

FINAL REPORT

FINAL REPORT OF THE
PENNSYLVANIA SUPREME
COURT COMMITTEE ON
RACIAL AND GENDER BIAS
IN THE JUSTICE SYSTEM



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The wisdom of these many individuals and organizations helped produce a report that we hope will serve as a guide to fostering a court system that is as fair and equitable as possible. Without their support, the Committee's work would have been impossible.

INTRODUCTION

On October 15, 1999, the Supreme Court of Pennsylvania appointed the Committee on Racial and Gender Bias in the Justice System,¹ to undertake a study of the state court system to determine whether racial or gender bias plays a role in the justice system. Upon completion of the study, the Committee was instructed to present its findings and recommendations to the Court.

In order to discharge its mission, the Committee identified what it believed to be the key issues in its study. These included the needs of litigants with limited English proficiency; the lack of racial and ethnic diversity in the composition of juries; the employment and appointment processes of the courts; the treatment by the court system of survivors of domestic violence and sexual assault; racial, ethnic, and gender bias in the juvenile justice system; disparities in sentencing; the adequacy of representation of indigent criminal defendants; racial and ethnic disparities in the imposition of the death penalty; and selected issues in civil litigation and family law. The Committee set up a series of work groups comprised of distinguished representatives from across the state, including members of the bench and bar, educators, and advocates with expertise in the topics which the Committee selected for study. Each of the work groups was assigned the task of examining one of the discrete topics selected for study and implementing the research methodology formulated by the Committee. The methodology was chosen to ensure the broadest level of participation by all sectors of the community. The methods that were employed included the following:

1. **PUBLIC HEARINGS**—The Committee conducted public hearings in six locations across the Commonwealth. The hearings attracted scholars, advocates, court personnel, attorneys, judges, and members of the general public who offered accounts of their experiences with the justice system. The hearings were well-publicized and generated a total of 2,000 pages of testimony.
2. **SURVEYS**—With the assistance of experts, the Committee drafted and distributed surveys to court administrators, district attorneys, public defenders, community service agencies, and others in order to collect data from across the Commonwealth on the topics chosen for study. The response rate for most of the surveys was exceptionally high. The data yielded by the surveys was professionally analyzed and was used as a basis for the findings in the work groups' reports. The data was integral to the Committee's recommendations.

3. **STATISTICAL STUDIES**—The Committee engaged the services of statistical experts to conduct original research for several of the work groups. The topics of these studies included the racial and ethnic diversity of juries across the Commonwealth; the adequacy of indigent criminal defense services provided by public defender offices and court-appointed attorneys; and racial, ethnic, and gender disparities in sentencing. Comprehensive reports were prepared by the consultants which support the findings and recommendations. These reports are included in the appendices to the Committee report.
4. **FOCUS GROUPS AND PERSONAL INTERVIEWS**—The Committee engaged the services of two professional research consultants to conduct a series of focus group discussions and personal interviews with individuals who play important roles in the legal system across the Commonwealth. They helped to frame the issues for discussion and utilized social scientific protocol for these inquiries. The discussions focused on racial, ethnic, and gender bias in the courtroom. A total of 10 focus group sessions were conducted with attorneys and court personnel. Personal interviews were held with 18 judges and 10 litigants. The participants in the interviews and in the focus groups were primarily African American and white, with representation from the Latino and Asian American communities, and included both men and women.
5. **ROUNDTABLE DISCUSSIONS**—The Committee also conducted a series of roundtable discussions with experienced attorneys from around the Commonwealth to discuss bias issues in discrete areas of law, including employment law, family law, the juvenile dependency system, general civil litigation, and criminal sexual assault cases. Roundtable discussions were also held among users of the legal system, including victims of domestic violence. The sessions were led by experienced discussion facilitators. The invited participants came from all areas of the Commonwealth and represented a cross-section of racial and ethnic groups; they included both men and women, as well.
6. **EXISTING STATISTICAL STUDIES**—The Committee also reviewed several existing statistical studies on topics being examined by the work groups. The studies were conducted by distinguished researchers and have found wide acceptance in the legal and social sciences arenas. The topics ranged from the death penalty to court interpretation services.

7. OTHER STATE TASK FORCE REPORTS—In an effort to build upon the extensive research and study by other states and federal courts, the Committee examined reports published by other state and federal racial, ethnic, and gender bias task forces for information and recommendations pertinent to the topics studied by the Committee. The Committee also conducted extensive literature reviews on the topics under study, focusing on law reviews, law journals, and scholarly publications.

The Committee’s task presented a unique challenge: In seeking to determine whether racial and gender bias permeate the court system, the Committee, of necessity, had to seek out and focus upon data and information that address race and gender explicitly. However, in some ways, this focus challenges the notion that “justice is blind.” While the Committee initially struggled with this seeming dichotomy, it recognized that in some contexts a race-conscious or gender-conscious approach is needed, while in others, a race-neutral or gender-neutral approach is the way to eliminate bias. For example, if we are concerned about the racial makeup of jury pools, we need information about the racial makeup of the population summoned, the population responding to summonses, the pool that appears, and the panels that are selected. Yet collecting such information can be characterized as at odds with a “race-neutral” approach. The Committee has concluded that collecting this information, not just in the jury context, but in many others, is necessary to the work of eradicating bias. In other contexts, the Committee has proposed a race-neutral and gender-neutral approach as a means to eliminate bias, for example, in the use of statistical life and work expectancy tables for damages awards. The Committee’s positions in these different settings are not inconsistent; rather, they reflect different modes of analysis for identifying and recommending solutions for eliminating bias present in the court system.

The Committee wishes to emphasize that it heard positive comments about how the Pennsylvania justice system functions. The full report describes these observations and highlights “best practices” by the courts in Pennsylvania and elsewhere. At the same time, the Committee’s findings demonstrate that racial, ethnic, and gender bias does exist and that it infects the justice system at many key points in both overt and subtle ways. Even when controlling for other factors such as economic status, familial status, and geographic diversity, the studies demonstrate that racial, ethnic, and gender bias still emerge as significantly affecting the way an individual (be it a party, witness, litigant, lawyer, court employee, or potential juror) is treated.

As the Supreme Court itself recognized in commissioning and appointing this Committee, any such bias is intolerable and must be eliminated. The courts are the institutions in which all citizens should expect to be treated with equality, fairness, and respect. In order to live up to this ideal, Pennsylvania’s courts must undertake reforms. Accordingly, the Committee identifies in the report its findings and its recommendations for change. These findings and recommendations are designed to respond to the concerns articulated to the Committee and to highlight areas of the justice system in need of improvement.

In formulating the recommendations, the Committee acknowledges that the implementation of some of them is likely to be costly. Nevertheless, the Committee strongly believes that they represent important steps towards achieving a bias-free justice system.

While the findings and recommendations are responsive to the Court’s charge, the Committee also believes that the work of the Court on these matters should continue. There is an obvious need for additional data on some issues, and in other areas, a more systematic effort should be undertaken to establish a baseline and a system for monitoring progress. Data collection should be an ongoing activity of the Court if bias is to be addressed effectively. The Committee, therefore, respectfully recommends that the Court consider appointing an implementation committee to accomplish its goals of fairness and equality in the courts.²

ENDNOTES

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¹ The members of the Committee include the following:
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² During the study, the Committee heard concerns regarding bias against those with disabilities and gay, lesbian, bisexual, and transgendered individuals. The Committee determined that bias against people in these categories was beyond the scope of its charge. Nevertheless, the Committee suggests that the Court consider simultaneously addressing the needs of these groups, in light of the similarity of issues and solutions in the context of race, ethnicity, and gender.

1 LITIGANTS WITH LIMITED ENGLISH PROFICIENCY

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RECOMMENDATIONS

In formulating the following recommendations, the Committee acknowledges that the implementation of these recommendations is likely to be costly. Nonetheless, they are essential to providing equal access to justice to LEP individuals.

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:²⁸

1. Establish for all courts of the Commonwealth of Pennsylvania a policy that all persons, including parties to judicial proceedings, witnesses appearing therein, victims in criminal proceedings, and members of the public seeking information from offices of the courts, shall have equal access to justice in the judicial system of Pennsylvania without regard to their English language proficiency.²⁹
2. Require that all courts provide qualified interpreters to litigants at no charge, in order that LEP parties and witnesses may fully and fairly participate in court proceedings and obtain reasonable access to the court system.
3. Require that the courts translate forms and other documents to the extent necessary to provide access to the court system to those unable to read English.
4. Require that all court interpreters obtain certification pursuant to a recognized statewide certification program, maintain their proficiency through continuing education, and adhere to standards of professional conduct.
5. Require the adoption of a code of professional responsibility for judicial interpreters together with mechanisms to assure that all interpreters are familiar with the code and are subject to discipline for any violation.
6. Establish within the Administrative Office of the Pennsylvania Courts (AOPC) a Language Services Office,³⁰ similar to those established by other states, staffed by professional administrative personnel experienced with issues related to court interpretation and translation, and funded sufficiently to carry out its mission. (Please refer to Endnote 30 at the end of this chapter for a full listing of suggested services to be provided by a Language Services Office.)

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- ²⁵ Louise Story, *Interpreters Balance Scales, Court Interpreters Make Sure Everyone is Heard, and Demand for their Services is Growing*, Osceola Sentinel, July 2, 2001.
- ²⁶ H.R. 718, 2002 Regular Session (Miss. 2002).
- ²⁷ National Center for State Courts, Philadelphia Court Interpreter Services Study, Translating and Bilingual Services Section of the Administrative Office of New Jersey Courts, Robert Joe Lee, Director of Court Interpreting, pp. 16–17.
- ²⁸ In its comments to the proposed Rule of Court Administration relating to Equal Access to Justice in the Courts of the Commonwealth of Pennsylvania, the Supreme Court of Pennsylvania should note that it anticipates that in implementation of that Rule, courts will utilize the guidance which has been provided under Title VI of the Civil Rights Act of 1964 relating to National Origin Discrimination Against Persons With Limited English Proficiency pursuant to United States Presidential Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”
- ²⁹ The Committee notes that during the study, similar concerns were raised regarding the needs of the hearing impaired. The Committee determined that the needs of the hearing impaired were beyond the scope of its study but urges the Court to consider addressing the needs of the hearing impaired and citizens with limited English proficiency at the same time since they involve similar issues and solutions.
- ³⁰ The Language Services Office shall be responsible for:
- a) Enrolling the Pennsylvania Unified Judicial System as a member of the State Court Interpreter Certification Consortium of the National Center for State Courts;
 - b) Establishing procedures for the employment, training, compensation, qualification, and approval of staff and contracted court interpreters during the transition to statewide certification standards;
 - c) Creating a comprehensive statewide system to assure qualified judicial interpreters, including:
 - i) Adopting standards for the skills and qualifications required for different levels of expertise of interpreters as well as job descriptions for interpreters and supervisors;
 - ii) Assessing the need for and implementing orientation training, certification training, and continuing professional education;
 - iii) Overseeing the administration of consortium certification exams in available languages needed by the courts; and developing testing protocols for languages for which consortium exams are not developed;
 - iv) Determining the advisability of and standards for certifying knowledge of the Code of Professional Responsibility for Judicial Interpreters; and
 - v) Developing guidelines for compensation scales for staff and contracted interpreters at various levels of proficiency and experience.
 - d) Creating and managing a statewide administrative system for interpreting, including:
 - i) Recruiting and hiring staff interpreters and contracted interpreters;
 - ii) Creating a system to assign interpreters efficiently, as needed, to proceedings across the state to assure maximum use of the most qualified interpreters and the avoidance of delay for the courts, the litigants, and the interpreters;
 - iii) Supervising the work of interpreters to maintain quality and professionalism; and
 - iv) Gathering and analyzing data on the need for, use of, and cost of the interpreter program, and making recommendations for improvement of the system.
 - e) Developing protocols for the use of interpreters in courts and courthouses, including:
 - i) Adopting a bench guide for judges to consult in the proper utilization and supervision of interpreters in judicial proceedings, including standard *voir dire* questions for court interpreters and for witnesses and/or litigants to determine whether appointment of an interpreter is necessary;

- ii) Adopting standards for such matters as the techniques to be used by interpreters; the correction of interpreter errors and objecting interpretation; and avoidance of interpreter fatigue;
 - iii) Consistent with published Title VI guidances, identifying those vital written documents, forms, posted notices, and signs utilized by the courts that should be required to be translated to other languages and into which other languages such written materials should be translated;
 - iv) Developing a system to create reviewable interpreting records, including (1) appropriate tape recording of witnesses and interpreters and the proceedings to the extent feasible, so as to have a complete record for judicial review and challenges to the adequacy of interpretation; and (2) video recording of the witness and interpreter where sign language interpretation or other assistance to hearing impaired persons is provided;
 - v) Developing policies and procedures for the use of video telephone conferencing systems for court interpretation when qualified on-site interpreters are not available, assuring with those policies that video interpreters are qualified;
 - vi) Determining means to provide meaningful access to LEP persons who are *pro se* litigants; and
 - vii) Adopting procedures to assure that language services are provided to assist court-appointed counsel in communicating with LEP clients in criminal and other matters.
- f) Promoting increased hiring of bilingual and bicultural court staff able to deliver services to LEP parties without the need for an interpreter, including development of job descriptions for bilingual positions, providing fiscal support for upgrading skills of existing bilingual employees, and recommending practices to facilitate recruitment and retention of bilingual staff.
- g) Working with continuing legal education providers and the administrative office of the Pennsylvania Courts to develop training and educational systems for attorneys, judges, court administrators, and others as to issues relating to the equal access to justice for LEP persons and for the utilization of court interpreters.
- h) Engaging in study of other issues relating to providing equal access to LEP litigants and making further recommendations in such areas as:
- i) Assessing how the cultural norms of immigrant communities may adversely impact their ability to obtain equal justice in the judicial system and what remedial action is appropriate;
 - ii) Determining how foreign-born litigants' immigration status may affect their rights to equal access to justice in Pennsylvania judicial proceedings and how the adverse aspects of such impact may be minimized; and
 - iii) Establishing mechanisms for providing members of LEP immigrant communities with accurate information about their legal rights and options open to them, which could include an explanation of the possibility of free or *pro bono* representation, lists of competent referrals for different kinds of translation or other services, and types of problems which can be addressed through the legal system.
- i) Ensuring that all Pennsylvania courts and Commonwealth administrative departments or agencies which conduct hearings that are subject to judicial review on the record also develop procedures to comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations.

2 RACIAL AND ETHNIC BIAS IN JURY SELECTION

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Direct the AOPC to design a standardized system for court administrators throughout the Commonwealth to record the race and ethnicity of all individuals who are summoned for jury service, who appear in court in response to a summons, and who are selected for jury duty. This information should be retained and reported by each court administrator to the AOPC on an annual basis.
2. Direct county court administrators to use multiple sources in compiling jury lists, rather than relying strictly on voter registration lists in which young people and minorities are generally underrepresented and driver's license lists which tend to exclude minorities, the poor, the young, and the elderly. Other possible source lists that have been used in other states include utility subscriber lists, welfare lists, tax collection lists, high school graduate lists, library address lists, and unemployment compensation lists.
3. Direct trial judges to exercise increased scrutiny to ensure that peremptory challenges are not used improperly based on race in the *voir dire* process.
4. Expand *voir dire* to allow counsel the opportunity to question jurors more extensively than is now permitted in many counties, to better ensure fairness and impartiality in the jury selection process.
5. Direct trial judges to engage in individual, not group, questioning of potential jurors regarding racial bias.¹⁴³
6. Direct county court administrators to tighten standards for exemption from jury service and to enforce strictly the jury summons.
7. Require that all *Batson* and other similar challenges be made part of the official court record.
8. Require that a database be established regarding every *Batson* challenge and other similar challenges. The database should contain the name and race of each juror, the basis for the challenge, the names of the striking and challenging attorneys and trial judge, and all other information pertinent to the challenge. All courts should use comparable codes to create and maintain such a database

9. Consistent with the recommendations set forth in Chapter 3, encourage court administrators to establish licensed childcare facilities in courthouses with funding through Title 42 Pa. Cons. Stat. Ann. § 3721 for individuals who have been summoned for jury duty.
10. Consistent with the recommendations set forth in Chapter 3, require training of court administrators to understand better how procedures by which prospective jurors are disqualified, exempted, and excused may adversely affect the composition of the jury pool, and to identify ways to address these inequities.

TO THE LEGISLATURE

The Committee recommends that the Legislature enact legislation to:

1. Require employers with a certain minimum number of employees to develop a paid leave policy for employees so that employees will receive their regular pay while serving on a jury. Employers should receive a state tax credit reflecting their payments to active jurors.
2. Establish a statewide Office of Jury Commissioner, similar to those in Massachusetts, Connecticut, and New York, whose function is to produce a master list of jurors for each county in a more cost-effective and efficient manner, and to increase minority representation on juries throughout the Commonwealth. It is intended that a centralized process of gathering the most representative jury source lists, eliminating duplication of names, and utilizing a professional service to regularly update juror addresses will increase the likelihood of producing a more representative pool of jurors for each county.
3. Conduct a study of juror compensation provided by employers and the courts for jury service. Following completion of the study, enact legislation to increase juror pay if supported by the results of the study.¹⁴⁴
4. Conduct a study of transportation problems that impede citizens' abilities to serve as jurors, and develop solutions supported by the study.

TO BAR ASSOCIATIONS

The Committee recommends that county bar associations, in conjunction with jury commissioners and court administrators:

1. Develop community outreach programs to emphasize the importance of jury service and encourage citizens to perform their jury duty, particularly in minority communities.

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- ¹¹⁰ *Id.* at 230.
- ¹¹¹ *Id.*
- ¹¹² *Id.* at 231.
- ¹¹³ *Id.* at 234.
- ¹¹⁴ The Gender, Race, and Ethnic Bias Task Force Project in the D.C. Circuit, IVB-112 (1995). “In 1993 juror questionnaires showed that 70% of jurors in federal district court were African American, 27.4% were white and 1.3% were ‘other’ (1.3% did not respond).”
- ¹¹⁵ *Id.*
- ¹¹⁶ *Id.* at IVB-113.
- ¹¹⁷ *Id.*
- ¹¹⁸ *Id.* at IVB-115.
- ¹¹⁹ *Id.* at IVB-123–124.
- ¹²⁰ *Id.* at IVB-125.
- ¹²¹ *Id.* at IVB-126.
- ¹²² *Id.*
- ¹²³ *Id.* at IVB 126–127.
- ¹²⁴ *Id.* at 127.
- ¹²⁵ The Report of the Third Circuit Task Force on Equal Treatment in the Courts, 42 Vill. L. Rev. 1355, 1757 (1997).
- ¹²⁶ *Id.* at 1801.
- ¹²⁷ *Id.* at 1759.
- ¹²⁸ *Id.* at 1760.
- ¹²⁹ *Id.* at 1802–1803.
- ¹³⁰ *Id.* at 1804.
- ¹³¹ *Id.* at 1785.
- ¹³² *Id.*
- ¹³³ *Id.* at 1765.
- ¹³⁴ Report of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, p. 101 (1997) [hereinafter Second Circuit Report].
- ¹³⁵ *United States v. Jackman*, 46 F.3d 1240, 1242–44 (1995).
- ¹³⁶ *Id.* at 1242.
- ¹³⁷ Second Circuit Report, *supra* at 102.
- ¹³⁸ *Id.* at 104.
- ¹³⁹ William J. Murray, Jr., and Annette Kirby, “Jury Duty—It’s Not Fair If You’re Not There” (*Stockton Record*, May 2000) [hereinafter Murray and Kirby, “It’s Not Fair If You’re Not There”].
- ¹⁴⁰ William J. Murray, Jr., and Annette Kirby, “Jury Duty—Many Are Called, Few Are Chosen, All Are Appreciated” (*Stockton Record*, May 2001).
- ¹⁴¹ William J. Murray, Jr., and Annette Kirby, “Jury of Your Peers—No Such Constitutional Right” (*Stockton Record*, May 2001).
- ¹⁴² Murray and Kirby, “It’s Not Fair If You’re Not There,” *supra*.
- ¹⁴³ The Committee recommends the use of written questionnaires but not as a substitute for counsel-directed *voir dire*.
- ¹⁴⁴ The study should include consideration of a pay rate that will increase public participation in jury service in general, and will facilitate efforts to create more representative juries; an increase in the rate of travel reimbursement for jurors; special provisions for jurors who are compensated on an hourly basis and provisions requiring employers with a prescribed minimum number of employees to pay for the first three days of an employee’s juror service.

3 GENDER BIAS IN JURY SELECTION

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Direct the AOPC to develop a standard jury service survey, or identify one from among surveys that are already utilized in Pennsylvania or other jurisdictions. The survey should be used across the Commonwealth on a regular basis to afford the collection of pertinent data about the composition of the jury, the process of jury selection, the jurors' experiences, and other relevant information about them and their service.
2. Require training of court administrators to understand better how procedures by which prospective jurors are disqualified, exempted, and excused may adversely affect the composition of the jury pool, and to identify ways to address these inequities.
3. Encourage court administrators to take advantage of recently enacted state legislation, Title 42 Pa.Cons.Stat.Ann. § 3721, which provides for funding for the start-up and daily operating costs of licensed childcare facilities in courthouses across the Commonwealth.
4. Direct the drafting and implementation of a standard jury instruction to state that the jury deliberation process be conducted in a manner that provides all jurors, regardless of gender, the opportunity to speak and be heard.
5. Require training of court personnel regarding interactions with jurors to ensure gender neutrality.
6. Study gender dynamics within the jury room to determine whether special instructions from the court or other measures are needed to ensure full participation by females in the jury deliberation process.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Require employers with a certain minimum number of employees to develop a paid leave policy for employees so that employees will receive their regular pay while serving on a jury. Employers should receive a state tax credit reflecting their payments to active jurors.
2. Conduct a study of juror compensation provided by employers and the courts for jury service. Following completion of the study, enact legislation to increase juror pay if supported by the results of the study.¹⁶
3. Conduct a study of transportation problems that impede citizens' abilities to serve as jurors, and develop solutions supported by the study.

ENDNOTES

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- 1 See generally Alker, Hosticka, and Mitchell, *Jury Selection as a Biased Social Process*, 11 *Law and Society Review* 9 (1976); Alker and Barnard, *Procedural and Social Biases in the Jury Selection Process*, 2 *Justice Systems Journal* 246 (1978); Boatright, *Improving Citizen Response to Jury Summonses*, American Judicature Society (Chicago: 1998); Boatright, *Generational Differences in Attitudes Towards Jury Service*, 19 *Behavioral Sciences and the Law* 235 (2001); Fukurai and Butler, *Organization, Labor Force, and Jury Representation*, 32 *Jurimetrics Journal* 49 (1991); Fukurai, Butler, and Krooth, *Where did Black Jurors Go? A Theoretical Synthesis of Racial Disenfranchisement in the Jury System and Jury Selection*, 22 *Journal of Black Studies* 196 (1991); Losh, Wasserman, and Wasserman, *Reluctant Jurors: What Summons Response Reveals about Jury Duty Attitudes*, 83 *Judicature* 304 (2000); Munsterman, Lynch, and Penrod, National Center for State Courts, *The Relationship of Juror Fees and Terms of Service to Jury System Performance* (1991); Richert, *Jurors' Attitudes Towards Jury Service*, 2 *Justice Systems Journal* 233 (1977); Seltzer, *The Vanishing Juror: Why are there not Enough Jurors?*, 20 *Justice Systems Journal* 214 (1999).
- 2 See Unified Court System of New York State, *The Jury Project: Report to the Chief Judge of New York*, pp. 6–8, and pp. 3034 (New York: 1994).
- 3 Testimony of Robert Dunham, Philadelphia Public Hearing Transcript, pp. 177178.
- 4 Testimony of David Baldus, Philadelphia Public Hearing Transcript, p. 69.
- 5 *Id.* at 7071.
- 6 *Id.* at 85.
- 7 *Id.*
- 8 Testimony of Robert Chuk, Harrisburg Public Hearing Transcript, pp. 9495
- 9 *Id.* at 95
- 10 *Id.* at 96
- 11 *Id.*
- 12 Testimony of James Minella, Wilkes-Barre Public Hearing Transcript, p. 131.
- 13 *Id.*
- 14 42 Pa. Cons. Stat. Ann. § 4561.
- 15 See Table below.
- 16 The study should include consideration of a pay rate that will increase public participation in jury service in general, and will facilitate efforts to create more representative juries; an increase in the rate of travel reimbursement for jurors; special provisions for jurors who are compensated on an hourly basis and provisions requiring employers with a prescribed minimum number of employees to pay for the first three days of an employee's juror service.

4 SENTENCING DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Include programs on the impact of race, ethnicity, and gender bias in sentencing at judicial training sessions.⁸⁶
2. Include in such judicial training sessions, education on how the use of specific offender characteristics, such as employment, family responsibilities, and role in the offense, can potentially contribute to unwarranted racial, ethnic, and gender disparities in sentencing.⁸⁷
3. Strengthen the formal standards of accountability to which sentencing judges are held through adoption of a broader standard of appellate review for sentencing decisions.
4. Strengthen and expand the collection of data on sentencing decisions.⁸⁸

TO DISTRICT ATTORNEYS

The Committee recommends that district attorney's offices:

1. Institute training programs for prosecuting attorneys on the influence of race, ethnicity, and gender bias on charging and plea bargaining decisions.⁸⁹

⁸² Reitz, *supra* at 1471.

⁸³ See Kramer/Ulmer Report, *supra* at 16.

⁸⁴ *Id.*

⁸⁵ *Id.*; see also Reitz, *supra* at 1472 (expressing view that Pennsylvania guidelines system is “much simpler than its federal counterpart”).

⁸⁶ Kramer and Ulmer suggest in their report that making judges aware of disparity as a focal concern and addressing the link of race to employment, education and other factors might sensitize judges to unintended race and gender effects. Training in recognition of bias related to race, ethnicity, and gender, and in ways to recognize and resist biased decision-making, would help sentencing courts to realize the egalitarian ideals to which they, and the court system as whole, aspire. See Kramer/Ulmer Report, *supra* at 15; see also Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 Cal. L. Rev. 733 (1995).

⁸⁷ Under Pennsylvania’s sentencing guidelines, courts are given discretion to consider a number of specific offender characteristics aside from race, ethnicity, and gender. These factors, which include family responsibilities, employment, and role in the offense, may correlate with some of the observed disparities in sentencing. Indeed, the problematic nature of these factors has been recognized by other jurisdictions.

For example, the Minnesota Sentencing Commission finds the consideration of employment status in sentencing to be inappropriate because it would result in racial disparity. See Dale G. Parent, *Structuring Criminal Sentences: The Evolution of Minnesota’s Sentencing Guidelines* (1988); see also *State v. Carter*, 545 N.W.2d 695, 698 (Minn. Ct. App. 1996) (stating that “social factors such as employment history or educational attainment are not qualifying factors for departure from guidelines”) (citing Minn. Sent. Guidelines II.D.C., d.), *rev’d on other grounds*, 569 N.W.2d 169 (Minn. 1997). Cf. U.S.S.G. Ch. 5, Part H, intro. cmt. (stating that the guidelines, pursuant to 28 U.S.C. sec. 994(e), incorporate the view that “defendant’s education, vocational skills, employment record, family ties, and responsibilities, and community ties” “are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range,” although, unless expressly stated, “this does not mean that the Commission views such factors as necessarily inappropriate to the determination of a sentence within the applicable guideline range”); U.S.S.G. secs. 5H1.2, 5H1.5, 5H1.6, 5H1.11, and 5H1.12.

Further, as John Kramer noted in his oral testimony at the Pittsburgh public hearing, judges may be using factors such as a defendant’s education level as a “predictor” of dangerousness, without knowing either the role of education in recidivism or the racial impact of taking education into account. As a result, he said, “There’s an awful lot of flying by the seat of our pants in those terms.” He suggested that judges be informed of the value of such information and the effect of considering it. See Testimony of John Kramer, Pittsburgh Public Hearing Transcript, pp. 110–112.

⁸⁸ As discussed in the chapter, the findings with respect to bias in sentencing are limited in part by the lack of information. Among the data that the researchers were unable to analyze was information concerning charging decisions, type of counsel, offender information such as employment status, socioeconomic status, role in the offense and family status and responsibilities, and similar information concerning the victim of the offense. (In addition, information about type of counsel is to be collected on the current PCS forms, but in most cases is left blank.) Each factor might correlate to race, ethnicity, or gender, and future studies of disparities in sentencing would benefit greatly from the collection and analysis of the relevant information. It is therefore recommended that efforts be undertaken to improve provision of the currently requested information; and that the PCS be authorized to collect additional information of the kind suggested above.

⁸⁹ Judges are not the only actors in the criminal justice system who influence sentencing. In many respects, prosecutors play as important a role, and in negotiated plea agreements, prosecutors may be even more important than judges. There is no reason to think that prosecutors are any less susceptible than judges and other individuals to biases based upon race, ethnicity, and gender, whether conscious or unconscious. Therefore, it is not enough to focus on judges alone in educating actors within the criminal justice system on the operation of biases based upon race, ethnicity, and gender, and the ways to avoid being influenced by those biases.

5 INDIGENT DEFENSE IN PENNSYLVANIA

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Develop uniform binding indigent defense standards to meet indigent defense quality concerns regarding conflicts of interest, contracting for services, attorney eligibility, training, and workload.⁵⁵
2. Direct court administrators to explore innovative programs that seek to resolve cases earlier or to divert non-violent defendants into counseling or other alternative programs instead of the court system.

TO TRIAL COURTS

The Committee recommends that the trial courts:

1. Refrain from moving cases through the system at the expense of proper legal defense for indigent persons.⁵⁶

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Establish an independent Indigent Defense Commission to oversee services throughout the Commonwealth and to promulgate uniform, effective minimum standards. The Commission should report to the Court one year from the date of appointment.⁵⁷
2. Appropriate funding for indigent defense services from Commonwealth funds and adopt adequate uniform attorney compensation standards.⁵⁸

TO COUNTY PUBLIC DEFENDER OFFICES

The Committee recommends that the public defender offices:

1. Increase diversity of staff, particularly attorneys, and establish clear anti-bias policies for personnel.⁵⁹
2. Develop relationships with local law schools and initiate cooperative arrangements to attract law students to public defense work early in their careers.⁶⁰
3. Along with the Pennsylvania Defenders Association, investigate whether applicable student loan programs, including the Perkins program, permitting student loan forgiveness for prosecutors, can be extended to public defenders.

assignments. Administration of the assigned-counsel program should be by a competent staff able to advise and assist the private attorneys who provide defense services.

⁴⁴ See Spangenberg Report, *supra* at 66–67.

⁴⁵ *Id.* at 64–65.

⁴⁶ *Id.* at 74–75.

⁴⁷ *Id.* at 62–63.

⁴⁸ Muth Testimony, *supra* at 139.

⁴⁹ See Spangenberg Report, *supra* at 75–76.

⁵⁰ *Id.* at 77–78.

⁵¹ Konzel Testimony, *supra* at 117–118 and 126–127.

⁵² See Spangenberg Report, *supra* at 76–77.

⁵³ *Id.* at 79.

⁵⁴ *Id.* at 76.

⁵⁵ One of the most notable developments in the delivery of indigent defense services in the past ten years has been the adoption of standards and guidelines for attorney eligibility, workloads, conflicts of interest, indigency screening, attorney performance, and administration of indigent defense systems. Standards and guidelines have been adopted at all levels, by state and local legislation, state supreme court rule, national, state, and local public defender organizations, indigent defense commissions, and other entities, including the American Bar Association. See American Bar Association *Standards for Criminal Justice: Providing Defense Services* (3d. ed.); <http://www.abanet.org/crimjust/standards/defsvcs_toc.html>.

Greater oversight and accountability are needed in Pennsylvania. The Spangenberg Group Report’s study found one or more counties failed to comply with national or local guidelines in each of the following areas: conflicts of interest standards, contracting standards, assigned counsel standards, attorney eligibility standards in death penalty cases, and indigent defense caseload standards. For discussion of each of these areas, See Spangenberg Report, *supra* at 85–91.

⁵⁶ The United States Supreme Court has stated that “an almost total preoccupation...with moving cases,” an “obsession for speedy dispositions, regardless of the fairness of the result,” and the “assembly line justice” that results, are inconsistent with the right to counsel. (*Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972)). In courtrooms across the Commonwealth, however, the quality of justice for poor defendants is being compromised by the premium some judges have placed on the speedy disposition of cases. For example, defendants who have not yet retained counsel are sometimes pressured to proceed with an attorney not of their choosing or to “work something out” with the district attorney.

⁵⁷ The public defender office should be an independent entity, free from political or judicial control. Further, indigent defense in Pennsylvania suffers from a lack of a centralized authority to provide coordinated planning, oversight, and management. To address all of these concerns, Pennsylvania should establish an independent, state-level commission to oversee the delivery of indigent defense services. ABA standards maintain that establishing a board of trustees with responsibility for governance is an effective means of securing political independence for defender organizations. (See Standard 5-1.3(b) of the American Bar Association *Standards for Criminal Justice: Providing Defense Services* (3d. ed.); <http://www.abanet.org/crimjust/standards/defsvcs_toc.html>. More than half of the states have such commissions. (See Spangenberg Report, *supra* at 81-95; Appendix 2) Membership is typically broad-based, including former judges, legislators, former prosecutors, and experienced defense attorneys. It also should reflect the racial, ethnic, and gender composition of the client community. Such a commission can be created by the legislature or the courts, and may be part of the judicial or executive branches. Most of the states that have created such commissions ensure oversight by those directly answerable to the state citizenry by requiring that members be appointed by executive, judicial, and legislative representatives. Other members are generally appointed through statewide and local bar associations. Ideally, a statewide commission would

significantly increase the resources for, set meaningful standards for, and professionalize indigent defense services throughout the state. It would do so by promulgating and monitoring compliance with indigent defense standards, securing adequate financing to guarantee effective representation, overseeing the training of defense providers, conducting public education, and defending the system from attack. In particular, such a commission could help to improve Pennsylvania's indigent defense system by: ensuring the independence of the defense function by insulating county public defenders from political pressures; promoting a unified indigent defense voice to address defender concerns statewide; ensuring that effective minimum qualifications, training, workload, and contracting standards will be enforced; guaranteeing that indigent defense data will be collected and reported in a uniform manner; and studying the issue of quality representation, including the impact of race and gender on defense representation. For more detailed elaboration of the organization, functions, and benefits of such a commission, *see* Spangenberg Report, *supra* at 81–84.

- ⁵⁸ The creation of a state Indigent Defense Commission should be accompanied by state funding of indigent defense. As mentioned above, Pennsylvania is one of only three states with no state funding for indigent defense. The result of the dependence on county-level funding has been the underfunding of indigent defense, which in turn has led to inadequate attorney performance and poor morale among public defenders and contract attorneys. For discussion of a model of state funding that has been followed with success in other states (reimbursement by the state of a percentage of the counties' defense expenditure.) *See* Spangenberg Report, *supra* at 84–85.
- ⁵⁹ Minorities were disproportionately represented in the criminal justice systems of the sample counties. Therefore, to enhance public and client confidence, trust, and respect, efforts should be made to achieve better diversity among the staff of the public defenders' offices, particularly attorneys. Public defenders also should ensure that their staffs perform their duties without biases based upon race, ethnicity, gender, class, or disability. This can be encouraged by, for example, paying attention to candidates' attitudes toward diversity in the recruitment and selection of employees; providing diversity training for employees; establishing a clear anti-bias policy and disciplining individuals who violate it; and creating a fair and impartial mechanism to report and investigate claims of bias. *See* Ruffner Testimony, *supra* at 25–27.
- ⁶⁰ An arrangement that mutually benefits law students and public defender offices is an internship program, by which law students gain invaluable lessons in applying the law they have learned in the classroom and public defenders receive much-needed assistance in research and investigation. This will enhance their ability to recruit new attorneys and increase the pool of applicants.

6

RACIAL AND ETHNIC DISPARITIES IN THE IMPOSITION OF THE DEATH PENALTY

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Pursuant to its inherent power to issue temporary stays of execution, declare a moratorium on the imposition of the death penalty in any case where the defendant's direct appeal has resulted in affirmation by the Supreme Court of Pennsylvania, pending the completion of a study investigating the impact of the race of the defendant and of the victim in prosecutorial decisions to seek the death penalty and in death sentencing outcomes. The moratorium should continue until policies and procedures intended to ensure that the death penalty is administered fairly and impartially are implemented.
2. Empanel a special commission to study the impact of the race of the defendant and of the victim in prosecutorial decisions to seek the death penalty and in death sentencing outcomes.
3. Direct the AOPC, or alternatively appoint a master, to undertake a comprehensive data collection effort covering all stages of capital litigation, including responsibility for completing the data collection instruments and maintaining the database and all supporting documentation. The Court should direct the AOPC, or master, to retain a principal investigator to review data collection efforts undertaken in other states and develop a research design and a plan to implement data collection. The cases to be reviewed should include those in which the death penalty was sought or could have been sought in all cases where the defendant was held for court on first-degree murder or murder generally.
4. Amend Rule 801 (former Rule 352) to require that a copy of the prosecutor's notice of intention to seek death be filed with the AOPC as well as the trial court to facilitate tracking of death-noticed cases.
5. Amend Rule 632 (former Rule 1107) to require retention of the jury questionnaire utilized at trial, which indicates the race and gender of the jurors, for the duration of the defendant's incarceration.
6. Mandate statewide standards for an independent appointment process of selecting capital counsel for all stages of the prosecution, including trial, appeal, and post-conviction hearings. The standards, at a minimum, should incorporate those recommended by the American Bar Association in its *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*.

7. Require that all capital counsel successfully complete, at a minimum, an annual continuing legal educational component specifically focusing on capital representation.
8. Promulgate reasonable minimum compensation standards for capital counsel throughout Pennsylvania and ensure that sufficient resources for experts and investigators are made available to counsel.
9. Require trial courts during *voir dire* in capital cases to explore fully, when requested by either party, views about race held by prospective jurors.
10. Promulgate a rule that allows for reasonable latitude by defense counsel and the Commonwealth to explore all potential sources of racial bias in *voir dire* of prospective capital jurors.
11. Require trial courts to charge capital juries, when requested by either party, that they may not consider the race of the defendant or victim in determining the appropriate sentence for the defendant.
12. Promulgate a rule that should a *prima facie* case of discrimination in the use of peremptory challenges be established, reasons invoked for the exclusion of the juror that do not substantially relate to his or her qualifications, fitness, or bias shall be viewed as presumptively pretextual.
13. Reduce the number of peremptory strikes in capital cases.
14. Promulgate a jury instruction stating “life means life with no possibility of parole” and require that it be given in all capital cases.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Enact a Racial Justice Act, like that of other states, that allows for the admission of evidence of a pattern and practice of disparate treatment in both the prosecutorial decision to seek the death penalty and in sentencing outcomes.
2. Enact a proportionality provision requiring the Supreme Court to review death sentences for proportionality.
3. Create and adequately fund a statewide independent Capital Resource Center, or its equivalent, to assist in, and where local resources are inadequate, undertake the representation of, capital charged defendants and those currently under sentence of death. The assistance and/or representation should extend from arrest through trial and, if the defendant is sentenced to death, through the state and federal appeal and post-conviction process. The Capital Resource Center also should be charged with the responsibility of maintaining court

appointment lists of qualified capital counsel and of overseeing ongoing training programs for capital counsel.

4. Appropriate adequate funds to the Supreme Court for the administration of a comprehensive data collection effort covering all stages of capital litigation.
5. Enact legislation declaring a moratorium on the death penalty until such time as policies and procedures are implemented to ensure that the death penalty is being administered fairly and impartially throughout the Commonwealth.

TO THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS

The Committee recommends that:

1. District attorney's offices adopt written standards and procedures for making decisions about whether to seek the death penalty.
2. The Attorney General empanel a statewide committee of county district attorneys to review each decision by a district attorney to seek the death penalty with the goal of ensuring geographic consistency in the application of the death penalty. The committee's review should commence as soon as possible after each filing of a notice of intention to seek the death penalty, and the result of its review should not be binding. The review committee should include, at a minimum, the Attorney General, the district attorneys of Philadelphia and Allegheny counties and the current president of the Pennsylvania District Attorneys Association, but otherwise be geographically representative of the Commonwealth.

TO THE GOVERNOR OF PENNSYLVANIA

The Committee recommends that the Governor of Pennsylvania:

1. Pursuant to his constitutional authority to grant temporary reprieves, declare a moratorium on the imposition of the death penalty in any case where the defendant's direct appeal has resulted in affirmation by the Supreme Court of Pennsylvania, pending the completion of a study investigating the impact of the race of the defendant, and of the victim, in prosecutorial decisions to seek the death penalty and in death sentencing outcomes. The moratorium should continue until policies and procedures intended to ensure that the death penalty is administered fairly and impartially are implemented.
2. Empanel a special commission to study the impact of the race of the defendant and the victim in prosecutorial decisions to seek the death penalty and in death sentencing outcomes.

7 CIVIL LITIGATION

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Adopt rules and jury instructions to eliminate the use of gender-based and race-based life expectancy or work-life tables in determining future earning capacity.
2. Direct judges to instruct jurors, at the beginning of each case, to refrain from allowing personal racial, ethnic or gender bias to influence their deliberations.
3. Establish a policy that prohibits judges or counsel from using potential racial, ethnic, or gender bias of jurors as a means of influencing settlement negotiations.
4. Direct that a standard jury instruction be drafted and implemented in all types of cases, which prohibits jurors from considering race, gender or ethnic identity when evaluating the credibility of witnesses, experts or litigation parties.
5. Increase diversity on juries throughout the Commonwealth.⁷²
6. Direct that model jury instructions be drafted to address specifically the undervaluation of homemaker services.
7. Commission an empirical study of decided cases in Pennsylvania to determine whether a racial, ethnic or gender disparity in damage awards exists, and to determine the specific factors (e.g., future earnings, evaluation of pain and suffering) that likely account for the disparity, if any.
8. Include programs on the need for fair and equal treatment of litigants in employment discrimination cases at training sessions for judges and court personnel.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Amend the Pennsylvania Human Relations Act to include a right to a jury trial for all discrimination plaintiffs, as is provided to virtually all other plaintiffs in the civil litigation system.
2. Amend the Pennsylvania Human Relations Act to include a right to reasonable attorney's fees to plaintiffs who are prevailing parties.
3. Appropriate funding for the Pennsylvania Human Relations Commission at a level to permit substantive investigation of all claims.

⁶⁷ Id. at 766.

⁶⁸ Lynn Hecht Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, Trial Magazine, February 1990, p. 30–32.

⁶⁹ *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 88 S. Ct. 964 (1968).

⁷⁰ For example, in *Haynes v. Rhone-Poulenc, Inc.*, 206 W.Va. 18, 521 S.E. 2d 33 (1999), the Supreme Court of Appeals of West Virginia interpreted identical language in that state’s statutory counterpart to the PHRA, the West Virginia Human Rights Act, W.Va. Code, 5-11-13(c), as permitting an award of punitive damages to a successful plaintiff under that Act. Similarly, in *Perilli v. The Board of Education Monongalia County*, 182 W. Va. 261, 387 S.E. 2d 315 (1989), the Supreme Court of Appeals of West Virginia construed the same act, the West Virginia Human Rights Act, W. Va. Code, 5-11-13 as providing a right to a jury trial, reasoning that the language of the statute did not prohibit a jury trial and that the plaintiff’s sexual discrimination claim was “a species of personal injury akin to tort.”

⁷¹ See Chapter 2 of this report on Racial and Ethnic Bias in Jury Selection for a more extensive discussion of jury diversity.

⁷² *Id.*

8

EMPLOYMENT AND APPOINTMENT PRACTICES OF THE COURTS

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Direct court administrators to devise a statewide method of collecting data on the racial, ethnic, and gender composition of the court workforce.
2. Direct each court administrator to analyze the data collected pursuant to Recommendation Number 1 and submit to the Court a standardized written annual report of findings.⁶²
3. Establish as a goal increased opportunities for women and minorities to receive judicial appointments and employment with the courts.⁶³
4. Create a training session for judges and court administrators on the responsibilities of the court in personnel matters.
5. Implement the resolution drafted by the Pennsylvania Bar Association in 1994 for a voluntary check-off identifying the gender of lawyers admitted to practice in Pennsylvania, and expand it to include race and ethnicity so as to ensure adequate data collection.
6. Increase opportunities for promotion of minority and female judges and lawyers into more responsible positions and policymaking assignments.

TO BAR ASSOCIATIONS

The Committee recommends that county bar associations:

1. Ensure adequate female and minority representation on judicial evaluation committees.

TO THE AOPC AND COUNTY COURT PERSONNEL OFFICES

The Committee recommends that the AOPC and county court personnel offices:

1. Review all job descriptions to ensure that they are gender-neutral.
2. Make specific efforts to increase the number of women and minorities holding highly paid, high-status jobs within the court system.
3. Develop written policies for promotion; discipline; training; annual, sick and disability leaves; part-time and flex-time arrangements; and job sharing. Seek ways to ensure the objective, consistent application of such policies.

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- ⁵¹ Testimony at the various hearings conducted throughout the state also identified other appointed positions: guardians, trustees, interpreters, experts, and court reporters.
- ⁵² The Honorable Stanton Wettick of the Allegheny County Court of Common Pleas, the Honorable Joseph Del Sole of the Pennsylvania Superior Court, Commonwealth Court Executive Administrator Ronald Darlington, and Superior Court Executive Administrator Mitchell Gruner were among those interviewed by Work Group members.
- ⁵³ The Committee extends its gratitude to Paul Kuntz, court administrator of Westmoreland County, who not only provided assistance in the development of the survey, but also worked closely with the other court administrators to assure that it was properly completed and returned.
- ⁵⁴ When the Committee sent the survey to the court administrator or president judge of each county, the respondents expanded the categories by identifying other court appointed positions: education counselors, juvenile masters, and per diem clerks.
- ⁵⁵ John Carroll, dean of Cumberland Law School at Stamford University in Birmingham, AL.
- ⁵⁶ Data sheet, Allegheny County Court Administrator's office, *Court Appointed Counsel, January–December 2000*, attached in Appendix Vol. II.
- ⁵⁷ Testimony of Honorable Nelson A. Diaz, Philadelphia Public Hearing Transcript, pp. 34–36.
- ⁵⁸ *Id.* at 44–45.
- ⁵⁹ Testimony of Felipe Restrepo, Harrisburg Public Hearing Transcript, pp. 84–85.
- ⁶⁰ Testimony of Shelley Pagac, Pittsburgh Public Hearing Transcript, p.187.
- ⁶¹ Testimony of Larry Frankel, Philadelphia Public Hearing Transcript, p. 250.
- ⁶² A standardized listing of job classifications and method of collecting data is critical to the system. The format of such reporting should be created by the AOPC. The purpose of this reporting should be to create a profile of the racial, ethnic, and gender composition of the workforce and any trends that have emerged. In particular, an analysis of this data, when received, should include promotion patterns for higher level positions, career development, training, discipline, tracking of employee complaints, performance evaluations, applicant pool tracking (applicants, interviewees, and final hires), and salary comparisons. The establishment of a unified personnel tracking database will be invaluable for forecasting purposes, budgetary preparation, employee deployment, measuring attrition, determining the workforce profile in each of the counties, and tracking staff training hours and expenditures. The analysis should also indicate the degree to which men and women are hired into these positions from both internal and external applicant pools.
- ⁶³ Specifically, the Committee recommends the following process for handling court employment and appointments:
- a. The courts should publicly solicit applications for court appointments and permanent jobs from all groups including females and minorities, and should specifically identify the necessary criteria. The administrative office of the New Jersey court system has an excellent program for seeking minority candidates for judicial clerkships that could be replicated by the AOPC;
 - b. Those applicants who meet the criteria for appointments and permanent employment should be placed on a list maintained either by the entire court or by the individual judges. The list should be used to make court appointments and fill permanent job openings within the system; and
 - c. Care should be taken that appointments and permanent hiring from this list should be made or offered equitably, such as on a rotating basis.

9 PERCEPTIONS AND OCCURRENCES OF RACIAL, ETHNIC, AND GENDER BIAS IN THE COURTROOM

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Ensure that an effective and impartial grievance procedure,²⁷⁵ that takes into account the confidentiality needs of the grievant, be available to any person participating in the court system of the Commonwealth who believes that he or she has experienced unfair treatment because of racial, ethnic, or gender biased speech or conduct on the part of a judicial officer, officer of the court, or court employee.
2. Direct that judicial officers adopt and maintain a policy of zero tolerance for racial, ethnic, and gender bias in their courtrooms. In order to assist judicial officers in reaching this goal, the following steps should be taken:
 - all judicial officers should receive periodic mandatory training on the issues surrounding racial, ethnic, and gender bias, including:
 - civility within the courtroom;
 - cultural diversity and its effect upon treatment in the court system;
 - what constitutes, or can be perceived to constitute racial-, ethnic-, and gender-biased language and conduct;
 - the effect of racial, ethnic, and gender biases upon determinations of credibility and competence; and
 - the racial, ethnic, and gender stereotypes and cultural impediments that inhibit minorities, persons of varying ethnic backgrounds, and women from having confidence in, and utilizing, the Commonwealth’s judicial system.
 - a handbook should be developed and distributed to every courtroom in the Commonwealth setting forth conduct that is objectionable and suggesting appropriate forms of speech. (A similar type of handbook developed by the Supreme Court of Texas Gender Fairness Task Force may be replicated for use in Pennsylvania.)
3. Require that all Pennsylvania attorneys receive training concerning the effects of racial, ethnic, and gender bias within the legal system as part of their continuing mandatory legal ethics education requirement. The subject matter of this training should include topics such as those set forth above in *Recommendation for the Pennsylvania Supreme Court*, Number 2.

4. Direct that all court employees receive training concerning the effects of racial, ethnic, and gender bias within the legal system. The subject matter of this training should include topics such as those set forth above in *Recommendation for the Pennsylvania Supreme Court, Number 2*.
5. Examine and modify, where necessary, and in a manner consistent with the provisions of the First Amendment, all relevant ethical and civility codes to state clearly that racial, ethnic, and gender-biased speech and conduct are violations of these codes. The Committee's recommended codes of conduct were set forth previously in this chapter.
6. Direct that the judiciary take all necessary steps to enlarge minority representation on juries, in accordance with the recommendations enumerated in Chapter 2.

TO BAR ASSOCIATIONS

The Committee recommends that bar associations:

1. Establish and implement policies and procedures for encouraging minorities and women to seek and obtain positions as judicial officers.
2. Cooperate with the Supreme Court in establishing and maintaining a confidential grievance procedure available to any person who believes he or she has been the recipient of racial-, ethnic-, or gender-biased speech or conduct by an attorney.
3. Initiate and maintain a "mentoring" system for law school graduates and those attorneys recently admitted to the bar, with special attention directed toward minority and female attorneys, whereby those attorneys seeking mentors are paired with a more experienced attorney.

TO LAW SCHOOLS

The Committee recommends that all Pennsylvania law schools:

1. Educate students about the effects of racial, ethnic, and gender bias within the legal system as part of their obligation to provide legal ethics education. The subject matter of this educational information should include topics such as those set forth above in *Recommendation for the Pennsylvania Supreme Court, Number 2*.

2. Provide opportunities for law school faculty to become better informed about the effects of racial, ethnic, and gender bias in their teaching and in the legal educational environment, and to consider ways of better educating students about the effects of bias in the legal process.
3. Affirmatively recruit men and women of color, as faculty and students, and offer mentoring networks for enrolled students.

TO LAW ENFORCEMENT AGENCIES

The Committee recommends that law enforcement agencies:

1. Provide training to law enforcement officers and agents concerning the effect of racial, ethnic, and gender bias within the law enforcement and legal systems. The subject matter of this training should include topics such as those set forth above in *Recommendation for the Pennsylvania Supreme Court*, Number 2. Additional relevant information should also be presented concerning bias within the context of investigative, detention, and arrest practices and procedures employed by law enforcement agents with regard to racial and ethnic minorities.
2. Establish and maintain an effective and impartial grievance procedure available to any person who believes he or she has been the recipient of racial-, ethnic-, or gender-biased speech or conduct by any law enforcement official or employee of a law enforcement agency. Information concerning the grievance procedure should be clearly set forth and prominently displayed at all law enforcement offices and other appropriate venues.

²⁷⁴ The Committee to Promote Fairness in the Legal System of the Philadelphia Bar Association was established in 1999.

²⁷⁵ The Committee recognizes that there may be existing effective procedures in place in some counties that address these concerns. Significantly, procedures that are in place in Allegheny County and Philadelphia rely principally on an informal resolution process that is possible because of the voluntary collaborative work of well-respected judges and lawyers who are able to communicate with both judicial officers and court participants. The Code of Judicial Conduct, as well as the Code of Civility, also includes provisions that may subject judicial officers to sanctions for some kinds of conduct evidencing bias. The Committee believes that there is value in having procedures in place and available to all participants in the judicial system that can address informally and, when necessary, more formally, a broad array of bias-related conduct and speech that can adversely affect the experiences of the participants. The procedures should have an education component so that participants are informed about the opportunities and procedures for grieving and resolving perceived bias. It is also important for data to be collected centrally to better inform the courts about the prevalence of experiences and perceptions of bias.

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DOMESTIC VIOLENCE

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Require periodic training about domestic violence issues for persons involved with domestic violence cases, including judges, district justices, masters, court administrators, and other court personnel.⁷⁶
2. Require the establishment of uniform statewide requirements for all county courts concerning the processing of domestic violence cases. It is recommended that these requirements include the following:
 - Establish a physically safe environment for survivors within each courthouse where they can proceed with their legal actions free of interference from the defendant;
 - Establish a simplified and accessible system for the filing of *pro se* domestic violence complaints; and
 - Allot sufficient time and personnel on a weekly basis for the court of each county to hear PFA petitions, establish temporary orders, and hold final hearings and additional hearings, as necessary, concerning violations of previous orders.
3. Direct all courts in the Commonwealth with jurisdiction to hear cases filed pursuant to the PFA Act to adopt the following two policies:
 - Mediation should not be used to resolve any issue with respect to the issuance of an order of protection, including custody, visitation, or support issues, unless the petitioner is represented by counsel and consents; and
 - Mutual protection orders should not be issued unless both parties have filed a PFA petition and the court makes specific findings of fact that each party against whom an order is issued has engaged in behavior sought to be prevented by the PFA petition.
4. Direct the AOPC to collect and annually analyze statewide data regarding the type of relief entered in final PFA orders, violations of PFA orders as reported to or by police, and the types of criminal resolution in PFA cases.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Modify Title 23 of the Pennsylvania Consolidated Statutes to permit domestic violence advocates to accompany their clients to court in any proceeding under that Title.
2. Review current Pennsylvania custody, child endangerment, child protection, and domestic violence laws with consideration for the survivor's safety, and resolve any existing conflicts.
3. Conform Pennsylvania weapons laws with federal law, which prohibits the acquisition or retention of weapons by perpetrators of abuse.
4. Authorize further study on the need for additional shelters, "safe" visitation centers, additional advocacy organizations, and interpreter services for non-English speaking litigants within each county, and, if warranted, appropriate additional funds to meet those needs.
5. Appropriate funds for community education concerning domestic violence.

TO LAW ENFORCEMENT AGENCIES

The Committee recommends that law enforcement agencies:

1. Provide appropriate training to all agents or officers concerning domestic violence. The training should be similar to that provided to the judiciary and court personnel set forth in *Recommendations for the Supreme Court*, Number 1, of this chapter, but should also emphasize the critical role played by law enforcement agencies in the enforcement of PFA orders.
2. Develop and implement appropriate investigation procedures and sanctions to address instances in which law enforcement officials are personally involved in domestic violence crimes.

TO BAR ASSOCIATIONS

The Committee recommends that county bar associations:

1. Establish committees to study, develop and maintain *pro bono* programs that include the provision of legal services to PFA petitioners, with appropriate training for attorneys representing domestic violence survivors.
2. Review and comment on legislation affecting domestic violence survivors and evaluate court procedures and practices that affect domestic violence survivors.
3. Take an active role in ensuring that the topic of domestic violence is appropriately integrated into continuing legal education courses.

TO COUNTY ADMINISTRATORS AND MANAGERS

The Committee recommends that county administrators and managers:

1. Establish domestic violence task forces that might include a representative from that county's law enforcement agency; civil, criminal, and administrative representatives from the court system; a representative from a domestic violence advocacy program; lawyers knowledgeable about domestic violence; and concerned citizens. The task forces should be responsible for assessing the status of enforcement efforts, coordinating information by and among the respective agencies, proposing and implementing training, and establishing procedures for more streamlined and less burdensome processes for accessing the judicial system.

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- ⁵⁵ Coleman Testimony, *supra* at 116.
- ⁵⁶ 23 Pa. Cons. Stat. Ann. § 6108(a)(4)
- ⁵⁷ Bloom Testimony, *supra* at 161–162.
- ⁵⁸ American Psychological Association Presidential Task Force on Violence and the Family, *Violence and the Family* 40 (1996) [hereinafter APA Report].
- ⁵⁹ Susan Schechter and Jeffrey L. Edleson, *In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies*, briefing paper prepared for the conference Domestic Violence and Child Welfare: Integrating Policy and Practice for Families, 1994. *See also* Dubin Written Testimony, *supra* at 10–11.
- ⁶⁰ Bittner Testimony, *supra* at 93; Coleman Testimony, *supra* at 122.
- ⁶¹ Coleman Testimony *supra* at 121–123.
- ⁶² APA Report, *supra*.
- ⁶³ Donahue Testimony, *supra* at 8.
- ⁶⁴ *Id.* at 5–6.
- ⁶⁵ Lopez Testimony, *supra* at 22.
- ⁶⁶ *Fonner v. Fonner*, 731 A.2d 160 (1999); *Dye v. McCoy*, 423 Pa. Super. 334, 621 A.2d 144 (1993); *Snyder v. Snyder*, 427 Pa. Super. 494, 629 A.2d 977 (1993).
- ⁶⁷ *Commonwealth v. Snell*, ___ Pa. Super. ___, 737 A. 2d 1232 (1999).
- ⁶⁸ The Gender Bias Task Force of Texas Final Report, p.72 (1994) [hereinafter Texas Report].
- ⁶⁹ The Report of the Gender Bias Study of the Supreme Judicial Court, Commonwealth of Massachusetts, p. 80 (1989) [hereinafter Massachusetts Report].
- ⁷⁰ Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, p. 138 (1997).
- ⁷¹ Massachusetts Report, *supra* at 90.
- ⁷² A Massachusetts civil abuse statute prohibits the awarding of temporary custody or visitation to batterers.
- ⁷³ Texas Report, *supra* at 68.
- ⁷⁴ Report of the New York Task Force on Women in the Court, *Fordham Urban Law Journal*, Vol. XV, Number 1 (1986–1987), p. 46.
- ⁷⁵ Massachusetts Report, *supra* at 92.
- ⁷⁶ The training should include but not be limited to:
- a. the dynamics of domestic violence;
 - b. the psychological characteristics of abusers and survivors;
 - c. the impact of domestic violence on children and basic child development;
 - d. the racial stereotypes and cultural impediments that may inhibit minorities and persons of various ethnic backgrounds from coming forward or proceeding with domestic violence cases;
 - e. the procedural and substantive laws that affect the processing, implementation, and enforcement of PFA orders in domestic violence cases;
 - f. the availability of advocacy programs, shelters, and other related social services agencies for persons who have experienced domestic violence; and
 - g. related state and federal laws concerning weapons, custody, spousal and child support, advocacy, confidentiality, and criminal offenses.

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SEXUAL ASSAULT

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Establish a program of education⁵³ for the judiciary, on the subject of crimes of sexual assault and rape.
2. Require periodic training⁵⁴ for all court personnel on the nature of the crimes of rape and sexual assault. The training should be directed toward court administrators, clerks, and others whose duties bring them into contact with survivors of rape and sexual assault.
3. Require trial courts to devise and implement guidelines for ensuring that sexual assault and rape cases are effectively managed. Such guidelines should address:
 - The impact that granting multiple continuances in rape and sexual assault cases has upon survivors;
 - Providing more opportunities for survivors to make statements at sentencing; and
 - Protecting the mental and physical well-being of survivors by providing a comfortable, safe environment within the courthouse. This room or space should be located in a secure area separate from the defendant and his or her family.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Enact legislation enabling sexual assault survivors to obtain civil protection orders.

TO DISTRICT ATTORNEYS

The Committee recommends that district attorney's offices:

1. Provide educational programs for prosecutors handling cases involving rape or sexual assault survivors, similar to the education programs recommended above for court personnel. Prosecutors should also receive training that helps them to better understand survivors' fears of the court process and the effect that multiple interviews and continuances have upon survivors' emotional well-being.
2. Provide oversight that ensures that acquaintance rape and sexual assault cases are prosecuted with the same vigor as stranger rape and sexual assault cases.

3. Coordinate with and make use of sexual assault forensic examiners in rape cases.⁵⁵
4. Routinely inform a sexual assault advocate/counselor when a sexual assault case is initiated and support each survivor's request to have an advocate attend all court appearances with the survivor.
5. Promote the use of and coordinate efforts with sexual assault response teams (SART), which are multidisciplinary teams that support survivors throughout the investigation and trial process.
6. Whenever possible, implement vertical prosecution of sexual assault cases.

TO BAR ASSOCIATIONS

The Committee recommends that the Pennsylvania Bar Association and/or county bar associations:

1. Incorporate representation of sexual assault survivors' civil legal needs into *pro bono* programs.
2. Provide programs to members of the bar and the law enforcement community addressing the issue of sexual violence.
3. Offer continuing legal education courses for attorneys that include the same information on rape, sexual assault, and related legal issues as addressed in the education programs for court personnel.

TO LAW ENFORCEMENT OFFICES/AGENCIES

The Committee recommends that law enforcement offices and agencies:

1. Provide education for law enforcement officers regarding the nature of the crimes of rape and sexual assault, similar to the education programs recommended above for court personnel and district attorneys.
2. Provide survivors with interpreters who are sensitive to ethnic and cultural issues and the emotional needs of sexual assault survivors at all stages of the investigation.
3. Make efforts to reduce the number of interviews that survivors are subjected to during the investigation and trial.
4. Investigate acquaintance rape and sexual assault cases with the same vigor as stranger rape and sexual assault cases.
5. Provide survivors with information on the availability of special assistance programs.
6. Work with a sexual assault response team.

“Forcible compulsion” is defined at 18 Pa. Cons. Stat. Ann. § 3101 as compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during, or after sexual intercourse.

⁴⁰ *Commonwealth v. Berkowitz*, 415 Pa. Super. 505, 519, 609 A.2d 1338, 1345 n.5 (1992) *vacated in part on other grounds*, 537 Pa. Super 143, 641 A. 2d 1161 (1994).

⁴¹ Brief for Amici Curiae in *Commonwealth v. Fischer*, filed by The Women’s Law Project, Pennsylvania Coalition Against Rape, et al. In Support of Appellee, filed October 22, 1999, p. 15.

⁴² Summary of Michigan’s 1989 Gender Report *The Court’s Response to Violence Against Women*, p. 114.

⁴³ Final Report Colorado Supreme Court Task Force on Gender Bias in the Courts, p. 90 (1990).

⁴⁴ The Gender Bias Task Force of Texas Final Report, p. 82 (1994) [hereinafter Texas Report].

⁴⁵ The Final Report of the Washington State Task Force on Gender & Justice in the Courts, p. 39 (1989) [hereinafter Washington Report].

⁴⁶ CALCASA Report, *supra* at 16.

⁴⁷ Nebraska Supreme Court Task Force on Gender Fairness in the Courts Final Report, p. 60 (1994) [hereinafter Nebraska Report].

⁴⁸ Texas Report, *supra* at 83.

⁴⁹ Washington Report, *supra* at 43.

⁵⁰ Report of the Gender Bias Study of the Supreme Judicial Court, Commonwealth of Massachusetts, p. 100 (1989) [hereinafter Massachusetts Report].

⁵¹ Nebraska Report, *supra* at 61.

⁵² Sources consulted for this review included: CALCASA Report, *supra*; Massachusetts Report, *supra*; Nebraska Report, *supra*; Texas Report, *supra*; and Washington Report, *supra*.

⁵³ This program should include:

- a. Training sessions that emphasize hypothetical situations regarding bail conditions, motions *in limine*, jury instructions, and sentencing; followed by a discussion;
- b. Use of materials developed by The National Judicial Education Program for the seminar “Understanding Sexual Violence: The Judicial Response to Stranger and Non-Stranger Rape and Sexual Assault”;
- c. Education regarding the nature of the crime of rape, the psychology of offenders, the prevalence of and seriousness of acquaintance rape, rape trauma syndrome, child sexual assault and delayed reporting, drug facilitated sexual assault, racial stereotypes and cultural impediments to reporting, and the long-term psychological injury to rape survivors;
- d. Training and sensitizing judges to the difference between vigorous cross-examination that protects the defendant’s rights and questioning that includes improper sex stereotyping and harassment of the survivor; and
- e. Training on the Survivor Bill of Rights.

⁵⁴ The training should include such topics as the psychology of offenders, the prevalence of and seriousness of acquaintance rape, rape trauma syndrome, child sexual assault and delayed reporting, drug-facilitated sexual assault, racial stereotypes and cultural impediments to reporting, and the long-term psychological injury to rape survivors.

⁵⁵ Such examiners are specially trained registered nurses or physicians who provide comprehensive care, timely collection of forensic evidence, and testimony in sexual assault cases.

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FAMILY LAW

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Establish a statewide uniform family law system, with procedural rules governing the management, processing, and procedures for family law cases from inception through conclusion.¹⁹⁵
2. Establish uniform requirements for courts regarding family and dependency cases, including a system for the dissemination of public information in oral, written, and telephonic form about the availability of interpreters, court procedures for all areas of family law, substantive and procedural laws and rights, the availability of *in forma pauperis* status, the availability of *pro bono* counsel, and other appropriate legal and social services.
3. Order the reallocation of existing judicial resources to increase the proportion of judges assigned to hear family law cases.
4. Require opinions from the trial judge, master, or hearing officer that explain the basis for decisions concerning custody, alimony, child support, and equitable distribution.
5. Direct court administrators to establish a scheduling system that provides judges with sufficient time necessary to hear family cases. To the extent possible, cases should be completed in one scheduled hearing and decisions should be rendered in a timely fashion, in order to avoid repeated court appearances by the parties.
6. Establish a more effective and less expensive system for litigants to enforce support, custody, and alimony orders.
7. Require court-appointed attorneys and court personnel appearing in dependency court to attend training sessions.¹⁹⁶
8. Establish guidelines for maximum caseloads for guardians *ad litem* and court-appointed attorneys in dependency cases, and for adequate compensation to permit guardians *ad litem* and court-appointed attorneys to perform their jobs in a competent manner.
9. Establish clear procedures for processing bias complaints against family law masters.¹⁹⁷

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Allocate sufficient funds to study and develop a Family Court Reform Model System effectuating the proposed statewide family law system set forth in *Recommendations for the Pennsylvania Supreme Court*, Number 2.
2. Allocate sufficient funds so that courts can physically accommodate all family and dependency litigants.
3. Allocate sufficient funds for legal aid and other *pro bono* organizations to adequately address the needs of low-income family law litigants.
4. Modify the alimony section of the Divorce Code to further define the appropriate circumstances under which alimony should be awarded, and to provide meaningful and uniform guidelines regarding the amount and duration of the alimony award.
5. Allocate additional court funds to hire personnel necessary to process family and dependency cases.

TO BAR ASSOCIATIONS

The Committee recommends that bar associations:

1. Work with the Supreme Court and citizen groups to establish educational programs for the general public on substantive and procedural rights and responsibilities in family and dependency law.

TO COURT ADMINISTRATORS AND MANAGERS

The Committee recommends that court administrators and managers:

1. Study and recommend to the Court appropriate changes in local family law and juvenile court facilities to establish a family and juvenile court infrastructure of sufficient size for effective, safe, and efficient accommodation of all family law litigants, witnesses, and related personnel.¹⁹⁸
2. Study methods of enhancing the dependency system in each county and submit proposals for federal funds to implement these improvements, as permitted pursuant to the Federal Strengthening Abuse and Neglect Courts Act of 2000, Public Law 106-314.

3. Study and recommend to the Court standards for all family and dependency court cases that address the following procedural issues:
 - the timely advance notice to all parties concerning scheduling changes;
 - the accurate and complete transcription of all proceedings;
 - the presence of a judge, hearing officer, or master for every hearing;
 - the allocation of sufficient time for full presentation of evidence and examination of witnesses at every hearing; and
 - the allocation of sufficient time for the hearing of all cases scheduled on any given day.
4. Establish a system to disseminate information between the family and juvenile sections of each court in a timely and appropriate manner, in order to facilitate consolidation of dependency, custody and/or support issues, as may be appropriate.

TO THE DEPARTMENT OF PUBLIC WELFARE, AND
CHILDREN, YOUTH AND FAMILY SERVICES PROGRAMS

The Committee recommends that the Department of Public Welfare and Children, Youth and Family Services Programs:

1. Establish and improve ongoing training for all appropriate social services personnel, similar to that required for court-appointed attorneys and court personnel who are involved in dependency proceedings.¹⁹⁹
2. Develop methods of enhancing the delivery of services in each county and submit proposals for funding of those improvements, pursuant to the Federal Strengthening Abuse and Neglect Courts Act of 2000, Public Law 106-314.

¹⁸³ New York State Judicial Commission, *supra* at 35.

¹⁸⁴ New York Task Force Report, *supra* at 99.

¹⁸⁵ *Id.* at 98.

¹⁸⁶ *Id.* at 69.

¹⁸⁷ As of the date of the issuance of this report, Texas did not permit the entry of an award for alimony. Texas Report, *supra* at 45.

¹⁸⁸ Achieving Equal Justice for Women and Men in the California Courts: Final Report (1996), p. 7.

¹⁸⁹ *Id.* at 9.

¹⁹⁰ *Id.*

¹⁹¹ Oregon Report, *supra* at 52.

¹⁹² *Id.* at 56.

¹⁹³ Cohen Testimony, *supra* at 63.

¹⁹⁴ Washington State Report, *supra* at 55.

¹⁹⁵ Under this system, the Committee recommends the adoption of the following procedures/requirements:

- a. the establishment of one judge/adjudication unit per family;
- b. a uniform case management system that evaluates and assigns cases based upon their complexity, and provides for continuing periodic review to assess ongoing needs, scheduling, and other relevant issues; and
- c. the implementation of training for all affected personnel concerning the requirements and responsibilities under this new system.

We note that on December 17, 2002, the Supreme Court of Pennsylvania announced a pilot program to ease and expedite family court matters.

¹⁹⁶ The training should include the following topics:

- a. their responsibilities under the Juvenile Act;
- b. the special issues surrounding children as clients and witnesses;
- c. the availability of social services and other institutions and agencies designed to meet the needs of dependent children and their families; and
- d. the interplay between the relevant state, federal, Department of Public Welfare and Children, and Youth and Family Services laws and regulations.

¹⁹⁷ Master are not covered in the judicial discipline system established by the 1993 Constitutional Amendment.

¹⁹⁸ These facilities should reflect the same status and dignity granted to other legal facilities in that county. In establishing the facilities, planners should take into consideration the needs of the family law populace, including accessibility to public and other transportation, hours of availability and need for on-site childcare.

¹⁹⁹ The training should include these topics:

- a. their requirements and responsibilities under the Juvenile Act;
- b. the special issues surrounding children as clients and witnesses;
- c. the availability of legal programs and other social services designed to meet the needs of dependent children and their families;
- d. the interplay between the relevant state, federal, Department of Public Welfare and Children, and Youth and Family Services laws and regulations; and
- e. diversity and cultural sensitivity training, including race, ethnicity, gender, and socioeconomic class issues.

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RACIAL, ETHNIC, AND GENDER BIAS IN THE JUVENILE JUSTICE SYSTEM

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RECOMMENDATIONS

The following recommendations are designed to address the problems of both female and minority youth in the Pennsylvania juvenile justice system.

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Include programs on the impact of race, ethnicity, and gender disparities in the juvenile justice system at training sessions for attorneys who practice in juvenile court, judges, and court personnel, including probation officers.
2. Establish guidelines for maximum caseloads for public defenders and district attorneys in juvenile court, consistent with the National Advisory Commission standards.
3. Direct county juvenile court judges, juvenile court administrators, and probation staff to work together with the Pennsylvania Commission on Crime and Delinquency (PCCD) to develop risk assessment instruments¹¹⁴ for secure detention. Such instruments have been effective in other jurisdictions around the country in reducing disproportionate minority confinement in secure detention facilities.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Allocate sufficient funds to the Court and/or the Juvenile Court Judges Commission to promote the establishment of specialized probation units to work specifically with female offenders, to promote the establishment of mentoring programs for youth returning from placement, and to promote effective aftercare probation services.

TO THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

The Committee recommends that the Department of Public Welfare (DPW):

1. Assess the needs of female offenders in the juvenile justice system to determine specifically what resources and treatment options are necessary to meet their specialized needs.
2. In fulfilling its obligation to approve county children and youth budgets that are consistent with DPW regulations and “needs-based” budget guidelines, work with county children and youth agencies to ensure that current regulations providing for the use of community-based alternatives and resources, in-home services, and reduction of institutional placements effectively address the special needs of young women and minorities in the juvenile justice system. Limit the inappropriate use of secure detention for young women and minorities in the absence of suitable alternatives and resources, and, consistent with public safety, encourage the diversion of young women in particular, who are more frequently charged with status and other public order offenses, into the dependency system where that system can better serve their needs, or to other community-based resources.

TO COUNTY CHILDREN AND YOUTH AGENCIES/JUVENILE COURT ADMINISTRATORS

The Committee recommends that county children and youth agencies and juvenile court administrators:

1. Provide mentoring programs for juveniles returning from placement.
2. Ensure racial, ethnic, gender, and cultural diversity among their staffs.
3. Work closely with local school districts to promote successful transitions for adjudicated youth from placement back to their regular schools.
4. Work together to promote and develop an integrated system of care for at-risk and delinquent females and their families, based on their competencies and needs; to reevaluate risk and other assessment instruments for their gender, racial, and ethnic sensitivity; to recommend alternatives that more adequately identify the competencies and needs of at-risk and delinquent females; and promote and develop alternatives to institutional placement to help reduce the overrepresentation of minorities in public and private juvenile correctional facilities.

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- ⁸⁴ *Id.* at 106–107.
- ⁸⁵ Testimony of Daniel Elby, Harrisburg Public Hearing Transcript, p. 71 [hereinafter Elby Testimony].
- ⁸⁶ *Id.* at 72.
- ⁸⁷ Testimony of Malik Aziz, Philadelphia Public Hearing Transcript, p. 229.
- ⁸⁸ *Id.* at 231.
- ⁸⁹ Gamble Testimony, *supra* at 110.
- ⁹⁰ Hurst Testimony, *supra* at 134.
- ⁹¹ Elby Testimony, *supra* at 74–75.
- ⁹² Ciavarella Testimony, *supra* at 224–226.
- ⁹³ *Id.* at 224.
- ⁹⁴ *Id.* at 225–226.
- ⁹⁵ Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, January 1997, p. 167.
- ⁹⁶ *Id.* at 156.
- ⁹⁷ *Id.* at 166–167.
- ⁹⁸ The Massachusetts Gender Bias Study of the Court System, 1989, p. 6.
- ⁹⁹ *Id.*
- ¹⁰⁰ *Id.*
- ¹⁰¹ *Id.*
- ¹⁰² *Id.* at 8.
- ¹⁰³ The Report of the Ohio Commission on Racial Fairness, 1999, p. 49.
- ¹⁰⁴ *Id.* at 50.
- ¹⁰⁵ *Id.*
- ¹⁰⁶ *Id.* at 49.
- ¹⁰⁷ *Id.* at 53–55.
- ¹⁰⁸ The New Jersey Supreme Court Task Force on Minority Concerns, 1992, p. 144–145.
- ¹⁰⁹ *Id.* at 170–171.
- ¹¹⁰ *Id.* at 23.
- ¹¹¹ *Id.* at 24.
- ¹¹² The Connecticut Office of Policy Management: An Assessment of Minority Overrepresentation in Connecticut’s Juvenile Justice System, p. 60 (1995).
- ¹¹³ *Id.* at 61.
- ¹¹⁴ A “risk assessment tool” sets forth measures or criteria to identify risk factors in juveniles that make them appropriate or inappropriate candidates for secure detention. Such tools are typically used by intake workers and judges in the juvenile system to assist in making decisions on whether to hold or release juveniles before trial. It has been shown in other jurisdictions that such gatekeeping instruments reduce not only the overall population in juvenile facilities but in particular, the minority population in those facilities.

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THE INTERSECTION OF RACIAL AND GENDER BIAS

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RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Direct the AOPC to collect data and research on the status of women of color contrasted with white women and all men in the justice system, focusing on salary levels, hiring, and promotion practices.
2. Consistent with Recommendations for the Supreme Court of Pennsylvania in Chapter 8, ensure that selections for positions and pay scales for all court personnel are merit-based.

TO BAR ASSOCIATIONS

The Committee recommends that bar associations:

1. Conduct educational programs about the existence of cultural, racial, ethnic, and gender bias in the Pennsylvania justice system and the negative impact this bias has on women of color in the justice system in particular.
2. Appoint a special committee or division devoted to addressing the particular issues faced by women of color who are attorneys and judges. Establish a mentor or support network for these women.
3. Include more women of color in the planning of future conferences and reports on bias in the justice system.

TO LAW SCHOOLS

The Committee recommends that law schools:

1. Affirmatively recruit more women of color as students and faculty, and offer mentor networks for enrolled women of color.⁷⁷
2. Provide opportunities for law faculty to become better informed about the effects of racial, ethnic, and gender bias in their teaching and in the legal education environment, and to consider ways of better educating students about the effects of bias in the legal decision-making process.

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- ⁵³ *Id.* at 1548.
- ⁵⁴ *Id.*
- ⁵⁵ *Id.* at 1552.
- ⁵⁶ *Id.* at 1557.
- ⁵⁷ *Id.*
- ⁵⁸ The Melior Group/V. Kramer & Associates, Racial Roundtable Discussion, Philadelphia Court Employees Transcript, p. 35, attached in Appendix Vol. III [hereinafter Melior Group Racial Philadelphia Court Employees Transcript].
- ⁵⁹ The Melior Group/V. Kramer & Associates, Final Report on Perceptions and Occurrences of Racial Bias in the Courtroom, Court Personnel, p. 1 (2001), attached in Appendix Vol. III [hereinafter Melior Group Racial Bias Court Personnel Report].
- ⁶⁰ Melior Group Racial Philadelphia Court Employees Transcript, *supra* at 6.
- ⁶¹ Melior Group Racial Bias Court Personnel Report, *supra* at 1.
- ⁶² See Chapter 9 of this report, Perceptions and Occurrences of Racial, Ethnic, and Gender Bias in the Courtroom.
- ⁶³ Vandiver Testimony, *supra* at 194–195.
- ⁶⁴ See Chapter 1 of this report, Litigants with Limited English Proficiency; see also Testimony of Caren Bloom, State College Public Hearing Transcript, p. 167.
- ⁶⁵ See Chapter 10 of this report, Domestic Violence.
- ⁶⁶ The Melior Group/V. Kramer & Associates, Final Report on Perceptions and Occurrences of Racial Bias in the Courtroom, p. 5 (2001), attached in Appendix Vol. III [hereinafter Melior Group Racial Bias Report].
- ⁶⁷ *Id.*; see also Chapter 10 of this report, Domestic Violence.
- ⁶⁸ Melior Group Racial Bias Report, *supra* at 4–5.
- ⁶⁹ Report of the New York Task Force on Women in the Courts, 15 Fordham Urb. L.J. 123 [hereinafter New York Report].
- ⁷⁰ Vandiver Testimony, *supra* at 200.
- ⁷¹ Melior Group Gender Bias Report, *supra* at 2.
- ⁷² Testimony of Jacqueline Mae Johnson, Erie Public Hearing Transcript, pp. 56–57 [hereinafter Johnson Testimony]; See also Chapter 10 of this report, Domestic Violence, on the particular concerns of African American women about subjecting African American men to the justice system.
- ⁷³ Johnson Testimony, *supra* at 57.
- ⁷⁴ New York Report, *supra* at 123.
- ⁷⁵ Oregon Report, *supra* at 20.
- ⁷⁶ Caldwell, *supra*, at 372.
- ⁷⁷ The Committee understands that greater efforts must be undertaken to increase the declining number of men of color in law schools.