WOMEN IN THE COURTS: *A Work in Progress*

15 Years After the Report of the New York Task Force on Women in the Courts

New York State Judicial Committee on Women in the Courts **April 2002**

The Chief Judge of the State of New York

Judith S. Kaye

April 11, 2002

Hon. Betty Weinberg Ellerin, Chair
New York State Committee on
Women in the Courts
Appellate Division, First Department
27 Madison Avenue
New York, NY 10010

Dear Judge Ellerin:

Many thanks for your invitation to include my opening letter with your Committee's Fifteen Year Report. For two reasons, I accept your invitation enthusiastically.

First, I write to endorse the Committee's report and assure our faithful attention to your recommendations. As Chief Judge for the past nine-plus years, and as a woman for far longer, I am naturally delighted to read this solid evidence that, in every area, there has been "dramatic" improvement for women in the courts. That, however, is simply not good enough for New York State's court administration so long as there is also solid evidence of concerns we can address. We are fully pledged to the attainment of the mission first articulated by Chief Judge Cooke and significantly advanced by the Committee under the able leadership of Kay McDonald for a decade.

Which brings me to my second reason. I write to convey personal thanks, as well as widespread gratitude, to you, your excellent Committee and local Committees, and your superb counsel. Perhaps most of all, I take pleasure in having placed the reins of this important initiative in your capable hands. I am convinced that with the competence and commitment you all bring to our objective of gender fairness, we will continue to have dramatic improvements.

To my mind, it is the vigilance and pressure of your spotlight that help to account for our gains, and I am delighted to know that it will continue to shine on us.

Sincerely,

Judith S. Kaye

State of New York

Jonathan Lippman
Chief Administrative Judge

25 Beaver Street
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April 10, 2002

The New York State Judicial Committee on
Women in the Courts
Hon. Betty Weinberg Ellerin, Chair
27 Madison Avenue
New York, NY 10010

Dear Judge Ellerin and members of the Committee:

It is with great pleasure that I write this letter to introduce the Fifteenth Year Report of the New York State Judicial Committee on Women in the Courts. I congratulate you all on the work you have done in the fifteen years since the Committee was established, originally as a Task Force by then-Chief Judge Cooke, to identify and help eliminate bias against women in the New York State courts. While your report documents the work yet ahead, so much has been accomplished in those fifteen years, and so much of what has been achieved is owing to the dedicated efforts of this Committee. Indeed, where some might have been discouraged by existing laws, practices and attitudes, you have seen challenge and opportunity, insisting that the battle can and will be won. You know you have my unqualified support in all that you do, and I look forward to seeing this "work in progress" continue its record of success.

Sincerely,

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INTRODUCTION

In 1984, then-Chief Judge Lawrence H. Cooke appointed the New York State Task Force on Women in the Courts and asked it to assume responsibility for an investigation into whether women's role in "the jurisprudential scheme in the Empire State is fair under all circumstances."[1] In response, the Task Force launched an ambitious project of self-examination that continues to this day. This report, occasioned by the 15th anniversary of the 1986 Task Force Report, is yet another installment in that project.

New York's Efforts to Assess Bias Against Women in the Courts

Chief Judge Cooke's Task Force employed multiple tools in its two-year study of New York Courts. It reviewed research and literature; recruited expert advisers; held public hearings, regional meetings with judges and attorneys, and regional listening sessions; inquired into the judicial nominating process; and asked the Center for Women in Government to analyze the status of women employed in New York's court system. The Task Force also sent out 50,000 surveys canvassing attorneys about their perceptions of bias in New York's courts and tabulated the 1,759 responses.

At the conclusion of its work in 1986, the Task Force reported that "More was found in this examination of gender bias in the courts than bruised feelings resulting from rude or callous behavior. Real hardships are borne by women. An exacting price is ultimately paid by our entire society."[2]

The process Chief Judge Cooke set in motion has continued without interruption. As soon as the Task Force made its report, then-Chief Judge Sol Wachtler accepted in its totality the Task Force's powerful findings and appointed a committee, now known as the New York State Judicial Committee on Women in the Courts, to implement the recommendations and named Hon. Kathyrn McDonald chair.

Ten years later, in 1996, with Chief Judge Judith S. Kaye at the helm of New York's court system providing unwavering and unhesitating support for the agenda laid out by the Task Force, the implementation Committee issued its own report. Without attempting to re-survey New York attorneys, the Committee looked at the efforts made by the various constituencies of New York's court system and at tangible signs of change. Its 1996 report concluded that: "Educational programs have been put in place, committees have been formed and have issued reports, statutes have been changed, court decisions have clarified laws, gender neutral language has become the norm, and the number of women in the profession, in the judiciary, and in the upper ranks of the

courts' nonjudicial personnel has increased—yet women in the courthouses and the court system may still find obstacles to pursuit of their legal claims, careers, and professions that men rarely confront."[3]

Fifteen years after the Task Force issued its report, the New York State Committee on Women in the Courts found itself once again assessing progress towards the elusive but still critical goal of a court system free of bias and fair to all. Taking a somewhat different approach, the Committee embarked on two projects. First, the Committee used a questionnaire to ask those who spend their professional lives in New York's courts their thoughts about change in the past 15 years. The Committee also organized a conference, which it titled "The Miles Traveled and the Miles Yet To Go," as another vehicle for exploring the extent of progress in the decade and a half since the original 1986 Task Force Report. This conference also celebrated the lives of two heroic figures who shaped the New York's response to the challenge of bias in the courts: Chief Judge Lawrence H. Cooke and Hon. Kathryn A. McDonald, who steered the Committee's work during its first ten years.

This report has two major sections that present the fruits of those projects: an analysis of responses to the 2001 questionnaire and a compilation of the highlights of the 15th year conference. Preceding them are recommendations and a summary of findings that have been culled from the voices heard through the many hundreds of pages of responses to the questionnaire and thoughtful panelists at the conference.

1. Court Administrators should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed about the kinds of issues that arise in matrimonial cases, including:

- **a.** The need for realistic awards of temporary and permanent maintenance.
- **b.** The need for prompt awards of interim attorneys fees, made regularly during the course of litigation and made with adequate consideration of the amount the spouse with the greater financial resources is paying for an attorney.
- **c.** The ways that dual responsibilities for caring for minor children and for earning a living often place special burdens on women.
- **d.** The ways that sex-based stereotypes lead to the application of higher standards of parenting to mothers than to fathers.

2. Court Administrators should assure that the assignment of judges to matrimonial parts is made so that those judges are experienced and well-informed about the kinds of issues that arise in such matters, including the foregoing.

3. Court Administrators should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed about domestic violence, including:

- **a.** The dynamics of domestic violence, the drive for power and control that tends to make pursuing court cases against abusers cases difficult and dangerous, and the effects of trauma.
- **b.** The economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance.
- **c.** The reasons, including safety, for restricting the access of abusers to their children.
- **d.** The effects of racial, ethnic, religious or national cultural norms on the ability of victims of domestic violence to gain access to courts.

4. Court Administrators should assure that all those who contribute to judicial decisions, including OCA's non-judicial personnel, law guardians, and forensic experts, have a full understanding of domestic violence, including:

a. The dynamics of domestic violence, the drive for power and control that tends to make pursuing court cases against abusers cases difficult and dangerous, and the effects of trauma.

b. The economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance.

c. The concerns, including safety, involved when abusers are permitted access to their children.

d. The effects of racial, ethnic, religious, or national cultural norms on the ability of victims of domestic violence to gain access to courts.

5. Court Administrators should exercise administrative authority to:

a. Streamline procedures for enforcing child support orders so that custodial parents are spared the expense in time and money of multiple court appearances.

b. Establish wherever possible evening hours in Family Court and Supreme Court for enforcing orders for the payment of child support, spousal support, or other remedies in matrimonial and child support proceedings, so that working families can purse remedies without jeopardizing their jobs.

c. Establish wherever possible specialized enforcement parts in criminal courts for enforcing matrimonial orders.

d. Simplify procedures and forms for both contested and uncontested matrimonial cases.

e. Increase the number and staff of OCA's Offices for the Self-Represented to provide assistance to those who cannot afford lawyers for matrimonial cases.

f. Make creative use of technology to provide judges with prompt, accurate, and complete information so they can respond effectively to the potential for danger in domestic violence cases.

g. Expand the use of the specialized domestic violence parts and integrated domestic violence courts, with experienced judges and supplemental resources to support victims, throughout the state.

h. Work with community groups to make courts more accessible to new immigrants and to diverse ethnic and racial populations.

i. Continue to respond quickly and decisively to complaints about inappropriate or biased behavior on the part of court personnel.

j. Continue to support the work of Grievance Committees and the Commission on Judicial Conduct in connection with instances of inappropriate and biased behavior.

k. Request that the Legislature provide appropriate funding for Family Court in amounts adequate to provide for the efficient, compassionate, and respectful administration of justice.

6. Judges should:

- **a.** Tighten compliance with Chief Administrative Judge's Rules relating to matrimonial actions and increase the use preliminary conferences to resolve issues, including awards of interim attorneys fees and interim child and spousal support.
- **b.** Continue to monitor behavior in the courtroom and in litigation contexts and intervene swiftly when lawyers, court personnel, witnesses, or litigants display inappropriate or biased behavior toward women.
- **c.** Make efforts to serve as mentors for women lawyers and less senior women judges.

7. Judicial Screening Committees, when evaluating candidates for courts where such issues arise, should inquire into candidates' familiarity with:

- **a.** The ways that dual responsibilities for caring for minor children and for earning a living often place special burdens on women; the need for realistic awards of temporary and permanent maintenance in matrimonial matters; the need for prompt awards of interim attorneys fees, made regularly during the course of litigation and made with adequate consideration of the amount the spouse with the greater financial resources is paying for an attorney; the ways that sex-based stereotypes lead to the application of higher standards of parenting to mothers than to fathers.
- **b.** Domestic violence, including: the dynamics of domestic violence; the drive for power and control that tends to make pursuing court cases against abusers difficult and dangerous; the economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance; the effects of trauma; and the effects of racial, ethnic, religious or national cultural norms on the ability of victims of domestic violence to gain access to courts.

8. The Legislature should:

- **a.** Enact legislation making interim awards of attorney fees mandatory in matrimonial cases.
- **b.** Enact legislation that paves the way for restructuring New York's courts and integrating Family Court jurisdiction into a superior or supreme court.
- **c.** Provide appropriate funding for Family Court in amounts adequate to provide for the efficient, compassionate, and respectful administration of justice.
- **d.** Increase the rate of pay for attorneys appointed in Family Court matters and provide other means for the representation of the indigent litigants entitled to counsel under laws so that Family Court litigants have full access to justice and Family Court can operate productively.

9. Bar Associations should:

- **a.** Create and promote programs to encourage *pro bono* assistance for matrimonial and Family Court cases.
- **b.** Work with community groups and the court system to develop programs that educate practitioners about the cultural and other issues facing immigrants and other ethnic and racial populations that make access to courts difficult.
- **c.** Encourage legal employers to adopt employment policies that provide flexibility for parents to choose the extent of involvement in raising children without prejudice to their careers.
- **d.** Establish programs to encourage senior attorneys to act as mentors for women attorneys and law students.
- **e.** Organize programs on "How to Become a Judge," directed at women and others who historically have not been well-represented in the judiciary.

FINDINGS *with* RECOMMENDATIONS

These fifteen year findings, which follow selections of the 1986 Task Force findings, are compiled from the reports from the front lines of those who responded to the 2000-01 survey of the New York State Judicial Committee on Women in the Courts and the panelists who made presentations at the Committee's April 2001 conference on "The Miles Traveled and the Miles Yet to Go."

Family Law

CHILD SUPPORT

1986 Findings of the New York Task Force on Women in the Courts

The Task Force received compelling evidence of human suffering resulting from the judicial system's failure to administer child support laws adequately.[4]

2001 Findings of the Judicial Committee on Women in the Courts

1. Awards of child support are fairer than they were 15 years ago. The Child Support Standards Act [CSSA] has brought greater consistency and predictability to judicial determinations of financial obligations of non-custodial parents by substituting numerical formulas for *ad hoc* determinations about the needs of children and the ability of parents to provide for them. Judicial decisions have supported the objectives of the CSSA.
2. Enforcement of child support obligations has improved. Legislation allowing judges to suspend professional and driving licenses of non-custodial parents who refuse to comply with court orders has made enforcement easier.
3. The time and multiple court appearances often required to pursue these remedies burdens women, who are most often the custodial parents, and takes them away from their jobs and their children.

2001 Recommendations of the New York State Judiciary Committee on Women in the Courts

1. **Court Administrators** should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed

about the ways that dual responsibilities for caring for minor children and for earning a living often place special burdens on women.

2. **Court Administrators** should exercise administrative authority to:
   a. Streamline procedures for enforcing child support orders so that custodial parents are spared the expense in time and money of multiple court appearances.
   b. Establish wherever possible evening hours in Family Court and Supreme Court for enforcing orders for the payment of child support so that working families can purse remedies without jeopardizing their jobs.
3. **Bar Associations** should create and promote programs to encourage *pro bono* assistance for Family Court cases.

DIVORCE

1986 Findings of the New York Task Force on Women in the Courts

1. The manner in which judges distribute a family's assets and income upon divorce profoundly affects many women's economic welfare. Women who forego careers to become homemakers usually have limited opportunities to develop their full potential in the paid labor force.[5]
2. Many lower court judges have demonstrated a predisposition . . . to minimize the homemaker spouse's contributions to the martial economic partnership by:
   a. Awarding minimal, short-term maintenance or no maintenance at all to older, long-term, full or part-time homemakers with little or no chance of becoming self-supporting at a standard of living commensurate with that enjoyed during the marriage.[6]
   b. Awarding homemaker-wives inequitably small shares of the income-generating or business property.[7]
   c. Economically dependent wives are put at an additional disadvantage because many judges fail to award attorneys' fees adequate to enable effective representation or experts' fees adequate to value the marital assets.[8]
   d. Many judges fail to order provisional remedies that ensure assets are not diverted or dissipated.[9]
   e. After awards have been made, many judges fail to enforce them.[10]

2001 Findings of the New York State Judicial Committee on Women in the Courts

1. Judges are more likely to recognize homemakers' contributions to a marriage and women have a greater chance of achieving post-divorce economic security than they did fifteen years ago, but women whose marriages end are still at risk financially.
2. Women with dependent children are particularly vulnerable because their dual roles as wage-earners and primary caretakers go largely unrecognized.

3. Maintenance awards still are often not adequate to provide financially dependent spouses with sufficient support. Judges often fail to consider pre-divorce standards of living when making maintenance awards.
4. Although the disadvantages women face in matrimonial litigation are eroding slowly, the cost of a divorce is still a major obstacle for women who want to end a marriage.
5. New York's complicated procedures and extensive paperwork contribute to the high cost and difficulty of getting a divorce.
6. Despite legislation encouraging judges to exercise their discretion to make adequate interim awards to lawyers for the spouse with fewer resources, counsel fee awards are often too low to provide a level playing field.

2001 Recommendations of the New York State Judiciary Committee on Women in the Courts

1. **Court Administrators** should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed about the kinds of issues that arise in matrimonial cases, including:
   a. The need for realistic awards of temporary and permanent maintenance.
   b. The need for prompt awards of interim attorneys fees, made regularly during the course of litigation and made with adequate consideration of the amount the spouse with the greater financial resources is paying for an attorney.
   c. The ways that dual responsibilities for caring for minor children and for earning a living often place special burdens on women.
   d. The ways that sex-based stereotypes lead to the application of higher standards of parenting to mothers than to fathers.
2. **Court Administrators** should assure that the assignment of judges to matrimonial parts is made so that those judges are experienced and well-informed about the kinds of issues that arise in such matters, including the foregoing.
3. **Court Administrators** should exercise administrative authority to:
   a. Establish wherever possible evening hours in Supreme Court for enforcing orders for the payment of child support, spousal support, or other remedies in matrimonial and child support proceedings, so that working families can purse remedies without jeopardizing their jobs.
   b. Establish wherever possible specialized enforcement parts in criminal courts for enforcing matrimonial orders.
   c. Simplify procedures and forms for both contested and uncontested matrimonial cases.
   d. Increase the number and staff of OCA's Offices for the Self-Represented to provide assistance to those who cannot afford lawyers for matrimonial cases.

4. **Judges** should tighten compliance with the Chief Administrative Judge's Rules relating to matrimonial actions and increase the use of preliminary conferences to resolve issues, including awards of interim attorneys fees and interim child and spousal support.
5. **Judicial Screening Committees,** when evaluating candidates for courts where such issues arise, should inquire into candidates' familiarity with the ways that dual responsibilities for caring for minor children and for earning a living often place special burdens on women; the need for realistic awards of temporary and permanent maintenance in matrimonial matters; the need for prompt awards of interim attorneys fees, made regularly during the course of litigation and made with adequate consideration of the amount the spouse with the greater financial resources is paying for an attorney; the ways that sex-based stereotypes lead to the application of higher standards of parenting to mothers than to fathers.
6. **The Legislature** should enact legislation making interim awards of attorney fees mandatory in matrimonial cases.
7. **Bar Associations** should create and promote programs to encourage *pro bono* assistance for matrimonial cases.

CUSTODY

1986 Findings of the New York Task Force on Women in the Courts

1. Determinations of child custody are among the most perplexing and difficult aspects of the judicial function.[11]
2. Some judges appear to give weight to gender-based stereotypes about mothers and fathers that may have little bearing on the child's best interests.[12]

2001 Findings of the New York State Judiciary Committee on Women in the Courts

1. The use of gender-based stereotypes in custody decisions, in general, has lessened in the recent past.
2. Victims of domestic violence find that often higher standards of parenting are applied to mothers than to fathers.

2001 Recommendations of the New York State Judicial Committee on Women in the Courts

1. **Court Administrators** should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed about the ways that sex-based stereotypes lead to the application of higher standards of parenting to mothers than to fathers.

RESOURCES FOR FAMILY COURT

1986 Findings of the New York Task Force on Women in the Courts

Resources allocated to the family court are perceived to be unfairly low when compared to the resources of other courts.[13]

2001 Findings of the New York State Judicial Committee on Women in the Courts

The inadequacy of resources in Family Court, where poor women are most likely to appear, is severe enough to create conditions that routinely deprive litigants of fair, just and timely resolutions of their cases.

2001 Recommendations of the New York State Judicial Committee on Women in the Courts

1. **Court Administrators should:**

   Provide appropriate funding for Family Court in amounts adequate to provide for the efficient, compassionate, and respectful administration of justice.

2. **The Legislature should:**

   a. Enact legislation that paves the way for restructuring New York's courts and integrating Family Court jurisdiction into a superior or supreme court.

   b. Provide appropriate funding for Family Court in amounts adequate to provide for the efficient, compassionate, and respectful administration of justice.

   c. Increase the rate of pay for attorneys appointed in the Family Court matters and provide other means for the representation of the indigent litigants entitled to counsel under laws so that Family Court litigants have full access to justice and Family Court can operate productively.

Violence Against Women

RAPE AND SEXUAL ASSAULT

1986 Findings of the New York Task Force on Women in the Courts

1. Until recently, New York's rape law codified the view that women's claims of rape are to be skeptically received.[14]
2. The attitudes embodied in the former law and which resisted its reform continue to operate in the minds of some judges, jurors, defense attorneys and prosecutors.[15]
3. As a result, cultural stigma and myths about rape's perpetrators and victims still narrow the law's protective reach.[16]

2001 Findings of the New York State Judicial Committee on Women in the Courts

1. Attitudes toward rape and rape victims have undergone significant changes since the Task Force reported in 1986. Prosecutions of rape cases, including cases in which the perpetrator and victim know each other, are now common. The rape shield law, passed to protect victims from harassment and invasions of privacy, has taken root and its provisions are accepted by bench and bar.
2. Some judges believe that jurors apply different and harsher tests of credibility to testimony of rape victims than they do to testimony of perpetrators or victims of other crimes.

DOMESTIC VIOLENCE

1986 Findings of the New York Task Force on Women in the Courts

1. Domestic violence . . . . is a problem of dramatic proportions for women in New York State.[17]
2. The Family Court Act and the Criminal Procedure Law, by and large, provide an adequate framework for providing relief to victims of domestic violence.[18]
3. Notwithstanding the existence of adequate statutory protections, barriers to the laws' remedial purposes remain:
   a. Victims' access to the courts is limited by their being dissuaded by law enforcement officials and court personnel from proceedings in criminal and family courts and by having their claims trivialized or ignored.[19]
5. Some judges, attorneys and court personnel erroneously presume that petitions for orders of protection filed by women during the course of a matrimonial action are 'tactical' in nature. This assumption fails to appreciate the many legal disincentives to filing a petition as a litigation tactic and that, in a violent relationship, violence is particularly likely to occur after a divorce action has commenced.[20]
6. Judges making custody and visitation determinations too often fail to consider a man's violent conduct toward his wife.[21]
7. Some judges are unwilling to remove a batterer from the family home, forcing the mothers and children to live in shelter.[22]
8. A significant number of women who bring petitions for court-ordered protection fail to follow through, leading to dismissals for failure to prosecute. Women who fail to proceed are deterred in part by the hostile or indifferent treatment they receive in court. Intimidation by the respondent is another cause although judges rarely inquire into whether the petitioner has been coerced.[23]

2001 Findings of the New York State Judicial Committee on Women in the Courts

1. The past fifteen years have witnessed vast changes in public perceptions about domestic violence and in the justice system's responses. Victims now benefit

from heightened public awareness, more sensitive police and prosecutorial approaches, and increases in resources. The court system, as an institution, treats domestic violence with appropriate seriousness.

2. The model domestic violence courts and dedicated domestic violence parts opened in recent years serve victims of domestic violence well. They provide committed, experienced judges, and resources that provide support to victims in their search for safety.
3. Legislative responses, including provisions for mandatory arrest and primary physical aggressor assessments and the expanded anti-stalking laws, have made access to justice easier for victims.
4. Despite improvements, domestic violence remains, as it was when the original Task Force reported in 1986, "a problem of dramatic proportions for women in New York State."[24]
5. Establishing credibility remains an issue for many victims of domestic violence, who often find themselves subjected to higher standards than their abusers.
6. Many judges need to be better informed about the effects of trauma or the dynamics of abuse that can leave victims deeply fearful of their abusers and in grave physical danger.
7. Often victims are blamed, and at times penalized, for failing to proceed with court cases despite the difficulties and even dangers of pursuing abusers through legal processes.
8. Some attorneys and judges tend to dismiss applications for orders of protection made during matrimonial cases as mere tactical maneuvers.
9. Although statutory changes now require judges to consider domestic violence in custody and visitation cases, some judges routinely grant abusers access to their children, at times without sufficient regard for the safety of the children or their mothers. Law guardians and forensic experts are not necessarily trained to recognize domestic violence and understand its effects on children.
10. Immigrant victims of domestic violence face additional burdens, including language barriers, insecure immigrant status and cultural differences, that may make courts intimidating or inaccessible. New York State has seen a large influx of immigrants from increasingly diverse corners of the globe in the past fifteen years, and the court system is only beginning to grapple with the challenges these migrations have created.

2001 Recommendations of the New York State Judicial Committee on Women in the Courts

1. **Court Administrators** should assure that the annual Judicial Seminars provide meaningful opportunities for judges, especially those who are assigned to preside over matters where such issues regularly arise, to remain well-informed about domestic violence, including:

a. The dynamics of domestic violence, the drive for power and control that tends to make pursuing court cases against abusers cases difficult and dangerous, and the effects of trauma.

b. The economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance.

c. The concerns, including safety, involved when abusers are permitted access to their children.

d. The effects of racial, ethnic, religious, or national cultural norms on the ability of victims of domestic violence to gain access to courts.

2. **Court Administrators** should assure that all those who contribute to judicial decisions, including OCA's non-judicial personnel, law guardians and forensic experts, have a full understanding of domestic violence, including:

   a. The dynamics of domestic violence, the drive for power and control that tends to make pursuing court cases against abusers cases difficult and dangerous, and the effects of trauma.

   b. The economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance.

   c. The concerns, including safety, involved when abusers are permitted access to their children.

   d. The effects of racial, ethnic, religious or national cultural norms on the ability of victims of domestic violence to gain access to courts.

3. **Court Administrators** should exercise administrative authority to:

   a. Make creative use of technology to provide judges with prompt, accurate, and complete information so they can respond effectively to the potential for danger in domestic violence cases.

   b. Expand the use of the specialized domestic violence parts and integrated domestic violence courts, with experienced judges and supplemental resources, to support victims, throughout the state.

   c. Work with groups to make courts more accessible to new immigrants and to diverse ethnic and racial populations.

6. **Judicial Screening Committees,** when evaluating candidates for courts where such issues arise, should inquire into candidates' familiarity with domestic violence, including: the dynamics of domestic violence and the drive for power and control that tends to make pursuing court cases against abusers cases difficult and dangerous; the effects of trauma; the economic difficulties faced by many victims of domestic violence and the need for immediate orders of child support and/or maintenance; and the effects of racial, ethnic, religious, or national cultural norms on the ability of victims of domestic violence to gain access to courts.

7. **Bar Associations** should work with community groups and the court system to develop programs that educate practitioners about the cultural and other issues

facing immigrants and other ethnic and racial populations that make access to courts difficult.

THE COURTROOM ENVIRONMENT AND THE TREATMENT OF WOMEN IN THE COURTS

1986 Findings of the New York Task Force on Women in the Courts

1. Perhaps the most insidious manifestation of gender bias against women . . . is the tendency of some judges and attorneys to accord less credibility to the claims of women because they are women.[25]
2. Many women who seek relief in court for matters such as domestic violence, rape, child support, paternity and divorce are subject to undue skepticism.[26]
3. Lack of credibility is also manifest in the unacceptable frequency with which women litigants and witnesses are subjected to sexist remarks and conduct by judges, lawyers and court personnel.[27]
4. There exists a widespread perception that some judges, men attorneys and court personnel do not treat women attorneys with the same dignity and respect as men attorneys.[28]
5. Among the most commonly-cited types of inappropriate and demeaning conduct are: [b]eing addressed in familiar terms; [b]eing subject to comments about personal appearance, [b]eing subject to remarks and conduct that degrade women and verbal or physical sexual advances.[29]
6. A . . . subtle obstacle to professional acceptance is women attorneys being treated dismissively and with less tolerance than are men attorneys . . . . Aggressive behavior is rewarded or tolerated from men attorneys but viewed as out of place or even unacceptable from women attorneys.[30]

2001 Findings of the New York State Judicial Committee on Women in the Courts

1. The courtroom environment for women attorneys, judges, and litigants is widely-perceived to be far better that it was fifteen years ago. Women are less likely to be addressed disrespectfully or be subjected to demeaning treatment.
2. When inappropriate behavior manifests itself in the courtroom, judges are far more likely to initiate action to correct the situation.
3. Women still face obstacles. Some attorneys and judges still treat women less courteously or respectfully; women encounter "old boys" networks and behavior that cast them in the role of outsider; women's credibility, particularly in domestic violence cases, may be subjected to greater scrutiny than that of men, and women who are strong or aggressive are at times singled out and subjected to offensive behavior.

2001 Recommendations of the New York State Judicial Committee on Women in the Courts

1. **Court Administrators** should exercise administrative authority to:

a. Continue to respond quickly and decisively to complaints about inappropriate or biased behavior on the part of court personnel.

b. Continue to support the work of Grievance Committees and the Commission on Judicial Conduct in connection with instances of inappropriate and biased behavior.

2. **Judges** should continue to monitor behavior in the courtroom and in litigation contexts and intervene swiftly when lawyers, court personnel, witnesses, or litigants display inappropriate or biased behavior toward women.

Women in the Profession

1986 Findings of the New York Task Force on Women in the Courts

Although women have been achieving judicial office in greater numbers, they are underrepresented in New York's highest judicial posts and are not well represented throughout the New York Judicial System. Nearly half of all women judges, who constitute 9.7% of New York's judiciary, sit in New York City's family, criminal, civil and housing courts. Forty-three of New York's sixty-counties are reported to have no women judges of record.[31]

2001 Findings of the New York State Judicial Committee on Women in the Courts

1. Women are present in all branches of the profession in far greater numbers and in more leadership positions than ever before.
2. Despite overall success, certain kinds of professional advancement are still difficult for women to achieve because of artificial barriers unrelated to ability.
3. Time taken from work for child bearing or rearing is perceived as evidence of women's lack of commitment to the legal profession and used against women when decisions are made about their careers.
4. The number of women in the judiciary has increased substantially. Women are well-represented on New York's appellate benches and within the ranks of administrative judges. However, a disproportionate number of the state's women judges are found in New York City, and women are not well-represented on New York's Supreme Court, particularly outside New York City.[32]

2001 Recommendations of the New York State Judicial Committee on Women in the Courts

1. **Judges should:**

   a. Continue to monitor behavior in the courtroom and in litigation contexts and intervene swiftly when lawyers, court personnel, witnesses, or litigants display inappropriate or biased behavior towards women.

b. Make efforts to serve as mentors for women lawyers and less senior women judges.

2. Bar Associations should:

a. Encourage legal employers to adopt employment policies that provide flexibility for parents to choose the extent of involvement in raising children without prejudice to their careers.

b. Establish programs to encourage senior attorneys to act as mentors for women attorneys and law students.

c. Organize programs on "How to Become a Judge," directed at women and others who historically have not been well-represented in the judiciary.

Conducting the Survey

Content

In late 2000 and early 2001 the New York State Judicial Committee on Women in the Courts distributed a questionnaire composed of six open-ended inquiries designed to elicit narrative responses on issues central to the 1986 Task Force Report. The questions asked respondents about the treatment of women on issues on which the 1986 Task Force Report had made its most pointed findings: child support and divorce; violence against women, both sexual assault and domestic violence; assessments of credibility; and opportunities for advancement in the profession. Respondents also were asked about other issues they thought were important and their prescriptions for the future.

In a letter accompanying the questionnaire, the Committee's Chair, Hon. Betty Weinberg Ellerin, defined the nature of the inquiry and encouraged individuals to choose their own approaches rather than confine themselves to the questionnaire's format. She said, "What we are really seeking is your honest appraisal of how the court system has changed in the past 15 years and your prescription for work in the years to come. We welcome your comments on the treatment of women in any of their roles in courts—as attorneys, judges, litigants, and witnesses—or in any substantive area of law. Feel free to use the form or not as you like."[33]

Distribution

About 4000 questionnaires were distributed. They were sent to all New York judges and town and village justices; to the state's various bar association presidents and executives; to the presidents of the Women's Bar Association and the District Attorney's Association to circulate among their members; to law school deans; to domestic violence advocacy organizations, legal aid societies, and legal services offices; and to New York's Attorney General.

Responses

Survey responses numbered approximately 140.[34] Of these, two-thirds were from New York judges, split about evenly between New York State-paid judges and town and village

justices; the rest were spread among the other categories. Just under 60% of the responses were from men and about 40% were from women. (A small number of respondents did not identify themselves.)

Many of the respondents wrote at length. At least ten accepted the invitation to shape the form of their response and wrote two or three page letters. Others provided responses that spilled onto the back of the form. Responses were often thoughtful and heartfelt; those who answered the questionnaire appeared to care deeply about the court system's treatment of women.

The questionnaire proved useful. The responses, like those of the original Task Force, are interesting and valuable opinions providing insights into the experiences of the respondents and conditions in New York's courts. They are direct evidence of what people who were concerned enough about these issues to spend time thinking and writing about women in the courts believe about how well the New York State Court System is meeting its avowed commitment to fairness for women.

Answers to the 2001 Questionnaire's Queries

Respondents to the 2001 questionnaire spoke with many voices from many different vantage points. Some were sanguine about the status of women in New York courts, some hopeful, some deeply critical. The responses taken as a whole suggest that to those who spend their professional lives in New York's courts change is visible everywhere but so is the persistence of troubling attitudes and harmful practices.

Family Law

In general, respondents to the 2001 questionnaire believe that women raising children alone and women litigating divorces in New York's courts are treated more fairly than they were 15 years ago. Still, a number of respondents perceived persisting disadvantages, particularly financial, for women, often as a function of their roles within families.

Child Support

When asked about significant changes having to do with divorce and child support, most of the respondents who answered this question mentioned the Child Support Standards Act (CSSA). This legislation, signed into law in 1989, brought, according to one judge responding to the survey, "greater consistency and predictability"[35] to judicial determinations of the financial obligations of non-custodial parents by substituting numerical formulas for *ad hoc* and necessarily subjective judicial determinations about the needs of children and the ability of parents to pay. Respondents praised CSSA as "a great leap forward in helping custodial parents obtain fair levels of support,"[36] and as "greatly assisting women."[37] Noting that the greater fairness translated into higher awards, they said, for example:

> "With the advent of CSSA and hearing examiners, these cases are given proper priority and—in most instances—more realistic support figures. Also it appears that cases are handled more quickly."[38]

> "As a hearing examiner from November 1985 through October 1996, I was in a position to see enormous changes . . . most significantly the advent of more realistic orders following the enactment of CSSA. Prior to that legislation, orders barely covered the cost of child care for the custodial parents, almost invariably women."[39]

> "There is a greater consistency . . . . that benefits custodial parents. Previously, gauging the amount of child support was a guessing game that often resulted in grossly inadequate orders of support. The system is much better now."[40]

Enforcement of child support orders has improved as well according to respondents. Respondents reported that more warrants are issued, arrears are collected more easily (as long as the defaulting parent is in New York State), and overall enforcement is better.[41] A number of respondents give credit for these advances to legislation allowing judges to suspend licenses to drive and practice various professions.[42] All is not perfect—respondents said, for example, that lags in holding hearings and delays in enforcing orders remain—but the overwhelming sentiment was appreciation for improvements.

Post-Divorce Economic Stability

When respondents spoke about matrimonial actions in New York State, their reactions were more mixed. Of great importance to them was the economic fate of newly-single women. Judges, according to the questionnaire's respondents, are more likely to recognize homemakers' contributions to a marriage[43] and women do have a greater chance for post-divorce economic security,[44] but respondents also noted that women whose marriages end are still vulnerable financially. Time and again, respondents pointed to the lower post-divorce standard of living for women. They called attention as well to the largely unrecognized problems of mothers who are expected both to meet the daily physical and emotional needs of children and to provide a major portion of their families' income. They said, for example:

> " I find that in divorce cases, it is more the financial situation of women than the fact that they are women that which is problematic . . . and women are most often the 'non-monied' spouse."[45]

> "Even though the theory is for children to maintain the same standard of living after the divorce . . . . the custodial parent nearly always has to downgrade . . . . After divorce child support formulas rarely allow for maintaining the marital home."[46]

> "As women have become more economically self-sufficient they are expected to need men's financial resources less. And if they have not been working, they are expected to do so, even if they have less education and are the primary caretakers of their children."[47]

> "Women are expected to be self-supporting and be responsible for getting the children to school."[48]

> "Women still tend to have custody of the children . . . Women with 'middle-aged children' (i.e., 10-17) are presumed by the Courts to be able to work full-time even though the mother is still held back from fully succeeding at work because she still has significant custodial obligations."[49]

Cost of a Divorce

The cost of a New York divorce loomed large as an obstacle for women according to many respondents. At least one respondent saw improvement and concluded that "the disadvantages facing the less wealthy spouse in matrimonial litigation, while still extant, have slowly eroded."[50] More commonly, however, respondents expressed deep concern about the high price of New York divorces. They noted that judges remain reluctant to award interim attorneys' fees, that indigent parents have no right to counsel in Supreme Court, and that complicated paperwork makes divorces difficult and consequently expensive.[51] According to respondents, women often are placed at real disadvantages:

> "The cost of legal representation in connection with contested divorce proceedings remains an obstacle for women without sufficient financial resources."[52]

> "The demand for representation in family law matters vastly outstrips the supply of legal aid and *pro bono* attorneys [and] courts in our community are still reluctant to grant attorneys fees *pendente lite* for a non-monied spouse."[53]

> "Women continue to become *pro se* litigants because they can no longer afford to pay their attorneys."[54]

> "Until courts start awarding interim counsel and expert fees which are realistic, most women in divorce litigation will not get good representation."[55]

Custody

The perceived advantage that women held in custody battles 15 years ago seems to have diminished. Respondents who were concerned about past bias against men reported that courts no longer assume women are more suitable caretakers of children, that custody determinations are more neutral, and that women and men "now start on an equal footing."[56]

One attorney specializing in representing domestic violence victims, however, described bias not against fathers but against mothers:

> "Women are still being held to a higher standard of parenting. They are penalized for working full time and are expected to provide the greater amount of parenting time and quality parenting. Fathers are awarded and complimented if they merely provide some parenting even if the father provides less than quality parenting, but spends some time with the child. A mother will be penalized for not encouraging visitation, but a father will not

be penalized for not visiting with his child, arriving late and/or returning the child late or canceling the visitation without good cause or adequate notification to the mother.[57]

Violence Against Women: Sexual Assault and Domestic Violence

Violence against women, whether sexual assault or domestic abuse, is still with us, but respondents to the 2001 questionnaire believe that the justice system's treatment of abusers and victims has changed significantly in the past 15 years. Many respondents commented on the greater sensitivity of judges, law enforcement personnel, and the society as a whole to women who are the victims of either sexual assault or domestic violence. One judge characterized the changes as "dramatic."[58] Praise for a transformed system, however, was far from universal. One advocate responded to questions about treatment of assault and domestic violence victims with a more sobering view:

> "There has been some improvement in the credibility afforded victims of domestic violence and sexual assault and in court referral to services. However, I believe these victims continue to face uncaring, disbelieving, and disrespectful treatment by court personnel, including judges. Much of this, I believe, is related to gender, race and class bias."[59]

Sexual Assault

Sexual assault, a principal focus of the 1986 Task Force Report's findings on violence against women, has faded in importance in the minds of the 2001 survey respondents, perhaps because of changes in the deeply skeptical and punishing attitudes toward rape victims expressed in laws for many centuries.

Fifteen years ago the 1986 Task Force reported that recent legislation had abolished New York statutes' harsh corroboration requirements, the insistence that a victim prove "earnest resistence," and the license provided defendants to probe without restraint the intimate details of victims' lives.[60] In the past decade and a half these statutory reforms seem to have taken root and altered the attitudes and practices to such an extent that concern for unfairness toward victims of sexual assault was mentioned only occasionally as a separate issue. When respondents did discuss rape, for the most part they remarked on improvements, such as the willingness of prosecutors to proceed with marital and acquaintance rape cases and the freedom victims now enjoy from the appalling invasions of privacy that had been the norm. They said, for example:

> "Date rape and marital rape cases that would never have been prosecuted in the past are now routinely the subject of prosecutions, which often are successful. The impact of the rape shield law has been especially clear. Although in the early years after passage of the law, defense counsel frequently invoked or attempted to invoke the provisions for the court to find an exception to the prohibition, in recent years it is fairly unusual for anyone to attempt to question the complainant or introduce evidence of their past sexual conduct, except where that conduct involved the defendant.

> The complainant's sexual history has simply become a non-issue in most sex crime cases."[61]

> "Women are believed and are taken seriously. The days of asking a victim what she was wearing and why she was out of her home after dark are fortunately (hopefully) long gone."[62]

> "Victims of sexual assault are now far less likely to be 'blamed' for inviting the assault."[63]

Credibility, however, remains an issue. One administrative judge with considerable experience in criminal law believes different standards are imposed not by the law or lawyers but by jurors:

> "It is not uncommon to see clearly compromised verdicts and to learn from jurors after the verdict that the victim's credibility was an issue to some jurors because of the nature of the crime and the potential stigma to the defendant if he is convicted . . . . Even where the defendant testifies on his own behalf and recounts a totally inconsistent and implausible version of the incident, jurors do not reject this testimony as they do in other matters. Attitudes hostile to the complaining witness seem to prevail in the minds of both male and female jurors."[64]

One prosecutor also noted that men's stories are taken as true while women's are doubted:

> "When a woman's narrative conflicts with a man's narrative in a sexual assault context and there is a pre-existing relationship between the protagonists, a woman's credibility is assessed in a manner inconsistent with the normal rules of the game. There has been some positive change in attitudes over the years . . . . but a strict scrutiny of the woman's testimony in every phase of the proceedings can be expected."[65]

Domestic Violence

Domestic violence, a topic covered at considerable length in the original 1986 Task Force Report, elicited both more and sharper responses than any other topic in the 2001 questionnaire. Many respondents applauded the changes at all levels of the justice system, but many also saw the persistence of damaging attitudes and practices that they believe place the very lives of women in jeopardy.

Improvements Generally. Virtually all respondents called attention to the transformation of the justice system's treatment of domestic violence. They noted the greater protection and respect afforded victims and the increase in the seriousness with which cases of abuse are handled.[66] As one domestic violence advocate said,

> "The law has come to recognize the danger to women and children and positive responses have come about."[67]

Another respondent commented that:

> "Victims of domestic violence have gained a voice."[68]

One judge said that perhaps the most important change is "a greater appreciation by everyone concerned that a marriage license is not a license to commit domestic violence or sexual assault upon one's spouse."[69] Another judge remarked on the general recognition "that domestic violence is a pervasive condition in our society that must be addressed, especially by the court system."[70]

Often respondents used dramatic language to describe the differences, commenting on, for example, the "enormous change,"[71] "the sea of change,"[72] or "significant change in the way all law enforcement agencies approach these issues."[73] One judge, for example, said:

> "The courts have made a 180 degree turn. Finally we now treat these cases seriously. We understand that they are all potential homicides. . . . It is a tremendous improvement."[74]

Improvements in Attitudes and Approaches. Changes in the attitudes and practices of the major players—police and prosecutors as well as judges—were the subject of a number of respondents' comments. Typically police were credited with a "heightened awareness,"[75] with more effective intervention as a result of greater public awareness, with a greater willingness to take action, and with more consistent enforcement of orders of protection.[76] Remarking on improvements in police responses were judges who said:

> "One of the most significant changes over the past 15 years has been a complete refocus by policemen in the field. . . . When I first came to Family Court, the usual police response was 'just another domestic.' "[77]

> "The police have signed onto the [Domestic Violence] program enthusiastically after some trepidation."[78]

Respondents pointed to improvements in prosecutors' responses as well. Prosecutors too were described as more aware of, and more responsive to, victims; enthusiastic partners in innovative, high-tech approaches; vigorous enforcers of temporary orders of protection; and sources of practical assistance to victims.[79]

The courts themselves were seen by respondents as more hospitable to domestic violence victims, and court access was perceived as faster and easier. Town and village justices repeatedly noted an increased willingness of judges to issue orders of protection, give them teeth, and take enforcement seriously as welcome changes.[80] Judges were viewed as more inclined to order offenders from their homes; to grant women immediate custody with orders of support; and to use contempt as a sanction.[81] An upstate Family Court Judge described differences in his court:

> "The Family Court where I sat instituted a domestic violence policy about ten years ago that put such cases on a fast track. Applicants for *ex parte* orders of protection were seen by the Court within minutes of filing. Immediate service upon the respondent was facilitated so the case could be heard promptly."[82]

A New York City judge sitting in a felony part said:

> "The treatment of orders of protection has been the subject of impressive and positive change. I see that change reflected in the attitudes of my fellow

judges, who issue them now with the same equanimity as they would issue a temporary restraining order in a civil case."[83]

Another upstate judge said:

> "Though much work has to be done, judges are becoming educated in the arena and [are] understanding [that] these assaults are markedly different from the others."[84]

New resources available to domestic violence victims were mentioned repeatedly by respondents as yet another improvement in the past 15 years. Dedicated domestic violence parts[85] and victim advocates, often in courthouses,[86] were both mentioned frequently as contributing to the more effective responses of the court system and ultimately to the safety of victims.

Remaining Problems. But, as respondents made clear, the battle is only partly won. While recognizing the value of the past 15 years' changes, many respondents wrote about problems that remain for domestic violence victims who turn to the courts for help. Respondents, often but not exclusively domestic violence advocates, said, for example:

> "There is . . . an increased but not consistent understanding of the effect of domestic violence on battered women."[87]

> "There is still a gap in the understanding that a domestic assault is not a family matter."[88]

> "Judges are less likely to disbelieve a woman's allegations of abuse. They still do not treat the allegations as seriously as they should, but they pay attention to what women are saying more."[89]

> "I work as a domestic violence attorney providing back up support services to domestic violence advocates and attorneys, [and] I frequently hear horrendous stories regarding comments judges make. . . . Although I think we have made tremendous progress in our legal response to domestic violence in this state, I think it may still take a while for individual judges' [and] attorneys' attitudes to catch up."[90]

> "Many—too many—matrimonial attorneys have neither the understanding nor the desire to learn about the effects of domestic violence and the potential dangers faced by victims."[91]

> "[Women who are abused by their partners] are still victimized by the legal system as a matter of course. And, unfortunately, their complaints are minimized and their abusers/attackers are often not prosecuted."[92]

Diverting Attention Away from the Behavior of the Abuser: Respondents pointed to a number of damaging practices and approaches that they believe divert attention from the behavior of abusers and train the spotlight instead on the behavior of victims. One of these, issuing mutual orders of protection, was discussed at length in the 1986 Task Force Report. Although less of a concern than 15 years ago, a number of respondents suggested the practice of ordering victims to stay away from abusers at the same time abusers are instructed to leave victims alone has not completely disappeared.[93] One advocate said:

> "Changes in the law that require the filing of a petition before an order of protection can be granted have helped decrease the number of mutual orders of protection that are issued. However, even when the abuser files in retaliation to the victim's order, judges still continue to issue cross-orders. This places victims of domestic violence and their children in danger."[94]

Advocates mentioned as well the practice of charging victims with child neglect simply because they are being beaten or battered even when the woman is the only one who has been harmed physically.[95] Since the threat of neglect proceedings makes women fear courts, it cuts them off from any measure of safety that might be available from the justice system and contributes to the danger in their lives.

A third problem, encouraging victims to settle and blaming them when they refuse, was also mentioned:

> "The courts still pressure victims of domestic violence to settle, at any cost. If victims refuse to settle, they are seen as the 'unfriendly parent' or the 'destructive spouse.' Courts don't seem to understand that in DV cases, the only way for the victim to be safe is to have a judge make the decision. In DV cases, agreements and negotiations are always used to regain control over the wife."[96]

Failing to Understand the Reluctance of Victims to Proceed with Court Cases. Many respondents, most of them judges or town and village justices, shifted focus away from abusers by expressing concern about the reluctance of women to follow through with court cases. Some of the comments were relatively neutral:

> "The reality is that most DV charges are in fact withdrawn, probably for economic reasons."[97]

> "Unfortunately, I still get calls a few days later from the woman asking to have the 'charges dropped.'"[98]

> "Female victims are still prone to recant and move to have Orders of Protection vacated."[99]

> "A troubling number of 'emergency' petitions are withdrawn the next day."[100]

However, some of the respondents who commented on victims' hesitancy to proceed with their court cases spoke in terms that appeared to place blame on victims:

> "Many times the victim will open the door for the abuser making the Order of Protection next to useless."[101]

> "Now the 'weak-link' is most often the victim's unwillingness to testify."[102]

> "Courts are more cognizant [of] the pattern of victims who 'forgive' the abusers and who consequently enable their offenses."[103]

> "I am amazed at the treatment women will undergo, and, even though they are under Court orders to stay apart at least until the case is finished, within 48 hours they are back together begging that the charge be withdrawn."[104]

> "Victims should also have to attend counseling to break the cycle and stop taking the abuser back."[105]

> "Victims are often their worst enemies. [They] start a proceeding and then drop it."[106]

One lawyer who provides back up services to domestic violence attorneys analyzed this problem from her vantage point and said:

> "For example, just today an advocate from a domestic violence program called me to ask how someone could make a formal complaint against a Family Court judge. Apparently, a judge told the domestic violence victim, after she decided to drop her custody petition, 'If he slaps you around again, don't come back to me.' Many judges still do not understand why a victim of domestic violence and/or sexual assault may drop charges, withdraw petitions, etc., and that this may actually keep a victim safer."[107]

Another lawyer suggested that what is still needed is "a realization that the courts do not strengthen a woman's resolve to leave a domestic violence situation by penalizing her for not leaving."[108] Summing up the problem, another lawyer said:

> "I still see in some judges and attorneys [the belief] that women are practically responsible for [the] inappropriate conduct of a husband, boyfriend or father of their child."[109]

Credibility. A number of respondents believe that tougher standards are used for assessing the credibility of victims of abuse than those applied to abusers or to other crime victims. They said, for example:

> "Women still face an uphill battle convincing the court system to take domestic violence seriously. . . . Women's allegations are still often seen as 'hysterical' while batterers are viewed as calm and cooperative."[110]

> "I frequently hear stories and have seen personally judges who do not consider a victim of domestic violence as credible, especially if the victim does not present well due to her being in [crisis]."[111]

> "As men pursue custody more often, women's credibility seems to be decreasing concerning domestic violence. A middle class man with whom the judge can identify is believed or is given the benefit of the doubt [while] the victim of domestic violence is blamed and disbelieved for not leaving the man. . . ."[112]

> "While women are usually believed at the *ex parte* appearance, as soon as the abuser alleges that she is using the order of protection as part of a divorce strategy or because she is having an affair, some judges still give more credence to men."[113]

Some respondents demonstrated this skepticism about allegations of domestic violence. Leaders of the matrimonial bar made particularly strong charges:

> "I believe domestic violence and sexual assault seem to be raised in more cases than before even when [they] do not exist. The simple allegation without substantiation is now enough. . . . to create untenable and unsettleable issues."[114]

> "In matrimonial actions, domestic abuse is often abused by women to obtain exclusive possession of the marital premises and child custody by filing false or exaggerated domestic abuse claims to obtain *ex parte* orders of custody, possession of the marital premises."[115]

Differential Treatment Based on Stereotypes. Some advocates for domestic violence victims responding to the questionnaire reported witnessing what they believed were intrusions of deeply harmful stereotypes and prejudicial views of women into courtrooms, and they wrote with passion about continuing differences in courts' responses to men and women litigants:

> "Women continue to be held to a different (and more stringent) standard, *e.g.,* in compliance with court orders or the timely submission of documents. Rarely is a non-compliant man held to the same exacting standard."[116]

> "Women are still viewed through the stereotyped lens as inherently incredible, manipulative and hysterical. Women are pushed far harder than men (even acknowledged abusers!) to prove the truth of their allegations."[117]

> "If a woman displays any type of anger or resentment toward her abuser/partner, she is immediately labeled a troublemaker. If she is involved in a custody case, she will invariably be viewed as the parent who will 'alienate the affections' of the non-custodial parent. Men, on the other hand, who are angry and oftentimes violent, are ignored or pacified. Their violence is minimized."[118]

Treatment of Women

Besides examining the tendency of those within the court system to question the credibility of sexual abuse or domestic violence victims, the original Task Force looked more broadly at the conduct of judges, court personnel and lawyers to determine if the credibility of women was undermined by the kind of inappropriate or demeaning treatment that can distort the judicial process and prejudice litigants.[119] The Task Force found that the responses of men and women differed, and that men were far less inclined to notice or report, for example, sexist remarks or jokes.[120]

Respondents to the current questionnaire also were split along gender lines over the extent to which women are treated differently and less respectfully. A relatively large number—about one out of five respondents, all of them male—believe, despite the Task Force's unequivocal findings to the contrary, that women never were treated differently from men. Some of these men are bar association leaders who said they had never seen women's credibility challenged and thus saw no change.[121] Others were judges who

typically responded to the inquiry about credibility with a statement that they themselves had always treated everyone, male and female, fairly and respectfully.

Judges said, for example:

> "In his years on the bench, the undersigned seldom observed or was made aware of any differential on a gender basis by those involved in the court system as to assessment of credibility."[122]
>
> "I have always demanded equal treatment for anyone in my courtroom, regardless of sex, race, age or any other contributing factor. Word gets around, and that is obviously the reason I have not had to address any problems."[123]
>
> "I have always treated female defendants, attorneys with respect."[124]
>
> "I have never witnessed any discrimination in assessing credibility based on gender."[125]
>
> "Perhaps I'm naive, but I never felt there was any 'credibility' issue."[126]

About the same number of respondents recognized, as the original 1986 Task Force reported so eloquently, that historically women had been subjected to different, less respectful, and unfair treatment, and they perceived improvements. Unlike the group of respondent who denied there ever had been problems, this group included both men and women.

Although few of these respondents suggested that inappropriate treatment of women had entirely disappeared from courtrooms in New York state, some characterized the change as "marked," or "dramatic."[127] They spoke of male attorneys who were more careful in their communications with female judges and court personnel, improvements in the approaches of all court personnel, and better behavior in front of jurors. They noted encouraging developments:

> "When a woman is addressed in a less then respectful manner, it is obvious and corrected as opposed to accepted, though this happens with much less frequency than in the past."[128]
>
> "While I am sure there are still instances when women are treated inappropriately . . . I am certain that the number of those occasions has decreased dramatically. One rarely hears female attorneys, judges, or litigants addressed in a disrespectful manner by other participants. Unlike 15 years ago, if it happens it is addressed immediately by a judge."[129]
>
> "In the late 70's and early 80's, women attorneys and women court employees were routinely demeaned by paternalistic and condescending male attorneys, judges and co-employees. The use of appellations like 'sweetheart' and 'dear' and comments on a woman's marital status or appearance were commonplace. Women were urged to forgive this behavior because it was not done out of malice but, rather, ignorance. . . . It is to the credit of the women who persevered through this era that they refused to accept this institutionalized discrimination. Women, on all levels, provided support for

one another and changed the climate in the courthouse. . . . I personally cannot remember the last time I heard an attorney refer to his secretary as 'his girl' or refer to an adversary as 'cute.'"[130]

"Generally, all women participants in the criminal justice system are treated better today than they were 15 years ago. We see little discrimination against or mistreatment of female attorneys, and overtly sexist behavior is virtually unknown."[131]

Others found less to celebrate. A substantial number of respondents believe that behavior in the courts may have changed, but not enough to place women on anything like an equal footing with men. They said, for example:

"I have seen improvement, but some older members of the bar and bench still seem to have difficulty accepting the fact that a woman, especially an attractive woman, can be a capable attorney, jurist, etc."[132]

"Some judges still treat women discourteously or deferentially or with indifference, all, at times to their disadvantage. This applies to women litigants and attorneys."[133]

"I do still see several police officers give less credibility to women's statements when making out incident reports, accident investigations and when testifying. I have taken recesses and instructed ADA's and defense attorneys that such prejudices are unacceptable."[134]

Respondents also referred to the persistence of an "old boys" network, despite gains:

"The 'old boy' network/attitude still exists, but substantially diminished over the past 15 years."[135]

"Women have come further, faster than any other segment in our society . . . [but] the old boy network still exists. We need to dismantle it completely."[136]

"The 'old boys' network is still alive and kicking."[137]

The additional burdens placed on female attorneys were among the objects of continuing concern:

"On the surface, respect is given, but I see lawyers still, and some justices, treat female attorneys less formally than their male counterparts."[138]

"For the most part, women have been given greater respect, although there is still a disparity in the treatment of attorneys based on gender by court personnel and, to a lesser extent, judges and other attorneys."[139]

"I do believe a women attorney is still deemed less credible than a man attorney by male judges in many instances."[140]

"It's much easier for women to operate in the present system because there are more women. The sense of aloneness is gone . . . [but] for women attorneys, I believe, it is more difficult to be assertive and tough."[141]

> "Women in the profession continue to gain more credibility, but I feel we still have to work harder to achieve it."[142]

> "There is no doubt that there is still a 'boys' club' mentality in this profession, and that it is often uncomfortable to practice in that atmosphere."[143]

> "Though outwardly things seem to be improving, I still believe that many male judges are somewhat condescending toward women attorneys and may not give the same weight to a woman attorney's arguments."[144]

> "Where I practice, there is still a feeling of a 'boys' club' running the courthouse (despite women judges) and shared winks between clerks and assigned counsel that exclude domestic violence advocates, marginalizing them along with their clients."[145]

Respondents perceived that female judges as well as female attorneys were singled out for differential and harsher treatment:

> "Women judges are still treated as 'outsiders' or untrustworthy by many male judges."[146]

> "Women judges are tested more than men on the bench."[147]

> "Some of our [judicial] colleagues still regard us as an anomaly, the weak or tenuous link in the judiciary."[148]

Some assessments were dismaying. One respondent, a male member of the original Task Force, said he believes, "Society at large still does not take gender equality seriously."[149] Other respondents said:

> "Women are still viewed as hormonally driven. . . . Their observations, intelligence and motives are more violently attacked."[150]

> "It bothers me that very inappropriate conduct of a male is more tolerated then with a female. . . . If the woman is less than perfect she can be the subject of subtle discrimination. . . . I've actually witnessed abusive and disruptive men get away with conduct that's inappropriate and had to then listen to a judge berate my female client."[151]

> "A double standard still exists as to the credibility of women in the courts. Negative allegations against a woman are taken at face value, while they are considered 'mere allegations' when relating to a male."[152]

> "Slight changes toward the positive but not significant. I still have sheriff's deputies leaving court saying, 'Thanks and see ya later, dear.'"[153]

Four respondents, all of them women and all judges, remarked that women who appear strong or powerful are quickly labeled "bitchy" or a "bitch."

> "A strong woman who voices her opinions in a direct way is seen as a 'bitch' by most judges and personnel."[154]

> "It is difficult to change the male idea that strong, intelligent, sometimes aggressive women lawyers and judges are 'bitchy,' (sorry) whereas males are more often seen as 'achievers.'"[155]

> "[An assertive woman is] viewed, as a juror in a recent case said, as 'a bitch.'"[156]

> "I still have many defendants requesting to see the man judge; I have also been called that 'bitch woman judge.'"[157]

Advancement of Women in the Profession

As an issue separate and apart from the treatment of women in courtroom settings, the questionnaire, following the lead of the original Task Force, addressed the ability of women to reach positions of responsibility within the legal profession.

The increase in the number of women practicing law over the past 15 years is striking, and many respondents from various parts of the state and varying kinds of practices remarked on the growing and visible presence of women at the bar and on the bench as well as the effects of critical mass of women in the profession. They said, for example:

> "When I graduated with a class of 125 from Albany Law School, the group included but three women. Today, I am informed the number of women students there is greater than the number of men.[158] When I first began to practice law in [Warren] County, there were one woman partner and two associates in practice here. Today there are approximately 100 male attorneys . . . and approximately 25 female attorneys."[159]

> "In The Legal Aid Society of the City of New York women now comprise half of the attorney staff. Women serve as attorneys-in-charge of four out of the Society's five divisions."[160]

> "A year ago our Court had a woman [village] justice, a woman ADA and a woman court clerk. I think some male defendants tended to be overwhelmed by the concentration. . . . especially the assault and domestic violence defendants. Very interesting."[161]

Yet the picture of women in the profession is mixed. As one upstate judge said:

> "While theoretically there are no barriers to advancement of women in the profession, the current reality is that women are woefully under-represented in the judiciary in this area of upstate New York and likewise are woefully under-represented in partnership or leadership positions within law firms."[162]

Attorneys

While acknowledging the obvious and dramatic increase in women with law degrees practicing in numbers that would have been difficult to imagine a few decades ago, many respondents remarked on the unevenness of women's achievements. They pointed to kinds of success that still eluded women in significant numbers and pockets of the

professional life where women are still rarely seen. Time and again respondents referred to a "glass ceiling"[163] that keeps many women from the upper reaches of the profession, although one respondent expressed some optimism: "The glass ceiling still exists, but it is higher and not as thick."[164] Women, according to respondents, are less likely to be trial lawyers,[165] "heavy hitters"[166] or high-profile defense lawyers.[167] Some respondents believe that it is more difficult for women to practice law in law firms, particularly large ones, than in the public sector, and they believe it is more difficult for women to make partner then men. They said:

> "I see little in the past 15 years to indicate there is a sea-change in advancement opportunities for women in private law firms. It is still very much 'a man's world' when it comes to 'partnership potential' in private firms."[168]

> "As to the private sector, I can only report that with respect to appellate counsel appearing before our court, the number of men still far outnumbers women. I can only assume from this fact that the number of male partners in law firms still exceeds the number of women by a wide margin. In my view, there is considerable room for improvement in this area."[169]

> "Women. . . still face glass ceilings (especially in private practice) and have to work harder than men to be acknowledged and promoted."[170]

Some respondents believe that women have an easier time practicing law in New York City or other urban settings than outside city limits.[171] And one respondent wrote about particular problems of women of color:

> "I have personally been assumed to be a client because I am a woman of color. My suit did not even 'tip off' my opposing counsel."[172]

According to a number of respondents, family obligations still put a brake on women's careers. Maternity leave and child care remain problems, and, while alternative work schedules may help women balance work and family lives, they are understood to diminish women's chances for partnership or other kinds of professional achievement. Identifying the dilemmas facing women with major responsibility for raising children, lawyers said;

> "Women still have the primary household and child-rearing obligations and often cannot stay on the 'partnership track.'. . . More firms are offering flex-time and part-time positions, which can be good for specific women with children [but] these flex-time and part-time jobs are viewed as lower or less important jobs and thus probably hurt the cause of women in the profession generally."[173]

> "Women still have the primary household and child-rearing obligations and often cannot stay on the "partnership track."[174]

> "I see child care as the biggest impediment to the advancement of women generally in the legal system."[175]

A judge commented from a somewhat different angle on the problems of attorneys who are mothers:

> "With the ever-increasing competitiveness and use of faster technologies, the pace of practice has become more demanding and requires attorneys to work well beyond the usual workday, thereby creating difficulties for women with sole or shared family responsibilities."[176]

Judges

Women, according to respondents, are far more visible on the bench than they were 15 years ago,[177] and some respondents commented on the differences that attend this more diverse judiciary.

> "The presence of these competent women in positions of authority is beneficial because women, as a group, bring to the bench perspectives that are different from men as a group."[178]

> "[Increasing] the number of Supreme Court judges [lends] credibility to female attorneys, litigants, and witnesses."[179]

But, according to respondents, gains for women in the New York State judiciary are spotty.[180] Respondents noted that women are still not found in substantial numbers on the Supreme Court, particularly in the upstate counties. One judge observed that:

> "In some upstate areas . . . there are still no women Supreme Court Justices."[181]

A leader of an upstate Trial Lawyers Association summed up the problem—and its solution—saying:

> "We need more qualified women to run and be elected to Supreme Court."[182]

But, according to some respondents, both men and women, the political process that leads to a judgeship is stacked against women. Male judges in particular identified this problem:

> "As long as nominations for judgeships are controlled by political parties where male bonding occurs, only men or mostly men are selected."[183]

> "At a local level, the selection process for judges . . . is still parochial, political and male-dominated."[184]

> "There is still a strong overall public perception that judges should be men. For elected positions that hurts, and advancement to appointed judge positions is most often made from the lower (elected) courts."[185]

The Future

No consensus emerged about unfinished work and future projects. The varied suggestions about further initiatives consistently reflected respondents' differing analyses of the status of women. Those who believed there were no problems, and never had been, found no need for further action except, perhaps, as one village justice said, "to stop blaming males for female's problems."[186] More sympathetically, one village justice

suggested that "No action [is] required. I believe changes in our social structure are in lockstep with the legal system."[187]

Some respondents who perceived the persistence of challenges to the ideal of fairness that inspired Chief Judge Cooke to appoint the Task Force suggested that the court system stay its course, keep fighting discrimination, and, as one judge said, "vigorously pursue . . . existing programs."[188] Or, as one judge said, "We must keep this going."[189] Thus, many respondents concerned about women's advancement in the profession recommended continuing to promote women to leadership roles, place them in increasingly important judicial posts, elevate them to Supreme Court, find more women to teach at law school and assume deanships, and encourage senior lawyers to mentor more young women and to help them reach partnership level and beyond.

Using education to achieve equality, a strategy on which the New York State court system already relies heavily, was endorsed by some respondents. Speaking generally and summing up the role of education, one judge said:

> "Education was and is a necessary tool in bringing about the awareness that is needed to fight gender bias and to make all aware that it will no longer be tolerated."[190]

Respondents, for example, suggested more education for judges and court personnel on domestic violence and sexual assault. One attorney spoke with great specificity about the kind of education she would like to see:

> "Judges and courthouse personnel should be educated about domestic violence and learn to recognize abuse of the court system as one of its symptoms. This education should emphasize that most battered women make rational decisions to protect themselves and their children and even if they are not choices the court understands, they should be respected."[191]

A judge spoke unequivocally about the need for continuing education on domestic violence:

> "I am fortunate to have a specialized Domestic Violence Court . . . but as I and my staff travel throughout the state we hear continually [that] judges still do not 'get it.' I cannot recommend strongly enough the need for additional mandated judicial training."[192]

A number of respondents remarked on the plight of litigants with limited financial resources. They suggested money be made available for more legal services, for offices of the self-represented, for services to domestic violence victims, and for counsel assigned to represent the indigent. As one advocate said:

> "The vast majority of low income people in courts are women, [and] the resources for legal services for low income women are wholly inadequate."[193]

One respondent raised the problems of incarcerated women, an issue mentioned in passing in an appendix to the 1986 Task Force Report as an issue for further study.[194]

Respondents discussing the future also talked about the needs of litigants in matrimonial cases:

> "There is a glaring need to level the playing field with regard to legal representation when you have a monied spouse versus a non-monied spouse. In addition, something needs to be done to provide for the immediate availability of financial and other resources to the non-monied spouse for day-to-day living expenses and needs."[195]

> "We must aggressively promote economic fairness in divorce and support cases."[196]

> " Middle income [matrimonial] litigants do not always benefit from case law based on the affluent and have less money to appeal."[197]

> "We need additional funding for legal services and a greater commitment to *pro bono* services; these will help poor and lower-middle income women pursue support/divorce rights. We need to provide greater assistance to self-represented litigants."[198]

Respondents singled out the Family Court, where so many litigants are women, as a place particularly needing an infusion of attention and funds:

> "[There is] a need to re-evaluate the efficiency of court procedures and to provide increased resources to the family courts so women receive the fair and just resolution of the cases."[199]

> "More funds should go to improving court environments where women are more likely to be litigants, like Family Court."[200]

Reflecting on efforts so far, one judge responding to the questionnaire identified yet another approach to the future—working to change attitudes:

> "Gender fairness issues were first raised a decade ago during evening sessions at our annual judicial seminars. Then, there were vociferous outcries from our male colleagues. They felt the issues were petty and the allotted time was too consuming. Today, political correctness would mute their remarks, but attitudinal change is still very much worth striving for."[201]

Conclusion

The opinions gathered together by this survey provide us not with a simple road map but rather with ideas of paths we might follow. Together they suggest that many people who know our courts very well believe the journey is far from over and that much work remains if we are to reach Chief Judge Lawrence Cooke's ideal of a "jurisprudential scheme . . . . [that] is fair under all circumstances" to New York State's women.

EXCERPTS FROM THE TRANSCRIPT OF THE APRIL 4, 2001 CONFERENCE:

The Miles Traveled and the Miles Yet To Go

Introduction to Excerpts from the Transcript of the April 4, 2001 Conference

Hon. Betty Weinberg Ellerin, *Justice, Appellate Division First Department, and Chair, New York State Judicial Committee on Women in the Courts.*

It's truly my pleasure to welcome all of you to this very exciting event in this very gorgeous venue to celebrate the fifteenth anniversary of the issuance of the report of the New York Task Force on Women in the Courts. That report, after a twenty-two month intensive investigation, meticulously documented the extent to which bias on the basis of gender infected the way in which women were treated in our court system as litigants, as attorneys and as court employees.

Let me give you a little historical background about how the task force came into being. That discrimination against women was practiced in our court system, and in society generally, had long been recognized and fought against by many, including women's bar associations and others of good will. But, unfortunately, it was accepted by all too many in our society, particularly at the highest levels of power, as the way things were or, worse, the natural order of things. As a matter of fact, there were judicial decisions that proclaimed this view.

And then, a little over twenty years ago, respected academic writings took note of the various ways in which such bias appeared to affect and infect decision-making in our judicial system to the disadvantage of women. One of those academics was Professor Norma Wikler, someone very dear to us and to our committee, who brought that message to the then newly-formed National Association of Women Judges. And it was concluded that in order to address such inequities meaningfully, at the root, each state should undertake a searching analysis to document the extent of such bias within its own judicial system and to make specific recommendations as to how to eliminate it. Let me assure you at the outset, the judicial leaders in most states did not rush to embrace that challenge. Instead, most either ignored it or took a defensive posture and assured all who would listen that, oh, they didn't have that problem within their borders, maybe in some other state, but clearly not in theirs.

We in New York, however, were blessed with a Chief Judge to whom bias in any form was intolerable, a Chief Judge, moreover, who was always open to, and indeed searched for, ways to make our judicial system a model of fairness. His response to this challenge was immediate and, in his insightful and pragmatic style, brilliant. He created a statewide task force of outstanding and highly respected members of various segments of the

community: judges; lawyers and non-lawyers; academics; legislators; and other community leaders. Many were already known to be deeply committed to gender fairness. Some others, however, were part of the establishment that had long accepted gender inequity as a given.

I must say that when I saw a few of the names on his list I was less than enthusiastic. But, as usual, he was right. Those about whom one might have had qualms turned out to be among the most forceful and effective voices urging change because they had seen first-hand during the investigatory stage how pernicious and destructive bias in the court system could be to the lives of women.

Their report is a living tribute to that man of vision and goodness from Monticello, Chief Judge Lawrence Cooke, and to each of the members of the magnificent task force he established.

Today's conference will celebrate both the significant changes that have taken place in our court system since that report and its recommendations were issued, and also take note of what yet remains to be done. As has been said often, court reform is not for the short-winded. And it is important also to know that the issuance of the New York report not only served as a blue print for change for us, but, because of the wide and favorable publicity that it generated, it also served as a catalyst for various other states to create similar task forces. Today over forty-five states have issued such reports. And guess what? Despite the we-don't-have-any-problem-here response, every single one of those Task Forces found that, yes, there was a problem, and they documented existing bias with precision and made specific recommendations about how to address it.

Now it is my privilege and pleasure to introduce our Chief Judge Judith S. Kaye. The hackneyed phrase, "She needs no introduction," really does apply to her because her extraordinary record of accomplishment and unique persona have touched each of our lives in so many ways. We of this Judicial Committee are particularly grateful to her for her unswerving support and for her constant and wise encouragement. As for her role here today, let me say no one can or has more eloquently eulogized former Chief Judge Lawrence Cooke than she, not only incomparable prose, but in terms of continuing to bring to fruition so many of the dreams he had for the court system, as well as by charting so many other innovations that would have made him proud. She truly continues, and enhances, the Monticello tradition that has enriched our judicial system beyond measure.

Tribute to Hon. Lawrence S. Cooke

Hon. Judith S. Kaye, *Chief Judge of the State of New York*

How fitting it is that we celebrate the anniversary of the Committee on Women in the Courts coincident with the opening of an exhibit today at 60 Centre Street on the rise of women in the legal profession.

Women's History Month may officially have ended on March 31, but we all know that keeping track of the miles traveled and the many, many miles yet to go deserves,

indeed it requires, our round the clock, round the year vigilance. And what better way to celebrate the advancement of women than this conference marking the fifteenth anniversary of the watershed path-breaking Task Force on Women in the Courts.

It is, of course, impossible to think about the miles traveled without thinking about this Committee's beginnings fifteen years ago. And it's impossible to think about this committee's beginnings fifteen years ago without a tip of the hat to Chief Judge Lawrence Cooke, whose inspiration and commitment all of this was. I am delighted that my assignment today is both to pay tribute to the Chief, a lifelong friend of mine, a cherished colleague and treasured mentor, and, on behalf of the Committee, to present a plaque honoring him to the Cooke family. And I'm so pleased to welcome and to introduce his children, George and Colleen and Eddie and Lauren, and his grandchildren Austin and Lawrence. And I know that all of them will carry back to Monticello to Alice, Chief Judge Cooke's beloved wife and partner of more than sixty-one years, our love, our esteem and our gratitude.

Anniversaries are benchmarks. It is therefore entirely natural on anniversaries to think back on one's own personal experiences as this nation and this state continue to make halting progress toward our ideal of equality. Inevitably many of our thoughts will be sad ones, thoughts of exclusion and discrimination, thoughts of doors closed and opportunities denied. But also, I hope, for each of us here, there will be happy thoughts as barriers have indeed been shattered and sensitivities enlarged. And as women have made their way into and up through the ranks of the justice system, undeniably there still are great, great distances to be traveled. But undeniably also the picture is a much, much different one from that of even fifteen years ago. And that is in large measure due to the efforts of this Committee and its affiliates in every single district throughout the State of New York. I express my particular gratitude to our incomparable Chair, Judge Ellerin, and to our exceptional counsel, Jill Laurie Goodman.

Joy and sadness. That pretty well captures my own thoughts about this morning's honoree, Chief Judge Lawrence Cooke, or as he was widely-known, just plain Larry. The sadness, I have to tell you right at the start, is only that he is not here among us to see the magnificent fruits of his inspiration and commitment and to receive your heartfelt applause. I know that he would have enjoyed it. And he surely does deserve it.

For me, calling Chief Judge Lawrence Cooke Larry was actually the hardest part of my work at the Court of Appeals back in the year 1983. I rehearsed that for hours and hours. And to tell the truth it just never was easy for me. After all, I did grow up in Monticello, New York. In fact, I grew up in the Village of Monticello together with George and Eddie and Lauren. Back in Monticello, Chief Judge Cooke was universally admired whether he was at the Miss Monticello Diner having pie and ice cream or at the Fire House on Broadway where he was a loyal volunteer, or on line at the supermarket, or shopping with Mrs. Cooke at Smith's Apparel, my parents' lady's clothing store, or presiding at the Sullivan County Courthouse, now named for him. His interest in people and his respect for the worth and dignity of every single human being were legendary. And his love of people was returned to him in full. He was everywhere revered in the community. But for me he could never be Larry. He was always Judge Cooke.

No tribute to Chief Judge Cooke could be complete, as I am certain his children and grandchildren will readily agree, without reference to his favorite bit of advice, which was actually advice received from his own father. How many times, I ask you, all of you, did you hear this from your father and your grandfather: "When in doubt"—what's the rest of the sentence? "When in doubt take the high road."

It is unquestionably his unswerving commitment to the high road that led to his own distinguished career in public service beginning with his election as Town of Thompson Supervisor, then Judge of the Surrogate and Children's Court, Supreme Court, Appellate Division, Court of Appeals, Chief Judge of the State of New York, Chief Judge of the Court of Appeals, Head of the National Center for State Courts and the Nationwide Conference of Chief Justices. He served New York State's judiciary brilliantly to the very last minute that was allowed by law. And then he continued to contribute his profound and prodigious talents as counselor, as law professor, as Chair of the Governor's Judicial Screening Committee. He lived a life of public service, a life of rectitude and integrity, a life dedicated to the law, and the principle of justice for all. Always—always—Chief Judge Cooke walked the high road.

I have no doubt that it was his unswerving commitment to the high road that also inspired the idea for a New York State Task Force on Women in the Courts. In his own life, in his own world, he saw injustice. He saw injustice and his only thought was to act to eliminate it. In his words, and I'm quoting: "The core of the law is justice. That's what it's all about. That no one be deprived of it. That everyone be afforded the opportunity to achieve her or his noblest of aspirations."

The idea, of course, did not originate with him. Equal opportunity is, after all, among the founding principles of this great nation. But when it came to women in the courts, women lawyers, women judges, women litigants, Judge Cooke saw that there was an intolerable gap, a chasm, a canyon, between the glorious rhetoric and the grim day-to-day reality. And, as was typical of him, he set out to do something about it, to right a wrong, to correct an injustice, to set in motion a process for reform.

Now no good idea is without its critics, and the Task Force on Women in the Courts certainly had its share. "What me," they said, "discriminate against women? Never. I protect women. Who needs a Task Force anyway? A male Chair? A budget? Don't be ridiculous. "

Thankfully Judge Cooke weathered the storm and thankfully the Task Force completed its work carefully, authoritatively, comprehensively. And its report, as you have heard, has become a model for the nation—forty-five others followed it—and a blue print for reform throughout the State of New York.

The 1986 Task Force Report made the front page of *The New York Times* and the *New York Law Journal,* of course, and it was reprinted in full in the *Fordham Urban Law Journal.* In fact, the quote of the day in *The New York Times* was the conclusion of the Task Force, and here's what it said: "More was found in this examination of gender bias in the Courts than bruised feelings resulting from rude or callous behavior. Women uniquely, disproportionately and with unacceptable frequency, must endure a climate of condescension, indifference and hostility."

To a good many of us this did not come as news.

Within days of the report's release this committee was formed under the very, very able leadership of our magnificent Judge Kathryn McDonald, a great friend, and then succeeded by another great friend, Judge Betty Ellerin, to assure that the spirit as well as the recommendations would be followed faithfully to the letter. And indeed you have all done your work very, very well.

One thing Chief Judge Cooke knew for absolute certain is that change this profound would not be accomplished overnight. Ten years after the Task Force's report was issued, he implored the Association of Women Judges and many, many others to continue to be leaders in the struggle for what he called unadulterated righteousness that goes on to this very day. Those are the miles yet to go requiring the extraordinary energy and persistence and vigilance of us all.

"A champion of equal justice; a guardian of individuals rights; a courageous reformer; a decent, ever-caring and faithful friend whose commitment to fairness and support for women inspired the creation of the Task Force on Women in the Courts. His wish, to use his words, simply was to be remembered for having always been fair. Fairness, after all is just a synonym for justice." Those are the words in our hearts today as we think of and pay tribute to Chief Judge Lawrence H. Cooke, we the beneficiaries of his inspiration and commitment. Those are also the very words inscribed on the plaque I now have the privilege of presenting on behalf of the Committee in Women in the Courts to the family of Chief Judge Lawrence H. Cooke.

Morning Panel

Fern Schair, *Senior Vice President of the American Arbitration Association, Member of the New York Task Force on Women in the Courts, Vice Chair of the New York State Judicial Committee on Women in the Courts, and Co-chair of the Conference.*

I would like to proceed in the spirit of the Task Force that took as its principal assignment not chronicling the strides that had been made—and we could indeed spend this hour and a half, and probably all day, talking about how far we've come. Rather I've asked the panel to touch on progress but to focus on how far we have to go. I would like us to hear what the next challenges over the horizon are and to think about what framework and information we all need, especially those judges on the front line, to help us understand what's happening, to understand the lives of women, the cultural framework they come from, their backgrounds and, what they bring to the issues they bring before judges.

Since the Task Force reported, diversity has increased in our country, in our state and in every one of our neighborhoods. This is not a city-rural issue or an upstate-downstate issue. There is no part of this state that is not more diverse than it was 15 years ago. Everywhere there are more issues to handle and more problems we on the Task Force didn't foresee.

I want to frame the discussion a little bit by two quotes that were in a *New York Times* article on a recent conference on domestic violence. One of the professors organizing the conference said:

> "Domestic violence must be looked at in the context of race, economic status and religious and cultural beliefs."

It's provocative, but something to think about and look at. And another professor, perhaps even more provocatively said:

> "The legal system was perhaps not the first place to intervene to help victims."

Again, a provocative statement and something that we all need to think about to make sure that the legal system is something that can be helpful in whatever crisis women happen to find themselves.

Hon. John Leventhal, *Supreme Court Justice sitting in Kings County's Felony Domestic Violence Part.*

Recommendations:

- We should maximize the flow of information. Domestic incident reports should be complete and include statements of victims. A mechanism should be established to provide the domestic incident reports to the DA's so that once they're properly and completely filled out they can serve also as a corroborating affidavit, thereby converting a criminal complaint to a jurisdictionally sufficient information.
- We should not only have domestic violence officers working around the clock, we should train every police officer to handle a domestic violence situation.
- Cameras should be in every patrol car to take pictures of the crime scenes, and they should have computers with access to the domestic violence registry.
- Technology should be used to send information to the DA, to get 911 tapes, emergency room records, photos taken at the crime scene and the initial police write-up to Criminal Court for arraignments so they can be used by judges deciding bail applications.
- There has been a tremendous increase and improvement in police training, but the culture has to be changed and everyone has to be sensitized.
- There are many reasons why a victim may not come forward—economic, affection, fear of loss of the home, no one to watch the kids. We have to take the weight off of the victim.
- New York should pass legislation to permit a judge to consider the safety of a complainant in setting appropriate bail conditions. Other jurisdictions allow this criteria to be used as a factor in setting appropriate bail.
- We need more and better shelters, shelters which do not require women to choose, for example, between staying with an abusive spouse and giving up a

13 or 14-year old son. Women should not have to make impossible and improper choices.

- The courts themselves have to do better monitoring of defendants. Why can't we give the Department of Probation jurisdiction to monitor defendants through electronic bracelets as a pre-trial condition of bail.

Dennis Hawkins, *former Chief of Investigations, Kings County District Attorney's Office*

Progress: In the fifteen years since the Task Force made its recommendations, the District Attorney of Kings County, Charles J. Hynes, has made changes within the office that represent the best of what is happening in jurisdictions all throughout the State. Our progress is evident in a number of ways, including:

- Commitment of Resources: In 1990, District Attorney Hynes established the Domestic Violence Bureau. It currently has 63 Assistant District Attorneys and 25 support staff. There is also a Sex Crimes Bureau with 23 ADA's and 9 support staff. And District Attorney Hynes established a Crimes Against Children Bureau with 20 ADA's and 9 support staff. That is 106 individuals who are working on issues of violence against women and children out of 527, representing 20% of our office. The Office also employs 17 social workers and/or counselors to assist the victims in these cases.
- Mandatory Continuing Legal Education: The DA's office has used the advent of Mandatory Continuing Legal Education as a way of organizing ourselves. Since our ADA's have to get MCLE credits anyway, we have a well-developed, in-house MCLE program, and many of the courses focus on specialized areas such as domestic violence and sex crimes.
- Conferences: The conference idea has really become a growth industry in our Office. Linking the District Attorney's Office with academic institutions is absolutely critical.
- Technology: We are experimenting with a project that makes videotapes and the tapes of 911 calls available to judges through computers. We also have been part of the Brooklyn Project AWARE, in which we provide pendants to women who are at risk for further abuse. Pushing a button on the pendant places a direct call to 911. The police are aware that this pendant has been provided to a potential victim and respond immediately.
- Working with Communities: The Central Brooklyn Task Force Program, which is funded through the Violence Against Women Act, provides money for us and for the police and, more importantly, for four community agencies that serve immigrant women. This particular grant is designed to act even before arrest by educating immigrants, mostly Asian, Caribbean and some Middle Eastern women. It also provides social workers who are able to make contact with victims at the time of the arrest or slightly thereafter and start talking about options. This helps create a responsive approach that is not paternalistic.

Recommendation:

- We should be evaluating all of our programs, including the impact of no-drop policies, mandatory arrest policies, and social worker participation early in cases.

Professor Leah Hill, *Associate Clinical Professor, Fordham Law School*

Progress:

- Dedicated Domestic Violence Parts: Dedicated Parts have provided a number of judges who understand the dynamics of domestic violence and can respond to victims who present a variety of patterns in terms of financial control and emotional abuse.
- Treatment of Women. I remember telling women when I first started practicing that you need to get into court well before noon or your case will not be heard. That's just not an issue anymore. I remember telling women that you might have a difficult time if you don't have injuries that are visible. That's just not the case as much any more, although it happens sometimes.
- Mutual Orders of Protection. Mutual orders of protection are no longer issued routinely. Judges are much more reluctant to do so now and the law now prevents it unless a separate petition is filed.
- Domestic Violence Factor in Child Custody Cases: We now have a statute making domestic violence a factor in custody proceeding.
- Expanded Supervised Visitation Programs: Supervised visitation provides options for women trying to make arrangements for visitation.

Remaining Problems:

- Delays in Resolving Cases: When counseling clients, I cannot explain and I cannot justify how it may take up to two years to have a hearing in a contested custody case.
- Judges and Referees Who Do Not Understand Domestic Violence: Dedicated domestic violence parts can handle only a limited number of cases. Domestic violence cases are often before judges and referees who do not understand domestic violence. I had a case recently in which, during a pre-trial discussion, a client was asked, in front of the abuser, how long ago was the abuse. It turns out that seven years ago she was beaten beyond recognition. The referee's response was to say, well, that was a long time ago so maybe you should consider mediation.
- One-Size-Fits-All Relief: Because of limited resources, there's a lack of evaluation of individual facts and a failure to tailor Orders of Protection to meet the needs of particular victims. Orders rarely provide for monitoring abusers or for restitution.
- Lack of counsel. Many litigants go without counsel, particularly poor women.

Recommendation:

- Remedy the Disparities of Resources Among Courts. Family Court is probably the court that interfaces most with poor women who are experiencing violence. It also is a place where you get to see the intersection of race, class and gender. And it's a court with extremely limited resources. The clear disparities in resources among different courts is an outrage. In a society as rich as this one, there is just no excuse.

Julie A. Domonkos, Esq. *Executive Director, My Sisters' Place*

Progress:

- Domestic Violence Has Become a Recognized Field of Law. The domestic violence movement was a grass roots feminist movement that over many years branched up into the legal system, and it has given rise to a recognized legal practice area and a body of law. We now have CLE programs and bar association committees on domestic violence. This provides a very helpful framework.
- Legislative Advances. We have had huge legislative advances, including the federal Violence Against Women Act (VAWA) that created a new civil rights remedy. Local versions of VAWA are springing up in places like New York City and Westchester County, creating civil rights causes of action for gender-motivated acts of violence. On the state level, in 1994, a broad omnibus Domestic Violence bill was passed, introducing mandatory arrest, creating the order of protection registry, and providing for training. In 1996, a statute was enacted directing judges to consider domestic violence in making custody and visitation decisions, and, in 1999, an anti-stalking law was passed.
- Improvements in the Courts. The specialized domestic violence parts that have been introduced are a tremendous advance because they make domestic violence the hub of the case. We also have a corps of judges who have accumulated a body of knowledge about domestic violence.

Problems:

- Unintended Consequences of the Mandatory Arrest Law. After the mandatory arrest law went into effect we found that police officers were often arresting both parties and batterers began making false allegations so that the victim was arrested. We had to go back and write a primary physical aggressor law, and we're still working on training and making sure it's applied fairly.
- Custody. I refer to custody law as the black hole for battered women because, under our very broad framework for custody, all of our double standards and gender biases easily come into play. We know that mothers are held to a very high standard, and fathers are held to a different and much lower standard.
- Child Welfare and Domestic Violence. Mothers who are being terrorized by batterers in their home are still charged with "failure to protect," even when the only allegation against her is that she has been battered.

- Giving Abusers Access to Their Children. We should be questioning why we provide easy access for fathers to the children whose mothers they have abused. We should, as the 1986 Task Force Report suggested, put the burden on the fathers to prove that they are no longer a risk to the children and that their influence will be positive.
- Enforcing the New Stalking Law. The new stalking law was revolutionary because it captured the lived experience of stalking victims, most of whom are women and most of whom are being stalked by someone they know. Yet we are not seeing many stalking charges written up by police officers or prosecuted.

Recommendations:

- Deepen Our Understanding of the Dynamics of Gender Equality and Domestic Violence. We know, as the Task Force found, that domestic violence at its core is an issue of gender inequality. The batterer and victim do not come into court on equal footing precisely because of the tactics of terror that the batterer has used and will continue to use throughout the litigation. We shouldn't confuse judicial impartiality with an unwillingness to use the accumulated knowledge we have about inequality in domestic violence cases.
- Guard Against Gender Stereotypes that Undermine Women's Credibility. The 1986 Task Force Report documented the tendency to question women's credibility and accept the stereotypes that present them as lying, manipulative, hysterical, and unstable. We have to understand that in domestic violence cases it's often the abusers who manipulate, deny, and lie and that women may appear unstable, angry, and out of control in court because they are terrified and may be facing someone who has said to her, if you ever tell, if you ever take this to court, I'm going to kill you and maybe I'm going to kill your kids too.
- Recognize the Importance of Financial Stability to Domestic Violence Victims. We have to admit up front that money counts when it comes to access to justice and to escaping domestic violence. We can facilitate child support. We can see that interim fees are awarded from monied spouses in divorce cases. And we can make sure that domestic violence is taken into account in the distribution of marital assets.
- Look Beyond the Law for Answers. Many of us—lawyers and judges alike—start to think that the law has all the answers, but we really don't. We can't promise victims complete safety for themselves and their children or the economic stability that they need. We have to be in partnership together: the judges, the prosecutors, the police, the victim advocates, the lawyers, and the victims, with the victims' voices paramount.
- Recognize the Significance of Race and Class. Gender inequities are related to, and magnified by, the issues of race and class in the courts and in our society at large. At issue are power structures and power imbalances.
- Begin to Reach Out to Women of Different Cultures. There is a vast netherworld of victims who come from other cultures, who don't know they

have any rights, who may not even understand the concept of a right. We are not reaching them and we need to.

Dr. Margaret Abraham, *Chair, Department of Sociology and Anthropology, Hofstra University*

Problems:

- Failure to Address the Intersections of Race, Class, Gender, Ethnicity, and Citizenship.
- Lack of trained interpreters.

Recommendations:

- Continue to Build Coordinated Community Responses. We are making progress toward the goal of including not only police, the courts, and social services, but also the abused women in making decisions, but we need to overcome additional barriers of language and cultural stereotypes when a woman is not only a victim of violence but also an immigrant.
- Educate Judges on the Links Between State Court Adjudications and Immigration Law. Judges should be acquainted with the implications of plea bargains, which may leave women open to deportation.
- Build a Balanced Judiciary. Bringing about gender and racial balance to the judicial system is important for courts responding to violence against women. We need more judges of color.
- Find Ways to Make Sure that All Women Feel Comfortable Using the Courts. Immigrant women and poor, minority women often feel intimidated by courts and court personnel's responses to them. Also, they may hesitate to use courts because of issues like police brutality. Educating court personnel to be sensitive to these issues would be helpful.

Comment from the Audience

Hon. Jacqueline Silbermann, *Administrative Judge for Matrimonial Matters and Administrative Jude for Supreme Court, New York County, Civil Term*

Recommendation

- We have come a long way in the sense that we have added domestic violence as a factor judges must consider in child custody cases, but the next step is educating advocates. So far we have not educated either our law guardians or our forensic experts about what taking domestic violence into account means, and if we don't do this we are missing a great deal.

Fern Schair, *Panel Moderator*

Recommendation:

- The rights of many women who are victims, like the rights of other people who don't have resources, depend in large measure on someone to express

> those rights in court and lawyers just aren't available. It is truly outrageous that people have to manage complex laws and structures without lawyers. Chief Judge Kaye and Justice Ellerin have given us leadership in the effort to raise rates for assigned counsel and to find other solutions, but it is important for each of us to find out what is happening in our courts and to see whether the right to counsel really exists besides on paper.

Tribute to Lynn Hecht Schafran

Hon. Betty Weinberg Ellerin, *presenting an award to* **Lynn Hecht Schafran,** *Director of the National Judicial Education Program*

Before lunch I have an unannounced award to make. There's one person who really has played a role in the gender fairness task forces throughout the country who needs to be acknowledged on our anniversary. Not only did she play an extraordinary role in our own report, but she's always been there when we've needed her. If you ever have a question about what's going on here, there or anywhere, the person you ask is Lynn Hecht Schafran. Along with Norma Wikler, she has been a crusader who first made these task forces a reality and then made them meaningful. This plaque we are presenting to Lynn reads:

> On the occasion of the fifteenth anniversary of the report by The New York Task Force on Women in the Courts, the New York State Judicial Committee on Women in the Courts salutes the dedication of Lynn Hecht Schafran, a passionate advocate for the rights of women and an architect of social change. Lynn Hecht Schafran's chosen tool has been education. Through her efforts to improve justice she has heightened our awareness of inequities and has moved us to improve our courts and ourselves.

Tribute to Hon. Kathryn McDonald

Hon. Betty Weinberg Ellerin:

There are some few people whom it is really impossible to fully capture in a word picture. Their qualities and characteristics are so rare and remarkable that they defy description and whatever you say really just isn't adequate. Kay McDonald was such a person. She was perhaps four feet, eleven inches tall—and I think I exaggerate—but a giant in all of the ways that counted.

I had heard glowing reports about her long before I met her. She was then a Family Court Judge who had come to the law and the bench after a very successful career as a labor relations expert in private industry. This was undoubtedly excellent training for dealing with the myriad, seemingly insoluble problems of the Family Court. But then

Kay was the kind of pragmatic optimist and creative doer who refused to acknowledge that a problem was without a solution of some kind, perhaps not a perfect one, but something that would at least make it better, especially when it came to children. They were the constituents who were closest to her heart and the ones that she worried about constantly. Not the wringing-her-hands type of worrying, but rather I've-got-to-find-a-way-to-help-this-kid worrying. And she invariably did find a way.

When I first met Kay, I understood why she was such a favorite with everyone in the Court system, from her colleagues in the Bar, to the President of the Court Officer's Union—and those who know Dennis Quirk know that he is no pushover. But with Kay McDonald he was a pussycat.

She was a little dynamo: short in actual inches, but with a bearing, an elegance, and a carriage that made her seem six feet tall. If there was one thing I envied it was that figure and her sense of style. She had an infectious smile, a wonderful laugh, and she radiated warmth, graciousness and innate kindness, which were coupled with very plain speaking. There was never any doubt about where Kay stood on an issue. She was very direct and candid, albeit never overly confrontational, unkind, or hurtful.

It was my good fortune to get to know her and become a close friend shortly after the Task Force on Women in the Courts was formed and the report had been issued. The report had recommended the creation of an implementation committee. Needless to say, fifteen years ago the climate was somewhat different from what it is today, and such a committee could only succeed if it had at its head someone who commanded the utmost respect among all segments of the legal community, who had the ability to withstand the turbulent waters generated by those unwilling to change the status quo, someone with a kind of personality that could bring diverse people together without generating an outbreak of hostilities, but at the same time without sacrificing principle. There was only one person who met those qualifications: Kay McDonald.

We will always be grateful to former Chief Judge Sol Wachtler for his insight and wisdom in appointing Kay as the first Chair of this Committee, which she served for over ten years, the critical ones that set the blueprint for the future. She was magnificent in that soft, no-nonsense voice. She spread the message of gender fairness throughout the State, enlisting the support of the administrative leaders of the judicial system and tirelessly helping them to initiate programs and procedures to both overcome and prevent bias from infecting our system of justice. Early on she spearheaded the publication of a booklet entitled "Fair Speech: Gender Neutral Language in the Courts," which has been reprinted and adapted by states throughout the country and remains the last word on gender neutral language.

From the inception, Kay focused attention on the sensitive issues involved in domestic violence, emphasizing a need for judges and others to be specially trained in this area. She also recognized that no one statewide committee could effectively accomplish the remedial action necessary to eliminate bias, so she instituted a format of satellite local gender fairness committees in every judicial district in the State made up of local lawyers, judges and others to bring attention to the particular gender-related problems present in that locality and to seek to address those problems.

The accomplishments and progress forward that we've made in eliminating bias in our Court system spearheaded by the Committee under Kay McDonald's aegis are documented in the Committee's Annual Reports, which she edited, and, typical of Kay, she took no credit whatsoever for those accomplishments, but rather heaped praise on others for their roles. The truth is, however, that none of it would have happened or been possible without her dedicated leadership and unceasing efforts, always carried on without fanfare, and those annual reports stand as a superb legacy and memorial to her unique and extraordinary impact on the movement to eliminate bias of all types in our Courts.

I'd like to conclude on a little personal note. Being a friend of Kay's was to be enriched beyond measure. She was one of the kindest, most giving and caring people anywhere. And in addition she was great fun to be with and exchange confidences with because you knew she'd always give you the right advice, even if you didn't like it. She was also one of the most courageous people I've ever met. When she suffered several painful accidents she uttered never a word of complaint. On the contrary, she worried about my knee, about Bob's health.

That sincere selflessness and giving to others was her touchstone to the end. When I visited her in the hospital shortly before she died she could barely speak, but she managed to tell me that she was counting on me to make sure that a project for another friend came to fruition.

There's no one sentence that can sum up the extraordinary woman named Kay McDonald beyond saying that she was that extremely rare and wonderful person who truly made the world a better place and that to have known her was to be truly blessed. On behalf of the Committee it is my privilege to make a presentation in her memory to her daughter, Ann McDonald, who is a wonderful lawyer in her own right, reflecting the talents of both of her parents. This plaque reads:

> As we celebrate the fifteen anniversary of the report by the New York Task Force on Women in the Courts, the New York State Judicial Committee on Women in the Courts pays tribute to the inimitable and indefatigable leadership of Judge Kathryn A. McDonald, 1918 to 2000. As Chair of the New York State Judicial Committee on Women in the Courts during its first decade, Judge McDonald combined passionate humanitarianism and unparalleled fortitude. She inspired by example, brooking no resistance, and labored to ensure that women would forever be treated as equals in the Courts of New York State.

Ann McDonald, *accepting the plaque in her mother's honor:*

I just want to thank you, Betty, and the Committee. My mother would have appreciated it so much. She had a wish list that included one item in the big picture for this Committee. And the wish list was that some day, not a hundred years from now, maybe even in the foreseeable future, this Committee could write its final report, disband, and, as Betty, said earlier go out of business.

Afternoon Panel

Hon. S. Michael Nadel, *Court of Claims Judge, Member of the New York Task Force on Women in the Courts, Member of the New York State Judicial Committee on Women in the Courts, and Co-chair of the Conference.*

In 1986 the first sentence of the Task Force Report announced that: "Gender 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."[204] The dramatic conclusion that women litigants were denied equal justice was derived in large measure from the Task Force's examination of the Court's enforcement of women's economic rights, in particular with respect to property distribution and maintenance upon dissolution of a marriage and with respect to child support. The Task Force also concluded that the Courts had, in fact, contributed to increased economic hardship for women. The purpose of our panel this afternoon is to assess what progress has been made in the past fifteen years in the Court's enforcement of women's economic rights and to focus attention on what remains to be done.

Our first panelist will discuss the effect of the enactment and implementation of child support guidelines, which came at about the same time as the 1986 Task Force Report. According to the Report, the Task Force received "compelling evidence of human suffering"[205] resulting from unconscionable delays in courts hearing child support petitions and inadequate child support.

Allen Hochberg, Esq., *Family Court Hearing Examiner, Westchester County*

Progress:

- Child Support Guidelines: The first advance was legislative guidelines, so that instead of having child support and spousal maintenance slide all over the field, we have a center line.
- Clarifying Burdens of Proof. Appellate courts have put the burden of proof on the payor parent to show that the guidelines should not be applied or should not be applied to income over $80,000.00 per year. The burden of proof also has been shifted for cases in which the income of the payor parent falls dramatically immediately following a divorce and there is a downward modification request for a reduction in child support. Income or the ability to earn is now imputable to the parent seeking a reduction in child support on a claim of reduced earnings.
- Discovery. There are now requirements for complete discovery and truthful financial disclosure in child support cases, and that helps considerably.

Recommendations:

- Provide regularly scheduled education and training to the judiciary and non-judicial personnel on post-traumatic stress disorder, family systems, psychopathology and other mental health and social work topics. We need to

address the needs of a litigant who may have suffered domestic violence the night prior to the court date, left the children with relatives, had no chance to wash or change clothes, has been told to fill out forms and is too much in shock to relate a coherent description of times and events. Funds should be made available for programs with social work schools so the judiciary can become familiar with issues of stress, trauma, and mental health generally.

- Clarify and strengthen provisions for health insurance and the payment of health expenses not covered by any insurance. The language currently used is not sufficiently structured to insure that the non-custodial parent will provide health insurance and pay for a share of medical and other health-related needs of the child.
- Create procedural exceptions in order that the employed custodial parent is not required to make repeated court appearances, losing time from work and parenting duties, often to find that the payor parent has not come to court at all.
- Recognize that the threat of financial sanctions by the monied, paying or non-custodial parent is a form of violence, and treat it as such.
- Continue the Work of the Committee on Women in the Courts. We have to continue to address these issues. Our work is an ongoing process.

Judge Nadel: In 1986 the Task Force Report included the following statement: "Judges' refusals to award adequate or timely counsel and expert fees were repeatedly cited as critical barriers to women receiving adequate representation in matrimonial cases."[206] Our next panelist will discuss the extent to which economic issues continue to affect the enforcement of a woman's rights upon the dissolution of a marriage.

Kay Thompson, *Partner, Belock Levine & Hoffman, LLP*.

Progress

- Broad Interpretations of the Meaning of Marital Property: The Court of Appeals has interpreted the equitable distribution law in an expansive manner with great appreciation for the needs and contributions of the economically dependent spouses, as our legislature intended. As a result we see a continuous trend interpreting the statutory term "marital property" in a broad manner to include a wide array of both tangible and intangible assets. During the past fifteen years our courts have held that the following assets, just to name a few, constitute marital property: non-vested pension plans, partnerships in professional practices, masters' degrees, law degrees, tax loss carry forwards; stock options, lottery tickets, professional certifications, and appreciation in the titled spouse's separate property interest in closely held businesses and professional practices.
- Greater Recognition of the Homemaker Spouse's Contributions. Judges in the past fifteen years have become increasingly inclined to split the marital assets in half and to award 50% to each spouse.

Recommendations

- Make Sure that Awards for Maintenance are Fair. Since few divorcing couples have any assets besides a marital residence, fair awards of maintenance are as critical, if not more critical, to the financial stability to the economically weaker spouse than an equal division of the assets. Consequently, we need drastic measures to make appropriate maintenance awards the norm.
- Pass Legislation Making Awards of Interim Counsel Fees Mandatory. There are very few cases in which spouses have relatively equal incomes and equal assets. The legislature gave trial judges the discretion to make the more affluent spouse pay for legal expenses of the needier one, but it is in the area of adequate interim counsel fee awards that we have made the least progress.
- Encourage Judges to Use Preliminary Conferences to Resolve Matters Including Attorneys Fees. When the judge at a preliminary conference hears what the issues are and hears that the attorney for the non-monied spouse will need attorneys fees, a judge can simply say, I've heard the facts and I know there will be a motion for attorneys fees and if I rule for attorneys fees, I'm going to have to award the fees for making the motion as well. This encourages parties to stipulate attorneys' fees as well as other matters.

Judge Nadel: In 1986 the Task Force Report stated that: "The Task Force has received compelling evidence of human suffering resulting from . . . courts' failure to impose sanctions for nonpayment of awards as authorized by the law and courts' forgiveness of arrears of unpaid child support."[207] Our next panelist will address the issue of whether the enforcement of court orders for child support has gotten any better since 1986.

Hon. Fred Shapiro, *Acting Supreme Court Justice, 9th Judicial District.*

Progress

- Creation of the Position of Administrative Judge for Matrimonial Matters. The fact that there is such a post is recognition of how important matrimonial cases are.
- Education for Matrimonial Judges. Now, in addition to the Summer Judicial Seminars, there are special seminars for judges who hear matrimonial cases.
- Mandatory Preliminary Conferences with Parties Present. These conferences are very important because they provide a time when the judge can set the tone.

Problem

- Distaste of Judges for Assignments to Matrimonial Parts. I don't think it's a secret that judges, as a general rule, don't like to sit in the Matrimonial Part, and they view it as a punishment. And I think that that's unfortunate.

Recommendations

- Hold Hearings on Enforcement Motions Swiftly. Contempt Motions should be brought on by Order to Show Cause, and I do hearings within two weeks. These motions have to be heard swiftly, first, because the punishment should come quickly, and, second, but more important, the woman often needs the money to feed the children and to keep a roof over her head.
- Use Jail to Punish Contempt. I've never had a repeater in a contempt case when I've sent someone to jail.
- Direct Lawyers Not to Accept Fees Until Their Clients Pay Money Owed Pursuant to Existing Order. I get many applications for post-judgment relief, most often a change in custody, when money is owed for child support, for counsel fees, for fees to the law guardian. I issue an order that the lawyer is not to collect a nickel until the money that is owed is paid.
- Level the Playing Field by Awarding Attorneys Fees Based on the Amount Paid to the Monied Spouse's Attorney. The first question I ask the attorney for the monied spouse is, how much did your client pay you? Once I know that, I know what my award will be. And I will review it as the case goes on because I want to keep it even.
- Assign Counsel to Represent Indigent Litigants. In the Ninth Judicial District we assign counsel to represent litigants without compensation. If you are a lawyer and you file a note of issue in a matrimonial case, you're going to get a case assigned to you. A commitment is made that it will never be more than one a year, and the pool is large enough so lawyers are getting one case about every three years.

Judge Nadel: Fifteen years ago the Task Force sought to counteract what was described by Supreme Court Justice Betty Ellerin as societal attitudes that deprecate the women's role or contribution. The Task Force recommended that steps be taken to assure that judges are familiar with the social and economic considerations relevant to a divorce by making them aware of studies and scholarly commentary on women's employment opportunities and paid potential and the cost of child rearing.[208] Similar concerns are emerging about the impact of different particular cultural attitudes which affect women.

Hon. Barbara Howe, *Supreme Court Justice, 8th Judicial District.*

Recommendation

- Be Aware of Ethnic Stereotypes. We have to be careful that in attempting to rectify gender inequity we don't rush to ethnic stereotyping.

Concluding Remarks

Judge Ellerin: I want to introduce someone who truly loves the court system and the people who use it, Judge Jonathan Lippman.

Hon. Jonathan Lippman, *Chief Administrative Judge of New York.*

It really is a delight to be here today at this wonderful celebration of the fifteenth anniversary of the Report of the New York Task Force on Women in the Courts. In thinking about today's conference I was struck by how apt its title is: the miles traveled and the miles to go. I wanted to talk briefly with you as someone who's been in the Court system for over 30 years who can personally attest to the fact that the New York State Court system is a very different place from what it was when the Task Force began its work.

First, women are a visible presence at every level of the court system, finally seeing discernable cracks in the glass ceiling that was impenetrable just a short time ago. Just last month we marked the eighth year of Chief Judge Judith Kaye's tenure as the Chief Judge of the State of New York. We now take for granted the fact that the Chief Judge of the State of New York is a woman, much less a remarkable, innovative, and inspiring woman who has reset the standard for Chief Judges, men and women, throughout the country, and a woman, who as you saw earlier today, has no greater priority than pushing the agenda forward even in the most trying of circumstances.

Here in New York City we not that long ago concluded the tenure of the first woman Presiding Justice of the Appellate Division, First Department, Betty Weinberg Ellerin, a trailblazer if there ever was one. Her tireless and determined leadership as your Committee Chair, as a sterling jurist and as a one of a kind, motivating force, has been absolutely instrumental in the progress made by women in the courts and in the legal profession. In the western part of the state not so long ago we lost a giant, the state's very first woman Presiding Appellate Division Justice, M. Dolores Denman, whose strength as a person and a judge allowed us to mourn her without feeling the need to define her as someone who broke so many gender barriers. Today we also accept quite readily the fact that five of the seven judicial statewide leadership positions in Court Administration are held by women.

In comparison, I cannot help but think back to the days when I started my career in the court system, when it was very rare to see women in the courthouse other than the secretary in the chambers or very low level clerks, an occasional law clerk like Betty Weinberg Ellerin, and only in the rarest of instances as judges. How different today when three of the seven seats on the Court of Appeals, the highest Court in the State, are occupied by women; when there are 50 women sitting on the Supreme Court of the State; when a full one-quarter of the state's entire judiciary is women—almost three hundred judges. We can and will do better, but what a change.

But what does all of this really mean, the change in the role of women in the courts? What does it signify for the courts and the public? What it means is that today we have a

court system with a new perspective and a new energy, where no or we can't do it is not an acceptable answer. It is a court system with a willingness to change, to hear new ideas, to experiment with how we do business in order to benefit the public, a system that is dedicated to ensuring meaningful access to the courts, putting children and families first and providing outreach to every segment of society. These things are no accident in a court system with so many women in leadership positions, and not just because we are committed to so-called women's issues. Rather, we in the court system are now defined by a value system that is fundamental to women. We are committed with all of our energies to doing the right things for the courts and the public that we serve, most especially for those who are most vulnerable. That is the court system of today, one that is very, very proud to have been a part with all of you of the drive for equality for women under the law and the revolution that has taken place in the role of women in the Courts and the legal profession.

Without question the advances that women in the courts and the courts themselves have made would not have been possible without the New York Task Force on Women in the Courts and its successor, the New York State Judicial Committee on Women in the Courts, starting from the landmark report that documented the unequal justice, unequal treatment and unequal opportunity that women encountered in the courts and in the profession, and the very, very small number of women who served as judges or in other high ranking court positions. This Committee has in countless ways paved the way, bulldozing when necessary, for the progress that we see today under the persistent, creative and, I might say, iron-willed leadership of Kay McDonald and your incomparable present chair, Betty Weinberg Ellerin, the only person that the Chief Judge and I could possibly envision as a successor to Kay.

The Committee has been a beacon of hope for women in the courts and in the profession. There have been so many steps to where we are today: education for judges and non-judicial personnel on gender, bias and sexual harassment; leadership and statutory reforms in the areas of domestic violence and child support; publications on gender-neutral language, sexual harassment, and judicial responses to gender bias; policy changes in regard to job sharing and part-time employment; advances in divorce litigation, including uncontested matrimonials and child support; the use of technology to aid litigants in the court; domestic violence days and take a child to work days that reinforce the issues we all care about; personnel policies to ensure that child support responsibilities are met by all; enforcement of matrimonial support orders; waiting rooms for children and so much more.

The Committee is a unique entity, both at the state and local district level, serving as an advocacy group for women in the courts, educating, sensitizing and jaw-boning, being a place where those who face inequality on a daily level can voice their complaints and concerns, and serving as a rallying point for women in the courts and for substantive and procedural changes that benefit not only women but all those whose lives are touched by the justice system. You have all contributed fundamentally to the advances that women have made in the courts over these last 15 years. The values and goals for the courts, not only for women, that the Committee stands for are the backbone of so many of the court's programs of reform and change, in the areas of family and matrimonial law, the

treatment of offenders, attitudes toward, and treatment of, domestic violence victims, and the drive to achieve diversity in the courts.

Clearly the effort to achieve greater gender equality is a work in progress with much remaining to be done. But all of you have so much of which to be proud. Encouraged by your successes I look forward with great excitement to the future which I know will bring us closer to reaching true, full equality for women and for all of our citizens in the courts and in the profession.

Judge Ellerin: In conclusion, let me say that Judge Lippman had it right. This is a work in progress. When the 1986 Task Force reported it used broad strokes because the bias in the system was so all pervasive. Today we were provided with some very interesting insights. Obviously, the problems are far from resolved. But today we heard about more specific ideas of where we have to step in and try to make adjustments. I'm not prepared to speak of any panoramic view, and, in some ways, I want to keep you hanging because this is a work in progress, and we—you and I—are going to continue to strive to make the courts truly and completely free of bias.

ENDNOTES

1. Report of the New York Task Force on Women in the Courts, reprinted in *Fordham Urb.*. L. J. 1, 99 (1986-87) [1986 *Task Force Report*].
2. *Id.* at. 15, 18.
3. New York State Judicial Committee on Women in the Courts, *Equal Justice, Equal Treatment, Equal Opportunity: Appraising Change and Progress a Decade After the Report of the New York Task Force on Women in the Courts,* May, 1996 [available from the New York State Judicial Committee on Women in the Courts, 25 Beaver Street, New York, New York 10004].
4. *1986 Task Force Report* at 99.
5. *Id.* at 79.
6. *Id.* at 79-80
7. *Id.* at 79-80.
8. *Id.* at 80.
9. *Id.*
10. *Id.*
11. *Id.* at 111.
12. *Id.* at 111-12.
13. *Id.* at 99.
14. *Id.* at 62.
15. *Id.*
16. *Id.*
17. *Id.* at 47.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 48.
22. *Id.*
23. *Id.*
24. *Id.* at 47.
25. *Id.* at 125.

26. *Id.*

27. *Id.*

28. *Id.* at 145.

29. *Id.*

30. *Id.*

31. *Id.* at 153.

32. Figures compiled by the Office of Court Administration confirm these perceptions about women in the judiciary. In 2001, women comprised 25% of New York's state-paid judges, up from 11% in 1986. However, only 17 % of New York's Supreme Court Justices were women and in the counties outside New York City only 11% of Supreme Court Justices were women. *See Appendix A.*

33. A sample of the letter and the questionnaire, which varied slightly according to the group to which it was addressed, are attached to this report as *Appendix B.*

34. This response rate of about 3.6% is close to the 3.5% response rate for the original Task Force's survey.

35. New York City Judge (Male) (Respondent Survey No. 112).

36. Upstate Urban Attorney (Male) (Respondent Survey No. 5).

37. New York City Attorney (Male) (Respondent Survey No. 59).

38. Upstate Urban Judge (Male) (Respondent Survey No. 39).

39. Upstate Urban Attorney (Female) (Respondent Survey No. 54).

40. Upstate Urban Attorney (Female) (Respondent Survey No. 97).

41. *See, i.e.,* Town/Village Justice (Male) (Respondent Survey No. 70); Upstate Urban Judge (Female) (Respondent Survey No. 109); Upstate Urban Judge (Respondent Survey No. 40).

42. *See, i.e.,* Town/Village Justice (Male) (Respondent Survey No. 16); Non-Urban Upstate Judge (Male) (Respondent Survey No. 17); Town/Village Justice (Male) (Respondent Survey No. 33); Town/Village Justice (Male) (Respondent Survey No. 34); Town/Village Justice (Male) (Respondent Survey No. 37); Town/Village Justice (Female) (Respondent Survey No. 42); Non-Urban Upstate Judge (Female) (Respondent Survey No. 117).

43. *See, i.e.,* New York City Judge (Male) (Respondent Survey No. 8); Non-Urban Upstate Judge (Male) (Respondent Survey No. 29); New York City Judge (Female) (Respondent Survey No. 80).

44. *See, i.e.,* Suburban New York City Judge (Male) (Respondent Survey No. 78); New York City Attorney (Female)(Respondent Survey No. 53).

45. New York City Attorney (Female) (Respondent Survey No. 63).

46. Upstate Urban Attorney (Female) (Respondent Survey No. 66).

47. Suburban New York City Attorney (Female) (Respondent Survey No. 115).
48. Town/Village Justice (Female) (Respondent Survey No. 14).
49. New York City Attorney (Female) (Respondent Survey No. 53).
50. New York City Judge (Male) (Respondent Survey No. 112).
51. *See, i.e.,* Upstate Urban Attorney (Female) (Respondent Survey No. 113); Suburban New York City Attorney (Female) (Respondent Survey No. 125).
52. Upstate Urban Judge (Male) (Respondent Survey No. 40).
53. Upstate Urban Attorney (Female) (Respondent Survey No. 11).
54. Suburban New York City Attorney (Female) (Respondent Survey No. 91).
55. New York City Attorney (Female) (Respondent Survey No. 110). *See also, i.e.,* New York City Judge (Male) (Respondent Survey No. 15); Town/Village Justice (Male) (Respondent Survey No. 20).
56. Upstate Non-Urban Judge (Male) (Respondent Survey No. 86).
57. Suburban New York City Attorney (Female) (Respondent Survey No. 69).
58. Upstate Urban Judge (Male) (Respondent Survey No. 39).
59. Suburban New York City Attorney (Female) (Respondent Survey No. 114).
60. *1986 Task Force* Report at 50-51.
61. New York City Attorney (Female) (Respondent Survey No. 116).
62. Suburban New York City Attorney (Female) (Respondent Survey No. 120).
63. Town/Village Justice (Male) (Respondent Survey No. 10).
64. New York City Judge (Female) (Respondent Survey No. 67).
65. Suburban New York City Attorney (Female) (Respondent Survey No. 95).
66. *See, i.e.,* Suburban New York City Attorney (Female) (Respondent Survey No. 38); Upstate Urban Judge (Male) (Respondent Survey No. 39); Town/Village Justice (Male) (Respondent Survey No. 45); Urban Upstate Attorney (Male) (Respondent Survey No. 55.)
67. Suburban New York City Attorney (Female) (Respondent Survey No. 91).
68. New York City Attorney (Female) (Respondent Survey No. 121).
69. Upstate Urban Judge (Male) (Respondent Survey No. 29).
70. Town/Village Justice (Female) (Respondent Survey No. 20).
71. Suburban New York City Judge (Female) (Respondent Survey No. 79).
72. New York City Judge (Female) (Respondent Survey No. 44).
73. New York City Judge (Female) (Respondent Survey No. 80).
74. New York City Judge (Male) (Respondent Survey No. 105).

75. Suburban New York City Judge (Female) (Respondent Survey No. 3).

76. *See, i.e.,* Upstate Non-Urban Judge (Male) (Respondent Survey No. 32); Town/Village Justice (Male) (Respondent Survey No. 34); Upstate Urban Judge (Female) (Respondent Survey No. 40).

77. Upstate Non-Urban Judge (Male) (Respondent Survey No. 95).

78. Upstate Non-Urban Judge (Male) (Respondent Survey No. 11).

79. *See, i.e.,* Upstate Non-Urban Judge (Male) (Respondent Survey No. 19); Suburban New York City Judge (Female) (Respondent Survey No. 3); New York City Judge (Male) (Respondent Survey No. 30); New York City Judge (Female) (Respondent Survey No. 100); Town/Village Justice (Female) (Respondent Survey No. 42).

80. *See, i.e.,* Town/Village Justice (Male) (Respondent Survey No. 1); Town/Village Justice (Male) (Respondent Survey No. 6); Town/Village Justice (Male) (Respondent Survey No. 34); Town/Village Justice (Male) (Respondent Survey No. 37); Town/Village Justices (Male) (Respondent Survey No. 85).

81. *See, i.e.,* Suburban New York City Attorney (Female) (Respondent Survey No. 91); Suburban New York City Attorney (Female) (Respondent Survey No. 69); Town/Village Justice (Male) (Respondent No. 34); Town/Village Justice (Male) (Respondent No. 37).

82. Upstate Non-Urban Judge (Male) (Respondent Survey No. 134).

83. New York City Judge (Female) (Respondent Survey No. 100).

84. Upstate Urban Judge (Female) (Respondent Survey No. 109).

85. *See, i.e.,* Upstate Non-Urban Judge (Male) (Respondent Survey 11); New York City Judge (Male) (Respondent Survey No. 30); Suburban New York City Judge (Female) (Respondent Survey No. 90); Suburban New York City Attorney (Female) (Respondent Survey No. 96).

86. *See, i.e.,* Suburban New York City Judge (Female) (Respondent Survey No. 3); Town/Village Justice (Male) (Respondent Survey No. 37); Town/Village Justice (Male) (Respondent Survey No. 56); New York City Attorney (Female) (Respondent Survey No. 57).

87. Upstate Urban Attorney (Female) (Respondent Survey No. 97).

88. Suburban New York City Attorney (Female) (Respondent Survey No. 69).

89. Suburban New York City Attorney (Female) (Respondent No. Survey 115).

90. Upstate Urban Attorney (Female) (Respondent Survey No. 61).

91. Upstate Urban Attorney (Female) (Respondent Survey No. 97).

92. New York City Attorney (Female) (Respondent Survey No. 81).

93. *See, i.e.,* Suburban New York City Attorney (Female) (Respondent Survey No. 91); New York City Judge (Female) (Respondent Survey No. 100).

94. Suburban New York City Attorney (Female) (Respondent Survey No. 69).

95. *See, i.e.,* Upstate Urban Attorney (Female) (Respondent Survey No. 66); New York City Attorney (Gender Not Indicated) (Respondent Survey No. 81); Suburban New York City Attorney (Female) (Respondent Survey No. 91).

96. New York City Lawyer (Female) (Respondent Survey No. 63).

97. Town/Village Justice (Male) (Respondent Survey No. 10).

98. Town/Village Justice (Female) (Respondent Survey No. 121).

99. Town/Village Justice (Male) (Respondent Survey No. 13).

100. Upstate Non-Urban Judge (Male) (Respondent Survey No. 86).

101. Town/Village Justice (Female) (Respondent survey No. 71).

102. Town/Village Justice (Male) (Respondent Survey No. 47).

103. New York City Judge (Male) (Respondent Survey No. 2).

104. Town/Village Justice (Male) (Respondent Survey No. 76).

105. Town/Village Justice (Female) (Respondent Survey No. 14).

106. Town/Village Justice (Male) (Respondent Survey No. 22).

107. Upstate Urban Attorney (Female) (Respondent Survey No. 61).

108. Upstate Urban Attorney (Female) (Respondent Survey No. 66).

109. Upstate Non-Urban Attorney (Male) (Respondent Survey No. 26).

110. Suburban New York City Attorney (No Gender Noted) (Respondent Survey No. 60).

111. Upstate Urban Attorney (Female) (Respondent Survey No. 61).

112. Upstate Urban Attorney (No Gender Noted) (Respondent Survey No. 66).

113. Suburban New York City Attorney (Female) (Respondent Survey No. 69).

114. Suburban New York City Attorney (Male) (Respondent Survey No. 68).

115. Upstate Non-Urban Attorney (Male) (Respondent Survey No. 84).

116. Suburban New York City Attorney (Female) (Respondent Survey No. 91).

117. Suburban New York City Attorney (Female) (Respondent Survey No. 114).

118. Suburban New York City Attorney (Female) (Respondent Survey No. 115).

119. *1986 Task Force Report* at 118.

120. *Id.* at 120.

121. *See, i.e,* Upstate Non-Urban Attorney (Male) (Respondent Survey No. 58); Suburban New York City Attorney (Male) (Respondent Survey No. 68).

122. Upstate Non-Urban Judge (Male) (Respondent Survey No. 134).

123. Town/Village Justice (Male) (Respondent Survey No. 43).

124. Town/Village Justice (Male) (Respondent Survey No. 34).

125. Town/Village Justice (Male) (Respondent Survey No. 10).

126. Upstate Non-Urban Judge (Male) (Respondent Survey No. 11).

127. *See, i.e.,* New York City Judge (Male) (Respondent Survey No. 15); Upstate Urban Judge (Female) (Respondent Survey No. 40); Town/Village Justice (Male) (Respondent Survey No 77).

128. New York City Judge (Male) (Respondent Survey No. 8).

129. Upstate Urban Judge (Male) (Respondent Survey No. 39).

130. New York City Judge (Female) (Respondent Survey No. 67).

131. New York City Attorney (Female) (Respondent Survey No. 116).

132. New York City Attorney (Female) (Respondent Survey No. 121).

133. Town/Village Justice (Male) (Respondent Survey No. 20).

134. Town/Village Justice (Male) (Respondent Survey No. 47).

135. Town/Village Justice (Male) (Respondent Survey No. 48).

136. New York City Judge (Male) (Respondent Survey No. 105).

137. Suburban Judge (Female) (Respondent Survey No. 79).

138. Town/Village Justice (Male) (Respondent Survey No. 37).

139. Upstate Urban Attorney (Female) (Respondent Survey No. 54).

140. Suburban New York City Attorney (Female) (Respondent Survey No. 82).

141. New York City Judge (Female) (Respondent Survey No. 98).

142. Town/Village Justice (Female) (Respondent Survey No. 92).

143. Upstate Urban Attorney (Female) (Respondent Survey No. 119).

144. New York City Attorney (Female) (Respondent Survey No. 122).

145. Suburban New York City Attorney (Female) (Respondent Survey No. 60).

146. Suburban New York City Judge (Female) (Respondent Survey No. 79).

147. New York City Judge (Female) (Respondent Survey No. 98).

148. New York City Judge (Female) (Respondent Survey No. 44).

149. New York City Attorney (Male) (Respondent Survey No. 83).

150. New York City Attorney (Female) (Respondent Survey No. 72).

151. Upstate Non-Urban Attorney (Male) (Respondent Survey No. 26).

152. Suburban New York City Attorney (Female) (Respondent Survey No. 91).

153. Town/Village Justice (Female) (Respondent Survey No. 12).

154. Suburban New York City Judge (Female) (Respondent Survey No. 79).

155. Town/Village Justice (Female) (Respondent Survey No. 92).

156. New York City Judge (Female) (Respondent Survey No. 98).

157. Town/Village Justice (Female) (Respondent Survey No. 12).

158. In fact, according to a recent survey published in the *New York Law Journal,* women comprised 51.1% of Albany Law School in the 1999-2000 academic year, and New York State's other law schools varied from a high of 59.8% for CUNY Law School to 44.4% for Hofstra University Law School *NYLJ,* Dec. 10, 2001, p. s32.

159. Upstate Non-Urban Judge (Male) (Respondent Survey No. 134).

160. New York City Attorney (Female) (Respondent Survey No. 116).

161. Town/Village Justice (Female) (Respondent Survey No. 106).

162. Upstate Urban Judge (Male) (Respondent Survey No. 29).

163. *See, i.e.,* Town/Village Justice (Male) (Respondent Survey No. 46); New York City Judge (Female) (Respondent Survey No. 44); New York City Attorney (Female) (Respondent Survey No. 53); Suburban New York City Attorney (Female) (Respondent Survey No. 82); New York City Attorney (Male) (Respondent Survey No. 83); Suburban New York City Attorney (Female) (Respondent Survey No. 114).

164. Town/Village Justice (Male) (Respondent Survey No. 46).

165. New York City Judge (Female) (Respondent Survey No. 104).

166. Suburban New York City Attorney (Female) (Respondent survey No. 134).

167. New York City Judge (Female) (Respondent Survey No. 80).

168. Upstate Urban Attorney (Male) (Respondent Survey No. 88).

169. New York City Judge (Respondent Survey No. 112).

170. Suburban New York City Attorney (Female) (Respondent Survey No. 114).

171. *See i.e.,* New York City Judge (Male) (Respondent Survey No. 30); New York City Attorney (Female) (Respondent Survey No. 53); Upstate Urban Attorney (Female) (Respondent Survey No. 66).

172. New York City Attorney (Female) (Respondent Survey No. 81).

173. New York City Attorney (Female) (Respondent Survey No. 53).

174. Suburban New York City Attorney (Female) (Respondent Survey No. 82).

175. Upstate Urban Judge (Male) (Respondent Survey No. 39).

176. Upstate Urban Judge (Female) (Respondent Survey No. 40).

177. The number and percent of women in the judiciary in New York State have doubled in the past 15 years, from 133 (11%) to 311 (25%). *See* charts in *Appendix A.*

178. New York City Attorney (Female) (Respondent Survey No. 53).

179. Upstate Urban Attorney (Female) (Respondent Survey No. 4).

180. OCA data confirms this as well. *See Appendix A.*

181. New York City Judge (Male) (Respondent Survey No. 30).

182. Upstate Urban Attorney (Female) (Respondent Survey No. 4).

183. Town/Village Justice (Male) (Respondent Survey No. 14).

184. Upstate Urban Attorney (Male) (Respondent Survey No. 88).

185. Town/Village Justice (Male) (Respondent Survey No. 47).

186. Town/Village Justice (Male) (Respondent Survey No. 24).

187. Town/Village Justice (Male) (Respondent Survey No. 77).

188. Upstate Urban Judge (Male) (Respondent Survey No. 29).

189. Town/Village Justice (Male) (Respondent Survey No. 56).

190. New York City Judge (Male) (Respondent Survey No. 62).

191. Suburban New York City (No Gender Noted) (Respondent Survey No. 60).

192. Upstate Urban Judge (Female) (Respondent Survey No. 117).

193. New York City Attorney (Female) (Respondent Survey No. 63).

194. *1986 Task Force Report* at 196.

195. Downstate Non-Urban Judge (Respondent Survey No. 90).

196. Suburban New York City Attorney (Female) (Respondent Survey No. 114).

197. Suburban New York City Lawyer (Female) (Respondent Survey No. 38).

198. New York City Judge (Female) (Respondent Survey No. 30).

199. Upstate Urban Judge (Female) (Respondent Survey No. 40).

200. Suburban New York City Attorney (Female) (Respondent Survey No. 38).

201. New York City Judge (Female) (Respondent Survey No. 44).

202. *1986 Task Force Report* at 15.

203. *Id.* at 99.

204. *Id.* at 69.

205. *Id.* at 85.

206. *Id.* at 99-100.

APPENDIX A

Women in New York State Judiciary 2001 (March)

Court	Women	Men	Total	Percent Women
Court of Appeals	3	4	7	43%
Appellate Division	10	39	49	26%
Administrative Judges	10	14	24	42%
Supreme Court	60	285	345	17%
Acting Supreme Court*	48	109	157	31%
Surrogates Court	4	18	22	18%
Court of Claims	8	53	61	13%
County Court (Outside NYC)**	10	101	111	9%
Family Court (Outside NYC)	24	41	65	37%
District Court (Nassau and Suffolk)	10	31	41	24%
City Court (Outside NYC)***	33	148	181	18%
NYC Family	22	15	37	60%
NYC Civil Court	36	40	76	47%
NYC Criminal Court	11	21	32	34%
Housing Court	22	27	49	45%
Totals	311	946	1257	25%

* Judges from other trial level courts who are designated to sit in Supreme Court and Supervising Judges from New York's Civil, Family and Criminal Courts.

** Judges who sit in County Court only and judges who combine service on the County Court with service on Family and/or Surrogates Court.

*** City Court Judges, Acting City Court Judges, and Chief Judges of the City Court.

Women in New York State Judiciary 1988, 1999, and 2001

Court	1988	1999	2001
Court of Appeals	14%	29%	43%
Appellate Division	14%	25%	26%
Administrative Judges	5%	41%	42%
Supreme Court	8%	15%	17%
Acting Supreme Court*	16%	31%	31%
Surrogates Court	7%	17%	18%
Court of Claims	10%	14%	13%
County Court (Outside NYC)**	4%	7%	9%
Family Court (Outside NYC)	10%	28%	37%
District Court (Nassau and Suffolk)	7%	33%	24%
City Court (Outside NYC)***	5%	19%	18%
NYC Family	54%	54%	60%
NYC Civil Court	20%	48%	47%
NYC Criminal Court	21%	38%	34%
Housing Court	N/A	46%	45%
Totals	11%	24%	25%

* Judges from other trial level courts who are designated to sit in Supreme Court and Supervising Judges from New York's Civil, Family and Criminal Courts.

** Judges who sit in County Court only and judges who combine service on the County Court with service on Family and/or Surrogates Court.

*** City Court Judges, Acting City Court Judges, and Chief Judges of the City Court.

Women Serving As Elected Supreme Court Justices 2001

(April) (includes certificated justices)

Court	Women	Men	Total	Percent Women
Third Judicial District	1	14	15	7%
Fourth Judicial District	0	14	14	0%
Fifth Judicial District	1	20	19	5%
Sixth Judicial District	1	11	12	8%
Seventh Judicial District	3	17	20	15%
Eighth Judicial District	5	26	31	16%
Ninth Judicial District	3	29	32	9%
Tenth Judicial District	10	62	72	14%
Subtotal Outside NYC	**24**	**192**	**216**	**11%**
First Judicial District	20	28	48	42%
Second Judicial District	15	57	72	21%
Eleventh Judicial District	8	41	49	16%
Twelfth Judicial District	8	22	30	27%
Subtotal for NYC	**51**	**148**	**199**	**26%**
Totals for New York State	**75**	**340**	**415**	**18%**

Women Serving As Elected Supreme Court Justices 1998-2001
(includes certificated justices)

Court	1998	1999	2000	2001
Third Judicial District	18%	12%	12%	7%
Fourth Judicial District	0%	0%	0%	0%
Fifth Judicial District	0%	0%	5%	5%
Sixth Judicial District	0%	0%	10%	8%
Seventh Judicial District	16%	15%	15%	15%
Eighth Judicial District	23%	21%	16%	16%
Ninth Judicial District	11%	10%	9%	9%
Tenth Judicial District	7%	10%	11%	14%
Subtotal Outside NYC	**11%**	**10%**	**10%**	**11%**
First Judicial District	43%	45%	44%	42%
Second Judicial District	17%	18%	20%	21%
Eleventh Judicial District	13%	14%	16%	16%
Twelfth Judicial District	15%	14%	21%	27%
Subtotal for NYC	**21%**	**22%**	**24%**	**26%**
Totals for New York State	**16%**	**16%**	**17%**	**18%**

APPENDIX B

November 8, 2000

Dear Judge:

The New York State Judicial Committee on Women in the Courts will celebrate its 15th anniversary in April, 2001, and I am seeking your assistance as we prepare to mark this occasion. As you know, the Committee was appointed in response to a task force report that found pervasive gender bias against women litigants, attorneys, and employees within New York's Court System. We recognize that, while great progress has been made, much work remains.

We would like your help in setting our agenda for the next few years. A form is enclosed for your convenience, but what we are really seeking is your honest appraisal of how the court system has changed in the past fifteen years and your prescription for work in the years to come. We welcome your comments on the treatment of women in any of their roles in courts – as attorneys, judges, litigants and witnesses -- or in any substantive area of the law. Feel free to use the form or not as you like.

A response by December 8, 2000, would be appreciated since we would like to incorporate your ideas into our report. You should send your response to Jill Laurie Goodman, Counsel, New York State Judicial Committee on Women in the Courts, at 25 Beaver St., Room 878, New York, NY 10004.

If you know others whose opinions might be useful, please make copies of this letter and distribute it to them. Thank you for your help.

Sincerely,

Betty Weinberg Ellerin

Judges' Assessments for the 15th Anniversary Report of the New York State Judicial Committee on Women in the Courts

What significant changes have you seen in the past 15 years in the treatment of women in **child support or divorce** cases?

_____

_____

_____

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_____

What significant changes have you seen in the past 15 years in the treatment of **victims of domestic violence or sexual assault**?

_____

_____

_____

_____

_____

_____

What significant changes have you seen in the past 15 years in **the treatment of women attorneys, judges, litigants or witnesses in the courtroom or the justice system generally** by judges, court personnel, court administrators and attorneys, regarding:

A. Assessments of women's credibility?

_____

_____

_____

_____

B. Opportunities for advancement in the profession?

_____

_____

_____

C. Other issues?

_____

_____

_____

What are the most **important changes still needed** in regard to the treatment of women in the courts?

_____

_____

_____

_____

_____

_____

_____

_____

_____

Name, Title and Address (optional)

_____

_____

Please send your response, by December 8, 2000, to:

Jill Laurie Goodman, Counsel
New York State Judicial Committee on Women in the Courts
25 Beaver Street, Room 878
New York, NY 10004

Hon. Betty Weinberg Ellerin, *Chair*

Fern Schair, *Vice Chair*

Patricia K. Bucklin, Esq.

Hon. Joan Carey

Michael Colodner, Esq.

Hon. Donald J. Corbett, Jr.

Hon. Sandra Feuerstein

Hon. David G. Klim

Caroline Levy, Esq.

Maria Logus, Esq.

Margaret Morton, Esq.

Hon. S. Michael Nadel

Hon. Juanita Bing Newton

Barbara Berger Opotowsky, Esq.

Hon. Terry Jane Ruderman

Peter Ryan, Esq.

Adrienne White

Jill Laurie Goodman, *Counsel*

April 2002