

equal access



Equal Access

Our Continuous Need to Increase Public Confidence in the Fairness of the Legal Profession

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History of Organized Equal Access Activities

Michigan lawyers have long understood the need for an equal, open, and fair justice system. This fact is documented in the very first issue of the *Michigan Bar Journal* in 1936 when President Roberts P. Hudson said, “[The State Bar] is designed not only for the benefit and betterment of its members, but primarily for the public at large who require the services of the profession It cannot represent the interests of any group or political faith. It must not draw distinctions of color, race or creed It is now and must remain democratic, independent and representative of the best ideals of citizenship.”

Many years, many struggles, and many legal milestones passed between that statement and the concerted efforts undertaken by the bench and bar in the 1980s to achieve a diverse and bias-free environment. Among those were the promulgation of the civil rights laws,¹ the racial tensions that erupted in our communities, the growing rights of the disabled, and the critical role of the courts in addressing those issues.

By 1986, a Michigan Supreme Court Citizens’ Commission concluded that over one-third of Michigan’s citizens believed that the court system discriminates against individuals on the basis of gender, race, or ethnic origin.² In 1987, task forces on gender, racial, and ethnic issues in the courts were mobilized to examine the courts and the legal profession and to recommend changes to assure equal treatment for all.³ By 1989, reports from those bodies confirmed both the perception and the reality that bias exists and that it affects the quality of justice.⁴

The State Bar's 1996 Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession and the 1998 formation of the Open Justice Commission led to an aggressive five-year plan to address these issues. Today, the State Bar acts on these issues through the Equal Access Initiative (EAI) of the Committee on Justice Initiatives. Its mission is to "work within the State Bar of Michigan's Justice Initiatives structure to facilitate equal justice and to work to eliminate and minimize barriers in the administration of justice, as well as entry to and participation in the legal profession and the Bar." It follows the Bar's strategic plan direction to "refine, focus and continue to strengthen our justice initiatives efforts." Its work is guided by Michigan Supreme Court Administrative Order 2004-01, the *Keller* order that requires State Bar-funded activities to occur within the five areas outlined⁵ and the strategic plan's direction that activities "avoid divisiveness and be achievable."

Early Strategies to Overcome Bias

Some of the achievements that occurred between 1998 and 2003 include:

Conference on Racial and Ethnic Fairness in the Courts

This 2003 event was held in conjunction with the 15th annual meeting of the National Consortium on Racial and Ethnic Fairness in the Courts. Held in Detroit, the conference brought together leaders at the state and national level from courts, bar associations, academia, and communities to discuss challenges and opportunities in the area of racial and ethnic fairness and to develop effective strategies for assuring fairness within the legal and judicial system. Over 23 substantive programs were offered on topics such as the impact of race and culture on court services, underfunding the delivery of legal services in criminal cases and its impact on case outcome, and racial and ethnic issues in jury participation and selection.

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

The Disabilities Committee produced this report to give voice to people with disabilities. It is an analysis of the status of persons with disabilities within the courts, law schools, and law firms of this state with recommendations for future initiatives and programs to assist persons with disabilities to become full participants in every phase of Michigan's legal system.

Bench/Bar Holidays and Observances Guide

This booklet contains the dates of religious and cultural holidays and observances of more than a dozen world religions. It is a resource for judges and lawyers, not only in setting case schedules, but also in domestic relations cases when determining parenting time outcomes.

Roundtable Forum

"...And Justice For All" was taped in front of a live audience in 2001 and was designed for use as an educational tool throughout the state. A hypothetical courtroom situation was used to identify open justice issues in the Michigan court system related to the impact of race, gender, ethnicity, disability, and other personal charac-

teristics of court users. These vignettes are the basis for discussion and analysis by top legal minds in the state. The forum was used as the basis for a high school education project, described later in "More Recent Activities to Achieve Equal Access."

State Bar of Michigan Website

The State Bar's website at <http://www.michbar.org> was evaluated by iCan for its accessibility to persons with disabilities, particularly those with vision impairments. Based on iCan's 24-page Web Accessibility Audit, the SBM website underwent a major revision, completed in 2004, which resulted in its becoming ADA-compliant and more accessible to persons with vision handicaps.

Disabilities Committee Law School Forum

The Disabilities Law School Forum took place in 2002 and brought together representatives from Michigan's six law schools and others to discuss the impact of physical or cognitive disabilities on law students and the law school environment, to explore strategies and programs designed to address the challenges of appropriate and effective accommodation, and to jointly formulate recommended law school policies and practices as a response to these complex issues.

"It Isn't Fair if You're Not There"—A Jury Duty Video

This 24-minute video was created to improve citizen participation in the jury process. It is a tool to help educate the public about the importance of jury duty. The video is not for juror orientation, but can be used in Michigan courts, classrooms, town hall meetings, and educational forums to stress the importance of participation in the jury process. Information on its availability was distributed to courts throughout Michigan, and over 25 copies were provided to judges upon their request. It is currently being used by a community group in southwest Michigan to develop a local program and is frequently requested by lawyers and others interested in the topic.

More Recent Activities to Achieve Equal Access

Cognitive Disabilities in the Criminal Justice System—Annual Meeting Program

As part of the State Bar's 70th Annual meeting in 2005, "People with Cognitive & Psychiatric Disabilities in the Criminal Justice System: A Practitioner's Guide to Recognition, Identification and Resources" was presented to educate judges, lawyers, and other practitioners about the presence of people in the system with these disabilities. Michigan's diversion statute and the more than 30 people with mental disabilities who have been successfully diverted from jail and into the community mental health system in Oakland County were highlighted in the discussion.

Juvenile Justice Brochures

Three legal educational booklets were posted to the EAI website in September 2004: *Guide for Parents, Decisions: What you need to know*, and *You. Police. Court*. More recently, this information was

produced as a compact disc that is being distributed to 600 organizations in contact with young people in Michigan.

Commitment to Service Poster

This document was approved by the Michigan Supreme Court and distributed by the Bar as a framed poster to Michigan's 250 chief judges in 2004. It reads:

Everyone who works for this Court, including the judges and their staffs, will strive to assure the fair and equal application of the rule of law, and to provide efficient access to justice to all people. Our effort includes conducting Court proceedings in a timely and orderly manner, and maintaining a courteous and professional environment. Please let us know if you have any questions about a Court matter, or if you need assistance of any kind in order to participate effectively in a Court proceeding.

If you have a comment about the service you received, you may contact the local court administrator or the chief judge of this Court.

Roundtable Curriculum

In conjunction with the Center for Civic Education Through Law, a high school curriculum was developed for "...And Justice For All: an Open Justice Round Table," and a compact disc presentation of the session was mailed in 2004 to 550 Michigan high schools. The mailing supplemented distribution of 100 copies of the curriculum and videotape at a conference of high school social studies teachers.

Disabilities Newsletter

A series of free electronic newsletters with information on disabilities issues for individuals associated with the legal profession is distributed quarterly to subscribers. The newsletter topics include "Autism and the Courts," "Wheelchair Access to Michigan Courts," "Lay Advocates as an Accommodation for Individuals with Disabilities," "Low Cost Ways Courthouses Can Be More Accessible to Persons with Disabilities," and "Deaf and Hard of Hearing."

Domestic Violence Training

The first domestic violence/pro bono training took place in May 2001 as a demonstration project sponsored by the Open Justice Commission. Over 200 pro bono attorneys were recruited through that training. In 2003, the training was replicated, and several hundred more pro bono volunteers were recruited. The project attracted national recognition as the recipient of the Community and Educational Outreach Award by the National Association of Bar Executives and LexisNexis.

The third biannual domestic violence training, conducted as a partnership between the Bar and the Michigan Coalition Against Domestic and Sexual Violence, was held on August 25, 2005. Six locations around the state were connected to the live satellite broadcast from East Lansing. In exchange for the training, 122 lawyers, 6 law students, and 2 legal assistants each agreed to provide 30 hours of pro bono assistance to victims of domestic violence. Fourteen Michigan nonprofit programs that deliver legal assistance to domestic violence survivors are currently making case assignments to those volunteers.

Alimony Guidelines Report

This 2004 report follows recommendations that statewide guidelines for alimony awards be considered, based on a Michigan Supreme Court Task Force on Gender Issues in the Courts finding that "the economic impact of divorce is very different for men than it is for women." The report provided Michigan's circuit and probate judges with results of a judicial survey showing that non-mandatory alimony guidelines are quite frequently used as a factor in judicial determinations or as a tool for settlement. A few judges use them as a presumptive determination. A free copy of two different alimony software programs was offered to the judges.

Brown v Board Panel Discussion

A panel discussion focusing on the 50 years since *Brown* and its legacy for access to justice took place at the 2004 Annual Meeting at the Lansing Center. "Connecting the Dots: *Brown v Board* and its Impact on Equal Justice" featured Barbara Arnwine, Lawyer's Committee for Civil Rights; Linda Parker, Michigan Department of Civil Rights; and Frank Wu, Wayne State University Law School.

Policy Recommendations

To weave its access work into broader policy issues, the EAI often encourages the State Bar to adopt positions on proposed legislative or court rule activities. Recent positions were taken on proposed amendments to Federal Rules of Civil Procedure 5(e) to allow federal courts to mandate the electronic filing of all pleadings, and proposed amendments to MCR 6.412 regarding affirmative action in the jury impaneling process.

Current Activities

Access in Alternative Dispute Resolution (ADR) National Bar Association Annual Meeting Program

An Access to ADR program will be presented at the National Bar Association Annual Meeting in Detroit in August 2006. The program will provide an overview of ADR systems, explain both the mediation and arbitration processes, and highlight the differences between the ADR processes and the judicial process so that the importance of diversity and sensitivity in the ADR process is better understood. Data will be presented regarding cultural and ethnic diversity in those systems. Panelists will set forth the standards and qualifications for mediators and will question whether the focus on the importance of being neutral adequately accounts for the need for sensitivity to cultural and disability issues.

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Jury Curriculum In-Service

This program is intended to provide information about the jury process and local courts to teachers in urban settings who could use the materials in humanities, social studies, English, and other studies. It will help teachers prepare students for the MEAP tests, particularly in regard to core democratic values on equality, justice, and freedom. The project will use the short story, "This is Our Town, Too" to demonstrate the values.

Model Defense Plan

The EAI is concerned about criminal defense systems in Michigan because minority populations represent a disproportionately high percentage of defendants and imprisoned people. The Model Defense Plan project joins in the work of many others in Michigan to address a serious problem of how trial-level public defense services are provided to the state's poorest citizens. Michigan ranks at the bottom of states nationwide in the resources provided for the public defense function and is one of only four states providing no state funds to counties.⁶ Assigned counsels are poorly paid, with fees often failing to cover even office overhead. Support services, such as investigators and experts, are rarely available in assigned cases. Those with the least power in the system—the indigent accused—often receive far less than effective representation or a fair trial.

The Model Defense Plan's goal is to see legislation passed that will improve administration, accountability, funding, quality of representation, and the quality of justice in Michigan.

Ethics Project

An information campaign demonstrating the relationship between our formal ethics system and access to justice issues is being developed for presentation to Michigan lawyers. Writings and slide presentations will be used to encourage lawyers to adopt practices that will foster greater access to the legal system by the poor.

Dissemination of Information Regarding Request for Accommodations (MC70)

Court form MC70 should be filed in the event that a party, attorney, witness, or juror, due to a disability, has need of an accommodation of some kind in order to appear in court. Publicity about the form and broader distribution will increase awareness and use of the form, providing persons with disabilities easier access to the courts and legal system. The form and the Michigan Court of Appeals' policy on accommodations is posted at <http://www.michiganequalaccess.org>.

Conclusion

As evidenced by the ongoing good works of the Equal Access Initiative, our commitment remains to increase public confidence in the fairness of the legal profession. The public's perception of the legal profession and of lawyers in particular affects every aspect of a citizen's involvement with and trust in the legal system. Let us work together to improve the perception by improving the reality, by making courts more accessible, by ensuring fair representation on juries, by addressing ethical issues, and by guaranteeing that the "commitment to service" can be an unspoken promise of which neither the court employees nor the citizens needs reminding.

In order to do this, we need more dedicated volunteers like the people currently serving on EAI. There should be a project or topic area listed that is of interest to everyone reading this article, or perhaps that occurs to someone to be included in EAI's goals. We look forward to hearing from you that you would like to be involved in the important work that started with the vision of Roberts P. Hudson and continues through the efforts of the State Bar in the mission of EAI and all of the justice initiatives.

For more information on any of these topics, please visit our website at <http://www.michiganequalaccess.org>. ♦

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Candace Crowley has worked with the State Bar on justice initiatives since early 1999. Before that, she was a civil legal aid lawyer, manager, and director in southeast Michigan and active in many state planning, Access to Justice Task Force, and Open Justice activities. She is a 1976 graduate of Wayne State University, earning a B.A. with distinction, and a 1980 graduate of Wayne State University Law School.

Footnotes

1. Civil Rights Act of 1964, 42 USC 1971; Voting Rights Act of 1965, 42 USC 1973; Americans with Disabilities Act of 1990; Fair Housing Act, 42 USC 3601; Section 504 of the Rehabilitation Act of 1973, the state Deaf Persons Interpreters Act, PA 204 of 1982; Michigan Handicappers Civil Rights Act, PA 220 of 1976; the Elliott-Larsen Civil Rights Act, PA 455 of 1976.
2. The Michigan Supreme Court Citizens' Commission to Improve Michigan Courts.
3. Task Force on Gender Issues in the Courts and Task Force on Racial/Ethnic Issues in the Courts.
4. Similar findings have been documented more recently in other states. See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, 2003; Indiana Supreme Court Commission on Racial and Gender Fairness Report and Recommendations, 2002; and The Nebraska Minority and Justice Task Force Final Report, 2003.
5. (1) The regulation and discipline of attorneys; (2) the improvement of the functioning of the courts; (3) the availability of legal services to society; (4) the regulation of attorney trust accounts; and (5) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.
6. The Spangenberg Group, State and County Expenditures for Indigent Defense Services in Fiscal Year 2002, prepared for the American Bar Association, available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefepend2003.pdf>.

