

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

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CONTACT: CARL GOLDEN (609)292-9580

STATEMENT OF CHIEF JUSTICE ROBERT N. WILENTZ

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

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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.

7-11-1942

Dear Mr. [Name]

I have your letter of the 10th inst.

and am sorry to hear that

you are having trouble with your

eyes. I am sure that you will

be able to get them fixed

and that you will be able to

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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.

