

ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

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CN-037  
TRENTON, NEW JERSEY 08625

FOR RELEASE: Tuesday, November 22, 1983

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SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS REPORT

Parsippany, N.J. -- The New Jersey Supreme Court Task Force on Women in the Courts, the first effort by a state court system to examine itself to identify gender bias, today reported that there is evidence of gender bias in certain areas, and asked all State judges to take a leadership role in correcting the problem.

The 31-member Task Force, chaired by Superior Court Judge Marilyn Loftus and including trial and appellate judges, lawyers, law school professors, other educators and private citizens, gave a summary report and recommendations at the 1983 Judicial College, an education conference for the State's 350 judges.

"New Jersey has a national reputation as a leader in court reform," Chief Justice Robert N. Wilentz told the College.

"We are confronting an issue facing court systems around the country. There is still gender bias in our society. The courts, however, cannot be satisfied with simply reflecting society, including all its flaws. We must do better. There is no place for bias of any kind in the courts, and we are committed to that goal."

"The Task Force has brought together women and men with varied and distinguished backgrounds to focus on a very sensitive issue," said Judge Marilyn Loftus. "I am grateful for their tireless efforts and for the support and interest of my colleagues on the bench during this first year."

Two national experts in Judicial Education on gender bias were involved in the

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work of the Task Force. Professor Norma Wikler, former director of the National Judicial Education Program to Promote Equality of Women and Men in the Courts and Professor of Sociology at the University of California at Santa Cruz; and Lynn Hecht Schafran, a lawyer and current director of the National Judicial Education Program, joined other Task Force members in presentations and panel discussions at the College.

"Since the Judiciary directs Americas other social institutions to eliminate policies and practices that discriminate against women, the elimination of gender bias in the judicial system itself is obviously essential," said Professor Wikler. "The New Jersey Supreme Court Task Force on Women in the Courts will be a model for the rest of the country."

"The implications of gender bias for the judicial system is an emerging area of concern in judicial education programs across the country," said Ms. Schafran. "However, New Jersey's efforts to involve and educate all judges goes far beyond anything accomplished elsewhere."

The Task Force defined gender bias as a predisposition or tendency to think about and behave toward people on the basis of their sex, reflecting stereotypical beliefs about the 'true nature' or 'proper roles' for the sexes, rather than an independent evaluation of each individual's abilities, life experiences and aspirations.

The Task Force summarized information gathered from a survey of almost 900 lawyers, meetings with bar associations, and letters from litigants. It identified concerns about gender bias in the application of substantive law in:

- \* personal injury damage awards - lower awards to women, failure to recognize economic value of households and child care work
- \* sentencing - females generally receive light and more non-custodial sentences than males, although the gap is narrowing under the new criminal code; female juvenile status offenders, however, appear to be incarcerated for longer periods than males

- \* matrimonial - inadequate child support and alimony awards and enforcement of orders; sex stereotypes operate against women and men in custody decisions
- \* domestic violence - the Prevention of Domestic Violence Act has assisted victims, most of whom are women, but there are still difficulties in obtaining access to the courts after-hours in emergency situations, and in enforcement of orders issued in these cases

In daily interaction in the legal/judicial environment, the Task Force reported instances of inappropriate personal remarks, forms of address, and hostile remarks directed at female lawyers, litigants and witnesses, and not to their male counterparts. Such treatment is viewed as having a negative impact on the individual's credibility and competence in their crucial roles as lawyer, litigant or witness in a court proceeding.

Among the Task Force's recommendations are the following:

- \* additional judicial training in certain areas i.e. economic status of women in society
- \* specific research to obtain more information on certain areas of concern i.e. economic and other data on all divorces granted over a period of one year, data on personal injury awards
- \* greater attention to enforcement of court orders involving child support, alimony, and domestic violence
- \* gender neutral language in all court forms and in forms of address in court i.e. counsel or attorney
- \* a study of whether factors the judiciary uses as relevant for sentencing are different for men than women
- \* close monitoring of female and male sentencing under the new juvenile code that goes into effect in January
- \* revise the Model Jury Charge on personal injury to recognize economic value of a career in the home

The Task Force will issue a formal report in mid-January to all judges, and will ask all judges to record instances of gender bias as part of its second-phase work.

Attached is a copy of the report, which includes a list of members of the Task Force.

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

**SUMMARY REPORT**

1983 NEW JERSEY JUDICIAL COLLEGE

November 21, 1983

Parsippany, New Jersey

## INTRODUCTION

### Creation of the Task Force

In October, 1982, Chief Justice Robert N. Wilentz established a special Supreme Court Task Force to investigate the extent to which gender bias exists in the New Jersey judicial branch and to develop educational programs to eliminate any such bias. The Chief Justice said "Obviously, bias of any kind has no place in the judiciary.

### Task Force Members

The Task Force is chaired by the Honorable Marilyn Loftus of the New Jersey Superior Court, Essex County. It is composed of thirty-one male and female members, including trial and appellate judges, attorneys, legal and judicial educators, as well as members of the public from all parts of the State. (See Appendix for list of members.)

### Background

During the last decade, significant changes have occurred with regard to the role of women in our society. Outdated cultural attitudes and stereotyped beliefs concerning the natures and roles of men and women are being examined in public and private institutions throughout the nation. National and state judicial educational programs have begun to offer courses on how gender bias may affect courtroom interaction and judicial decision making. Courses have been presented at the National Judicial College and in other states, including California, Oregon, New York, Indiana and Colorado. However, until this Task Force effort, no state court system has attempted to obtain systemwide information from attorneys, educators and members of the public.

### What is gender bias?

Gender bias is the predisposition or tendency to think about and behave toward people mainly on the basis of their sex. It is reflected in attitudes and behavior toward women and men which are based on stereotypical beliefs about the sexes' true natures and proper roles rather than independent evaluation of each individual's abilities, life experiences and aspirations.

Gender bias is often subtle and difficult to describe. It has deep sociological and cultural implications. Frequently, it is expressed in ways which seem so natural to our society that the element of bias is not understood. As Justice Alan B. Handler once wrote:

(N)ot everyone has a nose for discrimination, especially in its most subtle forms. We are coming to realize that people are products of cultural conditioning which frequently obscures recognition of social wrongs. ...The "commonplace" may constitute a Trojan horse of social

inequities. Discrimination frequently goes uncorrected because it is undetected. Castellano v. Linden Board of Education, 79 N.J. 407, 420 (1979) (Handler, J., concurring and dissenting).

Federal and state courts have already provided a forum for sex-discrimination issues. The judiciary has been called upon to interpret and define anti-discrimination laws by ordering various segments of society to implement legislatively mandated reform. It is therefore fitting and proper at this time that the progressive New Jersey judiciary review its processes and perceptions.

#### Designing the Task Force Approach

After examining other judicial educational programs on the subject of gender bias in society, the Task Force decided to inquire into the following issues: (1) Do gender-based myths, biases and stereotypes affect the substantive law and/or impact upon judicial decision making? (2) Does gender affect the treatment of women and men in the legal and judicial environment (e.g. courtroom, chambers and professional gatherings)? and (3) If so, how can judges affirmatively ensure equal treatment for women and men in the courts?

A Subcommittee on Substantive Law decided to investigate whether gender bias influenced decision making in the areas of damages, domestic violence, juvenile justice, matrimonial law and sentencing. The Subcommittee researched these areas by reviewing relevant case law, interviewing judges who sit in these areas and analyzing statistical materials and studies from the Administrative Office of the Courts as well as other state and federal agencies.

In the fall of 1982, a Task Force Subcommittee of judges and attorneys designed a questionnaire containing open-ended and closed-ended items to collect information about attorneys' perceptions of the treatment of women in New Jersey's judicial system. The New Jersey Law Journal published the "Attorneys Survey" as a supplement to its February 10, 1983 edition.\* Eight hundred eighty-six (886) individuals returned questionnaires. Of these, 867 were usable for analysis. Two-thirds of the respondents were males and one-third were females. According to data from the New Jersey State Bar Association and the Administrative Office of the Courts as of September 15, 1983, there were 25,000 attorneys licensed to practice law in New Jersey, of whom 13% are women. Thus, there was a proportionately higher response from women than men.

During the winter of 1983, the Task Force held seven regional meetings hosted by women's bar associations in all parts of the State. Approximately 200 attorneys attended these meetings. A male and female judge as well as one other Task Force member (usually an attorney) conducted each session. The eighth meeting was held at the New Jersey State Bar Association Annual Meeting in May, 1983. At each meeting, Bar Association members responded to specific questions about the treatment of female attorneys in court, chambers and at professional gatherings; the courtroom treatment of female litigants, witnesses and jurors; and problems in

\* Names were removed from the returned surveys to ensure anonymity. An identification number was assigned to each questionnaire for data analysis. Responses to both open- and closed-ended items were coded for data entry.

substantive law areas relating to domestic violence, rape, damages, adult and juvenile sentencing, custody, equitable distribution and support awards and enforcement.

More than 1,100 male and female attorneys communicated with the Task Force through the survey, at the Regional and State Bar meetings and through personal letters and telephone calls.

The three methods of data collection enabled the Task Force to collect both subjective data (attorneys' perceptions and personal experiences) as well as objective data (findings from legal and social scientific studies as well as statistical data from the State).

A Subcommittee was appointed to study whether gender bias affects court administration, with the initial focus of inquiring as to whether the standard forms and correspondence utilized by the courts contained gender neutral language.

#### FINDINGS AND RECOMMENDATIONS

With few exceptions, the findings and results of the Substantive Law Subcommittee, the Attorneys Survey and the Regional and State Bar Associations were mutually corroborative. They indicate that although the written case law appears to be gender neutral, stereotyped myths, beliefs and biases appear to sometimes affect decision making in certain subject areas, e.g., damages, domestic violence, juvenile justice, matrimonial and sentencing. Additionally, it appears that there may be inequality of treatment of men and women in the legal and judicial environment (courtroom, chambers and professional gatherings).

Following is a summary of the results of the work of the subcommittees. The findings are drawn from the data collected through the three methods described above. The recommendations found at the conclusion of each section have been gathered from those same information sources.

#### DO GENDER BASED MYTHS, BIASES, AND STEREOTYPES AFFECT THE SUBSTANTIVE LAW AND IMPACT UPON JUDICIAL DECISION MAKING?

The Subcommittee on Substantive Law initially concluded that the New Jersey statutes and written case law are basically gender neutral. However, in certain areas of the law it appears that decision making may be affected by gender bias. These areas need to receive the continued attention and observation of the judiciary.

##### I. Damages

Gender bias in the award of personal injury damages is a subject where few academic or statistical studies are available. However, anecdotal material offered by attorneys suggests that gender bias may be a substantial influence in the award of damages whether by judge or jury. Among the frequently described

perceptions are: (1) that both male and female wage earners receive higher awards for pain, suffering and disability than do homemakers; (2) that a woman wage earner is likely to be awarded less than her male counterpart; (3) that women receive lower awards for certain kinds of pain and disability that may reflect a bias that these are more common to or more easily borne by women, i.e. headaches and back pain; and (4) that women receive higher awards than men for injuries involving scarring or disfigurement that may reflect a bias that appearance is more important for women.

The existence of a dual valuation system in the personal injury courtroom was evidenced by statistics released in a 1983 national survey of adult plaintiffs.<sup>1</sup> The study concluded that younger women (ages 18 through 39) fared far better both in recovery and verdict award size than did women litigants in the 40 through 64 age group. Moreover, the likelihood of successful litigation for a female plaintiff "decreased drastically with age" while a similarly situated male plaintiff experienced an increased chance of success.<sup>2</sup>

The major components of a personal injury damage award are so closely tied to wage earning that women whose work is uncompensated are often relegated to modest awards. We suggest that the substantive law which guides judges and juries in fixing personal injury damages is unfairly skewed to a significant number of women, this being the category of female litigants who perform work as homemakers, wives or mothers. This is true whether the career is exclusively at home or in tandem with salaried employment outside the home. Neither our case law nor the model jury charges appear to recognize that personal injury -- and the associated pain, suffering, temporary and permanent disability and other consequential losses -- all affect a woman's unsalaried home career as importantly as they impact upon a wage earner's career.

In presenting cases on behalf of women litigants it appears that some attorneys fail to explore the economic value of the uncompensated services in the home. The problem is further compounded by a reported hesitancy on the part of some judges to accept proofs on this element of damages.

#### Recommendation

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

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<sup>1</sup>Jury Verdict Research, Inc. Adults as Plaintiffs Part I and II, 1983.

<sup>2</sup>Id. at 2326.

## II. Domestic Violence

New Jersey has aggressive legislation on the subject of domestic violence, (1982 Prevention of Domestic Violence Act) the spirit of which is gender neutral. While both males and females may seek redress under its provisions, the phenomenon of battering tends to primarily victimize females.

The Subcommittee on Domestic Violence focused on whether stereotypical attitudes toward women tend to obstruct meaningful redress under the existing legislation. The summary which follows outlines those areas of concern manifested in the data collections discussed.

Personal attitudes of police officers, court personnel, judges, and prosecutors may contribute to the institutional barriers which abused women seeking help must overcome. Feedback from regional meetings included complaints of police officers who tend to trivialize domestic violence complaints; some judges who are resistant to the additional burden of being on call nights and weekends under the 24-hour emergency provisions of the Act; some judges' reluctance to accept complaints where prior complaints have been withdrawn; probation officers discouraging victims from filing complaints until after a 'cooling off' period. Responses to the attorneys questionnaire mirrored those concerns.

Despite court directives requiring 24-hour judge coverage, there continue to be reports of difficulties with regard to after-hour access to the courts in emergency situations.

There is evidence of a public perception that the judiciary continues to be reluctant to utilize remedies available under the Act. There is concern that when judicial orders are issued, either generally from the Domestic Relations Court or specifically under the Act, they are frequently neither monitored nor enforced. In addition, there appears to be some lack of uniformity on the part of the judiciary concerning the proper handling of contempt proceedings once there has been a violation of court orders in these cases.

There appears to be some dissatisfaction on the part of the public and the bar with the nature of child visitation orders that do not adequately address the concerns of the complaining party in having contact with the alleged abuser; inadequate support orders that are seen as a determining factor in the victim's decision to remain in an abusive situation; and an underutilization of court-ordered counseling as a viable means of breaking the cycle of violence. On this last point, there was disagreement among those at regional meetings as to whether counseling should be mandated by the court or made available on a voluntary basis.

Concern was expressed about court recordkeeping and other systematic deficiencies that hamper judicial access to reliable data on previous patterns of violence in a particular case. This was seen as having impact on the judge's evaluation of the case, thereby impeding the responsiveness of the judge to the problem.

### Recommendations

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

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

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

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

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

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

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

### III. Juvenile Justice

National data on the treatment of juveniles shows disparate treatment on the basis of sex at virtually all stages of the juvenile process. With respect to status offenses (those that would not be crimes if the person was an adult, i.e. truancy, runaways) females are treated more harshly than males at every stage in the detention and adjudication process. However, female juvenile delinquents receive more lenient treatment with respect to certain crimes. As a result, young females are often institutionalized for longer periods than males. Available data from New Jersey indicates that during certain periods the State has generally conformed to the national pattern.

#### Recommendation

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

### IV. Matrimonial Law

The Subcommittee confined itself to an investigation of the economic consequences of divorce, which initial inquiries showed to be the most pressing problem facing women.\*

The data that the Subcommittee gathered from the U.S. Census and other reliable sources shows that, on a national scale, divorce portends long term, deepening poverty for a large proportion of women and their custodial children. This phenomenon is the result of continuing gender-based wage discrimination and job segregation in the labor market; inadequate job opportunities and support services for displaced homemakers who must re-enter the job market after a long interval at home; awards of alimony and child support that fail to take labor market realities and the true costs of living and child rearing into proper account; widespread defaults in payment of ordered alimony and child support; and overestimation of the degree to which marital property offsets these disadvantages. After divorce, the economic status of men appears to follow a normal upward course with increasing age and experience. By contrast, the economic status of women appears to deteriorate.

There is a perception that some judges make an assumption -- both biased and factually inaccurate -- that divorced women will remarry and thereby regain lost economic ground. Statistics demonstrate that after age twenty-five women remarry at a significantly lower rate than do men; and that this disparity in remarriage rates increases sharply with age.

Census data specific to New Jersey suggests that, despite the equitable intentions of the law, outcomes for New Jersey's divorced women mirror the national picture. In New Jersey, single parent households headed by women

\* As herein indicated, the economic consequences of divorce for women and their custodial children were a major concern of participants in the regional meetings conducted by the Task Force. Knowledgeable members of the Subcommittee reported a like concern generally among lawyers representing women.

outnumber single parent households headed by men by a ratio of nine to one. Data from the 1980 census shows that about forty percent of New Jersey's female headed single parent households, of which households headed by divorced female parents are a significant fraction, exist below federally established poverty levels. In addition, information gathered by New Jersey state agencies shows a pattern of defaults in alimony and child support payments; a gross insufficiency of child care facilities for mothers of young children who must go back to work after divorce; and the unavailability to displaced homemakers of any but the lowest paying jobs.

Detailed information is needed to determine whether our courts are inadvertently contributing to the disproportionate impoverishment of divorced women and their children in ways that can be corrected.

At regional meetings matrimonial law emerged as the area of greatest concern, where the stereotypes about men and women are most strongly expressed, the facts are least known and the economic disadvantage to women appears to be the greatest.

Support: There was strong agreement that our courts are not provided with sufficient information about the economic obstacles confronting women, with the result that women suffer inequitable, long range outcomes with respect to property division, support awards and enforcement.

Judges seem to lack accurate information about the kinds of jobs that are available to women and their salary levels, the costs of feeding and clothing a family, the availability and costs of child care and the particular employment problems of the displaced homemaker who has never, or not in many decades, worked outside the home.

Limits on Equitable Distribution and Support: Attorneys from all parts of the State observed that there appears to be an unofficial standard that the wife will receive no more than 35% to 40% of the net marital assets in equitable distribution, and a support award of no more than 30% of the husband's net pay even when there are small children in the custody of the wife.\*

Rehabilitative Alimony: Concern was raised that the developing concept of rehabilitative alimony (support granted to a homemaker spouse for a specific period to enable the recipient to obtain training or retraining in order to establish herself in the workforce) has begun to hurt women. Some judges are already expressing the idea that all alimony should only continue for a few years, even where the marriage has been of long duration and the wife is unlikely to rise to her husband's level of earning power.

Counsel, Accountant and Appraiser Fees: Women are seen as disadvantaged in divorce proceedings by the reluctance of some judges to award pendente lite (while the case is pending) counsel fees or fees for accountants and appraisers. No or low fee awards make it extremely difficult for women to obtain full discovery and properly pursue their cases.

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\* Perceptions about the support figure gain some corroboration from a study conducted by the League of Women Voters of all divorces granted in Bergen County in April, 1978.

Enforcement of Support Orders: Enforcement of orders for alimony and child support is gravely inadequate in the view of regional meeting participants\* some of whom perceive that some judges are reluctant to impose serious sanctions for failure to pay support.

Remedial Proposals Made by Regional Meeting Participants:

Support orders should include automatic adjustments to reflect changes in costs of living;

Reasonable counsel fees should be imposed on enforcement orders as an additional sanction on the non-compliant litigant;

Judges should review settlement agreements to be sure they fall within the parameters of economic equity for both parties;

Attorneys should file certifications setting forth the extent of discovery conducted before the case is heard on the divorce itself;

Information should be collected and disseminated to the bar and bench concerning the economic realities facing spouses at the time of divorce and for some period thereafter.

Recommendation

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

V. Sentencing

Attorneys perceive that female defendants generally receive lighter and more non-custodial sentences than male defendants.

The Sentencing Subcommittee analyzed New Jersey sentencing data from 1977 and 1981 and while statistics confirmed the attorneys' perception, they also indicated that the differential had narrowed somewhat. The changes from Title 2A to Title 2C of the 1979 Code of Criminal Justice (Title 2C) which limits judicial discretion in sentencing appeared to be an important factor in the equalization process.

Recommendation

A study should be undertaken to determine whether the factors that the judiciary views as relevant for sentencing are different for women than for

\* Information generated by the New Jersey Division of Human Resources, Bureau of Child Support and Paternity indicates that in several counties the arrearage rate on court ordered child support in 1981 was above 90% in both welfare and non-welfare cases.

men. This study should also ascertain whether or not the perceived leniency toward female offenders holds true for women committing so-called "male crimes," such as armed robbery and aggravated assault, when defendants are matched for prior criminal record, marital status and child care responsibilities.

#### DOES GENDER AFFECT THE TREATMENT OF WOMEN AND MEN IN THE LEGAL AND JUDICIAL ENVIRONMENT?

Responses to both the Attorneys Survey and the questions asked at the bar association meetings indicate that both male and female attorneys believe gender does sometimes affect the way litigants, witnesses and lawyers are treated in the courtroom, chambers and at professional gatherings. The perceptions and experiences as reported by female attorneys, however, differed from those of male attorneys when responding to specific questions.

An understanding of the survey format is necessary to properly interpret the results and analysis which follow. Respondents were initially asked questions falling into two categories: (1) whether they observed incidents where it appeared that females were treated disadvantageously; and (2) whether they observed incidents where it appeared the females were treated advantageously. These questions were divided into subcategories inquiring whether these incidents involved judges, counsel or court personnel. Respondents were given a choice of answering "never," "rarely," "sometimes" or "often." The latter three choices have been collapsed here into a general "ever perceived" category for purposes of this summary report.

More than two-thirds of the female respondents indicated that they had observed incidents where it appeared that women litigants or witnesses were treated disadvantageously by a judge, while almost one-third of the male respondents indicated they had observed such incidents. This same pattern of differing perceptions of males and females remained consistent for the responses in the court personnel category.

When asked whether they had ever observed incidents in which it appeared that counsel treated women litigants and witnesses disadvantageously because they were women, almost 50% of male respondents compared to 80% of women respondents reported that they had seen such incidents (13% of women attorneys reporting seeing such incidents often, while only 2% of men reported same).

Are women attorneys treated disadvantageously because they are women? Two-thirds of male attorneys said they had never seen such an incident involving a judge, but three-quarters of the female respondents said they had. Two-thirds of the male attorneys reported never seeing such an incident with court personnel, while again, two-thirds of women attorneys had. Forty-seven percent (47%) of male attorneys said they had seen incidents in which it appeared that male counsel treated female counsel disadvantageously because they were women, compared to 86% of women attorneys reporting such incidents (20% of women observing them often, compared to 2% of men).

With regard to their own personal experiences in court, in chambers and at professional gatherings, 78% of female attorneys responding to the survey reported incidents in which they felt they were treated disadvantageously by judges because they were women. Of these responses, 5% said such incidents happen often,

45% said they occurred sometimes and 28% said they occurred rarely. Nearly 90% of women attorneys reported experiencing such treatment by male counsel and 60% reported such experiences with court personnel.\*

Both female and male counsel reported having observed incidents in which it appeared to them that women litigants and witnesses were treated advantageously because they were women. Approximately 66% of both female and male attorneys had observed such incidents on the part of judges; 60% of female and male attorneys had observed them on the part of counsel; and 66% of the women and 54% of the men had observed them on the part of court personnel.

### Credibility

"Credible" encompasses many meanings: believable, competent, trustworthy, convincing, truthful, authoritative. By an extremely wide margin, more women than men reported that judges sometimes appear to give less credibility to female counsel, witnesses, experts and probation officers than to their male counterparts. Although the situation is perceived to be more serious with respect to male judges, one-third of female attorneys feel that women judges, too, on occasion appear to give less credibility to women than to men.

### Interaction in Professional Settings

Respondents were asked if they had ever observed or experienced: (1) women litigants, witnesses or lawyers addressed by their first names or by endearing terms when similarly situated men were addressed more formally; (2) comments on women's dress or personal appearance in court or chambers; (3) women subjected to unwelcome advances; and (4) hostile remarks or sexist jokes about women in court, in chambers or at professional gatherings.

Substantially more women than men in the survey reported observing such incidents. Even in categories where a significant number of men had seen such behavior, the percentage of women reporting them was even higher. For example, three-quarters of male attorneys reported never hearing a judge use an inappropriate form of address to a woman attorney, whereas more than half the women attorneys had. Although almost half of male attorneys acknowledged having heard male counsel use inappropriate forms of address toward female counsel, among female counsel, 85% reported observing or experiencing such incidents (29% reporting them as happening often, compared to 2% of men). Fifty percent (50%) of male attorneys reported observing incidents in which male counsel commented on the dress or appearance of women litigants or witnesses in court or in chambers. Again the figure was higher for women attorneys: nearly 70% observed such incidents.

Compared to other forms of behavior, unwelcome advances to women attorneys, litigants and witnesses was perceived to be less of a problem although its existence was confirmed. However, both male and female counsel indicated that the problem was greater with counsel than with either judges or court personnel.

At the regional meetings serious concern was voiced about the frequency

\* The distribution of responses in the category of counsel was: 19% often, 51% sometimes, 18% rarely. The distribution of responses in the category of court personnel was: 5% often, 23% sometimes and 31% rarely.

of hostile remarks toward women and jokes demeaning to women. Survey responses indicated that this behavior was most often engaged in by male counsel. Of the women responding, 86% had observed this behavior from their male peers, while 68% of the men indicated an awareness of this type of incident. Over two-thirds of women and 40% of men observed such behavior by judges. More than half of the women and nearly 50% of the men heard such remarks and jokes from court personnel.

The Task Force asked attorneys if they thought that inappropriate forms of address, comments on appearance and sexist remarks affect case outcome. Sixteen percent (16%) of the women and 3% of the men responding to the survey felt that they did impact on the ultimate case outcome. Comments written on the survey forms further indicated that many attorneys were uncertain but believed that even if the ultimate outcome of a case is not affected, the litigation process overall is negatively affected.

#### Perceptions as to Counsel Fees and Fee Generating Appointments

There was a difference in the way women and men perceive awards of counsel fees and fee generating appointments. Forty-seven percent (47%) of women compared to 3% of men reported a perception that male judges appear to accord women lawyers lower fees than men in similar cases. One-third of women and 3% of men reported perceptions that lower fees are accorded to women counsel by women judges.

When asked whether men or women tend to fare better with respect to receiving fee generating court appointments for guardianships, receiverships, condemnations and administrations, over 75% of men saw no difference. But more than half of the female attorneys reported men fare better with respect to appointments to receiverships, condemnations, administrations and guardianships.

#### Attorney Performance

An exception to the general pattern of disagreement in the perceptions of male and female attorneys regarding gender bias in the judicial system is their overall agreement in the area of attorney performance. Male and female survey respondents agreed that the sex of the attorney does not affect how clients fare in either civil or criminal matters.

#### Employment Opportunities for Women

A point about which the Task Force did not inquire but which was raised with frequency in the survey comments from both female and male attorneys related to women's employment opportunities in law firms, in government service and as law clerks. Many respondents expressed the opinion that women are not being hired, promoted or paid on the same basis as men. Others stated that some judges ask highly inappropriate questions of women candidates during clerkship interviews, and that some judges will not hire female law clerks at all.

#### Regional Meetings Corroborate Survey Findings

The tenor of comments made by the female attorneys at these meetings was directed at the matters of courtroom dynamics and professional etiquette. Female counsel reported being challenged as to whether they were in fact attorneys in situations where their status appeared self-evident. Women attorneys were offended by the use of first names in the courtroom setting,

if their male counterparts were addressed more formally.

Concern was raised about the "Old Boys' Network" type atmosphere often created during conferences in chambers. Attorneys reported incidents where women witnesses were not given the appropriate deference, thus discrediting their expert testimony. Many women stated that they felt invisible when judges use the salutation "Gentlemen" when opening court or upon directing counsel to proceed, despite the obvious presence of women. Many women attorneys indicated a hesitancy to object to unsettling behavior in the courtroom and in chambers, concerned that their clients would somehow fall in disfavor.

The negative attitudes of male attorneys toward women encountered in court and chambers were cited as also prevailing in the county bar associations, which seek out male but not female attorneys for active involvement and leadership positions. Attorneys urged that judges see their obligation to promote equality in the courts as extending to the functions of the bar associations.

#### Court Administration

The Subcommittee initially examined the way that gender bias may affect the administration of the courts by reviewing the standard forms in use. Their review indicated that masculine terminology is frequently used.

#### Recommendation

The Administrative Director of the Courts should issue a directive to all court personnel that appropriate steps be taken to revise the standard forms to include gender neutral language.

#### WHAT CAN JUDGES DO TO ENSURE EQUALITY FOR MEN AND WOMEN IN THE COURTS?

Judges take an oath to uphold the law fairly, impartially and justly. It is the responsibility of judges to create an atmosphere of equality in the courts by setting an example for counsel and court personnel to follow. It is recommended that, where appropriate, judges affirmatively take leadership roles in discouraging behavior rooted in gender bias in the courtroom, in chambers and at professional gatherings. The following are suggestions:

1. If your judicial assignment involves the responsibility of decision making in the substantive law areas previously discussed, give consideration to the merit of the recommendations and make observations with regard to the propriety of their implementation.
2. Examine your hiring and appointment record. How often do you:
  - a. Hire women law clerks?
  - b. Designate women as grand jury forepersons?
  - c. Appoint women to positions of administrative or supervisory responsibility?
  - d. Give women attorneys fee generating court appointments, particularly those other than guardianships, on an equal basis with men?

3. Use gender neutral language in all court correspondence. Use "Dear Counsel" and where appropriate include reference to he/she, him/her. Advise staff to do so.
4. Edit your jury instructions to use gender neutral language. Using the plural (witnesses/they) is helpful. Use he or she, her or him as necessary.
5. With regard to methods of address:
  - a. Address all attorneys as "Counsel," "Counselor" or "Attorney (last name)." Direct staff to do likewise.
  - b. When addressing male attorneys as "Mr.," address women attorneys as "Ms." unless otherwise requested.
  - c. Address Grand Jurors as "Members of the Grand Jury," "Grand Jurors," foreman/forewomen, he/she, him/her.
  - d. Open court with "Good Morning, Ladies and Gentlemen" or "Good Morning Counsel."
  - e. Do not refer to women litigants, witnesses, lawyers, jurors as "girls." Do not use their first names if you are addressing similarly situated men as "Mr." or by title. Do not use terms of endearment such as "sweetheart" or "honey." Direct staff and counsel to follow your example.
6. Set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, courtroom or at professional gatherings.

Some of the problems cited in this summary report on the first year of the Task Force on Women in the Courts are correctable with relative ease, while deep-seated attitudes, often unconscious, are obviously more difficult to eradicate.

The Task Force will continue to work with the judiciary to ensure equality for women and men in the courts. The formal First Year Task Force Report will be distributed to all members of the judiciary in mid-January, 1984, including amplification of points made here, selected charts and tables, further evaluation of New Jersey data with national data and an annotated bibliography. At that time, the Task Force will also outline its second year program, which will include asking New Jersey judges to make and record their own observations about gender bias in the courtroom, in chambers and at professional gatherings. We express our sincere appreciation to Chief Justice Robert N. Wilentz for providing the opportunity for this unprecedented inquiry, which continues New Jersey tradition as a national leader in court administration.

TASK FORCE ON WOMEN IN THE COURTS

Superior Court Judge Marilyn Loftus (Essex), Chair  
Appellate Judge Geoffrey Gaulkin  
Appellate Judge Michael Patrick King  
Superior Court Judge Thomas F. Shebell Jr. (t/a Appellate Division)  
Superior Court Judge Nicholas Scalera (Essex Assignment Judge)  
Superior Court Judge Theodore Z. Davis (Camden)  
Superior Court Judge Steven Z. Kleiner (Cumberland)  
Superior Court Judge Virginia A. Long (Mercer)  
Superior Court Judge Mary Ellen Talbott (Camden)  
Juvenile and Domestic Court Relations Judge Florence R. Peskoe (Monmouth)  
District Court Judge Rosemary Higgins Cass (Essex)  
Jersey City Municipal Court Judge Elaine B. Davis  
Newark Municipal Court Presiding Judge Betty J. Lester  
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