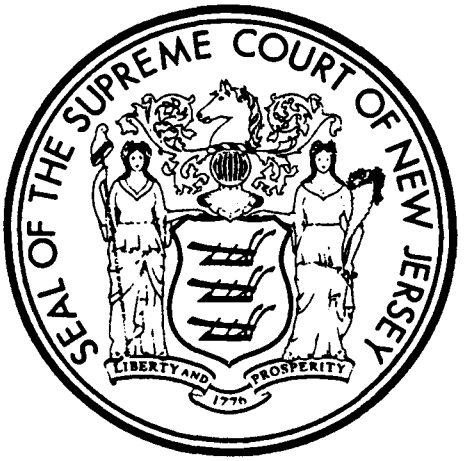
NEW JERSEY SUPREME COURT TASK FORCE ON MINORITY CONCERNS



FINAL REPORT

JUNE 1992

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

Chambers of
THEODORE Z. DAVIS
Judge

HALL OF JUSTICE
101 S. 5TH STREET
SUITE 640
CAMDEN, N.J. 08103-4001
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June 30, 1992

Chief Justice Robert N. Wilentz
and Associate Justices

Re: New Jersey Supreme Court Task Force
On Minority Concerns

Dear Chief Justice Wilentz and Associate Justices:

The Task Force is pleased to present to you its final report.

On behalf of all members, it must be said that we have been honored by your request that we be of service to the Court regarding such an important question. Our task could not have been completed without the assistance provided by the Administrative Office of the Courts.

This report attempts to document the impact that the unfinished agenda of our nation and State, which are still struggling to come to terms with the consequences of its history of relations with racial and ethnic minorities, has had upon the judicial system.

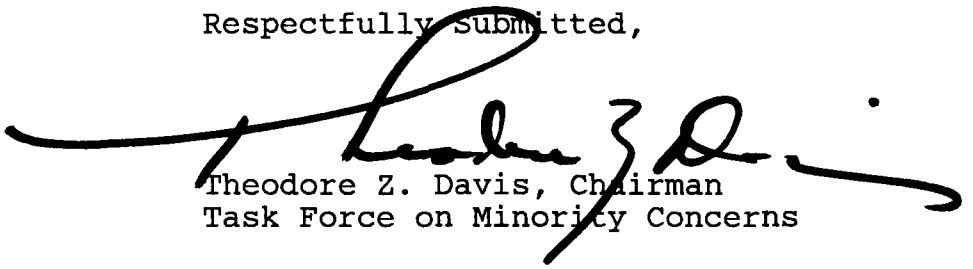
The legacy of that history has had a profound impact on our entire judicial system. Opinions may vary as to the meaning of any particular percentage or other attempt to numerically categorize that which was found. However, there is no dispute that racial and ethnic bias exist. It would be unrealistic to expect all readers of this report to agree with all the emphases and nuances. It is hoped, however, that it is clear that we have tried to search out and critically assess objective evidence wherever available.

The multi-disciplinary character of this Task Force provided us with a wide range of knowledge, opinions and varying perspectives. Some members held strong positions on how broad our mission should have been and, of course, on many of the issues studied. However, after six years of immersion in the subject

matter, I believe an impressive convergence of minds developed. Of course, as expected, individual differences of view among participants remain.

The Task Force submits this report to the Court, knowing quite well that the most difficult task of resolving the problems of racial and ethnic bigotry lay ahead. Their resolution will require an extraordinary intellect, unswerving compassion and most importantly, a level of candor that will engender respect for any decision the Court might reach.

Respectfully Submitted,



Theodore Z. Davis, Chairman
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[1]The affiliations and titles which are listed are those which members had at the time of their appointment to the Task Force. Before the Task Force completed its work, two members died (they are signified by one asterisk) and one retired (this person is marked by two asterisks).

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CHAPTER ONE
ESTABLISHMENT AND MISSION OF THE TASK FORCE

Establishment and Mission of the Task Force

In summer 1983, Chief Justice Robert N. Wilentz met with representatives of the Coalition of Minorities in the Judiciary[1] who had been asked to convey their concerns about the experience of African-American and Latino judicial employees and those non-judicial users of the court system who were African Americans or Latinos.

As a result of that meeting, Chief Justice Wilentz convened an internal, ad hoc Committee on Minority Concerns in June 1984, for the purpose of addressing the concerns of the Coalition. The Committee was chaired by The Honorable James H. Coleman, Jr., Appellate Division. In August 1984, the Committee submitted its report to the Supreme Court.

In September 1985, after reviewing the report of the Committee on Minority Concerns (the Coleman Committee), the Chief Justice formed a sixteen-member Task Force. In January 1986, the Task Force was expanded to forty-eight members in response to complaints from some minority bar associations (African American and Hispanic). The Honorable Theodore Z. Davis, a judge of the Superior Court, was asked to be Chairman. The Task Force was named the New Jersey Supreme Court Task Force on Minority Concerns.

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[1]This group is an organization founded in 1980 to address issues of concern to racial minorities in the judiciary and to make recommendations to the Chief Justice, the Supreme Court, and the Administrative Director of the Courts on ways to address problems relating to minority concerns.

The Chief Justice commissioned 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." Further, the Chief Justice instructed the Task Force "to pursue its investigations wherever they may lead [and] set forth its findings with candor...."

Among initial Task Force members were one Appellate Division judge, numerous Superior and Municipal Court judges, a past and then-serving Public Advocate, the director of a Legal Services agency, prosecutors, academicians, representatives from minority community organizations, and the business community. The membership varied somewhat over the life of the Task Force. The Task Force was saddened at the death of two of its members, Hosea Williams, a retired Probation Officer, and The Honorable Elliott G. Heard, Superior Court. However, additional persons were appointed by the Chief Justice: John Mayson, then Clerk of the Superior Court and now Counsel to the Sentencing Pathfinders Committee; Public Advocate Wilfredo Caraballo; and Gerald M. Eisenstat, Esq., President of the New Jersey State Bar Association. The total number of persons who served as members is fifty-one, thirty-three (65%) of whom were minority (twenty-three African-Americans, nine Latinos, and one Asian-Pacific Islander).

Committee Structure

The Task Force established an Executive Committee to assist the Chairman with developing policies and operational procedures, and coordinating and directing the Task Force. The Executive

Committee was composed of the chairpersons of the four working Committees and three members at large.

The four standing Committees were:

- Criminal Justice and the Minority Defendant
- Minorities and Juvenile Justice
- Minority Access to Justice
- Minority Participation in the Judicial Process

Each member of the Task Force was assigned to one working Committee. The responsibilities of each Committee are described in the respective chapter reports.

Research Consultants

The Task Force retained several independent research consultants to execute a wide-ranging research program. First, Dr. Howard F. Taylor, Professor of Sociology at Princeton University, and Dr. William J. Chambliss, Professor of Sociology at The George Washington University in Washington, D.C., were selected to advise the Chairman and the Executive Committee on research matters and to supervise the research projects undertaken by the Task Force. They brought distinguished academic records in the fields of criminology, research methodology, social psychology, sociology, and race relations.

In spring 1989, the Task Force retained three additional research consultants to guide a federally-funded research project entitled "Differential Court Usage Patterns among Minority and Non-Minority Populations in New Jersey." They were Dr. Susan S. Silbey, Professor of Sociology at Wellesley College; Dr. Patricia M. Ewick, Professor of Sociology at Smith College (who has since

transferred to Clark University); and Nelson Kofie, A.B.D., a graduate student at The George Washington University. When Mr. Kofie returned to graduate school to complete his dissertation late in 1990, Ms. Sylvia Breau, a recent graduate of Rutgers University, assumed his duties.

Activities of the Task Force

In order to complete its mission, the Task Force undertook a variety of activities. Members of one or more Committees have met with representatives of minority bar associations, as well as administrators of key public and private agencies involved with the administration of justice; other members observed court proceedings; experts in specialized areas spoke at symposia. A pilot research project obtained preliminary insights about how judicial employees at the State, county, and municipal levels experienced the judicial workplace. Furthermore, extensive reviews of pertinent fields of literature and a number of research projects—including ad hoc telephone surveys and social scientific surveys—were completed.

Four research initiatives merit special attention. First, a survey aimed at capturing perceptions of bias in the justice system was conducted of all Superior Court judges and top-level court managers[2] in November 1987, at the annual Judicial College and Staff College respectively. Each of the Committees submitted questions of specific interest to its research program. The final

[2]The managers included division and unit heads at the Administrative Office of the Courts, Trial Court Administrators, Division Managers, and Vicinage Chief Probation Officers.

draft included some questions from each Committee and was titled "Court Process Questionnaire." This project was directed by Drs. Chambliss and Taylor and their assistants. Of the 340 Superior Court judges attending the Judicial College, nearly 50% (169) returned the questionnaire. The response rate for court administrators attending the Judicial Staff College was 61% (113). This report, SURVEY OF PERCEPTIONS OF BIAS IN THE NEW JERSEY COURTS (May 4, 1989), is attached as Appendix A1.[3]

Second, several focus groups were held. The use of this research method by the Judiciary is relatively novel. It is a form of qualitative research in which a small group of "experts" on some subject is convened and the participants are interviewed collectively. All but one of the Task Force's focus groups were conducted by an external consultant who worked very closely with each Committee that sponsored a focus group. The consultant assisted with the development of a plan for conducting the sessions, chaired the sessions, analyzed the results, and wrote the reports.[4]

Third, public hearings were convened at key locations around the State to assure that members of the public had the opportunity to present issues and concerns directly to the Task Force. Testimony was received from more than two hundred persons in one or more of the following ways:

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[3]The research reports compiled by the Task Force, together with other background information collected by the Task Force, are appended to the Final Report in a separate volume.

[4]Two sources that provide helpful introductions to this research method are R.A. Krueger, FOCUS GROUPS: A PRACTICAL GUIDE FOR APPLIED RESEARCH (1988) and D.L. Morgan, FOCUS GROUPS AS QUALITATIVE RESEARCH (1988).

(1) Testimony in person at public hearings held at thirteen different sites around the State. The testimony of the 129 persons who spoke at these hearings produced 1,216 pages of transcripts.

(2) Testimony in person but anonymously. This testimony was taken in the privacy of the offices of designated members of the Task Force. The testimony of these twenty-two persons produced 376 pages of transcripts.

(3) Submission of written testimony of a public nature. Eleven persons presented forty-eight pages of written materials under this option.

(4) Submission of written testimony on an anonymous basis. Forty-five persons provided 192 pages of written testimony.

The text of all public testimony is submitted as a supplement to this final report.[5] A "Master Subject Index and Content Analysis of the Hearings" is provided in each of the five volumes of public hearings as well as in Appendix A2.

The last major study, "Differential Court Usage Patterns among Minority and Non-Minority Populations in New Jersey," already has been mentioned. It is funded by a grant of $149,952 from the State Justice Institute and $116,950 in matching New Jersey State funds. The study is still in progress and is expected to be completed by September 1992.

This study will break new ground in many areas and has two principal areas of research interest. First, the study will test the perception that minorities underuse the courts, a perception

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[5]Readers who want to obtain the transcripts are advised that, given their voluminous nature, it would be prohibitive for the judiciary to provide free copies upon request. Instead, the Chairman of the Task Force has asked that the Administrative Office of the Courts distribute the documents through the New Jersey Documents Collection administered by the State Library in the Department of Education. The six-volume set including all public hearing transcripts is expected to be available in the State's major college libraries, county libraries, and public libraries in addition to the State Library in Trenton and the law libraries in each county courthouse. Sets will also be available at the Administrative Office of the Courts in Trenton.

that emerged primarily in the context of civil matters. The second aim is to discover what contributes to any differences in patterns of use between minorities and non-minorities.

Interim Report

When the Task Force recognized that several research efforts required further time to complete, the Task Force submitted an interim report to the Supreme Court in August 1989, to inspire as many changes in the Judiciary as early as possible rather than wait until all recommendations could be submitted. The Task Force also wanted to submit its preliminary work to widespread public scrutiny before submitting a final document. In addition to sending the INTERIM REPORT to and soliciting comments from hundreds of scholars, religious leaders, community leaders, politicians, court officials, other justice system personnel, and attorneys, it was published in the NEW JERSEY LAW JOURNAL.[6] The comments that were received are included in the document, "Comments from the Public on the Interim Report," which may be found in Appendix A3.

After reviewing the INTERIM REPORT, the Task Force was advised that the Supreme Court had studied its recommendations and had commenced the implementation of the recommendations it could immediately address. That response is outlined in a letter from the Administrative Director of the Courts to the Chairman of the Task Force and is included as Appendix A4.

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[6]125 N.J.L.J. 55 (January 11, 1990).

Demographic Context

New Jersey is increasingly becoming a racially, culturally, ethnically, and linguistically pluralistic State. Now the home of about 7.7 million persons, it has a rich and complex history. The State's residents or their ancestors include natives of this continent, immigrants and refugees from around the world, migrants from other parts of the United States and its possessions, and victims of coercive migratory practices such as slavery.

Racial and ethnic minorities[7] now comprise slightly more than one-fourth (26%) of the State's residents.[8] Over the course of the 1980s, the first decade for which statistics are available for the four major racial and ethnic groups, minorities increased from 21% of the population in 1980 to 26% of the State's residents in 1990. While whites decreased both in number and proportion over the course of the decade, each of the other three major groups increased: African Americans by almost 80,000, an increase from 12.4% to 12.8%; Latinos by about 248,000, an increase of about 50% from 6.7% to 9.6%; and all others, more than doubling by about 168,000 from 1.5% of the State's residents to 3.6%. See Table 1

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[7]The term minority, as used by the Task Force, refers to the following five groups commonly viewed to be racial/ethnic groups: African-Americans (a designation which we will use alternatively with "Black"), Native Indians, Asians/Pacific Islanders, and Latinos (which will be used alternatively with "Hispanic"). The Task Force does not imply in any way that these are the only minorities, nor that these are the only minorities whose concerns are worthy of study. Rather, these are merely the groups whose concerns **this** Task Force was mandated to address.

[8]N.J. State Data Center, Div. of Labor Market & Demographic Research, Dep't. of Labor. "Data from the 1990 Census of Population and Housing Public Law 94-171 Tape for New Jersey" (January 30, 1991). Persons of Hispanic Origin have been subtracted from the five "racial" categories and the 9,685 persons of "other" racial identifications are omitted from the statistics reported here and in Table One to make all categories comparable. See note 9 infra for details on how to interpret Census data.

for further details.[9]

TABLE 1

1990 POPULATION OF NEW JERSEY BY RACIAL/ETHNIC GROUP

RACIAL/ETHNIC GROUP	1980 POPULATION[10]		1990 POPULATION[11]	
	NUMBER OF PERSONS	PERCENT OF THE TOTAL POPULATION	NUMBER OF PERSONS	PERCENT OF THE TOTAL POPULATION
White	5,825,538	79.4%	5,718,966	74.1%
Black	907,554	12.4%	984,845	12.8%
Hispanic Origin	491,883	6.7%	739,861	9.6%
Am. Indian, Eskimo, Aleut, Asian, or Pacific Islander	108,374	1.5%	276,831	3.6%

[9]Readers should be aware of two facts about Census data for racial and ethnic groups. First, the meaning of the various categories should be understood. The categories for "white," "black" and "Asian or Pacific Islander" are labeled "racial" categories. The following explanation from the 1980 Census applies equally to the 1990 Census. "The data on race were derived from answers to question 4, which was asked of all persons. The concept of race as used by the Census Bureau reflects self-identification by respondents; it does not denote any clear-cut scientific definition of biological stock." Bureau of the Census, U.S. Dep't. of Commerce, 1980 CENSUS OF POPULATION, Detailed Population Characteristics: New Jersey, PC80-1-D32, Table 194, 32-7, Appendix B, "Definitions and Explanations of Subject Characteristics," B-3 (1983).

"Spanish Origin," however, is not a part of the "racial" item. It comes from Census question #7. "Origin or descent can be regarded as the ancestry, nationality group, lineage, or country in which the person or person's parents or ancestors were born before their arrival in the United States. It is important to note that persons of Spanish origin may be of any race." Ibid. at B-5. The term "Hispanic" was used in the 1990 Census, replacing the term "Spanish" which was used in the 1980 Census.

[10]Off. of Demographic & Econ. Analysis, Div. of Planning & Res., N.J. Dep't. of Labor, NEW JERSEY 1980 CENSUS OF POPULATION AND HOUSING—MUNICIPAL PROFILES, Vol. 1: Characteristics of Persons 1 (January 1982). As indicated supra at note 2, one racial group, "Other," has been excluded from the statistics for both 1980 and 1990. The reason is that they are without definition other than the persons do not classify themselves in any of the four "racial" categories and are not of Hispanic origin. For the purposes of our analysis, this category, which includes 31,474 persons for 1980 and 9,685 persons for 1990, is thus treated as missing data.

[11]N.J. State Data Center, supra n. 8.

Two additional measures illustrate further the State's growing pluralism. First, the number of foreign-born persons grew by 208,788 from 1980 to 1990, an increase of 27.6%. Secondly, the number of linguistic minorities expanded by 309,976 from 1980 to 1990, an increase of 28.3%. While 15.9% of the State's population spoke a language other than English in 1980, 19.5% did so by 1990.[12]

Demographic projections show that the trend of growing numbers and proportions of minorities and a decreasing white population appears to be a fairly robust projection which will persist for the foreseeable future. For example, a report projecting the growth of Latinos in the tri-state region of Connecticut, New Jersey, and New York projects that by the year 2000 the region's population will be 20% Hispanic.[13] The projection for Asian Americans for the year 2000 is 5%.[14] The Black population is estimated to reach 15.5% of the population by the turn of the century.[15]

Overview of the FINAL REPORT

The remainder of the FINAL REPORT consists of an Executive Summary, four chapters of specific findings and recommendations from the standing Committees, appendices, and a five-volume supple-

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[12]Table 1-B, Memorandum to Mark Davis from Connie Hughes, N.J. Dep't. of Labor, N.J. Data Center (April 17, 1992). The actual count by the Census with respect to language is "persons 5 years and over," not all persons.

[13]Latino Commission of Tri-State et al., OUTLOOK: THE GROWING LATINO PRESENCE IN THE TRI-STATE REGION 17 (1987).

[14]Chinese-American Planning Council, OUTLOOK: THE GROWING ASIAN PRESENCE IN THE TRI-STATE REGION 5 (1989).

[15]U.S. Dep't. of Commerce, Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES, III Edition, 26 (1991). This projection was prepared prior to the release of the 1990 Census and is not based on those data.

ment that contains the public hearings. In general, each Committee's work is reported according to this general outline:

- **Scope** of the Committee's work;
- **Activities** undertaken to date by the Committee;
- **Accomplishments** to date; and
- **Findings and recommendations.**

This report supersedes the INTERIM REPORT insofar as some of the findings and recommendations contained therein have been revised and new findings and recommendations have been added.

The Appendix includes the substantive information generated by the Task Force. It includes, for example, internal memoranda, research reports, comments from the public about the INTERIM REPORT, transcripts of focus group sessions, and other data.

SOURCES CITED

Books and Articles

Chinese-American Planning Council. OUTLOOK: THE GROWING ASIAN PRESENCE IN THE TRI-STATE REGION (1989).

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U.S. Dep't. of Commerce, Bureau of the Census. STATISTICAL ABSTRACT OF THE UNITED STATES, III Edition (1991).

CHAPTER TWO
EXECUTIVE SUMMARY

Introduction

The findings and recommendations of the four principal committees are presented in detail. Because of the scope of the Task Force's endeavor, there have been unavoidable overlaps and many similarities in the findings and recommendations although approached from different perspectives of the committees. This chapter summarizes the documented concerns and categorizes the recommendations in a manner which may be useful and practical to address those concerns.

The task of addressing minorities' concerns about the New Jersey court system is monumental and requires an absolute, straightforward, and long-term judicial resolve.

Because of the large number of recommendations, the historical intractability of racial and ethnic bias in our society and our judicial system, the need to ensure that the implementation process has integrity, the need to conduct continuous research to keep the courts abreast of current phenomena, and the need to ensure minority confidence in the courts' attempt to earnestly and effectively address minority concerns within the Judiciary, it is the opinion of the Task Force that some permanent, appropriately staffed, and adequately empowered body be created to assist in the implementation of the recommendations the Court finds feasible to adopt and to continue to investigate those matters of importance that have not been completed or addressed.

RECOMMENDATION

THE CHIEF JUSTICE SHOULD APPOINT A PERMANENT SUPREME COURT COMMITTEE ON MINORITY CONCERNS TO FURTHER THE GOALS OF THE TASK FORCE.

The Chief Justice should appoint a permanent, standing oversight committee named the Supreme Court Committee on Minority Concerns. That Committee should report directly to the Chief Justice. The responsibilities of the Committee should include, among others:

1. Monitoring the Judiciary's progress in implementing the recommendations of this Task Force;
2. Supervising the uncompleted research project on Differential Court Usage commenced by this Task Force;
3. Planning, developing, implementing, and/or providing supervision for additional research projects; and
4. Monitoring the status of minority participation in the Judiciary.

The Committee should have fifteen members who are divided equally among judges, lawyers, and members of the general public. The membership should be comprised of men and women of diverse racial and ethnic backgrounds. All regions of the State must be equally represented. In order to provide continuity, members of the Task Force on Minority Concerns should be canvassed for volunteers who wish to serve. Furthermore, Task Force members should be asked for recommendations of others to be considered for appointment.

The Committee on Minority Concerns should meet on a regular basis and should issue an annual report to the Court. In addition, the Committee should convene a yearly conference with representatives from minority organizations to discuss the state of minorities in the New Jersey Judiciary.

There are several matters that warrant further investigation. Additional information is needed to more precisely identify whether, where, and how the judicial system differs in its treatment of minority and non-minority litigants as they pass through the various components of the court system. Of particular importance is whether and to what degree courts and juries differ in their disposition of cases based on the race or ethnicity of the litigants. An investigation of the manner in which the system treats minority and non-minority litigants going through the civil process may require an effort similar in scope to the Differential Court Usage Project which is discussed in Chapter Five.

Some of these areas which require additional attention by the permanent committee are as follows:

RECOMMENDATION

THE SUPREME COURT SHOULD ENSURE THAT JUDICIAL DECISIONS INVOLVING MINORITIES ARE FAIR BY: (1) DIRECTING THE STANDING COMMITTEE ON MINORITY CONCERNS, IN CONJUNCTION WITH THE CONFERENCE OF FAMILY DIVISION PRESIDING JUDGES, TO EXAMINE THE JUVENILE CODE, ALL WRITTEN RULES, DIRECTIVES, AND FORMS, TO (A) IDENTIFY AND DETERMINE THE NATURE OF ANY ADVERSE IMPACT ON MINORITY YOUTH AND (B) RECOMMEND CORRECTIVE ACTION; THIS EXAMINATION SHOULD FOCUS ON DECISION-MAKING CRITERIA SUCH AS CONSIDERATION OF FAMILY CIRCUMSTANCES.... (Juvenile Justice,[1] #19A[2])

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[1]The committee which authored the particular recommendation is named in parentheses. The number of the recommendation is identified as well.

[2]When there are two or more recommendations to be listed under a particular subject, the recommendations are listed in the numerical order in which they appear in the report.

Furthermore, some recommendations have been split into segments since some parts belong in one area and other parts belong in other areas. All such recommendations are marked with an alphabetic suffix.

RECOMMENDATION

THE CHIEF JUSTICE SHOULD DIRECT THE PERMANENT SUPREME COURT COMMITTEE ON MINORITY CONCERNS TO STUDY MINORITY REPRESENTATION ON JURIES AND THEIR IMPACT, IF ANY, ON VERDICTS. (Minority Access, #27)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE FORTHCOMING SUPREME COURT COMMITTEE ON MINORITY CONCERNS TO DOCUMENT ANY SPECIAL NEEDS THAT MAY DISTINGUISH COUNTIES IN TERMS OF THE SIZE OR PROPORTION OF MINORITIES WITHIN THOSE COUNTIES. (Minority Access, #29)

SUMMARY AND CATEGORIZATION OF COMMITTEE RECOMMENDATIONS

Education and Training

A. Education of Persons Working in the Courts

The first concern—the only one addressed by all four committees—is that judges, court employees, and others who work in the courts (most notably the Bar) are not sufficiently aware of and sensitive to minority concerns and do not possess the requisite skills to address racial and ethnic bias issues. Hence the ability of court employees and others to effectively deliver services to minorities is called into question.

A vital component of the proposed solution to this concern is professional development and training. The recommendations that seek to provide specific suggestions for educational initiatives primarily for employees of the Judiciary and, secondarily, for attorneys who practice in the courts, are as follows:

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE ANNUAL SENSITIVITY TRAINING TO ADDRESS RACIAL AND ETHNIC BIAS FOR ALL JUDGES AND COURT SUPPORT EMPLOYEES. (Criminal Justice, #1)

RECOMMENDATION

PRACTITIONERS IN THE CRIMINAL JUSTICE SYSTEM, INCLUDING JUDGES, SHOULD ATTEND EDUCATIONAL SEMINARS ON EYEWITNESS IDENTIFICATION DEVELOPED BY THEIR RESPECTIVE AGENCIES. (Criminal Justice, #9)

RECOMMENDATION

THE SUPREME COURT SHOULD ASSURE THAT FAMILY DIVISION JUDGES, MANAGERS, AND SUPPORT STAFF ARE AS AWARE AS POSSIBLE OF RESOURCES BY DIRECTING EACH VICINAGE TO CREATE AND MAKE APPROPRIATE USE THROUGH TRAINING AND DAILY USE OF A VICINAGE DELINQUENCY DISPOSITIONAL RESOURCE MANUAL WHICH IS REGULARLY UPDATED. (Juvenile Justice, #21)

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THAT ALL FAMILY COURT JUDGES, DIVISION MANAGERS, AND SUPPORT STAFF ARE TRAINED EFFECTIVELY REGARDING THE KNOWLEDGE AND SENSITIVITY THAT ARE REQUIRED TO ASSURE (1) THE DELIVERY OF APPROPRIATE SERVICES TO AND (2) THE REACHING OF BIAS-FREE DECISIONS REGARDING COURT-INVOLVED MINORITY YOUTH. (Juvenile Justice, #22)

RECOMMENDATION

IN ORDER TO INCREASE PUBLIC CONFIDENCE IN THE FAIRNESS OF THE JUVENILE JUSTICE SYSTEM THE SUPREME COURT SHOULD: (1) DIRECT THAT EACH ASSIGNMENT JUDGE ARRANGE FOR A STATEMENT ON RACIAL AND ETHNIC BIAS IN THE COURTS TO BE READ IN COURT ON MAY 1 (LAW DAY) OF EACH YEAR. IN ADDITION CONSIDERATION SHOULD BE GIVEN TO PROMINENTLY DISPLAYING A STATEMENT IN EACH COURT, ALONG WITH THE NAME OF A PERSON WHO CAN BE CONTACTED IF SOMEONE HAS A CONCERN OR QUESTION. (Juvenile Justice, #23A)

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THAT ALL COURT PERSONNEL ATTEND ONGOING CROSS-CULTURAL TRAINING PROGRAMS. (Minority Access, #36)

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THE ADMINISTRATIVE OFFICE OF THE COURTS TO (1) EXPAND ITS TRAINING EFFORTS TOWARD CULTURAL AWARENESS AND MANAGEMENT SKILLS IN A MULTICULTURAL WORK FORCE AND (2) PROVIDE MINORITY EMPLOYEES WITH GENERAL MANAGEMENT AND LEADERSHIP TRAINING. (Minority Participation, #52)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH AN EEO/AA TRAINING PROGRAM FOR NEW EMPLOYEES AND AN ANNUAL CULTURAL AWARENESS PROGRAM FOR STATE AND VICINAGE JUDICIAL EMPLOYEES. (Minority Participation, #53)

B. Education of the Public

The Task Force has documented that minorities lack confidence in the Judiciary as well as the broader legal system. There are numerous ways to educate the general public and minorities in particular about the Judiciary's role, procedures, and limitations. The following recommendations have been crafted to provide specific guidance for the Judiciary to initiate its outreach efforts to the public:

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT TWO INITIATIVES BE UNDERTAKEN TO MAKE THE COMMUNITY, ESPECIALLY THE MINORITY COMMUNITY, AWARE OF THE JUVENILE COURT SYSTEM: (1) CREATE A COMPREHENSIVE PUBLIC EDUCATION PROGRAM TO PROVIDE INFORMATION ABOUT THE OPERATION OF THE JUVENILE COURT SYSTEM AND TO MAKE THE PUBLIC AWARE OF EFFORTS THAT ARE BEING TAKEN TO ELIMINATE UNFAIRNESS TO MINORITY JUVENILES; AND (2) ENGAGE IN PARTNERSHIPS WITH SCHOOLS AT ALL LEVELS WHERE THE JUDICIARY CAN ASSIST THEM IN THE DEVELOPMENT AND INSTRUCTION OF A LEGAL EDUCATION CURRICULUM OR PROGRAM, THE EFFECT OF WHICH WILL BRING JUDGES AND COURT WORKERS INTO CLASSROOMS AND STUDENTS INTO THE COURTS. (Juvenile Justice, #18)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A PLAN AIMED AT FAMILIARIZING THE COMMUNITY WITH THE JUDICIARY AND MAKING THE EMPLOYEES OF THE JUDICIARY MORE FAMILIAR WITH THE COMMUNITIES THEY SERVE. THIS SHOULD INCLUDE RECOMMENDATIONS AS TO MATERIALS THAT MIGHT BE INCLUDED IN PUBLIC SCHOOL CURRICULA. THE PLAN SHOULD INCLUDE INITIATIVES THAT ARE CULTURALLY AND ETHNICALLY APPROPRIATE FOR REACHING MINORITY COMMUNITIES. (Minority Access, #28)

Effective Communication

Three committees addressed the issue of how the Judiciary fails to assure effective communication. Notwithstanding the progress that the Court has made, many of the impediments to effective communication noted by the Supreme Court Task Force on Interpreter and Translation Services still inhibit or prevent equal access to the courts for many minorities. Those barriers include lack of standards for interpreters and translators, unavailability of interpreters and bilingual court personnel, and inaccessible documents due to reading levels that exceed the reading abilities of many persons. The impediments are not limited to linguistic minorities but affect native English speakers as well, especially those who have limited education.

The recommendations regarding linguistic minorities focus on the need to assure that qualified interpreters are provided to litigants, witnesses, and others who need them; that court support services are available from bilingual personnel; and that forms and documents intended to be read by the public are written in easily comprehensible language and are translated into other languages.

RECOMMENDATION

THE SUPREME COURT SHOULD ASSURE THAT THE TRIAL COURTS (1) PROVIDE INTERPRETERS WHO ARE NOT ONLY BILINGUAL, BUT WHO HAVE A KNOWLEDGE OF CULTURAL VARIATIONS; AND (2) IMPLEMENT THE RECOMMENDATIONS OF THE TASK FORCE ON INTERPRETER AND TRANSLATION SERVICES AIMED AT ASSURING EQUAL ACCESS TO COURTS FOR LINGUISTIC MINORITIES. (Criminal Justice, #3)

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THAT A QUALIFIED INTERPRETER IS PROVIDED FOR EVERY PERSON WHO NEEDS AN INTERPRETER. (Minority Access, #35)

RECOMMENDATION

THE SUPREME COURT SHOULD ADOPT A POLICY THAT REQUIRES ALL FORMS AND DOCUMENTS INTENDED TO BE READ BY LITIGANTS OR THE PUBLIC BE PUBLISHED IN LANGUAGE THAT THE LAY PUBLIC CAN EASILY COMPREHEND. (Minority Access, #37)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE BILINGUAL PROBATION INITIATIVE BY (1) REQUIRING GREATER RELIANCE ON THE BILINGUAL VARIANT POSITION FOR MEETING GOALS, (2) EXTENDING THE INITIATIVE TO ALL JUDICIARY UNITS, INCLUDING THE MUNICIPAL COURTS, THAT HAVE DIRECT CONTACT WITH THE PUBLIC OR CLIENTS, (3) CONDUCTING A NEW NEEDS ASSESSMENT AND SETTING NEW GOALS, AND (4) DIRECTING THAT EMPLOYEES IN BILINGUAL VARIANT TITLES BE PAID FOR THE ADDITIONAL SKILL THEY ARE REQUIRED TO HAVE. (Minority Participation, #48)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO EXPAND ITS TRAINING EFFORTS, AND DIRECT APPOINTING AUTHORITIES TO INCREASE COURT INTERPRETERS' PAY. (Minority Participation, #49)

Procedures for Correcting Perceived Discrimination

Another major concern addressed by multiple committees is the lack of sufficient procedures other than the ordinary appeals process by which minorities can seek to address racially discriminatory practices. While the Task Force notes that some procedures are indeed in place (e.g., the Advisory Committee on Judicial Conduct), they are not as accessible as they should be, are not as effective as they should be, and have no procedures to identify and monitor the disposition of the complaints. The basic goal is to design, implement, and maintain effective procedures where allegedly discriminatory treatment of minority court users or employees by Judiciary personnel or lawyers may be reported.

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT THE ADMINISTRATIVE OFFICE OF THE COURTS DEVELOP, ADOPT AND IMPLEMENT IN ITS OWN OFFICES AND IN EACH VICINAGE A DISCRIMINATION COMPLAINT PROCEDURE. (Criminal Justice, #2)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT ALL COMPLAINT PROCEDURES INCLUDE THE FOLLOWING FEATURES: ALL KEY ASPECTS OF BEHAVIOR WHICH COULD RESULT IN A COMPLAINT ARE CLEARLY SPECIFIED, NOTICES OF COMPLAINT MECHANISMS ARE READILY ACCESSIBLE TO THE PUBLIC, AND COMPLAINT PROCEDURES ARE STRUCTURED SO THAT GRIEVANCES HAVING TO DO WITH MINORITY ISSUES CAN BE IDENTIFIED AND QUANTIFIED. (Minority Access, #30)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT OMBUDSPERSON OFFICES BE ESTABLISHED AT THE STATE AND VICINAGE LEVELS TO PROVIDE INFORMATION ABOUT THE COURTS AND TO RECEIVE AND INVESTIGATE COMPLAINTS ABOUT ABUSES IN THE JUDICIAL PROCESS. (Minority Access, #31)

Judges' Decision Making and Trial Management

The Task Force found that minorities are disproportionately represented as defendants in criminal and delinquency matters and as recipients of sentences to incarceration. Some of the overrepresentation was found to be due to discrimination in the Judiciary.

Two of the specific ways the Task Force proposes to reduce the possibility of discrimination against minorities in the Judiciary are (1) to use eyewitness testimony with greater caution given the fact that it is much more unreliable than is commonly believed; and (2) to assure that judges handling delinquency matters (a) are more aware and make greater use of dispositional alternatives and (b) rely less on factors which appear neutral on the surface but nevertheless produce discriminatory effects. The recommendations drafted to address these concerns are:

RECOMMENDATION

THE SUPREME COURT SHOULD DEVELOP CAUTIONARY INSTRUCTIONS THAT WOULD BE USED TO INFORM JURIES ON THE ISSUES PERTAINING TO UNRELIABILITY OF EYEWITNESS IDENTIFICATION GENERALLY AND ON THE MORE SIGNIFICANT LIMITATIONS RESPECTING CROSS-RACIAL IDENTIFICATION PARTICULARLY. THE INSTRUCTIONS SHOULD BE MADE AVAILABLE TO JUDGES FOR USE IN CASES WHERE EXPERT TESTIMONY ON EYEWITNESS IDENTIFICATION IS INTRODUCED. (Criminal Justice, #10)

RECOMMENDATION

THE SUPREME COURT SHOULD ALLOW MORE FREQUENT USE OF EXPERT WITNESSES ON THE GENERAL PROBLEM OF UNRELIABILITY OF EYEWITNESS IDENTIFICATION IN TRIALS. COURT RULES SHOULD BE FORMULATED WHICH AUTHORIZE SUCH TESTIMONY, PARTICULARLY WHERE THE IDENTIFICATION IS NOT STRONG OR WHERE THE CASE RESTS MAINLY ON THE IDENTIFICATION. (Criminal Justice, #11)

RECOMMENDATION

THE SUPREME COURT SHOULD SET A GOAL FOR THE JUDICIARY OF REDUCING THE NUMBER OF MINORITY JUVENILES INCARCERATED. THIS GOAL WOULD BE ACCOMPLISHED BY: ... (2) CAREFULLY CONSIDERING THE USE OF AVAILABLE ALTERNATIVE DISPOSITIONS THAT WOULD KEEP JUVENILES IN THE COMMUNITY; (3) ADOPTING A POLICY THAT FACTORS LIKE FAMILY STATUS, WHICH MAY APPEAR RACE-NEUTRAL BUT WHICH WHEN CONSIDERED IN CREATING A DISPOSITION MAY TEND TO RESULT IN DISPROPORTIONATE NUMBERS OF MINORITIES BEING INCARCERATED, ARE INSUFFICIENT GROUNDS IN AND OF THEMSELVES FOR JUSTIFYING A DECISION TO INCARCERATE; (4) ENCOURAGING JUDGES TO PLAY A MORE ACTIVE ROLE IN DETERMINING WHICH JUVENILES GO INTO THESE PROGRAMS BY RECOMMENDING SPECIFIC PLACEMENTS AT THE TIME OF SENTENCING;.... (Juvenile Justice, #17A)

RECOMMENDATION

THE SUPREME COURT SHOULD ENSURE THAT JUDICIAL DECISIONS INVOLVING MINORITIES ARE FAIR BY: ... (2) AUTHORIZING THE ADMINISTRATIVE DIRECTOR OF THE COURTS TO ISSUE A DIRECTIVE THAT FAMILY DIVISION JUDGES AND STAFF, WHEN MAKING DIVERSION, DETENTION, CALENDARING, DISPOSITIONAL, AND OTHER DECISIONS IN DELINQUENCY CASES, DETERMINE AND CONSIDER ACTUAL FAMILY CIRCUMSTANCES. (Juvenile Justice, #19B)

Developing Alternatives and Expanding Services for Juveniles

The final report also addresses the concern that the resources available to judges who preside over delinquency cases are too limited. This finding applies to all juveniles, minority and non-minority alike. Minority juveniles are more likely to reside in urban areas and, because resources and alternatives are more limited in urban counties, minority juveniles are less likely to have access to the range of alternatives and services available to non-minority youth. Therefore the Task Force submits the following recommendations:

RECOMMENDATION

THE SUPREME COURT SHOULD SET A GOAL FOR THE JUDICIARY OF REDUCING THE NUMBER OF MINORITY JUVENILES INCARCERATED. THIS GOAL WOULD BE ACCOMPLISHED BY: (1) WORKING THROUGH COUNTY YOUTH SERVICES COMMISSIONS TO EXPAND SENTENCING ALTERNATIVES; ... (5) DIRECTING THAT JUVENILE CONFERENCE COMMITTEES BE ESTABLISHED FOR EVERY MUNICIPALITY WHICH DOES NOT NOW HAVE ONE IN ORDER TO STRENGTHEN THE LOCAL CONSTITUENCY FOR DEVELOPING RESOURCES AND ALTERNATIVES TO KEEP JUVENILES FROM BEING INCARCERATED; (6) SUPPORTING THE CONCEPT OF AN URBAN INITIATIVE TO PROVIDE ALTERNATIVE DISPOSITIONAL RESOURCES IN NEW JERSEY'S CITIES; AND (7) IMPLEMENTING A STATEWIDE INTENSIVE SUPERVISION PROGRAM FOR JUVENILES. (Juvenile Justice, #17B)

RECOMMENDATION

IN ORDER FOR THE JUDICIARY TO PLAY A LEAD ROLE IN THE DEVELOPMENT OF ADDITIONAL COMMUNITY ALTERNATIVES WHICH CAN PROVIDE ADEQUATE LEVELS OF SUPERVISION FOR JUVENILES FOR WHOM FAMILY SUPERVISION IS LACKING, THE SUPREME COURT SHOULD DIRECT EACH VICINAGE TO IMPLEMENT THE FOLLOWING STRATEGIES: (1) DIRECT FAMILY DIVISION JUDGES TO ENHANCE AND EXPAND THE LEVEL AND KINDS OF SERVICES CURRENTLY AVAILABLE INTERNALLY THROUGH PROBATION AND EXTERNALLY BY DEVELOPING PARTNERSHIPS WITH COMMUNITY GROUPS IN THE JUDGES' CAPACITY AS MEMBERS OF YOUTH SERVICES COMMISSIONS AND IN THEIR DEALINGS WITH OTHER BODIES; AND (2) SINCE SOME JUVENILES ARE COMMITTED TO THE DEPARTMENT OF CORRECTIONS BECAUSE OTHER STATE AGENCIES ARE NOT FORTHCOMING WITH OTHER SERVICES, DIRECT FAMILY DIVISION JUDGES TO ACTIVELY SEEK TO HOLD SUCH AGENCIES ACCOUNTABLE FOR (A) THE DELIVERY OF MANDATED SERVICES AND (B) THE MEETING OF STATUTORY TIME GOALS. (Juvenile Justice, #20)

Court Administration

Minorities are nearly absent in the highest policy-making and decision-making levels of the Judiciary. The Task Force submits the following recommendation aimed at assuring participation on a day-to-day basis in the highest levels of court administration:

RECOMMENDATION

THE SUPREME COURT SHOULD APPOINT A MULTICULTURAL ADVISORY BOARD TO INCREASE THE JUDICIARY'S ABILITY TO RELATE EFFECTIVELY WITH DIFFERENT COMMUNITY GROUPS. THE BOARD COULD ALSO REVIEW ADMINISTRATIVE POLICIES AND PROCEDURES, PARTICIPATE IN MANAGEMENT TEAM MEETINGS, AND SENSITIZE TOP POLICY MAKERS TO CULTURAL DIVERSITY. (Minority Participation, #43)

Bail Policy

The Task Force documented the lack of uniformity in reaching bail decisions and identified some of the various socioeconomic forces that result in a discriminatory impact on minorities seeking to make bail. The following recommendations address these concerns:

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THAT ALL RULES AND DIRECTIVES REGARDING BAIL BE REVIEWED AND REVISED IN ORDER TO PROMULGATE PROCEDURES TO BE APPLIED UNIFORMLY STATEWIDE. (Criminal Justice, #4)

RECOMMENDATION

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY WITH RELEASE CRITERIA FOCUSED UPON FACTORS RELATING DEMONSTRABLY TO THE DEFENDANT'S LIKELIHOOD TO APPEAR IN COURT. THE BAIL POLICY SHOULD (1) TAKE INTO CONSIDERATION PAST COURT APPEARANCE HISTORY AND SIGNIFICANT BACKGROUND FACTORS WHICH INSURE LIKELIHOOD TO APPEAR, (2) GIVE SUBSTANTIAL CONSIDERATION IN THE RELEASE EVALUATION PROCESS TO DEFENDANTS' LIKELIHOOD TO MAKE CASH BAIL, AND (3) GIVE MINIMUM WEIGHT TO ECONOMIC CRITERIA BECAUSE SUCH FACTORS GENERALLY IMPACT UNFAIRLY UPON RACIAL MINORITIES (E.G., SALARY, EMPLOYMENT HISTORY). (Criminal Justice, #5)

RECOMMENDATION

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY WHICH REQUIRES THAT MONETARY RELEASE OPTIONS INCORPORATE A DEFENDANT'S ABILITY TO PAY IN CASES WHERE BAIL WILL BE SET. THE POLICY SHOULD (1) SPECIFICALLY REQUIRE SUBMISSION AND USE OF FINANCIAL AND ECONOMIC INFORMATION REGARDING THE DEFENDANT'S STATUS; (2) CREATE A MECHANISM FOR REVIEW EVERY 30 DAYS, WHERE BAIL HAS BEEN GRANTED, WITH A REQUIREMENT THAT THE PROSECUTOR SUBMIT AN AFFIDAVIT REGARDING THE STATUS OF THE CASE, (E.G., EXPECTED DATES FOR INDICTMENT, ARRAIGNMENT, AND TRIAL); AND (3) REQUIRE CONSIDERATION OF THE RELATIONSHIP BETWEEN BAIL AND THE ACCUSED'S ABILITY TO PAY. (Criminal Justice, #6)

RECOMMENDATION

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY THAT INCLUDES NON-MONETARY RELEASE OPTIONS TO MINIMIZE THE SETTING OF BAIL UNLESS PROBABILITY OF NONAPPEARANCE HAS BEEN ESTABLISHED BY THE COURT. THE NON-MONETARY OPTIONS SHOULD INCLUDE BUT NOT BE LIMITED TO: (1) SUPERVISED PRETRIAL RELEASE WITH CONDITIONS; AND (2) RELEASE TO A COMMUNITY AGENCY OR FAMILY MEMBER WILLING TO ASSUME RESPONSIBILITY FOR THE DEFENDANT'S APPEARANCE IN COURT. (Criminal Justice, #7)

RECOMMENDATION

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY BASED ON THE PRESUMPTION THAT ALL INDIVIDUALS ARE RELEASE-WORTHY AND THAT IN CASES WHERE THERE IS A PRESUMPTION AGAINST INCARCERATION, THE DEFENDANT SHOULD BE RELEASED ON HIS OR HER OWN RECOGNIZANCE. (Criminal Justice, #8)

Personnel Policy: Ethics and Standards

The Task Force found that existing ethical and performance standards for court employees and attorneys were inadequate to create a work force and circumscribe attorney performance that deliver effective services to a racially, culturally, and ethnically diverse clientele. Therefore, the following recommendations are proposed:

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT PERFORMANCE STANDARDS SIMILAR TO THOSE EXISTING FOR JUDGES, LAWYERS, AND PROBATION PERSONNEL BE ADOPTED FOR ALL EMPLOYEES OF THE JUDICIARY; THAT ALL JOB DESCRIPTIONS INCLUDE RELATED PROVISIONS; AND THAT THE PERSONNEL SYSTEM INCORPORATE THESE STANDARDS IN THE INITIAL SELECTION OF NEW HIRES, THEIR ORIENTATION, AND THEIR ONGOING PERFORMANCE EVALUATIONS. (Minority Access, #32)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT PERFORMANCE STANDARDS BE ESTABLISHED TO EVALUATE EMPLOYEES' TREATMENT OF RACIALLY, CULTURALLY, AND ETHNICALLY SENSITIVE ISSUES. (Minority Access, #33)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THAT CODES OF CONDUCT INCLUDE A PROVISION THAT PROHIBITS DISCRIMINATION AGAINST LITIGANTS ON THE BASIS OF LANGUAGE. (Minority Access, #34)

Personnel Policy: Recruitment, Professional Development, and Promotion of Minority Personnel

The underrepresentation of minorities in the Judiciary's work force was found to be especially critical for (1) the key positions of judges and senior managers at all levels of the Judiciary—State, county, and municipal—and (2) Latinos and Asians/Pacific Islanders. Furthermore, even though there have been modest gains in minority representation in the work force at all levels, the Judiciary's recruitment of minorities lags behind the growing proportion of minorities in the general population as well as the available work force. Efforts to recruit minorities have been too narrowly focused and conventional. Efforts that were initially successful, such as the Chief Justice's emphasis on hiring minority law clerks, have not grown beyond their initial

success. These issues have led the Task Force to propose these recommendations:

RECOMMENDATION

THE SUPREME COURT SHOULD: ... (2) SET A POLICY REQUIRING AN INCREASE IN THE NUMBER OF MINORITIES IN ALL LEVELS OF THE FAMILY COURTS AND THE FAMILY DIVISION AT THE ADMINISTRATIVE OFFICE OF THE COURTS, ESPECIALLY IN KEY POSITIONS SUCH AS FAMILY COURT JUDGES, DIVISION MANAGERS, SUPERVISING PROBATION OFFICERS, INTAKE WORKERS, AND MANAGERS AT THE ADMINISTRATIVE OFFICE OF THE COURTS. (Juvenile Justice, #23B)

RECOMMENDATION

THE CHIEF JUSTICE SHOULD PROMOTE MINORITY JUDGES INTO THE MORE PRESTIGIOUS AND POLICY-MAKING JUDICIAL ASSIGNMENTS. (Minority Participation, #41)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS AND THE VICINAGES TO MAKE VIGOROUS AND AGGRESSIVE RECRUITMENT, HIRING, AND RETENTION EFFORTS TO INCREASE THE REPRESENTATION OF MINORITIES IN SENIOR MANAGEMENT AND KEY POLICY-MAKING POSITIONS. (Minority Participation, #42)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AND IMPLEMENT A MORE AGGRESSIVE PLAN TO ENSURE REPRESENTATION OF HISPANICS IN THE JUDICIARY'S WORK FORCE. (Minority Participation, #45)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ENHANCE ITS EFFORTS TO ENSURE REPRESENTATION OF ASIANS/PACIFIC ISLANDERS IN THE JUDICIARY'S WORK FORCE. (Minority Participation, #46)

RECOMMENDATION

THE CHIEF JUSTICE SHOULD CONTINUE THE PROGRAM TO RECRUIT MINORITY LAW CLERKS. (Minority Participation, #47)

RECOMMENDATION

THE SUPREME COURT SHOULD ESTABLISH ONGOING MONITORING PROCEDURES TO ENSURE REPRESENTATION OF MINORITIES IN ALL JOB CLASSIFICATIONS OF THE JUDICIARY'S STATE, VICINAGE, AND MUNICIPAL WORK FORCE. (Minority Participation, #50)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH A CAREER DEVELOPMENT OFFICE AND AN IN-HOUSE PROMOTION POLICY. (Minority Participation, #51)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH EMPLOYEE SUPPORT SERVICES TO ASSIST IN RECRUITMENT AND RETENTION OF MINORITIES IN THE JUDICIAL WORK FORCE. (Minority Participation, #54)

RECOMMENDATION

THE SUPREME COURT SHOULD ESTABLISH A TUITION REIMBURSEMENT PROGRAM AS SOON AS POSSIBLE. (Minority Participation, #55)

Appointees and Volunteers

The Judiciary relies on many persons other than employees to carry out its responsibilities. With respect to Supreme Court committees, there has been positive growth in minority representation as committee members. Underrepresentation is now limited to a few committees. However, minorities are not sufficiently represented among committee chairpersons, committee senior staff persons, and court volunteers. Factors which may partially explain these shortcomings are lack of standards for determining what the

proportion of minority appointees and volunteers should be, absence of statistical reporting systems to monitor progress toward meeting standards, and limited recruitment and advertising among minority constituencies. These recommendations address these concerns:

RECOMMENDATION

THE SUPREME COURT SHOULD CONTINUE ITS EFFORTS TO INCREASE THE REPRESENTATION OF MINORITIES AMONG ITS APPOINTEES TO THE VARIOUS SUPREME COURT BOARDS AND COMMITTEES. (Minority Participation, #57)

RECOMMENDATION

THE SUPREME COURT SHOULD SET A STANDARD FOR DETERMINING UNDERREPRESENTATION (SDU) IN COURT APPOINTMENTS. THAT STANDARD SHOULD REFLECT THE LEVEL OF MINORITIES USING THE SYSTEM. (Minority Participation, #58)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO MAINTAIN CURRENT DATA ON MINORITY REPRESENTATION AMONG LAWYERS, MUNICIPAL JUDGES AND EMPLOYEES, COURT COMMITTEES AND STAFF, COURT VOLUNTEERS, AND COURT APPOINTEES. (Minority Participation, #61)

RECOMMENDATION

THE SUPREME COURT SHOULD SET THE STANDARD FOR DETERMINING UNDERREPRESENTATION (SDU) IN COURT VOLUNTEER PROGRAMS IN TWO STAGES: FIRST AT THE LEVEL OF MINORITIES IN THE COUNTY POPULATION AND SECOND AT THE LEVEL OF MINORITIES AMONG THE CONSTITUENCY SERVED. (Minority Participation, #59)

RECOMMENDATION

THE SUPREME COURT SHOULD REQUIRE THAT THE VARIOUS VOLUNTEER PROGRAMS BE BETTER ADVERTISED IN THE MINORITY COMMUNITY. (Minority Participation, #60)

Bar Examination

There are concerns about the fairness of the Bar exam given the fact that minority examinees pass at a lower rate than do non-minorities. Therefore, the Task Force recommends:

RECOMMENDATION

THE SUPREME COURT SHOULD CONTINUE TO SEEK COMMENTARY ON THE BAR EXAMINATION FROM MINORITY ATTORNEYS. IT SHOULD (1) ADOPT THE RECOMMENDATIONS MADE BY THE ACBA BASED ON THE CONSULTANT'S REPORT, (2) INSTRUCT THE BOARD OF BAR EXAMINERS TO CONSIDER CAREFULLY THE REVIEWERS' COMMENTS ON THE ESSAY QUESTIONS, AND (3) ENSURE THAT THE BOARD OF BAR EXAMINERS AND RELATED COMMITTEES ALWAYS HAVE FULL REPRESENTATION OF MINORITY ATTORNEYS. FINALLY, THE COURT SHOULD SUPPORT EFFORTS TO RECRUIT MINORITY STUDENTS TO NEW JERSEY'S LAW SCHOOLS. (Minority Participation, #56)

Minority Vendors

Although limited somewhat by State procurement guidelines and procedures, the Judiciary may make too little use of minority vendors and contractors. The recommendation which addresses that concern follows:

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH AND MONITOR A MINORITY VENDOR PROGRAM TO ENSURE ONGOING REPRESENTATION OF MINORITIES IN ITS CONTRACTS. (Minority Participation, #62)

Ongoing and Further Research

The Task Force has identified several areas for research that either need to be initiated or completed. In addition to the three additional studies directed to be performed under the proposed

Supreme Court Committee on Minority Concerns[3] and three studies outlined in the following section, the Task Force submits the following recommendations pertaining to research:

RECOMMENDATION

THE SUPREME COURT SHOULD AUTHORIZE A STATEWIDE STUDY TO DETERMINE THE PREVALENCE AND FREQUENCY OF CROSS-RACIAL EYEWITNESS IDENTIFICATIONS IN CRIMINAL INVESTIGATIONS AND INDICTABLE CASES. (Criminal Justice, #13)

RECOMMENDATION

THE SUPREME COURT SHOULD PERMIT THE COMMITTEE ON MINORITY ACCESS TO JUSTICE TO SUPERVISE THE COMPLETION OF THE DIFFERENTIAL COURT USAGE PROJECT. (Minority Access, #38)

RECOMMENDATION

ADDITIONAL ANALYSIS OF THE HIRING, PROMOTING, AND SEPARATION DATA OF THE JUDICIAL WORK FORCE SHOULD BE CONDUCTED. (Minority Participation, #44)

Assistance from Other Branches of Government

Finally, the Task Force concluded that the Judiciary is not able to resolve all concerns regarding the courts specifically, much less the administration of justice generally, without the participation of other branches of government. The Judiciary is limited in its ability to undertake certain research projects and new initiatives, or even maintain old initiatives and services, to the degree that it cannot rely on the other branches for cooperation and funding. The specific needs for collaboration and assistance which the Task Force has identified are:

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[3]See pages 14-16, supra.

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER MAKING A REQUEST FOR LEGISLATION WHICH WOULD GRANT A RIGHT FOR DEFENSE COUNSEL TO BE PRESENT DURING LIVE LINEUP PROCEDURES. (Criminal Justice, #12)

RECOMMENDATION

THE CHIEF JUSTICE SHOULD CONSIDER APPROACHING THE ATTORNEY GENERAL TO EXPLORE THE POSSIBILITY OF JOINTLY SPONSORING AN EMPIRICAL ANALYSIS OF RECENT NEW JERSEY SAMPLES OF BAIL AND SENTENCING OUTCOMES, CONTROLLING FOR KEY FACTORS THAT INFLUENCE THE OUTCOMES OF THESE DECISIONS, EXAMINING THE POSSIBILITY OF CUMULATIVE DISCRIMINATION EFFECTS OVER THE SEQUENCE OF DECISIONS FROM ARREST THROUGH SENTENCING, AND DETERMINING THE DEGREE TO WHICH DISCRIMINATION OCCURS AT EACH OF THOSE DECISION POINTS. (Criminal Justice, #14)

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER A REQUEST TO THE LEGISLATURE THAT WOULD REVISE N.J.S.A. 2C:44-1 TO INCLUDE AS AN APPROPRIATE MITIGATING SENTENCING FACTOR THAT THE DEFENDANT HAS SUFFERED FAMILIAL, EDUCATIONAL, OR OTHER SOCIETAL DEPRIVATION DURING HIS OR HER YOUTH WHICH MAY HAVE CONTRIBUTED TO THE CRIMINAL ACTIVITY. (Criminal Justice, #15)

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER PROPOSING TO THE APPROPRIATE EXECUTIVE BRANCH AGENCIES THAT DEDICATED TREATMENT BED SPACES FOR INDIGENT DEFENDANTS BE MADE AVAILABLE TO THE JUDICIARY. (Criminal Justice, #16)

RECOMMENDATION

THE SUPREME COURT SHOULD DIRECT EACH VICINAGE TO CONSULT WITH ITS COUNTY GOVERNMENT TO ENSURE THAT THE PHYSICAL CONDITION OF COURTHOUSE FACILITIES FOR THE FAMILY DIVISION MEETS THE COURTHOUSE FACILITY GUIDELINES DEVELOPED BY THE SUPREME COURT COMMITTEE ON COURTHOUSE FACILITIES. (Juvenile Justice, #24)

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER REQUESTING THAT THE LEGISLATURE PROVIDE SUFFICIENT FUNDING TO CONTINUE THE INSTALLATION OF FACTS THROUGHOUT THE STATE. IF THE LEGISLATURE CANNOT FUND FACTS THROUGH NORMAL APPROPRIATIONS, THE JUDICIARY SHOULD EXPLORE WITH THE LEGISLATURE NON-TRADITIONAL FUNDING METHODS, SUCH AS POSSIBLE SURCHARGES ON DISSOLUTION OR OTHER COURT FILINGS, AS A MEANS OF PROVIDING THE RESOURCES NECESSARY TO CONTINUE THE INSTALLATION OF FACTS. (Juvenile Justice, #25)

RECOMMENDATION

THE CHIEF JUSTICE SHOULD SHARE WITH THE GOVERNOR THE FINDINGS ABOUT THE DISCRIMINATION THAT HAS BEEN FOUND TO OCCUR AT THE LAW ENFORCEMENT STAGE OF PROCESSING JUVENILE DELINQUENCY CASES AND PROPOSE CONDUCTING A JOINT STUDY OF ALL DECISION POINTS IN PROCESSING JUVENILE DEFENDANTS. (Juvenile Justice, #26)

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER PRESENTING TO THE GOVERNOR AND THE STATE LEGISLATURE THE FINDING OF THE TASK FORCE THAT THERE IS WIDESPREAD CONCERN ABOUT THE UNDERREPRESENTATION OF MINORITIES ON SUPREME, SUPERIOR, AND TAX COURT BENCHES. (Minority Participation, #39)

RECOMMENDATION

THE SUPREME COURT SHOULD CONSIDER PRESENTING THE FINDING OF THE TASK FORCE THAT THERE IS WIDESPREAD CONCERN ABOUT THE UNDERREPRESENTATION OF MINORITIES ON THE MUNICIPAL COURT BENCH TO ALL MAYORS AND MUNICIPAL COUNCILS. (Minority Participation, #40)

CHAPTER THREE
COMMITTEE ON CRIMINAL JUSTICE AND THE MINORITY DEFENDANT

Philosophical Statement

The Committee on Criminal Justice and the Minority Defendant has been guided by the mandate given to it by the Chief Justice and by the report of the Task Force's predecessor, the Committee on Minority Concerns, hereinafter referred to as the Coleman Committee. It also was guided by the experience brought to the Committee by each member.

While the Committee's members come from diverse racial and ethnic backgrounds, all are united as New Jerseyans. As judges, lawyers, administrators, scholars, and citizens, all are further unified by their common participation in the State's system of justice—one of the institutions that undergirds everyone's way of life. As each member personally treasures the principle of equality, it follows that that principle is treasured in the operation of the court system.

The criminal justice system is no stronger than the public's confidence in it. Public confidence cannot be attained unless all defendants—minority and majority—are treated fairly and equally, and the public can gauge the degree to which the principles of fairness and equal treatment prevail. Without public confidence the foundations of the system are threatened. As an integral part of the criminal justice system, the criminal courts must be the

driving force behind these principles and the catalyst for inspiring public confidence.

Therefore, it is imperative to scrutinize the criminal courts, identify all areas which need strengthening to assure fairness and equal treatment for both minority and majority defendants, and shape recommendations to achieve that strengthening. It is with these objectives in mind that the Committee has conducted itself for the past several years and now presents its findings and recommendations.

As a final note, the Committee's charge was to study the criminal courts. However, no institution functions in a vacuum, and the findings have invariably touched upon other participants, particularly executive agencies. Perhaps above all, the Committee has been constantly faced in its deliberations with the specter of discrimination in society at large. This Task Force cannot resolve such problems, but hereby joins its voice with the many who seek an end to this great tragedy and call for all individuals to work to secure a full measure of liberty for all citizens.

Overview of Committee's Structure

The Committee on Criminal Justice and the Minority Defendant distributed its work among four Subcommittees. This chapter presents the reports of the Subcommittees in the following order: (1) the Subcommittee on Attitudes and Administration, (2) the Subcommittee on Bail, (3) the Subcommittee on Cross-Racial

Identification, and (4) the Subcommittee on Outcome Determinants.[1]

SUBCOMMITTEE ON ATTITUDES AND ADMINISTRATION

Introduction

The Subcommittee was formed to address concerns that minorities are affected both directly and indirectly by attitudes of court personnel. The primary questions are whether the attitudes of judicial employees, from court attendants to judges, affect minorities' experiences with, or perceptions of, the judicial process; and whether minorities experience bias in both their direct, face-to-face contacts with court personnel and their efforts to negotiate the judicial process in terms of its scheduling, paperwork, and procedures.

Attitudes were considered in the REPORT OF THE COMMITTEE ON MINORITY CONCERNS (Coleman Report). The Coleman Report stated that insensitivity of court personnel as well as racial and ethnic bias were areas which needed to be addressed:

> The lack of sensitivity on the part of key judicial personnel was a recurrent theme. It was felt that the lack of understanding of such matters as the behavioral pattern, habits and customs of different ethnic groups often impacted upon the determination made as to whether a person was lying, repentant, intractable, or drunk.
>
> The Committee was also concerned with the tunnel vision evidenced by judicial personnel in dealing with the needs of the Hispanic community. It noted the ineffectiveness of treatment programs which give no consideration to the various cultures, histories, and mind-sets of people coming from places so diverse as Mexico, Panama, other parts of

[1]There were originally five Subcommittees. However, the fifth Subcommittee, which was formed to address jury issues, merged with the Subcommittee on Jury Representation which was created by Chairman Davis with representation from each of the four standing Committees.

Central America, Puerto Rico, and South America.[2]

> Committee members and community representatives related numerous incidents of bias against minorities engaging in the judicial process. Minority litigants, minority witnesses, and minority attorneys are subjected to racial and ethnic slights from all levels of court and security personnel - from the bailiff to the bench. The Committee was very concerned with the deleterious effects caused by bigotry in the halls of justice, especially when it is engaged in, condoned, and tolerated by key judicial personnel.
>
> Some instances of racial or ethnic bias discussed were (1) in scheduling or calling of cases, minority attorneys are called last, (2) judge or court personnel asking a Hispanic witness or litigant why he or she cannot speak English after being in this country for years, and (3) the judge or court personnel demonstrating less respect for minority attorneys or litigants.[3]

Working independently of the Committee on Minority Concerns, the Supreme Court Task Force on Interpreter and Translation Services reported a similar finding a year later:

> It is frequently perceived that some court personnel, attorneys and other persons engaged in delivering judicial or legal services to linguistic minorities are not sufficiently sensitive to the importance and complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds.[4]

That Task Force cited numerous examples illustrating the effects of unfamiliarity, insensitivity, and indifference toward minorities.[5]

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[2]REPORT OF COMMITTEE ON MINORITY CONCERNS 26 (Summer 1984) (emphasis added) [hereinafter COLEMAN REPORT].

[3]Id. at 27. See Appendix B1 for additional selections from the COLEMAN REPORT.

[4]EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES 165 (May 22, 1985) [hereinafter LINGUISTIC MINORITIES].

[5]Id. at 165-174. The report cites numerous other publications where more examples from New Jersey and elsewhere can be found.

Scope

The Subcommittee's first tasks were to define the scope of the problems and to develop a detailed work plan. The Subcommittee generally focused on (1) identifying the nature and prevalence of the attitudes of court personnel toward minority defendants and (2) examining court procedures which potentially discriminate against minority defendants. More specifically, the Subcommittee investigated the following substantive problems in the context of the criminal courts:

1. Practices by judges and other court personnel resulting in racial or ethnic bias toward minority defendants;

2. Attitudes of judges and other court personnel toward minority defendants and how these attitudes affect the disposition of minority defendants' cases as they proceed through the different stages of arrest, indictment, arraignment, bail, plea bargaining, trial, and sentencing;

3. Lack of sensitivity on the part of judges and other court personnel toward minority defendants and lack of understanding of such matters as differing behavioral patterns, habits, and customs;

4. Disparities in application of administrative rules, regulations, and policies, including (a) Scheduling of trials, motions, and hearings, and (b) Issuance of summons in lieu of bail, subpoenas, other pleadings or court documentation, as they concern the minority defendant; and

5. Availability and effectiveness of mechanisms or procedures available for complaints to be filed against judges, lawyers, and court personnel other than judges.

Activities

The Subcommittee initiated several empirical research projects. The first consisted of an inquiry into ethics complaints at the State court level. Secondly, a study of perceptions was undertaken which was partially incorporated in the survey of

judges' and top court managers' opinions and perceptions.[6] The Subcommittee also assisted with designing, planning, and conducting the public hearings.

The fourth research project entailed conducting focus group sessions[7] with inmates to obtain their perceptions of the treatment they had received from court personnel. To minimize the effects of intimidation the inmate participants might feel, an outside consultant was hired to conduct the focus group sessions. Héctor Velázquez, who is Chairman of the Subcommittee and an attorney in private practice, accompanied the consultant to all focus group sessions.

Three sessions were held, one at each of the following sites: East Jersey State Prison, Edna Mahan Correctional Facility for Women, and Hudson County Jail, Secaucus Annex. Thirty-two prisoners participated.

Inmates were recruited to participate in the discussions by the wardens in their respective facilities. The Subcommittee requested that the inmates be minorities who had been incarcerated within a six month period preceding the focus group session. It was important that the court experiences of inmate participants be fresh in each inmate's mind and not confused with or clouded by correctional experiences. It was recognized that the warden's

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[6]The Subcommittee's perceptions study was partially incorporated in the Task Force's larger study of perceptions of bias. Some of the Subcommittee's original questions were included in the larger study's data gathering instrument, the Court Process Questionnaire. W.J. Chambliss and H.F. Taylor, SURVEY OF PERCEPTIONS OF BIAS IN THE NEW JERSEY COURTS 73 (May 4, 1989) (hereinafter PERCEPTIONS REPORT).

[7]For background to the use of focus groups in qualitative research, see page five in Chapter One. For further information about this Subcommittee's focus groups, see Appendix B2 for a statement of the objectives and B3 for the consultant's summary of findings.

choice of the participants may have introduced an element of bias. It should be noted that the events and circumstances leading to the incarceration of the inmate participants were unknown to Subcommittee members.

Findings and Recommendations

FINDING #1

THERE IS A PERCEPTION OF INSENSITIVITY OR INDIFFERENCE TO MINORITY CITIZENS WHO ARE IN THE CRIMINAL JUSTICE PROCESS.

Introduction

Ample evidence supports a broad perception of insensitivity and indifference exhibited sometimes by judges, court employees, members of the bar (whether working in some official capacity or as privately retained counsel)[8], and other persons who work in courthouses (e.g., employees of the Sheriff and the Deputy Clerk of Superior Court). Support for these findings is now presented, beginning with the evidence of insensitivity and indifference and concluding with the factors that are thought to produce such dispositions.

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[8]While the public hearings yielded considerable information about insensitive or discriminatory conduct by Prosecutors and Public Defenders, very little commentary of any kind was made about attorneys in private practice. The sources that did comment on the subject suggested that the representation by privately retained counsel is perceived to be of a higher quality than that available from the Public Defender. For example, Esther Canty, President of The Association of Black Women Lawyers of New Jersey, testified, "There is an appearance that private attorneys obtain better dispositions via trial and also via plea bargains." ATLANTIC CITY PUBLIC HEARING 79 (December 16, 1989).

Evidence of Insensitivity/Indifference

The first source of data on this subject comes from inmates who participated in the focus groups. The main issues which consistently were raised in all of the focus groups were:

- Discrimination (e.g., expedited removal of whites from the bull pen and use of racial slurs toward Blacks and Latinos) by law enforcement officers while en route to and in holding facilities and court;
- Inadequate attention to their case by the Public Defenders who had represented them;
- Recognition of overrepresentation of minorities in jail/prison;
- Judges' and lawyers' intolerance of or annoyance with defendants who speak little or no English;[9]
- Perception that whites received lower bail and lighter sentences than African Americans and Hispanics;
- General insensitivity and indifference; and
- Lack of consideration for defendants' unfamiliarity with court procedures and attendant failure of court officials to empower defendants to participate in their cases in a meaningful way.[10]

However, it is important to note that when the inmates were pressed on whether they felt their particular treatment in the judicial process was racially motivated, they often stated that the treatment they experienced was not directly because of their race

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[9]One female Hispanic prisoner remarked: "[P]eople were being turned off because they couldn't understand what she was saying." Focus Group at Edna Mahan Correctional Facility for Women 59 [hereinafter "Mahan Focus Group"]. Other Hispanic prisoners talked about how, when they tried to explain themselves in English, they were not able to do so and saw that judges and lawyers were becoming annoyed with them. Id. at 16-18. The transcript of the Mahan Focus Group may be found at Appendix B4.

[10]These quotes typify the inmates' concerns: "They didn't really want to hear anything I had to say." Id. at 4. "They didn't give me a chance to speak at all." Id. at 45. "I never really had a chance to explain what went down." Focus Group at Hudson County Jail, Secaucus Annex 32 [hereinafter Hudson Focus Group]. "I don't know the judicial system. I'm not used to what's going on. They go so fast you don't know what's going on." Id. at 29. The transcript of the Hudson Focus Group is provided at Appendix B5.

or ethnicity and that often everyone was treated the same.

The second source of documentation comes from the judges and court managers[11] who completed the Court Process Questionnaire. Their opinions point to some insensitivity and indifference.[12] On the one hand, 87% of the respondents reported that judges are usually or always as courteous to minority litigants as they are to whites (see Table 2); 83% also opined that litigants are usually or always treated the same in court regardless of race (consult Table 3). Furthermore, 89% of the respondents stated that the court always or usually is as flexible in scheduling when a minority litigant is involved as when a white litigant is involved (see Table 4).

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[11]It should be noted that the overwhelming majority of judges (95%) and court managers (94%) were non-minorities and that minority respondents to the survey tended to report opinions reflecting indifference or insensitivity at rates much higher than their white counterparts. PERCEPTIONS REPORT, supra n. 6, at 54-66.

[12]The data reported in the PERCEPTIONS REPORT references the courts in generic terms, i.e., it does not specifically refer to Criminal Court, Family Court, etc.

TABLE 2[13]

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q16:
"IN GENERAL, JUDGES TEND TO BE AS COURTEOUS
TO MINORITY LITIGANTS AS THEY ARE TO WHITE LITIGANTS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	0.6%	1.8%	7.7%	56.8%	33.1%	169
Managers	0.0%	2.7%	14.4%	63.1%	19.8%	111
Both	0.4%	2.1%	10.4%	59.3%	27.9%	280

TABLE 3

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q39:
"LITIGANTS ARE TREATED THE SAME IN COURT
REGARDLESS OF THEIR RACE."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	3.0%	2.4%	9.5%	50.6%	34.5%	168
Managers	0.0%	3.6%	15.5%	57.3%	23.6%	110
Both	1.8%	2.9%	11.9%	53.2%	30.2%	278

[13]Except as otherwise indicated, the tables of data reported herein are constructed from data published in Appendix B of the PERCEPTIONS REPORT, id. at 85-95. The text above each table is the actual question asked of the respondents. The percentages provided should be read across the rows, not columns. Hence, the data in Table 1 should be read as follows: 0.6% of all judges responded "Never," 1.8% of all judges responded "Rarely," and so forth.

TABLE 4

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q25: "JUDGES ARE AS FLEXIBLE IN SCHEDULING WHEN A MINORITY LITIGANT IS INVOLVED AS WHEN A WHITE LITIGANT IS INVOLVED."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	0.6%	1.2%	7.7%	45.8%	44.6%	168
Managers	1.0%	5.0%	8.0%	63.0%	23.0%	100
Both	0.7%	2.6%	7.8%	52.2%	36.6%	268

On the other hand, the foregoing tables demonstrate that from 10% to 20% of the judges and court managers had the opinion that there are some problems regarding courtesy, equal treatment, and discrimination in the courts. Furthermore, while incidents of discrimination against minority attorneys had been observed rarely or never (see Table 5), almost one-third (29%) of the respondents indicated having observed discrimination against minority litigants at least sometimes and an equal proportion (29%) having observed it rarely (refer to Table 6). Finally, minority judges and court managers more often reported insensitive, indifferent, and discriminatory treatment than did their white counterparts.

TABLE 5

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q38: "HAVE YOU OBSERVED INCIDENTS WHERE MINORITY ATTORNEYS WERE DISCRIMINATED AGAINST BY COURT PERSONNEL?"

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	68.3%	21.6%	9.6%	0.6%	0.0%	167
Managers	65.5%	21.8%	10.9%	0.9%	0.9%	110
Both	67.1%	21.7%	10.1%	0.7%	0.4%	277

TABLE 6

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q37: "HAVE YOU OBSERVED INCIDENTS WHERE IT APPEARED TO YOU THAT COURT PERSONNEL DISCRIMINATED AGAINST MINORITY LITIGANTS?"

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	41.4%	30.8%	27.2%	0.6%	0.0%	169
Managers	39.1%	25.5%	32.7%	1.8%	0.9%	110
Both	40.5%	28.7%	29.4%	1.1%	0.4%	269

The perception of insensitivity and indifference is supported further by presentations made at the conference, "Hispanics and the Justice System in New Jersey," sponsored by Hispanic members of the Task Force in October 1987. Two of the major speakers, Dr. Orlando Rodríguez of Fordham University and Dr. Marilyn R. Tayler of Montclair State College, illustrated the need for service delivery to be culturally appropriate. They also noted the failure of many institutions, including the courts, to recognize this need. During open discussion, some conference participants gave examples of the

lack of courtesy, inadequate sensitivity, and unfamiliarity with minority concerns in the court system.

Finally, testimony given at the public hearings further substantiates the finding. Here are a number of expressions of insensitivity and indifference cited:

- Some witnesses spoke of the greater sympathy of white employees, who are in the majority, with defendants of their own race. An example was provided by Karen Blackadar, who, while appearing with her mother in a Municipal Court and waiting for her traffic case to be called, observed the following incident:

  > [A] black male, clad in prison pajamas, handcuffed, I believe, also wearing leg chains and looking very dishevelled, was brought before the judge accompanied by a white guard.... Upon listening to the white prosecutor [it was learned] that the [defendant] had been jailed for over 20 days for not answering a summons that was based on a computer error. The prosecutor knew beforehand that [the defendant] was held on an erroneous charge and allowed him to be brought into the courtroom in a humiliating and disrespectful manner. During the same court session, a young white male, accused of drunk driving, and not answering a summons, appeared on his own recognizance and was dressed in an orderly manner. In [the black defendant's] case, [the judge] ruled that [he] be given 'credit' for time served and dismissed the case.[14]

- Some witnesses commented that judges and other court personnel sometimes are not understanding of the special needs and circumstances of poor and homeless persons, which include disproportionately high numbers of African Americans and Latinos. They claimed that sometimes judges and court personnel fail to:
  (1) Be as open to adjournments and delays for pro se parties as for parties who are represented;
  (2) Grasp that a person can legitimately miss a court

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[14]Karen Blackadar, NEWTON TOWN MEETING 1157-1158 (October 29, 1990). Another example was given by Esther Canty: "I had the opportunity to sit in and listen to a group of court personnel talk about a white male who was charged with two counts of death by auto.... He was convicted ... [and sentenced] to a four-year sentence. There was great agony on their part. There was sympathy evoked by this individual not only from the judge, but court staff and personnel who openly indicated that this was a sad occasion. However, on the opposite side of the spectrum is a young black male who has been in jail for several months because his family cannot afford bail. The black gentleman is eventually acquitted, yet there is no hint of any kind of sympathy or any kind of care that is given to this particular individual." ATLANTIC CITY PUBLIC HEARING 8 (December 16, 1989).

appearance or an appointment with a court employee or parole officer due to lack of bus fare or other effects of poverty;[15]

(3) Weigh all circumstances that may account for conduct that resulted in a charge of violation of probation; and

(4) Realize that notices often are not received (e.g., due to theft, tampering, or the fact that one person's name is on a mailbox but multiple families live at the address) and the issuance of a bench warrant and all the presumptions of deliberate noncompliance that accompany it may be unjustified.[16]

- Some witnesses expressed the view that some judges reveal their attitudes toward defendants they believe are guilty in a way that abandons impartiality and introduces bias against defendants.[17]

- Some witnesses addressed the perception that some judges and other court personnel, in open court, are occasionally disre-

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[15]An example was provided by Esther Canty: "One example that comes to my mind involves a client who failed to appear for a presentence report. I later learned that the client had been beaten and severely hurt by a gang of individuals. The client was not able to seek medical treatment, so he could not get a medical excuse because the hospitals would not admit him because he did not have insurance. He could not afford to go to a doctor because he could not afford the cost of a doctor. So, therefore, to ask a client to obtain a medical excuse was not a valid request in view of the fact that the client was an indigent person. When the client finally appeared in court, it was obvious that the client's face was distorted and he moved in a very labored manner. Prior to his coming to the court, the judge had threatened to arrest him if he failed to show up that day." Esther Canty, ATLANTIC CITY PUBLIC HEARING 81 (December 16, 1989).

[16]Canty, id. at 81-86. These examples are corroborated by Richard Sims, JERSEY CITY PUBLIC HEARING 346 (December 1, 1989), and a witness providing confidential testimony. TRANSCRIPT OF CONFIDENTIAL TESTIMONY 392-393.

[17]A description of the apparent disregard for impartiality is provided by Esther Canty. "Sometimes, the mere words of the judge [reveal the judge's opinion]—when he explains the law and he tells the jury that a defendant is presumed innocent at all stages and that an indictment is not evidence of guilt or it should not be considered as evidence of guilt. Sometimes the demeanor tells the jury or the jury panel much more than the words that come from the judge's mouth. The attitudes of some judges in rulings and charges can be devastating and can adversely impact on the result that is ultimately rendered by a jury. Some judges find it necessary to comment on the evidence and when they comment on the evidence, they look clearly at the defendant with scorn on their face and indicate, 'If you believe this defendant,' the implication is, 'If you believe this defendant, then you will believe anything and that maybe I can sell you some swamp land in Florida.'

There is also a problem with some judges' aiding the prosecutor in the prosecution of the case. The appearance is that there is not impartiality. The inflections of the voice and the occasional show of hostility can also lead a person who is involved in the judicial system to believe that he is not getting a fair trial." Canty, id. at 86.

spectful toward and prejudiced against minorities.[18]

- Finally, other members of the public expressed concern that some judges and other court personnel are insensitive to the special challenges of communicating with persons who are racially or ethnically different from themselves. The basic problem expressed is that the greater the differences between two persons who are attempting to communicate, the greater the obstacles to effective communication.[19] The problems of communicating with linguistic minorities are discussed in greater detail in Finding #3. It is important, however, to point out that the likelihood of communicating successfully with persons who are racially, ethnically, or linguistically different from oneself is largely dependent on the degree to which efforts to communicate are accompanied by (1) respect for, and some degree of understanding of and openness to, racial and ethnic differences; and (2) a desire to communicate effectively and openly with persons of different racial and ethnic backgrounds.

Other Reasons for Insensitivity/Indifference

There are multiple reasons for insensitivity and indifference that may go beyond racially or ethnically motivated prejudice. Human behavior is quite complex and not driven by a single causal factor such as racial bigotry. An exchange of views by female minority prisoners illustrates how multiple factors, in addition to racial/ethnic prejudice, impact on defendants:

> Speaker #1: It's according to who the judge is and what he's feeling at the time.
> Speaker #2: And how thorough he is.
> Speaker #3: And how the system is. Because for one thing, they couldn't find my file so it never got to the judge.
> Speaker #4: And your prior record. They go by your prior record.[20]

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[18]See, e.g., the testimony of a retired school administrator, J. Garfield Jackson, NEWARK PUBLIC HEARING 571 (November 30, 1989) regarding his occasional observation of shortness of temper toward minorities.

[19]For an introduction to the field of intercultural communication, see Supreme Court Task Force on Interpreter and Translation Services, BACKGROUND REPORT #20: THE CROSS-CULTURAL DELIVERY OF HUMAN SERVICES (May 21, 1985).

[20]Mahan Focus Group at 73.

Other factors articulated by the prisoners to account for indifference and/or insensitivity on the part of court employees and others who work in the criminal courtrooms include:

- Courts rush cases too quickly.
- Personnel are overburdened and burned out or the work is so routine as to be mind numbing and induce callousness.[21]
- The courts are not well managed.[22]
- Personnel are rude and are not courteous.[23]
- Defendants who are not articulate, bright, or aware of their rights will be run over.[24]

In addition to the factors previously discussed, comments pertaining to the inability of some court personnel and others to set aside their personal biases should be noted. Minority court users allege that some judges, court personnel, and prosecutors participate in cases when they have a special bias that should have been cause for their removal from the case. The prisoners who gave the examples believe their cases were handled unfairly or harshly because of the biases of the judge or prosecutor.

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[21]One prisoner observed, "You're rushed through everything.... They're always overworked and you're always rushed. And then at the end, it affects your life forever." Hudson Focus Group, 58-59. Another commented, "I think the man [i.e., the judge] is overworked, all right. He's tired. He's gotten fed up with the system himself, and anybody who comes to him; he's looking dollars." Id. at 11. See also testimony of Jaime Vázquez, JERSEY CITY PUBLIC HEARING, December 1, 1989 at 356.

[22]One interchange between two focus group participants discussed poor court management: Speaker #1: "The court system is just all messed up." Speaker #2: It is not always due to your race, your color, but it's due to the fact that the court is poorly run." Speaker #1: "Right." Mahan Focus Group at 24.

[23]Another inmate commented on the discourteous behavior by a judge: "[The judge] was a rude man, period, not just to me, but to everybody...." Ibid.

[24]A prisoner made the following observation: "It's not race all the time. If they think you're stupid, they're going to step all over you; but if you let them know you got rights and you aren't going with that crap they're trying to hand you, they will respect you." Id. at 47.

- A judge whose daughter had died of an overdose of drugs was viewed to be unusually harsh on drug cases.[25]

- A judge whose house had been broken into and extensively burglarized was viewed to be unusually harsh on burglars.[26]

- Court personnel, instead of being neutral in criminal matters, sometimes align themselves with the prosecutor.[27]

- A prosecutor who was related to the family that was the victim of the defendant's crime was observed to be especially zealous in the prosecution and sentence sought.[28]

While the impact the personal family histories and experiences of judges, court personnel, and prosecutors has on their decisions cannot be determined, one conclusion is inescapable. When defendants believe that racial and other biases are ingredients which have compelling effects on the way their cases are handled, both their confidence in the process and the likelihood that the criminal court's impact will be positive are diminished. Any such distractions diminish the overall effectiveness of the court system.

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[25]The person who had sold the daughter drugs was a black person, so the prisoner thought that if a drug dealer appearing before the judge was also black, that defendant would be the victim of discrimination. Id. at 25-26.

[26]According to the prisoner, the judge said the following: "My house got broken into.... I lost everything I had, and I will not let you run around, breaking in houses again, not you or your boyfriend." Id. at 27.

[27]Esther Canty testified, "[A]lthough our laws provide that individuals are presumed innocent, in criminal matters the attitudes and messages that are sent out are quite different. Courts' staff often render opinions as to whether or not an individual may or may not be guilty of a crime. Sometimes those attitudes are based upon what they perceive the individual looks like or what the individual sounds like in expressing those opinions. Many of the court personnel tend to try to associate themselves or align themselves with the prosecutor which they claim is the right side to be on." Esther Canty, ATLANTIC CITY PUBLIC HEARING 78 (December 16, 1989). This situation sometimes occurs in criminal matters in the Municipal Courts as well. An example was given by a defense attorney of an incident where "the prosecutor seemed to be extremely close to the judge" and his efforts to present important information to the judge was like "interrupting a judge from a very nice private talk with the prosecutor." TRANSCRIPT OF CONFIDENTIAL TESTIMONY 365-366.

[28]"He really tried to dog me," the prisoner said of this prosecutor. Mahan Focus Group at 92.

RECOMMENDATION #1

THE SUPREME COURT SHOULD REQUIRE ANNUAL SENSITIVITY TRAINING TO ADDRESS RACIAL AND ETHNIC BIAS FOR ALL JUDGES AND COURT SUPPORT EMPLOYEES.

Attitudes of indifference and inadequate sensitivity should be addressed by requiring all judicial/court personnel to attend an educational seminar each year.[29] The Task Force recognizes that the Administrative Office of the Courts already has conducted one training course focusing on discrimination, perceptions, and sexual harassment that was required of all but Municipal Court employees.[30] While the first set of sessions emphasized sensitivity to fellow employees rather than defendants, witnesses, and the public, a new program including more sensitivity training recently was initiated.[31] In addition to those programs which were mandatory for all employees, other courses, which are attended on a voluntary

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[29]Similar recommendations have been made by the Committee on Minority Concerns, COLEMAN REPORT, supra note 2, at 10, 15, and the Supreme Court Task Force on Interpreter and Translation Services, LINGUISTIC MINORITIES, supra n. 4, at 197-198, 221-222.

[30]In 1986 the Judiciary presented its one-day course on EEO/AA to all 8,000 judicial employees and judges. The title of the program was "Affirmative Action: The Next Phase."

[31]This follow-up program, "Beyond AA/EEO: Understanding Your Role in a Multi-Cultural Workforce," was piloted in mid-1991. The vicinage training commenced in October, 1991.

basis, have been offered.[32]

Notwithstanding these beginnings, a more direct and comprehensive approach to racial and ethnic issues needs to be developed. A curriculum which includes cross-cultural social awareness, cultural communication styles, and sensitivity to minority concerns should be required of all employees. The curriculum should include courses on the cultural and historical backgrounds of specific racial and ethnic groups and cover issues relating to the use of court interpreters, including the potential for bias against defendants who need interpreters during court proceedings. Courses also should include issues relating to the meaning of various racial categories, as reported in census data, and the difference between "race" and "origin or descent" as relating to Hispanics.

Furthermore, several educational events on racial and ethnic issues generally and sensitivity enhancement specifically have been offered at the Judicial College since 1985.[33] However, the Subcommittee on the Judicial College of the Supreme Court Committee on Judicial Education and the Supreme Court Committee on Municipal

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[32]The Judiciary Training Unit has developed and offered the following courses aimed at enhancing sensitivity in racial and ethnic relations: "Cross Cultural Awareness: Racial and Ethnic Minority Families," a two-day seminar, offered four times in 1986; "Cross-Cultural Differences," focusing on Hispanic and black clients, offered twice in 1987; "Managing Cultural Diversity," a two-day seminar, offered twice and "Managing Difference," offered once in 1989; "Dynamics Confronting Blacks in the Court System" and "Understanding Issues Facing Hispanics in the Court System" were offered in 1991.

Furthermore, the Court Interpreting, Legal Translating and Bilingual Services Section has offered a seminar titled "How to Conduct Effective Interviews through Interpreters" five times since early 1987. The course has a strong cultural awareness component.

[33]In 1985 and 1986, a course titled "Equal Justice Under Law" was offered by a panel of experts. In 1987 and in 1989, Dr. Edwin Nichols of the National Institute of Mental Health taught a course titled "Interaction of Cultures and How They Affect the Law." Dr. Nichols gave a plenary address by the same title at the 1988 Judicial College. Professor Faye J. Crosby of Smith College presented a course titled "Recognizing Discrimination--Emotional and Cognitive Factors" at the 1990 Judicial College.

Court Education should commit themselves to coordinate the development and offering of a comprehensive curriculum that results in sensitivity courses on racial, ethnic, and cultural bias in the courts at each year's Judicial College for Superior Court judges and Conference for Municipal Court judges. Each year's course should be followed up six months later with meetings of judges and high level staff in each vicinage to remind the attendees of the need for their continuing support in combating racial and ethnic discrimination in the courts.

There is considerable support for such an initiative from both judges and court managers as reflected in their responses to a question in the PERCEPTIONS REPORT. When asked, "What changes do you think are needed to make the system of justice more equitable?," one-third of the responses suggested some form of education, training, or consciousness-raising aimed at reforming or improving the behavior and attitudes of court personnel.[34]

FINDING #2

PRESENTLY THERE IS NO FORMAL PROCEDURE AVAILABLE TO USERS OF CRIMINAL COURT SERVICES FOR FILING A GRIEVANCE AGAINST COURT PERSONNEL IN INSTANCES OF ALLEGED DISCRIMINATORY BEHAVIOR, AND EXISTING PROCEDURES FOR FILING COMPLAINTS OF DISCRIMINATORY BEHAVIOR AGAINST JUDGES AND ATTORNEYS RARELY ARE USED.

It is clear from the first finding that there is a perception that discriminatory behavior occurs. The next logical question is whether there are mechanisms to control such behavior and, where

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[34]PERCEPTIONS REPORT, supra note 6, at 37-38.

they exist, whether they are working effectively. There is a need to hold court officials and personnel accountable to the citizenry. Procedures exist to complain against judges (the Advisory Committee on Judicial Conduct) and against attorneys (District Ethics Committees), but none exist for other court personnel or non-judicial employees (e.g., courthouse security personnel and some clerks) who work in courthouses. Contacts with representatives of the existing disciplinary committees revealed that racially based grievances are rarely filed.

RECOMMENDATION #2

THE SUPREME COURT SHOULD DIRECT THAT THE ADMINISTRATIVE OFFICE OF THE COURTS DEVELOP, ADOPT AND IMPLEMENT IN ITS OWN OFFICES AND IN EACH VICINAGE A DISCRIMINATION COMPLAINT PROCEDURE.

Defendants should be advised in writing by the case management staff at the initial intake or first appearance in court of (1) their right to file a complaint regarding any instance of racial and ethnic discrimination by a court employee and (2) the procedure to follow for filing the complaint and how the complaint will be handled.

All allegations of discrimination would be addressed to the Trial Court Administrator (TCA), who would be responsible for investigating grievances according to standardized procedures,[35] responding to the defendant in writing, and reporting to the AOC. In the event that a complaint is filed against an attorney or a

[35]The actual investigation of such complaints should be handled by persons such as members of the EEO/AA Vicinage Advisory Committee.

judge, the TCA should forward same to the appropriate District Ethics Committee or the Advisory Committee on Judicial Conduct for proper handling. The complainant should receive written notification of the referral. A computerized management information system should be used to manage the complaint system.

The notice should be similar to the following, although it may vary depending on the particular judicial vicinage:

NOTICE OF DISCRIMINATION COMPLAINT PROCEDURE

You have the right to file a complaint against a judicial or court employee in instances of racially discriminatory behavior. All allegations must be in writing and addressed to:

Trial Court Administrator
Street Address
City NJ Zip Code

The Trial Court Administrator will investigate your complaint and send you a written response.

FINDING #3

CRIMINAL DEFENDANTS WHO HAVE LIMITED ENGLISH PROFICIENCY OFTEN ARE UNFAMILIAR WITH THE JUDICIAL PROCESS, ARE SOMETIMES SUBJECTED TO DISCRIMINATION BECAUSE OF LANGUAGE, RECEIVE INADEQUATE INTERPRETING SERVICES, AND HAVE LIMITED ACCESS TO THE VARIOUS SUPPORT SERVICES.

A special sub-population of minority criminal defendants, i.e., those with limited or no English proficiency, have particular needs

which have been documented for some time[36] but which persist notwithstanding efforts to address them. The overwhelming majority of these "linguistic minorities" are themselves also racial and ethnic minorities, most notably Hispanics, but there are also Blacks from Haiti and persons from many parts of Asia.

The problems confronting linguistic minorities that were documented in the earlier studies (see note 36) still are widespread. In fact, a content analysis of the public hearings found that only three subjects—courts' treatment of minorities, law enforcement, and personnel practices—were discussed more frequently than language issues.[37] Before proceeding to the four elements of this finding, the tenor of the findings is cogently expressed in the following testimony of a staff court interpreter:

> I have witnessed countless instances of bias against Spanish-speaking people who are not sufficiently proficient in English to fend for themselves in a courtroom situation. ... [S]ome judges and lawyers ... permit and encourage people with no qualifications and questionable biases to interpret in court and in lawyer/client interviews....
>
> I perceive an unwillingness to deal with language policy issues in a fair and humane way, and I submit that this unwillingness has the effect of bias, whether intentional or not, against linguistic minorities—in this case, Hispanics.[38]

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[36]The problem was first documented in L.J. Hippchen, "Development of a Plan for Bilingual Interpreters in the Criminal Courts of New Jersey," 2 THE JUST. SYS. J. 258 (1977). See also the following reports: the COLEMAN REPORT, supra n. 2, at 15-17, 22-23, 28-30; and the final report of the Supreme Court Task Force on Interpreter and Translation Services, LINGUISTIC MINORITIES, supra n. 4, at 136, 166-174.

[37]"Master Subject Index and Content Analysis of the Hearings" 19 (May 17, 1991) (hereinafter "Subject Index"). The content analysis was performed by staff to the Executive Committee and, given the subjectivity involved in preparing any subject index, the results should be considered with some caution. See pages iv-v of Appendix A2 which provide an overview of the possible limitations of the subject index.

[38]CONFIDENTIAL WRITTEN TESTIMONY 35-36 (n.d.) [The date of correspondence received by the Task Force is provided in footnotes when the date of the material appeared in the text. Materials that were not dated are marked "n.d."]

Lack of Familiarity with the Judicial Process

The first element of the finding is that many linguistic minorities are unfamiliar with the judicial process.[39] The implication of this finding is that the ability of linguistic minorities to participate meaningfully in their own defense is limited. What new evidence is there of this information deficit?

First, the judges and court managers who were surveyed about their perceptions of bias were asked about the comparative knowledge of the court system possessed by Latinos and similarly situated whites. They clearly were of the opinion that there is often such a deficit. Only slightly more than one-third (36.5%) of the respondents reported that Hispanics "usually" or "always" knew about as much as similarly situated whites regarding how courts function. Another one-third answered "never" or "rarely," while the remaining one-third suggested that Latinos "sometimes" have similar knowledge. Table 7 presents these data.

[39]There are several instances in this final report where the Task Force discusses how minorities as a general group are often unfamiliar with court procedures. The basic point in this section is that the sub-group of linguistic minorities tends to be at least as unfamiliar as other minorities, if not more unfamiliar, given their linguistic and historical backgrounds.

TABLE 7

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q7: "HISPANICS KNOW ABOUT AS MUCH ABOUT HOW COURTS FUNCTION AS DO SIMILARLY SITUATED WHITES."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	3.0%	25.0%	36.3%	30.4%	5.4%	168
Managers	3.7%	33.0%	25.7%	28.4%	9.2%	109
Both	3.2%	28.2%	32.1%	29.6%	6.9%	277

Second, several persons gave testimony on this subject at various public hearings. Two quotes, one from an Hispanic attorney and another from a Latino detainee being held in a county adult correctional center, are illustrative:

> There's a sense of pessimism involving many of the Hispanics. Once they arrive at court they're awed by everything around them. This may be their first or second time ever in court. They don't understand what's going on. I find myself many times ... just having to explain what Miranda rights are ... the very basic things which I think many non-Hispanic people already know or have some kind of an idea that they have some kind of rights.
>
> Many times Spanish-speaking persons don't even know they have rights. They come from countries like El Salvador. There they have no rights and they somehow think that maybe the same thing happens here. They have to be told, "You do have some rights." They come from great hardship and are awed by the total environmement. Many times they would just simply walk away and not follow through with what would ensure their rights.[40]

A prisoner wrote the following:

> I am very grateful from my heart for the opportunity that you give me to give this voice of alarm in the name of many men and women of this institution who are silent

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[40]David José Alcántara, Esq., ATLANTIC CITY PUBLIC HEARING, 54-55 (December 16, 1989).

because they don't know their rights, or how to express them.[41]

Language Discrimination

"Language discrimination" means that persons who have little or no proficiency in English experience discrimination from the judicial system. Discriminatory conduct such as court personnel's being annoyed when a defendant cannot communicate well in English already has been cited.[42] Many examples[43] appear throughout the public hearings. Here is a sampling of salient points made relative to language discrimination:

- Some comments suggested that an interpreter sometimes places a defendant's credibility in jeopardy and that judges sometimes are openly scornful of requests for interpreters and make disparaging remarks.[44] The phenomenon is illustrated by an attorney who was vice president of the Hispanic Bar Association at the time of testifying and is now a former president:

  > There is a bias which arises [when a linguistic minority asks for an interpreter in court]. This bias manifests itself in raising the expectation—of the level of credibility of that person, in a negative sense—... that at the moment someone indicates that they require an interpreter, the first impression that you get is that there is a lack of credibility in that person... immediately the question that comes to mind... [T]he impression that you get that most people question is, "How long has he been in this country? Why does he say he needs an interpreter? He speaks English. He understands English."[45]

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[41]CONFIDENTIAL WRITTEN TESTIMONY 137 (November 4, 1989 letter to the Task Force).

[42]See n. 9, supra. For other examples, see the confidential testimony submitted by a free-lance interpreter. CONFIDENTIAL WRITTEN TESTIMONY 11 (n.d.).

[43]About fifteen different witnesses testified about language discrimination. "Subject Index," supra n. 36, at 6-7.

[44]Some examples are provided by a staff court interpreter in CONFIDENTIAL WRITTEN TESTIMONY 37 (n.d.).

[45]Edwin Flores, Esq., PATERSON PUBLIC HEARING 673-674 (November 29, 1989). Note the corroborating testimony that follows from attorney John Fuentes, as referenced in n. 46.

- Requesting an interpreter sometimes is viewed to be an effort to gain an advantage or to avoid telling the truth. For example, a Latino attorney testified, "It's been said to me more than once that that person seeks an interpreter for the purpose of having additional time to think about the answer to the question...."[46]

- One witness stated that judges sometimes force linguistic minorities to testify in English when they would do better with an interpreter, thereby reducing the effectiveness of their testimony. An Hispanic lawyer testified,

  > I have seen judges jump on a Hispanic at the moment he pronounces two or three words in English, saying to this person: "You know English. Oh, you lied to us. You were telling us that you didn't know English. No, no, I want you to testify in English" and that person has had to, with a thousand sacrifices and embarrassment, fight through his English in order to satisfy a judge. And I tell you today that ... those people that are made to go through that humiliating experience don't really grasp what they are saying.[47]

- There is a perception that hearing Spanish spoken is offensive to some court employees, including managers. A Latino attorney commented, "[E]very time a lot of people hear defendants and attorneys speaking Spanish in the courts, people get offended."[48] This overall attitude has resulted in at least one instance where Spanish-speaking employees were told, presumably by management, not to speak Spanish with other Hispanic employees—even during lunch breaks![49]

- There was also testimony that sometimes judges treat lawyers who have heavy, Spanish accents with less respect.[50]

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[46]Flores, id. at 677.

[47]John Fuentes, Esq., VINELAND PUBLIC HEARING 1049 (December 13, 1989).

[48]Martín Pérez, Esq., PERTH AMBOY PUBLIC HEARING 793 (December 7, 1989).

[49]Carlos Pacheco, TRENTON PUBLIC HEARING 925-926 (December 8, 1989).

[50]An Hispanic attorney commented, "I have often been present in the courtroom when older Hispanic attorneys have come before a judge and, perhaps because of their heavy accent, right away you see the demeanor of the judge change. You see the way that the judge treats these attorneys, the way that this judge addresses the attorney and how much less that attorney can get from the judge as opposed to his adversary who may not be a minority or a Hispanic." Lilia Muñóz, UNION CITY PUBLIC HEARING 950 (November 30, 1990).

The survey of opinions included two variables that yield additional evidence of language discrimination. In the first question, the issue is whether people who speak with an accent are likely to be discriminated against in court proceedings. Three-fourths of the judges and court managers reported that this situation occurred "never" or "rarely." However, almost one-fourth (23%) were of the opinion that persons who speak with an accent will be discriminated against "sometimes"; only a few (2%) stated that this was "usually" the case. Refer to Table 8 for full details.

TABLE 8

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q30: "PEOPLE WHO SPEAK WITH AN ACCENT ARE LIKELY TO BE DISCRIMINATED AGAINST IN COURT PROCEEDINGS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	23.2%	53.0%	22.0%	1.8%	0.0%	168
Managers	13.0%	60.0%	24.0%	3.0%	0.0%	100
Both	19.4%	55.6%	22.8%	2.0%	0.0%	268

The second question asked respondents to compare Hispanics who speak English with those who do not and questioned whether the language spoken alone has an effect on bail determination. As Table 9 illustrates, slightly less than one-half (42%) of the judges and court managers indicated a response of "never" or "rarely," while 36% reported "sometimes," 21% answered "usually," and 2% responded "always."

The Task Force is concerned that almost 60% of judges and court managers were of the opinion that English-speaking Hispanics are more likely than their non-English speaking counterparts to be released on own recognizance (ROR). The language one speaks should not be a relevant criterion in a judge's decision to grant a defendant ROR.

TABLE 9

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q5: "OTHER THINGS BEING EQUAL (E.G., ROOTS IN THE COMMUNITY, EMPLOYMENT, NATURE OF CRIME), A HISPANIC DEFENDANT WHO CAN SPEAK ENGLISH IS MORE LIKELY TO RECEIVE RELEASE ON OWN RECOGNIZANCE THAN A HISPANIC DEFENDANT WHO CANNOT SPEAK ENGLISH."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	15.0%	32.3%	34.1%	18.0%	0.6%	167
Managers	5.4%	28.8%	37.8%	24.3%	3.6%	111
Both	11.2%	30.9%	35.6%	20.5%	1.8%	278

Inadequacy of Interpreting Services

The third element of this finding is that interpreting services are inadequate. There was extensive testimony on this issue. The major problems reported are these:

- Interpreters are not sufficiently available. Where there are staff interpreters, they might not be available for a given case since they already are involved in another matter; one may have to wait a long time or proceed, instead, with one's own interpreter; lawyers do not know whether they can count on an interpreter's being present when they come to court.[51]

[51]John Montanez, Esq., ATLANTIC CITY PUBLIC HEARING 8 (December 16, 1989). For numerous other examples on this and related subjects, see the general subject heading of "Language Issues" in "Subject Index," supra n. 36, at 6-7.

- Unavailability of interpreters increases costs to litigants, frustration of attorneys, and inequality of justice to linguistic minority litigants. When a staff interpreter is not available and the case is delayed or postponed, the costs of litigation increase and the other commitments attorneys have are interfered with. The costs are both financial and substantive (i.e., quality of interpretation suffers) since unavailability of a staff interpreter can force reliance on lay interpreters who are not qualified.[52] The unavailability of an interpreter often forces the litigant to return one or more times rather than conclude the case in a timely fashion.[53] Sometimes judges proceed without an interpreter when a witness or a defendant clearly needs one to testify or protect constitutional rights, or judges allow lay persons who, while available, are not competent to interpret, when staff court interpreters are not immediately available.[54]

- The courts do not always apprise defendants of the availability of interpreters.[55] Litigants often do not know what their rights are because the courts do not always make them aware of what they can depend on or have a right to. This lack of information is especially critical for parties appearing pro se.

- There is confusion and inconsistency about who is to pay for interpreters. In some instances, the courts pay; in others, they do not. This is also related to the problem of availability since a staff interpreter will be provided at no cost depending on availability.

- It was stated that far too many persons who are incompetent as interpreters or who have a conflict of interest are allowed to interpret. Judges are often lax about ensuring that persons who wish to interpret are in fact competent to do so. Instead of requiring objective standards, judges far too often allow anyone who appears to be bilingual to interpret, regardless of credentials. Sometimes this includes prisoners, children, maintenance workers, and personnel directly involved in the case (e.g., law enforcement officer, probation officer).

- Training resources for interpreters are inadequate. The need for extensive training is not sufficiently appreciated, training resources are scarce, and there is not

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[52]Ibid.

[53]David José Alcántara, ATLANTIC CITY PUBLIC HEARING 48 (December 16, 1989).

[54]Billy Delgado Muñoz, Esq., PERTH AMBOY PUBLIC HEARING 750 (December 7, 1989).

[55]Id. at 47-48.

sufficient support for helping interpreters obtain available training.[56]

- Existing tests for court interpreters are thought to be inadequate. One person testified that the testing process administered by the Administrative Office of the Courts appeared to be biased against Latinos.[57] Another thought that the Civil Service test did not weed out unqualified persons.[58]

- The cultural appropriateness of policy decisions made by the Court Interpreting, Legal Translating and Bilingual Services Section at the AOC is limited given the absence of Hispanic professional staff.[59]

Inaccessibility of Support Services

The last component of this finding is that the support services of the criminal courts are inadequate for linguistic minorities. For example, there are rarely, if ever, bilingual court personnel available to inform defendants about delayed hearings or to answer general questions about courthouse facilities and other matters which may not be directly related to their cases. Throughout the public hearings, there was considerable evidence on this subject. The major features of the public's testimony paint a picture of the courts as a bewildering, intimidating maze. The salient issues raised in the testimony are:

- There is a need for bilingual/bicultural support staff. Interviews often are conducted by monolingual, English-speaking persons without the assistance of an interpreter.

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[56]Nellie Gorbea-Díaz, TRENTON PUBLIC HEARING 875 (December 8, 1989); Rosa Olivera Nims, UNION COUNTY PUBLIC HEARING 1027 (December 2, 1989).

[57]Douglas Jones, VINELAND PUBLIC HEARING 1031-1032 (December 13, 1989). However, another witness, the Chief Court Interpreter for the United States District Court, Eastern District of New York (Brooklyn), felt the test was "the only way to go." Rosa Olivera Nims, UNION COUNTY PUBLIC HEARING 1020 (December 2, 1989).

[58]José LaBoy, Esq., VINELAND PUBLIC HEARING 1063 (December 13, 1989).

[59]Confidential Interviews with Three Minority Employees of the Administrative Office of the Courts (April-May, 1990).

Supervision personnel cannot always communicate with defendants being supervised. Furthermore, delivering services to persons who are culturally dissimilar and about whom the provider of the service knows little, if anything, all but assures that the quality of service will suffer. Finally, it is important for litigants to be able to obtain routine information from court employees such as directions to courtrooms and other court offices.

- Bilingual documents such as notices, forms, and brochures stating litigants' rights are not sufficiently available and, in many instances, are not available at all. The kinds of information that are necessary for giving speakers of other languages the same access as English speakers have are either not available or inconsistently made available.[60] This is especially problematic when conditions of supervision (e.g., pretrial release, probation and parole conditions) are not translated because it is difficult to comply with conditions one does not understand.

- When psychological services such as testing and treatment are provided to linguistic minorities by persons who neither speak the client's language nor are sufficiently knowledgeable about the clients' culture, inaccurate or inadequate results are likely. This means findings and recommendations the court relies on can be faulty, leading to unfounded sentencing or inaccurate case management decisions.[61]

RECOMMENDATION #3

THE SUPREME COURT SHOULD ASSURE THAT THE TRIAL COURTS (1) PROVIDE INTERPRETERS WHO ARE NOT ONLY BILINGUAL, BUT WHO HAVE A KNOWLEDGE OF CULTURAL VARIATIONS; AND (2) IMPLEMENT THE RECOMMENDATIONS OF THE TASK FORCE ON INTERPRETER AND TRANSLATION SERVICES AIMED AT ASSURING EQUAL ACCESS TO COURTS FOR LINGUISTIC MINORITIES.

The trial court and all units providing court support services must remedy the situation of a minority defendant who is processed

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[60]Debra Joy Pérez testified, "And imagine again, if you will, the feelings of isolation of a foreign-language-speaking woman who is a victim of domestic violence and she needs services and what she gets is basically a fog of vital information." TRENTON PUBLIC HEARING 850 (December 8, 1989).

[61]See the testimony of Dr. Gilberto Pagán, a licensed psychologist practicing in New Jersey. PERTH AMBOY PUBLIC HEARING 726 et seq. (December 7, 1989); WRITTEN TESTIMONY 25-26 (January 7, 1990 Letter to Theodore Wells).

through the system without the benefit of effective communication and participation. The court should provide interpreters who are governed by standards as recommended by the Task Force on Interpreter and Translation Services. Linguistic minorities should be given information about interpreting services, including their right to an interpreter. Judges should issue instructions to juries on the use and role of interpreters during trials.

Furthermore, a mechanism should be made available to the non-English-speaking population whereby the stages of the judicial system are explained in the language they can understand. That mechanism would answer questions such as "What is an arraignment? What happens at a pretrial conference? Who is a Probation Officer?" This information could be conveyed to the court user in person, by video, computer, and/or in a written format, e.g., a pamphlet.

The pertinent recommendations of the Supreme Court Task Force on Interpreter and Translation Services which should be fully implemented are summarized[62] as follows:

1. The Supreme Court should prescribe the qualifications of interpreters and translators, including a certification process, and of the other pertinent employees, i.e., bilingual and bilingual/multicultural court support personnel; and should adopt policies, including standards governing interpreted proceedings, to assure that services to linguistic minority clients are delivered in a manner that is both linguistically and culturally appropriate.

2. The Supreme Court should assure that continuing education be provided to pertinent employees, i.e., interpreters, translators, and those who deliver bilingual or bilingual/multicultural court support services.

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[62]See Chapter Five, Summary of Recommendations, in LINGUISTIC MINORITIES, supra n. 4, at 175 et seq., for the original text and discussion.

3. The Supreme Court should assure that all of these services are organized effectively and administered efficiently.

4. The Supreme Court should adopt policies that will attract, employ, and retain sufficient numbers of the pertinent employees.

5. The Supreme Court should adopt a policy that all forms and documents must be drafted in easily translatable English and translated into other languages.

6. The Supreme Court should adopt a program informing linguistic minorities about the Judiciary and its services.

SUBCOMMITTEE ON BAIL

Scope

This Subcommittee was formed to address various concerns relating to the impact of minority status on the timeliness and likelihood of making bail. The scope of the Subcommittee's focus specifically included:

1. A review of the differences in procedures for setting bail among the counties (bail units, night bail availability, availability of 10% option, type of bail hearings conducted for initial bail or bail reduction, a lockup versus county jail situation, summonses versus warrants);

2. A determination of the amount of delay in setting bail for minorities versus non-minorities; and

3. A determination of the disparities in bail levels or release on recognizance (ROR) for minorities who are otherwise similarly situated to non-minority defendants.

The Subcommittee originally proposed to engage in a broad problem identification exercise including the following:

1. A survey of the procedures for setting initial bail and bail reduction in the counties;

2. A study of similarly situated minority defendants to measure the time from arrest to initial bail, bail reduction hearings, and bail release, as compared to non-minority defendants;

3. Empirical research to measure disparities in bail levels for minority defendants who are similarly situated to white defendants; and

4. A survey of criminal justice practitioners to ascertain their perceptions and experiences as to discrimination in bail-setting practices.

Later, the Subcommittee expanded the work plan to include (5) interviews of defendants and criminal justice practitioners and (6) a review of pertinent legal literature.

Bail is a complex and difficult issue. It is very visible to the public and potentially volatile. As Table 10 illustrates, judges are subject to criticism in especially sensitive bail setting situations. Approximately 90% of judges and court managers who completed the questionnaire on perceptions of bias thought that even where low bail is proper, judges who set low bail in crimes of violence are likely to be criticized. Granting bail is a decision in which many have a stake and advocate earnestly for their respective interests.

TABLE 10

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q11:
"EVEN WHERE LOW BAIL IS PROPER, JUDGES WHO SET LOW BAIL
IN CRIMES OF VIOLENCE ARE LIKELY TO BE CRITICIZED."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	1.2%	10.2%	46.1%	39.5%	3.0%	167
Managers	0.9%	10.6%	37.2%	48.7%	2.7%	113
Both	1.1%	10.4%	42.5%	43.2%	2.9%	280

Activities

The first major activity was developing survey questions designed to gather information on (1) bail-setting procedures throughout New Jersey and (2) participants' perceptions regarding discrimination in bail-setting practices. Four of the eleven proposed perceptions questions submitted by the Subcommittee on Bail were included in the Court Process Questionnaire.

The second major aspect of the Subcommittee's work plan was to interview bail system participants. This programmatic objective was accomplished by conducting two focus group sessions, one with county and municipal bail officials and another with judges.[63] The consultant hired to conduct the focus groups was accompanied to all focus groups by Dale Jones, Assistant Public Defender, Office of the Public Defender, and John P. McCarthy, Jr., Assistant Director for Criminal Practice at the Administrative Office of the Courts.

The third component of the work plan inlcuded a bail study. The six counties included in the study were Camden, Cumberland, Essex, Mercer, Middlesex, and Union. Jail lists from each county were reviewed to obtain the study's sample: all incarcerated offenders in the $500 or less bail range. The next step involved verifying the information obtained by reviewing inmate files and, when possible, interviewing the inmate.[64]

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[63]See Appendices B6 and B7 for detailed information about the objectives and results of these focus groups.

[64]The study was carried out during a three-month time period (February-April, 1988) when the statewide pretrial population was 6,133. The cases in the study's sample (3,067) represent 50% of the total pretrial population at that time and were drawn from six counties. About 8% (7.5%; n=234) of the study's pretrial detainees had a cash bail of $500 or less and had no detainer.

Finally, the Subcommittee reviewed the legal literature on bail. Special attention was focused on bail policies and procedures in neighboring states and jurisdictions and on innovative programs.

Findings and Recommendations

FINDING #4

THERE IS A TREMENDOUS LACK OF UNIFORMITY IN ARRIVING AT BAIL DECISIONS IN NEW JERSEY AND THESE DIFFERENCES IMPACT SUBSTANTIALLY ON THE CONSTITUTIONAL RIGHT TO BAIL.

This subject formerly had been addressed by the Committee on Minority Concerns. That Committee submitted the following suggestion in its report to the Chief Justice:

> The Committee called for the Supreme Court to establish a uniform bail-setting policy for the entire State. Moreover, it stated that the bail rule should be amended to include a specific time limit such as within 12 hours of arrest for the setting of bail, with bail to be reviewed within three days if the defendant is still in custody.[65]

The report noted the disparity throughout the State in the availability of the 10% cash bail option, and the inequity of the effect of cash bail on the poor where the 10% option is not available or viable. It further cited the effect of jail overcrowding on those in pretrial detention.

The focus groups yielded a consensus that an unacceptably high degree of diversity prevails in making bail determinations in New Jersey. The main factors identified as varying considerably are these:

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[65]COLEMAN REPORT, supra n. 2, at 41.

- The nature and quality of information considered at bail setting;
- The availability of 10% cash bail automatically in most but not all counties;
- The lack of clarity whether the 10% cash bail option applies if not stated by the judge (although there are presumptions in some counties one way or the other); and
- The dramatic variance in procedures, among them the setting of initial bail, use of bail schedules, bail reviews, and formal bail reductions. This procedural disparity impacts upon important considerations such as timeliness, fact gathering, presence of defendant or attorney, and nature and type of bail ultimately set. Bail reduction hearings vary and can take from one day to approximately two weeks.

RECOMMENDATION #4

THE SUPREME COURT SHOULD REQUIRE THAT ALL RULES AND DIRECTIVES REGARDING BAIL BE REVIEWED AND REVISED IN ORDER TO PROMULGATE PROCEDURES TO BE APPLIED UNIFORMLY STATEWIDE.

Procedural disparities in bail practices statewide impact substantially on the constitutional right to bail. Current rules are vague or do not adequately provide guidelines for a principled bail practice. A major revision of bail rules is needed.[66]

[66]This problem has been recognized by the Supreme Court Committee on Criminal Practice; see "Bail Reduction Applications", REPORT OF THE SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE 36-39 (April 27, 1988), in Appendix B8.

FINDING #5

THE TYPE AND AMOUNT OF BAIL USUALLY ARE INFLUENCED MORE BY FACTORS RELATING TO DANGEROUSNESS OF THE OFFENDER, SUCH AS THE SEVERITY OF THE CRIME AND THE DEFENDANT'S CRIMINAL HISTORY, THAN BY THOSE BACKGROUND FACTORS RELATING TO RISK OF FLIGHT (SUCH AS EMPLOYMENT AND COMMUNITY TIES).

The consensus of the focus groups was clearly that severity of offense and prior record are the overriding factors used in setting bail. The risk of flight was reported to be a judgement call based on each judge's experience and knowledge of the community. However, two other considerations were identified that affect the bail decision-making process. First, most administrators agreed that bail often was set much higher when a defendant was from out of town. This process seemed particularly pronounced where urban minority defendants were charged in more affluent suburban communities. Secondly, a review of the data presented in Table 11 indicates that 85% of the judges and court managers suggested that the opinions of police and prosecutors affected judges' bail-setting practices at least sometimes.

TABLE 11

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q15: "POLICE AND PROSECUTORS' OPINIONS AFFECT JUDGES' BAIL SETTING PRACTICES."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	4.2%	14.9%	45.2%	34.5%	1.2%	168
Managers	2.8%	5.0%	44.4%	38.0%	9.3%	108
Both	3.6%	11.2%	44.9%	35.9%	4.3%	276

Additional evidence of the influence of persons other than court personnel on the setting of bail was provided at a public hearing by a witness who recalled an incident he had observed in which the arresting officer, in violation of court rules, set bail for a defendant. According to that witness, the officer came into court and stated, "Ah, $250.00; no 10%."[67]

Most jurisdictions use as their criteria to determine release or amount of bail those conditions which will most reasonably assure the appearance of the defendant and the safety of the community. For example, in Illinois, the defendant's release on bail is evaluated based on the nature and circumstances of the offense, injury to the victim, likelihood of filing a greater charge, the weight of the evidence against such defendant, use of aliases, record of appearance, flight to avoid arrest or prosecution, escape or attempted escape to avoid arrest, and failure to appear at court proceedings. Additionally, consideration is given to the factors relating to the defendant's personal status, e.g., family ties, employment, financial resources, character and mental condition, employment, length of residence in the community, and citizenship.[68] Even when personal characteristics are taken into consideration, unless they are appropriately evaluated within the context of the minority genre, background factors such as employment, community ties, and residential stability may be misinterpreted by persons unfamiliar with the culture of a particular minority group.

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[67]John Lewis, TRENTON PUBLIC HEARING 866 (December 8, 1989).

[68]Ill. Ann. Stat. ch. 38, ¶110.5 (Smith-Hurd 1980).

The testimony of Mayor Robert Menéndez is instructive here. His remarks dealt with the issue of the disenfranchisement of Hispanic voters. Menéndez reported that the Board of Elections routinely "chopped off" most of the second part of the surnames of Latino registrants, leading the Board to believe that some voters no longer resided at particular addresses. Menéndez went on to observe,

> Anyone who knows about Hispanic families knows that there are often multiple surnames and many families live with each other in the same house or apartment but have only one mail box and that they are a very mobile community....
>
> Imagine arguing in a different context in a bail hearing that the constant moving from one address to another is not lack of community roots, but a way of life, arguing that the one constant that can be relied upon is the change of one's address as they attempt to seek better employment or improve the location they call home.[69]

During the course of Mayor Menéndez's continuing testimony, one of the Task Force panelists, The Honorable Julio Fuentes, Superior Court, asked the Mayor if he had observed problems with bail. The Mayor went on to give a more in-depth discourse on how Hispanic families, in their struggle to be upwardly mobile, to secure better housing, to get a better job, and to place their children in better schools, move within their communities and change jobs quite frequently. He cautioned,

> [M]any judges do not look at the context that while somebody may have lived in a community for several years, albeit in various locations and worked at various different jobs ..., they don't consider these factors as significant roots and that produces a problem.[70]

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[69]UNION CITY PUBLIC HEARING 936-937 (November 30, 1989).

[70]Id. at 947.

In most instances, New York clearly makes the decision for release on recognizance discretionary rather than a matter of law. The question of recognizance or bail is controlled by "the kind and degree of control or restriction that is necessary to secure this court attendance."[71] This decision is made on the basis of information available to the court regarding the defendant's personal characteristics, employment, community ties, criminal record, prior history of court appearances, flight to avoid criminal prosecution, and the weight of the evidence against the defendant. New York does not statutorily recognize the seriousness of the crime as part of the controlling criteria.[72]

Pennsylvania's "Standards for Setting Bail" require that bail "be such as to insure the presence of the defendant as required by the bond...."[73] It also considers the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction or possible penalty. Additionally, the personal characteristics of the defendant are evaluated with respect to the eligibility for release or bail.[74]

The Federal court system considers several factors "in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community."[75] Those factors include

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[71]N.Y. Crim. Proc. Law §510.30, ¶2(a) (Consol. 1986).

[72]Ibid.

[73]Pa. R. Crim. Proc. 4004.

[74]Ibid.

[75]18 U.S.C.A. 3142 (g).

(1) the nature and circumstances of the offense, in particular whether the offense is a violent crime or involves drugs, (2) the weight of the evidence against the individual, and (3) personal characteristics. Furthermore, if after a hearing the judge finds that no conditions or combination of conditions will reasonably assure the defendant's appearance, the court may detain the defendant under a preventive detention status.[76]

In summary, most jurisdictions examined use a combined approach which either statutorily infuses the nature of and seriousness of the offense charged, or this consideration is employed informally as part of the discretionary bail or release process.

RECOMMENDATION #5

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY WITH RELEASE CRITERIA FOCUSED UPON FACTORS RELATING DEMONSTRABLY TO THE DEFENDANT'S LIKELIHOOD TO APPEAR IN COURT. THE BAIL POLICY SHOULD (1) TAKE INTO CONSIDERATION PAST COURT APPEARANCE HISTORY AND SIGNIFICANT BACKGROUND FACTORS WHICH INSURE LIKELIHOOD TO APPEAR, (2) GIVE SUBSTANTIAL CONSIDERATION IN THE RELEASE EVALUATION PROCESS TO DEFENDANTS' LIKELIHOOD TO MAKE CASH BAIL, AND (3) GIVE MINIMUM WEIGHT TO ECONOMIC CRITERIA BECAUSE SUCH FACTORS GENERALLY IMPACT UNFAIRLY UPON RACIAL MINORITIES (E.G., SALARY, EMPLOYMENT HISTORY).

It is not the Subcommittee's charge to consider issues relating to preventive detention. However, insofar as the current law requires a focus on the likelihood of appearance, the trial court should receive and consider the factors set forth in the recommendation.

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[76] Id. at ¶(e).

Economic criteria should be given minimal weight. Alternatively stated, there are identifiable classes in our society with limited access to capital. It is inappropriate for that fact to have a material impact upon those judgments made regarding whether bail will be set. A case can be made that the primary question governing ties to the community is a social question rather than an economic one, and that the extent to which social connections exist is a better yardstick to determine the likelihood of an appearance in court than a host of economic data. Once the social factors have been taken into account, if bail is required, economics can come into play to determine the appropriate amount of bail.

FINDING #6

THE EFFECT OF MONEY BAIL FALLS HARDEST ON THE POOR AND, SINCE MINORITIES ARE DISPROPORTIONATELY POOR, IT FALLS DISPROPORTIONATELY ON MINORITIES.

The participants in the focus groups generally felt strongly that while bail itself is not set in a racially discriminatory manner, the effect of money bail falls hardest on minorities since they are disproportionately poor. In any event, judges and most administrators still felt strongly that money bail was crucial to ensuring appearance in court, although there were some administrators who felt that alternatives could be effective and that money bail often was used when probably not needed.

However, while survey responses in Tables 12, 13, and 14 suggest that racial attitudes generally do not affect bail decisions, 42% of the respondents felt that judges' bail decisions are at least

"sometimes" influenced by the judges' racial attitudes. Refer to Table 12.

TABLE 12

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q12: "JUDGES' BAIL DECISIONS ARE INFLUENCED BY THEIR RACIAL ATTITUDES."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	19.3%	42.8%	30.7%	6.6%	0.6%	166
Managers	14.5%	37.3%	39.1%	8.2%	0.9%	110
Both	17.4%	40.6%	34.1%	7.2%	0.7%	280

The basic direction of the responses reported in Table 12 is corroborated by responses to two other questions in the questionnaire employed to study judges' and court managers' perceptions of bias. When asked more specific questions as to actual decisions reached, a majority of the respondents reported that judges "usually" or "always" release minority defendants who are accused of equally serious crimes and with similar offense histories under release on recognizance (ROR) as readily as white defendants. Tables 13 and 14 present these data.

TABLE 13

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q13: "JUDGES RELEASE MINORITY DEFENDANTS ON THEIR OWN RECOGNIZANCE AS OFTEN AS THEY DO WHITE DEFENDANTS ACCUSED OF EQUALLY SERIOUS CRIMES."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	1.2%	12.0%	25.3%	47.6%	13.9%	166
Managers	0.0%	15.6%	30.3%	45.9%	8.3%	109
Both	0.7%	13.5%	27.3%	46.9%	11.6%	275

TABLE 14

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q14: "JUDGES ARE LESS LIKELY TO RELEASE ON OWN RECOGNIZANCE MINORITY THAN WHITE OFFENDERS WITH SIMILAR OFFENSE CHARACTERISTICS AND CRIMINAL HISTORIES."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	14.5%	44.2%	27.3%	12.7%	1.2%	165
Managers	13.1%	44.0%	29.9%	15.0%	0.9%	107
Both	14.0%	43.0%	28.3%	13.6%	1.1%	272

Effects of Poverty on Bail

The findings of the jail study, described earlier, indicated that the median length of stay for the six counties studied was 6.5 weeks (with a range of one to sixty-four weeks). Insofar as pretrial detainees with cash bails less than $500 are concerned, African-American defendants are found in dramatically greater proportions than Caucasians. Of 234 offenders in the sample, 93% (217) were Black and 7% (17) were white. The detailed results of

the jail study showing the disproportionate impact of money bail on minorities are reported in Table 15 and illustrated in Figure A on the next page.

TABLE 15

DISTRIBUTION OF CASH BAILS LESS THAN $500 AMONG BLACK AND WHITE PRETRIAL POPULATIONS IN COUNTY JAILS

AMOUNT OF CASH BAIL	WHITES BEING HELD IN PRETRIAL DETENTION		BLACKS BEING HELD IN PRETRIAL DETENTION		TOTAL PERSONS BEING HELD IN PRETRIAL DETENTION	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
$ 0 - $250	6	9	64	91	70	30
$251 - $400	1	4	27	96	28	12
$401 - $500	10	7	126	93	136	58
Totals	17	7	217	93	234	100

Furthermore, there was testimony throughout the public hearings which addressed the twin issues of race and class in the bail-setting process.[77] The testimony in the following examples illustrates the type of comments that several witnesses volunteered:

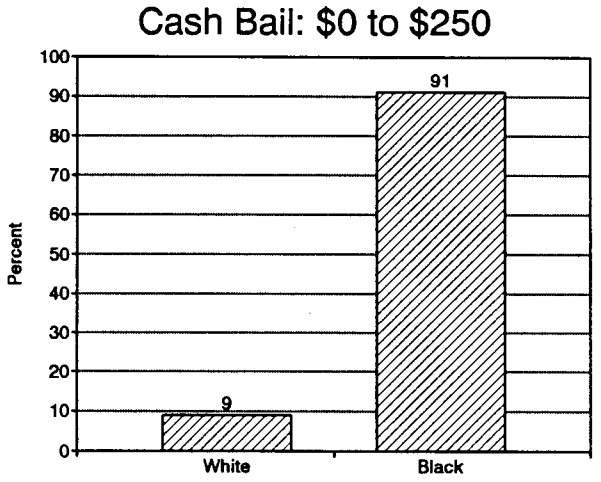
> Even though in New Jersey one out of every seven residents is a minority, we find approximately 80% of the prison population is minority—something has gone awry. I see it when an individual is arrested. I see it in the bail....
>
> I notice in the suburbs of Mercer County that these individuals [i.e., defendants] are given OR released on their own recognizance as opposed to ... inner city or the city of Trenton where they are given sometimes rather exorbitant bails.[78]

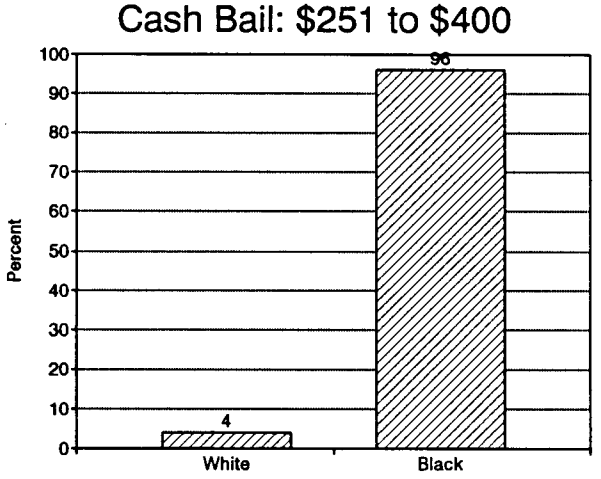
[77]Testimony on this subject was presented at twelve of the thirteen public hearings.

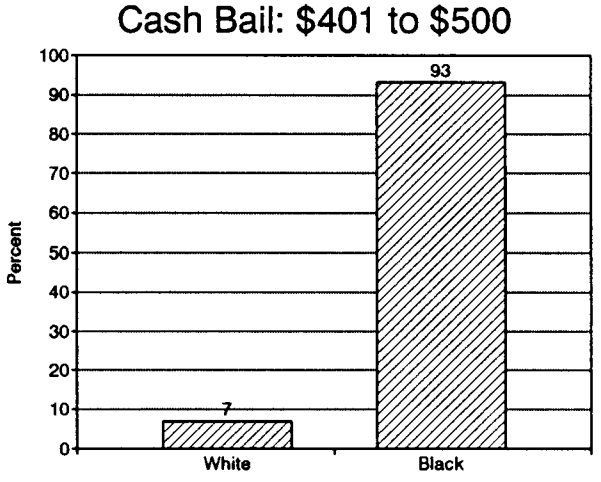
[78]Dwight Washington, TRENTON PUBLIC HEARING 916 (December 8, 1989).

FIGURE A

PERCENT DISTRIBUTION OF CASH BAILS LESS THAN $500
AMONG BLACK AND WHITE PRETRIAL POPULATIONS
IN SELECTED COUNTY JAILS







Background Literature Review[79]

New York and the federal jurisdictions maintain the use of non-monetary release options. In state jurisdictions, these are usually local court initiatives operated by cities and counties. Generally, this procedure is used to complement release on recognizance, and in most cases will not be used to reach that fringe number of defendants who cannot make any bail and are detained simply due to indigency.

In some jurisdictions, e.g., Pennsylvania, the power to develop such programs is vested with the local courts. This results in the programs' being dependent upon the view of the region's presiding judge regarding pretrial release programs. Local influences also factor into bail decisions.

Present detention populations have the probability of forcing judges to consider bail and to use every pretrial release option possible to preserve precious jail space. This is a very real concern. For example, a Special Master recommended in November 1990 that the population at the Camden County Jail be capped at 859 inmates. This figure fell far below the 1,294 who were then being housed in the jail, a facility originally designed to house 450 inmates.[80]

In New York City, the Vera Institute of Justice-Criminal Justice Agency has provided programs which afford the judge supervised release options for a defendant, but the use of these options

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[79]See State v. Johnson, 61 N.J. 351, 362 (1972) for some thoughtful articulations of release options.

[80]J. Gammage, "Jail Conditions Called Unconstitutional: Inmate Cap of 859 Urged in Camden," THE PHILADELPHIA INQUIRER, November 16, 1990, at B-1.

varies from judge to judge based on the individual judge's view of bail. Therefore, upon referral by counsel, a representative of the agency will interview the defendant to ensure that programmatic criteria are met, community and personal references are contacted, and a recommendation is made to the judge for release to the program. Furthermore, community-based drug treatment programs are also are used as third party release programs based on their representation to the Court that the individual will be detoxified and supervised as an in-house resident. However, the drastic reduction in Federal funds has forced the cessation of admissions to these programs due to the large number of voluntary referrals or the elimination of the programs themselves.

The Federal system allows for defendants to be released into the custody of the Pretrial Services Agency.[81]

Several New Jersey counties, including Essex, Middlesex, and Union, recently have instituted programs which afford non-monetary supervised pretrial release for offenders who cannot make bail. These programs currently are being reviewed by the State Criminal Disposition Commission.

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[81]18 U.S.C.A. 3153-3156.

RECOMMENDATION #6

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY WHICH REQUIRES THAT MONETARY RELEASE OPTIONS INCORPORATE A DEFENDANT'S ABILITY TO PAY IN CASES WHERE BAIL WILL BE SET. THE POLICY SHOULD (1) SPECIFICALLY REQUIRE SUBMISSION AND USE OF FINANCIAL AND ECONOMIC INFORMATION REGARDING THE DEFENDANT'S STATUS; (2) CREATE A MECHANISM FOR REVIEW EVERY 30 DAYS, WHERE BAIL HAS BEEN GRANTED, WITH A REQUIREMENT THAT THE PROSECUTOR SUBMIT AN AFFIDAVIT REGARDING THE STATUS OF THE CASE, (E.G., EXPECTED DATES FOR INDICTMENT, ARRAIGNMENT, AND TRIAL); AND (3) REQUIRE CONSIDERATION OF THE RELATIONSHIP BETWEEN BAIL AND THE ACCUSED'S ABILITY TO PAY.

A court should not impose bail without first having substantive evidence that no other condition will reasonably assure the defendant's appearance in court. However, such a rule is not used by the jurisdictions canvassed, notwithstanding the findings of disparate impact of money bail upon the poor.

The Supreme Court should conduct research which further analyzes the finding that minorities are disproportionately held in lieu of relatively low bails and endeavor to better understand, by interviewing judges and others, the reasons underlying such bails.

Illinois, Pennsylvania, and California presently maintain 10% cash bail systems. Pennsylvania's system is significant in that it statutorily gives a judge the latitude to impose a cash percentage of the bail so long as it does not exceed 10%.[82] New York does not have a statutory 10% bail option.

New York and the Federal system provide for the posting of an unsecured appearance bond. These are generally known as "signature bonds," where the defendants agree that if they should flee the

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[82]Pa. R. Crim. P. 4006.

jurisdiction, they will be liable for the set amount.[83]

RECOMMENDATION #7

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY THAT INCLUDES NON-MONETARY RELEASE OPTIONS TO MINIMIZE THE SETTING OF BAIL UNLESS PROBABILITY OF NONAPPEARANCE HAS BEEN ESTABLISHED BY THE COURT. THE NON-MONETARY OPTIONS SHOULD INCLUDE BUT NOT BE LIMITED TO: (1) SUPERVISED PRETRIAL RELEASE WITH CONDITIONS; AND (2) RELEASE TO A COMMUNITY AGENCY OR FAMILY MEMBER WILLING TO ASSUME RESPONSIBILITY FOR THE DEFENDANT'S APPEARANCE IN COURT.

Virtually no system studied employs the principle of release or recognizance worthiness of every defendant brought before the court. A rebuttable presumption of release-worthiness never is considered as part of the bail setting process. Jurisdictions which use the concept of preventive detention employ the concept that the judicial decision to deny release or bail must be based on "clear and convincing evidence" that a serious risk exists that the individual will flee the jurisdiction or that the individual will obstruct justice, threaten injury, or act in a manner that may harm witnesses or jurors.[84] Additionally, where the individual is charged with a crime of violence, a capital offense, or has been convicted previously of a felony offense, the "clear and convincing" standard is met when no condition or combination of conditions will reasonably assure the safety of witnesses, jurors, and the community at large. Since the defendant is being deprived of

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[83]N.Y. Crim. Proc. Law §520.10 (Consol. 1986); 18 U.S.C.A. 3142, ¶1.

[84]The federal system has the most comprehensive preventive detention statute; see 18 U.S.C.A. 3141-3151.

liberty until the trial, these procedural due process protections are much greater than in those instances where bail is being set. However, it should be noted that when bail is out of the defendant's economic capability, it has the same effect as preventive detention.

The requirement that bail initially be set by a judicial officer is extensively employed, although California allows for the use of a bail schedule by the sheriff prior to the arraignment of the defendant before a judicial officer.[85] In those instances where the defendant has not posted a station house bail, the general constitutional principle that a defendant must be brought before a judicial officer without "unnecessary delay" must apply.[86] This requires that a defendant being held must be presented to a judicial officer for a reading of the rights and charges, appointment of counsel in those instances where the defendant does not have counsel, and a determination of bail or release.[87]

The New York and Pennsylvania systems are most representative in that a defendant is brought before a judge for arraignment or preliminary arraignment within a 12- to 36-hour period. Therefore, the defendant is held in a central booking detention area prior to seeing a judge. During the pre-arraignment stage, the defendant is interviewed by the local bail agency, and information is gathered, verified, and presented to the judge with a recommendation as to release. A copy of the report is filed with assigned counsel, who

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[85]New York provides for a bail schedule in misdemeanor cases and minor cases. N.Y. Crim. Proc. Law §520.10 (Consol. 1986).

[86]See Mallery v. United States, 354 U.S. 449 (1957).

[87]See N.Y. Crim. Proc. Law §170.0 (Consol. 1986) and Pa. R. Crim. Proc. 140.

then uses the information in response to the prosecutor's bail or release application to the judge. The downside to such a system is that without adequate court resources, arrest rates cause significant pre-arraignment delays which can go well beyond the 12 to 36 hour arraignment range.

Accordingly, each system mandates that a judge consider certain criteria with respect to the bail or release decision. For instance, Illinois sets the following guidelines for a judge considering bail:

> (b) The amount of bail shall be:
>
> (1) Sufficient to assure compliance with the conditions set forth in the bail bond;
> (2) Not oppressive;
> (3) Considerate of the financial ability of the accused.[88]

This structures the bail or release decision to reflect the financial status of the defendant, and may provide an implicit element of economic fairness to the indigent defendant. In theory, bail amounts which are non-oppressive and considerate of the financial ability of the defendant should help narrow the gap between the bail set and the defendant's ability to pay that bail.

The Pennsylvania statutory provision is nearer to a mandatory bail or release system for certain offenses than any other surveyed. Pennsylvania requires that a defendant shall be released on his own recognizance or on nominal bail when:

> (1) the most serious offense charged is punishable by a maximum sentence of imprisonment of not more than three years, and
> (2) the defendant is a resident of the Commonwealth, and
> (3) the defendant poses no threat of immediate physical harm to himself or to others, and

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[88]Ill. Ann. Stat. ch. 38, ¶110-5 (Smith-Hurd 1980).

(4) the issuing authority or the court has reasonable grounds to believe that a defendant will appear as required.[89]

Pennsylvania furthermore gives the court discretion to release defendants on their own recognizance or a nominal bail where the defendant is charged with an offense which is punishable by a sentence of more than three years.[90] The concept of nominal bail is not defined; however, Pennsylvania employs a 10% bail program which may be considered applicable to these circumstances.

New York's statutory provisions mandate that bail or release are discretionary. However, the court must consider the "kind and degree" of control or restriction required based on a consideration of factors ranging from character, reputation, habits, and mental condition, to the weight of the evidence against the defendant in the pending criminal action.[91]

RECOMMENDATION #8

THE SUPREME COURT SHOULD ADOPT A BAIL POLICY BASED ON THE PRESUMPTION THAT ALL INDIVIDUALS ARE RELEASE-WORTHY AND THAT IN CASES WHERE THERE IS A PRESUMPTION AGAINST INCARCERATION, THE DEFENDANT SHOULD BE RELEASED ON HIS OR HER OWN RECOGNIZANCE.

In discussing bail as a concept, certain ideological threads surface time and time again, even in the face of professed notions that they are not applicable. One of the concerns is the gravity

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[89]Pa. R. Crim. Proc., 4003 §(a).

[90]Pa. R. Crim. Proc., 4003 §(b).

[91]N.Y. Crim. Proc. Law §510.30 (Consol. 1986).

or seriousness of the alleged criminal conduct. The second is that due process is as necessary in the bail-setting process as in the later stages of the criminal justice process. Finally, any bail system, at its inception, ought to address the many issues resulting from the issuance of a summons in lieu of a warrant.

This recommendation flows from, and to some extent restates, the constitutional right to bail in New Jersey. It also derives from the finding, supported by research findings stated earlier, that the current bail practice does not always fully accord with what the Constitution contemplates.

The presumption is, in fact, a presumption of continuing freedom absent a factual showing by the State. To the extent that the State fails to meet its burden of establishing this presumption, then the minimal conditions that are required to ensure that the accused will appear at trial and that society's interest is properly protected must be established. The following proposal will move New Jersey beyond most jurisdictions in creating a presumption for release on bail in cases subject to a presumption against incarceration. Under this proposal judges would need to find that money or property bail, as opposed to release on own recognizance (ROR), is necessary to protect the public. This standard directly responds to the finding that a number of defendants whose cases involve a presumption against incarceration are detained, sometimes for lack of only a few hundred dollars.

The revised bail policy should include the following key ingredients:

1. A determination on bail should be made only when the defendant is afforded the minimum protections of due process of law. Therefore, release decisions should be

vested in a judicial officer whose sole purpose is to determine a defendant's release conditions. Each defendant should be entitled to a release hearing, which could also serve as an arraignment, within eight hours of arrest, before a judicial officer, and to be represented by assigned counsel for this stage of the process. Such hearings should be held in public, wherein members of a defendant's family may be present to assist in establishing a defendant's release worthiness.

2. Proofs which overcome the presumption might show that a defendant has in the past violated court conditions of release or failed to appear at a court proceeding. Additionally, as part of the evidence pertaining to release, the prosecutor should be afforded the opportunity to submit a bail recommendation containing facts concerning the crime, victim impact, and defendant's background which substantiate the recommendation.

3. The presumption of release should strictly apply to third and fourth degree offenses, where for first offenders there is a presumption of non-incarceration, unless the threshold of substantive evidence is met, indicating that the defendant is unlikely to appear.

4. Bail should be imposed only where alternative options of release, i.e., supervised release conditions, will not insure the defendant's appearance in court.

5. The release decision should be placed on the court record as a finding indicating that substantive evidence which supports the conclusion that the defendant is unlikely to appear in court has been received by the judge.

6. The burden of determining that the presumption of release is rebutted should be carried by the State. If the presumption of release is overcome, then a minimal condition must be considered. If minimal conditions are not sufficient, then a determination must be made as to the nature of and security for a recognizance.

SUBCOMMITTEE ON CROSS-RACIAL EYEWITNESS IDENTIFICATION

Scope

This Subcommittee was formed to investigate cross-racial eyewitness identifications in criminal matters. The main goal was to determine whether racial and ethnic differences between witnesses and alleged perpetrators are related to significantly greater errors in identification. The following issues were examined:

1. The "identification" practices and procedures of the bench and bar, including initial in-person or photo identifications conducted by law enforcement authorities;

2. The relative importance of eyewitness identification generally in the adjudication of criminal cases, including the frequency of such identifications particularly when such identifications are the key or sole evidence; and

3. The reliability of eyewitness identification when the eyewitness and perpetrator are of the same race, and the reliability of eyewitness identification when the eyewitness and perpetrator are of different races.

Activities

The Subcommittee's work plans included a review of:

1. The importance of eyewitness identification;

2. The reliability of eyewitness testimony generally and, specifically, when it is cross-racial/ethnic;

3. Identification practices and procedures presently used by law enforcement agencies and the judicial system; and

4. Alternative approaches to handling cases involving cross-racial/ethnic identification.

The Subcommittee began its work with an extensive literature review. It also drew on the vast experience of its members. The data gathered in the aforementioned literature review served as a

foundation for the Subcommittee's development of survey questions designed to capture the perceptions of criminal justice and judicial personnel on cross-racial identifications. Three questions were incorporated into the questionnaire used in the study of judges' and top court managers' perceptions of bias.

In an effort to gain additional insight on the topic of cross-racial eyewitness identification, the Subcommittee sponsored a symposium. Two of the speakers were noted and widely-published experts who have served as expert witnesses on the subject: Dr. Robert Buckhout, Professor of Psychology at Brooklyn College, and Dr. Terrence S. Luce, Professor of Psychology at the University of Tulsa. Buckhout and Luce presented a comprehensive review of individual cases and scientific studies and discussed cases of misidentification in which the accused and the witness were of different races or ethnic background.

The third panelist at the symposium was Detective Sergeant Louis Trowbridge, a composite artist with the New Jersey State Police. Trowbridge reported on current policies and procedures used by New Jersey law enforcement officers to assist witnesses in describing suspects.

FINDING #7

WHILE EYEWITNESS IDENTIFICATION IS WIDELY ACCEPTED AS PERSUASIVE EVIDENCE, IT IS SIGNIFICANTLY LESS RELIABLE THAN IS COMMONLY BELIEVED.[92]

Significance and Reliability of Eyewitness Identification

There is considerable documentation that eyewitness identifications of suspects is significantly less reliable than generally believed. Furthermore, a general review of the research literature found that scholars also agree that own-race bias in recognition accuracy is likewise significant. However, people are generally better at remembering and identifying persons of the same racial/ethnic group.

Factors other than the individual abilities/disabilities of the witness affecting the reliability of identification include:

- Duration of time the witness viewed the suspect;
- Amount of light in the viewing area;
- Interval of time between the time a witness views the suspect and is asked to recognize the suspect; and
- Amount of stress induced by viewing a situation in the presence of a weapon.[93]

An examination of available information in this field indicates that eyewitness identification is a serious problem. Human beings just are not as good at remembering the way others look as they

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[92]Michael White, Esq., the designee representing Herbert H. Tate, Jr., dissented on the issue of unreliability in eyewitness identification.

[93]Robert Buckhout, Address at Symposium on Cross-Racial Eyewitness Identification (March 18, 1988)

would like to think. Psychology professors who have performed exhaustive research experiments have repeatedly demonstrated that memory is not static, but consists of a set of dynamic processes. The mind is not a mirror, camera, or VCR. A process of encoding begins as soon as one's mind registers the observation of an event, and the encoding process subjects one's memory to modification and change from that moment forth.

Unconscious transference also may taint the reliability of an eyewitness. The eyewitness may "recognize" a suspect (e.g., from walking down the street, being in the store, living in the same neighborhood, etc.), but the suspect may not be the perpetrator. In one classroom study, 25% of the "witnesses" identified an innocent bystander.[94] Witnesses have admirable intentions, but human memory is only one part of the complex psychological process of recognition.

Notwithstanding the problems found in the area of identification, most jurors give a great deal of weight to eyewitness testimony. Elizabeth Loftus studied the influence a single eyewitness can have in the courtroom. A criminal trial was simulated using 150 students as jurors. A written description of a grocery store robbery in which the owner and his granddaughter were killed was given to all of the students. The students also received a summary of the evidence and arguments presented at the defendant's trial. Each juror had to arrive at a verdict of guilty or not guilty. Some of the jurors were told that there had been no eyewitnesses to the crime. Others were told that a store clerk

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[94]R. Buckhout, "Eyewitness Testimony", 231 SCI. AM. 23, 30 (December, 1974).

testified he saw the defendant shoot the two victims, although the defense attorney claimed he was mistaken. Finally, the third group of students was told that the store clerk had testified to seeing the shootings, but the defense attorney had discredited him. The attorney proved that the witness had not been wearing his glasses on the day of the robbery, and since he had vision poorer than 20/400, the witness could not possibly have seen the robber from where the witness was standing. The results from this experiment were:

Percentage of Guilty Verdicts

Group 1.) No eyewitness - 18%
Group 2.) Eyewitness - 72%
Group 3.) Discredited eyewitness - 68%

Note that 68% of the jurors who had heard about the discredited witness still voted for conviction despite the defense attorney's remarks. It seems that people are convinced by a witness who declares with conviction, "That's the man."[95]

Two experiments on the frequency of identification errors are of particular interest. In the first experiment, a man dressed in a workman's overalls entered a classroom while a class was in session, made some remarks about the heat, tinkered with the radiator for a minute or two, and left. Two weeks later the man reappeared with five other men of similar appearance and the students were asked to identify the original workman. Seventeen percent of the students chose the wrong man. Another group of students who had not actually witnessed the event but were told

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[95]"Incredible Eyewitness", 8 PSYCHOLOGY TODAY 116, 117-118 (Dec. 1974).

they had seen the incident were asked to make a selection. Seventy percent of these students refused and said they could not recall the event, but 29% did identify one of the men, a man they had never seen.[96]

In the second experiment, a lecturer was dramatically attacked in front of 141 students. Immediate descriptions of the attacker were generally inaccurate. When tested seven weeks later, identification accuracy from an array of six photographs was only 40% and even the professor misidentified the assailant; 25% of the witnesses identified an innocent bystander—including even the victim—as the perpetrator.[97]

Many theories have been developed to explain inaccuracies in eyewitness identifications, especially those involving a suspect and a witness of different ethnic or cultural backgrounds. Some of these theories have been proven in one study and disproven in another, but these are among the most popular in the research reviewed by the Subcommittee:

- Own-race bias is somewhat greater among whites.
- Racial prejudice affects the ability to recognize.
- Amount of subjects' interracial experience improves ability to identify.
- Males recognize female and male faces with equal ability.
- Women recognize other females with greater facility than men.[98]

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[96]Loftus, id. at 117.

[97]Buckhout, supra n. 94, at 29-30.

[98]Barkowitz, P. & J.C. Brigham, "Recognition of Faces: Own Race Bias, Incentive and Time Delay", 12 J. APPLIED SOCIAL PSYCHOLOGY 257 (1982).

In 1952, lawyer-novelist Erle Stanley Gardner reported a study of the difficulties encountered by trained and experienced state police officers in accurately estimating height, weight, and age. The respective variations were five inches, twenty pounds, and fifteen years.[99]

In conclusion, the research clearly demonstrates that there are numerous factors that diminish reliability of eyewitness testimony. In fact, the rate at which perpetrators are correctly identified in controlled experiments has never been found to exceed 50%.[100]

Familiarity with the Limitations of Eyewitness Identification

This discussion commenced by pointing out how much credence jurors tend to give eyewitness testimony. Since jurors place such great faith in the testimony of eyewitnesses and the unreliablity of eyewitness has been pointed out, it is reasonable to conclude that the average lay person who serves as a juror is not familiar with the limitations of this type of testimony. Some of the questionable assumptions that jurors embrace include the following:

- Police officers have better memory than the average citizen.
- Violent events are more likely to be remembered accurately than nonviolent ones.
- Witnesses are no more likely to overestimate the amount of time that transpired in an event than they are to underestimate it.

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[99]F.J. Levine & J.L. Tapp, "The Psychology of Criminal Identification: The Gap from Wade to Kirby", 121 U. PA. L. REV. 1079, 1088 (1973).

[100]Terrence Luce, Address at Symposium on Cross-Racial Identification (March 18, 1988).

- Testimony will be more accurate the more confident a witness appears to be.[101]

Beliefs about and knowledge of the reliability of eyewitness identification vary between attorneys who serve as prosecutors and those who work as defense counsel. According to Terrence Luce, when defense attorneys are asked how accurate witness identification is, they estimate an accuracy rate of 30-35%. However, when prosecutors are asked the same question, their estimates are almost triple: most say 90-95% accurate.[102] These varying beliefs about the reliability of eyewitness testimony are reflected in the findings outlined by John C. Brigham. Nearly three-fifths (59%) of the defense attorneys surveyed believe that expert testimony should be considered in cases where eyewitness evidence testimony is disputed. No prosecutor and few (5%) law enforcement personnel believed expert testimony should be considered.[103]

FINDING #8

CROSS-RACIAL IDENTIFICATIONS BY EYEWITNESSES ARE SIGNIFICANTLY LESS RELIABLE THAN SAME-RACE IDENTIFICATION. THE LEGAL COMMUNITY IS NOT SUFFICIENTLY AWARE OF THIS EXTREMELY IMPORTANT FACT.

One of the most significant factors accounting for the unreliability of eyewitness identification occurs when the witness and

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[101]E.F. Loftus and J. M. Doyle, EYEWITNESS TESTIMONY: CIVIL AND CRIMINAL, "1990 Cumulative Supplement" 2 (1987).

[102]Luce, supra n. 100. Luce also refers to a study where attorneys were asked whether judges and juries placed too much emphasis on eyewitness evidence. The vast majority of defense attorneys (90%) felt there was too much emphasis compared to a minority (only 30%) of prosecutors who felt there was too much emphasis. Ibid.

[103]J.C. Brigham, "Psychological Factors in Eyewitness Identifications," 11 J. CRIM. JUST. 51 (1983).

suspect are not of the same race. Scholars agree that an own-race bias in recognition accuracy exists. While it has not yet been demonstrated that this own-race bias is universal across all racial groups, evidence of it has been documented for whites, Blacks, and Asians.[104]

As has been seen in the previous section, controlled experiments have found that the probability of making a mistake in identifying someone may be as high as 50%. How much greater is the probability of error in identification when there is a difference in race between the witness and the subject? Responsible authorities tell us that people are generally twice as likely to correctly identify someone of their own race as they are someone of a different race.[105] This suggests that the probability of misidentification in instances of cross-racial eyewitness identification is significantly greater.

A review of the responses to questions relative to this issue in the PERCEPTIONS REPORT reveals that New Jersey's judges and court managers appear to be fairly familiar with the problems of cross-racial identification. The following statement was posed in the survey of perceptions and opinions: "People can identify other members of their own race or ethnic group more accurately than they can people from other races of ethnic groups." Approximately one-half (47%) of the judges and nearly 40% of the court managers are aware of some of the problems attendant to identifying persons from

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[104]S.L. Johnson, "Cross-racial Identification Errors in Criminal Cases," 69 CORNELL L. REV. 934 (1984); T. Luce, "Blacks, Whites and Yellows: They All Look Alike to Me," 8 PSYCHOLOGY TODAY 105 (1974); T. Luce, "The Role of Experience in Inter-Racial Recognition," 1 PERSONALITY & SOCIAL PSYCHOLOGY BULL. 39 (1974).

[105]Luce, supra n. 100 and Buckhout, supra n. 93.

other races as compared to identifying members of one's own race. See Table 16 for additional data.

While the Task Force does not know with any certainty how familiar New Jersey's attorneys or prospective jurors may be with the limitations of cross-racial eyewitness testimony, it is strongly suspected that their respective knowledge bases are limited.

TABLE 16

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q49: "PEOPLE CAN IDENTIFY OTHER MEMBERS OF THEIR OWN RACE OR ETHNIC GROUP MORE ACCURATELY THAN THEY CAN PEOPLE FROM OTHER RACES OR ETHNIC GROUPS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	3.8%	8.2%	41.5%	41.5%	5.0%	159
Managers	2.9%	13.3%	44.8%	37.1%	1.9%	105
Both	3.4%	10.2%	42.8%	39.8%	3.8%	264

One additional finding deserves special emphasis. Not only are persons of one racial group more likely to misidentify persons of another racial group, but the risk of misidentification is greatest where the witness is white and the defendant is Black.[106]

[106]Johnson, supra n. 104 at 938-940, 949.

RECOMMENDATION #9

PRACTITIONERS IN THE CRIMINAL JUSTICE SYSTEM, INCLUDING JUDGES, SHOULD ATTEND EDUCATIONAL SEMINARS ON EYEWITNESS IDENTIFICATION DEVELOPED BY THEIR RESPECTIVE AGENCIES.

The seminars should cover the topic generally and include information on the conduct of lineups and photo arrays. Research findings on the limited reliability of eyewitness identification generally and the even further diminished reliability of cross-racial identification specifically should be included, as well as a review of the developing jurisprudence on this subject. This recommendation should be implemented by the Attorney General's Office, the Public Defender's Office, the State Bar Association, and the Administrative Office of the Courts.

RECOMMENDATION #10

THE SUPREME COURT SHOULD DEVELOP CAUTIONARY INSTRUCTIONS THAT WOULD BE USED TO INFORM JURIES ON THE ISSUES PERTAINING TO UNRELIABILITY OF EYEWITNESS IDENTIFICATION GENERALLY AND ON THE MORE SIGNIFICANT LIMITATIONS RESPECTING CROSS-RACIAL IDENTIFICATION PARTICULARLY. THE INSTRUCTIONS SHOULD BE MADE AVAILABLE TO JUDGES FOR USE IN CASES WHERE EXPERT TESTIMONY ON EYEWITNESS IDENTIFICATION IS INTRODUCED.

There are two basic approaches needed to improve the likelihood that innocent persons will not be falsely identified and guilty persons will be correctly identified. First, the probability of misidentification in the early stages of the criminal justice process must be reduced. Suggestions along these lines are

provided infra at Recommendation #11 and the accompanying narrative.

The second approach to improving the accuracy of eyewitnesses is to better control the testimony of witnesses at the trial stage in cases where the probability of misidentification is high. In order to achieve this goal, the Supreme Court should promulgate two cautionary instructions for jurors. The first should be a general cautionary instruction for use in all cases containing eyewitness identification. The second instruction should address specific cases where the eyewitness is of a race different of that of the defendant.

The Task Force is aware that the judges and court managers who completed the questionnaire on perceptions of bias believe that judges should not unduly caution juries regarding the possibilities of misidentification where the eyewitness is of a different race than the defendant. Exactly how such cautions would be given and under what circumstances are obviously sensitive matters that will require considerable analysis and assessment.[107] Review Table 17.

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[107]Helpful material is provided by Loftus and Doyle, supra n. 101. See especially Chapter 7, Jury Education and Selection; Chapter 11, Presenting Expert Testimony; and Chapter 12, Instructions for the Jury. See also Johnson, supra n. 104, at 974 et seq.

TABLE 17

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q51: "JUDGES SHOULD MORE STRONGLY CAUTION JURIES REGARDING POSSIBILITIES OF MISIDENTIFICATION WHERE THE EYEWITNESS IS OF A DIFFERENT RACE THAN THE DEFENDANT."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	52.7%	22.2%	16.8%	6.6%	1.8%	167
Managers	40.4%	22.0%	26.6%	5.5%	5.5%	109
Both	47.8%	22.1%	20.7%	6.2%	3.3%	276

RECOMMENDATION #11

THE SUPREME COURT SHOULD ALLOW MORE FREQUENT USE OF EXPERT WITNESSES ON THE GENERAL PROBLEM OF UNRELIABILITY OF EYEWITNESS IDENTIFICATION IN TRIALS. COURT RULES SHOULD BE FORMULATED WHICH AUTHORIZE SUCH TESTIMONY, PARTICULARLY WHERE THE IDENTIFICATION IS NOT STRONG OR WHERE THE CASE RESTS MAINLY ON THE IDENTIFICATION.

When there is application by the parties and the court determines that eyewitness identification is an issue in the case, expert testimony should be heard. This can be done by motion, pretrial hearing, or if the issue rises unexpectedly during a trial, a hearing may be held before the expert is offered as a witness.

FINDING #9

THE RELIABILITY OF EYEWITNESS IDENTIFICATION, BOTH SAME-RACE AND DIFFERENT-RACE, IS REDUCED FURTHER BY IDENTIFICATION PROCEDURES USED BY LAW ENFORCEMENT. IN THE PROCESS OF IN-PERSON LINEUP IDENTIFICATION, THERE IS FREQUENTLY NO COUNSEL PRESENT. THIS PROCESS OFTEN OCCURS PRIOR TO A CHARGE BEING MADE AND PRIOR TO ARREST.

The problem of eyewitness identification goes far beyond the limits of the reliability of both same-race and different-race identifications. The goal of improving the likelihood that innocent persons will not be falsely identified and guilty persons will be correctly identified extends beyond the judicial branch since the probability of misidentification increases, in some instances, because of operational law enforcement procedures and practices.

Since the Task Force has no mandate or authority to study racial and ethnic bias outside the Judiciary, no empirical study of the efficacy of law enforcement procedures and practices in New Jersey was conducted. However, a representative of the State Police spoke at the symposium on cross-racial identification.

During the course of reviewing the literature, the Task Force discovered that there is reason for concern that corroborates our own professional experiences and opinions that such procedures and practices introduce additional risks of further reducing the reliability of eyewitness identification. Those impediments must be recognized here as a general statement of what the research literature and the Task Force's experiences reveal to be problematic.

One major issue is that lineup procedures are often not objective and fair. Robert Buckhout describes some of the problems with law enforcement practices as follows:

> Unfair test construction often encourages error. The lineup or the array of photographs for testing the eyewitness's ability to identify a suspect can be analyzed as fair or unfair on the basis of criteria most psychologists can agree on. A fair test is designed carefully so that all faces have an equal chance of being selected by someone who did not see the suspect; the faces are similar enough to one another and to the original description of the suspect to be confusing to a person who is merely guessing; the test is conducted without leading questions or suggestions. All too frequently lineups or photograph arrays are carelessly assembled or even rigged. If, for example, there are five pictures, the chance should be only one in five that any one picture will be chosen on the basis of guessing.[108]

There are other aspects of law enforcement practices regarding eyewitness identification that the literature points to as being troublesome. Some of the problems which have been identified are implied in the following list of suggestions for improving identification procedures:

> ...minimizing the time delay between the apprehension of the suspect and the identification procedure, creating fair and appropriate lineups using distractor persons of generally similar appearance to the suspect, avoiding biasing instructions or comments while the identification is being made (e.g., implying that the criminal must be in the lineup), avoiding unintentional 'nonverbal cuing' of witnesses about the investigators' expectations, minimizing the possibility that witnesses will see a photograph of the suspect before they view the photo or corporeal lineup, and so forth.[109]

While not a constitutional requirement, all defendants should have, and be advised of, a right to have counsel present at lineup procedures as a matter of policy. If a defendant does not have an

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[108]Buckhout, supra n. 94, at 27.

[109]Brigham, supra n. 103.

attorney, the public defender should have attorneys on call for this purpose. Without counsel's presence, there exists little or no protection for the defendant.

RECOMMENDATION #12

THE SUPREME COURT SHOULD CONSIDER MAKING A REQUEST FOR LEGISLATION WHICH WOULD GRANT A RIGHT FOR DEFENSE COUNSEL TO BE PRESENT DURING LIVE LINEUP PROCEDURES.

Given the serious concerns about identifications, and the potential for injustice, greater protections are needed. Therefore, during all live lineup procedures, the presence of defense counsel is recommended.

Finally, while the scope of this Subcommittee was limited to judicial issues, a few suggestions pertain to matters of interest to the law enforcement community, and should be considered by the Attorney General and County Prosecutors. A more logical and systematic procedure should be used to ascertain identification of suspects by law enforcement officers. Three suggestions aimed at improving the procedure are—

1. An updated picture pool with a limited number of similar pictures should be used by witnesses to identify suspects. The picture pool should be reviewed periodically by minorities to assist in determination of the similarity in photos. All photos should be in either black and white or color and of similar size and quality.

2. Law enforcement officers should be trained in cognitive interviewing techniques to assist witnesses in identification. This will make witnesses' time more productive and ensure less suggestibility by officers during identification.

3. Computers should be used to prepare photo arrays for eyewitness viewing. Modern technology can match physical

characteristics systematically. Use of computers to select photos for viewing will avoid suggestibility.

Having defense counsel present at lineups, together with improvement and modernization of identification procedures, development of cautionary instructions and use of expert witness testimony in court, will positively promote justice for minority and non-minority defendants. The Task Force believes that these recommendations should be goals which the criminal justice system should seek to achieve to make this aspect of the system more "just" for all.

FINDING #10

SINCE DATA ON THE FREQUENCY OF CROSS-RACIAL EYEWITNESS IDENTIFICATION IN COURTROOM HEARINGS ARE NOT AVAILABLE IN NEW JERSEY OR OTHER STATES, IT IS NOT POSSIBLE TO DETERMINE THE INCIDENCE AND MAGNITUDE OF THE PROBLEM OF CROSS-RACIAL EYEWITNESS IDENTIFICATION.

The Subcommittee wanted to determine the frequency and accuracy of cross-racial eyewitness identifications in New Jersey. Data available in New Jersey on this subject are quite limited. Detective Sergeant Trowbridge reported that of 800 witnesses he interviewed in 1985-86, 40% (288) reported that they were of a different race than the person they allegedly witnessed committing a crime. Furthermore, of the 124 instances in which an identification was made on the basis of a composite sketch, fifty-four involved cross-racial participants. This data set provided the Task Force with a crude estimate of the incidence of cross-racial eyewitness identifications in New Jersey.

The Subcommittee created a data collection form to gather the specific information required to measure the volume of cross-racial eyewitness cases in New Jersey. Use of the form was problematic because finding a reliable data source was difficult. The study was not implemented for two major reasons. First, courts and public defenders do not have information on the race of an eyewitness unless the case proceeds to trial. Second, prosecutors do not track the race of eyewitnesses unless they also are victims.

RECOMMENDATION #13

THE SUPREME COURT SHOULD AUTHORIZE A STATEWIDE STUDY TO DETERMINE THE PREVALENCE AND FREQUENCY OF CROSS-RACIAL EYEWITNESS IDENTIFICATIONS IN CRIMINAL INVESTIGATIONS AND INDICTABLE CASES.

Given that to date no statewide or national data are available to demonstrate how often cross-racial identifications occur, New Jersey should pioneer the study. A proposal for federal grant monies to finance the project may yield funding that will offset the cost. In the event that grant money is not available, alternative ways of conducting the study, such as using a cadre of law students or graduate students to conduct a pilot study, should be investigated. The pilot study may be used to secure federal funding for a larger study.

When there is application by the parties and the court determines that eyewitness identification is an issue in the case, expert testimony should be heard. This can be done by motion, pretrial hearing, or, if the issue arises unexpectedly during a trial, at a hearing held before the expert is offered as a witness.

SUBCOMMITTEE ON OUTCOME DETERMINATIONS

Scope

The Subcommittee was formed to address the following statement made by the Committee on Minority Concerns:

> The Committee found that minorities are more likely than non-minorities to be brought into the criminal justice system and are more likely to remain in the system once they are there.[110]

This conclusion alone does not imply that minorities, because of their racial status, are dealt with more severely than non-minorities. The Committee on Minority Concerns, however, in identifying problems for immediate action, went further, citing a "need to correct the lack of uniformity in charging, diversion, prosecution, and sentencing of minority defendants."[111]

The Subcommittee considered its charge to be the investigation of evidence concerning discrimination (i.e., placing accused or convicted minority defendants at intolerable disadvantage) in decisions made by the courts in criminal matters, particularly those decisions resulting in a loss of freedom or in other punishments. The primary purpose of this Subcommittee was to investigate sentence outcomes for all defendants in order to focus on a comparison of sentences for similarly situated minority and non-minority defendants. Then the Subcommittee would determine what methods could be developed to address any disparity found. The Subcommittee also planned to investigate the area of pretrial intervention (PTI) and conditional discharge under N.J.S.A. 24:21-27.

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[110]COLEMAN REPORT, supra n. 2, at 31.

[111]Ibid.

Activities

The first dimension of the Subcommittee's work plan was to review the research literature on both the national and state levels that would include studies that have measured the relationship between sentencing and minority defendants (as well as diversionary programs). The Subcommittee considered carefully those areas in which research on this subject had been scrutinized. In pursuit of this objective, a symposium was held at the School of Criminal Justice at Rutgers, Newark, in collaboration with the New Jersey Criminal Disposition Commission. Four nationally respected authorities on empirical research concerning prosecution, bail, sentencing, and discrimination in the criminal justice system presented their summaries of relevant research. They were Dr. Alfred Blumstein of Carnegie-Mellon University, Dr. Robert Crutchfield of the University of Washington, Dr. John Goldkamp of Temple University, and Joan Jacoby of the Jefferson Institute of Justice Studies. Members of the Supreme Court Task Force on Sentencing, members of the New Jersey Criminal Disposition Commission, and observers were invited.

In addition, the Subcommittee developed questions to be included in the questionnaire used to study judges' and top court managers' perceptions of bias. Finally, the information obtained in the public hearings process was carefully studied.

FINDING #11

SCIENTIFIC EVIDENCE SUPPORTING A HYPOTHESIS OF DISCRIMINATION IS MIXED AND RESULTS VARY BY LOCALE OF DECISIONS IN THE CRIMINAL JUSTICE SYSTEM AND BY JURISDICTION STUDIED. WHEN DATA ARE POOLED FROM A VARIETY OF DECISION POINTS OR OF JURISDICTIONS, EVIDENCE OF DISCRIMINATION MAY BE OBSERVED.

At the symposium, the various experts presented a picture which at best can be said to be unclear. Alfred Blumstein presented his work in investigating the reasons why Blacks were seven times as likely as whites to be imprisoned at the Federal level. Blumstein's findings were reported by the National Academy of Sciences, which had appointed him chair of the Panel on Sentencing Research. The Panel reviewed sentencing research completed before 1983 and the final report focused, inter alia, on the determinants of sentencing, particularly those associated with discrimination and disparity, and the methodological problems associated with this type of research.[112]

The Panel on Sentencing Research noted that two types of evidence often are cited in support of assertions of racial discrimination in sentencing. First, it is known that African Americans are incarcerated in numbers disproportionate to their representation in the population. Second, many studies (more than 70 at the time of the Panel's review) have been done to find a

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[112]The Panel is a part of the Committee on Research on Law Enforcement and the Administration of Justice of the Commission on Behavioral and Social Sciences and Education of the National Research Council. Its findings were reported in RESEARCH ON SENTENCING: THE SEARCH FOR REFORM, Volumes I and II (A. Blumstein, J. Cohen, S.E. Martin, M.H. Tonry, eds. 1983). For an earlier thorough review, see M.J. Hindelang, "Equality Under The Law", in 60 THE J. OF CRIM. L., CRIMINOLOGY, & POLICE SCI. 306 (1969).

statistical association between race and sentencing outcomes. Noting that "some of these studies find an association that has been interpreted as evidence of racial discrimination in sentencing," the Panel nevertheless summarized its extensive review as follows:

> The available research suggests that factors other than racial discrimination in sentencing account for most of the disproportionate representation of blacks in U.S. prisons, although racial discrimination in sentencing may play a more important role in some regions or jurisdictions, for some crime types, or in the decisions of individual participants.[113]

The conclusion was based on the Panel's review of a large volume of research, as well as on studies conducted by individual Panel members in support of the Panel's work. Some of these studies are more directly related to the issue of disproportionate representation of Blacks in prison, and some are more related to the general issue of minority group classification as a determinant of sentencing decision outcomes.[114]

The Panel noted that the use of aggregated data could mask racial differences in sentencing at more disaggregated levels and pointed to a need for "careful, disaggregated research on racial effects for individual crime types at different stages of the criminal justice system and within individual jurisdictions."[115]

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[113]RESEARCH ON SENTENCING, id., Vol. I, at 13 (emphasis in original).

[114]See especially the following articles in RESEARCH ON SENTENCING: THE SEARCH FOR REFORM, Vol. II (A. Blumstein, J. Cohen, S.E. Martin & M.H. Tonry, eds. 1983): J. Hagen and K. Bumiller, "Making Sense of Sentencing: A Review and Critique of Sentencing Research" 1; S. Klepper, D. Nagin, and L.J. Tierney, "Discrimination in the Criminal Justice System: A Critical Appraisal of the Literature" 55; and S. Garber, S. Klepper, and D. Nagin, "The Role of Extralegal Factors in Determining Criminal Case Disposition" 129.

[115]RESEARCH ON SENTENCING, supra n. 112, Vol. I, at 15.

The available studies of the sentencing process were described as vulnerable to various statistical problems. Many early studies were found to be seriously flawed by statistical biases in the estimates of discrimination arising from a failure to control for prior record, offense seriousness, and other variables that affect sentencing. Later, more sophisticated studies that sought to exercise the needed controls yielded mixed results. That is, some found evidence of racial discrimination but others did not.[116]

At the symposium, John Goldkamp supported Blumstein's assertion that 80% of the difference in disproportionate incarceration rates between African Americans and whites can be explained by the greater involvement of Blacks in serious crime, as opposed to different treatment by the judicial system. He added that his own research on the issue of bail had found no consensus supporting a pattern of discrimination.

However, Crutchfield stated that his research in the State of Washington found evidence of discrimination in certain areas. He cautioned that the findings of the National Academy of Sciences, on a national level, could mask or hide pockets of profound discrimination in individual jurisdictions or courts. He urged that each

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[116]This is also the case with more recent studies that further emphasize variation in findings across decision points and jurisdictions. See, for example, J. Petersilia, RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM (1983); T.D. Miethe & C.A. Moore, "Racial Differences in Criminal Processing: The Consequences of Model Selection on Conclusions About Differential Treatment," 27 SOC. Q. 217 (1986); J.A. Humphrey & T.J. Fogarty, "Race and Plea Bargained Outcomes: A Research Note," 66 SOC. FORCES 176 (1987); M.A. Myers & S.M. Talarico, "The Social Contexts of Racial Discrimination in Sentencing," 33 SOC. PROBLEMS 236 (1986); R.D. Peterson & J. Hagan, "Changing Conceptions of Race: Towards an Account of Anomalous Findings of Sentencing Research," 49 AM. SOC. REV. 56 (1984); M.S. Zatz, "Race/Ethnicity and Determinate Sentencing: A New Dimension to an Old Controversy," 22 CRIMINOLOGY 147 (1984); O. Clayton, Jr., "A Reconsideration of the Effects of Race in Criminal Sentencing," 8 CRIM. JUST. REV. 15 (1983); and S. Welch, C. Spohn & J. Gruhl, "Convicting and Sentencing Differences Among Black, Hispanic, and White Males in Six Localities," 2 JUST. Q. 67 (1985).

state study its own experience, and noted that, as he found in Washington, it is likely that discrimination could exist in some courts at the local level and would not be detected by large, statewide studies.

FINDING #12

SINCE THERE ARE SUBSTANTIAL RELATIONS BETWEEN MINORITY STATUS AND OTHER CORRELATES OF OUTCOMES, ASSESSMENTS OF DISCRIMINATION EFFECTS ARE ESPECIALLY DIFFICULT TO MAKE FROM STATISTICAL STUDIES.

Although measured differently in various studies, the seriousness of the offense and the nature of bodily harm and property loss have been shown to be the dominant factors in the decisions of victims (i.e., whether or not to report a crime), police, judges (both at bail hearings and at sentencing), and parole boards. Another factor that appears to be important for decision outcomes throughout the system is the prior criminal conduct of the offender. The influence of this factor is seen in decisions to arrest, to require cash bail, to require incarceration, and to require lengthy prison terms. A third strikingly consistent major correlate of criminal justice decision outcomes is the prior relationship between the offender and the victim.[117] To the extent that such variables are related to minority group classifications, the correlation or "overlap" among these variables must be considered in the analysis. It is for this reason that the issues

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[117]M.R. Gottfredson & D.M. Gottfredson, DECISION MAKING IN CRIMINAL JUSTICE: TOWARD THE RATIONAL EXERCISE OF DISCRETION (1988).

of measurement error, sample selection, and the specifics of the statistical methods used are of great importance.

The National Research Council report, CRIMINAL CAREERS AND "CAREER CRIMINALS," funded by the U.S. Department of Justice, studied factors related to participation in crime and to the frequency of criminal activity, and reported these factors: "ineffective parenting, poor school performance, low measured IQ, drug use, and parental criminality"[118] and "age of onset of [criminal] careers, ... unemployment, and prior criminal involvement."[119] While such societal deprivation is felt by all races, these factors are more closely associated with minorities.

FINDING #13

EVIDENCE OF DISCRIMINATION AT ANY ONE POINT IN THE CRIMINAL JUSTICE SYSTEM TENDS TO BE LIMITED BY SAMPLING BIAS. CUMULATIVE INCREMENTS OF DISCRIMINATION EFFECTS MAY BE MISSED IN THE ANALYSIS.

In statistical analyses, problems of identifying the effects of minority group membership on sentencing or other criminal justice decision outcomes are particularly complicated by complex relationships of measurement errors and sample selection effects. As explained by the Panel on Sentencing Research,

> Use of incomplete measures of offense seriousness and prior record bias the effects of these variables on sentences and contaminate the estimated effects of correlated variables like race that are generally measured more accurately. The direction of bias in the correctly measured variable

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[118]CRIMINAL CAREERS AND "CAREER CRIMINALS," Vol. I, 54 (A. Blumstein, J. Cohen, J.A. Roth and C.A. Visher eds. 1986).

[119]Id. at 76.

> depends on the bias in the incorrectly measured variable and the nature of the correlation between these variables.

The Panel observed further:

> The direction of bias in the estimated race effect arising from measurement errors in offense seriousness and prior record may be affected by sample selection, where the cases ultimately available for sentencing are a selected sample, including only a portion of the population of 'similar' offenses originally committed. Aside from challenges to the generalizability of the results, sample selection can pose serious threats to the validity of statistical results even within the selected sample. In sentencing research, these internal selection biases can arise when unobserved (and thus unmeasured) factors are common to both the selection and sentence processes, thereby inducing (or altering) correlations in the selected samples between the unmeasured variables and other included variables like race that are also common to both selection and sentencing. Depending on the nature of the resulting correlation, use of selected samples could result in either overestimates or underestimates of the effect of race on sentencing.

The Panel concluded,

> Measurement error bias, operating either directly or through sample selection, could thus substantially obscure the true incidence of discrimination in sentencing.[120]

The effects of sample selection biases must be considered not only in relation to sentencing outcome studies, but also when potential discrimination effects are examined at other decision points in the criminal justice system.[121]

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[120]RESEARCH ON SENTENCING, supra n. 112, Vol. I, at 16.

[121]For example, M.S. Zatz and J. Hagan recently studied this problem in relation to sentence bargaining. See their article, "Crime, Time, and Punishment: An Exploration of Selection Bias in Sentencing Research", 1 J. OF QUANTITATIVE CRIMINOLOGY 103 (1985).

FINDING #14

MOST AVAILABLE EMPIRICAL STUDIES MAY BE CHALLENGED AS LACKING IN SUFFICIENT SCIENTIFIC RIGOR TO PERMIT FIRM CONCLUSIONS ON THE QUESTION OF DISCRIMINATION IN SENTENCING.

Despite the fact that numerous studies have addressed the problem of discrimination in sentencing and, to a lesser extent, of discrimination in bail decisions, charging decisions, plea or sentence-bargaining decisions, and paroling decisions, no firm guidance is given from these studies about the nature or extent of the problem in the nation, much less New Jersey. Yet, much has been learned from these and other investigations, particularly about the complexity of the problem of identification of discrimination and about specific methodological issues that must be addressed in this area of research. Major efforts to conduct system-wide empirical studies of discrimination in any given decision such as bail or sentencing are apt to be rewarding only to the extent that they are aimed at the specific identification of problems of discrimination so that potential remedies may be proposed.

This means that a carefully designed empirical study may be helpful to the Judiciary in identifying areas (e.g., crime types, jurisdictions) where there is probable cause that discrimination is a particular problem justifying more intensive investigation and exploration of potential remedies. Such an investigation should pay strict attention to the reliability of the data used, the need for disaggregation of data suggested by the literature (e.g., classifying decision events by crime types and by jurisdictions),

and the issues of the potential cumulative effects of selection in samples noted above.

FINDING #15

SOME GROUPS OF MINORITIES—ESPECIALLY AFRICAN AMERICANS—ARE OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM AND THE INDEPENDENT CONTRIBUTION OF THE CRIMINAL COURT SYSTEM ITSELF TO THIS OVERREPRESENTATION NEEDS TO BE CLOSELY STUDIED.

Overrepresentation of Minorities in New Jersey's Criminal Process

Regardless of the degree to which the criminal courts themselves are responsible for the overrepresentation of minorities in the criminal justice system because of discriminatory practices, the overrepresentation itself is an indisputable fact. "Overrepresentation" means that there is a proportionately higher number of minorities arrested and in prison.

First, what are the facts about overrepresentation of minorities in the criminal justice process at the State and national levels? In New Jersey, African Americans are by far the most overrepresented of all minorities, while Hispanics are overrepresented in prison at almost a ratio of 2:1.[122] Table 18 presents the most current data available and contrasts New Jersey's adult

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[122]Readers should keep in mind the following clarifications and precautions when studying the data in Table 18. Different agencies count racial and ethnic minorities differently and those differences can make comparisons of data collected by various agencies problematic. Hispanics, an "ethnic" group, are scattered among the four "racial" groups in the Arrests columns. However, Hispanics have been counted as a completely separate group by both the 1990 Census and the Department of Corrections.

Data for Hispanic arrests do not figure in the calculation of the numbers or percentages in the arrests columns of data. Hence the data from the Census (columns 2 and 3) and the Department of Corrections (columns six and seven) are directly comparable for all racial and ethnic groups. The UCR does not separately report 17,824 Hispanic criminal arrests, 12% of the total arrests, but does not relate this data racially. See, infra n. 124, UNIFORM CRIME REPORTS, at 51.

population in three key aspects: total population in 1990, arrests in 1989, and state prison population on December 31, 1990. Based on the data from Table 18, Blacks represent only 12% of the general population, but 63% of the State prison population, an astounding difference.

The statistics are equally dramatic when the rate of incarceration per 10,000 population is calculated. Figure B shows that adult Blacks are incarcerated in State correctional facilities at the rate of 130 per 10,000 and adult Hispanics at the rate of 47 per 10,000 while adult whites are incarcerated at the rate of 6 per 10,000.

TABLE 18

RACIAL/ETHNIC MINORITY ADULTS IN THE NEW JERSEY CRIMINAL JUSTICE SYSTEM

RACIAL/ ETHNIC GROUP	1990 CENSUS[123]		CRIMINAL ARRESTS IN 1989[124]		STATE PRISON POPULATION ON DEC. 31, 1990[125]	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Whites	4,514,331	76	73,878	51	3,406	21
Blacks	698,130	12	70,702	49	10,281	63
Hispanic	517,302	9	See n. 124	See n. 124	2,648	16
Asian/ Pacific Islander	186,577	3	710	0	14	0
American Indian/ Alaskan Native	9,358	0	84	0	3	0
Other	5,028	0	—	—	6	0
TOTALS	5,930,726	100	145,374	100	16,362	100

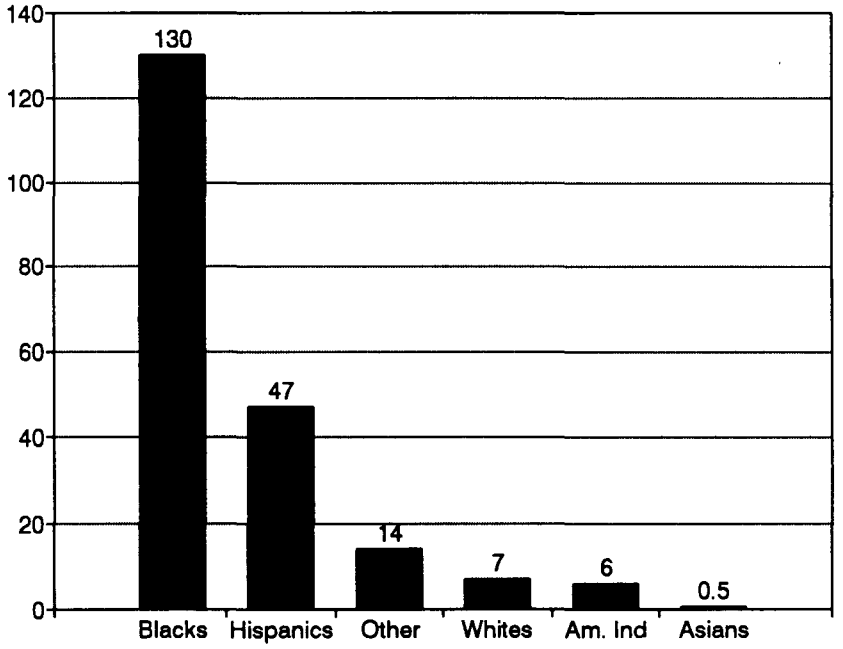
[123]New Jersey State Data Center, Division of Labor Market and Demographic Research, Department of Labor, POPULATION BY RACE AND HISPANIC ORIGIN BY AGE, TOTAL HOUSING UNITS: NEW JERSEY, COUNTIES AND MUNICIPALITIES 1990, Table 1, 8-9 (April 1991). Persons of Hispanic Origin have been subtracted from the five "racial" categories.

[124]Div. of State Police, UNIFORM CRIME REPORTS (U.C.R.), STATE OF NEW JERSEY (1989) 48-51. The U.C.R. tables report "index offenses" (murder, rape, robbery, aggravated assault, burglary, larceny and car theft) and all "other offenses", but in so doing blur the distinction between indictable and disorderly persons arrests for several offenses. In order to get a close approximation of criminal arrests (which are those eligible for state imprisonment), we included all index offenses plus manslaughter, arson, forgery, fraud, embezzlement, stolen property, weapons, sex, and gambling. Drug abuse data in the U.C.R. combines crimes and disorderly offenses, but were also included nonetheless in order to get a reasonable comparison for purposes of Table 187. Note: for these reasons this data is only an approximation of the number of criminal arrests.

[125]ANNUAL REPORT: OFFENDERS IN NEW JERSEY CORRECTIONAL INSTITUTIONS ON DECEMBER 31, 1990 BY SELECTED CHARACTERISTICS 20 (September 1, 1990). Data for the juvenile facilities are omitted. Also, data which were "Not Coded" are not included. NOTE: These figures do not include the 4,407 persons sentenced to a state facility who were waiting in a County Jail, or confined in some other status.

FIGURE B

RATE OF IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS PER 10,000 FOR WHITES, BLACKS, AND HISPANICS[126]



Against those statistics, it is important to consider the human dimension. The sense that many persons who testified at the public hearings had about the human dimension is illustrated by William S. Thomas, a citizen with a long history of advocating for positive change in the criminal justice system:[127]

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[126]These figures are based on the rate at which persons in each group are incarcerated (as reported in the state prison population on December 31, 1989 in Table Two) per 10,000 persons in the 1990 general population as reported in the 1990 Census column of Table 18.

[127]A resident of East Orange, Mr. Thomas was a charter member and chairman of the first Essex County Legal Services. He also served on the panel which first proposed the pretrial intervention program in Essex County as well as on Governor Cahill's Select Committee on Criminal Justice. He was a member of the

> I want to show you members of the panel a concern which I feel is pressing and basic in the Afro-American community. That concern is genocide of the black male by meaningless incarceration. In most of the larger Superior Courts in the State of New Jersey, black males are being sentenced to state prisons at a high rate on a daily basis. The courts are forced to handle and deal with the black male who comes before the courts as a result of the mishandling of the social and economic problems of our state by the politicians. The court, in an effort to render justice with mercy, in most instances sentences the black male, usually under 30 years of age, to a meaningless sentence in the state correction facility.[128]

Mr. Thomas goes on to point out how prisoners, instead of being rehabilitated and equipped with effective life skills, return to the community "with greatly sharpened, new criminal skills."[129] After giving some suggestions of creative sentencing which would correct this problem, he outlines some of the ramifications of present sentencing practices:

> If no new opinions are extended by the black community all by themselves and if no new approaches are tried by you, the so-called minority will continue to dwindle because that's what's going on now. With all the young black men in jail, there's no young black men out here to marry black women and without the marriage of young black men with young black women, our race is going to dwindle. And eventually, the so-called minority ... would dwindle and the so-called majority, the Caucasians, will continue to live in a state of fear and a state of mistrust of Blacks, which does not make for a homogeneous society.[130]

In the area of drug use, two indicators illustrate the overrepresentation of African Americans and, although to a lesser degree, Hispanics. First, admissions to substance abuse treatment

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East Orange City Council for eight years. See Thomas' testimony, EAST ORANGE PUBLIC HEARING 274-275 (November 29, 1989).

[128]Id. at 275.

[129]Id. at 276.

[130]Id. at 277-278.

facilities in New Jersey show that, with respect to alcohol, African Americans are admitted at a rate almost three times their proportion in the general population, while whites and Latinos are admitted at a rate slightly under a 1:1 ratio. As far as other drug use is concerned, African Americans are admitted at a rate approaching a ratio of 4:1 when compared to their proportion of the population, with Hispanics being admitted at a ratio of 1.4:1 and whites at a ratio of 0.6:1. Consult Table 19 for details.

TABLE 19

PROPORTIONS OF PERSONS ADMITTED TO DRUG TREATMENT PROGRAMS IN 1989 BY RACIAL/ETHNIC GROUPS IN 1990[131]

TYPE OF TREATMENT PROGRAM	PERCENTAGE OF WHITE PERSONS		PERCENTAGE OF AFRICAN-AMERICAN PERSONS		PERCENTAGE OF LATINO PERSONS	
	GEN. POP.	ADMIS-SIONS	GEN. POP.	ADMIS-SIONS	GEN. POP.	ADMIS-SIONS
Alcohol	76%	61%	12%	32%	9%	7%
Drug	76%	44%	12%	43%	9%	13%

A less reliable but still very strong indicator of the differences among racial and ethnic groups is provided by official adult drug abuse arrest figures. Consider the following statistics:

- While Blacks comprise only 12% of the State's adult population, they account for 52% of the arrests for drug abuse.

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[131]Source of treatment admissions data: M. Aguirre-Molina and A. Troutman, Co-Chairpersons, "Interim Report of the Commissioner's Advisory Committee on Minority Health" 7-8 (June 1991). Source of population data: N.J. State Data Center, Div. of Labor Market and Demographic Research, Dep't. of Labor, POPULATION BY RACE AND HISPANIC ORIGIN BY AGE, TOTAL HOUSING UNITS: NEW JERSEY, COUNTIES AND MUNICIPALITIES 1990, Table 1, 8-9 (April 1991).

- Latinos are 9% of the State's adult population, but comprise 12% of all arrests for drug abuse.

By contrast, whites represent 76% of the adult population but account for less than one-half (48%) of the total arrests for drug violations.[132]

Overrepresentation of Minorities in the Nation's Criminal Courts

The Panel on Research on Criminal Careers of the National Research Council called attention to a 1967 study which estimated that 68% of black males and 20% African-American females will be arrested for non-traffic offenses sometime during their lifetimes. The estimates for white males and females are 47% and 11%.[133]

The findings of overrepresentation of minorities in New Jersey's criminal justice system are consistent with reports focusing on the national level. Early in 1990, the Sentencing Project of Washington, D.C. released a report that described the effect of the criminal justice system on the nation's minorities. Here are the principal findings:

* Almost one in four (23 percent) Black men in the age group 20-29 is either in prison, jail, on probation, or parole on any given day.

* For white men in the age group 20-29, one in 16 (6.2 percent) is under the control of the criminal justice system.

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[132]UNIFORM CRIME REPORTS, STATE OF NEW JERSEY, supra n. 124, at 49-50.

[133]R. Christensen, "Projected Percentage of U.S. Population with Criminal Arrest and Conviction Records," in TASK FORCE REPORT: SCIENCE AND TECHNOLOGY (Report to the President's Commission on Law Enforcement and the Administration of Justice) as cited in C.A. Visher and J.A. Roth, "Participation in Criminal Careers," in CRIMINAL CAREERS AND "CAREER CRIMINALS," supra n. 118, Vol. I, at 228.

* Hispanic male rates fall between these two groups, with one in 10 (10.4 percent within the criminal justice system on any given day). [sic]

* Although the number of women in the criminal justice system is much lower than for men, the racial disproportions are parallel. For women in their twenties, relative rates of criminal justice control are:

  Black women - one in 37 (2.7 percent)
  White women - one in 100 (1 percent)
  Hispanic women - one in 56 (1.8 percent)[134]

The report called for attacking "those social factors that many believe provide a more direct link to crime, such as unemployment, poverty, and substance abuse."[135]

It is likely that the overrepresentation of minorities in the criminal justice process is significantly related to the social, educational, and employment deprivation of minorities in our culture, and that such deprivation should be taken into account as a mitigating factor when sentencing defendants. Currently, the New Jersey Code of Criminal Justice does not provide for such consideration in the mitigating factors listed in N.J.S.A. 2C:44-1. Given this, such deprivation should be considered in the sentencing process.

The Role of Law Enforcement

There was considerable testimony about discriminatory conduct in all aspects of law enforcement at the public hearings. The testimony focused primarily on police conduct. Both the quantity and tenor of the remarks suggest that minorities view discriminato-

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[134]M. Mauer, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM 3 (February 1990).

[135]Id. at 6.

ry practices at the hands of law enforcement agencies to be a serious and longstanding problem. In one instance, a witness even made this statement: "And I must ... make you aware of what I think is the main problem confronting, especially the Hispanic community, today, which is the abuse by the police forces."[136] The testimony may be classified among the following major concerns:

- Minorities are perceived to be the likely subjects of police intervention resulting in arrest. A juvenile who testified at the public hearings summarized his experiences of police brutality and harassment in these words:

  > I'm also here to say that, when the police come and stop the fights [i.e, between gangs], they just beat people up. I mean, I hear you can restrain somebody. I see police beat kids till it doesn't make sense how they beat them. They beat them up for no reason. Really you don't even have to be involved with the fighting, and you can just be in the wrong place at the wrong time, and still be hurt.[137]

  Compare that story coming out of Monmouth County with this one from Hudson County: An Hispanic police officer was himself the victim of police brutality and required medical treatment for over two years. He said, "Now I am a police officer. Can you imagine these poor people walking around the city, what they go through?" He concluded, "...I'm going to tell you, a lot of cops, a lot of police officers, especially in this town right here, man they are brutal. They are brutal."[138]

- The "war on drugs" is viewed by some minorities to be a special invitation to discriminate against minorities. The author of a confidential letter noted, "The war on drugs is not working and I only see black Americans suffering from this. It gives the whites a legal reason to bring back

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[136]Billy Delgado Muñoz, PERTH AMBOY PUBLIC HEARING 754 (November 30, 1990).

[137]Stanley Mindingall, NEPTUNE PUBLIC HEARING 450 (February 27, 1990). Later in his testimony Mr. Mindingall said, "I see them beat people up that aren't even involved in the gangs or anything." Id. at 456. In the same statement, he indicated further that these statements only applied to a "certain few" of the police officers, not all of them.

[138]Edward Mesa of the Hudson County Sheriff's Department, UNION CITY PUBLIC HEARING 977 (November 30, 1989).

slavery to the black people...."[139] A staff court interpreter wrote:

> In their zeal to wage this war [i.e., the war on drugs], law enforcement agencies in the county where I live and work are running over the legal rights of citizens, usually minorities.... In some cases, the office of the prosecutor puts the condition into plea agreements that the defense cannot make any bail reduction motions before sentencing on behalf of people who are part of collective plea bargains, even when their sentences are to be non-custodial.[140]

- Some minorities report receiving unequal treatment at the hands of white police, including selective enforcement. For example, when a seventeen-year-old black boy was hit by a car, the white officer did not issue a summons to the driver "Because he didn't see any reason to give it."[141]

  Another witness said he had observed, while driving on highways patrolled by either local or state police, that the overwhelming majority of cars that are stopped are driven by a Black or Latino. He has been stopped numerous times himself, which he described as follows: "Either I'm going too slow or I'm not driving correctly, just a posture to come and stop and look in the car and the stereotype is, if you're Black or Hispanic and you're driving a decent car, it's a blank check."[142]

- Some minorities feel that police sometimes pick up the first available minority person rather than conduct adequate investigations. Leniah Johnson, President of the Toms River Branch of the NAACP, said he knows of cases where a police officer picks up minority persons simply because they "need a suspect," arresting "the first Black to turn up."[143]

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[139]CONFIDENTIAL WRITTEN TESTIMONY 92 (undated letter to the U.S. Dep't. of Justice).

[140]WRITTEN CONFIDENTIAL TESTIMONY 38 (undated letter to the Task Force).

[141]Marita Rollins, NEPTUNE PUBLIC HEARING 486 (February 27, 1990).

[142]Bill Morton, President of the Perth Amboy NAACP, PERTH AMBOY PUBLIC HEARING 810 (December 7, 1989). This observation was also made by Bianca González Restrepo, who travels all over Middlesex County in her position as a social worker. She said it is especially bad for persons who are Spanish-speaking. ATLANTIC CITY PUBLIC HEARING 92 (December 16, 1989). A first-person account of special discrimination against Hispanics is provided by a prisoner, which includes the slurs used by the arresting officers, at WRITTEN CONFIDENTIAL TESTIMONY 143-144, 147-148 (December 5, 1989 letters). Another example may be found in id., at 167 (undated letter). Other examples are provided in TRANSCRIPT OF CONFIDENTIAL TESTIMONY 19-20.

[143]PERTH AMBOY PUBLIC HEARING 743 (December 7, 1989).

Another witness put it this way: "I blame the police force, better known as Klannies, dressed in their little uniforms. There's a few good ones, but the majority are worthless. They commit crimes simply because they are interested in their week's pay. Now, when a black man walks down Spring Street and some squad car passes, they just jump out and assume, because he's drinking soda, that it has to have whiskey in it. It's these assumptions that are some of the underlying causes of locking up our young black men out of jealousy, hatred."[144]

Finally, the author of a confidential letter alleged "policemen are illegally searching each and every person whom they see, or don't like." He or she described it as "unlawful, maliciously and forceful arrest of black men and women in this county."[145]

- Some minorities believe that police fabricate cases against minorities. Jesús A. Rodríguez, Deputy Director of the Division of Civil Rights, testified, "People are plainly afraid that a policeman is going to invade their privacy, especially automobiles, and put drugs in there...."[146] Other witnesses said this had actually happened to their children[147] or members of their church.[148] Such charges have also been made by prisoners.[149]

There is some support for the view that extrajudicial discrimination against minorities occurs from the survey of opinions conducted of judges and court managers. Two of the questions solicited opinions about prosecutorial discretion. As Tables 20 and 21 illustrate, about 30% of the combined responses to the questions suggested some discrimination in the exercise of prosecutorial discretion. However, it should be noted that when

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[144]Geraldine Reynolds, NEWTON TOWN MEETING 1135 (October 29, 1990).

[145]CONFIDENTIAL WRITTEN TESTIMONY 61 (August 29, 1989 letter).

[146]VINELAND PUBLIC HEARING 1101-1102 (December 13, 1989).

[147]Sylvia A. Carithers, NEWTON TOWN MEETING 1212 (October 29, 1990); Confidential letter from another parent, CONFIDENTIAL WRITTEN TESTIMONY 87 (letter dated November 29, 1989).

[148]Rev. Fred Jenkins, ATLANTIC CITY PUBLIC HEARING 108 (December 16, 1989).

[149]CONFIDENTIAL WRITTEN TESTIMONY 129 (December 19, 1989 letter).

judges and court managers were asked about whether judges sentence minorities more harshly than they do similarly situated whites, about 23% of the responses fell in the "sometimes" to "usually" range. See Tables 22 and 23.

TABLE 20

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q33:
"Prosecutors are less likely to downgrade the charges against minority defendants than against white defendants."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	27.3%	46.1%	21.8%	3.6%	1.2%	165
Managers	11.0%	52.0%	28.0%	8.0%	1.0%	100
Both	21.0%	48.3%	24.2%	5.3%	1.1%	265

TABLE 21

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q33:
"PROSECUTORS ARE MORE LIKELY TO INSIST ON MORE SERIOUS CHARGES AGAINST MINORITY DEFENDANTS THAN WHITE DEFENDANTS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	28.0%	45.1%	21.3%	4.3%	1.2%	
Managers	9.2%	54.1%	30.3%	4.6%	1.8%	
Both	20.5%	48.7%	24.9%	4.4%	1.5%	

TABLE 22

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q8:
"ALL OTHER THINGS BEING EQUAL (E.G., PAST RECORD,
CIRCUMSTANCES OF CRIME) HISPANICS RECEIVE THE SAME SENTENCES
AS WHITES IN YOUR COURTHOUSE."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	0.6%	3.6%	16.9%	55.4%	23.5%	166
Managers	0.9%	8.2%	20.9%	51.8%	18.2%	110
Both	0.7%	5.4%	18.5%	54.0%	21.4%	276

TABLE 23

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q32:
"IN YOUR COUNTY, SENTENCES FOR MINORITY OFFENDERS
ARE MORE SEVERE THAN FOR SIMILARLY SITUATED WHITE OFFENDERS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	33.5%	46.1%	17.4%	3.0%	0.0%	167
Managers	19.2%	52.5%	23.2%	4.0%	1.0%	99
Both	28.2%	48.5%	19.5%	3.4%	0.4%	266

Furthermore, almost one-half (47%) reported the opinion that there are small increments of discrimination against minorities at each step of the criminal justice process. Review Table 24 for the data.

TABLE 24

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q35: "THERE ARE SMALL INCREMENTS OF DISCRIMINATION AGAINST MINORITIES AT EACH STEP OF THE CRIMINAL JUSTICE PROCESS (E.G., ARREST, INDICTMENT, SENTENCING, ETC.).

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	18.1%	41.0%	32.5%	7.8%	0.6%	166
Managers	7.4%	34.3%	47.2%	9.3%	1.9%	108
Both	13.9%	38.3%	38.3%	8.4%	1.1%	274

Against this background, it is important to note one key implication that the foregoing discussion has for the Judiciary. There is significant evidence that some discriminatory conduct against minorities occurs by those who channel criminal defendants to the Judiciary. The significance of this finding is stated by John Samuel Lewis, Director of Community Services of Manchester:

> We find that the Judiciary, in order to remedy that [i.e., what he calls elsewhere "outrageous conduct by police"], we feel that the Judiciary, even at the municipal level, they have got to look askance and look with a jaundiced eye at who's bringing what before them, not only concerning minorities, but concerning many cases.
>
> I think they need to look at it, and they need to look particularly at minorities. We have seen police officers write up outrageous charges that really were ridiculous. I mean, even the Court had to dismiss some of them.[150]

[150]NEPTUNE PUBLIC HEARING 433-434 (February 27, 1990).

RECOMMENDATION #14

THE CHIEF JUSTICE SHOULD CONSIDER APPROACHING THE ATTORNEY GENERAL TO EXPLORE THE POSSIBILITY OF JOINTLY SPONSORING AN EMPIRICAL ANALYSIS OF RECENT NEW JERSEY SAMPLES OF BAIL AND SENTENCING OUTCOMES, CONTROLLING FOR KEY FACTORS THAT INFLUENCE THE OUTCOMES OF THESE DECISIONS, EXAMINING THE POSSIBILITY OF CUMULATIVE DISCRIMINATION EFFECTS OVER THE SEQUENCE OF DECISIONS FROM ARREST THROUGH SENTENCING, AND DETERMINING THE DEGREE TO WHICH DISCRIMINATION OCCURS AT EACH OF THOSE DECISION POINTS.

This type of study would be the first step in a process of identifying specific problems of discrimination. This research will be useful in identifying the appropriate points for intervention and in determining the precise form that intervention might take. The Task Force believes that the Chief Justice and the Attorney General could agree to conduct a joint study along the lines that have been outlined above.

An alternative or supplementary approach would focus on decision points that are exclusively within the Judiciary. This study would begin by identifying areas within the Judiciary where there are thought to be indications or perceptions of bias. Such a study also should explore appropriate strategies for reducing the appearance or reality of bias in those areas. The study should be supplemented by additional investigation, using field research methods, to permit an apt description of the problems and to suggest potential solutions.

RECOMMENDATION #15

THE SUPREME COURT SHOULD CONSIDER A REQUEST TO THE LEGISLATURE THAT WOULD REVISE N.J.S.A. 2C:44-1 TO INCLUDE AS AN APPROPRIATE MITIGATING SENTENCING FACTOR THAT THE DEFENDANT HAS SUFFERED FAMILIAL, EDUCATIONAL, OR OTHER SOCIETAL DEPRIVATION DURING HIS OR HER YOUTH WHICH MAY HAVE CONTRIBUTED TO THE CRIMINAL ACTIVITY.

Such a recommendation could be referred to the Supreme Court Committee on Criminal Practice. That Committee's review, comments, and recommendations would be given to the Supreme Court prior to a determination of legislative action.

FINDING #16

THERE MAY BE DISCRIMINATION AGAINST AFRICAN-AMERICAN DEFENDANTS IN CAPITAL CASES AND CASES WITH WHITE HOMICIDE VICTIMS MAY BE AT GREATER RISK OF ADVANCING TO A DEATH PENALTY TRIAL THAN CASES WITH AFRICAN-AMERICAN OR HISPANIC HOMICIDE VICTIMS.

The New Jersey Supreme Court has stated, "Discrimination on the basis of race, sex, or other suspect characteristic cannot be tolerated."[151] When the Court discussed the concept of "proportionality review," it concluded that it had found the vehicle for preventing such discrimination and appointed a Special Master, David C. Baldus, to conduct a study of proportionality of the application of the death penalty.

The report of the Special Master recently was published.[152] While the Proportionality Review project was not asked to study

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[151]State v. Ramseur, 106 N.J. 123, 327 (1987).

[152]D.C. Baldus, DEATH PENALTY PROPORTIONALITY REVIEW PROJECT: FINAL REPORT TO THE NEW JERSEY SUPREME COURT (September 24, 1991).

discrimination, race variables were included in the data base in order "to ensure that variables for legitimate case characteristics were not carrying any possible race effects,"[153] i.e, to make sure there was no discrimination.

Two race effects were observed, but the Special Master cautions that they should be viewed as "strictly preliminary." He went on to comment:

> More work will be required to determine if they persist under closer scrutiny and alternative analyses, to determine, for example, whether they are statistical artifacts or flukes, and to assess their legal and practical significance.[154]

The first race effect that was discovered was the suggestion "that black offenders may be at greater risk of receiving a death sentence than similarly situated white and Hispanic defendants."[155] To be more specific, the analyses suggested that "black defendants may have a 19-percentage-point higher risk ... of receiving a death sentence than do other defendants."[156]

The second race effect tentatively supported by the analyses focused on the race/ethnicity of the murder victim in the case. Baldus concluded that the data suggested "that cases with white victims may be at greater risk of advancing to a penalty trial than cases involving black or hispanic [sic] victims."[157] In fact, the analysis suggested that "cases with a white victim may have a 14

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[153] Id. at 100.

[154] Id. at 101.

[155] Ibid.

[156] Id. at 102.

[157] Id. at 103.

percentage point or higher risk of advancing to a penalty trial than do other cases."[158] This finding suggests that prosecutors may be less likely to seek the death penalty when the victim is Black or Hispanic than when the victim is white. Since this matter is currently before the Supreme Court, its decision on the issues presented must be made before further recommendations can be formulated.

FINDING #17

THERE IS A SEVERE SHORTAGE OF DRUG TREATMENT RESOURCES AVAILABLE TO INDIGENT OFFENDERS, WHO ARE DISPROPORTIONATELY MINORITIES.

The Supreme Court Task Force on Drugs and the Courts,[159] chaired by Justice Stewart Pollock, has found a severe shortage of bed spaces for rehabilitation and treatment of drug addicted offenders. That Task Force's Post Adjudication and Community Involvement Committee reported:

> The state's Department of Health estimates that there are roughly 550,000 alcohol abusers and 150,000 drug abusers who currently need treatment. Of the latter group, approximately 50,000 may be classified as intravenous drug users who require immediate care. However, only 15%-20% of these persons may ever receive the services they require given current levels of state and federal funding.
>
> According to the Department of Health, there are significant gaps in either client access to or the availability of the following services: detoxification services, especially in inner-city areas; residential treatment services for medically indigent youth and adults; halfway houses, especially those for women with dependent children; and extended care facilities for chronically debilitated alcoholics, many of whom are frequently homeless, as well.

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[158] Ibid.

[159] Supreme Court Task Force on Drugs and the Courts, FINAL REPORT (April 1991).

> There are only 8,905 publicly funded treatment slots in New Jersey. Clearly, at the present time the demand for treatment far exceeds the system's capacity to respond.[160]

The effects of the lack of resources will fall disproportionately on minorities given the fact that minorities are disproportionately in need of drug treatment services. Table 19, supra, details the rates at which different racial/ethnic groups entered treatment programs across New Jersey in 1989. African Americans are admitted to drug treatment programs for drugs other than alcohol at a rate over four times that of whites, while Latinos enter the programs at a rate slightly more than twice that of whites.

RECOMMENDATION #16

THE SUPREME COURT SHOULD CONSIDER PROPOSING TO THE APPROPRIATE EXECUTIVE BRANCH AGENCIES THAT DEDICATED TREATMENT BED SPACES FOR INDIGENT DEFENDANTS BE MADE AVAILABLE TO THE JUDICIARY.

The Governor's Council on Alcoholism and Drug Abuse has recognized the need for additional treatment services. In its first master plan, the Council issued the following recommendation: "Expand treatment services for alcohol and drug abusers already involved with the criminal justice system."[161] The Supreme Court could channel its recommendation to the Council through the

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[160]REPORT OF THE POST ADJUDICATION AND COMMUNITY INVOLVEMENT COMMITTEE 20 (1990).

[161]COMPREHENSIVE STATEWIDE ALCOHOLISM AND DRUG ABUSE MASTER PLAN 77 (April 1991).

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CHAPTER FOUR
COMMITTEE ON MINORITIES AND JUVENILE JUSTICE

Philosophical Statement

The Committee on Minorities and Juvenile Justice believes that the juvenile justice system as a whole, and the Family Court in particular, is the pivotal link in New Jersey's effort to provide a fair and efficient system of justice for its citizens. In processing juvenile delinquency cases, New Jersey's Family Court does not operate as merely a minor criminal court. The Legislature has given it a mandate to go beyond that role by setting forth the purposes of the New Jersey Code of Juvenile Justice in N.J.S.A. 2A:4A-21:

> This act shall be construed so as to effectuate the following purposes:
>
> a. To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of juveniles coming within the provisions of this act;
>
> b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefore an adequate program of supervision, care and rehabilitation;
>
> c. To separate juveniles from the family environment only when necessary for their health, safety or welfare or in the interests of public safety;
>
> d. To secure for each child coming under the jurisdiction of the court such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the State; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents;
>
> e. To insure that children under the jurisdiction of the court are wards of the State, subject to the discipline and entitled to the protection of the State, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations

due to them and from them.

In attempting to carry out the responsibility of obtaining the care necessary to children coming under its jurisdiction, the Family Court is, of course, dependent on others such as parents, schools, communities, service provider agencies, law enforcement, and the Departments of Corrections and Human Services. The resources to provide such care are not always equally available to minority and non-minority juveniles, making it even more important that, at least within the Family Court, all juveniles, regardless of race or ethnic background have equal access to all services; and that all juveniles are treated similarly when situated in similar circumstances. The Task Force believes complete impartiality by the Judiciary is the cornerstone of any system of justice. Without it the public can have no faith that anyone will receive justice.

Scope

This Committee has made findings as to the nature and extent to which minority youth charged with juvenile delinquency are treated differently than non-minority youth and has developed recommendations for corrective action. The Committee identified five major areas of concern:

1. The Judiciary has not provided sufficient information to the minority community about the operation of the juvenile justice system and the steps that the Judiciary is taking to eliminate unfair practices which are disadvantageous to minority juveniles;

2. There is an overrepresentation of minorities at all stages of juvenile delinquency cases (including the detention, waiver, adjudicatory, and dispositional stages);

3. There is a shortage of available services for juvenile delinquents, and an unequal distribution of those servic-

es between minority and non-minority youth charged with delinquency and between communities with a large minority population versus communities with a small minority population;

4. There is a lack of programs offering alternatives to the incarceration of minority juveniles; and

5. Some judges and court staff are insensitive to racial and ethnic differences and fail to treat minority juveniles fairly and compassionately.

Activities

The Committee began its task by more thoroughly familiarizing itself with the entire scope of the juvenile justice process. This was accomplished by a variety of mechanisms.

- A review of the Code of Juvenile Justice (effective December 31, 1983) and of materials which the Administrative Office of the Courts had prepared to assist in the implementation of the new Code.

- An analysis of publications on juvenile justice issued by other groups such as the Committee on Minority Concerns and the Juvenile Delinquency Commission.[1]

- Consideration of a presentation made to the Committee by the Honorable Robert W. Page, P.J.F.P., who outlined the juvenile justice process beginning with police arrest and proceeding through the detention, diversion, adjudication, and dispositional stages.[2]

- Consideration of exploratory observations of a Committee member who attended court sessions in Middlesex and Passaic Counties on behalf of the Committee, and of the information which Committee members obtained at juvenile justice conferences which they attended and from their own interactions with Family Court Judges and staff.

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[1]The Juvenile Delinquency Commission was established by the Code of Juvenile Justice to monitor implementation of the Code. It now consists of 21 members who represent various elements of the State's juvenile justice system. The Chief Justice has designated the Assistant Director of the Family Division to serve as his designee on the Commission.

[2]Judge Robert W. Page is a national authority on juvenile justice and family courts. He has lectured on those subjects throughout the country. He chairs the New Jersey Supreme Court's Pathfinders Committee, which is making findings and recommendations regarding the implementation of the Family Court in the State. Judge Page is also preparing a bench book on Family Division practices and procedures for use by the judges of that court.

- Convening of three focus groups (one with a representative cross-section of eight minority juveniles who had gone through the juvenile justice system, one with seven minority bar members, and one with nine Public Defenders) and analyzing the resulting discussions.[3]

- Participation in a series of public hearings on the issues.

- Inclusion of Martin J. Hodanish and Bruce D. Stout, Executive Director and former Assistant Executive Director respectively, of the Juvenile Delinquency Commission, who attended Committee meetings and provided a wealth of data and analyses. Their assistance was of immeasurable value to the Committee.

- A review of the two-part study, JUVENILE COURT PROCESSING IN NEW JERSEY,[4] which was commissioned by the Conference of Family Division Presiding Judges and the Administrative Office of the Courts. This study is attached as Appendix C1 and is discussed more fully under Finding #18.

The Committee took several steps to determine if the concerns expressed about the Judiciary's processing of minority juveniles are valid. For example, the Committee members individually or in concert reviewed scholarly articles discussing the treatment by the nation's courts of juveniles charged with delinquency. Moreover, the Committee considered the observations made by a Committee member who attended court hearings in two counties. Additionally, questionnaires were sent to representatives of the Probation Division of the Administrative Office of the Courts, the County Prosecutors Association, the Association of County Detention Administrators, and various private social service agencies working with juvenile delinquents. Furthermore, data were collected from representatives of the State Departments of Corrections, Human

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[3]The methodology and results of these focus groups are summarized in R. Wood, JUDICIAL SYSTEM: MINORITIES AND JUVENILE JUSTICE (July 1989).

[4]W.H. Feyerherm and C.E. Pope, JUVENILE CASE PROCESSING IN NEW JERSEY (1991).

Services, Education, Public Advocate, and Health by both written questionnaires and personal interviews.

The Committee also drafted questionnaires for judges, juvenile delinquents, and County Youth Services Commission members on their perceptions about judicial bias against minority juveniles. Some of the questions were incorporated in the Court Process Questionnaire, the data gathering instrument which was the basis for the Task Force's study of judges' and top managers' perceptions of bias in the courts.[5]

Accomplishments to Date

■ Law Day Statement

During the course of its deliberations and prior to the publication of the INTERIM REPORT, the Committee recommended that:

> On May 1, 1988, Law Day, a statement on racial discrimination in the courts be read in the courts and at bar association meetings and be published in newspapers throughout the State.[6]

On behalf of the Committee, The Honorable Mac D. Hunter, Superior Court, prepared a proposed statement. The Task Force's Executive Committee endorsed the concept of the statement. In conformity with that endorsement, The Honorable John Marzulli, then Assignment Judge for Essex County, sponsored a contest for court staff in the vicinage to develop a statement on minorities and the State's court system. The winning entry, prepared by Ann Sorrel, a law clerk for The Honorable Marilyn Loftus, Superior Court, was

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[5]W.J. Chambliss and H.F. Taylor, SURVEY OF PERCEPTIONS OF BIAS IN THE NEW JERSEY COURTS (May 4, 1989) (hereinafter PERCEPTIONS REPORT).

[6]INTERIM REPORT, Recommendation #14.

read at the beginning of court sessions held in Essex County on May 1, 1988.

■ **Policies on Judicial Decision-Making**

The Committee recommended in the INTERIM REPORT that the Supreme Court authorize the issuance of directives requiring that "judges in making dispositional and other decisions in delinquency cases determine and consider actual family circumstances" (Recommendation #15) and that judges and division managers "thoroughly familiarize themselves with the services that are available to juveniles charged with delinquency." (Recommendation #16) The substance of both these recommendations has been included in the Operating Standards for the Family Division Courts which are currently under development.

■ **Physical Condition of Courthouses**

Another recommendation contained in the INTERIM REPORT focused attention on the poor physical condition of courthouses, especially the Family Courts, where minorities frequently appear:

> THE ADMINISTRATIVE OFFICE OF THE COURTS SHOULD CONDUCT A DETAILED, FORMAL REVIEW OF THE PHYSICAL CONDITION OF THE FAMILY DIVISION COURTS AND, WHERE NECESSARY, RECOMMEND TO THE ASSIGNMENT JUDGES THAT THEY CONSULT WITH COUNTY GOVERNMENT TO UPGRADE THEM. (Recommendation #20)

The Supreme Court Committee on Courthouse Facilities recommended in its Final Report that the upgrading of court facilities be undertaken as part of a local planning process in each county.[7] This recommendation was approved by the Supreme Court and will be implemented by the Assignment Judges in each

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[7]Supreme Court Committee on Courthouse Facilities, COURTHOUSE FACILITY GUIDELINES (1990).

vicinage. The Administrative Office of the Courts will remind the Assignment Judges of the particular need to upgrade Family Court facilities, and will recommend that they organize the Local Planning Committee recommended in the Courthouse Facilities Committee Report to focus particularly on Family Court facilities where necessary.

■ Public Information Campaign

The next recommendation appearing in the INTERIM REPORT which the Judiciary is acting on is this:

> THE ADMINISTRATIVE OFFICE OF THE COURTS SHOULD UNDERTAKE A PUBLIC INFORMATION CAMPAIGN TO PROVIDE INFORMATION TO THE MINORITY COMMUNITIES ON THE OPERATION OF THE JUVENILE JUSTICE SYSTEM AND THE STEPS THAT ARE BEING TAKEN TO ELIMINATE UNFAIRNESS TO MINORITY JUVENILES. (Recommendation #21)

The Family Division Services unit of the Administrative Office of the Courts (AOC) has been directed to develop a short bilingual brochure outlining the juvenile justice system, how the system functions, and the rights of juveniles. The messages to be delivered are that (1) the juvenile justice system is a provider of services whose goal is to help and rehabilitate rather than to punish youth, and (2) the system offers juveniles in difficulty a range of options to address their problems and the opportunity to receive professional counseling and guidance. Ten counties have been identified where this brochure can most effectively be distributed through the public school system. Preliminary discussions have begun with the State Department of Education regarding use of the school superintendents' offices in those counties as distribution outlets for the brochure. Those counties and communities account for the majority of the State's delinquency

offenses:

County	Community
Atlantic	Atlantic City
Camden	Camden
Cumberland	Bridgeton, Millville and Vineland
Essex	East Orange, Newark and Orange
Hudson	Jersey City, Union City, and West New York
Mercer	Trenton
Middlesex	New Brunswick, Perth Amboy
Monmouth	Asbury Park, Long Branch
Passaic	Paterson
Union	Elizabeth, Plainfield

This brochure will be made available for distribution by all twenty-one County Youth Services Commissions, and also will be provided upon request to local police departments, board of education offices, mayoral offices, and community action or social service organizations.

In addition, the Family Division unit at the AOC plans to produce a taped 60-second public service announcement which will be provided to approximately 30 radio stations serving the above communities. The announcement will alert the minority community to services available in the juvenile justice system and will urge them to contact the local Youth Services Commission for further information.

■ **Dialogue between Key Family Court Managers and the Committee**

The Committee recommended in the INTERIM REPORT the following:

> THE ADMINISTRATIVE OFFICE OF THE COURTS SHOULD CONDUCT A TRAINING SESSION FOR FAMILY DIVISION JUDGES AND DIVISION MANAGERS TO ACQUAINT THEM WITH THIS COMMITTEE'S FINDINGS AND TO RECEIVE FEEDBACK ON THOSE FINDINGS. (Recommendation #22)

In response to this recommendation, The Honorable Shirley A. Tolentino, Superior Court, and Chair of the Task Force's Committee on Minorities and Juvenile Justice, at the invitation of The Honorable Carmen A. Ferrante, Superior Court, Chair of the Conference of Family Division Presiding Judges, addressed a joint Conference of Family Division Presiding Judges and Family Division Managers on June 26, 1991. It was agreed that the Conference of Family Division Presiding Judges and the Task Force's Committee on Minorities and Juvenile Justice would share information and work together.

Findings and Recommendations

FINDING #18

MINORITY DEFENDANTS ARE OVERREPRESENTED AT ALL STAGES OF JUVENILE DELINQUENCY PROCEEDINGS. THE DEGREE TO WHICH BIAS ON THE PART OF JUDGES AND COURT EMPLOYEES CONTRIBUTES TO THIS OVERREPRESENTATION IS UNCLEAR, BUT RESPONSIBILITY FOR THE OVERREPRESENTATION IS NOT ATTRIBUTABLE SOLELY TO THE JUDICIARY.

Introduction

The Task Force's focus was limited to the Judicial Branch of government. Therefore, this Committee did not attempt to identify or quantify the impact of the practices of police, prosecutors, defense attorneys, or social service agency staff on minority juveniles. However, representatives of those entities determine, in large part, which juveniles are to be charged with delinquency, influence the stages at which charged juveniles will be able to leave the court system, or control many of the rehabilitative

services upon which the Judiciary relies. While it is not possible to sort out the degree to which discrimination against minorities by the juvenile justice system is attributable to the Judiciary, the important point is that the causes of overrepresentation of minority youth in the juvenile justice system are not attributable solely or perhaps even primarily to the Judiciary. This subject will be discussed with supporting documentation later in the chapter.

National Overview

The Committee found considerable evidence of overrepresentation of minorities at the various stages of the judicial system. On a national level, reports reviewed by the Committee documented minority youth involvement disproportionate to the percentage of minorities in the general population at all stages of the juvenile justice system.

In a 1990 report submitted to the Florida Supreme Court, the Racial and Ethnic Bias Study Commission found that race made a difference with regard to outcome in Florida's juvenile justice system. Disparities were found to exist for petition, detention, incarceration, and waiver to adult court. Responses to a telephone survey indicated that race differences were tied to the lack of social and economic resources, as well as to prejudicial attitudes within the system.[8]

A report on Georgia's juvenile justice system also found significant differences in outcome for black and white youth at

[8]D.M. Bishop and C.E. Frazier, A STUDY OF RACE AND JUVENILE PROCESSING IN FLORIDA (1990).

each of the major decision points in the system. In discussing their results the authors stated,

> Thus, gross racial disparities do exist in Georgia's juvenile justice system. The fact that law enforcement officials have considerable discretion in the determination of how many and what types of charges to place against an alleged offender complicates the interpretation of such disparities. Black youth either are committing more serious crimes at younger ages than are white youth, or they are being charged with more serious crimes at younger ages than are white youth. In the former instance, we have understandable disparity. The second scenario constitutes racial discrimination.[9]

A study of Missouri's juvenile justice system found rural and urban differences as well as differences based on race or gender. The authors stated,

> Evidence exists that decision processes are systematically disadvantaging youths who are either black, female, or both. They receive harsher treatment at detention, have more petitions filed 'on their behalf,' and are more often removed from their family and friends at disposition.[10]

A recent report that uses data supplied to the National Juvenile Court Data Archive by seventeen states, including New Jersey, concludes that the overrepresentation of minorities in the juvenile justice system increased in the time period 1985 - 1989. The study states that while a small proportion of the increase may be due to the increase in the nonwhite population, the data shows that the increased volume of nonwhite cases is greater than that anticipated due to demographic shifts. The report also concludes

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[9]L.L. Lockhart, P.D. Kurtz, R. Stutphen, and K. Gauger, GEORGIA'S JUVENILE JUSTICE SYSTEM: A RETROSPECTIVE INVESTIGATION OF RACIAL DISPARITY 10 (1990).

[10]K.L. Kempf, S.H. Decker, and R.L. Bing, AN ANALYSIS OF APPARENT DISPARITIES IN THE HANDLING OF BLACK YOUTH WITHIN MISSOURI'S JUVENILE JUSTICE SYSTEM 18 (1990).

that for nonwhites both the number of youths charged with drug offenses and the severity of disposition has increased. Although formality in handling drug offenses has increased, for whites on the other hand, this effect has been offset by a decrease in the number of white youths referred for drug offenses. The report goes on to point out that the increase in nonwhite cases overall is not entirely attributable to the increase in nonwhite drug offenses since drug offenses comprised a relatively small proportion of the total nonwhite cases—10% in 1989.[11]

New Jersey

The Task Force has found substantial empirical evidence that minorities are overrepresented at all stages of juvenile court proceedings. The evidence comes from two main sources. First, data collected by the New Jersey Judiciary for its own use and the Juvenile Delinquency Commission indicate disproportionate involvement of minority youth and suggest that this disproportionality increases at successive stages in the system. For instance, while just over one-quarter (27%) of the State's juveniles are minorities, nearly one-half (43%) of the juveniles charged with delinquency are minorities. Most striking, however, is the fact that eight of every ten juveniles in State correctional facilities are minorities, as the graph in Figure C illustrates.[12]

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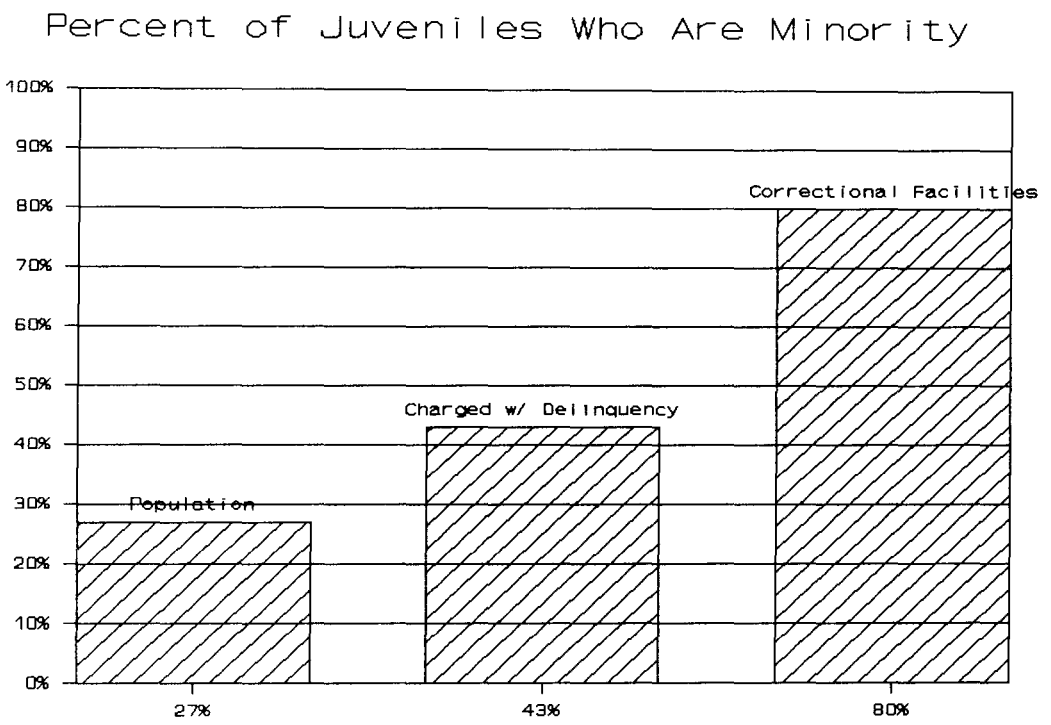
[11]E.F. McGarrell, TRENDS IN JUVENILE COURT PROCESSING: AN ASSESSMENT OF THE ROLE OF RACE IN COURT PROCESSING (1991).

[12]Juvenile Delinquency Commission, JUVENILE JUSTICE - TOWARD COMPLETING THE UNFINISHED AGENDA 51 (August 1988).

Figure C



The second main source that documents overrepresentation of minorities throughout the processing of delinquents in New Jersey is the two-part study referenced earlier, JUVENILE COURT PROCESSING IN NEW JERSEY. This report was prepared by two experts in the field, Dr. Carl E. Pope of the Criminal Justice Program of the University of Wisconsin—Milwaukee and Dr. William Feyerherm of the Regional Research Institute, Portland State University. Part one of this study focuses on the most serious juvenile delinquency cases, those on the counsel mandatory list;[13] while part two is a broader, less detailed study of all stages of juvenile case processing. Since the counsel mandatory study was more focused and

[13]Cases on the counsel mandatory list are those cases in which the juvenile must be represented by counsel because there is a potential for incarceration.

had a small sample size, the research team was able to assemble a more comprehensive data base and to control for such factors as prior offenses and social circumstances. The data set in the broader, part-two study was much less comprehensive and did not allow for such controls to be applied.

In part one of that report, Feyerherm and Pope examined the dispositions of counsel mandatory cases for African-American, Latino, and white youth with data drawn from Pre-Disposition Reports. The part-one study focused on incarceration because of a concern by the Conference of Family Division Presiding Judges that minority youth are overrepresented in Department of Corrections facilities. Using the data from the Pre-Disposition Reports the authors were able to control for factors such as the number of prior delinquent petitions, household income from employment, pending delinquent complaints at time of offense, family structure, and family problems such as abuse. The authors concluded as a result of the part-one study that "In short, on a statewide basis there are substantial differences in the rates of incarceration of minority and Caucasian youth. These differences persist despite controls for offense type, severity, and case background."[14] Interestingly, when these data were analyzed on a county rather than statewide basis, the disparity was reduced. See page 28 of the Feyerherm and Pope report for further discussion of this issue.

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[14]Feyerherm and Pope, supra n. 4, at 23.

Part two of the Feyerherm and Pope study used unit case data for the most recent years available, 1987 and 1988.[15] Although data were not available in the unit case system to control for variables such as prior record or family circumstances, the broader data base included in the unit case system allowed the research team to examine five decision stages in the processing of juvenile delinquency cases in New Jersey.

One pivotal decision stage that is not included in the study is police diversion. Prior to filing delinquency charges, police often divert cases from the court either on the street, at the time of an incident, or in a more formal manner as a station house adjustment. Since such cases never reach the court, they are not included in the unit case system.

The major decision-making stages in New Jersey juvenile case processing are displayed in the flowchart provided in Figure D.

The five decision points included in the study were:

1. Intake's decision whether or not to divert a case.
2. Intake's decision whether to place the case on the counsel mandatory or counsel non-mandatory list.
3. Intake's decision to detain the juvenile pending review by a judge.
4. Adjudication by the court.
5. Disposition by the court. Unit case data contains codes for forty-nine dispositions but for the purposes of this study they were grouped into five categories:
    a. Release—includes referrals to non-justice system agencies;

[15]The unit case system collected information on individual juvenile delinquency cases. It was discontinued in 1990 so that the resources being expended on it could be used for the installation of the Family Automated Case Tracking System (FACTS), a system which tracks all case types in the Family Division.

b. Conditional supervision—includes probation, community service, and programs which place conditions on the youth;

c. Non-residential programs—programs with a particular programmatic emphasis which do not involve a change in residence;

d. Residential programs—dispositions which provide rehabilitative programs in addition to residential care;

e. Institutional programs—represent those incarcerated in Department of Corrections facilities and those waived to adult court.

Some of the most telling statistics from this study are reproduced in Table 25. The authors suggested the following observations:

- The differences in the handling of Black, White and Hispanic youth are greater at earlier stages in the system (diversion, calendaring and detention) than at later stages of the system (adjudication and disposition).

- While comparisons in the early stages (diversion, calendaring and detention) all operate to the disadvantage of minority youth, in the adjudicatory and dispositional stages, there are individual comparisons in which minority youth are more likely to "fare well" (receive less severe decisions than white youth) as well as situations in which minority youth are likely to fare less well.[16]

[16]Feyerherm and Pope, supra n. 4, at 35.

Flow Chart -- Juvenile Case Processing in New Jersey

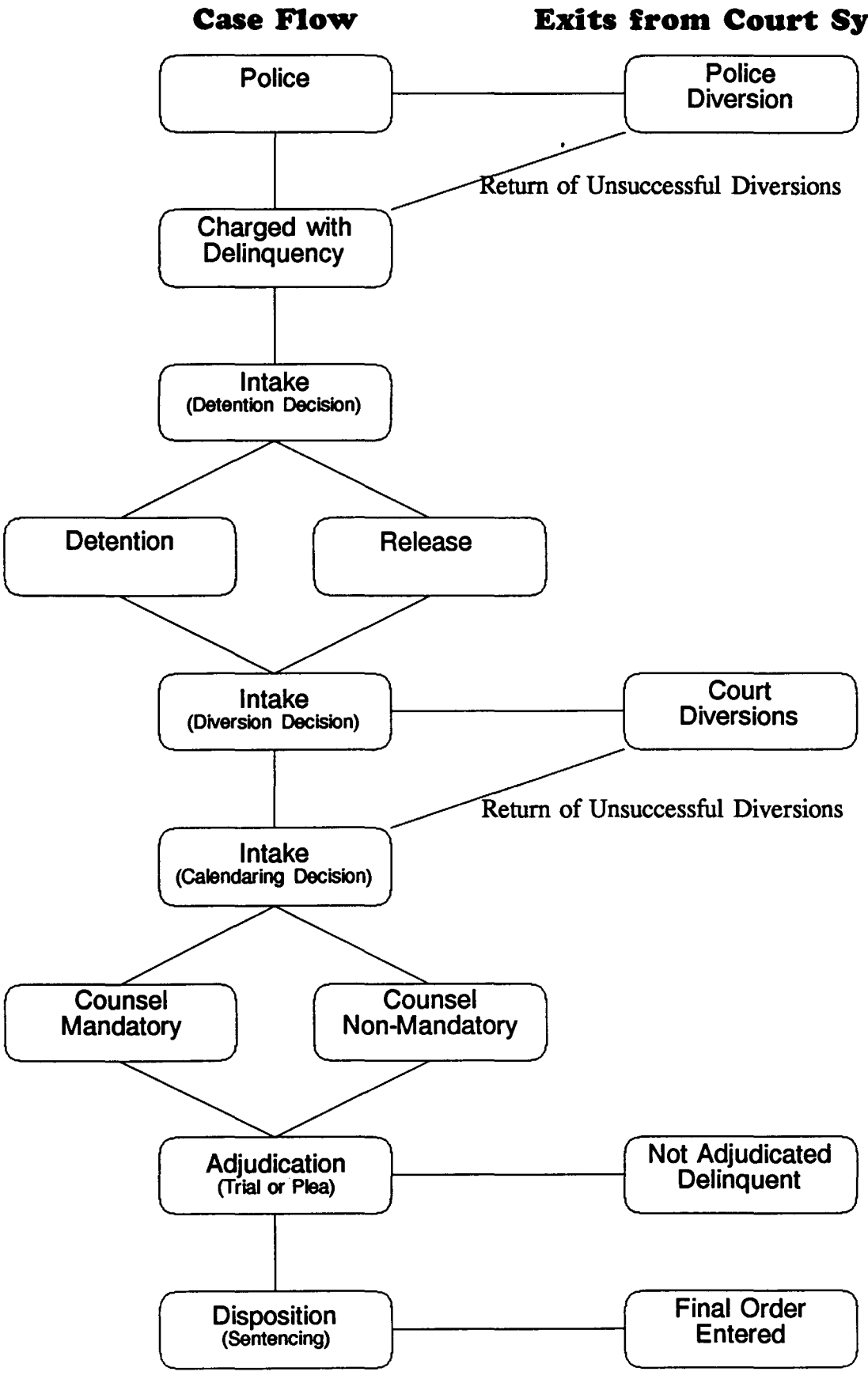

TABLE 25

PERCENTAGE OF STATEWIDE CASES 1987-1988 BY RACE/ETHNICITY AT SELECTED DECISION POINTS[17]

DECISION POINT	PERCENT WHITE	PERCENT BLACK	PERCENT HISPANIC
Diverted by Intake	53%	33%	38%
Placed on Counsel Mandatory Calendar	54%	80%	72%
Detained and Placed on Counsel Mandatory Calendar	20%	38%	39%
Detained, Placed on Counsel Mandatory Calendar and Adjudicated Delinquent	55%	45%	51%
Detained, Placed on Counsel Mandatory Calendar, Adjudicated Delinquent and Received Institutional Disposition	40%	49%	50%

Interestingly, as Table 25 demonstrates, at the adjudication stage (trial), judges were more likely to adjudicate a white defendant delinquent (55%) than a black (45%) or Latino (51%) defendant. This is the stage of a juvenile delinquency proceeding least likely to be affected by extraneous considerations such as the family circumstances, the availability of dispositional resources in the county, or prior record.

The PERCEPTIONS REPORT also found that almost three-fourths (71%) of the judges and court staff reported that a white teenager is more likely to be diverted than a similarly situated arrested minority teenager. See Table 26.

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[17]Id. at 39.

TABLE 26

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q2:
"AN ARRESTED WHITE TEENAGER IS MORE LIKELY TO BE DIVERTED
THAN A SIMILARLY SITUATED ARRESTED MINORITY TEENAGER."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	10.3%	17.0%	46.1%	25.5%	1.2%	165
Managers	6.3%	27.0%	37.8%	23.4%	5.4%	111
Both	8.7%	21.0%	42.8%	24,6%	2.9%	276

Waiver to Adult Criminal Court

In certain circumstances, the cases of juveniles accused of serious offenses may be involuntarily waived to adult criminal court on the motion of the prosecutor. It is also possible for a juvenile to voluntarily request waiver to adult court. This may be done for reasons of strategy such as to gain the right to a jury trial, but voluntary waivers are rare in comparison to involuntary waivers.

Since the waiver provisions of the New Jersey Code of Juvenile Justice were a key part of that legislation, the Committee requested pertinent information from the Juvenile Delinquency Commission.[18] The following data, which include both voluntary and involuntary waivers, were generated from the Unit Case Information System maintained by the Administrative Office of the Courts.

The use of waiver has increased in recent years. Between 1985 and 1989, the number of waivers granted rose 44%. During that

[18]The information supplied by Juvenile Delinquency Commission is not part of a published report. It was provided in a letter to the Committee from the Juvenile Delinquency Commission's Executive Director, Martin Hodanish, which may be found in Appendix C2.

time, 542 cases were waived, with 1986 yielding the lowest number (eighty-nine) and 1988 yielding the highest (135). Essex County waived the greatest number of cases during that time (183), while a number of counties waived fewer than six (Somerset, Morris, Salem, Gloucester, Sussex, and Warren). Hudson waived nineteen youths during this period.

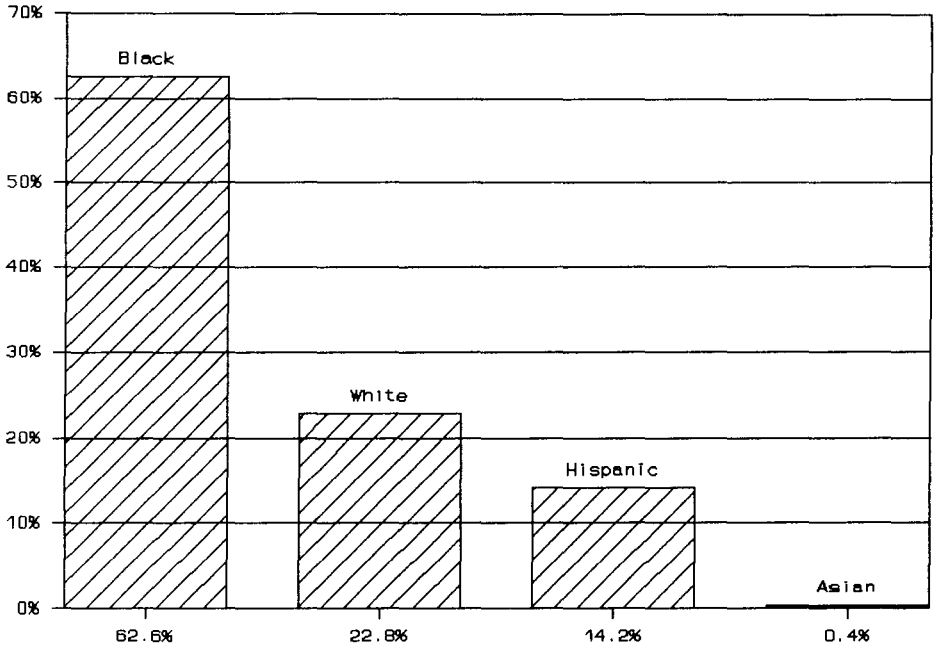
Overall, the proportion of minority cases has remained somewhat stable, although there have been some fluctuations. Between 1985 and 1989, minorities accounted for over three-quarters (77%) of all waived cases in which race could be determined.[19] The highest proportion (83%) of waivers occurred in 1985; the lowest proportion (74%) in 1988.

The data indicate that minority youths are being disproportionately waived to adult criminal court. For those cases in which race could be determined, African-American youths, who comprise less than 20% of the general youth population in New Jersey, were the most frequently waived group. They comprised nearly two-thirds (63%) of all waived cases. White youths on the other hand, accounted for approximately one in five waived cases (23%), while Hispanic youths accounted for less than one in seven (14%). Asian-Pacific Islander youths made up less than 1% of the cases.

[19]In some cases the unit case data base has no information on race or ethnicity because the information was not entered on the data collection forms.

Figure E

PERCENTAGE OF JUVENILES WAIVED TO ADULT COURT



There are certain factors, however, that may help to explain this phenomenon. According to the 1989 Uniform Crime Report, black youths accounted for 41% of all youths arrested, 47% of all index offense arrests, and 65% of all violent index offense arrests. Latino youths, who comprise approximately about 6% of the total youth population, accounted for 12% of all youth arrests, 14% of all index arrests, and 15% of all violent index offense arrests. Thus, even though African-American and Latino youth are disproportionately represented in waivers to adult court, they also account for a disproportionate share of juvenile arrests, especially for the more serious offenses. See Table 27 below for a comparison of minority arrest and waiver ratios.

TABLE 27

COMPARISON OF ARREST AND WAIVER RATIOS
FOR BLACK AND HISPANIC JUVENILES

CATEGORY OF ARREST OR WAIVER	BLACK	HISPANIC
Youths arrested (1989)	41%	12%
Youths arrested with violent index offense (1989)	65%	15%
Youths waived to adult court (1985-1989)	63%	14%

Explanations for Disparity of Outcome

It is an indisputable fact that minority youth in New Jersey are incarcerated in numbers which far exceed their proportional representation in the general population. The Task Force now turns its attention to some explanations for the disparate outcomes.

Two important questions are whether and to what degree the overrepresentation of minority youth is the result of court system bias. The authors of scholarly articles on the subject are not of one mind on the question of judicial system bias. Some suggest that there is bias[20]; others say that factors such as severity of offense and prior offense record rather than discrimination lead to the overrepresentation of minority youth.[21] Social scientists also suggest that, at any one stage, bias of the judicial process may be minimal, but that the combined effect of such discrimination

[20]W.R. Arnold, "Race and Ethnicity Relative to Other Factors in Juvenile Court Dispositions," 77 AM. J. SOCIOLOGY 211-27 (September 1971); A.E. Liska and M. Tausig, "Theoretical Interpretations of Social Class and Racial Differences in Legal Decision-making for Juveniles," 20 SOCIOLOGICAL Q. 197-207 (Spring 1979).

[21]R.H. Chused, "The Juvenile Court Process: A Study of Three New Jersey Counties," 26 RUTGERS L. REV. 488 (1973); L.E. Cohen and J.R. Kluegel, "Determinants of Juvenile Court Dispositions: Ascriptive and Achieved Factors in Two Metropolitan Courts," 43 AM. SOCIOLOGICAL REV. 162 (April 1978).

becomes greater by the time of disposition.[22]

The evidence on the subject is mixed. On the one hand, none of the staff from the public agencies contacted by the Committee staff attributed the overrepresentation of minority youth in the court system to racial or ethnic bias within the judicial system. Similarly, the Committee member who conducted exploratory observations of juvenile delinquency court hearings in Middlesex and Passaic Counties did not observe bias in the courtroom.

Additionally, several of those persons who appeared before the Committee or who were interviewed by Committee staff suggested that factors which the court does not directly control, e.g., the paucity of social services in urban areas[23] and the financial inability of many parents of minority youth to obtain insurance to purchase services, contributed to overrepresentation.[24] In addition, five local chapters of the NAACP attributed part of the overrepresentation to their finding that "more white youths are placed in the community program while their African-American peers ... remain in Jamesburg."[25]

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[22]D. Dannefer and R.K. Schutt, "Race and Juvenile Justice Processing in Court and Police Agencies," 87 AM. J. SOCIOLOGY 1113, 1129 (1982); R. Farrell and V.L. Swigert, "Prior Offense as a Self-fulfilling Prophecy," 12 LAW SOC'Y REV. 437 (1978); A.E. Liska and M. Tausig, "Theoretical Interpretations of Social Class and Racial Differences in Legal Decision-making for Juveniles," 20 SOCIOLOGICAL Q. 197 (Spring 1979).

[23]Carlos Pacheco of Trenton testified that there is a lack of services for minority youths. TRENTON PUBLIC HEARING 928 (December 8, 1989).

[24]See Finding #20 infra.

[25]Thomas E. Daniels, WRITTEN TESTIMONY 5, 8 (December 7, 1989). Jamesburg is a state training school.

Some additional insights were provided by attorneys taking part in the focus groups convened by the Committee. The overrepresentation of minorities in serious offense categories such as drugs brings stiffer sanctions and are subject to much greater public disapproval when compared to the offense categories more typical of white youths who officially commit less serious offenses, e.g., burglary.[26]

> [P]olice 'sweeps of predominantly minority communities,' insufficient number of programs to deal adequately with severe family problems, the imposition of white middle class values in the determination of a case and the insensitivity of judges due to lack of exposure to minority communities.[27]

The Committee also reviewed a 1982 study using data from two unidentified New Jersey counties which explored the relationship between police processing and court decisions. The study concluded that racial bias is more apparent in police dispositions than in judicial decisions, and that bias in police dispositions may translate into bias in judicial decisions by creating more extensive prior records for minority juveniles.[28] Obviously, minority youth will be negatively impacted by any discrimination, or by any policies, which, although not discriminatory on their face, may lead to discriminatory results. In their report, JUVENILE COURT PROCESSING IN NEW JERSEY, William E. Feyerherm and Carl E. Pope suggest that "... consideration be given toward the

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[26]Wood, supra n. 3, at 16.

[27]Id. at 12.

[28]D. Dannefer and R.K. Schutt, "Race and Juvenile Justice Processing in Court and Police Agencies," 87 AM. J. SOCIOLOGY 87 1113, 1129 (1982).

collection of data on police decision-making."[29]

However, there was testimony during the public hearings indicating that intentional racial or ethnic bias within the judicial system does contribute to this overrepresentation. A number of comments from public hearing witnesses suggested that minority youths are treated more harshly than white youths,[30] that punishment of minority youths seems to be more extensive,[31] and that minority youths are more frequently incarcerated than are white youths.[32] The following testimony representing five branches of the NAACP in Monmouth and Ocean Counties points to some judicial responsibility as well:

> An African American in Monmouth County is more likely to be sent to the detention center than a white juvenile. Additionally, the chances are greater that African-American juveniles will be incarcerated than their white counterparts.[33]

Two specific examples revealing biased treatment by judges of minority youth were observed by a member of the Committee during the course of the member's work-related interaction with the Family Court. They support further the notion that there is at least some judicial contribution to overrepresentation. First, a minority youth with two prior shoplifting convictions was sentenced to the county detention facility on a shoplifting charge even though the

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[29]Supra n. 4, at 38 (1991).

[30]Martín Pérez, Esq., PERTH AMBOY PUBLIC HEARING 794 (December 7, 1989).

[31]Rev. John H. Harris, Jr., TRENTON PUBLIC HEARING 819 (December 8, 1989).

[32]Marilee Jackson, Member of the Paterson City Council, PATERSON PUBLIC HEARING 688-689 (November 29, 1989).

[33]These statements were "based on interviews with attorneys, probation persons and on-site visits and others within the Monmouth County Minority Legal Community." Thomas E. Daniels, WRITTEN TESTIMONY 5, 8 (December 7, 1989).

detective from the Youth Squad which had taken her into custody spoke in court on her behalf. The same judge placed a white youth charged with shoplifting who also had two prior shoplifting convictions on probation. The attorney for the white youth had offered little proof of extenuating circumstances or of the youth's remorse.

Second, incidents involving a Family Court judge's refusing a plea agreement involving a minority youth who did not have a prior record and placing a minority child in a temporary shelter merely because the child was having difficulty with white children in his school are other examples of bias.

In an article published in CRIMINAL JUSTICE ABSTRACTS,[34] Carl Pope and William Feyerherm reviewed forty-six studies on juvenile justice processing of minority youth published during the 1970s and 1980s. Pope and Feyerherm divided explanations of minority overrepresentation in correctional systems into three distinct categories. First, such overrepresentation may be explained by the presumption that there is a disproportionately high involvement of minorities, particularly young African-American males, in the commission of offenses. This often is attributed to economic disenfranchisement and the existence of an "underclass." Pope and Feyerherm point out that this theory permits "the juvenile and criminal justice system to discover that the problem is 'larger' than the justice system and reflects larger social issues; thus the

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[34]C.E. Pope and W.H. Feyerherm, "Minority Status and Juvenile Justice Processing: An Assessment of the Research Literature (Part I)", 22 CRIM. JUST. ABSTRACTS 327 (June 1990).

justice system cannot be expected to cope with the problem."[35]

Second, overrepresentation may be explained by the theory that the criminal justice and juvenile justice systems are racist in their decision making. This hypothesis would be difficult to prove empirically since there are multiple variables associated with each case. Moreover, finding matching cases so that they are identical in all factors but race would be arduous and difficult—and this assumes sufficient numbers of cases can be found.[36]

Pope and Feyerherm advanced a third explanation for which they find substantial support in their review of the literature.

> [T]he structure of justice decision making acts to the disadvantage of minority citizens. By "structure" we mean to include at least three themes. First is the jurisdictional fragmentation which characterizes the justice system. Second, is the fragmentation of decision making even within jurisdictions, with decisions about youths being made separately by social workers, attorneys and judges, to name a few. And third is the myriad of variables which may be examined by decision makers in justifying their decisions. Specifically, our concern is whether these structural factors serve to disadvantage minority youths, regardless of whether that disadvantage is intentional.[37]

Another possible explanation for differential treatment suggested by the Juvenile Delinquency Commission is the court system's consideration of ostensibly race neutral factors by decision-makers within the judicial system does, in fact, negatively impact on minority youth. For example, the Juvenile Delinquency Commission recently published the following conclusion:

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[35]Ibid.

[36]Id. at 328.

[37]Ibid.

> [T]he most troubling finding of our research is that the 80% concentration of minority youth in correctional facilities cannot be adequately explained or justified by select legal and extra-legal factors. Rather than reflecting discriminatory intent, evidence suggests that the rate of minority incarceration is due to other indirect factors that often unwittingly impact minorities. Rural counties, which are most likely to have predominately white populations, are hesitant to commit juveniles to correctional institutions. Our inner cities, where delinquency is most serious, are predominantly minority in composition, and often have the fewest options available for judges to use in lieu of correctional placement. Minority juveniles handled by the juvenile justice system are less likely to have intact families; family structure influences decisions to remove juveniles from their homes. The families of minority youth are less likely to be able to afford, or have insurance to cover the costs of private services. As a result, state services often provide the only alternative available. While the intent may not be to discriminate, the result is no less cruel.[38]

The Juvenile Delinquency Commission also concluded:

> ...the disproportionate incarceration of minority youth cannot be adequately explained by relevant legal factors (i.e., differences in prior adjudication and seriousness of offenses). Other factors, generally, fail to explain the differences as well. The only exception to these findings is the apparent effect that family make-up has on judicial decisions. Our data support a view that when a question of family stability [i.e., existence of single parent families] exists the likelihood of incarceration may be greater. The negative impact of [sic] minorities, as a result, may be great.[39]

Conclusion

The evidence is overwhelming that the structure of the juvenile justice system leads to unjustifiable disparities in the treatment of similarly situated juveniles of different races and ethnic groups. However, while the actual amount of disparity that

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[38]Supra n. 12, at 77.

[39]Id. at 55.

occurs within the individual components of the juvenile justice system remains unclear, there is no doubt that some disparate treatment of minority youth occurs in each component of the juvenile justice system.

RECOMMENDATION #17

THE SUPREME COURT SHOULD SET A GOAL FOR THE JUDICIARY OF REDUCING THE NUMBER OF MINORITIES INCARCERATED. THIS GOAL WOULD BE ACCOMPLISHED BY: (1) WORKING THROUGH COUNTY YOUTH SERVICES COMMISSIONS TO EXPAND SENTENCING ALTERNATIVES; (2) CAREFULLY CONSIDERING THE USE OF AVAILABLE ALTERNATIVE DISPOSITIONS THAT WOULD KEEP JUVENILES IN THE COMMUNITY; (3) ADOPTING A POLICY THAT FACTORS LIKE FAMILY STATUS, WHICH MAY APPEAR RACE-NEUTRAL BUT WHICH WHEN CONSIDERED IN CREATING A DISPOSITION MAY TEND TO RESULT IN DISPROPORTIONATE NUMBERS OF MINORITIES BEING INCARCERATED, ARE INSUFFICIENT GROUNDS IN AND OF THEMSELVES FOR JUSTIFYING A DECISION TO INCARCERATE; (4) ENCOURAGING JUDGES TO PLAY A MORE ACTIVE ROLE IN DETERMINING WHICH JUVENILES GO INTO THESE PROGRAMS BY RECOMMENDING SPECIFIC PLACEMENTS AT THE TIME OF SENTENCING; (5) DIRECTING THAT JUVENILE CONFERENCE COMMITTEES BE ESTABLISHED FOR EVERY MUNICIPALITY WHICH DOES NOT NOW HAVE ONE IN ORDER TO STRENGTHEN THE LOCAL CONSTITUENCY FOR DEVELOPING RESOURCES AND ALTERNATIVES TO KEEP JUVENILES FROM BEING INCARCERATED; (6) SUPPORTING THE CONCEPT OF AN URBAN INITIATIVE TO PROVIDE ALTERNATIVE DISPOSITIONAL RESOURCES IN NEW JERSEY'S CITIES; AND (7) IMPLEMENTING A STATEWIDE INTENSIVE SUPERVISION PROGRAM FOR JUVENILES.

To begin the task of reducing the number of minority youth who are incarcerated, the Judiciary should work through County Youth Services Commissions to expand available services to delinquent youth. Where alternatives to incarceration are available, judges should consider, for each disposition involving incarceration,

whether the same rehabilitative effect and level of protection of the public might not be achieved by using an alternative program.

On its own initiative the Department of Corrections has created community-based residential programs for juveniles. Currently, juveniles can be placed in these programs either as a condition of probation or, after being incarcerated, by being reclassified for a community program by the Department of Corrections. Judges should make specific recommendations as to placements in these programs as well as those in the Division of Youth and Family Services.[40] The objective in making judges more active is to increase the placement of minority youth in community-based programs instead of training schools.

Furthermore, judges should recommend specific program placements in community residential programs established by the Department of Corrections as alternatives to incarceration in appropriate cases. In addition, the Judiciary should adopt a policy that **the family status of a juvenile does not justify incarceration** when a juvenile from a "stable" family in the same circumstances would not be incarcerated.[41]

Juvenile Conference Committees should be established in every municipality (or regionally where single municipalities are too small to support a JCC), both to increase resources for diversion of cases and to create a base of community leaders interested in

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[40]While judges can recommend specific placements, they cannot order them. Agencies in the Executive Branch such as the Department of Corrections and the Division of Youth and Family Services have the authority to determine where to place a juvenile within their own system.

[41]See Finding #20 and Recommendation #20, both infra, for related discussion and recommendations.

the problem of services for delinquent youth.

The urban initiative proposed by the Juvenile Delinquency Commission,[42] which is being worked on in cooperation with urban mayors, should be endorsed by the Judiciary. The urban initiative targets the creation of services for those communities most in need of additional services to increase alternatives to incarceration.

Finally, intensive supervised probation has been shown to be an effective alternative to incarceration for adults and should be available statewide as a disposition in juvenile delinquency offenses.

FINDING #19

THE JUDICIARY HAS NOT PROVIDED SUFFICIENT INFORMATION TO THE MINORITY COMMUNITY ABOUT EITHER THE JUVENILE JUSTICE SYSTEM OR THE STEPS THAT ARE BEING TAKEN BY THE JUDICIARY TO ELIMINATE UNFAIRNESS TO MINORITY JUVENILES.

Public Defenders report that their juvenile defendants' knowledge about the system comes from the streets and is usually incorrect or inadequate.[43] Minority attorneys believe that even defendants who go through the process understand very little of it.[44] Similarly, an agency representative pointed out that the paucity of information which the courts provide to minority populations is a problem.

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[42]The urban initiative was a recommendation of the Juvenile Delinquency Commission that is now being pursued by several mayors in consultation with the Juvenile Delinquency Commission. Juvenile Delinquency Commission, supra n. 12, at 71.

[43]Wood, supra n. 3, at 20.

[44]Id. at 21.

RECOMMENDATION #18

THE SUPREME COURT SHOULD DIRECT TWO INITIATIVES BE UNDERTAKEN TO MAKE THE COMMUNITY, ESPECIALLY THE MINORITY COMMUNITY, AWARE OF THE JUVENILE COURT SYSTEM: (1) A COMPREHENSIVE PUBLIC EDUCATION PROGRAM TO PROVIDE INFORMATION ON THE OPERATION OF THE JUVENILE COURT SYSTEM AND THE STEPS THAT ARE BEING TAKEN TO ELIMINATE UNFAIRNESS TO MINORITY JUVENILES; AND (2) AN ENGAGEMENT IN PARTNERSHIPS WITH SCHOOLS WHERE THE JUDICIARY ASSISTS LOCAL SCHOOLS IN DEVELOPMENT AND INSTRUCTION OF A LEGAL EDUCATION CURRICULUM OR PROGRAMS WHICH BRING JUDGES AND COURT WORKERS INTO CLASSROOMS TO SPEAK TO STUDENTS, AND BRING STUDENTS TO VISIT THE COURTS.

In response to recommendations on this topic in the Task Force's INTERIM REPORT, the Administrative Office of the Courts has developed a plan to begin a public education campaign in this area.[45] In addition, the Judiciary is making efforts to recruit more minorities as court employees and as volunteers.[46]

However, these efforts do not appear to be sufficient and may focus too much on public relations instead of sharing substantive educational information about the Family Court.[47] In addition to State-level efforts by the Administrative Office of the Courts to carry out the public education initiative, local efforts are needed in each vicinage to acquaint the community with Family Court.

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[45]See discussion of Interim Report Recommendation #21 in the Accomplishments section of this Chapter.

[46]These efforts are described in detail in Chapter Six.

[47]The Public Defenders and minority attorneys who participated in the focus groups were extremely negative about a "public information campaign." The negative views were based on their collective belief that, absent coherence between what is said in such a program and what really happens in the day-to-day life of the Family Court, any attempt to engage in public relations or paint a certain picture of the Family Court was doomed to fail. Rather, they suggested that more energy be directed toward ridding the Family Court of discriminatory and insensitive conduct on the part of judges and court personnel; in other words, **making** the system a "good system" should take precedence over **making it "look good."** Wood, supra n. 3, at 21.

School-based programs in which judges aid in the development of a legal education curriculum or visit schools to speak to students or Parent-Teacher Associations are two ways of increasing youth's knowledge about the juvenile justice system.[48] Juveniles who have not yet had any contact with the court system should learn about it from the court—not from those juveniles who are defendants in the system.

FINDING #20

DISPARITIES IN TREATMENT BASED ON RACE AND ETHNICITY EXIST AT ALL STAGES OF NEW JERSEY'S JUVENILE JUSTICE SYSTEM. SINCE THE NEW JERSEY CODE OF JUVENILE JUSTICE DIRECTS COURT INTAKE SERVICES TO CONSIDER FAMILY CIRCUMSTANCES WHEN DETERMINING WHETHER TO RECOMMEND DIVERSION (N.J.S.A. 2A:4A-71(b)(1)), A JUVENILE'S STATUS AS A CHILD OF A SINGLE PARENT FAMILY MAY CONTRIBUTE TO THOSE DISPARITIES.

As the Task Force concluded in Finding #18 (see Table 27), disparity exists at all stages in the processing of juvenile delinquency cases in New Jersey. The Task Force endorses the conclusion of the Juvenile Delinquency Commission:

> [D]ata support a view that when a question of family stability [i.e., existence of single parent families] exists the likelihood of incarceration may be greater. The negative impact of [sic] minorities, as a result, may be great.[49]

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[48]The attorneys who participated in the focus groups were supportive of substantive educational programs such as this, but did not support a public information campaign aimed more at image making than truly educating the public. Id. at 12.

[49]Juvenile Delinquency Commission, supra n. 12, at 55.

The Pathfinders Committee also concluded that minorities with families that are in distress have an increased likelihood of incarceration:

> The substantial racial disparity of incarcerated youth is an important area of training for judges to be sensitive to the impact of dysfunctional minority families on the severity of sentence. No child should be sent to a correctional facility as a result of factors over which he or she has no control. Accountability for delinquency offenses must be a personal reflection of the offender, not his or her family. If an offender would otherwise remain within the community, the dispositional treatment plan developed for the offender from a dysfunctional family ought not be harsher. This can be accomplished by providing for programs which substitute for family guidance; e.g., big brother or sister, intense [sic] supervised probation (I.S.P.), juvenile resource centers, and group homes. Comprehensive services to the family will lessen the need for removal at the outset. If he or she is a risk to society to the extent that incarceration is appropriate, it should occur regardless of the race or financial position of a family. Stated simply, if two delinquents have the same past record, commit the same type of delinquency offenses in terms of violence or threat to the physical safety of the community, they should receive substantially equal treatment at the time of disposition.[50]

The New Jersey Code of Juvenile Justice directs court intake services to consider family circumstances when determining whether to recommend diversion (N.J.S.A. 2A:4A-71(b)(1)), leading the Task Force to believe that the existence of non-traditional family structures may contribute to the disparate treatment of minorities at other stages in the processing of juvenile delinquency cases. Although the Committee has focused on dispositions and incarceration, the potential for bias at earlier decision-making stages such as diversion and calendaring is just as vital if justice is to be administered equally to all.

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[50]PATHFINDERS COMMITTEE REPORT 103 (1989) (hereinafter PATHFINDERS).

RECOMMENDATION #19

THE SUPREME COURT SHOULD ENSURE THAT JUDICIAL DECISIONS INVOLVING MINORITIES ARE FAIR BY: (1) DIRECTING THE STANDING COMMITTEE ON MINORITY CONCERNS, IN CONJUNCTION WITH THE CONFERENCE OF FAMILY DIVISION PRESIDING JUDGES, TO EXAMINE THE JUVENILE CODE, ALL WRITTEN RULES, DIRECTIVES, AND FORMS, TO (A) IDENTIFY AND DETERMINE THE NATURE OF ANY ADVERSE IMPACT ON MINORITY YOUTH AND (B) RECOMMEND CORRECTIVE ACTION; THIS EXAMINATION SHOULD FOCUS ON DECISION-MAKING CRITERIA SUCH AS CONSIDERATION OF FAMILY CIRCUMSTANCES. AND (2) AUTHORIZING THE ADMINISTRATIVE DIRECTOR OF THE COURTS TO ISSUE A DIRECTIVE THAT FAMILY DIVISION JUDGES AND STAFF, WHEN MAKING DIVERSION, DETENTION, CALENDARING, DISPOSITIONAL, AND OTHER DECISIONS IN DELINQUENCY CASES, DETERMINE AND CONSIDER ACTUAL FAMILY CIRCUMSTANCES.

The objective of this recommendation is to ensure that decisions do not affect particular racial or ethnic groups unfairly. The Judiciary must take steps to "level the playing field" for all juveniles at all stages in this process. Family Court judges, therefore, should understand the actual intricacies and differences in families and should avoid penalizing juveniles for being part of a family that is overwhelmed by problems.[51] A review of the Code of Juvenile Justice for criteria that may contribute to the disparate treatment of minorities would serve to alert Family Court judges to other sections of the Code that may be applied to the disadvantage of minorities and would provide a basis for reporting sections in need of revision to the Legislature.

The directive regarding consideration of family circumstances should note, for example, that the existence of a one-parent family does not in itself indicate familial instability. One parent may

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[51]See also Recommendation #17 supra.

well be able to provide all the love and security a juvenile needs. Also, there may be an extended family or the existence of a "significant other" in the household who helps to assure familial stability. Moreover, any additional directives, written rules, and forms should be scrutinized.

FINDING #21

THERE ARE TOO FEW SERVICES AVAILABLE TO JUVENILE DELINQUENTS, MINORITY AND NON-MINORITY ALIKE. FEWER SERVICES ARE AVAILABLE IN COMMUNITIES WITH A LARGE MINORITY POPULATION THAN IN COMMUNITIES WITH A SMALL MINORITY POPULATION. GIVEN CONSIDERATIONS OF SOCIOECONOMIC CLASS, MINORITIES HAVE ACCESS TO A SMALLER RANGE OF SERVICES.

General Availability of Services

The Juvenile Delinquency Commission, the Pathfinders Committee, Public Defenders, and other attorneys attending focus group sessions all agreed that there are too few services available to juvenile delinquents. Lack of services for youthful drug, sex, and arson offenders received particular mention. In its first annual report the Juvenile Delinquency Commission concluded that while the new Code of Juvenile Justice provides additional options to the Family Courts on paper, "[O]ur analysis indicates that several distinct (yet related) problems exist. The first is a lack of resources...."[52] Public Defenders and other attorneys attending focus groups "...felt that more programs are required and that there is a shortage of beds and treatment facilities."[53] The

[52]Juvenile Delinquency Commission, THE IMPACT OF THE NEW JERSEY CODE OF JUVENILE JUSTICE 45 (September 1986).

[53]Wood, supra n. 3, at 15.

Pathfinders Committee, in its 1989 REPORT, described the problem as follows:

> By statute (N.J.S. 2A:4A-43), New Jersey juvenile court judges have the greatest number and types of dispositional alternatives available. In practice, the alternatives set forth by the Legislature have not been made available to most counties....
>
> This gap between statute and practice has been filled to a small extent by the Department of Corrections. In recent years, DOC has greatly expanded its sphere of operations from the state training schools at Skillman, Jamesburg, and Bordentown to include a substantial array of residential treatment facilities and community-based day treatment programs throughout the state. Ironically, these programs are available through the Department of Corrections to less than 9% of the adjudicated juveniles. The remaining 91% of New Jersey's adjudicated juvenile delinquents see their dispositions based primarily upon the availability of resources of the county in which they were adjudicated delinquent.
>
> In too many instances, juvenile court judges are faced with the dilemma of the unavailability of needed programs and services for adjudicated juveniles outside the Department of Corrections. In theory, the Department of Corrections should be limited to maintaining the most secure training school lockup facilities for the most seriously disturbed juvenile offenders. In practice, due to the unavailability of necessary treatment programs and facilities within each community, many judges are forced to place children with the Department of Corrections in order to obtain out-of-home treatment.[54]

It is particularly disturbing to note the Pathfinders Committee's conclusion that this gap in services is being filled by Department of Corrections programs. While this Committee appreciates the efforts of the Department of Corrections to provide necessary services that are otherwise unavailable, the failure of county government and Executive Branch agencies to provide these services appears to be another factor contributing to the overrepresentation of minority juveniles in Department of Corrections programs.

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[54]PATHFINDERS, supra n. 51, at 89-90.

Services for Minority Youth

Analysis of the County Youth Service Commission plans (which are mandated by the Code of Juvenile Justice) reveals that fewer services are available in those communities which have a large minority population than in communities with a small minority population. Similarly, one agency representative suggested that some agencies are not aware of the needs of minority youth and their families and are too judgmental toward them. Another agency representative noted that minority youth generally are at a distinct disadvantage in securing alternatives to incarceration services because their parents tend to be poorer than their white counterparts' and thus less likely to be able to pay for such services or to obtain insurance coverage for them. The Pathfinders Committee also found that there is a "...lack of alternatives to incarceration for disadvantaged youth."[55] This view also was held by the focus group of Public Defenders and attorneys who represent minority juvenile defendants.[56] Personal observations made by Committee members in their daily interaction with the juvenile justice system confirm an unequal distribution of services.

The unavailability of services for minority juveniles is exacerbated further by socioeconomic class considerations given the disproportionate number of minority youths living in poverty or in resource-poor environments. The summary of the focus groups of

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[55]Id. at 104.

[56]Wood, supra n. 3. "Most of the public defenders and attorneys in private practices do not believe that race is a factor in the number of services made available to juvenile defendants.... Even though race is not considered a factor in offering services, socio-economic factors frequently determine access to treatment programs." At 14-15.

attorneys and minority delinquents illustrates the various ramifications of lack of funds, whether by minority families, the neighborhoods in which they live, or the resources available to public agencies:

> Some juveniles are directed toward private treatment facilities. The public defenders' juvenile clients are very seldom directed toward private treatment facilities. The juveniles with problems are directed toward the least expensive facility even if the resources of that facility are unable to solve the juvenile's problem. Economics as opposed to race influences the type of treatment. Some feel the state is not willing to spend the money needed to help juveniles who will continually return with various offenses because the problems are not properly addressed early. In addition, minorities tend to come from poor school districts that are requested to evaluate the juvenile's problem. If there is a shortage of funds in the district, the evaluation is less likely to be conducted.[57]

RECOMMENDATION #20

IN ORDER FOR THE JUDICIARY TO PLAY A LEAD ROLE IN THE DEVELOPMENT OF ADDITIONAL COMMUNITY ALTERNATIVES WHICH CAN PROVIDE ADEQUATE LEVELS OF SUPERVISION FOR JUVENILES FOR WHOM FAMILY SUPERVISION IS LACKING, THE SUPREME COURT SHOULD DIRECT EACH VICINAGE TO IMPLEMENT THE FOLLOWING STRATEGIES: (1) DIRECT FAMILY DIVISION JUDGES TO ENHANCE AND EXPAND THE LEVEL AND KINDS OF SERVICES CURRENTLY AVAILABLE INTERNALLY THROUGH PROBATION AND EXTERNALLY BY DEVELOPING PARTNERSHIPS WITH COMMUNITY GROUPS IN THE JUDGES' CAPACITY AS MEMBERS OF YOUTH SERVICES COMMISSIONS AND IN THEIR DEALINGS WITH OTHER BODIES; AND (2) SINCE SOME JUVENILES ARE COMMITTED TO THE DEPARTMENT OF CORRECTIONS BECAUSE OTHER STATE AGENCIES ARE NOT FORTHCOMING WITH OTHER SERVICES, DIRECT FAMILY DIVISION JUDGES TO ACTIVELY SEEK TO HOLD SUCH AGENCIES ACCOUNTABLE FOR (A) THE DELIVERY OF MANDATED SERVICES AND (B) THE MEETING OF STATUTORY TIME GOALS.

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[57] Id. at 17.

The Family Courts now use community groups to provide community service sites and other dispositional services to delinquent juveniles. This might be expanded by involving more community groups and, in appropriate cases, by placing juveniles on probation to someone from a community group rather than to a probation officer.[58]

Under the new Code of Juvenile Justice, County Youth Services Commissions assist the counties in planning for the delivery of services in the county to court connected youth. In addition, the Commissions make recommendations to State agencies as to the allocation of State funds to social service agencies. Judges from the Family Court who are members of these Commissions can help assure that all juveniles charged with delinquency receive necessary services by bringing service gaps to the attention of these Commissions; and by arguing that programs funded through the Commissions should not exclude juveniles because they either have been adjudicated delinquent or have delinquency charges pending against them. Judicial involvement would be particularly valuable in urban counties where, as a general rule, the minority population is large and services are most inadequate.

Judges should take an active role in ensuring that juveniles receive necessary services from agencies other than the Department of Corrections in order to prevent juveniles from being incarcerated solely to receive services in residential treatment facilities

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[58]The New Jersey Code of Juvenile Justice permits a judge to "Place the juvenile on probation to the chief probation officer of the county or to any other suitable person who agrees to accept the duty of probation supervision for a period not to exceed 3 years upon such written conditions as the court deems will aid rehabilitation." N.J.S.A. 2A:4A-43(b)(3).

or at the juvenile's home. The Pathfinders Committee recognized the need for judges to take an active role in obtaining services for juveniles in its 1989 report:

> A significant factor in developing rehabilitative plans is the availability of services, including residential treatment facilities, through the State Division of Youth and Family Services (DYFS). These services of DYFS must be specifically requested and utilized by every family court judge to ensure that the rights of the children to adequate treatment are fully observed.
>
> While these necessary services should be provided by the governmental agencies without judicial involvement, in fact this is not true. The right of children to receive this treatment and services from DYFS, the Division of Developmentally Disabled (mentally retarded), the Division of Mental Health and Hospitals (mental illness), schools, and other governmental agencies must be recognized and actively pursued. In addition to protecting the children's legal rights and using the inherent powers of the court, judges should not hesitate to take an active role requiring the appropriate agency to appear and explain why needed services are not being provided. At times, judicial persuasion is all that is necessary to break a bureaucratic log jam and free up treatment opportunities.[59]

FINDING #22

SERVICES THAT ARE AVAILABLE OFTEN ARE FRAGMENTED AND CREATING A COMPREHENSIVE DISPOSITIONAL PLAN FROM THEM CAN BE AN IMPOSING TASK. FAMILY DIVISION JUDGES AND STAFF DO NOT HAVE A WELL ORGANIZED APPROACH TO MANAGING INFORMATION ABOUT SERVICES WHICH ARE AVAILABLE.

Several Committee members, based on their own experiences, advised the Committee that some Family Court judges and court staff do not seem to have adequate information available to them about those services available for delinquent youth statewide. The validity of these observations is buttressed by the fact that judges and court staff often ask the Administrative Office of the

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[59]PATHFINDERS, supra n. 51, at 92-93.

Courts and Executive Branch agencies for information about the nature and availability of particular types of services for juveniles charged with delinquency. As a solution to the problem of maintaining current information on available dispositional resources, the Pathfinders Committee recommended the creation of a statewide office of resources within the Judiciary with the responsibility "...to maintain information about current resources, advise all Family Part judges periodically, and be on call for daily consultation."[60]

RECOMMENDATION #21

THE SUPREME COURT SHOULD ASSURE THAT FAMILY DIVISION JUDGES, MANAGERS, AND SUPPORT STAFF ARE AS AWARE AS POSSIBLE OF RESOURCES BY DIRECTING EACH VICINAGE TO CREATE AND MAKE APPROPRIATE USE THROUGH TRAINING AND DAILY USE OF A VICINAGE DELINQUENCY DISPOSITIONAL RESOURCE MANUAL WHICH IS REGULARLY UPDATED.

The process of creating and maintaining a vicinage delinquency disposition manual should include review by the judges and division manager in each county of the statutorily mandated County Youth Service Commission's plan. The judges and division manager should meet periodically with representatives of public and private youth serving agencies to learn of available services. The maintenance of a vicinage dispositional resource manual will serve to educate staff about the nature of programs available in their county and provide a necessary reference for new or recently assigned judges.

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[60]Id. at 89.

The New Jersey Code of Juvenile Justice requires that each County Youth Services Commission must develop a family court plan, including a services directory to be prepared by each Youth Services Commission every three years. However, the three-year cycle for updating such directories is too long for the Family Court to be able to rely on it to the exclusion of its own dispositional directory.

FINDING #23

SOME FAMILY DIVISION JUDGES AND COURT STAFF ARE INSENSITIVE TO THE NEED TO RECOGNIZE RACIAL AND ETHNIC DIFFERENCES AND THE NEED TO TREAT MINORITIES FAIRLY AND COMPASSIONATELY.

The observation of a Committee member who attended juvenile delinquency hearings in Middlesex and Passaic Counties was that minorities and others were treated equally. However, the Committee has received evidence during focus group meetings and public hearings to support a conclusion that some judges and court staff tend to treat minority juveniles with less sensitivity than they do white juveniles.

Records of focus group meetings convened by this Committee reveal that many juvenile defendants are scolded by the judge, and, in most cases, this behavior is considered appropriate by both the defense attorney and the juvenile.[61] However, several minority juveniles had negative feelings about this practice. For example, one minority youth reported that after he and his mother were fifteen minutes late for court, the judge threatened to put his

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[61]Wood, supra n. 3, at 19.

mother in jail for two weeks if they were late one more time.[62] Public Defenders indicated that the severity of warnings was related to the offense and the juvenile's prior record.[63] Race did not appear to be a factor in determining which juvenile defendants were scolded. However, there were isolated incidents in which judges were perceived to have made racist statements targeting minorities. For example, a judge told a Hispanic juvenile defendant that he was "genetically structured to steal cars."[64]

Judges and court staff generally were thought to be civil and professional, but also were sometimes considered "...uncaring, not very helpful, or not able to relate to defendants."[65] Comments made by lawyers in the focus groups seem to point to insensitivity rather than intentional bias as the most common problem. One Public Defender stated, "Judges talk to juvenile offenders as if they were white middle class kids. They don't understand the language." Another commented that there is a need to "learn 'more about non-conventional types of support groups' in the black community."[66]

Attorneys other than Public Defenders made similar comments indicating the need for greater sensitivity. One lawyer commented that judges need to be sensitive about what happens in the streets and another suggested it would be hard to "train someone who lives

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[62]Ibid.

[63]Ibid.

[64]Ibid.

[65]Id. at 20.

[66]Id. at 22.

in suburbia about black people."[67] Others suggested that judges do not work hard enough at reaching out to and understanding the minority juveniles who appear before them. These attorneys said that judges' "behavior ranged from indifference to being a little helpful."[68]

In public testimony regarding juvenile delinquency cases, one speaker described seeing "...these kids that come to court not dressed properly but from black families, from Hispanic families, and right away they were treated, just treated different, different."[69]

With respect to judges' and support staff's insensitivity to minorities, the PERCEPTION REPORT'S finding should be noted. Of all areas where the study inquired about opinions of bias in the court system, that part of the court system where the most bias was reported was in the treatment of minority juveniles:

> [R]espondents perceive minority juveniles suffer more bias than others in the justice system, and fully 25% believe that biased treatment usually occurs.[70]

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[67]Ibid.

[68]Id. at 20.

[69]Martín Pérez, PERTH AMBOY PUBLIC HEARING 794 (December 7, 1989).

[70]PERCEPTIONS REPORT, supra n. 5, at 25.

RECOMMENDATION #22

THE SUPREME COURT SHOULD REQUIRE THAT ALL FAMILY COURT JUDGES, DIVISION MANAGERS, AND SUPPORT STAFF ARE TRAINED EFFECTIVELY REGARDING THE KNOWLEDGE AND SENSITIVITY THAT ARE REQUIRED TO ASSURE (1) THE DELIVERY OF APPROPRIATE SERVICES TO AND (2) THE REACHING OF BIAS-FREE DECISIONS REGARDING COURT-INVOLVED MINORITY YOUTH.

The Supreme Court should direct the Administrative Office of the Courts, in collaboration with the Subcommittee on the Judicial College of the Supreme Court Committee on Judicial Training, to develop a comprehensive training program focusing on racial and ethnic differences and how to make decisions and deliver services that are fair and sensitive to those differences. A comprehensive curriculum, including a list of training courses and training materials, should be prepared. In the development of the program, the issues raised in JUVENILE COURT PROCESSING IN NEW JERSEY[71] should be dealt with thoroughly.

The program should include a core sensitivity course on racial and ethnic bias in the courts at all Judicial Colleges. The Supreme Court should make the course mandatory for all new or recently assigned Family Court judges who have not taken the course.

Furthermore, the program should include for all Family Court judges and support staff a required course on racial and ethnic differences and the need to be sensitive to these differences in making decisions. On a permanent basis, the course should be followed each six months with meetings of judges and high level

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[71]Supra, n. 4.

staff in each vicinage to conduct a self-assessment of vicinage progress in this area and to remind the attendees of the need for their continuing support in combatting racial discrimination in the courts.

One very important point must be made about training activities in the area of enhancing sensitivity and breaking down barriers among the races and ethnic groups. As suggested by the focus groups of attorneys, the training must engage the participants at all levels of their being, not just the intellectual.

> Any training that is done cannot be the cerebral type where they sit around a table and do a lot of verbiage. I think if there is some serious role playing, there is some hope for some of the judges.[72]

This principle points in the direction of guided, participatory, interactive experiences in which judges and court personnel see firsthand how minorities live, what their concerns are, and what forces they cope with that may affect the ways judges and court personnel treat minorities. It points away from approaches that emphasize acquisition of facts and other forms of detached, disengaged information.

FINDING #24

MANY MINORITIES HAVE LITTLE OR NO CONFIDENCE IN THE FAMILY COURT, SINCE THEY VIEW THE PROSPECTS OF MINORITY JUVENILES' CASES BEING HEARD FAIRLY AS LIMITED.

The Family Court is the ultimate guardian of the rights of each juvenile charged with delinquency. New Jersey citizens need

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[72]Wood, supra n. 3, at 23.

to be assured that the Family Court will apply the law in each case fairly and without regard to racial or ethnic background. An independent Judiciary, not swayed by popular prejudice or sentiment, is one of the foundations of society. It is important that the Family Court continuously reaffirm its commitment to this principle in order to maintain the respect and confidence of all citizens.

The PERCEPTIONS REPORT indicated that most court managers and judges reported that minority citizens are less accepting of the legitimacy of the courts than similarly situated white citizens. Although these data are not specific to the Family Court, the Task Force believes that this further demonstrates the need for the Judiciary to take action to increase acceptance of the courts' legitimacy by minority citizens. Consult Table 28 below.

TABLE 28

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q50:
"MINORITY CITIZENS ACCEPT LESS FULLY THE LEGITIMACY
OF THE COURTS THAN SIMILARLY SITUATED WHITE CITIZENS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	10.3%	17.0%	46.1%	25.5%	1.2%	165
Managers	6.3%	27.0%	37.8%	23.4%	5.4%	111
Both	8.7%	21.0%	42.8%	24.6%	2.9%	276

Testimony at public hearings also indicated a lack of minority confidence in the court system. One speaker, when describing unfairness in the Family Court's diversion practices, concluded

that: "A vast majority of Blacks in the community believe this is the clearest perception of institutional racism, and some believe that a conspiracy exists within the judicial system."[73]

There have been few minorities in key management positions in the Family Court, either at the trial court level or at the Family Division of the Administrative Office of the Courts. In the last five years, only three Family Division Presiding Judges, one Family Division Manager, and one professional in the Family Division of the Administrative Office of the Courts have been minorities. At the present time, there is one minority Presiding Judge in the Family Division, no minority Family Division manager, and no minority professional or manager in the Family Division unit of the Administrative Office of the Courts.

The absence of minorities in key positions in the juvenile justice system is one source of minority distrust of the system. One person speaking of African Americans in the juvenile justice system described this problem as follows:

> ...they actually feel like the justice system has turned against them prior to their ever even getting to the courtroom. They feel like they are being set aside and that the legal system has been set up specifically to inhibit their rights as Americans. I wonder, is it possible to be a white judge and to be impartial, when the lawyers are white, the prosecuting attorney is white, the police department is white? How then can a black person feel like he's getting a fair shake in the court system at all?[74]

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[73]Thomas V. Daniels, Member of the Asbury Park-Neptune Branch of the NAACP, NEPTUNE PUBLIC HEARING 463 (February 27, 1990).

[74]Reverend John H. Harris, Jr., TRENTON PUBLIC HEARING 819 (December 8, 1989).

RECOMMENDATION #23

THE SUPREME COURT SHOULD: (1) DIRECT THAT EACH ASSIGNMENT JUDGE ARRANGE FOR A STATEMENT ON RACIAL AND ETHNIC BIAS IN THE COURTS TO BE READ IN COURT ON MAY 1 (LAW DAY) OF EACH YEAR. IN ADDITION CONSIDERATION SHOULD BE GIVEN TO PROMINENTLY DISPLAYING A STATEMENT IN EACH COURT, ALONG WITH THE NAME OF A PERSON WHO CAN BE CONTACTED IF SOMEONE HAS A CONCERN OR QUESTION; AND (2) SET A POLICY REQUIRING AN INCREASE IN THE NUMBER OF MINORITIES IN ALL LEVELS OF THE FAMILY COURTS AND THE FAMILY DIVISION AT THE ADMINISTRATIVE OFFICE OF THE COURTS, ESPECIALLY IN KEY POSITIONS SUCH AS FAMILY COURT JUDGES, DIVISION MANAGERS, SUPERVISING PROBATION OFFICERS, INTAKE WORKERS, AND MANAGERS AT THE AOC.

A statement to be read on Law Day each year would help demonstrate to the residents of New Jersey in general, and to minority residents in particular, that the Judiciary is attempting to eliminate bias. It would further demonstrate the Judiciary's determination to treat all citizens equally. This has been successful in the past (see **Accomplishments** section of this chapter) and should be implemented statewide. A model statement prepared by The Honorable Mac D. Hunter, Superior Court, may be found in Appendix C3.

An increase in the number of minorities in key positions in the Family Court, such as judges, division managers, supervising probation officers, and intake workers, as well as in management and professional positions in the Family Division at the Administrative Office of the Courts, would serve to increase public confidence that minorities are receiving equal treatment from the Judiciary. While this is an important goal, the rights of minorities employed by the Judiciary must not be impaired by the implementation of this policy. It would not be acceptable for the

Judiciary to increase minority representation in the Family Court simply by assigning all minority judges and staff to Family, thereby closing off opportunities for minorities to be assigned to other divisions within the Judiciary.

FINDING #25

SINCE SOME FAMILY COURTS, ESPECIALLY IN URBAN AREAS, OPERATE UNDER UNSATISFACTORY PHYSICAL CONDITIONS, THE NEGATIVE EFFECTS FALL DISPROPORTIONATELY ON MINORITY JUVENILES.

During its study, the Task Force learned that some Family Court facilities are in poor physical condition.[75] Conditions are crowded and loud with a "crazed" atmosphere. Litigants are "turned off" by the experience. Managers of the Family Court want to comfort the people who are awaiting their court appearances under such conditions, but they do not have the time to do so.

An informal study done by the Committee's staff person showed wide divergence in courthouse conditions for Family Courts. The newer courthouses such as those of Atlantic, Burlington, Camden, and Ocean Counties are clean, bright, well-lighted, and generally appealing. However, public facilities (including waiting rooms and conference rooms) either are unavailable or are grossly inadequate in some courthouse facilities. This condition affects minorities more than whites because the older, more run-down courthouses tend to be in counties where minorities are concentrated, especially in

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[75]This observation was also reported by the Committee on Minority Concerns. REPORT OF COMMITTEE ON MINORITY CONCERNS 10 (Summer 1984). Additionally, the Pathfinders Committee noted that facilities for several Family Division courts are inadequate and that the physical conditions in several older courthouses (i.e. urban areas) are "appalling." PATHFINDERS, supra n. 51, at 38.

the northern part of the State.[76]

RECOMMENDATION #24

THE SUPREME COURT SHOULD DIRECT EACH VICINAGE TO CONSULT WITH ITS COUNTY GOVERNMENT TO ENSURE THAT THE PHYSICAL CONDITION OF COURTHOUSE FACILITIES FOR THE FAMILY DIVISION MEETS THE COURTHOUSE FACILITY GUIDELINES DEVELOPED BY THE SUPREME COURT COMMITTEE ON COURTHOUSE FACILITIES.

Recommendation #20 of the INTERIM REPORT requested that the Administrative Office of the courts conduct a formal review of the physical condition of Family Courts. The Supreme Court Committee on Courthouse Facilities has studied the physical condition of the courts and recommended that upgrading of court facilities be undertaken as part of a local planning process in each county. The Task Force recognizes that since courthouse facilities are provided by county governments, the Judiciary is limited in its ability to remedy this problem. Nevertheless, Family Court conditions in urban counties are still in need of improvement, and the lack of Judiciary control over these facilities does not absolve the Judiciary from its responsibility to do whatever it can to alleviate the problem. A photo essay of the various Family Court facilities throughout the State would graphically illustrate the physical conditions of the various courts and provide additional support for Assignment Judges in their negotiations with county government.

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[76]Information was collected through discussions between staff of the Administrative Office of the Courts and employees in the Family Division at the county level. The study covered courtrooms, waiting and conference rooms, and staff working areas in all twenty-one counties.

FINDING #26

STATEWIDE IMPLEMENTATION OF THE FAMILY AUTOMATED CASE-TRACKING SYSTEM (FACTS) IS NECESSARY IN ORDER TO PROVIDE A MECHANISM FOR MONITORING THE PROCESSING OF JUVENILE DELINQUENCY CASES BY RACE AND ETHNICITY IN THE FUTURE.

The data used by both Pope and Feyerherm in their study, JUVENILE COURT PROCESSING IN NEW JERSEY, and by the Juvenile Delinquency Commission in most of its studies were derived from the Unit Case database of the Administrative Office of the Courts. This system was terminated in 1990 so that the resources devoted to the Unit Case system could be applied to the implementation of the newer, more comprehensive Family Automated Case Tracking System (FACTS). FACTS is superior to the Unit Case system in that it captures information about all Family Court case types and provides an automated system of managing the processing of those cases. Unit Case was simply a statistical system for delinquency cases and provided no case management benefits.

However, FACTS is not yet installed in all twenty-one counties[77], and information obtained from the Administrative Office of the Courts reveals that funding may not be available to begin new installations in the coming year. This Committee is concerned that without full, statewide implementation of FACTS, the Judiciary will not have the means of conducting studies to assess racial and ethnic differences in juvenile case processing in the future.

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[77]As of this date FACTS is installed in eight counties, Atlantic, Bergen, Camden, Burlington, Hudson, Monmouth, Morris and Ocean. Installation was scheduled to begin in Mercer County in October 1991.

RECOMMENDATION #25

THE SUPREME COURT SHOULD CONSIDER REQUESTING THAT THE LEGISLATURE PROVIDE SUFFICIENT FUNDING TO CONTINUE THE INSTALLATION OF FACTS THROUGHOUT THE STATE. IF THE LEGISLATURE CANNOT FUND FACTS THROUGH NORMAL APPROPRIATIONS, THE JUDICIARY SHOULD EXPLORE WITH THE LEGISLATURE NON-TRADITIONAL FUNDING METHODS, SUCH AS POSSIBLE SURCHARGES ON DISSOLUTION OR OTHER COURT FILINGS, AS A MEANS OF PROVIDING THE RESOURCES NECESSARY TO CONTINUE THE INSTALLATION OF FACTS.

In addition to providing better case management and statistics for the Family Court as a whole, statewide installation of FACTS is necessary to provide monitoring of judicial handling of juvenile delinquency cases. Without statewide installation of FACTS, it will be impossible to conduct future studies to determine what impact the recommendations of this Committee may have had on racial differences in the court's handling of juvenile delinquency cases.

RECOMMENDATION #26

THE CHIEF JUSTICE SHOULD SHARE WITH THE GOVERNOR THE FINDINGS ABOUT THE DISCRIMINATION THAT HAS BEEN FOUND TO OCCUR AT THE LAW ENFORCEMENT STAGE OF PROCESSING JUVENILE DELINQUENCY CASES AND PROPOSE CONDUCTING A JOINT STUDY OF ALL DECISION POINTS IN PROCESSING JUVENILE DEFENDANTS.

In view of the findings that there is bias that results in differential treatment of minority youth and that this bias occurs both in the Judiciary and at pre-judicial stages, the factors that contribute to the overrepresentation of minority youth should be pinpointed, and the relative degrees to which they contribute to overrepresentation should be documented. Since the credibility

and fairness of the juvenile justice system, especially the Family Court, is at stake, the Chief Justice should assume the role of inspiring and stimulating this joint research initiative.

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CHAPTER FIVE
COMMITTEE ON
MINORITY ACCESS TO JUSTICE

Philosophical Statement

The Judiciary plays a critical role in our social and political system. Its central responsibility is to provide a neutral forum where disputes between parties can be resolved fairly and justly. As such, it provides key services to persons and private and public groups, all of whom are entitled to equal access to its services.

Although in varying degrees, racial and ethnic barriers exist in every aspect and at each level of the Judiciary. The presence of such barriers, whether subtle or blatant, should not be countenanced.

Scope

The Task Force on Minority Concerns directed the Committee to: (1) Identify the barriers that racial and ethnic minorities face in securing equal access to the New Jersey courts; (2) Determine the degree to which minorities choose not to use the courts and find out why minorities with a need to use the courts do not; (3) Identify where and how, within the judicial process, the concept of "equal justice" breaks down for the minority litigant; and (4) Recommend corrective measures.

Activities

When the Committee first began its work, its members were provided various materials, including two reports from Supreme

Court Task Forces that had been charged with identifying and making recommendations on access issues. The reports were those of the New Jersey Supreme Court Task Force on Women in the Courts[1] and the New Jersey Supreme Court Task Force on Interpreter and Translation Services.[2]

In addition, two subcommittees were designated to initiate major projects. First, the Subcommittee on Surveys was created to develop survey forms to collect information from members of the Bench and Bar, as well as court personnel. Questions developed by this Subcommittee ultimately were included in the Court Process Questionnaire, the instrument that was administered to judges and top court managers.[3]

Second, the Committee focused primarily on access issues that surface in the Civil Courts. The Subcommittee on Differential Court Utilization was created to develop methods for the identification of (1) real and perceived barriers to racial, ethnic, and cultural minorities who elect to use the courts, and (2) the reasons why minorities with a need to use the court do not. This led to the development of the Differential Court Utilization Project. The project is designed to map the court usage patterns of minority and non-minority populations in New Jersey; and to investigate whether racial and ethnic minorities are less likely to resort to the courts to adjudicate civil disputes than are non-

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[1]REPORT OF THE FIRST YEAR (June 1984) and SECOND REPORT (June 1986).

[2]EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES (May 22, 1985) (hereinafter LINGUISTIC MINORITIES).

[3]W.C. Chambliss and H.F. Taylor, SURVEY OF PERCEPTIONS OF BIAS IN THE NEW JERSEY COURTS (May 4, 1989) (hereinafter PERCEPTIONS REPORT).

minorities and, if so, the degree of and reasons for such differential utilization. The research is being conducted through in-depth interviews of randomly selected residents of four New Jersey counties (Bergen, Camden, Essex, and Hudson). Additional information on the project is provided in Chapter One at pages 6-7.

In Fall 1986, members of the Committee held a series of meetings with leaders and representatives from the Hispanic Bar Association, the Garden State Bar Association, the Association of Black Women Lawyers, the South Jersey Lawyers Association, the Asian-Pacific American Lawyers Association, and the Portuguese-American Congress.

The purposes of these meetings were: (1) to introduce the representatives from these associations to the objectives of the Task Force as a whole, and, in particular, to the specific areas of concern of the Committee on Minority Access to Justice; and (2) to discuss the concerns of the minority bar associations. During several meetings, minority attorneys expressed these concerns: (1) the minority litigant's access to the judicial process may be impeded by minority attorneys' very limited employment opportunities in the public and private sectors and (2) some minority attorneys experienced discriminatory treatment by judicial personnel and in the attorney disciplinary process.

Committee members also participated in conducting public hearings and reviewed pertinent literature and data collected by other Task Force Committees.

FINDING #27

MANY MINORITIES EXPRESS A LACK OF CONFIDENCE IN THE COURT SYSTEM AND ARE RELUCTANT TO BRING CASES TO COURT.

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 people who participated in the focus group which evaluated the research proposal on differential utilization of the courts estimated that while 80% of whites would be likely to seek to use the courts to settle disputes, only 15% of Blacks, 5% of English-speaking Hispanics, and 1% or less of linguistic minorities would do so.[4]

A summary of the nature of the barriers to access that the Committee found is provided by the following testimony from an employee of the Judiciary:

> In particular, minorities not only lack access to court positions but to the benefits which courts provide. A great majority have a relatively low socioeconomic and educational status resulting in restricted access to the courts for purposes of asserting legal rights. They face economic barriers in the form of prohibitive attorney fees, court costs, and time lost from employment; administrative organizational barriers in the form of calendaring and judicial allocation which focuses juridical resources on complex and costly cases and tends to abbreviate those cases which may be minor in a court administrative sense but very important to the parties involved; and legal barriers in the form of actual or procedural laws which unnecessarily complicate litigation. In addition, minorities lack knowledge of their rights, knowledge of court systems, and means to obtain representation. As civil or

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[4]EVALUATION OF PROPOSED RESEARCH ON DIFFERENTIAL COURT USAGE BY TEN PERSONS WITH EXTENSIVE FIELD EXPERIENCE WORKING WITH RACIAL, ETHNIC AND LINGUISTIC MINORITIES IN NEW JERSEY'S COURTS 9 (I. Bey and R.J. Lee eds.; February 2, 1988) (hereinafter COURT USAGE FOCUS GROUP REPORT). See Appendix D2 for this report.

criminal complainants, they may be effectively blocked from the benefits of adjudication.[5]

This perception is partially supported by the extensive literature review accompanying the research proposal for the Differential Court Usage Project.[6] The responses of judges and top court managers to a question in the survey of perceptions lends additional support to this view. Over half (55%) of the respondents answered "sometimes" or "usually" when asked their opinion regarding the following statement: "People from minority groups are reluctant to bring civil cases to court." Review Table 29 for details.

TABLE 29

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q40: "PEOPLE FROM MINORITY GROUPS ARE RELUCTANT TO BRING CIVIL CASES TO COURT."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	16.3%	41.3%	37.5%	5.0%	5.0%	0.0
Managers	4.9%	22.3%	55.3%	17.5%	17.5%	0.0
Both	11.8%	33.8%	44.5%	9.9%	9.9%	0.0

The Committee anticipates that the Differential Court Utilization Project will provide valuable data and further insight into the minority litigant's expectations of justice from the court system and how those expectations and perceptions correlate with

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[5]Richard Sims, JERSEY CITY PUBLIC HEARING 346 (December 1, 1989).

[6]See Appendix D1 for a copy of the proposal.

the nature and degree of participation by minorities in the court system.

The primary question that this finding raises is what are the key factors that contribute to the lack of confidence in the courts and the resulting reluctance to bring cases to the courts? The Task Force concludes that there are two principal factors: race/ethnicity and socioeconomic class. The racial/ethnic factor is the subject of the Task Force's entire report and will not be discussed separately here. While the Task Force recognizes the adverse impact that poverty introduces for all court users, irrespective of race or ethnicity, the disproportionate number of racial and ethnic minorities who live in poverty introduces an additional burden. A review of the specific dimensions of the socioeconomic factors follows.

With the general exception of Asians-Pacific Islanders, minorities are proportionately poorer than whites. A summary of pertinent findings from the 1980 Census follows:

- 26% of Blacks and 27% of Hispanics were below the poverty level, compared to 6% of whites and 7% of Asians;[7]
- 12% of Blacks and 11% of Hispanics were unemployed, compared to 6% of whites and 4% of Asians;[8]
- The median annual income was $9,774 for Black males and $10,161 for Hispanic males, while the corresponding figures were $17,866 for white males and $19,979 for Asian males;[9]

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[7]Bureau of the Census, U.S. Dep't. of Commerce, 1980 CENSUS OF POPULATION, Detailed Population Characteristics: New Jersey, PC80-1-D32, Table 245, 32-1666 to 1675 (1983).

[8]Id., Table 213, at 32-261 to 265.

[9]Id., Table 234, at 32-1286 to 1288.

- The median annual income was $14,540 for black families and $14,597 for Hispanic families, while it was $24,184 for white families and $27,931 for Asian families.[10]

Two dimensions of the socioeconomic factor emerged from the Task Force's investigation. The first dimension is the belief that there is a correlation between how much money one has and what type of justice one can "purchase." The second aspect suggests that a variety of case management practices have a differential impact on the poor.

Belief That Wealth Ensures Justice, Poverty Ensures Injustice

Many persons believe there is a direct correlation between how much money one has and the probability of prevailing in the Courts. This view was expressed by numerous witnesses at the public hearings. Here is a sampling of that testimony:

> Legal representation ... appears to be one of the most cruel dilemmas for African Americans because justice is more often than not equated with how much money one has.[11]

> I need help. I am not rich and it is clear that the system does not work to protect people like me.[12]

> We are always brought into these kangaroo courts under kangaroo justice, and it hasn't changed traditionally in the 50 years that I've been here. The only difference today is if you come through that courtroom and your wallet is filled with greenback dollar bills, I don't care

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[10]Id., Table 238, at 32-1434 to 1440.

[11]Thomas E. Daniels, presenting the joint position of numerous NAACP branches in Monmouth and Ocean Counties, WRITTEN TESTIMONY 9 (December 7, 1989).

[12]A prisoner submitted this statement, CONFIDENTIAL WRITTEN TESTIMONY 110 (March 25, 1990).

> what you commit, you're patted on the back, the price is right, "Come back and visit us again some time."[13]
>
> I don't believe that people have equal protection under the law. I believe that if you have more money, you have more protection. That's based on my own experiences and my own observations.[14]
>
> We poor, we never prove anything because the system always wins.[15]
>
> If I was a rich parent, came in here and said to [my son], "Here's Kuntsler, your lawyer," he'd walk the streets tomorrow. It's as simple as that.[16]
>
> And if you're Black, your bail is set because you're a risk and nine times out of ten you don't have identification. And if you're white, you've got money and you're going to come to court, so you can go home no matter what the crime.[17]
>
> It would have been different if I had been a man that had money, a lot of money, I believe it would have been different.[18]

As was mentioned earlier, this Committee did not focus on racial or ethnic factors. However, the Committee is cognizant of the intercorrelation between race/ethnicity and socioeconomic class factors and their respective contributions to inequality in the dispensation of justice. One school of thought argues that

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[13]Geraldine Reynolds, SUSSEX COUNTY PUBLIC HEARING 1134-1135 (October 29, 1990).

[14]Jaime Vázquez, JERSEY CITY PUBLIC HEARING 358-359 (December 2, 1989).

[15]Hispanic wife of a prisoner. TRANSCRIPT OF CONFIDENTIAL TESTIMONY 47 (December, 1990).

[16]Geraldine Reynolds, SUSSEX COUNTY PUBLIC HEARING 1141 (October 29, 1990).

[17]Margaret Wright, ATLANTIC CITY PUBLIC HEARING 31 (December 16, 1989).

[18]Rev. Luke Witherspoon, VINELAND PUBLIC HEARING 1087 (December 13, 1989).

socioeconomic class considerations outweigh those of race. For example, a participant in the focus group of prisoners at East Jersey State Prison offered this assessment:

> The black [prosecutor] and white [prosecutor], he's going to prosecute me to the fullest extent of the law.... Okay? So whether (indiscernible) white guy it's not going to make any difference. So what are we doing, (indiscernible), you're wasting your time and my time (indiscernible) because, you know, race ain't the issue. Race ain't the issue. The issue in court (indiscernible) is, what you can afford, what you can buy.[19]

Another example is provided by an African-American woman who had been to court. After commenting, "The court is unfair to anyone poor,"[20] she reached the following conclusion: "So we as a race are differentially treated if we do not have money. The court rules on the side of the money."[21]

Another public hearing witness suggested that socioeconomic class differences inhibit access because social distance separates those who work in the courts from minorities. This witness stated,

> [W]e oftentimes run into the instance where Blacks of the inner city are taken to court and they're being judged by whites who are of a different financial background.[22]

The President of the Black Women Lawyer's Association volunteered this observation:

> Another reason that there is distrust in terms of the judicial system is that clients see that money makes a

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[19]East Jersey State Prison Focus Group, at 29. This is one of three focus groups with prisoners conducted by the Committee on Criminal Justice and the Minority Defendant. Footnotes are citations to the transcripts produced from the tape-recorded sessions. The transcript of this focus group is provided as Appendix D3.

[20]Gwendolyn Smith, EAST ORANGE PUBLIC HEARING 300 (November 29, 1989).

[21]Gwendolyn Smith, EAST ORANGE PUBLIC HEARING 301 (November 29, 1989).

[22]Rev. John H. Harris, Jr., TRENTON PUBLIC HEARING 818 (December 8, 1989).

> difference on a number of levels. The judge tends to treat clients with private attorneys differently. The prosecutor treats clients with private attorneys differently and the court staff often treat the client who is afforded the opportunity to obtain a private attorney differently.[23]

It is also clear from much of the testimony that since many minorities interact with the judicial system defensively—that is, they are acted upon rather than initiators of action in the judicial arena—they view economics or their lack of wealth as making them victims in a system that presupposes financial resources. The record is replete with instances of minorities' not having funds for a bus, a baby sitter, medical assistance, etc., and thereby provoking sanctions of some sort for failures to appear or respond in a timely or appropriate manner. In these instances there is sometimes a harsh, insensitive judicial response. Here is one example:

> Another instance of insensitivity to the plight of the poor is also characteristic in something that I basically observed in court myself. It involved a female defendant who appeared for a violation of probation. She had explained to the judge that she did not report at least on some of the occasions because she did not have the funds to catch a bus and on other occasions because she had no one to care for her two infant children. I'm not sure what the other violations were for. I'm not sure as to the number of times she had been violated. However, what was egregious to me in this particular situation was that we had a welfare mother who had with her two infant children. The judge at that point immediately remanded her after a finding of guilty of violation of the probation to the county jail and proceeded to call DYFS to pick up the children. Now this is a welfare mother whose address could easily be traced. The mother was not allowed an alternative of going home to find a place or a person to care for her children. Instead, she was put into a posi-

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[23]Esther Canty, Esq., ATLANTIC CITY PUBLIC HEARING 79 (December 16, 1989).

> tion of being placed in jail and not knowing what happened to her two minor children.[24]

Finally, support for this view comes from many judges and court managers, too. They were asked to assess whether "the problems of minorities in the court system" are due more to race differences or socioeconomic class differences, or are due equally to both. The largest proportion of respondents (42%) were of the opinion that the problems are attributable "more to" or "only to" socioeconomic concerns. By contrast,

> Approximately 20% of the respondents feel that the problems of minorities are due 'more to' or 'only to' race, 15% feel that such problems could be equally attributed to both race and class, and 12% indicate that they do not believe minorities face serious problems in the justice system.[25]

Socioeconomic Impediments to Legal Representation

Minorities are more likely than non-minorities to lack the economic means to privately purchase legal representation. If a prospective litigant believes it is too expensive to hire an attorney to advance a claim or mount a defense, entry into the legal system or effective participation as a respondent can be foreclosed or leave one reliant on publicly-provided legal assistance.[26]

> Legal representation--this appears to be one of the most cruel dilemmas for African Americans because justice is, more often than not, equated with how much money one has. This is a real catch-22. If one is innocent and in jail, one is forced to plead guilty in order to get out.

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[24]Esther Canty, Esq., ATLANTIC CITY PUBLIC HEARING 84 (December 16, 1989).

[25]PERCEPTIONS REPORT, supra n. 3, at 31.

[26]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 241.

> In the simplest application, a fine is often far cheaper than the cost of legal representation.[27]

This view is elaborated by another witness:

> A great majority have a relatively low socioeconomic educational status, [resulting in] restricted access to the courts for the purposes of asserting legal rights. They face economic barriers in the form of prohibitive attorney fees....[28]

This notion of limited access is further supported by the survey of judges' and top court managers' perceptions of bias in the courts. When asked to comment on the assertion, "In general, economic considerations are more important than race in deciding who gets represented by prestigious private attorneys," an overwhelming majority (91%) answered "usually" or "always." Consult Table 30.

TABLE 30

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q26: "IN GENERAL, ECONOMIC CONSIDERATIONS ARE MORE IMPORTANT THAN RACE IN DECIDING WHO GETS REPRESENTED BY PRESTIGIOUS PRIVATE ATTORNEYS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	1.8%	1.2%	5.3%	56.8%	34.9%	169
Managers	0.0%	2.0%	9.2%	46.9%	41.8%	98
Both	1.1%	1.5%	6.7%	53.2%	37.5%	267

[27]Thomas E. Daniels, PERTH AMBOY PUBLIC HEARING 721-722 (December 7, 1989).

[28]Richard Sims, JERSEY CITY PUBLIC HEARING 346 (December 1, 1989).

Socioeconomic Effects on Case Management

The Task Force has learned of numerous aspects of case management that discourage minorities from participating in the legal system and may lead minorities to conclude they have inferior access.[29] Specific examples are offered below of case management practices that fail to consider the economic realities under which a substantial proportion of the courts' minority clients operate.[30]

Cost Factors Due to Temporal Issues

There are several ways in which the element of time factors into the cost equation. First is the extensive time required to conclude a case. Whether it's a personal injury suit, a criminal complaint signed against a juvenile, or any of a myriad of other types of cases, involvement in the legal process can simply be lengthy and unpredictable in terms of the outcome.[31] As persons in our focus groups indicated, going to court simply takes too long. "The person who needs money can't wait."[32] Another witness said that the down time, the waiting time to get into court—if one gets in at all—is very frustrating and probably discourages active

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[29]This problem has a long history. Consider the following statement about Italian immigrants: "The economic and social status of our Italian families has necessarily placed them in the poorest class of litigants. Thus they feel most the unwieldiness and injustice of the law's delays. The usual stumbling blocks to justice such as long waits, mounting civil costs, procedural technicalities, often seem to the Italian to be conclusive signs of unmitigated injustice, or a denial of justice." J.H. Mariano, THE ITALIAN IMMIGRANT AND OUR COURTS 36 (1975; originally printed 1925).

[30]See also the discussion on bail in Chapter Three.

[31]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 20.

[32]Id. at 21.

participation in the legal process.[33] This witness also said he thought attorneys were "not concerned with the time element of their clients."[34] A coalition of NAACP Branches in Monmouth and Ocean Counties submitted the following comment:

> It appears that case scheduling rarely ever took into account the severe economic impact on African Americans. Current practice of constantly rescheduling cases because the state wasn't ready or some other reason caused many African Americans to lose excessive time off from their jobs, ultimately resulting in loss of jobs. Many times the calendar is reset 5 or more times stretching a pleading out to as much as a year.[35]

One female prisoner told about the problems of having two children and trying to be in court when instructed. She would go to court as instructed at 9:00 AM, wait all morning without her case being called, recess for lunch, come back and spend the afternoon waiting. That meant she had to find someone to care for her two-year-old child. At the end of the day, she had to figure out how to pick up her other child at school. This scheduling nightmare lasted over a period of two years.[36]

A second aspect of the cost of time relates to the fact that whereas the court schedules people to appear at a certain time, it is often the litigants' experience that they sit all day, sometimes without their case even being called. Here is one example:

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[33]David Reeves, NEWARK PUBLIC HEARING 641-642 (November 30, 1989).

[34]David Reeves, NEWARK PUBLIC HEARING 641 (November 30, 1989).

[35]WRITTEN TESTIMONY 9 (December 7, 1989). The potential for losing one's job was also noted in the confidential testimony. TRANSCRIPT OF CONFIDENTIAL TESTIMONY 108 (December, 1990).

[36]Edna Mahan Correctional Facility for Women Focus Group 18-20. Note: This is another of the focus groups with prisoners conducted by the Committee on Criminal Justice and the Minority Defendant, the transcript of which is provided at Appendix B5.

> [T]here's a problem in New Brunswick that when a family comes to juvenile court, it could be what they call a trial call which is just go in front of the judge and say that you plead not guilty and they send you back and you have to come back one month or three months later. What happens in that court is that ... everybody is cited to be there at 9:00. Sometimes people are there until 4:00, attorneys and families, and nobody takes care of them.
>
> Since you don't have access to the inside of the court because the proceedings are behind closed doors, you don't have access to the judge, to anybody. They just make you sit there for the whole day. ... So I think you are not helped in the process. I think they should tell the people to come at 10:00 and if they have to wait for an hour, that's fine. But not the whole day because people are losing time; they come from their jobs. They lose salary and they don't have a lot of money in the first place. And I think that should be changed, the scheduling of the hearings should be looked into.[37]

A third temporal factor relates to delays occasioned by the unavailability of interpreters. It is not unusual that when lawyers and their linguistic minority clients come to court in need of an interpreter, their cases are often delayed or postponed. One attorney described the scenario this way:

> [O]n occasion I've had to postpone a case. Next time you show up, perhaps this time you do legitimately need a postponement and you cannot get a postponement because you already had a postponement. Then again, you are requesting many postponements, and in my opinion this is a violation of due process.[38]

Finally, an additional feature of the courts' lack of regard for the court user's time is provided by the President of the Long Branch Chapter of the NAACP, David Allen Brown. Mr. Brown discussed how "the judge in a certain municipality will come out a

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[37]Martín Pérez, Esq., PERTH AMBOY PUBLIC HEARING 800 (December 7, 1989).

[38]David José Alcántara, ATLANTIC CITY PUBLIC HEARING 49-50 (December 16, 1989).

half an hour late, take a break after fifteen minutes, then a half an hour later take another break." He went on to say that this pattern would last for several hours.

Mr. Brown went on to recount another example. He described a case where the prosecutor's office was prosecuting a case involving a black victim of an assault. The victim had been hospitalized from the incident and, during the course of the hospitalization, lost his job. Upon his release from the hospital, he got another job. Between trips to the prosecutor's office and to court to testify, he lost his second job. Mr. Brown then made the following point: "[W]hat you're doing, you're dragging him to court every day, and they [minority youth] don't have the flexibility on the job that you might have or I might have to go to court three times out of a week and still be able to keep a job." He then drew the following conclusion: "We wonder why young black boys are out there in the street, because they lose their jobs, because they've got to spend all day in court."[39]

Cost Factors Due to Financial Issues

Financial expenses associated with a court or hearing appearance present yet another case management factor which adversely impacts on minorities and discourages them from going to court. Many minorities cannot afford to make multiple trips to court. They may have limited access to transportation or risk losing

[39]David Allen Brown, NEPTUNE PUBLIC HEARING 470-471 (February 27, 1990). A person who sent in a letter confidentially also said minorities often lose their jobs due to cases that "are adjourned from one week to next." CONFIDENTIAL WRITTEN TESTIMONY 133 (March, 1991).

employment if they have to be absent from work on numerous occasions.[40] A day or more of work may be lost, meaning at least the loss of a vacation day and sometimes the loss of wages for persons paid on an hourly or per diem basis.[41]

The problems of time and money sometimes converge and further aggravate minority access to the courts. The owner of a small business pointed out the adverse impact that delayed case-processing of claims in collections matters have on the continued viability of a small business. She said that, unlike a large company, which is more likely to have greater assets, the small business is more dependent on having monies coming in.

> I'm here about the difficulty regarding the length of time in which it takes cases to be scheduled in the State Superior Court. I'm an entrepreneur and myself and sometimes my associates have had to go or attempt to go through the state Superior Court in collecting monies. ... I have a friend. She's tried to get a date in court, and it's been over a year. Many times, being a small minority business owner, we need monies coming in. It's going to make the difference between our remaining in business and not remaining in business. And I'm just wondering why it is that, many times, persons that owe money to us can go in and get postponement after postponement which delays our collecting monies that are owed to us, and we can't even get our day in court.[42]

The proprietor went on to say that when collection cases are allowed to be postponed over periods of time reaching two years or more, "[I]t causes hardship for small business people."[43]

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[40]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 251. Geraldine Reynolds, SUSSEX COUNTY PUBLIC HEARING 1142 (October 29, 1990).

[41]Geraldine Reynolds, SUSSEX COUNTY PUBLIC HEARING 1142 (October 29, 1990).

[42]Almeta Walker, EAST ORANGE PUBLIC HEARING 286 (November 29, 1989).

[43]Almeta Walker, EAST ORANGE PUBLIC HEARING 287 (November 29, 1989).

Cost Factors Associated with Processing Criminal Defendants

The procedural aspects of processing criminal defendants also introduce additional problems for litigants. One prisoner told of his experiences in the following words:

> In the county jail you're just sitting there the whole evening. You're lucky if you get somewhere to lay down on a mattress. You're never going to get that before you go to court the next day.... If you don't have a comb or anything like that when you walk into the courtroom, what impression are they going to get from you to begin with? And for myself, like I'm an admitted addict, right, they wouldn't give you any medical attention at all, you know. And when you come in front of the judge and in front of a prosecutor, they see you in that condition.[44]

Another prisoner complained of waiting in county jail two and one-half years while a parade of Public Defenders passed in and out of his life. He noted, "I wrote, complained, and even had members of my family call to see if and when I'd be brought to court."[45] A third prisoner reached the following conclusions during his stay in detention:

> It is very apparent from my time spent under the jurisdiction of [county name] County that required procedures are ignored, constitutional rights of due process are violated, and the delays are abhorrent.[46]

Still another inmate observed, "In this county, they make you sit for 12-18 months, maybe longer."[47]

Inmates also discussed sitting in a holding cell all day without food and water, waiting to be called to court—and

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[44]Hudson County Jail, Secaucus Annex Focus Group, 24 (hereinafter Hudson Focus Group). This is the other focus group with prisoners sponsored by the Committee on Criminal Justice and the Minority Defendant. See Appendix B4 for the transcript.

[45]CONFIDENTIAL WRITTEN TESTIMONY 109 (March 25, 1990).

[46]CONFIDENTIAL WRITTEN TESTIMONY 125 (October 16, 1989).

[47]CONFIDENTIAL WRITTEN TESTIMONY 131 (January 3, 1990).

sometimes still not seeing the judge. "Sometimes you got to be called back the next day because, you know, they claim it's overcrowded." This inmate went on to point out the effect this has on many prisoners: "That's why so many people cop out, man."[48]

Another example of a breakdown in criminal case management is the multiple mitigating factors which make it difficult for some litigants to obtain adequate proof of their whereabouts or documentation required to meet certain criminal case processing obligations. An example of this impediment follows:

> One example that comes to my mind involves a client who failed to appear for a presentence report. I later learned that the client had been beaten and severely hurt by a gang of individuals. Since he did not have insurance, the client was not able to seek medical treatment and he could not get a medical excuse. He could not afford to go to a doctor because he could not afford the cost of a doctor. So, therefore, to ask a client to obtain medical excuses was not a valid request in view of the fact that the client was an indigent person. When the client finally appeared in court, it was obvious that the client's face was distorted and he moved in a very labored manner. Prior to his coming to the court the judge had threatened to arrest him if he failed to show up that day. He did show up. He did have his presentence report completed.[49]

Another practice that is sometimes problematic for minorities is the service process. One witness, a person who had done a considerable amount of volunteer work as a mediator in a dispute settlement project, told the story of a defendant who received his summons only the night before he was to appear in court. He had

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[48]Hudson Focus Group, supra n. 44, at 12.

[49]Esther Canty, Esq., ATLANTIC CITY PUBLIC HEARING 81 (December 16, 1989).

been given an assignment by his employer that had to be completed on the court date or he would face being terminated from his job.[50]

As the following testimony shows, this is perceived to be a problem particularly for residents of urban areas, not other parts of the State. In view of the fact that proportionately more minorities reside in urban areas, the concerns about noticing respondents will obviously have a greater impact on minorities than non-minorities. The President of the Association of Black Women Lawyers testified,

> Normally mailings to clients to advise them of dates that they are to appear in court are presumed to reach the person within a period of five days and if they're not returned, they're presumed to be received. That is not necessarily the case in urban settings. There are situations where parties experience problems with mail theft and mail tampering. There are times when notices may not be received for some reason or another. Yet, I'm not sure how the court can deal with the problem except, when a bench warrant is issued, to give some consideration to the client who has indicated that there have been problems with the mailings in the past.[51]

A witness at the Newark public hearing corroborated these points, indicating further that sometimes respondents never receive notices or receive them after the date they were to appear. She went on to recommend that notices be mailed via certified mail.[52]

One witness testified about difficulties with regard to notices and summonses for persons who do not read English. He pointed to one specific case he knew where not only did the addressee of a

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[50]J. Garfield Jackson, Sr., NEWARK PUBLIC HEARING 565-566 (November 30, 1989).

[51]Esther Canty, Esq., ATLANTIC CITY PUBLIC HEARING 85 (December 16, 1989).

[52]Geraldine Howell, NEWARK PUBLIC HEARING 555-556 (November 30, 1989). This is also supported elsewhere. CONFIDENTIAL WRITTEN TESTIMONY 73 (January 6, 1990).

summons not read English, but no one else in his family did, either.[53]

The final aspect of the negative effects of case management practices is the matter of the order in which cases are heard. The point is clearly illustrated by the following confidential testimony by a person who manages properties and appears in Special Civil Part at least monthly:

> The number one thing I would like to talk about is when I go to tenancy court to deal with tenancy court cases, all of the courts in all the counties have docket numbers. And one presumes that the court will be dealing with their users by docket numbers in numerical order unless there are other reasons to do otherwise, except it's not that way. Cases are not heard in numerical order ever. People with money to hire lawyers are always heard first. Then the cases are then heard in numerical order except whenever attorneys should come in late. Then everything stops. Even in the middle of a case, you stop. The lawyer gets to have his case heard first and I feel that sits very negatively among all the users of court. They feel that because either they're less advantaged—they don't have a lawyer. Therefore, they wait almost all day all the time so the lawyer can get their hearing first....[54]

FINDING #28

MINORITIES ARE UNDERREPRESENTED ON JURIES AND, AS A RESULT, DECISIONS REACHED BY JURIES MAY DISCRIMINATE AGAINST MINORITIES.

Introduction

One of the cornerstones of our democracy is the right of each criminal defendant to be tried by a neutral and impartial jury

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[53]J. Garfield Jackson, Sr., NEWARK PUBLIC HEARING 567 (November 30, 1989).

[54]TRANSCRIPT OF CONFIDENTIAL TESTIMONY 333 (December, 1990). See also the person's testimony at 345-346.

which includes a representative cross-section of the population.[55] In lay terms, this concept is often called the right to be tried by a jury of one's peers. One dimension of the peer continuum references race. This common understanding is illustrated by a witness who gave the following testimony at a public hearings:

> [W]e also look at the fact of jury selection in all of the areas of the State. If we're tried, it's supposed to be a trial by one's peers; there should be enough of one's peers on that trial or selected for that trial rather than have perhaps an all-white jury in terms of the person of color being accused of the infraction.[56]

Another component of socioeconomic peerage was raised at the public hearing in Trenton:

> To me [being judged by one's peers] means both socio and economic peerage. ...it is my opinion that an affirmative action or a number-crunching process be put in place to absolutely have a peer judging system.[57]

Jon M. Van Dyke, a widely recognized authority on juries, sums up the import of the concept of juries' being constituted of peers.

> The jury representing a cross-section of the community, randomly selected, conforms to our commitment to a pluralistic society and a democratic government. ... When we talk of a jury of one's peers in the community today, we mean a jury drawn from the whole population of the area and representing a cross-section of it.[58]

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[55]State v. Ramseur, 106 N.J. 123, 226 (1987); State v. Gilmore, 103 N.J. 508, 524 et seq. (1986).

[56]Reginald P. Jeffries, EAST ORANGE PUBLIC HEARING 319 (November 29, 1989). Thomas E. Daniels, representing a coalition of NAACP branch offices in Monmouth and Ocean Counties, also made these points. PERTH AMBOY PUBLIC HEARING 720-721 (December 7, 1989).

[57]Robert Lawrence, TRENTON PUBLIC HEARING 883 (December 8, 1989).

[58]J.M. Van Dyke, JURY SELECTION PROCEDURES: OUR UNCERTAIN COMMITMENT TO REPRESENTATIVE IDEALS 18-19 (1977).

Whatever specific view one may have of juries, perhaps above all other aspects of the Judiciary, minority confidence in the Judiciary is, to a great extent, dependent upon their access to trial by juries on which there is minority representation.

Underrepresentation of Minorities on Juries

Historically, one of the perennial issues in the administration of justice has been the pattern of widespread underrepresentation of minorities on juries.

> Racial discrimination in the administration of justice has been chronic. Not only have physical facilities such as courtrooms and prisons and jails been segregated, but minority members were traditionally deemed not competent to serve on juries, were denied employment in law enforcement, and because of limited opportunities for education, had no chances to become members of the bar, judges, or prosecutors.[59]

The fact of minority underrepresentation on juries has been documented in many jurisdictions at both the Federal and state levels. In his review of the literature and statistics on the subject, which included both federal courts and some fifteen state courts, Jon M. Van Dyke concluded that underrepresentation of minorities on juries is "the rule" rather than the exception. He found further that while African Americans are surely underrepresented, "persons of Hispanic origin, Native Americans, and Asians, are underrepresented even more dramatically than are blacks."[60]

The Task Force has neither found nor generated statistics that permit statistical documentation of actual underrepresentation of

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[59]E.R. Larson and L. McDonald, THE RIGHTS OF RACIAL MINORITIES 186 (1980).

[60]Van Dyke, supra n. 58, at 30.

minorities on juries in New Jersey, or the degree and relative rates of such minority underrepresentation.[61] These data are not available because racial/ethnic information about jurors is not collected. However, all sources that have commented on the subject of juries to the Task Force report the firm conviction that racial and ethnic minorities are indeed underrepresented.[62] Moreover, there is no reason to believe that New Jersey is any different from the numerous jurisdictions where research has documented minority underrepresentation.

This view is held by some of the witnesses at the Task Force's public hearings. For example, a Latino attorney gave the following testimony: "I have seen the jury selection process eliminate systematically minority members out of juries when we have minority defendants."[63]

Secondly, there have been several challenges to jury selection practices in specific cases on trial in New Jersey based on some aspect of minority underrepresentation. An initial allegation relating to a challenge of underrepresentation has been mounted in

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[61]The Task Force contemplated conducting original research on this subject, but was unable to do so.

[62]One witness who spoke at the public hearings made a statement that may or may not be based on some empirical research, but it at least illustrates what some minorities **believe** the proportion to be. "There must be a higher selection of minorities from the general public to serve on your grand juries, as well as your petit juries. It is literally a scandal, it's scandalous, where when you have 12 percent of your population in the state is African American, and in your jury system, you have less than 1 percent serving. It is an outrage when you have as many African Americans in Monmouth County, and you have less than a dozen that serves on grand jury throughout its term." Augustinho Monteiro, NEPTUNE PUBLIC HEARING 417 (February 27, 1990).

[63]Billy Delgado Muñoz, Esq., PERTH AMBOY PUBLIC HEARING 753 (December 7, 1989). Similar testimony was given at three other public hearings.

at least ten counties, although no court has yet held that constitutionally significant underrepresentation has been shown.[64]

Finally, the New Jersey Supreme Court, when discussing representation in Essex County, stated, "We agree, however, that the results [of certain improvements to increase the representativeness of juries] are still far from optimal. Greater representativeness on the jury panels is obviously desirable."[65] The Court also has ruled that, in some cases, minorities are impermissibly eliminated from jury service via inappropriate use of peremptory challenges.[66]

Factors which Appear to Impede Minority Representation

There are several factors which appear to contribute to the underrepresentation of minorities on juries which have not been sufficiently explored or recognized. The classical supposition appears to be that jury pools should consist of minority persons in rough equivalence to their proportions of the general (or adult, "age-eligible") population. If the proportion of minority jurors in the pool is not within an acceptable range of the proportion of minorities in the general population, there may be de facto discrimination.[67]

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[64]Interview with Michael F. Garrahan, Esq., Chief, Technical Assistance, Administrative Office of the Courts, in Trenton (May 22, 1991). A helpful review of the issues is provided in one such case, State v. Ramseur, supra n. 55, at 212.

[65]State v. Ramseur, id. at 226 (1987).

[66]The leading case is Gilmore, supra n. 55.

[67]Some call this the "absolute deficiency standard." Larson and McDonald, supra n. 59, at 189.

(continued...)

An example of this assumption is a recommendation of the Committee on Minority Concerns: "Establishment of an overall goal that minority representation on juries should reflect the minority presence in the vicinage...."[68] It is then postulated that underrepresentation occurs because minorities are less likely to be included in the pools from which jurors are ultimately empaneled, i.e., "proportionally more blacks than whites do not register to vote and do not have driver's licenses."[69]

The first apparent impediment is the qualification stipulated by statute that a juror "shall be a citizen of this State...."[70] According to the most recent available Census data (1980),[71] 317,788 persons (4% of the entire population) residing in New Jersey in 1980 were not citizens. However, analysis of the proportion of non-citizens among the various minority populations shows varying rates of non-citizenship. The requirement of citizenship affects African Americans the least (3% of the black

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[67](...continued)
This was the approach followed by Dr. John Lamberth, a social psychologist who wrote for the New Jersey Office of the Public Defender a report entitled "Report on Camden County Jury Selection System" (March 10, 1986). For example, he wrote, "Hispanics were significantly underrepresented in the sample [of a jury panel]. There were 0.93% of the individuals surveyed who indicated that their ethnic background was Hispanic, while the proportion of jury age Hispanics in Camden County is 3.27%. This is comparative disparity of 71.56% and statistically significant...." At 2. He found the proportionate underrepresentation of Hispanics exceeded that of Blacks whose disparity figure was calculated to be 28.42%. Ibid.

[68]REPORT OF THE COMMITTEE ON MINORITY CONCERNS 33 (Summer 1984) [hereinafter COLEMAN REPORT]. The Committee will be referred to as the Coleman Committee.

[69]Ramseur, supra n. 55, at 227.

[70]N.J.S.A. 2A:69-1.

[71]Census data from 1990 on the variables discussed in this section are not yet available. Data from 1980 are used throughout since that is the most recent year for which data are available for all of the variables used in this discussion (although more recent estimates for some variables may be available from the Bureau of the Census).

population in 1980 was non-citizen, which is lower than the rate for whites), affects about one-fourth of all Hispanics (23% of persons of Spanish Origin in 1980 was non-citizen), and has a significant effect on Asians-Pacific Islanders, one-half of whom were non-citizens.

Another qualification for jury service that appears to reduce the availability of minority jurors is the statutory stipulation that jurors "shall not have been convicted of a crime."[72] There are no data for New Jersey of adults generally or minority adults specifically who have an unexpunged conviction. However, indirect evidence suggests that some groups of minorities (African Americans and Latinos) are significantly more likely to have unexpunged convictions than are whites; two groups of minorities (Asians-Pacific Islanders and American Indians) are less likely to have unexpunged convictions than whites.

The most current data available that contrast New Jersey's adult prison population show that the further people go into the criminal justice system, the proportion of whites decreases fifty-four points from 76% to 22% while the proportion for Blacks increases forty-nine points from 12% to 61%. The representation of Hispanics increases about four points from 12% to 16%.[73]

The finding of the Sentencing Project of Washington, D.C., that almost one in four (23 percent) black men in the twenty to twenty-nine age group is either in prison, jail, on probation, or on

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[72]N.J.S.A. 2A:69-1.

[73]The number and proportion of Asian-Pacific Islander or American Indian prisoners are negligible (ten and six prisoners respectively for 1989). See Figure A and Table 17 in Chapter Three, on pp. xx-yy.

parole on any given day was reported in Chapter Three.[74] That figure compares to one in sixteen (6.2%) for white males and one in ten for Hispanic males (10.4%). The disproportions are similar for women: the relative rates for women are 2.7% for Blacks, 1.0% for whites, and 1.8% for Latinos.[75]

The preceding data suggest that African Americans in particular and Hispanics to a lesser degree are excluded from eligibility to serve on juries at much higher rates than whites because of the conviction-free qualification. However, both Asians-Pacific Islanders and American Indians appear to be less likely than whites to be excluded from jury eligibility as a result of this qualification.

Another qualification for jury service that appears to impede minority access to the jury box disproportionately is the requirement that jurors "shall be able to read, write and understand the English language...."[76] At the most elementary level, this requirement eliminates many persons from eligibility. In 1980, 3% of New Jersey residents who were five years or older spoke English not well or not at all.[77] This requirement, however, has an especially dramatic effect on Latinos, and a lesser, although still significant, impact on Asians-Pacific Islanders. The 1980 Census

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[74]Ibid.

[75]M. Mauer, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM 3 (February 1990).

[76]N.J.S.A. 2A:69-1.

[77]The population of persons five years old or older was 6,903,354 and the population of persons who reported speaking English not well or not at all was 213,993. U.S. Dep't. of Commerce, Bureau of the Census, 1980 CENSUS OF POPULATION, DETAILED POPULATION CHARACTERISTICS: NEW JERSEY, Tables 194, p. 32-7, and Table 197, p. 32-25 (December 1983).

showed that 28% of the 442,774 Hispanic persons five years old or older indicated that they spoke English not well or not at all. The corresponding percentage for Asians-Pacific Islanders was 11%.[78]

One more legal obstacle is an exemption rather than a qualification. The law reads: "The following persons shall be exempt from service on any panel of grand or petit jurors: ... g. Any person who has the actual physical care and custody of a minor child...."[79] There are two subgroups of minorities for whom this exemption may have a differential impact: African-American and Latino women who are single heads of household.[80] Almost one in three African-American mothers is a single parent and a little more than one in five Latino mothers is a single mother. These figures contrast starkly with the rates for white single mothers (6%) and for Asian-Pacific Islander single mothers (3%).[81]

One unanticipated finding is that some African Americans and Latinos do not register to vote because they do not want to be called as jurors. While not registering to vote may reflect a desire to avoid jury duty, it appears to be rooted as well in the recognition of the hardship jury service represents for a substan-

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[78]Ibid. The data are published in such a way that estimates for blacks and whites cannot be calculated.

[79]N.J.S.A. 2A:69-2.

[80]These are the only groups of minorities for which data are readily available to explore the question of disproportionality in the context of this exemption. Other subgroups of minorities (e.g., two-parent families with minor children) may or may not be similarly affected. Of course **any** mother with minor children could be affected by this exemption. However, the class of mothers with minor children who would be **most likely** to be affected by the exemption probably is single mothers.

[81]1980 CENSUS, supra n. 77, Table 215, at 32-387 to 391.

tial proportion of minorities. Consider the following testimony of Marilee Jackson, a member of the Paterson City Council:

> In terms of jury issues and selection, one of the things that I find as an elected official is that, during the process of registering people to vote, I find that one of the reasons that people don't want to register to vote is they think that if they register to vote they'll be automatically selected for jury duty. I was kind of amazed at that attitude, but I've been in office now for nine years and it's still the same as it was in 1980.[82]

Two other witnesses, Assemblyman and Union City Mayor Robert Menéndez[83] and Warren D. Blackshear, former coordinator of the Plainfield Voter Registration Coalition, reported the same phenomenon.[84]

The cost of jury service to any person who is poor, minority and non-minority alike, can be prohibitive. Persons who are underemployed face the risk of losing their jobs since there are no protections. For example, persons who are unemployed and in dire financial straits find it difficult to come up with the bus money just to get to the courthouse.[85]

Pay for jury service itself is viewed as offensive and hurts more than just prospective jurors.[86] Mr. Blackshear put it this way:

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[82]PATERSON PUBLIC HEARING 689 (November 29, 1989).

[83]UNION CITY PUBLIC HEARING 944 (November 30, 1989).

[84]Union County Public Hearing 1010 et seq. (December 2, 1989) and Written Testimony 41 et seq. (January 17, 1990).

[85]Richard Sims, JERSEY CITY PUBLIC HEARING 347 (December 1, 1989).

[86]The compensation of both petit and grand jurors has been the same for some forty years: $5.00 per day and mileage reimbursement at the rate of 2¢ per mile, excluding the first mile both ways (i.e., to and from the courthouse). N.J.S.A. 22A:1-1.

> For a minority or any other person whose wages are not reimbursed by their employer, and for a minority businessperson, the current fees paid for juror service amount to a severe economic hardship. Since many jurors are reimbursed by their employers, it also places an unfair burden on minority and other small business persons who have to subsidize the jury system while they also lose the services of their employees.[87]

Blackshear concluded, "It is my opinion that our current juror fee schedules inhibit jury service participation by minorities, disadvantaged persons, [and] minority businesspersons...."[88]

Yet another factor that inhibits jury service for some minorities is the fact that they fear or lack confidence in the Judiciary. That lack of confidence ranges from a general sense that the Judiciary is not especially sensitive to minority needs to an outright fear of the Judiciary, as was discussed in Finding #27 and elsewhere in this report. The Coleman Committee referred to what it called "an inherent fear of the judicial system which keeps many minorities from willingly responding to a call to jury service."[89]

Cultural factors also restrict minority access to juries. Mayor Robert Menéndez recalled, for example, that Hasidic Jews did not want their wives registered to vote since they did not want them serving jury duty.[90] A second example of the cultural barrier was noted by the Committee on Minority Concerns: many Latinos come from totalitarian countries, bringing with them a heritage which

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[87]WRITTEN TESTIMONY 43 (January 17, 1990).

[88]Letter to the Task Force, WRITTEN TESTIMONY 43 (January 17, 1990).

[89]COLEMAN REPORT, supra n. 68, at 32.

[90]UNION CITY PUBLIC HEARING 944 (November 30, 1989).

has produced a profound fear of all things governmental and consequently results in a fear of jury service in this country.[91]

In summary, it appears that each of the previously discussed factors individually contributes in varying degrees to underrepresentation of minorities on juries. Furthermore, when the factors are taken collectively, perhaps as many as one-half of Blacks, Hispanics, and Asians-Pacific Islanders should be considered unavailable for jury service because of a combination of legal, socioeconomic, political, and cultural factors. A summary of the respective factors discussed above which can be quantified is provided in Table 31.

Jury Decisions Are Believed to Discriminate Against Minorities Sometimes

In the context of both civil and criminal juries, some of New Jersey's minorities believe that juries' decisions are less favorable for non-whites. With respect to juries in civil matters, the Committee on Minority Concerns reported what it called "the tendency of juries to make smaller awards in personal injury cases where the plaintiff is a minority."[92] The Committee on Minority Concerns went on to say that this phenomenon reflects the imputation by jurors of different values on pain undergone by minorities who have suffered injuries compared to similarly situated whites.[93]

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[91]COLEMAN REPORT, supra n. 68, at 22.

[92]Id. at 21.

[93]Ibid.

TABLE 31

ESTIMATED PERCENTAGES OF RACIAL/ETHNIC GROUPS ELIMINATED FROM JURY SERVICE BY VARIOUS FACTORS[94]

FACTOR INHIBITING JURY SERVICE	PERCENT OF WHITES AFFECTED	PERCENT OF BLACKS AFFECTED	PERCENT OF HISPANICS AFFECTED	PERCENT OF ASIANS-PAC. ISL. AFFECTED
Citizenship	3%	3%	23%	50%
Conviction-free[95]				
Males	6%	23%	10%	Negligible
Females	1%	3%	2%	Negligible
English Language	Unknown	Unknown	28%	11%
Care/custody of Children (Single Mothers)	6%	30%	21%	3%
Below Poverty Level	6%	26%	27%	7%

In the context of **criminal court**, the Committee on Minority Concerns concluded that the fact that minority defendants are infrequently judged by juries that include minorities leaves minority defendants "prey to the prejudices and fears of that unrepresentative jury."[96] The Committee also suggested that another factor leads unrepresentative juries to reach conclusions that may not be justified: the probability that such juries may misinterpret and misunderstand cultural and ethnic idiosyncrasies

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[94]The reader is alerted to the fact that the percentages in this table cannot be added. There is significant overlapping across the categories, but the degree of such overlapping cannot be estimated, and the reader is advised to avoid the temptation to total the columns, since the resulting figure would be invalid.

[95]The figures in this row are taken from Mauer, supra n. 75, and apply only to males in the age group of twenty to twenty-nine who are under control of the criminal justice system on any given day. While it may not be appropriate to apply these percentages to all adults within each racial/ethnic category, they provide an estimate of the disproportionate effect that the requirement to be free of convictions may have on two of the three minority groups.

[96]COLEMAN REPORT, supra n. 68, at 31-32.

presented by minority witnesses and defendants who come from dissimilar cultural and ethnic backgrounds.[97]

The answers to two opinion questions posed in the survey the Task Force conducted of judges and top court managers introduce additional support for the finding that jury decisions are less favorable for minorities. About one-third (34%) of the respondents (See Table 32) indicated that minority defendants are at least "sometimes" more likely than white defendants to be wrongfully convicted. Almost one-half (44%) of the respondents (Consult Table 33) stated that racial prejudice affects jury verdicts at least "sometimes" when minorities are parties in a dispute.

TABLE 32

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q52:
"THE CHANCES OF A JURY'S WRONGFUL CONVICTION
ARE HIGHER FOR A MINORITY DEFENDANT THAN FOR A WHITE DEFENDANT."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	18.7%	50.6%	24.1%	6.0%	0.6%	166
Managers	10.4%	49.1%	32.1%	6.6%	1.9%	106
Both	15.4%	50.0%	27.2%	6.3%	1.1%	272

[97] Id. at 31-32.

TABLE 33

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q53: "WHEN MINORITIES ARE PARTIES IN A DISPUTE, RACIAL PREJUDICE AFFECTS JURY VERDICTS."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	8.5%	47.6%	39.0%	4.3%	0.6%	164
Managers	5.7%	41.5%	50.9%	0.9%	0.9%	106
Both	7.4%	45.2%	43.7%	3.0%	0.7%	270

Misunderstanding of persons who are racially or ethnically different from oneself, when combined with prejudice toward such persons, introduces factors that erode juror impartiality. When all-white juries are given the responsibility of weighing the testimony or judging the guilt of minority persons, the risk that misconceptions and prejudice of varying degrees can lead to misinterpretations of evidence is increased.[98] That risk must be reduced by making sure that juries are composed of a cross-section of the community. The issue has been summarized by the New Jersey Supreme Court in the following way:

> In short, the main point of the representative cross-section rule is 'to achieve an overall impartiality by allowing the interaction of diverse beliefs and values the

[98]A psychologist who reviewed laboratory and archival studies on the subject concluded, "There is little evidence, however, to suggest that real jurors are adhering to these attitudes [i.e., racial prejudice] when they determine the guilt or innocence of [minority] defendants." J.E. Pfeifer, "Reviewing the Empirical Evidence on Jury Racism: Findings of Discrimination or Discriminatory Findings?," 69 NEB. L. REV. 230 (1990).

By contrast, a professor of law who has attempted to find out what is required in the legal system to eradicate the vestiges of slavery concluded, "Historical evidence and recent sociological data show that all-white juries are unable to be impartial in cases involving the rights of African-American defendants or crime victims." D.L. Colbert, "Challenging the Challenge: Thirteenth Amendment as a Prohibition against the Racial Use of Peremptory Challenges," 76 CORNELL L. REV. 1, 5 (1990).

> jurors bring from their group experiences,' (citations omitted) and in this manner to vindicate the defendant's right to trial by an impartial jury in our heterogeneous society.[99]

Some argue that an all-white jury is "the ultimate obstacle to justice for African-American criminal defendants."[100] The issue was succinctly summarized by Augustinho Monteiro, President of the Greater Red Bank Chapter of the NAACP:

> [I]f there's nothing that the courts can do to get the number of African Americans on juries, then all the rest of it doesn't amount to a hill of beans. And I say that for a very good, solid reason.... There are very few people, other than African Americans, who understand the African-American psyche. Nobody else has ever had or ever lived or perhaps could ever have endured what African Americans have endured in this country.[101]

In summary, the Task Force maintains that there are twin issues of concern: the principle of the fairness of the judicial process and the confidence one segment of the community, i.e., minorities, has in the system.

RECOMMENDATION #27

THE CHIEF JUSTICE SHOULD DIRECT THE PERMANENT SUPREME COURT COMMITTEE ON MINORITY CONCERNS TO STUDY MINORITY REPRESENTATION ON JURIES AND THEIR IMPACT, IF ANY, ON VERDICTS.

First, the Supreme Court Committee on Minority Concerns should review and evaluate the pertinent material in this report. This

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[99]Gilmore, supra n. 55, at 525.

[100]Colbert, supra n. 98, at 5, 128.

[101]NEPTUNE PUBLIC HEARING 417 (February 27, 1990).

might include contacting witnesses who testified before the Task Force on Minority Concerns.

Second, additional research should be conducted which explores, in greater detail and with greater precision, the factors that (1) inhibit voter registration, (2) discourage minorities from serving on juries, and (3) affect representation of minorities and non-minorities on juries. Furthermore, these three research questions should be explored with special emphasis on the possible discriminatory effects of peremptory challenges.[102]

1. What is the representation of racial/ethnic minorities in the initial pools from which prospective jurors are drawn, i.e., voter registration and drivers' license lists?

2. To what degree do racial/ethnic minorities drop out at each of the major stages leading up to the empaneling of a jury (e.g., response rate to initial summons, disqualifications, excusals, failure to appear, non-selection, challenges), and how do these rates compare to those of whites?

3. What is the actual representation of minorities on juries that ultimately are empaneled?

FINDING #29

ACCESS TO COURTS FOR MINORITIES IS IMPEDED BY THE LACK OF KNOWLEDGE MINORITIES AND MAJORITY PERSONS WHO WORK IN THE COURTS HAVE OF EACH OTHER.

Court System's Ignorance of Minorities

Many judges, court support personnel, and attorneys lack fundamental knowledge about the culture, practices, problems,

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[102]The call for the abolition of peremptory challenges in certain instances should be carefully considered. "Peremptory challenges should be abolished in race-sensitive cases to permit meaningful representation by black trial jurors." Colbert, supra n. 98, at 5, 128.

lifestyles, and beliefs of the minority persons with whom they interact. Even when judges and court personnel are not acting out of bias, whether active or passive, they can and do act out of ignorance. Stereotypes abound and can interfere with otherwise well-reasoned, well-intentioned decisions and actions.[103] A public hearing witness recounted this incident:

> When I first began practicing as an attorney, I remember representing an interstate truck driver of Hispanic origin who had been stopped in a motor vehicle check and was subsequently issued a summons for refusal to take the breathalyzer test. Upon first appearance, the judge directed certain routine questions to my client, namely, what was his name, what was his address, et cetera, which my client respectfully answered through an interpreter. However, the judge yelled at him, 'When you're in my court, mister, you look at me when I speak to you.' I tried to explain to the court that it was out of respect and not disrespect that my client was looking downward as it was his custom in his native country. His Honor responded to me, 'Well, Mr. Menéndez, in this country we do it my way.'[104]

Minority Citizens' Unfamiliarity with the Court System

The potential for misunderstanding and inadequate communication between minorities and court personnel is further amplified by minority citizens' lack of familiarity with the court system. Numerous witnesses before the Task Force's public hearings discussed the degree to which minorities are unfamiliar with their rights and the courts. Here are some representative examples:

> Use of the courts on the part of Hispanics has been minimal. A lack of understanding is one of the many reasons. Information needs to be provided to ensure equal access. Many do not know when to use different levels of

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[103]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 249.

[104]Robert Menéndez, UNION CITY PUBLIC HEARING 934-935 (November 30, 1989).

> the court system, for example, Superior Court versus the municipal level.[105]

> We're talking about treatment of persons coming before the courts or the court system and, much of the time, minorities do not understand procedures. The employees will have to be sensitive enough to them. So when minorities come into court and ask questions, employees must be able to give them good, correct, and courteous treatment. They need to understand that a person may ask two or three questions or the same question four or five times before they get the understanding. Employees must ... give them that kind of treatment so that they understand what they have to go through, what the procedures are, so they can go away, although they may not prevail, knowing fully what is expected of them.[106]

> [M]inorities lack knowledge of the rights, knowledge of court systems, and means to obtain representation. As civil or criminal complainants, they may be effectively blocked from the benefits of adjudication.[107]

Effects of Lack of Knowledge of the Court Process

Minorities often experience the courts as an intimidating, awesome, and overwhelming environment. Some of the factors that members of this Committee's focus group offered as possible causes of the alien and intimidating nature of the environment are the formality of the institution, the complexity of its procedures, the use of unfamiliar language, inadequate directions and directories, forms that are incomprehensible, physical structure of courtrooms (judge sits at higher level, dresses in unusual clothing, etc.) and courthouses, insensitivity of staff to one's lack of knowledge, and staff's unwillingness to explain things.[108]

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[105]Carlos Pacheco, TRENTON PUBLIC HEARING 925 (December 8, 1989).

[106]Reginald P. Jeffries, EAST ORANGE PUBLIC HEARING 320 (November 29, 1989).

[107]Richard Sims, JERSEY CITY PUBLIC HEARING 346 (December 1, 1989).

[108]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 250-252.

Linguistic minorities often have an additional measure of awe. First, the experience of going into an important environment where one does not speak the language is difficult enough. Secondly, the linguistic gulf is made more intense by unfamiliarity with the environment. Oftentimes, linguistic minorities expect courts here to be like the ones in their country of origin. This point is illustrated by attorney David José Alcántara's testimony:

> There's a sense of pessimism involving many of the Hispanics. Once they arrive at court they're awed by everything around them. This may be their first or second time ever in court. They don't understand what's going on. I find myself many times ... just having to explain what Miranda rights are, constitutional issues, the very basic things which I think many non-Hispanic people already know or have some idea that they have some kind of rights. Many times the Spanish-speaking persons don't even know ... they have rights. They come from countries like El Salvador, let's say. There they have no rights and they somehow think that maybe the same thing happens here. They have to be told, 'You do have some rights.' They come from great hardship and are awed by the total environment and many times they would just simply walk away and not follow through with their rights.[109]

Intimidation and Fear of Reprisals

Intimidation and fear of reprisals were reported to various members of the Task Force during the course of the public hearings. Some witnesses were reluctant to testify because of fear of retaliation. Other persons indicated, off the record, that they were deterred from testifying because they feared retaliation on their jobs or in their communities.

Marilee Jackson, a city councilwoman in Paterson attempted to recruit citizens to come and testify at the public hearings and shared these results with the Task Force:

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[109]ATLANTIC CITY PUBLIC HEARING 54-55 (December 16, 1989).

> Unfortunately I found that many people were reluctant to come and give testimony about the system because they thought that they would be held accountable, and so there was that kind of reluctance...."[110]

Later Ms. Jackson said:

> ... I'm quite sure that you will not hear that much from those minorities that are in the system because they do have that kind of fear that they will receive repercussions if they speak and it's considered as speaking out against the system. Unfortunately that's the way it is."[111]

The reluctance of court employees to testify at the public hearings is another manifestation of the fear. One witness who testified about problems on his job felt that retaliation would begin the following Monday after he testified.[112] Others resorted to giving testimony only on a confidential basis. Furthermore, an attorney related that his testimony was based in part on conversations with court personnel who "are afraid to come forward to make their criticism for fear of retaliation...."[113]

Fear and intimidation were especially marked at the Sussex County Public Hearing. This session was very tense, and it was readily apparent to Task Force panelists and staff that many persons felt intimidated. Here are some expressions of this fear. First, one woman said, "I was told that if I testified in here tonight, I've got the Internal Revenue on my ass."[114] Consider the

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[110]Marilee Jackson, PATERSON PUBLIC HEARING 683 (November 29, 1989).

[111]Marilee Jackson, PATERSON PUBLIC HEARING 691-692 (November 29, 1989).

[112]Milton Floyd, UNION COUNTY PUBLIC HEARING 1007-1008 (December 2, 1989).

[113]José LaBoy, Esq., VINELAND PUBLIC HEARING 1070 (December 13, 1990).

[114]Geraldine Reynolds, SUSSEX COUNTY PUBLIC HEARING 1138 (October 29, 1990).

following exchange between the moderator of the hearing and an attorney who was testifying:

> MR. GAFFNEY: I'd also like to say that I think it's important that the Committee have the names of the people who are testifying in public here, because I guarantee that there will be threats against them.
> JUDGE LISBOA: Who's that?
> MR. GAFFNEY: [P]eople will be called up. There will be harassing telephone calls.
> JUDGE LISBOA: Against whom?
> MR. GAFFNEY: Against anyone who is here in this room today, and is testifying, including myself.[115]

In fact, Mr. Gaffney was so concerned about the potential for violence and confrontation, he advised the United States Justice Department and the FBI in Newark of the public hearing.[116]

Another witness commented,

> It's a dangerous situation. In fact, the people that have testified tonight could be in danger because of the fact that, finally, this [abuse by police and prosecutors] is coming out and all these years it's been something that's been festering for so long. It's coming out, and so there's going to be reaction. There's going to be possibly a violent reaction from this, because it's been something that has been a problem too long, but it is time. It is time before somebody dies.[117]

A juvenile who testified in Newton spoke of his fear as follows:

> [F]or my 17 years, I've seen nothing but bigotry, racism, prejudice, and insults. ... I have a fear of living in this community. I have a fear so bad that I carry around with me my lawyer's phone number. God, I don't know if I'm going to walk out of here [the public hearing hosted by the Task Force] and get shot. People prank my house,

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[115]Edward J. Gaffney, Jr., Esq., SUSSEX COUNTY PUBLIC HEARING 1166 (October 29, 1990).

[116]Edward J. Gaffney, Jr., Esq., SUSSEX COUNTY PUBLIC HEARING 1167 (October 29, 1990).

[117]Sylvia A. Carithers, SUSSEX COUNTY PUBLIC HEARING 1210 (October 29, 1990).

> cut my phone wires, insult me, park in my yard. What are they there for? They're there to let me know that I am a minority.[118]

The experience in Newton suggests that there are special problems attendant to intimidation and access in environments where racial and ethnic minorities, whether proportionately or in absolute numbers, are a small segment of the total population.[119]

RECOMMENDATION #28

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A PLAN AIMED AT FAMILIARIZING THE COMMUNITY WITH THE JUDICIARY AND MAKING THE EMPLOYEES OF THE JUDICIARY MORE FAMILIAR WITH THE COMMUNITIES THEY SERVE. THIS SHOULD INCLUDE RECOMMENDATIONS AS TO MATERIALS THAT MIGHT BE INCLUDED IN PUBLIC SCHOOL CURRICULA. THE PLAN SHOULD INCLUDE INITIATIVES THAT ARE CULTURALLY AND ETHNICALLY APPROPRIATE FOR REACHING MINORITY COMMUNITIES.

While the other recommendations in this chapter focus on specific steps that should be taken to assure equal access to courts in the day-to-day administration of the Judiciary, this recommendation focuses on enhancing access by making the public more aware of the Judiciary and the Judiciary more aware of the public it serves. The way the Judiciary interacts with the community while the substantive improvements are being made is important. The primary vehicle for realizing these goals is

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[118]Adrian King, SUSSEX COUNTY PUBLIC HEARING 1150, 1156 (October 29, 1980).

[119]Four other counties—Cape May, Hunterdon, Ocean, and Warren—also have minority populations that constitute less than 10% of the total population. With the exception of Ocean County whose minority population is 29,832, the other four counties have populations ranging from 3,910 (Warren) to 7,592 (Cape May). See a proposed classification of the counties in Recommendation #30.

through direct contact with the community outside of ordinary litigation. Here are two ways that this objective may be accomplished.

Bring the communities into the courthouses. A Latino Public Defender gave several very helpful suggestions along these lines. In response to a Task Force member's question, "Would you have any recommendations on how to improve the image of the court in the community?" he replied:

> Absolutely, sir. I think that we should go into the schools, the elementary schools, day care centers; once they're old enough to understand what's going on, bring them to that courtroom. Why should anyone be fearful of a judge when that judge is under oath to be of assistance, to be neutral, to protect those rights that everybody has fought for, even members of my family, both in the Korean War and the Viet Nam war. And if they walked into that courtroom and they saw that these judges are human beings and if they could aspire to those goals also, they would not be afraid.[120]

Bring the courthouse into the communities. It is just as important that judges, court personnel and the bar make themselves available to schools, citizen action groups, neighborhood centers, churches, and other places.

RECOMMENDATION #29

THE SUPREME COURT SHOULD DIRECT THE FORTHCOMING SUPREME COURT COMMITTEE ON MINORITY CONCERNS TO DOCUMENT ANY SPECIAL NEEDS THAT MAY DISTINGUISH COUNTIES IN TERMS OF THE SIZE OR PROPORTION OF MINORITIES WITHIN THOSE COUNTIES.

[120]Dennis Vincent Nieves, Esq., PERTH AMBOY PUBLIC HEARING 805 (December 7, 1989).

The experience in Sussex County suggests that minority populations in other counties where there are negligible numbers or proportions of minorities may encounter particular impediments to access. Further analysis of the effects of differential minority populations throughout the State's counties is required.

In view of data from the 1990 Census, the counties may be classified into the following categories:

Negligible Minority Populations (four counties)

Sussex County	4% Minority	5,540 Minorities
Warren County	4% Minority	3,910 Minorities
Hunterdon County	5% Minority	5,376 Minorities
Cape May County	8% Minority	7,897 Minorities

Small Minority Populations (five counties)

Ocean County	7% Minority	29,832 Minorities
Morris County	12% Minority	48,935 Minorities
Gloucester County	12% Minority	27,093 Minorities
Somerset County	15% Minority	35,445 Minorities
Salem County	17% Minority	11,455 Minorities

Moderate Minority Populations (seven counties)

Monmouth County	15% Minority	84,015 Minorities
Bergen County	17% Minority	143,170 Minorities
Burlington County	19% Minority	76,957 Minorities
Camden County	25% Minority	126,467 Minorities
Atlantic County	26% Minority	59,094 Minorities
Mercer County	27% Minority	89,681 Minorities
Cumberland County	31% Minority	42,924 Minorities

Large Minority Populations (five counties)

Middlesex County	23% Minority	154,832 Minorities
Union County	35% Minority	171,572 Minorities
Passaic County	37% Minority	168,784 Minorities
Hudson County	53% Minority	291,022 Minorities
Essex County	55% Minority	427,221 Minorities

FINDING #30

THE JUDICIARY REFLECTS MANY OF THE PREJUDICES OF THE SOCIETY IT SERVES, AND MINORITIES OFTEN VIEW THE JUDICIARY AS WORKING IN CONCERT WITH LAW ENFORCEMENT.

Courts Reflect Society's Views and Prejudices

> Obviously the justice system is a microcosm of our society, and our society is suffering various and sundry racial and racist ills.[121]

Many minorities view the courts as mirroring society's social inequities and discriminatory practices and structures. They often experience and perceive the court system as being identified with and inseparable from the larger society with its private and public prejudices. Consequently they do not find the courts to be a fair place to find relief from the prejudices embedded in society.

One of the most difficult and challenging issues with which the Task Force has wrestled is the question of quantifying the amount of discrimination against minorities. While the amount of discrimination may be inherently unquantifiable with any degree of precision, it is nevertheless an important question. How much do judges, court support personnel, and attorneys engage in practices that contribute to and result in unequal treatment of minorities?

From the evidence available to the Task Force, it is apparent that some discrimination does occur. The statement of a Jersey City Councilman, Jaime Vázquez, summarizes this basic finding:

> I know for the most part most judges sit on the bench with a very objective attitude about the cases before them. But sometimes not. Sometimes you find a judge that doesn't like black people, because racism resides everywhere.

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[121]Michael Giles, Esq., President of the Garden State Bar Association, EAST ORANGE PUBLIC HEARING 305 (November 29, 1989).

> Sometimes you find a judge who doesn't like Spanish people, or doesn't like Koreans. And that judge will consistently find for the plaintiff if the defendant is a minority.[122]

Vázquez's statement is echoed by Augustinho Monteiro, President of the Greater Red Bank Chapter of the NAACP:

> We know that while we have some very fair and eminently fair judges, we know that there are by far too many that are prejudiced both in their decisions and in their actions.[123]

Courts as a Closed Shop Environment

Access to courts for minorities is impeded since many minority persons believe that—especially on the Municipal Court level—judges, prosecutors, Public Defenders, and police officials have close economic, political, social, and working ties which sometimes create a real or perceived "closed shop" environment from which minorities are excluded. Hence, the independence of the Judiciary and its ability to provide a neutral forum for resolving disputes are questioned. Some witnesses expressed the view that the close connection between the courts and elements of law enforcement compounds the disparity of treatment. Of the many statements made on the subject, some representative examples follow:

> I don't have any respect at all for the Municipal Courts in these kinds of cases. I know what they're going to do. I know they want the cops to look good. It seems maybe they feel it's unamerican to find a police officer guilty.[124]

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[122]JERSEY CITY PUBLIC HEARING 351-352 (December 1, 1989).

[123]NEPTUNE PUBLIC HEARING 410 (February 27, 1990). Later in his testimony he said he hoped that the Chief Justice would come to understand "that we do have biased judges, we do have outright bigots as judges." Id. at 418.

[124]Ignacio Saavedra, Jr., Esq., UNION CITY PUBLIC HEARING 982 (November 30, 1989).

> Unfortunately, I think the evolution in X County, which is my experience, and perhaps in other counties including Y, has been to call these "police courts." The relationship of the judges to the police and to the prosecutors who are involved with the police courts or Municipal Courts is so close that it takes a fine judge and an outstanding judge to separate the three power systems. There are private conferences. There are behind-the-scenes social and business-like conferences to help expedite with quotes around the word "the process of law."[125]

> [W]hile the instructions advise the witness not to testify about agencies or areas not under the control of the New Jersey Judiciary, a strong observation has to be made that, to many persons of color, law enforcement and the courts are viewed as one entity in the dispensing of unequal treatment and that the courts all too often compound the disparity of treatment where law enforcement is involved.[126]

FINDING #31

ACCESS TO JUSTICE FOR MINORITIES IS DIMINISHED SINCE SOME JUDGES ARE BELIEVED TO USE DIFFERENT STANDARDS OF CREDIBILITY WHEN DEALING WITH MINORITIES.

One of the issues discussed by several witnesses at various public hearings is the experience that minorities are sometimes subjected to special burdens in their efforts to be heard and believed. Some minorities believe that the word of a minority person does not stand a chance to be persuasive over the word of a police officer or a white witness. This double standard presumes that whites are more credible than minorities. In addition to the concept of "double standard," other phrases used to describe this phenomenon include "unequal treatment," "lack of credibility,"

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[125]TRANSCRIPT OF CONFIDENTIAL TESTIMONY 363 (December, 1990).

[126]Joint position paper introduced by a group of Monmouth and Ocean County chapters of the NAACP, presented by Thomas E. Daniels, WRITTEN TESTIMONY 7 (December 7, 1989).

"racism," and the like. It is not surprising, then, that many minorities believe the cards are stacked against them when they anticipate going to court.

An attorney in private practice related the story of a white police officer who he felt had systematically lied about minority defendants represented by the attorney. In each of the referable cases, the attorney's African-American and Latino clients had been found guilty on the police officer's word. The attorney described his experience as follows:

> In every single case I have requested that a lie detector test be given to the police officer and the citizen. Naturally this has been objected to by the other side and, unless we all stipulate that evidence of the lie detector result, it won't go before the court. The presiding judge has been a white judge in every single one of those cases. And I tell you one thing, gentlemen, whenever I walk into a court and I see a white judge, the impression I get is that I'm going to lose and the policeman is going to win at the expense of justice.[127]

He went on to say later,

> [O]ver 99 percent of the judges ... sitting in Municipal Courts, whenever a police officer comes and says that José Rodríguez said, "Hit me," or Carl Jones, a black guy, said, "Hit me," [the judge says] "Guilty." Ninety-nine point ninety-nine percent. That's justice, and that's a disaster.[128]

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[127]Ignacio Saavedra, Jr., Esq., UNION CITY PUBLIC HEARING 979 (November 30, 1989).

[128]Ignacio Saavedra, Jr., Esq., UNION CITY PUBLIC HEARING 988 (November 30, 1989).

FINDING #32

THE COURT SYSTEM LACKS SUFFICIENT COMPLAINT PROCEDURES TO ENABLE PERSONS TO OVERCOME UNFAIR TREATMENT IN THE COURT.

All litigants should be notified of their rights and the procedures available to seek enforcement of those rights. If minorities and other litigants are not aware of what they can expect of judges, lawyers, and court employees, then they are unable to distinguish between behavior that the Judiciary has labeled unacceptable and behavior that the Judiciary permits. In other words, there is no opportunity for a feedback loop when the conduct of judges, lawyers, and court support personnel falls short of the stated ideals.

The Judiciary has done very little to inform minority or other litigants about their rights and procedures for exercising those rights. For example, the Task Force learned of no efforts to acquaint the public or litigants with the various codes of conduct or complaint procedures. There are no posters in courthouses stating the obligations of judges, attorneys, or court support personnel. Furthermore, the public is not apprised of any recourse that may exist when they find the behavior of any court employee falling short of legitimate expectations.

Complaint Procedures

Citizens should be aware of the procedures to follow when performance standards are violated. Some formal complaint procedures do exist. The two most obvious ones are the ones for

judges (the Advisory Committee on Judicial Conduct[129]) and attorneys (the Office of Attorney Ethics, the District Ethics Committees, the Disciplinary Review Board, the Ethics Financial Committee, and the District Fee Arbitration Committees[130]). Both systems are dependent on written complaints filed with them, although only the attorney disciplinary process has a uniform format (the Attorney Grievance Form).

However, there are limitations of these systems beyond the fact that oral complaints cannot be taken. There is no accounting of complaints in terms of documenting the types of infractions that are being alleged. Hence, no one knows how often complaints alleging racially or ethnically biased infractions of the respective codes are filed, much less the degree to which such claims are ultimately substantiated.

Furthermore, public access to these complaint procedures is limited. There are no brochures or posters advising the public that the procedures exist or how to make them work.

One person testified that he did not know whether there were any procedures for filing complaints, much less how to use those procedures.[131] Another pointed out that the greatest commitments and intentions must be complemented by ongoing monitoring devices to ascertain the degree to which those commitments and intentions actually are being implemented.[132]

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[129]R. 2:15, "Advisory Committee on Judicial Conduct."

[130]R. 1:20, "Discipline of Members of the Bar."

[131]Rev. Fred Jenkins, ATLANTIC CITY PUBLIC HEARING 109 (December 16, 1989).

[132]Edward H. Brown, EAST ORANGE PUBLIC HEARING 309 (November 29, 1989).

The problem is that there are no standardized, coordinated, and efficiently managed complaint procedures regarding court employees other than judges. For example, complaints can be made about the performance of individual court employees. They are typically managed by the Trial Court Administrator's office on the local level and staff in the Office of the Administrative Director of the Courts at the State level. Litigants, jurors, and witnesses sometimes send letters to wherever they think is the appropriate place, and these letters are routed to various persons designated by the Administrative Director of the Courts or other court officials to handle them. However, litigants, jurors, witnesses, and other members of the public are not notified that they can complain or how to file complaints when they believe they are subjected to or observe discriminatory conduct.

RECOMMENDATION #30

THE SUPREME COURT SHOULD DIRECT THAT ALL COMPLAINT PROCEDURES INCLUDE THE FOLLOWING FEATURES: ALL KEY ASPECTS OF BEHAVIOR WHICH COULD RESULT IN A COMPLAINT ARE CLEARLY SPECIFIED, NOTICES OF COMPLAINT PROCEDURES ARE READILY ACCESSIBLE TO THE PUBLIC, AND COMPLAINT PROCEDURES ARE STRUCTURED SO THAT GRIEVANCES HAVING TO DO WITH MINORITY ISSUES CAN BE IDENTIFIED AND QUANTIFIED.

It is imperative that all complaint procedures be effective, accessible, and understandable to those who wish to use them. In order to accomplish these goals, the following steps should be taken.

First, all key aspects of behaviors which are unacceptable as defined by performance standards should be listed and described so that, for both employees and prospective complainants alike, there is some understanding of the range of permissible and impermissible conduct. This should be done (1) in writing in a format that is easily read and understood by laypersons and (2) in some audio format that makes the information and the process accessible to persons who do not read.

Secondly, the existence of the complaint procedures as well as the ombudsperson offices (see the following recommendation) should be made known to the public in at least the following ways:

- Posters/statements should be placed on the walls in prominent, well-traveled areas of all courthouses, Municipal Courts included;
- Brochures/pamphlets should be written and made available in courtroom seating areas, waiting areas, or information booths.
- User friendly computers should be installed at information booths in courthouses, to refer inquirers to the appropriate office for filing complaints.
- Toll-free numbers should be listed so that the public can call to obtain information about the appropriate office for filing complaints.

Public information booths staffed by paralegals, law students, or community volunteers should be provided in each courthouse.

RECOMMENDATION #31

THE SUPREME COURT SHOULD DIRECT THAT OMBUDSPERSON OFFICES BE ESTABLISHED AT THE STATE AND VICINAGE LEVELS TO PROVIDE INFORMATION ABOUT THE COURTS AND TO RECEIVE AND INVESTIGATE COMPLAINTS ABOUT ABUSES IN THE JUDICIAL PROCESS.

The Committee considered different approaches to addressing the implementation and monitoring of this recommendation. The Task Force received recommendations of a civilian review board modeled on those focusing on law enforcement agencies;[133] court-watching groups;[134] a review board modeled on the Disciplinary Review Board;[135] an ombudsperson;[136] and a "watchdog" system of monitoring.[137] One witness suggested that whatever system is adopted, it should be independent of the Administrative Office of the Courts.[138]

The Committee has concluded that the best choice is the establishment of ombudsperson offices at the local level since it will serve multiple purposes. The Committee anticipates that in its receipt and review of complaints, an ombudsperson office will

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[133]Marita Rollins, NEPTUNE PUBLIC HEARING 494 (February 27, 1990).

[134]The witness who endorse this was an attorney. TRANSCRIPT OF CONFIDENTIAL TESTIMONY 373 (December, 1990).

[135]TRANSCRIPT OF CONFIDENTIAL TESTIMONY 204 (December, 1990).

[136]Douglas Jones, a member of the Hispanic Political Caucus, VINELAND PUBLIC HEARING 1035 (December 13, 1989); John Fuentes, Esq., of Puerto Rican Action Committee of Cumberland and Salem County, VINELAND PUBLIC HEARING 1052 (December 13, 1989).

[137]This was suggested by a person who had recently been admitted to the bar, had served three judges as law clerk, and was newly hired as a Public Defender. TRANSCRIPT OF CONFIDENTIAL TESTIMONY 390 (December 7, 1989).

[138]John Fuentes, Esq., VINELAND PUBLIC HEARING 1052 (December 13, 1989).

resolve a substantial number of matters by providing information and instruction to people who seek the office's assistance. The Committee notes that Camden and Hudson Counties already have created county offices to assist minorities in their contacts with local government. An ombudsperson office should provide similar assistance to persons in their contacts with the courts.

In addition, the ombudsperson is to bring to the attention of the Assignment Judge, Clerk of Court, or other appropriate court administrator matters that require something more than the actions set forth in the foregoing paragraph. It may be that a substantial number of matters will be able to be resolved simply by bringing them to the attention of the appropriate court manager.

The foregoing recommendation is based on the view that a substantial number of problems may be amenable to resolution through informal and less-structured action that is keyed to finding means of increasing levels of communication, awareness, and sensitivity. An ombudsperson office should be created as a means of supplementing the purposes of the existing agencies, e.g., disciplinary agencies, the Advisory Committee on Judicial Conduct, or the Division on Civil Rights. These agencies appear to be geared to address complaints of misconduct at a level not amenable to resolution on an informal or low-key basis. The ombudsperson offices should be established first as pilot programs in selected counties, with particular attention to their being adequately staffed.

RECOMMENDATION #32

THE SUPREME COURT SHOULD DIRECT THAT PERFORMANCE STANDARDS SIMILAR TO THOSE EXISTING FOR JUDGES, LAWYERS, AND PROBATION PERSONNEL BE ADOPTED FOR ALL EMPLOYEES OF THE JUDICIARY; THAT ALL JOB DESCRIPTIONS INCLUDE RELATED PROVISIONS; AND THAT THE PERSONNEL SYSTEM INCORPORATE THESE STANDARDS IN THE INITIAL SELECTION OF NEW HIRES, THEIR ORIENTATION, AND THEIR ONGOING PERFORMANCE EVALUATIONS.

The aim of this recommendation is to assure that the standards articulated, for example, in the Code of Judicial Conduct[139] are made applicable to all employees of the Judiciary and thoroughly integrated into the institutional culture. Specifically, the Supreme Court should direct that the following specific steps be implemented:

1. The adoption of a requirement in either the negative (prohibits discrimination according to the list included in the Code of Judicial Conduct) or the positive (e.g., to treat all persons equally, and with respect and dignity) for all employees of the Judiciary. There are two ways to make clear what employees should and should not do. The first is what we have called the negative approach, i.e., telling them what they should not do. In this case, employees should not, using the language of the Code of Judicial Conduct, "discriminate because of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status, or handicap."

[139]Under Canon 3, "A judge should perform the duties of judicial office impartially and diligently," the code provides the following under subsection 4: "A judge should be impartial, and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status, or handicap."

The second is what we call the positive approach, i.e., telling people what they should do. In this case, language requiring employees "to respect and treat with dignity all personnel, clients and the public" or "to treat clients ... in a civil, dignified and courteous manner" is appropriate.

2. The adoption of the requirement that all aspects of personnel practices include explicit attention to such standards so they are ingrained in the self-awareness and daily performance of every employee. The ways to implement this directive would include the following:

- Inclusion in every job description reference to the pertinent performance standards (e.g., to treat persons non-discriminatorily in terms of the variables listed above);
- Requirement that one of the variables to be considered when evaluating applicants be their knowledge of and skills in delivering services in a manner consistent with these standards;
- Obligation that all new hires attend an orientation program that includes specific training on what it means to work for the Judiciary and to deliver services in a manner consistent with these standards;
- Establishment of a performance evaluation system wherein all employees, including managers and supervisors, are evaluated in part according to their performance in terms of these standards, with related actions in the system of rewards and discipline for employees.
- Posting of the policy in every courthouse.

RECOMMENDATION #33

THE SUPREME COURT SHOULD DIRECT THAT PERFORMANCE STANDARDS BE ESTABLISHED TO EVALUATE EMPLOYEES' TREATMENT OF RACIALLY, CULTURALLY, AND ETHNICALLY SENSITIVE ISSUES.

Performance Standards and Evaluation Systems

The next element required for institutionalizing the kinds of standards that are necessary for assuring equal access is a performance standard with attendant evaluation systems. Even where there are policy statements about affirmative obligations to treat persons with respect and dignity and to refrain from racially or ethnically based discrimination, these standards must be meaningfully integrated into personnel practices.

> By examining the system itself, from the viewpoints of defendants, witnesses, victims, and court personnel, I think one of the basic things that might be necessary would be sensitivity training as part of the job description, sort of an orientation when one is hired in the Judiciary no matter what the position.[140]

Example: Judicial Performance Program

The Supreme Court adopted the Judicial Performance Program in November 1986 and promulgated the pertinent rule on June 2, 1988.[141] The Program is authorized and guided by Rule 1:35A. Its primary objective is to improve "the judicial system through the improvement of the performance of judges on an individual and

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[140]TRANSCRIPT OF CONFIDENTIAL TESTIMONY 355 (December 1990).

[141]For further information on the background of this program, see New Jersey Supreme Court Committee on Judicial Performance, FIRST REPORT ON THE JUDICIAL PERFORMANCE PROGRAM (December 1989).

institutional basis."[142] It accomplishes this goal through conducting evaluations of the performance of judges and offering educational programs. Non-tenured judges are initially evaluated after their second year on the bench and again in the sixth year, prior to reappointment. The Program also periodically evaluates tenured judges.

The primary tools of the evaluation component are questionnaires[143] that are completed by lawyers[144] who have appeared before a judge who is being evaluated and by Appellate Division judges who have reviewed cases appealed from that judge's court. Each of the questionnaires includes one question pertaining to bias under Section 3: Comportment: "Absence of bias and prejudice based on race, sex, ethnicity, religion, social class, or other factor (if less than adequate or poor, please explain in the Comments section)." Respondents select one of five choices: "Excellent," "More Than Adequate," "Adequate," "Less Than Adequate," and "Poor." Additionally, respondents are given the option of providing narrative comments concerning any aspect of the judge's performance.

Once a statistically reliable number of questionnaires has been collected (usually over a period of six to nine months), a report aggregating the questionnaires is prepared by Program staff and given to the judge being evaluated, the Assignment Judge for that

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[142]R. 1:35A-2.

[143]Some judges are videotaped and those tapes are evaluated by experts in communication and interpersonal skills.

[144]One questionnaire is for major trial events and a second questionnaire is for all other proceedings.

Vicinage, the Evaluation Commission, and the Supreme Court. The Evaluation Commission, a panel of retired judges, meets with each judge as well as the particular Assignment Judge and reviews the report with them, discussing shortcomings that may have surfaced during the interview process and planning steps for addressing them.

This is a good beginning for evaluating judges for racial and ethnic bias, but it has several drawbacks that limit its potential effectiveness. First, racial and ethnic bias is merged with other forms of bias. This prevents the Judiciary from finding out the degree to which racial and ethnic bias is being identified among the judges. Second, the lawyers and judges who fill out the questionnaires are not likely to have sufficient skill at recognizing and identifying racial and ethnic bias in both its passive and active forms. Third, the judges who serve on the Evaluation Commission may not be sufficiently familiar with these issues to effectively identify and respond to needs that may surface during the evaluation process. Fourth, the Program is limited to Superior Court Judges. There is no similar procedure for Municipal Court Judges.

Finally, the scope of the evaluation is incomplete because there are some critical measures of evaluation that are not included. Missing from the evaluation criteria are the following areas: (1) Understanding of cultural differences; (2) Ability to communicate effectively with litigants, jurors, and witnesses, simplifying and explaining legal language and concepts when necessary to assure effective communication and participation; and (3) Management of the courtroom, assuring that no form of disre-

spect or bias by or against attorneys, court personnel, or the public is tolerated.

FINDING #33

ACCESS TO COURTS IS LIMITED FOR MINORITIES WHO SPEAK LITTLE OR NO ENGLISH BECAUSE INTERPRETERS OFTEN ARE NOT SUFFICIENTLY QUALIFIED AND ARE NOT READILY AVAILABLE, AND THERE ARE INSUFFICIENT BILINGUAL COURT SUPPORT STAFF WHO CAN SPEAK THE LANGUAGES THAT ARE SPOKEN BY PERSONS IN NEED OF THEIR SERVICES.

Language barriers have been discussed in some detail in Chapter Three in the context of criminal courts. The linguistic impediments reported by the Committee on Criminal Justice and the Minority Defendant are not limited to criminal courts. The findings reported in the criminal context apply to all other parts of the Judiciary:

- Lack of familiarity with the judicial process by linguistic minorities;
- Language discrimination;
- Inadequacy of interpreting services; and
- Inaccessibility of support services.

The following discussion will further amplify some of the issues. First, an investigator with the Public Defender pointed out how many Spanish-speaking defendants he sees getting lost in the system. He testified,

> [T]hey just sit there and nobody knows who they are. Many of them just don't say anything. They're Spanish-speaking. They won't even say anything and, like people said, they got lost in the system. It is not that they get lost in

> the system—it's that they just get tired of calling for some assistance.[145]

The President of Alianza, the Hispanic Law Student Association at the School of Law at Rutgers-Camden, provided the following additional insights:

> We're appearing before you today to hopefully add to the awareness of the ever-increasing need for bilingual attorneys and translation services for Hispanic Americans and possibly other minority groups such as Asians, Pacific minorities. The law, as we all know, is a daunting and complex arena for any citizen, and this is doubly true of those who do not understand the English language. This lack of understanding can and has lead to the substantial impairment of legal rights of Spanish-speaking Americans in our judicial system today. Such harms begin with the inability of a Spanish-speaking client to communicate effectively with his or her attorney. Those of us who are familiar with the law know that little matters can make a big difference in the outcome of a case. A lawyer who is not bilingual is necessarily hampered in his ability to make the kind of detailed inquiry that is essential to the representation of the best interests of his client. Likewise, the Spanish-speaking client is impaired in conveying important facts to a judge or a jury that help his or her lawyer make out a good case on their behalf.
>
> These gaps in communications are compounded by lack of mutual confidence and the understanding that are indispensable to a client-lawyer relationship. One of the canons of ethics is predicated upon complete communication and candidness between the client and his attorney. There is a need for truly mutual, non-related translators for effectively representing this need to fulfill the complete cooperation between a client and his attorney. Without bilingual counsel and adequate translation services, many Spanish-speaking Americans are unable to understand the legal proceedings either for or against them and cannot communicate or represent themselves well before a court.[146]

Another dimension of the language barrier is the inhibiting effect the barrier presents to minorities contemplating filing complaints in court. For example, some linguistic minorities who

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[145]Armando Figueroa, PERTH AMBOY PUBLIC HEARING 814C (December 7, 1989).

[146]Thomas Earle, CAMDEN PUBLIC HEARING 126-127 (December 12, 1989).

speak little or no English are embarrassed by that fact and do not want their language deficit to become public. Others are simply intimidated by the language barrier and avoid situations where it presents itself. Still others fear being ridiculed because of their accented English or inability to speak English well.[147]

A third area of concern is the insensitivity of law enforcement personnel, court employees, and lawyers with respect to those who speak a different language. For example, judges sometimes proceed with a hearing without an interpreter,[148] lawyers sometimes refuse to use an interpreter in their meetings with clients,[149] and law enforcement personnel may try to take statements from persons whose limited English results in numerous mistakes. Furthermore, judges, lawyers, and court support personnel often use interpreters inappropriately, show little or no respect or understanding of the interpreters' role,[150] or permit persons who are either unqualified and/or ethically compromised to interpret (e.g., friends, relatives, children, prisoners). An employee of a women's shelter discussed how victims of domestic violence often are expected to bring their own interpreters.[151]

The fourth issue presented by the language barrier is that attorneys may take advantage of the vulnerability of parties who speak no English and are unfamiliar with the legal system. Only

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[147]COURT USAGE FOCUS GROUP REPORT, supra n. 4, at 244.

[148]Id. at 250.

[149]Id. at 249.

[150]Id. at 250.

[151]Debra Joy Pérez, TRENTON PUBLIC HEARING 852 (December 8, 1989).

one instance of this was reported to the Task Force,[152] but the victimizing of unsuspecting immigrants by attorneys has a long history.[153]

The fifth major concern reported to the Task Force is the unavailability of interpreters in the courts. A social worker talked about how there were no interpreters provided in the courts anywhere in the county where she works.[154] An attorney stated that the availability of interpreters varied from county to county, being readily available in some and not available at all in others.[155] A Hudson County attorney commented,

> I do a lot of matrimonial law, and I'd say 90% of the time I need an interpreter. And sometimes my client cannot pay for an interpreter. So I have to go down and hope that I find another colleague who speaks Spanish and will interpret for me and if not, I have to request of the court to call on somebody to do so. They're not readily available, and sometimes we have to sit around and wait for an hour to get somebody to come....[156]

A representative from the Hispanic Political Caucus noted,

> Our experience has shown that most Municipal Courts within our county do not have interpreters available to them for the purposes of assuring not only equal access, but understandable access to the judicial system.[157]

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[152]Rahway Focus Group, at 24.

[153]K. Claghorn, THE IMMIGRANT'S DAY IN COURT 134-144, 173-174 (1969; orig. published in 1923).

[154]Bianca N. González-Restrepo, ATLANTIC CITY PUBLIC HEARING 91 (December 16, 1989).

[155]Edward J. Gaffney, Jr., Esq., SUSSEX COUNTY PUBLIC HEARING 1169 (October 29, 1990). Specific examples of interpreting errors were supplied by Edward Mesa, UNION CITY PUBLIC HEARING 973 (November 30, 1989) and Robert Menéndez, UNION CITY PUBLIC HEARING 935-936 (November 30, 1989).

[156]Lilia Muñoz, Esq., UNION CITY PUBLIC HEARING 954 (November 30, 1989).

[157]Douglas Jones of the Hispanic Political Caucus, VINELAND PUBLIC HEARING 1034 (December 13, 1989).

This problem was also identified by Rosa Olivera Nims, the Chief Interpreter for the Eastern District of the United District Court in Brooklyn, New York, and a former staff court interpreter in Hudson County. Nims testified:

> I'd like to say my concern here has to do with what I think is one of the greatest problems that the courts in the State of New Jersey face. And that is that there is a lack of qualified interpreter at all levels, from Municipal Courts to Superior Courts.[158]

Ms. Nims also said she had observed numerous instances when children were forced to interpret due to the lack of staff court interpreters. She commented, "I mean, it's not fair to the child, it's certainly not fair to the parent.[159]

The last major issue is that judges and lawyers do not sufficiently understand the issues surrounding interpreting and communicating effectively with linguistic minorities. One witness indicated that while most judges are understanding of the issue, some are not.[160] A staff court interpreter noted:

> In New Jersey today, too much decision-making authority over matters of court interpreting is still in the hands of monolingual bureaucrats who display an indifference to and lack of understanding of court interpreting and the problems of linguistic minorities, and who have proven unwilling to seek out the opinions and follow the advice of those who know better.[161]

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[158]UNION COUNTY PUBLIC HEARING 1019 (December 2, 1989).

[159]UNION COUNTY PUBLIC HEARING 1022 (December 2, 1989).

[160]Edward Mesa, UNION CITY PUBLIC HEARING 975 (November 30, 1989).

[161]CONFIDENTIAL WRITTEN TESTIMONY 36 (March, 1991).

RECOMMENDATION #34

THE SUPREME COURT SHOULD DIRECT THAT ALL CODES OF CONDUCT INCLUDE A PROVISION THAT PROHIBITS DISCRIMINATION AGAINST LITIGANTS ON THE BASIS OF LANGUAGE.

The Task Force has shown in this chapter as well as in Chapter Three[162] that linguistic minorities are sometimes subjected to discriminatory treatment in the Judiciary because of language prejudice. It is important that the Supreme Court recognize language discrimination as behavior which should not be countenanced.

This concept is rooted in international human rights law and some aspects of domestic civil rights law.[163] At the level of human rights, Article 2 of the Universal Declaration of Human Rights provides,

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[164]

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[162]See the section on language discrimination in Chapter 3, supra, at xx-yy.

[163]For a review of how civil rights laws are sometimes interpreted to include prohibition of language discrimination under the national origin rubric and sometimes they are not, see LINGUISTIC MINORITIES, supra n. 2, at 48. See also J.W. Aniol, "Language Discrimination Under Title VII: The Silent Right of National Origin Discrimination," 15 J. MARSHALL L. REV. 667 (1982) and M. del Valle, "Language Rights and Due Process--Hispanics in the United States," 17 REVISTA JURIDICA DE LA UNIVERSIDAD INTERAMERICANA 91 (Sept.-Dec. 1982).

[164]United Nations, HUMAN RIGHTS--A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS 1, Doc. ST/HR/1, U.N. Sales No. E.73.XIV.2 (1973; Declaration adopted 10 December 1948) (emphasis added). The following sources provide helpful additional analysis and background: B. Piatt, "Toward Domestic Recognition of a Human Right to Language," 23 HOUS. L. REV. 885 (1986); R.F. Macias, "Language Choice and Human Rights in the United States," in LANGUAGE IN PUBLIC LIFE 86 (J.E. Alatis and G.R. Tucker eds. 1979); and M.S. McDougal, H.D. Lasswell, and L. Chen, "Freedom from Discrimination in Choice of Language and International Human Rights," 1976 S. ILL. U. L. J. 151 (1976).

RECOMMENDATION #35

THE SUPREME COURT SHOULD REQUIRE THAT A QUALIFIED INTERPRETER IS PROVIDED FOR EVERY PERSON WHO NEEDS AN INTERPRETER.

Because the Task Force recognizes the impediments attendant to language discrimination and its adverse impact on all affected court users at all levels, any person seeking access to the courts who is in need of an interpreter should be provided with a qualified interpreter.

RECOMMENDATION #36

THE SUPREME COURT SHOULD REQUIRE THAT ALL COURT PERSONNEL ATTEND ONGOING CROSS-CULTURAL TRAINING PROGRAMS.

New Jersey is the home of increasing numbers of persons of Hispanic origin, Asian-Americans, and other minorities. Cross-cultural training programs should be included as a required component in the training of all judges and court personnel, including in the Municipal Courts. Further, all newly-appointed judges and court employees should be provided with intensive cross-cultural training as part of their orientation. The training also should be provided on an on-going basis for all personnel. In addition, cross-cultural training manuals should be developed and disseminated to all newly appointed judges and new court personnel upon employment.

One particular area where training resources should be targeted is interracial and cross-cultural communication. There are many workshops, trainers, consultants, and experts in the fields of

communications, human relations, civil rights, and international relations who provide training in these important fields. The Administrative Office of the Courts should draw on experts in the appropriate fields to develop specific modules of training that are tailored for and specifically aimed at judges and certain specific groups of court employees (e.g., persons in case management units who conduct interviews and write reports about clients, persons in Probation Departments who supervise clients). These training modules should be flexible and efficient enough to permit delivery throughout the State at times when judges and other court employees can be trained. Furthermore, the training modules should focus primarily on skill development and involve hands-on exercises. Finally, they should include modules aimed at the new employee, which would be delivered within the first three months of each employee's starting date, and modules aimed at (1) substantive skill development within the first year and (2) periodic continuing education thereafter.

A special analysis should be conducted of those courts that handle matters where significant numbers of minorities appear since fair resolution of cases may depend especially on the court's understanding of the cultural background of the litigants. The particular racial and cultural issues that would be discovered by this needs analysis should form the basis for the development of specialized training modules specifically targeted to these special needs. The Task Force suspects that the Family Court is the place where such needs appear most often.

Several of the Task Force's members have recommended certain programs as being of particularly high quality. Two examples are

the B'nai B'rith "World of Differences" program and a course on cultural interaction given by Dr. Edwin Nichols, of the National Institute of Mental Health, at the Judicial Colleges in 1988 and 1989. The Committee further notes that various of its members have urged the use of professional consultants or organizations such as the National Association for the Advancement of Colored People, the National Conference of Christians and Jews, and the National Council of Churches to conduct the training because of their special expertise in these matters. While the Committee does not endorse specific organizations, there are competent organizations and individual consultants who can provide services of this kind.

RECOMMENDATION #37

THE SUPREME COURT SHOULD ADOPT A POLICY THAT REQUIRES ALL FORMS AND DOCUMENTS INTENDED TO BE READ BY LITIGANTS OR THE PUBLIC BE PUBLISHED IN LANGUAGE THAT THE LAY PUBLIC CAN EASILY COMPREHEND.

The basic thrust of this recommendation is an orientation toward the "consumer" of court services. Litigants and others should be able to read with understanding the forms, notices, summonses, brochures, and other documents issued by the courts for processing cases, advising litigants about their rights and obligations, or sharing information about courts and their services. We recommend that the Supreme Court adopt a policy that includes the following major characteristics:

- A balance between the Judiciary's legal needs (i.e., what the document needs to say in terms of legal sufficiency) and the clients' need to understand the document.

- Drafters competent to follow state-of-the-art principles for clear and plain legal drafting aimed at the reading level of the largest possible number of persons.[165]

- A drafting procedure that includes a pre-test of each given document on a sample of consumers, including a multi-racial and multi-ethnic review panel to evaluate and comment on the documents at each developmental stage.[166]

- A drafting procedure that includes a translator so the documents can be produced in simple, "easily translatable English."[167]

- Translation of all documents into Spanish and additional languages.[168]

- A monitoring mechanism that periodically evaluates the entire program to make sure that the documents are (1) as readable as they can be, (2) made available to those who need them, and (3) appropriately used by employees of the Judiciary.

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[165]See, e.g., C. Felsenfeld and A. Siegel, WRITING CONTRACTS IN PLAIN ENGLISH (1981); J. Redish, "How to Write Regulations (and Other Legal Documents) in Clear English," 1 LEGAL NOTES AND VIEWPOINTS Q. 73 (August 1981); and Office of the Federal Register, LEGAL DRAFTING AND STYLE MANUAL (March 1978).

[166]For guidelines and precedents, see, e.g., Charrow, V. and R. Charrow, "Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions," 79 COLUMBIA LAW REV. 1306 (1979); A. Elwork, B.D. Sales, and J.J. Alfini, MAKING JURY INSTRUCTIONS UNDERSTANDABLE (1982); and Redish, J., D. Felker, and A. Rose, "Evaluating the Effects of Document Design Principles," 2 INFORMATION DESIGN J. 236 (1981).

[167]The Supreme Court Task Force on Interpreter and Translation Services recommended, "The Supreme Court should adopt a policy that requires all judicial forms and documents used by persons involved in court proceedings to be drafted in easily translatable English...." LINGUISTIC MINORITIES, supra n. 2, at 194. See Chapter Two, "Questionnaire Wording and Translation," in R.W. Brislin, W.J. Lonner and R.M. Thorndike, CROSS-CULTURAL RESEARCH METHODS 32 (1973) for the classic discussion of the rules for writing translatable English.

[168]The Supreme Court Task Force on Interpreter and Translation Services recommended further that all of the forms and documents "be translated into such additional languages as the Administrative Director of the Courts approves, all such translations to be made by approved legal translators, and all such translations to be printed at levels of quality equal to that of the corresponding English versions." LINGUISTIC MINORITIES, supra n. 2, at 194.

RECOMMENDATION #38

THE SUPREME COURT SHOULD PERMIT THE COMMITTEE ON MINORITY ACCESS TO JUSTICE TO SUPERVISE THE COMPLETION OF THE DIFFERENTIAL COURT USAGE PROJECT.

There will be a need to provide ongoing monitoring of the research project on Differential Court Usage since it will not be completed until September, 1992. The Committee on Minority Access to Justice should remain in existence so it can review its findings and recommendations when the report of the Differential Court Usage Project is completed and submit a supplemental report to the Supreme Court.

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CHAPTER SIX
COMMITTEE ON MINORITY PARTICIPATION IN THE JUDICIAL PROCESS

Philosophical Statement

The Committee on Minority Participation was guided by a philosophical perspective that tied its work to the ends of justice and not merely the means of good administration and effective personnel practices. The Committee's work has been based on the belief that, in a pluralistic society, elementary concepts of fairness and equity require participation by members of all racial and ethnic groups at all levels and in all capacities in the justice system. Moreover, equal treatment under the law is tainted or questionable when members of minority groups receive treatment that is meted out to them almost exclusively by persons who are non-minorities. Increased participation and visibility for minorities both as Judiciary employees and volunteers may increase the level of minority confidence in and responsiveness to the judicial system. The benefits which may accrue from increased minority participation include substantive contributions to the Judiciary, increased diversity of ideas, and expansion of the pool of candidates from which the Judiciary selects its employees.

Scope

There were three major aspects of "minority participation" on which the Committee focused its attention. The first relates to the basic personnel policies and practices of the Judiciary, and to

what degree the Judiciary is an employer whose personnel policies and practices assure equal employment opportunity and affirmative action? A subsidiary question extends that concern to volunteers, who may be viewed in part as part of the Judiciary's personnel system.

The second major issue is the representation and participation of minorities at the policy-making and management levels of the Judiciary. The fundamental question in this context is: To what degree and in what respects do minorities influence the policies and practices in the Judiciary?

The third major issue is a corollary of the other two. This dimension of participation concerns understanding the potentially positive impact a visibly diverse work force may have on the views minorities and non-minorities have of the Judiciary.

Activities

The Committee used a variety of approaches to carry out its mandate. These approaches provided the Committee with the opportunity to develop a well-rounded and well-informed understanding of the state of minority participation in the courts.

The Committee's first task was data gathering. The Committee members reviewed several years of statistics on minority employment in the courts. The records included the number of minority judges, minority staff persons on the State judicial payroll, minority court staff on county payrolls, and minority staff persons on the various Supreme Court Committees and Task Forces. The Committee periodically requested and received reports on specific employment titles in order to focus on key professional positions.

The Committee also met with the head of the State Department of Personnel's Equal Employment Opportunity/Affirmative Action[1] Office to learn of Executive Branch programs. Representatives of New Jersey Bell and the Port Authority of New York and New Jersey shared information on their respective programs (see Appendix E1).

The Committee learned of the work of the Partnership for New Jersey in helping companies manage cultural diversity in the work place and sought information from eighty leading companies with excellent records in EEO/AA as listed in BLACK ENTERPRISE MAGAZINE[2] and HISPANIC.[3] Requests were sent to these eighty companies soliciting more information about EEO and affirmative action programs; these companies were specifically asked to include those techniques which had proved most successful. Twenty-five responses were received. These responses were compiled and analyzed; a summary of the findings may be found in Appendix E2.

The Committee reviewed, with comment, the drafts of the Judiciary's State-level EEO/AA Plan as it was being prepared. The Administrative Director of the Courts ultimately approved the State plan and promulgated it in May 1988. A number of similar EEO/AA Vicinage plans were reviewed. One area of special concern to the Committee was the proposed initiatives to increase Latino representation in the Judiciary.

An additional concern was the percentage of minorities among court volunteers, court appointees, and staff of the Administrative

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[1]These are abbreviated hereinafter as EEO and AA respectively.

[2]"The 50 Best Places for Blacks to Work," BLACK ENTERPRISE MAGAZINE 73 (February 1989).

[3]"A Salute to the Hispanic 100," HISPANIC 34 (January/February 1990).

Office of the Courts to Supreme Court Committees and Task Forces. Special data gathering efforts were put into place to collect information. For example, a joint effort with staff to the 1989 Judicial Conference resulted in a useful data base designed and developed to periodically review the racial/ethnic composition of court appointees, volunteers, and staff.

In an effort to gauge the public's assessment of minority representation in the Judiciary, the Committee members participated in the Task Force's public hearings in 1989-1990. The Task Force received numerous comments relating to minority employment and related issues of participation in the court system.

Three focus group sessions on the law clerk experience were conducted to ascertain the effect of the Chief Justice's program to increase the number of minority law clerks. Participants included former minority and non-minority clerks and minority and non-minority judges.

An ongoing study was launched in collaboration with the Advisory Committee on Bar Admissions to ascertain whether there is bias in the design or grading of the essay portion of the Bar Examination.[4] The Committee also reviewed the analysis of Bar Examination passing rates conducted for the Advisory Committee on Bar Admissions.[5]

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[4]REPORT OF THE NEW JERSEY SUPREME COURT ADVISORY COMMITTEE ON BAR ADMISSIONS ON REVIEW OF BAR EXAMINATION QUESTIONS BY ATTORNEYS FROM MINORITY AND MAJORITY ETHNIC GROUPS (October 1, 1991). This document may be found at Appendix E3.

[5]S.P. Klein and R. Bolus, A STATISTICAL ANALYSIS OF THE NEW JERSEY BAR EXAMINATION (April 3, 1990); S.P. Klein and R. Bolus, ADDENDUM TO APRIL 1990 REPORT ON THE NEW JERSEY BAR EXAMINATION (September 5, 1991). These documents are provided at Appendices E4 and E5 respectively.

During summer 1990, an exploratory study of the quality of life of court employees was conducted.[6] Eighty-seven trial court employees, judges, managers, and non-managers were interviewed. Nine vicinages were represented in the survey. The employees were asked open-ended questions about their perspectives on the Judiciary's role in an increasingly racially and ethnically diverse work place, on court operations, on personnel practices, and on other specific areas of concern.

At the request of the Task Force, the Administrative Office of the Courts conducted a census of Municipal Court personnel. This study—the first census of Municipal Court personnel conducted by the Judiciary—provided the Task Force with baseline data. Responses were received from 92% of Municipal Courts.[7]

Overview of the Judiciary's Minority Employee Profile: State, County, and Municipal Levels

In order to place the context of the discussion which follows into perspective, the following Judiciary personnel profile is instructive:

- There are 8,779 non-judge judicial employees (county and State).
- 85.4% of judicial employees are county personnel; 14.6% are on the State payroll.
- 20.2% of all State-paid judicial staff are racial and ethnic minorities;

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[6]QUALITY OF LIFE SURVEY (June 1992). This report is included as Appendix E6.

[7]SURVEY OF MUNICIPAL COURT PERSONNEL (November 6, 1991). This report is provided at Appendix E7.

- 24.1% of all county employees are minorities;
- 27.0% of the Municipal Court employees are racial and ethnic minorities;
- The combined figure for State, county, and Municipal Court non-judge personnel is 10,975; 2,659 (23.8%) are racial/ethnic minorities;
- Minority representation in the State and county judicial labor force is "bottom heavy;" 71.5% of all minority employees are below the professional level.
- At the Municipal Court level, only 4.5% of the top managers are minorities.

TABLE 34

JUDICIARY'S MINORITY EMPLOYEE PROFILE[8]

MINORITY EMPLOYEE PARTICIPATION CATEGORY[9]	TOTAL NUMBER OF EMPLOYEES	TOTAL NUMBER OF MINORITY EMPLOYEES	PERCENT OF MINORITY EMPLOYEES
State	1,285	259	20.2%
County	7,494	1,807	24.1%
Municipal	2,196	593	27.0%
Totals	10,975	2,659	23.8%

[8]The chapter discussion reveals that the underrepresentation of minority employees in senior management positions is evident at the state, county, and municipal levels.

[9]Data for state and county employees are for April, 1992; data for municipal employees are for 1990.

Findings and Recommendations

FINDING #34

WHEN A MINORITY COMES TO COURT, THE DEGREE TO WHICH OTHER MINORITIES ARE VISIBLY PRESENT AS EMPLOYEES OF OR PRINCIPAL PARTICIPANTS IN THE COURT OFTEN PLAYS A SIGNIFICANT ROLE IN SHAPING THAT MINORITY PERSON'S EXPECTATIONS OF BEING TREATED FAIRLY.

> But I know that if I go before a black or Hispanic judge, I've got a better shot than if I go before a white judge. That's the way I feel. Most defendants feel that way.[10]

The Task Force gathered considerable evidence that the view a minority person has of the fairness of the legal process will be shaped to a significant degree by the presence of minority court and judicial personnel. When a minority person enters the court and observes that the Judiciary has so few minorities employed in the system, many believe that the system is biased and that the likelihood of receiving fair treatment is diminished.

Many minorities find they have no one or too few persons in the court system with whom they can identify.[11] Some believe that understanding and effective communication will be more likely to occur when a minority litigant is able to communicate with a minority professional. This view is expressed by minorities from diverse socioeconomic backgrounds.

The Legal Redress Chairman of the New Jersey State Conference of NAACP Branches views the minority professional as the bridge

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[10]Focus Group at East Jersey State Prison 27 [hereinafter Rahway Focus Group]. The Committee on Criminal Justice and the Minority Defendant conducted three focus groups with prisoners. Citations are to transcripts of the focus groups. The transcript of this focus group may be found at Appendix D3.

[11]EVALUATION OF PROPOSED RESEARCH ON DIFFERENTIAL COURT USAGE BY TEN PERSONS WITH EXTENSIVE FIELD EXPERIENCE WORKING WITH RACIAL, ETHNIC AND LINGUISTIC MINORITIES IN NEW JERSEY'S COURTS 246 (I. Bey and R.J. Lee eds. February 2, 1988). See Appendix D-2 for this document.

between those minorities in the lower socioeconomic classes and the predominantly middle- and upper-class court and legal system personnel. He said,

> When I talk—I go back again to the black experience—is that an attorney of color having to represent a person of color will still have that black experience idea and sensitivity in understanding a person's struggle so he can articulate to the court in the manner that the court can understand—in the king's English. What I'm saying is that these clients, these people of color have little education and cannot articulate themselves so that someone who is higher up in authority can understand them and understand them well. And so ... we have to increase the number of Blacks, minorities, Hispanics in the court system....[12]

David Allen Brown, President of the Long Branch Chapter of the NAACP, put it this way:

> If I don't see black judges—I'll be blunt and open—if I don't see black judges, if I don't see black assistant prosecuting attorneys, if I don't see those people that look like me, whom I can confide in, not just me, but people in the community, I have no reason to go to them.[13]

David José Alcántara, an Atlantic City attorney, said the following about his clients:

> When some of my Municipal Court matters go to court, the clients approach with great trepidation and feel that, no matter what they do or say, they won't be believed because again they feel that the judicial system is outside their total understanding and affords no protections because they don't see a Spanish-speaking officer out there, or a judge, or a prosecutor, or even a Public Defender.[14]

In a similar vein, the President of the Black Women Lawyer's Association made the following statement:

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[12]Reginald P. Jeffries, EAST ORANGE PUBLIC HEARING 321 (November 29, 1989).

[13]NEPTUNE PUBLIC HEARING 470 (February 27, 1990).

[14]ATLANTIC CITY PUBLIC HEARING 47 (December 16, 1989).

> I think that another way to diffuse the tension and the appearance of partiality and racial bias is to employ a greater number of minorities in the court system. The sense is that there is a great amount of cronyism when it comes to employment in the court system. Your employment basically depends or hinges on who you know. Many clients have the sense that they are surrounded by people who have historically served as their oppressors. We have a white judge. We have a non-minority stenographer. We have a non-minority court officer, secretary, and prosecutor likewise. So I believe that an increase in the number of minorities would especially help in terms of having additional support staff available. I also believe that there should be an appointment of additional minority judges to sit on the bench as a means of sensitizing the court to certain issues which may arise. I realize that a part of the problem which exists is derived from attitudes and behavior which have been adopted and accepted by society, attitudes and behavior which reflect a lack of understanding or knowledge of a different group of people. People who are employed in the court system are the same people who are afraid to walk alone in certain urban settings. These are the people who make decisions as to how fast or slow a bail slip gets down to the appropriate bail counter. So I believe that in order to diffuse some of the problems, additional minorities should be employed in the system.[15]

Minority prisoners who participated in focus groups were asked whether they thought the odds of being treated fairly were better if they went before a minority judge or were being prosecuted by a minority prosecutor. Some said it did not matter, "just as long as he's fair."[16] Other prisoners said they thought their chances of fair treatment would be better, and, at the very least, they would be less intimidated by the process.[17]

> I think that if we had a black judge ... who understands the neighborhood ... that they wouldn't be so quick to prejudge the way white judges do to Blacks and/or Puerto

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[15]Esther Canty, ATLANTIC CITY PUBLIC HEARING 87 (December 16, 1989).

[16]Focus Group at Hudson County Jail, Secaucus Annex 46 [hereinafter Hudson Focus Group]. See Appendix B4 for the transcript.

[17]Focus Group at Edna Mahan Correctional Facility for Women 96-97 [hereinafter Mahan Focus Group]. The transcript is provided at Appendix B5.

> Ricans ... in the court system. If we had someone of a likeness of our pigmentation, then we would be able to more or less communicate when we bring our argument in a courtroom, regardless of whether the prosecutor was white or black. We would have a representative that we could balance things out and weigh the pros and cons....[18]

Another prisoner said that an Hispanic defendant could communicate with an Hispanic judge and avoid the language problem.[19] Echoing this concern, a prisoner made the following statement during a focus group session: "But if we have more Hispanics and Blacks as attorneys and even prosecutors, I think we'll have a better chance because they understand us better than anybody else."[20]

However, other inmates thought the race or ethnicity of the judge or prosecutor would not matter. "A judge is a judge, the bastards got to do their job."[21] Some prisoners were also concerned that minority officials in the legal system had lost their connectedness to their minority origins with the passage of time. A focus group participant from the Secaucus Annex of the Hudson County Jail commented, for example, "After a while, they been there for a while, they start getting their money ... they go with the flow."[22]

An Hispanic attorney, commenting on the importance of having minorities employed in the courts, discussed the benefits to the

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[18]Hudson Focus Group, supra n. 16, at 49.

[19]Id. at 48.

[20]Id. at 81.

[21]Mahan Focus Group, supra n. 17, at 96-97.

[22]Hudson Focus Group, supra n. 16, at 48.

Judiciary. It is not just to see that persons with whom a minority can identify are working in the court. Rather it is the view that working with minority personnel is one of the best ways to promote interracial and interethnic understanding and gain an appreciation for cultural differences. If the work force lacks representation of the rich mosaic of the clients it serves, then the employees will lose the opportunity to grow in tolerance, understanding, and sensitivity. The attorney stated:

> I think that the one and most important recommendation I can give to the Judiciary is we need more Hispanics in the Judiciary and I don't mean just as judges. I mean at every level: case managers, secretaries to the judges. You know, sometimes if a judge does not understand or see the reason why a certain case may be going a certain way it is because the client has different customs and cultures. You have a Hispanic secretary in your office and you learn how this person is different from you, although she may be the same, you can better understand who's coming before you. I'm sure that the black population, the attorneys feel the same way, that we're all foreign to that judge. He has no one around him who is like us.[23]

Minority court personnel responding to the Quality of Life Survey discussed the general atmosphere of bias and ill treatment by non-minority managers and other court personnel toward minority court employees as well as minority citizens who came into contact with the court.[24] Many minority court employees indicated that a large number of non-minority employees fail to understand or appreciate the various cultures of the minorities with whom they work and serve daily, and thus have a negative attitude in dealing

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[23]Lilia Muñóz, Esq., UNION CITY PUBLIC HEARING 955-956 (November 30, 1989).

[24]QUALITY OF LIFE, supra n. 6, at 25-27.

with them.[25] The negative attitudes of white court personnel may be expressed in several ways. For example, many whites either are not helpful or rude to minorities who seek information from the courts, court offices, and departments.[26]

Judges and senior-level managers also voiced their concerns about minority participation in the Judiciary. The majority of judges and court managers (71.4% [see Table 35]) reported that the perception of the court system held by minority litigants depends, at least "sometimes," "usually," or "always," on the level of minority representation among judges and court personnel.

TABLE 35

PERCENTAGE DISTRIBUTION OF RESPONSES TO THE COURT PROCESS QUESTIONNAIRE, Q45: "MINORITY LITIGANTS' PERCEPTION OF THE COURT SYSTEM DEPENDS UPON THE PROPORTION OF MINORITY JUDGES AND MINORITY COURT PERSONNEL."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	6.3%	20.9%	54.4%	16.5%	1.9%	158
Managers	3.7%	26.9%	53.7%	14.8%	0.9%	108
Both	5.3%	23.3%	54.1%	15.8%	1.5%	266

While the overall perceptions of minorities as reported to the Task Force support the proposition that greater minority participation in all areas of the Judiciary diffuses the perceptions and/or

[25] Id. at 31-32.

[26] Id. at 32.

fact of racial and ethnic bias, there were some who were not inclined to agree that race or ethnicity has an adverse impact on minorities.

FINDING #35

THERE IS A PAUCITY OF MINORITIES ON THE NEW JERSEY SUPREME COURT, SUPERIOR COURT, AND TAX COURT.

Summary Statistics: New Jersey Minority Jurists

When all judges are combined, there are 925 judges in New Jersey; fifty are minorities. In total, 5.4% of New Jersey's judges are minority—thirty-eight black judges and twelve Hispanic judges. There are no Asian-Pacific Islander or Native American judges. Cumberland, Hunterdon, Ocean, Salem, Somerset, Sussex, and Warren Counties are the seven counties in the State that have no minority jurists in either Superior Court or Municipal Court. This figure represents one-third of the counties in New Jersey.

Supreme Court

There are no minorities on the New Jersey Supreme Court.

Superior Court (Appellate and Trial Divisions)

As of April 1992, there were 339 Superior Court Trial Division judges, twenty-five (7.4%) of whom were minorities. One minority

judge (3.6% of the Appellate Division judges) serves on the Appellate Court.[27] See Table 36.

TABLE 36

REPRESENTATION OF MINORITIES AMONG NEW JERSEY'S JUDGES
(APRIL 1992)

COURT	TOTAL NUMBER OF JUDGES	NUMBER OF MINORITY JUDGES		SUMMARY FOR ALL MINORITY JUDGES	
		BLACKS	HISPAN-ICS	TOTAL NUMBER	PERCENT OF ALL JUDGES
Supreme Court	7	0	0	0	0.0%
Appellate Division	28	1	0	1	3.6%
Superior Court (excluding App. Div.)	339	17	8	25	7.4%
Tax Court	9	0	0	0	0.0%
Sub-total: State Judges	383	18	8	26	6.8%
Municipal Court[28] (1990 Data)	542	20	4	24	4.4%
Total: All Judges	925	38	12	50	5.4%

Although the number of minority judges in the Superior Court Trial Division has been increasing over the last several years, the proportional representation of minorities on the Bench has remained

[27]The Honorable James H. Coleman, Jr., was appointed to Appellate Court in 1981.

[28]The unit of count in the Municipal Courts is judgeships instead of judges. This approach is necessary since some Municipal Court judges sit in two or more Municipal Courts and representation is an issue on a court-by-court basis, not person-as-judge basis.

fairly even at approximately 5.0%. In 1983, there were thirteen minority judges (4.0%); in 1984, twelve (5.0%); and in 1986, fifteen (5.0%). The net increase of minority judges appointed to Superior Court between 1986 and April 1992 is +2.4%.

In 1986 four or 25.0% of minority judges had tenure. As of April 1992, eight or 32.0% of minority judges had tenure. This represents a 7.0% increase over the course of six years.

Tax Court

There are no minority judges in Tax Court.

Representation of Minority Trial Division Superior Court Judges by County

Table 37 presents data on minority Superior Court judges for each county in New Jersey. Nine counties have no minorities currently on the Superior Court bench: Burlington, Cumberland, Hunterdon, Ocean, Passaic, Salem, Somerset, Sussex, and Warren. Essex County has nine minority jurists (17.3%); Hudson County has four minority judges (14.3%); Middlesex (6.1%) and Union County (9.1%) each have two minority jurists; and each of the following counties has one minority judge: Atlantic (6.7%), Bergen (3.1%), Camden (4.8%), Cape May (33.3%), Gloucester (12.5%), Mercer (6.3%), Monmouth (4.5%), and Morris (6.3%).

In summary, minorities comprise 6.8% of the 383 judges who serve on the Supreme Court, Appellate Division, Superior Court (Trial Division), and Tax Court, as previously shown in Table 36.

TABLE 37

NEW JERSEY SUPERIOR COURT: TRIAL DIVISION JUDGES BY COUNTY
(APRIL 1992)

COUNTY	TOTAL NUMBER OF JUDGES	TOTAL NUMBER OF MINORITY JUDGES	PERCENT MINORITY
SUPERIOR COURT, TRIAL DIVISION			
Atlantic	15	1	6.7%
Bergen	32	1	3.1%
Burlington	12	0	0.0%
Camden	21	1	4.8%
Cape May	3	1	33.3%
Cumberland	7	0	0.0%
Essex	52	9	17.3%
Gloucester	8	1	12.5%
Hudson	28	4	14.3%
Hunterdon	3	0	0.0%
Mercer	16	1	6.3%
Middlesex	33	2	6.1%
Monmouth	22	1	4.5%
Morris	16	1	6.3%
Ocean	13	0	0.0%
Passaic	19	0	0.0%
Salem	2	0	0.0%
Somerset	8	0	0.0%
Sussex	4	0	0.0%
Union	22	2	9.1%
Warren	3	0	0.0%
Total	339	25	7.4%

RECOMMENDATION #39

THE SUPREME COURT SHOULD CONSIDER PRESENTING TO THE GOVERNOR AND THE STATE LEGISLATURE THE FINDING OF THE TASK FORCE THAT THERE IS WIDESPREAD CONCERN ABOUT THE UNDERREPRESENTATION OF MINORITIES ON SUPREME, SUPERIOR, AND TAX COURT BENCHES.

All judges must be attorneys. The most reliable data available of racial and ethnic breakdowns of New Jersey attorneys show that, as of 1986 (the most recent year for which there are data) 4.7% of attorneys in New Jersey were minority.[29]

There are two dimensions to the judicial appointment process. The first involves the threshold requirement of admission to the Bar and the experience requirement. A Superior Court appointment requires that an attorney be a member of the Bar for a minimum of ten years. Municipal Court judicial appointments require no minimum number of years of experience.

The second dimension involves the actual politics of the appointment process. Supreme Court Justices, Superior Court Judges, and Tax Court Judges are nominated by the Governor and approved by the Senate. Municipal Court Judges are appointed by local governing bodies except in those cases where two or more municipalities share a court, in which case the appointment is made by the Governor. While the Task Force recognizes and respects the

[29]The most recent data on race and ethnicity of lawyers date from 1986. A survey of 30,479 attorneys was conducted and 27,047 of them indicated their race or ethnic background. The results were as follows: 741 (2.8%) Blacks, 287 (1.1%) Hispanics, 117 (0.4%) Asians, 13 (0.0%) Native Americans, 109 (0.4%) Others, and 25,780 (95.3%) Whites. 1987 STATE OF THE ATTORNEY DISCIPLINARY SYSTEM REPORT 151 (1987). The race/ethnicity variable no longer appears on the Annual Attorney Registration Statement.

separation of powers, the Supreme Court can properly play an informational and educational role.

The career paths of those minority judges who are presently sitting on Superior and Municipal Courts highlight the role of politics in judicial appointments. Prior to appointment, virtually all of the judges had an established record of one or more of the following: strong ties in the community, political connections, Bar association involvement, and/or prior public service. For instance, about one-half (54.8%) of the minority judges currently sitting in Superior Court previously served at the Municipal Court level.

Additionally, most non-minority judges have experienced similar career paths. For example, without exception, all of the 1991 Superior Court appointees have background which include at least two of the aforementioned experiences.[30] Therefore, these unwritten, but apparently clearly essential additional requirements, are not unique to minorities. Thus, notwithstanding the basic requirements set forth in the New Jersey Constitution, to be seriously considered for a judicial appointment, aspiring judges—at the very least—must have a background which includes one or more of the previously discussed professional, political, or civic experiences.

Consequently, minority attorneys must be encouraged and recruited to become involved in those activities which enhance their marketability for judgeships. Minority Bar associations, which compiled lists of minority lawyers who meet the threshold

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[30]See 1991 PICTORIAL DIRECTORY OF SUPERIOR COURT APPOINTEES.

requirements, must take a leadership role in lobbying legislators and county/State Bar associations to collectively work toward increasing the number of minority judges at all levels. Additionally, and perhaps most important, it is even incumbent upon those minority attorneys with no judicial aspirations to become involved in the professional and political organizations which influence the appointment process to ensure that minority concerns are raised and addressed. Of course, it is equally important that those institutions which influence the judicial appointment process be receptive to minority representation and participation at all levels.

It is noteworthy that the public regards the underrepresentation of racial/ethnic minorities on the Bench as significant, as seen in the Task Force's public hearings and the statements of minority group representatives. Hence, public awareness of the politics of judicial appointment may increase the public's lobbying efforts in this area with their elected officials. Although it is clear that the Supreme Court cannot become directly involved with the judicial appointment process, the Task Force recommends that the Supreme Court take deliberate steps to encourage those in the judicial selection process to improve the representation of minority judges.

FINDING #36

THERE IS A DEARTH OF MINORITY JUDGES ON THE MUNICIPAL COURT LEVEL.

At the Municipal Court level in 1990, twenty-four (4.4%) of the 542 judgeships were held by minorities. (Refer to Table 38.) In 1980, there were seven minority Municipal Court judges (1.5% of the

total of 463 judgeships).[31] This figure represents an increase of +2.9% over the last decade.

An examination of Table 38 reveals that Essex County has the highest numerical (ten) and proportional (30.3%) representation of minority Municipal Court jurists; Camden has four minority Municipal Court judges (10.3%). Each of the following counties has two minority jurists: Hudson (9.5%), Mercer (11.1%), and Passaic (11.1%). Atlantic (4.5%), Bergen (2.3%), Burlington (2.6%), and Union (4.2%) each have one minority Municipal Court judge.

According to 1990 data, the following twelve counties had no minority Municipal Court judges: Cape May, Cumberland, Gloucester, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren. It is noteworthy that those counties where there is a significant minority population also have the larger proportion of minority judges. The Task Force believes that even in those counties where there are small percentages of minorities in the population, there are positive gains which may result from the participation of minority judges, especially since their representation will reflect the rich mosaic pattern of racial and ethnic pluralism in the State.

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[31]SURVEY OF MUNICIPAL COURT PERSONNEL, supra n. 7, at 8-10.

RECOMMENDATION #40

THE SUPREME COURT SHOULD CONSIDER PRESENTING THE FINDING OF THE TASK FORCE THAT THERE IS WIDESPREAD CONCERN ABOUT THE UNDERREPRESENTATION OF MINORITIES ON THE MUNICIPAL COURT BENCH TO ALL MAYORS AND MUNICIPAL COUNCILS.

Historically, service in the Municipal Court has been a stepping stone for many minority judges who ultimately are appointed to Superior Court. Since there is no requirement to have been a member of the Bar for any period of time, Municipal judgeships may be an area where minorities may more readily be appointed to the Bench. Accordingly, the Supreme Court should consider giving special emphasis to diversifying the Municipal Court Bench by making all mayors and municipal councils aware of the Judiciary's desire for more minority Municipal Court judges.

FINDING #37

THERE IS SIGNIFICANT UNDERREPRESENTATION OF MINORITY JUDGES IN THE PROMINENT ASSIGNMENTS OF THE SUPERIOR COURT.

There is a significant lack of minority judges among those assigned to the Appellate Division, the General Equity Bench, and the positions of Assignment Judge and Presiding Judge. Of the total number of prestigious judicial assignments (N=119), 5.0% (n=6) are held by minority judges.[32] The proportion of minority judges who hold these positions is slightly below their proportional representation (7.4%) in the State (excluding Municipal Court).

[32]There are twenty-eight Appellate Division judges, fifteen Assignment Judges, sixty Presiding judgeships, and sixteen General Equity jurists.

TABLE 38

NEW JERSEY MUNICIPAL COURT JUDGESHIPS BY COUNTY AND MINORITY GROUP[32]
(1990)

COUNTY	TOTAL NUMBER OF JUDGESHIPS	TOTAL NUMBER OF BLACK JUDGESHIPS	TOTAL NUMBER OF HISPANIC JUDGESHIPS	PERCENT MINORITY JUDGESHIPS
Atlantic	22	1	0	4.5%
Bergen	44	1	0	2.3%
Burlington	38	1	0	2.6%
Camden	39	4	0	10.3%
Cape May	15	0	0	0.0%
Cumberland	13	0	0	0.0%
Essex	33	9	1	30.3%
Gloucester	25	0	0	0.0%
Hudson	21	1	1	9.5%
Hunterdon	11	0	0	0.0%
Mercer	18	1	1	11.1%
Middlesex	31	0	0	0.0%
Monmouth	51	0	0	0.0%
Morris	39	0	0	0.0%
Ocean	34	0	0	0.0%
Passaic	18	1	1	11.1%
Salem	14	0	0	0.0%
Somerset	18	0	0	0.0%
Sussex	15	0	0	0.0%
Union	24	1	0	4.2%
Warren	19	0	0	0.0%
Totals	542	20	4	4.4%

[32]This table is extrapolated from Tables 5-6 in SURVEY OF MUNICIPAL COURT PERSONNEL, supra n. 7, at 9-10.

Since 1986 nine judges have been elevated to the Appellate Division; thirteen judges promoted to the General Equity Bench. Four Assignment Judge vacancies have been filled, and seventy-three Presiding Judges have been appointed. There have been ninety-nine promotions; 5.1% (n=5) of these promotions went to minority jurists.

Currently there is one minority judge of twenty-seven in the Appellate Division and three (5.5%) of fifty-five Presiding Judges.[34] There are no minority judges among the Assignment Judges. The Task Force's chairman serves on the General Equity Bench; he was appointed in March 1991.

RECOMMENDATION #41
THE CHIEF JUSTICE SHOULD PROMOTE MINORITY JUDGES INTO THE MORE PRESTIGIOUS AND POLICY-MAKING JUDICIAL ASSIGNMENTS.

While the percentage of minority judges between 1986 and 1992 has increased by 2.4%, 5.1% of the ninety-nine promotions have gone to minorities. The criteria used by the Chief Justice to promote judges are not defined in any published document. The Task Force believes that an examination of the career paths of those judges who have been promoted may be instructive for those jurists who seek further advancement. The permanent Committee on Minority Concerns should collect and analyze these data.

[34]There were originally four minority appointments to Presiding Judgeships. One of the minority Presiding Judges is deceased.

FINDING #38

MINORITY REPRESENTATION IN THE KEY POLICY-MAKING AND SENIOR MANAGEMENT POSITIONS IS SERIOUSLY LOW AT EACH LEVEL OF THE JUDICIARY.

> Unless you have someone who is in a policy-making position who has felt what you feel and has experienced what you experience, the likelihood of your issue getting heard is remote because there's no one there who has felt your pain. And that's why I think Hispanic, black, female representation is so important. Not to have token people in positions,but to have people here and when you say something, they immediately identify with it and they know what you're talking about.[35]

> I see no significant minority representation at policy-making levels in the Judiciary, not only judges, but on our key committees and offices throughout the State where we can be influential enough to try to narrow the gap.[36]

At the Task Force's public hearing in Jersey City, one speaker shared his assessment:

> Sheer numbers is not the answer, because, you know, if you have a thousand janitors, you have a thousand janitors. You got a thousand employees, but they're all janitors.[37]

The speaker was not minimizing the work of the janitorial staff, but emphasizing the importance of having a sufficient number of minorities in key positions, those entrusted with policy decisions, administration, and supervision. The Task Force agrees with this emphasis.

Senior-level management and policy-making positions at all levels and in all segments of the Judiciary are overwhelmingly held

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[35]José L. Fuentes, Esq., UNION CITY PUBLIC HEARING 964-965 (November 30, 1989).

[36]Billy Delgado Muñóz, Esq., PERTH AMBOY PUBLIC HEARING 753 (December 7, 1989).

[37]Paul Michael DePascale, Hudson County Prosecutor, JERSEY CITY PUBLIC HEARING 404 (December 1, 1989).

(94.6% [see Table 39]) by non-minorities. The previous three findings already have demonstrated that minorities are underrepresented among judges generally and, especially, in the management positions held by judges. The presence of minorities in key non-judge positions is similarly important.

As Table 39 illustrates, the presence of minorities among the senior managers at the State level is 9.6% overall[38] and ranges from 0.0% to 33.3%. The Supreme Court employs no senior level managers; the Administrative Office of the Courts (including Trial Court Administrators) employs 8.5% minority managers in key policy-making positions. The Appellate Division has the highest proportion of minority representation (33.3%), followed by the Superior Court and the Tax Court Clerks' Offices combined (25.0%).

When the EEOC statistics for officials and administrators were examined over a period of six years for three discrete data points, one finds that there has been little change in the proportion of minority officials and administrators. See Table 42, infra, for further details. In 1986, 9.3% of the officials and administrators were minorities, while in 1988 the figure was 8.7%. In 1990 it was 9.2%, and in 1992, there were 9.6% minority officials and administrators in the State-paid work force. The consistently stable levels of representation of minorities among officials and administrators for the four measurement periods for State-paid court employees is disappointing. Obviously, better results are necessary.

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[38]When all "officials and administrators" are combined and include more managers than the senior managers, the percentage of minorities drops to 8.8%. See Table 43.

TABLE 39

REPRESENTATION OF MINORITIES IN THE KEY POLICY-MAKING AND MANAGEMENT POSITIONS IN THE NEW JERSEY JUDICIARY (APRIL 1992)

GROUPS OF POSITIONS	NUMBER OF POSITIONS	NUMBER OF MINORITIES	PERCENT OF POSITIONS HELD BY MINORITIES
STATE LEVEL	N=114	N=11	9.6%
Supreme Court[39]	10	0	0.0%
Appellate Division[40]	6	2	33.3%
Superior Court and Tax Court Clerks Offices[41]	4	1	25.0%
Administrative Office of the Courts[42] and TCAs	94	8	8.5%
COUNTY LEVEL	N=108	N=5	4.6%
Deputy and Assistant TCA's	29	2	6.9%
Vicinage Chief Probation Officers & Ass't. VCPOs	38	3	7.9%
Vicinage Division Managers (Civil, Criminal, Family & Municipal)	41	0	0.0%
MUNICIPAL LEVEL	N=466	N=21	4.5%
Top Managers	466	21	4.5%
TOTALS	688	37	5.4%

[39]Includes the Special Assistant to the Chief Justice, the Clerk and Deputy Clerk of the Supreme Court, the Chief of Bar Examiners, the Director of the Office of Attorney Ethics, the Chief Counsel of the Disciplinary Review Board, and the Director and Counsel to the Lawyers Fund for Client Protection.

[40]This category includes the Court Administrator, the Director and Deputy Director of Central Appellate Research, the Clerk, Deputy Clerk, and Chief Counsel.

[41]This category includes the Clerk and the Deputy Clerk of Superior Court, Chief of Foreclosure, and the Clerk of the Tax Court.

[42]This category includes (1) the Office of the Administrative Director (the Administrative Director of the Courts, the Deputy Director, and the heads of the following units: Judge Support Services, Judicial Education, Counsel to the Administrative Director, Media and Publications Services [includes both the Public Affairs Administrator and the Public Information Officer], and Professional Services) and (2) managers in the AOC's various divisions including the Assistant Directors, Deputy Assistant Directors, Chiefs, Assistant Chiefs, Directors, and Supervisors.

Table 39 shows that at the county level, 4.6% of the senior managers and policy-makers were minorities.[43] Of the thirty-eight Vicinage Chief Probation Officers and Assistant Vicinage Chief Probation Officers, 7.9% were minorities. Two of the twenty-nine (6.9%) Deputy and Assistant Trial Court Administrators were minorities. There were no minorities among the Vicinage Division Managers in the Civil, Criminal, Family, or Municipal Divisions.[44]

At the municipal level, the percentage of senior managers in the Municipal Courts range from 0% in nine counties to 23% in one county (Hudson County). Furthermore, the 1990 survey found that, on a Statewide basis, twenty-one (4.5%) of 466 top managers in the Municipal Courts were minority. While this is a change from twelve of 415, or 3%, as reported in 1980, it falls short of the overall average for all levels of courts combined. See Table 40 for complete details on a county-by-county basis.

The absence of minorities in policy-making positions throughout the Judiciary was a concern voiced by minority court employees who participated in the Quality of Life Survey.[45] Some minority employees indicated that sometimes they are not notified of openings for supervisory or management positions until after such

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[43]Table 47, which includes all persons working in official or administrative positions (i.e., not only the senior managers which are included in Table 39), shows that only 3% of county-paid officials and administrators are minorities.

[44]Data permitting a longitudinal analysis are not available. However, as can be seen in Table 40, there appears to have been some increase in the proportion of senior managers at the county level. Table 47 shows a more stable picture. The percentage of minorities among Officials/Administrators remained constant at around 3.0%.

[45]Supra, n. 6, at 24, 26.

TABLE 40

MUNICIPAL COURT WORK FORCE BY COUNTY, TOP MANAGERS ONLY:
STATISTICS FOR 1980 AND 1990
AND CHANGE FROM 1980 TO 1990

COUNTY	1990 POPULATION			1980 WORK FORCE		1990 WORK FORCE		% CHANGE 1980 TO 1990
	TOTAL POP.	MINORITY POPULATION	% MIN	# OF TOP MNGRS.	% MIN	# OF TOP MNGRS.	% MIN	
Atlantic	224,140	58,907	26	16	6	17	0	-600
Bergen	824,735	145,525	17	32	0	41	2	--
Burlington	394,681	76,572	19	37	0	37	3	--
Camden	502,395	126,038	25	31	10	32	6	-40
Cape May	95,031	7,839	8	14	7	14	14	+100
Cumberland	137,910	42,781	31	11	0	11	0	--
Essex	776,288	425,503	55	18	6	21	14	+133
Gloucester	229,933	26,944	12	21	0	19	0	--
Hudson	551,404	289,327	52	10	0	13	23	--
Hunterdon	107,728	5,328	5	8	0	12	0	--
Mercer	325,460	89,317	27	12	0	12	8	--
Middlesex	671,077	154,129	23	23	9	24	4	-56
Monmouth	552,712	83,603	15	38	0	48	0	--
Morris	421,097	48,679	12	33	3	33	9	+200
Ocean	433,004	29,633	7	26	0	34	0	--
Passaic	452,061	167,785	37	12	0	16	13	--
Salem	65,235	11,396	17	13	0	14	0	--
Somerset	240,045	35,211	15	15	0	17	0	--
Sussex	130,898	5,495	4	12	0	14	0	--
Union	493,098	170,851	35	19	16	21	10	-63
Warren	91,571	3,874	4	14	0	16	0	--
TOTALS	7,720,503	2,001,537	26	415	3	466	5	+67

positions have been filled.[46] One minority employee observed that when positions are filled by temporary appointment, the appointees are usually white males. When a minority employee applies for the position, she/he is usually told that the person who was temporarily appointed has more experience in the position.[47]

The need for hiring and promoting more minorities on all levels was a major and recurring theme. A large proportion of minorities believe that they are not considered for policy-making positions. An African-American manager summarized her concerns in this manner:

> [T]he staff has not received a clear message from the Administration that there is a need for a vigorous affirmative action program. The Assignment Judge sets the tone and everyone else falls into place. I know that you cannot change a person's attitude, but you can change the person's behavior.[48]

The Task Force has determined that this issue needs additional study.

RECOMMENDATION #42

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS AND THE VICINAGES TO MAKE VIGOROUS AND AGGRESSIVE RECRUITMENT, HIRING, AND RETENTION EFFORTS TO INCREASE THE REPRESENTATION OF MINORITIES IN SENIOR MANAGEMENT AND KEY POLICY-MAKING POSITIONS.

The Task Force has found low minority representation in key policy-making and senior management positions. Three affirmative

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[46]Id. at 29.

[47]Ibid.

[48]Id. at 21.

action programs have been identified as having proven success in the private sector: the Mentor Program, the Minority Internship Program, and the Minority Spokesperson Program. The Task Force recommends adopting, with the necessary programmatic alterations, all three of the models.

Successful mentoring programs are not limited to minority participants; however, minority sponsorships should be highly encouraged. The main purpose of the program is to pair volunteer mentors with promising employees to expose them to the duties and responsibilities of their job and work unit. Further, mentoring has been successful when used for the purpose of helping new minority and majority employees assimilate to the work environment. The scope and specific objectives of the mentoring program should be developed by the Administrative Office of the Courts after research into the needs of the present and projected work force.

The Minority Internship Program which the Administrative Office of the Courts sponsored in the summer of 1988 should be reinstituted with some modifications. Cooperative agreements with local colleges and universities are needed. Consideration should be given to establishing work-study partnerships whenever fiscal constraints limit funds for paid internships.

In addition, a Minority Speakers Bureau whose members act as spokespersons to assist in the recruitment of minorities for the Judiciary should be created. Participants need to be knowledgeable about the Judiciary, career opportunities, present and future work force needs, and be trained in presentation skills. Spokespersons should be recruited from all employment levels and vicinages throughout the State. Speaking engagements should be coordinated

by the EEO/AA Office. Reasonable time off from work for this purpose should be supported by all supervisors within the Judiciary.

Minorities employed by the court should reflect the rich mosaic of society's diverse, multiracial, and multicultural society. Hiring minority managers may help to increase minority representation at all levels. Conventional wisdom suggests that increasing minority representation at the top usually is a significant factor in increasing minority representation and minority contributions throughout an organization.

There is even some doubt that the standard for determining underrepresentation should be based on percentage of minorities in the applicable labor pool. In the survey of New Jersey judges and court managers (see Table 41), there was considerable support for the statement that the proportion of minority court personnel should "sometimes" to "always" (45.8%) be similar to the proportion of minority litigants in the system; 54.2% of those who responded thought the percentage of litigants should "never" or "rarely" be a guide.

While the Task Force has not exhaustively deliberated this issue or adopted a measure to guide the employment of minorities in the courts, such a standard is not unreasonable for certain types of jobs. For example, some probation officers monitor behavior and counsel probationers. To the extent that they share the ethnic and cultural background of the probationers, the officers' effectiveness may increase. This issue was discussed by several of the public hearings witnesses. See Chapter Three for further amplification of this issue.

TABLE 41

PERCENTAGE DISTRIBUTION OF RESPONSES TO
THE COURT PROCESS QUESTIONNAIRE, Q44:
"THE PROPORTION OF MINORITIES AMONG COURT PERSONNEL
SHOULD BE SIMILAR TO THE PROPORTION OF MINORITY LITIGANTS IN THE SYSTEM."

RESPONDENT GROUP	RESPONSE CATEGORIES					N
	NEVER	RARELY	SOME-TIMES	USUALLY	ALWAYS	
Judges	30.8%	19.9%	21.2%	23.1%	5.1%	156
Managers	28.3%	31.1%	16.0%	23.6%	0.9%	106
Both	29.8%	24.4%	19.1%	23.3%	3.4%	262

Again, the Task Force is not recommending such a policy guideline at this juncture, but the potential legitimacy of this issue in the context of the overall need to build a solid level of minority representation among court personnel is duly noted and recommended for further study.

RECOMMENDATION #43

THE SUPREME COURT SHOULD APPOINT A MULTICULTURAL ADVISORY BOARD TO INCREASE THE JUDICIARY'S ABILITY TO RELATE EFFECTIVELY WITH DIFFERENT COMMUNITY GROUPS. THE BOARD COULD ALSO REVIEW ADMINISTRATIVE POLICIES AND PROCEDURES, PARTICIPATE IN MANAGEMENT TEAM MEETINGS, AND SENSITIZE TOP POLICY MAKERS TO CULTURAL DIVERSITY.

Until such time as minorities are either recruited (externally) or promoted (internally) and fill sufficient numbers of senior-level management and policy-making positions, the Task Force urges the Court to consider creating a Multicultural Advisory Board as a temporary measure to ensure meaningful input of racial/ethnic minorities in the Judiciary's policy-making decisions. A Multicul-

tural Advisory Board would help improve the relationship between the court system and minority communities. Board members could not only present items of concern regarding the operation of the court system to senior managers, but they could also educate and inform community members about the courts. Board members would be able to encourage communication between the leaders of the courts and minority groups and build contacts and networks between them.

The Board could have other uses as well. There is low turnover among the key managerial positions, and even the most determined attempt to increase minority representation among key managers would effect only marginal results in the next year or two. Of course, the Task Force strongly urges that a commitment be made to seek out minority appointees when these positions do become open or new positions are created, but something more is necessary in the interim. Since the key management positions have so few minorities, the Chief Justice and Administrative Director of the Courts are not regularly and routinely receiving advice and comment from minorities. Minority participation, when it exists at all, generally is filtered through senior managers who are non-minority. Until there is better representation by minorities in the key jobs, the Task Force recommends the creation of the Board.

The purpose of the Board would be to provide the Administrative Director with a multicultural perspective that would be considered in the decision-making process. It also would sensitize managers to cultural diversity and encourage them to integrate minorities into the work force. The Board also may assist any supervisor with culturally or racially-based questions and issues of concern. The Task Force recommends that the Board, most of whom should be

members of the public, be appointed for a two-year term and be given staff support.

The Administrative Director of the Courts should consider making the highest ranking minority judicial employee member of the Board a member of his Management Team to allow for minority representation at the highest level of decision-making. The Administrative Director should also consider having minority representatives drawn from the ranks of minorities in the official/administrative and professional positions.

FINDING #39

WITH THE NOTABLE EXCEPTION OF SENIOR MANAGERS, OFFICIALS, AND ADMINISTRATORS AT THE STATE LEVEL, THE JUDICIARY GENERALLY MET OR EXCEEDED THE 1980 SDU[49] BUT LAGS BEHIND THE 1990 SDU.

The State-paid work force[50] includes the Administrative Office of the Courts; the legal staff and Clerk's Office staff in the Supreme Court, the Appellate Division, and the Tax Court; the Superior Court Clerk's Office; the Official Court Reporters; and secretaries and law clerks for selected trial judges. Compared to the 1990 Statewide SDU of 24.8%, the State-paid Judiciary work force is 20.2% minority. Table 42 provides longitudinal data which

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[49]"SDU" stands for "standard for determining underrepresentation. The Standard for Determining Underrepresentation (SDU) is a measure developed by the Federal government and used throughout New Jersey State government. It is the percentage of minorities in the entire civilian labor force in the relevant geographical area, in this case the entire State of New Jersey.

During the 1980s, the standard used to measure whether minority hiring goals were met in the State-level work force was 18.2%. That was the level set by the U.S. Census Bureau in 1980 to show the percentage of minorities in New Jersey's civilian labor force. The new SDU based on the 1990 Census is 24.8%.

[50]Judiciary employees may be on the payroll of one of three levels of government: municipal, county, or State. This finding pertains only to the State-paid workforce.

show a slow but steady overall improvement in that percentage from 1986 to 1992 during which time the overall percentage of State-paid minority employees increased from 18.9% to 20.2%.

Table 43 is the state-paid Judiciary work force for the Equal Employment Opportunity Commission (EEOC) and presents data on employment numbers and percentages, broken down by gender, specific minority group, and EEOC classification.[51] Employee profiles that are specific to individual State units and divisions are presented in Appendix E9.[52]

TABLE 42

PERCENTAGE OF MINORITY EMPLOYEES IN THE JUDICIARY'S STATE-PAID WORK FORCE
1986-1992

CATEGORY OF EMPLOYEES	EMPLOYEES AS OF 4/1/86 N=1,214	EMPLOYEES AS OF 4/1/88 N=1,347	EMPLOYEES AS OF 4/1/90 N=1,424	EMPLOYEES AS OF 4/1/92 N=1,285
Officials/ Administrators	9.3%	8.7%	9.2%	9.6%
Professionals	13.0%	12.0%	14.4%	16.5%
Technicians	7.8%	10.0%	12.4%	9.1%
Para-Professionals	18.2%	17.6%	17.6%	26.7%
Office/Clerical Workers	28.7%	29.9%	29.7%	31.2%
Skilled Craft Workers	40.0%	33.3%	42.9%	22.2%
Office Maintenance Workers	25.0%	55.6%	33.3%	50.0%
Overall Totals	18.9%	19.4%	19.9%	20.2%

[51]For a detailed description of the eight EEOC job classifications, see Appendix E8.

[52]The reader should note that February 1992 data were used to construct the unit/division profiles contained in those tables instead of the April 1992 data used elsewhere.

TABLE 43

STATE-PAID WORK FORCE BY EEOC JOB CLASSIFICATION (APRIL 1992)

GENDER AND RACE/ETHNICITY	OFFICIALS AND ADMINI-STRATORS		PROFESSIONALS		TECHNICIANS		PARAPRO-FESSIONALS		OFFICE/ CLERICAL WORKERS		SKILLED CRAFT WORKERS		SERVICE MAINTENANCE WORKERS		TOTAL		STANDARD FOR DETERMINING UNDERREPRE-SENTATION (SDU)	DIFF. FROM SDU
MALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
White (Non-Hispanic)	80	70.2	209	43.1	51	25.8	10	22.2	22	5.1	6	66.7	2	50.0	380	29.6	47.5	-17.9
Black (Non-Hispanic)	4	3.5	21	4.3	3	1.5	0	0.0	12	2.8	2	22.2	2	50.0	44	3.4	5.3	-1.9
Hispanic	1	0.9	2	0.4	0	0.0	1	2.2	1	0.2	0	0.0	0	0.0	5	0.4	3.4	-3.0
Asian/Pacific Islander	1	0.9	4	0.8	1	0.5	0	0.0	0	0.0	0	0.0	0	0.0	6	0.5	0.8	-0.3
American Indian/ Alaskan Native	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0.1	-0.1
Total Minority Males	6	5.3	27	5.6	4	2.0	1	2.2	13	3.0	2	22.2	2	50.0	55	4.3	9.6	-5.3
Total Males	86	75.4	236	48.7	55	27.8	11	24.4	35	8.1	8	88.9	4	100.0	435	33.9	57.2	-22.3
FEMALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
White (Non-Hispanic)	23	20.2	196	40.4	129	65.2	23	51.1	274	63.7	1	11.1	0	0.0	646	50.3	34.2	+16.1
Black (Non-Hispanic)	4	3.5	41	8.5	11	5.6	10	22.2	110	25.6	0	0.0	0	0.0	176	13.7	5.4	+8.3
Hispanic	1	0.9	5	1.0	3	1.5	0	0.0	10	2.3	0	0.0	0	0.0	19	1.5	2.5	-1.0
Asian/Pacific Islander	0	0.0	5	1.0	0	0.0	1	2.2	0	0.0	0	0.0	0	0.0	6	0.5	0.6	-0.1
American Indian/ Alaskan Native	0	0.0	2	0.4	0	0.0	0	0.0	1	0.2	0	0.0	0	0.0	3	0.2	0.1	+0.1
Total Minority Females	4	3.5	53	10.9	14	7.1	11	24.4	121	28.1	0	0.0	0	0.0	204	15.9	8.6	+7.3
Total Females	28	24.6	249	51.3	143	72.2	34	75.6	395	91.9	1	11.1	0	0.0	850	66.1	42.8	+23.3
TOTAL MALES + FEMALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
Grand Total Minorities	10	8.8	80	16.5	18	9.1	12	26.7	134	31.2	2	22.2	2	50.0	259	20.2	18.2	+2.0
Grand Total	114	100.0	485	100.0	198	100.0	45	100.0	430	100.0	9	100.0	4	100.0	1285	100.0		

FINDING #40

THE OVERALL 1990 GOAL FOR PROMOTING MINORITIES IN THE STATE-PAID JUDICIARY HAS NOT BEEN MET AND THE PROPORTION OF MINORITY PROMOTIONS MIRRORS THE PROPORTION OF MINORITY SEPARATIONS.

An examination of the tables in Appendix E10 reveals that the proportion of minority new hires and promotions falls short of the 1990 SDU of 24.8%. In 1991, 22.1% of all new hires were minorities and the proportion of minority promotions and separations in 1991 was 19.3%.

Tables 44-46 illuminate the trends in new hires, promotions, and separations[53] in the State-paid work force for these combined measurement periods: 1986, 1988, and 1991. The tables compare the proportion of minorities and non-minorities who were hired, promoted, and left the employ of the Judiciary. The discussion will be limited to management and professional classifications since these are the areas of greatest minority underrepresentation.

New Hires

Approximately 45.0% (n=202) of all new employees (n=453) hired by the Judiciary were minorities. In the Official/Administrator category, minorities accounted for 33.3% (n=3) of all new hires (n=10). The Judiciary retained approximately 10% of the cadre of minority Administrators and Officials which it hired. In the Professional job category, minorities comprise 22.3% (n=47) of all new hires (n=211). The total combined proportion of minority new hires (44.6%) nearly equals the total proportion of minority

[53]"Separations" is a term of art that means departures from employment for any reason. Sometimes the term "terminations" is used interchangeably.

separations (41.7%).

An examination of a more detailed table[54] of new hires reveals that Blacks (n=2) and Hispanics (n=1) were the only minorities represented among the ten newly hired Officials and Administrators.

TABLE 44

NEW HIRES OF JUDICIARY STATE-PAID EMPLOYEES BY EEOC JOB CLASSIFICATIONS (1986, 1988, and 1991)

EEOC JOB CLASSIFICATION	RACE/ETHNICITY				TOTALS	
	MINORITY		NON-MINORITY			
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Officials/ Administrators	3	33.3%	7	66.7%	10	100.0%
Professionals	47	22.3%	164	77.7%	211	100.0%
Technicians	34	72.3%	13	27.7%	47	100.0%
Paraprofessionals	1	100.0%	0	0.0%	1	100.0%
Office/Clerical	111	64.9%	60	35.1%	171	100.0%
Skilled Craft	3	75.0%	1	25.0%	4	100.0%
Service Maintenance	3	33.3%	6	66.7%	9	100.0%
Totals	202	44.6%	251	55.4%	453	100.0%

Among Professionals, there were 211 new hires; 14.2% were Black (n=30), 3.3% were Hispanic (n=7), 4.3% were Asians/Pacific Islanders (n=9), and one was a Native American (0.5%).

Promotions

Minorities comprised 20.8% (n=65) of the group of employees promoted. In the Official/Administrator category, 4.6% (n=3) of

[54]See Appendix E10 for the detailed data by race/ethnicity and EEO job category for each year, 1986, 1988, and 1991.

the promotions went to minorities. Among professionals 12.5% of the 168 persons promoted were minorities. Blacks accounted for 8.9% of the promotions (n=15) and equal proportions of Hispanics and Asians/Pacific Islanders (1.8%; n=3) received promotions.

TABLE 45

PROMOTIONS OF JUDICIARY STATE-PAID EMPLOYEES BY EEOC JOB CLASSIFICATIONS (1986, 1988, and 1991)

EEOC JOB CLASSIFICATION	RACE/ETHNICITY				TOTALS	
	MINORITY		NON-MINORITY			
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Officials/ Administrators	3	4.6%	62	95.4%	65	100.0%
Professionals	21	12.5%	147	87.5%	168	100.0%
Technicians	5	22.7%	17	77.3%	22	100.0%
Paraprofessionals	6	27.3%	16	72.7%	22	100.0%
Office/Clerical	63	38.4%	101	61.6%	164	100.0%
Skilled Craft	3	100.0%	0	0.0%	3	100.0%
Service Maintenance	0	0.0%	0	0.0%	0	0.0%
Totals	91	20.8%	346	79.2%	437	100.0%

Separations

Minorities accounted for 41.7% of the 324 persons who left the Judiciary. In the Official/Administrator classification, 23.1% (n=3) of the thirteen separations were minorities. All three of the separations were Blacks. In the Professional category, minorities comprised 23.3% (n=21) of all separations (n=90). Blacks accounted for 14.4% (n=13) of these separations; Hispanics comprised 6.7% (n=6) and Asians/Pacific Islanders made up 2.2% (n=2) of the separations in the Professional job category.

TABLE 46

SEPARATIONS OF JUDICIARY STATE-PAID EMPLOYEES BY EEOC JOB CLASSIFICATIONS
(1986, 1988, and 1991)

EEOC JOB CLASSIFICATION	RACE/ETHNICITY				TOTALS	
	MINORITY		NON-MINORITY			
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Officials/ Administrators	3	23.1%	10	76.9%	13	100.0%
Professionals	21	23.3%	69	76.7%	90	100.0%
Technicians	5	11.6%	38	88.4%	43	100.0%
Paraprofessionals	2	18.2%	9	81.8%	11	100.0%
Office/Clerical	101	63.5%	58	36.5%	159	100.0%
Skilled Craft	2	40.0%	3	60.0%	5	100.0%
Service Maintenance	1	33.3%	2	67.7%	3	100.0%
Totals	135	41.7%	189	58.3%	324	100.0%

RECOMMENDATION #44

ADDITIONAL ANALYSIS OF THE HIRING, PROMOTING, AND SEPARATION DATA OF THE JUDICIAL WORK FORCE SHOULD BE CONDUCTED.

The analysis that is presently available is for three specific years. However, these data are not sufficiently detailed to discern specific trends. The Task Force recommends that more detailed analysis be undertaken with an emphasis on the following: using longitudinal data and controlling for factors such as race, ethnicity, gender, years of education/professional training, job tenure, and job experience. Additionally, the career paths of persons who have been promoted or leave the Judiciary's employ should be studied.

FINDING #41

BOTH THE NUMBER AND PROPORTION OF MINORITY COUNTY EMPLOYEES WORKING IN THE SUPERIOR COURT HAVE INCREASED OVER THE LAST FIVE YEARS. HOWEVER, IN SOME COUNTIES MINORITIES ARE UNDERREPRESENTED THROUGHOUT THE COURT, ESPECIALLY IN SENIOR-LEVEL MANAGEMENT POSITIONS.

In New Jersey, most (85.4%) court employees are paid by the counties and work in the vicinages at the upper trial court level. Beginning in the mid-1980s, Chief Justice Wilentz called for increased minority employment at the trial court level. Currently there are more than 7,452 persons on county payrolls working in courts. Effective EEO/AA programs at this level are important because these are the employees who are most visible to the citizens and litigants.

The percentage of minority employees has increased among county-paid court workers from 1986 to 1991 (see Table 47). Total minority employment went from 17.8% to 24.0%. The Probation staff has consistently shown the best minority representation, followed by the Superior Court staff. The County Clerk-judicial function and Surrogate staff have lagged behind, but all sectors have shown some increase. In spite of the general growth in minority employment, the percentage of top-level court employees has remained relatively stable at around 3.0%.[55] The minority presence in the professional job category has grown from 13.2% in 1986 to 18.7% in 1991.

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[55]The Statewide summary data cannot easily be related to an SDU percentage since the county-paid work force is measured against the SDU for each county.

When the percentage of minority representation among the county-paid judicial work force is analyzed for each county, most counties met or exceeded their 1980 SDU (refer to Table 49). Furthermore, the total county-paid judicial work force of minorities for the State exceeded the 1980 SDU by 5%. However, eight counties did not meet the 1980 county SDU of minorities in the work force: Cape May, Cumberland, Gloucester, Hudson, Hunterdon, Ocean, Somerset, and Sussex. It is important to note that once the SDUs for 1990 have been promulgated, the degree of compliance may very well decline.

The Task Force underscores the importance of a minority presence in positions filled under Rule 1:33-4(e).[56] Filling these positions is not constrained by the Department of Personnel's procedures for the classified service. Court managers therefore are afforded greater freedom in their hiring practices to be sensitive to EEO/AA considerations. These positions, in general, are management, confidential, and technical personnel in the court's service on county payrolls. The Task Force is concerned by what it perceives to be a serious underrepresentation of minorities in these positions: in only four counties does the proportion of minority employees in these appointed positions equal to or exceed the proportion of minorities in the civilian work force. County-by-county data are provided in Table 49.

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[56]This rule gives Assignment Judges the authority to appoint or hire "judicial support personnel within the vicinage" outside the usual method which is by following procedures of the Department of Personnel. This appointing authority is instead "[s]ubject to uniform standards and conditions promulgated by the Administrative Director...."

TABLE 47

PERCENTAGE OF MINORITY EMPLOYEES IN THE COUNTY-PAID WORK FORCE (1986, 1988, 1991)

CATEGORY OF EMPLOYEES (BY BUDGETED UNIT)	OFFICIALS/ ADMINISTRATORS			PROFESSIONALS			TECHNICIANS			PARAPROFESSIONALS		
	12/31/86 (N=116)	3/31/88 (N=117)	10/ 4/91 (N=166)	12/31/86 (N=1977)	3/31/88 (N=2070)	10/ 4/91 (N=2597)	12/31/86 (N=15)	3/31/88 (N=21)	10/ 4/91 (N=24)	12/31/86 (N=749)	3/31/88 (N=723)	10/ 4/91 (N=880)
Superior Court	6.5%	6.5%	2.7%	11.7%	12.4%	17.0%	12.5%	50.0%	38.5%	20.6%	23.0%	27.4%
Probation	5.1%	5.1%	7.1%	13.9%	14.7%	20.1%	100.0%	100.0%	0.0%	33.9%	32.5%	35.3%
Surrogate	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	12.5%
County Clerk-Judicial	0.0%	0.0%	0.0%	11.1%	0.0%	0.0%	33.3%	12.5%	30.0%	0.0%	5.9%	9.1%
TOTAL	3.4%	3.4%	3.0%	13.2%	13.9%	18.7%	26.7%	38.1%	33.3%	28.4%	27.9%	30.8%

CATEGORY OF EMPLOYEES (BY BUDGETED UNIT)	PROTECTIVE SERVICE WORKERS			OFFICE CLERICAL WORKERS			SERVICE MAINTENANCE WORKERS			ALL EMPLOYEES COMBINED		
	12/31/86 (N=82)	3/31/88 (N=67)	10/ 4/91 (N=40)	12/31/86 (N=3205)	3/31/88 (N=3209)	10/ 4/91 (N=3658)	12/31/86 (N=4)	3/31/88 (N=7)	10/ 4/91 (N=28)	12/31/86 (N=6148)	3/31/88 (N=6214)	10/ 4/91 (N=7393)
Superior Court	6.8%	9.2%	10.5%	18.4%	21.1%	26.8%	0.0%	0.0%	20.0%	16.3%	18.7%	23.1%
Probation	33.3%	50.0%	50.0%	26.9%	28.0%	34.2%	33.3%	16.7%	15.4%	21.4%	21.5%	26.6%
Surrogate	0.0%	0.0%	0.0%	8.0%	10.2%	17.0%	0.0%	0.0%	0.0%	6.0%	7.7%	13.1%
County Clerk-Judicial	0.0%	0.0%	0.0%	14.1%	17.6%	22.8%	0.0%	0.0%	0.0%	13.7%	16.8%	21.5%
TOTAL	7.3%	10.4%	12.5%	18.9%	20.8%	27.1%	25.0%	14.3%	17.9%	17.8%	19.2%	24.0%

TABLE 48

COUNTY-PAID WORK FORCE BY EEOC JOB CLASSIFICATION (APRIL 1992)

GENDER AND RACE/ETHNICITY	OFFICIALS AND ADMINI-STRATORS		PROFESSIONALS		TECHNICIANS		PROTECTIVE SERVICE WORKERS		PARAPRO-FESSIONALS		OFFICE/ CLERICAL WORKERS		SKILLED CRAFT WORKERS		SERVICE MAINTENANCE WORKERS		TOTAL	
MALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
White (Non-Hispanic)	102	61.1	988	37.9	4	15.4	24	77.4	155	17.4	267	7.2	0	0.0	28	73.7	1568	21.0
Black (Non-Hispanic)	4	2.4	127	48.7	1	3.8	3	9.7	40	4.5	57	1.5	0	0.0	5	13.2	237	3.2
Hispanic	0	0.0	39	1.5	0	0.0	0	0.0	23	2.6	17	0.5	0	0.0	1	2.6	80	1.1
Asian/Pacific Islander	0	0.0	4	0.2	0	0.0	0	0.0	0	0.0	3	0.1	0	0.0	0	0.0	7	0.1
American Indian/ Alaskan Native	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Total Minority Males	4	2.4	170	6.5	1	3.8	3	9.7	63	7.1	77	2.1	0	0.0	6	15.8	324	4.3
Total Males	106	63.5	1158	44.4	5	19.2	27	87.1	218	24.5	344	9.3	0	0.0	34	89.5	1892	25.4
FEMALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
White (Non-Hispanic)	60	35.9	1129	43.3	14	53.8	3	9.7	459	51.5	2423	65.6	0	0.0	2	5.3	4090	54.9
Black (Non-Hispanic)	1	0.6	246	9.4	6	23.1	0	0.0	142	15.9	655	17.7	0	0.0	0	0.0	1050	14.1
Hispanic	0	0.0	64	2.5	1	3.8	1	3.2	69	7.7	253	6.9	0	0.0	2	5.3	390	5.2
Asian/Pacific Islander	0	0.0	6	0.2	0	0.0	0	0.0	2	0.2	17	0.5	0	0.0	0	0.0	25	0.3
American Indian/ Alaskan Native	0	0.0	3	0.1	0	0.0	0	0.0	1	0.1	1	0.0	0	0.0	0	0.0	5	0.1
Total Minority Females	1	0.6	319	12.2	7	26.9	1	3.2	214	24.0	926	25.1	0	0.0	2	5.3	1470	19.7
Total Females	61	36.5	1448	55.6	21	80.8	4	12.9	673	75.5	3349	90.7	0	0.0	4	10.5	5560	74.6
TOTAL MALES + FEMALES	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Grand Total Minorities	5	3.0	489	18.8	8	30.8	4	12.9	277	31.1	1003	27.2	0	0.0	8	21.1	1794	24.1
Grand Total	167	100.0	2606	100.0	26	100.0	31	100.0	891	100.0	3693	100.0	0	0.0	38	100.0	7452	100.0

TABLE 49

MINORITIES AMONG THE COUNTY-PAID JUDICIAL WORK FORCE
COMPARED TO EACH COUNTY'S CIVILIAN WORK FORCE;
PERCENTAGE OF MINORITIES IN
APPOINTED POSITIONS IN SUPERIOR COURT
(EFFECTIVE 10/90)

COUNTY	PERCENTAGE OF MINORITIES IN WORK FORCE (SDU)	TOTAL % MINORITY IN JUDICIAL WORK FORCE	R. 1:33 MINORITY %
Atlantic	20	35	29%
Bergen	10	10	5%
Burlington	14	21	12%
Camden	16	25	18%
Cape May	8	4	5%
Cumberland	21	11	15%
Essex	41	41	19%
Gloucester	10	8	10%
Hudson	38	33	26%
Hunterdon	2	0	0%
Mercer	19	32	12%
Middlesex	12	22	6%
Monmouth	11	13	4%
Morris	7	17	11%
Ocean	6	4	1%
Passaic	24	35	22%
Salem	15	16	0%
Somerset	8	4	4%
Sussex	3	1	3%
Union	24	27	27%
Warren	3	3	0%
State	18	23	14%

Although the employees who were surveyed in the Quality of Life study raised a wide range of issues, including many which were not related specifically to the concerns of minorities (these include salaries, work loads, facilities, and other matters), persistent concerns were raised about racial/ethnic bias discrimination and EEO/AA initiatives.

The survey's results reinforce the need to reflect the cultural diversity of the population in the court work force, especially among managers. Without such an effort, minority employees may feel powerless to affect their working conditions. They sometimes do not believe that promotions are open to them. They may also conclude that their views are not being respected, and that upper-level white managers do not consistently support a lower-level minority manager's instructions to his or her staff. Further, at least one employee told of openly racist jokes being told in the workplace.

Broader representation of minorities at all levels of court staff, of course, will enable the courts to more genuinely address and deliver appropriate services to the citizens they serve. Staff will better understand the various cultures represented in the population and deal more effectively with litigants.

FINDING #42

MINORITY REPRESENTATION AMONG MUNICIPAL COURT EMPLOYEES OVER THE PAST DECADE HAS INCREASED BY TEN PERCENT WHILE THE TOTAL INCREASE IN THE WORK FORCE HAS MORE THAN DOUBLED.

The 1990 census of Municipal Court personnel found that the number of minority Municipal Court employees (other than judges and

top managers) was 461 of 1,730, or 27% of the work force. This figure represents a 10.0% increase over the figure (17%; n=142) reported for 1980. Particularly noticeable were increases in the Municipal Courts in Mercer, Passaic, Atlantic, and Hudson counties. See Tables 50-51.

FINDING #43

THE JUDICIARY HAS AN UNSATISFACTORY LEVEL OF HISPANIC EMPLOYEES IN ALL CATEGORIES OF EMPLOYMENT FOR STATE-PAID EMPLOYEES AND IN MOST CATEGORIES OF EMPLOYMENT FOR COUNTY-PAID EMPLOYEES.

At the State level, twenty-four of 1,285 employees (1.9%) are Hispanic. According to the 1990 Census, Hispanics comprise 9.6% of the New Jersey population. In addition to that unsatisfactory degree of representation in the aggregate, there is an unsatisfactory level of Hispanic employment in each of the job classifications established by the EEOC in which there are State Judiciary employees.[57] Hispanic Officials and Administrators account for 1.8% of this job category; professionals comprise 1.4% and 2.5% of the Office/Clerical workers employed by the Judiciary as of April 1992 were Hispanic. There were no Hispanics in two classifications (Skilled Craft Workers and Service Maintenance Workers). Review Table 43 for further details.

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[57]There are no state-paid employees in the Protective Service Workers classification.

TABLE 50

MUNICIPAL COURT WORK FORCE BY COUNTY, **SUPPORT STAFF ONLY**:
STATISTICS FOR 1980 AND 1990
AND CHANGE FROM 1980 TO 1990

COUNTY	POPULATION FOR 1990			1980 WORK FORCE		1990 WORK FORCE		% CHANGE 1980 TO 1990
	TOTAL POP.	MINORITY POPULATION	% MIN.	# OF EMPL.	% MIN	# OF EMPL.	% MIN	
Atlantic	224,140	58,907	26	66	20	97	48	+140
Bergen	824,735	145,525	17	42	0	103	7	--
Burlington	394,681	76,572	19	37	8	58	3	-63
Camden	502,395	126,038	25	53	13	116	22	+69
Cape May	95,031	7,839	8	23	0	41	0	0
Cumberland	137,910	42,781	31	18	22	30	23	+5
Essex	776,288	425,503	55	98	68	224	77	+13
Gloucester	229,933	26,944	12	32	3	45	2	-33
Hudson	551,404	289,327	52	115	16	180	36	+125
Hunterdon	107,728	5,328	5	11	0	18	0	0
Mercer	325,460	89,317	27	31	6	102	27	+350
Middlesex	671,077	154,129	23	76	9	131	15	+67
Monmouth	552,712	83,603	15	66	9	128	6	-33
Morris	421,097	48,679	12	23	13	77	10	-23
Ocean	433,004	29,633	7	47	6	83	4	-33
Passaic	452,061	167,785	37	23	9	96	41	+356
Salem	65,235	11,396	17	5	0	20	10	--
Somerset	240,045	35,211	15	14	0	43	2	--
Sussex	130,898	5,495	4	15	0	20	0	0
Union	493,098	170,851	35	32	19	102	26	+37
Warren	91,571	3,874	4	4	0	16	0	0
TOTALS	7,720,503	2,001,537	26	831	17	1,730	27	+59

TABLE 51

MUNICIPAL COURT MINORITY SUPPORT STAFF BY COUNTY AND MINORITY GROUP[58]
(1990)

COUNTY	TOTAL NUMBER OF SUPPORT STAFF	TOTAL NUMBER OF BLACK SUPPORT STAFF	TOTAL NUMBER OF HIS-PANIC SUPPORT STAFF	TOTAL NUMBER OF ASIAN SUPPORT STAFF	TOTAL NUMBER OF NATIVE AMERI-CAN SUPPORT STAFF	PERCENT MINORITY SUPPORT STAFF
Atlantic	97	40	7	0	0	48.5%
Bergen	103	1	5	1	0	6.8%
Burlington	58	2	0	0	0	3.4%
Camden	116	19	6	0	0	21.6%
Cape May	41	0	0	0	0	0.0%
Cumberland	30	3	4	0	0	23.3%
Essex	224	152	16	4	0	76.8%
Gloucester	45	0	1	0	0	2.2%
Hudson	180	19	45	1	0	36.1%
Hunterdon	18	0	0	0	0	0.0%
Mercer	102	12	15	0	1	27.5%
Middlesex	131	10	8	1	0	14.5%
Monmouth	128	6	2	0	0	6.3%
Morris	77	4	4	0	0	10.4%
Ocean	83	2	1	0	0	3.6%
Passaic	96	15	23	1	0	40.6%
Salem	20	2	0	0	0	10.0%
Somerset	43	0	1	0	0	2.3%
Sussex	20	0	0	0	0	0.0%
Union	102	22	4	1	0	26.5%
Warren	16	0	0	0	0	0.0%
Totals	1730	309	142	9	1	26.6%

[58]This table is extrapolated from Tables 7-8 in SURVEY OF MUNICIPAL COURT PERSONNEL, supra n. 7, at 15-16.

At the county level, 470 of 7,452 employees (6.3%) are Hispanic. While Hispanics exceed 7% of the work force in three of the EEOC classifications (10.3% of Paraprofessionals, 7.9% of the Service Maintenance Workers, and 7.4% of Office/Clerical Workers), there are no Hispanics in two classifications (Officials and Administrators, and Skilled Craft Workers) and less than 7% in three others (3.2% of Protective Service Workers, 3.8% of Technicians, and 4.0% of Professionals). Additional information is supplied in Table 48.

The greatest representation of Latinos in the Judiciary's support staff is in the Municipal Courts. While data are not available by EEOC classifications, the census of Municipal Court employees found that 142 of the 1,730 Municipal Court support staff (8.2%) are Hispanics. See Table 51 for county-by-county data.

The Committee analyzed efforts undertaken to increase the number of Latino employees in the State work force: the Administrative Office of the Courts' EEO/AA Plan and its proposed "Affirmative Action Plan to Increase Hispanic Representation." The proposed affirmative action initiatives to increase Latino representation included: recruitment-related activities for law clerk and nonlegal positions, with campus visits to the University of Puerto Rico, the Inter-American University of Puerto Rico Rio Piedras, St. Thomas University in Miami, and other institutions where there is a significant Hispanic enrollment; sponsoring conferences and luncheons with Hispanic community leaders, Hispanic Bar Association, and ASPIRA; sponsoring a sensitivity awareness training for judges and all Judiciary employees; and increasing marketing and advertising efforts.

In addition, the Administrative Office of the Courts proposed ways to increase outreach and networking, sponsoring a job fair for Spanish-

speaking professionals and support staff, creating a management trainee program for recent Hispanic college graduates, and hiring bilingual recruiters.

While the activities contained in both plans are laudable, the Task Force believes that additional techniques are necessary. For example, a review of some of the affirmative action plans which focused upon Hispanic employment from leading private sector companies was helpful. These companies developed proposals for management training, cultural sensitivity, more flexible personnel policies, and a recommendation for the implementation of more comprehensive career development and outreach programs. These techniques may be less costly, more pervasive and long-lasting, and, ultimately, more effective than the periodic recruitment and advertising initiatives.

The need to develop and implement a more aggressive program of Hispanic recruitment throughout the court system was underlined at the public hearing in Trenton. One speaker shared these insights:

> Long experience in Mercer County at the Superior Court and also at the Municipal Court levels in Trenton has demonstrated the lack of equal employment opportunities in regard to Hispanics. As an Assistant Affirmative Action Officer for Mercer County government, I have referred many qualified Hispanics. Only through my personal intervention were those candidates given serious attention.[59]

[59]Carlos Pacheco, TRENTON PUBLIC HEARING 924-925 (December 8, 1989).

RECOMMENDATION #45

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AND IMPLEMENT A MORE AGGRESSIVE PLAN TO ENSURE REPRESENTATION OF HISPANICS IN THE JUDICIARY'S WORK FORCE.

The representation of Hispanics in the Judiciary's work force does not meet affirmative action goals. Furthermore, the representation of Hispanics in the professional and administrative job classifications is significantly low. Special emphasis should be placed upon enhancing the affirmative action efforts to recruit, hire, promote, and retain Hispanics at all levels in the Judiciary, especially at the senior and professional levels.

FINDING #44

THE STATE-PAID JUDICIARY HAS AN UNSATISFACTORY LEVEL OF ASIANS/PACIFIC ISLANDERS IN ALL CATEGORIES OF EMPLOYMENT.

Asians/Pacific Islanders comprise 1.0% of the State-paid work force. The 1990 SDU is 3.4% and the 1990 Census figures indicate that 3.6% of the State's residents are Asians/Pacific Islanders.

RECOMMENDATION #46

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ENHANCE ITS EFFORTS TO ENSURE REPRESENTATION OF ASIANS/PACIFIC ISLANDERS IN THE JUDICIARY'S WORK FORCE.

The representation of Asians/Pacific Islanders does not meet affirmative action goals and the representation of this group in the professional and administrative job classifications is exceedingly low,

i.e., approximately 1.0%. Special emphasis should be placed on enhancing affirmative action efforts to recruit, hire, promote, and retain Asians/Pacific Islanders.

FINDING #45

THE CHIEF JUSTICE'S PROGRAM TO EMPHASIZE THE HIRING OF MINORITY LAW CLERKS IS A MODEL FOR OTHER PROGRAMS BECAUSE OF ITS SIGNIFICANT SUCCESS. HOWEVER, THE PROGRAM HAS NOT ADVANCED IN RECENT YEARS BEYOND THE LEVEL ACHIEVED EARLY IN THE PROGRAM.

By way of background, in 1986, in response to the paucity of minority law clerks in the fifteen vicinages, the Chief Justice established a goal to increase the number of minority law clerks. That goal was tied to the percentage of minority law school graduates in New Jersey.

In 1984-85, about 5.0% of the law clerks in the court system were minority. The Chief Justice realized that the one-year service of law clerks, working closely with judges and seeing court operations from the inside, provided a very good opportunity for minority law school graduates to begin their legal careers. He set a goal of 10.0% for the next year, challenging trial court and Appellate judges to double the rate at which they selected minorities as their clerks. Because law clerks hold one-year appointments, dramatic results were possible in just one year.

The program has consistently met its goals. Since 1985, 10.0% or more of all clerks have been minority in each year except one. Table 52 presents these data for the most recent five-year period.

The Task Force believes that the success of this program is due to the leadership of the Chief Justice, both in terms of his general support for affirmative action and his specific commitment to this program. When the

leadership comes from the top, affirmative action has the greatest likelihood of being most effective.

TABLE 52

HIRING OF MINORITY LAW CLERKS, 1987-1991

COURT YEAR	TRIAL COURT	SUPREME COURT, APP. DIVISION, TAX COURT	TOTALS	TOTALS BY GROUP
1987-1988				
Total #	272	61	333	Black: 19
# Minority	25	9	34	Hispanic: 10
% Minority	9.2%	14.8%	10.2%	Asian: 5
1988-1989				
Total #	272	62	334	Black: 19
# Minority	28	8	36	Hispanic: 16
% Minority	10.3%	12.9%	10.8%	Asian: 1
1989-1990				
Total #	296	63	359	Black: 15
# Minority	30	7	37	Hispanic: 18
% Minority	10.1%	11.1%	10.3%	Asian: 4
1990-1991				
Total #	305	62	366	Black: 14
# Minority	30	3	33	Hispanic: 14
% Minority	9.8%	4.8%	9.0%	Asian: 5
1991-1992				
Total #	326	62	388	Black: 22
# Minority	33	6	39	Hispanic: 10
% Minority	10.1%	9.7%	10.1%	Asian/Am. Indian: 7

FINDING #46

MINORITY LAWYERS WHO HAVE SERVED AS LAW CLERKS HAVE FOUND THEIR EXPERIENCE VALUABLE, AND JUDGES REPORT NO DIFFERENCE IN THE QUALITY OF LAW CLERKS' WORK BETWEEN MINORITY AND NON-MINORITY CLERKS.

The clerks and former clerks who participated in the focus group sessions found their one-year clerkships to be valuable training in their legal careers. It honed their skills, gave them valuable experience in writing opinions, and bolstered their

confidence as attorneys. All of the clerks involved in the discussions recommended clerkships to law school students.

The judges who participated in the focus group sessions found similar performance between minority and non-minority clerks. Seven of the nine participating judges were non-minority. They emphasized personality factors and local residence in their selection of clerks. The judges believed that low law clerk salaries significantly contribute to the difficulty in hiring the best law graduates (both minority and non-minority). The judges also felt that, at least to some degree, law schools encouraged their graduates to work for large firms.

The former clerks reported that potential employers perceive a clerkship as a valuable experience that enhances employment in a law firm, especially if the judge is highly respected in the legal community. Some minority clerks, however, reported that they frequently were unable to receive the full benefit of enhanced employment possibilities because large white firms were reluctant to hire them. For example, several clerks reported attending a social event where the non-minority clerks received from ten to twenty business cards from interested firms, while the minority clerks received five or fewer.

RECOMMENDATION #47

THE CHIEF JUSTICE SHOULD CONTINUE THE PROGRAM TO RECRUIT MINORITY LAW CLERKS.

All justices and judges in the State should commit themselves to the goals of the Chief Justice's minority law clerk program.

This program has shown the effect of leadership in affirmative action, and it has been favorably evaluated by both judges and minority lawyers who completed clerkships. However, the program has not expanded in recent years.

The minority law clerk program presents an excellent opportunity for both novice lawyers and the courts. New lawyers have a chance to see the court system from the inside, learning about its operations and the decision-making style of the courts. They also can gain the evaluation of sitting judges in their job search following the clerkship. Additionally, judges benefit from the cultural insights that the individual minority law clerks may bring.

The Task Force noted that the Chief Justice sent a strong letter of support for the program to all judges in 1991 and encourages the Chief Justice to periodically review and revise the goal to reflect the proportion of law school graduates in the State and/or nation. See Table 53 reporting the law degrees conferred to minorities in 1991 and the projected degrees for 1992.

FINDING #47

THE ADMINISTRATIVE OFFICE OF THE COURTS HAS ATTEMPTED TO INCREASE THE HIRING OF BILINGUAL EMPLOYEES IN PROBATION DEPARTMENTS THROUGH A POLICY INITIATIVE WHICH COMMENCED IN 1982. HOWEVER, ADDITIONAL COMPENSATION FOR BILINGUAL POSITIONS IS OFTEN INADEQUATE OR NON-EXISTENT.

The Administrative Office of the Courts conducted a needs assessment in 1982 to determine the degree to which county probation departments had employed probation officers in the bilingual (Spanish-English) variant job title in order to make pro-

TABLE 53

LAW DEGREES CONFERRED TO MINORITIES IN 1991 AND PROJECTED LAW DEGREES FOR 1992 BY INSTITUTION[60]

LAW SCHOOL	LAW DEGREES CONFERRED IN 1991			LAW DEGREES PROJECTED FOR 1992		
	NUMBER OF DEGREES	NUMBER OF MINORITY DEGREES	PERCENT OF DEGREES TO MINORITIES	NUMBER OF DEGREES	NUMBER OF MINORITY DEGREES	PERCENT OF DEGREES TO MINORITIES
Seton Hall	355	48	13.5%	336	66	19.6%
Rutgers-Camden	221	29	13.1%	245	34	13.9%
Rutgers-Newark	274	60	21.9%	267	84	31.8%
TOTAL	850	137	16.1%	848	185	21.8%

bation services accessible for Spanish-speaking persons.[61] The study concluded that the need for the title varies dramatically from county to county and that, while most counties did not have an immediate need to create additional bilingual positions, some did. Another key finding suggested that the bilingual variant job title is the best vehicle for hiring probation employees who are able to provide quality and effective services for speakers of both Spanish as well as English.[62] This approach was important since some

[60]The data were collected by the EEO/AA Unit at the Administrative Office of the Courts from the law schools in support of the minority law clerk recruitment and hiring program.

[61]Probation Administrative Management System, HISPANICS AND PROBATION SERVICES: SOME PRELIMINARY EXPLORATIONS (May 1982).

[62]Persons who apply for the Probation Officer (Bilingual) position must pass not only the standard Department of Personnel test for Probation Officer (i.e., the person must demonstrate competency to perform the substantive duties of the position), but also an examination of Spanish proficiency. The basic philosophy of the bilingual variant is that persons in these positions must be able to perform the basic duties of the position in either English or Spanish [or any other language], given the needs of the client.

persons who purportedly are bilingual and are hired in other positions are not sufficiently bilingual to perform their duties in both languages.

In 1985, the Chief Justice and Assignment Judges approved an action plan aimed at assuring that the County Probation Departments establish specific goals to employ sufficient numbers of bilingual probation officers given the Spanish-speaking clients they serve.

As Tables 54 and 55 illustrate, this initiative has been somewhat successful. From 1981 to 1990, the number of bilingual probation officers has increased, the variant title is used by more counties (six instead of two), and more persons are employed in the title (twenty-seven instead of five). Furthermore, the total number of bilingual Probation Officers has increased from forty-five to sixty-five.

While there is clear progress from a Statewide perspective, there are several shortcomings. First, some individual counties (especially Bergen, Essex, and Mercer) show serious continuing needs at the level of Probation Officer (Bilingual). Furthermore, most counties continue to underuse the variant title for Probation Officer. For both Probation Officers and other probation staff, the counties thus far employ more bilingual persons who are not in the variant position. This is problematic since there is no independent certification that persons who are counted as being bilingual really are able to perform their professional duties in both English and Spanish. The best way to ensure effective performance is to use the variant titles, as the original plan recognized in its effort to institutionalize bilingual titles rather than rely on soft estimates of bilingual ability.

The last issue with respect to bilingual variants is the undercompensation of persons in the bilingual variant. Since people who work in bilingual variant positions are required to have a significant additional skill, the additional skill should be recognized in the salary structure. This principle has been implemented in a few jurisdictions, but there is considerable resistance to it. While some counties pay an extra stipend to persons in bilingual titles, the practice is not widespread. This makes it difficult to attract and retain bilingual personnel.

FINDING #48

BILINGUAL POSITIONS ARE UNDERUSED OR NONEXISTENT IN THE MUNICIPAL COURTS.

The study of Municipal Court personnel found that almost two-thirds (62%) of the Municipal Courts that need to use bilingual positions do not. See Table 56 for full details.

RECOMMENDATION #48

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE BILINGUAL PROBATION INITIATIVE BY (1) REQUIRING GREATER RELIANCE ON THE BILINGUAL VARIANT POSITION FOR MEETING GOALS, (2) EXTENDING THE INITIATIVE TO ALL JUDICIARY UNITS, INCLUDING THE MUNICIPAL COURTS, THAT HAVE DIRECT CONTACT WITH THE PUBLIC OR CLIENTS, (3) CONDUCTING A NEW NEEDS ASSESSMENT AND SETTING NEW GOALS, AND (4) DIRECTING THAT EMPLOYEES IN BILINGUAL VARIANT TITLES BE PAID FOR THE ADDITIONAL SKILL THEY ARE REQUIRED TO HAVE.

This program can be improved upon in four ways. First, the original intention of institutionalizing bilingual positions must be re-emphasized. The Administrative Office of the Courts should

TABLE 54

STATUS OF BILINGUAL PROBATION STAFF HIRING:
PROBATION OFFICER POSITION (MAY 1990)

COUNTY	PRO-JECTED[63] # IN VARIANT TITLE[64]	1981 BILINGUAL STAFF[65]		1990 BILINGUAL STAFF		
		IN VARIANT	NO VARIANT	IN VARIANT	NO VARIANT	DIFF.[66]
Atlantic	2	0	2	1	0	-1
Bergen	5	0	3	0	0	-5
Burlington	1	0	0	0	0	-1
Camden	5	0	3	5	0	0
Cape May	0	0	1	0	0	0
Cumberland	5	0	1	0	5	0
Essex	10	0	2	1	5	-4
Gloucester	1	0	2	1	0	0
Hudson	10	0	3	2	16	+8
Hunterdon	0	0	0	0	0	0
Mercer	5	0	1	0	1	-4
Middlesex	5	1	3	6	1	+2
Monmouth	2	0	1	0	0	-2
Morris	2	0	3	0	0	-2
Ocean	2	0	4	0	1	-1
Passaic	10	4	4	10	3	+3
Salem	1	0	0	0	0	-1
Somerset	1	0	0	0	3	+2
Sussex	0	0	1	0	0	0
Union	5	0	5	1	4	0
Warren	0	0	1	0	0	0
TOTALS	72	5	40	27	38	-7

[63]The projected number is the target number of bilingual Probation Officers needed to cover the Spanish-speaking work load within each county.

[64]"Variant title" means positions that are officially the Bilingual variant of the Probation Officer title. Persons in the "No Variant" columns are individuals who reportedly speak Spanish, but who have not been tested.

[65]HISPANICS AND PROBATION SERVICES, supra n. 60, at 11-12.

[66]This column is the difference in the target number of positions (column 2) and the number of bilingual staff (sum of columns five and six).

TABLE 55

STATUS OF BILINGUAL PROBATION STAFF HIRING:
OTHER PROBATION STAFF (MAY 1990)[67]

COUNTY	1986 BILINGUAL STAFF[68]		1990 BILINGUAL STAFF	
	IN VARIANT	NO VARIANT	IN VARIANT	NO VARIANT
Burlington	0	1	0	1
Camden	3	1	2	0
Cape May	0	3	0	0
Cumberland	0	0	0	3
Essex	0	0	1	18
Gloucester	1	0	0	0
Hudson	0	17	0	31
Hunterdon	0	0	0	1
Mercer	0	4	0	10
Middlesex	2	1	6	0
Monmouth	0	0	2	3
Morris	0	1	1	3
Ocean	0	0	0	2
Passaic	0	16	37	0
Salem	0	1	0	0
Somerset	0	0	0	0
Sussex	0	0	0	0
Union	0	5	0	2
Warren	0	0	0	0
TOTALS	6	46	71	74

[67]The original 1982 plan focused only on the Probation Officer title and did not develop target numbers for other levels of positions. Hence this table does not include columns for either a target number or differences between current staff and the target number.

[68]Memorandum to Robert D. Lipscher from Harvey M. Goldstein (April 7, 1986).

TABLE 56

REPRESENTATION OF BILINGUAL EMPLOYEES IN MUNICIPALITIES WHERE THE HISPANIC POPULATION IS EITHER 20% OR MORE OF THE TOTAL POPULATIONS SERVED (WITH AT LEAST 1,000 LATINOS) OR HAS 5,000 OR MORE LATINOS[69]

MUNICIPALITY	ESTIMATED PERCENTAGE OF PERSONS WHO SPEAK ENGLISH NOT WELL OR NOT AT ALL	NUMBER OF COURT EMPLOYEES	NUMBER OF COURT EMPLOYEES IN BILINGUAL TITLES	PERCENT OF COURT EMPLOYEES IN BILINGUAL TITLES
Newark	8	109	2	2
Paterson	12	41	1	2
Jersey City	7	100	0	0
Union City	22	26	1	4
Elizabeth	11	21	0	0
Passaic	15	15	1	7
West New York	21	7	0	0
Camden	9	27	4	15
Perth Amboy	16	18	3	17
North Bergen	12	12	0	0
Vineland	7	13	2	15
Trenton	4	48	8	17
Hoboken	9	15	1	7
New Brunswick	6	16	0	0
Plainfield	4	15	0	0
Irvington	3	29	0	0
Dover	12	6	0	0
Kearny	5	6	0	0
Bayonne	3	17	0	0
Atlantic City	4	58	1	2
Hackensack	4	11	1	9
Woodbridge	2	24	0	0
Weehawken	12	8	0	0

[69]The statistics provided in the second column, "Estimated Percentage of Persons Who Speak English Not Well or Not at All," were calculated as follows: the percentage of Hispanic employees in the municipality was multiplied by the statewide average of persons who speak Spanish not well or not at all, i.e., 29%.

MUNICIPALITY	ESTIMATED PERCENTAGE OF PERSONS WHO SPEAK ENGLISH NOT WELL OR NOT AT ALL	NUMBER OF COURT EMPLOYEES	NUMBER OF COURT EMPLOYEES IN BILINGUAL TITLES	PERCENT OF COURT EMPLOYEES IN BILINGUAL TITLES
Harrison	9	4	0	0
Guttenberg	13	6	0	0
Egg Harbor City	6	2	0	0
Buena Boro	6	3	0	0
East Newark	10	2	0	0
Victory Gardens	11	2	0	0

insist that full compliance with target numbers of bilingual employees is dependent on the use of the bilingual variant.

Second, the program should be expanded to include all units within the Judiciary that deliver direct services or have direct contact with the public. All parts of the Judiciary at all levels must make themselves accessible to the linguistic minority public. The plan should be redrafted to include all such units.

Third, a new needs assessment should be conducted and new goals should be established. The Administrative Office of the Courts, in collaboration with key managers of the various trial court support units, should conduct a thorough review of the need for bilingual variants for all job titles. The diverse population in many vicinages calls for bilingual titles such as Family Crisis Worker, EEO/AA Officer, and Interviewer. As a matter of policy and in the tradition of the plans required of Probation Departments, a hiring plan should be required for bilingual variant positions for all operating units in the Judiciary with direct contact with the

public or clients. All vacancies for those positions should be targeted for intense recruitment.

Fourth, the program should be expanded further to include the Municipal Courts. Municipal Courts that serve communities with significant Spanish-speaking populations (and, possibly, speakers of other languages such as Creole) should be required to hire a sufficient number of bilingual personnel to provide effective services.

Finally, the current practice of paying employees in the bilingual variant position the same salary as employees who do not have this additional required skill should be abandoned.

The Task Force recommends the Judiciary set priorities and target the bilingual positions which require the employee to have frequent contact with the public. The Task Force is steadfast in its recommendation that increased pay for bilingual variants be pursued with the Executive Branch Department of Personnel and local funding bodies where the Judiciary cannot initiate the change through its own management structures. The Task Force also recommends that when those employees who are in non-variant positions are called upon to perform additional duties as "bilingual employees," they should receive as a matter of course compensation or compensatory time.

FINDING #49

THE QUALITY AND PROFESSIONALISM OF COURT INTERPRETERS ARE INADEQUATE, ALTHOUGH SOME PROGRESS HAS BEEN MADE SINCE 1985.

Chapters Three and Five have discussed the language barrier and court interpreting issues. This Committee underscores the concerns previously discussed. Court interpreters too often are unqualified and perform below an acceptable professional level. Mayor Robert Menéndez of Union City (formerly Assemblyman, now Senator) spoke about a defendant he had represented in court for refusing to take the breathalyzer test. Mayor Menéndez realized that the police officer who tried to administer the breathalyzer test had used the wrong word—respira instead of soplando—when instructing the defendant on what to do to take the test.

> I then asked the Municipal Court Judge to ask the court interpreter what respira meant in Spanish. And, to my surprise, she responded, 'To blow as if to blow out air.' I objected strenuously that the interpretation was improper and that in reality it meant 'to breathe as if to breathe in, not to blow out.' The judge looked at me and said, 'Well, you interpreted it one way, the interpreter another, and anyhow these linguistic issues are not at stake here.'
>
> Now happily the story had a successful ending. I convinced the judge to allow me to bring in expert witnesses as to what the difference was linguistically between respira and soplando, which I think would have been the proper word for my client. That consideration for him would have been a considerable fine and, most importantly, his livelihood since he was an interstate trucker and his license could have been revoked. I was able to prove that the linguistic interpretation did make a difference in the defense of whether he refused to take the test because he was respirando, as he was told to do, or breathing in instead of soplando, which is blowing out into the breathalyzer so that a register of his alcohol content could be made.[70]

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[70]UNION CITY PUBLIC HEARING 935-936 (November 30, 1989).

The Administrative Office of the Courts has developed a test primarily for applicants to new or vacant court interpreting positions. Since 1987, 506 persons have been tested; 77% failed (n=391); 6% passed (n=32); eighty-three (16%) scored in the critical range.

RECOMMENDATION #49

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO EXPAND ITS TRAINING EFFORTS, AND DIRECT APPOINTING AUTHORITIES TO INCREASE COURT INTERPRETERS' PAY.

Poor interpreting materially and substantially affects the quality of justice rendered in the courts. There should be more training of interpreters, more training and sensitivity sessions for judges so that they are able to recognize when an interpreter is needed, and more professional interpreters available. Finally, the trial courts should be encouraged to work with local governments to increase interpreters' salaries so that these positions will be more attractive and competitive.

RECOMMENDATION #50

THE SUPREME COURT SHOULD ESTABLISH ONGOING MONITORING PROCEDURES TO ENSURE REPRESENTATION OF MINORITIES IN ALL JOB CLASSIFICATIONS OF THE JUDICIARY'S STATE, VICINAGE, AND MUNICIPAL WORK FORCE.

Enhanced statistical data are needed to properly monitor minority participation in the work force. The EEO/AA Office of the Administrative Office of the Courts should receive current minority

population statistics, establish SDUs for key job classifications, and monitor the State, vicinage, and municipal employment statistics on a quarterly basis. The basic reports on minority employment should show the SDUs for each job category.

Exit interview forms should be revised to include data necessary to assess the work environment and detect racially and ethnically discriminatory practices. The forms should be tabulated and a report issued on a semiannual basis. Consideration should be given to conducting employee opinion surveys every three years, to assess similar information. The responsibilities and scope of the EEO/AA Advisory Committee should be revised to include participation in the project.

To ensure follow-up on recommendations made as a result of the enhanced statistical data available, the Task Force recommends the Administrative Director conduct annual individual meetings with each Assistant Director to discuss EEO/AA needs for each unit. The performance evaluations of these managers should include, in part, a review of their unit's success in meeting EEO/AA goals. It is also recommended that the Assignment Judges meet with the Chief Justice for similar purposes.

RECOMMENDATION #51

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH A CAREER DEVELOPMENT OFFICE AND AN IN-HOUSE PROMOTION POLICY.

A professional should be assigned to maintain a résumé bank of employees seeking job changes. Qualified minority and majority

employees should be channeled into appropriate areas. The career counselor should be familiar with future work force needs, job qualifications and responsibilities, EEO/AA goals and objectives, and personnel policies, practices, and procedures. The career counselor also should assist in coordinating reclassifications.

The Task Force also recommends that an in-house promotion policy be established with an emphasis on Affirmative Action goals. Whenever possible, in-house employees should be given priority when vacancies occur, unless there is an unsatisfactory level of minority representation in the in-house pool of applicants. Supplemental training should also be provided whenever needed to enhance promotional opportunities. An emphasis on in-house promotions, of course, does not mean that external recruitment for higher positions is closed.

RECOMMENDATION #52

THE SUPREME COURT SHOULD REQUIRE THE ADMINISTRATIVE OFFICE OF THE COURTS TO (1) EXPAND ITS TRAINING EFFORTS TOWARD CULTURAL AWARENESS AND MANAGEMENT SKILLS IN A MULTICULTURAL WORK FORCE AND (2) PROVIDE MINORITY EMPLOYEES WITH GENERAL MANAGEMENT AND LEADERSHIP TRAINING.

In concert with the Task Force's recommendation that career ladders and a Career Development Office be established (see Recommendation #45), the number and scope of training programs should be substantially increased to enhance the pool of minorities eligible for promotion. The Task Force supports these programs for developmental and remedial purposes.

Increased management level training on topics such as managing cultural diversity, supervisory skills, time management, stress management, and oral and written communication should be presented. These programs should not be limited to present managers. Enrollment should be open to all levels of employees, but special efforts should be made to ensure that minority employees are selected to participate.

It would be helpful to share resources and promote joint attendance at State- or county-sponsored courses. In addition to the expanded career development opportunities, shared training promotes employee relations and creates a sense of belonging to the Judiciary as an integrated system.

RECOMMENDATION #53

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH AN EEO/AA TRAINING PROGRAM FOR NEW EMPLOYEES AND AN ANNUAL CULTURAL AWARENESS PROGRAM FOR STATE AND VICINAGE JUDICIAL EMPLOYEES.

The AOC conducted affirmative action training for all State and vicinage judicial employees in 1988 and a Phase II training program is being planned. However, there is a need to conduct annual training with an increased emphasis on cultural and racial sensitivity.

The Task Force recommends that the training be similar to that offered by private sector employers. The training should be conducted in large part by minority trainers and cover cultural

values, mores and norms to promote greater understanding of minorities as co-workers and users of the judicial system.

RECOMMENDATION #54

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH EMPLOYEE SUPPORT SERVICES TO ASSIST IN RECRUITMENT AND RETENTION OF MINORITIES IN THE JUDICIAL WORK FORCE.

The comparative review of private sector EEO Plans and Programs and the existing AOC EEO Plan suggests the need for more active and innovative EEO/AA programming. The Task Force recommends the adoption of employee support programs that will increase employee retention and productivity. Four programs are proposed for immediate implementation: Child care/elder care, job sharing, home production, and flextime.

The Task Force recommends the continuation and expansion of the Justice Juniors Day Care Center at the Hughes Justice Complex. Consideration should be given to giving priority to low-income employees with child care needs.

A similar service for elder care, although desirable, may not be practical. The Task Force, therefore, recommends that the Judiciary explore a working relationship with an elder care referral service.

RECOMMENDATION #55

THE SUPREME COURT SHOULD ESTABLISH A TUITION REIMBURSEMENT PROGRAM AS SOON AS POSSIBLE.

Since promotion of minority employees is vital to full minority participation, the Task Force is concerned about the low percentage of minorities who are being promoted. Data need to be collected and analyzed in order to determine which employees meet the experience and/or education requirements.

Tuition reimbursement for all employees, with consideration for EEO/AA goals, may ease the education barrier, should there be a determination that this barrier exists. Full or partial tuition reimbursement for graduate and undergraduate courses at accredited colleges and universities is not new to New Jersey Government. Many Executive Branch departments offer tuition reimbursement for their employees. The Committee has learned that court interpreters are afforded reimbursement by the Judiciary for relevant course work. This policy should be expanded to other Judiciary workers. See Appendix E10 for a description of the tuition reimbursement program for interpreters.

FINDING #50

MINORITY APPLICANTS PASS THE NEW JERSEY BAR EXAMINATION AT A RATE LOWER THAN DO NON-MINORITY APPLICANTS.

Majority persons who take the New Jersey Bar Examination have a higher passing rate than do minority examinees. A study conducted by the Advisory Committee on Bar Admission (ACBA), partly at the request of the Task Force, analyzed the results over three

successive bar exams: July 1988, February 1989, and July 1989. For applicants taking the Bar Examination for the first time, the passing rates were as follows: 53% for Blacks, 62% for Hispanics, 68% for Asians, and 83% for whites.[71] For persons retaking the examination, i.e., persons other than first-time examinees, the passing rates were 20% for African Americans, 13% for Latinos, 18% for Asians, and 36% for whites. See Table 57 for further details.

TABLE 57[72]

RATES OF PASSAGE OF THE BAR EXAMINATION BY EXAMINEE STATUS AND RACIAL/ETHNIC GROUP, 1998-1990

RACE/ ETHNICITY	FIRST-TIME EXAMINEES		REPEAT EXAMINEES	
	NUMBER	PERCENT	NUMBER	PERCENT
Black	256	53%	242	20%
Hispanic	55	62%	39	13%
Asian	47	68%	28	18%
White	4990	83%	1122	36%
Other	33	70%	16	0%
Missing	229	75%	24	0%
Total	5610	81%	1471	32%

A major question raised by the first study by Klein and Bolus was "the extent to which a minority group's share of those taking the exam for the first time corresponded to its share of those who

[71]All of the minority bar associations were consulted about whether these data should be released. The Hispanic Bar Association of New Jersey, the Minorities in the Professions Section of the New Jersey State Bar Association, and the South Jersey Lawyers Association responded in writing and urged the Task Force to release the findings.

[72]Klein and Bolus, "A Statistical Analysis of the New Jersey Bar Examination," supra n. 5, Table 7, at 17.

eventually passed it (i.e., after one or more tries).[73] A follow-up study was conducted to address the question. Two more Bar Examinations—February 1990 and July 1990—were added to provide a more extensive data base. The researchers reached the following conclusions:

> Black, Hispanic, and Asian candidates together comprised 6.2 percent of those taking the exam for the first time. These three groups constituted 5.4 percent of those who eventually passed. Thus, their eventual passing rate lagged slightly (0.8 percentage points) behind their proportional share of an incoming cohort.[74]

The complete results of that analysis are reported in Table 58.

TABLE 58[75]

PIPELINE ANALYSIS OF DATA AND RESULTS OF THE BAR EXAMINATION
(JULY 1988 THROUGH JULY 1990)

RACE/ ETHNICITY	FIRST-TIME EXAMINEES ONLY		ALL PASSING EXAMINEES	
	NUMBER	PERCENT OF ALL FIRST-TIMERS	NUMBER	PERCENT OF ALL PASSING EXAMINEES
Black	361	4.2%	286	3.6%
Hispanic	77	0.9%	64	0.8%
Asian	91	1.1%	71	0.9%
White	7630	88.6%	7145	90.0%
Other	51	0.6%	45	0.6%
Missing	400	4.6%	325	4.1%
Total	8610	100.0%	7936	100.0%

[73]Klein and Bolus, "Addendum to April 1990 Report on the New Jersey Bar Examination," supra n. 5, at 1-2.

[74]Id. at 2.

[75]Id., Table 3, at 4.

Factors contributing to the lower pass rate for minorities are not clear. A concern for this problem has been recognized nationally. In an effort to identify some of the contributing factors, a five-year study is being undertaken by the Law School Admission Council with the support of the American Bar Association, the National Conference of Bar Examiners, and the Conference of Chief Justices.[76] New Jersey is participating in the study.

In New Jersey, this differential pass rate presented questions of serious concern which should be addressed by the Board of Bar Examiners, the Advisory Committee on Bar Admission, those responsible for educating the applicants (from grade school through law school), and the applicants themselves. The Task Force is hopeful that the national study will shed additional light on the issue.

For more than twenty years, the Rutgers Law School/Newark has recruited and admitted large numbers of minority students, and in recent years Seton Hall Law School has made special efforts to increase minority representation within its student body. The Task Force recognizes the important contributions which these programs make.

The Supreme Court should encourage the three law schools in the State to recruit minority students and to provide special programs for them as is necessary. While these programs are already underway, the imprimatur of the Court would be helpful. The Court should encourage minority judges and lawyers to meet with minority law students and share their insights and experiences.

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[76]See Recommendation submitted by José García-Pedrosa, Chairman, American Bar Association, Section on Legal Education and Admissions to the Bar Report to the House of Delegates (February, 1991).

Finally, some members of the Committee expressed the view that students' selection of courses in law school might influence the chance of ultimately passing the Bar Examination. These members urge law schools to encourage minority students to take "core courses" beyond those required of all students during the first and second years of law school. Specifically, minority students should be encouraged to take such courses as real estate, sales and secured transactions, corporations, trusts and estates, as well as advanced criminal procedure and constitutional law. Some members of the Committee believe that these courses were more critical to passing the Bar Examination than the less traditional or clinical courses that the minority students may also wish to take.

Admission to the Bar is the ultimate test of the success of such programs, and increased efforts must be undertaken—at all levels of the educational system—to close the Bar Examination's pass rate gap between minority and non-minority applicants.

FINDING #51

SOME ESSAY QUESTIONS DRAFTED BY THE BOARD OF BAR EXAMINERS ARE PERCEIVED TO HAVE DEFECTS WHICH MAY AFFECT THE SCORES OF MINORITY EXAMINEES.

Another study undertaken by the ACBA, at the suggestion of the Task Force, was a review of twenty-three essay questions from recent New Jersey bar examinations to determine whether any defects existed in the questions which might affect the performance of minority examinees. Some Task Force members participated in the discussions. In this study, a group of twenty-four attorneys—six black, six Hispanic, six Asian, and six white—offered their

perspectives on the questions, including the wording, the selection of fact situations presented, the names used, and any other characteristics not necessarily related to the legal issues being tested.[77]

Only with respect to one question[78] was there a consensus among reviewers that existing defects were unfair to minorities. In other questions, however, some of the reviewers identified defects that they believed could potentially hurt the performance of minorities because of the way the question was worded. These included stereotypes of urban and suburban situations, the use of puns in names which might affect some test-takers, the lack of or use of minority or ethnic names in the questions, and the lack of tact in presenting some highly charged or emotionally sensitive situations.

Initial analysis indicated that there is a positive correlation between the multi-state test scores on the Bar Examination and the scores on the essay questions. These results have been reviewed by the Board of Bar Examiners and the Board plans to make changes, particularly in cases involving use of names and fact situations which are racially or ethnically insensitive.

Admission to the Bar is obviously critical to adequate participation in the justice system. Representation of minorities among New Jersey's lawyers is necessary to secure the confidence and trust of minorities in the system as well as to ensure that the system is sensitive to minority needs and perspectives.

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[77]MINORITY REVIEW OF BAR EXAMINATION QUESTIONS, supra, n. 4.

[78]This was a question in which the fact situation was similar to the MOVE confrontation in Philadelphia.

RECOMMENDATION #56

THE SUPREME COURT SHOULD CONTINUE TO SEEK COMMENTARY ON THE BAR EXAMINATION FROM MINORITY ATTORNEYS. IT SHOULD (1) ADOPT THE RECOMMENDATIONS MADE BY THE ACBA BASED ON THE CONSULTANT'S REPORT, (2) INSTRUCT THE BOARD OF BAR EXAMINERS TO CONSIDER CAREFULLY THE REVIEWERS' COMMENTS ON THE ESSAY QUESTIONS, AND (3) ENSURE THAT THE BOARD OF BAR EXAMINERS AND RELATED COMMITTEES ALWAYS HAVE FULL REPRESENTATION OF MINORITY ATTORNEYS. FINALLY, THE COURT SHOULD SUPPORT EFFORTS TO RECRUIT MINORITY STUDENTS TO NEW JERSEY'S LAW SCHOOLS.

Minority membership on the Board of Bar Examiners, the Committee on Character, and the ACBA is essential. The Supreme Court should ensure that the present representation of minorities on the bodies is maintained or improved upon.[79]

FINDING #52

THERE HAS BEEN AN INCREASE IN THE REPRESENTATION OF MINORITIES APPOINTED TO STANDING SUPREME COURT COMMITTEES SINCE THE INCEPTION OF THE TASK FORCE, BUT THREE SUCH COMMITTEES REMAIN WITHOUT ANY MINORITY MEMBERS.

The Committee researched the representation of minorities on Supreme Court Committees from 1985 to present. By contacting individual committee staff, it obtained data for all Boards and Committees, with the exception of the District Ethics Committee and District Arbitration Committee. In 1985, there were only fourteen minorities (3%) among 475 appointees. Three were Hispanic and the

[79]At the present time, minorities serve on these key bodies related to the bar exam as follows: five of the twenty-four bar exam readers, one of the six bar examiners, eleven of thirty-seven members of the Committee on Character, and six of nineteen members of the ACBA. Telephone interview with Samuel J. Uberman, Chief of Bar Examiners (May 13, 1992).

remainder were African American. Fourteen of the twenty-five Boards and Committees were without minority representation.

The current composition of appointees shows better minority representation: 9%. At present, there are forty-four minorities among the 515 Supreme Court-appointed committee members. Twelve are Latino and thirty-two are African American. Three Supreme Court Boards or Committees remain without minority representation: Supreme Court Committee on the Special Civil Part, Board on Trial Attorney Certification, and Board of Trustees of the Client Security Fund.

RECOMMENDATION #57

THE SUPREME COURT SHOULD CONTINUE ITS EFFORTS TO INCREASE THE REPRESENTATION OF MINORITIES AMONG ITS APPOINTEES TO THE VARIOUS SUPREME COURT BOARDS AND COMMITTEES.

The representation of minorities on all boards and committees must be monitored and minorities should be appointed as vacancies occur. The Supreme Court should adopt a policy that requires an appropriate representation of minorities on all advisory boards and committees. Additionally, minority representation on the boards and committees should be monitored by the Supreme Court to ensure appropriate representation and participation. The scope of the Task Force's recommendation is intended to include appointments to chairs of committees and task forces and minority representation among staff support to the various committees and task forces.

RECOMMENDATION #58

THE SUPREME COURT SHOULD SET A STANDARD FOR DETERMINING UNDERREPRESENTATION (SDU) IN COURT APPOINTMENTS. THAT STANDARD SHOULD REFLECT THE LEVEL OF MINORITIES USING THE SYSTEM.

The Court should establish an SDU for court appointments. These appointments are not employees, but attorneys, guardians, fiduciaries, and expert witnesses. While not all court appointees are attorneys, many of them are, and the non-attorneys come from many different specialty groups. The SDU should be a simple and direct measure to guide the court in appointing minorities. Without this goal, it is too easy to make court appointments from the qualified persons who are known to the judge making the appointment.

FINDING #53

COURT VOLUNTEERS ARE NOT SUFFICIENTLY REPRESENTATIVE OF THE CLIENT POPULATION.

The New Jersey courts use the services of more than 3,500 volunteers. These people work as members of Juvenile Conference Committees and Child Placement Review Boards, as persons supervising visitation between children and non-custodial parents, as helpers in supervising probationers, and in several other capacities.

Only recently has the court system attempted to determine the racial and ethnic make-up of court volunteers. In the first major survey, 77% of the volunteers who responded were white, even though most of the survey respondents came from New Jersey's urban

counties where there are large populations of minorities. A majority were female (63%), married (72%), over forty-five years of age (65%), and nearly half (48%) reported household incomes over $50,000.[80]

Although volunteers are actively demonstrating their interest and commitment, they are not representative of the client community—juvenile and adult offenders. Notwithstanding the good work of these volunteers, more needs to be done to reach out to minority group members to inform them about the opportunities to serve as volunteers. The recruitment and advertising initiatives used to recruit Judiciary employees should be revised and tailored to the Judiciary's program on volunteerism.

FINDING #54

THE JUDICIARY MAINTAINS INADEQUATE RECORDS ON RACIAL/ETHNIC REPRESENTATION AMONG COURT-RELATED VOLUNTEER BOARDS, MUNICIPAL COURT JUDGES AND STAFF, COURT APPOINTEES, AND COURT COMMITTEES.

With the exception of a data base being instituted for members of Juvenile Conference Committees,[81] no data are maintained for minority participation on volunteer boards and court committees, nor for employees of the Municipal Courts. It is not merely a problem that statistics on race/ethnicity of volunteers and employees are not kept. There is no data base of any kind on such

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[80]1989 Judicial Conference, REPORT OF THE COMMITTEE ON VOLUNTEER PROGRAMS 27-28 and Appendix A (September 12, 1989).

[81]A data base which will, among other things, permit the identification of the race and ethnicity of all members of Juvenile Conference Committees, Child Placement Review Boards, court-appointed special advocate volunteers, Project Care, supervised visitation, narcotics intervention program, and Volunteers in Probation was fully implemented in spring 1992.

persons. The inability to generate critical data hampers efforts to monitor the status of minority representation and progress toward EEO/AA goals.

One recent development should be noted. A Committee on Minority Representation Among Court Volunteers was formed in September 1990. The Committee's charge is to establish an SDU for court volunteers and determine a mechanism to monitor compliance. No similar Committee has been formed to address court appointments.

RECOMMENDATION #59

THE SUPREME COURT SHOULD SET THE STANDARD FOR DETERMINING UNDERREPRESENTATION (SDU) IN COURT VOLUNTEER PROGRAMS IN TWO STAGES: FIRST AT THE LEVEL OF MINORITIES IN THE COUNTY POPULATION AND SECOND AT THE LEVEL OF MINORITIES AMONG THE CONSTITUENCY SERVED.

The Task Force sees the need for setting a SDU for court volunteer programs as a benchmark to monitor the progress of efforts to recruit minority volunteers. These volunteer programs are vital to court operations. Minority volunteers are believed to be as important to the perceptions of the community as minority judges and employees.

Because of the central role of volunteers as helpers to litigants, probationers, and defendants, the ideal goal is that the minority percentage among volunteers should reflect the minority percentage of each program's constituency. This is the recommendation of the Committee on Volunteer Programs of the 1989 Judicial

Conference on Juveniles, Justice, and the Courts,[82] and the Task Force concurs.

It is already the policy of the Judiciary that the minority percentage of a county's Juvenile Conference Committee should reflect the minority percentage of juveniles who come before the Committee. R. 5:25-1(b) provides in part, "Members of a committee, to the maximum feasible extent, shall represent the various socio-economic, racial and ethnic groups in the community or communities to be served by it." The problem is that there is no mechanism for enforcing this existing policy,[83] much less the policy the Task Force intends to be implemented for all volunteer programs. This constituency-based SDU is important to make clear to the program's clients that the volunteers serve as helpers, as role models, and as a support network to the persons who are trying to improve their lives.

This goal may be difficult to reach in some counties and in some programs. An intermediate goal may be set, as long as the court system does not forget that it is intended only as a temporary measure. The intermediate goal suggests that court volunteers reflect the percentage of the county's minority population. Meeting this goal should be considered the first step in the effort to make court volunteer programs reflect the diversity of persons they serve within the various constituent communities.

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[82]Supra, n. 79.

[83]This was discussed by the Supreme Court Task Force on Interpreter and Translation Services. BACKGROUND REPORT #16: SURVEY OF BILINGUAL COURT SUPPORT SERVICES 51-72 (April 22, 1985).

RECOMMENDATION #60

THE SUPREME COURT SHOULD REQUIRE THAT THE VARIOUS VOLUNTEER PROGRAMS BE BETTER ADVERTISED IN THE MINORITY COMMUNITY.

The present level of outreach for the various volunteer programs is limited. There should be broader and more aggressive attempts to recruit minority volunteers. For example, the Task Force suggests that bilingual recruitment brochures be developed. Assignment Judges should take an active role in monitoring the representation of minorities on volunteer boards and Committees. The EEO designee of each county should be responsible for collecting and tabulating racial and ethnic data.

RECOMMENDATION #61

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO MAINTAIN CURRENT DATA ON MINORITY REPRESENTATION AMONG LAWYERS, MUNICIPAL JUDGES AND EMPLOYEES, COURT COMMITTEES AND STAFF, COURT VOLUNTEERS, AND COURT APPOINTEES.

The Task Force recommends the courts collect racial and ethnic data in all program areas and on all groups of persons, whether employees, volunteers, or appointees. That data should periodically be analyzed and reported to the Chief Justice and the Supreme Court to help in resolving key administrative issues. There is some question about how much data should be collected pertaining to race and ethnicity. People may be somewhat reluctant to identify their race or ethnicity on various forms, especially on matters related to the administration of justice. But if the court system

is to energize its outreach to minorities, it needs to document its efforts, disclose the results of its efforts, and recognize and learn from its shortcomings. It needs to collect regular and timely racial/ethnic data on those programs in which it seeks to improve minority participation.

FINDING #55

PROCUREMENT POLICIES AND PROGRAMS MAY EXHIBIT SOME BIAS.

The Judiciary at the State level uses the Executive Branch for its procurement and contracting with vendors. There was some testimony at the public hearings that the State discriminated against minority vendors in the Executive Branch processes.[84] While the courts are not directly responsible for purchasing policies and practices, the Judiciary should request an investigation of these charges. The Task Force is sharing the information it has with the Governor's Study Commission on Discrimination in Public Works Procurement.

RECOMMENDATION #62

THE SUPREME COURT SHOULD DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH AND MONITOR A MINORITY VENDOR PROGRAM TO ENSURE ONGOING REPRESENTATION OF MINORITIES IN ITS CONTRACTS.

Where the Judiciary is able to institute its own purchasing procedures, it should develop a minority vendor program. Such a

[84]John Samuel Lewis, NEPTUNE PUBLIC HEARING 439-441 (February 27, 1990).

program would include annual training offered to minority business owners on the process and procedure of contracting with the Judiciary of the State of New Jersey. Although ideally the training should be offered by the Executive Branch for all State purchasing, the Task Force recommends that the Judiciary take the lead in developing and administering such a program.

The AOC's Assistant Director for Management Services should be responsible for monitoring minority representation in State contracts for the Judiciary. A report on the racial and ethnic representation among contractors should be prepared for the Administrative Director on a quarterly basis.

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SEPARATE STATEMENTS BY DR. STEPHEN H. BALCH

MEMORANDUM

To: The Honorable Theodore Z. Davis
Chairman, Supreme Court Task
Force on Minority Concerns

Subject: Dissent on Report of the Committee on Minority Access to Justice

From: Stephen H. Balch, Member
Supreme Court Task Force on
Minority Concerns

Date: February 25, 1992

I cast one of two dissenting votes on the report of the Committee on Minority Access to Justice, on which I served. While many of the findings and recommendations of the report are plausible, it seems to me that its evidentiary base is far too weak to sustain any strong conclusions or meaningful proposals for structural change.

A sound study of the extent to which minority individuals enjoy equal access to the justice system would have made a systematic effort to collect data on behavior and outcomes, rather than concentrate on perceptions, and often secondhand perceptions at that. A variety of such research approaches were open to the Task Force, including direct observations of the judicial process and the analysis of court proceedings and judgments in cases where the ethnicity of parties could be determined. Despite six years to assemble its data, the Committee relied instead on surveys of judges and court managers, who were often not even recounting their own opinions, but simply providing speculation on what they thought others felt or believed. The testimony taken at public hearings was firsthand and often interesting, but it came from witnesses self-selected in a manner that casts some doubt on their representativeness and disinterestedness. While this testimony (and even the secondhand opinions of the court officers) was not without value, its role should have been to supplement harder data, assembled in a more direct and rigorous way. The differential utilization study promises to provide data of this kind, but it was not yet available when Committee's report was drafted.

Other methodological and interpretative problems abound. For example, many of the questions in the survey of judges and court managers are poorly phrased. Thus, if the question "Minority citizens accept less fully the legitimacy of the courts than similarly situated white citizens" requires a comparison between groups, the choices "never," "rarely," "sometimes," "usually" and "always" make little sense, and probably should have been replaced by a simple "yes," "no" and "not sure." By the same token, the fact that 49% of the sample choose "sometimes" as their answer can only by a rather tortured construction be taken to demonstrate that minorities consider the system less

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Stated briefly, my reservations are of two kinds. First, I think the report is one-sided in its view of the judicial system's impact on minorities, viewing the matter almost wholly in terms of potential discrimination against them within the system, and almost not at all from the perspective of the system's influence on the larger quality of life within their communities. While the courts may sometimes treat minority defendants and litigants less well than their non-minority counterparts, minorities have a far bigger stake than non-minorities in whether the courts can efficiently do their basic jobs: trying those accused of crimes and settling civil disputes. Because minority citizens have a higher probability of becoming crime victims, the first function is especially critical to their well-being and safety.

To study the impact of the judicial process on minority individuals and communities therefore entails formulating remedies whose possible meliorative effects with respect to discrimination must be balanced against the possible burdens and costs they may impose on the overall efficiency of the system. Measures such as ombudsmen, sensitivity training, and special recruitment programs aimed at under-represented groups all have cost and productivity consequences, which the Task Force has never tried seriously to assess, a failing accentuated by the extremely straitened fiscal circumstances now prevailing in the state. As a result, while some of its recommendations may open new career opportunities to minority professionals, their impact on the less fortunate members of these groups, whose main desire is often for effective protection or a timely court hearing, remains problematic.

Second, I am uneasy with the inclination of some sections of the report, particularly those dealing with minority participation, toward the principle of proportionality of representation within the judicial system by ethnic and racial group. I think this profoundly undercuts

the idea of equal justice under the law, which is a right of individuals, not groups, and will certainly work to erode the legitimacy of the judicial system in the eyes of the general public.

If other members of the panel do not take the trouble to communicate a dissent to you, I suppose that – practically speaking – you can count them as being in support. For my part, however, I wish to separate myself from any implication that I approve the Task Force document.

legitimate than "whites," as the same respondents could, without self-contradiction, have also chosen "sometimes" were the thrust of the question reversed. The questions and the findings also fail to distinguish among "minority groups," which may in fact be very differently situated.

If this report is to be genuinely useful the recommendations must be sharp and specific. This was not possible in most cases because the weak and haphazard methodology forced the Committee to rely on its instincts, and on impressions of the system its members possessed at the outset of the study. Because so many of the recommendations are vague, they must also pass over the thorny issues that any effort to implement them inevitably will raise. Consequently, the Committee has not been able to serve the Task Force or the Supreme Court very well. The only area in which I felt the evidence presented allowed us to make a really compelling case was with respect to the need for more and better court interpreters.

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