

FINAL REPORT

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



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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

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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.