

*Appraising Change and Progress a
Decade After the Report of the
New York Task Force on
Women in the Courts*

EQUAL Justice **EQUAL** Treatment **EQUAL** Opportunity

*A Report by the New York Judicial
Committee on Women in the Courts
May 1996*

Sexual Assault

The Task Force Report chronicled steady reforms in New York's law, through legislative measures and judicial decisions, that, in a decade and a half, had revised radically the legal treatment of sexual assault. From a crime burdened with unique evidentiary rules, suggesting that victims' testimony was singularly incredible and exposing women testifying to humiliating invasions of privacy, sexual assault had entered a modern age.²⁵ By 1986, on paper at least, New York's law was reasonably equitable. Remaining, however, were enforcement issues, since, as the Task Force recognized, the attitudes of some of those ultimately responsible for applying the law—judges, prosecutors, defense lawyers, and jurors—had not changed as quickly or as completely as the codified law.²⁶

The Task Force noted the remarkable increase in rape prosecutions as the law's obstacles to prosecutions had been removed, and that trend has continued in the past ten years. In 1972, when the first reforms were enacted, rape convictions numbered 18 statewide in a typical year.²⁷ When the Task Force began its work, in 1984, convictions for sexual offenses numbered 2312. Ten years later, in 1994, 2718 defendants were convicted of sexual offenses, all but 50 of them men. Marking the passage of sexual assault into the mainstream of criminal prosecutions was a conviction rate comparable to those for other violent crimes. New York's conviction rate for felony sexual offenses in 1994 – 55.7% – surpassed the rate of 44.5% for assault and more than equaled the 54.9% rate for robbery.²⁸

The law too has continued to move forward. A response to the changing but not yet fully transformed ideas about rape was *People v. Taylor*, a 1990 Court of Appeals decision approving the introduction of evidence on the rape trauma syndrome at criminal trials.²⁹ The Court's ruling, that expert testimony was admissible to help lay juries understand victims' responses to sexual assault, was moored in a sophisticated understanding of the social history and psychology of rape. The Court recognized that "rape is a crime that is permeated by misconceptions"³⁰ and that "cultural myths still affect common understanding of rape and rape victims."³¹ In *People v. Bennett*, decided two years later, the Court of Appeals again acknowledged the value of expert testimony at the same time the Court cautioned judges about the necessity for making case-by-case determinations on its admissibility.³²

Although not strictly a response to rape victims, but building on reforms to laws on sexual assault, was 1990 legislation restricting the evidence of prior sexual history of all crime victims.³³

²⁵ *Task Force Report* at 50-51, n.110-115.

²⁶ *Id.* 62-63.

²⁷ *Id.* at 50, n.110.

²⁸ Figures provided by The New York State Division of Criminal Justice Services, Bureau of Statistical Services. For additional figures on sexual assault in New York State between 1984 and 1994, see *Appendix B*.

²⁹ 75 N.Y. 2d 277 (1990).

³⁰ 75 N.Y. 2d at 288.

³¹ 75 N.Y. 2d at 289.

³² 79 N.Y. 2d 464 (1992).

³³ Laws of 1990, Ch. 832, codified at Criminal Procedure Law § 60.43. New York's "Rape Shield Law" is codified at Criminal Procedure Law § 60.42.

The bill extended the protections of New York's "rape shield law" by confining defense inquiries to evidence that judges found relevant after an offer of proof or a hearing outside the presence of a jury. The legislature recognized that, although prior sexual history is rarely relevant to any offense, sexual or otherwise, it often adds an inflammatory and prejudicial element to a trial as well as an opportunity to humiliate and intimidate complaining witnesses.

An entirely different kind of initiative on sexual assault has come from the Chief Judge's Family Violence Task Force, which, in July, 1995, began a series of seven, one-day seminars on child sexual abuse. Intended to bring the latest research and thinking to judges, the seminars have relied on multidisciplinary panels of experts and practitioners that have included the criminal defense bar as well as matrimonial lawyers, mental health experts, prosecutors, law enforcement officials, law guardians, and forensics experts. Five of these seminars used an interactive format addressing matrimonial, criminal, and family law issues.

Matrimonial Litigants

The Task Force, reporting relatively soon after New York's Equitable Distribution Law went into effect, as judges, lawyers, and litigants were grappling with its implications, found troublesome applications of the law that put at risk the economic stability of matrimonial litigants.³⁴ Most in jeopardy were partners in marriages, usually wives, with few assets in their names and little income of their own yet often responsible for dependent children. The decade since the Task Force Report has seen measured progress towards more fair outcomes and a more level playing field for New York women whose marriages end in divorce.

Economic Consequences of Divorce

Distribution of Marital Property

When the Task Force reported, New York's Equitable Distribution was still new, and the legal system was still adjusting to the law's changes in the process for assigning post-divorce economic rights. In the past decade, many of the gains envisioned by the law's architects have been consolidated through judicial decisions and legislation. Yet the application of these laws continues in some ways to leave women, particularly financially dependent spouses, at a disadvantage.

The Court of Appeals has taken an expansive view of the law's reach and, in conformance with the Legislature's intentions, interpreted it with an appreciation of the needs of economically weaker spouses. When the Task Force reported, the Court had recently decided the landmark case of *O'Brien v. O'Brien*,³⁵ adopting the theory that marriage is an economic partnership and encouraging courts to recognize the nonfinancial contributions of homemakers. The Court has held fast to the course set in *O'Brien*. In 1993, for example, the Court described the Equitable Distribution Law as a "revolutionary enactment," recognizing that a spouse acquires an independent ownership interest in marital property.³⁶ In the last year alone, the Court has ratified

³⁴ *Task Force Report* at 64-80.

³⁵ 66 N.Y. 2d 576 (1985).

³⁶ *Kaplan v. Kaplan*, 82 N.Y. 2d 300, 305-306 (1993).

STATE OF NEW YORK - DIVISION OF CRIMINAL JUSTICE SERVICES
OJSA/BUREAU OF STATISTICAL SERVICES

FELONY SEX OFFENSE ARRESTS DISPOSED
NEW YORK STATE

DISPOSITION YEAR	1984	1990	1991	1992	1993	1994
TOTAL DISPOSITIONS	3234	3817	3813	4072	3817	3638
NOT PROSECUTED	150	163	133	172	203	225
PROSECUTED	3084	3654	3680	3900	3614	3413
CONVICTED	1766	2033	2186	2338	2214	2026
--PLEA	1417	1736	1930	2104	1986	1851
--VERDICT	204	163	168	143	140	114
--UNKNOWN	145	134	88	91	88	61
DISMISSED	1150	1412	1316	1357	1211	1190
ACQUITTED	112	119	106	120	125	109
OTHER DISPOSITION	56	90	72	85	64	88
SENTENCES TO: PRISON	582	632	618	677	588	541
JAIL	290	311	313	305	291	257
TIME SERVED	37	54	46	53	52	40
JAIL + PROBATION	220	302	345	360	354	263
PROBATION	428	484	610	628	582	565
FINE	68	64	58	62	73	63
COND. DISCHARGE	121	171	184	236	258	264
OTHER	7	3	2	6	4	7
UNKNOWN	13	12	10	11	12	26
CONVICTION RATE (% OF DISPOSED)	54.6%	53.3%	57.3%	57.4%	58.0%	55.7%
INCARCERATION RATE (% OF CONVICTION)	63.9%	63.9%	60.5%	59.7%	58.0%	54.3%
% OF CONVICTION TO: FELONIES	56.9%	57.3%	56.5%	57.4%	53.6%	50.9%
MISDEMEANORS	37.1%	35.4%	37.6%	35.1%	37.9%	38.5%
LESSER OFFENSES	6.1%	7.3%	6.0%	7.5%	8.5%	10.7%

SOURCE: COMPUTERIZED CRIMINAL HISTORY (07/21/95)

STATE OF NEW YORK - DIVISION OF CRIMINAL JUSTICE SERVICES
OJSA/BUREAU OF STATISTICAL SERVICES

MISDEMEANOR SEX OFFENSE ARRESTS DISPOSED
NEW YORK STATE

DISPOSITION YEAR	1984	1990	1991	1992	1993	1994
TOTAL DISPOSITIONS	1011	1112	1086	1224	1244	1265
NOT PROSECUTED	21	22	26	21	34	41
PROSECUTED	990	1090	1060	1203	1210	1224
CONVICTED	546	596	634	721	726	692
--PLEA	493	532	568	666	681	649
--VERDICT	9	13	19	21	23	17
--UNKNOWN	44	51	47	34	22	26
DISMISSED	411	453	381	431	435	465
ACQUITTED	18	22	21	22	28	35
OTHER DISPOSITION	15	19	24	29	21	32
SENTENCES TO: PRISON	4	0	8	2	2	2
JAIL	99	105	111	107	117	97
TIME SERVED	21	27	22	27	25	32
JAIL + PROBATION	30	47	35	42	35	34
PROBATION	112	126	142	164	144	137
FINE	105	127	143	135	141	141
COND. DISCHARGE	162	157	164	232	253	230
OTHER	7	3	3	8	2	5
UNKNOWN	6	4	6	4	7	14
CONVICTION RATE (% OF DISPOSED)	54.0%	53.6%	58.4%	58.9%	58.4%	54.7%
INCARCERATION RATE (% OF CONVICTION)	28.2%	30.0%	27.8%	24.7%	24.7%	23.8%
% OF CONVICTION TO: FELONIES	1.5%	1.0%	2.4%	1.4%	.8%	.7%
MISDEMEANORS	60.1%	60.2%	57.3%	58.7%	59.5%	55.2%
LESSER OFFENSES	38.5%	38.8%	40.4%	39.9%	39.7%	44.1%

SOURCE: COMPUTERIZED CRIMINAL HISTORY (07/21/95)