

## **Establishing a Gender Bias Task Force**

### **Panel Presenters**

#### **The Honorable Marilyn Loftus**

Judge for the Superior Court of New Jersey and chairperson of the New Jersey Supreme Court Task Force on Women in the Courts.

#### **Lynn Hecht Schafran**

Attorney and current director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts\*, member of the New Jersey Supreme Court Task Force on Women in the Courts, and advisor to gender bias task forces in New York, Rhode Island, and Arizona.

#### **Norma Wikler**

Professor, Sociology Department, University of California at Santa Cruz and first director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts. Professor Wikler has developed courses on gender bias for various educational programs and serves as advisor to the New Jersey and New York task forces.

### **I. Introduction**

Gender bias is an often unacknowledged phenomenon in judicial decisionmaking which affects women's lives. Gender bias refers to attitudes and behaviors based on sex stereotypes, the perceived relative worth of women and men, and myths and misconceptions about the economic and social problems encountered by both sexes. It is reflected in attitudes and behavior toward women and men which are based on stereotypical beliefs about the nature and roles of the sexes, rather than upon independent evaluation of individual ability, life experiences, and aspirations. This presentation describes the purpose of a gender bias task force as well as the methods and strategies involved in setting up such a task force.

The purpose of a gender bias task force is to uncover and eliminate gender bias in the judicial system. A gender bias task force collects local data on the existence and effect of gender bias in the court system, develops recommendations to eliminate gender bias, and uses this information to educate the judiciary. Judicial education is the most useful tool in combatting gender bias in the judicial system.

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\* The National Judicial Education Program to Promote Equality for Women and Men in the Courts is a project of the NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges.

Professor Wikler outlines three prerequisites for the establishment of a task force. First, the success of the task force depends largely on the efforts of a core group of people within the state who are concerned about gender bias in the courts and are willing to commit themselves to the goal of establishing and operating a task force. This group should be composed of men and women judges, lawyers, educators, and members of the general public who are interested in the project.

Second, there must be some preparation within the judicial and legal communities which generates interest in and awareness of the problem. Professor Wikler cautions against moving to form a task force during a period of hostility toward dealing with the issue of gender bias. Timing is crucial because efforts to deal with the issue of gender bias will be fruitless if undertaken in an un-receptive or hostile climate.

Third, significant resources in the form of expertise, personnel, and money must be available. The money can be in the form of direct funding or, as in New Jersey, through in-house services from the administrative office of the courts. A task force should be formed only after these prerequisites have been met.

The overall plan of the task force typically involves three phases, the first of which is the preparation phase. The potential members of the task force must "till the soil" by raising awareness of the issue within the judicial and legal community and among key people in the state. This preparation creates a climate of receptivity for the task force.

The second phase is the appointment or endorsement of the task force by the highest court in the state. This can be accomplished by the chief justice, whose role will be discussed later in greater detail. This endorsement from the state's highest court confers legitimacy and credibility to the issue by officially recognizing gender bias in the courts as a serious problem requiring redress. It promotes cooperation and compliance with recommended reforms.

During the third phase, the findings of the task force are implemented. Reforms are put in place and mechanisms are established to ensure that the changes which are made are permanent and that the educational process continues. This phase involves the difficult but vital task of integrating awareness of gender bias into judicial education. As Professor Wikler points out, enforcement mechanisms such as disciplinary boards must be put in place to correct noncompliance so that the goals and recommendations of the task force can be realized.

Judicial education about gender bias must take place on an

ongoing basis. Gender bias, which is deep-rooted and pervasive, cannot be combatted by being raised as a trendy issue one year and ignored the next. Instead, the issue of gender bias must be integrated into each substantive area of judicial education. It is especially important that the issue be included in the education of new judges.

## II. Methods of Data Collection

The first job of the task force is to collect data on gender bias. Task force members should review existing research to educate themselves. They must then supplement this with local, specific data. Members of the judiciary may not be moved to correct a problem proven to exist nationally or in another state, but most will recognize and act on the problem when it is shown to exist to the same degree in their own state.

Data collection serves several functions. Data may be needed in the preliminary phase as a tool to convince the chief justice of the need for a task force. Some methods of collection, such as surveys, educate those who are polled. Data also forms the basis for ongoing judicial education.

Surveys are a common method of data collection. When considering surveys, task force members should be aware that surveys are not only expensive but also require a great deal of expertise and must be done correctly if they are to be valid. There are some unique advantages to using surveys. Survey results expose the seriousness of the problem and may serve to reveal an individual's own bias. The New Jersey surveys revealed not only bias, but deep hostility. One respondent wrote on the survey form, "Don't you girls have anything better to do with your time?" even though the committee consisted of males and females, trial and appellate judges, educators, and members of the general public. Another survey respondent instructed, "May I refer you to Genesis, chapter two, where God created man and woman?" while another asked, "Gender bias, is that a disease?" Survey forms included the request, "please respond promptly," to which one attorney wrote, "Aren't you a little bit bossy, honey, dearie, sweetie, oh, I mean judge?" The survey form was unsigned.

Several other methods of data collection are effective. Public hearings give members of the task force and the legal community the opportunity to hear directly from people who have been affected by discrimination. For example, public hearings held in three regions of New York were very effective. The attorney general and other prominent members of the bar testified. Some of the most interesting and valuable testimony was that of women

lawyers and their clients who related firsthand how gender bias in the courts had affected them.

In addition to surveys and hearings, a task force can use trial transcripts to demonstrate gender bias. The media can also be an effective ally, as in New Jersey, where interviews with task force members appeared on public television. Panel discussions are also effective and can be held with either local people or a combination of local and national speakers.

### **III. Composition of the Task Force**

A task force must have a core group of people who are dedicated to the job and are committed for the long haul. The core group should bring with them an awareness of the problem of gender bias and an ability to educate the other members of the task force. Along with this core group, key people from the legal community and the community at large are needed to give the task force credibility and to help publicize its findings. Ms. Schafran cites examples of prominent members of the bench and bar who, when appointed to the task force, had no knowledge of gender bias or thought the notion of a task force was "nonsense," but whose attitudes changed over time. One lawyer attended few task force meetings and events but read the transcripts and data. During the meeting at which recommendations for change were to be formulated, he stated, "Your recommendations must be as comprehensive as possible and must deal with what the Bar Association should do, because there is a problem out there, and it is very little known." This man's wholehearted support was achieved only after eighteen months of education. The task force must sensitize key people to issues of gender bias in order to get these issues on the judicial education agenda.

The ideal task force is a mixed group of women and men, lawyers and judges, and professionals and laypeople. Academics lend credibility and expertise—particularly social scientists, who are trained to design and interpret surveys. Each member is educated by the group and can then educate those in her or his sphere.

### **IV. Appointment of the Task Force: Enlisting the Help of the Chief Justice**

The endorsement and leadership of the chief justice is essential to the success of the task force. Ideally, the chief justice should take a leadership position, supporting the task force with appropriate resources and encouraging everyone to follow through in the data collection, education, and reform process. At the very

least, the chief justice should be asked to appoint the task force and to give it her or his endorsement.

What can one do if the chief justice says no to a proposal to form a task force? Professor Wikler stressed that the task force organizers should plot their strategy before that moment. Before approaching the chief justice, the organizers should determine in advance what her or his response will likely be. The organizers should send materials to inform the chief justice of the nature and seriousness of the problem of gender bias prior to the initial meeting.

If the chief justice says no, it is important to elicit the reason at that time. Common reasons are the belief that the issue is not important enough to warrant the appointment of a task force, that the appointment of a task force on this issue will open the door to any group with any issue that may come along, or that resources are not available. It is best for the organizers to summarize what they understand to be the position of the chief justice and to repeat it back to her or him to make sure it is understood correctly. The organizers should ask to come back after reporting to the group. This will leave the door open to return to the chief justice with findings which address her or his concerns. As findings are gathered, summaries may be sent to the chief justice as well as other members of the highest court, with hope of generating interest and discussion. The groundwork done in educating key members of the Bar may pay off here also.

## V. Conclusion

A state gender bias task force is an effective vehicle to educate a state judiciary on the problem of gender bias in the courts. The educational goals of the task force are long-term and are achieved only through proper timing, preliminary education, endorsement by the chief justice, data collection, and ongoing judicial education. These steps, in turn, have as their goal the elimination of gender bias in the courtroom environment and as a factor in decision making. When gender is properly regarded as irrelevant, cases can be decided on their merits, and women and men can be judged according to their individual abilities and qualifications.\*

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\* For more information see Lynn Hecht Schafran & Norma Wikler, *Task Forces on Gender Bias in the Courts: A Manual For Action* (1986). To obtain the manual contact the Foundation for Women Judges, 1225 Fifteenth Street, N.W., Washington, D.C. 20005; or (202) 462-4243.

