

THE EXECUTIVE SUMMARY

To appreciate the mandate of the State Bar's Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession, it is necessary to step back more than a decade to the 1986 report of the Michigan Supreme Court Citizen's Commission. Under the leadership of Justice Patricia Boyle, this Commission reached the disturbing conclusion that over one-third of Michigan's citizens believed that the Michigan court system discriminated against individuals on the basis of gender, race or ethnic origin.

In response, Michigan Supreme Court Chief Justice Dorothy Riley created, in 1987, two separate task forces – the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts and the Michigan Supreme Court Task Force on Gender Issues in the Courts (1989 Task Forces). After two years of extensive citizen, judicial and lawyer surveys, data collection and research, and 17 statewide public hearings, the 1989 Task Forces concluded that a substantial number of citizens and lawyers believed that bias affects justice, and that their perceptions of bias were often based on reality. These reports and their conclusions revealed that Michigan, like many other states, needed to address the manner in which courts treat those who often lack the power to make their voices heard.

The Reports, which were released in December of 1989, made hundreds of specific findings and recommendations urging individuals, agencies, organizations and courts to address the problems identified. They provided a roadmap for change addressing not only how lawyers treat one another, but also, more importantly, how to improve the quality of justice afforded to victims and litigants.

Eight years later in the fall of 1996, State Bar President Victoria A. Roberts determined that it was time to assess what, if any, progress had been made toward the goals identified in the 1989 Reports. To that end she created the State Bar Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession (State Bar Task Force). With 30 members drawn from diverse legal backgrounds and geographic locations, this group of experienced lawyers and judges was given the following mandate:

- report on the current status of recommendations made in December, 1989, by the Michigan Supreme Court's Task Forces on Race/Ethnic and Gender Issues in the Courts;
- compare the progress in Michigan to that achieved in other states;

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- identify and develop a strategy for collecting information about race, ethnic and gender issues not addressed in the Supreme Court Task Force reports; and
- develop a strategy for monitoring and implementing new and unrealized recommendations.

The initial development of this project was undertaken by Task Force Co-Chairs Dawn Van Hoek and Saul A. Green, State Bar Associate Executive Director for an Open Justice System Nkrumah Johnson-Wynn, and Special Advisor Lorraine Weber, who had served as the Project Director for both 1989 Supreme Court Task Forces. At the outset it was understood that this investigation would be completed during President Roberts' bar year, necessitating that much of the data collection and analysis would have to be done by Task Force members themselves. The Task Force received key administrative and financial support from the State Bar and the Michigan State Bar Foundation.

To meet this ambitious time frame, the 1989 recommendations were divided into five major subject areas: Domestic Violence, Domestic Relations, Bias Within the Court Environment, Bias Within the Profession and the Joint Recommendations of the Gender and Race/Ethnic Task Forces.

It was decided that three basic data-gathering techniques would be used to develop the final report. First, there would be a heavy emphasis on two types of questionnaires directed to all components of the legal system that were the subject of 1989 recommendations. The first questionnaire was designed to determine the degree of implementation of every recommendation made by the 1989 Task Force. The second questionnaire was more general in nature. This questionnaire was designed to gauge the degree of knowledge and the perceptions about implementation of the 1989 Task Force Reports. In all, 816 questionnaires were sent out and 399 were returned. The questionnaires were supplemented, as needed, by focus groups and direct interviews. These focus groups solicited information from individuals and organizations with specialized knowledge and experience of the topic areas. Finally, legal research was conducted to develop a national perspective and research relevant case law, statutory and procedural issues.

Several conclusions were drawn from the results of the preliminary questionnaires and the comments that accompanied them. First, it was clear that the initial publication and dissemination of the 1989 Reports had been effective. Yet, receiving the Reports without an opportunity to examine, review and internalize their contents had not resulted in meaningful awareness. As a result, respondents

understood the overall purpose of the Reports without retaining specific information about the findings and recommendations.

This lack of detailed understanding of the Reports accounted for the belief, on the part of most respondents, that the 1989 Reports had not been effective in addressing issues of gender, race and ethnic bias. Respondents seemed to lack both knowledge and confidence in the ability of the 1989 Reports to adequately address these concerns. Finally, a large majority of respondents did not believe that accountability, resource allocation or follow-up on the implementation of the 1989 Reports was effective.

What then is the strategy for addressing the problem of race/ethnic and gender bias in the Michigan justice system and the legal profession in the future? This report contains a detailed analysis of the status of each recommendation set forth in the 1989 Reports, the level of implementation achieved since that date, and additional recommendations for the future. However, like the 1989 Task Forces, there is unanimous agreement that some goals are so critical to the future of this work that they must be strongly emphasized. It is the conclusion of the State Bar of Michigan Task Force that the 1989 Task Forces' Joint Recommendations correctly predicted the necessary steps to be taken to insure that their reports would not only raise awareness, but would also reduce or eliminate bias and increase citizen confidence in the legal system. Three crucial areas were identified as the foundation for these changes: (1) Ethical Standards and Disciplinary Systems; (2) Education; and (3) Implementation.

Unfortunately, a review of these specific recommendations shows that only one area, judicial education, has been substantially addressed. No recommendations regarding the disciplinary system or the implementation plans were substantially accomplished. Few of the remaining recommendations regarding attorney education, law schools or public initiatives have been adopted. Yet, it is not too late to accomplish the task. Today, in 1997, a task force once again calls for the leadership of our profession to strongly endorse these fundamental changes.

ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS

In 1989 the Task Forces adopted joint recommendations calling for the amendment of the Code of Judicial Conduct, the Michigan Court Rules and the Michigan Rules of Professional Conduct to specifically prohibit invidious discrimination and sexual harassment by judges and lawyers. Despite

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adoption by the State Bar of Michigan Representative Assembly, these provisions were not enacted by the Michigan Supreme Court. The State Bar Task Force endorses the enactment of these amendments as proposed in 1990 by the State Bar of Michigan Representative Assembly. The State Bar Task Force further recommends that the disciplinary systems for attorneys and judges actively promulgate policies and procedures designed to increase the confidence level of the public and the professions regarding their response and intervention in matters related to discrimination and bias.

EDUCATION

The 1989 Reports concluded “education is an essential tool in efforts to eliminate race/ethnic and gender bias from the Michigan court system ... An educational approach is appropriate because it focuses on understanding, not on blame.” As a result, they proposed broad reforms in the areas of education for judges, court personnel, attorneys, law students and the public. In each instance they stressed the need for a broad spectrum of educational strategies. In the last eight years much has been done in the area of education, yet there are still wide gaps in the awareness and exposure of most of the profession to the issues of race, ethnic and gender bias. As a result, the State Bar Task Force reinforces the call to adopt the 1989 recommendations, with some modifications.

All members of the justice system should either receive or have access to the 1989 Task Force Reports and the 1997 State Bar of Michigan Report. Each member of the justice system and the legal profession should attend at least one training session that discusses the conclusions and recommendations. Courses should be developed at the Michigan Judicial Institute, the Institute of Continuing Legal Education and all Michigan law schools that examine gender and race/ethnic issues as they affect the justice system. Women and minorities should be included in all phases of the educational process as committee members, planners, faculty and speakers. Ethics, substantive law courses and seminars should regularly include discussion of the nature and impact of bias and discrimination on the profession.

THE JOINT COMMISSION PROPOSAL

It is clear that the single most important factor identified by the Task Force regarding realization of the 1989 Report goals is the creation of a permanent implementation effort. It was the opinion of

the membership of the 1989 Task Forces and it is the opinion of the members of the State Bar Task Force that “If the battle against bias is to be vigorously pursued and eventually won, the Supreme Court must lead the effort.” (1989 Task Force Reports, Gender at p. 132) Fundamental to the implementation proposal are the following factors: (1) continued leadership on the part of the Supreme Court; (2) an administrative structure which possesses sole responsibility and oversight for the realization of the Report’s recommendations and the development of new initiatives; (3) a research and evaluation methodology which identifies the extent and success of the Task Forces’ educational efforts, the extent and success of the implementation of the specific recommendations, and the extent and success of the reduction of bias in the courts; and (4) the allocation of sufficient resources to the effort.

Therefore, the State Bar Task Force proposes the creation of a Joint Commission on Diversity Issues and the Michigan Justice System by the Michigan Supreme Court and the State Bar of Michigan. The Commission should not only work to implement the 1989 recommendations, but should place special emphasis on the conclusions and recommendations of the State Bar Task Force and expand the scope of its inquiry to fairness and diversity issues, in general. The Commission should identify substantive areas of investigation which were not addressed by the 1989 Task Force, and adopt a plan for developing findings and new recommendations.

PRIORITY GOALS FOR THE FUTURE

While each recommendation and goal set forth in this document is important, the State Bar Task Force believes that that some recommendations should be given special attention and emphasis. In addition to the joint recommendations discussed above, several issues were identified by the Task Force members as necessary and fundamental to the appearance of fairness and equal treatment and the achievement of a truly bias-free and non-discriminatory justice system. These included the following:

Domestic Violence Coordinating Councils: The Task Force believes that the continued creation of local and statewide coordinating councils is essential to the considerable success of the domestic violence reforms that have been adopted over the last eight years. Councils should be required in every county to establish effective procedures relating to the processing and resolution of domestic violence cases.

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Prosecutorial Responsibility for Personal Protection Orders: Great progress has been made in the availability and effectiveness of personal protection orders in domestic violence cases. However, personal protection order statutes and court rules should be amended to provide that prosecuting attorneys be encouraged and allowed to assist applicants in obtaining personal protection orders in addition to their statutory obligation to enforce personal protection violations, when other assistance is not available and unless a conflict exists. Increased responsibility also should be supported through adequate funding.

Evaluation of the Impact of MCR 2.404 on Mediation Practices: By order of the Michigan Supreme Court dated March 5, 1997, the Michigan Court Rules were amended to adopt a new rule regulating the selection process for mediation panels. The rule specifically requires that the mediation process be free from race, ethnic and gender bias. The State Court Administrative Office will have the responsibility to evaluate the first annual reports filed by the chief judges pursuant to MCR 2.404 (D)(1) to determine the extent of compliance, and the impact of the court rule amendment on increasing the number of women and minority mediators. Not only should the State Court Administrative Office function as a clearinghouse for this information, it should also be empowered to regulate, enforce and sanction non-compliance.

Regulation and Supervision of Private Mediation and Alternative Dispute Resolution Systems: Regulation and supervision of mediation and alternative dispute resolution procedures should be extended to all private contractual dispute resolution services which are used to resolve legal disputes.

Recruitment and Retention of Women and Minority Faculty in Law Schools: Law schools should adopt and follow policies aimed at the recruitment, advancement toward tenure and retention of women and minority faculty members. Out-of-state schools with good records in recruiting and retaining tenured women and minority faculty should be studied and their policies adapted to Michigan law schools. Statistics should be collected which accurately reflect the recruitment, employment and tenure patterns of law schools over an extended period of time.

Appointment and Hiring Policies and Practices in the Michigan Justice System: Progress must continue toward a representational bench and bar. The Governor should appoint more women and minorities to judicial positions at all levels and in jurisdictions throughout the state. Courts should appoint referees, magistrates and *quasi*-judicial personnel in numbers which accurately reflect the racial/ethnic and gender demographics of the populations they serve. Representation should be

increased in the offices of the Attorney General, State Public Administrators Office, Prosecutor's offices and in the disciplinary systems. The number of minorities hired as law clerks, judicial assistants and commissioners should be increased at all levels of the judiciary, but particularly at the Court of Appeals and Supreme Court levels. Women and minorities should continue to be appointed, elected and hired into positions of authority and leadership in the State Bar of Michigan.

Mandatory Legal Education and Court Appointed Counsel: In accordance with the State Bar recommendation on MCLE, a system of mandatory legal education in the area of family law and family violence should be developed for judges and attorneys. Until a statewide mandatory continuing legal education standard is adopted, each Circuit Court - Family Division should adopt minimum continuing legal education standards for appointment in that jurisdiction. Any attorney appointments out of the family division should be given only to attorneys who have complied with these requirements. Referrals from bar associations regarding family matters should be consistent with these requirements.

Court Personnel Training: Quality training programs on race, ethnic and gender bias issues should be provided to all levels of court personnel. The Task Force recommends that funding for "on site" programs be increased in order to enable the Michigan Judicial Institute to fully implement this recommendation.

State Court Administrative Office Regulation and Enforcement: The Supreme Court should develop specific standards related to court administration and race/ethnic and gender bias. A mechanism for monitoring administrative compliance with Supreme Court standards should be developed. The State Court Administrative Office, at the direction of the Chief Justice of the Michigan Supreme Court, should be given the authority to review local court operations and make recommendations for improvements when necessary. This authority should include the ability to mandate adoption of internal administrative policies and procedures, which will enhance the fair and equitable delivery of justice to all citizens.

"One Court of Justice" Funding Issues for the Future: The Michigan legislature should recognize the authority of the Supreme Court of Michigan under the separation of powers doctrine. It should support the Supreme Court in the implementation of "One Court of Justice" and facilitate standardized administrative delivery systems and uniform, equitable enforcement of gender-neutral policies and management practices. The legislature should fully fund all mandated requirements placed on state courts.

NOTEWORTHY ACCOMPLISHMENTS

The State Bar Task Force wishes to recognize and acknowledge many of the organizations that have worked over the last eight years to comply with and implement the goals set forward in the 1989 Reports. In many instances, these achievements were done completely voluntarily and without additional financial resources or personnel. The **Michigan Judicial Institute** has consistently and comprehensively designed its educational curriculum to reflect the recommendations of the 1989 Task Force as they relate to the education of judges and court personnel. The **Prosecuting Attorneys Association of Michigan/Prosecuting Attorneys Coordinating Council/Domestic Violence Prevention and Treatment Board/State Court Administrative Office** have joined together to initiate significant reforms in the attitude about and the approach to domestic violence in Michigan. Of particular note is the progress achieved in the availability of personal protection orders. The **State Bar of Michigan** has responded to the challenge of the 1989 Reports by establishing a Department for an Open Justice System. During the last eight years, this department has dedicated its efforts to the implementation of numerous 1989 Task Force recommendations.

Throughout the state, **Friends of the Court** offices have struggled to respond to the growing needs of their constituency. They have been mandated to increase enforcement and collection efforts on child support, enforce parenting time requirements, utilize increased conciliation and mediation techniques, establish non-traditional office hours and standardize judicial recommendations. Despite the serious funding issues for these offices, many Friends of the Court reported serious efforts to address these concerns and to adopt innovative programs.

As a result of recommendations by the State Bar of Michigan Standing Committee on Standard Criminal Jury Instructions and the Michigan Supreme Court Standard Jury Instructions Committee, civil and criminal jury instructions were amended to adopt consistently gender neutral language in almost all provisions and commentary. The **Michigan State Bar Foundation** has demonstrated a long commitment to supporting the efforts of the 1989 Task Forces and the State Bar Task Force, providing financial support for the 1997 project. The **State Bar of Michigan Representative Assembly** adopted proposed revisions to the Code of Judicial Conduct, Michigan Court Rule 9.205 and the Code of Professional Conduct. These proposals were generated as a result of the 1989 recommendations and were a courageous and controversial action taken by the policy-setting body of the State Bar of Michigan.

The **Michigan Supreme Court** has provided leadership and guidance on the issues of bias and discrimination in the justice system of Michigan beginning with the Citizen's Commission to Improve Michigan's Courts in 1986. The establishment of the 1989 Task Forces and the Court's subsequent support of its findings and recommendations have been essential to the efforts for reform. Under its direction, the **State Court Administrator's Office** and the **Michigan Judicial Institute** have accomplished much toward the realization of the goals set forth in 1989. The **State Court Administrative Office** has provided invaluable support to the courts of this state in addressing the concerns of the 1989 Reports and providing administrative resources and guidance in their implementation.

CONCLUSION

The Task Force is aware that it answers its mandate and completes its work at a time of great national sensitivity to race/ethnic and gender issues. We are confident that there is nothing in the accomplishment of our mandate that infringes upon the rights of any individual or any group; asks for unequal and preferential treatment for unqualified persons; or places an unfair burden upon organizations within our profession. To the contrary, the reporting of the status of the 1989 Supreme Court Task Forces' recommendations, and our recommendations for further implementation, go a long way toward increasing the quality of justice and credibility of the Michigan judicial system.

The appearance of bias, as well as the reality of bias, damages our profession and our courts in their fundamental role as protector of freedom and dispenser of justice. In a very real sense, the implementation of these recommendations continues the process of insuring that the Michigan justice system accurately reflects the diversity of the constituency it serves, and that participants at all levels are afforded a level playing field upon which to operate. As we continue to strive for a bias-free society and justice system, lawyers, judges and their leaders must be in the forefront of this effort. This report, coupled with the 1989 Reports, will provide the members of our justice system with the knowledge and awareness needed to more ably continue this elusive undertaking.

THE STATE BAR OF MICHIGAN TASK FORCE MANDATE

To appreciate the mandate of the State Bar's Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession, it is necessary to step back more than a decade to the 1986 report of the Michigan Supreme Court Citizen's Commission. Under the leadership of Justice Patricia Boyle, this Commission was mandated 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."

After an intensive study of the justice system and several statewide public hearings, the Commission reached the disturbing conclusion that over one-third of Michigan's citizens believed that the Michigan court system discriminated against individuals on the basis of gender, race or ethnic origin.

It was upon the recommendation of the Citizen's Commission that Michigan Supreme Court Chief Justice Dorothy Riley created, in 1987, two separate task forces – the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts and the Michigan Supreme Court Task Force on Gender Issues in the Courts (1989 Task Forces.) It is important to note that these task forces were at the forefront of a national movement in which those who best know a state's justice system examine it for flaws. After two years of extensive citizen, judicial and lawyer surveys, data collection and research, and 17 statewide public hearings, the 1989 Task Forces concluded that a substantial number of citizens and lawyers believed that bias affects justice, and that their perceptions of bias were often based on reality. These reports and their conclusions revealed that Michigan, like many other states, needed to address the manner in which courts treat those who often lack the power to make their voices heard.

Hundreds of specific findings and recommendations urged individuals, agencies, organizations and courts to address the problems identified. The Reports, which were released in December of 1989, provided a roadmap for change addressing not only how lawyers treat one another, but also, more importantly, how to improve the quality of justice afforded to victims and litigants. The 1989 Task Forces recognized, however, that they had only taken the first steps on that road by stating the following: "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." Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts 135 (December, 1989).

Determining the status of implementation is not an easy task, as no agency or organization routinely tracks progress. Considering the issue one which seriously impacts the quality of justice in Michigan, as well as the perception of many that some goals remain unrealized, State Bar President

THE STATE BAR OF MICHIGAN TASK FORCE MANDATE

Victoria A. Roberts determined in the fall of 1996 that it was time to assess progress toward the goals identified in the 1989 Reports. To that end, in November of 1996, she appointed the State Bar Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession (State Bar Task Force). With members drawn from diverse legal backgrounds and geographic locations, this group of experienced lawyers and judges was given the following mandate:

- report on the current status of recommendations made in December, 1989, by the Michigan Supreme Court's Task Forces on Race/Ethnic and Gender Issues in the Courts;
- compare the progress in Michigan to that achieved in other states;
- identify and develop a strategy for collecting information about race, ethnic and gender issues not addressed in the Supreme Court Task Force reports; and
- develop a strategy for monitoring and implementing new and unrealized recommendations.

The Task Force is aware that it answers its mandate and completes its work at a time of great national sensitivity to race/ethnic and gender issues. We are confident that there is nothing in the accomplishment of our mandate that infringes upon the rights of any individual or any group; asks for unequal and preferential treatment for unqualified persons; or places an unfair burden upon organizations within our profession. To the contrary, the reporting of the status of the 1989 Supreme Court Task Forces' recommendations, and our recommendations for further implementation, go a long way toward increasing the quality of justice and credibility of the Michigan judicial system.

The appearance of bias, as well as the reality of bias, damages our profession and our courts in their fundamental role as protector of freedom and dispenser of justice. In a very real sense, the implementation of these recommendations continues the process of insuring that the Michigan justice system accurately reflects the diversity of the constituency it serves, and that participants at all levels are afforded a level playing field upon which to operate. As we continue to strive for a bias-free society and justice system, lawyers, judges and their leaders must be in the forefront of this effort. This report, coupled with the 1989 Reports, will provide the members of our justice system with the knowledge and awareness needed to more ably continue this elusive undertaking.

THE STATE BAR OF MICHIGAN TASK FORCE APPROACH

MEMBERSHIP

The State Bar Task Force was given until the end of President Roberts' bar year to complete its report. To accomplish this formidable task in this relatively short time frame, President Roberts appointed a task force membership that reflected a number of considerations. First, in order to bring a broad range of personal and cultural experiences to bear on this project, the State Bar Task Force was designed to reflect racial, ethnic and gender diversity. Second, to insure that views from all areas of our state were considered in data compilation and analysis, President Roberts selected a task force that represented numerous geographic locations across the state. The third consideration was to impanel a group of individuals with a wide spectrum of professional experience. This was necessary because the recommendations from the 1989 Reports addressed issues as diverse as domestic violence, domestic relations, criminal law, civil relations, bias within the court environment, employment policies, disciplinary systems, appointment policies, educational programs and bias within the profession. Each member appointed to the State Bar Task Force by President Roberts brought a wealth of experience and understanding to this undertaking.

FUNDING

With a mandate and membership in place, the State Bar Task Force Co-Chairs prepared a budget and presented the 1997 Task Force project to both the State Bar's Board of Commissioners and the Michigan State Bar Foundation. Both bodies responded enthusiastically with generous support, both conceptual and financial. Of the approximately \$38,000 budgeted for the project, the Foundation contributed \$25,000, with the Bar contributing the difference.

In addition to office facilities and administrative support, the State Bar also contributed substantial time and the expertise of its staff. Key to the success of the task force effort were D. Larkin Chenault, State Bar of Michigan Executive Director; Danial Kim, Deputy Executive Director; Dean Tucker, Director of Information Services; Stephanie Arbanas, Assistant Executive Director for Personnel and Research; Nkrumah Johnson-Wynn, Associate Executive Director for an Open Justice System; Judy Hershkowitz, Project Assistant; and Joyce Nordeen, Project Secretary.

METHODOLOGY

The initial development of this project was undertaken by Task Force Co-Chairs Dawn Van Hoek and Saul A. Green, State Bar Associate Executive Director for an Open Justice System Nkrumah Johnson-Wynn, and Special Advisor Lorraine H. Weber, who had served as the Project Director for both 1989 Supreme Court Task Forces. At the outset it was understood that this report card would be completed during President Roberts' bar year, necessitating that much of the data collection and analysis would have to be done by task force members themselves. This would truly be a working task force.

To meet this ambitious time frame, the 1989 recommendations were divided into the five major subject areas that had been evaluated by the 1989 Task Forces, with each assigned to a team:

- Domestic Violence
- Domestic Relations
- Bias Within the Court Environment
- Bias Within the Profession
- Joint Recommendations of the Gender and Race/Ethnic Task Forces

Task Force members were assigned to these five teams based on each member's background and professional experience, and made responsible for the data-gathering and analysis in their designated subject areas. A "Team 6," consisting of the Co-Chairs, Lorraine Weber, Nkrumah Johnson-Wynn and later Joan Ellerbusch Morgan, was assigned the responsibility for administering the project, coordinating the research effort, and editing, compiling and publishing the final report from the data received from the five teams.

The team responsibilities were assigned under the following structure:

TASK FORCE TEAMS

- Team 1** domestic violence
 women as criminal defendants
 women as victims of crime
 pretrial release
 sentencing

- Team 2** domestic relations
judicial education
court rules, statutes, jury instructions
- Team 3** mediation
arbitration
special masters
Task Force follow-up issues
- Team 4** treatment of women/minority judges, attorneys, litigants, witness, jurors, and the
public at large
appointment of women/minorities to fee-generating positions
treatment of court personnel
ethical standards and disciplinary systems
- Team 5** representation of women minorities on bench, in public positions
representation/treatment of women/minorities in professional associations
bias in employment issues
bias in law school issues
- Team 6** correlation
compile information received by teams 1-5
collate team reports into final report

RESEARCH

At the first full task force meeting it was decided that three basic data-gathering techniques would be used to develop the final report. First, there would be a heavy emphasis on questionnaires directed to all components of the legal system that were the subject of 1989 recommendations. Second, the questionnaires would be supplemented, as needed, by focus groups and direct interviews. These focus groups would solicit information from individuals with specialized knowledge and experience of the topic areas and from organizations, such as special purpose bar associations, whose members were the focus of the 1989 recommendations. Finally, the task force mandate required a comparison of Michigan's progress in implementation to that achieved by other states with similar task forces. This was to be accomplished by contracting with an experienced attorney capable of conducting the necessary research to develop a national perspective. This person would also research any legal issues or questions raised by the teams in order to accomplish their data gathering and analysis. In January of 1997, the State Bar entered into a contract with Joan Ellerbusch Morgan, an attorney experienced in criminal and appellate law, who had previously served as the Reporter to the State Bar Task Force to Appellate Courts. She was hired to conduct the national survey and general legal research on behalf of each team.

Data Collection

Two types of questionnaires were developed by the teams. The first type was designed to determine the degree of implementation of every recommendation made by the 1989 Task Forces. Some of the information sought was statistical in nature, other questions asked about procedures recommended in the 1989 Reports, while other questions attempted to determine the race and gender composition of the many participants in our court system. Additionally, there were questions addressed to each respondent seeking his or her opinion about factors that had a bearing on the current status of particular recommendations.

The second type of questionnaire was more general in nature. It was apparent to the members of the State Bar Task Force that not only was implementation of the individual 1989 recommendations important, but it was also important to gauge the degree of knowledge and the perceptions about implementation of the 1989 Task Force Reports possessed by those answering the questionnaires. Each person completing a questionnaire was asked the same 26 questions in the form of a Preliminary Questionnaire. The Preliminary Questionnaire surveyed the following types of knowledge and perceptions of implementation:

- 1) Were you aware of the existence of this Report prior to receiving this questionnaire?
- 2) Have you ever received a copy of the Report or a summary of its findings and recommendations?
- 3) Have you ever attended any educational program or seminar where the Report and its findings and recommendations were used as a part of the curriculum?
- 4) How effectively do you believe the Report has been in generating reform in the court system to prevent or reduce actual and/or perceived gender or racial /ethnic bias?
- 5) Has an effective method for accountability and follow-up on the implementation of the Report recommendations been created?

Through the use of these two survey methods the State Bar Task Force was able to gauge the degree of implementation of the 1989 Task Force Reports, and the level of awareness of the 1989 Reports by significant actors in our Michigan legal system.

The Teams developed questionnaires addressed to the following components of our Michigan legal system:

- Supreme Court Chief Justice
- Court of Appeals Chief Judge
- Circuit Court Chief Judges
- Probate Court Chief Judges
- District Court Chief Judges
- Recorder's Court Chief Judge
- Circuit Court Judges
- Recorder's Court Judges
- Friends of the Court
- Prosecuting Attorneys Association of Michigan
- Prosecuting Attorneys Coordinating Council
- Prosecutors
- Local Bar Associations and Special Purpose Organizations
- State Bar of Michigan
- State Bar of Michigan Sections
- State Bar of Michigan Criminal Law Section
- State Bar of Michigan Family Law Section
- State Bar of Michigan General Practice Section
- State Bar of Michigan Juvenile Law Section
- State Bar of Michigan Judicial Conference Section
- Michigan Judicial Institute
- Institute of Continuing Legal Education
- Governor Engler
- Attorney General
- Law School Deans
- Women & Minority Law School Professors
- Women and Minority Law School Student Groups
- Attorney Grievance Commission
- Attorney Discipline Board
- Judicial Tenure Commission
- Sentencing Guidelines Commission

In all, 816 questionnaires were sent out and 400 were returned.

The questionnaires were further separated into size and racial and ethnic demographics. As a result, the overall response could be separated into five categories:

- Region 1 – Large circuit court (5 or more circuit judges), high minority county population (greater than ten percent [10%]).

- Region 2 – Small circuit court (less than 5 circuit judges), high minority county population (greater than ten percent [10%]).
- Region 3 – Large circuit court (5 or more circuit judges) low minority county population (less than ten percent [10%]).
- Region 4 – Small circuit court (less than 5 circuit judges) low minority county population (less than ten percent [10%]).
- Statewide – Questionnaires sent to government agencies, professional organizations, law schools and other statewide entities.

As a result of this categorization, the State Bar Task force could make more meaningful findings. For example, failure to appoint a large number of minorities to fee-generating positions in a county with a high percentage minority population has more impact than the same situation in a county with a very small minority population. Throughout this report, distinctions may be drawn among regional responses in order to better alert the reader to the different demographic landscapes across our state.

Additional information was collected by convening focus groups and directly interviewing selected individuals. The individuals invited to participate in these events were chosen on the basis of both their experience and expertise. While the information solicited in this manner is generally anecdotal, it is still valuable. Some interviews were conducted with representatives of agencies or groups with a particular focus on a substantive area. Other interviews were conducted with persons representing women or minority organizations.

Analysis and Evaluation

The full State Bar Task Force met on four occasions: December 13, 1996, May 9, 1997, July 7, 1997, and October 31, 1997. Between those meetings teams met to develop the questionnaires, review and analyze the collected data, and prepare findings and recommendations.

Throughout the analysis phase the State Bar Task Force continually returned to its initial mandate. The purpose of this investigation was not to determine whether bias in the justice system still exists in 1997 or whether new problems have arisen. The task force mandate was clearly confined to evaluating

and reporting on the status of the implementation of the 1989 Reports. This information was collected primarily through the questionnaires, which were supplemented by targeted interviews, focus group meetings, and legal research. Each team met on numerous occasions and utilized the gathered data and research to determine the status of each of the 1989 recommendations and, in appropriate instances, to formulate recommendations for further implementation.

It should be noted that a nearly fifty percent (50%) return rate on the questionnaires' results is a very credible data base upon which to draw conclusions. The Task Force compiled all available data that revealed the current status of implementation of each of the 1989 recommendations. In many instances, the lack of available data from courts, agencies and organizations was as relevant in determining the status of implementation as was the production of "hard" data.

Anecdotal information was balanced by the written responses of organizations and courts. Where individual opinions were considered, they were considered within the context of the individual's experience and expertise supplemented by supporting documentation from other sources. No single source of data or commentary was viewed as conclusive.

All organizations and entities who were the subject of recommendations were given an opportunity to review and comment upon the draft report. Where supplemental commentary was received, every effort was made to incorporate explanations, context and additional data into the body of the report. It is important to note that it was not the intention of the Task Force to call into question individual persons, organizations or their actions, but rather to focus on the larger issues which remain unresolved since the 1989 Reports.

The members of the Task Force filtered and evaluated the data through their own collective expertise and experience in the Michigan court system and legal profession. The State Bar Task Force members carefully reviewed supporting data to confirm that each status determination could be supported.