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Foreword: Report of the New York State Judicial Commission on Minorities

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FOREWORD

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American society is deeply marked by racism — a legacy of over three centuries of slavery, segregation and officially sanctioned racial discrimination. Our court system could not possibly have escaped the effects of this legacy, and it has not. Wishful thinkers would have us believe that because racial discrimination no longer enjoys legal or moral sanction, there is no need to take special steps to combat it. Unfortunately, the facts tell us something different.

The New York State Judicial Commission on Minorities, appointed by Chief Judge Sol Wachtler, spent three years studying the problems of racial bias in the state's judicial system. We conducted an exhaustive review of existing scholarship in the field; held meetings and public hearings throughout the state at which we heard from dozens of ordinary citizens and public officials; conferred with judges, court administrators and bar association leaders; and undertook an ambitious program of original research that included surveys of practicing attorneys, judges, law schools and judicial screening committees. Our findings were detailed in an encyclopedic, five volume report that totaled nearly 2000 pages and runs over half a million words.[1]

What we discovered makes grim reading — segregated locker rooms in a Bronx court; the use of racist jargon by court personnel such as "skel", "mote", "tarbaby", and "rabbit"; racist graffiti scrawled on the walls of court facilities and left untouched by court personnel; squalid conditions in "ghetto courts" that serve a predominantly minority population.

We found that minorities are less likely than whites to be represented by attorneys, serve on juries, and receive favorable action from the courts. They are also less likely than whites to receive jobs in the court system commensurate with their qualifications. For example, we reported data showing that only four percent of all technical positions in the court system were held by minorities even though they comprised more than twenty percent of all persons in the state with the requisite skills. A plan to remedy the underrepresentation of mi-

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1. Only the Executive Summary of the Report is being reprinted here.

norities among court employees was prepared for the Office of Court Administration as far back as 1979, but it was ignored until the Commission made an issue of it.

The evidence is overwhelming. Our court system has a long way to go before it achieves racial equality in its own operations. Of greater consequence, it is unable to ensure equal justice before the law to minority litigants.

This is no time to relax in the struggle for racial justice. The Commission made approximately 100 recommendations for reform. Most would cost little or nothing to implement but would dramatically improve the judicial system's ability to dispense even-handed justice. They include mandatory cross-cultural sensitivity training for all court personnel; competency certification of attorneys that represent the poor; jury selection reforms to ensure that panels reflect a cross section of the state's citizenry; and a comprehensive plan to boost minority representation in the legal profession —including a model program for recruiting minority students.

The Commission also recommended rebuilding New York's dilapidated "ghetto courts." This is the one recommendation that would be expensive to implement. It is nevertheless essential. We did not just find dilapidated courts. We found unequally dilapidated courts. Facilities used predominantly by minorities were more crowded and less well-maintained than those used predominantly by whites. Such disparities cannot be accepted. If new spending is rejected, existing facilities should be reallocated to ensure that whites share equally the burdens imposed by fiscal austerity.

The Commission did not propose the use of quotas to increase minority employment in the legal system. What we did propose is (1) vigorous recruitment of minorities to ensure that they get their fair share of job opportunities and (2) the development of screening procedures for hiring and promotion decisions that do not discriminate against qualified minorities. For example, we proposed that cross-cultural competency — the ability to treat persons of widely differing backgrounds with equal dignity — be made a hiring and promotion criteria for all court personnel. There is nothing in our proposals that would disadvantage whites. We seek only to end practices that still give whites unfair advantages over minorities.

Racism is not a past problem. It is a present and continuing problem. It exists in our society and so, not surprisingly, it exists in our judicial system. It will not be ended through pious pronouncements or wishful thinking. Those who believe we have earned a rest in our efforts to achieve racial equality are fooling themselves. Worse, they

are helping to perpetuate the very problems they deny. Progress is possible but not without concerted effort. Complacency is the enemy.