



**FIVE YEAR REPORT
OF
THE NEW YORK JUDICIAL COMMITTEE
ON
WOMEN IN THE COURTS**

JUNE 1991



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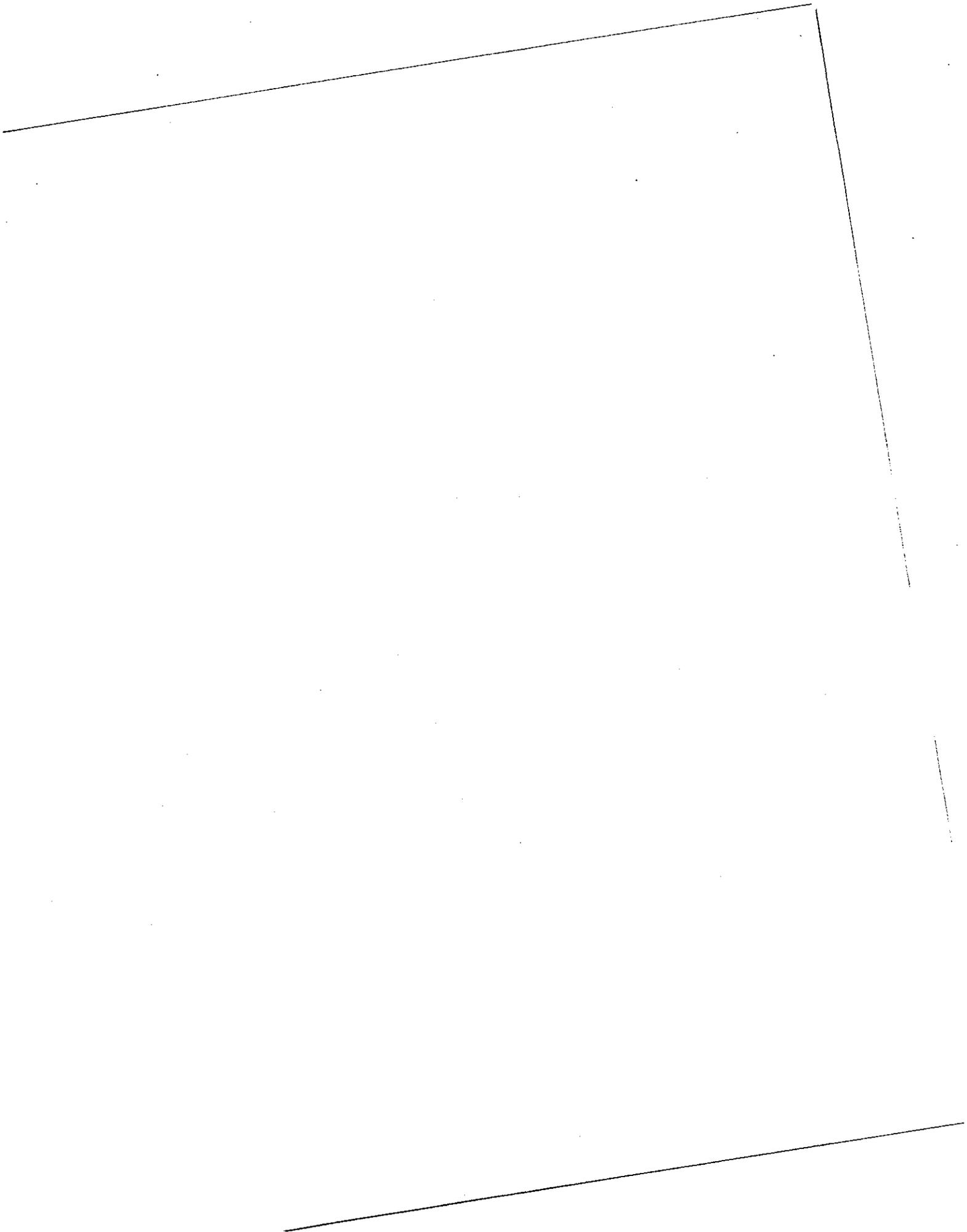
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INTRODUCTION

Five years ago, in April 1986, the New York Task Force on Women in the Courts submitted a report to Chief Judge Sol Wachtler concluding that "[G]ender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity."¹ Within weeks, the Chief Judge had appointed a committee with a mandate to work within the court system to implement the Task Force's recommendations and eliminate vestiges of gender bias and gender insensitivity extant in New York's courts.²

This report summarizes the work of that committee.³ It also takes note of progress since the Task Force made its report and charts a role for the Committee in continuing efforts to free the

¹ Report of the New York Task Force on Women in the Courts, reprinted in 15 Fordham Urban L. J. 1 (1986-87) [Hereinafter Task Force Report] at 15.

² The Lady in the Harbor and the Lady in Albany, Remarks of Hon. Sol Wachtler, Chief Judge of the State of New York, on Law Day at the Court of Appeals Hall, May 1, 1986, reprinted as Appendix A.

³ The Committee is now known as the New York Judicial Committee on Women in the Courts. It was originally called the Committee to Implement Recommendations of the New York Task Force on Women in the Courts.

courts of the devastating consequences to the ideal of justice that result from denying women fairness or equality.

HISTORY OF THE TASK FORCE

In 1984, then Chief Judge Lawrence H. Cooke convened the New York Task Force on Women in the Courts and assigned its twenty-two members the job of examining the courts, identifying gender bias, and, if found, making recommendations for eradicating it. Judge Cooke directed the Task Force to look at the entire court system: substance and procedure, statutes, rules, practices and conduct.⁴

The Task Force labored approximately two years before submitting its report. During that time, its members held four public hearings at which they heard 85 witnesses, conducted six regional meetings, and attended informal listening sessions with residents of six rural counties. They reviewed literature, surveyed surrogates on their mechanisms for appointing attorneys to fee-generating cases, made inquiries into the judicial selection process, and engaged the Center for Women in Government to study the status of female court employees. With the help of bar associations, they mailed surveys to 50,000 lawyers throughout the state and received 1,759 responses, many with written comments.⁵

⁴ Remarks of Hon. Lawrence H. Cooke at the Press Conference Announcing the Formation of the New York Task Force on Women in the Courts, May 31, 1984, reprinted as Appendix B.

⁵ For a full description of the Task Force's methodology, see Task Force Report at 18-25.

The product of the Task Force's painstaking work was a report with conclusions that draw their strength from the underlying documentation. The bulk of the report consisted of detailed findings concerning women as litigants, including the courts' response to violence against women, enforcement of economic rights, and consideration of gender in custody disputes; women as attorneys, particularly their difficulties in gaining acceptance and advancing in the profession; and women as court employees, who were found to be disproportionately represented in lower-paid jobs and often subjected to biased conduct. Findings on each of these topics were followed by discrete recommendations. The report directed these recommendations to the people and institutions who together affect the courts: court administrators, the Legislature, district attorneys, police departments, judicial screening committees, bar associations, and law schools. In the report's concluding call for action, the Task Force again noted the pernicious effects of gender bias and called attention to the courts' "special obligation to reject -- not reflect -- society's irrational prejudices."⁶

The Chief Judge's response to the Task Force Report was immediate and decisive. While voicing confidence in the commitment of the vast majority of the bench and bar to protecting and enhancing women's rights in the courts, he accepted the Task Force's findings and put into motion the mechanism for change. He began his campaign against gender bias in his Law Day Address, soon

⁶ Task Force Report at 166.

after the Task Force reported, with the categorical declaration that "Gender bias against women in our courts is unacceptable."⁷ At the same time he announced a comprehensive program to address the problems identified in the report. Key to the program was the creation of a standing committee, now the New York Judicial Committee on Women in the Courts.

EVOLUTION OF THE COMMITTEE'S WORK

The Committee's work, shaped by experience, has evolved significantly over the past five years. Its initial efforts focused on responding specifically to the road map laid out in the Report's recommendations. Now, five years later, it has developed additional issues and approaches.

A. ISSUES

The Committee, heeding the Chief Judge's instruction to start from the Task Force Report, commenced its agenda by addressing the Report's recommendations to court administrators and the judiciary. Concerns about judicial education and judicial responses to domestic violence, for example, the subject of important Task Force recommendations, absorbed considerable amounts of the Committee's energies in its first year.

⁷ Remarks of Chief Judge Sol Wachtler, May 1, 1986, reprinted as Appendix A, at 4.

However, these recommendations, because of the very specificity that made them so useful to the fledgling Committee, could serve only as a starting point. Over the years, many of the particular changes in laws or policy the Task Force suggested have been made. Issues have been transformed, both by Committee work directly in response to the Task Force and other sources. Recently, entirely new problems not contemplated by the Task Force have commanded attention. Among these are the larger numbers of female defendants in the state's criminal courts and the agonizing problems created by drug-dependent women who bear children.

The Committee, responding to these changes, has moved beyond the Report's specific recommendations and, for direction, has looked to the Report's overarching concern about gender bias and the distortions it causes in the very mission of the courts. This shift is in keeping with the intentions of the Task Force, which never assumed the analytic work it had begun was finished. Instead, aware of the magnitude of its job and restrained by limitations on time and resources, the Task Force chose certain topics for full exploration, but included in the Report's appendices descriptions of other issues for later investigation.⁸

⁸ Task Force Report at 26 and at Appendix G.

B. APPROACHES

The Committee's strategies too have developed during the course of five years. As the Committee has gained experience, it has come to rely on three basic techniques for accomplishing its goals. The first of these is broadcasting the commitment of the court's leadership to the necessary changes. This has been the easiest part of the Committee's work. Chief Judge Wachtler, after setting the tone for the entire court system with his unequivocal response to the Task Force Report, has provided the kind of visible, consistent support for the Committee's initiatives that the Task Force itself identified as essential. The courts' chief administrators, Judges Joseph Bellacosa and Albert Rosenblatt and now Matthew Crosson, also have lent their unwavering support to these efforts. Among the demonstrations of commitment are the reaffirmations each year in the Chief Judge's State of the Judiciary message of the goal of eliminating all gender bias.⁹

Another technique the Committee has used is incorporating change into the court system's routine policies and practices. The result is reform that is permanent and not dependent on the good will of current administrators. For example, on the issue of sexual harassment, the Committee worked with the Office of Court

⁹ See State of the Judiciary 1987 at 5-6; State of the Judiciary 1988 at 9-10; State of the Judiciary 1989 at 60-62; and State of the Judiciary 1990 at 68-69.

See also "Women in the Courts," N.Y. Law Journal, Nov. 1, 1988, an article by then Chief Administrative Judge Albert Rosenblatt.

Administration (OCA) to revise formal discrimination complaint procedures and create panels of people trained to respond informally to complaints.

Encouraging local initiatives is a third strategy the Committee has adopted. Originally, the work focused on issues that could be addressed by the court system's central administration. However, in turning to the more intractable manifestations of gender bias, local variations on themes became increasingly visible. The Committee found that the problems themselves differed from place to place. Victims of domestic violence and rape, for example, face very different kinds of police forces and prosecutor's offices throughout the state. The Committee also discovered that solutions to even the same problem had to be tailored to local circumstances. The most effective cures for demeaning behavior directed at attorneys who are women vary from small rural courts upstate to the large courthouses of lower Manhattan. In many instances, only attention by those who understand the people and the institutions of a particular place are in a position to effect change. To help mobilize these forces, the state's administrative judges were made ex officio members of the state wide Committee and they, in turn, were encouraged to appoint local committees of their own.

COMMITTEE CONCERNS AND PROJECTS

The Committee's day-to-day work has ranged across an intriguing and varied landscape as it has tackled the problems facing the three constituencies the Task Force Report addressed: women litigants, women attorneys, and women court employees. During its tenure the Committee has interested itself in education, employment in the courts, domestic violence, children's waiting rooms, child support awards data, the ability of women to achieve judicial office, access to fee-generating cases, the language used in the courts, complaints, and local activities. In some cases, the Committee has taken the laboring oar. Created to address problems by working within the court's administrative structure and charged chiefly with responsibility for efforts by court administrators and judges, the Committee found that within its institutional confines it could instigate many kinds of reform. The sources for other changes, however, necessarily lay outside the court system itself, as the Task Force well understood, by directing its recommendations to a variety of players. As a result, in some instances, the Committee has assumed a less active role or has simply monitored change initiated elsewhere.

A. EDUCATION AND TRAINING

Education has always been at the top of the Committee's agenda. The Task Force rightly placed great confidence in the ability of education to alter attitudes and thereby change conduct. The vast majority of its recommendations addressed to court administrators called for educating judges and court personnel about issues germane to women, particularly to litigants. Judicial education commanded the special attention of the Task Force. The Committee's involvement in educational programs, however, has extended beyond the specific topics mentioned in the Task Force Report to emerging issues and new manifestations of old forms of bias.

1. Judicial Education

From its earliest days, the Committee has joined forces with OCA's Office of Education and Training to implement Task Force recommendations on judicial training. Together the Committee and the Office of Education and Training have worked to incorporate gender concerns into all educational programs, to increase the participation of women in planning and presenting programs, and to institutionalize methods for assuring continued attention to issues of concern to women.

a. Courses

Each of OCA's three judicial education programs has been scrutinized to find suitable methods both for presenting courses directly on gender bias and for incorporating issues of concern to women into the rest of the curriculum.

These three programs address different groups of judges and answer different needs. The centerpiece of judicial training in New York and the core of OCA's continuing education program for judges is the Judicial Seminar, held each summer in two successive week-long sessions. All of the more than one thousand state-paid judges are expected to attend. During the program, developed by curriculum committees consisting of judges, the judiciary hears presentations by fellow judges, lawyers, law professors, psychologists, physicians, and an array of other experts. Newly appointed or elected judges gather in December in New York City for their own week-long training session. There they listen to presentations by seasoned judges, OCA personnel, and outside faculty in an effort to orient them to their new jobs and the standards of the courts. Town and village justices, the 2000 or so magistrates paid by localities who serve part-time, have a separate training program. Many of them are not lawyers and need basic information about the legal system as well as education on the particular kinds of cases they hear. Non-lawyers must participate in a six-day orientation course for certification, and all justices must attend continuing education programs annually.

The Committee first turned its attention to the need for judges to participate in programs designed to help them understand the common kinds of biases that daily and unconsciously affect decision-making. At the Judicial Seminar directly following the Task Force's Report, judges attended a mandatory, plenary, three-hour course called Courtroom Dynamics: Women and Justice. They heard openings by Judge Joseph Bellacosa, then Chief Administrative Judge, and Judge Kathryn A. McDonald, Administrative Judge of the New York City Family Court and Chair of what was at that time the Committee to Implement Task Force Recommendations; and a closing by Justice Betty Ellerin of the Appellate Division, First Department. The bulk of the session was devoted to presentations by professional educators and small discussion groups designed to help judges open their minds to the problems of stereotyped perceptions of women, to the ways biased thinking affects transactions in the courts, and to their own feelings about these problems.

The following December new judges participated in a two-and-a-half-hour session with the same goal of helping judges to understand the dynamics of biased conduct. Two educators from the CUNY Law School faculty helped organize and present the course.

During the same time, curriculum for the town and village justices was revised to include training on gender bias. A two-hour "Courtroom Decorum and Demeanor" lecture was developed, faculty was specifically trained to teach this course, and, in 1987, it was presented at each of the 30 advanced programs for town and village justices.

After the first year's successful experiments with training sessions dedicated to examining gender bias, the Committee shifted its focus to the traditional parts of the judicial training program and tackled the job of integrating gender considerations into all OCA judicial training. For the Committee this has meant vigilance to make sure, first, that courses on topics such as domestic violence and equitable distribution are given sufficient prominence. But it also has meant assuring that other courses are scrutinized for appropriate ways to include gender issues so that, for example, courses on recent developments in criminal law discuss new appellate rape cases and examples in judicial skills training use gender bias incidents to examine effective methods of judicial intervention.

Each of the Judicial Seminars since 1986 has woven issues of concern to women into its courses. Richness and variety have been the products of this approach. For example, in 1986, the Judicial Seminar included a three-hour presentation on domestic violence and one on child support in which materials on the cost of child-rearing and the economic consequences of divorce were distributed. The course on criminal law reviewed rules of evidence relating to inquiries into the sexual conduct of witnesses in sexual offense cases. The next year's program, as well as presenting standard courses on subjects such as matrimonial law, incorporated issues of concern to women into courses on victims and witnesses, judicial conduct, and psychiatry and the law. The curriculum in 1988 included a discussion of a terminally ill, pregnant woman's rights

in a presentation on the right to die and a course on child custody that covered outdated societal expectations of roles for men and women. At the plenary session that year, judges heard papers by two prominent women professors, one on women and the 14th Amendment and the other on "The Founders and Families." In 1989, the criminal law update included information on the prosecution of domestic violence cases, the program on child custody discussed charges of sexual abuse against noncustodial fathers, and an AIDS course raised the legal implications for pregnant women who test HIV positive. In response to a concern about the growing population of elderly women, an entire course on conservatorships was developed. Last year, courses were devoted to the problems presented to judges by drug-exposed infants and the new Child Support Standards Act, while a presentation in the evidence curriculum covered the use of experts to explain the rape trauma and battered spouse syndromes.

Other judicial training courses have followed the pattern of the Judicial Seminar and integrated gender concerns into their standard offerings. New judges now routinely hear a presentation on gender bias in the courts as well as a lecture on equitable distribution. The town and village justice certification training includes a course on domestic violence and a judicial ethics presentation that uses examples of sexist and racist speech to demonstrate judicial misconduct. At the advanced training required annually for recertification, courses on family offenses and judicial conduct covering biased behavior are offered regularly.

Copies of the Task Force Report and the Committee's follow up reports are made available routinely at training sessions.

b. Participation of Women

Not only content important to women but the participation of women, in planning and as faculty of judicial education courses, has concerned the Committee. Whatever positions individual women may take on a given issue, their presence at a meeting or on a podium signals that women and their concerns will not be ignored. For this reason, the Committee has taken an active hand in making sure women are visible, at all stages and in all positions, particularly at the Judicial Seminar, which so dominates judicial training.

The number of women involved in the Judicial Seminar, which has a more formal planning structure than the other programs, has increased steadily. In 1985, women made up 13% of the curriculum committees that plan the Judicial Seminar; in 1990 they accounted for 30% of those committees. The participation of women as faculty has risen even more dramatically, from 10% in 1985 to 32% in 1990.

c. Institutionalizing Reforms

Searching for ways to make permanent temporary gains, often achieved through personal diplomacy and a heavy expenditure of time, the Committee has tried to change institutional practices. Making sure certain courses are standard fare at judicial programs is one approach the Committee has used. The gender bias course for

new judges and the course offerings on family offenses and orders of protection for town and village justices are two examples.

With the Judicial Seminar, however, the Committee has done more than concern itself with making sure that certain courses are routinely offered. It has tried to build its own participation and that of women into the elaborate planning process that shapes the seminar. Attempting to create a firm structure for permanent change, the Committee has worked with the Office of Education and Training to create a gender curriculum review committee. This committee, which has met each year since 1989, consists of representatives of each of the substantive curriculum committees. They are charged with taking a particular interest in the inclusion of women on the faculty and subjects important to women in the courses. The Committee also has helped circulate to women's bar associations and other groups that have a continuing interest in the Task Force's work a request from the Court's Chief Administrator for suggestions for the Judicial Seminar. All of these procedures are now an accepted part of Judicial Seminar planning.

2. Training For Court Personnel

The committee has also taken an interest in training programs for the courts' approximately 12,000 nonjudicial personnel. An ideal opportunity to reach the court staff presented itself in 1987 when the Office for Education and Training launched a formal training program called "Mission and Organization," intended to

reach all employees. Built into this course was a presentation by a member of the staff of OCA'S EEO Office on equal employment issues, including gender bias.

A second training program for the entire court staff, a seminar on cultural sensitivity, was created in 1990 as part of the courts' Workforce Diversity Program. This seminar is designed to help people become more aware of the influences of ethnicity, gender, and other cultural attributes on their perceptions of themselves and others. The Office for Education and Training expects that all employees will have participated in this training by the end of 1991.

Components relevant to the Task Force's work have been added to other training programs offered to particular groups within the court system. For example, the Court Officer's Academy, which is responsible for training new court officers, now presents courses on family conflict resolution and sexual harassment to each class. Also, a program developed in 1988 for supervisors on performance counselling and appraisal includes a discussion of the effects of stereotyping by sex and race and the tendency to undervalue people who are different.

3. Public Education

Educating the public -- getting the message out to the world at large -- has been another of the Committee's missions. Quietly but consistently, for the past five years, the Committee's chair and individual committee members have accepted invitations to speak

and have addressed a variety of audiences on the Task Force Report and the work of changing conditions that confront women in the courts. Often these presentations have been organized by women's bar associations or the many committees on women in the courts that have sprung up in other bar associations.

Experimenting with sponsoring its own public event, the Committee, in 1989, organized a forum on domestic violence that was presented twice, once in New York City and once in Buffalo. Called "Fair or Foul? The Limits of Trial Advocacy in a Domestic Violence Case," the forum featured portions of a mock trial of a man accused of assaulting the woman with whom he was living. In New York City, the Association of the Bar of the City of New York hosted the event and acted as co-sponsor with the New York Women's Bar Association, the New York County Lawyers Association and the New York State Bar Association. Justice Betty Ellerin of the First Department's Appellate Division presided. In Buffalo, the Bar Association of Erie County joined forces with the Western New York Chapter of the Women's Bar and the Women Lawyers of Western New York to present the program. Supreme Court Justice Vincent Doyle presided, and Appellate Division Justice Dolores Denman moderated.

B. EMPLOYMENT IN THE COURTS

The status of women employees in the court system is necessarily a concern to people interested in gender bias, first, as a matter of equity to the women themselves. But assuring fair

treatment to court personnel is important for another reason. Court employees, as well as judges, are responsible for carrying out the courts' mission. If they are treated unfairly or see other employees subjected to discrimination, they may absorb the message that fairness is not a priority in the courts and the way they do their jobs is subtly but inevitably compromised.

1. Concentration of Women in Low-Paying Jobs

The Task Force's conclusions about the status of women employees were blunt: "Men consistently dominate the higher-grade, higher-paid positions. Women are vastly overrepresented at the lower levels."¹⁰ Minority women, even more than other women, the Task Force found, suffered from the effects of occupational segregation and were likely to be found working for the lowest salaries.¹¹ These conclusions were based on a study by the Center for Women in Government at the State University of New York at Albany, which analyzed the entire work force of about 12,000 nonjudicial employees and produced data on the number of women in each employment grade in the Unified Court System.

a. Employment Practices and Policies

When the Task Force examined its data in 1986, the composition of the court's work force still was influenced by rules that for many years had placed obstacles -- sometimes insurmountable -- in

¹⁰ Task Force Report at 156.

¹¹ Id. at 155.

paths for advancement for women. For example, height and weight restrictions effectively had barred women from the position of court officer, a major civil service title in downstate courts. Another rule restricted entry into the court clerk series, which leads eventually to many of the top-paying nonjudicial jobs in the system, to employees with service as court officers. As a result, women downstate were simply not found in two important civil service series.

Before the Task Force started work both of these rules had been eliminated. Litigation in the early 1970's outlawed height and weight restrictions and opened court officer jobs to women. In 1979, the rules governing entry into the court clerk series were changed so that anyone with two years of experience in a competitive court system job, not just court officers, could sit for the court clerk examination. This allowed women in office clerical positions to move into the court clerk titles and advance to higher salaries.

But the effects of these past policies and practices lingered, and affirmative steps were needed to undo the work of discriminatory rules, particularly in a work force with as little turnover as the courts. In the 1980's, through OCA's Equal Opportunity Office, the courts began publicizing aggressively job openings and recruiting potential applicants. Among the EEO Office's initiatives was a data bank which lists over 1500 organizations, many of them women's groups, as targets for publicity about OCA jobs and special mailings to women and minority

judges. OCA also has promulgated "Uniform Procedures for Appointment/Promotion and Guidelines for Screening, Interviews and Selection." These procedures supply information to supervisors on EEO considerations and non-discriminatory approaches to interviewing, and they include a list of possibly discriminatory questions.

OCA's efforts to recruit and promote women moved onto center stage in 1989, as the result of a work force utilization study, undertaken at the suggestion of the New York State Judicial Commission on Minorities. This study, summarized in an exhaustive report,¹² examined over 450 job titles in the Unified Court system, categorized them into 30 job groups, and, for each group, compared minority and female participation rates in the court system with relevant job pools. According to the study's conclusions, although minorities and women were employed in substantial numbers throughout the system, they were underrepresented in some jobs in some geographic locations. For example, women were found in insufficient numbers in chief clerk and deputy clerk positions in New York City, in data processing jobs in Albany, and in more senior positions in the court officer titles in New York City and Long Island.¹³

¹² See Report on the Participation of Minorities and Women in the Nonjudicial Work Force of the New York State Unified Court System, October, 1989.

¹³ Unified Court System Work Force Diversity Program, submitted by Hon. Robert Sise, Hon. Milton Williams, Hon. Jonathan Lippman, and Hon. Kathryn McDonald, December, 1989, at 32, 50, and 54.

This work force utilization analysis, which described many of the same problems identified by the Task Force, prompted the Chief Judge to appoint a committee to consider strategies and initiatives for change. This committee, which included Judge Kathryn McDonald in her capacity as Chair of the Chief Judge's Committee on Women in the Courts, issued a report in December 1989,¹⁴ which mapped a plan for the OCA's Workforce Diversity Program. This program has been a priority for court administrators since the beginning of 1990.

Key to the Workforce Diversity Program has been establishing goals and timetables for hiring in underrepresented job categories. Local administrators throughout the system worked with the OCA to arrive at appropriate hiring and promotional goals based on local labor pools and turnover statistics for the past several years. Having participated in setting goals and timetables, executive managers now are held responsible for meeting them, and their degree of success is considered in their annual evaluations. State wide hiring goals for top-level positions were established as well.

Also essential are a number of initiatives aimed at making the goals easier to reach. Among these are creating a state wide promotional unit so that employees who want to advance within the system are not confined to one geographical unit. Special training has been provided to supervisory personnel to help them develop strategies for keeping bias out of the evaluation process. For

¹⁴ Id. The Executive Summary of this report is reprinted as Appendix C to this Report.

higher-ranking positions, interview panels now must include at least one woman and one minority as members; the interview itself must be structured to make sure only objective, job-related criteria are used to evaluate candidates; and efforts to recruit women and minorities must be recorded. To help employees move into more senior civil service positions, OCA has developed materials to assist employees prepare for competitive exams. To bring young people into the system, monitoring and internship programs have been created. Liaisons have been designated for all courts to help with publicity about jobs and promotional opportunities.

b. Effects of Changing Policies and Practices

The courts' work force is changing. Women are being integrated into the higher grades of the nonjudicial work force, they are assuming better paid and more prestigious positions within the court system, and they are moving into the ranks of important civil service titles in significant numbers. Although the process often seems slow, movement is visible.

Change is evident in the upper salary grades in the Unified Court System. The Task Force targeted judicial grades 23 and above, which in practice means grades 23 through 34, since hiring is rarely done above grade 34. Starting salary for grade 23 is now \$40,375; for grade 34, \$73,008. The percentage of women appointed to these grades has been substantial for each fiscal year since 1986. At least 45% of the vacancies in judicial grades 23 and

above have been filled by women. In 1990 this figure was 58%. Women now hold 42.9% of these jobs.¹⁵

Women are well-represented also in two categories of quasi-judicial appointments in the New York courts. Housing court judges, who serve in New York City's Civil Court, number 29; seven or 24.1% of them are women. Hearing Examiners, who decide child support cases in Family Court, number 80, many of them recent appointments; 31 or 38.8% are women.¹⁶

In the past five years women also have moved into the upper echelons of the courts' administrative structure, although the very top leadership remains male. Recent appointments to cabinet-level, ungraded positions have placed women in positions as OCA's Director of Communications and Director of Education and Training. They joined two women already holding top-level jobs: the Director of the Office of Equal Employment Opportunity and the Director of Library Services and Record Management. The Executive Assistant to the Deputy Chief Administrative Judge for the New York City Courts is also a woman.

The bulk of the courts' jobs are found in the civil service positions of court officer and court clerk where the numbers of women have climbed steadily. Women are now 16.2% of the state's court officers. Since January 1990, 26.0% of the new court

¹⁵ Appendix D is a chart showing the number and percentage of women in each of these grades in March 1991.

¹⁶ These figures for Housing Court Judges and Family Court Hearing Examiners were current on March 31, 1991, the end of the 1990-91 fiscal year.

officers have been women. The court clerk series has seen a similar influx of women into their ranks in the downstate courts, where their advancement had been blocked by the requirement that they have experience as a court officer. Women now account for 37.6% of the individuals in the court clerk titles.

2. Flexible Scheduling

An issue not mentioned in the Task Force Report that has nonetheless concerned the Committee has been making options to the standard nine-to-five, five-day work week available to court employees. Although any employee may need flexibility, women are more likely than men to assume responsibility for running a household, caring for children, and nursing aging family members. A work schedule that deviates from the conventional one not only eases the burden for many female court employees who perform delicate balancing acts but also allows them to continue on their career paths instead of quitting in response to what are often temporary pressures.

Although flexible schedules had been available on an ad hoc basis for a number of years, in 1990 OCA adopted policies actively encouraging managers to accommodate alternative schedules and part time work.¹⁷ One of the stated purposes of these policies is to help working mothers, single parents, and employees with dependent elderly parents, as well as people who want to return to school.

¹⁷ The full text of these policies can be found in two employee relations memos, both dated May 23, 1990. They are reprinted as Appendix E to this Report.

However, OCA also expects these policies to further its own management interests by increasing the pool of qualified applicants for promotions, one of the critical goals of the Workforce Diversity Program, and encouraging the retention of experienced, valued employees.

OCA's policies permit managers to experiment with a host of variations on the standard work week. With alternative work schedules, full-time employees may stagger the work day's seven hours, work different hours each day, or compress thirty-five hours a week into four days. Part-time schedules and job sharing allow employees simply to work less than 35 hours a week and to split a job line with a colleague. These possibilities, of course, are available only when the work lends itself to this kind of flexibility.

In the year since these policies were adopted, over 150 requests for flexible work schedules have been granted. The majority of the requests have been from women, but men too have asked for greater flexibility, often to meet their obligations as parents. Supervisors seem very willing to try new kinds of arrangements. Indeed one judge recently hired two lawyers with young children to split a job as his law clerk. At least five other court attorneys are working part-time schedules.

3. Sexual Harassment

Recently the Committee has turned its attention to the problem of sexual harassment, an issue that also concerned the Task Force.¹⁸ Education is one tool OCA has used for combating sexual harassment. OCA now presents a course developed by the Center for Women in Government, which, using a video tape, makes a sophisticated presentation on various kinds of sexual harassment and its effects on employees. Virtually all upstate nonjudicial employees and many downstate employees have participated in this training.

Recognizing, however, that more than educational programs directed at identifying and preventing sexual harassment are necessary to safeguard the rights and sensibilities of employees, the Committee has worked with OCA to develop effective paths of redress for employees who believe that they have been victims of sexual harassment. The Committee has advocated both formal and informal complaint procedures. In response to the Committee's concerns and spurred by its own work on the Workforce Diversity Program, OCA is in the process of adopting new discrimination complaint procedures for all bias claims.¹⁹ At the same time, OCA has established local anti-discrimination panels to help resolve complaints about bias before they become intractable and employees

¹⁸ Task Force Report at 160-61.

¹⁹ A draft of these new Discrimination Complaint Procedures is reprinted as Appendix F to this Report.

feel compelled to turn to formal procedures or litigation.²⁰ Together these initiatives should provide both employees and OCA with valuable, additional tools for rooting out bias, including sexual harassment.

CONDITIONS FOR WOMEN LITIGANTS

1. Domestic Violence Litigants

The problems confronting domestic violence victims, a concern to both the Task Force²¹ and the Committee, lend themselves best to local attention. The role for central initiatives, the Committee has found, is important but limited. Education is one strategy that a committee with a state wide mandate can use, and the Committee has encouraged training on domestic violence at all levels, from the judicial seminar, to the court officers academy, to court attorneys.

Monitoring access to courts for victims seeking temporary orders of protection, identified by the Task Force as an important project,²² can also be undertaken centrally. The Committee, during its early years, looked into the issue of access and tried to

²⁰ See OCA's explanation of the anti-discrimination panels, reprinted as Appendix G.

²¹ Task Force Report at 28-49.

²² Id. at 49.

ascertain, court-by-court, whether judges were available to issue ex parte temporary orders of protection. According to the Family Court Act, Section 161(c), any judge in the state can hear an ex parte application for an order of protection. Many courts are open more than the standard eight-hour day. Manhattan's Criminal Court, for example, currently operates arraignment parts around the clock four days a week, and sixteen hours the other three days. Bronx, Queens and Kings Criminal Courts are open 16 hours a day six days a week and on Sunday from 5:00 P.M. to 1:00 A.M. When courts are closed, any judge may hear an ex parte application at any time.

Turning to the legislature is another state wide approach, and two of the Task Force's recommendations for legislation²³ on domestic violence have become law. In 1988, a bill was passed outlawing the practice, noted with disapproval by the Task Force, of issuing orders of protection to both parties when only one, usually the woman, had met the burden of demonstrating the need for protection against a violent or harassing partner.²⁴ Besides violating basic due process rights, these mutual orders of protection sent confusing messages to the police charged with enforcing them and sometimes left women worse off than they would have been with no court intervention at all.²⁵ Another product of

²³ Id.

²⁴ Ch. 706 L. 1988, codified in Family Court Act §§ 154-b, 466, 551, 841(d) and 842.

²⁵ Task Force Report at 38-40.

the 1988 legislative session was an amendment to the Criminal Procedure Act allowing judges to condition adjournments in contemplation of dismissal on the defendant's attending an educational program on family violence and spousal abuse.²⁶ This change too had been advocated by the Task Force.²⁷

But local answers are critical. Practices and procedures vary too widely to allow top down reforms to solve all problems. In some places women seeking temporary orders of protection may find difficulties in convincing town and village justices that they are in danger; in other places, women may be overwhelmed by the complexities of the procedures required to get before a judge. In one location state troopers may answer calls from domestic violence victims, in another local sheriffs, and in still another the New York City Police Department. If changes need to be made, for example, in how officers respond to family conflicts, discussions would have to be initiated separately with each of these diverse police units.

The experiences of New York City's Family Courts illustrate how effective and necessary local responses are. New York City litigants, for example, need help navigating the labyrinth of court procedures. Pro bono counsel is one means of providing assistance to these women, and the administrative judge of the Family Court

²⁶ Ch. 39 L. 1988, codified in Criminal Procedure Law § 170.55(4).

²⁷ Task Force Report at 49.

has worked with local groups, including a subcommittee of the New York Women's Bar Association, to try to arrange for lawyers to help indigent complainants. For the many women who do appear without a lawyer, specially trained petition clerks have been assigned to assist them in drawing up necessary papers. Cooperation with the New York City Police Department has borne fruit in the form of new procedures and instructions for police officers who serve papers for domestic violence petitioners.

Another example of successful efforts at a local level are changes now being made in the system for pursuing domestic violence cases in New York City's criminal courts. The process for civilians who wanted to initiate criminal complaints was sufficiently convoluted to discourage all but the most determined litigants. Complainants were forced to shuttle back and forth between a centralized summons part in lower Manhattan and the courts and police stations in their own boroughs. In the worst possible scenario, complainants had to make ten separate stops and spend up to two days before they had their day in court.²⁸ In response, in part, to needs of domestic violence victims, the Deputy Chief Administrative Judge for New York City Courts and the Administrative Judge of the New York City Criminal Court convened a task force to look at the entire civilian-initiated complaint

²⁸ Report of the Task Force on the Civilian-Initiated Complaint Process in the New York City Criminal Court: Findings and Recommendations, June 1989 [hereinafter Report on Civilian-Initiated Complaint Process] at 25-26. For a full description of the process, see Id. at 22-29.

process. During its deliberations, this task force heard testimony from, among others, the Chair of the Chief Judge's Committee on Women in the Courts.²⁹ Recognizing that some of the gravest and most violent cases that enter the criminal court system through this process -- and indeed the majority -- arose from domestic disputes, and that domestic violence victims were ill-served by the present system, the task force recommended major reforms. Among them were decentralizing the process to make it more accessible and transferring all prosecutorial functions to district attorneys offices, so that no victim of a violent crime was forced to proceed in criminal court on his or her own.³⁰ These recommendations, which require both legislative and administrative action, are now being implemented.

2. Children's Waiting Rooms

The Task Force heard testimony about the difficulties faced by mothers who are often forced by economic circumstances to bring children with them to court, particularly to Housing and Family Courts.³¹ In response, the Committee has gathered data on court facilities where children can be watched while their parents make court appearances. Three upstate Family Courts have waiting

²⁹ The text of this testimony is reprinted as Appendix H.

³⁰ Report on Civilian-Initiated Complaint Process at 38-55.

³¹ Task Force Report at 124-25.

rooms; more are planned. In New York City, Family Courts in all boroughs except Richmond County have facilities for children staffed by court employees with the help of the Victims Services Agency.³² Brooklyn Criminal Court also has a supervised children's waiting room.

3. Data on Child Support Cases

Prompted by concern for the economic rights of women and children for whom mothers most often take responsibility when parents do not live together, the Task Force recommended measures to strengthen the position of women who turn to the courts for child support. Besides advocating education on the economics of divorce and raising children in single parent households, the Task Force suggested that court administrators gather data that would help in monitoring child support awards.³³

Legislation, passed in 1989, now mandates collection of this kind of data.³⁴ Under the Child Support Standards Act, the Chief

³² Indeed, the Family Court Act provides that, "So far as possible a waiting room with a competent person in charge shall be provided for the care of children being brought to the Family Court under this Act." Family Court Act § 162.

³³ Task Force Report at 100.

³⁴ Family Court Act § 216(5).

This legislation, which was enacted with the support of many groups concerned about the welfare of women including the Association of the Bar of the City of New York, also establishes guidelines for the percentage of family income that should be awarded in child support cases, another recommendation of the Task Force. See Domestic Relations Law § 240(1-b) and Family Court Act § 413(1).

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. Two of these annual reports already have been made, on February 1, 1990 and February 1, 1991.

Using computers in Family Court to create petitions and orders in support cases is making the process of collecting this data easier. New York City Family Court is now in the final stages of installing a computer system that will take basic information about support cases and convert it into court documents. Outside New York City the process of collecting this information is almost completely computerized. Having this data in computers not only helps the courts meet their statutory reporting mandate, but it incidentally creates a data base about support awards that can be used to retrieve different kinds of information, as the need develops.

D. PROFESSIONAL ADVANCEMENT FOR WOMEN

1. Judges

The Task Force took the position that the ability of qualified women to achieve judicial office is a telling indicia of fairness in a court system.³⁵ While the Committee has no authority over the process of making judges, it has monitored the progress of women to determine how successful they have been at wending their ways through the appointive and elective processes to achieve the bench. The following chart shows the current representation of women in New York's courts of record.³⁶

³⁵ "A court system can be fairly judged by the degree to which opportunity is accorded all qualified attorneys -- regardless of gender -- who seek judicial office." Task Force Report at 150.

³⁶ All figures on judges were current on the last day of the 1990-91 fiscal year (March 31, 1991).

| <u>Court</u> | <u>Total Judges</u> | <u>Total Women</u> | <u>% of Women</u> |
|------------------------------------|---------------------|--------------------|-------------------|
| Court of Appeals | 7 | 1 | 14.3 |
| Appellate Division | 48 | 7 | 14.6 |
| Administrative Judges* | 20 | 2 | 10.0 |
| Supreme Court | 318 | 32 | 10.1 |
| Acting Supreme Court** | 113 | 26 | 23.0 |
| Surrogates Court | 27 | 3 | 11.1 |
| Court of Claims | 60 | 9 | 15.0 |
| County Court*** | 115 | 7 | 6.1 |
| Family Court (Outside NYC) | 69 | 10 | 14.5 |
| NYC Family Court | 38 | 21 | 55.3 |
| NYC Civil Court | 73 | 20 | 27.4 |
| NYC Criminal Court | 48 | 14 | 29.2 |
| District Court (Nassau/Suffolk) | 49 | 6 | 12.2 |
| City (Outside NYC)**** | 154 | 15 | 9.7 |
| Totals | 1139 | 173 | 15.2 |

* This figure includes judges who are full-time administrators and who do not do not act as sitting judges on a regular basis.

** This figure includes judges from other trial level courts who are designated to sit in Supreme Court and supervising judges from New York City's Civil, Family, and Criminal Courts.

*** This figure includes judges who sit in County Court only and judges who combine service on the County Court with service on the Family and/or Surrogate's Courts.

**** This figure includes City Court Judges, Acting City Court Judges, and Chief Judges of the City Courts.

Some gains for women in the past five years are evident from this chart. More women are judges. The Task Force reported that, in the fall of 1985, 9.7% of the judges sitting in New York's courts of record were women.³⁷ Now 15.2% are women.

However, despite this progress in total numbers, the increase of women on the state's appellate benches has been only modest. In 1985, according to Task Force figures, women were 11.8% of the state's appellate judges;³⁸ now they are 14.6%. This represents an increase of two judges at the appellate division level and none on the Court of Appeals, where the first woman ever appointed to that bench remains the only woman to serve there. No woman has ever presided over one of the state's Appellate Divisions.

Another problem the Task Force identified that persists today is the uneven distribution of women judges throughout the system.³⁹ They remain concentrated in New York City's Family, Criminal, and Civil Courts. Women fill 42.6% of the judgeships on these three courts. Women also serve in relatively large numbers as Acting Supreme Court Justices, a position that is achieved through

³⁷ Task Force Report at 151.

³⁸ Id.

³⁹ Id. at 152.

designation by court administrators. They hold 23.0% of these positions, while only 10.1% of the elected Supreme Court Justices are women.⁴⁰

2. Access to Fee-Generating Appointments

Also damaging to women's aspirations, the Task Force found, was lack of access to lucrative appointments from the courts. Concerned about this problem, the Task Force focused its attention on recommendations to court administrators to keep records of appointments by gender.

The regulations requiring attorneys to report fee-generating appointments provide a ready-built structure on which to graft requests for additional information on the gender of appointees. Everyone appointed to a range of fiduciary appointments, including receivers, conservators and guardians, must file basic information about their appointment with the Chief Administrator of the Courts.⁴¹ They also are asked to complete a separate form requesting information on, among other things, gender.⁴²

⁴⁰ The Task Force Report, which focused on the ability of women attorneys to achieve judgeships, provided no figures on the number or percent of women serving as town and village justices, who are not required to be lawyers. OCA figures show women have yet to be elected to this post in large numbers. Currently only 11.0% (220 out of 2008) are women.

⁴¹ 22 NYCRR § 36.3(a).

⁴² About a quarter of the individuals who have received fee-generating appointments since 1987 and who have elected to report their gender have been women.

E. LANGUAGE IN THE COURTS

The Task Force identified the need for gender neutral language in court documents.⁴³ The courts, however, do business through many kinds of speech, not just formal language. Recognizing the importance of different kinds of words to the work of the courts, the Committee has taken an active hand in making sure that all language used in the courts is free from bias and in helping people avoid words and expressions that may exclude or offend women.

The formal language of the courts was in the process of change when the Task Force issued its report, and the transformation has continued. For several years before the Task Force Report, the gender content of language in official documents, forms, and rules was reviewed whenever modifications or revisions were made. This process is virtually complete, and official documents now routinely use gender neutral language. OCA also asked private publishers, who produce widely used but unofficial forms, to revise their publications. Publishers have cooperated, and their forms too are largely free of biased language.

Content with the progress on formal, written language, the Committee turned its attention to speech. The results are two pieces on gender neutral language intended for wide distribution. The first is a memo, written with the Office for Education and Training, that reminds speakers at OCA-sponsored events about techniques for using gender neutral language and makes suggestions

⁴³ Task Force Report at 126.

for avoiding problems.⁴⁴ This memo has been circulated to hundreds of OCA speakers since 1989. The second is a booklet on the spoken word called "Fair Speech: Gender Neutral Language in the Courts."⁴⁵ Published in 1991 and addressed to people who work in the courts or who use them regularly, it has been distributed to all judges and nonjudicial personnel in the court system.

F. COMPLAINTS

Although the Committee has no independent authority for resolving claims of gender bias, the Committee has carved out a useful role as a clearinghouse. Many complaints are addressed to the Committee or its chair, and people who are knowledgeable about the Committee's work bring to its attention complaints they have received. Often these complaints come from litigants in matrimonial cases, domestic violence cases, or estate matters. Lawyers and judges also have turned to the Committee for help when confronted with biased behavior. Court personnel too have called on the Committee for assistance when they believe they have been treated unfairly.

The Committee, through its chair, answers all letters and requests for help, frequently with a referral or advice about how to proceed in another forum. In many cases, administrative judges

⁴⁴ The text of this memo is reprinted as Appendix I to this Report.

⁴⁵ The text of this pamphlet is reprinted as Appendix J to this Report.

are in a position to take effective action. Often they can find a solution using informal means, and they have the power, if necessary, to recommend disciplinary action against court personnel. When appropriate, complainants are referred to attorney grievance committees or the New York State Commission on Judicial Conduct. Sometimes advice about how to find a lawyer is all that is needed. Complaints also are valuable sources of information on systemic problems, which, once identified, become part of the Committee's agenda.

Through its own experiences in responding to complaints the Committee has become interested in the availability and efficacy of other sources of help with gender complaints. The Committee has in the past tried to publicize the places the public can lodge complaints about gender bias. Besides the mainstays of the Committee's referrals, i.e., administrative judges, grievance committees, and the Commission on Judicial Conduct, bar associations are often useful. For example, the Association of the Bar of the City of New York and the New York Women's Bar Association now both have special mechanisms for handling gender bias complaints.

G. DEVELOPMENT OF LOCAL COMMITTEES

Keenly aware of its own limitations as a centrally constituted committee with only selective knowledge of conditions in individual courts, the Committee has worked with administrative

judges to develop strong local committees to address problems of women in their own courts. Unlike the Committee's many projects that speak directly to the Task Force recommendations, these committees, which now exist in each administrative unit, are the product of experiment and experience.

The Committee has adopted a role, not of providing a blueprint for committees, but rather of nurturing local initiatives. The result is committees that come in a variety of shapes and sizes. Some have as few as four members; others have as many as 30. At least one committee consists only of judges; some have judges and court personnel; still others draw on the community outside the courts and include lawyers from the private bar, representatives from court constituencies such as district attorneys offices and public defenders, and lay advocates for women.

The agendas and projects of these committees also vary. For one committee, responding sensitively to complaints, whether about bathroom facilities or court personnel attitudes, is its prime activity. Another committee has decided that it should focus its attention on education. Other functions committees have assumed include monitoring employment issues, presenting forums, investigating conditions of women defendants, and looking into the establishment of children's waiting rooms.

The state wide Committee has tried to encourage local experiments and to spread ideas from one committee to another. Towards these ends, the Committee organized a conference in the fall of 1990. Administrative judges and women's bar associations

were invited to send representatives to a day-long meeting in Albany. In the morning, chairs of the more established committees spoke about their experiences, and workshops on substantive issues, such as encouraging pro bono representation and the treatment of women attorneys, were held in the afternoon. Chief Judge Sol Wachtler addressed the gathering during luncheon.⁴⁶ Since the conference, the Committee has worked to keep alive the interest and energy generated in Albany.

H. EFFORTS OUTSIDE NEW YORK STATE

The Committee also has lent its hand to the effort, organized by the National Judicial Education Program to Promote Equality for Women and Men in the Courts, to help other states examine gender bias in their courts. New York's Task Force was the second in the country to issue a report; only New Jersey preceded it. As other states have begun to organize task forces or have started the work of implementing task force recommendations, they have drawn on New York's experiences. Over the years, the Committee has responded to scores of requests, mostly from official committees and task forces in other states, for the original Task Force Report and the Committee's follow up reports. In 1989, the Committee chair and the special assistant to the chair attended a national conference

⁴⁶ A copy of the program for the conference is reprinted as Appendix K.

on state task forces and made presentations about New York's experiences.

New York also has participated in documenting the work of state task forces. The Committee has provided copies of the Task Force Report and its own reports to a number of law libraries, as well as to the Schlesinger Library at Radcliffe, which is interested in creating archives on women's history.

CONCLUSION: PROGRESS AND PLANS

After describing the activities of the past five years -- the programs, the new initiatives, the results of quiet diplomacy, the increases of women in various positions -- the ultimate question still remains: how far have we travelled towards the visionary goal of making our courts completely free of gender bias?

Answering this question poses great difficulties. Many of the most damaging problems the Task Force found simply defy objective measurement. Among these are the attitudes of judges, the atmosphere in courtrooms, and perceptions of credibility. We may believe, for example, that more female faces in the courtroom -- on the bench, at counsel's table, and among court personnel -- help, but we have few tools for gauging whether the process or the outcomes are more fair to women.

Nonetheless, we can hazard an educated guess about the usefulness of the Task Force and the process it initiated. The Report itself has proved to be immensely valuable. It has served

as an irrefutable demonstration of the existence and pernicious effects of gender bias in New York courts. This alone has allowed change to happen. Administrators have had the strong words of the report, backed by the Chief Judge, to help them introduce reforms. Lawyers and advocates for women have had additional support for their efforts. Indeed, judges have had the report to use as a source for citations when they have considered new legal issues⁴⁷ or defended the right of women to dignity in the courts.⁴⁸

The process of responding to the Task Force's powerful findings also has had an impact. Five years of affirming the message that gender bias is unacceptable, tracking down its manifestations, and finding creative ways of eliminating it have had a cumulative effect. Now, inescapably, gender bias and the concerns of women are on the agenda. Court administrators and staff accept that it is simply part of their job to take seriously offensive behavior and the status of female personnel. If disadvantages fall to women litigants because of their sex, they no longer are dismissed with a wave of the hand, but instead these

⁴⁷ See People v. Irizarry, 142 Misc.2d 793, 809-9 (Sup. Ct. Bronx Co. 1988) (rev'd on other grounds ___ A.D. ___, 560 NYS 2d 279 (1st Dept. 1990) and People v. S.R., 139 Misc. 2d 54 (Sup. Ct. Bronx Co. 1987) (both declaring that the use of gender-based preemptory challenges to potential jurors is unconstitutional under state law.) See also People v. Forman, 145 Misc. 2d 115, 127 (Criminal Ct. N.Y. Co. 1989) (upholding the constitutionality of the issuance of temporary orders of protection at arraignment).

⁴⁸ See concurrence of Justice Sybil Hart Kooper, Tortello v. Tortello, 161 A.D. 2d 633, 634 (2d Dept. 1990), reprimanding an attorney for referring to a litigant throughout an appellate brief by her first name.

problems are subjected to scrutiny and ameliorating changes are sought.

Much still needs to be done. Cementing gains is among the tasks that necessarily will occupy the Committee in the next years. The Committee expects to keep a watchful eye on places where progress has been made to make sure that the bureaucratic tendency to revert to old ways does not cause the reintroduction of discarded practices. But the Committee also will serve, as it has in the past, as a focal point for interest in advocacy. This is critical, since an active, vocal committee that enjoys the support of the courts' leadership sends an important signal to the legal community. Necessary too is a continuing role in shaping OCA policy, so that the problems that are susceptible to central solutions will have a strong advocate within the system. Working with local committees, as a resource and a clearinghouse, is a role that the Committee expects will absorb a greater share of its time. The Committee also plans to return to some of the original research work of the Task Force. The thrust of these efforts will be developing hard data on new and emerging issues as well as those not yet fully explored, rather than remeasuring topics already analyzed by the Task Force.

* * *

Over the past five years, a sturdy foundation has been laid for a court system free of gender bias and insensitivity. The New

York courts, however, have not embarked on an easy project. To accomplish it we will have to continue to relinquish some of our ingrained convictions about appropriate roles for men and women, about families, and about sexuality, and reconstruct them in a way that allows us to proceed untainted by false or unfair expectations based on gender.

Elusive as our goal may seem at times, we are moving closer. What is needed now is a renewed commitment of resources, good will, and imagination from us all.

THE NEW YORK JUDICIAL COMMITTEE ON
WOMEN IN THE COURTS

Hon. Kathryn A. McDonald, Chair

Nicholas Capra

Michael Colodner

Hon. Betty Weinberg Ellerin

Hon. Zelda Jonas

Hon. May W. Newburger

Hon. Juanita Bing Newton

Peter J. Ryan

Fern Schair Sussman

Amy S. Vance

Adrienne White

Jill Laurie Goodman,
Counsel

June, 1991

APPENDIX A

THE LADY IN THE HARBOR AND THE LADY IN ALBANY—TWO SYMBOLS OF FREEDOM*

Hon. Sol Wachtler**

We have read much during these past few months about the one hundredth anniversary of the dedication of the Statue of Liberty in New York Harbor. We are justifiably proud of this symbol and foundation of freedom. At the same time as this lady of liberty arrived, another important lady "arrived" in New York.

During this month of May, one hundred years ago, the first woman was admitted to the practice of law in this State. While this milestone has not attracted the same attention as the anniversary of the Statue of Liberty, it is certainly of equal significance as a symbol of freedom and a measure of progress in our great nation.

New York's first woman attorney, Kate Stoneman, came to Albany from Jamestown, New York. She learned the law, by marvelous historical coincidence, in this very building as a transcriber of the official proceedings of this court. And it was here, in Albany, that our legislature, on May 19, 1886, amended the laws of this State so as to allow, for the first time, women to be admitted as attorneys.

Ironically, only fourteen years earlier, the United States Supreme Court, in its notorious *Myra Bradwell* decision,¹ had upheld an Illinois law which prohibited women from becoming attorneys. The language in the concurring opinion in *Bradwell* revealed the obstacles women faced. There, three justices on our nation's highest court expressed their view that "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfil[] the noble and benign offices of wife and mother."²

While the New York State Legislature's progressive action in 1886 removed one obstacle confronting women, it was, of course, only a beginning. Just as the arrival of the Statue of Liberty did not eradicate ethnic prejudice, the change in our laws did not remove the bias against women and women attorneys.

* Hon. Sol Wachtler, Chief Judge of the State of New York, Remarks on Law Day at Court of Appeals Hall, Albany, New York (May 1, 1986).

** Chief Judge, New York Court of Appeals.

1. *Bradwell v. State*, 16 U.S. (1 Wall.) 130 (1873).

2. *Id.* at 141 (Bradley, J., concurring).

This celebration of Kate Stonemen's admission to the Bar, while not diminished, is made sober by compelling evidence that some of the same attitudes that delayed her becoming an attorney are still present today.

On April 2 of this year, the New York Task Force on Women in the Courts submitted its Report to me. The Task Force was established on May 31, 1984 by then Chief Judge Cooke. Since becoming Chief Judge sixteen months ago, I, along with Chief Administrative Judge Joseph W. Bellacosa, have continued to provide encouragement and financial support for its vital project.

I commend the Task Force, many of whom are here today, and its Chairperson, Judge Edward J. McLaughlin, for the extraordinary effort and thoroughness of the Report. It is the product of dedication, tireless effort and a profound sense of commitment. We are deeply grateful for your contribution.

Although the Report documents continuing problems and prejudices facing women in our court system, and serves as a strong impetus to accomplish more in this area, the Report should not be read as an indication that all judges and lawyers are insensitive to the problem.

I know from my personal experience that the vast majority of judges, and members of the Bar, are also committed to the protection and enhancement of women's rights in our courts. Nevertheless, adopting the voice of scores of professionals and lay persons with considerable experience in courts throughout the State, the Task Force has put forth an orderly and detailed exposition of "statutes, rules, practices, and conduct that work unfairness or undue hardship on women in the courts."

In examining the status and treatment of women litigants, attorneys and court employees, it found that women are denied equal justice, equal treatment and equal opportunity—the result of problems "rooted in a web of prejudice, circumstance, privilege, custom, misinformation and indifference." Gender bias against women in our courts is unacceptable.

The Task Force correctly observed that "the courts have a special obligation to reject—not reflect—society's irrational prejudices." It has been the abiding objective of this administration to provide to all citizens a court system that delivers quality justice. Making abundantly clear that gender-biased conduct is wrong wherever found in New York's courts—inimical to any concept of justice—is an important step towards that end.

Accordingly, we are prepared to pursue a comprehensive program to address the problems women face in our courts.

First, and without question, the educational and consciousness-raising recommendations which pervade the Report are singularly important and will be implemented immediately by substantial inclusion in all judicial and nonjudicial orientation and educational programs. This will be a significant part of one of our highest priorities for the next two years, which is to develop and inaugurate expanded educational programs and syllabi for judges and nonjudicial personnel on the entire range of subjects for which they and we are responsible.

Second, we will continue our policy of advancing women to important positions of judicial responsibility.

The most significant move in this direction was made, of course, when Governor Cuomo appointed my colleague, a superb jurist, Judith Kaye to this court.

Judge Bellacosa, when he was chief clerk of this court, began a program of recruiting qualified women and minorities for top professional positions.

We intend to continue that commitment and accomplishment throughout the court system and have already done so on our own initiative within the last several weeks by bringing to our ranks of administrative and supervising judges three distinguished judges and lawyers: Judge Marie Santagata, a distinguished jurist who was the first chairperson of the Nassau County Youth Board and formed the Juvenile Aid Bureau for Nassau County, appointed as Supervising Judge of all Criminal Courts in Nassau County; Judge Kathryn McDonald, who, in addition to her outstanding judicial experience, served for twelve years with the Children's Rights Division of the Legal Aid Society, and as Attorney in Charge of that Division, appointed as Administrative Judge for the entire Family Court of the City of New York; and Judge Judith Sheindlin, an excellent jurist, who was former Deputy Chief of the Family Court Division of the New York City Department of Law, appointed as Supervising Judge of the New York County Family Court.

Another key step in our comprehensive program will be the establishment of a standing and implementing arm of the court system to help us assess, monitor and further sensitize ourselves to these concerns. I am creating—as I did, for another key policy initiative last year, the statewide Individual Assignment System (IAS) Case Management Program—a small, in-house implementation team consisting of: Judge Kathryn McDonald, as Chairperson, in whose court so many of the concerns have been found to exist in a special way; Adrienne White, our Office of Court Administration (OCA) Director of Equal Employment Opportunity, who has responsibility for the

whole spectrum of equal opportunity, embracing this particular gender-neutral and gender-sensitive aspect as well; Nicholas Capra, the Executive Assistant to Judge Sise for all the courts outside New York City; Juanita Newton, the Executive Assistant to Judge Williams for all the courts in the City of New York; Michael Colodner, our OCA Counsel; and very specially as a bridge outside our own judicial branch, one member designated as my Special Consultant, the Honorable May Newburger, member of the Assembly and Chairperson of the Assembly's Special Task Force on Women's Issues and Concerns.

This standing team's charter will be as sweeping as the need warrants. They will start with the Report of the Task Force, which has now completed its work. The new team will report their recommendations and progress directly to Judge Bellacosa and me. They will reach out very specially to the court system's Personnel Director and to the education and judicial units and organizations, as well as all judges, lawyers, bar leaders, law school deans and faculties, law enforcement agencies and other public officials and community leaders who affect the operation of the courts.

I am convinced and determined that by this pervasive and persistent method of insight and oversight, we shall make great strides together to build on the significant improvements that have already been accomplished and to substantially eliminate the vices of gender bias and gender insensitivity insofar as they may persist in our great court system.

In pursuing this goal there will emerge a justice system better able to satisfy its special obligation to all the people of this State.

APPENDIX B

Appendix A

Hon. Lawrence H. Cooke, Remarks at the Press Conference Announcing the Formation of the New York Task Force on Women in the Courts at the Association of the Bar of the City of New York on May 31, 1984

The concept of justice is broad in reach and serious in nature; it is antithetical to any discrimination triggered by prejudice.

None of us had any choice of the home in which we were born; a higher power decided that circumstance. To deny anyone anything because of race, creed, color, national origin, gender, or any such irrelevant consideration is the basest kind of misbehavior. It is a surrender of the human to the animal instincts.

Distinctions grounded on improper concerns have no place whatsoever in the operation of our legal system and every reasonable effort should be made to guarantee that the scales of justice are balanced evenly for every person who comes before the courts. They expect no less and, certainly, are entitled to no less. There must be no corridors of special privilege, high hurdles for some, or bans on any. There must be no institutional hypocrisy.

It was not much more than one hundred years ago that the United States Supreme Court upheld the constitutionality of an Illinois statute prohibiting women from gaining admission to that state's bar. The words that all are created equal and are endowed with certain inalienable rights yielded no life, liberty or pursuit of happiness to those before whom doors were closed in search of their noblest aspirations or those who were told they could not enter the legal profession because of sex.

There are those, particularly such substantial groups as the New York State Association of Women Judges and the Women's Bar Association of the State of New York, who have expressed concern with the situation of women in our legal system. There is no question but that in recent chapters of history tremendous strides have been made by women in the legal structure and operation of our state and nation. The issue remains whether, at this juncture, their allotment of the jurisprudential scheme in the Empire State is fair under all the circumstances.

To answer this question the New York Task Force on Women in the Courts is being organized. The general aim of the Task Force will be to assist in promoting equality for men and women in the courts. The more specific goal will be to examine the courts and identify gender bias and, if found, to make recommendations for

its alleviation. Gender bias occurs when decisions are made or actions taken because of weight given to preconceived notions of sexual roles rather than upon a fair and unswayed appraisal of merit as to each person or situation. In determining the fact or extent of its existence, the focus of the Task Force should be upon all aspects of the system, both substantive and procedural. An effort should be made to ascertain if there are statutes, rules, practices, or conduct that work unfairness or undue hardship on women in our courts.

Recently, a similar study was conducted on behalf of the court system in New Jersey. Its leadership is to be commended and its methodology provides an exemplar for the study to be conducted here in New York.

The Task Force is made up of outstanding, representative and independent citizens. The members are charged with fulfilling their mission dispassionately and with reasonable dispatch.

The Task Force will be chaired by Edward J. McLaughlin, Administrative Judge of the Family Court of Onondaga County, formerly a President of the Family Court Judges Association of New York State and at one time employed by the Hughes Judiciary Committee. The other members of the Task Force are:

- Jay C. Carlisle, Esq., Professor of Law, Pace University School of Law, White Plains;
Hon. Hazel Dukes, President of New York Conference of NAACP, Roslyn Heights;
Haliburton Fales, II, Esq., President of New York State Bar Association, New York City;
Neva Flaherty, Esq., Assistant District Attorney, Monroe County, Rochester;
Hon. Josephine L. Gambino, Commissioner of New York State Department of Civil Service, Bayside;
Marjorie E. Karowe, Esq., Past President of Women's Bar Association of the State of New York, Albany;
Hon. Sybil Hart Kooper, Justice of the Supreme Court and President of New York State Women Judges' Association, Brooklyn;
Ms. Sarah Kovner, Chair, Board of Directors, First Women's Bank, New York City;
Hon. David F. Lee, Jr., Justice of the Supreme Court, Norwich;
Ms. Joan McKinley, President of New York State League of Women Voters, Saratoga Springs;
Hon. Olga A. Mendez, New York State Senator, Bronx;
Hon. S. Michael Nadel, Deputy Chief Administrator of the Unified Court System, New York City;

Edward M. Roth, Esq., Senior Law Assistant to Chief Judge, Monticello;

Oscar W. Ruebhausen, Esq., Former President of the Association of the Bar of the City of New York, New York City;

Fern Schair, Esq., Executive Secretary, the Association of the Bar of the City of New York, Scarsdale;

John Henry Schlegel, Esq., Associate Dean, State University of New York at Buffalo Law School, Buffalo;

Richard E. Shandell, Esq., Past President of New York State Trial Lawyers' Association, New York City;

Florence Perlow Shientag, Esq., Member of the Bar, New York City;

Sharon Sayers, Esq., Member of the Family Law Section of the Monroe County Bar Association, Rochester;

David Sive, Esq., Stimson Award Winner of New York State Bar Association and Lecturer at Columbia Law School, Ardsley-on-Hudson;

Hon. Ronald B. Stafford, Chairman of Codes Committee of New York State Senate, Plattsburgh;

Hon. Stanley Steingut, Former Speaker of New York State Assembly, Brooklyn.

Technical services for the Task Force will be supplied by the Equal Employment Opportunity unit of the Office of Court Administration under the leadership of Adrienne White, Director.

Patricia P. Satterfield, Assistant Deputy Counsel in the Counsel's Office of the Office of Court Administration, will serve as the Task Force's Counsel.

Appendix B

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APPENDIX C

Executive Summary

This report describes a recommended program for addressing underrepresentation of minorities and women in the New York State Unified Court System's nonjudicial workforce. The report is the work of a committee¹ appointed by Chief Judge Sol Wachtler and Chief Administrator of the Courts Matthew T. Crosson to recommend management strategies and initiatives designed to increase the participation of minorities and women in job groups and locations in which "underutilization" was found in the Unified Court System's October 1989 "Report on The Participation of Minorities and Women in the Nonjudicial Workforce."

The policy underlying this program, which the committee has called the "workforce diversity program," can be simply described: The Unified Court System will recruit and hire qualified minorities and women in order to eliminate existing

¹The Committee consisted of Hon. Robert J. Sise, Deputy Chief Administrative Judge for the Courts Outside New York City; Hon. Milton L. Williams, Deputy Chief Administrative Judge for the New York City Courts; Jonathan Lippman, Esq., Deputy Chief Administrator for Management Support; and Hon. Kathryn McDonald, Administrative Judge of the New York City Family Court and Chair of the Committee to Implement the Recommendations of the Task Force on Women in the Courts.

underrepresentation in specific occupational categories and locations and will provide an ongoing commitment to the goal of a diverse nonjudicial workforce. Successful implementation of this policy by means of the workforce diversity program will require the same strong resolve to achieve the program's objectives as that which resulted in the establishment by the Chief Judge and Chief Administrator of the Judicial Commission on Minorities, the Task Force and Implementation Committee on Women in the Courts, and the publication of the Report on the Participation of Minorities and Women in the Nonjudicial Workforce.

The major features of the recommended workforce diversity program include the following:

General Strategies

. Appointment by the Chief Judge of an Implementation Committee on the Nonjudicial Workforce Diversity Program, with a mandate for the Committee to advise the Chief Judge and Chief Administrator on implementation of the program as established; to make recommendations to the Chief Judge and Chief Administrator for additional program activities; to act as an advocacy group for minority employee interests; and to assess the impact of legal and other substantive issues related to equal employment opportunity.

. Establishment of specific job and locality based goals and timetables for recruitment and hiring to address minority and female underrepresentation for each New York City Supreme Court, each city-wide Court, and the Surrogate's Courts and County Clerks' Offices in New York City; for each judicial district outside New York City; and for OCA's Office of Management Support. Individual goals and timetables would be developed by local management (in consultation with the EEO Director) and approved by the Chief Administrator.

. Including achievement in meeting equal employment goals and timetables as a factor in the performance evaluation of Unified Court System managers (Chief Clerks, Executive Assistants, Unit Heads).

. Reorganization of the Unified Court System's Equal Employment Opportunity Office to include an appropriate Director compensation level in view of the importance of the EEO function; a Deputy Director and a staff of equal employment opportunity professionals with clearly-identified responsibility for specific program components, including outreach and recruitment, training and development, and program monitoring and evaluation; and creation of an EEO Action Group to integrate the diversity program into the court system's management and operational structure.

. Designation of EEO liaison staff persons, responsible to the Chief Clerk or Executive Assistant and the respective Administrative Judge, to coordinate EEO activities in districts and courts throughout the State. This program would initially be implemented with existing personnel.

. Requiring a report of efforts to recruit minorities and women where appointments of non-protected class candidates are submitted to the Chief Administrator for noncompetitive and exempt jobs in which underrepresentation exists.

. Elimination, on a phased-in basis, of existing geographical promotional units and unit lists. The present promotional units initially would be replaced by a limited number of appropriate regional units. Eventually, one statewide promotional unit would be established, with one list for each position and related examination, and an emphasis on statewide canvassing from that list for related vacancy fills in any court agency. A single promotional unit would effectively eliminate geographic restrictions on employee transfers.

. Development of a method to allow statewide recruitment for all noncompetitive and exempt positions.

. Development of a required cultural sensitivity seminar for all management personnel.

. Specialized training in cultural sensitivity for all Unified Court System personnel who deal directly with the public. Personnel who conduct employment interviews would receive training in conducting structured, job-related interviews.

. Identification of minority and female employees with supervisory or management potential for training in managerial theory, practice and skills.

. Establishment of a statewide automated employment hotline to provide information on Unified Court System employment and examination announcements.

. Implementation of the Unified Court System's newly-developed EEO computer application, with enhanced emphasis on the completeness and accuracy of EEO data collection and verification.

. Frequent updating of the Utilization Report to monitor the court system's progress in creating a more diverse nonjudicial workforce, particularly after 1990 census data is available.

Strategies for Particular Job Groups and Locations.

The October 1989 "Report of the Participation of Minorities and Women in the Nonjudicial Workforce," while pointing out that minority and female participation in the

majority of the Unified Court System job groups either matched or exceeded the availability of qualified protected class members in the workforce at large, described underrepresentation of minorities and women in particular occupational categories, job groups, and locations. A major objective of the workforce diversity program in its initial phase will be to focus on this specific underrepresentation and eliminate it.

The targeted occupational categories include Officials and Administrators (all job groups); Professionals (Entry-Level Attorneys, Senior-Level Attorneys; Court and Management Analysts; and Data Processing professionals) outside New York City only; Computer Programmers and Computer Operators outside New York City only; Court Security (Court Officers and Senior Court Officers in the Tenth Judicial District; Court Officer Sergeant and Senior Court Officer Sergeant in New York City; supervisory positions statewide); Court Reporters (Court Reporter title in all but one judicial district outside New York City; Senior Court Reporter title within and outside New York City); Court Clerks (minorities underrepresented in the Associate Court Clerk title statewide; women underrepresented in that title in New York City only); Office Clericals (outside New York City only).

In addition to its general strategies, which would apply to all nonjudicial positions, the recommended workforce diversity program features a variety of initiatives targeted at ending the underrepresentation in each of these specific job groups and locations. The many recommended initiatives are described in detail in the text of this report; noteworthy examples include:

- . Revamped selection procedures for Officials and Administrators highlighted by opening the potential candidate pool beyond immediate court ranks; including at least one minority and one woman on all interview panels; and developing a structured interview procedure with job-related rating criteria to improve the fairness and relevance of interviews.

- . A management traineeship program for minority and female employees identified as having managerial potential and a mentoring program to provide hands-on court management experience for graduate level students of public administration.

- . Highly focused outreach and recruitment efforts aimed at identifying and attracting minority and female candidates for attorney, management analyst, and data-processing position vacancies.

. Improved coordination between the Unified Court System and court reporter schools and training organizations to assure effective examination preparation.

. A court reporter internship program to provide career orientation and practical learning experience for court reporting students.

. Associate Court Clerk examination preparation offered at courthouses on a no-charge basis.

. A job rotation program available for Senior Court Clerks to increase their substantive knowledge in preparation for the Associate Court Clerk examination.

. Career counseling and skills assessment for Office Clerical employees.

. Alternative work schedules for Office Clericals to permit school attendance by current employees and to attract new employees with family and related obligations.

. Educational programs for managerial and line personnel, both within and outside the Court Security title series, that address stereotypes, such as characterizing men as more effective than women in protective service jobs.

. Adoption of standardized local interview procedures for use in the security supervisory assessment process, coupled with feedback to candidates of assessment results.

Throughout the development and presentation of the recommended workforce diversity program contained in this report, the Committee has consistently benefitted from the support, ideas, and suggestions of the Judicial Commission on Minorities. The Committee gratefully acknowledges this assistance.

APPENDIX D

Number and Percent of Women in Judicial
Grades 23 - 34
March 1991

| Grade Level | Total Encumbents | Female |
|-------------|------------------|---------------------|
| 23 | 699 | 233 (31.9%) |
| 24 | 656 | 417 (63.6%) |
| 25 | 200 | 90 (45.0%) |
| 26 | 217 | 77 (35.5%) |
| 27 | 699 | 403 (57.6%) |
| 28 | 178 | 67 (37.6%) |
| 29 | 71 | 29 (40.8%) |
| 30 | 185 | 34 (18.4%) |
| 31 | 673 | 214 (31.8%) |
| 32 | 42 | 6 (14.3%) |
| 33 | 11 | 0 |
| 34 | 19 | 5 (26.3%) |
| All | 3650 | 1565 (42.9%) |

APPENDIX E



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HOWARD A. RUBENSTEIN
 Director, Employee Relations

EMPLOYEE RELATIONS MEMO

No. 90-1

May 23, 1990

TO: All Officers and Employees Concerned with Employee Relations

FROM: Howard A. Rubenstein *Howard A. Rubenstein*

SUBJECT: Alternative Work Schedules

The purpose of this memorandum is to establish procedural guidelines when developing alternative work schedules other than part-time employment and job-sharing¹. The term "alternative work schedules" includes schedules that differ from standard work schedules under which all employees on a given shift report at the same time and work a regular five-day week of seven hours a day. Among the common forms of alternative work schedules are staggered hours, flextime and compressed workweeks (see Paragraph I below).

The Court System's policy is to encourage and promote the implementation of alternative work schedules when it is demonstrated that the alternative work schedule will, without compromising effective supervision:

- o increase the availability of services to the public or otherwise enhance the productivity of court operations;
- o enhance employment opportunities for qualified persons, such as working mothers, who may be unable to meet conventional work schedules;

¹For information on less than full-time alternative work schedules, see Employee Relations Memo 90-2, Part-Time Work and Job Sharing.

o improve employee morale, reduce absenteeism and/or tardiness, and encourage the retention of experienced employees;

o expand opportunities for the attainment of educational credentials, including high school, baccalaureate or advanced degrees, by employees outside of the "normal" work schedule.

I. Common Forms of Alternative Work Schedules

A. Staggered Hours

In a staggered hour arrangement, groups of employees begin and end work at different intervals. Overlapping schedules of predetermined hours are established for the total work force. Employees work a fixed number of hours each day, always between the same starting and quitting hours. Starting times usually are staggered at 15-minute intervals before and after the normal hours of work; however, variations of 20, 30 and 45 minutes are also common.

EXAMPLE:

| | <u>Arrival</u> | <u>Departure</u> |
|------------------------------------|----------------|------------------|
| Group #1 | 8:15 a.m. | 4:15 p.m. |
| Group #2 | 8:30 a.m. | 4:30 p.m. |
| Group #3 | 8:45 a.m. | 4:45 p.m. |
| "Normal" Starting and Ending Time: | | |
| Group #4 | 9:00 a.m. | 5:00 p.m. |
| Group #5 | 9:15 a.m. | 5:15 p.m. |
| Group #6 | 9:30 a.m. | 5:30 p.m. |
| Group #7 | 9:45 a.m. | 5:45 p.m. |

Lunch Period: One Hour

Unlike "flextime" schedules, discussed below, staggered hour arrangements do not permit employees to arrive and depart at different times on different days. Individual work schedules are either assigned by management or chosen by employees subject to management approval. Depending upon operational needs, some flexibility can be built into a staggered hour system by permitting employees to switch starting times during specified "open periods" or with supervisory approval.

In addition to providing scheduling options for individual employees, staggered hours may increase productivity in some back

office and data-entry operations because there are fewer interruptions before and after the regular "9 to 5" workday.

B. Flextime

Flexible work hours, also known as "flextime", differs from staggered hours in that employees are permitted the option of choosing their starting and quitting times, within established limits, on a daily basis.

Flextime schedules generally are built around a "core period" during each day when all employees are expected to be at work. Flextime places few constraints on employees, provided they work the core period and provided that the total hours worked each day add up to the required daily amount. The following are only two examples of possible flextime arrangements.

| EXAMPLE A: | | EXAMPLE B: | |
|-------------|----------------------|-------------|-------------------------|
| Flextime | 7:30 a.m. to 10 a.m. | Flextime | 7:30 a.m. to 10 a.m. |
| Core Period | 10 a.m. to noon | Core Period | 10 a.m. to 11:30 a.m. |
| Lunch | noon to 1 p.m. | Flex-Lunch | 11:30 a.m. to 1:30 p.m. |
| Core Period | 1 p.m. to 3:30 p.m. | Core Period | 1:30 p.m. to 3:30 p.m. |
| Flextime | 3:30 p.m. to 6 p.m. | Flextime | 3:30 p.m. to 6 p.m. |

Under both of these sample flextime schedules, an employee may choose on any given day to begin his or her work anytime between 7:30 and 10:00 a.m. and to leave work anytime between 3:30 and 6:00 p.m., so long as he or she works a total of 7 hours that day. In Example A, all employees must take lunch from noon to 1:00 p.m. In Example B, the core period is divided by a third flexible period during which an employee may pick his or her lunch hour on a daily basis. In this latter case, employees also could arrange in advance with their supervisor to choose to decrease or increase the length of the lunch hour on a daily basis, providing, of course, that each employee works a total of 7 hours each day and providing that each takes at least a half-hour lunch.

One of the advantages to employees of a flextime schedule is that it allows individuals to arrange their schedules on a daily

basis to accommodate personal needs. Therefore, it is expected that, to the extent possible, employees will schedule personal appointments and errands during the flexible portion of the workday, rather than taking time off from work.

Flextime schedules are best limited to those jobs that require little interaction with the public or with other employees or where such interaction can be limited to the "core" period.

Flexible schedules require cooperation among employees and between employees and their supervisors to ensure adequate coverage, to maintain continuity of communications and to avoid possible attendance abuse. If, due to absence or other reasons, adequate coverage cannot be maintained, a supervisor may designate someone for that coverage.

C. Compressed or Compact Workweek

The compressed workweek shortens the number of days in a workweek by lengthening the number of hours worked per day. For example, the normal 5-day, 7-hour schedule may be compressed into 4 days of 8 3/4 hours each. The specific days of the week worked generally will be determined by operational needs. Thus, for a 4-day schedule, an employee's regularly scheduled workdays may be Monday through Thursday or Saturday through Tuesday, etc.

The compressed workweek lends itself particularly to work units in which 24-hour coverage is required.

With the compressed workweek, which begins earlier in the morning and extends later into the day, employees often may need to make adjustments in their schedules for personal reasons. In considering a compressed workweek, one needs to look at whether such continuous adjustments in work schedules may adversely affect workflow.

Questions about the application of the attendance and leave provisions to employees working a full-time compressed workweek may be addressed to your agency payroll/personnel office or to the Employee Relations Unit.²

²Because of the unique time and attendance record-keeping problems that a compressed schedule creates, it is critical to alert the appropriate payroll agency when an employee changes to or from a compressed schedule.

II. Implementing an Alternative Work Schedule

Prior to implementing a new alternative work schedule, a court manager (generally, the Chief Clerk or Unit Director) must file a brief statement with the appropriate Administrative Authority³, with a copy to the Director of Employee Relations, describing the proposed change in work schedule. Courts, agencies or units are NOT required to submit descriptions of alternative work schedules that already were in effect prior to the issuance of this memorandum.

The written statement should contain the following information:

1. The nature of the change in work schedule proposed;
2. A brief description of the impact, if any, the new schedule would have on the availability of services to the public and/or on quantity and quality of work produced;
3. Proposed duration of the new schedule and whether it will be possible for the affected employee(s) to elect to return to a standard workweek (e.g., during an "open period" or simply with the approval of the supervisor);
4. Overtime compensation, shift differential⁴ or other cost implications, if any, of the proposed schedule;
5. A statement of how accurate time records, necessary supervision and adequate building security, if relevant, will be maintained;
6. A statement of whether the Employee Relations Unit has been consulted regarding the new schedule(s) [see Section III below] and, if not, whether the schedule is being proposed at the request of a union or by an individual employee or group of employees and if, in the latter case,

³ For courts outside New York City, the Administrative Authority is the District Administrative Judge; for the Court of Claims, it is the Deputy Chief Administrative Judge (Courts Outside New York City); for courts within New York City, it is the Deputy Chief Administrative Judge (New York City Courts); for Appellate Division courts and agencies, it is the appropriate Presiding Justice; and for the Office of Court Administration, it is the Deputy Chief Administrator for Management Support.

⁴ For example, if it is contemplated that some employees will start work before 8:00 a.m. or finish work after 6:00 p.m., payment of a shift differential to those employees may be required pursuant to collective agreement.

whether a responsible agent (e.g., the chapter president and/or field representative) of the union representing the affected employee(s) has been consulted regarding the proposed new schedule and, if so, whether they have expressed any concerns, objections or alternatives to it.

A request for an alternative work schedule also may be initiated by a union, an individual employee or a group of employees. In this case, the request should be in writing to the Chief Clerk or Unit Director, with a copy to the Director of Employee Relations. The Chief Clerk or Unit Director then will review the proposal, consulting as necessary with the Administrative Authority and the Director of Employee Relations. If the proposal is approved at the local level, the Chief Clerk or Unit Director will forward it for final approval to the Administrative Authority, along with a brief statement of the type described on Page 5 above, justifying the proposed schedule change. If the Administrative Authority approves, the Employee Relations Unit should be notified prior to final implementation.

III. Employee Relations Implications of Alternative Work Schedules

Aside from the fact that it is good labor relations practice to obtain the input and cooperation of local union representatives prior to implementing alternative work schedules, there are certain contractual obligations that must be met. Each collective Agreement has a provision defining the normal workweek and describing the circumstances under which changes may be made in employees' present workweeks or work schedules. Generally, such changes may be made only "upon reasonable notice" to the relevant union. Changes in the normal workweek or work schedule also may result in a demand from the union to negotiate the impact of the change on the terms and conditions of employment of the affected employees. For these reasons, alternative work schedules - even if initiated at the request of an employee or group of employees - may be implemented only after consultation with the Employee Relations Unit.

Any questions regarding alternative work schedules may be addressed to the Employee Relations Unit at (518) 474-7537.



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EMPLOYEE RELATIONS MEMO

HOWARD A. RUBENSTEIN
Director, Employee Relations

No. 90-2

May 23, 1990

TO: All Officers and Employees Concerned with Employee Relations

FROM: Howard A. Rubenstein *Howard A. Rubenstein*

SUBJECT: Part-Time Work and Job-Sharing

The purpose of this memorandum is to announce establishment of Part-Time Work/Shared Job Registries ("PT/SJ Registries") in the Offices of the Deputy Chief Administrative Judges.

In today's changing economic and social climate, many nonjudicial employees - working mothers, single parents, employees approaching retirement, employees with dependent elderly parents, employees desiring to return to school to enhance their educational or technical skills - may want or need to work less than full-time. The availability of part-time employment opportunities expands our pool of qualified candidates for positions and encourages the retention of experienced employees who otherwise would be unable or unwilling to continue their employment under conventional work schedules. This benefits the employees, the Court System and the public.

The Court System recognizes that not all jobs lend themselves to part-time work or to job-sharing. Courts and court-related agencies are encouraged to make such opportunities available to the extent possible. The policy of the Court System is to accommodate employee requests for part-time employment, where such employment is deemed by management to be consistent with the operating needs of the court or court-related agency.

The PT/SJ Registries have three major functions in support of this policy:

- To Provide Information. Court managers who have questions about procedures for implementing part-time schedules or shared-job arrangements or employees who have questions about the effects of

part-time work and job-sharing on employee benefits and other employment issues may direct those questions to the PT/SJ Registries. A Part-Time Work/Shared Job Fact Sheet (Appendix A) will be distributed through the Registries.

• To Assist in Processing and Evaluating Employee Requests for Part-Time Work and Job-Sharing. An employee seeking to convert from a full-time to a part-time schedule or to establish a job-share arrangement in his or her present court, unit or agency now should complete a Work Schedule Option Request Form (Appendix B).

An employee assigned to a New York City court would submit his/her Work Schedule Option Request Form to the Chief Clerk of the court to which he/she is assigned and submit a copy to the PT/SJ Registry in the Office of the Deputy Chief Administrative Judge (New York City Courts). The Chief Clerk would submit the form, with his/her recommendation, to the relevant Administrative Judge, who in turn would add his/her recommendation on the request. The form, with the recommendations, then would be forwarded to the Deputy Chief Administrative Judge (NYC Courts), c/o the PT/SJ Registry representative, for final determination by the Deputy Chief Administrative Judge.

An employee assigned to any other trial court or to the Office of Court Administration would submit his/her Work Schedule Option Request Form directly to the PT/SJ Registry in his/her geographic region¹. The PT/SJ Registry representative would refer the request to the relevant local manager and provide any desired assistance in evaluating the employee's request. The request and local management's recommendation on it would be submitted by the PT/SJ Registry representative for final determination by the relevant administrative authority (e.g., for Court of Claims or courts outside New York City, the Deputy Chief Administrative Judge).

In either case, if a request is approved, the PT/SJ Registry representative is available to assist local management in implementing it. Part-time schedules are arranged at the discretion of the court, court-related agency or unit, subject to final approval of the administrative authority.

¹Such employees assigned to work locations within the City of New York should make use of the PT/SJ Registry in the Office of the Deputy Chief Administrative Judge (New York City Courts). Those assigned to work locations outside the City of New York should make use of the PT/SJ Registry in the Office of the Deputy Chief Administrative Judge (Courts Outside New York City). The PT/SJ Registries will share a data base, so that each will have access to statewide information.

• To Make Referrals and to "Match" Job-Share "Pairs". An employee who is seeking a match with a potential job-share "partner" should complete a Work Schedule Option Request Form.

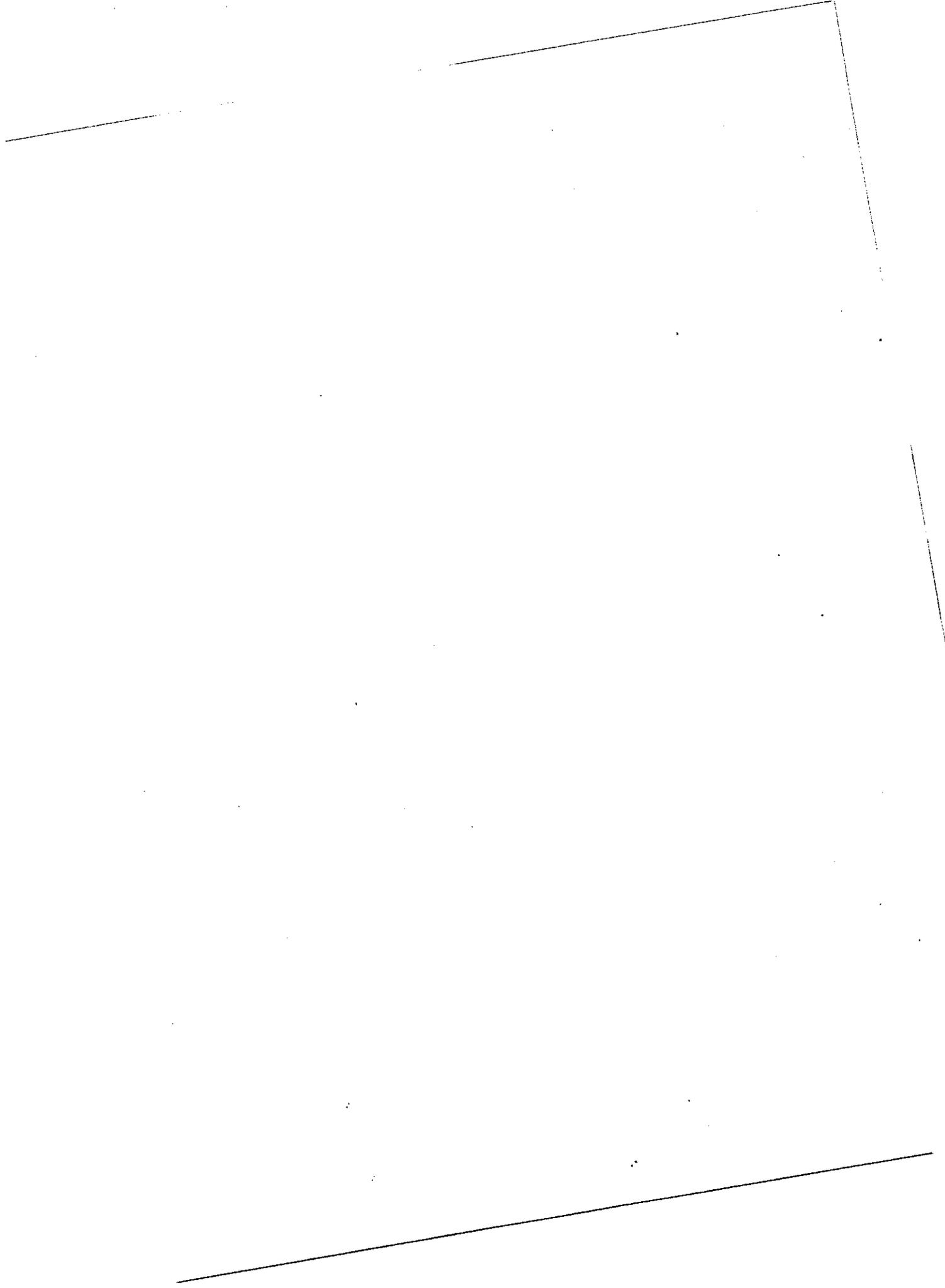
An employee assigned to a New York City court would submit his/her request for a possible job-share "match" to the Chief Clerk of his/her court, with a copy to the New York City PT/SJ Registry. Local management would review the request and determine whether a local "match" or job-share partner was available. The PT/SJ Registry representative also would search the PT/SJ Registry data base for possible matches and forward to the requesting employee names, addresses, titles and day telephone numbers of any matches found.

An employee assigned to any other trial court or to an Office of Court Administration unit would submit his/her request directly to the relevant PT/SJ Registry. The Registry representative would search the PT/SJ Registry data base for possible matches and forward to the requesting employee names, addresses, titles and day telephone numbers of any matches found.

In either event, if no matches are found within six weeks, the requesting employee will be so notified, and his/her information will be placed in the Registry for possible future match-up. Note that management is not required to accept a job-share match proposed by an employee, even if the match was located through the PT/SJ Registry.

It is strongly suggested that each less than full-time alternative work schedule arrangement initially be established for a definite time period of six months or less, to give the employee(s) and managers involved an opportunity to evaluate the arrangement. If the arrangement is satisfactory, further extension(s) may be made on a six-month to six-month or year-to-year basis. If local management finds that the arrangement is detrimental to operations, the arrangement may be canceled or suspended at any time. However, local management should be highly sensitive to the fact that canceling or suspending part-time work may cause the employee hardship. Whenever possible, the employee should be given written notice no less than ten workdays in advance of the cancellation or suspension of the part-time work arrangement. Alternatives should be explored that would allow the employee to continue to work part-time.

It also is strongly suggested, to avoid any misunderstandings that may arise later on, that the conditions of the arrangement be presented in detail and in writing by the manager to the employee(s), who then should sign the agreement. For assistance in preparing such an agreement, contact the PT/SJ Registry, the OCA Personnel Unit or the OCA Employee Relations Unit.



APPENDIX F



DRAFT

UCS DISCRIMINATION CLAIM POLICY AND PROCEDURES

I. UCS Policy

It is the policy of the New York State Unified Court System to ensure equal employment opportunity for all employees and applicants for employment, without regard to race, color, national origin, religion, creed, sex (including sexual harassment), sexual orientation, age, marital status, disability, or, in certain circumstances, prior criminal record. Towards this end, the court system has instituted procedures for the investigation and resolution of claims of discrimination.

Equal employment opportunity includes freedom from sexual harassment or intimidation.¹ Sexual harassment in any form will not be tolerated within the court system.

As a nonjudicial employee or applicant for employment, you may use these procedures whenever you believe that you have discriminated in an employment-related matter on the basis of race, color, national origin, religion, creed, sex (including sexual harassment), sexual orientation, age, marital status, disability, or, in certain circumstances, prior criminal record. Employment-related matters may include, for example, recruitment, interviewing, hiring, dismissal,

discipline, job assignment, training opportunity, shift assignment, transfer, promotion, demotion, or working conditions.

These procedures give you in-house methods for resolving your claims of discrimination. In addition, there are both federal and state agencies that will help you if you have a claim of discrimination.

II. Informal Claim Resolution

Before using the formal procedures described later, you may want to consider informal alternatives. The informal process has been put into place to encourage you to discuss the problem and to explore alternative methods of dealing with it.

A. Anti-Discrimination Panels

Anti-Discrimination Panels have been established for the judicial districts outside of New York City, for the courts and County Clerks' Offices in New York City, and for the Office of Court Administration in Albany and New York City to help employees with claims of bias. In general, panels, except those for OCA, include both judges and nonjudicial personnel. The panel members are volunteers who have received appropriate

training. You may choose which member of your panel to go to. If you do not feel that you can approach anyone on your court of district panel, you may approach a person who is on the panel of another court or district. At your request, the panel member that you select will listen to your claim, provide you with informal counseling on alternative courses of action, and, if you ask, act as an intermediary to help resolve the problem.

If you choose to bring your claim to a member of the panel, it will be kept confidential if you request. You may ask to remain anonymous. The panel member will respect your request for confidentiality, unless disclosure is absolutely necessary. You should be aware, however, that complete confidentiality restricts your options and may make it difficult to try to resolve the problem.

The role of the panel member varies with your situation. The panels are only there to help you, and will not take action on your behalf without your permission. The panel member will listen to you and tell you about possible alternatives, including filing formal charges. If you only want to talk, the person will listen. Alternatively, the panel member will become actively involved and work with you to try to resolve the problem if you ask for this involvement.

You can get specific information about the Anti-Discrimination Panel for your court, district, or office from the Office of the Administrative Judge or, for OCA, from the Office of the Unit Director of your unit.

B. Direct Discussions

You do not have to bring your claim to a member of an Anti-Discrimination Panel. You may prefer trying to resolve the matter informally by talking directly to the person you think is responsible for the actions being complained of. Using this approach, you may discover a genuine misunderstanding or a simple solution. If you do not want to talk to the individual directly, you may go to someone in charge who can help. Often this person will be your supervisor.

In many cases, these informal approaches are the best way to get results. However, you do not have to use them. You have the right to file a claim with the UCS Equal Employment Opportunity (EEO) Office without first trying to resolve your complaint informally.

III. Formal Claim Resolution

If you believe that you have been treated in a discriminatory manner concerning an employment-related matter, you may file a formal claim with the UCS EEO Office. Claims must be filed within one year of the event.

A. Filing A Claim

You can file a claim by filling out the form attached to this pamphlet and sending it to the EEO Office. Additional forms are available from the EEO Office.

In order to provide the EEO Office with enough information to start its investigation, you are asked on the form to describe the event as specifically as possible. You should include the names of anyone who can help the EEO Office with its investigation. Include a copy of any papers you might have that relate to your claim or that might help an investigator understand your complaint. Be sure to send copies of the documents and to keep the originals for your files.

Send the claim and any other relevant papers to the UCS Equal Employment Opportunity Office, 270 Broadway, Room 1011, New York, New York 10007. You should keep copies of everything that you send to the EEO Office.

Within two weeks of receiving your claim, the EEO Office will send you a letter acknowledging the claim. In the letter, you will be advised of the name and telephone number of the EEO staff member responsible for investigating your claim. You will also be informed if the Office needs further information or if there is a reason why the Office cannot proceed with the investigation.

B. EEO Office Investigation

The EEO Office will investigate your claim promptly, unless you are notified otherwise. In most cases the investigation will include interviews with other individuals, including those you name in your claim, and an examination of relevant documents and files. You will also be interviewed. Your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director will be sent a copy of the claim.

C. Confidentiality

Your claim will be discussed only to the extent necessary for a complete investigation. The EEO Office is committed to preserving your confidentiality. Anyone contacted by the EEO Office about your claim will be asked not to

disclose the fact or the content of your claim, unless disclosure is necessary.

You should be aware, however, that to investigate your claim thoroughly and responsibly, in almost all cases your identity and the nature of your claim will have to be made known to some people outside of the EEO Office, including, in most cases, your supervisor.

D. Findings and Determination

Within 45 days of the date your claim is received by the EEO Office, the EEO Office will forward the results of the investigation to your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director. The report will include the conclusions of the investigation and the facts that contributed to the conclusions.

Based on these findings, the Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director will send a recommended determination to the appropriate Deputy Chief Administrative Judge (for court employees) or to the Deputy Chief Administrator for Management Support (for OCA employees).

Within 30 days of the date of the issuance of the report of the EEO Office investigation, the Deputy Chief Administrative Judge or Deputy Chief Administrator will issue a determination. The determination will state whether it is reasonable to conclude that there was discriminatory conduct based on the weight of the evidence presented. Copies of the determination will be sent to you, your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director, the EEO Office, and to anyone against whom allegations have been made.

The determination will include, if appropriate, a remedy. For example, if it is determined that you were treated in a discriminatory manner, possible remedies may include a change in UCS policy or local practices, or disciplinary action against a specific individual.

E. Appeal

If you are not satisfied with the determination of the Deputy Chief Administrative Judge or Deputy Chief Administrator, you may appeal to the Chief Administrator within 30 days of your receipt of the determination.

F. Implementation

Your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director has responsibility for implementing the final determination. If you have any questions about implementation, you can check with that person's office, the EEO Office, or the office of the appropriate Deputy Chief Administrative Judge (for court employees) or Deputy Chief Administrator (for OCA employees).

G. Time Limits

All of the offices involved in the resolution of your claim will try to comply with the stated time limits. However, compliance is not always possible due to, for example, the absence of important witnesses or the need to complete an unusually complex investigation. Whenever possible, you will be notified about delays.

H. Pursuing Your Claim

A reasonable amount of time that you spend during your normal working day to pursue your claim may be excused leave, provided you make appropriate arrangements with your supervisor. If you have received permission to be away from

To appeal, you should send a letter of appeal to the Chief Administrator of the New York State Unified Court System, 270 Broadway, New York, New York 10007.

Your letter should explain as precisely as possible the reasons why you disagree with the determination and the remedy you think is appropriate. Be sure to attach a copy of the determination. Your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director, the EEO Office, and anyone against whom the allegations were made will be sent a copy of your appeal letter and will have an opportunity to respond.

Within 30 days of the date the appeal is received, the Chief Administrator (or designee) will issue a final determination, based on a complete review of the evidence. Copies of the determination will be sent to you, your Administrative Judge, New York City Surrogate, New York City County Clerk, or OCA Unit Director, the EEO Office, the Deputy Chief Administrative Judge or Deputy Chief Administrator, and anyone against whom the allegations were made. The Chief Administrator's determination may confirm the earlier determination, modify the remedy, or reverse the determination.

your job, no leave time will be charged to your leave accruals. The EEO Office will speak to your supervisor on your behalf if you would like help in making these arrangements. If you need to talk to the investigator in the EEO Office in person, the Office will arrange a meeting. If the EEO Office asks you to travel to speak with someone at that Office, your expenses will be reimbursed according to OCA guidelines.

IV. Retaliation

Retaliation against you by your supervisor or anyone else in the court system for bringing a formal or informal claim of discriminatory treatment violates UCS policy, state law, and federal law. This means that no one may threaten to transfer you, alter your work assignment, or pressure you to withdraw your claim because you filed a claim.

If you believe that someone has retaliated against you, you may raise the issue with your Anti-Discrimination Panel or file a new claim with the EEO Office. A charge of retaliation may be upheld even if your initial claim of discrimination was dismissed.

V. Federal and State Human Rights Agencies

You may file a claim of discriminatory treatment concerning an employment-related matter with an outside agency, even while your internal claim is pending. You should be aware that the time limits for filing claims with outside agencies may be shorter than the time limit for filing a claim with the EEO Office. Be sure to check with the outside agencies for their filing deadlines.

The Equal Employment Opportunity Commission is the federal agency that handles discrimination claims. The New York State Division of Human Rights is the State agency for claims of discrimination. Information about these agencies may be obtained from the EEO Office.

¹ The federal regulations define sexual harassment as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when: submission to the conduct is either an explicit or implicit term or condition of employment; or submission to or rejection of the conduct is used as a basis for an employment decision affecting the person rejecting or submitting to the conduct; or the conduct has the purpose or effect of unreasonably interfering with an affected person's work performance or creating an intimidating, hostile or offensive work environment.

**New York State Unified Court System
Equal Employment Opportunity Office**

Please complete this form to file a claim of discriminatory treatment with the Unified Court System's Equal Employment Opportunity Office. The EEO Office is committed to preserving your confidentiality. Any individuals contacted by the EEO Office will be asked not to disclose the fact or content of your claim unless disclosure is necessary.

Claim of Discriminatory Treatment

Name:

Title:

Work Location (include address and telephone number):

Home Address:

Home Telephone Number:

1. I believe that I have been treated in a discriminatory manner based on my:

| | |
|--------------------------|--|
| Race _____ | Sex _____ (including sexual harassment) |
| Color _____ | Age _____ |
| Creed _____ | Disability _____ |
| Religion _____ | Marital Status _____ |
| National origin _____ | Other _____ (specify) |
| Sexual Orientation _____ | |

2. I believe that the act or treatment described below is discriminatory:

3. I believe that the following individual(s) has(have) acted in a discriminatory manner:

4. Date of act or treatment (or indicate if ongoing):

5. Witnesses (include names, work locations and telephone numbers):

I authorize the Unified Court System Equal Employment Opportunity Office to use my name in investigating this claim.

Signature: _____

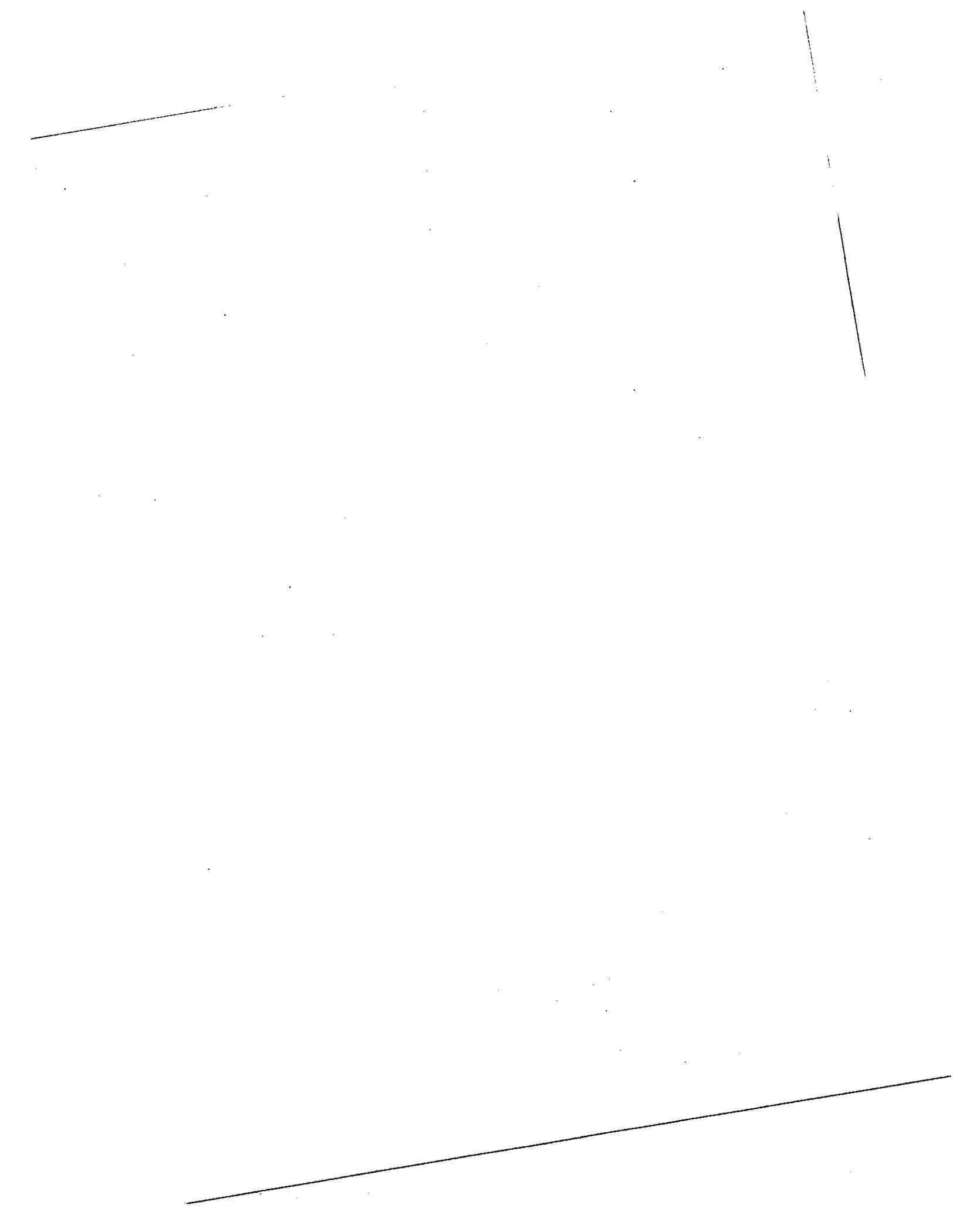
Date: _____

[Please attach any additional information you may have about the claim].

Mail this form to:

UCS Equal Employment Opportunity Office
Office of Court Administration
270 Broadway, 10th Floor
New York, New York 10007

APPENDIX G



UCS Anti-Discrimination Panels

I. Purpose

Anti-Discrimination Panels have been established for each judicial district outside of New York City, for each trial court in New York City,¹ and for OCA in New York City and Albany to act as a first line of defense against bias in the workplace. Such informal mechanisms for handling complaints of bias have been established in a number of organizations to promote fairness and the well-being of employees.

The primary purpose of the UCS Anti-Discrimination Panels is to help individuals claiming that they have been the victim of discriminatory conduct, including sexual harassment, by making available people who are sympathetic and trained to listen, to provide informal counseling on alternative courses of action, and, when appropriate, to act as intermediaries.

II. Procedures

Employees who wish to discuss complaints of bias in employment-related matters may approach their choice of Panel

¹ The Surrogates' Courts and County Clerks Offices in New York City are combined with the Supreme Courts in New York City for the establishment of Anti-Discrimination Panels.

member. Entire Panels need not be convened to listen to a complainant, although the Panel may do so if it wishes. The employee may select who to go to, but may not require the presence of all Panel members. In the event that an employee does not feel that he or she can discuss the matter with any of the Panel members, the complainant can ask to speak to a member of another court or district Panel.

The Panel member approached by the complainant will listen to the problem and advise the complainant of alternatives, including working the problem out on an informal basis or filing a complaint with the UCS EEO Office or an outside agency. The role of the Panel member is to listen and to help the complainant sort out the appropriate course of action.

Panel members will tailor their advice to the particular situations and concerns of the people who consult them. Some complainants may want formal action taken. Others may only want the complained-of behavior to stop, as quickly and painlessly as possible. Occasionally, individuals will want no action at all, but only a forum to begin talking about the problem. The advice given in each circumstance would be different.

When a complainant wants to informally resolve the problem, the the Panel member might start by talking directly with the person being complained about. In some cases, the Panel member may discover a genuine misunderstanding, a misinterpretation of signals, or a simple solution to the problem. In other cases, the Panel member may change the complained-of behavior without any direct acknowledgement of wrong-doing. The Panel member also may talk to the supervisor of the individual being complained of, and work with the supervisor to handle the problem by general discussions with the staff about such behavior, rather than a direct confrontation with the individual, if that course of action works best for those involved.

III. Confidentiality

Panel members should assure complainants that their confidentiality will be respected. Employees often fear subtle retaliation for making any kind of complaint. Some complainants will not want to be identified and will ask the Panel members not to take or keep notes.

Panel members should raise the issue of confidentiality early in their discussions, giving assurances that they understand the importance of confidentiality and that they will

respect the employee's request. However, there are some limitations on the extent to which complete confidentiality can be assured. The name of the individual being complained of (not the name of the complainant) will be kept in a central, restricted location so that the court system can address repeated complaints.

Panel members also should carefully explain to complainants that insisting on absolute confidentiality restricts the complainants' options. Clearly, absolute confidentiality means that formal charges cannot be filed and, for the most part, intervention to stop the behavior may not be possible.

If the Panels are successful, Panel members may find people willing to be more open about their complaints in exchange for resolving the problem. Panel members who listen sympathetically may discover that complainants are willing to work with them to try to resolve the problem.

IV. Authority and Reporting

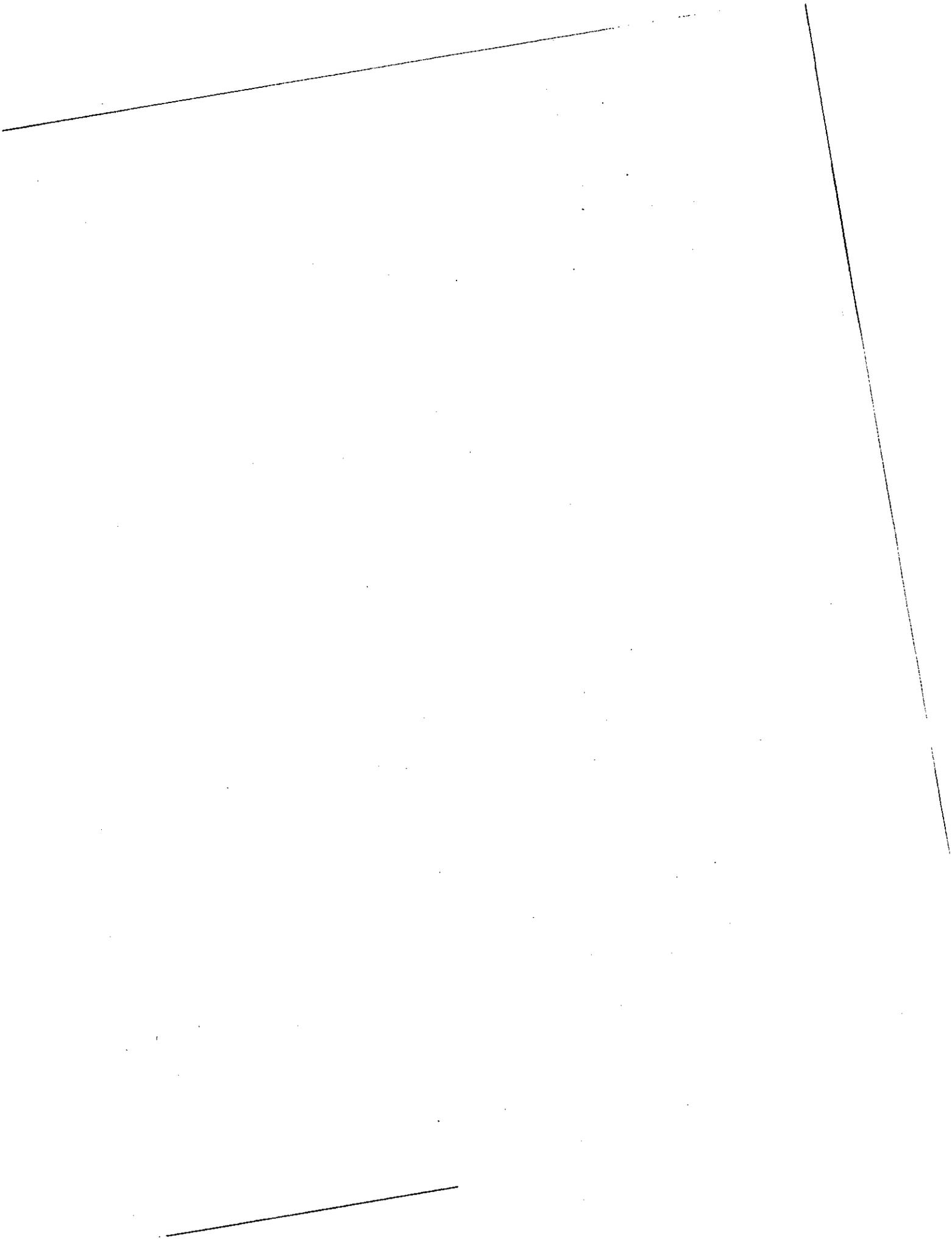
It is essential to the success of the Panels that they operate with a minimum of supervision to gain respect and protect confidentiality. Panel members are asked to report on

the complaints received, although the complainant need not be identified, and the action taken, if any, to a central, restricted location. This information will be used only to identify patterns of bias-related incidents.

Panel members should complete a copy of the attached memorandum form following each contact by an employee. The completed form should be sent to the Office of Court Administration, Ann Pfau, Esq., 270 Broadway, 14th Floor, New York, New York 10007. Panel members should not keep copies of the completed memoranda.



APPENDIX H



STATEMENT OF HONORABLE KATHRYN McDONALD, NYC FAMILY COURT

As Chair of OCA's Committee to Implement Recommendations of the New York Task Force on Women in the Courts, I welcome this opportunity to communicate our views on the optimal handling of civilian domestic violence complaints to the New York City Civilian Complaint Task Force.

I understand that the task you have set yourselves involves a far larger universe of civilian complaints than simply those involving domestic violence. Because 75% of the summonses issued by the Criminal Court occur in domestic violence matters, however, I believe that this category requires separate treatment. Separate treatment is also warranted because of the danger often present in these disputes and their explosive nature.

As you know, Family Court Act §812(3) and Criminal Procedure Law §530.11(3) provide that:

No official or other person (designated by the Chief Administrative Judge and including law enforcement and court personnel) shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

Despite this clear expression of legislative intent to keep courthouse doors open to victims of family violence, the existing structure in New York City for handling these matters when no arrest is involved, through 346 Broadway and the summons parts, effectively closes the criminal courthouse door by, at the very least, dissuading domestic violence victims from proceeding in that court. We are, in short, perilously vulnerable to the criticism that we are in violation of the law.

At present, victims of domestic violence, who elect to proceed in criminal court when no arrest is made, must arrive at 346 Broadway between the hours of 9 AM and 1 PM, Monday through Friday only, to obtain the paperwork they need to go before a judge. Petitioners from Queens, Kings, and Bronx Counties must travel to Manhattan for their complaints and summonses and then back again to the criminal court in the borough of their residence. Often, they cannot complete the return trip before court closes for the day and are forced to wait until the next to appear before a judge. In at least Staten Island and Manhattan, the complainant usually appears in court alone, unassisted by an ABA or advocate. Cases surviving the first appearance in these boroughs cannot begin to be prosecuted until an ABA is assigned, at the second court appearance. I am told that in all five boroughs, a good number of the accusatory instruments would have difficulty surviving a motion to dismiss for legal insufficiency.

In 1986, the New York Task Force on Women in the Courts, operating on behalf of and under the auspices of the Unified Court System, issued its report about domestic violence and other matters pertaining to women in court, after two years of exhaustive investigation through public hearings, research and literature reviews, consultation with experts, regional meetings with judges and attorneys and "listening sessions", questionnaires, and surveys. Chief Judge Sol Wachtler immediately accepted the findings and recommendations of that Report, reaffirmed the court system's commitment to the elimination of unfair treatment of women in court, and created the committee I chair to implement the Task Force's recommendations.

That Task Force made a number of findings relevant to your inquiry into the handling of civilian domestic violence complaints. Specifically, they found that

- 1) "Family violence victims with unambiguous claims that a crime has been committed are dissuaded from proceeding in criminal court" (p. 37);
- 2) "Battered women who bring petitions but fail to proceed are deterred in part because of the treatment they receive in court" (p. 40);

3) "Effective help once a woman finally seeks protection increases the likelihood that she will pursue her legal rights Timely availability of counsel or assistance of an advocate is also critical" (p. 42); and

4) "Mediation is not an acceptable alternative to swift and sure enforcement in domestic violence cases" (p. 57).

These findings, it seems to me, suggest certain solutions to the problem of civilian domestic violence complaints. First, we must return the complaint drafting and summons-preparation functions, now served centrally by 346 Broadway for most boroughs, to the home boroughs of the complainants. By doing so, we will not only eliminate much of the "run-around" phenomenon that discourages these people from pursuit of their complaints, but we will also reduce the potential danger to them created by delays in getting into court.

It is imperative that properly trained personnel interview complainants and draft criminal complaints. If court personnel are to continue to perform the complaint-drafting function, however, they must receive the necessary training and demonstrate competence at this task. They must be proficient at interviewing domestic violence victims and drawing legally sufficient complaints. Clerks should also prepare other papers necessary for court, and victim advocate staff should be on hand to offer services. The Criminal Courts and the advocates should receive the spatial and financial resources they need in each borough to perform these jobs.

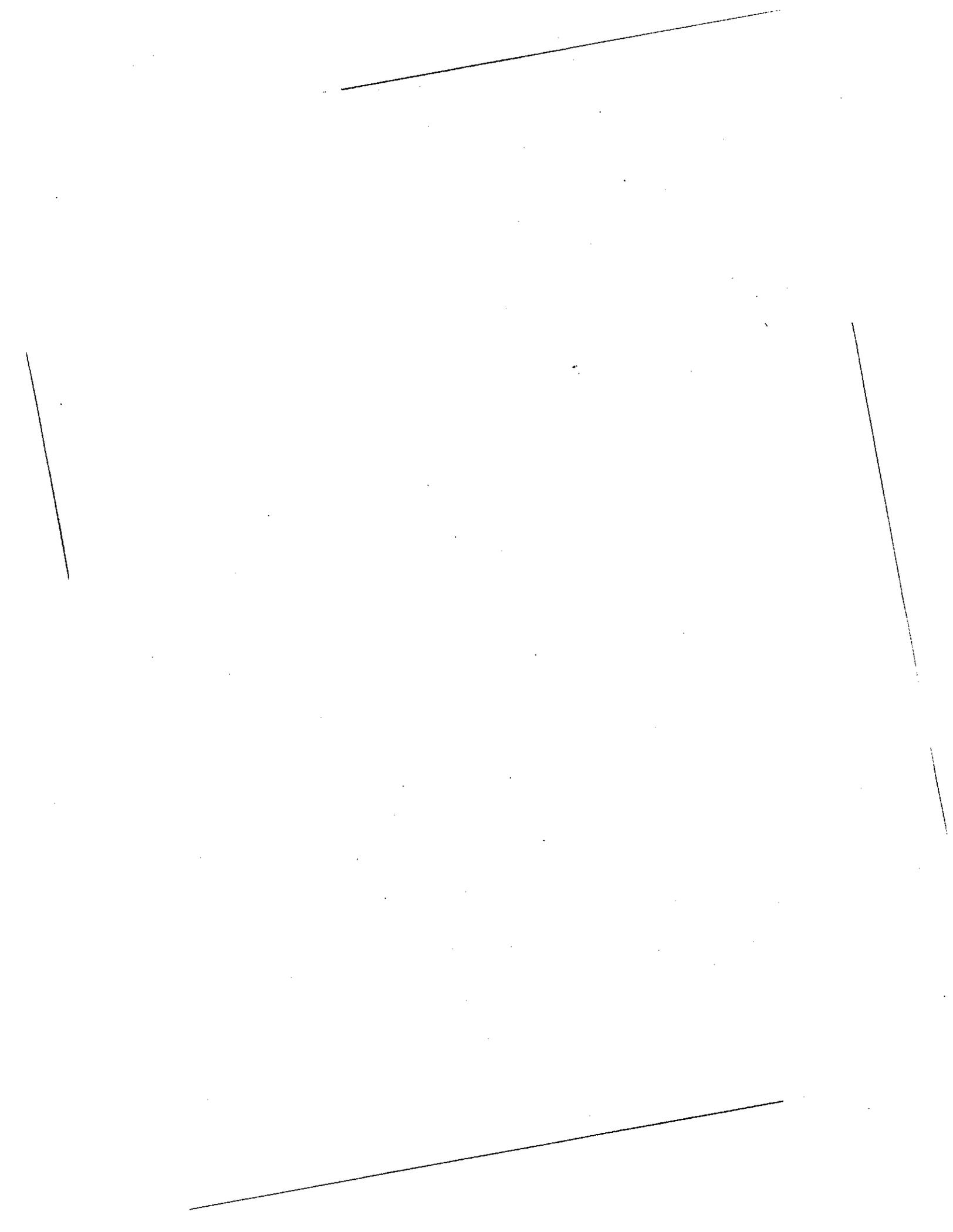
Alternatively, the DAs could draft complaints for all cases in which there is no reason to decline to prosecute. To avoid long delays in their complaint rooms, DAs might assign paralegals the task of interviewing, drafting, and typing these complaints. It is also imperative that DAs appear with the complainants in the arraignment parts where, again, some percentage of these complaints can be disposed of. For those cases which survive the arraignment part and are adjourned, it would seem to make sense to assign an ADA (or paralegal advocate) before the case leaves the arraignment part. Such timely case assignment will advance the prosecution and prevent victim discouragement, even though an adjournment for defendant's appearance and the assignment of counsel would still be necessary. Short dates from the arraignment part should be the rule. Again, the DAs should have the resources they need to staff their complaint rooms with extra assistants or paralegals and support staff.

In essence, I am proposing that civilian domestic violence complaints charging criminal offenses be treated the same way as police complaints charging criminal offenses, except with regard to the manner in which the court secures the attendance of the defendant. Parenthetically, however, I should note here that it's important to ensure that victims are aware they need not serve the summonses themselves but may have police officers perform this task, pursuant to CPL §130.40. By carving out a little space in each borough and adding a few personnel, we could increase our efficiency by using an otherwise already existing

structure for these cases and begin to comply with the law as well. We simply cannot continue to ignore these too often violent, criminal matters.

Finally, in an ideal world, the DAs would draw complaints on no-arrest cases after hours, at night and on weekends, for feeding into night and weekend arraignment parts. My understanding, however, is that nights and weekends do not present a serious problem because of the police department's prudent exercise of its discretion to arrest in cases involving imminent danger to victims.

APPENDIX I





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

HON. KATHRYN McDONALD
Chair

April 20, 1989

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.)

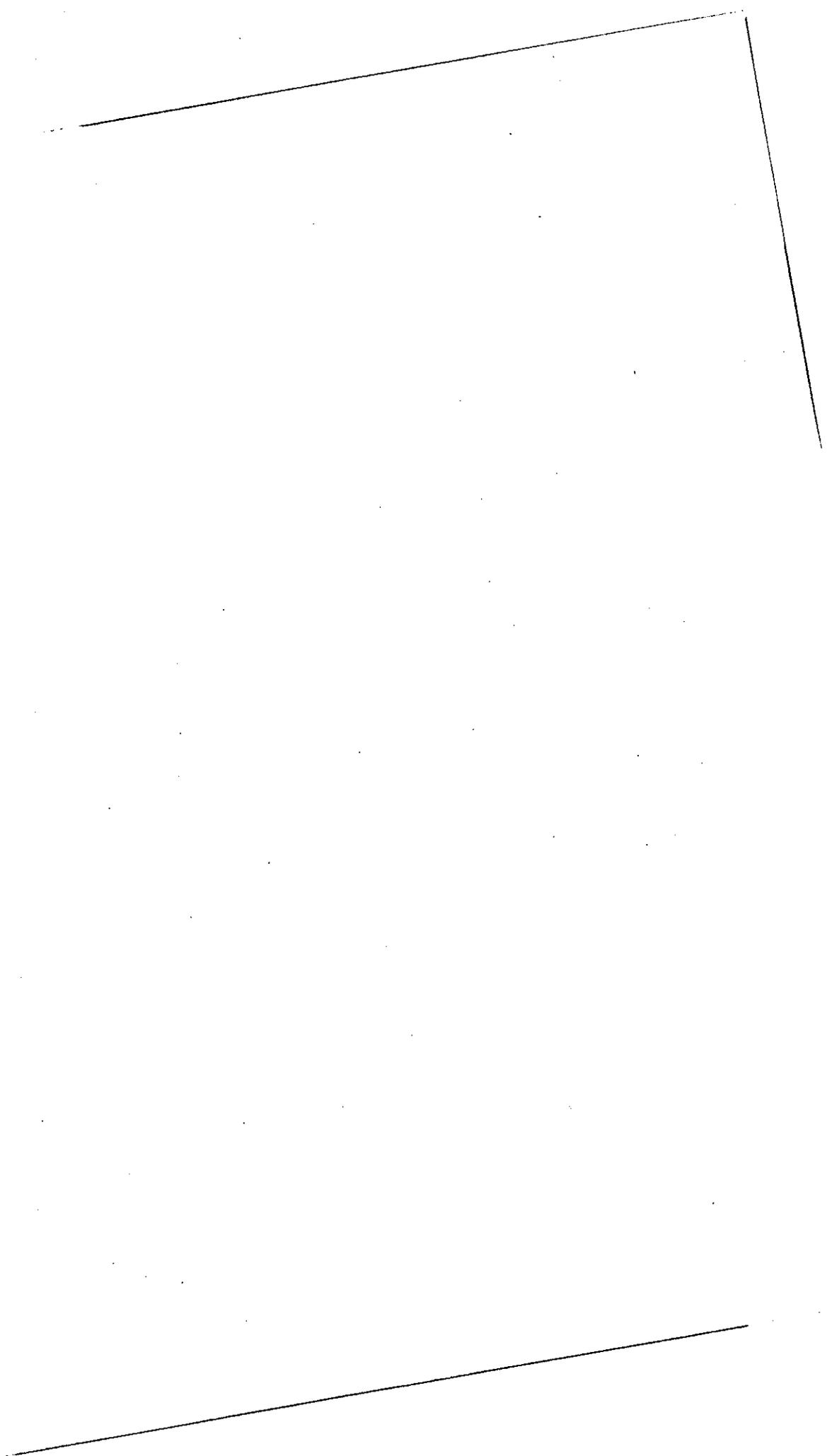
In addition to the "generic he" problem, difficulties sometimes arise in common (albeit dated) terminology. Most of these problems are easily corrected. For example:

| | | |
|------------------------|---|--|
| 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, <u>eg.</u> , "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 hypothetical 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.

APPENDIX J



This pamphlet was prepared by the New York Judicial Committee on Women in the Courts, which was created by Chief Judge Sol Wachtler in response to the report of the New York State Task Force on Women in the Courts. Since 1986, the Committee has acted as an advocate within the judicial system and a focal point of community concern for the courts' obligation to provide fair treatment to women.

**Fair Speech:
Gender Neutral Language
in the Courts**

When Chief Judge Sol Wachtler launched a campaign to alter the treatment of women in the court system, he declared that "Gender bias against women in our courts is unacceptable." The energy generated by this campaign has reached into the critical realm of language, and, in recent years, the formal language used in our courts has changed. Forms, regulations, and statutes have been reviewed and rewritten to eliminate words and expressions that exclude women or perpetuate the assumption that men are the norm. Regulations no longer say he when they mean he or she, and official letters are not addressed to "Dear Sir" when the recipients are judges,

lawyers, or any other group that may include both men and women.

Spoken language is equally important. In courts people communicate great quantities of critical information, not just on paper, but face to face. On any day that our courts are open they are filled with clerks and court officers addressing litigants, lawyers talking with each other, and judges making rulings from the bench. All of them are conveying not only data and facts but a variety of subtle messages about the status of the participants in the exchange and their relations with each other. When women are made invisible by the language or treated with less dignity, a damaging message about their place in the courts is broadcast.

At stake are not just claims for equality. Clarity is another victim of language that

inappropriately incorporates gender. The ambiguous use, for example, of male terms to refer to both men and women does create confusion, sometimes with profound effects. Indeed, in one notorious case the Supreme Court of Washington State reversed a murder conviction, in part because a jury was instructed on the reasonable man standard for a claim of self-defense on behalf of a 5'4" woman attacked by a 6'2" man. The court specifically faulted the "persistent use of the masculine gender" that left the impression that the measure for reasonableness was an altercation between two men. *State v. Wanrow* 559 P.2d 548, 558 (1977).

Acknowledging the critical role that words play in the climate of court-houses and courtrooms, the New York Judicial Committee on Women in the Courts has written this pamphlet. Its purpose is to

suggest a few fairly simple rules that will help all of us who use the courts or work in the court system to avoid unintended slights or compromises of the ideal of equal justice. Of course, we also must learn to listen to ourselves with an ear sensitive to the effect of our words on listeners of both sexes.

Use inclusive terms, rather than masculine forms. Many forms of address exclude women. Good substitutes, however, are easy to find:

| <u>use</u> | <u>avoid</u> |
|------------------------|-----------------------|
| chair, chairperson | chairman |
| members of the jury | gentlemen of the jury |
| colleagues | brethren |

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Designations for professionals or categories of workers often are a source of lingering problems. Since job segregation historically has been a barrier to women's claims for equality, using gendered terms may have the effect of implying women still cannot rightfully hold certain jobs. Again, substitutes are now commonly used, e.g.:

| <u>use</u> | <u>avoid</u> |
|---------------------------|---------------------------|
| police officer | policeman |
| fire fighter | fireman |
| worker | workman |
| homemaker | housewife |
| nurse | male nurse |
| executive | businessman |
| journalists | gentlemen of the press |
| representative | spokesman |
| Member of the Assembly | Assemblyman |

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Member of
Congress,
Representative

Congressman

Expressions that include the words man or men can also be changed so that women too are included, e.g.:

| <u>use</u> | <u>avoid</u> |
|------------------------|---------------------|
| reasonable person | reasonable man |
| artificial | man-made |
| staff | manpower |
| a one-person operation | a one-man operation |
| high ranking officials | men in high places |
| diplomacy | statesmanship |

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Avoid using "he" as a generic pronoun. "He" should not be used to refer to a group of people that may include men and women or an individual whose sex is not known. Instead you might:

1. Eliminate the pronoun altogether. For example, "A court clerk can give you his advice on that form," can be changed to "A court clerk can give you advice on that form."

2. Find a neutral article or pronoun, such as a, the or this. "A judge can always make his ruling orally," might be replaced by "A judge can always make the ruling orally."

3. Rearrange the sentence to use who as the pronoun. "If someone wants an adjournment, he should ask for it during the calendar call," can be altered to "A person who wants

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an adjournment should ask for it during the calendar call."

4. Replace the pronoun with a synonym. "You should find a court officer. He is the one who can help you," can be changed to "You should find a court officer. That is the official who can help you."

5. Use a plural pronoun. Instead of saying, "A juror must make his own assessment of the credibility of each witness," you can say, "Jurors must make their own assessments of the credibility of each witness."

Use consistent forms of address. When no other title is appropriate, Ms. and Mr. are usually the correct forms of address, not Miss

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or Mrs. and Mr. While Miss or Mrs. may be acceptable when a woman specifically asks for such a designation, in general, these forms should be avoided because, unlike Mr., they gratuitously call attention to a person's marital status.

Often you can use exactly the same form of address for men and women by calling them by their professional titles. Of course, these titles should be used consistently for both men and women. All physicians are Doctor (not Dr. and Ms.), police personnel are Officer (not Officer and Ma'am), and lawyers are Counselor (not Counselor and Ms.).

Use formal rather than informal forms of address. Using first names to refer to litigants or witnesses should be avoided not

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only because the informality is inappropriate in the courtroom setting, but also because it is women who are most often patronized in this manner. The motives for calling someone Maria or Jeannette may be simply habit on the part of a court official or an attempt by a woman's own lawyer to put her at ease. However, all litigants, including defendants in criminal cases, deserve a proper form of address, and the dignity of the more formal designation might do more to make a witness comfortable than the intimacy implied by the use of a first name.

Altering speech habits may require conscious thought for a period of time, but change is part of any living language, and English, which is an unusually rich tongue, is still evolving. What was considered

questionable usage a decade ago may be commonly accepted now. What feels awkward today may seem eminently natural tomorrow. For example, the term "chair," now a commonly preferred designation for the person in charge of a meeting, predates the use of "chairman," although it fell into disuse until its recent revival. Indeed, grammarians settled on the use of "he" as a generic pronoun less than three hundred years ago. Even the New York Times has changed. It now permits the use of "Ms.," a term that it staunchly eschewed for many years.

The goal is worth the effort it takes to reach it. After all, as an essay by Wendy Martyna, a scholar studying language and gender, recently suggested, when we change old habits of speech we are doing nothing less than creating "a language that speaks more fairly and clearly of us all."

**The New York Judicial Committee on
Women in the Courts**

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Hon. Zelda Jonas

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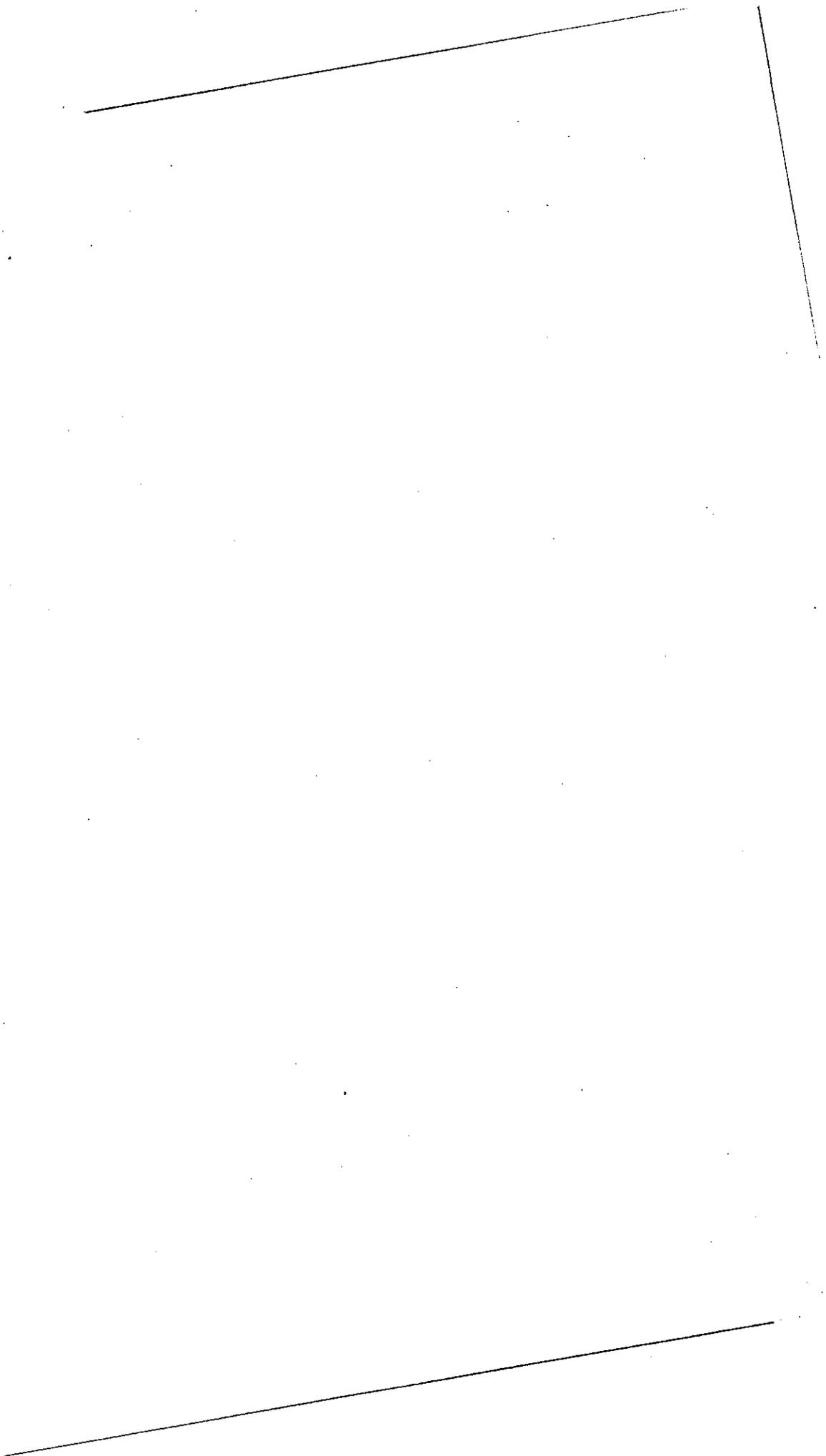
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**Jill Laurie Goodman,
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APPENDIX K



JUSTICE FOR ALL:
LOCAL INITIATIVES ON WOMEN IN THE COURTS
October 17, 1990

10:30

Welcome

Hon. Edward Conway, Administrative Judge,
Third Judicial District

10:45

Introduction

Hon. Kathryn McDonald, Administrative Judge,
New York City Family Court and Chair,
Committee to Implement Recommendations
of the New York Task Force on Women in the
Courts

11:00 -- 12:15

Plenary Session

Presentations by active participants in local
committees appointed by administrative judges
to address issues of women in the courts.

Hon. Dolores Denman, Associate Justice,
Appellate Division, 4th Department

Hon. Angela Mazzairelli, Acting Justice,
Supreme Court, New York City

Hon. Elizabeth Pine, Associate Justice,
Appellate Division, 4th Department

Hon. Richard Lee Price, Justice,
Supreme Court, Bronx County

12:30 -- 1:45

Luncheon

Remarks by Chief Judge Sol Wachtler

2:00 -- 3:00 WORKSHOPS I

A. Domestic Violence

Moderator:

Hon. Kathryn McDonald, Administrative Judge,
New York City Family Court

Speakers:

Sally Berry, Executive Director,
Vera House, Syracuse

Hon. Robert Clark, Judge,
New York City Family Court

Karla Digirolama, Executive Director,
New York State Task Force on Domestic
Violence

B. Public Forums, Public Education and
Relations with the Community

Moderator:

Fern Sussman, Executive Secretary,
Association of the Bar of the City
of New York

Speakers:

Mary deBourbon, Director of Communications,
Office of Court Administration

Hon. Sondra Miller, Associate Justice,
Appellate Division, 2nd Department

Sheila A. Weir, Law Assistant,
Buffalo City Court

3:00 -- 4:00 WORKSHOPS II

A. Treatment of Women Litigants, Witnesses and
Lawyers: Courtroom Dynamics

Moderator:

Hon. Juanita Bing Newton, Judge,
Court of Claims

Speakers:

Lenore Kramer, Esq.
Private Practice, New York City

Hon. Karen Peters, Judge,
Family Court, Ulster County

Peter Walsh, Esq.
Private Practice, Ithaca

B. Approaches to Pro Bono Programs for Women

Moderator:

Hon. Betty Ellerin, Associate Justice,
Appellate Division, 1st Department

Speakers:

Hon. Edward Conway, Administrative Judge,
Third Judicial District

William Dean, Executive Director,
Volunteers of Legal Services

Helene Goldberger,
Assistant Attorney General and
Capital District Women's Bar Association

Laurie Milder, Director,
Community Outreach Law Program,
Association of the Bar of the
City of New York