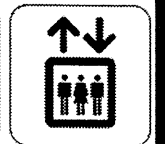
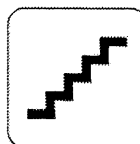
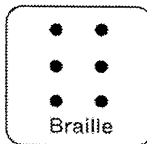
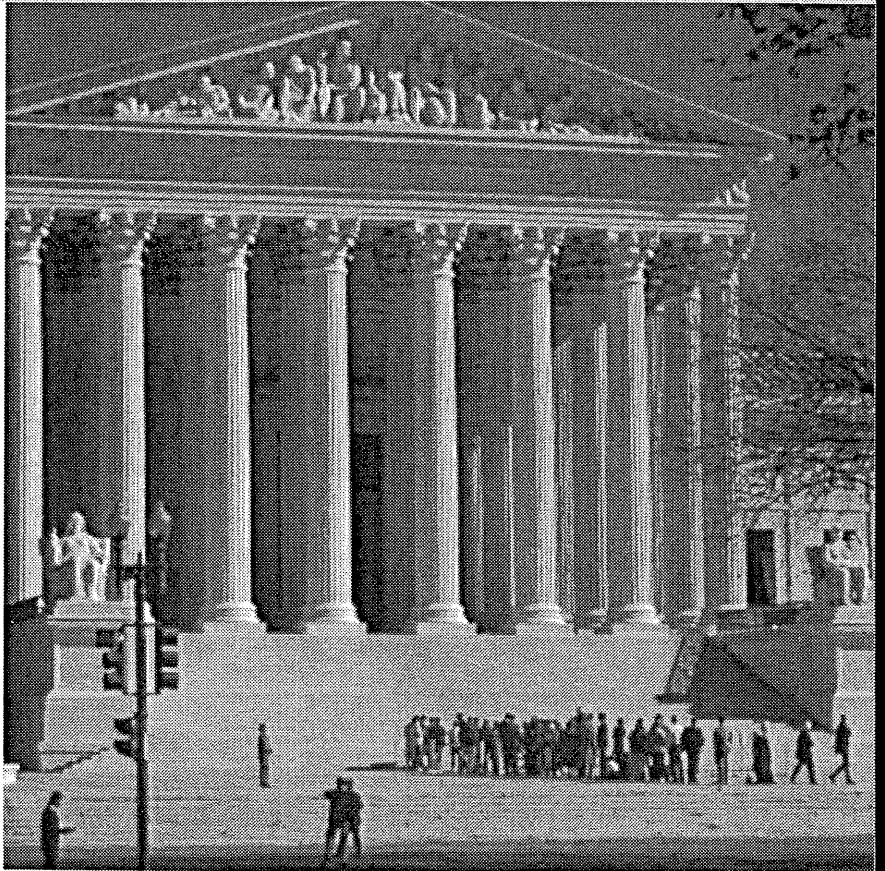
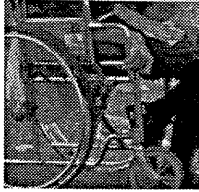


State Bar of Michigan Open Justice Commission



A Report on Access to the Legal System in Michigan for Persons with Disabilities

JUNE, 2001

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June 2002

To the Reader,

This report is the result of nearly two years of work on the part of the Disabilities Committee of the Open Justice Commission. The committee's mission is to identify the needs of people with disabilities to ensure fairness, accessibility and equality within the justice system and to make recommendations to key stakeholders about methods of meeting those needs. This investigation examined issues related to the courts, the legal profession, legal education, admission to the bar, access for clients with disabilities, and accommodations for attorneys and court users with disabilities.

The Report was unanimously approved and accepted by the Open Justice Commission on June 26, 2001 and forwarded to the State Bar of Michigan Board of Commissioners for consideration. On April 2, 2002 the State Bar of Michigan Board of Commissioners adopted the following resolution regarding the Report.

The Board of Commissioners commends the disabilities committee for its work and recognizes its report as a valuable contribution to the important effort to improve the accessibility of the legal system in Michigan to persons with disabilities. Accordingly, the Board authorizes the report be made available through the Open Justice Commission web pages, and authorizes the Open Justice Commission to make the report accessible to interested entities. The Board directs the Open Justice Commission to prioritize the recommendations concerning actions to be taken by the State Bar of Michigan for consideration during the 2002-03 budget deliberations.

There are 56 million people in the United States with disabilities¹. This group of people represents the single largest minority group in the world. Disabilities do not discriminate based on race, creed, gender or sexual orientation. Thirty million people in this group are considered to have a severe disability. It's time to provide them with the same opportunities and benefits that are taken for granted by the able-bodied community.

In the past, people with disabilities have been a silent minority. This report is an effort to give a voice to those individuals and to listen carefully to their concerns and issues. *People with disabilities are our clients, colleagues, judges, and juries that interact with our court system.* We recognize that the passage of the Americans with Disabilities Act required law schools, court houses, legal programs, and law offices/law firms to provide fully accessible curriculums, facilities, and specific accommodations based on all types of disability. Yet, this report goes beyond the mere letter of the law and calls our profession to a higher standard of fairness, access and equal treatment.

¹ 2000 US Census

The Open Justice Commission commends the State Bar of Michigan for having the vision to create and fund initiatives such as this. As a result of this commitment, Michigan lawyers and judges are at the forefront of diversity issues and are national leaders in creating opportunities for all Michigan citizens to participate in the justice system. With publication of this report, we now have a blueprint for future initiatives and programs to assist persons with disabilities to become full participants in every phase of Michigan's legal system.

Respectfully submitted,



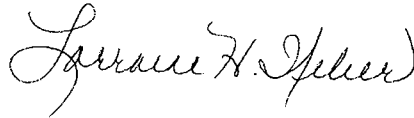
Marilyn Kelly
Justice, Michigan Supreme Court
Co-Chair, Open Justice Commission



Harold Hood
Judge, Michigan Court of Appeals
Co-Chair, Open Justice Commission



Paul S. Teranes
Presiding Judge, Civil Division, 3rd Circuit
Court, Retired
Chairperson, Disabilities Committee
Open Justice Commission



Lorraine H. Weber
Special Advisor
Open Justice Commission

This report is available at www.michbar.org/programs/ATJ/pdfs/disabilities.pdf where hard copies can be ordered online or the report can be downloaded to disk without cost. The report is also being made available in braille. If you have questions or concerns, please contact Judy Hershkowitz at the Open Justice Commission, State Bar of Michigan, 306 Townsend Street, Lansing, MI 48933-2083 or email at jhershkowitz@mail.michbar.org.



*STATE BAR OF MICHIGAN
OPEN JUSTICE COMMISSION*

**A REPORT ON ACCESS TO
THE LEGAL SYSTEM IN
MICHIGAN FOR PERSONS
WITH DISABILITIES**

June, 2001

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Members of the Disabilities Committee include:

Hon. Paul S. Teranes, Chair	Kenneth H. Lynn
Elizabeth W. Bauer	Brian D. Sheridan
Richard H. Bernstein	Jody Smith
Hon. John T. Courtright	David M. Stokes
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Saunders V. Dorsey	Gina M. Torielli
J. Kay Felt	Stephen J. Trahey
Hon. Hilda R. Gage	Marsha Lynn Tuck
Kathleen N. Harris	Paul L. Ulrich
Joanne R. Lax	Judith L. Zorn

The consulting research team was composed of:

Michael Mulvihill, HealthDesign Consultants
Kathleen Harris, Kathleen N. Harris, P.C., Associate
Bob Conlon, Student Intern
Katie Cushman, Student Intern

Finally, we'd like to thank the many individuals with disabilities, and court and agency staff who consented to be interviewed or who supplied information for much of the data and material in the report.

MISSION AND GOAL

The Open Justice Commission of the State Bar of Michigan is charged with the mission of raising awareness of open justice issues that adversely affect many minority groups. Its goal is to reduce or eliminate discrimination within the justice system. Recognizing that people with disabilities are not treated equally in our society as a whole, the Open Justice Commission decided to include a committee devoted solely to issues affecting individuals with disabilities.

In describing the need for the Disabilities Committee of the Open Justice Commission, the Honorable Paul S. Teranes, Chair of the Committee, stated:

The members of the Disabilities Committee believe that for too long people with disabilities have been the silent minority. They are often required to respond to stereotypical attitudes about their abilities and face physical barriers that prevent their full participation in the judicial process.

The mission of the Disabilities Committee of the Open Justice Commission is to identify the needs of persons with disabilities in using the justice system and to make that knowledge available to members of the bar, the judiciary, and the public. This includes the courts and legal systems, the legal profession, legal education, admission to the bar, access by clients with disabilities to attorneys, and accommodations for attorneys and court users with disabilities. The primary goal is to alleviate and eventually eliminate stereotypical attitudes and the physical and other barriers faced by people with disabilities.

The Disabilities Committee of the Open Justice Commission reports to the Open Justice Commission and will be referred to in this report as the Disabilities Committee. This report of the Disabilities Committee attempts to identify the barriers to access in three areas:

- Law Schools;
- Courthouses and Legal Process;
- Law Offices and Law Firms

Specific recommendations to overcome identified barriers are made by the Disabilities Committee in each of the three areas.

METHODOLOGY

A research team, consisting of a lead consultant, an assisting consultant and two student interns, was retained for purposes of conducting searches for abstracts, articles and studies and for identifying organizations that may have knowledge of or access to relevant information. At various times, focus groups were conducted and telephonic surveys and written surveys were done to solicit information. The specific methodology used for each piece of information will be identified in the report. Survey tools used are attached.

OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT AND THE MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

The Americans with Disabilities Act (ADA) is the most significant civil rights legislation for people with disabilities. The ADA prohibits disability-based discrimination in employment, public services and public accommodations, and telecommunications.

The ADA is divided into 4 major titles: Title I of the ADA applies to employment practices of employers with 15 or more employees. It prohibits discrimination in almost all phases of work. Title II applies to public services, prohibiting state and local governments from discriminating against qualified individuals with disabilities seeking access to public services. This includes court systems and law schools. Courts and law schools must provide what is termed "program accessibility" to people with disabilities and must also provide services or appropriate accommodations in all cases, as long as this does not result in an undue burden or in a fundamental alteration of the judicial service or activity. Title III of the ADA addresses private businesses and commercial facilities. This title includes courts and law firms and requires that all aspects of business operations be made accessible to persons with disabilities. Finally, Title IV mandates the creation of a relay system for local and long distance telephone calls. The intent of this provision is to make communication systems accessible to individuals with hearing or speech impairments and to provide the functional equivalent of voice communication.

Similar to the ADA, the Michigan Persons with Disabilities Civil Rights Act (MPDCRA) prohibits discrimination on the basis of disability in employment, housing, access to public buildings and transportation, or admittance to programs. Services which are directly or indirectly funded or operated by the State of Michigan or any of its political subdivisions and/or that are available to the general public are included. In many respects the MPDCRA is broader in coverage than the ADA. For instance, an employer with only one employee is covered by the MPDCRA.

SUMMARY OF RECOMMENDATIONS

Law Schools

1. The Open Justice Commission, in cooperation with the law schools, should develop and distribute to all Michigan law schools a “model-accommodation” policy with the recommendation that each school adopt it or a substantially similar policy. The Disabilities Committee should be a resource in the development of this policy. The model policy should include:
 - the definition of the “essential functions” of the school program;
 - the standards for documentation to be required for substantiating a disability;
 - the criteria for defining a “fundamental alteration” of the school program;
 - the criteria or process for defining what constitutes a “substantial burden” to the school;
 - a process to request an accommodation;
 - a time line for decision about whether to grant the requested accommodation;
 - a time line for implementing the accommodation;
 - a process to decide whether to grant a request for accommodation; and
 - an appeal process if the accommodation is denied.
2. The Open Justice Commission should develop and distribute information to Michigan law schools regarding the law schools’ responsibilities under the Americans with Disabilities Act and other applicable laws. Resources should be included to assist each school in evaluating the accessibility of the school and its program. The Disabilities Committee should be a resource in developing this information.
3. The Open Justice Commission, in cooperation with law firms, should develop and distribute to law school placement services, model descriptions of the essential functions of attorney positions with law firms and what are considered reasonable accommodations. Such services should distribute and discuss this information with law school students with disabilities and this information should be part of career counseling. The Disabilities Committee should be a resource in the development of these materials.

4. The State Bar of Michigan should develop a web site for disability issues including requirements for accommodations that gives students with disabilities equal opportunities for admission and success in law schools. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, educational materials, a resource list for further assistance, and links to other applicable web sites.
5. A work group composed of members from the Disabilities Committee, the Open Justice Commission, law schools, law firms, and LSAT representatives and bar examiners should be created to address the following areas: a) greater predictability and direction in relation to bar examinations and appropriate accommodations; b) a stronger connection between law school career services and potential employers such as law firms, corporate law departments, and governmental agencies, etc.; and c) more investigation related to psychiatric disabilities and appropriate accommodations in law school.

Courts and Legal Process

1. A manual for courts should be developed by the Open Justice Commission, in cooperation with the State Court Administrator's Office (SCAO) that summarizes accessibility standards of the ADA with a list of resources that can be used to evaluate whether a court is in compliance. There should be a definition and a process to determine what constitutes an "undue burden" or "fundamental alteration" of the judicial service or activity. A list of common accommodations for physical, cognitive and psychiatric disabilities should be included. The SCAO should distribute this manual to each court as a supplement to the judicial bench book.
2. Sensitivity training about people with disabilities and their specific needs in the legal system should be expanded and provided to judges and court staff, and offered to attorneys. This training should also be incorporated into mandatory diversity training for new judges and consideration should be given to requiring diversity training for all judges every two years. People with disabilities and people with expertise in each disability area should be a part of the training team. The Open Justice Commission should work in cooperation with the SCAO/Michigan Judicial Institute (MJI), the Institute for Continuing Legal Education (ICLE) and the National Center for State Courts to develop such training. Training for other court staff and attorneys should be offered at the annual local bar presidents conference, the Annual Bar Association meeting, the Annual Court Administrator's meeting, deputies' training for courts, ICLE training, juvenile court training, and other appropriate venues. The Disabilities Committee should be a resource for the development of the training content. This training should be offered on an annual basis in accessible places. Consideration should be given to transportation needs of attendees with disabilities who cannot drive and need to take public transportation.

3. The ADA Coordinator position appointed in each court pursuant to SCAO Administrative Memorandum 1998-02 should be strengthened and empowered in each court and should receive training about the responsibilities of the court under the ADA and MPDCRA. This person should be available to answer questions, investigate complaints and resolve problems relating to accessibility of the courts to individuals with disabilities.
4. SCAO Form MC-70 should be expanded to require, or allow for, identification of the specific judge, courtroom or proceeding for which accommodation is requested. With respect to the needs of the deaf/hard of hearing, the form should also be expanded to include space for the precise type of assistive listening system which the requestor needs, or the type of sign language interpreter needed (SEE, ASL, etc.). The form should also provide information regarding whom the requestor could contact at the local court to verify that the request has been received and is being acted on prior to the court hearing for which accommodations are being requested.
5. The Open Justice Commission should work with the Standing Committee on the Unauthorized Practice of Law to explore methods to provide advocacy accommodations for individuals with disabilities without the risk of an advocate being accused of practicing law without a license. An exception to the definition of "the unauthorized practice of law" for advocates who assist people with cognitive disabilities should be developed that would apply when a person with a disability requests an advocate to speak for him/her in legal processes that do not require an attorney.
6. The Open Justice Commission, in cooperation with the SCAO, should develop and distribute information to help courts, law enforcement and correctional agencies establish a mechanism for screening and identifying people with disabilities before arraignment who are defendants or victims of crime. This would enable the person to be referred to the appropriate Community Mental Health (CMH) program or other advocacy program for assistance.
7. The SCAO should provide information to courts about their county's statutorily required CMH diversion program so they will use it to refer people with mental illness and developmental disabilities for assistance. The courts should have policies to work cooperatively with CMH and other appropriate agencies toward developing and strengthening the diversion program if necessary. Michigan Association of Community Mental Health Boards (MACMHB) survey showed only 13 of 49 CMH's had diversion programs as required by MCL 330.1207; MSA 14.800 (207).
8. Judges should include in their sentencing orders language that makes clear, when ordering jail terms for criminals with disabilities, that if the person is going to be released from jail early because the jail cannot accommodate the disability, the jail should notify the judge so an alternate order can be issued if the judge finds it appropriate.

9. The Open Justice Commission should appoint a statewide task force to examine and make recommendations to eliminate discrimination and unjust treatment in the jail, law enforcement and prison systems. These systems are inextricably related to access to legal justice systems. The task force should include representatives of the State Bar, trial lawyers associations, law enforcement agencies, courts, prosecutors, CMH personnel and disability and prisoner advocacy groups. A heavy emphasis should be on developing effective diversion programs for people with mental illness or mental retardation through the CMH systems. Studies of model programs in Michigan and other states should be undertaken. Recommendations should include education programs for jail, pre-trial detention, parole, probation and law enforcement personnel about treatment of people with disabilities from the time they are questioned about crimes, as victims or potential defendants, to their treatment and release from the jail systems. It should also include resource information about other community systems, such as local CMH's, that can provide services to people with disabilities involved in the legal process. Other states have done extensive work in this area.
10. The State Bar of Michigan should develop a web site for disability issues that includes requirements to provide accessibility to courts and the legal process. The recommended materials in this report should be included, as well as links to other web sites with helpful information. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, a resource list for further assistance and educational materials.

Law Firms

1. The Open Justice Commission, in cooperation with law firms, should develop and distribute a manual to law firms outlining the requirements of the ADA and MPDCRA for accessibility of law firms by employees and clients. A resource list should be included so that law firms will be able to identify resources to evaluate their firms for accessibility. This manual should define "reasonable accommodations" and "substantial burden." The Disabilities Committee should be a resource to writing this manual and resource list.
2. Model employment policies should be drafted and distributed to law firms by the Open Justice Commission so that law firms will be familiar with employment requirements of the ADA and the MPDCRA. The policies should include sample job descriptions and contain information about permissible pre-employment questions; essential functions of the job; policies that describe reasonable accommodations; and the criteria for determining if an accommodation would be considered a "substantial burden." A list of potential accommodations should be included. Also included should be policies to affirmatively recruit individuals with disabilities and willingness to develop creative employment opportunities that would accommodate individuals with significant disabilities. The Disabilities Committee and the State Bar of Michigan Employment Law Section should be a resource to development of these policies.

3. The Open Justice Commission should commission a study of law firms to determine actual knowledge and practice regarding compliance with ADA and MPDCRA. These additional studies of the law firm environment should be used to determine awareness and education needs.
4. A State Bar of Michigan liaison should be identified to assist and provide education to firms needing guidance about appropriate policies and individual situations.
5. Educational programs should be provided to law firm administrators responsible for professional personnel through the Association for Law Firm Administrators, ICLE and other State Bar programs. These programs should cover responsibilities of employers under the ADA, the MPDCRA, and the advantages and responsibilities of hiring individuals with disabilities. The Disabilities Committee should be a resource for the development of these educational programs.
6. The State Bar of Michigan should develop a web site for disability issues that includes disability employment information. The web site should include the above recommended materials and links to other applicable web sites and helpful information. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, a resource list for further assistance, and educational materials.

RESEARCH, FINDINGS AND RECOMMENDATIONS

Law Schools

Under the ADA, the MPDCRA, and Section 504 of the Rehabilitation Act, students with disabilities are entitled to “reasonable accommodations” in order to attain an equal opportunity for admission and success in law school.

The Disabilities Committee examined whether such accommodations are requested and granted, and whether more information is needed by law schools and students to ensure equal opportunity.

To examine the needs of law students with disabilities, the Disabilities Committee conducted or reviewed the following studies:

1. Michigan Law Schools Survey

Methodology: All Michigan law schools were surveyed by phone to determine what policies exist about people with disabilities and accommodations for them. In almost all cases there was not a specific department within the law school for students with disabilities but rather a university-based program, which served law students. Several recent law students were also interviewed to examine their law school experiences.

Findings:

- All of the law schools surveyed in Michigan had generic policies that invited discussion about access and accommodation issues. All were generally familiar with the ADA and the Michigan Civil Rights Act. In most cases accommodations were made on a case-by-case basis. Usually the person (often the Dean of Students) handling the request for an accommodation was not specifically trained to handle requests but had learned over time through experience. Michigan is viewed generally in very positive terms in relation to disability policy and programs especially when compared to states like New York, which are viewed as “unfriendly” to individuals with disabilities.
- Typical accommodations include more time for test taking (usually one and one-half times longer, and sometimes double time). Auxiliary technical support in the form of aids and appliances are granted as well. These are typically granted at the expense of the school. In general, all reported that physical access to their buildings was not a problem and all had complied with architectural requirements for facility access.
- One guideline mentioned was that whenever an accommodation was related to an academic requirement e.g., books, the school paid for it. Whenever it was a “personal service” e.g., note taking, the individual paid for it. In general, faculty

were supportive of providing accommodations like extra time, note takers, etc. It was also noted that one-on-one “training” or coaching on a case-by-case basis worked better than trying to provide group training for faculty and staff. On rare occasions, faculty presented barriers when they did not understand the need for particular accommodations. One example was cited in which an individual with a speech impairment needed special assistance with classroom presentations. In this case, the one-on-one “training” was helpful.

- Some oppose clear-cut protocols in favor of determination on a case-by-case basis in order to be more flexible in accommodating unique circumstances. Others wanted more direction especially in the area of learning disabilities. Many were uncertain and confused about how to deal with cognitive and learning disabilities, especially given that the numbers of people with diagnosed learning disabilities is increasing and is an important area for investigation. Some believe that attention-deficit disorder (ADD) is not very well quantified and there are no standard diagnostic tools. Furthermore, there is concern that the label is loosely given to an increasingly large pool of individuals.
- Regarding the relationship between law school and employability, there is some concern about the implications of “over-accommodating” and its impact on employee performance and workplace expectations. Many wondered if students with disabilities are being “set up” for failure due to the fact that many employers and court systems, especially judges, will not grant various accommodations. For example, it is generally viewed that judges will not grant “more time” for hearings and various deadlines. Related to this view were numerous concerns about the lack of standardization and direction for accommodations for both the bar examination and the LSAT.
- There also appear to be concerns about applying or supporting “essential functions” of the job as defined by law firms in the law school curriculum. There is some strong sentiment that law schools should not be viewed as “training grounds” for law firms. Further, some see “essential functions” as being so broad or specific based on the practice environment that their definition is problematic. Also, there is a certain amount of legal risk associated with inaccurately characterizing “essential functions.” Furthermore, most law schools are not well connected with career placement services especially when it comes to students with disabilities. Likewise, law firms have poor recruitment strategies for individuals with disabilities as suggested by the lack of identified employees with disabilities on the National Association for Law Placement (NALP). Of the five major law firms reviewed, none disclosed any positions with individuals with disabilities on their NALP form.
- Overall, while there is some concern about “abuse,” most interviewed felt that the abuse of disability policies and programs was low. Those interviewed thought the greatest areas of vulnerability to abuse are learning disabilities and Attention

Deficit Hyperactivity Disorder (ADHD), and that documentation issues often make verification more difficult. Some reported that it helped to take time to speak directly to physicians or psychologists about the disability diagnosis. If not completely satisfied with the information, one interviewee mentioned the practice of requesting an independent evaluation in order to make a final decision.

- There was greater concern actually about late reporting or no reporting on behalf of individuals with learning disabilities due to embarrassment or not having come to terms with their disability themselves. Self-advocacy was encouraged, promoted and stressed in almost all policies and practices as an attempt to address this issue.
- The area of psychiatric-related disabilities was minimally addressed. One interviewee noted that this area might turn out to be even more complicated than the issues around learning disabilities. When attempting to accommodate several students with bi-polar disorder, many questions arose as to appropriate accommodations. For example, what accommodations should be given during the depressive phase of the illness and what, if any, are the long-term implications for law practice and the responsibility of the law school? These areas clearly need more extensive study.
- **Best Practice:** The MSU Resource Center for Students with Disabilities (Detroit College of Law at MSU) had a very elaborate and thorough policy and comprehensive program that took into account the many different types of disabilities. The Center has a team of specialists, some of whom have disabilities, who work in a team-oriented environment, which is proactive in its approach to students. They teach students with disabilities to be strong advocates and to set clear-cut expectations for themselves. The staff works very closely with the students and gets to know them and their unique circumstances. Staff approach students in a very realistic manner and can, at times, border on being confrontational in relation to academic and career-related expectations. They claim that positive relationships with students are maintained and that their policies and procedures are seen as fair. MSU could be used as model program for law schools. Attached is a detailed policy and program brochure.

2. National Survey by C. Spaulding, 1999

Methodology: C. Spaulding did a survey of all ABA accredited law schools that yielded 16 responses.

Findings: This survey revealed the following:

- Many law schools are unsure about what procedures and steps they are required to take in order to determine reasonable accommodations.
- Policies and procedures from law school to law school are very inconsistent.

- There are no clear guidelines on what documentation is required to substantiate a disability, especially cognitive and learning disabilities, or how comprehensive the documentation needs to be.
 - There is a lack of clarity regarding the timing of the request in relation to the timeline for implementation of the accommodation.
 - There is a wide disparity and disagreement regarding: a) who are considered “qualified professionals” for purposes of making the diagnosis of certain disabilities; b) what may constitute a “reasonable accommodation”; c) what constitutes a “fundamental alteration of the program”; and d) what are the appeal policies and procedures.
3. A Study of LSAT’s Disproportionate Impact on the Legally Blind Law-School Applicant – Richard H. Bernstein in collaboration with L.K. Arquette, 1998

Methodology: Description of LSAT, how it is administered and its effect of the visually impaired, survey of law students and practicing lawyers of the American Blind Lawyers Association (ABLA).

Findings:

- The decision to take the LSAT can be damaging to blind students’ law school prospects, even if appropriate test-taking accommodations are granted. This is because many LSAT questions require figuring out spatial relationships of various objects, and lend themselves to sketches, tables or diagrams, devices not available to a blind student. Also, multiple-choice questions require the memorization of individual items by blind students, so they can be compared, while a sighted person has the choices at hand for comparison. Other differences in the way blind students acquire and process information leads to disadvantages when compared to sighted students. This has led Bernstein to recommend that the LSAT be made optional to visually impaired students. Instead, the law schools could ask for more references and rely more heavily on grades.
- Since only the Law School Admissions Council administers the LSAT, it is a monopoly. Thus, there is little bargaining power when requesting accommodations. And, in fact, the LSAC has turned down requests by blind students for Braille typewriters while taking the exam, refused requests for closed-circuit televisions, and compelled students to use LSAC’s readers, instead of the students’ own readers who would know how a particular student uniquely studies and processes information.
- Many visually impaired students are under the impression that there is no option other than taking the LSAT because they believe their application will not be

processed without the test score. In fact, in a questionnaire sent to 56 visually impaired lawyers and law students of the American Blind Lawyers Association, there were 19 responses. Of the 19 persons responding, 16 did not take the LSAT. One respondent noted that upon application to law school in 1977, the LSAT was not made available to blind law students because the students would have to take it under non-standard conditions and so it would not be considered valid. Another said that Harvard Law School, in 1957, waived the LSAT because of excellent grades, extracurricular activities, and excellent recommendations. More recently though, when the author, Mr. Bernstein applied, Harvard refused to waive the LSAT upon his request. In the author's experience, a number of law schools refused to waive the test and some did not even respond to his request. It is notable that Wayne State Law School and University of Detroit were two that refused to waive the test. The University of Michigan, where Mr. Bernstein was an undergraduate student, never responded whether a waiver would be granted or not.

- More and more law schools are requiring the LSAT as a condition for admission and it is believed the trend is not likely to change. As stated by Professor Lubet from Northwestern University, optional testing as advocated by Richard Bernstein will not happen soon because of the influential rankings of law schools by *U.S. News and World Report*. (Law schools perceive that this publication uses the LSAT score, as a prime criterion in these rankings so to stop requiring the LSAT would adversely affect their rankings.)

4. Review of Literature

Methodology: Library research of existing literature was done in 2000 on the issue of students with disabilities in law schools and what policies exist and what accommodations are made for them.

Findings: The research reveals the following:

- People with learning disabilities make up one of the fastest growing segments of the law student population. For example, between 1990 and 1993, the number of people with learning disabilities taking the Law School Admission Test (LSAT) under special conditions (usually consisting of time extensions) increased by over 100 percent.
- The Law School Admission Council (LSAC), which administers the LSAT has made the following accommodations available, which include but are not limited to: 1) tests in large, 18 point print, in Braille, and on audio cassette; 2) large-type answer sheet; 3) use of reader; 4) an amanuensis (secretary); 5) wheel-chair accessible test center; 6) additional rest time between sections; and 7) additional testing time. Other accommodations and special aids are available if requested upon registration.

- If an accommodation is made for a student, a statement will be sent with the Law School Reports advising that the score(s) should be interpreted with great sensitivity and flexibility (flagging). This act of flagging raises the concern that accommodated test takers are being marked, increasing the likelihood of discrimination in the law school admissions process. To help ease the fears of the accommodated test takers, a 1993 Law Services study found that accommodated and unaccommodated test takers with similar results and undergraduate grades were admitted to law schools at the same rate. (Wrightman, *Test Takers with Disabilities: A Summary of Data from Special Administrations of the LSAT*, 24-32, 51 (1993).)

Based on the studies referenced above, the Disabilities Committee makes the following Recommendations with respect to Law Schools:

1. The Open Justice Commission, in cooperation with the law schools, should develop and distribute to all Michigan law schools a “model-accommodation” policy with the recommendation that each school adopt it or a substantially similar policy. The Disabilities Committee should be a resource in the development of this policy. The model policy should include:
 - the definition of the “essential functions” of the school program;
 - the standards for documentation to be required for substantiating a disability;
 - the criteria for defining a “fundamental alteration” of the school program;
 - the criteria or process for defining what constitutes a “substantial burden” to the school;
 - a process to request an accommodation;
 - a time line for decision about whether to grant the requested accommodation;
 - a time line for implementing the accommodation;
 - a process to decide whether to grant a request for accommodation; and
 - an appeal process if the accommodation is denied.
2. The Open Justice Commission should develop and distribute information to Michigan law schools regarding the law schools’ responsibilities under the Americans with Disabilities Act and other applicable laws. Resources should be included to assist each school in evaluating the accessibility of the school and its programs. The Disabilities Committee should be a resource for developing this information.

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3. The Open Justice Commission, in cooperation with law firms, should develop and distribute to law school placement services, model descriptions of the essential functions of attorney positions with law firms and what are considered reasonable accommodations. Such services should distribute and discuss this information with law school students with disabilities, and this information should be part of career counseling. The Disabilities Committee should be a resource in development of these materials.
4. The State Bar of Michigan should develop a web site for disability issues including requirements for accommodations that gives students with disabilities equal opportunities for admission and success in law schools. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, educational materials, a resource list for further assistance, and links to other applicable web sites.
5. A work group composed of members from the Disabilities Committee, the Open Justice Commission, law schools, law firms, and LSAT representatives and bar examiners should be created to address the following areas: a) greater predictability and direction in relation to bar examinations and appropriate accommodations; b) a stronger connection between law school career services and potential employers such as law firms, corporate law departments, and governmental agencies, etc.; and c) more investigation related to psychiatric disabilities and appropriate accommodations in law school.

Resources:

Journals:

Rothstein, *Guidelines Emerge for Accommodating Students Who Have Learning Disabilities*, *The Chronicle of Higher Education* (1998).

Rothstein, *The Affirmative Action Debate in Legal Education and the Legal Profession: Lessons from Disability Discrimination Law*, 2 *The Journal of Gender, Race and Justice* 1 (Fall 1998) pp 2 - 32.

Rothstein, *Disabilities and the Legal Profession in Texas*, 60 *Texas Bar Journal* 7 (1997), pp 691 - 694.

Rothstein, *Disability Issues Continue to Challenge Legal Educators and Bar Admissions Authorities*, XXVIII *Syllabus* 1 (Winter 1997).

Rothstein, *Bar Admissions and the Americans with Disabilities Act*, *The Houston Lawyer* (September/October 1994), pp 34 - 41.

Rothstein, *Health Care Professionals with Mental and Physical Impairments: Developments in Disability Discrimination Law*, 41 St. Louis Univ. Law Journal 3 (Summer 1997), p.973.

Articles:

Stone, *The Impact of the ADA on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study*, 44 U Kan L Rev 567 (1996).

Periodical:

Disability Compliance for Higher Education, "Successful Strategies for Students and Staff with Disabilities," LRP Publications, Horsham, PA.

Published Studies:

Wrightman, *Test Takers with Disabilities: A Summary of Data from Special Administrations of the LSAT* (1993), 24-32, 51.

A.B.A. Sec. Legal Educ. & Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum; Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, The MacCrate Report, The State Bar of Wisconsin in cooperation with two law schools in WI. (1993).

Website:

www.ets.org, The Educational Testing Service Network website has guidelines for attention deficit disorders documentation and verification.

Pamphlets:

Resource Center for Persons with Disabilities, Michigan State University, *Alternative Testing Guidelines Information for Faculty* (1999).

Resource Center for Persons with Disabilities, Michigan State University, *Guidelines for Documentation of a Learning Disability (LD) in Adolescents and Adults* (1999).

Unpublished Reports:

Open Justice Commission Disabilities Committee (OJCDC) Phone Survey of Michigan Law Schools (2000) (unpublished survey on file with the OJCDC).

Unpublished Manuscripts:

Cynthia M. Spalding, *Overly Accommodating or Inhospitable? Law Schools, the ADA, and Proposal for Statutory and Regulatory Changes* (January 1999) (unpublished manuscript on file with the Detroit College of Law).

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Richard H. Bernstein, in collaboration with L.K. Arquette, *A Study of LSAT's Disproportionate Impact on the Legally Blind Law-School Applicant* (November 1998) (unpublished manuscript on file with Northwestern University Law School).

Courts and Legal Process

People with disabilities need to have equitable and convenient access to Michigan's judicial system. To ensure such access, the Disabilities Committee examined applicable laws to determine the responsibility of courts to people with disabilities. The Disabilities Committee specifically reviewed Title II of the ADA. This title prohibits discrimination on the basis of disability in all services, programs and activities provided by state and local governments. Also included are all courts, which must provide services or appropriate accommodations to people with disabilities whenever necessary as long as this does not result in an undue burden or in a fundamental alteration of the judicial service or activity. Courts are also subject to the MPCRA.

The Disabilities Committee conducted or reviewed the following studies in order to examine the accessibility of courts and the legal process for people with disabilities:

1. Survey of State Bar Members with a Disability

Methodology: The Disabilities Committee sent a written survey to over 250 State Bar members who self-disclosed a personal disability on their State Bar dues form. 27% returned their surveys in a confidential sealed envelope to a consultant who summarized the results. See Attachment A for survey.

Findings:

- Approximately 50% of the 65 who responded stated they have had some difficulty accessing the legal system.
- The majority, 75%, felt that cognitive disabilities are a much larger problem in terms of the disability not being accommodated.

Comments:

Those who report having difficulty specified:

- Deaf or hard-of-hearing people are unable to hear the judge in the courtroom.
- Requests for a sign language interpreter have been denied as "unnecessary."
- There is a basic insensitivity of court personnel toward people with disabilities.
- There is inadequate parking, jury box or witness stand inaccessibility, and inaccessible or inadequate waiting areas for people with disabilities.

- Requested accommodations for cognitive or psychiatric impairments are often denied with no sympathy or interest in how to accommodate “seemingly” healthy people who behave differently.
- Many people with cognitive disabilities do not understand the language or proceedings and are therefore denied justice.
- Judges may be wary of, or do not believe in the existence of “hidden disabilities.”
- People who do not have a disability cannot imagine themselves as ever having a cognitive or psychiatric disability, and tend to believe that what is “hidden” is really imaginary.
- Since a cognitive or psychiatric disability is not as obvious as a physical disability, it is often overlooked or dismissed.

2. Phone Survey of Court Accessibility

Methodology: The Disabilities Committee conducted phone surveys of court administrators in seven courts regarding accessibility. See Attachment B for interview form.

Findings:

- All but one administrator was familiar with the ADA and the MPDCRA.
- Four of the seven did not have designated ADA Coordinators.
- No ADA coordinators had been provided training about the ADA by their employers. Two of the three had attended training provided by other programs.
- Four were familiar with the SCAO Court Accommodation Form.
- Five of the seven had written policies related to accommodating people with disabilities.
- Four of the five used the SCAO policy that was sent to them, which included the Court Accommodation Form. (See attached).
- Four of the seven stated they believed people with cognitive disabilities have unique problems.

Accommodations requested: Lowered counters, door pulls changed, language and hearing interpreters, parking, motorized chairs, Braille signs and handbooks, taping of testimony for legally blind persons, ramps, wheelchairs, signage, height changes in

bathrooms, obstructions removed from hallways; one obese person requested a hearing in her car because she could not get out of it.

Barriers still remaining: Inaccessible sidewalks, wheelchair barriers in courtrooms, lack of signage for restrooms for visually impaired, raised lettering, doors not wide enough for wheel chairs, high counters, witness stands inaccessible, inaccessible parking.

Comments about people with cognitive or psychiatric disabilities:

- Some of the Court Administrators indicated they believed people with cognitive disabilities have a problem with basic understanding of the process and procedure needed for resolution of issues within the court system.
- Some felt court employees with cognitive disabilities have problems because the work is so stressful and they need to be in a different environment within the court system.
- Some recognized that certain people are unable to read or understand what is going on in the courtroom. On the other hand, some administrators felt they do a good job with people who have such disabilities.
- Administrators believe their judges are very sensitive to people who have obvious cognitive disabilities and take care to make sure they understand what is going on.
- District court #16 in Livonia has worked with a number of community agencies to assure people with cognitive or communication difficulties are accommodated. They have received computer boards from the schools for people who need to use them to communicate. They utilize the services of social service agencies and the Family Independence Agency (FIA) to assist people who need extra help through their court process. They have rapport with women police officers that work on sexual crimes, and they have rapport, as well, with the probation department to give people the accommodations they need.
- Another court worker related a case involving a woman with a mental illness. They allowed someone who knew her well to be with her to explain the process and tell her what she needed to know and do.
- One court worker related that sometimes people don't tell the court about their disability. Thus, the court cannot be helpful.
- Resources: Three courts stated they have found Pam Creighton at the SCAO to be very helpful.
- The following specific recommendations were made to improve accessibility:

Having on-site language interpreters; multi-language forms; extending court hours; taking the court into the community; educating the public sector; having a phone number to call to ask questions and get case studies and disability information of all kinds; simplifying forms; legal aid on site for people who have transportation problems; additional materials for “*in pro per*” matters so people with disabilities can file pleadings out of their home through the internet, etc.; wheelchair ramps that conform to ADA standards; speech recognition software for the blind; and having mechanical speech readers available.

- The following reference was cited as very helpful to the courts:

State Court Administrator’s Office, Administrative Memorandum 1998-02; Guidelines for Accommodations for Persons with Disabilities. (See attached). Included in this memorandum to all Chief Judges is a guideline to be used to implement a policy in each trial court to meet the requirements of the ADA, a “Request for Accommodation Form,” a Model Public Notice Form, Listing of Disability Rights Resource Organizations, Directory of Interpreters from the Division on Deafness, Regional Resources Directory, and listing of known vendors who provide equipment for people with disabilities.

3. Site visits of courthouses

Methodology: Two site visits were conducted of Michigan court buildings. One was done in a rural area and one in an urban setting. The urban setting included two buildings; one housing the District and Circuit Courts for the county, and the other a Court of Appeals building. This evaluation was done by Center for Independent Living staff members who are very familiar with the evaluation of accessibility standards under ADA regulations. The rural setting site visit included two buildings – the District Court building and the Circuit Court building. A Disability Committee member who is well versed in obvious design elements under the applicable laws evaluated these courthouses.

Findings: In the urban setting, it was found that:

- Generally the courts in this community had a number of accessibility problems. The restrooms did not have the required side transfer space; dispensers and mirrors were mounted too high; no accessible handles on stall doors; pipes underneath the sinks were not insulated; some toilets were not the correct height; and some did not have grab bars.
- In the courtrooms, it was found that some lawyer tables were not high enough to accommodate wheelchairs; podiums were too high and microphones not removable; the elevators did not meet ADA Architectural Guidelines (ADAAG); ramps were too steep in some areas so that a person in a wheelchair could not

climb the ramp or would slide backward; drinking fountains were not accessible; jury boxes and witness stands were not accessible and microphones didn't reach far enough so that a witness could even sit in a wheelchair in front of the stand; more Braille signage was needed.

- In the common areas of the courthouses, it was found that: public telephone booths were not accessible; elevators did not have the required audible signal to alert a visually impaired person; the fire emergency systems had audible signals but no visual signals such as flashing or blinking lights to alert a person with a hearing impairment.
- The rural area courthouse was found accessible in many ways, but a few problems noted were:
 - √ Lack of power doors in entranceways, (not an ADA requirement);
 - √ Not enough Braille in elevators;
 - √ Inaccessible witness boxes;
 - √ No indication a teletypewriter (TTY) is available;
 - √ No signage of amplification systems being available.

4. Focus Group with People who have Disabilities.

Methodology: The Disabilities Committee conducted a focus group in July 2000, of eight people with physical disabilities who had contact with the court system sometime in the past. See attachment C for interview questions.

Findings:

- This group indicated that generally they were able to gain entrance into the courthouses they attended. Problems and exceptions are noted in comments below.
- They all believed people with cognitive or psychiatric disabilities are not properly identified and accommodated.

Comments:

- Some had been called to jury duty and found some of the courts had accessible jury boxes and some did not.
- All said the witness stands were not accessible, but they were able to state their case from the floor in their wheelchairs. They did wonder if the witness stands should be accessible.
- The biggest problem this group had was parking. There were complaints of parking lots on gravel in Detroit that make it almost impossible to use a

wheelchair. Others complained of parking structures that were not high enough to accommodate the high top vans they need for their wheelchair and equipment.

- They also stated that in a couple of cases, although ramps to courthouses were provided, the ramps were too steep and they slid down them.
- Comments about individuals with cognitive or psychiatric disabilities included:
 - People with cognitive or psychiatric disabilities have more difficulties because they do not know to ask for their rights.
 - People are more willing to help a person with a physical disability than someone with a cognitive or psychiatric disability. (For instance, it makes people feel good to help someone in a wheelchair get through a door, but people are more likely to get annoyed at someone who has to ask the same question over and over because they don't understand what they're supposed to do).
 - The problem is lack of awareness about cognitive and psychiatric disabilities and how to deal with them.

5. Phone Survey of Professionals Who Work with People with Cognitive Disabilities.

Methodology: The Disabilities Committee conducted a phone survey of four professionals who work in service systems for people who have cognitive or psychiatric disabilities, and who become involved with the court system either as defendants or plaintiffs. One of the service systems is for older people, one is for people with developmental disabilities, and the other two are primarily for people with mental illness. See Attachment D for interview questions.

Findings: These professionals were unanimous in their observations that more needs to be done to accommodate people with cognitive disabilities.

Elder law program:

- Courts often provide materials that older people cannot read because they cannot see them; the print is too small or of poor quality.
- Many older people also find it difficult to get into courtrooms physically. Although there is handicapped parking, there is often a long walk to the courtroom entrance; and the handicapped parking may not be the closest to the entrance.
- Once there, although there may be a ramp at an entrance, it is not the one closest to the parking lot.

- One experience older people have with the court system is going to small claims court. If they want to bring a spouse or family member to explain the proceedings so they can plead their cause, the family member is not allowed because family member is not the person with the claim. Thus, since it is so confusing the older person will often choose not to go to court.
- Landlord-tenant court is similar. A litigant does not have to have an attorney, but no one can act as the litigant's advocate either. It is recommended that someone should be allowed to be with them as an accommodation, much as personal representatives are allowed in social security hearings.
- Older people are typically less wealthy than the rest of the population because they are not working, and they also may be paying more for medical benefits and bills. Thus, they are less likely to be able to afford an attorney and more likely to need an advocate's help.
- It is not always easy to identify cognitive problems in the elderly, and they will often hide their disabilities because of embarrassment or fear that someone will try to take over their finances or other areas of their lives.

Program for people with developmental disabilities:

- Being poor is also typical, as most people in this group exist on government benefits, SSI being the most common. This level of income is about 73% of the poverty level in the United States. Thus, this population is less likely to be able to afford to hire an attorney and more likely to need an advocate's help.
- It is the experience in this program that there is a much greater chance of being granted an accommodation for a physical disability than for a cognitive disability.

Problems include:

- Crime victims not being considered good witnesses, because of their disabilities (even if they have a proven record for veracity and reliability);
- Being required to sign papers such as waivers of rights without being able to read;
- Pretending they can read or understand what is being said when they cannot;
- Confessing to crimes because they are easily intimidated, or agreeing or making confessions just to please people; and
- Being easily suggestible when questioned by authorities.

The accommodations requested and denied by this group include:

- Asking to have someone with the person who knows them while being questioned to make sure the person understands what is being asked or being signed;
- Asking for an attorney in criminal cases prior to any hearings, (by the time of the hearing the person has been questioned and interviewed and the damage is already done);
- Asking for an attorney who is sensitive and knowledgeable about disability issues so that these issues will be brought before the court.

Programs primarily dealing with people who have mental illness:

The first professional interviewed had spent a great deal of time going to landlord-tenant court with individuals who needed accommodations in order to not be evicted. This professional would act as an advocate, telling the judge that the person needed an accommodation, and what the accommodation might be. The individuals with disabilities generally did not understand their rights under the Fair Housing Amendments Act and were unable to articulate their need for an accommodation or what such accommodation might be. A complaint was filed against the professional for practicing law without a license and she was instructed by the State Bar to cease this practice.

- This professional was concerned also about the numbers of individuals with mental illness who were incarcerated in jails instead of being taken to hospitals. In one case, a person spent a few weeks in jail for a racial slur (part of the manifestation of his mental illness); the professional was able to meet with the judge and explain the individual was spending his time in jail, naked, in a state of psychosis, and pounding his head into the wall. The judge did order this person transferred to the state hospital and all charges were dropped. However, she is unable to intercede on behalf of most people who end up in jail because of behavior directly related to their disability.
- This professional pointed out that unless someone is with the person when being questioned and throughout their hearing process, the person would never understand their rights and the ramifications of statements made and papers signed while in custody.

The second professional interviewed works in a program specifically with people with cognitive disabilities who are in jail, in post-booking jail diversion programs, or at high risk of incarceration, such as people on probation or with criminal history. This professional had not asked for accommodations for people in the court process because by the time they were referred to him, they had already been through the arraignment

and hearing processes. They are usually referred to him after those processes or after the person is in jail and has been identified as a person in need of mental health treatment.

- This professional, too, believes there are far too many people in jail who should not be there because their behavior is a manifestation of their mental illness, and they are actively psychotic or in need of treatment. Therefore, they should be in a hospital or treatment program.
- He believes it would be helpful to have a mental health or behavioral health court as they have in Florida, in which judges can mandate treatment, including taking medications, and conduct follow-up on client progress.
- He also believes intervention is needed at the very front end of the criminal process, (i.e. when someone is picked up by the police) to explain what their rights are and be with them through the process so that they understand what is happening and can negotiate with prosecutors, etc.

6. The Michigan Courthouse Study of 1981

Methodology: This study constituted a very technical study/review of the building conditions and structural soundness of Michigan courthouses.

Findings:

- Courthouses have very complex spatial needs due to their varied constituents, including the general public, prisoners, attorneys, judges, court personnel, the jury, and law enforcement.
- Different circulation paths, entrances, and rooms set the foundation for the complexity of traffic flow.
- The volume of individual usage and the intensity of usage based in part on services provided create further complexity.
- Finding one's way around in Michigan's courts is more difficult than it should be. 40% of all the courts do not have clear signage either inside or out.
- Overall, Michigan courts lack adequate space, have outdated designs and are out of compliance because of changing standards.

7. Survey of Access to New York State Courts for Individuals with Disabilities

Methodology: In New York, an extensive study was done in 1994. A survey was sent to 275 courts. Site visits were conducted by a combination of staff from the Commission on Quality of Care for the Mentally Disabled, several Centers for Independent Living, and volunteers from the NY bar association.

Findings:

- There is a wide diversity of accessibility in the NY courts.
- Out of a rating scale of a possible 47, the mean score was only 23.
- The areas most problematic for courts in general included lack of appropriate signage, nonexistent or limited accommodations for persons with visual or hearing impairments, and very limited knowledge about reasonable accommodation for persons with mental disabilities.

8. Michigan Disability Rights Bar Association Court Access Study

Methodology: In 1994, surveys were sent to 225 courts asking whether they had done a self-evaluation of their court's accessibility, as required by the ADA.

Findings:

- 65% responded yes.
- A review of the self-evaluations ran the gamut from very detailed, professionally done evaluations to simple statements stating whether they believe their courts are accessible.
- The majority of self-evaluations done by courts did not meet the requirements of the ADA.

9. California Judicial Council Access and Fairness Advisory Committee

Methodology: In California, a very extensive study was done by the California Judicial Council's Access and Fairness Advisory Committee – Access for Persons with Disabilities Subcommittee in 1995. This research effort included seven public hearings, a telephonic survey of 1200 people, 6000 mail surveys, (1661 were returned), and 373 qualitative interviews.

Findings:

- The report dealt almost exclusively with obstacles pertaining to the physical access to the courts, as well as court policies and procedures necessary to participate in court proceedings.

- Physical mobility in and out of the court facilities was exceedingly difficult and sometimes impossible.
- It was also discovered that there was a need for more accommodations, including assistive listening devices, print enlargers, and sign language interpreters.
- It was found that court policies make it difficult for those with disabilities to be included in jury pools as well as to obtain legal representation.
- A majority of survey respondents believed that persons with disabilities have less access to court programs, activities and services than those without.
- It was also documented from survey respondents that architectural features (such as doors, restrooms, paths of travel, and parking lots) as well as furniture and fixtures (such as telephones, door handles, and counter-tops) made physical access to the courts difficult.
- Ramps, when provided, were reported to be too steep, doors were too heavy without power-assisted access, and elevators were too small; these were just a few of the criticisms of the California court buildings.
- The survey showed there was a general lack of knowledge and awareness of disability issues among the court personnel, including lack of knowledge of the ADA and its compliance requirements.
- Furthermore, courts were reported to be improperly equipped to permit those with disabilities to fully participate in court proceedings, as they lacked such devices as print enlargers, listening devices, TTY telephones, and real-time reporting.
- The Disabilities Committee reviewed a videotape done in California promoting sensitivity to people with disabilities in the court system. Although it was found to be helpful, it also served as an ironic learning tool. The tape had segments with written text but no voice-over so that people with vision impairments could not fully use the tape. Viewing this tape made obvious the importance of including experts in each disability area and people with disabilities in the development of such projects.

10. Administrative Office of the United States Courts report

Methodology: Under the 1996 Judicial Conference guidelines, courts providing services to the deaf and other persons with communications disabilities are to submit reports to the Administrative Office of the United States Courts. In a 1998

memorandum, the following results were reported representing a two-year time frame from April 1996 to June 1998.

Findings:

- Services were provided to 119 court participants, representing criminal defendants, parties to civil cases, jurors and attorneys.
- 132 total services were provided for 119 participants.
- Sign language interpreters were provided 56 times; Assistive Listening System 35 times; and Real-Time Transcriptions 31 times.
- Costs to the courts for the services were: 31% - nothing; 42% - \$1 to \$500; 4% - \$500 to \$1,000; 5% - over \$1,000; the cost is unknown for 18%.

11. CMHSP Jail Services/Jail Diversion Survey

Methodology: The Michigan Association of Community Mental Health Boards surveyed all 49 Community Mental Health Service Providers (CMHSP) to assess their compliance with section 207 of the Mental Health Code. (MCL 330.1207; MSA 14.300(207)). This section requires that all community mental health services programs provide services designed to divert persons with serious mental illness, serious emotional disturbance, or developmental disability from possible jail incarceration when appropriate. A Department of Community Health's administrative directive defines this procedure to include; "Each CMHSP shall work toward establishing working relationships with representative staff of local law enforcement agencies. Such agencies include the county prosecutors office, county sheriffs offices, county jails, municipal police agencies, municipal detention facilities AND THE COURTS." (Emphasis added). (See MDCH/CMHSP Managed Specialty Supports and Services Contract: Attachment 3.11.5 Jail Diversion Best Practice Guideline).

Findings:

- 48 of 49 CMHSP's are providing some level of mental health services in local jails.
- Only 13 are directly involved in diversionary activities with courts.
- There were a wide variety of services provided across the State.

12. Review of Literature – People with Cognitive Disabilities in the Criminal Justice System.

Methodology: Legal research of published literature.

Findings:

- The percentage of people with mental retardation (MR) and mental illness (MI) in jails and prisons is greater than their percentage of the general population.
- This population fares much worse once incarcerated. They are more likely to become victims of crimes in the penal system, also.
- Reasons for higher percentages of people with MR and MI in jails and prisons:
 - There is a greater likelihood that individuals with MR will respond to coercion and pressure to confess compared to an individual of average intelligence.
 - As mental capacity decreases, suggestibility to leading questions and false information supplied by others increases.
 - Most persons with MR do not have a complete understanding of the *Miranda* warning and, thus, may not realize that a waiver of rights increases the likelihood of self-incrimination.
 - Individuals with MR are easily led or coerced into crime by others, in an effort to be accepted and liked.
 - Many people with MR never learned the “rules” of acceptable behavior because of being segregated from general society or not being educated in the same rules as others.
 - Some individuals with MR do not recognize the consequences in the legal system of their actions.
 - The reason for high numbers of incarcerated individuals with MI are thought to be that police have an easier time apprehending violent criminals with MI; juries might be more willing to convict MI defendants; and judges might be more inclined to sentence MI violent offenders to prison than other violent offenders.
- People with cognitive or psychiatric disabilities fare much worse once incarcerated than those without such disabilities.
 - People with MR are more likely to be victimized, exploited, and injured than other inmates.
 - They are also more likely to be charged with disciplinary violations and to serve longer sentences.

- They are unlikely to receive any habilitation designed to address the problems caused by their mental retardation.
- A Department of Justice Study done last year showed that, once incarcerated, emotionally disturbed inmates in state prisons spend an average of 65 months longer behind bars than others, often because their delusions, hallucinations or paranoia make them more likely to get into fights or receive disciplinary reports.
- Other considerations are that persons who have a diagnosis of MI may decompensate in a prison; some people may have physical needs that may pose problems to prison personnel; and medications may not be given consistently, causing more problems.
- Solutions proposed include the following:
 - First, proper identification of individuals with cognitive disabilities in the early stages of the criminal justice system at the local level - rather than not at all or after the person has been incarcerated.
 - Second, raising the public levels of knowledge and consciousness of the issues, concerning people with cognitive disabilities, including lawyers and judges.
 - Third, experts agree that probation is the preferred disposition to be used for individuals with mental retardation. It can be individualized based on pre-sentence investigation and is flexible enough to include minimal to intensive supervision, with requirements for living arrangements, and participation in other services including education, vocational or other specialized treatment.
- Accommodations courts can offer to defendants with cognitive disabilities:
 - Holding a dialogue to be satisfied that waivers and admissions are reliable, (asking open-ended questions rather than questions that can be answered with “yes” or “no” would be essential to this process).
 - Excluding statements made without a lawyer present, allowing support from others when testifying for the purpose of explaining and interpreting what is happening for the defendant.
 - Allowing support from others when testifying for the purpose of explaining and interpreting what is happening for the defendant.
 - Slowing the pace of the proceedings.
 - Breaking down key concepts.

- Avoiding legal jargon.
- People with cognitive or psychiatric disabilities are also subject to more problems than those without such disabilities when they become victims of crimes.
 - Individuals with developmental disabilities have a 4 – 10 times higher risk of becoming victims of crime than people without a disability.
 - Children with a disability are over two times more likely to be physically abused and almost twice as likely to be sexually abused.
 - 68% - 83% of women with disabilities will be sexually assaulted, (50% higher than the rest of the population).
 - People with developmental disabilities are more likely to be re-victimized by the same person and more than one-half never seek assistance from legal or treatment services.
 - 81% of psychiatric inpatients have been physically or sexually assaulted.
 - According to the Colorado Department of Health, 85% of women with disabilities are victims of domestic abuse, compared to 25 to 50% of the general population.
- Strategies for the justice system to improve its response to the issues of victimization of people with disabilities:
 - Sentence enhancements could be implemented for the victimizers of people with disabilities.
 - Specialized victim assistance services could be provided, including counseling, transportation to court, escorts to court, accommodations such as hearing aids in court, follow-along services to enable victims to understand court scheduling and proceedings, help with arranging medical treatment following victimization, or alternative dispute resolution services.
 - Disability advocates could be recruited to assist police and the judicial system with some aspects of these cases.
 - Disability advocates might be helpful in reporting back to the court on the particular effects of victimization.

13. Review of Literature regarding court access of people who are deaf or hard of hearing

Methodology: Legal research of published literature conducted in 2000.

Findings: The committee reviewed numerous articles relating to the needs of people who are deaf or hard-of-hearing. An outstanding publication worthy of note is the American Judicature Society's excellent publication, *The Right to a Full Hearing: Improving Access to the Courts for People Who Are Deaf or Hard of Hearing*.

This publication was made possible by a grant from the W.K. Kellogg Foundation. It was a three-year project that included holding focus groups with deaf and hard-of-hearing persons, as well as major regional workshops on improving access to the courts. It was noted that current estimates of Americans with some degree of hearing loss are of the magnitude of 25 to 28 million, which constitutes about 10 percent of the population. The numbers are projected to increase significantly as the aging of America continues. Today, 25 percent of Americans who have reached age 60 have hearing loss. By age 70, that figure is 50 percent, and by 80 it is very close to 100 percent. The report observes that whether intended or not, the denial of access to the courts by persons who are deaf or hard-of-hearing is real. The report states:

The reality is that court proceedings are so inherently dependent upon oral faculties, and yet we as a society barely choose to recognize this, even as some 8 to 10 percent of the American population experiences some form of discrimination as they enter the courthouse door. Most of us who can hear have largely ignored this injustice, as a society and as individuals. And even when we attempt to rectify the situation, very often our best efforts are clouded yet again by our unintentional bias . . . Our intentions are good, but our ability to implement change remains suspect. We take control. We condescend. We assume that the hearing-impaired community needs our guidance. We have not learned the lesson: Ideas from persons who are deaf or hard of hearing must be the core of the solution, because they understand the problems far better than the hearing community can.

The following are just some of the top 40 recommendations that this report makes:

- Promulgate a state rule requiring lawyers to notify courts of the participation of a person who is hearing impaired in a case if that person so requests.
- Provide any hard-of-hearing participant in the court process – whether judge, attorney, party, witness, juror, or audience member – with access to assistive listening devices (ALD's), access to computer-aided real-time transcription (CART) services, and access to interpreting services in any proceeding in a courthouse so that such a participant can communicate on an equal basis with any hearing person and thereby achieve “effective communication,” as mandated specifically the ADA.

- Promulgate a statute in each state that would: (1) guarantee the rights of all court participants to sign language or oral interpreters, (2) advise all court participants that they have a right to a sign language or oral interpreters at the expense of the public, (3) ensure that at least one state governmental agency or commission would compile and maintain an inclusive list of qualified interpreters, and (4) recommend a standardized oath to communicate only what is said, signed, or written in the course of court proceedings and not add, delete, or otherwise misrepresent the content of any evidence or statements made during that proceeding.
- Implement an across-the-board practice of judicial qualification of all interpreters, oral interpreters, CART reporters, and the like by administering a standardized oath to them that would (1) maintain the confidentiality of the proceedings, (2) stress the need for absolute impartiality, (3) emphasize accuracy in the translation, (4) give the person the authority to address the court on issues relating to the deaf or hard-of-hearing person's ability to perform his or her function, and (5) respect the sanctity of deliberations in the jury room.
- Develop a set of guidelines for use by state judges discussing what constitutes a "qualified" interpreter and a "certified" interpreter. Also discuss what steps might be taken if a "nonqualified" or "noncertified" interpreter were to be used by a court.
- Append a standardized sample judicial instruction to state judicial bench books as a means to clarify the neutral role of interpreters and court reporters in the jury room.
- Require that judges meet with interpreters before court proceedings to discuss the communication needs of persons who are deaf or hard of hearing as well as other issues, such as the team approach to interpreting, physical arrangement of the courtroom, regular breaks, etc.
- Ensure access to communications facilitators by negotiating ongoing contracts with interpreting or CART services providers to ensure that they will be available upon demand. To obtain such contracts, it may be necessary to include more than one court or one court system – even other local state or municipal agencies.
- Ensure by a state Supreme Court rule that any documents that are provided by attorneys to clients, witnesses, or others bear TDD/TYY or relay service numbers so that the hearing-impaired may contact the courts for information, if needed.
- Choose a sample county within each state and bring it into total compliance with the ADA.

- Provide one fully accessible courtroom in each county, including an accessible jury room.
- Implement procedures so that potential jurors can have their juror numbers called by both visual and aural means.
- Use simple language in jury instructions so that they can be easily understood by average jurors and easily translated as well. It would be best to have both oral and written instructions.
- Encourage active outreach efforts between courts, the hearing-impaired community, and hearing advocacy groups to (1) ensure education of the hearing-impaired community regarding the auxiliary aids and services available at the courthouse; (2) facilitate information exchange from advocacy groups to courts regarding new technologies and providers of interpreting or CART services; (3) use advocacy groups to help train judges, ADA coordinators, and court staff regarding issues specific to communicating or accommodating the hearing impaired; and (4) maintain open lines of communication between courts and representatives of the deaf community to ensure the best possible delivery of services to that community within the administrative and budgetary constraints of the court system.

Based on the studies referenced above, the Disabilities Committee makes the following Recommendations with respect to Courts and Legal Process:

1. A manual for courts should be developed by the Open Justice Commission, in cooperation with the State Court Administrator's Office (SCAO) that summarizes accessibility standards of the ADA with a list of resources that can be used to evaluate whether a court is in compliance. There should be a definition and a process to determine what constitutes an "undue burden" or "fundamental alteration" of the judicial service or activity. A list of common accommodations for physical, cognitive and psychiatric disabilities should be included. The SCAO should distribute this manual to each court as a supplement to the judicial bench book.
2. Sensitivity training about people with disabilities and their specific needs in the legal system should be expanded and provided to judges and court staff, and offered to attorneys. This training should also be incorporated into mandatory diversity training for new judges consideration should be given to requiring diversity training for all judges every two years. People with disabilities and people with expertise in each disability area should be a part of the training team. The Open Justice Commission should work in cooperation with the SCAO/Michigan Judicial Institute (MJI), the Institute for Continuing Legal Education (ICLE) and the National Center for State Courts to develop such training. Training for other court staff and attorneys should be offered at the annual local bar presidents conference, the Annual Bar Association meeting, the Annual Court Administrator's meeting, deputies' training for courts,

- ICLE training, juvenile court training, and other appropriate venues. The Disabilities Committee should be a resource for the development of the training content. This training should be offered on an annual basis in accessible places. Consideration should be given to transportation needs of attendees with disabilities who cannot drive and need to take public transportation.
3. The ADA Coordinator position appointed in each court pursuant to SCAO Administrative Memorandum 1998-02 should be strengthened and empowered in each court and should receive training about the responsibilities of the court under the ADA and MPDCRA. This person should be available to answer questions, investigate complaints and resolve problems relating to accessibility of the courts to individuals with disabilities.
 4. SCAO Form MC-70 should be expanded to require, or allow for, identification of the specific judge, courtroom or proceeding for which accommodation is requested. With respect to the needs of the deaf/hard of hearing, the form should also be expanded to include space for the precise type of assistive listening system which the requestor needs, or the type of sign language interpreter needed (SEE, ASL, etc.). The form should also provide information regarding whom the requestor could contact at the local court to verify that the request has been received and is being acted on prior to the court hearing for which accommodations are being requested.
 5. The Open Justice Commission should work with the Standing Committee on the Unauthorized Practice of Law to explore methods to provide advocacy accommodations for individuals with disabilities without the risk of an advocate being accused of practicing law without a license. An exception to the definition of "the unauthorized practice of law" for advocates who assist people with cognitive disabilities should be developed that would apply when a person with a disability requests an advocate to speak for him/her in legal processes that do not require an attorney.
 6. The Open Justice Commission, in cooperation with the SCAO, should develop and distribute information to help courts, law enforcement and correctional agencies establish a mechanism for screening and identifying people with disabilities before arraignment who are defendants or victims of crime. This would enable the person to be referred to the appropriate Community Mental Health (CMH) program or other advocacy program for assistance.
 7. The SCAO should provide information to courts about their county's statutorily required CMH diversion program so they will use it to refer people with mental illness and developmental disabilities for assistance. The courts should have policies to work cooperatively with CMH and other appropriate agencies toward developing and strengthening the diversion program if necessary. Michigan Association of Community Mental Health Boards (MACMHB) survey showed only 13 of 49 CMH's had diversion programs as required by MCL 330.1207; MSA 14.800 (207).

8. Judges should make clear, when ordering jail terms for criminals with disabilities, that if the person is going to be released from jail early because the jail cannot accommodate the disability, the jail should notify the judge so an alternate order can be issued if the judge finds it appropriate.
9. The Open Justice Commission should appoint a statewide task force to examine and make recommendations to eliminate discrimination and unjust treatment in the jail, law enforcement and prison systems. These systems are inextricably related to access to legal justice systems. The task force should include representatives of the State Bar, trial lawyers associations, law enforcement agencies, courts, prosecutors, (CHM) personnel and disability and prisoner advocacy groups. A heavy emphasis should be on developing effective diversion programs for people with mental illness or mental retardation through the (CMH) systems. Studies of model programs in Michigan and other states should be undertaken. Recommendations should include education programs for jail, pretrial detention, parole, probation and law enforcement personnel about treatment of people with disabilities from the time they are questioned about crimes, as victims or potential defendants, to their treatment and release from the jail systems. It should also include resource information about other community systems, such as local CMH's, that can provide services to people with disabilities involved in the legal process. Other states have done extensive work in this area.
10. The State Bar of Michigan should develop a web site for disability issues that includes requirements to provide accessibility to courts and the legal process. The recommended materials in this report should be included, as well as links to other web sites with helpful information. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, a resource list for further assistance, and educational materials.

Resources:

Books:

Bleyer, McCarty, Wood, *Into the Jury Box: A Disability Accommodation Guide for State Courts*. Washington, D.C.: American Bar Association, Commission on Mental and Physical Disability Law and Commission on Legal Problems of the Elderly and the State Justice Institute, 1st ed. (1994).

Fallahay, *The Right to a Full Hearing: Improving Access to the Courts for People Who Are Deaf or Hard of Hearing*. Chicago: American Judicature Society, 1st ed., (2000).

Conley, Luckasson & Bouthilet, *The Criminal Justice System and Mental Retardation: Defendants and Victim*. Baltimore: Paul H. Brooks Publishing Co., 1st ed. (1992).

Luckasson and Vance, *Defendants, Victims and Witnesses with Mental Retardation: An Instructional Guide for Judges and Judicial Educators*. Nevada: American Bar Association, The National Judicial College, and 1st ed. (1995).

Wood, Dooley & Karp, *Court-Related Needs of the Elderly and Persons with Disabilities: a Blueprint for the Future*. Washington, D.C: American Bar Association, The National Judicial College, and 1st ed. (1991).

Published Reports:

New York State Commission on Quality of Care for the Mentally Disabled and the New York State Bar Association Committee on Mental and Physical Disabilities, *Survey of Access to New York State Courts for Individuals with Disabilities* (1994).

California Judicial Council's Access and Fairness Advisory Committee Access for Persons with Disabilities Subcommittee, *Summary of Survey and Public Hearing Reports* (2000).

Michigan Association of Community Mental Health Boards, *Study of CMHSP's Providing Jail Diversion Services* (1998).

University of Michigan Architectural Research Lab, *Michigan Courthouse Study*, Ann Arbor, Michigan (1981).

Ohio Courts Futures Commission, Supreme Court of Ohio, *A Changing Landscape* (2000)

Journals:

Sheridan, *Accommodations for the Hearing Impaired in State Courts*, Michigan Bar Journal (Vol. 74, No. 5, May 1995).

Sheridan, *Access to the Courts for People with Hearing Loss*, Hearing Loss (Volume 21 No. 5 (September/October 2000) pp 7-10).

Santamour & West, *The Mentally Retarded Offender in the Social Context*, Vol. 4, No. 1 Nat Center for Law & the Handicapped 23 (1979).

U.S. Dept. of Justice, Office of Justice Programs, Office for Victims of Crime (September 1998), *Working with Victims of Crime with Disabilities*.

The ARC Today, *Growing Interest seen in Criminal Justice Issues*, Vol. 48, No 1, (Spring 1999), p 4.

Everington & Fulero, *Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation*, Vol. 37, No. 3, *Mental Retardation* (June 1999) pp 212-220.

Pamphlets:

McGuire-Willis & Associates, *Person First; A Language Guide to Help You Put the Person First when Communicating about People with Disabilities* (Columbus, OH, revised, 1995).

Unpublished Reports:

Michigan Disability Rights Bar Association, *Study of Physical Accessibility of Michigan Courthouses* (1994) (unpublished manuscript on file with the MDRBA).

Open Justice Commission Disabilities Committee (OJCDC), *Survey of Self-identified Attorneys with Disabilities* (2000) (unpublished study on file with the OJCDC).

Open Justice Commission Disabilities Committee, *Interviews with 10 Michigan Court Administrators Regarding Accessibility of their Courts* (2000) (unpublished study on file with the OJCDC).

Open Justice Commission Disabilities Committee, *Two Site Visits of Michigan Courts* (2000) (unpublished study on file with the OJCDC).

Open Justice Commission Disabilities Committee, *Focus Group of People with Disabilities Who Have Been in the Court System* (2000) (unpublished study on file with OJCDC).

Open Justice Commission Disabilities Committee, *Four Phone Surveys of Professionals Who Provide Support to Individuals with Cognitive Disabilities in the Court System* (2000) (unpublished study on file with the OJCDC).

Law Firms

People with disabilities must have equal access to law firms as an essential part of the legal justice system. They also must have equal opportunity for employment in law firms. Law firms are subject to Titles I and III of the ADA. Title I prohibits discrimination in employment against qualified individuals with disabilities. Title III requires that businesses open to the public make sure that individuals with disabilities are able to participate in the services they offer. Law firms are also subject to the MPDCRA.

Accordingly, law firms must provide physical and programmatic accessibility to people with disabilities and must provide services or appropriate aids whenever necessary as long as this does not result in an "undue burden" or in a "fundamental alteration" of the judicial service or activity.

Finally, law firms should also provide broad and equitable opportunities for people with disabilities to be employed in their law firms. They need to be aware of employment requirements under the ADA and other civil rights laws that mandate non-discrimination and appropriate accommodations for people with disabilities. This includes awareness of what essential functions of each job are, what reasonable accommodations are, and what an undue burden would be for their firm.

The Disabilities Committee conducted or reviewed the following studies to examine accessibility of law firms:

1. Review of Law Firms

Methodology and Findings: The Disabilities Committee conducted interviews with a small number of law firms. It became clear that although some law firms do a good job on a case-by-case basis to employ people with disabilities, few law firms have actual employment policies about employment of people with disabilities. Statistics make it clear that people with disabilities are seeking employment in law firms, but not much attention is given by some firms to the kind of accommodations that would make their employment possible. Law firms need to concern themselves with this issue, and the State Bar can provide resources to help.

2. Accommodation Benefit/Cost Data, Job Accommodation Network (JAN), West Virginia University

Methodology: The JAN periodically sends a mail survey to a random selection of callers who received specific accommodation information. These results cover 1,954 responses from 1992 to 2000.

Findings:

- 20% of accommodations cost the employer nothing, 51% were below \$500.00, 25% were between \$500.00 and \$5000.00, 4% were more than \$5000.00.
- The mean cost was \$943.00 and the median cost was \$250.00.
- It was estimated that mean benefits to companies because of making the accommodations was \$32,607.00. Thus, for every dollar spent to make an accommodation, the company got \$34.58 in benefits.

3. Review of Literature

Methodology: Review of literature regarding whether “essential functions of the job” have been defined for lawyers.

Findings:

- Courts have defined some “essential functions” as the ability to reason analytically; ability to read; ability to communicate; ability to concentrate (organization); ability to maintain a regular and reliable level of attendance.
- The Economic Research Institute lists essential functions as: gathers evidence to formulate defense or to initiate legal action; conducts research; interviews clients and witnesses; handles other details in preparation for trial; prepares legal briefs; develops strategy, arguments and testimony in preparation for case; files briefs; represents client in court; and interprets laws, rulings and regulations.
- EEOC definition of “essential function” – the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.

Based on the studies referenced above, the Disabilities Committee makes the following Recommendations with respect to law firms:

1. The Open Justice Commission, in cooperation with law firms, should develop and distribute a manual to law firms outlining the requirements of the ADA and MPDCRA for accessibility of law firms by employees and clients. A resource list should be included so that law firms will be able to identify resources to evaluate their firms for accessibility. This manual should define “reasonable accommodations” and “substantial burden.” The Disabilities Committee should be a resource to writing this manual and resource list.

2. Model employment policies should be drafted and distributed to law firms by the Open Justice Commission so that law firms will be familiar with employment requirements of the ADA and the MPDCRA. The policies should include sample job descriptions and contain information about permissible pre-employment questions; essential functions of the job; policies that describe reasonable accommodations; and the criteria for determining if an accommodation would be considered a "substantial burden." A list of potential accommodations should be included. Also included should be policies to affirmatively recruit individuals with disabilities and willingness to develop creative employment opportunities that would accommodate individuals with significant disabilities. The Disabilities Committee should be a resource to development of these policies.
3. The Open Justice Commission should commission a study of law firms to determine actual knowledge and practice regarding compliance with ADA and MPDCRA. These additional studies of the law firm environment should be used to determine awareness and education needs.
4. A State Bar of Michigan liaison should be identified to assist and provide education to firms needing guidance about appropriate policies and individual situations.
5. Educational programs should be provided to law firm administrators responsible for professional personnel through the Association for Law Firm Administrators, ICLE and other State Bar programs. These programs should cover responsibilities of employers under the ADA, the MPDCRA, and the advantages and responsibilities of hiring individuals with disabilities. The Disabilities Committee should be a resource for the development of these education programs.
6. The State Bar of Michigan should develop a web site for disability issues that includes disability employment information. The web site should include the above recommended materials and links to other applicable web sites and helpful information. The State Bar should provide resources to see that this web site is kept current and provides the latest statutes, cases, a resource list for further assistance, and educational materials.

Resources:

Cases:

In re Wolfgram, No. 90-TT-16955, 1995 WL 506002, at*1 (Cal. Bar Ct. Aug.22, 1995).

Shaw v. Monroe County Sheriff's Dept., 1996 U.S. Dist. LEXIS 6669, at *29.

LAW FIRMS

Journals:

Stokes & McGlinn, *The Accessible Law Office*, Mich. Bar Journal (Vol. 75, No. 5, May 1996) pp 390- 393.

U.S. Department of Education National Institute on Disability and Rehabilitation Research, ILR Program on Employment and Disability, Cornell University, *Employing and Accommodating Workers with Psychiatric Disabilities*, Cornell University, (2000).

Keyes, Edwards & Derning, *Mitigating Mental Retardation in Capital Cases: Finding the "Invisible" Defendant*, Mental and Physical Disability Law Reporter (August 1998).

U.S. Department of Justice, Office of Attorney Personnel Management, *Enhancing Job Opportunities for Attorneys with Disabilities*, In Brief (Winter/Spring 2000).

Articles:

Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodations of Law Students with Disabilities in Clinical Placements*, 36 San Diego L. Rev. 137, 179 (1999).

Published Reports:

Job Accommodation Network (JAN), A Service of the President's Committee on Employment of People with Disabilities, tabulated through July 30, 1999. <http://www.jan.wvu.edu>.

Pamphlets:

President's Committee on Employment of People with Disabilities, *Accommodation Benefit/Cost Data, Job Accommodation Network, A Service of the President's Committee on Employment of People with Disabilities* (2000).

Unpublished Studies:

Open`Justice Commission Disabilities Committee, *Review of Law Firms Regarding Job Descriptions and Policies Regarding People with Disabilities* (2000) (unpublished study on file with the OJCDC).

Web Sites:

A "disability community" with resource listings, tips, timely articles, and interactive capabilities. <http://www.ICAN.com>

Miscellaneous:

Equal Employment Opportunity Commission (EEOC), *EEOC Enforcement Guidelines: The Americans with Disabilities & Psychiatric Disabilities* (Number 915.112, 3/25/97).

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American Society of Employers.

U.S. Department of Labor Employment and Training Administration, *Dictionary of Occupational Titles* (Vol. I, Fourth Edition, Revised 1991).