

**THE GENDER  
FAIRNESS STRATEGIES PROJECT**

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*National Association of  
Women Judges*

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*National Judicial College*

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*National Center  
for State Courts*

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*American Bar Association  
Commission on Women  
in the Profession*

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*National Judicial  
Education Program*

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# Implementation Resources Directory

**COMPILED BY THE  
NATIONAL JUDICIAL EDUCATION PROGRAM\***

**SJI**

State  
Justice  
Institute

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

# **Gender Fairness Strategies Project:**

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# Implementation Resources Directory

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Compiled by  
**Lynn Hecht Schafran, Esq.**  
*Director*

with  
**Norma J. Wikler, Ph.D.**  
*Founding Director*

and  
**Jill Crawford**  
*Program Associate*

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

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**Justice Betty Weinberg Ellerin**  
*Chair*  
*Gender Fairness Strategies Project*

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

1998

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to Promote Equality for Women and Men in the Courts, December 1998

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**Justice Ruth Bader Ginsburg** has written of the task forces on gender bias in the courts:

*Self-examination of the court's facilities and practices... can yield significant gains. First, such projects enhance public understanding that gender equality is an important goal for a nation concerned with full utilization of the talent of all its people. Second, self-examination enables an institution to identify, and devise means to eliminate the harmful effects of gender bias. Third, close attention to the existence of unconscious prejudice can prompt and encourage those who work in the courts to listen to women's voices, and to accord women's proposals the respect customarily accorded ideas advanced by men. And finally, self-inspection heightens appreciation that **progress does not occur automatically, but requires a concerted effort to change habitual modes of thinking and action.**\**

This Implementation Resources Directory is for all those who want to be part of that “concerted effort.”

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\*Ruth Bader Ginsburg, *Foreword* to THE REPORT OF THE SPECIAL COMMITTEE ON GENDER, PREPARED FOR THE D.C. CIRCUIT TASK FORCE ON GENDER, RACE, AND ETHNIC BIAS, *reprinted in* 84 GEO. L.J. 1651 (1996).

## ACKNOWLEDGEMENTS

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This Directory reflects sixteen years of work by the more than forty state Task Forces on Gender Bias in the Courts and the committees charged with implementing their recommendations. A reform effort such as this requires many heads and many hands. We gratefully acknowledge the dedication and countless hours donated to the national gender bias task force movement by thousands of individuals across the country, many of whom will soon complete their second decade of commitment to eliminating gender bias in the courts.

On behalf of the five partners in the *Gender Fairness Strategies Project*— the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in the Profession and the National Judicial Education Program— we thank our chair, Justice Betty Ellerin, for her commitment to making this project a reality and her guidance in its development. We also thank the State Justice Institute for its long term support of the national gender bias task force movement and for funding this project, which will bring the movement into its third decade with renewed energy. We are grateful to program manager Pamela Bulloch for her valuable suggestions for this Directory.

With respect to the production of this Directory, we thank the Task Force and Implementation Committee members and staff who responded to a lengthy survey and provided materials for inclusion in the Directory. We are indebted to NOW Legal Defense and Education Fund legal and undergraduate interns, Debbie Freundt, Margaret Hu, Jana Jacobson, Lisa Osiecki and Sabrina Wu, for help with research, cite checking and word processing. Funding for the interns was provided by the Everett Foundation and the Helena Rubenstein Foundation. A special thanks is due to Carol Schaeffer and Meredith Stern for designing the Directory cover.

Our thanks to all of you who have taken an interest in the critical judicial reform effort to eliminate bias in the courts. We have created this resource to make your job easier. Use it well and keep the movement going.

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

Lynn Hecht Schafran, Esq.  
Director

Norma J. Wikler  
Founding Director

Jill Crawford  
Program Associate

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

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  - National Center for State Courts
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- B. List of Gender Bias Task Force Implementation Committees with Contact Names and Addresses
  
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**THE GENDER FAIRNESS STRATEGIES PROJECT:**

*Identifying Our Resources and Maximizing Our Gains*

The Gender Fairness Strategies Project, funded by the State Justice Institute, is being carried out 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 the Profession and the National Judicial Education Program\*, five national organizations deeply involved in the twenty-year judicial reform effort to eliminate gender bias in the courts. The intent of the Gender Fairness Strategies Project is to promote states' efforts to eliminate gender bias in the courts, and to define an agenda for moving this vital court reform effort forward in the next decade.

The Project has three components. The first is this *Implementation Resources Directory*, based on a nationwide survey of the committees charged with implementing the recommendations of the forty state supreme court task forces on gender bias in the courts. The second is a **Strategic Meeting** of representatives from twelve geographically diverse task force implementation committees, convened in January 1999, to explore their experiences with implementation efforts and their strategies for success. The third component is *Maximizing Our Gains: An Implementation Strategies Manual*, which draws upon the wisdom gleaned at this meeting to suggest strategies that can guide future efforts of judicial, legal and non-legal entities committed to the goal of gender fairness in the courts.

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

## INTRODUCTION TO THIS DIRECTORY

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### *The National Gender Bias Task Force Movement*

The effort to eliminate gender bias in the courts has become one of the most significant twentieth century judicial reform movements in the country.<sup>1</sup> This effort began in 1980 when the NOW Legal Defense and Education Fund created the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) and invited the newly formed National Association of Women Judges (NAWJ) to become the project's co-sponsoring organization. The effort expanded in 1982 with New Jersey's creation of the first Supreme Court Task Force on Women in the Courts. The intense national interest in this Task Force's findings prompted NAWJ to create its own National Task Force on Gender Bias in the Courts to encourage and support formation of other Task Forces. The forty state and eight federal circuit Task Forces that ultimately emerged have become known as the *National Gender Bias Task Force Movement*. These Task Forces and their subsequent Implementation Committees have become critical vehicles in this judicial reform effort.

The "staying power" of the *National Gender Bias Task Force Movement*, and the gains achieved in promoting gender fairness in the judicial system of the United States, are due not only to the extraordinary work of the Task Forces and Implementation Committees, but also to the enduring commitment of a number of national organizations, five of which sponsored the production and distribution of this Implementation Resources Directory. These organizations—the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in the Profession and the National Judicial Education Program—have undertaken activities

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<sup>1</sup>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*, 81 JUDICATURE 15 (1997); Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952, 966-70 (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 28 (Feb. 1998) *Gender Equality in the Courts: Still on the Judicial Agenda*, 77 JUDICATURE 110 (Sept. - Oct. 1993), and *Credibility in the Courts: Why is There a Gender Gap?* 34 THE JUDGES' JOURNAL, 5 (1995); Norma J. Wikler, *On the Judicial Agenda for the 80s: Equal Treatment for Men and Women in the Courts*, 64 JUDICATURE 202 (1980) and *Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts*, 13 CT. J. 13 (1989).

separately and in concert with each other to provide technical assistance to and otherwise enrich the Task Forces' and Implementation Committees' work, as described in Appendix A. The State Justice Institute, which funded this Directory, has also played a major role in supporting many aspects of this work, such as national conferences and model judicial education curricula.

### ***The Need for this Implementation Resources Directory***

This Implementation Resources Directory brings together for the first time an annotated list of the "products" (e.g. educational materials, legislation, evaluation reports, employment policies) developed by the Gender Bias Task Force Implementation Committees to implement Task Force recommendations. The Directory also explains how these "products" serve as the building blocks of a comprehensive strategy for institutionalizing the Task Forces' work.

By 1998, almost all the state Task Forces had completed their investigations and many then moved into the stage of implementing recommendations. Despite diversity among the Task Forces, there is similarity in the reforms sought by different states. For example, every state Task Force recommended education about gender bias in the courts for judges, lawyers and court personnel. The Task Forces also called for new legislation, formal and informal complaint procedures, court rules, court employment policies, codes of conduct, data collection and guidelines for gender-neutral/gender-appropriate language. To carry out these recommendations, the Implementation Committees produced an assortment of materials such as educational programs, videotapes, guidelines and handbooks, most of which required substantial resources of time and money.

Over time, Implementation Committees realized that instead of "reinventing the wheel," materials produced elsewhere could be adopted or adapted for use in their states, thereby saving significant time and money.<sup>2</sup> The unique legal framework of each state might constrain the outright adoption of materials pertaining to substantive areas of the law such as custody or juvenile justice, while a topic such as "gender bias in courtroom interaction," which appears in near universal form, would not present this problem. The main obstacle to this sensible form of borrowing was the lack of information about what materials had been produced by other states and how to obtain them.

As Implementation Committees proliferated, so did their products. Now, sixteen years after the creation of the first Gender Bias Task Force, there is a wealth of materials that can be adopted or adapted, or at least serve as an inspiration to other states. With the publication of this Implementation Resource Directory, Implementation Committees throughout the country will be able to both identify the materials which can be of use to them and learn how to obtain them.

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<sup>2</sup> The first and second national gender bias task force conferences, held in 1989 and 1993, enabled attendees to become familiar with implementation tools from different states.

### ***How the Directory was Developed***

The resources described in this Directory were identified through the *Gender Fairness Strategies Task Force Implementation Survey* distributed to every state in 1997-1998.<sup>3</sup> The questionnaire requested that each state which had or has a Gender Bias Task Force or Implementation Committee specify the products each developed, and forward copies with the completed form. Specifically solicited were products relating to judicial education and legislation on substantive law areas cited as problematic in Gender Bias Task Force reports; new canons or commentary relating to judicial codes of conduct and rules of professional responsibility; new data collection tools; designs for court watching programs; new procedures for handling gender bias complaints; and materials for training judicial nominating and disciplinary commissions regarding gender bias. In addition, the survey requested copies of evaluations carried out by states with respect to the impact of their Task Force's work and citations to cases citing the Task Force reports. We also asked states that had not established a Task Force to specify what steps they have taken to promote gender fairness in the courts and what products — developed in-state or adapted from other models — are available for replication and use.

### ***How the Items Described in this Directory were Selected***

This Directory does *not* list everything that every Implementation Committee has done, nor does it include every item submitted to the Gender Fairness Strategies Project in response to the *Task Force Implementation Survey*. It would be impossible to capture in full detail the wealth of activities being carried out by Implementation Committees, court administrators, judicial educators, bar associations, legislators, prosecutors, police, law schools and many others in response to the Task Forces' recommendations. Even if it were possible, it would not further the goal of this Directory, which is to provide information about products and projects developed in one jurisdiction that can be replicated or adapted in others. For example, in the area of judicial education, many states have presented domestic violence training, but only a few states have the written materials from their programs available for others to use. This Directory lists with annotation only those state programs that others can obtain. With respect to some products, such as court conduct handbooks, so many states produced similar products that we chose to provide a sampling of different types rather than describe them all.

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<sup>3</sup> Thirty-five states returned the completed survey form.

### *Intended Audiences for this Directory*

This Directory is intended for multiple audiences. There are projects and programs listed here that can be replicated by:

- Gender Bias Task Force Implementation Committees
- Supreme Court Committees on Fairness
- 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

*\* Bar Associations in many states have been active in implementing the Task Forces' recommendations and in independent efforts to promote gender fairness in the courts. The involvement of the Bar in implementation efforts is vital for the gender bias reform movement as a whole. In an era of limited resources for state judicial systems, Bar Associations become more important than ever, and lawyers are an integral part of the problems and the solutions.*

## How TO USE THE DIRECTORY

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The Directory is divided into three segments. The first segment is an annotated list of the products developed by the Implementation Committees or at their suggestion (*e.g.* bench books, educational materials, legislation, employment policies). The second segment covers the substantive law areas to which these products relate. The third segment describes collaboration between Implementation Committees and other legal and non-legal entities. An alphabetical index which merges these three segments is at the back of the Directory.

To facilitate use of this Directory, each topic presented in each of the three segments contains the full annotated list of relevant products and projects. For example, the section on Domestic Violence repeats the legislation on this subject adopted in response to Task Force recommendations, instead of referring readers to the earlier section on Legislation, which includes this information as well.

### *How to Obtain the Materials Described in this Directory*

The National Center for State Courts (NCSC) is the clearinghouse for reports and other materials produced by and related to the Gender Bias Task Forces and Implementation Committees.<sup>4</sup> All the materials sent to the Gender Fairness Strategies Project in response to the 1997-1998 Implementation Survey will be catalogued and integrated into NCSC's gender bias collection after the January 1999 Strategic Meeting.

The items described in this Directory have been assigned a code number to facilitate loan requests from NCSC<sup>5</sup>. Code numbers appear in bold next to the item description (*e.g.* **IRD-001**). The products described in this Directory such as legislation, codes of conduct and court rules which are readily retrievable from law libraries and databases are *not* being forwarded to NCSC. For products such as these available through standard legal research, the Directory provides citations. Some of these materials are also available from the Implementation Committees that produced them. Contact persons for each state are listed in Appendix B to the Directory. In a few instances, materials are only available for sale from the organizations that published them. Purchase information is provided with these items.

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<sup>4</sup>The Information Service of the National Center for State Courts maintains a Gender Bias Topic Bibliography which consists of three parts. Part one is comprised of the final and implementation reports of the state and federal task forces on gender bias in the courts. Part two contains other materials received from state, federal, and bar association gender bias in the courts task forces. Part three includes materials identified from various journals, newsletters, and texts. All these items are maintained in Information Service and are available upon request.

<sup>5</sup>NCSC materials are available only for loan, with the exception of certain very short documents, photocopies of which can be obtained. Court system employees may request loan materials from the NCSC library by phone. The phone/fax are: 800/616-6160; 757/220-8798. The collection is available to individuals and organizations outside the court system as well. Contact NCSC Information Services for instructions.

## **PLAN FOR INSTITUTIONALIZING THE WORK OF THE GENDER BIAS TASK FORCES AND IMPLEMENTATION COMMITTEES**

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The products described in this Implementation Resources Directory are the building blocks of a plan to firmly institutionalize the judicial reform efforts of the Gender Bias Task Forces and Implementation Committees into the structures and processes of the judicial and legal systems of each state. Without this “lodging” process, the gains that have been made may, over time, diminish or be lost.<sup>6</sup> Users of this Directory would do well to consider the key components of the *institutionalization plan* which have emerged from the work of the Task Forces, Implementation Committees and programs such as the National Judicial Education Program which have over a decade and a half of experience in this area.

Instead of picking and choosing items in this Directory in a piecemeal manner, Implementation Committees and others can move towards the goal of full implementation by considering how each product and project listed is linked to one or more of these institutionalization components. The Key Components of a State Institutionalization Plan are listed on the following page.

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<sup>6</sup>For example, even if the entire judiciary in a particular state has been educated about gender bias in domestic violence cases, a few years later, given the turnover in judges and perhaps changes in the law, that state’s judiciary will no longer be “educated” about this critical issue. However, if judicial education on the subject has been *institutionalized* by being integrated into the curriculum in various courses, perhaps required, the work of the Task Forces and Implementation Committees will endure.

## *Key Components of a State Institutionalization Plan*

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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 and Court Personnel on an ongoing basis, premised on the guides *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources*, and *Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts: A Guidebook for Judicial Educators*<sup>7</sup>;
4. Ensuring that all gender-fairness initiatives address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles;
5. Amendments to the Model Codes of Judicial Conduct and Professional Responsibility as advocated by the Task Forces;
6. Legislation recommended by the Task Forces and Implementation Committees;
7. Gender-Neutral/Gender-Appropriate Language in courtrooms, rules, correspondence, jury instructions, opinions, etc.;
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 relevant data to permit monitoring and evaluation;
12. Creation of local committees throughout the state to further implementation efforts;
13. Mobilizing related organizations, agencies and entities to implement Task Force and Implementation Committee recommendations; and
14. Diffusion and outreach to related entities such as race bias commissions, law schools, police and community organizations.

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<sup>7</sup>Both are described under **Education for Judges**.



**Gender Fairness Strategies:  
*Implementation Resources Directory***

**PRODUCTS**

## BENCH BOOKS

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Bench books provide judges during trial with valuable guidance, immediately accessible, on particular areas of the law. The only Task Force Implementation Committee that has undertaken this project is Washington State, which produced and distributed a bench book on domestic violence.

**Washington:     *Domestic Violence Manual for Judges*     [IRD-001]**

The Washington State Supreme Court Gender and Justice Commission produced and distributed to all state judges and commissioners two bench books on domestic violence: *The Domestic Violence Manual for Judges, Vol. I. - Civil and Vol. II - Criminal*. In 1997, the Commission revised and combined the two volumes into one *Domestic Violence Manual for Judges*. This comprehensive multi-chapter manual covers:

- Chapter 1: Scope and Purpose of the Domestic Violence Manual
- Chapter 2: Domestic Violence: The What, Why, and Who, as Relevant to Criminal and Civil Court Domestic Violence Cases
- Chapter 3: The Legislative Response to Domestic Violence
- Chapter 4: Criminal Pre-Trial Issues
- Chapter 5: Criminal Trial Issues
- Chapter 6: Evidentiary Issues
- Chapter 7: The Battered Woman Syndrome and Related Issues
- Chapter 8: Criminal Case Dispositions
- Chapter 9: Civil Protection Orders
- Chapter 10: Enforcement of Civil Protection Orders
- Chapter 11: Parenting Plans
- Chapter 12: Child Abuse and Neglect Cases Where Abuse of One Parent by the Other Exists
- Chapter 13: Termination of Marriage
- Chapter 14: Spousal Tort

Copies were distributed to the judiciary and to advocates against domestic violence.

The manual is also being used as a text for six domestic violence workshops for state and tribal court judges in rural counties. The project was funded by a Violence Against Women Act Grant.

## CITATIONS TO THE TASK FORCE REPORTS IN COURT OPINIONS

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As of fall 1998 Task Force reports had been cited in nearly one hundred state appellate and trial opinions and four federal appellate and trial opinions. These decisions have recognized that judicial gender bias is grounds for reversal, and attorney gender bias is grounds for discipline. The fact that courts are relying on the Task Force reports as a basis for decision making is important information for attorneys writing briefs in areas where Task Force issues are germane. These cases are also important in judicial education to make clear that gender bias is now a mainstream concept in the law which should not be trivialized or denied. At recent judicial education programs on fairness in the courts which focused on cases reversed for evident 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.

Below is a list of all decisions citing the Task Force reports or articles about their findings as of fall 1998, by state and federal circuit. An annotated version of this list providing full information about the subject matter of the case, the holding, and where and why the Task Force report is cited, is in Appendix C.

### Opinions Listed By State and Federal Circuit

#### STATE CASES:

##### California

- ▶ *In re Jonathan M.*, 53 Cal. App. 4th 1234, 62 Cal. Rptr. 2d 208 (Cal. App. 4 Dist. 1997).
- ▶ *Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 440 (Cal. App. 1 Dist. 1995).
- ▶ *In re Marriage of Schnabel*, 30 Cal. App. 4th 747, 36 Cal. Rptr. 2d 682 (Cal. App. 4 Dist. 1994).
- ▶ *Betz v. Pankow*, 16 Cal. App. 4th 919, 20 Cal. Rptr. 2d 834 (Cal. App. 1 Dist. 1993).
- ▶ *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. App. 4 Dist. 1992).
- ▶ *Droeger v. Friedman, Sloan, & Ross*, 54 Cal. 3d 26, 812 P.2d 931, 283 Cal. Rptr. 584 (Cal. 1991).
- ▶ *In re Benjamin D.*, 227 Cal. App. 3d 1464, 278 Cal. Rptr. 468 (Cal. App. 4 Dist. 1991).
- ▶ *Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 271 Cal. Rptr. 30 (Cal. App. 6 Dist. 1990).
- ▶ *In re Marriage of Touchstone*, 267 Cal.Rptr 777, Ordered Not Published (Cal. App. 4 Dist. 1990).

## Connecticut

- ▶ *Wendt v. Wendt*, 1998 WL 161165 (Conn. Super. 1998).
- ▶ *State v. Williams*, 231 Conn. 235, 645 A.2d 999 (Conn. 1994).

## Florida

- ▶ *Balas v. Ruzzo*, 703 So.2d 1076 (Fla. App. 5 Dist., 1997).
- ▶ *Wuornos v. State*, 644 So.2d 1000 (Fla. 1994).
- ▶ *Jones v. State*, 640 So.2d 1084 (Fla. 1994).
- ▶ *Allen v. State*, 636 So.2d 494 (Fla. 1994).
- ▶ *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097 (Fla. 1993).
- ▶ *Foster v. State*, 614 So.2d 455 (Fla. 1992).
- ▶ *Miller v. Miller*, 602 So.2d 591 (Fla. App. 5 Dist. 1992).
- ▶ *Johns v. Johns*, 598 So.2d 327 (Fla. App. 5 Dist. 1992).
- ▶ *Doe v. State*, 587 So.2d 526 (Fla. App. 4 Dist. 1991).
- ▶ *In re Code of Judicial Conduct* (Canons 1, 2, and 7A (1)(b)), 603 So.2d 494 (Fla. 1992).
- ▶ *The Florida Bar Re: Amendments to Rules Regulating The Florida Bar*, 624 So.2d 720 (Fla. 1993).
- ▶ *The Florida Bar Re: Amendment to Florida Rules of Judicial Admin.*, 609 So.2d 465 (Fla. 1992).
- ▶ *The Florida Bar Re: Amendment to Rules Regulating The Florida Bar*, 605 So.2d 252 (Fla. 1992).
- ▶ *The Florida Bar re Amendments to Rules Regulating The Florida Bar* 1-3.7; 3-5.1(g); 3-5.2; 14-1.1 and Chapter 15, 593 So.2d 1035 (Fla. 1991).
- ▶ *Petition of The Florida Bar to Amend Florida Rules of Juvenile Procedure*, 589 So.2d 818 (Fla. 1991).
- ▶ *In re Amendment to Florida Rules of Criminal Procedure--Rule* 3.133(b)(6)(Pre-Trial Release), 573 So.2d 826 (Fla. 1991).
- ▶ *In re Amendments to Rules Regulating The Florida Bar* 1-3.1(a) and *Rules of Judicial Admin.*2.065 (Legal Aid), 598 So.2d 41 (Fla. 1992).

## Georgia

- ▶ *In Interest of B.L.S.*, 264 Ga. 643, 449 S.E.2d 823 (Ga. 1994).
- ▶ *Fathers Are Parents Too, Inc. v. Hunstein*, 202 Ga. App. 716, 415 S.E.2d 322 (Ga. App. 1992).

## Illinois

- ▶ *People v. Valentine*, 221 Ill. App. 3d 1082, 582 N.E. 2d 1338, 164 Ill. Dec. 394 (Ill. App. 1 Dist. 1991).
- ▶ *In re Marriage of Kantar*, 220 Ill. App. 3d 323, 581 N.E.2d 6, 163 Ill. Dec. 55 (Ill. App. 1 Dist. 1991).

## Iowa

- ▶ *State v. Jones*, 511 N.W.2d 400 (Iowa App. 1993).

## Maine

- ▶ *Henriksen v. Cameron*, 622 A.2d 1135 (Me. 1993).

## Maryland

- ▶ *Attorney Grievance Com'n of Maryland v. Goldsborough*, 330 Md. 342, 624 A.2d 503 (Ma. 1993).
- ▶ *Watson v. Peoples Sec. Life Ins. Co.*, 322 Md. 467, 588 A.2d 760 (Ma. 1991).
- ▶ *Surratt v. Prince George's County, Md.*, 320 Md. 439, 578 A.2d 745 (Md. 1990).

## Massachusetts

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- ▶ *Sands v. Sands*, 442 Mich. 30, 497 N.W.2d 493 (Mich. 1993).
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## Minnesota

- ▶ *State by Cooper v. French*, 460 N.W.2d 2 (Minn. 1990).

## Missouri

- ▶ *Burkhart v. Burkhardt*, 876 S.W.2d 675 (Mo. App. W.D. 1994).

## Montana

- ▶ *In re Marriage of Davies*, 266 Mont. 466, 880 P.2d 1368 (Mont. 1994).

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## New Jersey

- ▶ *State v. Hoffman*, 290 N.J. Super. 588, 676 A.2d 565 (N.J. Super. A.D. 1996).
- ▶ *State v. Kelly*, 97 N.J. 178, 478 A.2a 364 (N.J. 1984).

#### New Mexico

- ▶ *Lebeck v. Lebeck*, 118 N.M. 367, 881 P.2d 727 (N.M. App. 1994).

#### New York

- ▶ *Principe v. Assay Partners*, 154 Misc.2d 702, 586 N.Y.S. 2d 182 (N.Y. Sup. 1992).
- ▶ *Ruotolo v. State*, 151 Misc.2d 820, 574 N.Y.S. 2d 904 (N.Y. Ct. Cl. 1991).
- ▶ *Tortorello v. Tortorello*, 161 A.D.2d 633, 555 N.Y.S.2d 411 (N.Y. App. Div. Dept. 2 1990).
- ▶ *Match v. Match*, 146 Misc.2d 986, 553 N.Y.S.2d 626 (N.Y. Sup. 1990).
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- ▶ *People v. S.R.*, 136 Misc. 2d 54, 517 N.Y.S. 2d 864 (N.Y. Sup. 1987).

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- ▶ *Heck v. Reed*, 529 N.W.2d 155 (N.D. 1995).
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- ▶ *City of Mandan v. Fern*, 501 N.W.2d 739 (N.D. 1993).

#### Ohio

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- ▶ *State v. Mascarella*, 1995 WL 495390 (Ohio App. 5 Dist. 1995).

#### Rhode Island

- ▶ *McMaugh v. State*, 612 A.2d 725 (R.I. 1992).

#### Texas

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- ▶ *Williams v. State*, 927 S.W.2d 752 (Tex. App.--El Paso 1996).
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#### Utah

- ▶ *State, Dept. of Human Services, Office of Recovery Services v. Child Support Enforcement*, 888 P.2d 690 (Utah App. 1994).
- ▶ *Peterson v. Peterson*, 818 P.2d 1305 (Utah App. 1991).
- ▶ *Howell v. Howell*, 806 P.2d 1209 (Utah App. 1991).

## Vermont

- ▶ *Gilbert v. Gilbert*, 163 Vt. 549, 664 A.2d 239 (Vt. 1995).
- ▶ *State v. Forte*, 159 Vt. 550, 624 A.2d 352 (Vt. 1993).

## Washington

- ▶ *In re Marriage of Mathews*, 70 Wash. App. 116, 853 P.2d 462 (Wash. App. 3 Div. 1993).
- ▶ *State v. Carlson*, 66 Wash. App. 909, 833 P.2d 463 (Wash. App. 1 Div. 1992).
- ▶ *In re Marriage of Ieronimakis*, 66 Wash. App. 83, 831 P.2d 172 (Wash. App. 1 Div. 1992).
- ▶ *State v. Burch*, 65 Wash. App. 828, 830 P.2d 357 (Wash. App. 1 Div. 1992).
- ▶ *In re Marriage of Tower*, 55 Wash. App. 679, 780 P. 2d 863 (Wash. App. 1 Div. 1989).

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- ▶ *Shearer v. Shearer*, 191 W.Va. 734, 448 S.E.2d 165 (W.Va. 1994).
- ▶ *Metzner v. Metzner*, 191 W.Va. 378, 446 S.E.2d 165 (W.Va. 1994).

## Wisconsin

- ▶ *Novak v. Ceci*, 167 Wis.2d 486, 482 N.W.2d 669 (Wis. App. 1992).
- ▶ *Matter of C.M.B.*, 165 Wis.2d 703, 478 N.W.2d 385 (Wis. 1992).
- ▶ *Matter of Disciplinary Proceedings Against Crosetto*, 160 Wis.2d 581, 466 N.W. 2d 879 (Wis. 1991).
- ▶ *City of Milwaukee v. Wroten*, 160 Wis.2d 207, 466 N.W. 2d 861 (Wis. 1991).

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- ▶ *Brzonhala v. Virginia Polytechnic Institute and State University*, 132 F.3d 949, 122 Ed. Law Rep. 1193 (4th Cir. (Va.) 1997)

#### Ninth Circuit

- ▶ *U.S. v. Wunsch*, 84 F.3d 1110 (9th Cir. (Cal.) 1996)

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- ▶ *Farrell v. Sullivan*, 1992 WL 456728 (S.D. Cal. 1992)
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### Arbitration

- ▶ *Betz v. Pankow*, 16 Cal. App. 4th 919, 20 Cal.Rptr.2d 834 (Cal. App. Dist. 1993)

### Attorney Misconduct

- ▶ *In re Marriage of Kantar*, 220 Ill. App.3d 323, 581 N.E.2d 6, 163 Ill. Dec. 55 (Ill. App. 1st 1991)
- ▶ *Attorney Grievance Com'n of Maryland v. Goldsborough*, 330 Md. 342, 624 A.2a 503 (Ma. 1993)
- ▶ *Principe v. Assay Partners*, 154 Misc.2d 702, 586 N.Y.S.2d 182 (N.Y. Sup. Ct. 1992)
- ▶ *Tortorello v. Tortorello*, 161 A.D.2d 633, 555 N.Y.S.2d 411 (N.Y. App. Div. 1990)
- ▶ *State v. Forte*, 159 Vt. 550, 624 A.2d 352 (Vt. 1993)
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- ▶ *U.S. v. Wunsch*, 84 F.3d 1110 (9th Cir. (Cal.) 1996)
- ▶ *Matter of Swan*, 833 F.Supp. 794 (C.D. Cal., 1993)

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- ▶ *Johns v. Johns*, 598 So.2d 327 (Fla. Dist. Ct. App. 5 1992)
- ▶ *Burkhart v. Burkhart*, 876 S.W.2d 675 (Mo. Ct. App. 1994)
- ▶ *Match v. Match*, 146 Misc.2d 986, 553 N.Y.S.2d 626 (N.Y. Sup. Ct. 1990)
- ▶ *Peterson v. Peterson*, 818 P.2d 1305 (Utah Ct. App. 1991)

### Child Support

- ▶ *In re Marriage of Touchstone*, 267 Cal.Rptr.777, **Ordered Not Published**, Previously Published at: 218 Cal. App. 3d 870 (Cal. Ct. App. 1990)
- ▶ *State, Dept. of Human Services, Office of Recovery Services v. Child Support Enforcement*, 888 P.2d 690 (Utah Ct. App. 1994)

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- ▶ Wisconsin: *Matter of C.M.B.*, 165 Wis.2d 703, 478 N.W.2d 385 (Wis. 1992)

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- ▶ *State v. Williams*, 231 Conn. 235, 645 A.2d 999 (Conn. 1994)



### Custody

- ▶ *Custody of Vaughn*, 422 Mass. 590, 664 N.E.2d 434 (Mass. 1996)
- ▶ *R.H. v. B.F.*, 39 Mass. App. Ct. 29, 653 N.E.2d 195 (Mass. App. Ct. 1995)
- ▶ *Burkhart v. Burkhart*, 876 S.W.2d 675 (Mo. Ct. App. 1994)
- ▶ *Huesers v. Huesers*, 560 N.W.2d 219 (N.D. 1997)
- ▶ *Heck v. Reed*, 529 N.W.2d 155 (N.D. 1995)
- ▶ *Severson v. Hansen*, 529 N.W.2d 167 (N.D. 1995)
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- ▶ *Gilbert v. Gilbert*, 163 Vt. 549, 664 A.2d 239 (Vt. 1995)
- ▶ *In re Marriage of Ieronimakis*, 66 Wash. App. 83, 831 P.2d 172 (Wash. Ct. App. 1992)
- ▶ *Shearer v. Shearer*, 191 W.Va. 734, 448 S.E.2d 165 (W. Va. 1994)

### Death Penalty

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### Divorce

- ▶ *In re Marriage of Schnabel*, 30 Cal. App. 4th 747, 36 Cal. Rptr. 2d 682 (Cal. Ct. App. 1994)
- ▶ *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. Ct. App. 1992)
- ▶ *Droeger v. Friedman, Sloan, & Ross*, 54 Cal. 3d 26, 812 P.2d 931, 283 Cal. Rptr. 584 (Cal. 1991)
- ▶ *Wendt v. Wendt*, 1998 WL 161165 (Conn. Super. Ct. 1998) (**Shepards Not Available**)
- ▶ *Miller v. Miller*, 602 So.2d 591 (Fla. Dist. Ct. App. 5 1992)
- ▶ *Hogan v. Riemer*, 35 Mass. App. Ct. 360, 619 N.E.2d 984 (Mass. App. Ct. 1993)
- ▶ *Handrahan v. Handrahan*, 28 Mass. App. Ct. 167, 547 N.E.2d 1141 (Mass. App. Ct. 1989)
- ▶ *Sands v. Sands*, 442 Mich. 30, 497 N.W.2d 493 (Mich. 1993)
- ▶ *Sands v. Sands*, 192 Mich. App. 698, 482 N.W.2d 203 (Mich. App. 1992)
- ▶ *Burkhart v. Burkhart*, 876 S.W.2d 675 (Mo. Ct. App. 1994)
- ▶ *In re Marriage of Davies*, 266 Mont. 466, 880 P.2d 1368 (Mont. 1994)
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- ▶ *Match v. Match*, 146 Misc.2d 986, 553 N.Y.S.2d 626 (N.Y. Sup. Ct. 1990)
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- ▶ *Howell v. Howell*, 806 P.2d 1209 (Utah Ct. App. 1991)
- ▶ *In re Marriage of Matthews*, 70 Wash. App. 116, 853 P.2d 462 (Wash. Ct. App. 1993)
- ▶ *In re Marriage of Tower*, 55 Wash. App. 697, 780 P.2d 863 (Wash. Ct. App. 1989)
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- ▶ *Handrahan v. Handrahan*, 28 Mass. App. Ct. 167, 547 N.E.2d 1141 (Mass. App. Ct. 1989)
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- ▶ *In re Marriage of Davies*, 266 Mont. 466, 880 P.2d 1368 (Mont. 1994)
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- ▶ *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. Ct. App. 1992)
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- ▶ *City of Mandan v. Fern*, 501 N.W.2d 739 (N.D. 1993)
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- ▶ *Brzonkala v. Virginia Polytechnic Institute and State University*, 132 F.3d 949, 122 Ed. Law Rep. 1193 (4th Cir. (Va.) 1997), *Rehearing en Banc granted, Opinion Vacated*, (Feb 5, 1998).

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- ▶ *Watson v. Peoples Sec. Life Ins. Co.*, 322 Md. 467, 588 A.2d 760 (Md. 1991)

#### Sexual Harassment

- ▶ *Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 440 (Cal. Ct. App. 1995)
- ▶ *Attorney Grievance Com'n Maryland v. Goldborough*, 330 Md. 342, 624 A.2d 503 (Ma. 1993)
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- ▶ *Dept. of Civil Rights ex rel. Johnson v. Silver Dollar Cafe*, 441 Mich. 110, 490 N.W.2d 337 (Mich. 1992)

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- ▶ *The Florida Bar Re: Amendments to Rules Regulating The Florida Bar*, 624 So.2d 720 (Fla. 1993)

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- ▶ *In re Benjamin D.*, 227 Cal. App. 3d 1464, 278 Cal. Rptr. 468 (Cal. Ct. App. 1991)

## CODES OF CONDUCT - JUDGES

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Institutionalization occurs as new informal norms of behavior with respect to gender bias become formally incorporated into judicial codes of conduct, rules of professional conduct and other written codes of conduct established by the state or court system. Through such prescriptions and proscriptions, usually sanctionable, the behavior of group members is shaped and maintained.

Virtually all the Task Forces recommended that their state codes of judicial conduct be amended to explicitly address gender bias. Findings from the gender bias and race bias task forces led the American Bar Association in 1990 to amend its Model Code of Judicial Conduct to explicitly bar gender, race and other types of biased behavior by judges and others.

### **ABA Model Code of Judicial Conduct: *Anti-Bias Provisions***

**Canon 3** A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

**Canon 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.

Task Force Implementation Committees have been instrumental in having their states adopt these new canons. As of 1998 twenty-two states<sup>1</sup> and the District of Columbia had adopted provisions identical (or almost so) to Canon 3B(5). Sixteen other states had adopted anti-bias provisions which deviate from the model code in a variety of ways, as per the following examples.

**Alaska:** The Alaska code adds pregnancy, changes in marital status, parenthood, social status and economic status to the list of prohibited biases.

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<sup>1</sup>Arizona, California, Florida, Georgia, Hawaii, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, New York, North Dakota, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia and Wyoming.

**Idaho:**

The Idaho provision states:

Judges shall perform judicial duties without bias or prejudice to the end that justice shall be administered, in every respect, in a fair, equal, and nondiscriminatory manner. Judges shall not, by word or act, manifest any belief, attitude or position which has no substantial legitimate purpose, other than to embarrass, harass or discriminate against another person by reason of such person's race, gender, religious preference, national origin, age, disability, sexual orientation, or socioeconomic status, nor permit court staff, officers, counsel or others subject to judge's direction to do so.

**Michigan:**

The Michigan code reads:

Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.

**Missouri:**

The Missouri code omits sexual orientation and socioeconomic status from the list of prohibited prejudices. Missouri adds the following commentary to define sexual harassment:

Legal interpretations of Title VII of the Civil Rights Act of 1964 provide useful guidance in interpreting the provisions of Canon 3C. Sexual harassment is defined as illegal sex discrimination pursuant to Title VII in the context of employment relationships... For purposes of this subdivision C "sexual harassment" constitutes misconduct whether the conduct is in an employment relationship or in a nonemployment relationship manifested in the course of the performance of judicial duties.

"Sexual harassment" denotes: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individuals' employment;
- (2) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.

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The second amendment to Canon 3 of the ABA Model Code of Judicial Conduct inspired by task force findings relates to judicial control over the behavior of lawyers.

**Canon 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.

As of 1998 twenty-two states<sup>2</sup> and the District of Columbia had adopted provisions identical (or almost so) to Canon 3B(6). Twelve other states had adopted anti-bias provisions relating to lawyers' conduct that deviate from the model code, as per the following examples.

**Alaska:** The Alaska code adds changes in marital status, pregnancy, parenthood, social status, and economic status to the list of prohibited biases. The Alaska code also adds commentary to Canon 3B(6) which is unique in its directive on intervention.

This section is intended to prohibit not only express judicial support for the bias or prejudice but also speech, gestures, or inaction that could reasonably be interpreted as implicit approval of the expressed bias or prejudice. A judge may not ignore or overlook expressions of bias or prejudice in any judicial proceeding, even informal proceedings such as scheduling or settlement conferences. Appropriate action will depend on the circumstances. In some instances, a polite correction might be sufficient. However, deliberate or particularly offensive conduct will require more significant action, such as a specific direction from the judge, a private admonition, an admonition on the record, or, if the attorney repeats the misconduct after being warned, contempt.

**Colorado:** The Colorado code states that a judge "shall attempt, to the extent practicable, to make certain that lawyers in proceedings before the judge abide by their duties under the Code of Professional Responsibility and, in particular to refrain from manifesting bias or prejudice..."

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<sup>2</sup>Arizona, California, Florida, Hawaii, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Tennessee, Texas, Vermont, Wisconsin and Wyoming.

**Illinois.**

The Illinois code states:

Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, or national origin, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.



## CODES OF CONDUCT - COURT EMPLOYEES

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Codes of conduct for court employees are a recent development which builds on the codes for judges and lawyers. California adopted the first state code. There is also a national code promulgated by the National Association for Court Management.

### **California:**    *Code of Ethics for the Court Employees of California*

California's Code of Ethics for court employees was the first of its kind in the nation. The State Justice Institute is funding statewide training for court employees on their ethical duties.

**Tenet Ten**        Guard against, and, when necessary, repudiate any act of discrimination or bias based on race, gender, age, religion, national origin, language, appearance, or sexual orientation.

#### Guideline for Tenet Ten: DISCRIMINATION

Each day court employees assist users of court services of many races, religions, national origins, languages, sexual orientations, and varieties of personal appearances. They may deal with accused felons, child abusers, participants in painful dissolutions, those grieving from an injury or loss of a loved one, or people experiencing any one of numerous kinds of human pain or dysfunction. Court employees are expected to treat each other and each user of court services equally and with compassion. Equal access to the court system and equal treatment for all is the cornerstone of the administration of justice. Court employees must expose and discourage discrimination wherever it exists.

**Tenet Eleven**    Renounce any use of positional or personal power to harass another person sexually or in any other way based on that person's religious beliefs, political affiliation, age, national origin, language, appearance, or other personal choices and characteristics;

#### Guideline for Tenet Eleven: HARASSMENT

Court employees are to refrain from making sexual advances and insinuations that are inappropriate and offensive, or that could be perceived as such. Harassment may also take nonsexual forms

such as verbal, physical, and psychological. The investigation of a harassment complaint is difficult because a determination will often be based on the credibility of the parties. A supervisor is obligated, however, to conduct a prompt and thorough investigation of any allegations of harassment. If the investigation reveals that harassment has occurred, corrective action should be taken immediately. The supervisor should then conduct further inquiry to ensure that the action was effective and that the harasser has not retaliated against the complainant.

**Missouri:**            *Administrative Rule on Court Employee Conduct*

In 1994 the Supreme Court of Missouri promulgated an Administrative Rule for all court employees which tracks the language of Canon 3B (5) of the American Bar Association Model Code of Judicial Conduct. The rule includes a complaint procedure and sanctions.

**BIAS OR PREJUDICE IN THE JUDICIAL SYSTEM**  
**18.01 Prohibition of Bias or Prejudice**

The manifestation of bias or prejudice in the performance of court duties impairs the fairness and impartiality of court proceedings, brings the judicial system into disrepute and is unacceptable in the courts of the State of Missouri.

All court employees shall perform court duties without bias or prejudice. Court employees shall not, in the performance of court 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, or age.

Administrative Rule No. 18, effective July 1, 1995.

**Vermont:**            *Judicial Branch Personnel Policy*

Vermont completely revised its Judicial Branch Personnel Policy in March 1998 and included the following language:

It is the policy of the Judiciary that discriminatory behavior will not be condoned or tolerated. Discriminatory behavior includes any implicit or explicit action or behavior based on race, color, sex, religion, national origin, ancestry, age, disability, marital status, or sexual orientation which adversely affects the person's ability to use the facilities or services provided by the Judiciary. It also includes

verbal or written comments or actions which disparage or deride an individual's race, color, sex, religion, national origin, ancestry, age, disability, marital status, or sexual orientation. Discriminatory behavior also includes any actions, either implicit or explicit, which adversely affect an employee's work assignment, work environment, salary, career or promotional opportunities due to race, color, sex, national origin, ancestry, age, disability, marital status, or sexual orientation. Any employee who violates this policy is subject to disciplinary action up to and including dismissal.

With respect to implementation and enforcement, the Personnel Policy provides:

Supervisors and Program Managers are responsible for:

1. Knowing the Judicial Branch's code of conduct,
2. Communicating the code of conduct clearly to their employees,
3. Exercising the positive leadership necessary to minimize formal disciplinary actions involving their employees,
4. Enforcing the code of conduct consistently and fairly for the employees under their direction, and
5. Recommending to the Court Administrator changes to the existing code of conduct which might be necessary to better accomplish the overall mission and goals of the Judicial Branch.

**National Association For Court Management: *Model Code of Conduct***

Article IV. C.

Members shall not discriminate on the basis of, nor manifest by words or conduct, a bias or prejudice based upon race, color, religion, national origin, gender, or other groups protected by law, in conduct of service to the court and public.

## CODES OF CONDUCT - LAWYERS

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All Task Forces found that while some judges exhibited gender-biased behavior in the courts, attorneys were by far the worst offenders. Moreover, these biased behaviors frequently occur in pre-trial and out of court settings such as depositions and conferences. The Task Forces called for amendments to the Rules of Professional Conduct to address this problem and the Implementation Committees were instrumental in achieving this goal. Many states have now amended their rules, taking a variety of approaches toward different aspects of attorney misconduct, as illustrated by the examples below.

In addition, the American Bar Association, after long consideration, voted at the 1998 annual meeting to address the issue in a Comment to the Model Rules of Professional Conduct. This language is also provided below.

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Many states have amended their Rules of Professional Conduct to prohibit biased behavior in all of an attorney's professional activities, although they have used significantly different language in their drafting. For example:

**Florida:**            *Rules Regulating the Florida Bar (1993)*

A Lawyer shall not:

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(d) engage in conduct that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, or age.

**New Jersey:**        *Rules of Professional Conduct*

Rule 8.4 Misconduct (1990)

It is professional misconduct for a lawyer to:

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(g) Engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm.

**Rhode Island:    *Rules of Professional Conduct***

Rule 8.4 Misconduct (1988)

It is professional misconduct for a lawyer to:

\* \* \*

(d) Engage in conduct that is prejudicial to the administration of justice, including but not limited to harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, nationality, or sex.

**Colorado:    *Rule 1.2 Scope of Representation (1992)***

\* \* \*

(f) In representing a client, a lawyer shall not engage in conduct that exhibits or is intended to appeal to engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process.

**Massachusetts:    *Code of Professional Responsibility***

DR 7-106 Trial Conduct (1992)

C) In appearing in a professional capacity before a tribunal, a lawyer shall not:

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(8) Engage in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel or other person. The Disciplinary Rule does not preclude legitimate advocacy when orientation, or another similar factor, is an issue in the proceeding.

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Some states have limited their focus to discrimination in employment. For example:

**Vermont:    *Code of Professional Responsibility***

DR 1-102 Misconduct (1988)

(A) A lawyer shall not:

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(6) Discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or

otherwise determining the conditions of employment of that individual.

**District of Columbia: Rules of Professional Conduct**

Rule 9.1 Discrimination in Employment (1990)

A lawyer shall not discriminate against any individual in conditions of employment because of the individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, family responsibility or physical handicap.

**New York: Code of Professional Responsibility**

DR 1-102 Misconduct (1990)

(A) A lawyer shall not: \*\*\*

(6) Unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, national origin, sex, disability, or marital status. Where there is available tribunal of competent jurisdiction, other than a Departmental Disciplinary Committee, a complaint of professional misconduct based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable, and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding.

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Some states have focused on sexual and other types of harassment. For example:

**Minnesota: Rules of Professional Conduct**

Rule 8.4 Misconduct (1992)

It is professional misconduct for a lawyer to:

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(g) Harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities.

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Hawaii adopted for lawyers the ban on membership in discriminatory clubs promulgated for judges in the American Bar Association Model Code of Judicial Conduct in 1990.

**Hawaii** Code of Professional Responsibility

DR 1-102 Misconduct (1990)

(A) A lawyer shall not:

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(7) Hold membership in any organization that practices invidious discrimination on the basis of sex, race, religion or national origin.

**The American Bar Association** in 1998 amended its Model Rules of Professional Conduct to read:

Rule 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(d) Engage in conduct that is prejudicial to the administration of justice.

Comment:

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[2] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

## COMPLAINT PROCEDURES

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Task Forces commonly 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 Committees have found this component of Institutionalization difficult to implement because of the lack of effective models and difficulties and resistance encountered in trying to create fair and effective procedures. Education for judicial conduct commissions on gender bias issues is needed, see **Education for Judicial Disciplinary Commissions**.

### 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, deeply troubling comments made by judges in sexual harassment, domestic violence and rape cases, and Conduct Commissions' subsequent failure to take strong action, led to an overhaul in 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 which 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.

#### **California:     *Rules of Court - Minimum Components of a Complaint Procedure***

As described in the **Court Rules** section, the California Standards of Judicial Administration provide detailed guidance on preventing bias. These guidelines require creation of a local court/bar committee composed of judges, lawyers and court administrators directed to, *inter alia*, "Develop and maintain an informal procedure for receiving complaints relating to bias in the courtroom." The section of the rule describing that procedure is reproduced below. This model procedure was developed based on the recommendation of participants in a workshop for fourteen local committees created in response to the Task Force's recommendation that local groups be formed to experiment with local informal-complaint resolution methods and educational programs designed to address less serious incidents of bias.



**(c) [Minimum Components of Complaint Procedure]** An informal procedure developed and maintained by a local committee on bias should:

- (1) Contain a provision specifying that the intent of the procedure is to educate with the purpose of ameliorating the problem rather than disciplining the person who is the subject of the complaint;
- (2) Accommodate local needs and allow for local flexibility;
- (3) Apply to all participants in courtroom proceedings;
- (4) Apply only to complaints as to which the identity of the complainant is known;
- (5) To the extent possible and unless disclosure is required by law, protect the confidentiality of the complainant, the person who is the subject of the complaint, and other interested persons;
- (6) Relate to incidents of behavior or conduct occurring in courtroom proceedings;
- (7) Apply to incidents of bias whether they relate to race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
- (8) Contain a provision that exempts activities constituting legitimate advocacy when matters of race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status are relevant to issues in the courtroom proceeding;
- (9) Focus on incidents that do not warrant discipline but that should be corrected;
- (10) With respect to those incidents that if substantiated would warrant discipline, advise the complaining party of the appropriate disciplinary authority;
- (11) Contain a provision specifying that nothing in the procedure in any way limits the ability of any person to submit a complaint of misconduct to the appropriate disciplinary body;
- (12) To the extent possible and unless disclosure is required by law, prohibit retention of written records of complaints received but permit collection of data on types of complaints or underlying anecdotes that might be useful in educational programs.

Standards of Judicial Administration, Section 1

**District of Columbia:**

The “Welcome to the Courts” brochure, a public information brochure, was revised to include a statement which says that any concerns relating to racial, ethnic, or gender bias in the courts are to be brought to the attention of the Executive Officer.

**New Jersey and New York:**

In both of these states the Implementation Committees receive complaints and deal with them in ways appropriate to the circumstance and seriousness of the complaint. If the complaint is about the judge's decision, the Committee explains that this circumstance is outside its jurisdiction and the complainant must take an appeal. If the behavior complained of appears to breach the code of judicial conduct, the complaint is referred to the judicial conduct commission. Less serious offenses are handled by the Implementation Committee chair who usually first consults with the offending judge's Administrative Judge. Subsequently the offender either meets individually with the Administrative Judge, or together with that individual and the Implementation Committee Chair.

**Puerto Rico:**

The existing mechanism for handling sexual harassment complaints is used for gender bias complaints. Nevertheless, the Subcommittee on Administration is developing a special set of rules for handling informal complaints of gender bias.

## COURT CHILD CARE

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Many Task Forces recognized the necessity of child care rooms in the court to permit parents -- in the majority single mothers -- to participate in court proceedings without bringing children into the courtroom. When such facilities are not available parents run the risk, documented in a number of Task Force reports, of irritating judges who respond badly to the presence of children in the courtroom. Additionally, children are exposed to gruesome testimony, angry custody fights and parents in prison garb. Several states have developed in-court child care programs to meet this need. Some have also published manuals on how to organize and staff in-court child care centers.

### **California:**     *Court Rule on Children's Waiting Room*

#### **Sec. 1.3 Children's Waiting Room.**

Each court should endeavor to provide a children's waiting room located in the courthouse for the use of minors under the age of 16 who are present on court premises as participants or who accompany persons who are participants in court proceedings. The waiting room should be supervised and open during normal court hours. If a court does not have sufficient space in the courthouse for a children's waiting room, the court should create the necessary space when court facilities are reorganized or remodeled or when new facilities are constructed.

#### *Children's Room Manual*   [IRD-002]

This manual describes how the Sacramento Municipal Court established a children's waiting room with the support of judges, corporate and individual donors and the Sacramento County Board of Supervisors. It provides detailed guidance on choosing space, hiring a coordinator, selecting and training volunteers, security procedures and record keeping.

### **Colorado:**     *Court Child Care Survey*

The Gender and Justice Committee prepared a survey for all judges, court personnel and probation officers in each of the state's five "Consumer Relations" pilot districts to assess the need for drop-in child care for members of the public having business in the courts. The Service to the Public Subcommittee is preparing a report on the survey, which generated a significant response. The subcommittee is also communicating with local bar associations to enlist private-sector help.

**Massachusetts:** “*Court Care: Planning Child Care for the Courts*” [IRD-003]

This manual, funded by the State Justice Institute, addresses both drop-in child care for court consumers and on-site child care for court employees. It provides assessment survey forms and guidance in choosing a child care provider, setting up and operating a program, and finding financial support.

**New York:** “*A Good Place for Children: A Guide to Starting, Building and Operating Children’s Centers for New York’s Courts*”

The Task Force’s recommendation for child care centers in the courts was eventually carried out through the subsequently created Permanent Judicial Commission on Justice for Children. To facilitate the development of Children’s Centers in the courts, the Commission developed a manual entitled *A Good Place for Children: A Guide to Starting, Building, and Operating Children’s Centers for New York’s Courts*.<sup>3</sup>

**Rhode Island:** *Child Care Center Staffing*

The child care center at the Garahy Judicial Complex is staffed by the Foster Grandparents’ Program.

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<sup>3</sup>For a copy of this manual contact Patricia Kennedy, Coordinator of the Children’s Centers at (518) 486-6563, or write to her at The Permanent Judicial Commission on Justice for Children, A.E. Smith Building, 1st Floor, PO Box 7015, Albany, NY 12225.

## COURT CONDUCT HANDBOOKS

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Court Conduct Handbooks are guidelines for behavior directed at judges, attorneys and court employees for the purpose of promoting a bias-free judicial system. Typically these handbooks clearly and simply (1) identify common forms of gender-biased behavior, such as terms of endearment and jokes with sexual content or sexual stereotypes; (2) suggest behaviors such as forms of address which promote a bias-free atmosphere; and (3) list affirmative steps judges and others can take to ensure equality for women and men in the courts, such as scrutinizing one's own gender-based assumptions and preferences. Examples of these types of handbooks, which have been issued by many states, are described below. Some Court Conduct Handbooks focus exclusively on specific topics such as sexual harassment and gender-neutral language. These handbooks are described under **Court Employment - Sexual Harassment** and **Gender-Neutral Language** respectively.

**Colorado:**            *“Tips for Fostering Gender Neutral Courts”*            **[IRD-004]**

This brochure was given to all judges and is distributed as part of the training for all new judicial branch employees. Every local and specialty bar association in the state has been invited to request copies as needed. The brochure stresses the importance of avoiding stereotypes about individuals or groups; using consistent forms of respectful address for women and men; and gender neutral guidelines for speakers, including avoiding stereotypes in hypotheticals and case studies.

**Minnesota:**        *‘A Judge’s Guide to Gender Fair Court Proceedings’*            **[IRD-005]**

This Guide’s format is completely different from other court conduct handbooks. It presents sixteen hypothetical situations which a judge may encounter in the courtroom, in chambers, at a judges’ meeting or a bar association and asks what the judge should do. There are multiple choice answers followed by a brief explanation of the right and wrong answers.

**Rhode Island:**    *“Blind Justice, a Guide to Eradicating Gender Bias in the Courts”*  
**[IRD-006]**

The subcommittee assigned to develop a brochure used similar pamphlets published in Connecticut, Massachusetts, and Michigan as models. The purpose of *Blind Justice* as stated in the Chief Justice’s forward is to encourage a reexamination of one’s own conduct and a greater awareness of subtle or unintentional actions that may show, or be perceived as, bias. The pamphlet has been distributed to all sitting judges and will be provided to all new judges in the future.

**Utah:**     *“Every Person’s Guide in Gender Fairness in the Courts”*     [IRD-007]

This brochure is intended to sensitize all court system personnel to the “meaning and dangers” of gender bias. To make the tone serious but not solemn, a well known cartoonist was hired to draw cartoons illustrating the points made in the brochure. The brochure includes sections on defining gender bias, using gender-neutral language, ensuring gender-neutral demeanor in the courtroom and court offices, and what to do about bias or harassment experienced or observed by a court system employee. The brochure was completed in fall of 1992 and distributed to all judges and court employees. It has been accepted by the Judicial Council as court system policy and is part of the orientation materials given to each new court employee.

**Texas**     *“Guidelines for Gender-Neutral Courtrooms Procedures”*     [IRD-008]

The cover of this handbook states that it was written: “By The Gender Bias Reform Implementation Committee based on findings and recommendations of the Gender Bias Task Force.” The content includes examples of three aspects of gender bias (stereotyped thinking that leads to disparate treatment; devaluation of women and women’s work; placing a burden on one sex not placed on the other) and provides quick summaries of the Task Force’s findings with respect to domestic violence and sexual assault, court personnel and witnesses. The second section suggests eight ways to avoid gender bias. The final section covers the “Responsibility for Eliminating Gender Bias in the Courtroom” of judges, attorneys and court personnel.

## **COURT EMPLOYMENT**

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The Task Forces made numerous recommendations to address their findings that women court employees were significantly under represented in high level, policy making jobs; that courts lacked family-friendly employment policies; and that gender discrimination and sexual harassment are part of the reality in the court system as in all other institutions. Implementation Committees have pursued a variety of projects and policies to address these problems, as the following examples illustrate.

### **COMPLAINT PROCEDURES**

#### **District of Columbia:     *Employee Mediation Project***

This project is focused on improving court access, hiring and promotions, and improving the treatment of participants by judicial officers, through three sub-committees. The D.C. Courts received a grant from the State Justice Institute to conduct the Employee Mediation Project to resolve workplace conflict, including gender bias issues, through the use of non-adversarial strategies.

#### ***Ombudsperson***

In response to a Task Force recommendation, the Human Resources Division trained a court worker in each district to be an “ombudsperson” for that district. Any court worker could go to the ombudsperson for a confidential discussion of gender bias or harassment problems. The program was soon altered, however, due to concerns about liability in situations where the confidential relationship between those voicing complaints and the ombudsperson might prevent managers from learning of serious problems in their departments. The new policy asks workers with gender bias or harassment complaints to contact their supervisor, or if that is not comfortable, to talk to one of the two Human Resource personnel designated as “statewide ombudspersons.” These individuals report that while the system is not used often, they have received referrals in situations where using the normal channels for complaints was uncomfortable, and that this “back-up” complaint channel has proved its worth.

#### **New York:     *Anti-Discrimination Panels***

Seeking effective avenues of redress for employees subjected to sexual harassment, the New York Judicial Committee on Women in the Courts examined the court system’s procedures for handling complaints about discrimination in general. The Committee’s examination spurred the Office of Court Administration (OCA) to take two significant steps.

First, working with a plan initially devised by the Committee, OCA established Anti-Discrimination Panels for each judicial district and administrative unit, to serve as informal mechanisms for airing grievances about bias. The panels were designed for employees who might hesitate to use a formal complaint structure. Panel members were selected from among judicial and nonjudicial court personnel with special talent for listening and reputations for discretion. Their duties were defined as hearing complaints from employees who sought them out, giving advice about alternative courses of action, and, occasionally, acting as intermediaries. Panel members attended training sessions to acquaint them with their roles, court policies, and the nature of discrimination in the workplace.

Also at the behest of the Implementation Committee, OCA revised its procedures for handling employees' complaints. The procedures now cover not only discrimination on the basis of gender and race, but also a host of other forms of invidious discrimination including sexual orientation and marital status. The new procedures apply to challenges to a broad spectrum of employment decisions, among them employer choices about hiring, termination, job assignments, and working conditions.

#### **DIVERSITY TRAINING**

##### **Utah:     *“Valuing Diversity” and “Dealing with Difference” [IRD-009]***

In 1992, the Education Division received a grant from the State Justice Institute to develop and present an intensive “Valuing Diversity” program for all judges and support staff. The program included segments on sensitivity to varying gender perspectives. The programs were presented at several court conferences in 1993 and 1994. In November of 1995, a new education program on “Dealing with Difference” was presented at the Administrative Office of the Courts. The State Court Administrator directed that the new class be presented first to all AOC employees, and eventually to employees at every level of the court system.

#### **FLEXIBLE WORK SCHEDULES**

##### **California:     *Judicial Administration Standards - Sec. 27. Court Personnel Plans***

This detailed description of the provisions of a comprehensive personnel plan calls for, *inter alia*, an employee benefits plan, which may when consistent with requirements and county policies, but is not required to, include (1) flex-time, part-time, job-sharing, or other alternative work schedules, (ii) disability leave, including pregnancy leave in accordance with Government Code section 12945, (iii) unpaid leaves, including parental leave, and (iv) “cafeteria” options to use pre-tax dollars for dependant care and banked sick leave for care of dependants.



**New York: *Alternative Work Schedules***

Although flexible hours and part-time work had been available to court employees for a number of years on an *ad hoc* basis, in 1990 the Office of Court Administration established a policy in favor of supporting arrangements that deviate from the standard work week. Officially encouraging managers to accommodate alternative schedules, the policy spoke directly of the needs of working mothers, single parents, and employees with elderly parents, as well as those interested in educational opportunities. The policy officially authorized staggered work days, compressed work weeks, part-time work, and shared jobs. Managers were asked to cooperate in a process that, while complicated, had the potential to inspire loyalty, boost morale, and help the court system retain valuable employees. Court employees have taken advantage of the offer to accommodate their needs in substantial numbers. Over three quarters of these part-time employees were women. Although most occupational groups are represented, the majority of part-time workers perform jobs as office clericals, court reporters, or attorneys.

**HUMAN RESOURCES ISSUES**

**California: *Judicial Administration Standards - Sec. 27. Court Personnel Plan***

This detailed description of the provisions of a comprehensive personnel plan calls for, *inter alia*, job-related training and continuing education programs for all court personnel concerning at least (i) affirmative action concepts and recruitment methods, (ii) sexual harassment detection, prevention, and remedies, and (iii) gender bias; a sexual harassment policy; grievance procedures covering, but not limited to sexual harassment; a policy statement on professional behavior, requiring that all employees conduct themselves in a professional manner at all times and refrain from offensive conduct or comments that reflect gender bias.

**Utah. *Policies and Procedures Manual and New Employee Handbook*  
[IRD-010] and [IRD-007]**

The Policies and Procedures Manual and New Employee Handbook both contain strong statements of commitment to gender equity and pledge that no gender bias or sexual harassment will be tolerated. Presentations on these topics in new employee orientation sessions give substance to these anti-bias declarations. The brochure, "Every Person's Guide to Gender Fairness in the Courts," ([IRD-007] see **Court Conduct Handbooks**) which is distributed to all court employees, underscores the court system's strong commitment to gender fairness.

The Policy and Procedures Committee has rigorously and continuously reviewed the Policies and Procedures Manual to ensure that its language and substance are gender neutral. In February 1993 the AOC sponsored a workshop for all court administrators and executives with a consultant on the latest litigation trends in sexual harassment and gender bias cases and the steps these managers must take to ensure gender fairness in the daily functioning of their offices. Each quarter, Human Resources personnel conduct sessions on identifying and effectively dealing with gender bias.

***Hiring Decision Form*** [IRD-011]

To deal with the Task Force's complaint that court system record keeping was inadequate to allow a meaningful evaluation of hiring and promotion practices, the Human Resources Division instituted a Hiring Decision Form for use in all court system hiring and promotion decisions. The form names the final candidates for hiring and promotion and calls for the listing of specific reasons for the particular selection made.

**INTERVIEWING JOB APPLICANTS**

**New Jersey:** *Successful Interviewing: A Guide for Those Who Interview Job Applicants (1987)* [IRD-012]

This guide for judicial branch interviewers provides examples of permissible inquiries and categories of inquiries to be avoided.

**New York:** *Child Support Inquiry of Job Applicants*

All job applications and advancement applications now include a question about whether the applicant is in arrears on child support.

**EQUAL EMPLOYMENT OPPORTUNITY**

**Colorado:** *Partnerships for Success Program* [IRD-013]

The Probation Employee Issues Subcommittee determined that there was a need for a structured mentoring program that would facilitate gender-balanced opportunities. The subcommittee created *Partnerships for Success*, a pilot mentoring program that ran from April 1, 1997 for a 6-month period and consisted of ten pairs (an experienced probation officer with an inexperienced officer) required to meet a minimum of one time each month. The subcommittee evaluated the results of the pilot project and made recommendations in its May 1998 report.

**Connecticut:**     *Employment Advisory Committee on Affirmative Action*

Connecticut’s Chief Court Administrator established an Employee Advisory Committee on Affirmative Action in March, 1992. The committee is composed of fifteen Judicial Branch employees representing a cross-section of occupational categories, divisions, locations and protected classes. Its purpose is to encourage face-to-face discussion between protected class employees and the Affirmative Action Program Coordinator. The committee provides advice and assistance to the Affirmative Action Program Coordinator and identifies obstacles to achieving affirmative action initiatives. The committee assists in developing affirmative action goals for promotional classes, conducting job interviews, developing training programs (sensitivity regarding sexism, racism, etc., cultural diversity; supervisory training; etc.); female and minority recruitment; development of upward mobility programs and any other means that will facilitate the achievement of affirmative action goals. The committee distributed a questionnaire to all employees in late 1992 in order to gather information concerning the hiring, promotional and training process.

**Massachusetts:**     *Support Staff Task Force*

The original gender bias study uncovered, and subsequent outreach confirmed, that many female employees were discontent with their work situations, with complaints that tended to run deeper than those heard from male employees. The Gender Equality Commission established a Support Staff Task Force to educate clerical support staff as to their rights as employees; improve understanding of court procedure, administration and legal foundations; and identify constructive, creative approaches to improving the work lives of women working in the court system. This task force had three projects:

- Created a brochure about court personnel’s rights and resource organizations that can help in upholding them.
- Presented a Brown Bag Seminar Series in courts throughout the state.
- Developed a Three-Year Support Staff Training Program with the following curriculum:

YEAR ONE

1. Stress Management I
2. Department-Based Procedures Training
3. Personal Safety in the Courts
4. Supervisors Training
5. Planning for Computer Operations

YEAR TWO

1. Assertiveness Training
2. Computer Operations
3. Communicating with the Public
4. Stress Management Training I
5. Stress Management Training II

YEAR THREE

1. Stress Management I
2. Stress Management II
3. Computer Operations
4. Department-Based Procedures
5. Assertiveness Training

**GENDER-NEUTRAL LANGUAGE**

**Connecticut:     *Gender-Neutral Language in Judicial Branch Job Descriptions***

The Human Resources Management Unit reviewed all current Judicial Branch job descriptions to ensure gender-neutral wording. The personnel officer responsible for preparation of proposed job descriptions advised of the policy concerning gender-neutral wording and will ensure that the Judicial Branch continues to maintain such wording in new or revised job descriptions.

**SEXUAL HARASSMENT**

**Policies**

Task Forces found that sexual harassment is a problem in the judicial system, just as it is in every other institution in American society. Judges have been sanctioned for harassing litigants, attorneys and court employees. Court personnel also report harassment by co-workers, supervisors and attorneys. To promote sexual harassment prevention, Task Forces recommended creation of specific policies, avenues for complaint, training materials and programs. Court systems throughout the country have followed these recommendations, as these examples illustrate.

The following states and commonwealth are among those that have adopted sexual harassment policies for judicial and non-judicial court personnel:

Alaska	Hawaii	New Jersey
California	Idaho	New Mexico
Colorado	Illinois	New York
Connecticut	Iowa	Puerto Rico
District of Columbia	Maryland	Utah
Florida	Massachusetts	Vermont
Georgia	Michigan	Washington

The New Jersey policy was developed by a committee chaired by the chair of that state's Task Force and Implementation Committee. The committee's report and policy are available from the New Jersey Supreme Court Committee on Women in the Courts.

## Education and Training

Many states now conduct periodic training for judicial and non-judicial court personnel on preventing, reporting, investigating and disciplining sexual harassment. The programs described below are those for which the materials are available.

**California:**            *Workplace Sexual Harassment Awareness and Prevention: A Model  
Judicial Education Curriculum for Trial Courts (1998)*            [IRD-014]

The Gender Fairness Subcommittee of the Judicial Council Access and Fairness Committee secured funding from the State Justice Institute to enable the California Center for Judicial Education and Research to develop and pilot test this model curriculum for court employees and judicial officers. Both pilot tests received superlative evaluations.

### Overview of the Curriculum

The curriculum is comprised of a core program and four breakout modules which, if presented together, require a full day (from 9:00-4:00). The core program addresses the central legal concepts regarding workplace sexual harassment, outlines the responsibilities of the attendees to ensure their behavior conforms to the law, and provides a practical guide for self-assessment. The core program is designed to be presented in a plenary session with court administrators and managers, court staff, and judicial officers in attendance. The modules were created to focus on the concerns and unique issues of four different segments of the court work community: employees (non-managerial staff); judges and managers; managers as a separate group; and judges as a separate group. These modules also provide a forum for questions and answers which participants may not have felt comfortable asking in the joint core session.

Ideally, the curriculum should be offered in a full day format with presentation of the core program and all four modules. The curriculum is, however, designed so that it can be presented in parts. It is advisable to present the core program first and then the breakout modules as time permits. The modules should follow the core program as soon as scheduling permits, but certainly within a month. The Instructors Section of the curriculum binder contains a sample agenda and the timing for all program segments to assist in planning the training.

Reference materials are included to assist instructors in deepening their understanding of workplace sexual harassment law and issues.

**Colorado:**        *The Battle of the Sexes: Sexual Harassment and Gender Communication*  
(1995) [IRD-015]

Three and a half hour training program for all Judicial Branch employees. Lecture, discussion, videos, case studies, post-program test.

**Massachusetts:**    *Sexual Harassment Orientation Program*        [IRD-016]

Short program with video and small group discussions. Focus is on local court managers' responsibilities.

**Washington:**        *Avoiding Sexual Harassment Liability Prevention Training (1996)*  
[IRD-017]

Training program for Court Managers' Conference and, in a shortened version, for judges' conference. Self-test, definitions, case studies, exercises with questions, how to investigate a complaint, privacy rights, guidelines for prevention.

#### **Court Conduct Handbooks on Sexual Harassment**

**Massachusetts:**    *Understanding Sexual Harassment: The Tough Questions (1993)*  
[IRD-018]

Booklet for all court personnel. Defines quid pro quo and hostile environment sexual harassment, provides examples of sexual harassment, answers sixteen questions about what is sexual harassment and how to make a complaint, provides list of Sexual Harassment Investigators for all court levels with phone numbers.

**New York:**            *Sexual Harassment in the Workplace*        [IRD-019]

Short booklet for court personnel. Defines sexual harassment, with examples. Suggests informal actions to stop harassment and explains complaint procedure.

## Outreach to Other Agencies

### Rhode Island:    *Educational Seminar for Sheriffs*

The Implementation Committee's Education Subcommittee approached the sheriffs' department to initiate training programs for sheriffs on sexual harassment. As a result, the sheriff of Providence County issued an order prohibiting sexual harassment in his department and instituted an in-house training program on this topic. He arranged for all employees to participate in the program and indicated that it will become part of the orientation for all new sheriffs in the future. The sheriff of Kent County arranged for the advisory-committee chairperson to meet with the sheriffs of his department to discuss the work of the committee and its efforts to eliminate gender bias. He also arranged for all members of the department to attend a training program on sexual harassment. Several members of other counties' sheriff's departments also attended this session.

## COURT RULES

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Violations of behaviors prescribed and proscribed in court rules carry sanctions. For this reason, Task Forces and Implementation Committees understand the great advantage of translating a behavior that promotes gender fairness in the courts into a rule of court. Rules of Court “lodge” desirable behaviors into the very structure of the judicial system.

### **California:**        *Standards of Judicial Administration*

#### **Sec. 1. Court’s Duty to Prohibit Bias**

(a) **[General]** To preserve the integrity and impartiality of the judicial system, each judge should:

- (1)     **(Ensure Fairness)** Ensure that courtroom proceedings are conducted in a manner that is fair and impartial to all of the participants;
- (2)     **(Refrain From and Prohibit Biased Conduct)** In all courtroom proceedings, refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants;
- (3)     **(Ensure Unbiased Decisions)** Ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases. Adopted Jan. 1, 1987; amended Jan. 1, 1994; Jan. 1, 1998.

(b) **[Creation of Local Committees]** Each court should establish a local committee with local bar associations to assist in maintaining a courtroom environment free of bias or the appearance of bias. Courts within one or more counties may choose to form a single committee. The local committee should:

- (1)     Be composed of representative members of the court community, including but not limited to judges, lawyers, [3] and representatives and individuals from minority, women’s, and gay and lesbian bar associations and from organizations that represent persons with disabilities;



- (2) Sponsor or support educational programs designed to eliminate bias within the court and legal communities, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation;
- (3) Develop and maintain an informal procedure for receiving complaints relating to bias in the courtroom, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation.

For details of the suggested procedure, see **Complaint Procedures**.

**Iowa:**     *Gender Balance in Appointments*

**Court Rule 214. Judicial branch appointments.**

It is a policy of the judicial branch that all boards, commissions, and committees to which appointments are made or confirmed by any part of the judicial branch shall reflect, as much as possible, a gender balance. If there are multiple appointing authorities for a board, commission, or committee, they shall consult with each other to avoid contravention of this policy.

[Court Order June 30, 1986, effective July 1, 1986]

**Massachusetts:**     *Attorney's Fees in Probate and Family Courts*             **[IRD-020]**

Supplemental Rule 406 creates a presumption that attorney's and expert fees shall be awarded *pendente lite* to an economically dependant spouse to either prosecute or defend family law complaints. After successfully advocating for this new rule the Gender Equality Committee published a brochure for attorneys and others presenting the rule and a sample pleading.

**New York:**         *Data on Economic Consequences of Divorce*

The New York Judicial Committee on Women in the Courts worked with the court system to create a mechanism for collecting consistent data on the post-divorce economic prospect of families. A form was drafted soliciting basic demographic information and financial data on New York divorces, and, in 1994, court rules were amended to require parties, in both contested and uncontested matters, to complete the form and file it with their proposed judgments of divorce. The data are being recorded electronically.

## COURT WATCHING

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A number of Task Forces conducted and/or recommended court watching and related activities. While court watching is an excellent way to collect current data, it requires that the court watchers be carefully trained and that their recording forms be carefully designed. Many communities have court watching programs developed by organizations such as the League of Women Voters, Fund for Modern Courts (New York) and the Junior League. Implementation Committees can reach out to these existing programs and ask them to include the Committee's issues in their protocols and training.

### **Massachusetts: *Day in the Courts***

As part of the Task Force's original research it conducted a *Day in the Courts* in which teams of volunteer attorneys distributed a questionnaire, in both English and Spanish, in forty-nine courts across twelve counties. Nearly 2,000 questionnaires were completed by attorneys, court employees, parties, criminal defendants, witnesses, jurors, individuals meeting with family service or probation officers, and other members of the public who were in the courts that day. Prior to this *Day in the Courts* the Task Force piloted the questionnaire three times in different parts of the state and modified the survey form to achieve a short easy-to-read format. The Task Force held three training sessions in different parts of the state for the volunteer attorneys to discuss techniques for survey distribution and data collection. After the *Day in the Courts* each volunteer tabulated the answers on her surveys on a coding grid and a summary guide. Subsequently, small groups of volunteers tabulated the total results. Each volunteer also completed a volunteer observation sheet on which he or she recorded personal experiences with gender bias while distributing the survey as well as any noteworthy observations.

### **NOW Legal Defense and Education Fund: "*A Guide to Court Watching in Domestic Violence and Sexual Assault Cases*" (1997) [IRD-021]**

In 1997 the NOW Legal Defense and Education Fund gathered materials from court watching programs around the country and synthesized them into *A Guide to Court Watching in Domestic Violence and Sexual Assault Cases*.<sup>4</sup> The guide explains how to establish a court watch program, recruit and train volunteers, raise funds, design a survey for court observation (a sample is included), develop a report on the conclusions reached and use that report to create change. The guide also provides contact information for selected court watching programs and a list of state domestic violence and sexual assault groups who may be potential court watching partners.

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<sup>4</sup>Available from NOW LDEF, 395 Hudson Street, 5th Floor, New York, NY 10014 for \$5.

## DATA COLLECTION TOOLS AND DATABASES

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Lack of adequate qualitative and quantitative data posed a serious obstacle to most Task Forces. The statistical data necessary to determine in what ways and to what extent gender bias operates in particular areas of the law and to monitor its continuing existence or amelioration simply do not exist in most states. Recognizing the importance of securing relevant, retrievable statistical data on a routine basis, particularly in family law, some Task Forces charged Implementation Committees with collecting data in a variety of areas and designing new data collection tools. Below are examples of the new databases and data collection tools that have been developed.

**District of Columbia:**      *Data on Domestic Violence, Mental Examinations and Lawyer Appointments*

The D.C. courts collected data on:

- the rate of dismissal of domestic violence charges compared to the dismissal rate for all case categories;
- the number of mental examinations ordered for males as compared to females; and
- the appointment of attorneys in Probate cases by gender.

**Georgia:**      *Courts Automation Commission and Crime Information Center*

The Implementation 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 Protective Orders in domestic violence cases.

**Minnesota:**      *Statewide Database for Orders of Protection*

The Task Force recommended legislation creating a statewide computerized database for orders of protection to allow police in squad cars and judges on the bench to have immediate access to defendants' complete history and record of domestic violence. The Implementation Committee helped secure passage of the legislation and its subsequent funding. After a successful pilot project in several counties the program was expanded statewide.

**New York: *Data on Child Support Cases***

The Task Force suggested that court administrators gather data that would help in monitoring child support awards. Legislation now mandates collection of these kinds of data. 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. Included must be figures on 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. Having this data in computers not only helps the courts meet their statutory reporting mandate, but creates a database about support awards that can be used to retrieve different kinds of information, as the need develops. FAM. CT. ACT § 216(5) (McKinney Supp. 1991).

***Data on Economic Consequences of Divorce***

The Implementation Committee worked with the court system to create a mechanism for collecting consistent data on the post-divorce economic prospects of families. A form was drafted soliciting basic demographic information and financial data on New York divorces, and, in 1994, court rules were amended to require parties in both contested and uncontested matters to complete the form and file it with their proposed judgments of divorce. The data are being recorded electronically.

## EDUCATION FOR COURT PERSONNEL

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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. Many Task Forces recommended education for court personnel similar to that for judges and lawyers. For court personnel training programs on sexual harassment, see **Court Employment - Sexual Harassment**.

**Massachusetts:**    ***“Guidelines for Judicial Practice Abuse Prevention Proceedings”***  
**[IRD-022]**

At the urging of the Gender Equality Committee these comprehensive Guidelines were issued to assist judges and court personnel in addressing the many complex and sensitive issues that arise in the course of abuse prevention proceedings. The goal of these guidelines is twofold: 1) to promote the safety of those who seek abuse prevention orders and 2) to ensure the due process of rights of those against whom these orders are sought. The guidelines provide detailed commentary on due process considerations, the court’s relationship with local advocacy groups, interpreters, filing of complaints, *ex parte* hearings, *ex parte* orders, full hearings, “permanent” orders, appeal, enforcement of orders, criminal proceedings, civil contempt, other court proceedings related to abuse prevention proceedings, emergency response and related probate and family court matters (in particular custody and visitation). These guidelines are periodically updated by the Administrative Office of the Trial Court.

**Videotape:**    ***“Getting in Form: A Guide to Using the New Abuse Prevention Forms Under M.G.L. 209A” (1995) (32 Minutes)*** [IRD-023]

This video shows court personnel how to guide a plaintiff in filling out Massachusetts’ new Abuse Prevention Forms. The goal is to enhance public safety, due process, fairness, completeness and accuracy in order to provide the information a judge needs to shape an order. A particular feature of these new forms is their focus on developing detailed information about children in the plaintiff’s home and providing an address impoundment form to be kept separately in order to preserve the confidentiality of the plaintiff’s address.

The video first presents a narrator explaining the forms, then a court clerk assisting a woman with filling out the forms. This is followed by a closer look at the forms focusing on issues such as a new law requiring surrender of firearms. There is a second scene of the woman filling out the forms. Then the narrator explains what to do with the completed forms, reviews their order for completeness and tells how to serve them.

**Utah:**     *Court Clerk Training on New Domestic Violence Form*

Two AOC officials visited every court district to introduce court clerks to the new, uniform domestic violence form for obtaining protective orders and to train them to assist in completing the forms. Formerly only a few clerks knew the procedures for obtaining protective orders and thus service to persons seeking orders was spotty. Now all clerks and deputy clerks are being trained so that clerks well prepared to assist petitioners will be available at every court.

## EDUCATION FOR JUDGES

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Judicial education lies at the heart of the gender bias judicial reform effort. Every Task Force, Implementation Committee or Bar Association using this Directory should first consult *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources* prepared by the National Judicial Education Program and *Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts - A Guidebook for Judicial Educators* produced by the National Association of Women Judges with The National Judicial College.<sup>5</sup> Judicial education on gender fairness should address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles. Judicial Educators should make clear that judicial gender and other types of bias are now grounds for reversal. At recent judicial education programs on fairness in the courts which focused on cases reversed for evident 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.

### OVERVIEW AND TRAINING THE TRAINERS

#### **Wisconsin:**    *Use of Gender Bias Task Force Report in Judicial Education*

Starting in 1994 relevant portions of the Equal Justice Task Force Report have been given to judicial education faculty in the appropriate subject areas so that they will weave examples/problems into their session discussions. The Judicial Education Office reminds faculty to utilize gender-related examples and incorporate relevant portions of the Task Force recommendations into their teaching materials.

#### **National Judicial Education Program:**    *“Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources” (1989)* [IRD-024]<sup>6</sup>

This is a 200 page Guide to nearly sixty substantive and procedural areas of the law where gender bias may be a factor. The purpose of this Guide is two-fold. The first is to provide a comprehensive outline of the full range of substantive and procedural manifestations of gender bias in the courts about which education is needed. The second is to suggest how gender bias issues can be integrated throughout the training provided for judicial and non-judicial court personnel, and the resources available for use in this effort.

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<sup>5</sup>Both projects were supported by the State Justice Institute.

<sup>6</sup>Also available from the National Association of Women Judges. See Appendix A for address.

The subjects outlined range far beyond so-called “women’s issues,” such as rape and domestic violence, to subjects such as medical negligence, law and psychiatry, probate, trial skills and judicial writing. For each topic there is an outline or a summary discussion of the gender issues that should be explored in judicial education and suggestions for integrating these issues into the other topical areas to which they are relevant. For example, the segment on Rape suggests that gender bias issues related to rape should be a component of programs about Criminal Law, Domestic Violence, Evidence, Juvenile Justice, Law and Psychiatry, Prostitution, Sentencing and Torts and Damages.

For each topic there is a short annotated resource list of articles, book chapters and other publications. For those topics which have been investigated by a supreme court task force on gender bias in the courts, the resource list begins with citations to the relevant sections from the task force reports published as of 1989.

### **National Association of Women Judges and The National Judicial College:**

***“Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts - A Guidebook for Judicial Education” (1993) [IRD-025]***

*Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts* provides judicial educators with a guide for training faculty on methods to incorporate gender fairness in their teaching. The manual can be used alone or in conjunction with the videotape, “Keeping the Blindfold On: Creating a Gender Neutral Court,” described below. Both products stress that gender issues should be addressed throughout a judicial education curriculum, not as a separate topic, using a variety of adult education techniques.

During the workshop, faculty members are given the opportunity to explore how gender bias can manifest itself in the courts and how judges can perpetuate such bias unintentionally in their decision-making and application of the law. In addition, faculty are called upon to recognize and address the lack of gender fairness in themselves. (While it would be reasonable to assume that this process would meet with resistance, this segment of the workshop was highly evaluated by the participants at the two National Judicial College pilots in 1991.)

The workshop has a pre-course assignment based on reading *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources* by Lynn Hecht Schafran. Participants are asked to review the existing course outlines for the courses they presently teach to identify possible areas they might change or enhance as a result of reading this Guide. They are also asked to maintain a journal for two weeks prior to the workshop to log any gender fairness problems perceived in their courts with respect to both court interaction and substantive law issues.



At the workshop each participant creates a mini-teaching plan for incorporating gender issues. The final step in the learning process is actual micro-teaching by the workshop participants where they present a revised segment of their substantive teaching assignment incorporating gender neutral instruction and treatment of gender issues. Each participant receives critical feedback from the other participants and an adult education specialist. For many judges attending the pilot programs, the opportunity to apply their newfound knowledge and sensitivity on gender in this practical way was the highlight of the workshop.

Subjects covered in the workshop include:

- Pre-Course Assignment Described Above
- Institutionalizing Gender Fairness Education
- Gender Fairness Problems in the Court: An Overview
- The Source and Nature of Bias
- Ethical and Practical Responsibilities of Judges to Promote Gender Fairness in Their Courts
- Integrating Gender Fairness Training into Substantive Law Areas
- Teaching Gender Fairness in Civil Litigation
- Teaching Gender Fairness in Criminal Law
- Teaching Gender Fairness in Family Law
- Women in the Courtroom: Teaching Gender Fairness in the Treatment of Women Parties, Witnesses, Jurors, Lawyers and Staff

**National Association of Women Judges and The National Judicial College:**

**Videotape:** *“Keeping the Blindfold On: Creating a Gender Neutral Court”*  
(1993) (45 Minutes) [IRD-026]

This is a “train the trainers” video that shows judges and judicial educators how to integrate gender fairness issues throughout the judicial education curriculum using five effective adult teaching techniques. It can be used with *Planning and Conducting a Faculty Development Workshop on Gender Fairness in the Courts* or independently. The video begins with a white female attorney discussing with three judges (a black male, a white female and a white male) the nature and consequences of gender bias in the courts and the denial that surrounds this issue. This is followed by scenes of judicial education classes in which gender bias issues in five areas -- civil damages, divorce, rape, domestic violence and court interaction -- are addressed through a pre-test video, a hypothetical, role play, debate and group brainstorming. Throughout, the commentator emphasizes that gender issues should be introduced into all subjects because they are central to all aspects of life, and that it is judges’ responsibility to set the tone and to monitor for gender bias in the behavior of attorneys, court personnel and juries, in language in the courts, and in his or her own decisions.

## COURT INTERACTION

### **Connecticut: Videotape and Program Guide: “Gender and Justice: Approaching the Bench” (1993) (25 Minutes) [IRD-027]**

The Connecticut Task Force sought a way to present its findings to its state judiciary in a non-threatening manner using an entertaining scenario to help develop the subject. The presentation evolved as a mix of women’s history, data and analysis from Connecticut’s four year gender study and a play, “Nice Suit,” which employed role reversal to depict bias in various forms. The program was for the most part successful, especially “Nice Suit.” In response, the Task Force videotaped “Nice Suit,” wrote a program guide to highlight its educational potential, and developed a new format, “Gender and Justice: Approaching the Bench.”

The program has two major instructional components: a videotape and Program Guide. The twenty-five minute videotape of an original one act play, “Nice Suit,” written by an attorney and performed by an experienced semi-professional troupe, the play uses role reversal to explore gender bias in judge/attorney and attorney/attorney interaction. How might a young male attorney feel if the legal profession were primarily women’s domain? Introductory and concluding statements by Connecticut’s Deputy Chief Court Administrator Hon. Francis X. Hennessy focus attention on the pervasiveness of bias and highlight the play’s relevance for judicial audiences.

The second instructional component, the Program Guide, describes how to develop a training seminar incorporating the video and suggests approaches to raising awareness of fairness issues in court systems. The Guide is organized in five chapters. Chapter 1 is “Introduction - Gender Fairness and Judicial Education.” Chapter 2, “Strategies for Institutionalizing Gender Fairness,” speaks to the challenge of infusing the organizational climate of our courts with gender fairness and to the complexity of managing organizational change. Chapter 3 presents a model curriculum and supporting materials which can be used to develop a training program for your court system. As designed, the program runs approximately 2½ hours, is intended for a relatively small group (ideally 25-30 participants), and assumes judges as its audience. Chapter 4 contains a selection of readings. These have a variety of uses: as background information for the program facilitator, as enrichment for training participants, or as additions to your court’s library or gender fairness publications. Chapter 5 is an appendix of materials reflecting the Connecticut Judicial Branch’s experience with equality initiatives.

**Michigan: Videotape: “RESPECT: Women and Minorities in the Legal System” (1991) (28 Minutes) [IRD-028]**

This video was created by the Michigan State Bar based on information generated by the Michigan Supreme Court Task Forces on Gender and Racial/Ethnic Issues in the Courts. The presentation includes an ongoing scenario in which a male judge and attorney are shown to be biased against African-American and women lawyers; the white, male lawyer comes to recognize the worth of his colleagues and urges his client to do the same. The video explains that a judge’s preferential treatment of one person and disregard of another (e.g., lawyer, plaintiff and defendant) affects how others in the courtroom treat that person, often leading to women and minorities being treated poorly by other lawyers and court personnel.

**CUSTODY**

**National Association of Women Judges:**

***Judicial Training Materials on Child Custody and Visitation (1991)***

This half-day curriculum, funded by the State Justice Institute, utilizes role plays, hypotheticals, small group discussions, and self-tests to explore rationales for custody/visitation determinations that advance the best interests of the child, avoid gender-based stereotypes and recognize the serious impact of domestic violence on children, even when they are not themselves physically abused.<sup>7</sup>

**National Judicial Education Program:**

***“Adjudicating Allegations of Child Sexual Abuse when Custody is in Dispute” (1996)***

This day-and-a-half curriculum, funded by the State Justice Institute, provides guidance to judges about one of the most vexing questions facing them today: how to evaluate allegations of child sexual abuse in custody and visitation disputes. The curriculum was developed by leading experts in the fields of law, psychology and child witnesses to promote the fair administration of justice by improving courts’ ability to assess child sexual abuse allegations in the particular context of custody/visitation disputes, and to make decisions about custody and visitation in these cases that reflect the best interests of the child. A full description of this curriculum is in Appendix E.<sup>8</sup>

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<sup>7</sup>Available from the National Association of Women Judges. See Appendix A for address.

<sup>8</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix E for flyer with full description and address.

**Family Violence Prevention Fund: *Domestic Violence and Children: Resolving Custody and Visitation Dispute*<sup>9</sup> (1995)**

This 200 page curriculum, also SJI funded, is designed to assist judicial educators in conducting an 8-hour judicial education program on the resolution of custody and visitation cases involving domestic violence. The curriculum covers:

- Special challenges facing the court in the resolution of child custody cases involving domestic violence;
- Leading statutes and case law governing the court's handling of domestic violence cases;
- Evidentiary issues arising in domestic violence custody and visitation cases;
- Court practices and procedures when issuing custody orders in cases involving domestic violence;
- Enforcement of custody and visitation orders;
- Using mediation, evaluation and special masters in the resolution of custody disputes;
- Interstate and international custody issues, relocating and child-snatching.

**DOMESTIC VIOLENCE**

**Delaware: *Domestic Violence Seminar (1997)***

This two-day program for judges and court personnel covers *The Dynamics and Context of Domestic Violence, Forms of Victimization, Safety Issues in Domestic Violence, False Allegations, Victim Non-participation, Cultural Diversity in Domestic Violence, Causes of Battering, Batterer's Treatment and Accountability, Lethality Assessment, and Criminal Case Issues*. Materials are available from the state judicial educator, see Appendix B for contact information.

**Massachusetts: *Domestic Violence: Improving the Courts' Response (1994 and 1995)* [IRD-029]**

This two-day curriculum comprises:

- Faculty materials
- Program materials
- Readings and resource materials

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<sup>9</sup>Family Violence Prevention Fund; Item #007; \$50 each. See Appendix E for flyer and address.

The curriculum has seven objectives:

1. To sensitize participants to the nature of domestic violence and the impact of abuse on the victim and children.
2. To improve participants' knowledge of the law, standards of practice and procedures in domestic violence cases.
3. To improve communication among court personnel who come in contact with abuse and protection cases.
4. To increase awareness of the network of resources available in the community.
5. To assist participants to develop plans to implement standards and/or improve court procedures in domestic violence cases.
6. To encourage participants to develop a strategy for involving others in their court in improving procedures in domestic violence cases.
7. To improve communication between different court departments that handle domestic violence cases.

The curriculum includes expert presentations on issues such as the impact on children who witness domestic violence and the implications for custody and visitation determination, including domestic violence visitation risk assessment and a Visitation Issues Form. The 1995 curriculum includes materials on batterers intervention programs and a checklist for a Danger Assessment of Batterers.

Participants also watch and critique a series of videotapes of a domestic violence case moving through the first *ex parte* hearing, the second *ex parte* hearing, the first full hearing, and the second full hearing. The worksheets call for assessments of court personnel's behavior in terms of Positive Behaviors, Negative Behaviors and Suggestions for Change. A second set of worksheets explores conflicts between the District Court Order and the Probate Court Order.

Two structured sessions and detailed worksheets are devoted to Action Planning specific to each participant's court to:

- a. identify high priority needs to improve the court's response to domestic violence cases;
- b. develop an action plan for accomplishing top priority goals;
- c. establish concrete steps as follow-up to this training.

**Washington:     *Domestic Violence Curriculum (1991)*                    [IRD-030]**

This curriculum for judges and court personnel was based on a needs assessment survey plus attention to what respondents did not know they did not know. The units cover key concepts in domestic violence as well as organizational/system concerns. The units are intended for a variety of specified audiences. For example, there is a unit on *Domestic Violence: The Crucial Role of the Judge in the Criminal Court* for judges and commissioners of all criminal courts; a unit on *Understanding the Court System, Roles and Procedures* for domestic violence legal advocates; a unit on *Domestic Violence: Improving Court Standards* for district and municipal court administrators; and a unit on *Domestic Violence: Policy and Procedure* for teams of judges, commissioners, administrators of all courts and county clerks. The curriculum also incorporates significant material from the Family Violence Prevention Fund curriculum described below.

***Domestic Violence Manual for Judges*    [IRD-001]**

In 1997, the Gender and Justice Commission revised and combined into one volume two bench books on domestic violence: *The Domestic Violence Manual for Judges, Vol. I - Civil* and *Vol. II -Criminal*. Copies were distributed to the judiciary and domestic violence advocates. The manual is also being used as a text for six domestic violence workshops for state and tribal court judges in rural counties. See **Bench Books**.

**Videotape: “*Domestic Violence: Challenges and Solutions in Washington*” (1995)  
(27 Minutes)    [IRD-053]**

This video presents a diverse group of victims, victim advocates, judges, legislators, shelter workers, treatment providers, educators, court administrators, prosecutors and police responding to six questions:

- What do you identify as the biggest challenge in the system’s response to domestic violence?
- In what areas do you think the system for dealing with domestic violence and its impacts is not working?
- What limits you from providing the type of domestic violence programs and services that you want to provide?
- What solutions do you have to those limitations?

- What unique system or response has your agency or community developed to respond to those affected by domestic violence?
- If you could suggest to policy makers only three things to improve the system dealing with domestic violence, what would they be?

The responses convey the wide range of legal and community efforts that are going forward and provide valuable suggestions for improvement.

**Wisconsin: Videotape: “*Silent Hostage: Victims of Domestic Violence*” (1995)  
(22 Minutes) [IRD-0541]**

In this video the victim who is reluctant to seek help is a court commissioner who herself handles domestic violence cases. The scenes cut back and forth among her courtroom, her home, her office and a judicial training program about domestic violence. A substantial amount of important information about all aspects of domestic violence is conveyed, including why it is so difficult for women to leave, the danger of making that move, and the impact of domestic violence on children in the home. There is an epilogue from Wisconsin’s Chief Justice on the critical role of the courts in domestic violence victims’ safety. The video was partially funded by the State Justice Institute.

**Family Violence Prevention Fund:**

***“Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases”  
(1991)***

This State Justice Institute-funded comprehensive manual is designed to assist judicial educators and domestic violence workers in developing an 8-hour judicial education program on domestic violence and to produce a bench guide on criminal court cases specific to their state. The curriculum covers issues that arise during the three main stages of a criminal court domestic violence case:

- Pretrial/release considerations and options (including bail, release on own recognizance, no-contact orders, peace bonds, etc.);
- Evidentiary hearing/trial considerations (including discovery, admissibility of evidence, jury selection, expert testimony, etc.);
- Case dispositions (including incarceration, probation, diversion, restitution, court-mandated batterer treatment, etc.)<sup>10</sup>

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<sup>10</sup>Family Violence Prevention Fund; Item #001; \$50 each. See Appendix E for flyer and address.

***“Domestic Violence Cases in the Civil Court: A National Model for Judicial Education” (1992)***

This national curriculum, also funded by the State Justice Institute, is designed to assist judicial educators and domestic violence workers in developing a judicial education program on domestic violence relevant to civil court issues. The curriculum covers:

- An overview of domestic violence;
- Issuance of civil court protective orders (including enforcement issues);
- Custody and visitation;
- Child abuse and neglect cases (where abuse of one parent by the other exists);
- Termination of marriage;
- Interspousal tort cases;
- Developing a judicial education program on domestic violence;
- Hypothetical domestic violence cases for small group discussion.<sup>11</sup>

***“Domestic Violence: A Virtual Conference for Judges in the Criminal Courts”  
A CD-ROM Judicial Education Project***

This State Justice Institute-funded, two-disk CD-ROM program features some of the nation’s most knowledgeable judges and leading experts in abuse. The program allows users to rule in a hypothetical case and compare their rulings to those of colleagues. It also provides tips, information, statistics about domestic violence from every state, a quiz and goals for judicial intervention.

“Virtual Conference” allows judges to visit an information kiosk, see photographs taken at the scene of domestic violence incidents and participate in a highly interactive virtual case workshop in which they hear arguments of counsel, listen to judges from different jurisdictions discuss the case, rule and listen to other judges on their ruling.<sup>12</sup>

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<sup>11</sup>Family Violence Prevention Fund; Item #005; \$50 each. See Appendix E for flyer and address.

<sup>12</sup>Family Violence Prevention Fund; \$65 per two-disc set. See Appendix E for flyer and address.



**Videotape: “Making a Difference: Domestic Violence and the Role of the Court” (1998) (61 Minutes)**

This video, developed jointly with the California Center for Judicial Education and Research, explores five characteristics of domestic violence and their relevance to judicial functions.

1. Domestic violence is learned behavior.
2. Domestic violence typically involves repetitive behavior encompassing different types of abuse.
3. The batterer, not substance abuse, the victim, or the relationship causes domestic violence.
4. Danger to the victim and children is likely to increase at the time of separation.
5. The victim’s behavior is often a way of ensuring survival.

The film is introduced by a judge who comments on judges’ critical role in ending domestic violence and provides basic information about the issue. Then there are five vignettes of a white, middle-class family with one child, each illustrating one of these characteristics. After each vignette, three national experts comment on the characteristic illustrated. Then five judges discuss how their knowledge of the characteristic has informed their legal decisions, their discretionary calls and their courtroom admonishments. After each of these panels there is a “What a Judge Can Do” feature, with the discussants’ key points presented in headline form.<sup>13</sup>

**National Judicial Education Program:**

***“When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts” (1998)***

Unit III of this State Justice Institute-funded model judicial education curriculum is titled “Women of Color as Victims of Gender-Based Violence.” It can be used as a program in itself or integrated into other domestic violence programs. This unit uses a variety of exercises to explore the particular court-related problems confronting women of color and immigrant women victimized by domestic violence, such as interpreters’ bias and social and cultural impediments to reporting or following through with prosecution. The focus is on what judges can do to eliminate or minimize these problems.<sup>14</sup>

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<sup>13</sup>Available from the Family Violence Prevention Fund; \$15 for the video only; \$45 for the video and manual set. See Appendix E for address.

<sup>14</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix E for flyer with full description and address.

## NEW JUDGES ORIENTATION

### **Michigan:** *New Judges Seminar*

Since the Task Force report was issued in 1989, a permanent component of each *New Judges Seminar* has been a session on Fairness in the Courts which includes the recommendations of the Task Force as well as testimony obtained during the Task Force hearings. In addition to the specific session on Fairness in the Courts, the exercises and materials for the procedural and substantive law sessions during the seminar are designed to examine the issues of race/ethnic and gender bias.

## SPOUSAL SUPPORT

### **Washington:** *Family Law - Spousal Maintenance Session (1992)* [IRD-031]

This curriculum explores older and newer theories for awarding spousal support and explains why Washington statutory and case law provide a legal basis for using the newer, more gender-fair theories. It then presents two detailed hypotheticals to which these theories are to be applied in small group discussions and a report back. It also provides a self-test and factual information about the economic consequences of divorce, examples of evidence available from financial planning experts and a methodology for estimating lost opportunity.

### **National Association of Women Judges:**

#### *Judicial Training Materials on Spousal Support (1991)*

Several states have utilized this State Justice Institute-funded, half-day curriculum. The curriculum utilizes role plays, hypotheticals, small group discussions and self-tests to explore rationales for achieving economic equity at divorce.<sup>15</sup>

## RAPE AND SEXUAL ASSAULT

### **National Judicial Education Program:**

#### *“Understanding Sexual Violence: The Judicial Response to Stranger and Non-stranger Rape and Sexual Assault” (1994)*

Responding to their Task Forces’ recommendations for judicial education about rape and sexual assault, approximately twenty states have presented or invited the National Judicial Education Program (NJEP) to present its model judicial education curriculum, *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger*

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<sup>15</sup>Availabe from the National Association of Women Judges. See Appendix A for address.

*Rape and Sexual Assault*, funded by the State Justice Institute (SJI).<sup>16</sup> The NJEP presentations have been made possible by a grant from the U.S. Department of Justice Violence Against Women Grants Office. SJI also provides curriculum adaptation grants for the presentation or adaptation of training programs developed with SJI funding.

***“When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts” (1998)***

Unit III of this State Justice Institute-funded model judicial education curriculum is titled “Women of Color as Victims of Gender-Based Violence.” The final segment of this unit addresses the specific problems confronting women of color and immigrant women who are complainants in rape trials. These issues include the devaluation of women of color, especially African-American women, in rape cases, in terms of both their credibility and the assessment of harm to them, as revealed in minimal sentencing.<sup>17</sup>

**TASK FORCE FINDINGS - OVERVIEWS**

**Georgia:     **Videotape: “Bias Awareness in the Courts” (1989) (30 Minutes)****

This videotape, based on actual incidents in the Georgia courts, addresses gender, race and status bias. The tape begins with a brief introduction by the Dean of the University of Georgia School of Law who observes that unintended bias poisons the justice system as much as deliberate bias. Each vignette is introduced by a female attorney who describes the bias problems in the area. Then judges, lawyers and court personnel act out appropriate behavior and, in the case of the judges, correct inappropriate behavior on the part of others. Two scenes illustrate biased treatment of black women attorneys and provide good opportunities to discuss the special bias experienced by women of color. Following is a synopsis of the six scenes:

- “Issues in Voir Dire” addresses eliciting bias among jurors -- the specific case discussed relates to a gay male plaintiff -- and ensuring that female jurors participate and are listened to in jury deliberations.

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<sup>16</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix E for flyer with full description and address.

<sup>17</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix E for flyer with full description and address.

- “Court Employment: The Judicial Clerkship” demonstrates the appropriate use of job-related questions in interviews. The three interviews are a white man in a wheelchair, a Hispanic woman and a black man.
- “At Work: The Judicial Clerkship” dramatizes a judge’s intervention when an employee, in this case a black law clerk, is harassed by other lawyers in the system.
- “The Courtroom” illustrates gender and race bias on the part of a court employee and lawyers, and the judge’s taking action to deal with the lawyers’ demeaning remarks, which are overheard by the jury.
- “Valuing the Homemaker’s Contribution” presents two lawyers arguing over the admissibility of expert testimony about the economic value of homemaker work. This scene is also intended to spark discussion of other types of cases in which expert testimony is necessary to minimize bias.
- “Domestic Violence” shows a magistrate hearing three types of cases and dealing with each with great seriousness. The three cases deal with: a husband who may have intimidated his wife into not appearing at the hearing; a woman who says she wants to withdraw her petition because she and her partner have reconciled; and a wife who wants to go forward with criminal charges against her husband, who is also present.

Each of these six scenes can stand on its own and could be excerpted.<sup>18</sup>

**Videotape: “*Let Justice Be Done*” (1997) (40 Minutes)**

**[IRD-032]**

This video with instructor’s manual was developed by the Georgia Supreme Court Commission on Equality to help raise sensitivity to subtle forms of gender and race biased behavior which can be difficult to identify and remedy. It includes seven scenarios based on anecdotal information received during the public hearing and forums held by the Georgia Supreme Court Commission on Racial and Ethnic Bias in the Courts. The instructor’s manual includes the script for each scene and study guide questions. The vignettes cover biased behavior by police, court personnel, attorneys and judges. For example, in one scene a black court clerk is very helpful to a black

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<sup>18</sup>Available from the Georgia Institute for Continuing Judicial Education, School of Law, University of Georgia, Athens, GA 30602, (404) 542-7491, for \$75 with study guide.

woman seeking a protective order, then very curt with an Hispanic woman seeking the same assistance.<sup>19</sup>

**Michigan: Videotape: “RESPECT: Women and Minorities in the Legal System” (1991) (28 Minutes) [IRD-028]**

This video was created by the Michigan State Bar based on information generated by the Michigan Supreme Court Task Forces on Gender and Racial/Ethnic Issues in the Courts. The presentation includes an ongoing scenario in which a male judge and attorney are shown to be biased against African-American and women lawyers; the white, male lawyer comes to recognize the worth of his colleagues and urges his client to do the same. The video explains that a judge’s preferential treatment of one and disregard of another person (lawyer, plaintiff, etc.) affects how others in the courtroom treat that person, often leading to women and minorities being treated poorly by other lawyers and court personnel.

**New Jersey: Videotape: “Women and the Law: Changing Roles, Changing Attitudes” (1984) (30 Minutes) [IRD-033]**

This half-hour video, produced by the New Jersey Supreme Court Task Force on Women in the Courts, includes ten vignettes that dramatize the gender-biased behavior documented during the Task Force’s inquiry.

The video is introduced by Judge Marilyn Loftus, chair of the New Jersey Task Force, who describes the Task Force’s formation and data collection methods. The ten scenes are:

“Pretrial Conference.” Biased conduct toward female attorney on part of judge and female and male court personnel.

“The Courtroom.” Covers issues such as appropriate form of address for female attorney, judge correcting court attendant’s biased remarks and his own error, male lawyer’s patronizing cross-examination of female witness and judge’s failure to intervene.

“Probable Cause.” Contrasts judge’s strong reaction to violence between strangers and dismissive attitude toward violence between husband and wife.

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<sup>19</sup>The video with instructor’s manual is available from the Commission for \$30 per set. See Appendix B for address.

“Jury Verdict.” Shows an all-female jury giving a high award in a personal injury case in which the male attorney for plaintiff had thought the women would not understand issues related to mechanics.

“Matrimonial.” Illustrates a judge’s mistaken assumptions about ability of older homemaker to find work and likelihood of remarriage and his personal bias about divorce.

“Value of a Homemaker’s Services.” An expert in home economics testifies about the economic value of homemaker work.

“Dual Career Family.” Deals with stereotypical assumptions about female and male roles, how these roles are changing, and the value of homemaker work.

“Law Firm Associate Interview.” Bias against female interviewee by male law firm partners is manifest in the form of inappropriate questions, refusal to consider her for litigation department, and their insistence that she will have to work on matrimonial cases.

“Judicial Clerk Interview.” A judge asks a female law student gender-biased questions and disparages her work on a women’s rights law journal as likely to impair her judgement.

“Friendly Settlement.” Addresses stereotypical notions about what women’s areas of employment should be.

## **MANDATORY JUDICIAL EDUCATION LAWS AND COURT RULES**

### **California:    *Training on Family Law***

#### **Section 1 [of SB 1209 (1987)]**

The Legislature hereby finds and declares that there is a special need to require training programs on family law for judges, referees, commissioners, mediators, and others who perform duties in family law matters because more citizens are affected by family law proceedings than any other type of judicial proceedings. Further, family law matters comprise approximately one-half of all civil court filings in most counties, family law presents highly complex and diverse issues, family law can involve protracted litigation and massive use of court time and resources, and family law has a profound impact on all the involved parties, on taxpayers, and on the future of society.

It is the intent of the Legislature that the training program for judges be at least 30 hours per year.

Sec. 2. Section 68553 is added to the Government Code, to read: The Judicial Council shall establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters.

The training shall include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.

The training shall include instruction in all aspects of family law, including effects of gender on family law proceedings and the economic effects of dissolution on the involved parties.

After California adopted this legislation requiring the Judicial Council to provide judicial education on family law, the Supreme Court adopted a Rule of Court making it mandatory for Family Court Judicial Officers to take this training.

#### **Title V. Special Rules for Trial Courts**

Every judicial officer whose principal judicial assignment is to hear family law matters or who is the sole judge hearing family law matters shall, if funds are available, attend the following judicial education programs: (1) Basic Family Law Education. Within three months of beginning a family law assignment, or within one year of beginning a family law assignment in courts with five or fewer judges, the judicial officer shall attend a basic educational program on California family law and procedure designed primarily for judicial officers. A judicial officer who has completed the basic educational program need not attend the basic educational program again. All other judicial officers who hear family law matters, including retired judges who sit on court assignment, shall participate in appropriate family law educational programs.

(2) Continuing Family Law Education. The judicial officer shall attend a periodic update on new developments in California family law and procedure. (3) Other Family Law Education. To the extent that judicial time and resources are available, the judicial officer shall attend additional educational programs on other aspects of family law including interdisciplinary subjects relating to the family, Rule 1200, Adopted Jan. 1, 1992.

**New Jersey: *Training on Domestic Violence***

The Administrative Office of the Courts shall develop and approve a training course and a curriculum on the handling, investigation and response procedures concerning allegations of domestic violence. This training course shall be reviewed at least every two years and modified by the Administrative Office of the Courts from time to time as need may require. The Administrative Director of the Courts shall be responsible for ensuring that all judges and judicial personnel attend initial training within 90 days of appointment or transfer and biannual in service training as described in this section.

The Division of Criminal Justice and the Administrative Office of the Courts shall provide that all training on the handling of domestic violence matters shall include information concerning the impact of domestic violence on society, the dynamics of domestic violence, the necessary elements of a protection order, policies and procedures as promulgated or ordered by the Attorney General or the Supreme Court, and the use of available community resources, support services, available sanctions and treatment options...  
Code of Criminal Justice 2C:25-20.

**Texas: *Training on Family Violence, Sexual Assault and Child Abuse***

(a) The court of criminal appeals shall assure that judicial training related to the problems of family violence, sexual assault, and child abuse is provided.

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge and each judge of a statutory county court to complete at least eight hours of the training within the judge's first term of office and provide a method of certification of completion of that training. At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6) and (7). The rules must exempt from the training requirement of this subsection each judge who files an affidavit stating that the judge does not hear any cases involving family violence, sexual assault, or child abuse.

(c) In adopting the rules, the court of criminal appeals may consult with professional groups and associations in the state that have expertise in the subject matter to obtain the recommendations of those groups or associations for instruction content.



(d) The instruction must include information about: (1) statutory and case law relating to videotaping a child's testimony and relating to competency of children to testify; (2) methods for eliminating the trauma to the child caused by the court process; (3) case law, statutory law, and procedural rules relating to family violence, sexual assault, and child abuse; (4) methods for providing protection for victims of family violence, sexual assault, or child abuse; (5) available community and state resources for counseling and other aid to victims and to offenders; (6) gender bias in the judicial process; and (7) dynamics and effects of being a victim of family violence, sexual assault, or child abuse.  
Government Code Sec, 22.110.

## EDUCATION FOR JUDICIAL DISCIPLINARY COMMISSIONS

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### **Maryland:** *Training on Sexual Harassment*

The chair of the Select Commission presented an hour-long program on sexual harassment during a full day orientation session for the new members of the Commission on Judicial Disabilities. This program will also be presented to members of the Attorney Grievance Commission.

## EDUCATION FOR JUDICIAL NOMINATING COMMISSIONS

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### **Colorado:** **Videotape:** *“Colorado Judicial Nominating Commission: An Overview of the Judicial Selection Process” (1997) (25 Minutes) [IRD-034]*

This video focuses on four areas:

- Overview of the Role of the Commissioner
- Establishing Criteria for What Makes a Good Judge
- Review of Written Materials Available for Commissioners
- Suggested Techniques for Evaluating Candidates

The film is narrated by the co-chairs of the Gender and Justice Committee, Justice Mary Malarkey and Jim Benway, Director of Human Resources for the Courts. Justice Malarkey talks about the gender and race/ethnic bias studies in Colorado and elsewhere and what they have found. She urges Commissioners to be sure the people they select will not manifest these biases, to be sure to have and recommend a diverse pool of applicants and to be sure that all applicants are asked the same questions.

### **Utah:** *Training Program for Commissioners*

A section on gender bias issues has been a regular part of Judicial Nominating Commission Training since 1986.

#### ***Encouraging Diversity***

Following the instructions of the Judicial Council, the most recent (1994) revision of the *Manual of Procedures for Judicial Nominating Commissions* included a section that encouraged nominating commissions “when deciding among candidates whose qualifications appear in all other respects to be equal...to consider the background and experience of the candidates in relation to the current composition of the bench for which the appointment is being made. The idea is to promote a judiciary of sufficient diversity that it can most effectively meet the needs of the community.”

### *Women Lawyers of Utah Judicial Selection Subcommittee*

The Women Lawyers of Utah Judicial Selection Subcommittee took a multi-pronged approach to increasing the number of women judges in the state court system, particularly at the District Court level. Women Lawyers encouraged qualified women to apply for the bench, and held orientation sessions on what is involved in the bench application process and how the merit selection system works. The organization also sponsored several sessions with representatives from the Governor's office to discuss the particular qualities the Governor was looking for in judicial candidates, and the importance of a gender-balanced bench. Members of Women Lawyers pressed successfully for more female members on nominating commissions and when women emerged as nominating commission choices, they sent letters to the Governor pointing out the qualifications of these nominees for judicial office.

## **EDUCATION FOR LAW ENFORCEMENT AGENCIES**

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### **Georgia:**     *Georgia Protocol for Responding to Victims of Sexual Assault (1997)* [IRD-035]

This is a one-hundred page comprehensive protocol prepared by the Georgia Sexual Assault Task Force. It covers Victim Support Services, Law Enforcement Response, Sexual Assault Examination and Evidence Collection and Prosecution. (See **Rape and Sexual Assault.**)

### **Utah:**     *Domestic Violence Training for Law Enforcement Agencies*

After the Task Forces' recommendations resulted in significant new domestic violence legislation in 1991, the Division of Family Services of the Department of Human Services framed model law enforcement protocols which were distributed to all law enforcement agencies throughout the state. These were used as the basis of training intended to improve the response to domestic violence complaints and treat them as a criminal matter, not a family matter. The domestic violence legislation adopted in 1995 generated a new cycle of training to bring officers up to speed.

## EDUCATION FOR LAWYERS

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It is essential to diffuse the findings of the Task Forces and other information about gender bias through Continuing Legal Education courses so that lawyers are attuned to the issues and know how to address them most effectively. This relates both to issues of “civility”<sup>20</sup> and to the substantive law areas of concern to the Task Forces. Continuing legal education should address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles. Implementation Committees have worked closely with bar associations to develop this programming. One state made CLE on bias in the legal profession mandatory.

### **Alaska:     *Sexual Harassment Training (1997) [IRD-036]***

The Alaska Joint State-Federal Courts Gender Equality Task Force joined with the Alaska Bar Association Employment Law Section and the Alaska Association of Legal Administrators to present “Sexual Harassment: Where Do You Draw the Line in the Workplace?/Yes, It Really IS a Big Deal,” for the Alaska Bar Association. This three-hour program includes a twenty-question self-test as a starting point for discussion and extensive outlines, articles and cases, as well as a sample sexual harassment policy.

### **California:     *Requirement for Continuing Legal Education on Bias***

In response to a Task Force recommendation the State Bar of California adopted the following requirement:

#### **2.0 Minimum Continuing Legal Education Requirement**

##### **2.1 Requirement**

All members of the State Bar of California on active status shall demonstrate their compliance with the continuing legal education requirement at the end of each compliance period and, except as otherwise provided, shall complete at least 36 hours of approved continuing legal education activities every 36 months. Of the 36 hours:

\* \* \*

2.1.3 At least one shall relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation.

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<sup>20</sup>Task Forces consistently found that with respect to gender bias in courtroom interaction, lawyers were greater offenders than judges or court personnel.

Instruction in... elimination of bias may be a portion of a substantive law education activity.

*State Bar of California MCLE Rules and Regulations, adopted 12/8/90.*

A subsequently adopted guideline interpreting this rule states:

2.1.3 Education activities relating to the elimination of bias must focus on problems which attorneys encounter in the legal profession, and not on generic issues of bias in society in general. Education activities on how to handle a bias case do not count for elimination of bias credit. *Adopted 1/27/92.*

**Connecticut:      Videotape and Program Guide: “Gender and Justice: Approaching the Bench” (1993) (25 Minutes)      [IRD-027]**

This is a video and Program Guide of a one act play called “Nice Suit” written by a male attorney for the Task Force’s initial presentation of its findings to Connecticut judges. The premise of the play is role reversal. How might a young male attorney feel if the legal profession were primarily women’s domain?

The characters are a White female judge; two seasoned White female attorneys; their adversary, a young White male attorney; and his young White male client. The video opens with the judge and the two female attorneys in animated conversation that makes it clear they are old friends. The attorneys deride their adversary’s settlement demand. The judge asks if they won’t be a bit more generous “to such a nice young man.” The women trivialize the plaintiff’s injury as “a pain in his buns” and ask for photos. The judge tells the male attorney that she’s sure he understands that those comments were in jest.

When the judge talks to the male attorney privately she questions him about his marital status, his wife’s employment and his child care arrangements until he explodes and says “None of this is relevant, I’m not your little boy, don’t ‘matronize’ me.” The judge lectures him about his not wanting to accept a settlement that he perceives as the product of “female collusion.” The two women attorneys comment on testosterone poisoning and their adversary’s nice suit that fits so well.

The video is opened and closed by Judge Francis X. Hennessy, chair of the Task Force, with commentary on the pervasiveness of gender bias, the findings of the Task Force, the courts as a reflection of society and the need for the judicial system to show the way to ending unjustified differential treatment.

A Program Guide with suggestions for discussion is provided, organized into five chapters. Following Chapter 1, "Introduction - Gender Fairness and Judicial Education," Chapter 2, "Strategies for Institutionalizing Gender Fairness," speaks to the challenge of infusing the organizational climate of our courts with gender fairness and the complexity of managing organizational change. Chapter 3 presents a model curriculum and supporting materials which can be used to develop a training program for your court system. As designed, the program runs approximately two-and-a-half hours, is intended for a relatively small group (ideally 25-30 participants), and assumes judges as its audience. Chapter 4 contains a selection of readings. These have a variety of uses: as background information for the program facilitator, as enrichment for training participants, or as additions to your court's library or gender fairness publications. Chapter 5 is an appendix of materials reflecting the Connecticut Judicial Branch's experience with equality initiatives.

**Delaware: *Domestic Violence Continuing Legal Education***

In 1997 the Delaware Implementation Committee presented a CLE course on domestic violence. The materials from this program are available from the state judicial educator (see Appendix B for contact name).

**Michigan: Videotape: *RESPECT: Women and Minorities in the Legal System* (1991) (28 Minutes) [IRD-028]**

This video was created by the Michigan State Bar based on information generated by the Michigan Supreme Court Task Forces on Gender and Racial/Ethnic Issues in the Courts. The presentation includes an ongoing scenario in which a male judge and attorney are shown to be biased against African-American and women lawyers; the white, male lawyer comes to recognize the worth of his colleagues and urges his client to do the same. The video explains that a judge's preferential treatment of one and disregard of another person (lawyer, plaintiff, etc.) affects how others in the courtroom treat that person, often leading to women and minorities being treated poorly by other lawyers and court personnel.

**New Jersey: Videotape: *"A Day in the Life of a Female Attorney"* (1995) (33 Minutes) [IRD-037]**

The video depicts five vignettes, including an initial client intake interview, work allocation between two associates, intra-gender bias between a woman associate and a woman secretary, contact between adversaries and court personnel, and the court room. In the five scenes a white male partner and two associates with equivalent experience - one a black female and the other a white male - work on a TRO for a white male client against a white female adversary. In the law firm scenes, the male partner and male associate patronize the female associate, ask her for coffee, make her the researcher for the team and constantly interrupt her even though she is the only one asking the client pertinent questions. A female secretary refuses to stay late

for the female associate but does so for the male associate. The male associates denigrate the female adversary as intransigent and the male partner telephones her to insist that the case must belong to a senior male partner at her firm. In the courtroom before a white male judge, the male associate accuses the female adversary of sexual misconduct with a male witness. The judge (who in real life was a member of the New Jersey Supreme Court Task Force on Women in the Courts) announces that he will lodge a formal complaint about the male associate's conduct with the attorney disciplinary board.

The videotape is used as part of a one-hour presentation during which a facilitator or facilitators introduce the program, show each vignette and then, between vignettes, pose questions concerning the issues involved to stimulate audience involvement. The backbone of the program is the dialogue among attendees and their shared impressions and experiences. The video has been presented to a wide variety of state, county and specialty bar associations and at law schools.

**New York: *Domestic Violence and Women's Credibility CLE***

The Implementation Committee developed a program titled "Fair or Foul? The Limits of Trial Advocacy in a Domestic Violence Case" for presentation at bar associations that was very successful. It involves portions of a mock trial of a man accused of assaulting the woman with whom he was living. The unscripted direct cross-examination of the complainant was conducted by well-known prosecutors and defense attorneys in the community, followed by discussion with the audience.

**Utah: *State Bar Gender Bias Programs***

The Utah State Bar included one hour on gender fairness in a mandatory full-day seminar for new lawyers conducted in 1995 and 1996. The goal of these presentations was to inform new attorneys of the importance of gender sensitivity and fairness in the legal profession. Most of the responses to the presentation received by the Utah State Bar's Continuing Legal Education Department were very negative. The Department's report to the Gender Fairness committee on CLE classes related to gender fairness concludes: "An important lesson can be learned from the Bar's experience with gender presentations. Instead of making gender the main focus of a fairness or sensitivity seminar, emphasize consideration, fairness, etc. to all people in a professional conduct course. This would get the point across, but would be less offensive and glaring."

**Washington: *"Gender Bias in the Legal Profession - Breaking the Glass Ceiling"*  
[IRD-038]**

In 1991 the Implementation Committee worked with Washington Women Lawyers to develop the workshop "Gender Bias in the Legal Profession- Breaking the Glass Ceiling." Since then ten workshops have been given.

## EDUCATION FOR THE PUBLIC

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Task Forces recognized that a critical component in the overall strategy to promote gender fairness in the courts is promoting legal literacy. Before women can exercise their legal rights they must know what they are. Several Implementation Committees have prepared legal rights handbooks either distributed throughout the state or available in the courthouse itself. Other committees have undertaken innovative public education programs of a different sort, such as establishing community archives on gender bias materials and staging mock trials in high schools.

**Alaska:**    ***Alaska Women’s Legal Rights Handbook (1997)***

The Implementation Committee took a leading role in producing an updated version of this guide to women’s legal rights in Alaska.

***“Pioneering Paths: Photos and Excerpts from the 1998 Women in Alaska Law Archive”***

The Alaska Gender Equality Task Force began collecting an archive on “Women In Alaska Law.” This led to the creation of a traveling display about Alaskan women lawyers first presented at the Alaska Bar Convention and now traveling to courthouses around the state. It will be featured at Nordstrom’s department store in May 1999 to commemorate Women’s History Month. The archive will be presented to the Alaska Bar Historians Committee, which maintains a secure archive at the state law library.

***Public Archive of Gender Fairness Materials***

The Implementation Committee is working with the Federal Law Librarian in Anchorage to establish an archive of gender fairness materials for public use.

**Florida:**    ***Website Access***

The Implementation Committee posted publications dealing with gender bias on the court’s website.

**Iowa:**        ***“How to Protect Yourself from Domestic Abuse Without a Lawyer” (1995)***  
**[IRD-039]**

A detailed guide to the court system to enable domestic violence victims to secure protective orders and other relief *pro se*. Includes samples of all court forms, checklists to prepare for hearings, injury maps, tips on courtroom behavior and a list of all domestic violence projects in Iowa. This guide is published in English and Vietnamese.



**Maryland: Videotape and Discussion Guide: “*In Her Own Image: Women in Law - A Maryland Perspective*” (1991) (30 Minutes) [IRD-040]**

*In Her Own Image: Women in Law - A Maryland Perspective* highlights the contributions, past, present and future of women in the Maryland legal profession. The experiences of pioneering women in Maryland legal history and present day women judges and lawyers are presented to inform and inspire all young women today to follow their own goals into any profession.

The video is primarily intended for high school students and includes several sections in which young women and men are asked questions such as whether they know what judges and lawyers do and what their career aspirations are. It can also be viewed by a wide range of audiences interested in career issues, legal studies, or women’s rights.

The video is divided into three ten-minute segments. The first is historical, dealing with pioneering Maryland women lawyers. In the second, three women judges are interviewed, including the first Black woman judge, and a judge with young children who is interviewed with her family. Section three, “A Better Chance,” looks to the future, presenting the reality of the discrimination women lawyers still face together with the greater opportunities. The video Discussion Guide suggests questions and activities relevant to each segment and provides a bibliography for further research.

**Massachusetts: *Domestic Violence Resource Centers***

The Gender Equality Committee established domestic violence resource centers in all District Courts, Probate and Family Courts and Boston Municipal Court. These resource centers are wall mounted units stocked with information from local providers of services for domestic violence victims. This project was a collaboration of the Gender Equality Committee’s Task Force on Abuse Prevention, the courts, local shelters and fourteen bar associations.

**Brochure: *Attorney’s Fees in the Probate and Family Court: Supplemental Rule 406* [IRD-020]**

After successfully advocating for a new Probate Court rule creating a presumption that attorney’s and expert fees shall be awarded *pendente lite* to an economically dependent spouse to either prosecute or defend family law complaints, the Gender Equality Committee published a brochure for attorneys and others presenting the rule and a sample pleading.

**New York: *Community College Programs***

In 1997 The Bronx Supreme Court Gender Bias Committee presented a highly successful Gender Bias and Sexual Harassment Program based on a series of skits for

a local community college. As a result, the Committee was asked to present a program on domestic violence for the college.

**Nevada:**      ***Nevada Women’s Legal Guide (1996)***      **[IRD-041]**

This guide was written by the Supreme Court Justice who chaired the Nevada Supreme Court Gender Bias Task Force and a task force member. It covers eighteen topics and provides a “Where To Go For Help” appendix and sample forms.

**Ohio:**      ***Ohio Legal Rights with Emphasis on Women’s Issues (1993)***      **[IRD-42]**

This guide covers twenty-six topics from sex discrimination in employment to when and how to find an attorney using a question and answer format.

**Utah:**      ***Women Lawyers of Utah Domestic Violence Education Campaign***

As described in **Bar Association Collaborations**, Women Lawyers of Utah was extremely active in implementing the Utah Task Force’s recommendations. Among their initiatives was an emphasis on getting domestic abuse victims the information they so desperately need. Women Lawyers were convinced that domestic abuse was a seriously under-reported crime and that there were thousands of victims who had no idea of what community help was available to them, or how to obtain it. The organization committed itself to seeing that information on how to stop domestic abuse was disseminated throughout the state.

The new education effort solicited donations from organization members and many public and private groups, including local law firms, raising over \$20,000. That money was used to produce videos on the criminal and civil procedures involved in prosecuting domestic violence cases. The free videos were widely disseminated throughout the state to community groups, prosecutors, law enforcement and others. Bumper stickers, posters and brochures with the headline “**There’s no Excuse for Abuse**” were distributed statewide. A domestic abuse hotline number was widely publicized, as a part of a multi-agency statewide effort. Members of Women Lawyers and others in the domestic violence network spoke on radio and television and to many community groups concerning domestic abuse problems and where and how to get help. The over 200 percent increase in assault arrests in the last five years indicates that the word is getting out and that many more abused spouses and partners are turning to the justice system to get help.

**Washington:**      ***Domestic Violence Education for High Schools***      **[IRD-043]**

The Gender and Justice Commission funded development of a script on domestic violence for the 1997-98 YMCA Mock Trial Program in the state’s high schools.

## **GENDER-NEUTRAL LANGUAGE**

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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, lawyers and judges. Accordingly, many Task Forces recommended that all court communications, forms, court rules, jury instructions, opinions, etc. consistently use gender-neutral and gender-appropriate language.

Carrying out this recommendation has involved the Implementation Committees in working with numerous court committees and individuals such as those responsible for the state's model jury instructions, the court clerk and the head of human resources. In addition, some states have adopted court rules on gender-neutral language, and some Implementation Committees have written their own guidelines or handbooks for written and spoken language.

### **COURT RULES**

#### **California:    *Court Rule on Gender Neutral Language***

##### **Sec 1.2 Use of Gender Neutral Language**

Each court should use gender neutral language in all local rules, forms, and court documents and should provide for periodic review to ensure the continued use of gender neutral language. These changes may be made as local rules, forms, and documents are modified for other reasons.

#### **Florida:    *Amendments to the:***

- ***Rules of Judicial Administration***
- ***Rules Regulating the Florida Bar***
- ***Rules of Juvenile Procedure***
- ***Rules of Criminal Procedure***

The Florida Supreme Court approved recommendations from the Florida Bar to amend a variety of court rules to use gender-neutral language. The Florida Bar Re: Amendment to Florida Rules of Judicial Admin., 609 So.2d 465 (Fla. 1992); The Florida Bar Re: Amendment to Rules Regulating The Florida Bar, 605 So.2d 252 (Fla. 1992); The Florida Bar re Amendments to Rules Regulating The Florida Bar 1-3.7; 3-5.1(g); 3-5.2; 14-1.1 and Chapter 15, 593 So.2d 1035 (Fla. 1991); Petition of The Florida Bar to Amend Florida Rules of Juvenile Procedure, 589 So.2d 818 (Fla. 1991)

In one instance the Florida Supreme Court approved a change to the Rules of Criminal Procedure and went on to itself edit the proposed change to remove gender-biased language. In re Amendment to Florida Rules of Criminal Procedure- Rule 3.133(b)(6)(Pre-Trial Release), 573 So.2d 826 (Fla. 1991).

### GUIDELINES/HANDBOOKS

**Georgia:** *Guide to Bias-Free Communication* [IRD-044]

**New Jersey:** *Using Gender-Neutral Language: A Guide for Speakers and Writers in the Judiciary* [IRD-045]

**New York:** *Fair Speech: Gender Neutral Language in the Courts* [IRD-046]

Each of these short publications explains the importance of bias-free language and gives examples of how to make one's language gender-neutral and inclusive.

The New York pamphlet has influenced the court's written language as well as the spoken word to which it was addressed. In 1993, the style manual of the official New York Reports, "[a]cknowledging the critical role that words play in the climate of courthouses and courtrooms," explicitly adopted the approach and many of the specific suggestions of "Fair Speech." The manual reproduced large portions of the pamphlet and recommended using its guidelines "to assist in avoiding unintended slights."

**Wisconsin:** *Written Opinion Language*

All appellate law clerks, judges and justices are provided with appropriate language format guidelines for their written opinions.

### JOB DESCRIPTIONS

**Connecticut:** *Gender-Neutral Language in Judicial Job Decisions*

Human Resource Management Unit reviewed all current Judicial Branch job descriptions to ensure gender-neutral wording. The personnel officer responsible for preparation of proposed job descriptions advised of the policy concerning gender-neutral wording and will ensure that Judicial continues to maintain such wording in new or revised job descriptions.

## JURY INSTRUCTIONS

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Task Forces recommended that jury instructions be made gender-neutral and revised to address a variety of substantive issues. Following are examples of actions taken in response.

### **Michigan:**     *Deadly Force Justified to Prevent Rape*

The Task Force recommended that the standard criminal jury instructions should be revised to add defense against sexual assault as a situation in which the use of deadly force may be justified. The Michigan Supreme Court held in *People v. Barker*, 437 Mich. 161 (1991) that serious bodily harm includes forcible sexual penetration, and that a judge errs if he or she refuses to instruct that deadly force may be used to repel an imminent forcible penetration. The Standard Criminal Jury Instructions, CJI2d 7.15, were amended in 1991 to incorporate this holding.

### **Wisconsin:**    *Failure to Prevent Child Abuse When Defendant Also is Being Abused*

The Task Force recommended that the Criminal Jury Instructions Committee draft an instruction to use in Failure to Act to Prevent Child Abuse cases requiring the prosecutor to prove that the defendant was physically and emotionally capable of taking action to prevent the abuse. The purpose is to encourage proper implementation of the Failure to Act to Prevent Child Abuse Statute so there is no gender stereotyping of parental ability to act. In particular, women should not be charged in cases in which similarly-situated men would not be charged. In 1993 the Criminal Jury Instructions Committee approved and disseminated 2108.1 Wis.JI-Criminal which clearly recites the need to prove the defendant was physically and emotionally capable of taking action. Instructions Committee staff indicate that judges are grappling with the definition of “capable,” but feel that issue will best be addressed in a particular criminal case.

### ***Revision of Civil and Criminal Jury Instructions***

A Civil Jury Instruction review group was formulated through the original Equal Justice Task Force and nearly 500 Instructions (almost half) were reviewed and modified in 1990. The rest were reformatted by early 1992. The Criminal Jury Instructions received similar review and modification. These reviews provided for gender neutral and gender inclusive language and for matching language to the gender of the parties in each case. All judges currently have computer access to all Jury Instructions before them, and all are able to easily particularize Instructions to the genders within a case before the Court.

### *Valuation of At-Home Services*

Many Task Forces criticized courts' failure to acknowledge that unpaid work in the home, which is largely "women's work," has economic value. Wisconsin amended its jury instructions to establish that non-market services in the household are subject to economic valuation in personal injury and wrongful death cases.

## LEGISLATION

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The Task Forces called for a wide variety of legislation to address the problems documented in their reports. Implementation Committees, bar associations, domestic violence advocates, legislators and others have followed through on these recommendations, often with significant success. Although legislation is only as effective as the judge who interprets, applies and enforces it, these new laws provide an essential baseline for appeal, and sometimes create critical new standards and requirements, as in Texas' adoption of alimony, Utah's elimination of the marital rape exemption and California's requirement that the Judicial Council provide training for all types of judicial officers on domestic violence and family law.

Legislation recommended by the Task Forces and ultimately adopted through the efforts of the Implementation Committees is described below under the following headings.

*Child Abuse and Neglect*

*Child Support*

*Custody*

*Domestic Violence*

*Family Law*

*Guardians Ad Litem*

*Rape and Sexual Assault*

*Sentencing and Prisons*

*Spousal Support*

### CHILD ABUSE AND NEGLECT

#### **Texas:    *Expedited Hearings***

Extensive new legislation requiring *inter alia*, expedited hearings and appeals for child abuse cases, requiring joint agency investigations, establishing review teams, establishing criteria for removal of alleged perpetrator from the child's home. Section 4. Subchapter B, Chapter 262, Family Code, Sec. 262.1015.

#### ***Child Care Advocacy Center***

Established Children's Advocacy Centers to develop an interagency approach to investigating child abuse, to maximally reduce the number of interviews required of a child, and to develop and maintain an environment that emphasizes the best interests of the child and provides investigatory and rehabilitative services. Section 1, Chapter 264, Family Code, Subchapter E. Children's Advocacy Centers.

#### ***Fatality Reviews***

Established procedures for child fatality review and investigation. Section 2, Chapter 264, Family Code, Subchapter F. Child Fatality Review and Investigation.

## CHILD SUPPORT

### **California:** *Statewide Uniform Child Support Guidelines*

California adopted a statewide uniform child support guideline with twelve principles for their implementation that “place the interest of children as the state’s top priority” and call for periodic review of the guidelines by the Judicial Council in consultation with a broad cross-section of groups involved in child support issues. The review must incorporate data about the cost of raising children; analyze case data on the actual application of the guidelines; and analyze guidelines and studies from other states to insure appropriate child support orders and limit deviations from the guidelines. Family Code, Sec. 4054.

### **Connecticut:** *Permanent Support for a Special-Needs Child*

With respect to child support for children older than eighteen, the law was amended to provide that “The court, upon motion, may order the parents of a child of the marriage, which child is eighteen years of age or older, to maintain the child upon a showing that the child suffers from a physical or mental disability or serious emotional maladjustment.” The amendment also provides for health insurance to be maintained for such a child. Public Act 97-321.

### **New York:** *Data on Child Support Cases*

The Task Force suggested that court administrators gather data that would help in monitoring child support awards. Legislation now mandates collection of this kind of data. Under the Child Support Standards Act, the Chief Administrator of the New York Courts must report annually to the Governor and the Legislature statistics on all cases in which awards are made pursuant to the Act. Included must be figures on 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. Having this data in computers not only helps the courts meet their statutory reporting mandate, but creates a database about support awards that can be used to retrieve different kinds of information, as the need develops. N.Y. FAM. CT. ACT § 216(5) (McKinney Supp. 1991).

### **Utah:** *Child Support Guidelines Increased*

The 1994 Amendments to the Child Support Guidelines addressed several of the Task Force’s concerns. The recommended level of child support was increased by 10 to 15 percent and each party’s benefits are to be taken into consideration in determining responsibility for medical expenses. The amendments also set minimum income and subsistence levels and allow for an accounting of expenditures by the custodial parent. The 1994 amendments did not address other Task Force concerns, however, such as the proposal to increase child support for older children to reflect their increased expenses.



**Wisconsin:**    *Child Support Formula for “Shared Time” Payors*

The Task Force recommended that the standards applicable to “shared time” payors of whichever gender should be re-examined to determine whether an appropriate amount of relief is provided to those who have physical placement of their dependent child(ren) more than 109 overnights per year and whether those who do not exercise their right to periods of physical placement of the children should be required to pay more than the existing standard. The Health and Social Services Rule 80 promulgated March 1, 1995 provides a formula that may be utilized for child support for “shared time” payors. This option may provide more relief to the payors than the previously existing standards by considering the incomes of both parents.

***Collecting Child Support from Parents who are Self-Employed or on Commission***

To insure payment of child support by those of whichever gender who are self-employed and who are paid by commission, 1994 Wisconsin Act 481 provides for the use of deposit accounts, especially for self-employed payors.

**CUSTODY**

**California and New York:**    *Domestic Violence as a Factor in Custody and Visitation Determinations*

California and New York are among the states which, at the behest of their Task Forces and Implementation Committees, adopted legislation or court rules requiring that abuse of a spouse be a factor in the determination of child custody. Some of these provisions create a presumption that batterers shall not be awarded sole or joint custody or unsupervised visitation. California Family Code § 3011; New York Domestic Relations Law § 240.

**California:**    *Domestic Violence Training for Custody Investigators*

Domestic violence training is required for all court appointed persons who evaluate or investigate child custody matters. Family Code § 3111.

***Visitation where Domestic Violence is an Issue***

(C) **[Ensuring Safety]** Whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to limit the child’s exposure to potential domestic conflict or violence and to ensure the safety of all family members.

(D) **[Protecting Address Confidentiality]** Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location. Family Code § 3100.

*Standards for Supervised Visitation Providers*

The Judicial Council is directed to develop standards for supervised visitation providers which shall consider "Orientation to and guidelines for cases in which there is an allegation of domestic violence, child abuse, substance abuse or special circumstances." Family Code § 3200.

*The standards developed by the Judicial Council require providers to have training in, inter alia:*

"Cultural sensitivity . . . . child abuse, sexual abuse, and domestic violence" and to obtain during the intake process "a report of any written records of allegations of domestic violence or abuse..." Standards of Judicial Administration § 26.2.

***Court Encouraged to Ascertain Existence of Restraining Order when Making Custody/Visitation Determination and to Limit or Deny Visitation when an Order is on File.***

The court is encouraged when considering custody or visitation to make a "reasonable effort" to ascertain whether any restraining order concerning the parents or child is on file, and if so, not to make a custody or visitation order that is inconsistent with the restraining order. When custody or visitation is awarded in a case where domestic violence is alleged or a restraining order is in force, the award shall detail the times and terms of transfer to maximize everyone's safety. Consideration should be given to requiring supervised visitation. There are circumstances in which a temporary custody order denying all visitation is appropriate to preserve safety. Family Code § 3031 and § 6323.

## DOMESTIC VIOLENCE

### **California: *Required Domestic Violence Training Programs***

The Judicial Council shall establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council. The training programs shall include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. The training programs shall include instruction in all aspects of domestic violence. Government Code § 68555.

### ***Support Person for Victim of Domestic Violence***

An individual alleging domestic violence may choose anyone as a support person. The court shall permit the support person to attend a protective order hearing or other domestic violence proceeding and to sit at counsel table if petitioner has no attorney. If a court has issued a protective order a support person shall be permitted to attend any mediation session but may not act as a legal advocate or be disruptive. Family Code § 6303.

### ***Conditions for Issuance of Mutual Restraining Orders***

The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Family Code § 6305.

### ***Batterer's Program Procedure and Requirements***

This legislation abolishes diversion and requires participation in a batterer's treatment program for at least one year. The statute provides detailed standards for the type of batterer's program to which the court or probation department may refer a domestic violence offender granted probation and the type of investigation the probation department must make of the offender. The legislation also addresses conditions of probation restrictions, payments to a battered women's shelter in lieu of a fine and community service. Family Code § 1203.097.

### ***Court Interpreters in Domestic Violence Proceedings***

Requires court interpreter to be present when party does not proficiently speak or understand English but makes exceptions for domestic violence cases where the necessity for the order outweighs the necessity of an interpreter.  
Evidence Code § 755.

### **Michigan: *Crime Victims Compensation for Cohabitant Victim***

The Task Force urged that the Crime Victims Compensation Act be amended to allow payments to victims residing in the same household as the assailant because victims of abusive partners may be too intimidated to file civil suits or the abuser may be indigent, making such a suit meaningless. The statutory language prohibiting payments to crime victims who are members of the same household as the assailant was eliminated in 1990. MCL 18, 354(2); MSA 3.372(4).

### **Texas: *Sexual Assault is a Form of Family Violence***

Adds “sexual assault” to statutory definition of “Family Violence” Sec. 3; Sections 71.01 (b) (1) - (6) Family Code.

### ***Divorce Suits Must State Whether Protection Order Ever Issued Between Parties***

Requires suits for divorce or annulment to state whether a protective order is in effect or applied for, and to attach to the petition any order of protection issued between these two parties. SECTION 1. Subchapter c, Sec. 3.522 Chapter 3, Family Code.

### ***Bars Filing Fees for Protection Order Applicants: Assesses Attorney’s Fees Against Non-Indigent Batterer***

Bars charging protective order applicant a fee to file, serve, enter, dismiss, modify or withdraw the order. Assesses a filing fee against the non-indigent respondent and reasonable attorney’s fee against party found to have committed family violence. Section 5, Ch. 71, Family Code, Sec. 71.041.

**Wisconsin** adopted a similar law. Wisconsin 1993 Act 319, Section 814.710(1).

### ***Law Enforcement to Protect Petitioner When Respondent is to be Excluded from House***

Requires court to provide a written order to law enforcement to accompany and protect the petitioner when respondent is to be excluded from the family home. Section 18, Section 71.18, Family Code.

### ***Magistrates May Issue Emergency Protection Orders***

Authorizes Magistrates to issue emergency orders of protection. Section 1, Chapter 17, Code of Criminal Procedure, Art. 17.292.

### ***Bars Handgun Transfer to Person Known to be Subject of Protective Order***

Creates the offense of transferring a handgun to a person known to be the subject of an active protective order. Section 1, Subsection (B) (5), Section 46-06, Penal Code.

### ***Misdemeanors Elevated to Felonies Under Certain Circumstances***

Certain assaults that would be Class A misdemeanors become state jail felonies if it is shown at trial that the offense was committed against a family member and that the defendant was previously convicted of the same type of offense against a family member at least twice. Section 1. Section 22.01 (b) Penal Code. Violating a protective order also becomes a state jail felony under similar circumstances. Section 1, Section 25-07 (Cg), Penal Code.

### ***Notice to Victim When Batterer is Bailed or Released***

Before releasing an individual arrested for family violence on bail or releasing a convicted batterer from incarceration, the agency or entity holding the person must make a reasonable attempt to give personal notice of the imminent release to the victim. Section 1, Art. 17.29 Code / Criminal Procedure and Section 2, Chapter 42, Art. 42.21 Code of Criminal Procedure.

### **Utah:      *Cohabitant Abuse Act Amendments 1991 and 1995***

- Expedites the process for obtaining protective orders. District and Circuit Courts must have protective order request forms available at all times; forms must be easy to understand and uniform throughout the state; court clerk must assist in filling out the forms and filing the petition. Other amendments provide for mandatory arrest when probable cause is found, permit judges to defer sentencing while batterer is in a treatment program and provide funding for treatment programs.
- Severely limits the use of mutual protective orders (where both victim and abuser are prohibited from contacting one another) and gives the court power to order counseling for the abuser as part of the protective order.

**Wisconsin:    *Ban on “Prompt Complaint” Rule for Temporary Restraining Order***

Responding to the tendency of some judges and family court commissioners to condition Temporary Restraining Orders on how quickly after the alleged assault the victim came to court, Wisconsin adopted new legislation stating: “In determining whether to issue a temporary restraining order, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct by the respondent *but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended.* (Emphasis supplied.) (WIS. STAT. ANN. §813.12(3)(a)(2) (West, WESTLAW through 1997 Act 67).)

***Admission of Batterer to Home from which Order Excluded Him or Her Does Not Void Order***

It often happens that when a domestic violence victim obtains a restraining order excluding respondent from her home, then admits him on his plea to see the children or apologize, the court treats the order as void. Wisconsin law now prohibits this explicitly. The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. 1993 Wisconsin Act 319, Section 813.12 (3) (e). An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid. 1993 Wisconsin Act 319, Section 813.12 (4)(C)1.

***Domestic Violence Advocates at Hearings***

After adopting legislation authorizing domestic violence advocates to attend hearings with victims, 1991 Wisconsin Act 276, Wisconsin provided training for judges and commissioners on this change.

Legislation respecting custody decisions when domestic violence is a factor is described under **Legislation/Custody.**

**FAMILY LAW**

**California:    *Judicial Education in Family Law***

By statute, the Judicial Council must establish training programs for judges, referees, commissioners, mediators and others who hear family law matters. Government Code § 6:553.

*The Standard of Judicial Administration respecting this training reads:*

(A) [Comprehensive Curriculum] The Center for Judicial Education and Research (CJER) shall provide a comprehensive educational

curriculum for judicial officers who hear family law matters. This curriculum should include instruction in California law and procedure relevant to family matters, the effects of gender on family law proceedings, the economic effects of dissolution, and interdisciplinary subjects relating to family court matters, including but not limited to child development, substance abuse, sexual abuse of children, domestic violence, child abuse and neglect, juvenile justice, adoption, and the social service and mental health systems. It should include videotaped presentations and written materials which can be provided for local court use.

Adopted Jan 1, 1992.

(B) [Periodic Updates] CJER should also conduct a periodic educational program that provides an update on new developments, innovative court practices, and fair and efficient procedures in family law.

Adopted Jan 1, 1992.

**Utah:**      *Court Costs and Attorney's Fees Awards*

HB 146 authorizes the awarding of court costs and attorneys fees to the prevailing party in paternity actions and actions to enforce orders of custody, visitation, child support, alimony, or division of property. It also provides that attorney and witness fees can be awarded in advance of final judgment to allow a party to prosecute or defend an action.

**GUARDIANS AD LITEM**

**Texas**      *Qualifications for Guardians Ad Litem*

*Guardians ad litem* must complete the State Bar training on family law and the responsibilities of ad litem, complete at least three hours of CLE in family law annually, meet other requirements established by the local administrative district judge, and file a written statement with the court at least every two years acknowledging their responsibilities. Section 11, Chapter 107, Family Code Sec. 107.006.

**RAPE AND SEXUAL ASSAULT**

**Connecticut:**      *Marital and Cohabiting Couples Rape Exemption Eliminated*

Connecticut eliminated its marital exemption for rape and sexual contact and repealed the statutory provision that also exempted a defendant and alleged victim living in a cohabiting relationship. Connecticut General Statute 53A-70B.

**Michigan:**

The Task Force recommended that the standard criminal jury instructions should be revised to add defense against sexual assault as a situation in which the use of deadly force may be justified. The Michigan Supreme Court held in *People v. Barker*, 437 Mich 161 (1991) that serious bodily harm includes forcible sexual penetration, and that a judge errs if he or she refuses to instruct that deadly force may be used to repel an imminent forcible penetration. The Standard Criminal Jury Instructions, CJI2d 7.15, were amended in 1991 to incorporate this holding.

**Texas: *Polygraphs of Rape/Sexual Assault Complainants Barred***

Requiring that a complainant submit to a polygraph as a condition of charging a defendant with rape or sexual assault is now prohibited. S.B. No. 222, effective September 1, 1995.

***Sexual Assault is a Form of Family Violence***

The statutory definition of “Family Violence” now includes “sexual assault.” Sec. 3; Sections 71.01 (b) (1) - (6) Family Code.

**Utah: *Marital Rape Exemption Eliminated***

The spousal exception in the Utah rape statute was eliminated in 1991.

**SENTENCING AND PRISONS**

**Florida: *The Corrections Equality Act***

The Florida Task Force found that conditions and opportunities for women and girls in Florida’s state prisons and county jails are much inferior to those for men and boys. This led to passage of the Corrections Equality Act which provides in pertinent part:

(3) Women inmates shall have access to programs of education, vocational training, rehabilitation, and substance abuse treatment that are equivalent to those programs which are provided for male inmates. The department shall ensure that women inmates are given opportunities for exercise, recreation, and visitation privileges according to the same standards as those privileges are provided for men. Women inmates shall be given opportunities to participate in work release programs which are comparable to the opportunities provided for male inmates and shall be eligible for early release according to the same standards and procedures under which male inmates are eligible for early release.



(4) An inmate who is pregnant shall be provided with prenatal care and medical treatment for the duration of her pregnancy. The department shall ensure that a pregnant inmate receives supplemental food and clothing and is excused from inappropriate work assignments. An inmate shall be transferred to a hospital outside the prison grounds if a condition develops which is beyond the scope and capabilities of the prison's medical facilities. Florida Statutes Ch. 91-225, Section 29, Effective Oct. 1, 1993, section 944.24.

## **SPOUSAL SUPPORT**

### **Texas:    *Establishment of Spousal Support***

Texas was the only state with no post-divorce alimony. In 1995 alimony was finally authorized, albeit under highly restrictive terms. The parties must have been married for at least ten years; the spouse seeking maintenance must be unable to be self-supporting or caring for a special-needs child; the monthly amount is capped at the lesser of \$2,500 or 20% of the payor's monthly income; and the maximum term is three years unless the payee former spouse is disabled. Maintenance may be awarded in a marriage of less than ten years if the spouse from whom it is sought was convicted of or received deferred adjudication for an act of family violence within two years prior to the date of filing for divorce or while the suit is pending. Family Code, Chapter 8.

## **VALUATION OF HOMEMAKER SERVICES**

### **Rhode Island:    *Valuation of Homemaker Services - Legislation***

Rhode Island amended its statutes for personal injury causes of action and wrongful death to allow the recovery of damages for the loss of homemaker services. The wrongful death statute employs the same or similar language.

In any suit for damages as a result of personal injuries, a homemaker may recover the fair value of homemaker services provided to the home and those living therein. A "homemaker" as used herein is a person who has primary responsibility for the care of a home and a family and who receives no direct monetary compensation for those duties. The fair value of homemaker services shall not be limited to money actually expended to replace the services usually provided by the homemaker. In such a suit, the value of the homemaker services may be shown by expert testimony, but such testimony is not required. Rhode Island General Laws § 9-1-47.

## NEWSLETTERS AND OTHER PUBLICATIONS

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Newsletters and similar periodic publications keep the court and legal communities aware of the Implementation Committee's current activities, a vital means to sustain interest in what must be an ongoing reform effort.

### **Florida:** *Website Access*

The Implementation Committee posted publications dealing with gender bias on the court's website.

### **Massachusetts:** *Updates and Columns*

The Gender Equality Committee publishes a monthly update of its work. Each month, over 100 people receive a summary of events and progress. The "Updates" have proven to be valuable, as readers call to request copies of documents mentioned in the reports, which they would not have known about otherwise.

The Committee worked with the Women's Bar Association to organize a joint bar committee to publish a monthly column on gender issues in the Lawyers Weekly.

### **New York:** *Bulletin*

The New York State Judicial Committee on Women in the Courts publishes a one-page bulletin that brings the court community information about events and programs as well as highlighting important rules, regulations, and statutes.

## PROGRESS ASSESSMENT AND EVALUATION

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Assessing the progress in implementing Task Forces' recommendations, and evaluating the impact of the work of both Task Forces and Implementation Committees in reducing gender bias in the courts is an important component of institutionalization. Some states and other evaluators have limited their investigations to one or the other of these goals, and some have done both.

### STUDIES THAT ASSESS PROGRESS TOWARDS IMPLEMENTATION

**California:**     *“Gender and Justice: Implementing Gender Fairness in the Courts”*  
(1996) [IRD-047]

In 1990 the California Judicial Council approved 68 of the recommendations proposed by the Task Force. In 1996 the Implementation Committee issued a report on the implementation efforts to date which stressed the collaborative approach toward this effort. Implementation has been significantly aided by the State Bar, County domestic violence councils, the California Center on Judicial Education and Research and various Judicial Council Committees. The report summarizes “Highlights of Implementation” in twenty-one areas relating to substantive law, procedures, court conduct and court employment. It also describes several areas for “Future Focus.”

**Michigan:**     *“Report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession”* (1998) [IRD-048]

The Michigan Supreme Court Task Force on Racial/Ethnic and Gender Issues in the Courts issued its report in 1989, with 167 recommendations. In 1997 the Michigan State Bar Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession was mandated to investigate which recommendations had been implemented, which were not yet realized, and to suggest how further progress could be made. The Task Force employed three different data gathering techniques. First, it utilized mailed questionnaires to survey all entities in the legal system which were the subject of the 1989 recommendations. Second, it convened focus groups and conducted personal interviews with individuals who have specialized knowledge and experience in particular areas, including representatives of organizations, such as special purpose bar associations, which were the focus of the 1989 recommendations. Third, it relied on written reports from other states to compare Michigan's progress in implementation to that achieved elsewhere in the country. With respect to the extent of implementation progress in Michigan, the State Bar Task Force found that twenty-four percent (24%) of the recommendations have been fully or substantially implemented; fifty-three percent (53%) were partially implemented; and twenty-three percent (23%) remain unimplemented.

The report begins with a chart titled “Responsibility for Recommendations by Agency” which lists twenty-one “agencies,” (e.g., Supreme Court, Michigan Judicial Institute, Judicial Tenure Commission, attorney general, state bar, Institute of Continuing Legal Education, legislature, law schools) and all 167 recommendations with check marks showing the agency or agencies charged with implementation. This useful model is excerpted in Appendix D.

The State Bar Task Force concluded:

“As many believed, the bench and bar have not yet realized the goals set forth in the 1989 recommendations of the Michigan Supreme Courts Task Forces on Racial/Ethnic and Gender Issues in the Courts. ...[W]hile much has been accomplished, much remains to be done. ...As. . . our most important recommendation, the Task Force urges the creation of a Joint Commission on Diversity Issues and the Michigan Justice System, established by the State Bar of Michigan and Michigan Supreme Court to serve on a permanent basis. This Joint Commission should both monitor and work toward accomplishment of the 1989 recommendations, while also expanding the scope of inquiry into new problem areas of racial, ethnic and gender bias which are identified after investigation. It is our unanimous conclusion that without such a commission, Michigan is unlikely to see continued and coordinated progress.”

**Wisconsin: *Supreme Court Gender Equality Committee -- Final Report (1995)*  
[IRD-049]**

The Wisconsin Gender Equality Committee pursued an elaborate investigation to determine the status of the 145 Task Force recommendations. The Committee conducted its own inquiry and surveyed each member of the original Equal Justice Task Force with respect to the 55 recommendations from the original Task Force Report determined to be within the jurisdiction of the court system. The evaluation assesses the extent to which each recommendation has been implemented as well as the degree of improvement in ameliorating the specific forms of gender bias included in the findings of the Task Force Report. The Gender Equality Committee also drew on responses from agencies and organizations such as the State Bar Association, the Department of Corrections and local governments to assess the implementation status of the ninety recommendations not under the administrative authority of the courts, as well as some newer recommendations made since the original Task Force Report was published.

The Gender Equality Committee concluded:

“The court system has implemented in institutional and substantial ways virtually all the recommendations addressed to it by the original Equal Justice Task Force... The Committee is impressed with all that has been accomplished. But this is not to say that the work of ensuring gender fairness is finished. The Committee has made recommendations for more concerted efforts in certain areas. On-going assessment continues to be necessary in any organization, and especially in an organization dedicated to the pursuit of justice. The journey is long and continues. But litigants, lawyers, court employees, and the public have a right to expect gender fairness in the courts of Wisconsin.”

#### STUDIES ASSESSING IMPLEMENTATION PROGRESS AND EVALUATING IMPACT

**New Jersey:** *“Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation Recommendations Implications for Other States” (1989)<sup>21</sup> [IRD-050]*

This evaluation was undertaken by the founding and second directors of the National Judicial Education Program for the National Association of Women Judges. The purpose of this evaluation was to determine the impact of the New Jersey Task Force’s first six years of work in several areas, to make suggestions for the future direction of the Task Force, and to discuss the implications of this Task Force’s experiences for gender bias task forces in other states. The study draws on twenty-five sources of objective and subjective data, including Task Force members’ oral and written reports of their perceptions of progress and problems; reports from the Task Force subcommittees on the implementation of their respective recommendations; a judges survey; meetings with groups of judges and with the Women’s Rights Section of the state bar; a review of the judicial education courses presented by the Task Force or that integrated Task Force materials and concerns, and the participants’ evaluations; a structured telephone survey of battered women’s shelters in fifteen counties; a review of relevant appellate decisions; AOC data on domestic violence and child support; and interviews with the Chief Justice, the Administrative Director of the Courts and a variety of other individuals with knowledge and perspectives of particular relevance to the Task Force.

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<sup>21</sup>Norma Juliet Wikler and Lynn Hecht Schafran, *Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation Recommendations Implications for Other States*. Reprinted in 12 WOMEN’S RTS. L. REP. 313 (1991).

This inquiry was not a conventional social scientific evaluation in which researchers typically assess the success of a project by using quantitative measure of progress made toward goals clearly defined from the outset. Because of the unique endeavor of gender bias Task Forces, such an evaluation model is unsuitable. This was particularly true for New Jersey because its Task Force was the first in the country. The evaluation addressed six questions:

- Did the Task Force Fulfill its Mandate?
- What is the Current Status of the Task Force's Recommendations?
- In What Ways, if any, Did the Task Force's Work Reduce Gender Bias in the Courts in Designated Areas of Concern?
- What Factors Facilitated and What Factors Slowed the Work of the Task Force and the Implementation of its Recommendations?
- What Should be the Future Direction of the Task Force?
- What are the Implications of the New Jersey Task Force's Experience for Gender Bias Task Forces in Other States?

The evaluation concluded:

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

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

**New York:** *“Five Year Report of the New York Judicial Committee on Women in the Court”*<sup>22</sup> (1991) [IRD-051]

*“Appraising Change and Progress a Decade After the Report of the New York Task Force on Women in the Courts”* (1996) [IRD-052]

These detailed reports catalogue in narrative form all the actions taken by the New York Judicial Committee on Women in the Courts and the local committees it established to advance the recommendations of the Task Force and address issues surfaced since the 1986 Task Force report. These reports further address the effects of changing policies and practices. For example, the reports document changes in the courts’ work force, with women being integrated into the higher grades of the nonjudicial work force, assuming better paid and more prestigious positions within the court system and moving into the ranks of important civil service titles in significant numbers. The reports cover education for judicial and nonjudicial personnel and the public; conditions for women litigants in domestic violence, sexual assault, matrimonial and child support cases; the status of women attorneys and court employees; language and institutions such as bar associations.

The Implementation Committee concludes its ten-year report as follows:

“This report sounds a consistent theme: impressive progress alongside persisting problems. Education programs have been put in place, committees have been formed and have issued reports, statutes have been changed, court decisions have clarified laws, gender neutral language has become the norm, and the number of women in the profession, in the judiciary, and in the upper ranks of the courts’ nonjudicial personnel has increased -- yet women in courthouses and the court system may still find obstacles to the pursuit of their legal claims, careers, and profession that men rarely confront.

...Yet keeping judgments consistently free of ‘preconceived notions about sex roles...upon a fair and unswayed appraisal of merit as to each person or situation,’ the standard Chief Judge Lawrence Cooke set when he appointed the Task Force, continues to be our goal. A court system without vestiges of gender bias remains an ideal, but it is an ideal that can -- and must -- guide and inform us as we move into another decade.”

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<sup>22</sup>Reprinted in 19 Fordham Urban L.J. 313 (1992).

## STUDIES EVALUATING THE IMPACT OF TASK FORCE WORK

**New York:** *“The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts”*<sup>23</sup>

This is an independent evaluation undertaken by two Harvard law students as their third-year paper. It tracks the implementation and impact of the Task Force’s recommendations respecting domestic violence in the New York City Courts five years after the report was issued. The evaluators surveyed battered women’s advocates, judges and assistant district attorneys. They also interviewed legislators, bar leaders, judicial screening committee members, members of the Task Force and the Implementation Committee, judicial educators, Victim Services Agency directors, high-ranking police officers and others with relevant expertise. The survey instruments are included in the evaluation, which found that the Task Force’s recommendations with respect to court administration, DAs, the legislature, bar associations and judicial screening committees have not been fully implemented, and concludes: “Our research results indicate that despite significant progress, all of the problems that the Task Force noted in 1986 remain problems to some degree today.”<sup>24</sup>

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<sup>23</sup>Sarah Eaton and Ariella Hyman, *The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts*, 19 FORDHAM URB. L.J. 391 (1992).

<sup>24</sup>In the years subsequent to this report many of these recommendations were implemented, e.g. legislation making domestic violence a factor in custody decisions.



## **VIDEOTAPES**

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Several Implementation Committees produced videotapes for a variety of purposes. Some illustrate the problems documented in the Task Force reports and how they can be ameliorated or eliminated. Some are tutorials for judicial system procedures. Others demonstrate how to integrate gender fairness issues throughout the judicial education curriculum. See referenced sections for full descriptions of each video.

### **COURT INTERACTION**

Connecticut: Videotape and Program Guide: “*Gender and Justice: Approaching the Bench*” (1993) (25 Minutes) [IRD-027]

See: **Education for Judges / Court Interaction**

### **DOMESTIC VIOLENCE**

Family Violence Prevention Fund and California Center for Judicial Education and Research:

“*Making a Difference: Domestic Violence and the Role of the Court*” (1998) (61 Minutes)<sup>25</sup>

Washington: “*Domestic Violence: Challenges and Solutions in Washington*” (1995) (27 Minutes) [IRD-053]

Wisconsin: *Silent Hostage: Victims of Domestic Violence* (1995) (22 Minutes) [IRD-054]

See: **Education for Judges / Domestic Violence**

### **JUDICIAL EDUCATION -- TRAINING THE TRAINERS**

Massachusetts: “*Getting in Form: A Guide to Using the New Abuse Prevention Forms Under M.G.L. 209A*” (1995) (32 Minutes) [IRD-023]

See: **Education for Court Personnel**

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<sup>25</sup>Available from the Family Violence Prevention Fund; See Appendix E for full description and ordering information.

National Association of Women Judges and National Judicial College:

*“Keeping the Blindfold On: Creating a Gender Neutral Court” (1993)  
(45 Minutes) [IRD-026]*

See: **Education for Judges / Overview and Training the Trainers**

**JUDICIAL NOMINATING COMMISSIONS**

Colorado: *Colorado Judicial Nominating Commission: An Overview of the Judicial Selection Process (1997) (25 Minutes) [IRD-034]*

See: **Education for Judicial Nominating Commissions**

**TASK FORCE FINDINGS OVERVIEWS**

Georgia: *“Bias Awareness in the Courts” (1989) (30 Minutes)*

*“Let Justice Be Done” (1997) (40 Minutes) [IRD-032]*

Michigan: *“RESPECT: Women and Minorities in the Legal System” (1991) (28 Minutes)*

New Jersey: *“Women and the Law: Changing Roles, Changing Attitudes” (1984)  
(30 Minutes) [IRD-033]*

See: **Education for Judges / Task Force Findings Overview**

**WOMEN LAWYERS**

Georgia: *“Bias Awareness in the Courts” (1989) (30 Minutes)*

See: **Education for Judges**

Maryland: Videotape and Discussion Guide: *“In Her Own Image: Women in Law - A Maryland Perspective” (1991) (30 Minutes) [IRD-040]*

See: **Education for Public**

New Jersey: *“A Day in the Life of a Female Attorney” (1995) (33 Minutes) [IRD-037]*

See: **Education for Lawyers**

**Gender Fairness Strategies:  
*Implementation Resources Directory***

**SUBSTANTIVE LAW**

## CHILD ABUSE AND NEGLECT

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### **Texas:**    *Expedited Hearings*

Extensive new legislation requiring *inter alia*, expedited hearings and appeals for child abuse cases, requiring joint agency investigations, establishing review teams, establishing criteria for removal of alleged perpetrator from the child's home. Section 4. Subchapter B, Chapter 262, Family Code, Sec. 262.1015.

### *Child Care Advocacy Center*

Established Children's Advocacy Centers to develop an interagency approach to investigating child abuse, to maximally reduce the number of interviews required of a child, and to develop and maintain an environment that emphasizes the best interests of the child and provides investigatory and rehabilitative services. Section 1, Chapter 264, Family Code, Subchapter E. Children's Advocacy Centers.

### *Fatality Reviews*

Established procedures for child fatality review and investigation. Section 2, Chapter 264, Family Code, Subchapter F. Child Fatality Review and Investigation.

### **Wisconsin:**    *Failure to Prevent Child Abuse*

The Task Force recommended that the Criminal Jury Instructions Committee draft an instruction to use in Failure to Act to Prevent Child Abuse cases requiring the prosecutor to prove that the defendant was physically and emotionally capable of taking action to prevent the abuse. The purpose is to encourage proper implementation of the Failure to Act to Prevent Child Abuse Statute so there is no gender stereotyping of parental ability to act. In particular, women should not be charged in cases in which similarly-situated men would not be charged. In 1993 the Criminal Jury Instructions Committee approved and disseminated 2108.1 Wis.JI-Criminal which clearly recites the need to prove the defendant was physically and emotionally capable of taking action. Instructions Committee staff indicate that judges are grappling with the definition of "capable," but feel that issue will best be addressed in a particular criminal case.

## CHILD SUPPORT

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### **California:**     *Statewide Uniform Child Support Guidelines*

California adopted a statewide uniform child support guideline. with twelve principles for their implementation that “place the interest of children as the state’s top priority” and call for periodic review of the guidelines by the Judicial Council in consultation with a broad cross-section of groups involved in child support issues. The review must incorporate data about the cost of raising children; analyze case data on the actual application of the guidelines; and analyze guidelines and studies from other states to insure appropriate child support orders and limit deviations from the guidelines. Family Code, Sec. 4054.

### **Connecticut:**     *Permanent Support for a Special-Needs Child*

With respect to child support for children older than eighteen, the law was amended to provide that “The court, upon motion, may order the parents of a child of the marriage, which child is eighteen years of age or older, to maintain the child upon a showing that the child suffers from a physical or mental disability or serious emotional maladjustment.” The amendment also provides for health insurance to be maintained for such a child. Public Act 97-321.

### **New York:**     *Data on Child Support Cases*

The Task Force suggested that court administrators gather data that would help in monitoring child support awards. Legislation now mandates collection of this kind of data. Under the Child Support Standards Act, the Chief Administrator of the New York Courts must report annually to the Governor and the Legislature statistics on all cases in which awards are made pursuant to the Act. Included must be figures on 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. Having this data in computers not only helps the courts meet their statutory reporting mandate, but creates a database about support awards that can be used to retrieve different kinds of information, as the need develops. N.Y. FAM. CT. ACT § 216(5) (McKinney Supp. 1991).

### **Utah:**     *Child Support Guidelines Increased*

The 1994 Amendments to the Child Support Guidelines addressed several of the Task Force’s concerns. The recommended level of child support was increased by 10 to 15 percent and each party’s benefits are to be taken into consideration in determining responsibility for medical expenses. The amendments also set minimum income and subsistence levels and allow for an accounting of expenditures by the custodial parent.

The 1994 amendments did not address other Task Force concerns, however, such as the proposal to increase child support for older children to reflect their increased expenses.

**Wisconsin:**    *Child Support Formula for “Shared Time” Payors*

The Task Force recommended that the standards applicable to “shared time” payors of whichever gender should be re-examined to determine whether an appropriate amount of relief is provided to those who have physical placement of their dependent child(ren) more than 109 overnights per year and whether those who do not exercise their right to periods of physical placement of the children should be required to pay more than the existing standard. The Health and Social Services Rule 80 promulgated March 1, 1995 provides a formula that may be utilized for child support for “shared time” payors. This option may provide more relief to the payors than the previously existing standards by considering the incomes of both parents.

*Collecting Child Support from Parents who are Self-Employed or on Commission*

To insure payment of child support by those of whichever gender who are self-employed and who are paid by commission, 1994 Wisconsin Act 481 provides for the use of deposit accounts, especially for self-employed payors.

## CIVIL DAMAGES

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### **Rhode Island:**    *Valuation of Homemaker Services - Legislation*

Rhode Island amended its statutes for personal injury causes of action and wrongful death to allow the recovery of damages for the loss of homemaker services. The wrongful death statute employs the same or similar language.

In any suit for damages as a result of personal injuries, a homemaker may recover the fair value of homemaker services provided to the home and those living therein. A "homemaker" as used herein is a person who has primary responsibility for the care of a home and a family and who receives no direct monetary compensation for those duties. The fair value of homemaker services shall not be limited to money actually expended to replace the services usually provided by the homemaker. In such a suit, the value of the homemaker services may be shown by expert testimony, but such testimony is not required.

Rhode Island General Laws § 9-1-47.

### **Wisconsin:**    *Valuation of Homemaker Services - Jury Instructions*

Wisconsin amended its jury instructions to establish that non-market services in the household are subject to economic valuation in personal injury and wrongful death cases.

## COURT INTERACTION

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**New Jersey: Videotape: *A Day in the Life of a Female Attorney (1995) (33 minutes)*  
[IRD-037]**

The video depicts five vignettes, including an initial client intake interview, work allocation between two associates, intra-gender bias between a woman associate and a woman secretary, contact between adversaries and court personnel, and the court room. In the five scenes a white male partner and two associates with equivalent experience - one a black female associate and the other a white male - work on a TRO for a white male client against a white female adversary. In the law firm scenes, the male partner and associate patronize the female associate, ask her for coffee, make her the researcher for the team and constantly interrupt her, even though she is the only one asking the client pertinent questions. A female secretary refuses to stay late for the female associate but does so for the male associate. The male associates denigrate the female adversary as intransigent and the male partner telephones her to insist that the case must belong to a senior male partner at her firm. In the courtroom, before a white male judge the male associate accuses the adversary of sexual misconduct with a male witness. The judge (who in real life was a member of the New Jersey Supreme Court Task Force on Women in the Courts) announces that he will lodge a formal complaint about the male associate's conduct with the attorney disciplinary board.

The videotape is used as part of a one-hour presentation during which a facilitator or facilitators introduce the program, show each vignette and then between vignettes pose questions concerning the issues involved to stimulate audience involvement. The backbone of the program is the dialogue among attendees, and their shared impressions and experiences.

The video has been presented to a wide variety of state, county and specialty bar associations and at law schools. The evaluations and feedback have been extremely favorable.



## CUSTODY AND VISITATION

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Task Forces found that custody is an area in which gender-based stereotypes disadvantage both men and women, reflecting deeply embedded beliefs about the sexual division of the private and public spheres. Many judges, domestic relations commissioners, family services officers and custody evaluators have difficulty accepting men as primary caretakers or able to care for infants. These decision makers also disapprove of women working outside the home or having sexual relationships outside marriage, and hold women to a higher standard of parenting than men. A critical problem in custody and visitation cases is the significant indifference to spousal abuse. There is a widespread failure to understand that children in violent homes are secondary victims who suffer serious psychological and physical illnesses, even when not physically attacked themselves. Task Forces made numerous recommendations for required education about these issues for all those with decision-making responsibilities about custody and visitation, which many states have implemented.

### LEGISLATION

#### **California and New York: *Domestic Violence as a Factor in Custody and Visitation Decisions***

California and New York are among the states which, at the behest of their Task Forces and Implementation Committees, adopted legislation or court rules requiring that abuse of a spouse be a factor in the determination of child custody. Some of these provisions create a presumption that batterers shall not be awarded sole or joint custody or unsupervised visitation. California Family Code § 3011; New York Domestic Relations Law § 240.

#### **California: *Domestic Violence Training for Custody Investigators***

Domestic violence training is required for all court appointed persons who evaluate or investigate child custody matters. California Family Code § 3111.

#### ***Visitation where Domestic Violence is an Issue***

(C) **[Ensuring Safety]** Whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members.

(D) **[Protecting Address Confidentiality]** Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location. California Family Code § 3100.

*Standards for Supervised Visitation Providers*

The Judicial Council is directed to develop standards for supervised visitation providers which shall consider "Orientation to and guidelines for cases in which there is an allegation of domestic violence, child abuse, substance abuse or special circumstances. California Family Code § 3200.

*The standards developed by the Judicial Council require providers to have training in, inter alia,*

"Cultural sensitivity . . . child abuse, sexual abuse, and domestic violence" and to obtain during the intake process "a report of any written records of allegations of domestic violence or abuse..."  
Standards of Judicial Administration § 26.2.

***Court Encouraged to Ascertain Existence of Restraining Order when Making Custody/Visitation Determination and to Limit or Deny Visitation when an Order is on File.***

The court is encouraged when considering custody or visitation to make a "reasonable effort" to ascertain whether any restraining order concerning the parents or child is on file, and if so, not to make a custody or visitation order that is inconsistent with the restraining order. When custody or visitation is awarded in a case where domestic violence is alleged or a restraining order is in force, the award shall detail the times and terms of transfer to maximize everyone's safety. Consideration should be given to requiring supervised visitation. There are circumstances in which a temporary custody order denying all visitation is appropriate to preserve safety. California Family Code § 3031 and § 6323.

## EDUCATION FOR JUDGES AND COURT PERSONNEL

### **National Association of Women Judges:**

#### *Judicial Training Materials on Child Custody and Visitation (1991)*

This State Justice Institute-funded curriculum utilizes role plays, hypotheticals, small group discussions, and self-tests to explore rationales for custody/visitation determinations that advance the best interests of the child, avoid gender-based stereotypes and recognize the serious impact of domestic violence on children, even when they are not themselves physically abused.

### **National Judicial Education Program:**

#### *“Adjudicating Allegations of Child Sexual Abuse when Custody is in Dispute” (1996)*

This day-and-a-half curriculum, funded by the State Justice Institute, provides guidance to judges about one of the most vexing questions facing them today: how to evaluate allegations of child sexual abuse in custody and visitation disputes. The curriculum was developed by leading experts in the fields of law, psychology and child witnesses to promote the fair administration of justice by improving courts’ ability to assess child sexual abuse allegations in the particular context of custody/visitation disputes, and to make decisions about custody and visitation in these cases that reflect the best interests of the child. A full description of the curriculum is in Appendix E.<sup>1</sup>

### **Family Violence Prevention Fund:**

#### *“Domestic Violence and Children: Resolving Custody and Visitation Disputes” (1995)*

This 200 page SJI-funded curriculum is designed to assist judicial educators in conducting an 8-hour judicial education program on the resolution of custody and visitation cases involving domestic violence. The curriculum covers:

- Special challenges facing the court in the resolution of child custody cases involving domestic violence;
- Leading statute and case law governing the court’s handling of domestic violence cases;

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<sup>1</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix E for flyer with full description and address.

- Evidentiary issues arising in domestic violence custody and visitation cases;
- Court practices and procedures when issuing custody orders in cases involving domestic violence;
- Enforcement of custody and visitation orders;
- Using mediation, evaluation and special masters in the resolution of custody disputes;
- Interstate and international custody issues, relocating and child-snatching.<sup>2</sup>

Massachusetts:            ***“Domestic Violence: Improving the Courts’ Response”***  
  ***(1994 and 1995)***            **[IRD-029]**

This two-day curriculum comprises:

- Faculty materials
- Program materials
- Readings and resource materials

The curriculum has seven objectives:

1. To sensitize participants to the nature of domestic violence and the impact of abuse on the victim and children.
2. To improve participants’ knowledge of the law, standards of practice and procedures in domestic violence cases.
3. To improve communication among court personnel who come in contact with abuse and protection cases.
4. To increase awareness of the network of resources available in the community.
5. To assist participants to develop plans to implement standards and/or improve court procedures in domestic violence cases.
6. To encourage participants to develop a strategy for involving others in their court in improving procedures in domestic violence cases.
7. To improve communication between different court departments that handle domestic violence cases.

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<sup>2</sup>Family Violence Prevention Fund; Item #007; \$50 each. See Appendix E for address.

The curriculum includes expert presentations on issues such as the impact on children who witness domestic violence and the implications for custody and visitation determination, including domestic violence visitation risk assessment and a Visitation Issues Form. The 1995 curriculum includes materials on batterers intervention programs and a checklist for a Danger Assessment of Batterers.

Participants also watch and critique a series of videotapes of a domestic violence case moving through the first *ex parte* hearing, the second *ex parte* hearing, the first full hearing, and the second full hearing. The worksheets call for assessments of court personnel's behavior in terms of Positive Behaviors, Negative Behaviors and Suggestions for Change. A second set of worksheets explores conflicts between the District Court Order and the Probate Court Order.

Two structured sessions and detailed worksheets are devoted to Action Planning specific to each participant's court to:

- a. identify high priority needs to improve the court's response to domestic violence cases;
- b. develop an action plan for accomplishing your top priority goal;
- c. establish concrete steps as follow-up to this training.

## **INVESTIGATOR AND MEDIATOR TRAINING**

### **California:    *Domestic Violence Training for Custody Investigators***

Domestic violence training is required for all court appointed persons who evaluate or investigate child custody matters. Family Code § 3111.

### ***Domestic Violence Training for Custody Mediators***

Mediators in family law cases must be knowledgeable about the effects of domestic violence on children to qualify to be hired and must participate in programs of continuing instruction in all aspects of domestic violence. California Family Code § 1815 and § 1816.

Mediation of contested custody and visitation cases in which domestic violence is a factor shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council. California Family Code § 3170.

***Uniform Standard of Practice for Court - Connected Mediation of Child Custody and Visitation Disputes***

These Judicial Administration Standards provide *inter alia* that mediators “should be knowledgeable about their own biases and be sensitive to individual, gender, racial, ethnic, and cultural values and differences” and that “in order to maintain a neutral stance the mediator should understand and be sensitive to differences including gender biases and ethnic and cultural diversity.” Judicial Administration Standards Section 26.

**GUARDIANS AD LITEM TRAINING**

**Texas:     *Qualifications for Guardians Ad Litem***

*Guardians ad litem* must complete the State Bar training on family law and the responsibilities of ad litem, complete at least three hours of CLE in family law annually, meet other requirements established by the local administrative district judge, and file a written statement with the court at least every two years acknowledging their responsibilities. Section 11, Chapter 107, Family Code Sec. 107.006.

**SUPERVISED VISITATION CENTERS**

**Rhode Island:     *Title IV-D Funds for Supervised Visitation Centers for Non-custodial Parents***

At the initiative of the Implementation Committee the Family Court succeeded in being designated the administering agency for federal Title IV-D funds earmarked for the development of supervised visitation centers. As a result, the Family Court is eligible to receive \$50,000 for program development this fiscal year. The committee became aware of the availability of federal funds for this purpose after reviewing the 1996 report of the Massachusetts Gender Equality Advisory Board. The committee decided to focus on this issue because of the present lack of such centers in the state and the impact this has on both custodial (usually mothers) and non-custodial parents.

## **DIVORCE**

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### **California:    *Judicial Education in Family Law***

By statute, the Judicial Council must establish training programs for judges, referees, commissioners, mediators and others who hear family law matters. Government Code §6:553.

*The Standard of Judicial Administration respecting this training reads:*

(A) [Comprehensive Curriculum] The Center for Judicial Education and Research (CJER) shall provide a comprehensive educational curriculum for judicial officers who hear family law matters. This curriculum should include instruction in California law and procedure relevant to family matters, the effects of gender on family law proceedings, the economic effects of dissolution, and interdisciplinary subjects relating to family court matters, including but not limited to child development, substance abuse, sexual abuse of children, domestic violence, child abuse and neglect, juvenile justice, adoption, and the social service and mental health systems. It should include videotaped presentations and written materials which can be provided for local court use.

Adopted Jan 1, 1992.

(B) [Periodic Updates] CJER should also conduct a periodic educational program that provides an update on new developments, innovative court practices, and fair and efficient procedures in family law.

Adopted Jan 1, 1992.

### **Massachusetts:    *Achieving Equity: Recommendations for Dispute Intervention Practice in the Probate and Family Court (1995)*        [IRD-055]**

This fifty-five page report addresses the use of probation officers to resolve family law disputes and the need for careful training of these officers to deal with gender bias in the dispute intervention process. The report focuses on:

- Cases Involving Violence
- Cases Involving Care and Custody of Children
- Cases Involving Paternity Actions
- Cases Involving Financial Issues Including Financial Statements, Alimony and Division of Assets and Child Support

**Brochure: *Dispute Intervention in the Family Service Office* [IRD-056]**

This brochure for parties explains what the Family Service Office does with respect to investigation and dispute intervention. The brochure explains what the safety precautions are when one party has abused the other.

**Brochure: *Attorney's Fees in the Probate and Family Court: Supplemental Rule 406* [IRD-020]**

After successfully advocating for a new Probate Court rule creating a presumption that attorney's and expert fees shall be awarded *pendente lite* to an economically dependent spouse to either prosecute or defend family law complaints, the Gender Equality Committee published a brochure for attorneys and others presenting the rule and a sample pleading.

**Rhode Island: *Development of a Client's Statement of Rights and Responsibilities* [IRD-057]**

In March 1995 the Implementation Committee was contacted by two members of the Legislature concerned about complaints from female constituents regarding their treatment by attorneys in domestic relations cases. To address this problem they urged the committee to establish a client's statement of rights for Rhode Island comparable to the client's bill of rights adopted by the New York Court of Appeals. Working with representatives of the bar, the committee developed a proposed statement of rights for clients. The proposed statement applies to all areas of practice, whereas New York's version is intended only for matrimonial clients. Also, it includes a statement of a client's responsibilities, which the committee felt was very important for promoting better communication between attorneys and clients. The implementation plan that the committee has proposed involves several changes to the Rules of Professional Conduct for attorneys, including a change that would mandate written fee agreements, interim billings, and consultation with new clients on the client's statement of rights and responsibilities. The Supreme Court is currently considering this proposal.

**Texas: *Establishment of Spousal Support***

Texas was the only state with no post-divorce alimony. In 1995 alimony was finally authorized, albeit under highly restrictive terms. The parties must have been married for at least ten years; the spouse seeking maintenance must be unable to be self-supporting or caring for a special-needs child; the monthly amount is capped at the lesser of \$2,500 or 20% of the payor's monthly income; and the maximum term is three years unless the payee former spouse is disabled. Maintenance may be awarded



in a marriage of less than ten years if the spouse from whom it is sought was convicted of or received deferred adjudication for an act of family violence within two years prior to the date of filing for divorce or while the suit is pending. Family Code, Chapter 8.

**Utah:**     *Court Costs and Attorneys Fees Awards*

HB 146 authorizes the awarding of court costs and attorneys fees to the prevailing party in paternity actions and actions to enforce orders of custody, visitation, child support, alimony, or division of property. It also provides that attorney and witness fees can be awarded in advance of final judgment to allow a party to prosecute or defend an action.

*See also* **Child Abuse and Neglect, Child Support, Custody and Domestic Violence.**

## DOMESTIC VIOLENCE

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The Task Forces found that domestic violence is an area in which women experience significant bias, despite major statutory reforms to provide them with civil and criminal protections. Many judicial and nonjudicial officers ask what women do to provoke violence and why they stay with their batterers, instead of asking why men batter and why it is so difficult and dangerous for women to leave. There is little understanding of the terrible impact of spousal abuse on children. The Task Forces made numerous recommendations to address these problems, stressing the need for ongoing education for all judicial and non-judicial court personnel with any type of responsibility for these cases. They also urged interagency cooperation to address this grave community problem. As the projects, education programs, legislation and videotapes described below demonstrate, Implementation Committees and others have worked in many creative ways to advance these recommendations.

### COMMUNITY OUTREACH

**Georgia:**     *“A Handbook for Establishing a Community Task Force on Family Violence in Each Judicial Circuit Pursuant to O.C.G.A. § 19-13-31”*  
[IRD-058]

On the recommendation of the Georgia Gender and Justice Committee, the Georgia General Assembly passed legislation creating a State Commission on Family Violence. The Commission was charged with creating:

“...a comprehensive Handbook that will be divided into different sections which will include: (1) a suggested model for establishing a Community Task Force on Family Violence in your local area; (2) a statewide analysis of the availability and accessibility of services to victims and perpetrators of family violence; (3) protocols for criminal justice practitioners as well as social service and health care providers; (4) training materials for civic groups and professional organizations that work with family violence issues; and (5) a progressive legislative agenda that is designed to address more effectively the statutory needs of victims and perpetrators. The end product of our combined efforts then will be the creation of a working Handbook that can be used by community leaders to initiate a systematic response to family violence in local communities.”

**Massachusetts: Booklet: “Opening Doors: Model Projects Providing Advocacy to Victims of Domestic Violence Seeking Relief in Eastern Massachusetts” [IRD-059]**

The goal of this booklet is to inspire members of the Massachusetts courts and legal and advocacy groups to adopt programs to offer *pro bono* advocacy to victims of domestic violence. Examples of some of the various types of programs currently providing victims of domestic violence with legal and/or advocacy assistance are cited as models. Each entry provides information including: program origins and time frame involved, funding, description of participants, the commitment required of them, and the training and support available for them as well as client eligibility guidelines.

**Washington: Domestic Violence Summit [IRD-060 through IRD-063]**

In June 1995, the Gender and Justice Commission agreed to coordinate the first statewide Domestic Violence Summit. Working with the Chief Justice and Attorney General, the Commission brought together state judicial, legislative and executive branch leaders to undertake a comprehensive review of Washington State’s response to domestic violence and develop action plans for improvements. The Commission conducted a survey of domestic violence service providers and interviewed forty-one representatives of the court system, law enforcement, victims services, treatment providers, victims and offenders across the state and produced a videotape: *Domestic Violence: Challenges and Solutions in Washington State*. (See Videotapes).

The materials available from this Summit are:

- [IRD-060] *Domestic Violence Summit 1995*
- [IRD-061] *Domestic Violence Summit Supplemental Reading Materials 1995*
- [IRD-062] *Domestic Violence Summit Final Report 1995*
- [IRD-063] *Domestic Violence Summit I Action Plan Status Report 1996*

The Commission monitored the action plans developed by Summit participants and published the *Domestic Violence Summit: Action Plan Status Report, 1996*. Actions completed include: establishment of an Executive Branch Work Group to propose workplace and personnel policies regarding domestic violence for Washington State as an employer; introduction of legislation to make domestic violence an aggravating circumstance justifying an exceptional sentence; establishment of a Washington Association of Sheriffs and Police Bureau in the Seattle Police Department and Municipal Court; presentation of a three hour domestic violence education program at the District and Municipal Court Judges’ Association Spring Conference; and development of a middle school education program which includes a mock domestic violence trial.

The Commission took the model of the state summit and adapted it for use at the county level. In September 1996, the Commission worked with community leaders to facilitate the Benton/Franklin Counties Model Domestic Violence Summit. The focus of the eight hour conference was to improve local awareness of domestic violence; coordination of available services; and access to the legal system.

Meanwhile, the Commission was working with the Supreme Court, the Office of the Governor and the Office of the Attorney General to implement the Domestic Violence Summit II, December 1996. This effort focuses on positive changes in Washington State's response to domestic violence and ways for state leaders to move forward on state, organizational and community levels.

In 1997-98 the Commission is assisting two more counties in conducting local domestic violence summits.

### **CRIME VICTIMS COMPENSATION**

#### **Michigan:     *Crime Victims Compensation for Cohabitant Victim***

The Task Force urged that the Crime Victims Compensation Act be amended to allow payments to victims residing in the same household as the assailant because victims of abusive partners may be too intimidated to file civil suits or the abuser may be indigent, making such a suit meaningless. The statutory language prohibiting payments to crime victims who are members of the same household as the assailant was eliminated in 1990. MCL 18, 354(2); MSA 3.372(4).

### **EDUCATION FOR JUDGES AND COURT PERSONNEL**

#### **Family Violence Prevention Fund and California Center for Judicial Education and Research:**

**Videotape:**     *“Making a Difference: Domestic Violence and the Role of the Court” (1998) (61 Minutes)*<sup>3</sup>

This video, developed jointly with the California Center for Judicial Education and Research, explores five characteristics of domestic violence and their relevance to judicial functions.

1. Domestic violence is learned behavior.
2. Domestic violence typically involves repetitive behavior encompassing different types of abuse.

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<sup>3</sup>Available from the Family Violence Prevention Fund; \$15 for the video only; \$45 for the video and manual set. See Appendix E for address.

3. The batterer, not substance abuse, the victim, or the relationship causes domestic violence.
4. Danger to the victim and children is likely to increase at the time of separation.
5. The victim's behavior is often a way of ensuring survival.

The film is introduced by a judge who comments on judges' critical role in ending domestic violence and provides basic information about the issue. Then there are five vignettes of a white, middle-class family with one child, each illustrating one of these characteristics. After each vignette, three national experts comment on the characteristic illustrated. Then five judges discuss how their knowledge of the characteristic has informed their legal decisions, their discretionary calls and their courtroom admonishments. After each of these panels there is a "What a Judge Can Do" feature, with the discussants' key points presented in headline form.

**Massachusetts: "Domestic Violence: Improving the Courts' Response" (1994 and 1995)  
[IRD-029]**

This two-day curriculum for judges and court personnel comprises:

- Faculty materials
- Program materials
- Readings and resource materials

The curriculum has seven objectives:

1. To sensitize participants to the nature of domestic violence and the impact of abuse on the victim and children.
2. To improve participants' knowledge of the law, standards of practice and procedures in domestic violence cases.
3. To improve communication among court personnel who come in contact with abuse and protection cases.
4. To increase awareness of the network of resources available in the community.
5. To assist participants to develop plans to implement standards and/or improve court procedures in domestic violence cases.

6. To encourage participants to develop a strategy for involving others in their court in improving procedures in domestic violence cases.

7. To improve communication between different court departments that handle domestic violence cases.

The curriculum includes expert presentations on issues such as the impact on children who witness domestic violence and the implications for custody and visitation determinations, including domestic violence visitation risk assessment and a Visitation Issues Form. The 1995 curriculum includes materials on batterer's intervention programs and a checklist for a Danger Assessment of Batterers.

Participants also watch and critique a series of videotapes of a domestic violence case moving through the first *ex parte* hearing, the second *ex parte* hearing, the first full hearing, and the second full hearing. The worksheets call for assessments of court personnel's behavior in terms of Positive Behaviors, Negative Behaviors and Suggestions for Change. A second set of worksheets explores conflicts between the District Court Order and the Probate Court Order.

Two structured sessions and detailed worksheets are devoted to Action Planning specific to each participant's court to:

- a. identify high priority needs to improve the court's response to domestic violence cases;
- b. develop an action plan for accomplishing each participant's priority goal; and
- c. establish concrete steps as follow-up to this training.

***“Guidelines for Judicial Practice Abuse Prevention Proceedings” [IRD-022]***

At the urging of the Gender Equality Committee these comprehensive Guidelines were issued to assist judges and court personnel in addressing the many complex and sensitive issues that arise in the course of abuse prevention proceedings. The goal of these Guidelines is twofold: 1) to promote the safety of those who seek abuse prevention orders and 2) to ensure the due process of rights of those against whom these orders are sought. The Guidelines provide detailed commentary on due process considerations, the court's relationship with local advocacy groups, interpreters, filing of complaints, *ex parte* hearings, *ex parte* orders, full hearings, “permanent” orders, appeal, enforcement of orders, criminal proceedings, civil contempt, other court proceedings related to abuse prevention proceedings, emergency response and related

probate and family court matters (in particular custody and visitation). These Guidelines are periodically updated by the Administrative Office of the Trial Court.

**Videotape:** *“Getting in Form: A Guide to Using the New Abuse Prevention Forms Under M.G.L. 209A” (1995) (32 Minutes) [IRD-023]*

This video shows court personnel how to guide a plaintiff in filling out Massachusetts’ Abuse Prevention Forms. The goal is to enhance public safety, due process, fairness, completeness and accuracy in order to provide the information a judge needs to shape an order. A particular feature of these forms is their focus on developing detailed information about children in the plaintiffs home and providing an address impoundment form to be kept separately in order to preserve the confidentiality of the plaintiff’s address.

The video first presents a narrator explaining the forms, then a court clerk assisting a woman with filling out the forms. This is followed by a closer look at the forms focusing on issues such as a new law requiring surrender of firearms. There is a second scene of the woman filling out the forms. Then the narrator explains what to do with the completed forms, reviews their order for completeness and tells how to serve them.

#### **EDUCATION FOR LAW ENFORCEMENT**

**Utah:** *Domestic Violence Training for Law Enforcement Agencies*

After the Task Force’s recommendations resulted in significant new domestic violence legislation in 1991, the Division of Family Services of the Department of Human Services framed model law enforcement protocols which were distributed to all law enforcement agencies throughout the state. These were used as the basis of training intended to improve the response to domestic violence complaints and treat them as a criminal matter not a family matter. The new domestic violence legislation adopted in 1995 generated a new cycle of training to bring officers up to speed.

#### **EDUCATION FOR LAWYERS**

**New York:** *Domestic Violence and Women’s Credibility CLE*

The Implementation Committee developed a program titled “Fair or Foul? The Limits of Trial Advocacy in a Domestic Violence Case” for presentation at bar associations that was very successful. It involves portions of a mock trial of a man accused of assaulting the woman with whom he was living. The unscripted direct cross-examination of the complainant was conducted by well-known prosecutors and defense attorneys in the community, followed by discussion with the audience.

## LEGISLATION

### **California: *Required Domestic Violence Training Program for Decision Makers***

The Judicial Council shall establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council. The training programs shall include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. The training programs shall include instruction in all aspects of domestic violence. Government Code § 68555.

### ***Support Person for Victim of Domestic Violence***

An individual alleging domestic violence may choose anyone as a support person. The court shall permit the support person to attend a protective order hearing or other domestic violence proceeding and to sit at counsel table if petitioner has no attorney. If a court has issued a protective order a support person shall be permitted to attend any mediation session but may not act as a legal advocate or be disruptive. Family Code § 6303.

### ***Conditions for Issuance of Mutual Restraining Orders***

The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Family Code § 6305.

### ***Batterer's Program Procedures and Requirements***

This legislation abolishes diversion and requires participation in a batterer's treatment program for at least one year. The statute provides detailed standards for the type of batterer's program to which the court or probation department may refer a domestic violence offender granted probation and the type of investigation the probation department must make of the offender. The legislation also addresses conditions of probation restrictions, payments to a battered women's shelter in lieu of a fine and community service. Family Code § 1203.097.



### ***Court Interpreters in Domestic Violence Proceedings***

Requires that a court interpreter be present when party does not proficiently speak or understand English but makes exceptions for domestic violence cases where the necessity for the order outweighs the necessity of an interpreter. Evidence Code §755.

### **Michigan: *Crime Victims Compensation for Cohabitant Victim***

The Task Force urged that the Crime Victims Compensation Act be amended to allow payments to victims residing in the same household as the assailant because victims of abusive partners may be too intimidated to file civil suits or the abuser may be indigent, making such a suit meaningless. The statutory language prohibiting payments to crime victims who are members of the same household as the assailant was eliminated in 1990. MCL 18, 354(2); MSA 3.372(4).

### **Texas: *Sexual Assault is a Form of Family Violence***

Adds “sexual assault” to statutory definition of “Family Violence” Sec. 3; Sections 71.01 (b) (1) - (6) Family Code.

### ***Divorce Suits Must State Whether Protection Order Ever Issued Between Parties***

Requires suits for divorce or annulment to state whether a protective order is in effect or applied for, and to attach to the petition any order of protection issued between these two parties. SECTION 1. Subchapter c, Sec. 3.522 Chapter 3, Family Code.

### ***Bars Filing Fees for Protection Order Applicants: Assesses Attorney’s Fees Against Non-Indigent Batterer***

Bars charging protective order applicant a fee to file, serve, enter, dismiss, modify or withdraw the order. Assesses a filing fee against the non-indigent respondent and reasonable attorney’s fee against party found to have committed family violence. Section 5, Ch. 71, Family Code, Sec. 71.041.

**Wisconsin** adopted a similar law. Wisconsin 1993 Act 319, Section 814.710(1).

### ***Law Enforcement to Protect Petitioner When Respondent is to be Excluded from House***

Requires court to provide a written order to law enforcement to accompany and protect the petitioner when respondent is to be excluded from the family home. Section 18, Section 71.18, Family Code.

### ***Magistrates May Issue Emergency Protection Orders***

Authorizes Magistrates to issue emergency orders of protection. Section 1, Chapter 17, Code of Criminal Procedure, Art. 17.292.

### ***Bars Handgun Transfer to Person Known to be Subject of Protective Order***

Creates the offense of transferring a handgun to a person known to be the subject of an active protective order. Section 1, Subsection (B) (5), Section 46-06, Penal Code.

### ***Misdemeanors Elevated to Felonies Under Certain Circumstances***

Certain assaults that would be Class A misdemeanors become state jail felonies if it is shown at trial that the offense was committed against a family member and that the defendant was previously convicted of the same type of offense against a family member at least twice. Section 1. Section 22.01 (b) Penal Code. Violating a protective order also becomes a state jail felony under similar circumstances. Section 1, Section 25-07 (Cg), Penal Code.

### ***Notice to Victim When Batterer is Bailed or Released***

Before releasing an individual arrested for family violence on bail or releasing a convicted batterer from incarceration, the agency or entity holding the person must make a reasonable attempt to give personal notice of the imminent release to the victim. Section 1, Art. 17.29 Code / Criminal Procedure and Section 2, Chapter 42, Art. 42.21 Code of Criminal Procedure.

## **Utah:**

### ***Cohabitant Abuse Act Amendments 1991 and 1995***

- Expedites the process for obtaining protective orders. District and Circuit Courts must have protective order request forms available at all times; forms must be easy to understand and uniform throughout the state; court clerk must assist in filling out the forms and filing the petition. Other amendments provide for mandatory arrest when probable cause is found, permit judges to defer sentencing while batterer is in a treatment program and provide funding for treatment programs.
- Severely limits the use of mutual protective orders (where both victim and abuser are prohibited from contacting one another) and gives the court power to order counseling for the abuser as part of the protective order.

**Wisconsin: *Ban on “Prompt Complaint” Rule for Temporary Restraining Order***

Responding to the tendency of some judges and family court commissioners to condition Temporary Restraining Orders on how quickly after the alleged assault the victim came to court, Wisconsin adopted new legislation stating: “In determining whether to issue a temporary restraining order, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct by the respondent *but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended.* (Emphasis supplied.) (WIS. STAT. ANN. §813.12(3)(a)(2) (West, WESTLAW through 1997 Act 67).)

***Admission of Batterer to Home from which Order Excluded Him or Her Does Not Void Order***

It often happens that when a domestic violence victim obtains a restraining order excluding respondent from her home, then admits him on his plea to see the children or apologize, the court treats the order as void. Wisconsin law now prohibits this explicitly. The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. 1993 Wisconsin Act 319, Section 813.12 (3) (e). An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid. 1993 Wisconsin Act 319, Section 813.12 (4)(C)1.

***Domestic Violence Advocates at Hearings***

After adopting legislation authorizing domestic violence advocates to attend hearings with victims, 1991 Wisconsin Act 276, Wisconsin provided training for judges and commissioners on this change.

**LEGISLATION ON DOMESTIC VIOLENCE AND CUSTODY**

**California and New York: *Domestic Violence as a Factor in Custody and Visitation Determinations***

California and New York are among the states which, at the behest of their Task Forces and Implementation Committees, adopted legislation or court rules requiring that abuse of a spouse be a factor in the determination of child custody. Some of these provisions create a presumption that batterers shall not be awarded sole or joint custody or unsupervised visitation. California Family Code § 3011; New York Domestic Relations Law § 240.

**California:** *Domestic Violence Training for Custody Investigators*

Domestic violence training is required for all court appointed persons who evaluate or investigate child custody matters. Family Code § 3111.

*Domestic Violence Training for Custody Mediators*

Mediators in family law cases must be knowledgeable about the effects of domestic violence on children to qualify to be hired and must participate in programs of continuing instruction in all aspects of domestic violence. Family Code § 1815 and § 1816.

Mediation of contested custody and visitation cases in which domestic violence is a factor shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council. Family Code § 3170.

*Court Encouraged to Ascertain Existence of Restraining Order When Making Custody/Visitation Determination and to Limit Visitation When an Order is On File.*

The court is encouraged when considering custody or visitation to make a “reasonable effort” to ascertain whether any restraining order concerning the parents or child is on file, and if so, not to make a custody or visitation order that is inconsistent with the restraining order. When custody or visitation is awarded in a case where domestic violence is alleged or a restraining order is in force, the award shall detail the times and terms of transfer to maximize everyone’s safety. Consideration should be given to requiring supervised visitation. There are circumstances in which a temporary custody order denying all visitation is appropriate to preserve safety. Family Code § 3031 and § 6323.

*Visitation Where Domestic Violence is an Issue*

(C) **[Ensuring Safety]** Whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to limit the child’s exposure to potential domestic conflict or violence and to ensure the safety of all family members.

(D) **[Protecting Confidentiality of Address]** Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the courts order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location. Family Code § 3100.

*Standards for Supervised Visitation Providers*

The Judicial Council is directed to develop standards for supervised visitation providers which shall consider “Orientation to and guidelines for cases in which there is an allegation of domestic violence, child abuse, substance abuse or special circumstances.” Family Code § 3200.

*The standards developed by the Judicial Council require providers to have training in, inter alia,*

“Cultural sensitivity . . . child abuse, sexual abuse, and domestic violence and to obtain during the intake process “a report of any written records of allegations of domestic violence or abuse...” Standards of Judicial Administration § 26.2.

**PUBLIC EDUCATION**

**Iowa:** *“How to Protect Yourself from Domestic Abuse Without a Lawyer” (1995)*  
[IRD-039]

A detailed guide to the court system to enable domestic violence victims to secure protective orders and other relief *pro se*. Includes samples of all court forms, checklists to prepare for hearings, injury maps, tips on courtroom behavior and a list of all domestic violence projects in Iowa. This guide is published in English and Vietnamese.

**Massachusetts:** *Domestic Violence Resource Centers in the Courts*

The Gender Equality Committee established domestic violence resource centers in all District Courts, Probate and Family Courts and Boston Municipal Court. These resource centers are wall mounted units stocked with information from local providers of services for domestic violence victims. This project was a collaboration of the Gender Equality Committee’s Task Force on Abuse Prevention, the courts, local shelters and fourteen bar associations.

**Utah: *Women Lawyers of Utah Domestic Violence Education Campaign***

As described in **Bar Association Collaborations**, Women Lawyers of Utah was extremely active in implementing the Utah Task Force's recommendations. Among their initiatives was an emphasis on getting domestic abuse victims the information they so desperately need. Women Lawyers were convinced that domestic abuse was a seriously under-reported crime and that there were thousands of victims who had no idea of what community help was available to them, or how to obtain it. The organization committed itself to seeing that information on how to stop domestic abuse was disseminated throughout the state.

The new education effort solicited donations from organization members and many public and private groups, including local law firms, raising over \$20,000. That money was used to produce videos on the criminal and civil procedures involved in prosecuting domestic violence cases. The free videos were widely disseminated throughout the state to community groups, prosecutors, law enforcement and others.<sup>4</sup> Bumper stickers, posters and brochures with the headline "**There's no Excuse for Abuse**" were distributed statewide. A domestic abuse hotline number was widely publicized, as a part of a multi-agency statewide effort. Members of Women Lawyers and others in the domestic violence network spoke on radio and television and to many community groups concerning domestic abuse problems and where and how to get help. The over 200 percent increase in assault arrests in the last five years indicates that the word is getting out and that many more abused spouses and partners are turning to the justice system to get help.

**Washington: *Domestic Violence Education for High Schools* [IRD-043]**

The Gender and Justice Commission funded the development of a script on domestic violence for the 1997-98 YMCA Mock Trial Program in the state's high schools.

**Videotape: *"Domestic Violence: Challenges and Solutions in Washington"* (1995) (27 Minutes) [IRD-053]**

This video presents a diverse group of victims, victim advocates, judges, legislators, shelter workers, treatment providers, educators, court administrators, prosecutors and police responding to six questions:

- What do you identify as the biggest challenge in the system's response to domestic violence?

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<sup>4</sup>The video can be obtained from Women Lawyers of Utah, Inc., P.O. Box 932, Salt Lake City, UT 84110-0932.

- In what areas do you think the system for dealing with domestic violence and its impacts is not working?
- What limits you from providing the type of domestic violence programs and services that you want to provide?
- What solutions do you have to those limitations?
- What unique system or response has your agency or community developed to respond to those affected by domestic violence?
- If you could suggest to policy makers only three things to improve the system dealing with domestic violence, what would they be?

The responses convey the wide range of legal and community efforts that are going forward and provide valuable suggestions for improvement.

**Wisconsin: Videotape: “*Silent Hostage: Victims of Domestic Violence*” (1995)  
(22 Minutes) [IRD-054]**

In this video the victim who is reluctant to seek help is a court commissioner who herself handles domestic violence cases. The scenes cut back and forth among her courtroom, her home, her office and a judicial training program about domestic violence. A substantial amount of important information about all aspects of domestic violence is conveyed, including why it is so difficult for women to leave, the danger of making that move, and the impact of domestic violence on children in the home. There is an epilogue from Wisconsin’s Chief Justice on the critical role of the courts in domestic violence victims’ safety. The video was partially funded by the State Justice Institute.

**California:**      ***Legislation Requiring Domestic Violence Training for Custody Mediators***

Mediators in family law cases must be knowledgeable about the effects of domestic violence on children to qualify to be hired and must participate in programs of continuing instruction in all aspects of domestic violence. Family Code § 1815 and § 1816.

Mediation of contested custody and visitation cases in which domestic violence is a factor shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council. Family Code § 3170.

***Uniform Standard of Practice for Court-Connected Mediation of Child Custody and Visitation Disputes***

These Judicial Administration Standards provide, *inter alia*, that mediators “should be knowledgeable about their own biases and be sensitive to individual, gender, racial, ethnic, and cultural values and differences” and that “in order to maintain a neutral stance the mediator should understand and be sensitive to differences including gender biases and ethnic and cultural diversity.” Judicial Administration Standards Section 26.

**Massachusetts:**      ***“Achieving Equity: Recommendations for Dispute Intervention Practice in the Probate and Family Court” (1995)***      **[IRD-055]**

This fifty-five page report addresses the use of probation officers to resolve family law disputes and the need for careful training of these officers to deal with gender bias in the dispute intervention process. The report focuses on:

- Cases Involving Violence
- Cases Involving Care and Custody of Children
- Cases Involving Paternity Actions
- Cases Involving Financial Issues Including Financial Statements, Alimony and Division of Assets and Child Support

**Brochure:**      ***Dispute Intervention in the Family Service Office*** [IRD-056]

This brochure for parties explains what the Family Service Office does with respect to investigation and dispute intervention. Brochure states what the safety precautions are when one party has abused the other.



## RAPE AND SEXUAL ASSAULT

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The Task Forces cited rape and sexual assault as an area of the law in which the complainant rather than the defendant is often put on trial. Failure to acknowledge that the vast majority of rapes are committed by someone known to the victim has resulted in ineffective, unfair treatment of victims in the judicial process. Task Force recommendations called for new legislation, revised prosecutorial practices and education for judges, prosecutors and police on all aspects of this issue. Implementation Committees have pursued these recommendations in a variety of ways.

### **Connecticut: *Marital and Cohabiting Couples Rape Exemption Eliminated***

Connecticut eliminated its marital exemption for rape and sexual contact and repealed the statutory provision that also exempted a defendant and alleged victim living in a cohabiting relationship. Connecticut General Statute 53A-70B.

### **Georgia: *Georgia Protocol for Responding to Victims of Sexual Assault (1997)* [IRD-035]**

This is a one-hundred page comprehensive protocol prepared by the Georgia Sexual Assault Task Force. It covers Victim Support Services, Law Enforcement Response, Sexual Assault Examination and Evidence Collection and Prosecution.

### **Texas: *Legislation Barring Polygraphs of Rape/Sexual Assault Complainants***

The Implementation Committee secured legislation prohibiting the requirement that a complainant submit to a polygraph as a condition of charging a defendant with rape or sexual assault. S.B. No. 222, effective September 1, 1995.

#### ***Legislation Defining Sexual Assault as a Type of Family Violence***

Texas now includes “sexual assault” in the statutory definition of “Family Violence” Sec. 3; Sections 71.01 (b) (1) - (6) Family Code.

### **Utah: *Marital Rape Exemption Eliminated***

The spousal exception in the Utah rape statute was eliminated in 1991.

**National Judicial Education Program:**

*Understanding Sexual Violence: The Judicial Response to Stranger and Non-stranger Rape and Sexual Assault (1994)*<sup>5</sup>

Responding to their Task Forces' recommendations for judicial education about rape and sexual assault, approximately twenty states have presented or invited the National Judicial Education Program (NJEP) to present its model judicial education curriculum, *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*, funded by the State Justice Institute (SJI). The NJEP presentations have been made possible by a grant from the U.S. Department of Justice Violence Against Women Grants Office. SJI also provides curriculum adaptation grants for the presentation or adaptation of training programs developed with SJI funding. A full description of the curriculum is in Appendix E.

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<sup>5</sup>Available from the National Judicial Education Program for \$80 (\$70 for courts and court-related entities). See Appendix A for address and flyer with full description.

## SENTENCING AND PRISONS

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A few of the Task Forces investigated conditions for incarcerated women and girls. They found significant gender-based disparities which Implementation Committees have worked to correct.

### **Connecticut:**     *Task Force on Female Offenders*

The Gender, Justice and the Courts Implementation Committee was instrumental in formation of a task force on female offenders within the Office of Adult Probation (OAP). This Task Force's accomplishments include the following:

- dissemination to all OAP units of a reference manual of services available for women;
- establishment of liaison with the Department of Children and Youth Services to exchange information on mutual clients;
- establishment of liaison with Niantic Correctional Center to discuss with inmates to be released on probation the expectations of the probation officers and to assess the needs of the inmates; and
- creation of a subcommittee to design in-service training for probation officers on issues confronting female offenders and their children. This subcommittee has completed a training needs assessment and developed a preliminary curriculum proposal.

Additional OAP initiatives:

- Formation of a women's support group in the New Haven OAP. The goal of the group is to increase participants' awareness of damaging and dangerous behavior in which they are engaged or to which they are susceptible.
- In a joint effort with the Office of Alternative Sanction, submission of a grant application for a program to supervise female youthful offenders.
- New Haven OAP has been given approval to undertake a cooperative effort with Quinnipiac College to provide supervision of children of offenders at the probation office while probationers are meeting with their probation officers.

**Florida:**    *The Corrections Equality Act*

The Florida Task Force found that conditions and opportunities for women and girls in Florida's state prisons and county jails are much inferior to those for men and boys. This led to passage of the Corrections Equality Act which provides in pertinent part:

(3) Women inmates shall have access to programs of education, vocational training, rehabilitation, and substance abuse treatment that are equivalent to those programs which are provided for male inmates. The department shall ensure that women inmates are given opportunities for exercise, recreation, and visitation privileges according to the same standards as those privileges are provided for men. Women inmates shall be given opportunities to participate in work release programs which are comparable to the opportunities provided for male inmates and shall be eligible for early release according to the same standards and procedures under which male inmates are eligible for early release.

(4) An inmate who is pregnant shall be provided with prenatal care and medical treatment for the duration of her pregnancy. The department shall ensure that a pregnant inmate receives supplemental food and clothing and is excused from inappropriate work assignments. An inmate shall be transferred to a hospital outside the prison grounds if a condition develops which is beyond the scope and capabilities of the prison's medical facilities. Florida Statutes Ch. 91-225, Section 29, Effective Oct. 1, 1993, section 944.24.

**Massachusetts:**    *Secure Treatment Facilities*

The Gender Equality Advisory Board has been supporting legislation and advocating for funding for secure treatment facilities for women offenders civilly committed for substance abuse. A member and the staff of the Committee for Gender Equality previously sat on a legislative committee investigation of women in the criminal justice system.

**Gender Fairness Strategies:**  
*Implementation Resources Directory*

**COLLABORATIONS**

## BAR ASSOCIATION COLLABORATIONS

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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. Many Task Forces made specific recommendations for bar associations in such areas as lawyer education which obviously fall to the Bar to implement (see **Education - Lawyers**). Beyond this specific implementation role, bar associations are 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.

**Alaska:** The Alaska Bar Association has integrated gender issues into the planning stage of substantive and procedural courses. All Continuing Legal Education planning committees have been asked to consider potential gender equity issues inherent in their practice areas as they develop CLE topics. Faculty are encouraged to use gender neutral language and given guidelines. The Task Force and State Bar co-sponsored “Sexual Harassment: Where Do You Draw the Line in the Workplace?” in Fall 1998. The materials are available.

**Arizona:** The Arizona State Bar adopted a resolution stating:

RESOLVED that the State Bar Board of Governors is committed to promoting racial, ethnic, gender and disability diversity and to assuring the rights of all such persons within all State Bar programs, committees and activities, and

FURTHER RESOLVED that the Board of Governors will periodically monitor all existing programs, committees and activities for compliance with the goal of diversity and with assurance of the rights of all such persons in every aspect of the Bar.

**Arkansas:** The Arkansas Bar Association Committee on Opportunities for Women and Minorities in the Legal Profession conducted a public opinion poll on attitudes toward women lawyers that was published in the Fall 1997 issue of *The Arkansas Lawyer*.

**Florida:** Responsibility for implementing the Florida Task Force’s recommendations was formally divided between an Implementation Committee established by the Supreme Court to handle court-related matters and an Implementation Committee established by the State Bar to handle bar-related matters. The Florida Bar created the Special Committee for Gender Equality in the Profession. The Board of Governors agreed to give CLE credits for programs

dealing with gender equality and required that gender equality be dealt with in every “Bridge the Gap” program for new lawyers.

**Georgia:** The State Bar of Georgia created several committees to deal with issues and recommendations of the Task Force. This translates into better policies for the bar and CLE that furthers the goal of eliminating gender bias.

**Indiana:** The State Bar is creating a Women in the Law Commission which will be responsible for educational programs at State Bar meetings, recommending women to the Bar Commission, Women in Law Awards, and a Women in Law Directory.

**Illinois:** The State Bar formed an Implementation Committee to address the Illinois Task Force recommendations.

**Massachusetts:** The Gender Equality Committee established Domestic Violence Resource Centers in all District Courts, Probate and Family Courts and Boston Municipal Court. These resource centers are wall mounted units stocked with information from local providers of services for domestic violence victims. This project was a collaboration of the Gender Equality Committee’s Task Force on Abuse Prevention, the courts, local shelters and fourteen bar associations.

**Michigan:** In 1997 the State Bar of Michigan undertook a major initiative to assess what, if any, progress had been made toward the goals of the 1989 reports from the Supreme Court Task Force on Gender Issues in the Courts and on Racial/Ethnic Issues in the Courts. The methodology of that assessment and its findings are discussed in **Progress Assessment and Evaluation**.

Additionally, Michigan’s Institute for Continuing Legal Education (ICLE) has provided numerous training programs for attorneys on issues associated with domestic and sexual violence, domestic relations and racial and ethnic awareness. ICLE has also published books on *Wrongful Discharge and Employment Discrimination* and *An Employers Guide to Sexual Harassment Law for Attorneys*.<sup>1</sup>

**New York:** The Task Force directed both specific recommendations and calls for institutional change to the state’s many bar associations. In November 1995 the Implementation Committee mailed a questionnaire to the approximately 150 bar associations throughout the state. The responses disclosed that at least thirteen bar associations now have committees devoted to women in the courts

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<sup>1</sup>Available from Michigan Institute of Continuing Legal Education, Tel: (800) 968-1422, Fax: (517) 482-6248.

or women in the profession. The Association of the Bar of the City of New York has both. Almost all of the forty associations reporting some activities addressing women's issues listed forums held in the last five years. Domestic violence was the most popular topic, and several bar associations have come back to this issue repeatedly. Sexual harassment and matrimonial issues have also been covered by a number of bar association presentations. Other programs have discussed women as defendants, prisoners and immigrants, and the credibility of women in courtrooms. Bar associations also reported encouraging *pro bono* representation of domestic violence victims and matrimonial litigants; including questions about discrimination against women in inquiries to judicial candidates; organizing regular luncheons for part-time attorneys and evening events for summer associates; and sponsoring a study on glass ceilings in law firms. Two bar associations have collaborated with administrative judges' local gender bias committees. The New York State Bar Association's Committee on Women in the Law developed model policies on childbirth and parenting leaves, sexual harassment and alternative work schedules.

**Oklahoma:** The Oklahoma Bar Association created a section named "Women In the Law" which has undertaken many projects.

**Puerto Rico:** The Puerto Rican Bar Association created a Commission on Women's Rights whose President is a member of the Task Force Implementation Committee.

**Tennessee:** The Tennessee Bar Association, through the TBA Commission on Women and Minorities in the Profession and other initiatives, has raised the consciousness of the Bench and Bar with regard to gender bias in the courts and in the legal profession. Local bar associations, particularly urban bars, including, but not limited to the Memphis, Nashville, Knoxville, Chattanooga, and Jackson Bar Associations have active programs which encourage the elimination of gender bias in the courts and the legal profession. The State's Board of Professional Responsibility has begun to keep its database in such a way as to indicate gender and race so that specific demographics can be studied.

**Texas:** The Implementation Committee prepared written materials titled "Gender Bias and the Local Bar Association" for the 1997 Local Bar Leaders' Conference. The document summarizes the issues, the Texas Task Force's findings, the activities of the Implementation Committee and State Bar of Texas, and local bar initiatives that are models for consideration. The Implementation Committee included a feedback sheet so it could learn what other local bars are doing. The "Models for Consideration" section cited the following projects and programs:



- Texas Young Lawyers Association conducted a Board training on gender relations.
- San Antonio Bar Association and Bexar County Women's Bar Association formed a joint committee to deal with gender issues and co-sponsored a CLE/Public Education Program on issues related to gender bias in the legal system.
- Lubbock County Bar Association, Irving Bar Association, Dallas Women Lawyers' Association and Travis County Women Lawyers' Association have devoted lunchtime CLE programs to gender bias issues.
- The State Bar of Texas and Travis County Bar Association have incorporated issues related to gender bias as a component of their regularly-scheduled CLE programs. For example, the State Bar of Texas included discussions of gender bias issues in the Marriage Dissolution Institute and Advanced Personal Injury Practice Institute. Travis County Bar Association included role-playing on gender bias and discussions by experts in various CLE's throughout the last year.

**Utah:**

The Young Lawyers and Family Law Sections of the Bar gave strong support to many of the reforms proposed in the Utah Task Force report. The Diversity Committee of the Young Lawyers Section mobilized young lawyers to secure grant funding, help to draft scripts and brochures and engage in many other activities supporting the effort to publicize the help available to domestic violence victims. At the recommendation of the Delivery of Legal Services Task Force, the Bar expanded its *pro bono* program and hired a *pro bono* coordinator to further develop the program. Greater availability of *pro bono* services will help many victims of domestic violence, as well as low income clients with child support, visitation and other domestic relations issues.

According to the Utah Gender Fairness Committee, the group that did the most to secure implementation of the Task Force's recommendations was Women Lawyers of Utah. A month after the Gender and Justice Task Force issued its report, a member of the Utah Supreme Court, an Appellate Judge on the Task Force and the Task Force's staff director met with Women Lawyers to review the Task Force's findings and recommendations and urge Women Lawyers to become active in the implementation effort. The organization created its own Implementation Committee and worked on several fronts over the next years, in particular on securing new domestic violence legislation (see **Domestic Violence**) and educating the public about domestic violence through videotapes, bumper stickers, posters and brochures (see **Public Education**).

Through these efforts the Women Lawyers' Implementation Committee became part of a statewide network of public and private groups working on domestic violence.

**Washington:**

The Washington State Bar Association and Washington Women Lawyers were represented on the Task Force and have utilized Implementation Committee members in continuing legal education programs.

## **COMMUNITY OUTREACH**

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Task Forces recognized that effective responses to the problems with which they are concerned, such as domestic violence, require action not only from the courts but also from the community. Several Implementation Committees have sponsored activities involving other groups in coordinated action, as in the following examples.

**Georgia:**     *A Handbook for Establishing a Community Task Force on Family Violence in Each Judicial Circuit Pursuant to O.C.G.A. § 19-13-31.*     **[IRD-058]**

On the recommendation of the Georgia Gender and Justice Committee, the Georgia General Assembly passed legislation creating a State Commission on Family Violence. The Commission was charged with creating:

...a comprehensive Handbook that will be divided into different sections which will include: (1) a suggested model for establishing a Community Task Force on Family Violence in your local area; (2) a statewide analysis of the availability and accessibility of services to victims and perpetrators of family violence; (3) protocols for criminal justice practitioners as well as social service and health care providers; (4) training materials for civic groups and professional organizations that work with family violence issues; and (5) a progressive legislative agenda that is designed to address more effectively the statutory needs of victims and perpetrators. The end product of our combined efforts then will be the creation of a working Handbook that can be used by community leaders to initiate a systematic response to family violence in local communities.

**Massachusetts:**     *Domestic Violence Resource Centers in the Courts*

The Gender Equality Committee established domestic violence resource centers in all District Courts, Probate and Family Courts and Boston Municipal Court. These resource centers are wall mounted units stocked with information from local providers of services for domestic violence victims. This project was a collaboration of the Gender Equality Committee's Task Force on Abuse Prevention, the courts, local shelters and fourteen bar associations.

**Washington:**     *Domestic Violence Summit*     **[IRD-060 through IRD-063]**

In June 1995, the Gender and Justice Commission agreed to coordinate the first statewide Domestic Violence Summit. Working with the Chief Justice and Attorney General, the Commission brought together state judicial, legislative and executive branch leaders to undertake a comprehensive review of Washington State's response

to domestic violence and develop action plans for improvements. The Commission conducted a survey of domestic violence service providers and interviewed forty-one representatives of the court system, law enforcement, victims services, treatment providers, victims and offenders across the state and produced a videotape: *Domestic Violence: Challenges and Solutions in Washington State*. (See **Videotapes**).

The materials available from this Summit are:

[IRD-060] *Domestic Violence Summit 1995*

[IRD-061] *Domestic Violence Summit Supplemental Reading Materials 1995*

[IRD-062] *Domestic Violence Summit Final Report 1995*

[IRD-063] *Domestic Violence Summit I: Action Plan Status Report 1996*

The Commission monitored the action plans developed by Summit participants and published the *Domestic Violence Summit I: Action Plan Status Report 1996*. Actions completed include: establishment of an Executive Branch Work Group to propose workplace and personnel policies regarding domestic violence for Washington State as an employer; introduction of legislation to make domestic violence an aggravating circumstance justifying an exceptional sentence; establishment of a Washington Association of Sheriffs and Police Bureau in the Seattle Police Department and Municipal Court; presentation of a three hour domestic violence education program at the District and Municipal Court Judges' Association Spring Conference; and development of a middle school education program which includes a mock domestic violence trial.

The Commission took the model of the state summit and adapted it for use at the county level. In September 1996, the Commission worked with community leaders to facilitate the Benton/Franklin Counties Model Domestic Violence Summit. The focus of the eight hour conference was to improve local awareness of domestic violence; coordination of available services; and access to the legal system.

Meanwhile, the Commission was working with the Supreme Court, the Office of the Governor and the Office of the Attorney General to implement the Domestic Violence Summit II, December 1996. This effort focuses on positive changes in Washington State's response to domestic violence and ways for state leaders to move forward on state, organizational and community levels.

In 1997-98 the Commission is assisting two more counties in conducting local domestic violence summits.

## LAW SCHOOLS

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Task Forces recommended to law schools that they address in the curriculum gender bias problems identified by the Task Forces, and that they identify and eliminate gender bias within their own institutions. Many Implementation Committees have pursued outreach to law schools in order to realize these recommendations, as the following examples illustrate.

**Arizona:** The Task Force participates in law school forums where the topic of gender bias is examined and the concerns of law students addressed. As a result of a 1994 forum at Arizona State University, a system was created to address complaints that arise during the course of student clerkships.

**Hawaii:** The Implementation Committee developed a course on effective interviewing that includes a segment on how to respond to discriminatory questions.

**Maryland:** The Implementation Committee developed “Sexual Harassment- How to Recognize and Stop It” for students at the University of Maryland School of Law. There are also on-going meetings with Deans and law school faculty regarding the role of women in law schools.

**New Jersey:** The Implementation Committee created an Education/Law Schools Subcommittee to encourage the formation of programs at the three New Jersey law schools to address problems of gender bias experienced by women students and professors, and to foster the inclusion of course materials on how gender bias affects substantive decision-making. The work of this subcommittee is seen as a critical means of addressing gender bias before attorneys begin practicing law. Included on the subcommittee is a professor from each school. Two members of the subcommittee present a class on gender bias in the course on Professional Responsibility given at one of the law schools. The committee’s current focus is on helping students prepare for interviews and handling discriminatory questions.

**Texas:** The Implementation Committee distributes its gender-neutral court procedures booklet to law school ethics professors to raise awareness of new professional conduct provisions.

**Washington:** The Implementation Committee contacted law schools about implementing the Task Force’s recommendations. In 1992 the University of Washington School of Law indicated the problem of gender and minority bias is addressed in the orientation program for first-year students, “Feminist Legal Theory” and “Lawyers, the Legal System and Professionalism.” Law students are now required to take a professional ethics course. The Gender and Justice Task Force Report has been used as text in several classes at the University of Puget Sound School of Law (now the Seattle University School of Law).

# **Appendix A**

## **Descriptions of the Five National Organizations Sponsoring the**

### **Gender Fairness Strategies Project**

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



# National Association of Women Judges

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*President*  
US Court of Appeals  
9th Circuit  
Phoenix, Arizona

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Sr. Administrative Law Judge  
Vancouver, Washington

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**Leslie M. Alden**  
*International Director*

**Brenda P. Murray**  
*Project Development*

**Carol H. Arber**  
*Resource Development*

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**Darlene E. Averick**  
Executive Director

**Beverly A. Mantz**  
Director, Membership and  
Conference Planning

## *The National Association of Women Judges*

Established in 1979, the National Association of Women Judges 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. Members share the goals of attaining parity for women throughout the law and the judiciary. NAWJ provides strong, committed judicial leadership to improve the administration of justice and to ensure fairness and gender equality in American courts through effective judicial education. The association addresses the professional and personal concerns of women in the judiciary, incorporating the life experiences of women into the American judiciary, and promoting the equal rights of women, children, and the family. To achieve these goals, NAWJ develops and provides effective judicial education programs on child custody and visitation, spousal support, family violence, gender bias, reproductive technology and bioethics. NAWJ encourages studies to document gender bias in the judicial system, and promotes the appointment of women to state and federal courts. The Association takes these issues and turns them into meaningful projects with major long-term impact on the judicial system and therefore society as a whole. Education and training is conducted on the state and federal levels, and at the National Judicial College.

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



PERCY R. LUNEY, JR., *President*

# THE NATIONAL JUDICIAL COLLEGE

JUDICIAL COLLEGE BUILDING 358 • UNIVERSITY OF NEVADA • RENO, NEVADA 89557

AFFILIATED WITH  
AMERICAN BAR ASSOCIATION

TELEPHONE (702) 784-6747

(800) 25-JUDGE

FAX (702) 784-4234

JUSTICE TOM C. CLARK 1899-1977

*Chair of the Founders*

JUSTICE FLORENCE K. MURRAY

*Chair Emerita*

WALTER H. BECKHAM, JR., ESQ.

*Chair Emeritus*

JUDGE B. B. SCHRAUB

*Chair Emeritus*

## *The National Judicial College*

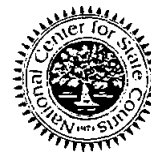
The National Judicial College is the leading national judicial education and training institution in the world. Its mission is to provide leadership in achieving justice through quality judicial education and collegial dialogue. NJC is a not-for-profit corporation, affiliated with the American Bar Association 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. Courses are offered 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 on its faculty. In recent years, nearly one third of its 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, *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*

300 Newport Avenue (23185)  
P.O. Box 8798  
Williamsburg, Virginia 23187-8798  
(757) 253-2000 / FAX: (757) 220-0449



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 will house 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

750 North Lake Shore Drive  
Chicago, Illinois 60611  
(312) 988-5715  
FAX: (312) 988-5688  
E-mail: abacwp@abanet.org

CHAIR

Karen J. Mathis  
Hall & Mathis, PC  
216 16th Street, Suite 860  
Denver, CO 80202  
(303) 571-4500  
E-mail: kjmaba@aol.com

Mary B. Cranston  
Pillsbury, Madison & Sutro  
235 Montgomery Street, Suite 1324  
San Francisco, CA 94104  
(415) 983-1621  
E-mail: cranston\_mb@pillsburylaw.com

Hon. Christine M. Durham  
Utah Supreme Court  
450 South State, P.O. Box 140210  
Salt Lake City, UT 84114-0210  
(801) 238-7945  
E-mail: jdurham@supreme.utcourts.gov

Samuel H. Gillespie, III  
Mobil Oil Corporation  
3225 Gallows Road  
Fairfax, VA 22037-0001  
(703) 846-4051  
E-mail: sam\_h\_gillespie@email.mobil.com

J. Canyon Gordon, Visiting Professor  
Boston College School of Law  
885 Centre Street  
Newton, MA 02459  
(617) 552-0705  
E-mail: gordoncu@bc.edu

Janet Langford Kelly  
Sara Lee Corporation  
Three First National Plaza, Suite 4700  
Chicago, IL 60602  
(312) 726-2600  
E-mail: jkelly@saralee.com

Teresa I. Leger  
Northhaus, Haltom, Taylor, Taradash & Frye LLP  
200 West De Vargas, Suite 9  
Santa Fe, NM 87501  
(505) 982-3622  
E-mail: nhitt4tl@aol.com

Roberta D. Liebenberg  
Liebenberg & White  
The Pavilion, Suite 810, 261 Old York Road  
Jenkintown, PA 19046  
(215) 481-0277  
E-mail: rliebenberg@liebenberg.com

Anita P. Miller  
Building A, Suite 5, 3500 Comanche NE  
Albuquerque, NM 87107  
(505) 878-9598  
E-mail: millerplan@aol.com

Katherine H. O'Neil  
Graff & O'Neil  
2121 SW Broadway Drive, Suite 100  
Portland, OR 97201-3180  
(503) 222-4545  
E-mail: kon@teleport.com

William L. Robinson  
City University of New York Law School  
65-21 Main Street  
Flushing, NY 11367  
(718) 340-4225

Lish Whitson  
Badgley Mullins Law Group  
5100 Washington Mutual Tower  
Seattle, WA 98101  
(206) 621-6566  
E-mail: lishwhitson@msn.com

BOARD OF GOVERNORS LIAISON

Judy Perry Martinez  
Simon, Peragine, Smith & Redlearn  
1100 Poydras Street, 30th Floor  
New Orleans, LA 70163  
(504) 569-2030  
E-mail: martinez@spsr-law.com

ABA STAFF DIRECTOR

Ellen T. Mayer  
(312) 988-5676  
E-mail: mayere@staff.abanet.org

*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 ground breaking report in 1988 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 the Commission on Women, one of the sponsoring organizations of the *Gender Fairness Strategies Project*,



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

395 Hudson Street, 5th Floor • New York, New York 10014-3684 • (212) 925-6635  
Fax (212) 226-1066 • E-mail: njep@nowldef.org

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Lynn Hecht Schafran, Esq.

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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 the 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 decision making 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*— as well as a judicial education manual, *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources*. The manual 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 nearly 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 will work with its project partners to institutionalize efforts to eliminate gender bias in the courts, reinvigorate the momentum for implementing task force recommendations, and define the implementation agenda for the next decade. NJEP compiled the project's *Implementation Resources Directory* and will publish *Maximizing Our Gains: An Implementation Strategies Manual*, after the January strategic meeting.

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

# **Appendix B**

**List of State Gender Bias Task Force Implementation Committees -  
Contact Names and Addresses**



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

99 Hudson Street, Suite 1201 • New York, New York 10013 • (212) 925-6635 • Fax (212) 226-1066

**Director**

Lynn Hecht Schafran, Esq.

**Advisory Committee**

Hon. Celeste F. Bremer  
 Hon. James Duke Cameron  
 Dennis Catlin, Esq.  
 Hon. John C. Coughenour  
 Rita G. Culbertson  
 Hon. Martha Craig Daughtrey  
 Hon. Bernice Bouie Donald  
 Hon. Lisa Hill Fenning  
 Anthony B. Fisser  
 Frances M. Friedman, Esq.  
 Hon. Gladys Kessler  
 Hon. Joan Dempsey Klein  
 Douglas Lanford, Esq.  
 Hon. Cindy S. Lederman  
 Observer: A. Leo Levin, Esq.  
 Edward B. McConnell, Esq.  
 Hon. Judith McConnell  
 Jean Louis W. McHardy, Esq.  
 Hon. Tim Murphy  
 Hon. Dorothy W. Nelson  
 Hon. Marilyn Hall Patel  
 Hon. V. Robert Payant  
 Prof. Judith Resnik  
 Dean Kenneth A. Rohrs  
 Hon. David Rothman  
 Hon. W. Terry Ruckriegle  
 Phyllis N. Segal, Esq.  
 Larry L. Sipes, Esq.  
 Hon. Vaino Spencer  
 Hon. Rosalie Wahl  
 Hon. Roger K. Warren  
 Norma Wikler, Ph.D.

## State Task Forces and Implementation Committees on Gender Bias in the Courts

As of Fall 1998

### Alaska

#### Joint State-Federal Gender Equality Task Force

##### Co-Chairs

Judge James T. Singleton  
 US District Court  
 222 West 7th Avenue # 41  
 Anchorage, AK 99513-7524  
 (907) 271-3198  
 Fax (907) 271-3822

Justice Dana Fabe  
 Alaska Supreme Court  
 303 K Street, 5th Floor  
 Anchorage, AK 99501  
 (907)264-0622  
 Fax (907) 264-0878

##### Program Committee Chair

Leroy Barker  
 Robertson, Monagle & Eastaugh  
 500 West 7th Avenue  
 Suite 1200  
 Anchorage, AK 99501  
 (907) 277-6693  
 Fax (907) 279-1959

##### Coordinator

Barbara Hood  
 2413 Lord Baranof Dr.  
 Anchorage, AK 99517  
 (907) 248-7374  
 Fax (907) 248-8387

### Arizona

*Task Force has been disbanded*

##### Contact

Sharon Frye  
 State Bar of Arizona  
 111 West Monroe  
 Suite 1800  
 Phoenix, AZ 85003-1742  
 (602) 340-7302  
 Fax (602) 271-4930

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

**Arkansas**

Arkansas State Bar Committee on Opportunities for Women and Minorities in the Law

Co-Chairs

Justice Robert L. Brown  
Arkansas Supreme Court  
625 Marshal Street  
Little Rock, AR 72201  
(501) 682-6864  
Fax (501) 682-6877

Sheila Campbell, Esq.  
217 W. 2nd Street  
Little Rock, AR 72201  
(501) 372-4623

**California**

Access and Fairness Advisory Committee of the California Supreme Court

Chair

Judge Frederick Horn  
Access and Fairness Advisory Committee  
Administrative Office of the Courts  
303 Second Street, South Tower  
San Francisco, CA 94107

Contact

Arlene Tyler, Esq.  
Access and Fairness Advisory Committee  
Administrative Office of the Courts  
303 Second Street, South Tower  
San Francisco, CA 94107  
(415) 396-9128

**Colorado**

The Permanent Committee on Gender & Fairness of the Colorado Supreme Court

Co-Chairs

Justice Mary J. Mullarkey  
Supreme Court of Colorado  
2 East 14th Ave.  
Denver, CO 80203  
(303) 837-3771  
Fax (303) 861-7429

James Benway  
Court Administrator  
Colorado Judicial Branch  
1301 Pennsylvania St., Suite 300  
Denver, CO 80203  
(800) 888-0001

**Connecticut**

Gender, Justice and the Courts Implementation Committee

Co-Chairs

Judge Francis X. Hennesy  
Deputy Chief Court Administrator  
Office of the Chief Court Administrator  
Drawer N, Station A  
Hartford, CT 06106  
(860) 548-2828

Judge Antoinette L. Dupont  
Appellate Court  
231 Capitol Street  
Drawer D, Station A  
Hartford, CT 06106  
(860) 566-7340

Contact

Ms. Moira Butler  
EEO Program Coordinator  
Connecticut Judicial Branch  
75 Elm Street  
Hartford, CT 06106  
(860) 722-5872  
Fax (860) 722-5815

**Delaware**

*The Task Force has been disbanded. The Final Report was published in August 1995 and the Supreme Court is considering an Implementation Committee*

Contact

Franny Maguire  
Judicial Educator  
Administrative Office of the Courts  
820 North French Street, 11th Floor  
Wilmington, DE 19801  
(302) 577-2480  
Fax (302) 577-3139

**Washington, DC**

Fairness and Access Committee

Chair

Ulysses B. Hammond, Esq.  
Executive Officer  
District of Columbia Courts  
500 Indiana Avenue, N.W., Room 1500  
Washington, D.C. 20001  
(202) 879-1700  
Fax (202) 879-4829

Contact

Dr. Cheryl R. Bailey  
Assistant to the Executive Officer for  
Planning and Policy Development  
District of Columbia Courts  
500 Indiana Avenue, N.W., Room 1500  
Washington, D.C. 20001  
(202) 879-1434  
Fax (202) 879-4829

**Florida**

Chair

Miriam Singer  
111 N.W. First St., Suite 1710  
Miami, FL 33128  
(305) 375-4132  
Fax (305) 375-4232

Contact

Debbie Howells  
Executive Assistant to the State Court Administrator  
Supreme Court Building  
500 S. Duval Street  
Tallahassee, FL 32399-1900  
(904) 922-4370  
Fax (904) 488-0156

## **Georgia**

### Supreme Court Commission on Equality

#### Chair

Linda A. Klein, Esq.  
1 Peachtree Center  
303 Peachtree Street, N.E.  
Atlanta, GA 30308  
(404) 221-6530  
Fax (404) 221-6501

#### Contact

Marla Moore  
Assistant Director for Judicial Liaison  
Administrative Office of the Courts  
244 Washington Street, S.W., Suite 550  
Atlanta, GA 30334-5900  
(404) 656-5171  
Fax (404) 651-6449

## **Hawaii**

### Supreme Court Committee on Equality and Access to the Courts

#### Co-chairs

James E. Duffy, Jr. Esq.  
Fujiyama, Duffy & Fujiyama  
Pauahi Tower #2700  
1001 Bishop Street  
Honolulu, HI 96813  
(808) 536-0802  
Fax (808) 536-5117

Judge Leslie A. Hayashi  
District Court, First District  
1111 Alakea Street  
Honolulu, HI 96813  
(808) 538-5003  
Fax (808) 538-5232

#### Contact

L. Dew Kaneshiro  
Project Director  
PO Box 2560  
Honolulu, HI 96813  
(808) 522-6475  
Fax (808) 522-6440



**Idaho****Idaho Supreme Court Fairness and Equality Committee****Chair**

Judge Sergio Gutierrez  
1115 Albany Street  
Caldwell, ID 83605  
(208) 454-7525

**Contact**

Patty Tobias, Court Administrator  
451 West State Street  
PO Box 83720  
Boise, ID 83720-0101  
(208) 334-2246  
Fax (208) 334-2146

**Illinois****Illinois Task Force on Gender Bias in the Courts****Contact**

Judge Sheila Murphy  
Presiding Judge, Sixth Municipal District  
16501 S. Kedzie Parkway  
Markham, IL 60426  
(708) 210-4170  
Fax (708) 210-4441

**Indiana**

*State Bar committee recommended an implementation committee to the judiciary but no action to date in the courts.*

**Contact**

Judge Patricia A. Riley  
Indiana Court of Appeals  
115 West Washington Street, Suite 1270  
Indianapolis, IN 46204-3419  
(317) 232-6902  
Fax (317) 233-4627

**Iowa****Supreme Court Monitoring & Implementation Committee of the Equality in the Court Task Force****Chair**

Inga Bumbar Langston, Esq.  
Executive Assistant U.S. Attorney  
US Courthouse Annex, Second Floor  
110 E. Court Ave.  
Des Moines, IA 50309  
(515) 284-6480  
Fax (515) 284-6492

**Staff Person**

David Boyd  
Department of State Court Administrator  
Iowa State Capitol  
Des Moines, IA 50319  
(515) 281-5241  
Fax (515) 242-6164

**Kansas**

*Task Force has been disbanded. Recommendations have been incorporated into Kansas Bar Association's strategic plan annually reviewed by Board.*

Contact

Executive Director  
Kansas Bar Association  
1200 S.W. Harrison  
Topeka, KS 66612  
(913) 234-5696

**Kentucky**

*The Committee on Equality of Opportunities in the Profession*

Chair

Jean Owen-Miller, Esq.  
PO Box 712  
Owensboro, Kentucky 42302  
(502) 926-2626  
Fax (502) 926-2638

**Louisiana**

*Task Force on Women in the Courts*

Chair

Judge Miriam Waltzer  
Fourth Circuit Court of Appeal  
1515 Poydras Street, 7th Floor  
New Orleans, LA 70112  
(504) 592-0933  
Fax (504) 568-4730

**Maine**

*Commission on Gender, Justice, and the Courts disbanded after presenting its report in December 1996. Implementation assigned to the "Performance Council," a group already in existence within the courts.*

Contact

James Glessner  
Administrative Offices of the Courts  
62 Elm Street, PO Box 4820  
Portland, ME 04112-4820  
(207) 822-0792  
Fax (207) 822-0781

## **Maryland**

### Select Committee on Gender Equality of the Maryland Judiciary and the Maryland State Bar Association

#### Chair

Pam White, Esq.  
Ober, Kaler, Grimes & Shriver  
120 E. Baltimore Street  
Baltimore, MD 21202-1643  
(410) 685-1120  
Fax (410) 547-0699

#### Contact

Deborah A. Unitus  
Assistant State Court Administrator  
Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, MD 21401  
(410) 260-1290  
Fax (410) 974-5577

## **Massachusetts**

### Gender Equality Advisory Board

#### Chair

Judge Linda E. Giles  
Boston Municipal Court  
Old Courthouse, Room 380  
Boston, MA 02108  
(617) 725-8378  
Fax (617) 723-8395

#### Vice-Chair

Judge Karyn F. Scheier  
Land Court Department  
Old Courthouse  
Boston, MA 02108  
(617) 227-7470  
Fax (617) 227-0451

#### Honorary Chair

Justice Ruth I. Abrams  
Supreme Judicial Court  
1300 New Courthouse  
Boston, MA 02108  
(617) 557-1150

#### Contact

Lois Frankel  
Human Resources Coordinator for Gender Issues  
Administrative Office of the Trial Court  
Two Center Plaza, 9th Floor  
Boston, MA 02108  
(617) 742-8575  
Fax (617) 227-9738

## **Michigan**

### Michigan Supreme Court Access to Justice Program

#### Contact

Pamela Creighton  
Coordinator, Access to Justice Program  
Michigan Supreme Court  
PO Box 30048  
Lansing, MI 48909  
(517) 373-4835  
Fax (517) 373-8922

## **Minnesota**

### *Minnesota Fairness Implementation Committee*

#### Chair

Hon. Russell Anderson  
Associate Justice  
421 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155  
(651) 296-2484  
Fax (651) 282-5115

#### Contact

Janet K. Marshall  
Director of Research and Planning  
120 Judicial Center  
25 Constitution Avenue, Suite 120  
St. Paul, MN 55155  
(651) 297-7579  
Fax (651) 296-6609

## **Mississippi**

### *Mississippi Gender Fairness Task Force*

#### Contact

Deanne M. Mosley, Esq.  
Langston Frazer Sweet & Freese P.A.  
PO Box 23307  
Jackson, MS 39225  
(601) 969-1356  
Fax (601) 968-3866

## **Missouri**

### *Missouri Gender Fairness Implementation Committee*

*This is a joint committee of the Missouri Bar Association and the Missouri Supreme Court.*

#### Co-Chairs

Judge William Ray Price, Jr.  
Supreme Court Building  
PO Box 150  
Jefferson City, MO 65102  
(573) 751-4513  
Fax (573) 751-2573

Kathlene S. Schoene, Esq.  
Peper, Martin, Jensen, Maichel, and Hetlage  
24th Floor, 720 Olive Street  
St. Louis, MO 63101  
(314) 421-3850  
Fax (314) 621-4834

Lawrence R. Tucker, Esq.  
Armstrong, Teaftale, Schafly, and Davis  
Suite 2000, 2345 Grand Blvd.  
Kansas City, MO 64108  
(816) 221-3420  
Fax (816) 221-0786

**Montana***Gender Fairness Task Force**Chair*

Klaus D. Sitte, Esq.  
Montana Legal Services Association  
304 North Higgins  
Missoula, MT 59802  
(406) 543-8343  
(800) 666-6899  
Fax (406) 543-8314

**Nebraska***Gender Fairness Implementation Committee**Chair*

Justice John M. Gerrard  
Nebraska Supreme Court  
PO Box 98910  
Lincoln, NE 68509-0910  
(402) 471-3736  
Fax (402) 471-3480

*Contact*

Judy Beutler  
Associate Administrator  
Administrative Office of the Courts  
Room 1220 State Capitol  
Lincoln, NE 68509  
(402) 471-2921  
Fax (402) 471-2197

**Nevada**

*Supreme Court Task Force on Gender Bias in The Courts is an implementation committee.*

*Chair*

Justice Charles Springer  
Nevada Supreme-Court  
Capitol Complex  
Carson City, NV 89710  
(702) 687-5190  
Fax (702) 687-8787

*There is also a Nevada Commission for Women which has overlapping goals with the task force and a crossover in membership.*

*Chair*

Paula L. Quagliana  
41 Country Club Lane  
Las Vegas, NV 89109  
(702) 732-7948  
Fax (702) 735-9230

## **New Jersey**

### *New Jersey Supreme Court Committee on Women in the Courts*

#### *Chair*

Judge Elaine Davis  
Hudson County Administrative Bldg.  
595 Newark Avenue  
Jersey City, NJ 07306  
(201) 795-6662  
Fax (201) 795-0725

#### *Contact*

Marylin C. Slivka  
Manager, Special Programs  
Administrative Office of the Courts  
PO Box 988  
Trenton, NJ 08625  
(609) 984-2172  
Fax (609) 633-7142

## **New Mexico**

*Committee on Women in the Legal Profession of the State Bar is an implementation committee that also addresses some court related and substantive law issues.*

#### *Co-Chairs*

Kimberly A. Schavey, Esq.  
2929 Coors Boulevard NW  
Suite 306  
Albuquerque, NM 87120-1425  
(505) 839-1965  
Fax (505) 839-1949

Robert M. St. John, Esq.  
PO Box 1888  
Albuquerque, NM 87103  
(505) 768-7338  
Fax (505) 768-7395

## **New York**

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

#### *Chair*

Justice Betty Ellerin  
Appellate Division, 1st Department  
27 Madison Avenue  
New York, NY 10010  
(212) 340-0457  
Fax (212) 889-4412

#### *Counsel*

Jill Goodman, Esq.  
25 Beaver Street  
Room 878  
New York, NY 10004  
(212) 428-2794  
Fax (212) 428-2793

## **North Dakota**

### *North Dakota Gender Fairness Commission*

#### *Chair*

Sarah Andrews Herman, Esq.  
Dorsey & Whitney LLP  
PO Box 1344  
Fargo, ND 58107  
(701) 235-6000  
Fax (701) 235-9969

#### *Contact*

Chief Justice Gerald W. Vandelwalle  
State of North Dakota Supreme Court  
600 E. Blvd. Avenue  
Bismarck, ND 58505

**Ohio**

Ohio Supreme Court and Ohio State Bar Association Joint Task Force on Gender Fairness has been disbanded.

Chair of now disbanded Joint Task Force

Justice Alice Robie Resnick  
Supreme Court of Ohio  
2407 Edgehill Road  
Toledo, OH 43615  
(614) 466-3578

**Oregon**

Oregon Supreme Court and State Bar Task Force on Gender Fairness

Contact

Mr. Richard Baldwin  
Chair, Access to Justice and Fairness Committee  
Director, Oregon Law Center  
813 S.W. Alder Street Suite 500  
Portland, OR 97205  
(503) 295-2760  
Fax: (503) 295-0676

**Pennsylvania**

Pennsylvania Conference of State Trial Judges/Pennsylvania Bar Association  
Joint Task Force To Ensure Gender Fairness in the Courts

Co-chairs

Judge Stephanie Domitrovitch  
Erie County Court of Common Pleas  
Room 223, 140 W. 6th Street  
Erie, PA 16501  
(814) 451-6230  
Fax (814) 451-6223

Judge Anthony Vandaro  
Crawford County Courthouse  
903 Diamond Square  
Meadville, PA 16335  
(814) 333-7493  
Fax (814) 333-7489

Contact

Bunny Baum  
Director of Judicial Services  
Administrative Offices of the Pennsylvania Courts  
1515 Market St., #1428  
Philadelphia, PA 19146  
(215) 560-6325

## **Puerto Rico**

*Special Judicial Commission to Investigate Gender Discrimination in the Courts of Puerto Rico*  
*An implementation committee, established in April 1997, operates as a Permanent Advisory Committee of the Secretariat of the Judicial Conference, Supreme Court of Puerto Rico.*

### Co-chairs

Judge Olivette Sagebien  
PO Box 600619  
Baymon, PR 00960-0619  
(787) 798-7325

Judge Miriam Naveira de Rodon  
Supreme Court of Puerto Rico  
PO Box 2392  
San Juan, PR 00902-2392  
(787) 723-6033

### Contact

Patricia Oton Olivieri, Esq.  
Director, Secretariat of the Judicial Conference  
Supreme Court of Puerto Rico  
PO Box 9022392  
San Juan, PR 00902

## **Rhode Island**

*Rhode Island Supreme Court Committee on Women in the Courts*

### Chair

Associate Justice Hon. Francis J. Darigan, Jr.  
Superior Court Licht Judicial Complex  
250 Benefit Street  
Providence, RI 02903  
(401) 222-3250

### Contact

Susan McCalmont  
Assistant Administrator, Policy and Programs  
Rhode Island Supreme Court  
250 Benefit Street, Room 705  
Providence, RI 02903  
(401) 222-2500  
Fax (401) 222-3599

## **Tennessee**

*Tennessee Supreme Court Committee to Implement the Recommendations of the Racial and Ethnic Fairness Commission and the Gender Fairness Commission*

### Co-chairs

Professor Judy Cornett  
University of Tennessee College of Law  
1505 West Cumberland Avenue  
Knoxville, TN 37996-1810  
(423) 974-6824  
Fax: (423) 974-0681  
Email: [cornett@libra.law.utk.edu](mailto:cornett@libra.law.utk.edu)

Monte D. Watkins, Esq.  
1510 Parkway Towers  
Nashville, TN 37219  
(615) 244-2432  
Fax: (615) 242-5549



**Texas****Gender Bias Implementation Committee****Chair**

Barbara Rosenberg, Esq.  
3811 Turtle Creek Blvd  
Suite 1900  
Dallas, TX 75219  
(214) 443-8000  
Fax (214) 443-8010

**Contact**

Dr. Cynthia Spanhel  
Director, Research & Analysis Dept.  
State Bar of Texas  
PO Box 12487  
Austin, TX 78711-2487  
(800) 204-2222 ext. 2022

**Utah****Utah Gender Bias Implementation Committee**

Judge Leslie A. Lewis  
3rd Judicial District of Utah  
450 South State, Scott Matheson Bldg.  
Salt Lake City, UT 84111  
(801) 238-7514  
Fax (801) 238-7542

**Vermont****Vermont Equal Access Committee****Chair**

Hon. Denise Johnson  
Vermont Supreme Court  
111 State Street  
Montpelier, VT 05609  
(802) 828-3278  
Fax (802) 828-3457

**Virginia****Virginia Commission on Women and Minorities in the Legal System****Contact**

Edna Vincent, Esq.  
Surobell, Jackson, Colten & Dugan  
4010 University Drive, 2nd Floor  
Fairfax, VA 22030  
(703) 591-1300  
Fax: (703) 591-1579

## **Washington**

### Supreme Court Gender and Justice Commission

#### Chair

Justice Barbara Madsen  
Supreme Court of Washington  
Temple of Justice Building  
PO Box 40929  
Olympia, WA 98502-0929  
(360) 357-2037  
Fax (360) 357-2103

#### Coordinator

Gloria C. Hemmen  
Office of the Administrator for the Courts  
1206 South Quince, PO Box 41160  
Olympia, WA 98504-1170  
(360) 705-5290  
Fax (360) 586-8869

## **West Virginia**

*Implementation committee to be appointed by West Virginia Supreme Court.*

#### Contact

Mary Dorkin, Esq.  
Administrative Office of the Courts  
West Virginia Supreme Court of Appeals  
Room E-400, State Capitol  
Charleston, WV 25305  
(304) 358-0145  
Fax (304) 358-3815

## **Wisconsin**

Gender Neutrality Committee of the Wisconsin Supreme Court is an implementation committee.

#### Chair

Judge Thomas Kane  
740 3rd Street  
Wausau, WI 54403-4784  
(715) 845-6404

#### Contact

William Mann  
Wisconsin Supreme Court  
PO Box 1688  
Madison, WI 53701-1688  
(608) 266-6708  
Fax (608) 267-0980

## **Appendix C**

### **State and Federal Case Citations to Gender Bias Task Force Reports - Annotated**

# SUMMARY OF STATE AND FEDERAL DECISIONS CITING GENDER BIAS TASK FORCE REPORTS AND RELATED AUTHORITIES, AND DECISIONS INVOLVING GENDER BIAS TASK FORCE INITIATIVES

As of Fall 1998\*

As of fall 1998 Task Force reports had been cited in nearly one hundred state appellate and trial opinions and four federal appellate and trial opinions. These decisions have recognized that judicial gender bias is grounds for reversal, and attorney gender bias is grounds for discipline. The fact that courts are relying on the Task Force reports as a basis for decision making is important information for attorneys writing briefs in areas where Task Force issues are germane. These cases are also important in judicial education to make clear that gender bias is now a mainstream concept in the law which should not be trivialized or denied. At recent judicial education programs on fairness in the courts which focused on cases reversed for evident 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 to steer clear of reversible error.

Below is an annotated list of all decisions citing the Task force reports or articles about their findings as of fall 1998, by state and federal circuit.

## STATE COURT DECISIONS

### California

- ▶ *In re Jonathan M.*, 53 Cal. App. 4th 1234, 62 Cal. Rptr. 2d 208 (Cal. Ct. App. 1997)
  - ▶ Topic(s): Child Visitation with Incarcerated Parent
  - Held: (Crosby, J.) In this case, the parent is incarcerated 275 miles away from dependent child. The juvenile court issued an order, at the request of the county social services agency, which established a geographical limit on the visitation component of a reunification plan of 50 miles, thus, preventing the parent from receiving visitation. Because every parent is entitled to visitation, unless to do so would be detrimental to the minor child, the geographical limit of 50 miles is arbitrary and should be removed in light of the special circumstances of this case.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court cited California gender bias task force reports, observing that visitation problems of incarcerated parents have received considerable scrutiny. *Id.* at 1237 n.5 (citing Judicial Council of Cal., Advisory Cmte. Report, Achieving Equal Justice for Women and Men in California Courts (1996) at p. 318; Judicial Council of Cal., Access and Fairness Advisory Cmte. Report, Gender Fairness Subcmte., Gender and Justice: Implementing Gender Fairness in the Courts (1996) at p. 17).
- ▶ *Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 440 (Cal. Ct. App. 1995)
  - ▶ Topic(s): Judicial Gender Bias; Witness Credibility; Sexual Harassment; Rape; Assault and Battery; Intentional and Negligent Infliction of Emotional Distress.
  - ▶ Held: (Kline, J.) Requiring the issue of gender bias to be raised at trial would be unjust. Because counsel wishing to raise this objection may not do so due to risk of offending the court and doubt as to whether the problem could be cured, requiring the issue be raised at trial would have the

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\*Compiled for the *Gender Fairness Strategies Project Implementation Resources Directory* (1998) by the National Judicial Education Program.

result of insulating judges from accountability for gender bias. The gender bias demonstrated by the lower court in its treatment of the employee-appellant (stating summary judgment was justified because her testimony was “simply not believable” because she failed to adequately thwart the assault of her supervisor) creates doubt as to whether the trial was impartial. The judgment is set aside and the matter is remanded for a new trial on all issues with assignment to a different judge.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) Court adopted the definition of “gender bias” developed by the California gender bias task force. *Id.* at 245 n.2 (quoting the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990) at p. 2).
  - (2) Court determined that reversal has been required in cases alleging gender bias where it is “reasonably clear that [the trial judge] entertained preconceptions about the parties because of their gender...[which make] it impossible for [a party] to receive a fair trial.” *Id.* at 245 (quoting *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 1499, 15 Cal. Rptr. 2d 70 (Cal. App. 4 D. 1992)).
  - (3) Court noted that excessive judicial impatience (*Id.* at 252 n.6) and judicial gender bias seemed most likely to arise in litigation in which gender is material, such as sexual harassment and discrimination cases. *Id.* at 248 n.5 (citing the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990) at pp. 24-25; Ninth Circuit Gender Bias Task Force, The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force (July 1993) at p. 127).
  - (4) Court observed that the judge’s questioning appeared gender biased in that it conformed to a “fatherly” or “patronizing” tone. *Id.* at 251 (quoting Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990) at p. 6).
  - (5) Court referenced Ninth Circuit and California gender bias task force reports, stating that the judgment of the lower court seemed to have improperly turned on stereotypes about women (that the employee-appellant was at fault for not successfully resisting the sexual assault of her supervisor) rather than a realistic evaluation of the facts. *Id.* at 260 n. 10 (citing the Ninth Circuit Gender Bias Task Force Report, *supra*, as having reviewed reports on gender bias from 23 other jurisdictions and found that 21 of those reports discussed the difficulties women face in establishing their credibility).
  - (6) Court cited the Ninth Circuit Gender Bias Task Force in concluding that the resistance requirement should be eliminated when applying a standard of reasonableness to a victim of sexual assault. *Id.* at 262 (quoting Report of the Ninth Circuit Gender Bias Task Force, *supra*, at 126 n. 11, citing Estrich, Sex at Work, 43 Stan.L.Rev. 813, 815 (1991)).
- ▶ *In re Marriage of Schnabel*, 30 Cal. App. 4th 747, 36 Cal. Rptr. 2d 682 (Cal. Ct. App. 1994)
  - ▶ Topic(s): Divorce; Sanctions for Frivolous and Gender-Biased Appeal
  - Held: (Didier, J.) Appellate court held that lower court had discretion to enter award in favor of wife for attorney fees and costs incurred defending against husband’s appeal of inclusion of medical and life insurance award in wife’s favor. Further, the court sanctioned husband-appellant and his attorney for frivolous and gender-biased appeal.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In justifying sanctions, the court quoted the Nevada gender bias task force report in a footnote, illustrating that frivolous appeals were a common ploy in divorces to cause harassment and delay when the financial resources of the ex-wife significantly limited her access to the courts compared with her ex-husband’s access to legal expertise. *Id.* at 754 n.5 (citing Lynn Hecht Schafran, Gender Bias in Family Courts (Aug. 1994), Family Advocate, Vol. 17, No. 1, p. 26).

- ▶ *Betz v. Pankow*, 16 Cal. App. 4th 919, 20 Cal.Rptr.2d 834 (Cal. App. 1 Dist. 1993)
  - ▶ Topic(s): Gender Discrimination in Arbitration (Burden of Proof On Plaintiff to Show Bias)
  - Held: (Hatting, J.) Appellate court held that female partner failed to show that award by two male members of a three-person arbitration panel was improperly influenced by gender bias against her and in favor of her male former partner. The court determined that discussing the personal relationship between the parties was not gender bias.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court stated that gender bias would warrant a reversal and noted that a Judicial Council Advisory Committee to implement proposals for the elimination of gender bias has been established by the Chief Justice of the California Supreme Court *Id.* at 923 n. 1.
  
- ▶ *In re Marriage of Iverson*, 11 Cal. App. 4th 1495, 15 Cal. Rptr. 2d 70 (Cal. Ct. App. 1992)
  - ▶ Topic(s): Judicial Gender Bias; Gender-Based Stereotypes; Witness Credibility; Divorce (Prenuptial Agreement)
  - Held: (Sills, J.) The oral statement of the trial judge who upheld the validity of a premarital agreement was replete with gender bias. The trial judge described Cheryl Iverson as a “lovely girl” who was not well-educated and “had nothing going for her except for her physical attractiveness,” and thus, displayed gender bias against her as a credible witness. The trial judge also displayed gender bias in favor of the ex-husband, Chick Iverson. Mr. Iverson testified that he did not want to marry Cheryl Iverson and the two resided together before their marriage. The trial judge explained, “And the 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.” The trial judge further explained, “And why, in heaven’s name do you buy the cow when you get the milk free...” Further, it appears gender-based stereotypes influenced his decision-making process. Because it “is the essence of our system of justice that individuals shall be judged on their own merits, not on some characteristic they happen to share with other people,” the appellate court concludes Cheryl Iverson did not receive a fair trial.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court adopted the definition of “gender bias” developed by the California gender bias task force. *Id.* at 1500 n.3 (quoting the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990) at p. 3).
    - (2) The court quoted the Ninth Circuit Gender Bias Task Force in discussing the difficulty women face in establishing credibility as witnesses. *Id.* at 1500 n.3 (quoting Preliminary Report of the Ninth Circuit Gender Bias Task Force (1992) at p. 17).
  
- ▶ *Droeger v. Friedman, Sloan, & Ross*, 54 Cal. 3d 26, 812 P.2d 931, 283 Cal. Rptr. 584 (Cal. 1991)
  - ▶ Topic(s): Divorce (Unilateral Transfer of Community Realty During Marriage)
  - Held: (Panelli, J.) In determining whether, after the parties to a marriage have separated, an ex-wife has the right to encumber her one-half interest in community real property to secure a note to pay for attorney’s fees for divorce, the Supreme Court of California held that a unilateral encumbrance by ex-wife without ex-husband’s consent can be invalidated in its entirety.
  - Dissent: (Kennard, J.) The decision of the court contravenes legislative intent to give spouses this property right and makes it virtually impossible for many economically weaker spouses to obtain adequate legal representation in contested divorce proceedings. Even though a trial court may order either spouse to pay the other’s attorney fees, many attorneys would be reluctant to accept a case when payment of fees is uncertain and determined by the discretion of the trial court.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The dissent notes that court-ordered attorney fees in marital dissolution proceedings are often delayed and inadequate in amount. *Id.* at 49 (quoting Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990) at p. 100).

- ▶ *In re Benjamin D.*, 227 Cal. App. 3d 1464, 278 Cal. Rptr. 468 (Cal. Ct. App. 1991)
  - ▶ Topic(s): Domestic Violence; Visitation
  - Held: (Sills, J.) Appellate court disagrees with trial judge’s assertions that there was insufficient evidence to establish juvenile court jurisdiction, and that collateral estoppel and res judicata applied to juvenile court’s consideration of facts previously considered by family court. Trial court’s analysis fails to distinguish between the relitigation of facts and whether a given amount of evidence brings a minor within jurisdiction of juvenile court. A juvenile court must not ignore future threat of physical injury and abuse to a minor child simply because those facts may have been previously aired in the forum of a family law court
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court referenced the California gender bias task force report in noting recent efforts to coordinate among family, juvenile, and other courts when dealing with children and overlapping subject matter. *Id.* at 1469, n.3 (quoting the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990), Tab 3-- Family Law, Recommendation 14, at pp. 11-12).
    - (2) The court cited the California gender bias task force report in reinforcing the importance of considering the impact of domestic violence when determining child visitation. *Id.* at 1470, n.5 (quoting the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990), Tab 6 at p. 37).
  
- ▶ *Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 271 Cal.Rptr. 30 (Cal. Ct. App. 1990)
  - ▶ Topic(s): Sexual Assault; Libel (Jury Instruction)
  - Held: (Elia, J.) Karen W. called Santa Cruz Women Against Rape (SCWAR), and said she believed she was sexually assaulted the night before by her co-worker Carney, and his friend, Wilson, while she was passed out from intoxication. At Karen’s request, SCWAR posted their newsletter throughout the Santa Cruz area with the names and descriptions of Carney and Wilson under the subheading of “ASSAULT/ATTEMPTED RAPE.” Carney filed an action against SCWAR seeking damages for libel, invasion of privacy, and intentional infliction of emotional distress. The jury awarded him \$7,500 in compensatory damages and \$25,000 in punitive damages. On appeal, SCWAR argued that the malice instruction was improper and that the jury should have been instructed that Carney was required to prove New York Times malice to recover punitive damages. The appellate court found that the trial court erred in not issuing the malice instruction. When the speech is a matter of public concern, the plaintiff must show New York Times malice (that the communication was published “with knowledge that it was false or with reckless disregard of whether it was false or not”) to recover punitive damages. The SCWAR newsletter was dedicated to addressing the general topic of sexual assault and harassment, thus, it dealt with matters of public concern and the New York Times standard was required.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) For purposes of establishing that the New York Times standard should be applied, the court cited the California gender bias task force report to emphasize that issues of sexual assault and harassment are issues of public concern. *Id.* at 1021 n.4 (citing the report of the Judicial Advisory Committee on Gender Bias in the Courts: Achieving Justice for Women and Men in the Courts (1996).
  
- ▶ *In re Marriage of Touchstone*, 267 Cal.Rptr.777, **Ordered Not Published**, Previously Published at: 218 Cal. App. 3d 870 (Cal. Ct. App. 1990)
  - ▶ Topic(s): Child Support
  - Held: (Froehlich, J.) The trial court may set child support at level below that indicated by discretionary guidelines in light of evidence that mother has remarried and has since become the mother of three additional children, and the higher award would inevitably be used for support of these other children.

- Dissent: (Work, J.) The majority opinion is both gender-biased as well as technically flawed. Discretionary child support guidelines, which are generally too low, are too often used as a ceiling instead of a minimum, as intended by the legislature. Here, the treatment between the parties is uneven-handed because of stereotypical views of women; sympathy for the non-custodial parent; and a paternalistic tone to women. The majority opinion is flawed because the reasons not to follow the child support guidelines given by the court are unsupported by evidence.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The dissent notes that this case is paradigmatic of gender bias in the courts. *Id.* at 782 n.2 (quoting N.J. Wikler, Crites and Hepperle, Women, the Courts and Equality (1986) Vol. 11, Educating Judges About Gender Bias in the Courts, at p. 227).
  - (2) The dissent states that the California gender bias task force has collected detailed findings to support the existence of judicial gender bias. *Id.* at 782 n.3 (citing generally to the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990)).
  - (3) Citing the California gender bias task force report, the dissent observes that where custody and visitation are bitterly contested, the court may be biased in favor of the father. *Id.* at 782 n.5 (citing generally to the Judicial Council of Cal., Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990)).
- Negative Case History: Ordered Not Published.

## Connecticut

- ▶ *Wendt v. Wendt*, 1998 WL 161165 (Conn. Super. Ct. 1998) (**Shepards Not Available**)
  - ▶ Topic(s): Divorce (Division of Property)
  - Held: (Tierney, J.) Although the nonmonetary contributions of non-wage earner spouse must be considered in division of property, this court rejects any attempt to place a specific dollar value on a spouse's non-monetary contributions. Human relationships are too complex to reduce and objectify the activities of a spouse into economic terms. The plaintiff, Lorna Wendt, claims that the marital assets are \$90 million as of the last day of trial, and she is entitled to half, by reason of her non-monetary contributions, the Equal Rights Amendment (ERA) to the Connecticut Constitution, and the theory that a marriage is an equal partnership. The defendant, Gary Wendt, claims that a transfer of \$8.3 million of property along with the payment of \$250,000 a year alimony is more than enough to keep the plaintiff in the lifestyle to which she is accustomed. Connecticut is not a community property state, and the legislature specifically enacted an equitable distribution scheme. Thus, a variety of factors are considered in the division of property and there is no statutory presumption of equal division, regardless of the amount of resources. The ERA to the Connecticut constitution does not change the equitable distribution standards to a community property scheme because no court in the past 14 years (since the ERA's adoption) has found this to be so, despite reviewing the impact of the ERA in divorce cases. Finally, marriage is not a partnership under Connecticut law, and therefore, will not be recognized as such here. Contingent resources, such as stocks and pension plans, may be considered in the division of property.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The plaintiff, Lorna Wendt, cited the Connecticut gender bias task force report in support of her argument that 50 percent division of marital assets was necessary to overcome unequal treatment of women post judgment. *Id.* at 106 (quoting Gender, Justice and the Courts, Report of the Connecticut Task Force (Sept. 1991) at pp. 139-140).
    - (2) The court noted that the Connecticut gender bias task force did not actually study gender bias, but rather collected surveys on perceptions of bias. Thus, the court concluded the report could not be used as evidence of the existence of actual bias. *Id.* at 106.
    - (3) The court recognized that, in addition to Connecticut, other gender bias task force reports observed an existence of judicial gender bias, such as New York, New Jersey, and Rhode Island. *Id.* at 107. But, the court noted that regarding property distribution, the evidence



gathered by the Connecticut task force was “mostly anecdotal and based on questionnaires.” *Id.* at 108. The court specifically pointed out that none of the recommendations made by the Connecticut task force included amending the equitable distribution scheme and adopting a community property scheme. *Id.*

- ▶ *State v. Williams*, 231 Conn. 235, 645 A.2d 999 (Conn. 1994)
  - ▶ Topic(s): Courtroom Bias Against Female Attorney and Jurors (in Closing Argument)
  - Held: (Norcott, J.) By failing to alert the trial court with the specific rationale for his objections, the convicted defendant in murder prosecution failed to preserve his claim that prosecutor engaged in misconduct by making statements in closing argument regarding defense counsel’s skill (prosecutor implied that the female defense attorney was cunning--“Miss Wise has been doing this a long time”) and the importance for female jurors to be tough (prosecutor implied that female jurors could debunk the stereotype that females “aren’t tough enough to convict”). The defense counsel in this case simply stated that the prosecution’s arguments were “simply improper.” This lacks adequate specificity to allow time for the trial court to correct the purported error without ordering a retrial.
  - Concurrence: (Borden, J.) The prosecutor’s closing arguments reflected overt gender bias and the defense counsel’s objections were specific and warranted correction by the trial judge. It was harmless error, however, because the defendant has not established that it is more likely than not that the verdict would have been different absent the error.
  - Dissent: (Berdon, J.) It is constitutional error for a prosecutor to attack the integrity of defense counsel in order to impute guilt to a defendant. Moreover, telling female jurors that they are thought to be weak and emotional unless they convict is reprehensible conduct. Therefore, the improper and prejudicial comments of the prosecutor require a reversal.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The concurrence disagrees with the state’s claim that the defendant’s argument “does nothing more than mirror the findings of the Task Force on Gender, Justice and the Courts.” Specifically addressing the four female members of the jury was improper and the prosecutor’s implicitly sexist message is properly condemned in the majority opinion. *Id.* at 257.
    - (2) The dissent noted that the judiciary in Connecticut has made clear that gender bias in the courts is not acceptable. *Id.* at 263 (quoting Conn. Judicial Branch, Gender and Justice: Guidelines to Ensure Fairness, A Handbook for the Courts, at pp. 2-3).

## Florida

- ▶ *Balas v. Ruzzo*, 703 So.2d 1076 (Fla. Dist. Ct. App. 1997)
  - ▶ Topic(s): Prostitution
  - Held: (Sharp, J.) In a civil action against their pimp, the petitioners, two former prostitutes, may be compelled in discovery to provide information about their prior involvement in prostitution. If the petitioners had brought their lawsuit against the respondent only under section 796.09 (allowing an action for coercion of prostitution) the information would not be discoverable because to do so would be in violation of section 796.09(6). (Section 796.09(6) provides that convictions for prostitution or prostitution-related offenses are inadmissible for the purpose of attacking the plaintiffs credibility). However, the petitioners in this case have filed a multi-count complaint alleging numerous causes of action. Thus, the information sought by respondent is discoverable.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court notes that section 796.09(6) was enacted as the result of the Florida Supreme Court Gender Bias Study Commission. *Id.* at 1079.
- ▶ *Wuornos v. State*, 644 So.2d 1000 (Fla. 1994)
  - ▶ Topic(s): Murder (Evidence of Similar Crimes)
  - Held: (Per Curiam) In conviction of prostitute for murder, where trial court allowed the State to introduce similar crimes evidence about defendant’s alleged involvement in several other murders,

the Florida Supreme Court held that introduction of evidence of similar crimes was not outweighed by potential for prejudice. Although the trial court should have allowed mitigating evidence as to the defendant's alcoholism and difficulties faced as a child as the victim of rape, this error was harmless because their weight was slight when compared with the case for aggravation.

- Concurring: (Kogan, J.) "Social awareness" regarding the problem of child victimization does not dispose of the strictly legal issues, beyond which this Court must be blind.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In concurring, Justice Kogan cited the Florida gender bias task force report's discussion of the cycle of prostitution: young girls who are forced into prostitution to escape abusive homes, but become labeled as criminals as adults. *Id.* at 1012 (Report of the Florida Supreme Court Gender Bias Study Commission, 42 Fla.L.Rev. 803, 892-908 (1990)).
- ▶ *Jones v. State*, 640 So.2d 1084 (Fla. 1994)
  - ▶ Topic(s): Statutory Rape
  - Held: (McDonald, J.) A minor child's constitutional right to privacy does not extend to cases of statutory rape in light of state's interest in protecting children from sexual activity and exploitation before their minds and bodies have sufficiently matured to make it appropriate, safe, and healthy for them.
  - Concurring: (Kogan, J.) The state's interest in preventing negative physical and psychological effects outweighs any "right" children may have in consenting to intercourse.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In concurring, Justice Kogan cited the Florida gender bias task force report's studies documenting the link between exploitation of girls and those same girls being lured into a life of prostitution. *Id.* at 1012 (Report of the Florida Supreme Court Gender Bias Study Commission, 42 Fla.L.Rev. 803, 894-905 (1990)).
- ▶ *Allen v. State*, 636 So.2d 494 (Fla. 1994)
  - ▶ Topic(s): Death Penalty
  - Held: (Per Curiam) For centuries, the law has recognized that children are not as responsible for their acts as are adults--a conclusion also supported by the scarcity of death penalties imposed on the very young. Here, a death penalty sentence for the 15-year-old defendant is a violation of Florida's constitution which prohibits cruel or unusual punishment.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court found unpersuasive the state's argument that the execution of juveniles was no different than the execution of women, in that they both seldom occur. The court cited the Florida gender bias task force report to show that murder cases against women often involve extenuating circumstances, such as domestic violence. *Id.* at 497 n. 6 (Report of the Florida Supreme Court Gender Bias Study Commission, 42 Fla.L.Rev. 803, 838 (1990)). The court stated, however, that adult men and women were treated essentially the same for murders that are equally aggravated and mitigated.
- ▶ *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097 (Fla. 1993)
  - ▶ Topic(s): Domestic Violence (Tort Action for Wrongful Death Suit)
  - Held: (Kogan, J.) A state attorney who promised deceased victim of domestic violence that he would help her in seeking a restraining order, but whose office subsequently misplaced or misfiled the pertinent documents, is not subject to tort action for wrongful death because judicial immunity extends to quasi-judicial officers.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court stated it was mindful of the problem of domestic violence and that it has commissioned and acted upon the Florida gender bias task force report. *Id.* at 1099 (Report of the Florida Supreme Court Gender Bias Study Commission, 42 Fla.L.Rev. 803

(1990)). The court further mentioned that partly as a result of the report, Florida law has been modified so that women suffering abuse can obtain an injunction for protection directly from the clerk of the court, without any need of the state attorney's help. Section 741.30, Fla.Stat. (1991).

- ▶ *Foster v. State*, 614 So.2d 455 (Fla. 1992)
  - ▶ Topic(s): Murder (Race Discrimination)
  - Held: (Per Curiam) The defendant has offered nothing to suggest that the state attorney's office acted with purposeful discrimination in seeking the death penalty. Therefore, the circuit court did not err in refusing to allow defendant to show that the use of the death penalty is racially motivated in Bay County, Florida (defendant offered a study concluding that the Attorney's Office pursued prosecution much more vigorously and fully in cases involving white victims than in cases involving black victims).
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In the concurrence/dissent, Chief Justice Barkett points to The Florida Supreme Court Gender Bias Study Commission Final Report (1990) and the Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission (1990 & 1991) in support of her claim that Florida has established its commitment to equality of treatment. *Id.* at 466. Chief Justice Barkett concludes that the standard of "purposeful discrimination" is insurmountable and that the defendant's claim of racial discrimination warranted an inquiry.
  
- ▶ *Miller v. Miller*, 602 So.2d 591 (Fla. Dist. Ct. App. 5 1992)
  - ▶ Topic(s): Modification of Permanent Spousal support Award; Attorney's Fee Award
  - Held: (Diamantis, J.) Trial judge did not abuse his discretion by denying motion to award attorney's fee for appeal and by awarding the former wife only a \$200 per month increase in her permanent spousal support award (for a total of \$1,050 per month) in light of evidence regarding the day-to-day expenses of former wife, despite fact that former husband's income had almost doubled since dissolution of marriage.
  - Dissent: (Sharp, J.) Although the bare day-to-day expenses perhaps totaled an increase of \$200 a month, this low increase did not factor in expenses such as increased medical expenses, car repairs, and medical insurance. The case should be remanded for an award which encompasses all of the former wife's current basic household and medically related needs, as well as an award for attorney fees.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In citing the Florida gender bias task force, the dissent observed that to deny the former wife any appellate fees because she lost will serve to close the appellate process to other impecunious spouses in dissolution cases. *Id.* at 594 n. 10 (citing Report of Florida Supreme Court Gender Bias Study Commission, Executive Summary (1990) at p. 6).
  
- ▶ *Johns v. Johns*, 598 So.2d 327 (Fla. Dist. Ct. App. 5 1992)
  - ▶ Topic(s): Divorce (Attorney's Fee Award)
  - Held: (Per Curiam) Affirmed trial court's denial of petitioner's motion for an award of attorney fees, reasoning that requiring ex-husband to pay attorney fees for ex-wife would constitute an equitable distribution of non-marital assets, which is prohibited by section 61.075(1) of the Florida Statutes (1989).
  - Dissent: (Sharp, J.) First, the trial judge abused his discretion by denying the former wife any attorney fees in the dissolution case, based on the relative abilities of the parties to pay and their comparative net worth. Here, the ex-wife has been awarded custody of the three children and will remain a homemaker. In contrast, the ex-husband works and his financial net worth exceeds his ex-wife's by at least ten times, and at most, 30 times. And second, the trial judge reached his decision not to award fees because of his misinterpretation of section 61.075(1). The trial judge concluded that, since neither party had any liquid assets to pay the attorney fees, requiring the ex-

husband to sell non-marital property (Palm Beach residence inherited from his family) to pay petitioner's attorney's fee in effect distributes non-marital assets to petitioner. Yet, nowhere in the statute is the trial court prohibited from considering non-marital assets as a source from which spousal support or attorney fees can be paid.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The dissent noted that denying former wife's attorney fees will have unfortunate consequences. Her attorney may not be paid in full, or if in part, not timely. Judge Sharp cited the Florida gender bias task force report to emphasize that this contributed to "the now-acknowledged syndrome of attorneys declining to represent women in dissolution cases because of fee considerations." *Id.* at 329 (citing Report of The Florida Supreme Court Gender Bias Study Commission (1990) pp. 49-50).

▶ *Doe v. State*, 587 So.2d 526 (Fla Dist. Ct. App. 1991)

- ▶ Topic(s): Prostitution
- Held: (Per Curiam) The lower court did not abuse discretion in refusing to restrict public access to pretrial discovery materials in prostitution prosecution in which police had seized client lists. Although the media do not have a First Amendment right of access to pretrial discovery, there is a statutory right of access under the Public Records Act. The petition for writ of certiorari is denied.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In concurring, Judge Warner observes that the moving parties, who identified themselves as "John Does," ironically stated in their affidavits that they were "victims," yet, "if they are 'victims,' then there is no exemption for the release of their names." (Fla.Stat. 119.01(3)(c)2) *Id.* at 533 (quoting The Florida Supreme Court Gender Bias Study Commission (1990)).

▶ *In re Code of Judicial Conduct* (Canons 1, 2, and 7A (1)(b)), 603 So.2d 494 (Fla. 1992)

- ▶ Topic(s): Judicial Misconduct
- Held: (McDonald, J.) The Code of Judicial Conduct, including canons prohibiting a judge from publicly endorsing a candidate for public office is not unconstitutional because preserving the impartiality and independence of the judiciary is a sufficiently compelling governmental interest to justify restriction of this right.
- Dissent: (Kogan, J.) Judge Glickstein's letters addressed socio-political issues of concern to him, including an assessment of Chief Justice Shaw's performance and the need to retain him in office. This expression did not imply that he has pre-judged cases or lacks impartiality. To construe his case as a violation of the canon is an overbroad interpretation, and thus, is unconstitutional.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In his dissent, Justice Kogan state that Judge Glickstein's comments were consistent with the clear public policy of Florida to better the lot of the state's children, noting that large sections of the Florida Supreme Court Gender Bias Study Commission Final Report (1990) dealt with the problems of runaways and children involved in custody and child-support. *Id.* at 501.

▶ *The Florida Bar Re: Amendments to Rules Regulating The Florida Bar*, 624 So.2d 720 (Fla. 1993)

- ▶ Topic(s): State Bar Association (Adopting Language Prohibiting Discrimination)
- Held: (Per Curiam) In a proposed amendment, the Supreme Court of Florida adopts the following language: "A lawyer shall not: (d) engage in conduct that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, or age."
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The amendment was proposed because of studies conducted by the Florida Supreme Court Racial and Ethnic Bias Study Commission and the Florida Supreme Court Gender Bias Study Commission. *Id.* at 721.

- ▶ *The Florida Bar Re: Amendment to Florida Rules of Judicial Admin.*, 609 So.2d 465 (Fla. 1992)
  - ▶ Topic(s): Gender-Specific Language (Amending Rules of Judicial Administration)
  - Held: (Per Curiam) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules of Judicial Administration, including gender-neutral language, such as replacing “he” with “chief justice” when referencing the Chief Justice; and including Rule 2.160: “Disqualification of Trial Judges.” Under the topic of“(d) Grounds,” the rule states, “A motion to disqualify shall show: (1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.”
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules of Judicial Administration to comply with style and gender requirements as mandated by this court and in response to the Report of The Florida Supreme Court Gender Bias Study Commission. *Id.* at 465.
  
- ▶ *The Florida Bar Re: Amendment to Rules Regulating The Florida Bar*, 605 So.2d 252 (Fla. 1992)
  - ▶ Topic(s): Gender-Specific Language (Amendment to Rules Regulating The Florida Bar)
  - Held: (Per Curiam) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Rules Regulating the Florida Bar, including gender-neutral language, such as replacing “spokesman” with “spokesperson,” and replacing “his property” with “another’s property.”
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules of Judicial Administration to comply with style and gender requirements as mandated by this court and in response to the Report of The Florida Supreme Court Gender Bias Study Commission. *Id.* at 252.
  
- ▶ *The Florida Barre Amendments to Rules Regulating The Florida Bar 1-3.7; 3-5.1(g); 3-5.2; 14-1.1 and Chapter 15*, 593 So.2d 1035 (Fla. 1991)
  - ▶ Topic(s): Gender-Specific Language (Amendment to Rules Regulating The Florida Bar)
  - Held: (Per Curiam) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Rules Regulating the Florida Bar regarding out-of-state corporate counsel and with respect to emergency orders of suspension of probation. Proposed rules included the elimination of gender-specific language.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules Regulating The Florida Bar, commending compliance with style and gender-neutral language, as was recommended by the Report of The Florida Supreme Court Gender Bias Study Commission. *Id.* at 1038.
  
- ▶ *Petition of The Florida Bar to Amend Florida Rules of Juvenile Procedure*, 589 So.2d 818 (Fla. 1991)
  - ▶ Topic(s): Gender-Specific Language (Amendment to Rules of Juvenile Procedure)
  - Held: (Per Curiam) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Rules Regulating the Florida Rules of Juvenile Procedure. All rules have been edited to remove gender-biased language.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules of Juvenile Procedure, stating compliance with style and gender-neutral language (as was recommended by the Report of The Florida Supreme Court Gender Bias Study Commission). *Id.* at 818.

- ▶ *In re Amendment to Florida Rules of Criminal Procedure--Rule 3.133(b)(6)(Pre-Trial Release)*, 573 So.2d 826 (Fla. 1991)
  - ▶ Topic(s): Gender-Specific Language (Amendment to Rules of Criminal Procedure)
  - Held: (Per Curiam) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Rules Regulating the Florida Rules of Criminal Procedure. However, the rule has been edited to remove gender-biased language, to meet the recommendation of the Florida gender bias task force.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Florida Supreme Court approves the recommendations made by the Florida Bar to amend the Florida Rules of Criminal Procedure, but, in accordance with the recommendation of the task force, the court has modified the present rule to avoid the use of any gender-specific language (as was recommended by the Report of The Florida Supreme Court Gender Bias Study Commission). *Id.* at 827.
  
- ▶ *In re Amendments to Rules Regulating The Florida Bar 1-3.1(a) and Rules of Judicial Admin. 2.065 (Legal Aid)*, 598 So.2d 41 (Fla. 1992)
  - ▶ Topic(s): Pro Bono Requirement
  - Held: (Overton, J.) The court approves of recommendation a voluntary pro bono requirement with certain modifications: proposes a definition of pro bono service; suggests a minimum of twenty hours of voluntary pro bono legal services or an alternative monetary contribution to legal services; and suggests a reporting system.
  - Concurring/Dissent: (Kogan, J.) The twenty hour pro bono requirement should be mandatory rather than voluntary, in light of the severe need for legal services in the state.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In dissenting, Justice Kogan emphasized the need for providing adequate legal services especially to dispossessed populations, which include divorcing women who face inadequate legal representation when their former husbands control the purse strings. *Id.* at 56 n. 8 (citing The Florida Supreme Court Gender Bias Study Commission Final Report (1990) at pp. 44-85).

## Georgia

- ▶ *In Interest of B.L.S.* 264 Ga. 643, 449 S.E.2d 823 (Ga. 1994)
  - ▶ Topic(s): Statutory Rape
  - Held: (Carley, J.) Juvenile male found guilty of statutory rape challenged statute which applied to males only on ground it violated equal protection. Court held because a separate statute covered the same conduct engaged in by a similarly situated female and provided for the same penalty there was no violation of equal protection.
  - Dissenting in Part: (Sears-Collins, J.) The statute violates equal protection because it only applies to male perpetrators and only protects female victims. Additionally, the statute that does apply to similarly situated female perpetrators provides for much lighter penalties. The statute also violates due process because by including boys involved in consensual sexual relations with peers it creates an irrebutable presumption which is not necessarily true that any female under 14 years of age can in no circumstances consent to sex.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) As part of the equal protection analysis Justice Sears-Collins notes that the statute is underinclusive because it does not protect male victims. In support of the contention that young boys need the same protection as young girls, Justice Sears-Collins cites the Commission on Gender Bias in the Judicial System for the Ending that “gender based stereotyping on the part of those working within the criminal justice system in Georgia results in a tendency to ignore the trauma which may be perpetrated upon a male, especially a male under the age of 14, who has been either pressured or forced to engage in sexual conduct.” *Id.* at 646.

- ▶ *Fathers Are Parents Too, Inc. v. Hunstein*, 202 Ga. App. 716, 415 S.E.2d 322 (Ga. Ct. App. 1992)
  - ▶ Topic(s): Task Force Regulation (Open Meetings Act)
  - Held: (Andrews, J.) In action seeking to enjoin the Georgia Commission on Gender Bias in the Judicial System from conducting closed meetings, the court finds that the commission is not subject to the Open Meetings Act. The Commission was created by order of the Supreme Court, and thus, is an extension of state judicial authority. The Act does not specifically reference the judicial branch, and due to the nature of judicial duties, the court finds that the Act does not apply to the judicial branch of state government, including the commission.

## Illinois

- ▶ *People v. Valentine*, 221 Ill. App.3d 1082, 582 N.E.2d 1338, 164 Ill. Dec. 394 (Ill. App. 1st 1991)
  - ▶ Topic(s): Sexual Assault (Victims' Names)
  - Held: (Murray, J.) The evidence failed to establish discriminatory use of peremptory challenge in sexual assault case. Moreover, evidence failed to establish whether defendant was intoxicated to the extent necessary to suspend ability to form intent to commit aggravated sexual assault.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court noted that although the public defender used the names of the victims in their briefs, the court would follow the recommendation of the state gender bias task force and not reveal the names of the victims, *Id.* at 1089.
- ▶ *In re Marriage of Kantar*, 220 Ill. App.3d 323, 581 N.E.2d 6, 163 Ill. Dec. 55 (Ill. App. 1st 1991)
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Cerda, J.) Both parties agreed to be responsible for their own attorney's fees in dissolution of marriage. After dissolution, former wife filed a petition alleging several improprieties committed by her attorney, including a billing statement containing untruthful time spent and a breach of fiduciary duty by engaging in a sexual relationship with her. Because the former wife provided sufficient evidence to support allegations of incorrect billing, she is entitled to a hearing to decide the correct amount of attorney's fees she should pay. The issue whether the alleged sexual relationship breached the attorney's fiduciary duty is not reached because the alleged attorney fees' impropriety alone would be a sufficient reason, if proven, to vacate the judgment.
  - Concurring: (Greiman, J.) The majority's reversal of the trial court reached by the majority is correct, but the attorney's sexual misconduct should also be considered.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In the concurrence, Judge Greiman discusses the need to address the growing problem of attorney-client sexual encounters in the domestic relations field. *Id.* at 12 n.2 (citing the Illinois Gender Bias Task Force, Illinois Task Force on Gender Bias in the Courts (1990) at p. 54).

## Iowa

- ▶ *State v. Jones*, 511 N.W.2d 400 (Iowa Ct. App. 1993)
  - ▶ Topic(s): Murder (Impeaching Witness)
  - Held: (Keefe, J.) Affirmed conviction of defendant for first-degree murder and attempted murder.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Videotape of government witness' appearance at public hearing for the Iowa gender bias task force, in which witness discussed family's prior involvement in crime and made comments about the judicial system, only went to a collateral issue, and thus, was not admissible for impeachment purposes. *Id.* at 406.

## Maine

- ▶ *Henriksen v. Cameron*, 622 A.2d 1135 (A.2d 1993)
  - ▶ Topic(s): Domestic Violence (Tort Action)
  - Held: (Collins, J.) Former wife brought action against former husband following divorce seeking to recover for emotional suffering intentionally inflicted during marriage through physical and

emotional abuse. Supreme Court of Maine upheld lower court's verdict in favor of former wife, holding that her claim was not barred by either interspousal immunity nor res judicata.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In support of dismissing the argument of interspousal immunity, the court noted that the fact that married couples were ever considered one legal entity demonstrates the difficulty women have faced in our nation's courts. *Id.* at 1139 n.2. Further, the court noted that it recently established a gender bias task force in Maine to study issues such as domestic violence. *Id.* at 1139 n.4.

## Maryland

- ▶ *Attorney Grievance Com'n of Maryland v. Goldsborough*, 330 Md. 342, 624 A.2d 503 (Md. 1993)
  - ▶ Topic(s): Sexual Harassment, Attorney Misconduct
  - Held: (Chasanow, J.) When an attorney engages in nonconsensual kissing and spanking of client, and spanking of his secretary, and when attorney has been untruthful to the review board charged with his disciplinary action, an indefinite suspension from the practice of law is warranted.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority commented that the Attorney's conduct exemplifies the arrogance that underlies sexual harassment, and that the legal profession is not free of such arrogance. *Id.* at 364 (citing the Report of the Special Joint Committee on Gender Bias in the Courts (May 1989); Report of the Select Committee on Gender Equality of the Maryland Judiciary and the Maryland State Bar Association (October 1992)).
- ▶ *Watson v. Peoples Sec. Life Ins. Co.*, 322 Md. 467, 588 A.2d 760 (Md. 1991)
  - ▶ Topic(s): Sexual Harassment; Sexual Assault; Retaliatory Termination of Employment
  - Held: (Rodowsky, J.) Absent a statute expressing a clear public policy mandate, there is ordinarily no violation of public policy by an employer's discharging an at-will employee in retaliation for that employee's suing the employer. It is, however, a violation of public policy when an employee is discharged for seeking legal redress against a co-worker for sexual harassment culminating in sexual assault and battery.
  - Concurring/Dissent: (Eldridge, J.) The majority's reasoning is flawed when concluding that an employer may not discharge an employee for filing a claim for sexual harassment against a co-worker, but may discharge an employee for filing a claim against the employer. When the allegations are identical, the employee should be protected from abusive discharge.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Judge Eldridge stated that if the plaintiffs employer fired her in retaliation for her lawsuit against it, even absent constitutional or statutory provisions, this action was a clear violation of a public policy mandate. *Id.* at 491 (citing the Maryland Special Joint Committee, Gender Bias in the Courts (1989) at pp. 80-83, 93-96).
- ▶ *Surratt v. Prince George's County, Md.*, 320 Md. 439, 578 A.2d 745 (Md. 1990)
  - ▶ Topic(s): Sexual Harassment; Judicial Misconduct
  - Held: (Adkins, J.) In this case, counsel believed that over a period of ten years, she had been the subject of the judge's unwelcome sexual advances. She offered testimony that her rejection of his advances was potentially affecting his impartiality as a judge in her case, ultimately harming her client. Thus, although the question of recusal is ordinarily decided by the judge whose recusal is sought, when a motion for recusal is set forth with detailed facts sufficient to show purported misconduct, the judge should permit another judge to decide motion.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court acknowledged that the facts of the case were supported by the findings of the Maryland gender bias task force. *Id.* at 757 (citing the Maryland Special Joint Committee, Gender Bias in the Courts (1989) at p. 125).



## Massachusetts

- ▶ *Custody of Vaughn*, 422 Mass. 590, 664 N.E.2d 434 (Mass. 1996)
  - ▶ Topic(s): Custody; Domestic Violence
  - Held: (Fried, J.) Affirmed appellate court in *R.H. v. B.F.*, 39 Mass. App. Ct. 29, 653 N.E.2d 195 (Mass. App. Ct. 1995). and ruled that probate court committed reversible error in failing to make findings of fact on domestic violence when awarding primary custody to father and in awarding shared legal custody.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Supreme Judicial Court noted that the Massachusetts gender bias task force study “concludes that our courts have too often failed to appreciate the fundamental wrong and the depths of the injury inflicted by family violence.” *Id.* at 596.
  
- ▶ *R.H. v. B.F.*, 39 Mass. App. Ct. 29, 653 N.E.2d 195 (Mass. App. Ct. 1995)
  - ▶ Topic(s): Custody; Domestic Violence
  - Held: (Perretta, J.) In the probate and family court, primary physical custody was awarded to father because the guardian ad litem found instances where mother’s erratic behavior concerned child; that primary custody to mother would cause separation anxiety between father and son; and eleven-year-old son preferred father’s custody. The appellate court reverses judgment in light of the domestic violence and sexual abuse of father. The probate court committed error for failing to make detailed findings of fact which demonstrate that the effects of domestic violence on the child have been evaluated. The probate court also erred in finding that both parents were abusive and for failing to support with evidence that the mother’s erratic behavior was not the result of battered woman’s syndrome and that mother’s use of force was defensive in nature.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court cited the Massachusetts gender bias task force report in support of the statement: “Although our Legislature has left it to the discretion of the trial judge to determine custody on the facts presented, it remains open to the appellate courts to provide guidance on the issue of how domestic violence should affect any decision.” *Id.* at 41 (quoting the Supreme Judicial Court, Gender Bias Study of the Court System in Massachusetts at p.4, (1989)).
  
- ▶ *Hogan v. Riemer*, 35 Mass. App. Ct. 360, 619 N.E.2d 984 (Mass. App. Ct. 1993)
  - ▶ Topic(s): Divorce (Unfair and Deceptive Trade Practice)
  - Held: (Kass, J.) The lower court did not err in granting summary judgment to the defendant, a mortgagee who allegedly promised to help plaintiff if she encountered financial difficulties with her second mortgage, and allegedly presented more favorable loan terms in discussions prior to signing. This is not a case of an unfair and deceptive trade practice because the plaintiff was represented by her attorney at the time of signing and the plaintiff failed to mention the loan terms were at variance with what she expected. The plaintiff, thus, fails to establish a misrepresentation of a material fact, made to induce action, and reasonable reliance on a false statement.
  - Dissent: (Brown, J.) Summary judgment was erroneous because there is a dispute of genuine issues of material fact. Based on the facts, if proven, a fact finder could have found the defendant’s conduct constituted an unfair practice.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The dissent notes that the plaintiff lost her home in the wake of a divorce settlement: Plaintiff was unable to obtain conventional financing to buy out her ex-husband’s share of the home and the defendant apparently took advantage of the situation. The dissent states that this case is consistent with the reality that women suffer a significant drop in their standard of living after a divorce. *Id.* at 991 (referencing the Supreme Judicial Court, Gender Bias Study of the Court System in Massachusetts at pp. 27-39 (1989)).

- ▶ *Handrahan v. Handrahan*, 28 Mass. App. Ct. 167, 547 N.E.2d 1141 (Mass. App. Ct. 1989)
  - ▶ Topic(s): Divorce (Division of Property); Domestic Violence
  - Held: (Kass, J.) Where wife shouldered the vast majority of economic cost of marital home, the lower court erred in granting husband equity in home by requiring ex-wife to pay 25% of home's value (\$51,000) in divorce. Such decision would result in additional instability to the family because wife would be forced to sell home, having no other financial assets to pay equity. Further, the domestic violence of husband resulted in negligible contributions to the family's well-being during the marriage to warrant such a judgment.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The concurrence notes that the lower court's award was manifestly unfair and that no court should "play a role in continuing and contributing to women's inferior economic and social status." *Id.* at 172 (quoting the Supreme Judicial Court, Gender Bias Study of the Court System in Massachusetts at p. 19 (1989)).

## Michigan

- ▶ *Sanads v. Sands*, 442 Mich. 30, 497 N.W.2d 493 (Mich. 1993)
  - ▶ Topic(s): Divorce (Division of Property)
  - Held: (Per Curiam) In divorce case in which the defendant husband attempted to conceal assets of the marital estate, court of appeals held that trial court erred in making an even distribution of property. Defendant forfeited his concealed assets and therefore should be ordered to pay 70% of his wife's attorney's fees. Court cautioned that there is no automatic forfeiture rule in every divorce case where defendant conceals assets.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority opinion reaffirmed the conclusions of the Michigan gender bias task force report in finding that spouses who conceal assets should be subject to sanctions. *Id.* at 33 n. 4 (quoting the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts at pp. 70-71 (1989)).
  
- ▶ *Dept. of Civil Rights ex rel. Johnson v. Silver Dollar Cafe*, 441 Mich. 110, 490 N.W.2d 337 (Mich. 1992)
  - ▶ Topic(s): Sexual Harassment
  - Held: (Levin, J.) Employers appealed Civil Rights Commission's conclusion that employee was entitled to \$30,000 in back pay and damages as a result of sexual harassment. Circuit court lowered amount to \$4,515 and appellate court reinstated original award. Supreme Court reversed and remanded to court of appeals to consider whether circuit court judge clearly erred in awarding the lower damages. Supreme Court also held that circuit court may substitute its assessment for the findings and conclusions of the Commission because of the "de novo" scope of review, and that a clearly erroneous standard applies.
  - Concurring/Dissent: (Boyle, J.) Agrees that the scope of review is "de novo," but the reviewing court "must recognize the superior position of the initial fact finder [the Civil Rights Commission in this case] in resolving issues of credibility." Here, the particular facts were disturbing (e.g., the supervisor offered to pay employee \$100 for 10 minutes of sexual favors) and the initial fact finder was in a far better position to assess the appropriate damages than the circuit court.
  - Concurring/Dissent: (Riley, J.) The circuit court's review of decisions made by the Civil Rights Commission "is limited to determining whether the commission's findings of fact and legal conclusions are supported by competent, material, and substantial evidence on the whole record."
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In Boyle's concurrence, the judge notes that sexual harassment has a devastating adverse impact on victims, including humiliation and enragement. *Id.* at 129 n. 26 (referencing the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts; Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts).

- ▶ *Sands v. Sands*, 192 Mich. App. 698, 482 N.W.2d 203 (Mich. App. 1992)
  - ▶ Topic(s): Divorce (Division of Property)
  - Held: (Weaver, J.) Case where the defendant spouse has attempted to conceal assets from ex-wife is “a prime example of the burden one spouse’s reprehensible conduct imposes upon not only the wronged spouse, but also the court system.” It is inappropriate for the court to award any share of assets that defendant attempted to conceal. Thus, the lower court committed error in awarding an even distribution of assets.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court cited the Michigan gender bias task force report in describing the problem of hidden assets and the fact that many spouses were unaware of the extent of their ex-spouse’s property and estate. *Id.* at 703 (quoting the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts at pp. 67-68 (1989)).
    - (2) The court supported its decision to impose sanctions and to order forfeiture of ex-husband’s assets through the recommendations of the Michigan gender bias task force. The task force suggested: “Both parties should be required to disclose all assets in the early stages of a divorce action. Failure to disclose assets should result in the imposition of meaningful sanctions such as default, an award of actual attorney fees, and costs or contempt. If undisclosed assets are later discovered, there should be a rebuttable presumption that they were deliberately concealed, resulting in the award of 100% of such assets to the injured party unless the presumption is overcome by the non-disclosing party.” *Id.* at 704 (quoting the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts at pp. 70-71(1989)).
  - Negative Case History: *Sands v. Sands*, 442 Mich. 30, 497 N.W.2d 493 (Mich. 1993) (There is no automatic forfeiture rule in every divorce case where the defendant conceals assets).

## Minnesota

- ▶ *State by Cooper v. French*, 460 N.W.2d 2 (Minn. 1990)
  - ▶ Topic(s): Civil Rights (Landlord-Tenant Dispute)
  - Held: (Yetka, J.) Landlord appealed an order by an administrative law judge after he was found guilty of discriminating against a single female who wished to cohabitate with her fiancé. Landlord ordered to pay tenant damages and civil penalties for violating the Human Rights Act. Court held that the Human Rights Act’s prohibition against discrimination based on marital status was intended by the legislature for the employment context and was not intended to extend to the scope of landlord-tenant relations. Further, the state constitution protects the landlord’s religious belief and this right outweighs the interest of the tenant.
  - Dissent: (Popovich, J. joined by Wahl and Keith, JJ.) If the state shows a compelling or overriding interest for a burdensome regulation, it can prevent a religious-based exemption from that regulation. Courts have repeatedly recognized there is a compelling state interest in eradicating invidious discrimination.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The dissent cites the Minnesota gender bias task force report to show recognition of the problem of discrimination against unmarried couples. *Id.* at 19 (referencing the Minnesota Supreme Court Task Force for Gender Fairness in the Courts, 15 Wm. Mitchell L.Rev. 825, 876 (1989)).

## Missouri

- ▶ *Burkhart v. Burkhardt*, 876 S.W.2d 675 (Mo. Ct. App. 1994)
  - ▶ Topic(s): Divorce; Custody; Attorney’s Fee
  - Held: The court rejected Appellant’s argument that the trial court, in considering a document on gender bias in determining the issue of who should pay attorney fees, made an impermissible presumption on the issue of custody that a child of tender years is best placed with the mother. The court also rejected Appellant’s argument that the trial court improperly relied on the document in deciding the issue of attorney fees.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) It was unclear what “the document on gender bias” was because it was not part of the record. The court of appeals assumed the trial court was referring to the “Report of the

Missouri Task Force on Gender and Justice.” *Id.* at 680. Thus it appears that in deciding the issue of attorney fees the trial court gave consideration to the Report of the Missouri Task Force on Gender and Justice. *Id.* at 678-79.

## Montana

- ▶ *In re Marriage of Davies*, 266 Mont. 466, 880 P.2d 1368 (Mont. 1994)
    - ▶ Topic(s): Divorce (Gender-based Stereotypes)
    - Question(s) Presented:
      - (1) Whether the lower court erred in refusing to award spouse a portion of the cash value of ex-husband’s stock when dividing the marital estate?
      - (2) Whether the lower court erred in discounting the values of the stock?
    - Held: (Hunt, J.) Gifted property, such as ex-husband’s stock in closely held family corporations, may be included in the marital estate after the court has considered the contributions of the other spouse. The lower court erred in holding that the non-owning spouse was not entitled to any portion of the stock because she had nothing to do with increasing the value of the two ranch corporations. The record does not support this because during the 19 years that the non-owning spouse lived on the ranch, she was engaged in the rigorous activities of a ranch wife. The lower court also erred in discounting the value of the stock by 50 percent. Thus, the non-owning spouse is entitled to the actual underlying value of that stock, rather than the discounted value.
    - Concurring: The lower court adopted the proposed findings of fact of the ex-husband, including that the ex-wife was a “pleasant appearing attractive person who has the ability both physically and emotionally to acquire continuing commercial education and training to enable her to find appropriate employment...” *Id.* at 1377-78. Suggesting that the wife’s physical appearance was relevant to the issue of property distribution was gender bias and sexual stereotyping and was both morally wrong and unconstitutional.
    - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
      - (1) The concurring opinion notes that in recognition of the harm caused by gender bias and sexual stereotyping in court proceedings the Supreme Court of Montana has appointed a Gender Bias Task Force. The concurrence noted:

In its Petition to the Supreme Court, the State Bar of Montana’s Gender Fairness Steering Committee listed forms of gender bias: a) denying rights on the basis of gender; b) subjecting people to stereotypes about the proper behavior of men and women which ignore their individual situations; c) treating people differently on the basis of gender in situations in which gender should be irrelevant; and d) subjecting men and women as a group to a legal rule, policy, or practice which produces worse results for them than for the other group. *Id.* at 1378.
- The concurrence stressed “[all] four forms of gender bias are implicated in any decision in which the counsel and the court litigate and decide issues wholly or partially on the basis of the physical appearance and attractiveness of one of the litigants.” *Id.* at 1378.

## Nevada

- ▶ *Turner v. State*, 111 Nev. 403, 892 P.2d 579 (Nev. 1995)
  - ▶ Topic(s): Sexual Assault (Jury Instruction)
  - Held: (Springer, J.) Defendant claimed error in the trial court’s denial of a “Lord Hale” jury instruction. The “Lord Hale” instruction--which suggests that accusations of sexual offenses are “easily made” and “difficult to disprove,” thus, the victim’s testimony should be examined with caution--dates back to 1671 and was used on the King’s Court of the King’s Bench. It was based upon false assumptions upon which courts can no longer rely and the Supreme Court of Nevada condemns its use in Nevada courts.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The Nevada Supreme Court cites its gender bias task force report to illustrate that charges of a sexual offense are not “easily made,” due to the numerous disincentives victims encounter when deciding to report a sexual offense and to testify at trial, including “(1) the initial emotional trauma of submitting to the official investigatory process; (2) the fear of humiliation attendant to the publicity surrounding a sexual offense charge and

embarrassment caused by demeaning defense tactics at trial; and (3) the vicious and discouraging process of “blaming the victim.” *Id.* at 579-580 (citing generally to Mary White Stewart and Suzanne Stormon, A Study of the Nevada Justice System’s Response to Sexual Assault: A Report to the Nevada Supreme Court Gender Bias Task Force (1991)).

**New Jersey**

- ▶ *Sate v. Hoffman*, 290 N.J. Super. 588, 676 A.2d 565 (N.J. Super. Ct. App. Div. 1996)
  - ▶ Topic(s): Domestic Violence (Violation of Restraining Order)
  - Held: (Long, J.) Lower court’s finding that defendant’s act of mailing ex-wife two ripped-up copies of child support orders constituted harassment, in violation of his restraining order, is reversed. Defendant was found guilty of harassment, and the law states that harassment constitutes acts which cause “annoyance or alarm.” Read in context with “alarm,” the mailings are not an “annoyance,” in that the ex-wife knew that the ripped up items were child support orders. Had the defendant mailed a picture of Nicole Brown Simpson, or a mutilated picture of his ex-wife, these would be examples of harassment within the meaning of the law.
  - Concurring/Dissent: (Loftus, J.) The majority departed from the standard of appellate review, which requires that the fact-finding of the trial judge not be disturbed if supported by adequate, substantial and credible evidence. Also, statutory language should be afforded its ordinary meaning, which would allow the act of the ex-husband to constitute an “annoyance” and thus, “harassment” under the law.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The dissent notes that because of custom, women are often disbelieved because they are women and are perceived as less credible witnesses than men. *Id.* at 607 (citing The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts--June 1984, 9 Women’s Rights L.Rep. 129, 138 (1986); Judith Resnik, Gender Bias: From Classes to Courts, 45 Stan. L.Rev. 2195, 2205 (1993); Lynn Hecht Schatian, Credibility in the Courts: Why is There A Gender Gap? The Judges Journal 5, 9 (Winter 1995);
    - (2) By characterizing the tom-up court orders as inconsequential acts, the dissent asserts that the majority trivializes the problem of domestic violence. *Id.* at 612 (citing Lynn Hecht Schafran, There’s No Accounting for Judges, 58 Alb.L.Rev. 1063, 1065, 1067 (1995) and Gender Bias in Family Courts, Why Prejudice Permeates the Process, 17 Family Advocate 22, 127 (Summer 1994)).
  - Negative Case History: Judgement affirmed in part and reversed in part by *State v. Hoffman*, 149 N.J. 564, 695 A.2d 236 (N.J. 1997).
 

Supreme Court (Coleman, J.) held that substantial evidence supported trial court’s finding that defendant’s purpose in his mailings was to harass wife; annoyance or alarm required by first subsection of harassment statute need not be serious; first subsection of harassment statute proscribes a single act of communicative conduct when its purpose is to harass; first subsection is not unconstitutionally vague; catchall provision of first subsection of harassment statute encompasses only those types of communications that also are invasive of the recipient’s legitimate expectation of privacy; defendant’s mailings did not invade wife’s privacy so as to constitute harassment but mailings violated restraining order so as to constitute contempt.
  
- ▶ *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (N.J. 1984)
  - ▶ Topic(s): Domestic Violence (Battered Woman’s Syndrome)
  - Held: (Wilentz, C.J.) Expert testimony about battered-women’s syndrome is admissible to help establish a claim of self-defense in a homicide case. The experts’ conclusions, despite the relative newness of the field, are sufficiently reliable under the state’s standards for scientific testimony, and the defendant’s expert was sufficiently qualified. Reversed and remanded for new trial. If on retrial the evidence supports the battered women’s syndrome, the expert’s testimony shall be admitted as relevant.
  - Concurring/Dissenting: (Handler, J.) The majority’s acceptance of the scientific reliability of battered women’s syndrome is correct. Consequently, “no further expert testimony or evidence concerning the admissibility of this doctrine should be required on a retrial of this case.”

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The concurrence/dissent emphasizes the pervasiveness of domestic violence citing the New Jersey gender bias task force report *Id.* at 226 (referencing the New Jersey Supreme Court Task Force on Women in the Courts, Summary Report (1983) at pp. 5-6).

## New Mexico

- ▶ *Lebeck v. Lebeck*, 118 N.M. 367, 881 P.2d 727 (N.M. Ct. App. 1994)
  - ▶ Topic(s): Judicial Gender Bias; Divorce (Spousal Support)
  - Held: (Minzner, C.J.) In appeal of divorce judgment, the Supreme Court found that district court did not err in concluding that wife was not entitled to spousal support due to her employability (possessed a degree in journalism and history); and received take-home pay of \$1,080 per month and \$1,423 per month in child support. Further, improper comments regarding the appellant's appearance ("an...articulate college-educated woman with additional attributes of being attractive, and on observation from several court appearances, possessed of exceptional good taste in attire") did not constitute reversible error where sufficient proper factors support decision.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court references the New Mexico gender bias handbook as explicitly stating that comments referring to physical appearance of parties should be avoided. *Id.* at 371 (quoting Handbook on Gender Equality in the Courts: A Guide for Court Conduct in All New Mexico Courts (1994) at p. 5).

## New York

- ▶ *Principe v. Assay Partners*, 154 Misc.2d 702, 586 N.Y.S.2d 182 (N.Y. Sup. Ct. 1992)
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Lebedeff, J.) Sanctions are warranted against plaintiffs counsel for his referring to female colleague in deposition as "little lady" and "little girl." Counsel's rude and condescending comments included: "I don't have to talk to you, little lady;" "What do you know, young girl;" and "Tell that little mouse over there to pipe down." The words he selected were meant to degrade a colleague on the basis that she was female. Counsel is directed to forward \$500 to the Clients' Security Fund and \$500 to movant's attorney as reasonable attorney's fees for the motion.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court noted that there is growing recognition of and intolerance for gender bias in the courts. *Id.* at 705 (citing the Report of the New York State Task Force on Women in the Courts (1986), Appendix A).
- ▶ *Ruotolo v. State*, 151 Misc.2d 820, 574 N.Y.S.2d 904 (N.Y. Ct. Cl. 1991)
  - ▶ Topic(s): Gender-Specific Language
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority noted that the doctrine referred to as the "fireman's rule" was anachronistic and revealed gender-biased language. *Id.* at 822 n.1 (citing Fair Speech: Gender Neutral Language in the Courts, by the New York Judicial Committee on Women in the Courts).
  - Negative Case History: Reversed by *Ruotolo v. State*, 593 N.Y.S.2d 198, 187 A.D.2d 160 (N.Y.A.D. 1993).
 

Court of Appeals (Bellacosa, J.) Held: that amendment to statute allowing police officers to bring claim alleging that state's negligence caused injuries in the line of duty was constitutional.
- ▶ *Tortorello v. Tortorello*, 161 A.D.2d 633, 555 N.Y.S.2d 411 (N.Y. App. Div. 1990)
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Per Curiam) Order denying plaintiffs motion to vacate a judgment against her determining the amount of a lien charged by her former counsel, is reversed. Plaintiffs motion to vacate default judgment granted on ground of fraud, misrepresentation, or other misconduct based on failure of her former counsel to apprise court of existence of modified retainer agreement in which counsel agreed to accept an hourly fee which was lower than fee agreed upon in the original retainer agreement.

- Concurring: (Kooper, J.) The plaintiffs former counsel referred to plaintiff as “Margaret” throughout their brief in 104 separate instances and in a patronizing way, which is sexist, demeaning, and unprofessional.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The concurrence stated that the use of terminology “which conveys a bias premised on gender has no place in a responsible appellate argument.” *Id.* at 634 (citing the Unified Court System, Office of Court Administration, Report of the New York Task Force on Women in the Courts (1986) at pp. 210-233).
- ▶ *Match v. Match*, 146 Misc.2d 986, 553 N.Y.S.2d 626 (N.Y. Sup. Ct. 1990)
- ▶ Topic(s): Divorce (Attorney Fees)
  - Held: (Glen, J.) A matrimonial judge has the power to request or require time records (or some approximation thereof) from the opposing counsel in an attempt to assess the reasonableness of fees sought by non-titled spouse. Here, the non-titled spouse’s counsel failed to keep detailed time records, and thus, it is difficult to ascertain whether the \$130,000 in fees sought accurately reflect a fair award in light of the work actually performed. Yet, failure of plaintiffs counsel to keep detailed time records should not serve to deprive the firm of reasonable compensation for the work performed. Therefore, the opposing counsel’s time records are appropriate and necessary to serve as a benchmark for the reasonableness of the fees sought by plaintiffs counsel.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The potential for a gender discriminatory process occurs when a non-titled spouse, often unemployed, has difficulty financing matrimonial litigation. *Id.* at 988 (citing the Task Force on Gender in the Courts, see Unified Court System, Office of Court Administration, Report of the New York Task Force on Women in the Courts, pp. 103-106 (1986)).
  - Negative Case History: Reversed by *Match v. Match*, 168 A.D.2d 226, 562 N.Y.S.2d 115 (N.Y.A.D.1 Dept. 1990).
 

Supreme Court, Appellate Division (Ellerin, J.) held: Trial court not justified in ordering defendant’s counsel to produce time records to assist in determining reasonableness of plaintiff’s counsel’s fee request and the Record provided the trial court with an ample basis for determining the amount of counsel fees that would fairly and reasonably compensate plaintiffs attorney.
- ▶ *People v. Forman*, 145 Misc.2d 115, 546 N.Y.S.2d 755 (N.Y. Crim. Ct. 1989)
- ▶ Topic(s): Domestic Violence (Constitutionality of Temporary Restraining Order)
  - Held: (Gruner-Gans, J.) Defendant claimed that due process pursuant to the Fourteenth Amendment requires that an evidentiary hearing must be held before a temporary order of protection (TOP) may be issued, excluding defendant from his home. Court finds that the emergency nature of domestic violence cases, as well as the practical difficulties inherent in convening an immediate evidentiary hearing, mitigate against the imposition of such hearings before a TOP may be issued. However, the defendant’s violation of TOP’s provision requiring defendant to “abstain from offensive conduct against” his wife could not support criminal contempt charge because such a provision is vague.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The government has a strong interest in the issuance of restraining orders and combating domestic violence. *Id.* at 127 (citing First Report, New York State Governor’s Commission on Domestic Violence, September 1986, pp. 3-4; Report of New York Task Force on Women in the Courts, Fordham Urban Law Journal, Vol. XV, No. 1, 1986-1087, p. 47).
- ▶ *People v. Irizarry* 142 Misc.2d 793, 536 N.Y.S.2d 630 (N.Y. Sup. Ct. 1988)
- ▶ Topic(s): Juror Challenges
  - Held: (Bamberger, J.) Although defense counsel established a prima facie case of purposeful discrimination by prosecutor in selection of jurors through gender-based peremptory challenges. Defendant’s motion for mistrial denied because prosecutor’s failure to justify exclusion of two of

the nine peremptory challenges of potential women jurors on grounds independent of gender does not rise to a violation of the Equal Protection Clause.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The statutes enacted by the Legislature and thereports of the gender bias task force reinforce the prohibition of gender-based discrimination. *Id* at 808-809 (citing New York Task Force on Women in the Courts, March 1986; Report of the Committee to Implement Recommendations of the New York State Task Force on Women in the Courts, April 1987).
- Negative Case History: Judgement Reversed by *People v. Irizarry*, 165 A.D.2d 715, 560 N.Y.S.2d 279 (N.Y.A.D. 1 Dept. 1990).

Supreme Court, Appellate Division (Kupferman, Ellerin, Wallach & Smith) held: Reversed trial court and held new trial was required where, following trial, court found that in two instances prosecutor used preemptory challenges to exclude women from the jury. Once a court concludes, as trial court did here, that two jurors have been excluded because they are women, the defendant and the juror have been denied the equal protection of the law.

- ▶ *People v. S.R.*, 136 Misc.2d 54, 517 N.Y.S.2d 864 (N.Y. Sup. Ct. 1987)
  - ▶ Topic(s): Juror Challenges
  - Held: (Price, J.) The defendant fails to establish a prima facie case of gender-based discrimination because a majority of the jury members were female.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The court condemns discrimination based on gender and is acutely aware that women are often not treated the same as male participants in the judicial system. *Id.* at 57 (citing the Report of the New York Task Force on Women in the Courts (1986), pp. 60-64, 121-124, 155-158, 178-179, 202-204, 233-234, 248, 260-262; Report of New York Task Force on Women in the Courts, 15 Fordham Urban Law Journal, 1986-1987).

#### **North Dakota**

- ▶ *Huesers v. Huesers*, 560 N.W.2d 219 (N.D. 1997)
  - ▶ Topic(s): Custody; Domestic Violence
  - Held: (Vande Walle, J.) Evidence of domestic violence creates a rebuttable presumption against awarding custody to perpetrator of the domestic violence. Trial court committed error by awarding custody to perpetrator of domestic violence. Trial court concluded the father's violence was mitigated by the mother's actions and provocation, which trial court found would have made most reasonable persons commit domestic violence. Although "button-pushing" is not condoned, provocation does not operate to mitigate domestic violence.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In a concurrence, Justice Maring notes that the trial judge's statements and findings of fact raise the appearance of gender bias, whether intended or not, and that the judiciary must not manifest bias on any basis. *Id.* at 224 (citing The North Dakota Commission on Gender Fairness, A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts, October 10, 1996, at 127).
- ▶ *Heck v. Reed*, 529 N.W.2d 155 (N.D. 1995)
  - ▶ Topic(s): Custody; Domestic Violence.
  - Held: (Levine, J.) Statutory presumption against awarding custody to a parent who has perpetrated domestic violence may only be rebutted by clear and convincing evidence demonstrating circumstances that the best interests of the children require that custody be placed in the perpetrator. Here, it was clearly erroneous for the trial court to find that the presumption against awarding sole or joint custody to a parent who has perpetrated domestic violence was rebutted. The trial court relied on factors such as the father's stability, a greater desire to provide for the children's needs, and the paternal grandparents' presence in assisting with child rearing to rebut the presumption against awarding custody to batterer. These factors, however, are customary and not compelling. Due to the lasting effects of domestic violence on children, the public policy of this state reflects that a perpetrator of domestic violence is generally not a proper person for custody.



- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) Court emphasized that the harm to children caused by domestic violence includes lack of proper attention to children’s needs due to abused parent’s attention; low energy and self-esteem; and potential physical injury. *Id.* at 164 (citing Karen Czapanskiy, Domestic Violence, The Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts, 27 Fam. L. Q. 247 (1993)).

▶ *Severson v. Hansen*, 529 N.W.2d 167 (N.D. 1995)

- ▶ Topic(s): Custody
- Held: (Meschke, J.) Here, the trial court granted custody to the father based on his greater ability to spend time with the child, as a result of his financial resources, as well as an assessment by the psychologist that he would allow greater flexibility on visitation by the non-custodial parent. Since we do not find error regarding the trial court’s finding, the custody determination is not clearly erroneous.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In a concurrence, Justice Levine notes a sharp contrast between the psychological assessments of the parties potentially reveals that the psychologist may not have given proper consideration to the mother’s suitability for custodial power, but appeared to be generous in his analysis of the father. The psychologist classified the mother as “hysterical,” however, the father was “appropriately guarded and concerned.” *See also* Lynn Hecht Schafran, Gender Bias in Family Courts, 17 Fam. Advocate 22 (1994) (“there is a predilection on the part of some males to see women as hysterical or particularly vindictive.”) *Id.* at 171.

▶ *Beals v. Beals*, 517 N.W.2d 413 (N.D. 1994)

- ▶ Topic(s): Divorce (Spousal Support)
- ▶ Held: (Vande Walle, J.) Based on the financial reports of the parties and the factual record, court finds neither amount of spousal award nor duration for payment to be clearly erroneous. The \$800 per month for a period of six years is appropriate in light of the facts: husband was able to secure his college and graduate education during the course of the marriage; wife quit her job when first child was born and did not return to work, and she has been diagnosed with a health condition which will probably limit her ability to pursue education and employment.
- ▶ Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In concurrence Justice Levine notes that divorce after a long-term marriage can be economically devastating for women. *Id.* at 418. A wife’s post-divorce income is about half that of her former husband. *Id.* (citing Colorado Supreme Court Task Force on Gender Bias in the Courts, Colorado Office of the State Court Administrator, Gender and Justice in Colorado Courts, p. 14 (1990)). The net worth of divorced women tends to decline by 25% within four years of divorce. *Id.* (citing Florida Supreme Court Gender Bias Commission, p. 4, 47 (1990); Rhode Island Committee on Women in the Courts, Rhode Island Supreme Court, A Report on Gender Bias, p. 39 (1987)). Within eight years, a divorced woman will often have negative net worth. *Id.* (citing Fairness and Equality Committee, Idaho Supreme Court, Digest of State Reports on Gender Bias, p. 9 (1991)).

▶ *City of Mandan v. Fern*, 501 N.W.2d 739 (N.D. 1993)

- ▶ Topic(s): Juror Challenges
- Held: (Levine, J.) Gender-based peremptory challenges violate the Equal Protection Clause of the Fourteenth Amendment. In this case, statistical evidence showing percentage of males arrested for driving under the influence and peremptory challenges in 19 jury trials in prosecutions for driving under the influence may be considered by trial court in determining whether defendant established prima facie case of purposeful discrimination against males in the exercise of peremptory challenges.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The majority noted that recent gender bias task force reports published throughout the nation illustrated the need to address gender bias in the courtroom. *Id.* at 745-746 (referencing The Preliminary Report of the Ninth Circuit Gender Bias Task Force, Discussion Draft (July 1992); Gender, Justice, and the Courts, Report of the Connecticut Task Force (1991); Gender and Justice in the Courts, A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System (August 1991); Report of the Select Committee on Gender Equality of the Maryland Judiciary and the Maryland State Bar Association (October 1992); Gender Bias Study of the Court System in Massachusetts (1989); Report of the New York Task Force on Women in the Courts (March 1986); Utah Task Force on Gender and Justice, Report to the Utah Judicial Council (March 1990); Wisconsin Equal Justice Task Force, Final Report (January 1991)).

## Ohio

- ▶ *Rozborski v. Rozborski*, 116 Ohio App.3d 29, 686 N.E.2d 546 (Ohio Ct. App. 1996)
  - ▶ Topic(s): Custody (Post-divorce Relocation of Minor Children)
  - Held: (Karpinski, J.) Pursuant to divorce decree agreement, plaintiff-mother tiled a motion to relocate minor children in order to pursue career opportunity in different city. Denial of motion affirmed because mother failed to meet her burden of establishing that relocation would be in the best interests of the children. Furthermore, denial of motion does not result in an unconstitutional infringement on plaintiffs right to travel because she voluntarily agreed to enter into the post-divorce decree, nor a violation of the Equal Protection Clause because plaintiff failed to provide evidence of gender bias.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In the concurrence, Judge Harper notes that judicial gender bias raises important issues for consideration, yet, the plaintiff-mother was not able to produce evidence showing that relocation was in the best interests of the children. *Id.* at 36 n.3 (referencing Judith Resnik, Gender Bias: From Classes to Courts (1993), 45 Stan. L.Rev. 2195; Lynn Hecht Schafran, Overwhelming Evidence: Reports from the Task Forces on Gender Bias in the Courts (Feb. 1994), Trial, at 25).
- ▶ *State v. Mascarella*, 1995 WL 495390 (Ohio Ct. App. 1995)
  - ▶ Topic(s): Judicial Misconduct
  - Held: (Farmer, J.) Appellant argues that trial court’s tone and manner in questioning defense witnesses indicated the trial court’s lack of impartiality. Although the court referred to appellant’s father as “Mr.” and to another defense witness as “Ann,” we find no error of prejudice to the appellant on this issue.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Although gender neutral language is recommended by the Ohio gender bias task force, including the elimination of addressing a female by her first name, there is no legal precedent for finding plain error in such situations. *Id.* at \*5 (citing Ohio Joint Task Force on Gender Fairness: Final Report of May 19, 1995, appendix 1-1).

## Rhode Island

- ▶ *McMaugh v. State*, 612 A.2d 725 (R.I. 1992)
  - ▶ Topic(s): Domestic Violence (Application for Postconviction Relief for Murder)
  - Held: (Shea, J.) Petitioner and husband were convicted of first-degree murder. In application for postconviction relief, evidence that petitioner was the victim of extreme physical and mental abuse by her codefendant husband was material to issue of whether petitioner was able to assist counsel in preparing defense in her best interests. Since the evidence that petitioner suffered from battered women’s syndrome could potentially change verdict of first-degree murder if believed by fact finder, a grant of postconviction relief is warranted.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) Majority cites gender bias task force report to discuss the gravity and impact of domestic violence. *Id.* at 731 (citing Report of the Gender Bias Study of [Massachusetts] Supreme Judicial Court, 23 Suffolk Univ.L.Rev. 575, 584 (1989) (citing U.S. Bureau of Justice Statistics, 1986)).

## Texas

- ▶ *In re Barr*, ----S.W.2d----, 1998 WL 58975 (Tex. Rev. Trib 1998) (**Quick Opinion**)
  - ▶ Topic(s): Judicial Misconduct
  - Held: (Barajas, J.) Judge Barr of the 337th Judicial District Court of Texas, through sexual comments and gestures, violated the constitution of the State of Texas and the Texas Code of Judicial Conduct. The findings of fact adopted by the State Commission on Judicial Conduct include Judge Barr’s reference to female assistant district attorneys as “babes,” and telling one assistant district attorney, “[y]ou are so nice to look at, if you leave, all I’ll have to look at all afternoon are swinging dicks.” Recommendation by the State Commission on Judicial Conduct that Judge Barr be removed accepted. Recommendation which would forever ban him from holding judicial office rejected.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority notes that Texas created a task force to study gender bias in the courts and Texas legal system. *Id.* at \*6 (citing Gender Bias Task Force of Texas, Final Report, at 1 (1994)).
    - (2) “Women in the courts in any capacity may find themselves subjected to inappropriate, overly familiar and demeaning forms of address, comments on their appearance, their clothing, and their bodies, sexist remarks and jokes, and unwelcome verbal and physical advances.” *Id.* (citing Women in the Law § 15.04[1] (C.H. Lefcourt ed., July 1988); Jeffrey M. Shaman et al., Judicial conduct and Ethics § 3.09 (2d ed. 1995)).
- ▶ *Williams v. State*, 927 S.W.2d 752 (Tex. Crim. App. 1996)
  - ▶ Topic(s): Domestic Violence (Voluntary Manslaughter of Ex-Wife)
  - Held: (Larsen, J.) Evidence of prior wrongful acts is generally not admissible to prove alleged offense. However, here, evidence concerning defendant’s threats and assaults upon ex-wife prior to shooting her to death has relevance apart from its tendency to prove character conformity when such evidence reflects ongoing violent conduct toward victim, tends to make it more probable that it was defendant’s conscious objective to cause her death, and tends to rebut defensive theories that victim was aggressor and that defendant acted under immediate influence of sudden passion. Thus, evidence of perpetrating domestic violence against victim is admissible.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) “Why the courts found it necessary to articulate a special rule excluding the hearsay statements of wives murdered by their husbands is curious, at best. To the extent it may be reflective of an overall attitude which minimizes domestic violence it is inappropriate and unwarranted.” *Id.* at 760 n.2 (citing Gender Bias Task Force of Texas, Final Report, February 1994).
- ▶ *Escobar v. Sutherland*, 917 S.W. 2d 399 (Tex. Crim. App. 1996)
  - ▶ Topic(s): Gender-Neutral Language
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority notes that “current statutes describe the public official in the instant case as the county party ‘chairman,’” yet, this does not follow the recommendation of enacting gender-neutral statutory language, as proposed by the gender bias task force. *Id.* at 403 n.3 (citing Gender Bias Task Force of Texas, Final Report, Recommendations 35 and 36, at 11 (1994)).

- ▶ *Barber v. Colorado Independent School Dist.*, 901 S.W.2d 447 (Tex. 1995)
  - ▶ Topic(s): Gender-Based Stereotypes (Constitutionality of School Regulations on Physical Appearance)
  - Held: (Gonzalez, J.) Although a policy requiring the removal of male students wearing earrings and whose hair falls below a certain length may violate the state constitution, it is not a serious violation. The school district has broad authority to impose unconstitutional policies and “the judiciary should not intervene” in such matters.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In his dissent, Justice Spector brings the court’s attention to the recent creation of the state’s gender bias task force to emphasize the majority’s failure to address the discrimination against males in the current case. *Id.* at 455 n. 1.

Utah

- ▶ *State, Dept. of Human Services, Office of Recovery Services v. Child Support Enforcement*, 888 P.2d 690 (Utah Ct. App. 1994)
  - ▶ Topic(s): Child Support (Enforcement Jurisdiction)
  - Held: (Greenwood, J.) District courts have exclusive subject matter jurisdiction over enforcement of past-due child support, and circuit courts may not exercise jurisdiction in such cases. If a custodial parent is allowed to utilize circuit courts, the district court’s ability to take a holistic approach to divorce and paternity actions would be severely limited because the district court may have no knowledge of the circuit court action. Moreover, the circuit court, unlike the district court, does not have the benefit of the history of the case.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority notes that other concerns involving child support enforcement include the lack of obligee spouse’s ability to effectively access the courts. *Id.* at 693 n.7 (citing the Utah Task Force on Gender and Justice, Report to the Utah Judicial Council, at p. 11 (1990)). As an alternative to filing an action in the circuit court, the majority proposes evening and weekend court hours and simple pro se forms and proceedings.
- ▶ *Peterson v. Peterson*, 818 P.2d 1305 (Utah Ct. App. 1991)
  - ▶ Topic(s): Divorce (Attorney Fees)
  - Held: (Garff, J.) The trial court properly ordered husband to pay costs expended by wife to defend against husband’s false allegations that she had sexually abused daughter, including costs of custody evaluation, polygraph examination, expert witness fees, service fees, and copying charges. The state statute authorizing the court to order a party in a divorce action to pay the litigation expenses of the other party allows for an award of costs to be determined on the basis of a spouse’s need and ability to pay.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The gender bias task force report underscores the importance of the state statute which allows the court to order financial assistance for a spouse who has limited access to family funds, thereby increasing her access to the judicial system *to* pursue custody and visitation claims. *Id.* at 1310 n.5 (citing the Utah Task Force on Gender and Justice, Report to the Utah Judicial Council, at pp. 11-13 (1990)).
- ▶ *Howell v. Howell* 806 P.2d 1209 (Utah Ct. App. 1991)
  - ▶ Topic(s): Divorce (Spousal support)
  - Held: (Greenwood, J.) The spousal support set by the lower court was clearly erroneous. The defendant is approximately 50 years old, has minimal job skills, and has spent most of the thirty years of the parties’ marriage raising their five children. The spousal support set by the court does not come close to equalizing the parties’ standard of living as of the time of the divorce, but allows plaintiff a two to four times advantage.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The majority points out, “If courts award child support in lieu of permanent alimony, they may fail to anticipate the financial impact on the remaining family as each child reaches age 18 and his or her award terminates.” *Id.* at 1213 n.2 (quoting Utah Task Force on Gender and Justice, Report to the Utah Judicial Council, at p. 38 (1990)).

## Vermont

- ▶ *Gilbert v. Gilbert*, 163 Vt. 549, 664 A.2d 239 (Vt. 1995)
  - ▶ Topic(s): Custody
  - Held: (Johnson, J.) The trial court improperly considered report prepared by child’s guardian ad litem (GAL) when awarding sole parental rights to father and extensive parent-child contact to mother. Here, the trial court rested its decision to grant father sole custody on improperly admitted evidence, a GAL report that found the mother favored work over home. The use of the report in this manner placed the mother in an unfair position because she was asked to defend herself against the GAL’s conclusions.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority notes that, according to a survey by the gender bias task force, a significant amount of gender bias existed among GALs; many GALs are not following applicable law, including the consideration of impermissible factors; and judges rely heavily on the recommendations of GALs. *Id.* at 556 n.2 (citing Vermont Supreme Court & Vermont Bar Ass’n, Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System, pp. 199-200 (1991)).
- ▶ *State v. Forte*, 159 Vt. 550, 624 A.2d 352 (Vt. 1993)
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Dooley, J.) After defendant’s conviction, the district court granted defendant’s motion for a new trial in sexual assault case. The district court focused on the female prosecutor’s introduction of her personal beliefs in closing argument and her emotional behavior, and granted the order on the grounds that the defendant was deprived of a fair trial. The State subsequently filed a petition to set aside the district court’s order. The superior court granted writ of certiorari to set aside the grant for a new trial, finding that the prosecutor never introduced personal beliefs and that allegations of emotional behavior were unreviewable because they were based on the observations of the trial judge. Certiorari unavailable in this proceeding, and superior court erred in its interpretation of the decision of the district court in granting a new trial.
  - Dissent: (Morse, J.) The sole question posed by this case is: “Did the criminal trial judge grant a new trial because the prosecutor overstepped fair bounds or did he do it because he disapproved of her behavior based on stereotypical notions about how women should act?” No proof ruling based on gender bias. New trial order should be reinstated.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Justice Morse’s dissent provides the definition of gender bias as it is proposed by the state gender bias task force. *Id.* at 563 n. 1 (citing Vermont Supreme Court & Vermont Bar Ass’n, Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System, p. xvi (1991)).

## Washington

- ▶ *In re Marriage of Matthews*, 70 Wash. App. 116, 853 P.2d 462 (Wash. Ct. App. 1993)
  - ▶ Topic(s): Divorce (Long-Term Maintenance)
  - Held: (Thomson, J.) The trial court’s order that maintenance should continue indefinitely based on the duration of the marriage and evidence of ex-wife’s poor health is an abuse of discretion. The evidence does not support that ex-wife is incapable of supporting herself, nor does the record show that husband’s assets could cover maintenance indefinitely.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1). In the dissent, Justice Sweeney notes that the adverse economic consequences faced by divorced women are a “significant national and statewide concern.” *Id.* at 133. (Quoting Gender and Justice Task Force, Final Report on Gender and Justice in the Courts, p.49 (1989). The dissent includes several studies indicating that after divorce, women experience a decline in their standard of living while men experience an increase in standard of living. *Id.* n. 1.
  
- ▶ *State v. Carlson*, 66 Wash. App. 909, 833 P.2d 463 (Wash. Ct. App. 1992)
  - ▶ Topic(s): Judicial Misconduct
  - Held: (Per Curiam) The participation of judge in a program designed to prepare children allegedly victimized by sexual abuse for their appearance in court does not disqualify judge from hearing cases involving child abuse.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Likewise, the majority observes that a judge sitting on a gender bias task force would not be disqualified from hearing cases on gender discrimination. *Id.* at 913.
  
- ▶ *In re Marriage of Ieronimakis*, 66 Wash. App. 83, 831 P.2d 172 (Wash. Ct. App. 1992)
  - ▶ Topic(s): Custody; Domestic Violence
  - Held: (Forrest, J.) The parties resided in Greece with their two children for nine years. Following their separation, the wife abducted the children from Greece. Wife filed for divorce and was granted custody of the children in Seattle. The trial court erred in assuming jurisdiction over child custody where Greece was the home state, had the most significant connection with the family, and granting jurisdiction contravened policy to deter abductions and other self-help measures undertaken to obtain custody.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Justice Kennedy, in dissenting, criticized the majority for apparently basing its decision on the preconceived notion that because the domestic violence faced by the wife was not “overwhelming,” it was not a proper basis for removing the children from Greece. *Id.* at 119 (referencing Gender & Justice in the Courts, Final Report of the Washington Task Force on Gender and Justice in the Courts, at p. 18 (1989)).
  
- ▶ *State v. Burch*, 65 Wash. App. 828, 830 P.2d 357 (Wash. Ct. App. 1992)
  - ▶ Topic(s): Juror Challenges
  - Held: (Pekelis, J.) Systematic exclusion of women from jury violates a criminal defendant’s right to representative jury. Here, the defendant has established a prima facie case of gender discrimination and the state has failed to rebut the inference of purposeful gender discrimination through independent non-gender related basis for challenge.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Prosecutor’s explanation that state used peremptory challenges to exclude one of the females because she “would have been very susceptible and sympathetic” was based on gender stereotypes. *Id.* at 843 n.7 (citing Eich, Gender Bias in the Courtroom: Some Participants are More Equal than Others, 69 Judicature 339 (April/May 1986).
  
- ▶ *In re Marriage of Tower*, 55 Wash. App. 697, 780 P.2d 863 (Wash. Ct. App. 1989)
  - ▶ Topic(s): Divorce (Long-Term Maintenance)
  - Held: (Winsor, J.) Termination of long-term maintenance because of “cohabitation,” even when construed tantamount to marriage, must be based upon subsequent finding of substantial change of circumstances in the recipient’s finances.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) The majority supports the gender bias task force report’s recommendation that the Legislature reevaluate the automatic termination of long-term maintenance upon the remarriage of a spouse. *Id.* at 704 n.4 (citing the Washington State Task Force, Gender and Justice in the Courts, at p. 145 (1989)). Such a statute reflects the traditional assumption that wives are supported by their husbands, which does not correspond with reality.

## West Virginia

- ▶ *Shearer v. Shearer*, 191 W.Va. 734, 448 S.E.2d 165 (W. Va. 1994)
  - ▶ Topic(s): Custody
  - Held: (Per Curiam) Lower court’s custody award of three-year-old child to father reversed. The best interests of very young children are presumed to be served when custody is placed with the primary caretaker. Here, despite the fact that defendant-father has more financial resources, has completed his education, and has the assistance of his parents to care for his child, the mother was primarily responsible for the care of the child until initiation of divorce proceedings.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) In the dissent, Justice Neely concludes that the majority is exercising gender bias against the defendant-father by granting custody to the mother, a recovering alcoholic. *Id.* at 740. Justice Neely requests that the West Virginia Task Force on Gender Bias investigate whether or not gender stereotypes cloud the “majority’s ability to render impartial decision in the area of family law.” *Id.*
- ▶ *Metzner v. Metzner*, 191 W.Va. 378, 446 S.E.2d 165 (W. Va. 1994)
  - ▶ Topic(s): Divorce (Division of Property)
  - Held: (Brotherton, J.) Any compensation that husband might receive for contingent fee contract and other future earned fees for cases which were pending at time of divorce may be considered “marital property.”
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) Partially concurring and dissenting, Justice Neely criticizes the majority for granting ex-wife a windfall because she is not bearing her share of the costs incurred in earning the contingent fee. Justice Neely concludes this is a case of gender bias in favor of females, and argues that courts should not make decisions based on preconceived notions of gender. *Id.* at 389 n.5 (citing Report of the New York Task Force on Women in the Courts, 15 Fordham Urban L.J. 15, 16 (1986-1987)).

## Wisconsin

- ▶ *Novak v. Ceci*, 167 Wis.2d 486, 482 N.W.2d 669 (Wis. Ct. App. 1992)
  - ▶ Topic(s): Task Force Regulation (Open Records Law)
  - Held: (Gartzke, J.) Novak and the Madison Men’s Organization, Inc. alleged that the Wisconsin Equal Justice Task Force failed to comply with the Wisconsin Open Records Law, and sought mandamus to compel compliance with the law. Court concluded that the Task Force was not subject to the open records law because it was created pursuant to the supreme court’s constitutional superseding power. The superintending power over matters of judicial ethics and standards is exclusive.
  - Negative Case History: Ordered Not Published
- ▶ *Matter of C.M.B.*, 165 Wis.2d 703, 478 N.W.2d 385 (Wis. 1992)
  - ▶ Topic(s): Court Commissioners
  - Held: (Bablitch, J.) Subject of an involuntary commitment proceeding sought review of an unpublished decision of the court of appeals. Court concluded that an order or judgment of the circuit court is required before an appeal to the court of appeals. Here, the commissioner’s order dismissing an involuntary commitment case for lack of probable cause could not be appealed since it was not the equivalent of an order of the circuit court.

- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) In concurring, Justice Abrahamson calls for a review of the use of court commissioners in the state. “The failure of commissioners to record their proceedings is a recurring problem for litigants and the administration of justice.” *Id.* at 716 (citing Wisconsin Equal Justice Task Force, Final Report, Report Summary, at p. 23, 25 (1990)).
- ▶ *Matter of Disciplinary Proceedings Against Crosetto*, 160 Wis.2d 581, 466 N.W. 2d 879 (Wis. 1991)
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Per Curiam) Rude remarks made to male family court commissioner (“Big mouth,” “Who the hell do you think you are?” and “You’re totally nuts!”) and female attorney (“Stupid”) warrants public reprimand for professional misconduct.
- Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
  - (1) Justice Abrahamson, in the dissent, discusses defendant’s argument that the justices should recuse themselves because they have a personal interest in his disciplinary hearing, since he is filing a federal suit against them. “Some lawyers apparently believe that voicing a complaint against a judge jeopardizes the attorney or the clients.” *Id.* at 602 n.15 (citing the Wisconsin Equal Justice Task Force, Final Report, at p. 244 (1990)).
- ▶ *City of Milwaukee v. Wroten*, 160 Wis.2d 207, 466 N.W.2d 861 (Wis. 1991)
  - ▶ Topic(s): Constitutionality of Municipal Ordinance
  - Held: (Heffeman, C.J.) A municipal court has the authority to determine the constitutionality of a city ordinance. In this case, defendant was arrested when she questioned police aggressively regarding their presence in her building and became “verbally abusive.” Defendant was charged with the offense of “Resisting Officer,” which prohibits a person from resisting or in any way interfering, hindering, or preventing a police officer from discharging his duty. Such an ordinance is excessively sweeping and overbroad, and is a constitutional violation because it restricts defendant’s right to free speech.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:
    - (1) The majority notes that municipal judges, unlike administrative hearing officers, are subject to the Code of Judicial Ethics. *Id.* at 223 n.11 (citing the Wisconsin Equal Justice Task Force, Final Report, at p. 32 (1990)).

## **FEDERAL COURTS DECISIONS**

### **Courts of Appeal**

#### **Fourth Circuit**

- ▶ *Brzonkala v. Virginia Polytechnic Institute and State University* 132 F.3d 949, 122 Ed. Law Rep. 1193 (4th Cir. (Va.) 1997), *Rehearing en Banc granted, Opinion Vacated*, (Feb 5, 1998).
  - ▶ Topic(s): Rape (Title IX and VAWA claims)
  - Held: (Motz, J.): Former university student brought action against university and other students who allegedly raped her under Title IX and Violence Against Women Act (“VAWA”). Court held student alleged sufficient facts to state Title IX hostile environment claim and VAWA claim and that VAWA did not exceed scope of Congress’ authority under commerce clause.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities:

The court cited state-sponsored court gender bias task force reports from numerous states. Court stated that “study after study has concluded that crimes disproportionately affecting women are often treated less seriously than crimes affecting men” and that “Collectively, these reports provide overwhelming evidence that gender bias permeates the court system and that women are most often its victims.” The studies referred to were largely State-sponsored.



## Ninth Circuit

- ▶ *U.S. v. Wunsch, 84 F.3d 1110 (9th Cir. (Cal.) 1996)*
  - ▶ Topic(s): Attorney Misconduct
  - Held: (Leavy, J.). Government moved for penalty against criminal defense attorney for allegedly sexist remarks made in his letter to Assistant U.S. Attorney following his disqualification. Court of Appeals concluded attorney's conduct in sending sexist letter following his disqualification was not in violation of local rule nor in interference with administration of justice and that statute prohibiting attorney from engaging in "offensive personality" was unconstitutionally vague.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities  
Court quoted the Ninth Circuit Gender Bias Task Force. Report and stated that "all manifestations of gender bias related in any way to the adjudicative process affect the administration of justice" See, e.g., Ninth Circuit Gender Bias Task Force, Final Report, "The Effects of Gender in the Federal Courts", 67 S.Cal.L.Rev. 745 (1993). Court also stated that "equally clear, however, the courts cannot punish every expression of gender bias by attorneys without running afoul of the First Amendment."

This case reversed *Matter of Swan* 833 F. Supp. 749 (C.D. Cal. 1993) *infra*.

## District Courts

### District of California

- ▶ *Farrell v. Sullivan, 1992 WL 456728 (S.D. Cal. 1992)*
  - ▶ Topic(s): Social Security and Disability Insurance Benefits
  - Held: (Rhoades, J.). Plaintiff appealed from Social Security Administrator's final determination denying her application for Disability Insurance and Supplemental Security Income. Plaintiff claimed as one issue that a male Administrative Law Judge "simply does not believe the conditions of endometriosis and adhesions following gynecological surgery are physical ailments likely to cause pain and that the ALJ appears to discount pelvic pain and pain connected with endometriosis ('female problems') as not based on objective medical evidence." Court held there was no evidence bias affected Administrative Law Judge's decision and ALJ applied the correct legal standards.
  - Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities Plaintiff cited the Preliminary Report of the Ninth Circuit Gender Bias Task Force, issued July, 1992 (pages 98-99) and the Executive Summary of that report, Discussion Draft, issued July 1992 (pg 11) for position that male ALJ's crediting testimony of male witnesses over that of female witnesses was evidence of gender bias. Court acknowledged that gender bias may affect legal proceedings, but that it did not in this case.
- ▶ *Matter of Swan, 833 F.Supp. 794 (C.D. Cal., 1993)*
  - ▶ Topic: Attorney Misconduct
  - ▶ Held: (Stotler, J.): Court had disciplinary jurisdiction over attorney; attachment submitted with attorney's letter violated local rules and ethical standards of legal profession; imposition of sanction did not violate attorney's first amendment right; appropriate sanction was requirement of apology and referral to standing committee on discipline.
  - ▶ Negative History: Reversed in the Ninth Circuit by *U.S. v. Wunsch, 84 F.3d. 1110 (9th Cir. (Cal.) 1996)*.
  - ▶ Gender Bias Task Force Report(s)/Initiative(s) Cited and Usage of Related Authorities  
Court finds guidance in Final Report of the Ninth Circuit Gender Bias Task Force, entitled "The Effects of Gender in the Federal Court," noting the Task Force's recommendation regarding the adoption of specific disciplinary rules applicable not only in the courtroom itself but also during the pre-trial or post-trial process and in any alternative dispute resolution programs sponsored by the court (pg. 226-227).

## **Appendix D**

**Chart - “Responsibility for Recommendations by Agency” from  
the Report of the State Bar of Michigan Task Force on Racial/  
Ethnic and Gender Issues in the Courts and  
Legal Profession (1998) (excerpts)**

Report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender  
Issues in the Courts and the Legal Profession (1998)

**A SUMMARY OF THE STATUS OF THE IMPLEMENTATION  
OF THE 1989 REPORTS WITH RECOMMENDATIONS**

**“STATUS OF IMPLEMENTATION BY RECOMMENDATION” TABLE**

	TEAM	RACE/ GENDER/ JOINT	REC No.	1989 TASK FORCE SUBJECT MATTER	SOURCE OF INQUURY (SEE KEY AT END OF TABLE)	FULLY (†) OR SUBSTANTIALLY (√) IMPLEMENTED	NOT IMPLEMENTED	PARTIALLY IMPLEMENTED
152.	3	J	IX-3	Ethical Standards and Disciplinary Systems	MCR		√	
153.	3	J	IX-4	Ethical Standards and Disciplinary Systems	MCR		√	
154.	3	J	IX-5	Ethical Standards and Disciplinary Systems	ADS		√	
155.	3	J	IX-6	Education - The Judiciary and the Courts	MJI/ICLE/JC	√		
156.	3	J	IX-7	Education - MJI and professional associations	MJI/ICLE	√		
157.	3	J	IX-8	Education- MJI and professional associations	MJI/ICLE			√
158.	3	J	IX-9	Education- MJI and professional associations	MJI/ICLE			√
159.	3	J	IX-10	Education - Attorneys	MJI/ICLE/SBM			√
160.	3	J	IX-11	Education - Attorneys	MJI/ICLE			√
161.	3	J	IX-12	Education - Law Schools	MLS		√	
162.	3	J	IX-13	Education - Law Schools	MLS		√	
163.	3	J	IX-14	Education - Law Schools	MLS			√
164.	3	J	IX-15	Education - The Public	SBM			√

## STATUS OF IMPLEMENTATION BY RECOMMENDATION

	TEAM	RACE/ GENDER/ JOINT	REC NO.	1989 TASK FORCE SUBJECT MATTER	SOURCE OF INQUIRY (SEE KEY AT END OF TABLE)	FULLY (†) OR SUBSTANTIALLY (√) IMPLEMENTED	NOT IMPLEMENTED	PARTIALLY IMPLEMENTED
1.	1	G	V-1	The Court's Response to Violence Against Women	PROS	√		
2.	1	G	V-2	The Court's Response to Violence Against Women	PROS	†		
3.	1	G	V-3	The Court's Response to Violence Against Women	PROS	†		
4.	1	G	V-4	The Court's Response to Violence Against Women	PROS			√
5.	1	G	V-5	The Court's Response to Violence Against Women	PROS	√		
6.	1	G	V-6	The Court's Response to Violence Against Women	PROS	†		
7.	1	G	V-7	The Court's Response to Violence Against Women	SCAO	√		
8.	1	G	V-8	The Court's Response to Violence Against Women	JQ			√
9.	1	G	V-9	The Court's Response to Violence Against Women	JQ			√
10.	1	G	V-10	The Court's Response to Violence Against Women	SCAO/JQ	√		
11.	1	G	V-11	The Court's Response to Violence Against Women	SCAO		√	
12.	1	G	V-12	The Court's Response to Violence Against Women	JQ			√

KEY TO SOURCE OF INQUIRY

ADR	ALTERNATIVE DISPUTE RESOLUTION
ADS	ATTORNEY DISCIPLINE SYSTEM
ARB	ARBITRATION
FOC	FRIEND OF THE COURT
ICLE	INSTITUTE OF CONTINUING LEGAL EDUCATION
JC	JUDICIAL CONFERENCES
JI	JURY INSTRLCTIONS
JQ	JUDICIAL QUESTIONNAIRE
MCR	MICHIGAN COURT RULES
MED	MEDIATION
MJI	MICHIGAN JUDICIAL INSTITUTE
MLS	MICHIGAN LAW SCHOOLS
PROS	PROSECUTING ATTORNEYS, (PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN, PROSECUTING ATTORNEYS COORDINATING COUNCIL)
SBM	STATE BAR OF MICHIGAN
SCAO	STATE COURT ADMINISTRATIVE OFFICE
STATE	STATE OF MICHIGAN

## **Appendix E**

**Descriptions and Ordering Information for the  
National Judicial Education Program and the Family Violence Prevention  
Fund Model Judicial Education Curricula**



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

395 Hudson Street, 5th Floor • New York, New York 10014-3684 • (212) 925-6635  
Fax (212) 226-1066 • E-mail: njep@nowldef.org

## Director

Lynn Hecht Schafran, Esq.

## Advisory Committee

Hon. Celeste F. Bremer  
Hon. John C. Coughenour  
Hon. Martha Craig Daughtrey  
Hon. Bernice Bouie Donald  
Hon. Lisa Hill Fenning  
Anthony B. Fisser  
Frances M. Friedman, Esq.  
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Hon. Cindy S. Lederman  
Observer: A. Leo Levin, Esq.  
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Norma Wikler, Ph.D.

## When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts

### A Model Judicial Education Curriculum

The National Judicial Education Program to Promote Equality for Women and Men in the Courts announces its fourth model judicial education curriculum, **When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts**. Developed under a grant from the State Justice Institute, the curriculum informs judges about the problems women of color face at every level and in every aspect of the judicial system, as litigants, witnesses, defendants, employees, lawyers and judges. The curriculum prompts judges to think about actions they can take to address these problems, in order to insure women of color equal access to justice and equal participation in the judicial system.

The curriculum comprises the substantive content to be communicated in the program and detailed directions for presentations. It is divided into a pre-program primer, an introduction, and five units. Each unit includes handouts, exercises and overheads for use at the program, as well as readings that explore in greater depth the subjects covered in the program. The curriculum utilizes a variety of interactive teaching techniques to present this material in ways familiar to judges: case studies, expert presentations, small and large group discussions, role plays and action planning. Each unit is designed to be either part of a comprehensive program or integrated into a variety of other education presentations. The unit on women of color as victims of gender-based violence can be a complete program in itself.

- The *Primer on Cognitive Process, Stereotyping, Intersectionality and the Implications for the Courts* is mailed in advance of the program to introduce two key issues with which participants are unlikely to be familiar: the research into cognitive processes and stereotyping and the concept of intersectionality. Fifty years of psychological research shows why and how the human mind is hard-wired to create stereotypes, how stereotypes become reflexive judgments that impair fairness, and how conscious intervention can stop stereotyped thinking from becoming discriminatory behavior. *Intersectionality* is the term coined by legal theorists to describe the way the confluence of race and gender creates an indivisible identity that shapes the lives of women of color, resulting in a type of compounded bias that is more than race or sex bias alone, and more than race plus sex. The Primer familiarizes participants with these concepts and terminology so that they can devote the program time to how judges can minimize discriminatory stereotyping in the particular context of women of color in the courts.

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



- The program itself begins with a short *Introduction to the Program* in which participants are asked their assessment of whether and why a program with this focus is needed, and the moderator briefly describes the five reasons why a judicial education program about women of color in the courts is necessary for judges of both sexes and all racial and ethnic backgrounds.
- Unit I is *Intersectionality, Cognitive Process, and the Implications of Stereotyping for Women of Color in the Courts*. This unit takes up the material introduced in the Primer on intersectionality and cognitive process as prelude to exploring the specific stereotypes about women of color and the implications of these stereotypes for women of color as litigants, complainants, defendants, lawyers, judges and court employees, and in substantive law areas ranging from personal injury to juvenile justice. The judges discuss the actions they can take in the courtroom, the courthouse, and the community in light of this research and these existing stereotypes to insure equality for women of color in the courts.
- Unit II is *Controlling the Courtroom and the Courthouse*. Participants explore scenarios based on courthouse interactions involving women of color documented by the task forces on gender, race and ethnic bias in the courts that illustrate the problems this curriculum seeks to overcome. The first presentation of the scenarios shows what actually happened. Then participants discuss why the approaches demonstrated adversely affect the women of color involved, and what can be done to prevent or rectify these situations. A second version of the scenarios models better ways to approach the various interactions.
- Unit III, *Women of Color as Victims of Gender-Based Violence*, is divided into sections on domestic violence, battered woman syndrome and rape. Each part explores the unique problems confronting women of color and immigrant women when these crimes bring them into the courts. The focus is on what judges can do to eliminate or minimize these problems.
- Unit IV, *Action Planning*, is a small group discussion session in which participants discuss and record the actions they will take as a result of the program to ensure equal justice for women of color in the courts. The action plans are collected and compiled into a master plan distributed to all participants for their own use.
- Unit V, *The Cultural Defense and Cultural Evidence*, presents the conflicting views toward admitting cultural evidence in defense of a criminal charge when women of color are the victims or the defendants. Participants then rule on the admission of cultural evidence in four types of cases—wife-murder, “marriage-by-capture” rape, female genital mutilation and parent-child suicide—and discuss how their decisions reflect the vying schools of thought on this issue.

Copies of the curriculum will be provided to each state judicial educator and to a library in each state designated by the State Justice Institute. As noted above, **When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts** was funded by the State Justice Institute (SJI). To encourage presentation of the curricula it funds, SJI awards Curriculum Adaptation Grants. These are grants of up to \$20,000 to a state or local court to replicate or modify a model training program developed with SJI funds.

With respect to the unit on *Women of Color as Victims of Gender-Based Violence*, the Department of Justice Office of Victims of Crime, through its Trainer’s Bureau, will pay up to \$2,500 of the cost of travel and consulting time to bring in a trainer on victim/witness issues. There is a cap on daily consulting fees. The Program Specialist for this Trainer’s Bureau can be reached at (202) 307-5950.

*The curriculum may be purchased for \$80.00 (\$70.00 for courts and court-related entities), which includes regular postage within the United States. If you are outside that area, postage will depend upon your location and postal preference, i.e. surface or air.*



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

395 Hudson Street, 5th Floor • New York, New York 10014-3684 • (212) 925-6635  
Fax (212) 226-1066 • E-mail: njep@nowldef.org

August, 1996

## Director

Lynn Hecht Schafran, Esq.

## Advisory Committee

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## ADJUDICATING ALLEGATIONS OF CHILD SEXUAL ABUSE WHEN CUSTODY IS IN DISPUTE

### *A Model Judicial Education Curriculum for Judges and Other Decision-Makers*

There is no more vexing question for judges today than how to evaluate allegations of child sexual abuse in custody and visitation disputes. Now judges have a resource to assist them in learning to adjudicate these cases in an informed and equitable manner. The National Judicial Education Program announces publication of its third model judicial education curriculum, **Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute**, produced in collaboration with the American Bar Association Center on Children and the Law. The curriculum was developed by leading experts in the fields of law, psychology and child witnesses under a grant from the State Justice Institute. Its purpose is to promote the fair administration of justice by improving courts' ability to assess child sexual abuse allegations in the particular context of custody/visitation disputes, and to make decisions about custody and visitation in these cases that reflect the best interests of the child.

**Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute** provides the most current information about child sexual abuse allegations in the custody/visitation context. The curriculum utilizes a variety of interactive teaching techniques to present this material in ways familiar to judges: factual hypotheticals, evaluating expert qualifications and testimony, and mock temporary and permanent custody and visitation orders.

The curriculum consists of two binders. The first binder contains the **Facilitator's Manual** and the **Curriculum**; the second binder contains the **Readings**.

The **Facilitator's Manual** explains in detail how to present the curriculum. It includes all the handouts, overheads and exercises necessary for the small group discussions and the experts' presentations.

The **Curriculum** is the substantive content to be communicated in the program. It is divided into a primer and four units.

- The PRIMER provides a short, comprehensive overview of current knowledge about child sexual abuse in all contexts, including incidence and prevalence data, the characteristics of offenders and the consequences for victims. The primer is sent to participants in advance of the program as background.
- Unit I, A CONTEXT FOR UNDERSTANDING CHILD SEXUAL ABUSE ALLEGATIONS WHEN CUSTODY IS IN DISPUTE, analyzes all extant studies on the incidence, prevalence and validity of child sexual abuse allegations in custody/visitation cases and explains the criteria for reliable research in this area. The unit explains the importance of using accurate terminology to distinguish fabricated allegations from those that are good-faith mistakes or unfounded for lack of determinative evidence. This unit also explains why child sexual abuse may begin or first be disclosed at divorce, why adults and children may fabricate and the circumstances that give rise to good faith but mistaken allegations.

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- Unit II, **EVALUATING THE EVALUATORS: ASSESSING EXPERTS' QUALIFICATIONS AND EVALUATIONS OF CHILD SEXUAL ABUSE: PSYCHOLOGICAL AND MEDICAL CRITERIA**, explores what the mental health and medical communities consider "best practice" in evaluating child sexual abuse allegations. It describes which approaches are viewed as useful, which are controversial and which are without empirical support and therefore not to be relied on.
- Unit III, **CHILDREN'S STATEMENTS AND TESTIMONY: OBTAINING INFORMATION FROM THE CHILD, ASSESSING STATEMENTS AND REDUCING TRAUMA**, covers child witnesses, explaining the research on children's memory and suggestibility and the differences among effective, ineffective and inappropriate interviewing techniques.
- Unit IV, **CUSTODY AND VISITATION DECISIONS IN THE BEST INTERESTS OF THE CHILD**, addresses making custody and visitation decisions that focus on the best interests of the child. This exploration includes: child development issues; ensuring supervised visitation that protects children from psychological as well as physical sexual abuse; how to reestablish the relationship between the accused parent and the child when an allegation is unfounded; and what to do when an allegation is fabricated -- which is not always as obvious as it seems.

The **Readings** are a collection of articles, reports and studies that enable the reader to explore the diverse subjects covered in the curriculum in greater depth.

The curriculum was pilot tested in two states, Alabama and Colorado. One Alabama judge stated that **Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute** was a "[r]eally good program - one of the strongest I've been to." Another stated that he was copying the resource materials provided as part of the curriculum for all the judges in his area. A third stated that the program had already impacted his handling of a case in that he resisted an inclination to be punitive toward the parent making the allegation. After the Colorado pilot a judge who served as a small group facilitator wrote, "It is my belief that the seminar was a success and that when offered to other judges that it will cause them to approach the issue in a deliberate and reasoned manner. I can assure you that my thought process has changed as a result of being involved with the faculty."

Copies of the curriculum have been provided to each state judicial educator and to a library in each state designated by the State Justice Institute. As noted above, **Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute** was funded by the State Justice Institute (SJI). To encourage presentation of the curricula it funds, SJI awards Curriculum Adaptation Grants. These are grants of up to \$20,000 to a state or local court to replicate or modify a model training program developed with SJI funds.

Another resource is the Trainer's Bureau funded by the Department of Justice Office of Victims of Crime. This bureau will pay up to \$2,500 of the cost of travel and consulting time to bring in a trainer on victim/witness issues. There is a cap on daily consulting fees. The Program Specialist for this Trainer's Bureau can be reached at (202) 307-5950. Even though custody/visitation cases are civil rather than criminal, the Trainer's Bureau will provide support for the curriculum.

Additionally, the Children's Justice Act, 42 U.S.C. 5101, et seq., funds activities undertaken to improve judicial handling of child sexual abuse cases. These funds are administered by the Department of Health and Human Services.

***The information in this curriculum is important for many organizations in addition to the judiciary, such as Child Protective Services, prosecutors and police, and can be adapted to meet their needs as well.***

*The curriculum may be purchased for \$80.00 (\$70.00 for courts and court-related entities), which includes regular postage within the United States. If you are outside that area, postage will depend upon your location and postal preference, i.e. surface or air.*



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

395 Hudson Street, 5th Floor • New York, New York 10014-3684 • (212) 925-6635  
Fax (212) 226-1066 • E-mail: njep@nowldef.org

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## UNDERSTANDING SEXUAL VIOLENCE: THE JUDICIAL RESPONSE TO STRANGER AND NONSTRANGER RAPE AND SEXUAL ASSAULT *A Model Judicial Education Curriculum*

The National Judicial Education Program to Promote Equality for Women and Men in the Courts announces publication of its model judicial education curriculum, **Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault**. This curriculum, developed under a grant from the State Justice Institute, approaches these issues from the critical vantage point of fairness in the administration of justice. Its focus is learning to deal fairly with sexual assault cases, especially nonstranger rapes, without undermining defendants' constitutional rights.

**Understanding Sexual Violence** provides the most current information about how different victims react during and after the assault, Rape-Related Post Traumatic Stress Disorder, sex offenders and sex offender treatment, and societal attitudes toward rape. This information is presented in the context of its implications for conduct of the pretrial and trial process, jury selection, assessment of force and consent, evidentiary decisions, plea bargaining and sentencing. The curriculum utilizes a variety of interactive teaching techniques to present this material in ways familiar to judges: through courtroom scenarios, motions to dismiss, evidentiary hypotheticals, offers of proof, sentencing hypotheticals and voir dire exercises. The curriculum also provides for presentations by experts on rape victims and sex offenders and sex offender treatment who have been trained in approaches to judicial education and who will work with the planning committee organized by the judicial educator.

This curriculum is relevant to appellate as well as trial judges. In May, 1994, two state supreme courts rendered decisions relating to the interpretation of force under their state sexual assault statutes. These decisions made national headlines. In both cases an understanding of how Rape Trauma Syndrome relates to force and consent was essential.

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The curriculum is presented in one volume divided into three parts. Part I is the Facilitator's Manual; Part II is the Curriculum; and Part III is the Readings. The Facilitator's Manual explains in detail how to present the curriculum. The Curriculum is the substantive content to be communicated in the program. The Readings are a series of reports, articles and excerpts that provide background on the substantive content of the curriculum and permit the reader to consider these subjects in greater depth than will be possible at a training program.

The curriculum was pilot tested in two states. Then, teams of two judges and the judicial educator from eight states -- Alabama, California, Maine, Minnesota, Missouri, New Mexico, Oklahoma and Oregon -- attended a Faculty Training Institute at which they prepared to teach the curriculum in their own states and regions. This means they are ready to plan with your judges and judicial educators and to serve as faculty to present the entire curriculum and to integrate parts of it into other trainings such as sentencing institutes and new judges' orientation programs. Copies of the curriculum have been provided to each state judicial educator and to a library in each state designated by the State Justice Institute. Other entities such as probation departments, prosecutors and police will also find this curriculum useful.

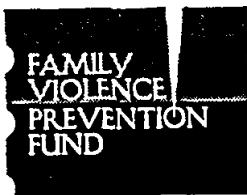
Initial presentations of the curriculum were very well received. Minnesota already plans a second presentation which will be a criminal justice institute for judges, prosecutors, defense attorneys, police, probation officers, victims, offenders and treatment personnel. A judge who attended the Oregon training wrote in his evaluation that he had been on the bench for twenty-five years, and this was the best judicial education program he ever attended.

As noted above, **Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Sexual Assault** was funded by the State Justice Institute (SJI). To encourage presentation of the curricula it funds, SJI awards Curriculum Adaptation Grants. These are grants of up to \$20,000 to a state or local court to replicate or modify a model training program developed with SJI funds.

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*The information in this curriculum is important for many organizations in addition to the judiciary, such as probation departments, prosecutors and police and can be adapted to meet their needs as well.*

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# TRAINING & EDUCATION RESOURCES

FROM THE FAMILY VIOLENCE PREVENTION FUND'S  
JUDICIAL EDUCATION AND DOMESTIC VIOLENCE AND CHILD ABUSE PROJECTS

## Training Judges . . . Saving Lives

The Judicial Education Project is helping battered women and their children by helping judges to understand how their decisions can play a critical role in preventing domestic violence injuries and deaths. The project's innovative training curricula have reached family and criminal court judges nationwide.

## Building Healthy Families

The Domestic Violence and Child Abuse Project works to raise awareness of the links between child abuse and domestic violence and develop strategies to prevent them both. The program has developed model national curricula for child protective services workers, family preservation practitioners, and family court judges.

### THE FAMILY VIOLENCE PREVENTION FUND

The Family Violence Prevention Fund (FUND) is a national organization working to develop innovative responses to the epidemic of domestic violence. Established in 1980, the Family Violence Prevention Fund is widely respected for its pioneering and award-winning work. The FUND has created policy, advocacy, prevention, and education programs that have been replicated in all 50 states and several foreign countries. Learn more about the Family Violence Prevention Fund through our World Wide Web site at <http://www.fvpf.org>

### TO PLACE AN ORDER

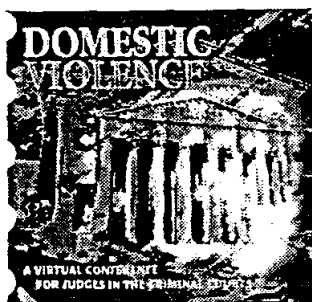
Complete the enclosed order form and fax to (415) 252-8991 or fold, tape and mail (postage paid) to the Family Violence Prevention Fund. If you have questions, call (415) 252-8089.

Prices listed are good as of October 1998 and are subject to change. Thank you!

## BUILDING A BETTER JUDICIAL RESPONSE: RESOURCES FROM THE JUDICIAL EDUCATION PROJECT

### **Domestic Violence: A Virtual Conference for Judges** **A Multi-Media CD-ROM Program**

*Winner of the Howell Heflin Award from the State Justice Institute for innovative projects likely to improve the quality of justice in state courts across the nation.*



The dynamics of domestic violence cases are complex. As women turn to the courts to end abuse, we must help judges handle domestic violence cases fairly and sensitively. This virtual conference is designed to do just that.

This two disk program features some of the nation's leading

experts on the court's response to domestic violence. Users can make rulings on hypothetical domestic violence criminal court cases and compare their ruling to those of their colleagues, interview a psychologist who works with both victims and perpetrators, find statistics on domestic violence, and take a quiz to test their knowledge.

The program provides judges and judicial educators with an innovative and accessible learning tool that can be used individually or with other judges as an integral part of continuing education courses.

**CD-ROM Program \$65.00 - Item #003**  
**Compatible with both PC and Macintosh formats**

# BUILDING A BETTER JUDICIAL RESPONSE: RESOURCES FROM THE JUDICIAL EDUCATION PROJECT

## *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases*

Authors: Janet Carter, Candace Heisler and Nancy K.D. Lemon

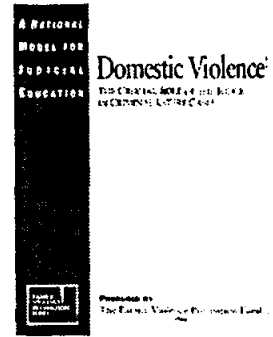
This comprehensive manual assists judicial educators and domestic violence workers in developing an 8-hour judicial education program on domestic violence and in producing a benchguide on criminal court cases specific to their state. The curriculum covers issues that arise during the 3 main stages of a criminal court domestic violence case:

- Pretrial/release considerations: bail, release on own recognizance, no-contact orders, peace bonds, etc.
- Evidentiary hearing/trial considerations: discovery, admissibility of evidence, jury selection, expert testimony, etc.
- Case dispositions — incarceration, probation, diversion, restitution, court-mandated batterer treatment, etc.

Chapters relevant to the adaptation to state statutes are available on disk in PC and Macintosh formats.

Manual \$50.00 – Item #001

3.5" Computer Disk \$25.00; PC format Item #002.1 – Macintosh format Item #002.2



## *Domestic Violence in the Civil Court: A National Model for Judicial Education*

This national curriculum assists judicial educators and domestic violence workers in developing an education program on domestic violence and civil court issues. The curriculum covers:

- An overview of domestic violence
- Issuance of civil court protective orders (including enforcement issues)
- Custody and visitation
- Child abuse and neglect cases (where abuse of one parent by the other exists)
- Termination of marriage
- Interspousal tort cases
- Hypothetical cases for small group discussions.

Chapters relevant to the adaptation to state statutes available on disk in PC and Macintosh formats.

Manual \$50.00 – Item #005

3.5" Computer Disk \$25.00; PC format Item #006.1 – Macintosh format Item #006.2

## *Making a Difference: Domestic Violence and the Role of the Court*

An Educational Video and Distance Learning Curriculum for Judges

*Making a Difference* offers judicial educators an unprecedented, cost-effective way to provide distance learning on domestic violence. *Making a Difference* includes: a video and a curriculum detailing how to use the video to conduct distance learning programs for judges. The video outlines five key learning points about domestic violence that can affect judges' decisions. These points are demonstrated through realistic dramatic scenarios, followed by discussion by judges and domestic violence experts on how to apply this new information on the bench. The video is also an ideal tool for classroom-style judicial education programs, and can be purchased separately.

Manual with video (60 minutes) \$45.00 – Item #140

Video only \$15.00 – Item #140.1



## BUILDING A BETTER JUDICIAL RESPONSE: RESOURCES FROM THE JUDICIAL EDUCATION PROJECT

### 5] *Domestic Violence and Children: Resolving Custody and Visitation Disputes*

A National Judicial Curriculum

Author: Nancy K.D. Lemon

This curriculum assists judges and judicial educators in developing and conducting an 8-hour program on the resolution of custody and visitation cases involving domestic violence. It can also be used to develop a benchguide on custody cases specific to each state. The curriculum covers:

- Leading statute and case law governing the courts' handling of domestic violence cases
- Evidentiary issues arising in domestic violence custody and visitation cases
- Court practices and procedures when issuing custody orders in domestic violence cases, including enforcement of custody and visitation orders
- Using mediation, evaluation and special masters in the resolution of custody disputes
- Interstate and international custody issues, relocation and child-snatching.

Chapters relevant to the adaptation to state statutes available on disk in PC and Macintosh formats.

Manual \$50.00 – Item #007

3.5" Computer Disk \$25.00; PC format Item #007.1 – Macintosh format Item #007.2

### 6] Also Available:

#### *Domestic Violence: A Benchguide for California Judges in the Criminal Courts*

Author: Nancy K.D. Lemon

Available through:

California Center for Judicial Education  
303 Second Street North Tower, Suite 450  
San Francisco, CA 94107  
(415) 356-6400

## BUILDING HEALTHY FAMILIES RESOURCES FROM THE DOMESTIC VIOLENCE AND CHILD ABUSE PROJECT

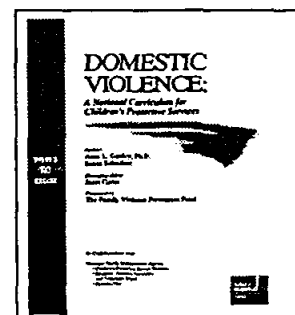
### 7] *Domestic Violence: A National Curriculum for Child Protective Services*

Authors: Anne L. Ganley, Ph.D. and Susan Schechter, M.S.W.

This curriculum outlines a two day training program to teach child protective services workers how best to protect children living with domestic violence. The curriculum covers:

- The relationship between domestic violence and child abuse
- The dynamics of domestic violence
- Identifying domestic violence
- Assessment and interventions in domestic violence cases.

Manual \$50.00 – Item # 082



### 2] *Domestic Violence: A National Curriculum for Family Preservation Practitioners*

Authors: Anne L. Ganley, Ph.D. and Susan Schechter, M.S.W.

This curriculum presents a comprehensive three day training program on domestic violence for family preservation practitioners. Exercises and presentations are geared towards teaching family preservation practitioners how to identify domestic violence, assess lethality, develop safety plans for the adult victim and children, and intervene with the perpetrator.

Manual \$50.00 – Item #010



# PRACTICAL TOOLS

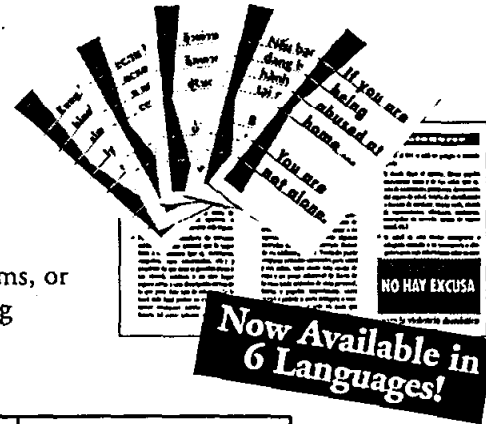
## Safety Cards

It's a card small enough to fit in your pocket — but it has information that can save lives.

The safety cards, now available in six languages, outline potentially life-saving steps women can take to protect themselves and their children from domestic violence.

Make them available in your reception areas, restrooms, employee lunchrooms, or cafeterias, and give them to your clients. Help us deliver the cards' life-saving information to every woman who needs it.

Cards can be ordered in bulk quantities of 50, 100, 500 and 1,000:



LANGUAGE	50 CARDS \$6.00	100 CARDS \$11.00	500 CARDS \$52.00	1,000 CARDS \$95.00
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Russian	Item #117.1	Item #117.2	Item #117.3	Item #117.4
Tagalog	Item #118.1	Item #118.2	Item #118.3	Item #118.4
Vietnamese	Item #116.1	Item #116.2	Item #116.3	Item #116.4
Lao	Item #115.1	Item #115.2	Item #115.3	Item #115.4

## Display Stands

These small plastic stands are the perfect way to display safety cards. They make the cards easy to access and keep them safe from water damage. Each stand holds up to 15 cards.

4 safety card display stands: \$5.00 – Item #216

## Bumper stickers

Black and blue vinyl bumper stickers and buttons drive home the message: *There's No Excuse for Domestic Violence*. Available in English and Spanish. Minimum order of 10.

10 bumper stickers: \$5.00

Item #201 English – Item #202 Spanish



## Coffee Mugs

Send a message to your colleagues by drinking your morning coffee from a *There's No Excuse for Domestic Violence* mug.

\$6.50 each – Item #093



## Pens

*Work to End Domestic Violence* — a direct message communicated with a pen.

10 pens \$7.50 – Item #217



The Family Violence Prevention Fund  
 383 Rhode Island Street, Suite 304, San Francisco, CA 94103-5133  
 Orders Hotline: (415) 252-8089; fax (415) 252-8991  
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**INFORMATION REQUESTS:**

- Send me information about the following:
- Public education & awareness materials
  - Domestic Violence Awareness Month
  - E-mail updates about domestic violence. My e-mail address is: \_\_\_\_\_
  - National Health Initiative
  - Battered immigrant women
  - Child welfare
  - Judicial education
  - Workplace education
  - Media advocacy

FAX YOUR ORDER: 415-252-8991 ■ QUESTIONS? Call 415-252-8089 ■ TO MAIL YOUR ORDER: Mail this form to the Family Violence Prevention Fund, 383 Rhode Island Street, Suite 304, San Francisco, CA 94103-5133 ■ The Family Violence Prevention Fund does not profit from the sale of these products. If you are an individual or organization in financial need, please let us know. Prices listed are good as of October 1998, and are subject to change.

# PROGRAMS OF THE FAMILY VIOLENCE PREVENTION FUND

- ***There's No Excuse for Domestic Violence*** is our national public education campaign, a collaborative effort with The Advertising Council designed to educate Americans about the seriousness of the epidemic and to mobilize Americans to be part of the solution. Interested individuals can call 1-800-END-ABUSE for free information about how to get involved in their local communities.
- The **National Health Initiative on Domestic Violence** serves as a national clearinghouse for information on the health care response to domestic violence, providing technical assistance to thousands of health care providers each year. For technical assistance or a catalog of materials, call toll-free 1-888-Rx-ABUSE.
- The **National Workplace Resource Center** helps employers and unions ensure that workplaces across America support the needs of battered working women. The project organizes the annual *Work to End Domestic Violence Day* each October. For more information, call 415-252-8900.
- The **Battered Immigrant Women's Rights Project** seeks to improve the lives of battered immigrant women through public policy reform and by strengthening direct services. Our multi-lingual educational resources are essential for providers of legal support, social services and health care to battered immigrant women. To receive information about available resources, call 415-252-8089.
- The **Judicial Education Project** is helping battered women and their children by teaching judges to better understand how their decisions can play a critical role in preventing domestic violence injuries and deaths. The project's innovative training curricula have reached family and criminal court judges nationwide. To receive information about available resources, call 415-252-8089.
- The **Child Welfare Project** works to raise awareness of the integral links between child abuse and domestic violence and develop strategies to prevent them both. The program has developed a model national curricula for child protective services workers, family preservation practitioners, and family court judges. To receive information about available resources, call 415-252-8089.

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## NEED MORE INFORMATION?

To receive information about all of the FUND's products, publications and programs, call 415-252-8089 — or indicate the program area you are interested in learning more about in the space provided on the first page of this form when you complete your order.

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Complete the first page of this order form and fax to 415-252-8991 or mail to the Family Violence Prevention Fund, 383 Rhode Island Street, Suite 304, San Francisco, CA 94103-5133. Questions? Call 415-252-8089.

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- A. Descriptions of the five national organizations sponsoring the *Gender Fairness Strategies Project*:
  - National Association of Women Judges
  - National Judicial College
  - National Center for State Courts
  - ABA Commission on the Status of Women
  - National Judicial Education Program
- B. List of Gender Bias Task Force Implementation Committees with Contact Names and Addresses
- C. State and Federal Case Citations to Gender Bias Task Force Reports - Annotated
- D. Chart - “Responsibility for Recommendations by Agency” from the Report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and Legal Profession (1998) (excerpts)
- E. Descriptions of the National Judicial Education Program and Family Violence Prevention Fund Model Judicial Education Curricula