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## **LEARNING FROM THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS: EVALUATION, RECOMMENDATIONS AND IMPLICATIONS FOR OTHER STATES**

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# Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States

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*The National Association of Women Judges (NAWJ) has been deeply involved in the national gender bias task force movement. When the 1984 Report of the New Jersey Supreme Court Task Force on Women in the Courts (9 WOMEN'S RTS. L. REP. 129 (1986)) attracted national attention, NAWJ created the National Task Force on Gender Bias in the Courts to encourage formation of new task forces and provide technical assistance to them. Today there are more than thirty states with supreme court task forces working to document the nature and extent of gender bias in their own court systems and to implement reforms. Thirteen of these task forces have issued their reports.*

*Whether these reports are making a difference in the administration of justice is of paramount concern. The following evaluation of the impact of the report of the New Jersey Supreme Court Task Force on Women in the Courts is the first and, to date, the only such evaluation. It assesses the status of all the task force's recommendations five years after the report's release. In addition, this report evaluates the task force's impact on substantive judicial decision-making and the treatment of women in court environments*

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Prof. Wikler and Ms. Schafran are co-authors of *Operating a Task Force on Gender Bias in the Courts: A Manual for Action*, published by the Women Judges' Fund for Justice, 1225 15th Street N.W., Washington D.C. 20005, (202) 462-4243.

and in bar associations. In response to the recommendations for the future of the New Jersey task force made in this evaluation, New Jersey Chief Justice Robert N. Wilentz established the Committee on Women in the Courts as a standing committee of the New Jersey Supreme Court, to carry forward the work of the task force.

For a list of these reports and how to obtain them contact Lynn Hecht Schafran, Esq., Director, National Judicial Education Program to Promote Equality for Women and Men in the Courts, 99 Hudson Street, 12th floor, New York, N.Y. 10013, (212) 925-6635.

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the Task Force would have a major impact nationwide. The commitment and hard work of this group deserves highest praise.

In the New Jersey Administrative Office of the Courts (AOC) we thank Director Robert Lipscher for his interest and support, and acknowledge with special appreciation Attorneys Patricia Nagle and Melanie Griffin, who served successively as AOC’s liaisons to the Task Force from 1982-1988 and worked devotedly towards its goals. We also thank AOC’s new liaison, Marilyn

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Among the many respondents to our inquiries were judges and lawyers throughout the state, staff at the Administrative Office of the Courts, staff at numerous domestic violence shelters and a variety of other individuals who participated in telephone interviews and responded to other types of inquiries. We thank all these respondents for sharing their views with us.

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### SUMMARY OF REPORT

In October 1982 New Jersey Supreme Court Chief Justice Robert N. Wilentz appointed a special New Jersey Supreme Court 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 (for the 1983 New Jersey Judicial College) to eliminate any such bias."<sup>2</sup> The Task Force employed a variety of data-collection methods to develop information about gender bias on selected areas: damages, domestic violence, juvenile justice, matrimonial law, sentencing, interactions in the court and professional environments and court administration. The seriousness of the problems it reported to the 1983 Judicial College led the Chief Justice to continue the Task Force without a definite term.

Six years since its inception, the Task Force is still at work. Already its efforts have brought about important changes in the New Jersey courts and inspired a nationwide gender bias task force movement. Today, twenty-five other states are

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1. The Women Judge's Fund for Justice (WJFJ) was created in 1980 by women judges committed to strengthening the role of women in the American judicial system. The Fund is a non-profit, tax exempt organization engaged in educational and research programs. The Fund works closely with the National Association of Women Judges (NAWJ).

Recent accomplishments and ongoing projects include:

- Publication and distribution of *Operating A Task Force on Gender Bias in the Courts: A Manual for Action*. Created with input from experts on gender bias in the courts, the manual offers concrete, step-by-step instruction on how to encourage the formation of a task force, collect relevant data, prepare a report, and structure the recommendation for maximum effectiveness;
- Development of a curriculum for institutes on the judicial selection process and candidacy skills, with the help of the National Women's Education Fund;
- Presentation of seminars on judicial selection and candidacy skills in targeted states for women interested in becoming judges;
- Publication and distribution of *Judicial Education: A Guide to State and National Programs*;
- Co-sponsorship of institutes on judicial education faculty development;

- Development of conference and training workshops on critical judicial issues such as recent developments in bioethics and reproductive technology.

President: Honorable Judith McConnell  
Executive Director: Marilyn Nejeleski

2. The New Jersey Task Force, the first in the country, evolved from the recommendation of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (the NJEP). It plans judicial education about gender bias in the courts and collects and presents local data in order to make judicial education effective and to minimize judges' denials of the problem. The NJEP was established in 1980 as a project of the NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges. The NJEP works to educate judges through their established judicial education programs about the ways in which the three aspects of gender bias — (1) stereotyped thinking about the nature and roles of women and men, (2) society's perception of the value of women and men and what is perceived as women's and men's work, and (3) myths and misconceptions about the economic and social realities of women's and men's lives — affect judicial decision-making and courtroom interaction.

utilizing the task force approach toward eliminating gender bias from their courts. The New Jersey Supreme Court Task Force on Women in the Courts can rightly claim to have played a pivotal role in American judicial reform.

## PURPOSE AND APPROACH

The purpose of this evaluation is to determine the impact of the New Jersey Task Force's first six years of work, to make suggestions for the future direction of the Task Force, and to discuss the implications of the New Jersey Task Force's experiences for gender bias task forces in other states. This study draws upon twenty-five sources of objective and subjective data, including Task Force members' oral and written reports of their perceptions of progress and problems as well as interviews with the Chief Justice, the Administrative Director of the Courts and a variety of other individuals with knowledge and perspectives of particular relevance to the Task Force.

This inquiry is not a conventional social scientific evaluation in which researchers typically assess the success of a project by using quantitative measures of progress made toward goals clearly defined from the outset. Because of the unique endeavor of gender bias task forces, such an evaluation model is unsuitable. This is particularly true for New Jersey because its Task Force was the first in the country. As in all pioneering efforts, unanticipated expectations, activities and goals arose in the course of its work, thereby precluding systematic assessment of change.

## EVALUATIONS QUESTIONS AND FINDINGS

### *Did the Task Force Fulfill its Mandate?*

The Task Force more than fulfilled its original 1982 mandate. It conducted an extensive investigation of gender bias in the judicial branch in 1982-83 and presented some form of programming on gender bias at the New Jersey Judicial College in 1983 and in each subsequent year. The Task Force issued a summary report in 1983, its First Year Report in 1984 and its Second Report in 1986. All the reports included numerous recommendations that the Task Force has worked to implement. Also in 1984 the Task Force produced a videotape depicting substantive and procedural gender bias problems for use in judicial

and legal education. The reports and videotape have been distributed nationwide.

### *What is the Current Status of the Task Force's Recommendations?*

Many of the Task Force's numerous recommendations have been implemented. Others are in process or under study. For example, the Code of Judicial Conduct was amended explicitly to bar gender and other types of bias, the Model Criminal Jury Charges were made gender-neutral, and the Administrative Office of the Courts (AOC) developed a manual about nondiscriminatory interviewing techniques. Among the recommendations in process or under study, the Model Civil Jury Charges committee is currently working on major changes to those charges, including the use of gender-neutral language; the AOC Statistical Services Unit is evaluating juvenile justice data for a study, recommended by the Task Force, of possible gender-based disparities in sentencing; and the Supreme Court Committee on Civil Charges is studying the Task Force's recommendation that the model damages charge be supplemented to address specifically the measure of damages for a plaintiff who pursues a career in the home.

### *In What Ways, if any, Did the Task Force's Work Reduce Gender Bias in the Courts in Designated Areas of Concern?*

There is a clear consensus among respondents to this evaluation that the Task Force has had its greatest impact on reducing gender bias in the courtroom and professional environments. Although the problems in these areas have not been entirely overcome, respondents agree that as a result of the Task Force's effectiveness in bringing these problems to the attention of the judicial and legal communities, there has been a significant amelioration. It appears that the Task Force's greatest accomplishment in the state is also its most subtle: creating a climate within the court system in which the nature and consequences of judicial gender bias are both acknowledged to exist and understood to be unacceptable in the New Jersey courts.

With respect to the substantive law issues investigated, our inquiry reveals both areas of notable progress and areas in which change appears to be taking place at a slower rate. There are data

indicating improvements in damage awards for homemakers, in child support awards and collections, and in aspects of domestic violence and matrimonial law. At the same time, some of the problems cited by the Task Force continue to be matters of concern. The study of matrimonial cases recommended by the Task Force to clarify problems in that area is now being explored by a joint committee of Presiding Family Court Judges and Task Force members. The Task Force's recommended studies respecting juvenile justice and sentencing are also not yet available.

*What Factors Facilitated and What Factors Slowed the Work of the Task Force and the Implementation of its Recommendations?*

The Task Force's work and the implementation of its recommendations were principally facilitated by the visible ongoing support of the Chief Justice, the continuing professional efforts and leadership of the Task Force's Chair and many of its members over the years, the staff liaisons and the Administrative Director of the Administrative Office of the Courts. All these individuals worked continuously to make judges, lawyers and laypersons throughout New Jersey and the country aware of the need for reform, to plan and participate in judicial education and education for the bar to follow though on the Task Force's recommendations.

In large and complex court systems, such as New Jersey's, which have numerous interrelated administrative units, no single organizational element can affect long-term change on its own. This is particularly true for a task force, which by its very nature is an advisory body, dependent upon others to implement its recommendations. Although the Task Force received ongoing cooperation from most of the implementing authorities to which it related in a few matters, such as presenting judicial education programs, it encountered some resistance. Other factors which slowed the work of the Task Force were limited authority to affect implementation, lack of an appropriate data base and social science expertise, lack of a full-time executive director and staff and some instance of complacency and backlash against the Task Force's goals and efforts.

*What Should Be the Future Direction of the Task Force?*

We recommend that the New Jersey Task Force devolve into a small standing committee which would:

- (1) continue efforts to implement recommendations,
- (2) encourage and help to develop judicial education in which gender bias issues are regularly integrated into all relevant substantive and procedural courses,
- (3) assist AOC to establish a statistical database appropriate for monitoring areas of Task Force concern,
- (4) review appellate decisions on gender-related issues and call the attention of the trial courts to those which pertain to gender bias,
- (5) participate in programs about gender bias for professional and lay audiences,
- (6) serve as a resource for the media, and
- (7) process complaints received through formal and informal mechanisms.

We also recommend the appointment of an ombudsperson, to monitor areas of concern to the Task Force and to bring community perspectives to the judiciary, the creation of an informal grievance mechanism for gender bias complaints, and the development within AOC of the social science expertise necessary to pursue gender bias studies.

*What Are the Implications of the Jersey Task Force's Experience for Gender Bias Task Forces in Other States?*

\* A Task Force Can Make a Difference

New Jersey's most important lesson for the task forces it has inspired is that a task force can make a difference. The New Jersey Task Force's success in legitimizing gender bias in the courts as an issue judges must take seriously should be a cause for optimism in other states.

\* The Importance of Focusing on the Judiciary

Task Forces on gender bias in the courts are a unique historic opportunity to focus attention on the judiciary and encourage the judiciary to undertake self-scrutiny of its behavior. The New Jersey Task Force's clear and consistent focus on the judicial branch should be emulated.

\* The Need to Focus on Gender Bias in Decision-Making

The differential rates of progress made in reducing gender bias in the substantive law areas studied by the New Jersey Task Force demonstrate the difficulty of affecting changes in decision-making practices. Task forces should emphasize as an essential goal the elimination of gender bias in the interpretation and application of substantive law.

\* Judicial Education Must Be Addressed from the Task Force's Beginning

Other states should recognize, as New Jersey did, that compiling information about gender bias in their state courts for use in judicial (and also legal) education is a task force's most important function. To derive the full benefit of this effort, it is essential that a task force plan for judicial education from the beginning.

\* Planning for the Difficulties of Implementation

Because task forces are usually advisory and lack authority to implement their recommendations, efforts must be made to plan for the difficulties of implementation. As was done in New Jersey, the Chief Justice and Court Administrator should be kept abreast of the information being brought to the task force's attention and their advice should be sought periodically about formulating curative recommendations.

\* The Need for a Data Base That Facilitates Investigation and Evaluation

State court systems need to develop data-collection capabilities which ensure that information needed to assess gender bias is collected on an ongoing basis and that it is easily retrievable.

\* Appreciation of the Long-Term Nature of the Enterprise

New Jersey's experience over a period of six years demonstrates that eliminating gender bias from the courts is a long-term enterprise. A task force must recommend mechanisms that will both affect and institutionalize reform and ensure monitoring and integrated judicial education about gender bias on a permanent basis.

## I. PREFACE

In October, 1982, New Jersey Chief Justice Robert N. Wilentz appointed a special one-year New Jersey Supreme Court Task Force on Women in the Courts (Task Force) "to investigate the extent to which gender bias exists in the New Jersey judicial branch and to develop an educational program [for the 1983 New Jersey Judicial College] to eliminate any such bias." The Chief Justice also suggested that it might be appropriate to issue a written report. In 1984 the Task Force issued its first report, which stated that:

With few exceptions, the findings of and results of the Substantive Law Committee, the Attorneys' Survey, and the Regional and State Bar Association Meetings were mutually corroborative. Although the law as written is for the most part gender neutral, stereotyped myths, beliefs and biases were found to sometimes affect decision-making in the areas investigated: damages, domestic violence, juvenile justice, matrimonial law and sentencing. In addition, there is strong evidence that women and men are sometimes treated differently in courtrooms, chambers and at professional gatherings.<sup>3</sup>

Because of the significance of these findings, the Chief Justice continued the Task Force without a definite term. For the next four years the Task Force worked to implement the recommendations set forth in its first (1984) and second (1986) reports and to present educational programs for the state judiciary.

In 1987 we undertook this evaluation of the Task Force's wide-ranging activities to assess the Task Force's effectiveness in eliminating gender bias in the New Jersey courts. Our findings suggest that the Task Force has significantly reduced gender-biased behavior in court interactions and positively influenced the professional environment as well. With respect to the substantive law issues which the Task Force investigated and about which we have current information, our inquiry reveals some areas of notable progress and others in which change appears to be taking place at a slower rate. The Task Force's greatest accom-

3. *The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts — June 1984*, 9 WOMEN'S RTS. L. REP. 129 (1986) [hereinafter *New Jersey Task Force Report*]. It is important to note that the New Jersey Task Force

did not investigate all the areas of substantive law in which gender bias may be manifested, for example, this Task Force did not investigate sexual assault, prostitution or custody.

plishment in the state is also its most subtle: creating a climate within the court system in which the nature and consequences of judicial gender bias are both acknowledged to exist and understood to be unacceptable in the New Jersey courts.

The impact of the New Jersey Task Force has spread far beyond the state borders. The Task Force's first report, issued in 1984,<sup>4</sup> drew national attention and sparked the creation of similar task forces across the country, which look to New Jersey as their model. After six years of pioneering work to reduce gender bias in the courts, the New Jersey Task Force can rightly claim to have played a pivotal role in the history of American judicial reform.

## II. INTRODUCTION

The New Jersey Task Force on Women in the Courts was the first such task force in the country. At the time this report was completed in October, 1988, similar task forces had been established by the highest courts in sixteen states. Bar associations in three other states had created committees to investigate gender bias in the courts. Formal efforts to establish task forces were underway in another seven states.<sup>5</sup>

These task forces are the most visible sign of the current national movement to eliminate gender bias in the courts. Although each task force is different, they share similar mandates: to investigate the nature and extent of gender bias within each state court system, to develop education programs to address the problems found, and to recommend reforms.

The primary impetus for the present inquiry was to gather information that would assist the Task Force in charting its future course and to assist other state task forces in their investigations. Task forces do not go on forever, at least not at full strength. A top priority of the Task Force now is to determine what steps to take to secure the gains it has made thus far and to ensure future progress in achieving equal justice in New Jersey. Our scrutiny of the Task Force's past will inform the decisions to be made about its future. But it is important for all task forces to take a close look at the work done in New Jersey. States can learn from each other. What worked? What did not? What factors facilitated or hin-

dered progress? By what means can a task force maximize its effectiveness and avoid the pitfalls encountered by others?

We describe this report as an "evaluation" of the New Jersey Task Force. However, this is not a conventional social scientific evaluation study. In that kind of work, researchers typically evaluate the success of a project using quantitative measures of progress made toward goals and objectives clearly defined from the outset. Such an evaluation model is unsuitable for gender bias task forces in general, because of their unique endeavor, and particularly so for New Jersey's pioneering efforts because unanticipated expectations, activities and goals arose in the course of the Task Force's work, thereby precluding systematic assessment of change. Moreover, the Task Force has made greatest progress in precisely those areas least amenable to quantitative analysis. (Other methodological constraints to this evaluation are discussed in Section IV.)

Despite these limitations, the four-year interval since the Task Force issued its first report and the creation of numerous other gender bias task forces across the country convinced us of the importance of assessing the impact of the New Jersey Task Force, and of communicating our findings to those involved in the national effort to reduce gender bias in the courts. Our study has several related goals:

1. To examine the Task Force's progress in fulfilling the Chief Justice's mandate, in implementing its own recommendations for specific changes and further studies, and in reducing gender bias in judicial decision-making and the courtroom environment,
2. To analyze, in addition to the "outcomes" listed above, the *processes* by which the Task Force operated, attending particularly to the key factors that emerge as either facilitating or hindering the Task Force's work,
3. To derive from this analysis recommendations that will serve to institutionalize the changes brought about by the Task Force and thereby to secure its gains, and
4. To describe the implications for other gender bias task forces that can be

4. *New Jersey Task Force Report*, *supra* note 3.

5. A list of all these task forces, including their date of creation and current stage of activity, appears in Appendix A.

drawn from our analysis of the work of the New Jersey Task Force.

Our evaluation begins with a history of the origins and activities of the New Jersey Task Force. We then turn to the procedures used in conducting this evaluation, setting forth our analytic framework and describing the data sources. Next is a lengthy discussion of our findings followed by our analysis of these findings, including the identification of key factors that enhanced or slowed the work of the Task Force. The final three sections include our recommendations for the future, the implications of New Jersey's work for task forces in other states, and our conclusion.

### III. ORIGIN, HISTORY AND ACTIVITIES OF THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS

Because the New Jersey Task Force is such an important development in the effort to eliminate gender bias from the courts, it is important to understand the background and context from which it evolved.

During the 1970s, lawyers and activists working to secure women's rights legislation realized that remedial laws were but one aspect of the reforms necessary to achieve legal equality for women. Because laws are only as effective as the judges who interpret, apply and enforce them, a way had to be found to enable judges to understand how judicial decision-making and court interaction are affected by gender bias in all its manifestations: stereotyped thinking about the nature and roles of women and men, society's perception of the relative worth of women and men and what is perceived as women's and men's work, and myths and misconceptions about the economic and social realities of women's and men's lives.

Seeking to address this need, in 1980 the NOW Legal Defense and Education Fund established the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP).<sup>6</sup> Soon after, the National Association of Women Judges joined as co-sponsor.

NJEP's purpose is to develop and introduce into established judicial education programs for state and federal judges courses and course segments about the ways in which gender bias affects the courts and undermines fundamental fairness.

In 1980 and 1981, Judge Marilyn Loftus of the New Jersey Superior Court (Essex County) in Newark, New Jersey, attended the second and third meetings of the National Association of Women Judges. In April, 1982, she participated in the conference "Women in the Judiciary: A Symposium for Women Judges" sponsored by the National Center for State Courts. During these meetings Judge Loftus attended programs at which the authors of this evaluation discussed judicial gender bias, its effects on the courts and the ways in which the National Judicial Education Program educates judges on this subject. Judge Loftus noted NJEP's recommendation that states planning judicial education about gender bias collect and present as much local data as possible in order to minimize judges' denial that this kind of bias exists within their own jurisdictions.

When Judge Loftus returned from these conferences she spoke with New Jersey Chief Justice Robert N. Wilentz and New Jersey Administrative Director of the Courts Robert D. Lipscher, who encouraged her to continue familiarizing herself with these issues and to make recommendations for judicial education programs. Director Lipscher suggested that she present a program on the subject of gender bias in the courts at the 1982 New Jersey Judicial College. Judge Loftus responded that if she did so, the New Jersey judges would be likely to say that gender bias occurred elsewhere, but not in New Jersey. She suggested that a committee be appointed to develop state-specific data about gender bias and that an educational program about gender bias in the courts be presented at the opening mandatory session of the 1983 New Jersey Judicial College.

In June, 1982, Judge Loftus wrote a letter recommending that Chief Justice Wilentz appoint a committee to work during the next year to collect relevant data for a program at the 1983 New Jersey Judicial College. The Chief Justice responded by appointing a special one-year New

6. For a complete description of the National Judicial Education Program to Promote Equality for Women and Men in the courts and the New Jersey Task Force, see Schafran, *Educating the Judiciary About Gender Bias: The National Judicial Education Program to Promote Equality for Women*

*and Men in the Courts and the New Jersey Supreme Court Task Force on Women in the Courts*, 9 WOMEN'S RTS. L. REP. 109-124 (1986) [hereinafter *Educating the Judiciary About Gender Bias*].

Jersey Supreme Court Task Force on Women in the Courts. The press release issued by the Chief Justice stated that the Task Force was "to investigate the extent to which gender bias exists in the New Jersey judicial branch." He further 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."

The New Jersey Supreme Court Task Force on Women in the Courts has thirty-two members of diverse backgrounds who come from all parts of the state. The Task Force's original membership included thirteen judges (three appellate judges, eight trial judges including the Chair, and two municipal court judges); a county prosecutor and two deputy attorney generals; several law professors, including a law school dean; officers of the New Jersey State Bar Association, the New Jersey Women Lawyers Association and the National Bar Association; the current and former assistants to the Chief Justice; a judicial educator; the president of the New Jersey Women's Political Caucus; and staff from the Administrative Office of the Courts, among others. Most of these individuals continue to serve on the Task Force, although over the years several members' professional affiliations have changed.

The New Jersey Task Force has been a truly collaborative working task force. Because it was the first gender bias task force in the nation, the magnitude of the undertaking could not be foreseen. Consequently the New Jersey Task Force was not funded by legislative appropriations for an executive director, staff or research. All work was carried out through the cooperative, voluntary efforts of the Task Force members, the Task Force advisor and others within the existing court system.<sup>8</sup> After several exploratory meetings at which the authors provided the Task Force with background about the ways in which gender bias manifests itself in judicial decision-making and court interaction, the Task Force decided to investigate three major questions:

- (1) Do gender-based myths, biases and stereotypes affect the substantive law

and/or impact upon judicial decision-making?

- (2) Does gender affect the treatment of women and men in the legal and judicial environment (courtroom, chambers, professional gatherings)?

- (3) If so, how can judges affirmatively ensure equal treatment for women and men in the courts?

The Task Force employed several data-collection methods. The Subcommittee on Substantive Law investigated gender bias in damages, domestic violence, juvenile justice, matrimonial law and sentencing. This subcommittee reviewed case law, interviewed judges and analyzed statistical materials from the Administrative Office of the Courts and other state and federal agencies. The Task Force collected additional data about substantive law and the treatment of women in the courts and professional environments at seven regional meetings with lawyers throughout the state and an eighth held in conjunction with the state bar meeting. Questions about substantive law and the court and professional environments were posed in a survey distributed to attorneys throughout the state. In all, more than 1,100 judges and lawyers communicated with the Task Force.

The Task Force announced its findings and recommendations and distributed a Summary Report at the mandatory plenary session of the New Jersey Judicial College in November 1983. The program, "Report of the New Jersey Supreme Court Task Force on Women in the Courts," was introduced by Chief Justice Wilentz. At its conclusion the Chief Justice made this statement:

There is 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

7. Press release of Chief Justice Robert N. Wilentz, released by the Administrative Office of the Courts, State of New Jersey (Nov. 11, 1982).

8. A list of the Task Force members, the Task Force advisor,

observers and staff appears in Appendix B. A list of the twelve Task Force subcommittees and their members appears in Appendix C.

judges who are women. It will not be tolerated in any form whatsoever.

Because of the significance of the findings presented, the Chief Justice continued the Task Force for an indefinite time to further investigate gender bias in the court system and authorized it to make additional recommendations to him.

In June, 1984, the Task Force published its full First Year Report.<sup>9</sup> In the same year the Task Force also presented three courses at the New Jersey Judicial College and produced a videotape for use in judicial and legal education based on actual incidents and cases of gender bias reported during its investigation.

After conducting an extensive study of gender bias in the New Jersey judicial branch, producing a report and videotape, and presenting four judicial education programs during 1983 and 1984, the Task Force considered whether it should remain in business. The question was discussed during several Task Force meetings in 1985 and a consensus emerged that the Task Force should continue to exist in a "watch dog" phase. Members noted the high level of interest and activity around the issue in the state and nationally, the continued support of the Chief Justice, the fact that studies which the Task Force had recommended be undertaken by the Administrative Office of the Courts had not yet been done, and the need to monitor complaints.

In addition, because this was the nation's first gender bias task force, no one anticipated at its outset all the changes the Task Force could bring about. Certainly there had been no anticipation of its making a national impact. Members of the Task Force were extremely surprised when its presentation to the 1983 New Jersey Judicial College about the investigation's findings was reported on the front page of *The New York Times*.<sup>10</sup> The Task Force members were equally surprised when requests poured in from bar associations within New Jersey and throughout the country asking for information and speakers from New Jersey to help them take action in their own organizations and states." AS expectations for

change built within and beyond the state, the Task Force felt an obligation to continue its work, albeit at a reduced level of activity, and to pursue change through as many avenues as possible, from gender-neutralizing the language in court rules, to continued pressure for judicial education about all aspects of gender bias at each year's judicial college.

In 1986, the Task Force published its Second Report, which described how the recommendations in the First Year Report had been implemented to date, and presented additional findings and recommendations from the Subcommittee on Court Administration.<sup>12</sup> This report also included several speeches given by Task Force members at the 1984 New Jersey Judicial College and provided an overview of New Jersey appellate decisions affecting women's rights between 1973 and 1984.<sup>13</sup> The Task Force continued to press the Administrative Office of the Courts to undertake the studies of matrimonial cases and sentencing that it had urged in 1984 and to continue to include gender bias problems in programs at the judicial college.

#### A. The Reason for an Evaluation Study

In 1985, the National Association of Women Judges, responding to the intense interest generated by the New Jersey Task Force, created the National Gender Bias Task Force, with Judge Marilyn Loftus as its chair, to encourage formation of new task forces and to provide technical assistance to them. Our manual, *Operating a Gender Bias Task Force: A Manual for Action*,<sup>14</sup> based on our experience as advisors to the New Jersey, New York, Rhode Island and Arizona task forces, was published in 1986 by NAWJ's educational arm, the Women Judges' Fund for Justice. By that year several other task forces had been created and others were in formation. The manual was intended to help established task forces operate effectively and to assist other states in getting new task forces off the ground.

But task force reports are only the beginning of the work that must be done to eliminate gender

9. *New Jersey Task Force Report*, *supra* note 5.

10. *Panel in Jersey Finds Bias Against Women in the State Courts*, N.Y. Times, Nov. 22, 1983, at 1, col. 1.

11. For a list of some of the presentations that resulted from these requests, see Task Force Members' Public Appearances in Appendix D.

12. The Task Force's Second Report is available from the

New Jersey Administrative Office of the Courts, CN-037, Trenton, NJ 08625.

13. Prepared for the Task Force by the Women's Rights Litigation Clinic at Rutgers University Law School-Newark.

14. *Operating Manual for Action* (1986). available from the Women Judges' Fund for Justice. 1900 L Street, N.W., Suite 300, Washington, D.C. 20036, for \$35.00.

bias in the courts. Understanding how the New Jersey Task Force fulfilled its mandate, implemented its recommendations and made progress toward reducing gender bias in decision-making and courtroom interaction can aid other task forces in implementing the long-term strategies necessary to achieve and then institutionalize meaningful reforms.

#### IV. EVALUATING THE NEW JERSEY TASK FORCE: FRAMEWORK AND PROCEDURES

##### A. Establishing the Framework

Assessing the Task Force's work required designing an appropriate frame of reference. Looking simply at how well the Task Force fulfilled its official mandate to develop a one-time judicial education program would have been grossly insufficient. From the outset there was an *implicit* expectation that by its very existence, as well as by its specific activities and recommendations, the Task Force would reduce gender bias in the New Jersey courts. Thus, our evaluation necessarily includes consideration of both implementation of the specific recommendations set forth by the Task Force in its first and second reports, and a variety of objective and subjective data that shed light on the Task Force's overall success in reducing gender bias within the state's judicial branch.

But limiting the scope of our inquiry to New Jersey only would still be underinclusive, for the Task Force has indirectly had a significant impact on court systems in other parts of the country. Thus, our assessment also incorporates data that document the Task Force's influence nationwide.

##### B. Methodological Constraints

Methodological constraints and procedural difficulties were anticipated and encountered in our evaluation study. The problems of a post hoc evaluation were alluded to earlier (*see supra*, p. 3). When attempting to assess reduction in gender bias, for example, one needs a baseline of the level of gender bias against which to measure change. But the Task Force, understandably, could not establish such a baseline and, in any case, could not have anticipated its own longevity.

The time frame for this evaluation study is problematic in itself. Is the six years from the Task Force's creation in 1982 the correct unit for assessment, or should it be the four years since

distribution of the first report? Neither may be satisfactory since both institutional and individual change in matters as complex as judicial gender bias may germinate so slowly and subtly that a four or six-year assessment could miss its significance.

Ideally, our evaluation would be based in large measure on "hard" or statistical data systematically collected for this purpose. For example, it would be interesting to know if the Task Force's judicial education programs contributed to an increase in adequate child and spousal support awards. But such information is not available. Even if we had "before" and "after" data on support awards (or decisional outcomes in other substantive law areas of concern to the Task Force), we would encounter the methodological impossibility of isolating the causative factors of change. The improvement in child support enforcement cannot be clearly attributed to the Task Force's efforts. As discussed *infra*, the federal Child Support Enforcement Amendments of 1984 were simultaneously exerting a positive force for change. With respect to New Jersey appellate decisions, the issue is the same. The appellate courts were largely sensitive to women's issues before the Task Force. We cannot say definitely that the Task Force further heightened appellate judges' awareness, although the case reviews undertaken for the Task Force suggest this is so. There are other areas of progress where the Task Force cannot claim sole credit. In these instances it is more appropriate to view the Task Force as having a synergistic effect with other sources of change.

In addition to the methodological limitations described above, another aspect of our data collection leads us to modest claims about the definitiveness of our study. Although we draw upon twenty-five different sources of objective and subjective data, restricted resources and time precluded our communication with large numbers of people. Our respondents were selected because of their relation either to the Task Force or to legal and lay communities which make them especially knowledgeable about the issues of concern to the Task Force. For the most part, there was broad consensus regarding those areas in which the Task Force has been most successful and those in which problems remain. But the size and nature of our sample makes it inappropriate to generalize the views of our respondents to the entire popula-

tion of judges, lawyers, court personnel and litigants in the state of New Jersey.

### C. Sources of Data

1. *Task Force Meeting*: At a special meeting of the Task Force on April 24, 1987, Professor Wikler led a structured discussion among Task Force members about their experiences, observations and analyses of the Task Force's impact and sought their suggestions for other sources of data. The entire meeting was recorded and transcribed.
2. *Task Force Logs*: Task Force members completed an assessment form prepared by Professor Wikler which asked them to (1) list all judicial, bar and public education programs about the Task Force in which they had participated; (2) record their overall assessment of the Task Force's impact on gender bias in the New Jersey courts, drawing upon their personal experiences, reported and unreported opinions, and comments made to them by judges and lawyers; (3) describe concrete examples of positive and negative responses to the Task Force's work, including its reports; (4) submit relevant documentation; and (5) suggest other sources of data.
3. *Subcommittee Reports*: The Chairs of the Task Force subcommittees were asked to report on the implementation of the recommendations made by their respective subcommittees in the Task Force's first and second reports.
4. *Inrerview with the chief justice*: On April 28, 1987, Professor Wikler interviewed Chief Justice Robert N. Wilentz about his assessment of the Task Force's impact and his continuing concerns about the elimination of gender bias in the New Jersey Courts.
5. *Women Judges Meeting*: At the May 5, 1987, meeting of District Three of the National Association of Women Judges (NAWJ), which includes New Jersey, twenty-six women judges participated in a discussion led by Judge Marilyn Loftus and Lynn Hecht Schafran in which these judges were asked for their assessment of the Task Force's impact. The entire meeting was recorded and transcribed.
6. *Women Judges' Logs*: The judges attending the NAWJ District Three meeting were also asked to complete a log similar to that prepared for Task Force members.
7. *Essex County Judges Meeting*: On January 20, 1988, the monthly meeting of the Essex County (Newark) Judges was devoted to a discussion led by Judge Marilyn Loftus and Lynn Hecht Schafran designed to elicit these judges' views as to whether and how the Task Force had influenced their decision making and the way they conduct their courtrooms.
8. *Judicial Education*: A review was made of the courses given at the New Jersey Judicial Colleges since 1983 that were either presented by the Task Force or that integrated Task Force materials and concerns, and the judges' evaluations of these courses.
9. *Judges' Survey*: In 1984, the Administrative Office of the Courts on behalf of the Task Force surveyed Superior Court Judges and Supreme Court Justices to learn about their responses to the Task Force's 1983 judicial college program and about areas in which they believed their decision-making ability would be enhanced by a deeper factual background on the status of women in society today. The seventy-eight responses were reviewed for this evaluation.
10. *Interview with the Director of the Administrative Office of the Courts (AOC)*: On April 30, 1987, Professor Wikler met with AOC Director Robert Lipscher to discuss the Task Force's impact and institutional mechanisms to ensure continued monitoring and reform.
11. *AOC Actions*: The authors consulted extensively with the first and second AOC staff attorneys assigned to the Task Force, Patricia Nagle, Esq., and Melanie Griffin, Esq., to learn about their perceptions of progress attributable to the Task Force and problems remaining, and to obtain documentation of AOC actions. These included such items as implementing directives from the Administrative Director of the Courts, amendments to the Code of Judicial Conduct and a handbook for nondiscriminatory interviewing of job applicants. The new AOC liaison to the Task Force, Marilyn Slivka, also provided extensive information about AOC implementation actions.
12. *Women's Rights Bar Section Meeting*: At the authors' request, the June 18, 1987, meeting of the Women's Rights Section of the New Jersey Bar Association included an extended discussion of the question: "The New Jersey Task Force on Women in the Courts: Where Were We and Where Are We Now?"
13. *Individual Telephone Interviews*: Lynn Hecht Schafran conducted a series of telephone interviews with a variety of individuals with knowledge and vantage points of particular interest.

These included judges who had talked to the Task Force Chair about the impact the Task Force has had on them personally and Task Force members whose log comments merited further discussion. She also spoke with child support officials and grassroots child support advocates, the Director of the New Jersey Commission on Discrimination Against Women in the Statutes and the President of the New Jersey Chapter of the American Trial Lawyers Association.

14. *AOC's Domestic Violence Internal Report*: The AOC Family Division provided the authors with a forty-six page internal report detailing the judiciary's efforts to date to improve the court's response to domestic violence and new measures that were considered at the October, 1988, New Jersey Judicial Conference.

15. *AOC's Reports on the Prevention of Domestic Violence Act for July 1, 1984 - June 30, 1985, July 1, 1985 - June 30, 1986, and July 1, 1986 - June 30, 1987*. The Prevention of Domestic Violence Act, *N. J. Stat. Ann. 2C:25-1 et seq.* requires the AOC to collect and publish data on the number of complaints filed under the Act, the types of relief sought and the relief awarded or denied.

16. *Domestic Violence Shelter Survey*: Under the auspices of the National Judicial Education Program to Promote Equality for Women and Men in the Courts, a twenty-four question structured telephone survey of directors and legal advocates at shelters for battered women in fifteen counties was conducted during the summer of 1987. The purpose of the survey was to ascertain these experts' experiences and perceptions of improvements and continuing problems in the courts' response to domestic violence cases and the award and enforcement of spousal and child support.

17. *Governor's Advisory Council on Domestic Violence Public Hearings*: The authors reviewed testimony from two September, 1988 public hearings held by the Governor's Advisory Council on Domestic Violence to determine how to improve the treatment of victims under the 1981 Prevention of Domestic Violence Act.

18. *Family Law Practitioner Interviews*: Lynn Hecht Schafran conducted a series of telephone interviews with family law practitioners from counties throughout the state to ascertain their views of progress and problems with respect to equitable distribution, spousal and child support awards and enforcement, custody and domestic violence. The attorneys interviewed were in pri-

vate and Legal Services practice and were recommended by the New Jersey Women's Bar Association.

19. *AOC's Data on Child Support Enforcement*: The AOC provided information about the performance of New Jersey's Child Support Enforcement Program drawn from a draft copy of the forthcoming "Twelfth Annual Report to Congress for the Period Ending September 30, 1987, of the U.S. Department of Health and Human Services, Office of Child Support Enforcement."

20. *Enforcement*: Review of the "Statement of NOW Legal Defense and Education Fund on the Status of the 1984 Child Support Enforcement Amendments, Before the Subcommittee on Public Assistance and Unemployment Compensation Committee on Ways and Means, United States House of Representatives, United States Congress, February 23, 1988." Review of the NOW LDEF empirical research on state implementation of the 1984 Federal Child Support Enforcement Amendments as it pertained to New Jersey.

21. *Appellate Decisions Update*: Review of the update prepared by the Women's Rights Litigation Clinic at Rutgers Law School-Newark of its review of relevant appellate decisions from 1978 to 1984 that appeared in the Task Force's Second Report.

22. *New Jersey Law Journal Notice*: A notice was placed in the *New Jersey Law Journal* on July 16, 1987, inviting readers to communicate with the Task Force regarding their assessment of the Task Force's impact on substantive decision-making and the courtroom environment.

23. *Press and Media Coverage*: Newspaper, magazine and broadcast media coverage of the Task Force was assembled and analyzed.

24. *Distribution of Reports and Videotapes*: Statistics on the nationwide distribution of the Task Force's reports and videotapes were obtained from AOC.

25. *Data on Formation of Other Gender Bias Task Forces and Task Forces on Minorities*: Review of National Judicial Education Program files on the formation of gender bias task forces throughout the country inspired by the New Jersey Task Force, and the new task forces on minorities for which the gender bias task forces were the catalyst.

## V. EVALUATION FINDINGS

In the following section we first assess the ex-

tent to which the Task Force fulfilled its mandate to collect data on gender bias and develop an education program. Then, for each of the areas of special concern—the court and professional environment, court administration, and selected areas of substantive law—we summarize the Task Force’s findings, list its recommendations, describe their implementation and assess the nature and level of impact the Task Force has had in reducing gender bias in that area.

Throughout this section we have drawn from all of our data sources. Published speeches and opinions and the like are cited in full; quotations from data sources such as Task Force assessment logs and meeting transcripts are cited by reference to the data source only, without the name of the speaker.

#### A. Did the Task Force Fulfill its Mandate?

##### *Investigation Phase*

The Task Force more than fulfilled its original 1982 mandate to investigate gender bias in the New Jersey judicial branch. The composite set of data sources employed by the Task Force during its initial investigation—review of case law, literature review, analysis of available statistical materials, interviews with judges, regional meetings with lawyers and distribution of a survey to attorneys throughout the state—was well suited to the Task Force’s mission.<sup>15</sup> In all areas of designated concern, concrete and specific examples of gender bias manifest in judicial fact-finding, decision-making and courtroom interaction were brought to the attention of the Task Force by the 1,100 individuals who communicated with it.

During the second phase of the Task Force’s work (after publication of its 1984 report), data-collection efforts were less successful. At this point, the Task Force mainly sought to obtain primary statistical data to document further the problems in matrimonial law decisions cited by attorneys during the first phase of data collection, as well as data about issues considered to be possible problem areas by the Task Force subcommittees on sentencing and juvenile justice. These studies are now being explored. Their delay appears to have been due to lack of resources or social scientific expertise within AOC and limited

communication between the Task Force and the individuals within key AOC units who were to undertake these studies.

##### *Educational Programs*

The Task Force’s mandate directed it to develop an educational program for the 1983 New Jersey Judicial College to eliminate the gender bias it identified. However, the nature, extent and subtle complexities of the gender bias revealed by the Task Force’s investigation during its first year made it clear that sustained judicial education would be required to affect change. In keeping with the Chief Justice Wilentz’s continuation of the Task Force beyond its original one-year term, the Task Force continued to be actively involved in judicial education.

From the point of view of the authors, judicial education is the most effective means to reduce judicial gender bias. The primary reason for a task force is to provide the local data necessary to make such educational programs relevant and persuasive. The New Jersey Task Force has achieved a good record on judicial education and recognizes the need to do more.

At the opening of the 1983 New Jersey Judicial College, the Task Force presented its findings to a plenary session and distributed its summary report. (A description of this program and those from subsequent years, described below, are in Appendix E.) At the 1984 Judicial College the Task Force presented three programs: “Women and the Law: Changing Roles, Changing Attitudes,” which included the first showing for judges of the Task Force’s videotape; “Economic Aspects of Homemaking in Damages and Divorce”; and “Domestic Violence.”

In 1985, the Chief Justice showed the Task Force videotape to all assignment judges and urged them to show it to the judges in their own vicinages<sup>16</sup> and to discuss it with them. Many have done so. The Chief Justice also addressed gender bias in his opening remarks to the 1987 training program for Municipal Court judges and acknowledged the importance of the Task Force’s work in his opening remarks to the 1987 Judicial College.

At the 1985, 1986 and 1987 Judicial Col-

15. Task forces in other states have found public hearings held in different regions of the state also to be an extremely productive source of data on gender bias.

16. A “vicinage” is a New Jersey court district.

leges, issues of gender bias were discussed together with issues regarding racial and linguistic minorities in the programs "Equal Justice for All" (1985), "Equal Justice Under Law" (1986) and "Interaction of Cultures and How They Affect the Law" (1987). In 1987, the judge teaching "Recent Developments in Family Law and Procedure" included a reference to the Task Force's findings on gender bias in the economic aspects of divorce. The judge who will be giving this program in the future has agreed to incorporate a segment on this issue in the course. At the orientation programs for new judges, the judges for the last few years have been given the Task Force's first and second reports and told to be alert for cases and instances in which gender bias may be a factor. Starting in fall 1988, there will be a permanent component on gender and justice in the New Judges Orientation Program.

The Task Force experienced some difficulty in securing this continued attention to issues relating to gender bias. Although the Task Force was mandated to develop a program for the 1983 New Jersey Judicial College, two members of the Supreme Court Committee on Judicial College/Seminars for the 1983 College strongly resisted scheduling the Task Force's presentation, deriding the subject matter as just a women judges' problem and something only the "girls" would want to talk about. It was necessary for the Chair of the Supreme Court Committee to refer the issue to a Subcommittee of the Judicial College for review and ultimate scheduling.

In 1984, the Supreme Court Committee on Judicial College/Seminars approved the three programs noted above: "Women and the Law: Changing Roles, Changing Attitudes," "Economic Aspects of Homemaking in Damages and Divorce" and "Domestic Violence."

In 1985, certain members of the Subcommit-

tee on Judicial College took the position that the issue of gender bias in the courts had been "done" and that there was no need to repeat it. The Task Force Chair met with the Chief Justice, who conferred with the Director of the Administrative Office of the Courts; ultimately a program, "Equal Justice for All," was presented. This program presented findings from the New Jersey Supreme Court Task Force on Women in the Courts, the New Jersey Supreme Court Task Force on Minority Concerns and the New Jersey Supreme Court Task Force on Linguistic Minorities. This course was also given in 1986 with the title "Equal Justice Under Law." In 1987, a new course, "Interaction of Cultures and How They Affect the Law," was given.

Although these presentations were well received, programs that attempt to cover gender, race, linguistic and other types of bias together are not the optimum way to present this diverse and complex material.

In our experience., judicial education courses that attempt to cover several biases or "isms" (sexism, racism, ageism, etc.) at once are both too abstract and too general to enable judges to identify, understand and correct the concrete, day-to-day manifestations of these biases in decision-making and courtroom interaction." Each of these types of judicial bias deserves independent consideration.

Most effective in promoting genuine education about gender bias are programs on specific topics (e.g., "Economic Aspects of Homemaking in Damages and Divorce") that provide excellent written materials and offer a participatory format with ample time for discussion. Ideally, a state judicial education program should offer these specialized courses as part of a curriculum that also consistently integrates the concern for gender fairness into the full range of relevant substantive

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17. The outlines for the 1985, 1986 and 1987 "Equal Justice" programs appear in Appendix E. The presenters of the 1985 program attempted to achieve some depth by breaking the group into three workshops: linguistic minorities, race/ethnic biases and gender bias. But assuming that the forty-two judges who registered for this program divided evenly among the workshops, only fourteen participated in any one segment.

At the 1986 program only fifteen minutes were allotted for the topic "How Racial, Ethnic and Gender Bias Affects Decision Making in Matrimonial, Juvenile and Domestic Violence Cases." The 1987 program was a cross-cultural comparison of European, Asian and African cultural values and how American corporate policymakers hurt their own goals and productivity by failing to include the views and values of

minorities and women. Although such fascinating material indeed widens judicial perspectives, it is no substitute for affording judges the opportunity to detect and correct the ways in which gender and other types of bias may affect their individual exercise of judicial discretion in specific areas of substantive law and procedure.

We note *infra* at page 82 the problem of judges who believe that if they eliminate gender bias in court interaction they have eliminated gender bias in the courts. "Equal Justice" programs which briefly address an enormous range of issues create another version of this problem. They give the judges who attend the impression of having dealt with these complex issues, when in fact the exploration that is necessary has only begun.

law courses. *See infra* p. 79. This should be a goal for the Task Force in New Jersey.

### *New Jersey Judges' Responses to Judicial Education About Gender Bias*

Our sources of information about judges' responses to the Task Force's judicial education program include a 1984 survey of judges which assessed responses to the Task Force's 1983 program, course evaluations from subsequent programs and the direct experiences of presenters, including the authors, at the Task Force's programs.

Over the years New Jersey judges have expressed a wide range of responses to the Task Forces' programs. In 1984, the AOC surveyed the state's judges for the Task Force to attempt a systematic assessment of their responses to the 1983 program and this new, controversial topic. The response rate was low. Only seventy-eight judges out of 364 in the state (21 percent) responded, sixty-eight of whom had attended the Task Force's 1983 program. In answer to the question "Did the program presented by the Task Force on Women in Courts at the 1983 Judicial College raise your consciousness as to gender bias?" thirty-six of the sixty-eight respondents who attended answered yes, eighteen said no, and fourteen did not answer at all.

The most frequent comment from the judges who said they *had* learned from the Task Force program was that although they were aware of a general societal problem, the program brought into focus the problems in the judiciary itself. One judge noted that "the main problem is not willfulness but a lack of understanding." In answer to the question "Are there any areas in the law in which your ability to make judicial decisions would be enhanced by a greater factual background on the status or position of women in today's society?," several respondents mentioned statistics on the financial consequences of divorce for women and men and the battered woman's syndrome defense.

One judge described several types of direct action he had taken as a result of the 1983 program:

The Judicial College brought to my attention that my appointments of condemnation commissioners, guardians ad litem and counsel in incompetency and other proceedings have not included a

balanced number of females, and that I was also deficient in the elevation of female employees in the vicinage to managerial positions. I have taken steps to correct these inequities.

Another judge wrote that although the Judicial College program had not changed his impression that there was no gender bias in the courts, reading the First Year Report had made him aware that indeed gender bias in the courts does exist.

There were also disappointing, but not unexpected, halfhearted and negative responses. For example, several survey respondents appeared to learn from the Task Force's 1983 program that women perceive a problem but not that a problem *exists*. One judge wrote "Yes [my consciousness was raised] to the extent of discovering what women consider to be no-nos." Several respondents echoed the judge who wrote, "There was nothing to 'raise.' I was not aware or am even now aware that it existed or that it presents a significant problem." Even more extreme was the judge who described the program as "[a] complete waste of judicial time."

There were also some negative responses to the Task Force's videotape when it was shown by assignment judges to the judges in their individual vicinages. In 1985, the assignment judge in one vicinage reported a strong negative reaction by a minority of judges who considered the film demeaning and insulting to all judges. As noted earlier, this videotape was based on actual cases and incidents brought to the Task Force's attention during its investigation. The only "liberty" the Task Force took in scripting was to combine incidents that had happened to several people in particular settings (e.g., judicial clerkship interviews) into one scene.

The Task Force's programs at the 1984, 1985, 1986 and 1987 judicial colleges were voluntary and were attended by twenty-two to forty-two judges each for a total of approximately 203 judges. The New Jersey Judicial College distributes evaluation forms at each of its courses, requesting judges to evaluate three items—speakers, course content and written materials—on a scale from 1 (poor) to 5 (excellent). Most of the 116 judges (57%) who completed the evaluation forms expressed a positive response. The average scores for each of the three categories for the programs offered in these years ranged between 3.77

and 4.96, an overall "very good" rating. The range of responses to the Task Force's programs over the last five years is exemplified by the remarks of two judges who attended the 1984 programs. One judge wrote on the evaluation form for "Women and the Law: Changing Roles, Changing Attitudes" that the "panelists and content were excellent." Another judge evaluated "Economic Aspects of Homemaking in Damages and Divorce" as "not germane to New Jersey."

The importance of judicial education in this latter area was evident at the Task Force's 1984 Judicial College program, "Economic Aspects of Homemaking in Damages and Divorce." The judges were extremely surprised to learn how much their individual approaches to dividing marital assets at divorce differed. Six attendees wrote on their evaluation forms "excellent panel, preparation and delivery" and one judge evaluated the program as "a mandate for judges dealing with support." By contrast, during the presentation several judges were openly resistant to the statement by a well-respected male appellate judge on the panel that there must be greater post-divorce financial equity between husbands and wives. This judge had described his concern about the cases he was seeing in which a woman who had been a homemaker took a \$12,000 per year entry-level job after divorce and was then seen by the judge as self-sufficient, needing no alimony, despite the fact that her husband earned \$40,000 per year and would have a markedly higher post-divorce standard of living than she. The judge urged his colleagues to award a financial supplement to the wife (to be reduced as her earnings increased) to achieve some equalization between the parties. This suggestion for a specific remedy within a judge's discretion exemplifies the educational approach which is most useful.

Similar resistance in the context of matrimonial law was evident at the January, 1988 Essex County Judges meeting at which judges were asked to describe how, if at all, the Task Force's reports and judicial education programs had influenced their decision-making and the way they conduct their courtrooms. Several judges talked about courtroom interaction issues, but efforts to turn the discussion to decision-making elicited negative reactions to the Task Force's findings in the matrimonial area from two of the fifty-two judges present; time constraints precluded further discussion. On the same note, a judge at the Na-

tional Association of Women Judges District Three Judges Meeting; in response to a question about judges' negative responses to the Task Force, wrote on her assessment form that she had observed "occasional concern with the task force. going beyond gender bias in courtroom and attempting to change decisions in a more substantive way."

A clear contrast to this resistance to acknowledging gender bias as a substantive problem was provided by another judge at the same meeting, who described her experiences at a 1987 National Judicial College Sentencing Institute, which she attended with five male Essex County judges and numerous other judges from all parts of the country. The hypotheticals presented at the Institute dealt with sentencing women and men defendants, offenses against female and male victims, sexual assault cases and child sexual abuse cases. This judge stated that the attitude toward women expressed by the male judges from New Jersey was strikingly different from that of the other male judges present. She described her colleagues as very evenhanded in dealing with crimes committed by women and men against female and male victims, and very much aware of the gender bias of the other judges, particularly in the sexual assault cases.

Another interesting report came from a judge who attended the Task Force's 1984 Judicial College program "Economic Aspects of Homemaking in Damages and Divorce" and was inspired to become a presenter on this issue in the 1985 and 1986 "Equal Justice Under Law" Judicial College programs. He reported that he and other judges who strive to effectuate evenhanded treatment for litigants in matrimonial cases feel supported by the Task Force's work.

The picture that emerges from the judges' survey, the course evaluations, the Essex County Judges Meeting and other sources is that most judges who came to the Task Force's judicial education programs found them an important forum for the exchange of information and ideas.

#### B. Current Status of the Task Force's Recommendations and Assessment of Change in Designated Areas of Concern

The Task Force made numerous recommendations about each of the areas it investigated: interaction in the court and professional environ-

ment, court administration, and five areas of substantive law. Following is a description of how the Task Force's recommendations in each of these areas has been carried out and current perceptions of the Task Force's success in reducing gender bias in the courts. "Task Force Findings" are summaries of the problems identified in the Task Force's 1984 First Year Report, and, with respect to Court Administration, its 1986 Second Report. "Task Force Recommendations" are direct quotations from those Reports except for the section "Interaction in the Court and Professional Environment," which is a summary.

#### *Interaction in the Courtroom and Professional Environment*

##### Task Force Findings:

The Task Force investigated whether female and male litigants, witnesses and lawyers are treated with equal respect and dignity by judges, lawyers and court personnel. It found substantial evidence of a wide range of gender-biased behavior toward women on the part of judges, court personnel, and, to an even greater extent, male attorneys, in the courtroom and in professional associations and environments. Rarely did judges intervene to stop this behavior, even when it occurred in a setting under their control.

The Task Force reported that women appearing in the courts in all capacities were sometimes subjected to inappropriate, overly familiar and demeaning forms of address; comments on their bodies, clothing and personal appearance; sexist remarks and "jokes" and unwelcome verbal and even physical advances. Court forms and correspondence were frequently addressed to "Gentlemen." Judges and law firms asked biased questions of female lawyer job applicants. Law firms sent women to answer the calendar but not to try cases. Judges did not appoint women to a fair share of the most complex, challenging and lucrative civil and criminal cases, nor pay them equally with men for equivalent work. Female attorneys who were strong client advocates were sometimes criticized as too aggressive. There was an attitude on the part of some male judges and lawyers that women in law should stick to domestic relations. (The environment for women in professional associations is discussed under the section titled Bar Associations. See *infra* p. 29.)

##### Task Force Recommendations:

The First Year Report of the Task Force included a section, "What Can Judges Do to Ensure Equality for Women and Men in the Courts?" which *inter alia* asked judges to examine their records on hiring and appointing women, advised them on how to address women in the courts and urged them to set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, courtrooms or at professional gatherings. (Excerpts from "Recommendations of the Task Force With Regard to Hiring and Appointments and Professional Interaction" appear in Appendix F.)

##### Evaluation Findings:

There is a clear consensus that the Task Force has had its greatest impact in the area of reducing gender bias in the courtroom and professional environments. Although the problems have not been entirely overcome, our respondents concurred that as a result of the Task Force's effectiveness in bringing these problems to the attention of the judicial and legal communities, there has been a marked improvement. One judge on the Task Force stated at the April, 1987 Evaluation Meeting:

Attitudes may not have completely changed, but behavior has a little. People haven't got the nerve to say what they once had the nerve to say. And that's progress, too . . . . And I think that's entirely due to the Task Force.

With respect to judges' behavior toward female attorneys, these attorneys frequently report to the Task Force Chair that they now feel comfortable in the courts. They state that courts are being opened "Good morning, ladies and gentlemen," that the sense of invisibility that so many women were experiencing has become less of a problem, and that judges treat them more fairly than in the past.

With respect to improvements in male attorneys' behavior, a lawyer member of the Task Force who perceives profound ongoing problems in the substantive areas of divorce and custody noted by contrast a positive change in the informal interactions between male and female attorneys. At the Task Force's Evaluation Meeting she commented:

I think relationships between attorneys, male and female, have improved . . . in terms of an ability to speak to each other more easily, to discuss matters more easily. The males don't necessarily group in a tight enough herd to cut out any woman's approach, nor do we get the kind of sexism [about] the beautiful young women that we had in the beginning . . . [W]e . . . have people . . . interacting, I think, much better. And with more mutual respect.

With regard to improvements in the court environment for women judges, a judge member of the Task Force reported "I see increased informal awareness judge-to-judge." This awareness was certainly apparent in the response of many male judges to the denigration of female judges at a 1987 bar event; *see, infra* pp. 30-31. Women judges note a new freedom to speak out against incidents like these as a result of the climate created by the Task Force. For example, the assessment form distributed to women judges asked, "Has the existence of the Task Force report made it easier for you to intervene to eliminate gender-biased behavior?" One woman judge wrote, "Absolutely! There is now a standard of behavior eliminating gender bias, to which all must conform."

Increased awareness has led some judges and lawyers to modify their own behavior and to intervene to stop or rectify gender-biased behavior they observe. Several respondents described instances where judges and lawyers corrected themselves and others when they exhibited gender bias. A former law clerk to the Task Force Chair, now an assistant prosecutor, wrote in her Task Force Assessment Log:

My subjective impression is that the Task Force's existence has caused a definite change in attorneys and judges' attitudes and thus, in the professional climate. Those who, five years ago, were probably indifferent to gender bias and passive contributors to it will now openly express their disapproval of such behavior and attitudes. Where a judge or attorney mistakenly says or does something that shows a disrespect for a female attorney, they are more apt now to catch themselves, correct the statement or action, and apologize.

At the January, 1988 Essex County Judges

Meeting to discuss the Task Force's impact, the assignment judge stated that the Task Force's work had made him realize that he was treating women attorneys as "lady lawyers" rather than simply lawyers, and that the particular courtesies which he had been raised to extend to women are not appropriate in a professional setting, where lawyers of both sexes should be treated alike.

In one instance the Task Force Chair received complaints about a judge whose courtroom behavior offended women attorneys and who habitually showed attorneys a poster in his chambers bathroom of the *Playgirl* centerfold of Burt Reynolds nude, on which the judge's former colleagues in the prosecutor's office had pasted a photograph of his head. The Chair met with the assignment judge in the offending judge's county and then with the judge himself, who was amazed to learn that his behavior was giving offense. The judge thought women attorneys would be amused by the photo as well as his behavior toward them in court.

After he learned of the women lawyers' objections, this judge asked to meet with women attorneys in his county to learn more about their concerns. At the request of the Task Force Chair, the county Women's Bar President convened a meeting attended by the judge and some thirty-five lawyers. The lawyers explained to the judge why his behavior in court was undermining their credibility, and they also raised the unwillingness of the county bar to welcome women's participation. This newly sensitized judge altered his own behavior and convinced the county bar to establish a committee to examine its treatment of women members.

Another judge voluntarily removed the "Male Chauvinist Pig" award that had hung on his chambers' wall. Yet another judge reprimanded a male attorney for using vulgar, sexist language to a women lawyer during a case management conference. The abusive lawyer and the senior partner of his firm also extended an apology to her. The judge told the woman lawyer that as a result of programs by the Task Force over the years, his sensitivity to these issues had been raised.

An Essex County judge wrote to the Task Force Chair that although his "personal philosophy on this issue precedes the excellent work done by your committee" he was "inclined to believe that the activity of the committee has proba-

bly made me more vigilant and active than I might otherwise be with regard to this problem." He recorded a number of actions he now takes to ensure appropriate courtroom behavior, and recounted his intervention in a case in which a police officer responded to a female defense lawyer's questions by condescendingly using a term of endearment (either "honey" or "dearie") in addressing her. On the second use of this term, the judge instructed the officer to answer appropriately. On the third occasion the judge excused the jury and explained to the officer that if he did it again, the judge would fine him, and if he did it a fourth time, the judge would jail him.

At the Task Force's April, 1987 Evaluation Meeting, one judge described how he raises the consciousness of other male judges and lawyers. Speaking of sexist jokes, he said that whereas once he joined in to avoid ostracism, he now gently points out that it's a male chauvinist joke and perhaps should be reconsidered. To those judges under his supervision who ignore this subtle reprimand, he says directly, "That's improper, don't do it again."

At the 1984 New Jersey Judicial College, this same judge publicly acknowledged that when he was appointed to the Task Force he thought it was ridiculous, "But once I became comfortable with the fact that [those Task Force members who claimed gender bias is a problem in the courts] had a genuine cause with which to be concerned, I started to think about what I could do in my daily professional life to enhance the committee's perfectly legitimate goals."<sup>18</sup>

With respect to women attorneys' employment opportunities, one assignment judge became so angered when he learned that law firms in his county refused to interview women law clerks for associate positions that he called partners at many of the firms and told them to come into the twentieth century. Another assignment judge succeeded in getting law firms to permit their women attorneys to try cases rather than merely answer calendar calls. When women attorneys answered the call saying, "Mr. So-and-so will be here," the judge responded, "Why don't you try the case. You don't have to have Mr. So-and-so come in. You try the case." Word spread to the law firms

in the county that the assignment judge was encouraging women attorneys to try the cases and it had a significant effect.

These very positive reports should not obscure the fact that not all is yet as it should be, nor deny the need for, as one Task Force member put it, "continued vigilance." There is a perception among respondents that some judges will never reform. One response to the Task Force's *New Jersey Law Journal* notice cited a judge who always assumes that a woman answering a calendar call is a litigant and asks if her attorney is present and also frequently tells welfare recipients that they are too attractive to be on welfare. A Task Force member reported that attorneys say that today judges are generally more accepting of female attorneys, but that during case conferences some judges still tell off-color jokes and direct their informal comments to male attorneys while apologizing for doing so and alluding to the scene in the Task Force's videotape which criticizes this kind of behavior!

A female judge reported that she must still remind litigants and witnesses to address her as "Judge" rather than "Miss" and to address women attorneys as "Counsel," not "young lady." Another described male attorneys who argue with her over rulings but don't argue with male judges.

A lawyer on the Task Force expressed his view that male judges in his county still believe female attorneys should limit themselves to matrimonial law and do not fully accept women as attorneys in business or municipal or land-use litigation. He also reported significant hostility on the part of young male lawyers toward female practitioners because the women are added competition, a perception with which other Task Force members strongly concur. Law school professors on the Task Force report that some law firms continue to ask discriminatory questions of women applicants, particularly older women.

Despite these lingering problems, Task Force members perceive that the Task Force has brought about a fundamental change in the atmosphere in the courts. An appellate judge described it this way at the Evaluation Meeting:

The Task Force, in my estimation, re-

18. Address by the Hon. Nicholas Scalera, J.S.C., delivered to the New Jersey Judicial College (Nov. 21, 1984), *reprinted in* New Jersey Supreme Court Task Force on Women in the

Courts, Second Report 6 (1986) [hereinafter *Women in the Courts, Second Report*].

sulted in the most profound attitudinal changes in the court system within my memory, and the judicial climate has been altered forever.

### *Bar Associations*

Although the Task Force's attorneys' survey did not inquire about gender bias in bar associations, many respondents expressed concerns about the organized bar. Attorneys of both sexes reported that whereas their county bars were eager to recruit new male attorneys and move them into committee work and positions of leadership, both new and established female attorneys were largely ignored, despite expressing strong interest in involvement in bar activities. Many bar associations were perceived as "old-boys' networks" and women reported that because of the sexist conduct at association meetings, they stayed away. One county bar made women feel particularly unwelcome with its tradition of a female stripper at its annual clambake. Attorneys at the Task Force's regional meetings urged judges to demonstrate leadership by objecting to these activities and refusing to attend bar functions featuring sexist programs.

The Task Force detailed women attorneys' concerns in its First Year Report and both the state and several county bar associations responded actively. Task Force members reported in 1987 that bar associations in six counties have conducted programs about gender bias at which the Task Force's videotape was shown. Several associations have made successful efforts to recruit women members and assign them to committee work as members and chairs. Three county bar associations were about to have their first woman president. Some bars set up committees to investigate the treatment of women in their own associations.

Another sign of progress reported by Task Force members is improved interaction between some women's bar associations and county bar associations in terms of joint programs of mutual interest. The above-noted tradition of the female stripper has come to an end. A Task Force member who is now immediate past president of the

New Jersey Bar Association brought the concerns raised about bar associations to the attention of the National Conference of Bar Presidents, where they have been discussed at several meetings.

Despite these improvements for women in the professional environment, women are not yet fully accepted in the state or county bar associations. Although state and county bar presidents have *appointed* women to leadership positions, women continue to be significantly under-represented as officers, trustees and in other *elected* leadership positions. It was the consensus of the Task Force at its April, 1987 Evaluation Meeting that there remains a tremendous amount of work to be done in this area. The Task Force's view was corroborated at the May, 1988 annual meeting of the New Jersey State Bar Association, where efforts to redress the absence of women and minorities on the board of trustees met with intense opposition. (Of thirty trustees and seven executive officers, one is a woman and none are minorities.) Attorneys present who believe that women are still treated as second-class citizens in the organized bar cited examples of women who have paid their dues through committee work yet been rejected for officer positions, and county bar associations "notorious" for still not being open to women.<sup>19</sup>

There is also evidence of bar association backlash against the Task Force for dealing so publicly with gender bias. A recent matter of pre-eminent concern to the Task Force was the virulent gender bias expressed by the Essex County (Newark) Bar Association in its 1987 Bon Ton show.<sup>20</sup> Bon Ton is an annual dinner attended by over a thousand lawyers and their clients and many judges.

During the first years of the Task Force, when women judges were on the Bon Ton planning committee, the show was "gender-neutral." In 1986, perhaps under the impression that the issues addressed by the Task Force were no longer a priority to the state's judiciary, or perhaps in a backlash, the skits attacked women judges in a manner that one Task Force member described as "brutal." These shows, in the name of satire, included bigotry of every kind and a

19. Bird, *Bar Rejects Trustee Seats for Minorities*, N.J.L.J., May 19, 1988, at 1, col. 3; *Jersey Bar Debates Exclusionary Policies*. The Star-Ledger, May 16, 1988, at 11, col. 3.

20. On August 4, 1987, seventeen Task Force members sent a letter to the Supreme Court describing their concerns about

this event and stating that the leadership of the Essex County Bar Association was remiss in allowing this show to continue in this vein, in total disregard of all responsibilities to the legal profession and the judiciary.

type of sexism in which individual New Jersey women judges were attacked on a highly personal basis. Even though this occurred outside the courtroom, it is relevant to an assessment of the Task Force's impact because this kind of bias cannot be compartmentalized. Attitudes expressed in professional associations will necessarily be reflected in the courts. Therefore these unabashedly sexist shows must be seen as a continuing source of gender bias.

The silver lining in this dark cloud is the response of Essex County judges, which provides evidence that the Task Force's work has taken hold within the judiciary. After the 1987 Bon Ton show, several male judges independently telephoned a female judge on the Task Force to ask her reaction and express the view that something should be done to prevent a repetition. At both the civil and criminal judges' monthly luncheon meetings following the show it was the topic of discussion, with the consensus being that the women judges were treated improperly. A number of judges announced that they would not attend the dinner in the future. Task Force members and judges at the District Three Women Judges meeting agreed that in the years before the Task Force the men judges would not have exhibited this kind of sensitivity and empathy, and women judges would not have felt free to object, not even those women who were personally attacked.

The difference that overt judicial disapproval can have is already apparent. In 1988, the director of the objectionable Bon Ton show resigned, the show itself, called "Sinners Repent", was "gender-neutral," and only seven of Essex County's fifty-five judges attended. Some stayed away as a silent protest. The Chief Justice and Administrative Director also did not attend.

#### Court Administration and Women Court Personnel

##### Task Force Findings:

Standard court forms, court rules, jury charges and court correspondence frequently employ masculine rather than gender-neutral terminology. There are few women in positions of responsibility in the Administrative Office of the courts.

Women court personnel are concentrated in the lowest paying clerical jobs with little opportunity for advancement. They are often assigned

the least challenging and responsible tasks in the various court support units. Dress codes are enforced more strictly against female employees than against men. Restrictions on court employees' undertaking additional employment disproportionately impact women, who are the lowest paid court employees. Female court employees may be subject to health and safety problems from their constant exposure to video display terminals.

Judges and supervisors sometimes require women court personnel to run personal errands outside the office and purchase personal items. Attorneys, too, press women court employees to perform tasks outside their job responsibilities (asking them to make phone calls, serve coffee, type and make copies), and sometimes refuse to take instruction from female court staff even though the instructions come from the judge and are consistent with court procedure. Women court employees are often addressed "in terms that are suggestive, overly familiar and patronizing."

The Task Force attorneys survey yielded extensive complaints about interviews for judicial clerkships at which women candidates were asked such questions as whether they intended to have children and if they had their husbands' permission to seek employment. The Subcommittee on Court Administration heard similar concerns expressed by women court employees about discriminatory application forms and interviews.

##### Task Force Recommendations:

#### 1. Recommendations for Immediate Court Action

a. Court rules should be revised to incorporate gender-neutral language.

b. Documents, forms, notices and correspondence prepared by or used by the courts' or clerks' offices should be revised utilizing gender-neutral language.

c. Model jury charges should be revised using gender-neutral language.

d. Carefully worded messages endorsed by the Supreme Court and the State Bar Association regarding appropriate conduct by attorneys in relation to court personnel should be prepared. The messages should appear in the *New Jersey Law Journal* and should be mailed with state and county bar bulletins.

e. The videotape prepared by the Task Force on Women in the Courts should be shown to all court staff and to every county bar association. Each assignment judge should provide introductory comments to showings in the vicinage to emphasize the seriousness of the message.

f. Judges and supervisors should require attorneys to obey the instructions given by all court staff in the exercise of their responsibilities.

g. Judges should make it clear that their secretaries cannot provide clerical or other services for attorneys except as the judge may direct.

h. Training programs should be instituted to sensitize supervisors of court personnel to the need to treat all court personnel with equal respect. Supervisors should thereafter provide similar training programs for all court personnel under their supervision.

i. Each assignment judge should designate an appropriate person in each courthouse to receive gender bias complaints from court personnel on an informal basis. That person should assist the complainant to work out the problem with all persons involved. This informal procedure should not supplant, but should function in addition to, any formal complaint resolution process.

## 2. Recommendations for Further Study

a. The Supreme Court should consider amending the Code of Judicial Conduct and the Rules of Professional Conduct to prohibit or discourage the improper treatment of women: particularly court employees, but also other persons who use or work in the courts. (Language for such an amendment was suggested in an appendix to the Task Force's 1984 report.)

b. The Judiciary should study the feasibility of providing training programs for, especially, the lowest-paid employees which will give them opportunities to learn new skills or qualify for promotions.

c. R. 1:17-1, restricting outside employment for employees of the Judiciary, should be reviewed to assess the necessity of its application to all persons now constrained by the rule. This review should focus, in particular, on paragraphs (c), (d), (e), (f), (h) and (i).

d. Court units requiring employees to be available on a twenty-four hour basis should review those requirements and eliminate them wherever possible.

e. Assignment criteria within job categories should be made. Consideration should be given to rotating job assignments on a periodic basis or providing some other means to ensure fairness and avoid gender bias in assignments.

f. Recruitment methods for high-level positions in court administrative and professional categories should be reviewed, with special attention to increasing the availability of opportunities to women who are already serving in the court system.

g. Application forms, procedures and interview practices should be reviewed to eliminate irrelevant inquiries of applicants and to ensure that all applicants are treated similarly.

h. The necessity and appropriateness of dress codes for court employees should be studied. If found necessary, appropriate codes should be enforced uniformly.

i. The structure of clerical and secretarial assistance should be examined to see if a greater range of positions could be offered to employees who currently have limited career ladders available to them.

j. The Administrative Office of the Courts should conduct further research on the issue of whether constant exposure to word processing equipment creates health or safety problems and take appropriate corrective action.

k. The Court should study the possibility of providing or subsidizing day-care for its employees' children and elderly relatives, for whom women typically take responsibility. If possible, any such efforts should be coordinated with other government employers in the vicinity.

## 3. Recommendations for Referral to Other Branches of Government

a. Statutory preference given to veterans should be examined. Consideration should be given to limiting or terminating it. N.J.S.A. § 11:27-1 *et seq.*

b. Criteria by which eligibility is determined for classification, transfer and promotion in the civil service, as they affect court employees, should be examined. N.J.S.A. § 11 (subtitles 2 and 3, generally).

### Evaluation Findings:

Listed below are actions taken by the Administrative Office of the Courts in response to the recommendations of the Task Force Subcom-

mittee on Court Administration. AOC reports that with respect to the Task Force's twenty-three recommendations for court administration, twelve are complete, five are in process and three others have been referred back to the Task Force for further information. AOC's work is complete for an additional three recommendations, with the remainder of the work dependent upon other parties. Some actions described below, such as the inclusion of a question about bias in the Judicial Performance Evaluation surveys, were not specifically recommended by the Task Force but reflect its influence.

- \* Directives from the Director of the Administrative Office of the Courts:

In September, 1984 the Director of the Administrative Office of the Courts circulated the recommendations of the Task Force Subcommittee on Court Administration to all those under his supervision, directing them to revise their forms and correspondence to use gender-neutral language and "to be sensitive to . . . actual and perceived gender bias in all our dealings with the public and co-workers." This memorandum and a sample of the other implementing memoranda issued by the AOC Director appear in Appendix H.

- \* Code of Judicial Conduct and Guidelines for Extrajudicial Activities:

In a December, 1986 memorandum, the AOC Director drew to the attention of the Chair of the Supreme Court Committee charged with recommending amendments to the Code of Judicial Conduct the Task Force's recommendation for an amendment to the Code. On October 26, 1987, the Supreme Court adopted amendments to the Code of Judicial Conduct that made the language throughout the Code gender-neutral and added the following language to the Commentary to Canon 3:

A judge should be impartial and should not discriminate because of race, color, religion, age, sex, national origin, marital status or handicap.

New Jersey also has Guidelines for Extrajudicial Activities, which complement the Code of Judicial Conduct and in June, 1987 the Supreme Court adopted Guidelines that state:

II. B. Judges must always guard against the appearance of bias or partiality or

the perception of prejudgment of issues likely to come before them.

IV. D. It is inappropriate for a judge to hold membership in an organization which practices invidious discrimination on the basis of race, sex, religion or national origin.

- \* Rules of Professional Conduct:

In March, 1987, the AOC Director wrote to the President of the New Jersey Bar Association asking him to refer to the Ad-Hoc Committee of the Bar reviewing the Rules of Professional Conduct the recommendation of the Task Force Subcommittee on Court Administration that the Rules be amended to provide that attorneys may not:

(d) engage in conduct that is prejudicial to the administration of justice, *including but not limited to differential, harmful, or discriminatory treatment of women or minorities.* (New language in italics.)

Because that committee has not yet acted on the proposed amendment, the AOC Director has indicated his intention to forward the recommendation to the Supreme Court with or without Bar Comment.

- \* Judicial Performance Evaluation:

New Jersey is one of the first states to undertake a comprehensive program of judicial performance evaluation. For nine months during 1987, lawyers and appellate judges for the first time evaluated the performance of forty-eight randomly selected superior court judges from all parts of the state. The survey developed by the New Jersey Supreme Court Committee on Judicial Performance asks respondents to assess judicial performance with respect to a number of issues including the "Absence of bias and prejudice based on race, sex, ethnicity, religion, social class or other factor." The rankings are: excellent, more than adequate, adequate, less than adequate, poor, not applicable, no opinion. If the response is "less than adequate" or "poor," the respondent is asked to explain in the comment section of the survey. The Supreme Court Committee on Judicial Performance will publish its report on this survey in fall 1988.

- \* Model Jury Charges:

In August, 1987, the Supreme Court Committee on Model Criminal Jury Charges distrib-

uted new model charges to all state judges. The covering memorandum stated:

Please be advised that the Subcommittee on Court Administration of the Task Force on Women in the Courts discourages use of language which reflects gender bias. Although the Subcommittee on Administration discourages use of configurations such as 'he/she,' the Committee decided that, unlike procedural rules and statutory provisions, the gender of the defendant(s) will dictate the language used in charging a jury. Gender-neutral language has been used throughout these charges except where it appears such use may be confusing. In those instances, configurations such as 'he/she' appear in parentheses for use based upon the gender of the individual before the court.

With respect to the model civil jury charges, the AOC has referred this recommendation to the Model Civil Jury Charges Committee, which is currently working on major changes to the charges, including the use of gender-neutral language.

\* Gender-Neutral Language in Court Rules and Documents:

AOC prepared draft revisions for all Court Rules and sent them to the judge who comments on and annotates rules before publication. AOC is now awaiting her review. As rules are rewritten or new ones recommended by the Rules Committees, gender-neutral language is used.

With respect to documents, forms, notices and correspondence prepared or used by the courts and clerks offices, all vicinages have reviewed their own papers. Most forms were gender-neutral. Immediate revisions were made to non-gender-neutral forms where feasible. Others will be revised as the supply of old forms runs out and new ones are printed. All new forms are reviewed for gender-neutral language when prepared.

A review of municipal court forms is in process as part of a larger review. The AOC forms management office has completed review of old forms on file. As new forms are prepared they are checked for gender-neutral language.

\* Complaints About Judges:

As already noted, the Task Force Chair sometimes resolves complaints about judicial behavior on an informal basis. AOC has adopted

the following process for dealing with complaints referred by the Task Force. A determination is made as to whether the complaint is about a procedural deficiency or about a specific judge or group of judges. A procedural matter is referred to the appropriate agency, such as the Child Support Enforcement Unit of the Probation Department or Trial Court Support Operations. Procedures for resolving issues in the departments vary and may involve investigations and policy clarification, including presentation to the Supreme Court in its administrative capacity. Resolutions include discipline, reassignment and recommendations for judicial or staff education.

A complaint of judicial bias is referred to the Supreme Court Advisory Committee on Judicial Conduct. The Committee can hold informal conferences or formal hearings, issue presentments, and recommend to the Supreme Court that judges be publicly admonished, suspended, or removed from office.

\* Women Judges:

As noted earlier, the new climate created by the Task Force has made it possible for women judges to object when they see gender-biased behavior, whether it is directed at others or themselves. Subsequent to the Task Force's report, and perhaps attributable in part to the Task Force's success in raising awareness about the status of all women in the courts, there have been several "firsts" for women judges in terms of assignments to administrative and supervisory responsibilities. Women have been appointed as Presiding Judges in the Special Civil Part and Family Part in Essex County, the Special Civil Part in Hudson County, the Union County Criminal Division and the Family Part in Mercer County. A woman was appointed Acting Assignment Judge in Essex County. Two women, both Task Force members, were appointed by the Chief Justice to the Appellate Division.

\* Women Court Personnel:

As set forth above, the Task Force made numerous recommendations for upgrading women within the AOC and addressing their needs and concerns. The AOC's Equal Employment Opportunity ("EEO") unit has issued two reports, with recommendations for improvements, on the number and status of women court employees.

Using EEO job categories, as of March, 1988 there were twenty-two women officials and administrators in AOC, 21.2 percent of the total for

that category, an increase of 22 percent from the previous year. There are three women among the sixteen state judiciary managers at the assistant director level or its equivalent, 19 percent of the total.

AOC also reports a base of 175 professional women (47.6 percent of the total) from which to promote women in future, and states that the Judiciary EEO/Affirmative Action officers target women professionals and administrators to whom they suggest career ladder paths and appropriate training and education.

\* Sensitivity Training and Complaint Process:

A positive development for all AOC employees was a 1987 presentation about affirmative action that Chief Justice Wilentz authorized for all judicial branch employees after learning of the program New Jersey's Governor presented for the executive branch. The judicial branch program was given by a consulting firm for all employees, from clerks to judges, to educate them about race and gender bias, including sexual harassment, on the job and about their rights to object to biased behavior. In thirteen of the state's fifteen vicinages an individual was named to take complaints and determine whether they can be resolved informally or whether an EEO complaint should be filed. In the other two vicinages an informal process has been set up to hear all EEO/Affirmative Action complaints, including those about gender bias.

A segment on bias is being added to AOCs five-day management/supervisory training program. A revised program will be given to all court employees again in 1989.

\* Nondiscriminatory Interviewing:

The Task Force's initial presentation of its findings at the 1983 New Jersey Judicial College included a short segment on clerkship interviews. The 1984 and 1986 College programs included substantial presentations by the Task Force about how to conduct an interview that comports with Title VII. Although most of the judges responded favorably, a few insisted they should be able to ask anyone anything, and that they wanted very much to know about the marital status and child-rearing responsibilities of female applicants. At the Task Force's 1984 "Women and the Law" program Chief Justice Wilentz pointed out that these factors can also affect a male applicant, and

that the appropriate question for all applicants is "Given the demands of a judicial clerkship, is there anything that would prevent your making this job your priority?"

In October, 1987, after most judiciary employees had completed the day of EEO training described above, the AOC distributed *Successful Interviewing: A Guide for Those Who Interview Job Applicants*.<sup>21</sup> In his preface the Administrative Director noted that the guide was prepared "in response to a recommendation from the Task Force on Women in the Courts, to help interviewers become more conscious of factors that may introduce subtle and overt bias in the employment interview and selection process so that they can be avoided."

Over 800 copies of that guide have been distributed to judges and supervisory personnel. A segment on employment interviewing was added to the management/supervisory training program.

\* Dress Codes:

In response to the Task Force's concerns about the use of dress codes, Trial Court Administrators reviewed dress codes within their vicinages. In some vicinages there are no dress codes; in some, court aides and attendants wear a uniform so the public will be able to recognize them; in some, there is a requirement that Probation Officers be dressed in businesslike fashion in court. The Trial Court Administrators reported that where there were dress codes they were uniformly enforced and there were no complaints.

\* Recommendations Respecting Court Personnel Referred Back to Task Force for More Information:

The Task Force recommended that the Supreme Court and the New Jersey State Bar Association publish messages in the *New Jersey Law Journal* regarding appropriate conduct by attorneys toward court personnel, that judges and supervisors require attorneys to obey staff instructions, and that judges make clear that secretaries cannot provide clerical or other services for attorneys except as directed by the judge. The Chief Justice asked the Task Force for more information as to the source, nature and extent of the problems that these recommendations were fashioned to address. The Task Force subsequently concluded that the response to the Task Force's

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21. Administrative Office of the Courts (1987).

report and videotape and the attention given to these issues within the state have effectively addressed these problems and therefore rescinded these recommendations.

\* AOC Response to Recommendations for Further Study of Women Court Personnel:

With respect to studying the feasibility of training programs for the lowest-paid employees, a largely female group, AOC reports that the Judiciary Training Unit already offers a number of courses under its own auspices as well as those of the State Department of Personnel. The Training Unit is developing a Training Academy to provide such training on a more systematic basis. Additionally, an AOC Task Force on Human Resources Development is considering ways to further this goal.

AOC reviewed the statute restricting outside employment for judiciary employees. According to AOC, this statute operates to limit but not to bar outside employment, and requires Supreme Court approval for such employment. The Chief Justice has convened a committee to review the traditional policy of applying all existing restrictions on outside activities and employment across the board to all judiciary personnel.

With respect to the Task Force's recommendation for a review and wherever possible an elimination of the requirement that court employees be available on a twenty-four hour basis, AOC reports that very few positions require that availability, that there is no apparent disproportionate effect on women, and that this requirement has not affected individuals' ability to seek and obtain outside employment.

The Task Force's recommendations that criteria for job assignments be developed and rotation of positions be considered was referred to the Committee to Review Trial Court Personnel, Policies or Practices. The request for an exploration of ways to expand the range of positions offered to employees such as clerks and secretaries who currently have limited career ladders available to them was referred to this Committee as well as to the AOC Task Force on Human Resources Development.

\* Possible Health Implications of Constant Exposure to Word Processing Equipment:

A consultant commissioned by AOC to review research on the possible health effects of constant exposure to video display terminals reported two major types of potential health

hazards: physical strain, including eyestrain, and exposure to radiation. AOC reports that under the judiciary's contract with union employees the judiciary pays for an annual eye exam for full-time VDT operators and gives union employees fifteen-minute morning and afternoon breaks.

Although the research results on radiation exposure are not conclusive, AOC provides for full-time VDT operators to transfer when possible to non-VDT work during pregnancy and fits all VDT's with standard radiation screens to minimize any potential hazard.

\* Dependent Care:

The Task Force recommended that AOC study the provision of subsidized day-care for employees' children and elderly relatives, for whom women usually take responsibility.

A child-care center opened in the Trenton Justice Complex in September, 1988. It accommodates forty-five children, with possible expansion to ninety-one. Costs are subsidized by the state. The possibility of child care in other vicinages will be discussed with Trial Court Administrators and Assignment Judges.

\* Recommendations for Referral to Other Branches of Government:

With respect to limiting or terminating the statutory preference for veterans, the AOC Director reported in January, 1987 that it was not feasible to consider a change in the statute because the Civil Service Reform Act retaining veterans preference had just become effective the previous September. He also reported that this was a moot point because veterans status does not apply to AOC employees, and most trial court employees are not affected, as the last war-service credit was prior to August, 1974 in Vietnam and there are few applicants from the age group with prior service.

The AOC Director referred the Task Force's concerns regarding the effect of civil service criteria on court employees to the Committee to Review Trial Court Personnel Policies or Practices.

The Subcommittee on Court Administration will write to the Task Force Chair to specifically identify the problem classifications, which basically fall in the probation and clerical areas.

### *Substantive Law*

#### 1. Damages

The Task Force Subcommittee on Substan-

tive Law investigated gender bias in the judicial response to damages, domestic violence, juvenile justice, matrimonial law and sentencing. The following is a description of how the Task Force's recommendations in each of these areas have been carried out and current perceptions of progress and problems in these five areas of substantive decision making.

#### Task Force Findings:

Neither New Jersey's case law nor its model jury charge adequately recognize that personal injury affects a homemaker's unpaid career as significantly as it affects a wage earner's career. The substantive rules of law that guide judges and juries in fixing personal injury awards are so closely tied to wage-earning as to skew the outcomes for full- or part-time homemakers. Attorneys sometimes fail to explore the value of unpaid work in the home. Practitioners' efforts to present proof on the economic value of homemaker work have at times been restricted or rejected by unreceptive judges.

#### Task Force Recommendation:

Model Jury Charge 6.10 should be supplemented with instructions specifically addressed to the measure of damages for a plaintiff who pursues a career at home. The charge should recognize that such a career is "work" and should permit the jury to assess the economic value as well as the plaintiffs ability to produce that economic value.

#### Evaluation Findings:

In 1985, the Supreme Court Committee on Civil Charges decided not to adopt the proposed revision of Model Jury Charge 6.10 because there was a question as to whether there was existing written appellate case law supporting the charge; it is the Committee's long-standing policy to avoid making (or even appearing to make) substantive law decisions. In June, 1988, the request was resubmitted to the Committee, which decided to reopen and restudy the recommendation.

Bar associations throughout the state, the New Jersey chapter of the American Trial Lawyers Association and the New Jersey Institute for Continuing Legal Education have presented programs on the value of homemaker work in personal injury cases. The Task Force addressed

these issues at the 1984 Judicial College Program "Economic Aspects of Homemaking in Damages and Divorce."

The Task Force Chair reports that several personal injury attorneys have told her that as a result of the Task Force's work and the courses for judges and lawyers, the economic valuation of a homemaker in wrongful death actions has increased significantly. The same lawyers who used to tell the Task Force Chair in conferences that the value of a deceased homemaker was around \$30,000 are now settling for \$250,000 and \$300,000. Additionally, the Chair notes that she has included the Task Force's proposed jury charge without objection in several civil cases on which she has sat during recent years. There are reports that other civil judges are also following the same procedure.

At the 1987 meeting at which the Women's Rights Section of the State Bar was asked to discuss the Task Force's impact, the Section recommended that the Task Force conduct a study of personal injury awards to obtain systematic data about progress and possible continuing gender bias in this area. This recommendation, however, was not officially forwarded to the Task Force Chair or the Administrative Director of the Courts.

## 2. Domestic Violence

#### Task Force Findings:

The Task Force cited numerous problems with courts' response to women victims of domestic violence. These included trivializing comments; disbelief absent serious visible injuries; questions about how the victim "provoked" her batterer; insistence that family violence is only a domestic matter and has no place in criminal court; inappropriate referrals to mediation; municipal courts' lack of provision for twenty-four hour emergency availability as required by statute; inadequate enforcement of protective orders; and disregard of victims' requests for supervised visitation, with the result that women suffer further abuse during fathers' visits with their children. The Task Force further concluded that judges are not sufficiently informed about the psychological makeup of batterers and victims and the economic dependency factors that shape many victims' decisions to withdraw com-

plaints.<sup>22</sup>

#### Task Force Recommendations:

There should be continued emphasis on education and training for police officers, judges and court personnel on domestic violence. Judicial education should include information about the economic position of women in society, as well as the impact of economic decisions on abusive relationships, and should explore visitation arrangements that are sensitive to the concerns of the victim, as well as the non-custodial parent.

An analysis of the statistical data gathered pursuant to the mandate of the Prevention of Domestic Violence Act should be undertaken to determine whether patterns of judicial reluctance with regard to utilization of remedies do in fact exist to any significant degree.

Attention should be given to judicial availability in after-hour emergency situations, and uniform emergency procedures required throughout the State.

A concerted effort must be made to ensure the enforcement of judicial orders. The establishment of a uniform monitoring mechanism is necessary to aid in the enforcement procedure.

There is a need to ensure statewide uniformity in procedures with regard to the prosecution of contempt proceedings for failure to comply with judicial orders under the Domestic Violence Act.

Further study of the impact of counseling upon the abusive relationship, as well as the proper role of the judicial system in utilizing and/or ensuring the availability of counseling should be undertaken.

Recordkeeping practices with regard to domestic violence recidivism should be evaluated with the objective of ensuring the existence of reliable data and their availability to the judiciary.

#### Evaluation Findings:

The New Jersey Administrative Office of the Courts, in concert with judiciary committees and other agencies, continues to make extensive efforts to ameliorate the problems cited by the Task Force relating to courts' response to domestic violence. Full amelioration of these problems is ex-

tremely difficult, however. Members of the legal and lay communities perceive that although there has been progress under the 1981 Prevention of Domestic Violence Act, aspects of this issue are still matters of concern.

The AOC provided the authors with an exhaustive report about education programs, directives, memoranda, study committee recommendations and other actions taken over the last several years to enhance the courts' response to domestic violence victims. In this section we first summarize those actions relating to the Task Force's seven specific recommendations. Next we discuss a landmark case for battered women decided by the New Jersey Supreme Court in 1984.

We then present current perceptions of progress and problems as reported by judges and members of the legal and lay communities. In this part we draw upon findings from our 1987 survey of staff at New Jersey's shelters for battered women and the testimony at two September, 1988 hearings sponsored by the Governor's Advisory Commission on Domestic Violence.

We conclude this section with the recommendations regarding domestic violence developed by the Supreme Court Task Force on Dispute Resolution for discussion at the October 1988 Judicial Conference. These recommendations illustrate the New Jersey judiciary's recognition that problems in this area persist, and its willingness to seek new solutions.

#### Status of the Task Force Recommendations on Domestic Violence, as Reported by AOC:

##### \* Domestic Violence Training Programs

The Task Force called for continued emphasis on education. Judges and AOC staff have conducted numerous domestic violence training programs for judges and court support personnel who handle domestic violence matters. To date, training in domestic violence has been offered to Family Division Judges and Municipal Court Judges (and court clerks) on nineteen occasions, including presentations at the orientation seminars for new Superior and Municipal Court Judges. Seven training programs were conducted for Superior and Juvenile and Do-

22. Note that the Task Force did not directly investigate all the aspects of domestic violence in which the literature has identified gender bias as a factor. For example, in custody

determinations, judges view battered wives as unstable because the women have moved frequently as a safety precaution.

mestic Relations Court Judges and twelve for Municipal Court Judges and Court Clerks. A basic training program on domestic violence for court support personnel has been given on eight occasions (four on a regional basis) and an advanced training course has also been offered. For instance, attendance was mandatory at several domestic violence training programs, at the orientation seminars for new Superior and Municipal Court Judges, at training programs for Municipal Court Clerks and at the General Session of the 1988 Family Division Retreat.

Topics addressed at these training sessions have included information about the dynamics of abuse; the domestic violence cycle; why, in some cases, domestic violence victims withdraw complaints or fail to appear at final hearings; sensitivity in handling domestic violence matters; and the laws and procedures applicable to domestic violence cases, including discussion of matters such as supervised visitation, custody, support considerations, the impact of spouse abuse on children, and justification and self-defense as applicable to the battered woman's syndrome.

AOC reports that, on the whole, the evaluations of the domestic violence training programs indicate a favorable reception by the judiciary. Many Superior Court judges have expressed appreciation for the availability of training. The training programs for court personnel have also been very well received.

\* Analysis of Statistical Data re Utilization of Remedies

Analysis of the data reported monthly to AOC pursuant to the Prevention of Domestic Violence Act indicate that the training has indeed had an impact on the judiciary. The Report on the Prevention of Domestic Violence Act, July 1, 1986 - June 30, 1987, states that of the 16,775 cases which proceeded to final hearing, some or all relief was granted in 14,270 cases, approximately 85 percent<sup>23</sup> of cases in which relief was requested.

By way of comparison, the report for July 1, 1984 - June 30, 1985 indicates that of the 15,541 cases which proceeded to final hearing, some or all relief was granted in 10,833 cases, approximately 70 percent. During this one-year period, in the 70 percent of cases in which some or all relief was granted, prohibition against contact was ordered in 68.6 percent of the cases, prohibition against return was ordered in 60 percent of cases, and child custody was granted in 67.8 percent of cases.<sup>24</sup>

\* Judicial Availability in After-Hour Emergencies

The Task Force recommended that attention be given to the availability of judges during after-hour emergencies. The Supreme Court Family Practice Division Committee addressed this issue in 1986-1987. It suggested that the Supreme Court issue a directive to the municipal courts or to the assignment judges in each vicinage to require the municipal court judge to be available for the issuance of temporary restraining orders at all times that the superior court is not in session. This issue has been held for further consideration by the Supreme Court.

\* Ensuring Enforcement of Judicial Orders

AOC reports that the Conference of Family Division Presiding Judges and the Family Division Practice Committee have both been concerned with mechanisms for enforcement and the need for standardization. The Conference had AOC conduct a survey to ascertain the enforcement procedures utilized in the vicinages and provided that information to the Committee.

Among the actions taken by the Committee were a review of in-house restraining orders and a recommendation that they be issued only at the request of the victim and under the most exceptional and cautious circumstances, with judges required to inform victims of the difficulty of enforcing such orders. The Family Practice Committee also amended R. 5:7A, Domestic Violence Temporary Restraining Order, to clarify court appearances, service of process

23. In 1986-87, 26,536 domestic violence cases were filed. A temporary restraining order was denied in 680 cases. In 4,300 cases the complaint was withdrawn and in 4,781 cases the complaint was dismissed because of failure to appear at final hearing. In 2,505 cases all relief was denied at final hearing. The three forms of relief most frequently sought were prohibition against contact, prohibition against return, and child custody. In the 85% of cases in which some or all relief

was granted, these forms of relief were ordered in 93.7%, 91.3%, and 94.9% of cases, respectively. Report on the Prevention of Domestic Violence Act, P.L. 1981, c.426 (N.J.S.A. 2C:25-1 *et seq.*) (April 18, 1986) [hereinafter Report]. This Report was Submitted by Robert D. Lipscher, Administrative Director of the Courts.

24. See *supra* note 23.

and the procedure for arrest without a warrant and to enlarge venue to include the county where the victim is sheltered.

\* Ensuring Statewide Uniformity in Contempt Proceedings

On January 5, 1988, New Jersey's Governor signed into law amendments to the 1981 Prevention of Domestic Violence Act, intended to address some of the continuing problems cited initially by the Task Force and again by respondents to this evaluation. The amendments provide that emergency matters may be assigned to a family part or municipal court judge; they clarify that contempt of an order issued under the Act is criminal contempt; and they set out a procedure for uniform enforcement of such contempts. These amendments were subsequently further amended to permit the use of either criminal or civil contempt.

\* Counseling

The response to the Task Force's recommendation respecting further study of the impact of counseling is an example of an inter-agency effort. The interagency Alcoholism and Domestic Violence Working Group is currently discussing the proposal of legislation to establish screening and evaluation centers for batterers and to provide counseling programs for them. Resource center personnel would monitor defendants' attendance at and response to counseling programs and report back to the court.

\* Evaluation of Recordkeeping Practices

The Task Force recommended the establishment of accurate and accessible recordkeeping respecting recidivism. AOC reports that since the implementation of the 1981 Prevention of Domestic Violence Act it has collected statistical data through the Monthly Report Form, which has been revised several times in order to collect additional relevant information. At this time, statistical data on recidivism in domestic violence cases are not collected. The proposed revised Domestic Violence Complaint form, however, includes questions about the prior his-

tory of domestic violence between the parties. The proposed form was developed by the Family Division Case Managers, reviewed by the Conference of Family Division Presiding Judges and referred by the Presiding Judges to the Family Division Practice Committee. The Family Division Practice Committee recommended the adoption of the form in its annual report. This recommendation is pending before the Supreme Court.

A Landmark Case:

In 1984, the New Jersey Supreme Court issued a landmark decision for battered women, *State v. Kelly*.<sup>25</sup> This opinion, authored by Chief Justice Wilentz, held that expert testimony regarding the battered woman's syndrome was admissible to establish that a murder defendant acted in self-defense in the honest and justifiable belief that she was in imminent danger of death at the hands of her victim. In his opinion for the court, Chief Justice Wilentz described the kinds of stereotyped beliefs and misinformation a jury may harbor about battered women, and why expert testimony is necessary to explain why a battered woman often remains with her abuser and why she attacks him in a specific instance when she has not done so before. In his concurring opinion Justice Alan Handler cited the Task Force report.<sup>26</sup>

Progress and Problems Relating to the Courts' Response to Domestic Violence:

All our data sources concur that despite the wide-ranging efforts being made by the judiciary, the Administration Office of the Courts and others to address domestic violence issues, this is an area of the law in which there are matters of continuing concern. As Chief Justice Wilentz stated recently, "By and large, the program in place is effective . . . [but we are] challenge[d] to seek additional ways to make secure the protections we offer victims of domestic violence."<sup>27</sup>

During the period of this evaluation study, speaking in a variety of forums, judges, legal and

25. 97 N.J. 178, 478 A.2d 364 (1984).

26. In the Appellate Decisions Update prepared for the Task Force, the Women's Rights Litigation Clinic raised a note of concern about the Supreme Court's sensitivity to another aspect of domestic violence. In a case determining the standard for termination of parental rights, although the Supreme Court set forth stringent standards, it nowhere addressed the abuse the mother experienced at the hands of her husband, which may

have been an important element in understanding the abuse suffered by the children. *N. J. Div. of Youth and Family Servs. v. A.W.*, 103 N.J. 591, 512 A.2d 438 (1986).

27. Memorandum of Chief Justice Robert N. Wilentz to assignment judges (September 15, 1988). This memorandum was also provided to all other superior court judges and to municipal court judges and the media.

administrative staff at domestic violence shelters and public hearing witnesses reported their perceptions of progress and problems in the court system's response to victims and batterers. The judge who chairs the Task Force's Subcommittee on Domestic Violence stated at the Task Force's April 1987 evaluation meeting:

Domestic Violence . . . is difficult duty . . . even more so than matrimonial. It is high volume, and requires a judge to successfully focus the testimony of unrepresented people. The judge doesn't have a lawyer to synthesize the issues. It requires a special kind of ear, that does not come from the normal course of judicial training.

It is a difficult kind of subject matter to listen to. It is safe to say that practices in this area have not gotten much better in spite of the legislation and Task Force. . . . [T]here is still some reluctance to show a seriousness in terms of the remedies that are given in specific cases. Specialized judicial training in domestic violence is needed.

The subcommittee chair's concerns were echoed by other judges. Participants in the May, 1987 District Three Women Judges' meeting reported that family assaults are sometimes still belittled as "domestic disputes." Some judges continue to tell badly beaten wives to go to marriage counseling and try reconciliation. Some judges are insensitive, making comments such as "All he did was shake her hard" and "Oh, well, there wasn't any bruise on her." Family law practitioners in both private and legal services practices in several counties reported similar problems.

#### Survey of Domestic Violence Shelters

For purposes of this evaluation the authors sought an assessment of progress and problems from individuals who interact with the courts on a daily basis on behalf of women victims of domestic violence. During the summer of 1987 an extensive structured telephone survey was conducted with staff at fifteen of New Jersey's seventeen county shelters for domestic violence victim<sup>28</sup> and the as-

sistant director of the New Jersey Coalition for Battered Women. Nine of the respondents were shelter directors, two were counselors and five were legal advocates.

Respondents cited as progress the fact that judges often order batterers out of the home so that victims and children can return from shelters, often give calendar priority to domestic violence cases and are more strict to enforce child support awards than in the past. On the latter point, however, most noted that child support awards are rarely adequate. With respect to child support enforcement, because the Task Force Report and the federal Child Support Enforcement Amendments Act of 1984 were contemporaneous, it is difficult to know whether the Task Force had any impact apart from the law.<sup>29</sup>

With respect to persisting problems, the shelter workers described numerous issues affecting battered women about which, in their experience, judges are not adequately informed. These include the psychological effects of spouse abuse on children; the issues of justification and self-defense as they apply to battered women who assault or kill their batterers; the cost of raising a child; the cost and availability of child-care and other social data necessary to make realistic child support awards; the economic consequences of divorce for women, including women's employment opportunities and pay potential compared with men's after divorce; the economic value of homemaking and child-rearing; and the nature of discrimination experienced by women of color in the courts.

A majority of respondents reported that judges sometimes or often grant mutual orders of protection when the respondent batterer has not filed a petition for a restraining order<sup>30</sup>, that judges tend to view a woman who responds to domestic violence by leaving the home as less stable or less fit to receive custody, and that judges sometimes disregard batterers' violence against their wives in making a custody award.

Respondents also cited as persisting problems the inaccessibility of judges at nights, on weekends and holidays — the most frequent times for domestic violence; the uneven and uncertain enforcement of the domestic violence law and of restraining or-

28. Staff at the two other county shelters declined to respond.

29. The federal Child Support Enforcement Amendments of 1984, Pub. L. No 98-378, 98 Stat. 1305 (1984) required states to adopt numerical guidelines for child support and to implement

specified child support enforcement techniques on penalty of losing federal Aid to Families with Dependent Children funds.

30. Granting a mutual order in these circumstances violates due process because the petitioner has had no notice, and it endangers the woman because police often refuse women's efforts to enforce this kind of order.

ders; the lack of enforcement of the law and court orders respecting maintenance and child support; the inadequacy of child support awards; and a tendency to make enforcement of child support awards to the mother dependent upon non-interference with visitation rights of the father, even in those cases when the judge has refused to order supervised visitation.

There were several comments about discriminatory treatment of women and children of color, for example, an attitude that violence is to be expected in the minority community and is therefore not a serious problem. Respondents stated that enforcement of their clients' rights was obstructed by reliance upon gender stereotypes, stereotypes about battered women, and the application of sex-based standards for evaluating the needs and behaviors of women and men. There was a widespread belief that outcomes often depend on the attitude of the individual judge.

Respondents urged that the courts institute mandatory training for judges and lawyers to be conducted by individuals genuinely expert in the field. This supports the recommendation of the Task Force's Domestic Violence Subcommittee. Chair.

#### Hearings of the Governor's Advisory Council on Domestic Violence:

In September, 1988, the Governor's Advisory Council on Domestic Violence held the first two of four hearings to determine how to improve the Prevention of Domestic Violence Act. The Governor's press release invited testimony from victims of battering as well as professionals in domestic violence and criminal justice concerning how well the police, the attorneys and the court system are enforcing the law. The fifty-seven witnesses at these two hearings included survivors, prosecutors, police, lawyers, client advocates and health professionals. The Executive Director of the Women's Center in Monmouth County testified on behalf of all such domestic violence programs in the state. The New Jersey Coalition for Battered Women also presented testimony through its Executive Director.

These witnesses shared many of the views of

the shelter survey respondents. Witnesses testified that over the past six years the Prevention of Domestic Violence Act has provided much relief previously unavailable to victims, but that there continue to be areas of difficulty. Many witnesses perceived judicial insensitivity to domestic violence victims and inconsistency in implementation of the law from judge to judge. Several speakers objected to the continuing use of mediation (sometimes called case conferencing),<sup>31</sup> and noted that the victim is sometimes required to meet alone with the batterer for a conference.

Witnesses called for the elimination of in-house restraining orders and an end to consent orders and mutual restraining orders, which imply that the victim is equally at fault. Speakers endorsed counseling for batterers and urged that more counseling be made available and be ordered. There was concern, however, that batterers who fail to appear for counseling are not punished, and that victims are being ordered into counseling. Witnesses perceived that custody and visitation orders sometimes do not take into account a father's violence against the mother, and that judges are reluctant to award custody to women living in battered women's shelters. There was testimony that twenty-four hour access to the courts for restraining orders is not always available, and that in some counties domestic violence cases are being referred to citizen dispute panels rather than being treated as crimes.

Many witnesses expressed concern that domestic violence victims are not being awarded child support or other monetary relief. The New Jersey Coalition of Battered Women noted the need of battered women to be educated about how and why to ask for this relief. Many of these women do not understand that by agreeing to defer consideration of this matter until a divorce hearing, they may be without child support for many months if not a year or two.

The coalition subsequently observed that under the Prevention of Domestic Violence Act judges have and use the power to grant relief not requested in this and other areas. For example, in 1986-87 at final hearing, visitation was requested in 2,210 cases and granted in 3,486 cases. The coalition questioned why child support was requested in only

31. New Jersey judges were explicitly prohibited from ordering nonconsensual mediation in domestic violence matters by an Administrative Directive and Memorandum to the vicinages in 1984 and a memorandum from the Administrative Director reiterating this prohibition in 1985. However, when a judge strongly suggests mediation, it is usually difficult for a

battered woman to resist the judge's authority and refuse. Thus, what looks "consensual" may not be. The domestic violence professionals who testified at the Governor's hearings object to any mediation in domestic violence cases on the ground that it is an invalid method of intervention and can be dangerous because the parties are not equivalent in power.

3,725 cases and awarded in 3,318 cases when custody was awarded in 5,817 cases at final hearing for 1986-1987.<sup>32</sup>

Many of those testifying stated that in their experience training improves implementation of the law. They urged more training for judges and court personnel with respect to matters such as the battered woman's syndrome, the effects of spousal violence on children, the trauma of psychological abuse and the need for sensitivity to domestic violence victims. Witnesses noted that the domestic violence caseload is such that more family court judges are needed. It was suggested that there be a pilot program of judges who handle only domestic violence cases.

#### Pending Recommendations from the Judiciary Respecting Domestic Violence:

The New Jersey judiciary is seeking ways to make the court system more responsive to domestic violence victims. In preparation for discussion at the October, 1988 Judicial Conference, the Family Subcommittee of the Dispute Resolution Task Force submitted its preliminary report, which included six recommendations concerning domestic violence:<sup>33</sup>

1. Implementation of a pilot program using domestic violence hearing officers.
2. Implementation of mandatory training of all Superior Court Judges who handle domestic violence cases.
3. Reactivation of County Working Groups on the Enforcement of the Prevention of Domestic Violence Act in those counties where they are not presently active<sup>34</sup>.
4. Utilization of existing local support services to aid domestic violence litigants.

5. Establishment of a specialized domestic violence intake unit.
6. Establishment of a permanent Supreme Court Committee to review and monitor domestic violence practice and procedure statewide.

These recommendations will be discussed at the October, 1988 Judicial Conference, modified if necessary, and incorporated into a final report for submission to the New Jersey Supreme Court. Before taking any action the Supreme Court will invite comment through a notice in the *New Jersey Law Journal* and will hold public hearings.

The AOC advises us that these recommendations are controversial and by no means settled. We list them solely to demonstrate that the New Jersey judiciary is aware that there are problems to be addressed and is actively seeking to grapple with them.

### 3. Juvenile Justice

#### Task Force Findings:

National data on the treatment of juveniles show disparate treatment on the basis of sex at virtually all stages of the juvenile justice process.<sup>35</sup> Although female juvenile delinquents sometimes receive more lenient treatment with respect to certain crimes, those who commit status offenses (offenses that would not be crimes if the person were an adult, e.g., truancy, running away from home) are treated more harshly than males at every stage in the detention and adjudication process. As a result, young females are often institutionalized for longer periods than males. Available data from New Jersey generally conform to the national pattern. A 1979 report from the New Jersey Task Force on the Juvenile Code stated, "At each . . . decision point . . . female JINS [juveniles in need of supervision] received more stringent treatment than male JINS."<sup>36</sup>

32. These figures appear in the Report, *supra* note 23 (personal communication from June Clark, Director, New Jersey Coalition of Battered Women (Oct. 4, 1988)). AOC advises us that the Family Division Practice Committee has recommended that child support be addressed before the custodial parent leaves the court so that the parent does not have to make a return appearance.

33. The Dispute Resolution Task Force is chaired by Supreme Court Justice Marie Garibaldi. The Family Subcommittee is chaired by Judge Eugene Serpentelli. We note that domestic violence is but one of the numerous issues the Task Force and Subcommittee addressed.

34. The County Working Groups were established in 1984 at the suggestion of the Attorney General and the county

prosecutors to monitor enforcement of the Act in the counties. Membership includes the local prosecutor, police and shelter workers. Judges are not permitted to be members but can be called on as resource people.

35. See, e.g., Report by the American Bar Association *Little Sisters and the Law: Differential Treatment in the Juvenile Justice System* (1977); Chesney-Lind, *Young Women in the Arms of the Law in WOMEN, CRIME AND THE CRIMINAL JUSTICE SYSTEM* (1978); *Exploring the Issue of Differential Treatment*, WISCONSIN FEMALE JUVENILE OFFENDER STUDY PROJECT, SUMMARY REPORT (1982).

36. Donnefer & DeJames, *JUVENILE JUSTICE IN NEW JERSEY, AN ASSESSMENT OF THE NEW JUVENILE CODE* at xxvi (1979).

#### Task Force Recommendation:

A new Code of Juvenile Justice took effect on January 1, 1984. Educational programs developed to aid in the new Code's administration should include information about the potential for disparate treatment and the need to eliminate any such disparity. Sentencing decisions under the new Code should be closely monitored.

#### Evaluation Findings:

On August 17, 1984, the AOC Director wrote to the family division judges, drawing their attention to this segment of the Task Force's First Year Report and urging that the Chair of the Juvenile Justice Subcommittee be contacted in connection with education programs for those involved with the new Code.

Implementation of the recommendation to monitor sentencing under the new Code is now underway. In March, 1988, the AOC Statistical Services Unit began a preliminary analysis of the rates of diversion, dismissal, adjudication and incarceration by sex for the calendar year 1987. These findings were not available for this report.

#### 4. Matrimonial Law

##### Task Force Findings:

In 1983, lawyers who participated in New Jersey's eight regional meetings and responded to the Task Force's attorneys survey concurred that gender bias is a factor in some judges' determinations of the division of property and the award and enforcement of spousal and child support. There were consistent reports from all parts of the state of an unofficial standard under which the wife would receive no more than 35-40 percent of the marital assets. There was widespread concern that judges overestimate the earning power of women who have been out of the job market for many years and that alimony awards are seriously deficient. With respect to child support, judges were described as having unrealistically low ideas of the costs of supporting a family and raising children. Judicial failure to enforce both spousal and child support was seen as a matter needing immediate attention.

The Task Force Subcommittee on Matrimonial Law concluded that "despite the objectives of [the New Jersey equitable distribution statute] and our case law to achieve gender equity in distributing marital property and the economic bur-

dens of divorce, we may in fact be falling far short of that goal."

##### Task Force Recommendation:

A comprehensive study should be designed by the Administrative Office of the Courts to collect detailed economic data about all New Jersey divorces for a period of one year to enable the Task Force fully to assess the problems identified in its investigations and to suggest remedial action.

##### Evaluation Findings:

Since 1984, the Matrimonial Law Subcommittee has continued to pursue this recommendation. Designing and implementing this study posed a challenge because AOC had never before attempted to collect these kinds of data. The AOC conducted a preliminary study in May, 1986. Because the sample was relatively small and the data base of uncertain reliability, it could not be used. The primary benefit of this study was that much was learned about the availability (or unavailability) of relevant data, the nature and complexity of the issues involved and the resources required for a comprehensive followup study.

In 1987, a presentation by the AOC Statistical Services Unit about the recommended study to the Presiding Judges of the Family Court evoked concern from some of the judges. To answer their questions about why a study of spousal and child support awards and enforcement as well as property distribution is necessary and how it would be conducted, another meeting was convened in January, 1988 at which the Task Force Chair, the Matrimonial Subcommittee Co-Chairs and other Task Force members met with five Family Court presiding judges and AOC staff. Again, there was reluctance on the part of some of these presiding judges. Subsequently, however, a committee consisting of three Family Court presiding judges, a Task Force judge and the Task Force Matrimonial Law Subcommittee was established to work together to design a study that will address the concerns of the Task Force and be informative for the presiding judges.

Over the last five years there have been a number of judicial education programs about child support guidelines and enforcement. However, only one judicial college program has fully

addressed the need to eliminate gender bias in property division and spousal support awards and enforcement, and it reached few judges. Only twenty-two judges registered for the Task Force's 1984 program, "Economic Aspects of Homemaking in Damages and Divorce." There has been some discussion of these issues in the Equal Justice Courses at the Judicial College and a brief mention in the 1987 family law update course. More judicial education about these difficult problems is needed.<sup>37</sup>

As with domestic violence, matrimonial law presents both areas of significant progress and areas in which change appears to be taking place more slowly. The Task Force's recommended study of matrimonial cases is not yet available, but we were able to gather some information about current perceptions of progress.

With respect to alimony, appellate judges on the Task Force reported at the 1987 Evaluation Meeting that they no longer see "disgracefully low awards that reflected some antediluvian approach." Another Task Force member reported comments he hears from other practitioners indicating a heightened sensitivity among some judges to the problems women face in divorce, such as going into the paid work force for the first time. He also reported his perception that rehabilitative alimony is being awarded when none would have been given before.

Nevertheless, there is concern among judges and lawyers on the Task Force and in counties throughout the state that rehabilitative alimony is sometimes being awarded in circumstances in which long-term alimony is called for. As a Task Force member stated at the Evaluation Meeting:

There is still the attitude that women only need time to be educated through rehabilitative alimony, and then they will be able to take care of themselves, and in many cases, their children, which is simply not true, because we're dealing by and large with a generation of women who are relatively uneducated and uneducable at this juncture.

Task Force members suggested that some judges' misperceptions about women's abilities to

become fully self-supporting after divorce may result from these judges' seeing increasing numbers of women attorneys practicing in the courts, and seeing their own daughters in professional schools. The judges erroneously conclude from these observations that all or most women can be in professional roles and assume that this is now the norm for women. Other respondents shared these concerns. Several commented on the need for judges to appreciate that not only full-time homemakers, but even women who have been in the paid work force during their marriages, have usually placed their jobs or careers second to those of their husbands' and can rarely make up for the lost human capital and the lost momentum.

Another issue on which many respondents commented is the great difficulty in obtaining *pendente lite* awards for counsel and expert fees.<sup>38</sup> They noted that few wives have economic resources commensurate with their husbands, and without meaningful *pendente lite* fees these women cannot retain counsel or, if they do, cannot authorize counsel fully to pursue their cases or obtain their own valuations of critical assets such as pensions and closely held businesses.

#### Reported Cases:

Several cases cited in the Appellate Decisions Update and one decided subsequent to it confirm respondents' concerns about trial court decisions. The reversal of these cases by the Appellate Division sets important standards that will provide greater post-divorce financial equity.

In *Avery v. Avery*,<sup>39</sup> the trial court reduced a former wife's alimony because her wages increased. The Appellate Division overturned this decision on the ground that despite her wage increase, the wife was still contributing 110 percent of her adjusted gross monthly earnings to the support of herself and her children while her former husband contributed approximately twenty-five percent of his, a disparity that made the termination of alimony inappropriate.

In *Weber v. Weber*,<sup>40</sup> the trial court reduced alimony and set a termination date without any evidence that the ex-wife's earning capacity would

37. The Supreme Court Family Division Practice Committee has called for expanded judicial education for all family court judges about all aspects of family law, with input from the bar. Family Division Practice Committee Annual Report 1987-1988, at 148-53 (1988).

38. These are fees that judges are empowered by statute to award to an economically dependent spouse to enable that spouse properly to pursue matrimonial litigation.

39. 209 N.J. Super. 155, 507 A.2d 242 (App. Div. 1986).

40. 211 N.J. Super. 533, 512 A.2d 494 (App. Div. 1986).

have changed by this date. The Appellate Division reversed.

In a case of major importance decided in December 1987, the Appellate Division ruled in *Whitfield v. Whitfield*<sup>41</sup> that unvested non-matured pensions are subject to equitable distribution at divorce.<sup>42</sup> Because the husband's pension is often a married couple's primary asset, and because few women are able to earn substantial pension benefits of their own during marriage or after divorce, this ruling should have a significant impact in easing the post-divorce economic disparities between women and men in middle-class families.<sup>43</sup>

With respect to child support, as already noted, the child support guidelines and new enforcement mechanisms adopted pursuant to the federal Child Support Enforcement Amendments of 1984, together with the extensive training for judges and court staff on these issues have brought about significant improvements in child support awards and enforcement.<sup>44</sup> Several practitioners stated that the child support guidelines have resulted in greater uniformity and higher awards and that judges in

their counties were generally applying them. The AOC reports that implementation of the child support guidelines has resulted in an increase of twenty percent to forty-seven percent in the amount of awards, depending on income level.<sup>45</sup>

One of the most welcome signs of progress is that the Child Support Program has had considerable success in removing families from Aid to Families with Dependent Children. Support collections to county welfare agencies helped remove over 10,000 families from welfare in FFY 1987.

Despite these notable achievements, family law practitioners in private practice and Legal Services offices across the state also reported ongoing difficulties in the award and enforcement of child support.<sup>46</sup> There was concern that the guidelines understate the costs of child-raising.<sup>47</sup> Attorneys also reported that some judges use the bottom of the scales as a maximum without examining the actual needs of the child and incomes of the parties.

The efficacy of probation departments in enforcing child support appears to vary from county to county. Departments in smaller counties appear

41. 222 N.J. Super. 36, 535 A.2d 986 (App. Div. 1989).

42. Writing for the court, Task Force member Judge Virginia A. Long observed:

Defendant claims that this pension will not be "earned" until the 20th anniversary of his entry into the service and that that will be the day it was "acquired" for includability purposes. If we were to accept this superficial analysis as a bar to the inclusion of this significant asset in the marital estate, we would be paying lip service to the theory of equitable distribution while ignoring the reality before us. These parties were married for sixteen years during which time they experienced all the joys and sorrows of married life. They raised three children. It is uncontroverted that they labored, shoulder to shoulder in the military, establishing homes and supporting their family, both financially and emotionally, all over the world. During the entire marriage, defendant was accumulating credits toward his pension which both parties anticipated he would receive in 1988. Clearly, this pension will not be earned on the 20th anniversary of defendant's entry into the service. Rather, it was earned during each and every day of his 20 years of employment in the military, 16 years of which were spent in a "shared enterprise" with plaintiff.

*Whitfield v. Whitfield*, 222 N.J. Super. 36, 45-46, 535 A.2d 986, 991-2 (App. Div. 1987).

43. In examining appellate decisions, particularly in matrimonial law, one must bear in mind that because it is so difficult for women to find the money to pursue an appeal, the number and holdings of these cases do not tell us enough about what is happening at the trial level. Only a matrimonial case study, like that recommended by the Task Force, can provide the relevant data.

44. The AOC reports that during the past five years child support collections by the state through the Title IV-D program have increased in absolute dollars:

FFY 83 -	\$158,878,227
FFY 84 -	\$177,933,649
FFY 85 -	\$200,037,294
FFY 86 -	\$223,504,991
FFY 87 -	\$250,206,492

New Jersey ranks fifth among states in terms of total support collections. It ranks fourth in unemployment compensation intercepts and sixth in the categories of federal tax intercepts, state tax intercepts and income withholding. The state ranks eighth in the number of paternities and support obligations established during FFY 1987. Office of Child Support Enforcement, U.S. Dept. of Health and Human Services, *Twelfth Annual Report to Congress for the Period Ending September 30, 1987* (forthcoming 1988) [hereinafter *Twelfth Annual Report*].

45. NEW JERSEY COMM'N ON CHILD SUPPORT, FINDINGS AND RECOMMENDATIONS 37 (1985).

46. For example, with respect to child support collected by the state through the Title IV-D program, New Jersey reported that it collected 50.6% of the current payments due in FFY 1987. U.S. Dept. of Health and Human Services. With respect to current payments and arrearages combined, the state received 22.7% of the amount due in FFY 1987. We note that collecting child support arrearages is a more difficult undertaking than collecting current payments. See *Twelfth Annual Report*, supra note 43; *National Child Support*, 10 CHILD SUPPORT REP., Jan-Feb. 1988, at 5.

47. The New Jersey child support guidelines are based on an "income shares" model also widely used in other states. For a discussion of how this model understates child-raising costs, see, Goldfarb, *What Every Lawyer Should Know About Child Support Guidelines*, 13 FAM. L. REP. (BNA) 3031-3037 (1987). See Women's Legal Defense Fund, *Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations: Proceedings of the Women's Legal Defense Fund National Conference on the Development of Child Support Guidelines* (May, 1987).

to be more effective. Those in the larger counties were described as understaffed, underpaid and overwhelmed. Several respondents stated that the provision for wage garnishment to come into force after a fourteen-day arrearage was not working on a timely basis. The AOC reports that, based on an AOC initiative, Human Services obtained federal monies to support a major statewide computerization program that is now underway. AOC reports that this program has improved probation performance in those counties already on the system.

Family law issues were discussed in depth at the June, 1987 meeting of the Women's Rights Section of the New Jersey Bar Association, convened to assess the Task Force's impact. Several recommendations were formulated and communicated to the authors of this evaluation. The Section urged that child support guidelines be updated annually and extended to cover higher family incomes. Currently the guidelines do not apply to families with net incomes above \$42,000 per annum.<sup>48</sup> It also urged that judges be encouraged to compensate women, who are usually the custodial parents, for the work they contribute after divorce to the nurturing of the children of the marriage. The section encouraged AOC to go forward with the study of matrimonial cases recommended by the Task Force and to develop a mandatory course for all judges to increase sensitivity to women's issues in matrimonial actions. The Section took the position that judges should be reminded that the measure of alimony is that amount of money which will enable a spouse to maintain the standard of living enjoyed during the marriage.

## 5. Sentencing

### Task Force Findings:

The Sentencing Subcommittee's analysis of prior arrest and sentencing data for women and men indicated that women appeared to be treated more leniently than similarly situated men. It noted that findings from research in other jurisdictions which show that judges are sometimes harsher on women who commit crimes atypical for women than on men committing those kinds of crimes was not borne out by the New Jersey data. The subcommittee speculated that judges' leniency toward women may be a function of concern for their roles as wives and mothers.

### Task Force Recommendation:

A study should be undertaken to determine whether and to what extent relevant factors may be applied differently as between male and female offenders in determining the appropriate sentence. This study should also ascertain whether or not the perceived leniency toward female offenders holds true for women committing so-called 'male crimes,' such as armed robbery and aggravated assault, where defendants have comparable prior criminal records, marital status and child-care responsibilities.

### Evaluation Findings:

The Task Force Subcommittee on Sentencing had several exploratory discussions with the AOC Statistical Services Unit about how the sophisticated study necessary to account for all these variables could be carried out with the existing New Jersey sentencing data. The subcommittee also explored but did not execute a study of sitting judges utilizing a set of sentencing hypotheticals developed in 1981 by the National Judicial Education Program to Promote Equality.

A series of tables showing convictions and sentencing in 1986 by specific charge types and sex has now been prepared by the AOC Statistical Services Unit. There are difficulties, which were anticipated, in using these tables for further analysis because the number of women is comparatively small and the tables do not provide full background data with respect to prior history and other factors that affect sentencing. The AOC liaison to the Task Force reports that she is hopeful that the Supreme Court Task Force on Reduction of Undue Sentencing Disparity and Improved Sentencing Procedures will be able to focus more on the area of gender bias.

## VI. ANALYSIS OF THE EVALUATION FINDINGS AND TASK FORCE PROCESSES

A. In What Ways, if any, did the Task Force's Work Reduce Gender Bias in the Courts in Designated Areas of Concern?

### *Courtroom Interaction and Professional Environments*

The Task Force exceeded all expectations re-

48. The AOC reports that the Supreme Court Family Division Practice Committee, based on its first-year evaluation,

has recommended to the Supreme Court new and extended guidelines.

garding its potential for promoting equal treatment for women and men in the courtroom and professional environments. Judges, attorneys and court personnel concur that inappropriate forms of address, sexist jokes and other verbal and non-verbal signs of disrespect for women lawyers, litigants and witnesses have greatly diminished in the New Jersey courts because of the formal and informal educational activities of the Task Force.

Some might argue that these changes are merely cosmetic "window dressing" which do not touch upon the serious forms of gender bias that manifest themselves in judicial decision-making. The authors understand this concern, and fully agree that if this were all that task forces on gender bias could accomplish, the results would not warrant the enormous investment of resources expended for such projects. However, we are also keenly aware that behavior which might appear to be a matter of "etiquette" in other institutional contexts has far greater consequences in a court of law. A judge's expression of disrespect for women attorneys, litigants or witnesses not only suggests gender bias on his or her part, but may also influence juries and prejudice case outcomes. Similarly, well-intentioned comments regarding a woman attorney's appearance or endearing forms of address can damage her credibility as a professional in the courtroom in the eyes of clients, jurors and opposing counsel. In our view, the success of the Task Force in creating a climate in which gender-biased behavior is no longer acceptable in the court and professional environments is of great and enduring significance.

The Task Force's achievements in this area have been noted and applauded by the Chief Justice. In an interview with Professor Wikler on April 29, 1987, Chief Justice Wilentz stated that the Task Force has accomplished an enormous amount in sensitizing judges and lawyers to the serious, harmful consequences of behaviors once thought acceptable. Moreover, he observed that these new realizations have led to changes in behavior, not only among judges but also among court personnel.

#### *Court Administration*

For a task force to have an enduring effect on reducing gender bias in the courts, judicial education — even at its best—will not suffice. Change in the hearts and minds of judges, attorneys and court personnel is crucial; but change at the *insti-*

*tutional* level is necessary as well. The New Jersey Task Force is to be commended for the important changes it generated in the court administration system. Directly or indirectly, the Task Force has initiated changes in the Code of Judicial Conduct and Guidelines for Extrajudicial Activities; inspired a question about judicial bias in individual performance evaluation form; proposed changes in the Code of Professional Conduct; secured gender-neutral language in court forms and correspondence and criminal jury charges; and generated publication of an AOC guide to non-discriminatory interviewing. All these actions will help to secure the gains already achieved by the Task Force.

#### *Substantive Areas of the Law*

Our ability to make definitive statements about whether the Task Force has significantly reduced gender bias in decision-making in the areas the Task Force investigated is hampered by our lack of statistical data. As previously noted, none of the statistical studies proposed by the Task Force has yet been executed. In the areas of matrimonial law and domestic violence, respondents to this evaluation inquiry provided extensive information helpful to our work; in other areas we were able to learn very little.

Regarding juvenile justice, for example, the judges, attorneys and court personnel we contacted for this evaluation offered no observations on whether or not male and female juveniles are treated equally. The recommended study of dispositions under the new 1984 Juvenile Justice Code is now underway and was not available for this report. A similar situation exists with respect to adult sentencing. Since our respondents said nothing on the subject, we are unable to draw conclusions regarding the Task Force's impact on judicial behavior in this area.

In the area of matrimonial law our respondents expressed many views, and statistical data were available on requests for child support collections. There were reports of improvements in the award of rehabilitative alimony and the amount and enforcement of child support, but respondents also reported ongoing concern with problems identified by the Task Force, such as the award of rehabilitative alimony in circumstances warranting permanent awards. Findings from the Task Force's proposed statistical study of court cases will be extremely useful in any subsequent

evaluation of the economic consequences of divorce in New Jersey.

Our assessment of change in the area of domestic violence, based on a wide range of data sources, is similar to that in matrimonial law. Judges, attorneys and staff at shelters for domestic violence victims report improvements in the court system's response to domestic violence, but also that the problems identified in the Task Force's First Report have not yet been fully eliminated.

With respect to damages, another designated area of Task Force concern, there is some evidence of a positive impact. Although the Task Force's proposed change in the model civil jury damages charge is still under consideration, several lawyers and the Task Force Chair reported that as a result of judicial and legal education on this topic, the value of a homemaker in damages cases has increased.

Further substantive change will require mandatory judicial education programs that focus on gender bias in specific areas of law and that integrate gender bias issues into all relevant courses. The continuous, visible support of the Chief Justice and other ranking judges for such education is also required.

#### B. What Were the Unanticipated Consequences of the Task Force's Work?

Beyond the Task Force's progress in fulfilling its specific mandate to investigate gender bias and develop an educational program, our inquiry reveals that there have been many unanticipated consequences of the Task Force's work which serve to promote equal justice within and outside of the state of New Jersey.

#### *Altering the Normative Environment*

The Task Force's greatest accomplishment within New Jersey is also its most subtle: creating a climate within the state's court system in which the nature and consequences of gender bias are both acknowledged to exist and understood to be

unacceptable in the New Jersey courts. Though intangible and impossible to measure, this shift in what sociologists call the "normative environment" of the judiciary is enormously significant.<sup>49</sup> Persuading judges and lawyers that gender bias is not a frivolous matter raised by "thin-skinned" women, but actually a serious problem that taints the fair administration of justice, is no small achievement. Equally impressive are the gains made in evoking lawyers' and judges' acknowledgment of new norms that clarify the unacceptability of biased behavior and provide sanctions against it. "The argument has been won," Chief Justice Wilentz told Professor Wikler. "The behavior is now understood to be *wrong* and *unacceptable*."<sup>50</sup>

As we have seen, one consequence of this change of climate is a new sense of freedom for concerned lawyers and judges to point out and challenge gender-biased behavior in the courts and in professional activities, such as the 1987 Bon Ton event.

#### *Stimulating Change in Bar Associations*

Another unanticipated consequence of the Task Force has been its influence on bar associations. Several state and county bar associations responded to the Task Force's First Year Report by introducing education programs on gender bias, intensifying efforts to recruit women lawyers and appointing more women to leadership positions. Without doubt, women lawyers have been the greatest beneficiaries of the Task Force's efforts despite the fears of a vocal minority of women lawyers who opposed the creation of the Task Force in 1982 on the grounds that their employment opportunities and client base would be undermined if public attention were drawn to the lack of credibility sometimes accorded them and to their ill treatment in court. The opposite proved true in New Jersey. Our inquiry found evidence that women lawyers' status and employment opportunities improved in the courts, in bar associations and in law firms as a result of the

49. Norms are guidelines people follow in their relations with one another; they are shared standards of behavior. Norms indicate what people should and should not do in a given situation. They also enable people to anticipate how others will interpret and respond to their words and actions.

50. The Chief Justice expressed his normative expectations regarding gender bias to the entire New Jersey judiciary in impromptu remarks to the 1983 New Jersey Judicial College

after the Task Force's presentation of its findings: "There's no room for gender bias in our system. It will not be tolerated in any form whatsoever." But the views of the Chief Justice alone could not have brought about this normative shift. The ongoing work of the Task Force and the discussions and debates it has sparked within the legal/judicial communities across the state also slowly affected this change.

Task Force having brought the biased treatment to light.

### *Facilitating Inquiries about Bias Against Minority Groups in the Courts*

In 1984, Chief Justice Wilentz created the Task Force on Minority Concerns. This is another example of the "ripple effect," the magnitude of which was certainly not anticipated. Administrative Director of the Courts Robert Lipscher explained to Professor Wikler that the fine work of the Task Force on Women in the Courts and its wide acceptance within the legal and judicial communities paved the way for the Task Force on Minority Concerns.

### *Creating State and National Public Awareness*

The Task Force also educated the public about gender bias in the courts. From its inception, the Task Force received widespread coverage in both print and broadcast media. News stories, feature stories and newspaper editorials were particularly effective in making judicial gender bias an issue of public concern. It is interesting to note that the New Jersey press did not use the Task Force's findings to attack the court system, as some observers might have expected. Rather, the consistent tone of reporting has been one of commending the judiciary for its self-scrutiny and reforms.

The Task Force has also played a less obvious educational role in public awareness. From 1984 on, legal and general press reporters increasingly turned to New Jersey's AOC as a resource for information for stories they were writing, not on the Task Force itself, but on matters related to Task Force concerns.

Press and public attention to the Task Force ranged far beyond New Jersey. As word of the Task Force's findings and ongoing efforts to pursue reforms spread, female lawyers and litigants (current and potential) in other states became aware that they might be disadvantaged in court solely because they were women. Inquiries the Task Force has received over the years from non-

legal organizations and lay individuals within the state and throughout the country indicate that nationwide consciousness about gender bias in the courts has been raised.

### *Inspiring Task Forces on Gender Bias in the Courts and Judicial and Legal Education About Gender Bias in Other States*

The New Jersey Task Force is responsible for what can fairly be termed an explosion of nationwide activity concerning gender bias in the courts. The increasing number of task forces and judicial education programs attests to the intense national interest the New Jersey Task Force generated.

Information about the Task Force was disseminated through the judicial, legal and popular press and at programs such as those at meetings of the National Association of Women Judges and the 1986 annual meeting of the American Bar Association,<sup>51</sup> as well as presentations of the National Judicial Education Program to Promote Equality for Women and Men in the Courts. These findings inspired women judges and lawyers across the country to initiate efforts to raise the issue of gender bias in the courts and to have task forces established in their states.

Their efforts received a significant boost in August 1986 when the Chairs of the New Jersey and New York<sup>52</sup> Task Forces on Women in the Courts and the authors of this report were invited to present a program on gender bias in the courts at the annual joint meeting of the Conference of Chief Justices and Conference of State Court Administrators. Having this issue on the agenda of the country's highest-ranking judges and court administrators is a striking example of how gender bias in the courts has been legitimated as a subject essential for the judiciary to address.

This program persuaded several chief justices to establish gender bias task forces and others to present judicial education programs about gender bias in their own states. In addition, just as New Jersey had done, three other states with gender bias task forces have either subse-

51. At this meeting, the ABA House of Delegates approved a resolution endorsing education about gender and race bias for state and federal judges. The Report in Support of the Resolution described the findings of the New Jersey and New York task forces and the experience of the National Judicial Education Program to Promote Equality for Women and Men in the Courts.

52. *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L. J. 1 (1987) [hereinafter *New York Task Force on Women*]. The Report of the Rhode Island Supreme Court Committee on Women in the Courts, the one other task force to have published its findings, is available from the Rhode Island Administrative Office of the Courts, 250 Benefit Street, Providence, RI 02903.

quently or concurrently created task forces on minority concerns.<sup>53</sup> At their 1988 joint annual meeting, the Conference of Chief Justices and Conference of State Court Administrators, at the request of the Conference of Chief Justice's Discrimination in the Courts Committee, adopted the following resolution:

The Conference of Chief Justices urges each chief justice in every state to establish separate task forces devoted to the study of (1) gender bias in the court system and (2) minority concerns as they relate to the judicial system.<sup>54</sup>

As of October, 1988, the date of this evaluation, twenty-five other supreme court and bar association task forces are in varying stages of implementation, data collection and formation. (See Appendix A.) This extraordinary level of activity concerning an issue that simply did not exist for the judiciary when the National Judicial Education Program began its work in 1980 is incontestable evidence of the remarkable impact of the New Jersey Task Force nationwide.

### C. What Factors Facilitated the Work of the Task Force?

#### *Support of the Chief Justice*

The Chief Justice's continuous, vigorous and highly visible support of the Task Force has been a key factor in its accomplishments. In September, 1984, Chief Justice Wilentz sent all New Jersey judges a memorandum directing them to be strictly attentive to the Task Force Report, particularly those sections dealing with the areas of substantive law in which the individual judge has decision-making responsibilities. (See Chief Justice's Memorandum, Appendix G.) He subsequently showed the Task Force's videotape to all the assignment judges and urged them to show it to the judges in their own jurisdictions. In addition, the Chief Justice initiated a series of other actions that powerfully reminded New Jersey judges of his personal commitment to the issue

and his expectation that they would take responsibility for educating themselves about judicial gender bias and eliminating such behavior.<sup>55</sup>

Perhaps most striking is the Chief Justice's continuing involvement in the Task Force's work. From the beginning, he made himself available on an "as needed" basis for consultation with the Task Force Chair and actively sought ways to facilitate and implement the Task Force's work. The Chief Justice has provided not only practical assistance to the Task Force but also moral support, which was greatly appreciated by the members who have generously given their time and effort.

#### *Support from the Administrative Office of the Courts*

The Administrative Office of the Courts facilitated the Task Force's work in a number of ways. Administrative Director Lipscher responded with interest to Judge Loftus's reports about what she had learned about gender bias in the courts at several education programs for women judges, and it was his invitation to her to present a program at the New Jersey Judicial College that led to the creation of the Task Force. After the Task Force published its first report, the Administrative Director instructed all court administration staff to use gender-neutral language in court correspondence and court rules and to be sensitive to gender bias in dealing with the public or co-workers. In January, 1986, the Director assigned one of his assistants to monitor and troubleshoot implementation of the recommendations of the Subcommittee on Court Administration. (A sample of AOC directives and implementing memoranda in support of the Task Force's goals is presented in Appendix H.)

Throughout the life of the Task Force, AOC staff attorney liaisons Patricia Nagle (1982-1984) and Melanie Griffin (1984-1988) provided extensive support to the Task Force in both its investigations and efforts to implement recommendations. AOC Education Chief Richard Saks was

53. These states are Michigan, New York and Washington.

54. Conference of Chief Justices. Resolution XVIII, "Task Forces on Gender Bias and Minority Concerns," adopted August 4, 1988. Conference of State Court Administrators. Resolution I, "Task Forces on Gender Bias and Minority Concerns," adopted August 4, 1988.

55. The Chief Justice's initiatives have included: (1) providing an opportunity for the Task Force Chair to meet with the assignment judges during the Task Force's first year; (2)

requiring attendance of all judges at the Task Force's presentation to the 1983 Judicial College; (3) reprimanding a judge for sexist behavior called to his attention by the Task Force during its first year; (4) transmitting the Task Force's report to District Ethics Committees and Fee Arbitration Committees throughout the state; (5) offering continuing support for the Task Force's ongoing activities during its six-year duration; and (6) suggesting procedures for monitoring progress in reducing gender bias.

consistently supportive of the Task Force's efforts to present programming about gender bias at the New Jersey Judicial College and to have the issue included in the orientation program for new judges.

#### *Public Appearances by Task Force Members*

Between 1983 and 1988, many of the thirty-two members of the Task Force participated in educational programs within and outside of New Jersey. (Appendix D provides a partial list of members' appearances in judicial education and gender bias task force programs; bar association and legal organization programs; law school programs; radio and television programs; and programs for nonlegal audiences). These appearances publicized the Task Force's work and sensitized diverse audiences to issues of gender bias. Some of these presentations on gender bias sparked remedial action on the part of groups or individuals. Such outreach is a vital component of any task force's long-term strategy for change.

Judge Marilyn Loftus deserves special recognition for her contributions in this regard. In her roles as Chair of both the New Jersey Task Force and the National Gender Bias Task Force, Judge Loftus has spoken to diverse groups across the country and served as a resource to the dozens of individuals, organizations and task forces that have contacted her for information and advice.

#### *Distribution of Task Force Materials*

The AOC's distribution of the Task Force's reports and its videotape throughout New Jersey and the country played a vital educational role. As of March, 1988, the AOC had loaned the Task Force's instructional videotape to 178 people, distributed thirty-six copies to assignment judges, Task Force members and others needing individual copies, and provided both a short- and full-length version to the National Center for State Courts, which also loans them out.

Prior to publication of the Task Force's First Year Report in the *Women's Rights Law Reporter*,<sup>56</sup> the AOC distributed approximately 1,500 copies of the report to New Jersey judges and interested parties within New Jersey and around the country. AOC subsequently distrib-

uted approximately 1,000 copies of the Task Force's Second Report.

#### *Experts on Gender Bias in the Courts*

Understandably, most judges and lawyers do not have specialized expertise in either the literature on judicial gender bias or data collection methods. The authors of this evaluation had extensive experience in educating judges about gender bias, familiarity with the relevant legal and social scientific literature and research skills which we were able to share with the Task Force in our capacities as a member and advisor. Task forces must have this kind of expertise available from advisors, consultants or members chosen specifically for these strengths.

#### D. What Factors Slowed the Work of the Task Force and the Implementation of its Recommendations?

##### *Limited Authority to Effect Implementation*

As an advisory body in a complex, interrelated court system, the Task Force was dependent upon other units in that system to carry out aspects of its work and to implement its recommendations. Although there has been ongoing cooperation between these units and the Task Force, in several instances problems have arisen. For example, the Task Force encountered resistance when it sought to carry out its mandate to present a program at the 1983 Judicial College and when it sought to continue education about gender bias issues in 1985.

Different kinds of problems arose in carrying out the several studies recommended by the Task Force. In some instances lack of communication between the AOC unit assigned the task and the Task Force produced delays and substantive difficulties. One creative solution to the inherent structural problem is the recently established joint committee of Family Court Presiding Judges and the Co-Chairs of the Task Force's Subcommittee on Matrimonial Law, which will pursue the Task Force's proposed matrimonial law study.

##### *Lack of an Appropriate Data Base and Social Science Expertise*

An impediment to both the Task Force's investigation and implementation of its recommen-

56. See *New Jersey Task Force Report*, *supra* note 3.

dations has been the lack of an appropriate data base and the kind of social science expertise required to conduct the studies vital to the Task Force's concerns. All task forces, to our knowledge, encounter the same problem. During the New Jersey Task Force's investigation many lawyers reported abuses in the award of rehabilitative alimony, but the Task Force could not test these impressionistic reports against the reality of the litigated cases because AOC had no records that captured essential divorce case data, such as the age, skills and employment records of the parties and the award, amount and duration of alimony. The Task Force has proposed a one-year study of matrimonial cases that would collect this essential data. The need for routine data collection by all court systems is discussed *supra*, at 84.

#### *Lack of Full-Time Executive Director and Staff*

As this report documents, the AOC facilitated the Task Force's work in a variety of ways and in many respects stands as a model for other states to emulate. Nevertheless, one shortcoming with respect to AOC staffing emerged from our investigation. The AOC staff attorneys assigned to the Task Force, both of whom gave invaluable service, were given this assignment as part of their regular duties. The demands imposed on staff by a gender bias task force are enormous and complex. Not surprisingly, therefore, when the Task Force's level of activity was high, these attorneys found it difficult to devote adequate time to implementation tasks.

#### *Instances of Complacency and Backlash*

Neither complacency nor backlash is easily identified, but a few respondents to our inquiry felt that both had set in. Several others predicted that once the Task Force is disbanded, backsliding will begin.

On the basis of the information available to us, we cannot determine if there has already been a backlash to the Task Force's work. What some judges and lawyers interpreted as signs of a backlash—inadequate alimony awards were mentioned most frequently—could be viewed simply as the continuation of biased judicial practices that have never been adequately addressed. The Bon Ton incident could be taken as a sign that the normative shift in the courtroom environment has not diffused into bar associations. Or, it could be

read as a backlash to the Task Force's efforts. Whatever the explanation, the point to be drawn here is that gender bias, judicial or otherwise, is so deeply entrenched in all our social institutions that it will not disappear regardless of how magnificently a task force performs. For this reason, there must be ongoing monitoring of problems, institutionalization of changes, continuous affirmation of the norms against gender bias by the Chief Justice and other respected judges and lawyers, meaningful sanctions and, of course, ongoing judicial education in which gender bias issues are integrated into all relevant aspects of the curriculum.

## VII. RECOMMENDATIONS FOR THE NEW JERSEY TASK FORCE

The New Jersey Task Force approaches a crossroad: should it continue as currently organized? devolve into another form? disband altogether? Regardless of the outcome of that decision, the Task Force must now take steps to secure the gains already made and to maximize the opportunity for further reform. Our assessment leads us to make the following recommendations.

### A. Creation of a Standing Committee of the Task Force

We fully agree with both Chief Justice Wilentz and AOC Director Lipscher that ongoing monitoring of gender bias is essential, and that some group of knowledgeable people must be constituted to carry out this and other implemental and educational tasks. Director Lipscher has proposed that the Supreme Court create a permanent committee to monitor and suggest reforms regarding all kinds of bias. This proposal surely deserves further consideration, although our experience with general "isms" courses in judicial education makes us prefer separate committees for each type of bias. Chief Justice Wilentz has been less specific in his proposals, but he has encouraged the Task Force to remain in existence in some form. Further reduction of gender bias in the New Jersey courts depends, in his view, upon persistently "keeping a thorn in the judiciary's side."

We suggest that the Task Force devolve into a standing committee of six to eight members who are dedicated to pursuing the Task Force's goals

over the long term. This committee's duties would include (1) continuing the effort to implement the Task Force's recommendations; (2) working with the AOC Office of Judicial Education and the National Judicial Education Program to develop judicial (and legal) education programs; (3) helping the AOC establish a statistical data base appropriate for monitoring areas of Task Force concern, such as child and spousal support awards and enforcement; (4) reviewing appellate decisions on gender-related issues in all areas of law and calling to the attention of the trial courts those decisions which pertain to gender bias; (5) participating in programs about gender bias for professional and lay audiences; (6) serving as a resource for the media; and (7) processing the complaints received about judges' and lawyers' gender-biased behaviors through both formal and informal mechanisms.

The committee would report directly to the Chief Justice on a biannual basis and could request that he reconstitute the Task Force if deemed necessary.

#### B. Introduction of an Integrated Judicial Education Curriculum on Gender Bias

We recommend a gender bias component in mandatory judicial education every year for new judges<sup>57</sup> and in training programs for judicial education faculty. The judiciary should also introduce a curriculum that integrates facts and perspectives on gender bias into all relevant substantive law courses.<sup>58</sup> When gender bias in the courts is discussed only in programs that single the issue out as "special," it is made to seem something apart from the mainstream concerns of the law. Moreover some judges simply will not attend. Consistently integrating gender bias issues into the full range of relevant substantive and procedural courses demonstrates that gender bias issues are among judges' daily concerns and in-

sure that judges who would not attend a specialized gender bias course will be introduced to this information. Given past resistance to the Task Force's educational efforts, we believe that even with the full cooperation of the Office of Judicial Education and the standing committee of the Task Force, these goals will not be attained unless the judges' planning committees include male and female judges concerned and knowledgeable about the issues.

The support of these groups alone will not be sufficient to guarantee the quality and success of educational programs about gender bias. This topic has been—and continues to be—controversial. From our years of experience with such programs we have learned that some approaches are much more acceptable and effective than others.<sup>59</sup> New Jersey should benefit from this accumulated wisdom. Accordingly, we recommend that the AOC Judicial Education Unit designate a staff member to serve as liaison to both the Task Force's standing committee and the National Judicial Education Program, which exists to assist states nationwide with preparation and presentation of judicial and legal education programs about gender bias.

The belief that "only judges can teach judges" has waned somewhat over the last few years, but still persists in the minds of many judges and judicial educators across the country. From the point of view of educating judges about gender bias, this belief is unfortunate. The information judges need most must often be drawn from sources outside of the legal and judicial corpora of knowledge. To learn why victims of domestic violence may not leave a battering spouse, or what employment prospects are realistic for an older displaced homemaker, judges need to hear from experts who have been studying these matters for years.

But simply bringing in social scientists, pol-

57. This component should go beyond the present practice of distributing the Task Force's reports and include interactive discussion in areas such as domestic violence and divorce.

58. For example, a program on medical negligence should include studies showing how gender bias shapes the medical profession's response to women patients; a program on custody should discuss why a man who beats his wife but not his child is not a suitable custodial parent; a program on dispositions for drunk drivers should make judges aware of their possibly differing responses to women and men alcoholics and the relative paucity of treatment facilities for women alcoholics; a program on sentencing should explain why being a domestic

violence victim may precipitate criminal behavior in women; a program on judicial trial skills should explore why failing to use gender-appropriate pronouns in jury charges can prejudice a jury. To facilitate this type of judicial education, the Women Judges' Fund for Justice published in 1989 *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources*, by Lynn Hecht Schafran, available for \$20.00 from the Women Judges Fund For Justice, see *supra* note 14 for address.

59. See Wikler, *Educating Judges About Gender Bias in the Courts in WOMEN, THE COURTS AND EQUALITY* (1987).

icy analysts and others as speakers for judicial education programs is not enough. In order for their presentations to be instructive (and acceptable to judges), they must have assistance in developing their materials and their approach for a judicial education program; their presentations must show judges how such knowledge bears directly and concretely on their day-to-day decision making. Nonjudicial experts are likely to have difficulty with this task. Therefore, judge instructors should work with these nonjudicial experts in the preparation of materials, and should participate in the programs as "translators" who draw out the implications of the social scientific (or other) material for their colleagues. In addition, these judges must confer credibility on nonjudicial speakers through proper introductions that stress their qualifications and the importance and relevance of the material for judges.

### C. Development of Legal Education About Gender Bias

Legal education about gender bias was introduced into the New Jersey Institute for Continuing Legal Education (ICLE) in 1984, with the course developed by Lynn Hecht Schafran on valuing homemaker work in damages and divorce. In a recent ICLE program the Chair of the Women's Rights Section of the New Jersey Bar Association and another attorney addressed *pendente lite* counsel and expert fee awards and developments in alimony law from a woman's perspective. County bar associations have also presented programs on gender bias. More work needs to be done in this area.

The Task Force found that attorneys in New Jersey (as in other states) attribute more gender-biased behavior in the courtroom and professional environments to lawyers than to judges. Potential offenders must be educated about the impermissibility of such behavior.

To achieve unbiased decision making in substantive law, lawyers must become knowledgeable about gender issues in order to include pertinent information in their arguments and briefs for judges and be prepared to respond to substantive

gender bias from adversaries. Institutionalizing progress in this area requires that legal education about substantive gender bias be provided for both practicing lawyers and law students.<sup>60</sup>

### D. Appointment of an Ombudsperson to the court

An ombudsperson on the AOC staff could significantly help to promote equal justice in the courts by monitoring problems identified by the Task Force (e.g., enforcement of judicial orders in domestic violence cases) and bringing community perspectives to the judiciary through liaison activities with groups such as rape crisis centers, battered women's shelters and academic institutions. In addition, the ombudsperson could oversee both the informal grievance mechanism for gender bias complaints (discussed below) and the personnel procedure designed by AOC for complaints about court personnel.

The scope of the ombudsperson's activities (unlike the committees established to monitor biases and suggest reforms) could extend to other sources of bias as well. He or she could work closely with the Task Force for Minority Concerns (and minority community groups) as well as with the proposed standing committee of the Task Force on Women in the Courts.

### E. Establishment of an Informal Grievance Mechanism for Gender Bias Complaints

AOC's current formal procedures for handling complaints referred by the Task Force should be supplemented by permanent informal mechanisms for resolution of gender bias complaints. Gender bias is often a subtle pattern of behavior that does not reach the level of explicitness or severity required for discipline by the Advisory Committee on Judicial Conduct. Yet subtle forms of gender bias can also be damaging.

From time to time over the life of the Task Force, the Chair and the Chief Justice have intervened informally to resolve complaints about gender bias. This approach has been highly effective. A further justification for informal grievance mechanisms is the fear which has been expressed

60. Feminist law professors have recently developed an extensive body of research documenting gender bias in both what is taught in law schools and how it is taught. See, e.g., Erickson, *Legal Education: The Last Academic Bastion of Sex Bias?*, 10 NOVA L. J. 457 (1986); Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L.

REV. 1065 (1985); Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141 (1985). For a discussion of how the findings of gender bias task forces can be incorporated into law school education, see Schneider, *Task Force Reports: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988).

by some attorneys (even seasoned males) about the possible professional repercussions of initiating formal complaint procedures.

#### F. Development of Social Science Expertise

As noted earlier, the kind of social science research expertise needed to assess and monitor gender bias is usually not found on court administrative staffs. Statisticians generally do not have wide experience in survey design or in developing other research strategies that could be effective in this enterprise. Determining the appropriate questions to be asked and collecting suitable data require the expertise of people who have both advanced social scientific research training *and* a firm understanding of the diverse and often subtle aspects of gender bias in the courts.

Such expertise should be sought among applicants for staff positions in the research and statistical divisions of court administrations. In the absence of in-house expertise, consultant relationships with qualified academics should be established. The AOC reported to us that it has recently hired a new Chief for its Statistical Services Unit who has strong research credentials.

### VIII. IMPLICATIONS OF THE NEW JERSEY EXPERIENCE FOR OTHER STATES

The New Jersey Task Force inspired a national gender bias task force movement. What are the implications of the New Jersey experience for these other task forces and those to come? The recommendations for the next phase of the New Jersey Task Force presented in the previous section are, of course, valid for other task forces as well. Here we wish to highlight only a few points that seem to us of particular importance, given our work with the other task forces throughout the country.

#### A. A Task Force Can Make a Difference

Undoubtedly New Jersey's most important lesson for the task forces it has inspired is that a task force can make a difference. A task force is a major enterprise that demands significant expenditures of time, energy and money. It often impels individual litigants, lawyers and judges to come forward and recount painful personal experiences—sometimes against their own perceived self-interest in the legal and larger communities—

in the hope that changes will be made and reforms achieved. New Jersey's success in legitimating gender bias in the courts as an issue the judiciary must take seriously should be a cause for optimism in other states.

#### B. The Importance of Focusing on the Judiciary

Task forces provide a unique, historic opportunity to focus attention on the judiciary and encourage judges to undertake the self-scrutiny of their own behavior that is prerequisite to eliminating this bias.

In some respects actions taken or not taken by police, prosecutors and others in the justice system inevitably shape judicial action. But the mission of a task force is to focus on judges and decision-making, not to provide a comprehensive examination of every type of gender bias in the justice system and legal profession. Such a wide scope inevitably distracts and detracts from the task force's essential purpose.

A task force will, of course, receive information about matters such as prosecutorial discretion and prison conditions. However, it is important for task force members to ask whether time and resources permit investigation of these matters without sacrificing focus. Depending upon the quantity and quality of the data collected, authors of task force reports may find it preferable to put the information on non-judicial actors in the court system in an appendix or to summarize the data in their primary report and issue a subsequent report relating the data in full. A task force should be sensitive to the point at which including information about other aspects of the justice system in the text of their main report would overwhelm the focus on the judiciary.

The New Jersey Task Force adhered to its original mission to investigate gender bias in the judicial branch. Its membership was judicially and legally oriented, composed of individuals with a long-term personal and professional involvement in and commitment to reforming the court system. When information came to the Task Force about gender bias in areas of the legal system other than the courts, the Task Force noted these concerns in its report, but it did not take on an investigation. For example, respondents to the attorneys survey and participants in the regional meetings repeatedly raised concerns

about women's unequal treatment in bar associations. The Task Force noted these concerns in its First Year Report with the hope that doing so would be an impetus for reform, but it did not undertake an examination of women in bar associations.

The New Jersey Task Force's clear and consistent focus on the judicial branch should be emulated.

### C. The Press Is Not the Enemy

Judges and task force members in other states have expressed apprehension that publicizing judicial gender bias will result in press attacks on the judiciary. In New Jersey, however, as we have noted, the press viewed the Task Force's findings and recommendations as laudatory steps toward reform.

### D. The Need to Focus on Gender Bias in Decision-Making

Reducing gender bias in the court environment is less difficult than reducing gender bias in judges' decisions about substantive law. As we have seen, many New Jersey judges are eager to know how to behave in a non-gender-biased way in court and professional settings and to change their behavior accordingly. Some of these judges, once educated, go further and actively intervene to stop gender-biased behavior on the part of those under their supervision. But this positive response to eliminating gender bias in court interaction can have another side.

Some judges appear to believe that once they eliminate gender bias in matters such as forms of address and appointments to fee-generating positions, they have eliminated gender bias in the courts. They are reluctant to move beyond court interaction to the complexities of gender bias in substantive decision-making. Although reducing gender bias in the court environment creates conditions favorable to its reduction in the more difficult area of case outcome, an understanding of one aspect of the problem does not necessarily lead to an understanding of the other.

A second problem is that many judicial acts and omissions that are manifestations of gender bias are not understood as such. A primary duty of a task force is to explain why indifference to spousal abuse in custody awards, failure to enforce child support and *de minimis* awards to the

family of a homemaker in a wrongful death suit, to cite three examples, constitute gender bias, and why gender bias is inimical to fundamental fairness. Providing a new context in which to think about these issues can be an important impetus for reform. Task forces should learn from New Jersey's experience the importance of emphasizing, as an essential goal, the elimination of gender bias in the interpretation and application of substantive law.

### E. Judicial Education Must Be Addressed from the Task Force's Beginning

Developing information about gender bias in its own state courts for use in judicial education is a task force's most important function. From the beginning a task force must focus on how to integrate gender bias issues, both substantive and procedural, into all relevant courses. Even if the task force is not to be the implementing agent, it should learn precisely how judicial education programming in its state is planned (for example, who is on the planning committees and how they are appointed) and develop with the chief justice, the court administrator, the director of judicial education and other judges and administrators involved in education a commitment to the kind of integrated, ongoing education that is needed.

### F. The Need for Funding for Staff and Research

The New Jersey Task Force had no legislative or other direct funding appropriation. All work was done by the Task Force and AOC out of existing resources. Although the New Jersey Task Force accomplished a great deal with limited resources, this is not an optimal arrangement.

It is important that task force members be actively involved in all phases of the task force's work in order to feel invested in the task force report and the implementation of its recommendations, but the time that members can allocate to this work is limited by their other professional responsibilities. Thus, it is highly desirable for a task force to have funding for its own executive or staff director.

With respect to research funds, we discuss below the importance of an appropriate data base. The New Jersey Task Force had very limited funds for original research and thus had to recommend that certain studies be carried out by the

court system. A task force that begins with funding for research will have the great advantage of being able to collect the information it needs on its own.

#### G. The Need for a Data Base That Facilitates Investigation and Evaluation

Most gender bias task forces will encounter the same data collection problems experienced by New Jersey. In addition to gathering data based primarily on individuals' perceptions and experiences in court, a task force will want to collect systematic statistical data, which will corroborate or contradict the impressionistic data and extend and deepen the investigation. Statistical data will also provide a baseline for future evaluation of changes in judicial practice. State court systems need to develop data-collection capabilities which ensure that information needed to assess gender bias is collected on an ongoing basis and that it is easily retrievable.

#### H. Planning for the Difficulties of Implementation

Any task force constituted as an advisory body by nature lacks authority to implement its recommendations. Moreover, because a task force is seeking to institutionalize change in a complex court system (not to mention the wider legal community), implementation will require action on many fronts. The presence of a fully supportive chief justice and court administrator and adequate staffing assigned to implementation can partially remediate this structural problem. However, even then, many other actors and agencies must become involved if the range of task force recommendations is to be implemented.

Because there is no easy answer to this problem, part of a task force's ongoing thinking and efforts must be devoted to anticipating and negotiating the difficulties of implementing its recommendations.

One way of proceeding is to keep the chief justice and court administrator abreast of the information being brought to the task force and to seek their advice about formulating feasible curative recommendations. In some cases the task force may not be in a position to secure this type of advice, particularly if it was appointed by a bar

association rather than the chief justice. At the very least, therefore, a task force must structure its recommendations so that the specific individual, committee or administrative division with the authority to carry out each recommendation is clearly identified. This will enable other groups concerned with implementation to know where to address their questions about actions taken or not taken.<sup>61</sup>

#### I. Appreciation of the Long-Term Nature of the Enterprise

The New Jersey Task Force is unusual in that it has continued in existence for six years. Most subsequent task forces have a limited time frame, usually two years. A critical lesson from the New Jersey experience is that eliminating gender bias from the courts is a long-term, indeed a permanent, enterprise. A task force must engage in long-term planning and look to what will happen after the formal task force disbands. The task force must recommend mechanisms that will both effect and institutionalize reform and ensure monitoring and integrated judicial education about gender bias on a permanent basis.

### IX. CONCLUSION

The New Jersey Supreme Court Task Force on Women in the Courts can rightly claim to have played a pivotal role in American judicial reform. Though its greatest achievements are intangible and immeasurable, they have enormous significance. By its very existence the Task Force defined gender bias in the New Jersey courts as not only a problem of women, but also a problem of the judiciary. Until a social problem is defined and legitimated as warranting reform, remedial action is unlikely to occur.

Gender bias has not been eliminated from the New Jersey courts, not even in the courtroom and professional environments where the Task Force has made its greatest gains. But it has been greatly reduced, according to our respondents, and the possibility now exists for even greater progress.

Would the changes effected by the Task Force have come about anyway as more and more women lawyers and judges came in to the courts? Definitely not. In states where there are many

61. For a discussion of how concerned organizations and individuals not affiliated with task forces can become involved

in implementing recommendations, see Schafran, *Women in the Courts* in *WOMEN AND THE LAW* (1988).

women lawyers and judges, the problems persist. For meaningful change to occur, judges, lawyers and court personnel must understand not only that gender bias is not acceptable, but *why* it is unacceptable. Deliberate consciousness raising, formal education, sanctions and the articulation of norms against gender bias are the necessary ingredients for change. These were provided or initiated by the New Jersey Task Force.

Although the Task Force's greatest achievements defy quantification, one ready measure of its success is the growing number of gender bias task forces. Today twenty-five other states are utilizing the task force approach toward eliminating gender bias from their courts. This is a singular tribute to the impact of the New Jersey Supreme Court Task Force on Women in the courts.

## APPENDIX A

## TASK FORCES ON GENDER BIAS IN THE COURTS

AS OF OCTOBER 1988

*Task Forces on Gender Bias in the Courts  
According to Current Phase of Activity with Year  
and by Whom Established*

*Implementation Phase*

NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS Established 1982 by the Chief Justice

NEW YORK TASK FORCE ON WOMEN IN THE COURTS Established 1984 by the Chief Judge

RHODE ISLAND SUPREME COURT COMMITTEE ON WOMEN IN THE COURTS Established 1984 by the Chief Justice

*Data-Collection Phase*

PIMA COUNTY (ARIZONA) TASK FORCE FOR THE STUDY OF GENDER AND JUSTICE Established 1983 by a judge, subsequently endorsed by the Supreme Court, now sponsored by a bar association

CALIFORNIA JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS

Established 1987 by the chief justice

COLORADO SUPREME COURT GENDER BIAS TASK FORCE

Established 1988 by the chief justice

CONNECTICUT TASK FORCE ON GENDER BIAS IN THE COURTS

Established 1987 by the chief justice

FLORIDA GENDER BIAS STUDY COMMISSION

Established 1987 by the chief justice

HAWAII GENDER BIAS TASK FORCE

Established 1987 by the chief justice

## ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS

Established 1988 by three bar associations at the direction of the Supreme Court National Judicial Education Program to Promote Equality for Women and Men in the Courts  
MARYLAND SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

Established 1987 by the chief judge  
MASSACHUSETTS SUPREME COURT COMMITTEE ON GENDER BIAS IN THE COURTS  
Established 1986 by the chief judge

MICHIGAN TASK FORCE ON GENDER ISSUES IN THE COURTS

Established 1987 by the chief justice  
MINNESOTA TASK FORCE FOR GENDER FAIRNESS IN THE COURTS

Established 1987 by the chief justice  
NEVADA SUPREME COURT TASK FORCE ON GENDER BIAS IN THE COURTS

Established 1986 by the chief justice  
NEW MEXICO BAR ASSOCIATION COMMITTEE ON WOMEN IN THE LAW

Established 1987 by the State Bar Association

UTAH TASK FORCE ON GENDER AND JUSTICE

Established 1986 by the chief justice

VERMONT GENDER BIAS

Established 1988 by the chief justice and State Bar Association

WASHINGTON TASK FORCE ON GENDER AND JUSTICE

Established 1987 by the chief justice

*Formation Phase*

Montana

Oregon

Wisconsin

*Exploration Phase*

District of Columbia

Louisiana

North Dakota

Pennsylvania

## APPENDIX B

MEMBERS OF THE NEW JERSEY  
SUPREME COURT TASK FORCE ON  
WOMEN IN THE COURTS\*

Honorable Marilyn Loftus, Judge, Superior Court (Essex), Chair

## APPELLATE JUDGES:

Hon. Julia L. Ashbey  
Hon. Geoffrey Gaulkin  
Hon. Michael Patrick King  
Hon. Virginia A. Long  
Hon. Nicholas Scalera  
Hon. Thomas F. Shebell, Jr.

## SUPERIOR COURT JUDGES:

Hon. Philip S. Carchman (Mercer)  
Hon. Rosemary Higgins Cass (Essex)  
Hon. Elaine Davis (Hudson)  
Hon. Theodore Z. Davis (Camden)  
Hon. Steven Z. Kleiner (Cumberland)  
Hon. Betty J. Lester (Essex)  
Hon. Florence R. Peskoe (Monmouth)  
Hon. Mary Ellen Talbott (Camden)

Emily Arnow Alman, Esq., Professor Emeritus, Rutgers University

Catherine S. Arnone, Manager, Public Awareness and Communications Services, Port Authority of New York and New Jersey; formerly, Public Information Officer, New Jersey Administrative Office of the Courts

Roger S. Clark, Esq., Professor of Law, Rutgers Law School at Camden

Dean Elizabeth F. Defeis, Seton Hall Law School  
Hector E. DeSoto, Esq., Director of Personnel, Essex County College

William J. Keams, Jr., Esq., Former Chair, Women's Rights Section, New Jersey State Bar Association; Past President, Burlington County Bar Association

Judith M. O'Leary, Esq., Assistant Prosecutor (Morris); Former Law Clerk to Judge Marilyn Loftus

Susan R. Oxford, Assistant Deputy Public Advocate; Former Law Clerk to Judge Marilyn Loftus

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

Phoebe W. Seham, Esq., Former Chair, Women's Rights Section, New Jersey State Bar Association; Chair, Judiciary Committee, New Jersey Women Lawyers Association

Annamay T. Sheppard, Esq., Professor of Law, Rutgers Law School at Newark

Helen Handin Spiro, Esq., Former Special Assistant to Chief Justice Wilentz

Theodosia A. Tamborlane, Esq., Chair, Health and Hospital Law Committee, New Jersey State Bar Association

Nadine Taub, Esq., Professor of Law, Rutgers Law School at Newark

Eileen Thornton, Past National President, Women's Economic Equity League

Raymond R. Trombadore, Esq., Immediate Past President, New Jersey State Bar Association

Dolores Pegram Wilson, Esq., Past Vice President, National Bar Association; President-Elect of the National Conference of Women's Bar Associations

## Advisor to the Task Force:

Norma J. Wikler, Ph.D., Associate Professor of Sociology, University of California at Santa Cruz; Former Director, National Judicial Education Program to Promote Equality for Women and Men in the Courts

## Observers and Staff to the Task Force:

Melanie S. Griffin, Esq., Executive Director, Committee on Sex Discrimination in the Statutes; formerly, Staff Attorney Liaison to the Task Force from the Administrative Office of the Courts

Patricia K. Nagle, Esq., formerly, Staff Attorney Liaison to the Task Force from the Administrative Office of the Courts

Michael L. Park, Esq., Special Assistant to Chief Justice Robert N. Wilentz

Blanche Del Deo Vilade, Esq., Former Law Clerk to Judge Marilyn Loftus

Sue Pai Yang, Esq., Former Law Clerk to Judge Marilyn Loftus

Alice J. Solomon, Esq., Former Law Clerk to Judge Marilyn Loftus

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\*Current and former affiliations are cited where relevant.

## APPENDIX C

SUBCOMMITTEES OF THE NEW  
JERSEY SUPREME COURT TASK  
FORCE ON WOMEN IN THE  
COURTSI. *SUBSTANTIVE LAW*

Dean Elizabeth F. Defeis  
 Prosecutor Philip S. Carchman  
 Hon. Geoffrey Gaulkin  
 Hon. Betty J. Lester  
 Professor Nadine Taub  
 Professor Annamay Sheppard  
 Theodosia A. Tamborlane, Esq.

II. *ATTORNEYS SURVEY FORM*

Hon. Rosemary Higgins Cass  
 Professor Emily Arnow Alman  
 William J. Kearns, Jr., Esq.  
 Susan R Oxford, Esq.  
 Raymond R. Trombadore, Esq.  
 Dolores Pegram Wilson, Esq.  
 Helen Handin Spiro, Esq.

III. *COMMITTEE TO REVIEW  
ATTORNEYS' SURVEY FORM*

Hon. Marilyn Loftus  
 Hon. Rosemary Higgins Cass  
 Dean Elizabeth F. Defeis  
 Dolores Pegram Wilson, Esq.  
 Susan R Oxford, Esq.  
 Patricia K. Nagle, Esq.  
 Theresa Fritzes, Ph.D.  
 Judith M. O'Leary, Esq.

IV. *ATTORNEYS' SURVEY ANALYSIS*

Lynn Hecht Schafran, Esq.  
 Norma J. Wikler, Ph.D.

V. *REGIONAL BAR ASSOCIATION  
MEETINGS*

Phoebe W. Seham, Esq.

VI. *LITIGANTS' COMPLAINTS*

Hon. Virginia A. Long  
 Dean Elizabeth F. Defeis  
 Jacqueline Tinnesz, Esq.

VII. *FORMAT 1983 JUDICIAL COLLEGE*

Hon. Michael Patrick King  
 Dean Elizabeth F. Defeis

Professor Roger S. Clark  
 Hon. Nicholas Scalera  
 Lynn Hecht Schafran, Esq.  
 Hon. Mary Ellen Talbott  
 Hon. Virginia A. Long  
 Patricia K. Nagle, Esq.

VIII. *VIDEOTAPE*

Hon. Marilyn Loftus  
 Dean Elizabeth F. Defeis  
 Judith M. O'Leary, Esq.  
 Lynn Hecht Schafran, Esq.

IX. *JUDICIAL PARTICIPATION FORM*

Hon. Rosemary Higgins Cass  
 Steven D. Bonville, Esq.  
 Patricia K. Nagle, Esq.  
 Melanie S. Griffin, Esq.

X. *FORMAT 1984 JUDICIAL COLLEGE*

Hon. Marilyn Loftus  
 Dean Elizabeth F. Defeis  
 Hon. Virginia A. Long  
 Hon. Nicholas Scalera  
 Professor Roger S. Clark

XI. *COURT ADMINISTRATION*

Hon. Florence R. Peskoe  
 Hon. Rosemary Higgins Cass  
 Hon. Martin Haines  
 David P. Anderson, Jr., T.C.A.  
 Marion Feehan  
 Maureen Le Francis  
 Dollie E. Gallagher, T.C.A.  
 Paula Giacomara  
 Robert Joe Lee  
 Donna Kaye, Esq.  
 Jean Wargo

XII. *WORKING GROUP ON MARRIAGE  
AND FAMILY LAW*

Hon. Rosemary Higgins Cass  
 Dean Elizabeth F. Defeis  
 William J. Kearns, Jr., Esq.  
 Hon. Julia L. Ashbey  
 Ted Meth, Esq.  
 Phoebe W. Seham, Esq.  
 Professor Annamay T. Sheppard  
 Theodosia A. Tamborlane, Esq.

*APPENDIX D*  
TASK FORCE MEMBERS' PUBLIC  
APPEARANCES

Following is a nonexhaustive chronological list of Task Force members' public appearances (not including the New Jersey Judicial College) in New Jersey and elsewhere in the country from 1984 to 1987.

*1. JUDICIAL EDUCATION AND GENDER BIAS TASK FORCE PROGRAMS*

National Association of Women Judges, District Three Meeting, June 9, 1984  
Rhode Island Judicial College, Newport, Rhode Island, June 22, 1984  
National Association of Women Judges Annual Meeting, Boston, Massachusetts, October 14, 1984  
Rhode Island Supreme Court Committee on Women in the Courts, Providence, Rhode Island, January 11, 1985  
New Jersey Office of Administrative Law, March 5, 1985  
National Association of Women Judges Conference, Minneapolis, Minnesota, October 1985  
Illinois Judges Association Annual Convention, December 6, 1985  
Conference of Chief Justices and Conference of State Court Administrators Joint Annual Meeting, Omaha, Nebraska, August 5, 1986  
Monmouth County (New Jersey) Meeting, Fall 1986  
Vermont Trial Judges Conference, Burlington, Vermont, January 16, 1987  
Pennsylvania Conference Of State Trial Judges Mid-Annual Meeting, Philadelphia, Pennsylvania, February 13, 1987  
Monmouth County (New Jersey) Judges' Training Session On Affirmative Action, Spring 1987  
New Jersey Workers Compensation Judges, March 7, 1987  
Kentucky Judicial Conference and Bar Association Joint Convention, Louisville, Kentucky, June 11, 1987

*2. BAR ASSOCIATION AND LEGAL ORGANIZATION PROGRAMS*

New Jersey State Bar Association, November 29, 1983  
South Jersey Regional Bar Group 1984  
Passaic County Bar Association, January 23, 1984

Monmouth County Bar Association, March 15, 1984  
Bloomfield Lawyers Club, Bloomfield, New Jersey, March 21, 1984  
New Jersey State Bar Association Annual Meeting, May 1984  
New Jersey Institute for Continuing Legal Education, May 30, 1984  
Association of Trial Lawyers of America, Princeton, New Jersey, June 2, 1984  
Essex County Bar Association, April 16, 1985  
Metropolitan Women's Bar Association Program, New York City, May 22, 1985  
Association of Trial Lawyers of America, Washington, D.C., June 1985  
Delaware State Bar, Spring 1986  
New Jersey State Bar Association Annual Meeting, May 1986  
American Bar Association Annual Meeting, New York City, August 1986  
National Conference of Bar Presidents, New York City, August 1986  
California State Bar Convention, Monterey, California, September 13, 1986  
Mid Atlantic Bar Conference, Sagamore, New York, October 1986  
Monmouth Bar Association, Asbury Park, New Jersey, January 15, 1987  
Florida Bar Association and Florida Association of Women Attorneys, Miami, Florida, January 23, 1987  
National Conference of Bar Presidents, New Orleans, February 1987  
New York Women's Bar Association, Education Committee, Spring 1987  
Middlesex County Bar Association, March 1987  
New Brunswick Bar Association, New Brunswick, New Jersey, April 24, 1987

*3. RADIO AND TELEVISION PROGRAMS*

New Jersey Public Television, November 21, 1983  
WOR A.M., Sherri Henry Show, November 28, 1983  
Straight Talk, TV Channel 9, New Jersey, December 1983  
WHT T.V., January 30, 1984

*4. PROGRAMS FOR NON-LEGAL AUDIENCES*

American Association of University Women, Livingston, New Jersey, February 13, 1985  
American Association of University Women, Convent Station, New Jersey, June 1, 1985

Nevada Women's Political Caucus, Minden, Nevada, October 1985

American Association of University Women — Nutley Chapter, Nutley, New Jersey, October 2, 1985

American Association of University Women - Wilmington, Delaware Chapter, Wilmington, Delaware, October 1986

Nassau Club, Princeton, New Jersey, April 1987

New Brunswick Bar Association, New Brunswick, New Jersey, April 24, 1987

##### 5. *LAW SCHOOLS*

John Jay College of Criminal Justice, New York City, May 7, 1984

New York Law School Legal Association for Women, October 27, 1984

New York University Review of Law and Social Change Program, March 1985

Metropolitan Women Law Teachers Association, Columbia University School of Law, New York City, Fall 1986

Rutgers Law School Women's Day, March 30, 1987

APPENDIX E

TASK FORCE JUDICIAL EDUCATION PROGRAMS 1984-1987

1983 NEW JERSEY JUDICIAL COLLEGE OPENING SESSION (MANDATORY ATTENDANCE)

FIRST YEAR REPORT OF THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS

MONDAY, NOVEMBER 21, 1983  
11:30 A.M. - 1:00 P.M.

- |   |  |
|---|--|
| <p>(10 minutes) Introduction — Judge Marilyn Loftus (General Background; Mandate of Task Force; Committee Work; Data Collection; Basic Results as they impact upon Judicial Responsibilities)</p> | <p>(10 minutes) Dean Elizabeth F. Defeis — Summary of findings of Substantive Law Committee (Damages, Domestic Violence, Juvenile Justice, Matrimonial and Sentencing).</p>  |
| <p>(5 minutes) Judge Nicholas Scalera — How the work of the Task Force awakened me to the problems of gender bias in the court.</p>   | <p>(5 minutes) Judge Geoffrey Gaulkin — Description of Regional Meetings as well as Attorneys' Survey and Results.</p>   |
| <p>(15 minutes) Professor Norma J. Wikler — Overview of gender bias as a cultural phenomenon permeating all aspects of society including the judicial branch.</p>                                 | <p>(23 minutes) Judge Michael Patrick King moderates panel discussion on how findings of the Task Force indicate that gender bias impacts upon legal and judicial work.<br/>Judge Betty J. Lester — Domestic Violence.<br/>Judge Geoffrey Gaulkin — Matrimonial Law.<br/>Judge Mary Ellen Talbott — Clerkship Interview.<br/>Judge Virginia A. Long — Chambers and Courtroom Decorum.<br/>William J. Kearns, Jr., Esq. — Bar Association Activities.</p> |
| <p>(15 minutes) Lynn Hecht Schafran, Esq. — Summary of various educational programs throughout the country on gender bias; emphasis on necessary self-examination by the court system.</p>        | <p>(5 minutes) Judge Thomas F. Shebell, Jr. — Plans for the Coming Year.<br/>(1 minute) Judge Marilyn Loftus — Summary Remarks.<br/>(1 minute) Chief Justice Robert N. Wilentz — Comments.<br/>Distribution: Summary of First Year Report.</p>   |

1984 NEW JERSEY JUDICIAL COLLEGE  
NEW JERSEY SUPREME COURT TASK  
FORCE ON WOMEN IN THE COURTS

WOMEN AND THE LAW:  
CHANGING ROLES, CHANGING  
ATTITUDES

WEDNESDAY, NOVEMBER 21, 1984  
9:00 A.M. TO 12:00 NOON

Judge Marilyn Loftus — General Introduction and Overview of What Has Happened Since Last Year.

Showing of Videotape "Women and the Law: Changing Roles and Changing Attitudes," which sets general background for discussions.

Judge Nicholas Scalera — Affirmative leadership steps which a judge can take to ensure gender equality in the legal and judicial environment.

A. Courtroom environment

— Methods of address

Jury — "Members of the Jury"

Attorneys — "Counsel," or

"Ms." when "Mr."

Witnesses — "Dr.," "Ms." when

"Mr.," no first names

—Charges — Gender-Neutral

Language.

—Court Personnel — Appoint women to supervisory and administrative positions.

—Calendar Calls and Motion Days — Encourage firms to send women attorneys to court and permit them to try cases.

—Public Functions, e.g., Swearing In.

—Grand Jury

—Other

B. Outside Courtroom (Chambers, Bar Associations)

—Settlement Conferences

—Staff Appointments

—Fee-Generating Appointments

—Clerkship Interviews

—Correspondence

—Bar Association Activities

—Other

C. Leadership role requires that judges monitor their own behavior as well as that of their staffs. Judge Virginia A. Long — How the changing roles of women in society impact upon our judicial responsibilities and how the data contained in the First Year Report can be utilized in our judicial fact-finding and decision-making responsibilities.

Videotape on Sexual Harassment

Dean Elizabeth F. Defeis — Sexual harassment, what is it? how do we deal with it? what are judicial responsibilities when complaints are brought to our attention?

Professor Roger S. Clark — How to conduct a proper judicial clerkship interview under the Civil Rights Act Title VII and the New Jersey Law Against Discrimination.

Lynn Hecht Schafran, Esq. — Comments on what was wrong with the various video scenes that depicted improper conduct in the legal and judicial environment.

Judge Marilyn Loftus — Summary.

1984 NEW JERSEY JUDICIAL COLLEGE  
COURSE NUMBER 9

Economic Aspects of Homemaking in Damages and Divorce

Hon. Julia L. Ashbey, P.J.F.P.

Judith I. Avner, Esq.

Formerly Director, Family Law Project  
NOW Legal Defense & Education Fund  
New York, NY

Hon. Rosemary Higgins Cass, J.S.C.

Hon. William A. Dreier, J.A.D.

William Kearns, Esq.

Lynn Hecht Schafran, Esq.

Director, National Judicial Education Program to  
Promote Equality for Women and Men in the  
courts

This course will explore various models for  
valuing homemaker work in the context of per-

sonal injury, wrongful death and matrimonial actions, and the economic consequences of divorce for women generally and the displaced homemaker in particular. The discussion will encompass both the full-time homemaker and the individual carrying the double responsibility of employment in the paid work-force and work in the home.

The faculty will describe and critique valuation concepts such as replacement value, opportunity cost, willingness to pay, aggregate replacement cost and presumption of equal value and discuss national and New Jersey data respecting the potential for former homemakers to become economically self-sufficient, as they relate to judicial decisions about rehabilitative and permanent alimony.

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1984 NEW JERSEY JUDICIAL COLLEGE  
COURSE NUMBER 16

Domestic Violence

Hon. Julia L. Ashbey, P.J.F.P.

Ursula Bubelle, President

New Jersey Coalition for Battered Women

Philip S. Carchman, Prosecutor Mercer County

---

Dr. John Testa, Supervisor of Treatment Group  
for Batterers

This course will deal with examination of the law and procedure on Domestic Violence with the assistance of the selected members of the Working Group on Domestic Violence.

1985 NEW JERSEY JUDICIAL COLLEGE  
PROGRAM "EQUAL JUSTICE FOR  
ALL"

WEDNESDAY, NOVEMBER 27, 1985

9:00 A.M. - 12:00 NOON

9:00 a.m. - 9:30 a.m.

- (2 minutes) Welcome and General  
Introduction of Program —  
Judge Marilyn Loftus
- (10 minutes) Summary of Work of Task  
Force on Interpreter and  
Translation Services — Judge  
Herbert S. Alterman
- (10 minutes) Summary of Preliminary  
Work on Task Force of  
Minority Concerns — Judge  
Theodore Z. Davis
- (8 minutes) Summary Second Report of  
Women's Task Force —  
Judge Marilyn Loftus
- 9:30 - 11:15 a.m. *Workshops*
- Linguistic Minorities —  
Judge Herbert A. Alterman  
and Judge Rosemary  
Higgins Cass
- Racial/Ethnic Biases —  
Judge Theodore Z. Davis  
and Judge Rosemary  
Higgins Cass

Gender Bias —  
Judge Howard H. Kestin  
and Judge Betty J. Lester

11:15 a.m. - 11:45 a.m.

- (10 minutes) Report of problems and  
recommendations from  
Linguistic Workshop —  
Judge Herbert A. Alterman  
and Judge Rosemary  
Higgins Cass
- (10 minutes) Report of Problems and  
Recommendations from  
Racial/Ethnic Biases  
Workshop —  
Judge Theodore Z. Davis  
and Judge B. Thomas  
Leahy
- (10 minutes) Report of Problems and  
Recommendations from  
Gender Bias Workshop —  
Judge Howard H. Kestin  
and Judge Betty J. Lester

11:45 a.m. - 12:00 noon

Summary and Conclusion —  
Judge Marilyn Loftus

1986 NEW JERSEY JUDICIAL COLLEGE PROGRAM "EQUAL JUSTICE UNDER LAW"		10 minutes	Completion of Questionnaire
MONDAY, NOVEMBER 24, 1986		(15 minutes)	Communication and Interpreters
2:00 P.M. - 5:00 P.M.			— Honorable Joseph H. Rodriguez
(10 minutes)	Welcome and General	(15 minutes)	Coffee Break
	Introduction: Brief Update on Work of New Jersey Supreme Court Task Force on Women in the Courts	(15 minutes)	Highlights of Appellate Decisions on Women's Issues
	— Honorable Marilyn Loftus	(15 minutes)	— Professor Nadine Taub
(15 minutes)	Update on Work of the New Jersey Task Force on Minority Concerns: General Introduction to "X's and O's" Film	(10 minutes)	How Racial, Ethnic and Gender Bias Affects Decision Making in Matrimonial, Juvenile and Domestic Violence Cases
	— Honorable Theodore Z. Davis	(5 minutes)	— Honorable Howard H. Kestin
(25 minutes)	Showing of "X's and O's" Film		General Questions and Discussion
			Summary and Conclusion
			— Honorable Marilyn Loftus

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1987 NEW JERSEY JUDICIAL COLLEGE PROGRAM COURSE NUMBER 11

Interaction of Cultures and How They Affect the Law

Dr. Edwin Nichols, Ph.D.  
National Institute of Mental Health

Are your judgments sexist and/or racist? This course will focus on how unconscious cultural bias affects the decision-making process. The philosophical aspects of cultural difference gives insight into this process: that is, axiology, epistemology and logic sets.

## APPENDIX F

RECOMMENDATIONS OF THE TASK  
FORCE WITH REGARD TO HIRING  
AND APPOINTMENTS AND  
PROFESSIONAL INTERACTION

1. Examine your hiring and appointment record. How often do you:
  - a. Hire women law clerks?
  - b. Designate women as grand jury forepersons?
  - c. Appoint women to positions of administrative or supervisory responsibility?
  - d. Give women attorneys fee-generating court appointments, particularly those other than guardianships, on an equal basis with men?
2. Edit your jury instructions to use gender-neutral language. Using the plural (witnesses/they) is helpful. Use *he* or *she*, *her* or *him*, as necessary.
3. Use appropriate forms of address:
  - a. Address all attorneys as "Counsel," "Counselor," or "Attorney (last name)." Direct staff to do likewise.
  - b. When addressing male attorneys as "Mr.," address women attorneys as "Ms." unless otherwise requested.
- c. Address Grand Jurors as "Members of the Grand Jury," "Grand Jurors," foreman/forewoman, he/she, him/her.
- d. Open court with "Good Morning, Ladies and Gentlemen" or "Good Morning Counsel."
- e. 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.
4. Set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, courtroom or at professional gatherings.
5. Monitor your own thoughts and reactions to determine whether your nonverbal communication conveys less respect for women than for men.

APPENDIX G

Selected Implementing Memoranda from Chief Justice Robert N. Wilentz

As published in the 1986 Second Report of the New Jersey Supreme Court Task Force on Women in the Courts

S U P R E M E   C O U R T   O F   N E W   J E R S E Y



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 exemplary 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."

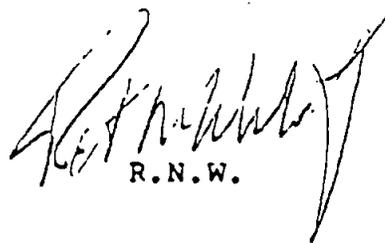
September 28, 1984

Page 2

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 efforts 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. Arnone  
Melanie S. Griffin, Esq.

OFFICE OF ATTORNEY ETHICS



SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX  
CN 037  
TRENTON, NEW JERSEY 08625  
609-292-8750

OFFICE OF DIRECTOR

DAVID E. JOHNSON, JR.  
Director

TO: CHAIRS, VICE-CHAIRS, AND SECRETARIES  
District Ethics Committees and  
District Fee Arbitration Committees

FROM: David E. Johnson, Jr., Director 

SUBJECT: Women In The Courts Task Force Report

DATE: March 8, 1985

You are probably aware that in 1982 Chief Justice Robert N. Wilentz appointed a Task Force on Women in the Courts, chaired by the Honorable Marilyn Loftus, to study and report to the Court on gender bias in the courts. The Task Force made many recommendations having to do with attorneys' behavior toward clients, witnesses, and other attorneys. Because you are to some extent the judges of some of that behavior, and because you set standards for the profession with your decisions, the Court has asked me to share the results of the Task Force's work with you. I am sure you will want to share the enclosed copy of the first year report with your committees.

/ce  
Enclosure

cc: Chief Justice Robert N. Wilentz, w/o att  
Hon. Marilyn Loftus, w/o att  
Robert D. Lipscher, Esq., w/o att

## SUPREME COURT OF NEW JERSEY



ROBERT N. WILENTZ  
CHIEF JUSTICE

313 STATE STREET  
PERTH AMBOY, NEW JERSEY 08861

July 18, 1985

John L. White, Esquire  
President  
New Jersey State Bar Association  
22 North Broad Street  
Woodbury, New Jersey 08096

Dear Jack:

The Task Force on Women in the Courts as you are no doubt aware has been working since 1982 to define and address the particular problems that women encounter in their dealings with the State's judicial system. A survey of New Jersey lawyers done in 1983 reflected that informal associations of attorneys to which women are not admitted often influence the administration of the various bar associations. I would like to make sure that you know that the Task Force is available to you as a resource to combat the problem if you observe it and I urge you to make use of its report, videotape, and speakers from its membership as you need them.

New Jersey has become a leader in the study of women in the legal field and the Bar Association might by taking an active role in the acknowledgement and correction of gender bias can send the important message that women are welcome to the profession of law as well as to its practice, and welcome as equals. The Bar could do exciting work in this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert N. Wilentz".

Robert N. Wilentz

P.S. Jack, you might want to consider presenting a program on the Changing role of women in the legal profession at the annual meeting of the State Bar Association.

APPENDIX H

Selected Implementing Memoranda from Administrative Director Robert D. Lipscher  
As published in the 1986 Second Report of the New Jersey Supreme Court Task Force on Women in  
the Courts

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN-037  
TRENTON, NEW JERSEY 08625

MEMORANDUM

TO: Family Division Judges  
FROM: Robert D. Lipscher <sup>RDL</sup>  
SUBJECT: Women in the Courts Task Force: Juvenile  
Justice Recommendations  
DATE: August 17, 1984

You recently received a report of the first year's progress of the Task Force on Women in the Courts. I would like to bring your particular attention to the section regarding Juvenile Justice which begins on page 52 of the report. The report recommends that "educational programs for all involved with the new Code's administration should be reviewed to ensure that the potential for continued disparate treatments is discussed." (Report at page 59.)

If you are involved in the preparation or teaching of judicial education programs, I encourage you to avail yourself of the expertise of the Task Force. Ms. Nadine Taub, Professor of Law at Rutgers University, School of Law at Newark, served as chair of the Committee on Juvenile Justice, and would be a valuable source for background information on the committee's findings and resources.

I wish you well for the new court year.

/mfk

cc: Honorable Marilyn Loftus  
Professor Nadine Taub  
Richard L. Saks, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN-037  
TRENTON, NEW JERSEY 08625

September 13, 1984

Honorable Betty J. Lester  
Presiding Judge, Municipal Court  
31 Green Street  
Newark, New Jersey 07102

Dear Judge Lester:

Re: Subcommittee on Domestic Violence of the  
Task Force on Women in the Courts

I am writing to solicit any comments or suggested changes which came out of your subcommittee and which you feel would be of use in improving the way we collect data on domestic violence.

I note that there was one concrete suggestion incorporated in the report (breaking out mandated and recommended counseling). I am particularly interested in capturing statistics on any reluctance on the part of judges to hear cases, grant relief, or grant the relief requested. If you have any suggestions that impact on any step of the progress of a case, however, I would be happy to consider collecting statistics in that area.

Thank you for your anticipated cooperation and continuing concern.

Very truly yours,

A handwritten signature in black ink that reads "Robert D. Lipscher".

Robert D. Lipscher

## ADMINISTRATIVE OFFICE OF THE COURTS

## INTEROFFICE MEMO

TO: Assistant Directors, Clerks of the Court,  
Chiefs, Trial Court Administrators

FROM: Robert D. Lipscher *RDL*

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 gender bias in the court system. He said, "There's no room for the funny joke...for conscious, inadvertent, sophisticated, clumsy, or any other kind of gender bias...It will not be tolerated in any form whatsoever."

In June of this year, the Task Force on Women 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 very 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

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



U.S. DISTRICT COURT  
TRENTON, NEW JERSEY 08646

October 25, 1984

Hon. Marilyn Loftus  
814 Essex County Courts Building  
Market Street  
Newark, New Jersey 07102

Dear Judge Loftus:

I have asked Melanie Griffin to acknowledge the letters in the file you sent with her to the Administrative Office of the Courts of litigants' complaints, and am concerned that we develop a procedure for dealing with such letters. I want the Task Force to get the information it needs to develop long-range solutions to widespread problems, but if the problem outlined in a letter is a current one in which the AOC should intervene. I also want to assure that the litigant's individual complaint is addressed.

Therefore, please acknowledge each letter and explain what will be done with the information in it. If you are sending the letter to the AOC, explain our functions and limitations, and that if the problem requires a change in caselaw our involvement can have no effect on that aspect. If the letter does not raise a current problem, but will be useful to the Task Force in studying the general problem of gender bias, your acknowledgement should make it clear that we are grateful for the litigant's input but will not pursue the individual problem. I do not want the litigant/complainant to expect more from the Task Force than it can do.

Please be assured that we will do all we can to make the courts function properly for all litigants. I hope that the correspondence you receive will make us all more sensitive to the problems which exist. As the Task Force identifies ways we can correct any continuing biases which disadvantage women, I hope you will bring them to my attention, and where the problem is one which can be resolved through traditional administrative channels or judicial education, I consider it my responsibility to correct it.

Yours very truly,

  
Robert D. Lipscher

/lsh

cc: Chief Justice Robert N. Wilentz  
Melanie S. Griffin, Esq.

ADMINISTRATIVE OFFICE OF THE COURTS  
INTEROFFICE MEMO

TO: Richard L. Saks

FROM: Robert D. Lipscher *RL*

SUBJECT: TASK FORCE ON WOMEN IN THE COURTS - Impact of  
Report on Substantive Judicial Education Programs

DATE: February 15, 1985

Dr. Norma Wikler, a consultant to the Task Force on Women in the Courts, has suggested that there be a positive effort to integrate the findings of the Task Force into the substantive law courses offered at the 1985 Judicial College. I agree that the work of the Task Force should not only be addressed in a separate course which will naturally tend to attract those judges who need education least, but should be a part of the other efforts we make to keep judges abreast of the current state of the law.

Particular items which should be available for your use by the time of the next Judicial College include the results of the sentencing and divorce studies and the discussion by the subcommittee on Civil Jury charges which will soon decide whether to recommend a charge which compensates homemakers for lost "earnings". In addition, a subcommittee of the Municipal Courts Task Force has reported on the enforcement of the Prevention of Domestic Violence Act; its recommendations to the Accountability Committee of the Task Force will be useful in municipal court and family part education. I assume that to whatever extent is appropriate, you will incorporate these materials into the next College program.

/lsh

cc: Chief Justice Wilentz

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN-017  
TRENTON, NEW JERSEY 08625

MEMORANDUM TO: Presiding Family Division Judges  
SUBJECT: Supreme Court Committee on Women in  
the Courts  
DATE: April 16, 1985

The Chief Justice has approved a request by the Supreme Court Committee on Women in the Courts to conduct a New Jersey Divorce Study. The goal of the Study is to assess the even-handedness of treatment of divorce litigants regardless of their sex.

The Statistical Services Unit of the AOC has drafted the attached Code Sheet to capture data on approximately 300 divorce cases statewide. The Unit will send staff to each county to cull from case files (including the Case Information Statement and dispositional order) data in order to complete the Code Sheet. Thus, the only work that will be required of local staff will be to pull case files for AOC staff.

I am requesting that you review the draft Code Sheet and advise me of any suggestions for changes you would like to make for consideration in the development of the final form. For example, are there questions that should be modified for purposes of greater clarity, eliminated or added? I would appreciate your advising Ed Kennedy of your comments within two weeks of your receipt of this memorandum.

*RD*

R.D.L.

/jgb  
Attachment

cc: Chief Justice Robert N. Wilentz (w/o attachment)  
Assignment Judges (w/o attachment)  
Hon. Marilyn Loftus (w/o attachment)  
Trial Court Administrators (w/o attachment)  
Family Division Case Managers (w/attachment)  
Edwin Kennedy (w/attachment)  
Raymond Rainville (w/attachment)  
Steven Yoslov, Esq. (w/attachment)

For a list of task force reports and how to obtain them contact Lynn Hecht Schafran, Esq., Director, National Judicial Education Program to Promote Equality for Women and Men in the Courts, 99 Hudson Street, 12th floor, New York, N.Y. 10013; (212) 925-6635.