Report on Bias In Fed'l Courts Late by a Year

BY DEBORAH PINES

A COMMITTEE examining issues of gender, race and ethnic bias within federal courts in the Second Circuit expects to release its findings in June, one year past its target release date.

Committee members, in the home stretch of polishing and rewriting their conclusions, say they have been hampered most by reliance on volunteers for the ambitious circuit-wide self evaluation. To a lesser extent, others cited efforts to accommodate judges' concerns, computer glitches and the comprehensive nature of the project, which included surveying more than 1,000 attorneys, 1,743 court employees, 165 judges and jurors.

"With volunteers a hard task gets harder," said Sheila Birnbaum, a partner at Skadden, Arps, Slate, Meagher & Flom, who has served as the task force's volunteer executive director.

Ms. Birnbaum added, with apparent relief, "The end is in sight."

The committee was created in October 1993 at the request of the courts' governing body, the Judicial Council of the Second Circuit. At the time, Chief Judge Jon O. Newman, said the task force would examine "if any manifestations of bias" are occurring in the far-flung circuit which includes federal courts in New York, Vermont and Connecticut.

He predicted a relatively quick result because, he said, the committee could build on the experience of similar bias studies conducted in the circuit's state courts and in other circuits around the country.

"I anticipate that our task force will be able to spend relatively little time on studies and move rapidly toward

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Bias Report Delay

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precise recommendations and implementation of proposals," Judge Newman said at the time.

Once fully under way, the committee predicted its draft report — based on surveys, public hearings, focus groups and reviews of court employment and appointment practices — would be available in June 1996. (*NYLJ*, Sept. 19, 1995)

But the job has taken longer.

Judges' Concerns

While in some circuits judicial opponents of bias reports have openly revolted, judges' concerns in the Second Circuit were reportedly more isolated and muted. In the D.C. Circuit, for instance, Judge Laurence H. Silberman in 1995 attacked that circuit's findings, methodology and recommendations immediately upon the release of its report. U.S. Senate Republicans, led by Iowa Senator Charles E. Grassley, have denounced the costs and methodology of many of the reports.

In the Southern District, a few judges interviewed, who declined to be identified, said some of their colleagues had philosophical and practical concerns. Some judges, for instance, refused to permit their law clerks to answer questionnaires because of the highly confidential nature of the clerks' positions, they said. Other judges reportedly objected to questions posed to employees for observations about bias against others, not themselves. And some expressed concerns about juror questionnaires distributed by judges, suggesting compulsion. Consequently, some juror surveys were sent out by the clerk's office, one court source said.

In the Eastern District, juror surveys were revised to address judges' concerns about perceived intrusions into the confidentiality of deliberations.

Second Circuit Judge John M. Walker, one task force co-chair, said that accommodating the judges did not slow the process significantly. Instead, he attributed delays to the ambitiousness of the job undertaken by dozens of volunteers as well as difficulties gathering court data, computer compatability problems and an earnest desire to make original, sound conclusions. "We weren't simply copying other circuits," he said.

The other task force co-chair, Southern District Magistrate Judge Sharon Grubin, said initial target completion dates were overly optimistic. "To do a thorough, complete job with scientific accuracy took a lot longer than anybody expected," she said.