OPERATING A TASK FORCE ON
Gender Bias
IN THE
Courts
A MANUAL FOR ACTION

by Lynn Hecht Schafran, Esq.
and
Norma Juliet Wikler, Ph.D.

THE FOUNDATION FOR WOMEN JUDGES
1225 15th Street NW
Washington, DC 20005
(202) 462-4243

The Foundation for Women Judges

The Foundation for Women Judges (FWJ) was created in 1980 by women judges committed to strengthening the role of women in the American judicial system. The Foundation is a non-profit, tax exempt organization engaged in educational and research programs. The Foundation works closely with the National Association of Women Judges (NAWJ) and staffs the National Task Force on Gender Bias in the Courts.

In addition to publishing this manual on gender bias task forces, the Foundation for Women Judges' 1986 projects include:

- publication of **Judicial Education: A Guide to State and National Programs;**
- co-sponsorship of institutes on judicial education faculty development;
- production of a curriculum and guide for conducting seminars on judicial selection and candidacy skills for women;
- presentation of seminars on judicial selection and candidacy skills.

President: Hon. Martha Craig Daughtrey

Executive Director: Mary Ann Stein, Esq.

The National Association of Women Judges and The National Task Force on Gender Bias in the Courts

The National Association of Women Judges (NAWJ) is a 775 member organization comprised primarily of judges from all levels of state and federal courts across the United States. Its goals are: to promote the fair administration of justice; to discuss and formulate solutions to legal, educational, social and ethical problems encountered by women judges; and to increase the number of women judges so that the judiciary more appropriately reflects the role of women in a democratic society.

In 1985 the NAWJ created the National Task Force on Gender Bias in the Courts to encourage the formation of state task forces on gender bias throughout the country and to provide technical assistance to enable these task forces to perform their functions as efficiently and effectively as possible. The members of the National Task Force on Gender Bias in the Courts include women and men who are members of and advisors to the first task forces formed as well as experts in judicial education. The members of this Task Force have provided advice and editorial assistance in the production of this manual.

National Association of Women Judges

President: Hon. Sybil Hart Kooper
President Elect: Hon. Christine Durham
Past President: Hon. Martha Craig Daughtrey

National Task Force on Gender Bias in the Courts
Chair: Hon. Marilyn Loftus

Forward

NATIONAL TASK FORCE ON GENDER BIAS IN THE COURTS

Through co-sponsorship and financial support of the National Judicial Education Program to Promote Equality for Women and Men in the Courts,[1] NAWJ and FWJ have been instrumental in introducing courses about gender bias into state and national judicial education programs throughout the country. The New Jersey Task Force on Women in the Courts, the first of its kind, was an outgrowth of this ongoing effort. As chair of the New Jersey Task Force I have seen first hand the positive changes that come from documenting the specific manifestations of gender bias in a state's judicial system. In New Jersey, reforms implementing our Task Force's recommendations have significantly improved the treatment of women litigants, witnesses and attorneys in our courts. I believe that Task Forces modeled after New Jersey's can be one of the most effective ways to identify and redress bias against women in the judicial and legal systems.

New Jersey's findings about gender bias in the courts and recommendations for countering the negative effects of such bias have generated intense national interest. In the two years since the creation of this first task force, three additional Task Forces have been established in New York, Rhode Island and Arizona. Moreover, judges and lawyers across the country have sought NAWJ's advice about how to have Task Forces created in their own states. In response to this widespread interest, NAWJ established the National Task Force on Gender Bias in the Courts to encourage the creation of new Task Forces and to provide technical assistance to them. As part of this effort, the Foundation for Women Judges, which staffs the National Task Force, is publishing this manual.

We hope you will use the manual to establish a Task Force on Gender Bias in the Courts in your own state. We stand ready to advise and assist you in any way we can. Working together we can effectively reduce gender bias in the courts nationwide.

Hon. Marilyn Loftus, Chair

[1] The National Judicial Education Program's founding sponsor is the NOW Legal Defense and Education Fund.

Forward
THE FOUNDATION FOR WOMEN JUDGES

The Foundation for Women Judges is pleased to publish this manual about Task Forces on Gender Bias in the Courts. The manual's authors are Norma Juliet Wikler, Ph.D. and Lynn Hecht Schafran, Esq., respectively the first and current directors of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP). The authors have been closely involved in all aspects of the work of the Task Forces now in existence and in advising judges and lawyers seeking to establish new Task Forces in their own states.

By no means do we think that Task Forces are a magic wand which can dispel attitudes and patterns of conduct and decision making that have been an integral part of our society and laws for centuries. We do believe, however, that when properly constituted and focused, and prepared for a long term effort, Task Forces can go a long way to counter denial of bias, to document its existence and impact, to identify steps necessary to reduce its incidence and effects and to demonstrate that it is a serious matter deserving serious treatment.

For Task Forces to be optimally effective their composition, focus, methods of data gathering, conclusions and scope of recommendations must be carefully considered and crafted. Task Forces which have the backing of the chief justice and take into account the long term educational efforts necessary to make meaningful changes in biased thinking will be the most successful.

This manual provides a comprehensive overview of the Task Force process and contains information on specific tasks. It cannot, however, answer every question nor provide guidance for unexpected occurrences or situations peculiar to specific states. Just as each of the Task Forces now operating has proceeded differently at various points, so will new efforts produce novel approaches, difficulties and outcomes.

To accommodate your need for more information, for ideas about how to handle the unexpected or situations not covered or anticipated in this document, we have built into our project on Gender Bias Task Force development a component for technical assistance. To maximize the benefits of this manual, we encourage you to avail yourselves of this technical assistance from the start. When you decide to take the first steps toward creating a Task Force in your state, contact the National Task Force on Gender Bias in the Courts through the Foundation's Washington, D.C. office.[1] We can help you plan your approach, provide any additional materials you may need, supply you with names of other

people from your state or region who have expressed interest in a Task Force and share with you new ideas and information which other states have reported to us since the writing of this manual.

The last item in this manual (Appendix XIV) is a series of report formats which we urge you to fill out and send to us. These reports will enable the National Task Force to keep track of Task Forces around the country and provide you with information about current developments. Your reports will help us evaluate the utility of various resources and approaches so that successful activities can be replicated and common mistakes avoided.

As you read this manual you will be impressed with the complexity and the enormity of the tasks involved in effective Task Force implementation. We have tried to point out potential problems and pitfalls, to emphasize the importance of proceeding carefully and deliberately. We do not intend to overwhelm you. As any of the participants in the Task Forces in New Jersey, New York or Rhode Island can tell you, a Task Force is a manageable undertaking and definitely worthwhile. With patience, determination and the assistance of others committed to reform, you can produce high quality results without sacrificing your job or your sanity.

We look forward to hearing from you and to joining with you to pursue our shared goal of ever improving the administration of justice.

Mary Ann Stein, Esq., Executive Director

[1] The Foundation for Women Judges is located at 1225 15th St.. N.W., Washington, D.C. 20005. (202) 462-4243.

Authors' Preface

Rarely is there an opportunity to trace the growth of an issue from its inception in the mind of one individual to its expression as a national movement. As the first and current directors of the National Judicial Education Program to Promote Equality for Women and Men in the Courts, we have had this unusual opportunity. We dedicate this manual to Sylvia Roberts, Esq., a pioneer litigator for women's rights who first saw the need for and the possibility of educating judges about the consequences of gender bias in judicial decision making and the courtroom environment. Thanks to her vision, judicial education about gender bias is now a subject of national concern.

Much of the satisfaction we gain in our work for the National Judicial Education Program comes from interaction with others who are also working to eliminate gender bias from the courts. We hope this manual will encourage you to go forward with a Gender Bias Task Force in your state, and that we will have the pleasure of working with you in that effort.

Lynn Hecht Schafran, Esq.

Norma Juliet Wikler, Ph.D.

About the Authors

Lynn Hecht Schafran is an attorney specializing in gender discrimination and Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts. She is a member of the New Jersey Supreme Court Task Force on Women in the Courts and the National Task Force on Gender Bias in the Courts and advisor to the New York Task Force on Women in the Courts, the Rhode Island Supreme Court Committee on the Treatment of Women in the Courts and the Arizona Task Force on Gender and Justice. She is also Special Counsel to the New York City Commission on the Status of Women and Chair of the Committee on Sex and Law of the Association of the Bar of the City of New York. Ms. Schafran received her B.A. from Smith College, her M.A. from Columbia University, and her J.D. from the Columbia University School of Law.

The National Judicial Education Program is located at 99 Hudson Street, Suite 1201, New York, New York 10013. (212) 925-6635;

Norma Juliet Wikler was the first Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts. She is currently an Associate Professor of Sociology at the University of California, Santa Cruz and Research Associate at the Institute for the Study of Social Change at the University of California, Berkeley. She serves as advisor to the New Jersey and New York Task Forces on Women in the Courts, is a member of the National Task Force on Gender Bias in the Courts and is Senior Advisor to the Foundation for Women Judges. Professor Wikler received her B.S. from the University of Michigan and her M.A. and Ph.D. from the University of California, Berkeley.

Dr. Wikler can be reached at the Kresge College, University of California, Santa Cruz. (408) 429-2781 or 1433 A Walnut Street, Berkeley, CA 94709. (415) 848-1712.

Acknowledgments

The authors wish to acknowledge and thank several individuals who gave generously of their time and talent in the production of this manual: Mary Ann Stein, Esq., Executive Director of the Foundation for Women Judges, for her skillful editing and for supervising production; Sharon Musikar for her handsome graphic design; and Kathy Bonk and Alisa B. Shapiro of the NOW Legal Defense and Education Fund Women's Media Project who helped to transform a typescript into a camera ready document.

The Foundation for Women Judges wishes to acknowledge the support of the foundations, law firms, associations and individuals whose contributions have made the publication of this important manual possible.

Special appreciation is given to the following:

Foundations: The William E. Bingham Foundation, Minnesota State Bar Foundation, Otto Bremer Foundation, Cargill Foundation, Doherty, Rumble & Butler Foundation, Dorsey and Whitney Foundation, Hennepin County Bar Foundation, Patrick and Aimee Butler Family Foundation, Beim Foundation, Honeywell Foundation, Roscoe Pound American Trial Lawyers Foundation, and the Minnesota Women Lawyers, Inc.

Law firms and corporations: Larkin, Hoffman, Daly, Lindgren, Ltd.; Pillsbury Company; Popham, Haik, Schnobrich, Kaufman & Doty, Ltd.; Super Valu Stores, Inc.; 3M Corporation; Gray, Plant, Mooty, Mooty & Bennett, P.A.; Leonard, Street & Deinard; Lindquist & Vennum; Meshbesher, Singer & Spence, Ltd.; and Robins, Zelle, Larson & Kaplan.

We also express gratitude to Laura Miles, Jane Schoenike and many others in Minnesota who gave their time and provided support for this project.

Table of Contents

Introduction

Task Forces on Gender Bias[1] in the Courts are a recent development in the ongoing effort to achieve equality for women and men in American society. Beginning in the 1970's activists and scholars began to explore the nature and consequences of gender bias in the courts.[2] Their concerns arose from the fact that although progressive legislation in many areas affecting women's rights had been passed in numerous states, these remedial laws have turned out to be only as effective as the judges who interpret and enforce them.

Legislative reform alone will never be enough. As long as judges adhere to gender based myths, biases and stereotypes, the intent of the laws can be compromised or subverted through the exercise of judicial discretion. Equal treatment of women and men in the courts cannot be achieved unless all judges become educated about sex based discrimination in the law, in court procedures and in their own belief systems.

To provide this education the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) was established in 1980 by Dr. 'Norma Juliet Wikler who served as its first Director. The NJEP, continuing under the directorship of Lynn Hecht Schafran, Esq., has designed and participated in courses about gender bias in more than twenty state and national judicial education programs.[3] The increased awareness of and concern about gender bias brought about by these programs has led to the creation of Gender Bias Task Forces in several states.

The first Task Force was established in 1982 by New Jersey Chief Justice Robert N. Wilentz. Judge Marilyn Loftus, an NAWJ member, was appointed to chair the New Jersey Supreme Court Task Force on Women in the Courts. Establishment of this Task Force marked a turning point in the effort to eliminate gender bias in the courts. It signaled that the judiciary recognized gender bias as a problem warranting systematic official investigation and reform.

After a year of research, New Jersey disseminated its findings of pervasive gender bias and recommendations for reform in a report which gained national attention and sparked the interest of NAWJ members and lawyers across the country in initiating Task Forces in other states. At the request of New York NAWJ members, then Chief Judge Lawrence Cooke established the New York Task Force on Women in the Courts in 1984 with NAWJ president Judge Sybil Hart Kooper as a member. Rhode Island followed shortly with Chief Justice Joseph Bevilacqua's creation of the Supreme Court Committee on the Treatment of Women in the Courts with another NAWJ member, Judge Corinne Grande, as its chair. In 1985 in Arizona, NAWJ member Judge Lillian Fisher established the independent Arizona Task Force on Gender and Justice which was subsequently endorsed by the Arizona Supreme Court. As we write this

manual the New York Task Force has just released its report and efforts to establish Task Forces on Gender Bias in the Courts are underway in a number of other states.

---

[1] Gender bias refers to attitudes and behaviors based on sex stereotypes, the perceived relative worth of women and men and myths and misconceptions about their economic and social positions.

[2] Investigations yielded substantial information. Across the country a similar pattern emerged: women and men are often treated differently and unequally in the American legal and judicial systems. Gender based myths biases and stereotypes operate in the application, interpretation and enforcement of numerous areas of the law.

The three articles in Appendix A provide an overview of gender bias in judicial decision-making and courtroom interaction. The bibliographies in Appendix B identify key readings in specific substantive areas of the law such as domestic violence, damages, rape, custody, support awards and the treatment of women in the courtroom environment. We encourage readers of this manual to review at least the materials in Appendix A before proceeding with this text in order to gain a firm grasp of the broad issues. We also suggest that you obtain the reports of the New Jersey and New York Task Forces for an understanding of how these Task Forces were run and the kind of data they collected. (See Appendix C for ordering information.)

[3] See Appendix D for information about NJEP courses and how the Program can assist you in presenting a course or panel on gender bias at your state's judicial college or annual bar meeting.

1 Why Task Force on Gender Bias

The primary purposes of a Task Force are to document the existence of gender bias in the state's court system, specify its different manifestations and consequences, propose reforms and recommend mechanisms to implement, monitor and institutionalize those reforms. Depending on its resources, the Task Force will employ various methods of data collection (described later in this manual) to investigate the courts' treatment of women and men in relevant substantive law areas and to examine how gender affects the dynamics of courtroom interaction and the differential treatment of women and men in courtrooms and chambers. By gathering data, documenting problems, educating judges and lawyers and the public, a Task Force can:

- Enhance public perception of the court system's commitment to equal justice under law,
- Legitimate the problem of gender bias in the courts as worthy of judicial investigation and reform.
- Help to eliminate gender bias in the courts by establishing strong norms and sanctions against gender bias and making specific proposals for reform.
- Increase the sensitivity of bench and bar and the public to the incidence and consequences of gender bias in the courts.
- Improve professional relationships among male and female judges, lawyers and court personnel.

The accomplishments of a Task Force will go beyond what is reflected in the final report. Moreover, the process of the Task Force is important in itself. Task Force members, individuals and organizations solicited for information and the public, informed through the media, can become-educated about gender bias along the way. Coalitions and alliances may be forged and personal relationships created or strengthened which will enhance the ultimate implementation of reforms. Institutions may initiate internal reforms because of self-scrutiny prompted by the Task Force investigation.

What Task Force Can Do that Other Groups Concerned with Gender Bias Cannot

A Task Force established by the state's chief justice or highest court is the most effective mechanism by which information on the nature and consequences of gender bias in a particular state and specific jurisdictions within a state can be collected and disseminated. Such local documentation is vital because judges and lawyers who want to deny that gender bias is a problem will dismiss findings from studies based on national samples or other states, claiming: "It may be true elsewhere, but it doesn't happen here!"

A Task Force established by the state's chief justice will have more authority and visibility than any other group committed to the same issue. The chief justice has the standing to authorize funds, compel cooperation in data collection, endorse (and propose) reforms and ensure their implementation. The chief justice can also direct the chief court administrator to cooperate with the Task Force and facilitate its activities.

Both the judicial/legal community and the broader community will accord greater credibility and respect to a Task Force endorsed or created by the chief justice than to other investigative groups which are likely to be perceived as motivated by special interest groups (i.e., women). Equally important is the authority the chief justice can exercise in overcoming judicial resistance to dealing with gender bias during the Task Force's existence and afterward.

In states where the chief justice is not amenable to a Task Force, alternate routes for developing and publicizing information about gender bias in the courts should definitely be explored, at least as a preliminary step. Task Forces established independent of the chief justice can accomplish a great deal. Alternate models for a Task Force are discussed in Chapter 10.

When to Start a Task Force and When to wait

National studies of gender bias in the judicial/legal system show that similar problems exist in courts throughout the country. Thus, the need for a Task Force probably exists in every state. Nonetheless, a Task Force cannot be effective unless certain conditions prevail. **Perhaps most important is the existence of a group of individuals knowledgable about local problems of gender bias and committed to reform.** In many cases this will be a group of judges who are highly motivated to make changes in their state. Increasingly, women lawyers are also playing an important role in mobilizing support for the creation of Task Forces and serving as active members. For maximum effectiveness, we recommend that lawyers involve judges in their efforts from the beginning.

Adequate resources (budget and staff) are essential to the success of a Task, Force. The controversial nature of the subject matter ensures that its activities and reports will be carefully scrutinized and that the burden of proof will be heavy. The work must be professional in all respects, which requires time and money. If it is clear that adequate resources will not be available, it is advisable to wait.

Another requisite for **a** Task Force is **a** number of **male judges, lawyers or judicial educators concerned about the problem and willing to participate.** Their involvement enhances the credibility of the Task Force and bolsters interest and support in the judicial/legal community. Finally, before establishing a Task Force it is important to gauge the state's receptiveness to a gender bias inquiry. A Task Force will be most effective when there **is interest and receptivity in the community and among leading members of the judiciary.** The receptivity can be assessed by exploring the idea of a Task Force with bar associations, civic groups and commissions concerned with women or fairness in the courts. If there is insufficient interest or generalized overt hostility toward the issues -- for example, if key members of the bench and bar in your state will actively undermine and deride your efforts -- the odds against the Task Force achieving its primary goals may be too great and the likelihood of demoralizing its members too high. In such circumstances, we recommend using small scale projects to document various forms of gender bias and to build a community of interest focussed on creating a Task Force in the future. For descriptions of effective small scale projects see pages 11-13 of this manual.

The Task Force Should Deal with Gender Bias Only

The request to establish a Task Force may result in the suggestion that the Task Force also deal with other kinds of bias such as racism, "handicapism" and "ageism". To avoid overload and confusion, a Task Force on gender bias should deal exclusively with this one issue. The sources and nature of bias against women are distinct and the consequences for women's legal rights should therefore 'be considered separately.

Race, ethnicity, economic status and age certainly affect the treatment of women in the courts and compound the effects of sexism. For example, social science research has demonstrated that stereotyped attitudes about black women's sexuality biases the treatment of black female sexual assault victims. Displaced homemakers face special problems in divorce because of judges' misinformation about opportunities for older women in the paid workforce. Poor women often lack access to legal counsel and, in addition, may be treated disparagingly in pro se proceedings. The Task Force's data collection methods and analysis of its findings should clearly reflect awareness of how these additional factors interrelate with gender. However, attempting simultaneously to investigate all forms of racism and other kinds of bias in addition to sexism at an appropriate level of detail would be impossible within the constraints imposed on a Task Force.

Moreover, in our experience, the judicial education courses which attempt to cover several "isms" (racism, sexism, handicapism, etc.) are too abstract and general to be useful in helping judges identify, understand and correct the concrete, day-to-day manifestations and consequences of their biases in

decision making and courtroom interaction. A Task Force that embarks on a similar course can be expected to yield similar results. A gender bias Task Force may lead to creation of a separate Task Force on minorities, as happened in New Jersey.

Does gender bias only mean bias against women? Both New Jersey and New York have Task Forces on Women in the Courts. In our opinion, a Task Force on gender bias is preferable. Bias against men as well as bias against women undermines justice. There is overwhelming evidence, however, that the negative impact of gender bias operates much more frequently and seriously against women. Therefore it is not a contradiction for the Task Force to be concerned with gender bias against both sexes yet focus its attention primarily on the problems known to be the most pervasive ones encountered by women in the courts. The Task Force should, however, be alert to evidence of systematic bias against men and should investigate these areas if they are identified.

A Task Force as Part of a Long Term Strategy for Change

Task Forces will be most effective in reducing gender bias in the courts if they are undertaken as part of a multifaceted, long term strategy for change. Gender bias is pervasive in our culture and deep within each individual's consciousness. There can be no quick or easy solution. Change will come slowly and will require extensive attention, A realistic approach will reflect a long range perspective.

If the work of the Task Force is to have been worthwhile, gender bias must be kept on the judicial agenda for investigation, education and reform until monitoring reveals that reforms are effective and securely in place.

Efforts can be divided into four phases. Unique conditions in each state will determine the length of time necessary for each phase. As a very rough guide, six months will usually be sufficient for Phase I; a year to 18 months for Phase II; six months for Phase III; and three to five years for Phase IV.

FOUR PHASES OF A PLAN TO REDUCE GENDER BIAS IN THE COURTS

PHASE I: Mobilization and Pre-Task Force Data Collection

PHASE II: The Task Force in Process

PHASE III: Initial Dissemination of Findings and Implementation of Reforms

PHASE IV: Long Term Dissemination, Implementation and Monitoring

Phase I mobilization, begins when a group of individuals undertakes to persuade the chief justice to establish a Task Force. The group first mobilizes a base of support for a Task Force and collects initial data on the nature and prevalence of gender bias in the state's courts in order to demonstrate the need for a formal inquiry.

Phase II begins with the creation of the Task Force. The focus is on systematic collection of data and sensitization of members of the bench, bar and public to the issue of gender bias.

Phase III begins with publication of the report and presentation of the findings and recommendations to the judiciary. The Task Force should make presentations at the judicial college and before other local, state and national judicial, legal, and civic groups.

In Phase III the Task Force begins to implement its recommended reforms. On some recommendations the Task Force itself may be able to take action. Others will require action by the chief justice, court administrators, the legislature, bar associations, and individual judges.

Phase IV is long term dissemination of the report and implementation and monitoring of its recommendations. These tasks can be carried out by the Task Force or a standing committee which continues in existence, or by

a specially designated person such as a special assistant to the chief justice. Specific tasks are: ensuring that findings and recommendations are integrated into judicial education courses on a continuing basis; receiving complaints about gender bias and expediting their resolution; soliciting information from a range of individuals and groups about perceived progress in eliminating gender bias. A continuing Task Force may also want to study new areas or examine in greater detail areas already studied.

2 Establishing a Task Force on Gender Bias: Laying the Groundwork

If you are fortunate enough to have a chief justice known to be aware of gender bias in the courts and expected to be receptive to the idea of a Task Force, approach him/her directly with a well thought out plan for a Task Force as described in "Meeting with the Chief Justice" at page 14.[1]

If you believe your chief justice will not approve a Task Force without specific evidence that your state has gender bias problems serious enough to warrant full scale Task Force review, there are different ways to develop that evidence which do not involve significant cost.

Methods for Collecting Data and Stimulating Interest in Gender Bias in the Courts

Described below are several methods that have been used to document the existence of a problem and the need for a Task Force. Consider undertaking one or more of these. They can be carried out sequentially or concurrently. None of this preliminary data gathering is wasted. The information developed will be incorporated into later Task Force findings and the people and organizations you enlist at this stage will become mobilized around the issue and will help in implementing subsequent Task Force recommendations.

PRELIMINARY DATA COLLECTION METHODS

- Panel Discussions
- Featured Speaker
- Media Coverage
- Regional Meetings with Lawyers and Judges
- Report on a Specific Aspect of Gender Bias in the Courts
- Working with Court Administrators and Judicial Education Officers

Panel Discussions

Associations of women judges or lawyers or bar association committees on women's rights can present panels on sexism in the courts. These panels are useful for increasing awareness of gender bias and for generating data which can be used in a variety of settings including judicial education. A California judge recruited to teach in NJEP's pilot course, "Judicial Discretion: Does Sex Make A Difference?" told his colleagues he had become aware of the pervasiveness and seriousness of gender bias in the courts only after participating in a panel discussion sponsored by his county women lawyers association. He could have read about the problems, he said, but that would not have had the same impact.

What to Do:
Invite local male and female judges and lawyers to explore gender bias in the application of substantive law and the treatment of women in the courts and to assess the value of having a Task Force examine these problems. A member of or advisor to an existing Task Force can also appear on such a panel.

Record the speakers' remarks and the discussion from the floor to use as evidence of the need for a Task Force and for examples in judicial education courses about gender bias in that state.

Featured Speaker

A featured speaker such as the chair, a member of or an advisor to an existing Task Force, brought in to address judges and/or bar associations and community organizations, can build interest in the issue of gender bias and a Task Force by describing her Task Force's data collection methods, findings and recommendations. This speaker can be the sole presenter or part of a panel as discussed above.

What to Do:
Determine the sponsoring organization. Invite and schedule the speaker. Arrange publicity and media coverage.

Consider organizing a two part effort: first a speaker to generate interest; then, a month or two later, a panel of experts to discuss local concerns.

Note: Extensive newspaper, TV and radio coverage of the presentations by the New Jersey Task Force chair and NJEP Director to the Rhode Island Supreme Court Committee on the Treatment of Women in the Courts generated significant community interest. The New Jersey Task Force chair's speech to the Rhode Island Judicial College was a critical element in the creation of the Rhode Island Committee.

Media Coverage

Media coverage can increase community awareness of gender bias in the courts. Expressions of concern by civic leaders and community groups can be a powerful stimulus to the creation of a Task Force.

What to Do:
Encourage newspaper and magazine articles and broadcast media programs about gender bias in the courts as a means of generating public awareness of the problem and encouraging people to come forward with information.

Invite the press to cover any speeches and panels you sponsor and to interview the speakers.

Write articles for publications such as state and local bar journals.

Use the media to report on the fact that you are holding regional meetings and other data gathering events.

Regional Meetings with Lawyers and Judges

Discussion meetings with lawyers and judges in different parts of the state can effectively develop preliminary information to demonstrate the need for a Task Force. The data collected in this fashion is more systematic than that of a panel discussion. Script and directions for pre-task force regional meetings are in Appendix E.

What to Do:
Invite organizations such as groups of women judges, bar associations or their committees on women's rights to hold meetings in several parts of the state at which members discuss the nature and extent of gender bias in local courts.

Using a script, discuss the same issues at each meeting so that the information developed can corroborate or contrast with that developed at other meetings.

Record the discussion and write a report about each meeting. Synthesize the individual meeting reports into a single report to submit to your chief justice.

Report on a Specific Aspect of Gender Bias in Local Courts

A well researched report that documents the existence and consequences of gender bias in one particular aspect of local practice is useful in demonstrating to the chief justice the operation of gender bias in your local courts and the need for a Task Force.

What to Do:
Arrange for a respected organization, bar association or committee to study and report on a problem area in your state in which you believe gender bias is a major factor. For example, are older women commonly awarded only minimal rehabilitative alimony after long term marriages? Do judges issue mutual orders of protection when a woman seeks an order of protection and there is no cross-petition from the respondent? The report can be issued publicly and transmitted specifically to the chief justice, administrative judges, and others with power to effect the reforms suggested in the report. The usefulness of such a study and report in obtaining a Task Force was demonstrated in Rhode Island. Before there was any thought of a Task Force, the Rhode Island Bar Association Committee on Sex Discrimination surveyed lawyers statewide concerning the treatment and employment of' women attorneys. It issued a report documenting substantial discriminatory behavior toward women lawyers by male judges and lawyers, ranging from inappropriate forms of address to unwelcome physical contact. The issuance of this report

created a climate of concern in which it was possible for the state's judicial education officer to put on a gender bias program which led to a Task Force.

Working with Court Administrators and Judicial Education Officers

Working with your chief court administrator and judicial education officer acknowledges the importance of these individuals in effecting reform within the system. Encouraging them to examine the issue of gender bias is a way to enlist their support for a Task Force and for pre and post Task Force judicial education about gender bias in the courts. Your state's judicial education officer may be aware of the gender bias issue because the NJEP directors have spoken at meetings of the National Association of State Judicial Educators. Also, the Foundation for Women Judges' Judicial Education: A Guide to State and National Programs includes a description of the NJEP.

What to Do:
Examine court forms, rules, correspondence, juror's manuals and jury charges to see whether they are written in gender neutral language. If changes are needed, offer to assist with or prepare the revisions.

Inform your judicial educator of the number of states that have presented gender bias courses over the last five years and the issues addressed (see Appendix D). Request a course in your state.

Judicial Education Courses

Presenting a carefully structured course on gender bias at your judicial college or other education program is another way to make your chief justice and other judges aware of local concerns regarding gender bias in the courts. It also provides the opportunity to discuss how and why other states are addressing similar concerns through the mechanism of a Task Force. Your judicial college course can build on existing teaching materials created by the National Judicial Education Program and the New Jersey and Wisconsin videotapes (see Appendices C and D).

What to Do:
Always include at least one male and one female judge as course presenters.

Try to include presentations from local litigators expert in relevant areas such as domestic violence and members of or advisors to existing Task Forces. The litigators can discuss local issues while the out-of-state speakers provide a sense of the universality of the problems and describe how their Task Forces have dealt with them.

Build on any local cases or issues that have generated particular concern or interest.[2]

Try to include some discussion of support awards and enforcement. This is the legal area that affects the greatest number of women. Present local data relating to women's ability to become self-supporting and contribute to the support of their children after divorce. Local data on women's occupational distribution patterns, the wage gap, the poverty rate for female headed households, the availability and cost of child care in your state and similar issues can be obtained from sources such as the Census Bureau, federal and state departments of labor, commissions on the status of women and child support commissions.

Invite your chief justice to attend the course. Afterward explain to him/her that the local information presented is but the tip of the iceberg and that a full investigation of gender bias in the state judicial system requires a Task Force.

Note: It is critical that this course be carefully planned in every respect including choice of issues, speakers, and materials. Gender bias is a sensitive, sometimes explosive, issue for judges to examine. Discussion of any kind of judicial bias calls into question the core professional norms of impartiality and fairness and is therefore likely to make some judges uncomfortable. Gender bias is often a more sensitive issue than other kinds of bias because it hits so close to home. Most male and female judges usually live and work with members of the opposite sex. Feelings about their personal relationships may enter into discussions about gender bias in judicial decision making and courtroom interaction.

The National Judicial Education Program has six years of experience in presenting judicial courses on gender bias. If you are considering such a course, NJEP can help you plan and deliver it in a way that avoids common pitfalls.

Meeting with the Chief Justice

Having collected sufficient preliminary data to demonstrate that problems of gender bias exist in your state, you are ready to meet with your chief justice. Several key questions emerge at this point. The precise format of this meeting, including the decision as to who should initiate and attend, will vary according to the personalities in each state and the relationships among them.[3] The National Task Force on Gender Bias in the Courts and the NJEP can help you assess your particular situation and plan the meeting accordingly. The general approach set forth here is based on the experiences of Task Forces now in existence.

Planning the Meeting

To make the meeting with the chief justice as productive as possible, carefully develop an agenda and plan in advance who will serve as spokesperson for the group. Try to ascertain beforehand the chief justice's position on issues of gender bias. Review his or her opinions and votes on any relevant cases. If the chief was formerly a legislator or elected official, determine his or her positions on relevant issues while in that post. Several weeks before the meeting send the chief justice a small set of materials: e.g., one or two overview articles on gender bias in the courts, the New Jersey and New York summary reports, the statements from the three chief justices who have established Task Forces (Appendix F), and any summary reports that you have developed based on regional meetings, panels and/or local studies. If the chief justice does the homework, you will start your discussion with a shared framework for understanding gender bias which will save a good deal of time and confusion. Avoid pre-meeting publicity. Leaks to the press that the chief justice would soon be asked to create a Task Force jeopardized the effort in at least one state.

Agenda for the Meeting

Your chief justice will rightly consider creating a Task Force a major step. Expect to be asked many questions. We suggest that at this meeting you be prepared to:

Articulate a concise explanation of the need for a Task Force in your state.

Stress to the chief justice that gender bias in the courts is nationally recognized as a significant problem (refer to Task Forces operating in other states) and that there is evidence of its existence in your state. Even a chief justice sympathetic to this view, will want to know why a Task Force is necessary to deal with the problem. (See page 5 supra).

Describe the interest in a Task Force within the judicial/legal community.

The broader the support for a Task Force the more amenable to its creation the chief justice is likely to be. He/she will be aware of the sensitivity of the issue and the probability of negative responses from some judges. Support for the Task Force from organizations which include male judges and lawyers will be particularly helpful in mitigating this strategic concern.

Present a proposed long term outline for the Task Force's work.

Your position in requesting a Task Force will be stronger if the project's goals have been well developed in advance. Make it clear that you understand what a Task Force inquiry will involve and that doing it right is a long term project that goes well beyond issuing a report. Show that you have thought all this through by outlining a comprehensive plan for the Task Force from its inception through information gathering, dissemination of findings and implementation of reforms as outlined in this manual. Solicit the chief justice's suggestions for incorporation into your plan.

Identify resources that will be needed.

Tentative budget and staff requirements should be presented at this meeting in part to

forestall misunderstandings in the future. Research beforehand the level of direct funding and in-house services given to previous similar projects of your courts. This comparative data will be useful. If your court system has a tight budget and you believe that funding could be the major obstacle to the creation of a Task Force, indicate your willingness to seek voluntary services from organizations such as universities and local bar associations. (See discussion of Budget/Staff at page 22.)

Suggest the **desired composition of the Task Force in terms of the kinds of expertise and time commitments needed.**

You may wish to provide a list of specific names with a biographical paragraph for each. At the least you should offer a list of the desired composition of the Task Force in terms of number, level and sex of judges; number and sex of attorneys and laypersons and geographical and organizational distribution. (See page 21 for further detail about Task Force membership.) Another approach is that of the Massachusetts Women Lawyers' Association which submitted a request for a Task Force to that state's chief justice with the suggestion that the bar associations in the state appoint six of the suggested eight attorney members. (It may also be useful to discuss the need for a procedure for removing non-participating members and naming replacements.)

Explain that visible support for the work of the Task Force will be needed from the Chief Justice throughout its period of inquiry and in the implementation of its recommendations.

The chief justice should understand that his/her support will make a critical difference in the ability of the Task Force to carry out its mandate and to its overall success. (Examples of the kinds of effective actions taken by the Chief Justice in New Jersey are at page 59). Try to reach some agreement as to what the chief justice would be willing to do. If a Task Force is established, the chief justice should not only announce it publicly, preferably at a press conference, but should send a letter or memorandum to each state court judge announcing the formation of the Task Force, stating its mandate and urging full cooperation with its efforts.

Formulating the Task Force Mandate

The Task Force's mandate is extremely important. It describes and limits the parameters of the investigation and recommendations for reform. If bound by a mandate which narrowly confines the inquiry to determining whether or not the problem of gender bias exists, a Task Force is not worth the effort required. In our view, the mandate should state that gender bias exists in the courts and that the purpose of the Task Force is to determine its nature, extent and consequences, make wide ranging recommendations for reform, and monitor progress in eliminating it.

As described in the box on page 16, the mandates of the three official Task Forces now operating differ from one another in detail but share the same basic goals.

Note: See Appendix F for the chief justices' full statements announcing the creation of the three existing Task Forces. Although the Task Forces use "women" in their titles, we suggest the broader concept of a Task Force on Gender Bias.

If the Chief Justice Says No

Rehearse in advance how you will handle a negative response from the chief justice. The key here is to prevent a final negative decision and keep the door open for future discussion. If the answer is no, find out why. Listen carefully to the reasons given and try also to read between the lines. The more you can get the chief justice to say, the better. Some possible reasons for refusal are (a) cost, (b) the belief that the chief justice would then be obligated to meet similar requests from other groups, (c) disbelief that a Task Force is necessary to deal with gender bias, (d) disbelief that gender bias exists.

Rather than trying to counter the refusal during this meeting, tell the chief justice that you would like to discuss his/her comments with the broader group you represent and to report on their responses at a later time. Summarize what you understand to be the

TASK FORCE MANDATES

New Jersey

The New Jersey Supreme Court Task Force on Women in the Courts was established to "investigate the extent to which gender bias exists in the New Jersey judicial branch, and to develop an educational program to eliminate any such bias."

In setting forth this mandate, Chief Justice Robert N. Wilentz stated, "We want to make sure, in both substance and procedure, that there is no discrimination whatsoever against women—whether they are jurors, witnesses, judges, lawyers, law clerks or litigants."

New York

In New York, Chief Justice Lawrence N. Cooke announced that "the general aim of the New York Task Force on Women in the Courts will be to assist in promoting equality for women and men in the courts. The more specific goal will be to examine the courts and identify gender bias, and, if found, to make recommendations for its alleviation." He further instructed that "[The] focus of the Task Force should be upon all aspects of the system, both substantive and procedural. An effort should be made to ascertain if there are statutes, rules, practices or conduct that work unfairness or undue hardship on women in our courts"

Rhode Island

Chief Justice Joseph A. Bevilacqua established the Rhode Island Supreme Court Committee on the Treatment of Women in the Court "to document instances of discrimination against women and to develop concrete programs to eliminate the problem." He directed the Task Force to explore areas of potential bias including:

- discriminatory behavior towards women attorneys, litigants, witnesses and jurors;
- the effect of sexual stereotypes and biases in statutes, court opinions, judicial decision making, and jury verdicts; and
- gender bias in the wording of the forms and in court correspondence.

chief justice's objections to creating a Task Force and ask if your statement accurately represents his/her position. If the chief justice agrees to your request for a future meeting or further correspondence you have bought yourself time to: (1) assess if now is really the time to try for a Task Force -- remember that the support of the chief justice is critical; (2) formulate a thoughtful response (perhaps including new information) which might persuade the chief justice to change his/her mind. In either case, a follow-up letter should be sent to thank the chief justice and to indicate that there will be more communication in the future.

If the chief justice has said no but other conditions seem ripe for a Task Force, renew your commitment and persevere. Diversify your base of support for a Task Force by mobilizing other groups and key individuals to support your proposal or initiate one of their own. Continue to carry out small scale projects such as those previously described to keep the issue visible within the judicial/legal community.[4] If you have left the door open for further communication with the chief justice, you should be able to go for a second try at the appropriate time.

[1] In New York, for example, the state women judges' and women's bar associations had a long and close relationship with the Chief Judge and knew his interest in equal opportunity and equal justice issues. Also, NJEP had raised the issue of gender bias in a course at the 1982 New York Judicial College. These factors made it appropriate for three prominent NAWJ members, including the President of the New York State Association of Women Judges. to write directly to the Chief Judge to request a meeting to discuss a possible Task Force. As more Task Forces report their findings and more are established, it should become easier to approach your chief justice without extensive preliminary data collection.

[2] A course at the 1985 Colorado Judicial Conference focused on domestic violence because of a public outcry and Supreme Court inquiry after a judge gave a light sentence to a man who killed his wife by shooting her five times in the face. The judge said he ruled out a stiffer sentence in part because of the wife's "highly provoking acts" including being "extremely loving and caring" before her departure and leaving without a note.

[3] Usually we recommend a delegation of three to six women and men including respected members of the bench and bar and representatives of women's and/or civil rights groups who are in a position to speak for their memberships and constituencies.

[4] In Florida, the Florida Association of Women Lawyers (FAWL) presented a well received panel on sexism in the courts at the June 1985 annual meeting of the state bar association. When they formally requested that the chief justice form a Task Force, however, he replied that it was unnecessary. FAWL then turned to the Florida State University Law School Center for Policy. Studies. The Center has hired a researcher for a six month study to develop the data to demonstrate the need for a Task Force.

3 The Start-Up Phase

Membership

The start up phase involves both short and long range planning. Budget, staff and orientation issues must be addressed. Task Force members will require some education to enable them to choose which among the many possible problem areas they will study and how they will collect data. From its inception the Task Force should also consider who will write its report and how its findings will be disseminated and implemented.

Choosing the Task Force Chair

The Task Force chair will be selected by the chief justice but you can identify the key characteristics necessary for the chair and suggest one or more names. The chair should be an individual respected by the chief justice, the state judiciary and the legal community, knowledgable about the issue of gender bias in the courts and committed to a thorough investigation and reform. Organizing and leadership skills, a diplomatic style, a sense of humor and great persistence are essential qualities. A Task Force is a long term project which will encounter varying degrees of resistance along the way. The chair also needs to appreciate the varieties of expertise that a Task Force requires to collect, analyze and present data.

Preferably the chair should be a judge. There is a division of opinion as to whether it should be a woman. In the one state where the chair is a man, there was substantial negative community comment. Some dissenters maintained that if it were a Task Force on race bias, a white would not have been named chair. Our view is that a male judge who has the requisite abilities and has demonstrated a strong commitment to equity between the sexes can be as effective as a female judge in this role.

Choosing Task Force Members

The Task Force membership should include female and male judges from the trial and appellate levels; lawyers with expertise in relevant areas such as matrimonial law and sexual assault; lawyers with high community visibility such as state and local bar leaders; law professors in fields such as family law and women's rights; academics such as sociologists, psychologists and political scientists working in the area of gender bias; leaders from appropriate community and civil rights organizations; and possibly legislators. There should be gender, geographic, racial and ethnic diversity reflecting the population of the state. We believe having a significant number of judges on the Task Force, as in New Jersey and Rhode Island, is preferable to very few as in New York.

In considering the Task Force's membership, realize that Task Force members will come from different parts of the state and have different levels of commitment and time to devote to the effort. A state bar president, for example; may be committed to the goals of the Task Force and willing to implement its recommendations through state bar mechanisms but have little time to give to the Task Force itself. It is essential that the Task Force membership include a critical mass for whom the Task Force will be a primary concern. These individuals can function as a "core group" as discussed at page 43. It is also helpful if the geographic distribution allows "neighbors" to work together as sub-committees. The Task Force should be large enough to include the necessary components and permit creation of workable subcommittees but not so large as to be unwieldy. The New Jersey, New York, and Rhode Island Task Forces include 31, 23, and 22 members respectively.

Choosing Task Force Advisors

Depending upon the composition of the Task Force, expertise beyond that provided by members themselves may be required. One or more advisors knowledgable about the overall problem of gender bias in the courts, about specific aspects of the problem, and about research and social science methods should be added to the Task Force to provide the necessary experiences and skills.

Advisors to the New York Task Force include the current and former NJEP directors (one a lawyer, the other a sociologist, both experts

on sex discrimination in the courts), the co-chair of the Governor's Commission on Domestic Violence, and an attorney active with the state and local women's bar associations who is a member of the Governor's Commission on Child Support.

Advisors to the Rhode Island Task Force include the chair of the Governor's Commission on the Status of Women, the former chair of the Rhode Island Bar Association's Committee on Sex Discrimination, a national authority on domestic violence, a professor of psychology and the NJEP director. The advisor in New Jersey is the former NJEP Director.

Advisors with previous Task Force experience can be helpful even if they are out-of-state. The Foundation for Women Judges can provide limited technical assistance to states which request the services of an advisor from the National Task Force on Gender Bias in the Courts.

Budget and Staff

The expenses a Task Force is most likely to incur are:

1. Travel
2. Meeting expenses including lodging and meals
3. Space rental and labor costs (e.g. custodians) for meetings and hearings
4. Stationery and supplies
5. Telephone
6. Postage
7. Printing and duplication
8. Consultants and sub-contractors for surveys, special studies, report writing, etc.
9. Court reporters for public hearings
10. Transcripts
11. Computer time

It is difficult to offer a clear picture of what these costs have been for the existing Task Forces. In New Jersey and Rhode Island the Task Forces do not have specific budgets. Almost all Task Force expenses are absorbed by the administrative offices of the courts and most services are provided in house. A summary of how the New Jersey, Rhode Island, New York and Arizona Task Forces met their budget and staffing needs is contained in the box on page 23.

None of the existing Task Forces has a full time staff director capable of overseeing research as well as administration, which is certainly the most desirable model. After its experience with the New Jersey Supreme Court Task Force on Women in the Courts, the New Jersey Administrative Office of the Courts hired an attorney as staff director at a salary of $40,000 per year when it established a Task Force on Minority Concerns.

Educating The Task Force

At the start of your inquiry Task Force members may have widely divergent levels of knowledge about and attitudes toward gender bias in society and in the courts. To achieve a minimum shared understanding of the issues, all members should be provided with background reading materials which should be discussed at early Task Force meetings.

NJEP provided the New York Task Force members with reading packets of articles on gender bias in society and in the courts, domestic violence, rape, juvenile and adult sentencing, custody, and support awards and enforcement. (See lists at Appendix B.) Each packet required no more than an. hour or two to read. The packets were mailed over a period of several weeks so that members would not be overwhelmed by receiving six inches of reading material at once -- a strategy to remember throughout the Task Force process.

One or more of the early Task Force meetings should be devoted to orienting Task Force members through presentations that provide an overview of the issues and outline the way other Task Forces have proceeded. Speakers can be members of or advisors to your Task Force or existing Task Forces in other states.

In planning meetings, sufficient time should be allowed for full discussion of issues and process. The different levels of knowledge and attitudes of Task Force members may necessitate reviewing and thrashing out (often

MEETING BUDGET AND STAFFING NEEDS

New Jersey

The attorneys survey was printed and distributed by the New Jersey Law Journal at no cost. The survey data were processed in house by the Administrative Office of the Courts, which also assigned staff to carry out administrative functions for the Task Force and absorbed costs for meetings, travel and duplication/printing.

Some New Jersey judges' law clerks and some law students volunteered time to the Task Force. (Under the direct supervision of the Task Force members, law and graduate students can be useful research aides.)

Rhode Island

The Court Administrative Office assigned staff to the Task Force for administrative functions and purchased special software to be able to process survey data in-house. This Task Force employed a doctoral candidate in sociology as a consultant at the rate of $100 per day with a cap of $2,000 per fiscal year. Brown University undergraduates received course credit for assisting the Task Force by analyzing the records of 500 bench and jury trials in several areas.

New York

The budget of the New York Task Force for its first year was $51,200. The New York State Bar Association split the cost of printing the attorney's survey with the Task Force and distributed it in its newsletter at no cost. The Task Force contracted with a survey research firm which charged $10,000 to assist in drafting a survey; coding and keypunching responses to 1800 questionnaires; reporting marginal percentages by age, sex, and geographical distribution; entering narrative questionnaire comments into the computer and providing a preliminary analysis of the data. $15,000 was expended for a study of women in the court personnel system commissioned from a university affiliated research center. (Appendix G is an article about court administration which notes the low status of women court personnel nationwide.) The remainder of the budget funded items such as members' travel expenses and costs for hearings including court reporters and transcripts. The Office of Court Administration assigned staff to the Task Force for administrative functions.

Arizona

If your budget and court resources are limited, consider asking a state university to provide services such as research design and analysis and updating relevant research literature. The Arizona Task Force on Gender and Justice has such an arrangement with the University of Arizona.

more than once) views as to the nature and even existence of certain problems and whether they are evidence of gender bias or some other kind of deficiency in the system. Because of these differences among Task Force members the entire data collection process should be viewed as being as much an education for your members as your report will be for the world at large. You cannot educate other judges, lawyers and the public until you have educated the members of your own Task Force and made them believe in the reality of the problem and the necessity for

reform. Some of the most important people on the Task Force in terms of their status in the community, organizational ties and power to implement recommendations may start out as indifferent, skeptical or hostile. We have seen individuals of this type turned around completely after a thorough exposure to the realities, but you should know that this may not be easy: Educating Task Force members is discussed again at pages 29 and 39.

Education about Research Techniques

A special note of caution is due with respect to survey research techniques and other data collection methods. Task Force members must be made to appreciate that sociology and survey research are as specific areas of expertise as is the law. Because judges and lawyers are used to assimilating information about a wide variety of subjects to which they then apply the rules of law, they often assume they can write a survey or design a study or undertake other kinds of projects when in fact they are not qualified to do so. Such misplaced confidence can result in a disastrous loss of time and money. Drawing the analogy between a sociologist with no legal training who decides to write a brief and a lawyer or judge with no social science training who decides to "revise" a questionnaire helps to make the point clear to all concerned.

The other side of this coin is assuming that the Task Force can commission a survey or study and sit back awaiting the results. Just as judges and lawyers are not social scientists, so social scientists are not trained in the law and do not know the issues as you do. As the survey or study proceeds, there must be ongoing communication between the Task Force and the researchers to insure that the kind of information the Task Force needs is being elicited and that researchers do not misinterpret findings because of a lack of understanding of the judicial system.

Investigation: Identifying Areas for Investigation and Limiting the scope of Inquiry

The Task Force should investigate gender bias in both substantive law and the courtroom environment. Focusing on substantive law alone ignores the ways in which women's credibility as litigants, lawyers, victims, defendants, witnesses and experts is undermined by demeaning treatment in the courtroom and chambers. Focusing on courtroom interaction alone ignores the critical problems women, and sometimes men, face in securing equal justice under law. Additionally, if there is too much emphasis on the treatment of women lawyers, the Task Force may be seen as self-serving and trivial.

The Task Force investigation should develop concrete information about how stereotyped thinking translates into biased decision making and courtroom behavior. It is not enough to state that some judges still believe that women should be confined to the "domestic sphere" or that men cannot be nurturing parents. There must be a discussion of specific cases showing how custody decisions have been skewed by a judge's refusal to believe that a woman who works outside the home can still be a good mother or that a man can be a primary caretaker.

Judges usually find it easier to deal with gender bias in courtroom interaction than in substantive law. It is easier for a judge to accept a directive not to call women lawyers "honey" than to acknowledge that he or she is driving women into poverty because of inadequate and unenforced support awards. The Task Force must document and highlight the specific ways in which judicial decision making translates gender biased social standards into legal inequities. We suggest that you set as priorities those issues such as domestic violence and support awards which affect the greatest number of women and take up other issues as time and resources allow.

The box at page 25 outlines existing Task Forces' areas of investigation.

Constraints of time and other resources require that the Task Force limit its scope of inquiry. We advocate focusing primarily on the decision making and behavior of judges, and secondarily on the behavior of lawyers and court personnel. Beyond the goal of documenting and describing the various forms of gender bias in the courts, the Task Force should gear its efforts toward educating judges about their obligation to be responsible

AREAS OF INVESTIGATION

New Jersey

Substantive Law Areas: damages, domestic violence, juvenile justice, matrimonial law, sentencing.

Women in the Courts: Courtroom treatment of women litigants, witnesses and lawyers; treatment of women lawyers in chambers and professional gatherings.

Court Administration: gender neutral language in jury charges, court forms and correspondence; status of women in the court personnel system.

New York

Substantive Law Areas: Women and Economics (equitable distribution, alimony, child support, custody, damages); Women and Violence (domestic violence and sexual assault).

Women in the Courts: courtroom treatment of women litigants, witnesses, and lawyers; women lawyers' appointments to fee generating positions and women's access to judgeships.

Court Administrative: status of women personnel in the Unified Court System.

Rhode Island

Substantive Law Areas: family law (domestic abuse, support awards and enforcement, property division); personal injury and wrongful death awards; sentencing.

Women in the Courts: courtroom treatment of women litigants, witnesses, lawyers and jurors.

Court Administration: employment and promotion of women; language used in court forms and publications.

for their own behavior and that of those they supervise, i.e., lawyers, court 'personnel and witnesses, during a trial.

During your investigation complaints will be lodged against other actors in the justice system, e.g. police who refuse to take action when called in on domestic violence complaints and district attorneys who will not prosecute acquaintance rape. Complaints may also be made about bar associations' treatment of women lawyers, as happened in New Jersey. All of these concerns can be cited in your report and you can make recommendations that address them. However, do not let the Task Force's investigation veer off into detailed study of these areas. There is more than enough to cope with in an investigation limited to judges and the judicial branch.

Selecting Data Collection Methods

There are numerous ways in which Task Forces can collect data about the areas it decides to investigate. Principal among them are:

- Existing research, studies and statistics (published and unpublished) for your state and nationally.
- Public Hearings (formal testimony).
- Regional Meetings (informal but structured discussions with the legal community).
- Listening Sessions (informal discussions with lay persons).
- Surveys.
- Court Watching.

  Transcripts.
- Conducting or sub-contracting for studies to collect new data on specific topics.

The benefits of using several data collection methods are threefold: first, this approach is the best way for the Task Force to gain a clear, composite picture of the way gender bias operates throughout the state's judicial

COMMITTEE STRUCTURES

New Jersey
Substantive Law: Subcommittees on damages, domestic violence, juvenile justice, matrimonial law, sentencing.

Court Administration
Regional Meetings
Attorneys Survey
Judicial College Presentation

New York
Research Methodologies
Public Hearings
Women in the Courts
Women and Economics
Women and Violence
Report Drafting

Rhode Island
Courtroom Interaction
Administration of the Courts
Judicial Decision Making
Family Law

system and how it is differentially perceived and experienced by participants in that system. Second, different data collection methods can produce sets of findings which are mutually corroborative and thus lend weight to the Task Force's documentation of the seriousness of the problems and the need for reform. Third, the data collection process in itself serves to increase awareness and concern about gender bias. Using diverse methods generates responses from different segments of the community and contributes to the Task Force's goal of educating as many people as possible about gender bias in the courts. Each of the data collection methods and the criteria for choosing among them are discussed in detail in Chapter 4.

Committees and Individual Assignments

The organization of the Task Force's committees and sub-committees will depend on the areas chosen for investigation, the methods employed for collecting data and the availability of staff. On a preliminary basis, the Task Force may wish to set up committees to investigate the desirability and feasibility of pursuing various subject matters and methods. Some committees and subcommittees will include several people; others may be only one or two individuals.

Anticipating the Task Force Report and Dissemination of Findings

The Task Force will undoubtedly want to issue a report and must have a plan for disseminating its findings and recommendations. These topics are discussed in Chapter 6. The report writing and dissemination strategy must be part of your planning from the beginning.

Time Tables

Has your chief justice imposed a time limit on the' Task Force or is yours an open ended inquiry? If no firm time limit has been set, develop one that will allow sufficient time to complete your work but not appear dilatory to the chief justice or the public. Consider whether you want the issuance of your report to coincide with a presentation to your judicial college. This may influence your data collection and report timetable.

The New Jersey Task Force reported to its state judicial college thirteen months after its formation, issued its first report several months later, continued its investigations and two years later issued a second report. The New York Task Force required twenty-two months from its inception to the issuance of its report.

Press Policy

Dealing with the press and broadcast media is fully discussed at page 44. From the outset the Task Force should have a clear policy about who may speak to the press on behalf of the Task Force, whether evidence received by the Task Force other than in public hearings may be discussed and similar issues.

4 Data Collection Methods

This section includes a detailed discussion of the seven data collection methods identified at page 25. To help you choose among them, each method is discussed in terms of time and resources involved, the kind of information each is likely to yield, and the obstacles that may be encountered in their execution.

Existing Published and Unpublished Research

The National Task Force on Gender Bias in the Courts and the NJEP can provide materials which document the problem of gender bias nationwide. The distinctive role of a Task Force is to document the nature and consequences of gender bias at the state and local levels. Before initiating other means of data collection, the Task Force should try to locate studies and statistics (in published and unpublished form) which may be relevant to its work.

Several of the issues which a Gender Bias Task Force will examine and about which it will formulate recommendations may also be the subject of scrutiny by other task forces or commissions, such as those on the status of women. One early step, therefore, is to identify these groups, contact them and learn what they are doing.

If the Task Force members have been drawn from diverse sectors of the community (civic leaders and academics as well as judges and attorneys) members' personal and professional networks will probably be sufficient to locate these sources. A social scientist, for example, should be able to find out which faculty members and university affiliated research institutes around the state are working in areas germane to the Task Force.

Academic institutions, state governmental agencies, community organizations, commissions and previous court and governmental task forces on issues in which gender bias may be a factor are likely sources of research studies and statistics which relate directly or indirectly to gender bias in the courts.

The New York Task Force found the reports of a gubernatorial task force on domestic violence and census figures on women's income for the state helpful. The New Jersey Task Force incorporated into its final report Census Bureau and U.S. Department of Labor data, a study of New Jersey displaced homemakers and the findings of a study on support awards conducted by the League of Women Voters. Of particular importance are the materials produced by your stare Child Support Commission pursuant to by the Federal Child Support Enforcement Amendments Act of 1984. This act requires states to investigate local child support enforcement problems and to make major changes in the system for establishing and enforcing support orders as well as determining the amount.

In analyzing the impact of judicial decision making in matrimonial law, the Task Force will benefit from local and state statistics on the employment and earnings of women and men. Federal and state Departments of Labor can help in this regard. (The NJEP can offer additional assistance on where to locate such statistics).

Public Hearings

As the data collection method most widely used by legislatures, public hearings have wide acceptance as a valid means of gathering information and are the single most effective method of gathering data on gender bias in the courts.

By holding hearings around the state and inviting individuals with a wide range of expertise and viewpoints as well as the general public to testify, the Task Force can have part of its research done for it by those most knowledgable about the issues and sources. Hearing the live testimony and questioning the witnesses helps those Task Force members for whom the issues are new gain an understanding of the pervasiveness of gender bias in the courts and the pain and injustice it causes. Hearing about local conditions directly from the judges, lawyers, activists and litigants who live with them every day has an impact different from reading about them. Therefore, as many Task Force members as possible should attend each hearing.

Who Should Testify

To develop a witness list, begin by asking Task Force members to provide the names of individuals and organizations who should be invited to testify. Seek additional recommendations from other sources, particularly organizations in the cities where hearings will be held.

Invite the full spectrum of judicial, legal and relevant community organizations to testify in order to avoid alienating anyone or calling into question the representativeness of those who do testify. Insure geographical diversity. Ask individuals testifying for organizations with statewide membership to develop local and regional information.

The New York Task Force held four public hearings in three cities over a period of seven months. The first three hearings were principally for invited witnesses. The fourth was widely advertised to the public. Witnesses included individual judges and officers of judicial organizations, individual lawyers and bar leaders, elected officials such as the state attorney general, directors of shelters for battered women, representatives of women's rights and fathers' rights groups, prosecutors in sex crimes units, matrimonial attorneys, law professors and other academics, paralegal groups aiding women to enforce child support, individual male and female litigants, and other individuals with expertise and personal experience to offer.

Three of these hearings ran from 10 a.m. to 5 p.m. One ran from 12 noon to 8 p.m. to accommodate individuals who could not testify during working hours.

Format

Set a time limit for oral testimony and questioning. This will tell you how many witnesses you can have in a day. In scheduling the hearing day, you may want to follow New York's format of leaving an hour at the end of the hearings for unscheduled individuals to speak.[1]

Make clear in the hearing invitation and announcement that witnesses should submit written testimony if at all possible and bring enough copies for each Task Force member and several extras for the press. State that this testimony should be thoroughly documented with the opinions, transcripts and studies cited appended. Asking that documentation be appended minimizes the Task Force's research and simplifies substantiating or refuting witnesses' claims. Although you should have a court reporter recording the testimony, having written testimony will help Task Force members follow the testimony and formulate questions.

State in the hearing announcement that written testimony may be whatever length the witness chooses, but oral testimony will be strictly limited to the time limit you have chosen.

Oganization, Invitations and Publicity

Public hearings require substantial organization and lead time. In setting hearing dates, allow enough time for the Task Force to get organized and for witnesses to research and write their testimony. Giving short notice for hearings implies that the Task Force is not interested in receiving thorough, thoughtful testimony and creates ill, will in the community. Reserve hearing rooms and arrange for court reporter services well in advance. Try to arrange access to photo copying equipment at the hearings for witnesses who bring too few copies of their testimony for the Task Force members and press in attendance.

Extend individual invitations to the "expert witnesses" the Task Force has identified. Announce the hearings in legal and non-legal newspapers and periodicals. Send announcements to organizations such as bar groups and commissions on women likely to have useful information. All of these announcements should include the time limit for oral testimony and request a written submission and supporting documentation. Invite the press in each city where a hearing is held.

After the Hearings

Despite the Task Force's request that witnesses provide written testimony, some will not do so. Because it is important for Task Force members to review the testimony at once, transcribe first any testimony not also submitted in written form.

STEPS TO TAKE
IF YOU DECIDE TO
HOLD PUBLIC HEARINGS

1. Identify locations. Insure geographic diversity.

2. Select dates, allowing sufficient lead time for witnesses to prepare testimony.

3. Decide on the length of oral testimony you will allow and whether you want time for questioning. Compute how many witnesses you can hear in a day.

4. Reserve hearing rooms and court reporter services for desired dates.

5. Decide whether hearing(s) will be for invited Witnesses, the public, or a mixture.

6. Develop a list of individuals and organizations with relevant expertise. Ask them to testify and submit well documented written testimony. State in the invitation the time limit for oral testimony.

7. Notify the public about hearings through various media such as newspaper announcements and flyers to organizations. State the time limit for oral testimony and request written submissions.

8. Urge all Task Force members to attend each hearing.

9. Assign someone to talk with any unscheduled witnesses who arrive, learn the nature of their testimony and advise them of the time limit if they are to be permitted to testify.

10. Invite press to each hearing.

11. At the hearing have access to photocopying equipment for witnesses who don't bring enough copies of their testimony.

12. After hearings, have the court reporter first transcribe testimony not submitted in writing. Circulate transcribed oral testimony to those who were in attendance and transcribed testimony plus written submissions to those who were not.

13. Discuss the issues raised by the testimony to determine what points need further clarification and/or documentation and obtain them.

Distribute this and the written submissions to all Task Force members as soon as possible. Do not wait to send all the hearing transcripts at once; Task Force members will be so overwhelmed they may not read it. (In New York, the four public hearings produced 1117 transcript pages plus voluminous written submissions. This would have drowned even the most dedicated Task Force member if it had all been received at once.)

Discuss the issues raised by the hearing testimony to determine what points require clarification and/or documentation and obtain it.

Regional Meetings

Regional meetings with members of the judicial/legal community combine a highly structured method -- questions posed according to a prepared script -- with an informal discussion format. Meetings in different parts of the state provide an opportunity for Task Force members to gain insight into local concerns. Also, the kind of data generated from individuals listening to one another in a discussion format at regional meetings is different from that presented by witnesses in formal, prepared testimony at public hearings.

The Script

Each meeting should cover the same issues so that the information developed at one meeting can be used to corroborate or contrast with the information developed at other meetings and through other data collection methods. This requires the Task Force consistently to

use the same script in conducting these meetings. The script developed for the New Jersey Task Force and adapted by New York is in Appendix H.

The New Jersey regional meetings script calls for Task Force members to:

- explain the Task Force's composition, goals and data collection methods;
- describe some of their personal concerns or experiences with gender bias in the courts;
- ask whether problems exist in the areas of courtroom interaction, domestic violence, rape, sentencing, custody, name cases, equitable distribution and support awards and enforcement;
- ask for suggestions about how gender bias in the courts can be eliminated.

Adapt this script to serve local needs and interests.

Timing

The script includes a time limit for the discussion of each issue to insure that time does not run out before all the issues have at least been touched on. At the end of the time segment for each topic ask those who have information but were not called on to write to the Task Force. Equitable distribution, alimony, child support and enforcement should be scheduled last because these topics will probably generate the most discussion. If they are placed first, little else will be discussed, despite an attempt to impose time limits. The script anticipates a two hour and twenty minute meeting. Most of the New Jersey meetings ran until the janitor asked the group to leave.

Who Should be Invited

Regional meetings can be held with lawyers and judges separately or together. You may want to consider holding some meetings with women lawyers only, for reasons discussed below.

REGIONAL MEETINGS

New Jersey

The New Jersey Task Force held eight regional meetings with lawyers: seven with women's bar associations, the eighth with women and men attorneys in conjunction with the state's annual bar meeting. The decision to hold meetings with the women's bar associations only was a response to the numerous complaints about the behavior of male lawyers toward female lawyers reported in a four question preliminary survey distributed by the Task Force chair at several bar meetings that coincided with the start of the Task Force's inquiry. It was thought that, particularly in smaller counties, women attorneys might be reluctant to discuss these problems if the male attorneys in the community were present. In retrospect, based on the experience of the New York regional meetings which were all open to both women and men attorneys, it is unlikely that male attorneys who indulge in sexist behavior or would report women lawyers' concerns to other male attorneys in a negative light will bother to attend these sessions.

New York

New York's regional meetings were open to lawyers and judges. Individual invitations were sent to each judge in the region. Few attended. New York held one meeting with the New York State Association of Women Judges (which includes men) that was very well attended.

Organization, Scheduling and Outreach

Regional meetings must be thoroughly organized. It is not enough to send a meeting announcement to the presidents of local bar associations and expect people to turn out en masse.

Bar leaders on the Task Force should be particularly involved in outreach to the legal community for the regional meetings. Choose dates far enough in advance to allow notices to be placed in local bar bulletins, legal newspapers and other appropriate media and to enable people to save the dates on their schedules. In selecting meeting dates, think of the weather. Don't schedule meetings in the depths of winter in snow country lest you be snowed out. In New York the regional meetings in the three cities where public hearings were held were scheduled for the nights preceding the hearings to minimize Task Force members' travel expenses.

Regional meetings should be announced at local bar functions in the months/weeks preceding each meeting. Outreach is important, particularly to groups such as women's bar associations, women's rights sections and committees of local and state bars, matrimonial and family law bar committees, legal aid offices, lawyers affiliated with commissions on domestic. violence, battered women's shelters and rape crisis centers, prosecutors working in sex crimes units and law professors expert in family law and women's rights. These groups include the individuals most likeiy to have useful information to communicate to the Task Force.

Who Should Conduct Regional Meetings

Each of the New Jersey regional meetings was conducted by a female and a male judge and at least one non-judicial member of the Task Force. Judges were assigned to meetings in such a way that no judge went to a county in which she or he was sitting. This was done out of concern that lawyers might feel inhibited about voicing their concerns in front of judges before whom they appear regularly, particularly in small counties.

In New York the regional meetings in large cities were conducted by the Chair of the Committee on Women in the Courts. Regional meetings in smaller cities and rural areas were conducted by the Task Force members living in closest proximity. (As there were only three judges on the New York Task Force, all from large communities, there was no concern about having local judges present as there was in New Jersey.)

Encouraging Discussion

Before each meeting, one or two people with something specific to say about each of the issues to be discussed should be identified. Be certain that they attend the meeting and are called on. They will be the ice breakers who get the discussion going. Even though lawyers are hardly a shy lot, this is necessary insurance in case there is some reticence in talking about the issues in the context of an official inquiry where one's comments could get back to the judges and lawyers involved. (See discussion of confidentiality at page 34.)

This is especially true with respect to the issue of courtroom interaction. Women lawyers have been taught that it is bad form to complain about sexist treatment and told to laugh off the kind of sex biased comments which, if made to other lawyers on the basis of race or religion, would arouse a furor.

Male lawyers may not recognize the sex biased behavior around them and may engage in it themselves without understanding what it is. Having people at each meeting who will describe the sex biased treatment which they, their colleagues and their clients have experienced in the courts will lead others to follow suit. For the women present, it is in effect giving them permission to object; for the men, it helps put the label of "bias" on behavior which they had previously not understood as such.

Sometimes substituting race for sex in a specific example helps to indentify the language or conduct as biased. At the 1985 Florida Bar Association presentation on "Sexism in the Courts' the male judge on the panel told the women lawyers present that they had to laugh off the sexist behavior of their male opponents as just a form of "goat getting." A woman participant pointed out that such advice would not be given about racial slurs. This connection prompted a prominent male litigator on the panel to relate a recent incident in which he deliberately made a sexist remark to a female prosecutor to throw her off her stride. He said it would never even have occurred to him to use a racial slur to throw a minority opponent, but that he had not understood until that panel discussion that what he did to his female adversary was equally reprehensible.

Note Taking and Reports

At each regional meeting at least one person, not necessarily a Task Force member, should be assigned as the recorder for the meeting to take comprehensive notes. (If you have access to recording equipment, that, too, is useful. If the Task Force can afford a court reporter, even better.) Task Force members, who will presumably listen closely and make notes of their own, can use the recorder's notes to develop a detailed report on the concerns raised and recommendations made at each meeting. In New Jersey the reports from the eight regional meetings were synthesized into a single report which was published in full in the Task Force's Report of the First Year.

Confidentiality and Press

At the opening of each meeting it should be stated that, although the Task Force will treat attendees' comments as confidential in the sense that their names, if they choose to state them, or any other names mentioned, will not be noted in Task Force reports, the Task Force cannot guarantee that other attendees will be so discreet. Comments or information that should only be disclosed in confidence should be communicated to the Task Force privately.

Press is important at public hearings where formal testimony is presented but should not be invited to regional meetings so that lawyers will feel free to speak about their personal experiences. If the Task Force is an official state body, open meeting laws will require that any press that does arrive must be admitted. Before beginning the meeting, ask press to identify themselves to the group.

Listening Sessions

"Listening Sessions" is the term coined by the New York Task Force for a series of meetings with laypersons in the rural counties where there are few women lawyers. These sessions were organized to ensure that the views of this segment of the population, few of whom appeared at the public hearings, were heard. Outreach for these meetings was conducted through the Cornell University Cooperative Extension Service. The problems reported were in many instances similar to those in metropolitan and suburban areas, but some women's concerns related specifically to unique rural issues.

STEPS TO TAKE IF YOU DECIDE TO HOLD REGIONAL MEETINGS

1. Determine locations and dates. Insure geographic diversity and sufficient lead time for organization and publicity.
2. Determine invitees: lawyers alone? judges alone? lawyers and judges together? women lawyers alone?
3. Announce regional meetings in legal newspapers and periodicals, at bar meetings and with letters to bar leaders.
4. Conduct extensive outreach to insure attendance. Identify a few people in each community with specific information to communicate to get the discussion rolling. Be sure they attend and are called on.
5. Adapt script from New Jersey regional meetings. (Appendix H) for local purposes and issues.
6. Determine who will conduct meetings and which Task Force members will attend.
7. If Task Force cannot afford a court reporter, appoint a reporter for each meeting to take copious notes and turn them into a report.
8. At meeting clarify confidentiality issues and ask press to identify themselves.

Surveys

Both the New Jersey and New York Task Forces conducted surveys of attorneys' perceptions of and personal experiences with gender bias in the courts. As of this writing the Rhode Island Task Force plans to survey judges, attorneys, jurors and court employees about their experiences and perceptions. Before your Task Force decides to develop a

SURVEYS

New Jersey
The New Jersey survey focused on attorneys' experiences and perceptions with respect to the treatment of women litigants, witnesses and lawyers in the courtroom, in chambers, and at professional gatherings, as well as on substantive areas of the law.

New York
New York's survey drew on the New Jersey survey's courtroom interaction questions and added detailed questions about issues such as maintenance, custody and domestic violence based on specific concerns raised at public hearings. The New York survey is in Appendix I. Before adapting this survey form for use in your state, check with the NJEP for suggestions.

questionnaire and use the survey method of data collection,[2] a good deal of thought should be given to the resources required and the kinds of information a survey can and cannot provide.

What are the Purposes of a Survey?
The Task Force survey collects and analyzes information on attorneys' perceptions and experiences of gender bias in the courts of a given state.[3] It increases the awareness of those who read and/or respond to the questionnaire and provides a communication vehicle for those who want to express their concerns to the Task Force.

Advantages of a Survey
When properly executed a survey can yield valuable information and lend credible corroborative evidence to the Task Force's documentation of gender bias in the courts obtained through other data collection methods.

In New York and New Jersey many respondents used the questionnaire to communicate detailed experiences of gender bias in the courts through narrative responses added to the closed-ended questions. These remarks added richness to the understanding of the problems explored and provided powerful examples in both the Task Force's final report and in the materials used in subsequent judicial education courses.

An equally strong justification for a survey is its educational or consciousness raising value. The very fact that a survey on gender bias is being conducted by the Task Force indicates to those who read it that the chief justice "and members of the Task Force take the issue seriously (even if many of the readers do not). A widely distributed questionnaire dramatically raises the issue of gender bias within the legal and judicial communities and facilitates discussions of the issue among individuals, within groups and organizations and in print. Quite possibly, the awareness among attorneys and judges that "someone is looking" stimulates reflection on gender biased behavior and promotes improved non-biased behavior in the courtroom.

A survey distributed widely rather than to a selected sample tends to be answered principally by those who have strong feelings about the subject one way or the other.[4] Some individuals may charge that the results of a survey answered by self selected respondents are merely those of a biased (negatively or positively) minority. However, the fact that it is largely those who care who are speaking out does not invalidate the findings but ensures that the Task Force hears from those with relevant information to convey. So long as the report makes clear who the respondents were and cautions readers against inappropriate generalizations, these data can be quite useful.

Limitations and Disadvantages of a Survey
In evaluating whether or not to conduct a survey, the Task Force should recognize the limitations of the kind of data different types of surveys will yield. Again, consultation with the NJEP will be useful.

A survey will not "prove" that gender bias exists in the courts, nor can it measure its extent. The questionnaire investigates the perceptions and personal experiences of the responding attorneys. In the absence of an independent measure of the behavior perceived, the responses cannot "prove" the objective reality. This in no way diminishes

the importance of perceptions, but it is critical to understand the difference in advance.

A second limitation of the data from a survey distributed as widely as possible is that they cannot be generalized to describe the perceptions and experiences of all attorneys in the state who currently litigate in state courts. In order to claim such generalizability the research design would have to include a scientifically selected sample of attorneys drawn from the universe of attorneys identified as having such relevant characteristics as current experience litigating in state courts and geographic diversity.

The costs of drawing this kind of sample of attorneys in most states will be prohibitive and the amount of time involved unreasonable. In addition, this sampling procedure, which selects a small number of respondents, while essential for substantiating claims about the generalizability of the findings, defeats one of the Task Force survey's key purposes: consciousness raising about gender bias among a large number of judges and attorneys. For all these reasons, neither the New Jersey nor the New York Task Force drew a sample of attorneys. Instead, both distributed the questionnaire as widely as possible within the legal communities in their states.

Another disadvantage to the survey approach is the level of expertise needed to properly execute it and the substantial cost involved in designing the questionnaire, printing and distributing it, analyzing and interpreting the findings and writing up the results. Do not try to cut corners on a survey. Survey research is a highly specialized field within social science, and even Ph.Ds in sociology, political science or psychology without special training are unlikely to have the level of skill necessary. This means that the services of qualified, paid consultants will probably be necessary during all phases, from questionnaire construction through the analysis of the results. (In New Jersey the advisor, a sociologist, worked with an outside consultant in survey research; in New York the services of a consulting firm specializing in survey research were retained.)

However, although as discussed at page 24, Task Force members should be aware of their limitations in fields outside their expertise, a

STEPS TO TAKE IF YOU DECIDE TO CONDUCT A SURVEY

1. Contact the NTFGBC and the NJEP for more information about surveys, additional materials and general advice.

2. Draw up a realistic budget and secure the necessary funds. (See discussion under Budget and Staff.)

3. Retain the services of an individual or firm with proper expertise and credentials. (Consult your local university for suggestions.)

4. Devise an effective dissemination strategy. (The New Jersey and New York surveys were carried as inserts in state legal newspapers and distributed by bar associations.)

5. Request a letter from the chief justice to be part of or accompany the questionnaire which explains the importance of the survey and urges cooperation from attorneys.

6. Modify the New York survey form in Appendix I to reflect local practices and statutes with help from NJEP. Survey questions should address the problems identified as most salient at public hearings and regional meetings. A statement in the questionnaire indicating that certain items were included because they pertain to problems brought to the Task Force's attention during its investigation helps to disarm the resistors who are disposed to believe there is no evidence that such problems exist.

7. Be prepared for narrative comments on the survey ranging from "This is a waste of taxpayers' money" to "Thank you for taking this issue seriously." These comments are excellent indications of what the Task Force will confront when it attempts to implement reforms.

8. In reporting on the survey findings, illustrate the numerical and percentage responses with appropriate narrative comments. (See the New Jersey and New York Reports as models.)

survey or any other special study cannot be left to professionals not on the Task Force. Social scientists may not be sensitive to the nuances of surveying judges and lawyers. Substantial input from Task Force members will be needed at all stages of questionnaire preparation and analysis if the survey is to yield relevant data.

A survey takes considerable time. Once the final version of the questionnaire has been prepared, count on a minimum of five months to complete the analysis.

No Task Force should undertake a survey if proper survey research expertise, sufficient funding and effective distribution methods cannot be assured from the outset. If they are, however, a survey will benefit the work of your Task Force.

Court Watching

Court watching or monitoring can be an effective data collection method if the court watchers are well trained individuals in whose reports the Task Force can have confidence. This is a sensitive technique which must be used with caution.

The court watchers need not have prior experience in watching for gender bias per se but they should be knowledgable about the courts, the legal system and the personnel. Your state may have existing, respected court monitoring groups which you can utilize. League of Women Voters chapters often have court watching programs. Rhode Island recruited and trained its own group of court watchers from among women and men students court employees and older persons.

Be prepared for judges to resist having court watchers in their courtrooms. Some judges see it as an unwarranted invasion of their authority and resent court watchers strongly. Although most court proceedings are open to the public, it would be appropriate to obtain the approval of the administrative judge(s) of the court(s) you want to monitor before beginning.

Whether you are dealing with experienced court watchers or novices, they will have to be trained to recognize gender bias in the courtroom. The Rhode Island court watchers were trained by the Task Force's consultant who provided them with detailed instructions as to what to look for and showed them the New Jersey videotape as described in Appendix C. We also recommend providing your court watchers with the background readings in Appendix A.

Court watching will be interesting and instructive for those who engage in it, but the Task Force must take into account its inherent methodological problems. It is easy for court watchers' subjective interpretations to slip in when the behavior of judges and others is being described in a purportedly objective manner. One way to guard against this problem is to conduct reliability checks among court watchers to determine the level of consensus. This requires assigning two or three watchers to a courtroom to run a check. If the reliability factor is too low, the data cannot be considered valid.

In addition to the obvious points for observation, e.g., does the judge call women lawyers by their first names while calling male lawyers by surnames or titles, the question of nonverbal communication is extremely significant. For example, does a judge consistently respond quickly to questions and statements from male attorneys but consistently delay more than five seconds in responding to women attorneys? Does a judge consistently make eye contact with men but not with women?

Unfortunately, it is difficult to make observations about nonverbal communication because of the court watcher's location in the courtroom and because of subjective interpretation. Any attempt to evaluate nonverbal communication must compare the way a particular judge deals with men and women. The judge may simply be someone who responds slowly to everyone. There must be at least two observers in the courtroom whose observations arc corroborative.

Transcripts

The Task Force may want to solicit and, if necessary, purchase, full or partial transcripts of trials and hearings in order to document specific incidents and colloquies or the tenor

INITIATING NEW STUDIES

New Jersey

In its first year the New Jersey Task Force determined that although the divorce laws were neutral on their face, in practice decided inequities disfavoring women in equitable distribution, alimony and child support were forcing women from all economic strata into poverty. The Task Force believed it necessary to go beyond these generalized findings and the national statistics to document the patterns of distribution and support awards in different counties in New Jersey. The subcommittee on matrimonial law worked with the Administrative Office of the Courts to design a study in which AOC staff reviewed a sample of the court records from 552 litigated divorce cases to extract information as to the couple's respective ages, educational and employment backgrounds, income, health and separate property, the length of the marriage, age of children and custody agreement or award, and the court's decision repecting equitable distribution, alimony and child support.

New York

From the outset the New York Task Force wanted to investigate the status of women in the court personnel system because it was common knowledge that women are virtually absent from its senior ranks. (See Appendix G.) The Task Force turned to the Center for Women in Government, a research organization which had completed major studies of women in the New York state and city civil service systems. The studies documented the numbers and salaries of women in various positions and the hiring and promotion regulations and practices that made it extremely difficult for women to move out of clerical positions. The studies also devised ways to reform these systems. The New York Task Force contracted with the Center for Women in Government to produce a similar comprehensive study of women in the New York Unified Court System at a cost of approximately $15,000.

of an entire hearing. For example, the New York Task Force was interested in the testimony of several public hearing witnesses about domestic violence victims not being taken seriously and abuses in the issuance of mutual orders of protection that endanger victims. Through a Task Force advisor who is co-chair of the Governor's Commission on Domestic Violence, the Task Force obtained the minutes of several domestic violence hearings that vividly illustrated domestic violence victims' charges of unequal treatment.

When public hearing witnesses, particularly litigants, describe especially disturbing cases, transcripts may be essential to document their claims. The New York Task Force also invited the submission of transcripts through its attorneys survey.

Conducting or Sub-contracting for Studies to Collect New Data on Specific Issues

At the outset or in the course of its inquiry, the Task Force may need information about a specific issue that requires a comprehensive study based on original data. The Task Force may be able to undertake such a study on its own with assistance from the office of court administration or may want to sub-contract it to an appropriate organization or consultant.

Criteria for Selection of Methods and Corroboration of Data Sets

As the above discussion indicates, each method of data collection yields different

kinds of information and each method has advantages and disadvantages.

Findings from each method add to the cumulative body of information gathered and help construct a general picture of how gender bias operates in the state's courts. The most convincing case is made when the data produced by different methods corroborate each other. In New Jersey, for example, the problems identified as most salient in the regional meetings were also cited by survey respondents and the committee on substantive law.

The Task Force fulfills its mandate by looking for patterns of gender bias through a variety of sources. No one method is essential although it obviously makes sense to build on existing data by beginning with a review of relevant published and unpublished research. The discussion of "limited models" at page 73 presents our thinking on the priority a Task Force might give to the various methods discussed.

The available resources i.e. time, money and expertise, will dictate to some extent your choice of methods. Almost all methods of gathering original data take time to design and carry out, in addition to the time needed to analyze results. Therefore, it is important to begin planning for these early on. Public hearings require ample lead time. Regional meetings should be held early on because judges and lawyers attending may identify unanticipated problem areas which the Task Force will want to study. Studies which involve data collection by an outside research organization or the office of court administration take substantial time to design and complete.

Surveys also take substantial time to design and execute. However, because public hearings and regional meetings may highlight areas of concern, it is advisable to delay finalizing any questionnaire until the Task Force has received some information from these sources.

Some Task Force members may be concerned that public hearings and regional meetings will be "gripe sessions" and will not produce objective data on which the Task Force can rely. This attitude misperceives the kind of information these methods produce, the importance of corroboration through testimony by multiple witnesses and the impact on Task Force members hearing this information directly from the witnesses.

At the New York public hearings the secretary of state, a county legislator, the director of a paralegal organization that helps women to collect child support, the chair of the state commission on child support, the chair of NOW-NY's committee on matrimonial law and the Administrative Judge of the New York City Family Court, among many others, testified that child support enforcement in New York is a "joke" and that adjournments are so routinely granted to the defaulting parent, almost always the father, that many mothers finally give up. With testimony like this, a Task Force does not need to collect data showing that in a given period in six different courts adjournments were granted to fathers in 67% of child support petitions in order to state reliably that a problem exists.

The New Jersey Task Force includes an appellate judge who has publicly acknowledged that when appointed he thought the Task Force was nonsense, but that he had come to a new understanding of the gender bias issue as a result of the Task Force's work, a major part of which was eight regional meetings with lawyers throughout the state. In New York there were similar responses from male attorneys as a result of their attendance at the public hearings.

---

[1] Public hearings always raise a concern about disruptive witnesses. Have an intake person interview unknown witnesses, schedule the most problematic last, and exercise strict time controls.

[2] A survey is a method of data collection; a questionnaire is the survey instrument.

[3] Members of your Task Force may suggest surveys of jurors, judges, litigants and court personnel in addition to attorneys. In our opinion, at least during the first year, the Task Force's survey should be restricted to attorneys. Litigants may have difficulty understanding the law and separating their unhappiness about the verdict or award in their individual case from the established parameters of the law itself. A survey of judges' perceptions and experiences would be more fruitful after they have been sensitized to the issues of gender bias through judicial education courses and presentations and reports of the Task Force. In our experience, prior to this kind of education judges' understanding of gender bias patterns in their courts is considerably limited. Surveys of jurors and court personnel might be informative on limited issues, but in our opinion are not worth the time, effort and money a well executed study would require.

[4] New York sought to counter this with a bold face notice on its questionnaire asking people to respond whether or not they felt strongly so as to give a more complete picture.

5 The Task Force in Process

Keeping the Task Force on Track

Because the Task Force members will be busy people distributed widely throughout the state, the number of full Task Force meetings which can be held will be relatively few. Even with strong leadership from the chair and the full commitment of members, there may frequently be a sense that the Task Force does not have enough time. Matters will arise which require unanticipated lengthy discussion, pushing the meeting's planned agenda aside. To be effective and to maintain members' morale the Task Force must cover its ground and complete its work on schedule. Once the methods have been determined and data collection is underway, the Task Force and its committees should continue meeting to analyze the data, determine areas about which more data is needed, develop interim reports, respond to urgent problems and formulate committee reports and recommendations.

The Core Group

As in any group with a large number of members there will be some individuals for whom the Task Force is a primary commitment and who are prepared to give it substantial energy and time. If these individuals function. as a "core" group meeting outside of the regularly scheduled meetings, they can play a key role in keeping the Task Force on track by:

- continually assessing the progress of the Task Force and helping to resolve difficulties as they develop;
- clarifying issues that are too complex or vague for fruitful discussion before the next task force meeting so that decisions can be expedited;
- assuring any Task Force members who appear to be losing interest or otherwise disengaging that their contributions are needed and helping to find ways for involvement with the group;
- serving as resources to Task Force members who want to discuss issues outside of formal meetings but who, for logistical or other reasons, lack the opportunity.

Members Who Do Mot Participate

A potential problem for every Task Force is how to deal with -members who consistently miss meetings and do not participate in other ways. The matter is significant, not only because there are other people who would contribute to the Task Force if appointed, but also because someone who has not been involved can cause difficulties later on. The Task Force findings and recommendations will carry much greater weight if they are unanimously endorsed by the members. Some people who have not attended meetings would be hesitant to object to the product of those who had done the work, but others may decide to dissent through a minority report or public statements. The risk of this undesirable outcome can be minimized by keeping all members actively involved and requesting those who choose not to participate to resign.

The policy for requesting the resignation of members and appointing new ones must be established with the chief justice if he/she is the one who made the appointments. Our advice is to decide with the chief before the Task Force is established how this contingency will be handled.

Insuring Participation by Men

The elimination of gender bias is a problem that should be of equal concern to men and women, but women will no doubt be in the lead in the creation of the Task Forces and their activities, even when equal numbers of both sexes are appointed to serve.

We have observed that some men recede into the shadows at Task Force meetings and limit their participation because they feel less knowledgable about the issues and less involved in networks concerned with the problems. Also, some men may hesitate to speak up on a "women's issue" for fear of being perceived as speaking out of turn. All the ways women are often left out of group discussions can also happen to men. When this occurs the consequences affect not only the men who feel alienated but also the Task Force work product.

Members who have been actively involved will be better able to explain the work of the

Task Force, speak publicly on gender bias, and defend the final report than those who remained at the margins of the group.

The chair should be aware of this matter and try to avoid it by assigning men and women to work together on committees and special tasks and by soliciting the participation of men. The core, which should include men, can stay alert to this problem and take corrective action as necessary.

Data Analysis is an Ongoing Process

The Task Force will elicit information and feedback from the judicial/legal community and the public from the moment its creation is announced. Some information will be in the form of unsolicited written and oral communication; most will be in response to the various data collection methods (survey, public hearings, regional meetings,. etc.) implemented by the Task Force.

Subcommittee analysis of this information must be ongoing throughout the duration of the Task Force. It should not be viewed as a "phase" of the work which follows the formal data collection activities and precedes the final report. Analyzing the information as it is received will help identify subjects which warrant closer investigation than previously estimated, uncover new problem areas and suggest reforms which should be immediately initiated.

In addition to steering the Task Force in the directions of greatest significance for the elimination of gender bias, ongoing data analysis avoids the undesirable state of "data overload" which often confronts groups at the end. Anticipate a mountain of paper: reports, letters, memos, transcripts and survey findings. Even the most experienced and committed members and advisors will not be able to digest adequately this amount of information if it is left to the end, and the quality of the thinking about the implications of the data for education and reform will be compromised by the constraint of time. Additionally, the difficulty of writing the final report depends in part on the extent to which analysis has been ongoing.

All Task Force members are likely to learn directly and indirectly about the responses of other judges and attorneys to the Task Force and should keep the Task Force informed about them. These responses are a rich source of data to be scrutinized for what they reveal about attitudes toward gender bias and what might be required to change them.

Initiate Refoms and Undertake Education While the Task Force is in Process

Ordinarily the Task Force will wait until its inquiry is complete before issuing recommendations and seeking to implement reforms. Occasionally, however, matters may come to light requiring immediate attention, or the Task Force will be provided an opportunity to educate the judiciary while its inquiry is in process. Interim actions in New Jersey and New York are described in the box on page 45.

Interim Reports

The Task Force should invite the chief justice to attend activities such as public hearings and keep him or her informed of its progress through formal and informal reports and meetings. Consider making this information available to the statewide judicial and legal community as well. The chair of the Rhode Island Task Force reported to the 1985 state bar association meeting and judicial conference on the origins of the Task Force, its mandate, the areas it was studying, data collection methods and some preliminary findings.

Dealing with the Press and Broadcast Media

The print press and broadcast media can be valuable allies in building community awareness about the need for a Task Force, encouraging participation in public hearings and regional meetings and direct communication with the Task Force and ultimately in disseminating the Task Force's findings and recommendations. For the media to be most helpful to the Task Force, it is important that media representatives understand that:

- gender bias in the courts is a problem that affects many aspects of the law and courtroom interaction;
- the Task Force is interested in securing comprehensive improvements; and
- your state is not significantly better or worse than other states which have established Task Forces.

Suggestions for Handling the Media

Appoint a Task Force Spokesperson to the Press

As discussed at page 26, the Task Force should decide at the start of its inquiry who will speak to the press on behalf of the Task Force and how much latitude Task Force members have to speak for themselves..

Your office of court administration probably has a public information officer. If this person is competent and sympathetic to the task, she or he should handle the Task Force's dealings with the press. If not, the Task Force chair or one member should take charge. Make sure that the press liason officer reads the background materials in Appendix A.

Hold Press Conferences to Announce Task Force

The chief justice's announcement of the Task Force should be accompanied by a press release which includes the Task Force mandate (see page 15) and makes clear that the Task Force will investigate a wide range of issues. In New York, announcement of the Task Force took place at a press conference at which the press questioned Task Force members about their own experiences with gender bias in the courts as well as questioning the Chief Judge about his purpose in establishing the Task Force.

Avoid Sensationalism

In most states there have been one or two highly publicized incidents of judicial gender bias such as a judge's insensitive remarks in a rape case. Discourage the press from focusing on these matters and stress that the pervasive problem of gender bias rather then any single incident led to the Task Force's creation. Sensationalism both distorts understanding of the scope of the problems and makes

INTERIM ACTION

New Jersey

In New Jersey the chief justice told the Task Force chair to advise him if anything occurred that required immediate action. Early on the chair learned that at a county bar meeting to welcome a new assignment judge, the judge included in his speech an extremely sexist "joke" about the women judges with whom he worked in his previous assignment. After verifying this information the chair reported it to the chief justice who reprimanded the offending assignment judge.

Judicial education need not wait until the Task Force. has completed its inquiry. While, the New Jersey Task Force was in process, the chief justice invited the chair to speak at a meeting of the administrative judges. The chair used this opportunity to provide the administrative judges with guidelines for courtroom interaction to be transmitted to the judges of their respective counties. These guidelines are at Appendix J.

New York

The New York Task Force's public hearings produced repeated testimony about domestic violence victims endangered by judicial abuses in the issuance of mutual orders of protection. There was particularly powerful testimony from the Administrative Judge of the New York Family Courts calling for legislation to stop these abuses. The Task Force brought this testimony to the attention of the chief judge who instructed the administrative judge to direct judges under their supervision to stop issuing mutual orders absent cross petitions and substantiation of respondents' allegations.

judges suspicious about the Task Force's motives. There will be enough judicial resistance without the press fanning those flames.

Prepare Press Kits

Provide the press with background reading. Using the articles in Appendix I and any other relevant materials, prepare press kits to distribute at the press conference announcing the Task Force, to members of the press who attend public hearings and to those who inquire about the Task Force's work. Obtain permission to reproduce the articles you reprint, if necessary.

Invite Press and Broadcast Media to Public Hearings

Invite the press and broadcast media to your public hearings. Provide them beforehand with as complete a list of speakers as possible. See that they receive copies of all written submissions. It is preferable not to have press at regional meetings, as discussed at page 34.

Hold Press Conference to Announce Findings and Recommendations

The media will undoubtedly be most interested in the Task Force's findings and recommendations. When the New Jersey Task Force made its first year presentation to a plenary session of the New Jersey Judicial College, the press attended and there was a press conference afterward. As a result, there was extensive coverage of the findings in the New Jersey press and a front page article in The New York Times. In addition to news stories, New Jersey papers ran editorials about the findings and the need for reform. Encourage the media not only to report the Task Force's findings as news on the day they are reported but to run subsequent feature stories and editorials as well.

Final Data Analysis and Committee Reports Including Recommendations for Reform

Each committee and subcommittee should be responsible for reviewing and analyzing the data from all sources collected about its particular area of concern and developing a report that lays out the information gathered and recommendations for reform. Ideally each report will substantiate its findings and recommendations with comprehensive citations to and quotations from the underlying data. However, because the abilities and resources of the committees are likely to differ substantially, some reports will have to be fleshed out for the final report by other Task Force members or advisors.

Recommendations for reform should be as concrete and specific as possible and should address changes that can be made by the legislature, bar associations and the court personnel system as well as the judiciary.

Approval of Committee Reports and Task Force Consensus on Recommendations for Reform

Committee reports should be submitted to the entire Task Force for review and approval. All Task Force members should review all the data collected so that they can evaluate these committee reports. Does each report fully and fairly convey the data and the spectrum of views collected by the Task Force? Are the findings warranted? Is anything omitted? Do the recommendations deal with the problems effectively? Are they realistic? Is there any area for which the recommendations should include a more detailed study?

Circulate the committee reports by mail and ask Task Force members to be prepared to discuss both the substantive content and the recommendations for reform at a meeting a week to ten days after the anticipated date of receipt. This will give members time to review the reports but insure that their thoughts will still be fresh when they meet. In all likelihood the reports will have to go through at least a second draft to incorporate changes suggested at this meeting. If revisions arc not extensive, it should be possible to circulate the revised reports and take a mail or telephone vote. Otherwise one or more additional meetings on the committee reports will be required.

Ideally the findings and recommendations that emerge should represent the consensus of the Task Force. All Task Force members should feel committed to the report and the realization of its recommendations for reform. It is preferable that there not be a minority report

EXISTING TASK FORCES HAVE CALLED FOR THE FOLLOWING REFORMS:

- legislative changes;
- education for judges, court personnel, members of the bar and the police on a range of substantive and procedural topics;
- revision of jury charges, jurors' manuals, court rules, forms and correspondence to employ gender neutral language;
- allocation of more resources to particular courts;
- efforts to upgrade women in the court personnel system and eliminate sexual harassment;
- improved record keeping on domestic violence petitions and support payments;
- improved procedures and their uniform implementation;
- improved enforcement of support orders;
- eliminating gender bias in hiring law clerks and appointing lawyers to fee generating positions;
- mechanisms for monitoring gender bias complaints against bench and bar;
- studies to document further or more precisely problem areas revealed by the Task Force's inquiry.

or dissent. This may, however, be unavoidable. For example, a Task Force member who has not participated in the data collection process and reviews the evidence cursorily may be reluctant or unwilling to subscribe to certain findings which the Task Force deems fully warranted. These situations will have to be resolved on an individual basis.

Writing and Disseminating the Final and Summary Reports

The final report is a public record of the activities and the findings and recommendations of the Task Force and an educational tool. Its primary audience will be members of the judicial/legal community in the state, but given the current interest in gender bias in the courts, expect the report to receive national attention as well.

The work of the Task Force will be judged to a large extent by the quality of its final report. The desire to deny that the problem exists will dispose some judges and attorneys to denigrate or dismiss the report. To forestall such challenges the report must be highly professional in both content and form. The Task Force must allocate sufficient funds for the report and develop a reasonable timetable for its writing and revision. There is no ideal model for a Task Force Report. The appropriate format depends on many factors, such as the committee structure and data collection methods used. Nevertheless, all reports should include the sections listed on page 48.

Who Should Write the Report

There are various ways in which the final report can be written, but all require that one or two people be in charge of coordinating the overall project and drafting much of the introductory and background material. Ideally the coordinators or primary authors will have been consistently involved with the Task Force from its inception as members or advisors. In addition to writing skills, they should have experience distilling and synthesizing the kinds of information and data collected by the Task Force. Their work will be much easier if the committee reports are thorough and well written, but even then the amount of time required to produce a first class document will be substantial.

Task Forces undertaking as wide ranging an inquiry as that carried out by Gender Bias Task Forces usually have an executive director or staff member to write their reports. As discussed under Budget and Staff, supra, none of the existing Task Forces has

REPORT CONTENTS

1. A discussion of the emergence of gender bias as an issue for the judiciary.

2. Description of the Task Force's mandate, approach and activities.

3. Presentation and analysis of the findings with illustrative examples and quotations from hearings and surveys.

4. A brief comparison of your findings to national data and findings from other states to defuse press charges that your state is singular in its problems.

5. Recommendations for reform.

6. Other useful additions include annotated bibliographies, specialized reference bibliographies and guidelines for what individual judges can do to promote an atmosphere of impartiality in the court room. (See tables of contents of New Jersey and New York Task Force Reports in Appendix K.)

7. Consider inserting a response form asking each judge to read the report, consider how it applies in his/her own courtroom and communicate responses to the Task Force.

had such an individual available to it. If there is no staff the Task Force members and/or advisors who will write the report should be identified soon after the Task Force commences its work and funds budgeted to pay these advisors/consultants.

There are two basic approaches to writing the report. Each committee can produce its own report which, when combined with an introduction and conclusion, can constitute the Task Force report. A more unified approach is to have one or two individuals write the entire report based on the committee's submissions and other sources. In either case it is helpful if the Task Force provides an outline/format to committees for their reports to make them uniform.

Presenting the Report to the Chief Justice

After the Task Force as a whole has adopted the report and before it is duplicated, send it to your chief justice. This is a courtesy which does not imply editorial control. However, the chief justice may have concerns or questions which the Task Force will want to consider before distribution.

Preparing a Summary Report

In addition to a final report we strongly advise preparing a summary report of no more than 20 pages which presents in brief form the activities of the Task Force, its findings and recommendations. This summary report can meet a number of needs that the longer report cannot. Because it is much less expensive to reproduce, its dissemination can be greater, people can read and absorb it quickly and it is useful for the press. If possible, both reports should be available at the same time. (See Appendix C for ordering the New Jersey and New York fill and summary reports.)

Disseminating and Publicizing the Report

The plan for disseminating both the full and summary reports should be initiated during the first stages of the Task Force. This allows for proper budgeting and helps the authors keep their audience in mind. Every judge in the state should receive both the full and summary reports (preferably with an accompanying directive from the chief justice urging a careful reading). Organizations and individuals who offered special assistance to the Task Force should also be sent copies as well as state, county and local bar presidents and law school deans. The bar presidents and deans should be asked to develop education programs based on the report and to place the report in their association/school libraries.[1]

If you make any recommendations for legislative reform or call for a larger budget allocation for the courts, the report should go to. the appropriate elected officials with a cover letter citing the recommendations that arc within their jurisdiction. Depending on the resources of the state, copies requested

by others could be sent free of charge, as was done in New Jersey and New York, or for a fee to cover the cost of duplication and mailing.

The summary report should be circulated as widely as possible. Send it also to the media and to legal and social science academics working in the areas of civil rights, family law, gender stereotypes and related matters. Include an order form for the full report.

---

[1] We request that you send copies to the Foundation for Women Judges, National Judicial Education Program, American Academy of Judicial Eduation, National Judicial College, National Center for State Courts, National Association for State Judicial Educators and the governing bodies of judicial administration organizations. These are listed with addresses in Appendix L

6 Disseminating the Findings and Recommendations

The most important aspect of disseminating the Task Force's findings and recommendations is ongoing, in person communication at judicial education programs. The Task Force must also find ways to reach lawyers, law schools and the public at large.

Report to the Judiciary

Ideally, the Task Force should initially present its findings and recommendations to the state judiciary at a mandatory assemblage (a judicial college) at which the chief justice introduces the Task Force and calls for compliance with its recommendations. Judges are more likely to read and act upon a Task Force report that comes to them with such visible and strong endorsement from the chief justice.

Although the New Jersey Task Force accomplished these components sequentially, it provides an excellent model. The New Jersey Task Force reported to its state judiciary at a plenary session that opened the 1983 New Jersey Judicial College. Attendance was mandatory for the state's 364 judges. After brief opening remarks by the chief justice, the Task Force chair explained why the changes in women's and men's roles in society require an examination of how sex stereotyped thinking undermines impartial decision making. An appellate judge on the Task Force described how he had initially thought the Task Force was a waste of time but had come to understand that there were significant problems that needed to be addressed. The former and current NJEP directors' presentations discussed gender bias in society and the introduction of gender bias issues into the judicial education curriculum nationally.

Finally, five Task Force members gave overviews of the findings and recommendations in the areas of courtroom interaction, domestic violence, matrimonial law, damages, and hiring and fee generating appointments. At the conclusion of the Task Force's program Chief Justice Wilentz made a strong statement about the seriousness and scope of its findings and the necessity for following its recommendations. The oft cited first paragraph of that extemporaneous statement became the "Quotation of the Day" in the next day's New York Times.

FOUR COMPONENTS OF TASK FORCE PARTICIPATION IN A JUDICIAL COLLEGE

1. A mandatory plenary session presentation that places the issue of gender bias and its manifestations in the courts in its cultural context and provides an overview of the Task Force's data collection methods, findings and recommendations.

2. An in-depth course on gender bias in the courts. (See Appendix D.)

3. Integration of the Task Force's findings and recommendations into relevant substantive law courses.

4. Distribution of the Task Force report to each judge.

> "There's no room for gender bias in our system. There's no room for the funny joke and the not-so-funny joke. There's no room for conscious, inadvertent, sophisticated, clumsy, or any other kind of gender bias, and certainly no room for gender bias that affects substantive rights. There's no room because it hurts and it insults. It hurts female lawyers psychologically and economically, litigants psychologically and economically, and witnesses, jurors, law clerks and judges who are women. It will not be tolerated in any form whatsoever."

In planning your judicial college presentation be certain that you have ample time. Each speaker's statement should be written and timed. Because the gender bias issue is sensitive, it is important that what is said sets forth exactly what the Task Force has learned and what it is recommending. Inartful paraphrases can convey false impressions.

The Task Force report should be distributed at the college after this presentation, otherwise judges will flip pages and read along rather than listen. Distributing the report at the college when interest is high enhances the likelihood of its being read and

acted on. Plan in advance how you will deal with the press at this judicial college. As noted, the New Jersey Administrative Office of the Courts invited the press to cover the Task Force's presentation and held a press conference afterward. Here again it is important that findings and recommendations be stated with care and calm to deflect sensationalism.

Continuing Dissemination

One presentation at a judicial college is not enough to secure reform. Courses and course segments on gender bias issues must be repeated. The legal community and the public must be educated to understand the issues and their role in eliminating the problems.

Ongoing Judicial Education

The core elements in the long term strategy to eliminate gender bias in the courts are court reforms and judicial and legal education. If lasting reform is to be realized, courses. related to gender bias in the courts must become a permanent part of the orientation for new judges and the continuing curriculum for those already on the bench. As important as courses related to women or gender bias in the courts are, to be most effective in the long run the findings and perspectives on gender bias generated by the Task Force and other sources should be integrated into judicial education courses on substantive areas of law.[1]

As the Task Force develops its strategy for continuing dissemination of its findings, it should anticipate obstacles. Our NJEP experiences taught us that generally, judicial educators and judges are less resistant to courses on gender bias in courtroom interaction which stress correcting forms of address and eliminating sexist remarks than they are to courses on judicial decision making in substantive areas of the law which may reveal., for example, how gender bias affects support awards and enforcement and contributes to the impoverishment of women and children. We have also encountered the attitude that gender bias is a "hot topic," good for a year or two of judicial education, dispensable after that.

Resistance to continuing judicial education on this subject may be overt, "We did this already," or it may take more subtle forms. Judicial educators may attempt to water down subsequent years' courses on gender bias by focusing on courtroom interaction issues only Another way to dilute the gender bias course is to broaden it so that it deals with stereotypes and bias in general, drawing examples from racism, ageism, handicapism etc. The reasons to resist a general "isms" course are the same as those given on page 6 for keeping the Task Force focused on gender bias only.

Overcoming resistance to continuing dissemin ation of the Task Force's findings and the topic of gender bias is extremely important. The time and effort required by a Task Force are not worth it if the doors of your judicial college swing shut after a year or two. The Task Force's position should be that general courses on gender bias which include the Task Force's findings and recommendations should be given until all judges on the bench have taken the course. At that point the general course could. be restricted to courses for new judges and the "gender perspective" as well as updated specific materials should be integrated into courses on substantive areas of the law on a continuing basis.

To this end the Task Force should encourage sympathetic judges to serve on judicial education planning committees and as faculty for gender bias courses.[2] Also, the chief justice may be willing to express support and make it clear that he/she does not see education about gender bias as a fad. Judicial educators may be more receptive if they are aware that the NJEP can assist in providing updated curricular materials.

Educating the Legal Community and the Public

Although the Task Force's focus is judges, lawyers must also be informed of the Task Force's findings, particularly those that reveal ways attorneys could improve their services to female clients. Task Force members should consider giving presentations to national bar associations and national legal groups as well as to local and community organizations. Lectures and workshops on support awards and enforcement are particularly important.

If lawyers are given the facts about the economic consequences of divorce, they can help educate judges by integrating this information into their strategies for settlements and trials.

Law schools, too, should be made aware of the Task Force's findings and recommendations and asked to include these materials in their curricula. They should be encouraged to review the casebooks used to determine whether these contribute to the development of biased attitudes on the part of law students and if so, introduce corrective supplementary materials.

The public will learn of the Task Force's findings from the press. This should produce invitations to speak at meetings of various organizations and commissions. These are important opportunities because they help build public support for implementation of the Task Force's suggested reforms.

---

[1] For example, materials about the economic consequences of divorce should be integrated into every course on divorce, equitable distribution. alimony/maintenance, child support and support awards enforcement. A segment of these courses should be devoted to reminding attendees about the findings of the Task Force in this area and distributing updated data about, e.g., women's workforce participation and salaries and the availability rod costs of child care in your state.

[2] The dearth of women on judicial education planning committees and as teachers in judicial colleges, a nationwide phenomenon, is an example of gender bias in the judicial system.

7 Implementing Reforms

The chief justice, the chief court administrator, the state judicial conduct commission and bar associations and ethics committees have critical roles to play in implementing the Task Force's reforms.

Role of the Chief Justice

Throughout this manual we have stressed that the support of the chief justice is crucial to the effectiveness of the Task Force. Your Task Force and your chief justice will probably think of measures that would be important to take which have not been thought of in other states. As a starting point it will be useful to consider the range of actions initiated by Chief Justice Robert N. Wilentz in New Jersey, summarized at right.

Role of the Chief Court Administrator

The chief court administrator can be an important ally in having a Task Force established. His or her cooperation is also necessary to the Task Force's ongoing work and the implementation of reforms.

In New Jersey, Director of the Administrative Office of the Courts (AOC) Robert Lipscher in September 1984 issued a memorandum to all those under his supervision directing them to act on the report of the Task Force's Subcommittee on Court Administration and its recommendations with regard to court forms and correspondence, hiring and appointments and professional interaction. (See Appendix M.) He also provided AOC personnel to conduct a study of support award patterns for the Task Force.

Not all court administrators are so helpful. If yours is indifferent or hostile, you will have to work with your chief judge to insure that the court administrator facilitates rather than blocks the work of the Task Force.

State Commission on Judicial Conduct

The Task Force should give a special course for members of the state commission on judicial conduct to educate them about gender bias and explain why it should be considered judicial misconduct. NJEP can provide you with materials from states where judicial conduct commissions have dealt with these issues. For example, in New York recently, two judges were publicly censured for gender

ACTION INITIATED IN NEW JERSEY BY CHIEF JUSTICE ROBERT N. WILENTZ

- Providing an opportunity for the Task Force Chair to meet with the administrative judges during the first year.
- Requiring mandatory attendance of all judges at the Task Force's presentation to the 1983 judicial college. (When a few judges rose to leave the room, the chief directed them to sit down.)
- Introducing the Task Force's presentation and concluding with a strong expression of concern for its findings and endorsement for its suggested reforms.
- Issuing a memorandum to judges directing them to be strictly attentive to the Task Force's report and to follow its. recommendations. (See Appendix M.)
- Reprimanding a judge for sexist behavior called to the chief's attention by the Task Force during its first year.
- Encouraging administrative judges to show the Task Force videotape to judges in their counties and discuss issues raised by each scene.
- Transmitting the Task Force's report to District Ethics Committees and Fee Arbitration Committees throughout the state.
- Offering continuing support for the Task Force's ongoing activities in its second, third, and fourth years and suggesting procedures for monitoring progress, e.g., a follow up survey of attorneys' perceptions of gender bias in the courts to see if there were noticeable improvements.

biased behavior in, respectively, courtroom interaction and a rape case, and another judge was admonished for his numerous sexist remarks to women attorneys.

Bar Associations and Ethics Committees

Although the Task Force's focus will be on judges' own behavior and their obligation to intervene in lawyers' and court personnel's biased behavior, attorneys' undesirable behaviour must also be dealt with by some mechanism within the bar association. Male and female respondents to the New Jersey and New York attorneys surveys reported that it is male attorneys more often than judges who behave offensively toward women in the courtroom, in chambers and at professional gatherings. The Task Force should present its overall findings and recommendations to the state, county and local bar associations, highlighting concerns raised about lawyers' behavior and barriers, to women's full participation in bar activities, and urge that the bar association take remedial action.

8 Long Dissemination, Implementation and Monitoring

In our opinion, the most important and in some ways the most difficult work of the Task Force begins after completion of the report. The effectiveness of the Task Force is most appropriately measured by its enduring success in eliminating gender bias in the courts. No matter how brilliantly the Task Force performs during the first phases, the value of its efforts will be greatly compromised if this fourth phase of long term dissemination, implementation and monitoring is inadequate.

The organizational form in which the Task Force carries out Phase IV may be either an ongoing, full-fledged Task Force or a smaller standing committee. New Jersey, now in its fourth year, chose to continue as a full Task Force in order to undertake new studies in specific areas[1] and because it believed the presence of an active Task Force is important in keeping the issue visible and educating the bench, bar and public.

The advantages of an effective Task Force extending itself into this long term phase are obvious. However, there are circumstances in which carrying on as a full Task Force is not appropriate. If the energy and attention of a substantial number of members has flagged, it is preferable to transform the Task Force into a smaller standing committee with a limited, specific agenda. In either case, three critical activities must be pursued over the long term.

1. Insure that judicial education programs continue to incorporate materials on gender bias in the courts into substantive law courses and present courses devoted to the topic itself.

2. Receive complaints about gender bias in the courts from lawyers, litigants and court personnel who may be unfamiliar with other avenues for grievance or reluctant to employ them.

3. Monitor positive changes and identify new problem areas.

After an appropriate interval, send letters to the following individuals and organizations requesting their views about progress and problems in eliminating gender bias in courtroom interaction and the application of substantive law.

- Legal organizations such as women's bar associations and the family/matrimonial law section of the state bar;
- Public Hearing witnesses;
- Organizations, interest groups and service providers which may have relevant information, e.g., battered women's shelters;
- Commissions and other task forces working on issues and legislation relating to gender bias, e.g., child support commissions.

Develop the information generated by these inquiries and information obtained by or provided to the Task Force through other sources into an annual report (for at least three years) which

- evaluates progress in implementing reforms and reducing gender bias;
- describes the nature. and disposition of the complaints received;
- assesses the extent to which the findings and recommendations of the Task Force are being integrated into judicial and legal education courses and programs;
- identifies new problems rooted in gender bias and suggests appropriate remedial action.

Disseminate this report to the chief justice, the state judiciary, Task Force members, individuals and groups from whom information was solicited, the press and the National Task Force on Gender Bias in the Courts.

---

[1] The Task Force may find that there was insufficient time to study all the areas it identified during its "in process" phase; that areas studied during this phase require more detailed investigation; and/or, that it wishes to study new issues not originally identified. New Jersey did not have time during its first phase to investigate the status of women court personnel, an issue identified at the outset, and determined that its findings respecting the economic consequences of divorce required a county-by-county study of equitable distribution and support award patterns.

9 Response of the Judicial and the Legal Community

Recognizing that gender bias is a sensitive and controversial issue, NAWJ members and lawyers who wish to create Task Forces are likely to wonder how their colleagues will react to their work. Below we discuss the range of responses encountered by Task Forces in New York and New Jersey and offer some suggestions as to how your Task Force might constructively handle them.

Appreciation

An immediate outpouring of appreciation, especially from women lawyers, is one predictable response to the creation of a Task Force. Many of these women will have coped alone with the anger and frustration generated by their own experiences with gender bias in the courts and will be greatly relieved that the issue is finally being taken seriously by the judiciary.

Reactions to the Task Force do not break clearly along gender lines. As noted below, in one state the Task Force encountered significant resistance from women lawyers, and in all states substantial appreciation and support came from men. Men with wives and daughters who are judges and lawyers often see the personal costs of discrimination. As a group, they seem particularly sensitive to the problem and are concerned about change.

Support may also come from civic groups and organizations which deal with women's problems (e.g., battered women's shelters, coalitions for aid in collecting child support), women's right's groups and organizations concerned with the quality of justice in the courts. Expressions of appreciation from individuals and groups should be acknowledged and ways found to keep them as resources for the Task Force.

Cooperation

The Task Force can usually count on the cooperation of women's bar associations and the groups and individuals mentioned above. If the Task Force is perceived as having the strong support of the chief justice cooperation will also come from men (and women) who would not otherwise embrace this cause. The importance of the chief justice's influence should not be underestimated. Some judges and attorneys will calculate that it is in their own interests to cooperate with the Task Force and show respect for its work. Regardless of their motivation, expressions of interest should be encouraged. In some cases what starts out as self-serving involvement turns into genuine concern.

Curiosity

Some judges will be curious (and nervous) about what the Task Force will mean to them personally. Will there be a witch hunt that will bring all the skeletons out of the closets? Will courtrooms be invaded by court watchers? Task Force members will need to provide clear answers regarding the Task Force's objectives and procedures. Curiosity will not be based only on fear. There are many judges who truly do not understand what the fuss is all about but would like to learn more. These individuals might welcome the short set of readings on gender bias and guidelines on what judges can do to promote an atmosphere' of impartiality in Appendices A and J. Task Force members approached by judges and attorneys should listen to their concerns, answer their questions, and give them whatever materials might help educate them about gender bias.

Resistance

There will be resistance and hostility and it will come from women as well as men. In one state, women lawyers openly resisted having a Task Force because they feared that drawing attention to the discriminatory treatment of women lawyers would undermine their client base and make it difficult to serve their clients. Some women judges are also uncomfortable with a public exploration of gender bias in the courts. After years of trying to fit in, they may hesitate to draw attention to themselves or to rock the boat.

These are important concerns which require sensitive responses. Our view is that no one benefits from refusing or failing to deal openly with bias. Documenting the existence of gender bias and advocating reform is in the interests of all and is a valid pursuit of lawyers and judges.

In a state with strong visible support from the chief justice, public hostility from individual male judges or attorneys is less likely. Negative reactions are more likely to surface in group settings. In one state, a group of matrimonial judges (some of whom had individually expressed support of the Task Force) showed great collective hostility to a talk given by the Task Force chair. These situations are difficult to handle. If anticipated, however, judges in the group (particularly male) known to be sympathetic to the Task Force can be alerted as to what might occur and requested to give their support at the appropriate time.

A common complaint from men and some women will be that the Task Force is not acknowledging discrimination against men. Many judges and attorneys will recall individual cases where they felt strongly that men were discriminated against on the basis of gender. It is important to acknowledge that in individual cases men may indeed be disadvantaged. The Task Force's role is to identify patterns of gender bias. It is concerned with what happens to women and men as groups. Should evidence of patterns of bias against men emerge in the course of the Task Force's investigation, they should be examined and reported.

Here again the short set of general readings on gender bias (Appendix A) and references to the articles on specific substantive law areas, e.g. custody, (Appendix B) would be useful to give to an individual whose resistance is based on a lack of information about the seriousness of gender bias and the relative disadvantage of women compared to men. Resistance should be treated as data by Task Force members who should listen respectfully to complaints, try to understand their source, educate whenever possible and discuss these reactions with the Task Force.

Understanding

In our work with NJEP and the Task Forces we have seen interesting examples of male judges and attorneys who were initially skeptical or hostile who suddenly connect personal experiences with the broader issues of gender bias and become highly motivated to bring about change. Such men are extremely important in the effort to eliminate gender bias because peer pressure is an important tool for change.[1]

Not infrequently Task Force members become advocates as they learn startling and disturbing facts about the treatment of women in the courts and come to understand the consequences. These individuals should be encouraged to engage in dialogue with other judges individually and in groups throughout the duration of the Task Force and afterward. They should be considered as speakers at judicial college presentations and as faculty for subsequent judicial courses. Because they are men and because, by their own acknowledgment, they once behaved in a biased manner or were blind to the behavior around them, they are often able to break through the resistance of their peers and be heard. Their status within the judicial or legal hierarchy and the respect they already enjoy from their peers will influence their effectiveness in this role.

Appreciation, cooperation, curiosity, resistance, understanding; no doubt your Task Force will get a sampling of all these responses. The important question is what will be the mix. To a great extent that is unpredictable, but this does not mean that the Task Force has no control. The likelihood of a positive response will be maximized if the conditions appropriate to establishing a Task Force (see page 6) prevailed when it was created, if the Task Force's activities are well carried out, and if the chief justice offers consistent visible support.

Responses After Your Report

Judicial response to the New Jersey report and first judicial college presentation ranged from amazement to hostility. Inevitably, some will dismiss and deny the findings of your Task Force. The New Jersey experience demonstrates, however, that the Task Force can be a uniquely positive force for change.[2] In the two years following the New Jersey Task Force's first report, several judges reported a new understanding of what consti tutes gender bias and described reforms they had instituted in their own courtrooms.

There is evidence in written opinions, some citing the Task Force report, that issues highlighted by the Task Force are being considered by judges in their decision making. Women attorneys throughout the state report signficantly improved treatment in the courts by judges and in professional organizations by male colleagues. (One of the more symbolic Task Force accomplishments was an end to the female stripper tradition at the Monmouth County Bar Association annual clambake.)

---

[1] This is not to say that women cannot be effective in educating their male colleagues. At this point in history, however, most male judges and lawyers will give greater credibility to a male judge who says there is gender bias in the courts than to a woman making the same point.

[2] When this manual went to press, no other Task Force's findings and recommendations had been public long enough to determine their effects.

10 Alternate Models and Independent Task Forces

Your chief justice may be willing to establish a Task Force but unable or unwilling to commit the resources required to undertake the variety of data collection methods we have described. In those circumstances, consider whether it makes sense to go forward with the resources available. Although it is desirable to have data from different sources that corroborate-each other, much can be accomplished with a more limited model.

Limited Data Collection Models

It is standard for legislative committees to develop information and publish reports including findings and recommendations based almost wholly on existing research and testimony at public hearings. A limited Task Force model, therefore, might include a review of the existing literature, a request to relevant federal, state and local agencies and organizations for information about your state, and a series of public hearings at which the full cross-section of the community has an opportunity to be heard.

These activities should yield a substantial amount of information about local concerns and enable your Task Force to write a report, make a presentation to your judicial college and follow the other suggestions for dissemination and the implementation of reforms. Even if the endeavor is not as comprehensive as you might wish, the findings will be valid and the effort worthwhile. Note however, that even if you pursue a limited data collection model, your strategies for dissemination and implementation must be as thorough and long term as the full model outlined in this manual.

Independent Task Forces

The most effective model for a Task Force is one established by a state's chief justice and operated under the aegis of the court. (See page 5.) We recognize, however, that in some states the chief justice will not be willing to establish a Task Force. If this is the case, you and others committed to reform may want to consider establishing an independent Task Force.

STEPS TO TAKE IF YOU DECIDE TO ESTABLISH AN INDEPENDENT TASK FORCE

- Recruit members from among the same mix of individuals you would want for an official Task Force.
- Draw up a list of goals, set a timetable, elect a chair.
- Devise a funding plan. Possible sources of funding within the community arc bar associations of all kinds and other professional associations concerned with legal and women's rights. Professional fundraisers can steer you to foundations and corporations. Fund raising is difficult and requires months of lead time. It is wise to seek the assistance of a grant writer from a friendly organization.
- Determine data collection methods and proceed with them.
- Give the Task Force visibility by inviting the press to public hearings or to forums where you have local or out-of-state speakers discuss gender bias in the courts.
- Keep the chief justice informed about the progress of your Task Force and invite him/her to your activities.
- Issue a report on the findings from your data collection and offer recommendations for reform.
- Follow the report dissemination plan outlined in this manual to the fullest extent possible.

Such a Task Force can be operated by a bar association, a judges' association or an ad hoc group of judges, lawyers, civic leaders and academics. In any of these casts, it is worth soliciting the official endorsement of the chief justice. This will lend legitimacy to the

ARIZONA'S INDEPENDENT TASK FORCE

One independent effort is the Arizona Task Force on Gender and Justice formed by NAWJ member Judge Lillian Fisher of Tucson to investigate gender bias in the courts in Pima County. A persistent effort by Judge Fisher ultimately secured endorsement of this Task Force by the Arizona Supreme Court. The first activity of this volunteer group of judges, lawyers, bar and civic leaders and academics was to enlist social scientists from the University of Arizona to do a preliminary survey of a scientifically selected sample of attorneys in Pima County. The Task Force also held public hearings.

endeavor, although it will not provide the kind of supports available to an "official" Task Force.

The underlying principles, membership mix, data collection methods and long range planning are the same for an independent as for an official Task Force. The special problems to be anticipated with an independent Task Force are credibility, compliance with data collection and reform and funding. Arizona's independent Task Force is described in the box above.

Conclusion

The guidelines offered in this manual for establishing and operating a Task Force on Gender Bias in the Courts are based on what we have learned by participating in the Task Forces now in existence and from our years of experience as Directors of the NJEP. These recommendations reflect our best thinking to date, and that of the members of NAWJ's National Task Force on Gender Bias in the Courts, but we view this manual as a starting point, not an end.

Appendix N includes a series of reporting forms so that you can let us know about your experiences with a Task Force. Perhaps you will develop a different organizational format or design new methods for collecting information or implementing reforms. To improve on the Task Force model outlined here, the National Task Force on Gender Bias in the Courts needs to hear from you. Your reports will assist us to advise Task Forces in other states, thereby making it easier for others who embark on similar projects.

Despite our efforts to communicate a spirit of collegiality and the excitement of being a part of pioneering efforts to combat gender bias, we expect that the very size of this manual will give pause to some who contemplate moving ahead with a Task Force. Please remember that you are not alone. The National Task Force on Gender Bias in the Courts and the National Judicial Education Program are available to help you with ideas, materials and technical assistance from the beginning to the end.

Judicial attitudes are changing in those states which have addressed gender bias formally through Task Forces and judicial education courses. However formidable an undertaking a Task Force may have seemed as you read this manual, we hope the knowledge that a Task Force on Gender Bias can make a difference will inspire you to go forward.

Appendices

Appendix A
Background Articles

EXCERPTS

SEX DISCRIMINATION BY LAW: A STUDY IN JUDICIAL PERSPECTIVE

John D. Johnston, Jr.
Charles L. Knapp

46 N.Y.U.L. Rev. 675 (1971)

(Footnotes omitted)

In this article the authors analyze a wide variety of cases in which the courts have been asked to deal with sex discrimination. Their research included findings, analysis and commentary written on judicial opinions. Based on this survey of cases, the authors draw an analogy to racial discrimination; investigate judicial attitudes towards gender issues and propose measures by which judges may attempt to overcome their bias and bring more impartiality to decision-making.

Our conclusion independently reached, but completely shared, is that by and large the performance of American judges in the area of sex discrimination can be succinctly described as ranging from poor to abominable. With some notabl exceptions, they have failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues. Particularly striking, we believe, is the contrast between judicial attitudes toward sex and race discrimination. Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist" -- at least their opinions in that area exhibit a conscious attempt to free themselves from habits of stereotypical thought with regard to discrimination based on color. With respect to sex discrimination, however, the story is different. “Sexism” -- the making Of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences -- is as easily discernible in contemporary judicial opinions as racism ever was.

* * *

We will attempt to demonstrate this thesis through a sampling of what American judges have said in opinions in sex discrimination cases over the past hundred years. Some opinions contain assertions that are, by any rational analysis, overt declarations of "male supremacy". In others, more or less objective rationales for sex discrimination are advanced. The relatively few (and for the most part quite recent) decisions invalidating sex discrimination will also receive consideration, substantively and as possible precursors of a changing judicial attitude.

* * *

The review of judicial opinions covers six areas: professional and occupational restrictions, labor regulation, public accomodation, jury qualification, public education and consortium, Based on their research the authors conclude:

(1) Despite the enactment of various laws designed to improve the position of women, male-dominated legislatures and courts have historically exhibited the belief that women generally are -- and ought to be -- confined to the social roles of homemaker, wife and mother, and gainfully employed (if at all) only in endeavors which comport with their assumed subservient, child-oriented and decorative characteristics;

(2) A small but significant number of courts has recently perceived that some legislation mandating sex discrimination presents substantial constitutional questions, and several such laws have been struck down on equal protection grounds;

(3) Despite such holdings by a number of state and lower federal courts, opinions continue to appear in which both the result and the reasoning are virtually indistinguishable from those issued nearly a century ago, In the absence of a definite shift of position on the part of the Supreme Court, and in the face of continued adherence by many state and federal courts to traditional sexist attitudes, it is far too soon to assert that a clear trend toward judicial recognition of women's rights has developed.

* * *

In nearly every section of this study, we have advanced the analogy of racial discrimination in order to clarify and strengthen our arguments that various forms of sex discrimination constitute a denial of equal protection.

* * *

Analytically, state-enforced sex discrimination is virtually identical to racial discrimination in at least three significant ways: (1) each reflects a group stereotype based on imputed characteristics which, if not purely imaginary, are nonetheless inapplicable to many individual members of the group; (2) each provides governmental endorsement for the opinion privately held by members of a dominant group that, due to the supposed existence of these characteristics, each member of the subordinate group is inherently inferior; and (3) proceeding from the assumption that the stereotypes are accurate, each attempts to confirm and perpetuate the existence of the supposed characteristics by requiring every citizen to conform to a variety of rules, all of which reflect the belief that one group is in fact inferior to another.

The falsity of certain racial stereotypes, notably with respect to blacks and American Indians, has become widely recognized in recent years. That the female stereotype is also untrue (and even a bit foolish) has been convincingly argued by many, but the myth of female inferiority stubbornly persists -- even among supposedly enlightened judges.

* * *

As bases for classification, sex and race share three important similarities: (1) by and large, members of the subordinate group are readily identifiable; (2) membership in the "inferior" group is initially nonvolitional; and (3) once acquired, this membership cannot be renounced. (Particularly in the last respect, race and sex discrimination are of a different order from discrimination against the poor or the young; members of these latter groups are not inevitably trapped for life in a subordinate status.) It is repugnant to the most rudimentary sense of fairness that a person should be officially relegated to an inferior status, severely limiting his opportunities for self-expression and achievement, solely because of an accident of birth. Stripped to its essentials, this is precisely the effect of racial and sex discrimination.

* * *

The failure of any male to perceive the harmful potential of various sexually discriminatory laws and practices can perhaps be initially ascribed simply to a lack of knowledge. This is particularly true in contrast with race discrimination. For at least the past ten years, the white public has been exposed to a rather steady and tide-ranging stream of information about the effects of one hundred years of segregation and discrimination on the black citizens of America. Only recently, however, has the public begun to be aware of the injurious effects of sex discrimination. It is the responsibility of counsel, of course, to educate the judge about the facts of any lawsuit, and in a case involving sex discrimination, this includes helping him to understand in what respects the practice complained of is harmful to those affected.

* * *

Even assuming that a judge does understand the effects of sex discrimination, he may nevertheless be deterred from granting relief in a particular case because of personal attitudes of which he is not even aware. There are a number of emotional responses to "women's liberation" which it seems to us are shared by many men, including some judges. One of these, the fear of competition from individual women, is probably not present in the judge's case; judges, by and large, hold positions where women are no particular danger to either job retention or possible promotion. This may of course change in another generation, as the proportion of female law graduates rapidly increases, but for the present generation of judges, women probably pose little or no threat of personal competition.

* * *

Fear of economic or political competition, even if wholly subconscious, is of course an obvious reason why one might be moved to support discriminatory practices. There are, however, other emotions which may influence any male judge's response to a suit involving sex discrimination. All lawyers know that the "law" as represented by the results of litigated cases is as much the product of the court's evaluation of the "morality" of the parties' behavior and the "fairness" of the possible decisions as it is of any set of abstract rules. One way in which a good judge will utilize his emotional responses in partnership with his intellect is by engaging in a process of *empathy* -- attempting to perceive the case before him as it is viewed *by the parties themselves.* Olympian detachment is indeed the best posture from which to render final decision, but it should be assumed only after the judge has first exercised his ability to empathize with the parties to the lawsuit.

Faced with a black man's complaint of racial discrimination, a white judge may well do at least a passable job of empathizing with the plaintiff--of temporarily imagining himself to be blackskinned. This will of course vary with the judge's own conditioning on the matter of race. For a judge taught from birth to regard every black person as a subhuman creature, empathizing with a black man is as inconceivable as empathizing with an eagle or a Labrador retriever, The judge not so severely handicapped, however, will be able to imagine how it would feel to be on the receiving end of such discriminatory treatment. From this perspective, the judge's answer to the hypothetical question "How would I feel if someone did that to me?" is likely to be "Furious!" -- because if there is *anyone* unaccustomed to being treated as inferior or subordinate, it is a white male American judge, Having subjected himself, even if fleetingly, to what he imagines to be the plaintiff's mental tribulations, the judge is better equipped to test the parties' competing claims against an abstract principle of law.

Where sex discrimination is alleged, however, most male judges are likely to have considerable difficulty empathizing with a female complainant. Even before the typical American child first becomes aware of sex differences, he (or she) is conditioned to conform to the social role expected of his sex -- which interests he should pursue (and which to shun), which occupations he should consider (and which to ignore), how he should talk, walk, thing and feel, And one of the very worst things he can do, in society's eyes, is to express a desire to be -- or to behave as though he were -- a member of the other sex. Although there is some evidence that

preoccupation with secondary sex differences may be declining, for the present generation of judges it may be easier to assume the imagined mental state of a black male, of whatever station in life, than it is sucessfully to imagine that one is a *female* (even for a white, middle-class one). The wonder is not that some judges display insensitivity toward the sexist features of our society but rather that an increasing number of judges are apparently able to break through the strictures of their own conditioning,

An even more deeply rooted emotion which judges share with most of mankind is a general hostility to change - especially change of such a fundamental and far-reaching character as to transform radically the basic institutions of society. Although complaints about sex discrimination may focus on particular practices, the whole battery of "women's liberation" goals seems to some (both men and women) to portend a future society in which the roles of men and women as members of a family unit would be so different from those of today as to make it almost unrecognizable, Perhaps children would not be raised by their parents at all; perhaps marriage as we know it would disappear completely; perhaps the concept of "family" would mean something completely different - or nothing at all. To many white southerners of twenty years ago, the end of racial segregation seemed to spell the end of civilization. For the elderly or even middle-aged person today, any prospect of a basic change in the family structure of society as he has known it may seem equally disquieting. Even the most modest demand for equality, if perceived as the spearhead of a wide-ranging assault on the social order, may thus be viewed as a threat. But the reconciliation of stability and change is the essence of the judicial function; judges are therefore required to transcend their natural aversion to change - to join in shaping the course of social evolution, rather than adamantly opposing it.

If the above analysis has any validity, it follows that male judges are likely to decide issues of sex discrimination from a narrow perspective and under certain psychological handicaps. Are any countermeasures available to them?

First, the judge can avoid the temptation to dismiss summarily any claim of impermissible sex discrimination as "lacking in substance". The fact that a particular statute or practice has received general acquiescence for many years from both males and females should not foreclose judicial consideration of its consitutionality. (Here again, race discrimination furnishes an instructive parallel.)

The next suggestion is implicit in what has been said earlier about the process of judicial empathy. The judge musk make a conscious effort to educate himself as to the effect of the statue or practice in question, from the point of view of the different types of women it affects. If the stature is one which prohibits all women from engaging in a certain occupation, for instance, he cannot be content with merely considering whether he, a mature male, is inclined to think that women generally ought not to engage in the porscribed activity (much less whether he thinks his own wife or daughter should do so). Rather, he must consider how a variety of women - single women as well as married, older women as well as young, black women and white, those with much education and those with little, those with children and those with non - are affected.

Further questions should be explored: Do the reasons advanced to support the discrimination in question apply only to *some* women? To some men as well? Does it represent an expression of the stereotype of woman as homebody, fit only for domestic labor? Or as some sort of harlot, wantonly corrupting innocent men?

Does it appear to represent a conclusion that some portion of the community's affairs are - and should continue to be - run completely or primarily by men? That some kinds of decisions are better left to men? If the answer to some of these questions is yes, we would suggest that a prima facie case has been made against the validity of the statute or practice in question, as a denial of equal protection.

If the judge has reached this conclusion, then the next question is whether there is a basis for the legislature's action sufficient to overcome the initial finding that improper class legislation may be involved, We have earlier suggested that a classification based on sex is one which demands "scrutiny" as "strict" as any other, induding race. If the reader disagrees, he will probably concede that there must at least be a "rational basis" for the discriminations. How does the judge ascertain whether such a "rational basis" exists?

It is perhaps more appropriate to suggest what the judge should not do in this regard. One suggestion would be to avoid merely concluding (as some judges apparently do) that the legislature must have had some reason, and whatever it was, it is good enough. Certainly a presumption of validity attaches to any legislative act, but when that presumption has been overcome by a showing of unequal treatment, it should be incumbent on the proponent of the act to demonstrate what its purpose was and why the purpose justifies treating the sexes in an unequal manner.

A second response to avoid is acquiescence in discrimination merely on the ground that it may obviate some degree of expense or inconvenience. An easy example is the jury statute considered in the *Hoyt* case, which was supported by the argument that calling only female volunteers would avoid the inconvenience occasioned by calling women who would then claim exemption. Another might be the claim of an educational institution that requiring it to admit females would entail the burden of providing them with restroom and other facilities not currently available. In our view, a state's policy of discrimination is not justifiable merely because it is more convenient or less expensive than a non-discriminatory policy. It would be cheaper and more convenient to choose our President only from the citizens of one particular state, to have only citizens of that state elect him and to elect a new one only when the incumbent dies or retires. It would also be cheaper and quicker to do away with trial by jury in criminal cases. There are competing interests in both cases, however, which are stronger than the mere desire for efficiency and economy. The policy against sex discrimination should also be strong enough to prevail in such a competition. While efficiency and economy are in general "rational bases" for legislation, they do not justify discrimination against individuals on the basis of inborn characteristics which they are powerless to alter,

* * *

Having presented the results of our legal research, as well as our own intuitive hypotheses about judicial attitudes in sex discrimination cases, we would add only one item to a presentation perhaps already overlong. Freely

conceding as we do that male judges are not unique in manifesting sexist habits of thought but rather share them with most other males (even law professors, ourselves included), have we any justification for singling out the judiciary for special criticism?

The judge in American society occupies a position of unique esteem in the eyes of his fellow citizens, In return for this particular honor, the judge assumes a special burden of personal responsibility for the fairness, objectivity and disinterestedness of his approach to the legal issues presented to him for resolution. This duty requires him, insofar as he is humanly able, to perform his judicial functions without yielding to the many prejudices and superstitions that influence other men in every aspect of their daily lives. Just as the policeman's special role entitles society to expect him not to react violently to taunts or expletives that would incite most men to action, so the judge can fairly be expected to free himself as nearly as possible from the limitations of his personal attitudes about sex roles in cases involving constitutional challenges to sex discrimination. The judicial role must transcend social conditioning in such matters; in this respect, the judge must be *above* other men.

Another aspect of the judicial role is the responsibility to be *ahead* of other men. Judges are not entitled to the luxury of shielding themselves behind public opinion or community attitudes, however strongly held these may be. The judiciary thus cannot shift responsibility to the legislatures, the press, women's liberation activists or anyone else. Nor can it postpone affirmative action until public opinion is overwhelmingly convinced that the time is appropriate. A judge whose opinions on important questions of public policy reflect nothing more than his private estimate of public majority opinion is engaging in journalism, not jurisprudence,

Our study has convinced us that, to date, most male American judges faced with issues of sex discrimination have not adequately met these special responsibilities, There are, however, some encouraging signs of progress. It is our hope that this study will contribute to an increasing. judicial understanding of and sensitivity toward the serious constitutional issues raised by state laws that discriminate against individuals solely on the basis of their sex.

On the judicial agenda for the 80s:

equal treatment for men and women in the courts.

Sex-based bias influences decision-making in America's courts, researchers have discovered. Here's a report on their findings — and some possible remedies.

by Norma Juliet Wikler

[T]he judge assumes a special burden of personal responsibility for the fairness, objectivity and disinterestedness of his approach to the legal issues presented to him for resolution. This duty requires him, insofar as he is humanly able, to perform his judicial junctions without yielding to the many prejudices and superstitions that influence other men in every aspect of their daily lives.[1]

Eliminating gender-based stereotypes, myths and biases in the judiciary is an important priority for our society. During the past decade, as a result of the movement for women's rights, almost every American social institution and profession has been carefully scrutinized for sex-discriminatory practices and policies. As a result of this external pressure, most institutions have been forced to undergo critical self-examination of the sexism embedded in the structural features of their institutions and manifest in the attitudes and behaviors of the individuals who participate in them.

The legal apparatus in this country has also come under attack, and the charge of "sexist justice" has been directed at every level of the judicial system.[2] However, the judiciary—the institution which determines the effectiveness of many of the efforts to eliminate sex discrimination in other institutions-has so far come under less scrutiny than the others and its process of self-examination has just begun.'

Yet there is overwhelming evidence that gender-based stereotypes, biases and myths are embedded in the law itself and in the attitudes, values and beliefs of some of those who serve as judges. In the 1980s it is essential to remedy this situation, for as long as sexism persists in the judiciary, the struggle of Americans to free themselves from the strictures of traditional sex roles and move toward social equality will be retarded.

The judicial virtues of objectivity, reflection, impartiality and critical analysis have served judges well with respect to other sensitive social issues. As New York University Law Professors John Johnston and Charles Knapp point out:

> Judges have largely freed themselves from patterns of thought that can be stigmatized as 'racist'—at least their opinions in that area exhibit a conscious attempt to free themselves from habits of stereotypical thought with regard to discrimination based on color.[4]

With sex discrimination, however, the story is different. On the basis of their careful study of judicial perspectives and biases in reported opinions in cases where women charged that they were discriminated against on the basis of their sex, Johnston and Knapp conclude that:

> Sexism—the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.[5]

What researchers have found

Evidence of gender-based stereotypes, biases and myths, and discrimination in the judiciary comes from other sources as well. Empirical studies of judicial attitudes by legal researchers and social scientists confirm that male judges tend to adhere to traditional values and beliefs about the "natures" and proper roles of men and women and prefer traditional and familiar institutions and roles.[6]

- Summarizing the findings of an attitudinal survey of Alabama judges, Crites states that the data reveal strong judicial attachment to traditional notions of the "female personality"

The author wishes to thank Phyllis Segal, legal director of the NOW Legal Defense and Education Fund, for her help in preparing this article. Segal's report, "Proposed Project on judicial Attitudes Toward Women: An Introductory Overview" (1978), initiated the National Judicial Education Program described on page 208.

1. Johnston and Knapp, *Sex Discrimination by Law: A Study in Judicial Perspective*, 46 N.Y.U. L. REV. 747 (October 1971). This article, as reflected by the language in the quotation from it, was written about the decision-making of male judges. Of course, the principles stated apply equally to female judges.

2. *See* DeCrow, SEXIST JUSTICE (New York: Vintage Books, 1974).

3. *See* Segal, PROPOSED PROJECT ON JUDICIAL ATTITUDES TOWARD WOMEN: AN INTRODUCTORY OVERVIEW (New York: NOW Legal Defense and Education Fund Report. 1978).

4. Johnston and Knapp, *supra* n. l, at 676.

5. *Id.*

6. Increasingly, female attorneys are writing and publishing reports on the sexism they observe and personally experience in the courts, accounts which further substantiate the findings of controlled empirical research. DeCrow, *supra* n. 2.

See also Levezey and Anderson, *Trials of a Woman Lawyer*, 1 (16) WOMEN'S RIGHTS LAW REPORTER (December 1974); and Segal, *supra* n. 3.

(more emotional, sympathetic and artistically inclined than men and less aggressive, less able to reason logically and poorer leaders than men) and familial roles (woman as wife and mother; man as decision-maker).[7]

- Using the statistical technique of Guttman's scaling, Cook analyzed the Burger Court's decisions on women's rights issues from 1971 to 1977 and measured the relative attachment of each justice to sexist precedent and the relative willingness of each to give legitimacy to new sex roles. Her findings reveal that the Burger Court's members decided cases concerning female roles in America on the basis of their personal value systems rather than the application of neutral legal principles and that over time the Court's decisions reflected an increasingly traditional orientation or "anti-feminist" stance toward sex roles.[8]
- In another study of judicial attitudes and decisions on women's rights, Cook compared the questionnaire responses of a matched sample of 85 male and 85 female state trial judges in 1978 and found that: "The women judges have strong attitudes in favor of new social roles for women in comparison to the weaker and sometimes antagonistic attitudes of male judges."[9]

Sex role typing

Another major and persistent source of sex discrimination is the inflexible sex role typing embedded in the law itself. Much evidence for the sexism in the courts can be found in histories of the law's traditional view of sex roles and its impact on the thinking and structure of the judiciary, and in histories of women's dependent legal status, especially regarding marriage and property.[10]

As Ginsburg has repeatedly pointed out, up to the 1960s both legislators and jurists supported a system of laws that prevented or impeded departures by men and women from traditional sex roles.[11] Restrictions limiting women's opportunities and confining their responsibilities to the home often were rationalized as "protective" and beneficial to women who, like children, were subservient to and dependent on men.

In the 1970s, however, women and men not captivated by tradition took their complaints of unconstitutional gender discrimination to the courts. With uneven success, they challenged employment discrimination, educational inequality, sex bias in statutes governing social insurance and fringe benefits, gender distinctions in jury selection and age of majority laws, classifications discriminating against parents or child based on out-of-wedlock birth, and restrictions on access to contraceptives and abortions.[12]

Sex-based discrimination in the law, sometimes reinforced by gender-based stereotypes, biases and myths subscribed to by judges, results in differential (and unequal) treatment of men and women in the courts. For example, many studies have examined the double standard applied to criminal offenders. The early 1970s produced a spate of studies which explored the differential treatment of men and women in all four stages in the criminal justice decision-making process: prearrest, arrest, jail and court sentencing.

Evidence of judicial reluctance to sentence women harshly led to a commonly held view that women were treated chivalrously by the courts. The most widely cited investigation of the effect of sex on judicial behavior (and one that supplied support for the chivalry hypothesis) is Nagel's and Weitzman's analysis of national data on the experience of male and female defendants charged with grand larceny or felonious assault. From their findings that fewer women than men were sent to jail, wo-

7. Crites, *Women in the Criminal Courts,* in Hepperle and Crites (eds.), WOMEN IN THE COURTS (Chapter 8) (Williamsburg, Virginia: National Center for State Courts. 1978).

8. Cook, *The Burger Court and Women's Rights 1971-1977,* in Hepperle and Crites (eds.), *supra* n. 7. at Chapter 3.

9. Cook, "Judicial Attitudes and Decisions on Women's Rights: Do Women Judges Make a Difference?", paper presented at the International Political Science Association Round Table, University of Essex, England, August 6-8, 1979, at page 19.

10. Crites, *supra* n. 7; *see also* Sachs and Wilson, SEXISM AND THE LAW (New York: Free Press, 1978); DeCrow, *supra* n. 2: Kanowitz. SEX ROLES IN LAW AND SOCIETY (Albuquerque: University of New Mexico Press, 1969); Murphy and Ross, *Liberating Women-Legally Speaking,* in Wasserstein and Green (eds.), WITH JUSTICE FOR SOME (Boston: Beacon Press, 1970): Schulder, *Does The Law Oppress Women?* in Morgan (ed.). SISTERHOOD IS POWERFUL (New York: Vintage Rooks, 1970).

11. Davidson. Ginsberg and Kay, TEXT, CASES AND MATERIALS ON SEX-BASED DISCRIMINATION (St. Paul, Minnesota: West Publishing Co., Supplement, 1978); Ginsberg, *Women, Men, and the Constitution: Key Supreme Court Rulings,* in Hepperle and Crites, *supra* n. 7, at Chapter 2.

12. Ginsberg, in Hepperle and Crites, *supra* n. 7, at 27.

men were held less time before trial, and more women than men received suspended sentences or probation, they concluded that women were being treated "paternalistically" by the courts.[13]

New studies

During the mid and late 1970s. new studies which corrected for the methodological and conceptual errors in the earlier work revealed a much more complex response of the courts to female criminality. Chesney-Lind has concluded from her thorough examination of the literature on the criminal justice system that the courts appear to be less lenient toward women than early studies seem to indicate, and that there appears to be discrimination against some women defendants and favoritism toward others.[14]

Other investigators besides Chesney-Lind have attempted to explain the contradictions in the courts' treatment of men and women and the differential treatment among women for the same offense. From diverse sources and research perspectives a common picture is formed: some women, particularly those who engage in traditional female offenses, may enjoy benefits before the courts—particularly if they can establish themselves as "women" by fulfilling other traditional roles (e.g., wife and mother). But other women whose criminal activity is "unfeminine" (e.g., violent) may be treated more harshly, particularly if they cannot provide other evidence of conformity to the standards of womenhood—through marriage or economic dependence on a man.[15]

Chesney-Lind suggests that the judiciary may be enforcing sex-role expectations

Courts appear to discriminate against some women defendants and show favoritism toward others.

as well as, and sometimes in place of, the law, with court personnel's [sic] overlooking female criminal misconduct of the woman who conforms to sex-role expectations. but responding harshly to women who deviate from sexual behavior components of the female sex role.[16]

Clearly, the apparent reinforcement by the court of the traditional female sex role implies a comparable enforcement of traditional male sex role expectations as well. Though the empirical evidence remains complex as to which sex gets harsher treatment under what conditions and for what offense, the main point that rests undisputed is that gender is a basis for differential treatment of criminal offenders.

The literature on juvenile misbehavior shows a similar pattern of judicial response. Some young women get chivalrous treatment in the juvenile justice system, but all the evidence shows that these are women who are charged with non-sexual crimes. Those who present the possibility of becoming sexual delinquents receive harsher treatment at all stages of the decision-making process than their sisters suspected of crimes. Also, juvenile women brought before the court for violation of parental authority and sexual norms are treated more severely than the few males charged with these offenses.[17]

A study by the American Bar Association also documents the unequal treatment accorded to female juvenile offenders:

Despite the fact that the 'crimes' girls are accused of are categorized as less serious and less harmful to society, they are often held in detention for longer

---

[13]. Paternalism is operationally defined (by Nagel and Weitzman) as a pattern of court behavior in which there is favoritism for the weak in the reluctance to impose negative sanctions and disfavoritism in the awarding or enforcing of monetary awards and the informality of judicial process. Nagel and Weitzman, *Women as Litigants*, *23* HASTINGS L. J. 171 (November 1971).

See also Chesney-Lind, *Chivalry Reexamined: Women and the Criminal justice System* in Bowker (ed.), WOMEN, CRIME AND THE CRIMINAL JUSTICE SYSTEM (Chapter 7) (Lexington: Lexington Books, 1978).

14. *Id*.

15. *Id*. *See also* Kruttschnitt, "Women, Crime. and Dependency: An Application of the Theory of Law." paper presented at the Meetings of *the* Law and Society Association, San Francisco, May 10-12. 1979.

16. Chesney-Lind, supra n. 13. at 218.

17. Chesney-Lind, *Young Women in the Arms of the Law,* in Bowker (ed.). *supra* n. 13, at chapter 6.

periods of time and they are placed less frequently in community programs than boys are.[18]

But as Kress points out, all women—juvenile or adult—who engage in crimes *defined* as sexual in nature (such as prostitution, juvenile promiscuity, and incorrigibility) are penalized more harshly than their male counterparts.[19]

Treatment of victims

Pervasive sexism in the courts is documented by not only the treatment of criminal offenders but also by the treatment of victims. An extensive literature generated by the anti-rape movement has shown that the legal system traditionally has served to protect the rape offender and punish the victim. Clearly, part of the explantion for this rests in judicial myths concerning the nature of male and female sexuality and attitudes of judges and legislators toward the "proper" role of women.[20]

Segal, for example, cites three recent highly publicized cases of men charged with sexual -assault against women in which male judges revealed their personal biases and gender-based stereotypes in rejecting the claims of the victims.

- In Madison, Wisconsin, during the sentencing of a youth charged with rape who had pleaded "no contest" to second-degree assault, Judge [Archie] Simonson questioned whether he should punish severely someone who may have been reacting 'normally' to provocative dress and sexual permissiveness. The victim, a high school student, had been wearing blue jeans at the time of the attack.
- In California, Judge Lynn D. Compton warned a rape victim that by hitchhiking she had invited sexual intercourse. A friend of the Judge has been quoted as explaining that this warning was as much to the judge's daughters as it was to the victim. He was saying it to them: Don't hitchhike, because that makes you a loose women.
- And in Connecticut, Judge Walter M. Pickett dismissed a charge against a man who failed in a rape attempt with the comment, You can't blame someone for trying.[21]

More recently, studies documenting the casual response of the legal professions and the judiciary to the plight of battered women have lent support to the charge that a faint echo of the common law view of a wife as her husband's property persists in the minds of judicial administrators.[22] A common interpretation of the reluctance of some judges to use their discretionary powers to give legal relief to battered wives is that destructive cultural myths about the nature of the female psyche (e.g., women's alleged masochism) are embodied in the conception of wife battery (and rape) as "victim-precipitated" crimes.[23]

Myths in family law

In family law, we see the full operation of gender-based stereotypes, biases and myths and their deleterious effects on both men and women. Findings are now being reported from a recent longitudinal major study of the impact of the California no-fault system of divorce instituted in 1970, and the elimination in 1973 of the statutory "maternal preference" in the standard for awarding custody.[24] Comparing data from Los Angeles and San Francisco from 1968, 1972 and 1977, the investigators conclude that women continue to be awarded both physical and legal custody of their children in the overwhelming majority of cases.

A major finding in these data is the continued strength of the preference for the mother as the custodian of children after divorce. Since only 10 per cent of the cases in their sample went to trial, judges attitudes alone cannot explain what happens in the vast majority of divorce cases. However, part of the explanation for this enduring maternal preference, according to the researchers, is that some judges are still following the traditional standard despite changes in the law.[25] Thus, the persistent belief

18. Report by the American Bar Association, LITTLE SISTERS AND THE LAW 1 (Washington, D.C.: ABA, 1977).

19. Kress, *Bourgeois Morality and the Administration of justice*, 12 CRIME AND SOCIAL JUSTICE 44 (Winter 1979).

20. Brownmiller, AGAINST OUR WILL: MEN, WOMEN, AND RAPE (New York: Bantam Books, 1975); Griffin, RAPE: THE POWER OF CONSCIOUSNESS (New York: Harper and Row, 1979); and Russell, THE POLITICS OF RAPE (New York: Stein and Day, 1975).

21. Segal, *supra* n. 3.

22. Martin, BATTERED WIVES (San Francisco: New Glide, 1976); Roy, BATTERED WOMEN: A PSYCHO-SOCIAL STUDY OF DOMESTIC VIOLENCE (New York: Van Nostrand Reinhold, 1977): Trent, *Wife-Beating: A Psycho-Legal Analysis*, 84(6) CASE AND COMMENT 14 (1979); Klein, *Can This Marriage Be Saved?: Battery and Sheltering*, 12 CRIME AND SOCIAL JUSTICE 19 (Winter 1979).

23. Smart, WOMEN, CRIME AND CRIMINOLOGY: A FEMINIST CRITIQUE (London: Routledge and Kegan Paul Ltd., 1976).

24. Weitzman and Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support, and Visitation After Divorce*, 12(2) U. OF CAL. DAVIS L. REV. 473-521 (Summer 1979).

25. The authors suggest that the low percentage of father custody awards may also be the result of lawyers dissuading fathers from asking for custody or decisions made by husbands and wives before they see their attorneys.

based on traditional sex-role stereotypes that mother's custody is in the best interest of the child interferes with the application of a new law which was designed to give men fair and equal treatment in custody awards.

Women and children sometimes become victims in divorce because judge's decisions in support awards are influenced by serious misconceptions concerning the personal and economic consequences of divorce.[26] Prevailing American myths reinforced by the media (such as those identified by Segal) appear to influence the perceptions and responses of some judges in domestic relations cases—myths that say women lead indolent lives on alimony, child support payments and divorce settlements; any women who really wants to can get a job and support herself; that housework isn't really work; and that a woman always has access to some "man" who is willing to take care of her.[27]

Two key questions

In short, in almost any area of the law we can identify prevailing myths, gender-based stereotypes and biases, and evidence that men and women are treated differentially and unequally in the American legal and judiciary systems. For those concerned with righting this situation, two related questions stand out: What explains the lack of impartiality in the judiciary, and what can be done to change it?

The answer to the first question lies in understanding both the sources of judicial gender bias, and the lack of opportunities so far afforded judges to understand and correct it. The-fact that personal experiences and biases do affect judicial decision-making has long been recognized by leading judges and justices. As far back as 1921, Supreme Court Justice Benjamin Cardozo warned that

> deep below consciousness are ocher forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge...[28]

...and affect the outcome of every trial, one observer has added.[23] More recently, Justice Blackmun similarly observed that

> one's philosophy, one's experiences. one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and color one's thinking and conclusions....[30]

Though sexism *per se* is rarely mentioned as a potential source of bias by members of the judiciary, recognition of the very nature of the society in which judges have been socialized suggests that it could hardly be otherwise. Until the recent challenges from the movement for women's rights, American society rigidly defined sex roles and held women in subservient and inferior status. And most adults in the United States, judges included, learned traditional sex stereotypes and misconceptions through the social institutions which still reflect and reinforce them. It is axiomatic that biases, attitudes and beliefs persist unless education or life experiences oblige men and women to become self- and socially aware.

When we examine the structure and organization of the judiciary and the pathways to that profession, we see that judges have been given few opportunities to examine the nature and consequences of sex-based discrimination in the law, or their own gender-based stereotypes,

Prevailing myths appear to influence the perceptions and responses of some judges.

26. Hoffman, *Changes in Domestic Relations Court.* Hepperle and Crites, *supra* n. 7. at Chapter 7: and Alarcon, "Educating the Judiciary," panel presentation at the 11th Conference on Women and the Law, San Francisco, February 28-March 2, 1980.

27. Segal, *supra* n. 3.

28. Timnick, Judges—*The Realities vs. the Myths,* LOS ANGELES TIMES, March 2, 1980, p. 1.

29. *Id.*

30. Cook, *supra* n. 8.

myths and biases. Only within the last decade have some law schools introduced courses on "women and the law," or considered in different substantive law courses how gender operates as a source of potential bias. Most judges now on the bench were never exposed to the findings and perspectives these new courses offer.

Overcoming biases

Increasingly, judges are attending judicial education programs at the state, regional and national levels, but so far they have been offered little education in these formal classroom settings about sexism and its effects on judicial decision-making. Occasionally the issues of sexism or gender-based stereotypes are addressed,

ABOUT THE NEW PROGRAM

The National Judicial Education Program to Promote Equality for Women and Men in the Courts, directed initially at state court judges, is designed to examine the effects of gender-based stereotypes, myths and biases on judicial decision-making. It will develop and introduce course materials and curricula at established state, regional and national judicial education programs.

During the pilot year (July 1980-1981), some course materials will be available on a limited basis for introduction into judicial education programs. Some of these materials have already been presented at the National Judicial College in Reno. A course based on these materials co-taught by a male and female judge trained through the program will be introduced into the Califonia Center for Judicial Education and Research's Mid-Career Program in January 1981.

The materials are based on information drawn from the actual experiences of judges, as well as from legal and social scientific research, and will assist state court judges in detecting hidden biases and misconceptions, and in making decisions which reflect greater understanding of changing American sex roles. The proposed courses and curriculum will be designed in accord with established principles of judicial education such as peer teaching and will emphasize concrete material which relates directly to legal and judicial activity. The program will deal with such topics as gender bias in support and custody awards, the effects of sexual stereotypes on the judicial treatment of male and female offenders and victims, and the dynamics of gender in courtroom interactions.

The new program to promote equality for women and men has been endorsed by the American Academy of Judicial Education; the California Center for Judicial Education and Research; the National Judicial College; and the National Center for State Courts. The National Conference of Special Court Judges has passed a resolution endorsing the principle of incorporating materials on gender bias into judicial education programs.

The National Advisory Committee for the program consists of more than 20 members, including

Joan Dempsey Klein, Presiding Justice, Court of Appeal, Second Appellate District, Los Angeles, and President of the National Association of Women Judges;

Marilyn Hall Patel, U.S. District Court Judge for the Northern District of California;

Dorothy W. Nelson, U.S. Circuit Judge for the Ninth Circuit and chairman of the board of directors of the American Judicature Society;

Edward C. McConnell, Director for the National Center for State Courts;

Judge Ernst John Watts, dean of the National Judicial College;

Douglas Lanford, executive director of the American Academy of Judicial Education;

Paul M. Li, Director, California Center For Judicial Education and Research;

Lawrence Margolis, U.S. Magistrate and chairman of the Judicial Administration Division of the American Bar Association;

Tim Murphy, Judge, Superior Court, Washington, D.C.;

Hortense W. Gabel, Justice, Supreme Court of the State of New York; and

Phyllis Segal, legal director of the NOW-Legal Defense and Education Fund,

For additional information, contact the program director: Dr. Norma J. Wikler, NOW-Legal Defense and Education Fund, 132 West 43rd Street, New York, New York 10036.

but only on a cursory and fragmented basis. Thus far, there has been no systematic attempt in any program in the United States to introduce course curricula specifically dealing with the impact of gender-based stereotypes, biases and myths on judicial decision-making.

Legal and judicial periodicals and books should serve. to educate judges about sexism, but so far few of the findings or perspectives generated by the burgeoning scholarly and popular studies on sex discrimination in the courts have found their way into mainstream legal or judicial literature. For the most part, such studies have been written by women about women, and read primarily by women. For example, a review of legal periodicals over the past five years yields scant references to discussions of sexism or of the persistence and consequence of traditional sex roles in the law or in the attitudes of those who judge.[31]

Because of the small number of women in the judiciary itself, a third type of educational experience also has up to now been denied members of the American judiciary: shared work among peers, that corrective force which has traditionally challenged sex bias (and racial bias) and led men and women to critically examine their attitudes and beliefs.[32] Thus, traditional sex stereotypes and prejudices subscribed to by some members of the judiciary go almost unchallenged in the day to day round of professional activity.[33]

The answer to the second question—what can be done to correct the lack of impartiality in the judiciary—is complex. Clearly, there is no single means to eliminate gender-based stereotypes, biases and myths from the judicial system. Legislative reform, passage of the Equal Rights Amendment, and inclusion of women in the judiciary on an equal basis to men are all important steps, and systematic efforts are currently being made to achieve all three. Another remedy—the attempt to change underlying attitudes and beliefs through formal and informal education of judges—is just beginning to be explored. (See "About the new program" on page 208.)

Traditional sex stereotypes to which some judges subscribe go almost unchallenged.

In the 1980s a central task for the American judiciary will surely be the elimination of gender bias in decision-making. Most judges would agree that in exchange for the special position of power and esteem which they occupy in society they must assume a special burden of responsibility for fairness and objectivity. During this decade their efforts to do so will become more and more visible as judicial behavior is increasingly subjected to public scrutiny and evaluation. Bar association polls, "court-watchers," broadcast media access to the courtroom and more attention to the judicial selection process are all current expressions of the public mood demanding greater judicial accountability. Judges sensitive to the issues of gender bias will find recognition and support for their efforts to achieve equal justice under law for American women and men. ❑

NORMA JULIET WIKLER is associate professor of sociology at the University of California, Santa Cruz. She is also program director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts, sponsored by the NOW-Legal Defense and Education Fund in cooperation with the Nations/Association of Women Judges.

31. The exceptions are almost exclusively in special women's legal periodicals *such* as *Women's Rights LAW Reporter* and Golden Gate University's *Woman's Law Forum*.

A recent comprehensive search of the literature on judicial ethics and judicial behavior by a *Los Angeles Times* reporter conducting research for a series of articles on the judiciary yielded no discussions of sexism as a source of bias in judicial decision-making. Timnick, interview with the author, March 30, 1980.

32. For example, only 5.4 per cent of all federal judges are women: no woman has ever sat on the U.S. Supreme Court. Only 7.8 per cent of U.S. circuit judges are women: only 5.1 per cent of the district court judges are women; and only 3 per cent of state trial and appellate court judges are women. National Women's Political Caucus, WOMEN IN THE FEDERAL JUDICIARY: A STATUS REPORT, (Washington, D.C., 1980); Segal, *supra* n. 3. Cook, *supra* n. 8; The Center for the American Woman and Politics, FACT SHEET (Eagleron Institute for Politics. Rutgers University, 1979).

33. Segal, *supra* n. 3; *see also* Sassower. *Women and the Judiciary: Undoing the Law of the Creator*, 57 JUDICATURE 282 (1974).

Eve, Mary, Superwoman:

How Sterotypes About Women Influence Judges

Whether you're a man or a woman, sexism may shape your thinking

By Lynn Hecht Schafran

Lynn Heck Schafran, Esq.
is the director of the National Judicial Education Project to Promote Equality for Men and Women in the Courts

In 1971 two New York University law professors published a study analyzing judicial opinions in cases involving sex discrimination in the law. The "case law showed women being denied equal treatment in employment, public education, places of accommodation, and . . . in the criminal and civil courts." From their research, Professors John D. Johnston, Jr. and Charles L. Knapp concluded that "the performance of American judges in the area of sex discrimination can be described as ranging from poor to abominable." The authors noted that judges in their written opinions had largely freed themselves of patterns of thought that could be described as, "racist," but that "sexism" (which they defined as "the making of unjustified— or at least unsupported—assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences" and which today is often called "gender bias") was "as easily discernible in contemporary judicial opinions as racism ever was."

In attempting to analyze why sexism permeated judicial opinions, Professors Johnson and Knapp found "a surprising extent to which the survival of sex discrimination can be attributed to pervasive judicial attitudes." They noted that "The falsity of certain racial stereotypes . . . has been widely recognized in recent years. That the female stereotype is also untrue (and even a bit foolish) has been argued by many, but the myth of female inferiority stubbornly persists—even

among supposedly enlightened judges."[1] The observation is as true today as it was in 1971.

In 1971, a watershed year for women's legal rights, the U.S. Supreme Court first used the Equal Protection clause to strike down a sex discriminatory statute *[Reed v. Reed,* 404 U.S. 71 (1971)). In the years since, the American judiciary, though still overwhelmingly white and male,[2] has done much to eliminate sex discrimination. Judges held invalid numerous discrimination statutes; victims of sexual discrimination in employment won significant victories under Title VII; jurists spoke out on the need to treat domestic violence as a crime and eliminate the marital exemption for rape; and male judges supported female attorneys for appointment to the bench.

Despite this progress, however, many judges still believe in different standards for men and women. Even those who do not, often unconsciously believe in female stereotypes, which can interfere with true judicial impartiality.

Albie Sachs and Joan Hoff Wilson described the parameters and contradictions of these stereotypes in their 1979 book, *Sexism and the Legal Profession.*

> The law in the United States represents the epitome of the stereotypic masculine or agentic characteristics of rational thinking, competitiveness, aggressiveness, strength, and seriousness. Conversely feminine or affiliative characteristics are routinely described as those of emotional responses, weakness, delicacy, gentleness, and frivolity. Yet the most cursory sampling of the vast literature about women (written largely by men) reveals a number of contradictory attributes. This schizoid male image of women as somehow morally superior yet intellectually inferior, as the embodiment of both all that is good and asexual symbolized by the Virgin Mary and all that is evil, including insatiable sexuality, symbolized by Eve, has forced women through the ages to live with contradiction, with an internal discord and confusion about their true nature. It has also made them the object of both man's love and hate.

To these ancient stereotypes of Mary and Eve society has added a new stereotype: Superwoman. She is the woman who can hold down a job (or two), raise her children, clean her house, and never need a respite or help from the children's father or society. We see her in court when it is time to set or enforce a support award.

This article will examine each of these stereotypes—Mary, Eve, Superwoman—and how their continuing power to shape judicial perceptions influences decision-making and judicial attitudes toward women in the law.

MARY

> *Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is found in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of women. . . . The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.*[3]
>
> —*Bradley v. Illinois* (1873). Justice Bradley concurring in denying a married woman a license to practice law.[3]

> *I was not as attuned to [gender bias] until my wife entered law school three years ago and entered the job market last fall. We were appalled when, in interviews with two appellate division judges for judicial clerkships, she was asked:*
>
> *I. Did she have my permission to be doing this?*
>
> *2. Would she be able to handle the job while being a wife and stepmother?*
>
> *3. Was she planning to have children?*
>
> —Forty-three-year-old male respondent to the 1983 New Jersey Supreme Court Task Force on Women in the Courts' Attorneys Survey.[4]

Many judges remain deeply attached to the concept of woman they believe to be symbolized by Mary: A woman for whom motherhood is the only appropriate goal, who remains at home participating in a limited range of activities in the "domestic sphere," who does not assume positions of authority, whose chastity is unassailable.

The impact of this stereotype on judicial perceptions can be seen in employment discrimination cases, family law and the treatment of women lawyers. One judge denounces having to hire women for important jobs "in this day and age of women's lib." Another, told that female Ph.D.s are leaving a company because inexperienced men with B.A.s are being promoted over them replies, "But why, to have children or what?" A third is incredulous that the New York Attorney General cares about a non-job related seniority system that discriminates against women. A judge is hostile to the

Why does it matter if a judge calls a female attorney "little girl" or calls attention to her looks?

custody-seeking mother who works outside the home but sees no paradox in awarding custody to the father who works outside the home. A woman who abandons her family and returns seeking visitation is a pariah. A returning father is seen as a prodigal dad, given visitation and, in at least one case, joint custody. Where fault is considered—and it is often considered, even where barred by statute—a man's adultery is glossed over, a woman's held against her. The irony of judicial adherence to a belief that women should only be wives and mothers is that when women who have played exactly that role appear in divorce court, too few judges appreciate that work in the home has economic value that should be recognized at dissolution.

Some judges have difficulty perceiving women as individuals with the right and ability to undertake serious work outside the home. This attitude is particularly obvious in the day-to-day courtroom treatment of women. Most male judges have gone through law school, practice and often many years on the bench with no or very few female colleagues. They often only know working women as support staff, and some have considerable difficulty accepting women as attorneys, expert witnesses or judges.

At times the judicial response to a female professional is surprise, because her looks do not match what a lawyer or expert is supposed to be. We hear this when a judge asks a defendant how it feels to be represented by a woman attorney and in remarks like, "Ladies and gentlemen, can you believe this pretty little thing is an assistant attorney general?" or, to an expert witness, "You are too young and pretty to be a doctor."[5] (The latter comments express one of the basic tenets of sex bias: women are essentially ornamental, and it is always appropriate to comment on a woman's looks, no matter what the setting. A compliment that a woman would welcome in private takes on a different meaning in the courtroom. The expert female attorney is there to carry out a professional obligation. By commenting on her looks when she takes the witness stand or presents her opening statement to the jury, the judge takes her out of that professional context and focuses attention on her as a woman, to be appraised for her appearance rather than her ability.)

Some judges express their discomfort with women lawyers privately, others in open court. At the August 1984 Connecticut Judicial Institute, a male judge confided to a colleague who was teaching a course called "Gender Stereotyping in Court" that he did not think women belonged in the legal profession. During a 1982 Oregon trial, another judge said, "Women lawyers make me so tired," when the female public defender correctly objected to the prosecutor's showing the jury an unmarked exhibit.

The National Jury Project reports that some judges speak to male attorneys in a straightforward voice, then switch to a long-suffering tone to respond to a female attorney, no matter what she is saying, implying that only a fool would raise that objection or make that argument. Other judges speak to women in a consistently angry tone, when no anger is warranted.

A few years ago a New York judge apologized to a female defense attorney for his behavior toward her during the first week of a lengthy malpractice trial. He had responded to her every objection in a hostile voice, sometimes even yelling. The judge explained that he was initially appalled that a woman was sent to try this case (a girl doing a man's job), and assumed the company just sent a pretty face to keep the damages down. Afterward the judge not only apologized, he bought the trial transcript to show other lawyers how such cases should be tried, using the female defense attorney's presentation as a model.

Why does it matter if a judge calls a female attorney "little girl," or calls attention to her looks, or demeans her with his tone of voice? As explained in the accompanying sidebar titled, *The Less Credible Sex*, the stereotype of women as properly belonging only in the "domestic sphere" has led to lessened credibility for women in the public sphere. Thus, remarks or responses like these are more than a personal insult. They undermine a female lawyer's credibility and professionalism, which in turn reflect on how well her client is represented.

There are also judges who express their unease with female attorneys in completely unconscious ways, such as listening intently when a male lawyer speaks but looking at the clock and shuffling papers when female counsel speaks. Body language that reveals discomfort or disinterest when a woman speaks has a tremendous impact on a jury: Communications researchers have found that nonverbal messages carry four times the weight of verbal messages.

A recital of incidents like these often provokes the response that they are singular occurrences on the part of aberrant judges. However, the survey of 900 attorneys conducted by the New Jersey Supreme Court Task Force on Women in the Courts in 1983 revealed that such incidents are not as uncommon as one would hope. Sixty-one percent of the women attorneys and 25 percent of the men attorneys surveyed reported instances in which judges used women's

first names or "terms of endearment" (dear, sweetheart, honey, etc.) while addressing men by surnames or titles; 54 percent of the female attorneys and 28 percent of the male attorneys were aware of judges making comments about the personal appearance and dress of women attorneys; 52 percent of the women and 38 percent of the men were aware of similar comments about female litigants and witnesses. With respect to hostile remarks and sexist jokes, 69 percent of the women and 40 percent of the men reported hearing such remarks and jokes from judges.

Narrative responses to the survey gave the specifics of offensive incidents in which women litigants, witnesses and attorneys were derided, belittled and demeaned. One woman respondent to the survey wrote about an incident at a crowded calendar call and asked why the judge felt free to say things about women he would never say about other groups in our society. In her letter to the New Jersey Task Force, she wrote:

> [I]n response to a statement by a female attorney that she had "problems" with her case and

THE LESS CREDIBLE SEX

"Credible" encompasses many meanings; believable, competent, trustworthy, intelligent, capable, convincing, truthful, someone to be taken seriously. "Credible" is the crucial attribute for a lawyer, litigant, complainant, defendant or witness. Yet for women, achieving credibilty in and out of the courtroom is no easy task. Custom and law have taught that women are not to be believed and not to be taken seriously. Historically, women existed to look pretty, make babies and keep house. Women were not educated and were not expected either to participate in or have opinions about the world at large. For most of American history, the law classed women with children and idiots, and forbade us to own property, enter into a contract, or vote. The rape laws were a codified expression of mistrust. Althought the laws have changed, social science studies reveal that women today are still perceived as being less credible than men.

In an often replicated experiment, two groups of matched subjects evaluate an identical set of essays, one group believing them to have been written by a man, the other believing them to be written by a woman. Those essays believed to have been written by a man are consistently evaluated as better written and more persuasive.

In the late seventies, Professor Norma Wikler, author of *On the Judicial Agenda for the 80s: Equal Treatment for Men and Women in the Courts,* 64 *Judicature* 202 (1980), examined 16,000 teacher evaluation forms filed by students at the University of California, who, after each course, evaluate their instructors on a list of twenty attributes. Both men and women students said that their women teachers were superior in the sense of being better prepared, having mastery of the material, and being more responsive to students. But they gave significantly more weight to the views of their male professors, evaluating them as more credible, more believable, more authoritative and more persuasive than their female professors. Moreover, male students were much more dramatically prejudiced in *favor* of the male teachers than were the women students.

There is a style of speech known as 'Women's Language" or "Powerless Speech," used far more often by women than by men, which is marked by questioning intonations, hedges and overly polite forms. The speech style is more effective than an abrupt and commanding style in interpersonal relationships, but research by the Duke University Law and Language Project shows it to be a less credible style in the courtroom.

Even young girls are acutely conscious that women and girls are not as credible as men and boys. In 1982 two thousand Colorado children in grades three through twelve were asked "If you woke tomorrow and discovered that you were a (boy)(girl), how would your life be different?"

Both boys and girls exhibited a fundamental contempt for being female and woman's traditional role in society. The boys percieved being a girl as a disaster because they would be valued only for their appearance and would have to give up all but the most stereotypically feminine activities. The girls saw being a boy as vastly liberating. Their comments included, "I would get paid more," "My dad would respect me more."

Given the fact of women's lesser credibility in society, judges need to understand how little it takes to undermine a woman's authority and status in the courtroom. Even apparently trivial matters, such as calling a woman by her first name or using her marital rather than her professional title, do have consequences for her credibility. Moreover, although it may be an unintended slip when the male witness calls his female cross-examiner 'honey," this kind of tactic is often used on women with complete deliberateness. It was no accident, for example, that in the October 1984 vice-presidential debates George Bush consistently called his adversary *Mrs.* Ferraro, despite the pre-debate agreement, announced by the moderator, that the debators would be addressed as Vice-President Bush and *Congresswomen* Ferraro.

wanted to be heard at the second call, [the judge] made a pronouncement that "women are the problem." This comment, again, was received by the audience with a great deal of amusement, laughter, clapping, etc.

What would have happened had this same judge said that Blacks, Jews, Catholics, Orientals or Hispanics were the "problem?" Would that comment have been met with uproarious laughter? Certainly not, but women are still considered a joke.

Judges need both to eliminate gender bias in their own verbal and nonverbal behavior and to intervene when, for example, male counsel deliberately fails to use a female expert's professional title in order to undercut her authority, or a male witness makes a crude gesture to his female cross-examiner. Judicial intervention is important in these situations, because they put the female attorney in an impossible bind. If she responds, she may alienate the judge and jury as a "women's libber" who makes a mountain out of a molehill. If she ignores a deliberate attempt to undercut her or her client's credibility, she disserves her client and herself.

As this sampling of recent incidents demonstrates, the stereotype of woman symbolized by Mary has a tenacious power with serious consequences for women in the law. That power and its consequences were attested to from personal experience by Judge Dolores K. Sloviter of the United States Circuit Court of Appeals for the Third Circuit in a 1984 speech to the National Association for Law Placement:

> Five years ago, when I was being evaluated by the American Bar Association for this judgeship, despite the fact that I had been the first female to have moved, on her own, up to partnership in a large Philadelphia law firm, and despite the fact that I apparently had been the first female to have been made a full professor in a Philadelphia law school, I was asked how I would care for my then and still vigorous husband, because, I was told, that was expected to be a woman's role; I was asked how I would care for my child, although I had already shown myself at least equivalent to my male colleagues during the preceding four years of motherhood, and I was told that every lawyer and every judge believed women were less productive in the law than men. . . . Until we are willing to take firm steps to excise and exorcise those demons, women as a group will not be able to proceed to their rightfully equal place in the legal profession.

EVE

Contradicting the stereotype of woman as Mary, the chaste wife and mother, is the stereotype of woman as Eve, the unchaste eternal temptress. The image of Eve permeates many judges' responses to rape, no matter how young the victim.

Perhaps no other act has evoked such public outrage against certain judges (and the judiciary as a whole) as when the blame for a rape is placed on the victim. For example, one judge called a five-year-old girl "an unusually sexually promiscuous young lady" and "the aggressor," and referred to the defendant as a limited man who "just did not know enough to knock off her advances." This is the classic stereotype of the rape victim: a woman who entices a man, then yells "rape."

Another judge was voted out of office after he placed a 15-year-old rapist on probation because he believed the young man was only reacting "normally" to a sexually permissive society. A third judge said that he would "just love to try a garden variety rape case. It keeps you awake in the afternoon and provides a little vicarious pleasure."

Occasionally, such attitudes have resulted in disciplinary proceedings against judges. In October 1984, the New York State Commission on Judicial Conduct voted 8-1 to censure a Greene County judge. The judge's conduct took place in *People v. Hickey*, in which defendant Ronald Hickey pled guilty to third-degree rape and, according to the terms of a plea arrangement, was to receive a one-year sentence. Before sentencing Hickey, however, the judge discussed the case with a newspaper reporter.

The disciplinary commission's in its finding of fact quoted the Judge as having said to the reporter:

> As I recall he [the defendant] did go into her [the victim's] apartment without permission. . . . He was drunk, jumped into the sack with her, had sex and went to sleep. I think it started without consent, but maybe they ended up enjoying themselves.
>
> It was not like a rape on the street. . . . People hear rape and they think of the poor girl dragged into the bushes. But it wasn't like that.

The commission further found that at a pretrial conference, "defense counsel had stated that the defendant claimed he was drunk on the night of the rape, that after the initial rape he fell asleep, that the victim later awoke him, and they engaged again in sexual intercourse, and that he then went back to sleep. It was on the basis of this statement that respondent said to the reporter, [M]aybe they ended up enjoying themselves.'"

The 8-1 majority opinion of the commission, signed by two judges, found the judge guilty of violating Canons 1, 2A, 3A(4), and 3A(6) of the Code of Judicial Conduct and various sections of the Rules Governing Judicial Conduct. The commission majority's comments are worth quoting in detail:

> It would have been improper for respondent to make *any* public comment, no matter how minor, to a newspaper reporter or to any one else, about a case pending before him. The nature of respondent's misconduct was greatly exacerbated when

(Please turn to page 48)

Schafran

(Continued from page 17)

> he granted an interview to a reporter in which he recited his opinions with regard to the law controlling the case and stated in detail his views of the facts of the case. The misconduct was further compounded by respondent's crude and offensive comments about the victim of the rape and about the rape itself. Respondent's comments were not based on fact but were a distorted version and extrapolation of unsworn statements made by defense counsel in argument during a pretrial conference.
>
> By making the comments "I *think* (underlining added) it started without consent . . ." and ". . . maybe they ended up enjoying themselves", respondent publicly questioned whether there ever was a rape or whether the victim had consented to the sexual intercourse—without having any supporting facts for his comments. The comments that this was ". . . not like a rape on the streets . . ." and was not a situation ". . . of the poor girl in the park dragged into the bushes", when taken with the previous statements, further underscore respondent's lack of sensitivity and understanding of the situation.
>
> Respondent's statements were humiliating and demeaning to the victim of the rape, in no small measure because respondent was, in effect, publicly stating that she had probably consented to the sexual intercourse. The burden upon the victim of such gratuitous observations is obvious.
>
> Moreover, such comments have the effect of discouraging complaints of rape and sexual harassment. The impact upon those who look to the judiciary for protection from sexual assault may be devastating.
>
> Respondent's conduct violates the basic tenets of fairness in the administraticn of justice and brings the administration of justice into public disrepute.

In a dissenting option, John J. Power, Esq., wrote that the sanction was "Excessive and . . . not consistent with any standard of sanction of errant judges." Mr. Power noted that the respondent judge was regarded as "hard-working, able and fair" and "had never been the object of discipline before." Furthermore, Power decried the "disparity of treatment" accorded to this Greene County judge, who received censure, compared with that accorded another judge, who received admonition after he "hung a dart board in his chambers and offered defendants an opportunity to throw a dart to determine their fines." In one instance cited, the admonished judge threatened to incarcerate a woman defendant for seven days if she missed the dart board all together.

After stating that there was no deprivation of substantial legal rights, or the slightest semblance of moral turpitude, or improper ethics involved in the Greene County judge's conduct, Power concluded that the correct resolution of the case would be "dismissal with a strongly worded letter of caution."

In September 1984, ABC television's 20/20 program broadcast "To Catch A Rapist," which chronicled the 25-year history of an often arrested man who was ultimately convicted of rape. In one case, he was accused of repeatedly raping a woman he was dating and choking her until the blood vessels broke in her eyes. The man was convicted of six counts of rape and sentenced to 30-to-150 years in prison, but the conviction was reversed by the Ohio Supreme Court. The ground for reversal centered around one portion of the victim's testimony that: "He made me perform oral sex a couple of times, three times. And he did it to me. And then we had intercourse a couple times. Just kept going back and forth." The Ohio Supreme Court reversed because her testimony omitted the word *"sexual"* intercourse, and was therefore insufficient to prove penetration (a decision the dissent called "absolutely incredible"). A retrial was ordered. *[State v. Ferguson,* 5 OBR 380 (1983).]

However, last year television also provided direct evidence of how far the judiciary has moved beyond the Eve stereotype in rape cases. In the fully televised March 1984 trial of the gang rape in Big Dan's Tavem, a Fail River, Massachusetts barroom, Massachusetts Superior Court Judge William G. Young did his utmost to preservethe defendants' right to full cross-examination, while never forgetting that it was the defendants and not the complainant who, under the law, were on trial. At sentencing, Judge Young rejected defense counsels' argument that the victim's behavior required mitigation, saying, "To suggest that any course of conduct, however flirtatious or seductive, may reduce the sentence imposed for subsequent aggravated rape is to impair the degree of freedom we ought to jealously guard for all our people."

HISTORY OF RAPE LAWS

A historical look at rape laws reveals a profound mistrust of women as witnesses and a tendency to discourage prosecution by making it extremely difficult and unpleasant for the victim. Until recently it was standard throughout the United States for a judge to give the so-called "Lord Hale Instruction" in sexual assault cases:

> A charge such as that made against the defendant in this case is one which is easily made and once made difficult to defend against even if the person is innocent. Therefore, the law requires that you examine the testimony of the female person named in the Information with caution.

Prominent commentators provided analyses like these:

> Complaints of sex offenses are easily made. They spring from a variety of motives and reasons. . . . Prosecuting attorneys must continually be on guard for a charge of sex offense

brought by the spurned female that has as its underlying basis a desire for revenge, or a blackmail or shakedown scheme.

—Ploscowe, *Sex Offenses: The American Legal Context,* 25, LAW AND CONTEMPORARY PROBLEMS 215 (1960).

A woman's prior sexual history was considered relevant to both her consent and her credibility, although such history was never considered relevant to a man's credibility, nor has it been admitted in reference to any other crime. Many states long required corroborative evidence of rape charges and a showing of earnest resistance, despite Justice Department data showing that physical resistance leads to serious physical injury.

In reponse to efforts by women and women's rights groups, most states have now passed rape shield laws that bar inquiry into the complainant's past sexual history apart from certain exceptions. However, the responsibility for enforcing the rape shield law should rest with the judge. A prosecutor's failure to invoke the rape shield law is often a calculated strategy. Prosetutors know that frequent invocation of the rape shield law may make it appear that the complainant has something to hide, which conflicts with the prose-

JUDICIAL EDUCATION PROGRAMS EXAMINE GENDER BIAS IN THE COURTS

The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) was formed in 1980 to help judges understand how stereotyped thinking about women and men affects true impartiality. Since its inception, NJEP has worked with numerous national and state judicial education organizations, examining gender bias in decision making, fact-finding, communication, sentencing and courtroom interaction. NJEP has helped conduct judicial education programs in more than 10 states.

The National Judicial Education Program employs legal, statistical, anecdotal, psychological, political and social science data, as well as information developed from the judiciary itself, to address a wide spectrum of issues. These range from stereotypes about "women as temptress," which burden rape victims, to Census Bureau data on support awards and compliance, to communications research into the impact on credibility of women's and men's speaking styles. The program uses a variety of interactive adult teaching techniques and, wherever possible, team teaches with local judges. NJFP is a project of the National Organization for Women (NOW) Legal Defense and Education Fund, in cooperation with the National Association of Women Judges. It is endorsed by the American Academy of Judicial Education, the National Judicial College, the National Center for State Courts and the California Center for Judicial Education and Research.

Responding to concerns raised by women judges and lawyers and by NJEP and other organizations, the chief justices of New Jersey, New York and Rhode Island have established statewide task forces to investigate the existence and extent of gender bias in their own courts and recommend ways to eliminate it. The New York and Rhode Island task forces began their inquiries in mid-1984. The New Jersey Supreme Court Task Force on Women in the Courts, established by Chief Justice Robert N. Wilentz in October 1982, reported to a plenary session of the New Jersey Judicial College in November 1983, that

> Stereotyped myths, beliefs and biases appear to sometimes affect decision-making in certain subject areas, e.g., damages, domestic violence, juvenile justice, matrimonial and sentencing.
>
> Additionally, it appears that there may be inequality. of treatment of men and women in the legal and judicial environment (courtroom, chambers and professional gatherings).

The full *Report of the First Year of the New Jersey Supreme Court Task Force on Women in the Courts,* published in July 1984, was based on a survey of 900 female and male attorneys, comments from litigants, meetings with attorneys around the state, and a review of case law and existing research. The task force also produced a videotape and teaching materials that address problem interactions in courtroom and chambers, clerkship interviews, and judicial attitiudes toward domestic violence, support awards and the value of homemaker work. The videotape is a composite of actual incidents reported to the task force during its inquiry, which is ongoing.

The New Jersey report and videotape may be obtained from Melanie Griffin, Esq., Administrative Office of the Courts, Hughes Justice Complex, CN-037, Trenton, NJ. 07625.

For information about the National Judicial Education to Promote Equality for Women and Men in the Courts and technical assistance in developing local courses and task forces, contact the program director, Lynn Hecht Schafran, Esq., 99 Hudson Street, New York, N.Y. 10013, phone: 212/925-6635.

cutorial obligation to make her as credible to the jury as possible. For the judge to take the initiative in invoking the rape shield law provides needed neutrality. A judge, however, who believes there is a difference between a "nice girl" who gets raped and a "bad girl" (notice the use of "girl" for an adult woman) because the latter may have "enticed the man," will probably not be sensitive enough to invoke the rape shield law in either case, though this denies the victim a fair trial and subverts the public policy of the legislation.

The stereotype of Eve "enticing" her rapist is behind the belief expressed directly or indirectly by some judges that rape is an act of sexual passion rather than a violent assault. In spite of all the studies and evidence showing that rape is a deliberate act of violence, this belief remains widely held.

Society's lessening but continued adherence to the stereotype of the rape victim as temptress is also a serious problem. Judges, however, can mitigate this attitude. Their behavior critically affects the jury and witnesses. Judges set the tone of cross-examination and control to some degree just how humiliated the complainant will be in a situation where humiliation is unavoidable. They can invoke the rape shield law as appropriate and avoid stereotyped thinking in deciding what evidence will be admissible under the exceptions to that law.

SUPERWOMAN

In 1972 a Florida appeals court denied a woman's request for permanent alimony with a sweeping generalization about women's earning potential. In the "earlier days of our civilization," when women's "destiny was to remain always in the home . . . providing for the needs and comforts of their family," women had limited education and almost no experience in commerce. Now, however, "Such conditions no longer exist. In this era of women's liberation movements and enlightened thinking . . . the woman is as fully equipped as the man to earn a living and provide for her essential needs." *[Beard Y. Beard,* 262 So. 2d 269, 271-72 (Fla. App. 1972).]

Just as the stereotypes of Eve and Mary clashed, here is the clash of Mary and a new stereotype, Superwoman, "as fully equipped as the man" to earn an independent living. But it was not only in some distant past that women were schooled to forgo career development and job opportunities in order to devote themselves to homemaking for their husbands and children. Until very recently, this was the national norm. Even today many families decide that the wife should be a full- or part-time homemaker, particularly when there are minor children to be cared for.

Homemaking is valuable, unpaid work that carries an extremely high opportunity cost in terms of lost earning capacity. The *Beard* court completely ignores that opportunity cost and assumes that that upon divorce a woman can go from Mary to Superwoman overnight, "fully equipped" for economic self-sufficiency despite years given to unpaid family labor.

The *Beard* opinion cannot be dismissed as an aberration from the early years of the modem woman's movement when expectations of immediate equality ran high. Striving for equality is not being equal. The ensuing years have proven beyond doubt that women of all ages continue to be severely disadvantaged in the paid workforce; that custodial mothers have difficulty making ends meet on what little, if any, child support they receive; and that "displaced homemakers," older women entering or reentering the paid workforce after decades of work in the home, face critical barriers to economic self-sufficiency.[6] Yet throughout the country, judicial opinions in divorce cases frequently reflect what is either adherence to the Superwoman stereotype—that any woman can do it all, alone—or else indifference to women's and children's postdivorce struggle for economic survival.

In *Otis v. Otis,* 299 N.W. 26 114 (Minn. 1980), a 49-year-old woman married for 25 years who had not worked outside the home since the birth of her child was awarded rehabilitative alimony of $2,000 per month for two years and $1,000 per month for one year. The court said she could return to her former work as a secretary and earn between $12,000 and $18,000 per year. Her business executive husband earned $125,000 per year plus bonuses. The court held that self-supporting was defined as meeting reasonable needs, not in terms of her former marital standard of living. This case led the Minnesota legislature to amend its domestic relations law to repudiate *Otis* to the extent that it emphasized rehabilitative alimony to the exclusion of permanent alimony. Nonetheless, in two 1984 Minnesota Supreme Court cases, there were strong dissents from a denial of permanent alimony to middle-aged women who abandoned their own careers "to fulfill the expected, traditional roles of mother, wife and hostess for rising business and professional men."[7]

In *Weider v. Weider,* 402 So. 2d, 66 (Fla. App. 1980), a 23-year marriage, the trial court awarded rehabilitative alimony of $150 per week for three years to a 60-year-old wife in poor health who had not been employed for 12 years. A vocational consultant had testified that she could earn $150-160 per week. The husband, age 51, earned $43,000 per year plus perks. The appellate court reversed and ordered permanent alimony, holding that there was no evidence that the wife could become self-supporting on termination of rehabilitative alimony, and that the award itself was too low.

Molnar v. Molnar, 10 FLR 1293 (W. Va. 1984), involved a 25-year marriage between a 53-year-old wife netting $438 per month as a clerk and a husband netting $2,520 per month as a manager. The trial court's award of rehabilitative alimony was reversed on the ground that there was no evidence that this older, dependent spouse could continue to work and simultaneously take the part-time college training suggested by the court. The appellate court said that this

appeared to be beyond her ability, and that she did not have a realistic expectation of obtaining a new job when she graduated, which would be at age 63.

In *Holston v. Holston,* 10 FLR 1369 (Md. 1984), the Maryland Court of Special Appeals reversed a rehabilitative alimony award of $150 per week for three years to a woman with five minor children who had stopped her own education to support her husband. At divorce, he was earning $85,000 per year as a dentist. The trial court suggested that the wife return to her work as a secretary, a job she had not held in 15 years. The appeals court noted that if she could get such a job, she would earn $13,000 per year at the local rate. This would give her earnings less than 15 percent of her husband's and would mean that the respective standards of living of the parties

SOME FACTS ABOUT ALIMONY, CHILD SUPPORT AND WOMEN IN THE PAID WORK FORCE

- In 1981, only 15 percent of the 17 million women ever divorced or separated in the country had an award to receive alimony. Less than half the women supposed to receive alimony received the full amount due. One-third received nothing. The average amount received was $3,000. (1)
- In 1981, only 59 percent of women with children under 21 present from an absent father had an award to receive child support. Less than half received the full amount due. Close to one-third received nothing. The average amount received was $2,110. (1)
- In 1981, one out of three families maintained by women was in poverty compared to one out of sixteen married couple families. (2)
- A 1978 longitudinal study of middle-aged women with children found that 40 percent of all divorced white women who did not remarry over a seven-year period had incomes that fell below the poverty level at least once. Fifteen to twenty percent were continuously poor or close to poverty. These figures were much higher for black and Hispanic women. (3)
- The high cost of child care is a critical element in many divorced women's poverty. Forty-five percent of single mothers with children under five would look for work if child care were available at a reasonable cost. (4)

The low award and compliance figures for alimony and child support suggest that where there is a dependent spouse and a spouse with a steady income stream, the farmer should receive most of the marital property to minimize the likelihood that the dependent spouse will fall into poverty.

- Median annual earnings for year-round, full time working men in 1982 were $21,077. For year-round full-time working women median earnings were $13,014, 62 percent of men's earnings(5)
- In 1981, women workers with four or more years of college had about the same income as men with one-to three years of high school—$12,085 and $11,936 respectively. Fully employed women high school graduates had the same income on average as men who had not completed elementary school—$12,332 and $12,866 respectively. (6)
- Fifty percent of women in the paid labor force are segregated into only 20 of the Census Bureau's 420 occupational categories, as, e.g., clericals, retail salespeople, nurses, teachers, bookkeepers, waitresses, child care workers and cleaners, all low wage jobs with little upward mobility. (7)
- For women, aged 34 years and older, wages decline. Men experience an increase in wages until their mid-fifties. (8)
- Displaced homemakers, many of whom are not even high school graduates, lack both current work experience and the education requirements for today's job market. As such, they are more likely to be poor. A 1979 survey of displaced homemaker programs by the Displaced Homemakers Network, Inc. found that 75 percent of these women earned less than $5,000 that year. (9)

Sources:

1. Child Support and Alimony: 1981, U.S. Department of Commerce, Bureau of the Census, Series P-23, No.124 (May 1983)
2. Money Income and Poverty Status of Families and Persons in the United States in 1982. U.S. Department of Commerce, Bureau of the Census (July 1983)
3. L. Shaw, "Economic Consequences of Marital Disruption," National Longitudinal Study of Mature Women. U.S. Department of Labor (June 1978)
4. Child Care Arrangements of Working Mothers: U.S. Department of Commerce (June 1982) Bureau of the Census, Series P-23, No. 129 (1983)
5. U.S. Department of Labor, Bureau of Labor Statistics, Women at Work: A Chartbook, Bulletin 2168 (April 1983)
6. 20 Facts on Women Workers, US. Department of Labor, Women's Bureau (1982)
7. Employment and Earnings, U.S. Department of Labor, Bureau of Labor Statistics (1982)
8. Earnings Gap Between Women and Men, U.S. Department of Labor, Women's Bureau (1979)
9. Time of Change: 1983 Handbook on Women Workers, U.S. Department of Labor, Women's Bureau, Bulletin 298 (1984)

would be "unconsciously disparate."

The latter three cases were reversed on appeal—a luxury few women can afford. Most divorces end with the trial court or in a settlement that reflects what the lawyers think they could get at trial, and litigation continues through numerous, often futile, attempts to enforce the payment agreed to. The result is that many formerly middle-class women and children are literally falling into poverty while their former husbands enjoy the same or an even more comfortable standard of living after divorce than they did during marriage.

In a study of the economic consequences of divorce the University of Michigan Survey Research Institute tracked more than two thousand families, weighted to be representative of the entire U.S. population, from 1968 through 1974. The study compared income and need for families that remained married, women and men who divorced, and women and men who remarried. Actual income was determined by annual interviews with each family and included earned income, transfer payments and welfare. Need was assessed against a model based on the Department of Agriculture's minimal low standard budget that took into account the age, sex and number of family members.

After seven years, couples in intact marriages had income 21 percent above need level, divorced men had income 17 percent above need level, but divorced women had income 7 percent *below* need level. The women's income was below need level because they had to share their income with their children, their ex-husbands often paid little or no support, and the women could rarely find work outside the "pink collar" ghetto, that is, minimum wage, no-mobility jobs in the female-dominated segment of the service sector. Remarried men, who tended to marry younger women working in the paid labor force, had income 31 percent above need level. The number of remarried women was too small to be statistically significant.

Many judges assume that women will remarry after divorce. Some even say in open court that the woman shouldn't complain about a low support award because she's probably out "hunting" already and bound to catch a new man soon. Not only is this an impermissible basis for setting an award, it flies in the face of reality. According to federal data, only one woman in two remarries between ages 30 and 39. Over age 40, only one woman in four remarries. In a 1978 study of 1,500 divorce decrees by the UCLA Divorce Law Research Project, many of the women said they were desperate to remarry because they were not Superwomen and saw remarriage as the only way out of their economic struggle. In that study, interviews with a weighted sample of Los Angeles women and men one year after divorce revealed that the men's living standard had risen by 42 percent while the women's had fallen by 73 percent.

The *Beard* court's assumption that "the woman is as fully equipped as the man to earn a living and provide for her essential needs" was not true in 1972 and is not true in 1985. We live in an era of transition. Most of the women entering the professions and climbing the corporate ladder are younger women who went from college to graduate school to the business world. The majority of women still work in the pink-collar ghetto. Despite the belief that every woman got alimony before the days of "women's liberation movements," few women have ever done well economically after divorce. From 1890-1920, when the Census Bureau kept detailed records, there was no year in which more than 16 percent of divorcing women were awarded alimony. But then the number of women divorcing during that time was small and their post-divorce struggles little noticed. Today, when half of all marriages end in divorce, it is clear that insufficient and unenforced support awards are driving women and children into poverty. Judges need to put themselves in the place of the displaced homemaker and ask, What would I do if my income were suddenly slashed by 85 percent? Could I live on $13,000 per year? What would I do if tomorrow my chief judge announced that my career as a lawyer and jurist was ended, and that I had to start over with no reference to my past 20 or 30 or 40 years of experience to help sell myself?

No area of law affects more women than support awards and enforcement. It is essential that judges set and enforce support awards keyed to need and a decent standard of living. This can only happen if judges will inform. themselves about individual women's actual potential to become self-supporting and contribute to the support of their children, taking into account each woman's age, education and employment background and prospects. Women today do sit on the Supreme Court, run for high office and walk in space, but not every woman is Superwoman.

* * * * * *

Mary, Eve, Superwoman: three female stereotypes have profound implications for the full and fair administration of justice. Justice Benjamin Cardozo wrote of the judicial process, "deep below consciousness are other forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge." The deeply rooted stereotypes of women described in this article are among those unconscious forces. Only by recognizing their existence and their power can judges move beyond Mary, Eve and Superwoman and treat women as individuals, rather than as emblems of their sex.

1. Johnston and Knapp, *Sex Discrimination By Law: A Study in Judicial Perspective*, 46 N.Y.U. LAW REV. 675 (1971).

2. According to a study by the Fund for Modern Courts, Inc., based in New York City, as of December 19, 1984, women comprised 7.5 percent of state court judges and 7.5 percent of federal court judges. Minority group members were 4.5 percent of state court judges and 10 percent of federal judges. Although the particular examples of gender bias in interaction and decision making

cited in this article are about male judges, with respect to the Superwoman stereotype and the overriding issue of society's cultural bias against women's credibility, there are individual female judges who adhere to the prevailing biases as much as individual male judges.

3. 83 U.S. (16 Wall.) 130 (1873).

4. *See,* A Judicial Education Program and Statewide Task Forces Examine Gender Bias in the Courts, Report of the First Year of the New Jersey Task Force on Women in the Courts (July 1984).

5. The incidents cited in this article occurred within the last few years and are drawn from reports from all parts of the country.

6. *See* the accompanying sidebar article, Some Facts About Alimony, Child Support and Women in the Paid Workforce.

7. *Abuzzhab v. Abuzzahab,* F.L.R. 1094 (Jan. 1, 1985) and *In re: McClelland, 11 F.L.R. 1094 (Jan. 1, 1985).*

Appendix B
Bibliography

National Judicial Education Program
to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212) 354-1225

July 16, 1984

TO: New York Task Force on Women in the Courts

FROM: Lynn Hecht Schafran, Esq.
Advisor to the Task Force

RE: Resource Reading Packet: GENDER BIAS IN THE COURTS, COURTROOM INTERACTION, HOW WOMEN ARE TREATED IN OTHER INSTITUTIONAL SETTINGS.

Attached are a variety of materials, listed below, that relate to the overall problem of gender bias in the courts: courtroom interaction, that is, the way women litigants, lawyers, victims, witnesses and jurors are treated in the courtroom and chambers, and the impact of demeaning treatment on women's credibility; and how women are treated in other institutional settings, e.g., academia, the corporate world and medicine.

This reading packet will provide you with resource materials and background on the issues to be discussed at the Task Force's September 12, 1984 meeting.

CONTENTS

a project of the
NOW Legal Defense and Education Fund
in cooperation with the
National Association of Women Judges

Taylor, "Oyez, Oyez", National Association of Women Judges, District 2 Newsletter, Spring, 1984.

"Women Judges Tell of Sexism", The Boston Globe, March 6, 1983, 22.

Kanter, "Reflections on Women and the Legal Profession: A Sociological Perspective," 1 Harvard Women's Lawyer 1 (1978).

Wolman and Frank, "The Solo Woman in a Professional Peer Group," 45 American Journal of Orthopsychiatry 164 (January 1975).

Schmidt, "Sexist Schooling," Working Woman, October 1982, p. 101.

Serlin, “Mutterings From the Men's Room", Working Woman, May, 1983, p.112-115.

Schafran, "Real Affirmative Action is More Than Just Numbers," American Banker, October 18, 1982,p.20.

Bernikow, "We're Dancing As Fast As We Can," Savvy, April 1984, p. 41.

Weil, "A Separate Peace," Savvy, July 1984, p. 38.

National Judicial Education Program

to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212) 354-1225

Date: July 16, 1984

To: New York Task Force on Women in the Courts

From: Lynn Hecht Schafran, Esq.
Advisor to the Task Force

Re: Resource Reading Packet: RAPE

Enclosed are a variety of materials relating to rape. This reading packet will provide you with resource materials and background on the issues to be discussed at the Task Force's September 12, 1984 meeting.

CONTENTS

a project of the
NOW Legal Defense and Education Fund
in cooperation with the
National Association of Women Judges

"Judge Says Girl, 5, Invited Sex Assualt," The Capitol Times, January 8, 1982, 1, 4, Cal. 3.

"Ousted Judge in Rape Case Says Feminists Will 'Stoop' to Any Low," The New York Times, January 4, 1978.

"Rape Verdict: Blinded Justice?" New York Magazine, 1982.

"A Furor Over An Alternative Sentence," The National Law Journal, December 5, 1983, p.8.

"Rape Plea an Injustice: Columbia NOW," The Register-Star Hudson, August 19, 1983, Al6.

National Judicial Education Program

to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212) 354-1225

Date: July 16, 1984

To: New York Task Force on Women in the Courts

From: Lynn Hecht Schafran, Esq.
Advisor to the Task Force

Re: Resource Reading Packet: SUPPORT AWARDS AND ENFORCEMENT

Enclosed *are* a variety of materials relating to support awards and enforcement. This reading packet will provide you with resource materials and background on the issues to be discussed at the Task Force's September 12, 1984 meeting.

CONTENTS

Mann, "Newly Poor". The Washington Post, July 15, 1983, B1, Col. 1.

Hunter, Child Support Law and Policy: The Systematic Imposition of Costs on women, 6 Harvard Women's L. J. 1 (1983).

Bernstein, "Shouldn't Low-Income Fathers Support Their Children" 66 Public interest 55 (1982). (Discusses the attitudes of New York City Family Court judges.)

Brunch and Wikler, The Economic Consequences of Child Support," Juvenile and Family Court Journals, Volume 36. Number 3, Fall 1985, 5-26.

National Judicial Education Program
to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212)354-1225

August 3, 1984

To: New York Task Force on Women in the Courts

From: Lynn Hecht Schafran, Esq.
Advisor to the Task Force

Re: Resource Reading Packet: CUSTODY

Enclosed are a variety of materials relating to custody and disbelief in women's allegations of child sexual abuse by their husbands, in the context of custody and visitation cases. This reading packet will provide you with resource materials and background on the issues to be discussed at the Task Force's September 12, 1984 meeting.

CONTENTS

a project of the
NOW Legal Defense and Education Fund
in cooperation with the
National Association of Women Judges

National Judicial Education Program

to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212) 354-1225

Date: August 20, 1984

To: New York Task Force on Women in the Courts

From: Lynn Heck Schafran, Esq.
Advisor to the Task Force

Re: Resource Reading Packet: DOMESTIC VIOLENCE

Enclosed are a variety of materials relating to domestic violence. This reading packet will provide you with resource materials and background on the issues to be discussed at the Task Force's September 12, 1984 meeting.

CONTENTS

"Wife Beating: The Silent Crime", Time, September; 5, 1983, p. 23.

New York State Task Force (now Commission.) on Domestic Violence, Domestic Violence: Second Report to the Governor and the Legislature, 1982

This excerpt from the introduction to this report includes recent statistics for New York State.

McLaughlin and Whisenand, "Beating a Spouse is a Crime", The New York Times, January 10, 1981, p. 23.

"Fields: No Help for Battered Wives'Til Attitudes Change," Marriage and Divorce Today, February 20, 1978, p.1

Marjory D. Fields is Co-Chair of the New York State Commission on Domestic Violence.

Fields, "The Battered Wife," Family Advocate, Fall 1979, p 20.

Fields, Letter to Lynn Schafran dated August 14, 1984 with minutes from a hearing in a domestic violence matter, pointing out problems with judge's treatment of woman seeking an order of protection.

Jones, "When Battered Women Fight Back," Legal periodical citation missing.

Camella S. Serum, Ph.D. "Profile of Assailants," from Michigan Regional Judicial Seminar, Domestic Violence: A Judicial and Social Perspective," November 1981.

"A Study of Patterns in Family Violence," The New York Times, June 8, 1983

"Arrest May Be Deterrent in Domestic Violence, Study Shows," The New York Times, May 30, 1984

National Judicial Education Program

to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York • (212)354-1225

Date: August 20, 1984

To: New York Task Force on Women in the Courts

From: Lynn Hecht Schafran, Esq.
Advisor to the Task Force

Re: Resource Reading Packet: JUVENILE JUSTICE and ADULT SENTENCING

Enclosed are a variety of materials relating to the differential treatment of girls and boys in the juvenile justice system and perceptions of women in the context of adult sentencing.

CONTENTS

a project of the
NOW Legal Defense and Education Fund
in cooperation with the
National Association of Women Judges

Appendix C
Sources for Reports and Videotapes

SOURCES FOR REPORTS AND VIDEOTAPES

The Task Forces of New York and New Jersey have issued summary as well as full reports and to date have made these available to the public without charge. New Jersey also has produced a short, 30 minute videotape which it will loan upon request. Judges in Wisconsin developed a ten minute videotape on courtroom interaction which can also be borrowed.

To order copies of full or summary reports or videotapes contact:

New York reports:

Public Information Officer
Office of Court Administration
270 Broadway
New York, New York 10007
(212) 587-5900

New Jersey reports and videotapes:

Melanie Griffin, Esq.
Administrative Office
of the Courts - CN-037
State of New Jersey
Trenton, New Jersey 08625
(609) 984-5419

Wisconsin videotape:

Susan Keilitz
Secretariat, NAWJ
National Center for State
(804) 253-2000

Appendix D
National Judicial Education Program to Promote Equality for Women and Men in the Courts

National Judicial Education Program

to Promote Equality for Women and Men in the Courts

99 Hudson Street, Suite 1201 • New York, New York 10013 • (212) 925-6635

THE NATIONAL JUDICIAL EDUCATION PROGRAM TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS

The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) was established in 1980 by the NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges to eliminate gender bias in judicial decision making and courtroom interaction. Reported decisions, judicial conduct commission findings, news reports, anecdotal evidence and numerous studies by legal organizations and political and social scientists show this kind of bias to be a continuing, serious and pervasive problem. NJEP is endorsed by the American Academy of Judicial Education, the National Judicial College, the National Center for State Courts and the California Center for Judicial Education and Research.

NJEP's courses, presented at judicial and legal education programs throughout the country, help judges understand how stereotypes, myths and biases about the nature and role of women and men affect fact finding, decision making, sentencing, communication and courtroom behavior. Among the wide range of issues NJEP addresses are: how sex stereotypes shape the admission of evidence and sentencing in rape cases: how the courtroom treatment of women litigants, witnesses, lawyers and experts affects women's credibility: social science research into the courtroom impact of a speaking style called "Women's Language" or "Powerless Speech"; sentencing disparities rooted

a project of the
NOW Legal Defense and Education Fund
in cooperation with the
National Association of Women Judges

in sex stereotypes; support awards and enforcement, focusing on the potential for women of different ages and backgrounds to become self supporting and contribute to the support of their children and the comparative economic well being of women and men after divorce; domestic violence: and how gender bias operates against both men and women in custody disputes.

NJEP employs a variety of interactive adult teaching techniques, including large and small group discussions, self-tests, hypotheticals, videotapes and other visual aids. Courses are tailored to the judicial education program and state in which they are given and are usually taught with local judges. NJEP also provides technical assistance to judges, judicial educators and attorneys developing their own judicial education programs about gender bias. NJEP's work in bringing the problem of gender bias in the courts to the attention of the nation's judiciary led the chief justices of New Jersey, New York and Rhode Island to establish state-wide task forces mandated to determine the nature and extent of gender bias in these state court systems and to develop recommendations and educational programs to eliminate it. NJEP provides technical assistance to these task forces and to judges and lawyers seeking to have such task forces established in their own states.

NJEP's courses have been well received by the predominantly male participants. Evaluation comments include:

> "Superb. Rectified old tired myths--increased my sensitivity 500%."
>
> "I was quite shocked at the information we received indicating the disparity between males and females and the treatment of them in the courts, especially the statistics concerning how women fare after divorce as compared to how men fare after divorce, after a few years. Many of the myths that are taken as facts by judges were shattered by your presentation and the correct situation was revealed. It was the impact of knowledge on ignorance."
>
> "This course should be for everybody at the beginning of the conference."

> "Your thought provoking presentation made us examine anew our courtroom procedures and techniques. Based upon my conversation with other judges, I conclude that your presentation made us focus on a problem that most of US assumed to be nonexistent."

NJEP's pilot course, "Judicial Discretion: Does Sex Make A Difference?", is available in a two-part text based on transcripts from the course as given at the California Center for Judicial Education and Research. The Instructor's Manual (194 pages) includes edited transcripts of the instructors' presentations and participants' responses for the entire course, supplementary readings, copies of visual aids and bibliographies. The Participant's Binder (224 pages) contains all materials used by participants in the course: pre-course readings, hypothetical cases, visual aids, supplementary readings, bibliographies and evaluation forms. Other NJEP publications include Wikler, "On the Judicial Agenda for the 80's: Equal Treatment for Men and Women in the Courts," 64 Judicature 203 (1980); Schafran, "Women as Litigators: Abilities vs. Assumptions," 19 Trial 37 (1983); Schafran, "Eve, Mary, Superwoman: How Stereotypes About Women Influence Judges," 24 Judges' Journal 12 (1985).

The NJEP Director is available to work with judges, judicial educators and attorneys to adapt the NJEP course materials for use in judicial and legal education programs and to assist in setting up state task forces on gender bias in the courts.

Judicial colleges, judicial organizations, gender bias task forces, bar associations and law schools to which NJEP has provided training and technical assistance include:

Alabama Judicial College
American Academy of Judicial Education
American Bar Association
American Judicature Society
Arizona Task Force on Gender and Justice
California Institute for Judicial Education and Research
Canadian Bar Association
Canadian Institute for the Administration of Justice
Cardozo Law School
Conference of Chief Justices
Conference of State Court Administrators
Colorado Judicial Conference
Connecticut Bar Association
Connecticut Judicial Institute
Cornell Law School
Delaware Bench and Bar Conference
Federal, Administrative Law Judges Conference
Florida Bar Association
Illinois' Judges' Association
Indiana Judicial College
Louisiana Judicial College
Massachusetts Women Lawyers Association
Missouri Bar/Judicial Conference
National Association of State Judicial Educators
National Association of Women Judges
National Center for State Courts
National Judicial College
New Jersey Bar Association
New Jersey Judicial College
New Jersey Institute for Continuing Legal Education
New Jersey Supreme Court Task Force
on Women in the Courts
New York Family Courts
New York Judicial College
New York Task Force on Women in the Courts
New York Trial Lawyers Association
Oregon Supreme Court Program on Judicial Bias
and Prejudice
Philadelphia Bar Association
Rhode Island Supreme Court Committee
on the Treatment of Women in the Courts
Wisconsin Judicial Conference
Yale Law School

Appendix E
Pre-Task Force Regional Meeting Script

NEW YORK STATE ASSOCIATION OF WOMEN JUDGES
and the
WOMEN'S BAR ASSOCIATION OF
THE STATE OF NEW YORK

PRELIMINARY INQUIRY FOR CHAPTER MEETINGS
RESPECTING GENDER BIAS IN THE COURTS

I. In your county, are there problems with the way judges deal with substantive areas of the law that particularly affect women that are so extensive and/or serious as to require judicial education and reform?

For example:

* In rape cases, do judges set lower bail than in cases of non-sexual assault? Do judges permit a courtroom atmosphere and cross-examination in which the victim is made to feel that she rather than the defendant is on trial? Are sentences inappropriately lenient?

* Is the equitable distribution law resulting in equitable divisions of property at divorce? Do support awards reflect a realistic sense of women's opportunities in the work force and the costs of child raising and child care? Are support awards being enforced?

* Are domestic violence cases treated as serious assaults or family squabbles? Are orders of protection enforced? Are support awards to domestic violence victims sufficient and are they enforced?

* *Are* juvenile female status offenders treated more harshly than similarly situated males?

These examples are by no means exhaustive. Be sure to ask whether there are other substantive law areas in which gender bias appears to be operative. Such bias may be a function of attitudes, of adherence to outdated stereotypes about the nature and role of women and men, or of lack of factual information about women's lives today, particularly the economic consequences of divorce.

II. With respect to the procedural and overall treatment of women lawyers, litigants, witnesses and jurors in the judicial system, are women accorded the same respect, dignity and credibility as their male counterparts?

Again, the following questions are not meant to be exhaustive but to stimulate your thinking. Bear in mind that gender bias is often subtle and difficult to describe. Often it is expressed in ways that seem so natural in our society that it is not understood as biased behavior, e.g.,

the judge who believes he is complimenting a woman when he comments on her appearance in open court, whereas he is actually detracting from her professional credibility by reinforcing the stereotype of women as decorative objects.

- Do judges patronize women in the guise of chivalry?

- Do judges appear to give greater credibility to the testimony of male witnesses than to female witnesses?

- Do judges address women by first names and "terms of endearment" when men are addressed by surnames and titles?

- Do judges make hostile remarks and sexist jokes about particular women or women in general?

- Are the equal employment guidelines for the courts being adhered to?

III. With respect to women attorneys in particular, here is another non-exhaustive list of questions to stimulate your thinking.

- Are women attorneys awarded lower fees than men in similar cases?

- Are women attorneys awarded a fair share of fee generating appointments, e.g., receiverships and administrations?

- Are women attorneys challenged as to whether they are attorneys, years in practice, etc., when male attorneys are not?

- Are women attorneys treated as interlopers or ignored at conferences in chambers?

- Do judges appear to give more attention and credibility to the opinions and arguments of male counsel than to female counsel?

IV. If you determine that there are problems serious enough to warrant further investigation, (1) what are your suggestions for documenting these problems, and (2) what are your suggestions for eliminating them?

Appendix F
Task Force Mandates

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
MINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

FOR RELEASE: November 11, 1982

Contact: Catherine Arnone 609-292-9580

Chief Justice Robert N. Wilentz has announced the formation of a 26-member Task Force on Women in the Courts to investigate the extent to which gender bias exists in the New Jersey judicial branch, and to develop an educational program to eliminate any such bias.

The Task Force, headed by Superior Court Judge Marilyn Loftus, will present its findings and an educational program to all State court judges at the opening session of the 1983 Annual Judicial College next fall. The Task Force includes male and female judges, lawyers, law school professors, a sociologist and a women's group representative, and a county prosecutor.

"We want to make sure, in both *substance* and procedure, that there is no discrimination whatsoever against women -- whether they are jurors, witnesses, judges, lawyers, law clerks or litigants," said the Chief Justice. "Obviously, bias of any kind has no place in the judiciary."

Judge Loftus said that the Task Force will begin its work by surveying male and female court personnel, lawyers and citizens who have been involved in court proceedings about their perception of gender bias in the system. On the basis of the surveys, the Task Force will focus on specific areas. The Task Force efforts will be documented with statistical research and data.

A list of Task Force members is attached.

MEMBERS FOR TASK FORCE ON WOMEN IN THE COURTS

Superior Court Judge Marilyn Loftus, Chair (Essex)

District Court Judge Rosemary Higgins Case (Essex)

Appellate Judge Geoffrey Gaulkin

Appellate Judge Michael Patrick King

Superior Court Judge Steven Z. Kleiner (Cumberland)

Superior Court Judge Virginia Long (Union)

Juvenile & Domestic Relations Judge Florence R. Peskoe (Monmouth)

Superior Court Judge Nicholas Scalera (Essex Assignment Judge)

Superior Court Judge Thomas F. Shebell, Jr. (Monouth Assignment Judge)

Superior Court Judge Mary Ellen Talbott (Camden)

Newark Municipal Court Judge Betty Lester

Jersey City Municipal Court Judge Elaine Davis

Professor Elizabeth F. Defeis, Seton Hall Law School, Newark

William Kearns, Willingboro lawyer, Chair, Women's Rights Section, New Jersey State Bar Association

Susan R. Oxford, Deputy Attorney General (East Orange)

Lynn Schafran, Director, National Judicial Education Program to Promote Equality for Women and Men in the Courts

Phoebe W. Seham, Tenafly lawyer, Committee to Study Sex Discrimination in New Jersey Statutes

Theodosia Tamborlane, law assistant

Professor Nadine Taub, Rutgers Law School, Newark

Eileen Thornton, Trenton, Past President, Women's Equity Action League

Dolores Pegram Wilson, lawyer, Public Advocate's Office, Newark

Raymond Trombadore, Somerville lawyer, Secretary of the New Jersey Bar Association

Philip Carchman, Prosecutor Mercer County

Judith O'Leary, law clerk (Essex)

Helen Spiro, lawyer, Administrative Office of the Courts

Patricia K. Nagle, lawyer, Administrative Office of the Courts, Staff to the Force

# # # # # # # # #

Remarks of Lawrence H. Cooke, Chief Judge of the state of New York, at Press Conference announcing the formation of the New York Task Force on Women in the Courts, at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York City, Thursday, May 31, 1984 at 11:00 a.m.

* * * * * * * * * * * * * *

The concept of justice is broad in reach and serious in nature; it is antithetical to any discrimination triggered by prejudice.

None of us had any choice of the home in which we were born; a higher power decided that circumstance. TO deny anyone anything because of rare, creed, color national origin, gender, or any such irrelevant consideration is the basest kind of misbehavior. It is a surrender of the human to the animal instincts.

Distinctions grounded on improper concerns have no place whatsoever in the operation of our legal system and every reasonable effort should be made to guarantee that the scales of justice are balanced evenly for every person who comes before the courts. They expect no less and, certainly, are entitled to no less. There must be no corridors of special privilege, high hurdles for some, or bans on any. There must be no institutional hypocrisy.

It was not much more than 100 years ago that the United States Supreme Court upheld the constitutionality of an Illinois statute prohibiting women from gaining admission to that State's Bar. The words, that all are created equal and are endowed with certain inalienable tights, yielded no life, liberty or pursuit of happiness to those before whom doors were closed in search of

their noblest aspirations or those who were told they could not enter the legal profession because of sex.

There are those, particularly such substantial groups as the New York State Association of Women Judges and The Women's Bar Association of the State of New York, who have expressed concern with the situation of women in our legal system. There is no question but that in recent chapters of history tremendous strides have been made by women in the legal structure and operation of our State and Nation. The issue remains whether, at this juncture, their allotment of the jurisprudential scheme in the Empire State is fair under all the circumstances.

To answer this question the New York Task Force on Women in the Courts is being organized. The general aim of the Task Force will be to assist in promoting equality for men and women in the courts. The more specific goal will be to examine the courts and identify gender bias and, if found, to make recommendations for its alleviation. Gender bias occurs when decisions are made or actions taken because of weight given to preconceived notions of sexual roles rather than upon a fair and unswayed appraisal of merit as to each person or situation, In determining the fact or extent of its existence, the focus of the Task Force should be upon all aspects of the system, both substantive and procedural. An effort should be made to ascertain if there are statutes, rules, practices, or conduct that work unfairness or undue hardship on women in our courts.

Recently a similar study was conducted on behalf of the court system in New Jersey. Its leadership is to be commended and its methodology provides an exemplar for the study to be conducted here in New York.

The Task Force is made up of outstanding, representative and independent citizens. The members are charged with fulfilling their mission dispassionately and with reasonable dispatch.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPREME COURT
Providence

September 13, 1984

Lois Kalifarski
Superior Court Clerk's Office
250 Benfit St.
Providence, R.I. 02903

Dear Ms. Kalifarski,

As the role of women increases daily in our society, I think it is appropriate that the Rhode Island Court System survey that increasing role as it relates to us. More than ten percent of the attorneys in our state bar are now women. Increasingly, women are found in professional agencies which interact with the courts and, unfortunately, with the growth in the volume and complexity of family law, women are increasingly litigants before the courts.

I believe that many feel that women are being treated fairly in our system. There have, in fact, been no widespread complaints. However, some recent research by the Rhode Island Bar Committee on Sex Discrimination indicates that all may not be as well as some people feel and that there are areas which should be explored.

To respond to that concern I am appointing a Committee on Women In The Courts. This group will have the responsibility of reviewing a wide range of relevant issues and reporting their findings to me. It will be composed of members of the Judiciary, related court agencies, and other persons who I feel can make a significant contribution to such a study. The Committee will be chaired by Associate Justice Corinne P. Grande of the Superior Court.

I am writing to ask that you make some time in your 'busy schedule to serve on this committee. If you are able to do so, I would appreciate a confirmation from you as soon as possible.

Sincerely,

Joseph A. Bevilacqua
Chief Justice

cc. Justice Corinne P. Grande

Appendix G
Women Court Personnel

Appendix VII

"Local Court Administration:

Findings from a Survey of Appointed Managers"

by

G. Larry Mays and William A. Taggart

69 Judicature 29 (1985)

The authors of this study have asked **us** to state that although it did not involve a random sample of court management personnel, they believe that the respondents included are representative of court managers both elected and appointed, especially those who are members of the National Association for Court Management.

Local court administration: findings from a survey of appointed managers

Appointed court managers are not a homogeneous group, and do not work in a uniform organizational context; most perform their jobs as an extension of the judge to whom they report.

by G. Larry Mays and William A. Taggart

Since the appearance of *Managing the Courts* by Friesen, Gallas, and Gallas,[1] and the National Advisory Commission on Criminal Justice Standards and Goals *Task Force Report on the Courts*,[2] much has been said about the "profession" of court administration.[3] Commentators have focused on the technical and managerial aspects of court operations;[4] the broader environment of court administration;[5] differing "styles" of management;[6] conflicts in court management;[7] the nature and consequences of court reforms;[8] distinctions between appointed and elected

The authors gratefully acknowledge the Arts & Sciences Research Center at New Mexico State University for funding this project, the executive boards and members of the National Association for Court Administration and the National Association of Trial Court Administrators for their assistance in the research, and the anonymous reviewers for their many helpful comments.

1. Friesen, Gallas, and Gallas, MANAGING THE COURTS (Indianapolis: Bobbs-Merrill Co., 1971).

2. National Advisory Commission on Criminal Justice Standards and Goals, TASK FORCE REPORT ON THE COURTS (Washington. DC: U.S. Governmcnt Printing Office, 1973).

3. In this paper the terms court administration and court management will be used interchangeably. We will, however, use the term "manager" to refer to administrators, clerks, and executives.

4. See, for example, Friesen, Gallas, and Gallas, *supra* n. 1; and La Bar, *The Modernization of Court Functions: A Review of Court Management and Computer Technology, 5* J. OF COMPUTERS AND LAW 97 (1975).

5. Saari, *Modem Court Management: Trends in Court Organization Concepts—1976,* 2 JUST. SYS. J. 19 (1976); and Wheeler and Whitcomb. JUDICIAL ADMINISTRATION: TEXT AND READINGS (Englewood Cliffs: Prentice-Hall. 1977).

6. Corso. *Three Political Theories for Court Administrators,* 63 JUDICATURE 427 (1980).

7. See Friesen, *Constraints and Conflicts in Court Administration,* 31 PUBLIC ADMINISTRATION REV. 121 (1971); Harrall, *In Defense of Court Managers: The Critics* Misconceive *Our Role,* in Gallas, ed., PROCEEDINGS OF THE FIRST NATIONAL SYMPOSIUM ON CORT MANAGEMENT (San Diego: National Center for State Courts, 1981); McConnell, *The Role of the State Administrator,* JUSTICE IN THE STATES (Washington, DC: U.S. Department of Justice, 1971).

8. Glick, *Innovation* in *State Judicial Administration: Effects on Court Management and Organization.* 9 AMERICAN POLITICS Q. 49 (1981); and Berkson and Carbon, COURT UNIFICATION: HISTORY. POLITICS, AND IMPLEMENTATION (Washington, DC: Government Printing Office, 1978).

administrators;[9] and the development of theories of court administration.[10]

Most of these discussions have been directed at answering two questions: what should court managers be;[11] and what should court managers do?[12] Although raising and addressing such questions are important in the development of an administrative subfield, much is to be gained by sidestepping the normative considerations of what ought to be and focusing instead on the actual management of the courts, if, for no other reason, than to assess the congruence between theory and practice in contemporary court administration. However, except for a handful of case studies[13] and a few dated surveys of court administrators,[14] little has been written about the individuals who perform the day- today administrative tasks associated with the courts' nonadjudicative business. Consequently, our practical understanding of modem court administration is limited.

This article presents the findings of a research project profiling American local court managers. Compiling such a profile is no easy undertaking, for, as Saari notes, there is no-accurate count of the number of court managers in the United States, thereby making it very difficult to identify the total population of court managers.[15] As a result, two preliminary decisions were made in order to facilitate the identification and selection of court managers.

First, since courts are overwhelmingly local institutions, they are locally managed.[16] It was decided, therefore, to focus on local court managers, irrespective of title or administrative responsibilities. Saari notes, for example, that title cannot be the essential, determining factor because ". . . many clerks of court are not managers, and some truly are managers. Some federal and state-court administrators and some trial-court administrators occupy positions that have limited managerial content."[17]

Second, to conveniently identify individuals engaged in court administration, we solicited the assistance of two professional associations that are representative of local court managers, the National Association for Court Administration (NACA) and the National Association of Trial Court Administrators (NATCA). We readily acknowledge that the universe of local court managers is not necessarily reflected in the combined membership of these two organizations, but it does provide a relatively efficient method for contacting a number of appointed administrative personnel. Although the NACA and NATCA are not the only national associations available to court managers, most of the other groups serve managers working in nonlocal courts, specialized professional fields, or elected clerks.[18] Moreover, the NACA and NATCA are the largest national associations serving local manag ers, and merged in July, 1985 to form the National Association for Court Management (NACM) in recognition of having similar constituencies.

Overall, the characteristics of the respondents suggest the population is fairly heterogeneous.

Study design

With the cooperation of the NACA and NATCA a mail questionnaire was distributed to 731 organizational members in 46 states.[19] The mailing list supplied by these two groups provided a total of 847 entries. From this list entries were eliminated that: indicated institutional memberships (e.g. university libraries), or contained titles for individuals suggesting an occupation not directly related to court management (e.g. judges, consultants and students). The final list was composed of 410 NACA members and 321 NATCA members.

The questionnaires were distributed in late November, 1982, with one postcard follow-up, and the data were compiled and analyzed in March and April, 1983. Of the 731 surveys sent, 407 (55.7 per cent) were returned, including 205 (50.0 per cent) from the NACA membership and 202 (62.9 per cent) from the NATCA members. By survey research standards, an overall response rate of 56 per cent is fairly good, although the discrepancy in organizational response rates is not easily understood.[20] Thirty of the questionnaires were completed by nonmanagement personnel (e.g. judges, support personnel and registers) bringing the number of cases down to 377.

9. Berkson and Hays, *Injecting Court Administrators into an Old System: A Case of Conflict in Florida,* 2 JUST. SYS. J. 57 (1976).

10. Saari, AMERICAN COURT MANAGEMENT (Westport, CT: Quorum Books, 1982); and Gallas, *The Conventional Wisdom of State Court Administration: A* Critical *Assessment and an* Alternative *Approach,* 2 JUST. SYS. J. 35 (1976).

11. *See,* for instance, Berkson and Hays, *The Unmaking of a Court Administrator?,* 60 JUDICATURE 134 (1976); and in the same volume the article by Cheatham, *The Making of a Court Administrator,* page 128.

12. *See,* for example, Butler, *Presiding Judges' Role Perceptions of Trial Court Administrators,* 3 JUST. SYS. J. 181 (1977).

13. See Berkson and Hays. *supra* n. 9; Berkson and Hays, *The Forgotten Polificians: Court Clerks,* 30 U. MIAMI L. REV. 499 (1976); Stranahan and Cutler, *County Court Administrators* in *Pennsylvania.* 43 PENNSYLVANIA BAR ASSOCIATION Q. 56 (1971): Jensen and Dosal, *Circuit Clerks' Study,* 1 ST. COURT J. 17 (1977).

14. Report of the National Association of Trial Court Administrators, SURVEY ON THE POSITION OF TRIAL COURT ADMINISTRATOR IN THE STATES (New York: Institute of Judicial Administration, 1966); and National Advisory Commission on Criminal Justice Standards and Goals, *supra* n. 1.

15. Saari, *supra* n. 7. Saari is currently compiling a directory listing of approximately 1,600 "court administrators" at all levels of government.

16. *Id.* at 32; *see also* Glick, COURTS, POLITICS. AND JUSTICE 54 (New York: McGraw-Hill. 1983). The managers selected for this survey work in courts of general trial or limited/specialized jurisdiction, as opposed to being appellate court managers, most of whom belong to the Conference of State Court Administrators.

17. *Id.* at 133.

18. Other organizations in the area of court administration include: International Association of Elected Clerks and Election Recorders (IAECER); Conference of State Court Administrators (COSCA); Federal Court Clerks Association (FCCA); National Conference of Appellate Court Clerks (NCACC); National Council for Judicial Planning (NCJP); National Conference of Bankruptcy Clerks (NCBC); and National Association of State Judicial Educators (NASJE).

19. There are no organizational members in Mississippi, New Hampshire, Vermont, and West Virginia.

20. *See, for example,* Babbie, THE PRACTICE OF SOCIAL RESEARCH (Belmont. CA: Wadsworth, 1975) or Hagan, RESEARCH METHODS IN CRIMINAL JUSTICE AND CRIMINOLOGY (New York: Macmillan, 1982). Among the respondents, more members of the NATCA than the NACA (70 per cent and 40 per cent, respectively) have a four-year college degree. If this is reflective of the general membership, then these differences might account for the discrepancy in organizational response rates. See Mays and Taggart, Survey *Reveals Demographic Differences in NACA and NATCA Membership,* COURT MANAGEMENT J. 33 (1984).

Table 1 General titles of respondents by method of selection

Title	Appointed		Elected	
	N	%	N	%
Clerk	80	24.9	51	91.1
Administrator	190	59.2	1	1.8
Clerk plus 2nd title	13	4.0	4	7.1
Administrator plus 2nd title	15	4.7		
Executive	23	7.2		
Total	321	100.0	56	100.0

Table 2 Demographic characteristics of court managers

	N	%
Gender		
Female	132	41.6
Male	185	58.4
Age		
Below 31 yrs.	32	10.1
31–40 yrs.	126	39.7
41-50 yrs.	80	25.2
51-60 yrs.	68	21.5
Over 60 yrs.	11	3.5
Income		
$10-25,000/yr.	95	30.0
$26-40,000/yr.	165	51.9
Over $41,000/yr.	57	18.0
Prior court experience		
Yes	232	72.5
No	88	27.5
Educational attainment		
High school	47	14.6
Some college	80	24.9
4 yr. college degree	75	23.4
Master's*	86	26.8
Law degree	33	10.3

In this and subsequent tables the number of cases may not equal 321 due to missing information; percentages may not total 100 per cent due to rounding.
*Includes one individual holding a Ph.D.

As expected, a sizable proportion (85 per cent) of the respondents are appointed court managers, with the remainder being elected officials. Among the appointed managers, almost two-thirds are administrators in title, another 30 per cent are clerks and a handful are court executives (see Table 1). In the following presentation we will limit our attention to these 321 appointed managers. Excluding the elected officials, all of whom except one are clerks in title, is desirable given the limited number of cases and the many differences between elected and appointed court managers.[21]

At the lower income levels the proportion of females far exceeds that of males.

The survey was designed to examine two general areas: demographic factors concerning the court managers and the courts in which they work, and attitudes and opinions about court' management and the broader environment of the administration of justice. In the following analysis we will focus on respondent demographic characteristics, organizational features and opinions regarding the environment of court administration.[22]

Demographic characteristics

Age/sex. Demographic information on the appointed managers appears in Table 2, where we have attempted to use variable categories found in earlier studies to facilitate comparisons. Overall, the characteristics of the respondents suggest that they represent a fairly heterogeneous population. Slightly more than 50 per cent of the 321 appointed managers are male. The average age of the respondents is 42, with no significant age difference between male and female managers. When examining the age breakdowns provided in Table 2, it can be seen that almost two-fifths of the managers are between 31 and 40, and two-thirds fall in the 31 to 50 range.

Table 3 Income of court managers by gender

Income level	Gender	
	male	female
$10,000-15,000	1	12
16,000-20,000	7	31
21,000-25,000	12	32
26,000-30,000	36	30
31,000-40,000	76	23
40,000 or more	53	4
Total	185	132

Gamma=-.74; Tau C=-.61.

Salary. Table 2 also contains information on annual salaries. Roughly one-half of the respondents indicated that they earn between $26,000 and $40,000 a year. A more interesting finding concerns the relationship between gender and annual income. Information on sex and income appears in Table 3. At lower income levels, the proportion of females far exceeds that of males: only one man (compared to 12 women) reported an annual salary between $10,000 and $15,000. Conversely, the proportion of males in the higher income brackets is much larger. For instance, five women reported an income greater than $40,000 per year compared to 66 men. More generally, one-half of the women report incomes lower than $25,000 per year, whereas 90 per cent of the men earn more than this a year. This strong negative relationship between income and sex is borne out by the summary statistics provided with the table.

Previous employment. Returning to Table 2, we find that when asked about prior service, two-thirds (72 per cent) of the managers reported working in a "court-related" capacity prior to assuming their present positions. Although reflecting a variety of occupations and career paths, on the average this translated into a little less than six years of experience (results not shown). However, one should not be mislead into believing that a majority of managers have this kind of extensive employment background since the distribution of years of service is positively skewed. Hence, more than one-half of the respondents noted that they had held this position for four years or less, with 21 per cent alone indicating that they were at this job only two years. The mean length of service is pulled upward due to a few individuals reporting rather extended (greater than 10 years) employment periods.

21. For a discussion of many of these differences, see Berkson and Hays, *supra* n. 9. An exploratory analysis of the survey results for the court clerks can be found in Taggart and *Mays, The Politics and Administration of Local Trial Courts: A Look at the Overlooked Court Clerk,* 4 POLITICS AND POLICY 66 (1984).

22. We make no pretense of having a representative sample of all court managers. Indeed, we cannot be assured that the respondents are even representative of the court management membership of the two organizations. Extreme caution therefore must be exercised in drawing inferences about all court managers. Some solace can be taken in the fact that where comparisons are possible, many of our findings approximate those reported in earlier studies, and studies working with much smaller samples (see citations above).

Affiliations. Respondents also were queried regarding membership in professional organizations germane to court administration. In addition to being affiliated with the NACA or NATCA, more than 50 per cent of the managers are members of at least one other association (results not shown). Most common is membership in the American Judicature Society, where one out of every three individuals reports being a member. This is closely followed by affiliations with state and local court management organizations (25 per cent). Beyond these two, however, the degree of participation in any specific association is substantially lower. The American Bar Association is the third most frequent, with nine per cent holding a membership. Fourth in the ranking is the American Society for Public Administration, where six per cent report being a member.

There is a very strong positive relationship between the region of the respondent's alma mater and employment region.

Education. We complete the discussion of demographic characteristics by focusing on the educational background of court managers and their academic preparation for a career in court administration.[21] Respondents were asked to indicate their highest level of educational achievement (see Table 2). Slightly more than 60 per cent have successfully completed at least four years of college. Perhaps more noteworthy is that one-third hold post-baccalaureate degrees, with most having a master's degree of some type.

An examination of the different college majors provides additional insight into the educational background of court managers. Among those managers providing information about their four year degree (n=70), the most common major is business administration (21 per cent), followed by public administration (7 per cent) and criminal justice (6 per cent). Perhaps more surprising than the prominence of business degrees, is that these three majors only account for one-third of all the degrees: another 38 majors are represented, ranging from zoology to social work.

When turning to those 85 managers holding a post-baccalaureate degree, there is less diversity in majors. Forty per cent of these individuals have a graduate degree in public administration, while one-third hold a specialized degree in judicial or court administration.[24] Rounding out the top three majors are seven degrees (8 per cent) in criminal justice. These three majors represent eight out of every ten master's degrees among the managers. It would appear that the academic achievements of court managers are more specialized and directly related to administration as one moves from four year to graduate degrees.

In any field, but especially a specialized administrative field like court management, it is necessary that formal education be supplemented with continuing in-service training programs. The managers were asked to list as specifically as possible the most beneficial training sessions they had attended. Although a number of individuals only listed titles such as "conferences" or "state seminars," several indicated specific course. content such as caseflow management, personnel management, budgeting and/or finance, and records management. As the respondents emphasized, these training programs are offered in conjunction with state administrative offices of courts, associational meetings, and by the Institute for Court Management. It is apparent from the managers' responses that in-service training programs are viewed as being extremely valuable since they cover material not normally presented as part of most college degree programs. Consequently, almost all of the respondents reported attending at least one training program that was beneficial.

The issue of localism has received considerable attention in recent discussions of court administration, in large part because efforts to reform state court systems through greater centralization have been proffered as viable methods to counteract undesirable parochial tendencies.[25] Localism is shown, for example, when an individual attends college and subsequently gains employment in the same locale. Although it is not possible to provide a state-level analysis of university attendance and current employment, a regional breakdown is presented in Table 4.[26] As can be seen, there is an extremely strong positive relationship between the regional location of a respondent's alma mater and region of employment. Among those reporting information on university at tendance, most went to school and now work in the same region. Indeed, only 18 per cent of the managers are employed outside the region where they attended college.

In summarizing the demographic

Table 4 Region of employment by regional location of university attended

Region of current employment	Regional location of university attended				
	West	Midwest	South	East	Total
West	55	2	2	1	60
Midwest	14	56	3	2	75
South	5	1	28	3	37
East	1	1	1	22	25
Total	75	60	34	28	197

Gamma=.87; Tau b=.76.

23. For an extended discussion and analysis of the following material see Taggart and Mays, *Preparing to Manage the Courts: The Educational Backgrounds of Court Administrators*, 67 JUDICATURE 284 (1983).

24. Three universities are generally recognized for their specialized master's degrees in judicial administration. These include: the University of Denver (Institute for Court Management), the University of Southern California, and American University (see Scheb, *Florida Conference Examines Education of Court Administrators*, 64 JUDICATURE 465 (1981)). Although these programs have been influential in some segments of the field of court administration, only 34 of the respondents to this survey are graduates of those programs.

25. See Berkson and Hays, *supra* n. 9 for a discussion of localism. Gallas, *supra* n. 10, defends the need for some local autonomy in order for courts to remain responsive to changing environmental conditions.

26. The regional classificatory scheme corresponds with that used by the U.S. Bureau of the Census. To protect respondent confidentiality a more disaggregated analysis cannot be pursued.

Table 5 Administrative and organizational features

	N	%
Type of court		
General jurisd.	180	56.4
Other	139	43.6
Title of appointer		
Judge	263	82.2
Manager	24	7.5
Both	14	4.4
Other	19	5.9
Length of tenure		
1-5 years	173	54.4
6-10 years	84	26.4
Over 10 years	61	19.2
Annual civil caseload		
Less than 1000 cases/yr.	45	17.3
1000-10,000 cases/yr.	138	53.1
More than 10,000 cases/yr.	77	29.6
Annual criminal caseload		
Less than 1000 cases/yr.	54	20.1
1000-10,000 cases/yr.	142	52.8
More than 10,000 cases/yr.	73	27.1
Administrative index		
No administrative duties	9	2.8
Responsible for 1 function	12	3.7
Responsible for 2 functions	90	28.0
Responsible for 3 functions	95	29.6
Responsible for all 4	115	35.8

Table 6 Administrative responsibility for four functions

	Primary responsibility for...							
	Budget		Personnel		Jury management		Case schedule	
	N	%	N	%	N	%	N	%
Manager	282	89.5	275	87.3	195	71.4	185	58.7
Judge	13	4.1	27	8.6	68	21.2	114	36.2
Both	17	5.4	12	3.8	7	2.6	13	4.1
Someone else	3	1.0	1	0.3	3	1.1	3	1.0

characteristics of court managers, it can be seen that most are males, in the 31-50 age range, holding relatively well paying positions. While many of these individuals hold college degrees, their undergraduate educations demonstrate a tremendous diversity. At the graduate level most are likely to have degrees in judicial/court administration, public administration, or criminal justice. Most of the managers have held court-related positions prior to their current appointments, and many work in the region of the country in which they were educated. These factors considered together mean that court managers resemble others in the courtroom work group—particularly attorneys and judges. While this similarity does not guarantee their acceptance, it does make them less foreign to the other actors in the adjudication process.

Administrative context

As noted previously, almost two-thirds of the respondents have the title of administrator, while the remainder are clerks and executives in title. Additional job-related information appears in Table 5. Here again we find that the respondents represent a fairly diverse group, but there are some exceptions to this trend. A slim majority of the managers (56 per cent) work in courts of general trial jurisdiction. The other respondents noted that they are in courts with either limited or specialized jurisdictional responsibilities.

Selection. Overwhelmingly the appointed managers are selected by a single judge or body of judges (82 per cent). A small proportion are appointed by court administrative personnel (8 per cent), while even fewer (4 per cent) are selected by a judge and administrator in consultation. A small number (6 per cent) are chosen by a variety of more idiosyncratic methods. For example, some managers revealed that they obtained their present position through civil service advancement, whereas in a couple of courts personnel are selected by the city manager and/or council. Nevertheless, most managers serve at the pleasure of the judiciary.

Tenure. In addition to focusing on method of selection, respondents were asked to indicate how long they had been in their present position. Slightly more than 50 per cent reported a tenure of five years or less, with 19 per cent indicating that they had held their position in excess of ten years. On the average, respondents had worked approximately six and one-half years in their present capacity. Moreover, when this is considered in light of their previous experience (see Table 2), an average respondent had worked a little more than 12 years in two positions directly related to the operation of courts.

Caseload. Information on annual caseload also appears in Table 5. Respondents were asked to indicate the approximate number of civil and criminal cases their courts handled the previous year. Slightly more than two-thirds of the managers indicated that they work in courts which processed less than 10,000 civil or criminal cases a year.[27] Roughly one-fifth of the managers reported caseloads of less than 1,000 a year, and only a very small percentage indicated civil or criminal caseloads in excess of 50,000.

Authority. To further our understanding of their administrative roles, court managers were asked to indicate who has the primary responsibility for performing four administrative functions in their courts. Two of the functions, budgeting and personnel, are endemic to any administrative process. The other two, jury management and case scheduling, are unique products of the trial court process, and represent major elements of many intracourt conflicts. All four management functions are central to the operation of a court and generally have been treated in most of the reform literature as duties falling to. court administrators.

Table 6 shows that at least half of the managers report having primary responsibility for each of the four functions. However, the degree of managerial control is not uniform across functions. In Butler's 1977 study, presiding judges were asked to rank the 10 most important responsibilities of court administrators.[28] The judges ranked the four functions included here as follows: budgeting was first, jury management sixth, personnel management seventh, and caseflow management tenth. In the present study, the most prevalent function assigned to court managers is budgeting, where nine out of every ten managers claim primary responsibility. This is closely followed by issues of personnel (87.3 per cent). Then there is a 15 per cent drop in the proportion of managers having control over juror utilization and scheduling, and finally, only 59 per cent of the managers claim that they have primary responsibility for case scheduling.

In those instances when a manager does not have primary responsibility for a function, the task is usually performed by a judge. A few respondents indicated that administrative functions are shared equally, while even fewer indicated that

27. The caseload statistics are biased slightly upward. For some courts a particular type of case does not apply (e.g. criminal cases cannot be resolved by specialized courts) but have been treated as missing data.

28. Butler, supra n. 12.

someone else performs a given function.

Although there seems to be general consensus among court managers and judges over the scope of court administration, it should be recognized that there is not a clear delineation between adjudicative and nonadjudicative business in the courts. This means that much court administration takes place in the grey area between the court manager's role and that of the judge. The net result is that managers have unequal responsibilities across courts, a condition that likely results from influences such as the propensity of a judge(s) to delegate administrative duties as well as the increasing competence and professionalization of court managers.

A simple additive index of administrative authority has been constructed to understand the extent of the manager's responsibilities. The index represents the number of functions assigned to each manager, and thus has a range from zero (no administrative duties) to four (primary responsibility for all four functions). The results are summarized in Table 5. Approximately two-thirds of the respondents are responsible for at least three administrative tasks, with over 90 per cent performing two or more tasks. Only a handful (6.5 per cent) report having less administrative involvement. Yet this should not diminish the significance of the finding that a clear majority do not have primary authority for all four functions, even though most of the court reform literature suggests that these duties should be assumed by an appointed manager who has the requisite skills to undertake such tasks.

Survey results regarding the administrative context of court management present a mixed picture. First, most of the managers carry the title administrator and are appointed to their position by a judge or panel of judges. Most of the court administrators work in courts of general trial jurisdiction handling less than 10,000 civil and/or criminal cases annually. Finally, while the clear majority of court managers handle a range of administrative functions, it is apparent from their answers that there is not complete agreement on the scope of court administration, with a broad undefined area remaining between the adjudicative and non-adjudicative business of the courts.

Environment

Up to this point we have sought to isolate court managers in the administration of justice by delineating who they are, what they do, and where they work. In this final section we take a different perspective and examine the relationships that court managers enjoy with other individuals and groups. There has been much speculation but little empirical evidence about the reception and treatment of court managers. Hence, our objective is to examine the niche that managers have developed in the legal community, and to do so from their perspective.

Several of the questionnaire items addressed relations with individuals found both within and outside a court's organizational framework. Many of the results are summarized in Table 7. With a great deal of emphasis being placed on judge-manager interactions, respondents were asked if the judge(s) in their court treated them as a colleague or employee. Slightly more than 40 per cent of the managers reported that they are regarded as an employee. That a sizable number of individuals feel this way is not totally unexpected inasmuch as various commentators on court administration have noted the proclivity of judges to see appointed managers as simply extensions of the bench.[29] What is more surprising is that almost the same number of respondents report being treated as a colleague.

Table 7 Managers' opinions on the environment of court administration

	N	%
Judge's treatment		
Employee	133	42.8
Colleague	119	38.3
Other	59	19.0
Public is aware of issues involving court managers		
Strongly agree/agree	31	9.8
Neutral/no opinion	12	3.8
Strongly disagree/disagree	274	86.5
Court managers should consider the public's opinion		
Strongly agree/agree	223	70.5
Neutral/no opinion	29	9.2
Strongly disagree/disagree	64	20.2
Group most supportive of court managers		
Judges	119	62.3
Court management personnel	51	26.7
Attorneys	14	7.3
No one	4	2.1
Media	2	1.0
Other	1	0.5
General public	0	0.0
Group least supportive of court managers		
General public	73	31.6
Court management personnel	41	17.7
Other branches/levels of govt.	38	16.5
Attorneys	31	13.4
Media	30	13.0
Judges	15	6.5
Other	3	1.3

Information concerning the general public was also solicited. When confronted with the statement that managers should consider the opinions of the general public in performing their job, a little more than two-thirds of the respondents agreed or strongly agreed. Perhaps more significant is that even a larger proportion (86.5 per cent) indicated that most citizens are not aware of issues involving court managers. It would appear that while many managers believe that public opinion is relevant to court administration, an overwhelming majority simultaneously believe that the citizenry is poorly informed when it comes to court management issues. This indirectly suggests that public opinion probably has a marginal impact on what court managers actually do.

A later series of questions asked respondents to identify the groups most and least supportive of court managers. As can be seen in Table 7, a full 60 per cent of the managers revealed that judges, more than anyone else, have been the most supportive group.[30] Another one-fifth indicated that other courtroom personnel are most supportive. The remaining respondents listed a variety of groups, with attorneys being the most common at seven per cent.

There is not nearly as much consensus among respondents when it comes to identifying the least supportive group. At the top of the list is the general public, with one-third of the managers finding citizens least supportive. Another 18 per cent noted that court management personnel are the least supportive, possibly suggesting a degree of animosity within the courtroom work group. Although no respondents reported that other units or levels of government are most supportive of court managers, roughly one-

29. Mort and Hall, *The Trial Court Administrator: Court Executive or Administrative Aide?*, COURT MANAGEMENT J. 12-16, 30-31 (1980).

30. There are fewer cases for these two questions since many of the respondents identified more than one group in their responses while not providing a rank order as to most and least supportive. Consequently. we eliminated these cases in Table 7.

sixth aid indicated having problems when it came to intergovernmental relations. Included in this category are several references to state court administrative offices. Two other groups identified with some frequency as not supporting court managers are attorneys and the media. Finally, a handful of the respondents feel that judges are the least supportive group.

When one considers the distribution of responses to these last two questions, some unexpected patterns are detected. Perhaps most noteworthy is the favorable evaluation of local judges. Rather than resisting or thwarting the infusion of local managerial personnel, as the literature suggests, judges represent significant allies of many respondents. An equally important finding deals with the number of respondents suggesting that other court management personnel are not supportive. While an actual count is not possible, several individuals specifically referred to elected clerks within this group.

This portion of the survey results has some important implications for the field of court administration. First, outside of the courthouse, court administration is perceived to have low visibility and little saliency with the general public. Although appointed managers do not depend on public support, as would elected clerks, their work does impact on the administration of justice and eventually on the public's impressions of judicial effectiveness. Also, their acceptance as colleagues in some courtroom work groups and their support by judges indicates that, despite lack of formal authority, managers enjoy the confidence of many judges. A relationship of trust between judge(s) and manager may explain conflicts with other court management personnel, especially the elected clerks.

Conclusion: a profile

It is difficult to accurately describe court managers, given their low level of visibility, the relative difficulty of identifying them, and the extremely decentralized nature of lower level court operations. In concluding, therefore, it seems most appropriate to develop a profile or composite picture of court managers based on the results of this study.

Demographically, a typical appointed manager is: a court administrator by title, male, college-educated, and earning approximately $25,000 per year. This average respondent is roughly 40 years old and a member of at least two professional organizations. Additionally, he has approximately six years of prior court-related experience and is employed in the same region where he attended college.

A typical court manager is male, college educated and earns about $25,000 per year.

With respect to the workplace, the typical respondent serves in a court with general trial jurisdiction, is appointed by a judge or judges, and has been in his present position less than five years. The manager works in a court that handles less than 10,000 cases a year, and where he is responsible for budgeting, personnel, caseflow and jury scheduling functions. The manager reports that he is treated as a court employee rather than a colleague by most judges, but that judges are most supportive of court managers.

Despite this profile, we nevertheless wish to emphasize that the court managers responding to the questionnaire are not members of a homogeneous group, nor do they work in a uniform organizational con text. This variation undoubtedly reflects divergent evolutionary patterns of local legal systems as well as uneven experiences with administrative reforms.

The importance of this profile can be seen, however, by looking at the possible consequences of who manages the courts. By practice, and by law in most jurisdictions, judges are ultimately responsible for the management of local courts. Yet, as much of the court reform literature has been quick to point out, most judges have neither the appropriate training nor the inclination to serve as administrators—thus the emergence of the professional court manager. It also means, however, that in many jurisdictions elected court clerks are now serving as court administrators, or share some court-related duties with appointed managers and judges.

One might suspect that judges have different "styles" when interacting with appointed and elected managers. A major reason for this is that appointed managers are subordinate to, and extensions of, the bench. Elected court officials, on the other hand, are not derivates of judicial authority, but political actors with an independent source of power. When asked if the judge(s) treated them as a colleague or employee, the elected clerks were much more likely to perceive a co-equal relationship.[31]

Finally, the administrative environment for the appointed administrators may be the most complex of all. In many courts judges continue to exercise some administrative responsibilities, in addition to, or in conjunction with, an elected clerk. This means that appointed court managers perform their jobs as an extension of the judge, to whom they report and by whom they are appointed, but with recognition of the independent political power of the court clerks.

This management triad, composed of an elected manager, an appointed manager, and judge suggests a complex set of relationships. In some respects the appointed manager operates from a distinct disadvantage, being the organizational interloper. Yet, this position might well represent the appointed manager's greatest strength: with judges consumed by adjudicative details and elected clerks obligated to perform numerous tasks, the appointed manager emerges as the overseer of the daily nonadjudicative business of the courts. The capacity to use this opportunity is in no small way related to the increased training and preparation of these individuals for management and their ability to instill a sense of professionalism on this amorphous condition. ❑

G. LARRY MAYS is an associate professor and head of the Department of Criminal Justice at New Mexico State University.
WILLIAM A. TAGGART is an assistant professor of government at New Mexico State University.

31. See Taggart and Mays, *supra* n. 21.

Appendix H
Regional Meeting Script

NEW JERSEY

SUPREME COURT TASK FORCE

ON

WOMEN IN THE COURTS

Fact-Finding Meetings With Women's Bar Associations

OUTLINE

		Minutes
I.	Introductions and Opening Statements	15
II.	Interpersonal Dynamics in Courtroom, Chambers and at Professional Gatherings	30
III.	substantive Law Issues: Problems with Laws, Interpretation and Enforcement	
	A. Name Cases	5
	B. Domestic Violence	15
	C. Rape	10
	D. Damages	10
	E. Sentencing (Adults and Juveniles)	10
	F. Custody	10
	G. Equitable Distribution and Support Awards Enforcement	20
IV.	Suggestions for Eliminating Gender Bias in the Judicial Branch	10
V.	Summary and Conclusion	5
		140

Prepared by:
National Judicial Education Program
to Promote Equality for Women and Men in the Courts

Lynn Hecht Schafran, Esq.
Director

1983

NEW JERSEY

SUPREME COURT TASK FORCE

ON

WOMEN IN THE COURT

Format for Fact Finding Meetings with Women's Bar Associations

I. Introductions and opening Statements (15) NOTES

A. Task Force Introduced by Local Bar President or Designee (5)

B. Opening Statements by Task Force Members

1. Male Judge: (3)

Describe Task Force Mandate as per Chief Justice Wilentz's letter/press release including plans for presentation to Nov. 1983 Judicial College and subsequent written report.

State basis of your personal interest in area of Task Force's concern.

Survey: Ask many have already completed and returned it. Ask those who haven't to do so. (Have extra copies of survey at meetings to distribute on spot.) Remind audience that even though same may have completed the four question survey Judge Loftus distributed at two meetings in the fall, it is essential to complete this survey as this is the data that will be entered in the computer.

Explain reasons for holding meetings in addition to survey:

a. Enable Task Force to hear directly from those concerned and go beyond what can be conveyed in a survey.

b. Take advantage of synergy that develops in a group to elicit points that as individuals we may not have discerned or fully understood in terms of their impact on women.

c. Give audience a sense of scope of Task Force's inquiry so audience can provide us with relevant infomation.

* Time for each segment appears in minutes in parenthesis.

NOTES

Assure audience of confidentiality. No need to name any judges or provide specifics during the evening; any specifics, names, etc., that they provide to the Task Force in writing will be held in confidence.

2. Female Judge: (3)

Place legal system and judiciary in context as part of a society historically socialized to believe that women and men have distinct natures and roles and should operate in different spheres. Because the law is a public sphere and women have been restricted to the private sphere, women in the law do experience problems with acceptance and credibility.

It is not complaining or being weak to speak freely about these concerns. This is the only way to confront and eliminate them.

Describe your own increased understanding of the need for the Task Force's inquiry. Just because we're women doesn't mean we automatically understand gender bias, e.g.,

> At one time, I too, did not appreciate the ramifications of some of the things that happened to me as a woman in the law. In connection with the Task Force I've read a number of articles about women in the courts and reviewed a number of questionnaires which have made me realize that in addition to the blatant incidents of discrimination of which we are all aware, if it often the subtle problems that are the most important.

Describe one or relevant personal experiences of your own. This will give the audience "permission" to air its own experiences.

3. Non-Judicial Task Force Member: (3)

Describe nature of our interest and experience in Task Force's work.

Explain meeting format:

First half hour on personal interactions in courtroom, chambers and at professional gatherings.

An hour and a half on substantive law areas.

I. Introduction and Opening Statements (cont'd.)

NOTES

Close with audience's suggestions for eliminating gender bias in the judicial bench.

Will be running a very tight clock because so much ground to cover and so little time. Want to stimulate thinking about a number of different areas.

May be frustrating to draw each section to a close just when we're getting into it, but it's unavoidable. Task Force Suggests each bar association plan a follow up to this meeting one month from, and that during that month you make specific observations in the areas we discuss tonight. We've asked each bar association to designate a liaison to the Task Force to provide information from the association to us, and to whom can direct an inquiry, if there is some new area about which we need information.*

The Task Form also welcomes your individual communications. Write to us about relevant incidents and cases. Send transcripts and decisions.

II. Interpersonal Dynamics in Courtroom, Chambers and at Professional Gatherings

A. Women Lawyers' Experiences and Observations (15)

Female Judge: [N.B., one panel member is designated to introduce each segment. During the discussion, all should ask questions or respond as appropriate.]

First area will discuss relates to interpersonal dynamics. How are you as female attorneys being treated in courtrooms, chambers and at professional gatherings?

Are you treated strictly as professionals in the courtman? Do you feel included or ignored at meetings in chambers? Is the presence and ability of women acknowledged at professional gatherings?

State that (name of Bar Assoc. President or Designee) will act as facilitator and call on members of the audience to speak.

* If you have names before the meeting, announce them.

NOTES

(As this segment proceeds it may be necessary for Task Force members to cue the audience with specific questions from the Survey or incidents from the questionnaires. E.g., has any of you been called "sweetheart" or something similar in court; has any of you had an experience similar to that of one of our questionnaire respondents who reported that she was the only woman at a calendar call, and the judge called out, "You get better looking every time I see you--I should have hired you for that clerkship!" Be prepared to draw speakers out and focus meaning of incidents, e.g., why it undercuts credibility to have a judge remark on female attorneys' looks in open court; why it is a misdirection of energies when female attorneys must think about what, if any, response to make to inappropriate comments; what says when a judge continually insists on addressing a group of male and female attorneys as "gentlemen." At one minute signal try summarize the segment and its importance. Ask audience to observe what happens to women lawyers with a new awareness.)

3. Women Litigants, Witnesses and Jurors (15)

Male Judge:

Next, let me ask about your experiences and observations with respect to women litigants, witnesses and jurors. Do you think that they are treated in a particular manner, whether advantageous or disadvantageous, specifically because they are women?

Not talking how women are sentenced or if they receive adequate support awards. That will come later. First want to ask about issues of respect, credibility, etc. For example, have you seen instances where on the witness stand are called by their first names while male witnesses are addressed by surnames?

(Again, be prepared to ask the audience the questions asked in the Survey and use examples from questionnaires.)

At conclusion of segment, summarize very briefly the tenor of the discussion and urge that the issues. raised be explained further at a follow up meeting.

III. substantive Law Issues: Problems in Law, Interpretation and Enforcement

NOTES

Non-Judicial Task Force Member: Introduction

Will now move on to areas of substantive law in which there appear to be problems in the way women are treated. Will discuss problems in the laws themselves, in the way they are interpreted and the way they are enforced.

Obviously impossible to go into detail on each topic in the time available. Purpose tonight is to get an overview of the areas where you believe there are problems the Task Force should address.

After tonight's meting, think about the areas we have discussed as well as those we miss. Write to the Task Force with your ideas about these problem areas. Send us relevant transcripts and decisions and studies. Discuss these issues at your own follow up meeting.

We will discuss several issue areas very rapidly so there will only be time to get a sense of whether there is a problem and take a few comments one each. Will save equitable distribution for last in order to cover as much ground as possible.

A. Name Changes (5)

One are which is something of a bell weather with respect to judicial attitudes is how judges respond to women who want to retain ro return to the use of their birth names.

1. How many of you have had experience with name change cases? (Take count.)

2. How many have had experience where a judge refused a petition or made it very difficult? (Take count.)

If any in audience gay yes, ask for particulars from one or two.

III. substantive Law Issues: Problems in Law, Interpretation and Enforcement (cont'd.)

NOTES

B. Domestic Violence: Male Judge (10)

As you know, New Jersey has a new domestic violence statute. We'd like to know your perceptions about how judges are responding to it, and what are your experiences with its enforcement.

1. How many of you have cases in this area? (Count.)

2. How many of you who work with it think the new law is having its desired effect? (Count.)

3. How many think the enforcement problems are due to judicial attitudes? (Cont.)

4. Do you think judges don't take domestic violence seriously enough? (Count.)

5. Do you think judges feel the new law is unfair to the accused? (Count.)

Take one or two statements from audience.

III. Substantive Law Issues: Problems in Law, Interpretation and Enforcement (cont'd.)

NOTES

C. Rape: Female Judge (10)

The next issue we want to ask you about is rape. It appears that significant progress has been made in the last few years in improving how rape victims are treated during trial. However, one still hears stories from around the county about rape victims being made to feel as if they are on trial rather than the defendant, and about judges making extremely insensitive comments. We want to know what you see as the current situation in this area in New Jersey.

1. How many of you have experience with rape cases? (Count.)

2. How many of you think there has been an improvement in the way rape victims are treated in court? (Count.)

3. How many of you find that there are still problems with regard to issues such as judicial attitudes toward the introduction of a victim's past sexual history? (Count.)

Take one or two statements from audience.

III. Substantive Law Issues: Problem in Law, Interpretation and Enforcement (cont'd.)

NOTES

D. Damages: Non-Judicial Task Force Member (10)

Damages is a subject that has not received wide attention with respect to the possibility of its having discriminatory is aspects. Nonetheless, the Task Force has heard suggestions that, for example, in a wrongful death suit for the life of home-mader, her contributions to her home and family are undervalued. We've also heard about cases where a seriously injured female accident victim received substantially less for her injuries, pain and suffering than her husband received for loss of consortium. We'd like to know if you are aware of any cases that shed light on the question of whether women involved in personal injury, mal-practice, consortium and other kinds of damage suits receive awards that are not commensurate with those received by men?

1. How many of you have experience with personal injury and other kinds of damage suits? (Count.)

2. How many of you are aware of cases in which female plaintiffs received an award that you felt undervalued their contribution as home-makers, trivialized their injury or was some way not commensurate with what a similarly situated man would have received? (Count.)

Take one or two statements from audience.

III. Substantive Law Issues: Problems in Law, Interpretation and Enforcement (cont'd.)

NOTES

E. Sentencing: Male Judge (10)

A variety of studies comparing the way females and males are sentenced in the criminal and juvenile justice systems suggest that judges have different standards for the two sexes.

Juveniles:

1. How many of you have experience with juvenile offenders? (Count.)

2. How many of you think that girls are treated more harshly than boys? (Count.)

3. How many of you think that judges are overly concerned with the possibility of promiscuity among juvenile females?

Take one or two comments from the audience.

Adults:

1. How many of you have experience with adult offenders? (Count.)

2. How many think there are discrepancies in the way women and men are sentenced for similar crimes? (Count.)

3. How many think women are treated less severely? (Count.)

4. How many think women are treated more severely? (Count.)

5. For those who said women are treated less severely, if I ask you to carefully take into account the seriousness of the crime, the use of guns and the individuals' past record, how many of you still think women are treated less severely? (Count.)

6. How many think judges are deterred from sending women to prison because the facilities are so far away and so poor? (Count.)

7. Have any of you had cases in which you felt a judge sentenced a woman more harshly in, for example, an assault because he could not tolerate a woman committing what he viewed as a male crime? (Count.)

Take one or two comments from the audience.

III. Substantive Law Issues: Problems in Law, Interpretation and Enforcement (cont'd.)

NOTES

F. Custody: Female Judge (10)

The Task Force has several questions about current trends in custody.

1. How many of you have experience in the custody area? (Count.)

2. How many of you think appreciably more fathers are genuinely interested in obtaining custody than in the past? (Count.)

3. How many of you think judges are more open to awarding custody to fathers than in the past? (Count.)

4. Are you ware of any cases in which a woman lost custody because she worked outside the home, which didn't match the judge's concept of a traditional mother?

5. Are you aware of any cases in which custody was specifically awarded to the spouse with the greater earning ability?

Take one or two comments from audience.

III. Substantive Law Issues: Problems in Law, Interpretation and Enforcement (cont'd.)

NOTES

G. Equitable Distribution, and Support Awards Enforcement:

Non-Judicial Panel Member (20)

The final area of substantive law we will discuss tonight is Equitable Distribution and Support Awards Enforcement. We realize that this is an enormous topic which we could discuss all night, so we are going to ask some specific questions to forces the discussion.

1. How many of you have experience in this area? (Count.)

2. How many of you think judges have adequate knowledge of the cost of child raising, day care availability and similar items that should be considered when setting child support? (Cont.)

3. Respecting the division of family income between the custodial parent and the spouse paying support, how many of you think these divisions reflect a fair sharing out of family income, as opposed to a notable disparity in the amount awarded to or retained by me spouse?

4. How many think the new wage garnishment statute that effect last spring is having a positive effect on enforcement?

Take three to five comments from audience.

IV. Suggestions for Eliminating Gender Bias in the Judicial Branch NOTES

Male Judge (10)

During this final segment of our meeting, we want to hear your suggestions about how to address the problems raised during the evening and eliminate gender bias in the judicial branch. However, before we do that, are there specific problem areas that we did not touch on tonight which you believe the Task Farce should address? Please raise your hands and give us one sentence when you are called on.

Ask for suggestions on how to eliminate gender bias in the judicial branch.

V. Summary and Conclusion

Female Judge (5)

Summarize sense of meeting. Remind audience to complete and return survey. Repeat invitation to send Task Force additional information, transcripts, decisions and suggestions. Thank audience for attending.

Turn meeting back to local bar association president or designee who introduced you.

Appendix I
New York Attorneys Survey

State of New York,
Court of Appeals,

Sol Wachtler
Chief Judge

ATTORNEY SURVEY OF THE NEW YORK COURT OF APPEALS TASK FORCE ON WOMEN IN THE COURTS

The possibility of gender bias in the justice system has been recognized as a matter serious enough to warrant the establishment, in 1984, of the New York Task Force on Women in the Courts. In order to determine the extent to which this gender bias may exist, and the *real or* perceived effect it may have on courtroom interaction and the decision making process, it is important that certain information be gathered.

Toward this end, the enclosed questionnaire has been prepared by the New York Task Force on Women in the Courts. The information sought through this survey is essential to the work of the Task Force and I urge you to complete and return the survey as quickly as possible.

Very truly yours,

Sol Wachtler

PLEASE COMPLETE THIS SURVEY EVEN IF YOU DO NOT HAVE STRONG FEELINGS ABOUT GENDER BIAS WITHIN THE JUDICIAL SYSTEM. IT IS IMPORTANT THAT WE OBTAIN THE VIEWS OF AS MANY ATTORNEYS AS POSSIBLE. YOUR RESPONSES WILL HELP US OBTAIN A MORE COMPLETE PICTURE OF GENDER BIAS IN THE NEW YORK STATE COURTS.

This survey is based on the specific concerns raised at the Task Force's four public hearings and in meetings with judges and lawyers throughout the State. Questions are divided into several areas relating to court interaction and substantive law. *Please answer questions only in those areas in which you have had experience in the past two years.* Circle the response which best describes your experience, perception, or opinion. Responses are: (1) Always, (2) Often, (3) Sometimes, (4) Rarely, or (5) Never.

Space for comments is provided at the end of the survey. Please use this space for more detailed responses and other issues you would like to bring to the Task Force's attention. Attach additional sheets, if necessary. The Task Force is especially interested in reviewing transcripts. Please send applicable transcript sections, if you have them, along with your completed survey. The Task Force will consider purchasing transcripts in appropriate cases when all information necessary to identify the case is provided.

Please do *not* put your name on the survey. Upon receipt, envelopes will be destroyed. You will not be identified with your responses in any way. They will be summarized with those of other attorneys. Please mail your completed survey *no later than July 26* to R L Associates, 15 Chambers Street, Princeton, New Jersey 08542. Thank you for your participation.

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely, 5 = Never

COURT INTERACTION: The Task force received testimony from judges and attorneys about the ways in which seemingly trivial negative conduct toward women in courtrooms and in chambers interferes with the administration of justice. These questions seek Formation about the perceived frequency of the behaviors most commonly cited.

Approximate number of appearances in court or chambers during the last two years_____

	A	O	S	R	N
1. Are women asked if they are attorneys when men are not asked?	1	2	3	4	5
2. Are women attorneys addressed by first names or terms of endearment when men attorneys are addressed by surnames or titles:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
3. Are women litigants or witnesses addressed by first names or terms of endearment when men are addressed by surnames or titles:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
4. Are inappropriate comments made about the personal appearance of women attorneys when no such comments are made about men:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
5. Are inappropriate comments made about the personal appearance of women litigants or witnesses when no such comments are made about men:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
6. Are sexist remarks or jokes that demean women made in court or in chambers:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
7. Are women litigants or witnesses subjected to verbal or physical sexual advances:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
8. Are women attorneys subjected to verbal or physical sexual advances:					
(a) by judges?	1	2	3	4	5
(b) by counsel?	1	2	3	4	5
(c) by court personnel?	1	2	3	4	5
9. If you have experienced or observed any of the conduct described in questions 1-8, do you believe it affected the outcome of the case? IF YES, please describe on the last page	1 Yes 2 No Y Don't know				
10. Have judges or counsel intervened to correct any of the situations described in questions 1-8? IF YES, please use the last page to describe the situation and the way it was handled.	1 Yes 2 No				

CREDIBILITY In the courtroom, "credible" in its fullest sense (believable capable, convincing, someone to be taken seriously) is one of the most important things that a litigant, witness, expert, or attorney can be. Because of testimony received at its public hearings, the Task Force seeks your perceptions of whether and how gender affects credibility in the courts.

	A	O	S	R	N
1. Do male judges appear to pay less attention to and/or give less credibility to female attorneys' statements/arguments than to those of male attorneys?	1	2	3	4	5
2. Do female judges appear to pay less attention to and/or give less credibility to female attorneys' statements/arguments than to those of male attorneys?	1	2	3	4	5

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely, 5 = Never

	A	O	S	R	N
3. Do male judges appear to impose a greater burden of proof on female witnesses than on male witnesses?	1	2	3	4	5
4. Do female judges appear to impose a greater burden of proof on female witnesses than on male witnesses?	1	2	3	4	5
5. Do male judges appear to give less credibility to female expert witnesses than to male experts based on gender rather than the substance of the experts' testimony?	1	2	3	4	5
6. Do female judges appear to give less credibility to female expert witnesses than to male experts based on gender rather than the substance of the experts' testimony?	1	2	3	4	5

INTERRELATIONSHIP OF SEX/RACE AND SEX/ECONOMIC STATUS: Testimony received by the Task Force suggests that women from minority groups and women who are economically disadvantaged sometimes receive particularly unequal treatment in both courtroom interaction and substantive decisions. The Task Force seeks further information from attorneys who have observed or experienced these compound forms of bias. Please use the last page of the survey and attach sheets as necessary to provide your general analysis of this issue and concrete incidents that illustrate how these factors interact to the disadvantage (or advantage) of adult and juvenile females in the courts.

EQUITABLE DISTRIBUTION

Approximate number of equitable distribution cases handled during the last two years _____

	A	O	S	R	N
1. Are effective temporary restraining orders granted to maintain the status quo for equitable distribution?	1	2	3	4	5
2. Do judges impose meaningful sanctions, including civil commitment, when injunctions are violated?	1	2	3	4	5
3. Do judges refuse to award 50% of property or more to wives even though "probable future financial circumstances" indicate that even with such an award husbands will not have to substantially reduce their standard of living but wives will?	1	2	3	4	5
4. Do equitable distribution awards reflect a judicial attitude that property belongs to the husband and a wife's share is based on how much the husband could give her without diminishing his current lifestyle?	1	2	3	4	5
5. Do judges make remarks which indicate that awards of maintenance or property distribution are based on the likelihood of the wife's remarriage?	1	2	3	4	5
6. Are women plaintiffs refused equitable distribution when husbands default, all papers are in order and there is no question of notice?	1	2	3	4	5
7. Is there a rule of thumb in your county regarding division of marital property under equitable distribution?	1 Yes 2 No Y Don't know				
If Yes: _____% to wife _____% to husband					

MAINTENANCE

Approximate number of spousal maintenance cases handled during the last two years _____

	A	O	S	R	N
1. Are older displaced homemakers, with little chance of obtaining employment above minumum wage, awarded permanent maintenance after long-term marriages?	1	2	3	4	5

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely, 5 = Never

2. If permanent maintenance is not always granted after long-term marriages, what is the trend in your county regarding the number of years for which maintenance other than a jurisdictional award is granted for each of the following years of marriage category:

   (a) 10-20 years:_____ years of maintenance (b) 21-30 years: _____ years of maintenance

   (c) Over 30 years: _____ years of maintenance

3. If there is a trend in your county with respect to the duration of rehabilitative maintenance awarded after marriages of less than 10 years, what is the usual duration of these awards: _____ years _____ no trend

	A	O	S	R	N
4. Is temporary maintenance granted pending a hearing on the *pendente lite* motion?	1	2	3	4	5
5. Is maintenance granted *pendente lite?*	1	2	3	4	5
6. Is maintenance granted retroactive to the initial motion date?	1	2	3	4	5
7. Do the courts effectively enforce maintenance awards?	1	2	3	4	5
8. Is enforcement of maintenance denied because of alleged visitation problems?	1	2	3	4	5
9. Are maintenance arrears reduced to judgment at the time arrears are established?	1	2	3	4	5
10. Is interest on arrears awarded as provided by statute?	1	2	3	4	5
11. Do courts reduce/forgive arrears accrued prior to the making of a motion for downward modification of support?	1	2	3	4	5
12. Are income deduction orders granted when there-are maintenance arrears?	1	2	3	4	5
13. Are downward modifications granted in response to support enforcement motions?	1	2	3	4	5
14. Are decreases in maintenance awards granted in cases in which decreases are warranted?	1	2	3	4	5
15. Are increases in maintenance awards granted in cases in which increases are warranted?	1	2	3	4	5
16. Are sequestration and/or bonds ordered to secure future spousal support payments?	1	2	3	4	5
17. Are respondents who deliberately fail to abide by court orders for maintenance jailed for civil contempt?	1	2	3	4	5

CHILD SUPPORT

Approximate number of child support cases handled during the last two years_____

	A	O	S	R	N
1. Do child support awards reflect a realistic understanding of the local costs of child raising, particular children's needs, and the earning capacity of the custodial parent?	1	2	3	4	5
2. Is temporary child support granted pending a hearing on the *pendente lite* motion?	1	2	3	4	5
3. Is child support granted *pendente lite?*	1	2	3	4	5
4. Is child support granted retroactive to the initial motion date?	1	2	3	4	5
5. Do the courts effectively enforce child support awards?	1	2	3	4	5
6. Are repeated adjournments granted to non-custodial parents in child support proceedings?	1	2	3	4	5
7. Is enforcement of child support denied because of alleged visitation problems?	1	2	3	4	5
8. Are child support arrears reduced to judgment at the time arrears are established?	1	2	3	4	5

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely, 5 = Never

	A	O	S	R	N
9. Is interest on arrears awarded as provided by statute?	1	2	3	4	5
10. Do courts reduce/forgive arrears accrued prior to the making of a motion for downward modification of support?	1	2	3	4	5
11. Are income deduction orders granted when there are child support arrears?	1	2	3	4	5
12. Are sequestration and/or bonds ordered to secure future child support payments?	1	2	3	4	5
13. Are downward modifications granted in response to support enforcement motions?	1	2	3	4	5
14. Are decreases in child support granted in cases in which decreases are warranted?	1	2	3	4	5
15. Are increases in child support granted in cases in which increases are warranted?	1	2	3	4	5
16. Are respondents who deliberately fail to abide by court orders for child support jailed for civil contempt?	1	2	3	4	5

CUSTODY

Approximate number of custody cases handled during the last two years _____

	A	O	S	R	N
1. Are custody awards to mothers apparently based on an assumption that children belong with their mothers rather than independent facts?	1	2	3	4	5
2. Do judges give fair and serious consideration to fathers who actively seek custody?	1	2	3	4	5
3. Is temporary custody (pending final divorce) awarded to mothers despite fathers' petitions for same?	1	2	3	4	5
4. Do you dissuade fathers from seeking custody because you think judges will not give their petitions fair consideration?	1	2	3	4	5
5. Is custody awarded to the parent in a stronger financial position rather than ordering child payments support to the primary caretaker?	1	2	3	4	5
6. Are mothers denied custody because of employment outside the home?	1	2	3	4	5
7. Are mothers granted custody on the condition they not work outside the home?	1	2	3	4	5
8. Are custody awards to mothers conditioned on limitations of social relationships or activities?	1	2	3	4	5
9. Are fathers denied custody because of employment outside the home?	1	2	3	4	5
10. Are fathers granted custody on the condition they not work outside the home?	1	2	3	4	5
11. Are custody awards to fathers conditioned on limitations of social relationships or activities?	1	2	3	4	5
12. Are visitation provisions sufficient for meaningful participation in children's lives by non-custodial parents?	1	2	3	4	5
13. Is change of custody granted to fathers because of mothers working outside the home and presence of "stay at home" stepmothers?	1	2	3	4	5
14. Is joint custody imposed over the objections of one or both parents?	1	2	3	4	5
15. Do custody awards disregard father's violence against mother?	1	2	3	4	5

DOMESTIC VIOLENCE

Approximate number of domestic violence cases handled during the last two years_____

	A	O	S	R	N
1. Are Orders of Protection directing respondents to stay away from the home granted when petitioners are seriously endangered?	1	2	3	4	5

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely, 5 = Never

	A	O	S	R	N
2. When a woman is in a shelter or otherwise out of the marital home because of violence, do judges issue Orders of Protection directing respondents to leave the marital home to enable the woman and children to return?	1	2	3	4	5
3. Are Family Court petitioners granted *ex parte* temporary Orders of Protection?	1	2	3	4	5
4. Are Criminal Court complainants granted *ex parte* Orders of Protection?	1	2	3	4	5
5. Do District Attorneys decline to prosecute domestic violence complaints in criminal courts?	1	2	3	4	5
6. Are mutual Orders of Protection issued even though respondents have not filed petitions?	1	2	3	4	5
7. Are petitioners' requests for supervised visitation between respondent and children refused or ignored?	1	2	3	4	5
8. Are Family Court petitioners asked why they have no visible injuries?	1	2	3	4	5
9. Are Criminal Court petitioners asked why they have no visible injuries?	1	2	3	4	5
10. Is adequate support awarded for domestic violence victims living apart from respondents under Orders of Protection?	1	2	3	4	5
11. Are support awards to domestic violence victims and their children firmly enforced?	1	2	3	4	5
12. Are potential petitioners discouraged by Family Court or Probation personnel from seeking Orders of Protection?	1	2	3	4	5
13. Are victims discouraged from seeking Orders of Protection in Criminal Court?	1	2	3	4	5
14. Does Supreme Court grant Orders of Protection when there is a pending matrimonial action?	1	2	3	4	5
15. Does Family Court grant Orders of Protection when there is a pending matrimonial action?	1	2	3	4	5

RAPE

Approximate number of rape cases handled during the last two years. _____

	A	O	S	R	N
1. Is bail in rape cases set lower than in other B felony offenses?	1	2	3	4	5
2. Are defendants in rape cases released on their own recognizance more often than defendants charged with other B felony offenses?	1	2	3	4	5
3. Are sentences in rape cases shorter than in other B felony offenses?	1	2	3	4	5
4. Is bail in rape cases where parties knew one another set lower than in cases where parties were strangers?	1	2	3	4	5
5. Are sentences in rape cases shorter when parties knew one another than in cases where parties were strangers?	1	2	3	4	5
6. When there is improper questioning about complainant's prior sexual conduct, do judges invoke the rape shield law *sua sponte* if the prosecutor does not?	1	2	3	4	5
7. Do you think there is less concern about rape cases where parties have a current or past relationship/acquaintance, on the part of:					
(a) judges?	1 Yes 2 No Y Don't know				
(b) prosecutors?	1 Yes 2 No Y Don't know				
(c) defense attorneys?	1 Yes 2 No Y Don't know				

1 = Always, 2 = Often, 3 = Sometimes, 4 = Rarely. 5 = Never

ADULT SENTENCING

Approximate number of criminal trials handled during the last two years _____

	A	O	S	R	N
1. Do women receive lighter sentences than males with similar prior records convicted of similar crimes when comparable facilities are available?	1	2	3	4	5
2. Do women who are the primary income earners for their children receive lighter sentences than women convicted of similar crimes who are not employed outside the home?	1	2	3	4	5

JUVENILE JUSTICE

Approximate number of juvenile hearings handled during the last two years _____

	A	O	S	R	N
1. Are female juveniles dealt with more harshly than male juveniles charged with similar status offenses?	1	2	3	4	5
2. Are male juveniles dealt with more harshly than female juveniles charged with similar delinquency offenses?	1	2	3	4	5
3. All other factors being equal. do females and males receive equal adjudications?	1 Yes 2 No Y Don't know				
4. If no, who receives more lenient adjudications?	1 Females 2 Males Y Don't know				
5. All other factors being equal, do female and male juvenile delinquents receive equal periods of secure placement?	1 Yes 2 No Y Don't know				
6. If no, who receives shorter periods of secure placements?	1 Females 2 Males Y Don't know				

NEGLIGENCE

Approximate number of negligence trials handled during the last two years _____

ALL OTHER FACTORS BEING EQUAL:	A	O	S	R	N
1. Do men receive higher awards than women for pain and suffering?	1	2	3	4	5
2. Do husbands receive higher awards than wives for loss of consortium?	1	2	3	4	5
3. Do women receive higher awards than men for disfigurement?	1	2	3	4	5
4. Do women employed outside the home receive higher awards than homemakers for pain and suffering?	1	2	3	4	5

COUNSEL FEES AND FEE GENERATING POSITIONS

	A	O	S	R	N
1. Are women attorneys awarded lower counsel fees than men attorneys for similar work?	1	2	3	4	5
2. Are women attorneys on assigned counsel panels assigned to represent women and men attorneys assigned to represent men?	1	2	3	4	5
3. If you are eligible and have made your interest known, has a judge appointed you to a fee generating position within the last two years?	Yes 2 No				
4. If yes, please indicate the number of each: Guardian ad litem _____ ; Receiver _____; Conservator _____ ; Administrator _____ ; Other (please specify _____					

5. Are you on an 18-B (assigned counsel) panel in your county? 1 Yes 2 No

6. Do women attorneys on assigned counsel panels receive their proportional share of violent felony cases?
1 Yes
2 No
Y Don't know

7. Do women attorneys on assigned counsel panels receive their proportional share of rape cases?
1 Yes
2 No
Y Don't know

DEMOGRAPHICS (To be used for statistical purposes only)

1. Age _____

2. Sex 1 Female 2 Male

3. Race/Ethnicity _____ 4. Number of years practicing in New York _____

5. Primary county in which you practice _____

6. Areas of specialization _____

7. Type of Practice
1 Sole practitioner
2 Law firm
3 Corporate/house counsel
4 Public Defender
5 Prosecutor
6 Public agency counsel
0 Other: _____ (please specify)

Please use the space below for more detailed responses to any of the foregoing questions and other issues you would like to bring to the Task Force's attention. If necessary, please attach additional sheets.

PLEASE RETURN YOUR COMPLETED SURVEY TO: R L Associates, 15 Chambers Street. Princeton. New Jersey 08542 by July 26. Thank you for your cooperation.

Appendix J
Equality Guidelines for Judges

National Judicial Education Program
to Promote Equality for Women and Men in the Courts

132 West 43rd Street, Second Floor • New York, New York 10036 • (212)354-1225

WHAT CAN JUDGES DO TO ENSURE EQUALITY FOR WOMEN AND MEN IN THE COURTS?

TREAT WOMEN AND MEN WITH EQUAL DIGNITY, RESPECT AND ATTENTIVENESS. REQUIRE THOSE UNDER YOUR SUPERVISION TO DO THE SAME. REMEMBER THAT DEMEANING TREATMENT IS BOTH PERSONALLY HUMILIATING AND UNDERMINES CREDIBILITY.

1. With regard to forms of address:

   - Address all attorneys as "Counsel," "Counselor" or "Attorney (last name)." Direct staff to do likewise.

   - When addressing male attorneys as "Mr.", address women attorneys as "Ms." unless otherwise requested.

   - Address female jurors, witnesses, etc. as "Ms." unless otherwise requested.

   - Address Grand Jurors as "Members of the Grand Jury," "Grand Jurors," foreman/forewoman, he/she, him/her.

   - Open court with "Good Morning, Ladies and Gentlemen" or "Good Morning Counsel."

   - Do not refer to women litigants, witnesses, lawyers, jurors, or court personnel as "girls." Do not use their first names if you are addressing similarly situated men as "Mr." or by title. Do not use terms of endearment such as "sweetheart" or "honey." Direct staff and counsel to follow your example.

2. When you begin a new trial inform counsel of these requirements for appropriate courtroom decorum.

3. Use gender neutral language in all court correspondence. Use "Dear Counsel" and where appropriate include reference to he/she, him/her. Direct staff to do likewise.

4. Edit your jury instructions to use gender neutral language. Using the plural (witnesses/they) is helpful. Use he/she, her/him as necessary.

5. Set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, the court-room or at professional gatherings.

6. Examine your hiring and appointment record. Do you:

   - Hire women law clerks?
   - Designate women as grand jury forepersons?
   - Appoint women to positions of administrative or supervisory responsibility?
   - Give women attorneys fee generating court appointments, particularly those other than guardianships, on an equal basis with men?

7. Intervene when an attorney, witness, juror or other individual under your supervision speaks or behaves inappropriately toward women during trial or in other professional settings.

EXAMINE YOUR ASSUMPTIONS ABOUT WOMEN AND MEN. THINK ABOUT HOW THESE ASSUMPTIONS COLOR YOUR PRECEPTIONS OF THE INDIVIDUALS IN YOUR COURTROOM, YOUR ASSESSMENT OF CREDIBILITY, YOUR FACT FINDING, YOUR DECISION-MAKING, YOUR SENTENCING.

Do you assume, for example....

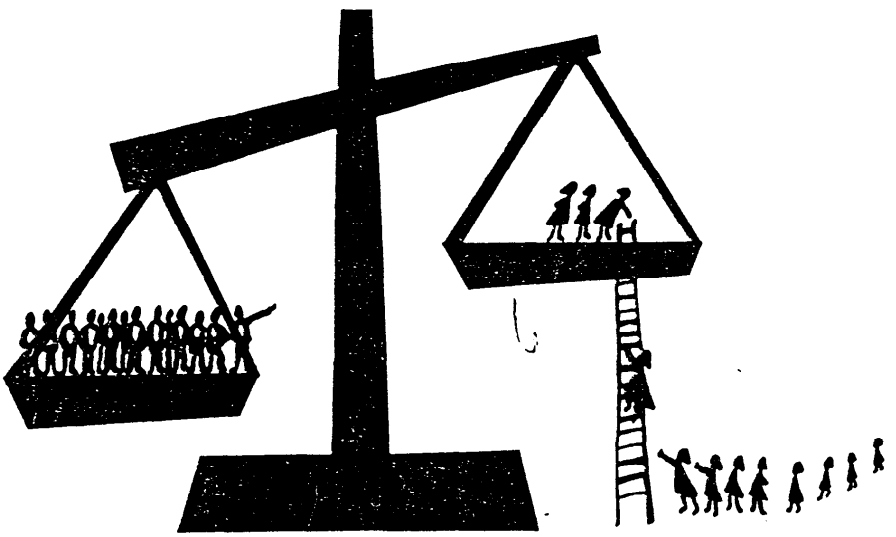
- that men are more believable than women?
- that a rape victim who was not beaten or stabbed was not hurt?
- that a man cannot be a nurturing parent?
- that a woman who charges her husband with sexually abusing their child is lying out of vindictiveness?
- that men are the only good litigators?
- that status offenses committed by young women should be punished more severely than those committed by young men?
- that men who assault their wives are usually provoked?
- that any women of any age can get a job and support herself after divorce?
- that men's Complaints Of pain are more serious than women's?

Appendix K
Tables of Contents: N.Y. and N. J. Reports

The First Year Report of the

NEW JERSEY SUPREME COURT TASK FORCE ON

WOMEN IN THE COURTS



JUNE 1984

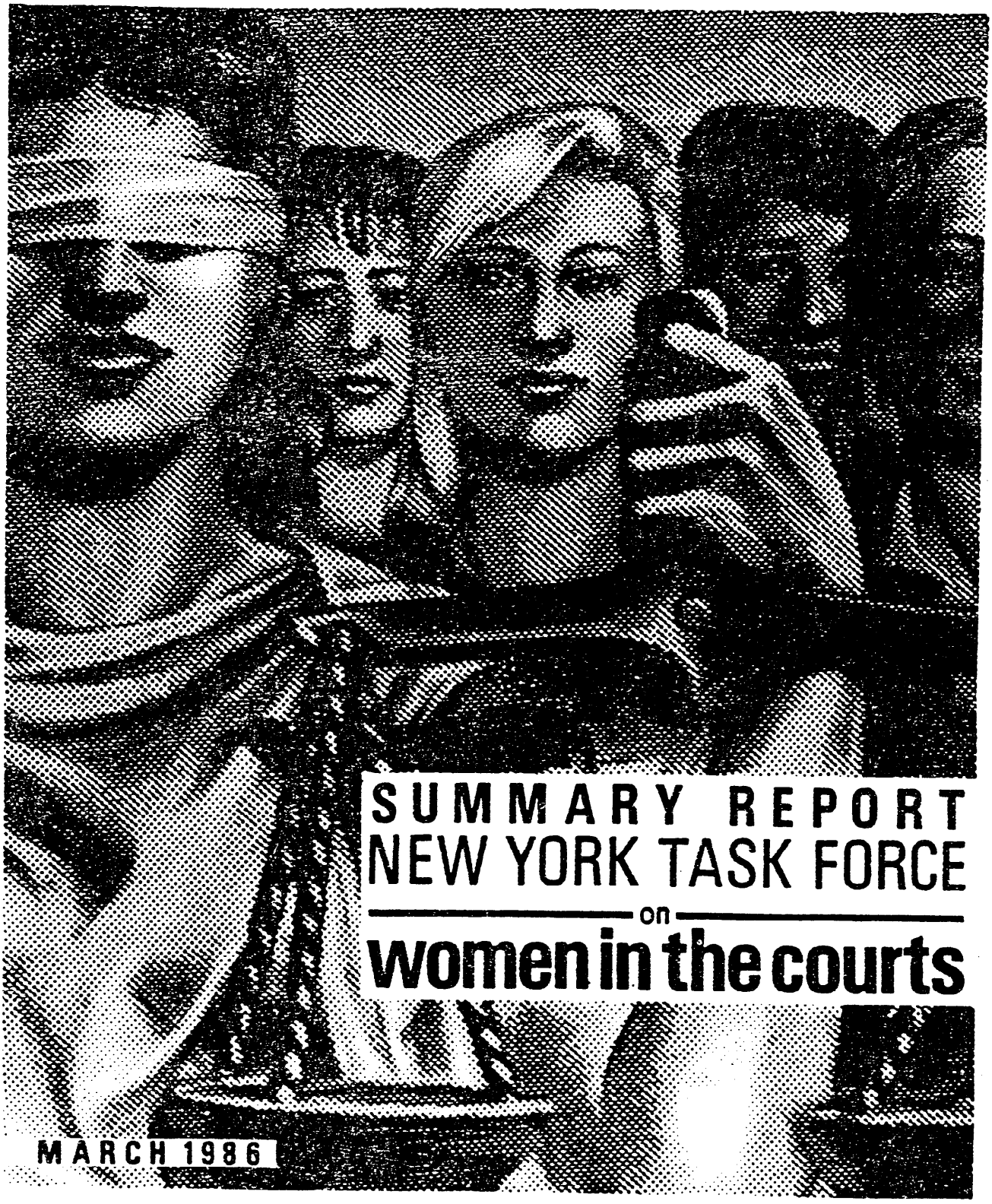
NEW JERSEY SUPREME COURT
TASK FORCE ON WOMEN IN THE COURTS

REPORT OF THE FIRST YEAR

JUNE 1984

TABLE OF CONTENTS

UNIFIED COURT SYSTEM OFFICE OF COURT ADMINISTRATION



SUMMARY REPORT
NEW YORK TASK FORCE
on
women in the courts

MARCH 1986

UNIFIED COURT SYSTEM
Office of Court Administration

REPORT OF THE

NEW YORK TASK FORCE

ON

WOMEN IN THE COURTS

March 31, 1986

TABLE OF CONTENTS

APPENDIX

Exhibit	Description
A	Remarks of Hon. Lawrence H. Cooke, Chief Judge of the State of New York, announcing formation of the New York State Task Force on Women in the Courts, May 31, 1984.
B	Bibliography of introductory materials on issues affecting women in the courts reviewed by the Task Force.
C	Schedule of witnesses appearing at public hearings.
D	Transmittal letter and questionnaire sent to Surrogate's Courts.
E	Transmittal letters and questionnaires sent to judicial nominating committees and bar association judicial screening committees.
F	Survey questionnaire distributed to attorneys.
G	Recommended topics for future study.

Appendix L
Organizations to Receive Reports

ORGANIZATIONS TO RECEIVE REPORTS

Foundation for Women Judges
1225 15th St., NW
Washington, D.C. 20005

National Judicial Education Program
to Promote Equality of Women and
Men in the Courts
99 Hudson Street, Suite 1201
New York, New York 10013

American Academy of Judicial Education
Suite 903
2025 Eye Street, NW
Washington, D.C. 20006

National Judicial College
University of Nevada
Reno, NV 89557

National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23185

National Association for State Judicial
Educators
Dennis Catlin, President
P.O. Box 30104
Lansing, MI 48909

Institute for Court Management
of the National Center for State Courts
Suite 402
1331 17th Street
Denver, CO 80202

Judicial Administration Division
of the American Bar Association
750 N. Lake Shore Drive
Chicago, IL 60611

Appendix M
New Jersey Directives

SUPREME COURT OF NEW JERSEY

Robert N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 08861

MEMORANDUM

TO: All Judges

SUBJECT: Women as Litigants, Attorneys, Jurors, and Witnesses in the New Jersey Courts

DATE: September 28, 1984

Shortly before this court year began, the Task Force on women in the Courts published its first-year report. The issues it identifies prompt me to send this reminder of specific areas in which the Judiciary must demonstrate the highest standards of professionalism and examplary behavior. In general, I ask for sensitive understanding of the particular problems women have faced in their dealings with the court system in the past, and ask your help in establishing a level of conduct for the Judiciary that will totally erase the gender bias that affects every institution and practically every person within it.

The Task Force cites as basic to impartial justice the notion that all attorneys, lay witnesses, expert witnesses, witnesses who are also victims of domestic crimes, and jurors should be addressed in a manner befitting their role in whatever proceeding is before the court, and not treated differently or addressed by a more familiar title or in a demeaning tone if they are women. Accordingly, it should be the practice of every judge, at the beginning of every trial, to meet with the attorneys and advise them to address witnesses in a non-sexist manner, to avoid sexist remarks to the jury if there is one, and to address all attorneys (male and female) by the neutral term "counsellor."

Each judge should also examine his or her conduct, In particular, I ask that you scrutinize your behavior toward female applicants for law clerk positions; that you examine your awards of fees to female attorneys for any bias; that you recognize, and show by your demeanor that you recognize, incidents of domestic violence for the crimes they are; that you judge expert witnesses on their qualifications, and not on their gender: and that you refuse to tolerate sexist humor in the courtroom or your chambers.

The Task Force found, in general, that judges are much less likely to offend women in the courtroom than *are* male attorneys or parties. I commend you for that, and hope that your effort to make the position of the judiciary on this issue clear will effectively eliminate most demeaning behavior by those who appear in the courts. I urge you to carefully read and digest the report of the Task Force, and especially those sections concerning areas of law with which you deal most frequently.

I hope we will eliminate much that is bad in the courts for women by behaving fairly and consistently ourselves and by requiring the same behavior of those before us.

R.N.W.

/mfk

cc: Members of the Court
Robert D. Lipscher, Esq.
Ms. Catherine S. Arnohe
Melanie S. Griffin, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS

INTEROFFICE MEMO

TO : Assistant Directors, Clerks of the Court, Chiefs, Trial Court Administrators

FROM : Robert D. Lipscher

SUBJECT : Gender Bias in Court Administration

DATE : September 28, 1984

In remarks at the Judicial College in 1983, the Chief Justice took a strong stand against all forms of gander bias *in* the court system. He said, "There's no room for the funny joke... for conscious, inadvertant, sophisticated, clumsy, or any othet kind of gender bias...It will not be tolerated in any form whatsoever."

In June *of* this year, the Task Force on Woman in the Courts issued its first report with recommendations. I call your attention especially to the report of the Subcommittee on Court Administration and recommendations of the Task Force with regard to hiring and appointments and professional interaction (attached hereto). These two documents contain some vety important observations.on gender bias in forms as well as unacceptable modes of address for attorneys. I would further suggest that we all need to be sensitive to both actual and perceived gender bias in all our dealings with the. public and co-workers.

I am specifically asking you to review forms under your domain and to set a suitable expectation with your staff regarding their sensitivity to these issues in their written, verbal and other behavior towards co-workers and the public. The New Jersey Courts have taken a leadership position in the nation by creating a Task Force on Women in the Courts and it is vital that we do all we can to respond to the recommendations which affect us.

/ajb
Attachment
cc: Chief Justice Robert N. Wilentz
Hon. Marilyn Loftus
Hon. Florence R. Peskoe
Assignment Judges

Appendix N
Format for Reports to FWJ

REPORTS

The Foundation for Women Judges together with the National Association of Women Judges (NAWJ) National Task Force on Gender Bias in the Courts and the National Judicial Education Program are committed to providing assistance to new Task Forces and to groups endeavoring to have a Task Force created in their own state. For us to be able to provide the most effective assistance we need to know as much as possible about the efforts, successes and difficulties encountered by groups such as yours. We therefore ask you to take the time to provide reports to us as your efforts and Task Forces progress. The following pages contain lists of questions/topics that we request you include in your report.

Reports should be mailed to:

The Foundation for Women Judges
1225 15th Street, N.W.
Washington, D.C. 20005

REPORT I [completed when task force is created]

I. Identifying Information

A. Report: date.
B. Name, address, phone.
C. Task Force name.

II. Background Information

A. Which individuals and/or groups initiated the efforts in your state for a gender bias Task Force? (Judges, attorneys, others.)

B. Briefly describe their efforts (attach copies of key correspondence, memos, studies used).

C. When was the Task Force established? By whom?

D. Does the Task Force have the endorsement of the chief justice?

E. Was there a memo, news release or other document announcing the creation of the Task Force? (Please attach a copy.)

II. Structure of the Task Force

A. What is the Task Force called?

B. What is the official Task Force mandate? (Attach copy.)

C. For what length of time is the Task Force to function?

D. Who are the Task Forces? (Attach a list with names, titles and organizational affiliations.

E. Who is the chair? Why was he/she selected?

F. What committees have been or will be established?

G. What topics have been selected for investigation?

H. Please describe budget, staff, other resources--amounts and sources.

III. Manual and Needs

Please describe any obstacles encountered in setting up the Task Force and how they were handled.

Was the manual helpful? How would it be more helpful?

What advice would you have for others wishing to establish a Task Force in their state?

REPORT II [completed after data collection finalized or first major round of data collection]

I. Identifying Information

A. Report date.
B. Name, address, phone.
C. Task Force name.

II. Investigation and Data Collection

A. Please describe scope of Task Force investigation.

B. Describe methods of data collection that were used. (Attach copies of survey forms, meeting scripts, hearing, announcements.) Briefly sumarize the findigs.

C. How useful were these methods.

D. How were these efforts financed?

E. Who analyzes data gathered?

III. Manual and Needs

Was the manual helpful?

How could it have been more helpful?

What difficulties did you encounted in gathering data? How were they overcome?

REPORT III [to be completed when report is published]

I. Identifying Information

A. Report date.
B. Name, address, phone.
C. Task Force name.

II. Reports

A. Please send a copy (more than one if possible).

B. If a summary report is published please send copies.

III. Report Development

A. Who wrote your report?

B. Was this volunteer effort or were the authors paid?

C. Did the author(s) participate in the Task Force as members, observer(s)?

REPORT IV [to be completed 3-6 months after Task Force Report is issued]

I. Identifying Information

A. Report date.
B. Name, address, phone.
C. Task Force name.

II. Implementation of Recommendations

A. How have Task Force recommendations been implemented? What activities are underway, planned?

B. Has there been or will there be a presentation at the judicial college? Describe briefly.

C. What judicial or legal courses on gender bias have been or will be offered? Where? Were of these offered as a result Of the Task Force work? Do these courses include information collected by the Task Force?

D. Describe media coverage of your report activities. (Attach copies.)

E. How widespread has dissemination of the report been?

F. Is your Task Force ongoing--for long, with what specific objectives?

G. What obstacles do you see to continuation of the Task Force focus on gender bias?

III. Is Your Task Force Still in Existense?

A. How has the Task Force changed?

B. What is the Task Force's mission after issuance of the report?

C. What commitment (by whom) is there for long term follow-up?