

The Gender Fairness Strategies Project



Gender Fairness in the Courts: Action in the New Millennium

*National Association
of Women Judges*

National Judicial College

*National Center
for State Courts*

*American Bar Association
Commission on Women
in the Profession*

*National Judicial
Education Program*

by

Lynn Hecht Schafran

and

Norma J. Wikler

for the

National Judicial Education Program*



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

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The spine on this page
may be utilized by
individuals who wish
to hold the contents of
the *Manual* in a
binder.

Gender Fairness Strategies Project



Gender Fairness in the Courts: Action in the New Millennium

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(A Project of **NOW Legal Defense and Education Fund** in
cooperation with the **National Association of Women Judges**)

Justice Betty Weinberg Ellerin

Chair

- ***National Association of Women Judges***
- ***The National Judicial College***
- ***National Center for State Courts***
- ***American Bar Association Commission on Women in the Profession***
- ***National Judicial Education Program***

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**“[P]rogress does not occur automatically,
but requires a concerted effort to
change habitual modes of
thinking and action.”**

Justice Ruth Bader Ginsburg
*in her foreword to the Report of the
Special Committee on Gender of the
DC. Circuit Task Force on Gender, Race, and Ethnic Bias*^{*}

**“Gender bias had to be addressed and attacked.
We’ve come a long way, but have yet
to reach the end of the journey.
Even a little bit is too much.
We must remain committed to gender equality.
Our work is not yet done.”**

Chief Judge Robert Bell,
Maryland Court of Appeals
*in his remarks on the tenth anniversary of
the Maryland Select Committee on Gender Equality*

^{*} Reprinted in 84 GEORGETOWN LAW JOURNAL 1651 (1996).

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Acknowledgements

Gender Fairness in the New Millennium: A Manual for Action, is the third and final component of the Gender Fairness Strategies Project, a collaborative effort among five national organizations and a stalwart funding organization concerned with eliminating gender bias in the courts. Each of the five organizations is described in detail in Appendix A to this manual. Here we want to acknowledge their efforts in support of this project and through the many years we have worked together.

The National Association of Women Judges (NAWJ), the lead organization in the Gender Fairness Strategies Project, in 1980 accepted NOW Legal Defense and Education Fund's invitation to co-sponsor the National Judicial Education Program (NJEP) and then present panels about NJEP's early judicial education programs at its own annual meetings. NAWJ members launched what became the national gender bias task force movement. Over the years, NAWJ funded several NJEP publications for the task forces* and sponsored or co-sponsored three national task force conferences.

The National Judicial College (NJC) was the site of the very first program on gender bias for judges, presented there by Professor Norma J. Wikler in 1980. Subsequently, NJC integrated these issues into its course on *How to Run a Bias Free Courtroom** and collaborated with NAWJ to create the important model curriculum, *Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts-A Guidebook for Judicial Education*.

The National Center for State Courts (NCSC) was the prime mover behind the first National Conference on Gender Bias in the Courts, held at its Williamsburg headquarters in 1989, and co-sponsor with NAWJ of the second national conference, in 1993. NCSC's information division is the clearinghouse for a wide variety of materials related to the gender bias task forces. In 1998 NCSC established a special loan collection of the materials produced by the task forces in their implementation efforts that we had gathered during the first phase of the Gender Fairness Strategies Project to prepare the *Gender Fairness Strategies Implementation Resources Directory*, which is referenced throughout this publication.

* These are listed at page 9 under "The Essential Gender Fairness Library."

* Discussed at page 29.

The American Bar Association Commission on Women in the Profession will now make many task force-related publications available in a different way: an electronic format. The Commission will post on its website both currently available publications, and those which have become hard to obtain, including the Proceedings of the First National Conference on Gender Bias in the Courts and NJEP's *Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts*, both published in 1989.

The National Judicial Education Program (NJEP), conceived by NOW Legal Defense and Education Fund at its own founding in 1970 and officially established in 1980, pioneered judicial education about gender bias and became the catalyst for the national gender bias task force movement. NJEP works with individual task forces on all phases of their work and with NAWJ on publications and conferences to further this national effort.

Since 1987, much of this work, including the Gender Fairness Strategies Project, has been generously supported by the **State Justice Institute** (SJI), an independent agency established by Congress to award grants to improve the quality of justice in state courts, facilitate better coordination between state and federal courts, and foster innovative, efficient solutions to common problems faced by all courts. In addition to grants with a national focus, SJI also has made direct awards to several gender bias task forces to support their individual investigations. We are enormously grateful to SJI for its sustained support of our mission.

We also thank several individuals who gave generously of their time and talents to help us prepare this publication. First and foremost is **Judge Betty Weinberg Ellerin**, Chair of the Gender Fairness Strategies Project. Judge Ellerin's commitment to this work stretches back to 1984 when she was instrumental in the establishment of the New York Task Force on Women in the Courts. When the Task Force published its report in 1986, she became chair of a new committee at the Association of the Bar of the City of New York dedicated to implementing its recommendations. Since 1996 she has served as chair of the Task Force's successor, the New York State Judicial Committee on Women in the Courts. Throughout the several years' gestation of the Gender Fairness Strategies Project and the nearly five years needed to carry out its various phases, Judge Ellerin's vision, energy, wisdom, and humor were essential to our success. Collaborating with her has been a special pleasure.

Our other wonderful collaborators from the National Association of Women Judges were Executive Director **Linda Ferren** and Director of Finance

and Conference Management **Pam White**. They worked closely with us to survey and interview the Gender Bias Task Forces about the strategies explored in this manual.

The production of this manual was ably carried out by staff of the National Judicial Education Program and NOW Legal Defense and Education Fund. Program Assistants **Kerry Dieckman** and **Alison Stankus** typed the seemingly endless drafts of this manuscript, Program Associate **Gretchen Elsner** handled national distribution and promotion and **Aurora Robson** provided the graphic design.

Finally, we want to acknowledge our State Justice Institute Program Manager **Pamela Bulloch**. Her always-thoughtful suggestions and her steadfast interest in this project over many years have been invaluable.

Lynn Hecht Schafran, Esq.

Norma Juliet Wikler, Ph.D.

Preface

As the first and second directors of the National Judicial Education Program to Promote Equality for Women and Men in the Courts* it has been our good fortune to be involved from its inception in one of the most significant and enduring court reform initiatives of the 20th century: the elimination of gender bias in the courts. When NOW Legal Defense and Education Fund established the National Judicial Education Program (NJEP) in 1980 and invited the National Association of Women Judges to become the new project's co-sponsor, judicial gender bias was an invisible problem. Today it is grounds for reversal and sanction. In 1980, knowledgeable judges, lawyers and journalists told NJEP that judges would never acknowledge that gender bias is a problem in their courts or an appropriate subject for judicial education. Two decades later, 45 states have created special task forces on gender bias in the courts, the reform vehicle that emerged in response to NJEP's early educational programs. At the National Conference on Public Trust and Confidence in the Justice System in May 1999, 500 state chief justices, state court administrators, state bar presidents and other justice system leaders voted to make implementing the recommendations of the state task forces on gender, race and ethnic bias in the courts a top priority.

Ironically, our success is generating new problems. So much has been accomplished that many believe there is no more to be done. This is not true. The constant turnover among judicial and non-judicial court personnel, and the widespread lack of factual knowledge about the social and economic realities of women's and men's lives that so often produces gender-biased decisionmaking, require us to continue and to intensify our reform effort.

As the national gender bias task force movement moves into the new millennium, success will depend on adapting new strategies to fit new social and institutional realities. The movement must now work collaboratively with other entities and individuals, as well as on its own, and gender fairness issues must be integrated into every related court reform. In 1986, when we wrote the first publication for task forces, *Operating a Task Force on Gender Bias in the Courts: A Manual for Action*, we dedicated it to Sylvia Roberts, the lawyer whose vision,

* Norma Juliet Wikler was NJEP's founding director from 1979 to late 1981 when she was succeeded by Lynn Hecht Schafran. We have continued to collaborate on all aspects of the gender fairness movement during the past twenty years.

beginning in the late 1960s, ultimately made judicial education about gender bias a subject of national concern. We dedicate this publication to the thousands of judges, lawyers, court administrators, judicial educators, legislators, social scientists and community activists who, as members and supporters of their gender bias task forces, have persevered with us for more than twenty years. Their commitment and contributions are extraordinary by any standard.

Gender Fairness in the Courts: Action in the New Millennium is written in the spirit of solidarity. Our role has been to synthesize and elaborate the information and wisdom provided by participants in the 1999 *Maximizing Our Gains Conference* to produce a resource useful to any group or individual working towards gender fairness in the courts. Now, perhaps more than ever, we need to join together to fulfill the mission we have set for ourselves: eliminating gender bias in the courts through ongoing investigation, education and institutional reforms.

Lynn Hecht Schafran, Esq.

Norma Juliet Wikler, PhD.

Introduction: Gender Fairness in the New Millennium

At the approach of the millennium five national organizations concerned with gender fairness in the courts convened a group of the most effective, geographically diverse Gender Bias Task Force Implementation and Standing Committees to celebrate our successes, breach the barriers to our ongoing efforts, and strategize for the work ahead. As we listened to the states' reports we, the conference participants, were buoyed by a clear sense of our progress over the past two decades. In 1980 gender bias in the courts was an invisible issue. In 1986 it was the subject of an education program for the Conference of Chief Justices. In 1992 an appellate court for the first time reversed a trial court judge for gender-biased decisionmaking. And by the time we gathered for the *Maximizing Our Gains Conference* in January 1999¹, 45 states and most federal circuits had created task forces on gender bias in the courts, and their reports had been cited in over one hundred state and federal judicial opinions. With a crystal ball, we could have seen that just a few months later there would be another milestone to add to our list: five hundred justice system leaders gathered at the May 1999 National Conference on Public Trust and Confidence in the Justice System would vote to make implementing the recommendations of the gender, race and ethnic bias task forces a priority.

Access and Fairness is now a top priority for the Judicial Council. This is a major change from twenty years ago and the result of the Gender Bias Task Force.

*Judge Frederick Horn
Chair,
California Fairness and Access
Advisory Committee*

Alongside the recognition of our successes, however, participants in the *Maximizing Our Gains Conference* were also mindful of how much remains to be done, and that, as with liberty, eternal vigilance is the price of gender fairness in the courts. At the conference, participants explored the strategies they used to achieve their successes and the problem areas in which they needed help, especially as they attempted to implement the fifteen component Institutionalization Plan that constitutes the core work of Implementation and Standing Committees.² After the conference, participants applied each other's tested strategies and new ideas and reported on their effectiveness. ***Gender Fairness in the Courts: Action in the New Millennium*** is a strategies manual that presents the collective wisdom and post-conference experiences of the conference

¹ The *Maximizing Our Gains Conference* was funded by the State Justice Institute (SJI).

² In this Manual these two types of committees will be referred to as Implementation/Standing Committees.

participants. Its purpose is to aid all the Gender Bias Task Forces, the Implementation/Standing Committees and their allies as they continue their efforts to eliminate gender bias in the courts.

The Manual begins by examining each element of The Institutionalization Plan, addressing the concerns and questions raised at the *Maximizing Our Gains Conference*. Next it synthesizes participants' strategies for strengthening the Committees themselves and overcoming the obstacles impeding their work. Finally, the Manual explores how the gender fairness reform effort can advance by integrating its concerns into other court planning and reform initiatives. We conclude by condensing our strategic analysis for the new millennium into an image and a motto. The star, with its many points radiating outward, represents our need to move simultaneously on different fronts. In the 21st Century, we must proceed by ***Moving Forward in All Directions***.

The Need for This Implementation Strategies Manual

In 1980, NOW Legal Defense and Education Fund invited the National Association of Women Judges (NAWJ) to join in launching the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP). The premise of the new program was that fairness to women in the courts was an essential component of the fair administration of justice. NJEP's investigation of gender bias in the courts led to the first task force on gender bias in the courts, established by the New Jersey Supreme Court in 1982.³ In 1986, four years after creation of the first Task Force, NAWJ published *Operating A Task Force on Gender Bias in the Courts: A Manual for Action*. This document, drafted by NJEP and based on the experiences of the first four Task Forces, provided a comprehensive overview of the Task Force process and detailed information on specific tasks. Although individual states fashioned their Task Forces differently, the 1986 Manual served as a guide that led to striking uniformity among them. The 1989 First National Conference on Gender Bias in the Courts, sponsored by the National Council of

There's no room for gender bias in our system. There's no room for the funny joke and the not-so-funny joke. There's no room for conscious, inadvertent, sophisticated, clumsy, or any other kind of gender bias that affects substantive rights.

Chief Justice Robert N. Wilentz, in response to the findings of the New Jersey Supreme Court Task Force on Women in the Courts.

³ A number of articles provide detailed accounts of both the nature and consequences of gender bias in the courts, and the origins, development and findings of the National Gender Bias Task Force Movement. See, e.g., Ruth Bader Ginsburg, *Foreword to REPORT OF THE SPECIAL COMMITTEE ON GENDER TO THE D.C. CIRCUIT TASK FORCE ON GENDER, RACE, AND ETHNIC BIAS*, reprinted in 84 GEO. L.J. 1651 (1996) and *Foreword to REPORT OF THE SECOND CIRCUIT TASK FORCE ON GENDER, RACIAL AND ETHNIC FAIRNESS IN THE COURTS* in 1997 ANN. SURV. AM. L. 1; Karen Czapanskiy, *Domestic Violence, the Family and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 235 (1993); Vicki C. Jackson, *What Judges Can Learn From Gender Bias Task Force Studies*, JUDICATURE July/August, 1997 at 15; Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952, (Summer, 1996) and "Naturally" Without Gender: Women, Jurisdiction, and the Federal Courts, 66 N.Y.U. L. REV. 1682 (1991); Lynn Hecht 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 (1986); *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 ARIZ. ST. L.J. 237 (1989); *Overwhelming Evidence: Reports on Gender Bias in the Courts*, TRIAL Feb. 1990 at 28; *Gender Equality in the Courts: Still on the Judicial Agenda*, 77 JUDICATURE, Sept. - Oct. 1993 at 110; *Credibility in the Courts: Why is There a Gender Gap?* THE JUDGES' JOURNAL, WINTER, 1995, at 5; and *Will Inquiry Produce Action? Studying the Effects of Gender in the Federal Courts*, 32 U. OF RICHMOND L. REV. 615 (1998); Norma J. Wikler, *On the Judicial Agenda for the 80s: Equal Treatment for Men and Women in the Courts*, JUDICATURE 1980 at 202 and *Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts*, CT. REV. Fall, 1989 at 13.

State Courts and the National Association of Women Judges, together with this operating manual guaranteed the existence of a truly “National Gender Bias Task Force Movement.”

The 1989 Conference was followed by two new NJEP/NAWJ publications focused on evaluating Task Force impact: *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* and *Planning for Evaluation: Guidelines for Task Forces in Gender Bias in the Courts*. Both stressed the need for finding ways to conduct the initial Task Force inquiry to facilitate evaluation, and the importance of special oversight of the implementation process.⁴

In the 1990's, the majority of Task Forces moved into the implementation phase. Often the supreme court appointed a new committee to oversee implementation of the Task Force's recommendations. Sometimes the original Task Force simply carried on as an Implementation Committee. In some states the Implementation Committees were succeeded by, or transformed into, permanent Standing Committees, the most desirable structure for this ongoing work. By then it was widely recognized that the Task Forces' gains could be dissipated or lost if they were not “institutionalized,” that is, formally and officially lodged within the structure and processes of the court system. Until now, however, no manual or guidelines have been available to assist in this phase of the work.

Part I of ***Gender Fairness in the Courts: Action in the New Millennium*** explains the fifteen key components of The Institutionalization Plan and provides the strategies to secure and maintain them. Part II focuses on the Implementation/Standing Committees themselves, and how they can be strengthened in order to continue to serve as the movement's principal vehicles for reform. During the 1990's, many Committees encountered an array of obstacles that impeded their work and extracted a heavy price from the individuals most actively engaged in it. During the *Maximizing Our Gains Conference* participants shared their strategies for overcoming these obstacles and, on occasion, turning them into opportunities. Using a question and answer format, we present to the reader a synthesis of the experiences of the thirteen

⁴ The authors, Lynn Hecht Schafran, Esq. and Norma J. Wikler, Ph. D., had been involved in all aspects of the Task Forces then in existence and in advising judges and lawyers seeking to establish Task Forces in their own states. These publications are available from the National Judicial Education Program, see Appendix A. *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* is reprinted in 12 WOMEN'S RTS. L. REP 313 (1991).

states represented at the *Conference*.⁵ In contrast to the early years when Task Forces and Implementation/Standing Committees worked alone (or in concert with bar associations), to focus judicial attention on gender fairness as a distinct issue, action in the new millennium requires these Committees to collaborate with other groups and integrate gender fairness concerns into other court reform initiatives. Part III of this Manual, as well as *Key Component No. 15. Initiatives to Ensure Court Planning and Reform Efforts Address the Relevant Gender-Fairness Concerns* examines this new imperative.

⁵ The states represented by their Implementation or Standing Committees were: Alaska, California, Colorado, Florida, Georgia, Massachusetts, New Jersey, New York, Texas, Washington. Three additional states, Illinois, Maryland, and Utah, were represented through conference steering committee members and former Gender Bias Task Force staff invited for their expertise. A list of the conference participants is in Appendix B. A list of the Gender Bias Task Forces and Implementation/Standing Committees with contact names and addresses as of Spring 2001 is in Appendix C.

How This Manual was Developed

The strategies described in this Manual are drawn from the experiences of the Task Force Implementation and Standing Committees, gender fairness experts, judicial educators and organizations represented at the January 1999 *Maximizing Our Gains Conference*, both before the conference and in the subsequent eighteen months when they sought to apply the ideas explored there. The subject matter for the conference emerged from the responses to the nationwide *Task Force Implementation Survey* distributed by the National Judicial Education Program to all states in 1997-98. From these questionnaires NJEP identified the Implementation/Standing Committees' key problems as well as areas of perceived need for information and assistance. These problems included *internal* Committee issues, such as frustration on the part of Committee members, and *external* issues, such as diminished support from the chief justice and new forms of backlash. We also learned that Implementation/Standing Committees were generally working in isolation. No communication mechanisms existed through which the Committees could learn from one another, and share experiences and strategies.

This national survey also revealed grossly uneven levels of implementation and other activity among the Implementation/Standing Committees. Those with leadership, funding, broad support and experienced and dedicated members and staff were forging ahead while others were stalled or moribund. But even those more advanced stressed the need to learn about what other states were doing, what obstacles they were encountering and what strategies had worked or not worked in overcoming them.

The agenda for the January 1999 *Maximizing Our Gains Conference* reflected the survey findings. The format maximized participants' participation. There were no formal talks or outside speakers. Attendees shared their experiences, led discussions and brainstormed about the future. The conference paid special attention to the fifteen components of The Institutionalization Plan. At the end of the conference, the Implementation/Standing Committees developed an action plan that identified the three components they would address on their return home and the strategies they would use to achieve them. In Spring 2000 all conference participants received a survey from the *Gender Fairness Strategies Project* asking what they had achieved at home as a result of the conference, which strategies had worked and which had not. In June 2000 NJEP and NAWJ conducted lengthy telephone interviews with these participants to learn how they applied the conference's insights and strategies and with what consequences. ***Gender Fairness in the Courts: Action in the New Millennium*** reflects this wealth of experience and expertise.

Intended Audiences

This Manual is intended for two audiences. The first is past and present members and staff of Gender Bias Task Forces and Implementation/Standing Committees. The second is other individuals, agencies and organizations who are important actors in the justice system and thus have—or should have—a keen commitment to gender fairness. This Manual will enable them to collaborate with the Committees in the institutionalization process and to take a leadership role when the Committee is moribund or non-existent. This second audience includes:

- ***Judges***
- ***Court Administrators***
- ***Judicial Educators***
- ***Bar Associations***
- ***Prosecutors***
- ***Public Defenders***
- ***Court Watching Organizations***
- ***Judicial Nominating Commissions***
- ***Judicial Disciplinary Commissions***
- ***Attorney Disciplinary Commissions***
- ***Legislatures***
- ***Law Schools***
- ***Advocates Against Domestic Violence and Sexual Assault***
- ***Commissions on the Status of Women***
- ***Civic and Religious Organizations***
- ***Individuals from Any Background Who Want to Mobilize Support for the Implementation/Standing Committees***

How To Use *Gender Fairness in the Courts: Action in the New Millennium*

This Manual is meant to be read in conjunction with several prior gender fairness publications that provide both background and elaboration on points raised in this document. Consider two examples. This Manual explains the strategic importance of making bar associations collaborators and allies. The *Gender Fairness Strategies Implementation Resources Directory* (IRD)⁶ complements this discussion by describing specific projects Implementation/Standing Committees have carried out with bar associations and telling how to obtain the related materials. Similarly, the discussion of evaluation in this Manual can best be fully understood and utilized when read along with the two related NJEP/NAWJ publications, *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* and *Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts*. Each section of the fifteen component Institutionalization Plan in Part I of this Manual begins with a reference to these *Relevant Readings*. These readings and the abbreviations we use for them in this Manual are listed on the following page.

⁶ The *Implementation Resources Directory* was funded by the State Justice Institute (SJI). To order the Directory contact the National Judicial Education Program, 395 Hudson St, 5th Floor, New York, NY 10014, (212) 925-6635, njep@nowldef.org.

The Essential Gender Fairness Library

Relevant Readings & Abbreviations

The abbreviations that follow the publications listed below are used to reference the relevant publications or publication pages at the beginning of each of the fifteen components of the Institutionalization Plan.

- Lynn Hecht Schafran & Norma Wikler, OPERATING A TASK FORCE ON GENDER BIAS IN THE COURTS: A MANUAL FOR ACTION (1986). **GBTF Manual.***
- Norma Wikler & Lynn Hecht Schafran, LEARNING FROM THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS: EVALUATION, RECOMMENDATIONS AND IMPLICATIONS FOR OTHER STATES (1989), reprinted in 12, WOMEN'S RTS L. REP 313 (1991). **NJ Evaluation.***
- Lynn Hecht Schafran, PLANNING FOR EVALUATION: GUIDELINES FOR TASK FORCES ON GENDER BIAS IN THE COURTS (1989). **Planning for Evaluation.***
- Lynn Hecht Schafran, PROMOTING GENDER FAIRNESS THROUGH JUDICIAL EDUCATION: A GUIDE TO THE ISSUES AND RESOURCES (1989). **Promoting Gender Fairness.**
- National Judicial College, CONDUCTING A FACULTY DEVELOPMENT WORKSHOP ON GENDER FAIRNESS IN THE COURTS: A GUIDEBOOK FOR JUDICIAL EDUCATORS (1993). **NJC Workshop on Gender Fairness.***
- Lynn Hecht Schafran, Norma Wikler and Jill Crawford, GENDER FAIRNESS STRATEGIES IMPLEMENTATION RESOURCES DIRECTORY (1998). **IRD.***

**These publications can be purchased from the National Judicial Education Program, 395 Hudson St, 5th Floor, New York, NY 10014, (212) 925-6635, njep@nowlde.org or borrowed from the National Center for State Courts. See Appendix A. All but the first of these publications were funded by the State Justice Institute (SJI).*

Gender Fairness in the Courts: Action in the New Millennium Is a Tool for Implementation/Standing Committees to Use in a Variety of Ways:

- *To support the Committee's work on implementation and institutionalization*
- *To enable the Committee to strengthen itself*
- *To encourage the Committee's collaboration with other organizations*
- *To show how the Committee can infuse its concerns into all relevant court planning and reform initiatives*

Every Committee member should receive a copy or photocopy of this Manual and read it in preparation for one or more planning meetings.⁷ At these meetings the Committee should:

- **Review *Part I. Institutionalizing Reform to Secure Gender Fairness in the Courts*** and determine how the Committee can use the strategies in the Manual to advance each component of the fifteen point Institutionalization Plan.
- **Review *Part II. Strengthening Gender Bias Task Forces and Implementation/Standing Committees as Vehicles for Reform*** and analyze how the Committee can use these strategies to enhance its own functioning.
- **Review *Part III. Integrating Gender Fairness Concerns into Court Planning and Reform Initiatives*** and explore how the Committee can become involved with and monitor those court planning and reform initiatives related to its concerns. To determine which initiatives are relevant, use the *Gender Fairness Impact Assessment Form* described in *Key Component 15. Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender Fairness Concerns*.

After these three steps have been accomplished, the Committee should develop a formal action plan and timeline that details how each activity will be carried out, when and by whom. In preparation for any meetings with agencies, organizations, and individuals, it may be useful for the Committee to send all or part of the Manual beforehand, along with a specifically tailored cover letter. For example, if the Committee decides to move ahead on data collection, send a photocopy of the cover of the Manual and the text of *Key Component 11. Data Collection to Monitor Gender Bias in the Courts* to the court's in-house research staff before meeting with them. An Implementation Committee seeking the

⁷ Additional copies are available from the National Judicial Education Program, 395 Hudson St, 5th Floor, New York, NY 10014, (212) 925-6635, njep@nowldeg.org. Photocopies of all or part of the Manual may be made for non-profit educational purposes without charge or further permission so long as they are distributed with copies of the title page.

appointment of a Standing Committee can provide the Chief Justice and State Court Administrator with the text of *Key Component 1. A Standing Committee on Gender Fairness* prior to meeting with them. Individuals who ask what they as concerned citizens can do can be given *Appendix F. Strategies for Individuals Who Want to Mobilize Support for their Implementation/Standing Committee*.



Part I.

The Institutionalization Plan

***Key Components to Achieve and Secure
Gender Fairness in the Courts***

Part I.

The Institutionalization Plan:

*Key Components to Achieve and Secure Gender Fairness in the Courts,
Comments on Institutionalization*

If the gains made in the gender fairness reform effort over the past two decades are to endure, they must be embedded within the structure and processes of the judicial system. The changes brought about by the Task Forces and Implementation/ Standing Committees must be locked in place and become part of the normal day-to-day operation of the courts. This is accomplished through the systematic and thorough implementation of the fifteen components of The Institutionalization Plan.

*Institutionalization is the key to our success.
Unconscious prejudice and inertia are our prime
enemies.*

*James Benway
Court Administrator and Co-chair,
Colorado Gender and Justice Committee*

Institutionalization involves linking the gender-related behaviors that Task Forces and Implementation/ Standing Committees want to promote or eliminate to the formal norms and sanctions of the judiciary and the legal profession. That is the rationale behind the component that calls for **amendments to codes of judicial conduct and professional responsibility**, as advocated by the Task Forces. If new behavioral norms in controversial areas do not entail sanctions (both formal and informal), there may be little compliance. For this reason, **mechanisms for handling formal and informal complaints of gender bias** are critical, as is education about gender fairness for members of disciplinary bodies. The law--or **legislation recommended by the Task Forces and Implementation/ Standing Committees**--can be viewed as the most formal and sanctionable norms that exist. Securing this legislation achieves deep and enduring institutionalization.

This gender fairness reform effort must reach beyond the current population of judges to include within its scope of activities the pipeline through which new judges enter the system. This requires **initiatives to ensure gender fairness in the judicial nomination and election processes, as well as in judicial evaluation and disciplinary processes**. We must also address our issues with court personnel through **initiatives to ensure gender fairness in court employment and education for court employees**.

Education has always been at the heart of the gender bias reform effort. No component of The Institutionalization Plan is as important as **ongoing education for judges and court personnel** that integrates gender fairness issues

throughout the curriculum. As with all gender-fairness initiatives, those that are educational must **address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles**. Through education and other initiatives, the important component of **gender-neutral and gender appropriate language in courtrooms, rules, correspondence, jury instructions, opinions, and other court communications** can be achieved.

The single fact that in the court system there is high turnover of judicial and non-judicial personnel means that the gender bias reform effort must be understood as an enduring effort, not something that can be taken care of once and for all, then put aside as the court system and the actors within it move on to other concerns. Insuring the permanency of this effort requires creation of a permanent **Standing Committee on Gender Fairness** of the state supreme court. Included in this committee's mandate is monitoring the operation of gender bias not only in the areas investigated by the Task Force and Implementation Committee, but in other areas that may have been overlooked or not included because of limited resources, or because the problem only recently emerged.

But how can a Standing Committee or any other entity determine how gender bias may be operating in the court system? Obviously, it must be through the **collection of relevant data**. The collection and retrieval of data, particularly statistical data, related to gender fairness issues has been one of the greatest obstacles in the Task Forces' and Implementation Committees' work. Now, in the era of court automation and computerization, there is an unprecedented opportunity to routinely collect and analyze pertinent statistical data on gender fairness issues, be they in judicial decisionmaking, court personnel matters or attorney selection for fee generating positions. Data collection should be a high priority component for every Committee.

Strapped by scarce resources and overworked members, most Implementation/Standing Committees cannot hope to fully implement their Task Force's and their own recommendations alone. That is why The Institutionalization Plan highlights the need to **secure staff and funding to carry out the work of implementation on a long-term basis**. It is also the rationale for the component that advocates

Forty of our forty-seven court districts now have domestic violence commissions. We developed a statewide protocol for sexual assault cases. We distributed a guide to bias-free communication and adopted a model sexual harassment policy for the courts. We created three training videos on bias, including one for bailiffs who are the first people court users meet. We now have women judges on our supreme court and court of appeals. Something is happening in Georgia. We think it's good.

*Judge John Ruffin, Jr.
Co-chair,*

Georgia Supreme Court Commission on Equality

collaboration and alliances with related organizations and agencies, a process

that expands the pool of people inside and outside of the courts who can deepen and perpetuate the reforms of the past two decades. There should also be ***outreach and diffusion to related entities such as race bias commissions, law schools, police and community organizations*** to educate them about gender bias in the courts and their role in eliminating it. The final component of institutionalization is ***ensuring that gender fairness concerns are integrated into all relevant court initiatives and planning projects*** so that the entire court system becomes involved in carrying the work of gender fairness forward.



Key Components

to Achieve & Secure Gender Fairness in the Courts

Institutionalization Plan

1. A Standing Committee on Gender Fairness;
2. Staff and Funding to Carry Out the Work of Implementation/Standing Committees on a Long-Term Basis;
3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Conduct Commissions on an Ongoing Basis;
4. Initiatives that Address the Court-Related Issues Confronting Women of Diverse Racial and Ethnic Backgrounds and Lifestyles;
5. Codes of Conduct for Judges, Court Personnel and Lawyers that Address Gender Bias with Specificity;
6. Legislation Recommended by Task Forces and Implementation/Standing Committees;
7. Gender-Neutral and Gender-Appropriate Language;
8. Mechanisms for Handling Formal and Informal Complaints of Gender Bias;
9. Initiatives to Ensure Gender Fairness in the Judicial Nomination, Election, Performance Evaluation and Disciplinary Processes;
10. Initiatives to Ensure Gender Fairness in Court Employment;
11. Data Collection Necessary to Monitor Gender Bias in the Courts;
12. Collaboration and Alliances with Other Groups and Individuals Inside and Outside the Courts.
13. Wide Diffusion of Task Force and Committee Findings and Initiatives Throughout the Justice System and Community;
14. Periodic Evaluation to Assess Implementation Efforts, Analyze their Effect on Reducing Gender Bias in the Courts and Identify New Problems;
15. Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender-Fairness Concerns.

1. A Standing Committee on Gender Fairness

Relevant Readings: GBTF Manual, p. 63

1989 New Jersey Task Force Evaluation.

A permanent supreme court standing committee on gender fairness (or fairness in general) is the organizational form best suited to keeping gender fairness issues on the judicial agenda and to monitoring and responding to gender bias in the courts over the long term. Experience shows that in the absence of a permanent standing committee specifically charged with monitoring and carrying this work forward, reform efforts may dissipate or stall.

What are the Distinctive Functions of a Standing Committee?

Task Force work involves three stages: The first is the period in which the Gender Bias Task Force investigates and reports; next is the implementation phase, usually conducted by a Task Force Implementation Committee; and finally, there is the ongoing work of a Standing Committee.⁸ The key tasks for Gender Bias Task Forces are to gather state-specific data to document the nature, extent and consequences of gender bias in the courts and to formulate specific recommendations for reform. Task Force Implementation Committees, activated after the Task Force issues its final report, are mandated to carry out the implementation effort and to inform the court and public of its progress.

Moving from implementation to institutionalization is work. Implementation and Standing Committee members must take it as personal responsibility and work at it constantly.

*Mignon “Dee” Beranek
Deputy State Court Administrator,
Florida Supreme Court Fairness
Committee*

Permanent Standing Committees, in contrast, have a broader range of functions, which include:

- Monitoring the effects of the implemented reforms in reducing gender bias in the courts;
- Identifying new problems areas;
- Keeping the issue of gender fairness on the legal and judicial agenda by participating in other court initiatives and building alliances and collaborations with other entities which are or should be concerned with gender fairness issues;

⁸ In some states creation of the Task Force was preceded by a “pre-task force” that collected the data needed to convince the supreme court (and other judges) of the need for a Gender Bias Task Force.

- Ensuring that education for judicial and non-judicial court personnel continues to incorporate updated materials on gender bias in the courts;
- Receiving complaints about gender bias from lawyers, litigants, and court personnel when effective and accessible informal and formal grievance mechanisms do not exist; and
- Applying the Gender Fairness Impact Assessment Form to new court planning and reform initiatives, see pages 82-84 and Appendix G.

In some states the Implementation Committee has metamorphosed into a permanent committee simply by virtue of longevity. This is not optimal. The appointment by the supreme court of a Standing Committee with a specific mandate to carry out the six tasks listed above demonstrates the court's renewed commitment to gender fairness and provides an opportunity to bring in new leadership and talent.

What Are the Varieties of Standing Committees?

In what appears to be a growing trend, long-term gender bias monitoring functions are assigned to committees concerned with problems of fairness and access not only for women, but for all groups allegedly disadvantaged in the courts by virtue of race, ethnicity, religion, disability, gender, sexual orientation or socio-economic status. In the experience of the Implementation/Standing Committees represented at the *Maximizing Our Gains Conference*, these mixed committees present both opportunities and obstacles to executing the vital work required of permanent standing committees.

Opportunities Cited:

- Groups that are disadvantaged in the court system are “natural allies.” Working together they can push more effectively for reforms.
- California representatives believe that the Judicial Council’s “Committee on Fairness and Access in the Courts” has garnered more visibility and credibility than a single focus gender fairness committee would have.
- Some issues that have been neglected by both race and gender Task Forces and Implementation Committees are best addressed in a merged committee. Women of Color in the courts is the most obvious.

Obstacles Cited:

- In most states, Implementation/Standing Committees operate with minimal funding and staff. In mixed committees this leads to competition for resources among the groups. Gender issues are often submerged because of other groups’ claims that gender has received more attention than other issues because the Gender Bias Task Force was created before other such entities.
- Some Standing Committees are functioning simultaneously as task forces as new issues are added to the fairness mix. For example, in some states fairness commissions are expected to handle disability issues without benefit of first having a task force or implementation committee focused on the area. Thus, the fairness committee must investigate the problem and formulate recommendations before it can move to the tasks of a Standing Committee for this area. This means that the new issue area will require a disproportionate share of resources for some period of time.
- For some *Maximizing Our Gains Conference* participants the merged committees are a disturbing reminder of the early vague and tepid “fairness” courses in judicial education (dubbed the “isms courses” or the “garbage courses”) which resistant judges and judicial educators substituted for courses on gender bias that focused on concrete judicial decisionmaking.
- The agendas of merged committees may become overly broad and diffused, thus blocking effective action of any kind.

How Can the Disadvantages Be Minimized?

Maximizing Conference participants offered these suggestions to minimize the disadvantages of mixed Standing Committees:

- Establish subcommittees with equivalent “person power” for each issue area;
- Rotate the Chair of the entire Standing Committee among the subcommittee chairs;
- Have separate budgets for the different groups represented;
- Establish clear priorities for the specific issues to be addressed and the concrete projects to be undertaken;
- Prioritize topics that span the range of biases, e.g., women of color in the courts.

Given the resource constraints, there should be specific discussion about how to give each area its due. This can be a thorny issue. When a topic has not previously been investigated by a task force, a disproportionate share might justifiably be allocated to it in the initial phase. However, it must be clearly understood that this is a time limited allocation and that each area must receive equal attention.

Why Is Broad-Based Membership So Important to the Success of a Committee?

As *Maximizing Conference* attendees analyzed the strengths and weaknesses of their Committees and asked themselves what they would do differently if they could, they most frequently cited *membership selection*. For a Standing Committee, mixed or otherwise, just as for Implementation Committees and the Task Forces preceding them, membership composition is a key determinant of success. Committees need a broad-based membership that includes a solid core of visible, powerful, highly credible individuals who are linked to other constituencies that can be mobilized with respect to gender fairness issues. This enables the Implementation/Standing Committee to form alliances, to collaborate with other entities and to take a proactive role in making sure that gender fairness issues are on the agenda of other court-related initiatives.

Some Conference participants cited as a disadvantage their Committee’s lack of diversity with respect to members’ expertise in substantive areas of the law. Such expertise is vital to implementing recommendations in different areas of the law, evaluating their impact on gender bias, and formulating programs and projects in different fields. The Committee’s credibility within the legal and judicial system requires that the legal areas of greatest concern to gender fairness be represented on the Committee by respected jurists, lawyer practitioners and legal scholars.

Standing Committees must also be diverse in terms of age and areas of legal knowledge. The concern (indeed, alarm) that “there is no one coming up behind” was ubiquitous among conference attendees. While one waits for the third wave of feminism to gather force within the ranks of young women lawyers, generally, a practical step is to include young male and female lawyers and law students on the Committee. Their role should include mobilizing young lawyer associations and law schools to undertake relevant projects and educational programs. One place to find younger members is the women law student associations of local law schools and the faculty serving as their advisors. Even though these law students will not have expertise and experience, they will have energy and enthusiasm and they are the cadre for the future.

Since substantive evaluation efforts — an important Committee responsibility — require competence in social science methodology, it may be advisable to include a social scientist with relevant training on the Committee. Such a person could be very useful in tapping into the research capacities of universities and other research institutes on behalf of the Committee. An alternative to adding non-lawyers to the Committee is to create a “resource group” of social scientists and other professionals who accept a formal invitation to collaborate (*pro bono*) with the group. Many academics welcome the opportunity to step out of the ivory tower to put their skills in service of a worthy cause.

Conference participants urged that Standing Committee members should have something special to offer, including their own constituencies and diverse linkages to other groups.

Are Local Committees Useful?

In some states, the Implementation/Standing Committee leveraged its work by creating local committees in cities, counties or districts across the state. In other states local committees developed on their own. In El Paso, Texas, for example, the court of appeals passed its own resolution against gender bias that lead to creation of a local task force. Three Texas cities now have local committees that have undertaken different projects. One published divorce information in English and Spanish and sought to ensure gender fairness in lawyers’ appointments. Another restudied the issues in a completely local context as a prelude to developing local solutions. The third is working through two bar associations.

The New York Judicial Committee on Women in the Courts established a very successful network of gender bias committees in every court district. Given the size of New York's population, these local committees help the central Committee know what is happening around the state. The local committees address internal court issues, such as personnel problems, and engage in extensive community outreach and public education, using vehicles such as Women's History Month and Domestic Violence Awareness Month. Once a year, the local committee chairs meet together with the state committee chair to review their work and plan new programs.

2. Staff and Funding To Carry Out the Work of Implementation/Standing Committees on a Long-Term Basis

Obtaining adequate staff and funding is one of the most significant problems for Implementation/Standing Committees, and there are no easy answers. Participants in the *Maximizing Our Gains Conference* made several suggestions for obtaining direct funding and partnering with new court initiatives that do have resources and can assist in carrying out Committee projects.

What Are Sources of Direct Funding for Committee Staff and Projects?

Direct funding may come from the court system, the legislature or sources outside the court system. The Committee must make a strong case for funds and staff to the chief justice, state court administrator and legislature. The authorities that appointed the Committee should want it to function effectively. They should know that implementation and institutionalization are hard work that cannot be accomplished solely by volunteers but require paid staff and an adequate budget. As one *Maximizing Conference* participant said, “Remind them that if it’s worth doing, it’s worth doing well.” To convey how hard the work is, give the appointing authorities, the chief justice and the state court administrator a copy of the fifteen component Institutionalization Plan from this Manual and explain concretely and in writing how the Committee would carry out this work if it were properly staffed and funded. Then meet personally with the appointing authority and other court system leaders to discuss the requested budget.

A second key strategy is to show the chief justice, court administrator and legislature how the committee’s work serves other court goals and enhances other initiatives that have the court’s attention. The Committee’s knowledge of “hidden” gender-related issues is critical if other reform efforts are to be fully effective. The Committee should be seen as essential to accomplishing the court system’s current agenda, not marginal to it, and not as a charity case. A prime example is to show how the Committee’s work advances the Public Trust and Confidence agenda, because every state was a participant in the 1999 National Conference on Public Trust and Confidence in the Justice System which voted to make implementing the recommendations of the gender, race and ethnic bias

task forces a priority, and every state is undertaking a variety of projects in response to this conference.

Implementing Task Force recommendations requires staff to be in constant contact with a wide variety of courts, court units, justice system agencies, bar associations, law schools, and others. Close monitoring and interaction with new court initiatives cannot be done by Implementation/Standing Committee members whose fulltime professional responsibilities mean they can only learn about and respond to these new efforts on a catch-as-catch-can basis.

A third strategy to persuade your chief justice and court administrator to provide resources is to show them that assuring gender fairness for court employees means money saved for the court system. A state court administrator at the *Maximizing Our Gains Conference* reported that when he started his job the court had no sexual harassment policy and the chief justice told him none was necessary because there was no problem. When he tried to conduct training on this issue the judges were extremely hostile. But with a few years of work by his Committee he was able to institute both an effective policy and a training program that was well received. As a result, the number of complaints dropped from a hundred a year to fewer than ten.

Consider Obtaining Funding from the Legislature

Allocations from the court system are not the only source of direct funding for implementation work. Some Task Forces were funded by their state legislatures and others obtained appropriations for the implementation phase. The documentation of gender bias in the Task Force reports constitutes what might be called the legislative history. Here again, the mandate of the Public Trust and Confidence Conference is to implement the Task Force's recommendations and the savings to the state when there is gender fairness in court employment are important selling points.

Is Sharing Staff With Other Court Units and Committees Effective?

While full-time staff for the Implementation/Standing Committee is obviously desirable, part-time staff shared with other court entities has benefits. At the *Maximizing Conference* the Manager of Special Programs for the New Jersey courts, who staffs several committees, reported that while the downside is the limitation on her time for the Supreme Court Committee on Women in the Courts, the upside is that having responsibility in several areas gave her contacts and credibility she would not otherwise have. The Coordinator for the

Washington (State) Supreme Court Gender and Justice Commission, who works half-time on the Commission and half-time on a variety of other court projects, believes she was never as effective as during the period when she staffed both the Commission and two state judges associations. But she also observed that if she had more staff, she could accomplish more. Thus, an optimum arrangement might be a senior staff member whose time is shared and several dedicated junior staff members to assist.

Can Our Committee Obtain Resources by Becoming a Partner in Other Court Initiatives' Projects?

Some Implementation/Standing Committees have secured resources by partnering on other committees' projects. For example, the Georgia Supreme Court Commission on Equality partnered with the Georgia Commission on Public Trust and Confidence in the Courts to hold public hearings/town hall meetings in each of Georgia's ten judicial districts. Initially, the Equality Commission hoped to hold its own hearings as a follow up to the work of the Gender Bias Commission in 1990 and the Racial/Ethnic Bias Commission in 1995, but costs and time constraints made collaboration the best way to gather information. While the objective of the Public Trust and Confidence Commission is to learn about the public's perception of the justice system overall, the Commission on Equality will focus on the information developed that relates to public perceptions of bias in the system. The Georgia Equality Commission was allowed to add questions to the Public Trust and Confidence Commission survey and worked to ensure that community leaders, advocates, and members of the public with comments or concerns about bias (related to race, ethnicity, gender, socio-economic status, ability level, sexual orientation, religion, national origin or age), were invited to the hearings and provided the opportunity to speak. Thus, at no extra cost, the Georgia Equality Commission was able to advance its work while furthering objectives of the Public Trust and Confidence Committee.

Are There Sources of Funding Outside the Court System?

Some Task Forces and Implementation/Standing Committees secured funding and in-kind services outside the court system. Potential sources of support include:

- Bar association foundations
- IOLA funds from state and local bar associations
- In-kind services from law firms
- In-kind services from law schools and other academic institutions
- Corporations
- Foundations

A few Task Forces were housed in law firm offices. Others benefited from significant staff support from members' firms. Legal and non-legal academics can be invited to carry out studies related to their own fields of expertise. These individuals can be especially valuable for evaluation projects, as discussed under *Key Component 1. A Standing Committee on Gender Fairness*, in the section on membership. With respect to corporations, the Georgia Commission on Equality, through a Commission member employed at Bell South Cellular, secured \$5,000 from Bell to support a hearing. Many foundations and corporate funding programs fund only local state or city initiatives and can be approached in that context. State and local bar associations often award grants from IOLA funds. Securing direct financial contributions from these sources is an art in itself that requires knowledge of how to write grants. To go this route, the Committee should find someone with successful experience in grant writing to assist it.

State Justice Institute Funding for Specific Projects

Another potential funding source is the State Justice Institute (SJI), a federally funded non-profit corporation that supports innovative projects to enhance the administration of justice in the state courts and has supported many gender fairness projects.⁹ SJI also provides grants of up to \$20,000 to support projects that adapt and pilot-test model judicial education curricula developed with SJI support. Implementation/Standing Committees can encourage judicial branch educators to apply for these funds to adapt and present the SJI-supported curricula on rape and sexual assault, domestic violence, women of color in the courts, child sexual abuse allegations in custody cases, and sexual harassment

⁹ <http://statejustice.org>. Under SJI Grants, select "Grants by Category."

within the court system.¹⁰ As with applying to foundations, here, too, grant-writing skills are essential.

What About Law Students?

Law students are an excellent source of assistance if properly selected and supervised. Law schools increasingly require students to perform *pro bono* service. Working for an Implementation/Standing Committee can satisfy that requirement. A student who is getting academic credit or fulfilling such a requirement is more likely to put in the time and carry out the work assigned than someone who is just coming for the experience and will not be held to any standard of performance. Meet with your local law schools to learn about their *pro bono* requirements and other opportunities to give credit for working with the Committee. Give talks for the Women Law Students Association, the Black Law Students Association, the Hispanic Law Students Association, the Asian Pacific American Law Students Association and similar groups to familiarize them with the Committee's work and the opportunities for students to be part of it.

Become Part of the Court's Long Range Planning Process

The potential for funding the gender fairness initiative depends to some extent on where it is lodged in the court system's overall scheme. In Florida, three of the five goals in the court's Long Range Plan concern bias; the state's Performance Based Budget Process also addresses several specific bias issues. Thus, even though the legislature in 1999 declined to fund additional staff for the Fairness Commission, this will continue to be an initiative in the list of funding proposals because it is part of the Long Range Plan.

¹⁰ These curricula are all described at www.statejustice.org. Under SJI Grant Programs, select "Curriculum Adaptation."

3. Education on Gender Issues For Judges, Court Personnel and Judicial Nominating and Conduct Commissions on an Ongoing Basis

Relevant Readings: IRD 54-83, Promoting Gender Fairness, NJC Workshop on Gender Fairness

The prime recommendation from every Task Force was to provide education on gender fairness for every sector of the justice system.¹¹ The fair administration of justice requires that judges learn how to avoid gender bias in substantive decisionmaking and courtroom interactions. Court personnel need education similar to that for judges with respect to their interactions with court users. All judicial and non-judicial court personnel require education on employment-related issues ranging from non-discriminatory interviewing to sexual harassment. Judicial nominating commissions can benefit from training on non-discriminatory interviewing, valuing various kinds of legal experience and determining candidates' sensitivity to gender issues. Similarly, judicial conduct commissions need education to understand the nature and gravity of the gender-related complaints that come before them.

What is socially constructed can be deconstructed.

*Judge John Ruffin, Jr.
Co-chair,
Georgia Supreme Court
Commission on Equality*

How Can Our Implementation/Standing Committee Persuade Judges and Judicial Educators of the Importance of Gender Fairness Education?

There has been a significant change in attitudes toward bias-related education in recent years, as judges have come to realize that they can be sanctioned and reversed for biased behavior and decisionmaking. At recent judicial education programs on fairness in the courts that focused on cases reversed for judicial gender and racial bias, the judges arrived with a sense of purpose linked to professional risk, and left with thanks to the instructors for helping them steer clear of reversible error.

¹¹ The top-ranked strategy for improving public trust and confidence in the justice system, as voted by participants in the 1999 National Conference on this subject, was improving education and training. This strategy includes education programs for judges, lawyers and court staff on topics such as bias sensitivity training and ethics. See, *Potential Strategies for Improving Public Trust and Confidence in the Courts*, 36 CT. REV. 63 (Fall 1999).

The National Judicial College (NJC) “fairness” course, now called “How to Run a Bias Free Courtroom,” also uses the “save yourself embarrassment, reversal and job loss” hook. Other “hooks” to get and maintain judges’ interest include:

- Canons of Ethics, particularly states’ versions of Canons 3B(5) and (6) of the ABA Model Code of Judicial Conduct explicitly barring biased conduct by judges and those under their direction and control.
- Judges being disciplined and removed for biased behavior.
- Risk of reversal (see cases such as *Catchpole v. Brannon*, 35 Cal. App. 4th 237, 42 Cal Rptr 2d 440 (1995)).¹²
- Liability for bias in administrative actions (see *Forrester v. White*, 484 U.S. 219 (1988)).
- Negative media attention (e.g., cases in which judges have crashed and burned over sexual harassment).
- Elections
- Judicial Performance Evaluation

The NJC course explores the impact of biased attitudes in all substantive areas of law criminal, civil, and family. This focus on substantive law communicates that this is serious judicial business and not merely a matter of courtroom etiquette, although examples are given of how bias can be manifested in courtroom conduct through language, demeanor and peremptory challenges.¹³

The greatest impact is decisional law that punishes violations of the code.

Justice Betty Ellerin

Chair,

New York Judicial Committee on Women

in the Courts

and the

Gender Fairness Strategies Project

¹² See Lynn Hecht Schafran, *Judges Cite Gender Bias Task Force Reports*, THE JUDGES’ JOURNAL, Spring 2000 at 13 in Appendix D.

¹³ In her article on actions taken in California as a result of the *Maximizing Our Gains Conference*, steering committee member Judge Judith McConnell noted California Judicial Council members comments on bias-related education “Fairness education still suffers from resistance and negativity from some judges; however, once judges attend a program, most are positive, if not enthusiastic, about the experience. So, concentrated effort needs to be directed toward the perception of fairness courses and toward getting all judges to attend.” Judge Judith McConnell and Kathleen F. Sikora, Esq., *Gender Bias and the Institutionalization of Change*, THE JUDGES’ JOURNAL, Summer 2000, at 13 in Appendix E.

Why Is Integrating Gender Issues Throughout the Curriculum Important and How Can We Achieve It?

As detailed in *Promoting Gender Fairness Through Judicial Education*, (see page 9) gender-related issues arise in virtually every area of the law and cannot be contained in a single “fairness” course. Integrating gender issues throughout the judicial education curriculum is critical because it enables judges to understand how gender bias operates in the specific substantive areas in which they are conducting trials and making decisions. Such integration also ensures that judges who would never attend a “fairness” course or, having gone once, would consider it “done” are continually exposed to the material. Each state carries out judicial education in its own way and therefore will follow different paths to integrating gender fairness throughout the curriculum. At the *Maximizing Our Gains Conference* an attorney with the California Center for Judicial Education and Research (CJER) described the several components necessary to achieve integration.

- **Leadership.** Judges and court staff who are key people in judicial education can promote and institutionalize integration.
- **A Sense of Urgency and Pressure.** Judges and judicial educators must feel a sense of urgency about how much there is to teach about gender fairness and why it is necessary to talk about this again and again, not only with new judges, but also on increasingly sophisticated levels with those who have had prior exposure. A judge at the conference stated that the sense of urgency should come from the fact that the rule of law is based on public perception that courts are fair. When that perception is undermined, courts fail.
- **Mandatory Education for Judges and Court Personnel.** Mandatory judicial education is highly controversial and must be approached cautiously. Many judges resent the notion that they need or could benefit from education. Appellate judges are particularly hostile, asserting that education is only for trial judges. Nonetheless, it is important to institute some requirements, whether by court rule or by statute. The issues confronting the courts today are far from those addressed in law school when the judges now sitting were students. We must challenge the notion that it is acceptable for people to make decisions about other people’s lives in areas where they have no education.
- **Pedagogy.** Two myths must be overcome: first, that “only judges can teach judges”; second, that judges should not take into account social science data about the experiences of different groups because to be neutral they must remain *tabula rasa* and consider only the facts of the particular case before them. In fact, judges often do not have all the expertise they need for their own decisionmaking or to teach other judges. They need to hear from the experts who can provide this critical background.

As to the second myth no judge is truly *tabula rasa*, in that no judge makes judicial decisions without preconceived perceptions, judgments and views. Judges are no more able to “naturally” set these mental elements aside than are ordinary citizens.

The key strategy here is judicial education. We aren't supposed to decide based on our own family lives. We have to address unconscious motivations.

Judge Judith McConnell

San Diego Superior Court

Gender Fairness Strategies Project Steering Committee

The human brain does not permit it. What judges can and must do is to recognize these elements in their own thinking and consciously try to counter their influence in rendering fair and impartial decisions. Exalting the model of a judge *tabula rasa* is to exalt ignorance.

One effective way to surmount these myths is to move to a curriculum-based model of judicial education. In this model, judges move through a sequenced and increasingly sophisticated curriculum on particular issues or areas of substantive law that reflects their own intellectual growth from “baby judges” school through years of experience and new assignments. The California Center for Judicial Education and Research (CJER) developed such a domestic violence curriculum and has begun one on family law. For the domestic violence curriculum CJER developed a video on the link between social science information about domestic violence and decisionmaking and sent it to all new judges. States that want to move to curriculum-based education should take advantage of work done in other states. These curricula are time consuming to produce, but can often be easily adapted for use in other states. They must always be of top quality, created with or reviewed by judges.¹⁴

At Family Law programs we do “Barriers to Objectivity: Judicial Decisionmaking and Family Law,” team taught by a judge and a judicial educator. We discuss how difficult it is to decide cases in this area where you have deeply held views, then offer data that give a wider perspective.

Bobbie Welling

Program Attorney,

California Center for Judicial Education and Research

What Additional Strategies Are There for Making Judges Receptive to Social Science and Other Non-Legal Material?

Judges and judicial educators at the *Maximizing Our Gains Conference* offered a substantial list of strategies for introducing non-legal experts and materials into judicial education.

¹⁴ For more information on California’s innovative curricula on domestic violence and family law, contact Bobbie Welling, Esq, Program Attorney at the California Center for Judicial Education and Research (CJER). bobbie_welling@jud.ca.gov

- Begin with a self-test so the judges will know what they don't know.
- Have the subject and the expert introduced by a judge with high credibility in areas other than gender fairness.
- Have the expert team teach with a judge to ensure that connections are constantly made between the social science and other non-legal information provided and the tasks judges do every day.
- Use state specific data in substantive law areas, for example, the state's Gender Bias Task Force Report.
- Require all judicial and non-judge faculty to participate in faculty training.
- Be aware that the people who teach these subjects, whether experts or judges, and especially women and people of color, are often criticized for their efforts regardless of the quality of their presentations. Prepare these faculty for the possibility of biased evaluations and take this into account in deciding whether to invite them back.
- Encourage judicial educators to utilize State Justice Institute (SJI) curriculum adaptation grants. SJI has supported numerous curricula on subjects such as domestic violence, rape and avoiding sexual harassment in the court system. Show judicial educators how using funds from SJI for these programs can free up funds for programs on other needed subjects.
- Be prepared to address fairness as a mature issue

Because there has been extensive judicial education on fairness issues over the last two decades, you must be prepared to respond to arguments against having more.

We've already provided judicial education on gender fairness.

Yes, but there are new judges who have not had the training, and there is a need to reinforce the learning of experienced judges. Also, new gender fairness issues emerge which have not been covered in previous courses.

Why are your issues more important than the others vying for time on the education docket?

Gender bias operates in all areas of the law and profoundly affects the public's trust and confidence in the justice system.

Gender bias is no longer a problem because the climate has changed.

While it is true that the blatant forms of gender bias in the courts (such as sexist jokes and gender-biased language) have diminished, the subtle and intractable forms persist, particularly in substantive law decisionmaking. Moreover, the gender bias that results from lack of knowledge about the social and economic realities of women's and men's lives can only be eliminated through education. An improved climate does not mean that everyone grasps, for example, the counterintuitive reality that rape by someone the victim knows usually causes more and longer-lasting psychological damage than rape by a stranger.

Why Must There Be Specific Education for Court Personnel?

Gender Bias Task Forces determined that the interaction between court users (litigants and lawyers) and court personnel was frequently a locus of gender-biased behavior. This was particularly true in domestic violence cases where court personnel who file forms act as “gate keepers” to obtaining relief. For resources for this type of training, see the *Implementation Resources Directory*.¹⁵ Court personnel also need education about their interactions with each other. Court managers of both judicial and non-judicial personnel must learn to see themselves as managers and be trained in management techniques, non-discriminatory interviewing, and avoiding and investigating sexual harassment. Court staff needs education to upgrade their skills and understand where they fit in the court system. The court system can be persuaded to provide this education by showing how such training enhances productivity and saves money. These issues are discussed further under *Key Component 10. Initiatives to Ensure Gender Fairness in Court Employment*.

We continue to be encouraged by comments received after educational programs for judges and other court employees. Many participants indicated that with their new learning they would improve how they made decisions and how they served the public. They learned how gender-biased stereotypes may have influenced their behavior and made a commitment to change that behavior.

*Honorable Barbara Dorch-Okra
Chief Justice of the Massachusetts Trial Court,
Speaking at the Massachusetts Gender Equality
Board's 10th Anniversary Celebration*

¹⁵ At pages 54-55

How Can We Persuade Judicial Nominating and Conduct Commissions That They Can Benefit from Education on Gender Issues?

As described under *Key Component 9. Initiatives to Ensure Gender Fairness in the Judicial Nomination, Election, Performance Evaluation and Disciplinary Processes*, gender bias on the part of judicial nominating and conduct commissions is still a problem. Generally, only women applicants are asked about their childcare arrangements; sometimes allegations of sexual harassment against a judge are totally ignored. Implementation/Standing Committees can try to develop relationships with the rotating chairs and permanent staff of these commissions to help them see why members and staff will benefit from gender fairness education. Perhaps the most persuasive information you can convey is the community outrage when bias in these processes becomes public knowledge.

In New Jersey, for example, the judicial conduct commission ignored a law clerk's sexual harassment complaint against a judge until the clerk sued. After considerable pressure the commission held hearings and recommended to the New Jersey Supreme Court that the judge should receive a public censure. The Supreme Court imposed a 60-day suspension without pay and attendance at a court-approved sensitivity program.¹⁶ The community refused to accept this determination as final. After an assemblyperson said she was going to draft articles of impeachment,¹⁷ the judge resigned.¹⁸ In an editorial condemning the Supreme Court's failure to take serious action despite its own findings that the judge "committed acts of sexual crudity, deeply offensive to another person," one newspaper wrote, "[P]ublic outrage and threats of impeachment that followed the court's action were the real force that drove [the judge] out.... [I]f not for an engaged and outraged public, a statewide storm of protest might never have formed to pressure [him] to resign."¹⁹

Some judicial disciplinary commissions operate like a black hole, never divulging their disposition of complaints. This type of commission may think it is immune from community outrage because no one will ever find out. But, again, lawsuits can make this material public. When a Nebraska court reporter sued a judge for sexual harassment it became public knowledge that the judicial

16 In the Matter of Judge Edward Seaman, Supreme Court of New Jersey, D-83 Sept. Term 1992. Decided July 16, 1993.

17 "Anti-Seaman Mood Grows in Statehouse," N.J.L.J., Aug. 23, 1993.

18 Jim O'Neill, "Suspended judge quits over sex case," Star-Ledger, Aug. 31, 1993 at 1.

19 "Judge Seaman himself did what Supreme Court didn't," News Tribune, Sept. 1, 1993 at A-10.

conduct commission had received numerous complaints about this judge over twenty-five years but had never taken action.²⁰

Implementation/Standing Committees should learn how judicial discipline works in their own states and whether it is responsive to their concerns. The Center for Judicial Conduct Organizations of the American Judicature Society,²¹ headquartered in Chicago, has information about how the judicial conduct commission in

Our Commission on Judicial Conduct tells offending judges they should take gender bias training, a term the Commission would not have used before the Task Force.

*Gloria Hemmen
Coordinator,*

Supreme Court Gender and Justice Commission, Washington State

each state operates and how it compares to commissions in other states. As with judicial selection panels, the composition of the disciplinary commissions and training on gender bias issues are critical factors in ensuring appropriate action on gender-related cases. Ill-informed or insensitive commission members can override even committed staff. If there have been changes in the state's codes of conduct regarding gender bias, disciplinary commissions will be more receptive to training.

Colorado's Standing Committee has developed training materials for judicial nominating commissions, as discussed under *Key Component 9. Initiatives to Ensure Gender Fairness in Judicial Nominating, Election, Performance Evaluation and Disciplinary Processes*. The extensive training curricula available on sexual harassment are discussed under *Key Component 10. Initiatives to Ensure Gender Fairness in Court Employment*. Materials useful for educating disciplinary commissions on gender bias in court interaction include cases where judges have been sanctioned or reversed for gender biased behavior or have sanctioned lawyers for such conduct.²²

²⁰ Keslar v. Bartu No. 4:96 CV3072 (D.) Neb. Mar.18, 1999, aff'd, 210 F. 3d 1016 (8th Cir. 2000).

²¹ <http://www.ajs.org>

²² See Lynn Hecht Schafran, *Judges Cite Gender Bias Task Forces*, THE JUDGES' JOURNAL, Spring 2000, at 13 in Appendix D.

4. Initiatives That Address Court-Related Issues Confronting Women of Diverse Racial and Ethnic Backgrounds and Lifestyles

Relevant Readings: IRD p. 66

The unparalleled concern about racial and ethnic bias in the courts that emerged from the 1999 National Conference on Public Trust and Confidence in the Justice System presents both a unique opportunity to address the court-related issues for diverse groups of women and a critical challenge. Will the specific ways that race/ethnic bias affect women be addressed, or will they be ignored or submerged? As we write this publication, a parallel situation has emerged in the preparations for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances to be held in South Africa in the summer of 2001. Forty non-governmental organizations from around the world have joined to create a Women's Caucus to address and assert the interests of women and girls who are victims of racism and/or ethnic discrimination. In a paper titled "Putting Gender on the Agenda" they write:

Racial and ethnic discrimination and racism have been compounded by the limited examination of all aspects of identity, especially gender. Racism does not always affect men and women equally or the same way. A person's ability to exercise their human rights and fundamental freedoms is shaped not only by their race and ethnicity, but also by their gender, as well as other factors of their identity. In many cases, the intersection of racial and gender discrimination leaves female members of minorities facing violations of their rights that are unique to them...Without addressing gender, as well as age, class, caste and sexual orientation, in the analysis, the remedies to eliminate and challenge racial discrimination arising from the World Conference Against Racism will not be effective.²³

But the Women's Caucus reports that at the two preparatory meetings for this conference held in Ethiopia and Chile, the specific concerns of women were largely ignored, despite efforts to have them addressed. The Caucus is making an intense effort to ensure that gender issues will not be ignored in the other preparatory meetings or the conference itself. Task Force Implementation/ Standing Committees must make similar efforts to ensure that gender issues are not lost in the new court initiatives on racial and ethnic bias. This means being

²³ Statement of the Women's Human Rights Caucus to the First PrepCom of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances, undated, page 3, available from wild@igc.org

closely engaged with these new initiatives as well as keeping the issues for women of color and different lifestyles on the Committees' own action agenda.

Implementation/Standing Committees that are broadly focused on many kinds of bias should examine the areas of overlap and the areas of uniqueness and focus on those with the greatest impact on the courts. At the *Maximizing Our Gains Conference* the attorney who is lead staff for the California Access and Fairness Advisory Committee described its subcommittee on Women of Color and the Justice System and that committee's efforts to develop what became *The New Millennium: Women of Color as Court Leaders and Managers* program, held in May 2000. The Women of Color Committee held two roundtables and then a one-day meeting to identify the issues. This was attended by nearly thirty women judges, court attorneys, administrative office of the courts staff and Access and Fairness Advisory Committee members. Many women feared being criticized by their presiding judge if they attended this meeting. Some minority women were concerned that they would be perceived by majority women as not being team players. There was a perception that while the court system had no difficulty giving permission to attend the *Maximizing Our Gains Conference* because of its focus on gender bias generally, if it were a conference on women of color, questions would have been raised.

Initially there was significant confusion among minority and majority women on what issues should be addressed. Nonetheless, the event that emerged from this planning was extremely successful. *The New Millennium* was presented as part of the California Center for Judicial Education and Research (CJER) 2000-spring judicial conference and drew a large audience for a full day of panels and small group discussions. The Committee on Women of Color in the Justice System now hopes to make it a national conference.²⁴

The materials for this conference included a set of readings about the problems confronting women of color litigants and victims across many areas of substantive law and as attorneys, judges and court personnel. These readings were largely drawn from the National Judicial Education Program's model curriculum, SJI-funded *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts*, another tool available to Implementation/Standing

²⁴ For information about the conference, the conference materials and the recommendations that emerged contact Judge Barbara Zuniga, Superior Court, Dept. 2, P.O. Box 911, 1020 Ward St., Martinez, CA, (925) 646-4000, bzuni@sc.co.contra-costa.ca.us, or Arline Tyler, Esq., Access and Fairness Advisory Committee, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396-9128, arline.tyler@jud.ca.gov.

Committees. This curriculum asks not only “asks the woman question,”²⁵ i.e., what are “the gender implications of rules and practices which might otherwise appear to be neutral or objective,”²⁶ but also asks how the situation changes if it involves women of color from specific groups and backgrounds.

Implementation/Standing Committees can partner with other agencies and initiatives on these kinds of issues. The California Court Commission on Juveniles has made a commitment to look at the issues for girls of color. This commission has substantial funding, making this an example not only for *Key Component 4. Initiatives that Address Court-Related Issues Confronting Women of Diverse Racial and Ethnic Backgrounds and Lifestyles*, but also for *Key Component 2. Staff and Funding to Carry Out the Work of Implementation/Standing Committees on a Long-Term Basis*.

Sexual orientation bias as it affects lesbians is another issue that Implementation/Standing Committees need to address on their own and to monitor in other court initiatives. Some Task Forces and Implementation Committees are including sexual orientation bias in their own investigations. For example, the California Access and Fairness Advisory Committee, which is both an implementation and investigatory body, added sexual orientation to the new areas it investigated. Court and other initiatives respecting domestic violence initiatives should be monitored to ensure that they address same-sex domestic violence, an issue beginning to be acknowledged in the gay and lesbian community.

²⁵ In a famous law review article, Katharine Bartlett, now Dean of Duke Law School, posited “asking the woman question” as a methodology within feminist jurisprudence. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990).

²⁶ *Id.* at 837.

5. Codes of Conduct For Judges, Court Personnel and Lawyers That Address Gender Bias With Specificity

Relevant Readings: IRD 22-32

Codes of conduct are the basis for the disciplinary mechanisms discussed in *Key Component 8. Mechanisms for Handling Formal and Informal Complaints of Gender Bias* and central to the education programs discussed in *Key Component 3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Conduct Commissions on an Ongoing Basis*. A signal accomplishment of the movement to end bias in the courts is the 1990 addition to the American Bar Association Model Code of Judicial Conduct of Canons 3B (5) and (6).²⁷ These new canons specifically bar biased conduct on the part of judges and those under their direction and control, and specifically address sexual harassment.

The Code of Judicial Conduct also acknowledges that the absence of judicial impartiality may be based on gender bias. Catchpole v. Brannon, 36 Cal. App. 4th 237, 246 (1995), reversing a judge for gender bias in a sexual harassment/rape case.

As of this writing about half the states have adopted these canons and sixteen more have adopted some variety of anti-bias provision. These state codes of judicial conduct are described in the *Implementation Resources Directory*. At the *Maximizing Our Gains Conference* Florida's representatives reported that since they changed their code of judicial conduct to adopt Canons 3B(5) and (6) there has been an increase in disciplinary actions against judges for biased conduct. In January 1999, charges were then pending against three judges for sexual harassment and one was

New codes of conduct create a moral imperative that is the essential basis for education about gender bias.
Marilyn Slivka
Manager, Special Programs,
New Jersey Supreme Court Task Force on Women in the Courts

²⁷ 3B(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. 3B(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors are issues in the proceedings.

planning to resign. A female judge had been removed for sexually harassing a female judicial assistant.

In 1998 the ABA amended its Code of Professional Responsibility for lawyers to reflect the concerns in Canon 3B(6) to the Code of Judicial Conduct respecting judges' supervision of lawyers during trial. Many states have followed suit, as described in the *Implementation Resources Directory*. Codes of conduct are also important for court employees and court interpreters. Court employee codes, also detailed in the *Directory*, typically address a broad range of biases and interactions with both the public and other court employees.

It is important for states to adopt codes of conduct for court interpreters as well. There is a Model Code of Professional Responsibility for Interpreters in the Judiciary. Canon 3, Impartiality and Avoidance of Conflict of Interest states, "Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest." However, domestic violence advocates across the country who work with battered immigrant women report that interpreters often undermine these women's cases because they do not want the community's dirty linen aired in public and do not think battering is a crime.

Different states have different procedures for adopting codes of conduct. In some states the supreme court determines the code for judges, lawyers and others. In other states, legislatures are involved. The Implementation/Standing Committee should become knowledgeable about who has responsibility for adopting codes of conduct for these different groups and approach them accordingly. The Committee should be prepared for positive and negative responses to its proposals. Some courts, offices of court administration and bar associations have been less than receptive if not overtly hostile to the code amendments described above. But many of the code adoptions have come after repeated overtures to the powers that be, so persevere.

6. Legislation Recommended by Task Forces and Implementation Committees

Relevant Readings: IRD 88-98, 111-146

The Gender Bias Task Forces called for a wide variety of legislation to address the problems documented in their reports. The *Implementation Resources Directory* details the many new statutes enacted as a result. Although legislation is only as effective as the judges who interpret, apply and enforce it, these new laws create important new standards and requirements and provide an essential baseline for appeals. The Implementation/Standing Committees have pursued a wide variety of strategies, acting directly and through others, to secure passage of these bills.

The statutory changes we achieved, especially the domestic violence statutes, have made a significant difference in the lives of Florida women.

Judge Gill Freeman

Chair,

Florida Supreme Court Fairness Commission

Does Promoting Legislation Involve Separation of Powers Issues?

The Implementation/Standing Committees are highly conscious of the separation of powers issues that may arise if judges are actively involved in passing legislation. The Committees do not want the supreme court justices who appointed them or the judicial members of their committees being asked to recuse themselves in cases involving laws they proposed. Some Committees, therefore, use their resources to encourage other institutions to take on legislation about substantive law while providing back up and confining their direct legislative efforts to laws related to court administration and to their own Committees. At the start of its implementation effort the Massachusetts Gender Equality Advisory Board turned to the Massachusetts Women's Bar Association to move five pieces of legislation recommended by the original Gender Bias Study Committee. A member of that Committee who was on the Bar Association's legislative policy committee became the moving force – perfect example of the benefits of having former Task Force members spread throughout the court and legal systems. Equality Board staff gave behind the scenes support to the Association's effort. Today the Equality Board provides information and speakers about proposed legislation, and recommends judges to speak on legislation where appropriate. For example, the chair of the Gender Equality Board works with the chair of the Ways and Means Committee (a former judge) on legislation on detoxification facilities for women awaiting trial. These facilities

are available for men but not women. The Equality Board itself works directly on legislation respecting its own funding and court procedures.

In Georgia the Implementation Committee began with a direct approach to legislation when two of its members testified before a legislative subcommittee. Since then it has largely handed this responsibility on to others and provided background support. Several *Maximizing Our Gains Conference* participants reported that their state legislatures now look to them to analyze pending legislation. The Washington (State) Gender and Justice Commission reported that their legislature deferred passage of a joint custody bill awaiting the Commission's analysis. Counsel to the New York State Judicial Committee on Women in the Courts reported that the Office of Court Administration legislative office now seeks endorsements from her committee. A California judge noted that the California Judicial Council has a full-time office for legislation with which the Access and Fairness Advisory Committee can interact in several ways that are within appropriate bounds. In particular, the Committee analyzes pending legislation for its impact on the courts. Is this law drafted so that judges can interpret it? Are there administration of justice aspects of proposed legislation that are appropriate for Committee comment? Here again, a member of the original Task Force has played a key role. A lawyer expert on domestic violence who was on this Task Force is now Chair of the California Senate Judiciary Committee and in that role has secured extensive legislative reforms in this area. Another effective way to move the kind of legislation supported by the Task Forces is the annual joint retreat of Indiana's women judges and legislators, an idea that an Illinois judge reported has now been copied in her state.

What About Relevant Legislation Proposed By Other Groups?

Implementation/Standing Committees should also be alert to legislation relating to Task Force concerns being put forward as part of other court-related initiatives. For example, at the *Maximizing Conference* a California judge described the California Committee on Family Equity that she chaired. Although not generated by the Task Force, it related to Task Force concerns, addressing administration of justice issues in the context of the disparate treatment of women and men under family laws. When a reform effort like this is created, the Implementation/Standing Committee must become involved, as described in *Key Component 15. Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender-Fairness Concerns.*

7. Gender-Neutral and Gender-Appropriate Language

Relevant Readings: IRD p. 84-85

In 1933 Edward Sapir, a pioneer in the study of linguistics, wrote “[It] is not too much to say that one of the really important functions of language is to be constantly declaring to society the psychological place held by all of its members.”²⁸ This reality, and the particular importance of language in the law, is captured by Georgia’s Chief Justice Robert Benham in his foreword to the *Guide to Bias-Free Communication* published by the Georgia Supreme Court Commission on Equality.

Language is the most powerful tool in the courtroom. If our courts are to dispense justice fairly and impartially, they must do so in an atmosphere that is free of all forms and shades of prejudice. In order for the legal community to gain and maintain the respect of the public, all people must be treated with dignity and respect at every level of the legal process.

The Gender Bias Task Forces recognized the power of written and spoken language to convey a variety of subtle messages about the credibility, legitimacy and worth of women and men participating in the court system as witnesses, parties, litigants, jurors, lawyers and judges. Accordingly, the Task Forces recommended that all court forms, court rules, jury instructions, opinions and other verbal and written court communications consistently use gender-neutral and gender-appropriate language.

You can't always change attitudes, but I believe that if you change behavior it will work on their minds.

Judge Gill Freeman

Chair,

Florida Supreme Court Fairness Commission

How Do We Deal with Some Judges’ Reluctance to Take the Need for Gender-Neutral Language Seriously?

Adopting gender-neutral and gender-appropriate language is so easy and has been so widely accepted that many think this is one aspect of implementation that is beyond controversy. But that is a mistake. At the *Maximizing Our Gains Conference* a state supreme court justice reported that when

²⁸ *Selected Writings of Edward Sapir* in *LANGUAGE, CULTURE AND PERSONALITY* (David Mandelbaum, ed., 1963.)

she urges other judges, including women judges, to use gender-neutral and gender-appropriate language, some retort that she is nit picking. Judges and judicial educators from other states reported resistance to gender neutral/appropriate language from some new judges at “baby judge” school. A Georgia representative reported that it took three years to publish the *Guide to Bias-Free Communication*, quoted above, and that it made some judges furious.

Thus, it is important to communicate to those who do not understand how critical gender neutral and gender appropriate language are why they are in error when they call it nit picking. Famed evidence professor Irving Younger, for example, once asserted that efforts to eliminate gender-biased language are “a waste [of] effort” because “[o]nly to the uninformed do fisherman, fireman, and handyman suggest that women may not wield hook, hose or hammer.”²⁹ But extensive research by experts in linguistics and communication has demonstrated conclusively that gender-biased language is neither trivial nor harmless, and that the misunderstanding and confusion it generates is widespread. Empirical studies have repeatedly found that supposedly generic terms such as “man” and “he” are overwhelmingly perceived by both men and women as referring solely to men. Masculine terminology skews perceptions about who should seek and hold which jobs and who may aspire to leadership. It creates a world model in which men are the paradigm and women feel excluded.³⁰ For example, at the 1988 Arizona Bar Association annual meeting, a judge reported that in a recent trial he assumed that a particular woman juror would be appointed foreperson. When he asked the jurors why they did not choose her, they replied that the court rules instructed them to appoint a “foreman.”³¹

The perceptions fostered by language have genuine consequences for case outcomes. The Washington Supreme Court recognized the power of language to shape our mental images and our judgment when it reversed the murder conviction of a woman, in part on the ground that the use of the “reasonable man” standard and masculine pronouns in the jury instruction on self-defense

²⁹ Irving Younger, *The English Language Is Sex-Neutral*, 72 ABA JOURNAL 89 (1986).

³⁰ Fourteen of these studies are reviewed in William R. Todd-Mancillas, *Masculine Generics = Sexist Language: A Review of Literature and Implications for Speech Communications Professionals*, 29 COMMUNICATION QUARTERLY 107 (1981). Other studies are discussed in Wendy Martyna, *Beyond the He/Man Approach: The Case for Non-Sexist Language*, and Donald G. MacKay, *Prescriptive Grammar and the Pronoun Problem and Sex Similarities and Differences in Language Speech and Nonverbal Communication: An Annotated Bibliography in LANGUAGE, GENDER, AND SOCIETY* (Thorne, et. al., eds., 1983).

³¹ Arizona Bar Association Annual Meeting, June 10, 1988. Tucson, Arizona. “Sex and Law: The Impact of Gender in the Courtroom.” Reported by Lynn Hecht Schafran, program speaker.

left jurors with the impression that the reasonableness of the defendant's conduct "must be measured against that of a reasonable male individual finding himself in the same circumstances" rather than in the context of a 5'4" woman in a leg cast facing a 6'2" intoxicated man.³²

One strategy reported at the *Maximizing Conference* to show that language does count came from the supreme court justice who said she has been accused of nit picking. She always uses female pronouns in her presentations in places where listeners expect a supposedly generic male pronoun. This has shock value and undermines the assertion that "everyone knows" that "he, his, him" mean women, too.

Fortunately, there is also good news about courts' adoption of gender-neutral and gender-appropriate language and the availability of excellent tools to advance this goal. At the *Maximizing Conference*, a California judge reported that he no longer hears other judges make nasty cracks about using gender-neutral language, and that male judges talking together are using it on their own. Conference participants also reported wide use and sharing of the materials on gender-neutral language developed by various Task Forces. The New York Judicial Committee on Women in the Courts has distributed 20,000 copies of its booklet, *Fair Speech: Gender-Neutral Language in the Courts*, across the country for other Task Forces and Committees to use.³³ For example, the Alaska Joint State-Federal Gender Equality Task Force reported that it had distributed the booklet to its entire bench and bar. The New York format has been widely and creatively adopted, for example in the Georgia *Guide to Bias-Free Communication*, noted above.³⁴ These materials are described in the *Implementation Resources Directory*.³⁵

³² *State v. Wanrow*, 559 P.2d 548 (1977).

³³ To obtain free copies of this booklet, contact the New York State Judicial Committee on Women in the Courts, 25 Beaver St., Room 878, New York, NY 10004, fax (212) 428-2793. Jill Goodman, Counsel, (212) 428-2794, jgoodman@courts.state.ny.us.

³⁴ To obtain this booklet contact the Georgia Supreme Court Commission on Equality, Administrative Office of the Courts, 244 Washington Street, SW, suite 550, Atlanta GA 30334-5900, (404) 656-5171, jacksonc@supreme.courts.state.ga.us.

³⁵ At page 84-85

8. Mechanisms for Handling Formal and Informal Complaints of Gender Bias

Relevant Readings: IRD 33-35;

Task Forces concluded that existing procedures for filing formal complaints of gender-biased behavior on the part of judges, attorneys or court personnel were unsatisfactory, and that informal procedures available to the public as well as to lawyers and court employees were generally non-existent. Implementation/Standing Committees have found this component of institutionalization difficult to implement because of the lack of effective models and resistance encountered in trying to create fair and effective procedures. Education for judicial conduct commissions on gender bias issues is needed, as described in *Key Component 3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Conduct Commissions on an Ongoing Basis*.

Formal Complaint Mechanisms

Every state has a Judicial Conduct Commission and an Attorney Disciplinary Commission, but their sensitivity to gender bias and the degree to which they operate publicly varies widely. In a few states, conduct commissions' failure to take strong action in response to deeply troubling comments made by judges in sexual harassment, domestic violence and rape cases led to an overhaul of the formal judicial disciplinary commissions, particularly the addition of public members to the commissions.

Informal Complaint Mechanisms

For matters that do not rise to the level of formal disciplinary procedures, speedy and accessible informal complaint mechanisms are needed. Informal complaint mechanisms that help to educate judges and others about gender bias in the courts can help prevent gender-biased behavior of a more serious nature. This is in keeping with the Task Forces' goal of promoting gender fairness through education rather than through punishment.

What Complaint Mechanisms Exist?

- Judicial Conduct Commissions
- Attorney Disciplinary Commissions
- Court and County Personnel Rules
- Judicial Performance Evaluations
- Employer Performance Evaluations
- Judicial Council
- Presiding Judge
- Ombudsperson

- Court-Watching
- League of Women Voters
- The Press

Why Are Effective Complaint Procedures So Vital to the Gender Bias Reform Effort?

Grievance mechanisms may be viewed as a “court user’s right” as part of our concept of public institutions in a democratic society. The gender bias movement seeks to change the normative environment of the courts. With respect to gender bias, that means establishing norms about what kind of behavior will not be tolerated on the part of judges, attorneys and court personnel. Codes of conduct backed up by sanctions administered by a duly authorized body of the court are the formal embodiment of those norms. To be of any use in reducing gender bias in the courts, there must also be effective and accessible procedures that channel complaints to Judicial and Attorney Disciplinary Commissions, and these must function fairly with respect to matters within their jurisdiction. In addition, the workings of these commissions -- in terms of identification of the number and nature of the complaints it reviews and their disposition -- must be made public. Without both sanctions that are fairly applied in gender bias cases and reasonable disclosure of information, formal grievance procedures will continue to play a minor role in changing the normative environment of the courts.

Informal complaint mechanisms are intended to educate rather than punish judges whose gender-biased behavior does not rise to the level of a formal complaint. When these mechanisms function effectively, they help to educate judges and others about gender bias in the courts and help prevent gender-biased behavior of a more serious nature. Moreover, the information gathered by the committee or individual receiving these complaints can be extremely useful to Implementation/Standing Committees in their ongoing monitoring, evaluation and new problem identification efforts. With names deleted, the incidents that come through these channels provide vivid anecdotes and examples that can be quite effective in judicial education. In 1999, the New York Committee on Women in the Courts published a booklet presenting bias incidents reported to the Committee within the prior five years with questions about how the reader would handle these cases and suggested courses of conduct.³⁶

³⁶ This booklet, *On the Bench: Judicial Responses to Gender Bias*, is available from the New York State Judicial Committee on Women in the Courts, 25 Beaver St., Room 878, New York, NY 10004, phone (212) 428-2794, fax (212) 428-2793 or email jgoodman@courts.state.ny.us.

What Models of Formal and Informal Complaint Procedures Are Available and What has Been the Experience of Different States?

Participants at the *Maximizing Our Gains Conference* reported very different experiences with *formal* complaint procedures in their states. At one end of the continuum are states whose Judicial Conduct Commissions operate in secret and disclose no information to the legal community or the public regarding the number and types of complaints received or their disposition. California may be the end point on the other end of this continuum. During the past decade the Judicial Conduct Commission came under intense fire from many sources. This led to a system overhaul. Today, a woman is the Executive Director and there is no longer a majority of judges among its members. When probable cause is found, the hearings are open. This ensures that egregious problems are not swept under the rug.

With respect to *informal* complaint procedures, the models tried in different states are even more diverse. The *Implementation Resources Directory* describes the efforts of California, the District of Columbia, New Jersey, New York and Puerto Rico. In addition, Conference participants learned that:

- **Utah** has a subcommittee of its Implementation Committee that receives calls. Callers are told to send their complaints in writing. The Committee makes it clear that it cannot address case outcomes, only behavior. The subcommittee's mandate is to educate.
- **New Jersey** also has an ombudsperson who receives complaints from litigants and others, which are then fed into the regular system.
- **California** has a Rule of Court that establishes the judge's affirmative duty to prevent bias of any kind. The Court Rules also require creation of local court/bar committees composed of judges, lawyers and court administrators to develop and maintain informal procedures for receiving complaints related to bias in the courtroom. These are known as "Just Knock it Off Committees" because the offender is told informally to simply 'knock off' the offensive behavior.
- **California** also has a code section with a controversial new provision requiring that judges have a "duty to report" other judges who violate the code. If they do not, they can be punished. At the *Maximizing Conference* a California judge related a situation in which she had received numerous harassment complaints about another judge from his court staff. She knew that if it came to light that she was aware of his misconduct and did not report it, she herself would be disciplined.

Some states are experimenting with novel approaches where gender bias concerns are “piggy-backed” onto other court programs such as “Courts and the Community.” When such initiatives include a court consumer “feedback” or complaint mechanism, the Implementation/Standing Committee might be able to insert its concerns and ensure that complaints concerning gender bias are channeled to the proper entities for action.

Unfortunately, despite creative, and in some states extensive, activity in this area, complaint procedures remain the most frustrating and difficult component of The Institutionalization Plan. The most effective model at the *informal* level seems to be one that cannot be brought about by legislation or court rules. This involves the actions of a highly respected, assertive Implementation/Standing Committee chair working through personal contacts to get the message across clearly to the offender. (See New Jersey and New York experiences described in the *Implementation Resources Directory*).

Why Is This Component of Institutionalization So Difficult To Achieve?

At the formal level there is always the tendency to protect one’s own, as well as lack of awareness or denial that the problem exists. On the informal level, there has been little success due to resistance. Opponents claim that an informal process will undermine judicial independence. One big issue is what to do with anonymous complaints; a related issue is how to ensure the confidentiality of the complainant and the offender. Fear of reprisal is quite high among attorneys, especially those practicing in small jurisdictions. Thus, one state wanted to protect the identity of the complainant because of the power differential. But judges said this was giving people power to complain with no way for judges to respond. When the informal complaint system functions as an educational—not punitive—system, resistance in the form of concerns about “due process” are not unfounded, but are sometimes overblown.³⁷ What kind of grievance mechanism will work depends on the local legal culture.

³⁷ Suggestion: At the informal level, anonymous and signed complaints should be handled differently. Verbal anonymous complaints should be recorded in the tallies according to the category of complaint, and the incident noted for the offender under “anonymous complaint.” Written anonymous complaints should be forward directly to the offender without discussion or action by the committee. Signed complaints, in contrast, are “actionable,” meaning that the committee will discuss them and a member will talk to the alleged offender with the intent of education. The complaint (without identification of the offender) goes to the Implementation/Standing Committee for multipurpose use, including judicial education.

Two important steps for Implementation/Standing Committees are: To educate the state judicial conduct commission and attorney disciplinary commission about gender bias (if there have been changes in the codes of conduct regarding gender bias, there may be more receptivity to such education), and (2) to join with other entities to press for reforms so that the disposition of complaints brought to the formal disciplinary commissions is made public.

9. Initiatives to Ensure Gender Fairness in the Judicial Nomination, Election, Performance Evaluation and Disciplinary Processes

Relevant Readings: IRD p. 75

The judicial nomination, election, performance evaluation and disciplinary processes are all areas in which gender bias may be a factor. Implementation/Standing Committees have an important role to play in reforming and monitoring each of them. A good name for a subcommittee focused on these issues can be borrowed from the Massachusetts Gender Equality Board, “The Judicial Excellence Committee.”

To increase the number of female and minority judges, several Committees have worked with women’s and minority bar associations to present programs on how to run for elective and appointive office.³⁸ In the screening process for judicial nominations and elections, it is important both that female candidates not be discriminated against and that all candidates be vetted for their awareness of gender issues. At the *Maximizing Our Gains Conference*, Maryland’s Assistant State Court Administrator reported that in Maryland the percentage of women judges has risen from six to twenty percent in large part because of the work of the Select Committee on Gender Equality. The Committee pressed successfully for a new judicial application form that asks about bias complaints against the candidate and memberships in discriminatory clubs. It urged the judicial nominating committee to give credit for domestic relations and juvenile justice work, which is more often done by women than men and often disdained by screening committees as second-rate legal experience. Also, the Committee passed a resolution urging nominating commissions to ask candidates questions about sensitivity to gender issues. As a result, candidates call for copies of the Task Force report so they can be prepared.

In Colorado the Standing Committee undertook a major project to train the state’s judicial nominating commissions on their role in full. This one-day training, presented by the Committee’s co-chairs – the Chief Justice of the Supreme Court and the Court Administrator – focuses on the qualities of a judge and how to identify them in applicants. The Colorado Committee created a video to use in these trainings. This video and the Utah Training Program for

³⁸ For information on this kind of program contact the Georgia Supreme Court Commission on Equality, Administrative Office of the Courts, 244 Washington Street, SW, suite 550, Atlanta GA 30334-5900, (404) 656-5171, jacksonc@supreme.courts.state.ga.us.

judicial nominating commissions are described in the *Implementation Resources Directory*.

Colorado also encountered a problem often reported from other states concerning the membership of judicial nomination commissions. Frequently these commissions are composed of lawyers who are mostly men and lay persons who are largely women. The professionals intimidate the lay persons, so the women have little or no voice in the process. The co-chairs of Colorado's Standing Committee had a teleconference with a male attorney on one commission who was ultimately removed because of his sexist attitudes. Implementation/Standing Committees should be alert to the composition and deliberations of the judicial nominating commissions in their state and be prepared to intervene if necessary.

Judicial performance evaluations are another problem area because they are often rife with bias against judges who are women and people of color.³⁹ An important way to minimize this is to change from the typical evaluation instrument that allows for highly subjective comments to a performance-based instrument such as that developed in North Carolina. This instrument asks very specific questions about the judge's behavior, e.g.,

- Does the judge follow legal precedent even when it goes against the judge's strongly held personal belief?
- Does the judge read files and materials submitted by a counsel?
- Does the judge use intimidation to maintain control of the courtroom?⁴⁰

Faulty design of the performance evaluation instrument and lack of scientific sampling procedures are other sources of bias in performance evaluations. Implementation/Standing Committees should investigate this matter and press the performance evaluation commissions to hire social science experts to conduct the study.

The problems in the judicial disciplinary process are discussed in *Key Component 3, Education in Gender Issues for Judges, Court Personnel and Judicial Disciplinary Commissions*.

³⁹ See Christine M. Durham, *Gender and Professional Identity: Unexplored Issues in Judicial Performance Evaluation*, THE JUDGES' JOURNAL, Spring 2000 at 11.

⁴⁰ E. Lee Bernick & David J. Prato, *A Behavior-based Evaluation Instrument for Judges*, 18 THE JUSTICE SYSTEM JOURNAL 173 (1995).

10. Initiatives To Ensure Gender Fairness in Court Employment

Relevant Readings: IRD 40-47

The New York Task Force on Women in the Courts observed that “the unequal opportunity for women in the court personnel system...[has] implications for the ways judges and court personnel carry out their judicial and administrative functions.”⁴¹ The Gender Bias Task Forces reported that women court employees are consigned to the low status, low paying jobs throughout the court system, with minimal training or opportunity for promotion; that courts lack family-friendly employment policies; that court managers lack managerial skills; and that gender discrimination and sexual harassment are part of the reality in the court system as in all other institutions. The Task Forces also made numerous recommendations to address these findings and Implementation/ Standing Committees have pursued a variety of projects and policies to address these problems.

What Strategies Can We Use To Ensure Gender Fairness in Court Employment?

Lower level court personnel, the vast majority of them women, need training to understand where their work fits into the work of the court system and to rise in that system. The Massachusetts Gender Equality Board focused on enhancing education and opportunities for the court’s ninety percent female support staff. A survey produced 600 responses from these women giving the specifics of the kind of training they wanted. In response, the Equality Board established a Support Staff Education Committee. It created a brochure about court personnel’s rights and the resources to uphold them, conducted a brown bag seminar series in courts throughout the state, and developed a three-year support staff training program to professionalize these women.⁴²

Professionalizing the women who are ninety percent of court staff must be a high priority. This is a core competency for the court.

*Lois Frankel
Coordinator for Gender Issues,
Massachusetts Trial Court*

Surveying court staff can be tricky. At the *Maximizing Our Gains Conference* Maryland reported that on its original Task Force survey the lowest return rate was from court employees who were worried about what would be

⁴¹ *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URBAN LAW J. 11(1986-87).

⁴² See the *Implementation Resources Directory* at 44-45.

done with their answers. Presumably a survey asking court employees what they need to be better workers should be less threatening than a survey asking about bias in the system. But even the “better worker” approach implies criticism of the system for allowing problems for employees to exist or fester. Thus, in surveying or holding focus groups for court employees, clarify at the outset that their response will be both anonymous and confidential.

Also at the *Maximizing Conference* Colorado’s Court Administrator and Gender and Fairness Committee co-chair detailed the strategies to ensure fairness in employment that he successfully introduced there. After describing his Model Hiring Process and Behavior-Based Interviewing, he noted that you cannot sell employment programs like these by saying they are about discrimination. They must be marketed on the “what’s in it for me” model. The “carrot” is: this approach will produce better employees and fewer discrimination suits, which means money saved for the court system. At first the Colorado court system said it could not offer flextime. Now it is seen as a way to attract qualified employees and fill difficult positions. There is now mandatory training on codes of conduct, sexual harassment and the business of the courts for all new court employees, with special training for supervisors who require different administrative skills. When this training began there were one hundred employment-related complaints each year; in 1998 there were six.

How Can We Address Issues of Sexual Harassment in the Court System?

Colorado’s Court Administrator reported that when he introduced a sexual harassment policy and training for the judiciary there was tremendous resistance. The chief justice asserted there was no need for a policy because there were no problems of this nature. But the Court Administrator used liability as the hook and called the training “How Not to Kiss Your Assets Goodbye.” At the first program the judges became very upset at what they heard about the nature and incidence of sexual harassment by judges in the Colorado courts. This paved the way for a second program at which small groups discussed actual Colorado cases of sexual harassment by judges and women judges felt comfortable enough to say there was indeed a problem. These two programs produced a culture change, but it took ongoing attention to the issues from the top of the court system before the training could acquire legitimacy.

Implementation/Standing Committees have frequently been the initiator of sexual harassment training for judicial and non-judicial court personnel. In addition to the Colorado programs noted above, Massachusetts and Washington State have training programs that can be replicated, and Massachusetts and New York produced court conduct handbooks on the issue. California developed

Workplace Sexual Harassment Awareness and Prevention: A Model Judicial Education Curriculum for Trial Courts that can be replicated with a State Justice Institute curriculum adaptation grant, at pages 41-4, *supra*. For more information about all these programs and materials see the *Implementation Resources Directory*.⁴³

How Can We Enhance Fairness in the Hiring of Judges' Personal Staffs?

Fair hiring practices on judges' personal staffs are a key problem. At the *Maximizing Conference* Florida reported that the statistics in this area are terrible, especially with respect to people of color. The Florida Fairness Committee established an EEO subcommittee which is seeking to bring these positions under general recruiting so there will be a more competitive process. Typically, judges bring their secretaries with them from their prior jobs rather than advertising the position. As a result Florida's judicial secretaries are ninety percent white females. The EEO subcommittee has developed recruiting materials primarily targeted at minorities. Colorado reported that hiring for judges' personal staffs was a hard issue to broach in that state as well, but presenting it at new judges school as "how to hire to avoid liability" created widespread interest. Judges are now eager for the training and wish they had it earlier in their careers.

⁴³ At 46-47.

11. Data Collection Necessary To Monitor Gender Bias in the Courts

Relevant Readings: IRD 52-53; GBTF Manual 29-39; Planning for Evaluation, p. 6-9, 16-17.

Identifying the different forms of gender bias in the courts and monitoring their course over time requires the collection and analysis of both quantitative (statistical) data and qualitative data. Qualitative data, which are obtained through interviews, focus groups, public hearings and courtroom observations, generally poses little difficulty to Task Forces and Implementation/Standing Committees since there are people available inside and outside the court system who can be tapped for this purpose. (See *Key Component 14. Periodic Evaluation to Assess Implementation Efforts, Analyze their Effects on Reducing Gender Bias and Identify New Problems.*) This is not the case for quantitative data, however. The dearth of relevant, retrievable statistical data led the Task Forces to recommend that such data be routinely collected and made publicly available. Unfortunately, the lack of these crucial data persists. Their unavailability remains a serious obstacle to Implementation/Standing Committees throughout the country in their evaluation efforts and in ongoing monitoring and new problem identification.

Lack of ongoing data collection and monitoring means we don't know when our solutions are backfiring.

Bobbie Welling

Program Attorney,

California Center for Judicial Education and Research

What Does the Term “Statistical Data” Mean?

Statistical data refers to numerical data, which may involve straightforward tabulations or advanced statistical techniques. Examples of simple tabulations would be: (1) the number of female attorneys compared to male attorneys who were appointed to important fee generating positions in a given court system during a given period; (2) the rate of dismissal of domestic violence charges compared to the dismissal rate for all case categories; and (3) the number of mental examinations ordered for males compared to females.

Advanced statistical tests can be applied when the samples are large enough and enough information is available. In the first example, if the sample was large enough, and information such as attorneys' years of experience, or the pool of available female attorneys relative to male attorneys was known, a statistician

The plural of anecdote is data. They add up.

Jill Laurie Goodman

Counsel,

*New York State Judicial Committee
on Women in the Courts*

could perform the statistical technique called “regression analysis” to determine to what extent the attorneys’ gender was a causal factor in the selection.

Databases in the court system are large (sometimes enormous) sets of statistical information on particular categories of cases. They are created by entering (manually or by electronic scanning) specific data elements (e.g., gender, number of children, length of sentence) into a computerized system. These databases allow evaluators and other researchers to use computer software to retrieve information that can then be statistically analyzed according to the particular issues under study. It will be up to the Implementation/Standing Committees to identify the specific information that needs to be collected in addition to case outcome in order to assess whether gender bias has been a factor at any point in decisionmaking.⁴⁴

The New York Task Force on Women in the Courts suggested that court administrators gather data to monitor child support awards. Today, under the Child Support Standards Act, the Chief Administrator of the New York Courts must annually report statistics to the Governor and the Legislature on all cases in which awards are made pursuant to the Act. This includes the incomes of the parties, the number of children, the amount of the award, and any other support, maintenance or property allocations in court orders or judgments that include awards under the Act.

Another family law database is being generated in New York. In 1994 court rules were amended to require parties in both contested and uncontested divorce matters to submit demographic information and financial data using a form developed by the New York Judicial Committee on Women in the Courts working with the court system. These data are being recorded electronically.

There are other important uses for databases besides research. For example, Minnesota established a statewide computerized database for orders of protection because of legislation recommended by its Task Force and Implementation Committee. This database allows police in squad cars and judges on the bench to have immediate access to defendants’ complete history and record of domestic violence.

⁴⁴ See *Planning for Evaluation* at 6-8.

How Can Implementation/Standing Committees Obtain the Statistical Data Needed for Ongoing Monitoring of Gender Bias in the Courts, New Problem Identification and Evaluation?

The computerization and automation of the state courts, an effort now receiving substantial Federal money, provides an unprecedented opportunity for Implementation/Standing Committees to ameliorate the problem. With the new tools brought about through this technological revolution, court systems are reconsidering what data will be collected and through what means. It is a moment when Implementation/Standing Committees should make their needs known, requesting that data elements be added to forms and encouraging the creation of new databases in areas relating to gender bias concerns. Although pursuit of these objectives leads Committee members into unfamiliar territory (social science research), the potential payoff is well worth the effort.⁴⁵ Without statistical data to establish baselines for judicial processes and case outcomes, one cannot assess change in the future, one of the key tasks for the Standing Committees. The advice given to Task Forces in the 1989 guidelines in *Planning for Evaluation* is as valid now as it was ten years ago: “The most important recommendation a task force can make to facilitate evaluation [and ongoing monitoring and problem identification] is that the court system create and maintain data bases about all the areas of concern where data can be readily collected.”

The Georgia Supreme Court Commission on Equality has taken advantage of this “historical moment” to have input into what new data its courts will collect. The Committee is working with the Georgia Courts Automation Commission as it develops databases to provide better statistics on domestic violence cases going through the courts. The Committee is also working with the Georgia Crime Information Center to develop a registry of Temporary Orders in domestic violence cases.

When an Implementation/Standing Committee undertakes an evaluation of its work or seeks to investigate a new gender bias problem, members should first think carefully about what data are needed to accomplish the task at hand. One obvious “data element” needed to study any aspect of gender bias is *gender* itself. Many court records lack information on the gender of the attorneys and parties. With respect to specific issue areas, one must work backwards: What is the question to be answered and what data are needed to answer it? For

⁴⁵ Implementation/Standing Committees that seek to collaborate and form alliances with other entities both inside and outside of the court system will find this effort less difficult. Those that have a diversified membership, including participation of social scientists, may have the needed expertise readily available to them.

example, a substantive evaluation of the effects of new legislation (recommended by the Task Force) prohibiting judges from issuing mutual orders of protection absent cross-petition requires information about whether judges are still issuing mutual orders and if so, under what conditions. Those engaged in ongoing monitoring of gender bias in juvenile law would want data on the sentencing of male and female juveniles according to type of offense and number and type of prior offenses to evaluate any differential in sentencing.

Once the Implementation/Standing Committee has identified the issues it wants to examine or anticipates examining in the future, it should seek collaboration with those who collect data and conduct research in the court system. Research staff might be invited to Committee meetings and provided with Task Force reports. The goal should be to forge a collaborative relationship between the Committee and the research staff for the long term, not just for a single study.

If research staff members are able and willing to collaborate with the Committee, the next step should be to determine which data already exist in the system and need only to be retrieved and analyzed. Since most court systems today identify the race/ethnicity and gender of defendants in criminal cases, the data for monitoring differential sentencing in juvenile law might be easily available. In most areas, unfortunately, the data the Committee needs will not be retrievable, because they were never collected in the first place. If this is the case, the Committee should enlist the research staff's assistance in determining what steps would be necessary to obtain the needed data.

Since the technological trends afford a distinct opportunity to secure urgently needed data, a good case can be made for thinking through the whole gamut of databases important to gender bias reform concerns, including topics that were not studied by the state's own Task Force but were identified as problematic by other Task Forces.

Whenever possible, try to have included in legislation on areas of interest to the Committee reporting requirements which mandate court administrators to report statistics annually to the chief justice, the governor, the legislature or other court-related entities.

Should We Expect Resistance Within the Court System in Our Efforts to Secure the Statistical Data Needed for Gender Bias Reform Efforts?

Yes. Such resistance comes from the following sources: (1) “gate keepers” (court administrators or research staff) unfamiliar with or hostile to gender bias reform efforts; (2) overburdened clerks who balk at requests to collect more data because it increases their workload; (3) attorneys who do not want to disclose certain information, such as financial data in divorce cases; and (4) individuals ideologically opposed to government collection of statistics for purposes of social analyses.

Despite these obstacles, Implementation/Standing Committees should persist in their efforts to secure the data needed to show whether and how gender bias is operating in the court system. Veterans of the Task Force phase know how the lack of adequate statistical data complicated their task, making them vulnerable to critics who attacked the credibility of their work because of lack of “objective,” “hard” data. As we enter the 21st century, gender bias in the courts is widely acknowledged to exist, but this has not eliminated the resistance of some individuals, and in some states the court system as a whole, to facilitating its study. *After all, what we don’t know about we won’t have to fix.*

Participants at the *Maximizing Our Gains Conference* suggested several strategies to overcome obstacles to data collection:

- Change court rules to require completion of new data collection forms or new sections in existing forms;
- Ensure that relevant legislation includes reporting requirements;
- Forge alliances with other court committees that share concerns in seeking new databases;
- Establish collegial working relationships with members of the court research staff, educating them about gender bias issues and enlisting their assistance in resolving data collection matters.

Validity, Reliability And Generalizability

The worth and credibility of data gathered by any social science research method or technique depends on their **validity**, **reliability** and **generalizability**. **Validity** means that you are measuring what you think you are measuring. For example, few female judicial candidates put forward by a judicial nominating commission would *not* be a valid measure of gender bias if the female applicant pool had been very small. **Reliability** refers to the consistency in responses among the same respondents at different times or among different observers or coders at the same time. For example, if three court watchers identify the same behavior of a particular judge as an instance of gender bias, we would say there is high reliability. But if there is disagreement among the observers, the reliability rating would be low. **Generalizability** refers to the extent to which the responses of a particular sample of respondents can be legitimately generalized to a larger defined sample. Findings should be generalized only as far as warranted by the sampling procedures, which determine how representative the sample is of the larger defined population.

If the Court System Cannot Routinely Collect the Statistical Data We Need, Are There Other Ways to Obtain Them?

Clearly there are limits to the kinds of statewide data that can routinely be collected and analyzed. That is why it is so important for Implementation/Standing Committees to think carefully about what they need to know to answer specific questions. Another strategy is to initiate “window” studies that collect data on a particular matter during a specific period of time, perhaps in a sample of jurisdictions selected according to relevant criteria. Since the time period is limited, the court personnel who are to collect the data will be more likely to cooperate. The data gathered will give provide a snapshot of what is going on in that jurisdiction at that moment in time. If the findings reveal a problem, the Committee can argue for a more extensive investigation.

If the Committee has funds, original data (both quantitative and qualitative) can be collected through studies sub-contracted to other entities. Since this level of solvency is unlikely, a more fruitful route is to form alliances and collaborate with others. Although academics have their own research agendas and are unlikely to conduct a study strictly on behalf of the Committee (especially without funds!), they might encourage advanced graduate students under their supervision to investigate relevant problems. As described in the *Implementation Resources Directory*, two Harvard law students undertook an independent evaluation of the impact on New York City courts of the domestic

violence recommendations of the New York Task Force on Women in the Courts and published their findings in a law journal.⁴⁶

⁴⁶ Sarah Eaton & Ariella Hyman, *The Domestic Violence Component of the New York Task Force on Women in the Courts: An Evaluation and Assessment of New York City Courts*, 19 FORDHAM URB L.J. 391 (1992). See *Implementation Resources Directory* at 105.

12. Collaboration and Alliances With Other Groups and Individuals Inside and Outside the Court System.

Relevant Readings: IRD 147-154

Collaborations and alliances with other groups and individuals inside and outside the court system are essential to leverage and magnify the efforts of Implementation/Standing Committees and to ensure that those Task Force recommendations which fall outside the purview of the courts are implemented. Other groups can extend the Committee's reach. They can take on activities inappropriate for judges (such as lobbying for new substantive laws) and raise issues that those inside the courts cannot. In addition, these groups can monitor the Committee's implementation progress and initiate new activities. The Committee should be proactive and invite representatives from court divisions and commissions, bar associations, law schools and community and civic organizations to meet with the Standing Committee to discuss possible collaborative projects.⁴⁷

Bringing in outside organizations solidifies Implementation/Standing Committees by giving others a continuing interest in our going on.
Justice Barbara Madsen
Washington State Gender and Justice Implementation Committee

What Are Some Examples of Successful Collaborations and Alliances?

At the *Maximizing Our Gains Conference*, and in the post-conference period, participants offered numerous examples of how they developed collaborations and alliances and the benefits that ensued. The most extensive came from California, where collaboration with the Judicial Council, the policy-making body for the California court system, has produced true institutionalization. As recounted in the Judges' Journal article *Gender Bias and the Institutionalization of Change*⁴⁸ in Appendix E, the *Maximizing Conference* inspired a California judge on the conference steering committee to initiate a thorough review of the status and impact of the California Task Force's recommendations on her return. Working with the State Court Administrator and key legislators, one of whom was on the

⁴⁷ See Key Component 15. *Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender-Fairness Concerns* for a detailed discussion of this critical point.

⁴⁸ Judge Judith McConnell and Kathleen F. Sikora, Esq., *Gender Bias and the Institutionalization of Change*, THE JUDGES' JOURNAL, Summer 2000 at 13 in Appendix E.

original California Task Force, the judge arranged to have the Judicial Council examine the status of the recommendations from all the groups covered by the Judicial Council Advisory Committee on Access and Fairness at one of its Issues meetings. The examination distinguished carefully between “checkmarks and change” (see *Key Component 14. Periodic Evaluation to Assess the Task Force’s Implementation Efforts, Analyze Their Effect on Reducing Gender Bias in the Courts and Identify New Problems*). In their preparations for this meeting, Council staff found that a very high percentage of recommendations could be checked off as having been “done,” but they needed to know much more to assess if there had been any change. As a result of this assessment, the Judicial Council first identified twenty-two issues as possibly meriting further action. Of these, the council selected nine on which to focus, and committed itself to periodic progress reviews. This institutionalization of concern for bias-related issues is what we have been striving for. We hope that California’s lead will be widely followed.

Maximizing Conference participants from other states provided many other examples of successful collaborations and alliances. *Key Component 2. Staff and Funding to Carry Out the Work of Implementation on a Long Term Basis* describes how the Georgia Commission on Equality partnered with the Georgia Public Trust and Confidence Commission on its hearing and survey to ensure that those with bias-related concerns were heard from and to develop information needed for its own work.

Other forms of collaboration are illustrated by the work of the New York Judicial Committee on Women in the Courts with the local committees it established as well as with groups outside the court system. As noted earlier, this Committee created a network of Gender Bias Committees in each of the state’s districts and institutionalized a once-a-year meeting that brings all the chairs together. These local committees work independently and also look to the Judicial Committee for suggested projects, such as programs for Domestic Violence Day and Women’s History Month and awards ceremonies to recognize committee staff and others who have made significant contributions. An example of collaboration outside the court system is the Judicial Committee’s work with the Lawyers Committee Against Domestic Violence. With funding from the Soros Foundation, these two committees published a lawyers’ manual on representing domestic violence victims, available in hard copy and on the net, edited by the Judicial Committee’s counsel.⁴⁹

⁴⁹ LAWYER’S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM. Jill Laurie Goodman & Julie Domonkos, eds. Located on <http://www.probono.net> in the Family Justice/Domestic Violence section under New York. To receive a hard copy of this publication contact: Jill Laurie Goodman, Office of Court Administration, 25 Beaver Street - Room 878, New York, NY 10004. (212) 428-2794, jgoodman@courts.state.ny.us.

Alaska's delegates to the *Maximizing Conference* provided an example of the breadth of court and non-court entities that can be mobilized to work on Task Force-related issues. They described a domestic violence summit that included the Tribal Courts, judges associations, bar associations and the state bar foundation, law schools, legislators, academics, the League of Women Voters, Girl Scouts, physicians, mental health counselors, public schools, NOW, other women's advocacy organizations and Rotary.

Knowing that other people care about this issue has given our Committee strong motivation to carry on.

Theresa Carns

Senior Staff Associate,

Alaska Joint State-Federal Courts Gender Equality Task Force

Also at the *Maximizing Conference* an Alaskan judge advised that in addition to cooperation as a strategy to mobilize other organizations, guilt and public recognition are also effective. She related that changes to the Alaska codes of judicial conduct and professional responsibility and certain bar rules were stalled until a brouhaha over the absence of a single woman lawyer's name from Martindale-Hubbell's AV ratings list for the state. After the Alaska Task Force received a grant in support of its publication, *Alaskan Women's Legal Rights Handbook*, from State Farm Insurance, it put the company's name on the cover.

Thus far we have focused on the Implementation/Standing Committees reaching out to other groups to form collaborations and alliances. Sometimes however, individuals either as representatives of groups or as concerned citizens, contact Committees and organizations working in this area to ask how they can be of help. They can be invaluable resources. See Appendix F for examples of inquiries the National Judicial Education Program has received from such people and NJEP's suggestions for them.

How Can Implementation/Standing Committees Work with Bar Associations?

Maximizing Conference participants highlighted the importance of working with bar associations. *Key Component 6. Legislation Recommended by the Task Forces and Implementation Committees* describes how these Committees have worked with bar associations (and other court committees) to secure passage of desired legislation.

The *Implementation Resources Directory* describes many successful collaborations between task forces and bar associations.⁵⁰ The Alaska Joint

⁵⁰ At 147-151.

State-Federal Gender Equality Task Force decided to become a section of the Alaska Bar Association because the bar has resources. The new section is seeking to have an impact on the entire association by developing guidelines for CLE programs that require diversity among the speakers.

The Massachusetts Gender Equality Board used a combination of strategies to bring about a joint committee of six bar associations to pursue Task Force concerns. *Maximizing Conference* participants discussed using celebrations as a strategy to promote the Implementation/Standing Committees' accomplishments and draw new recruits to their work. As a result, the Gender Equality Board decided to have a tenth anniversary celebration. The Board appointed a planning committee of "insiders" from the Board and "outsiders" from six area bar associations, which the Board had always wanted to become more involved. Because of their involvement in the planning process, these bar associations were mobilized to create their own Joint Committee on Gender and Justice to pursue independently issues related to the courts and to women in the legal profession.

As the first public announcement of our new state agency I want to say that I have followed the work of the [Gender Equality Board] for many years and want to offer our assistance to work with you to continue the momentum.

Priscilla Golding

Director,

Massachusetts Commission on the Status of Women, at the Gender Equality Board's 10th Anniversary

Previously the Equality Board worked with fourteen local bars statewide to place domestic violence resource pamphlets in the courts.⁵¹ At the *Maximizing Conference* the lead staff to the Equality Board observed that although the implementation effort has had significant success in Massachusetts, it would have been more effective had the chief judge of the trial courts permitted the Board to work in collaboration with others. She pointed out that when the Committee undertakes projects by itself with no collaborators, it risks getting the run around from those in power because it is seen as having no supporters. Working behind closed doors also makes the Committee lose touch with other people who think this work is valuable. Under the new chief judge of the trial courts, the Equality Board plans to reposition itself to advocate with others who should be joining in this work.

The Georgia Equality Commission has forged a close alliance with the Georgia State Bar Association, enabling the Commission to present important education programs to bar audiences. Each year the Commission presents a program for judges and lawyers at the bar's annual and mid-year meetings, covering issues such as domestic violence, the impact of domestic violence on

⁵¹ See *Implementation Resources Directory* at 148.

children and issues for immigrant women. The Commission reports that the audience is usually half judges/half lawyers, and that there is always maximum attendance.

The importance of having Implementation/Standing Committee members in other key roles is born out by the experience of a judge on the *Maximizing Conference* steering committee who won a seat on the Illinois Board of Governors. From that vantage point she has been able to ask every bar committee to examine the points in the original Task Force report to see how they relate to that committee's work and otherwise further that agenda.

In the post-conference period the Washington (State) Supreme Court Gender and Justice Commission focused on outreach to other organizations to maximize its own resources. It invited Washington Women Lawyers, the Seattle/King County Bar Association Committee on Equality, the Northwest Women's Law Center and the Women's Center at Washington University to attend Commission meetings to learn what the Commission was doing and what they could do together. Some members of these groups were members of the Commission and these joint meetings revitalized them. The Commission went on to present a joint CLE with the two bar associations. The Washington Commission then collaborated with the commission on minorities, the state's minority bar associations and several law professors to present the National Judicial Education Program's *When Bias Compounds: Ensuring Equal Justice for Women of Color in the Courts* at two programs for several hundred attendees. SJI funded these programs with a curriculum adaptation grant.

The Massachusetts Gender Equality Board offers these tips for mobilizing related organizations to implement Task Force and Implementation/Standing Committee recommendations:

- ***Reach out broadly, though thoughtfully.***
- ***Develop a sense of ownership on the part of those you are attempting to mobilize.***
- ***Demonstrate to prospective participants the support of leadership.***
- ***Start with a clear, achievable objective or project.***
- ***Provide individual, personalized attention.***
- ***Make it "easy."***
- ***Make them, and their new (re)commitment to this work, visible.***

13. Wide Diffusion of Task Force and Committee Findings and Initiatives Throughout the Justice System and the Community

Relevant Readings: IRD 76-83, 147-154

The findings and initiatives of the original Gender Bias Task Force and the Implementation/Standing Committee must be widely diffused throughout both the justice system and the community through broad distribution of reports and other publications and personal communication. This outreach educates different groups about gender bias in the courts and helps to overcome one of the most important barriers to achieving gender fairness in the courts: the widespread assumption that gender fairness will disappear on its own as younger people come to the bar and bench.⁵² For justice system agencies such as district attorney/public defender offices and the police, Task Force and Committee reports can also prompt needed internal reforms by identifying sources of gender bias in their own agencies, particularly in their handling of domestic violence and sexual assault cases. To be effective, the reports must be transmitted with a personalized cover letter from the Committee chair that draws attention to those aspects of the report of particular significance to the recipient. The cover letter should include information on training programs available from sources such as the Family Violence Prevention Fund,⁵³ the National Institute for Women and Policing⁵⁴ and the National Judicial Education Program.⁵⁵ The letter should also request an opportunity to meet with the recipient organization to discuss how it and the Committee can support each other's work.

Community organizations, including academic institutions, should be made aware not only of the Task Force and Committee's work, but also of the critical role outside entities can play as a *constituency* of the court system that demands gender fairness in access to and treatment in the courts. In the early 1980's, as the gender bias in the courts reform effort got underway, judges

⁵² This assumption is erroneous on two grounds. First, sexist stereotypes and biases are too embedded in our culture to be excised absent conscious effort. Second, gender bias often results from a lack of knowledge about the social and economic realities of women's and men's lives. No one is born knowing, for example, why battered women remain in abusive relationships or that nonstranger rape is more psychologically damaging than rape by a stranger. Thus, it is important that every entity connected with the justice system grasp the reality of gender bias in the courts and educate its personnel to overcome it. It is also important that community organizations understand the nature and consequences of gender bias in the courts in order to educate their own members and the public.

⁵³ www.fvpf.org

⁵⁴ www.womenpolice.com

⁵⁵ www.njep.org

throughout the country were called upon to engage individually and collectively in self-scrutiny of both their decisionmaking in gender-related areas and in their interactions with women in the courts. This came about because of the activities of the NJEP and its broad network of lawyers and judges pushing for change *within* the judicial system, and in response to large, vocal constituencies in communities throughout the nation which had been mobilized by the women's movement to form a constituency *outside* the system to demand judicial reform of gender bias in the courts. Today, the judiciary is once again engaged in self-scrutiny, this time triggered by widespread concern about the public's trust in and satisfaction with the courts. As we enter the twenty-first century, the time is ripe for community organizations to mobilize once again and insist that the courts keep gender fairness as a distinct high priority focus, and not allow it to be swept under the judicial rug or dissolved in broader initiatives. Some organizations, such as the League of Women Voters, Church Women United and domestic violence/sexual assault coalitions, which have court watching programs, are well suited to become active partners with Implementation/Standing Committees in the ongoing gender bias reform movement. The Committees are pursuing a variety of strategies to ensure that their work and gender fairness issues are known in diverse venues. For example, the Alaska Committee has a project to ensure that procedures and decisionmaking in Youth Courts, in which young people judge each other, are bias free.

Academic institutions have an important role to play because of their educative and investigative functions. Implementation/Standing Committees should reach out to academics and encourage them to use their publications in courses and to find other ways to disseminate the findings on gender bias. University students, faculty and staff all have a personal stake in a fair and accessible court system. Colleges and universities are engaged in teaching young people about the realities of their society – including problems of bias within the court system – and in preparing them to assume civic responsibility by monitoring local institutions and participating in reform initiatives.

Academic institutions, or at least some academics, can become partners in Committee-sponsored initiatives including the periodic evaluations all Implementation/Standing Committees should carry out. Although academics have their own research agendas, some may be willing or even eager to contribute their research skills and substantive knowledge to Committee initiatives.⁵⁶

⁵⁶ If Committee members lack personal contacts at local colleges and universities, a way to find suitable collaborators is to contact the chairs of women's studies programs or sociology departments. University public relations departments are often good sources for making contacts with faculty and generally have a roster of professors interested in working with community organizations.

Law schools are obviously key recipients of Committee findings and initiatives, and some states have been innovative in their outreach to them. For example, the New Jersey Standing Committee created an Educational/Law School Subcommittee to encourage programs at three law schools. These programs foster inclusion of course materials on how gender bias affects substantive decisionmaking and how to address problems of gender bias experienced by women law students and professors. The work of this subcommittee is seen as a critical means of addressing gender bias before attorneys begin practicing law.

Implementation/Standing Committees can also work with law professors teaching subjects such as feminist jurisprudence and domestic violence and with the Women Law Students Associations to promote attention to these issues.

14. Periodic Evaluation to Assess Implementation Efforts, Analyze Their Effect on Reducing Gender Bias in the Courts and Identify New Problems

Relevant Readings: IRD: 100-105, Appendix D;
GBTF Manual; Planning for Evaluation; NJ Evaluation

Periodic evaluation of implementation efforts is vital and has two aspects: first, to assess the extent to which the Task Force's recommendations have been implemented ("**progress assessment**") and second, to evaluate the extent to which they have reduced gender bias in the courts ("**substantive evaluation**"). In addition to looking backward, another central task for Implementation/Standing Committees is ongoing monitoring and substantive evaluation of gender bias in the judicial system in new areas, as well as in those previously identified by the Task Force.

Don't just focus on what was not done. Be careful to give recognition for what was done.

Lorraine Weber
Judge (retired)
Consultant,
Open Justice Issues
State Bar of Michigan

How Does **Progress Assessment** of Implementation Work Differ From **Substantive Evaluation**?

The most serious threat to effectively implementing the full Institutionalization Plan is the failure of an Implementation/Standing Committee to conduct any kind of systematic evaluation. The second most serious threat is that the distinctions between the two kinds of evaluations blur, and the first becomes a substitute for the second. **Progress assessment**, that is, the systematic investigation of the implementation status of each of the Task Force's recommendations, is a necessary first step. Without it an Implementation/Standing Committee has no map to guide its activities and no basis to assess its own work. But a "checklist" approach that simply locates each recommendation on the continuum from "no implementation" to "full implementation" tells only a part of what we need to know in order to bring about meaningful change.

The significance of the Task Force's work in each state, and the gender fairness reform effort nationwide, depend on effectiveness in actually reducing gender bias, especially in judicial decisionmaking. It is important that Implementation/Standing Committees undertake a **substantive evaluation** that addresses these questions: (1) Has there been and is there still compliance with this reform? (2) If so, is the reform having the effects intended? (3) Are there any unintended and untoward consequences of this reform? In cases where much time has elapsed between the formulation and approval of the recommendation

and its implementation, the evaluation study should also ask (4) Is the specific reform recommended by the Task Force still the most appropriate at the present time?

What is the Purpose of Evaluations Conducted by Standing Committees?

For Standing Committees (or Implementation Committees that take on the functions of a Standing Committee) the purpose of an evaluation is different. The focus is no longer implementing the Task Force's recommendations nor the short-term effects of these reforms. A Standing Committee must stay informed about the ongoing nature and extent of gender bias over the long term in the areas identified by the Task Force, and must also be able to identify and respond to manifestations of gender bias in areas that were either missed by the Task Force and Implementation Committee, or emerged since that time. This requires ongoing monitoring based on both quantitative and qualitative data and periodic intensive evaluation of gender bias in one or more areas of the Task Force's concerns.

Given that evaluation is so critical to the enduring success of the work of the Task Force movement, why have so few states undertaken it? Some of the obstacles were brought to light during the *Maximizing Our Gains Conference*.

What are the Barriers to Evaluation?

Most Implementation/Standing Committees represented at the conference had conducted some kind of **progress assessment** of the implementation of their state Task Force's recommendations. These efforts ranged from a simple checklist approach to the complex, multipurpose Michigan model that showed how a creative evaluation of implementation progress can be used to accomplish many goals at once. At a minimal level, any progress implementation evaluation study should: (1) assess the implementation status of each Task Force recommendation; (2) identify the obstacles to the full implementation of each recommendation and design a strategy to overcome them; (3) assign clear responsibility to Implementation/Standing Committee members to monitor and report on further implementation progress and (4)

In our evaluation, we charted not only by 'was it done,' but by the entity responsible for doing it. That got a lot of response. What you count counts.

*Lorraine Weber
Judge (retired)
Consultant,
Open Justice Issues
State Bar of Michigan*

establish priorities among the recommendations not yet fully implemented according to established criteria of importance and feasibility.

The 1997 Michigan evaluation study, carried out by the state bar association and described on pages 100-101 and in Appendix D of the *Implementation Resources Directory*, shows how an implementation evaluation can be used to accomplish multiple goals. First, it was successful in achieving its “hidden agenda,” which was to use the findings as leverage for the bar to create the Implementation Committee that the Michigan Supreme Court should have created when the Supreme Court Task Force on Racial/Ethnic and Gender Issues in the Court’s issued its final report in 1989. Second, by contacting all entities in the legal system that had been the subject of the Task Force inquiry and alerting them to the forthcoming report, the evaluation sparked action by those who had not implemented the recommendations that fell within their jurisdiction. Third, the evaluation bolstered the prestige and satisfaction of the original Task Force members by demonstrating how much the Task Force had accomplished. Fourth, by investigating to what extent the changes made by the Task Force were perceived as such by others, the evaluation identified an important need to educate the legal community and the public about the Task Force’s accomplishments.⁵⁷

With some notable exceptions, Implementation/Standing Committees across the country have not yet undertaken **substantive evaluation** studies. The principal reasons for this are predictable: lack of resources (money and staff) and lack of confidence regarding how to go about the work. Fortunately, there are ways around these obstacles. Though Implementation/Standing Committees with no budget and/or staff are severely limited, it is possible to do a lot with very little. The key factors are: (1) Carefully defining the purpose and scope of the study; (2) selecting appropriate information gathering techniques (see “*Collecting Data for Substantive Evaluation Studies*” below); and (3) collaborating with other individuals and entities within and outside of the court system.

The first step, however, is to read two documents from the Relevant Readings in the Gender Bias Task Force Library *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* and *Planning for Evaluation: Guidelines for Task Forces*

⁵⁷ The Report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Bias in the Courts and the Legal Profession can be borrowed from the National Center for the State Courts, see Appendix A. To order a copy of this report, and the Executive Summary go to www.secure.inherent.com/michbar/taskforce_rptorder.html. Information about the report is available at www.michbar.org/oj/Reports_finalreport.htm.

on *Gender Bias in the Courts*⁵⁸ — and the Michigan evaluation study. With these guides in hand, an Implementation/Standing Committee will have the tools to carry out a range of substantive evaluation activities.

How Can Substantive Evaluation Be Made More Feasible?

Evaluation studies may seem overwhelming when the scope is defined too broadly. Different areas of the Task Force's work can be evaluated sequentially, as time and resources allow. For example, California put its first evaluative efforts into investigating the effects of the reforms in domestic violence brought about as a result of the Task Force.

One of the strongest themes of the *Maximizing Conference* was the urgency for Implementation/Standing Committees to form alliances and collaborate with others. This is also true with respect to evaluation activities. Specific ideas generated from *Conference* discussions are:

- work with well-trained court watchers.⁵⁹
- find other court committees that have produced evaluation reports in specific areas (e.g., Florida mentioned a very useful Family Law Committee report).
- explore the resources within the court system, especially staff in the court research and information departments and the like.
- encourage bar associations to collaborate on evaluation activities.
- discuss evaluation needs and interests with legal and social scientific academics familiar with the Task Force's work who might be interested in undertaking studies themselves or encouraging advanced students under their guidance to do so.

What Should Be Done with the Research Findings?

There is no sense in doing evaluations if the findings sit on a shelf. Creative thinking is needed to maximize the yield from this effort. An evaluation report will likely spark some interest, at least among those committed to the cause. Even for those who are not, it serves to keep the issue of gender bias on the judicial agenda. The evaluation report should be distributed to the chief justice, the state judiciary, bar associations, Task Force members, individuals and groups from which information was solicited during both the Task Force

⁵⁸ *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications of Other States and Planning for Evaluation for Task Forces on Gender Bias in the Courts* were funded by the State Justice Institute (SJI).

⁵⁹ See *Implementation Resources Directory* at 51.

investigation and the evaluation phases, the press, legislators and national organizations with interest in the issues.

The Task Force might consider inviting the chief justice and other members of the supreme court to a meeting to discuss the findings. The report should also be sent with an individual cover letter to other court committees whose mandate relates in some way to the issues in the evaluation study, together with a request to meet with representatives to discuss possible collaboration. Implementation/Standing Committee members should consider sending out a press release through the Court's Office of Information or Press Relations.

What Should Be the Ongoing Evaluation and Monitoring Activities for Standing Committees?

Evaluation during the Implementation Committee phase focuses on implementing recommendations and the short-term consequences of the reforms effected by the Task Force. As noted above, the purposes of evaluation activities for Standing Committees change over time. With respect to each of the areas in which gender bias was investigated by the original Task Force, the Standing Committee should ask, "What is going on now?" That is, what "old" problems persist and what new problems have emerged? Answering these hard questions requires the Committee to select the appropriate techniques for data collection.⁶⁰ (See *"Data Collecting for Substantive Evaluation Studies"* below.)

We must be alert to identify new problems. For example, child neglect complaints are coming in through the juvenile system in what are really domestic violence cases and must be understood and treated as such.

*Bobbie Welling
Program Attorney,
California Center for Judicial Education and Research*

If several years have lapsed since the Implementation Committee completed its work, and the evaluation activities reveal widespread problems, the Standing Committee should consider requesting that a new Gender Bias Task Force be established to investigate all or some of the problem areas identified.

⁶⁰ Appropriate with respect to the resources available and the kind of information most useful for the purposes identified.

Data Collecting for Substantive Evaluation Studies

Relevant Readings: GBTF Manual 34-39

The mandate of the Gender Bias Task Forces was to study the nature, extent and consequences of gender bias in the courts.⁶¹ To do so, the Task Forces employed a variety of legal and social scientific data gathering techniques. Of particular importance were those that solicited testimony from litigants, victims, parties, court personnel, lawyers and judges who had themselves experienced gender bias in the courts. The data gathering techniques included:

- published and unpublished existing research, studies and statistics;
- public hearings (formal testimony);
- regional meetings (informal but structured discussions with the legal community);
- listening sessions (informal discussions with lay persons);
- surveys of judges, attorneys, court personnel and jurors;
- court watching;
- transcripts; and
- studies to collect new data on specific topics, either undertaken by the Task Force or its court administration staff or sub-contracted

Examining a topic of interest using different data gathering techniques is a powerful way to assess the validity of the findings from any one technique. Gender Bias Task Forces used this “collaborative data sets” approach (also known as “triangulation”) to great advantage. Implementation/Standing Committees should rely on it as well.

Do the Data Collection Methods of Choice for Implementation/Standing Committees Differ from Those of the Task Forces?

Implementation/Standing Committees generally conduct their research and evaluation studies in a different context than the Gender Bias Task Forces. First of all, most have extremely scarce financial and staff resources, if they have any at all. In comparison, Gender Bias Task Forces, in general, were to some extent funded entities. Second, the nature and consequences of gender bias in different areas of the law were largely defined during the Task Force phase of the movement, although, the Implementation/Standing Committee is charged with

⁶¹ GBTF Manual at 25.

identifying new forms of gender bias as well as assessing the status of the previously identified forms. For these reasons, some of the techniques most useful in the task force phase, such as public hearings, regional meetings and surveys, may not be the methods of choice during evaluation.

The most cost effective and efficient approach for Implementation/Standing Committees is reliance on **key informants** and, to the extent possible, relevant statistical data retrieved from the court system. (See *Key Component 11. Data Collection Necessary to Monitor Gender Bias in the Courts.*) Key informants are individuals knowledgeable about a particular problem area and having different vantage points from which to see it. For example, in the area of domestic violence, key informants would include judges who hear such cases, prosecutors and defense attorneys and domestic violence advocates. Key informants can be convened in focus groups or interviewed individually.

What Are the Pros and Cons of Various Data Collection Methods for Evaluation?

- ***Focus Groups***

What are they? Focus groups bring together 6-10 individuals for a structured discussion guided by a moderator or facilitator. There must be an observer to take notes. For Implementation/Standing Committees, focus groups can be an inexpensive and efficient way to investigate a topic. Depending on the purpose of the inquiry, participants can be homogenous, as in groups of attorneys from a specialized practice area, or they can be heterogeneous, as with a designated group of “key informants” in the area of domestic violence, ranging from judges running specialized domestic violence courtrooms to advocates from shelters.

Pros: Focus groups offer the value of give and take and the comparison of different views. There is time to probe responses though questions such as “why might so and so have a different experience?” Focus groups also bring people into the processes of evaluation, ongoing monitoring and new problem identification, increasing the pool of people with a stake in pursuing reforms.

Cons: Depending on the mix of the group, some participants may be inhibited from fully expressing their perceptions, experiences and concerns. In these cases, an individual interview conducted by one or more members of the Implementation/Standing Committee is more appropriate.

Tip: Select focus group participants who will become a constituency to carry recommendations forward. After the group meets, write and thank participants for their time and send them the final report.

- ***Personal Interviews***

What are they? In their evaluation efforts, the Implementation/Standing Committee or one or more members can meet individually with Key Informants and others to learn about their perceptions, experiences and analyses of gender-related occurrences in an area of interest. Such interviews may be formal (using a structured pre-coded questionnaire) or informal (discussion guided by a set of topics).

Pros: Such interviews afford privacy to the respondent and may be easier to schedule than a focus group. Also, there is more opportunity for Committee members to probe responses than there would be in a focus group.

Cons: Without the give and take afforded when small groups of people discuss an issue, the Committee might be unduly influenced by the views of a particular person and draw faulty conclusions about what is really going on.

- ***Surveys***

A survey is a research approach that uses a structured questionnaire (the research instrument) to collect information, usually from a large number of people. The information can be collected by the respondent who fills out the form, or by the interviewer, as in door-to-door or telephone surveys. Surveys can generate both qualitative data (if there are open-ended questions) as well as quantitative data (from pre-coded questions) that can be subjected to statistical analysis.

During their initial investigations many Gender Bias Task Forces conducted surveys which collected and analyzed information on experiences and perceptions of gender bias in the courts in a given state from a variety of respondents: judges, court personnel, attorneys, jurors and others. We learned at

In response to a 1998 attorneys survey on whether the New Jersey Task Force made a difference, a much lower percentage of respondents reported problems than in the 1982 survey, but the problems are still there... The information gained from this new survey helps deal with complacency.

*Marilyn Slivka
Manager, Special Programs,
New Jersey Supreme Court Committee on Women in
the Courts*

the *Maximizing Our Gains Conference* that a few of the Implementation/ Standing Committees represented either had or were considering re-surveying attorneys.

Pros: When properly executed, a survey can yield valuable information and lend credible corroborative evidence to the documentation of gender bias in the courts. A questionnaire on gender bias increases the awareness of those who read and/or respond to it and provides a communication vehicle for those who want to communicate to the sponsoring entity. New Jersey replicated its attorneys survey after ten years and added new questions. The Standing Committee felt it was well suited for their jurisdiction and that the findings were useful in assessing changing perceptions and experiences of gender bias in the courts over time.

Cons: Most Implementation/Standing Committees think that surveys, and especially re-surveys, are not worth the enormous effort and significant expense required to do them well. Since most Committees operate with low or no budget, a survey may be out of the question. Moreover, the kind of information needed by an Implementation/Standing Committee is different from that of a Gender Bias Task Force, and is better suited to other information gathering techniques.

A serious disadvantage of a survey is the inherent contradiction of its alleged benefits. On the one hand, to maximize “consciousness raising” the survey must be distributed as widely as possible. On the other hand, the only way survey findings can be generalized to describe the perceptions and experiences of all attorneys litigating in the state is to draw a small *scientifically selected sample* from the universe of attorneys having the relevant characteristics. The costs of drawing this kind of sample, designing, printing and distributing the questionnaire, analyzing and interpreting the findings and writing the results can be prohibitive. Also, the level of expertise needed for these tasks is generally not available to an Implementation/Standing Committee. Survey research is a highly specialized field within social science and even sociologists, political scientists and psychologists without specialized training are unlikely to have the level of skill necessary.

Re-surveys which attempt to assess change over time present additional limitations of interpretation and generalization. Only if the respondents to the re-survey are the same individuals who responded to the first survey, or the re-survey utilizes a scientifically drawn sample based on the same attorney characteristics, can the findings from the first and second surveys be legitimately compared.

Tip: When survey findings are reported, it is essential to describe the sample or universe to which the questionnaire was distributed, the total number of returned questionnaires, the response rate and the limits of the generalizability of the findings. Task Forces and Implementation/Standing Committees are vulnerable to methodological attacks when these items are not mentioned, or are stated somewhere in the report but omitted when findings and conclusions are presented in other verbal statements or written documents.

- ***Collaborative Surveys***

Another strategy is to collaborate with other commissions that are preparing surveys and “piggy-back” on their efforts. As previously noted, the Georgia Commission on Equality was able to incorporate questions on gender, race and ethnic bias into a survey distributed by that state’s Commission on Public Trust and Confidence in the Courts.

Gathering Routine Statistical Data

(See Key Component 11. Data Collection Necessary to Monitor Gender Bias in the Courts.)

Collecting “Snapshot” or “Window” Data

(See “Collecting Data for Ongoing Monitoring and New Problem Identification”)

- ***Public Hearings***

Public Hearings are not optimum for the Implementation/Standing Committee phases because of the significant effort and expense involved, among other reasons. However, it may be possible to “piggy-back” onto Public Hearings convened by other groups, as the Georgia Commission on Equality is doing with that state’s Commission on Public Trust and Confidence in the Courts (see *Key Component 12. Collaboration and Alliances With Other Groups Inside and Outside the Court System.*)

- ***Court Watching***

What is it? Court Watching is a type of monitoring in which trained volunteers or professionals observe court proceedings and record their observations for purposes of reporting to the court system and the public.

Pros: Court Watching is an excellent way to collect current data.

Cons: There are inherent methodological problems. Court watchers must be carefully trained and their recording forms carefully designed. It is easy for court watchers' subjective interpretations to slip in when the behavior of judges and others are being described in a purportedly objective manner.⁶²

⁶² One way to guard against this problem is to conduct reliability checks among court watchers to determine the level of consensus. See OPERATING A TASK FORCE ON GENDER BIAS IN THE COURTS at 37 and NOW Legal Defense and Education Fund, A GUIDE TO COURT WATCHING IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES (1997), described in the *Implementation Resources Directory* at 51, and available from NOW Legal Defense and Education Fund, 395 Hudson St, New York, NY 10014, (212) 925-6635, Fax (212) 226-1066.

15. Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender Fairness Concerns

Courts today are in an intense period of self-assessment and strategic planning. As of May 2000, more than thirty state commissions on the future of the courts had published reports delineating what they perceive will be the principle challenges facing their courts in the twenty-first century, ranging from problems precipitated by demographic trends to how best to design new court houses. In addition, in response to national, state and local citizen surveys on public perceptions of the justice system that revealed areas of deep concern and distrust, courts are establishing committees, commissions and task forces to investigate areas the national gender bias task force movement has been talking about for twenty years. These include bias in decisionmaking and case outcome, incivility in court interactions, and barriers to *pro se* litigants. Concern about employee retention and the costs of sexual harassment have led court systems to also examine another area of concern to the Task Forces: gender bias in court employment.

While these new initiatives have direct bearing on gender fairness in the courts, they are unlikely to focus on that aspect of their work without direct input and assistance from Implementation/Standing Committees. These Committees should consider it a priority responsibility to involve themselves in these new activities and develop a special action plan to ensure that this happens.

What Are Some Specific New Court Initiatives with Which the Implementation/Standing Committees Should Be Working?

Implementation/Standing Committees must be alert to every new court and justice system initiative and consider how the Committee's concerns can be integrated into them. This requires constant attention from Committee staff, as discussed in *Key Component 2. Staff and Funding to Carry Out the Work of Implementation on a Long-Term Basis*.⁶³ Below are examples of initiatives where the Committees need to make themselves heard.

⁶³ *Key Component 2. Staff and Funding to Carry Out the Work of Implementation/Standing Committees on a Long-term Basis*, also explains how Implementation/Standing Committees can augment their own resources by partnering on other committees' projects.

- Public Trust and Confidence Conference State Teams and Projects
- State and Local Public Trust and Confidence Conferences
- Future of the Courts Commissions
- Family Law and Family Court Commissions
- Alternative Dispute Resolution Initiatives
- Domestic Violence Initiatives
- Legislative Proposals
- Interpreter Qualifications and Codes of Conduct for Interpreters
- *Pro Se* Litigant Initiatives
- Race/Ethnic Bias Task Forces and Implementation/Standing Committees
- Jail, Prison and Other Corrections Department Initiatives
- Drug Courts
- Substance Abuse Programs
- Guardian *Ad Litem* Initiatives
- Civility Initiatives
- Court Watching Programs
- Judicial Performance Evaluations Initiatives
- Hearings on Codes of Judicial Conduct, Codes of Conduct for Judicial Personnel and Codes of Professional Responsibility
- Hearings on the Adequacy of Judicial Disciplinary and Attorney Disciplinary Processes
- Court Appointment Initiatives
- Court Employment Initiatives
- Court Building Initiatives

The connections between these new court initiatives and the work of the Implementation/Standing Committees is discussed in detail in *Part III. Integrating Gender Fairness Concerns into New Court Planning and Reform Initiatives*.

How Can We Ensure That Each New Court Planning and Reform Effort Addresses the Relevant Gender Fairness Issues?

Develop a written form to use in assessment the gender fairness impact of all new court planning and reform initiatives along the lines of the *Gender Fairness Impact Assessment Form* below. Keep abreast of all new developments in planning and reform initiatives and apply this assessing to each one. Based on your assessment, develop a Gender Fairness Impact Statement to guide your Committee's in-person meetings and discussions with the new committee and any submissions or testimony to it.



Gender Fairness Impact Assessment Form*

1. What gender fairness issues does this court planning or reform initiative raise for women as a group and for different groups of women?
2. How can this initiative further gender fairness in the courts?
3. Are there ways in which this initiative could undermine gender fairness in the courts?
4. How should our Committee be involved in this initiative?
5. How will our Committee periodically evaluate the impact of this initiative on gender fairness?

If at all possible, ensure your Implementation/Standing Committee's involvement by having at least one of your members appointed to the new commission or made an official liaison to it.

*A full-page version of this Gender Fairness Impact Assessment Form is in Appendix G.



Part II.

Strengthening the Task Forces and Implementation/Standing Committees to Serve as Vehicles for Reform

Part II. Strengthening the Task Forces and Implementation/Standing Committees to Serve as Vehicles for Reform

The future success of the national movement to eliminate gender bias in the courts depends in great measure on the vitality of current and future Implementation and Standing Committees. If these Committees are debilitated or moribund, they will not be able to institutionalize the key components or keep gender fairness issues on the judicial agenda by infusing them into new court initiatives.

Among the issues that sparked the creation of the National Judicial Education Program (NJE) and the Gender Bias Task Forces were women's reluctance to use the courts for fear they would not be fairly heard, the court's disparaging treatment of women litigants and lawyers that undermined their credibility, and the predominance of women among those too poor to afford representation in the courts. Today, several of the problems the gender fairness movement identified twenty years ago with respect to women have emerged as mainstream concerns of the courts: improving public trust and confidence, especially on the part of disadvantaged groups; civility; and the treatment of litigants who appear *pro se* because they lack resources to retain counsel.

Although the gender fairness movement has played an essential role in sensitizing the courts to the issues that today top their agenda, there is an irony. As the courts attempt to improve the quality of their service to all sectors of the public, attention to gender fairness *per se* is often submerged. While this global approach will help everyone to some extent, a truly effective reform program requires a focus on the specific problems for women of different social, racial and ethnic groups.

This focus will be maintained only if there are knowledgeable, vigorous and vigilant advocates of gender fairness located within the justice system itself who operate with the authority of the state supreme court. We must make strengthening the Implementation/Standing Committees our top priority so that they can continue to serve as the vehicles for gender fairness reform.

To approach this strengthening process, we need a clear and realistic understanding of the common problems many Committees are encountering today and the constraints under which they will operate in the future. Information about these problems was gathered through NJE's nationwide survey of Task Forces and Implementation/Standing Committees distributed to all states in 1997-98. The 1999 *Maximizing Our Gains Conference* provided an

opportunity not only to deepen our understanding of these problems, as reported by the thirteen states represented. Moreover, we learned that in some cases, apparent obstacles could be turned into opportunities to advance the Committees' work.

At the *Maximizing Conference*, participants described the obstacles their Committees had met and mastered with varying degrees of success. Back at home after the conference, they utilized the new ideas and strategies they had learned to resolve their problems and make further progress. Eighteen months later, representatives reported on their state's efforts in extensive telephone interviews with NJEP and NAWJ. This information afforded further insight into how Committees can meet the problems that inevitably arise in keeping a reform effort viable over many years. Below, in a question and answer format, we present a synthesis of the *Maximizing Our Gains Conference* participants' suggestions for coping with the challenges most frequently encountered by the Implementation/Standing Committees.⁶⁴

A. Our Implementation/Standing Committee has accomplished a great deal. We want the community to know it and to help us set an agenda for the future. How can we do this?

Celebrate yourselves! At the *Maximizing Our Gains Conference* many participants suggested using important Committee anniversaries or other milestones to serve several purposes. Celebrations can:

[This is] a celebration of grand achievement marking a decade of very steady progress. Many times after a report like this, progress tends to recede. But the progress that has been achieved in the area we are discussing today...is...permanent.

*Justice John Greaney
Massachusetts Supreme Judicial Court, Co-Chair,
Massachusetts Gender Bias Study Committee,
1986-1989*

- Inform the community about your progress;
- Involve it in setting a future agenda;
- Validate past and current Committee members so they see how important their work is;
- Attract new Committee members;
- Mobilize other organizations to join with you.

At the time of the *Maximizing Conference* several states had already celebrated anniversaries with programs and other events. Following the conference other participants pursued this strategy on their return home with excellent results.

⁶⁴ Other serious problems impeding Committee work are discussed in Part I of this Manual in the context of specific key components. For example, most Committees lack adequate budget and staff, the topic of *Key Component 2. Staff and Funding to Carry Out the Work of Implementation and Institutionalization Committees on a Long-Term Basis*.

To honor the tenth anniversary of its final report, the Maryland Select Committee on Gender Equality held the “*Ten Years After....*”, *Gender Equality Celebratory Anniversary Dinner*. The event, attended by 200 people, honored the Committee’s long time chair and treated attendees to a video presentation tracing the progress of gender equality across the last decade.⁶⁵

The Massachusetts Gender Equality Board presented *A Celebration and Speak Out for Gender Equality in the Courts* to celebrate its ten-year implementation effort.⁶⁶ The Chief Justice of the Trial Court gave an overview of progress since the original Task Force’s report, including several important appellate decisions that cite the report.⁶⁷ The Chief Justice of the Massachusetts Supreme Judicial Court, who had been a member of the Task Force Implementation Committee for five years, gave the keynote address. The Board published a brochure listing its past accomplishments,⁶⁸ and fourteen speakers gave their views on what the Equality Board’s future focus should be. The event was attended by 350 people, including six of the Massachusetts’ Trial Court’s seven department heads, as well as the chief of the Probate and Family Court. This judge later sent copies of the entire gender bias task force report to every presiding judge. His cover letter stated that he knew the Probate and Family Court had done many good things since the report’s publication, but since only eight of the forty-six current probate court judges were on the bench when it was published, it was time to review it with colleagues and staff to assess what had been accomplished and what remained to be done.

The half-day tenth anniversary celebration of the Colorado Permanent Committee on Gender & Fairness of the Colorado Supreme court was titled *Gender & Justice in the Colorado Courts: Review, Renew & Recommit*.⁶⁹ In preparation, the Committee carried out a limited evaluation study of gender bias in the eight areas examined by the original Colorado Gender and Justice Task Force, with the dual purpose of documenting improvements and discovering what remains to be done. The report, “Taking Stock: Gender and Justice,” based on a small number of interviews in the Denver area, was posted on the web.⁷⁰

⁶⁵ Jane Stidman Eveleth, *Celebrating Gender Equality*, XIV [MARYLAND] BAR BULLETIN 2 (June 15, 1999) in Appendix H.

⁶⁶ See *Celebration and Speak Out for Gender Equality in the Courts* in, Appendix H.

⁶⁷ See, e.g., *In Re Custody of Vaughn*, 422 Mass. 590, 664 N.E. 434 (Mass. 1996), discussed in Lynn Hecht Schafran, *Judges Cite Gender Bias Task Force Reports*. THE JUDGE’S JOURNAL Spring, 2000 at 13, 45 in Appendix D.

⁶⁸ See *Promoting Gender Fairness in the Courts and Legal Community 1989-1999* in Appendix H.

⁶⁹ See *Gender and Justice in the Colorado Courts: Review, Renew, and Recommit* in Appendix H.

⁷⁰ Those interviewed for the informal study portrayed issues of gender fairness in a better and more hopeful light than the 1990 Gender and Justice Task Force study. They

The Committee distributed flyers inviting the public to read the report and to either come to the celebration speak-out with suggestions for future activities related to gender fairness, or e-mail comments directly to the Committee via the website. The event itself began with the female chief justice of another state speaking on the history of women in and under the law, followed by a Colorado judge speaking on the origins of the state's Task Force. Four subcommittees of the Gender & Justice Committee gave "Taking Stock" Reports. The Committee presented a video of interviews with prominent Colorado women lawyers and judges. Finally, Colorado's Chief Justice, the co-chair of the Gender and Justice Committee, spoke on "Looking Toward the Future" as the prelude to a speak-out at which members of the public made two-minute statements suggesting future action.

The New York State Judicial Committee on Women in the Courts celebrate its fifteenth anniversary with a one-day invitational conference for 175 justice system leaders titled *The Miles Traveled and the Miles Yet to Go*. The New York Law Journal audio taped the event in its entirety. Two panels of judges, attorneys, law professors, a victim advocate and a sociologist presented detailed recommendations for improvements needed in "The Courts' Response to Violence Against Women," focused on domestic violence, and "Courts' Enforcement of Women's Economic Rights," focused on divorce, alimony and child support. The state's chief administrative judge spoke on the significant progress for women in judicial leadership positions throughout the state and expectations for the future.⁷¹

*Court reform is not for the short winded.
Justice Betty Ellerin
Chair,
New York Judicial Committee on
Women in the Courts
and the
Gender Fairness Strategies Project*

Large and elaborate events such as the four described above have the benefit of enhancing the Committee's visibility, especially if there is press coverage. However, it is not always feasible or desirable to have celebrations on such a grand scale. Several states have taken advantage of regularly scheduled judicial events to honor individuals who have made important contributions to advancing gender fairness in the courts. For example, at the annual business meeting for all Washington State judges, the Supreme Court Gender and Justice Commission presented leadership awards to four judges who have chaired the Commission over the years. The New York State Judicial Committee on Women in the Courts gives awards at its annual meeting of local committees. Because such events are internal to the system, the Committee's work will not be broadly publicized. Nevertheless, these activities have the important effect of validating

also articulated how much remains to be done in the areas of concern. The report can be downloaded from <http://www.courts.state.co.us/supct/committees/gjc/stock.htm>.

⁷¹ See *The Miles Traveled and the Miles Yet to Go* and *Landmark Report on Women in the Courts Commemorated*, N.Y. LAW JOURNAL, April 5, 2001 at 1 in Appendix H.

the legitimacy and the importance of gender fairness for the judicial branch, as well as rewarding the honorees.

B. Our Implementation Committee is 10 years old. We've implemented our recommendations. What else is there to do? Some members think it has all been done.

The first step is to look at the *Implementation Resources Directory* and the Institutionalization Plan to determine how much ground you have really covered. Are there projects described in the *Directory* that your Committee should undertake? Are all of the fifteen components in the Institutionalization Plan completely institutionalized? Do you have a fully operational plan in place to ensure that now and in the future, every court planning and reform initiative will address the relevant gender fairness issues?

The problem is that people don't think there's a problem anymore.

Judge Gill Freeman

Chair,

Florida Supreme Court

Fairness Commission

If you have in fact implemented all the Task Force's recommendations and the components of The Institutionalization Plan, then it's time to go out of business and have your supreme court appoint a Standing Committee. The Standing Committee is a distinct third phase of task force work that will operate with a new mandate, bring new people into the reform effort, and demonstrate the supreme court's continued commitment to gender fairness, as described in *Key Component 1. A Standing Committee on Gender Fairness*.

However, if you know that no such committee will be appointed by your supreme court, your Implementation Committee needs to begin operating as a Standing Committee and carry out its six functions: (1) monitoring the effects of the implemented reforms in reducing gender bias in the courts; (2) identifying new problems areas; (3) keeping the issue of gender fairness on the legal and judicial agenda by infusing gender fairness into other court initiatives and by building alliances and collaborating with other entities concerned with gender fairness issues; (4) insuring that education programs for judicial and non-judicial court personnel continue to incorporate updated materials on gender bias in the courts; (5) receiving complaints about gender bias in the courts from lawyers, litigants and court personnel when effective and accessible informal and formal grievance mechanisms do not exist and; (6) applying the Gender Fairness Impact Assessment Form⁷² to new court planning and reform initiatives.⁷³

⁷² See Appendix G

⁷³ See Part III. Integrating Gender Fairness into New Court Planning and Reform Initiatives.

An appropriate and important undertaking for a Standing Committee, or an Implementation Committee operating in this capacity, is to initiate a substantive evaluation of one or more areas of the Task Force's concerns to find out if there has been compliance with the recommendations and, if so, what difference it has made. Even if the problems initially identified by the Task Force have been resolved, there may be new problems for which your Committee can recommend or initiate remedial action. Look beyond the court system to other groups—e.g., domestic violence coalitions, the family law section of the bar—to learn their assessment of unmet needs, problems and projects. A good way to access this information is through focus groups, as described in *Key Component 14. Periodic Evaluation to Assess Implementation Efforts, Analyze their Effect on Reducing Gender Bias in the Courts and Identify New Problems*.

C. How can we revitalize our Committee? Our members are running out of steam and our reform efforts have stalled.

The first question to ask is, why are your members running out of steam? If it is because they think everything has been done, see question B., above. If progress is stalled due to inadequate funds, see *Key Component 2. Staff and Funding to Carry Out the Work of Implementation/Standing Committees on a Long-Term Basis*. If backlash is a factor, see Question D below. Regardless of the “why,” everyone involved with Task Force work during each of its three stages should know that busy volunteers working long-term in an area that evokes hostility have intellectual and emotional needs that must be met if the group is to function optimally. We can liken this to a plant trying to grow in harsh soil. It needs light, water and special nutrients. A few Committee members and staff must join together to provide this for your group.

Intellectual Support

Task Forces, Implementation Committees and Standing Committees all need to be stimulated intellectually. Members are constantly giving out energy and ideas and need to be “fed” in return. You can, for example:

- Plan field trips to sites such as a women’s prison or domestic violence shelter.
- Invite speakers working and writing in fields of interest.
- Convene focus groups of key informants.
- Show videos on relevant topics.
- Read and discuss new articles, reports and books about the groups’ concerns.
- Bring in a speaker to talk about the history of the gender fairness movement and how much has been accomplished despite hostility, backlash and inadequate resources.

Each of these events should include time both for general discussion and a focused discussion on how the event can inform the Committee’s work.

By turning these activities into “mini-projects” where the Committee investigates a new or old problem and takes steps to resolve it, alone or in collaboration with other organizations, members renew their sense of purpose and accomplishment, thereby revitalizing their work. Tying this investigation to an activity such as an anniversary celebration, the Committee can ensure high visibility for the findings.⁷⁴ Subsequently, the findings should be incorporated into judicial education programs, thereby keeping the topic current and dispelling the assumption that gender bias in the courts has already been eliminated.

⁷⁴ This is exactly what the Colorado Gender and Justice Committee did in preparing its “Taking Stock: Gender and Justice” report for its tenth anniversary celebration. By posting the report on the web, and widely advertising the celebration, the Committee drew widespread public and judicial attention to both its past accomplishments and to persistent forms of gender bias uncovered in the investigation that require further remedial action.

Emotional Support

The social psychology of groups teaches us that members need emotional support and nourishment, especially when dealing long-term with tough issues. A very effective tool for generating collegial bonds, described at the *Maximizing Conference*, is having Committee members write and then read aloud at a meeting a short piece on “Why these issues are important to me” or “Why I am serving on this Committee.” This taps into and affirms the deepest part of them that cares about gender and justice. It is enriching to know colleagues at this level and to share one’s own feelings, and such communication among members, particularly when the going gets rough, creates group strength. New members should have access to these essays and be encouraged to write their own.

After I wrote the Michigan report I was persona non grata at the judicial college where I had taught. The report was more far reaching than they anticipated and they wanted to kill the messenger.

*Lorraine Weber
Judge (retired),
Consultant,
Open Justice Issues
State Bar of Michigan*

A social event where no shoptalk is allowed is another simple, inexpensive and enjoyable way to “feed” the Committee. A potluck dinner or Sunday picnic provides fine opportunities for members, staff and their families get to know each other in a relaxing environment.

Both intellectual and emotional support are available at the meetings of Task Force and Implementation/Standing Committee members and staff that the National Association of Women Judges will hold in conjunction with its own annual meetings, beginning in October 2001.

D. We are encountering new forms of backlash and don’t know how to handle them.

In the earlier years of the gender bias reform movement, backlash largely took the form of overt denials and a “kill the messenger” attitude toward the judges, lawyers and academics who were exposing the reality of gender bias by presenting the findings from their investigations in judicial education courses. Participants in the *Maximizing Conference* concurred that today backlash is manifested in new ways. Now one hears accusations that the pendulum has swung too far and that there is too much attention to these issues.

As mentioned earlier, a state supreme court justice reported that when she insists on gender-neutral language, her colleagues accuse her of nit picking. Representatives from another state reported that Fathers Rights Groups sought to intimidate the courts into dropping their focus on domestic violence by standing across from the courthouse and distributing order of protection forms with the names of domestic violence commission members and judicial educators on them. A former judge, now a consultant on fairness issues, reported complaints in her state that gender fairness efforts are not working towards equality between women and men, but rather, creating special privileges for women. *Maximizing Conference* attendees were particularly distressed when they experienced backlash from colleagues who were once allies.

A number of strategies for responding to backlash were proposed. One judge urged that attacks be met with political counter-attacks. When her presiding judge punished her for being a proponent of children's waiting rooms in the courts by sending her back to traffic court, she organized a group of seventeen women to use this as a platform for running in the next judicial elections. They were successful, and male judges and candidates are now on the bandwagon for childcare in the courts.

One judicial educator pointed out that remarks that appear to be backlash may be expressed by good, thoughtful judges who should not be written off. Instead, she suggested that these concerns be addressed in judicial education programs, which provide judges an opportunity to both express their views and obtain factual information that may change them. A second judicial educator concurred. When some of her state's new judges complained in a judicial education course on new domestic violence laws that the pendulum had swung too far, she organized a panel on the statutory changes moderated by the chair of the family law advisory committee that wrote the law's expanded definition of domestic violence. When the new judges were questioned about their specific objections to the law, rather than their general feelings about it, it turned out that they had none. In the same vein, one judge advocated including individuals hostile to gender fairness efforts in focus groups where controversial gender fairness concerns are systematically discussed. This strategy of direct contact and confrontation assumes some opponents can be neutralized or even won over if they are engaged in a discussion of the issues in an appropriate context.

Several *Maximizing Conference* participants urged utilizing as speakers on gender fairness judges who have proven their credibility and their commitment to court reform through their work on many other issues, the more broadly based the better. Because these judges are widely respected, when they speak on gender-related issues people take note.

We don't have to be advocates for everything anymore. Now there are a lot of men and women with enormous credibility saying the things that only a few of us had the courage to say before.

*Jill Laurie Goodman, Esq.
Counsel,
New York Judicial Committee
on Women in the Courts*

Those who claim the gender fairness movement has gone too far can also be reminded of the commitment at the National Conference on Public Trust and Confidence in the Justice System to implement the various bias task forces' recommendations. Obviously the 500 justice system leaders at this conference saw that the problems are by no means resolved and that this is the way to achieve the fairness essential to our judicial system.

Finally, though backlash hurts, often in very personal ways, it is useful to put it into perspective by thinking about how much the gender fairness movement has achieved in a very short time. A commentary on backlash by a prominent sociologist writing about efforts to combat child sexual abuse is relevant to our movement as well.

*"When I say that the ...movement has been extraordinarily successful, I mean when it is judged objectively, compared to other social problem mobilizations, not necessarily from the point of view of the advocates themselves. Because we don't get even a fraction of what we really want, we think of ourselves as puny. Yet compared to those who have tried to transform society around many other issues, from education reform to electoral reform, we have been very successful. Our movement has reached a huge audience and galvanized a great deal of professional, public policy and governmental activity."*⁷⁵

⁷⁵ David Finkelhor, "The Backlash" in *Sociological Perspective*, 8 APSAC ADVISOR 1 (Fall 1995).

E. We were a great Gender Bias Task Force, but now we've merged with task forces of other disadvantaged groups. Our issues are being submerged. How do we deal with this?

As discussed in *Key Component 1. A Standing Committee on Gender Fairness*, the disadvantages of a mixed Standing Committee can be minimized by:

- Establishing subcommittees with equivalent “person power” for each issue area;
- Rotating the chair of the entire Standing Committee among the subcommittee chairs;
- Having separate budgets for the different groups represented;
- Establishing clear priorities in terms of the specific issues to be addressed and the concrete projects to be undertaken;
- Giving priority to topics that span the range of biases, such as women of color in the courts.

Given the resource constraints, there should be specific discussion about how to give each area its due. This can be a thorny issue. When a Standing Committee takes on a bias issue area not previously investigated by a task force, a disproportionate share of resources might justifiably be allocated to the new topic in the initial phase. However, it must be clearly understood from the outset that this is a time-limited allocation and that each area must receive equal attention.

F. How can we recruit enthusiastic new members for our Committee?

The gender fairness movement suffers from a widely shared misperception that there is no more work to do. Now that the most blatant problems have been largely cured,

[W]e have long passed the era when bias relating to sex...is considered acceptable as a litigation strategy.

Mullaney v. Aude, 126 Md. App. 639, 658 (1999)

people who ten years ago would have put their time into a gender fairness committee no longer see the need. *Maximizing Conference* participants had several ideas for recruiting new Committee members. Individuals in specialty bars and bar committees working in areas covered by the Committee might be interested in joining in order to benefit from colleagues working on similar issues but with a broader scope. Similarly, lawyers and community activists working effectively in single-issue organizations such as domestic violence coalitions, or in civic organizations concerned with the courts, might want to participate in a Committee where their expertise can contribute to improving the court system as a whole. The pool of potential judge recruits is relatively smaller and the

competition for their time is greater. One *Maximizing Conference* participant advised, “Keep an eye out for new judges and grab them before others do!”

There are legal and non-legal academics from local colleges and universities who are working in relevant areas and would welcome the opportunity to have an impact on the real world. Also consider representatives from the Women Law Student Associations at your state’s law schools. These young women have demonstrated a commitment to advancing gender issues and can pave the way for the future of this reform effort.

Be alert to the possibilities presented when a case responding to gender bias comes down or a new law intended to curb some aspect of it is enacted. Judges and lawyers who thought these problems were history may suddenly realize that securing gender fairness requires ongoing attention and be eager to be part of this effort. Citations to Task Force Reports in judicial opinions enhance the credibility of the enterprise and make people want to be involved.⁷⁶ Another way to attract new members to the Committee is through celebrations and award ceremonies, as described under Question C, above.

The [Massachusetts] Gender Bias Study concludes that our courts have too often failed to appreciate the fundamental wrong and the depth of the injury inflicted by family violence.

Custody of Vaughn, 422 Mass 590, 596 (1996)

⁷⁶ Two recent cases provide excellent examples of decisions that can draw attention and talent to the Implementation/Standing Committees. In *Mullaney v. Aude*, 126 Md. App. 639, 730 A.2d 749 (1999) the Maryland Court of Special Appeals cited several gender bias task force reports in holding that the defense attorneys’ deposition conduct constituted gender bias warranting a protective order and attorneys’ fees, and that the trial judge’s imposition of sanctions was consistent with Maryland Code of Judicial Conduct Canon 3(A)(10) mandating that “[a] judge shall require lawyers in proceedings before the judge to refrain from manifesting by words or conduct, bias or prejudice based upon ...sex...against parties, witnesses, counsel or others.” In *Custody of Vaughn*, 422 Mass. 590, 664 N.E. 434 (Mass. 1996), the Probate and Family Court awarded shared legal custody and primary physical custody to a violent father without making written findings of fact on the impact of domestic violence on the child, the child’s safety and the father’s parenting ability. The Supreme Judicial Court cited research showing the “profound impact” witnessing domestic violence has on children, including the findings of the Massachusetts Supreme Judicial Court Gender Bias Study Committee, and held that the Probate Court’s failure to address this issue constituted reversible error. For additional cases citing the Gender Bias Task Force reports see Lynn Hecht Schafran, *Judges Cite Gender Bias Task Force Reports*, THE JUDGES’ JOURNAL, Spring 2000 at 13 in Appendix D and the annotated list of approximately one hundred cases in Appendix C of the *Implementation Resources Directory*.

G. Our chair, appointed by the supreme court, was highly effective for the first two years, but now we think we need someone more dynamic. Any suggestions for handling this matter?

Organize into subcommittees with effective chairs who will run with the ball on the issues for which they have responsibility. Suggest to the appointing power that each year there be a rotating chair for the entire Committee, and that membership on the Committee be for a finite period of a few years, with only one possible reappointment.

H. How can we overcome the disadvantage of a chief justice who pays lip service to the importance of our Committee, but gives negligible support?

The refusal of a chief justice/supreme court to support this work is deeply disturbing. However, such indifference, or even hostility, is by no means fatal. Given the vote of the National Conference on Public Trust and Confidence in the Justice System to make implementing the gender, race, and ethnic bias task force recommendations a priority, you can approach your chief justice and supreme court from the point of view that your state should not be ignoring this mandate. However, given that the Conference of Chief Justices several years ago twice adopted similar resolutions which many states have ignored,⁷⁷ it may make no difference. If this happens, you must adopt the gender fairness reform movement's motto for the new millennium and start *Moving Forward in All Directions*.

Remember that other groups can take over pieces of the implementation process. A striking example is the state of Michigan where there had been no implementation activity for several years after the Task Force's final report was issued. Then, a new president of the state bar association decided that during her tenure implementing the Task Force's recommendations would be a top priority. As described in the *Implementation Resources Directory*, the bar association subsequently funded an excellent evaluation of the status of each Task Force recommendation.⁷⁸ This evaluation has spurred considerable activity in the state and renewed support from the supreme court.

⁷⁷ In response to the Task Forces, the Conference of Chief Justices in 1988, 1993 and 1997 adopted resolutions urging every state to have a task force on gender bias in the courts and a task force on race/ethnic bias in the courts and to implement their recommendations. See Conference of Chief Justices, Resolution XVIII, Task Forces on Gender Bias and Minority Concerns (adopted Aug. 4, 1998), published in 26 Ct. Rev. 5 (1989); Resolution V, Urging Further Efforts for Equal Treatment of All Persons (adopted Jan. 28, 1993); and Resolution XIII, The Establishment of Task Forces and Commissions on Assess and Fairness in the State Courts (adopted July 31, 1997)

⁷⁸ Described in the *Implementation Resources Directory*, at 100-101.

Think creatively about who in your state outside the court system can make things happen and mobilize them. Review your Task Force's recommendations and the products and projects in the *Implementation Resources Directory* and decide which group is most suitable to pursue each of them. Look to bar associations and their sections and divisions, domestic violence/sexual assault coalitions, community and civic organizations, law schools and other academic institutions, the legislature and others. Be prepared to work with these groups and be clear that you are offering to help them.

Every Task Force made recommendations for a wide variety of groups outside the courts: bar associations, the legislature, police, law schools and others. The Implementation/Standing Committee can approach these groups directly to ask what they are doing to implement these recommendations. With respect to the recommendations for the courts, these outside groups can be asked to pressure the courts respecting their own areas of concern. Here are two examples.

- All Task Forces recommended judicial education about domestic violence. A state's domestic violence coalition can be the point organization for asking state judicial educators about what education has taken place and what is planned. The coalition can also provide information about effective programs presented elsewhere, and offer to provide speakers. Along with other groups, these coalitions can urge legislation requiring judicial education on domestic violence, as has been enacted in New Jersey and Texas.⁷⁹
- Task Forces also made recommendations regarding the treatment of women litigants and attorneys in the courtroom and the courthouse. Civility is currently a major preoccupation of the courts, and many state judicial systems have civility commissions and/or commissions on the treatment of *pro se* litigants. A women's bar association or similar organization can testify before these commissions on the gender-related concerns they should address, and seek to ensure that these commissions' recommendations include those originally made by the Task Force.

⁷⁹ See the *Implementation Resources Directory* at 73-74.

I. How can we “un-stall” our judicial education efforts?

If the problem is a hostile judicial educator who is blocking the issues, go to the planning committees for the different segments of the state’s judicial college. You may already have allies on these committees—e.g., former Task Force members or concerned judges who testified at the Task Force’s hearings. Encourage individuals from these backgrounds to involve themselves in judicial education so they can shape the programming.

Make it easy for the planning committees to go forward by providing them with ideas for materials and funding, as described in the next paragraph. Given that there is always competition for time at the judicial college because there is so much to be covered, a persuasive case must be made to both the planning committee and judicial educator for why gender fairness issues need to be covered, or covered again. As discussed in *Key Component 3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Conduct Commission on an Ongoing Basis*, only through repeated exposure to substantive law courses that include gender fairness issues, as well as general fairness courses, can judges learn to detect and appropriately respond to both the blatant and subtle forms of gender bias. Moreover, judges and court personnel are a constantly changing population. The high turnover makes it essential that gender fairness education be ongoing.

If your judicial educator is friendly but beleaguered and raises issues of parity and competing interests, again, make the case for gender fairness issues and provide resources to make the job easier. As discussed in the *Implementation Resources Directory* there are now model judicial education curricula available on a wide variety of gender-related issues.⁸⁰ For those curricula developed with funds from the State Justice Institute, SJI provides curriculum adaptation grants up to \$20,000 to enable a state to present them.⁸¹ For judicial education related to victims of crime, such as programs on sexual assault, domestic violence and child sexual abuse, the Department of Justice Office of Victims of Crime provides grants to pay for speakers.⁸²

⁸⁰ At pages 56 *et seq.* and 106 *et seq.*

⁸¹ See, <http://statejustice.org/>.

⁸² See, <http://www.ojp.usdoj.gov/ovc/>.

J. Gender Bias in the Courts is no longer the “flavor of the month.” How can we make others see us as relevant to the court’s current concerns and new initiatives?

This important question is taken up in detail in Part III of this Manual, *Integrating Gender Fairness Concerns into Court Planning and Reform Initiatives*. Participants in the *Maximizing Our Gains Conference* stressed that Committees must put the old wine (gender fairness) in new bottles with labels such as: Customer Service; Community Outreach; Futures; Public Trust and Confidence; Strategic Planning; Long Range Planning; Court Architecture; Civility; Pro Se Litigants; and Interpreter Services. Each of these court initiatives has a gender fairness component that Implementation/Standing Committees need to identify to the committees charged with investigating these concerns and implementing the necessary reforms. Finally, *Conference* attendees pointed out that Implementation/Standing Committees can demonstrate their relevance by keeping the issue visible within and outside of the justice system. To this end, participants recommended that Committee members:

Reformat your needs into the flavor of the month.

*Judge Sheila Murphy
Illinois
Steering Committee
Gender Fairness Strategies Project*

- Write letters about gender fairness in the courts to the editors of local newspapers and articles for a variety of media;
- Send speakers to the widest possible variety of public forums;
- Ask the chief justice to discuss gender fairness in the annual State of the Courts speech and report to the legislature. (A reference to the state’s mandate from the National Conference on Public Trust and Confidence in the Justice System is an ideal vehicle for this⁸³);
- Publicize cases that turn on gender bias;⁸⁴
- Sponsor celebrations and award ceremonies as discussed in Question A above.

K. How can we bring all of our members up to speed on gender fairness issues and on our Committee’s history?

Some states had little or no continuity in membership between the Task Force and the Implementation/Standing Committee. Not infrequently, new

⁸³ For example, see North Dakota Chief Justice Gerald W. VandeWalle’s 1999 *State of the Judiciary Message* at <http://www.court.state.nd.us/court/new/barjudiciary99htm>.

⁸⁴ Cases like those described above in footnote 73, demonstrate that the problem of gender bias in the courts has not gone away, and that courts are taking it seriously and drawing upon the findings of the gender bias task forces in drafting their decisions.

members had no involvement in any of the issues, knew nothing about them, and questioned the findings of the original Task Force. If your Committee includes such individuals, invite a vibrant speaker to talk about the history of the gender fairness movement from a national and a state perspective. All Committee members will benefit. By showing how much has already been accomplished, members will know that they, too, can be effective agents for change.

Another suggestion is to collectively review the Task Force report itself. One way to do this is by having the chairs of the original subcommittees that wrote the report make presentations. This can be done as a full-scale, one-day program with the subcommittee chairs speaking seriatim and taking questions, or broken up over two or three meetings. The idea of such a program can be introduced by saying that the Committee has several new members and it is important for everyone to be working from a common knowledge base.

Another possibility is to create reading packets around sections of the Task Force report to elaborate on its findings. This can mean presenting the subject from a national perspective, providing a deeper analysis, or providing important articles and studies written since the Task Force report was published. The readings should then be discussed as a group exercise.

If your Committee's problems include gender-biased attitudes on the part of some members (this has happened), you will need to present at least a half-day training program at which you use interactive teaching methods such as case studies and role plays to ensure that everyone "gets it."

L. Other Implementation/Standing Committees must have good ideas for projects and strategies for resolving problems that we could adapt. How do we find out about them?

To learn about readily adaptable projects carried out through 1998, consult the *Gender Fairness Strategies Implementation Resources Directory*. The material described can all be obtained from the special loan collection at the National Center for State Courts, see Appendix A.

Join the Gender Bias Task Force email listserve hosted by the National Judicial Education Program. Task Force and Implementation/Standing Committee members nationwide, as well as other interested individuals, subscribe to the listserve to post questions, problems and successful solutions. Email njep@nowldef.org with a request to subscribe. This is a great way to avoid the isolation that makes gender fairness reform work so much harder.

M. No one expected that the gender bias battle would have been won by now,

but shouldn't the struggle have become easier after twenty years? Why does it seem to take more now to accomplish less?

A number of gender fairness long-timers attending the *Maximizing Our Gains Conference* expressed similar sentiments and questions. From the point of view of both the national reform effort and the mental health of its most committed participants, this matter is of urgent concern. Even if people working for social change are keenly aware of the astonishing achievements they have already made, they become demoralized if they believe their efforts have stalled, or worse yet, that they are losing ground. Although understanding a problem is not the same as solving it, insight can go a long way in reducing the problem's immobilizing effects by affording intellectual distance to those engaged in the activity and depersonalizing the setbacks.

Victims of Our Own Success

The first reason why it may “take more to accomplish less” today is that we are victims of our own success. An unsupportive court administrator or chief justice who lets the Implementation/Standing Committee know that after so many years of operation it has used up its “air time” could point to a long list of accomplishments to justify this position. “Because of your work we have gender fairness education for judges and court personnel, sexual harassment guidelines, many more women judges and lawyers, new codes of conduct and a revolution in the way we handle domestic violence cases. It's time now to deal with other issues,” says our hypothetical naysayer. We should not expect that it will be easy to convince such a person that his or her support is needed now more than ever in order to eliminate the more subtle and intractable forms of gender bias, detect new problems and ensure that the reforms made in past years remain effective.

Head Winds and Tail Winds

The second reason the struggle seems more difficult is the changed social climate. The gender bias reform effort emerged in 1980 and was carried forward by the tail winds generated by two decades of civil rights struggle and by the vibrant movement for women's rights. By the time judicial leaders were urged to undertake self-scrutiny of how gender was operating as a factor in judicial decisionmaking and courtroom interaction, every other American social institution had been in the spotlight of the women's movement and had been targeted for reform.

The early gender bias reform effort was able to ride the crest of a wave. Ahead of us were the pioneer women lawyers changing the legislative framework on behalf of women. Behind us were legions of feminists and other committed men and women seeking ways to use their talents and energy to promote social causes. We felt ourselves part of the vast societal transformation that began in the 1960's and surged through the 1970's, drawing multiple sectors of American society into social reform activities. Judicial leaders whose support was solicited in the early efforts of the reform movement were persuaded, in part, by the argument that the judiciary, the institution that ostensibly embodies fairness and impartiality, was lagging far behind.

In the early days, when the resistance to our work took the form of blatant denial—"There is no such thing" [as gender bias in the courts] or "If it does exist it is not important"—we did not feel betrayed. We were just starting, and we knew the road ahead would be difficult.

Today the social and cultural context in which we operate has changed profoundly. The tail winds have turned into head winds impeding our progress and sometimes even rolling back our gains. We are in a conservative era. Social justice issues are no longer on the agenda. The "we" generation became the "me" generation, affecting young women as well as young men. Participants in the *Maximizing Conference* observed that, "The country no longer supports our efforts," and "No one is coming up behind." They also remarked that young women lawyers today – the group from which one might expect to recruit new activists for the gender fairness reform effort – are focused on themselves, not on the plight of other women. They do not constitute an assured source of renewal for the movement.

As noted before, the forms of backlash have changed and are now more insidious. The actions from some quarters have become more organized, overt and vicious; in other quarters the rhetoric has changed to a verbal veneer of

gender equality while gender bias has gone underground. Instead of the denials that gender bias exists, we hear charges from judges once considered allies that gender fairness advocates have gone too far. Now, some advocates who have given so much of themselves for a cause they believed was advancing, do, in fact, feel betrayed.

The Constantly Changing Population of Judges and Court Personnel

The third reason the “gender bias battle” seems more difficult today relates to the constant turnover of personnel in the courts. Because the gender fairness movement has worked in the courts for two decades now, we feel as if our efforts should have taken hold, that we should not have to repeat ourselves. Yet in reality there is an inevitable forward and backward movement to our accomplishments because judicial and non-judicial court personnel change so rapidly. Unlike many other countries where all judges are appointed for life, and there is minimal attrition through retirement and death, our state judges usually serve for a limited number of years and are sometimes defeated in their re-election contests. This turnover is exacerbated by the changing nature of judicial service itself. Whereas once a judgeship came at the end of a lawyer’s career, today younger lawyers join the bench for a brief time as a stepping stone before returning to private practice. Many judges now on the bench were not exposed to the findings of the original Gender Bias Task Forces, most of which released their reports in the late eighties and early nineties. Thus, the Implementation/Standing Committees must begin again with each new generation of judges, and the generations are cycling ever more rapidly.

Life Cycle of a Reform Movement

The maturity of our reform effort is yet another factor that explains why we may feel our work has stalled. By any standard, twenty years is a long time for an institutional reform effort, such as the movement to eliminate gender bias in the courts, to remain visible and effective. There are a host of reasons why over time such activities wither or cease: targeted reforms are achieved, leaders direct their energy elsewhere, resistance becomes insurmountable, resources diminish while competition for them augments. As the years pass, there are other pressures. It is simply in the nature of organizational life to “move on,” to take up new initiatives and programs, sometimes in response to funding opportunities, other times in response to new ideologies or interests of institutional leaders. When this occurs, those working in long-term efforts like

gender bias reform may feel thwarted, neglected, and perceived as irrelevant.

If reform efforts are to endure, they must periodically assess themselves and adapt to ever-changing conditions. In 1989 and 1993, at the First and Second National Conferences on Gender Bias in the Courts, the Task Forces did just that.⁸⁵ The 1999 *Maximizing Our Gains Conference* provided another opportunity for self-assessment and re-casting strategies. Attendees agreed that as the 20th century drew to a close, gender fairness in the courts was slipping off the judicial agenda, even as courts incorporated many of the concerns the gender fairness movement had raised years ago into their own new initiatives. Speaking in the vernacular, the *Maximizing Conference* participants acknowledged that we are no longer “the flavor of the month.” The environment in which gender fairness reform operates today is vastly different from twenty or even ten years ago, and it requires new strategies for survival. The most important, as we stress in Part III of this Manual, is to put our “old wine in new bottles.”

⁸⁵ The papers from the First Conference are published in *Proceedings of the National Conference on Gender Bias in the Courts* (1989) available from the National Center for State Courts. See Appendix A. In the First Conference’s keynote address, *Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts*, Norma J. Wikler explicitly analyzes the gender bias movement’s past and present, and the strategies needed for the future. This speech is reprinted in COURT REVIEW, Fall 1989 at 13 in Appendix I.



Looking Toward the Future

What conclusions should we draw from this analysis? First, we should understand that when head winds are blowing the need for Implementation/Standing Committees to secure the fifteen key components of The Institutionalization Plan is more urgent and more difficult than ever before. Second, we must realize that we are not likely to be besieged by people in the legal and judicial system wanting to participate in gender fairness initiatives and that we must go out and look for them. Thirdly, given the high turnover among judges and personnel, we must insist on ongoing gender fairness education. Finally, we must develop and execute action plans that ensure that our gender fairness issues will be infused into other current and future court initiatives.

I see the difference this judicial reform effort has made in women's lives. Recently, my neighbor, an immigrant woman, had a domestic violence situation. She and her husband were much better treated by the courts because of the changes brought about by the Gender Bias Task Force. They don't know you exist, but your work is key.

Gladys Maged

*Community Organizer and Staff Director to the
Massachusetts Supreme Judicial Court Gender
Bias Study Committee, 1986-1989*

There are also conclusions we should avoid drawing from the analyses above. Despite the societal tail winds and the uneven institutional support for our issues, this is definitely not the time to stop our work. We know that despite all the gains, serious forms of gender bias continue to deprive women of their legal rights.⁸⁶ If we who have been on the front lines abandon the reform movement, how can that reality ever change? Task Forces and Implementation/Standing Committees do have constituencies, both within and outside of the judicial system. Our supporters may not always be vocal or visible, but that does not mean they are not there. Hundreds of people from all parts of the court system—judges, court administrators, court personnel, probation officers and public and private attorneys—as well as victim advocates, civic organizations and the public, have participated in the anniversary celebrations held by Implementation/Standing Committees' various states, as described in Question A above. Our most important constituency, however is the women who come into the courts each day as litigants, victims, jurors, witnesses, lawyers, judges and court personnel, who benefit from our efforts. They may not know us, but we must be there for them.

⁸⁶ That is what the Colorado Supreme Court's Task Force on Gender Bias concluded from its recent study, undertaken in preparation for its tenth anniversary celebration.



Part III.

Integrating Gender Fairness Concerns Into Court Planning and Reform Initiatives

Part III.

Integrating Gender Fairness Issues Into Court Planning and Reform Initiatives

Today the issues the gender fairness movement raised twenty years ago have become mainstream concerns of the courts. They are now being translated into a myriad of new initiatives, described in the following pages, that present us with a unique opportunity for progress. If we can integrate gender fairness issues into other relevant court initiatives, we can ensure that it will not only be the Gender Bias Task Forces and Implementation/ Standing Committees who carry the work of gender fairness forward, but the court system as a whole. Old wine in new bottles is our strategy for the new millennium.

Implementation and Standing Committees should think of themselves as crucibles of leadership where members are trained to integrate the Committee's concerns throughout the justice system.

Mignon "Dee" Beranek

Deputy State Courts Administrator,

Florida Supreme Court Fairness Committee

The most effective way to integrate gender fairness issues into other court initiatives and planning is for current and former members of Task Forces and Implementation/ Standing Committees to become members of, or formal liaisons to, the commissions, committees and task forces charged with carrying out the new initiatives. In Florida, key players from the Task Force and Implementation Committee are now spread throughout the system in key roles, for example, on the Family Court Steering Committee. In Georgia, the Task Force chair is now on the Supreme Court and has been instrumental in improving court rules relating to domestic violence cases and obtaining legal services for domestic violence victims.

The second way to achieve integration is for Implementation/ Standing Committees to provide input into the relevant initiatives in the form of written submissions, testimony at public hearings and participation in focus groups or any other data collection methods the new group employs. The Committee must also encourage other groups concerned with gender fairness in the courts to involve themselves in these new initiatives. As in the example of alternative dispute resolution initiatives noted below, the Committee should make sure that domestic violence coalitions are also weighing in on the risks of ADR (Alternative Dispute Resolution) for battered women. It is critical for Implementation/ Standing Committees to not only provide input at the start of a new initiative's inquiry, but to monitor it. The Committee should comment on

reports, proposals and recommendations, preferably in the draft stage, but if that is not possible, on the final documents. If the new initiative was responsive to the Committee's concerns and suggestions, applaud it. If it was not, make its failure widely known, again enlisting other groups like domestic violence coalitions to draw public attention to this omission.

The welcome mainstreaming of the bias-related issues the gender fairness movement first raised twenty years ago also carries the danger that the issues specifically for women, and for women from discreet groups, may be ignored or submerged as the courts examine through a wider lens bias in decisionmaking and case outcome, barriers to *pro se* litigants, incivility in court interactions and discrimination in court employment. Implementation/Standing Committees must keep the focus on gender fairness clearly delineated and ensure that civility-type initiatives do not divert from the substantive law areas that are at the heart of Gender Bias Task Force concerns. Avoiding this shift in focus has been a concern of the Task Forces from the beginning, and is equally important now.

Even when the Implementation/Standing Committee cannot make one of its own an official member of or liaison to a new court initiative, it still has a vital role to play as watchdog. By following the four steps below, even Task Forces and Implementation/ Standing Committees with limited staff and funding can carry out this essential watchdog function.

- Identify current and proposed court planning projects and reform initiatives.
- Use the Gender Fairness Assessment Form in Appendix G to determine how each can impact gender fairness issues.
- Decide which of the initiatives with gender fairness implications are of greatest importance to the Implementation/Standing Committee.
- Of these, determine which are most receptive to Implementation/ Standing Committee input.

As described earlier in How to Use this Manual, make these decisions the focus of at least one planning meeting and develop an Action Plan so that good intentions are realized. Strongly consider assigning two Committee members rather than one to each of the court initiatives with which you decide to become involved. These two individuals will be able to spell one another at meetings of this initiative if need be, and to talk with one another about how best to further the Implementation/Standing Committee's interests there. The number of initiatives your Committee can actively relate to will differ depending upon the

Committee's membership and staff, and the extent of preparation needed to present its concerns. In those situations where the Committee has limited options for action it can at least transmit to the chair of the new initiative the relevant sections of the Task Force's report and recommendations and ask that they be acted on.

The National Conference on Public Trust and Confidence in the Justice System

One of the most significant opportunities for progress for the Gender Bias Task Forces and Implementation/Standing Committees emerged from an important national conference, held a few months after the *Maximizing Our Gains Conference*.

On May 13-15, 1999 nearly 500 justice system leaders met in Washington, D.C. at the SJI-funded *National Conference on Public Trust and Confidence in the Justice System*, sponsored by the American Bar Association, Conference of Chief Justices, Conference of State Court Administrators and League of Women Voters in cooperation with the National Center for State Courts. Each state sent a team composed of its chief justice, state court administrator, state bar president and other justice system leaders. Representatives from numerous court-related organizations also attended.

The conference focused on responding to two new national surveys: the ABA's *Public Perceptions of the U.S. Justice System*⁸⁷ and the National Center for State Court's *How the Public Views the Courts*.⁸⁸ A key finding of these surveys is that women and men of color and white women have less trust and confidence in the courts than do white men. To respond to this disparity, conference participants voted to make implementing the recommendations of the task forces on gender, race and ethnic bias in the courts a priority. This vote creates a critical opportunity for the Implementation/Standing Committees and their supporters because it provides the rationale for approaching the chief justice, state court administrator, state bar president and many others about taking action. As explained below, each state's Public Trust and Confidence Team, as well as those charged with the many and varied projects that states have initiated in response

⁸⁷ The ABA survey is available from the ABA, Office of the President, 750 Lakeshore Drive, Chicago, IL 60611, (312) 988-5103; Fax (312) 988-5100.

⁸⁸ The NCSC survey is available from the National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185; (757) 259-1841; (Fax) (757) 259-1250 or on the web at <http://www.ncsc.dni.us/PTC/Ptc.htm>. The materials on the web include the related and supporting documents, including issues priorities and strategies developed by individual state teams.

to this conference, should be approached. It is important to urge action within a comprehensive framework that will establish long-term implementation. Cherry-picking a few projects does not institutionalize change.

The vote at the national conference is cause for cheer, but how that vote came about is instructive for the future. When the American Bar Association and National Center for State Courts sought to assess public trust and confidence in the justice system, they did not approach the Gender Bias Task Forces for input. When one of the authors of this Manual, Lynn Hecht Schafran, heard about the national conference, she had to assertively propose herself as a speaker. She was on the conference panel titled *Potential Strategies*, i.e., how to fix the problems identified in the surveys. Panelists were provided with a list of strategies developed from the state conference teams at pre-conference meetings and asked to identify which one would be most useful. None of the state teams had proposed implementing bias task force recommendations, an obvious response to the findings in the two surveys.

As a panelist, Ms. Schafran pointed out that although the surveys showed women's and minorities' lack of confidence in the courts, they did not explain *why* this lack of confidence exists. She reminded the audience that the *why* is documented in the task force reports, which also present detailed recommendations for ameliorating the problems identified. She proposed that the Public Trust and Confidence Conference adopt as an overarching strategy: "Implement the recommendations of the task forces on gender, race and ethnic bias in the courts and do so in a way that builds on the successes in other states." This could be accomplished by using the *Gender Fairness Strategies Implementation Resources Directory*, which had been sent the previous December to every state court administrator, Task Force and Implementation/Standing Committee. After the panel conference attendees voted on a list of proposed strategies, the following six were the top priorities:

- Improve education and training
- Make courts more inclusive and outreaching
- Improve external communication
- Implement recommendations of gender, race and ethnic bias task forces and replicate the successes in other jurisdictions.
- Share programs and activities among the states that have been used to improve public trust and confidence.

- Provide swift fair justice—resolve cases with reasonable promptness.⁸⁹

Although the vote to make implementing bias task force recommendations a priority is a welcome validation of our work, the fact that neither the state conference teams nor the conference organizers thought about these recommendations beforehand is disturbing. Gender Bias Task Forces and Implementation/Standing Committees cannot assume that their work is widely known in their own states or that parties to court planning or reform initiatives will seek them out for input and collaboration. That is why these Committees must be constantly alert to every new court and justice system initiative and find proactive ways to integrate Committee concerns into them. We must re-package our issues into the frameworks and language of the initiatives currently favored by the courts: Courts and the Community; Public Trust and Confidence in the Justice System; Civility and the Courts, Equal Access and so forth. To avoid being marginalized, Gender Bias Task Forces and Implementation/Standing Committees must show how their work relates to and advances the goals of these new initiatives. Below are twenty-two examples of court and court-related initiatives where Implementation/Standing Committees need to make themselves heard.

Public Trust and Confidence State Teams and Projects

Some states are taking very seriously the vote of the 1999 National Conference on Public Trust and Confidence in the Justice System to make implementing the bias task forces' recommendations a priority. North Dakota Chief Justice Gerald W. VandeWalle, currently also Chair of the Conference of Chief Justices and President of the Board of the National Center for State Courts, reported in his 1999 State of the Judiciary Message that "[a] strong recommendation from many attending the national symposium on public trust and confidence is that states implement the recommendations of the gender fairness studies" and went on to describe the steps North Dakota has and is taking.⁹⁰

While we have had success to date in focusing on tasks to promote gender equality in specific arenas within the courts, it is now time to step back, look at the big picture, and infuse a consideration for gender equality into the wide range of on-going activities related to the courts.

*Judge Linda Giles
Co-Chair,
Massachusetts Gender Equality Board*

⁸⁹ The complete transcript of the conference panel can be found in *Potential Strategies for Improving Public Trust and Confidence in the Courts*, COURT REVIEW, Fall 1999 at 63.

⁹⁰ <http://www.court.state.nd.us/court/news/barjudiciary99.htm>. The Committee's approach to implementation has been to refer matters that can best be resolved by

In Rhode Island, Chief Justice Joseph R. Weisberger published a handsome eight-page brochure titled “The Current State of Public Trust and Confidence in the Justice System” in which he announced a plan that mirrors the recommendation in this strategies manual for an approach that integrates fairness concerns into all court planning and reform initiatives.

With respect to the issues raised [at the Public Trust and Confidence Conference], I have set up a broad based set of committees which deal with these specific matters. They include the Future of the Courts Committee, the User Friendly Committee, the Ad Hoc Committee on Judicial Independence, the Permanent Advisory Committee on Women and Minorities in the Court, the Court-Media Committee, the Interpreter Task Force, and the Rhode Island Conference on Building Public Trust and Confidence in the Justice System.

The Chief Justice set out specific questions and recommendations for each of these committees. For the Permanent Advisory Committee on Women and Minorities in the Courts he asked.

- Do all judges and court personnel treat women and minorities equally and fairly at present?
- What safeguards are in place to detect, stop and punish such discrimination?
- In a national poll, persons of color stated a belief that they were treated “worse or far worse” than white persons. If untrue, what can be done to correct this misperception?

The recommendations proposed for action by the Permanent Committee include: adopting a formal grievance procedure to process court employees’ bias complaints; public education about The Commission on Judicial Tenure and Discipline complaint process; an ombudsman to inform the public about their rights when discrimination complaints arise; a process to collect, evaluate and report on ethnic and racial data in and by the judicial branch and local and state law enforcement; a public education campaign to air the perception of minorities that are not being treated fairly in the courts, with the goal of engaging the public to support policies to root out discrimination wherever it may exist; a more diverse judicial branch and diversity sensitivity training; and educating people of diverse backgrounds about the operation of the courts.

existing committees and to maintain an aggressive education program for judges, employees, and attorneys.

The state teams that attended the national conference are now pursuing a wide variety of follow up activities. Implementation/ Standing Committees should make sure that team members have the Gender Bias Task Force's report and then arrange a meeting to show them how advancing the Committee's agenda will advance their own.⁹¹

Courts, bar associations and civic organizations are carrying out projects related to the Public Trust and Confidence Conference. The Maryland courts, for example, have an ADR (Alternative Dispute Resolution) Commission, which, in the Family Law area, is focused on custody and visitation mediation. An Implementation/Standing Committee should work closely with any ADR Commission to ensure, for example, that mediation is not wrongly used in cases where domestic violence is a factor. Many people mistakenly believe that the violence stops after separation and divorce and are unaware of how dangerous visitation can be for the battered parent, and of the profound negative impact of domestic violence on children. (See Alternative Dispute Resolution Initiatives below.)

An example of a bar effort is the Wisconsin State Bar Public Trust and Confidence Project. In focus groups around the state with people who had recent court experiences, the three themes that emerged were: race affects one's treatment in the courts, courts treat juveniles too lightly and courts lack empathy with the parties. Once again, gender bias committees have contributions to make on these issues. The issues for *women* of color are different from those for people of color in general.⁹² Juvenile girls' issues need special attention. For example, all too often courts punish runaway girls by sending them back to the families whose sexual and physical abuse drove them into the streets. With respect to the courts' lack of empathy with parties, often this results from a stark lack of factual understanding of the social and economic realities of women's and men's lives.

⁹¹ To pursue this approach, learn what projects your state included in its action plan as a result of this conference. To do this: Contact the chair of your state's team at this conference, check the National Center for State Court's website, www.ncsc.dri.us; contact the American Bar Association Committee on State Justice Initiatives (312) 988-6138, www.abanet.org/justice, E-mail: justice@abanet.org. Analyze how the Committee's work can support and enhance these initiatives. Also look at the projects other states are pursuing. Can any part of these projects be added to your agenda? Develop a written document that shows the supreme court, office of court administration and legislature why the Committee's work is critical to achieving public trust and confidence in the courts.

⁹² See Lynn Hecht Schafran, *Women of Color in the Courts*, TRIAL, August 1999 at 20 and NATIONAL JUDICIAL EDUCATION PROGRAM, WHEN BIAS COMPOUNDS: INSURING EQUAL JUSTICE FOR WOMEN OF COLOR IN THE COURTS (1998). Note that every state judicial educator and State Justice Institute Depository Library has a copy of this model judicial education curriculum.

The judge who does not grasp why a battered woman does not just leave is an example.⁹³

State and Local Public Trust and Confidence Conferences

Many states and localities are conducting their own versions of the National Conference on Public Trust and Confidence in the Justice System. California had a Courts and Community Strategic Planning Project featuring a statewide conference attended by 500 people and teams from 57 of the state's 58 counties. Sacramento County, as part of strategic planning for its local courts, conducted focus groups that included fairness-related questions. Implementation/Standing Committees should be part of these state and local court planning initiatives to insure that these conferences and focus groups address their concerns. The information elicited should help Committees measure their past impact and identify ongoing and new problems to be addressed in the future by Committees themselves and by the court initiatives that will emerge from these strategic planning projects.

Future of the Courts Commissions

These commissions are established by state supreme courts and go by many different names (Tennessee's was called the Renaissance Committee), but all are charged with developing a long-term action plan to improve court functioning and public trust and confidence in the courts. As of May 2000, thirty commissions had published reports. Obviously the Task Forces' recommendations are critical to realizing the goals of the Future of the Courts Commissions. Implementation/Standing Committees must make themselves part of the "futuring" process, participate in the hearings, comment on draft reports and recommendations, and comment loudly if the final reports omits their concerns. If your state's commission has already issued a report and the Implementation/ Standing Committee had no input, obtain the report and determine how to become part of the court's futuring process.⁹⁴

⁹³ Lynn Hecht Schafran, *Credibility in the Courts: Why is There a Gender Gap?* THE JUDGES' JOURNAL, Winter 1995 at 5.

⁹⁴ For additional information about these Futures Commissions and reports, contact the ABA Office of Justice Initiatives, 312/988-6138; fax 312/988-6100; justice@abanet.org or the American Judicature Society, 312/558-6900.

Family Law and Family Court Initiatives

Family law was an area of prime concern in every Gender Bias Task Force report. Thus, any court or legislative initiative in this area is vitally important. The Colorado Gender & Justice Committee set a good example when it announced formally, in conjunction with its tenth anniversary celebration, that it “will coordinate and work closely with the Commission on Families in the Colorado Courts, [newly] appointed by the Chief Justice...[to] study and make recommendations concerning best practices for resolving disputes involving families in the courts.” Many states are also establishing Family Court Task Forces and pilot Family Court projects. Here, too, Implementation/Standing Committees need to establish a liaison relationship in order to have input.

Committees should also be alert to any proposed family law legislation in order to evaluate its impact on the fair administration of justice and support, oppose or seek to amend it as appropriate. See *Key Component 6. Legislation Proposed by Task Forces and Implementation Committees* for a discussion of Committees’ appropriate role in legislation and separation of powers issues.

Alternative Dispute Resolution Initiatives

Almost every court system is exploring alternative dispute resolution (ADR) and mediation as alternatives to the litigation process, as exemplified by the Wisconsin initiative noted above. But the Gender Bias Task Forces identified ADR and mediation as minefields for battered women. ADR works best for parties of equivalent power. A woman who is afraid she will be beaten if she insists on a certain property division or visitation schedule during a divorce or custody negotiation will not be able to speak up for herself. The numerous current initiatives on ADR and mediation must not run rough shod over domestic violence victims, who should not be forced to use these mechanisms. Implementation/Standing Committees must follow and monitor ADR initiatives to make them aware of the Task Force’s recommendations and those of other organizations. For example, the American Bar Association adopted a resolution in August 2000 that any court-mandated mediation program should include an opt-out prerogative in any action in which one party has perpetrated domestic violence upon the other party.

Domestic Violence Initiatives

The justice system's treatment of domestic violence victims has improved significantly over the last several years. Nonetheless, this remains an area requiring continual attention. Court systems nationwide have come to understand the enormity of the problem and regularly undertake new initiatives to improve the courts' response. Implementation/ Standing Committees cannot assume that their input is not needed in these domestic violence initiatives. They must bring their independent judgment to the table lest the lessons of the Task Force investigation and subsequent evaluations showing the unintended consequences of some Task Force recommendations be lost.⁹⁵

Legislative Proposals

As noted above with respect to family law, even if Implementation/Standing Committees initiate legislation proposed by the Task Force on their own, they need also to be alert to proposals from other sources to ensure that they reflect Task Force/Committee findings and concerns. Committees should vet any proposed legislation relating to the issues the Task Force studied or to the Committees' emerging concerns. Proposed changes in substantive law areas such as family law, domestic violence and sexual assault should be of prime concern. See *Key Component 6. Legislation Recommended by Task Forces and Implementation/Standing Committees*, for further discussion of this point, including separation of powers issues.

***Pro Se* Litigant Initiatives**

The number of litigants coming to court without an attorney is increasing exponentially. Courts are struggling to improve their practices with regard to this population, as shown by the national conferences on *pro se* litigants convened by the American Judicature Society in Fall 1999 and Spring 2001.⁹⁶ As individual states develop their own *pro se* litigant initiatives, Implementation/ Standing Committees must ensure that the needs of the women who are the majority of this population are met.

⁹⁵ For example, the fact that mandatory arrest laws have resulted in widespread arrests of domestic violence victims where the perpetrator asserts that the victim started it, the police arrest both parties without further investigation.

⁹⁶ For information about these conferences, contact the American Judicature Society, 180 North Michigan Ave., Suite 600, Chicago, IL 60601, (312) 558-6900 x. 145, Fax (312) 558-9175, www.ajs.org.

In hearings before the California Judicial Advisory Committee on Gender Bias in the Courts, a rural legal aid attorney testified that there is a tendency of court clerks to treat *pro se* clients with disrespect, “especially if the pro [se] is a poor woman....”⁹⁷ The California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts reported that the overwhelming majority of litigants in family court appear without counsel and quoted a California Assemblywoman who testified that 85% of the *pro se* litigants in Los Angeles are women, “primarily women of color” who “were consistently treated with less respect and given insufficient information to carry out the roles that were assigned to them in representing themselves.”⁹⁸

Interpreter Qualifications and Codes of Conduct

There is currently a strong focus on improving interpreter services in the courts because of the increasing diversity of languages. This is certainly an area where there are gender-related concerns. Frequently, immigrant women of color who bring domestic violence or sexual assault charges against men from their own communities are undermined by court interpreters from their own communities who do not do not think these are serious crimes, and want to protect their community’s image. It is crucial that court interpreters receive training on the seriousness of domestic violence/sexual assault and that they adhere to the interpreters’ code of professional conduct that requires them to be free of bias.

Race/Ethnic Bias Task Forces and Implementation/Standing Committees

As of Fall 2000, there are/have been 45 gender bias task forces and 31 race/ethnic bias task forces. Thus, we can anticipate that more states will establish race/ethnic bias task forces in the coming years. When these do come on line, Implementation/Standing Committees should work with them to ensure that the particular issues for women of color are addressed. The Committees should also work with existing Race/Ethnic Bias Task Forces and

⁹⁷ CALIFORNIA JUDICIAL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS, ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE COURTS (1990) at Tab 5, page 105.

⁹⁸ CALIFORNIA JUDICIAL COUNCIL ADVISORY COMMITTEE ON RACIAL AND BIAS IN THE COURTS, FINAL REPORT (1997) at 165-166.

Implementation/Standing Committees to advance this issue and other mutual concerns and keep the court's attention on fairness issues.

Jail, Prison and Other Corrections Department Initiatives

Corrections Departments are repeatedly the locus of new initiatives dealing with issues such as overcrowding, drug and alcohol treatment and the upsurge in female inmates. The inequities women prisoners endure are legion. At the *Maximizing Our Gains Conference* an Illinois judge described a county where the work furlough, G.E.D. (High School Graduation Equivalency Degree) and drug programs were for men only. Additionally, the vast majority of female inmates have been battered and/or sexually abused and require specialized treatment for Posttraumatic Stress Disorder and the other psychological and emotional consequences of this abuse. Implementation/Standing Committees should involve themselves in Corrections Department initiatives to insure that these gender-related issues are addressed. The change that can be brought about, and the benefits of collaboration, were illustrated at the *Maximizing Conference* by the same Illinois judge who explained how she worked with the League of Women Voters to obtain a grant from the National Institute of Corrections which lead to a Women's Justice Department within the sheriff's office and important new activity on behalf of women inmates.

Substance Abuse Programs

Drug and alcohol abuse are significant factors in criminal activity. Thus, detox/rehab programs play a major role in sentencing. When they are not available to women offenders or women with children, these women do incarcerated time while comparably situated male offenders are sentenced to treatment. There is currently a major disparity in the availability of program beds for women. A California representative at the *Maximizing Conference* spoke about the belated discovery that the state was building a new 64-bed facility with no beds for women. Implementation/Standing Committees need to follow legislative and Corrections Department proposals for new treatment centers and demand equal and appropriate facilities for women, including women with children. The Committee can also initiate such efforts on its own, as is happening in Massachusetts.

Drug Courts

Many communities are establishing drug courts to divert certain non-violent drug offenders into probation and treatment and monitor their progress. Implementation/Standing Committees have a role here, too, because there are significant gender-related issues at play. Treatment providers often claim that women do not do as well as men in these programs. But judges in drug courts, as elsewhere in the system, need judicial education to understand why this is so and to insist that treatment providers adapt their programs to become successful for women. Female drug users often have needs that are different than the men for whom most of these programs were designed. A very high percentage of these women are using drugs to self-medicate the psychological trauma of sexual abuse and assault.⁹⁹ Drug treatment providers must understand the concept of co-occurring disorders and provide mental health treatment if they are to enable these women to get off drugs. Drug treatment providers must also provide childcare. Many women in these programs have young children and cannot attend a class or come in for a urine test if they have no place to leave a child.

Guardian *Ad Litem* Initiatives

The appointment of Guardians *Ad Litem* presents special problems because many lawyers long serving in this capacity, as well as those newly seeking these appointments, have no training in child development or the effects of domestic violence on children or child sexual abuse. Thus, whenever a court system undertakes review of its Guardian *Ad Litem* standards, Implementation/Standing Committees must become involved to insure a requirement for education in these crucial areas before an attorney can represent a child.¹⁰⁰

⁹⁹ NATIONAL VICTIM CENTER AND CRIME VICTIMS RESEARCH AND TREATMENT CENTER, RAPE IN AMERICA 7-8 (1992).

¹⁰⁰ See the *Implementation Resources Directory* at 90, 92 and 96 for court rules and legislation in this area.

Civility Initiatives

Courts today are deeply concerned with enhancing civility in court interactions. Implementation/Standing Committees need to be on top of these civility initiatives to ensure that they address with specificity the gender-related issues that are so clearly involved. Cases such as *Mullaney v. Aude*,¹⁰¹ which sanctioned attorneys for gender-biased conduct during discovery, underscore the finding in New Jersey's updated 1998 attorneys survey that despite the progress, problems persist, and male attorneys are still reported as the worst offenders.¹⁰² A caveat about civility initiatives is also necessary. Judges and others often believe that if they eliminate demeaning forms of address, sexist jokes and inappropriate comments on women lawyers' personal appearance they will have achieved gender fairness in the courts. While gender bias in court interactions does undermine women's credibility and the fair administration of justice, the fact is that a judge who runs an impeccable courtroom with respect to everyone's behavior may nonetheless make gender-biased decisions. Civility initiatives alone are not enough. The court system and education for all the actors in it must be concerned first and foremost with fairness in case outcomes.

Keep the focus on justice and keeping decisionmaking bias free.

Barbara Rosenberg

Chair,

Gender Bias Implementation Committee, Texas

Court Watching Programs

Implementation/Standing Committees can initiate their own court watching programs. But they should also partner with programs organized by other groups such as Church Women United and the League of Women Voters. When such a group announces a court-watching program, Committees should seek to ensure that these court watchers are properly trained to observe for gender bias in, for example, domestic violence cases.¹⁰³ Court watchers should also be trained to look for noteworthy instances of *gender fairness* so that the judge's action can be applauded and held up as an example to be emulated.

¹⁰¹ 126 Md. App. 639, 730 A. 2d 749 (1999), see *supra* footnote 76.

¹⁰² GENDER BIAS SURVEY REPORT, <http://www.state.nj.us/judiciary/gender.htm>

¹⁰³ See discussion of court watching and training materials at the end of *Key Component 14. Periodic Evaluation to Assess Implementation Efforts, Analyze Their Effect on Reducing Gender Bias in the Courts and Identify New Problems.*

Judicial Performance Evaluation Initiatives

Key Component 9. Initiatives to Ensure Gender Fairness in the Judicial Nomination, Election, Performance Evaluation and Disciplinary Processes discusses the way gender and race bias often taint judicial performance evaluation. When a state that does not have a judicial performance evaluation procedure in place begins to consider one, or there is the possibility of revising the extant system, Implementation/Standing Committees must involve themselves in the deliberations and insure that the instrument chosen is behavior-based and will minimize biased responses as much as possible.

Hearings on the Adequacy of Judicial and Attorney Disciplinary Processes and Changes to Codes of Conduct and Rules of Professional Responsibility

Gender-biased conduct by judges and attorneys is much reduced over the twenty years of the gender fairness movement, but has certainly not been eliminated. As discussed under *Key Component 3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Disciplinary Commissions on an Ongoing Basis*, judicial disciplinary bodies often lack sensitivity to gender bias issues and frequently operate as a black hole. Attorney disciplinary committees are regularly criticized for delay and silence. Thus, Implementation/Standing Committees must be part of the ongoing effort to reform these disciplinary bodies and the codes of conduct and rules of professional responsibility that establish the norms against which complaints are measured.

Court Appointment Initiatives

The gender, race and ethnic bias task forces found that female and minority group attorneys are often excluded from important court appointments as lawyers, law clerks, trustees, special masters and to court committees. In response, many courts are revising their systems (or lack thereof) for making these appointments in order to make them more equitable. Implementation/Standing Committees should be involved in this rethinking to make those charged with designing new systems aware of exactly what the Task Forces found and suggest ways to make the appointments process inclusive.

Court Employment Initiatives

Task Forces found that women are the large majority of lower level court employees and are not given training or credit for their contributions to the system or promotional opportunities. Thus, when court human resources departments are examining and revamping their systems, Implementation/Standing Committees need to provide timely input. To accomplish this, Committees must be proactive in advertising to various units within the court system that they want to be advised of new initiatives in time to provide constructive assistance.

Implementation/Standing Committees must also be attentive to court system affirmative action initiatives. In one state the new affirmative action office focused on race only. The Committee wanted it to focus also on issues for white women and women of color. The Committee's strategy was to put the head of the new office on the Committee itself.

Court Building Initiatives

Courthouses are constantly being newly built or renovated. Implementation/ Standing Committees must ensure that the new designs include children's waiting rooms and secure, separate waiting rooms for complaining witnesses/petitioners and defendants/respondents. Committees should also be alert to the placement and resources provided to Family Courts. Historically, these courts have sometimes been placed in less advantageous physical settings and provided fewer resources than other courts, even though family law issues are a major part of every state's docket and of paramount concern to the public that uses the courts. Being on top of this issue requires closely following the annual court budget in order to learn about building plans.



Conclusion:

**Moving Forward In All
Directions**



As the judicial reform effort to promote gender fairness in the courts enters the twenty-first century and begins its third decade of work, we can think of our movement as a star, radiating in many directions at once and lighting new paths for our work. Our star's five points represent the areas in which Task Forces, Implementation Committees, Standing Committees and others must work simultaneously if we are to secure the gains of the past two decades and accomplish more in the future.

The first star point represents the most essential task: comprehensive and *ongoing* execution of the fifteen components of ***The Institutionalization Plan***. These components reflect the Gender Bias Task Forces' most frequently made recommendations plus one more: ensuring that every court planning and reform effort addresses the relevant gender-fairness issues. Taken together, these fifteen components will embed the reforms initiated by the Task Force, the Implementation Committee and the Standing Committee deep within the structures and processes of judicial institutions.

Moving clockwise, the **second star point** refers to the kind of organization and communication necessary for those actively engaged in the reform effort in the twenty-first century. If we remain isolated from each other, we suffer tremendous individual and collective costs. But if we organize and maintain both ***regional and national networks***, we can strengthen our movement at every level, maximize the results of our efforts and nourish the individuals who labor for this cause.¹⁰⁴

The **third star point** directs us to an underutilized strategy for advancing the gender fairness agenda through the actions of committed individuals in agencies, organizations and committees within or functionally related to the courts: ***change agents*** and ***moles***. These *change agents*, often past or current members of Task Forces and Implementation/Standing Committees, are now in leadership positions in which they can openly promote specific reforms proposed by the Task Forces and the inclusion of gender fairness issues in the

¹⁰⁴ Those interested in joining the NJEP-sponsored Gender Bias Task Force listserv, please e-mail njep@nowldef.org.

agendas of other entities. In contrast, the *moles*, often past or current Task Force or Implementation/Standing Committee staff, promote the goals of the movement behind the scenes. Their “undercover” work involves promoting communication between their committee and other organizations both inside and outside of the court system, and finding other ways to include gender fairness issues on the wider court agenda. At the *Maximizing Our Gains Conference*, staff member participants commented that although implementing the gender bias task forces’ recommendations is a more than full-time job, they were most effective when they were simultaneously staffing other court initiatives into which they could integrate these concerns.

Implementation and Standing Committees must both *create* and *recruit* change agents and moles. The Committees must encourage current and former members and staff to involve themselves in all court-related activities and initiatives where gender fairness issues should be included, and must identify sympathetic non-Task Force members in these entities who can be asked to take a leadership role on issues of concern. Now that these issues are mainstream and there are cadres of member and staff “graduates” from the Task Forces, Implementation Committees and Standing Committees, there are more agents in the court system and the moles can become more visible and active in promoting these issues.

The **fourth star point** is ***Collaboration and Alliances***. It signals a new reality that Implementation/Standing Committees must acknowledge and act upon if further reforms of gender bias in the courts are to be realized in the near future. The Task Forces played a major role in the dramatic increase in public and professional consciousness about courts’ treatment of women in cases of domestic violence, rape and divorce. They also contributed to the diffusion of these and other gender fairness issues into the agendas of a broad range of judicial, legal and public organizations. Now, in this era of diminishing court resources and worn-out gender bias warriors, Implementation/Standing Committees should take advantage of the fact that “our” issues have become “mainstream” and form alliances and collaborative projects with other groups that share our concerns. These entities can help implement recommendations, jointly monitor the effects of the Task Forces’ and Committees’ work, mount public and professional education programs and undertake other mutually beneficial activities.

The **fifth star point** is ***Gender Fairness Issues in New Forums***. It points to an imperative reorientation of how we think and talk about issues of gender fairness in the courts in the coming decade. During the first two decades of this reform effort, our task was to define for the judicial and legal communities, and

also the public, the meanings and significance of the term “gender bias in the courts” and to establish its existence as antithetical to the core judicial norms of fairness and impartiality. The challenge before us now is to insert the “gender fairness perspective” into other court initiatives, which now garner the attention and resources of the court system, as well as into “Futures” long term strategic planning committees, which will establish programmatic priorities and allocate court resources into the future.

This will require framing old issues in new ways, asking new questions and using new language:

- “What are the special gender issues lodged in this initiative?”
- “How can we address areas of Task Force concern within this forum?”
- “What knowledge and experience gained by the Task Forces are relevant and useful to the new programs and initiatives, and how can they be brought to bear?”

The discussion of the Gender Fairness Impact Assessment Form for court planning and new reform initiatives in *Key Component 15* (pages **109 and 110 this will change!**) provides detailed guidance about how to insure the inclusion of gender fairness issues in these new forums.

During the next stage of our judicial reform effort we must conduct all these activities simultaneously. In other words, at all moments we must be ***Moving Forward in All Directions***. An impossible challenge? Remember what the national gender bias task force movement has accomplished thus far!

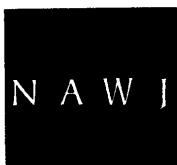


Appendices

APPENDIX A

Gender Fairness Strategies Project Sponsoring Organizations

- ***National Association of Women Judges***
- ***National Judicial College***
- ***National Center for State Courts***
- ***American Bar Association Commission on Women in the Profession***
- ***National Judicial Education Program***
- ***State Justice Institute***



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The National Association of Women Judges

Established in 1979, the National Association of Women Judges (NAWJ) is an independent non-profit, 501(c)(3) education and research organization. NAWJ membership exceeds 1,400 women and men from every state and all levels of the judiciary, including the United States Supreme Court.

The mission of the NAWJ is to look out for disadvantaged groups who so often find themselves struggling for equal justice and access to the courts - groups such as the young, the old, minorities, the underprivileged and people with disabilities. As NAWJ has long recognized, women in such groups face particular barriers to receiving fair treatment in our legal system. NAWJ conducts judicial education programs on immigrants in court, bioethics, child custody, family violence and the problems of women in the criminal justice system. NAWJ provides leadership training for judges and judicial educators, and trains judges at the National Judicial College on the issues of gender, race and ethnic fairness. NAWJ presents a forum for interacting and networking with judges from all levels of state and federal courts, as well as from international tribunals, and honors individuals for significant legal/judicial contribution:

As one of the organizations co-sponsoring the *Gender Fairness Strategies Project*, NAWJ uses its strong national network to evaluate and improve the project's effectiveness, and continues to advocate for implementation of task force recommendations nationwide.



THE NATIONAL JUDICIAL COLLEGE

AFFILIATED WITH THE AMERICAN BAR ASSOCIATION

WILLIAM F. DRESSSEL, *President*
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Chair Emeritus
JUDGE V. ROBERT PAYANT
President Emeritus

The National Judicial College

The National Judicial College is the leading national judicial education and training institution in the world. Its mission is to provide leadership in achieving justice through quality judicial education and collegial dialogue. NJC is a not-for-profit corporation, affiliated with the American Bar Association and located on the campus of the University of Nevada, Reno. Each year, NJC presents more than 50 resident courses, which have a duration of two and one half days to three weeks, for state court general and special jurisdiction trial court judges, appellate court judges, administrative law judges, and tribal court judges. Since its establishment in 1963, NJC has issued more than 65,000 certificates of completion to judges from all 50 states and 136 foreign countries.

In addition to its ongoing curriculum, NJC conducts workshops, special projects, and national conferences. NJC strives for diversity in its faculty. In recent years, nearly one third of faculty members have been women, and NJC has been proactive in recruiting women faculty members and inviting them to faculty development workshops. In addition to supporting the projects on *Gender Fairness Strategies: Identifying Our Resources* and *Gender Fairness Strategies: Maximizing Our Gains*, with State Justice Institute funding, NJC has presented faculty development workshops on *Gender Fairness in the Courts* and published the manual *Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts*. NJC has also integrated elimination of bias into all its faculty development workshops and annually sponsors a two and one half day resident course on *Building a Bias Free Environment in Your Court*. As part of its commitment to eliminate and prevent bias and any form of harassment, NJC publishes its policy against harassment prominently in the front of all its course materials and cautions its faculty against using language or telling anecdotes which could be construed as biased.

National Center for State Courts

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Roger K. Warren
President



The National Center for State Courts

The National Center for State Courts is an independent, nonprofit organization dedicated to the improvement of justice. It was founded in 1971 at the urging of Chief Justice Warren E. Burger who saw a need for a central resource for the nation's state, local and territorial courts. Today, NCSC meets that need by providing assistance, solving problems, creating knowledge, informing, educating, communicating state court interests, and supporting court organizations.

In 1989, the National Center for State Courts, in conjunction with the National Association of Women Judges and the William Bingham Foundation, hosted the National Conference on Gender Bias in the Courts in Williamsburg, Virginia and subsequently published the papers presented. The conference focused on the work of the various state court task forces aimed at eliminating gender bias in the courts. In 1993, Williamsburg was again chosen as the site of the Second National Conference on Gender Bias in the Courts. The primary focus of this conference was to assess progress achieved toward eliminating gender bias. In advance of the conference, the Information Service of the National Center for State Courts published *Status of Gender Bias Task Forces and Commissions in the State and Federal Judicial System*, compiled from the results of an extensive NCSC survey of the 50 states, District of Columbia and the circuit executives of the United States Courts of Appeal that identified action taken to address gender bias in the courts.

Today, the Information Service of the National Center for State Courts serves as a national clearinghouse for information on gender bias in the courts. The department maintains a Gender Bias Topic Bibliography, a Directory of Task Forces on Gender Bias in the Courts, and a Gender Bias Task Force Status Report. Information Service currently is providing staff assistance to the newly recreated Virginia Supreme Court Gender Bias Task Force. NCSC houses a special collection of materials gathered for the *Gender Fairness Strategies Project* for loan to task forces and states interested in researching or replicating the implementation approaches of other states.

AMERICAN BAR ASSOCIATION

Commission on Women in the Profession

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American Bar Association Commission on Women in the Profession

The Commission on Women in the Profession, comprised of twelve members appointed by the ABA President, was created in 1987 to assess the status of women in the legal profession and to identify and eliminate barriers to their advancement. The stated mission of the Commission is to secure the full and equal participation of women in the ABA, the legal profession, and the justice system.

As the *national voice* for women lawyers, the Commission is helping to forge a new and better profession that provides women with opportunities for professional growth and advancement equal to those of their male colleagues. Hillary Rodham Clinton, the first chair of the Commission, set the pace for changing the face of the legal profession by issuing a groundbreaking report in 1998 showing that women lawyers were not advancing at a satisfactory rate.

Now in its second decade, the Commission aims not only to report the challenges that women Lawyers face, but to *bring about change* in the legal workplace. Drawing upon members' expertise and diverse backgrounds, the Commission develops programs, policies, and publications to advance and assist women in public and private practice, the judiciary, and academia.

As an advocate for change the Commission:

- Challenges legal employers to set trends in the profession;
- Highlights incentives for legal employers and law schools to change;
- Advances the interests of women lawyers in the trenches and navigates the politics of backlash;
- Guarantees a national platform for the voice of women lawyers; and
- Encourages employers to utilize progressive workplace policies for parental leave, alternative work schedules and other "best practices" of the profession.

The elimination of gender bias in the courts of this nation is central to the mission of Commission on Women, one of the sponsoring organizations of the *Gender Fairness Strategies Project*.

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The National Judicial Education Program

The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) is a project of NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges. Since 1980 NJEP has provided training and materials for national, state and federal judicial education programs about the ways that gender bias undermines fairness in decisionmaking and court interactions.

NJEP creates model curricula and presents and advises on programs about gender bias in the courts for judicial colleges and organizations, bar associations, law schools and legal and lay organizations across the country. With funding from the State Justice Institute, NJEP has published three comprehensive model judicial education curricula— *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts*; *Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute*; and *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*, also available as a video. NJEP's judicial education manual, *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources*, is a guide to nearly sixty substantive and procedural areas of the law in which gender may be a factor.

NJEP's judicial education programs were the catalyst for the more than fifty task forces established by state chief justices and federal circuit councils to examine gender bias in their own judicial systems and implement reforms. NJEP provides extensive technical assistance to these task forces in all phases of their work. To support and encourage the national gender bias task force movement, NJEP published *Operating a Task Force on Gender Bias in the Courts: A Manual for Action, Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts* and *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States*. Through the *Gender Fairness Strategies Project*, NJEP works with its project partners to institutionalize efforts to eliminate gender bias in the courts, to reinvigorate the momentum for implementing task force recommendations, and to define the implementation agenda for the next decade. NJEP compiled the project's *Implementation Resources Directory* and wrote this final project publication, *Gender Fairness in the Courts: Action in the New Millennium*.

a project of the
**NOW Legal Defense and
Education Fund**
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**National Association of
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State Justice Institute

The State Justice Institute (SJI) was established by Federal law in 1984 to award grants to improve the quality of justice in State courts, facilitate better coordination between State and Federal courts, and foster innovative, efficient solutions to common problems faced by all courts. Since becoming operational in 1987, SJI has awarded over \$125 million to support more than 1,000 projects benefiting the nation's judicial system and the public it serves. Institute matching requirements have also enabled these projects to benefit from more than \$40 million in support from other public and private sources.

The Institute is unique both in its mission and how it seeks to fulfill it. Only SJI has the authority to assist all State courts — criminal, civil, juvenile, family, and appellate — and the mandate to share the success of one State's innovations with every State court system as well as the Federal courts. Key areas of interest include responding to the needs of children and families in court, family violence, applications of technology in the court, improving public confidence in the courts, judicial branch education, and sentencing.

The Institute carries out its mission in a variety of ways that maximize the impact of its funding, including:

- Placing practical products in the hands of the judges and court staff who can most benefit from them
- Maintaining information clearinghouses to assure that effective new judicial approaches in one State are quickly and economically shared with other courts nationwide
- Establishing national resource centers where judges and court staff obtain expert guidance, test new technologies, and learn from each other
- Convening national regional, and in-State educational programs to speed the transfer of solutions to problems confronting courts across the country
- Delivering national technical assistance targeted at specific jurisdictions' specific problems.

SJI is a non-profit corporation governed by an 11-member Board of Directors appointed by the President and confirmed by the Senate. By law, the President must appoint six State court judges, one State court administrator, and four members of the public (no more than two of whom may be of the same political party).

More information about the Institute is available on the SJI web site (<http://www.statejustice.org>), including:

- The Institute's annual Grant Guideline, quarterly newsletter, and other publications
- Forms and instructions for all grant programs, including Project Grants, Technical Assistance Grants, Curriculum Adaptation Grants, and Scholarships
- A list of all the grants SJI has awarded since its inception

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The **State Justice Institute** (SJI) has made numerous grants to national organizations, to state judicial education programs and to gender bias task forces in individual states in support of projects to enhance gender fairness in the courts. Following is a list of the SJI-supported projects cited in this manual.

- **American Judicature Society**

SJI-99-042: *A National Conference on Self-Represented Litigants Appearing in Court*, 1999.

- **Judicial Council of California**

SJI-96-089: *Sexual Harassment Awareness and Prevention: Proposal for a Model Curriculum*, 1996.

- **National Association of Women Judges**

SJI-87-008: *Minimizing Gender Bins in the State Courts*, 1987.

SJI-89-062: *Enhancing Gender Fairness in the State Courts*, 1989.

SJI-91-019: *Enhancing Gender Fairness in the State Courts*, 1991.

SJI-92-073-P92-1: *Second National Conference on Gender Bins in the Courts: Focus on Follow-Up*, 1992.

SJI-97-089: *Gender Fairness Strategies: Identifying Our Resources*, 1997.

- **National Center for State Courts**

SJI-98-040: *Planning Conference on Building Public Trust and Confidence in the Justice System*; 1998.

SJI-00-125: *Implementing the Notional Action Plan to Improve Public Trust and Confidence*, 2000.

- **National Judicial College**

SJI-90-077: *Gender Fairness Faculty Development Workshops*, 1990

- **National Judicial Education Program**

SJI-92-003: *The judicial Response to Stranger and Nonstranger Rape and Sexual Assault: A Model Judicial Education Curriculum*, 1992.

SJI-95-019: *Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute: A Model Curriculum for Judges and Court Personnel*, 1995.

SJI-96-161: *When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts*, 1996.

SJI-98-133: *Understanding Sexual Violence: The Judicial Response to Stranger and Non-Stranger Rape and Sexual Assault: A Self-Directed Model Judicial Education Curriculum*, 1998.

- **Washington State Office of the Administrator for the Courts**

SJI-00-054: *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts*: Curriculum Adaptation Grant, 2000.

Detailed information about these grants can be obtained from the SJI website (www.statejustice.org, SJI grants).

APPENDIX B

***Gender Fairness Strategies Project
Maximizing Our Gains Invitational Conference
January 20-24, 1999
Athens, Georgia
Conference Participants List***

Gender Fairness Strategies: Maximizing Our Gains

Invitational Conference

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APPENDIX D

**Lynn Hecht Schafran,
Judges Cite Gender Bias Task Force Reports,
THE JUDGES' JOURNAL,
Spring 2000, at 13.**

Judges Cite Gender Bias Task Force Reports

By Lynn Hecht Schafran

Since 1984, trial and appellate courts have cited the reports of the various task forces on gender bias in the courts in eighty-nine cases, in twenty-five states, and in eight federal cases. The issues addressed run the gamut from divorce and custody, to judicial and lawyer conduct, to rape and murder. With respect to lawyers' behavior, for example, in *Mullaney v. Aude*, 126 Md. App. 639, 730 A.2d 749 (1999), the Maryland Court of Special Appeals upheld a trial court's sanction against two lawyers who used gender-biased tactics during discovery. In discussing the long-standing history of gender bias in courtrooms the court cited to the Maryland and New Jersey task force reports directly and also to articles citing several additional states' reports. The court concluded:

While strategy and tactics are part of litigation, and throwing your adversary off balance may well be a legitimate tactic, it is not legitimate to do so by the use of gender-based insults [W]e have long passed the era when bias relating to sex . . . is considered acceptable as a litigation strategy. *Id.* at 658.

Of particular importance are the cases in which judges have been reversed for gender bias. The leading case is *Catchpole v. Branson*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 330 (Cal. Ct. App. 1995). In this sexual harassment case, which set aside a judgment due to the gender bias of the trial judge and also held that issues of gender bias did not have to be raised at the trial level, the court adopted the definition of "gender bias" in the California gender bias task force report:

[G]ender bias includes behavior or decision making of participants in the justice system which is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; and (3) myths and misconceptions about the social and economic realities encountered by both sexes. *Id.* at 442, n.2.

Similarly applying the California task force's definition, the same appellate court had found judicial gender bias in a divorce case three years earlier, in the oral statements of a trial judge who originally upheld the validity of a premarital agreement. *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. Ct. App. 1992). The appellate court held that the trial judge's perceptions, indicated by statements relating to marriage such as, "And why, in heaven's name, do you buy the cow when you get the milk free . . .," (*Id.* at 1499) indicated his use of gender-biased language and gender-based stereotypes in his decision-making process.

Gender bias task force reports have frequently been cited to highlight courts' common hesitancy to acknowledge the preva-

lence and seriousness of rape, sexual assault, and domestic violence. In *Custody of Vaughn*, 422 Mass. 590, 664 N.E.2d 434 (Mass. 1996), for example, the Supreme Judicial Court of Massachusetts ruled that the probate court erred when it failed to make findings of fact about domestic violence before it granted primary custody to a father and joint legal custody. Pointing to the Massachusetts task force study, the court stated:

The Gender Bias Study concludes that our courts have too often failed to appreciate the fundamental wrong and the depth of the injury inflicted by family violence. In subtle and overt ways, the decisions of courts fail to take these factors into account and have treated them with insufficient seriousness in making dispositions, particularly in cases involving custody of children and the realignment of family relationships in divorce and related proceedings. *Id.* at 596.

In federal proceedings respecting Congress's authority to enact a federal civil rights remedy under the Violence Against Women Act for victims of gender-motivated violence, courts repeatedly cited the task force reports as documenting the inadequacy of state judicial systems in providing protection to such victims. See, for example, *Doe v. Mercer*, 37 F. Supp. 2d 64 (Mass. 1999), where the court quoted Congress in saying, "Collectively, these reports provide overwhelming evidence that gender bias permeates the court system and that women are most often its victims." S. REP. NO. 103-138, at 49, *Mercer* at 69. See also *Timm v. Delong*, 59 F. Supp. 2d 944 (Neb. 1998); *Kuhn v. Kuhn*, 98 C2395 (N.D. Ill. 1999); *Ericson v. Syracuse University*, 45 F. Supp. 2d 344 (S.D.N.Y. 1999). In the 5-4 Supreme Court opinion holding that Congress exceeded its authority both sides point out that, in the words of the majority, "the assertion that there is pervasive bias in various state justice systems against victims of gender-motivated violence . . . is supported by a voluminous congressional record . . ." The majority cited the House and Senate reports that rely on the task force reports. *U.S. v. Morrison*, 120 S. Ct. 1740 (2000), 2000 LEXIS 3422, *35. The dissent cited twenty-one of these reports. *Id.* at *55.

Editor's Note: Ms. Schafran provides a discussion of some of the cases cited in this sidebar on p. 48.



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pendence—are at risk. Second, as one commentator has pointed out, "[t]hat women judges and lawyers who possess the privileges of formal and actual authority can still be subjected to minor and major harassment bears testament to the pervasive modes by which domination continues."⁶ In other words, it does not bode well for less privileged women—

employees, litigants, witnesses, jurors, and those affected by substantive rules of law—that the most privileged and powerful women in the system may themselves be disadvantaged by their gender in ways important to their work. Finally, given the uses to which we put the results of judicial performance evaluation (i.e., voter education on the fitness of judges sitting for

election and self-improvement), we are expending too much time, money, and institutional credibility if the results are contaminated by bias and are, therefore, unreliable.

Other Evidence of Gender-Related Bias

In addition to the widespread anecdotal information and the limited empirical data

GENDER BIAS CASE LAW

***Mullaney v. Aude*, 126 Md. App. 639, 730 A.2d 749 (1999)**

A female plaintiff successfully sued a male defendant in tort for infecting her with genital herpes. During plaintiff's pre-trial deposition she was asked to retrieve a document from her car. As she left the room one of the defendant's two male lawyers said she was going to meet "[a]nother boyfriend" at the car. When both of plaintiff's lawyers—a man and a woman—told him that his remark was in poor taste and asked that he refrain from further derogatory comments he slurred the female lawyer and called her "babe." When she objected he said, "At least he didn't call her bimbo." He continued to refer to her as "babe" throughout the litigation. For this and other discovery abuses plaintiff's lawyer sought and received a protective order and her attorneys' fees incurred in preparing the protective order and attending the hearing. Defendant and his counsel appealed the fee award. The Maryland Court of Special Appeals held, *inter alia*, that defense lawyer's deposition conduct constituted gender bias warranting a protective order and attorneys' fees, and that the trial judge's imposition of sanctions was consistent with Maryland Code of Judicial Conduct Canon 3(A)(10) mandating that "[a] judge shall require lawyers in proceedings before the judge to refrain from manifesting by words or conduct, bias or prejudice based upon . . . sex . . . against parties, witnesses, counsel or others."

***Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 330 (Cal. Ct. App. 1995)**

A young woman sued her employer and supervisor for sexual harassment, assault and battery, and intentional and negligent infliction of emotional distress. She alleged that her supervisor maintained a hostile work environment and sexually assaulted her. At trial a police detective testified that the supervisor admitted the assault in a controlled call monitored by the police and plaintiff testified that she did not physically resist. The trial judge wrote in his Tentative Decision that the situation was unbelievable, that plaintiff was at fault for not successfully resisting, and that it could be inferred that she pursued her supervisor. Plaintiff appealed on the ground of gender bias. The court of appeals found "substance to these claims," based on "the tenor of the proceedings" and the judge's "assessment of appellant's credibility." The trial judge called sexual harassment cases "detrimental to all concerned" and described this case as "nonsense." He showed extreme irritation at having to listen to plaintiff's witnesses and openly derided a rape crisis counselor. He subjected the plaintiff alone among all the witnesses to a scathing interrogation, asked her whether she blamed herself for letting the assault happen, whether her father blamed her, and whether she had considered "just leaving without your clothes"? The court of appeals held that "the allegations of gender bias [were] meritorious" and reversed and remanded for a new trial before a different judge. The court wrote: "[T]he phrase 'due process of law' . . . minimally contemplates the opportunity to be fully and fairly heard before an impartial decision-maker. . . . The judge's expressed hostility to sexual harass-

ment cases and the . . . misconceptions he adopted provide a reasonable person ample basis upon which to doubt whether appellant received a fair trial."

***In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. Ct. App. 1992)**

Cheryl Iverson appealed from a divorce judgment holding that her premarital agreement was valid. The court of appeal reversed and remanded for a new trial before a different judge. The court held that the trial judge's oral statement of decision was so replete with gender bias that it was forced to conclude that the wife could not have received a fair trial. The appellate court wrote that it was "quot[ing] the judge's statement at length to show that, in resolving disputed issues of fact, it is reasonably clear that he entertained preconceptions about the parties because of their gender . . ." For example, the trial judge described Cheryl Iverson as a "lovely girl" who "[h]ad nothing going for her except for her physical attractiveness." In response to the husband's assertion that he had not wanted to marry Cheryl with whom he resided prior to marriage, the judge said, "And why, in heaven's name do you buy the cow when you get the milk free. . . . [T]he impetus for marriage must be coming from her side, because there's nothing Mr. Iverson is going to get out of it. . . . [Marriage is] a deprivation of his freedom." These statements led the court of appeal to find that "[t]he resolution of the credibility issues in the case thus may have been based, at root, on Cheryl's gender and physical attributes.

" . . . The day is long past when appellate courts can disregard judicial action rooted in racial or sexual bias as harmless error"

***Custody of Vaughn*, 422 Mass. 590, 664 N.E. 434 (Mass. 1996)**

A father brought an action to determine custody of his eleven-year-old son. He and the boy's mother had lived together for approximately fifteen years. At trial there was extensive evidence of the father's "rages and violence" toward the mother and her two children by a previous marriage and his verbal and physical abuse of the boy. There was testimony that he injured the mother on numerous occasions and that police were called approximately a dozen times. The child in question had witnessed many of the episodes of abuse. There was also testimony that the father was deeply involved in the child's life and that the boy wanted to spend more time with the father. The father initiated his custody suit the day after the mother obtained a restraining order against him. The probate and family court awarded shared legal custody and primary physical custody to the father without making written findings of fact on the impact of domestic violence on the child, the child's safety, and the father's parenting ability. The Supreme Judicial Court cited research showing the "profound impact" witnessing domestic violence has on children and held that the probate court's failure to address this issue constituted reversible error. It remanded with a directive that the probate court make such findings.

A Call to Action from Lynn Hecht Schafran

Editor's Note: This excerpt is adapted from a 1999 memorandum written by Lynn Hecht Schafran of the National Judicial Education Program, entitled "National Conference on Public Trust and Confidence in the Justice System—An Opportunity Created for You." The memo is directed to the various task forces, commissions, and implementation committees on gender, race, and ethnic bias.

The "National Conference on Public Trust and Confidence in the Justice System," sponsored by the National Center for State Courts in cooperation with the American Bar Association, Conference of Chief Justices, Conference of State Court Administrators, and League of Women Voters, took place in Washington, D.C., in May 1999. The nearly 400 attendees included teams comprised of the chief justice, state court administrator, state bar president, and other justice system leaders from each state.

Implementing Recommendations Voted a Top Priority

The focus of the conference was to respond to two national surveys: the ABA's "Public Perceptions of the U.S. Justice System" and the National Center for State Courts' "How the Public Views the Courts." A key finding of these surveys was that women (both white and of color) and men of color have less confidence in the courts than do white men.

I was a speaker on one of the conference panels titled "Potential Strategies," i.e., how to fix the problems that had already been identified.¹ Panelists were provided a list of strategies developed from the teams' pre-conference meetings and asked to identify which of the strategies we thought would be most useful. My top choice was not on the list. The surveys show that women and minorities' lack confidence in the courts but do not explain why this lack of confidence exists. I reminded the audience that the why is documented in the state task force reports on gender, race, and ethnic bias in the courts, which also present detailed recommendations for everyone in the justice system to ameliorate the problems documented. I pointed out that implementation of these

recommendations has been uneven, with some states going full steam ahead and others not even bothering to establish implementation committees.

My overarching strategy, therefore, was to "implement the recommendations of the task forces on gender, race, and ethnic bias in the courts and do so in a way that builds on the successes in other states." Building on others' successes meant using the *Gender Fairness Strategies Implementation Resources Directory*, sent last December to every state court administrator, task force, and implementation committee, to familiarize them with what other states had done to implement their own task force's recommendations so that these actions could be readily replicated or adapted.

After the panel, breakout groups discussed the proposed strategies. My recommendation had been added to the list on which the attendees were asked to vote. The final vote on strategies yielded the following six items as the top following strategies:

- Improve education and training
- Make courts more inclusive and outreaching
- Improve external communication
- Implement recommendations of gender, race, and ethnic bias task forces and replicate the successes in other jurisdictions
- Share programs and activities among the states that have been used to improve public trust and confidence
- Resolve cases with reasonable promptness—provide swift fair justice

Improving Education and Training

The top-ranked strategy was "Improve education and training." This strategy includes the many references to school curricula about the courts and internal education programs for judges, lawyers, and court staff (the most common topics being bias sensitivity training and ethics).

In addition, educating judges and others on the substance of the areas in which they are making decisions is imperative. We would not let a dermatologist take up open-heart surgery without additional training, but we let all kinds of lawyers

(and even nonlawyers) without specialized training decide cases where lives are also at stake. It is critical that we change the justice system's anomalous paradigm and that the "Improve education and training" strategy focus not only on bias sensitivity/ethics issues, but also on the social science, medical, psychological, economic, scientific, etc., knowledge that must inform substantive decision making. Task force implementation committees should work with their state judicial educators to see that this need is met.

Use This Opportunity

Given that implementing task force recommendations emerged as a top strategy, now is the key moment to approach your chief justice, state court administrator, state bar president, etc., about taking action. It is important to urge action within a comprehensive framework that will establish long-term implementation. Cherry-picking a few projects does not institutionalize change. A model framework is provided by the Institutionalization Plan that appeared in the *Gender Fairness Strategies Implementation Resource Directory*.

The issues and strategies endorsed as critical at the National Conference on Public Trust and Confidence in the Justice System can take us a long way toward implementing the recommendations of the state task forces on gender, race, and ethnic bias in the courts and realizing our goal of equal, informed justice. I urge you to take advantage of this opportunity to meet with the leaders in your justice system and to infuse our work with new energy and commitment.

Note

1. The complete transcript of this and other conference panels can be found in a special issue of *Court Review*; see "Potential Strategies for Improving Public Trust and Confidence in the Courts," 36 Ct. Rev. 63 (Fall 1999).

Author's Note: The Gender Fairness Strategies Implementation Resources Directory can be obtained from the National Judicial Education Program for \$20; Phone: 212/925-6635.

APPENDIX E

**Judith M. McConnell and Kathleen F. Sikora,
*Gender Bias and the Institutionalization of Change:
Lessons from the California Experience,*
THE JUDGES' JOURNAL,
Summer 2000, at 13.**

GENDER BIAS AND THE INSTITUTIONALIZATION OF CHANGE

Lessons from the California Experience

BY JUDITH MCCONNELL AND KATHLEEN F. SIKORA

Editor's Note: This article continues the discussion of gender fairness and the law, which was introduced in The Judges' Journal's Spring 2000 special issue on "Gender Issues and the Legal System."

In January 1999, a California delegation of judges and attorneys attended the Gender Fairness Strategies: Maximizing Our Gains Invitational Conference¹ in Athens, Georgia, to consider the institutionalization of recommendations made over the previous two decades by various state and federal court gender bias task forces. The conference drew representatives from twelve geographically diverse areas to explore the status of their jurisdictions' gender bias task force proposals, most particularly the barriers to and strategies for successful implementation. A major focus of the discussions involved the essential ingredients set forth in guidelines compiled by the National Judicial Education Project (NJEP) entitled "Key Components to Achieve and Secure Gender Fairness in the Courts."

Thus, for the purposes of this article, "institutionalization" means the degree to which (1) gender bias rec-

ommendations have been implemented, (2) the components set forth in the NJEP guidelines have been put in place, and (3) both the recommendations and key components have become part of the way the courts regularly do business.

The Athens conference served to provide a new vigor to gender bias efforts in the California courts and resulted in a California Judicial Council² Fairness Issues Meeting in December 1999 to review the status of more than 270 recommendations made over the past ten years by three of its own task forces. Further, in March 2000 the Judicial Council took action that brought the work of many years into its current planning process. Initially designed to measure the degree to which the recommendations had been institutionalized, the process itself became a mechanism to further their implementation.

California's Approach to Reform

Despite the importance of the Athens conference to gender bias efforts in California, it was but another episode in the long history of California court reform in this arena.

Indeed, California's Judicial Council Advisory Committee on Gender Bias in the Courts,³ established in 1988, was not the first in the nation to study the impact of gender bias on the court system,⁴ but its effort was one of the most extensive. In 1990, the Judicial Council adopted sixty-eight recommendations of this advisory committee in the areas of civil law, criminal and juvenile law, courtroom demeanor, domestic violence, and court administration, and it subsequently formed the Advisory Committee to Implement the Gender Fairness Proposals to oversee their implementation. Several recommendations were adopted immediately. For example, Standards of Judicial Administration⁵ section 1 was amended to ensure fairness, prohibit biased conduct, and ensure unbiased decisions. This statement of principle elevated the importance of gender and other fairness issues to a new level and serves to this day as an aspirational goal. Further, California Rule of Court 1200 was adopted, mandating education for judicial officers new to a family law assignment, reflecting the advisory committee's finding that the family law calendar was often under-

staffed, undervalued, and assigned to the newest, least experienced judicial officers.

These two advisory committees merely constituted the beginnings of the examination of fairness issues in the California courts. Several other Judicial Council advisory committees and special task forces have been formed since 1990, including the Advisory Committee on Racial and Ethnic Bias (1991), the Court Interpreters Advisory Panel (1991), the Advisory Committee on Access and Fairness⁶ (1994), and the Special Task Force on Court/Community Outreach (1997). Throughout this period—and again in 1999—state and national studies have been undertaken to measure public perception of the courts.⁷

Progress after the Athens Conference

Energized by the Athens conference, the California delegation urged formation of a joint legislative-judicial Planning Committee to design a Judicial Council Fairness Issues Meeting⁸ with three objectives: (1) to recognize both the efforts and progress that have been made in the judicial branch toward identifying and eliminating bias and achiev-

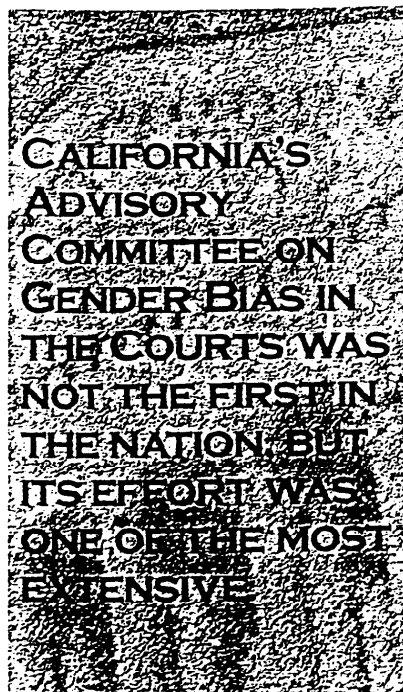


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ing fairness; (2) to identify areas for further improvement; and (3) to focus on collaborative efforts between the judicial, legislative, and executive branches and other entities, such as the state bar and public interest groups. Appointed by the Administrative Director of the Courts, the committee met in October 1999 to plan a Judicial Council Issues Meeting scheduled for December 1999. Judge Judith McConnell and Assembly Member Sheila James Kuehl, Chair of the Assembly Judiciary Committee, were appointed co-chairs.

Many different perspectives were voiced during the planning committee meeting. A sampling of certain comments that were offered will highlight the variety of viewpoints represented on the committee:

- Fairness education still suffers from resistance and negativity from some judges. However, once judges attend a program, most are positive, if not enthusiastic, about the experience. So, concentrated effort needs to be directed toward the perception of fairness courses and toward getting all judges to attend.

- If time away from the bench for judicial education about gender and other general fairness issues is a problem, the judiciary should petition the legislature for more resources to ensure sufficient backup for judges.

- Many judges basically agree with

fairness initiatives but are concerned that the judiciary is spending so much time analyzing and criticizing itself.

- Significant amounts of change in court technology, demographics, and diversity have occurred, and so too is the "self-image" of the judiciary evolving, from complete independence to central organization and local management. Some judges resent these changes.

- One major barrier to solving problems of bias is that attorneys and staff still do not feel safe in communicating their concerns about bias.

- Many judicial officers are still reluctant to deal directly with colleagues who exhibit bias or insensitivity.

- More fairness education needs to be provided locally.

- Addressing bias and fairness among the 18,000 court staff members statewide is critical to overall success.

- There are many layers of authority in the law—statutes, statewide rules, local rules, and standards—and many judges and attorneys do not even know what is expected or required of them.

- Even if there is a rule or a standard, how does one know that it is being followed?

- The future of an independent judiciary depends on public trust and confidence in the courts; however, research and surveys indicate that public perception of the courts is often driven by a feeling of unequal treatment.

- While California has engaged in an ongoing effort to implement its task force recommendations, the state courts need to continue efforts to institutionalize fairness in a way that invests people in it.

- Courts need to recognize and reinforce the progress that has been made and to acknowledge that the judiciary has led the way in efforts to improve the quality of justice.

- Despite the difficulty of measurement and definition, the judiciary needs to ascertain what progress has been made and where to go from here.

Reassessment and Rededication

During the October meeting of the planning committee, AOC staff was directed to prepare two documents for premeeting review by Council members

MANY JUDGES BASICALLY AGREE WITH FAIRNESS INITIATIVES BUT ARE CONCERNED THAT THE JUDICIARY IS SPENDING SO MUCH TIME ANALYZING AND CRITICIZING ITSELF

before the December Fairness Issues Meeting. First, staff was asked to revisit materials from a March 1997 Judicial Council planning workshop whose purpose had been to shift the focus from the creation of a long-range strategic plan to the prioritization of specific objectives. Included in those 1997 materials had been a report on the accomplishments from 1992 to 1995 under each of the Judicial Council's five goals and thirty-five policy directives. What in 1997 had spanned sixteen pages matured into a full-scale thirty one-page narrative report updating three goals related to access to justice: Goal I—Access, Fairness, and Diversity; Goal IV—Quality of Justice and Service to the Public; and Goal V—Education. Second, staff was directed to compile detailed and comprehensive tables reflecting the status of 270 recommendations, including subparts, set forth in prior reports on gender, race/ethnicity, and persons with disabilities. Although this task was complex given the passage of time, the difficulty of precision, and the subjectivity of judgment, tabulations indicated that of 161 original gender bias recommendations, seventy-six were wholly, substantially, or partially implemented; implementation of forty-six recommendations was ongoing or in progress; seventeen recommendations had not been implemented; and the status of twenty-two was unknown.

At its December 1, 1999 Fairness Issues Meeting, the Judicial Council identified twenty-two issues as possibly meriting further action, and on March 16, 2000, the Council recommended the following nine projects for further action:

- culturally competent, local court self-help centers;
- a study of the needs of children in court;
- education for judges and court staff on handling of pro se litigants;
- training for court clerks on the

CHRONOLOGY OF CALIFORNIA'S FAIRNESS INITIATIVE

- | | |
|------|---|
| 1987 | Judicial Council Advisory Committee on Gender Bias in the Courts appointed by Chief Justice Malcolm M. Lucas; co-chaired by Judge David M. Rothman (Ret.), Los Angeles Superior Court, and Senator Diane E. Watson, California State Senate. |
| 1990 | California Judicial Council received report of Advisory Committee on Gender Bias in the Courts; Council approves all sixty-eight recommendations. Advisory Committee to Implement the Gender Fairness Proposals appointed, chaired by Justice Ronald M. George, Court of Appeal, Los Angeles. |
| 1991 | Advisory Committee on Racial and Ethnic Bias in the Courts appointed by Chief Justice Malcolm M. Lucas; co-chaired by the late Supreme Court Justice Allen E. Broussard and Supreme Court Justice John A. Arguelles (Ret.). |
| 1992 | Judicial Council adopts rule of court mandating education for judicial officers newly assigned to family law. |
| 1992 | Judicial Council adopts first strategic plan. Access and fairness adopted as first of five goals. |
| 1994 | Advisory Committee on Access and Fairness appointed by Chief Justice Ronald M. George; chaired by the late Judge Benjamin J. Aranda III, Los Angeles Municipal Court; now chaired by Judge Frederick P. Horn, Superior Court of Orange County. |
| 1996 | Judicial Council adopts rule of court mandating three weeks of education for new judicial officers. |
| 1997 | Advisory Committee on Racial and Ethnic Bias in the Courts issues conclusions and recommendations. Council receives report and refers recommendations to various advisory committees for action. |
| 1997 | Special Task Force on Court/Community Outreach appointed by Chief Justice Ronald M. George; co-chaired by Judges Veronica S. McBeth, Superior Court of Los Angeles County, and Judith McConnell, Superior Court of San Diego County. |
| 1998 | Chief Justice Ronald M. George issues policy directive requesting all judicial officers and court staff to participate in fairness education programs. |
| 1999 | Special Task Force on Court/Community Outreach issues report to Judicial Council. |

meaning of "legal advice";

- in-house interpreters;
- unified family courts;
- regionalized court interpreter

services;

- centralized translation of forms and documents; and

• increased resources for children in the courts.

Lessons Learned

Although a significant amount of time has passed from initiation to implementation, the California

KEY COMPONENTS TO ACHIEVE AND SECURE GENDER FAIRNESS IN THE COURTS

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(212) 925-6635, fax (22) 226-1066, njep@nowldef.org

1. A standing committee on gender fairness.
2. Staff and funding to carry out the work of implementation on a long-term basis.
3. Education for judges, court personnel, and judicial nominating and disciplinary commissions on an ongoing basis.
4. Gender-fairness initiatives that address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles.
5. Codes of conduct for judges, court personnel, and lawyers that address gender bias with specificity.
6. Legislation recommended by the task forces and implementation committees.
7. Gender-neutral/gender-appropriate language in courtrooms, court rules and correspondence, jury instructions, opinions, and other court communications.
8. Mechanisms for handling formal and informal complaints of gender bias.
9. Initiatives to ensure gender fairness in the judicial nomination, election, evaluation, and disciplinary processes.
10. Initiatives to ensure gender fairness in court employment.
11. Collection of necessary data to monitor known areas of gender bias and identify new problems on an ongoing basis.
12. Collaboration and alliances with other groups, both inside and outside the court system, that can implement task force recommendations, monitor progress, and initiate new activities.
13. Wide diffusion of the task force's findings and initiatives to entities such as district attorney/public defender offices, police, academic institutions including law schools and community organizations.
14. Periodic evaluation to assess the task force's implementation efforts, analyze their effect on reducing gender bias in the courts, and identify new problem areas.
15. Initiatives to ensure that each court planning and reform effort addresses the relevant gender fairness concerns.

MANY JUDICIAL OFFICERS ARE STILL RELUCTANT TO DEAL DIRECTLY WITH COLLEAGUES WHO EXHIBIT BIAS OR INSENSITIVITY

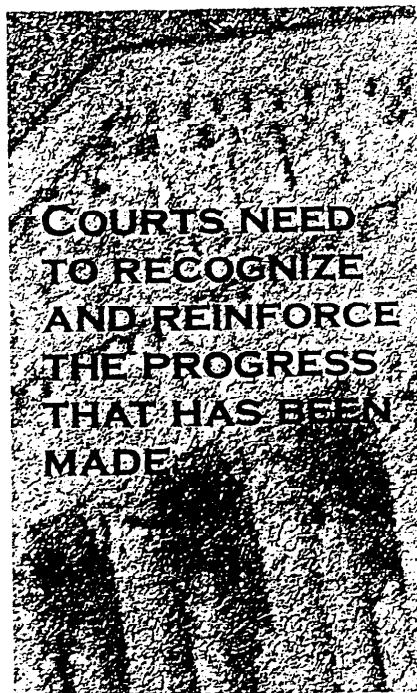
Judicial Council gender, race/ethnic, and persons with disabilities reports have not languished on the shelf. Indeed, the original gender bias report—our state's first—seems in retrospect to have been prescient. Some action has been taken on approximately 90 percent of those recommendations and this analysis and dynamic response have continued to the present day. If one overarching theme of California's gender bias report was that issues related to women and children were systemically relegated to less important status and given less money, staff, and attention, that perception and its reality have changed and are continuing to change.

When reviewing all the reports together, it has become evident that many issues overlap or intersect. With deference to both "identity" and "coalition" politics, initially some discomfort about conducting separate studies on gender, race/ethnicity, and disabilities existed. For some who disliked the fairness initiative altogether, separate inquiries led to accusations of special treatment. In retrospect, however, having each study focus in depth on separate needs and interests was the best course. It might now be said that ten years of honoring differences has enabled us to realize and see with

greater clarity the true dimensions of the "big picture." The December 1999 Issues Meeting offered just such an opportunity. By placing the reports side by side, new patterns emerged and novel approaches could be considered.

One dynamic we certainly experienced and learned more about was how change occurs within the judicial branch. To the extent that bias recommendations *were not implemented*, we believe several factors were at play. First, recommendations that fell outside the Council's direct purview were less likely to be implemented, and from this we conclude that increased interagency collaboration is needed. Second, institutionalization of recommendations contained in later reports was not as far along as that based upon proposals in the original gender bias report. We assume that this reflects the chronological sequence of the reports themselves—and that these will reach fruition in the foreseeable future—but time will tell.

As to the factors that directly affected the recommendations that *have been implemented*, they are



numerous and diverse. While some of these may be unique to the California experience, we believe that most will apply to the institutionalization of change in court systems. Although the following list is not comprehensive,

we would urge all persons or organizations interested in positive change to consider carefully some of the practical lessons gleaned from this process:

- The judiciary took the lead in examining fairness in the California courts.
- Three consecutive chief justices and two consecutive administrative directors supported the fairness initiative.
- Leaders in the state bar and the legislature supported the initiative.
- Leaders on the Governing Committee (and other committees) of the AOC's Center for Judicial Education and Research required integration of fairness issues into judicial and court staff education.
- Staff and budget were allocated to implement the projects.
- Some changes occurred as a

direct result of the gender bias report through implementation committees. Other changes, however, occurred in a less linear way. Implementation was not, fortunately, the responsibility of one or two committees, or controlled too rigorously by one group or person. Access to justice affects every aspect of our work in the judicial branch and is directly related to public trust and confidence, judicial independence, and other initiatives that seek to define the role of the courts in today's society. Thus, we are virtually certain that some gender bias recommendations were implemented by entities, including those within the AOC, that had no idea that the recommendations themselves, much less the gender bias report, existed. Would those changes have occurred anyway, or as soon, had there been no gender bias report? We do not know, but we doubt it. What we now know is that there was a report and most of the original recommended changes did indeed occur.

Notes

1. Chaired by Justice Betty Weinberg Ellerin, Associate Justice, Appellate Division, Supreme Court of the State of New York, and funded by the State Justice Institute, the Gender Fairness Strategies Conference was cosponsored by the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in t

In the Archives...

The following is a brief list of past articles that The Judges' Journal has published on the topic of gender fairness. To purchase back issues of The Judges' Journal contact the ABA Service Center at 800/285-ABA1.

"Affirmative Action Can Mean the Best Person for the Job," Kessler, Gladys, Vol. 22, No. 4, Fall 1983, p. 12.

"Credibility in the Courts: Why Is There a Gender Gap?" Schafran, Lynn Hecht, Vol. 34, No. 1, Winter 1995, p. 5.

"Family, Gender & Sexuality," Law, Sylvia A., Vol. 26, No. 3, Summer 1987, p. 22.

"How Stereotypes About Women Influence Judges," Schafran, Lynn Hecht, Vol. 24, No. 1, Winter 1985, p. 12.

"Looking at Lady Justice's Prejudices," The Editors, Vol. 24, No. 1, Winter 1985, p. 4.

"Ruling Without Bias," Lindsley, Byron F., Vol. 24, No. 1, Winter 1985, p. 18.

"Sex Discrimination in the Selection and Participation of Female Jurors: A Post-J.E.B. Analysis," Currie, Cameron McGowan and Aleta M. Pillick, Vol. 35, No. 1, Winter 1996, p. 2.

"State Findings on Discrimination Against Women in the Courts," Allen, Laura R., Vol. 29, No. 1, Winter 1990, p. 23.

"Women and the Law," Murray, Florence K., Vol. 29, No. 1, Winter 1990, p. 18.

Profession, and the National Judicial Education Program (NJE). Lynn Hecht Schafran, NJEP Director, and Norma J. Wikler, NJEP Founding Director, directed the conference.

2. The Judicial Council of California is the policy-setting body for the California state court system as provided by California Constitution article VI. Chaired by Chief Justice Ronald M. George, the Council is composed of fourteen judicial officers, two legislative members (one from each house of the legislature), four state bar members, and six advisory members, including state court administrators.

3. Advisory committees to the Judicial Council are appointed by the chief justice, report directly to the Council, and serve both to advise on and carry out Council policy.

4. The former chief justice of New

Jersey, Robert N. Wilentz, was the first to appoint a task force to investigate gender bias in the courts. Chaired by Judge Marilyn Loftus, the task force published its first report in 1984 and its second in 1986.

5. Standards of Judicial Administration, while not mandatory, serve as guidelines for court practice and procedure.

6. The current Judicial Council Advisory Committee on Access and Fairness includes subcommittees on gender, race/ethnicity, persons with disabilities, sexual orientation, women of color, and education.

7. California studies include *Justice in the Balance 2020*, *Report of the Commission on the Future of the California Courts*, 1993, and *CommScience's Fairness in the California State Courts: A Survey of the Public*.

Attorneys and Court Personnel, 1994. National studies include *Perceptions of the U.S. Justice System*, American Bar Association, February 1999, and *How the Public Views the State Courts: A 1999 National Survey*, National Center for State Courts & Hearst Corporation, May 1999.

8. Devoted to in-depth review and discussion of current judicial branch matters, Issues Meetings include an education component that provides background information, research, and comparative data, followed by full Council discussion. While no formal Council action is taken, results might include a request for further study, referral of issues to a standing advisory committee, direction that issues be placed on a later business meeting agenda, or no further action.

STATEMENT OF EDITORIAL POLICY

The *Judges' Journal* is the official quarterly publication of the Judicial Division of the American Bar Association. The *Journal's* goal is to help fulfill the Division's mission to assure efficient, effective, professional, fair, and impartial delivery of justice and dispute resolution throughout the nation.

The *Judges' Journal* accomplishes this goal by:

- publishing practical articles and reporting innovations to assist judges, lawyers, and court administrators in improving the administration of justice;
- promoting a dialogue between the bench and bar and among judges of various jurisdictions;
- presenting timely articles on important jurisprudential subjects; and
- imparting news of significant developments in the work of the Judicial Division and its conferences and committees.

The views espoused in the articles contained in *The Judges' Journal* are those of the authors, and do not necessarily represent the views or opinions of the Judicial Division or the American Bar Association.

APPENDIX F

Strategies for Individuals Who Want to Mobilize Support for Their Implementation/Standing Committee

Strategies for Individuals Who Want to Mobilize Support for Their Implementation/Standing Committee

Individuals can make a difference in the gender fairness movement. They can act independently and they can mobilize the organizations to which they belong. Below is a sample of the inquiries individuals have made to the National Judicial Education Program.

1. I was a member of my state's delegation to the National Conference on Public Trust and Confidence in the Courts. I know the Conference voted to make implementing the recommendations of the gender, race and ethnic bias task forces a top priority for all states. However, in my state I do not see any activity in this direction. How can I spur action?

Join together with others on your delegation who care about this issue. Find out if there is an internal court entity charged with this responsibility, e.g., a Gender Fairness Task Force Implementation Committee. If there is, request a meeting with this group in order to learn what obstacles they are encountering and how you can be helpful in supporting their work. If there is no such group, or if your efforts are unsuccessful, approach your chief justice and state court administrator directly to ask how they plan to carry out this mandate and how you can participate. If they are not responsive, turn to organizations outside the courts (see below). This is not a one-time inquiry. Implementing these recommendations requires an ongoing commitment. Utilize the *Gender Fairness Strategies Project Implementation Resources Directory* to learn about the wide array of products and projects other states created in response to their Task Force's recommendations that can be replicated in your state.¹

2. How can I involve my bar association in implementing task force recommendations, evaluation and generating the understanding that this must be an ongoing concern?

Bar associations are playing a vital role in institutionalizing the work of the Task Forces and extending the reach of the national effort to eliminate gender bias in the courts. The 2001 annual meeting of the National Conference of Bar Presidents will include a program on how bar associations can implement the recommendations of the task forces on gender, race and ethnic bias task forces. Many Task Forces made specific recommendations for bar associations in such

¹ The *Implementation Resources Directory* is a compilation of benchbooks, legislation, court rules, codes of conduct, education programs, collaborations and other products and projects created by Gender Bias Task Force Implementation Committees and

areas as lawyer education, which obviously fall to the Bar to implement. Bar associations are also collaborating with Gender Bias Task Forces and Implementation Committees and co-sponsoring activities ranging from educational programs to support for legislation. Task Force reports also serve as a stimulus for bar associations to act independently, establishing special committees on gender bias and charting their own strategies for reform.

Think about whether to involve your bar association as a whole, or through a section or committee. Read the *Implementation Resources Directory*² to learn about actions taken by other bar associations and develop areas of special interest to your group. Your level of activity could range from supporting a single piece of legislation to conducting an evaluation of the entire implementation effort.

3. *My state had a gender fairness task force, but has never followed through on implementation. Is there anything that I, as an individual concerned citizen, can do?*

Yes, you can take action both as an individual and a member of a group.

As an individual, you can write letters to your chief justice; state court administrator; the presiding judge in your county; your local, county and state bar presidents; anyone influential in the court system; and the press. Make your letter as specific as possible and request a detailed response. For example, you can say that you read your state's Task Force report, noted that it makes many concrete recommendations and want to know the status of each of them. Be persistent about getting answers.

Then, think about the organizations to which you belong. Which of them can you mobilize to pressure the court into action? Look at the *Implementation Resources Directory* for examples of actions that these groups might undertake on their own and try to match the organization to a suitable activity. Organizations such as the League of Women Voters, come readily to mind. But do not stop there! Maybe you belong to a religious organization concerned about the impact of domestic violence on children. Ask this group to initiate legislation requiring that domestic violence be taken into account in custody decisions and that anyone in the court system involved in decision-making responsibilities in this area have training on the impact of domestic violence on children. (See the *Implementation Resources Directory* at 125-138.).

As another example, any kind of organization concerned with good government should take a hard look at how the state judicial conduct commission operates. Too many of these organizations operate in total secrecy,

² At 147-151.

and the public has no idea of what is happening. Your organizations should insist on an open system and training on gender fairness for the judicial disciplinary commission. (See the *Implementation Resources Directory* at page 75).

Your organization can also encourage the media to undertake an active role by following the implementation story, giving kudos for the progress made and pointing out work still to be done and the ongoing nature of this reform effort.

4. *I am a member of my state/city's Commission on the Status of Women. Is there a role for us to play?*

Commissions on the Status of Women can play an important role in spurring and monitoring the implementation of Task Force recommendations. First, find out what is happening in your state. Did your supreme court appoint a Task Force on Gender Bias in the Courts? What were its recommendations? Is there an Implementation or Standing Committee actively working on those recommendations? Does the committee have funding? Who chairs it? Who staffs it? Does it meet? Have there been reports? What are the procedures in place to evaluate the status of implementation and the effectiveness of recommendations? What level of commitment exists in your state on the part of the chief justice and court administrator, the legal and judicial education community and the courts themselves?

The Task Force's recommendations are addressed to judges, court administrators, judicial educators, judicial selection and disciplinary commissions, lawyers, bar associations, prosecutors, police, law professors and legislators. Find out what these groups and other organizations relevant to the court and justice system are doing to implement the recommendations concerning them. For example, how does your judicial conduct commission deal with complaints of gender bias? Are local law schools making an effort to adapt their curricula to reflect the task force's recommendations germane to them?

If there is a currently active Task Force, Implementation or Standing Committee, meet with it to learn how your Commission can facilitate its work. Having an outside organization monitoring the courts and letting that activity be known is extremely valuable.

If there has been no formal Task Force or if there is no ongoing implementation/institutionalization effort, find out what steps your state has taken to promote gender fairness in the courts. For example, new court rules, judicial education programs, court employment policies, changes to your code of judicial conduct and rules of professional responsibility or the adoption of the adoption of legislation prompted by the task forces. Has your state adopted any of the recommendations of other state or federal task forces?

One very good way to answer these questions is to meet with your chief justice. Inform the chief justice that the Commission on the Status of Women is aware of the Task Force's recommendations and plans to hold the courts accountable for implementing them. Ask your chief justice what is happening and what the long-term plans are for implementing and institutionalizing reforms. Meet also with your state's committee on Public Trust and Confidence in the Courts. How are they carrying out the mandate of the National Conference on Public Trust and Confidence in the Justice System to make implementing Task Force recommendations a priority?³

Once you know what is happening, evaluate the effectiveness of implementation efforts to date. Depending on how much time and energy the Commission has to put into this, you may want to hold public hearings to assess the situation according to community members who are consumers of and participants in the courts. These hearings can be broadly focused on all the Task Force's recommendations or limited to one area such as domestic violence, divorce, or juveniles. You can also conduct focus groups with some of the key actors who are affected by the climate of the court system such as rape crisis center workers, domestic violence victim advocates and family law organizations. Another method is to host listening sessions with lawyers, judges and court personnel to learn their perceptions of the problems identified by the Task Forces and whether they are being solved.

Whatever the efforts have been to implement recommendations and evaluate their impact, your Commission should monitor and publicize the progress of implementation. Make a report card listing all of the recommendations with their current status and their effectiveness and publish it in your newsletter. Include articles about gender bias in the courts and the Task Forces. And let the Task Forces and Implementation/Standing Committees know that you are following and support their work.

Build up networks to help you track this work now and into the future. There are others who are actively involved in monitoring the courts, such as the League of Women Voters; women's bar associations; committees on women and minorities in the profession of your local, city and state bar associations; and court watching groups. Contact the Task Force on Racial and Ethnic Bias in the Courts if there is one in your state and find out how you can collaborate. Find out who all the players are and be the catalyst for organizing and building a network. One such network is the Gender Bias Task Force listserve, an email

³ At the National Conference on Public Trust and Confidence in the Justice System in May 1999, 500 justice system leaders, including almost every chief justice, state court administrator and state bar president, voted to make implementing the recommendations of the gender, race and ethnic bias task forces a priority. To learn more about the conference go to the website of the National Center for State Courts www.ncsconline.org.

discussion group hosted by the National Judicial Education Program (NJEP).⁴ Judges, task force members, court personnel and the like can post questions, seek help when stumbling, and share successful ideas. Individuals who cannot attach their name to their postings due to the dynamics within their state may email messages through NJEP to ensure confidentiality.

5. *I am active in a domestic violence/sexual assault coalition. How can we further the work of the Implementation/Standing Committee?*

Issues of violence against women, both domestic violence and sexual assault, received extensive attention in all the Task Force reports. It would be entirely appropriate for your organization to be actively involved in ensuring that the relevant recommendations from your state's Task Force are implemented. First, read the report and learn what the recommendations were. Second, determine the extent to which they have been carried out. If little evaluation has been done, this may be the project your coalition should undertake.⁵ Third, determine whether and how you can work with and support your state's Implementation/Standing Committee. Fourth, if that kind of collaboration is unavailable to you, decide what pieces of this work you can take on for yourselves. Read the *Implementation Resources Directory* to learn about the many activities—e.g., legislation, court rules, education for judges, court personnel and guardians *ad litem*, etc.—that your coalition might undertake or support.

⁴ Email njep@nowldef.org to subscribe to the list.

⁵ For models, see Sarah Eaton & Ariella Hyman, *The Domestic Violence Component of the New York Task Force on Women in the Courts: An Evaluation and Assessment of New York City Courts*, 19 FORDHAM URBAN LAW JOURNAL 391 (1992), and Lynn Hecht Schafran, *PLANNING FOR EVALUATION: GUIDELINES FOR TASK FORCES ON GENDER BIAS IN THE COURTS* (1989) available from the National Judicial Education Program at 395 Hudson St, 5th Floor, New York, NY 10014, (212) 925-6635, njep@nowldef.org. The Fordham Urban Law Journal article describes the impact of the recommendations of the New York Task Force on Women in the Courts on the New York City Courts. Planning for Evaluation includes a survey instrument used with all New Jersey domestic violence shelters in an evaluation of that state Task Force's impact.

6. I am a law professor teaching in a related area. How can my colleagues and I support this work?

In addition to taking cues from all the other strategies mentioned above, you are in a unique position to provide “warm bodies” to the implementation effort. Implementation/Standing Committees are usually strapped for staff and funds and would welcome volunteers for a variety of projects. For example, you might give academic credit to a student for carrying out a particular project under joint supervision from you and the Committee. Or, you could supervise a student in a study or other project related to the Task Force’s work from which everyone can benefit. See page 105 of the *Implementation Resources Directory* for an example.

You can also support this work indirectly by following the Task Force’s recommendation for law schools that they address in their curricula the gender bias problems described in the Task Force reports, and work to eliminate gender bias in their own institutions. See page 154 of the *Implementation Resources Directory* for examples of actions law schools have taken in this regard. With respect to documenting and eliminating gender bias in law schools themselves, utilize the materials developed by the American Bar Association Commission on Women in the Profession.⁶

7. As a non-legal academic with an interest in women’s issues, what role might I play?

Because Task Forces and Implementation/Standing Committees are typically made up of lawyers and judges, these groups usually lack expertise in social science methodological skills. Yet knowledge and experience in this area is vital to the implementation of a number of recommendations and to evaluation studies. If your expertise falls into this area, you, and perhaps your graduate students, could play an important role by offering your services. These Committees are always short-staffed. Thus, providing unpaid graduate or undergraduate student interns can be extremely helpful.

⁶ *Don’t Just Hear it on the Grapevine: Studying Gender Questions at Your Law School* (1998) available from the ABA Commission on Women in the Profession, 750 North Lake Shore Drive, Chicago, IL. 60611, (312) 988-5000, mayer@staff.abanet.org.

APPENDIX G

Gender Fairness Impact Assessment Form



Gender Fairness Impact Assessment Form

1. What gender fairness issues does this new court planning or reform initiative raise for women as a group and for different groups of women?
2. How can this initiative further gender fairness in the courts?
3. Are there ways in which this initiative could undermine gender fairness in the courts?
4. How should our Committee be involved in this initiative?
5. How will our Committee periodically evaluate the impact of this initiative on gender fairness?

APPENDIX H

Anniversary Celebration Materials from Three Gender Bias Task Force Implementation/Standing Committees

- **Colorado, *Gender & Justice in the Colorado Courts: Review, Renew, & Recommit***
- **Maryland, *Celebrating Gender Equality***
- **Massachusetts, *Celebration and Speak Out For Gender Equality in the Courts***
- **New York, *Fifteenth Anniversary Conference: The Miles Traveled and the Miles Yet To Go***

COLORADO



Gender & Justice in the Colorado Courts: *Review, Renew & Recommit*

Friday, December 8, 2000

2:00 - 5:00 P.M. • Reception to follow

Houston Fine Arts Center

7050 Montview Boulevard, Denver

(Free parking: Off 21st Avenue between Olive & Quebec,
behind Houston Fine Arts Center)

Join us as we . . .

- mark the 10-year anniversary of the Colorado Supreme Court Task Force on Gender Bias;
- reflect on where we've been;
- collaborate on our future direction; and
- reaffirm our commitment to Gender & Justice in the Colorado courts.

Don't miss these scheduled presentations:

- **Opening remarks by Chief Justice Jean Hoefer Toal, Supreme Court of South Carolina**
- **Historical Highlights: A video presentation featuring CU Professor Patricia Limerick**
- ***Taking Stock: Subcommittees take a look at progress***
- ***A Call to Action: Chief Justice Mary J. Mullarkey***
- ***Speak Out! — An opportunity to shape the future plan for Gender & Justice***

REGISTRATION DEADLINE: DECEMBER 1, 2000

This is a free event, but you must register in advance to attend.

Register by calling (303) 837-3652

or by e-mailing: genderandjustice@judicial.state.co.us

Note to Attorneys: *FREE CLE!* Application is pending for 3 general, 1 ethics credits

Be an active part of this special event!

We welcome your comments on the future plan for Gender & Justice!

Just prior to December 8, we encourage you to log onto our website (courts.state.co.us, under Index of Supreme Court Committees) to review ideas we've collected about the status of gender issues in the Colorado court system. These ideas will be the starting point for our discussion on December 8 about the direction of the Gender & Justice Committee in 2001 and beyond. **Share your comments with us** by signing up when you arrive on December 8 to speak for 2 minutes during the ***Speak Out!*** session, or by e-mailing your comments in advance to: genderandjustice@judicial.state.co.us.

**Colorado Supreme Court
Gender & Justice Committee
Looking Toward the Future**

It has been 10 years since the original Gender & Justice Report. Much has been accomplished by the Gender & Justice Committee, the Judicial Department and many organizations and individuals to create an environment free from gender bias in the Colorado court system. (See **Taking Stock** -- on Gender & Justice website -- for details.) Building on these accomplishments, the Gender & Justice Committee wants to set new goals and objectives for the future. We propose that future efforts be concentrated in the following five key areas:

- Judicial Selection, Training, and Performance Review
- Judicial Branch Employee Issues
- Family Related Cases
- Women in the Criminal Justice System
- Domestic Violence

We welcome your input and comment on these five areas on December 8, when we will gather to discuss our future efforts. Do you support our focusing on these key areas? What specific initiatives should we undertake or encourage others to undertake? Are there other issues or concerns you would encourage the committee to explore? **Please make your reservation by December 1** to join us for

Gender & Justice in the Colorado Courts
Review, Renew and Recommit
Friday, December 8, 2000
2:00 p.m. - 5:00 p.m.

Houston Fine Arts Center, 7111 Montview Blvd. (Montview & Quebec), Denver

You may e-mail your RSVP and your comments to us at
genderandjustice@judicial.state.co.us

Judicial Selection, Training, and Performance Review

We have seen an increase in the number of women on the bench, especially the appellate bench, the institution of education for the judicial nominating and performance review commissions, and training for judges on issues relating to gender, especially sexual harassment.

Current Concerns

- Why has the number of women on the trial bench remained about the same as a decade ago?
- Are women failing to apply for judicial vacancies?
- Are they being recommended by the judicial nominating commissions?
- If recommended, are they being selected?
- Are women and men judges being evaluated on a consistent basis or is some behavior acceptable from male judges but unacceptable from female judges?

Suggested Strategies

- Determine the number of women applying for judicial vacancies, recommended by the judicial nominating commissions, and appointed to the bench.
- Ascertain why some qualified female candidates apply for judgeships, while other qualified women do not.
- Based on the research, create appropriate programs, e.g., outreach programs to encourage more female applicants to the bench.
- Study the performance reviews to determine if performance, especially demeanor of female and male judges, is evaluated consistently.
- Create additional training for performance review commissions.
- Make gender fairness an integral part of all training.

Judicial Branch Employee Issues

The Judicial Branch Employee Issues Subcommittee has developed training programs for employees, supervisors, and judges on sexual harassment prevention and processes, gender communication, and domestic violence issues for employees. These programs, some mandatory, have been conducted hundreds of times.

Current Concerns

- What additional issues related to gender fairness within the workplace does the judicial branch still need to address?
- Does the workplace appropriately accommodate employees' family issues?
- Are there actual or perceived barriers to women becoming supervisors in the Judicial Branch?

Suggested Strategies

- Conduct a survey to determine additional issues important to women in the workplace that should be addressed by this committee.
- Continue to develop policies and procedures for telecommuting, flextime, flexplace, reduced hours, etc.
- Develop additional policies and procedures that enable all employees to achieve a balance between work and family.

Family Related Cases

Approximately 50% of all filings are family related cases¹. The Judicial Branch implements a standard formula for child support determinations, offers educational programs for parents and children involved in divorce in many jurisdictions, piloted expedited case management processes for domestic relations, domestic violence, and juvenile cases, established less-adversarial approaches in domestic relations and dependency and neglect proceedings in several judicial districts, and implemented reforms to assure that pro se litigants have affordable and efficient access to Colorado courts.

¹ Family Related cases are defined here as domestic relations, domestic violence, juvenile, and mental health cases involving families.

Current Concerns

- Are decisions on maintenance awards, property division, and parental rights and responsibilities fair?
- How can we ensure that pro se litigants are receiving affordable and efficient services?
- Expanded education for parties in domestic proceedings regarding financial aspects, child support issues, and parenting issues is needed.
- What is needed to enable courts to provide less adversarial forums for dispute resolution that promote equity and mutual understanding of court processes and procedures?
- How can courts provide safe and nurturing places for children who are brought to court and in need of supervision?
- Lack of coordination and information among multiple cases dealing with the same family.

Suggested Strategies

- The Gender & Justice Committee will coordinate and work closely with the Commission on Families in the Colorado Courts, appointed by the Chief Justice. The Commission will study and make recommendations concerning best practices for resolving disputes involving families in the courts.
- Evaluate the impact of pro se litigants, expedited case management, and less adversarial approaches in family cases.
- Continue implementation of recommendations from “Children’s Centers for the Courthouse” report, to seek funding and staffing for children’s waiting rooms in courthouses.
- Develop methods to evaluate the fairness of decisions in maintenance awards, property division, and parental rights and responsibilities.

Women in the Criminal Justice System

Women and girls constitute the fastest-growing segment of the adult and juvenile offender populations. The legislature has funded the Female Offender Program (FOP), allowing specialized probation officers to manage a reduced caseload of certain female offenders in metropolitan areas. The number of women probation officers has increased significantly.

Current Concerns

- If female offenders, both adult and juvenile, present unique management issues for the criminal justice system, can resources be made available to these females and the probation officers supervising them throughout Colorado?
- How can the perception that female offenders are a difficult population to supervise on probation be changed?
- How can probation departments reduce the increasing incarceration rate for female adults and commitment rate for female juveniles?

Suggested Strategies

- Develop a resource guide for probation officers working with female offenders emphasizing the unique issues which females present without characterizing those issues as problems.
- Post the resource guide on the Judicial Homepage, accessible to all state officers.
- Expand the networking among probation officers who work exclusively with female offenders in both the adult and juvenile populations. Share these officers' creative and unique approaches and encourage other officers to use similar or other creative approaches.

Domestic Violence

With the increased understanding of the impact of domestic violence on the courts and probation, the Judicial Department has developed judicial training on domestic violence and created the Domestic Violence Bench Book. Judges have also attended national conferences and training on domestic violence to gain expertise and promote leadership. The Gender & Justice Committee created and distributed a manual for supervisors in the Judicial Department to recognize and address employee domestic violence concerns. Probation departments employ victim coordinators to contact victims, help with safety planning, and make referrals. Offenders are screened and assessed for risk in developing supervision plans.

Current Concerns

- The increased awareness of the risk posed by domestic violence offenders has increased caseloads for probation departments and required more court time. Resources to handle these cases are not keeping pace.
- What research and coordination would support the jurisdictions experimenting with family courts or specialized domestic violence courts/dockets?
- Judges and probation are not mandated to attend training in domestic violence. Should there be a more concerted training effort in the judicial department? How effective are the training programs?
- Current research suggests that judges and probation officers are often not fully informed of offenders' criminal and social histories. How can decision-makers be better informed about a defendant's other court or social services involvement?

Suggested Strategies

- Evaluate the impact of domestic violence offenders on the courts and probation to determine priorities for future funding.
- Establish a liaison with the Commission on Families in the Colorado Courts.
- Conduct a domestic violence training needs assessment in the courts and probation departments.

Gender & Justice in the Colorado Courts

Review, Renew & Recommit

Friday, December 8, 2000
2:00 - 5:00 p.m.
Houston Fine Arts Center
7111 Montview Boulevard, Denver, CO

Welcome and Introductions: State Senator Michael F. Feeley

Opening Remarks: Chief Justice Jean Hoefer Toal
Supreme Court of South Carolina

How It All Began: Justice Rebecca Love Kourlis

"Taking Stock": Reports from

- Probation Issues Subcommittee
- Service to the Public Subcommittee

Historical Highlights: A Video Presentation
Featuring Professor Patricia Limerick, University of Colorado

"Taking Stock": Reports from

- Judicial Selection & Evaluation Subcommittee
- Judicial Branch Issues Subcommittee

BREAK

Looking Toward the Future: Chief Justice Mary J. Mullarkey

"Speak Out!" on the Future Focus of Gender & Justice
Moderated by State Senator Michael F. Feeley

Closing: Chief Justice Mary J. Mullarkey

Please join us for a reception in the Lobby
immediately following the program.

MARYLAND

Celebrating Gender Equality

By Janet Stidman Eveleth

On April 26, over 200 judges and attorneys gathered at the Baltimore Hyatt Hotel to celebrate the strides Maryland's legal community has made in gender equality in the last decade. The "Ten Years Af-

law school administrators, faculty and law students, advocated commentary to the lawyers' Rules of Professional Conduct and presented programs to the Attorney Grievance Commission.

On the 26th, these accomplishments, and the people who made them happen,



Pam White presents Judge Rodowsky a gift in honor of his service.



Original members of the Select Committee on Gender Equality

ter..." Gender Equality Celebratory Anniversary Dinner honored Maryland Court of Appeals Judge Lawrence F. Rodowsky as the first Chair of the Select Committee on Gender Equality. The attorneys and judges who have served on the Committee over the last ten years were also recognized and honored.

In 1989, the Select Committee on Gender Equality was created to "begin the process of eliminating gender bias from Maryland's judicial system." Then Chief Judge Robert C. Murphy and MSBA President Roger W. Titus appointed the Committee, naming Judge Rodowsky Chair. Focusing on judicial education, Judge Rodowsky guided the development of an ambitious agenda for the Committee.

In the last ten years, the Committee has made great strides in furthering gender equality within the court system. It has successfully pursued changes in the Judicial Nomination process and its members have participated in the development of civility codes and professionalism courses. Committee members have also drafted guidelines to deal with problems of sexual harassment in courthouses and law offices.

In addition, the Committee has worked with the Judicial Institute to improve judges' orientation programs, promoted revisions in the Judicial Canons and improved the operations of the Judicial Disabilities. Among its many other accomplishments, the Committee has served as a resource to

were celebrated. The festivities began with a reception and dinner, followed by a spec-

See *Equality* Page 15



Chief Judge Robert M. Bell offers his congratulations to Judge Rodowsky.

BAR BULLETIN

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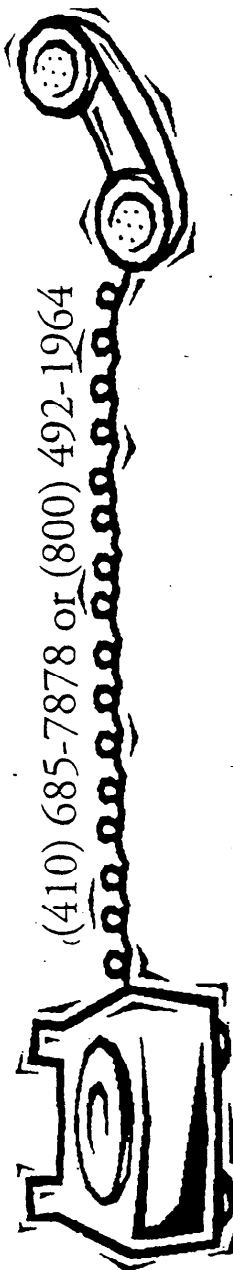
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Equality...Page 2

atacular multi-media presentation tracing the progress of gender equality across the last ten-years. Pamela J. White, current Chair of the Select Committee on Gender Equality, was featured in the Gender Equality videotape, along with many of the judges and attorneys who served as original members of the Committee. White thanked them for their service over the years and offered special presentations.

One of the highlights of the evening was the Chief Judge's introduction of the honoree. "It's good to be here to greet you ten years after," declared the Honorable Robert M. Bell, Chief Judge of the Court of Appeals of Maryland, as he greeted the audience. "We've come a long way - educating the bench, the bar and even the public in gender equality. From the gender perspective, things are much better today than they were ten years ago."

"Gender bias had to be addressed and attacked," the Chief Judge continued. "We've come a long way, but have yet to reach the end of the journey. Even a 'little bit is a bit too much. We must remain committed to gender equality. Our work is not yet done." As he introduced the honoree, Chief Judge Bell applauded him and said "Judge Rodowsky demonstrates his commitment by what he does."

Rodowsky received several awards including a gubernatorial citation honoring his accomplishments and service on the Committee. "I represent the original Committee on Gender Equality, Rodowsky said. I had the distinct privilege of serving with this outstanding group of lawyers and

judges. Thank you for this tribute."

White, who also served as MC of the evening, was pleased with the celebration's success and the support shown by the Bench and the Bar. "We enjoyed a true celebration of many accomplishments of the Select Committee over the past ten years," she declared. "The upbeat tone of the anniversary dinner was generated not only by our collective good wishes for the honorees but by a sense of good purpose and measurable success as we move toward gender fairness in every facet of judicial proceedings."

"Our courts have become more accessible for litigants and lawyers without the adverse conditions historically imposed by forms of gender bias, such as stereotyping the proper roles of men and women in the courthouse. Maryland benches across the state are deservedly the source of pride as our judges are better informed about problems of identifying issues and dealing with perceptions of gender bias."

White also applauded as "Chair Extraordinaire" by the Honorable Ann Harrington, the new head of the Select Committee. "Maryland's legal system should be proud - we are at the forefront of a movement to make sure that the people who enter court get a fair shake with respect to gender equality," she proclaimed.

"We've done a good job," Judge Harrington continued. Under her leadership, the Committee will continue its work so that we understand the history and contemporary issues surrounding gender equality as we look forward to, and plan for, the next ten years.

Women in the Maryland Judiciary

1989 - 19 women among 221 judges, or less than 9%, 1 woman among 20 appellate judges, or 5%

1994 - 34 women among 234 judges, or less than 15%, 2 women among 20 appellate judges, or 10%

1999 - 56 women among 265 judges, or 21%, 4 women among 20 appellate judges, or 20%

Women in Judicial Nominating Commissions

1987-1994 - 64 women among 210 members, or 30%

1995-1997 - 93 women among 225 members, or 41%

"TEN YEARS AFTER..."

An Anniversary Dinner Celebration

In Honor of

The Honorable Lawrence F. Rodowsky,
Maryland Court of Appeals

and

Members of the
Select Committee on Gender Equality 1989-99

Presentation by

Chief Judge Robert M. Bell

Monday, April 26, 1999

The Hyatt Hotel

Baltimore

Cocktails 6 P.M.

Dinner 7 P.M.

Select Committee on Gender Equality

1998-99

Lynne A. Battaglia
Hon. Rosalyn B. Bell
Hon. R. Scott Davis
Deborah C. Dopkin
Hon. Ann S. Harrington
Hon. C. Yvonne Holt-Stone
John Addison Howard
Hon. Barbara Kerr Howe
Hon. Eric M. Johnson
Linda H. Lamone
William S. Little
Hon. Keith E. Mathews
M. Peter Moser
Hon. Theresa A. Nolan
Hon. Martha F. Rasin
H. Frances Reaves
Claire A. Smeerman
Catherine E. Stavelly
Hon. Martin P. Welch, Sr.
Pamela J. White, Chair
Deborah A. Unitus, Staff

PROGRAM

6:00—7:00 Cash bar

7:00 Welcome and Introductions

On the Dais:

Chief Judge Robert M. Bell
Hon. Lawrence F. Rodowsky
Mrs. Colby Rodowsky
Hon. Rosalyn B. Bell
Hon. Ann Harrington
M. Peter Moser
Linda H. Lamone
Pamela J. White

Dinner

7:45 Dessert

Ten Years After: A Video Presentation

8:00 Announcements and Greetings

Introduction of Chief Judge Bell
Remarks by Chief Judge Bell

SELECT COMMITTEE ON GENDER EQUALITY
1989-90

Hon. William H. Adkins II
Lynne A. Battaglia
Hon. Rosalyn B. Bell
Edward P. Camus
Hon. James C. Chapin
William B. Dulaney
M. Albert Figinski
Hon. Clayton Greene
Hon. Barbara Kerr Howe
Eric M. Johnson
Linda H. Lamone
L. Paige Marvel
Hon. Keith E. Mathews
Hon. James S. McAuliffe, Jr.
M. Peter Moser
Hon. Theresa A. Nolan
Hon. Lawrence F. Rodowsky, Chair
Hon. David Ross
Hon. Robert F. Sweeney
Hon. Raymond G. Thieme, Jr.
Pamela J. White
Deborah A. Unitus, Staff

Additional Members 1991-1997

Neil E. Axel
Phillip G. Dantes
John H. Denick
Susan Carol Elgin
Robert L. Frank
Hon. Albert J. Matricciani, Jr.
Hon. John L. Norton III
Dana C. Petersen
Nancy L. Slepicka
Hon. Kathleen M. Sweeney

In 1989, Judge Lawrence F. Rodowsky and members of the Select Committee, appointed by Chief Judge Robert C. Murphy and Maryland State Bar Association President Roger W. Titus, were charged to begin the process of eliminating gender bias from the Maryland judicial system. Bluntly stated, Chief Judge Murphy's task force had found: "gender bias exists in the courts of Maryland, and it affects decision-making as well as participants."

On July 25, 1989, at the inaugural meeting of the Select Committee on Gender Equality, Chief Judge Robert C. Murphy participated and reflected the commitment of the Judiciary in the purposes of the Committee:

- (1) In consultation with the Maryland Institute for Continuing Professional Education for Lawyers, Inc. (MICPEL) and the Judicial Institute of Maryland, to assist in the development and scheduling of educational programs for members of the bench and bar designed to educate attorneys and judges of the means by which gender bias may be eliminated in the Maryland legal system.
- (2) To monitor and report on the progress in achieving gender equality in the Maryland legal system.
- (3) To monitor and make periodic reports on the status of implementation or recommendations of the Special Joint Committee on Gender Bias in the Courts.
- (4) To make periodic reports to the Chief Judge of the Court of Appeals of Maryland and to the President and Board of Governors of the Maryland State Bar Association on the work of the Committee.

Judge Rodowsky guided the development of an ambitious agenda for the Committee, an agenda focused on judicial education. As Judge Rodowsky advised of the Committee's earliest focus in September 1989: "Education concerning domestic violence cases is the highest priority objective of our committee."

Thereafter, twenty-five members of the bench and bar teamed with the Select Committee for intensive facilitators' training to conduct meetings with every Circuit and District Court bench from November 1989 through October 1990. Maryland's judges learned of particular problems facing our courts in cases of domestic violence. Similar educational programs were brought to the District Court Commissioners.

Judge Rodowsky initiated discussions with Charles H. Dorsey, Jr. as Chair of the Board of Law Examiners, to add Family Law as a necessary subject for examination. Judge Rodowsky worked with the Judicial Institute to "incorporate gender equality concepts into the regular continuing professional education courses." Judge Rodowsky's leadership agenda set a high performance standard for his successor committee chairs, include Judge McAuliffe, U.S. Attorney Battaglia, Judge Nolan and Pam White.

Beginning with Judge Rodowsky's term as Chair, Committee members have encouraged changes to the Judicial Nominations process; participated in the development of civility codes and professionalism courses; drafted guidelines to deal with problems of sexual harassment in courthouses and law offices; worked with the Judicial Institute to improve judges' orientation programs; promoted revisions to Judicial

Canons and improved operations of the Judicial Disabilities Commission; served as a resource to law school administrators, faculty and law students; advocated commentary to lawyers' Rules of Professional Conduct; and presented programs to the Attorney Grievance Commission.

Judge Rodowsky has now retired from the Committee but continues to serve as Chair of the Judicial Institute of Maryland. Judge Rodowsky has been a member of the Judicial Institute since 1981 and Chair since 1987. The Judicial Institute is a critical resource to prepare Maryland's judges to meet increasingly complex challenges in the administration of justice.

Judge Rodowsky, a magna cum laude graduate of Baltimore's Loyola College, received his law degree, with honors, from the University of Maryland School of Law in 1956. He was first in his class, editor of the *Maryland Law Review*, and a member of the Order of the Coif. After a judicial clerkship with Judge W. Calvin Chestnut of the United States District Court for the District of Maryland, Judge Rodowsky joined and remained with the firm of Frank, Bernstein, Conway & Goldman, except for two years of service as an Assistant Attorney General for Maryland from 1960 to 1962. Judge Rodowsky was a member, for more than eleven years, of the Court of Appeals' Standing Committee on Rules of Practice and Procedure. Judge Rodowsky was elected a Fellow of American College of Trial lawyers in 1975 and a Fellow of the Maryland Bar Foundation in 1979. He is a member of the Baltimore City and Maryland State Bar Associations and has chaired the MSBA's Section of Litigation. Judge Rodowsky joined the Court of Appeals in January 1980.

210

A MARYLAND CHRONOLOGY

- 1648 Margaret Brent argues for equal treatment under the law to General Assembly
- 1788 Maryland Statehood
- 1902 Etta Maddox first woman admitted to Maryland Bar
- 1920 Women win right to vote
- 1946 Rose Zetzer first woman admitted to Maryland State Bar Association
- 1950 Juanita Jackson Mitchell first black woman admitted to Maryland Bar
- 1955 Kathryn Lawlor Shook DuFour first woman Circuit Court Judge
- 1957 Jeannette Wolman first woman admitted to Bar Association of Baltimore City; first year African American lawyers allowed BABC membership
- 1979 Rita C. Davidson first woman appointed to Court of Appeals; Shirley B. Jones first woman appointed to United States District Court for the District of Maryland
- 1983 Rosalyn B. Bell first woman appointed to Court of Special Appeals
- 1985 Mabel Houze Hubbard first African American woman appointed to Circuit Court
- 1989 Report of the Special Joint Committee on Gender Bias in the Courts

Justice Sandra Day O'Connor had been serving on the Supreme Court at least a dozen years, but the distinguished advocate appearing before the Court must have suffered a momentary lapse. Counsel closed in on a legal point and urged: "I would like to remind you gentlemen" Justice O'Connor gently interrupted to inquire: "Would you like to remind me, too?" Counsel proceeded with his argument without missing a beat but clearly clueless when he later addressed the Court as "Justice O'Connor and gentlemen." It was Justice Byron White's turn to admonish counsel: "Just 'Justices' would be fine."

Special thanks to Eric DeLisle and the Administrative Office of the Courts for production of the Select Committee's outstanding video presentation.

REPORT OF THE MARYLAND SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

After a two-year investigation by the Special Joint Committee, the May 1989 Report concluded, simply and unequivocally: "gender bias exists in the courts of Maryland, and it affects decision-making as well as participants."

"Gender bias exists when people are denied rights or burdened with responsibilities solely on the basis of gender. Gender bias exists when people are subjected to stereotypes about the proper behavior of men and women which ignore their individual situations. Gender bias exists when people are treated differently on the basis of gender in situations where gender should make no difference. Finally, gender bias exists when men or women as a group can be subjected to a legal rule, policy or practice which produces worse results for them than for the other group." (Report at p. iii).

1989 Special Joint Committee on
Gender Bias in the Courts
Hon. Hilary D. Caplan (Chair)
Hon. William H. Adkins II
Hon. Rosalyn B. Bell
Marvin J. Garbis
Linda H. Lamone
Hon. William D. Missouri
M. Peter Moser
Louise G. Scrivener
Professor Karen Czapanskiy, Reporter
and with Tricia D. O'Neill
Deborah A. Unitus, Staff

WOMEN IN THE MARYLAND JUDICIARY

1989

19 women among 221 judges,
or less than 9%
1 woman among 20 appellate judges,
or 5%

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34 women among 234 judges,
or less than 15%
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or 10%

1999

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or 20%

WOMEN IN JUDICIAL NOMINATING COMMISSIONS

1987-1994

64 women among 210 members, or 30%

1995-1997

93 women among 225 members, or 41%

MARYLAND JUDICIAL APPLICANTS

1987

17 women among 102 District Court applicants, almost 17%
3 women among 31 Circuit Court applicants, almost 10%

1997

28 women among 111 District Court applicants, more than 25%
10 women among 49 Circuit Court applicants, more than 20%

"TEN YEARS AFTER..."

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**CELEBRATION AND SPEAK OUT FOR
GENDER EQUALITY IN THE COURTS**

APRIL 5, 2000

Opening Remarks:

The Honorable Linda E. Giles, Chair
Gender Equality Advisory Board to the
Chief Justice for Administration and Management

Special Address:

The Honorable Barbara A. Dortch-Okara
Chief Justice for Administration and Management
The Trial Court
Member, Gender Bias Study Committee, 1986-1989

Appreciation of the Honorable Ruth I. Abrams:

The Honorable John M. Greaney, Associate Justice
Supreme Judicial Court
Co-Chair, Gender Bias Study Committee, 1986-1989

Keynote Speaker:

The Honorable Margaret H. Marshall, Chief Justice
Supreme Judicial Court
Member, Committee for Gender Equality, 1989-1994

Speak Out - Mapping the New Millennium:

Representatives of the Community

Closing Remarks:

The Honorable Karyn F. Scheier, Vice-Chair
Gender Equality Advisory Board to the
Chief Justice for Administration and Management

Reception in the Art Gallery:

Showcase of Planning Committee Members' Work
Oral History Videotape Project
A Century of Progress: An Historical Timeline

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*We thank these organizations for their generous contributions.

NEW YORK



FIFTEENTH
ANNIVERSARY
CONFERENCE

NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

THE MILES TRAVELED AND
THE MILES YET TO GO

APRIL 4, 2001
AT THE NATIONAL ARTS CLUB
15 GRAMERCY PARK SOUTH
NEW YORK, NEW YORK

9:30 AM: Coffee and Registration

10:00 AM: Welcome

Hon. Betty Weinberg Ellerin, *Chair, New York State Judicial Committee on Women in the Courts*

10:15 AM: Tribute to Justice Cooke

Hon. Judith S. Kaye, *Chief Judge of the State of New York*

10:30 AM: Panel - The Courts' Response to Violence Against Women: Progress and Future
Moderator, Fern Schair, *Conference Co-Chair, Member of the New York State Task Force on Women in the Courts*

Panelists

Julie A. Domonkos, *Executive Director, My Sister's Place*

Dennis Hawkins, *former Chief of Investigations, Brooklyn District Attorney's Office*

Hon. John Leventhal, *Supreme Court Justice*
Prof. Leah Hill, *Associate Clinical Professor, Fordham Law School*

Dr. Margaret Abraham, *Chair, Department of Sociology and Anthropology, Hofstra University*

12:00 PM: Lunch

1:00 PM: Tribute to Hon. Kathryn A. McDonald
Hon. Betty Weinberg Ellerin

1:15 PM: Panel - Courts' Enforcement of Women's Economic Rights: Progress and Future
Moderator, Hon. S. Michael Nadel, *Conference Co-Chair, Member of the New York State Task Force on Women in the Courts; Judge, Court of Claims*

Panelists

Allen Hochberg, *Family Court Hearing Examiner*

Hon. Fred Shapiro, *Acting Supreme Court Justice*

Kay Thompson, *Partner, Belock Levine & Hoffman, LLP*

Hon. Barbara Howe, *Supreme Court Justice*

3:00 PM: OCA Fifteen Years After the Task Force Report

Hon. Jonathan Lippman

3:20 PM: The Next Fifteen Years

Hon. Betty Weinberg Ellerin

■ WOMEN IN THE LAW ■



PHOTOGRAPH BY ELIZABETH LIPPMAN

Appellate Division, First Department, Justice Betty Weinberg Ellerin, (left) chair of the New York State Judicial Committee on Women in the Courts, greets Edward Cooke, the eldest son of the late Chief Judge Lawrence J. Cooke and Ann McDonald, daughter of honoree Kathryn A. McDonald.

Landmark Report on Women In the Courts Commemorated

THE ISSUES of domestic violence and the economic rights of women were addressed by two panels yesterday at a conference marking the 15th anniversary of the report of the New York Task Force on Women in the Courts.

Organized by Appellate Division, First Department, Justice Betty Weinberg Ellerin, chair of the State Judicial Committee on Women in the Courts, the daylong conference at the National Arts Club attracted about 175 judges, lawyers, government officials and academics from around the state. Justice Ellerin recalled that 17 years ago, at the time of the task force's formation, gender bias in the courts was "accepted by all too many."

Chief Judge Judith S. Kaye kicked off the conference with reminiscences and presentation of a plaque honoring the late Chief Judge Lawrence Cooke, who appointed the task force. Quoting Judge Cooke's

oft-repeated advice of "When in doubt, take the high road," Judge Kaye presented a plaque to his son, Edward Cooke, citing her predecessor's "unswerving commitment to the high road," saying that when he "saw injustice [his] only act was to eliminate it."

Carrying through on the conference's theme of "The Miles Traveled and the Miles Yet to Go," the panelists addressing "The Courts' Response to Violence Against Women" traced the progress that has been made in the judicial system's handling of domestic violence incidents and the goals for improving the process in the future.

Justice John M. Leventhal, who is in his fifth year of presiding over the nation's first felony Domestic Violence Court, in Brooklyn, described his "wish list." Among his "wishes" were that police department domes-

Continued on page 2, column 3

Recalling Landmark Report on Women in the Courts

Continued from page 1, column 5

tic incident reports be completed, forwarded to prosecutors and entered into a computerized system for referral; that domestic violence officers in precincts be on duty around the clock; that all officers receive training on handling such incidents; that police cars be equipped with cameras for recording on-the-scene evidence and with computers to enable officers to check orders of protection; that 911 calls be taped and available for replay at arraignment; and that more and better shelters be available for victims of domestic violence.

Evaluation Needed

The former chief of investigations in the Brooklyn District Attorney's Office, Dennis Hawkins, called for more and better evaluation of programs and policies that have been tried and used by the police, by prosecutors and in the courts. He also described a new Brooklyn program, funded by a federal grant, that harnesses prosecutors, police and community agencies in a joint effort to target and service immigrant women who are victims of abuse in the home.

The particular plight of immigrant

women and domestic violence was poignantly addressed by Professor Margaret Abraham, chair of the sociology and anthropology department at Hofstra University.

She made a plea for appropriate court interpreters who are trained in domestic-violence issues, recounting a time that she sat in a courtroom and discerned a male interpreter translating only those portions of a battered spouse's testimony that he thought the judge should hear. She also suggested community education programs to enable potential jurors to have a better understanding of the issue, training on cultural and structural factors affecting certain nationalities, and greater diversity on the bench.

Other panelists included Julie A. Domonkos, executive director of My Sisters' Place, a services and advocacy organization in Westchester, Professor Leah Hill of Fordham University School of Law and Fern Schair, vice president at the American Arbitration Association, who moderated.

An afternoon panel examined "Courts' Enforcement of Women's Economic Rights," and scheduled panelists included Allen Hochberg, a Ninth District Family Court hearing examiner; Justice Barbara Howe from Buffalo; Acting Justice Fred Shapiro of the Matrimonial Part, Westchester County; Kay Thompson, a partner in Beldock, Levine & Hoffman; and Court of Claims Judge S. Michael Nadel, the panel's moderator.

APPENDIX I

**Norma J. Wikler,
*Water on Stone: A Perspective on
the Movement to Eliminate
Gender Bias in the Courts,*
COURT REVIEW, Fall 1989, at 13.**

COURT REVIEW

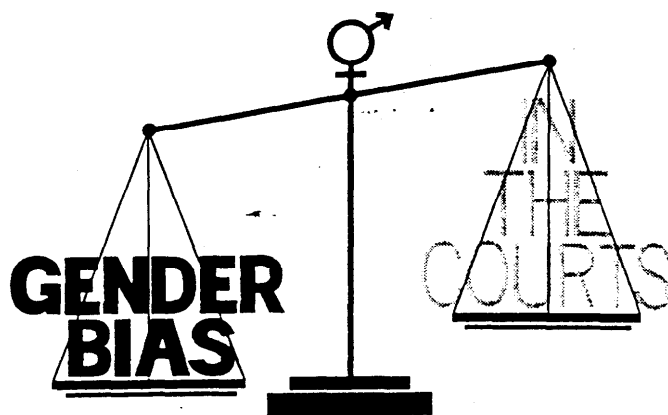
30th Anniversary, 1959-1989



In this Issue . . .

Gender bias is the focus of a national reform effort led from the top—i.e., by state chief justices—because it so severely affects the fair administration of justice.

AMERICAN JUDGES ASSOCIATION



Water on Stone

A Perspective on the Movement to Eliminate Gender Bias in the Courts

Norma J. Wikler

My intent is to put our efforts in context regarding the elimination of gender bias in the courts, by which I mean understanding the gender bias reform movement in its relation to other social movements and in relation to the special qualities of the judiciary. These observations will, I hope, present a clearer picture both of where we have been and where we might wish to go.

For all of us interested in social change, a historical perspective is crucial. Regardless of the scope

and depth of social movements, such as the movement for women's rights which began in the 1960s, social change will not endure unless these movements bring about lasting reforms in our core institutions. This is especially true of legal institutions, such as the courts, whose decisions affect so profoundly the operation of the whole of society. A look backward to the origins and development of our current efforts provides an understanding of how undertakings such as the gender bias task

forces can serve to secure lasting change.

Curiously, both the study and the practice of institutional reform of the kind we have undertaken with respect to judicial gender bias has been neglected by American social reformers and analysts. One by-product of our work on gender bias can be to contribute to such knowledge by reflecting on what it is that we have been doing. This is the task I undertake. After describing the social and political context in which the movement to eliminate gender bias in the courts arose, I will discuss the creation of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (the NJEP) and its catalytic role in the formation of the gender bias task forces. Next, I will comment on the work and significance of the task forces, and, finally, I will give you my perspective of the road ahead.

This article is an edited version of a speech given by Professor Wikler at the National Conference on Gender Bias in the Courts, May 18, 1989, and is reprinted with permission of the State Court Journal. Professor Wikler is a professor at the University of California—Santa Cruz, and has advised many of the state court task forces on gender bias in the courts.—ED



One main point here will be to emphasize the changes that occurred in the very rationale for the gender bias task forces. I hope to show that in certain respects these task forces are unique in American society and that the specific missions they have undertaken are precisely tailored to the task of bringing reforms to the judiciary. Of course, this fit of form and function is much clearer in hindsight than it was to those of us who were involved in working with the first task forces, helping to define their methods and goals. And therefore, we need to be cautious in trying to predict the future path for the task forces or the broader reform movement. Nevertheless, a look at the past can help to point the way in the future.

Conditions for the emergence of the movement to eliminate gender bias in the courts

It is striking how rapidly the problem of gender bias has emerged from obscurity to prominence among judicial concerns. A visit to a law library in 1989 would yield dozens of articles on the topic, many published in leading legal and judicial journals. Courses and course segments on gender bias in the courts are included in numerous judicial education programs for state court judges and recently for federal judges, as well. Now special task forces across the country are investigating gender bias in the states' judicial systems and proposing and implementing a wide range of reforms. And the pace of change is not slowing.

The resolutions passed in August 1988 in Rockport, Maine, by the Conference of Chief Justices and the Conference of State Court Administrators (see p. 5) called for the creation in every state of both gender bias task forces and task forces for minority concerns. These resolutions signaled that gender bias and bias against minorities

had been legitimated by the highest level of the judiciary as problems worthy of official investigation and reform.

Less than ten years before, the terms judicial *gender bias* or *gender bias in the courts* had not yet been introduced. As late as 1980, there was only one article on the subject in the mainstream legal and judicial literature, and there had not yet been a systematic discussion of gender bias in any judicial education program in the country. What seems so plain to us today—pervasive gender bias in the courts—was then virtually invisible.

Needless to say, the lack of attention to gender bias was not due to any shortage of the bias itself. Pioneer female litigators in the late 1960s, in both the federal and state courts, began to observe firsthand how judges' gender-based stereotypes and biases could undermine even the most progressive legal reforms through the exercise of judicial discretion and through courtroom behavior.

During the 1970s, women lawyers' firsthand observations of judicial gender bias, were documented by social scientists and legal researchers who conducted empirical studies of the effects of gender on judicial fact finding and decision making in numerous areas of the law. From this uncoordinated research agenda, a disquieting picture emerged that showed that gender bias existed in all areas, operating sometimes to the disadvantage of men and more often and more seriously to the disadvantage of women. I will give a few examples that no doubt will sound familiar.

1. In juvenile law, numerous studies corroborated the finding of the American Bar Association's study *Little Sisters and the Law* that although the "crimes" that females are accused of are categorized as less serious and harmful to society than those of males,

girls are more often held in detention for longer periods of time and are less likely to be placed in community programs than boys.¹

2. Early studies also noted the casual response of the legal profession and the judiciary to the plight of battered women. Some researchers interpreted this finding as evidence of faint echoes of the common-law view of a wife as her husband's property lingering in the minds of some judges and attorneys.
3. The extensive literature generated by the anti-rape movement showed that judicial myths regarding the nature of male and female sexuality and attitudes toward the "proper" roles of women served to punish rape victims by defining rape (and spousal abuse) as "victim-precipitated crimes."
4. But it was the looming disaster in family law that most disturbed those concerned with equal justice. Social scientists studying the consequences of no-fault divorce in California began to document the important contribution state courts were unwittingly making to the feminization of poverty through seemingly minor day-to-day decisions in divorce cases. A new underclass of American women and children was coming into being through inadequate support awards, which were then inadequately enforced. Researchers traced these inequities directly to misinformation on the judges' part about the economic and social realities of women and men.² Disposable income for males, meanwhile, typically increased after divorce because of a combination of court decisions and the striking gender disparities in employment and earnings that persist in American society.

The need to educate judges about the findings of researchers

and the concerns of women lawyers was first articulated by Sylvia Roberts, a pioneer Title VII litigator from Louisiana. The idea crystallized in Ms. Roberts' mind in 1969, she has said, and she proposed it the next year to the newly formed National Organization for Women (NOW) Legal Defense and Education Fund, to which she served as general counsel. The idea for such a program had immediate appeal to the fund since it was aware of the serious problems that judicial gender bias was posing for much of its work. Nevertheless, this organization understood the hurdles that would have to be cleared in any attempt to bring reform to the judiciary. Roberts' proposal would require a breach in the wall society places around judges and the courts. This insularity deserves some special attention, for it is the source not only of one of the chief obstacles to reform but of the particular distinction of the task force approach.

INSULARITY OF JUDGES

The insularity of judges is intentional, a matter of social design, and desirable. The theory behind it is that the core judicial norms of evenhandedness and impartiality require judges to maintain their distance. Judging, unlike legislating, is supposed to answer to relatively timeless and nonlocalized norms of fairness and procedure rather than to the push and pull of the political process and the fads and enthusiasms of the moment. Thus, judges must be protected not only from the individuals pushing the many reform agendas but even, in a sense, from the reformers' aims and ideas.

The advantage of this arrangement for the processes of justice is apparent, but the arrangement also has its drawbacks. Not all of those who would seek to influence the judiciary are simply special interest groups attempting to bend judicial deliberations in their fa-

vor. Some are reformers who have information and ideas essential to impartial and equitable judging, which have been overlooked, due either to judicial inexperience or to systematic biases, which judges may share with much of the larger society. Those of us involved in creating the NJEP saw ourselves in this second category. Our dilemma

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was that we, like most other Americans, had no basic quarrel with the insularity of the judiciary, so long as it served the purposes for which it was intended. Yet we sought to gain a hearing, both to Share our research findings and to stimulate reflection on the judges' part to identify and eliminate biases of their own.

At the time that gender bias in the courts was first being documented by researchers, the findings were not available to the judges. In the 1970s, judicial education was in its infancy and generally proceeded according to the dictum, "Only judges can teach judges." Yet the judges who did the teaching did not do field observations of the immediate causes of domestic violence nor did they

conduct studies of the relative economic position of husbands and wives in the years following a divorce settlement. More importantly, they were not exposed to the work of those social scientists who did do the research. Judges who served as faculty for judicial education shared what they knew, but efforts to assure the completeness and accuracy of this knowledge were lacking.

To be sure, feminists and others concerned about equal justice tried to get the data to the judges. Women lawyers who were part of this early cadre litigating for women's rights in the early 1970s adopted the strategy of using the data-heavy amicus brief as a means to educate in a traditionally accepted form. But there was no assurance that judges would read the dense material nor that they would believe it. Even if they were receptive, this kind of uninvited contribution gave judges no sense of personal discovery or the kind of active learning that has the best chance of affecting deeply held beliefs and attitudes.

If only judges could teach judges, what was to be done? For the decade beginning in 1969, the idea sat on the back burner of the NOW Legal Defense and Education Fund. The staff referred to it as the "impossible project." Energy and time were devoted to shoring up the documentation of judicial gender bias, in part through courtwatching projects, and to publicizing the problem through the media.

The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP)

In 1979 my path unexpectedly crossed that of the NOW Legal Defense and Education Fund. My academic research on women in the professions and on the status of women in American institutions

had led to my participation in one of the Fund's major conferences on the family. There I learned about its interest in finding someone to design and launch the National Judicial Education Program.

From my sociological perspective, it seemed as if the moment had come when there was a way through the impasse despite the traditions that appeared to block the path to reform of judicial gender bias. I believed that a well-coordinated and supported effort undertaken at that particular point in history might succeed in reaching judges on this issue. Taking a two-year leave from the University of California, I became the founding director of the NJEP and steered the project for two years before returning to academia. My successor in that post in late 1981 was Lynn Hecht Schafran, who continues to direct the program.

The strategy upon which the NJEP was established in 1980 rested on one key realization and one fortuitous circumstance. The key realization was that the concern over gender bias was really nothing different than a desire that judges be true to their own ideals of objectivity, fairness, and impartiality. In other words, those seeking equal justice were not trying to impose a feminist agenda in the manner of a traditional interest group. Rather, the goal was to provide facts and new sensibilities that would assist judges in doing precisely what they were doing—administering justice—only to do so with greater fidelity to their own ideals and with more precise knowledge.

The fortuitous development that enabled the project to engage in effective education was the formation in 1979 of the National Association of Women Judges and its subsequent decision to cosponsor the NJEP with the NOW Legal Defense and Education Fund. Here were bona fide members of the judicial community, whose experi-

ences ranged beyond that of the upper-middle-class white males, who were ready to work with non-judges to bring the necessary information to their colleagues. They were able to understand and communicate to their peers the ideological compatibility of the ideas of the women's movement with the core judicial norms of fairness and

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impartiality. Most significantly, these judges had credibility. When they spoke of bias, they-spoke both as women, often as the victims of bias, and, simultaneously, as fellow judges with the objectivity and fairness of mind that the office requires. As mentioned earlier, judges are expected to differ from legislators in being above the political process, representing no special group. When women judges confirmed the existence of bias, therefore, their observations had to be taken seriously. And so they were.

The efforts of the NJEP were greatly facilitated by the early endorsement of leading judicial organizations, including the National Center for State Courts, the National Judicial College, the Cali-

fornia Center for Judicial Education and Research, and the American Academy of Judicial Education. The vision, commitment, and courage of these people deserve emphasis, for none of them had to give the new program their backing. They did so because they became convinced by the evidence that a problem did indeed exist and because of their adherence to the ideal of fairness to which the judiciary is devoted. These endorsements demonstrate that the eradication of gender bias has been a project undertaken by men as well as women in this field.

The NJEP's central purpose has been to develop and introduce courses into established judicial education programs for state and federal judges on the ways in which gender bias affects the courts and undermines fairness. Although these educational efforts introduced gender bias issues to many judges during the program's early years, their effectiveness in changing attitudes and behavior was limited in some important ways. These problems have been discussed at length in the literature on the NJEP.³ But there is one particular obstacle of special interest, for it turned out to be the direct catalyst for the formation of the task forces.

One of the common forms of resistance of judges to information about gender bias in the courts was the denial that any such bias existed in the particular judge's jurisdiction, even if it was acknowledged to occur elsewhere. The NJEP was not equipped to deal with this challenge. Given the difficulty of obtaining high-quality data on gender bias in the courts, neither the NJEP staff nor interested judges were in a position to gather this evidence.

The success of the movement to eradicate gender bias in the courts, then, required that the individual states collect concrete and specific information about the ways in

which gender bias operated in that state's judicial system. Talks presented by the NJEP's first and second directors stressed this point continuously. One judge, the Honorable Marilyn Loftus, current president of the National Association of Women Judges, remembered this message when she spoke with Chief Justice Robert N. Wilentz and New Jersey administrative director of the courts Robert Lipscher in 1982 about introducing judicial education about gender bias in New Jersey.

In response to her letter requesting that he appoint a committee to collect relevant data for the 1983 Judicial College, Chief Justice Wilentz established a special one-year Supreme Court Task Force on Women in the Courts. (The task force is now in its seventh year.) The creation of this first task force ushered in the second phase of the national movement to eliminate gender bias in the courts.

The gender bias task forces

A dramatic burgeoning of task forces has followed. Similar entities were established in 1984 in New York, Rhode Island, and Arizona. Each subsequent year has seen other task forces brought into creation, usually by the chief justice of the state. A turning point in this development was surely the August 1986 Conference of Chief Justices in Omaha, Nebraska, which had on its educational program for the first time a panel on gender bias in the courts. Today the official gender bias task force count is 27: 5 states are in the exploratory phase; 17 are in the data collection and report-writing phase; and 5 are in the implementation phase. But even now, I may be out of date.

FUNCTIONS

The task forces have turned out to be more than instruments for the collection of state-specific data

on gender bias in the courts for use in judicial education. Two further functions are especially important. First, the creation of a task force transforms gender bias in the courts from a problem "for women" to a problem "of the judiciary." Second, the task force model reinforces the idea that any needed reforms will be the result of self-

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scrutiny and of improvement from within. This perception results from the role of the chief justices in creating the task forces and the direct participation of judges who serve on them along with lawyers, community leaders, legislators and, occasionally, social scientists.

As I have stressed already, the judiciary may need periodic updating and reform. But necessary corrections of misinformation and subjective bias need to come about through internal reform, preferably led by judges who have, for one reason or another, become aware of existing shortcomings and who have enough respect from peers within the judiciary to press effec-

tively for improvement. This, of course, is what the task forces do, and it is difficult to conceive of any other kind of body or initiative that would accomplish this so well.

The task forces involve a broad range of data-gathering techniques: public hearings, surveys, reviews of court decisions, special empirical studies, collections of existing statistical data, private meetings with attorneys, "listening sessions" with laypeople, and other approaches. In each state, these data are analyzed and interpreted by the task force or by researchers who have been retained to conduct special studies and report to the task force. What is essential here is that the relevance and implications of these findings are assessed by task force members themselves for the judicial goals of fairness and impartiality.

By combining standard data collection techniques such as public hearings and surveys with original formats devised on their own, the gender bias task forces have organically developed into a unique general form capable of bringing to the attention of judicial, legal, and lay communities a wealth of information about the actual practices of the courts and the effects of these practices, including judicial rulings, on the administration of justice.

The task forces have gone beyond their original mission to become vehicles for broad institutional reform. This capability follows from the fact that the chief justice is usually in a position to authorize funds, compel cooperation in data collection, endorse and propose reforms, ensure their implementation, and support judicial education about gender bias issues on an ongoing basis. Thus, the agenda of task forces has expanded to include such activities as adding specific prohibitions against gender-biased behavior to codes of judicial conduct, introducing standards and rules of

court, instituting statistical data collection systems that allow for ongoing monitoring of gender bias issues, gender-neutralizing court documents, jury instructions, and recommending improvements in the work environment for court personnel.

FINDINGS

The National Center for State Courts makes available through its clearinghouse the reports, documents, and other materials produced by the task forces. Information is available on what the data have shown in the substantive, procedural, and administrative areas that have been investigated. No attempt will be made here to summarize the findings of the task forces, for to do so would do a disservice to the complexities of their work. Nevertheless, I will make some general observations about them.

Overall, what most impresses the reader of these reports is that the problems everywhere are generally the same. There are differences, of course, not only among states but in different jurisdictions within states, but essentially the task forces as a whole are generating a consistent picture of the forms of gender bias that permeate the American state court system.⁴ Their findings confirm the studies of the 1970s that I referred to earlier, and they corroborate state and national data currently being assembled by academic researchers. These investigations have also done much more, however.

Task force inquiries add specific detail about the nature, extent, and consequences of gender bias, which, as we have seen, is often necessary in fostering acceptance by individual judges of the fact of bias in their own jurisdictions. New or insufficiently examined forms of gender bias are being brought to light as well. For example, women's limited access to the courts, because of their generally inferior

economic position and some judges' and court systems' distaste for family law matters, is emerging as a critical issue across the country.

OUTCOMES

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But have they actually helped to ameliorate them? Thus far, there has been only one systematic evaluation of the work of a task force. It is reported in *Learning from the New Jersey Task Force on Women in the Courts: Evaluation. Recommendations and Implications for Other States*, which Lynn Hecht Schafran and I wrote together.⁵ In this evaluation, we report that "the Task Force's greatest accomplishment in the state is also its most subtle: creating a climate within a 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 Court."⁶

This claim, I believe, will also be true of most of the other task forces. To the outside observer, this may not sound like much—facing up to a problem is not the same as eliminating it. In the context of the judiciary's need for insulation, however, and of the traditions of judicial education, this is a monumental accomplishment. In less than ten years since the term was introduced, well-organized and dedicated groups are constituted by the profession's leaders to scrutinize the problem, design solutions, and monitor compliance with reforms.

In addition, the task forces' work promotes equal justice by stimulating change in bar associations, by facilitating inquiries about bias against minority groups, and by creating state and national public awareness of judicial gender bias in the courts through its contact with nonlegal organizations, lay individuals, and the media.

The gender bias task forces represent something genuinely new. Judges in the past have seldom been called on to reflect on the role of their beliefs and attitudes in perpetuating and entrenching systematic social injustices. There was something similar in the jurisprudential legal realist movement of the 1920s and 1930s, which first opened our eyes to the wide variations in behavior produced by judicial discretion. But the legal realists focused on the judges' personal modes of thought and attitude, rather than on the way that judges may reflect systematic cultural biases.⁷ In this vein, the realist writer Jerome Frank called on judges to be psychoanalyzed. Salutory though that therapy may be, the task forces are presenting judges with more concrete and better targeted steps they might take to eradicate bias.

The gender bias movement is unique not only in terms of judicial reform; there has been no such in-house investigation or reform in

any other American institution or profession. The closest analogy is medical ethics, but that subject recalls Mark Twain's complaint about the weather, that is, though everyone was talking about it, no one was doing anything about it. The huge interest in medical ethics has spawned countless symposia, but no doctors' group has been constituted with a mandate to gather data on biases and inequities in the health care system and to issue recommended reforms and monitor compliance. In contrast, the gender bias task forces not only survey the problems but implement the remedies.

The road ahead

My focus on the past has been to better see the future. All social movements end—sometimes because their work is done, other times because they cannot go further. Right now it may be hard for us to consider this a problem. Look around: there are more task forces every year, and the number of participants is growing every day. And our work is crossing national borders. Canadians are working on the issues and are interested in learning more about the task force approach. Within the past six months, I have received requests for materials on task forces and judicial education on gender bias from the Netherlands, the Philippines, Israel, England, and Greece. Others involved in this effort have had other such requests, I am sure. In November 1989, when the National Association of Women Judges has its tenth anniversary meeting in Washington, D.C., women judges from many countries will attend and be introduced to this work. Our efforts are being multiplied as the movement to eradicate gender bias in the courts gets international.

But while there is growth in the number of task forces, we must examine what has happened to this movement in terms of its origi-

nal goals and commitments. Let me speak candidly. From my point of view—and it is only my view—the future promises opportunities not only for continuing our progress but also for getting thrown off the track. As in all social movements, there are what social scientists call “tendencies” and “contradictions” that may alter the movement's direction and goals as new people come into it with different agendas and needs. Amid all the splendid growth and effort, I see the following five potential problems:

1. The focus has shifted from state-specific data on judicial decision making and courtroom interaction to broader perspectives on gender bias in the courts that look at the whole system and at other court participants such as jurors, prosecutors, and the police. This trend is understandable, and is considered in itself desirable, since gender bias permeates the entire court system. The problem for the task forces is that broadening the focus may also diffuse it, with the result that the judiciary does not remain the main subject of reform. As I have argued today, the great merit of the task force approach lies in its premise of self-scrutiny and internal reform. Other groups can and have studied other participants, but the judges must study themselves. This is a historic opportunity that is unlikely to recur. In my view, the resources of the task forces should be focused on the judges.
2. In some instances, the goal of producing the final reports looms so large that it threatens to eclipse other activities task forces should be undertaking during their duration, such as initiating judicial education and planning for ongoing monitoring and evaluation. Here, indeed, the tail begins to wag the dog. The problem is not just

that important task force activities may be deferred but also that the report will come to signify to task force members the end of an arduous process when, in an important sense, it is just the beginning.

I do not make this statement lightly because I know full well that operating a task force and producing a report are enormous jobs requiring prodigious energy and commitment from staff and task force members, who usually do this work in addition to their other demanding, sometimes full-time, duties. Yet we must appreciate the long-term nature of the enterprise, or we will be like a comet crossing the sky. The institutionalization of our gains through judicial and legal education, ongoing monitoring of gender bias, and other means are as important as the dissemination of the report itself.

3. The third caution may sound harsh. The task forces have been aided in numerous ways by women lawyers, who have often taken the lead in calling for their creation. But there have been problematic consequences stemming from their participation as well. Task forces seem to be attending more and more to the problems of women lawyers both inside and outside the courts, extending in some states into the problems confronting women law students, women attorneys in law firms, and in the profession as a whole. Gender bias against women lawyers is indeed important and it may also affect their ability to represent their clients. Yet the danger exists that by directing the spotlight too intensely on this area the task forces will, ironically, take on the role of a professional interest group. This turn of events would negate the basis of their effectiveness, which is their appeal to universal rather than to particularistic interests

and values. Just as important is the question of which women's interests are being protected. The task forces must address primarily the needs of the voiceless, those who cannot articulate their injustices and have no way to seek redress.

4. The media present a fourth challenge to the task forces because their attention is often drawn particularly to women lawyers at the expense of what are, in my view, equally important issues. We found in California, for example—that reporters who covered the public hearings at which the range of gender bias issues were addressed wrote mostly about women lawyers, especially the prominent ones. In so doing, they distorted the nature of the movement and diminished the seriousness of the problem.

The *Los Angeles Times*, for example, ran an excellent pre-public-hearing article giving the history of the California Judicial Council Advisory Committee on Gender Bias and describing its concerns. But its only coverage of the nine-hour hearing in Los Angeles, attended all day by a woman reporter who covers the courts, was a brief item in the "Only in L.A. People and Events" column, which cited a proposal by a prominent feminist attorney—who had also testified eloquently about inadequate child support—that the courts should provide diaper-changing tables in men's restrooms as well as women's. No doubt this represents some sort of inequity, but surely the powerful testimony heard by the committee deserved more coverage from the major Los Angeles newspaper.

5. The final, disquieting feature of some task forces is the tendency to focus on courtroom interaction and to what transpires in chambers and in professional gatherings rather than on judicial decision making in substan-

tive law. The pressures to drift in this direction must be recognized and countered. Gender bias in courtroom interaction is an easier issue to address, if only because it elicits less resistance from judges. Even judges who harbor gender biases are less likely to oppose these lessons than they are to rethink the patterns of their decision making. And it is much easier for the press to report on a judge calling a woman lawyer "Honey" than it is to explain (or to understand) what is biased about a mutual order of protection in a domestic violence proceeding. But the task force's great contribution comes in identifying just such substantive inequities and pressing ahead in spite of the resistance to education and reform.

Conclusion

Recalling the origins and the progress of the gender bias task forces is a rewarding endeavor. All of us can take pride in what is really a quite extraordinary achievement, one not foreseen even a decade ago. My hope is that this proud review can serve a further purpose, which is to remind us of both the movement's original goals and the underlying reasons for its success. The task force approach addresses the problem of judicial gender bias as a key fits its lock. It is beautifully tailored to the task of promoting the basic judicial goals of evenhandedness and fairness to all those who appear before the bench. I do not believe that any other entity or strategy could do as well.

The news of progress in eradicating gender bias is almost all positive. Yet it is important to keep an eye focused on the magnitude of the problem yet unresolved. The feminization of poverty continues unabated, as do most of the other problems that gave rise to the projects we have undertaken.

These injustices, in truth, are the fault of the society as a whole, not just the judiciary, and they will persist.

Nevertheless, we have an important role to play, and I believe it is an essential one. Sylvia Roberts, speaking to me some years ago in a philosophical mood, said, "We should think of ourselves as water on stone." How apt the metaphor: water on stone. Though the stone is hard, and the water seems merely to splash around it, eventually that stone wears away, and the landscape is transformed. How fitting that the water metaphor is the expression of feminine power in the Taoist philosophy of the Chinese ancients. In our efforts to eradicate gender bias in America's judiciary, we do indeed act as water on stone, and, provided our energies keep flowing, the barriers to full equality will indeed give way.

Notes

1. Report by the American Bar Association, *Little Sisters and the Law* (Washington, D.C.: ABA, 1977).

2. For the most extensive discussion of these issues, see Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985).

3. See Norma J. Wikler, "Educating Judges About Gender Bias in the Courts," in Laura L. Crites and Winifred L. Hepperle (eds.), *Women the Courts and Equality* (Newbury Park, California: Sage Publications, 1987); and Lynn Hecht 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," 12 *Women's Rights Law Reporter* 9, 109-124 (Spring 1986).

4. Lynn Hecht Schafran, "Documenting Gender Bias in the Courts: The Task Force Approach," 70 *Judicature* 5, 280-290 (February-March, 1987).

5. Norma Wikler and Lynn Hecht Schafran, *Learning from the New Jersey Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* (Washington, D.C.: The National Association of Women Judges, 1988).

6. *Ibid.*, p. 2.

7. See, for example, Frank, *Law and the Modern Mind* (New York: Doubleday & Co., 1930); and Frank, *Courts on Trial* (Princeton, New Jersey: The Princeton University Press, 1956).