University of Richmond Law Review

Volume 32 | Issue 3 Article 13

1998

# D.C. Circuit: Study of Gender, Race, and Ethnic Bias

John Garrett Penn

Matthew J. DeVries

# D.C. CIRCUIT: STUDY OF GENDER, RACE, AND ETHNIC BIAS

*The Honorable John Garrett Penn**
*Matthew J. DeVries***

## I. TASK FORCE AND COMMITTEE WORK

The District of Columbia Circuit became the first federal circuit to establish a Task Force on race and gender bias.[1] In 1992, the Task Force, which was comprised of judges from the D.C. Circuit, created two committees—the Special Committee on Gender and the Special Committee on Race and Ethnicity—to assist the Task Force in its research. The committees were comprised of academics, social science advisors of national recognition, and leading attorneys.[2]

In the Fall of 1992, the Special Committee on Gender (the "Committee") met with the Task Force to prepare a research agenda. The Committee decided to pursue a plan to identify how gender affects the treatment of not only parties and lawyers, but also judges, jurors, witnesses, and courthouse employ-

---

* United States District Judge, United States District Court for the District of Columbia. Judge Penn was a member of the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias.

** Executive Editor, 1997-98, *University of Richmond Law Review*. Rachel Jackson, a second-year staff member of the *University of Richmond Law Review* and Manuscript Editor for the 1998-99 publication year, contributed to the research and drafting of this commentary.

1. *See* 1 THE GENDER, RACE, AND ETHNIC BIAS TASK FORCE PROJECT IN THE D.C. CIRCUIT, IVA-1 (1995). The Task Force was created in 1990 in response to a recommendation of the Study Committee on Gender Bias in the Courts of the District of Columbia Bar. Originally, the United States Court of Appeals for the District of Columbia created two task forces, one addressing gender bias and another addressing racial bias. *See id.* at IVA-1 n.1.

2. *See id.* at IVA-1. Among the original members of the Special Committee on Gender were law professors, public interest lawyers, private practitioners, a member of the United States Attorneys Office, and the head of the Federal Public Defenders Office. *See id.* at IVA-2. Of the 25 members, 14 were women and six were members of racial minorities. *See id.*

ees. Since gender and stereotypes affect both women and men, the Committee sought to include concerns regarding the treatment of both sexes. The Committee divided itself into six working subcommittees to better focus on specific topics of concern. These topics were: demographics, criminal process, litigation process, equality law, administrative law, and employee worklife.[3]

For a period of over fifteen months, each subcommittee researched its assigned focus and submitted a report detailing its findings.[4] The subcommittees used six primary methods of research, which included the following:

(1) Data compiled from a litigator survey, which was drafted by the committees' social science advisors and based upon a comparable survey used by the Ninth Circuit;[5]

(2) Data compiled from an employee survey designed by the Employee Worklife Subcommittee, which was used primarily to address issues of courthouse employees and employee worklife though it had tangential bearing on the other focus topics;[6]

(3) Information gathered from focus groups that drew from relevant populations to identify issues of concern and add a qualitative character to the statistical data gathered by the subcommittees;[7]

(4) Interviews with judges and courthouse managers and supervisors, which focused on the development of employment concerns;[8]

(5) Statistical research used in the focus groups and interviews gathered from various federal departments;[9] and

---

3. *See id.*

4. *See id.* at IVA-3.

5. *See id.* Dr. Rita Simon, a social science advisor to the Committee, selected the sample of attorneys who were surveyed. *See id.* at IVA-2. The survey received a response rate of over 60%, which was considered very successful. *See id.*

6. *See id.* at IVA-3.

7. *See id.*

8. *See id.* at IVA-4.

9. *See id.* Data was requested from such offices as the United States Sentencing Commission, the United States Department of Justice, the Federal Public Defender's Office, the Office of the United States Attorney for the District of Columbia, the United States Marshal's Office, the Administrator's Office of the United States Courts, and the Pretrial Services Agency. *See id.*

(6) Public input from individuals, public officials, legal organizations, professors, and law school groups.[10]

To complement these methods of research, the Committee also made use of other existing research, including working papers of academics and published legal research.[11]

In March of 1993, the Committee met to discuss the preliminary research performed by the subcommittees, specifically the research involving the litigator survey. Additionally, the various subcommittees met to begin compiling their preliminary reports. The full Committee reconvened in November 1993 and throughout Spring 1994 to review the subcommittee drafts and merge the full Preliminary Report. The Preliminary Report was presented to the Judicial Conference of the D.C. Circuit for discussion in June 1994. Recommendations made by members of the Judicial Conference were considered by the Committee at its next meetings. A Working Group on Recommendations was formed to assess the recommendations and to apprise both the Committee and the Task Force on the ongoing revision process. January 1995 brought forth a Draft Final Report, which underwent a technical revision.[12]

## II. THE D.C. CIRCUIT: A UNIQUE PERSPECTIVE

The D.C. Circuit offers a unique viewpoint in addressing issues of gender bias. Historically, the District of Columbia has offered more opportunities to women seeking careers in law.[13] Also, the effects of federal government are pronounced in the D.C. Circuit given the fact that Washington, D.C. is the headquarters of most federal agencies and departments.[14] Law practice in D.C. is often multi-jurisdictional due to its proximity

10. *See id.* The Committee sent notices encouraging public input to 700 individuals and groups as well as publishing the notice in the Daily Washington Law Reporter. *See id.*

11. *See id.* at IVA-5.

12. *See id.* at IVA-5 to IVA-6.

13. *See id.* at IVA-8 to IVA-9. The District of Columbia was the first jurisdiction to admit women to the practice of law and was the first to admit an African-American woman to the Bar. *See id.*

14. *See id.* at IVA-9.

to Virginia and Maryland. Thus, the D.C. Circuit affords the opportunity to see beyond the constraints of one circuit.[15]

The Final Report was prepared keeping the D.C. Circuit's unique perspective in mind. The Committee made the following recommendations to improve disparate treatment of men and women in the future. First, the courts should take steps, such as assuring equal respect and participating in educational programs, to maintain and increase fairness to parties and witnesses in the courtroom.[16] Second, courts should act to increase fairness toward attorneys both in and out of the courtroom.[17] Third, courts should work to increase awareness of service opportunities.[18] Fourth, courts should revise the discrimination complaint process to provide expanded options for solutions at an informal level.[19] Fifth, courts should adopt a formal written sexual harassment policy.[20] Sixth, courts should become more supportive of the family obligations of court participants and employees.[21] Seventh, courts should work to improve the safety and comfort of the courthouses.[22] Eighth, courts should improve information gathering and educational programs to ensure fairness and equality.[23] Finally, courts should create a committee to effectuate the recommendations.[24]

In conclusion, the Committee has offered its Final Report as a tool to be used to advance equality between the genders and fairness in the court process. The recommendations are offered to provide concrete stepping stones to further the mission of equality.[25] Currently, both the court of appeals and the district courts have established separate committees to determine what, if any, actions should be taken in response to the Final Report.

---

15. *See id.* at IVA-9 to IVA-10.
16. *See id.* at IVA-213 to IVA-216.
17. *See id.* at IVA-216 to IVA-218.
18. *See id.* at IVA-218 to IVA-220.
19. *See id.* at IVA-220 to IVA-222.
20. *See id.* at IVA-222 to IVA-223.
21. *See id.*
22. *See id.* at IVA-224.
23. *See id.* at IVA-225.
24. *See id.*
25. *See id.* at IVA-213.