

# EXECUTIVE SUMMARY

## PREAMBLE

On December 4, 1990, the Supreme Court of Iowa established the Equality in the Courts Task Force.<sup>1</sup> As framed by the Supreme Court, the mission for the Task Force was ambitious and unique. More than thirty states have studied gender bias; more than ten states have separate task forces focused on racial and ethnic bias. Iowa's is the first study, however, to investigate both race/ethnicity and gender bias in the court system.

The Task Force's simultaneous focus on gender and race/ethnicity has been a source of enlightenment and a challenge. In several instances, the research of the Task Force disclosed that white men, traditionally the most numerous and the dominant group in the legal profession, tend to perceive the world differently from either women or minority members of the profession. The specific concerns of women and minorities may and often do differ and this study demonstrates that it can be important to specify just which "minority" group is being discussed. However, because of their status as nondominant groups in the legal world, both women and racial/ethnic minorities are more vulnerable to bias and more willing to name and detect various forms of bias affecting their professional lives. The Task Force found it useful to develop a habit of looking at issues from multiple perspectives and to consider the possible interactive effects of race and ethnicity as well as gender.

The membership of the Task Force itself reflected the importance placed on diversity (14 of the members are women, seven are racial/ethnic minorities); it included persons from various sectors of the legal system (eight members were judges, 12 members were practicing attorneys, two members were court administrators); and it included representatives from the larger community (two members were state legislators, three members were academics and two members worked in private industry).

Funding was provided by the Iowa Legislative Council, the State Justice Institute and the Lawyers Trust Account Commission. All the Task Force members donated their time to the study and many members decided to use personal funds to defray any expenses incurred in travel and accommodations.

The Task Force conducted extensive independent research to determine how lawyers, judges, court personnel and the public view the court system and to solicit comments from these groups about their first-hand experiences. Our research strategy was designed to yield both qualitative and quantitative data.

The Task Force gathered qualitative data through a variety of methods. At five public hearings in Waterloo, Sioux City, Davenport, Council Bluffs and Des Moines, the Task Force listened to the testimony of 140 citizens who offered their experiences and views on every topic studied by the Task Force. Throughout our two years of study, the Task Force also received written comments from a diverse group of over 300 people, some of whom were members of organizations with special expertise in the problem areas focused upon in this Report. Finally, the surveys themselves elicited an unusually high number of written comments -- many of which are lengthy, detailed and extremely thoughtful -- in addition to responses to the numbered questions.

The qualitative or anecdotal material gives life and texture to the empirical, quantitative findings. From these sources, the Task Force was able to identify key issues, document differences in perceptions, pinpoint some of the many ways bias manifests itself in the courtroom and in professional interactions

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<sup>1</sup> *In the Matter of the Appointment of a Commission on Equality in the Courts*, Order, Supreme Court of Iowa, December 4, 1990.

and begin to understand the meaning of race and gender in the lives of those who seek justice in the Iowa courts.

To gather and analyze the quantitative data about attitudes and experiences, the Task Force contracted the services of the research firm of Selzer Boddy, Inc. to conduct four major surveys, directed at judges, attorneys, court personnel and the general public. The response rates in each of the written surveys were high: 84% for judges, 54% for attorneys and 43% for court employees. The perceptions of the general public were elicited via a telephone survey of a cross section of Iowans. Special efforts were taken to include enough minority respondents for statistical analysis. The results of these surveys enabled the Task Force to generalize about the attitudes, observations and experiences of participants in the legal process and to contrast the views of the majority group (i.e., white men) with those of women and minorities. The statistical analysis of the survey data gives us confidence that the patterns uncovered are not idiosyncratic or simply the result of chance. However, by their nature, survey instruments only canvass people about what they believe to be the truth. The surveys alone cannot determine the existence of bias or actual disparate treatment based on race or sex.

In addition to the four major surveys, Dr. B. Keith Crew of the University of Northern Iowa undertook a special retrospective study of criminal cases in selected Iowa counties. Funding for the Case Study was provided to the Task Force by the State Justice Institute. The criminal case study was designed to shed light on one pressing question before the Task Force -- the effect of race in the criminal justice process. Controlling for a variety of factors that legitimately could affect either the conviction or sentencing outcome (including prior felonies and severity of the offense), the empirical study compares the treatment of whites and minorities from the moment of formal charging of a crime to imposition of sentence. Like the survey data, the results of the case study can not yield conclusive evidence of the existence of racial bias. However, an unexplained disparity between whites and minorities is suggestive of race bias because it documents a difference in treatment for which we can provide no legitimate explanation.

The mandate to the Task Force from the Iowa Supreme Court identified three major objectives of the project:

1. to investigate bias -- particularly on the basis of race or gender -- which may exist in the court system and its effect upon the judicial process and participants;
2. to collect the information received and make findings with regard to any existing bias;
3. to submit a report to the Supreme Court, including the Task Force's findings and its recommendations of means to heighten awareness and to increase the sensitivity of court participants to forms of bias, and eliminate bias which may demean participants or affect the prospect of equal treatment.

The Task Force members believe that we have accomplished each of these objectives. The four surveys of judges, attorneys, court personnel and the general public together represent the most comprehensive study ever undertaken in the state focusing on gender and race bias in the courts. The criminal case study is a refined empirical analysis that permits us for the first time to measure with some confidence the extent to which racial bias may be affecting the adjudication of criminal proceedings. The extensive qualitative evidence received at the public hearings and through written submissions to the Task Force demonstrates that the work of the Task Force was given serious attention by members of the profession and by the general public.

The Task Force acknowledges that it is impossible to quantify the precise extent of bias in a system as dynamic and complex as the court system in Iowa, or to establish conclusively that any individual report of bias is fully accurate. It also must be noted that this is a consensus report which does

not in all instances reflect the personal views of individual members. However, the Task Force members believe that the data base provided by our independent research has allowed us to fulfill our mandate. Through this research, the Task Force is able to make meaningful generalizations about differences in perceptions and experiences, give concrete examples of what participants in the legal system regard as bias and frame specific recommendations for improving the system.

### **Distilling the Research: Three General Themes**

The research of the Task Force offers a complicated portrait of practices and interactions in the Iowa court system. There is strong evidence that most participants have confidence in the basic fairness of the Iowa courts and do not see the problems of race and gender bias as either overwhelming or intractable. Even when problems are acknowledged, the Task Force is hopeful that this Report will produce enthusiasm for change, rather than cynicism or resignation, notwithstanding testimony it received evidencing a lack of confidence that the Task Force efforts can bring about meaningful change.

The Task Force acknowledges that, in most instances of the day-to-day court procedures and practice of law, biased conduct is not evident, and that most attorneys and judges rarely, if ever, exhibit overtly or intentionally biased conduct. Nevertheless, there is no question that some quantum of race and gender bias exists. The Task Force strongly believes that the increasing diversification of the profession requires a renewed commitment to equality in the courts. The elimination of bias should not have to wait until the numbers of women and minority attorneys substantially increase.

In distilling the problems and concerns, three themes stand out from the wealth of data amassed and analyzed by the Task Force. First, women and minorities are significantly underrepresented in important sectors of the profession and in positions of influence affecting the court system. There is not yet a sizeable number of either women or minority judges, partners in private firms or on faculties in the two state law schools. Even in the judicial department where women make up the majority of court personnel, men disproportionately occupy the higher-paying, higher-status positions. This means that in many professional settings, women and minorities are vastly outnumbered and are likely to stand out as being "different."

Second, the demographics influence the experience of men and women and whites and minorities in their interactions in the courtroom and other professional settings. Not unexpectedly, one consistent finding in the various Task Force studies is that gender and race bias poses a greater problem for women and minorities than for white men. Consequently, women and minorities are less positive in their assessment of the current situation and less optimistic about the future. A majority of both women and minority attorneys report that they have experienced bias in the Iowa court system. These gender and race-related differences in attitudes and perceptions generally held true regardless of number of years in practice. The data give no reason to believe that the disparity will disappear with the passage of time alone.

Third, there is evidence that gender and race may at times negatively affect the interest of certain classes of litigants. There are disturbing reports that domestic violence victims -- the vast majority of whom are women -- feel they have sometimes been treated with disrespect and a lack of understanding by the court system. The criminal case study indicated that minority defendants do not fare as well in all Iowa courts as similarly situated white defendants. Ethnic minorities who are not fluent in English are placed at a disadvantage in Iowa courts because of the lack of availability of interpreters.

The Final Report also notes successes. The Task Force received quite a bit of testimony that, for the most part, the court system does not exhibit bias. There also was testimony at the public hearings and in the surveys praising Iowa judges and acknowledging that many problems have their source outside of the judicial system.

However, the emphasis of this Report is on documenting the depth of racial, ethnic and gender bias problems and concerns. We emphasize the bad news because we are more interested in raising consciousness as to the problems that have yet to be addressed effectively, than focusing on progress that already has occurred. The many recommendations for change, further study, and continued monitoring contained in this Final Report demonstrate the faith of Task Force members that more work and understanding can make a difference. Many of the recommendations require funding, and the Task Force strongly urges the Iowa State Legislature to work with the Supreme Court of Iowa in funding those recommendations which will require monetary assistance. Equality in the courts is both an aspiration and an attainable goal.

## **I. DEMOGRAPHIC PROFILE OF JUDGES, LAWYERS AND COURT EMPLOYEES**

### **By Gender**

Women make up 51.03% of Iowa's population aged 25 to 69. Women make up 16% of all Iowa attorneys. But women make up only 8.4% of the full-time judicial positions (16 of 191) and only 12.5% of all judicial positions (including part-time magistrates, not all of whom are lawyers, or 43 of 343).

Women make up 16% of all Iowa attorneys. Female attorneys are younger, on average, than male attorneys: 35% of women are under age 35, compared to 15% of men; 62% are under age 40, compared to 34% of men. Female attorneys have been practicing law for shorter periods, on average, than male attorneys. Male attorneys are significantly more likely than female attorneys to hold positions as named partners and senior partners. A larger percentage of female attorneys are government attorneys (apart from prosecutors and public defenders, where the distribution is approximately the same between men and women) and associates in law firms than the percentage of male attorneys in those positions.

The nonjudicial court system is populated predominantly by women. Of the 1569 court employees, 1269 (80.9%) are women, and 300 (19.1%) are men. Breaking the population down by pay grade indicates that male court personnel disproportionately hold more of the highest ranking, highest paying jobs. Twenty-nine percent of female employees responded that their job responsibilities include the supervision of other employees, compared to 41% of men.

### **By Race and Ethnicity**

Minorities make up 2.82% of Iowa's population aged 25 to 69. African Americans make up 1.46% of Iowa's population from that age group; the comparable figure for persons of Hispanic origin is .94%.

Minorities make up one percent of all Iowa attorneys. Currently three of the 343 judicial positions are filled by African Americans, or less than .87%. Only one of the 191 full-time judicial positions (.52%) is filled by an African American. No other minorities are represented on the Bench.

There is no significant difference in the ages of minority and white attorneys. There is no significant difference in the average numbers of years of practicing law between white and minority attorneys. A larger percentage of minority attorneys are prosecutors and sole practitioners than white attorneys.

Minority employees in the court system are dramatically underrepresented. Of the 1569 total employees, 28 are minorities (1.8%). None holds a position in the top pay grade levels.

## II. APPOINTMENTS, HIRING AND ADVANCEMENT: PRACTICES AND PERCEPTIONS

### Overview

The Task Force asked Iowa attorneys whether they believed that their race or sex had damaged them professionally. The survey reports indicate that women and minorities are significantly more likely than either men or whites to have had an experience with a judge or with another attorney that they believe was detrimental to them professionally because of their sex or race.

- Fifty-six percent of female attorneys reported that they have had an experience with another attorney that they believe was harmful to their career on the basis of their sex; this compares with 3% of male attorneys reporting they had an experience with another attorney or judge that they believe was harmful to their career on the basis of their sex.
- Thirty-four percent of female attorneys reported that they have had an experience with a judge that they believe was harmful to their career on the basis of their sex.
- Twenty-eight percent of minority attorneys reported they have had an experience with an attorney that they believe damaged their career because of their race.
- Twenty-seven percent of minority attorneys indicated that they have had an experience with a judge that they believe damaged their career because of their race.

### The Judicial Application Process

The percentages of female, male, minority and white attorneys who have applied for judicial appointments are virtually identical.

The Judge Survey indicated that the interviewing process for female judicial applicants often includes questions never or seldom asked of men.<sup>2</sup> For example:

- Female judges were asked significantly more often than male judges during the judicial interviewing process whether they would be willing to work long hours (55% were asked this question), what sort of child care arrangements they had (26%), what their spouses thought of their applications (25%), and whether they would move if their spouses were offered a job in another city (12%).
- In comparison, 39% of male judges were asked whether they would be willing to work long hours, 4% were asked what sort of child care arrangements they had, 11% were asked what their spouses thought of their applications, and 2% were asked whether they would move if their spouses were offered a job in another city.

Among the experiences described by those responding to the Attorney and Judge Surveys are several involving judicial nominating commissioners' discomfort with candidates who they thought might become pregnant, take maternity leave, or have difficulty with child care arrangements once

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<sup>2</sup> The number of minority judges and of minority attorneys responding to this survey question is not high enough to allow interpretive statistical analysis.

appointed. Others reported being asked questions implying doubts about women's suitability for judgeships. There were reports that some commissioners feared "reverse discrimination" in the judicial selection process and suggested that women expect preferential treatment.

## **Hiring and Advancement Within Law Firms and Other Professional Settings**

The career ambitions of white and minority attorneys are similar. There is no statistical difference between white and minority attorneys in the interest they express in holding a number of positions tested in the Attorney Survey. There are some differences, however, in the ways minority attorneys view their career opportunities compared to whites.

Female attorneys tend to be more interested than male attorneys in becoming the heads of corporate departments or government agencies. Male attorneys tend to be more interested than female attorneys in becoming named or senior partners in law firms. Female attorneys are less optimistic than men about their chances for advancement in the profession.

- A majority of all attorneys -- white (75%) and minority (57%), male (57%) and female (56%) -- say they are very or somewhat interested in becoming partners in law firms.
- Minority and female attorneys are less optimistic than white and male attorneys, respectively, about their chances to become partners in law firms generally or senior partners specifically.
- Male attorneys and white attorneys see their chances of becoming senior partners or partners in law firms as better than either female attorneys or minority attorneys view their chances. Twenty-five percent of whites say their chances are excellent, while no minority attorneys say their chances are this good; in fact, almost half of minority attorneys (46%) say their chances of making partner are poor; a majority (52%) rate their chances of making senior partner as poor.
- Men and women and whites and minorities tend to view their chances of achieving all other positions as approximately the same.

Male attorneys are significantly more likely than female attorneys to hold positions as named partners (21% versus 9%) and senior partners in law firms (14% versus 2%). A larger percentage of female attorneys are government attorneys (apart from prosecutors and public defenders) and associates in law firms than the corresponding percentage for male attorneys. A larger percentage of minority attorneys are prosecutors and sole practitioners than white attorneys. Few minorities are senior partners in law firms.

Some female attorneys commented about the artificial limits placed on hiring opportunities for women. Other women described specific acts of sex discrimination in hiring, salary and retention. Several women commented on biased treatment they have received once they began practicing.

Female attorneys are more likely than male attorneys to have applied for, but not held, positions in law firms of all sizes, as well as positions as prosecutors, positions as other government attorneys and as in-house corporate attorneys.

- Women applying to law firms were asked some questions more than men were. When applying for positions in law firms, female attorneys were asked significantly more often than men whether they would be willing to travel (43% were asked this question, compared to 23% of male attorneys), whether they intended to have children (25%, versus 6% of men), whether they would move if their spouses were offered a job in another city (25%, versus 5% of men), and what sort of child care arrangements they had (14%, versus 2% of men).

For many of the interview questions listed on the surveys, the majority of women reported that they had been asked these questions within the past five years.

Many female attorneys reported being asked questions about their marital status. Many reported questions about their children or plans for children. Many were asked questions about their spouses. Some were told they would not be paid as much as other (male) attorneys. Some women were asked questions implying stereotypical ideas of women or suggesting doubts about their ability to fit into the current environment. Some minority applicants were asked questions implying inferiority of minorities.

Not all of these questions are necessarily sexist in and of themselves. For example, both men and women could be asked legitimately if they are willing to travel. However, because women were asked this and other questions more often than men, it appears that women are being measured by different standards than men. And the large percentages of women asked the questions in the last five years indicates that the tendency to measure women by different standards persists.

## **Legal Education**

At public hearings, speakers emphasized the importance of diversity within the profession. The same speakers identified the state's law schools as the important starting point for diversity initiatives. Of 701 students at the University of Iowa College of Law, 324 (46%) are women and 154 (22%) are minorities. The Drake University School of Law student population is 42% women and 11% minorities. Despite the success of the University of Iowa in attracting minority law students, however, very few remain in the state to practice.

Of the 41 tenure-track faculty members at University of Iowa College of Law, seven (17%) are women and six (13%) are minorities. Of the 22 tenure-track faculty members at Drake University School of Law, five (23%) are women; there are no minority tenure-track faculty members.

The creation of an environment which disdains gender and race bias should begin at the law school level, and specifically should emphasize, through the educational process, the relationship between professional ethics and attitudes and actions which promote an environment of equal opportunity.

## **Hiring and Advancement of Court Employees**

With respect to perceptions of gender equity in the treatment of court employees, a large percentage of court employees (87%) characterized the work environment for female court employees as having no serious problems. A similarly high percentage (89%) characterized the work environment for minority court employees as having no serious problems. Male and female court employees, however, view the work environment somewhat differently. More than half the men (51%) said that the situation for female employees is getting better; only 23% of the women believe the situation for women is getting better. Similarly, 34% of the minority court employees, as compared to 2% of white court employees, think the environment is getting worse for minority court employees.

In their attempts to advance their careers -- and in their records of success -- the survey disclosed no statistically significant differences between male and female or between white and minority employees.

### III. COURTROOM AND PROFESSIONAL INTERACTIONS

#### Overview

The Task Force studied how race, ethnicity and gender affect interactions among lawyers and judges. The surveys conducted by the Task Force revealed significant differences in the perceptions of white males compared to other groups.

- When asked to characterize the current situation for women and minority attorneys in the Iowa court system, the most common response from male attorneys (43%) is that there might be a few problems, but nothing very serious. An additional 25% of male attorneys indicate they see virtually no problems for women or minorities in the court system.
- In contrast, the most common response from female attorneys (71%) is that the current situation has some problems for women and minorities, some of them serious. An additional 10% say the current situation is very difficult for women, with many serious problems.
- Most minorities (57%) describe the current situation as having some problems, some of them serious, and another 20% say the current situation is very difficult for minorities, with many serious problems.

One of the most important findings of the Task Force is that women and minorities see little change in recent years.

- A majority of female attorneys (56%) and a significant number of minorities (44%) state the situation has not changed in the past five years.
- In contrast, 70% of male attorneys and 65% of white attorneys say the situation for women and minorities is changing for the better.

The number of minorities in the legal profession in Iowa has increased only slightly in the past few years, and this underrepresentation is of great concern to the Task Force. Although the minority student enrollment at the University of Iowa Law School now is almost 22%, the number of minority attorneys in the state has not increased much over time.<sup>3</sup> The Task Force heard testimony that it is difficult to convince minority graduates of the state law schools to remain in Iowa to practice law. The participation of minorities in the ISBA is almost negligible, as is the representation of minorities on the Bench.

By some objective standards, the involvement of women in the legal profession has substantially increased during the last five years. All judicial nominating commissions are now fully gender balanced; approximately 50% of the chairs for Iowa Bar Association Committees are now women; and student enrollment at the University of Iowa Law School is 46% women. Nonetheless, a majority of female attorneys do not believe that the problems they encounter in the profession have improved during this period of time.

Because women have entered the legal profession in substantially larger numbers in recent years, a greater percentage of female lawyers are under age 35. However, this demographic fact did not skew

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<sup>3</sup> Testimony from the Iowa Branch of the National Bar Association reported that in 1900 there were 30 African American lawyers in Iowa; in 1991 there were only 43.

the survey results. The problems perceived by female lawyers and the problems perceived by male lawyers were not affected by their age or number of years in practice. Both newer and more experienced female lawyers report bias, often occurring within the last five years. The disparity in the perceptions between women and minorities on one hand and white men on the other is noticeable at every age, years in practice, size of firm, size of community, or any other control that was used in the survey.

Given the wide-spread nature of the reported complaints, the Task Force is fully satisfied that the survey data and the testimony it has received provide an adequate basis for concluding that problems exist for female and minority attorneys in Iowa.

### **Interactions Among Judges and Attorneys**

The results of the Judge and Attorney Surveys disclosed that biased conduct poses a distinctive problem for women and minorities. A very large percentage of minority attorneys (83%) and female attorneys (92%) report that they have been the target of or have personally witnessed racially or sexually biased behavior on at least one occasion. A sizeable percentage of this group (44% of minority attorneys and 69% of female attorneys) report such biased conduct on many occasions.

Although there are significant differences in the number of women and minorities reporting such incidents compared to the number of men and whites, it should be noted that most attorneys reported having inappropriate comments or jokes about race and sex made in their presence on few or many occasions.

Women reported having listened to inappropriate comments about their sex, having been called by belittling terms of address, having been called by their first names when others were not, having been the subject of inappropriate comments about their dress or appearance, and having experienced inappropriate physical contact more than male attorneys.

Specifically:

- Seventy-four percent of female attorneys and 39% of female judges report hearing inappropriate comments made about their sex in their presence by other attorneys on many or a few occasions, compared to 7% of male attorneys and 6% of male judges.
- Twenty-three percent of female attorneys and 24% of female judges report hearing inappropriate comments made about their sex by court personnel on many or few occasions, compared to 2% male attorneys and 4% of male judges.
- Women report hearing fewer of these comments from judges; still, 40% of female attorneys and 36% of female judges have had inappropriate comments made about their sex in their presence on many or few occasions by judges, compared to 2% of male attorneys and 4% of male judges.
- Fifty-five percent of female attorneys report having been called by belittling terms of address by other attorneys, compared to 24% of male attorneys.
- Twenty-seven percent of female attorneys report having been called by belittling terms of address by a judge, compared to 8% of male attorneys.
- Twenty-three percent of female attorneys report having been the subject of inappropriate physical contact by other attorneys, compared to 1% of male attorneys.
- Twenty-seven percent of female attorneys report that a judge failed to reprimand or take corrective action when another attorney made inappropriate comments, compared to 3% of men.

- Sixty-two percent of female attorneys report having been excluded from informal conversation about cases by attorneys on few or many occasions, compared to 25% of male attorneys.
- Forty percent of female attorneys and 26% of female judges report having been excluded from informal conversations about cases by judges on few or many occasions, compared with 15% of male attorneys and 7% of male judges.

Minority attorneys also reported a high exposure to racially derogatory comments:

- Fifty-three percent report having heard inappropriate comments about their race made by other attorneys; 29% report having heard inappropriate comments about their race made by judges; and 30% report having heard inappropriate comments about their race made by court personnel.
- Forty-seven percent report having been called by belittling terms of address by judges and 20% report having been called by belittling terms of address by court personnel.
- Thirty percent report having been the subject of racial slurs voiced by attorneys; 10% report they have been the subject of racial slurs by judges, and 9% report they have been the subject of racial slurs voiced by court personnel; 33% report inappropriate comments made about their ethnicity or accent by attorneys, 20% by judges, and 15% by court personnel.
- Thirty-five percent of minority attorneys report that a judge failed to take corrective action when inappropriate racial comments were made by another attorney.
- Virtually no white attorneys report similar incidents.

The Task Force received a great number of comments from judges and attorneys in response to survey questions. Some of the comments related experiences where attorneys or judges exhibited explicitly biased conduct, sometimes of a hostile or intimidating nature. Several women reported specific situations involving sexually inappropriate conduct, ranging from harassment to more subtle forms of sexual baiting. Many reports concerned sexual jokes, including posting and distribution of cartoons and pictures. Reports of this sort came from law firms, county attorney and public defender offices and from the judicial department, from top to bottom.

The results of the Judge and Attorney Surveys indicate that most male and white attorneys believe that judges and attorneys treat female and minority attorneys neutrally. Most female and minority attorneys, on the other hand, believe that judges and attorneys appear to pay less attention or give less credibility to female and minority attorneys.

Several women reported incidents where their legal skills were not taken seriously and their competence was questioned, either explicitly or implicitly. There were several reports in which women felt as if they were invisible or blatantly ignored. There were many reports of female attorneys being called by their first name while male attorneys were called by their last name.

Female attorneys reported that they were treated unprofessionally, reflecting stereotypes of women as "domestic" and lacking in prestige and power. Some also complained that they receive more criticism than their male colleagues. Several respondents noted that they were excluded from informal settings with male judges and attorneys and made to feel like an outsider.

Some women have taken action -- formal and informal -- to complain about conduct they regarded as inappropriate. The survey results show that women are more likely to take action than men, and are less likely to be satisfied with the outcome. Many women described their attempts at using informal avenues to respond to incidents or bias. Several women responded that they suffered some form

of retaliation as a result of their informal action. Some women described their dissatisfaction with the handling or resolution of informal complaints. Testimony provided reasons why more women do not complain about the incidents of bias. Reasons include: they do not know what action they can take without retaliation; they do not want retaliation against them to affect their clients' cases; they are concerned they will not be able to reach their career goals because they may be labeled as trouble-makers or as people who could not fit in with the system; they do not want the public to have the perception that if you hire a woman attorney you might not get the same kind of justice you would otherwise get if you had a male lawyer.

## **COURTROOM INTERACTION OF LITIGANTS, WITNESSES AND COURT PERSONNEL**

### **Treatment of Litigants and Witnesses**

The Public Perception Survey revealed that most court users in the past ten years believed that they had been treated fairly. Seventy percent said that they were treated fairly as compared to only 18% who reported unfair treatment. In this assessment, there were no statistically significant differences between male and female court users or between minority and white court users.

Only a relatively small percentage of these persons reported that they witnessed (4%) or experienced (4%) sexual bias. The percentages were also low for persons who had witnessed (5%) or experienced (2%) racial or ethnic bias. However, minority court users were considerably more likely than whites to report having witnessed or experienced racial or ethnic bias (20% versus 8%). There were no statistically significant differences between men and women in the percentage of first- and second-hand reports of sexual or racial bias in the courts.

Among attorneys and judges, views differ along gender and racial lines as to whether they regard sex or race as affecting the outcome in concrete cases. The results indicate that race and sex are perceived as causal factors -- working to a litigant's disadvantage or advantage -- when women or minorities participate as lawyers or judges in a case. White male attorneys tend to perceive their race or gender as having little significance. Race and sex become a concern principally for women and minority legal professionals. Thus, a majority of female attorneys (55%) say that their sex worked to a client's disadvantage on at least a few occasions, compared to only nine percent of male attorneys. About one in five female judges (19%) believe that their gender worked to a litigant's disadvantage, compared to three percent of male judges. Similarly, a greater percentage of minority attorneys (38%) than white attorneys (4%) believe that their race worked to a client's disadvantage. Conversely, more female attorneys (50%) also believe that their sex sometimes worked to a client's advantage, than do male attorneys (12%) and more minority lawyers (26%) than white attorneys (9%) believe that race sometimes worked to a client's advantage.

There also are differences in opinion regarding whether sex or race bias by another attorney or by a judge -- intended or unintended -- worked to the detriment of minorities or women in cases. Most attorneys and judges do not think sex or race bias on their own parts worked to the detriment of anyone.

This difference in views between male and female attorneys and between minority and white attorneys was also present when each was asked to assess whether various groups, broken down by race, ethnicity or gender (e.g., minority and white criminal defendants; male and female plaintiffs), were treated neutrally in Iowa courts. Both female and minority attorneys were less confident of neutral treatment for female and minority participants and more likely than either male or white attorneys to believe that women and minorities in various roles were treated with less respect than similarly situated whites.

The survey results also indicate that female attorneys are more likely than male attorneys to believe that minorities suffer disadvantage and that minority lawyers are more likely than white lawyers to report disadvantage affecting women. The sensitivity of nondominant groups thus seems to extend beyond their specific race or gender class and to enable them to notice bias more generally. White male lawyers, on the other hand, tend to be more sensitive to bias perceived to affect their own group -- instances such as child custody in which women are thought to have an advantage.

Among attorneys and judges, there is a sharp difference in views as to whether female expert witnesses are given less credibility or afforded less attention than male experts. Fifty-one percent of the female attorneys and 45% of female judges believed that female experts were afforded less credibility and attention, compared to only ten percent of male attorneys and eight percent of male judges. A similar disparity appeared with respect to views as to minority expert witnesses. Fifty-two percent of minority attorneys, compared to 12% of white attorneys, agreed with the statement that judges appear to pay less attention to or give less credibility to minority expert witnesses than to white expert witnesses.

### **Treatment of Court Personnel**

Although a majority of court employees give a favorable report of their work environment, a significant percentage of female and minority court employees report that inappropriate comments or jokes about their gender or race or ethnicity have been made in their presence by judges, attorneys, or other court personnel in the last five years. Twenty-five percent of minority court employees say that inappropriate comments or jokes about their race or ethnicity have been made in their presence by judges. Eighteen percent of female court employees report that comments or jokes about their gender have been made by judges. Twenty-seven percent of minority court employees say that inappropriate comments or jokes about their race or ethnicity have been made in their presence by attorneys. And 26% of female court employees have heard comments or jokes about their gender made by attorneys.

## **IV. LANGUAGE BARRIERS**

Since 1970, non-English speaking parties and witnesses to legal proceedings have been entitled by Iowa law to the assistance of interpreters.<sup>4</sup> Since 1984, the law also has required the Supreme Court to adopt rules governing the qualifications and compensation of interpreters appearing in proceedings before a court or grand jury.<sup>5</sup>

Despite these statutory protections, the issue of whether non-English speaking people have full access to Iowa courts surfaced at each of the public hearings and in several of the written comments. The twin concerns of lack of availability and sometimes poor quality of interpreters were expressed repeatedly. Much of the testimony documented the ways in which language barriers could translate into disparate treatment for linguistic minorities.

Testimony received by the Task Force revealed specific problem areas created by language barriers. Several of those supplying testimony to the Task Force related instances in which they believed that arrested persons had spent more time in jail because they were not fluent in English and no interpreter was available. Some sentencing arrangements which require oral communication -- notably supervised probation -- may not be practical for or provided to defendants who are not fluent in English. If qualified translators who are well-versed in the legal system and in legal terminology are not available,

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<sup>4</sup> Iowa Code sec. 622A.2 (1991)(enacted 1970).

<sup>5</sup> Iowa Code sec. 622A.7 (1991)(enacted 1984).

rights may not be communicated or may be misunderstood. Because of a lack of bilingual counselors, non-English speaking persons may not derive any benefit from state-mandated counseling or treatment.

Many persons testifying stressed the need for interpreters who have enough familiarity with the legal system to translate the substance of the proceedings accurately. The Bureau of Refugee Services, the League of Latin American Citizens (LULAC) and the Iowa Commission on Latino Affairs have issued extensive reports and recommendations calling for the implementation of a better system for training, locating, and compensating interpreters and for improving access to the courts for linguistic minorities.

## V. JURY SELECTION

At its public hearings, the Task Force heard extensive testimony critical of the jury selection process in Iowa. Much of the testimony focused on the scarcity of African Americans on jury panels and in the composition of actual juries. This testimony was consistent with media reports of controversies centering on inadequate minority representation which have received considerable public attention in the last two years.

The very limited survey data collected by the Task Force, however, fails to demonstrate a discriminatory impact on African Americans in the jury selection process. For example, the Public Perception Survey revealed no statistically significant difference between the percentage of whites and the percentage of African Americans who reported that they had been called for or had served on juries.

The Task Force examined the current process to determine whether it does have the impact of excluding racial minorities, what could be causing such impact and what could be done to eliminate it. In particular, the Task Force tried to devise, and encourage the implementation of a selection process that would eliminate the exercise of discretion in the jury selection process. The Task Force was aware that the exercise of discretion by jury commissioners could eliminate or reduce the number of minorities called for jury service. Additionally, the Task Force discussed ways of ensuring that the most inclusive lists of eligible persons are actually used.

Available research indicates Iowa's present requirement of using both the driver's license and the voter registration lists as source lists should yield the most complete coverage of the adult population of any of the lists currently available for use by the state of Iowa. However, at present there is no reliable way to test whether consistent use of these source lists -- coupled with the elimination of discretion to manipulate or alter the list by jury commissioners -- will in fact yield a racially representative jury pool. One of the difficulties in determining the representation of minorities in jury panels is that the questionnaires currently sent to prospective jurors do not request the respondent to indicate his or her racial group. Although census data is available to indicate the percentage of minorities over the age of 18 in a given geographic region, there has been no systematic effort to compare the census data to the percentage of minorities on the jury panel.

The Task Force received information that disparities might develop as a result of discretionary judgments by jury commissioners. In addition, it was recognized that, once source lists are obtained, the composition of the available jurors made available may change based upon the process of selecting, summoning, qualification, and excusal in both drawing the jury panel and seating specific juries. Many prospective jurors ask to be excused because of economic and employment pressures. These pressures weigh more heavily on low-income and/or self-employed persons and are likely to have a disproportionate impact on minorities.

In a state like Iowa, where the number of minorities in a given community may be small, every effort must be made to select and to encourage people to serve as jurors, to increase the chances that juries will be racially diverse.

## VI. CIVIL DAMAGES

Because of limited resources, it was not possible for the Task Force to conduct its own empirical study of the issue of gender and racial bias in civil damage awards in Iowa. The Task Force instead examined existing studies.

Despite the lack of conclusive empirical studies, other state gender bias task forces which have considered the issue of civil damage awards have expressed some concern that women as a class receive inadequate awards and that the problem of unfair compensation may be serious. The reports highlight two problem areas for special attention: the valuation of homemaker services in death and personal injury cases and the disparity between women's and men's expected or calculated future incomes. The two problems intersect because current research indicates that many employed women continue to bear primary responsibility for housework and child care. Most empirical studies indicate that women receive significantly lower damage awards than men.

The one study on racial equity in damage awards analyzed asbestos cases involving minority plaintiffs. Minorities received statistically significant lower average settlements than nonminorities overall; this pattern held true for most specific diseases and within occupations.

Although none of the other state task forces addressed this issue, there may be a problem with the use in tort litigation of actuarial tables or other data which are based explicitly on gender or race. Despite the existence of Title VII, the Equal Pay Act and other prohibitions against sex and race discrimination in compensation, women and racial minorities as a group are still paid less than white men for doing the same or equivalent work. Therefore, damage awards which are premised upon and thus perpetuate "illegal" sex-based or race-based wage differentials are deficient.

## VII. DOMESTIC RELATIONS

Because such a large proportion of the cases handled at the district court level are in the area of domestic relations, the Task Force was not surprised to receive considerable testimony at its public hearings and in correspondence from men and women across the state who expressed dissatisfaction with the system as it affected their lives. Many of the comments were directed at the treatment individuals received during court proceedings and expressed overall displeasure with the process. Women and minorities, many of whom are low-income plaintiffs, felt they suffered unfair consequences because the courts held litigants to a dominant, majority standard when making determinations on outcomes.

Several complaints were heard about the treatment litigants received from their own counsel. Many who testified felt their attorneys were not handling domestic relations cases by choice -- that they would have preferred to handle other more lucrative cases. Some testified that their attorneys did not seem to listen to their concerns; as a result, these litigants lacked confidence in the system and the legal services being provided. Others expressed dismay that decisions were rendered by judges in chambers, behind closed doors, with only attorneys present.

The Task Force discussed the need for an extensive study on family law to collect data and determine the full nature of problems disclosed during the public hearing process; however, the resources of the Task Force did not permit such an in-depth retrospective study.

Public Perception Survey respondents were questioned about their confidence level in receiving fair treatment by Iowa courts. Most Iowans were either strongly confident or fairly confident they would receive fair treatment by the Iowa courts in each scenario, but fewer than one in five were strongly confident they would be treated fairly.

- Iowans were most confident of receiving fair treatment by the courts in divorce cases, with 69% feeling very or fairly confident of being treated fairly. When the data was tabulated according to sex and race, 76% of the women and 62% of the men expressed confidence while 61% of the African Americans and 71% of the whites expressed confidence in getting fair treatment by the courts in divorce cases.
- In contrast to these positive perceptions regarding divorce proceedings, Iowans expressed the most concerns about situations involving alimony and child custody decisions. Less than half of those surveyed (48%) were somewhat or not confident of fair treatment by the courts when the issue was alimony and child custody.
- When asked whether judges appear to favor female litigants over male litigants in family court, 5 female judges (15%) compared to 119 male judges (27%) agreed somewhat with that statement. The percentages of agreement were much higher among attorneys when asked the same question. A majority of the male attorneys (56%), compared to 32% percent of the female attorneys, felt that female litigants are favored over male litigants in family court cases.

The Task Force received reports from both men and women regarding bias on the part of judges and attorneys as to the capabilities of mothers or fathers in raising children. Women reported judges refusing to award physical care to mothers who worked outside the home. Men reported judges assuming mothers would be better caretakers.

The Task Force received many reports from women who were having trouble collecting child support and from men who were having trouble enforcing visitation rights. Contempt does not provide an adequate remedy when one party violates a dissolution decree. There was also concern expressed that matters involving temporary custody are very frequently decided in chambers between judges and lawyers without participation by the parties which leads to a perception that input from the parties is unwelcome.

Custody is an area of the law in which gender-biased stereotypes about appropriate rules and behavior for women and men disadvantage both sexes, and children as well. Stereotypes operate to the disadvantage of men (that they are not capable or appropriate caretakers) as well as women (they are subject to heightened moral scrutiny and heightened scrutiny of parenting and personal behavior than fathers).

The results of the Public Opinion Survey revealed that women have more confidence in the court system than do men in child custody disputes.

- Sixty-one percent of Iowans are very or fairly confident, compared to 54% of men. Nineteen percent of men have no confidence of fair treatment, compared to 9% of women.

Questions about child custody were also included when surveying Iowa's attorneys and judges.

- Thirteen female judges (52%) compared to 131 male judges (55%) agreed somewhat that attorneys presume that mothers should get custody in a child custody dispute.
- The percentages were much higher among attorneys when asked the same question. The majority of attorneys, both men and women (83% and 62% respectively) feel that, in child custody cases, judges presume that the mother should have custody.

These perceptions were confirmed by numerous statements during the public hearings and in written comments submitted to the Task Force.

While some Iowans complained about the amount of child support being set either too high or too low, there is no indication that it is gender-based. The differences appear to be related to the income and the ability of the individual to pay. Since most child support recipients are women, however, the burden to enforce child support payment falls disproportionately on women. Because their incomes are generally lower to begin with, access to the court and enforcing the orders are made even more difficult.

Gender bias task forces in other states have repeatedly documented that it is women, not men, who are overwhelmingly disadvantaged by the economic consequences of divorce, and that the courts play a significant role in creating this disparity. Iowa-specific studies should be conducted, and should specifically investigate not only gender but the effect of race and ethnicity on domestic relations decisions. However, the Task Force believes there is no reason to think Iowa will differ significantly from the national proclivity. National data are so convincing that the Task Force believes immediate steps should be taken to correct such inequities in Iowa. The education of judges and attorneys to these inequities is vital if changes are to occur and equity is to be achieved.

## VIII. DOMESTIC ABUSE

Because many of the comments received by the Task Force concerned the court system's treatment of victims and perpetrators of domestic abuse, this issue is treated separately. The Task Force considers domestic abuse a gender bias issue because over 97% of the victims of domestic assault are women who are assaulted by men. Although the Task Force's research was very limited, this is an area in which there is sufficient information from other studies to guide recommendations for Iowa.

Through its Criminal Case Study, the Task Force did collect some data on criminal assaults which occur in the domestic context. The study found that, in cases involving assaults against another person, similar levels of violence result in much less severe charges if the victim is a family member or cohabitant of the offender. The study also found that white defendants were more likely than minorities to be charged with domestic assaults.

The FBI estimates that 30% to 50% of all women in this country are abused by their husbands or boyfriends at some time in their relationships. According to 1990 data from the Iowa Department of Public Safety, 6,199 cases of domestic abuse in Iowa were reported by law enforcement officers. This is a 77% increase from the first reporting year in 1986, when 3,501 cases were reported. This is the fourth consecutive year an increase has been documented. In 75% of the reported cases, the reporting officer noted apparent injury to the victim. Twenty of the 53 murders in Iowa in 1990 (37%) were familial.

Iowa law now specifically addresses domestic abuse as a criminal act. Iowa also enacted a new law which specifically authorizes petitioners who seek protective orders from domestic abuse to proceed *pro se* -- that is, by representing themselves in court without attorney representation.

Iowans have been using the new *pro se* process. This use has increased the caseload in the Iowa court system. Iowa Code section 236.3A provides only for *pro se* filing and for the provision of simplified pleading forms. The legislature did not appropriate money for additional personnel, nor did it specify whether any other assistance was to be given to the *pro se* plaintiff.

Some judges feel uncomfortable acting as both objective arbiter and counsel for the *pro se* applicant and adverse party. Judges have expressed concern over the conflict between securing the information required in order to decide a case fairly, and the desire to remain neutral by not questioning parties too extensively. Clerks of court have doubts about whether they can legally or practically give plaintiffs help. Lay victim advocates fear that they will be charged with the unauthorized practice of law,

although they are often in the best position to, and do, guide plaintiffs through the process from filing through hearing.

Particular concern was expressed about the judicial treatment of domestic abuse victims. Judges are not always educated about or sensitive to the situation of abuse victims. Judges may question the character of the victim or tend to blame the victim for not leaving the abuser. Some reports to the Task Force indicate judges do not like dealing with *pro se* litigants, and that some judges resist signing *pro se* restraining orders. There is a persistent belief that violence between family members is not as serious as violence directed against a stranger, and that it merits less intervention on the part of the judiciary.

The Task Force also received testimony regarding biased treatment by attorneys in domestic abuse cases.

The Task Force survey results indicate that increased numbers of protective order filings have strained existing judicial resources and have created confusion among clerks and judges about how they should deal with *pro se* litigants.

- Nearly one out of three court employees (30%) reported to the Task Force that they have worked with people filing domestic violence petitions without benefit of an attorney in the past year. This includes 60% of the Clerks of Court.
- A large percentage of employees who have worked with domestic violence petitioners (45%) describe them as needing more legal help than the employee can provide.
- The majority of the employees in the Second, Sixth and Seventh Judicial Districts (56%, 67% and 62% respectively) say domestic violence petitioners generally need more help than the employee can easily provide.

The Task Force research indicates that the traditional support given to the *pro se* plaintiff is inadequate to assure that all domestic violence victims obtain the assistance they require, and the support they need. Arrest of the abuser and strict enforcement of no-contact orders may not be enough; there is more that judges, court personnel, attorneys and victim advocates can do without overstepping their authority. Some states specifically provide guidance for the role of victim advocates in domestic abuse situations.

## IX. BIAS IN THE CRIMINAL SYSTEM

Racial justice in the criminal court system is an issue of top priority for the Task Force. The Task Force focused its attention on three influential points in the processing of criminal cases: formal charging by filing of Trial Information; pretrial release of criminal defendants; and sentencing of criminal defendants.

The Task Force focus on racial justice in the criminal system was prompted by the need to address the widespread perception that there is a bias or prejudice against racial minorities within the criminal justice system. The scope of the Task Force inquiry was circumscribed by its charge to investigate bias only in the court system. The Task Force investigated those portions of the legal process or profession over which the judiciary has control or influence. Consequently, processes in the criminal justice system outside of the courts (police actions, prison policies, etc.) were not examined.

In November 1990, a report, issued by the Division of Criminal and Juvenile Justice Planning of the Iowa Department of Human Rights (CJJP), raised concerns regarding whether the courts of Iowa provide equal application of the judicial process in criminal cases or whether participants receive

disparate treatment because of race. The report noted that 22% of Iowa's prison population was African American, even though only 1.6% of Iowa's general population was African American.<sup>6</sup>

This disparity was not unique to Iowa. According to the U.S. Department of Justice, 46% of all prisoners under jurisdiction of state and federal correctional authorities were African American, and 34 other states had a higher percentage of African Americans in prison than Iowa. However, in comparing the per capita incarceration of African Americans with the per capita incarceration of whites, only four states have a higher rate of such disparity: for every 1000 whites in Iowa, fewer than one (.8) are in prison; for every 1000 African Americans in Iowa, 12 are in prison.

The Public Perception Survey found that 58% of all people responding believe judges give different sentences to those committing similar offenses and having similar backgrounds. More whites (58%) than minorities (47%) agreed with this statement (that judges give different sentences to those of the same offense and background), but more minorities agreed with the statement (47%) than those that disagreed (42%).

The Public Perception Survey also found that most people surveyed believe: that courts do not treat rich and poor people alike (66%, compared to 30% who disagree); that courts do not treat blacks and whites alike (52% disagreed that courts treat blacks and whites alike, compared to 38% who agreed); and that judges treat people of different ethnic backgrounds differently (52%, compared to 39% who disagree). Minorities more strongly believe that differential treatment exists than whites.

The Attorney Survey asked Iowa attorneys whether, based upon their own experience in the past five years, "prosecutors recommend harsher sentences for minority defendants than white defendants in criminal court." Thirty percent of white attorneys and 78% of minority attorneys agree (37% of minority attorneys agree strongly, compared to five percent of white attorneys). Judges strongly disagree with this statement.

In response to the question, "All other things being equal, bail amounts recommended for minority defendants are higher than those for white defendants charged with the same crime," 68% of minority and 26% of white attorneys agree. Fifty-four percent of female attorneys disagree, compared to 74% of male attorneys who disagree. Again, prosecutors and public defenders disagree almost two to one, and judges strongly disagree with this statement.

In response to the statement, "Minorities are more likely than whites to spend pretrial time in jail because, for whatever reason, they are less likely to know what's going on," 69% of minorities agree compared to 43% of whites. Judges disagree with this statement.

Given the findings of the CJPJ report and survey information received, the Task Force determined that, without some idea of the extent to which the court system contributed to the disparate rate of incarceration, it could not make adequate findings or recommendations to the Supreme Court regarding how to eliminate the effects of bias on such disparity. A case-by-case analysis is the only way at this time to determine the extent to which bias contributes to decision-making: data are not otherwise available because, although Iowa clerks of court compile data regarding the offense with which individuals are charged and the final court disposition, they do not identify the race, criminal history or other important characteristics of defendants.

The Criminal Case Study conducted by the Task Force was just such a case-by-case analysis of criminal cases in four counties of Iowa. The purpose of the Criminal Case Study was to determine if there are racial and gender disparities in the charging, pretrial release and sentencing decisions.

Specifically, the study examined the results in 1,978 recent cases in the four Iowa counties -- Polk, Scott, Woodbury and Black Hawk -- which have the most significant minority populations. The researchers measured the possible effect of race on the outcome of these cases using a statistical analysis

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<sup>6</sup> Division of Criminal and Juvenile Justice Planning, Iowa Department of Human Rights, *African Americans in Iowa's Justice System: A Discussion of Data and Data Availability* 11, 17 (Nov. 1990).

known as multiple regression analysis. This method attempts to determine the effect of race through a process of elimination, controlling for a variety of factors, other than race, that might rationally explain a difference in outcomes. For example, the analysis included variables, such as prior conviction records of the defendants, and the level of violence used or threatened by the defendant, to determine the extent to which more severe charges or harsher sentences might be attributable to these factors. To the extent feasible, all legitimate variables that the researchers regarded as likely to influence the criminal process were factored into the analysis.

In those instances where statistically significant differences between the results in cases involving minority defendants as compared to white defendants persisted, the researchers were able to conclude that race likely influenced the criminal process. This statistical method, however, cannot identify the source of the racial disparity. The method is not designed to uncover discriminatory states of mind, unconscious prejudice, or stereotypes. Such a statistical showing often has been regarded by courts in employment discrimination cases as *prima facie* evidence of systemic discrimination, although such a study alone is not enough to prove the existence of racial discrimination in an individual criminal case.

The Criminal Case Study concluded that for each of the three critical points -- (1) charging, (2) bail and pretrial release and (3) sentencing -- race has some influence on the criminal process in Iowa. Even after controlling for the combined effect of other possible explanatory factors, minority defendants are more likely than white defendants to be charged with more serious offenses, to be required to post higher bond amounts, to be denied pretrial release and to be sent to prison. The extent to which race affects these decisions is not great, compared to other more salient variables, such as prior conviction record and degree of violence inflicted. However, the effect of race was found to be statistically significant, indicating that the disparity could not be the product of chance or inadequate sample size.<sup>7</sup> In a racially neutral and fair system, race would have no impact on the results in criminal cases.

Most of the racial disparity that accounts for the overrepresentation of minorities in Iowa's prisons is present before persons are formally charged with crime. Thus in the study, 37.9% of the criminal defendants were minorities, compared to a representation of minorities of only 9.42% in the four counties. However, the effect of race is also present throughout the criminal process. The study showed that racial disparity actually increases by 10% as the cases progress in the criminal court system. Thus, of the defendants ultimately sentenced to prison, 48.7% were minorities. The negative effect of race was most prominent in Black Hawk County where it was found that minorities are almost twice as likely as whites to be charged with a class "C" or higher felony and more than twice as likely to be sent to prison.

Looking at the more specific findings, the study indicated that race has a statistically significant effect on charging decisions in cases involving personal violence. Minorities are more likely than whites to be charged with serious crimes, even when the level of violence is the same. This disparity is partially explained by the fact that defendants charged with domestic violence (who tend to be white) are treated more leniently. The study found that similar levels of violence result in much less severe charges when the victim is a family member or cohabitant of the offender. Race and gender intersect at this point, resulting in disparate treatment of minority male defendants and less protection for female victims.

With respect to drug offenses and property offenses, the study did not disclose any statistically significant differences in charging practices between minority and white defendants. Apparent racial disparities were explained by controlling for the nature of the offense (selling versus buying drugs or crimes involving marijuana versus cocaine) or other race-neutral variables (e.g., monetary value of the stolen property).

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<sup>7</sup> Readers are cautioned not to confuse "statistical significance" with actual or substantive significance. The phrase "statistically significant" indicates that it is very unlikely that a research finding is the result of chance or error. The significance level, or probability level, does not tell us anything about the size or importance of a finding.

The analysis of bail and pretrial release practices also disclosed that minority defendants were disadvantaged. When all the control factors were taken into account, there remains a statistically significant difference between racial groups: minorities are more likely to be required to post higher bond and less likely to be released prior to trial.

With respect to sentencing, the study concluded that race played the most significant role in aggravated misdemeanor cases (as opposed to felonies).

To test the importance of judicial discretion in sentencing, a sample of cases in the Iowa study were compared to the results that would be obtained using Minnesota sentencing criteria. It was found that the use of Minnesota criteria would eliminate the effects of race, suggesting that inappropriate exercise of judicial discretion may produce some degree of racial disparity in Iowa.

The implications of these findings are that, if each of these three stages demonstrates a slight disparity, the combined effect during processing in the court system is not so slight. Further, the effect of such racial disparities will be felt in any subsequent criminal charge through the impact of prior record on decision-making. The disparity in each of these three stages is cumulative for each charge and for future charges.

If the racial disparities in criminal processing cannot be entirely explained by the legally relevant variables studied, what does cause these disparities is unclear. In the surveys of attorneys and judges, a significant number felt that minority defendants were at a disadvantage. The observed racial disparities are statistically significant. Although this analysis suggests that such discrimination is not blatant in Iowa courts, from the point of view of a victim of such discrimination it no doubt appears to be, and is, inexcusable, regardless of how small the disparity or how infrequently it occurs.

## X. IMPLEMENTATION

The most important steps to be taken to eliminate bias in the Iowa court system begin after completion of the charge of the Equality in the Courts Task Force. The implementation of the Task Force's recommendations is crucial to the realization of the goal of providing equal application of the judicial process to all controversies and insuring that participants do not receive disparate treatment because of sex, race, national origin, or ethnicity.

The Task Force received numerous comments over the course of its two-year assignment warning that, though the goals of the Task Force have been noble, the findings and recommendations will mean nothing if the Final Report sits on a shelf collecting dust. The value of the Task Force's efforts will be undercut unless this last phase of dissemination of information, monitoring of trends and implementation of recommendations is adequate.

**Recommendations**  
**of the**  
**EQUALITY IN THE COURTS TASK FORCE**

1. Minorities and women should be nominated and appointed to increase their presence in judicial and quasi-judicial positions and to progress toward a representational bench.
2. Judicial nominating commissions and appointive authorities should nominate and appoint persons to the bench on a non-discriminatory basis.
3. The Iowa Supreme Court should continue its policy and practice of including minorities, women and lay members on judicial and quasi-judicial boards, committees and commissions in Iowa.
4. Law schools should give priority to efforts to recruit and retain minority and female faculty members and law students.
5. Law schools should reinforce their commitments to train attorneys who will be sensitive to and aware of manifestations of discrimination and bias and their effects.
6. Studies related to different Bar Exam pass rates among men, women and whites and minorities should be brought to the attention of the Board of Examiners for review, to determine whether further inquiry or action needs to be taken related to the Iowa Bar Examination.
7. Law school placement offices and law firms should work with professional associations, bar associations, and the courts to facilitate the entry of women and minority law students into summer clerkships, judicial clerkships, and other opportunities which lead to professional development and permanent employment opportunities in Iowa.
8. A summary of the results of both the court administrators survey and the court employee survey should be distributed to all court administrators.
9. Court administrators and others responsible for hiring should practice equal opportunity. Court administrators should take necessary steps to ensure that all court employees and minority groups within appropriate communities are made aware of position openings as they occur.
10. Employment levels within each county of the Judicial Department should more accurately reflect the minority populations within each county.
11. Women and minorities should have more representation within the administrative and supervisory positions.
12. Supreme Court should maintain and report in its annual report data regarding gender and minority distribution by pay grades and applicant flow.

13. In accordance with Iowa Code section 602.1204, the Supreme Court should review, update, adopt and implement the Affirmative Action plan.
14. The Supreme Court of Iowa should require attorneys and judges to complete two hours of continuing legal education during 1993 and two hours every two years thereafter addressing:
  - a. The impact of race, national origin, ethnicity and sex on issues related to court system interaction and case or controversy outcome.
  - b. Professional relationships between attorneys and judges where race, national origin, ethnicity or sex is a potential factor.

The two hours should be credited towards the 15 hours CLE requirement. Additional workshops with small interactive groups on cultural differences and on male/female professional relationships should be encouraged. The Commission of Continuing Legal Education should be encouraged to make such workshops eligible for CLE accreditation.

15. The Supreme Court of Iowa should provide each Chief District Court Judge, all judges and those persons in quasi-judicial positions, including court-related boards and commissions, training regarding their role and significance in ensuring an environment of equal opportunity and fairness.
16. The Supreme Court of Iowa should provide to the Judicial Department appropriate training to all court personnel to ensure an environment of equal opportunity and fairness.
17. The Supreme Court of Iowa should actively encourage Bar associations to increase anti-bias training and education.
18. Law firms should adopt and implement policies to prohibit sexual harassment and discrimination on the basis of race, national origin, ethnicity or sex.
19. The Supreme Court of Iowa should amend the Code of Judicial Conduct to add to Canon 3(A) the following:

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not in the performance of judicial duties by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, national origin, or ethnicity, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(9) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon sex, race, national origin, or ethnicity, against parties, witnesses, counsel or others. This Section 3(A)(9) does not preclude legitimate advocacy when sex, race, national origin or ethnicity are issues in the proceeding.

20. The Supreme Court of Iowa should amend the Code of Judicial Conduct to add (perhaps as Canon 2 (C)) the following:

A judge shall not hold membership in any organization that the judge knows discriminates on the basis of sex, race, national origin or ethnicity.
21. The Supreme Court of Iowa should amend the Code of Professional Responsibility to add (perhaps as a new DR-1-102 (A)(7)) the following:
  - (A) A lawyer shall not:
    - (7) engage in sexual harassment or other discrimination on the basis of sex, race, national origin or ethnicity in the practice of law and shall prohibit staff and agents subject to the lawyer's direction and control from doing so.
22. The Supreme Court of Iowa should amend the Code of Professional Responsibility to add (perhaps as part of EC 1-5 or EC 9-6, or as a new EC 1-7 or EC 9-7) the following:

A lawyer shall not hold membership in any organization that the lawyer knows discriminates on the basis of sex, race, national origin, or ethnicity.
23. The Supreme Court of Iowa should amend the Code of Professional Responsibility to add (perhaps as a new EC 5-25), a prohibition against sexual relations between attorneys and their clients.
24. To the extent that it has not already done so, the Supreme Court of Iowa should revise the Code of Professional Responsibility, the Code of Judicial Conduct, all court rules, procedures and the like, so that all the language contained therein is gender neutral.
25. The Equality in the Courts Task Force did not study bias on the basis of religion, disability, age, sexual orientation or socioeconomic status, but it did receive a significant amount of testimony regarding bias on such bases in the Iowa court system. Therefore, although the Equality in the Courts Task Force does not make any findings regarding bias on such bases, it recommends that the Supreme Court of Iowa should study the existence of bias on such bases and should consider expanding the provisions recommended in paragraphs 19, 20, 21, and 22, above, so that, in addition to the prohibitions against discrimination on the basis of sex, race, national origin and ethnicity, the provisions would include, if appropriate, prohibitions against discrimination on any or all of the bases of religion, disability, age, sexual orientation or socioeconomic status.
26. Minorities and women should be nominated and appointed to increase their presence in judicial and quasi-judicial positions, to continue progress toward a representational bench.
27. The Iowa Supreme Court should continue its policy and practice of including minorities, women and lay members on judicial and quasi-judicial boards, committees and commissions in Iowa.

28. The Supreme Court of Iowa should create an informal, confidential dispute resolution process with respect to racial-, ethnic- and gender-biased misconduct for judicial and attorney complainants to utilize, if they choose to do so, prior to or in lieu of filing formal complaints.
29. The Supreme Court of Iowa should develop procedures and provide a designated person to be director of human resources. This person should be designated as the contact for sexual harassment complaints or racial-, ethnic- or gender-biased misconduct. The designated person should investigate and try to resolve any complaints received. If the complaint is serious, it should be referred to the Judicial Qualifications Commission (for complaints about judges) or should be dealt with through ordinary personnel policy procedures (for complaints about nonjudicial court personnel) to investigate the need for sanctions. The designated person should be given the authority to make a finding of sexual harassment or racial-, ethnic- or gender-biased misconduct, if appropriate, which would include information that an attempt was made to resolve the matter, that the attempt was unsuccessful, and that there was substantial evidence of harassment or discrimination. This finding would be submitted to the appropriate authority for determination of the need for remedial action or sanctions. The Judicial Department Employee Handbook should provide that discipline may be appropriate if warranted for acts of harassment or discrimination.
30. The Supreme Court of Iowa should provide educational programs for court personnel related to bias on the basis of sex, race, national origin and ethnicity. Specifically:
  - a. Educational programs and standards/procedures should be developed regarding how court personnel can be of assistance to the *pro se* plaintiff.
  - b. Education for clerks of court ("Clerk's School") should include training on the following topics:
    - i. Sex, racial, national origin and ethnic bias; training regarding racial, ethnic, and cultural diversity; training regarding the stereotypes which may affect their treatment of litigants.
    - ii. Sexual harassment (definition and complaint procedures).
    - iii. Equal opportunity within the work force.
    - iv. Procedures available for court users to make complaints regarding judges, attorneys, and court personnel.
  - c. Training regarding the above subjects should be afforded to all court personnel at least once during their employment. Preferably, such training would be provided on a regular basis.

- d. The Supreme Court of Iowa recently has developed a new sexual harassment policy. This policy is accompanied by guidelines giving employees examples of inappropriate conduct. The Supreme Court should issue a similar guideline listing the sexual and racial/ethnic stereotypes about which court personnel should be watchful in themselves and in others. The Supreme Court should encourage court personnel to strive to eliminate the effects of such stereotypes in their treatment of those with whom they come in contact in the court system. Included in this memorandum should be an admonishment against evaluating or assessing cases, witnesses, litigants, etc.
31. The Supreme Court of Iowa should provide educational programs for judges and magistrates related to issues of bias on the basis of sex, race, national origin and ethnicity. Specifically:
    - a. Require training for judges regarding racial/ethnic/cultural diversity.
    - b. Require training for judges regarding the stereotypes based on race, national origin, ethnicity or sex, which may affect their treatment of litigants, may lead them to discount certain testimony, and may otherwise affect their decisionmaking.
  32. The Supreme Court of Iowa should provide educational programs for attorneys related to issues of bias on the basis of sex, race, national origin and ethnicity. Specifically:
    - a. Require training for attorneys regarding racial/ethnic/cultural diversity.
    - b. Require training for attorneys regarding the stereotypes based on race, ethnicity or gender, which may affect their treatment of litigants, may lead them to discount certain testimony, and may otherwise affect their decisionmaking.
  33. In accordance with Iowa Code 622A.7 (1991)(enacted in 1984), the Supreme Court of Iowa should adopt rules within six months of this Report governing the qualification and compensation of interpreters.
  34. A central, comprehensive list of interpreters should be maintained to facilitate the use of qualified personnel.
  35. Financial incentives -- such as the award of a merit step or the reimbursement of tuition -- should be created to encourage court personnel to develop language capacities needed in that district.
  36. Bilingual and multilingual persons should be actively recruited to work for the Judicial Department and such language ability should be recognized as a valuable asset for employment.
  37. Community colleges and other educational institutions should be encouraged to develop programs to train persons who provide court interpreting, legal translations, and bilingual and multicultural court support services.
  38. The Supreme Court should give serious consideration to the implementation of the recommendations made by the League of United Latin Americans Citizens (LULAC), and by the Bureau of Refugee Services of the Iowa Department of Human Services, included in the Final Report.

39.
  - a. The consolidated source list anticipated in Iowa Code Section 607A.22 to be provided by applicable state and local governmental officials should be provided directly to the Clerks of Court.
  - b. Names to be used from the consolidated source list, as anticipated in Iowa Code Section 607A.22, should be randomly chosen and consist of either a certain number of names or a certain percentage of all the names in the consolidated list.
  - c. All discretion in selection should be eliminated. To this end, the Task Force recommends the elimination of jury commissions.
  - d. Section 607A.22 of the Iowa Code should be amended to require monthly updating of the consolidated list.
40.
  - a. Jury questionnaires sent to potential jurors should request prospective jurors to voluntarily indicate their race, with an explanation of why the information is requested.
  - b. The Supreme Court should direct Clerks of Court to obtain census figures regarding the percentage of minorities over 18 for a given regional area. Those numbers should be used to determine whether or not minorities are being appropriately represented in a given jury panel.
  - c. Statistics on the race and gender of jurors should be obtained immediately to facilitate future studies and to assist in attaining representative jury pools in the future.
  - d. If, six months after the date of this Report, it is demonstrated that there is a racially disparate impact in jury selection, other selecting methodology including oversampling of minorities, should be used as a method to ensure that the representation of minorities in the jury panels approximates the percentage of minorities in the county's population.
  - e. The Supreme Court should undertake further study in this area once statistics have been maintained.
41.
  - a. The pay for jurors should be increased.
  - b. Reimbursement should be made to low-income jurors for day care and/or elderly care expenses incurred because of jury service.
42. The use of race-specific or sex-specific economic data or expert testimony premised on such data is inequitable. Because minorities and women often have earned less than white men for doing the same or equivalent work, the use of race- or sex-specific economic data to predict future earnings tends to perpetuate past discrimination. As a result, the lives and health of minorities and women are undervalued. The Task Force recommends that only race-neutral and gender-neutral economic data be used to evaluate damages in civil cases.
43. The data from other states indicates that jurors are often influenced by gender stereotypes in setting damage awards in civil cases. A survey of Iowa jurors needs to be conducted to determine whether impermissible factors are influencing jury awards and whether the same set of factors govern awards in cases of both male and female injury. In particular, jurors should be asked whether they have considered specific factors (e.g., potential salary increases, continuity of

- work, child-raising responsibilities) in their calculations of lost future earnings and what other factors influenced their judgment (e.g., potential of surviving spouse to remarry, importance of physical appearance to men and women). More information from jurors is also needed to determine whether homemaker services are being fairly evaluated. Jurors should be surveyed as to whether any portion of the award represented loss of homemaker services and the basis on which such amount, if any, was derived.
44. Because of the scarcity of studies on the effect of race on damage awards, we lack a basis even for speculation about the specific factors which may possibly reduce awards for minority plaintiffs, assuming that the Washington Task Force finding of lower awards for minority plaintiffs is replicated in other states. An empirical study of decided cases in Iowa, similar to the study of asbestos cases in Washington, should be conducted to determine whether a racial disparity in damage awards exists and to suggest the specific factors (e.g., future earnings, evaluation of pain and suffering) which likely account for the disparity.
  45. Little is known about the specific content of jury instructions on damages in civil cases in Iowa and about the types of evidence admitted to prove the amount of damages. A roundtable discussion including trial judges, attorneys who litigate personal injury cases, members of the Supreme Court committee on jury instructions, and experts (such as economists or annuity brokers) who provide evidence in civil suits, should be convened to discuss the issues of gender and race equity raised in this Report.
  46. A renewed sensitivity in child custody disputes and enforcement of an equal justice remedy which recognizes the rights of both custodial and non-custodial parents must be encouraged.
  47. The Iowa Supreme Court should instruct the educational director to see that the semi-annual judges' seminars regularly include components relating to the dynamics of child custody, the valuation of homemaking services, the expenses of child-rearing, techniques for child support collections, and the prospects of mature women, long out of the work place, obtaining satisfactory and remunerative employment, and the dynamics of domestic abuse.
  48. The Supreme Court should adopt such policies that will make judges and lawyers more aware of the value of the services of the woman as wife, mother and homemaker in relation to the division of assets and the awarding of family support and alimony.
  49. The Supreme Court should adopt such policies as will improve the sensitivity of judges to the need to give the same consideration to men as to women in child custody matters, and in order to avoid bias in favor of the mother or father.
  50. The Supreme Court should adopt policies that will create a more open court hearing system in matters concerning temporary custody, with the view toward making the function of the legal system more visible to the public.
  51. The court should study ways to facilitate review of adjustments to awards.
  52. The court should study ways to make child support enforcement more effective.

53. The Supreme Court should:
- a. distribute the *Pro Se* Domestic Abuse Assistance Project guide regarding the *pro se* process to all domestic violence shelters and courthouses;
  - b. suggest courthouse and party safety measures (in particular, procedures to keep parties separate from each other while waiting for hearings where possible);
  - c. develop a bench manual with checklists of considerations for judges to consult in both *ex parte* and full hearings;
  - d. clarify how clerks can be of assistance to the *pro se* plaintiff and provide guidance as needed to supplement the statutory requirement that standardized pleadings be made available to *pro se* litigants;
  - e. provide guidance regarding the appropriate role of victim advocates and others who accompany domestic violence victims into the courtroom;
  - f. develop educational programs for victim advocates regarding the court system, its procedures, and the *pro se* process.
54. A report of the number of *pro se* domestic abuse filings should be included in the Report to the Supreme Court of Iowa by the State Court Administrator.
55. Efforts should be made to make counsel available to the *pro se* litigants. Legal services for the poor should be fully funded to include representation of indigent domestic violence litigants. Attorneys should be encouraged and trained to do their *pro bono* service in this area.
56. Educational programming should be provided:
- a. for judges on the dynamics of domestic abuse and what is appropriate for them to do to assist *pro se* litigants.
  - b. for attorneys on the dynamics of domestic abuse and what is appropriate for them to do to assist *pro se* litigants;
  - c. for court personnel on how they can be of assistance to *pro se* litigants.
57. Statutory guidelines in Iowa Code section 811.2(2) (1991) regarding the appropriate criteria to use for determining the conditions of pretrial release should be used uniformly.
58. Statutory guidelines in Iowa Code Chapter 907 (1991) regarding the appropriate criteria to use for determining sentencing should be used uniformly.
59. The Criminal Justice system should strive to increase employment opportunities for minorities and women at critical points in the criminal justice system, including county attorney staff, pretrial release staff, public defenders and presentence investigators.

60. Sensitivity training should be provided for judges, attorneys and court personnel regarding racial, ethnic and cultural differences, including the dynamics of domestic violence and sexual assault and the overt and subtle ways bias may manifest itself.
61. Presentence investigation officers, parole officers, juvenile court personnel, and others employed within the criminal justice system should receive cultural sensitivity training, and training regarding racial/ethnic and gender bias.
62. The results of the Criminal Case Study should be discussed at the annual judges conference. The present and future court system database should be monitored periodically, and patterns of racially associated disparities noted, publicly disseminated, and specifically brought to the attention of Districts where disparities occur.
63. County Attorney offices should be required to keep records of the charges on initial arrest, the charges ultimately filed, the arrests they chose not to prosecute, the reasons they chose not to prosecute, and the race and gender of the alleged perpetrators.
64. The Supreme Court of Iowa should watch for and review the results of study being conducted by the Division of Criminal and Juvenile Justice Planning regarding two years of class "C" nonviolent felony convictions.
65. Criminal defendants should be advised that court-appointed attorneys will be paid by the state regardless of whether they win or lose the case. They also should be advised that, at the disposition of their case they may be required later to reimburse any court-appointed attorney fees.
66. The Judicial Department should develop a brochure to explain the criminal process generally, what participants in the court process might expect to happen, where participants can go to receive answers to questions, and what additional help is available.
67. The Iowa State Bar Association should develop educational programs explaining the criminal system for schools, and brochures for distribution at police stations, county attorneys' offices, courthouses, or other appropriate public places.
68. The Supreme Court of Iowa and local courts should work with the state and the local bar associations to establish a system to disseminate information referenced in Recommendations 66 and 67 above.
69. The Division of Criminal and Juvenile Justice Planning should access information, and make it easily retrievable on a uniform statewide basis, regarding the trends and patterns evolving related to the various stages of the criminal process as regards to the race and sex of defendant and crime reporters or crime victims. The court system, including the Department of Corrections Division of Community-Based Corrections, should keep data similar to that used in the Criminal Case Study, as it relates to pretrial release, to be made available to the Division of Criminal and Juvenile Justice Planning. This same organization should be furnished additional data, all data to be included in their annual report, including:

- a. Data regarding whether a defendant used a privately-retained attorney, a court-appointed attorney, a public defender or appeared *pro se*.
  - b. Data regarding charge reduction and plea bargaining by race and sex of defendant (this could then be compared to charging).
  - c. Data regarding the makeup by race and sex of jury pools and ultimate jury members selected.
  - d. Data regarding the ultimate court disposition of each case, with the race and sex of the defendant.
  - e. Data regarding presentence investigation recommendations by race and sex.
  - f. Data regarding prior adult commitments, prior juvenile commitments, education and age of defendants.
  - g. Data regarding probation revocation.
70. A committee or task force should immediately implement the recommendations of the Equality in the Courts Task Force. This committee or task force should include representation from the present Task Force, the Judiciary, court administration, Bar, academic communities in law and the social sciences, and lay persons.
71. Two critical activities must be pursued over the long term.
- a. The Supreme Court and the implementation committee should insure that educational programs continue to incorporate materials on gender and racial/ethnic bias in the courts, both in courses principally devoted to antidiscrimination topics and in the entire range of substantive law courses. The implementation committee should disseminate and publicize the findings and recommendations included in the Final Report and any additional findings and recommendations it makes during the course of implementation.
  - b. The implementation committee should monitor positive changes and identify new problem areas. Specifically, the committee should seek funding for additional studies as recommended in this report, for education as recommended in this report, and for the implementation of other programs and recommendations made in this report. Every other year, the committee should review the progress made toward implementing the recommendations and reducing bias. It should assess the extent to which the findings and recommendations of the Task Force are being integrated into judicial and legal education courses and programs. It should identify new problems rooted in gender and racial/ethnic bias, suggesting appropriate remedial action.
73. The legislature should provide adequate funding to implement the statutory requirements it enacted, as discussed in the Final Report and these Recommendations, and should provide adequate funding to the Judicial Department to implement the Recommendations of the Equality in the Courts Task Force.

*Submitted by the*  
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to the Supreme Court of Iowa  
February 1993

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