Unified Court System
Office of Court Administration

THIRD REPORT

OF THE

COMMITTEE TO IMPLEMENT RECOMMENDATIONS

OF THE

NEW YORK TASK FORCE

ON

WOMEN IN THE COURTS

OCTOBER 1989

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COMMITTEE TO IMPLEMENT RECOMMENDATIONS
OF THE NEW YORK TASK FORCE ON
WOMEN IN THE COURTS

HON. KATHRYN McDONALD
Chair

60 LAFAYETTE STREET
NEW YORK, NEW YORK 10013
(212) 374-3711

October 26, 1989

Hon. Sol Wachtler
Chief Judge
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Dear Chief Judge Wachtler:

On behalf of your Committee, I submit our third report on progress made in implementing the recommendations of the Task Force on Women in the Courts.

Since the Committee was appointed, the problem of bias against women in the courts has been attacked, as you know, in a variety of ways: first, with a massive effort intended to educate court personnel (and the larger legal community) to the existence of bias and its diverse manifestations in the court system; later, with specific educational and training programs tailored to the needs of judges and nonjudicial personnel; with administrative reforms that could be initiated through the Office of Court Administration's central offices; and with outreach to local Administrative Judges.

This report describes the continuing cooperation between this Committee, OCA's Education and Training Office and local judges to improve the judicial education programs presented each year; the expanded availability to nonjudicial personnel of educational programs concerning gender bias; presentation of public forums on topics such as domestic violence; and the constructive use of complaints received by this Committee to institute change at the local level. The report also acknowledges the earlier limitations of our information concerning the status of women nonjudicial employees, and renews our commitment to examining this question in the coming year, relying on the recently released report on the participation of women and minorities in the Unified Court System.

After three years our efforts have begun to achieve an "institutionalized" quality, a development that is most encouraging. Although earlier efforts were highly visible and very gratifying, we believe that, in the long run, the routine incorporation of gender bias concerns into the daily operations of the UCS is even more valuable. Our efforts have gained legitimacy in the system from the steady and public leadership of yourself, Administrative Judges Bellacosa and Rosenblatt, and Chief Administrator Crosson. That leadership continues to be crucial to our relatively recent efforts to deal with an age-old bias. However, I am happy to report that our progress to date encourages me to believe that the day will come when bias against women will require less of your personal attention, because there will be recognition throughout the entire court system that eliminating bias against women is not only "good for the women" but "good for the courts."

Sincerely,

Kathryn A. McDonald

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INTRODUCTION

This is the third report of the Committee to Implement the Recommendations of the New York Task Force on Women in the Courts. The Committee was created by Chief Judge Sol Wachtler in May, 1986 to turn the recommendations of the 275-page Task Force Report into the daily realities of life in New York's immense Unified Court System (UCS). The Committee's goal continues to be to institutionalize reforms so thoroughly that the court system is made totally inhospitable to individual bias.

The millions of cases adjudicated annually in New York State represent appearances in court of literally countless attorneys, parties, witnesses, and (often) jurors. Given the staggering dimensions of the court system, the job of introducing reforms and monitoring their effectiveness is a complex one. An "in-house implementation team," as Chief Judge Wachtler once described it, can function effectively only with enthusiastic public leadership from the highest levels of court administration and an active, on-going dialogue with community groups and advocates. This Committee has enjoyed the unwavering support of Chief Judge Wachtler, former Chief Administrative Judges Joseph A. Bellacosa and Albert M. Rosenblatt, and current Chief Administrator Matthew T. Crosson, and has benefited from advice from articulate, knowledgeable advocates who monitor our progress. Finally, a key to our on-going efforts to locally implement and institutionalize efforts to eliminate gender bias is the increasingly active role assumed by Administrative Judges throughout the state.

This report will present a summary of recent efforts that are both largely central, such as statewide educational programs for court personnel and on-going efforts to recruit, hire, and promote qualified women, and those that may be described as local: efforts undertaken by the eighteen Administrative Judges (who since 1987 are ex officio members of the Committee) and Supervising Judges in local courthouses. However, the distinction between central and local is rapidly blurring, and as awareness and sensitivity to women's concerns become more widespread, local and central efforts should be expected to coordinate even more smoothly. Our ultimate goal is to create both a climate of opinion (vigorously led by the Chief Judge and Office of Court Administration) and an interlocking network of explicit procedures and rules that will effectively make it impossible for bias, whether expressed by an individual or unwittingly perpetuated in a procedure, to undermine the courts' commitment to equal and fair treatment of women and men.

JUDICIAL EDUCATION

Several judicial education programs have been presented by the Office of Court Administration ("OCA") since the Committee issued its last report in June, 1988. It has now become a matter of routine for the Committee to receive briefings and mailings from OCA's Office of Education and Training throughout the year. Building on the foundation laid in the Committee's first two years, the Committee and the Education and Training Office have continued to work closely to assure that the educational programs offered to New York's 3500 elected and appointed judges provide adequate discussion of legal issues that have a particular impact on women, and that all programs are presented in a manner that does not employ demeaning stereotypes.

Recognizing that insensitive choice of words or use of offensive examples can distract from the impact of an otherwise valuable presentation, the Committee requested that the Education and Training Office distribute a brief memo to all OCA speakers reminding them of our commitment to equality between the sexes, and offering suggestions for eliminating dated or offensive terminology. When the Committee reviewed the pamphlet in use for that purpose through 1988, it concluded that is was not suitable for audiences of court professionals, and drafted its own memo. (See appendix). The two-page memorandum is now distributed to all OCA speakers (in both judicial and nonjudicial programs) and has apparently filled a need well beyond its intended scope. The Committee has received many requests for copies, including requests from other states' gender bias task forces.

1. Annual Judicial Conference

The centerpiece of the education program is the week-long judicial conference attended each summer by virtually all the judges of New York's courts of record. Planning for this conference begins the preceding winter, when the Chief Administrator appoints Curriculum Committees to begin developing course content and recruiting speakers for the following summer. This Committee forwards names for Curriculum Committee members and then offers suggestions to Curriculum Committee Chairs for topics and speakers.* Early in the spring of 1988 and 1989 then-Chief Adminstrative Judge Rosenblatt also solicited curriculum suggestions from several women's advocacy groups, who responded with thoughtful and stimulating suggestions, many of which were incorporated into the program. In addition, in 1988 Judges Kathryn A. McDonald and Betty Weinberg Ellerin of this Committee met with each Curriculum Committee to review course content and presentation of issues particularly relevant to women.

As in 1987, the goal of the Committee in 1988 was to integrate gender bias information into courses of general interest, rather than to isolate so-called "women's issues" in "women's courses." Thus the 1988 curriculum contained discussions of the rights of pregnant women in the course en-

* The Curriculum Committees increasingly reflect the participation of women in the judiciary and as scholars in the law schools. In 1988, 22% of the Curriculum Committee members were women; in 1989, 28%. In 1988, in addition to the two keynote addresses by Professors Sylvia Law and Nancy Cott, women made presentations in 25/of the courses. In 1989, womem were speakers or panelists in 41/of the programs.

titled "The Right to Live, the Right to Die," and of outdated societal expectations of men's and women's roles in the course covering "Selected Problems in Child Custody." Other areas of the law with an overwhelming impact on women's lives, such as domestic violence prosecutions, were the subject of full-length presentations. And the plenary session at each of the two week-long programs was devoted to constitutional issues affecting women. The first was a discussion by Professor Nancy Cott of Yale University Law School of women's rights under the 14th amendment, and the second, prepared by Professor Sylvia Law of New York University, described the views of "The Founders on Families."

The general process of Committee cooperation with the Education and Training Office continued in the winter of 1988-89, and again produced specific suggestions for course material and participants for the 1989 judicial seminar. An example of the cooperative spirit among all participants is the 1989 course entitled "Conservatorships." Noting current demographics and economic trends, a New York City Supreme Court Justice discussed with the Committee Chair her concern that the needs of a growing population of elderly women might require increased attention by judges and attorneys handling these cases. The Education and Training Office encouraged development of a course on this subject, which was presented five months later by a panel including judges, doctors, and lawyers. The Committee hopes that this example will encourage other judges to offer suggestions for courses to fill perceived needs in their areas of experience.

Other courses in the 1989 schedule that presented gender bias issues included the update on criminal law, which incorporated significant

developments in the areas of domestic violence prosecutions; the discussions in the "child custody" program of difficulties in cases involving charges by a mother that the noncustodial father has sexually molested a child; and the "children with AIDS" program, which also raised issues relating to pregnant AIDS carriers.

The Committee is satisfied that its participation in the development of each summer's judicial conference has become a regular, accepted part of the planning process. Alertness to areas of potential bias against women — whether as witnesses, attorneys or other courtroom participants — is present throughout the week-long program. We look forward to the continued support of the Office of Education and Training and anticipate that the Committee's suggestions for specific courses and speakers will continue to be welcomed.

2. Other Judicial Training

In both the orientation program held each December for newly elected and appointed judges and the Town and Village Justice certification programs, a presentation on gender bias issues has become standard. The Committee Chair conducts a discussion for the new judges that is designed to stimulate awareness of gender bias in the court system, its harmful effects, and the Chief Judge's intolerance of it. Likewise, the Town and Village Justices participate in a required course on judicial ethics that includes sample cases designed to demonstrate racist or sexist behavior. In both programs, copies of the Task Force and Implementation Committee Reports are made available, and the general lectures integrate gender bias

material wherever practicable. Further, in 1989 all faculty members received the Committee's memorandum on gender-neutral language and were encouraged to review their presentations accordingly. Future plans call for a continuation of these efforts as well as the addition of a domestic violence course to the basic Town and Village Justice program.

NONJUDICIAL EDUCATION

In the 1987 report, the Committee recommended that information on work environment, equal employment, and sexual harassment be part of each employee's education and training experience. To a large extent, this recommendaion has been implemented.

That same year, OCA presented its first large-scale formal training program for nonjudicial employees. The program, entitled "Mission and Organization," is a day-long course required of all present employees of the UCS, and is offered periodically to newly hired personnel. The program includes a presentation by the EEO office on equal employment opportunties and bias-related issues.

In 1988, OCA introduced a formal performance counselling and appraisal training program to instruct supervisors in their duties relating to performance evaluations. This training program alerts supervisors to a tendency to evaluate favorably individuals who are similar to themselves, and likewise to undervalue the efforts of people who are different because of age, education, work experience, interests, race, or sex. In addition, the program includes a segment on false assumptions and stereotyping that is designed to remind supervisors of the errors that can result from subjectively categorizing employees on the basis of inferred traits generally associated with a particular race or sex. Supervisors are encouraged to make employees aware of these tendencies and to suggest ways to avoid them.

The Education and Training Office also developed a separate course on sexual harassment. This two-hour program incorporates a video segment from the popular television series "Cagney and Lacy" in a sophisticated presentation of issues related to sexual harassment in the workplace. Program presenters receive special training in conducting the small-group discussions that follow viewing of the videotape. This program has been presented as part of the Mission and Organization training; it is also available at the request of local Administrative Judges and for meetings of various professional associations within the UCS.

Because of the nature of their work, some court employee groups receive special training relating to specific gender-bias issues. For example, the Court Officer Academy offers a training segment on family conflict resolution to each entering class of court officers. (In addition, all court officers must attend the Mission and Organization program, with its section on gender bias.)

No group of court personnel deals more frequently or intensively with tension between the sexes than the Hearing Examiners who preside over support cases in Family Courts throughout New York State. The intense anger and frustration expressed by many women and their attorneys, amply documented in the Task Force report and eloquently supported by the testimony of Family Court judges, demonstrated the need for immediate legislative reform. In 1985 legislation enabled the court system to strengthen the Hearing Examiner program significantly, converting from a part-time per diem system to one using seventy-one full-time Hearing Examiners with authority to hear and determine support matters (as opposed to

previously hearing and recommending dispositions to a judge), and greatly enhancing their power to move cases to a rapid conclusion (for example, by requiring that a temporary order of support be entered at the first court appearance, thus immediately removing incentive for the delays that had plagued such proceedings before 1985).

The statutory changes have had the desired effect of greatly reducing the delays and other procedural difficulties in enforcing support awards, but women's advocates have continued to complain that support awards, particularly child support, are too low, in part because respondent fathers successfully disguise or conceal their resources. To address this and other problems in support enforcement, a two-day training program was created for Hearing Examiners throughout the state, and presented in November, 1988. This Committee worked intensively with the participants to assure coverage not only of current federal and state law requirements concerning support orders, but on the then-pending child support guidelines bill* and sophisticated accounting and tax analyses designed to assist the Hearing Examiners in identifying financial resources that are available to satisfy child support obligations.

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* Since enacted as L. 1989, ch. 567. All Hearing Examiners attended a full-day program devoted exclusively to the specific requirements of the new law in September, 1989.

PUBLIC EDUCATION

1. Local Forums

Although the Committee's educational efforts have been directed primarily to UCS personnel, the Committee decided early in 1989 to highlight some persistent problems in a series of forums open to the public as well as judges, attorneys and court staff.

The first of these, entitled "Foul or Fair? The Limits of Trail Advocacy in a Domestic Violence Case," was presented in New York City in May, 1989 before a sizeable audience. It depicted a simulated domestic violence trial designed to highlight the potential for gender bias in the differential treatment of men and women as witnesses. The "presiding judge" was Judge Ellerin; the case was "prosecuted" by Bronx District Attorney Robert Johnson and "defended" by attorney Barry I. Slotnick.

The forum opened with remarks by Chief Judge Wachtler and concluded with an analysis by two commentators — Lucy Friedman, Executive Director of the Victim Services Agency and Professor William E. Hellerstein of Brooklyn Law School. The audience then questioned the panel. A similar program will be held in Buffalo in November, jointly sponsored by this Committee and the gender bias task force for the Eighth Judicial District.

These programs are intended to highlight the tensions between the valid concerns of vigorous representation of criminal defendants and fair treatment of women in the courts.

2. National Conference on Gender Bias in the Courts

In May 1989 the National Center for State Courts sponsored a four-day conference on gender bias in the courts, to which all state task forces were invited. New York was represented by this Committee's Chair, her assistant, and the Chair of the Task Force on Gender Bias of the National Association of Women Judges, who is also a member of this Committee. As one of only three states that have moved from the data-gathering to implementation phase, New York's representatives were asked to address topics relating to the process of institutionalizing reforms. The presentations emphasized the importance of strong leadership from the Chief Judge; active cooperation among the courts, bar associations, and community groups; and on-going education of judges, nonjudicial personnel, lawyers, and the public. (An illustration of the exemplary leadership in New York is Chief Judge Wachtler's convening of the full bench and staff of the Court of Appeals on Law Day, May 1, 1988, to hear five women members of the Court's legal staff make presentations on "Developments in the Law Affecting Women." The scholarly papers were later compiled and distributed throughout the Court, with a limited supply available to the public.)

LOCAL ADMINISTRATIVE EFFORTS

In June of 1987 the Chief Judge appointed each Administrative Judge an *ex officio* member of the Committee and added the topic of gender bias to the agenda of each of the periodic meetings of the Administrative Judges. These efforts have paid off handsomely.

The Administrative Judges' involvement has been manifold: first, responding to the gender-bias complaints that are received by the Committee and referred to the local Administrative Judge for prompt investigation and appropriate action; second, creating local committees, task forces, or anti-bias monitoring groups at the local level; third, assisting efforts to increase the availability of pro bono counsel to women; and finally, addressing diverse local problems affecting women in the courts.

1. Response to complaints

Although this Committee has no disciplinary powers, it quickly became a clearinghouse for complaints concerning bias against women in the court system. Very few of these complaints reflect system-wide problems; rather, they describe specific allegations of biased behavior as experienced by the writer. The complaints fall into three categories. First (and most numerous) are those in which a party in a pending or just-concluded proceeding complains that the conduct of the judge or lawyers during the case resulted in an unjust result. In response to such letters, the Committee can explain only that it may not intervene in the trial or appellate process,

suggesting to the writer sources of legal or other professional advice concerning possible remedies.

Second are complaints of a highly specific nature, i.e., the biased behavior of individual court officers or employees, including judges, that was apparently directed to the writer simply because she was a woman. In the case of nonjudicial employees, a copy of the letter is forwarded to the appropriate Administrative Judge with a request for an investigation and report. If a complaint refers to objectionable conduct by a judge, the same procedure is followed, except naturally the complainant may be advised that the only body empowered to discipline judges is the New York State Commission on Judicial Conduct.

Third are those complaints describing a court procedure that harms women is some way. These complaints are referred to local Administrative Judges, whose flexibility and willingness to suggest change whenever legitimate complaints reveal bias have resulted in effective and prompt behind-the-scenes action. The revised procedures can have significant, lasting impact on the way women are treated in the court system.

Thus, the Committee's informal role as a recipient of gender-biased complaints serves two important functions: first, the Committee insures that the complaint receives prompt attention, and second, this Committee and the local Adminstrative Judges are alerted to problems (or personalties causing problems) within a specific district so that they can be cured before they develop into trends.

A good example of the effective use of this process of alerting local Administrative Judges to problems is a complaint relayed to the Committee Chair concerning excessive delays in returning women inmates to the New York State correctional facilities at Bedford Hills after their appearances in New York City's Family Court. The general description of the problem, by a psychologist who was a consultant at the Bedford Hills prisons, was quickly followed by a letter from an inmate, who told of having been "housed" at Rikers Island for five months in order to be present at a one-day Family Court hearing. During that period, the woman, whose child was in foster care, lost her place in programs she had attended at Bedford Hills, including educational, vocational and parenting skills programs. It appeared that rapid-return transportation was available to male inmates, but not to women due to their fewer numbers.

A solution to this problem was promptly fashioned with the cooperation of the New York City Family Court Administrative Judge and Department of Correction personnel. Women incarcerated at the Bedford Hills-Taconic facilities (New York State's only prisons for women) now are routinely produced in New York City Family Court and returned to Bedford Hills on the same day. The inmates are thus better able to take advantage of the myriad programs offered at the facilities, which are designed to enhance their chances to lead productive lives with their families after release. (Both the inmates and the staff have expressed a somewhat surprised gratification that the Committee's concern for the needs of women involved in the court system extends to incarcerated women.)

2. Local committees

Since 1987, local gender-bias committees have been created in courts across the state. These local Committees usually include judges and non-judicial personnel and complement the efforts of this Committee, with particular emphasis on prompt response to problems uncovered locally. (It is interesting to note that some complainants appear to feel more comfortable taking a complaint to a local committee composed of familiar faces, while others prefer to make a more formal complaint to a distant, more "official" body such as this Committee. The existence of both local and central committees appears to maximize the benefits of the Unified Court System's efforts to date.) This Committee provides basic informational publications to newly created local committees, and is available as a resource as needed. In turn, the Committee relies on local groups to identify problems that might require "central" attention, and to generate innovative solutions and suggestions for educational programs. (As mentioned earlier, the Eighth District Committee is co-sponsor with this Committee of the public forum scheduled for presentation in Buffalo on November, 1989 concerning fair treatment of women in domestic violence cases.)

3. Pro bono counsel

An area in which Administrative Judges can be involved is the provision of pro bono legal services for battered women. The 1986 Task Force report documented the gravity of domestic violence throughout the state. There remain chronic shortages of attorneys experienced and skilled in representing these women, for whom the physical battering is often only one aspect of a complex host of legal problems.

The private bar and women's advocates have begun to address the problem of providing legal representation for these women. In New York City, two organizations approached the Family Court Administrative Judge for assistance in organizing their prospective volunteer attorneys, coordinating their efforts with existing assigned-counsel plans, and gaining access to the courts. As occurred in this case, the local Adminstrative Judge can provide information, court staff expertise, and suggestions about potential funding souces, including the state-wide Interest on Lawyer Account ("IOLA") fund. The two New York City programs are scheduled to begin operating in the fall of 1989, producing, we hope, encouraging models for other localities.

Similar projects could be undertaken by bar associations and Administrative Judges to increase the availability of competent counsel in matrimonial cases. In New York County, the Administrative Judge in the Supreme Court, Civil Branch, assisted efforts by various committees of several local bar associations to establish a pro bono panel of attorneys who agree to accept one case each year. The pro bono volunteers must apply to the panel, are screened by the bar associations, and approved for service by the Administrative Judge. In exchange for their services, these attorneys receive a training program in matrimonial law, in addition to access to an experienced matrimonial law specialist who has agreed to serve as a "resource attorney" for the pro bono attorney assigned to a particular case. Since its inception in December 1988, the New York County pro bono panel has served approximately 25 litigants, the majority of them women.

4. Other local problems

Another example of local problems affecting women that can be addressed by an Administrative Judge is the situation in New York City involving "civilian complaints" in the criminal justice system. As described in our 1988 report, various procedures often hampered, even completely discouraged, female victims of domestic violence from proceeding against their abusers in the Criminal Court. Among the problems were the centralization of the complaint-processing unit, which required women from all five boroughs to travel to lower Manhattan to initiate the necessary paperwork, only to discover that they had to return to their home boroughs to serve the summons; and the lack of professional assistance in drafting legally sufficient complaints. In 1988 the Deputy Chief Administrative Judge for New York City courts and the Administrative Judge for New York City Criminal Court convened a committee to evaluate the procedures by which these cases were handled. (Later that year this Committee presented testimony to that group that emphasized the serious consequences and potential for further family violence when these so-called "civilian complaints" were not given adequate attention.) The committee appointed by the Administrative Judges issued its report in June, 1989, recommending, among other things, that units be established in each borough to screen complaints and make immediate referrals of serious domestic violence complaints to local District Attorneys for prosecution. Implementation of the recommendations will require action by both OCA and the state legislature. This Committee will continue to monitor the results of the on-going effort to address the needs of women seeking criminal prosecution of their abusive partners.

EMPLOYMENT OF WOMEN IN UCS

Three years after the Implementation Committee was appointed, it seems appropriate to review the overall efforts of the court system to provide equal employment opportunities to women. This section of our report deals with the status of women employed in nonjudicial positions — roughly half of the UCS total of 12,000. We summarize after three years of work the steps taken to improve what testimony before the Task Force called "acute occupational segregation" of women.

The first crucial step was completed in 1986 by the Task Force when it issued its report providing overwhelming objective data that confirmed the widespread impression that women were largely confined to the lower ranks of employment. The Task Force had commissioned a study from the Center for Women in Government (part of the State University of New York at Albany) which formed the basis for the Task Force findings and recommendations concerning women employees. Noting that "those with hiring authority in the Unified Court System enjoy considerable discretion," the Task Force concluded that "the acute occupational segregation revealed by the Center's study may be seen as a further manifestation of attitudes that disadvantage women in areas of substantive law and in the courtroom environment."

The second step is removal of explicit obstacles that barred women from desirable positions by imposing application requirements that were arguably unrelated to job performance. For example, even as recently as the 1970's, the Uniformed Court Officer (UCO) position, widely viewed as a highly

desirable job in itself, was effectively closed to women because of height and weight requirements. Even more damaging to women was the restriction of eligibility for various promotional exams in the "court clerk" series to persons who had experience as UCO's. (UCO's were at that time serving only in New York City, Nassau and Suffolk County courts; elsewhere courthouse security was the responsibility of the local sheriff or police.) Significantly, women were able to enter the "court clerk" series outside the metropolitan area in impressive numbers — over 50% in some counties — while in New York City/Long Island, the court clerk title series remained predominantly made.

The UCO situation is the clearest example of the impact of removing overt obstacles. Under the impetus of a federal court order (the outcome of litigation commenced some years before the Task Force commissioned its study), the UCO application requirements were modified so as to permit women greater access to the position. As a result, the increase in female UCO's has been dramatic — from none in the early 1970's to 12% in 1980, and to approximately 25% in 1989. And in 1982 eligibility for the "court clerk" promotional exams was opened to all Unified Court System employees who have had two years of service in any competitive class position.

The third step, creating a favorable climate for hiring and promoting women, responds to the Task Force's perception that "attitudes" affect discretionary hiring decisions, to women's detriment. In a hierachical system such as the UCS, leadership from the highest ranks is critical, and in New York State that leadership has consistently and conspicuously

demonstrated its commitment to the elimination of gender bias. Since 1986 several top-level "ungraded" UCS postions when vacated by men have been filled by women. These include OCA's Director of Communications, Director of Education and Training, and Executive Assistant to the Deputy Administrative Judge for New York City Courts. In addition, women have been appointed as Adminstrative Judges in the New York City Civil Court and Family Court. Seven women also serve as Supervising Judges in Civil, Criminal, Family and Surrogates Courts around the state. The "message" is clear: women applicants receive serious consideration. The result, we believe, is that more women now apply for Unified Court System appointments and promotions.

Another, more explicit, means of encouraging a favorable climate among those with discretion to hire and promote is the supervisors' training program (described earlier, at page 7) which emphasizes awareness of personal biases and the need to overcome them when evaluating candidates.

The fourth step, publicity and recruitment, has also demonstrated real progress. OCA's Equal Employment Opportunity office is obviously an essential part of the effort to erase bias against women. Indeed, the Equal Employment Opportunity Director has served both as staff to the Task Force and member of the Implementation Committee. EEO's "usual" efforts (job fairs, visits to high schools and colleges, etc.) are supplemented by a 500-entry data bank that allows announcements of available positions to be publicized to target groups, including women's groups. Here again, the Uniformed Court Officer position indicates the degree of success in recruiting women: the percentage of women applicants is now approximately 43%.

The fifth and final step, of course, is actual hiring and promotion. Here the court system is hampered by a single daunting reality: an extremely low turnover. This means that even with the elimination of explicit obstacles, creation of a favorable hiring climate, and aggressive recruitment, the sheer number of women benefiting from our efforts is lower than we would like. Particularly in a system with relatively high statewide salary levels, departures from secure, well-paying jobs are rare. Occasional "bonanzas," such as the creation of the Family Court Hearing Examiner Program with its seventy-one hearing examiners statewide (40% of whom are women), are rare. Much more common is the low rate of turnover from desirable positions, with women and men competing equally for those relatively few spots.

Despite these efforts, the Committee has perceived a sense of unease, confusion, or general disappointment concerning women's access to the higher ranks of the UCS. It has been awkward for the Committee to respond to these concerns because of differing methodologies used to measure the raw data presented. We are greatly encouraged by the recent completion of the report on the participation of minorities and women in the nonjudicial workforce of the UCS prepared by the Office of Court Administration. We plan to rely on this document to develop a realistic view of the present status of women employees. Matthew T. Crosson, Chief Administrator of the UCS, has accepted the study as a "detailed and comprehensive workforce analysis" that gives a "precise picture" of women's participation in the nonjudicial workforce. If it appears that women's talents are unrecognized or underutilized, we will devote our efforts to identifying the positions where women are underrepresented, analyzing the

dynamics that have produced that result, and devising techniques to improve their representation. If, on the other hand, the data demonstrate that women are appropriately hired and promoted, and are hindered only by a public perception that their applications are not welcomed, we will strive to better publicize the court system's receptiveness to women.

We are well aware of the complexity of forces, including statewide budget constraints, civil service requirements, and low turnover that often inhibit a government employment system. However, acknowledgement of the difficulties does not mean resignation to the problem. It means simply that our commitment must not falter, nor our attention be diverted.

MISCELLANEOUS ISSUES FOR CENTRAL ADMINISTRATION

In past reports the Committee reviewed the progress of several miscellaneous issues raised by the Task Force. To a large extent, these issues have been resolved.

- The court system has made the elimination of gender bias a priority and has made repeated public declarations of its goal of eliminating sexist conduct, for example, in the remarks of Chief Judge Wachtler at the May, 1989 public forum, and the article by then-Chief Administrative Judge Albert Rosenblatt in the November 1, 1988 New York Law Journal, entitled "Women in the Courts."

- The court system has completed its development of computer programs to gather data on child support cases.

- Substantially all official court documents, manuals and forms are gender-neutral, and OCA continues to work with private publishers of unofficial forms to ensure their gender neutrality.

- Attention to the need for child care facilities for persons who must appear in court remains a part of the court facilities review process (but, like other much needed improvements, children's waiting rooms are often "postponed" during periods of budget crisis).

- Fee-generating appointment forms now request information about all protected classes, including sex, and this information is now available to the public.

CONCLUSION

The conference sponsored in May, 1989 by the National Association of Women Judges and the National Center for State Courts was intended primarily to assist the dozens of state gender bias task forces that, unlike New York, had not yet produced a comprehensive report on the status of women's treatment in the courts. A secondary but very valuable benefit was the perspective it offered on New York's progress since the Task Force was appointed in 1984. In preparation for New York's participation in the May conference (and for this report) the Committee has looked back, and by so doing, has gained insight into where we are, how we got here, and what lies ahead.

The process of uncovering and documenting bias produces a dramatic result — in New York, the 1986 Task Force Report. Release of the well-documented report and its immediate acceptance by Chief Judge Wachtler produced headlines, enthusiasm, and across-the-board efforts by all branches of the legal system. The new programs described in our earlier reports were the products of this period of innovation. Now, after three years, "innovation" has become "acceptance;" the success of this Committee's work can be measured by how routinely alertness to bias issues is built into the courts' training programs, personnel evaluations, and drafts of new procedures.

In a system as large and complex as the UCS, implementation means institutionalization — and institutionalization is not dramatic. We are in a sense attempting to turn to our advantage the "bureaucracy" that is so

often cited as a weakness of any large institution. If our future successes are less easy to count and more difficult to describe, let us hope it is because they are more widespread and more enduring. If we succeed in weaving our message into the fabric of court rules, procedures, and staff folklore (''the way it's always been done''), we will have made equality between men and women as ''pervasive'' as bias was once found to be.

Respectfully submitted,

Hon. Kathryn A. McDonald, Chair
Hon. Betty Weinberg Ellerin
Hon. Zelda Jonas
Hon. Juanita Bing Newton
Nicholas P. Capra
Michael Colodner
May Newburger
Peter Ryan
Fern Schair Sussman
Amy Vance
Adrienne White
Christine C. Kopec
Counsel to the Committee

The Committee acknowledges its appreciation to Nora Freeman, who, as Assistant to the Chair, assisted in the preparation and drafting of this report.

COMMITTEE TO IMPLEMENT RECOMMENDATIONS
OF THE NEW YORK TASK FORCE ON
WOMEN IN THE COURTS

HON. KATHRYN McDONALD
Chair

60 LAFAYETTE STREET
NEW YORK, NEW YORK 10013
(212) 374-3711

To: OCA Speakers and Panelists

From: Hon. Kathryn McDonald
Chair, Committee to Implement Recommendations of
the New York Task Force on Women in the Courts

Helen Johnson, Director of Education and Training

Re: Neutral language in OCA presentations

This memorandum is intended to be a brief reminder to all our speakers of the need to present material in a manner that does not unwittingly support offensive stereotypes about men and women. We have no reservations concerning the professionalism and courtesy of our speakers, and offer this memo merely to suggest some solutions to problems encountered in the past.

As you are no doubt aware, numerous studies have established that language and non-verbal communication may influence the listener's absorption of material in a way that supports gender-based assumptions. Our shared goal is to allow our varied audiences* to listen and learn in an atmosphere free of even subtle messages of discrimination based on sex. Like any review of old habits, the effort to break away from sexist language can refresh the speaker's style and presentation. Some writers re-read Strunk and White's Elements of Style in a yearly ritual of renewal. Similarly (while not claiming that classic's venerable authority) we hope that each of you will use this memo as a check-list or tune-up device when preparing your presentation.

We use the term "gender bias" to mean a tendency to think about others - and to treat them - primarily on the basis of their sex. Such bias may appear in an educational program in two ways: through the speakers' language and through the use of sex-based stereotypes in illustrative examples or hypotheticals.

* OCA's annual roster of 34 training programs includes continuing legal education for judges and attorneys as well as specialized programs for the UCS's 12,000 support staff.

The most common problem encountered by our speakers -- and one of the most frequently commented on by women in the audience -- is the use of the male pronoun "he" as a "generic" pronoun meaning all persons rather than all males. Perhaps simply because all of us have been trained to be brief (would that the training were uniformly successful!) many speakers are reluctant to abandon the "generic he" because "he or she" is a cumbersome substitute. We agree that "he or she" is awkward, especially if used repetitiously. But there are several alternatives:

1. A neutral article: a, an, the, this. For example: "After oral argument, the judge may issue the [not "his"] decision from the bench."

2. Repeating the noun or using a synonym: Eg.: "The clerk of court will then certify the order. This official [not "he"] has now completed the process."

3. Plural pronouns: "The judge should allow counsel to present his own case in his own style," can be replaced by "The judge should allow attorneys to present their cases in their own styles."

4. Eliminating the pronoun: Rather than, "the court stenographer may signal her need for a recess, "the stenographer will indicate the need for a recess."

5. Alternating the male and female pronouns throughout the presentation: Moving easily from "she" and "her" to "he" and "his" throughout the text conveys to the audience that the sex of the example is essentially irrelevant, (unless, of course, you choose to state otherwise for the purpose of illustrating a particular point.)

In addition to the "generic he" problem, difficulties sometimes arise in common (albeit dated) terminology. Most of these problems are easily corrected. For example:

policeman	-	police officer
chairman	-	chair, chairperson
Congressman	-	Member of Congress, Representative
fireman	-	fire fighter
man-made	-	manufactured, synthetic
repairman	-	electrician, plumber [etc.]
spokesman	-	representative, spokesperson
workmen	-	workers
gentlemen of the press	-	journalists
brethren	-	colleagues
male nurse	-	nurse
"Dear Sir"	-	"Dear Sir or Madam" [or use the title, eg., "Dear Claim Adjuster"]

In a more substantive area, it is important to remember that the identity of figures used in teaching hypotheticals sends its own message. While it has been a long time, indeed, since any speaker would refer to "the little woman" when referring to a wife, it is not uncommon for an audience to hear a three hour presentation in which the only female characters cited in examples are secretaries, rape victims, or homemakers. A discussion for attorneys of techniques for dealing with an emotional, rambling witness should not invariably present the witness as a distraught young woman or an elderly person; male business executives also ramble on the witness stand. Women can be used in a hypothical dealing with an expert witness, a double-crossing executive, an attorney accused of malpractice, or a police officer charged with falsifying a report. A traumatized crime victim may be an innocent young man. Similarly, secretaries and nurses need not invariably be women; clerks of court and supervisors needn't always be men.

In closing, we extend our thanks once again to all our speakers, whose efforts (often on a voluntary basis) are a central part of our effort to maintain the highest levels of professionalism throughout the Unified Court System. As an educator, you have the opportunity to correct and erase some of the inaccurate stereotypes that have for too long encumbered the courts' efforts to provide justice for all. Chief Judge Sol Wachtler has stated, "the courts have a special obligation to reject -- not reflect -- society's irrational prejudices." Your support of the Chief Judge's commitment to eliminating bias against women from the courts of New York is warmly appreciated.

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