

# **NEW JERSEY SUPREME COURT**

## **Statement On The Final Report Action Plan on Minority Concerns**



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## Introduction

There are several documents in this compendium. On August 9, 1992, one day before the release of the New Jersey Supreme Court Task Force on Minority Concerns' final report, Chief Justice Robert N. Wilentz announced in a press release the Court's immediate approval of the Task Force's major recommendations and the establishment of a permanent oversight committee to succeed the Task Force and to oversee the implementation of the court-approved recommendations.

The Court issued a second press release on August 10, 1992 commending the Supreme Court Task Force on Minority Concerns for its work and noting that the Task Force . . . "has performed a public service of the highest order."

One year following the public release of the final report (August 16, 1993), the Supreme Court issued another press release. The Chief Justice announced the appointment of the chair and vice-chair of the standing Supreme Court Committee on Minority Concerns and the establishment of local advisory committees on minority concerns in each of the fifteen vicinages and at the Administrative Office of the Courts. The Court also provided a "Statement on the Final Report (pages 1-4) which is an overview of the Court's response and an "Action Plan" adopted by the Court to implement the recommendations (page 5).

The text of each recommendation along with a description of each recommendation is provided in Appendix A (page 16). Appendix B presents the Court's comments explaining selected responses.

For your convenience, the mandate has been summarized and is attached as Appendix C. The full text of the mandate can be found on pages 4 (August 10, 1992 Press Release) and in the "Supreme Court of New Jersey Action Plan on Minority Concerns" (1993), pages 5-6.

To obtain copies of this document and other Minority Concerns reports, please call 609.292-8967 or 609.633-8108 during business hours.



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### II. Supreme Court of New Jersey (August 16, 1993)

- Press Release.
- “Statement on the Final Report,” pp. 1-4. Provides an overview of the Court’s response.
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**PRESS RELEASES**

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN-007  
TRENTON, NEW JERSEY 086

FOR RELEASE: AUGUST 9, 1992

CONTACT: CARL GOLDEN 609-292-9580

The report and recommendations of the Supreme Court Task Force on Minority Concerns was released today, concluding a six-year-long study ordered by Chief Justice Robert N. Wilentz to determine the existence, nature and extent of bias in the New Jersey court system.

The 48-member Task Force --- the first of its kind in the nation --- was headed by Superior Court Judge Theodore Z. Davis of Camden County.

The report has been submitted to the Court and will be officially published tomorrow. The Court has directed a 90-day period in which to receive public comment on it.

The Chief Justice announced the Court's immediate approval of one of the Task Force's major recommendations --- the establishment of a permanent oversight committee to succeed the Task Force and oversee implementation of the recommendations eventually accepted by the Court.



This permanent committee, to consist of judges, lawyers and public members of diverse racial and ethnic backgrounds, will monitor the Judiciary's progress in achieving the task Force goals, complete research currently in progress, and make further recommendations to the Court.

The Chief Justice, in a statement issued with the report, commended the Task Force, saying it had performed "a public service of the highest order."

"We have long known that the same bias that has affected all of society for so long exists in all of its institutions, including the Judiciary," Wilentz said. "That general knowledge, however, has not been enough to bring about effective corrective action. What is needed and what has been accomplished by the Task Force is broad public exposure of the problem, in detail, so that the Judiciary will know better where to attack it, and so that the public will support our efforts."

"The Judiciary's efforts in this area have been of long standing and have been substantial," the Chief Justice said. "This report gives us new direction and new motivation."

"The mere existence of bias must be a matter of great concern to an institution dedicated to fairness and equality," Wilentz said. "It has always been a matter of great concern to me. It must be

eradicated, no matter how difficult that may be and no matter how long that may take."

"If there is to be one place in our society that is to be totally, completely free of bias, it must be the courts and the court system," the Chief Justice said. "If there is to be one place where blacks and Hispanics can enter and know they will be treated the same as anyone else, not one bit different, no better, no worse, that place must be the courts and the court system.

"The Judiciary, judges, support staff, administrator, have tried hard to make it that way," he continued. "We will continue to do so. We will never be content until bias is completely eliminated."

Printed copies of the report and its appendices are available from the state's two officially designated publications of the Court, The New Jersey Law Journal and New Jersey Lawyer. The cost is \$3.00 for the report alone; \$22.00 for the appendices, and \$24.00 for a complete set of the report and appendices.

Arrangements can be made by calling the Law Journal at 201-642-0075 or the New Jersey Lawyer at 908-549-4800.



ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



RICHARD J. HUGHES  
JUSTICE COMPLEX  
CN-037  
TRENTON, NEW JERSEY 08625

FOR RELEASE: AUGUST 10, 1992

CONTACT: CARL GOLDEN (609)292-9580

The Task Force on Minority Concerns has completed its long and arduous work. No more difficult assignment has faced a Supreme Court Task Force. No more difficult problem has faced the judiciary, for the elimination of racial bias will require unusual determination and perseverance.

I commend the Task Force for its work. It has performed a public service of the highest order.

The Task Force has publicly exposed the existence, nature and extent of bias in the court system. That was one of many important reasons for its appointment, the first such group ever created in the nation. We have long known that the same bias that has affected all of society for so long exists in all of its institutions, including the judiciary. That general knowledge, however, has not been enough to bring about effective corrective action. What is needed and what has been accomplished by the Task Force is broad public exposure of the problem, in detail, so that the judiciary will know better where to attack it, and so that the public will support our efforts. The judiciary's efforts in this area have been of long standing, and have been

substantial. But this report gives us new direction and new motivation.

The persuasiveness of the Task Force's findings and the credibility of its conclusions and recommendations are based on the report's thoughtful and careful documentation and are enhanced by the composition of the Task Force itself. This was a most distinguished group, including the Public Advocate and two former Public Advocates, a former Attorney General, a former State Senator, a law school dean, the presidents of three minority bar organizations, the executive director of the New Jersey Business and Industry Association and the chairs of the State Criminal Disposition Commission, the New Jersey Advisory Committee to the U.S. Civil Rights Commission, and the Supreme Court Committee on Women in the Courts.

Identifying bias in the court system can be difficult, and the task of measuring its extent even more so. Given those difficulties the Task Force has done well in both respects. It did so by virtue of hard work and persistence in addressing a subject that seems so obvious, yet is so elusive to measure.

No matter what its extent, the mere existence of bias must be a matter of great concern to an institution dedicated to fairness and equality. It has always been a matter of great concern to me. It must be eradicated, no matter how difficult that may be and no matter how long it may take.

One of the most significant and hopeful conclusions of the Task Force relates to judges' and court managers' attitude toward

the problem. The Task Force found that while they differ among themselves in their perception about the extent of justice system bias, they are overwhelmingly united in their commitment to its elimination.

Judges and court managers support increased affirmative action, equal opportunity and sensitivity training for court managers, hiring more minorities or improving the status of minorities employed within the justice system, increasing the number of minority volunteers in the justice system and public education to encourage minority usage of the civil courts.

That conclusion accords with my own perceptions and with the experience and views of those most knowledgeable about our judges and our court administrators. It is not surprising, for they are the beneficiaries of a judicial tradition that goes back to Chief Justice Vanderbilt and continues through Chief Justice Weintraub and Chief Justice Hughes -- a tradition not only of judicial excellence, but of fairness and equality. Unintended bias, bias in impact, bias in effect, unconscious bias -- all of these exist, and to those who suffer, it makes little difference that the bias may be unintended. But intentional, conscious discrimination in our court system is a rarity, and that helps explain the finding of the Task Force of the almost unanimous commitment on the part of judges and administrators to take whatever steps are necessary to end bias in all of its forms.

The judiciary -- judges, administrators, support staff -- have no reason to be defensive about this report. We are not

perfect, and we know it, and it makes little difference how far we vary from any acceptable standard on this issue, for none of us wants the court system to fall short one iota in any respect and to any extent when it comes to eliminating discrimination.

There must be one response to this report -- it is a report that must be treated as a call to action, a guide to where action is most needed, and an opportunity to redouble our efforts.

As a critical first step, the Supreme Court has approved the Task Force recommendation that a permanent oversight committee be established to succeed the six-year-old task force and continue its pioneering work.

This permanent committee, one of the first of its kind in the nation, will oversee implementation of other Task Force recommendations adopted by the Court, monitor the judiciary's progress in achieving Task Force goals, finish research still in progress and make further recommendations to the Court, including recommendations for additional research.

The standing committee will consist of judges, lawyers and public members of diverse racial and ethnic backgrounds, many of whom served so well on the Task Force, with the number still to be determined. It will be a companion effort to that of the Committee on Women in the Courts, which was established in 1990 to deal with issues of gender fairness and gender bias.

We have already started to implement other recommendations in the initial report. Courses aimed at enhancing sensitivity in the treatment of minorities have become a regular feature of our

annual judicial college and, most recently, were introduced at our orientation program for new judges. Training in managing diversity was initiated at our staff college and is being presented this year to all other managers in four regional training sessions. Several cultural awareness courses have been made a permanent part of the judiciary's training curriculum offerings. Later this year, all 9,000 judiciary employees and judges will begin participating in a course on understanding their role in a multi-cultural workplace -- the followup to a system-wide program conducted in 1986.

A formal procedure for filing employment discrimination complaints has been established and detailed guidelines on investigating and resolving such complaints have been developed. A code of responsibility, testing, training, and tuition reimbursement have been developed for interpreters and translators. More than 40 court documents and forms have been translated into Spanish. Efforts have been stepped up to recruit minorities as volunteers in court programs. A neutral selection process has been established for court appointment of attorneys to ensure that every attorney is eventually called upon for such assignments.

The final report provides added reason to continue these efforts. The report treats several major areas of minority involvement with the court system: in employment and as witnesses, jurors, litigants, or defendants in criminal matters. To some extent they are interrelated; the relative lack of a



minority presence among court personnel and judges understandably reinforces the fears and concerns when minorities are in court.

Equal employment opportunities are our goal, including a strong commitment to affirmative action. Equal and respectful treatment of witnesses and litigants is, of course, a given, a must, and nothing else than that will be tolerated.

For minorities who are defendants, all the report asks is that they be treated fairly and equally; it does not ask that they be favored, but that they not be disfavored. It asks that they not be treated worse just because they happen not to speak English well, or just because they happen to be poor, or just because they happen to be unemployed, without a family, lacking in education, or just because they happen to be Black or Hispanic. The report seeks no advantage for minorities and I do not believe they want any. They just want to be treated like everyone else and they are entitled to be.

Accompanying the report is a survey of perceptions, written by two consultants, that the Task Force submitted with its interim report in November, 1989. I asked that the survey be withheld at that time because I was convinced that its most prominently stated conclusion -- that ". . . we find that 98% of the respondents perceive some bias against minorities in the justice system" -- was terribly misleading and would plunge the Task Force into controversy that would have inevitably clouded the validity of the interim report and the credibility of the Task Force itself. My only purpose in requesting the delay was

to assure that the Task Force's clear message of bias in the court system and the corrective measures needed to eliminate it would not be confused and perhaps lost in that controversy.

Although much of the survey data was also used in the interim report itself, the difference is that the interim report put the data in a context that was balanced and fair.

The aforementioned conclusion in the survey executive summary, written by consultants, was based on the answers of 282 people (169 judges and 113 court managers) to 20 questions about their perceptions of bias in the justice system. They were asked, for instance, if they perceived "small increments of discrimination against minorities at each step of the criminal justice process" or if they perceived "that a jury is more likely to make a wrong decision for a minority defendant than for a white defendant..." The five choices given as possible answers to every question were "never," "rarely," "sometimes," "usually," "always." Their answers in the aggregate to the 20 questions asking whether or not they found prejudice in various areas can be seen in the table below:

<u>Never</u>	<u>Rarely</u>	<u>Sometimes</u>	<u>Usually</u>	<u>Always</u>
1,085	2,505	1,395	441	47
(20%)	(46%)	(25%)	(8%)	(1%)

Sixty-six percent of the responses were that bias was never or rarely perceived, 9% that it usually or always was. The balance, 25%, perceived prejudice "sometimes," without any

indication of what "sometimes" means, other than that it is somewhere in between "rarely" and "usually."

But the consultants counted every judge or court manager as one who found bias in the court system even if the respondent answered "never" for 19 questions and "rarely" for the 20th. When they added up the number of judges and court managers who had indicated a perception of any bias at all they counted them as finding justice system bias, just as if they had answered "always" to all 20 questions. That is how they reached the unfair and misleading conclusion that 98% found bias in the court system.

Recognizing that I am neither a social scientist nor statistician, I obtained an independent evaluation of the survey by a nationally-recognized out-of-state sociologist with expertise in research methods, statistics and law, Dr. Albert J. Reiss, Jr. of Yale University. When that evaluation confirmed my concerns, I discussed them with the Executive Committee of the Task Force in April of 1990, but told the members they could release the survey whenever they wanted. They decided to combine it with the final report which they then believed would be completed in the fall of 1990. However, it took longer than any of us envisioned to complete the final report.

I did not ask the Task Force to withhold release of the survey in order to conceal bias in the judiciary. Indeed, my main purpose in creating the Task Force was just the opposite.

My criticism of the consultants' executive summary does not detract one whit from the reliability of the Task Force's conclusions or the excellence of its work. I not only accept its final report, I approve of it and welcome it as a catalyst for potential improvement in this critical area. The entire public in this State should unite and support this report, for all it asks is fairness, nothing more, nothing less.

I pledge that the judiciary will do all within its powers to accomplish the recommendations ultimately adopted by the Supreme Court. If there is to be one place in our society that is to be totally, completely free of bias, it must be the courts and court system. If there is to be one place where Blacks and Hispanics can enter and know they will be treated the same as anyone else, not one bit different, no better, no worse, that place must be the courts and the court system. The judiciary, judges, support staff, administrators, have tried hard to make it that way. We will continue to do so. We will never be content until bias is completely eliminated.

**SUPREME COURT STATEMENT  
ON THE FINAL REPORT**

**SUPREME COURT OF NEW JERSEY ACTION PLAN  
ON MINORITY CONCERNS**

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
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FOR RELEASE: AUGUST 16, 1993

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KELLUM

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The Supreme Court today approved the Final Report of the Task Force on Minority Concerns. The Court favored almost all of the Task Force's sixty-three recommendations. The justices also adopted an action plan aimed at "eradicating all forms of bias and discrimination rooted in racial and ethnic prejudice, ignorance, or insensitivity."

On behalf of the Court, the Chief Justice has appointed Harold W. Fullilove, Judge of the Superior Court sitting in Essex County, Chair, and Severiano Lisboa III, Judge of the Superior Court sitting in Hudson County, Vice-chair of the new, Standing Supreme Court Committee on Minority Concerns. To complement at local levels the work of this statewide committee, the Court will create advisory committees on minority concerns in each vicinage as well as at the State level.

The Court's "Statement on the Final Report" is attached (see page 1) and provides an overview of its response. The "Action Plan" adopted by the Court to implement the recommendations follows (see page 5).

The text of the Task Force's recommendations contained in its Final Report—released August 9, 1992—with a description of the Court's disposition of each recommendation, is provided in Appendix A (page 16). Appendix B presents the Court's comments explaining certain of its responses (page 32).

The public may obtain copies of the Court's statement and action plan (including the appendices) by calling 609-984-5024 during business hours, evenings, or weekends, or by visiting any court facility.



**SUPREME COURT OF NEW JERSEY**  
**STATEMENT ON THE FINAL REPORT**

**OF THE SUPREME COURT TASK FORCE ON MINORITY CONCERNS**

The Supreme Court today has approved the Final Report of the Task Force on Minority Concerns and has named Harold W. Fullilove, a Judge of the Superior Court sitting in Essex County, and Severiano Lisboa III, a Judge of the Superior Court sitting in Hudson County, as Chair and Vice-chair respectively of a new Standing Supreme Court Committee on Minority Concerns. The creation of that new Committee was the first recommendation of the Task Force. As we noted on its submission to the Court, the Report of the Task Force clearly exposes the problem of minority discrimination in the judicial system. Given the composition of the Task Force and the credibility of its findings, its recommendations are most persuasive. We favor practically all of them, even where implementation may be deferred pending further study by others or receipt of additional funds from the Legislature, as noted in the attachments to this statement.

In the Court's view, the most important contribution of the Task Force—indeed, one of the main reasons for its creation—is that it has made public, in an official and credible study, the fact that discrimination against minorities affects so many aspects of the justice system. By so doing, the Task Force has energized both the public and the Judiciary to the task of addressing all aspects of the problem.

The Court regards itself as primarily responsible for eliminating discrimination in the Judiciary. By appointing a new



Standing Committee, we recognize the need and value of a permanent group to oversee, monitor, and spur on our work, a group deeply committed to this goal. We believe that the process of selecting that Standing Committee, involving many diverse organizations, groups, and individuals, will result in appointments by the Court that will promote confidence in and respect for the Committee's work. The Chair and Vice-chair shall be in charge of that process and shall submit recommendations for membership in the Standing Committee to the Court by early Fall 1993. They shall also consult, as appropriate, with Judges James H. Coleman, Jr., Judge of the Appellate Division, who chaired the Committee on Minority Concerns, and Theodore Z. Davis, Presiding Judge of the Superior Court, Chancery Division, Camden County, who chaired the Task Force on Minority Concerns. The Court will also require the appointment in every vicinage as well as the State level of an advisory committee on minority concerns.

Discrimination within the justice system is intolerable and must be eliminated, regardless of its extent. That it exists, the Court has no doubt. The public, however, is entitled to know that the survey conducted by the Task Force shows that the judges and judicial managers surveyed are committed to its elimination.<sup>1</sup>

Discrimination is a fact of life. In America it has deep historic roots and is systemic to some extent. It would be

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<sup>1</sup>Responding to the Task Force's questionnaire, 169 Superior Court judges and 186 court managers replied to the statement, "In its administrative operation, the judicial system in New Jersey should positively contribute to reducing racial discrimination," as follows: 73% of the judges and managers answered "Always," with 16% indicating "Usually," 8% "Sometimes," 2% "Rarely," and 1% "Never." The pattern of responses by judges only to the question, "In general, in your work as a judge, do you consider it your obligation to carry out policy against racial discrimination?" was even stronger: 80% "Always," 15% "Usually," 3% "Sometimes," 1% "Rarely," and 1% "Never."

unrealistic to believe, given its nature, that it can be eliminated either in America or in our Judiciary with a mere stroke of the pen. More unrealistic, however, is the belief that it will go away by itself. Its elimination requires continued exposure, as already started by the Task Force; hard work in addressing and eliminating its specific manifestations; strong leadership and an unflagging determination to succeed; and the perseverance to keep trying in these efforts. The Court, with the help of the Standing Committee, with the help of the rest of the Judiciary, and with the support of the public, will try to accomplish these goals.

The Judiciary has already undertaken numerous approaches to eradicate discrimination. Three initiatives symbolize the Judiciary's recognition that comprehensive, repeated efforts are required. First, two one-day courses on minority issues have been required of all county and state judicial employees, including judges, the first being presented in 1986 and the other beginning in mid-1992 and still continuing. Second, about 140 court employees throughout the system have been selected and specially trained over a five-day period as a cadre of people who can serve as catalysts and resource people in areas involving cross-cultural and cross-racial relationships. Finally, court employees have been offered numerous courses over the past two years on special cultural issues, minority career development, and managing cultural diversity.

Attached to this statement is the Action Plan on minority concerns adopted by the Supreme Court. It shall guide the Standing Committee, the Court, and all employees of the Judiciary. It also

serves as a summary of the initiatives sought by the Task Force which the Supreme Court has approved.

Two appendices are also attached. The first provides the complete text of each of the Task Force's recommendations together with the Court's disposition of each. The second presents the Court's commentary on its disposition of some of the recommendations.

This packet shall be given to every employee of the Judiciary, including the Municipal Courts, and to all newly hired employees hereafter. Furthermore, it is available to the public by calling 609-984-5024 during business hours, evenings, or weekends. Copies will also be made available to the public at every court facility in the State.

August 16, 1993

**SUPREME COURT OF NEW JERSEY**  
**ACTION PLAN ON MINORITY CONCERNS**

**INTRODUCTION**

The goal of eradicating all forms of bias and discrimination rooted in racial and ethnic prejudice, ignorance, or insensitivity, shall guide all operations of the Judicial Branch, including how (1) cases brought before the courts are processed and adjudicated; (2) the work force is managed through recruitment, training, accountability systems, and opportunities for careers, to deliver services effectively and efficiently; (3) community-based volunteers are utilized; (4) policies are developed and programs are designed, implemented, and maintained; (5) jurors are selected and treated; (6) grievances against the Judiciary are processed; (7) services and goods are purchased from vendors; and (8) the public is informed of the foregoing.

To that end, the Court adopts this action plan based principally on the Task Force's recommendations. This plan requires that certain actions be taken immediately. It also notes the Court's approval of other matters whose implementation cannot be immediate due to lack of resources. Still other subjects are to be reviewed by Supreme Court committees for subsequent consideration by the Court. Then there are issues that the Supreme Court Committee on Minority Concerns is to develop, study, and monitor. Finally, several matters are to be referred to the other branches of government without recommendation.

## ASSURE PERMANENT OVERSIGHT, COORDINATION, AND IMPLEMENTATION<sup>1</sup>

The Court will pursue a two-pronged approach to assuring effective oversight, coordination, and implementation of this plan beyond the special efforts being devoted to minority concerns by the Assignment Judges and other managers throughout the Judiciary. First, the Committee on Minority Concerns will be established. This shall be a standing statewide committee governed by the Operational Guidelines for Supreme Court Committees. Specifically, it shall assure implementation of the Court-approved recommendations of the Task Force. More generally, it shall advise the Supreme Court on how the Judiciary, with respect to racial and ethnic minorities, may best assure fairness, impartiality, equal access, and full participation and eliminate discrimination statewide at all levels and in all functions and capacities in dispute resolution, support services, and administration. It is commissioned to advise the Court on goals, objectives, and time tables for implementation of this plan, provide guidance to the local advisory committees (see next paragraph), monitor execution of the statewide minority concerns program, review and advise on major emerging policies and procedures, and conduct studies recommended by the Task Force on Minority Concerns and other research as it deems appropriate. As a rules committee, it shall report to the Court biennially, but may bring emergent matters to the Court at any time.

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<sup>1</sup>This section draws on the following recommendations: Unnumbered recommendation (re creation of permanent committee) and recommendations 19, 27, 29, 43, and 58.

In order to facilitate system-wide implementation of this plan throughout the Judiciary, the Court directs that each of the fifteen vicinages shall create a Vicinage Advisory Committee on Minority Concerns. Another Advisory Committee shall be created at the administrative offices in Trenton for State-level activities, i.e., Supreme Court, Appellate Division, Tax Court, their respective Clerk's offices, the Office of Attorney Ethics, the offices of the Chief Counsel to the Disciplinary Review Board and the New Jersey Lawyers' Fund for Client Protection, and the Administrative Office of the Courts (AOC). These committees shall, in full collaboration with each other and the Supreme Court Committee, advise the Assignment Judges, the Presiding Judges of the Appellate Division and the Tax Court, and the Administrative Director of the Courts respectively by identifying needs, developing implementation plans, and monitoring effectiveness in addressing minority concerns in the respective jurisdictions.

#### **ENHANCE COMPETENCY AND AWARENESS OF COURT PERSONNEL<sup>2</sup>**

All judges and other court employees shall become competent in delivering services effectively to a culturally and ethnically diverse population. The Court will require of all judges and other court employees regular training regarding the development and sharpening of such competency. Every orientation course for new employees shall include a segment on minority concerns, cross-cultural relations, sensitivity training, and an overview of the minority communities they serve. The AOC shall develop and offer

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<sup>2</sup>This section draws on recommendations 1, 22, 28, 32, 33, 36, 52, and 53.

an all-day program for all judges and other court employees. In addition, the AOC shall offer specialized courses periodically both at major annual training events such as the Judicial College, the Conference of Municipal Court Judges, and the Staff College, and on an ad hoc basis as needed.

The AOC shall also provide particularized training to specific groups of employees as follows: managers on managing a multicultural work force; and minority employees on management and leadership skills.

Finally, the AOC shall develop and implement a plan that fully integrates competency in delivering services in a manner that is culturally, racially, and ethnically appropriate into the Judiciary's personnel system. This shall include integrating appropriate features in job descriptions, recruitment processes, performance standards, and performance evaluations for all classes of employees.

#### **ASSURE PUBLIC ACCOUNTABILITY AND RESPONSIVENESS<sup>3</sup>**

The Court approves for immediate implementation a pilot project for developing a uniform procedure for receiving and handling complaints of discriminatory conduct brought against any employee of the Judiciary other than judges (complaints against judges will continue to be brought to the Advisory Committee on Judicial Conduct). The AOC is directed to form expeditiously an ad hoc committee which will design and carry out the pilot test, elements of which will include determining how to deliver ombuds-

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<sup>3</sup>This section draws on recommendations 2, 23 (1), 30, and 31.

person functions, evaluating whether a complaint procedure needs such functions to be successful, and assessing how best to integrate complaint procedures for all forms of discrimination. Within one year, the ad hoc committee shall report to the Standing Committee for eventual transmittal to the Court its recommendations for a program that the Court can consider adopting statewide.

#### PROVIDE EQUAL ACCESS FOR LINGUISTIC MINORITIES<sup>4</sup>

The Court reiterates its position that the courts and their support services shall be equally accessible for all persons regardless of the degree to which they are able to communicate effectively in the English language. Linguistic barriers to access shall be overcome by providing qualified interpreters and bilingual court support personnel.

To reach these goals, the AOC shall expeditiously develop and submit to the Court for its consideration a comprehensive set of standards for assuring equal access to courts and their support services for linguistic minorities. The Judiciary shall also continue to seek adequate funding for full implementation of the goals of (1) providing qualified interpreters to all persons needing them, (2) expanding its program for training court interpreters, and (3) compensating interpreters adequately.

As to bilingual court support personnel, the AOC shall extend its initiative on certain classes of bilingual personnel in the probation departments to all offices of the Judiciary where

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<sup>4</sup>This section draws on recommendations 3, 34, 35, 48, and 49.



bilingual employees are needed in order to assure strategic deployment of bilingual employees statewide.

Finally, each of the existing (Code of Judicial Conduct; Rules of Professional Conduct) and proposed (Code of Conduct for Judiciary Employees) codes of conduct for attorneys and employees of the Judiciary shall be revised to include the prohibition of discrimination on the basis of language.

#### IMPROVE TRIAL COURT PROCEDURES<sup>5</sup>

In view of its desire to eliminate all forms of bias and disparity in the trial courts, the Court has considered recommendations for revising certain trial court procedures. The AOC Family Division shall complete as soon as possible the development of and implement an automated juvenile disposition resource manual to inform all judges and court support personnel of available resources for juveniles. The Court has already endorsed implementation of a statewide intensive supervision program for juveniles which is already under way.

Consistent with long-standing practice, matters affecting trial court procedures such as proposed rule changes are referred to standing Supreme Court Committees. Accordingly, the Court has referred the recommendations pertaining to bail and eyewitness identification to the Criminal Practice Committee for the development of proposed rules or such other actions that the Committee might recommend to the Court. The Committee was instructed to include these issues in its biennial report to be submitted at the

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<sup>5</sup>This section draws on recommendations 4-8, 9-13, and 17, 19-21.

end of the 1992-94 rules cycle. Furthermore, the Court has referred the recommendations pertaining to proceedings on juvenile delinquency (i.e., recommendations 17, 19, and 20) to the Conference of Family Division Presiding Judges for its views which are to be submitted to the Court by January 31, 1994.

All of the issues raised by the recommendations which have been referred to committees are serious matters and the Court, which is generally favorable to the goals of these recommendations, will act promptly on the reports received from these committees.

#### HEIGHTEN PUBLIC UNDERSTANDING OF AND ACCESS TO THE JUDICIAL SYSTEM<sup>6</sup>

The Court is committed to informing the public about the nature and operations of the judicial system and its efforts to ensure the principle of equal treatment for all. To this end, this plan shall be publicized in each court facility when and as appropriate, including at annual Law Day ceremonies. Beginning in 1994, each vicinage shall issue annually a statement on racial and ethnic bias in the courts to be posted and referred to in each court facility on or about Law Day.

In addition, each vicinage shall begin developing a permanent program to be implemented at the local level that will familiarize the minority communities with the judicial system. The vicinages may use their respective Vicinage Advisory Committees on Minority Concerns and seek guidance from the Standing Committee and take such other actions as they deem appropriate to accomplish this task.

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<sup>6</sup>This section draws on recommendations 18, 23, 28, and 37.

Finally, subject to the availability of adequate resources, uniform forms and documents promulgated by the Judiciary and intended to be read by litigants or the public shall be written in language easily comprehensible to the lay public.

**INCREASE MINORITY REPRESENTATION (1) IN THE WORK FORCE, APPOINTEES, BAR, AND VOLUNTEERS AND (2) AMONG VENDORS TO THE JUDICIARY<sup>7</sup>**

The Court affirms the importance of minority representation at all levels of the work force, especially in key management positions. Minority judges and minority job candidates shall receive full and equal consideration for all categories of positions for which they are eligible.

The AOC shall expeditiously develop and implement a plan that appraises all managers who make personnel decisions to (1) identify qualified minority personnel throughout the Judiciary eligible for appointment to managerial positions and (2) assure that all minority groups are adequately represented throughout the rest of the work force. The plan shall include thorough procedures for (1) developing and monitoring performance in attaining Equal Employment Opportunity/Affirmative Action goals at all levels of the work force (including creating and maintaining data bases of all classes of employees as well as the Bar, Court committees, volunteers, and appointees; and conducting analyses of data pertaining to new hirings, promotions, and separations), (2) identifying the areas of greatest underrepresentation, (3) renewing commitment to successful programs like the minority law clerk program, and (4)

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<sup>7</sup>This section draws on recommendations 41, 42, 44-47, 50, 51, 54-57, and 59-62.

establishing a career development and employee support service as well as a promotion policy.

The Judiciary shall seek funds to permit the creation of a tuition reimbursement program. The current practices of involving minorities in efforts to improve the Bar examination, assuring minority representation on Supreme Court boards, committees, and task forces, and recruiting minorities for the Judiciary's volunteer programs (including expanded advertisements in minority communities) are reaffirmed and shall be continued.

The Judiciary shall continue its participation in and support for the Executive Branch's minority and other set-aside programs. Furthermore, the AOC is to develop guidelines to support a minority vendor program that monitors the purchase of goods and services from minority vendors where the AOC has flexibility beyond the Executive Branch's programs.

#### **INTERACT WITH OTHER BRANCHES OF GOVERNMENT<sup>6</sup>**

The Judiciary is one of three co-equal branches of government. As a matter of comity, the Judiciary defers to the judgment of the Legislative and Executive branches on those matters which are within their respective domains. Because some of the matters addressed by the Task Force's recommendations are entirely or predominantly entrusted to the elected branches of government and involve elements of both policy and politics not within the jurisdiction of the Court, the Judiciary will call to the attention of the Legislative and Executive branches all of the recommenda-

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<sup>6</sup>This section draws on recommendations 14-16, 25, 26, 39, and 40.

tions that fall within those categories, but will not advocate for or take a position on them.

First, while the Court is concerned about the Task Force's finding that minorities are underrepresented among judges, the Court does not believe it appropriate for the Judiciary to become an advocate in this matter as the Task Force has requested, despite its importance and the desirability of its objectives. The Court has historically not advocated initial appointments to the Judiciary. The clear and substantial political aspects of this matter, as well as the presence of effective and numerous advocates of this position outside of the Judiciary, counsel against the Court's role. The pertinent findings will be transmitted to the Governor without comment by the Court.

The Chief Justice intends to approach the Attorney General and the Public Defender to explore the possibility of jointly sponsoring empirical analyses of the handling of juveniles and adult criminal defendants as recommended by the Task Force. The Court agrees with the Task Force that further study is warranted, but recognizes that this is a massive undertaking requiring substantial funding and cooperation with agencies outside the Judiciary. The Chief Justice will share the pertinent findings with the Governor.

The Judiciary will transmit to the Legislature the Task Force's recommendation that a mitigating factor be added to the sentencing provisions of the Code of Criminal Justice. However, because this is clearly a value judgment solely within the domain of the Legislature, the Court takes no position on the recommendation.

Likewise the recommendation that the Court consider proposing to the appropriate Executive Branch agencies that dedicated bed spaces for indigent defendants be made available for the Judiciary will be forwarded to the Governor and the Legislature. Again, the Court will not take a position on the proposal because it is exclusively a decision of the Executive Branch.

The Court supports statewide implementation of the Family Automated Case Tracking System (FACTS). The Judiciary shall continue to seek full funding through the normal appropriations process.

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**APPENDIX A**

**RECOMMENDATIONS OF THE  
SUPREME COURT TASK FORCE ON MINORITY CONCERNS  
AND THEIR DISPOSITION BY THE SUPREME COURT**

**Recommendation (Not numbered)**

The Chief Justice should appoint a permanent Supreme Court Committee on Minority Concerns to further the goals of the Task Force.

**Disposition:** Approved (see Action Plan, p. 6<sup>1</sup>).

**Committee on Criminal Justice and the Minority Defendant**

**Recommendation #1**

The Supreme Court should require annual sensitivity training<sup>1</sup> to address racial and ethnic bias for all judges and court support employees.

**Disposition:** Approved, with the modification that the Court will later determine, based on experience and feasibility, whether sensitivity training should be more or less frequent than annual (see Action Plan, pp. 7-8).

**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.

**Disposition:** Approved, subject to outcome of pilot project (see Action Plan, pp. 8-9).

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<sup>1</sup>Reference will be made in Appendix A to the Action Plan when there is additional information regarding or direct reference to the Court's response to a particular recommendation.



### 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.

Disposition: Approved, subject to adequate funding, but modified so as not to require "knowledge of cultural variations" (see Action Plan, pp. 9-10).

### 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.

Disposition: Approved, referred to the Criminal Practice Committee for development of appropriate procedures.

### 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).

Disposition: Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, p. 32<sup>2</sup>.)

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<sup>2</sup>Reference will be made to Appendix B, "Comments of the Supreme Court on Particular Recommendations," cited as "Supreme Court's comments," for those recommendations the Court has chosen to comment on.

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, p. 32.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, p. 32.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, p. 32.)

#### **Recommendation #9**

Practitioners in the criminal justice system, including judges, should attend educational seminars on eyewitness identification developed by their respective agencies.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, pp. 32-33.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, pp. 32-33.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, pp. 32-33.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, pp. 32-33.)

#### **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.

**Disposition:** Referred for review by and recommendation of the Supreme Court Criminal Practice Committee. (See Supreme Court's comments, pp. 32-33.)

#### 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.

Disposition: Approved (see Supreme Court's comments, p. 33, and Action Plan, p. 14).

#### 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.

Disposition: To be communicated to the Legislature without recommendation (see Supreme Court's comments, pp. 33-34, and Action Plan, p. 14).

#### 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.

Disposition: To be communicated to the Governor and Legislature without recommendation (see Supreme Court's comments, p. 34, and Action Plan, pp. 14-15).

**Committee on Minorities and Juvenile Justice**

**Recommendation #17**

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; (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.

**Disposition:** Referred for review by and recommendation of the Conference of Family Division Presiding Judges (see Supreme Court's comments, p. 34-35, and Action Plan, pp. 10-11).

**Recommendation #18**

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.

**Disposition:** Approved (see Action Plan, p. 11).

#### 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; (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.

Disposition: §1 approved and §2 referred for review by and recommendation of the Conference of Family Division Presiding Judges.

#### 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.

Disposition: Referred for review by and recommendation of the Conference of Family Division Presiding Judges (see Supreme Court's comments, p. 35).

#### 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.

Disposition: Approved (see Action Plan, p. 10).

#### **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.

**Disposition:** Approved (see Action Plan, pp. 7-8).

#### **Recommendation 23**

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; (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.

**Disposition:** Approved, with qualification regarding §2 (see Supreme Court's comments, pp. 35-36, and Action Plan, p. 11).

#### **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.

**Disposition:** Approved.

#### **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.

**Disposition:** Approved (see Action Plan, p. 15).

#### **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.

**Disposition:** Approved (see Supreme Court's comments regarding Recommendation #14, p. 33, and Action Plan, p. 14).

#### **Committee on Minority Access to Justice**

#### **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.

**Disposition:** Approved, but the Standing Committee will be asked to await report of the Ad Hoc Committee on Jury Selection in Criminal Cases.

#### **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.

**Disposition:** Approved (see Action Plan, pp. 7-8, 11).

#### **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.

**Disposition:** Approved.



### **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 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.

**Disposition:** Approved subject to outcome of pilot project (see Action Plan, pp. 8-9).

### **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.

**Disposition:** Approved subject to outcome of pilot project (see Action Plan, pp. 8-9).

### **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.

**Disposition:** Approved (see Action Plan, pp. 7-8).

### **Recommendation #33**

The Supreme Court should direct that performance standards be established to evaluate employees' treatment of racially, culturally, and ethnically sensitive issues.

**Disposition:** Approved (see Action Plan, pp. 7-8).

### **Recommendation #34**

The Supreme Court should direct that codes of conduct include a provision that prohibits discrimination against litigants on the basis of language.

**Disposition:** Approved (see Action Plan, p. 10).

**Recommendation #35**

The Supreme Court should require that a qualified interpreter is provided for every person who needs an interpreter.

**Disposition:** Approved, subject to adequate funding (see Action Plan, p. 9).

**Recommendation #36**

The Supreme Court should require that all court personnel attend ongoing cross-cultural training programs.

**Disposition:** Approved (see Action Plan, pp. 7-8).

**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.

**Disposition:** Approved, subject to adequate funding (see Action Plan, p. 12).

**Recommendation #38**

The Supreme Court should permit the Committee on Minority Access to Justice to supervise the completion of the Differential Court Usage Project.

**Disposition:** Approved.

**Committee on Minority Participation in the Judicial Process**

**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.

**Disposition:** To be communicated to the Governor and Legislature without recommendation (see Supreme Court's comments, p. 36, and Action Plan, p. 13-14).

#### **Recommendation #40**

The Supreme Court should consider presenting the finding of Task Force that there is widespread concern about the underrepresentation of minorities on the Municipal Court bench to all mayors and municipal councils.

**Disposition:** To be communicated to the Governor and Legislature without recommendation (see Supreme Court's comments, p. 36, and Action Plan, p. 13-14).

#### **Recommendation #41**

The Chief Justice should promote minority judges into the more prestigious and policy-making judicial assignments.

**Disposition:** See Supreme Court's comments, pp. 36-37, and Action Plan, pp. 12-13.

#### **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.

**Disposition:** Approved (see Action Plan, pp. 12-13).

#### **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.

**Disposition:** Not approved, but see Supreme Court's comments, p. 37, and Action Plan, pp. 6-7.

#### **Recommendation #44**

Additional analysis of the hiring, promoting, and separation data of the judicial work force should be conducted.

**Disposition:** Approved (see Action Plan, pp. 12-13).

**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.

**Disposition:** Approved (see Supreme Court's comments, pp. 37-38, and Action Plan, pp. 12-13)

**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.

**Disposition:** Approved (see Supreme Court's comments, pp. 37-38, and Action Plan, pp. 12-13).

**Recommendation #47**

The Chief Justice should continue the program to recruit minority law clerks.

**Disposition:** Approved (see Action Plan, pp. 12-13).

**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.

**Disposition:** Approved, with \$4 being subject to adequate funding (see Action Plan, pp. 9-10).

**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.

**Disposition:** Approved, subject to availability of funding (see Action Plan, p. 9).

**Recommendation #50**

The Supreme Court should establish ongoing monitoring procedures ensure representation of minorities in all job classifications of the Judiciary's State, vicinage, and municipal work force.

**Disposition:** Approved (see Action Plan, pp. 12-13).

**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.

**Disposition:** Approved (see Action Plan, pp. 12-13).

**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.

**Disposition:** Approved (see Action Plan, pp. 7-8).

**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.

**Disposition:** Approved (see Disposition of Recommendation #1, p. 15, and Action Plan, pp. 7-8).

**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.

**Disposition:** Approved, subject to adequate funding (see Action Plan, pp. 7-8).

**Recommendation #55**

The Supreme Court should establish a tuition reimbursement program as soon as possible.

**Disposition:** Approved, subject to adequate funding (see Action Plan, p. 13).

**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.

**Disposition:** Approved (see Supreme Court's comments, p. 38).

**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.

**Disposition:** Approved (see Action Plan, p. 13).

**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.

**Disposition:** Referred for review by and recommendation of the Committee on Minority Concerns in light of the Court's approval of the Final Report of the Supreme Court Committee on Court Appointments of Fiduciaries, Counsel and Experts.

**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.

**Disposition:** Approved.

**Recommendation #60**

The Supreme Court should require that the various volunteer programs be better advertised in the minority community.

**Disposition: Approved (see Action Plan, p. 13).**

**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.**

**Disposition: Approved (see Action Plan, p. 12).**

**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.**

**Disposition: Approved (see Supreme Court's comments, p. 38, and Action Plan, p. 13).**

APPENDIX B  
COMMENTS OF THE SUPREME COURT  
ON PARTICULAR RECOMMENDATIONS  
IN THE FINAL REPORT OF  
THE SUPREME COURT TASK FORCE ON MINORITY CONCERNS

Recommendations Nos. 4-8: These recommendations have been referred to the Criminal Practice Committee to get the benefit of its expertise in the area of bail. The Court is generally favorable, however, to the goals of those recommendations, for instance, emphasis on the relationship between bail and future appearances in court, defendant's ability to pay, consideration of further non-monetary release options.

Recommendations Nos. 9-13: These recommendations relating to eyewitness identification have also been referred to the Criminal Practice Committee. This is an area of considerable controversy, one which the Task Force identifies as a potential source of discrimination in outcomes. Some of the Task Force recommendations in this area call for changes in legislation, others in court practice or rules, others in instructions, etc. While the Task Force has devoted considerable time and study to these matters, the Court believes, given the kind of action called for by the Task Force recommendations, that the matters should be referred to the Court's Criminal Practice Committee in order to have the benefit of that Committee's experience, study, and views. By so doing the Court does not imply that these are not serious matters and potentially damaging to minority defendants, but rather that it



simply is not sure of the appropriate remedies, or indeed extent and impact of the problem.

Recommendation Nos. 14 and 26: While the Court has approved these recommendations for consideration of joint social scientific studies of system-wide handling of adult criminal and juvenile delinquency cases from arrest through disposition, it should be noted that such studies are a massive undertaking requiring substantial funding if the analysis requested is to command respect. Studies of bail and sentencing outcomes designed to control all factors other than race, or all factors other than those historically related to economic conditions often associated with race, are notoriously difficult to design and implement.

A previous study undertaken by the Sentencing Guidelines Project<sup>1</sup> of the Administrative Office of the Courts (AOC) concluded that no substantial relationship between sentences and race exists in New Jersey for adult offenders. Both the study and its conclusions provoked considerable controversy. Given the importance attached to this subject by the Task Force, the Court believes that further examination of this matter is called for, and agrees that the studies should be done jointly with the Attorney General, as recommended by the Task Force, as well as with the Public Defender.

Recommendation No. 15: This Recommendation asks that the Court request the Legislature to amend the Code of Criminal Justice so that the sentencing judge is required to consider, as a miti-

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<sup>1</sup>J.P. McCarthy, Jr., N. Sheflin, and J.J. Barraco, REPORT OF THE SENTENCING GUIDELINES PROJECT TO THE ADMINISTRATIVE DIRECTOR OF THE COURTS ON THE RELATIONSHIP BETWEEN RACE AND SENTENCING (September 4, 1979). Published at 104 N.J.L.J. 291 (September 27, 1979).

gating factor, defendant's societal deprivation during his or her youth that may have contributed to criminal activity. While the recommendation is obviously related to the impact of the criminal justice system on minorities, it is so clearly at the core of the value judgments that the Legislature must make in determining sentencing criteria, that the Court does not believe it would be appropriate for it to take a position on the matter. It is exclusively legislative, and there are many other institutions that could more appropriately call the issue to the Legislature's attention.

Recommendation No. 16: The Court takes no position on this Recommendation that it should request Executive Branch agencies to set aside treatment bed spaces for indigent defendants. Inadequate treatment facilities throughout the State for many different purposes are a common fact of life, a fact that affects the entire population, including indigent defendants. While society may conclude that the treatment of indigent defendants should have a higher priority than the treatment of others, that judgment is one for the Legislature and the Executive to make, not the Court. The Court would very much like to have adequate treatment facilities, including bed space, available for indigent defendants in need of same. Whether, given the shortage, they should be "dedicated" to the Judiciary poses not only the value judgment mentioned above, but the potential administrative deficit of having dedicated facilities to one institution when, from time to time, they may be more badly needed by others.

Recommendation No. 17: The Task Force recommends that the Court set a goal for the Judiciary of reducing the number of

juvenile minorities incarcerated. The Court believes it beyond its power, and improper, to adopt any policy that in effect strips trial court judges of the sentencing discretion vested in them by the law, a discretion to be governed solely by the law and not by some numerical or other goal determined by the Court. While the Court approves of the goal of the Task Force of reducing the disparity in the treatment of juveniles found by the Task Force, it believes—as does the Task Force—that that problem must be addressed by attacking wherever possible the causes of that disparity, rather than by determining a fixed goal that will govern overall sentencing dispositions. The Court is generally in agreement with the various steps mentioned in this recommendation, however. It has referred the recommendation in its entirety to the Conference of Family Division Presiding Judges for their study and comments in order to determine the extent to which various aspects of the recommendation should be implemented.

Recommendation No. 20: This recommendation asks the Judiciary to play a "lead" role in developing additional community alternatives for juveniles. This is not an appropriate role for the Judiciary. This recommendation has also been referred to the Conference of Family Division Presiding Judges for its review and recommendations on the role the Judiciary can appropriately play.

Recommendation No. 23: The second portion of Recommendation No. 23 calls for a policy requiring an increase in the number of minorities in all positions in the Family Courts at the vicinage level and the Family Practice Division at the AOC. While the Court generally supports such a policy, "requiring" an increase, for example, in the number of minority judges in the Family Division

must necessarily consider the impact on the number of minority judges in, for instance, the Criminal Division. The Court agrees with the thrust of the policy, but not with the requirement. The Court agrees that the Affirmative Action programs presently in place should be pursued aggressively.

Recommendation No. 26: See the discussion under Recommendation No. 14.

Recommendation No. 39: This recommendation seeks to bring to the attention of the Governor and the Legislature the Task Force's finding of widespread concern about underrepresentation of minorities on the Supreme, Superior, and Tax Court benches. The Court will, of course, inform the other branches of all of the recommendations of the Task Force requesting Executive or Legislative action. The Court does not, however, believe it appropriate for the Judiciary to become an advocate in this matter, regardless of its importance and the desirability of its objectives. Given the clear and substantial political aspects of the matter, and the presence of effective and numerous advocates of this point of view outside the Judiciary, the role of the Court is necessarily limited.

Recommendation No. 40: This recommendation seeks to bring to the attention of all mayors and municipal councils the Task Force's finding about underrepresentation of minorities on Municipal Court benches. As with the previous recommendation, the Court will inform the Governor and Legislature of the Task Force's finding.

Recommendation No. 41: This recommendation calls upon the Chief Justice to promote minority judges "into the more prestigious and policy making judicial assignments," presumably the positions

of Presiding Judge, Assignment Judge, and Appellate Division. Seven percent of the Superior Court Judges are minorities. Seven percent of the Appellate Division Judges are minorities; five percent of the Presiding Judges are minorities; there is one (six percent) minority Assignment Judge. The Chief Justice will continue the policies that have guided him in assigning judges to these various positions. Included among those policies, at the Appellate Division level, is achieving a balance of many different qualities within the Court as a whole; at the Presiding Judge level, expanding the opportunities of judges to participate in trial administration; and, for Assignment Judges, identifying the person most likely to lead the vicinage effectively.

Recommendation No. 43: The Standing Committee appointed by the Court can better achieve the goals of the multicultural advisory board envisioned in Recommendation No. 43, we believe. Furthermore, it is the Court's view that the number of minorities participating both as judges and managers are better able to perform and achieve the other goals of this recommendation than would be a multicultural advisory board. To some extent the objectives of this recommendation will be achieved by the creation of vicinage level advisory committees on minority concerns.

Recommendation Nos. 45-46: These recommendations call for special efforts to employ Hispanics (#45) and Asians/Pacific Islanders (#46) in the Judiciary's work force. While the Court recognizes that some distinct groups of minorities have more representation in the work force than do others, it does not want to distinguish among minority groups when there is general underrepresentation of them all. Accordingly, the Court has taken

a broader view of these recommendations and will direct the AOC to develop and implement a more aggressive plan to ensure adequate representation of all minorities and that the Judiciary's commitment to EEO/AA for all protected groups does not slacken.

Recommendation No. 56: This recommendation embodies several different but related proposals regarding the Bar examination and sensitivity to minority Bar candidates. The Court has previously considered and approved recommendations of its Advisory Committee on Bar Admissions which form the basis of §§1 and 2 of Recommendation No. 56.

Recommendation No. 62: This recommendation called for the Court to direct the AOC to establish a minority vendor program. The Judiciary has always participated in the Executive Branch's minority and other set-aside vendor programs. The Court supports continuing the Judiciary's participation in and support for these programs.

There are, however, some areas of purchasing where the Judiciary has flexibility in selecting vendors. The Court approves the development of guidelines to support a minority vendor program that monitors the purchase of goods and services from minority vendors where such flexibility exists.

**APPENDIX C**

**SUPREME COURT COMMITTEE  
ON MINORITY CONCERNS MANDATE**

## Appendix C

### **Supreme Court Committee on Minority Concerns Mandate (Assure Permanent Oversight, Coordination and Implementation)**

**The Supreme Court's Statement on the Final Report spells out the Committee's mandate. Of the seven Committee mandates set forth by the Court, four reference advisory responsibilities, two address monitoring responsibilities and one empowers the Committee to conduct further research. See page 6 of the Action Plan.**

#### **1. Mandate**

##### **Advisory**

- **Advise the Court how the Judiciary may best assure fairness, impartiality, equal access and full participation for racial and ethnic minorities at all levels of the Judiciary;**
- **Advise the Court on goals, objectives, implementation timetables;**
- **Provide guidance to local advisory committees;**
- **Review and advise on major emerging policies and procedures.**

##### **Monitoring**

- **Assure implementation of court-approved recommendations;**
- **Monitor statewide execution of the program.**

##### **Research**

- **Conduct studies recommended by the Task Force and other appropriate research.**

#### **2. Reporting to the Court**

**The Committee reports biennially; however, emergent matters can be brought to the Court at any time.**

#### **3. Membership**

**Members are appointed for a two year term.**