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**Final Report of the  
Michigan Supreme  
Court Task Force on  
Gender Issues  
in the Courts**

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December, 1989

## Dedication

*The Task Force dedicates this report to the memory of G. Mervin Williams, an outstanding national leader and humanitarian. Following his sixteen year tenure on the Michigan Supreme Court, including four years as Chief Justice, Justice Williams carried out the role of honorary chairperson of the Task Force with vigor and enthusiasm until his sudden death on February 2, 1988. Our knowledge of his expectations for the project and his commitment to equal justice inspired the Task Force in our work.*

**MICHIGAN SUPREME COURT  
TASK FORCE ON GENDER ISSUES IN THE COURTS  
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**Robert B. Webster, President, State Bar of Michigan, Birmingham**

**Carolyn H. Williams, Probate Judge, Kalamazoo**

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Michigan Department of Civil Rights  
Michigan District Judges Association  
Michigan Family Support Council  
Michigan Judges Association  
Michigan Lawyers Auxiliary  
Michigan Probate and Juvenile Registers Association  
Michigan Probate Judges Association

Michigan Trial Lawyers Association  
Michigan Women's Commission  
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## I. INTRODUCTION

### The Task Force's Mandate

*A fundamental principle of our constitutional government is that discriminatory treatment on the basis of race, gender, economic class, religion, or physical condition cannot and will not be tolerated. Bias damages a court in its fundamental role as dispenser of justice.*

With these words, the Michigan Supreme Court Citizens' Commission to Improve Michigan Courts called in 1986 for the creation of task forces on gender and racial/ethnic issues in the courts. In its year-long examination of the Michigan courts, the Citizens' Commission found a significant and disturbing perception among Michigan citizens: over one-third believed that the Michigan court system discriminated against individuals on the basis of gender, race or ethnic origin.

Several states throughout the country had by 1986 created joint bench and bar commissions to study the effect of gender discrimination in their court systems. The State Bar of Michigan, the Women Lawyers Association of Michigan and numerous individual members of the Michigan judicial and legal community endorsed the Citizens' Commission's call for the Michigan Supreme Court to support a similar effort.

On September 15, 1987, the Justices of the Michigan Supreme Court issued Administrative Order No. 1987-6, attached as Appendix A, creating the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts (together referred to in this Report as the "Task Forces"). The Supreme Court directed the Task Forces "to examine the courts and to recommend revisions in rules, procedures and administration of the courts to assure equal treatment for men and women, free from race or gender bias".

The Task Force on Gender Issues in the Courts (referred to in this Report as the "Task Force") reports that its two-year examination of the Michigan courts establishes, as the Citizens' Commission suggested, that a substantial number of Michigan citizens believe that gender bias affects justice in the Michigan court system. The Task Force further concludes that the perceptions of gender bias are rooted in reality. Gender bias adversely affects the interpretation and application of substantive laws, practices and procedures; the treatment of and relationships among participants in the court system, including parties, victims of violence, children of divorce, witnesses, court employees, judges and lawyers; and related educational institutions and professional associations. The Task Force investigated the concerns of both men and women and found that gender bias adversely impacts both sexes.

The working definition of gender bias which the Task Force adopted, its funding, its community relations program and the focus and methods of its research efforts are described in Sections II through IV. Sections V and VI deal with substantive areas of the law and broad categories of societal problems which come before the Michigan courts, including domestic violence, domestic relations and sexual assault. Sections VII and VIII address the treatment of individuals within the court system itself and the status of women in the legal profession in such contexts as courtroom proceedings, court employment, bar associations and law schools.

The Task Force recommends a variety of reforms to address gender bias, ranging from specific to general. Some require implementation by the Supreme Court; others by bar associations, disciplinary agencies, law schools, court administrators and law firms. Various specific recommendations are discussed in the context of the topical subjects addressed in Sections V through VIII.

Fundamental reforms concerning the ethical standards governing judges and lawyers and the education they are provided are recommended in Section IX, "Joint Recommendations of the Task Forces". Here the Task Force proposes the articulation of new ethical standards, as well as the development of long-range educational programs. It recommends that implementation of its recommendations be overseen by an ongoing committee reflective of the diversity of participants in the Michigan court system.

The Task Force has been greatly encouraged by the positive reception it has received from the bench, the bar and the public. The Task Force has received significant support from the State Bar of Michigan, the Michigan State Bar Foundation, other bar associations and foundations and judicial and court administration groups. It has also been the beneficiary of extraordinary contributions by volunteers and community organizations. Some participants in the legal system were prompted, as a result of the Task Force work, to implement meaningful reforms without waiting for the final report of the Task Force. These efforts reflect the good faith and determination of judges, lawyers and court personnel who are committed to delivering justice fairly, honestly and dispassionately. The Task Force acknowledges this fundamental strength of the Michigan court system.

The Task Force intends that this Report illuminate the ways that bias hampers the delivery of justice and recommend constructive methods for its elimination from the Michigan court system. The Report does not identify or criticize individuals or events.

The Task Force concludes that gender bias exists within the Michigan justice system in forms both overt and subtle. The two year investigation leading to this conclusion is chronicled in the following pages. The Task Force believes that to elevate public confidence in our system of justice, the elimination of invidious bias must be a priority for each participant in that system.

The Task Force asks the Michigan Supreme Court to give this Report considered attention and to implement its recommendations with a sense of urgency.

### **National Developments**

As the Task Force concludes its work, twenty-eight task forces and commissions on gender bias in other states are underway or have completed their findings. Representatives of the Michigan Task Force participated in a National Conference on Gender Bias sponsored by the National Center for State Courts in the spring of 1989. The Task Force benefited greatly from the shared experience of these groups and hopes that this Report will in turn assist others.

The Task Force calls the Michigan Supreme Court's attention to this national momentum. It urges the Court to bring the Michigan justice system to the forefront of constructive change.

## **II. THE TASK FORCE APPROACH**

The Task Force was convened at the invitation of Chief Justice Dorothy Comstock Riley in December, 1987. Over the next twenty-three months, the Task Force met as a body approximately once a month and in numerous subgroups and committees.

### **Definition of Gender Bias**

The Task Force defined gender bias as:

. . . the tendency to think about and behave toward others primarily on the basis of their sex. It is reflected in attitudes and behavior toward women and men which are based on stereotypical beliefs about the "true nature", "proper role" and other "attributes" of the gender.

During the course of its investigation, the Task Force received testimony and written materials and undertook research which demonstrated that gender bias occurs in a great variety of circumstances. Bias may be expressed in ways that are so routine and subtle that they often go unrecognized. Even when bias is identified, it may be dismissed or ignored because the actor is assumed to have been well-intentioned, the conduct appears essentially harmless or the victim is thought to be hyper-sensitive.

The Task Force formulated an initial set of questions to test for gender bias in the courts:

Is substantive decision-making fair and impartial?

Do judges provide respectful and dignified treatment to all parties?

Is the exercise of power characterized by a recognition of personal dignity?

Do court facilities accommodate court users according to their needs?

How are court personnel treated by their employer?

Do court personnel treat users with courtesy and personal respect?

Do court policies and practices reflect fair and impartial treatment of all users?

Do gender neutral practices nonetheless have significant gender biased results?

Is there fair and equal treatment in law schools?

Are there fair and equal opportunity, encouragement and welcome in bar associations?

Is there fair and equal treatment in employment?

Is there proper professional behavior in attorney to attorney relationships?

Is there fair and equal treatment in judicial selection?

**Are there systems in place designed to guard against gender bias in the courts and do they function adequately?**

Following public hearings in the fall of 1988, the Task Force concluded that allegations of gender bias were made most frequently in five major areas: domestic violence; domestic relations; legal and judicial ethics; treatment of litigants, witnesses, judges, lawyers and court staff; and status of women in the profession. The Task Force therefore focused its subsequent investigations on these areas.

### **Funding**

The State Court Administrative Office provided a full-time executive director, an administrative assistant, office facilities and administrative support to the Task Forces. The Task Forces solicited funding for research projects and other out-of-pocket expenses from private and public sources. All fund-raising efforts were conducted jointly by both Task Forces, and solicitations to the general public were designed to encourage equal contributions to both projects. Additionally, the Task Forces cooperated on data collection and research projects which could be funded from single source grants.

The Task Forces received two major research grant awards: a \$67,000 grant from the State Justice Institute for the Citizen-User Survey and a \$28,600 grant from the Michigan State Bar Foundation for the Attorney Survey. Nearly \$15,000 in private donations were received. A combined grant from the Michigan State Bar Foundation and the State Bar of Michigan in the amount of \$11,000 for operating expenses helped make it possible for the Task Forces to extend their work an additional two months to finalize their reports.

Significant contributions of time and expertise were donated by numerous volunteers. Their support was invaluable. The Task Forces received research assistance from Suellyn Scarnecchia, Associate Professor, University of Michigan Law School; student interns Katherine Eyde, Michigan State University, Robert Heimbuch, Kalamazoo College, and Beverly Anthony Walker, Detroit College of Law; and the Domestic Violence Prevention and Treatment Board.

### **Community Relations**

The Task Forces believed that public awareness of their work would be vital to their success in several respects: to generate participation by citizens, lawyers, judges and court personnel in the information gathering process; to educate the public about the functioning of the justice system and issues of bias; and to create momentum for self-improvement within the judicial and legal communities.

The Task Forces adopted and implemented a joint community relations plan, which included:

creation of a comprehensive mailing list of interested organizations and individuals;

distribution of 30,000 brochures describing the work of the Task Forces and containing a registration sheet for persons interested in testifying or being on the mailing list;

distribution of informational material to interested individuals and organizations;

distribution of a news release package regarding the public hearings to every newspaper in the state;

publication of notices about the existence and work of the Task Forces in journals and newsletters of various organizations;

appearances by Task Force members and the Project Director on local television and radio talk shows and speaking engagements with community groups and special interest organizations; and

appearances by Task Force members and the Executive Director at judicial, court administration and bar conferences to discuss the proposed findings of the Task Forces and to solicit suggestions about recommendations.

Media coverage of the public hearings and of the Task Forces' three press conferences was excellent. In addition, Task Force members appeared on local radio and television programs throughout the state and made many presentations to community groups concerning the work of the Task Forces. Members of the Task Forces and the Project Director met formally and informally with representatives of interested organizations and responded to numerous telephone inquiries.

Task Force members also made a number of presentations including presentations at the annual summer conferences of the Probate Judges Association, the District Judges Association and the Michigan Judges Association. These appearances provided an opportunity to introduce the project to those whose cooperation and understanding are essential to its success. At the September, 1989 meeting of the Judicial Conference of the State Bar of Michigan, the Task Forces presented a two-hour program. Judges from the Task Forces led other judges in an examination of gender and racial/ethnic bias issues and practical solutions. Finally, Task Force representatives presented information about its work to numerous bar associations, as well as to the conference of presidents-elect of local bar associations sponsored by the State Bar of Michigan.

The work of the Task Forces generated substantial public interest. This interest was demonstrated by the volume of letters received from members of the general public as well as the legal community and the turnout of participants at the public hearings. The Task Force estimates that it received over four hundred letters from persons wishing to bring their views and experiences to its attention. One hundred eighty-two persons testified at the public hearings.

The public response suggests that the community relations program was successful. More importantly, that response demonstrates the breadth of public concern about gender bias in the Michigan justice system. Most importantly, perhaps, the level of response signals that effective reforms will be welcomed by, and meaningful to, the people of Michigan.

### III. RESEARCH

Task Force research drew upon numerous sources, including testimony presented at public hearings, case transcripts, judicial opinions, data concerning court demographics, published and unpublished scholarly research, surveys of citizen-users, judges, court staff and lawyers and presentations to the Task Force by scholars and experts in various fields.

#### Public Hearings

In October and November, 1988 the Task Force conducted public hearings in Escanaba, Gaylord, Grand Rapids, Saginaw and Detroit. Attendance was high at each hearing. Advance registration for the Detroit hearings was particularly strong. In Detroit, the hearings ran from 9:00 a.m. to 9:00 p.m., without interruption, on two consecutive days. In the other cities hearings were held for one day and lasted approximately eight hours. A list of the individuals who testified and the organizations they represented is set forth as Appendix B.

A hearing at Huron Valley Correctional Institute was arranged in cooperation with the State Appellate Defender's Office and the Michigan Department of Corrections. This hearing provided an opportunity to learn about the experiences with the court system of women convicted of killing in the context of domestic violence.

Another hearing was sponsored jointly by DAZS, a coalition of African-American Sororities: (Delta Sigma Theta, Alpha Kappa Alpha, Zeta Phi Beta, and Sigma Gamma Rho) and the Lewis College of Business in Detroit, Michigan. Members of these organizations participated as facilitators and panel members and forwarded the videotape of the testimony of thirty-four citizens to the Task Forces. (See Appendix B)

At each hearing, much of the testimony concerned domestic relations and domestic violence. Attorneys, other professionals and litigants spoke of frustration and anguish experienced in court proceedings. They cited negative attitudes of some judges and attorneys, as well as lengthy waits for disposition, the absence of meaningful explanations of the process and the resulting loss of control litigants felt over their own destiny. This testimony reported damage to the lives of women, men and children caused by the legal process over and beyond the already substantial damage caused by the breakdown of the marital relationship.

Testimony regarding bias affecting women covered a wide variety of subject matters and problems. For example, the Task Force heard from an older homemaker divorced after 30 years of a marriage during which significant assets had been accumulated; she received no share of the family business and only minimal short-term maintenance. She testified that the court cited her ability to remarry or to get a job at a fast food restaurant as the basis for its limited award.

Testimony was submitted by a young woman who, on the day she passed the bar exam, was told by her male employer that one of her male colleagues "hoped she wouldn't become one of those cunt lawyers." Women litigants and their attorneys spoke of the re-brutalization of the domestic violence victim by prosecutors, lawyers and judges who trivialized the danger to her and tacitly encouraged further violence through slow and inadequate response. The Task Force was provided with copies of published court policies mandating "10 day cooling off periods" before injunctive orders could be entered, regardless of the underlying circumstances.

Women testified that they had been referred to by judges in open court as "fat and dumb" or a "looker". One witness provided the Task Force with an appellate opinion reversing a lower court award of damages in a personal injury action in which the court commented that a defendant had "only pushed a woman to the ground and inserted a finger in her vagina".

Testimony about gender bias against men focused principally on matters of child custody, visitation and accountability for support for children. Retaliatory allegations of child sexual abuse were of particular concern. Attorneys and clients cited a predisposition on the part of judges towards the conclusion that mothers were inherently better qualified to be custodial parents. They spoke of the time, expense and futility of seeking the award of custody to fathers. Many complained about the difficulty of maintaining contact with children when the custodial spouse failed to adhere to court ordered visitation schedules and the failure of the courts to enforce such schedules. They asserted that the court system was unwilling to make any effort to determine whether child support was appropriately used.

All Task Force members were present at at least one hearing and many attended most. They were deeply moved by the witnesses who testified about intensely painful, personal experiences. While the evidence was necessarily largely anecdotal and reflected individual perspectives, the cumulative effect of similar testimony from persons of various backgrounds, professions and roles in the underlying situations persuaded the Task Force that serious and complex problems relating to gender exist in the Michigan court system.

### **Court Employment Questionnaire Project**

The Court Employment Questionnaire was designed to elicit information about the hiring, firing, salary, promotion and disciplinary practices of Michigan courts. Similar to the Equal Employment Opportunity Commission reporting form, the questionnaire asked that each court identify numbers and positions of employees by gender, race and specified ethnic origin. Copies of court affirmative action plans, equal employment opportunity policy statements and personnel guidelines were requested. Courts were also asked to identify the number and types of employment discrimination complaints they had received and the actions taken.

The Court Employment Questionnaire was sent to all 238 trial courts in the state. Response was voluntary. Following is the rate of return:

**TABLE III-1: COURT EMPLOYMENT QUESTIONNAIRE RESPONSE**

	Circuit Courts	District Courts	Probate Courts	Total Courts
Courts in Region I	7	54	7	68
Respondents	3	37	4	44 (65%)
Courts in Region II	18	27	18	61
Respondents	11	18	13	42 (69%)
Courts in Region III	17	19	25	61
Respondents	9	13	16	38 (62%)
Courts in Region IV	14	17	31	62
Respondents	11	12	22	45 (73%)
Total Courts in Michigan	56	117	81	252
Total Respondents	34 (61%)	80 (68%)	55 (68%)	169 (67%)

The data collected by this instrument show a lack of uniformity and an absence of standardized employment procedures. Responding courts presented an inconsistent, highly idiosyncratic picture of personnel policies, employment regulations and equal employment opportunity safeguards.

#### **Attorney Survey Project**

In September, 1988 Formative Evaluation Research Associates ("FERA") was retained by the Task Forces to design and implement a survey of attorneys practicing in the Michigan court system. This study was to document and examine the impact of racial/ethnic and gender bias on attorneys' experiences. Reports and working papers related to gender bias surveys conducted in other states were reviewed to inform the development of the Michigan questionnaire.

Task Force members determined that it was important to gather as much specific information as possible about the professional experiences of attorneys and their observations of disparate treatment. The demographic characteristics of the respondents would in addition disclose whether attorneys who believe they personally experience gender or racial/ethnic bias in their own

professional lives, observe biased behavior on the part of their colleagues and the judiciary more often than those attorneys who do not themselves experience such bias. To that end, the Task Forces determined that it would be helpful to document differences in the perception of bias in the court system among major sub-groups comprised of male and female, minority and majority attorneys.

The survey instrument yielded a great deal of information about how practicing attorneys view bias in the Michigan courts.

### **Selection of the Survey Sample**

Nine hundred attorneys were selected to participate in the survey. An equal number of males and females was chosen. Although an equal number of minority/majority attorneys was also sought, the number could not be obtained because racial indicators were not maintained by the State Bar of Michigan, which provided the membership list from which the major sample was drawn. Survey respondents in each of the four key subgroups were disproportionately selected from additional source lists in order to achieve the desired balance, including principally a list of minority attorneys provided by the Wolverine Bar Association and a list of female attorneys provided by the Women Lawyers Association of Michigan.

**TABLE III-2: SOURCE FOR THE SAMPLE - ATTORNEY SURVEY**

Frame	Males	Females
State Bar of Michigan	225	143
Wolverine Bar Association	225	203
Women Lawyers Association	—	104
	—	—
<b>TOTAL</b>	<b>450</b>	<b>450</b>

### **Survey Implementation**

After pilot-testing and appropriate revisions, survey questionnaires were mailed to the sample of attorneys in April, 1989. The questionnaires were accompanied by a cover letter from Chief Justice Dorothy Comstock Riley and Donald Reisig, then President of the State Bar of Michigan. The letter, attached as Appendix C stressed the importance of the survey effort and urged the recipients to complete and return the questionnaire. Announcements of the study were made in the State Bar of Michigan Journal and the Wolverine Bar Association Newsletter.

The overall response rate for the Attorney Survey was 45.6% (the ratio of mailed questionnaires to returned questionnaires). The survey population included both those who practiced in the courts and those who did not. Attorneys who had represented clients in the courts were asked to complete the questionnaire. The others were instructed to return the questionnaires after providing demographic data only. Questionnaires from those who had no court experience was not analyzed for statistical purpose but were included in the overall response rate. A total of 333 questionnaires filled out by attorneys with court experience was analyzed.

## Methodology

Frequency distributions and means were employed to identify differences between the male/female and minority/majority subgroups. Missing-data and non-responses to a question were excluded from all calculations. In table analyses, fractions of percents were rounded up or down to the nearest whole number, sometimes resulting in frequencies totaling slightly over or under 100%.

### Demographic Description of Respondents

The table below depicts the distribution of Attorney Survey respondents with respect to gender and minority/majority status:

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**TABLE III-3: TOTAL ACTUAL SAMPLE ATTORNEY SURVEY  
Race and Gender Profile**

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	Males	Females	Total
Minorities	22.8%(n = 76)	21.0%(n = 70)	43.8%(n = 146)
Majorities	29.7%(n = 99)	26.4%(n = 88)	56.2%(n = 187)
Total	52.6%(n = 175)	47.4%(n = 158)	100%(N = 333)

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\* Total sample = 333

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Nearly 61%(n = 198) of the responding attorneys reported that they had represented clients in the Michigan courts for 10 years or less. Differences between males and females were evident. Fifty-nine percent (n = 102) of the male respondents had spent 11 or more years representing clients in the courts, compared with only 17% (n = 25) of the female respondents. Of the females, 47% had represented clients in the Michigan courts for 5 years or less.

Forty-six percent (n = 143) of the respondents in the 31 counties in which they are situated listed civil litigation and general practice as their primary area of practice. Over 50% stated that at least half of their practice involved representing clients in court. See Appendix D for geographic distribution.

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**TABLE III-4: DEMOGRAPHICS**

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**Admission to the Bar Association****Question: When were you admitted to the State Bar of Michigan?**

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	<b>GENDER</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
<b>1966 and Earlier</b>	36 21%	1 6%	37 11%
<b>Between 1967 and 1979</b>	87 50%	46 30%	133 40%
<b>1980 and Later</b>	51 29%	108 70%	159 48%
<b>Number of Respondents</b>	174	155	329

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	<b>MINORITY</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
<b>1966 and Earlier</b>	8 11%		8 6%
<b>Between 1967 and 1979</b>	38 50%	22 32%	60 42%
<b>1980 and Later</b>	30 39%	46 68%	76 53%
<b>Number of Respondents</b>	76	68	144

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	<b>NON-MINORITY</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
<b>1966 and Earlier</b>	28 29%	1 1%	29 16%
<b>Between 1967 and 1979</b>	49 50%	24 28%	73 39%
<b>1980 and Later</b>	21 21%	62 71%	83 45%
<b>Number of Respondents</b>	98	87	185

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**TABLE III-5: DEMOGRAPHICS**

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**Age of Respondents**Question: What is your age?

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	<b>GENDER</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
Less than 30	7 4%	24 15%	31 9%
30 to 50	128 73%	123 79%	251 76%
50 Plus	40 23%	9 6%	49 15%
Number of Respondents	175	156	331

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	<b>MINORITY</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
Less than 50	3 41%	8 12%	11 8%
30 to 50	57 75%	57 83%	114 79%
50 Plus	16 21%	4 6%	20 14%
Number of Respondents	76	69	145

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	<b>NON-MINORITY</b>		
	<b>Male</b>	<b>Female</b>	<b>Total</b>
Less than 50	4 4%	16 18%	20 11%
30 to 50	71 72%	66 76%	137 74%
50 Plus	24 24%	5 6%	29 16%
Number of Respondents	99	87	186

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## **Findings**

The survey results were tabulated in the context of a demographic profile of the four sub-groups: male attorneys, female attorneys, minority attorneys and majority attorneys. The data was also analyzed to compare responses by gender within minority and majority subgroups.

The findings reflect a correlation between how the respondent attorneys perceived they were treated by colleagues and the judiciary and how they viewed the treatment of litigants and case outcomes in the court system generally. Majority female attorneys and all minority attorneys observed substantially more instances of unfair or insensitive behavior directed towards themselves, their female and minority colleagues and litigants, witnesses and jurors than did majority males.

In general, majority male attorneys perceived biased behavior less often than members of any other subgroup. Specifically, majority male attorneys perceived that minority attorneys and female attorneys had far greater access to mentor relationships and fee-generating assignments than minority attorneys and female attorneys themselves reported they had. The majority male attorneys also reported that they observed female and racial/ethnic minority practitioners being interrupted, addressed less formally, given less credibility or joked about far less frequently than female and minority attorneys reported that they observed such behaviors. Similar differences in perspective about case outcome existed; majority males observed instances of unfair or insensitive behavior resulting in the disparate treatment of litigants far less frequently than the members of any other subgroup.

Similarly, male attorneys observed far fewer instances of unfair or insensitive courtroom treatment of female attorneys and litigants than did women attorneys. Male attorneys more often reported that they had "never" observed examples of bias against females in the courts than did women attorneys. Contrasts in perspective are apparent in the reported observation of biased treatment of racial/ethnic minorities in the courts. Majority attorneys reported unfair or insensitive courtroom treatment of racial/ethnic minority attorneys, litigants, witnesses, jurors or judges far less frequently than minority attorneys.

### **Court User Survey Project**

A 1987 survey of public attitudes conducted by the Institute for Social Research at the University of Michigan (ISR) at the request of the Citizens' Commission to Improve Michigan Courts found that 34% of Michigan residents believe that women are not treated as well as men. These percentages increased dramatically when the survey population was limited to the group analyzed. These statistics are consistent with the Task Force conclusions that there exists a significant perception of gender bias in the operation of Michigan courts.

The ISR Survey was a preliminary assessment of a complex problem. Prior to the ISR survey, courts had been studied primarily through the eyes of the people who were most responsible for their operation - judges, administrators, staff and attorneys. There had been little research done to examine the impact of the court system from the perspective of the citizen who came into contact with it.

On November 1, 1988 the State Justice Institute awarded a \$67,000 grant to the Task Forces to conduct a court user survey. The primary goal of the Michigan Court User Survey was to collect and analyze data regarding the attitudes, experiences and recommendations of people who had had recent experiences with the Michigan court system by taking into account gender and racial/ethnic factors.

FERA was commissioned to conduct the study to answer the following questions posed by the Task Forces:

Are litigants treated in a disparate fashion because of race or ethnic origin? In what ways do minority litigants experience the court differently than non-minority litigants?

Are litigants treated in a disparate fashion because of gender? In what ways do female litigants experience the court differently than male litigants?

What are the behaviors in the court process that litigants identify as being unfair? In what areas of court proceedings does bias occur? What behaviors in the courtroom lead litigants to feel discriminated against?

What are the litigants' perceptions of the impact of bias on the court setting?

To what extent does perception of bias reflect actual bias? What is the incidence of bias (perceived and actual)?

What is the profile of someone who feels "injured" due to gender or racial/ethnic bias in the courts?

What is the incidence of bias in large as compared to small courts?

### **Methodology**

FERA held several design meetings with members of the Task Forces to define the purpose and scope of the Michigan Court User Survey. The research design and implementation relied upon a number of assumptions:

The issues of racial/ethnic and gender bias present different research design problems and, therefore, should not necessarily be investigated in the same way.

An in-depth study of a sample of a well defined subgroup of the population of litigants will result in more credible and accurate findings with greater accuracy than a random survey of all litigants.

The survey should place greater emphasis on questions designed to elicit detailed information about an individual's actual experience than on the individual's feelings related to that experience.

The court user's experience outside the courtroom would be included in the investigation; however, its primary focus would be on the respondent's experience as a litigant in the courtroom.

The basic research design contemplated a telephone survey administered to a sample of litigants who participated in the Michigan court system in 1988. This survey was followed by an in-depth study of a selected sample of cases of those litigants who reported bias. Anne Murdoch Vrooman, an independent consultant, reviewed five percent (26 cases) from the sampling frame of 539 completed court user surveys. In her findings and conclusions, she stated that "the vast majority of information able to be verified was correctly stated by the questionnaire respondent in the court user study."<sup>1</sup>

Individuals surveyed: 1) had been litigants in matters affected by the outcome of the court's decision; 2) had been involved in a court action in which a judgment or decision was rendered in 1988; and 3) represented an appropriate demographic profile for the statistical purposes of the survey.

The survey was validated in two ways. First, the interview questions were reviewed for quality and accuracy by Task Force members, an attorney consultant and the Project Director. Second, the instrument was tested on a pilot sample of 25 court users.

The survey project encountered an unexpected series of obstacles in finalizing the sample:

Several sample source lists were not timely obtained.

Many counties lacked a sufficient number of litigants from which to select the sample in the numbers originally contemplated. This was particularly true in smaller counties with respect to the desired sample of domestic relations, personal injury and assaultive felonies cases. Where this occurred, every litigant was selected. Five counties were added to the sampling frame to supplement the number of available litigants in such counties.

There was a limited number of females from which to select the desired female portion of the total sample, particularly in personal injury and assaultive felony cases in certain small counties. When this occurred every female was selected. Additional males were then selected from the same counties to supplement the female portion of the sample.

District and circuit courts were not always able to provide correct telephone numbers and addresses for litigants. A significant number could not be located.

Because of these obstacles, samples of sufficient size for particular court types were not always obtained. The following number of respondents was interviewed:

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**TABLE III-6: TOTAL ACTUAL SAMPLE**  
**Race and Gender Profile**

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	Females	Males	Total
Minorities	8% (n = 41)	10% (n = 55)	18% (n = 96)
Non-minorities	34% (n = 186)	48% (n = 257)	82% (n = 443)
Total	42% (n = 227)	58% (n = 312)	100% (N = 539) *

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\* Total sample = 539

**TABLE III-7: STUDY SAMPLE BY COURT TYPE**

	Large Circuit Court	Small Circuit Court	Total
<b>HIGH Minority Population</b>	27%(n = 146)	32%(n = 174)	59%(n = 320)
<b>LOW Minority Population</b>	<u>10%(n = 53)</u>	<u>31%(n = 166)</u>	<u>41%(n = 219)</u>
<b>Total</b>	37%(n = 199)	63%(n = 340)	100%(N = 539)*

\* Total sample = 539

**TABLE III-8: TOTAL ACTUAL SAMPLE BY COURT TYPE AND CASE TYPE**

<u>Court Type</u>	<u>Domestic Relations (n = 258)</u>	<u>Personal Injury (n = 37)</u>	<u>Assaultive Felonies (n = 87)</u>	<u>Small Claims (n = 157)</u>	<u>Total (N = 539)</u>
Large Circuit Court/ High Minority	79(31%)	7(19%)	27(31%)	33(21%)	146(27%)
Small Circuit Court/ High Minority	83(32%)	13(35%)	25(29%)	53(34%)	174(32%)
Large Circuit Court/ Low Minority	10(4%)	1(3%)	18(21%)	24(15%)	53(10%)
Small Circuit Court/ Low Minority	86(33%)	16(43%)	7(20%)	47(30%)	166(31%)

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**TABLE III-9: STUDY SAMPLE BY CASE TYPE**

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<u>Case Type</u>	<u>Sample</u>
Domestic Relations	48% (n = 258)
Personal Injury	7% (n = 37)
Assaultive Felonies	16% (n = 87)
<u>Small Claims</u>	<u>29% (n = 157)</u>
Total	100% (N = 539)

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Respondents participating in the survey varied in age, income, education, type of case, size of court, previous experience with the court system, and reports of fair and unfair treatment. Issues of racial/ethnic and gender bias were assessed across this diverse group.

Qualitative analysis of several open-ended survey questions provided data concerning the nature of bias experienced by court user, and their recommendations on how to ensure that all users of Michigan trial courts receive fair and equal treatment.

It is important to note that the sampling problems encountered limit the utility of the findings of this study. The findings in the report focus on a comparison of the feelings and perceptions of the particular individuals who were interviewed. These comparisons are informative in that they reflect the views of certain court users who were randomly selected and did not themselves decide to come forward. For these reasons this survey suggests directions for future investigation but does not support valid generalizations about the entire population of court users.

The experience gained with respect to survey design and the baseline data collected are important resources for data collection projects undertaken by task forces and commissions in other states involved in the investigation of gender and racial/ethnic bias in the court system. Several other states have conducted surveys of various populations dealing with gender bias. Michigan, however, is the first state to attempt to document and evaluate the influence and impact of gender and racial/ethnic bias on the experiences of public users of trial courts. Thus, an important work product of the Michigan Court User Survey will be the publication of a technical manual outlining the data collection system, the survey elements, and the research method implemented to assess both racial/ethnic and gender bias experienced by public users of trial courts. This manual will be made available to all state court administrators and other interested justice system personnel.

#### **Judicial Survey Project**

The investigation of judicial behavior and decision-making was the highest priority of both Task Forces. This priority reflects the reality that the judge establishes the atmosphere of the court and affects all actors in the system - attorneys, litigants, witnesses and staff. Moreover, judges would undoubtedly be charged with the implementation of many of the Task Forces' recommendations. It was essential, therefore, that the Task Forces draw upon their knowledge and experience in fact finding and formulating needed reforms.

The goals of the judicial survey were to collect, compile and analyze data regarding the impact of gender, racial and ethnic differences on the experiences and the performance of judges in both substantive and procedural areas.

Several areas of inquiry were identified jointly by the Task Forces:

- fairness and sensitivity toward participants in the courtroom;
- judicial qualifications and selection;
- domestic relations issues, including custody, support, alimony, property and violence issues;
- criminal issues, including sentencing, bail, plea bargaining and probation issues;
- civil damages.

When compared with the actual distribution of judges in Michigan across gender and racial/ethnic lines, the survey respondent pool shows the following:

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**Table III-10: JUDICIAL RESPONDENTS**

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	Surveys Distributed	Surveys Returned	%
Majority Male	461	210	45.5%
Majority Female	48	20	41.6%
Minority Male	42	14	33.3%
Minority Female	23	12	52.1%
<b>Total</b>	<b>574</b>	<b>256</b>	<b>44.5%</b>

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**Table III-11: JUDICIAL RESPONDENTS BY COURT TYPE**

Court	Majority Male	Majority Female	Minority Male	Minority Female	Total
District					
actual	197	16	20	14	247
surveys	74	5	5	7	91
percentage	37.5%	31.2%	25%	50%	36.8%
Probate					
actual	93	11	1	2	107
surveys	48	6	0	0	54
percentage	51.6%	54.5%	0	0	50.4%
Circuit					
actual	154	16	19	7	196
surveys	86	8	8	5	107
percentage	55.8%	50%	42.1%	71.4%	54.5%
Appeals					
actual	8	7	3	0	18
surveys	2	1	1	0	4
percentage	25%	14.2%	33.3%	0	22.2%

The survey instrument was designed by the Project Director, in consultation with State Court Administrative Office staff and FERA. Data collection, analysis and reporting were undertaken by the Task Force's administrative staff and the State Court Administrative Office. A survey instrument was designed to solicit perception information from Michigan judges concerning their impressions of race and gender issues in Michigan Courts. Demographic information was collected from each responding judge. Likert type scales were used to capture judges' perceptions of race/gender activities that occurred in the judicial environment.

Data from all respondents were compiled to provide an overall picture of the reaction of the Michigan judiciary. Comparisons of response patterns were made by gender and race. For selected issues high minority population areas were compared with low minority population areas. The cell sizes in the research design varied. Relatively few minority responses were available from the population. Descriptive statistics rather than inferential statistics were applied in the analysis of the data.

All Michigan judges were surveyed. The response rate was approximately 45%. Minority males displayed the lowest response rate (33.3%); however, the small number of available minority males makes percentages subject to large fluctuation. No systematic response patterns were identified which would indicate that the results were not representative of the population of Michigan judges.

The survey results identified areas in which judges believe gender and racial/ethnic bias exists. The research findings provided the Task Forces with both qualitative and quantitative results on which to base their recommendations.

### **Scholarly Works**

The Task Force reviewed numerous articles about gender bias and its effect on the legal system authored by lawyers, judges, social scientists and academic researchers. Additionally, the Task Force reviewed materials published by other state task forces. Many of these works are identified in the Bibliography attached as Appendix E.

Much additional material has been collected and warrants further study. The Task Force recommends this material to be furnished to the implementation committee which the Task Force asks the Supreme Court to constitute for its ongoing work. (See Section IX)

### **Expert Testimony**

The Task Force invited legal and other experts in the subject areas upon which it focused its investigation to present information on selected topics. A list of these experts is attached as Appendix F.

### **ENDNOTE**

1. Vrooman, Court User Study Information Verification, November, 1989

#### IV. ANALYSIS AND EVALUATION

The Task Force identified incidents and patterns of gender bias existing in the Michigan court system. The conclusions and recommendations were adopted after careful examination of all information obtained. Because its resources and time frame were limited, however, there remain many areas of investigation and sources of information which the Task Force believes should be pursued. The most pressing are identified in the recommendations for further investigation which are included in the Report.

Neither of the Task Forces focused specifically on the experiences of minority women. The Task Force recognizes that minority women are often included in statistics relative only to either racial or gender bias and that such category blending fails to measure the impact of race and gender bias on them. This Report notes separate statistics or information relative to minority women where such data became available to the Task Force. However, The Task Force urges that the special nature of such data be considered in all implementation efforts and follow-up studies concerning this Report.

More than 1500 judges, lawyers, professionals and citizens communicated with the Task Force during the course of its work. Their experiences, opinions, perceptions and recommendations were collected through public and written testimony, survey, telephone interviews and specific presentations to the Task Force. In many instances, people testified on behalf of organizations and associations with special interests and expertise. The Task Force heard from groups as diverse as the Michigan Civil Rights Commission, the Women Lawyers Association of Michigan, the Domestic Violence Prevention and Treatment Board, Michigan Fathers' For Equal Rights, and the Older Women's League, among many more. The opinions and views expressed reflected a wide spectrum of attitudes, experiences and platforms.

A topic of much discussion within the Task Force was the extent the information received supported general conclusions and proposed recommendations. The Task Force recognized that a subject of such legal and social complexity as gender bias in the courts would not lend itself to neatly measured conclusions. It was also aware that many readers of the Report, attuned to 20 second TV bytes and headlines replete with facts and percentages, would look for simplistic statements about the Michigan justice system -- for example, most judges do "x" or a majority of lawyers believe "y". However, the Task Force determined that such conclusions were neither feasible nor appropriate. The Task Force sought a balance between quantitative and qualitative evidence in the belief that cumulative information from a variety of sources would establish a reliable record of gender bias within the court system as a whole. No one single source of data or comment was viewed as conclusive, and none predominated. Instead, conclusions and recommendations were drawn from all accumulated qualitative and quantitative data. The Task Force focused on whether such data supported conclusions of substantial bias.

Where statistical surveys provided valid projections for the larger population as a whole (as in the Attorney Survey), the data was so considered. Where such wider generalization was not statistically warranted (as in the Court User Survey), the information obtained was considered to be limited to the experience and perception of the individual respondents.

The members of the Task Force filtered and evaluated the information collected through their own collective expertise and experience in the Michigan court system. Their individual experiences, their perspectives and no doubt their own prejudices affected their understanding of that data, but all made a conscious effort to be as objective as possible and to identify each other's own tendencies toward bias. The Task Force carefully reviewed supporting documentation to confirm that each conclusion could be supported.

## V. THE COURTS' RESPONSE TO VIOLENCE AGAINST WOMEN

### DOMESTIC VIOLENCE

The Task Force received compelling information about the pervasiveness and severity of domestic violence throughout the state. Domestic violence was the subject of testimony by members of the public, lawyers and other professionals in the field, written materials and survey data. The Task Force recognizes that there is a critical need to assure effective intervention in domestic violence cases and to identify and utilize constructive remedies.

While new programs and protective laws in Michigan have sought to address problems of domestic violence, much has yet to be accomplished. The Task Force finds that barriers still exist within the judicial system which hinder access to effective civil and criminal protection for victims against their batterers.

#### The Nature of Domestic Violence

Domestic violence is defined in Michigan statutes as:

A violent physical attack or fear of violent physical attack perpetrated by an assailant against a victim: in which the victim is a person assaulted by or threatened by assault by his or her spouse or former spouse or an adult person or emancipated minor assaulted by an adult person of the opposite sex with whom the assaulted person cohabits or formerly cohabited; and in which the victim and assailant are or were involved in a consenting sexual relationship.<sup>1</sup>

This violence can occur against any family member and in any social or economic group. Statistics and the testimony of professionals and volunteers working with the problem in Michigan demonstrate that the overwhelming majority of victims of domestic violence are women.

National studies indicate that as many as four million women are physically abused by their husband or an intimate partner each year.<sup>2</sup> Of these cases, only about two million are reported.<sup>3</sup> In Michigan, 38,906 cases of domestic violence were officially reported in 1985.<sup>4</sup> Because this figure represents only those cases which were reported to law enforcement agencies, it is considered conservative.<sup>5</sup> Some studies suggest that serious domestic violence occurs in as many as one-third of all American households.<sup>6</sup>

Testimony at the hearings suggested that certain myths and misconceptions about the nature of domestic violence exist, not only in our society as a whole, but within the Michigan justice system as well. Witnesses reported that domestic violence is trivialized: the justice system fails to comprehend the dynamics between the batterer and the battered spouse and those factors which prevent the victim from leaving, and the underlying incident is considered to be a mere quarrel. Many women who are victims of domestic violence believe, as a result, that the courts are ineffective in providing legal relief and protection from their assailants.<sup>7</sup>

#### Profiles of Domestic Violence Assailants and Victims

Numerous witnesses and experts told the Task Force that a sound understanding by participants in the justice system of basic data on family violence would be a dramatic forward step toward the eradication of this serious problem. Battered females often have been socially conditioned to believe that it is a woman's responsibility to maintain a "successful" marriage, even if it entails physical abuse.<sup>8</sup> These women frequently possess a very poor self-image and a low level of self-confidence. The negative psychological state of a victim is compounded by feelings of fear, guilt

and entrapment due to physical and mental abuse. This syndrome can be likened to that experienced by hostages.<sup>9</sup>

In many cases, a victim's physical, economic or psychological dependence on her batterer will make escape from an abusive situation extremely difficult. Threats of retaliatory violence or loss of access to her children may further inhibit the victim from leaving her batterer. Moreover, the victim is likely to be in the greatest danger at the time she tries to leave the home and the relationship. Participants in the justice system often fail to recognize these dependencies and conclude that women who remain in domestic violence situations either enjoy or invite the violence or exaggerate the degree of abuse.<sup>10</sup> When victims encounter such misconceptions in the justice system, their sense of isolation, low self-worth and frustration are exacerbated.<sup>11</sup>

Equally important to an understanding of domestic violence is the profile of the assailant. As with victims of domestic violence, aspects of a batterer's behavior may be attributed to learned social factors. According to expert opinion, batterers are generally fearful, insecure men who feel compelled to control or manipulate their partners by means of abusive force. Their violence is generally rewarded because it frequently forces accommodations by the victim and others. Further, if the batterer is successful in shifting the responsibility for the assault from himself to the victim, his physical aggression is justified or condoned by society and/or the courts and the victim's blameworthiness is again reinforced. Societal acceptance of male violence against women consequently contributes to the assailant's belief that he is operating within the boundaries of accepted community standards.<sup>12</sup>

As a relationship between the batterer and the victim deteriorates and the victim moves closer to leaving, there is increased risk of injury. Authorities believe that few attorneys and judges understand that the victim is most likely to be in the most dangerous position at the time she leaves the relationship.<sup>13</sup> This factor heightens the sense of urgency in preparing for the separation and requires the victim and the system to plan carefully prior to the instituting divorce proceedings. Failure to do so increases the threat to the victim's safety at the point where she is most vulnerable to returning to the relationship.<sup>14</sup>

#### **Attitudes Which Affect the Judicial System's Response to Domestic Violence**

##### **"Domestic violence is not a serious crime"**

A pervasive misconception about domestic violence is that it is a lesser, not very serious crime, particularly when compared to physical assaultive crimes occurring between strangers. Several women testified that the judge minimized the violence they had experienced. One advocate for battered women told the Task Force about a judge who "admonished both my client and the assailant for their 'childish' behavior and encouraged them to 'act like adults for the kid's sake,'" after the assailant had forcibly entered the woman's apartment and attempted to strangle her.<sup>15</sup>

One advocate described the case of a woman who was killed by her husband shortly after a judge released him from detention, despite evidence of earlier repeated public assaults and letters from jail threatening retaliation.<sup>16</sup> A prominent domestic relations attorney described a case in which he represented a woman who was fatally shot by her abusive husband. During year-long divorce proceedings, the victim endured physical and verbal abuse. While taking testimony regarding a petition for the removal of the assailant from the home, the presiding judge denied the petition and scolded the victim for not leaving the home, so as not to provoke the assailant. Four such petitions were filed without success. Within days after the last petition was denied, the husband killed his wife.<sup>17</sup>

### **"Domestic violence is a private family matter"**

Another myth or misconception characterizes domestic violence as a private family matter.<sup>18</sup> A judge may minimize domestic violence so as to preserve the family unit or avoid the possibility of imposing a financial burden on the family.<sup>19</sup> A judge may perceive the family unit as a shelter from the violence of the real world,<sup>20</sup> and view criminal justice intervention in domestic violence situations as jeopardizing family relationships. This view is potentially disastrous because the victim's isolation is increased and the assailant's perception that he has a right to act violently within his home is reinforced. Information gathered from the attorney survey indicates that 33% of the female attorneys and 27% of the male attorneys believe that judges will hesitate to intervene in domestic violence cases because they are private family matters. Yet the judicial survey indicates that 78.9% of the judges recognize that domestic violence cases are "never" private matters.

### **"The victim of domestic violence deserves or provokes the violence"**

Several myths related to domestic violence specifically concern the victim, rather than the violence itself. The Task Force learned that the justice system sometimes blames the victim for provoking the violence.<sup>21</sup> For example, results of the attorney survey indicate that judges frequently engage in questioning which implies a belief that the victim provoked the violence. This is confirmed by the judicial survey results which indicates that 21.6% (N=28) of the judges responding believed that the victim provoked the violence "usually" or "always" as compared with 50.8% (N=66) who answered seldom and 7.7% (n=10) responding "never".

A representative of a shelter for battered women, describing the sentencing in a domestic violence case, reported that the judge "turned to the victim, who had chosen to be present for the hearing, and stated that if he could he would sentence her to counseling."<sup>22</sup> In another case involving a victim of domestic violence who had killed her abusive husband, allegedly in self-defense, the judge reportedly stated, "I'm going to sentence you to life in the state correction facility as an example for other battered women so that they will leave their husbands."<sup>23</sup> These judicial responses suggest strongly the absence of a realistic understanding of the psychological consequences of battering.

### **"Victims habitually lie or exaggerate about the extent of the violence"**

The Task Force received reports that the courts raise unwarranted questions about the credibility of the victim.<sup>24</sup> A woman testified that she had suffered physical and mental abuse during 23 years of marriage and that the judge in her divorce case "told her that he thought she was lying and that he could not believe that her husband, an upstanding citizen, would beat her unless she had it coming."<sup>25</sup> This attitude on the part of some judges was confirmed by an experienced family law practitioner, who stated, "No lawyer wants to take a case where the husband is beating her [the wife] up. It is a pain in the neck and you don't get paid because you don't have the judges listening to you and the other lawyers just pooh-pooh it ... The older the client the less credibility she has."<sup>26</sup>

## **The Response of the Courts to Domestic Violence**

### **Legislative History**

Since 1978, the Michigan legislature has enacted six statutes addressing the issue of domestic violence. They provide for the following:

warrantless arrests by law enforcement officers in cases where they have reasonable cause to believe that domestic assault has occurred; (MCLA 764.15a; MSA 28.874(1))

issuance of protective orders against a spouse, former spouse, co-habitant or former cohabitant, and the filing of the proof of service with local law enforcement; warrantless arrest for violation of these orders; (MCLA 764.15b; MSA 28.874(2)); (MCLA 600.2950; MSA 27A.2950)

reporting and documentation of domestic assault crimes in the State; (MCLA 28.257; MSA 4.469 (57))

special probation and counseling for assailants; and (MCLA 769.4a; MSA 28.1076(1))

creation of the Domestic Violence Prevention and Treatment Board, funding of shelter programs and mandatory notice to victims of the availability of such resources. (MCLA 400.1501 et seq.; MSA 16.611(1) et seq.); (MCLA 764.15c; MSA 28.874(3))

These laws, the work of such organizations as the Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Domestic Violence and the increased awareness of the public cost of domestic crime have enhanced the state's ability to provide services and protection to domestic violence victims and families. They establish a meaningful statutory and administrative framework with which to counter domestic violence in Michigan. It is in complying with the spirit of the legislation and consistency in its application that the justice system often fails.<sup>27</sup>

A domestic violence victim is offered several legal options. They include: suing for legal separation or divorce; petitioning for emergency injunctive relief/civil order of protection; and pursuing criminal charges, i.e., assault and battery, aggravated assault or felony assaults. The Task Force finds that there is general confusion within the court system about these different civil and criminal procedures. Many judges, lawyers and prosecutors apparently believe that victims must choose a single remedy.

Reliance upon criminal sanctions serves the interest of the people by invoking public policy against violent conduct. The criminal justice system provides a mechanism to punish the assailant. Civil procedure provides a mechanism to facilitate the woman's separation and future protection from the abuser. Punishment and prevention are not usually exclusive, and there is no justification for forcing a woman to choose one over the other.

#### **Civil Orders of Protection/Abuse Injunction**

In Michigan, a victim of domestic violence may seek relief from abuse by petitioning for a civil order of protection.<sup>28</sup> In most circumstances it is necessary for "an attorney to prepare and file a petition to the court to obtain an injunction".<sup>29</sup> A protective order or injunction is generally effective for one year from the filing date, the maximum permitted under the statute.

A victim of domestic violence must overcome several obstacles to get a civil order of protection in this state. Access to legal assistance presents a significant difficulty for the victim of domestic violence. Women, who generally have fewer financial resources and must often rely on their male partner for support, are often unable to afford legal assistance or to support themselves and their children outside the abusive home. Reduction in legal aid services due to federal funding cutbacks further limits the availability of legal representation. The Task Force received testimony that the financial vulnerability of the victim is a key factor in preventing access to the court and counsel.<sup>30</sup> An attorney who handles many domestic violence cases stated: "The economic disparity between men and women in these situations has effectively made women powerless in obtaining court assistance."<sup>31</sup>

Another obstacle to obtaining a civil order of protection is the time it takes. The Task Force heard testimony about the long delay before some requested injunctions become effective. One witness told of disparities across Michigan with regard to the availability of *ex parte* injunctions; "the judges and the courts are giving assailants extra shots at their victims by not giving these injunctions *ex parte*".<sup>32</sup>

The lack of uniform procedures for obtaining an injunction is also a barrier which victims of domestic violence face when approaching the courts for help. The Task Force was told of one

judge who would not issue a TRO because the wife was in a shelter.<sup>33</sup> An attorney stated that, "There is far too much variance from circuit to circuit, and from judge to judge regarding these matters."<sup>34</sup> Several attorneys and professionals in the field who work in multi-judge courts or in multi-county jurisdictions expressed a need for consistent and clear guidelines governing the issuance of injunctions. In some jurisdictions, circuit judges have refused to issue any injunctive orders containing criminal contempt language as a matter of express court policy.<sup>35</sup> In others, injunctions are limited by local court rule to less than the permissible statutory maximum of one year. This causes the victim to incur additional expense and more court appearances when protection is required for longer than 90 or 180 days.<sup>36</sup>

In testimony to the Michigan Department of Civil Rights Task Force, Crime Victims Compensation Board, Director Robert Fullwood highlighted the difficulty facing the homemaker who is a victim of domestic violence. Existing statutes authorizing compensation to victims make no provision for the economic protection of a woman who does not leave the home.<sup>37</sup> His recommendation was that the current "summary exclusion of direct compensation payments to victims residing in the same household as the person criminally responsible for the crime, be eliminated. ... The broad exclusion now exercised under the statute may have the unintended and reverse effect of increasing a victim's financial dependence upon the offender, thus, perpetuating the abusive relationship."<sup>38</sup> Also, the Task Force was told that some judges are unwilling to remove a batterer from the home. One attorney testified that, "In my experience, the axiom that 'a man's home is his castle' is given a sanctity and inviolability that it does not deserve."<sup>39</sup>

Mutual orders of protection are sometimes concurrently issued, ostensibly to prevent harassment or assault between two parties. Often these orders are entered by judges without prior notice to the party petitioning for an order of protection, and despite the fact the defendant has not sought an order. The issuance of mutual orders of protection implies that both parties have acted violently, even though there is no proof of such behavior by the petitioner.

#### **Enforcement of Civil Orders of Protection**

Once a civil order of protection has been granted, the victim of domestic violence must further overcome the many obstacles which interfere with the enforcement of the order. Proceedings for violating a "civil" order of contempt because of spouse abuse are usually "criminal" in nature because the sanction imposed is punishment for a violation of a court order. The Task Force has been provided copies of administrative orders which prohibit the use of criminal contempt language in orders issued pursuant to MCLA 600.2950; MSA 27A.2950; MSA 25.94; and MCLA 552.14. This practice limits the effectiveness of these orders. Additionally, some attorneys have indicated concern at being placed in the position of "prosecuting" criminal contempt violations although they are representing the victim in the civil divorce case. A representative of a large legal services office stated: "[The victim does not] get the same protection from the Prosecutor that [the victim] would get from other crimes."<sup>40</sup> She based this statement on the disparity in expertise of counsel, expense to the victim and impact on a jury or judge.

#### **Separation or Divorce**

In 1978 the Michigan legislature enacted legislation creating a spouse abuse injunction which was available only to victims who were filing for a dissolution of marriage. This provision was expanded in 1983 to make the injunction available to all victims regardless of marital status, so long as the victim and assailant resided together at some time. Yet, despite the intent of the law, there is evidence that some members of the legal system are unwilling to file for a spouse abuse injunction where divorce is not contemplated.

A representative of a domestic violence program testified that "many attorneys will not, as a matter of course, do orders of protection...without an actual divorce proceeding being started".<sup>41</sup>

A major concern for a victim of domestic violence seeking a separation or divorce is her personal safety. Experts testified that the violence in the home often escalates at the very time that the

victim makes the first step toward termination of the relationship.<sup>43</sup> It is at this point that a victim needs to be assured that the court will support her efforts with quick and certain action. Lengthy delays in holdings hearings pending confusing negotiations over property, custody and interim support all serve to interfere with proper protection for the victim.

#### **Custody/Visitation Issues**

The battered spouse seeking a divorce may encounter extreme manipulation by the batterer concerning custody and/or visitation of the children. Again, this is an area where a domestic violence victim may find herself in an unfair bargaining position unless the judge, referee and attorneys understand the dynamics of the violent relationship. The batterer may use flight to a shelter, lack of financial resources and fear as leverage with which to seek custody of the children or expanded visitation rights. One victim testified that she was advised by her attorney to drop felonious assault charges against her husband lest the judge put her children in foster care.<sup>44</sup> A friend of the court referee stated he did not think there would be problems with unsupervised visitation with a batterer since once the parties were apart the violence would probably stop.<sup>45</sup> Several women testified that custody of the children was given to the batterer, sometimes by an *ex parte* order. In one instance it was reported that an abusive husband was awarded custody because he had "a stable income".<sup>46</sup>

Other allegations brought to the attention of the Task Force include reports of referees not allowing advocates for battered women to stay in the hearing room during custody/visitation determinations<sup>47</sup> and reports of judges and friend of the court referees minimizing or ignoring the consequences of the violent relationship on the children in the home.<sup>48</sup> In one instance a judge referred to a husband's physical abuse as "misbehavior".<sup>49</sup>

There are no direct references to the violent tendencies or actions in a party in the statutory requirement to be considered by the judge in making custody decisions,<sup>50</sup> although with respect to visitation, the law has been recently amended to permit the court to consider "the reasonable likelihood of abuse of a parent resulting from the exercise of visitation".<sup>51</sup> In responding to the question whether "Incidence of domestic violence are valid reasons to withhold child custody or visitation", 30.5% of judges responded "usually or always" while 50.8% said "sometimes".

#### **Mediation/Conciliation Procedures**

An additional concern exists in counties that utilize mediation as an alternative dispute resolution method in domestic relations cases. Abused women should not be placed in the position of mediating any issue with their abusers as they are unable to participate in such negotiations as an equal and free bargainer. The threat to her own safety and that of her children, and the history of manipulation and violence, make it impossible for a victim of domestic violence adequately to protect her own interests. Maryland has enacted legislation which specifically prohibits mediation "in any case where there is a genuine issue of physical or sexual abuse of a party or child"<sup>52</sup>. This requires two levels of system response: first, early identification and diversion of domestic violence cases from mediation, and second, training of mediators in the identification of domestic violence cases so that they will recognize the need for diversion after mediation has begun.

#### **Criminal Proceedings**

Domestic violence is a crime equivalent to physical and/or sexual assault occurring between strangers. The criminal justice system has several layers of officials with discretionary powers - law enforcement officers, prosecutors, judges and probation officers. If any of them is personally misinformed about the characteristics of domestic violence, cases of domestic violence may either escape the criminal justice system entirely or may be trivialized. When violence occurs within a marriage or other intimate relationship, the victim has the right to rely on effective criminal justice intervention against the aggressor.

### **Prosecution of the Domestic Violence Case**

Although many prosecutors have exhibited increasing sensitivity to gender issues, particularly in domestic violence cases, much remains to be accomplished. Despite the fact that domestic violence is a crime, some prosecutors believe that these incidents should be left to social service agencies or domestic relations courts for resolution.<sup>52</sup> The Task Force recognizes that issues such as attrition, availability of evidence and victim credibility are very real problems in the prosecution of domestic violence cases.<sup>53</sup> However, domestic violence is no less a crime because it is hard to prosecute.

The Michigan Department of Civil Rights Task Force on Domestic Violence, in cooperation with the Domestic Violence Treatment and Prevention Board and the Task Force, conducted a survey of all police agencies, county sheriffs and prosecutors in Michigan. Its purpose was to capture statistics and obtain copies of policies on domestic violence which are required to be maintained under Michigan law. A review of the statistics collected from prosecutors' offices is informative.

Thirty-seven out of eighty-three surveys sent to county prosecutors were returned, a 30% response rate. Eighty-six percent of those responding had not established written policies or procedures concerning the handling of domestic violence cases. Only eight percent of those responding keep statistics on the number of domestic violence cases referred. In 1987 they reported only 18 cases referred. Sixteen percent of the offices keep statistics on the number of cases in which charges were brought; 210 total cases were reported in 1987. Out of those 210 cases, a total of 92 resulted in some form of adjudication, including 25 in which the assailant received jail time. Ninety-four defendants were placed in pre-trial diversion and the charges were dropped against 17 others.

Concerns about the consistency of policy and the uniformity of standards were raised. One director of a program servicing five counties outlined differences in approaches taken by each of the five prosecutors. These included allowing the victim to withdraw the complaint, allowing the charges to be dropped only after contact of a shelter for education, prosecuting victims for filing false police reports, recruiting a police officer to sign the complaint and using a "no-drop" provision for all domestic violence complaints.<sup>54</sup>

The most serious concern for prosecutors is the frequency with which victims of abuse drop charges or fail to appear in court for trial or preliminary hearing.<sup>55</sup> Reasons for the dropping of charges may include: fear of reprisal by the batterer; failure to understand the justice system; the difficulty of testifying; and emotional or economic attachment to the batterer.<sup>56</sup> Prosecutors may anticipate case attrition and discourage victims of abuse from filing criminal charges by insisting upon a "cooling off" period. One prosecuting attorney noted that, "The consensus of the system was that these were people that were going to back out. All you have to do is give it ten days. And most of the time that would happen."<sup>57</sup> As a result, prosecutors would "systematically set out to discourage them from prosecuting to prevent them from getting to court on criminal cases."

New policies have been adopted by some counties to reduce the number of charges being withdrawn in domestic violence cases. This has been accomplished by means of a "no-drop" policy which requires the police officer, not the victim, to sign a criminal complaint once charges have been filed. The responsibility to press forward with charges then rests upon the prosecutor or police officer, thus reducing the threat of retaliation by the batterer against the victim.<sup>58</sup>

Many criminal cases involving domestic violence are said to be charged below the proper level. Many assault and battery charges involve documented injuries and should have been charged as aggravated assaults. Similarly, assaults with weapons are sometimes charged as misdemeanors.<sup>59</sup> National Crime Survey data show that one-third of domestic violence incidents against women, including rape, robbery and aggravated assault, were considered to be felonies, while two-thirds were classified as a misdemeanor-level simple assault. However, victim injury occurred at nearly the same rate in both classes of crime--in forty-two percent of simple assault cases and in thirty-

six percent of felonies and "as many as half of all incidents of domestic violence that police would classify as misdemeanors are as serious as or more serious than ninety percent of all the violent crimes that police would classify as felonies."<sup>60</sup>

One enforcement problem appears to result from the practice of some prosecutors to authorize peace bonds in domestic violence situations rather than to issue criminal charges.<sup>61</sup> These bonds sometimes offer little deterrent to further abuse of a victim. A batterer may be willing to accept the monetary loss in exchange for the opportunity to retaliate physically against the victim in an abusive manner.

#### **Judicial Considerations**

Conditional bonds prohibiting contact between the assailant and the alleged victim are not consistently used during the pendency of the criminal proceedings. Such a conditional bond delivers a message to the defendant that such behavior is unacceptable and makes it possible to revoke the bond and incarcerate the defendant if the condition is violated. This is an important early message to give the defendant and assures the victim that the system will respond clearly and meaningfully to the situation.

Victims, their lawyers and their advocates lose confidence in the legal system when prosecution is inconsistent, courtroom interaction is degrading, questions are uninformed and cases are prolonged through continuances and unnecessary delays.<sup>62</sup> These actions all communicate a lack of understanding of the dynamics of domestic violence.<sup>63</sup>

According to Task Force surveys, the Michigan judicial system does not uniformly hold assailants accountable for their conduct. A total of twenty-three percent believe that defendants in domestic violence cases are "sometimes" or "usually" released on their own recognizance where other misdemeanor offenders are not. Approximately twenty-six percent (26.2%) responded "seldom", and approximately twenty-six percent (26.2%) responded "never". This view was supported by a Saginaw witness who noted that "one of our district judges recently made a statement, during a public forum, that he questions sending a batterer for help because 'they don't think that they are guilty.'<sup>64</sup> Judicial response is especially critical to deterring future misconduct. If jail is used to enforce probation orders for counseling, recidivism can be reduced. Studies demonstrate that batterers subject to jail are more likely to change their behavior.<sup>65</sup>

Denial of responsibility by the defendant for his actions is a characteristic of assaultive behavior (similar to the substance abuser). Batterers consistently minimize the severity of the assault, and blame others. To be effective, the judge must respond by emphasizing that it is the violence by the batterer which is the problem, not the actions of the victim or the quality of the relationship.<sup>66</sup> Counseling for alcoholism may also be necessary. Some counties have special group counseling available for batterers and require an initial assessment to determine the need for individual counseling.<sup>67</sup>

Stringent conditions for completing counseling programs should be attached to any delay in sentencing. These conditions must be consistently enforced (by imposing sentence) if the defendant fails to complete the program or commits another assault. A "special probation" status is currently available for defendants in domestic assault cases which also diverts the defendant from the system. However, since no determination of guilt is necessary, if the probation conditions are violated, the case is back to a pre-trial status. Also such "special probation" is available twice to the defendant. Recognizing that jail overcrowding may seriously limit this option, the Task Force believes that a delay of sentence is a more effective vehicle to use in first offender cases.

The Task Force concludes that the legal system does not always respond adequately to the concerns of domestic violence victims by providing effective protection from their assailants or imposing appropriate sentencing conditions. A conscious effort must be made by the courts to convince assailants and the community that battering is criminal conduct which will not be tolerated.

### **WOMEN AS CRIMINAL DEFENDANTS IN VICTIM-PRECIPITATED HOMICIDES**

A victim-precipitated homicide occurs when a woman, after prolonged domestic abuse or sexual attack, defends herself or her children by killing her assaultive intimate partner. According to the National Center on Women and Family Law, approximately twenty percent of all homicides occur within the family and over one-half of those involve one spouse killing the other. Although husbands and wives kill each other with almost equal frequency (52% to 48%),<sup>66</sup> wives are motivated by self-defense almost seven times more frequently than husbands.<sup>67</sup>

The tragic reality, often referred to as the "battered woman syndrome", is that a battered woman "unprotected by an ineffective legal network, often sees no choice but to kill or be killed."<sup>70</sup> When the woman stops the man herself, she is likely to find that the criminal justice system is a powerful instrument of law and order and the same sex biases that earlier denied her protection now ensure her prosecution.<sup>71</sup>

Women charged in the death of a mate have the least extensive prior criminal record of any female offenders. However, they often face harsher penalties than men who kill their mates. FBI statistics demonstrate that fewer men are charged with first- or second-degree murder for killing a woman they have known than are women who kill a man they have known. And women convicted of these murders are frequently sentenced to longer prison terms than are men.<sup>72</sup>

Discussion of the topic of victim-precipitated homicides with respect to the Michigan court system is necessarily limited by the small number of recently reported Michigan cases of this type available to the Task Force. The conclusions and recommendations made in this Section are based upon a study prepared by Dawn Van Hoek, witnesses at hearings and, to the limited extent detailed in following section, testimony at a hearing held at Huron Valley Correctional Institute. Ms. Van Hoek, the Director of the Legal Resources Project of the State Appellate Defender Office, has practiced criminal appellate law since 1976. In preparing her report she selected a cross-section of cases handled by the State Appellate Defender Office as representative of the problems which arise in victim-precipitated homicides. The cases come from different parts of the state and were prosecuted from 1980 to the present. All summaries of the cases were taken from public records, primarily appellate briefs and opinions. Their common thread is the claim of self-defense and the existence of an abusive relationship between the parties.

#### **Huron Valley Correctional Institute Hearing**

At a special hearing held at the Huron Valley Correctional Institute on June 26, 1989, members of the Task Force heard testimony from seven women who had been convicted of murder or manslaughter for killing men with whom they alleged they had abusive relationships. The decision to hear testimony from incarcerated felons was unusual. Although New York conducted a special study of incarcerated women in 1987, few gender bias task forces have sought information from this source. Recognizing that testimony of convicted felons may be subject to criticism on various levels, the Task Force nevertheless determined that this information should be considered together with expert testimony and research on this aspect of domestic violence. It decided that women who have been involved in the criminal justice system under these circumstances and, indeed, have been severely affected by it through their incarceration, should have the opportunity to report their perceptions of disparate treatment.

The women who testified were carefully screened and counselled prior to and after the hearing to avoid unreasonable expectations or adverse personal response. Most of them had no prior criminal record. While the facts pertaining to each of their cases differed considerably, they all testified to certain common themes and issues. Their testimony was compelling. The concerns identified by the women at Huron Valley appear to be consistent with those problems identified by the experts in the literature, as well as by Michigan attorneys who have been involved in cases of this type.

### Attitudes Which Affect Decisions in Victim-Precipitated Homicides

Displays of aggression or violence are frequently regarded as incompatible with the accepted role of women in our society. The stereotypic expectation is that a truly "feminine" woman should be soft-spoken, non-assertive and vulnerable. When a woman fails to live up to those expectations, the system may respond more severely. For example, a 64-year old battered woman defendant, convicted in 1986 for the manslaughter of her husband, was sentenced to 10-15 years in prison. The judge in this case departed from the sentencing guidelines and apparently intended to send a message to the community "to stop this wholesale sort of killing."<sup>73</sup> In another case in 1987, where the defendant was kicked, handcuffed and sodomized by the father of her two children shortly before she committed the killing for which she was convicted of manslaughter, the Court departed from the sentencing guidelines and sentenced her to 8-15 years in prison. The Court said at sentencing that the defendant "was caught up in a lifestyle, which she remained in by her own choosing" and "deprive[d] her two children of their natural father..."<sup>74</sup>

Another prejudicial attitude which may affect the ability of a woman to defend herself against criminal charges rising out of a domestic homicide is the expectation that she is at fault for not removing herself from the home or the relationship in the face of escalating threats and violence. Judges must have an understanding of the "battered women's syndrome" discussed above as well as the fear and vulnerability that women experience in violent situations. When evidence of these factors is not presented, the claim of self-defense is undermined.<sup>75</sup> An attorney who had used the battered spouse syndrome to buttress a self-defense claim for a young woman who shot her live-in companion told the Task Force:

At the conclusion of all the proofs in this case, I remember listening carefully to what the judge was saying. [He] continually said, why this woman didn't leave this battering relationship. He kept saying over and over again, if it was really as bad as all this, why wouldn't this lady leave?

I think there is also a hidden message to all this. I think there is a suggestion in not leaving, she was somehow blameworthy; by some sense, her refusing to leaving an abusive situation, she was asking for what she got.

When I heard the judge say that, when he elevated the question why she refused to leave the situation, I knew the case was gone. I knew he didn't understand the defense.<sup>76</sup>

### Legal Issues Which Affect Decisions in Victim-Precipitated Homicides

#### **Applicability of self-defense**

Traditionally, the defense of self-defense exonerates a person who kills in the honest and reasonable belief that doing so was necessary to prevent his or her own death or serious injury.<sup>77</sup> In battering situations, however, the murder may not occur until hours or days after the last violent attack. Thus, traditional principles of self-defense would lead to the conclusion that the battered

woman could not have reasonably believed that she was in imminent danger at the time of the homicide.

Many jurisdictions have allowed expert testimony on the "battered woman's syndrome" to explain why the behavior of battered women is at variance with assumptions about ordinary behavior, thereby establishing a basis for a jury determination that a defendant perceived herself to be in imminent danger at the time of a killing which was committed in self-defense.<sup>79</sup> No Michigan appellate cases have been identified which admit or reject the applicability of the "battered woman's syndrome" to self-defense cases involving prolonged prior battering. According to authorities, battered women usually have come to regard the final beating (or threat of beating) preceding the killing as somehow more serious and dangerous than any other. They become convinced that they will be killed or very seriously injured unless they do something to save themselves.<sup>79</sup>

#### **Use of decedent's propensity and reputation for violence**

Because self-defense is based on the subjective state of mind of the defendant at the time of the homicide (i.e. whether the defendant honestly believed she was in imminent danger of death or serious bodily harm), evidence of the defendant's knowledge of the victim's violent character and specific acts of violence known to the defendant is relevant to show the subjective nature of her belief and is clearly admissible.<sup>80</sup> In cases in which evidence of the battered woman's syndrome is not offered, the relevance of the victim's prior violent acts and reputation may be overlooked. In one Michigan case an instruction on decedent's past acts of violence and general reputation for cruelty and violence was omitted.<sup>81</sup>

#### **No duty to retreat from home**

A defendant claiming self-defense has no duty to retreat or flee from her home if attacked by anyone, whether it be an intruder or other occupant of the house.<sup>82</sup> In one Michigan case, however, the Court told the defendant that "common sense and decency" would have compelled her to leave after the decedent said he was going for his gun.<sup>83</sup> Similarly, a woman in another case who killed a man after he had handcuffed and sodomized her was told by the Court that she had had the capability to leave the home when handcuffs were removed.<sup>84</sup>

#### **Self-defense against sexual assault**

Although killing in self-defense is recognized to be appropriate when there exists a reasonable fear of imminent death or serious bodily injury,<sup>85</sup> the applicable jury instruction does not identify violent sexual assault as "serious bodily injury." Several homicide cases were identified in which the women alleged that they acted in self-defense against sexual assault but the jury was not instructed that deadly force may be used to repel sexual assault.<sup>86</sup>

### **Prosecutorial Conduct**

One major concern involves the prosecutor's decision at the outset as to what offense should be charged. As Van Hoek notes, "When a death results, that charge often is 'open' or first degree murder. If facts suggesting that the defendant acted in self-defense are known, however, that charge may be highly inappropriate."<sup>87</sup> For example, one woman told the Task Force that her assailant was killed in a struggle with her for a rifle after he had broken into her home, held her and her 10-month-old daughter hostage for over 24 hours, repeatedly raped and beat her, even urinated on her, and physically injured the baby. She was charged with first degree murder.<sup>88</sup>

### **Defense Representation**

A defendant may encounter substantial difficulties with her own defense counsel, if defense counsel fails to develop adequately a self-defense claim for the defendant.<sup>89</sup> For example, Van Hoek describes the case of a woman who, "after suffering years of serious and documented abuse, including an incident the day before the killing in which the police were called, ...found herself in

mortal combat with her common-law husband. Despite this, trial counsel failed to bring in witnesses to corroborate the previous abuse, and failed to bring in expert evidence to explain why, as a battered woman, defendant did not leave the relationship.<sup>80</sup>

An advocate for battered women described to the Task Force a case with which she was familiar involving a woman who was repeatedly beaten for over ten years. She left her husband and moved into her own apartment, but he continued to beat her. Finally she obtained a gun. When he next broke into her apartment, she killed him. Her attorney reportedly advised the woman to plead guilty to second-degree murder because the prosecutor would recommend probation. She pleaded guilty as recommended and was sentenced to life in prison.<sup>81</sup>

The failure of defense counsel to explain and utilize the battered woman syndrome as a legitimate defense tactic may be fatally damaging to the defendant's case. A woman who responds to threats and violence from an unarmed assailant by utilizing a weapon may perceive that her only options for safety are to frighten or disable her assailant permanently and effectively. In this instance, expert testimony needs to be presented to establish that deadly results may occur simply because women are more likely to utilize weapons against men to compensate for their physical disadvantage and their heightened sense of vulnerability.

### **Sentencing**

Perhaps the most difficult problem in cases involving battered women concerns the sentences imposed. In some cases, the sentencing judge deviates from the sentencing guidelines and imposes a harsher sentence. For instance, one woman who was convicted of second degree murder after a struggle with her violent husband over a gun told the Task Force that the Court said he was going to sentence her to life in the state correctional facility "as an example for other battered women so that they will leave their husbands."<sup>82</sup> In another case, the Court imposed a sentence considerably higher than that recommended by the guidelines where open murder was charged and a manslaughter verdict returned, although the Court acknowledged that the defendant had been exposed to repeated physical and sexual assaults.<sup>83</sup>

In another case, the Court exceeded the guidelines and imposed a sentence of 10-15 years on 64 year old woman with no prior record. The guidelines recommended a 1-5 year minimum for manslaughter.<sup>84</sup> In a case involving a woman convicted of second degree murder for the death of her abusive husband, the judge exceeded the standard guidelines by imposing a sentence of 50-75 years.<sup>85</sup>

Although mitigating variables (i.e. avoiding harm, provocation, passion and mistake/inadvertence) were factored into the sentencing guidelines prior to 1988, they have now been eliminated. Therefore, the guidelines no longer permit the sentencing court to take into consideration the circumstances which are so often present in these cases.

## WOMEN AS VICTIMS OF SEXUAL ASSAULT

Sexual assault is any form of sexual conduct to which a victim is subjected without consent and which is imposed by threat, deception or physical violence. It includes rape, child sexual abuse, incest, date and acquaintance rape, marital rape, same-sex assault, sexual harassment, indecent exposure and other sex offenses defined in the Michigan Code of Criminal Sexual Conduct.<sup>96</sup> In one national study, 44% or four out of every ten women surveyed reported having experienced at least one attempted or completed rape.<sup>97</sup>

According to the Michigan Uniform Crime Report, there were 6,370 reported rapes and attempted rapes in Michigan in 1988. Of those, 2030 resulted in arrests.<sup>98</sup> Between the years 1983 and 1988 the likelihood that a citizen of this state could be the victim of rape increased from 49 in every 100,000 to 70 in every 100,000 - a 42.9% increase over a five year period. These figures relate only the most serious sexual crime - rape - and do not include other crimes involving sexual penetration or unpermitted sexual touching. Moreover, they undoubtedly understate the number of actual incidents. The FBI reports that sexual assault is one of the most seriously unreported crimes. It is estimated that only about one in ten cases is ever officially brought to the attention of the authorities.<sup>99</sup>

The Task Force received information from citizens and from lawyers and other professionals with experience in this area and also reviewed published data and articles on the subject. The Task Force relied particularly on the material presented by the Sexual Assault Network of Michigan in making its findings and conclusions. That testimony demonstrated that in addition to experiencing significant physical and emotional trauma resulting from the sexual assault itself, the victim experiences an increasing sense of frustration and anger arising out of the handling of the matter in the court system.

### Michigan Criminal Sexual Conduct Statute

Effective in 1974, the Michigan Criminal Sexual Conduct Code has had a positive impact on the prosecution of perpetrators. Besides prohibiting the use of prior sexual history as evidence, the statute also established a degree structure for the crime, eliminated resistance and consent standards and extended coverage to previously unprotected groups.<sup>100</sup> A model for the rest of the country, Michigan's law provides a viable and valuable tool for the successful prosecution and conviction of sexual offenders. Yet, laws can only be effective if they are consistently applied. Jeanne Marsh, in her book Rape and the Limits of the Law, states,

While the form and substance of interactions within this (justice) system are shaped by statutes and case law, as well as by organizational policies, the expectations of judges, attorneys and police officers for each other are by far the most influential force determining case outcome.<sup>101</sup>

The Task Force has concluded that some participants in the justice system do not understand or accept the spirit of the reforms reflected in Michigan's Criminal Sexual Conduct Code. Despite the frequency and severity of the sexual assaultive crime, some judges, attorneys and court personnel appear uninformed, misinformed or simply insensitive to the needs of sexual assault victims.<sup>102</sup> This results in serious and frustrating obstacles for the victims.

## Attitudes which Affect the Judicial System's Response to Sexual Assault

Despite the significant progress made toward reform in the law governing rape and the escalating concern with the victim's rights<sup>103</sup> there remain many cultural stereotypes and myths about the nature of rape, its perpetrators and its victims. These attitudes limit the effectiveness of the protection provided by law and increase the reluctance on the part of the victim to report and participate in the prosecution of sex crimes. These attitudes include the following:

### **Sexual assault is a sexual crime of passion and not violence.**

It is a popular belief that sexual assault is not an intentional crime in the same sense that murder or robbery are crimes. There is a tendency to believe that sexual assault is merely the result of passion, deprivation or frustration. In reality, sexual assault is a crime of violence committed by males wishing to "exert power and control over the victim through the use of violence and humiliation".<sup>104</sup> Failure to treat sexual assaults as the serious crimes they are is reflected in testimony presented to the Task Force that some judges, attorneys and court personnel characterize these cases as "juicy", sexually exciting or somehow more interesting than others. This reflects sexism and trivializes the victim's need to have the assault treated seriously.<sup>105</sup>

### **The victim of a sexual assault invites or deserves the abuse and the victim's past behavior and character are relevant to the issue of the guilt of the assailant.**

The view that rape is a crime of sex and not of violence further focuses attention toward the action, motivations and character of the victim rather than the assailant. Societal expectations that a woman who does not conform to traditional notions of female chastity and virginal behavior must in some way have "asked for it" may be the basis for courtroom examinations and arguments and jury decision-making.

In reviewing some of the more prominent trial practice manuals of recent decades, the New York Task Force found that "judges like all members of the legal profession, have not only been exposed to cultural myths about rape victims, but have been taught that 'prosecuting attorneys must continually be on guard for the charge of sex offense brought by the spurned female that has as its underlying basis a desire for revenge, or a blackmail or shakedown scheme."<sup>106</sup>

While the credibility of the victim is always an issue, there may be the perception that rape victims, unlike other victims, are initially misrepresenting the circumstances surrounding the crime and that the burden is upon them to convince the court and the jury that they did not in some way contribute to their own assault. In this way, criminal sexual conduct victims may be held to a higher or inappropriate burden to prove their own credibility.

### **A victim must resist sexual assaults to the utmost.**

Until recently, the law in most states, including Michigan, required that a rape victim prove her resistance to her attacker. These requirements were abandoned in recognition of the reality that women were risking greater injury or death in futile attempts to repel attackers to "prove" that they did not consent to the assault. Yet, vestiges of this abandoned requirement remain in attitudes on the part of some that unless a woman shows that she has suffered significant physical injury and has fought her assailant, she could not have been raped.

## The Judicial System's Response to Sexual Assault cases

### **Prosecution and Pre-trial Issues**

The creation of specialized prosecution units for the handling of criminal sexual conduct cases may minimize the trauma and difficulties experienced by the victim of sexual assault. The Michigan Victim Witness Program is a resource for such a coordinated effort and is mandated under the Crime Victims Act. The prosecutor's office is also required to provide detailed information to the

victim about the hearing process and the resources available to the victim and to discuss with the victim any decision short of proceeding to trial, whether by dismissal, plea or sentence negotiation.

A director of a victim witness program testified about several concerns regarding the process leading up to trial. He suggested that the victim's interests may not be taken into account when cases are scheduled even though the defendant is given that consideration. He also asserted that no-contact bonds are not used consistently and, even when they are used, they are not enforced adequately.<sup>107</sup>

#### **Courtroom Treatment and the Credibility of the Victim**

No other single topic related to criminal sexual conduct dominated the Task Force's investigation as much as the negative ramifications arising from inappropriate questions about the victim's past sexual history.<sup>108</sup> Susan Estrich, in her book Real Rape, asserts,

In a general sense, the belief that a woman's sexual past is relevant to her complaint of rape reflects, as does the resistance requirement, the law's punitive celebration of female chastity and its unwillingness to protect women who lack its version of virtue.<sup>109</sup>

Under Michigan's Criminal Sexual Conduct statute any "evidence of prior sexual conduct with persons other than the accused" is prohibited due to its "irrelevant" and "prejudicial" nature.<sup>110</sup> Michigan Rules of Evidence allow for the entry of evidence of "specific instances of sexual activity showing the source or origin of semen, pregnancy or disease."<sup>111</sup>

Some judges tolerate questions addressed to the victim's past sexual behavior. A recent study which reported that "nearly half of the defense attorneys and rape crisis center staff (surveyed) said that judges allow this testimony 'sometimes' or 'frequently'."<sup>112</sup> Even when a prosecutor successfully objects to questions concerning a victim's past sexual history, the sustaining of the objection does not eradicate the damage already done.<sup>113</sup> The Sexual Assault Information Network of Michigan ("SAINM") suggests that inappropriate questioning may in part be due to confusion on the part of some judges, prosecutors and defense attorneys about the difference between the current criminal sexual conduct statute and the previous (pre-1974) rape laws.<sup>114</sup>

The Task Force received testimony that some defense counsel engage in repetitive badgering of a witness or use delaying tactics as a means to harass the victim.<sup>115</sup>

#### **Court Facilities and Administration**

Many courts in Michigan do not possess the facilities necessary to provide separate waiting areas for victims. During testimony in Grand Rapids, it was reported that, "There are courthouses in this county that, if you went in as a victim of a domestic violence situation or sexual assault, you could still be sitting across from the perpetrator."<sup>116</sup> Placing the victim in this setting may make her vulnerable to intimidation, stress and fear of the process.

#### **Victims**

Victims may feel confused or alienated by the court system. The law requires the victims receive assistance, notification and an opportunity to appear at court hearings. However, testimony before the Task Force indicated this was not being done everywhere. A shelter director's statement "not one woman [was] given [this notification]" would indicate a need to reconsider this procedure and determine whether courts should be providing victims with procedural information.<sup>117</sup>

#### **Juror Involvement**

In some instances, juror bias may negatively affect a victim. As with domestic violence cases, some common societal attitudes and stereotypes may reinforce the idea that a woman invites and deserves abuse.<sup>118</sup> Some studies indicate that juries not only tend to be biased against rape case

prosecutions, but "will go to great lengths to be lenient with defendants if there is any suggestion of 'contributory behavior' on the part of the victim".<sup>119</sup>

SAINM submitted testimony involving a woman who was sexually assaulted by her ex-husband while picking up Christmas presents for their children. Agreeing to drink on social terms, the woman was drugged by the assailant and abused over the course of several hours:

This was a strong case, in part strengthened by the existence of a tape recording of the assault made by the defendant, which was played in court as evidence. Despite hearing the tape, recorded graphic details of the vicious assault, which included the use of several objects to penetrate the victim, the jury acquitted the defendant.<sup>120</sup>

Such a verdict seems to reflect a disturbing juror attitude that the victim deserved or encouraged the assault simply because she accepted a social invitation or that the assailant was entitled to commit violent acts upon his ex-wife.

The Task Force was informed that "jurors who are predisposed to doubt women who say they have been raped may wrongly consider a victim's lack of 'resistance to the utmost' to be a sign of consent".<sup>121</sup>

### **Sentencing**

Another problem which arises in criminal sexual conduct cases has to do with lenient sentencing. There may be many reasons for a judge to hand down an inappropriately lenient sentence: misplaced optimism as to the effectiveness of therapy; the belief that the victim is somehow responsible for the crime; or lack of adequate training for the judge and personnel making sentencing recommendations.

A 1989 criminal sexual conduct case graphically illustrates how greater value may sometimes be placed on the needs of the male assailant than those of the female victim. A Circuit Court judge convicted a university student of criminal sexual conduct in the first degree, then improperly sentenced the defendant under the Holmes Youthful Trainee Act to avoid giving the defendant a prison sentence.<sup>122</sup> Despite being convinced of the assailant's guilt, the judge stated "I don't feel he should be saddled with a conviction for his whole life".<sup>123</sup> As SAINM observed to the Task Force, "The judge acknowledged the pain that the defendant had caused the victim, but apparently weighed that far less heavily than he weighed the defendant's future."<sup>124</sup>

This particular case raised substantial public protest throughout the State. The Task Force received numerous letters of outrage, which included a copy of the Judicial Tenure complaint filed by the Michigan Women's Assembly against the judge in question.<sup>125</sup> The Tenure Commission publicly announced its dismissal of the complaint without comment. The Task Force does not know the basis of its decision.

### **Civil Actions and the Woman Victim**

In 1988, two civil suits were filed in Michigan against victims of criminal sexual conduct for defamation of character by their assailants. These suits signal an apparent national trend on the part of accused assailants to intimidate victims by subjecting them to less structured environment of the civil case even before the criminal charge is adjudicated.<sup>126</sup> In its testimony, SAINM described this recent phenomena:

...we believe that this new defense technique is overtly predicated on the attitude that women lie about rape, that they would publicly risk their own reputations and subject themselves to many months- even years- of criminal justice process simply to defame or get back at an acquaintance or former lover. Further we believe that

such a technique can also serve the purpose of sidestepping the rape shield provisions of the Criminal Sexual Conduct statute, since the shield does not apply in civil court and details of the victim's past sexual history can be discovered in depositions prior to the criminal trial.<sup>127</sup>

Civil suits brought by women victims may be influenced by the same myths and attitudes which impact upon criminal prosecutions. As a result, the emotional and physical trauma which women experience when they are victimized may be minimized by the trier of fact, resulting in lower damage awards or denial of their claims. Although the Task Force did not investigate this question in depth, several cases were brought to its attention by plaintiff's counsel which suggest a problem warranting further examination.

## **CONCLUSIONS**

### **Domestic Violence**

1. **Domestic violence is a serious problem for women and children.**
2. **Criminal and civil remedies are available under Michigan law.**
3. **Myths and misconceptions about the nature of domestic violence and the characteristics of victims and assailants sometimes interfere with the ability of the system to properly respond to the crime. Some examples of myths that prevent effective use of existing legal remedies are:**
  - a. **domestic violence is not a serious crime; it is a private family matter;**
  - b. **victims provoke the violence;**
  - c. **victims must enjoy the violence or else they would leave;**
  - d. **families must be preserved or at least not disturbed; criminal justice intervention may jeopardize family relationships.**
4. **Domestic violence is a crime. The response of the criminal justice system to domestic violence should be the same as the response to physical and/or sexual assault between strangers. Decisions about prosecution and disposition should be based on the nature and seriousness of the criminal conduct, not the relationship between the parties. The legal system does not uniformly and clearly:**
  - a. **hold assailants accountable for their conduct;**
  - b. **protect victims and treat them with respect;**
  - c. **encourage and support effective and appropriate response to domestic violence by law enforcement agencies;**
  - d. **let assailants and the community know that battering is crime which will not be tolerated.**

### **Women as Criminal Defendants**

5. **Women defendants in victim-precipitated homicides may be treated unfairly by the criminal justice system due to gender-based attitudes and a lack of understanding of the effects of prolonged abuse. Primarily, they may be blamed for not leaving their home or the relationship before the killing occurred.**
6. **Self-defense and the use of expert testimony on "the battered woman's syndrome" for the purpose of establishing the defendant's state of mind at the time of the killing are not consistently used in defending these cases in Michigan.**
7. **The past violent acts and reputation for cruelty and violence of the decedent, and the defendant having no duty to retreat from her own home in the face of an attack, are legal issues which are not consistently raised, developed, or admitted in these cases. In some cases, the proper jury instructions as to these legal rules may not be given or requested.**
8. **The existing criminal jury instruction on the use of deadly force in self-defense cases does not address the issue of defense against sexual assault.**

## Women as Victims

9. The Michigan criminal sexual conduct statute has made a difference in the prosecution and conduct of rape trials. Problems remain related to the failure of participants in the criminal justice system to understand the provisions of the statute or their unwillingness to follow the law.
10. Resources are not always available for courts to provide separate waiting areas for victims, making them vulnerable to intimidation, stress and fear of the process.
11. Juror bias may reinforce the idea that a woman invites and deserves abuse.
12. The rape shield provision is violated by inappropriate questioning about the victim's past sexual history.
13. Judges, attorneys and court personnel are not always appropriately aware of or sensitive to the nature and trauma of sexual assault cases.
14. No-contact condition bonds are not uniformly used or enforced.
15. Unduly lenient sentences may result from:
  - a. unrealistic optimism about the effectiveness of therapy;
  - b. lack of training for judges and personnel making recommendations;
  - c. greater value placed on the male than the female; and
  - d. belief that the victim is somehow responsible for the crime.
16. Civil suits against victims for defamation of character may be used to intimidate women and avoid the rape shield laws.
17. Stereotypes which minimize the emotional and physical trauma which women experience when they are victimized may affect civil as well as criminal cases and result in the award of lesser damages.
18. Sexual assaults are not consistently recognized as crimes which should not be treated differently from any other assault.

## **RECOMMENDATIONS**

### **Domestic Violence**

1. Every prosecutor's office should have written policies and procedures that encourage aggressive prosecution of domestic violence cases. They should provide that:
  - a. Domestic assaults will be charged at the appropriate level of seriousness, based on the nature of the criminal conduct.
  - b. The victim is not required to sign the formal complaint against the assailant.
  - c. The assailant and the victim are to be told that it is the responsibility of the prosecutor to proceed with the case and that no case will be dropped simply because the victim so requests.
  - d. Waiting or "cooling off" periods are not required before warrants are issued.
  - e. Peace bonds will not be utilized in domestic violence cases.
2. The Prosecuting Attorneys Association of Michigan and the Prosecuting Attorneys Coordinating Council should be encouraged to work with the Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Violence to develop model policies and procedures and to encourage the collection of statistics on domestic violence cases.
3. The Prosecuting Attorneys Association of Michigan and the Prosecuting Attorneys Coordinating Council should be encouraged to work with the Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Domestic Violence to develop training programs for prosecutors on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children in the home, the effectiveness of arrest and prosecution of assailants, and issues of self-defense as pertaining to women who kill their batterers.
4. Prosecutors should establish special prosecution units for domestic violence cases in those jurisdictions where the volume of those cases permits. These units would make it possible for the same prosecutor to handle cases from intake through final disposition.
5. Prosecutors should inform victims how they can obtain spouse abuse injunctions and referrals to domestic violence programs and social services and should prepare victims to participate in prosecutions by explaining the functions of courts and prosecutors, steps in the process between charging and disposition, the number of hearings which may be required and the possible outcomes.
6. Whether criminal action and/or a violation of a spouse abuse injunction occurs, the prosecuting attorney should be responsible to go forward with the action.
7. The Supreme Court and State Court Administrative Office should issue appropriate procedural guidelines to ensure that spouse abuse injunctions permitted under civil law are available in every circuit. They should also take steps to guarantee that all administrative orders and local rules comport with statutory requirements (MCR 8.112) before approval.

8. **Mutual injunctions should not be issued prohibiting physically abusive behavior unless the record justifies a finding that both parties have exhibited physically abusive behavior.**
9. **Judges should consider violence or threatened violence by one spouse toward another in making custody and visitation decisions. Violence should be specifically included in the "best interest" standard for custody decisions.**
10. **Procedures should be put in place that permit victims to obtain spouse abuse injunctions regardless of their education or economic status. They should include:**
  - a. **Statewide availability and use of pro per injunctions with instructions for their use.**
  - b. **Judges should effectively enforce injunctive orders through use of jail and/or fines, and should separate the couple if violence is a continuing thing.**
11. **The Michigan Supreme Court should monitor the sentencing practices of judges, including the factors used to determine the sentences imposed and the reliance upon diversion/expungement and counseling as an alternative to incarceration in domestic violence cases, in order to determine effectiveness and to effectuate desired changes.**
12. **When an alleged assailant is released, judges and magistrates should restrict the assailant's access to the victim, as a condition of bond or sentence.**
13. **The Supreme Court should mandate education for all judges, magistrates and referees on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, the impact of economic decisions on abusive relationships and the effectiveness of arrest and prosecution of assailants.**
14. **Domestic violence cases should receive a high priority and be granted calendar preference. The timeliness of case handling should be monitored.**
15. **Court personnel should receive training on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, and the effectiveness of arrest and prosecution of assailants.**
16. **The State Bar through the Family Law and Criminal Law sections and other appropriate agencies should provide continuing legal education to family law and defense attorneys on the nature of domestic violence, the characteristics of victims and assailants, the impact of domestic violence on children, the impact of economic decisions on abusive relationships and the effectiveness of arrest and prosecution of assailants as well as criminal and civil remedies, the availability of community resources, and issued related to self-defense for women who fight back.**

17. The State Bar should develop programs to provide legal assistance to victims of domestic violence. This should entail further efforts toward the adoption of the proposed mandatory IOLTA Program which is essential to secure additional funding for indigent legal services, particularly in light of recent federal funding reductions. Additionally, the State Bar should adopt a pro bono program to provide legal representation for domestic violence.
18. The Crime Victims Compensation Act should be amended to allow payments to victims residing in the same household as the assailant.

#### **Women as Criminal Defendants**

19. All participants in the criminal justice system should receive education on "the battered woman's syndrome" to ensure an understanding of the complex nature of the problem and why such victimized women should not necessarily be held criminally responsible.
20. The standard criminal jury instructions should be revised to add defense against sexual assault as a situation in which the use of deadly force may be justified.
21. Expert testimony concerning the battered woman's syndrome should be admissible in Michigan courts to develop a self-defense claim and provide the trier of fact with guidance as to why a defendant perceived herself to be in imminent danger or death or serious bodily injury at the time of the killing.
22. Sentencing guidelines should be amended to allow mitigation based on the dire circumstances present in many cases involving battered women.

#### **Women as Victims**

23. Judges, attorneys and court personnel should receive education in the following areas:
  - a. Michigan Criminal Sexual Conduct Code and related law;
  - b. dynamics of criminal sexual conduct, options for and efficacy of various treatment modalities for sex offenders and the long and short-term impact of sexual assault on victims; and
  - c. the use of pre-trial techniques and courtroom controls to limit inappropriate trial tactics and intimidation of the victim.
24. Courts should be provided with separate waiting areas for victims and other prosecution witnesses and should utilize all available mechanisms to protect such individuals from harassment and intimidation.
25. Jury instructions should be reviewed to ensure that bias is addressed to the end that juror biases will be minimized. Jury instructions should reflect the spirit and intent of the Criminal Sexual Conduct Code. A jury instruction for the elimination of the marital rape exception should be developed.
26. Legislation should be adopted which prohibits the filing of a civil damage action until completion of any related criminal sexual conduct case during the pendency of which the statute of limitations would be tolled.

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## **VI. DOMESTIC RELATIONS**

A large amount of public and written testimony, as well as the judicial, attorney and court user surveys and numerous articles and treatises, spoke to the impact of gender bias on the divorce process. Notwithstanding the fact that the vast majority of domestic relations cases are settled by the parties without trial, men and women attorneys, other professionals and citizens spoke of the frustration, anger and personal cost attendant to the divorce process. It was apparent that much of their concern reflected their perception that men and women are treated differently in the divorce process on the basis of stereotypes about their natural roles in marriage and misconceptions about their status in society.

To address adequately the issue of gender bias and justice in the domestic relations area, it is important to consider three factors: 1) the underlying assumptions about men and women as partners in marriage; 2) the economic realities facing women in society; and 3) the underlying attitudes within the court system toward the domestic relations process.

### **Marriage as a Social Partnership**

Strong cultural traditions define the institution of marriage and assign roles and remen and women therein. The divorce process is profoundly influenced by these traditions. Many judges, lawyers and litigants are also deeply affected. Because discretion plays a major role in the divorce process, their attitudes may exert a powerful influence upon decision-making.

Stereotypical attitudes about the divorce process include the view that the woman in marriage is essentially a caretaker, parent, nurturer, homemaker and wife. A woman's conduct is measured against the yardstick of "wife and mother". A direct corollary to this view of women is that men are less desirable parents. Women are seen to be naturally qualified as mothers and wives, but men are not viewed as naturally qualified fathers and husbands. The result is that the woman's sphere of influence is limited to the domestic domain, while men are thrust into the outside world as protector, defender, breadwinner.

### **The Economic Status of Women**

Many divorce law reforms have occurred in the United States in recent years. While many states, including Michigan, have eliminated fault as an issue in divorce, the question of economic equity for women remains. There is evidence that current domestic relations decisions may not take into account the long term economic effect of divorce on wives and children and the increasing reality of the "feminization of poverty" in society.

In 1988, 33.5% of female heads of household with no husband present were at or below the poverty level, in contrast to 5.6% of married couple families. The median income of female heads of households with no husband present was \$15,346, as opposed to \$36,389 for married-couple families.<sup>1</sup> Additionally, the number of female-headed households has increased dramatically over the last 25 years.

Divorce has become much more common over this period, and the number of never-married women with children has also risen. Consequently, the number and proportion of families maintained by persons - mostly women - with no spouse present rose to 13.8 million or 21% of the total.<sup>2</sup>

In a 1987 study on the status of women in Michigan, University of Michigan sociologist Dr. Rosemary Sarri reported that women in Michigan in unprecedented numbers are rearing children alone, with inadequate or no child support, earning little more than half what men earn and

experiencing a steady decline in government benefits. She reported that women and children constitute 70 % of Michigan's poor.<sup>3</sup>

Various factors significantly contribute to the hardship experienced by divorced women. The first is that women usually remain responsible for the emotional support and care of the children. The mother is typically the primary parent and after divorce that pattern continues. Childbearing and child care responsibility affect an individual's earning capacity. According to a study of the effect of parenthood on the career and job choices of young adults, the proportion of women employed drops dramatically upon the birth of a first child; two years later the proportion of females employed is 40% lower than what would have been predicted in the absence of childbirth. Prior to the childbirth, approximately 85% of the married women in the study would have been expected to be employed, while only 45% were expected to be employed following childbirth.<sup>4</sup>

Compared to the effect of parenthood on the careers of mothers, the impact of parenthood on the careers of fathers is slight. Following childbirth, the father's wages and earnings closely resemble that which would have been predicted had there been no children. The slight decline in the father's earnings contrasts sharply with the one-third decline in the mother's earnings (which earnings were significantly lower from the outset). Thus, parenthood is associated with a major decline in the employment and expected earnings of mothers, but not in the employment and expected earnings of fathers. This difference raises important public policy questions if mothers are expected to support themselves (and their children) after divorce.<sup>5</sup>

In testimony presented to the Task Force by a single mother supporting three children, the dilemma of family and career was vividly illustrated:

Men and women are not equal in the work force in their ability to control their time during working hours. The reality is in the working world I cannot devote 50 or 60 hours a week to a profession which would bring me a competent income to support three children. I cannot do night shifts, weekends or moonlight. All the health care, physical, dental, and mental health services are available mostly during working hours. I have to take time off regularly to meet these obligations.<sup>6</sup>

A second factor in women's economic decline after divorce is financial responsibility for children. According to the 1985 US Census, despite child support orders in the majority of divorce cases, sixty-three percent of absent fathers paid no child support; twenty-four percent comply fully with support orders; and the remaining fifteen percent pay irregularly.<sup>7</sup> Few support orders provide for automatic cost-of-living increases and fewer recognize that child-rearing costs rise as children get older.

A third major factor is the continued gender inequity in the work place. Fully-employed women tend to earn less than fully-employed men. In a comparison of relative income across the nation, the following chart compares the mean 1985 earnings of females and minority groups as a percentage of majority men's earnings.

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**TABLE VI-1: 1985 MEAN ANNUAL EARNINGS AS PERCENT OF WHITE MALES'**

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White Males	\$28,159	100.0%
Black Males	19,949	70.8%
Hispanic Males	19,692	69.9%
White Females	17,253	61.2%
Black Females	15,459	54.8%
Hispanic Females	14,576	51.7%

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There are several factors which can account for this significant wage gap. Two out of every three women in poverty are unemployed. Of those families with children in poverty, 50% are headed by a female high school dropout.<sup>4</sup> Women maintaining families have more than double the jobless rate of husbands or wives.<sup>9</sup>

According to the U.S. Department of Labor, women workers in 1988 were divided into the following occupational categories:

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**TABLE VI-2: WOMEN ARE CONCENTRATED IN LOW PAYING JOBS**

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All Occupations	41.9%
Childcare Worker	99.4%
Secretary, Administrative Support	99.2%
Receptionist	97.2%
Typist	94.5%
RN	92.7%
Bank Teller	91.0%
Cashier	79.3%
Waitress	77.0%
Teacher	70.3%
Sales, Counter Clerk	70.2%

These ten occupations account for 8,076 women, 27.0% of the women in the paid workforce.

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As one witness testified:

(There is) gender bias in the work world. Although I have an undergraduate degree from the University of Michigan, my MBA from the University of Michigan-Flint, I am still unable to break through what my husband made with two years of college education.<sup>10</sup>

Another factor in the wage gap is that even when women have access to similar jobs and responsibilities as men, they tend to earn less for comparable work. An example of this phenomenon can be found in the following 1985 statistics illustrating sex-based wage discrimination where salaries are based on the sex of the worker and not on the skills required for the job.

Finally, several indirect factors influence the economic status of women after divorce. Women must frequently take part-time employment in clerical and sales positions, most with no benefits. Women in poverty are often forced to choose between working at low wage jobs -without health benefits - and going on welfare, which provides Medicaid benefits. Many women choose the avenue which is most likely to provide health care for their children.

### **Attitudes Towards Domestic Relations Within the Court System**

Judges and lawyers testified that the area of domestic relations should be elevated in importance in the legal system. Concern was expressed that judges are reluctant to hear domestic cases. Both lawyers and judges were sometimes viewed as forcing settlements, prolonging cases and postponing decisions because of the "difficult and distasteful" nature of a contested divorce. Similarly, concern was expressed about the lack of in-depth knowledge some attorneys display in the domestic relations field.

Concern was also expressed about the availability of adequate attorney fees to make it possible for the financially disadvantaged to litigate their claims properly. A number of experienced domestic relations attorneys expressed the view that representation of male clients is both easier and more lucrative. Where decisions are delayed and a "siege mentality" prevails, the financially weaker party is distinctly disadvantaged. Attorneys may then be pressured to settle matters on terms far less desirable than would result if the issue were litigated.

Many attorneys expressed concern that the appellate courts in Michigan have not established clear direction with respect to a number of unresolved domestic relations issues. They observed that Supreme Court reluctance to take domestic relations cases and Court of Appeals decisions which are inconsistent or unclear further confuse the trial courts and foster wide disparities in the application of existing law.

The domestic relations docket in Michigan is a major part of cases. Yet many statements were made to the Task Force about the inadequate funding and low priority afforded these cases by the system. Finally, the members of the Task Force attending the public hearings were struck with the degree of confusion and misinformation shown by men and women participating in divorce proceedings. Many individuals appeared to have received inadequate information concerning the process itself and to have unrealistic expectations about the ability of the courts to resolve their problems.

## **ALIMONY**

### **Statutory Basis for Alimony**

The Michigan statute governing the payment of alimony provides:

Upon entry of a judgment of divorce or separate maintenance if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage are as committed to the care and custody of either party...[alimony may be paid to either party]... in gross or otherwise as the court considers just and reasonable after considering the ability of either party to pay and the character and situation of the parties and all other circumstances of the case.<sup>11</sup>

These criteria were supplemented in Parrish v Parrish<sup>12</sup>, 138 Mich App 546 (1984), in which the Michigan Court of Appeals confirmed the following factors which should be considered in determining whether alimony should be awarded:

- 1) the past relations and conduct of the parties;
- 2) the length of the marriage;
- 3) the ability of the parties to work;
- 4) the source of and amount of property awarded to the parties;
- 5) the age of the parties;
- 6) the ability of the parties to pay alimony;
- 7) the present situation of the parties;
- 8) the needs of the parties;
- 9) the health of the parties;
- 10) the prior standard of living of the parties and whether either is responsible for the support of others; and
- 11) general principles of equity.<sup>13</sup>

A review of the statutes and case law pertaining to alimony does not provide clear and unequivocal guidance. The relevant considerations are interrelated and the relative weight or importance placed on one over another is solely within the discretion of the trier of fact. No judge is required to make a separate finding for each factor. The judge is only required to provide a basis for the decision on the record. Thus, awards of alimony entail significant judicial discretion and individual judgment. One witness provided the following example:

After hearing this case, (the judge) awarded me, the plaintiff, \$25,000 yearly for 10 years in addition to an equal division of property which included my inheritance from my parents. Based upon my belief that some of the testimony was in error, I appealed the decision and the appellate court modified the decision and increased the alimony award to \$50,000 annually for 10 years. The defendant then appealed to the State Supreme Court which reversed the decision of the appellate court, allowing the original judgment to stand. That decision was based upon the belief, to paraphrase, that (the judge) "did not abuse his discretion and that to overturn his decision would undermine the authority of the Circuit Court."<sup>14</sup>

### **Factors Which Influence the Award of Alimony**

The economic impact of divorce is very different for men than it is for women. As detailed above, national and Michigan data demonstrate that women experience a significant decrease in their standard of living after divorce. Although divorce can impose severe economic hardship on both parties where the family's financial resources are limited, data show that in most instances the standard of living for men improves after a divorce, and where it does not improve, the decrease is less than that experienced by similarly situated women.

. . . (D)uring the 1970's, most states introduced laws assuring the equitable distribution of property. These laws effectively got rid of alimony, replacing it with a property settlement. The net result has been to make divorce much less expensive for men.<sup>15</sup>

Concerns about alimony include the infrequency of awards and the reluctance of some judges to award permanent alimony. A California study found that eighty-five percent of divorced women were not awarded any alimony.<sup>16</sup> A similar study in Massachusetts revealed that the percent of women who do not receive alimony is between ten and twenty percent.<sup>17</sup> Nationwide, only 12.4%

of those divorced between 1980 and 1985 were awarded alimony.<sup>18</sup> The reluctance to award permanent alimony was graphically illustrated by the perceptions of the former wife of a professional man:

Permanent alimony was not an option with (my judge) in spite of the fact that I was married over 25 years, seven children, no more than a high school education and had never worked out of the home.<sup>19</sup>

She explained that she entered into a divorce settlement which provided for five years of alimony, at the end of which she was left with limited career options and no likelihood of again experiencing anything close to her previous lifestyle.

An experienced Michigan domestic relations attorney told the Task Force:

Alimony is awarded in very few cases, less than twenty percent... And the number of cases in which it is being awarded is getting smaller and smaller. The alimony period, the length of time during which an award is made is getting shorter and shorter. And unfortunately, the amount of alimony is getting smaller and smaller.<sup>20</sup>

The child support guidelines may also inhibit the award of alimony. Judges and attorneys may conclude that the guidelines represent the upper limit of required financial contribution and will, therefore, be unwilling to order additional payments. This assumption that child support is an adequate substitute for alimony adversely affects the custodial parent who postpones career opportunities to raise the children and is left with no marketable skills and no source of income when the children reach majority.

Another reason that some judges are reluctant to award alimony are their erroneous assumptions about a woman's ability to survive economically after divorce. These assumptions include: Women are likely to remarry and will be supported by another husband soon after the divorce; women will be able to enter the workforce and achieve income parity with their male counterparts; and alimony fosters a negative dependency and is a bar to a woman's initiative and ambition. Therefore, its use should be limited to a temporary stopgap while the woman obtains enough education to qualify herself for a job.

This rationale is reflected in Ozdaglar v Ozdaglar, which upheld the trial court's determination that the property award was sufficient to meet the needs of the spouse until such time as she was able to supplement the award with earnings from employment after "updating her skills".<sup>21</sup> In contrast, in Zecchin v Zecchin, the Court of Appeals observed that the wife "should not have to dissipate her marital assets and become impoverished during the two-year rehabilitation period." The appellate court directed the trial court to redetermine the minimum alimony originally awarded and to determine the amount "reasonably necessary" for the wife's support and education during the two-year period. Further, it directed the trial court to review the alimony award at the end of the period because "in spite of her best efforts" the wife may be unable to support herself fully "because of her age and relative lack of marketable skills".<sup>22</sup>

Yet, according to a lawyer practicing in the field, inadequate alimony awards persist:

The judges in the \_\_\_\_\_ area have said to me and I can't tell you in how many cases: 'What does your client look like?' 'What does my client look like? A sixty year old woman... [she should] be able to get another husband and subsequently should need alimony for a shorter period of time, and [the judge] will not be so tough on the husband...Judges ignore the effect of ageism and sexism in the marketplace. There is a double whammy,...and the support awards are almost always

inadequate to support them if forced to go into the work place faced with sex discrimination, sixty cents on the dollar for every dollar that a man earns. So they are faced with inadequate support to supplement inadequate wages.<sup>23</sup>

Another factor which impacts the award of alimony is the failure of some judges and attorneys to acknowledge and value the real and tangible contributions made by a homemaker to the survival, benefit and growth of the family unit. One such contribution may be the sacrifice of her career opportunities. This was vividly illustrated in testimony concerning the plight of an older homemaker, faced with divorce after a lengthy marriage:

I made a commitment to my husband to do all those things which would not only make possible but would enhance his rapid and successful ascent in the business world.

As a result of this agreement between my husband and myself, I refrained from even contemplating the possibility of a career ...Thus, in the division of responsibilities, mine not only embodied the care of our five children and the keeping of our home, but included being prepared for the constant and demanding obligations of a corporate wife. In a way it was like any business partnership... However, unlike a business, where each partner has the opportunity to develop particular skills... it is not possible for a wife to develop marketable skills due to a lack of time and opportunity.<sup>24</sup>

### **Enforcement**

According to the U.S. Census Bureau, the rate of compliance with alimony orders is very low. In 1985, only 43% of the women who were awarded alimony received the full payment due; 27% received no payment at all.<sup>25</sup> These percentages are substantially similar to compliance rates for child support payments. Yet, the collection initiatives and national policies established to provide child support payment enforcement have not been duplicated with respect to alimony collection. Few national or state efforts have been put in place to further court efforts to enforce alimony orders.

Women who are being denied court-ordered alimony face a long, frustrating, expensive and often fruitless battle to collect. One woman told the Task Force that she had filed for alimony enforcement in pro per over a year earlier and by the time of the hearing had found it necessary to pay an attorney \$5,000 in an effort to collect an arrearage of \$3,000.<sup>26</sup>

### **Principles That Should Govern the Award of Alimony**

The Task Force concludes that several principles should govern the award of alimony. First, alimony should be based on the gross income of the parties and not merely on their salary income. The court should take into account dividends, pensions, deferred income, bonuses and other sources of income. Total income represents the full fruit of the couple's labor and equity demands that each should share in the totality of what they have worked together to achieve.

Second, alimony should be based upon the amount of money available, not merely on the basic needs of the recipient. There is no justification for limiting one spouse to essential needs while the other enjoys a significantly higher standard of living. Where both have contributed to the whole, each should enjoy equally the benefits of their contributions.

The award of alimony is very much a function of the beliefs, attitudes and assumptions held by the individual judge. This broad judicial discretion, tempered only by a clear abuse standard, results in a system in which there is little predictability or consistency.

### **PROPERTY**

Property division in a contested divorce is a discretionary function of the courts. Under current law "the end sought in the division of property is a fair and equitable distribution under all the circumstances. The division is not governed by any rigid rules or mathematical formulas".<sup>27</sup> As has been described in the previous sections, the exercise of this discretion is often shaped by the beliefs and experience of the judge on such matters pertaining to domestic relations as:

view of marriage as an economic partnership;

understanding of the economic consequences to the parties resulting from the dissolution of the marriage;

attitudes about the proper role of men and women and the value of women's contributions to the marriage; and

recognition of the unequal bargaining position that women may have in the divorce process and its financial and emotional consequences.

To the extent that these factors are misunderstood, ignored or denied, gender-based treatment may inappropriately influence property division.

### **Career as Major Asset of the Marriage**

Several witnesses advised the Task Force that when assets are divided, courts do not regularly take into account the career of the wage-earning spouse (the husband in most instances) as the single most valuable asset of the marriage. College degrees, apprenticeship training, skilled trade status, business acumen and career longevity and success are all contributors to the marketability and long term solvency of the husband. If this asset is factored out of the property decision, the wife is often left in a position where she is required to utilize her property distribution as a source of on-going support. The husband, however, can continue to utilize his career for his further advancement and to live on the wages it generates. To the extent that a wife has postponed her own career in order to provide a home and family for her spouse while he develops his career, she is further denied an equitable share of the very asset she has helped create.<sup>28</sup> Women contribute to the overall value of the marital estate as partners in a joint venture. The consequences of the actions taken in furtherance of that contribution frequently cannot be accommodated through a 50/50 split of the present value of that partnership unless both the career and pension of the wage earning spouse are taken into consideration.<sup>29</sup>

**TABLE VI-3: Disposition of Property**

Question: When judges divide the marital property, there is an assumption of a 50/50 split of all assets.

(n = 157)	Always and Usually	Sometimes	Seldom	Never	No Basis For Opinion
Female (n = 78)	48%	28%	17%	0%	6%
Male (n = 79)	76%	14%	3%	3%	5%

### Family Businesses

Many women testified before the Task Force that the courts had totally precluded them from any interest in the family owned business. These decisions may have several consequences. The women lose their jobs with the divorce, and in many cases, because they have not been paid for their work, they lose any social security benefit arising from the years of work.

**TABLE VI-4: Disposition of Property**

Question: When judges divide the marital property, there is an assumption that if a business is involved, it goes to the husband.

(n = 157)	Always and Usually	Sometimes	Seldom and Never	No Basis For Opinion
Female (n = 78)	50%	18%	6%	26%
Male (n = 79)	40%	24%	18%	19%

A further variation on this theme was reported by several women. They not only lost their position and interest in the family owned business, but they also were enjoined from competing against their ex-husbands by pursuing their careers and skills in the geographic area in which they resided. Such a "restraint of trade, non-competition order" has been upheld by the Michigan Court of Appeals.<sup>30</sup>

### Discovery

Attorneys who spoke to the Task Force about property issues in domestic relations cases strongly complained about the difficulties inherent in discovery and the absence of any meaningful consequences to a party who wrongfully hides assets. One experienced domestic relations practitioner told the Task Force that he would rather represent five men than one woman because "It is so much easier." The man holds fifty-two carrots, and the woman's lawyer, if he or she is good, finds forty on discovery, so that the wife receives twenty. In many marriages, the wage-earning spouse is in a position to have more information about the nature and extent of the assets, more advanced warning about the likely dissolution of the marriage and greater ability to manipulate those assets so that they will not be included in the marital package.<sup>31</sup>

### Relationship Between Property and Custody Decisions

Another concern voiced to the Task Force by many court and legal professionals was that resolution of economic issues in divorce was often held "hostage" to demands for custody.<sup>32</sup> Where custody demands are advanced merely as bargaining devices, the woman who wants to keep her children may be disadvantaged. She can be forced to agree to economic concessions out of fear of losing custody. Judges, lawyers and court staff should be aware of the possibility of this happening and attempt to separate the various issues arising out of divorce.

## CHILD SUPPORT

Extensive testimony received by the Task Force demonstrated that child support often falls below the amount necessary for the needs of the child. Plainly, divorced parties and their children cannot continue to live at the same cost in separate households as they could as a single family unit. However, while married men generally spend most of their income on their families, after divorce they retain the lion's share and use it to establish a new life. This puts a wife who has custody of the children in the disparate position of having to make up that financial loss. One individual stated that in the seven years since she had been divorced, she had been unable to effectuate a standard of living for herself and three children comparable to that which the family had when intact.<sup>23</sup>

An analysis of women surveyed in the 1985 Survey of Income and Education and the 1979 Supplement to the current Population Survey revealed that only twenty-five percent and thirty-five percent, respectively, of demographically eligible women received some child support payments. In cases where support was ordered, the average order amounted to only about seventy percent of the poverty standard and only about one-fourth of the estimated normal level of expenditures on children within intact families.<sup>24</sup>

The Task Force's attorney survey indicated that only eight percent of female attorneys and twenty-eight percent of male attorneys believed that child support awards usually reflect a realistic understanding of the local costs of child rearing.

**TABLE VI-5: DOMESTIC RELATIONS**

### Child Support

Question: Child support awards reflect a realistic understanding of the local costs of child rearing.

(n = 153) Usually	Always and Sometimes	Seldom	Never	For Opinion	No Basis
<b>Female</b> (n = 77)	8% *	16%	36%	34%	6%
<b>Male</b> (n = 76)	28% *	30%	36%	4%	3%

\* "Always" response = 0%

Experienced domestic relations practitioners testified that the Michigan Child Support Guidelines as originally structured do not take into account the actual cost of raising children. They contended that the committee that developed the Guidelines started by looking at the expenses of an intact family with two parents providing for the children. This did not take into consideration the

additional costs incurred when a separate family unit is formed with only one adult caring for the children. As a result, the following items were omitted in calculating the costs of raising children:

...Savings, the price of the payment of the principal on a home, in which the children lived. Insurance, payments on credit, none of these things were included as part of cost for children. In the process I found that the overriding concern although it was stated that we were concerned about the well-being of the children and providing children with adequate income, adequate support, the procedure was to start with a home in existence. And then we added on cost so that we don't look at a home and say a part of this goes to the child. Instead, we say we have an existing household. If we add a child, what is the increase in cost? We have things like electricity, maybe the home is bigger, maybe it isn't. That is how the support was determined.<sup>35</sup>

The Court of Appeals in Kalter v Kalter<sup>36</sup>, and Haefner v Bayman, assumed that the custodial parent has and pays for the home and basic services independently of the children. Therefore, she may not receive child support to compensate for any of those costs. In a discussion of the Kalter decision, one witness told the Task Force:

(In Kalter) we find the issue of the hidden alimony. And it concerns that if too much money is given, it is going to mean that the custodial parent is receiving this hidden alimony. Now, the Court in (Kalter) stated that the mother's expenses for the car, condominium, utility, insurance should not be considered as half for her son. She had to have [these items] anyway and therefore should not be considered as needs for the child. The total, and in that case (Kalter), also the father earned two hundred thousand dollars. Child support was set at eight thousand dollars a year. And that was felt to be more than sufficient. I think we are dealing with a real sexist attitude here in dealing with the issue of child support. I think often we are dealing with Judges who have no idea of the cost of raising children.<sup>37</sup>

Inadequate support awards are as much of a problem as lack of enforcement. According to one authority:

It is relevant to note that although the bulk of the federal and state efforts are directed at improved enforcement measures, it has been estimated that the amount of money lost as a result of inadequate orders is five times as great as the amount of money lost as a result of the failure to collect ordered support. The deficiency in child support orders as well as the absence of systematic updating procedures for orders in effect.<sup>38</sup>

According to testimony presented to the Task Force child support guidelines are often treated as the maximum amount to be awarded or are not followed. The guidelines are treated as a cap or a "high water mark". In the Kalter case, the trial court set the level of child support below the child support guidelines. The Court of Appeals affirmed. It commented that "guidelines and percentages used without limitation are unrealistic and unfair when both parties have substantial income".<sup>39</sup> In this case, the wife's annual income was \$33,500 and the husband's was \$200,000. The Court observed, "At some point, too much money can be bad for a child."<sup>40</sup>

## **Enforcement of Child Support**

Establishing the child support obligation and enforcing payment too often are left to a custodial parent who may already have spent much time and money on enforcement and collection. When long periods of time elapse during which no support is received, the children are likely to suffer real deprivation.

The Task Force heard testimony from women and their attorneys describing the unreasonable number of appearances they were required to make to obtain and enforce support awards. For many this jeopardized the woman's job because of the many absences from work. The following testimony was received about the Friend of the Court.

No review of cases is made without initiating from the outside. To try to get a response from a caseworker requires me to call back at least three or four times during working hours. When you want to – when you want to get some satisfaction from them, you need to make an appearance usually, and it's the women who do not already have the support have to go to the Friend of the Court or have to make the – hire a lawyer to go back into Court to get some sort movement on a child support agreement. I would suggest that some kind of system be instituted where Friend of the Court regularly reviews child support without having the women – put the burden on the women or a mother to come in and point out what's going on.<sup>41</sup>

Testimony in another case concerned child support arrearages which, at the end of a nine-year period, totaled \$20,000. Seven adjournments occurred in one three-month period.<sup>42</sup>

The enactment of the federal Child Support Enforcement Program in 1975 represented a significant step forward in the national initiative to address the problem of non-payment of child support. Its purpose was to provide services aimed at locating absent parents, establishing paternity and setting and enforcing the support obligations. The Act put in place some new tools to assist states in enforcing child support orders and required that the state use a number of other enforcement techniques, including mandatory wage-withholding, liens against real and personal property, state tax refund withholding, consumer credit reporting, bond provisions and expedited court processing of enforcement matters.<sup>43</sup>

On September 11, 1988 the Committee on Ways and Means issued an evaluation of the child support enforcement programs throughout the nation. Michigan was one of four states awarded an "A" rating on the basis of performance in five areas: paternity establishment, child support collections, cost effectiveness, interstate collections and AFDC cost reductions. The Michigan State Courts Annual Report, 1988 shows a total 92% collection rate for support ordered.

Despite Michigan's success as measured by the performance of other states, significant problems concerning the award and collection of child support were revealed to the Task Force. Much progress, both legislatively and judicially, has recently been made, and currently many new procedures are being put in place which are designed to alleviate these problems. Some of these new developments include:

The guidelines themselves are being revised.

The Family Support Act of 1988 requires that the guidelines constitute a rebuttable presumption in setting child support.

Since July 6, 1987, retroactive modification of support has been prohibited.

Plan for allocation of child care expenses between the parents proportionate to their income is being implemented. This will remove the entire burden of child care costs from the custodial parent.

The Support and Visitation Act as amended now provides for an automatic order of income withholding.

## CHILD CUSTODY

The Task Force received a considerable amount of material from both men and women suggesting that gender bias or certain expectations associated with gender result in unequal treatment in the disposition of custody disputes. It is the opinion of the Task Force that determinations of child custody are among the most important, difficult and demanding aspects of a judge's responsibility. Judges are required to exercise their discretion based on the "best interest of the child" standard. Stereotypes about the traditional roles of men and women as parents may hinder the application of the "best interest" standard and adversely affect the children, as well as one or both of the parents involved in the custody dispute.

### Perceptions of Unfairness Toward Fathers

Fathers and advocates for fathers expressed to the Task Force frustration over custody disputes. A substantial amount of public testimony suggested that fathers are sometimes denied custody solely on the basis of their gender, because of "social values which uphold the supposed greater importance of maternal care and...the legal realities which demonstrate custody is rarely granted to fathers unless the mother is grossly unfit."<sup>44</sup> In other words, "society has concluded that mothers are better equipped biologically and psychologically than fathers for nurturant parenting".<sup>45</sup> This perception is reflected by some judicial decisions and remarks in child custody cases. One witness recalled a judge blatantly suggesting that girls belong with their mothers up "until the time the daughter is ready to walk down the aisle".<sup>46</sup> In a similar case, a judge during a custody dispute went on the record as saying, "I don't buy that the father is better for a 22-month old girl than the mother. And I can't swallow it. I'm going to vomit on it. I can't handle it."<sup>47</sup> Another father noted, "I am discriminated against simply because I am a man. I am not considered to be an equal parent."<sup>48</sup>

Fathers and advocates for fathers suggested that the courts often perceive the role of the father as one which merely provides economic support. One frustrated witness described the courts' view of him as such: "I am not a father. I'm a wallet. I'm a bank account. I'm a working machine. I'm not a father."<sup>49</sup> Another father stated that, "the best interest of the children does not mean, 'daddy pays mommy', but rather both parents take parenting responsibility."<sup>50</sup> Finally, Jerry W. McCant, in the Family Law Quarterly, notes, "to state the matter bluntly, except for his financial contribution, the father is a 'disposable parent'.<sup>51</sup>

The Task Force heard a considerable amount of testimony by fathers contesting their portrayal by our justice system as persons who are uncaring or uninterested in parental roles and responsibilities. Some judges simply do not realize that many fathers genuinely are, and desire to continue to be, actively involved in parenting. One father, engaged in a custody dispute with his wife concerning their son noted, "the fact that I had given my son a good home [while having custody for over one year prior to the decision] never seemed to carry a lot of weight."<sup>52</sup> The frustration which may arise from the perception that fathers are uninterested parents was reflected

in the testimony of one who asked "how do you tell a judge that you love your kids, that you don't want to give them up? And how do you tell a judge that (he is) wrong without him throwing you in jail? How do you tell a judge that you can love your kids better than the mother can?"<sup>53</sup> As Jerry McCant again notes, "there is no longer any good reason to assume that mothers are parents while fathers are providers and thus nonparents... Many fathers are no longer willing to be nonparents in our culture. They want to be, and to be accepted as, nurturant parents."<sup>54</sup>

K.S. Gersick, in Divorce and Separation, notes, "many fathers who desire custody report being actively discouraged from requesting custody by their attorneys."<sup>55</sup> One father described this reality, stating, "During the last few years, I have come to understand the nightmare and indignities that fathers face. You have no idea the sense of despair that sets in when you are repeatedly told by lawyers that you have no chance of winning in court."<sup>56</sup>

The perception of judges who responded to the judicial survey is that fair and serious consideration is always or usually given to fathers who seek primary custody, 81.1% vs. the 3.4% who responded seldom or never. Approximately six percent (6.8%) answered sometimes, thirteen percent said no basis for opinion. Judges also feel that custody awards are not in fact based on the assumption that children belong with their mothers. Approximately fifty-two percent (52.4%) responded seldom or never to this question while zero percent said always, fifteen percent said usually, 23.1% said sometimes.

### Perceptions of Unfairness Toward Mothers

Besides reviewing claims of negative stereotypes or unfair perceptions that may affect a father in custody disputes, the Task Force heard testimony from mothers and advocates for mothers similarly alleging unfair treatment.

One of the most prevalent concerns identified by mothers and their advocates had to do with the awarding of custody to fathers on the basis of only a minimal amount of parental involvement. They claim that those awards often disregard or do not consider the primary caretaking role a mother might have performed. One attorney offered to the Task Force the example of a case involving a woman who, after acting as a full-time caretaker for her two children for fifteen years, was denied physical custody. Custody was instead awarded to the father who held two full-time jobs, one part-time job, and had little contact with the children.<sup>57</sup>

Another basis for the awarding of custody which is perceived of as unfair by mothers is the economic disparity existing between two parents. It was suggested to the Task Force that often when judges look to financial status or the presence of a stay-home mother to determine custody, the lower post-divorce economic status of the mother disadvantages her. Besides the fact that full-time, year-round employed women earn substantially less, on the whole, than their male counterparts, their lower economic status may in part be aggravated by inequitable maintenance, property and child support awards. These economic disparities may then be further complicated when a woman attempts to balance a career and the duties of a responsible parent. The Task Force noted that women who place great emphasis on careers, whether because of ambition or economic necessity, are sometimes considered less fit to be awarded custody than men who place similar emphasis on their careers. One women's advocacy group referred to this reality as a "catch 22 situation in the court."<sup>58</sup>

Several mothers and their advocates also reported that women are held to a stricter standard of sexual activity than are men. In other words, some judges condemn a woman's extra-marital and post-divorce social relationships, while ignoring or disregarding similar relationships held by a male. This double standard may negatively impact a woman in other related court disputes as well.

### **Custody Disputes Involving Allegations of Domestic Violence or Child Sexual Abuse**

Of particular concern to mothers, fathers and their advocates was the issue of custody disputes involving allegations of domestic violence or child sexual abuse. Violence and sexual abuse within the family unit are significant problems of major dimensions, yet their impact on custody decisions made in the "best interest" of the child frequently appears to be minimal. Despite the fact that domestic violence and child sexual abuse are crimes, some judges disregard expert testimony<sup>60</sup> and award custody to the alleged perpetrator. In some instances, an appropriate reaction to domestic violence on the part of the victim may result in denial of custody. The Task Force learned that women who respond to domestic violence by leaving the home may be perceived as unstable and less fit to receive custody. Since domestic violence and sexual abuse can adversely affect the mental and/or physical health of a child, judges who ignore or disregard such evidence in custody matters are overlooking information of serious importance to the child's future.

There is an increase in the number of domestic violence and child sexual abuse allegations that are now being brought to the attention of the courts. Correspondingly, more men are stepping forward to dispute and challenge such accusations. The Task Force heard testimony from several fathers who allege that false claims of violence and sexual abuse were made against them as a means for the mother to gain custody of the child.<sup>61</sup> One witness testified that his wife made such allegations for fear that she would not receive custody of her children. In that instance, polygraph tests were utilized to prove that the allegations were fabricated.<sup>62</sup> In these cases, the mother "is guilty of psycho-sexually molesting her own children".<sup>62</sup>

The Task Force also received reports concerned with case backlogs and time delays in the courts and their potentially adverse consequences on custody disputes involving child sexual abuse allegations. In these matters delay may pose a serious threat to the physical and mental well-being of a child needlessly exposed to further abuse. On the other hand, delay could also needlessly deny a father the right to unsupervised visitation and even custody.

### **VISITATION**

A report of the Friend of the Court Visitation Model Committee discusses the importance of maintaining parental visitation: "Visitation is considered important because it attempts to provide continuity with previous family life, maintain, repair, or create emotional ties, and encourage the continuance of parental responsibility other than the merely material (for which the support obligation is designed). It also may be designed to maintain a relationship beneficial to the child, such as that with grandparents or a particularly involved and significant third party."<sup>63</sup>

Two problems affecting the ability of the non-custodial parent to exercise visitation with children were identified by the Task Force: The first is a perception that visitation orders are not given the same vigorous enforcement as are support orders. The onus and expense of enforcing visitation orders are placed on the parent who must pay attorney fees to file orders to show cause when the custodial parent refuses to allow visits. The courts may be reluctant to apply the sanction of jailing the non-complying parent because of concern about the need for care for the children in the home.<sup>64</sup>

The second problem is that the use of the term "liberal visitation" is subject to a restrictive interpretation by the custodial parent. One father testified that the prevailing attitude is that

"liberal visitation" means that mother can grant visits at her convenience.<sup>45</sup>

On the other hand, mothers testified that the father's exercise of visitation - especially when children are picked up from her residence - become the occasion for renewal of the physical or verbal harassment which caused the breakdown of the marriage.<sup>46</sup>

Fathers also complained about the backlog in the Friend of the Court office affecting the ability to schedule show cause hearings, as authorized by statute, to obtain specific orders for make-up of denied visits.

In Wayne County, for example, referral of visitation problems to Friend of the Court counseling and mediation adds to delay in solving the problem because there is a 8-10 week backlog for appointments. Moreover, the mediation process does not result in an enforceable court order.

Respondents to the attorney survey confirmed a problem of ineffective court enforcement of visitation orders; 22% of male attorneys and 46% of female attorneys believe courts "seldom" or "never" effectively enforce visitation orders.

**TABLE VI-6: ENFORCEMENT OF VISITATION**

Question: Courts effectively enforce visitation order.

(n = 153)	Always and Usually	Sometimes	Seldom and Never	No Basis For Opinion
Female (n = 77)	19% *	27%	46%	8%
Male (n = 76)	29%	39%	22%	9%

\* "Always" response = 0%

However, respondents to the judicial survey had a markedly different perception; seventy-three percent believed that visitation orders are always or usually effectively enforced, while only 5.6% believed they were seldom or never enforced.

A separate problem raised by non-custodial fathers is that of allegations of sexual abuse made after unsupervised visits. When such an allegation is made, the court may immediately suspend visits without hearing the merits. Resources are not available without additional expense, usually to the father, for an objective evaluation of the truth or falsity of the claim. Crowded dockets results in

long delays between the time the charge is made and the time the court hears evidence to determine whether the claim is true. Fathers' rights groups argue that visitation should be continued on a supervised basis pending trial. Representatives of women's groups, however, believe that a father's visitation should be suspended pending investigation of alleged sexual abuse of a child.<sup>67</sup>

## CONCLUSIONS

### General

1. Fundamental attitudes about men and women, divorce and the role of judges and lawyers contribute to gender disparity in domestic relations cases.
2. The resolution of economic issues is often premised on misconceptions about the economic consequences of divorce for women.
3. The status and importance of domestic relations cases are not uniformly established in the minds of some judges and attorneys. In some instances, cases take too long, are unreasonably delayed or are forced into settlement. The financially weaker party is often least able to afford an extended wait and most vulnerable to the increase in costs and fees created by the delay.
4. The Michigan appellate courts have failed to establish clear judicial direction on important domestic relations issues. There are few limits on trial court discretion and little guidance for judges on matters involving the lives and livelihood of men, women and children.

### Alimony

5. The manner in which alimony is determined and awarded profoundly affects the lives of the parties. Alimony is often not awarded when it should be or is awarded for too short a period of time and in inadequate amounts. This places women in a financially disadvantaged position after divorce. Older, long-term homemakers have little or no chance to become self-supporting at a standard of living commensurate with that enjoyed during the marriage. Divorce orders often provide for the automatic termination of alimony upon remarriage.
6. Enforcement of alimony orders is inadequate.
7. Some judges and attorneys fail to recognize a spouse's loss of career or career potential as a meaningful contribution to the economic partnership of the marriage.

### Property

8. Marriage is not consistently viewed by the courts and the bar as an economic partnership in matters related to the division of marital property. In some cases, the contribution of the homemaker/mother is not recognized as having provided an economic benefit to the marriage.
9. In order for a traditional 50/50 property split to be fair and equitable to both parties, it must take into account the wage-earner's profession or career as an asset arising out of the marriage.
10. In many cases, a non-earning spouse has little knowledge of what property the parties own, or its value, and has a difficult burden in discovering the nature and

extent of the marital estate. There are few meaningful adverse consequences to a party who hides or disposes of marital assets and thus avoids inclusion of such assets in the property award.

11. In some cases, a presumption exists that men should be awarded income producing assets and women the non-income producing assets, without adjusting for the added value of the available future income of the former or for the increased costs of maintenance and repair of the latter. This presumption may apply even where both parties have participated equally in the creation and operation of the business.
12. In some cases, a demand for custody of the minor children is used as a bargaining chip in property negotiations, often to the disadvantage of the woman who may voluntarily relinquish a claim to property in order to make sure that she receives custody of the children.

#### **Child Support**

13. The failure to award adequate child support and to enforce child support orders causes significant economic hardships to children and their custodial parent (who is usually the mother).
14. Through the child support guidelines, Michigan has sought to address the appropriate level of support required and has established expedited procedures for immediate or temporary support and provided for alternative collection methods.
15. Problems relating to child support are:
  - a. Awards frequently are inadequate and appear to be based on what the father can comfortably afford rather than the earlier standard of living of the children and their special needs. Child support guidelines are often viewed as a maximum and not merely as a guide. Some courts do not recognize the guidelines.
  - b. Women often have inadequate resources to retain counsel to assist in collecting awards.
  - c. In enforcement proceedings, repeated adjournments benefit the nonpaying parents and compromise the custodial parent's employment by necessitating numerous court appearances.
  - d. Resources allocated to the Friend of the Court are inadequate.

#### **Child Custody**

16. Determinations of child custody are among the most important, difficult and demanding aspects of a judge's responsibility. In making such decisions, a judge should exercise his or her discretion based on the "best interest of the child" standard instead of stereotypes about the traditional roles of men and women as parents.

17. Stereotypes that influence some judges and that disadvantage fathers include:
  - a. Mothers are presumptively preferred as custodial parents, resulting in counsel's advice to fathers not to litigate custody because they have little chance of winning.
  - b. Some judges do not realize that some fathers genuinely are, and desire to continue to be, actively involved in parenting.
18. Stereotypes that influence some judges and that disadvantage mothers include:
  - a. Fathers who exhibit any interest in parenting should be granted custody despite years of primary caretaking by mothers.
  - b. Women who place great emphasis on careers, whether because of ambition or economic necessity, are sometimes considered less fit to be awarded custody than men who place a similar emphasis on their careers.
  - c. Women's extra-marital and post-divorce social relationships are sometimes judged by a stricter standard than are men's.
  - d. When judges look to financial status or the presence of a stay-home mother as a factor in deciding custody, the lower post-divorce economic status of women—caused in part by inequitable maintenance, property and child support awards—disadvantages the mother seeking custody.
  - e. Women forced to leave home to escape domestic violence may be viewed as unstable and less fit to receive custody.
19. The adversarial nature of the divorce process makes contested decisions involving children difficult and counterproductive. Custody often becomes a bargaining chip to gain an advantage in negotiations over other issues.
20. The longer a custody battle takes the more disadvantage incurred by the non-custodial parent and the more difficult it is for the family.
21. Delay in deciding disputes which involve allegations of sexual abuse may result in unnecessary harm to the child and, in some cases, to the father.

## **RECOMMENDATIONS**

### **General**

1. Educational programs should train judges and lawyers to recognize the unfairness which can result from gender-based stereotypes in the domestic relations area. These training programs should emphasize the special importance of domestic relations litigation to the parties involved and to society. Such programs should explore fully the economic realities facing women after divorce.
2. Mechanisms should be created within the system which will assist a financially disadvantaged party in bearing the expenses of litigation.
3. The Michigan bar examination should include a domestic relations component. Law schools in Michigan should be encouraged to include information concerning not only the substantive law of domestic relations but also its economic and social consequences for men, women and children.
4. Domestic relations should be recognized by the judicial system and the practicing bar as a vital area of practice affecting a large number of litigants which requires expertise in substantive law and procedure and awareness of the psychological factors experienced by people in divorce.

### **Alimony**

5. The Supreme Court should establish a Task Force to develop statewide guidelines for alimony awards.
6. The Supreme Court should adopt rules and procedures to foster prompt enforcement of alimony awards.
7. Judges should impose meaningful sanctions for failure to comply with alimony orders.
8. Judges and attorneys should be trained in the economic consequences of divorce for men and women.

### **Property**

9. Judges and lawyers should be educated about the value and relevance of non-monetary contributions to a marriage in dividing the marital estate. Evidence should be introduced to establish the extent and value of such contributions.
10. In accordance with appellate decisions, the value of a career to which both parties have made contributions should be included as a marital asset and appropriately distributed.
11. Both parties should be required to disclose all assets in the early stages of a divorce action. Failure to disclose assets should result in the imposition of meaningful sanctions such as default, an award of actual attorney fees and costs or contempt. If undisclosed assets are later discovered, there should be a rebuttable presumption

that they were deliberately concealed, resulting in the award of 100% of such assets to the injured party unless the presumption is overcome by the non-disclosing party.

12. An economically disadvantaged party should be awarded attorney fees and costs early in the proceedings to allow for adequate preparation of the case.
13. There should be no presumption that income-producing assets of the parties should be awarded automatically to one or the other of the parties.

### **Child Support**

14. Training programs for lawyers, judges, and hearing officers should include:
  - a. current, accurate information about the costs of child raising, the costs and availability of child care and other data essential to making realistic child support awards;
  - b. identification of all available enforcement mechanisms under new and existing laws and stress on the importance of utilizing them to the fullest extent of the law; and
  - c. the child support guidelines.
15. The determination of child support should be made with special consideration given to:
  - a. alleviation of the disproportionate percentage of income contributed by divorced mothers and fathers to the support of their children, (e.g., husband's wages equal 80% of total family earnings, but he contributes 12% to 20% of his income to child support, while mother's wages equal 20% of total "family" earnings but she contribute 80% of her income to child support); and
  - b. application of the guidelines as a guide and not as a maximum standard, with the actual needs and prior standard of living of the child as the most important determining factors.
16. Legislation should permit the courts to impose an obligation on the non-custodial parent to share the cost of post high school education.
17. Greater resources should be allocated to the Friend of the Court system in order to secure prompt and effective enforcement of child support orders.
18. The Friend of the Court should periodically review child support orders to avoid the need for the custodial parent to raise issues of changed income.
19. Opportunities should be given outside of ordinary working hours for parents to confer with the Friend of the Court office personnel.

## **Child Custody**

20. Courts should use non-adversarial dispute resolution mechanisms such as conciliation and mediation to resolve custody disputes. Voluntary agreements with parents should be encouraged regarding major decisions concerning: education, enrichment activities, travel, medical problems, notice by the custodial parent of the whereabouts of the child and unlimited phone contact. However, such mechanisms should not be used in situations of domestic violence where unequal bargaining positions should be assumed.
21. Educational programs for judges should emphasize that the "best interest" of the child should specifically relate to the individual parenting ability of each party and not the societal role placed upon their gender.
22. Custody decisions should be expedited and should be separated from decisions on economic issues. Michigan Court Rule 3.206(F) directs that custody decisions be expedited. Trial courts should make every effort to comply with this rule. In order to ensure compliance, adequate Friend of the Court funding and staffing should be provided.
23. Where sexual abuse allegations are made, specific expedited time limits should be established and adhered to. Special training for judges concerning the underlying issues, as well as access to juvenile court resources and expertise, should be provided.
24. In any divorce proceeding or post-divorce proceeding where an allegation of child sexual abuse is made by one party against the other, the circuit court should refer the matter immediately to the probate court for prompt review and recommendation as to future custody and/or visitation of the minor children.

## **Visitation**

25. Uniform standards and guidelines for frequency and duration should be established when parents are unable amicably to establish visitation arrangements.
26. Visitation and child support should be treated as separate issues.
27. Clear and consistent methods for enforcement of orders consistent with the best interest of the children should be adopted statewide.
28. Meaningful consequences for violation and/or interference with visitation orders should be imposed on the offending parent.
29. Judges and prosecutors should encourage the procedures outlined in the Support and Visitation Enforcement Act, which permits the injured party to bring the issue to the attention of the Friend of the Court and/or judge in pro per.
30. Mediation projects such as the Clinton County Mediation/Consultation Project should be studied to determine whether changes in legislation or court rules are needed.

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## VII. GENDER BIAS WITHIN THE COURT ENVIRONMENT

In Michigan courts, judges, attorneys, litigants, witnesses, jurors and court staff work closely together. The respect and dignity they afford each other affect their personal well-being and their individual futures. Inappropriate conduct may not only embarrass the recipient, but also result in the denial of a party's substantive rights. Such damage may profoundly diminish the credibility and integrity of the courts. The Task Force found that a significant degree of gender bias in the treatment of women is present in the court environment. Women in every group encounter unnecessary and unacceptable impediments to their full, effective participation in the work of the courts.

During the course of its investigation, the Task Force was told by some individuals that reports of biased treatment were the result of over-sensitivity or exaggeration. They complained that bias was a trivial matter and unworthy of the time, attention and money being expended. In the Task Force's view, the volume of reports of incidents of bias received proved them wrong.

The information received by the Task Force did not suggest that all judges, lawyers or court staff were acting in a gender biased manner, nor did it suggest that all incidents of bias were intentional or malicious. Nonetheless, the reports of bias from a wide variety of sources were compelling. To illustrate the frequency and serious nature of such reports, an extensive representative sample is set forth verbatim at Appendix G.

The impact of this material was reinforced by the judicial survey conducted by the Task Force. In answer to the question: "Have you ever experienced a situation in your courtroom in which you perceived unfair or insensitive treatment of any of the following people resulting from racial, ethnic or gender bias?", 30.9% of all judicial respondents answered yes for instances involving female judges, attorneys, litigants, defendants, jurors or witnesses. Sixteen and one-half percent (16.5%) identified biased treatment against males.

Following is a breakdown of those responses by gender and race:

TABLE VII-1: COURTROOM TREATMENT

	Majority Male	Majority Female	Minority Male	Minority Female	Total
Minorities Treated Unfairly	(52) 26%	(9) 47.4%	(6) 46.2%	(9) 75%	(76) 31%
Non-Minorities Treated Unfairly	(40) 20.4%	(7) 36.8%	(3) 23.1%	(6) 60%	(56) 23.4%
Males Treated Unfairly	(30) 15.4%	(4) 22.2%	(2) 16.7%	(3) 30%	(39) 16.5%
Females Treated Unfairly	(48) 24.2%	(13) 65%	(7) 53.8%	(7) 63.6%	(75) 30.9%

The attorney survey revealed that female attorneys observed behavior which they viewed as "unfair" more often than did their male colleagues. Female attorneys cited their colleagues for giving unfair or insensitive treatment to female attorneys, litigants and witnesses more often than to female jurors or judges. Some female minority attorneys noted that they were the object of both gender and racial/ethnic bias on the part of their colleagues. While eighty-one percent of majority male attorneys reported that they "seldom" or "never" observed a judge giving unfair treatment to a female attorney, forty-seven percent of female attorneys reported that they had observed such treatment sometimes or usually. Both groups cited numerous examples of disparate treatment.

Following are tables describing the responses of attorneys to some of these key questions.

**TABLE VII-2: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed an attorney giving unfair or insensitive treatment to a female attorney?

(n = 281)	Always and Usually	Sometimes	Seldom	Never
Female Attorney (n = 134)	11%	56%	19%	15%
Male Attorney (n = 147)	5%	26%	28%	41%

**TABLE VII-3: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed an attorney giving unfair or insensitive treatment to a female litigant?

(n = 271)	Always and Usually	Sometimes	Seldom	Never
Female Attorney (n = 125)	5% *	47%	24%	24%
Male Attorney (n = 146)	4% *	21%	32%	43%

\* "Always" response = 0%

**TABLE VII-4: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed an attorney giving unfair or insensitive treatment to a female witness?

(N = 267)	Always and Usually	Sometimes	Seldom and Never
Female Attorney (n = 124)	3% *	40%	56%
Male Attorney (n = 143)	3% *	20%	77%

\* "Always" response = 0%

**TABLE VII-5: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed an attorney giving unfair or insensitive treatment to a female juror?

(N = 265)	Always and Usually	Sometimes	Seldom and Never
Female Attorney (n = 123)	0%	19%	81%
Male Attorney (n = 143)	3%	8%	89%

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**TABLE VII-6: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed a judge giving unfair or insensitive treatment to a female witness?

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(N = 267)	Always and Usually	Sometimes	Seldom and Never
Female Attorney (n = 124)	2% *	24%	74%
Male Attorney (n = 143)	2% *	13%	85%

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\* "Always" response = 0%

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**TABLE VII-7: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed a judge giving unfair or insensitive treatment to a female juror?

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(N = 266)	Always and Usually	Sometimes	Seldom and Never
Female Attorney (n = 125)	0%	10%	91%
Male Attorney (n = 141)	1%	8%	91%

---

\* "Always" response = 0%

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**TABLE VII-8: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed a judge giving unfair or insensitive treatment to a female attorney?

(n = 272)	Always and Usually	Sometimes	Seldom	Never
Female Attorney (n = 129)	5% *	42%	26%	27%
Male Attorney (n = 143)	3% *	16%	31%	50%

\* "Always" response = 0%

**TABLE VII-9: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed a judge giving unfair or insensitive treatment to a female litigant?

(n = 272)	Always and Usually	Sometimes	Seldom	Never
Female Attorney (n = 129)	3% *	32%	26%	39%
Male Attorney (n = 143)	2% *	17%	27%	56%

\* "Always" response = 0%

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**TABLE VII-10: ATTORNEY RESPONSES**

Question: Within the past five years how often have you observed an attorney giving unfair or insensitive treatment to a female judge?

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(N = 268)	Always and Usually	Sometimes	Seldom and Never
Female Attorney (n = 125)	2% *	27%	71%
Male Attorney (n = 143)	2%	15%	83%

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\* "Always" response = 0%

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The Task Force was interested in finding out how often attorneys who observed disparate treatment followed-up by "protesting". The findings reflect some interesting differences between the subgroups. Responding attorneys reported that they protested situations of gender bias on the part of attorneys forty-four percent of the time and on the part of the judges twenty-two percent of the time.

Unusually large numbers of attorneys offered specific examples of gender and racial/ethnic bias, as well as extensive additional comments. Considering the length of the questionnaire, the total of 518 examples and comments submitted testify to the fact that the topic of bias is of considerable importance to Michigan attorneys. Attorney survey respondents described 181 examples of gender bias and 209 examples of racial/ethnic bias on the part of attorneys and judges.

Overall, forty-two respondents to the court user study reported that their gender had a negative influence on the treatment they received by their attorneys. Eighty-two persons reported that their gender had a negative influence on the treatment they received by the judge and one hundred eleven reported that their gender had a negative effect on the outcome of their case. As noted in Section III above, because of sample problems in this survey, the results should not be projected to Michigan court users as a whole.

### Treatment of Women Litigants and Witnesses

#### **Credibility**

One form of gender bias which may operate in a courtroom is the assumption that female litigants and witnesses are, by the nature of their sex, less credible than their male counterparts. The Task Force defined credibility as the likelihood that an individual would be perceived as truthful, competent, believable, convincing and a person of serious intent and honest views.

In "The Power to Communicate: Gender Differences as Barriers" authors Deborah Borisoff and Lisa Merrill identify several stereotypes which reduce or destroy the credibility of women. These

stereotypes include the expectation that women are "soft-spoken, self-effacing, compliant, more emotional than logical, prone to be disorganized and subjective"<sup>1</sup> As a result of these factors, political scientist Nasserl O. Keohane concludes that:

...the power of such prescriptive silence is such that when women do speak, their speech deviates from the norm of masculinity in timbre and pattern...And the words of women are consistently devalued in group settings, not heard, assumed to be trivial, not attended to.<sup>2</sup>

#### **Inappropriate or Demeaning Conduct**

The frequency with which women litigants and witnesses are subjected to inappropriate and demeaning conduct by judges, lawyers and court staff directly affects their credibility. This conduct may take several forms:

address by first names or terms of endearment;  
comments about personal appearance;  
verbal or physical sexual innuendo or advances;  
sexist remarks or jokes;  
patronizing or oversolicitous behavior; or  
bullying, intimidating or overly aggressive behavior.

Attorneys and judges were asked in the survey questionnaires about the frequency of unfair treatment against females which they had observed. (See preceding tables) In supplementing their responses, the attorneys and judges gave numerous examples illustrating their perceptions of unfair treatment and how it may occur. For example:<sup>3</sup>

A judge in a recent sex discrimination case so badgered my client that she gave up mid-trial. His response to her testimony of her competence was to berate her for thinking she could run the company! Judge once tried to talk a husband out of paying alimony (after it had been placed on the record as part of a divorce settlement.)

Female litigants and witnesses have their personal lives pried into much more extensively than males. They are also questioned in a demeaning snide tone (none of this ever appears on a record.) The questioning frequently assumes the witness is an "airhead."

RE: female litigant; demeaning comments; insensitive to emotional issues; assuming female has no business knowledge...

State district court judge made a rude and sexist remark about "female" drivers while presiding over a hearing on a traffic offense committed by a woman.

During voir dire attorney asked the prospective jurors if they would hold it against him (the attorney) "because she was prettier than he was." An attorney (male) asked a female witness why she spent so long shopping in a clothing store without buying anything. Her reply was she couldn't find anything to purchase. He responded with "Just like a typical woman, shopping to waste time."

During deposition there was verbal intimidation of a female deponent. The attorney mocked and used his body size and posture to attempt to intimidate an expert witness during trial.

I can only recall one recent incident that truly amazed me. First-degree murder, [i.e., Criminal Sexual Conduct] case, involving female victim [and] horrendous facts. Oral argument, Court of Appeals, Appellate issue: error in admission of evidence re bite mark(s) on victim's buttock. During argument one judge remarked something like: "I guess the prosecutor wouldn't give him the benefit of one bite".

These quotations are a small sample of reports the Task Force received. The Task Force also took note of news reports of extreme conduct on the part of a district judge who was removed from the bench by the Judicial Tenure Commission for soliciting sexual favors from three female defendants and making "improper and indecent" remarks to a female employee.<sup>4</sup> It may be expected that citizens who receive such treatment leave the courts disillusioned, angry and confused by the contradictions between "justice for all" and the discrimination they have encountered. Many said so.

#### **Court Administration**

Information received from citizens, attorneys and experts convinced the Task Force that court administration plays a vital role in determining whether court users receive unbiased treatment. In many instances, court staff determine the level of user information, case progress and court access. The application and monitoring of consistent fair user policies are essential to the avoidance of gender bias in court administration.

Court procedures utilize special language, processes and time frames which a user may find difficult to understand. Users may feel powerless and perceive biased treatment due to their lack of understanding of the court process. Many of the respondents to the court user survey reported feeling "confused", "angry" and "frustrated". Approximately half of the respondents reported that males and females are treated differently by the courts. One respondent indicated that not understanding the system meant the user would have to tolerate what happened. Another stated that it was not possible to deal with the case because there was no understanding of the system. The responses identified a need for printed material explaining the procedures and detailing how to complete court forms. As one user explained, "Citizens need to be better prepared to deal with court cases in general. I was unprepared to deal with the case because I had no knowledge of the system".<sup>5</sup>

Court personnel may have personal beliefs or attitudes which lead to unfair treatment of court users. Testimony given to the Task Force supports the conclusion that court employees would benefit from education regarding the detrimental treatment of users. The courts must not ignore such accusatory comments as: "women are discouraged from filing by court personnel through ignoring claims, trivialization..."<sup>6</sup> or "people talked down to me, condescending, like I was a child".<sup>7</sup> Court administrators may not recognize discriminatory behavior by court staff when it occurs. One user testified that a deputy "spoke out [and] accused me of holding a hatchet over my former husband". The supervisor who was present at the time did not seem to disapprove the comment. This woman further reported she felt a "camaraderie" among the three men in the room.<sup>8</sup> Several users reported a lack of sensitivity to gender discrimination on the part of court staff.<sup>9</sup> Testimony was given that a social bias exists against the poor, that "women are poor" and that the court is not sensitive to this bias.<sup>10</sup>

#### **Forms and Correspondence**

The State Court Administrative Office has appointed forms committees for the various courts which have been diligent in incorporating gender-neutral language. Additionally, on February 6, 1989 the American Bar Association adopted a recommendation calling for gender-neutral language in all documents establishing policy and procedure. Nevertheless, the Task Force received several

complaints about sexist language in court forms and informational material.

### **Juries**

Although the Task Force recognizes that the courts cannot control societal prejudice, it believes that special attention to potential jury bias is warranted. Individual jurors may hold biased beliefs.<sup>11</sup> The killing of a trial judge by her estranged husband raised serious questions of how stereotypical attitudes about women victims may influence jury decision-making. According to newspaper accounts, jurors reported that they found the husband guilty of voluntary manslaughter instead of murder because the "judge provoked her estranged husband into shooting her to death in her court chambers because she went out with other men..." One juror was quoted as saying:

First of all, she went out with other men...then he was having trouble sexually, and I imagined that she rubbed that into him. Then he went to his lawyer's office and found out she wouldn't agree to the settlement.<sup>12</sup>

### **Treatment of Women Attorneys**

The Task Force views the status of women in the legal profession and the manner in which they are treated and perceived by judges, colleagues and court personnel as reaching beyond women attorneys' personal well-being and career goals. Their status and treatment have important consequences for the administration of justice.

The ability of women attorneys to function fully in a professional capacity is directly connected to the welfare of the broader client community they serve. Their open access to opportunity, training, experience, and information is crucial to effective representation of their clients. As Lynn Hecht Schafran has observed:

These differences in treatment matter. They go far beyond personal irritation and insult to issues of equal opportunity, professional credibility and whether one's clients receive the full due process of law.<sup>13</sup>

Overt discriminatory conduct against women attorneys tells the public that the profession is not fair and unbiased. It affects the reputation of the justice system as a whole. "In a system where litigants must depend on their chosen advocates, bias affects justice."<sup>14</sup>

Persuasive information was presented to the Task Force that women attorneys faced obstacles and attitudes which hindered their full participation in the practice of law. Certainly not every woman attorney has experienced the problems identified in the following material. However, the Task Force found that women lawyers were not yet consistently treated with the same respect and dignity as were their male colleagues, nor were they able to avail themselves of the full economic and professional benefits accorded their male counterparts. In some instance, both men and women were negatively impacted by the expectations placed on them as a result of their gender.

In testimony presented to the Task Force, women attorneys from throughout the state spoke of their frustration and anger:

It is our belief that the stress, the humiliation and the harm to the woman attorney's reputation and credibility, not to mention the potential harm to the credibility of her case from such remarks and actions by male judges and attorneys is apparent.<sup>15</sup>

...over a period of eight years, I have accepted that, as a Black female, I will be discriminated against. My clients commonly come to me and ask should they get

a White male or Jewish attorney or can a Black female attorney be fairly treated in any Court. Therefore, even though I attempt to repress the experience of discrimination, it commonly affects the economics of my law office...<sup>16</sup>

The Task Force also noted the concern of a significant number of women that testifying could place a female attorney at risk and that many women who might wish to speak to issues of discrimination would not come forward for fear of reprisal.<sup>17</sup>

I could write plenty of examples and just focusing on it makes me extremely angry - however you must understand that to publicly complain - re: your committee hearings jeopardizes current clients in pending cases...<sup>18</sup>

Three witnesses reported that they had, in fact, experienced negative consequences as a result of their participation in the public hearings.<sup>19</sup>

The confidential surveys of attorneys and judges, where anonymity of the respondent was protected, show a much higher rate of response. The surveys suggest that many women attorneys and judges who do not speak out publicly are nonetheless deeply troubled by their perception of biased treatment.

Examples of attitudes and behavior of judges and attorneys which women attorneys cited include the following:

patronizing language, improper forms of address, references to appearance and marital status;

verbal and physical actions which exclude women or ignore their presence;

questions, comments and behavior related to whether women are "real" attorneys;

demeaning jokes and comments;

"bullying" and intimidation;

sexual harassment and innuendo against women, including jokes, sexual references, physical touching, and implied or overt pressure for sexual favors;

toleration and encouragement of behavior in male attorneys which is not valued in female attorneys, such as aggressive/assertive behavior and failure to meet the "feminine" ideal;

less attention and credibility given to female attorneys' statements than to male attorneys' statements; and

judges' greater impatience with and criticism of female attorneys than male attorneys;

Other states which have undertaken studies of gender bias in their court systems have identified the existence of many of the same attitudes and practices.<sup>20</sup> The experience of women attorneys in Michigan is not unusual in type or frequency of occurrence.

The Task Force identified several likely effects of gender-biased behavior upon woman attorneys. A woman attorney is obliged to expend mental and emotional energy to respond to such behavior in many aspects of her professional life. If she is a woman of color, she is often subject to racial or ethnic bias as well. The following excerpts from an article appearing in *The American Bar Journal* describe some of the consequences of such bias:

The "masculinity" or "femininity" of their demeanor is something women lawyers have to think about constantly when they appear in court. . . .

Says Leonard Cavise, professor at DePaul University College of Law, "Ultimately, some of these women ask themselves, "How long do I have to do this before I am accepted as myself?"

That question forms the core of the gender bias complaint. And, while men may argue that, "We have to worry about how we come across too," the issue for them centers on how competent, how authoritative they appear - not on how masculine they are being perceived.<sup>21</sup>

These observations were made by Michigan lawyers:

In my experience, racial/ethnic and gender bias are so prevalent in the Michigan court systems, that I have as a matter used a minority male and/or white male as Co-Counsel so that our client's interest would not adversely be affected by the presence of said bias. When assigning an attorney to a file I consider the race and/or gender of the judge and the attorney on the opposite side and the county in which the matter is to [be] tried [as] significant factors. Rarely, if ever, when large financial awards or sophisticated business issues are present before a jury or male bench will I not factor in the fact that I am a Black female as I make plans for my presentation of my client's case.<sup>22</sup>

We are all [so] afraid of being identified as troublemakers, non-team players, (and most obviously not "one of the boys,") that we hide our rage at the gross indignity of practicing law in front of prejudiced judges.<sup>23</sup>

The woman attorney's clients, the court system and the lawyer herself are prevented from receiving the full benefit of the woman attorney's attention to the substance of her work. Needless time is spent in countering prejudicial behavior and strategizing means of protecting her client despite the embarrassment or anger that she may feel.

### **Treatment of Women Judges**

When asked to describe their satisfaction with their experience as a judge, 65.6% of the surveyed female judges were "very satisfied" and 28.1% were "satisfied". There were no differences in the percentage of satisfaction expressed by male and female judges. Female judges, as a group, reported that they enjoyed the responsibilities, position and benefits of the bench. Despite this high level of satisfaction, however, information before the Task Force suggests that they are not totally insulated from the conduct displayed against other female participants in the courts.

Illustrative of some of these problems are the following excerpts and surveys:

Difficult white male judges are referred to as "irascible" while difficult female judges are characterized as "bitches".

Male attorneys are often disrespectful to female attorneys. They interrupt constantly during arguments in court. Have demeaning attitude towards female attorney as though to say "This is a man's area and you shouldn't even be here." Male attorneys often use this same attitude to female judges.

If a female judge doesn't rule in their favor or allow disrespectful behavior that they would never display to a white male judge, she is talked about in the halls and called stupid or a bitch who's hard to get along with.

Many comments re: women judges -- that they are too emotional, men-haters, on their period, less bright, less professional than male judges, can't take a joke, etc.

A partner in my office calls a judge we deal w[ith] a bitch, he definitely wants to know if the judge is a woman before he goes into court.

Testimony was also submitted by female judges about their concerns for adequate child care provisions in court administration and policies on temporary disability, maternity and parental leaves.<sup>24</sup> Like female lawyers (see Section VIII) female judges perceive these issues as very important to their professional life.

### The Judge's Role in Courtroom Control

The role that a judge performs in regulating and correcting biased conduct in the court environment is crucial:

Every participant in the court process, whether directly or indirectly, is affected by the daily activity of the judge. It is the judge who establishes the atmosphere of the court and provides the focal point to which all eyes turn for reference and direction.<sup>25</sup>

A judge who is willing to address instances of gender biased conduct and correct behaviors which occur in front of him or her makes a lasting impression and impact.

The Task Force recognizes the difficulty a judge faces in weighing this role against possible interference with normal trial practices. Yet, every day judges are required to separate advocacy from histrionics, argument from abuse. Altering the treatment accorded female participants in the courts and eliminating the effects of gender discrimination are formidable challenges but ones which must be faced. Judicial leadership must begin the process and spur other participants to join.

### Case Assignments and Appointment of Women in Criminal Matters

The sixth amendment to the U.S Constitution mandates that a defendant accused in a criminal prosecution is entitled to "have the assistance of counsel for his defense." In Michigan in 1986, \$43,612,176 were spent for the representation of indigent persons in the criminal justice system.<sup>26</sup>

This figure includes state funding for appellate services and local county funding for representation at the trial, as well as other funding from federal and private sources.

In Michigan, the service delivery system for indigent counsel is determined at the local level. Each county and court chooses one or a combination of three types of indigent representation to provide defense services to the poor. These three choices are (1) assigned private counsel; (2) contract attorney programs; and (3) public defender programs. Regardless of the type of program used, the individual court and judge exercise enormous influence on the selection, qualification and payment of assigned counsel. To the extent that such assignments are affected by the gender of an attorney, there are serious consequences for the integrity of the system, the representation of the client and the economic and professional status of the lawyer.

The Task Force collected data on this issue through public hearing testimony and the attorney and judicial surveys. Testimony from female attorneys in a number of areas raised the concern that they were not receiving access to court appointments and that, even when they were appointed, they were not considered for cases involving high visibility or significant economic reward.

Several stereotypes affect the assignment opportunities available to women. A former Chief Judge of a large trial court testified that during his tenure it became apparent that both male and female judges of his court were unwilling to appoint an equitable share of indigent assignments to female attorneys. In identifying the attitudes which fostered this result, the witness cited several rationales based on stereotypic beliefs about women in the profession:

Judges believe that capital cases and major drug cases are too tough for female attorneys.

Judges believe that clients will object to the assignment of female attorneys to their cases.

Judges believe that women attorneys will be intimidated and threatened by "dangerous" clients and wish to protect them from this element.

The witness was convinced that even though there existed a strong core of female attorneys who regularly practiced in the court, those attorneys were not receiving their proportionate share of the assignments. As a result he instituted an affirmative program designed to resolve this inequity. Yet, despite the obvious concern for remedying wrongs, this witness also admitted that he had reservations about appointing some women to some cases, "... for example, there are some big, rough defendants that I would not put a small female to represent".<sup>27</sup>

Women attorneys also stated not only that they were receiving few cases, but also that those they received did not involve significant charges or substantial fees.<sup>28</sup>

As a criminal practitioner at \_\_\_\_\_ Court, the discrimination overall is in the low number of assignments that I receive to represent indigent persons. It is incredible that men who are similarly situated are able to obtain a substantially higher number of assignments for representation. This is not for one particular judge, but an assessment of the entire Court in general.<sup>29</sup>

Anecdotal information on such discrimination (case assignment) abounds, often coming from new attorneys "making the rounds" at court to get on the judges' assignments lists. Women attorneys sometimes receive no more than a perfunctory interest or interview, and sometimes are told by court staff that women are rarely appointed or that women's business cards are routinely discarded.<sup>30</sup>

A statistical survey submitted by the Women Lawyers Association of Michigan examining the busiest trial court in Michigan for the period between July 1, 1987 to July 1, 1988 revealed the following:<sup>31</sup>

**TABLE VIII-11: CASE ASSIGNMENTS AND AVERAGE FEES**

<u>ATTORNEY TYPE</u>	<u>NUMBER IN GROUP</u>	<u>TOTAL FEES PAID</u>	<u>NUMBER CASES</u>	<u>AVERAGE FEE PER CASE</u>
White Male	285	\$2,714,819	6,290	\$431.61
White Female	60	635,209	2,088	\$304.22
Black Male	105	1,312,554	3,030	\$433.19
Black Female	27	468,006	1,255	\$372.91
Hispanic Male	4	67,622	143	\$472.88
Hispanic Female	2	49,010	123	\$398.46
Unknown Male	32	92,321	231	\$399.66
Unknown Female	13	26,861	61	\$440.34
<u>Totals</u>				
Male	426	\$4,187,316	9,694	\$431.95
Female	102	\$1,179,085	3,527	\$334.30

This study of a large sample of over 13,000 cases indicates that women attorneys in this court earn an average of \$100 less per case than male attorneys. One hundred dollars represents nearly one quarter of the total average fee earned by male practitioners. This study also contradicts testimony that women receive fewer assignments; in the cases in question women received an average of 35 cases per attorney while men handled an average of 23 cases per attorney. This suggests that women attorneys accepting criminal cases earn less per case while handling more cases on average.

Over eighty percent of the respondents to the Task Force's judicial survey were in positions where they assigned attorneys to fee generating positions. By their own assessment, the judges revealed their assignment patterns for female attorneys:

**TABLE VII-12: ATTORNEY ASSIGNMENT**

<b>% Females Assigned</b>	<b>Majority Male Judges</b>	<b>Majority Female Judges</b>	<b>Minority Male Judges</b>	<b>Minority Female Judges</b>	<b>Total Judges</b>
0	21.6%	0	11.1%	0	21.1%
1-5	10.4%	9.15%	0	0	7.3%
6-10	22.3%	0	0	11.1%	19%
11-15	4.5%	0	0	11.1%	4.3%
16-20	12.7%	0	0	0	10.4%
21-25	11.9%	0	11.1%	11.1%	11%
26-30	4.5%	9.1%	11.1%	11.1%	5.5%
31-35	3.7%	0	0	0	3.1%
36-40	3%	18.2%	22.2%	11.1%	5.5%
41-50	3.7%	54.5%	33.3%	33.3%	10.4%
51-60	0	0	11.1%	11.1%	1.2%
61-70	0	0	0	0	0%
71-80	.7%	9.1%	0	0	1.2%

The Task Force was told:

...women are assigned mere "minor" cases which are unlikely to generate larger fees. Assignment to a case such as welfare fraud or probation violation requires the opening of a file and client visit, but it rarely results in a trial which would generate a larger fee. The fee schedule in effect during the study period, which pays attorneys per event, makes a distinction between "capital" and noncapital" cases. ...Assigning a higher percentage of male attorneys to the more serious capital cases could account for the difference in average fees per case. ... An attorney assigned on serious or "high profile" cases is more likely to gain a reputation which will lead to an ability to attract retained cases.<sup>22</sup>

[Without major cases] it is difficult to gain a reputation of being a good criminal lawyer.<sup>23</sup>

The foregoing information supports the conclusion that women attorneys may be economically harmed both in actual fees earned and in their reputations in the community. Women attorneys have restricted access to professional opportunities which will increase their marketability as identified criminal defense experts and their ability to attract retained cases.

## Mediation

As the use of mediation and other alternative dispute resolution mechanisms in Michigan increases, these systems should be subject to the same standard for fair and equal treatment as other parts of the justice system. Underrepresentation of women in the implementation of these mechanisms has serious consequences for the quality of service provided to women litigants, as well as the respect and credibility afforded women attorneys.

### **Panel Composition**

Testimony was presented at the public hearings, in writing and by bar associations regarding the treatment and valuation of cases where either a litigant or an attorney was female.<sup>24</sup> In Michigan, the appointment of mediators is under the control of the courts and, therefore, the courts are ultimately responsible for whether the referral or appointment of mediators is gender-neutral. A review of the roster of mediators in the six largest counties in the state reveals that the representation of women in each of these county mediation programs is far below the 18% female proportion of State Bar membership.

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**TABLE VII-13: MEDIATOR APPOINTMENTS**

COUNTY	TOTAL MEDIATORS	FEMALE MEDIATORS	%
KENT	256	11	4%
GENESEE	84	7	8%
OAKLAND	965	47	5%
MACOMB	156	8	5%
SAGINAW	132	0	0%
WAYNE	632	67	11%

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\* This data was compiled by Task Force members through empirical analysis of information solicited from various sources and not from official figures provided by the mediation tribunals

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The attorney survey shows differences in the way male and female attorneys perceive the participation of female attorneys in mediation panels. While twenty-seven percent of male attorneys as a group believe that female attorneys "always" or "usually" participate on mediation panels, only three percent of female attorneys agree.

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**TABLE VII-14: MEDIATION PANELS**

Question: Female attorneys participate in mediation panels.

(n = 176)	Always and Usually	Sometimes	Seldom and Never	No Basis For Opinion
Total	16%	35%	42%	7%
Male (n = 100)	27%	37%	27%	9%
Female (n = 76)	3% *	32%	62%	4%

\* "Always" response = 0%

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The Women Lawyers Association of Michigan and others suggested a variety of reasons for the inadequate representation of women in the mediation process.<sup>35</sup> For example, there is no statewide standard application process to serve as a mediator. A review of the application processes for the six identified counties reveals a wide range of requirements and selection criteria. In some instances mediators are selected by the court administrator; in others a bench and bar committee selects the pool. Some selections are made by professional organizations, by a representative of the tribunal or by the judge. Although a State Court Administrative Order form is used by most counties, the general guideline for selection seems to be amended and augmented by local practice and custom.

Where selection standards are articulated, they may establish requirements which result in the exclusion of women practitioners. Included in these requirements are length of practice, size of awards, personal reputation and professional contacts. Moreover, once a woman is included in the pool of mediation panelists, there is no guarantee that she will then be appointed to a mediation panel. Finally, there is a tendency to appoint women to cases as neutrals under the assumption that they have neither the experience nor the public reputation to function as defense or plaintiff mediator.<sup>36</sup>

#### Accountability

Mediation processes do not uniformly collect or publish information on the mediation system.<sup>37</sup> Determining the number and demographics of applicants for mediation positions, the number selected for the pool and the utilization of those applicants in an actual mediation was difficult and in some instances impossible. It was equally difficult to determine the amount of money earned by mediators in relation to their gender. The very failure of a mediation system to monitor its own use of underrepresented groups suggests the absence of commitment to the inclusion of those groups in the process. As in all other phases of the court system, this lack of accountability and self-monitoring creates the appearance of indifference, if not neglect.

### **Behavior of Mediation Panelists**

Written and public testimony cited several examples of situations where mediators appeared to have exhibited biased attitudes. A woman attorney was asked how many women attorneys were in her firm and whether her firm only represented ladies. When informed that she was associated with other women attorneys, the male mediator joked about the fact that her firm might be discriminating against men. Given that the case before the panel was a matter of sexual discrimination in employment such a comment was particularly inappropriate.<sup>38</sup>

A female mediator reported that the two men on her panel referred to all black women, whether litigants or attorneys, as "gals", while white women and males were not subjected to similar references. These same mediators commented on the abilities of the women attorneys throughout the day and joked about the litigants in an offensive and abusive manner.<sup>39</sup> A third female mediator cited highly offensive, sexist commentary used by a male mediator in chambers, and inappropriate and demeaning references to the dress of a female attorney during the mediation process itself.<sup>40</sup>

Such biased attitudes may have serious consequences:

The client of a woman attorney thus treated may not get an accurate or fair evaluation of their case, resulting in an extremely low mediation award which has negative implications for trial. The client does not receive a clear sense of the market value of that case as a result of inaccurate awards that have been affected by sexual bias of the mediation panel. Furthermore, the reputation of the particular woman attorney is harmed in the eye of her opposing counsel and her bargaining power for her client is diminished due to the lightness with which her case is perceived by the mediators.... [a]n even more subtle problem with the lack of women mediators is that issues in which sex is involved, such as civil rape cases or sex discrimination in employment... are often given short shrift when the mediation panel of men fails to understand the nature of the claim and the damages to the individual litigants.<sup>41</sup>

### **Treatment of Court Personnel**

The Task Force initially proposed two distinct research projects to investigate treatment issues related to the treatment of court personnel. The first was a court employment questionnaire designed to collect demographic data on employment practices and policies. The second was a survey of randomly selected court staff designed to collect data on fairness and sensitivity in the courtroom and in administrative dealings with the public and attorneys, hiring and promotional opportunities, working conditions and job performance. Because of budget constraints, only the first project was completed. As a result, the Task Force received little information directly from court staff about their perceptions and experiences within the system.

The Task Force recognizes the importance of such data, the pivotal role that administrative personnel play in the judicial system and the seriousness of concerns about bias in compensation, job parity, sexual harassment, promotion and administrative policies and practices. Although it recommends that such concerns be addressed in the future, it notes that the employment questionnaire, testimony, court reports and published articles yield the following observations about the treatment of court employees within the court environment.

### **Personnel Policies**

Many Michigan courts do not have written personnel policies, let alone established policies on equal employment or sexual harassment. Only twenty-three percent of the courts responding to the employment questionnaire had established equal employment policies and an even smaller percentage (16%) were following affirmative action guidelines. Many courts relied upon the policies promulgated by their local government funding source without adopting specific policies of their own.

Of the courts responding to the questionnaire, the following chart shows the extent to which personnel policies have been adopted in some form:

	<u>Yes</u>	<u>No</u>	<u>Funding Source</u>
Written Personnel Policies	119	51	-
Written Disciplinary Policies	108	67	-
Written Employment Application Form	45	127	-
Collection of statistics on applications for employment	10	156	-
Written Sexual Harassment Policy	64	104	-
Written Equal Employment Opportunity statement	40	50	85
Written Affirmative Action Statement	28	75	72
File an Annual Federal EEO Report	30	135	-

### **Equal Employment Opportunity**

The State Court Administrative Office has adopted a policy related to equal employment which provides, inter alia, that,

- (1) **Equal Opportunity:** The SCAO is committed to the concept of equal employment opportunity as a necessary element in its basic personnel and administrative policy. This commitment is supported by positive, practical efforts to work continually toward improving recruitment, employment, development and promotional opportunities for minorities and women.
- (2) **General Objective:**
  - A. To establish and maintain employment levels for minorities and women commensurate with their percentages in the population.
  - B. To distribute these employment levels proportionately throughout the various job classifications, whenever possible.
  - C. To make a continuous effort to eliminate and prevent occurrences of arbitrary or discriminatory hiring and promotional practices.
  - D. No SCAO employee shall be subjected to sexual harassment by another employee during the course of his/her employment with the

SCAO, which will make a good faith effort to prevent sexual harassment. When allegations of sexual harassment are brought to management's attention, the State Court Administrator will investigate them, and, if substantiated, take corrective action.

E. To establish on-the-job training programs and to encourage and compensate for outside educational activities, as a means of upward mobility for minorities and women.

- (3) **Commitment:** All Administrators, Directors and other employees are required to support this Affirmative Action Policy.

In testimony before the Task Force, John Roy Castillo, Director of the Michigan Department of Civil Rights, stated:

The beginning point for addressing any question of gender based discrimination is the simple recognition that we, as a society, have developed a large number of ingrained institutionalized ideas and attitudes toward women and toward sex discrimination issues. Discrimination does not require snarling, name calling or threats [of] violence to constitute exclusion. Attitudes or practices which exclude women because of gender are too often simply unconscious acts or the result of assumptions about ability or values. Our social system, and the court system which is a part of the total system are rife with these assumptions and misperceptions.<sup>42</sup>

He further indicated that the Department intends to investigate complaints concerning the courts and to require judges to account for lack of compliance with equal employment practices.

#### **Recruitment and Hiring**

The response to the Court Employment Questionnaire demonstrated a lack of consistent open hiring practices, although such practices are generally understood to be important to securing unbiased employment treatment.

#### **Grievances and Disciplinary Policies**

Of the 71 reported grievances over the last 5 years, courts reported that 17 grievances were based on an allegation of gender discrimination. Of those cases, 6 were decided in the employer's favor, 7 were dismissed or withdrawn on the basis of a negotiated agreement and 4 were dismissed or withdrawn without agreement.

Of the reported disciplinary actions taken, the overall rate of discipline for all employees was ten percent. There was no significant difference in the disciplinary rate for male employees (11%) as compared to female employees (9%) either in relation to each other or in relation to the overall rate.

#### **Sexual Harassment**

A significant number of courts did not have a written sexual harassment policy and judges, and administrators and employees had not received training concerning this issue.

**TABLE VII-15: SEXUAL HARASSMENT**

Does your court have a written sexual harassment policy?	64 Yes	104 No
Have judges or court staff been required to attend training sessions concerning the policy on sexual harassment:		
Judges	8 Yes	151 No
Administrator/supervisors	28 Yes	36 No
Other Employees	9 Yes	145 No

National statistics on sexual harassment reveal that it may occur in any employment environment and may be seriously damaging to the productivity and health of employees who are victims of harassing behavior. Sexual harassment may manifest itself in two distinct types of conduct. Quid pro quo harassment occurs where sexual advances, requests for sexual favors or conduct of a sexual nature are directly linked to the granting or denial of employment benefits. Hostile work environment harassment has the purpose or effect of unreasonably interfering with a person's work performance through the creation of an intimidating or offensive work environment. In each instance, employers have a legal obligation to protect employees, provide mechanisms for reporting incidents of harassment and establish clear policies which prohibit harassing conduct on the part of any other employee.<sup>43</sup>

**Job Training and Advancement**

A high percentage of courts (83% n=146) reported the existence of written job descriptions for all staff, while a majority (58% n=94) have training opportunities available to employees to increase their upward mobility within the court.

**Occupational Segregation**

A review of the reported employment demographics shows that occupational segregation occurs within the court system. The statistics show that while women made up seventy-three percent of the employment population in the court system, their numbers were grouped at the lower clerical/administrative areas and para-professional job categories, while male employees were grouped in the higher official/administrator and professional categories. Roughly equal numbers of men and women occupied upper-level administrative and professional positions within the courts. The Task Force did not examine economic factors and salary differentials across or within job categories. It believes that further information should be compiled concerning career progression, salary, benefits, career progression in order to understand the relative parity of men and women employed in the courts.

**Employee Benefit Policies**

Policies relating to outside employment, flex time, parental leave and disability are of obvious importance to women and men who are parents. The ability of an individual to structure work around the demands of family is particularly important for the single parent. The national increase

in the number of single, female-headed households suggests that many women are bearing the economic and physical burden of child rearing alone and likely need flexible policies concerning adjusted work schedules.

Regarding the availability of leave policies relating to maternity and parental leave, the questionnaire revealed the following:

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**TABLE VII-16: PERSONNEL POLICIES**

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	<u>Yes</u>	<u>No</u>
Does your court have a policy regulating outside employment?	51	120
Does your court have a maternity leave personnel policy?	105	66
Does your court have a temporary disability policy?	94	74

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The questionnaire indicated that not all courts made available to their employees a provision for temporary disability related to pregnancy, and in a large number pregnancy was treated differently than other disabilities under established disability policies.

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**TABLE VII-17: PERSONNEL POLICIES**

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	<u>Yes</u>	<u>No</u>
Does your court have a parental leave policy?	26	146
Does your court allow for flextime or flexible work schedules?	75	96

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Large number of courts did not accommodate male requests for parental leave. Many courts were unclear about the conceptual relationship between maternity, disability and parental leave and seemed to need direction and training about the current employment law.

#### **Complaint Processes**

There are over 7600 employees in Michigan courts.<sup>44</sup> The ability of these employees to articulate concerns about the practices of their employers is necessarily limited by the structure of the court environment and the political nature of the administrative hierarchy. Where bargaining units exist, checks and balances on employment abuse may be greater, but for most court employees who believe that they are being unfairly treated, voicing their concerns is difficult and may have adverse employment consequences.

In 1987, eighteen court administrators from the largest courts in the state outlined several factors which they believed contributed to administrative problems in the courts. Chief among these were the lack of appropriate mechanisms for organizational accountability. They stated.<sup>6</sup>

Accountability, in the management sense, connotes the requirement of periodic reporting, measuring performance against expectations, to some higher authority...The question of accountability is complicated by the two inherent conflicts in the structure of the judiciary: 1. independent, strong-willed, elected officials working within an administrative system which must focus on consistency, uniformity and cohesiveness; 2. costs and efficiency weighed against legal rights and due process. Full management accountability will never be attained with these constraints.

The Task Force concludes that statewide employment policies, Supreme Court leadership and a system for accountability are necessary to ensure a court system which can respond equally and fairly to all employees. Such goals are consistent with the overriding desire to implement the "One Court of Justice" mandated by the Michigan Constitution in principle and long a priority of the Michigan Supreme Court and the State Bar of Michigan.

## **CONCLUSIONS**

### **Treatment of Women Judges, Attorneys, Litigants, Witnesses and Jurors**

1. Female litigants, witnesses, judges, lawyers and court personnel in the Michigan court system are subjected to discourteous and disrespectful conduct not encountered by their male counterparts.
  - a. Patronizing language, improper forms of address and references to appearance and marital status undermine credibility and isolate female litigants, witnesses, judges, attorneys and court staff.
  - b. Verbal and physical actions such as interruptions, male-only conferences and directed conversations exclude women or ignore their presence.
  - c. Jokes or demeaning comments are made by some judges, lawyers and court staff within the court environment.
  - d. Male attorneys "bully" female litigants, witnesses or attorneys in a manner which transcends acceptable advocacy techniques.
2. Sexual harassment of women occurs in the Michigan court system, including jokes, sexual references, physical touching and implied or overt pressure for sexual favors.
3. Some judges and attorneys appear to accord less credibility to the claims, testimony and statements of female litigants, witnesses and lawyers. They may express undue impatience with or harsh criticism of women in the courtroom which they do not express with respect to men in comparable situations.
4. Some judges and attorneys appear to tolerate or encourage certain behavior by male professionals which they devalue in female professionals such as aggression, assertiveness and other departures from the "feminine" ideal.

### **Appointment of Women to Fee Generating Positions**

5. In comparison to their male counterparts, women attorneys do not receive an equitable share of the available appointments in all jurisdictions, or of the assignments to more serious criminal cases and cases which are high profile or economically lucrative.

### **Mediation**

6. Some mediation panel member are insensitive to the existence and impact of gender bias in their decision-making and their treatment of women attorneys and litigants.
7. Mediation panels do not include a representative number of female participants.

### **Treatment of Court Personnel**

8. **Michigan courts do not have uniform policies and standardized procedures relating to personnel and employment matters.**
9. **There is a lack of standardized data collection regarding the employment status, recruitment, hiring and benefits respectively accorded male and female employees in Michigan courts.**
10. **Courts lack parental leave and temporary disability policies.**

## **RECOMMENDATIONS**

### **Treatment of Women Judges, Attorneys, Litigants, Witnesses and Jurors**

1. The Michigan Supreme Court should issue an Administrative Order that behavior exhibiting gender bias in the court environment is not acceptable and that judges must set an example by not engaging in or permitting such behavior in chambers, courtroom or administrative areas.
2. The Michigan Supreme Court should require the Michigan Judicial Institute ("MJJI") to provide education in the following areas:
  - a. awareness training for judges on the definition, recognition and impact of sexist behavior; and
  - b. the importance of language.
3. All court administrators should:
  - a. direct that all forms, manuals, bench books, and correspondence employ gender-neutral language;
  - b. establish a policy prohibiting gender-biased conduct by all judges and court personnel;
  - c. conduct regular training for court employees on the issue of gender bias and its relation to the proper function of the court as a service provider; and
  - d. when undertaking improvements to court facilities, take into account the special needs of parents by providing for child care areas and facilities.
4. Jury instructions should be continually monitored to ensure gender neutrality. Some jury instructions should be amended to include specific examples of the types of bias jurors must guard against and the ways in which such bias might influence their decision-making.
5. The State Court Administrative Office should be empowered to investigate allegations of gender bias on the part of court personnel.

### **Appointment of Women to Fee Generating Positions**

6. Records of appointments to fee-generating positions by type of position, gender of appointee and fee generated should be maintained and monitored.
7. Such appointments should be distributed fairly among qualified male and female attorneys.

8. **Mechanisms for appointment of assigned counsel in the jurisdictions in which their members practice should be reviewed and a means should be developed to ensure that appointments to fee-generating positions are fairly distributed among qualified male and female attorneys.**

### **Mediation**

9. **The number of women appointed to mediation panels should be increased through the use of the following mechanisms:**
  - a. **consistent, established objective criteria for appointment;**
  - b. **a clear, advertised and available application process;**
  - c. **public access to mediation statistics profiling selection and panels;**  
**and**
  - d. **inclusion of women representatives as plaintiff, defense and neutral mediators.**
10. **Courts should monitor any agencies to which they refer cases for mediation for gender diversity and should decline referrals to any agency which does not fairly utilize women mediators. Where mediators are routinely appointed by individual judges, efforts should be made to report and review those appointments based upon the same considerations.**
11. **To the extent that courts, either by practice or court rule, refer cases to alternative dispute resolution, assignments as mediators, arbitrators or special masters should be available to attorneys regardless of gender. The referring court or judge has the affirmative obligation to ensure that any private agency receiving such assignments utilizes lawyers from both genders.**
12. **Appointing agencies should establish standards for conduct of mediation panels, arbitrators and special masters and make these individuals aware that discrimination in the discharge of their duties is not acceptable in any form or manner.**
13. **Women should be present in all aspects of mediation, arbitration or alternative dispute resolution and the compensation of these positions shall be provided without disparity based upon the gender of the individuals.**

### **Treatment of Court Personnel**

14. **Standardized employment policies and procedures should be adopted by the Supreme Court for the administration of Michigan courts with particular emphasis on:**
  - a. **equal employment goals;**
  - b. **sexual harassment;**
  - c. **disability and parental leave; and**
  - d. **flexible work schedules.**

**All courts should be required to promulgate written policies which accord with these standards.**

15. **Data should be collected annually from Michigan courts which correlates job classification, salary level and hiring, recruitment and promotion decisions with gender factors.**
16. **Training programs should be developed for the executive component (Chief Judge, Court Administrator) of the courts to teach administrative topics which impact disparately upon male and female court employees.**
17. **Education programs should be developed for all judicial and court support personnel addressing issues of gender bias and sexual harassment in the administrative environment.**
18. **A mechanism for monitoring administrative compliance with Supreme Court standards should be developed.**
19. **The Michigan legislature should implement "One Court of Justice" to facilitate standardized administrative delivery systems and uniform, equitable enforcement of gender-neutral policies and management practices.**

## ENDNOTES

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## VIII. THE STATUS OF WOMEN IN THE PROFESSION

In view of the dramatic increase of women attorneys and judges participating in the Michigan court system during the past 15 years, the Task Force undertook to examine whether the status of women had progressed apace. This section of the Report sets forth the results of the Task Force's examination of the level of participation by women in the judiciary and in other key areas of the legal profession, in professional associations, particularly the State Bar of Michigan, and in law schools.

In addition, although the Task Force did not conduct an in-depth statistical examination of employment issues confronting women lawyers in Michigan, it reviewed information about women lawyers compiled on a national basis, particularly the 1988 Report of the ABA Commission on Women.<sup>1</sup> Such reports invariably cite not only on-the-job difficulties encountered by women, but also the conflict between work and family responsibilities. The Task Force decided to make special recommendations to the State Bar of Michigan to focus on these issues with respect to Michigan lawyers.

The report of the ABA Commission provides a statistical framework for this section. It documents that in 1970 women represented just three percent of the lawyers in the United States and that by 1988 the number of women lawyers nationally had grown to twenty percent. Over eighty percent of the women lawyers practicing in 1988 had entered the profession since 1970. The growth is consistent with the increasing percentage of women law school graduates -- up from four percent in 1966 to forty-one percent in 1988. Focusing on lawyers in private practice who were admitted to the bar prior to 1975, the report indicated that only three percent of these pre-1975 lawyers were female and ninety-seven percent male.<sup>2</sup>

With respect to acceptance of newcomers to the legal profession, one observer has said:

This long history of exclusion followed by grudging toleration is not easily forgotten or overcome. Even today, it creates the basis for a certain wariness, if not suspicion, in the attitude of those former outsiders who approach a profession traditionally dominated by white men. Under these circumstances, those who have been the insiders must be sensitive to their unspoken assumptions about the newcomers. A commitment to diversity cannot succeed without the willingness to hear, understand, and accept their different voices. No one ... should pretend this process of acceptance will be easy. But the reward for all of us, if we are successful, will lie in the intellectual richness that diversity confers upon our joint enterprise.<sup>3</sup>

One measure of fairness by which legal and judicial systems can be judged is the extent to which qualified attorneys, regardless of gender, have access to positions of authority, influence and economic benefit.

The inclusion of women in a variety of professional capacities is essential to the appearance of fairness in the delivery of justice. A review of the statistics in Michigan for women in the legal profession reveals that the number of women in the profession has increased, but there is room for further progress in treatment and status.

### State Bar Admissions

The yearly admissions of women to membership in the State Bar of Michigan first topped the 300 mark in 1980. It reached 400 in 1985. It has consistently ranged between 300 and 400 over the last decade. The total number of women members of the State Bar of Michigan as of September 15,

1989 was 4,760 out of a total membership of 26,861. Thus, women represented eighteen percent of the lawyers licensed to practice law in the state. For the purpose of evaluating the following statistics, eighteen percent should represent a proportional distribution of women lawyers and judges throughout the court system. However, eighteen percent is far from the fifty-one percent representing the state's female population.<sup>4</sup>

#### Judges

Of the 581 members of the Michigan judiciary, 73 are female (12.6%). The distribution among courts is detailed in the following table.

**TABLE VIII-1: MICHIGAN JUDGES IN 1988**

	TOTAL WITH WAYNE COUNTY		TOTAL WITHOUT WAYNE COUNTY	
	TOTAL	FEMALE	TOTAL	FEMALE
Supreme	7	2	n/a	n/a
Appeals	24	5	n/a	n/a
Circuit & Recorders	196	23	161	4
Probate	107	28	99	9
District	247	13	184	9
Municipal	6	2	n/a	n/a
<b>TOTAL</b>	<b>581</b>	<b>73</b>	<b>444</b>	<b>32</b>

Members of the judiciary usually serve for many years. Consequently, the percentage of women and minorities now on the bench does not reflect the percentage of those appointed and elected in recent years. Their disproportionate number is in part due to the number of women and minorities available and appointment and election practices of past decades. While accurate figures are not available on the appointment and election practices of past decades, women and minorities have in recent years been recipients of increasing gubernatorial appointments and election by popular vote.

#### Quasi-Judicial Officers

The justice system involves numerous actors who are not judges, who nevertheless serve as public representatives of the judicial system. They include administrative law judges, magistrates and referees. The absence of significant numbers of women and minorities in these positions affects the public's perception of the fairness of the system and diminishes the system's ability to address adequately issues of direct consequence to women.

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**TABLE VIII-2: ADMINISTRATIVE LAW JUDGES**

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Administrative Law Judges	Total
Civil Rights	1
Civil Service	4
Commerce	10
Corrections	30
Education	3
Labor	
Hearings	5
MERC	4
MESC	31
Licensing & Regulation	7
Mental Health	2
Natural Resources	1
Social Service	23
State	20
Transportation	1
Treasury	11
Total	153

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**Prosecutors**

The Task Force was provided with substantial testimony about the role and influence of prosecutors over issues involving women. Many complaints and requests for change related to the influence of gender biased attitudes on the exercise of prosecutorial discretion. It may be that as women become more involved in policy decisions and participate in the operation and direction of these offices, there is evolving a heightened awareness of the consequences of gender discrimination and an increased sensitivity to the concerns of women in cases involving domestic violence, criminal sexual conduct and self defense. In the 83 Michigan counties responding to a Task Force questionnaire, there are 2 majority female and no minority prosecutors. The demographics of their offices are as follows:

**TABLE VIII-3: PROSECUTORS**

	Representation in Michigan Prosecutors Offices		Individuals who make charging decisions		Individuals who make plea decisions	
	Male Asst. Pros.	Female Asst. Pros.	Male	Female	Male	Female
Majority	307	106	224	74	209	70
Hispanic	3	3	0	2	0	2
African-American	15	13	8	2	8	2
Asian-American	0	0	0	0	0	0
Native-American	0	1	0	0	0	0

**Legal Aid and Public Defenders Offices**

Many women who come into contact with the court system are indigent. The feminization of poverty has increased those numbers over the last decade. Testimony of women from around the state highlighted the fact that many must rely upon legal aid services. The presence of large numbers of women lawyers in legal aid and public defender offices constitutes a double-edged sword. On the one hand, these women can influence policy decisions within their offices toward providing equal and fair representation to both poor women and poor men. On the other hand, many times these offices and the attorneys who staff them have onerous caseloads and limited funding and are under enormous pressures to spread the limited resources available over an increasingly larger population in need. In a questionnaire sent by the Task Force to state legal aid and defenders offices showed the following demographics:

**TABLE VIII-4: LEGAL AID AND DEFENDER'S OFFICES ATTORNEYS**

	Policy and Administrative Authority		Line Staff Attorney		Total Attorney Employees	
	Male	Female	Male	Female	Male	Female
Majority	29	21	68	54	97	75
Minority in Wayne County	3	2	14	5	17	7
Minority Outside Wayne County	0	0	3	3	3	3

\*Appendix I Lists offices responding to this questionnaire

#### Attorney General's Office

The Attorney General's Office directs state policy on many legal issues. It prosecutes and defends significant cases of far-reaching precedence. The State Public Administrator's Office appoints attorneys throughout the state to recover escheated funds. They also represent mentally ill patients and serve as guardian and conservator and in other fiduciary responsibilities. Employment profiles of these agencies reveal the following gender and racial/ethnic representatives.

**TABLE VIII-5: ATTORNEY GENERALS**

	Total Assistant Attorney General		Assistants in Charge or Higher Level		Public Administrators	
	Male	Female	Male	Female	Male	Female
White	131	54	52	8	108	7
Hispanic	2	2	1	0	0	0
Black	9	8	3	0	4	1
Asia	1	0	0	0	0	0
American Indian	0	0	0	0	0	0

## Disciplinary Agencies

Public testimony and survey responses demonstrated concerns on the part of the public, attorneys and judges about the effectiveness of the existing disciplinary systems in responding to issues of gender and racial/ethnic bias. The governing boards of the three disciplinary agencies have the following gender and racial/ethnic representation.

**TABLE VIII-6: DISCIPLINARY AGENCIES**

	Total Members	Male	Female
Judicial Tenure Commission Board	9	7	2
Attorney General Commission Board	7	5	2
Attorney Discipline Board	7	5	2

The presence of women in all areas of the profession is not a guarantee of unbiased behavior. Intra-group discrimination does occur and is damaging to the profession. But the presence of women and minorities in the profession does increase public perception of fairness. When asked an open-ended question requesting recommendations for ensuring equal and fair treatment in the Michigan Court system, 231 court users said "increase the number of female and racial/ethnic minority judges and attorneys". The next highest response, "speed up the system" was suggested by 47 proponents.<sup>5</sup>

Similarly, well over 60% of all judges in all categories indicated in their response to the judicial survey that gender and racial/ethnic diversity is "important " or "very important".

**TABLE VIII-7: THE IMPORTANCE OF GENDER DIVERSITY:**

	Majority Male Judges	Majority Female Judges	Minority Male Judges	Minority Female Judges	Total Judges
very important	10.7%	40%	23.1%	41.7%	15.1%
important	48.1%	60%	53.8%	41.7%	48.8%
unimportant	29.1%	0	23.1%	16.7%	25.8%
very unimportant	11.7%	0	0	0	9.9%

Finally, the striking disparity in the perception and recognition of gender bias between majority male respondents and minority and female respondents to Task Force surveys suggests that there may exist heightened sensitivities to bias on the part of those individuals most vulnerable to its impact.

## **PROFESSIONAL ASSOCIATIONS**

### **The State Bar of Michigan<sup>6</sup>**

As of September 15, 1989, the Board of Commissioners of the State Bar of Michigan consisted of 28 members. Three were women (11%), one of whom was African-American. One of the majority women was appointed by the Michigan Supreme Court; the other was a member of the Board by virtue of her election by the Representative Assembly as its chair. The African-American woman member of the Board of Commissioners was elected from Wayne County.

The Supreme Court until about five years ago had five appointees to the Board. That number was recently reduced to three. Two women, one of them African-American, and one African-American male have in the history of the Board been elected to membership.

The number of women currently on the Board is not atypical. Their percentage is significantly less than the 18 percent of women members of the State Bar of Michigan. A much more positive picture is presented by the Representative Assembly which consists of 150 members. Of these, 25 are women (16.7%).

Women have not yet obtained seats on the Board of Commissioners proportional to their numbers in the profession through the elective process. The election results must therefore be supplemented by appointments by the Michigan Supreme Court or some other mechanism. One Court appointment per year for three year terms will not be adequate to accomplish that purpose, particularly in an era of increasing numbers of women and minorities entering the profession. The Court needs at the very least to restore its five appointees to supplement the elective process. In addition, consideration should be given to the potential advantages and disadvantages of amending bylaws of the State Bar governing election to the Board of Commissioners which require attorneys to vote for a specific number of candidates, precluding the practice of concentrating votes known as "plunking".

### **State Bar Presidency**

In the 54 year history of the State Bar of Michigan one majority female and one minority male have been elected president, both in the past five years. Both were elected members of the Board. State Bar presidents are elected by the Board from among its members. A candidate for the presidency customarily runs for the office of vice president and if elected serves one year in that capacity, one year as president-elect and as president the third year.

It is mathematically impossible for Supreme Court appointees who are limited to a single three year term to serve in the chairs leading to the presidency. Because these appointees have historically been the source of most of the women members of the Board of Commissioners, the single term policy in practice significantly limits the number of women who can serve in the highest offices of the State Bar of Michigan. Removing that limitation, and permitting reappointment for at least two terms, as is the Court's current practice with its appointees to the Attorney Grievance Commission and Attorney Discipline Board, would make it possible for women appointees to serve a first term in which they could demonstrate their capability and dedication as a basis for consideration for election for vice president at the end of their third year. They could then serve in the offices of vice president, president-elect and president over their second three year term.

### State Bar Staff

Nineteen of the 21 members of the State Bar administrative staff are female (90%). The gender population of the administrative staff has been constant. Eleven of the 16 members of the State Bar executive staff are female (69%). The gender proportion of the executive staff has fluctuated from time to time but the current figure is typical.

### Section Councils and Officers

The statistics demonstrate that the status of women in sections varies greatly. Membership in some sections exceeds the percentage of women in the profession. In others, the proportion of women is below that in the profession. Similarly, the percentage of some women on section councils exceeds their proportion among section members generally. In others, female representation on section councils is far below that of the proportion of women in the section itself. Some section councils have no women members at all.

TABLE VIII-8: STATE BAR SECTION MEMBERSHIP

STATE BAR SECTION	TOTAL MEMBERS	FEMALE MEMBERS	COUNCIL MEMBERS	FEMALE MEMBER:
Administrative Law	733	138(19%)	15	5(20%)
Antitrust Law	404	57(14%)	19	1(.05%)
Arts	451	86(15%)	18	5(28%)
Business Law	3924	490(12.5%)	19	1(.05%)
Computer Law	546	87(16%)	17	2(12%)
Criminal Law	2506	368(15%)	27	6(22%)
Environmental Law	956	164(17%)	21	4(15%)
Family Law	2906	601(21%)	26	6(23%)
General Practice	4258	1202(28%)	10	1(10%)
Intellectual Property	614	89(14.5%)	14	1(.07%)
International Law	163	35(21.5%)	9	0(0%)
Judicial Conference	597	75(12.5%)	28	3(11%)
Juvenile Law	203	66(32.5%)	n/a	n/a
Labor Relations Law	1698	351(20%)	15	2(13%)
Latin American Bar Activities	93	23(25%)	12	3(25%)
Legal Economics	825	55(6.6%)	21	1(.05%)
Negligence Law Section	4782	544(11%)	15	2(13%)
Probate & Trust Law	5590	1235(22%)	20	1(.05%)
Public Corporation Law	873	133(15%)	16	1(.06%)
Real Property Law	3444	368(11%)	15	2(12%)
Taxation	1761	204(11.5%)	15	0(0%)
Worker's Compensation Law	1505	165(11%)	15	3(20%)
Young Lawyers	9777	3102(32%)	22	9(41%)

Only two of the twenty three sections are chaired by women (8.5%). There is no accurate record of the number of women who over time have served as section chairpersons. It is, however, true

that as the number of women in the profession increases, the number who serve in section office does, too. However, there are still many sections which have never had a women chairperson.

Most of the sections concern themselves with substantive areas of the law. They are a major source of continuing legal education. Involvement in section work is not only important for learning but also for obtaining recognition in the field of practice. The involvement of more women as section members and leaders must therefore be given greater priority. Sections must make reasonable efforts to involve women at all levels of their hierarchy, from section committee member to section chairperson.

#### **State Bar Committees**

Members and chairpersons of State Bar committees are appointed by the State Bar president. Ordinarily, the terms of one-third of the committee members expire each year. Thus, each president determines the membership of only a part but not the entire committee. With some exceptions, the percentage of women serving on State Bar committees equals or exceeds the percentage of women in the profession. State Bar presidents who have served in recent years report that they have appointed all women and minorities who have sought committee appointments. The proportion of women chairpersons of State Bar Committees -- 15 out of a total of 59 (25%) -- points to the success of these efforts.

Membership in State Bar Committees by gender is as follows:

TABLE VIII-9

<u>STATE BAR COMMITTEES</u>	<u>TOTAL MEMBERS</u>	<u>FEMALE MEMBERS</u>
Advanced Technology Task Force	16	2(12.5%)
Advertising, Certification & Specialization	13	4(31%)
Appellate Court Administration	20	8(40%)
Arbitration & Alternate Methods of Dispute Resolution	16	5(31%)
Arbitration of Disputes Among Attorneys	14	2(14%)
Assigned Counsel Task Force, Standards for	30	4(13%)
Awards	11	2(18%)
Bar Journal Advisory Board	29	11(38%)
Bar-Related Title Insurance	10	0(0%)
Character & Witness	20	5(25%)
Civil Liberties	1	6(33.3%)
Civil Procedure	21	5(24%)
Client Security Fund	7	1(14%)
Communications	11	6(54.5%)
Constitutional Law	18	6(33.3%)
Consumer Law	16	6(37.5%)

Continuing Legal Education	15	7(47%)
Criminal Code Revision	24	2(.08%)
Criminal Jurisprudence	26	5(19%)
Defender Systems & Services	16	3(19%)
Grievance	19	7(37%)
Health Care	21	6(28.5%)
Insurance Law	19	3(16%)
Judicial Qualifications	21	6(28.5%)
Law & Media	16	3(18.75%)
Law Day	16	5(19%)
Law Related Education	11	8(73%)
Lawyers & Judge Assistance	19	7(37%)
Lawyers Professional Liability Insurance	14	2(14%)
Legal Aid	17	5(29%)
Legal Education	16	2(12.5%)
Legal Services, Delivery of	23	3(13%)
Libraries, Legal Research and Publications	17	3(18%)
Local Bar Liaison	16	4(25%)
Medicological Problems	17	5(29%)
Mentally Disabled	15	8(53.3%)
Military Law	8	0(0%)
Oil and Gas Law	21	0(0%)
Plain English	15	3(33.3%)
Prisons & Corrections	14	4(28.5%)
Pro Bono Involvement of the State Bar of Michigan	14	4(28.5%)
Professional Ethics, Subcommittee on Lawyer Ethics	30	10(37.3%)
Professional Ethics, Subcommittee on Judicial Ethics	12	3(25%)
Professionalism, Task Force on	20	2(10%)
Relationship with Law-Related Professions, Study Task Force	4	1(25%)
Scope & Correlation	16	5(31%)
Senior Justice	21	12(57%)
Standard Criminal Jury Instructions	22	4(18%)
State Trial Court Administration	15	2(13%)
Tort Law Review	13	1(8%)
Unauthorized Practice of the Law	19	3(16%)

Underrepresented Groups in the Law, Expansion of	13	5(38%)
United States Courts	21	4(19%)
Upper Michigan Lawyers	21	6(28.5%)
Victims of Crimes	7	3(43%)

The substantial involvement of women on State Bar committees is not accidental or coincidental. It reflects a determined effort to assure that State Bar committees are fully representative of the diversity in our profession. That effort must obviously be continued.

#### **Local Bar Associations**

The Task Force heard testimony and received correspondence indicating that some women have experienced difficulty being accepted by their local bar association colleagues. Their experiences have gone beyond the all too common (and unacceptable) difficulty which any newcomer has gaining acceptance to a well defined group. Reports of epithets, suggestive remarks and touchings, suggestions that women lawyers might use their bodies to further their law practices and the like suggests an unwillingness of some male members of local bar associations to accept women members.

Examples of incidents reported to or observed by the Task Force during the course of investigation include:

A bar association newsletter which described itself as supporting women in the profession but in fact expressed stereotypical attitudes such as the importance of "lady like" behavior and otherwise [quote] served to perpetuate many of the myths and stereotypes which hinder women's advancement and acceptance.

A bar association meeting that featured a lingerie show with live models as the main source of entertainment.

A Representative Assembly meeting where representatives from a professional organization were referred to as "young lovelies" in open session.

A judicial seminar that featured a comedian whose entire repertoire consisted of sexual and sexist material.

A bar admission ceremony where a male judge publicly joked that he should offer to let his female colleague sit on his lap on the podium because there were insufficient chairs for the judges assembled there.

A closed-door nomination of a slate of council offices of a State Bar Section, after which a woman was told that she had not been nominated to higher office because "as a woman, we don't think you can control the men on the section council."

While there is no evidence that the majority of members of local bar associations are hostile toward new women, some appear to regard the difficulties new members encounter as isolated, aberrational situations for which they are themselves not responsible. Their tendency is to let the new members fend for themselves. The reality, however, is that the treatment of newcomers cannot appropriately be left to each individual member. All members of an association must assume responsibility for how new members are received and strive to create a hospitable atmosphere for new members which will leave no doubt that manifestations of inappropriate behavior are not welcome and will not be tolerated.

## EMPLOYMENT ISSUES FOR WOMEN LAWYERS

### Entry into the Profession

Like their presence in the legal profession as a whole, employment of women in significant numbers in the traditional professional mainstream--by law firms, corporations and the government--is a post-1975 development.

Forty-one percent of the 1988 law school graduates were women. According to the ABA Commission this recent increase is reflected in the number of women lawyers in private practice. Twenty-five percent of the associates in private practice with law firms in 1988 were women. However, the percentage of women attorneys on law school faculties, as government attorneys and in the judiciary was well below the twenty percent of women attorneys in the profession nationwide.

In its report, the ABA Commission highlighted the entry point for employment -- the job interview -- and found that women were subjected to "inappropriate inquiries concerning their personal lives, childbearing plans and personal appearance".<sup>7</sup> (ABA Commission Report) Additionally, the report noted that law schools did not always monitor illegal recruiting questions or impose sanctions when such questions were discovered. According to the National Association for Law Placement, the number of inappropriate incidents reported in 1988 demonstrated that "not only do potential employers persist in asking such questions, but they are unaware that such attitudes and assumptions are inappropriate and illegal".<sup>8</sup>

The ABA Commission states:

Although employers have reason to be concerned about the needs of the practice, this concern affects men as well as women. Directing such inquiries exclusively to women perpetuates the impression that there is something incompatible about being a woman, a wife, a mother and an attorney. Moreover, when employers substitute their own judgments about how a woman's personal life plans will fit with her work for the judgment of the woman,--but do not make assumptions about men-- the employer is making gender biased assumptions that reflect a failure to treat women as equal participants in the profession.<sup>9</sup>

### Economics

The 1988 Economics of Law Practice Survey for the State Bar of Michigan reported that the median 1987 net income of male attorneys working full time in Michigan was \$57,000. Female attorneys working full time in Michigan had a median income of \$27,000. Part time status figures were \$42,000 for males and \$10,000 for females.

According to a 1984 national survey of 3000 lawyers of all ages done by the Young Lawyers Division of the American Bar Association, the median income for male junior associates was \$30,000 compared to \$25,000 for female junior associates; male solo practitioners made \$75,000 as compared with \$17,000 for female solo practitioners; and male partners in firms made \$75,000 as compared with \$51,000 for female partners.

Several witnesses at the Task Force hearings expressed concern that women attorneys were active in "traditional" female areas such as probate or domestic relations or were employed in public sector positions or service agencies, rather than in the more lucrative fields of corporate, personal injury or commercial litigation.<sup>10</sup> According to the ABA Commission report, a disproportionately high percentage of women lawyers are employed in government (14% of all female lawyers compared to 7% of all male lawyers) and a disproportionately high percentage of women lawyers work in legal services/public defender offices (3% of all female lawyers compared to 1% of all male

lawyers). The Director of the Michigan Department of Civil Rights testified that "affirmative action and consciousness of gender are needed to raise the level of women employees in upper levels of pay and responsibility".<sup>11</sup>

#### **Barriers to Advancement**

Closely related to the issue of economic parity is the existence of overt and subtle barriers to a woman's advancement in the profession once she has entered the legal field. The ABA Commission found that nationally only six percent of the partners in private law firms are women. The report of the National Law Journal similarly documented that in the nation's largest firms only eight percent of the partners are women while thirty-three percent of the associates are women.<sup>12</sup> The ABA Commission concluded that women have been increasing their representation at the partner level at a rate of only one percent per year. Similarly with respect to law school faculties, women are more heavily represented in the non-tenure track positions; the ABA Commission reported that in 1986 forty percent of the clinical teaching positions were held by women compared to twenty percent of the overall faculty positions.

Nationally, a considerable body of information has been developed in recent years which identifies severe impediments to advancement and success for women attorneys. These include:

Women attorneys have greater difficulty in establishing mentor relationships with senior male attorneys. The absence of mentor relationships may result in problems with case assignment, business development, assignment of additional responsibility and advancement within the employment environment.

Women may be given different case assignments than their male colleagues and may be steered away from major litigation and other "heavy" responsibilities.

Law firms may accommodate requests to limit or remove female attorneys from participating in the client's case.

Social opportunities and informal professional activities are often the starting point for professional trust, collegiality and business contacts. Women experience isolation, and in some instances exclusion, as a result of the "male only" aura which often characterizes such occasions.

Women are often perceived to be ineffective business generators. Rainmaking (generating business) is an evaluation standard which is applied to women with more frequency and with more negative effect than to men in similar positions.

Women experience a greater degree of scrutiny in their work and in their work styles than males and, unlike males, are presumed to be incompetent or unqualified until proven otherwise.

Women who experience discrimination or differential treatment are often unable to confront the problem effectively. They fear the possibility that if they speak up the incident will be denied or they will receive no response at all. They will then have to escalate the process or abandon it. The damage to their future success by being identified as a troublemaker or a "woman's libber" is a price which they often feel is too great to pay.

### **Family Issues**

While "family issues" may currently have a greater impact on women than on men, because many women share disproportionately in the responsibility for child care and family maintenance, they are not "women's issues" *per se*. The Task Force is aware that gender stereotypes restrict both men and women in their attempts to balance the demands of their profession with the needs of family life. Several male partners from large Michigan law firms, among others, urged the Task Force to note the reality that today both men and women are searching to find a healthy balance between work and family. Law firms and other employers appear to be seeking to identify ways to support these efforts.

The ABA Commission discussed the historical foundation for today's limiting professional norms:

The structures and attitudes of the legal profession were originally developed by men in an era when the workforce was predominantly male and the dual career family was an anomaly. The work expectations and definitions of career commitment were created at a time when the prototypic lawyer was one whose wife, in most instances, devoted full time to raising their children and providing him with a well-organized home life. Lawyers were seen as breadwinners and professionals with little or no responsibility for child care...

Today the structures and attitudes of the legal profession - developed in an era that no longer is representative of American society - pose great problems for women lawyers... these norms represent the subtle attitudinal and structural barriers encountered on a daily basis... They are the problems with no name, yet most men do not even understand the description of them as "problems", but rather perceive them as the inevitable and necessary norms of the profession to which all members must adapt.<sup>15</sup>

The ABA Commission observed that a principal barrier encountered by men and women regarding family life is the assumption that professional scheduling adjustments and non-traditional promotional tracks are detrimental to the business of the firm or agency. Individuals who request such arrangements may be viewed as seeking special favors or preferential treatment or challenged as to their demonstrated commitment to the legal profession.

## LAW SCHOOLS

A large percentage of women in the State Bar of Michigan joined the profession in the last 10 years. Because there are so few veteran female members of the profession, their impact as role models has been limited in both legal education and the profession as a whole.

There is a very small percentage of tenured female faculty at Michigan's five law schools (5% to 13%), despite the fact that the female law student enrollment is now consistently in the thirty to fifty percent range. The tenure process usually requires many years. As more women join the faculties of Michigan law schools, the assumption should be that more of them should achieve tenured status. This may not be a valid assumption, however, where women are employed to teach in non-tenure-track fields of study. Clinical professors and legal writing teachers are not in the tenure-track at some law schools. Statistics nationwide show that these fields, which do not lead to tenure at many schools, contain the greatest concentration of female law school professors.<sup>14</sup>

**TABLE VIII-10: SUBJECT MATTER TAUGHT BY WOMEN**

	<u>1966</u>	<u>1976</u>	<u>1986</u>
Family Law	5%	10%	31%
Corporations	0.5%	3%	11%
Taxation	1%	4%	13%
Civil Procedure	1%	9%	16%
Evidence	0.4%	5%	12%
Women in Law	—	89%	92

**TABLE VIII-11: WOMEN IN LEGAL EDUCATION**

	Women Students	Women Faculty
1960	3%	.5%
1976	26%	9%
1986	40%	20%*

\* These percentages include tenure and non-tenure positions, such as legal writing and clinical teachers. Over 40% of clinical law school positions and over 70% of legal writing positions are held by women.

**TABLE VIII-12: LAW SCHOOLS**

	ENROLLMENT		FACULTY		TENURED FACULTY	
	TOTAL	FEMALE	TOTAL	FEMALE	TOTAL	FEMALE
Thomas Cooley Law School Total	1247	426(34%)	34(f) 51(p) 85	8(f) 17(p) 25(29%)	20	1(5%)
Wayne State University Total	689	342(50%)	32(f) 26(p) 58	9 7 16(27%)	24	3(12%)
Detroit College of Law Total	711	274(39%)	23(f) 24(p) 47	3 2 5(10%)	19	5(26%)
University of Detroit Total	613	258(42%)	21(f) 38(p) 59	3 9 12(20%)	23	4(17%)
University of Michigan Total	1135	416(37%)	50(f) 7(p) 57	10 1 11(19%)	41	3(7%)
Total	4395	1716(39%)	160(f) 146(p) 306	42 27 69(22%)	127	16(13%)

(f) = Full Time  
(p) = Part Time

Women law school professors report that they are not always treated with the same respect and deference by students as their male colleagues. Their professional legitimacy may be questioned and challenged because of the novelty of women in legal academics.

**Curriculum Issues**

Women today are participants in a fuller range of life's activities because exclusive barriers around traditional gender roles gradually have been weakening. Men, too, experience greater freedom from the cross-role participation of the genders. Accompanying the breakdown of gender roles is the dissolution of the once common perception that personality characteristics and behaviors are necessarily sex-specific. While many persons may in their personal lives choose to adhere to traditional roles and values, the opportunities for non-traditional roles in society have increased dramatically during the last several decades. It is the participation of women in this wider spectrum of roles that is inconsistently incorporated into the pedagogy of the Law School. The imprint of gender role differentiation, and its consequences for social misperceptions of women, also persist in legal education today.<sup>115</sup>

The foregoing statement was taken from a 1989 report on the Women Law Students Association at the University of Michigan on "The Impact of Gender Bias in the Law School Classroom" (WLSA Report).

The WLSA report details how, in many classes, students observe that when the professor and students pose hypotheticals, nearly every buyer, seller, landlord, tenant, contractor, judge, lawyer, stockholder, and CEO is male. As a factual matter, such a depiction of the world is inaccurate. But it is not merely the inaccuracy of this practice that is objectionable; it is the psychological and educational effect on the participants in the classroom that is significant.

Not only may the negative impact be on a student's self-perception, but some female students report a sense of alienation and exclusion from such language... The impact on the minds of male students of applying the law to fact situations involving only male players may be to lead them away from imagining women, -- and relating to women -- in that world on equal terms.<sup>16</sup>

Women students have expressed frustration and alienation with professors using female characters in examinations and hypotheticals only as passive characters defined by their social or sexual relationship with primary, active male characters.<sup>17</sup> Students ask that professors avoid making comments and condemn comments made by students which assign stereotyped personality traits to women. References to such stereotypes as the "hysterical woman" or the "woman driver" are offensive to students. Assuming that particular attributes always attach to a woman perpetuates gender stereotypes.

Students expressed concerns about the portrayal and treatment in the classroom of the subject of rape and violence against women.

Violence against women has historically been accepted as normal; concerns about such violence were dismissed as unimportant. Therefore, failure to raise certain issues reinforces the notion that the issues are unimportant. Without understanding the new empirical findings and conclusions about the nature and reality of rape, which can be found in current literature, the old myths and misperceptions remain dominant.<sup>18</sup>

There is a heightened need for a sensitive and informed treatment of rape and violence against women because of the inherently emotional aspect of these experiences. The usage of hypotheticals involving references to sexual assault or violence against women to illustrate unrelated criminal law concepts have been criticized. Female students, including those who have been victims of sexual assault, want to see law faculty educated about current concepts of domestic violence and sexual assault. Professors must learn first, if there is any hope of educating students.

Professors' innuendos that victims of rape enjoy a violent sexual assault or their lack of knowledge about the battered women's syndrome when discussing violence against women are unacceptable. Ignoring modern concepts about sexual assault and violence against women in law school results in law graduates who do not know about these sensitive and important legal issues. This in turn leads to a profession populated with attorneys and judges who have misconceptions about rape and violence against women.

Gender issues related to the content of core courses and professional ethics are not adequately addressed in law schools. Courses concerning fields of practice in which gender issues are particularly important, like employment discrimination and family law, need to adequately emphasize their relevance to a full understanding of the practice.

Textbooks and course materials in every law school class should be reviewed for gender-based stereotypes. Remedial steps should be taken to correct them. New courses should incorporate material concerning gender issues in substantive areas of the law.

One recent law school graduate testified at a public hearing about there being no one at her law school to whom concerns about gender issues could be communicated. She explained that this inadequacy reflected the law school's inability to cope with, or lack of sensitivity toward, unique problems faced by women law students. During her entire three years, the law school did not stock the machines in the women's bathrooms with feminine hygiene products. Women were informed by a note on the wall to ask the librarian for the products. The student says that she was informed by the librarian that this practice had been going on since 1978. The lawyer-to-be testified that small things in legal education add up.<sup>19</sup> She told how she felt compelled to drop a class when the professor persisted in making racial and ethnic jokes and demeaning statements about women during class.

Female students say that the atmosphere in law school is not supportive of their presence and contribution to the school and the legal profession. In "Gender and Race Bias in Trial Courts: A Classroom Response," Professor Suellen Scarnecchia, University of Michigan Law School, speaking about students relating their encounters with race or gender bias, states:

In the context of a discussion on race and gender bias in the courts, it seems to me particularly important to attempt to spread the burden of exploration of the issues, education and problem solving to the entire group. This is more difficult when a particular student's experience is the basis for discussion. When a student shares what may be a painful experience with her peers, she must subject her responses to discussion and possible criticism. Because the situation is presented as specific to the particular student, his classmates might perceive it as "his problem" and fail to generalize the experience to their own future practice.<sup>20</sup>

Professor Scarnecchia has taught sessions on race and gender bias to five classes of second and third year law students. Students are given readings on race and gender bias. There are discussions, role-playing and extensive evaluation of the sessions. Some of the law students' reactions follow.<sup>21</sup>

One student who described himself as male, 25 and "very white" lamented that he had not discussed race or gender issues in a law school class in six terms and asked whether small discussion groups on the topic could be organized on an informal basis. A 36 year-old woman stated; "These issues should be addressed much more than they are in law school and should start in the first year."

The majority of the students found the class valuable. Several commented that the discussion raised their awareness and gave them ideas for responding to bias. Other students noted the value of hearing the points of view of classmates and verbalizing their own positions. Clearly many were testing their own perceptions against perceptions of their peers:

... it helps to have one's own perceptions verified and to work through (in advance) some of the situations I might encounter. (white female, 37)

... mostly [valuable] to discover the range of reactions. (white male, 27)

... The issues are complex -- I like to hear what others have to say -- to test my own views -- to further form my views. (white male, 32)

. . . You don't really know how your ideas about bias stack up until you compare them with actual experiences of other people. In addition -- the conversation helps explore your "blind spot" in assessing your own views. (white female, 25)

There was some evidence in the evaluations that the discussions had affected student perceptions of bias:

It helped me to consider arguments against race and gender bias that went beyond my intuitive sense that the bias is wrong. i.e., long term broader effects of individual incidents. (white male, 25)

. . . I find it helpful, as a man, to hear views on what women believe is sexist or discriminatory and what is not. I believe a lot of such behavior goes unchecked because people don't often recognize what they are doing. (white male, 24)

. . . it made me aware of several circumstances where people may interpret something as racist/sexist where I would never have questioned it. (white male, 25)

. . . actually, the reading really kind of shocked me and made me think about what I was doing. (Asian-American male, 24)

## **CONCLUSIONS**

### **Representation**

1. **Underrepresentation of women as judges and quasi-judicial officers and other public servants involved in the justice system such as Assistant Attorneys General, prosecutors, public administrators and public defenders affects public confidence in, and the effectiveness of, the justice system.**

### **Professional Associations**

2. **Women are underrepresented on the State Bar Board of Commissioners, and the limited appointive process now utilized by the Michigan Supreme Court fails to address the imbalance.**
3. **Local bar associations do not consistently provide a hospitable atmosphere for women members.**
4. **Women are underrepresented in State Bar section leadership.**

### **Employment**

5. **During the recruitment process, female law students and female candidates for employment may be asked illegal interview questions related to family responsibility, husband's attitudes, future family plans and the applicant's appearance and gender.**
6. **Women lawyers are economically disadvantaged in comparison with their male colleagues and underrepresented in some areas of practice.**
7. **The following work policies are not consistently recognized as legitimate alternatives to traditional work arrangements for both men and women attorneys: part-time employment, flexible work schedules, non-traditional promotional tracks, parental and family leave and flexible child care arrangements.**
8. **Women practicing in law firms may experience difficulties related to lack of upward mobility into positions of authority (i.e., partnership), greater difficulty in establishing positive mentor relationships, increased rate of attrition and lack of access to the same economic benefits as their male colleagues.**

### **Law School**

9. **Compared to the percentage of women law students there is underrepresentation of women on law school faculties and as tenured law school professors.**
10. **Women law professors' professional legitimacy and the respect accorded by colleagues and students are negatively affected by the small number of women professors and the lack of knowledge about women's issues.**

## **RECOMMENDATIONS**

### **Representation**

1. The Governor should continue to appoint more women to the bench.
2. Courts should appoint more female referees, magistrates and quasi-judicial personnel in numbers sufficient to represent the demographics of the population they serve.
3. Appointing authorities should increase the representation and influence of women in the offices of the Attorney General, prosecutors and public administrators.

### **Professional Associations**

4. The Supreme Court should adopt a mechanism to increase the number of female appointees to the Board of Commissioners or otherwise ensure adequate representation.
5. The Supreme Court's policy prohibiting reappointment of its appointees to the Board of Commissioners should be revised to permit appointments for at least two terms, thereby enabling appointees to run for election for State Bar office, including the presidency.
6. The Local Bar Liaison Committee, the "On The Road" publication, the Presidents-Elect Conference and other communications mechanisms of the State Bar should be used to raise the consciousness of local bar associations to the need for establishing an hospitable atmosphere for new women members.
7. The leadership of the State Bar should continue efforts to eliminate bias in the profession and should encourage local bar associations to make such efforts an important priority.
8. State Bar sections must increase their efforts to recruit women members and must aggressively pursue policies designed to increase the number of women serving on the section councils and as section officers.

### **Employment**

9. The State Bar should establish model employment policies for the profession which contain gender-neutral standards for recruitment and interviewing and for mentoring and prescribe exit interviews which include gender-related concerns. It should provide educational programs concerning these policies.
10. The State Bar should participate in and support the adoption of gender-neutral standards for recruitment and interviewing at Michigan law schools.

11. The State Bar should establish model employment policies in the areas of part-time employment, flexible work schedules, non-traditional promotional tracks, parental and family leave and flexible child care arrangements and sponsor the development of informational material and provide educational programs concerning these issues.
12. The State Bar should investigate establishing a program for women attorneys similar to the Michigan Minority Demonstration Project in order to give women attorneys the opportunity for increased exposure to clients and to business opportunities, as well as other programs which address the economic concerns of women attorneys.
13. The State Bar should conduct a survey every three years of Michigan law firms regarding the gender composition of their attorneys by partnership categories/staff/associate status and by number of years in practice; mentoring policies and practices; and attorney net income by gender, years in practice, practice classification, size of firm, office location and other relevant variables. It should publish the results of the survey in the Michigan Bar Journal.

#### **Law Schools**

14. Law school textbooks, course materials and classroom presentations should be reviewed and altered where necessary to eliminate overt and subtle gender bias.
15. Law school faculty and administrative policies should reflect a commitment to train attorneys who will be sensitive to and aware of manifestations of gender discrimination and its effects.
16. Professors should be taught the need for and use of gender issues discussions in substantive law courses. All professional ethics classes should cover gender discrimination as it affects law practice, treatment of fellow professionals and treatment of court users.

## ENDNOTES

1. Report to the House of Delegates, American Bar Association, Commission on Women in the Profession, August, 1988. (hereafter referred to as ABA)
2. Supra, p. 5
3. Kay, President, Association of American Law Schools, Newsletter, Association of American Law Schools, April, 1989.
4. Frank, Executive Director, State Bar of Michigan, Presentation to Task Force, October 20, 1989.
5. Court User Survey, p. 45
6. All statistics contained in the following section were supplied by the Office of the Executive Director of the State Bar of Michigan.
7. ABA, Supra, p. 5-7.
8. ABA, Supra, p. 9
9. ABA, Supra, p. 9.
10. Saginaw, October 18, 1988, Vol. III-B, Detroit, November 17 and 18, 1988, Vols. VI-B + V-D
11. Castillo, Director of the Michigan Department of Civil Rights, Written Presentation to Task Force, February 6, 1989, p. 2.
12. Weisenhaus, "Still a Long Way to Go for Women, Minorities," National Law Journal, February 8, 1988, p. 48.
13. ABA, Supra, p. 14.
14. Chused, "The Hiring and Retention of Minorities and Women on American Law School Faculties," University of Pennsylvania Law Review, Vol. 137, No. 2, December, 1988, p. 553.
15. The Impact of Gender Bias in the Law School Classroom, Women Law Students Association, University of Michigan Law School, April, 1989.
16. Supra, p. 2.
17. Supra, p. 3.
18. Supra, p. 5.
19. Detroit, November 18, 1988, Vol. VI-B. [Less, p. 55, et seq].
20. Scarnecchia, "Gender and Race Bias in Trial Courts: A Classroom Response," August, 1989. p. 7-8.
21. All succeeding quotations in this Section can be found in Scarnecchia, Supra.

## **IX. JOINT RECOMMENDATIONS OF THE TASK FORCES**

In this Section of the Report, the Task Force joins with the Task Force on Racial/Ethnic Issues in the Courts to present recommendations for fundamental reforms in ethical standards governing lawyers and judges, education for all participants in the court system and implementation of the recommendations of the Reports.

### **ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS**

The Michigan Supreme Court directed the Task Force on Gender Issues "to examine the courts and to recommend revisions in rules, procedures and administration of the courts to assure equal treatment for men and women, free from race or gender bias." It soon became apparent that an ethical standard prohibiting biased conduct needed to be incorporated into the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct. Adoption of this standard, combined with the development of a strong, meaningful program of education for judges, lawyers and court personnel concerning gender bias, needs to be accomplished without delay.

There exists a perception among many who come into contact with the courts of this state that gender bias exists and undermines the principle of equal justice for all. Incidents of gender bias in our courts have been brought to the attention of the Task Force. It is not essential that the precise extent of this perception of bias or the actual existence of bias be determined. Steps should in any event be taken to eradicate them.

The principal actors in the court system are judges and lawyers. Court personnel who also play a major role in the courts are under the supervision and control of the judges. Thus, if bias exists or appears to exist, lawyers and judges bear a substantial responsibility for its elimination.

Inappropriate conduct on the part of lawyers and judges falls within the jurisdiction of the disciplinary agencies established to enforce appropriate standards of conduct. The Task Force has been told that women in general and women attorneys in particular have little confidence in the ability of these agencies to cope with misconduct which takes the form of bias. They believe that gender bias is not dealt with adequately by either the Attorney Grievance Commission or the Judicial Tenure Commission.<sup>1</sup>

Public testimony and survey responses demonstrate these concerns about the ability of the disciplinary system to cope with bias. Of the judges, 58.3% of those who responded to the survey felt that the Judicial Tenure Commission was an effective means of dealing with bias in the courts, but 16.2% felt it was not. When asked about the attorney discipline system, 51% expressed confidence, but 20.6% did not. More than 25% of the judges responding "did not know" whether the disciplinary systems were effective against bias.

Attorneys were more critical. When asked whether the Judicial Tenure Commission was an effective means of dealing with bias, thirty-seven percent of them said "yes"; thirty-one percent said "no"; and thirty-two percent "did not know". When asked about the effectiveness of the attorney discipline system, twenty-seven percent said "yes"; forty-one percent said "no"; and thirty-three percent "did not know".

On April 25, 1989, representatives of the Judicial Tenure Commission, the Attorney Grievance Commission and the State Bar Committee on Professional and Judicial Ethics appeared before the Task Force. They testified that the Michigan Code of Judicial Conduct and the Michigan Rules of Professional Conduct did not adequately address the issue of bias. The inadequacy of these

statements of ethical standards lies in their failure to put lawyers and judges on notice about the inappropriateness of biased conduct. They also fail to establish standards governing bias to support prosecution for violations.

The Michigan Rules of Professional Conduct and the Code of Judicial Conduct presently contain no provision directly addressing bias. The only relevant provision of the Rules is Rule 8.4(c), which states it is professional misconduct for a lawyer to: "...engage in conduct that is prejudicial to the administration of justice".

The only Code of Judicial Conduct provision relevant to the subject of gender bias is found under Canon 2, entitled "A judge should avoid impropriety and the appearance of impropriety in all his (sic) activities," which provides:

(A) Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and appearance of impropriety. He (sic) must expect to be the subject of constant public scrutiny...

(B) A judge should respect and observe the law and should conduct himself (sic) at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

It is evident that the present provisions are inadequate. Specific provisions addressing both gender and race/ethnic bias must be added to the Rules of Professional Conduct and the Code of Judicial Conduct. The Task Force joins the Task Force on Racial/Ethnic Issues in the Courts in so urging.

The Task Force has deliberately chosen to recommend the most comprehensive attack on bias. It believes that any manifestation of invidious discrimination by lawyers or judges damages public confidence in the fairness and impartiality of the administration of justice in Michigan. Lawyers and judges are society's ultimate guarantors of every individual's right to be treated equally. Public confidence in that guarantee is unlikely to survive evidence that lawyers and judges themselves engage (or at the very least acquiesce) in acts of invidious discrimination.

With these considerations in mind, the Task Force recommends the following amendment of Rule 8.4 of the Michigan Rules of Professional Conduct to the Court adding a new section 8.4(f):

It is professional misconduct for a lawyer to:...(f) engage in sexual harassment or invidious discrimination.

The Task Force proposes amendment to the Code of Judicial Conduct by adding another numbered paragraph under Section (a) of Canon 3:

A judge shall not engage in sexual harassment or invidious discrimination and shall prohibit staff, court officials and others subject to the judge's direction and control from doing so. A judge shall prohibit sexual harassment or invidious discrimination against parties, witnesses, counsel or others on the part of lawyers in proceedings before the judge.

Further, Rule 8.3, entitled "Reporting Professional Misconduct", should be amended as follows:

(a) A lawyer having knowledge that another lawyer has committed a significant violation of the Rules of Professional Conduct that raises a substantial question as

to that lawyer's honesty, trustworthiness, bias and prejudice or fitness as a lawyer shall inform the Attorney Grievance Commission.

(b) A lawyer having knowledge that a judge has committed a significant violation of the Code of Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness, bias and prejudice or fitness for office shall inform the Judicial Tenure Commission.

Finally, the Task Force believes that it is essential that the Supreme Court communicate to the Bar at large, perhaps through the Michigan Bar Journal, its total dedication to the eradication of bias: (1) in the judicial process; (2) by those connected to the process; and (3) most specifically, by lawyers over whom it has supervisory power. The Court should call upon practicing lawyers and judges to report misconduct, including manifestations of bias and prejudice, to the proper disciplinary body.

If the battle against bias in the courts is to be vigorously pursued and eventually won, the Supreme Court must lead the effort. It has already taken the first step by establishing Task Forces on Gender and Racial/Ethnic Issues in the Courts. The Court must now take every possible step to communicate its determination to rid the justice system of every manifestation of bias and prejudice.

## EDUCATION

Education is an essential tool in efforts to eliminate race/ethnic and gender bias from the Michigan court system. Bias exists not only in the court system, but in the society which it mirrors. An educational approach is, therefore, appropriate because it focuses on understanding, not on blame.

### Judiciary

Of Michigan judges responding to the Task Force survey seventy-seven percent (n = 191) identified education as an effective means of dealing with bias in the Michigan court system. "We need consciousness raising programs. What am I doing which is being perceived by the recipient as being biased when I'm not even aware of it? Don't punish me - educate me"; "Attitudes must be changed in judges. We control the courts, and the public's perceptions are based on their contact with us."<sup>2</sup>

Similarly, a substantial number of responding judges (62.7%) are interested in attending a program which would discuss the impact of bias on the Michigan court system: "Judicial and attorney education is the answer to this. Having said that, one realizes how complex this is. A systematic approach is called for"; "A program of education and sensitization after completion of the report at the very latest. These issues demand to be addressed as soon as possible."<sup>3</sup>

### Court Personnel

Education of court personnel is an integral part of elimination of bias from the justice system. Their own educational programs, focused on their own functioning, are essential to their understanding of the need for bias-free court operation. They often are the first contact an individual has with the court, and their conduct may be especially significant.

### Michigan Judicial Institute

The Michigan Judicial Institute (MJJ) provides education to the judiciary and to some court personnel. Statistics provided to the Task Forces by MJJ indicate that over the past three years, its faculty shows the following gender and race distributions:

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TABLE IX-1: MJJ FACULTY

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#### MJJ FACULTY

Majority women	20% - 25%
Minority women	0% - 2%
Minority men	4% - 6%
Majority men	69% - 76%

The composition of the 1988-89 MJJ Planning Committee was:

Majority women	28%
Minority women	1%
Minority men	3%
White men	68%

---

As reflected in the above statistics, there is a need for expansion of minority and female participation in MJJ faculty and planning committees.

### Attorneys

Attorney education is also an important component of the elimination of gender and race/ethnic bias from the court system. Austin Anderson, Director of the Institute for Continuing Legal Education "ICLE", told the Task Forces that substantive courses related to race, sex, or age bias "have not been part of ICLE's regular inventory" over the last few years. He also stated that "ICLE has never kept a record of gender and minority participation as faculty -- they are now doing that." As a result of the Task Forces' invitation to address them, Mr. Anderson reviewed programs from [1985-1988] and found that women were fourteen percent of the faculty, and minority presenters were one percent of the faculty.

The State Bar has initiated efforts through its Committee on Expansion of Underrepresented Groups in the Law to encourage ICLE to use more women and minorities on its faculty. ICLE has recently adopted a policy relative to the active recruitment of minorities and women to serve in all capacities. The Task Forces were impressed with the structure of this recruitment effort.

### Law Schools

Judges and lawyers begin their professional legal education in law school. It is the law school environment which forms many attitudes and ideas of the future lawyer or judge. The Task Forces have learned that race/ethnic and gender bias in the law schools can sow the seeds for future bias in the court system. It is for this reason that recommendations are included for education regarding all areas of the legal educational process.

### Models for Education

Several states and jurisdictions have successfully initiated educational programs to generate understanding of race/ethnic and gender bias in the courts.<sup>4</sup> These programs have involved various formats:

presenting the Task Force's conclusions and recommendations with discussion of their impact;

overview programs which discuss racial/ethnic and gender bias in a broad area such as 1) racial stereotypes and racial/ethnic biased attitudes in judicial decision making and in statutes; 2) the dynamics of court interaction; 3) substantive law programs, domestic relations, criminal justice;

panel formats which provide many perspectives on issues - panelists can be judges, lawyers, experts, service providers and individuals from the community; and

single issue programs focus on a narrow topic in great detail from many perspectives.

Strong leadership from the Chief Justice and the Justices of their state Supreme Courts have been essential to the success of education programs to eliminate bias in the various states. The belief that "only judges can teach judges" should also be examined. National experience has shown that non-judicial experts can be very helpful in presenting material on bias effectively. "Judge instructors should work with non-judicial experts in the preparation of materials and should participate in these programs as 'translators' who draw out the implications of the social, scientific or other material

for their colleagues.<sup>45</sup> Additional attention should be given to the integration of race/ethnic and gender bias issues throughout all educational curricula, as well as in courses specifically devoted to ethics, administration, conduct or courtroom interaction.

## **IMPLEMENTATION**

The work of the Task Forces on Racial/Ethnic and Gender Issues in the Courts, have created a foundation for the next steps on the path to a bias free court system. However, the ultimate effectiveness of the Reports can only be measured by the extent to which bias is reduced or eliminated and the extent to which citizen confidence in the courts is increased. To that end, the Task Forces propose the adoption of a plan which they believe to be essential to the realization of the goals envisioned in the Reports. This plan requires the continued leadership of the Supreme Court; the creation of a method for accountability and follow-up; the allocation of sufficient resources to the effort; and an evaluation of the success of the recommendations once implemented.

National experience has shown that the ultimate success of state task force recommendations is, in large part, dependent upon the level of leadership demonstrated by the highest court of those states. To the extent that the Supreme Court strongly and consistently communicates its commitment to system change, judges, lawyers, court personnel and citizens will work to effectuate such change. The Supreme Court has taken the initiative in attacking bias through the creation of the Task Forces. This leadership has already generated a positive response both in the justice system and from members of the public.

The proposals contained in these Reports are far-reaching and complex. An administrative structure must be created which will possess sole responsibility and oversight for realization of the Reports' recommendations. This will require follow-up on recommendations, monitoring of complaints, creation of statistical databases, identification of additional areas of concern, and the ability to function as an educational resource on bias issues for many system participants. It is absolutely essential that adequate resources be allocated to this effort to accomplish these objectives.

Finally, the Task Forces have submitted to the Supreme Court their best assessment of programs and ideas for change. After implementation, it is essential to determine whether the changes have, in fact, succeeded in achieving the desired end, and to what extent. The evaluation process should identify:

- 1) the extent of the Task Forces' education of judicial, legal and lay communities about race/ethnic and gender bias in the courts;
- 2) the extent of implementation of the Task Forces' specific recommendations; and
- 3) the extent of reduction of race/ethnic and gender bias in the courts, as a result of these efforts.

It is the Task Forces' recommendation that a Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be established with the mandates, responsibilities and structure described below:

## **CONCLUSIONS**

### **Ethical Standards and Disciplinary Systems**

1. The existing Attorney Rules of Professional Conduct and the Code of Judicial Conduct do not contain specific grievable provisions which prohibit gender or racially or ethnically discriminatory conduct on the part of judges, quasi-judicial officers or lawyers.

### **Education**

2. Judicial education programs are an effective means of dealing with bias in the Michigan court system.
3. A substantial proportion of judges would be interested in attending a program which would discuss the impact of bias on the Michigan court system.
4. Attorney education is necessary to deal with bias in the profession and the Michigan court system.
5. Education of court personnel is necessary to deal with bias in the Michigan court system.
6. Education at law schools is fundamental to deal with bias in the profession and in the Michigan court system.
7. Race/ethnic and gender bias issues can be integrated throughout educational curricula.

## **RECOMMENDATIONS**

### **Ethical Standards and Disciplinary Systems**

1. Judges, quasi-judicial officers and lawyers should be subject to a specific Judicial Canon and/or Michigan Rule of Professional Conduct precluding inappropriate gender or racial/ethnic comments or actions.
2. The Code of Judicial Conduct (Canon 3) should be amended to add an additional numbered paragraph under Section (A) providing that:

A judge shall not engage in sexual harassment or invidious discrimination and shall prohibit staff, court officials and others subject to the judge's discretion and control from doing so. A judge shall prohibit sexual harassment or invidious discrimination against parties, counsel or others on the part of lawyers in proceedings before the judge.
3. The Michigan Rules of Professional Conduct (MRPC 8.4) should be amended to state:

It is professional misconduct for a lawyer to:...

(f) Engage in sexual harassment or invidious discrimination.
4. General Court Rules 2.003 and 9.205 should be amended to provide for disqualification on the basis of such precluded behavior.
5. The disciplinary systems for attorneys and judges should actively promulgate policies and procedures designed to increase the confidence level of the public and the profession regarding their response and intervention in matters related to discrimination and bias.

### **Education**

#### **The Judiciary and the Courts:**

6. Judicial education related to gender and race/ethnic bias in the courts should be a permanent component of the new judges' seminar as well as of regional seminars and separate curricula for judges on the bench. It should be presented in at least these forms:
  - a. Task Forces' findings and recommendations should be presented for all judges on the bench, then for each group of new judges.
  - b. Courses should be developed which examine gender and race/ethnic bias as they affect court system interactions and case or controversy outcomes with particular attention to an analysis of race and sex-based stereotypes, myths, beliefs and biases that may affect judicial decision making in numerous spheres which affect litigants.

- c. New and existing courses on substantive areas of the law should be continually updated from the perspective of gender and race/ethnic issues.

**Michigan Judicial Institute and Professional Associations:**

- 7. The Michigan Judicial Institute and professional associations should ensure that all educational components are sensitive to the issues of race/ethnic and gender bias by adopting standards which address the following items:
  - a. Gender and race/ethnic neutral materials.
  - b. Inclusion of women and racial/ethnic minorities as committee members, planners, faculty and speakers.
  - c. Impact of race/ethnic and gender bias on issues related to substantive law areas.
- 8. Regular training should be conducted for court employees on the issues of gender and race/ethnic bias and their relation to the proper function of the court.
- 9. Faculty utilized in educational components should be trained regarding relevant issues of race/ethnic and gender bias.

**Attorneys:**

- 10. All entities which provide education for attorneys should be encouraged to:
  - a. Include in ethics courses the nature and impact of gender and race/ethnic discrimination and bias on the profession. There should be an aggressive program of education regarding amendments proposed to the Michigan Rules of Professional Conduct, the Code of Judicial Conduct, and any other ethics amendments proposed to prohibit race/ethnic and gender bias, and the consequences flowing from violation of these provisions.
  - b. Include components regarding the nature and impact of race/ethnic and gender discrimination and bias in a course in the mandatory continuing legal education currently being developed by the Standing Committee on Continuing Legal Education of the State Bar of Michigan, pursuant to State Bar Rule 17.
  - c. Establish an educational standard which assures that all educational components are sensitive to the issues of race/ethnic and gender bias by addressing the following items:
    - 1) race/ethnic-gender-neutral materials.
    - 2) inclusion of women and racial/ethnic minorities as planners, faculty and speakers.

- 3) impact of race/ethnic and gender bias on issues related to court system interaction and case or controversy outcome.
  - d. Upon adoption of mandatory continuing legal education, adopt the above standard as a requirement for accreditation.
11. All entities which provide education including publication of literature for attorneys should review such literature to make sure it does not reflect race/ethnic or gender bias.

#### **Law Schools:**

12. Law schools have a very important role in educating future lawyers regarding the nature and impact of gender and race/ethnic bias in the profession. Michigan law schools should receive the Task Forces' reports and be requested to undertake the following actions:
  - a. Include the Task Forces' conclusions and recommendations in the following areas:
    - 1) Court system interaction: to be included in clinical law and trial practice courses;
    - 2) Ethics: to be included in professional responsibility courses;
    - 3) Substantive areas of the law: to be included in courses covering said areas;
    - 4) Task Forces' conclusions and recommendations where appropriate should be included in extra-curricular legal activities, such as moot court programs.
  - b. Sensitize faculty to race/ethnic and gender bias issues.
13. Law schools should review case book and instructional materials for biased materials and introduce corrective supplemental materials.
14. Law schools should initiate programs to expand the pool of potential applicants for faculty positions to include more minorities and women.

#### **The Public:**

15. Conclusions and recommendations of the Task Forces' Reports should reach the public through the press and other media. Task Force members should actively seek out avenues, such as meetings of groups, associations and commissions, to speak on conclusions and recommendations of the Reports.

## **Implementation**

16. **A Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be created by the Supreme Court. This Committee would:**
- a. **Implement the Task Forces' recommendations and monitor implementation efforts on an ongoing basis.**
  - b. **Work with the Michigan Judicial Institute, continuing legal education providers for attorneys, the National Judicial Education Program and other similar entities to develop judicial and legal education programs on gender and race/ethnic fairness.**
  - c. **Work with the State Court Administrative Office to establish a statistical database appropriate for monitoring areas of Task Forces' concerns and performing studies in furtherance of the committee's charge.**
  - d. **Monitor the impact of the changes in the Codes regarding the profession, the judiciary, and court operation. As a part of this process, monitor complaints to the Attorney Grievance Commission, the Attorney Discipline Board, the Judicial Tenure Commission, Civil Service entities and individual courts from lawyers, litigants, court personnel, and others.**
  - e. **Develop the information generated by these inquiries and information obtained by or provided to the Task Forces through other sources into annual reports which:**
    - 1. **evaluate progress in implementing reforms and reducing gender and race/ethnic bias;**
    - 2. **describe the nature and disposition of the complaints received;**
    - 3. **assess the extent to which the findings and recommendations of the Task Forces are being integrated into judicial and legal education courses and programs;**
    - 4. **identify new problems rooted in race/ethnic and gender bias and suggests appropriate remedial action.**
  - f. **Disseminate these Reports to the Chief Justice, the state judiciary, Task Force members, interested individuals and groups and the media and publish it in the Michigan Bar Journal.**
  - g. **Review appellate decisions on gender-related and race/ethnic-related issues in all areas of law and call to the attention of the trial courts those decisions which pertain to gender and race/ethnic bias.**

17. The Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be structured as follows:
  - a. A Committee should be appointed which is multi-jurisdictional in scope, including representation from the judiciary, court administrators, the organized bar and academic communities in both law and social science.
  - b. The Committee should be smaller in size than the original Task Forces.
  - c. Selection of chair, staff, and committee members should take into account recommendations of Task Force Chairs Harold Hood and Julia Darlow and Project Director Lorraine Weber, in consultation with Task Forces' members.
18. Adequate resources must be made available to create the Committee and administer its work, to implement all programmatic concerns reflected in the recommendations of both Task Forces, and to oversee the implementation process. Funding should come from the Supreme Court budget.

#### ENDNOTES

1. Snow, Women Lawyers Association of Michigan, written testimony on file, April 18, 1989, Detroit, November 18, 1989 Vol. VI-D.
2. Judicial Survey verbatim comments.
3. Judicial Survey verbatim comments.
4. Schafran, "Issues and Models for Judicial Education About Gender Bias in the Courts," May 20, 1989.
5. Supra p. 18 A.

APPENDIX A

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the \_\_\_\_\_ 15th \_\_\_\_\_ day of September in the year of our Lord one thousand nine hundred and eighty-seven.

Administrative Order 1987-6

Present the Honorable  
DOROTHY COMSTOCK RILEY,  
Chief Justice  
CHARLES L. LEVIN,  
JAMES H. BRICKLEY,  
MICHAEL E. CAVANAGH,  
PATRICIA J. BOYLE,  
DENNIS W. ARCHER,  
ROBERT P. GRIFFIN,  
Associate Justices

Appointments of

TASK FORCE ON GENDER ISSUES IN THE COURTS and  
TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE COURTS

---

Whereas, The Michigan Supreme Court is charged with superintendence of the Michigan Court System founded on the fair and equal application of the rule of law for all, WE HEREBY APPOINT, as recommended by the Citizens' Commission, two task forces to examine the courts and to recommend revisions in rules, procedures and administration of the courts to assure equal treatment for men and women, free from race or gender bias.

These task forces are:

1. Task Force on Gender Issues in the Courts
2. Task Force on Racial/Ethnic Issues in the Courts

These task forces are to begin work September 15, 1987, within resources available, and to report their progress to the Court by December, 1988. Because of limited resources, initial efforts will include investigating funding sources for their further efforts.

The general scope of inquiry of the task forces shall include, but not be limited to, the following as related to gender and race bias issues:

- Courtroom Treatment of Litigants, Witnesses and Attorneys
- Judicial Perceptions of Victims
- Protection of Victims
- Disparate Treatment in Family Law Matters
  - a) Equitable Distribution
  - b) Child Support
  - c) Support Enforcement
  - d) Custody and Visitation

(OVER)

- Juvenile and Adult Sentencing Disparities
- Fee-Generating Court Appointments
- Judicial Nominating Process
- Status of Court Employment and Promotion
- Damages (Personal Injury and Wrongful Death Awards)
- Treatment of Lawyers in Chambers/Professional Gatherings
- Gender-Neutral Jury Instructions and Court Forms
- Representative Jury Selection
- Special Problems Faced by the Elderly

Retired Chief Justice G. Mennen Williams is named Honorary Chairperson of each task force.

Members of the Task Force on Gender Issues in the Courts are:

JUDGES

Hon. Marianne O. Battani  
 Hon. James C. Kingsley  
 Hon. Roger J. LaRose  
 Hon. Barbara B. MacKenzie  
 Hon. Patricia L. Micklow  
 Hon. Carolyn E. Williams

STATE BAR

Mr. Joel M. Boyden  
 Ms. Ann Cooper  
 Ms. Julia D. Darlow, Chairperson  
 Mr. Michael Franck  
 Ms. Denise J. Lewis  
 Ms. Helen Pratt Mickens  
 Mr. Robert B. Webster

COURT PERSONNEL

Mr. William Duncan Camden  
 Mr. Joseph F. Mysliwiec  
 Ms. Grace A. Rudd  
 Ms. Joan E. Young

PUBLIC MEMBERS

Dr. Bernadene Denning  
 Sister Monica Kostielney

Members of the Task Force on Racial/Ethnic Issues in the Courts are:

JUDGES

Hon. Geraldine Bledsoe Ford  
 Hon. Harold Hood, Chairperson  
 Hon. Cynthia D. Stephens  
 Hon. George J. Theut  
 Hon. Isidore B. Torres  
 Hon. Valdemar Washington

STATE BAR

Mr. Michael Berry  
 Ms. Deborah J. Gaskin  
 Mr. Benjamin H. Logan  
 Mr. Samuel E. McCargo  
 Mr. Eugene Mossner  
 Mr. Gary Walker

COURT PERSONNEL

Mr. David Cable  
 Ms. Barbara Consilio  
 Mr. Alphonso Harper  
 Mr. Josef R. Soper

PUBLIC MEMBERS

Dr. Larry Crawford  
 Dr. Rosalyn Griffin  
 Mr. S. Martin Taylor

STATE OF MICHIGAN—ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that is a true transcript therefrom, and the whole of said original order.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing,

this 15<sup>th</sup> day of September  
 in the year of our Lord one thousand nine hundred &  
 eighty-seven.

Corbin R. Davis Clerk.

## **APPENDIX B**

### **List of Witnesses Who Testified at Public Hearings**

Bill Alcini  
Frank Ancona  
Valenda Applegarth, American Civil Liberties Union  
Jim Atkinson, Fathers for Equal Rights  
Linda Atkinson, Attorney  
Deputy Chief James Bannon, Domestic Violence Prevention and Treatment Board  
Katherine Barnhart, Attorney  
William Barringer  
Margaret Barton  
Henry Baskin, Attorney  
Christine M. Brzezinski, Legal Services of Northern Michigan  
Helen Bennett, Association of Certified Social Workers.\*  
Janet Boes, Attorney  
David Boston  
Carol Bowen, Department of Civil Rights  
Joni Brandon, Women's Center  
Patrica Ann Brianey  
Delphine Brown  
Elizabeth Burnwill  
Walter E. Bush  
William D. Camden  
James H. Carnagic  
Virginia Catanese, Respond Inc.  
Carol Chiamp, Attorney  
Mary Church  
Beverly Clark, Attorney  
Amy Coha, Domestic Violence Project  
Kathleen Corkin-Boyle  
Lenore Cronovich, Referee  
James Cryderman  
Dan Devine, Attorney  
Eugene Dixon  
Theresa Dorsey-Newblatt, VIA, Inc.  
Arnold Dunchock  
Ronald Edwards  
Gary Eickholt  
F. David Engelbrink  
Donald Erikson  
Lilyan Fan  
Marilyn Fessler  
Cheryl Gore Follette, Attorney  
Gloria A. Fulshen  
Kenneth Fuqua  
Hon. Samuel Gardner, Retired Chief Judge  
Sandra L. Gheldof  
Hazel Gillis  
Mark Gleason, Director, Victim Witness Program  
Janet Goode  
Susan M. Gorbah  
Jerry Graff  
Roberta Gubbins  
Allene Haddock  
Jeffrey L. Hampel, Attorney  
Norman Harrison, Attorney, Legal Services  
Rhonda Harrison  
Honorable Pam Harwood, Circuit Judge

Ellen Hayse, Michigan Coalition Against Domestic Violence  
Gerald Hicks, Governor's Task Force on Welfare Reform  
Janee Olson Hill  
Cynthia Hind  
Dianne Hobbs  
Janet R. Hool, Underground Railroad  
Philip O. Hotz, II  
Doreen Howson, Eastern Upper Peninsula, Domestic Violence Program  
Mary Hyslop, Branch County Coalition Against Domestic Violence  
Cathie Jenkins, Shelter, Inc.  
Cathy Staples Jewell  
Carol Johnson  
Mr. & Mrs. Carl Johnson, Grandparent's for Children's Rights  
Susan Jones  
Robert Katz, Attorney  
Judith Keating  
Carol Kellow  
Joann B. Kendrick  
Judy Kennan  
Ada Kerwin, Attorney  
Barbara Klimeszewski, Attorney  
Helen A. Kowalski  
Kathy Leavey-Kageff, Attorney, President, Women Lawyers Association of Michigan  
Al Lebow, Fathers for Equal Rights  
Marcia Ledford, Attorney, Michigan Organization for Human Rights  
Rosanne Less  
R. Jack Lewis  
Janene A. Little, River House Shelter  
Cheryl A. Lobbestail-Griffin, Harbor House  
Charles W. Lockwood  
Susan G. Madden  
Betty Mahmoody  
Janet M. Mancinelli, Women's Resource Center of Northern Michigan  
Linda Mason, National Organization of Women  
Hugh Mather  
Dr. Gary Mauro  
Sally May  
Eric Mays  
Max McColough, Chair, State Bar Section on Family Law  
Jone McCoy  
Dorothy McElwee  
Dr. Murlene E. McKinnon  
Henry D. Messer M.D.  
John C. Miller  
Frank Mills  
Dr. Barbara Mills, YWCA Domestic Assault Program  
Patricia Morse  
Christine R. Moskal  
Walter Mullins  
Lee Nabkey  
Susan Nagelkirk  
Syned Naqvi  
Carolyn Nelson  
Lee Clyde Nelson  
Leslie Newman, Kent County Domestic Violence Board  
Carol L. Nichols  
Virginia Nicoll  
George P. Novotny  
Brenda O'Brien  
Lucille O'Connor  
Susan Odgers

Walter L. Olepa  
Debbie Orlowski, Sex Discrimination Committee of Michigan, American Civil Liberties Union  
Rose A. Parker  
Martha Parks  
Lucia M. Patritto, Domestic Violence Shelter  
Mary Kay Pearce  
James R. Pelton  
Madelyn Perkins, Center for Women in Transition  
Gail Peterson, Grand Rapids Crime Prevention Program  
Beverly Pitman  
Dawn Pyrer  
Carol J. Quinn, DDS  
Karen Louise Rakan  
Phyllis Rapaport  
Chris Lukens Rose, Women's Information Services, Inc., Big Rapids  
Kathrien R. Ryder  
Monica Sacks, Attorney  
Jean Sam  
Vivian Santoro  
John A. Scheid, Michigan Organization for Human Rights  
Maxine L. Schultz  
Michael Alan Schwartz  
Kay Schwarzberg, Attorney, Fathers for Equal Rights  
Sandra Scott  
Kelly A. Shadowens, Attorney, Women Lawyers Association of Michigan  
Caroline Fletcher Sharpe, Attorney  
Carol Shaw  
Max J. Siegle  
Daniella Sivan-Winter  
Patricia Slomski  
Suzanne Smith, Attorney, Legal Services  
Danny Sorel, Fathers for Equal Rights  
Terri L. Stangl, Director, Legal Services, Eastern Michigan  
Steven Stauch  
Jeff Stein  
Stanley Stempleski, Sr., Fathers for Equal Rights  
Adrian Stevens  
Paul Stoffel  
Irene Stuart  
Michael Stuart  
Patricia R. Sullivan, Underground Railroad  
Karen Sundber, Vice President Detroit National Organization of Women,  
Michigan Organization for Human Rights  
Dr. Jane Swanson, Women's Resource Center  
Anita Syrowik  
Billie Jo Taylor  
James A. Thienel  
John Thurmond  
Shelia Turney  
Dawn Van Hoek, Attorney  
Francis VanderMaarel  
Sandra Vernot  
Ann Waggener  
Viginia Wakeford  
Diane Warshal, Sex Discrimination Committee of Michigan, American Civil Liberties Union  
Otho Weller  
Barbara Wenner  
Carol Wess  
Judy Westwood  
Sara Wetherholt-Brubaker  
Kenneth White

**Susan E. Williams**  
**Jerry Williford**  
**Susan Winshall, Attorney**  
**Ellen Witt**  
**Malba Wollack**  
**Gloria Woods, National Organization of Women**  
**Jane Zehnder-Merrell**

**List of Participants  
DAZS - WCOB Public Hearing  
Lewis College of Business**

**February 4, 1989**

**Janeen M. Bell  
Isaac Blue  
Debra D. Chambers  
Patricia M. Chinn  
Dorothy J. Cleveland  
Maggie L. Coleman  
Stephanie Daly  
Mary Davis  
Gloria Frampong  
Ethel Fuller  
Gwendolyn Gilmore Copeland  
Allene Haddock  
Willie James Judson  
Mary D. Kinchen  
Alberta W. Lewis  
Alpha Lewis  
Gladys Love  
Deborah McGree  
Councilwoman Maryann Mahaffey  
Agnes Marie Miller  
Mattie Ray Pitts  
Fatina Pizana  
William Richardson  
George Rivers  
Janice M. Robertson  
Carrie Tharpe  
Lady Bird Crawford Ward  
Charlie White  
Christopher Paul Wilson  
Winifred Wilson  
Carl Winkley, Jr.  
Christiana J. Woods  
Isiah Woods  
Jacqueline E. Wright**

## GENDER ISSUES IN THE COURTS

### PUBLIC HEARINGS

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	Attorneys	Judges	Court Employees	Agencies	Public Organizations	Citizens	Total	Male	Female
Escanaba	2	0	1	5	0	12	21	4	17
Gaylord	6	0	2	4	0	8	20	3	17
Saginaw	8	0	0	2	2	13	25	6	19
Grand Rapids	2	0	1	10	2	9	24	14 19	35 29
Detroit	14	1	0	7	5	12	97	33	64
	8	0	0	3	2	34		-	-
	22	1	0	10	7	57		55	132

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APPENDIX C

Michigan Supreme Court

Task Forces on Gender and Racial/Ethnic Issues in the Courts

611 W. Ottawa Street

P.O. Box 30048

Lansing, MI 48909

517.373-3596

Honorary Chair  
Hon. C. Warren Williams  
1987-1988

Gender Issues Task Force

John Darlow, Chair  
Detroit

Judge Monahan D. Battani  
Detroit

Judge M. Bowers  
Grand Rapids

William D. Campbell  
Grand Rapids

Ann Cumber  
Grand Rapids

Dr. Bernadine Denting  
Detroit

Marquet French  
Lansing

Judge James C. Kinross  
Warren

Super. Patricia Kuntz  
Lansing

Judge Roger J. La Rose  
Warren

Dennis I. Lewis  
Detroit

Judge Barbara MacInnes  
Ann Arbor

Nolan Pratt Mackinnon  
Lansing

Judge Patricia L. Micklow  
Monroe

Joseph F. Nivolski  
Lansing

Casey A. Ruld  
Livonia

Robert B. Schaefer  
Livonia

Judge Carolyn M. Williams  
Kalamazoo

Judge John Young  
Plymouth

April 10, 1989

Dear Colleague:

The possibility of gender and racial/ethnic bias in the justice system has been recognized as a matter serious enough to warrant the establishment, in 1987, of the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts. In order to determine the extent to which this bias may exist, and the real or perceived effect it may have on courtroom interaction, the decision-making process and the representation of clients' interests, it is important that certain information be gathered.

Toward this end, the enclosed questionnaire has been prepared. You have been selected as one of only 900 attorneys surveyed for this project, therefore, your cooperation in this endeavor is most important. Thank you for taking the time to assist in the work of the Task Forces. We urge you to complete and return the survey as quickly as possible.

Racial/Ethnic Issues Task Force

Judge Harold Hines, Chair  
Detroit

Michael Berry  
Detroit

David Cable  
Livonia

Barbara Cunsilio  
Ann Arbor

Dr. Larry Crawford  
Livonia

Judge Geraldine Blodgett Ford  
Detroit

Dobson I. Gashin  
Detroit

Dr. Ronald Griffin  
Livonia

Alphonse Harper  
Detroit

Judge Benjamin M. Lujan  
Grand Rapids

Thomas E. McCasie  
Detroit

Angela Neussner  
Livonia

Dr. Janet R. Soper  
Grand Rapids

Judge Cynthia Dasher Stephens  
Detroit

S. Martin Taylor  
Detroit

Judge George J. Theret  
St. Joseph

Judge Andrew B. Torres  
Detroit

Case Walker  
Monroe

Judge Landoner Washington  
East

Dorothy Comstock Riley  
Chief Justice  
Michigan Supreme Court

Donald Reisig  
President  
State Bar of Michigan



## APPENDIX E

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## **APPENDIX F**

### **Expert Witnesses**

**Jeffrey S. Albaugh**  
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**Carole L. Chiamp**  
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**Max D. McCullough**  
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**Professor Rosemary Sarri**  
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**Hon. Pamela Harwood**  
Wayne County Circuit Court  
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**Alan C. Bennett**  
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**Hon. James R. Giddings**  
30th Circuit Court  
Lansing, MI

**Kent J. Vana**  
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**Cheryl Gore Follett**  
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**Elaine Weiss**  
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**Hon. Harold Hood**  
Chair, Michigan Judicial Tenure Commission  
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**Joseph Regnier**  
Executive Director  
Michigan Judicial Tenure Commission  
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Chair, Attorney Grievance Commission  
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Chair, State Bar Committee on Professional and Judicial Ethics  
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Director, Sexual Assault Information Network  
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**Debi Cain**  
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**Barbara Craft**  
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**Robert Cleland**  
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**Hedy Nuriel**  
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## APPENDIX G

### Attorneys and Judges Surveys: Verbatim Responses Relating to Treatment of Women in the Courtroom

#### A. REFERENCES TO APPEARANCE AND MARITAL STATUS

Male judges sometimes give undue attention to a female attorney's appearance. (minority male attorney)

As an attorney assigned to a certain judge's court, I was complimented almost daily on my dress and appearance in a rather patronizing tone. At the same time, I was told my adversarial/advocacy skills were deficient. In law school, I was an award-winning moot courter, and prior to that, I had always received high praise for my trial skills. When I saw another female attorney similarly treated by the same judge, (now retired), I concluded the treatment was based on sex. Since the other attorney is of another race, I don't feel race was the cause of the judge's mistreatment of me. I was later replaced in that court by a male attorney at the judge's request. (minority female attorney)

"Mrs. \_\_\_\_\_, your presence always pleases the Court." (re: attorney - sarcastic use of "Ms.") (majority male attorney)

Often times comments are made on their attire or appearance. (majority male attorney)

One most recent example a judge ... often asked the woman attorney her choice of address; sarcastically loudly enunciated "Ms." in his subsequent exchanges with her. (majority female attorney)

Comments in open court about my good looks -- obviously well meaning, but resulting in an embarrassing situation in the presence of my client. I felt I had to explain away the judge's comments after the hearing to my client. This has happened twice -- both times with the same judge. (majority female attorney)

Criticism of clothing. (majority female attorney)

Judge inquiring if female attorney had been a beauty queen when initially introduced. (majority female attorney)

A judge on a number of occasions asked female attorneys if they were married, and then asked "why not?" (majority female attorney)

I had a two-week circuit trial where the trial judge with me in open court (and [in] chambers) commented on my legs, etc. (majority female attorney)

Judges referring to looks and dress of female attorney. (majority female attorney)

Comments from a judge about a female attorney's attire do not necessarily have any real connection with whether justice was administered fairly by the Court. (majority male attorney)

Often times I think that those attorneys and judges behaving insensitively don't realize it. Maybe they even come across as insensitive at times trying to avoid saying things that may be considered sexist or racist. For instance, part of the reason male judges may not address conversation to female attorneys is because they are not even sure any more whether to use Miss, Ms. or Mrs. Use of the wrong one often time miffs the person it's directed to. That can't be the whole problem though. Part of the problem I'm sure is the "male fraternity." (majority female attorney)

**B. PATRONIZING LANGUAGE; IMPROPER FORMS OF ADDRESS**

Judge calling person "Dearie." (majority male attorney)

I had a contested motion against a female colleague. Not only was she a bright, articulate and effective voice for her client, she was also right on the law. The judge (an old groggy... ) referred to her twice as "Girly." This offended me, and I protested. The Court's response was "What are you upset about, I didn't call you "Boy." I protested even louder. I also lost the motion. (minority male attorney)

I have seen judges and attorneys refer to females as "Honey," "Sweetie" and such. (minority female attorney)

I personally have been told during trial by a judge that we'd be breaking and I could use the time to "powder my nose." Frequently male lawyers are addressed as "Counselor" where my name or "Young Lady" is how I am addressed. (majority female attorney)

The usual "pet names" are "Honey," "Dear," etc. (female attorney)

Older judges patronizing; Judge \_\_\_\_\_ asking a woman attorney did she think her father would approve of her behavior (arguing in favor of her position on a motion). (female attorney)

Judges call female attorneys, "Gentlemen," "Sir," etc. (majority female attorney)

Male judges also have a tendency to call the male attorney, "Mr. Smith," and the female attorney, "Jane," etc. (majority female attorney)

\_\_\_\_\_ (female judge) referred to me as "Dear" but did not refer to male attorneys. (majority female attorney)

Also, attorneys in a particular area, such as \_\_\_\_\_ County, are spoken of as "the guys." I am not a "guy" [and] I don't want to be one.

Memorandum to members of the Bar Association addressed to "Gentlemen." (majority female attorney)

Women and blacks tend to be addressed by their first names and more frequently by assistant prosecutors than white males are. I have heard male judges and lawyers express surprise, astonishment, amazement, when a female attorney does an outstanding job (not on record). (judicial survey)

Being overly familiar or using first names with some persons (women particularly) (judicial survey)

**C. BEHAVIOR TOLERATED AND ENCOURAGED IN MALE ATTORNEYS IS NOT VALUED IN FEMALE ATTORNEYS IN PROFESSIONAL SITUATIONS; JUDGES ARE CRITICAL AND IMPATIENT WITH FEMALE ATTORNEYS.**

I witnessed a judge telling a female attorney to stand when addressing the Court on a motion, and had not made the same request to opposing male counsel. Also I witnessed an incident when I felt undue criticism was directed to a female lawyer in open court. (minority male attorney)

One judge, who prides himself on his "lock them up for ever -- law and order" stance, berates female attorneys who vigorously represent their clients. (minority male attorney)

Male judges are often impatient and curt with female attorneys (female judges tend to favor female attorneys in both courtroom treatment and legal rulings.) (minority male attorney)

I have seen judges unduly criticize female attorneys in court. I have observed judges who were very impatient with female attorneys. (minority female attorney)

Impatience with female attorneys; don't take them seriously; reference to sex. (minority female attorney)

I have seen judges allow male attorneys the opportunity to drone on uninterrupted, but then interrupt

female opposing counsel demanding that she "get to the point." The body language also indicates irritation, impatience and resentment. (minority female attorney)

Judges advice to female (Black) attorney to [go] find her client at home when she was unable to reach him by telephone to advise of court appearance. (minority female attorney)

Judges are impatient with female attorneys, litigants [and] witnesses. (majority female attorney)

I have sat in courtrooms [and] watched particular judges overtly demean women attorneys who are assertive [and] well prepared. Women who conform to someone's image as too soft spoken to be heard, act like they are scared [and] barely make an argument, these judges don't bother. I have had a particular judge refuse to let me say even one word to argue my own motion while allowing whatever time he wants to my opposing counsel - so much so that I now feel forced to write detailed Briefs since I must make a record [and] I know this judge will not allow me to argue. Although I may win the motion I do not observe him doing this to other male attorneys on motion day. (majority female attorney)

One County judge asked a prominent attorney what was like to have worked with an aggressive, talkative woman. This was on the record. (minority female attorney)

I believe that to a great extent the court system is an "old boy network." I believe that aggressive behavior is viewed favorably when exhibited by male attorneys. There is a double standard that exists. (minority female attorney)

When sexism occurs "and I have been the target on a few occasions" it usually takes the form of legal rulings, curtailing cross-examination, or voir dire, and one occasion, a judge berating, demeaning, and finger-pointing at me in front of a jury while the male attorney (co-counsel) who had done precisely the same thing was not even admonished. (majority female attorney)

**D. PHYSICAL ACTIONS WHICH EXCLUDE WOMEN OR DISCOUNT/IGNORE THEIR PRESENCE: INTERRUPTIONS; IN CHAMBER CONFERENCES WITH MALE CRONIES; OTHER**

Judges sometimes cut off the arguments of female attorneys prematurely and give them less opportunity to argue in court than male attorneys. (minority male attorney)

Interruptions, body language, impatience. (minority male attorney)

Female attorneys are generally given less respect. (1) Arguments are usually shortened by Court or interruptions of male opponent; (2) Court is less lenient on deadlines, sanctions, and dismissal orders. (minority female attorney)

I have observed male judges avoid eye contact with [a] female attorney who is arguing a motion. Sometimes the judges look at women attorneys as though they are bored by what the attorneys are saying. (minority female attorney)

Judge treating female attorney as having less experience on that basis alone. (majority male attorney)

In Court this is a common occurrence. Female attorneys are cut off by the judge much more commonly than [are] male attorneys. (majority female attorney)

I was once questioned by a circuit judge on a motion as to (1) why the (male) partner wasn't there, (2) how I was employed by the partner (i.e.,) when I said associate in the same firm he didn't understand and kept asking if I worked in the same building and what I was doing there in court. (majority female attorney)

(1) "I've known (male) Attorney X. for \_\_\_\_\_ years;" (2) "that's not the way we do things here -- the Court rules don't matter;" (3) "well, he says he's been busy;" (majority female attorney)

When I was before a district court judge, along [with] another female attorney, for a pre-trial conference, the judge referred to both of us as "two hysterical women." This was during our first pre-trial conference before either of us said a word. (majority female attorney)

Calling "gentlemen." (majority female attorney)

Getting cut off before being able to make a point or offer full argument on an issue. (majority female attorney)

One most recent example a judge continually interrupted a female attorney and not the male. (majority female attorney)

On Motion Day -- every male attorney was treated with respect [and] courtesy -- the female attorney was literally interrupted [and] screamed at (for no good reason). (majority female attorney)

I appeared before the Court for oral arguments, (and) upon conclusion one judge asked me with whom I was employed, to which I responded I was in-house counsel. The same judge then turned to my opposing counsel and asked him how the rest of the family was (opposing counsel has relations on the bench). I found this to be insensitive and disheartening. (majority female attorney)

One judge in our area makes female attorneys wait extensive lengths of time while he engages in "good old boy" conversations in chambers. This same judge discounts female attorneys' positions in court. (majority female attorney)

A circuit court judge in a contested custody case overruled all my objections, while sustaining that of the opposing male party; [the judge] constantly interrupted me, interrupted the direct exams of my client and expert [witness], and completely disallowed the testimony of my expert (a woman); and [the judge] stated on the record [that] a 5 year old boy belonged with his mother (I represented the mom) based on the judge's own divorce experience. (majority female attorney)

The Old Boys Club has to be disbanded. Most violations occur during conferences in chambers - off the record. (minority female attorney)

The gender bias I have experienced and/or observed is generally not overt. It's mostly exhibited in less time to speak at mediations or conferences. Judges and male attorney will often try to interrupt when trying to make a point. In addition, although male attorney and/or judge generally don't make obvious remarks indicating gender bias, their body language and facial expression often do. (majority female attorney)

There clearly is [bias] but it's more insidious [and] less outspoken than it used to be. It's often a tone or a disinterest by a judge that's obvious to those watching. (majority female attorney)

Having been on the receiving end of a Judge's unfair statements made in open court such as screaming, stating cases frivolous, I ordered transcripts. These statements did not appear in print. (majority female attorney)

## E. SEXUAL INNUENDOS AND HARASSMENT

I have heard a judge comment that he would like to have a particular female attorney "sit on his face."  
(majority male attorney)

District Judge is notorious for his abuse of female attorney and litigants. Women attorneys in this county try to avoid practicing in his court. There have been marches at his courtroom by women because of his insensitivity to domestic violence cases. Judge \_\_\_\_\_ (\_\_\_\_\_ County Circuit Court) suggested that Judge \_\_\_\_\_ should sit on his lap during the new attorney ceremony. Recently he told jurors to "come back tomorrow. I have a nice little rape case for you." (majority female attorney)

Some male judges reward sexual liaisons with female attorneys by giving them lots of assignments.  
(majority female attorney)

This primarily stems from my experience with a particular judge when I used to be a prosecutor. He on several occasions made disparaging remarks about female attorneys, and at times indecent comments about female litigants or witnesses. (judicial survey)

Once a male attorney made a sexual reference to the appearance of a female participant. I bawled him out on the spot and on the record. (judicial survey)

## F. WOMEN ATTORNEYS OF COLOR/MINORITY FEMALES

I believe that in general female attorneys are viewed as being less competent than male attorneys. I also believe that Black attorneys are viewed as being less competent. Therefore, Black female attorneys would then be viewed as the least competent of all. I think there is actually an "old boy system" in the court system that women have a hard time penetrating, if at all. I have had less than favorable experiences in the mediation process where there is a presumption of legitimacy with opposing counsel's case if he happens to be a white male. Similarly, a case's value is diminished if my client is Black — as if he/her life/injury is not worth as much as a non-minority's. I have gone to District Court representing a client and been told to "get in line for my landlord hearing" even though I was appearing on an unrelated civil matter. I do believe, however, that most judges are sensitive to these issues and exercise the proper judgement and professionalism when dealing with women and/or minorities. Attorneys, on the other hand are a different matter altogether. There seems to be no way to control attorneys' conduct towards other attorneys and/or litigants. Thank you. (minority female attorney)

I don't mind participating in this study, but why do a survey to find out what everyone already knows? Female attorneys, especially Black, are always viewed as secretaries, no matter what the situation or circumstances is. There also exists discrimination/bias on the part of Black male judges and attorneys against Black female attorneys. Also, as a young Black female attorney (26 years old), I don't know what I'm doing and that I'm too young to practice. These comments, ironically, many times come from Blacks. (minority female attorney).

In my experience, there has been great strides for Black women in the County Court System. (minority female attorney)

One thing I have observed that is very disappointing is to observe how judges (some) respond to minority attorneys (female or male). There is often open hostility toward the attorneys from the bench. The hostility is more noticeable against Black male attorneys than female. This is especially so in counties such as \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County used to be bad also, but it's getting better. Something has got to be done about these judges and their attitudes. I have argued cases in these counties, where the case law was clearly on my side, I was overprepared, extremely articulate and literally kicked the white male attorney in his ass, but the white judge still ruled in favor of white attorney. In these instances white observers in the courtrooms have waited outside the courtroom to encourage me and compliment me on my presentation but let me know the reason the judge ruled the way he did was because of prejudicial bias. (minority female attorney)

**G. GENERAL COMMENTS REGARDING TREATMENT OF WOMEN ATTORNEYS IN THE COURTROOM**

Strangely enough the unfair treatment to a female attorney has come from a female judge. (minority male attorney)

During one motion day in Circuit Court the male judge yelled "I can't hear you, lady!" to a litigant on the witness stand whose voice was not audible. My motions against a male opponent were both denied after perfunctory hearing by this same judge on that date. My male opponent commented to me that he sensed the judge's bias against women. (minority female attorney)

The judge often talks down to female attorneys, address(es) men attorneys with more respect, allows male attorneys to beat up on female litigants especially if the lawsuit is between female and male litigants. I strongly believe that this is the main reason we have so many underreported cases of rape (acquaintance rape especially). The treatment is so unfair [and] insensitive to women. (minority female attorney)

I have seen some instances in which a judge was rather clearly less sensitive to the time demands of other matters on a female attorney than the same judge was to similar demands on male attorneys. (majority male attorney)

Berate the attorney's case as being of no value. (majority male attorney)

Many judges do not view female attorneys as qualified, or as professionals. Many sexist remarks are utilized. Sometimes male attorneys are taken (case called) before female attorneys. (majority male attorney)

Constant problem -- bench has no use for females! (majority male attorney)

Waiting to be heard on motion day, I have observed judicial discourtesies to female litigants and attorneys. (majority female attorney)

Adopting a condescending attitude toward female counsel in the course of oral argument on a motion where opposing side represented by a male. (majority female attorney)

While I strongly believe gender and racial bias exists, I do not feel the incidents are very blatant. They stem from life long learning and beliefs, and in close situations (or even those where the decision is simply not obvious) an adjudicator will decide based on personal feelings and bias. The old boys network is as strong as ever and those who are not a party operate at a disadvantage. (minority female attorney)

Judges are condescending toward blacks and females in their responses and decisions. (minority female attorney)

In my experience, racial/ethnic and gender bias are so prevalent in the Michigan court system, that I have as a matter used a minority male and/or white male as Co-Counsel so that our client's interest would not be adversely affected by the presence of said bias. When assigning an attorney to a file I consider the race and/or gender of the judge and the attorney on the opposite side and the county in which the matter is to [be] tried [as] significant factors. Rarely, if ever, when large financial awards or sophisticated business issues are present before a jury or a male bench will I not factor in the fact that I am a Black female as I make plans for my presentation of my client's case. (minority female attorney)

As to the reason in Section I - 11, I did inquire of the judge in what ways my advocacy skills were deficient and how could they be improved. My efforts to obtain any specific or concrete information were unsuccessful. He was vague and evasive and appeared very uncomfortable with my having even asked the question. He would never identify any one particular fault, but simply said I "lacked experience." I had been practicing 5 years and had successfully tried many felony cases from both sides of the table. This is my only first-hand, personal experience with sexism from the bench in an overt fashion. I am pleased to be so fortunate. (minority female attorney)

I have rarely witnessed any racial or gender bias in the courts. The only incidents I have observed have been directed at females and they all took place in state district courts. (majority male attorney)

I would think that women and minorities are a lot more aware of bias than Caucasian male attorneys since they would be the target of such bias. I would applaud any reasonable measures to eliminate bias in the court system. (majority male attorney)

There is in fact no bias of any kind in the "System." There are, however, judges and attorneys who both knowingly and unknowingly possess and sometimes act on the basis of racist-sexist attitudes and beliefs. (majority male attorney)

In 29-1/2 years of practice -- bias towards minorities including Caucasian/males and their type of practice (personal injury) always exists; bias toward racial minorities in personal injury litigation -- [is] always prevalent. Bias toward women, [be they] attorneys, witnesses, clients, [or] jurors [is] rampant! (majority male attorney)

In the past five years I have had at least three landlord-tenant matters before the Honorable \_\_\_\_\_. In each of the matters he has displayed an abuse of discretion detrimental to my client when a male attorney represented the adverse party. My clients have had limited funds so we could not continue with costly appeals. I truly believe this judge is biased against female attorneys, whether on civil matters like my own experiences or when I have observed his demeanor with female assistant prosecuting attorneys. (majority female attorney)

Permit me also to say that the situation is so bad in my view that I expect it to be remedied for our children -- not in our time. (majority female attorney)

We are all [so] afraid of being identified as troublemakers, non-team players, (and most obviously not "one of the boys,") that we hide our rage at the gross indignity of practicing law in front of prejudiced judges. (majority male attorney)

For me the question is not whether or not there is bias in the court system, but rather what we can do about it. The only hope I see in this area is that these judges who are part of a good ole boy network simply die [and] are replaced by judges [w]ith some sense of social justice. (majority female attorney)

This is really a very difficult situation to assess, there is seldom an overt act, rather it is more of an insensitive and condescending attitude.

H. COMMENTS REGARDING THE LACK OF OR MINIMAL NATURE OF UNFAIR OR INSENSITIVE TREATMENT TO FEMALES BY JUDGES; VARYING OPINIONS; FAVORABLE OPINIONS

We have a district court judge in our county who is often insensitive to those who come before him but he does not confine his insensitivity to females only. (majority male attorney)

I've observed male judges behave differently to a female attorney as opposed unfairly or insensitively. For example, I've seen a male judge smile [and] wave when a female attorney walks in the courtroom. Female judges tend to be more demanding or rude to female attorneys when they are opposed by male counsel. (majority female attorney)

I have observed some judges being very critical of or rude to female attorneys -- but these judges are very often rude, pompous, condescending and unfair to many attorneys, regardless of color or sex. (majority female attorney)

The treatment administered by both male and female judges (is) consistent with that individual's personality and manners. If he or she is abrasive, rude, etc., [h]e or she is consistent, to both genders, and without regard to race, etc. A rude judge is a rude judge. (majority female attorney)

(Following a negative comment): however, in my experience the majority of judges appear absolutely unbiased -- some were much more polite to female attorneys than to young male attorneys. (majority female attorney)

Based upon my experience as an attorney in Michigan (7 years), I do not believe there is racial/ethnic or gender bias in Michigan court system other than the fact that Blacks and women appear to be appointed to the bench by the governor as opposed to equally qualified white males. (minority male attorney)

My observation would only apply to the \_\_\_\_\_ County area. I have not practiced in any other counties in several years. I find that on the whole I am treated with respect. Other attorneys are a problem however for they occasionally treat women disrespectfully, especially in trial situations or motions. In my experience, there has been great strides for Black women in the \_\_\_\_\_ County court system. (minority female attorney)

I have never witnessed either racial/ ethnic or gender bias during my 16 years of practice. The judges I have appeared before have always gone to great lengths to treat everyone equally. (majority male attorney)

I have not perceived there is any basis for assuming bias in the Michigan court system. All litigants and attorneys are treated equally by the judges whether the treatment is good or bad. Some judges treat everybody fairly. Race does not determine this nor does gender. (majority male attorney)

In the last eight years, my perspective has been limited to the Workers' Compensation there are a growing number of female attorneys practicing. As the number of female attorneys grew, they seem to be less isolated in the Workers' Compensation Hearing area rather than the fact that they are female. The female attorneys that I have seen who regularly appear are quite well known and do not seem to be isolated. In addition in the Workers' Compensation area, we have a number of female judges. (majority male attorney)

I do not accept the conclusion that there is bias in the system. There are occasional evidences on an individual basis -- but not consistently. If there is consistent, biased approach by an individual -- then the individual should be addressed -- either by superiors or peers. I believe that most practitioners of actual bias are unaware of it -- when it is pointed out -- it will be corrected. (majority male attorney)

My experience has been largely in County [and] I find little bias. (majority male attorney)

In my humble opinion, this survey is a pointless waste of time and money and quite obviously drawn up by people unfamiliar with the private practice of law. For me, it did nothing but generate anger. It appears that the intent is to invite one to fantasize about what goes on in the minds of jurors and judges and to blow the myths out of proportion. Perhaps I'm a naive babe-in-the-woods but in more than twenty years in private practice, I have never felt that the value of my cases was contingent upon race or sex. (majority male attorney)

I believe such attitudes definitely exist but are not seen. (majority male attorney)

I have not found in my experience the types of bias you inquire about. (majority male attorney)

I have never seen bias in the court system personally. I have read of such bias in the newspaper. (majority male attorney)

I can honestly say that in nine years as a litigator, I have not seen a judge treat an attorney, witness, litigant any (differently) than he/she treats others based on race, sex or ethnic origin. ... on the other hand, judges, attorneys, witnesses and litigants are all human beings, and in any pool of human beings, one is likely to find idiots who harbor stupid and unfounded prejudices. If a problem exists in our court system, the way to address it would be to more closely screen those who seek to become judges, etc. (majority male attorney)

It is my guess that if a study could be done of the racial/gender/ethnic biases of judges and attorneys, one would find that they would merely reflect a cross-section of the general population. (majority male attorney)

My primary practice is before the Michigan Public Service Commission and the Michigan Court of Appeals and Supreme Court. All of these institutions have female judges and female attorneys representing clients. I have never experienced or witnessed any bias on account of race or gender. (majority male attorney)

Problems of bias in the Court system are not so severe as to require study or the creation of systems of dealing with them, other than those mentioned in "age" of. Of much greater concern is the lack of respect and outright rudeness shown by judges and court personnel to most attorneys of either sex and any race. (majority male attorney)

I think women lawyers have to be careful that they are not too quick to attribute the insensitivity they encounter to sexism. Much of it on this side of the state is attributable to your level of experience. I've watched young male attorneys get it much worse than I ever have. All attorneys should be encouraged to help teach new lawyers. (majority female attorney)

I don't question that the bias exists, but it's not very apparent outstate. The older judges are very polite. Younger judges tend to be more problematic. In fact, I've seen judges bend over backwards to help me out of a situation I created for which I could be criticized badly. It really may be a function of where I practice -- it's one of the reasons I came here. There may be bias, but people are too polite to give anyone trouble. There's also a sense of professionalism and ethics that lawyers here shy away from taking unfair advantage. (majority female attorney)

I am a white female attorney recently admitted to the Bar. I have never experienced any bias in the Courts by any Judge -- Black, female, or White male. However, although I practiced in County, I have never been to the District Court. Most of my time is spent in Court or County Circuit Court. In addition, although I can point to no specific instances, the atmosphere in the \_\_\_\_\_ County Circuit Court is more of a "good old boy club." (majority female attorney)

Perhaps our judges in \_\_\_\_\_ County are atypical, but my experience with them as a female attorney has been nothing but excellent. I have not experienced personally any discrimination because of my gender. (majority female attorney)

... I have not had a lot of trial experience where I would be able to see much bias towards attorneys, parties, witnesses, etc. based on race or sex. ... My courtroom experience in a trials, settlement conferences, etc., [and] mediations over the years. I think that most judges try to conduct themselves so as not to appear biased. Only one judge in chambers used unprofessional [and] rude language about an attorney before him -- and that attorney was a white male. (majority female attorney)

There is no doubt that I feel I am being taken seriously by judges, referees, and almost all male attorneys at this point in my career. I did not feel that way ten years ago. I do not know whether the difference is that attitudes have changed in the past ten years, or I am simply older now with a track record that gives me credibility. I suspect it is a combination of both. (majority female attorney)

I practice part-time in a limited area; and I see relatively little bias in the court system. (majority female attorney)

During my years of practice, I never experienced discrimination on account of sex by any court; however, male attorneys systematically use gender as a weapon to intimidate or embarrass opponents. I suppose this is inevitable and nothing can be done about it. I found the barriers impenetrable and went into another line of work, although I know many women do manage very well. You have to have a thick skin. (majority female attorney)

Since I have only been an attorney for almost one year, my experience limits my ability to render a comprehensive opinion. The experience I've had thus far, mainly in Workers' Compensation, has exhibited very little in the way of bias. Very few attorneys participate in such behavior. In fact, my experience has been that most judges [and] attorneys go out of their way not to exhibit biased behavior, especially when dealing w[ith] female attorneys. (majority female attorney)

In most of my dealings with other attorneys, judges, and litigants, being a female attorney has never been an issue. Competency has been the primary concern. If other attorneys know you know your job they don't give you any flak. I don't know if you have to work harder to establish competency when you're a female attorney, I've never been a male attorney. (majority female attorney)

Gender bias -- on the surface, there appears to be little bias. In the eight years I have been an attorney, it is amazing how careful attorneys and judges have become about what they say to female attorneys. Many judges express outrage in court about rape, spouse abuse, child abuse, failure to pay support, etc. However, I do not sense that there has been any significant change in male attorneys' attitudes about sharing power, money, or professional standing. (majority female attorney)

It is getting better. Personally, I don't think it will change much until bias in the practice of law is dealt with at the same time. Western Michigan is conservative, and sexism in law firms is overwhelming. (majority female attorney)

My practice is mainly in Court, and I have found the judges there to treat women and minorities very well. I think the bench (which itself has [a] high percentage of Blacks and women) is very sensitive to these issues. (majority female attorney)

#### I. REMARKS REGARDING WOMEN'S ROLES/DISPARAGING COMMENTS, JOKES, REMARKS

I can only recall one recent incident that truly amazed me. First-degree murder, C.S.C. [i.e., criminal, social conduct] case, involving female victim [and] horrendous facts. Oral argument, Court of Appeals. Appellate issue: error in admission of evidence re: bite marks (s) on victim's buttock. During argument by attorney for Defendant-Appellant, one judge on panel remarked something like: "I guess the prosecutor wouldn't give him the benefit of one bite." (majority male attorney)

(1) I have been told by a Circuit Court judge in chambers with three male attorneys present the women belong in the kitchen.

(1) Telling a pregnant attorney she should be home caring for her new child not arguing w[ith] him.

In view of the sexist jokes/comments that judges and attorneys have made to my male colleagues, I have no doubt that bias exists. However, it is difficult to point specific instances. (majority female attorney)

Insulting or demeaning questions, remarks between attorneys. (judicial survey)

Lawyers have told jokes or made remarks evidencing racial and gender bias in court offices. Witnesses have referred to adult females as "girls". Lawyers refer to witnesses and jurors as "Miss" or "Mrs." when marital status is irrelevant. (judicial survey)

**J. EFFECT ON FEMALE ATTORNEYS OF JUDGES' INAPPROPRIATE BEHAVIOR**

The judges often talk down to female attorneys, address men attorneys with more respect, allow male attorneys to beat up on female litigants especially if the lawsuit is between female and male litigants. I strongly believe that this is the main reason we have so many underreported cases of rape (acquaintance rape especially). The treatment is so unfair [and] insensitive to women. (minority female attorney)

I have sat in courtrooms [and] watched particular judges overtly demean women attorneys who are assertive [and] well prepared. Women who conform to someone's image as too soft spoken to be heard, act like they are scared [and] barely make an argument, these judges don't bother. I have had a particular judge refuse to let me say even one word to argue my own motion while allowing whatever time he wants to my opposing counsel -- so much so that I now feel forced to write detailed Briefs since I must make a record [and] I know this judge will not allow me to argue. Although I may win. (female attorney)

**K. OBSERVATIONS OF UNFAIR OR INSENSITIVE TREATMENT TO A FEMALE JUDGE**

Difficult white male judges are referred to as "irascible" while difficult female judges are characterized as "bitches". (judicial survey)

I have observed that male attorneys tend to interrupt female judges frequently. (judicial survey)

This is a predominantly white male system. Females entering the profession are considered abrasive if they are advocating for their client. My male colleagues refer to Black and female judges by their first names (consistently,) while referring to male judges as Judge "so [and] so". This is obscene. (judicial survey)

I've heard attorneys snicker at how some women judges' conduct their courtroom, whereas similar conduct by male judges is not so disrespected. (judicial survey)

Toward attorneys, sexual innuendos; toward judges, inadequate respect. (judicial survey)

Male attorneys are often disrespectful to female attorneys. They interrupt constantly during arguments in court. Have demeaning attitude towards female attorney as though to say "This is a man's area and you shouldn't even be here." Male attorneys often use this same attitude to female judges. (judicial survey)

If a female judge doesn't rule in their favor or allow disrespectful behavior that they would never display to a white male judge, she is talked about in the halls and called stupid or a bitch who's hard to get along with. (judicial survey)

While observing a motion in Circuit Court, a male attorney talked while [a] female judge was making her ruling and explaining [the] basis of her ruling. (judicial survey)

Males have no respect for female judges or jurors, unless they find in their favor. (judicial survey)

Many comments Re: women judges--that they are too emotional, men-haters, on their period, less bright, less professional than male judges, can't take a joke, etc. (judicial survey)

Attorney told me I prevailed in circuit court only because judge was female and we women stick together--but we were both wrong. (judicial survey)

A partner in my office calls a judge we deal w[ith] on a frequent basis "that little girl." Also, if he has not dealt w[ith] a judge, he definitely wants to know if the judge is a woman before he goes into court. (judicial survey)

Weird comments--Some women judges referred to as "bitches." Male prosecutor called me "sweetheart" in court several times. (judicial survey)

I have seen judges and attorneys refer to females as "honey," "sweetie" and such. (judicial survey)

Judge suggested that Judge should sit on his lap during the new attorney ceremony. (judicial survey)

Some male attorneys have a reputation for using disruptive behavior with female judges only. (judicial survey)

Women judges and attorneys are often addressed as "ma'am" or "gal" (for attorneys); are patronized by males who believe women are intellectually inferior. (judicial survey)

One attorney and firm refuse to address the female judge as "Your Honor", "Judge" or "The Court", but consistently refer to her as 'mam'. (judicial survey)

#### L. OBSERVATIONS OF UNFAIR OR INSENSITIVE TREATMENT OF LITIGANTS

Usually the insensitive treatment toward a female would be as either a witness or litigant while testifying by overly or unnecessarily badgering the witness after an answer has been received, but is not happy with the answer. (judicial survey)

Many white male attorneys often call a female, "girl" or "gal." (judicial survey)

I observed an attorney making unnecessary comments about a female in a divorce case -- the comments involved her lifestyle and the number of children she had and her unemployed status. (judicial survey)

The attorney will ask the female questions they will obviously embarrass. (judicial survey)

I have seen some efforts by male attorneys to "bully" or intimidate a female witness. (judicial survey)

RE: female litigant; demeaning comments; insensitive to emotional issues; assuming female has no business knowledge, etc. (judicial survey)

Attorney depreciating emotion injury of female client. (judicial survey)

In domestic relations matters lack of concern of homemakers future financial problems in settlement discussions. (judicial survey)

Male attorneys interrupt female attorneys during argument. I have been shouted at during deposition and called "baby." During deposition verbal intimidation of female deponent. Attorney mocked and used his body size and posture to attempt to intimidate an expert witness during trial. (judicial survey)

During voir dire attorney asked the prospective jurors if they would hold it against him (the attorney) "because she was prettier than he was." An attorney (male) asked a female witness why she spent so long shopping in a clothing store without buying anything. Her reply was that she couldn't find anything to purchase. He responded with "Just like a typical woman, shopping to waste time." (judicial survey)

Female litigants and witnesses have their personal lives pried into much more extensively than males. They are also questioned in a demeaning snide tone (none of this ever appears on a record.) The questioning frequently assumes the witness is an "airhead." (judicial survey)

Crude references to a litigant as a "broad." (judicial survey)

An attorney recently grilled a female domestic violence complaint for over six hours in District Court. He was allowed to be abusive. (judicial survey)

Attorney, in questioning a litigant, pressed her for a title of "Miss" or "Mrs." because her last name was different than that of one man she was living with and he did not know their marital status. In fact, they were married, but it was not at all material to the case. (judicial survey)

A judge reprimanded a litigant for bringing her child to court rather than finding a sitter. The child, approximately 4 years old, was talking to his mother during her questioning [and] while the judge was talking. The woman tried to explain she couldn't find a sitter but the judge cut her off [and] said the child shouldn't be there. (judicial survey)

Female witness called a "flake." (judicial survey)

State district court judge make a rude and sexist remark about "female" drivers while presiding over a hearing on a traffic offense committed by a woman. (judicial survey)

Re: Attorney-sarcastic use of "Ms." Re: Litigant;-refusal to restore maiden name in violation of statute; Refusal to enforce spouse abuse injunction; Refusal to award sufficient alimony; Refusal to award adequate attorney fees. (attorney survey)

In chambers comments about witnesses. (attorney survey)

I can only recall one recent incident that truly amazed me. First-degree murder, CSC [i.e., Criminal Social Conduct] case, involving female victim [and] horrendous facts. Oral argument, Court of Appeals, Appellate issue: error in admission of evidence re bite mark(s) on victim's buttock. (majority male attorney)

Waiting to be heard on motion day I have observed judicial discourtesies to female litigants and attorneys. (attorney survey)

(1) I have been told by a circuit court judge in chambers with 3 male attorneys present the women belong in the kitchen; (2) Judge refused to grant a protective order after husband beat wife. He did tell the husband not to do it again but then agreed with the husband that divorce is a bad thing [and] the judge does not believe in it either. (attorney survey)

A judge in a recent sex discrimination case so badgered my client that she gave up mid-trial. His response to her testimony of her competence was to berate her for thinking she could run the company! Judge once tried to talk a husband out of paying alimony (after it had been placed on the record as part of a divorce settlement.) Judges do not give fees [and] costs to help litigate on behalf of female spouses. Show causes for further to pay support result in long term no interest pay-offs – the custodian [and] children can't buy groceries at \$10.00 per week (e.g. Husband over \$3,000.00 back support, ordered paid off at \$10.00 per week.) (attorney survey)

Telling women attorneys not to be so emotional or argue so much; Other judges making statements that women litigants are hysterical. Older judges patronizing; asking a woman attorney did she think her father would approve of her behavior (arguing in favor of her position on a motion.) (attorney survey)

Judges are impatient with female attorneys, litigants [and] witnesses. Also, women attorneys get far fewer assignments than men attorneys and far less lucrative ones. (attorney survey)

In domestic relations cases, I have observed judges in subtle ways, treat female divorce litigants in a patronizing manner. (attorney survey)

A Circuit Judge, in a domestic relations final hearing, made "inferences" that a mother's intent to continue her education while caring for a minor child was an indication that she was not going to be able to provide a suitable environment for the minor child -- this was an uncontested custody issue. (attorney survey)

(a) Memorandum to Members of the Bar Association addressed to "Gentlemen;" (b) Reference to respondent as an individual lacking "mothering" skills; female respondent told to get married if she wanted children returned; (c) Judge inquiring if female attorney had been a beauty queen when initially introduced; (d) Condescending and/or paternalistic attitude conveyed in chambers and court room. (attorney survey)

A circuit court judge in a contested custody case overruled all my objections, while sustaining that of the opposing male party; [the judge] constantly interrupted me, interrupted the direct exams of my client and expert [witness], and completely disallowed the testimony of my expert (a woman); and [the judge] stated on the record [that] a 5 year old boy belonged with his mother (I represented the mom) based on the judge's own divorce experience. (attorney survey)

Insensitive treatment of prospective jurors/litigants/defendants based on race and ethnic bias and of female attorneys and female clients. (attorney survey)

## APPENDIX H

### Job Category Definitions

The following job category definitions were used in the Court Employment Questionnaire to determine the placement of all court staff.

1. **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the court's operations. Includes: court administrators, deputy court administrators, friend of the court, registers, court executives, department heads, division chiefs, directors, deputy directors, and controllers.
2. **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, lawyers, system analysts, accountants, probation officers, referees, magistrates, and other quasi-judicial hearing officers.
3. **Para-Professionals:** Occupations in which workers perform some of the duties of a professional in a supportive role, which usually require less formal training and/or experience than that normally required for professional status. Such positions may fall within an identified pattern or staff development and promotion. Includes: library assistants, research assistants, law clerks, judicial secretaries, administrative assistants, clerk of the court, court transcribers, reporters and recorders and deputy registers, computer programmers and operators.
4. **Administrative/Protective Services Workers:** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paper work required in an office. Includes: bookkeepers, secretaries, messengers, office machine operators, clerk-typists, statistical clerks, dispatchers, license distributors, payroll clerks, court clerks and kindred workers and/or occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: guards, deputy sheriffs, bailiffs, court officers, process servers, warrant officers, and child care facility workers.

## APPENDIX I

### Prosecutor's Offices Responding to the Employment Questionnaire

#### COUNTIES WITH FEMALE AND MINORITY STAFF:

Wayne  
Kent  
Macomb  
Ingham  
Saginaw

Kalamazoo  
Berrien  
Genessee  
Jackson

#### COUNTIES WITH FEMALE BUT NO MINORITY STAFF:

Bay  
Cass  
Livingston  
Muskegon  
Barry  
Grand Traverse  
Delta  
Allegan  
Midland  
Ionia

Huron  
Ottawa  
Van Buren  
Tuscola  
St. Joseph  
Montcalm  
Shiawassee  
Clinton  
Isabella  
Charlevoix

#### COUNTIES WITH ALL MALE STAFF:

Menominee  
Branch  
Lapeer  
Leelanau  
Manistee  
Sanilac  
Oceana

Crawford  
Gratiot  
Wexford  
Presque Isle  
Antrim  
Dickinson

#### COUNTIES WITH A SOLE PROSECUTOR:

Baraga  
Gogebic  
Keweenaw  
Iron  
Arenac  
Montmorency

Benzie  
Gladwin  
Missaukee  
Alger  
Alcona