
Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts

December, 1989

DEDICATION

This report and all the work of the Task Force on Racial/Ethnic Issues in the Courts is dedicated to the memory of the

**HONORABLE G. MENNEN WILLIAMS
February 23, 1911 - February 2, 1988
Former Chief Justice, Michigan Supreme Court**

His life stands as an example to each of us, in its commitment to the principle that every person must be assured dignity, respect and justice in a judicial system based on fairness and equality for all of our citizens.

Task Forces on Gender and Racial/Ethnic Issues in the Courts

611 W. Ottawa Street

P.O. Box 30048

Lansing, MI 48909

517/373-5596

Honorary Chair

Hon. C. Mennen Williams
1987 - 1988

TO: Honorable Dorothy Comstock Riley
Chief Justice
Supreme Court of Michigan

Gender Issues Task Force

Julia Darlow, Chair
Detroit

Judge Marianne O. Baltani
Detroit

Joel M. Boyden
Grand Rapids

William D. Camden
Grand Rapids

Ann Cooper
Grand Rapids

Dr. Bernadine Denning
Detroit

Michael Franck
Lansing

Judge James C. Kingsley
Marshall

Sister Monica Kustelnov
Lansing

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Detroit

Judge Barbara MacKenzie
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Lansing

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Marquette

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Livonia

Grace A. Rudd
Traverse City

Robert B. Webster
Farmington

Judge Carolyn H. Williams
Kalamazoo

Judge Joan Young
Ann Arbor

Racial/Ethnic Issues Task Force

Judge Harold Hood, Chair
Detroit

Michael Bern
Dearborn

David Cable
Saginaw

Barbara Consilio
Ann Arbor

Dr. Larry Crawford
Saginaw

Judge Geraldine Bledsoe Ford
Detroit

Deborah J. Gaskin
Detroit

Dr. Beulah Griffin
Southfield

Alphonso Harper
Detroit

Judge Benjamin H. Logan
Grand Rapids

Samuel E. McCargo
Detroit

Eugene Müssner
Saginaw

Dr. Josef R. Super
Grand Rapids

Judge Cynthia Dune Stephens
Detroit

S. Martin Taylor
Detroit

Judge George J. Theut
St. Ignace

Judge Isidore B. Torres
Detroit

Tary Walker
Marquette

Judge Valdemar Washington
Flint

Project Director

Lorraine Weber

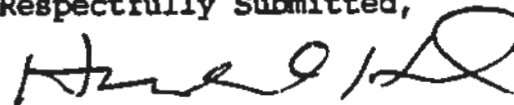
I am pleased, on behalf of the Task Force on Racial/Ethnic Issues in the Courts, to present our final report to you. Michigan has a fine and dedicated judiciary, of which its citizens can be proud, and this report in no way detracts from that.

During the two years that the Task Force has labored, its members have received, reviewed and discussed a vast amount of information from numerous sources both within and without the justice system of our great state. For many of us, this was a unique and enlightening experience, as we sought a better understanding of the ways in which racial and ethnic considerations impact upon the justice system. We have tried, in this report, to convey that understanding in a constructive and objective manner.

It is of course impossible to recognize every person who has contributed to the work of the Task Force. We have mentioned many in the list of acknowledgments which precedes the report, and apologize for any omissions. We would also like to specially acknowledge the contributions of our Project Director, Lorraine Weber and the project secretary, Margo Kortess, both of whom repeatedly faced and overcame temporal and logistical problems.

Finally, we wish to express our gratitude to you for your outstanding leadership and to the members of the Court for their support of this project. We are confident that your continued leadership and support will lead to the accomplishment of the objectives addressed in this report, which will make an outstanding judiciary even more so.

Respectfully Submitted,



Harold Hood, Judge
Court of Appeals
Chairperson

**MICHIGAN SUPREME COURT
TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE COURTS
Task Force Members**

**Honorable Harold Hood, Chair
Judge, Court of Appeals**

Michael Berry, Attorney, Dearborn

David Cable, Circuit Court Administrator, Saginaw

**Barbara Consilio, Court Administrator, Probate and
Juvenile Register, Pontiac**

Larry Crawford, D.D.S., Saginaw

Geraldine Bledsoe Ford, Recorder's Court Judge, Detroit

Deborah J. Gaskin, Attorney, Detroit

Rosalind E. Griffin, M.D., Psychiatrist, Southfield

Alphonso Harper, Judicial Assistant, Recorder's Court, Detroit

Benjamin H. Logan, District Court Judge, Grand Rapids

Samuel E. McCargo, Attorney, Detroit

Eugene Mossner, Attorney, Saginaw

Josef R. Soper, D.P.A., District Court Administrator, Grand Rapids

Cynthia Diane Stephens, Circuit Court Judge, Detroit

S. Martin Taylor, Detroit, Vice-President Community Affairs, Detroit Edison

George J. Theut, Probate Court Judge, St. Ignace

Isidore B. Torres, Recorder's Court Judge, Detroit

Gary Walker, Prosecuting Attorney, Marquette

Valdemar Washington, Circuit Court Judge, Flint

**Staff
Lorraine H. Weber
Project Director**

**Margo Kortes
Project Secretary**

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Catherine Davis
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Hartford Memorial Baptist Church
Dorothy Heydon
Honorable Harold Hood
Michigan Commission On Indian Affairs
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Chrysanthé Kotsis
Honorable Charles Levin
Lewis College of Business
Honorable Benjamin Logan
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Lucille O'Connor
Thomas Oren, State Bar of Michigan
Honorable and Mrs. V. Robert Payant
Honorable Dorothy Comstock Riley, Chief Justice

Riley & Roumell
Catherine Rush
U.S. Sixth Circuit Bicentennial Commission, Honorable Damon J. Keith, Chair
State Bar of Michigan
Honorable Cynthia Diane Stephens
Suellyn Scarnecchia, Associate Professor, University of Michigan
The Spanish-Speaking Affairs Commission
Beverly Walker
Honorable and Mrs. Valdemar Washington
Marsha Nettles
Honorable Carolyn Williams
Wolverine Bar Association
Women Lawyers Association of Michigan
Women Lawyers Association of Michigan Foundation

Michigan Shorthand Reporters Association
Marilynn Dillard, Chair, Pro-Bono Committee

Leif Anderson	Pat Moretti
Monica Brunkel	Karen Morris
Sandi Campbell	Linda Ney
Norma Chanerl	Louise Packer
Ronald DiBartolomeo	Don Pearson
Debbie Elliott	Melissa Portinga
Hilary Epstein	Marie Puchell
Shiela Floyd	Shirley Richard
Laura Fox	Valerie Rissi
Stephen D. Gerger	Kathy Rogalski
Jane Harris	Cynthia Rose
Patricia Hyland	Terri Schulte
Caryl Hyry	Marjorie Seymour
Maureen Jacobson	Clara Shah
Linda Joseph	Carol Tappert
Ilene Kendzierski	Cheryl Warren
Richard Kendzierski	Pat Way
Sandra Larson	Kelley Whittaker
Richard Loberg	Terri Zimmerman

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I. INTRODUCTION

The lack of equal opportunity for minority participation in business, corporate, and professional affairs, is a grave societal problem that will not be solved by legislation and judicial decrees alone. Full and equal opportunities for racial and ethnic minorities will exist only after an informed society rejects discrimination and racism, not only because they may be unlawful, but also because they violate the moral and human values upon which our Nation was founded.'

No segment of society is so strategically positioned to attack minority problems as the legal profession. None has a higher duty to do so. That duty arises out of the unique offices that lawyers hold as ministers of the law, guardians of its conscience, and as teachers and advocates of fairness and equality.

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

In response, the Michigan Supreme Court issued Administrative Order No. 1987-6, attached as Appendix A, creating the Task Force on Racial/Ethnic in the Courts as well as the Task Force on Racial/Ethnic Issues in the Courts.

The Michigan Supreme Court's Task Force on Racial/Ethnic Issues in the Courts was the first of its kind in the nation. Task forces have now been established in six other states, and several additional jurisdictions are considering the creation of minority issue commissions. In the past year, four states (Michigan, Washington, New Jersey and New York) have formed the National Consortium of Commissions and Task Forces on Racial/Ethnic Bias in the Courts. The purpose of this consortium is to provide a national forum for the dissemination of information relating to Task Force work and to encourage favorable consideration by other states for the creation and support of initiatives in this area. To that end a presentation was made to the National Conference of Chief Justices and State Court Administrators in August, 1989.

II. PURPOSE AND SCOPE OF INVESTIGATION

In its order the Supreme Court stated that the mission of the Task Forces was to examine in detail the Michigan court system and to:

Determine whether and to what extent citizens believe that bias exists in the court system.

Determine where the court system actually operates in a biased manner.

Recommend ways to reform the court system to prevent the actual and/or perceived bias.

The initial determination of the Citizens' Commission was that a disturbing percentage of citizens believe that bias exists in the Michigan court system. This statement has been confirmed and supported by the work of the Task Force on Racial/Ethnic Issues in the Courts (hereinafter referred to as Task Force). The information received by this Task Force also indicates that a significant number of Michigan citizens believe that race or ethnic background directly affects the level of justice they receive.

The Task Force identified many areas where race and ethnicity influence conduct, procedures and, in some instances, case outcome. While confident that these factors are not occurring in every court in every case, there is evidence that bias does occur with disturbing frequency at every level of the legal profession and court system. This bias damages the lives of individual litigants, witnesses, judges, lawyers and court personnel, and the court system itself.

The oral and written testimony, as well as research indicates that bias occurs in a variety of circumstances. However, the Task Force focused its investigations on seven major areas: judicial behavior, court treatment, court employment practices, ethics, attorney behavior, criminal justice and jury processes. While all of these areas will be dealt with in this report, the two areas of highest priority are addressed in this introduction.

The Impact of Judicial Behavior and Decision-Making on Litigants, Attorneys, Witnesses, Victims and Court Employees

Racial/ethnic bias exhibited or permitted by the judiciary is the highest priority issue for the Task Force. Judges establish the tone for treatment of individuals within the court, and therefore any judicial display of bias can be particularly damaging. At its most subtle level, discrimination by judges may begin with an unspoken presumption that minorities are "shiftless", "lazy", "violent", "untrustworthy", "over-emotional", (or other negative adjectives). The minority person is then faced with the task of proving exemption from these characteristics - an often impossible task. At its most blatant, judicial discrimination operates with open, hostile and clearly vindictive statements about a person's color, heritage, national origin or culture. Demeaning and patronizing remarks or gestures undermine the effectiveness of counsel or the credibility of witnesses. Cultural or language barriers should not invite hostile treatment or ridicule from the bench. Stereotyping of minority participants may reinforce perceptions that minorities are less articulate, less intelligent and, therefore, less competent than others.

**The Impact of Court Personnel Behavior and
Administrative Policies on Users of the
Court System, Including Cultural and Language Differences**

It is important that the entire court system establish and maintain an environment which is tolerant of cultural differences among users, and which safeguards the dignity and respect of every citizen. Court personnel, especially management staff, significantly affect this environment. When individuals are unable to understand or speak English or speak non-standard English, they are often severely hindered in their ability to function in the court environment. This difficulty not only invites embarrassment, confusion and, in some instances, ridicule; it may negatively affect case outcome.

Implementation

The conclusions and recommendations contained in this report are far-reaching. While many are within the scope and authority of the Supreme Court to accomplish, many are directed at the state bar, law schools, members of the bar and other independent legal entities and thus, are technically beyond the mandate of the Task Force. It is the Task Force's hope that this report will provide a blueprint with which all members of the legal profession can build a strong foundation for equality and fair treatment in our courts and in the legal profession.

III. THE TASK FORCE PROCESS

Although the Gender and Racial/Ethnic Issues Task Forces were conceived as separate, independent investigative bodies, they shared administrative resources and have undertaken many joint projects during the last two years. The Task Forces' operations plan consisted of six phases:

- Issue Identification
- Budget and Funding
- Community Relations and Public Awareness
- Research and Data Collection
- Evaluation and Findings
- Recommendations

Funding

The Supreme Court had determined that limited financial resources were available, and therefore, the mandate to the Task Forces included the responsibility to raise funds to support the project.

The State Court Administrative Office provided a full-time project director, an administrative assistant, office facilities, project management and significant 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 fundraising efforts were made jointly by both Task Forces and solicitations to the general public were designed to encourage equal contributions to both projects. More than \$17,000 in private donations were received. 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. An additional combined grant from the Michigan State Bar Foundation and the State Bar of Michigan, awarded in September, 1989 in the amount of \$11,000 for operating expenses, helped to enable the Task Forces to extend their work from the original completion date of October 1, 1989 to December 1, 1989.

Significant contributions of time and expertise were made by numerous volunteers. The support of these individuals was invaluable. The Task Forces received research assistance from Suellen Scarnecchia, Associate Professor, University of Michigan Law School, Katherine Eyde (Michigan State University), Robert Heimbuch (Kalamazoo College) and Beverly Anthony Walker (Detroit College of Law).

Community Relations and Public Awareness

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 the issues of bias; and to create a momentum for self-improvement within the judicial and legal communities.

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

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

creation of informational material and advertisements distributed to interested individuals, organizations and publications;

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

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

inclusion of information about the Task Forces in organizational journals and newsletters;

appearances on local television and radio talk shows, and speaking engagements with community groups and special interest organizations;

appearances at Judicial, Court Administration and Bar Conferences to discuss the proposed findings of the Task Forces, and to solicit suggestions about possible recommendations; and

distribution of the final report.

Research and Data Collection

The Task Forces' research plan included a variety of methods and sources. Information gathered from public hearings, legal research, review of transcripts and judicial opinions, analysis of court demographics, existing published and unpublished research and surveys of citizen-users, judges, court staff and lawyers created the basis for all conclusions and recommendations.

Public Hearings

In October, 1988 the Task Force began a series of public hearings in eight cities throughout the state. The hearings were held in:

Marquette	October 4, 1988
Traverse City	October 14, 1988
Saginaw	October 17, 1988
Flint	October 20, 1988
Grand Rapids	October 26, 1988
Pontiac	November 1, 1988
St. Joseph	November 4, 1988
Detroit	November 14, 1988
Detroit	November 15, 1988

Public testimony represented a wide range of racial and ethnic backgrounds. The largest number

of minorities appearing were African-Americans and Hispanics. There was also testimony by Native-American, Asian-Americans, Pacific Islanders, Arab-Americans and members of the Jewish and Polish-American communities. The testimony covered a variety of subject matters and concerns.

Throughout the state considerable testimony was received regarding language issues, the availability of interpreters, the confusion and frustration of individuals who cannot speak or understand English, and those who speak non-standard English.

Testimony was also received about the difficulties faced by minority judges and attorneys. Inadequate representation on the bench and in the bar served as the foundation for stories of discrimination, tokenism, isolation and scapegoating. Concerns about the appointment process, access to business, and unfair media attention to predominantly minority courts were expressed. Some testimony indicated that many minority attorneys were unwilling to testify due to concern about possible retribution and negative reaction.

The criminal arena was the focus of a large portion of the testimony. Problems were expressed concerning both sentencing and bond-setting practices. Concerns about prosecutorial discretion, such as charging practices and plea bargaining were also raised. Additional issues were identified regarding the disparate treatment of minority victims when the defendant was not a member of a minority group.

All Task Force members attended at least one hearing and many attended several. Although the testimony was necessarily anecdotal, the repetition of certain themes from witnesses of diverse backgrounds underscored the severe and complex problems relating to race and ethnic bias in the Michigan court system.

A "special" 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. Members of these two organizations participated as facilitators and panel members. A videotape of the testimony of was provided to the Task Forces. This hearing provided significant testimony from minority women. See Appendix B for a list of individuals testifying at all hearings.

Court Employment Questionnaire

During the public hearing phase, testimony was received which suggested that the absence of minorities in policy-making positions within the courts was indicative of the overall failure of the courts to recognize or serve the needs of minorities. Conversely, there was testimony that where minority persons were present in policy making and decisional roles within the courts that the overall system provides better service to minorities. It was, therefore, important to the Task Force to study court system personnel patterns.

The Court Employment Questionnaire was designed to get information about the hiring, salary, promotion and disciplinary practices of Michigan courts. Similar to the Equal Employment Opportunity Commission reporting form, it requested 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 asked to identify the number and types of employment discrimination complaints they had received and the actions taken. This research instrument was designed to answer the following questions about the Michigan court system:

Have courts established equal employment policies and affirmative action plans designed to assure reasonable representation of women and minorities in the work force?

Are hiring practices designed to maximize access to the court with a fair and equitable opportunity for hire by all qualified individuals regardless of gender, race or ethnic origin?

Are promotional practices fair and equitable and are they applied consistently for all employees regardless of race, gender or ethnic origin?

Are disciplinary proceedings conducted in accordance with an established, known procedure applied consistently to all employees?

The most striking impression conveyed by the data collected in this instrument is the lack of standardized procedures for employment operations within the Michigan court system.

The Court Employment Questionnaire was sent to all 238 trial courts in the state. Though response was voluntary, the overall response rate was 67%. The Task Force appreciates the level of cooperation from courts demonstrated by the response to this survey. The following table reflects the rate of return on those questionnaires and the distribution of responses throughout geographic regions.

TABLE III-1

COURT EMPLOYMENT QUESTIONNAIRE RESPONSE

	Circuit Court	District Court	Probate Court	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%)

Attorney Survey Project

In September, 1988, Formative Evaluation Research Associates of Ann Arbor (FERA) was retained by the Task Forces following a competitive bidding and interview process to design and implement a survey of attorneys practicing in the Michigan court system. This study was designed to examine the impact of racial/ethnic and gender bias on attorneys' experiences. Reports and working papers of gender bias surveys in other states were reviewed to inform the development of the questionnaire. While most of the questionnaires formulated by other states were oriented toward gathering attitudinal information, the Michigan Attorney Survey was designed to correlate attitudes and perceptions of bias with case outcomes.

The FERA survey was designed to determine whether attorneys who believe they 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 experience such bias. It was developed to allow for comparison of the perceptions of bias in the court system among four major sub-groups: male and female attorneys and minority and majority attorneys.

Sample Selection and Survey Implementation: A sample of 900 attorneys was selected. The selection of males and females was controlled in order to ensure sufficient sub-samples of males and females. A 50% minority/majority selection was sought, but was not obtained because minority/majority indicators do not appear on the State Bar of Michigan membership list from which the major sample was drawn. In order to compensate, Wayne County, where a majority of the female and minority attorneys practice was "over sampled".

Attorneys in the sample were randomly selected principally from two lists: the State Bar of Michigan's membership list, and a list of minority attorneys provided by the Wolverine Bar Association, a professional association composed primarily of minority attorneys. A third list of the membership of the Women Lawyers Association of Michigan was used to supplement the female attorney portion of the sample to ensure the desired fifty percent male/female split. See Appendix C for a geographic distribution of responding attorneys.

TABLE III-2 SOURCES FOR THE SAMPLE- ATTORNEY SURVEY

Frame	Males	Females
State Bar of Michigan	225	143
Wolverine Bar Association	225	104
Women Lawyers Association	---	104
	—	—
TOTAL	450	450

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 Hon. Dorothy Comstock Riley, Chief Justice, Michigan Supreme Court, and Donald Reisig, President, State Bar of Michigan. See Appendix D. The letter urged attorneys to recognize the importance of the survey effort and to complete and return the questionnaire. Announcements of the study were made in the Journal of the State Bar of Michigan and the Wolverine Bar Association newsletter.

A total of 333 questionnaires was returned. The response rate for the survey was 45.6%. The sample to whom questionnaires were mailed included both attorneys who practiced in the courts and attorneys who did not. However, only attorneys who had represented clients in the courts were asked to complete the questionnaire. Attorneys who did not represent clients in the courts were instructed to return their questionnaires with only demographic data. Such questionnaires were not analyzed for statistical purposes but were included in the overall response rate.

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

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

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

	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	2.6%(n = 175))	47.4%(n = 158)	100%(N = 333)

* Total sample = 333

Nearly 61%(n = 198) of the responding attorneys reported that they had been representing clients in the Michigan courts for 10 years or less. Differences between males and females are 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 been representing clients in the Michigan courts for 5 years or less.

Across the 31 counties represented in the sample, 46% (n = 143) of the attorneys listed civil litigation and general practice as their primary area of practice. Over 50% of the attorneys indicated that at least half of their practice involved representing clients in court.

TABLE III-4

DEMOGRAPHICS

Admission to the Bar Association

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

GENDER			
	Male	Female	Total
1966 and Earlier	36 11%	1 21%	37 6%
Between 1967 and 1979	87 50%	46 30%	133 49%
1980 and Later	51 29%	108 70%	159 48%
Number of Respondents	174	155	329
MINORITY			
	Male	Female	Total
1966 and Earlier	8 11%	8	6%
Between 1967 and 1979	38 50	22 32%	60 42%
1980 and Later	30 39%	46 68%	76 53%
Number of Respondents	76	68	144
NON-MINORITY			
	Male	Female	Total
1966 and Earlier	28 11%	1 1%	29 16%
Between 1967 and 1979	49 50%	24 28%	73 39%
1980 and Later	21 21%	62 71%	83 45%
Number of Respondents	98	87	185

TABLE III-5**DEMOGRAPHICS****Age of Respondents**

Question: What is your age?

GENDER			
	Male	Female	Total
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
MINORITY			
	Male	Female	Total
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
NON-MINORITY			
	Male	Female	Total
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

Findings: The findings were placed in the context of a demographic profile of four sub-groups of attorneys who practice in the courts: male attorneys, female attorneys, minority attorneys and majority attorneys. Data was also analyzed to allow for comparison between gender groups within minority and majority subgroups.

The findings showed that the professional experience of the respondent attorneys, including how they perceived that they were treated by colleagues and the judiciary, was similar to the way they believe other lawyers and litigants were treated in the system. Non-minority 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 majority male attorneys. There were few differences between the responses of minority males and females. In the area where minority males and females differ, domestic relations, majority and minority female attorneys also differed in their responses.

Majority male attorneys perceived biased behavior less often than the other subgroups. Specifically, the respondent non-minority 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 reported that they had. The respondent majority male attorneys also reported that their female and minority colleagues were interrupted, addressed less formally, given less credibility or joked about far less often than female and minority attorneys reported these behaviors to occur. The data showed that this perspective was also carried over into case outcome areas. Majority males were less likely than any other sub-group to see instances of unfair or insensitive behavior resulting in the disparate treatment of litigants.

Similar contrasts in perspective are apparent in the findings of how often the responding majority attorneys, compared to the responding minority attorneys, saw examples of biased treatment of racial/ethnic minorities in the courts. Compared to the responding minority attorneys, majority attorneys rarely saw attorneys and judges giving unfair or insensitive treatment to racial/ethnic minority attorneys, litigants, witnesses, jurors or judges.

Court-User Survey Project

The survey conducted by the Institute for Social Research at the University of Michigan (ISR) at the request of the Citizens' Commission to Improve Michigan Courts (Commission) found that 37% of Michigan residents agreed that courts do not treat blacks as well as whites and that 34% did not feel that women were treated the same as men. These figures increased dramatically when only the affected groups were analyzed. On the basis of these statistics, the Commission found that there was a significant "perception" of both gender and racial bias in the operation of Michigan courts.²

The ISR Survey was a preliminary assessment of a complex problem. There had been little research which looked in detail at the impact of the court system on the citizen who encounters it. Courts have been studied primarily through the eyes of the people who are most responsible for the status quo - judges, administrators, staff and attorneys.

On November 1, 1988 the State Justice Institute awarded a \$64,000 grant to the Task Forces to conduct a citizen-user survey. This survey project, named the Michigan Court User Survey, was intended to provide a mechanism for viewing the judicial system through the eyes of its constituency - citizen participants.

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 recent experiences with the Michigan court system and to assess the impact of gender and racial/ethnic factors on those attitudes and experiences.

FERA was commissioned by the Task Forces to conduct the study. The study was designed 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 system that litigants identify as being unfair? In what areas of the court proceedings does bias occur? What behaviors in the courtroom lead litigants to feel discriminated against because of their gender or race/ethnicity?

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

To what extent does perception of bias indicate actual bias? To what extent is the perception of bias supported by other evidence that bias occurred? 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 occurrence of bias in large and 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. As a result of these meetings, several assumptions about the study were made by the joint research advisory subcommittee to guide the research design and implementation of the study. These assumptions were:

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

An in-depth study of a sample of a relatively well defined subgroup of the population of litigants will allow for the possibility of developing more credible findings with greater accuracy than a simple random survey of all litigants.

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

The experience of the court user outside the courtroom will be included in the investigation; however, the primary focus will be placed on judicial behavior and decision making.

The study is only one of several research efforts being conducted by the Task Forces to examine the nature and extent of bias in the court system and, therefore, should be quite focused on the litigants' perspective.

The basic research design was 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 5% (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".³

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 interview schedule 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. Survey responses were validated by the analysis of selected case records.

The sample was designed to meet the following specifications:

A total sample frame composed of 2000 litigants, with a desired resulting sample of 720 respondents.

A total sample frame comprised of 50% males and 50% females.

A proportion of Domestic Relations cases to equal 50% of the total sample frame.

An equal distribution of Personal Injury, Assaultive Felony and Small Claims cases to equal 50% of the total sample frame.

A sample of litigants obtained from large and small circuit jurisdictions and from high and low minority population areas.

The survey project encountered an unexpected series of obstacles in completing its sample:

A number of sample source lists were not obtained from various courts in time to conduct interviews.

Many counties lacked a sufficient number of litigants from which to select the sample as it was originally designed. This was particularly true in small courts with respect to selecting the sample for Domestic Relations, Personal Injury and Assaultive Felony cases. When this situation occurred, all litigants were selected from the list. Five counties were added to the sampling frame to supplement the sample of litigants in such counties.

There was a limited number of females from which to select the desired female portion of the total sample, particularly Personal Injury and Assaultive Felony case types in certain small counties. When this occurred all females were chosen from the list; more males, in addition to the male portion of the sample, 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 recent telephone numbers and addresses for litigants. Though directory assistance and telephone books were employed, a significant number of litigants could not be located. Because of these obstacles, samples of sufficient size for particular court types were not always met.

In view of these deficiencies, findings from the survey should be viewed as a useful but limited data source. The unique value of the survey is that data was obtained from over 500 litigants who were not actively seeking a forum to express their dissatisfaction with the court system.

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 a diverse group.

Qualitative analysis of several open-ended questions provided information about the nature of bias experienced by court users, systemic bias in the Michigan court system, sources of bias as felt by court users and user recommendations on how to ensure that all users of Michigan trial courts will receive fair and equal treatment.

As a result of these sampling problems, the required sample size was not met. The following number of respondents were interviewed:

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

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

* Total sample = 539

TABLE III-7:

STUDY SAMPLE BY COURT TYPE

	Large Circuit Court	Small Circuit Court	Total
HIGH Minority Population	27%(n = 146)	32%(n = 174)	59%(n = 320)
LOW Minority Population	10%(n = 53)	31%(n = 166)	41%(n = 219)
Total	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%)

TABLE III-9: STUDY SAMPLE BY CASE TYPE

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

Because of the approach to the design of the sample and the problems encountered in its implementation, it is important to note the limited generalizability of the findings from this study. The findings presented in this report will focus on individual responses. These responses are the feelings and perceptions of particular individuals who were interviewed. While survey findings are informative and suggest directions for future investigation, inferences with respect to the general population of court users are not appropriate.

The experience gained with respect to survey design and the baseline data collected will be an important resource for ongoing and future data collection projects of other states involved in the investigation of gender and racial/ethnic bias in the court system.

While several other states have undertaken studies dealing with gender bias, Michigan is the first state in the nation to attempt to document and evaluate the influence and impact of racial/ethnic bias on the experiences of public users of trial courts. An important 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 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 throughout the nation.

Judicial Survey Project

Both Task Forces identified the investigation of judicial behavior and decision-making process as their highest priority. The Task Forces recognized that the judge establishes the atmosphere of the court and affects all participants in the system - attorneys, litigants, witnesses and staff. Moreover, judges would likely be charged with the implementation of many recommendations of the Task Forces. It was essential, therefore, that the Task Forces draw upon judges' knowledge and experience in formulating findings and constructing 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 of judges in the court system and on the performance of judges on the bench in both substantive and procedural areas.

Several specific categories of questions were formulated:

- fairness and sensitivity of participants in the courtroom;

- judicial qualifications and selection;

- treatment of lawyers, witnesses and parties;

- domestic relations issues, including custody, support, alimony, property and violence issues;

- criminal issues, including sentencing, bail, plea bargaining and probation issues; and

- civil damages.

The respondents for this survey include judges from all court levels. When compared with the actual distribution of judges in Michigan across gender and racial/ethnic lines, the respondent return rate for the survey was:

TABLE III-10**JUDICIAL SURVEY RESPONDENT RETURN RATE**

	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%
Total	574	256	44.5%

TABLE III-11**JUDICIAL SURVEY 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. The 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. As a result of this survey the Task Force identified areas in which judges believe that bias existed and affected the outcome of their performance in the system. The research findings provided the Task Forces with both qualitative and quantitative results on which to base its recommendations.

Review of Research and Literature

The Task Force reviewed numerous articles about racial/ethnic bias and its effect on the legal system authored by lawyers, judges, social scientists and academic researchers. In addition, the Task Force reviewed published materials from other states. A bibliography of materials is attached as Appendix E.

ENDNOTES

1. American Bar Association Task Force on Minorities in the Legal Profession Report with Recommendations, January, 1986.
2. Citizens' Commission to Improve Michigan Courts Final Report and Recommendations, p. 6.
3. Vrooman, Court User Study Information Verification, November, 1989.

IV. ANALYSIS AND EVALUATION

In reviewing the material before it, the Task Force identified some incidents of racial/ethnic bias in the Michigan court system. The conclusions and recommendations were adopted after careful examination of all information obtained with the resources and time allotted. However, this information was far from exhaustive, and there remain many areas of investigation and sources of information which the Task Force believes should be pursued.

The Status of Minority Women

Most information regarding gender or racial/ethnic bias does not include a category for minority women. Minority women are either reflected in the statistics under racial or gender bias. This "category blending" fails to measure the impact of race/gender bias on minority women. Many sections of this report will provide insight into the effect of racial/gender bias on minority women within the courts in the hope that this special focus will underline the special problems raised by the impact of dual discrimination and bias.

The Use of Qualitative and Quantitative Data

A topic of much discussion within the Task Force was the reliability of the information received and the extent to which such information supported proposed conclusions. The Task Force sought a balance between quantitative and qualitative evidence, in the belief that cumulative information from a variety of sources would create the most complete and accurate analysis of issues of racial/ethnic bias within the system as a whole. No one single source of data or comment was viewed as conclusive, and none predominated. Conclusions and recommendations were drawn from an accumulation of qualitative and quantitative data.

More than 1,200 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, surveys, telephone interviews, and presentations to the Task Force. In many instances, people testified on behalf of organizations and associations with special interests and expertise. The contributions of these groups were valuable sources of information. The opinions and views expressed reflected a wide spectrum of attitudes and experiences.

Where surveys provided validated projections for the larger population (as in the Attorney Survey), the data was considered in that light. Where such projections were not statistically validated (as in the Court User Survey), the collected information was considered without projection to the larger population but only as representative of the experience and perception of the individual respondents. Because members of the Task Force are individuals with significant collective expertise and experience in the Michigan court system, many believed it appropriate that the information collected be filtered through and evaluated in the light of their collective experience. However, the Task Force systematically reviewed all supporting documentation to confirm that each conclusion was based upon information before the Task Force and could be supported on the record.

Definition of Minority

The mandate from the Supreme Court charged the Task Force to investigate racial/ethnic bias as it affected all individuals in the state. Early in the course of its work, and in the light of time and funding constraints, the Task Force determined that it would not be possible to investigate and report on the impact of bias on all racial and/or ethnic groups within the state. Cultural, racial and ethnic stereotypes manifest themselves in many ways and in relation to many different populations.

Consequently, references in this report to minorities include African-Americans, Hispanics, Asian-Americans, Pacific Islanders, Native-Americans and Arab-Americans.

Context for the Report

The Task Force was encouraged by the positive reception it has received from the bench, bar and other participants in the justice system. Illustrative of this is significant support of the State Bar, the Michigan State Bar Foundation, the Sixth U.S. Circuit Bicentennial Commission and other bar associations and foundations; the contributions of many judicial and court administration groups; and the extraordinary contribution of many volunteers. Equally encouraging were the efforts toward positive change undertaken by many participants in the legal system during the Task Force process. Such efforts reflect the good faith and honest concern of professionals who wish to take a good system and make it better. The Task Force believed that the judges, lawyers and court personnel of Michigan are fully committed to the delivery of justice fairly, honestly and dispassionately. The Task Force recognized this fundamental strength even though it was mandated to cast light upon some weaknesses of the system.

The Task Force's intent was not to call into question individual persons, courts or case decisions, but rather to illuminate the ways that bias and discrimination can hamper the delivery of justice and to recommend constructive methods for eliminating it from the Michigan court system.

With these points in mind, it was clear to the Task Force that racial/ethnic bias exists within the judicial and legal systems of this state in forms both overt and subtle. Its two year investigation leading to this conclusion is chronicled in the following pages. It is our belief that the elimination of bias and the recovery of public confidence in our system of justice must become and remain a priority for each member of that system. The successful implementation and monitoring of the recommendations contained in this report is the beginning. It is our hope that the Supreme Court will continue to provide the leadership and initiative necessary to make these goals a reality.

V. COURTROOM TREATMENT OF MINORITY LITIGANTS, WITNESSES, JURORS, AND ATTORNEYS

The Task Force received information indicating that minority litigants, witnesses, jurors and lawyers are treated differently in court solely on the basis of race and ethnicity. These differences manifest themselves in comments addressed to minorities both on and off the record by judges and lawyers, uses of discretion on the part of judges and limitations on access to court personnel and services.

TREATMENT OF MINORITY LITIGANTS, ATTORNEYS AND WITNESSES

There is unanimity in the acceptance of the principle that race and ethnicity should play no role in determining how persons are treated in the courtroom. However, oral and written testimony was received throughout the state which confirmed that this principle is not always practiced in our courts. The responses to surveys among minority and female court users, lawyers, and judges showed the negative impact of race and ethnicity on the treatment of litigants, witnesses, and attorneys.

An attorney's treatment in court affects the ability to serve clients. The manner in which an attorney is treated by the judge or other participants in the judicial system affects how the attorney's professionalism and competence are assessed. This treatment may affect both case outcome and the litigants' perception of the system.

Judicial Behavior

On-The-Record Comments

Witnesses at public hearings cited judicial commentary as varied as an on-the-record noting of a Muslim woman's traditional attire¹ to an inquiry reported to have been made to a Hispanic defendant, "What do you think would happen to me if I were in your shoes in Mexico? Do you think I would get a fair trial?"² A letter was received from the Director of a University Clinic recounting a judge's on-the-record references to race and ethnicity throughout a trial, "He kept saying things like, 'I know this sounds racist but these people act this way because it is in their blood....' That same writer noted that, 'culture can affect behavior but you get the feeling that in this court that he or she did not act in conformity with the court's stereotype'.³ The court's questioning during voir dire was reported in testimony of a human services worker who told of a judge's immigration related questions directed toward prospective jurors with Spanish surnames.⁴

A letter received from a concerned mother detailed an offensive ethnic remark made by a judge when "he told [her] son [that] he was Irish and the Irish are known for their drinking". The woman goes on to state, "I now can understand why the Black people, the Hispanic people, the American Indians, and others complain about the judicial system making offensive and derogatory remarks..."⁵

On-the-record bias may also be expressed by nonverbal behaviors such as expressions of frustration, frowns, rolling of the eyes or general inattentiveness. Both surveys and public hearing testimony underscored the frequency of this type of behavior toward minorities. A circuit-riding African-American administrative adjudicator gave testimony on the difference in the behavior of his majority colleagues when he was hearing cases in their jurisdiction.⁶ It is significant that the majority male lawyers and judges who responded to the surveys did not perceive that such behaviors exist.

TABLE V-1**EXAMPLES OF BIAS IN THE COURTS**

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

(n = 276)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 122)	15%	45%	20%	20%
Non-Minority Attorney (n = 154)	1%	10%	13%	76%

TABLE V-2**EXAMPLES OF BIAS IN THE COURTS**

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

(n = 274)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 120)	14%	42%	22%	23%
Non-Minority Attorney (n = 154)	2%	9%	16%	73%

TABLE V-3

EXAMPLES OF BIAS IN THE COURTS

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

(n = 268)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 114)	13%	32%	26%	29%
Non-Minority Attorney (n = 154)	3%*	8%	11%	78%

* "Always" response = 0%.

Off-the-Record Comments

A lawyer reported a judge's extensive comment on the subject of race in her presence. She quoted the judge as stating that, "He doesn't like the way we have dealt with race...we made our first mistake starting with the Civil War." Several attorneys and court users gave anecdotal information of this kind, sometimes identifying a particular adjudicator. More often than not, however, the comment was without a particular name due to the concern voiced by the representative of the Wolverine Bar Association, that quick reprisals would ensue.⁸ A fear of reprisals and negative impacts on case outcomes, which testimony revealed, left minority practitioners believing that there was no redress for their grievances.

A survey of Wolverine Bar Association members stated, "Attorneys who practice out of Detroit are constantly facing the effects of subtle racism, and they must tolerate the unequal treatment without complaint because of the enormous power these judges exercise in their jurisdictions."⁹ The off the record comments were a particular concern for lawyers who underscored that such comments are not readily susceptible to appellate scrutiny.

In their article, "The Judges Book-Avoiding Race and Gender Bias in the Courtroom, authors Ronald L. Ellis and Lynn Hecht Schafran state:

Consistency in forms of address and treatment are important to avoid the impression that one person is being favored over another, and to prevent denigration of one person's status as compared to another's. Calling a white male lawyer by his first name and inviting him into chambers while calling a black male lawyer "Mr." and leaving him behind in the courtroom demonstrates a relationship between the judge and lawyer and implies favoritism.¹⁰

Several attorneys throughout the state cited examples of behavior which illustrated patronizing and differential treatment on the part of judges and colleagues. Of concern was the number of reported incidents of racially motivated remarks, slurs and "jokes". Two examples of these type of remarks were the following:

A judge was reported as commenting in a courthouse lunchroom about attorneys in a local firm and referring to the three partners as a "runt, a cunt, and a nigger."¹¹

A letter was received by the Task Force from an attorney describing a joke which was told by a judge from the bench. "What is a geisha's favorite holiday? Answer: Erection day".¹²

Exercises of Discretion

Minority litigants and lawyers indicated their belief that judicial discretion was exercised against them, from the granting and enforcement of domestic violence injunctions to bail decisions. Attorneys noted that minority lawyers were denied adjournments in circumstances where their majority colleagues would get them, or delayed in their trial date in circumstances when majority lawyers would get firm trial dates. In response to questions concerning the interruption of court presentations by judges, minority lawyers indicated their belief that they were interrupted more often than majority lawyers. The inability to fully argue points of law can certainly affect the ultimate case outcome.

An African-American female attorney stated in her public testimony, "Offering assistance to the white attorneys in the guise of suggestions for changes in approach motions or designing of the case, where such benefits are not afforded minority attorneys can seriously impact the outcome of the case."¹³ Some of the testimony focused not upon a judge's action but instead on the failure to prevent the inappropriate actions of others whether court staff, lawyers or litigants. Neither the court rules or the canons were perceived to be adequate to alleviate these kinds of problems.

Attorney Behavior

From attorneys who address witnesses and litigants by first name if they are minority, to attorneys who make racial or ethnic comments in the course of in-chambers discussions, there was testimony concerning inappropriate attorney behavior.¹⁴ It was suggested that attorneys acting as mediators factor race and ethnicity into their evaluation of a cases settlement value.¹⁵ Female and minority attorneys responded to survey questions by noting that they had heard inappropriate references or comments from other lawyers.

TABLE V-4

EXAMPLES OF BIAS IN THE COURTS

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

(n = 282)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 125)	16%*	53%	18%	13%
Non-Minority Attorney (n = 157)	1%*	15%	23%	61%

* "Always" response = 0%

TABLE V-5

EXAMPLES OF BIAS IN THE COURTS

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

(n = 279)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 123)	20%	56%	15%	9%
Non-Minority Attorney (n = 126)	5%	21%	23%	59%

TABLE V-6**EXAMPLES OF BIAS IN THE COURTS**

Question: Within the past five years how often have you observed an attorney giving unfair treatment to a racial/ethnic minority witness?

(n = 275)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 120)	19%	53%	13%	15%
Non-Minority Attorney (n = 155)	3%*	15%	20%	62%
* "Always" response = 0%				

TABLE V-7**EXAMPLES OF BIAS IN THE COURTS**

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

(n = 269)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 116)	8%	28%	31%	33%
Non-Minority Attorney (n = 153)	1%	9%	12%	78%

TABLE V-8

EXAMPLES OF BIAS IN THE COURTS

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

(n = 277)	Always and Usually	Sometimes	Seldom	Never
Minority Attorney (n = 121)	8%	35%	27%	30%
Non-Minority Attorney (n = 156)	3%	6%	10%	81%

A perception exists among some majority attorneys that minority women are incompetent in their knowledge of the law and that they provide "shoddy" representation for their clients. Majority male attorneys have openly questioned a minority female's credibility. In a report to the Task Force an independent researcher reported several situations where bias against minority females was exhibited.¹⁶

...they (Majority males) insist that we must prove that we are attorneys, daily. White males only have to have a "P" number, no other proof necessary.

Frequently it was reported that minority female attorneys are mistaken for the court reporter, secretary, or a witness by majority attorneys. On rare occasions minority male attorneys have made the same assumption. Many majority attorneys, male and female, are disrespectful and condescending towards minority female attorneys. Both use the terms "honey" or "dearie" when addressing a minority female attorney. Another minority female recounted the following situation:

I was before a promotion review panel comprised of two majority males and one majority female. While I was addressing the panel, they proceeded to share and eat "brown bag lunches" and carried on unrelated, personal conversations. This was not done with any of the majority female candidates.

Only the broadest interpretation of the Rules of Professional Conduct addresses whether it is an attorney's duty to abstain from or report this behavior.

Administrative Personnel

Witnesses made reference to the impact of court personnel on the quality of treatment afforded minorities in the courts. Minority lawyers noted that once outside of Detroit, it was assumed that they were criminal defendants or witnesses instead of advocates. Testimony was given regarding special access that majority advocates and parties have to court facilities and personnel. In some instances majority attorneys were given access to court files themselves, while minority attorneys were not.

APPOINTMENTS AND COMPENSATION OF ATTORNEYS TO FEE GENERATING POSITIONS

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 the State of Michigan in 1986, \$43,612,176 was spent for the representation of indigent persons in the criminal justice system.¹⁷ This figure includes state funding for appellate services and local county funding for representation at the original trial as well as other funding from Federal and private sources. Significant funds are also expended on assigned counsel for probate hearings on competency and incapacity hearings, and other mandated legal services. Courts are also required to appoint guardians-ad-litem and special fiduciaries in some cases. In many instances these persons are paid from private estate funds.

Each court in Michigan chooses one or a combination of three types of indigent representation to provide criminal 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 trial courts exercise enormous influence on the selection, qualification and payment of assigned counsel. To the extent that such assignments are affected by the race or ethnicity of an attorney, there are serious consequences for the integrity of the system, the representation of that client and the economic and professional status of lawyers.

The Task Force collected data on this issue through public hearing testimony, and the attorney and judicial surveys. Testimony on the part of minority practitioners 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 high economic reward.¹⁸

...procedures relating to criminal, juvenile and probate court assignments ... are worthy of review for this Task Force. The reports that we [Wolverine Bar Association] have received suggest that the system employed and commonly understood by those who use it does not overcome the "old boy" syndrome complaint since the basis for participating in these attorney assignment systems, in large measure, is centered on who you know. This "who you know" approach has a tendency of locking out those who are unfamiliar with the practice... the present practice of arbitrary [and] capricious application tend(s) to exclude a higher percentage of Black lawyers and other minorities.¹⁹

Another individual stated:

Another major area where racism manifests itself is in the court appointed system in Western Michigan, both in the operation and in the impact, non-whites are sacrifices to the system. There is unmonitored favoritism with preference being given and taken away in arbitrary fashion. ... I was shocked and surprised to find that individuals with less qualifications and with less experience were receiving major felony appointments. To this day, and I've been in this city eight years, I've never received one criminal defendant appointment a major case, i.e., murder.²⁰

This testimony was supported by a review of the survey data. Over 80% of the respondents to the Task Force's judicial survey were in positions where they assigned attorneys to fee-generating positions. The following table reflects the assessment of those judges when asked about their own assignment patterns for minority attorneys.

TABLE V-9

FEE GENERATING APPOINTMENTS

% Minorities Assigned	Majority Male	Majority Female	Minority Male	Minority Female	Total
0	50.4%	10%	0	0	42.3%
1-5	13.5%	0	0	0	5.7%
6-10	11%	0	10%	0	16.7%
11-15	2.4%	10%	0	0	2.6%
16-20	4.7%	10%	0	0	5.1%
21-25	3.1%	0	0	22.2%	3.8%
26-30	1.6%	10%	0	0	1.9%
31-35	2.4%	0	0	0	1.9%
36-40	3.1%	10%	0	11.1%	3.8%
41-50	3.1%	20%	50%	33.3%	9%
51-60	.8%	0	20%	11.1%	2.5%
61-70	1.6%	0	0	0	1.2%
71-80	.8%	0	0	22.2	2.5%
81-90	.8%	0	0	0	.6%
91-100	0	0	10%	0	.6%

TABLE V-10 FEE GENERATING APPOINTMENTS - COMMENTS

Question:	If you were asked to indicate the reason for the percentage of minorities you have appointed to fee-generating assignments, which of the answers below would you most likely give?	
(44)	19%	I actively seek out minority attorneys for appointments and have been successful in increasing the number of appointments I make.
(91)	39.4%	I would like to appoint more minorities, but there are not enough minority attorneys available in my jurisdiction.
(0)		The minority attorneys that I know are not qualified to handle the cases in my court.
(5)	2.2%	I do not know enough about the qualifications of the minority attorneys in my jurisdiction.
(63)	27.3%	I believe that I appoint a good representative mix of attorneys which includes both minority and non-minority attorneys.
(0)		I am concerned that litigants/defendants will be uncomfortable if represented by a minority attorney.
(35)	16%	Other

This data is supported by the attorney survey where thirty-five percent of the minority attorneys surveyed believed that they seldom or never had the same access to fee-generating appointments as non-minority attorneys while only 11% felt that they always or usually had such access.

APPOINTMENT AND COMPENSATION OF MEDIATORS, ARBITRATORS AND SPECIAL MASTERS

In response to citizen's concerns regarding case delay, the courts in this state utilize several settlement tools, including mandatory mediation, arbitration, and special masters. Testimony was offered at the public hearings by litigants and bar organizations regarding the under-valuation of cases where either a party or a lawyer were members of racial and ethnic minorities.²¹ Specific note was made by the Wolverine Bar Association that a dearth of minority mediators may contribute to this phenomena.²² The appointment of mediators is within the control of the courts. Concern was expressed that court referrals or appointments of mediators were racially skewed. A cursory review of the roster of mediators in the six largest counties in the state yields the following data:*

TABLE V-11

MEDIATOR APPOINTMENTS

COUNTY	TOTAL MEDIATORS	MINORITY MEDIATORS	% MINORITY MEDIATORS
KENT	256	1 (African-Amer.)	< 1 %
GENESEE	84	1 (African-Amer.)	< 1 %
OAKLAND	965	information not available	
MACOMB	156	information not available	
SAGINAW	132	5 (Total) 4 (African-Amer.) 1 (Hispanic)	3%
WAYNE	632	24 (Total) 20 (African-Amer.) 2 (Hispanic) 1 (Arab-Amer. surname)	3.6%

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

The above figures were corroborated by the results of the Attorney Survey showing the extent to which attorneys believe that mediation panels include a cross-section of racial/ethnic minority attorneys.

TABLE V-12

PERSONAL INJURY

Question: Mediation panels include representatives of a cross-section of racial/ethnic minority attorneys in a specific jurisdiction.

(n = 176)	Always and Usually	Sometimes	Seldom and Never	No Basis For Opinion
Minority Attorneys				
Male(n = 40)	8%	8%	83%	3%
Female(n = 36)	0%	8%	89%	3%
Total(n = 76)	4%	8%	86%	3%
Majority Attorneys				
Male(n = 60)	26%	22%	30%	22%
Female(n = 40)	8%	18%	61%	15%
Total(n = 100)	19%	20%	42%	19%

* "Always" response = 0%

No data is available on the practice of appointing arbitrators and special masters.

The absence of minority mediators affects several areas of concern. First, it raises questions as to the commitment of the appointing authority to the principle of equal and fair representation of all people in our justice system. Secondly, it perpetuates the public perception that minority individuals will not receive an unbiased determination from the mediation process. Third, the presence of minorities in the mediation process may act as a check upon the level of treatment received by other minority litigants or attorneys appearing before the panel. Finally, it impacts upon the ability of minority attorneys to professionally and economically benefit from the opportunity to sit as a mediator.

CONCLUSIONS

Courtroom Treatment of Minority Litigants, Witnesses, Jurors and Attorneys

1. There is a perception on the part of racial and ethnic minorities and also of many non-minorities of the justice system's discrimination and insensitivity. There is evidence that such behaviors do exist.
2. A minority lawyer's ability to attract and service clients is affected by the quality of treatment afforded the lawyer by judges, court personnel and other lawyers. Testimony was received by the Task Force which indicated that minority lawyers and litigants are treated differently. The apparent ease of access that non-minority lawyers have to judges and court personnel is as detrimental to the minority lawyer as overt negative behaviors and comments.

Appointments and Compensation of Attorneys to Fee Generating Positions

3. In determining the access of minority attorneys to court appointments, there is evidence that minority attorneys do not receive an equitable share of the available appointments in every jurisdiction of the State, nor do they have the same access as majority attorneys to cases which are more serious in nature, higher profile or more economically rewarding.

Appointment and Compensation of Mediators Arbitrators

4. Mediation panels, arbitrators and special masters do not include a representative number of minority participants.

RECOMMENDATIONS

Courtroom Treatment of Minority Litigants, Witnesses, Jurors and Attorneys

1. Both judges of courts of record and quasi-judicial officers should be educated about this issue as a regular part of their on-going continuing legal education. Wherever possible such education should be a part of training on substantive areas of law and judging as a curriculum component of all training which is offered to the bench on a required or non-mandated basis (MJL, ICLE, Civil Service and Appropriate Administrative Agencies).
2. Educational materials and guidelines should be amended and designed to identify and appropriately advise judges on problems related to racial/ethnic issues and judicial decision-making.
3. Attorneys should be educated about these issues as a regular part of their on-going Continuing Legal Education. Wherever possible such education should be a part of training on substantive and procedural areas of law as a curriculum component of all training which is offered to the bar on a required or non-mandated basis.
4. The Administrative Procedures Act (MCL 24.279; MSA 3.560 (179) Presiding Officer's Designation, Disqualification and Inability) should be amended to prohibit such conduct by quasi-judicial officers and should provide appropriate sanctions.
5. Just as the Michigan Rules of Professional Conduct and the Code of Judicial Conduct govern overt behaviors, effort should be made to ensure equal and appropriate access to judges and court personnel for all counsel, and to educate both judicial and court personnel on this issue.
6. Increase the amount of participation by the trial bench in pre-trial stages of litigation, with heightened race/ethnic consciousness.
7. Institute educational programs for judicial and court personnel to increase consciousness of race/ethnic issues.
8. Increase the number of racial/ethnic minorities in the alternative dispute resolution process. (See recommendations under professional opportunities for minorities).

NOTE: For the purpose of this section, a quasi-judicial officer includes: magistrates, referees, hearing officers, and any other administrative officers performing adjudicative functions as part of their official action.

Appointment and Compensation of Attorneys to Fee Generating Positions

9. Courts should be required to maintain records of all appointments to fee-generating positions by type of position, race/ethnicity of the appointee and the amount of fee eventually generated. This data should be reported to the State Court Administrators office on a regular basis. These appointment records should include all indigent defense

appointments, guardian-ad-litem, next friend, special fiduciary and all other court-appointed counsel whether or not fees are paid from public moneys or other sources.

10. Bar Associations should develop mechanisms for educating the local bench about the availability and qualifications of minority attorneys for appointment. This can include sponsoring opportunities for judges to meet and participate in social, educational and professional activities with minority attorneys; the identification of qualified minority attorneys available for appointments in multi-county districts; and the sponsoring of special informational programs by the bar to discuss the barriers to full participation of minority lawyers in the appointment process.
11. Courts should also develop and sponsor outreach programs to encourage minority attorneys to accept appointments in districts where there are no local minority practitioners. These programs may include special compensation for mileage when extensive travel is required and creation of local initiatives to assure that minority attorneys are afforded full and equal access to the benefits of the profession.

Appointment and Compensation of Mediators Arbitrators and Special Masters

12. The number of minorities appointed to mediation panels should be increased through the use of the following mechanisms:

consistent, established objective criteria for appointment;
a clear, advertised and available application process;
public access to mediation statistics profiling selection and panels; and
inclusion of minority representatives as plaintiff, defense and neutral
mediators

Courts should monitor any agencies to which they refer cases for mediation for racial and ethnic diversity and should decline referrals to any agency which does not fairly utilize mediators from racial and ethnic minorities. Where mediators are routinely appointed by individual judges, efforts should be made to report and review those appointments based upon the same considerations.

13. To the extent that courts, either by practice or Court Rule, refer cases to Alternative Dispute Resolution, assignments as mediators, arbitrators or special masters shall be accessible to counsel regardless of race, ethnicity or gender. The referring court or judge has the affirmative obligation to ensure that any private agency receiving such assignments utilizes lawyers from racial and ethnic minorities and from both genders.
14. Appointing agencies should establish standards for conduct of mediation panels, arbitrators and special masters and make these individuals aware that discrimination is not acceptable in any form or manner in the discharge of their duties.
15. Minority representatives 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 race or ethnicity of the individuals.

ENDNOTES

1. Detroit, November 15, 1988, Vol. IX-A.
2. Grand Rapids, October 26, 1988, Vol. V-B.
3. Scarnecchia, "Gender and Race Bias in Trial Courts: A Classroom Response", August, 1989.
4. Grand Rapids, October 26, 1988, Vol. V-B.
5. Written Testimony on file, March 20, 1989.
6. Detroit, November 14, 1988, Vol. VIII-A. .
7. Detroit, November 18, 1988, Vol. VI-B.
8. Lewis, Wolverine Bar Association, Presentation to the Task Force, November 15, 1988.
9. Supra.
10. Ellis and Schafran, "The Judges Book - Avoiding Race and Gender Bias in the Courtroom," p. 31.
11. Reported by Task Force member during investigation.
12. Written Testimony on file, January 30, 1989.
13. Detroit, November 14, 1988, Vol. VIII-B.
14. Detroit, November 14, 1988, Vol. VIII-B.
15. Saginaw, October 17, 1988, Vol. III-A.
16. Walker, Report to the Task Force on Minority Women, November, 1989.
17. Criminal Defense for the Poor, 1986, Bureau of Justice Statistics Bulletin, September, 1988 p.4.
18. Pontiac, November 1, 1988, Vol. VI.
19. Lewis, Supra, p.11.
20. Grand Rapids, October 26, 1988, Vol. V-A.
21. Saginaw, October 17, 1988. Vol.III-A.
22. Lewis, Supra.

VI. THE IMPACT OF RACIAL/ETHNIC BIAS ON THE ADMINISTRATION, STAFFING AND BEHAVIOR OF THE COURT

THE COURT ADMINISTRATION ENVIRONMENT

A citizen's initial contact with the court system is frequently through court administrative staff. The citizen's perception of the fairness of the process and the law is greatly influenced by this first contact. The executive component of the administrative staff (Chief Judge and Court Administrator) is responsible for establishing standards of conduct to be followed by all subordinate staff. These standards relate to many issues, including the treatment of racial and ethnic minorities.

Not all non-judicial personnel who interact with the public in the judicial system are solely employees of the Judiciary (e.g., county sheriff's security personnel, county clerk's circuit court staff). However, courts bear the ultimate responsibility for the conduct and demeanor of non-judicial employees, as well as of court employees, when they are in contact with the public on judicial system matters.

COURT EMPLOYMENT PRACTICES

Data collected by the Task Force relating to employment practices and demographics relate to three problem areas: representation of minority employees, personnel policies, and disciplinary mechanisms.

Representation of Minority Employees

In general, most court personnel are majority female, except at higher levels where they are majority male. Data from responding courts shows that distribution of total minority and female employment in the judicial system does not reflect significant variation from state population and workforce data. Insufficient data were available to determine whether such discrepancies exist within smaller geographic areas within the state.

There is, however, some evidence from survey data that suggests underrepresentation of females and minority staff in certain occupational categories in comparison to the make-up of the reported workforce. See Appendix F for the definition of "job categories" used in the Court Employment Questionnaire.

Table VI-1 indicates that while only 21.7% of the reported workforce are majority males, 43.8% of the upper level staff, "Officials and Administrators," are majority males. While the workforce is comprised of 18.1% minority females, only 4.2% of upper level managerial positions are occupied by minority females and 13.7% of the professional positions are occupied by minority females. The data collected, however, is not sufficient to draw conclusions regarding the cause of underrepresentation in those classifications where it appears to exist.

TABLE VI - 1

Employment Data
(Fiscal Year Ending 1988)

Job Category	Full Time Employees							
	Total	Male White	Black	Hispanic	Other	Female White	Black	Hispanic Other
Officials/ Administrators	404	177	21		1	188	14	2 1
	100%	43.8%	5.2%		.2%	46.5%	3.5%	.5% .2%
Professionals	907	347	67	7	1	361	116	5 3
	100%	38.3%	7.4%	.8%	.1%	39.8%	12.8%	.6% .3%
Paraprofessionals	1161	178	59		1	619	292	7 5
	100%	15.3%	5.1%		.1%	53.3%	25.2%	.6% .4%
Administrative/ Protective Services	1394	135	63	1	3	936	228	21 7
	100%	9.7%	4.5%	.1%	.2%	67.1%	16.4%	1.5% .1%
TOTAL	3866	837	210	8	6	2104	650	35 16
	100%	21.7%	5.4%	.2%	.2%	54.4%	16.8%	.9% .4%

Personnel Policies in Michigan Trial Courts

Table VI-2, below, reflects data from the Court Employment Survey regarding the existence of various types of personnel policies in responding trial courts. While a majority of courts responding indicated that they do have written personnel policies, equal employment opportunity policies, and affirmative action policies; a disturbing 29.1% do not have written personnel policies, 28.6% do not have an equal employment opportunity policy, and 42.9% report not having an affirmative action policy. Only 5.7% of the responding courts collect data regarding applications for employment, and over 90% publish no Equal Opportunity Report.

TABLE VI - 2

**Personnel Policies
in Michigan Courts**

<u>Issue</u>	<u>Total (175)</u>	<u>Yes</u>	<u>%</u>	<u>Uses Funding Unit Policy</u>	<u>%</u>	<u>No</u>	<u>%</u>	<u>No Answer</u>	<u>%</u>
Written Personnel Policy?	175	119	68.0%	N/A		51	29.1%	5	2.9%
Equal Employment Opportunity Policy?	175	40	22.9%	85	48.6%	50	28.6%	0	0%
Affirmative Action Policy?	175	28	16.0%	72	41.1%	75	42.9%	0	0%
Employment Application Forms?	175	119	68.0%	N/A		53	30.3%	3	1.7%
Collect Statistics on Applications for Employment?	175	10	5.7%	N/A		156	89.1%	9	5.2%
File Annual Federal E.E.O. Report	175	30	17.1%	N/A		135	77.2%	10	5.7%
Publish an E.E.O. Report?	175	12	6.9%	N/A		158	90.2%	5	2.9%
Written Sexual Harassment Policy?	175	64	36.6%	N/A		104	59.4%	7	4.0%
Written Disciplinary Policy?	175	108	61.7%	N/A		67	38.3%	0	0%

Grievances and Disciplinary Policies

Survey data indicates that minority employees are subject to a greater proportion of disciplinary actions than majority employees. Minority females and minority males compose 18.1% and 5.8% of the work force, respectively. However, they account for 38.0% and 13.7% of the disciplinary actions.

TABLE VI - 3 DISCIPLINARY ACTIONS

Type of Disciplinary Action	Total	Male				Female			
		White	Black	Hispanic	Other	White	Black	Hispanic	Other
Formal Oral #	182	24	23	0	0	60	74	1	0
Reprimand %	100	13.2	12.6	0	0	33.0	40.7	.5	0
Written #	118	23	17	1	1	31	45	0	0
Reprimand %	100	19.5	14.4	.8	.8	26.3	38.2	0	0
Suspension #	70	15	10	0	0	19	26	0	0
%	100	21.4	14.3	0	0	27.2	37.1	0	0
Discharge #	16	7	1	0	0	7	1	0	0
%	100	43.8	6.2	0	0	7	1	0	0
TOTAL #	386	69	51	1	1	117	146	1	0
%	100	17.9	13.2	0.3	0.3	30.2	37.8	0.3	0

TABLE VI - 4 GRIEVANCES REPORTED

Discrimination Alleged	Type of Grievance					
	Total	Failure to Hire	Failure to Promote	Unfair Discipline	Pay Equity	Other
GENDER	17	1	3	3	2	10
RACIAL/ETHNIC	16	2	2	3	0	9
OTHER	38	2	0	9	3	24
TOTAL	71	5	5	15	5	43

While the existence of written personnel policies is not a guarantee of equal treatment for court staff, it can accomplish three things: First, the existence of written policies will provide the employee some measure of protection from bias; Second, employees become aware of their rights and obligations and can evaluate their treatment and behavior within the context of those guidelines; and finally, the court clearly and publicly states its commitment to an employment environment built upon principles of equity and fairness.

---THE SERVICE ROLE AND RESPONSIBILITY OF THE COURT

The demeanor and attitude of court employees who meet the public daily greatly influences the public's perception of fair treatment. It is the responsibility of staff and court personnel to avoid either the appearance, or reality, of disparate treatment of persons who come into contact with the judicial system. An individual's cultural, racial, or ethnic background should not affect treatment by court personnel. Similarly, the use of non-standard English, accents or dialects must not result in any less helpful treatment towards the user.

Language and Interpretation Issues

When litigants, witnesses, or victims cannot speak or read English, a significant impediment exists to their ability to achieve fair and equal treatment under the law. The quality and availability of translation service varies widely from location to location. Translation is often performed by untrained individuals, unfamiliar with the court system, who may be unable to adequately interpret the testimony of a criminal defendant, litigant or witness. Less reliable translations of testimony often comes through the services of friends, family members, or other individuals haphazardly recruited from hallways or court offices.

Although the law currently requires the Court to provide translation services in criminal cases, there is no such mandate to provide translation at public expense in civil actions. Litigants who are unable to understand or communicate may be exposed to negative results solely because of the language barrier.

In the judicial survey, 43% of the respondents indicated that the inability to speak English was detrimental to an individual's case. This is supported by information contained in the attorney survey. In answer to the question, "Does the inability of the plaintiff to speak English negatively affect the outcome of the case", 31% of responding attorneys said "always" or "usually."

When interpreter services are available, judicial survey respondents believed them to be of reasonably high quality. However, excluding respondents who have no basis for evaluation, judges are just about equally divided on how readily available services are in their courts.

The importance of language and its impact on the court process was described in the following testimony:

Sometimes the interpreter can do more harm than help...frequently there is a loss of issues or values when you translate from foreign language into English..¹

The [court] system is not explained to them before they come into court, and when your interpreting for the client...your job is just to interpret...the person you're interpreting for doesn't

understand...they want to get their story out. They want to find out all this information and some of the judges get upset...They're very insensitive to the person's lack of knowledge...and the person comes out of court even more confused than before he came in...³

Non-English speaking persons, unable to participate fully in the courtroom process, are also unable to appreciate the administrative procedures of the courts, or to understand and correctly use court forms and informational material. Providing these forms and manuals in other languages is expensive and may not adequately remedy this problem, since this assumes both literacy and membership in a defined language pool. Few courts possess adequate resources to respond to the language needs of all minority populations.

Michigan has adopted standards for interpretation for the Hearing Impaired which provide clear guidance on the qualification, payment and use of certified interpreters. The Federal Court System has established guidelines for language interpretation, and has developed a system for certification of interpreters. These examples may provide a model for the development of similar standards for language interpretation in Michigan Courts.

JURY ISSUES

The participation of citizens as jurors in the justice system is a fundamental institution of American government. Those who manage the jury selection process must assure representation of the many diverse elements of a modern complex society. To achieve a "fair" cross-section of the community, there must be no discrimination on the basis of race, sex, color, religion, national origin, or economic status.

The United States Supreme Court has observed:

When any large identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that their exclusion deprives the jury of a perspective on human events that may be of unsuspected importance in any case that may be presented.³

Michigan in recent years has moved from reliance on voter registration lists as a primary source list for jury selection, to the Drivers License and Personal Identification Card (PID) list maintained by the Secretary of State. There have been no studies uncovered by the Task Force as to the effect in Michigan of this change. However, several studies conducted in other states demonstrate that reliance on the drivers license list as the primary source list increases both the "inclusiveness" and the "representativeness" of the list. The term "inclusiveness" means that percentage of the entire eligible adult population that is included in the source list, while "representativeness" means the extent to which the source list includes all segments of society proportionate to population.

Reliance on a representative and inclusive source list will not alone insure that the end result will be panels of jurors from a broad cross-section of the community available to be sent to the court room, for the final yield of citizens is also influenced by the excusal policies of the individual courts. A high rate of excusal because of the length of the term of service, or because of the economic hardship that an individual may suffer while on jury service, may result in some skewing of the final yield.

A key element of public confidence in the justice system is community participation in the administration of justice through jury service. Exclusion of any group from jury service undermines confidence in the fairness of the justice system.

Peremptory Challenges

In its Interim Report, the Task Force pointed out that in the case of Batson v Kentucky,⁴ racially motivated peremptory challenges were found to be improper and are prohibited as arbitrary and in violation of equal protection principles.- The application of the Batson standard may be raised by counsel or by the judge sua sponte.

Under Batson, once a defendant demonstrates a pattern of exclusion of minority panelists, the prosecutor is required to demonstrate a racially neutral basis for the peremptory challenge. Michigan appellate courts have ruled that Batson is applicable in Michigan cases.⁵

Although the Task Force was unable to find any reported Michigan decisions in which a Batson challenge has been successful, it is noteworthy that in the Attorney Survey, nearly 80% of minority attorneys with criminal practice stated a belief that peremptory challenges were used to exclude jurors on the basis of race or ethnicity. The Task Force believes that diligent judicial scrutiny in this area can be a large part of the solution.

CONCLUSIONS

The Court Administration Environment

1. A review of court employment demographics shows that minorities are under-represented in professional and administrative positions which exercise authority and determine or recommend policy.
2. Many courts lack formal personnel policies and procedures that would promote an environment in which equal opportunity is protected, bias free attitudes and treatment are encouraged, and invidious discrimination prohibited.

The Service Role of the Courts

3. Testimony and user surveys suggested that there is a perception by individuals from racial/ethnic minority groups, as well as those who used non-standard or accented English, that treatment by some clerical personnel was discriminatory, impatient, or less than helpful.
4. Individuals unable to speak or understand English are effectively deprived of equal access to the courts, and, therefore, are limited in the exercise of their right to fully participate in the judicial system.
5. The translation services currently available in the court system are inconsistent from court-to-court, and in some instances, unreliable and inadequate.

Jury Issues

6. Recent changes in Michigan Laws governing the source list from which jurors are selected have probably improved the process, resulting in more representative and inclusive jury panels. However, further improvement may be possible.
7. The experience of other states shows that it is possible to enhance representativeness and inclusiveness in the jury selection process through the use of multiple source lists.

RECOMMENDATIONS

The Court Administration Environment

1. The Michigan Supreme Court should direct each Chief Judge and Administrator to attend training regarding the role and significance of the executive component to court administration.

Such executive component training should include, at a minimum, the following:

- a. The roles and responsibility of the Chief Judge and Court Administrator in personnel matters, including equal opportunity, and bias-free treatment of the public.
 - b. Treatment of staff, prohibition of racial/ethnic harassment, propriety of special service, intimidation and stereotyping on racial/cultural basis.
2. Each Court should develop written personnel policies and procedures which include, but are not limited to an equal opportunity, recruitment, promotional procedures and disciplinary policies. Of particular importance is the fact that employee grievances must be disposed of expeditiously and fairly.
 3. The State Court Administrative Office annual survey of Court Employee Compensation should include a section which identifies the existence of such policies, their implementation, and the results achieved, as well as other matters relating to equal opportunity hiring and promotion.
 4. Each Court should provide for the training of its supervisors and managers in personnel management issues, including the importance of fair and equitable practices in promotion, discipline, and job assignments.

The Service Role of the Court

5. Courts must educate staff on their responsibility to treat all members of the public and officers of the court fairly. Such treatment must avoid the appearance of discrimination.
6. Each Court should develop techniques for employees to use when handling situations involving non-standard English, uncommon dialects or accents.
7. The Supreme Court should adopt a court rule mandating and setting standards for interpretation services in civil and criminal cases where a litigant, witness or victim is unable to communicate effectively in English.
8. Courts should promote outreach services in the community to provide non-English speaking populations with adequate resources to assist in understanding court processes and in completing forms.
9. Judges should determine whether interpreter services are required in a given case, and provide those services when appropriate.

10. The chief judge of each trial court, the other judges of that bench, and the Court Manager/Administrator, must establish and maintain an environment that promotes and protects equal opportunity, bias free attitudes, and fair treatment.

Juries

11. Michigan courts should examine the use of multiple source lists, after careful consideration of the available sources to augment the Drivers/PID list, and seek appropriate legislative authority.
12. Studies should be undertaken to investigate how representative and inclusive the currently available lists are, and the extent to which the excusal practices impact on the diversity of jury pools.
13. Jury terms of service should be shortened, in those courts using a relatively long term, in order to lessen the financial impact on those who are economically disadvantaged, and to decrease the likelihood that such persons will seek excusal from jury service.
14. That trial judges be encouraged to implement the Batson standard on their own initiative in any jury selection process in which peremptory challenges appear to be racially motivated.

ENDNOTES

1. Detroit, November 15, 1989, Vol. IX-B.
2. Grand Rapids, October 26, 1988, Vol. V-B.
3. Peters v Kiff, 407 US 493, 503-4 (1972).
4. Batson v Kentucky, 476 US 79; 106 SCt 708; 93 LEd2d 649 (1987).
5. Peo v Hart, 161 MI App 630, 641 (1987); Peo v Kelly, 428 Michigan 867 (1987).

VII. THE IMPACT OF RACIAL/ETHNIC BIAS ON THE CRIMINAL JUSTICE PROCESS

There was evidence received regarding the negative effect of race and ethnicity at the critical stages of the criminal justice process: Particular focus was addressed to the exercise of prosecutorial discretion in pre-trial proceedings and the exercise of judicial discretion in bail and sentencing decisions.

Charging Decisions

A survey of employment patterns revealed that prosecutors' offices are overwhelmingly populated by white males. See Section VIII. Consequently, this informal discretion resides almost exclusively in the hands of white males. The criteria for the exercise of prosecutorial discretion in charging decisions are often informal and unwritten according to responses to a survey among prosecutors in 55 counties.

TABLE VII-1 **PROSECUTOR'S SURVEY**

		Yes	No	Some
A1.	Does your office have policies, procedures, guidelines or other similar standards which relate specifically to charging decisions?	42	11	1
A2.	If yes, are these standards in writing?	7	32	4
B1.	Does your office have policies, procedures, guidelines or other similar standards which relate specifically to plea decisions?	44	9	1
B2.	If yes, are these standards in writing?	11	33	2

Witnesses at public hearings testified that they believed that racial and ethnic minorities were routinely over-charged to extract pleas. Bad check and shoplifting charges are particularly subject to this manipulation. Racial and ethnic minorities in the metropolitan area surround Detroit are repeatedly routinely charged with felonies in both cases where majority persons are brought to court on misdemeanor charges.

Bail and Bond Decisions

A prominent judicial scholar gave extensive testimony on the issue of bond criteria. Citing recent studies. Judge Robert Evans raised serious questions regarding such bail criteria as employment on racial and ethnic minorities whose unemployment percentages are very high.¹ Minority respondents to our surveys, lawyers and lay people alike, agreed that recognizance bonds were less likely to be available for racial and ethnic minorities than majority defendants. Additionally, a district judge at a judicial forum indicated that it was sometimes expedient as a matter of political reality to place a higher bond on a minority defendant.²

Dispositional Alternatives

Attorneys noted that the impact of race and ethnicity was no less severe when it came to dispositional alternatives other than trial. At the Saginaw hearing an attorney noted that when he assessed a client's alternatives in a criminal matter, "Obviously the practices of the prosecutor's office and the judge's in that county is going to track dramatically differently as to whether this is a black woman trying to smuggle whiskey to an inmate or a white woman..."³ Overall, attorneys concurred in their survey responses that such dispositional alternatives as diversions of Holmes Youthful Trainee Act were less likely to even be presented to racial or ethnic minorities than to majority defendants.

TABLE VII-2 **FELONIOUS ASSAULT**

Question: Counsel suggests a wider range of dispositional alternatives (e.g., drug treatment programs, supervised home release) in the case of non-minority defendant than in the case of a racial/minority defendant

(n = 105)	Always and Usually	Sometimes	Seldom and Never	No Basis For Opinion
Minority Attorneys				
Male(n = 28)	25%	29%	29%	18%
Female(n = 26)	50%	19%	23%	8%
Total(n = 54)	37%	24%	28%	13%
Non-Minority Attorneys				
Male(n = 37)	3%	16%	59%	22%
Female(n = 14)	7%	14%	72%	7%
Total(n = 51)	4%	16%	62%	18%

* "Always" response = 0%

Trial and Sentencing

While trials are governed by procedural, substantive and evidentiary rules of law; there is a significant amount of discretion left in the hands of the judges and lawyers in the prosecution of a criminal case. As the materials in the section on treatment of witnesses, parties and lawyers notes; the tenor and treatment of minorities within the courtroom setting is sometimes different than the treatment of majority persons. Comments by the judge or counsel both to and about the witnesses or others form the basis of the perception of differences. The use of judicial discretion in decisions to grant adjournments; to set fees or authorize fees for witnesses or investigators; or to determine the amount of time given to argument on a point of law; are all matters which affect the case outcome.

Of the issues raised regarding trial, one of the most telling was the Attorney Survey response which noted that minority attorneys with criminal practices believed that peremptory challenges are used

to exclude jurors on the basis of race and ethnicity. Nearly eighty percent (80%) of the minority practitioners shared this belief. Testimony was received about the impact of the victim/defendant's race and ethnic characteristics on verdicts and sentencing. No data was available on cases where the defendant was acquitted. While the Sentencing Guidelines have narrowed the apparent discrepancies in sentencing based upon the race and ethnicity of the accused,⁴ both the Court Users and Attorney Surveys, as well as public hearing testimony supported the perception expressed by a witness at the public hearing who said, "I know that my son would have been treated differently had he been white".⁵

Attorneys with significant criminal practices noted that the cumulative effect of overcharging, denial of bail, and narrowing of dispositional alternatives may result in sentencing disparities which cannot be statistically measured in the Sentencing Information Report (SIR) reports.⁶ Further, little is known about the effect of the racial and ethnic characteristics of the victim on the process, since the SIR does not include victim information.

It is of some note that the probation pre-sentence report and the dispositional report for juveniles include social history and psychological information. Task Force members with forensic psychiatric and criminal practice experience noted that these aspects of these reports are susceptible to bias.

CONCLUSIONS

1. There is a perception that there is a disparity in prosecutorial decision making based upon the race and ethnicity of both the accused and the victim. These perceptions are based on the belief that:
 - a. Broad discretion is exercised in the hands of white male prosecutors.
 - b. Warrants are sometimes issued for inappropriate police searches which target -- minority populations without probable cause.
 - c. Minority people are more likely to be charged with a more serious crime than non-minority people for similar offenses and records.
 - d. Minority defendants are more likely to be pressured into plea-bargaining by the use of multiple charges.
 - e. Dispositional alternatives to trial, including plea-bargaining opportunities are disparately available between minority and white defendants.
2. The Pretrial Release Rule 6.110 creates a social stability index for the granting of bail which disproportionately impacts upon minorities by stressing factors such as employment, financial stability, and community ties. There is a perception that bail practices are affected by the race and ethnicity of the accused. Adequate statistical studies have not been conducted to collect information on the question of disparity in bail decisions.
3. The appearance and language of an individual impacts upon the court's perception and treatment of that individual.
4. It appears that conviction and acquittal rates may be affected by race or ethnicity of defendant and/or victim.
5. Psychiatric examination of minority defendants is not uniformly conducted by individuals aware of and sensitive to the socio-cultural background of the minority defendant.
6. An analysis of the Michigan Sentencing Guidelines data indicates that race/ethnicity are not significant factors in sentencing when the only variables taken into account are severity of offense and prior record. This data does not address other factors which may impact upon minority populations in the system such as arrest, exercises of prosecutorial discretion, pretrial detention, and the effect of the race/ethnicity of the victim and the adjudicator. The Sentencing Guidelines project has been asked to analyze the incidence of departure from guidelines as it relates to minority populations. This data has not been made available to the Task Force.
7. Certain courts in the state have a practice of including police photographs in pre-sentence reports to the judge.

RECOMMENDATIONS

1. The Michigan Supreme Court should AMEND MCR 6.110 to add the following language "Nothing in these rules shall be construed to sanction the determination of Pretrial release on the basis of race, religion, gender, age, economic status, or other impermissible criteria.
2. The Michigan Supreme Court should AMEND MCR 6.110 to eliminate any factors which can be shown to have minimal predictive effect on the likelihood the defendant will appear at subsequent proceedings and which allow and invite considerations of race and ethnicity.
3. The Michigan Supreme Court should conduct a study similar to that done in the felony sentencing project of actual bail practices to investigate the question of disparity in bail practices by race, ethnicity, gender, economic class and region and to establish a process to develop recommendations in the event that disparity is statistically shown.
4. Judges, attorneys, and court personnel should be trained to understand and control their attitudes about individual appearance and language as it relates to both defendants and victims.
5. Courts and mental health agencies should create a pool of qualified forensic specialists who are aware and sensitive to socio-cultural factors in minority defendants.
6. The Sentencing Guidelines project should continue to monitor the sentencing practices of Michigan judges. Effort should be made to insure the meaningful input of minority representatives in the administration and policy setting of this project.

Current analysis of sentencing should include factors relating to the impact of and interrelationship of:

- a. misdemeanor convictions and sentences
- b. race, ethnic background and gender of the judge
- c. race, ethnic background and gender of the victim
- d. race, ethnic background and gender of the defendant
- e. guideline departures

All judges should receive an analysis of their own sentencing practices on an annual basis.

7. Photographs of defendants in pre-sentence reports should be prohibited in all court systems.

ENDNOTES

1. Evans, Presentation to the Task Force, Detroit, November 14, 1988, Vol. VIII-A.
2. Reported by Task Force member during investigation.
3. Saginaw, October 17, 1988, Vol III-A.
4. McComb, Presentation to Task Force, State Court Administrative Office Sentencing Guidelines Project, July, 1989.
5. Detroit, November 15, 1989 Vol IX-B.
6. McComb, Supra.

VIII. PROFESSIONAL DEVELOPMENT AND OPPORTUNITIES FOR MINORITIES

MINORITY REPRESENTATION IN THE PROFESSION

Until about a century ago, the legal profession was the exclusive domain of white males. The few intrepid minorities who were permitted entry into the profession were usually treated as unwanted intruders and exiled to the outskirts of professional activity. In spite of the legal prohibition against racial discrimination, lack of equal opportunity for minorities in the legal profession persists as an unwanted residue of history.

The legal and judicial systems in Michigan can be judged, to a large extent, by the ability of all attorneys, regardless of their race or ethnic background, to attain positions of status, authority and economic benefit. The inclusion and success of minority attorneys in every facet of the legal profession is essential to the appearance of fairness in the administration of justice, and is an indication of the treatment that other minority participants may expect to receive from that same system.

It is estimated that there are approximately 1,270 minority attorneys in Michigan, (5%) five percent of the total State Bar membership of 26,861. Of these attorneys, an estimated 1,100 are African-American, 150 are Spanish-surname, 14 are Asian-American, and 6 are Native American.¹

Judges

Of the 597 members of the Judiciary, 66 (11%) are minority. Of these 24 are minority women.

TABLE VIII-1

MICHIGAN JUDGES

	TOTAL WITH WAYNE COUNTY		TOTAL WITHOUT WAYNE COUNTY	
	TOTAL	MINORITY	TOTAL	MINORITY
SUPREME	7	1 (14%)	n/a	n/a
APPEALS	24	2 (8%)	n/a	n/a
CIRCUIT & RECORDERS	196	26 (13%)	161	1 (> 1%)
PROBATE	107	3 (2%)	99	1 (1%)
DISTRICT	247	34 (14%)	184	7 (>3%)
MUNICIPAL	6	0	n/a	n/a
TOTAL	581	66 (11%)	444	9 (>2%)

Quasi-Judicial Officers

The justice system involves numerous participants who are not judges, but who nevertheless impact upon the public and function as public representatives of the judicial system. These individuals include Administrative Law Judges, magistrates, and referees. The absence of significant numbers of minorities in these positions affects the public's perception in the fairness of the system and diminishes the ability of the system to adequately represent issues of direct consequence to minorities.

TABLE VIII-2

ADMINISTRATIVE LAW JUDGES TOTAL MINORITY
155 20

Civil Rights	1	2
Civil Service	4	2
Commerce	10	1
Corrections	30	2
Education	3	0
Labor		
Hearings	5	1
MERC	4	0
MESC	31	5
Licensing and Regulation	7	3
Mental Health	2	0
Natural Resources	1	0
Social Service	23	3
State	20	1
Transportation	1	0
Treasury	11	2

Note²

Judicial Clerks, Assistants, and Commissioners

The instances in the Michigan judiciary of majority jurists hiring minority law clerks, assistants, or commissioners are few.³ The importance of these positions cannot be overemphasized. The clerkship and assistant jobs provide important opportunities for access to employment as law school professors and associate positions with majority law firms. The Appellate Commissioners wield significant influence on the operation of our appellate courts. The absence of minorities in these positions is an indication of the depth of the courts' commitment to diversity.

Prosecutors

During the public hearings considerable testimony was directed at the role and influence of prosecutors in issues involving minorities. Many complaints and requests for reform were directly related to the exercise of discretion within the Prosecutor's office, and the influence of racially and ethnically biased attitudes on those exercises. To the extent that minorities are involved in policy decisions, and leadership positions in these offices, there may be a heightened awareness of the consequences of bias and an increased sensitivity to the treatment of minorities. A review of the employment data and policies, affecting charging and plea bargaining, reveals an inadequate number of minorities in many of these offices. In the 83 counties in Michigan there are 2 majority female Prosecutors and no minority Prosecutors.

TABLE VIII-3

PROSECUTORS

	Representation in 55 Michigan Prosecutor's 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		2		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

* Appendix G shows counties responding to this questionnaire

Attorney General's Office

The State Attorney General's Office has significant influence on the justice system. This office directs State policy on many legal issues, and it prosecutes and defends many cases with broad impact. The State Public Administrator's Office appoints attorneys throughout the State to administer estates of certain deceased or mentally ill persons and recover escheatable property.

TABLE VIII-4¹

	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
Asian	1	0	0	0	0	0
American Indian	0	0	0	0	0	0

Disciplinary Agencies

The governing boards of all three disciplinary agencies in Michigan reveal the following membership profiles:

TABLE VIII-5

DISCIPLINARY BOARDS

Total Majority Minority
Members Male Female Male Female

Judicial Tenure Commission	9	6	1	1	1
Attorney Grievance Commission	7	5	1	0	1
Attorney Discipline Board	7	5	0	0	2

Conclusion

Diversity is an important goal for a quality justice system. The presence of minorities in all areas of the profession is not a guarantee of unbiased behavior. However, the research done by the Task Force is conclusive on several points. First, the presence of minorities in the profession increases public perception of fairness. It further responds to the need of citizens to feel less isolated and alone within the legal process. 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", gained only 47 proponents.⁵

Further, as revealed in the following tables, taken from the Judicial Survey, more minority judges believe that gender and racial ethnic diversity is important in the selection of judges, with well over 60% of all judges in all categories believing that it is "important" or "very important".

TABLE VIII-6**MINORITY REPRESENTATION**

Question: The Importance of Racial/Ethnic Diversity

	Very Important	Very Important	Unimportant	Unimportant
Majority Judges				
Male	8.3%	49%	29.6%	12.6%
Female	40%	60%	0	0
Minority Judges				
Male	23%	61%	15.4%	0
Female	41%	41%	16.7%	0
Total	13.1%	50%	25.8%	10.7%

Finally, as discussed in previous sections, the striking disparity in the perception and recognition of gender and racial/ethnic bias between majority male respondents to Task Force surveys, and minority and female respondents, suggests that there are different sensitivities, attitudes, and awareness of bias on the part of those individuals most negatively impacted by its presence. This awareness is a powerful tool in the identification and elimination of bias. To the extent that women and minorities bring that awareness to every level of the profession, they will be powerful agents for change within the system.

PROFESSIONAL ORGANIZATIONS AND BAR ASSOCIATIONS**The State Bar of Michigan⁶**

The chief professional organization for attorneys and judges in the state is the State Bar of Michigan (the "Bar"). Membership in the Bar is mandated in order to practice law. The Michigan Supreme Court establishes rules for the Bar's organization and operation.

The final policy-making body within the bar is the Representative Assembly. The body which sets and implements the policies of the bar between sessions of the Representative Assembly and manages the bar on a month-to-month basis is the Board of Commissioners. The bar also functions through 23 sections, which devote their efforts primarily to specific areas of the law, and approximately 54 standing and special committees which operate year-round and deal with various aspects of the practice of law. The State Bar also has an Executive Director and executive staff.

Representative Assembly

The Representative Assembly consists of 150 members, elected by attorneys in various districts throughout the state, according to attorney population. The current chairperson of the Assembly is an African-American male, who also served as Clerk of the Assembly in 1988-89. He is from out-state Michigan (Saginaw County), and is the first minority to serve in these positions. There are currently four minority representatives in the Assembly.

Board of Commissioners

As of September 15, 1989, the Board consisted of 28 members. Of these 21 were elected by districts and 3 were appointed by the Supreme Court. Additionally, the chairperson and clerk of the Representative Assembly are members by virtue of their offices as are the chairperson and past-chairperson of the Young Lawyers Section of the bar. Of the 28, there were a total of 4 minority members, 3 black males and 1 black female (14%). There are no Hispanic, Asian-American or Native American members of the Board.

In the history of the Board, only 1 African-American male and 1 female have been elected to membership on the Board, both from Wayne County. One ran as an incumbent having been appointed to the Board to fill a vacancy. The other minority members have obtained their positions on the Board by virtue of either appointment by the Supreme Court, or having been chairperson or past-chairperson of the Young Lawyers Section. The current assembly chair is the first minority to achieve commissioner status through the representative assembly. In recent years, the Supreme Court has used its appointive power to place either minorities or female members of the profession on the Board. Until approximately 5 years ago the Supreme Court had 5 appointments to the Board, but that number was reduced to 3 by the Court. Supreme Court appointees are limited to a single 3-year term. Bylaws of the State Bar governing election to the Board of Commissioners require attorneys to vote for a specific number of candidates, thus precluding the practice of voting for a lesser number of single candidates (commonly known as "plunking").

Despite the number of minorities currently serving on the Board of Commissioners, there are certain minorities who have never been represented on the Board (e.g., Hispanics, Asian-Americans, Native Americans), and up to the present time most minority members of the Board have gained their positions through appointment or by virtue of holding office in the Young Lawyers Section.

State Bar presidents are elected by the Board of Commissioners from among its members. A candidate for the presidency customarily first runs for the office of vice-president and, if elected, serves one year in that capacity, one year as president-elect and automatically becomes president during the third year. In the 54 year history of the State Bar there has been one minority president of the bar, an African-American male.

It is apparent that minorities cannot yet obtain seats on the Board of Commissioners proportional to their numbers in the profession through the elective process. Appointments by the Supreme Court have been used to augment the elective process. One court appointment per year for three year terms will not be adequate to accomplish meaningful increase, particularly in an era of increasing numbers of minorities entering the profession. The Court needs at the very least to restore its 5 appointees to supplement the elective process.

Moreover, it is mathematically impossible for Supreme Court appointees who are limited to a single term to serve in the chairs leading to the presidency. 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 increase the possibility of minorities advancing to officer status and eventually the presidency.

State Bar Sections

Membership in the various sections of the State Bar is generally determined by the interest of practitioners in certain specific areas of legal practice. Membership in sections is voluntary. No information currently exists concerning the numbers or percentages of minorities who are members of the various sections of the bar. This is true because, historically, no information has been requested of members concerning race and ethnicity. In fact, some 25 or so years ago this information was removed from the application for admission to the bar because of the widespread fear of discrimination (occasionally documented in other states) in admissions to practice. The State Bar, on the recommendation of its Committee On Expansion Of Underrepresented Groups In The Law, is, this year, for the first time seeking that information on a voluntary basis as part of

the annual dues process. It is hoped that this information will make it possible to develop similar statistics concerning the racial and ethnic composition of various State Bar entities in future years.

Most of the sections of the bar 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. Involvement of substantial numbers of minorities in section work could have considerable influence on perception and acceptance of minority lawyers in general. We must continue to encourage the involvement of minorities. Sections must then make increased efforts to involve minorities in their hierarchy, from section executive board member all the way to section chairperson.

Virtually all of the sections of the bar are engaged in sponsoring seminars on various aspects of the law. The Institute for Continuing Legal Education reports that in the past years, of the 1,169 lawyers who have served as faculty on its courses, 20 were minorities (2%). Following Task Force inquiry, ICLE has undertaken an aggressive program to diversify its faculty.

State Bar Committees

Members and chairpersons of the State Bar committees are appointed by the State Bar president. Ordinarily, the terms of one-third of the committee members expire each year.

While exact statistics are not available, there is every indication that more and more minorities are being placed into key committee positions through the appointive process. The substantial involvement of minorities on State Bar committees is not accidental or coincidental. It reflects a determined effort on the part of the State Bar leadership in recent years to assure that State Bar committees are fully representative of the diversity in our profession. This effort obviously must be continued.

State Bar Staff

Currently, 4 of the 21 members of the State Bar administrative staff are minorities. Three are black and one is hispanic (19%). The race/ethnic composition of the staff has occasionally varied, but the current distribution is typical. One of the 16 members of the State Bar executive staff is a minority, one African-American female (6%). She is the second minority member of the executive staff.

It has been indicated to the Task Force that the unacceptable number of minority members on the State Bar executive staff has been the result of inadequate attention and false assumptions, rather than intentional discrimination. It has been assumed that only those already in the Lansing area are potential employees. Only informal attempts at recruiting minority applicants have been made. No approach has been made, for example, to employment agencies which specialize in placing minority candidates. In fact, although announcements of vacancies have always advised that the State Bar is an equal opportunity employer, and minority applicants would be considered if and when they submitted applications, no affirmative effort has been made in the past to recruit minority staff members when none applied for available positions (see July 1989 Lansing Letter, Michigan Bar Journal by the State Bar Executive Director). Attention is being given to this area by the State Bar.

Local and Special Purpose Bar Associations or Organizations

Currently there appear to be approximately 68 local bar associations in the state, either county organizations or regional. Additionally, there are over 30 special purpose law related organizations. These include the various ethnic bar groups such as the Arab-American, Asian-American, Armenian-American, Latin-American, Irish-American, Hellenic-American, Italian-American, and Ukrainian-American bar associations. One of the largest special bar associations in the state is the Wolverine Bar which consists primarily of African-American attorneys. While many of these

associations consist primarily of persons of the ethnic origins indicated by the name, long standing State Bar policy requires that each association must be open to all members of the bar regardless of race or ethnicity.

There is no reliable data concerning the extent of minority membership in these local or special purpose bar associations. Some limited anecdotal evidence does exist, as well as the experience of some of the task force members. The full acceptance of minorities in local bar and special purpose bar associations depends in part upon the number of their members in these categories. Associations with larger numbers of minorities have made greater progress than those with a smaller percentage. Although overt discrimination in membership appears no longer to be practiced, minority members in some associations are expected to "fit in" and not disturb the status quo. Thus, racist jokes and the like are too frequently still regarded as acceptable in some areas of the state. There are examples of a number of minorities being appointed to executive boards and as officers of several local and special purpose bar associations. However, outside of the Wolverine Bar Association and the Association of Black Judges of Michigan, minorities occupy few seats on the boards of major legal organizations in the State.

EMPLOYMENT ISSUES FOR MINORITIES IN THE LEGAL PROFESSION

Entry Into the Profession

Entry of minorities into the legal profession in significant numbers has been a recent development. The historical pattern of racial and ethnic discrimination and underrepresentation affects the acceptance of minority lawyers as they seek to become full members of the profession. To a great extent, minority lawyers have been excluded from the mainstream of the legal profession⁷. They were not hired by major law firms, or corporate legal departments, but instead became private practitioners. To the extent that they found greater opportunities in the public sector, they were limited to low-level positions lacking meaningful authority or economic benefit.

According to the ABA Task Force on Minorities in the Profession (ABA Report),

Residual discrimination still persists in some parts of the legal profession, and some hiring and promotion processes and criteria continue to limit minorities opportunities. In light of this discriminatory history, and the continued limited opportunities for racial and ethnic minorities in the profession, TITLE VII is not adequate to assure full and equal opportunities for minorities in the profession.⁸

The ABA Report identifies several methods of increasing professional opportunities for minorities: (1) the use of the lateral hiring process to recruit minority lawyers who have demonstrated their competence through practice and experience; (2) intensified recruitment and review of interviewing procedures and hiring standards to eliminate disparate treatment of minority candidates; (3) increased opportunity for promotion and advancement through mentor programs, client development, established evaluation criteria, and a commitment to provide experiences which will allow minority attorneys to develop and demonstrate their abilities.⁹

Testimony by the Wolverine Bar Association buttressed the belief that most minority attorneys in Michigan are in the public sector or solo practice. The larger law firms in Michigan had less than twelve minority partners of whom only three are African-American females.¹⁰

The Michigan Minority Demonstration Project is designed to increase minority lawyers in majority law firms and minority lawyer's access to corporate clients. It is a significant effort to acknowledge and correct the underrepresentation of minority lawyers in majority law firms, and their ability to service corporate clients. It is based upon the premise of demonstrating to corporate America that minority law firms are able to handle their business, if given the opportunity. Through joint

ventures between minority and majority firms, and through direct corporate employment, minority firms are receiving work to which they would traditionally have been denied access.

THE IMPACT OF RACIAL ETHNIC BIAS ON LAW SCHOOLS

The law has played a major role in helping minorities make great gains in achieving equality over the past few years. Nevertheless, it is alarming that recent statistics show that the law appears to be failing those same minorities when progress is examined for their assimilation into the legal profession itself.¹¹

While the Task Force has not conducted an in-depth study of the status of minority law students, it is clear that law schools play a pivotal role in the formation and development of the future attitudes and professional ethics of all lawyers and judges. After reviewing testimony and research data on racial/ethnic bias in law school, the Task Force concludes that the law school environment does impact on minority participants in a variety of ways. Racist comments and innuendoes from white male law professors and racial perceptions as a response from disgruntled students to minority instructors constitute a racial state of mind classified as "anti-minority mindset."¹² "Anti-minority mindset" means a predisposition to assess minority performance in a negative or hypercritical fashion, an intolerance for even small mistakes committed by minorities, and a proclivity toward denying minorities the deference or presumption of competence normally accorded to majority individuals. In essence, this mindset is a set of negative biases held against minorities either consciously or unconsciously. This mindset manifests itself in the treatment of minority professors, students, and in the material taught to those students. Many core courses in law schools are devoid of materials relating to race and ethnic bias issues, and law students are not sensitized to the impact of bias in many substantive and procedural contexts.

There is evidence that the law school hierarchy seems preset to react negatively toward minority candidates for faculty appointment, promotion, or tenure.¹³ The result of this is reflected in the following tables which depict the numbers of minority students and faculty in Michigan's five law schools.

TABLE VIII-7¹⁴

	LAW SCHOOLS					
	ENROLLMENT		FACULTY		TENURED FACULTY	
	TOTAL	MINOR.	TOTAL	MINOR.	TOTAL	MINOR.
Thomas Cooley Law School	1247	102(8%)	34(f) * 51(p) ** 85	1 2 3(4%)	20	0
Wayne State University	689	71(10%)	32(f) 26(p) 58	2 1 3(5%)	24	2(8%)
Detroit College of Law	711	99(14%)	23(f) 24(p) 47	0 2 2(4%)	19	2(10%)
University of Detroit	613	26(4%)	21(f) 38(p) 59	1 5 6(10%)	23	1(4%)
University of Michigan	1135	184(16%)	50(f) 7(p) 57	1 2 3(5%)	41	1(2%)
Total	4395	482(11%)	160(f) 146(p) 306	5 12 17(5.5%)	127	6(4.7%)
	* full-time		** part-time			

The absence of minority law faculty, or their minor presence, directly affects minority students by denying them role models and has an untoward effect on the quality of legal education for all students and the professional development of the law faculty.

Recent litigation has been brought against Michigan law schools by students who have been unable to redress grievances through established administrative processes. These suits are symptomatic of the isolation, anger, and damage which can result from the failure of an institution to effectually eliminate an "anti-minority mindset" from the law school environment. Law schools, colleges, as well as the government, must affirm their commitment to give minorities the chance for quality education.¹⁵

CONCLUSIONS

Minority Representation in the Profession

1. Minority presence is inadequate both in numbers and in terms of geographical distribution on the benches of the State.
2. The Departments of Social Services and Correction have significant minority service populations, but very few minority Administrative Law judges. This disparity affects the perception of fairness.
3. The justice system involves numerous participants who are not judges, quasi-judicial officers, or court employees, but who are public servants: Attorney Generals, Prosecutors, Public Administrators and Disciplinary Systems. The absence of representative numbers of minorities in these positions affects the confidence in and effectiveness of the system.
4. There are few instances in the Michigan judiciary of majority jurists employing minority law clerks, judicial assistants, or commissioners.

Professional Organizations and Bar Associations

5. Minorities cannot obtain seats on the State Bar Board of Commissioners proportional to their numbers in the profession through the elective process.
6. Sections of the State Bar have not aggressively recruited minority members, in the past.
7. The presence of minority representatives in Committees of the State Bar is a result of an aggressive policy on the part of State Bar leadership.
8. Local bar organizations may not actively recognize their responsibility to encourage and create opportunities for minority involvement.
9. The State Bar Executive Staff does not have adequate representation of minority employees at the executive level.

Employment Issues for Minorities in the Profession

10. Minorities have traditionally been excluded from certain areas of the legal profession. This exclusion is reflected in the low percentage of participation by minorities in private law firms, on law school faculties, with corporations, and in the judiciary.
11. Minorities experience unique difficulties in the profession related to their lack of advancement, lower hiring and recruitment, increased rate of attrition, and lack of access to professional development opportunities. Many of these problems are directly related to disparate treatment based on racial/ethnic bias.

Legal Education and the Impact of Racial/Ethnic Bias

12. There is a small number of racial/ethnic faculty at the five Michigan law schools and an even smaller number of tenured minority professors.
13. The absence of minority law faculty, or their minor presence, directly affects minority students by denying them role models and has an untoward effect on the quality of legal education for all students and the professional development of the law faculty.

14. 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. Law schools curricula does not adequately incorporate racial/ethnic bias and discrimination discussions into substantive courses, and it is not a part of all professional ethics courses.

RECOMMENDATIONS

Minority Representation in the Profession

1. Progress must be continued toward a representational bench throughout the State through the appointive authority, and by the support and recruitment of minority candidates for the bench.
2. Courts, through their Chief Judges, should appoint referees, magistrates, and quasi-judicial personnel in numbers which accurately reflect the racial/ethnic demographics of the population they serve.
3. The appointing authority should increase the representation of racial/ethnic minority populations in quasi-judicial positions.
4. The appointing authorities should increase the representation of racial/ethnic minority populations in policy-making positions in the offices of the Attorney General, State Public Administrators, Prosecutors offices, and Disciplinary systems.
5. Increase the number of minorities hired as law clerks, judicial assistants, and commissioners at all levels of the judiciary, but particularly at the appellate level.

Professional Organizations and Bar Associations

6. The Supreme Court should use its appointive powers to place minorities in leadership positions and to facilitate advancement within the leadership ranks of the bar. Specifically, the number of Supreme Court appointees to the Board of Commissioners should be increased by at the very least restoring the number to five. Additionally, the Court's policy prohibiting reappointment of their 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.
7. State Bar of Michigan Bylaws should be amended to delete any requirement that a minimum number of votes be cast for any vacant position on The State Bar Board of Commissions and Representative Assembly.
8. The State Bar of Michigan and local and special purpose bar boards should utilize their appointive powers to place minority lawyers into leadership positions and to facilitate advancement within their ranks.
9. State Bar presidents should be encouraged to continue their efforts to recent years to appoint minorities as committee members and chairs in substantial numbers.
10. State Bar sections must increase their efforts to recruit minority members and must aggressively pursue policies designed to increase the number of minorities serving on the section counsel and as section officers.
11. Rather than await the gradual change which will inevitably accompany a growing number of minorities admitted to practice, the State Bar of Michigan should develop methods of sensitizing local bar associations and special purpose organizations to the more subtle forms of discriminatory treatment, and by persuasion and example end them.
12. The Local Bar Liaison Committee, the "On The Road" publication, the Presidents-Elect Conference and other communications vehicles should be used to raise the consciousness of local and special purpose bar associations to the need for establishing a hospitable atmosphere for minority members.

13. State Bar efforts initiated under the leadership of its Committee on Expansion of Underrepresented Groups in the Law to encourage the Michigan Judicial Institute, The Institute of Continuing Legal Education, and other educational programs to use more minorities on its faculties should be continued. Similar efforts should be directed at State Bar sections to recruit faculty for their fall and spring seminars and their programs at annual meetings. Minorities must be adequately involved as faculty for the Michigan Continuing Legal Education program for new lawyers.
14. Every effort should be made to hire additional minorities for the State Bar's executive staff.

Employment Issues for Minorities in the Profession

15. The State Bar should adopt the recommendations contained in the ABA Task Force on Minorities in the Legal Profession Report of January 1986, and provide leadership and assistance in increasing opportunities for minority attorneys within the profession.
16. The Supreme Court should publicly acknowledge and support the Michigan Minority Demonstration Project and the American Bar Association Minority Demonstration Project. The Court, when appropriate, should encourage the increased participation and expansion of such programs.

Legal Education and the Impact of Racial\Ethnic Bias

17. Michigan law schools should receive the Task Force report, and incorporate consideration of the Task Forces' conclusions and recommendations in the following course areas:
 - a. Courtroom interaction: to be included in clinical law and trial practice courses;
 - b. Ethics: to be included in professional responsibility courses;
 - c. Substantive areas of the law: to be included in courses covering said areas;
 - d. Task Force conclusions and recommendations where appropriate should be included in extra-curricular legal activities, such as moot court programs.
18. Law schools should adopt and follow policies aimed at the recruitment, advancement toward tenure and retention of minority faculty members.
19. Textbooks, course materials and classroom presentations should be reviewed and altered where necessary to eliminate overt and subtle race/ethnic bias.
20. Faculty and administrative policies should reinforce law schools' commitment to train attorneys who will be sensitive to and aware of manifestations of race/ethnic discrimination and its effects.
21. Professors should be taught ways to integrate race/ethnic issue discussions into a range of classes. All professional ethics classes should cover racial/ethnic bias and discrimination as it affects law practice, treatment of fellow professionals and treatment of court users.
22. Law school placement offices should work with professional associations, bar organizations, and the courts to facilitate the entry of minority students into summer clerkships and other opportunities which lead to professional development.

ENDNOTES

1. Lewis, Wolverine Bar Association, Presentation to the Task Force, November, 1988.
2. The data in this Table was provided by the Wolverine Bar Association, Spring 1989.
3. Archer, Presentation to the Task Force, August, 1989.
4. Letter on file, Attorney General's Office.
5. Court User Survey, p.45.
6. Franck, Executive Director, State Bar of Michigan Presentation to the Task Force, October 20, 1989. The factual information and statistics contained in this section were compiled by the State Bar for the Task Force.
7. American Bar Association Task Force on Minorities in the Legal Profession Report with Recommendations, January, 1986. p.6.
8. ABA Report, Supra. p.23.8.
9. ABA Report, Supra. p.33.
10. Lewis, Supra.
11. The National Law Journal, February 8, 1988.
12. Brooks, "Anti-Minority Mindset in the Law School Personnel Process: Toward an Understanding of Racial Mindsets".
13. 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.
14. "American Bar Association Annual Report on American Law Schools, 1988.
15. Diamond, "A Trace Element in the Law", American Bar Association Journal, May 15, 1987.

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

In its Interim Report, the Task Force recommended the "immediate creation and adoption of rules in both the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct which specifically and clearly create an enforceable ethical standard for lawyers and judges relating to racial/ethnic discrimination". This recommendation was fortified by subsequent testimony of attorney witnesses as well as representatives of the Judicial Tenure Commission and the Attorney Grievance Commission. This testimony emphasized that the Code of Judicial Conduct and the Michigan Rules of Professional Responsibility do not presently contain language which specifically prohibits invidious discrimination or sexual harassment.

This position is consistent with proposed draft revisions to the American Bar Association Code of Judicial Conduct. A proposed new section 2C states:

"C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Note: New section 2C was added to make clear that a judge's membership in any organization practicing invidious discrimination violated the Code."

With the establishment of such national momentum on the issues of discrimination in the profession, many states are currently considering related changes to their own Codes of Conduct. In September, 1989 the Conference of Delegates of the California State Bar adopted by a two-thirds vote the following recommended language.

A member of the State Bar shall not discriminate in employment, partnership, and compensation decisions, including hiring, promoting, or otherwise determining conditions of employment on the basis of sex, color, race, religion, national origin, ancestry, handicap, disability, age, medical condition or sexual orientation.

In the statement of reasons accompanying this resolution the California Bar stated:

...the Model Code required that "every lawyer. . . conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect and trust" of the public. As a profession and as officers of the court, we seek to enforce and uphold the laws governing nondiscrimination in our society. If we are to inspire confidence, respect and trust. . . we must demonstrate our commitment to the principles contained in the Rule. . . It is not enough to adopt the goals of integration and minority representation without also instituting the rules and procedures which ensure that the legal profession moves beyond rhetoric to reality. ¹

Public testimony and survey responses not only highlighted the need for specific changes in the ethical standards governing these issues, but also pointed out the concerns of the public, attorneys and judges about the effectiveness of the existing disciplinary systems in responding to these issues. The following Tables reflect the perception of both judges and lawyers.

TABLE IX-1

Question: The Appellate System is an effective means of dealing with bias in the Michigan Court System.

(n = 290)	Yes	No	Don't Know
Total	14%	50%	36%
Male (n = 150)	16%	49%	35%
Female (n = 140)	12%	51%	37%
Minority (n = 132)	18%	49%	33%
Non-minority (n = 158)	11%	50%	39%

TABLE IX-2

Question: The Judicial Tenure Commission is an effective means of dealing with bias in the Michigan Court System.

(n = 291)	Yes	No	Don't Know
Total	37%	31%	32%
Male (n = 151)	36%	32%	32%
Female (n = 140)	39%	29%	32%
Minority (n = 132)	38%	35%	27%
Non-minority (n = 159)	37%	27%	36%

TABLE IX-3

Question: The Attorney Disciplinary System is an effective means of dealing with bias in the Michigan Court System.

(n = 288)	Yes	No	Don't Know
Total	27%	41%	33%
Male (n = 151)	25%	44%	31%
Female (n = 137)	28%	37%	34%
Minority (n = 131)	26%	44%	31%
Non-minority (n = 157)	27%	38%	34%

One of the most striking findings for these questions is the number of judges and attorneys who indicate that they do not have a basis for opinion on the effectiveness of these three institutions. Thirty-four percent of the attorneys and twenty-eight percent of the judges surveyed indicated that they "don't know". Of the three systems, the Appellate system is viewed as being the least effective system for dealing with racial/ethnic and gender bias and the Judicial Tenure Commission is viewed by the greatest number of attorneys and judges as an effective means of dealing with bias. The distinctions between majority and minority attorneys on these issues were less dramatic than the clear difference of opinion expressed by these two groups of judges.

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 77% (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."²

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."³

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 "MJl" provides education to the judiciary and to some court personnel. Statistics provided to the Task Forces by MJl indicate that over the past three years, its faculty shows the following gender and race distributions:

TABLE IX-4

MJI FACULTY

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

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

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

As reflected in the above statistics, there is a need for expansion of minority and female participation in MJl 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 14% of the faculty, and minority presenters were 1% 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.⁴ 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."⁵ 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 Court, has 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:

- the extent of the Task Forces' education of judicial, legal and lay communities about race/ethnic and gender bias in the courts;

- the extent of implementation of the Task Forces' specific recommendations; and

- 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 following 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. Racial/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 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 - race/ethnic - neutral materials.
 - b. -- Inclusion of women and racial/ethnic minorities as committee members, planners, faculty and speakers.
 - c. Impact of race/ethnic or 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 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' report 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 Committee, 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, 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. Resolution Conference of Delegates, State Bar of California to add Rule 1-700 to the Rules of Professional Conduct. August 10, 1989.
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.

Present the Honorable

DOROTHY COMSTOCK RILEY,
Chief Justice

CHARLES L. LEVIN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
DENNIS W. ARCHER,
ROBERT P. GRIFFIN,
Associate Justices

Administrative Order 1987-6

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 H. 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 15th 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

Eurlene Baggett
Daniel Besser
Edward Bielat
David Boston
Will Branscumb, National Association for the Advancement of Colored People
Walter E. Bush
Brigida Cantu, Latin Affairs Office
Thomas Carnegie, Michigan Department of Civil Rights
Gail P. Carr
John Roy Castillo, Director, Michigan Department of Civil Rights
San Juana Cornejo
Paul Daniel Curtis, Attorney
Mary R. Defoe, National Association for the Advancement of Colored People
Maria M. Delgado, Latin Affairs Office
Shelia Dolly
Jeffrey L. Edison, Attorney, National Conference of Black Lawyers
Rita J. Estrada
Judge Robert E. Evans
Pedro Ferrer
Alan Forbes
David Fukuzawa, Director, Asian-American Center for Justice
Richard D. Gingerich
Mark Gleason, Director, Victim Witness Program
Stanislaw Golec, M.D.
Roger Groves, Association of Black Judges of Michigan
Aliene Haddock
Mosabi Hamed
Jeffrey L. Hampel, Attorney
John Hardwick
Percy Harris, Jr.
Honorable Erma L. Henderson, Chair, Detroit City Council
Algenoid Henderson
Elizabeth Hernandez
Gary Hosbein, President Berrien County Defense Associates
William Houseal, Courts Advisory Council
Jerry L. Hover
John Allen Johnson, Attorney, Concerned Citizens Council
Charlene Jones
K. Franklin Kelly
Pat Kitzman
Barbara Klimeszewski, Attorney
Julius Laba
Denise Langford-Morris
Kenneth L. Lewis, President-Elect, Wolverine Bar Association
Wendy Lewis

Rosie Lewis
Leonard Lowenstein
Michael Makks
Anthony J. Mansour, Attorney
George Mansour, Attorney
Mike Mather, Department of Civil Rights
W. Paul Mayhue, Attorney
Eric Mays
Timothy McMorrow
Kazimierz Olejarczyk, Polish American Congress
Judy Patel, Berrien County Department of Social Services Migrant Program
Willie Paymon
James Piazza
Dolores Preston-Cooper, Attorney
Kathleen Quigley, Director, Victim Services, Wayne County
Phyllis D. Rapaport
Elder W. Rondal Justice
Benjamin Rosa
Sylvester Sain
James Schutte, Michigan Department of Civil Rights
Ronald Seamons
Alvin Seti
Raymond K. Sewell, Jr., Michigan Association of Black Judges
Daniella Sivan-Winter
Stephen S. Sobkowski, Jr., Polish American Congress, Michigan Division Political Action Committee
June Soper
Camile Stallworth
Carmella Stella, M.D.
William T. Street, Attorney, American Civil Liberties Union, National Lawyers Guild
Judge Isidore Torres
Elias Vazquez, Jr., State of Michigan Commission on Spanish Speaking Affairs
Effie Washington
Patricia Wells, Michigan Department of Civil Rights
Eloise Williams, Attorney

**LIST OF PARTICIPANTS
DAZS - WCOC PUBLIC HEARING
LEWIS COLLEGE OF BUSINESS**

February 4, 1989

**Janeen M. Bell
Issiac Blue
Debora 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**

APPENDIX C

ATTORNEY SURVEY RESPONDENTS: PRIMARY COUNTY OF PRACTICE

