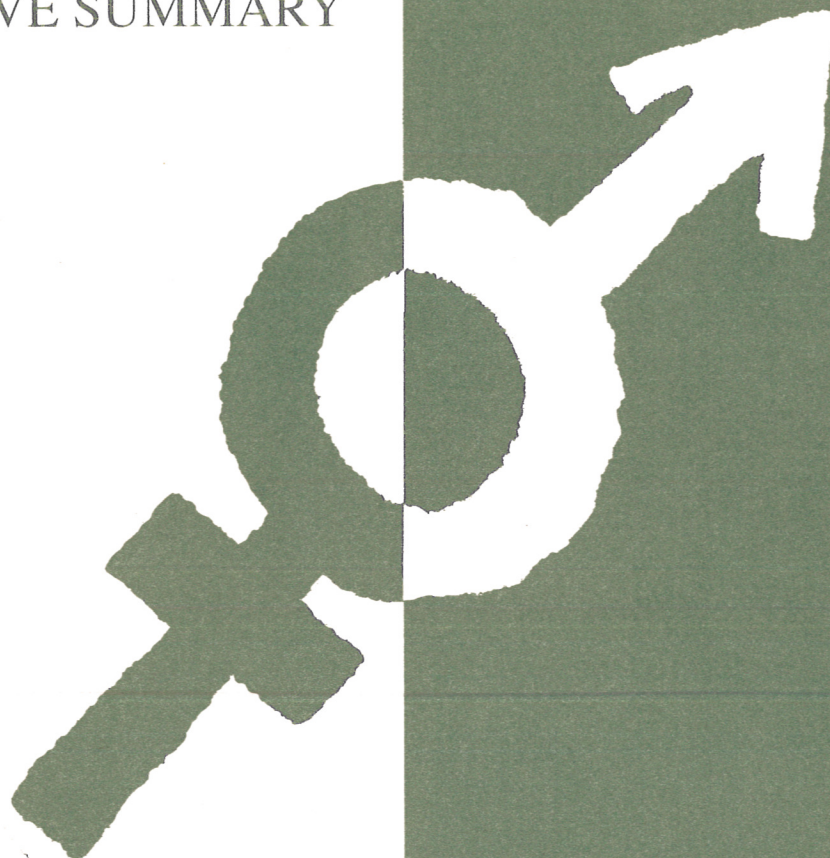


EXECUTIVE SUMMARY



UTAH TASK FORCE ON
GENDER
AND
JUSTICE

Report to the Utah Judicial Council
March 1990

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NOTE:

This Executive Summary consists largely of the Findings and Recommendations of the Utah Task Force on Gender and Justice. For a detailed narrative of the data underlying each area of study, as well as a more comprehensive exploration of how gender bias may be manifested, please refer to the complete Report.



TABLE OF CONTENTS

List of Task Force Members	v
Acknowledgements	vii
Preface	xi
I. Introduction	S-1
II. Domestic Relations	S-4
III. Domestic Violence	S-15
IV. Judicial Selection	S-26
V. Court Employment	S-29
VI. Courtroom Interaction	S-34
Looking to the Future	S-38



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ACKNOWLEDGMENTS

The efforts of many people made the work of the Task Force and this Report possible. The Utah Task Force on Gender and Justice would like to thank the following for their contributions to the Task Force's work:

The Utah Judicial Council, for establishing and supporting the mission of the Task Force;

Gordon R. Hall, Chief Justice of the Utah Supreme Court, for his continuing commitment to the Task Force and the issues it was charged to examine;

Bill Vickrey, Court Administrator, for his support, his thoughtful and probing questions, and his ongoing interest in court improvement.

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Kathryn Kendell, Esq., for her appellate caselaw research;

Professors Barbara R. Rowe and Jean M. Lown, Utah State University, for their research on the economic consequences of divorce for rural Utah families;

Lynn Hecht Schafran, National Judicial Education Program Director, for her advice and guidance throughout the Task Force's study;

Ken Smith and Lois Haggard, of the University of Utah Survey Research Center, for their work in developing, implementing, and analyzing the Attorney Survey;

Professor Linda Smith, University of Utah College of Law, for her background research on domestic relations law;

Blake Swain, Administrative Office Personnel Analyst, for his help in sorting through and interpreting personnel data.

Professor Lee Teitelbaum, University of Utah College of Law, for his contributions to the development of the Attorney Survey;

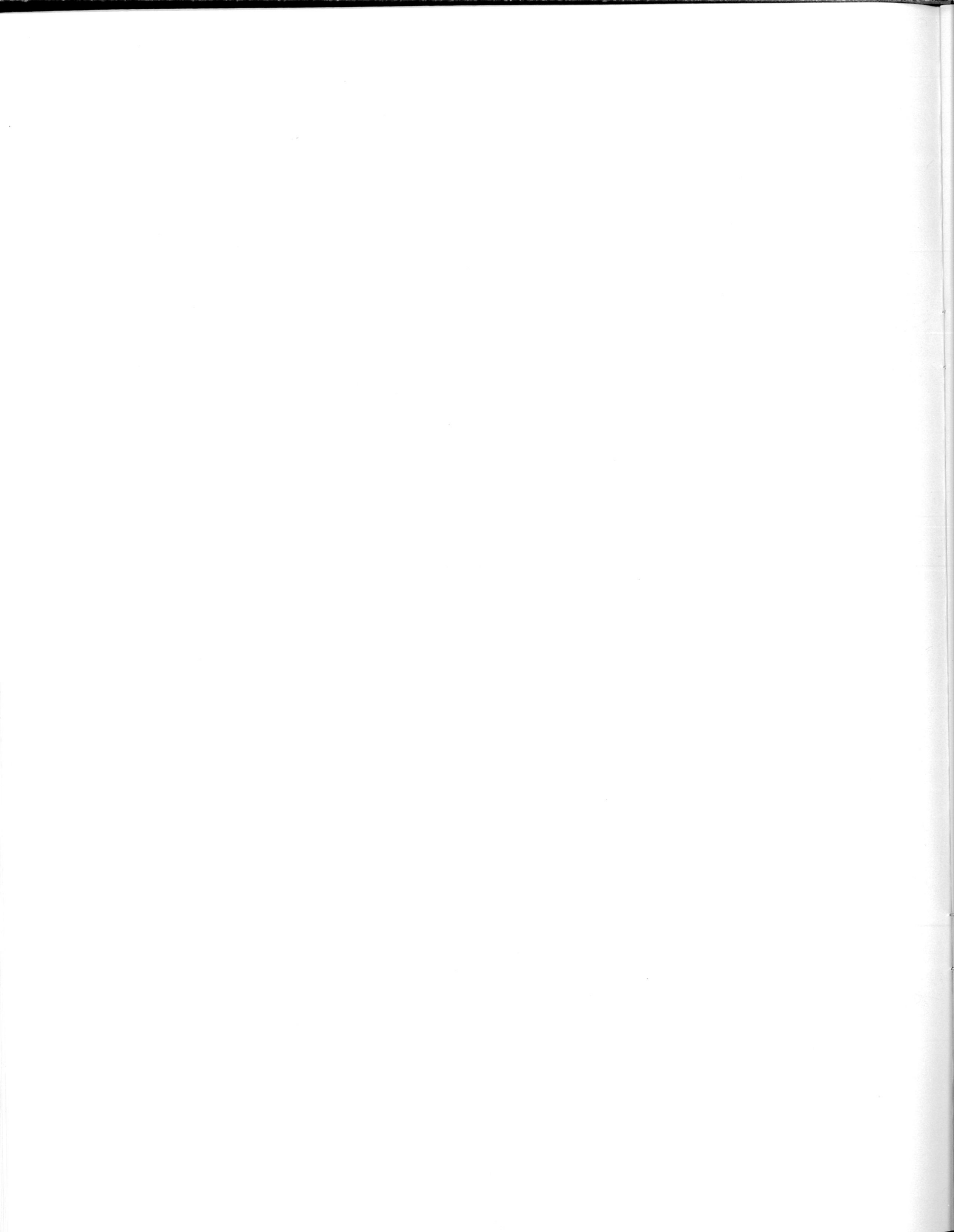


Brenda Voisard, researcher, for her help in interpreting the Attorney Survey data;

Carolyn Weber, secretary, for her dedicated service to the Task Force and her meticulous attention to detail.

The Task Force also gratefully acknowledges the financial support of the Utah Administrative Office of the Courts, the State Justice Institute, and the Women Judges' Fund for Justice.

Finally, the Task Force would like to thank the many women and men who shared their experiences and perceptions with the Task Force.



PREFACE

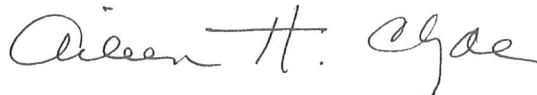
The Utah Task Force on Gender and Justice has worked diligently to fulfill its charge from Chief Justice Gordon R. Hall and the Judicial Council to bring definition and description to gender bias as it may affect the administration of justice in our courts. The study was conducted by Task Force members with diverse backgrounds as judges, former judges, lawyers, educators and citizens. The committee of the whole developed the process of broad inquiry using a variety of disciplines. Sub-groups of the committee worked through each phase of the data gathering to the formulation of the Findings and Recommendations and to the editing of the narrative.

The Task Force also expresses appreciation to the Utah Judiciary for the leadership it has demonstrated by being in the forefront in the United States to invite study of this issue, which is now receiving serious judicial review nationwide. The Report may seem somewhat harsh to readers who are aware that problems identified here are commonplace in society. It is well understood that the judiciary holds itself to the strictest standards and its aspirations are necessarily higher than for other social institutions. Consequently, the critical findings of the judicial system by the Task Force do not imply that the problems cited here are worse than elsewhere, but that the ethical concern for justice is greater and the standard to be met is higher.

Task Force members have given uncommon and competent service throughout this sensitive and complex project. Their energies have remained high, and the report is the product of the individual and collective efforts of people dedicated to serving justice and the public good. The Task Force was particularly well-served by Joanne Slotnik of the Administrative Office of the Courts, who was both a Task Force member and staff to the group. Her excellent organizational skills, her ability to solicit and utilize criticism, and her competence at bringing synthesis to the many elements of this project have been fundamental to the quality of our work.

It is the hope of the Task Force that this report will be useful not only to those who commissioned it but to all people within our state who have an interest in fairness and the quality of justice. The problems cited did not originate in the judicial system and that system cannot independently eliminate them. It will take a concerted and ongoing effort in the judiciary and the larger society to fully implement the recommendations of this report.

Respectfully submitted,



Aileen H. Clyde, Chair
Utah Task Force on Gender and Justice





EXECUTIVE SUMMARY

INTRODUCTION

Nature and Scope of the Project:

The Utah Task Force on Gender and Justice was established in November of 1986 by the Utah Judicial Council, at the suggestion of Chief Justice Gordon R. Hall, to inquire into the nature, extent, and consequences of gender bias as it might exist within the Utah court system. The Task Force was charged with examining both substantive and procedural aspects of the law and with making concrete recommendations for reform where necessary, in order to ensure equal justice for all who use the courts.

Task Force membership included judges from each level of the Utah court system, lawyers, court personnel, and community leaders, selected to reflect geographic, gender, and professional diversity. Aileen H. Clyde, a long-time and highly respected citizen volunteer with the judiciary, was appointed to chair the Task Force.

The Task Force determined that it would approach its charge without preconceived notions about the nature or extent of gender bias in the Utah court system. The Task Force would gather data, both statistical and anecdotal, evaluate it carefully, and draw whatever conclusions were appropriate.

The Task Force chose to use the following description of gender bias:

Gender bias encompasses society's perception of the value of work assigned to each sex, the myths and misconceptions about the social and economic realities of peoples' lives, and the stereotypes that society has assigned to the behavior of men and women.

This description does not include an element of intent. Indeed, as the study progressed, Task Force members became increasingly convinced that many people who engage in gender-biased conduct have no idea that they are giving offense or making decisions based on anything other than sound, unbiased reasoning.

Data Collection:

The Task Force sought to establish a broad data base through varied methods of data collection:

- statewide public hearings;
- statewide confidential hearings;
- written survey of 2000 Utah attorneys, in consultation with the University of Utah Survey Research Center;
- telephone survey of Utah's county attorney offices;
- statewide employee focus groups, in consultation with Kate Kirkham, Ph.D., Brigham Young University;
- Administrative Office of the Courts personnel data.

The Task Force also found most helpful the coincidental preparation of the following publications:

- Domestic Violence Advisory Council Survey, 1989;
- The Economics of Divorce and Remarriage for Rural Utah Families*, Barbara R. Rowe, Ph.D., and Jean M. Lown, Ph.D., Utah State University, 1989;
- From Guesswork to Guidelines — The Adoption of Uniform Child Support Guidelines in Utah*, Hon. Judith M. Billings, 1989.

The Report:

The production of this Report was organized through subcommittees, each of which was assigned an area of the study and developed its Findings and Recommendations after sorting through and evaluating all relevant data. The full Task Force discussed and edited each subcommittee's work product, which was then submitted to a review committee for final revision.

As Findings and Recommendations were developed, Task Force members became aware that the work of agencies and institutions apart from the judiciary directly affects how the court system can function. The Task Force, therefore,

determined that its Report should include Recommendations not only for the judiciary, but also for these other agencies. The Task Force hopes that these agencies will consider the Recommendations in the constructive spirit in which they are intended and evaluate for themselves the extent to which they accurately reflect areas of potential improvement.

The Heart of the Matter:

Persons talk about gender bias — or deny its existence — without fully understanding or agreeing on what it means. The heart of the matter is increased awareness of the ways in which inappropriate gender-related attitudes and behaviors can influence the primary mission of the courts, dispensing justice in an evenhanded manner to all. The judiciary's aspiration must necessarily be to ensure that this equal treatment for all is a reality. The Task Force commends the judiciary for its willingness and courage in undertaking this study to methodically examine the influence of gender on its own operation.

DOMESTIC RELATIONS

Court Access:

The Task Force heard repeatedly that women and men do not have equal access to the courts, that the barriers to entry are primarily financial, and that women in domestic relations proceedings are less likely than men to have adequate financial resources or access to the family's resources.

Access to the courts may be limited for some women by other than economic factors. Some may be discouraged from seeking legitimate legal remedies because of role stereotypes or religious norms.

Once a final decree has been entered, access to the courts for enforcement is a major problem, with those who need it most having the fewest resources to see that they receive what the court has ordered.

To the extent that barriers to entering the court system for the resolution of controversies have a greater impact on one gender than on the other, in effect creating differential access to the system designed to resolve the controversy, the gender fairness of the legal system and the results it produces are called into question. Gender fairness is especially critical in domestic relations proceedings because in every case women and men are pitted against each other. In no area of the law must the judiciary scrutinize itself more carefully to make certain that men and women are treated equally.

Child Custody:

Gender-based stereotypes about proper roles for men and women serve to disadvantage mothers in some situations and fathers in others. The primary gender-related stereotype that operates against men is that they are less capable than women of caring for children. This habitual way of thinking influences child custody decisions, whether made by the parties themselves or by the court. Women, who almost always must work outside the home pending and following divorce, are disadvantaged by stereotypes that full-time homemakers are the best parents.

Visitation:

In the conflict that often ensues between parents after a divorce is entered, visitation is a prime weapon. When one parent denies visitation, the aggrieved spouse has no practical way to gain quick and inexpensive access to court for enforcement of the court's decree. If the aggrieved party does go to court, testimony suggests that presently available sanctions are not consistently imposed.

Child Support:

Two themes, the adequacy of child support awards and the enforcement of such awards, ran consistently through the Task Force's data on child support.

Both empirical research and anecdotal testimony suggest that many child support awards are inadequate to permit the custodial parent to meet the basic needs of children. While the adoption of presumptive, statewide Child Support Guidelines in 1989 was a step forward in assuring predictability and uniformity in child support awards, the Guidelines' deficiencies continue to financially handicap the custodial parent, usually the mother.

Enforcement of court-ordered child support is another continuing problem. If support is not paid, the economically-dependent custodial spouse is less able to provide for the children's needs. Returning to court for enforcement may present an insurmountable financial obstacle in light of other, more pressing financial demands. And, if the aggrieved spouse does return to court for enforcement, sanctions must be consistently levied to send a clear message to the noncompliant spouse.

Without effective recourse, due to an inability to return to the courts or a failure of the courts to impose effective sanctions, aggrieved parties may resort to using visitation as a weapon. This is another reason that both custodial and non-custodial parents need quick access to effective enforcement procedures at nominal cost.

Alimony and Property Distribution:

The underlying problem with many alimony and property distribution awards is that they do not adequately reflect the economic realities for working women in Utah. Judges seem to underestimate the difficulties women face when they re-enter the work force after a lengthy absence and to inadequately respond to well-documented differences in the earning abilities of Utah women and men.

Although many judges award more net assets to wives than to husbands, the value and liquidity of the assets do not ensure the wives' economic well-being and, indeed, may handicap the wife by limiting her mobility or saddling her with debt service.

The difficulties of enforcing alimony orders are the same as in enforcing other domestic relations orders.

DOMESTIC RELATIONS FINDINGS

I. UNDERLYING PROBLEMS

1. A husband and wife have unequal access to justice when they have unequal access to financial resources.
2. Frequently, both parties to a divorce action are advised by the same attorney, which places the party not paying the attorney's fees, usually the woman, at a disadvantage.
3. Access to the legal system is curtailed or denied to many women in the following ways:
 - a. At the outset of divorce proceedings, women far more frequently than men lack the financial and personal resources necessary to obtain counsel in order to actively pursue their legal remedies.
 - b. When adequate counsel or expert fees are not awarded, the financially disadvantaged spouse's ability to pursue her legal rights and remedies is substantially impaired.
 - c. After divorce, women far more frequently than men lack the financial and personal resources necessary to access the court for enforcement or modification of orders granted in final divorce decrees.
 - d. Some judges and commissioners will not conduct full evidentiary hearings in domestic relations cases. Some insist that parties either settle disputes or present evidence by proffers or affidavits only. Some refuse to hear parties not represented by counsel.

These practices disadvantage women because they more often lack the resources to engage counsel to ensure fair hearings.
 - e. Women far more frequently than men report that their attorneys have failed to vigorously represent them in domestic relations matters.
4. Frequently, ecclesiastical leaders and counselors emphasize the woman's role in preserving the marriage and family, ignoring or contradicting the woman's legal rights.

5. The impartiality due to every individual who enters the justice system is at risk when an individual's religious leader is also a judge or lawyer in the case.

6. Often a woman who foregoes a career to become a full-time homemaker, either by choice or at her husband's request, is penalized financially for that decision at the time of the divorce.

7. The Domestic Relations Commissioner system works with varying effectiveness throughout the state. During the Task Force's data-gathering between June of 1987 and March of 1989, the following gender-related problems were identified:

a. Excessive caseloads prevent sufficient consideration of each case, magnifying inequities resulting from gender stereotypes, such as stereotypes about men as parents and women as wage-earners.

b. In a contested case, where a commissioner has entered an inadequate temporary support order, the financial burden on the custodial parent, usually the mother, is exacerbated by the often lengthy delay before the court enters a final order.

c. Unless an objection is filed, commissioners' recommendations are routinely approved by the court. More women than men lack the resources to hire attorneys to file such objections.

8. One domestic relations commissioner indulges in blatantly sexist remarks directed at women litigants and attorneys. While some remedial administrative action has been taken, the problem has not been entirely alleviated.

9. The Attorney Survey reveals significantly different perceptions by women and men of many domestic relations issues. In the District Court, where all of the judges are men, these differences result in unintended and unconscious gender bias.

10. Many judges and lawyers would prefer not to deal with domestic relations cases. As a result, many avoid, postpone, or give low priority to domestic relations cases, thus exacerbating the economic predicament of women and children in divorce proceedings.

II. CHILD CUSTODY

1. Some judges appear to rely on gender-based stereotypes in making decisions about an individual's fitness to be a custodial parent. Such stereotypes include the perception that mothers are better custodial parents, or that fathers have little desire or ability to be actively involved in parenting. This may result in custody awards that have little relationship to the best interests of the child and that unfairly discriminate against one parent or the other.
2. Although the Utah Supreme Court abolished the statutory maternal preference in child custody cases in 1986, trial court judges in the overwhelming majority of cases still grant child custody to mothers. Attorneys aware of the propensity of judges to award custody to mothers often advise fathers not to contest custody because to do so would be very expensive and unlikely to result in a custody award to the father. Such advice perpetuates the maternal preference, to the disadvantage of fathers.
3. Although mothers receive custody in the vast majority of cases, some who seek custody are disadvantaged by gender-based stereotypes:
 - a. Some judges assume that mothers who work outside the home, by choice or economic necessity, are less fit custodial parents than fathers who place a similar emphasis on their work.
 - b. Some judges assume that a mother's extra-marital or post-divorce relationships make her a less fit parent. Similar behavior by a father does not appear to be judged by the same standard.
4. In some instances, men threaten women with loss of child custody to force reconciliation or gain economic advantage in a divorce.

III. CHILD SUPPORT

1. Child support awards are generally inadequate to enable the custodial parent, usually the mother, to meet the basic needs of children. This occurs not only in cases where financial resources are limited, but also in cases where the noncustodial spouse has substantial income.
2. Adoption of the Uniform Child Support Guidelines in 1989 is a step forward in assuring predictability and uniformity in child support awards. Significant deficiencies that continue to exist under the Guidelines negatively affect custodial parents, usually women. Among deficiencies in the Guidelines are the following:

- a. The costs of child care, out-of-pocket medical expenses, and medical and dental premiums are allocated without taking into consideration the parties' actual earnings, benefits, and tax liability.
 - b. Child support is reduced by 50% when the child spends more than 25 days in a 30 day period with the non-custodial parent, even though the fixed expenses of the custodial parent do not decrease by 50%.
 - c. The specified amount of child support at upper income levels is too low.
 - d. No consideration is given to the increased expenses of older children.
3. Women who cannot meet the basic needs of their children do not have the money, energy or time to return to court for enforcement or modification of child support orders.
 4. Delinquencies in child support payments often accrue for several months before the judicial system provides redress, placing increased burdens on the custodial parent, usually the mother.
 5. Non-custodial parents, usually fathers, have no mechanism to ensure that child support is spent to benefit the children.
 6. Non-custodial mothers are rarely ordered to pay child support.

IV. VISITATION

1. Non-custodial fathers report:
 - a. They are denied access to their children by custodial mothers, despite court orders granting them visitation.
 - b. They are denied access to or encounter difficulty in gaining access to children's school and medical records.
2. Custodial mothers report:
 - a. Fathers fail to meet child support obligations, yet insist on visitation.

- b. Awards of "reasonable" visitation do not provide sufficient predictability.
3. Unsupervised visitation is sometimes granted without adequate investigation of reports of abuse of the child by the non-custodial parent.
- a. Mothers may not be believed when they or their children allege child abuse by the father.
 - b. Fathers may be falsely accused of child abuse in custody and visitation disputes.

V. ALIMONY AND PROPERTY DISTRIBUTION

1. After long-term marriages, many alimony awards do not adequately reflect:
- a. The wife's non-monetary contributions to the family;
 - b. The wife's job-market limitations due to lack of training or education, long-term absence from the job market, and age;
 - c. The disparity in earning power between men and women in Utah, regardless of education, qualifications, or experience.
2. Women are more likely than men to work only part-time outside the home. In awarding alimony and dividing property, the court often fails to consider limitations inherent in part-time work, including undependable income, limited promotion possibilities, lack of job benefits such as health insurance and retirement, and limited opportunities to move into full-time work.
3. If courts award child support in lieu of permanent alimony, they may fail to anticipate the financial impact on the remaining family as each child reaches age 18 and his or her award is cut off.
4. Though the value of the assets awarded to the wife often exceeds that awarded to the husband, the wife's assets are usually non-liquid and non-income producing, and may require both debt service and maintenance. These factors limit the wife's economic opportunities.

DOMESTIC RELATIONS RECOMMENDATIONS

For Judges and Court Administration:

1. Take effective action to eliminate blatant sexist behavior by judges or commissioners through education, censure or, as a last resort in extreme and repeated cases, removal from office.
2. Establish by Judicial Council rule a statewide summary enforcement procedure for domestic relations orders, e.g., alimony, child support, visitation. Monitor utilization and impact of the procedure.
3. Encourage judges to award counsel and expert fees, including temporary orders, where a woman would otherwise be financially unable to pursue legitimate legal remedies.
4. Encourage judges to award attorney fees on a routine basis to the prevailing party in proceedings to collect delinquent child support or alimony or to enforce visitation orders.
5. Develop mandatory education programs for all judges, including active senior judges, and commissioners who handle domestic relations cases, to include, but not be limited to, current information about:
 - a. The disparate economic consequences of divorce for women and men;
 - b. Economic realities for working women in Utah;
 - c. Wage-earning potential of middle-aged women who have been economically dependent during a long-term marriage;
 - d. The costs of rearing a child, the costs and availability of child care, and other statistical and social data essential to making realistic child support awards.
6. Include in new judges' and new commissioners' orientation programs all issues outlined above.
7. Use education programs for judges and court commissioners to illustrate how laws that are gender-neutral on their face may nonetheless regularly be applied in ways that disadvantage one gender.

8. Familiarize judges, commissioners, and other appropriate court personnel with the nature and extent of the differences in how men and women perceive domestic relations issues, as evidenced by the Task Force's Attorney Survey results.

For the Bar:

1. Develop basic written information for domestic relations litigants about their rights and about what a qualified domestic relations attorney can and cannot accomplish through legal proceedings.
2. Develop practical information for litigants about how to proceed with an attorney, including:
 - a. What information to have available at the first meeting;
 - b. What to ask and tell an attorney during the first meeting;
 - c. How to reach agreement about fees and court costs;
 - d. What to do if the attorney/client relationship proves unsatisfactory.

Prepare this information in a variety of ways, e.g., videotapes as well as written materials, and distribute statewide with the primary goal of reaching those who have least access to the legal system.

3. Familiarize attorneys with the nature and extent of the differences in how men and women perceive domestic relations issues. In cooperation with the Administrative Office of the Courts, provide attorneys with pertinent Task Force Attorney Survey results as an educational tool to illustrate these differences.
4. Incorporate into mandatory continuing legal education programs for domestic relations lawyers, current information about:
 - a. The disparate economic consequences of divorce for women and men;
 - b. The economic realities for working women in Utah;
 - c. The wage-earning potential of middle-aged women who have been economically dependent during long-term marriages;
 - d. The costs of rearing a child, the costs and availability of child care, and other statistical and social data essential to determining realistic child support needs.

- e. The ethical impropriety of the same attorney representing both parties in a divorce case.
5. Incorporate into all final divorce decrees the provision of Utah Code Annotated, section 62A-11-403, requiring income withholding to collect delinquent child support payments.

For Law Schools:

1. Incorporate into relevant courses and clinical programs current information about:
 - a. The disparate economic consequences of divorce for women and men;
 - b. Economic realities for working women in Utah;
 - c. Wage-earning potential of middle-aged women who have been economically dependent during a long-term marriage;
 - d. The costs of rearing a child, the costs and availability of child care, and other statistical and social data essential to determining realistic child support needs.
 - e. The ethical impropriety of the same attorney representing both parties in a divorce case;
2. Familiarize law students with the nature and extent of the differences in how men and women perceive domestic relations issues. In cooperation with the Administrative Office of the Courts, provide law students with pertinent Task Force Attorney Survey results as an educational tool to illustrate these perceptual differences.

For the Legislature:

1. Reconsider the Uniform Child Support Guidelines, with particular attention to:
 - a. Taking into account the parties' actual earnings, benefits, and tax liabilities when allocating the costs of child care, out-of-pocket medical expenses, and medical and dental insurance premiums;
 - b. Lessening the reduction in child support when the child spends more than 25 days in a 30 day period with the non-custodial parent;

- c. Increasing child support awards at upper income levels;
- d. Increasing child support awards for older children.

For Ecclesiastical Leaders:

1. Sensitize ecclesiastical personnel who provide marriage and family counseling and advice to the potential harm that may result from advice based on gender role stereotypes that discourages a woman who has good cause to seek a legal remedy from doing so.
2. Consider how proper functioning of the legal system can be impaired through role confusion if a person's ecclesiastical leader is also that person's lawyer or judge in the state court system.

DOMESTIC VIOLENCE

Extent of the Problem:

Domestic violence is a complex social problem, not amenable to simple solution or remedy by any discrete group in society. In over 90% of the reported domestic violence cases, women are the victims. In addition, the entire family unit is seriously and negatively affected, including children, who are more likely as adults to become abusers and/or victims themselves.

The Task Force found that among all groups of professionals who deal with domestic violence, there appears to be a lack of knowledge or understanding about the dynamics of such violence and, particularly, about the characteristics of and relationships between abusers and victims.

For many Task Force members, the quantity of testimony involving domestic violence, as well as its substance, was shocking. Utah, despite its strong family values, is no exception to the national scourge of spouse abuse.

Gatekeepers to Safety:

Much domestic violence occurs outside the reach of judicial intervention. Both police and prosecutors serve as "gatekeepers", having a profound effect on whether domestic violence cases reach the court system at all. Other gatekeepers include the clergy or laypeople to whom an abused spouse might turn for guidance.

Law Enforcement - The effectiveness of Utah's civil Domestic Violence Act and its criminal Domestic Violence Procedures Act is dependent on law enforcement's initial response to family violence calls and on its response to reported violations of orders issued pursuant to these laws. Data gathered by the Task Force indicates significant problems of enforcement at both junctures.

Testimony suggests that police are often reluctant to arrest offenders in family violence situations, whether or not a court order is in place. An underlying attitude, that domestic violence is "just domestic", not warranting the same treatment as violence between strangers, serves to disadvantage many women and some men. Stereotypes about men and women involved in such cases prevent consideration of individual circumstances by attributing to each party a narrow range of behaviors deemed typical of everyone of that gender.

The Task Force was particularly impressed with law enforcement agencies that have successfully experimented with alternative ways to handle domestic violence complaints. In particular, Riverdale, St. George, West Valley City, and Sandy City have all developed innovative policies and practices to separate the parties in a meaningful way and ensure that complaints are pursued through the legal system. Characteristics of such policies include mandatory or pro-arrest clauses, no drop clauses, as well as encouragement of court-ordered treatment for the abuser.

The County Attorney - The prosecutorial response to family violence varies widely across the state. Complaints are generally handled most effectively in those counties with formal programs to provide legal assistance to complainants. In at least one rural county, neither the office of the county attorney nor the office of the county clerk seems to be providing forms and assistance to complainants, as required by the Domestic Violence Act.

Knowledge of the substance and procedures under the Domestic Violence Act and the Domestic Violence Procedures Act seems spotty. Public hearing testimony suggests that clear information is not provided consistently by county attorney offices statewide. In addition, the dynamics underlying domestic violence seem to be poorly understood, sometimes resulting in victims receiving cavalier treatment for problems that are of the utmost seriousness to them.

The Judiciary - The judiciary is reached by domestic violence complainants in only a minority of cases. Experiences at this level are somewhat more positive than with law enforcement and prosecution, although the attitudes of some judges towards family violence complainants is still problematic.

Of special concern is the issuance of mutual protective orders on the court's own motion in response to a victim's request for a protective order, a practice that occurs with some frequency in several judicial districts, according to the Task Force's Attorney Survey. Mutual protective orders create the appearance that both parties have been found to be violent and fail to provide law enforcement with clear direction about enforcement. Lack of guidance from the judiciary can only serve to enhance law enforcement's ambivalence about intervening in family violence situations.

Because protective orders are violated with some frequency, sanctions for such violations are crucial to the integrity of the laws designed to protect citizens against domestic violence. Attorneys perceive that the sanction itself, that of a class B misdemeanor, is not regularly imposed. To the degree that this is so, the statutes cannot serve their intended purpose.

Effective enforcement, whether at the police, prosecution, or judicial levels, will occur only when Utahns decide they will no longer tolerate within families the same violent conduct that they already refuse to tolerate on the streets.

ADULT SEXUAL ASSAULT

Adult sexual assault raises many of the same issues as does domestic violence. Men and women are almost always pitted against one another as perpetrators and victims, and the actions of agencies apart from the judiciary in many instances determine whether the case will ever come to the attention of the judiciary.

In adult sexual assault cases, the needs of the victim are often addressed by rape crisis centers. Testimony from the directors of these centers suggests that their effectiveness depends on the relationship they are able to establish with the county attorney's office and with local law enforcement. Only through cooperation can they work together towards common prosecutorial goals in appropriate cases. Testimony suggests that in some areas of the state this is not a problem, but that in others a working relationship barely exists.

Another concern in adult sexual assault cases is the reported difficulty of establishing credibility, especially if the victim was acquainted with the perpetrator. This appears to be a problem with prosecutors, law enforcement, and the judiciary.

DOMESTIC VIOLENCE FINDINGS

I. WOMEN AS VICTIMS

1. Women are the victims in the overwhelming majority of domestic violence cases.
2. Domestic violence has a significant detrimental impact on the victim, the family, and the entire community in which it occurs.
 - a. The victim suffers serious emotional and psychological harm and a significant loss of self-esteem.
 - b. Children in families in which domestic violence occurs are damaged emotionally and psychologically, and are more likely to become abusers and/or victims themselves.
 - c. Economic costs to the victim and society include lost wages, social service agency costs, medical costs, law enforcement costs, and court and other legal expenses.

These social costs are multiplied by the number of violent recurrences.

3. Utah statutes do not allow a charge of rape or other forms of sexual assault by one married person against the other unless they are living apart pursuant to a court order. Utah Code Annotated, section 76-5-407(1).
4. Non-domestic adult sexual assault involving parties who are acquainted raises many of the same issues as does domestic violence. Skeptical regard for the victim's credibility is a continuing problem in both areas, especially in interactions with law enforcement officers and prosecutors.

II. UNDER-REPORTING

1. Domestic violence in Utah is far more pervasive than statistics based on the number of reported cases would indicate.
2. Although official statistics purport to document the extent of domestic violence in Utah, they fail to accurately reflect the true incidence of domestic violence because of chronic under-reporting. The reasons for under-reporting include:
 - a. Many victims take no action to remedy the situation.
 - b. Some victims look to non-legal channels, such as ecclesiastical leaders, for assistance.
 - c. Most victims lack information about the options available to them.
3. When support services for domestic violence victims become available, the rate of reporting increases.
4. In many counties, there is little or no record-keeping regarding the number of complaints filed under the Domestic Violence Act (Utah Code Annotated, Section 30-6-1, *et seq.*) and the Domestic Violence Procedures Act (Utah Code Annotated, section 77-36-1, *et seq.*).

III. STATUTES

1. Confusion and ignorance is pervasive at the local level (i.e. prosecutors, law enforcement, courts, social services) about the purposes, procedures, forms, and remedies available under the Domestic Violence Act (Utah Code Annotated, section 30-6-1, *et seq.*) and the Domestic Violence Procedures Act (Utah Code Annotated, section 77-36-1, *et seq.*).
2. The provision in the Domestic Violence Act that allows the assignment of responsibility for assisting domestic violence complainants to either the County Attorney or County Clerk's office creates confusion and the opportunity for buck-passing. When this occurs, adequate assistance is not provided.

3. The Domestic Violence Act explicitly prohibits an order issued thereunder from containing any provision regarding “custody or visitation rights”, “child or spousal support responsibilities”, or “recovery for medical expenses or other damages suffered as a result of the abuse.” Utah Code Annotated, section 30-6-6(1). These prohibitions perpetuate the cycle of abuse, i.e., the victim returns to the abuser and the pattern repeats itself.

4. Some judges enter mutual protective or restraining orders despite the lack of a request for such an order by the party against whom the order was originally brought. This practice creates problems, including:

- a. The victim is viewed as an equally culpable party in the eyes of the law.
- b. Law enforcement officers are unable to identify the offending party when called upon to enforce protective orders.

IV. COMMUNITY RESPONSE TO DOMESTIC VIOLENCE

1. Substantial differences exist in the handling of domestic violence cases in rural and urban areas. In many parts of the state, there is little or no effective legal protection for victims of domestic violence. Factors contributing to such differential treatment include, but are not limited to:

- a. Access to the judicial system;
- b. Availability of support services;
- c. Availability of information about victims’ rights and remedies.

2. Many individuals in the justice system (law enforcement officers, prosecutors, court personnel, and judges) regard domestic violence as less serious than similar violence between strangers.

3. In a number of reported instances, victims have been discouraged from filing complaints under the Domestic Violence Act by some judges, court personnel, and county attorneys. For example:

- a. A victim is told that only one protective order is available in a lifetime under the Domestic Violence Act.
- b. A victim is told that a protective order is not available if a divorce is pending.

- c. A victim is refused an affidavit of impecuniosity.
 - d. A victim is told that the forms for filing are not available in a particular office, without being directed to the proper office.
 - e. A male victim is ridiculed for trying to file under the Act.
4. Often the first request for assistance in a domestic violence case is to a law enforcement officer. The effectiveness of the response depends on the officer's individual sensitivity to the problems of domestic violence.
5. A few police departments understand the dynamics of domestic violence and recognize the severity of the problem. As a result, they have adopted policies that direct officers to:
- a. Separate the parties in a way that provides meaningful protection;
 - b. Take advantage of community resources; and
 - c. Provide effective follow-up.
6. Domestic violence complaints are generally handled more effectively in those counties (e.g., Salt Lake, Utah, Weber) that have formal programs to provide legal assistance to complainants.
7. A team approach involving all agencies that deal with domestic violence is the most effective way to alleviate the serious social and economic impact of domestic violence.

DOMESTIC VIOLENCE RECOMMENDATIONS

For Judges and Court Administration:

1. Ensure that judges and court commissioners become familiar with the complex nature of domestic violence. Provide educational programming on:
 - a. The importance of treating domestic violence with the same seriousness accorded violence between strangers;
 - b. The effect of domestic violence on the entire family, including children;

- c. Characteristics of and relationships between abusers and victims;
- d. The need to consider any history of spousal assault as a factor in child custody and visitation determinations;
- e. The need for expedited handling of violations of protective orders under the Domestic Violence Act;
- f. The problems inherent in mutual protective orders issued by the court *sua sponte* or upon mere oral request by respondent;
- g. The appropriateness of sanctions such as incarceration for violators of protective orders.

In addition, incorporate these issues into an orientation program for new judges and court commissioners.

2. Provide educational programming to court support personnel who deal with domestic violence complainants, focusing on the nature of domestic violence, the cycle of abuse, and the characteristics of domestic violence victims.
3. Require that mutual protective orders be issued only upon request and that they be supported by findings of fact.
4. Consider any history of spousal abuse as evidence of the abusing parent's unfitness in child custody and visitation determinations.
5. Order counseling for the abuser, the victim, and the family in appropriate cases.
6. Establish streamlined uniform procedures for handling domestic violence cases, including procedures for scheduling hearings on domestic violence complaints.
7. Review all forms related to the Domestic Violence Act to ensure they are written in clear, easy-to-understand language, are easy to follow, and are non-threatening.
8. Devise a statewide program for maintaining detailed, consistent records under both the Domestic Violence Act and Domestic Violence Procedures Act.

For the Legislature:

1. Appropriate funds to establish adequate statewide support programs and services for domestic violence victims, e.g., shelters, legal assistance, counseling, etc.
2. Appropriate funds to enable service providers (law enforcement, social services, prosecutors, lawyers, and others) to educate their own personnel about the complex nature of domestic violence. Such educational programming should include training about the substance and procedures of both the Domestic Violence Act and the Domestic Violence Procedures Act.
3. Appropriate funds to support a joint effort by agencies, especially in rural areas, that deal with domestic violence, aimed at informing victims about available laws and remedies.
4. Study and amend the Domestic Violence Act, considering the following matters, among others:
 - a. The need for each county to designate one office as responsible for the preparation and distribution of forms provided for under the Act;
 - b. The need of victims for adequate legal assistance and support services attendant to the prosecution of their complaints;
 - c. The need to prohibit mutual protective orders except where requested and supported by adequate proof.
5. Repeal section 76-5-407(1) of the Utah Code, which exempts married persons from criminal liability for various sexual offenses if committed against a spouse.

For the Executive Branch, including Law Enforcement:

1. Establish a standing committee to ensure continuing dialogue among police, prosecutors, victims' representatives, and judges. This committee should review all facets of the domestic violence problem in Utah, with a goal of maximum enforcement of domestic violence laws and protection of victims.
2. Ensure that law enforcement officers become familiar with the complex nature of domestic violence. Provide educational programming on:
 - a. The importance of treating domestic violence with the same seriousness accorded violence between strangers;

- b. The effect of domestic violence on the entire family, including children;
 - c. Characteristics of and relationships between abusers and victims;
 - d. The Domestic Violence Procedures Act, with special attention to probable cause, arrests, and immunity. Include opportunities for police officers to rehearse behaviors they might employ when responding to domestic violence calls;
 - e. Rape and other forms of adult sexual assault as crimes of violence that require prosecution.
3. Adopt policies to ensure that abusers or persons sympathetic to abusers will not be hired as law enforcement officers.
 4. Devise and implement a uniform written policy to address domestic violence cases. In so doing, evaluate the policies and practices used by those departments that most effectively handle domestic violence complaints.
 5. Ensure that acquaintance rape complaints are treated with the same degree of seriousness as cases of rape by a stranger.
 6. Maintain accurate records on filings under both the Domestic Violence Act and Domestic Violence Procedures Act.

For County Attorneys:

1. Ensure that prosecutors become familiar with the complex nature of domestic violence. Provide educational programming on:
 - a. The importance of treating domestic violence with the same seriousness accorded violence between strangers;
 - b. The effect of domestic violence on the entire family, including children;
 - c. Characteristics of and relationships between abusers and victims;
 - d. The appropriateness of sanctions such as incarceration for violators of protective orders;
 - e. The problems inherent in mutual protective or restraining orders;

- f. The necessity of helping victims to effectively gain access to the legal system.
 - g. Procedures and forms for obtaining protective orders.
3. Refer domestic violence victims to support services in the community so that their safety and social service needs are met.
 4. Establish domestic violence prosecution units in those counties with sufficient population to justify such units.
 5. Maintain accurate records on filings under both the Domestic Violence Act and Domestic Violence Procedures Act.

For the Bar and Law Firms:

1. Prepare an informational videotape and pamphlet in layperson's language describing to domestic violence victims:
 - a. Rights and remedies under both Acts;
 - b. What to realistically expect from the legal system;
 - c. What to expect from an attorney;
 - d. What support services are available and which organizations provide them.

Distribute widely, especially in rural areas.

2. Provide continuing legal education for attorneys to ensure that they are familiar with the complex nature of domestic violence. Include:
 - a. The importance of treating domestic violence with the same seriousness accorded violence between strangers;
 - b. The effect of domestic violence on the entire family, including children;
 - c. Characteristics of and relationships between abusers and victims;
 - d. The need for expedited handling of violations of protective orders under the Domestic Violence Act;

- e. The need for informed consent from the client before agreeing to a mutual order of protection as a condition of settlement;
3. Encourage lawyers to represent victims *pro bono* in domestic violence cases.

For Law Schools:

1. Include information about domestic violence in appropriate courses in the law school curriculum, including the nature and extent of the problem, the impact on the family, and the history of attitudes of judges, lawyers, and law enforcement officers towards domestic violence.
2. Encourage clinical placements for law students with service organizations and volunteer programs that address the legal needs of domestic violence victims.

JUDICIAL SELECTION

Judges in Utah are chosen through a merit selection process, involving screening and interviewing by judicial nominating commissions and final selection by the Governor. This process has produced a judiciary that is 7% female. Currently, no women serve on the general jurisdiction trial court bench.

Judicial nominating commissions sent the name of at least one qualified woman to the Governor for final selection in three-quarters of the available openings. The Governor has appointed three women out of 17 opportunities to do so: two to the Court of Appeals and one to the Circuit Court.

Information available on the judicial selection process is extremely limited. Better record-keeping would help ensure that preconceived stereotypes about women and men do not narrow the pool of applicants and, ultimately, the judiciary to a homogeneous subgroup of those who are well qualified to hold judicial office.

JUDICIAL SELECTION FINDINGS

1. Women are underrepresented on the trial bench statewide.
 - a. There are no women on the District Court (general jurisdiction) bench.
 - b. Of the 12 Juvenile Court judges, only one is a woman.
 - c. Of the 37 Circuit Court (limited jurisdiction) judges, only three are women.
2. Women are better represented at the appellate court level, given the percentage of women in the Bar.
 - a. Of the five Supreme Court justices, one is a woman.
 - b. Of the seven Court of Appeals judges, two are women.
3. The judicial selection process is failing to produce an adequate number of women appointees to the trial bench.

JUDICIAL SELECTION RECOMMENDATIONS

For Judicial Nominating Commissioners:

1. Establish a goal of increasing the number of women judges.
2. In interviewing the candidate for judicial office and in conducting reference checks, include questions aimed at evaluating whether the candidate exhibits gender bias.
3. Participate in education programs provided by the Administrative Office of the Courts in order to understand better the impact of gender issues on judicial selection and enhance the fairness of the process by which judges are selected.

For Judges and Court Administration:

1. Actively encourage qualified women to apply for judgeships by directly communicating with potential applicants about the availability of positions and the steps, both formal and informal, in the judicial selection process.
2. Develop continuing education programs for judicial nominating commissions aimed at:
 - a. Sensitizing members to their own gender-based biases;
 - b. Educating members about the impact of inappropriate gender-related attitudes and behavior on the fair administration of justice;
 - c. Providing practical experience in formulating and asking appropriate gender-neutral interview questions.
3. Establish a review mechanism by which the judicial selection process may be evaluated, e.g., conduct interviews with members of nominating commissions and with applicants on a random basis after a selection has been made.

For the Bar:

1. Actively encourage qualified women to apply for judgeships through direct communication about available openings, and organize support for women applicants, particularly at the final selection stage of the process.

2. Encourage senior/experienced Bar members to offer to women interested in applying for judgeships guidance about both formal and informal aspects of the judicial selection process.
3. Ensure that attorney members of judicial nominating commissions are selected from a broad cross-section of the Bar, including women.

For the Governor:

1. Appoint additional qualified women to the trial bench. Continue to appoint qualified women to the appellate bench.

COURT EMPLOYMENT

Defining the Problem:

Data from seven court-employee focus groups, examined in conjunction with extensive public and private hearing testimony and Administrative Office of the Courts personnel data, suggest that gender bias affects court employment in a variety of ways and that it is sufficiently serious to warrant immediate attention.

Excluding judges and quasi-judicial officers, 75% of the Utah court system employees are women and 25% are men. Yet professional supervisory positions, top management and administration are all heavily dominated by men, while the lower grade, lower paid technical positions are even more heavily dominated by women. While in many instances this disproportion was not created by the courts, it does continue to exist. The Task Force sought to understand what kinds of attitudes and behaviors contribute to the apparent difficulty for women of achieving career status equal to men. By pursuing this inquiry, the Task Force hoped to provide administration with some insight into ways of creating a working environment in which both women and men can achieve their full professional potential.

Lack of Awareness about Gender Issues:

The inability of women and men in the workplace to recognize inappropriate gender-related attitudes and behaviors, both in themselves and in others, is a major stumbling block to improving the courts' working environment. Because employees do not now share a common understanding of what gender bias is and how it manifests itself in the workplace, miscommunication has flourished. Denials and accusations have displaced clear communication and constructive problem solving.

Hiring and Promotion:

The processes, both formal and informal, by which persons are hired into a system and promoted through it are good indications of fairness in employment practice. The Task Force was hindered in its exploration of hiring and promotion practices by a lack of record-keeping, both at the Administrative Office and its field offices. Not only does this void make any systematic analysis impossible, but it also precludes clear accountability for hiring and promotion decisions.

Anecdotal data points to practices that undermine the spirit if not the letter of written personnel policies, and behaviors that promote "insiders", usually male, while excluding qualified women not in the "old boys" network. This data, in conjunction with the lack of meaningful record keeping, concerns the Task Force deeply.

Reporting and Resolution of Gender-Related Problems:

As the Task Force began soliciting information about the experiences of court employees, it discovered that many people were hesitant to talk candidly for fear of upsetting work relationships, being viewed as trouble makers, or hurting their advancement opportunities. The challenge for the judiciary is to refrain from adopting apparently logical explanations that too facily explain away perceived problems, maintaining the status quo without reflection, and to instead provide a forum where problems can be openly explored and legitimate inequities effectively redressed.

COURT EMPLOYMENT FINDINGS

1. Significant percentage differences exist between women and men in all court employment categories:

	Male	Female
a. Top management and Administration	19 (68%)	9 (32%)
b. Mid-level supervision-Professionals	25 (81%)	6 (19%)
c. Non-managerial professional	65 (57%)	49 (43%)
d. Mid-level supervision-Technical	16 (21%)	60 (79%)
e. Technical, including deputy court clerks	49 (12%)	355 (88%)
f. Secretarial	0 (0%)	41(100%)
g. Maintenance	4 (80%)	1 (20%)
TOTAL:	178 (25%)	521 (75%)

2. A common understanding of gender bias, and agreement on supervisory and managerial responsibilities to respond to it, do not exist among personnel in the court system.

3. Many supervisory and management personnel, both male and female, are insensitive to gender issues.

- a. Some are not aware of their own inappropriate gender-related attitudes and behaviors.
 - b. Some are not able to identify inappropriate gender-related attitudes and behaviors in others.
 - c. Some believe that, absent an intent to offend, inappropriate gender-related conduct is excusable.
 - d. Some who are aware of inappropriate gender-related attitudes and behaviors refuse to address them.
 - e. A few have retaliated against those who complain of inappropriate gender-related conduct.
 - f. Some believe that sexual harassment is the only gender-related problem in the workplace requiring remedial action, and they therefore dismiss complaints of other inappropriate gender-related conduct as unimportant.
4. Testimony suggests that gender bias is often a factor in hiring and promotion. Court employees have reported:
- a. Women have been discouraged by men superiors from applying for supervisory or managerial positions.
 - b. Women have been impeded by men superiors in the hiring and promotion process, especially through inconsistently applied promotion criteria.
 - c. Men supervisors frequently act as mentors for other men but rarely act as mentors for women.
5. Existing personnel records and procedures make it impossible for administrators to track the impact of gender bias on personnel decisions.
6. Existing personnel policies and procedures are incapable of preventing gender bias from influencing hiring and promotion decisions.
7. In some cases, informal practices contradict written policies and control hiring and promotion decisions, disadvantaging women applicants. The problem is exacerbated by a lack of accountability for personnel decisions.

8. Although procedures exist within the court system for reporting inappropriate gender-related conduct, employees testified they have no confidence in these procedures. They do not raise gender issues because they fear discrimination through labeling, isolation, loss of job, or loss of promotion opportunity. Several witnesses testified that such discrimination has actually occurred.

COURT EMPLOYMENT RECOMMENDATIONS

For Court Administration:

1. Develop a statement of commitment to gender equity in court employment, including notice that gender bias in court employment will not be tolerated. Communicate the commitment clearly and forcefully to all court employees so that inappropriate gender-related conduct will be eliminated.
2. Vigorously recruit qualified women to apply for supervisory and management positions.
3. Consider the current gender imbalance as one factor in hiring, promotion, and leadership opportunities.
4. Require that all managerial and supervisory personnel demonstrate competence in resolving gender bias issues. Treat effective use of such skills as performance criteria. Examples of such skills include:
 - a. Recognizing gender-biased behavior and understanding its impact on court employees;
 - b. Resolving gender-bias problems and maintaining a work environment free of gender bias;
 - c. Making hiring and promotion decisions free of gender-bias, based on written policies and procedures.
5. Train and authorize designated individuals in each judicial district to resolve gender bias and sexual harassment complaints. Give special attention to procedures and remedies designed to both meet the needs of victims and protect the rights of those accused.
6. Develop education programs for all court employees to increase awareness about appropriate and inappropriate gender-related conduct in the workplace.

7. Evaluate personnel policies and procedures for gender fairness, and correct if necessary.

8. Develop a record-keeping system that enables meaningful evaluation of gender factors in personnel decisions and accountability for those decisions. Pay special attention to the application process, hiring, promotions, salary histories, and terminations.

COURTROOM INTERACTION

Differences in Perception:

The responses to the Task Force's Attorney Survey illustrate with remarkable clarity how differently most women and men perceive their treatment in the courtroom. That so many men do not perceive as a problem what is real to so many women is part of the problem of gender bias and is one of the reasons that it is so difficult to confront, discuss, and deal with productively.

Many male Survey respondents commented that the Task Force's inquiry was unnecessary, either because they had never experienced or observed any gender-biased conduct or because they did not view the issue as an important one. Other male respondents commented that any differences in treatment favor women and may give them an advantage in court. The men who observed deferential conduct towards women may not be far from the many women who reported condescending or paternalistic behavior by judges, lawyers, or court personnel. Both may be seeing the same behaviors but interpreting them differently based on their own background and experience. Both may perceive gender bias as part of the interaction, but men see the conduct as favoring women while women see it as disadvantageous.

Professional Acceptance and Credibility:

How women are treated in the courtroom is a behavioral indication of whether they are accepted as professionals equal to others in their profession. Some women reported difficulties with judges, court personnel, and other lawyers even recognizing their status as attorneys. Others reported they had run into stereotypes about roles women and men ought to assume in society, stereotypes that either did not include women functioning as attorneys or that assumed women attorneys must behave in certain traditional ways in order to be acceptable.

Professional acceptance for many women means "fitting in" in a male-dominated profession. The Task Force heard repeatedly that women were hesitant to testify before the Task Force, believing they had worked too hard to do what they perceived might jeopardize their chances for professional advancement. In essence, professional acceptance requires credibility, and openly expressing opinions about the ways in which women and men are treated in the profession draws attention that may diminish one's credibility. Candid remarks, then, about one's own perceptions may be counterproductive to the goal of professional acceptance.

The Conduct of Judges and Attorneys:

Although strides have apparently been made in recent years by the judiciary, the same improvement was not generally noted in the gender-related attitudes and behaviors of male attorneys. Women attorneys' concerns included being addressed by first name or terms of endearment when men are addressed by title or surname

and being subjected to comments about their physical or sexual attributes. Judges were most often cited by Attorney Survey respondents for interrupting women lawyers, litigants, and witnesses more frequently than their male counterparts, for awarding women attorneys lower fees than men attorneys doing similar work, and for failure to intervene to correct inappropriate gender-related conduct occurring in their presence.

Because the courtroom is the most visible symbol of our legal system, what goes on in the courtroom is of the utmost importance. If women, in any of the roles they assume in court, are perceived and treated less credibly than men in the same roles, then equality under the law is diminished. The judge must exercise the professional ability to comprehend more than one viewpoint, to view the proceedings from the female's perspective as well as the male's, and to ensure that the courtroom is a neutral environment where justice for women and men is not infected by even the most subtle gender-biased attitudes and behaviors.

COURTROOM INTERACTION FINDINGS

1. There is little consensus between women and men as to how gender affects courtroom interaction. This lack of shared awareness prevents identification and resolution of, and communication about, gender issues.
2. Women lawyers report that:
 - a. Women lawyers, litigants, and witnesses are interrupted by judges more frequently than men lawyers, litigants, and witnesses.
 - b. Deferential treatment accorded to women in court by men is demeaning and undermines their credibility.
 - c. Women lawyers receive lower fee awards for similar work.
3. Men lawyers report that:
 - a. There is no gender bias problem in the courts.
 - b. Deferential treatment accorded to women in court by judges gives women an advantage in court.
4. Objectionable conduct that women and men most commonly report includes:

- a. Women being addressed by first names or terms of endearment;
 - b. Women being subjected to comments about physical or sexual attributes or appearance.
5. As among judges, lawyers and court personnel, in recent years judges improved the most in their treatment of women in court; lawyers improved the least.
6. Women lawyers consistently criticized men lawyers for inappropriate gender-related behavior. Commonly reported conduct includes:
- a. Addressing women lawyers by first names or terms of endearment;
 - b. Making comments about the physical or sexual attributes or appearance of women lawyers;
 - c. Making remarks or jokes demeaning to women;
 - d. Making comments that women are unsuited to practice law.
7. Judges rarely intervene to correct inappropriate, gender-related conduct in their courtrooms and environs.

COURTROOM INTERACTION RECOMMENDATIONS

For Judges:

1. Refrain from inappropriate gender-related conduct.
2. Intervene to correct inappropriate gender-related conduct in the courtroom and environs.

For Court Administration:

1. Provide educational programs for judges, court commissioners, and other court personnel to heighten awareness and increase recognition of inappropriate gender-related conduct. Include in such programs information concerning how women and men perceive gender issues differently.

2. Gather data to determine the validity of reports that fee awards are affected by the gender of the attorney.

For The Supreme Court:

1. Amend the Code of Judicial Conduct to direct judges not to engage in or permit others under their supervision to engage in any biased conduct, including inappropriate gender-related conduct.

For Law Professors:

1. Integrate instruction concerning inappropriate gender-related conduct into classes on professional responsibility, trial advocacy, and clinical programs.
2. Refrain from inappropriate gender-related conduct in the classroom.
3. Intervene to correct inappropriate gender-related conduct in the classroom.

For The Bar:

1. Recommend amending the Rules of Professional Conduct to prohibit attorneys from engaging in inappropriate gender-related conduct.
2. Ensure that continuing legal education programs include a component directed to gender fairness in court and professional interactions.
3. Improve continuing legal education programs by:
 - a. Developing a policy that expressly prohibits inappropriate gender-related conduct in Bar-sponsored education programs;
 - b. Screening potential continuing legal education faculty members for gender issue awareness;
 - c. Including in program evaluations questions that address the gender fairness of both the substantive program and the faculty member's presentation;
 - d. Recruiting qualified women as faculty in continuing legal education programs and as panelists at conferences and seminars.

4. Communicate the results of the Task Force's Attorney Survey to all members of the Utah State Bar.
5. Ensure that all Bar publications and communications are gender neutral.

LOOKING TO THE FUTURE

The Task Force Report is the product of more than three years effort, but only the beginning of what will be needed to eliminate inappropriate gender-related attitudes and behaviors from Utah's court system.

The true measure of success will be the responsiveness of the judiciary — and of other agencies who share the vision of equal justice for all — to the Task Force Report and, especially, to its Findings and Recommendations.

To facilitate the process of change, the Task Force is recommending to the Judicial Council that a Gender and Justice Implementation Committee be established, charged with implementation of Recommendations and with reporting regularly to the Council on actions that have been taken to eliminate gender bias from the courts.

Inappropriate gender-related attitudes and behaviors cannot be eliminated from the courts overnight. But with a judiciary aspiring to the highest standards of fairness and allied agencies also willing to engage in thoughtful self-examination, the Task Force is convinced that a vital first step has been taken and that the goal can be attained.



