RESOLVED, That the American Bar Association supports the enactment of authoritative measures, requiring studies of the existence, if any, of bias in the federal judicial system, including bias based on race, ethnicity, gender, age, sexual orientation and disability, and the extent to which bias may affect litigants, witnesses, attorneys and all those who work in the judicial branch.

BE IT FURTHER RESOLVED, That the American Bar Association urges that such studies should include the development of remedial steps to address and eliminate any bias found to exist.
The federal courts — the very place where much of the public must turn to vindicate rights, to determine guilt or innocence, to resolve disputes — are not immune from bias on the basis of race, ethnicity and gender. Such concerns are particularly troubling because the courts are the forum for the resolution of issues of fairness, equity and good faith.

The need for examination of the matter in the federal courts has already been recognized. The Ninth Circuit has established a committee to study gender bias pursuant to a resolution of its Judicial Conference. Also, committees on racial and gender bias are at work in the D.C. Circuit as well.

At least 28 state jurisdictions also have undertaken studies of bias on the basis of race or gender. Their reports have illuminated many problems and given rise to constructive remedial measures. Leading studies include New Jersey Supreme Court Task Force on Women in the Courts, Report of the First Year (1984); Report of the New York Task Force on Women in the Courts (1986); The Report of the Gender Bias Study of the Massachusetts Supreme Judicial Court (1989); and Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts (Dec. 1989). The state task forces on bias have concluded that bias is pervasive and education is a key element of reform. It is time for the federal system to catch up.

In order to fulfill their pivotal role in our society, the federal courts must exemplify the very highest standards and must be free of bias on the basis of race, ethnicity and gender. It is critical to both the perception of justice and the actual integrity of the federal courts that a study be made of the extent of racial, ethnic and gender bias in the courts as it may affect not only litigants, witnesses, and attorneys, but also those who work in the judicial branch. Such a study should focus on the existence of bias, if any, in the federal judicial system, and the development of meaningful remedial steps to address and eliminate any racial, ethnic and gender bias found to exist within that system. Both the American Bar Association’s Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession endorse such a study.
The ultimate goal of the proposed study is a federal courts system free from bias on the basis of race, ethnicity and gender. Achievement of this goal first requires the compilation of reliable statistical and other information about racial, ethnic and gender bias upon which recommendations for action can be based. Some may question why time and money should be spent on yet another study. The experience of the many state court task forces which have studied bias in the court system is that a systemic examination of the courts is a necessary step. As a working definition, bias exists when decisions made and actions taken are based on preconceived or stereotypical notions about race, ethnicity or gender. A thorough evaluation of our courts may well show unexpected impacts of bias. The educational value of such a study cannot be overestimated. Moreover, without identification of the problem, we cannot move on to the second stage, namely, development of an action plan encompassing steps which can be taken to address bias issues, such as the formulation of policies and standards, the development and implementation of training programs, and a method for monitoring progress toward the goal. Finally, the suggested remedial programs must be adopted.

Possible remedial measures for consideration on a national basis might include the following: (a) the Judicial Conference establish a standing committee on issues of bias in the court system; (b) circuit conferences build these issues into their meetings; and (c) localized educational materials be developed for the judicial education that the state task forces on bias have concluded is a key element of reform.

The Federal Courts Study Committee (FCSC), in its final report of April 2, 1990, expressed the view that, "Although we have confidence that the quality of the federal bench and the nature of federal law keep such problems (of gender bias) to a minimum, it is unlikely that the federal judiciary is totally exempt from instances of this general social problem." However, while acknowledging that the issue of gender bias may be a problem, and while proposing specific remedial measures, the FCSC concluded that a study of bias in the federal courts is unnecessary.
Our committee respectfully disagrees with that conclusion and believes a comprehensive study of racial, ethnic and gender bias is an essential first step in preventing and dealing with bias in federal court proceedings and operations.

The ABA has fought actively against discrimination on the basis of race, ethnicity and gender for many years. It has adopted policies urging federal and state legislatures to prohibit discrimination in employment, housing, public accommodations and education and has sought to eradicate discrimination throughout the legal profession. Over the past 10 years, the Association has promulgated policies encouraging court systems to adopt equal opportunity and affirmative action plans and non-discrimination policies, urging elimination of barriers to the selection of women and minorities as judges and strengthening of recruitment and training programs to assure increased employment opportunities, and encouraging education programs for judges to consider how racial and sexual bias may affect decision-making and courtroom atmosphere. See also Curtin, "Combating Gender Bias" ABA Journal, April 1991, p.8.

In view of the foregoing, the Standing Committee on Federal Judicial Improvements requests the House of Delegates to adopt the accompanying resolution supporting the enactment of legislation or other authoritative measures requiring a comprehensive study of racial, ethnic and gender bias in the federal judicial system.

Respectfully submitted,

Maurice Rosenberg
Chairperson
August 1991

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1. Summary of Recommendation(s).
Support the enactment of legislation or other measures to require a study of the existence, if any, of racial, ethnic and
gender bias in the federal judicial system and the development of remedial steps to eliminate any bias found to exist.

2. Approval by Submitting Entity.
This recommendation was approved by the Standing Committee on Federal Judicial Improvements on May 18, 1991. In addition, it was approved by the Boston Bar Association on May 30, 1991, the Commission on Women in the Profession on June 3, 1991, and the Commission on Opportunities for Minorities in the Legal Profession on June 4, 1991, the Association of the Bar of the City of New York on June 5, and the Section of Criminal Justice on June 12.

3. Previous Submission to the House or Relevant Association.
The present resolution has not previously been submitted to the House of Delegates. It nevertheless builds on prior ABA resolutions spanning over a decade. In 1990, the House of Delegates approved a resolution urging judicial leaders and court systems to adopt non-discrimination in employment policies, and to adopt merit based personnel systems. In 1986, the House of Delegates approved a resolution urging that federal and state education programs for judges include a course on how racial and sexual bias can affect judicial decision-making and courtroom atmosphere. During the same meeting, it also approved a resolution to urge the elimination of any barriers to the selection of women and minorities as judges. In 1980, the House of Delegates supported the establishment of procedures to encourage the appointment of all
federal judges strictly on the basis of merit and without regard to extraneous political considerations.

4. Need for Action at This Meeting.

A clear statement of ABA policy on the need for a study of the existence of racial, ethnic and gender bias in the federal judicial system is particularly important at this time because the Federal Courts Study Committee, in its final Report of April 1990, concluded that a study of bias in the federal courts is an unnecessary first step. The FCSC instead proposed specific remedial measures. This Committee believes that a preliminary study is essential to identify the particularities of the problem.

5. Status of Legislation. (If applicable.)

Not Applicable.

6. Cost to the Association. (Both direct and indirect costs.)

None.

7. Disclosure of Interest. (If applicable.)

There is no conflict of interest. For information purposes, however, the Committee currently has two members who are also members of the Federal bench.

8. Referrals.

Boston Bar Association
Commission on Women in the Profession
Commission on Opportunities for Minorities in the Legal Profession
Section of Criminal Justice
Section of Litigation
Section of Individual Rights and Responsibilities
Section of General Practice
Young Lawyers Division
Judicial Administration Division:
   Appellate Judges Conference
   National Conference of Administrative Law Judges
   National Conference of Federal Trial Judges
   National Conference of Special Court Judges
   National Conference of State Trial Judges
9. **Contact Person.** (Prior to meeting.)

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Standing Committee on Federal Judicial Improvements  
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New York, N.Y. 10027

Phone No: (212) 854-5699

10. **Contact Person.** (Who will present the report to the House.)

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