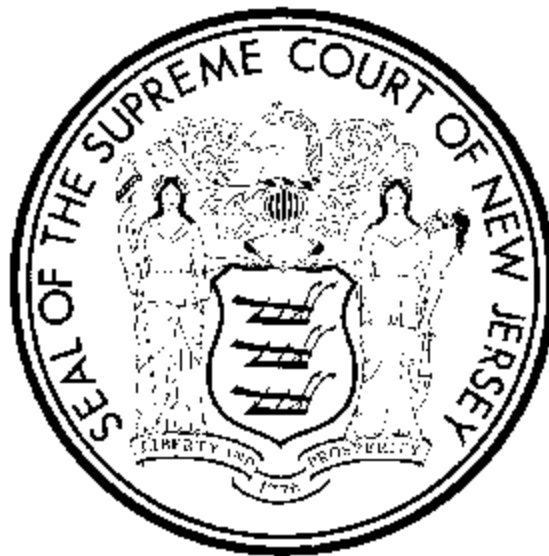


New Jersey Supreme Court Committee on Minority Concerns



2000 - 2002 Report

The members of the standing Supreme Court Committee on Minority Concerns are grateful for having the opportunity to serve the Court in this capacity and wish to express our sincere appreciation to all those who assisted us in completing this report.

Respectfully Submitted,

March 2002

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TABLE OF CONTENTS

INTRODUCTION	1
Demographic Context	1
EXECUTIVE SUMMARY	2
Formatting Committee Recommendations	3
Subcommittee on Criminal Justice and the Minority Defendant	4
Subcommittee on Minorities and Juvenile Justice/Family	5
Subcommittee on Minority Access to Justice	7
Subcommittee on Minority Participation in the Judicial Process	10
 CHAPTER I REPORT OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE AND THE MINORITY DEFENDANT	
INTRODUCTION AND MANDATE	18
I. SUBCOMMITTEE ACTIVITIES	18
II. LIST OF PRIORITY RECOMMENDATIONS	19
III. DISCUSSION OF PRIORITY RECOMMENDATIONS	19
A. Bail and Sentencing Outcomes	19
1. Bail Outcomes: Preliminary Observation Project	20
a. Background	20
b. Preliminary Bail Observation Project	21
2. Sentencing Outcomes	24
a. Literature Review	24
b. Incarceration Statistics Comparison	26
B. Jury Issues and Educational Seminars	29
1. Educational Seminars for Criminal Justice Practitioners	29
2. Model Jury Charge Revision: Cross-Racial/Eyewitness	
Identification	31
3. Peremptory Challenges	33
C. Drug Courts	35
Sources Cited	38

CHAPTER II	
REPORT OF THE SUBCOMMITTEE ON	
MINORITIES AND JUVENILE JUSTICE/FAMILY	41
INTRODUCTION AND MANDATE	41
I. LIST OF PRIORITY RECOMMENDATIONS	41
II. SUBCOMMITTEE ACTIVITIES	41
III. DISCUSSION OF PRIORITY SUBCOMMITTEE RECOMMENDATIONS	42
A. Disproportionate Minority Confinement and Judicial Involvement in Judicial Program Development	42
1. Enhancing Collaboration and Participation in the County Youth Services Commissions	45
2. Community Outreach	47
B. Development and Standardization of a Public Education Curriculum/Campaign	49
1. Law Day	50
2. Vicinage Advisory Committee on Minority Concerns Retreat	51
3. National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts	52
C. Development of an On-line Juvenile Program Directory	53
D. Develop and Institutionalization of a Judicial Education Curriculum/Campaign	56
E. Minorities in Key Positions in the Family Division	57
F. Establishment of Child Waiting Rooms	58
G. Collaborative Study of Juvenile Case Processing Decision Points	60
Sources Cited	63

CHAPTER III	
REPORT OF THE SUBCOMMITTEE	
ON MINORITY ACCESS TO JUSTICE	65
INTRODUCTION AND MANDATE	65
I. SUBCOMMITTEE ACTIVITIES	65
II. LIST OF PRIORITY RECOMMENDATIONS	67

III.	DISCUSSION OF PRIORITY RECOMMENDATIONS	68
A.	Jury Issues	68
1.	Minority Representation on Juries (Recommendation 27)	68
2.	Educating the Public About Jury Service	70
B.	Adoption of Court User Bill of Rights and Responsibilities	72
C.	Ombudsman Program	73
1.	Expansion of Ombudsman Program Statewide	73
2.	Adoption, Distribution and Use of a Policy Statement and Complaint Process for Court Users	77
3.	Ombudsman Offices Status Reports: Camden and Essex	80
a.	Camden Report	80
(1)	Demographic Data	80
(2)	Constituency	82
(3)	Constituent Concerns and Inquiries	83
b.	Essex Report	84
(1)	Methods Used by Court Users to Contact the Office of the Ombudsman and Court Information and Community Relations Center	85
(2)	Essex: Reasons Court Users Contacted the Office of the Ombudsman and the Court Information and Community Relations Center	85
D.	Linguistic Minorities	96
1.	Spoken Language Services	96
2.	Services for the Deaf and Hard of Hearing	101
E.	Statewide Availability of Comprehensive and User Friendly <i>Pro Se</i> Materials	102
1.	What Did the Minority Concerns Task Force and Committee Propose and When?	103
2.	Progress Report	106
3.	Guidelines to Assist Self-Represented Litigants and Training Court Staff	110
	Sources Cited	114

CHAPTER IV

REPORT OF THE SUBCOMMITTEE

ON LEGISLATION REVIEW	114
------------------------------------	------------

INTRODUCTION AND MANDATE	114
---------------------------------------	------------

SUBCOMMITTEE ACTIVITIES	114
-------------------------------	-----

CHAPTER V

REPORT OF SUBCOMMITTEE ON MINORITY

PARTICIPATION IN THE JUDICIAL PROCESS 115

INTRODUCTION 116

I. SUBCOMMITTEE MANDATE AND FOCUS OF THE REPORT 118

II. SUBCOMMITTEE ACTIVITIES 119

III. LIST OF PRIORITY RECOMMENDATIONS 121

IV. DISCUSSION OF PRIORITY RECOMMENDATIONS 124

A. Employment Practices in the New Jersey Judiciary 124

1. EEO/AA Master Plan 124

2. EEO/AA Staffing 129

a. Increase to EEO/AA Staff 129

b. Training the New EEO/AA Officers 133

c. Establishing the Conference of EEO/AA Officers 134

d. EEO/AA Staff Work With Judiciary Committees and Conferences 134

e. Need for Bilingual Staff 135

f. Status of Vicinage EEO/AA Programs 137

3. Judiciary Discrimination Complaint Procedures 140

a. Background Information: Complaint Procedures 140

b. Issuance of New Jersey Judiciary Discrimination Complaint Procedures, May 2000 142

c. Discrimination Complaint Procedures in the *Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination* 143

d. Discrimination Complaint Procedures in the Judiciary EEO/AA Master Plan 144

e. Discrimination Complaint Procedures Standard Operating Guidelines 144

f. Informal and Formal Discrimination Complaint Forms 144

g. EEO/AA Complaint Tracking Forms and Complaint Log 145

4. Regionalizing the EEO/AA Investigative Function 146

a. Increase in EEO/AA Investigative Staff 146

b. Discrimination Complaint Procedures Training for EEO/AA Investigative Staff and Employees 146

5. Review of EEO/AA Complaint Data 147

6.	Discrimination Complaint Findings	152
a.	Time Frames for Handling Discrimination Complaints	152
b.	Tracking Discrimination Complaints/Complaint Log	156
c.	Discrimination Complaint Procedures Standard Operating Guidelines	156
d.	Discrimination Complaint Intake Forms	157
e.	Complaints Based on Race, Sexual Harassment, Gender and Retaliation	158
f.	Training of Managers, Supervisors and EEO/AA Officers	160
g.	Dissemination and Translation of Discrimination Complaint Procedures	161
h.	Employee Survey to Assess the Judiciary Workforce Environment	163
B.	Monitoring Procedures to Ensure Minority Representation	164
1.	Background Information: Judiciary Monitoring Procedures	164
a.	Job Notices of Vacancy Review	167
b.	Interview Selection Lists Review	167
c.	Selection Disposition Forms Review and Sign-off	168
d.	Exit Interviews	168
e.	Committee Findings: Monitoring Employment Practices	169
f.	Successful Interviewing	170
C.	Reduction in Force	153
D.	Performance Appraisals	172
1.	Performance Assessment Review Committee	172
2.	Review of the Diversity Performance Standard	174
E.	Minority Participation in the Judicial Process: Jurists	176
1.	New Jersey Jurists	176
a.	Current Report on New Jersey Judiciary Judges of Color	176
b.	Historical Review	180
c.	Representation of Minority Judges by Court Level	180
(1)	Supreme Court	182
(2)	Superior Court - Appellate Division	182
(3)	Superior Court - Trial Division	182
(4)	Tax Court	183
(5)	Municipal Courts	183
2.	Women Judges and Judges of Color	186
a.	Summary Data	186
b.	State Court Bench	186
c.	Municipal Court	186
d.	Women Judges of Color	187

F.	Promotion of Minority and Women Judges	189
1.	Minority Judges	189
2.	Women Judges	189
G.	Overview of the Judiciary Workforce	190
1.	Overview of the Judiciary Workforce	190
2.	Presence of Minorities in County Workforces	191
3.	Workforce Trends	194
a.	Total Minority Representation in the Judiciary Workforce	194
b.	Workforce Trends by Race/Ethnic Group	194
4.	Employees in Judiciary Job Bands by Race/Ethnicity	194
a.	Professional Supervisory	196
b.	Legal	196
c.	Support Staff Supervisory	196
d.	Official Court Reporter	196
e.	Court Interpreter	197
f.	Information Technology	197
g.	Administrative Professional	197
h.	Case Processing	198
i.	Judges Secretary	198
j.	Support Staff	198
5.	Judiciary Division/Unit Workforce Profiles	201
a.	Total Minorities	201
b.	Blacks	201
c.	Hispanics	201
d.	Asians/Pacific Islanders/American Indians	201
e.	New Hires and Separations	204
6.	Committee Findings: Diversity of the Judiciary Workforce	208
H.	Judiciary Minority Court Executive	209
1.	Court Executives by Division	210
2.	Court Executives by Level	212
3.	Committee Findings: Minority Representation in the Court Executive Job Band	214
I.	Employee Compensation	217
J.	Hispanics and Asian/Pacific Islanders in the Judiciary Workforce	220
K.	Bilingual Variant Titles in the Judiciary Workforce	222
L.	Data on Minority Representation	226
M.	Minority Law Clerks	228
	Distribution of Judicial Law Clerk Appointments by Law School	236
N.	Court Volunteers	237
1.	Recruitment Initiatives	237
2.	Court Volunteers Profile	238

LIST OF FIGURES

Figure 1	New Jersey Department of Corrections: Offenders Characteristics Report (December 1992, December 1994, January 1998, January 1999 and January 2001)	28
Figure 2	Essex: Reasons Court Users Contact the Office of the Ombudsman, Court Information and Community Relations January - December 2001)	86
Figure 3	Essex: Complaints/Issues Presented by Division January 2001 - December 2001	88
Figure 4	Essex: Overall Courthouse Ratings (January 2001 - December 2001)	95
Figure 5	New Jersey Judiciary: Discrimination Complaints Filed by Nature of Complaint - AOC/Central Clerks' Offices and Vicinages Combined (July 1, 2000 - June 30, 2001)	159
Figure 6	New Jersey Justices and Judges by Race/Ethnicity (December 2001)	179
Figure 7	New Jersey Judiciary Employees in Selected Judiciary Job Bands by Race/Ethnicity (December 2001)	199
Figure 8	Judiciary Court Executives: AOC/Central and Vicinage (December 2001)	209

LIST OF TABLES

Table 1 Camden Ombudsman Program Utilization by Race/Ethnicity December 1996 - December 1997	80
Table 2 Camden Ombudsman Program Utilization by Gender December 1996 - December 1997	81
Table 3 Camden Ombudsman Utilization by Age Categories December 1996 - December 1997	81
Table 4 Camden Ombudsman Program Utilization by Residence December 1996 - December 1997	82
Table 5 Camden Ombudsman Program Utilization by Persons With and Without Counsel December 1996 - December 1997	82
Table 6 Camden Ombudsman Program by Constituent Status December 1996 - December 1997	83
Table 7 Camden Ombudsman Program: Complaint/Inquiry Categories December 1996 - December 1997	83
Table 8 Camden Ombudsman Program Case Dispositions December 1996 - December 1997	84
Table 9 Essex: Methods Used by Court Users to Contact the Ombudsman Office and Court Information Center January 2001 - December 2001	85
Table 10 Essex: Reasons Court Users Contacted the Office of the Ombudsman, Court Information and Community Relations Center January 2001 - December 2001	86
Table 11 Essex: Complaints/Issues Presented to the Ombudsman for Resolution by Division January 2001 - December 2001	89
Table 12 Essex: Ombudsman Resolution of Complaints/Issues	

	Presented by Civil Division January 2001 - December 2001	90
Table 13	Essex: Ombudsman Resolution of Complaints/Issues Presented by Family Division January 2001 - December 2001	90
Table 14	Essex: Ombudsman Resolution of Complaints/Issues Presented by Child Support January 2001 - December 2001	90
Table 15	Essex: Ombudsman Resolution of Complaints/Issues Presented by Municipal Division January 2001 - December 2001	91
Table 16	Essex: Ombudsman Resolution of Miscellaneous Complaints/Issues January 2001 - December 2001	91
Table 17	Essex: Ombudsman Resolution of Complaints/Issues Presented by Criminal Division January 2001 - December 2001	91
Table 18	Essex: Ombudsman Resolution of Complaints/Issues Presented by Sheriff's Office January 2001 - December 2001	92
Table 19	Essex: Ombudsman Resolution of Complaints/Issues Presented by Jury Management Division January 2001 - December 2001	92
Table 20	Essex: Ombudsman Resolution of Complaints/Issues Presented by Probation Division January 2001 - December 2001	92
Table 21	Essex: Complaints/Issues Presented by Ethnicity December 2001	93
Table 22	Essex Court User Survey Results, Overall Courthouse Ratings December 2001	95
Table 23	New Jersey Population by Race and Hispanic Origin for 1990, 1995 and 2000	117

Table 24	New Jersey Judiciary: Comparison of EEO/AA Vicinage Staffing Levels (1998 and 2002)	131
Table 25	New Jersey Judiciary: Comparison of EEO/AA Staffing Levels - AOC/Central Clerks' Offices (1998 and 2002) Full-Time Staff	132
Table 26	New Jersey Judiciary: Training of Vicinage EEO/AA Officers, Regional Investigators and Vicinage EEO/AA Advisory Committee Members (2001)	133
Table 27	New Jersey Judiciary: Summary Responses to the Questionnaire on the Vicinage EEO/AA Program, Management Team Participation	137
Table 28	New Jersey Judiciary: Summary Responses to the Questionnaire on the Vicinage EEO/AA Program, In-Kind Support and Equipment	139
Table 29	New Jersey Judiciary: Discrimination Complaints Filed at the AOC/Central Clerks' Offices and Vicinages Combined (July 1, 2000 - June 30, 2001)	149
Table 30	New Jersey Judiciary: Discrimination Complaints Filed by Nature of Complaint for the AOC/Central Clerks' Offices and by Vicinage (July 1, 2000 - June 30, 2001)	150
Table 31	New Jersey Judiciary: Discrimination Complaints Filed by Nature of Complaint AOC/Central Clerks' Offices and Vicinages Combined (July 1, 2000 - June 30, 2001)	154
Table 32	New Jersey Judiciary: Summary of Action Taken by Nature of Complaint (July 1, 2000 - June 30, 2001)	160
Table 33	New Jersey Judiciary: AOC and Vicinage Questionnaires, Summary Responses Monitoring Employment Practices (Includes AOC and Vicinages) (January 2002)	133
Table 34	New Jersey Judiciary: Justices and Judges by Race/Ethnicity (December 2001)	178
Table 35	New Jersey Judiciary: Percent of Justices and Judges by Race/Ethnicity (April 1992, January 1996, December 1997, December 2001)	181

Table 36	New Jersey Judiciary: Minority Representation on the Supreme Court, Superior Court (Appellate and Trial Divisions) and Tax Court (1992-1997 and 2001)	182
Table 37a	New Jersey Judiciary: 2000 Census Data and Municipal Court Judgeships by County and Total Minority Representation (1995 and 2001)	184
Table 37b	Municipal Court Judgeships by County and Race/Ethnicity (1995 and 2001)	185
Table 38	New Jersey Judiciary - Percent Female Judges on the Supreme Court, Superior Court (Appellate and Trial Divisions), Tax Court and Municipal Court (December 2001)	188
Table 39	New Jersey Judiciary: Employees by Race/Ethnicity, AOC/Central Clerks' Offices and Vicinages (December 2001) Excluding Judges and Law Clerks	190
Table 40	New Jersey Judiciary: Vicinage Employees by County and Race/Ethnicity (December 2001), Excluding Judges and Judicial Law Clerks	192
Table 41	New Jersey Total County Population by Race and Hispanic Origin - Census 2000	193
Table 42	New Jersey Judiciary: Percent Minority Employees by Race/Ethnicity (AOC and Vicinages Combined) (1992, 1995, 1997 and 2001)	194
Table 43	New Jersey Judiciary: Percent Judiciary Minority Employees by Race/Ethnicity (AOC/Central Clerks' Offices and Vicinages) for 1992, 1995, 1997 and 2001	195
Table 44	New Jersey Judiciary: Employees by Race/Ethnicity and Job Band - Combined AOC/Central Clerks' Offices and Vicinages (December 2001)	200
Table 45	New Jersey Judiciary: Employees by Race/Ethnicity and Division AOC/Central Clerks' Offices (December 2001)	203

Table 46	New Jersey Judiciary: New Hires by Race/Ethnicity (January-December 2001)	206
Table 47	New Jersey Judiciary: Separations by Race/Ethnicity: January - December 2001 (for AOC/Central Clerks' Offices) August 6 - December 31, 2001 (for Vicinages)	207
Table 48	New Jersey Judiciary: Court Executives AOC/Central Clerks' Offices and Vicinages Combined (December 2001)	210
Table 49	New Jersey Judiciary: Court Executives in Selected Judiciary Divisions (December 2001)	211
Table 50	New Jersey Judiciary: Court Executives by Level AOC/Central Clerks' Offices and Vicinages (December 2001)	212
Table 51	New Jersey Judiciary Court Executives by Level AOC/Central Clerks' Offices (December 2001)	213
Table 52	New Jersey Judiciary: Court Executives by Level - Vicinages (December 2001)	213
Table 53	New Jersey Judiciary: Court Executives AOC/Central Clerks' Offices and Vicinages by County and Race/Ethnicity (December 2001)	216
Table 54	New Jersey Judiciary: Salary Comparison by Race/Ethnicity of Employees - AOC/Central Clerk's Office and Vicinages Combined as of October 2001	219
Table 55	New Jersey Judiciary: Comparison by Selected Counties of Hispanic, Asian and Black Employees within the County Population	221

APPENDICES

Appendix A: Materials for Chapter I **Report of the Subcommittee on Criminal Justice** **and the Minority Defendant**

A-1	Bail Survey Team Guide Questions	22
A-2	<u>State v. Johnson</u> Factors	22
A-3	Task Force on Minority Concerns Final Report, Subcommittee on Outcome Determinations, pp. 110-133	24
A-4	Table A: Offenders in New Jersey Correctional Institutions on December 31, 1992 by Race/Ethnic Identification	26
	Table B: Offenders in New Jersey Correctional Institutions on January 8, 2001 by Race/Ethnic Identification	26
A-5.1	Memorandum from Hon. Harold W. Fullilove to Hon. James J. Ciancia, dated February 3, 1997, re <u>Gilmore</u> Violations.	33
A-5.2	Memorandum from Judge James J. Ciancia to Trial Judges, dated May 8, 1997, Reminding Them of the Remedy Required for Gilmore Violations	33
A-5.3	Advisory Committee on Professional Ethics Opinion 685: The Use of Peremptory Challenges to Exclude Minorities from Sitting on a Jury	33
A-6	List of New Jersey Drug Court Programs	37

Appendix B: Materials for Chapter II **Report of the Subcommittee on Minorities** **and Juvenile Justice/Family**

B-1	Report of Eileen Poe-Yamagata and Michael Jones, Building Blocks for Youth, <u>And Justice for Some, Differential Treatment</u> <u>of Minority Youth in the Justice System</u> (April 2000)	42
B-2	Memorandum from Acting Administrative Director James J.	

	Ciancia to The Honorable Valerie H. Armstrong (July 31, 1998)	46
B-3	Memorandum from The Honorable Severiano Lisboa III to Acting Administrative Director James J. Ciancia (April 21, 1999)	48
B-4	Memorandum from The Honorable Valerie H. Armstrong, Chair of the Conference of Family Division Presiding Judges to Acting Administrative Director James J. Ciancia (December 4, 1998)	49
B-5	Essex Vicinage <i>A Call to Action</i> (November 1996)	55
Appendix C: Materials for Chapter III		
Report of the Subcommittee on		
Minority Access to Justice		
C-1.1	Memorandum from Robert D. Lipscher to Samuel D. Conti re Minority Concerns Ombudsman Proposal (March 30, 1995)	75
C-1.2	Memorandum from Hon. Harold W. Fullilove to Chief Justice Deborah T. Poritz re Camden County Ombudsman Pilot Project Evaluation (January 14, 1998)	75
C-1.3	Advisory Letter from James J. Ciancia to Hon. Harold W. Fullilove re Camden Ombudsman Pilot Project Evaluation (February 3, 1998)	75
C-2	Memorandum to Hon. Richard J. Williams, Administrative Director, from Hon. Ronald J. Freeman re Comments on the Ombudsman Program Working Group Report (June 27, 2001)	76
C-3.1	Sample Essex Ombudsman Complaint Intake Forms	78
C-3.2	Customer Service Survey Form	93
C-4.1	Fifth and Sixth Reports on Court Interpreting Events; Statistical Report for Court Year 1996-1997 (February 2000)	97
C-4.2	Memorandum of Understanding in <u>De Rosa v. Boro of South Plainfield</u> (August 7, 2002)	101

C-5.1	Supreme Court <u>Ad Hoc</u> Committee on Pro Bono Assignments, Final Report to the Supreme Court (November 23, 1998)	105
C-5.2	Poster: <i>Welcome to the New Jersey State Courts: What Court Staff Can and Cannot Do</i>	110

Appendix D: Materials for Chapter V
Report of the Subcommittee on Minority
Participation in the Judicial Process

D-1.1	Questionnaire on the Vicinage EEO/AA Program (January 2002)	125
D-1.2	Questions for Bobby E. Battle, Chief EEO/AA Officer, from the Supreme Court Committee on Minority Concerns, Subcommittee on Minority Participation in the Judicial Process (January 18, 2002)	127
D-2.1	Memorandum from Honorable Richard J. Williams to Assignment Judges, Regarding EEO/AA Position in the Vicinages (December 28, 2000)	130
D-2.2	Memorandum from Jude del Preore to Honorable Richard J. Williams Regarding Administrative Council Follow-up (November 15, 2000)	130
D-2.3	Memorandum from Theodore J. Fetter to Trial Court Administrators, Regarding Staff to Vicinage Minority Concerns Advisory Committees (October 4, 2001)	135
D-3	New Jersey Superior Court: Trial Division Judges by County (December 2001)	183
D-4	Memorandum from John Kafader to Deputy Administrative et. al., Regarding, Revised Job Bands and Levels Chart	196
	Job Bands and Levels Chart, The Judiciary Classification and Compensation System, pages 1-5	

Definition of Dedicated Funds and Commissions

OTHER DATA TABLES

D-5 New Jersey Judiciary: AOC/Central Clerks' Offices
Employees by Race/Ethnicity and Job Band (Excluding Judges and Law Clerks)
December 2001

New Jersey Judiciary: Vicinage Employees by Race/Ethnicity and Job Band
(Excluding Judges and Law Clerks) December 2001

Two Year Comparison (1999 and 2000) of Law Degrees Conferred by New
Jersey Law Schools by Race/Ethnicity and Gender

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Copies of the
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Introduction

It has been almost ten years since the Supreme Court Task Force on Minority Concerns released its final report in June 1992. This report had been the culmination of six continuous years of work by the 48-member Task Force under the able leadership of The Honorable Theodore Z. Davis of Camden County. The predecessor Committee on Minority Concerns, chaired by The Honorable James H. Coleman, Jr. issued a report to the Court in August 1984. Shortly after the release of the final report, the Supreme Court established a permanent standing committee to: assure the implementation of the court-approved minority concerns recommendations; advise the Court on goals, objectives and implementation time tables; provide guidance to local advisory committees on minority concerns; monitor statewide execution of the minority concerns program; and conduct studies and other research deemed appropriate.

To complement the work of the standing Committee, the court created advisory committees on minority concerns in all fifteen vicinages and the Administrative Office of the Courts.

This report describes the work of the standing Committee during the last two committee cycles 1998-2000 and 2000-2002. Since the Committee's last report, its designation has been changed from a rules committee to a program committee.

Demographic Context

In 1992, the Task Force report commented on the fact that New Jersey was increasingly becoming a racially, culturally, ethnically and linguistically pluralistic State. At that time, the population of the state was around 7.7 million persons. As of 2000, the population was 8,414,350. The diversity of persons residing in New Jersey has similarly increased. In 1992 approximately 74.1% of New Jerseyans were White, 12.8% were Black; 9.6% were of Hispanic origin and 3.6% were Asians/American Indians/Pacific Islanders. Today the 2000 Census indicates that the White population in New Jersey has declined by 6.9% reducing the total proportion of Whites in the state from 74.1% to 67.2%. All of the minority groups, however have experienced population growth. The 0.2% gain for Blacks was negligible (from 12.8% to 13.0%). Hispanics experienced a 3.9% gain, from 9.6% to 13.5% and Asians/American Indians/Pacific Islanders experienced a 2.2% increase (from 3.6% to 5.8%).

Nearly one third (32.3%) of the present population in the State identify themselves as belonging

to a race/ethnic group. This growing pluralism in the state's population places increasing demands on the Judiciary to provide court services and programs to an array of constituents from diverse cultural, ethnic, language and racial groups.

Executive Summary

The Committee believes that the Judiciary has consistently shown its resolve to meet the challenges of providing fair and equitable justice to all who enter its portals and it has launched many ground breaking initiatives designed to ensure that the court system is operating without bias. It is noteworthy that the Judiciary's commitment has been unswerving over the course of so many years as has its resolve to continuously work to improve and enhance court services and programs. Much progress has been made and this report will highlight some of those areas. However, in spite of these notable gains, the committee has identified areas which require further attention and work.

The New Jersey Supreme Court took a leadership role in 1984 when the Chief Justice appointed an ad hoc Committee on Minority Concerns and later the Supreme Court Task Force on Minority Concerns. The present Court, under the leadership of New Jersey's first woman Chief Justice, Deborah T. Poritz, and Administrative Director of the Courts, the Honorable Richard J. Williams has continued to advance these access issues on several levels.

The Judiciary hosted the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts twelfth annual meeting in May 2000 in Teaneck, New Jersey. Over 200 conference participants from 29 states and the District of Columbia attended the annual meeting. As one of the four founding member-states of the National Consortium, this was the second time that New Jersey hosted an annual meeting; the first occasion was in 1990. The comprehensive educational program offered at the meeting drew rave reviews from conference participants and as Justice Charles Z. Smith from Washington State remarked, "took the Consortium to new heights and raised the bar for future programs".

Many of the 53 court-approved Task Force recommendations have been implemented. The Judiciary is working vigorously to ensure that as new technological advancements become available that they be used to improve and enhance the quality of services and programs for court users.

The Court has worked vigorously to reduce the case backlog and ensure that justice is meted out

in a timely fashion. Great strides have been made to expand and offer training opportunities for judges and court staff throughout the organization. Minorities now comprise 34.2% of the total judiciary workforce; more minority law clerks are being hired and staff interpreters are available in most courts. Great strides have been made in standardizing pro se kits and improving services for self-represented litigants. The ombudsman program has been approved for statewide expansion; an ombudsman office is now in place in two vicinages. The EEO/AA Master Plan is in the process of being implemented in all vicinages and at the Administrative Office of the courts; full time EEO/AA Officers have been hired in almost all of the vicinages and all EEO/AA Officers and investigators have received extensive training.

These findings and other accomplishments will be discussed in greater detail in the following five subcommittee chapter reports: Criminal Justice and the Minority Defendant, Minorities and Juvenile Justice/Family; Minority Access to Justice, Legislation Review and Minority Participation in the Judicial Process. An executive summary follows for four of the subcommittee chapter reports (excluded the Subcommittee on Legislation Review). The Committee is also including a companion report, *Superior Court of New Jersey , Essex Vicinage, Ombudsman Report 2001*.

Formatting Committee Recommendations

It should be noted that the report references original Task Force (1992) recommendations in italics. Amended recommendations that address like-topic areas carried over from the 1992 report are also in italics, appear in a text box, are bolded and include the year designation. For example, ***Committee Recommendation 02:20.2*** refers to an amended original Task Force (1992) recommendation. The number, **02** denotes **the year 2002**, followed by a colon and the original Task Force Recommendation number **20** is followed by a period and the sequenced number of the amended text. Entirely new recommendations are likewise boxed, and appear in bold type, note the year, chapter number and sequential order of the recommendation. For example, **Committee Recommendation 02:1.2** is a new Committee Recommendation drafted in **2002** and appears as the **second** recommendation in **Chapter I**, Subcommittee on Criminal Justice and the Minority Defendant (internal cash bail research project recommendation, page 8).

Subcommittee on Criminal Justice and the Minority Defendant

The Subcommittee on Criminal Justice and the Minority Defendant report addresses three recommendations: bail and sentencing outcomes; jury issues and educational seminars; and drug courts. The impact of bail practices on persons of color and the poor has been a long standing concern of every court committee or task force on minority concerns convened in New Jersey beginning with the Coleman Committee Report in 1984, the interim report in 1989, the final report in 1992 and the first two rules cycle reports published in 1994-1996 and 1996-1998. These earlier reports concluded that, “the Judiciary process of setting bail denies minorities and poor citizens equal access to pre-trial release and its advantages in helping to prepare one’s defense.” The Court approved the recommendation calling for a comprehensive study of bail and noted that such a study would require “substantial funding if the analysis requested is to command respect”.

In order to understand the bail setting process, the Committee conducted preliminary bail research in several counties. The objective of the observation was to identify problem areas, determine the feasibility of conducting a comprehensive study of bail practices, and determine the availability and format of the databases. The internal observation project renewed and crystalized the Committee’s belief that a bail project should be conducted and that it would be necessary to hire an outside consultant.

The Committee recognizes that present budgetary considerations may prevent this project from going forward in the near future and recommended that the Judiciary review and revise the 1988 internal research model used to gather and analyze information on cash bails \$500 or less in six New Jersey counties. This study noted the disparity in the availability of the 10% cash bail option throughout the State.

A review of the literature on sentencing outcomes revealed that minority defendants continue to be over-represented in every phase of the New Jersey criminal justice system from the initial arrest to pre-trial detention, conviction and incarceration. These figures are virtually the same as they were ten years ago. This fact underscores the need for the Judiciary to revisit this issue and to identify those areas of bail set that are in need of improvements.

The body of literature in this area indicates that many of the defendants who find themselves in the various institutions are there because of drug related crimes and there is a serious shortage of available

treatment beds, particularly for the uninsured and indigents. The Committee actively endorsed and supported the development of Drug Courts in New Jersey and believes that these courts represent an opportunity to have a positive impact on rehabilitating minorities and others who find themselves in the criminal justice system due to their involvement with drugs.

The Judiciary has for the past three consecutive years presented educational seminars for judges and managers on the issue of cross-racial eyewitness identification. Representatives from the Attorney General's Office and the Office of the Public Defender were extended invitations to attend these sessions.

The Court addressed a 1992 Task Force Recommendation that revisions be made to the Model Criminal Jury Charge Instructions referencing the issue of eyewitness identification. The relevant portion of the revised New Jersey Model Jury Instructions pertain to In-Court and Out-of-Court Identification.

Subcommittee on Minorities and Juvenile Justice/Family

The Subcommittee on Minorities and Juvenile Justice/Family addressed the following recommendations: disproportionate minority confinement, development and standardization of court public education programs, development of a statewide on-line juvenile program directory, establishment and institutionalization of a judicial and staff education curriculum, representation of minorities in court executive and policy-making positions in the Family Division, establishment of child waiting rooms and conducting research on juvenile case processing decision points.

As is the case with adult minority defendants, disproportionate confinement of minority youths has been a priority item on the Committee's agenda since 1992. The fact that there has been no significant decline in the confinement figures for minority youth over the course of the last ten years is a cause of great concern. The Committee believes that the intractable nature of the findings suggest, perhaps even demands, that the justice system pursue novel approaches to this multi-faceted problem. Our Court has taken steps to broaden its collaboration with the public by seeking the active participation and involvement of citizens in the dialogue on juvenile justice issues.

The Committee supports and encourages all efforts to enhance communication and networking between judges, court staff, the Committee on Minority Concerns and local advisory committees and other stakeholders who are working to find solutions to juvenile justice problems. Judges can lend their

considerable knowledge and guidance to the county youth services commissions and assist with agenda setting and prioritizing.

Vicinage Advisory Committees on Minority Concerns members are similarly urged to become more active on these boards as private citizens and as a representative of the vicinage advisory committees on minority concerns. Citizens partnering with the court community have resulted in the establishment of some very innovative programs. Two recent examples of successful court/community partnerships and citizen advocacy are noteworthy. The Essex Vicinage Advisory Committee on Minority Concerns was part of a court/community collaboration that resulted in the establishment of Our Children's Foundation of New Jersey. This program is a non-profit organization dedicated to supporting and encouraging children in the urban community. The Passaic Vicinage has established the Village Initiative Program, the only one of its kind in the nation which conducts on-site health screens for both youths and their family members. Some of the Passaic Vicinage Advisory Committee on Minority Concerns community members are also members of the Village Initiative Board of Directors.

Another crucial component in the development of alternative juvenile programs is the availability of an on-line juvenile program directory. For some time now, this recommendation has been proposed but has yet to be implemented. The Committee believes that judges and court staff need a state-of-the-art on-line resource directory that will provide information on current juvenile programs and services.

The court continues to make inroads into the community and educate the public about juvenile programs and family court issues. Middlesex and Cumberland/Gloucester/Salem Vicinage Advisory Committee on Minority Concerns collaborated with local youth agencies, programs, and schools and jointly sponsored juvenile justice symposia on juvenile justice issues and Family Court. Another avenue for public education are the annual law day programs. Most vicinages use the law day program to educate the public, including youth about the court system and its operations and to present seminars on various issues such as landlord/tenant, domestic violence, record expungements and wills, for example.

Still another training venue is the annual minority concerns retreat; the retreat agenda is developed by vicinage advisory committee on minority concerns chairs and staff. Advisory committee members from most counties attend this conference as well as judiciary court administrators and staff.

The Committee on Minority Concerns, Juvenile Justice Subcommittee has worked closely with the Family Division and the Conference of Family Division Presiding Judges in the past to address some issues common to both agendas. The development of the public education curriculum is a palpable example of this collaboration.

With respect to the issue of the availability of child waiting rooms for court users, several vicinages have been able to establish child waiting areas. The Bergen vicinage was the first vicinage to establish a court care center. It is staffed by a full-time Family Division employee. In the first year of operation (September 1998-1999) 1270 children were cared for in the center. During the second year, 1303 were cared for and 1387 in year three. The Sussex vicinage opened a court care center in April 2001 staffed by a full-time child care specialist. The facility can accommodate eight children at a time. Essex, Hudson, Hunterdon, Ocean and Union Counties each have unstaffed child waiting rooms where a parent or guardian is required to remain with the child.

Since 1992, the Committee on Minority Concerns has urged that a collaborative study be undertaken to investigate juvenile case processing decision points. Recently, the Committee learned that such a study is under serious consideration by the Juvenile Justice Commission. The Juvenile Justice Commission, Minority Concerns Issues Subcommittee is developing a request for proposals to investigate the disproportionate representation of minorities in the juvenile justice system. The Committee on Minority Concerns had an opportunity to comment on the draft request for funds. In preparation for selecting a study sample, the Juvenile Justice Commission conducted a study to determine whether minority juveniles are over-represented in the state's secure facilities relative to their representation in the state population. The Committee eagerly awaits the study results.

Subcommittee on Minority Access to Justice

The Subcommittee on Minority Access to Justice identified the following issues of concern for discussion in the 2002 program cycle report: jury issues, adoption of "Court Use Rights and Responsibilities Guide", ombudsman program, linguistic minorities and pro se materials. Over the course of the last several years, notable enhancements have been made to New Jersey's jury system. Recommendations for improvements were set forth in the Task Force final report as well as the Committee's subsequent reports.

The Administrative Office of the Courts has installed an automated jury system in all twenty-one counties; a new full-time jury manager position is in place in all 15 vicinages; and juror pay has been increased from \$5.00 to \$40.00 a day for persons serving three or more consecutive days on jury service.

The Subcommittee remains interested in learning about jury participation among persons of color. However, the present jury management system does not include a race/ethnic identifier; therefore, it is not possible to: monitor the diversity of the jury pool statewide; report on the diversity of persons contacted for jury service; capture information on who drops out at various stages in the process; and gather information on the diversity of persons who actually serve on juries. Retrieving information comparing minority and non-minority juror participation will be useful in assisting the Judiciary in targeting public education juror programs. Realizing that funding is a serious impediment to research on this issue, the court should explore other methodologies such as using state-of-art census tract data and mapping technology to obtain relevant information. Another fruitful avenue to obtain juror feedback is to conduct exit interviews.

The court should also enhance its efforts to educate the public about the importance of jury service. This public education initiative should also include public school from the elementary level through high school. A statewide juror appreciation day should also be instituted.

The Committee is extremely pleased that the court has reviewed the draft of the Committee's "Court User Rights and Responsibilities" guide and provided comments to the Committee. The Committee will soon be responding to the court's review.

Another significant event is the Court's approval of the expansion of the ombudsman program to all vicinages. Currently, there are two vicinages with a full-time ombudsman program in place, Camden and Essex. Funds for expansion of the program were requested but this issue was tabled in the foreseeable future due to the budget situation.

The Committee notes that there is room for improvement in noticing citizens about the formal and informal complaint procedures. Moreover, while the complaint procedures and process has been standardized for court employees, there has not been a campaign to notify court users that these procedures are available to them. And too, the materials that have been standardized were prepared with

Judiciary employees in mind and no statewide database exists which details the extent to which the public actually makes use of the generic EEO/AA formal and informal complaint forms.

Both ombudsman offices have established court user complaint intake forms and both have complaint procedures in place for the public. Monthly reports are routinely provided to all divisions and programs/units about issues/complaints received and resolved in their respective practice areas.

The New Jersey Judiciary also has the distinction of being the flagship for the state court initiatives designed to assure equal access to courts for linguistic minorities, and the Supreme Court has made significant progress in ensuring equal access to courts for linguistic minorities. Some of the highlights of these initiatives are listed below: there are 34 staff court interpreters who are approved to provide interpreting services; a tuition reimbursement program for court employees is in place; training is provided to municipal court judges; the Judiciary incorporated into the Code of Judicial Conduct, the Rules of Professional Conduct and the Code of Conduct for Judiciary Employees a prohibition against discrimination on the basis of language; a Code of Professional Responsibility for Interpreters in the Judiciary, Translators and Translators has been approved; continuing efforts are underway to enhance access to interpreting by instituting and modernizing the technology; a pilot telephone interpreting program has been instituted and services are in place for deaf and hard of hearing persons.

For over two years now, the Judiciary has been engaged in continuing efforts to review, revise and standardize pro se kits and improve services for self-represented litigants. Revised pro se kits have been prepared and distributed in the following areas: civil matters, family matters, Municipal Court and Surrogates. A web site for self-represented litigants is also available. Other materials for self-represented litigants are available on the web site from the Supreme Court and Appellate Court.

Guidelines to assist self-represented litigants have also been developed. These guidelines were initially drafted by the Subcommittee on Minority Access to Justice. They were revised and reformatted by the Ad Hoc Pro Se Working Group and published as a poster. The poster advises court users about what staff “Can and Cannot Do”. The posters were distributed in all state courts and in municipal courts.

Subcommittee on Minority Participation in the Judicial Process

Under the leadership of the Chief Justice and the Administrative Director of the Courts, the New Jersey Judiciary has made major strides both in the continued diversification of the court workforce and in embracing policies and programs to ensure fairness in the administrative fabric of the organization. Several of these accomplishments have been recognized by the legal community (in New Jersey and nationally), by the National Center for State Courts, and by the public.

The following significant milestone in the continuing pursuit and enhancement of racial/ethnic equality in the courts were achieved by the Judiciary since the Committee last reported to the Court in 1998.

As of December 2001 there were 47 (11.1%) minority justices and judges: thirty-two or 7.6% are Black; 13 (3.1%) are Hispanics and 2 (0.5%) are Asians/Pacific Islanders out of a total of 423 jurists who sit on the Supreme Court, Superior Court (Appellate and Trial Divisions), and Tax Court. Racial and ethnic minorities comprise 34.2% of the Judiciary's total workforce (23.9% Blacks, 8.4% Hispanics, and 1.8% Asians/American Indians/Pacific Islanders combined) of 8,620 employees (excluding judges and judicial law clerks). There are 22.2% minority law clerks out of a total of 460, exceeding the 20.8% availability of minorities who received law degrees from the three New Jersey law schools. The Judiciary's progress positions it to meet the challenges of rapidly changing population demographics in our state. Minorities now account for almost a third of New Jersey's total population; a decade ago, they represented about a quarter of all New Jerseyans. See Table A: New Jersey Population by Race and Hispanic Origin for 1990, 1995 and 2000 below.

**New Jersey Population by Race and Hispanic Origin
For 1990, 1995 and 2000¹**

	Year 1990		Year 1995		Year 2000	
	#	%	#	%	#	%
Blacks	984,845	12.7	1,156,000	14.6	1,096,171	13.0
Hispanics	739,861	9.6	898,000	11.3	1,136,756	13.5
Asians/American Indians/Pac. Isl.²	276,831	3.6	370,000	4.7	490,525	5.8
Total Minorities	2,011,222	26.0	2,424,000	30.5	2,723,452	32.3
Grand Total³	7,730,188	100.0	7,931,000	100.0	8,414,350	100.0

The Judiciary has a strong program for promoting diversity in the workplace and much has been accomplished over the years. Some of these accomplishments are briefly highlighted in the discussion which follows.

In May of 2000, the New Jersey Supreme Court and the Administrative Director of the Courts approved the Judiciary EEO/AA Master Plan. This was a significant event and the Master Plan has become a model plan for other departments of the state government and other state courts. The Plan was first released to the public at the Twelfth Annual Conference of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts 2000 meeting and it was very favorably received.

¹This table is duplicated as Table 23 in Chapter V, Report of Subcommittee on Minority Participation in the Judicial Process.

²According to the 2000 Census there are: 11,338 (0.1%) American Indians in the state of New Jersey, 477,012 (5.7%) Asians and 2,175 (0.0%) Native Hawaiian and Other Pacific Islanders.

³The category "two or more races" which comprises 1.6% of New Jersey's population is not included in this report. The category "some other races" which consists predominantly (97%) of people of Hispanic origin, e.g., Mexican Americans, Dominicans, Peruvians, etc. represent 19,565 (0.2%) of New Jersey's population and has been merged into the "Hispanic" category as recommended by the New Jersey State Data Center.

The Judiciary also revised and re-issued the Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination and discrimination complaint procedures (both were incorporated in the EEO/AA Master Plan). The Judiciary aggressively pursued the statewide roll-out of the Judiciary EEO/AA Master Plan. At the same time, the Court has continued its outreach efforts to publicize employment opportunities (including judicial clerkships) in minority communities and in the community at-large. These activities resulted in increases in minority representation such that minorities accounted for 37.9% (23.2% Black, 10.1% Hispanic and 4.6% Asians/Pacific Islanders/American Indians) of the total 1,252 new hires by the Judiciary in 2001.

There was also a significant increase in full-time EEO/AA staff at the Central Office (Administrative Office of the Courts [AOC]) and in the vicinages and a rigorous course of training was provided to EEO/AA staff statewide. The title of EEO/AA Officer at the vicinage level was elevated to Court Executive 1B (with direct reporting to the Trial Court Administrator) as was the title of Affirmative Action Officer at the AOC/Central Clerks' Offices. A Conference of EEO/AA Officers was established and EEO/AA Advisory Committees were appointed at the AOC/Central Clerks' Offices and in each vicinage. This will enhance dialogue and the exchange of information regarding the implementation of the Judiciary EEO/AA Program.

The Judiciary has adopted a new employee classification and compensation system and a performance assessment system. The latter includes a diversity clause and a component to hold managers accountable for EEO/AA compliance.⁴

The Judiciary converted its workforce databases from more than 800 job titles (both state and county) into 10 broad band job categories, and merged the Trial Conversion Personnel Conversion System (TCPSCS) and the Judicial Human Resource Information System (JHRIS) into one. Unifying the Judiciary workforce data base by job broad bands partially implements the recommendation of the Supreme Court Action Plan on Minority Concerns that the Judiciary refine its workforce data systems to assist in

⁴Many of these initiatives represent the fulfillment of Task Force on Minority Concerns recommendations approved by the Court. See the Supreme Court Action Plan, Recommendation 32, p. 25. Other initiatives were suggested by the Committee on Minority Concerns in prior Rules Cycle Reports. See also Minority Concerns Rules Cycle Report to the Court (1994-1996), p. 110.

monitoring.⁵

Despite the substantial progress made in institutionalizing programs and procedures to ensure fairness, there remain areas in which progress is less than satisfactory. There is a need for the Judiciary to complete the self-critical analysis as required by the Judiciary EEO/AA Master Plan and to complete the review and approval of the vicinage EEO/AA Implementation Plans. The AOC/Central Clerks' Offices need to serve as a model and complete its own implementation plan.

In spite of the impressive gains made in EEO/AA staffing statewide, the dearth of bilingual/bi-cultural staff at any level of the central office EEO/AA Unit is of great concern. The Committee recommends that a bilingual/bi-cultural court executive be hired by the EEO/AA Unit and that the bilingual variant title of Affirmative Action Officer be reinstated and the job be re-posted with this clause.

The Committee on Minority Concerns has also concluded, based on a statewide survey distributed to the vicinages, that not all EEO/AA Officers have the authority, resources and time needed to carry out their duties. In those vicinages where these vital program components are not in place, the Committee urges the Judiciary to ensure that all vicinages are fully compliant as a means of ensuring an effectively managed operating program. Furthermore, EEO/AA Officers should not be required, as a matter of course, to provide staff support to the Vicinage Advisory Committee on Minority Concerns.

The EEO/AA investigative function was regionalized with the expectation of improving the effective and timely processing of discrimination complaints. EEO/AA software was purchased to facilitate the establishment of availability data to be used in the preparation of the self-critical workforce analysis.

The Committee has concerns about the timely resolution of discrimination complaints. The discrimination complaint procedures have a time table for resolution of the complaints and in order to meet the requirement that complaints be investigated effectively and in a timely manner, the Committee urges the Judiciary to modify the time frame for completing investigations from 45 days to 90 days from the point of intake.

Both the formal and informal discrimination complaint procedures and standard operating guidelines should: 1) be issued in plain English; 2) include a reference to the EEO/AA Regional Investigators; 3) be

⁵New Jersey Supreme Court Action Plan on Minority Concerns, 1993; Supreme Court Committee on Minority Concerns Rules Cycle Report to the Court (1994-1996), Recommendations 44.1 and 44.2, Ibid.

distributed to managers and supervisors, and 4) be made readily available to employees and the public.

The complaint procedures should also be translated into Spanish and other appropriate languages. A computerized information system to manage, track and audit discrimination complaints that have been filed, both formally and informally, should be put into place. Divisions/units should receive monthly reports on the status of these cases and periodic summary reports should be distributed to management. An annual report should also be published.

The EEO/AA Unit is urged to expedite the completion of the standard operating guidelines on the discrimination complaint procedures and to provide detailed and continuous training to managers and EEO/AA staff. Mandated courses on race and ethnic bias prevention should also be developed for managers and supervisors.

The Committee on Minority Concerns also recommends that the Judiciary conduct a statewide employee survey as required by the Judiciary EEO/AA Master Plan in order to assess the Judiciary's work environment.

The Committee on Minority Concerns has also concluded that there is a need for the AOC/Central Clerks' Offices and the vicinages to immediately institute the Judiciary's EEO/AA Master Plan monitoring requirements that local EEO/AA Officers receive (in a timely manner) copies of all notices of job vacancies, interview selection lists, and Selection Disposition Forms.

The Judiciary should also immediately update the employment interviewing guidelines and training course and institute the statewide use of exit interviews for departing employees (transfers, resignations, firings, etc.). The exit interviews should be shared with the local EEO/AA Officers and employees should be given the option of filing out the interviews on-line.

The Judiciary should also ensure that the human resources function at both the AOC/Central Clerks' Offices and the vicinages are in full compliance with all the requirements of the Judiciary EEO/AA Master Plan and the Selection Evaluation Employee Services Manual. Together these documents, among other things, require that the Human Resources Division screen all employee resumés and determine which applicants meet or fail to meet minimum job requirements. This is a critical and important step and helps the judiciary ensure that all applicants are evaluated by a set of objective standards by persons who have

the technical training and knowledge to make these decisions. The hiring managers should not be receiving the resumés and be expected to make these determinations.

The Committee also addressed the topic of a potential reduction in the workforce. Should the Judiciary be required to reduce its workforce in the future, the AOC EEO/AA and Minority Concerns Unit should play a key role in the process in order to eliminate possible adverse impact on minorities and women.

The Committee asserts that the Judiciary workforce statistics tell several important stories that should be of concern to the Supreme Court. While it is indisputable that the overall diversity profile of the Judiciary workforce has significantly improved, it is also a fact that the gains are more modest at the policy-making and court executive level. Moreover, the problem areas that were identified almost ten years ago, remain problem areas today and the Committee on Minority Concerns respectfully requests that direct and immediate attention be devoted to these issues.

Of note, for example, is the continuing absence of minority court executives in several Judiciary divisions and in executive positions in many of the practice areas. This means that important policies are being formulated without the benefit of the perspectives that persons of color would bring to the table. Additionally, Hispanics and Asians/American Indians/Pacific Islanders have lost considerable ground. Their underutilization at the AOC/Central Clerks' Offices, in several vicinages and divisions is quite pronounced in the workforce and among court volunteers.

There have also been minimal gains in the number of bilingual titles statewide with the exception of the Hudson vicinage. According to the 2000 Census, Hispanics now constitute the largest minority group in the State and the Asian population has almost doubled in size since the last census. If the Judiciary is to conform to its own Strategic Plan and "meet the needs of a culturally and linguistically diverse population,"⁶ it will need to recruit and train staff that is more reflective of the population being served. The Committee reiterates its previous recommendations on these issues and urges the Judiciary "to make vigorous and aggressive recruitment and retention efforts that go beyond current efforts to increase the representation of minority court executives; of Hispanic and Asian/American Indian/Pacific Islander employees, court

⁶New Jersey Judiciary Strategic Planning Committee, Report to the Supreme Court, March 31, 1998, p. 94.

volunteers and of employees holding bilingual variant titles.”

The Committee also recommends that the Judiciary complete its assessment to determine whether its Performance Appraisal System has an adverse impact on minorities and women and, if it is determined that there is adverse impact, that measures be undertaken to remove any barriers to equal treatment. The Judiciary should also revise the diversity performance standard so that it accurately evaluates performance in this area.

The Committee on Minority Concerns also conducted a preliminary examination of employee compensation and found that there are proportionately fewer minorities in the Judiciary earning salaries at the top of the compensation chart. This finding is consistent with the absence of minority employees in top level court executive positions in the organization. The Committee expects to explore this topic at greater length in the near future and to examine the impact on women of color, in particular.

The Judiciary needs to complete the process of refining its information systems capabilities and the production of employment data reports so that all the requirements of the Judiciary EEO/AA Master Plan and the current and future statistical needs of the Committee on Minority Concerns are met. Further consultation and collaboration will be required between the Committee and other divisions who respond to these data requests in order to streamline this process and institute mechanisms to ensure that the data are checked for errors and are in the format needed. The data screens requested include race/ethnic information on court volunteers and Supreme Court Committee membership.

During the course of this rules cycle, the Committee on Minority Concerns was deeply saddened by the death of one of our Committee members, The Honorable Ivelisse Torres, Public Defender. We are genuinely and deeply appreciative of her many contributions.

The members of the Supreme Court Committee on Minority Concerns are grateful for the opportunity to serve the Court and to present this report of its continuing investigation, study and analyses of the Judiciary’s implementation of the court approved recommendations. Moreover, we are also deeply appreciative of the opportunity to carry out this task in an atmosphere that is supportive, willing to engage in dialogue, is cooperative and respectful of that which we do.

Chief Justice Deborah T. Poritz and the Administrative Director of the Courts, The Honorable Richard J. Williams, are continuing to illuminate a path that Chief Justice Robert N. Wilentz lit so many

years ago when he challenged the Supreme Court Task Force on Minority Concerns to take the investigation on race and ethnic bias issues in the judiciary wherever it may lead and to set forth its findings with candor.

Chapter I

SUBCOMMITTEE ON CRIMINAL JUSTICE AND THE MINORITY DEFENDANT

Introduction and Mandate

In 1992, The Supreme Court Task Force on Minority Concerns Final Report stated, “. . . The criminal justice system is no stronger than the public’s confidence in it. Public confidence cannot be attained unless all defendants-minority and majority- are treated fairly and equally, and the public can gauge the degree to which the principles of fairness and equal treatment prevail.”

The mandate of the Subcommittee on Criminal Justice and the Minority Defendant is to scrutinize the criminal courts, identify all areas which need strengthening to assure fairness and equal treatment for both minority and non-minority defendants and shape recommendations to achieve that strengthening. Consistent with the recommendations approved by the Supreme Court which fall within the scope of the Subcommittee on Criminal Justice and the Minority Defendant’s mandate, the following priority recommendations were identified and monitored for the 2000-2002 Committee cycle report. The priority recommendations address bail and sentencing outcomes, jury issues and adult drug courts.

I. Subcommittee Activities

The Subcommittee implemented a work plan that included the establishment of three Ad Hoc Working Groups to formulate a proposed bail research project. Each of the three ad hoc working groups focused on different aspects of the project. Administrative Office of the Courts (hereinafter AOC) Criminal Practice Division staff were consulted to provide technical expertise with regard to the proposed project design, methodology, and the selection of counties in which to conduct day-long on-site observations of bail units. Subcommittee members also researched and reviewed articles, reports and other literature relating to bail and sentencing outcomes, and drafted an internal bail report which was submitted to the Administrative Director for review.

The Subcommittee’s action plan also included working with the AOC Criminal Practice Division and the Judicial Education Unit to design and plan workshops and seminars on cross-racial and eyewitness identification.

Members of the Subcommittee and staff served on the Committee planning the annual meeting of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts. Two seminars were designed for presentation at the 2000 annual meeting held in New Jersey. One seminar addressed *Issues in Eyewitness and Cross-Racial Identification*. The Honorable Thomas F. Shebell,

Jr., J.A.D. (retired) was the moderator of the panel. Panelists included Paul Casteleiro, Esq., a criminal trial and appellate attorney in private practice in Hoboken, New Jersey; Sylvia M. Orenstein, Esq., Office of the Public Defender, and Debra Stone, Assistant Attorney General, Division of Criminal Justice. Dr. Gary Wells, a professor from Iowa State University, was the keynote panelist.

The second seminar developed and presented by the Subcommittee was entitled, *Juvenile and Adult Drug Courts: Effective and Efficient Models*. The moderator was Yvonne Segars, First Assistant Deputy Public Defender. The panelists included The Honorable Carmen M. Garcia of Trenton Municipal Court, C. West Huddleston III, Deputy Director, National Drug Court Institute; Dr. Bruce Stout, Executive Director, Juvenile Justice Commission, and The Honorable Steven W. Thompson, Camden Superior Court. Subcommittee staff and members also worked as conference facilitators and provided other support services as needed.

II. List of Priority Recommendations

The following priority recommendations will be addressed in the Subcommittee's 2000-2002 cycle report:

- < Bail and sentencing outcomes,
Ad Hoc Working Group on Bail and Pre-Trial Intervention (PTI);
Ad Hoc Working Group on Research, and
Ad Hoc Working Group on Summons v. Arrest Warrants
- < Jury issues and educational seminars,

Educational seminars for criminal justice practitioners;
Model Jury Charge addressing the issue of cross-racial eyewitness
identification, and
Peremptory challenges
- < Drug Courts.

III. Discussion of Priority Recommendations

A. Bail and Sentencing Outcomes

Task Force 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 arrests through sentencing, and determining the degree to which discrimination occurs at each of those decision points.

1. Bail Outcomes : Preliminary Observation Project

a. Background

The impact of New Jersey bail practices on persons of color has been a long standing concern of every court committee or task force on minority concerns convened in New Jersey. Indeed, all reports issued by the predecessor task force and follow-up standing committees have stressed the need to address the issue, beginning with the inaugural report published by the Coleman Committee in 1984 and including the interim (1989) and final (1992) reports of the Supreme Court Task Force on Minority Concerns, as well as the first two rules cycle reports published in 1994-1996 and 1996-1998 of the Supreme Court Committee on Minority Concerns.⁷

⁷ In the 1984 Coleman Committee Report, the adverse impact of bail practices on poor defendants in New Jersey was discussed. The following quote captured the Coleman Committee's assessment. "... Because many minorities are also poor people, ... the Judiciary process of setting bail denies them equal access to pre-trial release with all of its advantages in helping to prepare one's defense for trial..." Reference: National Minority Advisory Council on Criminal Justice, *The Inequality of Justice: A Report on Crime and The Administration of Justice in the Minority Community*, at p. 260.

The New Jersey Supreme Court Task Force on Minority Concerns Interim Report was published in 1989 (pp. 35, 36 and 41). Three findings contained therein formed the basis of five bail recommendations chronicled in both the 1989 Interim Report and Final Report, published in 1992. The findings noted a tremendous lack of uniformity in arriving at bail decisions in New Jersey and opined (sic) that these differences impact substantially on the constitutional right to bail; that bail type and amount is usually influenced more by factors relating to dangerousness of the offender (such as the severity of the crime and the defendant's criminal history) than by those background factors relating to risk of flight (such as employment and community ties); and that since the effects of money bail fall hardest on the poor and since minorities are disproportionately poor, the effects of money bail, therefore, fall disproportionately on minorities.

The Supreme Court Task Force on Minority Concerns (hereinafter referenced as the Task Force) proposed the following bail recommendations in the 1992 Final Report: Recommendation #4, Promulgation of Uniform Bail Procedures throughout the State; Recommendation #5, Adoption of a bail policy with release criteria focused upon factors relating demonstrably to the defendant's likelihood to appear in court; Recommendation #6, Adoption of a bail policy which requires that monetary release options incorporate a defendant's ability to pay; Recommendation #7, Adoption of a bail policy that increases non-monetary release options and Recommendation #8, Adoption of a bail policy based on the presumption that all individuals are release worthy.

The Supreme Court Committee on Minority Concerns (hereinafter referenced as Minority Concerns) 1994-1996 Rules Cycle Report discussed the revisions made to the Criminal Court Rules on bail, which were effective January 1,

In approving Task Force Recommendation 14, the Court noted that “. . . joint social scientific studies of system-wide handling of adult criminal . . . cases from arrest through disposition, . . . are a massive undertaking requiring substantial funding if the analysis requested is to command respect.”

b. Preliminary Bail Observation Project

The Subcommittee on Criminal Justice and the Minority Defendant conceptualized a preliminary bail research project to determine which aspects of entry into the system might benefit from further examination. The Subcommittee established three Ad Hoc Working Groups: an Ad Hoc Working Group on Bail and Pre-Trial Intervention (hereinafter PTI); an Ad Hoc Working Group on Research; and an Ad Hoc Working Group on Summonses v. Arrest Warrants. The Ad Hoc Working Group on Bail and PTI set out to draft a preliminary research proposal to examine bail practices and pre-trial intervention for adult defendants. This preliminary proposal included:

- A statement of the problem to be researched;
- A determination of the availability and format of databases from which data were to be retrieved; and
- A review of existing literature in this subject area (including external and internal reports, social science and law journal articles and published research reports from other states).

The Ad Hoc Working Group on Research was assigned the following tasks: exploring options for reducing the costs of a comprehensive research project by determining if graduate students and student interns, who were fulfilling university and college practicums, may be hired to help defray research costs; designing data retrieval instruments; developing code books and manuals; recruiting student interns; and ensuring that those interns received adequate training by developing training modules for inclusion in a research orientation program.

The subcommittee consulted with the Assistant Director of the Criminal Practice Division, the

1995, and implemented statewide. The revised rules included: R.3:3-1(b) [clarified the preference for summons over arrest warrant except in certain circumstances]; R.3:4-1(a) and (b) [bail was to be set no later than 12 hours after arrest]; R.3:7-9 [conditions of pretrial release, including the amount of bail, are to be fixed by the court and endorsed on an arrest warrant]; R.3:25-2 [allowed defendants, including those charged with first degree crimes, other than capital murder to move for a trial date and permitted pretrial release if the prosecutor is unable to proceed]; R.3:26-2(c) [prompts Superior Court review of initial bails]; R.3:26-2 (d) [first bail reduction motion shall be heard within 7 days after filing]. R.3:26-1a was also amended in 1998 by incorporating the Johnson factors.

Assistant Director of the Municipal Court Services and other court managers and staff in these two divisions, and reevaluated the feasibility of conducting a joint study on bail and pre-trial intervention and summonses v. arrests warrants. Because the simultaneous study of all four topics would be a massive undertaking, the Subcommittee determined that a proposed preliminary study should be limited to only one of these topics. The subcommittee, therefore, tabled its research on summonses v. arrest warrants and pre-trial intervention and opted to focus exclusively on bail practices.

In collaborating with Criminal Practice Division staff at the Administrative Office of the Courts, the Subcommittee designed and drafted a questionnaire and prepared interview guide questions (see Appendix A-1), selected six counties to observe after having gained insight and technical assistance from Criminal Practice Division staff, and requested and received approval to conduct the site visits from the Administrative Director. The Ad Hoc Committee on Bail observation project was designed to: identify problem areas, determine the feasibility of conducting a comprehensive study of bail practices, determine the availability and format of databases from which bail data could be extracted, and determine if the questionnaire adequately captured all of the data elements needed to investigate bail setting at each successive stage of the process. The observation team consisted of three members: The Honorable Ivelisse Torres, the Public Defender⁸, Dr. Yolande Marlow and Ms. Cheryl Gilbert, both Administrative Office of the Courts staff and staff to the Supreme Court Committee.

The three person team observed bail procedures in six vicinages. This initial stage focused on understanding bail procedures in each county, including the data collection methods and data entry schedules. Atlantic, Camden, Essex, Hudson, Middlesex and Monmouth vicinages were selected to participate in this pilot project. The following criteria were used to select the vicinages:

- the quality of databases already in place (Promis/Gavel and the Central Automated Bail System (CABS);
- the ability to retrieve information on the factors identified in **State v Johnson** 61 N.J. 351, 364-365 (1972) that must be considered in fixing bail, and the likelihood that data on race/ethnicity had been recorded (See **State v Johnson Factors**, Appendix A-2);

⁸ At the time that this project was convened, Ivelisse Torres was the Public Defender for the State of New Jersey and the Chair of the Subcommittee on Criminal Justice and the Minority Defendant. Ms. Torres is now deceased. This bail project was a high priority for her, and the Committee honors her memory.

- the racial/ethnic diversity of the population; and
- the geographic location.

The Subcommittee determined that a bail study would necessitate hiring an outside consultant, with an established track record in this area, to design the study, supervise the collection and coding of bail information, and perform the necessary data analyses for preparing a report.

The Committee respectfully reiterates its earlier recommendation that, without any further delay, a study of bail practices in selected counties be commissioned and conducted by a qualified social scientist with appropriate credentials and experience, for the purpose of determining whether current bail practices are discriminatory. The Committee further recommends that the vicinage Criminal Divisions and the Administrative Office of the Courts continue to fully cooperate with the Supreme Court Committee on Minority Concerns in selecting an expert to conduct a comprehensive bail study, and in gathering and retrieving the data and documentation necessary to complete this investigation and prepare a written report.

The Committee understands that current budget constraints may delay this recommendation, but hopes it can be carried out at the earliest possible time.

Committee Recommendation 02:1.1: Bail Research. A consultant should be retained to investigate recent New Jersey samples of bail and sentencing outcomes.

The Judiciary should use an earlier research model to revisit the issue of cash bail. The research project conducted in 1988 should be revisited and its methodology refined. A bail study was carried out in six counties (Camden, Cumberland, Essex, Mercer, Middlesex and Union) during a three-month time period (February- April 1988). Jail lists from each county were reviewed to obtain the study's sample which included all incarcerated offenders in the \$500 or less bail range. Inmate files were reviewed and when possible inmates were interviewed so that the information could be verified. At that time, the statewide pre-trial population was 6,133. The cases in the sample (3,067) represented 50% of the total pretrial population at that time.

Two focus group sessions were also conducted, one with county and municipal bail officials and another with judges. The consultant hired to conduct the focus groups was accompanied to each of the focus group session by Dale Jones, Assistant Public Defender, Office of the Public Defender and John P. McCarthy, Jr., then Assistant Director for Criminal Practice.

The study noted the disparity throughout the State in the availability of the 10% cash bail option and the inequity of the effect of cash bail on the poor.⁹

Committee Recommendation 02:1.2: A collaborative research project on the present use of cash bails should be conducted in selected counties. The research model used in 1988 should be reviewed in order to determine if its methodology is appropriate for a current examination of this issue. Race/ethnicity, county, gender, amount of cash bail and other variables should be retrieved from all cases in the pre-trial bail sample.

2. Sentencing Outcomes

a. Literature Review

It is axiomatic that minority defendants are over-represented in every phase of the New Jersey criminal justice system. From initial arrest to pre-trial detention, conviction and incarceration, the percentage of minorities in New Jersey's criminal justice system is profoundly disproportionate to that of non-minorities. The Supreme Court Task Force on Minority Concerns Final Report addressed this issue at length (excerpt from the Task Force on Minority Concerns Final Report, the Subcommittee on Outcome Determinations, pages 110-133, Appendix A-3). A review of recent New Jersey statistics as reported in the January 8, 2001 New Jersey Department of Corrections, Offender Characteristics Report, indicates that 63% of the offenders incarcerated were Black; 18% were Hispanic and only 19% were White¹⁰. This statistical phenomenon also existed in 1984, when the Report of the Committee on Minority Concerns

⁹ New Jersey Supreme Court Task Force on Minority Concerns, Final Report, pages 70-71.

¹⁰ The 2001, 1999, and 1998 statistics are virtually identical. The New Jersey Department of Corrections, Offender Characteristics Report, Policy Analysis and Planning (Highlights, n. ii, January 8, 2001 p.25, January 11, 1999 p. 25, and January 9, 1998 p. 25).

(Coleman Report) concluded that; . . . “Minorities are more likely than non-minorities to be brought into the criminal justice system and are more likely to remain in the system once they are there.”¹¹ The statistical findings persisted in 1992, when the Supreme Court Task Force on Minority Concerns noted the same finding in its final report¹², and those findings remain valid today.

In a recent Newark Star-Ledger article entitled, “Study : State jails blacks at twice the national rate,” Kathy Barrett Carter, (July 12, 2001) reported on a study published in *Mother Jones*, a nonprofit magazine that has won national acclaim for its investigative reporting. The *Mother Jones* study relied on federal statistics compiled by the Justice Policy Institute, a nonprofit criminal justice research organization. The report revealed that:

. . . New Jersey leads the nation when it comes to incarcerating drug offenders, and blacks in the state are nearly 18 times more likely than whites to be behind bars. The six-month study revealed that New Jersey ranked second in the nation in the disparity between whites and blacks in prison compared with the population as a whole. Only Minnesota has a greater imbalance. The report found that for every 100,000 black residents in New Jersey, there are 1,799 blacks in prison. That ratio mirrors the national average. But there are only 100 whites prisoners for every 100,000 whites in the state – about half the national average. Nationwide, blacks are about nine times more likely than whites to go to jail, while in New Jersey blacks are 18 times more likely to be in prison.

The report concluded that:

. . . One third of New Jersey’s prison population of 31,000 is made up of drug offenders---the highest rate in the nation. Less than one-quarter of prisoners across the nation are in for drug offenses.¹³

Across the nation, at the federal and state levels, legislative bodies have opted to toughen drug laws and the inevitable result has been to incarcerate more minorities for longer periods of time. The body of statistical information now available amply documents the preponderance of minority males in

¹¹ Report of the Committee on Minority Concerns (Coleman 1984), n. 2 at p.31.

¹² New Jersey Supreme Court Task Force on Minority Concerns, Final Report (1992), at p.110.

¹³ Kathy Barrett Carter, Newark Star Ledger, “ State jails blacks at twice the national rate,” (July 12, 2001), p. 15 and 16.

confinement.¹⁴ The Committee therefore urges the Court to move forward and aggressively pursue funding for the investigation of sentencing outcomes as originally stated in Task Force Recommendation 14 referenced on page 3 of this chapter.

b. Incarceration Statistics Comparisons

The Report of the Supreme Court Committee on Minority Concerns, Rules Cycle, 1994-1996, at page 18, stated that, “Over- representation of minorities in the correctional system continues to be a persistent problem.”¹⁵

The Committee reviewed statistics compiled by The New Jersey Department of Corrections, (Offenders Characteristics Report) Policy Analysis and Planning Unit. When comparing the statistics on offenders in New Jersey Correctional Institutions in 1992, 1994, 1998, 1999 and 2001, it is evident that the proportions of racial/ethnic minorities and non-minorities incarcerated are virtually identical for all these years. See Figure 1: New Jersey Department of Corrections: Offender Characteristics Reports (December 31, 1992; December 31, 1994; January 9, 1998; January 11, 1999 and January 8, 2001) for the summary statistics. These figures were extracted from the New Jersey Department of Corrections, Offender Characteristics Annual Reports for 1992, 1994, 1998, 1999 and 2001:

December 31, 1992: 63% of all State Correctional Institution Offenders were Black; 19% were White and 17% were Hispanic.

December 31, 1994: 64% of all State Correctional Institution Offenders were Black; 19% were White and 17% were Hispanics.

January 9, 1998: 64% of all State correctional Institution Offenders were Black; 18% were White and 18% are Hispanic.

January 11, 1999: 64% of all State Correctional Institution Offenders were Black; 17% were White and 18% were Hispanic.

January 8, 2001: 63% of all State Correctional Institution Offenders were Black; 19% were White and 18% were Hispanic.

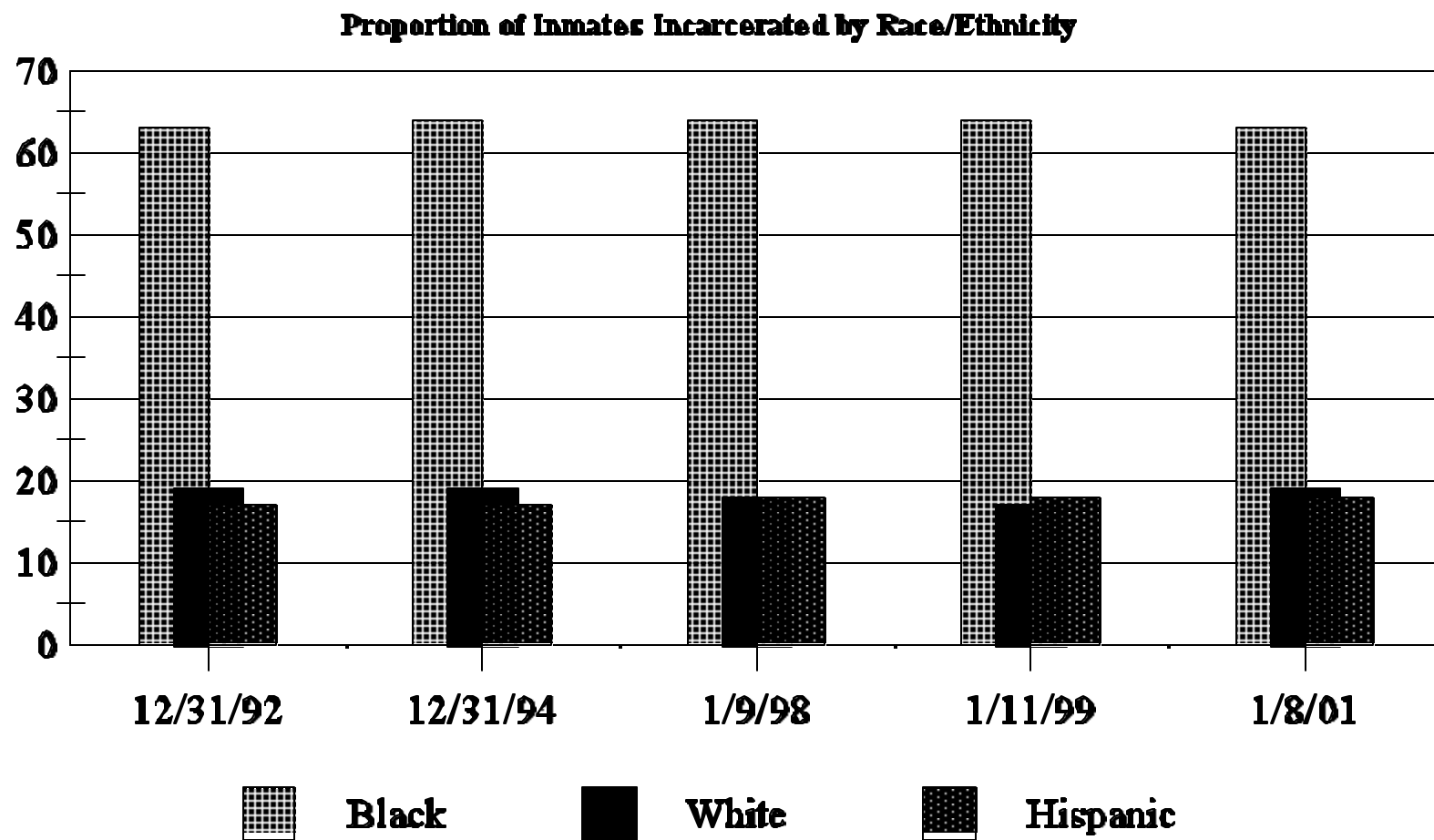
¹⁴ Marc Mauer, “The Crisis of the Young African American Male and the Criminal Justice System.” Report Prepared for the U.S. Commission on Civil Rights, (April 15-16, 1999), pp.1-7.

¹⁵ New Jersey Supreme Court Task Force on Minority Concerns, (1994-1996), at p. 18.

The reader may wish to consult Table A and Table B in Appendix A-4 for a more detailed presentation of the incarceration statistics for 1992 and 2001 by race/ethnic identification and institution. The year 1992 was selected because it is the year that the Task Force on Minority Concerns published its final report. The year 2001 represents the year with the most recent available correctional statistics.

The Subcommittee on Criminal Justice and the Minority Defendant will continue to address sentencing outcomes and work with the Criminal Practice Division, the Conference of Presiding Criminal Division Judges, Criminal Division Managers, and other outside agencies (at the direction of the Court) in an effort to move forward with a comprehensive research project in this area. Moreover, the Committee on Minority Concerns expresses its grave concerns about the seemingly intractable nature of minority overrepresentation in confinement.

Figure 1: New Jersey Department of Corrections: Offender Characteristics Report (December 1992, December 1994, January 1998, January 1999 and January 2001)



B. Jury Issues and Educational Seminars

Task Force Recommendation 9: Practitioners in the criminal justice system, including judges should attend educational seminars on eyewitness identification developed by their respective agencies.

Task Force Recommendation 10: The Supreme Court should develop cautionary instructions that would be used to inform juries on the issues pertaining to the unreliability of eyewitness identification generally and 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.

Task Force 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.

1. Educational Seminars for Criminal Justice Practitioners

On May 20, 1999 at the Criminal Division Retreat in Avalon, New Jersey, an educational seminar was held for Criminal Division judges and managers on the issue of cross-racial and eyewitness identification. Representatives from the Office of the Attorney General and the Office of the Public Defender were extended invitations to attend the workshop. Dr. Gary Wells, Professor, Department of Psychology, Iowa State University, was the workshop presenter. Dr. Wells highlighted these major points in his remarks:

- there is a need for improvement in the manner in which eyewitness identification procedures are currently handled;
- research has shown that a witness's memory of an event can be fragile and that the amount and accuracy of information obtained from a witness depends in part on the method of questioning, and
- the practice of using DNA testing has proven that the primary use of eyewitness testimony

presented at trial has contributed to wrongful convictions.

Nationally more than 70 people, including several in New Jersey have been exonerated by DNA testing.¹⁶ In his remarks, Dr. Wells also referenced a book in his remarks entitled, Eyewitness Evidence, A Guide for Law Enforcement (October 1999). He was one of the original 34 members known as The Technical Working Group for Eyewitness Evidence (TWGEYEE), which recommended practices to be used for law enforcement. The guide outlines basic procedures that can be used to obtain the most reliable and accurate information from eyewitnesses. This presentation was repeated at the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts' 2000 annual meeting. Dr. Wells also discussed the use of DNA evidence at the workshop on May 12, 2000. At subsequent training sessions in New Jersey, Dr Wells also addressed these issues at the Office of the Attorney General during the week of April 30, 2001 and the Office of the Public Defender on May 11, 2001.

The judiciary has continued to expand its efforts to educate judges about the use of DNA. In each of the past three consecutive years (November 1999, 2000 and 2001), this issue has been on the Judicial College agenda. In 1999, Dr. John E. B. Stewart, and Jennifer Luttman of the Federal Bureau of Investigation, Washington, D.C. presented, DNA Analysis Forensic Application. In 2000, Judge Elaine Davis, Chair of the Conference of Presiding Criminal Part Judges, and Barry Scheck, Esq., a Professor of Law at the Cardoza School of Law, and Director of the Innocence Project, presented a seminar entitled, *Actual Innocence Agenda for Reforming the Criminal Justice System*. In 2001, retired Judge Jamine P. Geske, a Professor of Law, Marquette University Law School, Wisconsin, addressed, *Evidence Problems-Hearsay and Expert Testimony*. The Committee on Minority Concerns acknowledges the judiciary's commitment to educating its judges on these important issues. Training on these topics should be included as part of the mandated training curriculum for criminal division judges and staff.

¹⁶Robert Schwananeberg, "State to offer convicts free DNA testing." The Newark Star Ledger (June 18, 2001), pp.1,6.

Committee Recommendation 02:1.3: DNA/Eyewitness Training: Training on cross-racial and eyewitness identification and the use of DNA evidence and expert witness should be included in the mandated training curriculum for criminal division judges and orientation information on these issues should be offered to appropriate criminal division staff and supervisors of probationers.

2. Model Jury Charge Revision: Cross-Racial/Eyewitness Identification

The report of the Subcommittee on Criminal Justice and the Minority Defendant, 1994-1996, initially recommended that revisions be made to the Model Criminal Jury Charges addressing the issue of eyewitness identification. This issue was revisited by the Committee in the 1996-1998 Rules Cycle Report. The Committee recommended and forwarded to the Model Jury Charge Committee suggested revisions to the model jury charge on cross-racial eyewitness identification. While acknowledging the concerns of the Minority Concerns Committee, the Model Jury Criminal Jury Charge Committee reviewed the proposed charge on January 26, 1998, and decided to retain the charge's original language.

The cross-racial eyewitness identification issue was addressed by The Honorable Thomas Shebell, Jr., Appellate Division, in an unpublished opinion, **State v. Cromedy**, No:A-1359-95T4 (App. Div. December 29, 1997).

This appeal involved [sic] a rape and robbery in which a cross-racial identification was made of defendant as the perpetrator seven months after the offenses occurred. The identification of the perpetrator was the critical issue throughout the trial. The trial court denied defendant's request to have the jury instructed concerning the cross-racial nature of the identification. A majority in the Appellate Division panel agreed with the trial court.

In his dissent Judge Shebell stated:

A jury instruction that contains no direct reference to the hidden fires of prejudice and bias which may be stoked by an incident such as the sexual assault in question and fails to call the jury's attention to the problems of cross-racial identification, so well documented by the [New Jersey Supreme Court Task Force on Minority Concerns] denies minority defendants, such as McKinley Cromedy, their constitutional right to a fair trial. **Idem**

Judge Shebell concluded that a reversal was warranted because the trial court should have given such a charge. The Model Jury Charge Committee knew that because of Judge Shebell's dissent, this issue was before the Supreme Court.

On April 14, 1999 the Supreme Court decided **State v. Cromedy**, 158 N.J. 112 (1999). Justice James H. Coleman wrote the majority opinion and was joined by Chief Justice Deborah T. Poritz and Justices Stewart G. Pollock, Daniel J. O'Hern, Marie L. Garibaldi, and Gary S. Stein. Justice Coleman wrote:

It was reversible error not to have given cautionary instructions to the jury about the possible significance of the cross-racial identification factor. The Court requested that the Criminal Practice Committee and the Model Jury Charge Committee revise the current charge on Cross-Racial Eyewitness Identification to include an appropriate statement on cross-racial identification that is consistent with the Court's ruling.

It should be noted that, prior to the adoption of the cross-racial identification jury instruction, there was no provision in the New Jersey Model Jury Instructions pertinent to the question of whether a cross-racial identification might be less reliable than an identification made by a witness of the same race as the person being identified.

The relevant portion of the revised New Jersey Model Jury Instructions, with regard to both In-Court Identification, Out-of-Court Identification, and In-Court and Out-of-Court Identification, which the instructions direct, should be read in cases "when . . . identification is a critical issue in the case, and an eyewitness's cross-racial identification is not corroborated by other evidence giving it independent reliability", now reads as follows:

. . . In addition, you may consider the following factor [s]: . . . [IN THE APPROPRIATE CASE, CHARGE THE FOLLOWING FACTOR:]

. . . The fact that the witness is not of the same race as the perpetrator and/or defendant, and whether that fact might have had an impact on the accuracy of the witness' original perception, and/or the accuracy of the subsequent identification. You should consider that in ordinary human experience, people may have greater difficulty in accurately identifying members of a different race. **State v. Cromedy**, 158 N.J. at 132-133.

On November 9, 1999, The Honorable Richard J. Williams, then Acting Administrative Director,

sent a letter with the revised Model Jury Charges on Identification, to Chief Justice Poritz, Associate Justices, Superior Court Judges, Tax Court Judges, and to Trial Court Administrators.

3. Peremptory Challenges

The Honorable Harold W. Fullilove, former Chair of the Minority Concerns Committee, sent a memorandum (February 3, 1997, Appendix A-5.1) to The Honorable James J. Ciancia, then Acting Administrative Director of the Courts regarding the issue of Gilmore Violations. In State v. Gilmore, 103 N.J. 508 (1986), the Supreme Court held that the New Jersey Constitution forbids a prosecutor “from exercising peremptory challenges to remove potential petit jurors who are members of a cognizable group on the basis of their presumed group bias”.

A proposed draft questionnaire designed to document Gilmore challenges statewide and the remedy ordered by trial judges after finding that a proper challenge was brought was attached to Judge Fullilove’s memorandum. Although the questionnaire was not approved for distribution, Judge Ciancia sent a memorandum on May 8, 1997, reminding trial judges of the remedy required for Gilmore violations. (See Appendix A-5.2 for a copy of this memorandum).

The Committee on Minority Concerns also submitted an inquiry to the Advisory Committee on Professional Ethics in April 1997. That inquiry questioned whether the use of peremptory challenges to exclude minorities from sitting on a jury subjects an attorney to discipline for violation of RPC 8.4(g). That rule reads, in part:

It is professional misconduct for a lawyer to . . .engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm.

In November 1998, the Advisory Committee on Professional Ethics issued, Opinion 685, which stated that. . .” so long as peremptory challenges are permitted, the trial bar should not be routinely exposed to disciplinary action simply by exercising them.” ACPE Docket No: 8-97, Opinion 685. See Appendix A-5.3 for a copy of Opinion 685.

The issue of peremptory challenges has been under consideration by various judiciary conferences for some time. The Criminal Division Assignment Judges formed the Assignment Judges Committee to

review the use of peremptory challenges and to determine whether to recommend changes in either the use or number of peremptory challenges. *The Report of Assignment Judges Committee to Review the Use of Peremptory Challenges* was unanimously approved by the Conference of Assignment Judges in June 1997. The recommendations contained in the report are as follows:

- The number of peremptory challenges should be significantly reduced in both civil and criminal cases and; in civil cases, the number of peremptory challenges should not exceed three for each side, regardless of the number of parties on any one side.
- Programs on conducting more meaningful voir dire should be made a part of judicial education and training.
- In criminal cases covered by N.J.S.A. 2B:23-13b, the number of peremptory challenges should not exceed eight on each side.
- In multi-defendant cases defendants would be allowed an additional challenge for each defendant and the State would be allowed an additional challenge for each given defendant.
- In all other criminal cases, the number of peremptory challenges should not exceed five for each side. Additional peremptory challenges in multi-defendant cases were to be handled in the same manner. The Trial Judges should have the authority to allow additional peremptory challenges when justified.

In July 1997, Judge Ciania sent a letter to The Honorable Sylvia Pressler, P.J.A.D., Chair, Civil Practice Committee; and The Honorable Edwin H. Stern, J.A.D., Chair, Criminal Practice Committee, attaching the Assignment Judges Report on the Use of Peremptory Challenges and advising them of the interests of the Committee on Minority Concerns regarding the use of peremptory challenges. The Supreme Court requested the assistance of the Civil Practice Committee and the Criminal Practice Committee to review the Report of the Assignment Judges Committee. Prior to taking any action on the aforementioned report, the Court requested input from the Civil and Criminal Practice Committees.

Judge Stern recommended the establishment of a Joint Criminal/Civil Practice Committee (later renamed the Special Committee) to study voir dire issues and the jury selection process. On May 21, 1999, a workshop was presented at The Criminal Division Retreat on the work of the Special Committee on Voir Dire and Jury Selection Issues. The panelist included: The Honorable Edwin H. Stern, J.A.D., The

Honorable Elaine L. Davis, The Honorable Leonard N. Arnold, The Honorable Harvey Weissbard, and Joseph Barraco, Esq. This issue will remain on the Committee's agenda for the forthcoming cycle.

C. Drug Courts

In 1992, the Task Force recommended that the Court consider communicating to the executive branch the need for more treatment beds for alcohol and drug addicted indigents. In its 1994-1996 Rules Cycle Report, the Committee reiterated this recommendation.

Task Force Recommendation 16: The Supreme Court should consider proposing to the appropriate executive branch agencies that dedicated alcohol and drug treatment bed spaces for indigent defendants be made available to the Judiciary.

As a result of its interest in the availability of treatment beds for psychiatric and substance abuse indigents in New Jersey, the Committee conducted a *Survey on the Availability of Indigent Beds and a Directory of Treatment Facilities for Psychiatric and Substance Abuse* in 1996. The New Jersey Department of Health, Division of Addiction Services was very supportive in providing information on these services.

County alcoholism and drug abuse coordinators in New Jersey were surveyed. Respondents answered the following queries: how many beds are available for indigents in your county; how many bed days are funded; how many yearly residential and outpatient referrals are there for adult male and female individuals or families; what is the projected number of indigent beds available for the year 1996; what are the names of the residential treatment facilities in your county, and what is the length of stay for treatment programs? The treatment services reported in the report were not reserved specifically for judiciary referrals. Multiple copies of the report were distributed to all vicinages, to the New Jersey Department of Health, Division of Addiction Services, to other public agencies and to individuals upon request.

It is general knowledge that more people are being arrested, sentenced and incarcerated in the United States for drug offenses.¹⁷ A large proportion of the crimes committed are directly related to the

¹⁷ Robert L. Engen, Randy R. Gainey and Sara Steen, Race and Ethnic Disparities in Sentencing Outcomes for Drug Offenders in Washington State: FY1996 to FY1999, pages 5-9.

_____, Washington State-Minority and Justice Commission, The Impact of Race and Ethnicity on Charging and Sentencing Processes for Drug Offenders in Three Counties in

drug trade. Notwithstanding the “war on drugs,” and the passage of tougher and more punitive drug laws, drug use and the crime it generates remains an ever present condition in all communities. Minority communities are especially vulnerable.

In the earlier discussion on sentencing outcomes, statistics presented by the Justice Policy Institute revealed that:

. . . “New Jersey leads the nation in incarcerating drug offenders and blacks were nearly 18 times more likely than whites to be behind bars . . . Furthermore, one-third of New Jersey’s prison population of 31,000 is made up of drug offenders—the highest rate in the nation. Less than one-quarter of prisoners across the nation are in for drug offenses. . .”

The dire situation is readily apparent when one examines the number of inmates in New Jersey prisons and notes that these figures have climbed dramatically in the past two decades, in part because of the mandatory penalties for convicted drug offenders. More than 42 percent of New Jersey’s inmates report “extreme” problems with drugs. The judiciary has taken a leadership role and moved forward to incrementally establish drug courts in each of the twenty-one counties. The “drug court” concept offers New Jersey an innovative strategy that addresses the underlying factors that contribute to criminal behavior and substance abuse ultimately reducing drug use and recidivism.

The Committee has actively endorsed and supported the development of Drug Courts in New Jersey and believe that they represent an opportunity to have a positive impact on rehabilitating minorities and others who find themselves in the criminal justice system. Equally as important, drug courts have the potential to deinstitutionalize a significant segment of minorities in confinement in New Jersey. This fact is made abundantly clear when one considers that for an entire generation, over 80% of the inmates in the state have been minorities, a percentage that is grossly disproportionate to that of minorities in the general New Jersey population. At the same time, consistently well over half of the inmates in New Jersey’s prisons have been incarcerated for drug-related offenses.

Drug Courts target non-violent offenders whose criminality is drug-driven and provide them with

Washington State, Final Report (December 1999), pages 1-10.

intensive treatment-based probationary supervision, which has been shown to be more effective than incarceration in rehabilitating for this kind of criminal defendant. The program involves a team approach on the part of judges, prosecutors, court staff, probation officers, substance abuse evaluators and treatment counselors, all of whom work together to support and monitor a participant's recovery. Consequently, drug courts are an extremely desirable dispositional option for a significant percentage of the criminal defendants in New Jersey who are minority and otherwise prison-bound.¹⁸ See Appendix A-6 for a list of New Jersey Drug Court Programs.

On September 6, 2001, the expansion of the drug court program was signed into law. Public Law, 2001, c243 (S-2227) increases the number of judgeships in the state at the Superior Court level and appropriates \$1,480,000 to process convicted drug users through the program. Six new judges will be added along with staff and support personnel. In January 2002, drug courts will be expanded to Bergen, Cumberland/Gloucester/Salem, Monmouth, Morris/Sussex and Ocean Counties. In 2003, drug courts will be established in the following vicinages: Atlantic/Cape May, Burlington, Hudson, Middlesex, and Somerset/Hunterdon/Warren.

The New Jersey Department of Health and Senior Services will be responsible for coordinating treatment for drug court participants and will be allocated \$1,570,000 in funds for services. An additional \$10 million dollars is being transferred from the Department of Corrections to the Drug Court Program.

The Committee has been an advocate for this initiative and lent its support by commenting on the legislation proposed for the expansion of drug courts and pointing out the dire need for more rehabilitation based programs and treatment beds. With the Court's guidance and approval, we will continue this advocacy role and offer whatever assistance the Court may deem appropriate.

The Committee strongly endorses the Judiciary's efforts to expand drug courts and ensure that defendants, irrespective of their county of residency, are assured equal protection.

¹⁸ New Jersey Judiciary, "Drugs Courts, A Plan for Statewide Implementation," (December 2000).

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Chapter II

SUBCOMMITTEE ON MINORITIES AND JUVENILE JUSTICE/FAMILY

Introduction and Mandate

The mandate of the Subcommittee on Minorities Juvenile Justice/Family is to monitor the implementation of the court-approved recommendations that relate to youth under the court's jurisdiction. Since the resources necessary to provide care for youth are not always equally available to minority and non-minority juveniles, it is important for youth to have equal access to all services and be treated similarly when situated in similar circumstances.

I. List of Priority Recommendations

The report addresses the status of the judiciary's implementation efforts of the following recommendations:

- A. Disproportionate minority confinement and judicial involvement in juvenile program development (Recommendations 17 and 20 respectively);
- B. Development and standardization of a public education program (Recommendation 18);
- C. Development of a statewide on-line juvenile program directory (Recommendation 21);
- D. Development and institutionalization of a judicial education curriculum that facilitates the delivery of appropriate services and bias-free decisions (Recommendation 22);
- E. Increase of minorities in key positions within the Family Court and Division (Recommendation 23);
- F. Establishment of child waiting rooms in all counties (Recommendation 24); and
- G. Collaborative study on juvenile case-processing decision points (Recommendation 26).

II. Subcommittee Activities

The Subcommittee on Minorities and Juvenile Justice/Family has worked cooperatively with other Minority Concerns subcommittees to address and monitor several of the aforementioned recommendations in public education and community outreach. Some of the recommendations have spawned the development of youth-specific judiciary education seminars; other programs were planned for the public in general. Still other subcommittee initiatives have been the catalyst for the development of on-going juvenile programs. Subcommittee members have also worked with various state government juvenile

policy-making and planning bodies.

Highlights of the subcommittee activities are listed below:

- participating in the judiciary's Ad Hoc Working Group on Public Education on Juvenile Courts;
- reviewing and commenting on the Juvenile Justice Commission Master Plan and Detention Reform Task Force Report
- reviewing and commenting on a draft research proposal addressing juvenile case-processing decision points;
- volunteering to serve on planning committees and as faculty/facilitators for the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts annual meeting and the Vicinage Advisory Committees on Minority Concerns (VACMC) Conference of Chairs annual retreat;
- assisting various vicinages in their respective law day activities around the state and juvenile justice symposia and
- planning, coordinating and presenting a seminar at the November 2000 Judicial College.

III. Discussion of Priority Subcommittee Recommendations

A. Disproportionate Minority Confinement and Judicial Involvement in Juvenile Program Development

The over-representation of minority youth in confinement has been, for the duration of the judiciary's minority concerns initiatives (which began in the 1980's), a persistent problem and remains so today.¹⁹ It is evident that the solution to disproportionate minority confinement will require a team effort

¹⁹See the discussion in the following reports: New Jersey Supreme Court Task Force on Minority Concerns Interim Report (1989), pp. 77-90; New Jersey Supreme Court Task Force on Minority Concerns, Final Report (1992), pp. 152-160 and 178-184; New Jersey Supreme Court Committee on Minority Concerns, Report of the Subcommittee on Minorities and Juvenile Justice/Family, 1994-1996 Rules Cycle, Supplement II, pp. 8-12 and 15-17; and New Jersey Supreme Court, Report of the Committee on Minority Concerns, January 1996-1998 Rules Cycle, pp. 20-28.

In 1990, the State Law Enforcement Planning Agency published a report entitled The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey, Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee and its Ad Hoc Subcommittee on Minority Issues. A more recent report on this issue using national data finds that little has changed with respect to the over-representation of minority youth in confinement. See Appendix B-1 for a copy of the following report: Eileen Poe-Yamagata and

involving participants from the judiciary as well as from other government agencies and organizations in both the public and private sectors. Moreover, the corpus of knowledge in this area dictates that different and novel approaches to this problem are warranted and long overdue. For this reason the Subcommittee has chosen to discuss the reduction of minority confinement and the judicial involvement in juvenile program development as complementary issues.

Task Force Recommendation 17, which addresses the issue of reducing the number of incarcerated minorities, was amended in 1996. The amendments discussed: the more active involvement of Presiding Family Court Judges in County Youth Services Commissions, the Committee's request to forward a recommendation suggesting that a disproportionate minority confinement stipulation be included in all State/Community Grant Program proposals²⁰ and the recommendation that a Vicinage Advisory Committee on Minority Concerns liaison serve on each County Youth Services Commission. The full text of the recommendation is noted below. The complementary recommendation, Task Force Recommendation 20, discusses the lead role that judges can play in expanding services for youth. This recommendation and its amendments also follow.

Task Force Recommendation 17: The Supreme Court should set a goal for the judiciary of reducing the number of minorities incarcerated. This goal would be accomplished by: (1) working through County Youth Services Commissions to expand sentencing alternatives; (2) carefully considering the use of available alternative dispositions that would keep juveniles in the community; (3) adopting a policy that factors like family status which may appear race-neutral, but which when considered in creating a disposition may tend to result in disproportionate numbers of minorities being incarcerated, are insufficient grounds in and of themselves for justifying a decision to incarcerate; (4) encouraging judges to play a more active role in determining which juveniles go into these programs by recommending specific placements at the time of

Michael A. Jones, Building Blocks for Youth, And Justice for Some, Differential Treatment of Minority Youth in the Justice System (April 2000).

²⁰Since this recommendation does not fall within the governance of the Court, the Committee respectfully recommended that the Court consider forwarding this recommendation to the Executive branch.

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.

Committee Recommendation 17.1: The Chief Justice should direct Presiding Family Court Judges to become active in County Youth Services Commissions. (1996)

Committee Recommendation 17.2: The Supreme Court should consider recommending to the Juvenile Justice Commission that all State/Community Grant Program proposals commit the applicant to the reduction of minorities in the juvenile justice system and that each applicant adopt a viable plan of action to achieve this goal. (1996)

Committee Recommendation 17.3: The Chief Justice should direct Assignment Judges to designate a member from the vicinage advisory committee on minority concerns to serve as a liaison to the County Youth Services Commission. (1996)

Committee Recommendation 17.4: The Supreme Court should consider recommending to the Juvenile Justice Commission that each County Youth Services Commission be required to actively recruit and seat minority members and that Youth Services Commissions be composed of members selected for their knowledge, competence, experience and interest in the juvenile justice system. (1996)

Task Force 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.

Committee Recommendation 20.1: The Supreme Court should direct the Conference of Family Division Presiding Judges to develop a viable plan of action to implement the Hawkins/Fall Committee Recommendations.²¹ (1996)

1. Enhancing Collaboration and Participation in County Youth Services Commissions

The subcommittee has explored ways that it can enhance the collaboration between the Administrative Office of the Courts, the Family Practice Division, the Conference of Family Presiding Judges and the Conference of Family Division Managers in an effort to work more effectively and efficiently on juvenile justice and family court issues and challenges. The work of the local Vicinage Advisory Committees on Minority Concerns (a court/community partnership) has resulted in several collaborative projects such as expanding vicinage law day programs, developing juvenile justice symposia, establishing community-based alternative prevention and treatment programs for at-risk youth and court visitation programs.

Several years ago, members of the Conference of Family Presiding Judges were invited to the Subcommittee meetings and plans were made to explore other collaborative venues. At these meetings, one of the concerns discussed was enhancing participation of judges and court staff in the county youth services commissions. The Subcommittee received anecdotal information from several vicinage advisory

²¹A number of the Task Force Recommendations were referred to the Conference of Family Division Presiding Judges. The Conference appointed a committee to review and report on the Task Force Recommendations. The committee was jointly chaired by The Honorable Rudolph N. Hawkins, Jr. and The Honorable Robert A. Fall. The Hawkins/Fall Report was submitted on September 28, 1994 and considered at the February 2, 1995 Conference of Family Division Presiding Judges meeting.

The basic premise of this report was that diversion must happen at the front end of the system and not the tail end where judges are, and that resources must be available at the early stages of juveniles' involvement with the juvenile justice system. The following recommendations were discussed in the report: judicial involvement in the County Youth Services Commissions; judicial outreach by judges; collaboration with the Committee on Minority Concerns; vigorously pursuing alternatives to detention and providing transportation services to court for families and others. *New Jersey Supreme Court Committee on Minority Concerns, Report of the Subcommittee on Minorities and Juvenile Justice/Family, 1994 -1996 Rules Cycle, Supplement II, pp. 15-16.*

committees on minority concerns and community representatives that improvements were needed in this area. During the previous biennial term, the Subcommittee worked with the Juvenile Justice Commission to draft, review and edit guidelines for the State/Community Partnership Grant Program. One issue championed by the Subcommittee was ensuring greater representation of minorities on the County Youth Services Commissions.

Notwithstanding the court's preclusion from voting on funding issues in the youth service commissions meetings, Presiding Judges and other court personnel can play an important role in advising the commissions of program priorities, gaps in service and issues of program accountability.

The AOC Family Practice Division, in consultation with then Chair of the Conference of Family Division Presiding Judges, the Honorable Valerie H. Armstrong, designed and distributed a survey to capture information on the extent of judicial participation in County Youth Services Commissions. The questionnaire was distributed to Family Division Managers in all vicinages and all vicinages responded. The survey results were compiled by Family Division staff.

Judge Armstrong submitted the Conference's findings and recommendations to Judge Ciania in December 1998. In her report, Judge Armstrong highlighted the need for judges to participate more at the early stages of the funding process, contributing to program funding and development through "committee work and agenda setting," assuring that priorities are properly set. Judge Armstrong also discussed the need to focus on prevention and diversion, as well as the need to hold programs accountable. The Subcommittee was encouraged by the position taken by the Conference on these issues and applauds all efforts to implement the recommendations of the Conference.

In a memorandum to the Conference of Family Division Presiding Judges, the Conference of Family Division Managers and the Assistant Director of the Family Practice Division (AOC), the Administrative Director discussed a companion issue also raised in the Committee's 1996-1998 Rules Report.²² The memorandum addressed the role of judges with respect to the establishment of community alternatives and the delivery of mandated services as stated in Recommendation 20. The Supreme Court reserved action

²²Memorandum from Acting Administrative Director James J. Ciania to The Honorable Valerie H. Armstrong (July 31, 1998). See Appendix B-2.

on this particular recommendation as it deemed that further guidance and clarification was required. The Subcommittee looks forward to meeting with the Conference of Family Presiding Judges, the AOC Family Practice Division and the Conference of Family Division Managers to determine how best to strengthen its partnership and enhance its collaboration in order to move forward in light of the new initiatives that are now in place or are contemplated in Family Court.

The Essex Vicinage Advisory Committee on Minority Concerns (hereinafter the vicinage committees will be referenced as VACMC and be preceded by the vicinage name) offers a model for how this partnership may work. The Essex VACMC realized that one promising avenue for addressing the issue of over-representation of minorities in the juvenile justice system is to assure that minority youth receive needed services. The advisory committee identified and compiled a list of minority psychologists and psychiatrists in the area. This project stemmed from two years' of dialogue with judges regarding the need for access to such professionals. Other initiatives that were directly related to alternative programs for youth were the establishment of Our Children's Foundation of New Jersey.

The Passaic Village Initiative is yet another example of a noteworthy court/community collaborative venture. The Passaic VACMC members, many of whom are lay members and other members of other local agencies, worked with the court to establish this model program. Both of the aforementioned programs will be discussed in more detail in Section B of the subcommittee's report.

Since the Conference of Family Presiding Judges has already established a Minority Concerns Subcommittee, and shared the same staff person with the Committee on Minority Concerns, Subcommittee on Juvenile Justice/Family, the Committee wishes to revisit this partnership and urges the AOC to re-instate this staff liaison position as soon as possible as a means to ensure that the channels of communication remain open between the advisory committees and the Family Division and to share information and to promote and optimize networking relationships between the court and the community.

2. Community Outreach

It is the Subcommittee's position that the Judiciary will be well served by some type of outreach to communities and organizations that serve juveniles. While time off the bench for a judge may be a rare

commodity, the time dedicated to community outreach is a valuable tool in assuring service availability, accountability, program compatibility and enhanced community relations.

To ensure representation and advocacy of programs tailored to the needs of juveniles under the court's jurisdiction, the Supreme Court should encourage the involvement of the VACMC members in advocating for prevention, diversion and dispositional programs for youth. However, in order for community representatives and leaders to advocate for these services, they must be fully informed about the court's needs and priorities in Family Court. In this role, vicinage members may appropriately serve a valuable role as a bridge between the court and the community.

The following model programs illustrate this point. The Bergen vicinage has invited program and service organizations to address judges, sometimes during the lunch hour, about their respective services. The Passaic vicinage is planning to inaugurate a similar program; the Essex VACMC conducted a survey of community programs and services which it shared with the Family Division and other vicinages.

The Committee believes that the continuing dialogue with other agencies such as the Juvenile Justice Commission will help identify some of the unfolding challenges and barriers to providing and enhancing services for all youth and minority youth in particular. The Juvenile Justice/Family Subcommittee is appreciative of the opportunity it had to review and comment on the Juvenile Justice Commission Master Plan and other policy documents.

The Honorable Severiano Lisboa, then chair of the Subcommittee, forwarded comments on the Juvenile Justice Master Plan to the Acting Administrative Director.²³ One of the issues addressed in Judge Lisboa's memorandum was program availability and accountability. Judge Lisboa stated in part . . . ;

As to alternatives to detention and community programs, the subcommittee resoundingly supports them. However, more programs and more beds are not going to help minority juveniles if the same access barriers that now exist, persist. Implementation of the Master Plan must include a strategy for opening program doors (now closed) to minorities. Access to alternatives to detention for minorities must be improved if DMC [Disproportionate Minority Confinement] is to be remedied.

²³Memorandum from The Honorable Severiano Lisboa III to Acting Administrative Director James J. Ciance (April 21, 1999). See Appendix B-3.

. . . The subcommittee supports all efforts to ensure that only those programs that work receive funding through the State/Community Partnership Grant Program or any other funding source. Programs must be held accountable for quality services. Funds earmarked for treatment should not be used to fund programs that have not demonstrated an ability to make a positive difference in the lives of the young people they are supposed to serve, and fail to deliver appropriate quality services . .

The Subcommittee amends Task Force Recommendation 20 to include the following:

Committee Recommendation 02:20.2: The Supreme Court should adopt a policy that encourages Family Court judges to periodically meet with juvenile justice service providers. Service providers and county youth services commissions should be periodically advised by judges of the needs of youth under Family Court jurisdiction.

The Committee underscores the importance of re-establishing and maintaining enhanced communication with the Conference of Family Division Presiding Judges, Managers and the Family Practice Divisions. This team approach will better mobilize the court's resources and will provide collective guidance ". . .at the front end of the funding process. . . by contributing to program development through committee work and 'agenda setting', assuring that priorities are properly set".²⁴

B. Development and Standardization of a Public Education Curriculum/Campaign

Task Force Recommendation 18: The Supreme Court should direct two initiatives be undertaken to make the community, especially the minority community, aware of the juvenile court system: (1) a comprehensive public education program to provide information on the operation of the juvenile court system and the steps that are being taken to eliminate unfairness to minority juveniles; and (2) an engagement in partnerships with schools where the judiciary assists local schools in the development and instruction of a legal education

²⁴ Memorandum from The Honorable Valerie H. Armstrong, Chair of the Conference of Family Division Presiding Judges to Acting Administrative Director James J. Ciancia (December 4, 1998). See Appendix B-4.

curriculum or programs which bring judges and court workers into classrooms to speak to students, and students to visit the courts.

Committee Recommendation 18.1 The Supreme Court should direct the AOC to provide funding and staff support for two symposia to be held in selected communities for the purpose of fostering and encouraging long term partnerships and educating the minority community about court services. (1996)

At its June 16, 1998, Administrative Conference the Supreme Court endorsed the Committee's 1996-1998 recommendations for improving public education on juvenile court issues and established the Ad Hoc Working Group on Public Education on the Juvenile Courts to spearhead this initiative. The Honorable F. Lee Forrester, P.J.F.P., Mercer County, was appointed chair of the Ad Hoc working Group. Members of the group included representatives from the Conference of Family Division Presiding Judges, the Conference of Family Division Managers, the Juvenile Justice Commission and the County Youth Services Commissions. The Ad Hoc Working Group was responsible for developing a statewide action plan for educating the public on the juvenile court system, including presentation of symposia, publication of public information brochures and production of videos. The final report of the Ad Hoc Working Group was completed in March 2000.

Another on-going public education initiative is the development and presentation of model education seminars and conferences that specifically address juvenile justice issues at the vicinage level. This initiative is implemented by the VACMC in collaboration with the Family Division and community-based agencies. The Committee has found that the VACMC have been very receptive to working with their respective local courts to enhance law-related public education programs. Examples of these activities are discussed below.

1. Law Day

The Vicinage Advisory Committees on Minority Concerns continue to be integrally involved in the program development for law day activities in several vicinages. Working cooperatively with the court, county bar associations, local community groups and schools, several vicinage advisory committees assist

with Law Day program planning and coordination. These annual programs present workshops for adults and youth. Adults have the opportunity to learn about court related issues such as child support, domestic violence, landlord/tenant issues and record expungements in a public forum setting.

Youth have participated in mock trials, essay and poster contests, courthouse tours, age appropriate law-related education workshops and attended school programs featuring judges and other court staff. Participating vicinages have shared their programs with other vicinages. For the several years, vicinage law day program information has been compiled and edited by the Minority Concerns Unit and forwarded to the Office of Public Affairs, Internet Services for posting on the Judiciary InfoNet and the Internet. In previous years, hard copies of law day program agenda were distributed to the vicinages.

2. Vicinage Advisory Committee on Minority Concerns Retreat

The annual Vicinage Advisory Committee on Minority Concerns Conference of Chairs Retreat has been used to conduct training on juvenile issues and to educate lay members of the vicinage advisory committees on Family Court matters. The retreat provides a forum for judges, court staff and advisory committee members across the state to become familiar with local and state minority concerns initiatives, court innovations and best practices. The 2001 retreat highlighted presentations of various alternative juvenile prevention and treatment programs and model juvenile law related education programs.

a. Our Children's Foundation of New Jersey

Our Children's Foundation of New Jersey is a non-profit organization dedicated to supporting and encouraging children in the urban community. The Foundation has its roots in the Essex VACMC. One of the goals of the committee since its inception was to develop community programs for young people that would foster understanding, encourage positive planning for the future and help prevent involvement in crime. After having identified the Our Children's Foundation of Harlem as a model for after-school programs, the committee acted as a catalyst to bring the program to Essex County. Before the establishment of the Foundation, the project was spun off from the Essex VACMC and established as a separate entity. Our Children's Foundation of New Jersey is located in Orange and plans to have an open house in 2002.

b. Village Initiative

The Passaic Village Initiative services juvenile probationers and addresses their individual needs as well as those of their families. The Initiative "enables various agencies to share information regarding individual youths or groups of juveniles who exhibit difficulties in the school or the community with the goal of intervening before further delinquency occurs".

The program teams probation officers, parole officers and local police in a holistic approach focused on guiding juveniles away from further criminality and ensuring their compliance with court orders. Social workers and health care providers also routinely visit the juveniles homes to facilitate the process of securing additional services and conducting medical screening of family members.

Members of the Passaic VACMC were part of a team comprised of court staff, law enforcement, social service agencies, schools and health care providers who developed the program. Members of the vicinage committee presently serve on the executive board.

c. Juvenile Justice Symposium

Over the past four years, the Middlesex VACMC has sponsored an annual Juvenile Justice Symposium. The topics for the conferences have centered around awareness of the juvenile justice system, the over-representation of minorities in the system, prevention and program funding. The collaboration with various government agencies, local bar associations, community and faith-based organizations and other non-profit organizations has contributed to the success of the annual symposia.

The Cumberland/Gloucester/Salem Vicinage Advisory Committee on Minority Concerns has also presented juvenile justice symposia.

d. Juvenile Drug Courts

The goal of drug courts is to proactively deter juveniles from criminal behavior and keep them out of secure facilities. Camden and Hudson Counties presently have Juvenile Drug Courts that address cases through probation and rehabilitation. Representatives from the programs briefly reviewed the history of national drug court initiatives and discussed the development of juvenile drug courts in New Jersey.

Research and evaluation studies of these programs at the national level have demonstrated that the “drug court” approach is effective in reducing drug abuse and drug-related crime. Through the critical integration of the key components of judicial supervision, treatment matching, prescribed sanctions, intense enforcement and coerced abstinence, drug court programs represent an innovative court service which provides incentives to stay in treatment and assures certainty of punishment for non-complying drug abusing offenders.

3. National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts

Subcommittee members participated in the development and presentation of national education programs. Members and staff of the Subcommittee on Juvenile Justice/Family developed, coordinated, facilitated and/or presented four workshops at the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Court's annual meeting. The seminars presented were: *The Race for Permanency: The Impact of the Safe Families Act (ASFA) and the Multi-Ethnic Placement Act (MEPA) on the Minority Community*, *Minorities and Juvenile Justice: Prevention, Detention and Sentencing Alternatives in the Twenty-First Century*, *In the Eye of the Beholder: A Look at Juvenile Justice from the Juvenile's Perspective* and *Appropriate Programming for Female Offenders: Effectively Serving the Needs of Young Women*. Workshop faculty included New Jersey judges, attorneys and government representatives, including federal officials and experts from various states.

The Subcommittee also facilitated presentations by two keynote speakers, Michael Fowlin of *The World is My Stage*, a Ph.D. candidate in Psychology at Rutgers University and Jeremy Estrada, a rehabilitated juvenile offender and recent honors graduate of Pepperdine University. Each speaker conducted a powerful presentation challenging members of the audience to identify points in their lives when they could have made a difference in someone else's life and sharing anecdotes about how their lives had been changed by the intervention of judges and concerned adult role models.

The Subcommittee on Juvenile Justice/Family believes that with continued input and support from the vicinage advisory committees on minority concerns, additional programs, courses and workshops can be developed that address issues affecting minority juveniles at the local and state levels. With technical assistance from the Family Practice Division, some of these courses can be revised and tailored to a judicial audience and enhanced for inclusion in model judicial and staff training curricula.

C. Development of an On-line Juvenile Program Directory

Task Force 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 resource manual which is regularly updated.

Committee Recommendation 21.1: The Supreme Court should consider recommending to the Juvenile Justice Commission that all

Youth Service Commission Plans be timely filed as required by law or by Juvenile Justice Commission guidelines. (1996)

Committee Recommendation 21.2: The AOC should make this project a funded priority for the coming fiscal year and ensure that those vicinages which do not have the hardware to implement the on-line resource directory receive the necessary equipment. A combination of factors should be taken into consideration when selecting pilot sites such as the proportion of minorities within the county/vicinage population, the volume of juvenile cases (intake and disposed of) and the disproportionate over-representation of minority youth incarcerated. (1996)

Committee Recommendation 21.3: The AOC should ensure that all Family Division judges and appropriate court support staff receive training on how to use the text retrieval system. (1996)

Committee Recommendation 21.4: The Supreme Court should direct the AOC to require the Assistant Director of the Family Division and the Family Division Manager, to assure that each vicinage regularly updates their on-line resource directory. (1996)

Although this recommendation has a long history, it has yet to be implemented. The Administrative Office of the Courts purchased TextBOOK (a data management software package) in the mid-1990's in order to permit the Family Division at the Central Office to import juvenile justice programs and service directories from the counties and establish an on-line database. The objective of the TextBook application was to create a local on-line directory of juvenile services and programs for use by Family Division personnel in all twenty-one counties. Information from only two counties was imported to TextBook. One Family Division staff person, who provided staff support to the Subcommittee on Juvenile Justice/Family and the Conference of Family Division Presiding Judges, received training in TextBOOK. Additional funds for the project were not forthcoming. A small grant proposal was prepared and forwarded to the State Justice Institute (SJI) requesting funds to fully implement the project; the project did not receive funding.

Key questions which need to be answered are: to what extent are judges and court staff aware of resources for juveniles in their vicinages; how do they keep abreast of programmatic changes, new programs, defunct programs and service availability and what is their level of familiarity with the quality of

available services? See the related discussion on Recommendations 17 and 20. The more staff knows about the various programs that are available, the better staff will be able to ‘match’ juveniles to the needed services. The Subcommittee believes that it is essential that this recommendation be implemented. Family Division Presiding Judges and managers should be consulted about this project inasmuch as the technological capabilities within the vicinages may have changed over the last several years. Court staff are ideally situated to know what information screens are needed.

A viable model is already in place. This “how to” guide is the brain child of the Essex VACMC and can be exported to other vicinages. The Survey of the Essex Vicinage Proposal for the Essex Family Court Resource Directory and Resource Utilization Monitoring and Evaluation Program (found in the Essex Vicinage *A Call To Action* [November 1996]) are attached as Appendix B-5.

Given the disproportionate minority confinement figures, the Judiciary should include funding for this project in the upcoming New Jersey proposed budget. In the prior session of the Legislature, a bill was introduced to appropriate \$60,000 for an on-line directory of juvenile services. The bill was not enacted.

Committee Recommendation 02:21.5: The Committee urges the Court to make the development of an on-line juvenile directory a priority and build into any state-of-the-art system a capacity to expand and search other portals for juvenile program sources. The proposed funding appropriation for this project should be increased and the AOC and vicinage Information System staff, representatives from the AOC, Family Division, Conference of Presiding Judges and Family Division Managers and the Minority Concerns Unit should be on the project planning team.

A third approach to bringing this project to fruition is to determine if resident AOC talent can be assigned to this project in order to design and implement it in conjunction with vicinage information center managers.

Another possible avenue is to monitor the newly created Children’s System of Care Initiative whereas it may serve as the catalyst for creating the on-line juvenile resource manual. The Children’s

Initiative will utilize a database that will track services that are available to the juveniles and their families. The goal of the Children's Initiative is to secure services for children with emotional and behavioral problems. These services would also be extended to families when needed. The objectives of the Children's Initiative are to: increase funding for services; broaden the scope of services with emphasis on community based care; create an overall system to better manage and coordinate care across agencies and build service plans that are child/family centered.

The courts have played an integral role in the development of this initiative and serve as a referring body to Care Management Organizations (CMO) that have been established, to date, in Burlington, Monmouth and Union Counties.²⁵ The Committee notes the collaboration involved in launching this statewide initiative and believes that it may present an opportunity to create the judiciary's on-line directory of services for youth.

D. Development and Institutionalization of a Judicial Education Curriculum/Campaign

Task Force 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.

Since this recommendation was first made by the New Jersey Supreme Court Task Force on Minority Concerns in June 1992, considerable progress has been made in developing judicial education courses designed to facilitate the delivery of appropriate services and bias-free decisions. All employees are required to take a six-hour course offered by the AOC entitled *Diversity and Workplace Issues in the New Millennium: Beyond AA/EEO: Understanding Your Role in a Multi-Cultural Work Environment*. In addition, managers and staff are given a number of opportunities during the court year to take elective courses addressing diversity, prejudice, racism and cultural issues. The 2001 Fall/Winter EEO/AA Training Catalog offered six separate programs on thirteen different days focusing on "bridging

²⁵In 2002, Care Management Organization contracts have been awarded to Bergen, Mercer and Atlantic/Cape May counties. The program will be continue to expand to encompass all vicinages by the end of 2003.

our differences and connecting with our similarities”. These courses are designed to help employees better understand diversity and workplace issues in the new millennium.

Family Part Judges have been given a number of opportunities to participate in elective courses at Judicial College including, *In the Eye of the Beholder: A Look at Juvenile Justice from the Juvenile’s Perspective*, offered in November 2000. Dr. Theodore Johnson (a former member of the Committee) was the panel moderator. Two courses, *What Works with Youthful Offenders* and *Cultural Competency in Drug Court*, were offered in November 2001.

In addition, Family Part Judges have the opportunity to focus on the many issues relating to youth of color in the juvenile justice system through their involvement with the National Council of Juvenile and Family Court Judges, County Youth Services Commissions and Vicinage Advisory Committees on Minority Concerns. These combined training opportunities and learning experiences have the potential to create alternatives-to-incarceration programs in coming years.

The Committee is aware that the Conference of Family Division Presiding Judges is developing a standardized curriculum for teaching specific subjects to judges and that education and training for judges and staff will be enriched by a collaborative approach. The Committee proposes the following amendments to Task Force Recommendation 22:

Committee Recommendation 02:22.3: A standardized curriculum for Family Part judges should be developed by the Judicial Training Unit in collaboration with the Conference of Family Part Judges, the Family Practice Division and the Committee on Minority Concerns. Internal experts should be designated and trained as faculty. When needed, external consultants should be hired. The curriculum should include a cultural competency component that addresses the impact of the juvenile justice system on minorities at various decision points and the unique needs of minority populations.

E. Minorities in Key Positions in the Family Division

*Task Force Recommendation 23(2): The Supreme Court should: .
.. (2) Set a policy requiring an increase in the number of minorities
in all levels of the Family Courts and the Family Division at the*

Administrative Office of the Courts, especially in key positions such as family court judges, division managers, supervising probation officers, intake workers, and managers at the AOC.

Data on the representation of court executives in the Family Division are discussed in Chapter V. Review Table 46. New Jersey Judiciary: Total Judiciary Court Executives in Selected Judiciary Divisions (December 2001). There is also a general discussion on court executives.

Out of a total of 50 vicinage court executives in the Family Division, 41 or 82.0% are White and a combined total of 9 or 18.0% are minorities: 5 or 10% are Black; 3 or 6.0% are Hispanic and 1 or 2.0% are Asian/American Indian.

At the Administrative Office of the Courts Family Division there are five court executives, one of whom is a minority.

F. Establishment of Child Waiting Rooms

Task Force Recommendation 24: The Supreme Court should direct each vicinage to consult with its county government to ensure that the physical condition of the courthouse meets the guidelines developed by the Supreme Court.

Committee Recommendation 24.1: In counties where court facilities are below standard or have specific deficits, the Chief Justice should urge that individual Assignment Judges should issue Orders to Show Cause to require county officials to explain why conditions are not corrected. In addition, steps should be taken to encourage county officials to apply for federal funding, where appropriate, if court facilities are located in historical landmark sites, (Hudson County Court House in Jersey City). (1996)

The Committee, for purposes of this reporting cycle, is focusing only on the child waiting rooms component of the above recommendation. The availability of child waiting areas in court facilities for court users has been, for some time now, a concern, not only of the Committee on Minority Concerns (Subcommittees on Minority Access to Justice and Juvenile Justice/Family), but of the Supreme Court Committee on Women in the Court.

In the June 1992 Final Report, the Task Force described “loud and crowded conditions and found

public facilities, including waiting rooms and conference rooms, to be either unavailable or grossly inadequate". Attention was called to this issue again in the Committee's 1994-1996 report to the Supreme Court.²⁶ The Subcommittee noted the monitoring by the Family Division of dirty and inconvenient family waiting areas in counties across the state. The conditions prompted the Conference of Family Division Presiding Judges to approve a recommendation supporting the establishment of child waiting areas in all state court facilities.

Several counties have been able to provide an area in the court where parents attending to court business can wait with their children or leave them in a clean, comfortable place. In July 1997, the Supreme Court Committee on Minority Concerns requested that the Vicinage Advisory Committees on Minority Concerns provide a status report of programs implemented in each vicinage, including child waiting rooms. Responses to the inquiry revealed that the availability of child waiting rooms around the state was still problematic. In January 2001, Judge Francine I. Axelrad, chair of the Supreme Court Committee on Women, made a presentation to the Judicial Council requesting that child-care facilities be included in new court houses and that some type of accommodation be made in existing court houses.²⁷

The Bergen vicinage was the first vicinage to establish a court care center. The center is staffed by a full-time Family Division employee. Volunteers from the local chapter of the National Council of Jewish Women and interns are routinely scheduled to work throughout the week. The center has three rooms, including a reception area. In its first year (September 1998-1999) 1,270 children were cared for in the center; 1,303 in year two and 1,387 in year three.

²⁶ The Supreme Court Committee on Minority Concerns, in collaboration with the Vicinage Advisory Committee on Minority Concerns, Conference of Chairs, presented seminars on this issue at several annual meetings and minority concerns conferences. The former Bergen Vicinage ATCA was also staff to the Bergen VACMC and worked on the Bergen court care funding proposal. With the permission of Assignment Judge Moses, Ms. Linda Dunlap-Miller presented a seminar on this issue at the Conference of Chairs Retreat in June 1999. Cindy Thomson made a presentation on the Passaic Vicinage purchase of care model.

²⁷ In February 2001, the Judicial Council agreed that each vicinage should explore establishing a child care facility similar to the one in the Bergen vicinage. This recommendation was in response to the presentation of the Supreme Court Committee on Women in the Courts that either adequate child care facilities or suitable alternatives be made available to care for children who accompany parents or guardians to court proceedings.

The Sussex vicinage opened a court care center in April 2001. In collaboration with the Northwest Community Action Program, the Sussex vicinage received funding through United Way for a full-time certified child care specialist. The child care specialist is an employee of the Northwest Community Action Program and reports to the Assistant Trial Court Administrator. No more than eight children can be accommodated at a time.

In the Passaic vicinage, contracted child care is purchased by the court from a private child care center and provided to court users through the use of vouchers. Services are rendered by a center located next to the courthouse in Paterson. The court is then billed for the services.

Middlesex is the most recent vicinage to establish a child waiting room. In August 2001, the child waiting room opened with trained child care staff provided by the Raritan Valley Young Men's Christian Association.²⁸ The child waiting room provides services similar to those of the Bergen and Sussex court care centers.

As of December 2001, Essex, Hudson, Hunterdon, Ocean and Union counties each had an unstaffed child waiting room where a parent or guardian is required to remain with the child.

The Committee is aware of some of the challenges that vicinages face in implementing this recommendation, particularly in older courthouses where space is limited, and funds for capital improvements are in short supply. There are other concerns as well, such as staffing, liability, security and utilization concerns. Other vicinages will be well served to explore the existing models. The Committee is poised to lend its continuing support to this effort.

G. Collaborative Study of Juvenile Case Processing Decision Points

Task Force 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.

²⁸ Walsh, Diane C. "Court offers haven for children." The Newark Star-Ledger (October 7, 2001). Internet article and Mary P. Gallagher, "Bergen and Passaic Pave Way in Providing Child Care for Litigants." New Jersey Law Journal 184 (April 16, 2001), page 4.

Committee Recommendation 26.1: The Chief Justice should direct the AOC to assure that the presently established Judiciary Research Council membership includes a representative who has expertise in the juvenile justice/family area, is familiar with funding streams in these areas, will proactively seek and identify funding sources in these areas and will function as an advocate in the juvenile justice/family area. These issues may be addressed within the present Judicial Research Council framework by stipulating that the Council membership be expanded to include representatives from these areas or that the Assistant Director of the Family Division or a designee be appointed to the present Research Council. (1996)

In the Task Force Final Report (1992), the above referenced recommendation was proposed and approved for implementation.²⁹ The Supreme Court shared the Task Force findings with the Executive Branch, specifically the Governor's Advisory Council on Juvenile Justice. In the intervening years, the Judiciary has continued its collaboration with the Executive Branch to address a number of concerns related to the juvenile justice system. However, no concrete plans have been put into place for a joint study examining the decision points in processing juvenile defendants.

The Subcommittee has recently learned about a possible juvenile case processing study. The Juvenile Justice Commission, Minority Issues Subcommittee is developing a request for proposals to investigate the disproportionate representation of minorities in the juvenile justice system. Prior to issuing the request for notice of proposals, the Minority Issues Subcommittee commissioned a study to determine whether minority juveniles are over-represented in the state's secure facilities relative to their representation in the state population. The Office of Juvenile Justice and Delinquency Prevention is presently refining and analyzing juvenile confinement statistics for the state. All twenty-one counties in New Jersey have provided data to the Juvenile Justice Commission. A draft report entitled "Examining Minority Representation in New Jersey's Juvenile Justice System" is currently under review. The Minority Issues Subcommittee requested that the Minority Concerns Committee review this report and provide feedback.

²⁹ New Jersey Supreme Court. Statement on the Final Report and Action Plan on Minority Concerns (1993), pp. 14, 24 and 33.

An issue of concern that was noted in the Subcommittee's comments to the Juvenile Justice Commission is that of juvenile waivers to adult court. Waiver to criminal court was discussed at length in the Supreme Court Task Force on Minority Concerns Final Report, pages 161-165. (See Appendix B-7.) The waiver data discussed in the report was for a four-year period covering 1985 through 1989. The data indicated that minority youths were being disproportionately waived to adult criminal court.

For purposes of this report, the subcommittee requested current statistics on juvenile waivers from the AOC Family Division and the Juvenile Justice Commission. The data were forwarded to the subcommittee but the reports did not provide race/ethnicity, gender and age information. The Committee puts forth the following recommendation as an amendment to Task Force Recommendation 26.

Committee Recommendation 02:26.2: To better understand the decision points within the juvenile justice system each vicinage should be directed to keep and routinely update juvenile waiver data by race/ethnicity, gender, county, age, charge(s) and waiver type (i.e. discretionary or mandated)

The Subcommittee as was discussed earlier is keenly interested and concerned about findings ways to support, foster and promote new and innovative approaches to addressing disproportionate minority representation, support programs and looking for novel ways to better serve New Jersey citizens who appear in Family Court.

In the 1994-1996 biennial report, the Juvenile Justice/Family Subcommittee proposed the establishment of an internal Juvenile Justice/Family Research Committee. This body was envisioned as a centralized body housed at the AOC to advocate for, coordinate and review judiciary grant proposals relating to juvenile justice issues, including research focusing on policies and procedures and case law. The subcommittee also wanted to establish an internal clearinghouse for grants in this area and support the development of grant specific expertise at the AOC in Family Court and juvenile justice.

The Administrative Director promptly responded to this recommendation by re-instituting the Judiciary Research Council. The charge of the Research Council, however, is to review all incoming research proposals from both external and internal sources across all practice areas and court programs and make recommendations to the Administrative Director regarding whether to grant approval for the

proposed projects. Although the Assistant Director of the Family Division and the Assistant Chief of Research and Statistics are members of the Research Council, the Subcommittee maintains that there is still a need for a body whose primary focus is to secure program funding, advocate for technical expertise and spear-head research and review of Family Court programs, policy initiatives and case law.

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Chapter III

SUBCOMMITTEE ON MINORITY ACCESS TO JUSTICE

Introduction And Mandate

This report addresses the status of the Judiciary's implementation efforts with respect to selective Supreme Court Task Force on Minority Concerns (1992) recommendations (falling under the purview of the Subcommittee on Minority Access to Justice) that were approved by the Court (1993) for implementation.

The mandate of the Subcommittee is to ensure that throughout the court system all individuals have equal access to all services regardless of race or ethnic background. Providing equal access to justice includes all those factors that affect an individual's ability to optimally utilize court services and programs. These factors include:

- C the location and physical conditions of court facilities or physical access;
- C economic access or the ability to participate equally in court proceedings and programs and receive equal services regardless of income level;
- C timely access or the ability to obtain timely justice since justice delayed is justice denied, and
- C cognitive or psychological access or the ability to fully understand court processes and procedures.

Thus, in order to provide equal and fair access for citizens, the Judiciary must eliminate all barriers to its services.

I. Subcommittee Activities

During the course of the last two biennial Committee cycles, the Subcommittee reviewed and prioritized the recommendations that it selected to monitor. Several recommendations were designated as matters requiring further Supreme Court review. Other recommendations were identified as being more

appropriately administrative, such as establishing, drafting and promulgating performance standards (Task Force Recommendations 32 and 33 [1992]) including a measure that evaluates employees on the delivery of culturally competent services.

Members have lent their unswerving support and energies to the establishment and continuing operation of the ombudsman programs in Camden and Essex Counties respectively. They have reviewed and edited drafts of ombudsman intake and complaint forms, brochures and other literature that are distributed to the public. Both the Camden and Essex Vicinage ombudsman evaluation reports³⁰ were reviewed by subcommittee members as well. More recently subcommittee representatives were part of an ad hoc group that met with the Deputy Administrative Director, Administrative Council leadership, Administrative Office of the Courts staff and others to discuss and resolve ombudsman program administration issues.

Subcommittee members were also active in drafting guidelines for self-represented litigants (pro se poster), reviewing and editing pro se kits and other major court policy documents, such as the *Judiciary's Policy Statement on Equal Opportunity, Affirmative Action and Anti-Discrimination*.

Working collaboratively with the Conference of Vicinage Advisory Committee of Chairs and the vicinage committee of staff liaisons, several presentations have been made at the vicinage advisory conference's annual retreat about the establishment and operation of the ombudsman program as well as the establishment of child waiting rooms in the courts. See the chapter on Juvenile Justice/Family for a discussion of child waiting rooms. Other presentations on the ombudsman program and child waiting rooms have been made to various national judicial and court management forums.

Subcommittee members served on the 2000 planning committee for the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts' annual conference and prepared the curriculum agenda for two seminars (*Ombudsman Office, Cultural Navigation and Pro Se Assistance Programs and Women of Color and the Courts: Myths and Realities*). Subcommittee members also served as faculty presenters and facilitators. The twelfth annual Consortium meeting was

³⁰ Copies of the Camden and Essex Ombudsman Program Evaluations are available from the Minority Concerns Unit, Richard J. Hughes Justice Complex, Trenton, New Jersey upon request.

hosted in May 2000 by the New Jersey Judiciary. The meeting was first hosted by New Jersey in 1990.³¹

The Subcommittee deeply appreciates the Court's continuing commitment to address fairness and access issues and to further enhance its partnership with the community by promoting the direct involvement and participation of the public in the judiciary's decision-making process. The Subcommittee also commends the Administrative Office of the Courts leadership for the stance it has taken in clearly communicating to the court community and the community-at-large, the importance of this dynamic and synergistic partnership.

II. List of Priority Recommendations

The following issues were identified as priority areas relating to minority access to justice and will form the basis of the Subcommittee's 2000-2002 biennial report:

- A. Jury Issues
 - 1. Minority representation on juries (*Recommendation #27*);
 - 2. Educating the public about jury service;
- B. Adoption of court user rights and responsibilities guide
(*Recommendation #30.3*);
- C. Ombudsman Program
 - 1. Expansion of ombudsman³² offices statewide (*Recommendation #31*);
 - 2. Adoption, distribution and use of a policy statement and complaint process for court users;

³¹New Jersey was one of the four founding member states of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts. New York, Michigan and Washington joined New Jersey at a meeting convened in New York City by Ambassador Franklin H. Williams, Chair of the New York Commission on Minorities, in 1988 to share information on addressing issues of racial and ethnic bias in state courts. Currently there are thirty-one states and the District of Columbia with similar initiatives.

³² Ombudsman is a gender neutral Swedish term with no English equivalent. The term "ombudsperson" is preferred by many because it denotes a gender neutral term.

3. Ombudsman Offices Status Reports: Camden and Essex

- D. Linguistic Minorities availability of qualified interpreters for court users (*Recommendation #35*) and
- E. Statewide Availability of Comprehensive and User Friendly Pro Se Materials - publication of court forms and documents intended to be read by litigants or the public in language that the lay public can easily comprehend (*Recommendation #37*).

III. Discussion of Priority Recommendations

A. Jury Issues

1. Minority Representation on Juries (*Recommendation 27*)

Task Force 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.

Committee Recommendation 27.1: The Supreme Court should direct the Administrative Office of the Courts to conduct research on the following issues: to what degree do racial/ethnic minorities drop out at each of the major stages leading up to the empaneling of a jury (e.g. response rate to initial summons, disqualifications, excusals, failure to appear, non-selection, challenges) and how do these rates compare with those of non-minorities? What is the actual representation of minorities on juries that are ultimately empaneled?

Committee Recommendation 27.2: An ethnographic study (direct observation) should be designed and implemented in select vicinages in order to determine the racial composition of sitting juries for a selected time period.

Committee Recommendation 27.3: Federal statutes and regulations should be amended to allow access to entitlement lists such as AFDC, unemployment, disability and social security.

The Committee notes that over the course of the last several years notable enhancements have been made to New Jersey's jury system. Recommendations for improvements were set forth in the Supreme Court Task Force on Minority Concerns Final Report(1992), the final Report of the Ad Hoc Committee on Jury Selection(1993) and the Supreme Court Committee on Minority Concerns 1994-1996 Rules Cycle Report, Supplement III. In the 1994-1996 biennial report, the Committee amplified Recommendation 27 and included sections 27.1 , 27.2. 27.3 and 27.4.

The Administrative Office of the Courts has installed an automated jury system in all twenty-one counties; a new full-time jury manager position has been established in all vicinages; juror pay has been increased from \$5.00 to \$40.00 a day for anyone serving three or more consecutive days of jury service; government workers no longer receive pay and are no longer responsible for returning the juror fees; the present system handles this procedure as a paperless transaction. As was reported in the Report of the Subcommittee on Minority Access to Justice 1994-1996 Rules Cycle, Supplement III, (pages 13-14), access to entitlement lists such as the Temporary Assistance for Needy Families (TANF), unemployment, disability and social security numbers are severely limited by federal laws. The basis of the restriction is grounded in the right to privacy. Federal legislation passed in 1994 made it possible for agencies compiling juror source lists to obtain access to social security numbers if that information was already included in the lists being used for juror selection. The use of the social security number, however, is specifically limited to the identification of duplicate records and criminal record checks.

In 1995, provided that all other criteria were met, a resident of New Jersey was eligible for jury service if s\he was not currently under criminal justice supervision (parole or probation). In 1997, the eligibility standard was revised to disqualify from jury service persons who had ever been convicted of a crime or had ever plead guilty to a crime.³³ Further research is needed to determine if this standard

³³ Senate, No. 264-L.1997,c. 127 restores the historical per se disqualification of convicted criminals from jury service. Persons convicted of crimes are not eligible for jury service regardless of whether they are still subject to some form of official restraint as a result of the conviction. L.1997,c.127, changed the prohibition in subsec. e., from serving a sentence or being on parole (1.1995,c. 44, § 1, eff. June 5, 1995. Cite N.J.S.A. § 2B:20-1.

eliminates a significant proportion of the juror pool.

For some time now, the Committee has been interested in learning about jury participation among persons of color. New Jersey's present jury management system does not include a race/ethnic identifier. There is no way, therefore, to capture information on the race/ethnic identification of either petit or grand juries. Without race/ethnic identifiers, it is not possible: to monitor the diversity of the juror pool statewide or in the counties; to report on the diversity profile of persons contacted for jury service; to capture information on who drops out at various stages in the process by race/ethnicity (response to initial summons, disqualifications, excusals, failure to appear, non-selection and challenges); and to gather information on the diversity of persons who actually serve on juries. Conceivably, gender and age can be retrieved.

The Committee believes in the efficacy and desirability of conducting research comparing minority and non-minority juror participation. This information will be useful in assisting the Judiciary in targeting public education juror programs. While the Committee is still interested in pursuing this research and in engaging an expert in this area to design a research project and apply for funding, it realizes that the funding matter is a serious impediment to such research in the near future. Nevertheless the Committee encourages the court to explore other methodologies that make use of state-of-the-art census tract data and mapping technology to obtain relevant information, to simultaneously permit jury managers to conduct internal jury pool audits charting the participation and attrition of all jurors at each phase of the selection process and to conduct an ethnographic study (see Recommendation 27.2) to learn about problem areas and other juror concerns. Another fruitful line of inquiry would be to conduct juror exit interviews for a specific period of time in order to get a better understanding of jurors who serve and how best to improve juror services.

2. Educating the Public About Jury Service

Committee Recommendation 27.4: The AOC should continue the publicity campaign including the use of videotapes, "You the Juror" and "Our New Jersey Courts, Equal Justice for All," and produce a cable program to encourage all people, minorities and non-minorities, to serve as jurors. Such a program should include information about all of the different types of cases(both criminal and civil) that necessitate juror participation. Moreover, consideration should be given to developing written publicity concerning jury

service to be sent with AFDC checks and other government entitlements.

The Committee continues to place a high value on continuing and enhancing the Judiciary's efforts to educate the public about the importance of jury service and would like to see a collaborative program developed by the court and the public school system. Juror education programs should embrace elementary, middle and high school grade levels and should remind youthful citizens of the importance of jury duty and emphasize the critical role jurors play in the justice system.

Treating jurors with respect and demonstrating the court's appreciation for the services rendered makes jury service more rewarding and gives the court an opportunity to enhance the public's understanding of how the court system operates. The Committee endorses a recommendation proposed by the Conference of Vicinage Advisory Committee on Minority Concerns calling for the establishment of a statewide juror appreciation day, preferably during the law day/week/month vicinage observances. The Committee for Jury Management has also proposed the establishment of a juror appreciation day as a best practice (Committee for Jury Management, September 2001 [Draft]).

To ensure that the public education is sufficiently broad and that the court receives feedback on how best to improve the use of the juror's time and to secure feedback about how to make improvements and identify problem areas, the Committee puts forward the following amendments to Recommendation #27.

Committee Recommendation 02:27.5(1): A curriculum should be designed which would introduce jury service to elementary, middle school and high school grade students; 02:27.5(2): Establish a statewide juror appreciation program and 02:27.5(3) Institute statewide, a standard juror feedback form so that jurors (after completion of their service) are given an opportunity to identify problem areas and areas which may need to be improved in the respective counties/vicines.

The Conference of Jury Managers has drafted a grand juror and a petit juror questionnaire and included these forms in their proposed standards and best practices. The Operations

Committee and Administrative Council are currently reviewing this document.

The Committee recommends that it be allowed sufficient time to review and comment on the petit and grand juror draft questionnaires before they are distributed.

B. Adoption of Court User Rights and Responsibilities Guide

Committee Recommendation 30.3: The Supreme Court should require the AOC and the vicinages to include a “Bill of Rights and Responsibilities” in all documents which introduce a litigant to the court process.

As best the Committee was able to determine, no state Judiciary has promulgated a document which spells out court user rights and responsibilities. The Committee believes that the Court’s Mission Statement (New Jersey Judiciary Strategic Planning Committee: Report to the Supreme Court, March 31, 1998, pages 21-25) aptly captures the intent of the proposed document.

We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and the State.

In furtherance of this mission, the vision statement reads in part,

We will be a court system, characterized by excellence, that strives to attain justice for the individual and society through the rule of law. We will:

Provide equal access to a fair and effective system of justice for all without excess cost, inconvenience, or delay with sensitivity to an increasingly diverse society . . . and

Earn the respect and confidence of an informed public.

The statement of citizen rights and responsibilities should be posted in all courthouses and on the judiciary’s web page, distributed to court users attending proceedings, included in promotional literature and otherwise widely publicized so that court users clearly understand what they can reasonably expect and what reciprocal obligations enure. The Committee further believes that promulgation of this document will help promote public confidence in the court system and facilitate the realization of fair and dignified treatment of all court users while informing court users of their reciprocal duties and responsibilities as

citizens and stewards of the American system of justice. A revised draft “Statement of Rights and Responsibilities” has been forwarded to the Subcommittee for review and comment.

C. Ombudsman Program

1. Expansion of Ombudsman Offices Statewide

Task Force Recommendation 31: The Supreme Court should direct that Ombudsman Offices be established at the State and vicinage levels to provide information and to receive and investigate complaints about abuses in the judicial process.

Committee Recommendation 31.1: . . . The AOC should also be directed to develop procedures and policies regarding complaints by the public immediately. These procedures shall include an avenue for filing complaints based not only on race and ethnic bias, but also gender, sexual orientation, age, language and other bases for illegal discrimination and unfair treatment. The AOC, Minority Concerns Unit should be responsible for tracking and monitoring the handling and dispositions of all court user complaints.

Committee Recommendation 31.2: The Supreme Court should require each Assignment Judge to identify a ‘point’ person who will be responsible for accepting complaints, following up on disposition of complaints and reporting to the AOC.

The Committee on Minority Concerns has assiduously followed the development of the ombudsman program from its original recommendation to date.³⁴ The recommendation was approved

³⁴In the Supreme Court Task Force on Minority Concerns Interim Report published in August 1989, one of the recommendations proposed that the Administrative Office of the Courts develop a formal discrimination complaint procedure for court users who wanted to complain about the improper behavior of court staff. That same year, the Women in the Courts Committee also called for the appointment of an ombudsman at the Administrative Office of the Courts that would help to promote equal justice by monitoring problems such as enforcement of judicial orders in domestic violence cases and bringing community perspectives to the judiciary through the use of liaison activities with the rape crisis centers and battered women’s shelters, for example.

The Task Force on Minority Concerns amended and revised the 1989 recommendation addressing the establishment of a citizen complaint mechanism in the final report published in 1992. Two of the four subcommittees (Criminal Defendant and Minority Access) submitted recommendations (Recommendation 2,30 and 31) calling for the establishment of ombudsman offices.

subject to the outcome of the pilot project in 1993. See the Action Plan on Minority Concerns.³⁵ The ombudsman recommendations were informed by the review of 1200 pages of public hearing testimony gleaned from thirteen public hearings held throughout the state. The testimony included a recurrent theme regarding the lack and clarity of court user complaint procedures. Persons providing testimony noted that complaint procedures were not uniform across the state and were not efficiently managed. Persons who wished to complain about the behavior of court employees, other than judges and attorneys found that the court did not have a central office where court users, jurors and witnesses could register their concerns (both verbal and written). Nor was guidance from staff forthcoming on how to file complaints when members of the public, court users and litigants believe that they have been subjected to or observe discriminatory or unprofessional conduct. Citizens called for both formal and informal complaint procedures and an effectively managed system that tracks and monitors court user complaints.

Relying on the judiciary's formal complaint models already in place for judges (the Advisory Committee on Judicial Conduct [R. 2:15] and attorneys (the Office of Attorney Ethics, the District Ethics Committees, the Disciplinary Review Board, the Disciplinary Oversight Committee and the District Fee Arbitration Committees [R. 1:20]) as guides, the Committee proposed an ombudsman office with a direct reporting relationship to the Assignment Judge and Trial Court Administrator as a means of ensuring the ombudsman's neutrality in the vicinage table of organization. Identification with the top management executive team places the ombudsman on an equal footing with other court executives with whom the ombudsman interacts and clearly communicates to the public the importance the court places on having a direct link with the citizenry. And too, the ombudsman should be in a position to effectively address court user concerns ensuring the expeditious resolution of problems.

³⁵“The Court approves for immediate implementation in 1993, a pilot project for developing uniform procedures 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) and attorneys (sic). 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 ombudsperson 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.” Excerpt from the *Supreme Court of New Jersey, Action Plan on on Minority Concerns*, pp. 8-9.

The ombudsman pilot project was implemented in the Camden Vicinage in June 1996.³⁶ In addition to the full time ombudsman, part-time clerical support was provided. After eighteen months, the pilot program was evaluated. In January 1998, the then-chair of the Minority Concerns Committee requested that the Court expand the ombudsman program to other vicinages on an incremental basis (see the January 14, 1998 Memorandum from Hon. Harold W. Fullilove to Chief Justice Deborah T. Poritz in Appendix C-1.2).

On February 2, 1998, the Supreme Court approved an expansion of the Camden ombudsman program to other interested vicinages (Advisory Letter from Hon. James J. Ciance to Hon. Harold W. Fullilove [February 3, 1998], Appendix C-1.3).³⁷ Following the Supreme Court's endorsement of the program, the Essex Vicinage opened an ombudsman office in May 1998. The Essex ombudsman officer, unlike Camden, has responsibility for managing the already existing Essex Information and Community Relations Center.³⁸

The Administrative Council, with the approval of the Administrative Director, convened an ad hoc working group to formulate a comprehensive proposal and implementation plan for a statewide program. The Administrative Council charged the Ombudsman Working Group to "build on the experience obtained in the Camden and Essex Vicinages and take a broad view of the policy issues surrounding expansion of the ombudsman program into every vicinage." The Council cautioned that "although the ombudsman is often thought of a complaint resolver, this position should be viewed in broader customer service terms." More specifically, the Administrative Council indicated that "the ombudsman has assumed and should continue to assume important duties with respect to public information, education and outreach services to

³⁶ There were two stipulations placed on implementing a pilot program by the Conference of Assignment Judges; the complaints received from the ombudsman should go directly to the Assignment Judge and the ombudsman would report to the Trial Court Administrator regarding work assignments and administrative matters (Memorandum from the Administrative Director, March 30, 1995, [Appendix C-1.1]).

³⁷ The Conference of Operations Managers endorsed a unanimous resolution calling for the creation of an ombudsman office in each vicinage on July 20, 2000.

³⁸ This expanded model is consistent with the Camden ombudsman evaluation findings. A grant had been prepared to secure funding for the development and design of a court information center that was to be housed in the Camden ombudsman office; however, funds were not received for the project.

self-represented litigants.” The Ad Hoc Ombudsman Working Report goes on to state:

. . . Indeed the collective experiences in both Camden and Essex demonstrates that people coming into the office with a complaint often need to be educated about the role of the courts or to be directed to the correct court office. For this reason, the ombudsman’s office may usefully serve as a coordinating point for services for self-represented litigants generally.

These assertions were consonant with findings resulting from the Committee’s extensive research of various ombudsman programs across the nation (both in the public and private sectors), prior to participating in the design and launching of the Camden Pilot Ombudsman Program. It was the Committee’s expectation that fewer than 10% of the contacts with the office would involve citizen complaints that could be resolved informally. The bulk of the work of the ombudsman, it was believed (statistical reports have substantiated this presumption) would involve: issues relating to court users’ understanding of court processes and procedures, dispensing various types of citizen assistance services, referrals to other agencies outside the court, and so on.

The Ad Hoc Ombudsman Working Group submitted its report to the Administrative Director in May 2001. The Administrative Director shared the Administrative Council’s report with the Committee on Minority Concerns. Committee members reviewed the report and forwarded comments, under Judge Freeman’s signature to the Administrative Director (June 2001). The Committee concurred with the Administrative Council on most points in the report and certainly supported the statewide expansion of the program. However, the Committee took exception to the recommendation from the Council referencing the reporting and liaison relationship, i.e. specifically having the ombudsman report to the Operations Manager and placing the position in the Court Executive 1A level as opposed to a 1B. See Appendix C-2 for a copy of the June 27, 2001 memorandum from Judge Freeman to Judge Williams.

In Fall 2001, a meeting was convened with the Chair of the Administrative Council, the chair and selected members of the Supreme Court Committee on Minority Concerns, the Deputy Administrative Director and other judiciary staff to resolve the points of disagreement. Although this special ad hoc committee reached a resolution acceptable to the representatives present at the meeting, the resolution of the disagreements was not similarly endorsed by the full Administrative Council.

The judiciary as a whole supports the statewide implementation of the ombudsman position and funds were requested for the program in the FY2002 budget for full implementation. However, funding was not received and recently the roll-out of the ombudsman program to other vicinages has been tabled due to the growing pressures on the overall budget.

The Committee looks forward to the continuing collaboration with the Administrative Office of the Courts to resolve the few remaining issues and Committee members remain optimistic that the budget situation will improve in the foreseeable future so as to allow for the full implementation of this recommendation.

The Committee remains steadfast in its commitment to the project that has been, to date, a ten-year odyssey. The establishment of an ombudsman executive position with direct reporting to the Assignment Judge/Trial Court Administrator will be a welcomed addition to the present vicinage management team inasmuch as there has never been a top level court official whose sole responsibility is to provide feedback on court access issues across all court divisions and programs.

2. Adoption, Distribution and Use of a Policy Statement and Establishing Complaint Procedures for Court Users

Task Force 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 discrimination complaint procedures.

Task Force Recommendation 30: The Supreme Court should direct that all complaint procedures include: (1) behavior which results in a complaint is clearly specified; (2) notices of complaint mechanisms are accessible to the public; and (3) grievances having to do with minority issues can be identified.

Committee Recommendation 30.1: The Supreme Court should mandate that the AOC and each vicinage post notice of complaint procedures in the courthouses at places where the public will have access no later than three months after the policies are promulgated.

Committee Recommendation 30.2: The Supreme Court should

require the AOC and the vicinages to publicize the availability of grievance procedures in all promotional literature, videos and other educational materials developed by the AOC and the vicinages.

In the 1994-1996 rules cycle report the Committee amended Recommendation 30 to include sections 30.1 and 30.2 relating to the Judiciary's complaint procedures. These two amendments are noted above. The *Judiciary of the State of New Jersey Policy Statement on Equal Employment Opportunity and Affirmative Action and Anti-Discrimination (reissued in November 2000)*, embraces court users. While the aforementioned policy statement is posted in all courthouses, there has been no systematic and comprehensive campaign to advise the public of the judiciary's complaint policy or of the various processes and procedures for filing a complaint. Information on filing a complaint against judges, attorneys and Americans with Disabilities Act is available on the Judiciary's web page under FAQ (frequently asked questions). However, linkages are available for only the latter two categories. Forms, procedures and other information about the process and steps to take if one wishes to file a complaint against an attorney or initiate an ADA complaint can be accessed on the web site. See the Report of the Subcommittee on Minority Participation in the Judicial Process for a more detailed discussion of the complaint procedures for court employees.

The Committee has reviewed the EEO/AA Master Plan promulgated in May 2000 and reports from the Camden and Essex Ombudsman Offices. It notes that the complaint procedures for court employees have been standardized and information about the process have been disseminated to current employees and are made available to new employees upon hire through the new court employee orientation training. There is still, however, room for improvement with respect to standardizing court complaint procedures for the public and disseminating the information regarding formal and informal complaint procedures.

The Committee is aware that the public may file complaints by filling out the EEO/AA forms that court employees use, or the court user may chose to write a letter to the Assignment Judge, Trial Court Administrator, division manager or AOC court official regarding the behavior of a court employee. But many court users are not comfortable filing written complaints and even if formal complaints are filed, these

complaints are not uniformly tracked or monitored statewide. The two ombudsman offices developed and are presently using a court user complaint form. Sample ombudsman complaint forms are attached in Appendix C-3.1.

No statewide data base currently exists which details the extent to which the public actually makes use of the generic EEO/AA complaint forms (formal and informal) in the vicinages or at the central office.³⁹

This is an area of inquiry that the Committee will pursue. Another issue that is of interest is retrieving information court user complaints from vicinages and the central office across all practice areas and programs. Access to these data or reports will provide the Subcommittee with a more global appreciation of the spectrum of issues that are of concern to New Jersey consumers of court services and will also provide some measure of the volume of complaints processed , the nature and basis of the complaint and the resolution of the complaints by the various practice areas and programs.⁴⁰

The Committee continues to work collaboratively with both the Camden and Essex Ombudsman programs. The Committee played a key role in helping to draft and revise the complaint/intake form in both the Camden and Essex vicinages. This collaboration included: providing assistance with designing and setting up the pilot program; giving feedback on problematic and promising programmatic issues; serving as a troubleshooter for issues of concerns; reaching out to the local community to inform them about the program; advocating for this innovative program and assisting with whatever other supportive services were needed, such as offering technical assistance in specific program areas. When called upon to do so, feedback will continue to be provided to the ombudsman offices in the form of reviewing, revising and drafting literature for the public, designing and planning public seminars and programs and web sites, revising and editing ombudsman reports and articles, planning and developing training curricula for court staff and the public and developing guidelines for self-represented litigants. Committee staff have also consulted with visiting representatives from the Georgia Republic, South Africa and Japan as well as other as other state courts on the New Jersey Ombudsman Program.

³⁹ Somerset/Hunterdon/Warren Vicinage does not have an ombudsman office in place but does have a court user complaint form. The Assignment Judge in Ocean County has for many years been receiving and responding to juror complaints. A conversation with the Chief EEO/AA Officer revealed that court user data on complaints (filed using the Judiciary standard complaint form) are not monitored or tracked (December 28, 2001).

⁴⁰ The Camden and Essex ombudsman offices routinely receive and monitor citizen complaints/inquiries and provide periodic reports.

3. Ombudsman Offices Status Reports: Camden and Essex

Please note in reviewing the subsequent tables that the total number of contacts (N) will vary; some respondents declined to answer all of the questions on the exit survey form.

a. Camden Report

(1) Demographic Data

(a) *Race/Ethnicity*

A review of Table 1: Camden Ombudsman Program Utilization by Race/Ethnic Groups, December 1996-December 1997 reveals that: 43.3 % of the 425 persons using the office during a one year period from December 1996 to December 1997 were White; 35.5% were Black; 14.1 % were Hispanic/Latino; 4.5% identified themselves as “Other”; 2.4% were Asians and only 0.2% were Native Americans.

Table 1. Camden Ombudsman Program Utilization by Race/Ethnicity
December 1996 - December 1997

ETHNICITY/RACE	Number of Contacts	Percentage to Date
White	184	43.3
Black	151	35.5
Hispanic/Latino	60	14.1
Other	19	4.5
Asian	10	2.4
Native American	1	0.2
TOTAL	425	1

(b) *Gender*

Table 2: Camden Ombudsman Program Utilization by Gender, December 1996-December 1997 indicates that 66.2% of persons using the ombudsman office during this one year period were males; 33.8 % were females.

**Table 2. Camden Ombudsman Program Utilization by Gender,
December 1996 - December 1997**

GENDER	Number of Contacts	Percentage to Date
Male	302	66.2
Female	154	33.8
TOTAL	456	100%

(c) *Age Distribution*

With respect to age, Table 3: Camden Ombudsman Utilization by Age Categories, December 1996- December 1997 reveals that the majority of persons(48.8%) using the Camden ombudsman services were between the ages of 22-40, followed by the 41-60 age group with 39.2%. Another 6.5 % were persons over 60 and 3.1% were persons under 21. The remaining respondents did not report their respective age ranges (2.4 %).

**Table 3. Camden Ombudsman Utilization by Age Categories
December 1996 - December 1997**

AGE	Number	Percentage to Date
Under 21	13	3.1
22 - 40	203	48.8
41 - 60	163	39.2
Over 60	27	6.5
Unknown	10	2.4

TOTAL	416	100%
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(d) *Residency*

Table 4: Camden Ombudsman Program Utilization by Residence (December 1996 - December 1997) indicates that 52.3% of the persons using the Camden ombudsman services during a one year period were residents of the suburbs; 29.6% were residents of Camden City; 3.4 % were residents of other counties in New Jersey and 7.0% had an unknown address. Out-of-state residents comprised 7.3% of the persons using the ombudsman's services.

**Table 4. Camden Ombudsman Program Utilization by Residence
December 1996 - December 1997**

RESIDENCE	Number	Percentage to Date
Camden City	129	29.7
Suburbs (Camden County)	229	52.6
Other County in New Jersey	15	3.4
Out of State	32	7.3
Unknown Address	30	7.0
TOTAL	435	100%

(2) *Constituency*

(a) *With/Without Counsel*

The majority of persons using the ombudsman office were self-represented litigants (92.3%). Only 7.7% of the persons reported that they had retained counsel.

**Table 5. Camden Ombudsman Program Utilization by Persons
With and Without Counsel
December 1996 - December 1997**

REPRESENTATION	Number of Contacts	Percentage to Date
Self-represented Litigants (without counsel)	398	92.3
With Counsel	33	7.7
TOTAL	431	100%

(b) *Constituent Status (Who Used the Services?)*

Most of the persons making use of the ombudsman services are: court users (55.4%) who have business before the court; the general public(25.1%); others, including family members and attorneys (12.3%) and judiciary employees (7.2%).

**Table 6. Camden Ombudsman Program by Constituent Status
December 1996 -December 1997**

GROUP	Number	Percentage to Date
Court User	307	55.4
General Public	139	25.1
Judiciary Employee	40	7.2
Other (Family member, attorney, etc.)	68	12.3
TOTAL	554	100%

(3) *Constituent Concerns and Inquiries*

(a) *Complaint/Inquiry Categories*

Close to half of the issues brought to the attention of the Camden ombudsman(48.6%) addressed court procedural matters; the second most frequently appearing category, 34.6% were informational inquiries, followed by, “Other”, 8.7%, employee issues (5.4%), work conditions/facilities(2.0%) and discrimination issues (0.7%).

**Table 7: Camden Ombudsman Program: Complaint/Inquiry Categories
December 1996-December 1997**

COMPLAINT INQUIRY CATEGORIES	Number	Percentage to Date
Court Procedural Matters	269	48.6
Informational Inquiries	192	34.6
Other	48	8.7
Employee Matters * ⁴¹	30	5.4
Work Conditions/Facilities *	11	2.0
Discrimination	4	0.7

⁴¹The issues in these two categories, employee issues (5.4%) and work conditions/facilities (2.0%) were complaints referred to appropriate departments for resolution. The total proportion of complaints processed during this one year time period was 14.8% (45).

TOTAL	554	100%
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(b) Camden Ombudsman Case Dispositions

Close to ninety percent (87.5%) of all the issues brought to the Camden Ombudsman's attention were resolved. As of the report date, only 12.3% were still pending and one case (0.2%) was closed (no action taken).

**Table 8. Camden Ombudsman Program Case Dispositions
December 1996 - December 1997**

STATUS	Number	Percentage to Date
Resolved	484	87.5
Pending	68	12.3
Closed	1	0.2
TOTAL	553	100%

(c) Methods Used to Contact the Camden Office

Data were also gathered on the number of people that visited, called, sent correspondence to the Camden Ombudsman Office over a two year period beginning in 1996. These data show that of the more than 1300 person contacts made by 644 people reaching out for assistance:

- more than 45.3 % contacted the office by telephone;
- 36.8% were walk-in clients who received personal interviews;
- 14.0% were referrals and
- 3.9% contacted the office by mail.

The average transaction, from initial intake to resolution, required two to three contacts with the court user to resolve. The ombudsman is ideally situated to provide more labor intensive services because s/he does not have primary responsibility for managing a court calendar.

b. Essex Report

As the program has developed, the methods of collecting and analyzing data have become more refined, detailed and computerized. The remainder of the narrative on the ombudsman will share some of the data from Essex Vicinage Ombudsman 2001 Report. The reader is reminded that the Essex

Ombudsman Office includes the Court Information and Community Relations Center.

(1) Methods Used by Court Users to Contact the Office of the Ombudsman and Court Information and Community Relations Center, January 2001 - December 2001

A review of Table 9: Essex, Ombudsman Office and Court Information and Community Relations Center, Methods of Contact, January- December 2001 reveals that 62.3% of persons using the offices are walk-ins; 37.1% call; 0.4% contact the offices by mail and 0.2% contact the office by fax.

**Table 9. Methods Used by Court Users to Contact the Ombudsman Office
and Court Information and Community Relations Center
January 2001 - December 2001**

SOURCE	Number	Percent
Walk-Ins	1061	62.3
Telephone	632	37.1
Mail	7	0.4
Fax	3	0.2
TOTAL	1703	100%

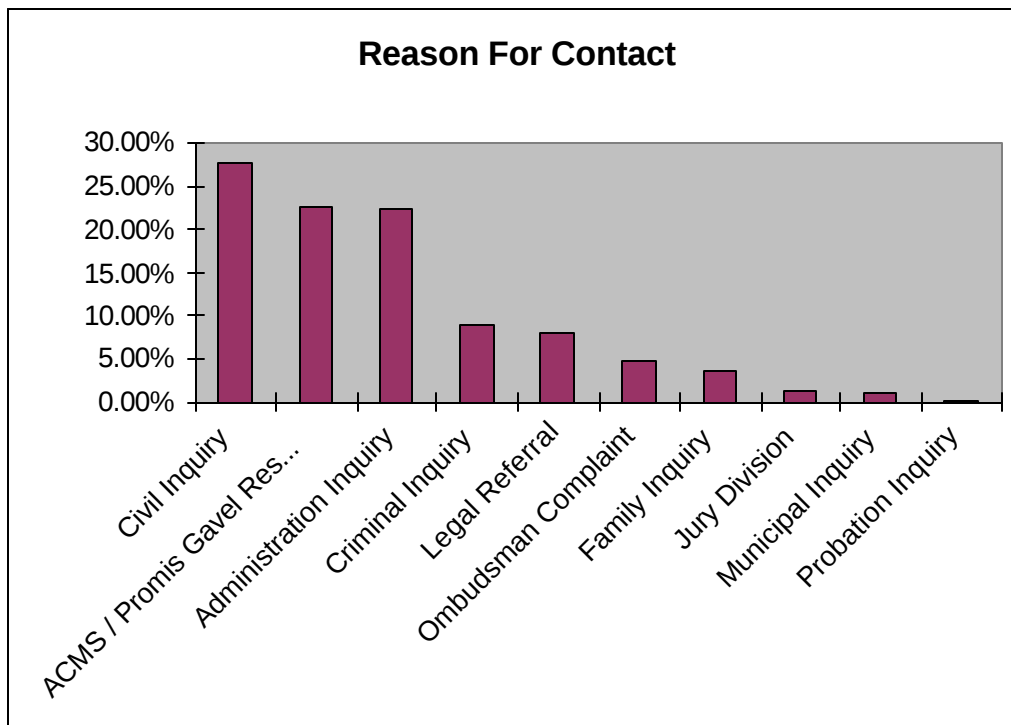
(2) Essex: Reasons Court Users Contacted the Office of the Ombudsman and the Court Information and Community Relations Center

Table 10 above lists the reasons court users gave for contacting the Essex Office of the Ombudsman and Court Information and Community Relations Center in calendar year 2001. These services represent assistance that went beyond merely directing the public to the correct office or providing a phone number. The services represent substantive interactions which included researching a case, providing referrals, assistance with filling out forms, arranging for an interpreter and communicating with court supervisors, managers and other court personnel about a specific case or court matter. See Graph 1 below for a graphic display of the information in Table 10, Essex: Reasons Court Users Contacted the Office of the Ombudsman and the Court Information Center, January - December 2001.

Table 10. Essex: Reasons Court Users Contacted the Office of the Ombudsman, Court Information and Community and Relations Center, January 2001 - December 2001

REASON FOR CONTACT	Number	Percent
Civil Inquiry	520	27.6
ACMS/Promis Gavel Research	425	22.5
Administration Inquiry	420	22.3
Criminal Inquiry	170	9.0
Legal Referral	150	8.0
Ombudsman Complaint	93	4.9
Family Inquiry	66	3.4
Jury Division	21	1.1
Municipal Inquiry	19	1.0
Probation Inquiry	3	0.2
TOTAL	1887	100%

**Figure 2: Essex: Reasons Court Users Contact the Office of the Ombudsman, Court Information and Community Relations
January - December 2001**



(3) Questions Frequently Asked by Persons Contacting the Essex Ombudsman Office Court Information and Community Relations Center

The following lists reflects anecdotal data regarding the questions frequently asked by persons contacting the Essex Ombudsman Office, Court Information and Community Relations Center.

(a) Civil Division Questions

- a. 1) How do I go about suing someone for money?
- a. 2) What form do I need and where can I get that form?
- a. 3) How do I fill out the form?
- a. 4) What is the filing fee?
- a. 5) How long will it take me to evict my tenant?
- a. 6) How do I collect my money once I have a judgement in my favor?
- a. 7) How can I sue someone if I do not know where they live?
- a. 8) How long do I have to wait to get my court date?
- a. 9) How can I find out if someone has been sued before?
- a. 10) How can I get temporary rental assistance?
- a. 11) Is an interpreter available to help me?
- a. 12) How can I change my child's name?
- a. 13) Where can I get an order to show cause?

(b) Criminal Division Questions

- b. 1) How do I collect my bail money?
- b. 2) How do I get a Letter of Good Conduct?
- b. 3) How do I find out when and where my case will be heard?
- b. 4) How do I get a public defender?
- b. 5) How can I find out if someone has a criminal record?

(c) Questions From Attorneys

- c. 1) How can I research a case?
- c. 2) What are the service requirements in New Jersey?
- c. 3) How do I proceed *pro hac vice* (for this one particular occasion)?

(d) General Questions

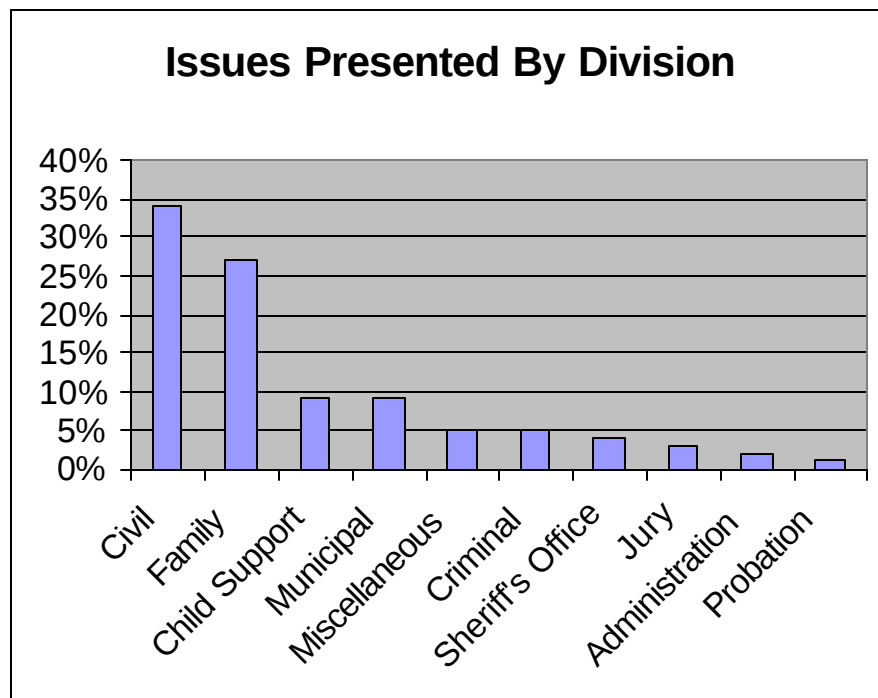
- d. 1) Where can I go to get a lawyer?
- d. 2) What do I do if I cannot afford a lawyer?
- d. 3) Will legal services or legal aid help me?
- d. 4) Are trials open to the public?
- d. 5) Can I speak to the judge?
- d. 6) What are the requirements for jurors?
- d. 7) How can I appeal the judge's decision?

d 8) How do I complain about a judge or attorney?

(4) Citizen Assistance Services: Ombudsman Complaints/Issues

The following data on complaints/issues presented to the Ombudsman for resolution were collected.⁴² These data reflect the complaint/ issues presented by division, the type of issues presented, the gender, primary language and ethnicity of office visitors. These data also indicate whether or not visitors were represented by counsel. An additional miscellaneous category reflects contacts by persons who believed that the problem involved the court, but in fact, upon review by the ombudsman it became clear that the issues involved other institutions. Of the 1887 court user contacts the Office of the Ombudsman and Court Information Center, for calendar year 2001 93 or 4.9% were complaints. Some of the issues presented for resolution were complaints or concerns about other agencies. Complaints/Issues Presented by Division to the Ombudsman reveal that the Civil and Family Divisions have the highest proportion of issues followed by Child Support and Municipal Court. The probation and administration areas have the smallest proportion of complaints/issues presented to the ombudsman for resolution respectively.

Figure 3: Essex: Complaints/Issues Presented by Division: January - December 2001



⁴² Appendix C-3.1 has a copy of the Essex Complaint/Intake Form.

Table 11 represents summary data collected on complaints/issues presented to the Essex Ombudsman for resolution across all divisions. Tables 12-20 present the issues raised by constituents for each of the divisions noted in Table 11. The detailed tables permit the reader to gain an appreciation for the range of complaints/issues which were referred to the ombudsman. The tables capture citizen concerns that were shared about various court practice areas other offices, i.e. Sheriff's Office.

**Table 11: Essex: Complaints/Issues Presented to the Ombudsman
for Resolution by Division
January - December 2001**

DIVISION	Number of Issues	Percent
Civil	32	34.4
Family	25	26.9
Child Support	8	8.6
Municipal	8	8.6
Miscellaneous	5	5.4
Criminal	5	5.4
Sheriff's Office	4	4.3
Jury	3	3.2
Administration	2	2.2
Probation	1	1.1
TOTAL	93	100 %

**Table 12: Essex: Ombudsman Resolution of Complaints/Issues
Presented by Civil Division,**

January - December 2001

Confusion Regarding Court Processes	8
Judicial Demeanor	8
Staff Conduct	3
Constable	2
Court Staff	
Waiting Time / Delay	4
General Dissatisfaction	4
Phone System	3
Total	32

**Table 13: Essex: Ombudsman Resolution of Complaints/Issues
Presented By Family Division
January - December 2001**

Judicial Demeanor	12
Staff Conduct / Error	6
Confusion Regarding Court Process	3
Waiting Time / Delay	2
General Dissatisfaction	2
Total	25

**Table 14: Essex: Ombudsman Resolution of Complaints/Issues
Presented By Child Support
January - December 2001**

Incorrect Information	2
Confusion Regarding Court Process	2
Waiting Time / Delay	1
Staff Conduct	3
Total	8

**Table 15: Essex: Ombudsman Resolution of Complaints/Issues
Presented By Municipal Division
January - December 2001**

Records	1
Bail	1
Judicial Demeanor	3
General Dissatisfaction	2
Rude Treatment	1
Total	8

**Table 16: Essex: Ombudsman Resolution
of Miscellaneous Complaints/Issues
January - December 2001**

Parole Officer Problem	1
Refund Check	1
Attorney Conduct	1
Phone System (General)	1
County Employee	1
County Jail	2
Total	7

**Table 17: Essex: Ombudsman Resolution of Complaints/Issues
Presented By Criminal Division
January -December 2001**

Judicial Demeanor	1
Waiting Time / Delay	1
Bail	1
Staff Conduct	1
Confusion Regarding Court Process	1
Total	5

**Table 18: Essex: Ombudsman Resolution of Complaints/Issues
Presented By Sheriff's Office
January - December 2001**

Waiting Time / Delay	1
Incorrect Information	1
Rude Treatment	2
Total	4

**Table 19: Essex: Ombudsman Resolution of Complaints/Issues
Presented by Jury Management Division
January - December 2001**

Staff Conduct	2
Offensive Statement by Attorney	1
Total	3

**Table 20: Essex: Ombudsman Resolution of Complaints/Issues
Presented by Probation Division,
January - December 2001**

Confusion Regarding Fines	1
Total	1

Of the 93 complaints/issues, charted above, and presented to the Essex Ombudsman's Office for resolution, approximately equal proportions of females (50.5%) and males (49.5%) had complaints/issues and the majority of the concerns (93.5%) were presented in English compared to 6.5% which were noted in Spanish.

With respect to the race/ethnic categories of complainants, Table 21: Essex: Complaints/Issues Presented by Ethnicity; December 2001 reveals that 45.1% of the complainants were African Americans; 20.9% were Whites, 15.3% were of unknown race/ethnicity and 14.3% were Hispanic. Asian Americans and Nigerians were equally likely to register complaints (1.1% for each).

Table 21: Essex Complaints/Issues Presented by Ethnicity, December 2001

RACE/ETHNICITY	Number	Percent
African American	41	45.1
Nigerian	1	1.1
Jamaican	2	2.2
Caucasian	19	20.9
Hispanic	13	14.3
Asian	1	1.1
Unknown	14	15.3
TOTAL	91	100 %

Of those persons (N=78) who noted if they had/did not have legal representation, 88.5% were reported as having no legal representation, compared to 11.5% who reported having retained counsel.

(5) Essex Customer Service Survey

The Essex Ombudsman designed and implemented a customer service survey in court year 2000. See Appendix C-3.2 for a copy of the Customer Service Survey form. The survey gives visitors to the court an opportunity to rate the quality of a specific division's customer service in the categories of promptness, courtesy, efficiency, information and overall service. The rating categories include: excellent, good, fair or poor in each of the items measured. There were 715 surveys collected for calendar year 2001 from the New Courts Building and from the Wilentz Justice Complex. Review Table 22: Essex Court User Survey Results, Overall Courthouse Ratings, December 2001 and Figure 4.

The Overall Courthouse Ratings results indicate that visitors either thought that the customer service at the courthouse was either excellent or poor. These bifurcated findings may be due to case outcome, i.e. whether the person filling out the survey received a positive or negative outcome in his/her case. The overall results also reveal that visitors feel that most employees are courteous and that they do an excellent job with providing information to the public about court matters.

The findings show that most visitors complained about the amount of time that they had to wait for their matter to be heard or addressed. This is consistent with the poor ratings that the visitors gave in the

categories of promptness and efficiency throughout the year. Many court users felt that the time issue could be solved if court proceedings started on time or if more employees were hired. Visitors were also very concerned with the quality of customer service that they received. There were approximately seventy eight visitor comments received who wanted court employees to be more polite or friendly. Many of the visitors' feedback commented on the need for improvements in employee training. Finally, visitors wanted the facilities at the courthouse to improve. Specifically, they wanted an improvement in the cleanliness of the courthouse and the quality of the air-conditioning or ventilation system.

There were several employees in the Civil Customer Service Office, Criminal Division and the Family Division who were singled out by visitors during the year as being especially helpful.

For more detailed information on the Essex Ombudsman Report and a break-out of the customer service ratings by divisions, see the companion report, Superior Court of New Jersey, Essex Vicinage, Ombudsman Report 2001. To obtain a copy of this report, contact the Essex Office of the Ombudsman.

Like its successful predecessor pilot program in Camden, the expanded Essex Ombudsman Program, incorporating citizen assistance services , community relations, court services and program information and citizen complaints has continued to garner national recognition as an innovative court program. Most recently, the National Association for Court Management, Knowledge Fair 2001 had this to say about the program.

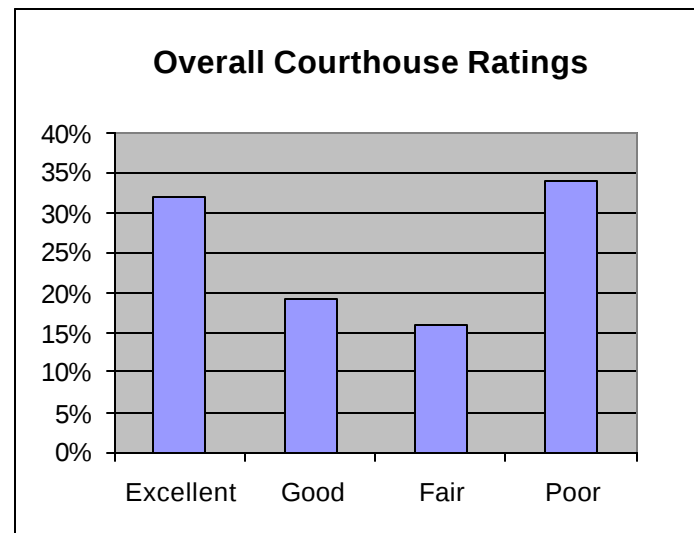
The Essex Vicinage of the Superior Court of New Jersey in Newark has made a breakthrough with the ombudsman program. By consolidating public information and community relations with the complaint function of the ombudsman, the vicinage has gained a remarkable synergy that is worthy of emulation. The combined program offers court users a single location for gaining access to the array of services now being offered by the judiciary in the county.⁴³

⁴³ Karl Thoennos, Reporter. The Court Manager, "Organizational Ombudsman, Newark, New Jersey Model, XVI, Number 3, page 43. The Essex Ombudsman, Michele Bertran , Esq. was the speaker and was assisted by Tom Dribble, Court Executive Essex Vicinage.

**Table 22: Essex Court User Survey Results, Overall Courthouse Ratings
December 2001**

RATING CATEGORIES	PROMPTNESS		COURTESY		EFFICIENCY		INFORMATION		OVERALL SERVICE		TOTAL
	#	%	#	%	#	%	#	%	#	%	
Excellent	186	28.9	232	37.2	192	31.2	215	34.9	172	27.0	997
Good	113	17.5	127	20.4	100	16.2	132	21.4	125	19.7	597
Fair	92	14.3	95	15.2	88	14.3	91	14.8	125	19.7	491
Poor	253	39.3	170	27.2	236	38.3	178	29.4	214	33.6	1051
TOTAL	644	100%	624	100%	616	100%	616	100%	636	100%	3136

**Figure 4: Essex: Overall Courthouse Ratings
January - December 2001**



D. Linguistic Minorities

Task Force Recommendation 3: The Supreme Court shall assure that the trial courts (1) provide interpreters who have knowledge of cultural variations; and (2) assure equal access to courts for linguistic minorities.

Task Force Recommendation 35: The Supreme Court should require that a qualified interpreter is provided for every person who needs an interpreter.

1. Spoken Language Services

a. Historical Background

The New Jersey Judiciary has the distinction of being the flagship for state court initiatives designed to assure equal access to courts for linguistic minorities.⁴⁴ Five Supreme Court Task Forces have addressed this issue.⁴⁵ In 1993, the Court reiterated its support in the Action Plan on Minority Concerns when it stated 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.” The provision for interpreters also embraces the deaf and hard of hearing. In court year 1996-1997, the first year for which statistics were collected, the Superior Court needed interpreters for 45,188 events spread among forty-six languages in Superior Court. While no such statistics are collected for Municipal Courts,

⁴⁴The section of the report on linguistic minorities is, in large part, excerpted from a earlier report prepared by Robert Joe Lee, AOC Court Interpreting, Legal Translating and Bilingual Services Unit.

⁴⁵Chief Justice Robert N. Wilentz appointed the Supreme Court Task Force on Interpreter and Translation Services in 1982 to study the degree to which linguistic minorities have equal access to the courts and to recommend corrective steps. In 1985, that task force submitted its report to the Court entitled, *Equal Access to the Courts for Linguistic Minorities*. Also in 1985, the *Supreme Court Task Force on the Improvement of Municipal Courts* issued its final report which also called for equal access to the courts for linguistic minorities.

In 1991, the Supreme Court Task Force on Drugs and the Courts noted its concerns about the need to improve services for defendants who do not speak English. Later in 1991, the Supreme Court Committee on Court Reporting evaluated the special circumstances of testimony taken through interpreters. Focusing attention on this issue grew out of concerns about how best to handle the need to assure that misinterpretations of testimony could be identified and assessed for appellate review.

In 1989 and 1992, the Supreme Court Task Force on Minority Concerns in its interim and final reports respectively, addressed this issue as well. In 1993, the Supreme Court called for expedited adoption and implementation of a coordinated program to assure equal access to courts for linguistic minorities.

it is estimated that the volume of interpreted events in the Municipal Courts was around 90,000 for the same time period. See Appendix C-4.1 for the Fifth and Sixth Statistical Reports on Court Interpreting Events for Court Year 1996-1997.

It is noteworthy that since May 3, 1889, New Jersey's judges have had statutory permission to appoint interpreters. *L.* 1889, *c.* 206. Notwithstanding a long succession of bills on this issue, by the time Robert Wilentz became Chief Justice numerous calls for reform in this area had been made.⁴⁶ In 1980-81, the Chief Justice received letters alleging absence of interpreters in many courts, widespread use of unqualified interpreters, and lack of policy and guidelines regarding interpreters. He responded by appointing the Supreme Court Task Force on Interpreter and Translation Services, which began its work in May 1982 and submitted its final report in May 1985.

Chief Justice Wilentz directed the Task Force to identify and document the ways linguistic barriers inhibit equal access to the courts and their support services. This was the first body of its kind appointed by a Judiciary⁴⁷ and the only one to date that has systematically analyzed all aspects of access to courts for linguistic minorities. The Task Force recommended:

- Certification of interpreters and translators;
- Comprehensive policy (including a code of conduct, legislation, and standards);
- Professional development of interpreters and translators;
- Training for judges, attorneys, and court employees who rely on interpreters to do their jobs;
- The hiring and deployment of sufficient numbers of qualified and adequately compensated interpreters and bilingual support staff;

⁴⁶Note, "The Right to an Interpreter," 25 Rutgers L. Rev. 145 (1970); R.C. Rodriguez, "Presently Existing Situation on Court Interpreter and Bilingual Services in the Newark Municipal Courts" (1972); M.R. Frankenthaler and H.L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreter Act," 3 Seton Hall Leg. J. 125 (1978); Frankenthaler, "How to Work with Court Interpreters," N.J. Lawyer (May 1981); Leonard J. Hippchen, "Development of a Plan for Bilingual Interpreters in the Criminal Courts of New Jersey," 2 Just. Sys. J. 258 (1977).

⁴⁷The only similar effort that preceded this study was one conducted for The Judicial Council of California which was mandated and funded by the Legislature in September 1973 (Assembly Concurrent Resolution No. 74).

- Effective administrative support; and
- Education of linguistic minorities about the courts and resources for equal access to them.

The Judiciary has made significant progress toward implementing the Supreme Court's program for ensuring equal access to courts for linguistic minorities. The New Jersey Judiciary is a national leader in this area. Some of the highlights of the court's initiatives are discussed below.

b. Highlights of Court's Initiatives in Interpreting

(1) Qualifying Interpreters

Since 1987, a valid and reliable test for Spanish court interpreting has been administered. The program started with testing in Spanish, but now includes the following additional languages: Arabic, Cantonese, French, German, Haitian Creole, Italian, Korean, Mandarin, Polish, Portuguese, Russian, Serbian, and Vietnamese. Tests in additional languages are added almost every year. About 2,100 examinations have been administered. A full-fledged certification program has been designed, published for comment, and is pending final approval and implementation.

When testing began in 1987, only two of the approximately twenty-two staff court interpreters in the Superior Court at the time were able to pass the test and be approved. As of February 2001, all of the thirty-four positions are filled by staff interpreters who are approved--and eight of them have tested at the Master level. The requirement to use approved interpreters for staff positions was extended to free-lance interpreters in 1995. Hence the overall quality of interpreters working in the Judiciary has improved dramatically since 1985. The only category of interpreters who are not yet approved to go through the established approval process are interpreters provided through agencies.

Many jurisdictions come to New Jersey for guidance and our judiciary is one of four founding members of the Consortium for State Court Interpreter Certification. This body is a multi-state effort with 28 members and is staffed by the National Center for State Courts to certify interpreters and establish national standards for qualifying court interpreters.⁴⁸

⁴⁸ A national assessment of court interpreting noted, "To find certified interpreters, courts should look to the federal courts, and state courts of California, New Jersey, and Washington." William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, 238 (1995).

(2) Training Interpreters

Chief Justice Robert N. Wilentz helped make possible a collaborative effort between the Judiciary and the Department of Higher Education to develop a model curriculum for training Spanish interpreters at institutions of higher education in New Jersey. That initiative has resulted most notably in the creation of an undergraduate minor for Spanish court interpreters at William Paterson College. Other courses have also been offered at New Jersey City University, Montclair State University, and Rutgers University at New Brunswick. In addition, a certified program for spoken languages interpreting has been established at Union County College.

Other efforts in this area include a tuition reimbursement program for court employees who interpret. The AOC also offers some training opportunities. For example, about 2,350 persons have completed a one-day seminar offered by the Court Interpreting, Legal Translating and Bilingual Services Section of the Special Programs Unit on the Code of Professional Conduct for Interpreters, the first step to becoming an approved interpreter. The Court has implemented training for all interpreters that addresses the cultural and dialect differences inherent in the native languages of linguistic minorities. Such development will assure more accurate and effective interpretation of court proceedings.

A brief segment on court interpreting has been offered since 1989 in the orientation program for new Municipal Court judges. A longer segment on access to courts for linguistic minorities has been included in Principles of Municipal Court Administration since 1988. Similar offerings were included in the orientation course for Superior Court judges from 1988 until 1997.

Training for conducting interviews and delivering services via interpreters is also available for attorneys, hearing officers, mediators, arbitrators, and court support personnel. Suggestions have been offered to staff regarding developing an orientation course to be given to all new support employees of the Superior Court statewide focusing on equal access to courts for linguistic minorities.

(3) Comprehensive Policy

The judiciary has worked diligently to make sure that a comprehensive set of policies is adopted and maintained that ensure equal access to courts. In 1994, the Supreme Court incorporated into the Code

of Judicial Conduct, the Rules of Professional Conduct, and the Code of Conduct for Judiciary Employees a prohibition of discrimination on the basis of language. The Judiciary is the only branch of government in the country known to have such an explicit prohibition.

The Supreme Court has also approved the Code of Professional Conduct for Interpreters, Translators, and Translators, which became effective December 1, 1994. It clarifies and establishes the role and responsibilities of interpreters and other professional linguists. The Code heavily influenced the "Model Code of Professional Responsibility for Interpreters in the Judiciary" issued by the National Center for State Courts.⁴⁹

Early in 1995, the Chief Justice and the Assignment Judges adopted Guidelines for Contracting Free-lance Interpreters in the Superior Court. That policy established minimum qualifications and unifying compensation rates for free-lance interpreters for the first time. .

Chief Justice Poritz and the AOC are now working aggressively to revise and streamline the standards for court interpreting. Revision and completion of these interpreting standards represents a major policy initiative.

(4) Bilingual Services

The AOC continues to coordinate periodic plans by the Probation Departments to hire sufficient numbers of bilingual personnel, as requested by the Chief Justice and Assignment Judges. The Supreme Court has requested that the efforts to hire sufficient numbers of bilingual employees in the Probation Departments be expanded to all operating units in the Judiciary.

(5) Telephone Interpreting

Chief Justice Poritz and Administrative Director Williams continue to enhance access to interpreting by instituting and modernizing the technology available to accomplish the goals of equal access to the courts for linguistic minorities. Initiatives have been advanced for the use of telephone interpreting.

Judge Williams issued Directive # 14-01 on August 29, 2001, which sets forth the operational standards for telephone interpreting. The telephone program initiative outlines the proper and efficient operation of telephone interpreting usage.

⁴⁹Ibid. at 195.

A Pilot Telephone Interpreting Program was instituted and feedback from this pilot guided the development of the judiciary's telephone interpreting program. The Telephone Interpreting Program was initiated in April 2001. The first phase of the program focused on interpreting in the trial courts; this phase of the program is fully operational. The second phase focused on the Hearing Officer Programs and became operational in June 2001. The third phase of the program is focused on divisional programs, including probation. This phase is being implemented and is expected to become operational statewide by April 2002.

The Administrative Office of the Courts has developed evaluation forms on the use of telephone interpreting and will incorporate solutions to any identified problems as the use of telephone interpreting expands. Information on telephone interpreting is available on the judiciary's web page. There are links for the following areas: a registry of interpreters and agencies, a telephone interpreting calendar, and telephone interpreting policies and procedures in the New Jersey Judiciary.

(6) Administrative Oversight

All of the preceding efforts illustrate different ways of ensuring that equal access to courts for linguistic minorities is institutionalized. However, no initiative would succeed without trial court familiarity and local control. The Committee of Vicinage Coordinators of Interpreting Services field staff manage the day-to-day coordination of interpreting services and has formed a committee and expects to meet quarterly.

2. Services for the Deaf and Hard of Hearing

Although American Sign Language Interpreting Services for the deaf have been available since 1984, in September of 2001 the Administrative Office of the Courts entered into a Memorandum of Understanding and provided guidelines to the Municipal Courts for *Assisting Persons Who Are Deaf and Hard of Hearing* (see Appendix C-4.2). The guidelines give an overview of the different ways of communicating with the deaf and hard of hearing population and provide information on when it is appropriate to use the services. The guidelines also briefly describe what the court's obligations are, what the person requesting the service is required to do and provides a list of interpreting services and information on getting a certified interpreter.

Each Municipal court is required to designate an American with Disabilities Act (ADA)

Coordinator to accommodate persons who are deaf and hard of hearing, to post a sign with the hearing impaired logo in the courtrooms and to continue to provide training to municipal court judges.

The Committee appreciates the Court's continuing efforts to assure equal access for linguistic minorities and respectfully proposes the following recommendations:

Committee Recommendation 02:3.1: The Supreme Court should direct the Administrative Office of the Courts to assure: 1) that an introductory seminar on interpreting issues be presented to all new Superior Court judges during the new judges orientation training and that an elective refresher course be presented annually at the Judicial College; and 2) that law clerks, new hires and veteran court staff receive orientation on matters of access to courts for linguistic minorities at the AOC and in all the vicinages.

Committee Recommendation 02:3.2: The Court Interpreting, Legal Translating and Bilingual Services Unit (AOC) in collaboration with the Committee on Linguistic Minorities should design and periodically administer a customer service survey. The survey results should be published and distributed to all divisions and the public.

E. Statewide Availability of Comprehensive and User Friendly *Pro Se* Materials

The pro se initiatives in New Jersey encompass a holistic view of offerings for court assistance services and include providing information on court services and programs. The Ombudsman Office is a key component in this model of court user “wrap-around services.” The following discussion briefly outlines some of the accomplishments that the Judiciary has made in improving services for self-represented litigants. This section begins with a review of the Judiciary’s efforts to standardize pro se forms and ends with the published guidelines to court users about the assistance court staff can and cannot provide. Ideas are also shared on the need to establish delivery of service guidelines and training for court staff in this area. The original Recommendation 37 follows as well as its amendment 37.1 (1994-1996). Further amendments were presented in a six-part pro se recommendation in the 1996-1998 report.

Task Force Recommendation 37: The Supreme Court should adopt a policy that requires all forms and documents intended to be read by the litigants or the public be published in language that the public can comprehend.

Committee Recommendation 37.1: The Supreme Court should mandate that a more systematic approach, including the adoption of uniform guidelines, be taken by all AOC Divisions with respect to redesign of forms, brochures or written materials to ensure that they

are in plain language. A specific timetable and implementation plan should be adopted and closely followed. The plan should include express provision for pretesting and a periodic monitoring system.

Committee Recommendation Pro Se 1: The Supreme Court should direct the AOC to compile all pro se materials, evaluate those materials to ensure that they are written in plain language, revise the materials, as necessary, and distribute the materials to the vicinages and to the public (libraries, community centers, municipal buildings, county government, social service and government agencies). Targeted distribution plans for minorities should be put into place.

- 1) Production by each AOC division of easy-to-understand pro se packets for the most frequent issues facing pro se litigants in that division within the next 12 months. Uniform packets should be available in every vicinage (Pro Se 1.1),*
- 2) Preparation of guidelines for court staff on handling pro se litigants (guidelines have been prepared by the Subcommittee for pro se litigants) (Pro Se 1.2),*
- 3) Accessibility of general information in every courthouse concerning the availability of legal services in discrete areas. (The Subcommittee agreed and suggested that the Camden Ombudsman call Legal Aid while pro se litigants are in her office to see if their specific circumstances qualify) (Pro Se 1.3),*
- 4) Pro se litigants should not be referred to forms books; specific court forms should be available in the courthouses regardless of whether the AOC maintains a library there or not (Pro Se 1.4),*
- 5) The AOC should review the information collected from the Municipal Court clerks and administrators and obtain materials from legal services providers and ascertain if such materials could be adapted and made available for statewide use (Pro Se 1.5); and*
- 6) Each AOC division should produce easy-to-understand informational videos for pro se litigants, in cooperation with vicinage staff, the State Bar and specialty bars, and distribute this information within the next 12 months. The areas in descending order of priority are Special Civil Part, Municipal Court, Family and Civil (Pro Se 1.6).*

1. What Did the Minority Concerns Task Force and Committee Propose and When?

In the Task Force's 1992 report, Recommendation 37 stated that the "Supreme Court should adopt a policy which requires all forms and documents intended to be read by litigants or the public be published in language that the lay public can easily comprehend." The basic thrust of this recommendation was to ensure that litigants and others using court services be able to read and understand the forms, notices, summonses, brochures and other documents issued by the court for processing cases, advising litigants about their rights and obligations or sharing information about court programs and services. The Court approved this recommendation for implementation in 1993.

In the 1994-96 report to the Court, the Minority Concerns Committee refined its earlier recommendation and suggested that all pro se materials in the state court system be compiled, evaluated and revised and that the forms be made available in public venues such as libraries, municipal buildings and community centers. The Committee further observed that while there was one attorney in New Jersey for every 200 persons, there is only one legal services attorney for every 3000-5000 poor persons in the state (depending of course on the county of residence). Legal services offices in the state were inundated with clients and were only able to represent 20% of the people seeking their services. Since minorities are disproportionately represented among the poor, the Committee reasoned that the lack of legal representation for the poor will be felt more strongly by minorities. The lack of adequate and appropriate legal services is a serious access issue and fundamentally impacts the court's "equal justice for all" foundation.

These alarming statistics have not improved over the course of the past several years in New Jersey. The poverty rate has remained virtually the same for the past decade. In the late 1980's when the state was in a recession, the poverty rate was 8.8%. Ten years later, the poverty rate was 9.1%.⁵⁰ The report cited by Leusner goes on to recommend a significant increase in the welfare grant which has not been raised since 1987. It notes that poverty varies by county and Hunterdon had the lowest rate of 2.9% in 1998 while Hudson had the highest 17.3%. Although the rates are not published by cities, the U. S.

⁵⁰ Leusner, Donna, "Report Finds Robust Economy Can't Budge State Poverty Rate," The Star Ledger (July 27, 2001), p. 52.

Department of Housing and Urban Development reports that the poverty rate in Camden in 1999 was 44% and more than 30 % in Newark.

Committee Recommendation 02:3.3: The Committee joins the Ad Hoc Committee on Pro Bo Assignments, chaired by Assignment Judge Eugene Serpentelli in the following recommendation, . . .“the Governor and Legislature should be apprised of the need to provide funding support for government sponsored legal (sic) services. . . .⁵¹

Pro se assistance, therefore, may be one of the few ways that racial and ethnic minorities and the poor may access the courts. The Committee on Minority Concerns fact-finding also revealed that while all fifteen court administrative districts had pro se kits, these kits were not uniform nor were they universally available to the public at accessible locations throughout the state. In an effort to a complete comprehensive assessment of the available pro se materials in the state, the Supreme Court Committee on Minority Concerns asked each of the fifteen vicinage advisory committees on minority concerns staff to compile all of the pro se materials and forms made available to the public in each of the fifteen administrative jurisdictions. Rutgers University student interns catalogued these materials by subject area, document number, title, division and program, publisher, type of document, description of the format, forms present/not present, instructions present/not present, instructions clear/not clear and presence of court logo. The interns were also asked to assess how user-friendly the materials were as determined by whether or not they could complete the forms without assistance.

These student assessments were reviewed by various practice division managers and staff prior to the report being forwarded to the Court. As a result of this comprehensive review, the Committee’s pro se recommendations were amended to reflect the information that had been gleaned from the compilation of the Court’s available pro se packets. The amended pro se recommendations as noted earlier was included in the Committee’s 1996-1998 report to the Court. The six-part recommendation proposed that

⁵¹New Jersey Supreme Court Ad Hoc Committee on Pro Bono Assignments, *Final Report to the Supreme Court* (November 23, 1998), A General Findings, p. 7, Specific Findings, p. 8 and #6 Committee Recommendation A, pp.13-14 (Appendix C-5.1).

each Administrative Office of the Courts practice division (civil, criminal, family, municipal court) draft or revise existing pro se packets so that they are standardized and that best practices are adopted. These best practices were to embrace the dissemination of pro se forms and information to court users and the preparation of user friendly instructions.

The Committee's report also included a discussion on how to improve access to the Court for self-represented litigants. The policy recommendations which accompanied this narrative suggested that the Court strike a balance between the Judiciary's legal needs (legal sufficiency) and the client's need to be able to understand the document; that standardized pro se kits be drafted for the most frequent issues facing litigants in a given practice division; that the forms be piloted; that the documents be clear and written at a level that most people can understand; that the forms be translated into other languages; and that a monitoring mechanism be put into place to periodically evaluate the roll-out of the standardized forms; that guidelines be prepared for court staff on handling pro se litigants; that information on pro se materials and the availability of legal services be easily accessible in all court complexes throughout the state; that pro se litigants not be referred to forms books and that court forms be available in the courthouse even if there is not a library in the facility and that each practice division produce an easy-to-understand informational video for pro se litigants. Other recommendations included putting in an evaluation component to determine the use of the pro se kits and to secure feedback from the court staff and the public in order to determine if the materials for self-represented litigants are made available to the persons who need them and if staff are using them in the manner intended.

2. Progress Report

The Administrative Director of the Courts appointed an Ad Hoc Working Group on Pro Se Materials composed of staff from all of the practice areas and the Administrative Office of the Courts to review and draft or revise pro se kits, beginning with those practice areas in which pro se kits are in high demand. This working group, composed of both AOC and vicinage representatives, has been meeting regularly for over two years .

The Ad Hoc Pro Se Committee produced various draft pro se kits and then systematically submitted the draft documents for review to various conferences and divisions (external to the working

group). For example, for the Special Civil Part, the Conference of Civil Division Presiding Judges, the Conference of Civil Division Managers and other conferences all had the opportunity to review the draft pro se packets. It is also noteworthy that all of the pro se kits were reviewed by the Supreme Court Committee on Minority Concerns (Access Subcommittee) as well. Since the Subcommittee has public members who are not Judiciary employees and who do not work in the justice system, these citizen reviews allowed the Ad Hoc Pro Se Working Group to gauge how receptive the public was to the new forms as well as to assess how clear the accompanying instructions were for persons who are not familiar with court forms.

Materials provided in the packets include information on what is included in the pro se kit, definitions of terminology and concise step-by-step instructions. Legal Services of New Jersey has found the forms very useful and is very complimentary of the work of the Ad Hoc Committee.

Selected pro se packets (Civil Division) were pilot tested in the Essex, Hudson and Mercer vicinages. The pilot included a user survey to obtain feedback on how helpful the explanatory materials and forms were. The results of the survey were generally positive. Over 80% of all users found the original civil division pro se packets either “very helpful” or “helpful”. Three-fourths of small claims filers were able to complete the forms without assistance and two-thirds of Special Civil filers were able to complete the forms without assistance. This means, however, that 25% of the people attempting to use the small claims packet and 33% of the people attempting to use the special civil packet are unsuccessful.

By the time the pro se kits reached the Court’s highest Conference, the Judicial Council, each packet had been through an exhaustive review process. The Judicial Council⁵² reviewed the packets prior to the pilot testing and post pilot testing. The following pro se kits are available:

- < *Civil Matters*
 - How to Sue for an Amount of Money Under \$10,000
 - How to Sue for an Amount of Money Under \$2,000 – Non Auto
 - How to Sue for an Amount of Money Under \$2,000 – Auto
 - How to Answer a Complaint in the Special Civil Part

⁵² The Judicial Council membership includes the Chief Justice, the Administrative Director of the Courts, the 15 Assignment Judges, the chairs of the four Presiding Judges Conferences and the Deputy Administrative Director of the Courts.

It is estimated that approximately 85,000 people annually file small claims and special civil complaints without a lawyer and these standardized forms should enhance access to the courts for self-represented individuals.

< *Family Matters*

In Spring 2001, the Judicial Council approved a pilot program to test informational packets designed to enable self-represented litigants to file a Motion to Increase/Decrease Child Support Payments or Alimony in the Family Division. The packets were pilot tested in Bergen, Cumberland and Middlesex Counties. The distribution of forms were limited to dissolution cases and cases where incarcerated individuals contacted the Family Division seeking packets for dissolution and non-dissolution cases. When court users completed the forms and filed them, they were asked to complete a user survey form . At the conclusion of the test period, vicinage staff were also asked to complete a staff survey to elicit their views on the packets.

Only 38 surveys were returned; 60% of the users rated the packets as either “ very helpful or helpful” and three- fourths of the respondents were able to complete the form on their own. Although the initial numbers were encouraging, in light of the fact that the filing requirements in the Family Division are quite complicated, the sample size is too small to draw definitive conclusions about the use of the kit.

The results of the staff survey for the pilot test of the Motion to Increase/Decrease Child Support Payments or Alimony were also generally encouraging as well. All three pilot vicinages supported the continued use of this packet and indicated that it was an improvement over the previous packets that had been used in the past. Staff especially favored the standardized packets because they could distribute theses new forms secure in the knowledge that the packets were legally sufficient to have the motion heard and that they contained information about the process in one succinct document. Prior to the distribution of the new packet, vicinage staff often had to send court users to the court law library, if they had one, to research how to properly file the form.

A revised Multipurpose Family Division Post Judgment Motion packet was recently substituted for the Motion to Increase/Decrease Child Support or Alimony packet. The new packet can be utilized for

the following:

- A motion to increase or decrease child support payments;
- A motion to increase or decrease alimony payments;
- A motion to change the custody arrangements of the minor child;
- A motion to change the visitation/parenting time arrangements;
- A motion to enforce litigants rights (this includes enforcing custody, visitation and child support and alimony payment orders);
- A motion for emancipation of a child (termination of child support obligations);
- A motion for reimbursement of medical expenses; and
- A cross-motion responding to one of the motions listed above.

The following guides to help litigants appeal a court's decision are also available.

< *Municipal Court Matters*

- How to Appeal a Decision of a Municipal Court

< *Appellate Division Matters*

- How to File an Appeal in the Appellate Division

< *Supreme Court Matters*

- How to File an Appeal in the Supreme Court

The Committee commends the judiciary for its rapid response to the World Trade Center Disaster in posting the forms necessary to obtain a declaration of death and proceeds through probate in New Jersey within two weeks of the disaster.

< *World Trade Center Disaster*

- Forms for Use in Obtaining a Declaration of Death–World Trade Center Disaster;
- Forms for Obtaining a Declaration of Death for a Person Missing in Connection with the Terrorist Attacks on September 11, 2001;
- Full Set of Forms for Use by Surrogates, Attorneys, and Others Providing Assistance to Litigants.

Pro Se materials are now available for caregivers seeking guardianship of persons receiving services from the New Jersey Division of Developmental Disabilities.

The Ad Hoc Pro Se Working Group is continuing to work on the following packets: Name

Change; Special Civil Part Post-Judgement Motion and Landlord/Tenant.

Committee Recommendation 02:3.4: The judiciary needs to determine whether additional packets will be helpful and, if so, produce those packets within the next 12 months. The judiciary should consider producing and packets addressing the following concerns:

- * How to file emergent applications for hardship stay and other post-eviction relief for tenants;**
- * How to obtain your own divorce;**
- * How to modify visitation/parenting time and**
- * How to enforce family division orders.**

Although the Ad Hoc Pro Se Working Group was mindful of the need to draft pro se kits in language that court users can easily understand, an expert should be retained to review the present body of work before the packets are translated into other languages.

Committee Recommendation 02:3. 5: The judiciary should have an expert examine the pro se packets that have been produced for reading level and reading ease. A consultant with expertise in this area should be hired to review the pro se kits and to present a seminar to the Pro Se Ad Hoc Working Group and other judiciary staff who routinely draft documents for the public and produce other media materials. The packets should be revised to a fifth grade reading level within the next 12 months.

Committee Recommendation 02:3.6: The packets are currently available only in English. Although the documents filed with the court must be filed in English, providing instructions in other languages, especially Spanish, would enable more people to use the packets. The judiciary should have the instructions for each packet translated into Spanish within the next 12 months and other languages, as appropriate, within 24 months.

3. Guidelines to Assist Self-Represented Litigants and Training Court Staff

Several years ago, the Court approved posting of the guidelines listing “What Court Staff Can and Cannot Do” (Appendix C-5.2). These guidelines were initially drafted by the Subcommittee on Minority Access to Justice. The guidelines were revised and reformatted by the Ad Hoc Pro Se Working

Group and distributed to all courts, including municipal courts. The distributed guidelines were enlarged and copied on bright gold paper before being laminated. Both English and Spanish versions are on display in courthouses.

The Committee also believes that court staff should be trained in how to deliver services to self-represented litigants. In conjunction with this training, guidelines for court staff should be developed. Included in the guidelines should be the Pro Se Committee recommendation: Pro Se 1.4, “that pro se litigants not be referred to forms books; specific court forms should be available in the courthouses regardless of whether the AOC maintains a library there or not.

The Essex Ombudsman has provided training to court staff in the Essex vicinage, at staff college, for law librarians and in conjunction with the National Center for State Courts Institute for Court Management and various national forums on delivering services to self-represented litigants. These course discussions center around the court’s mission and structure. The focus is on the need for access to justice for all litigants and how to direct litigants to information and resources for their own decision making. Emphasis is placed on neutrality, impartiality and fairness while lifting the veil of mystery that often surrounds court processes and procedures.

Committee Recommendation 02:27.5(4): The Committee recommends that this course be further developed and offered as a part of the judiciary’s judicial and staff training curriculum.

The Committee notes that the Court has vigorously worked to revise and standardize forms and improve services for self-represented litigants. The Court is to be commended for these efforts and the Committee looks forward to continuing the teamwork in this area. Materials for self-represented litigants may be accessed on the New Jersey Judiciary’s web site at www.judiciary.state.nj.us .

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Chapter IV

SUBCOMMITTEE ON LEGISLATION REVIEW

INTRODUCTION AND MANDATE

The Subcommittee on Legislation Review is a newly created group appointed in 2001 at the recommendation of Administrative Director Richard J. Williams. The Director saw that the Committee on Minority Concerns could play an important role in advising him of proposed legislation that may have an adverse impact on women and persons of color.

At the May 2000 National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts annual meeting, hosted by the New Jersey Judiciary, Judge Williams formally announced (in his address to conference participants) the request shared earlier with the Supreme Court Committee on Minority Concerns.

Subcommittee Activities

The subcommittee developed regular procedures to review a bill when it appears that movement through the legislative process is imminent. That review focuses on whether a particular proposal might have a disparate impact on minorities and women. Subcommittee members' comments are quickly transmitted to the Administrative Director as he and other leaders decide whether the Judiciary should comment on that bill.

The Subcommittee reviewed many bills. Two examples of the reviews follow. In one instance the Subcommittee's comments led to a conditional veto of legislation which, while intended as a tough crime fighting measure, would have disproportionately subjected minority youths to the possibility of referral from juvenile courts to the adult criminal courts. Thus, the possibility of racially disparate treatment of minority youths was prevented.

In another instance, the Subcommittee reviewed pending drug court legislation. It is general knowledge that a large percentage of drug prosecutions involve minorities, and current law treats these offences very seriously. Legislation supporting the establishment and funding of drug courts will play a critical role in addressing the serious problem of the disparate population of race and ethnic minorities in New Jersey jails and prisons.

These are two examples which demonstrate how the review of proposed legislation by the Supreme

Court Committee on Minority Concerns is an important and appropriate expanded role.