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Achieving Equal Justice for Women and Men in the Courts. The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts

Judicial Council of California

— DRAFT —
RELEASED FOR COMMENT

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Administrative Office JUDICIAL COUNCIL of the Courts
OF CALIFORNIA

Achieving Equal Justice for Women and Men in the Courts

The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts

Honorable David M. Rothman, Co-chair
Judge of the Superior Court
Los Angeles County

Honorable Diane E. Watson, Co-chair
Member of the Senate,
Eighteenth Senatorial District
Los Angeles County

Honorable Judith C. Chirlin, Vice-chair
Judge of the Superior Court
Los Angeles County

March 23, 1990

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DR. NORMA J. WIKLER
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Associate Professor of Sociology
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MR. FRANK S. ZOLIN
County Clerk-Executive Officer
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TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two Chief Justices and charged with the duty of examining the problem of gender bias in the California courts, gathering information, and making recommendations to the Judicial Council to correct any problems identified. The committee has found that serious problems do exist in decison making, court practices and procedures, the fair allocation of judicial resources, and in the courtroom environment. The committee proposes a series of recommendations in the areas of: Civil Litigation and Courtroom Demeanor, Family Law, Domestic Violence, Juvenile and Criminal Law, and Court Administration. The committee also proposes a recommendation for implementing its suggestions and for developing judicial education programs on gender bias issues.

The committee is chaired by Los Angeles Superior Court Judge David M. Rothman and Senator Diane E. Watson of Los Angeles. Los Angeles Superior Court Judge Judith C. Chirlin serves as the committee's vice-chair and subcommittee chairs are:

- Mr. Herbert Rosenthal, Executive Director,
  State Bar of California
  Chair, Civil Litigation and Courtroom Demeanor
  Subcommittee

- Los Angeles Superior Court Judge Meredith C. Taylor
  Chair, Family Law Subcommittee

- Ms. Sheila James Kuehl, Managing Attorney
  Southern California Women's Law Center
  Chair, Domestic Violence Subcommittee

- Los Angeles Superior Court Judge Kathryn Doi Todd
  Chair, Juvenile and Criminal Law Subcommittee

- United States Bankruptcy Judge Lisa Hill Fenning
  Chair, Court Administration Subcommittee

Dr. Norma J. Wikler, Associate Professor of Sociology at the University of California at Santa Cruz and founding director of the National Judicial Education Project to Promote Equality for Women and Men in the Courts, serves as special advisor and consultant to the committee.

The advisory committee's work began in April 1987 with its first meeting. The committee developed a working definition of gender bias which provides that gender bias includes behavior or decision making of participants in the justice system which is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; and (3) myths and misconceptions about the social and economic realities encountered by both sexes.

The committee developed a research plan and pursued a methodological strategy that seeks to gather information from diverse data sets in order to obtain a composite picture of the problems of gender bias in the courts. The information gathered was mutually corroborative.

The primary information techniques consisted of consultation with and the collection of testimony from knowledgeable and credible people across the state with different vantage points who supplied the committee with an accurate account of their experiences in the courts. Judges, attorneys, domestic violence workers, mediators, clerks, and litigants related their views on problems of gender bias in the California court system in rural areas, urban areas, large courts and small courts. Of these sources, a survey of all California state court judges and commissioners proved to be reliable and useful especially in light of the high survey response rate of 73.9

percent. The advisory committee's approach is in accord with that used by other gender bias task forces across the country, nine of which have published final reports.

The advisory committee used the following methods of gathering information about the problems of gender bias in the California courts:

- o A comprehensive survey of all California judges;

- o Confidential regional bar meetings attended by approximately 200 attorneys and held in six regions of the state;

- o Five public hearings with approximately 125 witnesses including judges, community leaders, attorneys, researchers, other experts, and members of the public;

- o Site visits to two women's jail facilities;

- o Focus group discussions with judges, civil litigators, family lawyers, and minority attorneys at the State Bar Annual meeting in September 1988;

- o Three information gathering meetings with domestic violence advocates and receipt of a fourth written report from the California Coalition of Women of Color Against Domestic Violence;

- o Meetings with and surveys of court clerks;

- o Reports submitted by participants at the Conference of Affiliates of California Women Lawyers on domestic violence diversion, attorneys' fees in family law matters, alternative sentencing and dispositional

programs in criminal and juvenile law, and the appointment of counsel in juvenile and criminal matters;

o Literature and case law searches in the fields of concern to the committee;

o An invitation to submit written comments published in California Lawyer; and

o Follow-up telephone interviews when necessary with participants in these information gathering efforts.

After developing its research plan and completing the information gathering phase, the advisory committee conducted a series of intensive meetings, and developed a series of recommendations. The recommendations address specific problems and issues. The committee thoroughly and vigorously discussed the issues and ultimately reached consensus on each recommendation. A summary of the findings and recommendations for each of the substantive law areas follows.

CIVIL LITIGATION AND COURTROOM DEMEANOR

The Civil Litigation and Courtroom Demeanor Subcommittee was concerned with factors that affect the courtroom environment and the players that appear in the courtroom drama. The committee focused primarily on judicial conduct because judges control or should control courtroom interaction. This focus included an examination of the duty of judges to intervene when other participants, such as attorneys or court employees, exhibit gender-biased behavior. The committee also directly considered the conduct of attorneys and the need for diversity in judicial appointments.

The committee determined that for bias of any kind to abate, judicial officers must refrain from any behavior reflecting gender bias and must regard the expressions of bias by others as intolerable. The judges must lead in articulating and accomplishing the goal of elimination of gender bias in the courts through setting the tone of fariness in the courtroom; appropriately responding to expressions of gender bias in the courtroom; controlling staff; reflecting impartiality in outside activities; ensuring neutrality in court appointments; using gender neutral language; and supporting diversity in judicial selection. Lawyers must follow the lead of the judiciary.

Judicial conduct

In its examination of the conduct of judges, other bench officers, and court employees, the committee found that upon occasion, conduct of judges constituting gender bias has resulted in judicial discipline by the Commission on Judicial Performance. Many more examples of conduct exhibiting gender bias or the appearance of gender bias have occurred that have not resulted in judicial discipline and include both overt and subtle forms of the following types of conduct:

a. Occasional openly hostile behavior;

b. The utterance of sexual innuendos or dirty jokes;

c. The occasional and offensive use of terms of endearment to refer to women participants in the courtroom;

d. The failure to extend equally common courtesies to women participants such as the gesture of a handshake or the use of an appropriate form of address;

e. The persistent focus upon the personal appearance of women court participants;

f. Devotion to and reliance on stereotypes about women rather than upon judgments unique to each individual;

g. Adoption of a tone toward women participants that is fatherly, either courtly and patronizing or harsh and reprimanding;

h. The unequal extension of professional courtesies;

i. Imposition of unequal standards of advocacy;

j. Hostility and impatience toward causes of action uniquely involving women such as sexual discrimination or harassment;

k. Imposing penalties, such as denial of continuances of trial or depositions, upon women participants who are pregnant when similar penalties would not have been imposed for any other disabling condition; and

l. The failure to intervene appropriately when conduct constituting gender bias is exhibited by some other court participant under the judge's control, such as opposing counsel, a bailiff, or a court clerk.

The committee found that conduct of judges and other bench officers constituting gender bias, even when the conduct is relatively minor in its immediate effect, results in undermining the credibility of the female participant and the general impugnment of the integrity of both the judiciary and the entire judicial system. This result is exacerbated when the court employees who work under the direct supervision of the judge exhibit similar behavior.

Incidents of conduct evidencing gender bias by other judicial officers, such as commissioners and arbitrators, have also occurred. Finally, in the committee's view, judicial membership in clubs that practice invidious discrmination creates an appearance of impropriety and undermines the efforts of courts to achieve equal justice.

Accordingly, the committee proposes that

o a new section of the Code of Judicial Conduct should be adopted that imposes the obligation upon judges to perform all judicial duties wihout bias or prejudice, to refrain from manifesting bias, and to prevent others under the judges' control from engaging in similar conduct;

o the Advisory Committee on Private Judges should consider the extension of this ethical duty to private judges, and the State Bar should likewise consider its application to lawyers serving as judicial officers;

o a fairness manual should be prepared to cover fair treatment of and appropriate behavior toward lawyers, jurors, court staff, experts, litigants, and others and to include a suggested opening statement to be read at the beginning of all court proceedings;

o a pilot project in three counties should be created to develop informal mechanisms for dealing with minor incidents of gender-baised conduct of judicial officers, attorneys, and court personnel; and

o the applicable judicial canon should be clarified to provide that judges <u>shall not</u> belong to clubs that practice invidious discrimination.

<u>Attorney conduct</u>

In its examination of the conduct of attorneys, the

committee found that examples of attorney conduct exhibiting gender bias abound, and the examples are both more frequent and more severe than those involving judicial conduct. Attorney conduct evidencing gender bias occurs in a climate of decreasing civility in the profession.

The committee found that attorney conduct that exhibits gender bias includes forms of the following types of behavior:

a. Words and acts that focus on the sexual attributes or personal appearance of women participants in courtroom proceedings;

b. The use and manipulation of gender issues as a trial tactic;

c. Expression of the belief by word and deed that women should not be lawyers or are inferior as advocates;

d. Discrimination against women in bar activities; and

e. Words or acts evidencing gender bias that are committed with the encouragement or participation of the judge.

In the committee's view, it is in the interests of the entire profession, the judiciary, and the public that the reputation of the legal profession and the underlying acts that create that reputation be improved. Eliminating gender bias in the courtroom will serve that laudable goal.

The committee recognized that the use of gender-neutral language by all court participants is essential to ensuring gender fairness and the appearance of gender fairness in the courts. Further, the committee determined that women attorneys are often excluded from the most lucrative and prestigious appointments as counsel in civil matters, and local practices and procedures should be adopted to correct this problem. Women attorneys perceive that they have fewer opportunities for advancement than do men attorneys, a situation directly related to the profession's failure to respond adequately to the difficulties of balancing home and family. Attorney membership in

and business use of private clubs that practice invidious discrimination is detrimental to affected professionals, both women and minorities.

To remedy these problems of gender bias, the committee proposes that

o the State Bar adopt a rule of professional responsibility similar to the proposed canon for judges that would create a duty for all attorneys not to manifest bias, the bar examination should contain questions relating to the ethical duty, and the State Bar should conduct a major on-going effort relating to the education of the bar on issues of gender bias;

o gender-neutral language should be required in all local court rules, forms, and documents and by January 1, 1991, in all jury instructions.

o a model local rule should be adopted setting forth a policy on the appointment of counsel in civil cases to assure equal access for all attorneys regardless of gender, race, or ethnicity;

o the State Bar should adopt a rule of professional responsibility prohibiting attorneys from discriminating in employment decisions or engaging in sexual harassment;

o the State Bar should take immediate steps to implement the recommendations of the Women in the Law Committee submitted in its recent survey of women and the practice of law in California; and

o the State Bar should use every available means permitted by the Constitution to discourage attorneys from using for business purposes clubs that practice invidious discrimination.

Judicial appointments

Although the committee did not propose a recommendation

relating to diversity in judicial appointments, the committee concluded that this issue was of great significance. The evidence received and reviewed by the advisory committee in the area of litigation and courtroom interaction collectively points to one conclusion: substantial amelioration of the problem of gender-biased conduct in the courtroom would be accomplished if women were appointed to judicial office in greater numbers commensurate with their numbers in the legal profession and in society as a whole.

The advisory committee found that issues of family law are of primary importance to the study of gender fairness in the courts of this state, and that gender bias affects the resolution of family law cases in both overt and subtle ways. The operation of bias in the family law system involves the following factors:

o The laws applicable in family law proceedings and the ways in which judges interpret and enforce them.

o Impediments to the neutral participation in family law proceedings of judges, lawyers, and mediators.

o The interaction of the components of the family law system to create delays, inappropriate allocation of court resources, and issuance of conflicting and overlapping orders that affect families.

o Other barriers to full and fair access to the courts for family law litigants.

o The need for greater information and research vital to the impartial resolution of family law cases, and the need for augmented training and education of judges.

Child support

The advisory committee found that child support awards are too low, that minimum child support awards are used as a ceiling rather than a floor, and that the duration of child support payment obligations is too short. The committee further found that child support is used inappropriately as a bargaining chip in custody disputes. Methods of enforcing child support orders must be improved. To the extent child support orders and enforcement of those orders are inadequate, a disparate impact is created for the impecunious custodial spouse who is usually female.

To remedy these problems of child support that have a disparate impact on the primary caretakers of children who are usually women, the committee proposes that the Judicial Council:

o Fund and adopt as a top priority a study of the adequacy of child support guidelines as applied;

o Urge the introduction of and support legislation which would require judges to state the factors on which they rely in setting child support awards at the minimum level, assure that children, after divorce, continue to share in the increased standard of living of the higher income parent, and extend the duration of child support to age 21;

o Urge the introduction of and support legislation which would amend Civil Code section 4727 so that shared custody would no longer reduce child support obligations;

o Request the Judicial Council Advisory Committee on Legal Forms to provide a simple application procedure for recovering expenses for childcare expenses as provided in Civil Code section 4700(b);

o Review compliance with the statute that requires distribution of information booklets on child support rights and duties and study whether a system of informal assistance can be created for parents seeking to collect unpaid child support.

Spousal support

The committee found that historically, spousal support awards have been infrequent and, when issued, have been insufficient in amount and duration. The unpredictability and insufficiency of spousal support awards have unfairly affected two groups of women: the older homemaker who has had no significant employment outside the home and the younger mother with children who has experienced a gap in employment history due to her attention to child-rearing duties. The committee further found that spousal support arrearages cause financial reversals for

the supported spouse that make it difficult to retain counsel to launch a collection effort.

To remedy problems of spousal support that unfairly affect the older homemaker and the young mother with children and no employment skills, the committee proposes that the Judicial Council:

o Monitor the operation of Civil Code section 4801(a) concerning the standard of living during marriage as a point of reference in determining spousal support and the new provisions for automatic wage assignments in spousal support awards and propose additional recommendations for reform if necessary.

Custody

The committee did not make a finding regarding the appropriate standard for determining custody or for evaluating whether joint custody should be the arrangement of choice whenever possible. The committee did find, however, that when judges are asked to make custody decisions, they do so within a relatively uncharted zone of discretion, and biases about the proper roles of women and men inherently affect those decisions. Most custody decisions are made between the parents themselves or with the assistance of counsel or a mediator. These decisions are equally important in terms of social policy, and lawyers and mediators are just as likely to be influenced by gender stereotypes. The committee further determined that bias in custody decision making is best cured by judicial, attorney, and mediator education. Research on the nature of custody arrangements that will truly be in the best interests of our children is urgently needed. The committee found that custody battles should be resolved as quickly as possible, and custody trials should be given the preference afforded them by statute.

In the special area of child abuse allegations made in the course of a custody dispute, the committee found that little evidence has been documented that rampant false

allegations of child sexual abuse are made by mothers against fathers in child custody disputes. Although individuals may have made false allegations in certain specific instances and although those allegations may have been made to gain advantage in a dissolution proceeding, the evidence tends to support the conclusion that these instances are not common. Similarly, the committee found that explanations exist, other than that the mother was motivated to gain an advantage in the custody dispute or wanted to punish the father for leaving her, for the apparent tendency for allegations of child sexual abuse to surface in the context of a divorce when they were not made prior to the separation of the parties.

The committee found that stereotypes and prejudices influence decision making in the area of custody disputes. One example is the tendency to doubt the credibility of women who make these allegations and characterize them as hysterical or vindictive even when medical evidence corroborates a claim of child abuse. The committee determined that there is an urgent need for speedy and expert resolution of these disputes as well as defined protocols for judges to follow in taking the steps necessary to reach a fair and just solution in the best interests of the allegedly molested child.

To remedy problems of gender bias in custody decision making, the advisory committee recommends that the Judicial Council:

o Fund further research on joint custody and stress in judicial education programs the need to accord the statutory trial preference to custody cases;

o Provide the family law judge with confidential access to existing investigatory reports on child abuse allegations and with the power to order his or her own investigations;

o Adopt a model protocol for judges who resolve custody disputes involving allegations of child sexual abuse; and

o Mandate the inclusion of these issues in judicial education programs.

Division of assets

The advisory committee found that the division of assets upon dissolution may follow the dictates of gender stereotypes and that women may be uninformed about the nature and extent of the marital property at the time of dissolution. The committee further found that simplified procedures that can be carried out by lay people should be created to implement existing law that permits an accounting of marital assets during or prior to dissolution.

To remedy these problems, the committee proposes that:

o the Advisory Committee on Legal Forms develop a simple petition form which would permit a spouse to request an accounting of the marital assets.

Family law judges

The advisory committee found that family law judges work in a field in which stereotypes about men and women inevitably arise. The committee found that judges rate the family law assignment as their lowest preference by a wide margin and that working conditions for family law judges are substandard. Time constraints, inadequate staffing, and pressure to move calendars augment the stress inherent in hearing matters of great emotional import to the parties and result in judicial burn-out among family law judges, especially among those who hear requests for temporary support, visitation, and custody. The committee further found that the inadequacy of the working conditions and the unpopularity of the assignment may both be due to relegation of "women's and children's issues" to the lowest priority. The committee determined that more attorneys with demonstrated expertise in

family law should be appointed to the bench. In many counties, there is no gender diversity among judges hearing family law matters either because no female superior court judge has been appointed or elected in the county or because no female superior court judge has been assigned to a family law department.

To remedy these problems in the field of family law caused, at least in part, by the historical characterization of family law issues as "women's issues," the committee proposes:

o that the Advisory Committee on Family Law examine the working conditions and educational needs of family law judges and submit recommendations to the Judicial Council for ways in which the family law assignment might be enhanced.

Family lawyers

The advisory committee found that to ensure that informed attorneys, and ultimately informed judges, engage in their profession without bias, major steps should be taken to provide for adequate training in family law that includes coverage of issues of gender bias for law students and lawyers. The committee further found that the refusal to permit the taking of live testimony at a hearing for temporary support, visitation, or custody without exception may seriously impede the ability of counsel to ensure fairness for his or her client.

To remedy these problems, the committee recommends that the Judicial Council:

o commend this report to the attention of the State Bar and the Committee on Bar Examiners and urge that family law and gender bias issues in family law be included on the bar exam and that education on gender bias issues be required for certification as a family law specialist;

o commend the report to all law school deans and urge that gender bias issues in family law be incorporated into the law school curriculum; and

o request the Family Law Advisory Committee to consider the issue of precluding live testimony at hearings for temporary orders.

Mediation

The advisory committee recognizes that mandatory mediation of child custody and visitation disputes is a vital tool for the court in expeditiously and effectively resolving this form of litigation and affords the family law judge a way to cope with long and burdensome calendars. The advisory committee, however, has serious misgivings about the fairness of the process for women, who are traditionally in less powerful positions and do not have equal bargaining power. The committee is concerned that the level of qualifications and training of mediators throughout the state is not uniform and needs improvement. The committee found that professional standards for mediators need to be promulgated that include an ethical duty to avoid bias in all aspects of the mediation process.

The committee further found that dangers inherent in uniform mandatory mediation of custody and visitation disputes include:

o the possibility that one party will be coerced into agreement due to unequal bargaining power or acculturation that seeks to "please the mediator";

o the pressure to resolve the dispute and serve the court's goal of avoiding litigation may result in inappropriate or unfair agreements in some cases;

o mediators themselves are just as prone to exhibit biases, including gender bias, as are the other participants in the process and as a reflection of the bias of the larger society in which they perform their tasks; and

o the fact that mediation occurs in private and, as a practical matter, is not often subject to court review renders the accountability of the process uncertain.

The committee thus found that the public perception of the fairness of mediation is of vital importance to the court system and therefore public grievance procedures for complaints of bias or prejudice against mediators should be instituted.

Committee recommendations pertaining to mediation include:

o the inclusion of education on gender stereotypes and the relative power balance between the parties in mediator training programs;

o the inclusion of an ethical duty to refrain from exhibiting gender bias or other bias in the new statewide standards for mediators now being proposed;

o the requirement that recommendations from mediators be in writing and that bench officers state the reasons for relying on a mediator's report in making orders;

o a request to the Family Law Advisory Committee and the Family Court Services Program to jointly study the custody evaluation process and recommend ways to improve the qualifications and professional standards of evaluators;

o the requirement of informing the parties about mediation and the ways in which the information obtained by the mediator will be used; and

o the creation of a simple grievance procedure for family law litigants concerning mediation.

Devaluation of family law

The advisory committee found that too few judges are

assigned and too few courtrooms are available to resolve family law matters in California. The family law court has been relegated to an inferior status among the other departments and functions of the court, and the proportion of the court's resources devoted to family law is not commensurate with either the volume, the issues at stake, or the importance of family law issues to the parties and society. The lack of available resources has sometimes had the practical effect of coercing the settlement of family law matters, forcing counsel to seek references to private judges, or inappropriately denying courtroom time for the resolution of family law matters. The committee further found that delay in family law is endemic; there is little case management; and these factors adversely affect the impecunious spouse who is more often the woman. Finally, conflicting orders affecting families and a lack of coordination and communication among the various departments of the court including those situated in different counties further exacerbate these adverse conditions for those families who are in the most distress.

To remedy these problems that adversely affect family law litigants, and have a disparate impact on women and children, the committee recommends:

o that the Judicial Council Court Profiles Advisory Committee reevaluate the method of weighting family law cases to ensure an adequate number of family law judges;

o that presiding judges allocate adequate judicial resources to family law departments;

o that a pilot program on delay in family law matters be created; and

o that protocols be developed for solving the problems resulting from overlapping jurisdiction of family, juvenile, and criminal law departments.

Other barriers

The advisory committee found that public information on family law is grossly inadequate. Citizens do not know or understand the ways in which the family law court can and does affect their lives. Representation in family law is grossly inadequate to serve the needs of the citizenry. The committee found that inequities in the award of attorney's fees present serious obstacles to obtaining representation. These inequities include the denial of fees when they should be awarded according to case law and the granting of differential awards between male and female attorneys. The committte found that additional obstacles to progressing through the family law system sometimes exist including obstructionist and unhelpful practices by clerks' offices, denial of appropriate requests for fee waivers, and imposition of job search requirements upon women receiving welfare grants for dependent children.

The committee further found that these barriers to access to the courts have their most serious impact on the poor and on the primary caretakers of children who are most often women in the context of the family law court.

The committee proposes that the following recommendations be adopted to improve access to the courts:

o develop a general information booklet or other educational device for family law litigants;

o urge the State Bar to recognize that there is a crisis in representation in family law matters and to create a task force to focus on solutions to this problem; and

o support legislation which will codify existing case law on the award of attorney's fees to ensure that each party has access to legal representation to preserve all of his or her rights.

The need for research

The committee determined that changes in family law are often initiated without a proper research foundation and without regard to future evaluation of the social experiment proposed. Without proper research and evaluation a study of unfairness in the courts is seriously hampered. California is no longer part of a national data collection system in family law. The committee found that the failure to conduct appropriate research and data collection insulates policies and practices from meaningful review and criticism.

The advisory committee proposes the following recommendation to the Judicial Council addressing this identified problem:

o Add staff, budget, and other resources to provide for and ensure the creation of a uniform statistical reporting system in family law as required by law and reevaluate the research priorities of the Family Court Services Program in light of this report.

DOMESTIC VIOLENCE

Since 95 percent of the victims of domestic violence are women, the judicial system's unequal and inadequate treatment of such victims and of the crime of domestic violence raises serious issues of gender bias. The evidence gathered for this report demonstrates that when domestic violence victims seek protection from the court, they are often further victimized by the process and by their experiences within the judicial system. Despite recent legislation offering the promise of protection to victims of domestic violence, the inadequacies and inequities of the judicial system often mean that effective relief will not be granted or enforced.

The committee has therefore adopted 15 recommendations and made 11 findings addressing the difficulties faced by domestic violence victims who come to court or who otherwise seek legal assistance to obtain the protection which the law guarantees, and suggesting new or modified procedures and legislation to help ensure that the judicial system adequately, effectively, and fairly protects those who are battered from further abuse. These recommendations and findings concern the major areas in which domestic violence victims interact with the judicial system: seeking protective orders against future abuse, resolving child custody and visitation disputes with their batterers, and participating in criminal prosecutions of the batterers. Also addressed are both the difficulties domestic violence victims face in obtaining access to the courts, and particular problems which occur within various court programs and with various court personnel. Our predominant message is that persons in the judicial system who deal with domestic violence need to be educated, and the system needs alteration, so that the nightmare of domestic violence is abated, and not aggravated, by resort to the judicial system.

Efforts to obtain protection from further abuse are often the first occasion in which victims of domestic violence

interact with the legal system. By law, restraining orders are available at any time on any day, but in fact various obstacles often bar victims from obtaining the relief to which they are entitled. Some procedural barriers can be readily removed by new rules of court; other barriers such as victims' lack of information as to procedural requirements and the judiciary's and law enforcement's lack of understanding of the realities of domestic violence can be remedied by education. One of the most critical changes needed is more effective enforcement of restraining orders after they are issued, so that the court orders will actually prevent further abusive behavior.

Another major problem area involved child custody and visitation disputes between parents where there has been a history of domestic violence. Mandatory mediation too often places the alleged batterer and the victim face-to-face, physically and psychologically endangering the victim and also enabling the alleged batterer to exert undue influence in what is intended to be a freely negotiated resolution of the dispute. Custody and visitation orders also frequently neglect to include adequate provisions to prevent further abuse, giving batterers unrestricted access to their children and therefore unrestricted access to their abused spouse. Finally, the judicial system needs to recognize the harmful effect of domestic violence on children who witness such violence, even if the children are not themselves physically abused.

The criminal justice system also disfavors victims of domestic violence, since domestic violence crimes are too frequently treated less seriously than similar violence against strangers. One major finding concerns the availability of pre-guilty plea diversion for those accused of spousal abuse. Batterers often escape any punishment, and are not effectively deterred from committing further abuse. The message given to both victims and batterers is that the judicial system does not consider domestic violence to be a serious crime.

Perhaps the greatest need documented by this report is the need for education. Judges, prosecutors, law enforcement, and other personnel involved in the legal system need to be educated on domestic violence issues, so they understand the domestic violence profile, such as that victims are often terrified to speak up against their abusers and may in fact be reluctant to pursue court intervention once the immediate threat of violence has passed. Domestic violence is a crime against society, as well as an injury to the individual victim, and the judicial system needs to acknowledge the seriousness of the problem and its responsibility for effective response so that the cycle of domestic violence may be ended.

Is gender bias reflected in the manner in which courts make decisions, such as treatment of adult and juvenile offenders, or court appointments of counsel for indigent representation?

The committee concentrated its review on the ways in which males and females, attorneys and participants, are differentially affected by the criminal and juvenile justice system. Its charge was to identify the ways in which the justice system treats females as compared to males. Thus, the committee sought to determine whether there was differential treatment motivated by gender bias and whether there were instances in which certain policies and practices created a disparate, negative impact on females.

California has the largest incarcerated female population in the world. The number of women in state and federal prisons has more than doubled over the past decade, rising from over 12,000 in 1977 to close to 27,000 in 1986. The state prison female population has grown at a faster rate than the male population since 1981. There are currently 6,057 women in the state prison system. The number of women in county jail facilities is also increasing significantly. There are three thousand women incarcerated in county jails in Los Angeles. That number is expected to triple by the mid-1990's.

The manner in which female offenders are treated by the courts and by the agencies that work in conjunction with them was an area of significant interest to this committee.

The committee found that the profile of a typical female prisoner is that of a woman between 18 and 40 years of age who has not completed high school. Between 70 and 80 percent of them are mothers. The crimes they commit are mostly non-violent.

Though their numbers are increasing, women still make up only five to eight percent of the incarcerated population in California. Because the penal system has a much larger male population, the committee noted that there exists a significant disparity between resources for men and women inmates. And since

the system was established to correct men's behavior, the committee found a dearth of understanding of the specific needs of women.

In our society women still are the primary caretakers of children. Thus, the general paucity of community-based resources has a disproportionately negative impact on females which is gender-based. For example, the placement of women outside their local geographical area seriously limits their access to children in families.

The connection and bond between women and their children cuts across the boundaries of both the criminal and juvenile systems. Since most incarcerated women who are mothers are single parents, many of their children become part of the juvenile dependency system. Insofar as the judicial system does not provide adequate reunification services, the lack of resources for families also translates into a lack of services for women and children.

The committee found that young female juvenile offenders fare no better than their adult counterparts. They face many of the same problems: histories of physical and sexual abuse, emotional instability, substance abuse and teenage pregnancy.

In 1986, there were 69,951 new referrals of male juveniles to probation departments for delinquent acts. There were 28,837 referrals of females for the same year. Again, because their numbers are comparatively small, the problems of female juvenile offenders are frequently ignored. The young males in the system are in the overwhelming majority; because of their more aggressive behavior, programs and policies are too often designed to meet only their needs.

The committee also reviewed the policies and procedures concerning access to court appointments and made recommendations to help minimize the effect of gender bias. It was concerned about how courts appoint and compensate attorneys, both male and female, to represent indigents in criminal and juvenile proceedings.

During the course of its inquiry, the committee did find that gender bias affects the ways in which the criminal and juvenile courts operate both directly and indirectly. The committee also found that racial and ethnic bias also affect the manner in which decisions are sometimes made.

Finally, the committee focused its attention on the ways in which the criminal and juvenile justice system can be modified to avoid unequal treatment based on gender, while recognizing basic differences between males and females and the special needs of females brought into the system. The committee found:

(1) Appointed counsel

(a) Generally, there is a lack of a formal written court policy for court-appointed attorneys statewide.

(b) The lack of written policies, recruitment protocols, and reporting requirements creates a climate and conditions where gender and ethnic bias are likely to grow and remain unabated.

(c) On a comparative basis, women and minority attorneys receive fewer appointments on the more financially lucrative death penalty and serious felony cases, while they receive more appointments on the less-paying juvenile and misdemeanor cases.

(d) In the absence of a requirement to keep and report statistical data showing the gender and race of attorneys appointed by the court, the type of case, and the amount of compensation, it is difficult to accurately determine whether court appointments are made in a bias-free manner.

(2) Programs, services, and facilities

(a) The number of female offenders in California, though increasing, is a small percentage of the adult and juvenile probation and inmate population.

(b) There is a disparity of available resources, programs,

services, and facilities available based on gender. A low priority in the justice system results in fewer services and programs for women and girls compared to their male counterparts with an apparent disproportionate share of the resources and facilities going to adult and juvenile males.

(c) There are few, if any, programs designed to meet the special needs of institutionalized females.

(d) The majority of adult women inmates are single mothers, whose children are frequently dependents of the court. Thus the lack of coordination of services and programs between the criminal and juvenile dependency systems has a gender-related impact. A lack of community-based resources has a more significant impact on women because they are the primary caretakers of children. Insofar as the justice system does not provide adequate reunification services, the lack of resources for families translates into a lack of services for women and children.

(e) The problems faced by female juvenile offenders are similar. Many have young children who are also the subject of juvenile court jurisdiction. The lack of programs to meet their special medical and mental health needs is especially apparent.

(f) Community-based alternative sentencing programs that keep nonviolent sentenced women and their children together or facilitate regular contact should be encouraged.

(3) Special needs of institutionalized females

(a) The clothing that is available in both male and female facilities is designed to accommodate the anatomy and physiology of men. There is generally a lack of available clothing specifically designed for a female's anatomy, especially for a pregnant female.

(b) Institutionalized females have difficulty obtaining adequate supplies of personal hygiene products for sanitary needs and getting additional clothing and increased access to laundry facilities during the menstrual cycle.

(c) Restraining hardware and shackles available in both male and female facilities are designed to accommodate the anatomy of men. Generally, there is a lack of available hardware and shackles designed specifically for a female's anatomy, especially that of a pregnant female.

(d) Since the child care responsibilities of institutionalized females are different than those of males, programs that allow institutionalized females to remain with their young children, such as provided by the state prison Mother/Infant Care Program under Penal Code section 3410 et seq., should be expanded. In instances where institutionalized mothers cannot remain with their children, visitation programs that facilitate regular contact should be encouraged.

(4) Medical problems of institutionalized females

(a) Institutionalized females have difficulty in obtaining appropriate medical care, including: prenatal and other pregnancy-related services, medically supervised drug detoxification programs, and voluntary AIDS testing.

(b) Protocols and guidelines for state and local agencies operating adult and juvenile facilities specifying procedures and minimum standards for appropriate medical care would assist institutionalized females in obtaining necessary services.

(5) Sexual assault and sexual harassment suffered by inmates

(a) Females are sometimes the victims of sexual assault and harassment while institutionalized in adult and juvenile facilities.

(6) Juvenile dependency proceedings

(a) Up to 80 percent of incarcerated women are mothers or mothers-to-be. A significant number of these women have children who are under the jurisdiction of the juvenile court. A substantial number of female offenders in juvenile detentions and placements also have children who are dependents of the juvenile court.

(b) Institutionalized females lack adequate information about juvenile dependency proceedings, and are unable to make knowledgeable decisions about the placement and future of their children.

(c) Institutionalized parents do not receive proper notice of proceedings and are therefore being denied due process. As a result, they are at risk of not having the opportunity to assert their statutory rights to participate in dependency proceedings, thereby loosing custody of their children by default.

(d) In addition to not receiving notice, institutionalized parents are not provided with transportation to court and an adequate opportunity to participate in dependency court proceedings.

(7) Enhancing status of the juvenile court

(a) The juvenile court is generally regarded by other judges and participants, as well as the public, as having a lower status than civil and general criminal courts. As with family law court, a factor relevant to this low status may be the perception that juvenile court is a court that deals with "women's problems." In addition, juvenile court is perceived by many as unimportant because the majority of families that come before it are poor, of color, and headed by a single parent who is female.

(b) As a consequence, juvenile court is given low priority within the superior court. This low priority results in heavy caseloads and inadequate facilities and staffing, further discouraging the interest of judges in seeking a juvenile court assignment.

(c) Since women are the primary caretakers of children, juvenile court's low status has a differentially negative impact on women and their children.

Based upon the findings, the committee recommends:

(1) The establishment of formal written policies and statistical reporting of fee-generating court appointments to ensure equal access for attorneys regardless of their gender, race or ethnicity.

(2) The development by local and state agencies responsible for implementing criminal and juvenile court decisions of protocols that

(a) make available on an equivalent basis for males and females:

(i) programs and services administered by local probation departments;

(ii) institutions and placements; and

(iii) education and training programs;

(b) design programs and services which reduce any differential effect on female offenders who are have infants and young children;

(c) design programs and services that meet the special physical and medical needs of institutionalized females, including pregnancy-related care; and

(d) assure the safety of inmates and detainees from sexual harassment and assault by others.

(3) The development and dissemination of informational materials for institutionalized parents on dependency law and procedure.

(4) Legislation to implement protocols for state and local agencies responsible for inmates and detainees to notify and secure the presence of parents at dependency-related proceedings.

(5) Implementation of measures to enhance the status of juvenile court.

(6) The development of training and standards on issues which relate to trial and jury selection in matters involving sexual assault, domestic violence and child abuse.

COURT ADMINISTRATION

Overview

California court administration is a patchwork of 229 separate court administrative systems, stitched together by a few statewide rules and standards. Given the high percentage of females in the court workforce and the lack of statewide standards, the potential for gender bias in court administration exists. Despite the fragmented nature of court administration, the committee found that it would be relatively simple to drastically reduce the opportunity for gender bias to affect court administration.

First, by adopting comprehensive personnel plans that contain standard provisions on such activities as salary setting, promotions, affirmative action, sexual harassment, alternative work schedules, dependent care benefits, and pregnancy and parenting leaves, courts can minimize the effect of gender bias in court administration. Second, judges as well as court employees need the protection of written policies on leaves. Third, courts must also respond to the need for care of the children of employees and other court participants. Finally, training all court employees, as well as bailiffs and others not employed by the court, about gender bias is essential to preventing it.

Additionally, the committee is calling upon law schools to adopt employment practices to minimize the effect of gender bias on the environment in which lawyers, judges, and some court administrators are educated and to teach courses concerning the effect of gender bias on different aspects of litigations.

Findings and Recommendations

California's courts employ predominantly women in the lower-paid classifications. Because of the sheer numbers of women in the clerk and secretary positions, particular personnel policies can have a disparate impact on women. Policies on

training, advancement, dependent care, affirmative action, pregnancy leaves and sexual harassment are crucial in the lives of the women working in the courts; without policies that are fair and clear to management and employees alike, gender bias is able to taint the decision making that will advance or hold back these women. Thus, the personnel plan under which employees work is very important.

The committee found that many court personnel plans are not comprehensive in scope, and many do not follow modern personnel practices. A comprehensive personnel plan can minimize the opportunities for gender bias to affect workplace decisions and resolve the confusion and inequity employees suffer under ad hoc policies. Creating a comprehensive court personnel plan will provide court employers with the opportunity to detect gender bias in their current employment practices and abolish those policies, replacing them with modern personnel practices that meet the needs of the courts and their employees.

If the Judicial Council amends the rules to require comprehensive personnel plans for every court, the courts will need guidance on what subjects should be covered in order to minimize gender bias in employment practices. Generally, the following subjects would be addressed in a comprehensive personnel plan: (a) salary setting; (b) job classifications and titles; (c) criteria and standards for promotion; (d) performance evaluations; (e) affirmative action; (f) training; (g) sexual harassment policy; (h) grievance procedures; (i) professional behavior; and (j) employee work schedules, leaves and benefits.

The absence of attention to any of these subjects in a personnel plan particularly has an impact on female employees

for three reasons. First, at this time, women predominate in the lower-paid classifications in courts. Policies on salary, accurately-valued job titles, promotion, performance evaluations, and training and affirmative action profoundly affect the possibilities for these women to move up in court administration. Second, women continue to be the primary caretakers of children in our society; hence, policies on leaves, alternative work schedules, dependent care benefits have a disparate impact on women. Third, it is usually, but not always, women who are the victims of sexual harassment and demeaning comments; therefore, sexual harassment policies, grievance procedures and professional behavior policies are crucial to a safe work environment for women.

Once a comprehensive personnel plan is in place, the judges must support the personnel plan and comply with it for the plan to operate effectively and fairly. Support from the judges will enable the court executive to enforce the plan. Furthermore, the judges must follow the plan when dealing with the employees in their courtroom.

The committee is asking courts to send their court personnel plans to the Administrative Office of the Courts (AOC) on an annual basis, hopefully spurring those courts to review and update the policies yearly. The AOC would act as a clearinghouse and resource for model court personnel practices, enabling all courts to benefit through shared knowledge of preferred personnel policies. By collecting and disseminating information on a variety of court employment practices, the AOC could speed the evolution of court administration in this important area.

Recommendation 5 requests the Judicial Council to amend the rules governing the duties of a presiding judge to include evaluating the training given to court employees not necessarily employed by the judges or court executive officer so that an informed decision can be made about the need to invite these employees to join in court-sponsored training on gender fairness

and sexual harassment. During the course of the public hearings and in many written submissions, the committee found that female attorneys, employees, and court-users often complained about the gender-biased treatment they received from court attaches who were not under the employment jurisdiction of the judge or court executive officer. Bailiffs, county clerk employees, and probation officers were some of the types of court attaches mentioned.

As the number of judges in the childbearing years increases, the need for a judicial leave policy becomes more pressing. The California Judges Association noted that an unduly limited leave policy or the lack of any leave policy can deter women of child-bearing age or their spouses from serving in the judiciary. A comprehensive judicial leave policy, as recommended by the committee, will guard against arbitrary denials of leaves to some judges or any appearance of unfairness to the other judges on the bench.

Parents working in the court and parents coming to court as witnesses, jurors, and litigants need affordable, accessible childcare. Ignoring this need has led to lost employees, absent witnesses, delinquent jurors, distracted litigants and defendants and children disrupting court proceedings. It is common knowledge that as the family patterns and mobility of the American population have changed, many children no longer have the safe, free option of staying with relatives. By working with county administration, courts could provide both regular and drop-in daycare for children of employees and court participants for a reasonable fee.

The advisory committee found that gender bias may taint both the employment practices and the curricula and teaching methods of many California law schools. Female professors have been denied tenure under circumstances that bespeak gender bias. Sexual harassment and gender-biased recruitment are reported on campus. Casebooks continue to portray stereotypical females, teachers continue to discount

female experience, and gender bias itself is not a subject studied in the schools for its impact on substantive law or trial practice. The committee urges law schools to develop written policies to eliminate these forms of gender bias in the law schools.

In conclusion, the subcommittee made recommendations on the following perceived needs:

(1) the need for comprehensive personnel plans and modern personnel practices;

(2) the necessary elements in each court's personnel plan, including

(a) Sound and equitable salary setting procedures;

(b) Revised job classifications and titles;

(c) Criteria and standards for promotion;

(d) Regular performance evaluations for all levels of employees;

(e) An affirmative action plan applying to all court personnel;

(f) Job-related training and continuing education programs for all court personnel;

(g) A sexual harassment policy;

(h) Grievance procedures covering, but not limited to sexual harassment;

(i) A policy statement on professional behavior;

(j) An employee benefits plan which may include: (i) flex-time, part-time, job-sharing or other alternative work schedules; (ii) disability leave, including pregnancy leave in accordance with Government Code section 12926(c); (iii) unpaid leaves, including parental leave; and (iv) "cafeteria" options to use pre-tax dollars for dependent care and banked sick leave for care of dependents;

(3) the need to require compliance by judges with the personnel plan;

(4) the need for the Administrative Office of the Courts to assist courts in developing and updating the personnel plans;

(5) the need to assess and assist related agencies, such as the sheriff's and probation departments, in the training of their employees;

(6) the need for a comprehensive judicial leave policy;

(7) the need for employee childcare;

(8) the need for children's waiting rooms; and

(9) the need for law schools to eliminate gender bias in teaching and employment practices and to study the effect of gender bias of different aspects of litigation and other legal work.

IMPLEMENTATION AND JUDICIAL EDUCATION

The advisory committee concluded that to ensure institutionalization of the recommended changes, a monitoring and liaison committee should be created. The task of the monitoring committee would be to act as a liaison to other groups charged with the responsibility of carrying out specific recommendations, draft and solicit comment on those proposals that are not referred to other agencies or committees, and provide technical assistance and evaluation to all groups engaged in the enterprise of ensuring implementation of the committee's recommendations as approved by the Judicial Council. In the committee's view, without an implementation committee, the likelihood that the recommendations would come to fruition was lessened.

The committee further found that judicial education is widely perceived as fundamental to correcting problems of gender bias. Attorneys and experts who testified at the various hearings conducted by the advisory committee supported increased judicial education on issues of gender bias. Judges themselves cited judicial education as the most effective remedy for curing problems of gender bias in the courts.

The committee determined that to be effective, judicial education on gender bias issues must be introduced and integrated into the curriculum as follows:

a. Curriculum must be developed that is integrated into the substantive areas of the law that are already taught so that an educational program is not focused on gender bias alone.

b. Innovative and creative teaching techniques should be developed to counter the resistance of judges encountered by those who serve as teachers on these issues.

c. Information from the social sciences must be included where appropriate so that judges profit from the important research that has been done in the areas of concern

and become more knowledgeable about the different life experiences that men and women have in our society.

d. In certain specific areas, most notably in family law, the model of voluntary education must yield ultimately to required courses for all judges who hear matters in these crucial areas.

The committee therefore recommends that:

o an implementation committee be appointed to ensure that the recommendations contained in this report are effectuated and to evaluate their effectiveness; and

o a comprehensive program for judicial education on gender bias be developed which would include the following elements:

a. encouragement of attendance at the California Judges' College

b. inclusion of gender bias issues in all programs for new judges and in substantive law courses;

c. creation of a special committee to develop curriculum in family law and to propose a program designed to ensure that every bench officer who hears family law matters will be educated in family law and gender bias issues in family law;

d. creation of a committee to coordinate efforts to develop quality educational programs on gender bias and other biases and to provide technical assistance and resources to those engaged in this effort; and

e. development of a program that would train faculty on the subtleties of handling gender bias courses and train them in effective and innovative teaching methods.

CONCLUSION

The advisory committee supports the creation of a similar committee to study issues of racial and ethnic bias in the courts and found that gender bias problems for women of color were particularly serious.

The committee found that gender bias embedded in our cultural and political history is manifested as well in the decision making and courtroom environment of the California justice system. The advisory committee members believe that it is the special responsibility of the judiciary and the court system, which are charged with judging the conduct and resolving the disputes of others, to take immediate steps to eradicate this bias and minimize its effects. The committee's recommendations are offered in the spirit of fostering the public's trust and confidence in the judicial system.

INTRODUCTION

I. Gender bias: the historical context

The members of the Judicial Council Advisory Committee on Gender Bias in the Courts were appointed by two Chief Justices and charged with the duty of examining the problem of gender bias in the California courts, gathering information, and making recommendations to the Judicial Council to correct any problems identified. The committee found that serious problems do exist in decison making, court practices and procedures, the fair allocation of judicial resources, and in the courtroom environment. The committee proposes a series of recommendations in the areas of: Civil Litigation and Courtroom Demeanor, Family Law, Domestic Violence, Juvenile and Criminal Law, and Court Administration. The committee also proposes recommendations for implementing its suggestions and for developing judicial education programs on gender bias issues.

The problems of gender bias found by the committee and discussed in this report are traceable to our historical and cultural past. In any examination of bias based on gender, therefore, it is first important to note the historical and social context in which this bias is rooted. Women and men did not share equal status in this country from its earliest beginnings. The first woman and her maid came to the colony of Virginia in 1608 and were followed thereafter in 1619 by ninety other women who were needed to create a more solid and lasting community in the new colony. As the colonies developed, women came in greater numbers, often as indentured servants or, in the case of many women of color, as slaves.[1/] When women who were neither slaves nor indentured servants came to this country, they did not necessarily find freedom as Eleanor Flexner notes in her history of the suffrage movement:

> Whatever their social station, under English common law, which became increasingly predominant in the colonies and among all religious denominations (until the advent of the Quakers), women had many duties, but few rights. Married women in particular suffered "civil death," having no right to property and no legal entity or existence apart from their husbands.2/

It is also easy to forget that it was not until August 26, 1920, when the proclamation certifying adoption of the Nineteenth Amendment was signed that women had the right to vote. That event occurred only 70 years ago. The effects of this disenfranchisement linger, and no woman has yet been elected president or vice-president of the United States.

The consequences of this position of political and civil inferiority were grave. They include the characterization of women as inferior, dependent, in need of protection, lacking in credibility, vindictive, overly emotional, and suitable subjects for domination and control.

Although gender bias is rooted in the not-so-distant past when women could neither vote nor own property, vast social change has occurred and is continuing to occur at a rapid rate. These changes have included, among others, the entry into the work force of many more women, the increased ability of men and women to plan their families, and the movement to establish equal rights both for women and for racial and ethnic minorities.

Our times are now changing with such speed and explosiveness that it is incumbent upon the courts to keep pace with and even to be in front of the changes that are surely coming. With the increase in the number of women in the work force, including as lawyers and judges, and with the changing demographics and economic forces, attitudes about women and men

based on last century's ideas and values will no longer suffice.

Accordingly, this investigation is not an attempt to report to the Judicial Council whether the court system is afflicted with a slight or a severe case of gender bias, or to test whether the foundations of our court system are structurally sound. Rather, our purpose is to provide the council with a map that points out the pathways to a future that assures decision making based on individual qualities, not on stereotypes, on perceptions that men and women have equal worth and dignity that endure regardless of their cultural or racial identification, and on knowledge of the realities, both economic and social, that men and women face in their lives. In the advisory committee's view, the results of this report, while critical of judges, lawyers, court clerks, and others in many respects, are essentially positive, in that they document issues and suggest specific recommendations for changes that will enable the judiciary to travel into the twenty-first century with the appropriate tools.

II. What is gender bias?

The advisory committee's working definition of gender bias is: behavior or decision making of participants in the justice system that is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; or (3) myths and misconceptions about the social and economic realities encountered by both sexes.

These factors manifest themselves in different ways. Bias can be intentional and reflect ill will as illustrated by the report from a witness that a judge remarked that he wouldn't take a family law assignment until the court got rid of the women lawyers. Intentional bias is the easiest form of

bias to understand, and it may also be the least frequent. Bias also includes disregard or insensitivity to the needs or characteristics of one sex or the other, such as rules that exclude children from the courtroom and make no other provisions for them when often abused women seeking restraining orders must come to court with their children. It includes differential treatment of the sexes that occurs when a judge is congenial and courteous to a male attorney and refuses to make eye contact with the female opposing counsel. Or, bias may amount to treatment that is unequal because it fails to acknowledge immutable differences such as the need for pregnancy leave or the placement of female juveniles in shackles unsuitable to and painful for the female anatomy. Finally, bias can be seen in the effects of court procedures and policies that have a disparate impact on one class of persons. For example, this occurs when child support guidelines are applied as a ceiling rather than as a floor as the Legislature intended, to the detriment of the children and the custodial spouse, who is often female.

Manifestations of gender bias are often subtle and difficult to discern. What is more, the path to understanding bias can be blocked by a series of obstacles that impede progress. The first obstacle to a judicial understanding of bias is personal resistance. Sometimes judges fail to take the issue of gender bias seriously because it implies a lack of impartiality, an implication that is difficult for judges to accept. Judges may not understand or may ignore the life experiences of those whose lives are so different from their own. This attitude may lead to trivializing or devaluing issues that uniquely affect one sex or the other. Thus, some judges do not treat domestic violence as a crime even when the level of violence is severe. Spousal abuse is seen rather as a subject for counseling and diversion, a family squabble into which the court should not intrude.

Another factor that impedes the ability to recognize bias and change behavior based upon it is the rapid and far-reaching social change that has overtaken our political and social institutions. What was once accepted behavior is no longer acceptable. What was once chivalrous or courtly behavior is now patronizing, for example, when the behavior relates to women professionals in the courtroom. We therefore see male judges responding negatively to female attorneys they perceive as too aggressive, and judges query, "Why can't they act like women; why must they act like men?" when in fact the women are only acting like lawyers.

Social change in general has been accompanied by a similar change in the judicial role. Courts are busier and larger. They require management. Bar leaders are beginning to recognize that lawyers' civility in the courtroom is waning. In this context, a judge has a duty to control the courtroom environment and to intervene when others exhibit bias in ways that were not expected of judges in earlier times. This change in the judicial role is occurring while judges are still relatively isolated professionals. Judges receive little feedback and may be isolated even from their peers. Coupled with this isolation is the enduring characteristic of judges: they are the ones in charge, and they wield great power over people's lives. In some areas of the law, such as family law, judges have broad discretion, the appeal rate is low, and to a great extent the judges' views, be they fair and neutral or affected by deeply-held personal beliefs, become the law of the case.

Juxtaposed against these characteristics of the judge's role, both changing and enduring, is a horizon of scarce and dwindling resources. More is being asked of judges who have less time, and fewer dollars are available to administer the courts. This lack of resources can be offered as an excuse or justification for some of the manifestations of bias. Yet, the advisory committee determined, it is important

to ask questions, especially in a time of scarce resources, about where and how those resources are allocated and who is paying the price. Family lawyers, for example, do not regard this scarcity as a legitimate justification for the insufficiency of resources allocated in family law, and this insufficiency makes fair and efficient decision making in that field even more difficult.

A review of the preceding pages of this introductory section to the advisory committee's report might prompt the questions: does gender bias include bias against men, and what is its effect on men? These questions are appropriate since most of the examples appear to relate specifically to women, and this is a study of gender. Presumably, a study of gender bias in the courts should include a discussion of the issues for both sexes. The advisory committee agrees with this proposition and has addressed bias against men when it has been shown. The fact is, however, if one excludes questions of racial and ethnic bias that most certainly affect men, problems of gender bias in the courts do not create specific disadvantages for men, with a few notable exceptions.

There are several salient reasons for this. First, historically white men have not been in positions of inferiority. Rather, they have been in positions of power. They have voted, held office, and owned property. They have not been excluded from professions, and they have not been economically disadvantaged solely because of their sex.

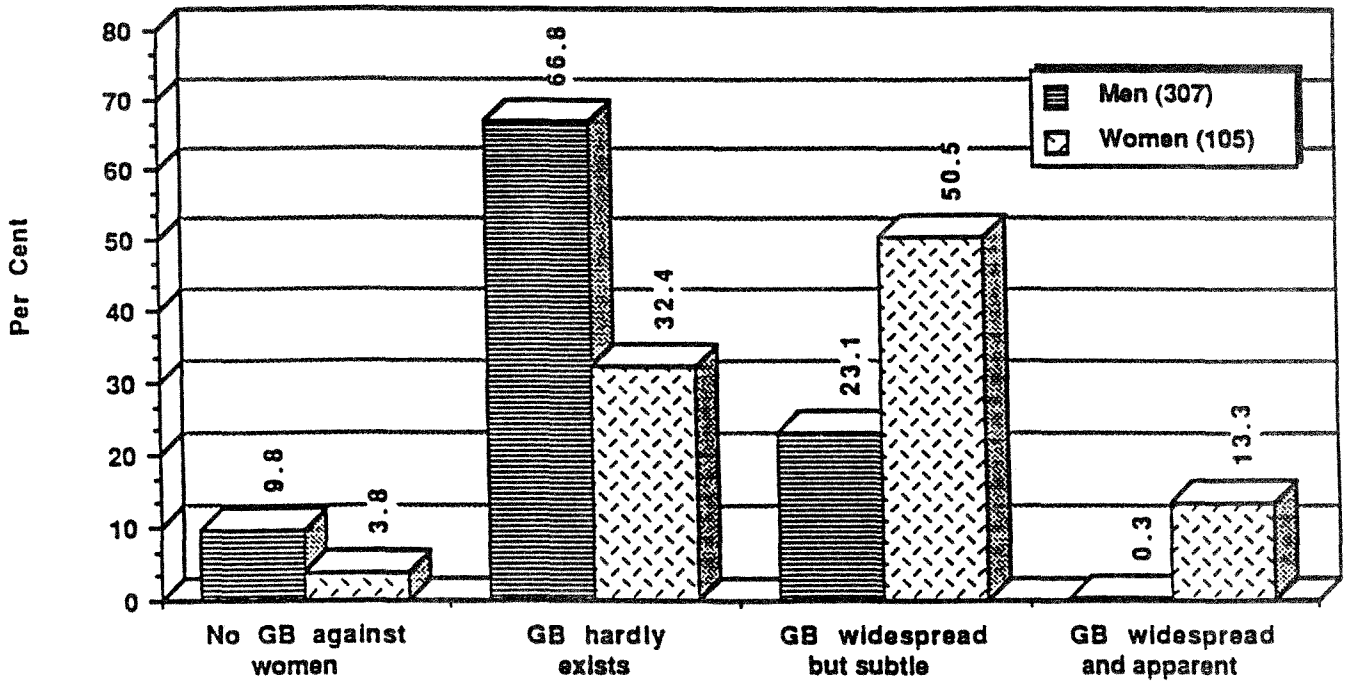
Second, stereotypes associated with white men do not connote dependence, a lack of credibility, or the absence of power. To the contrary, men are stereotypically viewed as powerful, credible, and independent. For example, if one examines the role of men as lawyers in the courtroom, one finds that these stereotypes help to bolster a man's image as a lawyer. Since men are often physically stronger, they are not the usual victims of domestic violence, although certainly some

women do act violently toward their spouses or companions. Since white men have economic ascendancy in our culture, they do not usually receive spousal support or child support. It is only when the area of the law and the focus of the decision making calls for other values to be primary that men are disadvantaged. Thus, in custody disputes men battle stereotypes that hold that while they are strong, credible, and independent, they are not capable of nurturing small children. Or, older male children, especially if they are members of a racial or ethnic minority, may be difficult to place in adoptive families because of stereotypes that associate violence and disruptive behavior with young men.

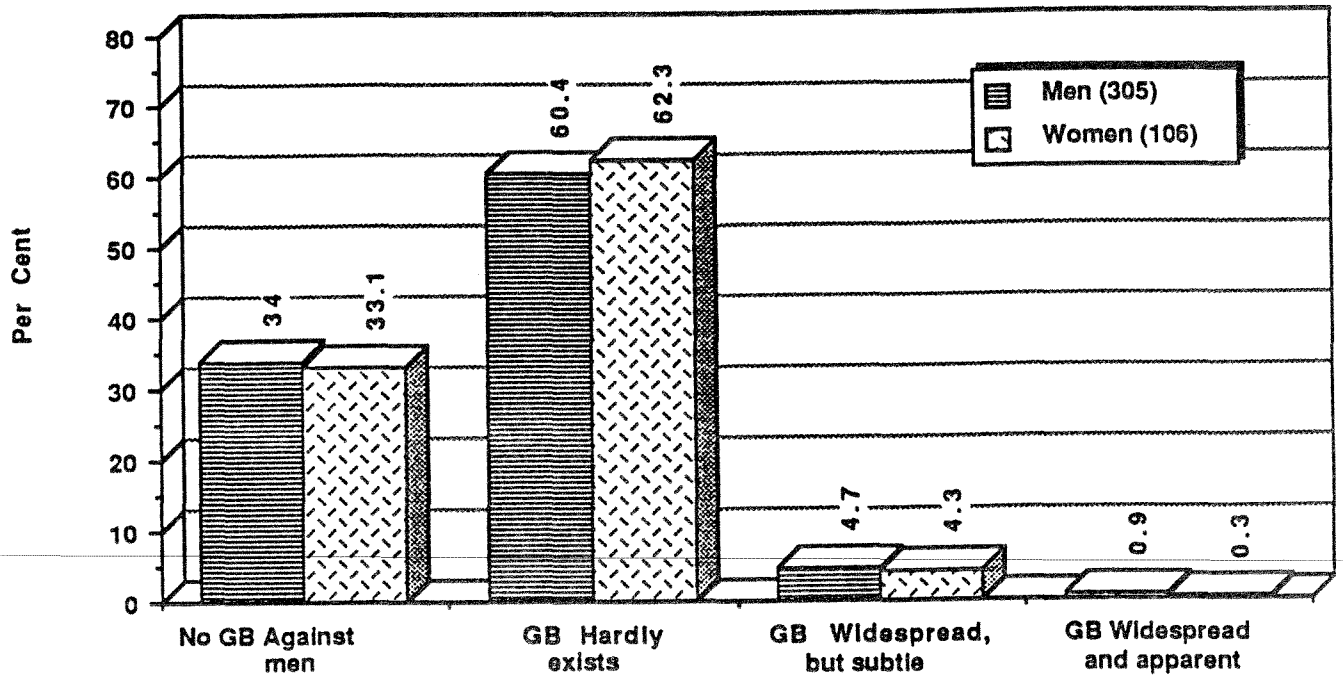
The third reason that this report does not focus on the problems of men in the court system is that, except in the area of child custody, the committee did not receive evidence of bias against men. While men participated extensively in the information-gathering phase of the committee's work, they did not speak about bias against men. Except in the area of custody, none of the witnesses at the public hearings or the regional meetings addressed bias against men in the courts.

In general, judges as well did not identify bias against men as a widespread problem in the courts. Judges were asked two questions on the judges' survey relating to their perceptions about gender bias against women and men. Graphic depictions of their responses appear below.

ASRQ53 Which of the following statements best describes your overall perception of gender bias against women in the California courts?



ASRQ54 Which of the following statements best describes your overall perception of gender bias against men in the California courts?



Reference to these graphs shows that 63.8 percent of the female judges agreed that gender bias against women is widespread and either apparent or subtle. In contrast, 23.4 male judges have that opinion.

When we examine views about bias against men, however, the numbers shift dramatically: only 4.6 percent of the female judges and 5.6 percent of the male judges agree that gender bias against men is widespread and either apparent or subtle. The remaining large majority, 95.4 percent of the female judges and 94.6 of the male judges, perceive either no bias against men or believe it hardly exists. It is interesting to note here that women and men tend to agree about their perceptions of bias against men. There is not a great deal of difference in the percentages. When bias against women is examined, men tend to see the problem as one that occurs much less frequently than do women.

Thus, the judges' survey corroborates the focus and emphasis the advisory committee has selected. For the most part, the examples and testimony will discuss the issues of gender bias as they relate to disadvantages faced by women in the court system due to their sex. Whenever the committee received testimony or other information relating to the disadvantages for men in the court system due to their sex, these instances will be discussed.

Although the information-gathering phase of the committee's work did not reveal that bias against men is a widespread problem in the courts, the committee members believe that the bias that exists against women hurts men as well. Both men and women have a special interest in ensuring that gender bias is no longer present in decision making and in the courtroom environment. Men who testified at the regional meetings and public hearings revealed a sincere commitment to examining these issues and supported the view that bias against a particular group ultimately harms the entire system.

III. The genesis and development of the advisory committee

A. Appointment of precursor committee

On July 15, 1986, then Chief Justice Rose Elizabeth Bird appointed a special committee of Judicial Council members to review issues of gender bias in the California court system. The committee's formation was inspired in part by the active interest in issues of gender bias demonstrated by persons and organizations in California and the states of New York and New Jersey. The Judicial Council committee was chaired by now retired Justice Elwood Lui of the Court of Appeal for the Second District, Division Three, and was charged with: (1) reviewing specific suggestions for changes in court practice and procedure designed to assure equal treatment for men and women in the court system; and (2) reporting its recommendations to the full Judicial Council.

Based on its extensive review of proposals pending in California and New York and New Jersey, the committee developed eight recommendations to the Judicial Council that concerned both suggested changes in court practice and procedure and further study of specific issues. Included in the proposals were recommendations relating to:

(1) judicial education;

(2) training conducted by the Administrative Office of the Courts (AOC);

(3) a Standard of Judicial Administration setting forth a judge's duty to refrain from and prevent conduct exhibiting bias in the courtroom;

(4) a Standard of Judicial Administration governing waiting rooms for children;

(5) a Standard of Judicial Administration on the use of gender-neutral language in local rules, forms, and documents;

(6) review by the AOC of all statewide rules, standards, and forms to assure the use of gender-neutral language;

(7) formal transmittal of reports from New York and New Jersey to other state agencies; and

(8) further study of gender bias issues by an advisory committee.

In accordance with the council's usual practice, a preliminary report summarizing the eight proposals was circulated for statewide comment in September 1986.

The committee's final recommendations were modified slightly and approved by the Judicial Council Court Management Committee at its November 1986 meeting, and, as modified, were adopted by the full council on December 6, 1986.

B. Implementation of council proposals

The following actions were taken after the December 1986 meeting, pursuant to the recommendations adopted by the Judicial Council:

(1) A letter dated December 30, 1986, was transmitted to the California Center for Judicial Education and Research (CJER) from the Administrative Director of the Courts. The letter commended CJER for its educational programs on fairness and urged expansion of those programs to include specific gender bias components at the substantive law institutes, orientation programs, and the Judges' College.

(2) A gender bias component was contained in CJER's Family Law Institute in March 1987.

(3) A gender bias component was a part of the workshop for presiding judges and court administrators conducted by the AOC on April 3 and 4, 1987.

(4) Copies of the newly adopted Standards of Judicial Administration and a manual on how to establish a children's waiting room prepared by Judge Alice A. Lytle of the Sacramento

Municipal Court were distributed to the courts on January 5, 1987.

(5) Copies of the New York and New Jersey reports were mailed, with letters of explanation, to the Commission on Judicial Performance, the Attorney General, the State Bar of California, the Committee of Bar Examiners, and the dean of each law school registered with that committee.

C. Appointment of advisory committee

On January 2, 1987, pursuant to Government Code section 68501, then Chief Justice Rose Elizabeth Bird appointed 27 members to the Judicial Council Advisory Committee on Gender Bias in the Courts. Justice Elwood Lui of the Court of Appeal for the Second Appellate District, Division Three, and Senator Diane E. Watson of the Twenty-eighth Senate District were named co-chairs. Thereafter, Chief Justice Malcolm M. Lucas appointed two additional members on March 16, 1987, and four additional members on September 23, 1987. On September 23, Chief Justice Lucas also named Los Angeles Superior Court Judge David M. Rothman as co-chair to replace Justice Lui, who retired and returned to private practice. Justice Lui remains a member of the executive committee and the full committee. Los Angeles Superior Court Judge Judith C. Chirlin was selected as vice-chair. Chief Justice Lucas also selected Dr. Norma J. Wikler, a recognized expert in the field with substantial experience in other states, to serve as an advisor and consultant to the committee. The committee was charged with conducting a comprehensive review of gender bias issues, consistent with the scope of the Judicial Council's authority and with special focus on the following topics

- o judicial branch employment practices;
- o gender bias within the judicary;
- o selection of court-appointed counsel;

- o jury instructions;
- o domestic violence;
- o custody;
- o child support;
- o economic consequences of dissolution; and
- o family law education and assignment procedures.

The council further authorized the advisory committee to

- o consult with other professionals in the justice system;
- o conduct public hearings, regional meetings, and surveys;
- o collect statistical information; and
- o perform any other tasks consistent with the Judicial Council's authority and the committee's charge.

A committee roster is contained in this report at Appendix A, and a full description of the information-gathering techniques used by the advisory committee is contained at Tab 3.

D. The national perspective

It is important to note briefly that the advisory committee is not functioning in isolation in its endeavor to examine problems of gender bias in the courts. There are now approximately 29 similar committees in other states. The Conference of Chief Justices in 1988 called for the creation of task forces on both gender bias and racial and ethnic bias in every state. A national conference on gender bias issues was conducted by the National Center for State Courts in May 1989. In the next decade, other nations will begin to study the problem of gender bias in the courts. Representatives from over 50

countries attended the annual meeting of the National Association of Women Judges held in October 1989 commemorating the tenth anniversary of the founding of the association. Judicial education on gender bias is well under way in Canada, and the Federal Study Committee recently issued a report that recommended judicial education on gender bias issues for the Federal bench.

E. Special focus on gender bias and racial and ethnic bias

In recognition that other equally troublesome and pernicious biases in our culture exist and affect court proceedings and in recognition of the changing demographics in California, the advisory committee designated the issue of the interaction between and the dual effects of gender and racial and ethnic bias as an important area of inquiry. The committee further recognized, however, that problems of racial and ethnic bias were not expressly included in its charge and that consideration by a separate committee was crucial to fully documenting these issues. Reference to and discussion of this issue may be found throughout this report and is more fully summarized and discussed at Tab 10.

IV. The advisory committee's report

In the pages that follow, the advisory committee will set forth its recommendations for solutions to problems of gender bias in the courts and will support these recommendations with information collected from the various sources consulted. The committee will report its findings in a particular area in summary fashion, will then pose a recommendation on the topic that is the focus for that part of the report, and will follow with a discussion and analysis of the information supporting

both the findings and the recommendation presented. This format will be followed essentially for each of the substantive law topics and subtopics within them and for the committee's recommendations regarding a mechanism for implementation of the suggested proposals. The chapters appear in the following order:

A. Civil Litigation and Courtroom Demeanor
B. Family Law
C. Domestic Violence
D. Juvenile and Criminal Law
E. Court Administration
F. Implementation and Judicial Education

The report will end with a look to the future and a summary of the advisory committee's review of the special focus issue of gender and racial and ethnic bias and a brief conclusion. Appendices are attached that contain the committee roster and fact sheet, the Chief Justice's speech at the first meeting of the committee, and copies of various survey instruments and other information-gathering devices.

The process of self-scrutiny represented by this report is both a necessary and a healthy one. It is rarely conducted by any institution. It is fitting, then, that those who sit in judgment over others are willing to look inside their own house, the one we call the courthouse, and voluntarily undertake a process of introspection and serious consideration of proposals for change.

ENDNOTES

1/ Flexner, Eleanor, Century of Struggle: The Women's Rights Movement in the United States, 1971, p. 3.

2/ Id. at p. 7.

METHODOLOGY

I. Introduction: the methodological approach

The findings, conclusions, and recommendations in this report are supported by data generated by a wide range of information gathering techniques which have been analyzed and interpeted by advisory committee members and in select areas also by outside social scientists. At the completion of the data gathering phase, the advisory committee reviewed approximately 3,500 pages of hearing transcript, 200 letters of comment, hundreds of articles, summaries of meetings, and survey results and reports. The fact that these diverse sources of information proved to be mutually corroborative has given the committee added confidence that within its areas of designated concern, its documentation of gender bias in the California courts has been both accurate and comprehensive.

The primary information techniques, described with particularity below, consisted of consultation with and the collection of testimony from a wide spectrum of knowledgeable and credible people across the state with different vantage points who supplied the committee with an accurate account of their experiences in the courts. Judges, attorneys, domestic violence workers, mediators, clerks, litigants, and others who work at every level of the justice system related their views of the California court system in rural areas, urban areas, large courts and small courts. The judges' survey proved to be a most reliable source especially in light of the high response rate of 73.9 percent. The advisory committee's approach is also in accord with that used by gender bias task forces across the country. The committee is satisfied that it secured the perspectives of a cross-section of the state's justice system participants.

This method of information gathering is especially suited to a field in which not only impropriety but the appearance of impropriety is important. Judges are bound by Canon 2 of the Code of Judicial Conduct which requires them to avoid impropriety and the appearance of impropriety in all their activities. This means that the views and impressions of the public and of those who work in the justice system are highly relevant to the inquiry.

The committee pursued a methodological approach that is uniquely appropriate to its distinctive mandate. Gender bias, as with all biases, is elusive. It is rarely manifested in objective forms that can be weighed or measured. To outline the contours and parameters of bias, an investigating body must rely on many sources of information. No single data source is sufficient. Piecing together the diverse data sets not only begins to build a composite picture of the many aspects of bias, but it also serves to corroborate the information already gathered. Each piece refines our understanding of what gender bias is and how it operates.

II. The methodological constraints

Each state that seeks to examine the question of gender bias starts with its own data base of statistical information. In California, probably because its docket is so huge and recovery of information is so expensive, statistics are simply not available in most fields. Although a preliminary study has been conducted, the Family Court Services Program, for example, has not yet instituted a uniform statistical reporting system in family law. Early on in the process, the task force acknowledged that this hurdle was not possible to overcome given existing resources.

California's lack of statistics, especially in the area of family law, are mirrored in other states. The lack of relevant, retrievable statistical data on issues pertaining to

gender bias was acknowledged at the national gender bias conference conducted by the National Center for State Courts to be a primary problem for those investigating gender bias in the courts.

In light of the lack of statistical information in some fields, the advisory committee determined that recommendations for collecting information were sometimes appropriate. If it appeared to the committee that "hard data" was necessary to document gender bias, then a recommendation in that regard was adopted by the committee. For example, family law research and statistics are the subject of one recommendation and statistical reporting of the appointment of counsel is the subject of another.

The value of the data that the advisory did collect is that it permitted the advisory committee to readily identify the problems of gender bias, assess their consequences, and develop some idea of their extent. In some cases, however, statistical information is necessary to define more precisely the extent to which gender bias operates and to monitor its continuing existence or amelioration. This will be the mandate of the implementation committee.

III. Information gathering techniques

The advisory committee used the following methods of gathering information about the problems of gender bias in the California courts:

- A survey of California judges
- Confidential regional bar meetings
- Public hearings
- Site visits to two jail facilities
- Focus group discussions with judges, civil litigators, family lawyers, and minority attorneys at the State Bar Annual meeting in September 1988

- o Information gathering meetings with domestic violence advocates
- o Meetings with and surveys of court clerks
- o Reports submitted by participants at the Conference of Affiliates of California Women Lawyers on practices in various counties relating to domestic violence diversion, attorneys' fees in family law matters, alternative sentencing and dispositional programs in criminal and juvenile law, and the appointment of counsel in juvenile and criminal matters
- o Extensive literature and case law searches in the fields of concern to the committee
- o An invitation to submit written comments published in California Lawyer
- o Follow-up telephone interviews with participants

The information provided by witnesses who attended the various hearings will often be referred to as testimony, but the committee acknowledges that it was not provided under oath.

A. A survey of California judges

1. A general description of the survey

Since this is a study of gender bias in the courts, the advisory committee determined that information collected from the judges themselves would be of great value. For this reason, the advisory committee determined tht the resources available to obtain outside research would be best allocated to determining the views and decision making patterns of judges. To ensure that the highest standards of social scientific survey research would be met, the committee contracted with Applied Survey Research (ASR), a highly regarded non-profit organization based in Santa Cruz, California to work with the staff of the Administrative Office of the Courts in designing and implementing this study.

In order to invite the widest possible commentary and opinion, all judges and commissioners in the State of California, a distribution total of 1737, were sent the survey questionnaire along with a letter from Chief Justice Malcolm M. Lucas. For purposes of analysis, however, a sample of 575 was drawn from this larger list. This sample size ensured that there would be sufficient reources of time and personnel to follow up on non-responders in order to achieve a response rate or "completion" rate high enough to permit generalizations regarding the attitudes and practices of judges in general. A pre-test was conducted of approximately 15 judges who commented on a draft survey instrument and helped the committee refine the questionnaire and clarify ambiguities in the questions.

2. Sample plan and method

This sample of 575, referred to in this report as the entire sample, consisted of the following elements:

(a) a representative or probability sample of 434 (also referred to as a "systematic random sample") composed of every fourth name on the population list of all judges and commissioners;

(b) an oversample of 13 sole judges (all sole judges of superior courts not already included in the representative sample);

(c) an oversample of 59 family law judges (all family law judges not already included in the representative sample); and

(d) an oversample of 69 women judges (every second woman judge not already included in the representative sample).

Oversampling was used to increase the number in the entire sample of three types of judicial officers who otherwise exist in relatively small numbers in the population as a

whole: sole judges, family law judges, and women judges. While these three groups are included in the representative sample in direct proportion to their numbers in the population of judicial officers as a whole, the oversamples increase the final yield of these three groups. This increased or enriched sample makes the groups large enough to permit the examination of differences between them. For example, by using the entire sample, which can be separated according to gender, comparisons can be made between male and female judges.

In this report, unless otherwise indicated, the sample statistics given are those for the representative sample (i.e. the sample consisting of every fourth name on the population list of all judges and commissioners). This is the correct statistic to use when one is describing the opinions, perceptions, or experiences of California judges as a whole (e.g. what percent of all judicial officers in California favor X? endorse Y? have observed Z?). In instances where groups of judicial officers are compared to one another (male judges to female judges; family judges to all others), the statistics are drawn from the entire sample which, as noted before, contains the oversamples of the three special groups. The distinction between the use of the different samples is crucial. The committee was concerned that the sample it used generally did not skew the results to reflect the views of, for example, women judges or family law judges. Thus, most references to the survey data are to the representative sample which is randomly selected and does not over sample any one group. It is only when gender distinctions or differences between family law and other judges are of interest that the over sample is used.

When the responses of different groups of judges are compared, statistical tests of significance are necessary to determine whether or not the difference found in the sample is great enough to warrant the conclusion that a similar difference exists in the population from which the sample was drawn. If, for example, one wanted to compare differences between male and

female judges, the differences reflected in the sample must correspond to the differences one would expect in the entire population. The "Chi Square" is the statistical test most commonly employed for this purpose. By convention, statisticians and social scientists accept as signficant any "significance" value less that 0.05, for this allows the researcher to be at least 95% confident that generalizations from a sample correspond to a difference in the population as a whole. In this report, only those differences in responses between groups of judges that are statistically significant will be presented.

3. The response rate

The response rate or completion rate in a survey is extremely important, since it strongly affects a researcher's confidence that a sample reflects the population accurately. The problem of "sampling bias" is assumed to be problematic to the extent that the response rate is low. In the present survey, the overall response rate was 73% or 1268 completed questionnaires out of a total population of 1737 judges and commissioners. Of the 575 individuals in the entire sample, 425 completed questionnaires were received for a response rate of 73.9 percent, which is considered high by the standards of the field.

4. What the survey yielded

The survey provided the advisory committee with extensive information on judicial opinions and decisions in the courts during the past three years. In addition, the survey produced data concerning the aspects of gender bias judges deem most important for judicial education and the appropriateness of a host of possible remedies for the problem. The survey also uncovered a number of statistically significant, dramatic

differences beween female and male judicial officers. Gender strongly affects judges' experiences, views, evaluations, and preferred remedies pertaining to gender bias in the courts.

B. Confidential regional bar meetings

A series of six confidential regional bar meetings for California attorneys were conducted in January through March of 1988 in the Counties of Butte, Sacramento, San Francisco, Orange, Fresno, and Los Angeles. From 30 to 50 attorneys attended each meeting except in Sacramento, which had approximately 15 attendees. The meetings were held over several hours so that attorneys could drop in as their schedules permitted and the meetings often extended into the evening hours so that attorneys could also attend after the close of business. Approximately 200 attorneys testified statewide. Most of those who testified were women, but several men testified at each meeting.

The witnesses were given an opportunity to speak confidentially about their personal experiences and observations on problems and issues of gender bias in the courts on all of the issues of concern to the committee. Written questions were distributed in advance to generate discussions. The questions reflected preliminary areas of concern to the committee and provided a framework and stimulus for thinking. Some attorneys sent written communications which were read by others because of either the unavailability of the witness or the witness' fear of identification or reprisal.

Panels from the advisory committee attended each meeting, and the meetings were transcribed. No judge member of the advisory committee attended a confidential bar meeting in his or her jurisdiction.

The special feature of this information gathering technique was the candor of the witnesses and their obvious respect for the judiciary. Reports from different areas of the

state were consistent. The meetings provided an opportunity to canvas the bar about the issue of gender bias in a setting that fostered discussion and openness.

C. The public hearings

Five public hearings were conducted in Los Angeles, San Diego, San Francisco, Sacramento, and Fresno from January to April of 1989. The public hearings were designed to solicit comments from participants in the justice system. Approximately 150 witnesses participated in the hearings. The hearings were conducted from 11:00 a.m. into the evening hours to permit working people to attend. They were publicized and open to the press. Expert testimony was solicited in advance and scheduled. Open mike periods were also scheduled to permit members of the public to speak.

Many of the experts who attended had impressive credentials in the areas of study of interest to the committee. They often submitted written testimony and bibliographies along with their oral testimony. Presiding judges and bar presidents were invited to address the advisory committee at each public hearing. Approximately 25 experts were scheduled at each meeting and from 5 to 15 members of the public participated at each meeting as well. Other members of the public and the legal community attended, but did not testify. The hearings were transcribed.

The public hearing witnesses reflected a wide range of expertise in the areas of concern to the committee. Witnesses included judges, presiding judges, attorneys and bar leaders, citizens and litigants, and others who work at every level of the justice system, such as clerks, court administrators, social workers, mediators, psychologists, and law enforcement officers.

The hearings did not necessarily consist of anecdotes about judicial misconduct or courtroom incidents which dominated

the information gathered at the confidential bar meetings. Instead, the testimony was analytical; the witnesses observed patterns of behavior; and their comments were substantive. Public hearing witnesses discussed decision making and suggested remedies.

When litigants submitted their remarks to the committee, there was no attempt to determine the merits of their claims. The advisory committee relied on this testimony only in a very limited way to define the parameters of the public's perception of the problem. Although the advisory committee didn't analyze the specifics of the individual claims, the testimony did establish a public perception on the part of many litigants that they were mistreated by the court system directly due to their gender.

D. Site visits to two jail facilities

A panel of committee members visited Sybil Brand Institute for Women in Los Angeles. Sybil Brand, built for 900 persons, now houses 2300 women. The committee members talked to over 150 women who attended parenting classes conducted at the jail. The committee members attended the classes themselves and asked the incarcerated women a series of questions relating to vocational training, medical care and other special needs, and their interaction with the dependency court. The inmates were invited to write their thoughts down on paper and submit them to the committee members. Inmates were not permitted to discuss the details of criminal matters leading to their incarceration.

A separate panel of committee members, with some overlap in attendance, visited Miraloma, a women's honor jail in Los Angeles. Approximately 30 women were interviewed at Miraloma.

These site visits produced a wealth of knowledge about conditions for incarcerated women. The most significant areas of concern expressed by these women were problems they experienced with being separated from their children and the difficulties they knew awaited them in being reunited with their families.

The interviews and discussions with incarcerated women were accompanied by interviews with teachers and other staff members at the facilities. The information provided by the staff corroborated much of the women's testimony. These visits were made with the full cooperation and assistance of the warden and her staff who facilitated the visits and information-gathering process.

E. Focus group discussions at the State Bar

Four focus group discussions were conducted at the State Bar Annual Meeting in September 1988. The discussions were conducted by separate panels of committee members and groups of (1) judges; (2) civil litigators; (3) family law specialists; and (4) leaders of minority bar groups. The advisory committee invited a cross-section of opinion leaders in these groups to attend. Each focus group consisted of from 10 to 15 experts and from 3 to 5 committee members. The discussions usually lasted from two to three hours, and in some cases the participants stayed on into the lunch hour or late afternoon.

Written lists of discussion questions were mailed to each group in advance. The committee used this forum as a kind of laboratory to test the accuracy or advisability of potential remedies and preliminary committee findings. The participants provided the committee with further refinement, corroboration, and feedback. The focus groups had several advantages. They permitted the committee members an opportunity to debate certain questions with thoughtful leaders and experts. This was

not possible at other meetings or hearings. The committee was also able to gain more knowledge about judges' and attorneys' views on certain issues and to analyze some of the information already gathered. Finally, the focus groups allowed the committee to determine whether a proposed remedy inadvertently created unforeseen problems or unintended results in the area of expertise of the focus group. The focus group for minority bar leaders was particularly valuable as a source of information about the concerns of minority attorneys in California.

F. Meetings with domestic violence advocates

Members of the subcommittee on domestic violence conducted three meetings with members of three regional coalitions against domestic violence. These coalitions represent battered women's shelters and services provided throughout the state. The meetings were conducted in Los Angeles, Fresno, and Vallejo in the fall of 1988. A range of 15 to 20 domestic violence lay advocates, attorneys, and victims attended these meetings. Written testimony was also submitted from a fourth coalition, the California Women of Color Coalition Against Domestic Violence. The coalition meetings and written testimony provided the advisory committee with first-hand accounts of the experiences battered women have in attempting to use the courts to obtain protection from the violence they face. Space would not permit the committee to repeat the experiences of all of the women who testified. Their stories were poignant and at times overwhelming in ways that the summaries contained in this report cannot convey. In no other area was the committee able to obtain so much information directly from the people the courts are attempting to serve.

G. Meetings with clerks

In July 1988, court employees from around the state who participated in an Administrative Office of the Courts workshop entitled "Developing Management Skills" were invited to attend discussion groups on gender bias issues conducted by the subcommittee on court administration during the conference. The employees who attended the discussion groups and others at the conference completed a questionnaire on employment practices and gender bias in the court work environment. Subsequently, in October 1988, municipal court clerks attended a special conference and were invited to participate in a drop-in roundtable discussion led by subcommittee members on gender bias issues arising in the court workplace. These attendees completed a slightly modified questionnaire as well.

The discussion groups were sparsely attended, in part, committee members were told, because some clerks were uncomfortable with the subject matter or feared that their superiors would object to their attendance. Approximately 10 persons attended each group. The major issues raised by clerks at these sessions were: opportunities for advancement and training, child care, and sexual harassment.

H. Survey of court employment practices

In March 1989, the subcommittee on court adminstration prepared a comprehensive survey about employment practices in the courts. Every court in the state received a survey and a request for written materials about court policies on affirmative action, sexual harassment policies and training, and pregnancy and parenting leave. This information was supplemented by a review of the more detailed written materials. Follow-up interviews were conducted in the spring of 1989 with representatives from six courts. Court executives, court clerks, and

presiding judges were contacted. The participating courts were: Alameda Superior Court, Monterey Superior Court, Placer Superior Court, Ventura Municipal Court, Stanislaus Municipal Court, and Santa Cruz Municipal Court.

I. Reports submitted by affiliates of California Women Lawyers

Reports were submitted to the advisory committee on four separate subjects. The committee needed information on the availability and accountability of domestic violence diversion programs, the practices in various jurisdictions of awarding attorneys' fees in family law matters, the availability of alternative sentencing programs or dispositions, and procedures and policies for the appointment of counsel.

Various women's bar associations affiliated with California Women Lawyers compiled information from several counties on these issues and submitted the information to the committee. Standardized interview sheets were provided each project participant. This information gathering technique was not used to obtain statewide patterns and practices since participation was limited in some areas and sometimes only a few counties were heard from. Rather, the information gathered served to corroborate anecdotal information received from other sources.

J. Literature and case law searches

The advisory committee conducted an extensive literature search in the areas of concern to the committee. Research from other states, articles on substantive law and court administration, scholarly articles in both law and other disciplines, and relevant case law were reviewed comprehensively by the committee. Although this research was secondary to the testimony gathered by the committee, it often served to confirm the

assertions or contentions of the witnesses or to show that a problem revealed in California was recognized nationally. The advisory committee also reviewed the gender bias reports available from other states.

K. Invitation to comment in California Lawyer

Over 200 comments were received in response to a request for comments published in California Lawyer in July of 1988. Attorneys who were unable to or chose not to testify at the regional meetings or public hearings could submit testimony in writing. The request contained specific questions on the issues of concern to the committee. The responses came from all over the state and from both urban and rural areas. Many of the responses were anonymous.

L. Follow-up telephone interviews

The advisory committee's general policy was to follow-up testimony of all kinds with telephone interviews whenever possible. Thus, staff conferred with judges and attorneys who attended the focus group both before the group meeting and thereafter. Public hearing witnesses were often consulted again by telephone for their views on a particular remedy or recommendation. This ensured that the testimony provided was not misunderstood and gave the advisory committee an opportunity to extend its own expertise.

ACHIEVING EQUAL JUSTICE IN LITIGATION AND COURTROOM INTERACTION

The Report of the Judicial Council
Advisory Committee on Gender Bias
in the Courts
on Civil Litigation and Courtroom Demeanor

Mr. Herbert M. Rosenthal, Chair,
Civil Litigation and Courtroom
Demeanor Subcommittee
Executive Director, State Bar of California

"When I would question him and say, 'But Your Honor, I understand that she has a right to do this by law,' he turned around to me, and we had probably about 75, 80 people waiting to be heard before this judge; he turned around to me and said, 'I do not care what the law says. When you are in my courtroom, I am God, and what I say goes.'"

Butte County Regional
Meeting Transcript, page 107

I. Introduction

Both in the past and in contemporary times, the courtroom has provided a wealth of dramatic material often depicted in literature, film, and television. Our courtrooms, in many ways, constitute a human theater. The courtroom drama performed there is a cooperative performance. Some players are in charge; some assist; some preserve order; some perform on behalf of an individual or the community in general. But some perform in the courtroom theater not out of commitment or professional desire, but because they must. They are summoned; they are subpoenaed; or the court is the only place to obtain what eludes them: justice. The dramas performed there every day can be comic or tragic, farcical or absurd. The regular performers may become inured to the theatrical elements, but the one-time performer, the one whose real life is portrayed there, does not become inured. It is for that player more than any other that the judicial system has a primary duty to prevent gender bias or any bias from marring the performance--a performance that is, in fact, not play-acting at all.

The nature, the tone, indeed, the overtones of the courtroom drama indicate to all who view it the attitudes of the participants in the judicial system. When the courtesy, the civility, the respect for all participants is preserved in a courtroom, then equal justice, and certainly the appearance of justice, is possible to achieve. But justice will continue to elude the one-time participants and our communities if we see courtrooms in which judges are engaging in overt and subtle forms of gender-biased conduct, as attorneys, litigants, and court personnel have reported to the members of the advisory committee. Moreover, if judges fail to prohibit the more blatant and serious attorney conduct observed and reported to the advisory committee, and the State Bar fails to take steps to eradicate this behavior, equality between men and women in the courts will remain an illusion.

Conduct of those judges and attorneys who exhibit gender bias cannot remain, as it is, exacerbated by court employees who act under the court's direct supervision and control. Nor can the courts permit those employees to be themselves the victims of biased behavior. Proceedings should no longer be conducted in courtroom environments where the very language used ignores or demeans women. Outside of our courtrooms, judges should not create the impression that they lack impartiality by choosing to belong to clubs that practice invidious discrimination, and attorneys should not use the premises of discriminatory clubs for business purposes. Finally, Californians are entitled to be judged by a diverse judiciary reflective of the numbers of qualified men and women in the legal profession and in our communities.

Although the committee recognizes that bias based on gender includes bias against both men and women, virtually no testimony was received in the area of courtroom demeanor and civil litigation that reported bias against men. Perhaps this is because many of the stereotypes associated with men are perceived as advantages and not disadvantages in the courtroom. Some testimony was heard relating to bias against men in other areas and bias against men who are members of ethnic or racial minorities. These subjects are covered in subsequent chapters of this report. As a result, the acknowledged emphasis of this section is on bias against women based on their gender and the supporting information will usually refer to women.

II. Chapter Overview

A. Courtroom conduct and civil litigation

The appearance of justice is as important as justice. Therefore, it is fundamental to our system of justice that judges act fairly and impartially. Thus, when pervasive bias

by judges exists, as this report demonstrates, the system is not fullfilling its duty to assure equal justice under the law. Regardless of its form, overt or subtle, gender bias is pernicious and harmful.

This chapter will discuss the evidence reported to and collected by the advisory committee relating to these problems and propose specific remedies for their resolution. The recommendations in the pages that follow are directed toward judicial officers, courtroom staff, and lawyers who function in the litigation context. For bias of any kind to abate, judicial officers must regard expressions of bias as intolerable. Efforts need to be undertaken to remedy igonorance of the problems of gender bias and correct false perceptions. The judges must lead in articulating and accomplishing the goal of elimination of gender bias in the courts through setting the tone of fairness in the courtroom; appropriately responding to expressions of gender bias in the courtroom; controlling staff; reflecting impartiality in other activities; ensuring neutrality in court appointments; using gender neutral language; and supporting diversity in judicial selection.

Lawyers must follow the lead of the judiciary. In the final analysis, a judge is simply a former law student and a former lawyer. A judge often reflects the accepted social and ethical rules of the legal culture. If that culture regards expressions of bias as improper -- not just from the moment robes are donned, but from the beginning of a lawyer's career -- then it is likely that judges who come from such a background will also be intolerant of bias, and will be able to afford participants in the court system equal justice under the law.

B. Racial and ethnic bias

The advisory committee designated the issue of racial and ethnic bias when combined with gender bias as a special focus of its inquiry. In other words, the committee was

particularly concerned with the problems of minority women in the courts. Whenever possible, witnesses were asked to respond to questions concerning this special focus. The evidence collected was of such crucial importance to the advisory committee members that a special section has been devoted to the issues and information revealed.[1/] Accordingly, the information gathered relating to the ways in which the combination of gender and ethnic and racial bias affects litigation and courtroom demeanor as well as other areas of the law is discussed in a subsequent chapter of this report.

C. Judicial education

Judicial education is clearly regarded as the essential cure for the ills of gender bias. The advisory committee suggests that the information contained in this chapter be consulted for assistance in developing curriculum materials for judicial education programs on civil litigation and courtroom demeanor. The subject of judicial education will be covered in depth in a subsequent chapter that will pose specific recommendations about how judicial education programs on gender bias should be developed.[2/]

D. A note on implemention

Many of the recommendations discussed in this chapter and indeed in other sections of this report propose remedies that require implemention. The Judicial Council is asked to approve <u>in principle</u> the adoption of rules, standards, and programs. Additional recommendations suggest action by other institutions or agencies such as the California Judges Association and the State Bar. The specific language of the rules and standards has not been developed by the advisory committee nor have all the details of the programs been set out. It is the recommendation of the advisory committee that these tasks

and further monitoring responsibilities be under- taken by an implementation committee.[3/]

III. Methodology

Of the methods of gathering information described in the general methodology section of this report, the most crucial to the work of the Civil Litigation and Courtroom Demeanor Subcommittee were the regional bar meetings. At these meetings, many attorneys reported their views and experiences to the members of the advisory committee in an informal confidential setting. The identities of these witnesses are not disclosed so that they do not suffer any repercussions resulting from their candor. It is acknowledged that some of the anecdotes related may have reflected personal animosity toward a judicial officer or attorney or were rooted in the disappointment caused by losing a case. The reports, however, were too frequent to be discounted and followed an identifiable pattern from county to county. The witnesses were respectful of the process and sometimes almost apologetic about their reports. Many witnesses were local bar leaders with reputations for truth and veracity in the community. The advisory committee found the witnesses credible in most instances. The number of participants at most regional meetings equaled from 30 to 40 persons. There were six meetings conducted throughout the state.

The regional meetings were confidential because some lawyers are reluctant to come forward publicly with complaints about judges out of fear of reprisals or repercussions. Dramatically, at the regional meeting held in Fresno County, many witnesses read written statements on behalf of other attorneys from the outlying districts who refused to attend the hearing out of concern for the effect their attendance might have for them professionally.

The public hearings also yielded a wealth of testimony relevant to the topics covered in this chapter of the report. This testimony included statements from bar presidents and presiding judges, and presidents of the State Bar and of the American Bar Association. The focus of the testimony was primarily on proposed remedies rather than detailed descriptions of courtroom conduct.

Focus groups conducted at the State Bar Annual Meeting in 1988 for civil litigators and judges were invaluable sources of information. It was at these focus groups that remedies were debated and analyzed, and distinguished litigators and trial judges corroborated the information provided by local attorneys at the regional bar meetings.

The focus group for judges also provided the advisory committee with a sounding board for the development of the judges' survey, the most important source of judicial attitudes and opinions analyzed by the committee. The judges' survey was a vital tool for determining judicial views on courtroom demeanor and the remedies for correcting it.

The committee conducted a comprehensive search of judicial conduct case law and the literature in the field of civil litigation, courtroom demeanor, discriminatory clubs, the employment of women lawyers, and the judicial selection process.

The committee is indebted to the State Bar Committee on Women in the Law for its timely production of an in-depth survey of California women lawyers on many issues of concern to the advisory committee.

These disparate data sets, confidential attorney meetings, public hearings, small discussion groups, a judges' survey, and a literature search provided the subcommittee with reliable information on which to base its recommendations.

IV. Findings, Recommendations, Discussion, and Analysis

A. Conduct of judges, other bench officers, and court employees

Findings

In determining whether incidents of gender bias occur in the courtrooms of California, the inquiry must begin with an examination of judicial conduct. Ms. Margaret Morrow, past-president of the Los Angeles County Bar Association, in pointing out that the focus for studies of gender bias in the courts has been primarily on the judiciary, stated:

> It is they who set the tone. It is they who control the participants. It is they who define the boundaries of appropriate and inappropriate conduct, and they, who in many cases, make the ultimate decision as to the rights and responsibilities of the litigants."4/

Ms. Morrow correctly identified the reasons that judicial conduct has been subjected to such scrutiny. It is a scrutiny that judges across California have willingly accepted as indicated by their open and candid participation in the focus groups conducted at the State Bar annual meeting in September 1988, in their impressive response rate of 73 percent to the judges' survey disseminated in May 1989, and in their participation in the growing number of judicial education programs focusing on gender bias issues.

Using the methods of gathering information described in the methodology section of this chapter, the advisory committee found:

1. Upon occasion, conduct of judges constituting gender bias has resulted in judicial discipline by the Commission on Judicial Performance.

2. Many more examples of conduct exhibiting gender bias or the appearance of gender bias have occurred that have

not resulted in judicial discipline and include both overt and subtle forms of the following types of conduct:

a. Occasional openly hostile behavior;

b. The utterance of sexual innuendos or dirty jokes;

c. The frequent and offensive use of terms of endearment to refer to women participants in the courtroom;

d. The failure to extend equally common courtesies to women participants such as the gesture of a handshake or the use of an appropriate form of address;

e. The persistent focus upon the personal appearance of women court participants;

f. Devotion to and reliance on stereotypes about women rather than upon judgments unique to each individual;

g. Adoption of a tone toward women participants that is fatherly, either courtly and patronizing or harsh and reprimanding;

h. The unequal extension of professional courtesies;

i. Imposition of unequal standards of advocacy;

j. Hostility and impatience toward causes of action primarily involving women such as sexual discrimination or harassment;

k. Imposing penalties, such as denial of continuances of trial or depositions, upon women participants who are pregnant when similar penalties would not have been imposed for any other disabling condition affecting men;

l. The failure to intervene appropriately when conduct constituting gender bias is exhibited by some other court participant under the judge's control, such as opposing counsel, a bailiff, or a court clerk.

3. Conduct of judges and other bench officers constituting gender bias, even when the conduct is relatively minor in its immediate effect, results in undermining the credibility of the female participant and the general impugnment of the integrity of both the judiciary and the entire judicial

system. This result is exacerbated when the court employees who work under the direct supervision of the judge exhibit similar behavior.

4. An appropriate remedy for this behavior is the promulgation of a specific section of the Code of Judicial Conduct, similar to that contained in the American Bar Association Draft Model Code of Judicial Conduct, which would mandate that a judge perform all judicial duties without bias or prejudice, refrain from manifesting bias or prejudice by words or conduct, and ensure that all staff and counsel conform to the same standard of behavior.

5. Incidents of conduct evidencing gender bias by other judicial officers have occurred. Clarification of provisions for enforcement of their ethical duties and inclusion of a mandate to refrain from exhibiting and to prevent gender bias in the proceedings they adjudicate should be adopted.

6. A manual on courtroom fairness will assist judges in ensuring that the courtroom environment is free from gender bias and will provide training for court employees under judges' direct supervision and control.

7. Informal local mechanisms for resolving the more subtle and less serious complaints of gender bias are urgently needed.

8. Judicial membership in clubs that practice invidious discrmination creates an appearance of impropriety and undermines the efforts of courts to achieve equal justice.

1. Judicial conduct

RECOMMENDATION 1

Request the Judicial Council to transmit and urge consideration by the California Judges Association of the advisory committee's recommendation that the association adopt Canons 3B(5) and (6) of the Draft Model Code of

> **Judicial Conduct of the American Bar Association. This canon imposes the obligation upon judges to perform all judicial duties without bias or prejudice, to refrain from manifesting bias or prejudice by word or conduct, to prohibit staff and others under the judges' control from engaging in similar conduct, and to require lawyers to refrain from similar conduct.**

Discussion and Analysis

a. Conduct resulting in judicial discipline

Los Angeles Superior Court Judge Billy G. Mills has been an expert in judicial education on fairness in the courts for many years. In his courses, Judge Mills recognized, long before the issue of gender bias in the courts became a nationally recognized problem, that personal bias, including gender bias, constituted judicial misconduct. More recently, he wrote:

> Allowing personal bias to influence judicial behavior is a form of judicial misconduct. This type of conduct, more prevalent than most judges would like to admit, often goes unchecked. On one hand, judges are human, and like everyone else, their perceptions are formed by personal experiences. Thus, the potential for bias, stereotyping and prejudice exists in every judge. Further, judges may have sublimated their personal biases, and would take offense at the suggestion that they allow their personal feelings to interfere with judicial conduct. On the other hand, by definition, a judge must be impartial and objective. In recognition of these conflicts, judges are not expected to be without personal biases. They are, however, expected to keep their biases from manifesting themselves in their conduct. If a bias, stereotype or prejudice manifests itself, the judicial system will be viewed as unfair by the participants.

> In the words of former Chief Justice Waren Burger, "To perform its high function in the best way, justice must satisfy the appearance of justice." (Aetna Life Ins. Co. v. Lavoie (1958) 106 S.Ct. 1580, 1587.) As such, a judge cannot successfully perform judicial duties unless he or she creates the perception of fairness.5/

Justice Arleigh Woods, presiding justice of the Court of Appeal, Second District, Division Four, is the current chair of the Commission on Judicial Performance. In her testimony at the public hearing conducted in Los Angeles she informed the advisory committee that the commission received a relatively small number of complaints against judges involving allegations of conduct exhibiting gender bias. She also stated:

> We are aware that many incidents go unreported, either because the victim does not feel that the transgression is of sufficient magnitude to warrant commission attention, or fails to report out of embarrassment or fear of future repercussions. This is particularly true when the potential complainant is an attorney or court personnel.6/

Justice Woods also lamented the lack of reporting by presiding judges or judicial colleagues.

As a result of this perceived underreporting, in 1987 the commission devoted a section of its annual report to information about gender bias. The section, included for educational purposes, cited examples of conduct that had been identified as gender bias and had led to judicial discipline in California and in other states. The description of these examples would at a minimum provide judges and others with some information about the nature of the prohibited conduct.

To establish the nature of the conduct that has warranted discipline in California, the majority of cases involving gender bias allegations will be described below. The cases will be described in some instances in unexpurgated language from the commission's findings. The purpose of this verbatim account is not to offend but to explain the nature of the conduct without the protective veil polite language affords. The language appears in the official reports.

The first reported case that included identified incidents of gender bias and resulted in the judge's removal was Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270. In Geiler, the Supreme Court affirmed the commission's findings that:

1. "In the summer of 1969, at a time when five to six men were in Judge Geiler's chambers, Mrs. P., his court clerk, entered the Judge's chambers at his request. Shortly thereafter she left. As she was leaving, Judge Geiler stated, 'How would you like to eat that?' His question referred to Mrs. P. This comment was a crude effort at humor and part of an established course of conduct."[7/]

2. "In the early part of 1970, Judge Geiler occasionally asked Mrs. P., 'Did you get any last night?' This comment was a crude effort at humor and part of an established course of conduct."[8/]

3. Judge Geiler was "found to have invited two female attorneys into his chambers wherein he discoursed on the salacious nature of the evidence adduced in criminal cases concerning homosexual acts and rape, punctuating his commentary with profane terms for bodily functions."[9/]

In In Re Robert S. Stevens (1981) 28 Cal.3d 873, a judge was censured for persistent telephone calls to a former secretary exhibiting vulgar and offensive language of an explicitly sexual nature. Behavior of a different sort resulted in the judge's censure in Roberts v. Commission on Judicial Performance (1983) 33 Cal.3d 739. In Roberts, the

judge in a dependency proceeding refused to hear legitimate objections of a woman attorney, commented on the lack of credibility of the dependent child's mother and would not let her continue her testimony, and demonstrated similar behavior toward a second female witness. In another matter, the judge called a female defense attorney into his chambers, accused her of being incompetent to represent the defendant, and questioned her about the extent of her legal experience.

In Ryan v. Commission on Judicial Performance (1988) 45 Cal.3d. 518, 544, a judge was removed for, among other things, telling offensive jokes, as follows:

> The judge admits telling the following joke while two female attorneys, among others, were present in his chambers:
>
> "It's during the period of creation and God has just gone ahead and has made -- he's made the earth and the stars and the wind and some of the animals. He's still creating things. Adam and Eve have been created. They discover each other and they discover the physical portions of each other and they lay down and they make love. When they finish, Eve leaves for a little while and then returns. When she returns, she -- or Adam says, where have you been? She says, I went to the stream to wash off. And Adam says, gee, I wonder if that's going to give a scent to the fish?"
>
> . . . Judge Ryan asked the two female attorneys if they knew the difference between a Caesar salad and a blow job.' When the attorneys responded that they did not know the difference, the judge said, "Great, let's have lunch."10/

On March 11, 1988, the commission filed its findings of fact and conclusions of law and recommendation with the

Supreme Court in an inquiry concerning Judge Kenneth L. Kloepfer. In this inquiry, the commission found that Judge Kloepfer questioned the competence of two women attorneys in a rude and humiliating manner. The commission found that one incident occurred in 1982 in which the judge told a deputy district attorney in open court that he was appalled that the interests of the State of California rested in her hands. The commission also found that later in 1984 the judge publicly demeaned a female attorney in front of her client and in open court. The judge "opined that she was afraid to go to trial, remarked that she was psychologically not capable of putting on a trial, and questioned her in a rude and derogatory manner about when and where she had done jury trials in the past."[11/] The Supreme Court upheld the commission's finding, and Judge Kloepfer was removed from office.[12/]

Finally, in an inquiry concerning Judge David Kennick, which is now pending before the Supreme Court,[13/] the commission found that the judge had repeatedly referred to female attorneys, defendants, and court personnel in open court and elsewhere using terms of endearment such as "sweetie, sweetheart, honey, dear, and baby" in an "unprofessional, demeaning, and sexist manner." The judge also called a woman deputy district attorney into chambers and without any apparent cause accused her of creating a security hazard in the courtroom. The judge yelled at the district attorney, paced the room, and pointed his finger at her. She emerged from the courtroom in tears. Judge Kennick was later heard remarking about how funny it was that he had upset her and made her run out of the courtroom. The commission has recommended that Judge Kennick be removed from office.

Other acts of misconduct involving gender bias on the part of judges have been occasionally reported in the newspaper, but they have not come to the attention of the advisory

committee in any other manner. Since these newspaper accounts may relate to pending commission proceedings that are confidential, no mention of these accounts will be made here.

The advisory committee stresses that very few discipline cases have involved gender-biased conduct and each case that does involve bias involves other acts warranting discipline as well. The discipline cases illustrate only the most egregious incidents. If, as the chair of the Commission on Judicial Performance suspects and as testimony heard by the committee corroborates, similar incidents and those which are less significant or offensive are simply not reported to the commission, then remedies in addition to discipline must be considered.

Moreover, complaints of gender-biased conduct may be increasing as these issues receive more and more public attention. Nine completed reports from committees conducting similar studies in other states are now available.[14/] These studies have all highlighted judicial conduct issues. Issues of gender bias relating to judicial conduct have been the subject of attention in the judicial conduct profession as well.[15/] They have been the subject of national inquiries such as the hearings before the American Bar Association Commission on Women in the Profession at the mid-year meeting of the association in Philadelphia in February 1988. Finally, they have been discussed in the national legal press.[16/] It is reasonable to assume, then, that complaints may increase as awareness and education bring these issues to the public's attention and that preventive measures in addition to the remedies of judicial discipline are necessary.

b. Other conduct

Judges who responded to the judges' survey were asked: "In the last three years, have you observed remarks or

jokes in the courtroom, in chambers, or in informal professional gatherings, which you considered demeaning to women?" Based on the survey responses, we can generalize that approximately 11 percent of California judges observed these incidents either frequently or on occasion. An additional 35.5 percent said they observed them rarely but had observed at least one incident. Thus, 46.5 percent of all California judges said they observed these incidents during the last three years at least once and 53.5 percent said they had never observed an incident of this nature during the stated three-year period.[17/]

Despite the rather long and varied discussion of judicial conduct that follows, the consensus of those who participated appears to be that attorney conduct is worse. Judicial conduct is our focus in this report because of the greater impact it may have on the outcome of litigation and because of the unique role and duties of the judiciary. Further, attorneys tended to believe that incidents of bias occurred more frequently in off-the-record situations such as chambers, settlement conferences, or professional gatherings.

(1) Conduct that is openly offensive, hostile, or involves sexual innuendo

This category of conduct, like the examples in the discipline cases, is characterized by the most extreme examples of judicial behavior and may, in fact, rarely occur. The examples, however, spoken about behind closed doors and submitted anonymously in writing do indicate some corroboration for the speculation that incidents are underreported to the Commission on Judicial Performance. Incidents reported to the advisory committee include: referring to counsel as a "high-strung girl" who must be handled; making derogatory remarks about women lawyers in general; engaging in unwanted flirting or sexual advances; ogling and leering at female witnesses or

court employees; pinups in chambers; sexist jokes; reading sexually explicit magazines on the bench; and indecorous touching.

In one county, a female family lawyer became embroiled in a rather vicious dispute with a male opposing counsel in chambers. The judge was present. When the female attorney accused her male opposing counsel of lying, he called her a "fucking cunt." When the female lawyer became enraged, the judge told her to calm down, and stated "it's advocacy." The judge then asked her whether she knew "the difference between a cunt and a pussy."[18/]

In another county, in chambers during a settlement conference a judge became angry that the parties hadn't reached an agreement, and pointed at every person in the room in turn saying, "I will not do your dirty laundry." When the judge came to the female attorney who was co-counsel for the plaintiff, he smirked and said, "Except for you, I will do your dirty laundry." The judge then singled out the female attorney to type the order, saying, "Come on sweetheart, I know you can type and if you want to do your client a favor, you will type it."[19/]

Copies of letters were forwarded to the advisory committee complaining of the conduct of a judge about to retire who delivered a talk on "judicial temperament" to a professional association. Observers reported that the judge made numerous derogatory remarks about women judges and lawyers, referring to women lawyers as "menopausal" dabblers who entered law school only after they completed their maternal duties. He stated that women judges could not meet his "rigorous standards" and that he knew of only one competent female jurist.[20/]

(2) Terms of endearment, refusal to extend common courtesies, appropriate forms of address, personal appearance

This category of conduct abounded with complaints. Witnesses too numerous to mention cited instances of being called "honey" or some other familiar term usually reserved for members of one's family, of being excluded when the handshakes were being passed out, of being called by a first name when opposing counsel was not, of being singled out and complimented, sometimes in a risque fashion, for appealing elements of personal appearance. At the Sacramento public hearing, then-president of California Women Lawyers, Ms. Janice Kaminer-Reznik, told the advisory committee about the many letters and complaints that the lawyers' association heads receive which cite examples of this type of conduct.[21/]

Most witnesses and those who submitted written comments appeared almost apologetic about bringing up these subjects. They acknowledged that the perpetrators were often well-meaning or at least oblivious, but that the attorney's pain, discomfiture, annoyance, and the resulting effect on the client might be greater than the incident would indicate. An example occurred in Los Angeles:

> I've had a judge remark in a court proceeding, when I appeared on an unopposed motion, that the reason he was granting my motion, and this is a quote, was because I was so attractive and brightened up his courtroom that morning (emphasis added)."[22/]

(3) Stereotypes

Stereotypes about women, as about men, are legion. They can influence unfairly the treatment of all the female participants in the courtroom from the woman attorney to the female expert witness or the female litigant. The stereotypes or values based on stereotypes that witnesses cited to the advisory committee include:

o the belief that women are too emotional or anger too easily;

o the opinion that female agressiveness is unattractive and inappropriate

o the distaste for dissension between two women ("the cat fight factor");

o the belief that women should be taking care of children and should not be in the work place;

o the belief that women are tricky or manipulative; and

o the belief that men should be in a paternal role toward women either to protect and flatter them or to reprimand them when they go astray.

Indeed some stereotypes operate in the courtroom to place women attorneys in a classic "double-bind" situation. A woman judge, in an article on gender bias in the courts, observed:

> The female attorney is in a constant dilemma. If she appears too feminine, displays compassion, and is softspoken, she is considered too weak to be effective. If she asserts herself and is aggressive, she is condemned for being too pushy and abrasive. Either way she stands to lose."[23/]

Examples of these stereotypes in operation are common throughout the transcripts of the regional meetings and are also present in the written comments received. A few examples follow.

Some judges, a Los Angeles woman attorney wrote, fail to object to the behavior of a rude or overbearing male attorney but do not accept the same behavior from a female, especially if she is young. The attorney believes that judges' attitudes may be based on the mistaken belief that male aggressiveness is natural whereas female aggressiveness is rude.[24/] Women lawyers in one county reported that a judge on three separate occasions brought a woman attorney into chambers before the beginning of the trial and told her in front of the opposing male attorney, "Do not try any of your

feminine tricks in my courtroom. I will not put up with it. I don't want any of your emotionalism. I don't want any of the feminine tricks and don't forget."[25/]

This behavior is also exhibited toward women when they appear as parties. A woman attorney reported that a judge stated: "By the way, I notice that your client is a woman. I just want to make sure we're not going to get all emotional and histrionic out there."[26/]

On more than one occasion, with an apparent distaste for women who are in contention, judges likened vigorous legal argument between two women attorneys to a "cat fight." One attorney stated:

> And my opposing counsel and I went into chambers and we were arguing our points, and in the middle of our argument the judge said, 'Now ladies, if you can't behave properly, you should not be in this courtroom. You're acting like cats. And you can go outside and discuss whatever you want, but in here you have to act like ladies."[27/]

This likening of women opposing counsel to cats occurs in Fresno as well. An attorney reported:

> I was in court, and . . . we went in and said, "We feel that we may have had this -- we may have settled this, but we have one thing that we aren't sure about. We're going to check that out, and we'd like to have a continuance to see if we can settle this.' He kind of laughed and said, 'What'd you gals do, go out in the hallway and have a cat fight?"[28/]

Judges were reported as excessively reprimanding and overly protective or interfering. For example, in San Diego, an attorney said:

> The third instance had to do with two women who were arguing a motion, and after each one finished speaking, the judge would address both counsel, and explain to the other one what that woman had just said. He said, "Now I guess what you really mean to say is this," and then the other one would give her argument, and then he would turn around and say, "Now, what you really mean to say is this." And it was a very patronizing attitude.[29/]

(4) Unequal extension of professional courtesies and the application of a double standard to female advocates

Women lawyers at every regional meeting reported that judges often unequally extended professional courtesies and seemed to judge their advocacy according to a different standard and that the effect of this behavior was to make them feel that they were not members of the exclusive club known as the bar. Frequently, a judge can forgive the inadvertent errors of counsel with an understanding of the realities of practicing law in some areas. In rural areas and in large metropolitan regions, attorneys may travel long distances to attend court appearances. A judge can make things easier by perhaps calling an attorney in another county to find out the lawyer's arrival time or by forgiving tardiness. Requirements such as stating objections for the record or timely service of documents such as settlement conference statements are sometimes relaxed. Continuances can be granted, despite this era of delay reduction, for illness or calendar conflicts. It is often in these daily discretionary decisions that judges make that bias can creep in. The lawyer whom the judge knows or whose work appears reliable is usually forgiven, is not sanctioned, and is extended every courtesy. Women attorneys believe that more often than not that lawyer is a man and that they must work twice as hard and adhere strictly to every protocol because they are not as well known or trusted by the

judge. Indeed, 62 percent of those who responded to a survey of women lawyers conducted by the State Bar believe that they are not accepted as lawyers by men in the legal profession, and 38 percent believe that they will never achieve equal status to male lawyers.[30/]

Sometimes this form of unequal treatment can take a more sinister form. One attorney told the following anecdote:

> She was over here on a multi-jillion dollar case of some sort at a settlement conference, and they were hammering it out, and multiple co-counsels from all over the place, and since they were from out of town and so on and settlement was at hand, they worked late into the night and the court reporters were gone and they finally reached a settlement, and they were going to go into the courtroom and put it on the record, even though there was no court reporter, and there were six or eight lawyers lined up, and the judge looked at her, the only woman, and asked her to take down the settlement. He didn't ask her if she could type, but it was close.[31/]

A woman litigator practicing in major, complex litigation involving large amounts of money for 15 years related an anecdote in which she was not permitted to oversee distribution of a major settlement despite the fact that she knew more about the litigation than any of the other attorneys.[32/] She then related the following:

> I was to be second chair at that trial, but I was the person who had worked the case up for trial, and I was prepared to argue all of the in limine motions, and they were substantial. When we got to court, the first thing I noticed is that I was invisible. The judge just simply did not recognize that I was there.

> I was the only woman on the team, and there were six lawyers in chambers, and every comment, whether social or dealing with the merits of the case, every comment, every question, was addressed to my colleagues.[33]

Another attorney who is female and Southeast Asian related the following:

> A few weeks ago, I had to try a case in front of one of our judges. The judge asked that counselors state our name for the record. My opponent stated his name, and then I stated mine. The judge looked down at me from the bench, and in open court, and asked me, "Are you an attorney?" I said, "Yes, sir." He then asked, "Are you licensed to practice here?" I said, "Yes, sir." He continued to ask, "Will you provide me with your bar number after the trial?" I said, "Certainly sir."
>
> All of this questioning of my credentials was done in open court in front of my client and my opponent, when it should have been done in a more discreet manner out of the hearing of my client and my opponent.
>
> Since the judge did not know me, it was reasonable for him to ascertain my authority. However, questioning my credentials in open court in front of my client and opponent could well undermine my credibility and thus damage my client's interest.[34]

(5) Hostility toward certain causes of action uniquely involving women

Some attorneys reported that judges appeared hostile to certain causes of action uniquely involving women, such as sex discrimination cases and sexual harassment cases. One woman reported that a judge, when told in chambers that a case involved sex discrimination, visibly grabbed his crotch for

more than a minute, rocked back in his chair, smiled and said, "I've been waiting to get one of these."[35/] Another woman said that a judge likened her female client's wrongful termination suit to "a $4 an hour clerk . . . getting in a huff over nothing and suing about it."[36/] A third attorney reported that at a public forum for judicial candidates sponsored by a local women's bar, a local judge running for re-election stated that he believed sex discrimination is permissible because it is not specifically prohibited by the Constitution.[37/]

Attorneys who practice in this area and who participated in the regional meetings generally believed that the hostility toward these causes of action influenced judicial rulings in the areas where judges exercise discretion. One example was reported by a San Francisco attorney about a state court case litigated in another county. The attorney said:

> Voir dire proceeded in slightly better fashion, except that the judge refused to excuse a potentional juror for cause when that juror stated that under no circumstances would he allow his wife to work outside the home. My case was a wage and sex discrimination case in employment.
>
> . . . During my cross-examination of a corporate financial officer to whom the judge seemed particularly favorably disposed, at a point where the officer was just about to be impeached by a showing that he knew that other managers at plaintiff's level made more money than she, the court stopped my examination, took counsel into chambers and began insisting that while he considered himself a strong supporter of women's rights and he believed in full equality of pay for women, he believed that this case involved too much detail. He would not allow further questioning along the same lines -- that is, what she made and what the other managers made -- and said the only thing he would allow is "in what conversations or what ways did they in any way discriminate against her, and the rest of

> this is hogwash." Of course, such testimony regarding wages of various managers would be highly relevant in this kind of case.
>
> The case was painful. It was terrible. It was very upsetting, and it was reversed on appeal.[38/]

(6) Response to pregnant women

Attorneys also reported in some instances that judges were not comfortable with the ways in which the pregnancy of a woman attorney or other participant might affect the proceedings. Ms. Kaminer-Reznik reported at the Sacramento public hearing that some courts are refusing to grant continuances of trial when an attorney is pregnant and about to deliver. She suggested that a policy was needed regarding continuances of court proceedings for pregnancy and child birth leaves. She pointed out that if a lead attorney in a complex case is unable to get a brief continuance to be able to bear a child, then firms may be less willing to assign the most important and complex cases to women of child-bearing years.[39/]

(7) Judicial intervention

Many of the lawyers who attended the regional meetings agreed that judicial intervention for conduct of opposing counsel or court personnel constituting gender bias was essential to correcting the problem. They cited the failure to intervene, the failure to take seriously, or the encouragement of biased conduct as an element of gender bias itself since a judge's tacit or explicit approval cloaks the conduct with a mantle of legitimacy not present if the conduct is identified and disapproved of in some manner. Commentators agreed, however, that the manner of proceeding is delicate. Most preferred a side-bar or chambers conversation with counsel and a remark after hours to court personnel. The attorneys did not favor a comment from the judge in open court when a jury is

present. They were sensitive to the need not to unduly influence the jury or intrude upon the jury process. Attorneys favored initiation of the remark from the judge. One attorney commented:

> But it's a very difficult situation because you don't want to be perceived as unable to take care of yourself and in need of a knight in shining armour.
>
> And so I'm very reluctant to do that too often if I don't see that a judge is willing to, at some point, take control of his or her own courtroom and . . . make some decisions about how the case will be conducted.
>
> Because whether I get a strategic advantage from it or not, it's the judge's decision as to what conduct will be tolerated in the courtroom. And if it is not germane to the issues of the case I don't think it ought to be tolerated on either side.[40/]

One of the questions on the judges' survey was: "In what situations in the courtroom or in chambers do you think it is appropriate for a judge to intervene when the judge observes behavior exhibiting gender bias?" Judges could choose as many of the following responses as they believed applicable: a) every time it occurs; b) whenever requested; c) only when the offending behavior might influence the outcome of the case; d) whenever intervention does not unduly interrupt the proceedings or become counterproductive; e) never; and f) other. Only one judge selected the choice "never." 48.6 percent of the judges who responded to the question selected "every time it occurs."[41/] Based on the survey results, it appears that judges favor intervention when offending conduct occurs. The narrative responses provided when judges were asked about their chosen methods of intervention reveal that judges are also sensitive to the effect a possible reprimand would have on the jury but that judges appear willing to correct improper forms

of address, terms of endearment, sarcastic references, and demeaning comments. Judges appeared to recognize that these comments can occur in a wide variety of circumstances, that intervention is necessary, and the method of intervention must be cautious, suited to the circumstance, and creative.[42/]

This willingness to intervene must be qualified by one caveat. To intervene effectively, a judge must first recognize expressions of bias when they occur. Many judges do not. This lack of understanding undermines their ability to ensure fairness in the courtroom. That is one of the reasons judicial education is crucial.

c. The consequences of judicial conduct exhibiting gender bias

Clearly the consequences resulting from the most severe forms of gender-biased conduct, such as overtly hostile or sexually offensive behavior, are to render the notion of equal justice myth not reality, and to tarnish the reputation of the court for fairness in the legal community and for the public at large. This behavior should not be tolerated and, indeed, when it is reported to the Commission on Judicial Performance, it results in disciplinary proceedings. But what are the consequences resulting from the scores of less serious incidents committed by judges who act perhaps unknowingly and whose effect, if taken on an individual basis, is minimal?

In discussions with attorneys and judges at the focus groups conducted at the State Bar Annual Meeting in September of 1988, these incidents were acknowledged as often perceived as trivial, part of the rough and tumble of courtroom life, something to be lived with. Taken collectively, however, the effect of this behavior on the life of a woman lawyer, litigant, or court employee who may be its victim is considerable.

Attorneys were asked at the regional meetings to address the question of what consequences resulted from gender bias in judicial conduct. Many spoke of a feeling of hopeless-

ness about ways to curtail it. Others referred to the deleterious effects witnessing the behavior had on their relationships with their clients. In some cases, attorneys firmly believed the conduct influenced the outcome of the case. Some women said they decided to leave litigation as a result of the uncivil conduct, including conduct exhibiting gender bias, that occurs. Others who had once practiced in fields traditionally dominated by men, such as anti-trust, said they chose to find another area of practice more hospitable to women.

One woman described her experiences as an antitrust attorney in Federal Court as follows:

> One of the reasons I left the antitrust division of the United States Justice Department was the constant hurdles I faced being an antitrust lawyer. I majored in economics as an undergraduate. I have a real fondness for economics, and it just boggled both the judges', unfortunately, and my opposing counsels' minds that I could be an antitrust lawyer.
>
> I guess small black women can maybe comfortably go into family law, even more successfully, into civil rights law; but economic analysis and antitrust were something that they felt was really left for the big boys, and really too technical for someone like me to comprehend.
>
> The first time I flew down to Los Angeles to try to stop a merger, I was asked by the judge, "Do you really understand all the economics involved in this case?" I wasn't sure the judge really understood all the economics involved in the case, but I really thought I had a grasp on it.
>
> Unfortunately, what I noticed in the antitrust division, I was the only minority attorney there during my five years. There were other women, and none of the women were ever put into

> the role of lead counsel, which means they would lead the team of attorneys. You know antitrust work, you can't do it by yourself.
>
> And as I got to be there about four or five years, I realized, you know, I'm really ready to lead a team here, and I'm never going to get to do that. And one of the things that the people who I've worked with used to reinforce the fact that the women in the antitrust division were not being elevated where they should was, you know, "Even the judges don't think you guys really understand this."
>
> So you had the perceptions of your judges affecting your ability to move up in that employment setting that you had chosen.[43]

One of the most profound effects of gender-biased judicial conduct is the effect that it has on the credibility of women. Further, judicial conduct that reflects bias is viewed by members of the public and can often be mirrored and augmented by their own biases and reliance on stereotypes. The following anecdote told by a highly qualified litigator illustrates these points:

> I was representing a client who really had chosen another attorney, who was unavailable in trial, and so I was second chair, but was the person who would do it. And seeing the reception and the hostility that I was receiving from the court-- or the lack of credence, is a better word, just lack of credibility, made the client have significant doubt, and that if there had been a way to get that male attorney in, he would not have continued to have me represent him. It turned out there was no choice.

> But it's a major problem for a client who goes into court with you to see that their advocate does not have respect or credibility or is not listened to commensurate with their experience.[44]

In two articles published in legal journals, Ms. Lynn Schafran, an attorney who heads the National Judicial Education Program to Promote Equality for Women and Men in the Courts, recognized the importance of the impact of judicial conduct exhibiting gender bias on women's credibility. Ms. Schafran points out in one article the overwhelming importance of credibility to the advocate and outlines that historically women were considered the less credible sex, unfit for ownership of property, the exercise of the franchise, and the practice of law. Despite the changes that have occurred throughout the years, notions of women as less credible people persist according to several studies cited by Ms. Schafran. One study showed that students gave more weight to the views of male professors and found them more authoritative. Male students even more dramatically favored male professors.[45] She states in a second article:

> What must be understood about these incidents is that they result in more than personal embarrassment, humiliation, and anger for the women involved, and that whether the offending remarks are unintentionally sexist or deliberately made, their consequences are the same. In the courtroom, in chambers, and in other professional settings, terms of endearment, comments on looks and clothing, and remarks that otherwise call attention to the individual as a woman rather than as a lawyer undercut her credibility and her professionalism.[46]

d. The need for a new section in the Code of Judicial Conduct

Adding a provision to the existing Code of Judicial Conduct that would create a specific ethical duty for judges to refrain from engaging in gender-biased conduct and to prevent others from engaging in such conduct in the courtroom has been discussed since 1986 when the Committee on Women in the Law circulated a proposal urging the California Judges Association (CJA) to adopt a new code section.[47/] Adoption of a code section was also specifically recommended by Queen's Bench, a San Francisco women lawyers' organization, at the San Francisco public hearing.[48/] Similarly, the American Bar Association (ABA) has been debating this issue and will be considering in August of 1990 a draft provision regarding bias to be added to the ABA's Model Code of Judicial Conduct.[49/]

The advisory committee recognizes that neither the committee nor the Judicial Council has authority to require additions to the Code of Judicial Conduct, which is promulgated by the California Judges Association. The committee nevertheless was strongly persuaded by the extensive information provided on judicial conduct in the courtroom that a code provision would be a vital tool for curbing incidents of gender bias. At their worst, these incidents impugn the integrity of the judicial process and even trial incidents unfairly reduce the credibility of women participants in courtroom procedures. With due regard for the differences in purview, the advisory committee strongly urges the adoption of a new provision and requests the Judicial Council to approve this recommendation and transmit it to the California Judges Association for its serious consideration.

Further, the advisory committee particularly recommends the adoption of the proposed ABA model code section. That section has had the benefit of national debate and comment and, in the advisory committee's view, represents the best thinking on the issues. The original California Code of Judicial Conduct was modeled after the 1972 ABA Model Code. The proposed model provisions state:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. * * *
B. Adjudicative Responsibilities.
(1)-(4) * * *
(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Judicial bias, as perceived by parties or lawyers in the proceeding, jurors, the media and others, may be manifested by nonverbal communication such as facial expression and body language as well as by words. A judge must be alert to avoid such prejudicial behavior.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) * * *

The model provisions accomplish three important goals. First, they elevate the elimination of gender bias and other biases in the courtroom to an ethical duty for all judges. Creation of the duty may help prevent serious incidents of bias and may increase reporting to the commission where appropriate. Second, they create a judicial duty to intervene, which is crucial to curing the double-bind that exists for many women attorneys and assists in protecting the public from biased behavior. Finally, the provisions foster these results using language that protects legitimate advocacy.

The advisory committee notes and applauds the fact that the provisions of the model code refer to all forms of bias. Although the committee's charge was limited to investigating problems of gender bias, the committee targeted bias based on race and ethnicity combined with gender bias as a special focus issue.[50/] The committee members determined that the need for a code provision preventing other forms of bias is equally compelling, and they saw no reason to elevate gender bias over other biases by limiting the language of the code section.

2. Conduct of other bench officers

RECOMMENDATION 2

(a) Request the Judicial Council to instruct the Advisory Committee on Private Judges to study and recommend a means of enforcing the appropriate standards of conduct for private judges relating to bias as stated in the ABA Model Code of Judicial Conduct Canons 3B(5) and (6).

(b) Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendation:

The State Bar should formulate and adopt a Rule of Professional Responsibility that requires lawyers serving as judicial officers to adhere to the ABA Model Code of Judicial Conduct Sections 3B(5) and (6)

a. Need for clarification of ethical duties and enforcing body

As has become increasingly apparent, elected or appointed judges are joined in their duties of deciding legal issues by a host of other bench officers. These include commissioners, referees, private attorneys acting as temporary judges, arbitrators, retired judges sitting on assignment, and private judges who may or may not have a specific reference from the court. Confusion exists concerning the ethical duties of these other judicial officers and the appropriate body charged with enforcing these duties.

The existing Code of Judicial Conduct provides in a compliance section following the code sections:

> Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

The code does not, for example, specifically refer to attorneys who serve as arbitrators in judicial arbitration proceedings[51/] Presumably, an arbitrator is an officer of a judicial system performing judicial functions and covered by the code, but the clarity of the section might be enhanced if arbitrators were specifically mentioned.

Similarly, the use of private judges, either with or without a specific reference from the court, has continued to

increase and is the subject of study by another advisory committee appointed by the Chief Justice. Witnesses at public hearings conducted by the Judicial Council Advisory Committee on Private Judges recognized that the applicable standard and method of discipline for private judges is an open question, and that resolution of the question becomes even more problematic if the private judge is functioning without a specific reference from the court. Others noted that private judges are sometimes used in the most complex family law matters.[52/] Family law is an area of great judicial discretion and raises many emotional issues about women, children, and families. As such, it is an area of the law where the potential for gender bias is great.

The Commission on Judicial Performance routinely receives complaints against commissioners. The presiding judge is charged with reviewing and redressing complaints against commissioners.[53/] The commission has noted that in some instances no appropriate mechanism at the local level exists for reviewing the complaints and that presiding judges sometimes request assistance when complaints against commissioners are received. Consequently, the commission is currently exploring whether its jurisdiction should be increased either by mandate or at the request of a presiding judge to include review of complaints against commissioners. Thus, the commission recognizes the problems of enforcement and clarity regarding the ethical duties of commissioners.[54/] The advisory committee is concerned not only with ensuring the adherence of all bench officers to ethical duties but also with the need for education for these judicial officers. The need for education is primary in the case of lawyers who serve as temporary judges and may or may not have adequate training in the particular substantive area or in judicial demeanor.

b. Gender bias reported

Incidents of conduct evidencing gender bias by judicial officers other than appointed or elected judges were reported to the advisory committee at both the regional meetings and public hearings. Two examples follow.

One San Francisco woman attorney described a sex and race discrimination case which was, in her view, erroneously sent to arbitration. The arbitrator was not knowledgeable in evidentiary matters pertaining to sex and race discrimination and would not permit argument or submission of authorities on a vital evidentiary question. Although the attorney acknowledged that exclusion of the evidence after full argument would not have necessarily reflected bias, the arbitrator's denial of her opportunity to be heard appeared, in the attorney's view, to be motivated by hostility toward the cause of action and herself. Ultimately, the arbitrator was disqualified and the case was tried by a judge.[55/]

Another woman attorney related an anecdote in which an arbitrator gave courteous attention to the plaintiff's attorney in a personal injury action but when she began to present her case on behalf of the defendant public entity, the arbitrator began filing, signing letters, taking phone calls, and walking around the room in complete disregard of her presentation.[56/] A third woman attorney from Orange County related an account of an arbitration in which the personal appearance of the woman plaintiff was a topic of joking and comment between the male arbitrator and the male opposing counsel.[57/]

c. Application of the ABA Model Code of Judicial Conduct

Based on the testimony received and because of the increasing use of other bench officers to resolve cases in the justice system, the advisory committee strongly recommends that

in promulgating the recommended ABA Model Code of Judicial Conduct sections relating to bias the judges' association ensure that its provisions apply to all bench officers. The committee further suggests that the ethical duties and the applicable enforcing body for all nonjudicial bench officers be clarified. The current code of judicial conduct applies to all bench officers. The Judicial Council Advisory Committee on Private Judges, however, heard testimony that indicated confusion about its application and a general unawareness of its application.[58/] Moreover, the provisions do not refer to a specific enforcement body relating to nonjudicial bench officers. The committee suggests, therefore, that this topic be explored by the Judicial Council Advisory Committee on Private Judges in the context of its study of private judging. The committee also recommends that the State Bar adopt a specific Rule of Professional Responsibility that would extend the bias provisions in ABA Model Code of Judicial Conduct Canons 3B(5) and (6) to lawyers acting as arbitrators or other judicial officers. Adoption of a rule would render the State Bar's disciplinary system applicable to complaints against lawyers acting as judicial officers who exhibit gender-biased conduct.

3. Judges and court employees

RECOMMENDATION 3

Request the Judicial Council to instruct its staff to prepare an educational manual for judges, other judicial officers, and court personnel on fairness governing the following issues:

a) the fair treatment of and appropriate courtroom behavior toward lawyers, jurors, court staff, experts, litigants, and others involved in the court process; and

b) a suggested opening statement to be read at the beginning of all court proceedings expressing the court's refusal to tolerate all kinds of biases.

a. Need for a fairness manual

The advisory committee recognizes that judicial conduct occurs in a setting that may include gender-biased conduct on the part of the courtroom staff who operate directly under the judge's control. Moreover, in trials the conduct of the court and the court staff is seen through the prism of the jury's perspective. Jurors bring to each trial a multitude of individual biases and prejudices that the court asks them to set aside. To assist both judges and court staff in ensuring a courtroom environment that is free from bias, the advisory committee recommends creation of a manual of fairness that contains guidelines for proper courtroom conduct and includes a general admonition that can be read to the jury at the beginning of each trial that bias has no place in the courtroom or in their deliberations. A manual will provide a valuable educational tool for employee training and may assist a new judge in developing an appropriate admonition.

1. Conduct of courtroom staff

The behavior of the courtroom staff directly reflects the attitude of the judge. Attorneys, witnesses, parties, and members of the public view acts of gender bias by clerks, court reporters, and bailiffs as tacitly condoned by the judicial officer who supervises them. Thus, when a bailiff makes a sexual remark about a female defendant that is audible throughout the courtroom except to the judge who is in chambers, it is the judge's reputation for fairness that is ultimately tarnished.

Witnesses at the regional meetings discussed various incidents of biased conduct by courtroom staff. One attorney requested a transcript of a colloquy with a judge she thought exhibited bias against her and met with obstructionist behavior by the court reporter.[59/]

The judge's clerk has access to the judge, ensures that papers are filed, and performs other vital clerical duties. The clerk's spirit of helpfulness can be extended unequally. Attorneys noted that some clerks respond positively to the young, dashing, and handsome cadre of male attorneys and become surly when the harried woman attorney toting a briefcase with a baby bottle inserted in the side pocket approaches the desk. One attorney at the San Francisco regional meeting reported being consistently ignored by a woman clerk who professed to be unable to find counsel's name amidst a long list of mostly male attorneys. Generally, young woman attorneys spoke about the consistent need to convince court staff that they are counsel of record. The refrain of "are you an attorney?" follows their progress through the halls of the courthouse and serves as a reminder that they are new arrivals in the profession. The same treatment does not appear to be directed toward young male attorneys. Attorneys also report that courtroom staff often acquiesce in gender-biased behavior by counsel toward their female opponents in the courtroom while the judge is in chambers. Rarely do staff members report offensive incidents to the judge.[60/]

Finally, court staff can themselves be victims of gender-biased behavior. In a female-dominated job category such as court clerks, sexual harassment by co-workers, judges, and attorneys can and does occur.[61/] One woman public defender noted that, historically, women clerks have been treated without a great deal of respect. It was her hope that the influx of more women attorneys who have a greater rapport with women clerks might ultimately improve their status.[62/]

2. Admonition to jurors

In the courtroom of Judge David W. Ryan of the North County Municipal Court District in San Diego, each trial begins with an affirmative statement made by the judge that "race, religion, creed, color, national origin, sex, age, handicap, and any other suspect classification that the Legislature deems appropriate have nothing to do with the case that may be at issue."[63/] Judge Ryan testified that he uses this opening statement because he believes he has a duty to alert the jurors to their duty to decide the facts on the basis of the evidence and not on the basis of their personal biases or prejudices. Judge Ryan pointed out that the bias in the courtroom is simply a reflection of the bias in society as a whole. An admonition at the beginning of trial is a useful reminder to jurors of their duty to question and successfully combat their own biases during the course of the trial and serves to set the tone in the courtroom for the attorneys and the staff.

The existence of juror bias was dramatically corroborated in a written comment submitted to the committee. Despite the attorney's conviction to the contrary, we cannot be sure that the juror's attitudes determined the case outcome described in the comment. This illustration demonstrates the fact that juror bias nevertheless does exist and must be considered. An attorney from San Francisco wrote:

> I am aware of a case in which a female deputy sheriff's claim of on-the-job sexual harassment was significantly influenced by the jurors' gender bias. The jurors found liability on the part of the defendants but awarded the female deputy only nominal damages. Post-trial interviews with the jurors indicated that despite seven weeks of solid evidence regarding the plaintff's claim, the jury based its award largely on their perception of the plaintiff as a loud-mouthed "badge-waver," who had

"asked for" the treatment she received from her male colleagues because she once wore a loose weave sweater to a training session where all the deputies wore civilian clothes, and because she attended rowdy parties with her fellow deputies when off-duty. In addition, the female deputy had a young son who was in day-care while she worked. She had also been divorced and remarried and led a less than orderly personal life.

The jury could not get past its perception of the plaintiff as a woman who "asked for it" by taking a "man's" job. She didn't fit the traditional female stereotype, and the jury made her pay for it. One older female juror said that she just couldn't award much money to "a woman who would go off and leave her child like that" (in day-care). The jury's perception of a male deputy who behaved in an identical manner would have been vastly different.64/

Judge Ryan's practice was also the subject of recommendations made to the advisory committee at the public hearings. Ms. Janice Kaminer-Reznik, past-president of California Women Lawyers, supports the adoption of an admonition and Queen's Bench, a San Francisco women lawyer's organization, requested its adoption.65/

4. Informal resolution of gender bias complaints

RECOMMENDATION 4

Request the Judicial Council to establish a pilot project in at least three counties of varying size and in disparate geographical regions of the state to develop informal mechanisms for dealing with minor incidents of gender-biased conduct of judicial officers, attorneys, and court personnel and report the results of the pilot back to the council within two years.

a. The need for fair resolution of minor complaints

At the focus group for judges held at the State Bar in September 1988, judges observed and generally bemoaned the fact that they work in an environment with very little opportunity for feedback. Judges can be and often are extremely isolated from even their colleagues and insulated from any source of criticism. Some judges do not even recognize the role of the presiding judge as the administrator and director of the court, and, as a result, they are not responsive to suggestions from the presiding judge or to comments about their judicial demeanor. Early recognition of a bias problem is unlikely in this context. It is easy to understand why complaints of gender bias sometimes rise to the level of judicial misconduct before any corrective attention is taken.

Judicial isolation is then coupled with attorney reluctance. As highlighted earlier, attorneys commented that the fear of repercussions or retaliation prevented them from reporting incidents of gender bias. One attorney testified that she attempted to determine whether members of a women's bar association in San Diego over which she presided were interested in testifying at the San Diego public hearing and found that some members were reluctant to testify for fear of reprisals. She stated:

> As a tax attorney, I don't have an eye on the courtroom bias that we're talking about today, so when I was notified of these hearings, I sought out members, and attorneys in general to just discuss the matter. Although all of them appreciate the fact that the Judicial Council is studying the issue of gender bias, none of them were willing to, as they put it, risk their careers, or their client's cases, by testifying today.66/

The same attorney later referred to the expected retaliation as "shunning." The attorney stated that the association members with whom she had this discussion related specific acts of retaliation that had occurred to them but asked that these acts not be disclosed at the public hearing for fear that the attorneys and cases might be identified by the information disclosed.

Indeed, judicial retaliation can be severe. In one celebrated incident, an attorney who made statements to a newspaper reporter regarding bias she perceived on the part of a local judge was ultimately sued by that judge.[67/]

Case law indicates as well that judges can retaliate against those who complain. One of the reasons underpinning the general rule that disciplinary proceedings against judges are confidential is the protection of complainants and witnesses from recrimination or retaliation.[68/] Moreover, judges in California have been disciplined for this retaliation.[69/]

The minor nature of some complaints can often keep attorneys from protesting the behavior. One attorney summarized:

> I really don't have anything to say that I would consider to be earth shattering, and in fact I discussed it with other people in my office. I was really concerned. I mean, am I going to really trivialize these hearings by bringing up these incidents? Are people going to say I am making mountains out of molehills and therefore undermine this work that you are trying to do? But the more I talked to people, I am convinced that even the little things have a cumulative effect, and it is important to talk about them. In fact, the more I thought about it, the more I realized that given the various stresses we all deal with in the practice of law, and I would add especially in the practice of

> legal aid law, the cumulative impact is significant. It is another stress. It is another something you have to deal with. It is another group of energies that you have to muster in order to not let that get under your skin, to not let it undo your composure. And for that reason too, I think it is important to bring up.[70/]

An informal mechanism that is locally based to deal with minor complaints thus serves the following purposes: a) it provides for an early detection of a problem of judicial conduct that might become worse and operates to prevent more serious problems from arising; and b) it provides an outlet for disgruntled attorneys who might otherwise have no recourse and can be designed to protect complainants from reprisals.

b. Support in the record

Alternatives to contacting the Commission on Judicial Performance for less serious incidents of gender bias were favored by attorneys who attended the public hearings and regional meetings. In Fresno, for example, Ms. Ruth Ratzlaff, president of Fresno County Women Lawyers, recommended the use of gender bias liaisons at courts throughout the state. In the Fresno Superior Court, Presiding Judge Mario G. Olmos acts as liaison with Fresno County's women lawyers on the subject of gender bias. A confidential report may be submitted to Judge Olmos. Ms. Ratzlaff stated: "This informal, confidential way of dealing with the problem, short of a nasty letter to the Commission on Judicial Performance would be, in our opinion, helpful to address concerns of gender bias."[71/]

Mr. Peter Keane, then-president of the San Francisco Bar Association and Chief Deputy Public Defender in the City and County of San Francisco, related that he has personally approached judges on behalf of a woman deputy when there have been problems and that this informal approach is sometimes

helpful.[72/] Ms. Mary Dunlap, a San Francisco attorney, also specifically recommended that an informal and efficient mechanism be developed for litigants, attorneys, and court personnel to complain immediately and meaningfully about behavior suggesting bias.[73/]

c. Creation of a pilot program

One county has independently already begun experimenting with the creation of a local mechanism for resolving complaints about gender bias. Spearheaded by Mendocino Superior Court Judge Conrad L. Cox, Mendocino now has a Gender Equality Committee with a Gender Equality Officer. The committee members are both male and female. They were nominated by the local women's bar association and appointed by the court. The committee "will assess the issue in Mendocino County, identify any existing areas of concern, and make recommendations to the court." The officer "will hear confidential complaints from any person who may have experienced gender bias in any aspect of the legal system" and "will be empowered to take direct action on behalf of the aggrieved party or to refer the party to an appropriate source for assistance."[74/] The Ventura County courts, the site of public scrutiny of the family law department and intense public debate about orders relating to child support and custody,[75/] are also interested in the possibility of creating a similar committee. Finally, the San Francisco Superior Court has expressed interest in gathering information about informal mechanisms for resolving gender bias complaints.

Accordingly, the advisory committee recommends that the Judicial Council commence a pilot project to develop programs for informal resolution of complaints of gender bias in the courts in at least three counties. The pilot project will provide technical assistance to the courts selected as participants, monitor the progress of the committees, evaluate the

results, and report back to the Judicial Council within two years. The project need not be limited strictly to questions of gender bias but might be varied in one county to include questions of other biases and minor demeanor problems. The advisory committee suggests that the Discipline and Disability Committee of the California Judges Association be consulted as well in the design of the project.

5. Membership in discriminatory clubs

RECOMMENDATION 5

Request the Judicial Council to transmit and urge consideration by the California Judges Association of the advisory committee's recommendation that the association modify its existing canon to conform to Canon 2C of the Draft Model Code of Judicial Conduct of the American Bar Association which makes it clear that judges, as part of their ethical obligations, shall not belong to clubs that practice invidious discrimination.

On September 15, 1986, the California Judges Association amended Canon 2 of the Code of Judicial Conduct to provide:

> It is inappropriate for a judge to hold membership in any organization, excluding religious organizations, that practices invidious discrmination on the basis of race, sex, religion or national origin. (Emphasis added.)[76/]

The advisory committee commends the California Judges Association for this enactment in light of the importance of the issue to women and minority lawyers and judges in the state. The committee agreed that reasonable people might

question the impartiality of judges who belong to discriminatory clubs especially after the promulgation of the section of the conduct code. Factors that affect the impartiality or the appearance of impartiality of judges, such as membership in discriminatory clubs, are a worthy topic of concern for the advisory committee.

The committee did not attempt to ascertain the number of judges who have failed to comply with the new section of the code. The advisory committee members have the general impression that many judges have been instrumental in changing discriminatory policies in clubs and others have resigned when change did not take place. Some evidence was received at the public hearings, however, to indicate that members of the bar question whether all judges have taken steps to resign from clubs that practice invidious discrimination since the enactment of the code section. Both the past-president of the San Francisco Bar Association and its executive director commented that there appears to be a continuation of membership in discriminatory clubs despite the existence of the prohibition in the Code of Judicial Conduct.[77/] A witness at the San Francisco Regional Meeting concurred.[78/] Civil litigators who attended a focus group at the State Bar Annual Meeting in September 1988 also spoke of their concerns that some judges had failed to heed the dictates of the new code section.

Mr. Robert Raven, then-president of the American Bar Association, alerted the advisory committee to the efforts of the ABA to adopt a section of the Model Code of Judicial Conduct that would prohibit membership in discriminatory clubs. The current version under consideration by the ABA provides:

> A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. (Emphasis added.)[79/]

The ABA version strengthens the language of the code section. The weaker "it is inappropriate" to hold yielded to a clear mandate: "a judge shall not hold."

The advisory committee determined that to ensure compliance with the code section and the original intent of the California Judges Association, the association should consider the adoption of the clearer and mandatory langugage proposed by the ABA. Adoption of this language will assist judges in understanding their ethical duties and dispel the appearance of impropriety created when judges belong to discriminatory clubs.

Prohibiting judicial membership in discriminatory clubs will be of direct benefit to the judiciary because:

1. Adoption of a code section conforms to a growing body of case law upholding laws that prohibit clubs that operate for business purposes from practicing invidious discrimination.[80/]

2. A code section will foster collegiality and lessen the deleterious effect discriminatory clubs have on judges whose membership is barred.

3. A code section will equalize access to community involvement for male and female judges and minority and non-minority judges.

4. Adoption of a code section will dispel the appearance of impropriety caused by judicial memberships.

5. The impact of judicial resignations prompted by adoption of a code section may influence clubs to change their discriminatory practices.

6. Continued membership in discriminatory clubs may adversely affect a judge's ability to seek elevation to a higher court.

B. Attorneys: conduct and related issues

Findings

Ms. Margaret Morrow, past-president of the Los Angeles County Bar Association, began her testimony at the Los Angeles public hearing by emphasizing the significance of the role of the judge in setting the tone in the courtroom. She pointed out, however, the acute need to focus as well on attorney conduct. She stated:

> But in another sense, this focus on the judiciary, almost to the exclusion of lawyers is not only unjustified, but unjustifiable. Both the New Jersey and the New York Task Forces on Gender Bias in the Courtroom, concluded that male attorneys, not judges, were the court-room actors who exhibited the highest incidence of biased conduct.
>
> Attorneys are not circumscribed in their conduct by the imperative which most judges feel to administer a fair, or at least an apparently fair court-room. Attorneys are not called upon to make the ultimate decisions, and in doing so, to evaluate whether the decision is the product of any form or species of bias.
>
> Rather, they approach litigation with only advocacy in mind. In the win/lose atmosphere of a courtroom, where per-suasion is the name of the game, an attorney concentrates on the main objective, and subconsciously, or worse, as part of a conscious strategy, acts on his or her own biases, and plays on the biases of others to achieve the desired result.
>
> This pattern will not change until the attitudes which underlie it change. And the fact of the matter is that despite all of the advances which women have made in the business world and in

> society as a result of the women's movement, the process of changing attitudes is glacially slow.[81]

The focus of this chapter has been, appropriately, judicial conduct because judges control the courtroom environment or at least potentially exert control and because the Judicial Council's purview does not include mandating duties for attorneys. Exclusion of attorney conduct from this report, however, would be in Ms. Morrow's words "unjustified and unjustifiable" both because the advisory committee concluded that attorney conduct is more offensive and egregious than judicial conduct and because of the importance of these findings to the bar. This part will therefore consider the nature and extent of attorney conduct, the context in which it occurs, and the types of conduct exhibited, and will propose remedies that may help to alleviate the problems identified.

Accordingly, the advisory committee finds that:

1. Examples of attorney conduct exhibiting gender bias abound and the examples are both more frequent and more severe than those involving judicial conduct.

2. Attorney conduct evidencing gender bias occurs in a climate of decreasing civility in the profession.

3. Attorney conduct that exhibits gender bias includes forms of the following types of behavior:

a. Words and acts that focus on the sexual attributes or personal appearance of women participants in courtroom proceedings;

b. The use and manipulation of gender issues as a trial tactic;

c. Expression of the belief by word and deed that women should not be lawyers or are inferior as advocates;

d. Discrimination against women in bar activities; and

e. Words or acts evidencing gender bias that are committed with the encouragement or participation of the judge.

4. Appropriate remedies for problems of attorney conduct exhibiting gender bias include: adoption of a rule of professional responsibility; inclusion of questions pertaining to the rule on the bar examination; and initiation of extensive education programs for attorneys and the Judicial Nominees Evaluation Commission.

5. It is in the interests of the entire profession, the judiciary, and the public that the reputation of the legal profession and the underlying acts that create that reputation be improved. Eliminating gender bias in the courtroom will serve that laudable goal.

6. The use of gender-neutral language by all court participants is essential to ensuring gender fairness and the appearance of gender fairness in the courts.

7. Women attorneys are often excluded from the most lucrative and prestigious appointments as counsel in civil matters, and local practices and procedures should be adopted to correct this problem.

8. Women attorneys perceive that they have fewer opportunities for advancement than do men attorneys, a situation directly related to the profession's failure to respond adequately to the difficulties of balancing home and family.

9. Attorney membership in and business use of private clubs that practice invidious discrimination is detrimental to affected professionals, both women and minorities.

Discussion and Analysis

1. Attorney conduct exhibiting gender bias

RECOMMENDATION 6

Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendations:

(a) The State Bar should adopt a Rule of Professional Responsibility analogous to ABA Draft Model Code of Judicial Conduct sections 3B (5) and (6) which would create a duty for all attorneys not to manifest bias on any basis in any proceeding toward any person, including court employees, with an exception for legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(b) The Committee of Bar Examiners should include questions pertaining to the amendment to the Rules of Professional Responsibility referred to in (a) above on the bar examination.

(c) The State Bar should conduct a major on-going effort relating to education of the bar on issues of gender bias. Gender bias issues should be included as part of the following educational materials or programs:

(1) materials in State Bar reports;
(2) section newsletters;
(3) programs at the annual meeting;
(4) programs at bar leaders' meetings;
(5) lawyer education programs;
(6) programs developed as part of mandatory continuing legal education; and
(7) training programs for members of the Judicial Nominees Evaluation Commission.

a. Gender bias by attorneys: more frequent and more severe

At each regional meeting, attorneys appeared to agree that acts of gender bias by attorneys were too numerous to mention and were characterized as commonplace, everyday occurrences. They agreed, too, that the nature of the behavior appeared to be more severe and that incidents occurred more

frequently when compared to judicial conduct exhibiting gender bias. The views expressed at the regional meetings had been established earlier in 1985 when the State Bar Committee on Women in the Law distributed a questionnaire to women attorneys practicing in small firms. The results of the questionnaire were summarized, in part, as follows:

> About 40 percent of the women responding have suffered gender bias in the courtrooom. Usually the problems arise from opposing male lawyers, not from the bench. The problems take the form of dirty tricks that border on unethical tactics, interruptions and talking over the women and making patronizing remarks. . . . Gender bias had no correlation to number of years in practice.[82/]

A former courtroom clerk who had worked in the courtroom for 17 years corroborated this view.[83/] Mr. Peter Keane, then-president of the San Francisco Bar Association, also stated:

> I supervise approximately 66 deputy public defenders in San Francisco who work in the courts on a daily basis. The observations that I have from the women attorneys are considerably distinct from the observations I have from the male attorneys.
>
> In terms of the comments they come back to me with regarding sexist remarks that are made to them in the courts on a virtual daily basis by judges, by district attorneys, by probation officers, by police officers, are quite alarming.[84/]

b. Acts of gender bias occur in a climate of increasing incivility and decreasing professionalism

Both Ms. Morrow[85/] and Ms. Patricia Phillips, a member of the Board of Governors of the State Bar,[86/] spoke about the lack of professionalism and the common belief that any trial tactic is legitimate that now characterizes the practice of law. Ms. Morrow described the debate of the Los Angeles County Bar Association on a proposed standard of judicial administration that created a judicial duty to avoid and prevent gender bias in the courtroom.[87/] She stated:

> These underlying attitudes were evident, I think, in the discussions of our board concerning the adoption of the standard of judicial administration. . . . What they seemed to be saying was that bias is part of a human experience, and that as advocates, they could not refrain from acknowledging its existence and its influence on the adversarial process, and utilizing it to the benefit of their clients.
>
> It seems, therefore, to me, that we must not only sensitize members of the profession more fully on the issue of gender bias, but must also work to modify commonly held perceptions concerning what are acceptable strategies and tactics in the name of advocacy. On both fronts, it is time for the Bar to put its own house in order.[88/]

Thus, the Los Angeles bar under Ms. Morrow's leadership promulgated a set of litigation guidelines in an effort to transform the legal culture's value system and the behavior norm of acceptable advocacy. As recognized by Ms. Morrow in her testimony:

> Law and legal institutions were formed, and have been controlled for many years by men. Expectations of what constitutes appropriate conduct on the part of an attorney are male expectations.

> Litigation and the negotiation of business transactions are conducted using methods and tactics which reflect fundamentally male patterns of behavior and male interaction. Until there is some recognition of this fact, and modifications of attitudes based on it, gender bias will continue to exist within the profession.89/

The guidelines promulgated in Los Angeles encourage civility and courtesy and, while noting the rights of free speech, encourage attorneys to consider the harm to the judicial system inflicted when disparaging remarks are made about opposing parties, counsel, witnesses, jurors, court personnel, or the judge. The preamble to the guidelines expresses concern about the implications of the lack of courtesy in the profession:

> Many believe that relations between lawyers have so deteriorated that our profession nears a crisis -- one that not only implicates how we deal with each other but threatens our usefulness to society, the ability of our clients to bear the cost of our work and the essential values that mark us as professionals.
>
> There have always been lawyers who have abused each other and the judicial system, but they seemed to be few in number. Now, some perceive, abusive conduct is gaining new adherents cloaked in the mantle of forceful advocacy. They proclaim that clients are best served by the intimidation of opponents, a relentless refusal to accommodate, and the use of tactics that impose escalating expense on an adversary. Be difficult and the other side may cave, they think.
>
> The Committee on Professionalism of the Los Angeles County Bar Association thinks otherwise.90/

Judges likewise recognize what some describe as a crisis in the profession. Judge Roger J. Miner, Judge of the United States Circuit Court of Appeals for the Second Circuit and adjunct professor at New York Law School, wrote:

> It should go without saying that lawyers should treat each other with decency and respect. The vigorous representation of clients is not inconsistent with civility. Yet there is a civility crisis of major proportions involving the bar. Our ethical standards make it crystal clear that ill feelings between clients should not influence relations between lawyers, that a lawyer should not refer to opposing counsel in a derogatory way and that haranguing tactics interfere with the orderly administration of justice.[91/]

c. Attorneys exhibit a panoply of types of behavior evidencing gender bias

(1) Focus upon the sexual attributes of women in the courtroom and elsewhere

Women attorneys report that they have been sexually propositioned by male attorneys, the object of their offensive jokes or sexual innuendos, and the subject of their discussions of sexual attributes. One attorney related that a deputy district attorney called her after hours and told her that if she agreed to go out with him, he would dismiss the charges against her client.[92/] A female attorney from Los Angeles reported that she became embroiled in a dispute with opposing counsel in a complex civil matter. Apparently angered at something she had done, opposing counsel wrote her a letter suggesting that she had only two workable parts and that those parts were interchangeable. She attached the letter in a motion for sanctions. The judge and the courtroom responded with laughter. In two subsequent letters, opposing counsel offerred to explain to her the body parts to which he had referred.[93/] Female court employees are similarly treated by some male attorneys. One attorney in Butte County told of overhearing a male attorney audibly discussing the court clerk's nipples.[94/]

(2) The use of gender as a trial tactic

Attorneys likewise report that men and women use gender as a tactic in the courtroom. Tactics include name calling; disparagement of female witnesses, parties, and experts; attempts to dominate the courtroom or chambers discourse through constant interruptions of women participants; and manipulation of the perceived biases of jurors in jury selection.

Flirtatious behavior, sexual comments, terms of endearment, and other forms of inappropriate conduct are used as a means to catch the opponent off-guard or disconcert opposing counsel and undermine his or her representation of the client.[95/]

Disrespect for female witnesses and expert witnesses and their accomplishments such as the failure to accord them their appropriate title is commonly practiced. One woman attorney believed that she received lower damages in a case involving claims of emotional distress because her client, her client's treating physicians, and her experts were women. She believes that the totality of the effect on the jury was to make her case less believable.[96/] Another attorney reported:

> It's been my observation in my trial practice that female witnesses are not attributed the same amount of credibility as male witnesses. That a man walks into the courtroom under the assumption that he'll be telling the truth without exaggeration.
>
> I have found that oftentimes my female witnesses have been subjected to what I feel is improper cross-examination, being subjected to an incredible amount of questioning about, are you really telling the truth? Aren't you exaggerating? Far beyond that which the court allows my male witnesses to be subjected to.[97/]

Another woman attorney commented about her experience with expert witnesses:

> My company happens to be a leader, in our industry, of having women in positions of authority. And our director of corporate planning is a woman, a young woman, a very attractive woman.

> And I've watched opposing counsel take her deposition. And first she has to justify her education in a way I've never seen a man asked to justify his education.
>
> Going through work experience from age 16. Not where did you go to college and where did you get the advanced degree, but just going way back. And what kind of background did you have and on and on and on and did you really prepare this memo that led to the end of this division or did your boss tell you what to conclude, and is it really your job to investigate and analyze all the division on an ongoing basis. Isn't it really that you're under the direction and under the control of all these men. I mean, you're not really a senior VP.
>
> It's sort of the tone of the questioning. And I've just never seen a male expert treated in that way. You know, what's your education. They give their education. And what's your job and then they give their job.
>
> And I just -- I'm always amazed when I see it happen but I see it happen time and time again.[98/]

The issue of jury selection and gender bias goes to the heart of the controversy about what are legitimate trial tactics. Some attorneys support the view that taking advantage of juror biases is smart lawyering.[99/] Others disagree and believe that jury selection based on supposed stereotypes will not be helpful to the client and borders on unethical conduct.[100/] One attorney delivered a lecture on jury selection in complex commercial cases and distributed a prepared memorandum to the attendees. In the memorandum, the attorney made numerous remarks about juries in general including the following: "Women are much more opinionated than men, less susceptible to reason, and less likely to change their minds based upon the arguments of other." In explaining this remark, the

attorney asserted that selecting a jury in a civil case on the basis of bias and generalizations about people was not only permissible but the attorney's duty.[101/]

(3) The belief that women should not be lawyers

Participants at the regional meetings reported that they perceived among some attorneys the belief that women had no business being lawyers. For example, one woman attorney from San Bernardino related an anecdote in which a male defense attorney told her that "when women lawyers become D.A.'s they are unreasonable and impossible to deal with." He continued, "I"ll take that generalization one step further -- no woman anywhere, should even be a lawyer, they cannot do the job!"[102/] One woman attorney reported that when she said she planned to attend a professional meeting a male colleague asked her whether she didn't have anything better to do like shopping.[103/]

(4) Discrimination against women in bar activities

One woman reported that in Shasta County de facto separate bar associations exist. The women attend the women's bar group, and the men attend the general bar association. Women do not attend the men's group in part because the activities revolve around sports or social occasions with other women who are not lawyers.[104/]

A past-president of the Fresno County Bar Association described a dispute involving the selection of the first woman president of that association. Prior to 1985, it was the custom and practice that the president of the association chose the vice-president who would then be the president-elect and succeed the president. This practice had been the unquestioned tradition for many years. In 1984, the then-president of the association chose a woman for his vice-president. Suddenly,

the customary practice was challenged as undemocratic, and two others were proposed as vice-presidents. A vote was conducted, and the woman the president had designated won by a narrow margin. No other woman has served as president of the Fresno County Bar Association.[105/]

At even the state level, gender bias occurs. An invitation to a reunion for past and present members of the Board of Governors requested the members to "join your fellow governors and their nice girls."[106/]

(5) Attorney conduct encouraged or joined by the judge

The consensus among attorneys who testified at the regional meeting is that the worst form of bias occurs when opposing counsel and the judge appear to collude. An attorney tells an off-color joke and is applauded by the judge. The attorney and the judge are friends, engage in sports talk, or chat about mutual acquaintances and social events both attended. The woman attorney in this situation and often her client believe that this collusive behavior almost guarantees a negative outcome.[107/]

d. The appropriate remedies: rule of professional responsibility and education

In 1986, the Women in the Law Committee proposed adoption of a rule of professional responsibility that would prohibit attorneys from engaging in conduct manifesting gender bias. The proposed language read as follows:

> A member of the State Bar shall not engage in any conduct concerning his or her handling of any legal proceeding that would directly or indirectly discriminate against any participant in the proceeding, or would manifest bias, on the basis of sex, color, race,

> religion, national origin, ancestry, physical handicap, age, medical condition, marital status, or sexual preference.[108]

Later, the 1987 Conference of Delegates proposed a similar addition to the professional responsibility rules. Conference of Delegates Resolution 5-7 recommended that the following language be added to the Rules of Professional Conduct:

> [A member shall] (2) refrain from engaging in conduct that exhibits or is intended to appeal to or engender, bias against a person on account of that person's race, color, religion, sex, national origin, sexual orientation or disability, whether that bias is directed to other counsel, court peson-nel, witnesses, parties, jurors, judges, judicial officers or any other partici-pants.[109]

The Board Committee on Professional Responsibility and Conduct objected to these proposals on the ground that they are overbroad and in response to the Conference of Delegates' resolution stated: "it reaches, inter alia, challenges to jurors and cross-examination of witnesses which, though relevant, could be objected to on the grounds of bias. Thus, the proposed subdivision is fraught with the potential for misuse by advocates and parties."[110] Consideration of these proposals was deferred pending receipt of the advisory committee's report with the hope that specific examples of biased conduct might be added to the language of the proposed rule to reduce its ambiguities. The report of the advisory committee was deemed to be a source of examples of biased conduct.

The advisory committee debated at length the issue of whether a rule of professional conduct prohibiting bias should be adopted. It considered other remedies as well, such as a code of professional courtesy or voluntary creeds entered into

by law firms that contain provisos against baised behavior. The issue was also roundly debated at the focus group conducted for civil litigators at the State Bar Annual Meeting in September of 1988. Support for adoption of the rule was expressed at the public hearings.[111/]

The committee concedes that issues of bias and issues of legitimate advocacy sometimes collide. The committee members believe, however, that a prohibition against bias is no more vague than any number of ethical rules lawyers are accustomed to following. The prohibitions of the rule are worked out on a case-by-case basis under the totality of the circumstances, which is a legitimate task for a disciplinary body to perform. Meaningful commentary can accompany the rule that will enlighten counsel sufficiently to define the ethical duty described. The committee rejected the notion that more specific examples should be catalogued in the rule. Rather, the committee suggests that an exception should be created for legitimate advocacy similar to that set forth in the ABA Draft Model Code of Judicial Conduct section 3B (6) in which an exception is created to a judge's duty to prevent lawyer bias. The exception exempts "legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding."[112/]

The advisory committee notes that an attorney exercising a peremptory challenge against a woman in a jury trial when he or she fears a woman might damage the client due to a bias she may have might be considered legitimate advocacy. In contrast, an attorney demeaning a woman witness in order to play on juror prejudice to obtain a certain result might not be considered legitimate.

Ms. Margaret Morrow reported on the debate on the proposed rule of professional responsibility in her testimony at the Los Angeles Public Hearing. She said:

> The State Bar's Committee on Women in the Law first proposed such a rule in 1986, and the reaction of many in my Bar Association at that time was uneasiness. This uneasiness was couched in terms of concerns about the vagueness of the rule.
>
> What kind of conduct would it proscribe? Might not it lead to ancillary disputes during litigation over whether conduct was or was not motivated by bias? How could an attorney be disciplined based on a rule which gave no guidelines as to what kind of conduct was prohibited.
>
> Those were the questions. But the reality underlying the questions was a lack of consensus about the boundaries of appropriate advocacy, and the propriety of playing on bias as a part of the litigation process.
>
> I think the same debate would ensue today if a Rule of Professional Conduct of this type were to be proposed; and I think it will always ensue until members of the bar generally are convinced that a real problem exists, and that it is a problem which undermines the integrity of the justice system, and contravenes the duty of lawyers to ensure that justice is done.[113]/

The advisory committee members are persuaded that a real problem exists and that it is a problem that undermines the integrity of the justice system. If judges are charged with preventing bias from occurring in the courtroom, attorneys should likewise be ethically precluded from exhibiting the same behavior. The definitions should be parallel. The definition favored by the committee is the definition in the model code, which has had the benefit of national debate and discussion. In the committee's view, the exception for legitimate advocacy contained in the model code sufficiently clarifies an attorney's duty and meets the objections raised in the debate

on this issue. The committee members were persuaded that creation of an ethical duty would be the most effective way to eradicate bias among attorneys. The evidence that incivility and unprofessionalism increasingly characterize the legal profession and poison the courtroom atmosphere further supported the committee's resolve. Finally, the committee reasoned that judges, if the model code provision is adopted, will be duty bound to prevent attorneys from engaging in such conduct and thus the duty of an attorney should parallel that judicial responsibility. Moreover, questions regarding the duty to refrain from bias should be contained in professional responsibility courses and asked on the bar examination.

The committee believes, however, that a rule of professional responsibility is meaningless without accompanying educational programs. Attorneys expressed a desire for educational programs that deal with questions of bias both in substantive areas of the law and specifically designed to cover questions of courtroom conduct.[114/] The committee strongly recommends development by the State Bar of a comprehensive educational program on gender bias including incorporation of gender bias programs in the plan for mandatory continuing legal education. Gender bias should be covered in State Bar reports, newsletters, programs at the annual meeting, programs at bar leaders' conferences, and voluntary and mandatory continuing legal education programs.

The advisory committee suggests that another effective check on attorney behavior is the sure knowledge that acts of bias will be detected by the Judicial Nominees Evaluation Commission if the offending attorney ever seeks judicial office. The commission's practices were discussed at the focus group for civil litigation attended by a former member of the commission. Although the commission does not frequently find complaints of bias in a candidate's record, they do occur and, unless deemed totally without merit, seriously hamper the likelihood of the candidate's success. Ms. Catherine

Sprinkles, a former commission member and member of the State Bar Board of Governors indicated at the Fresno Public Hearing that although complaints of bias are not numerous there are sufficient numbers to be concerned about.

Ms. Nanci Clinch, a former commission member and present member of the State Bar Board of Governors, suggests that the commission members receive information about gender bias as part of their training. She stated:

> There is a training session that lasts approximately one day. The members get to see -- the new members get to see the old members go through some of the evaluations, they can see how it is done, how it's presented.
>
> Last year, for the first time, there was on the agenda for training, a section on gender bias, and I specifically requested it be part of the training. It was made part of the training for that year. I provided all the documents for new and old members. It included a synopsis of the New Jersey Task Force on Gender Bias.
>
> However, I was only given five minutes to make the presentation. There were no other presentations on any of the other types of bias. That is something that I think should be instituted every year, and extend beyond just gender bias itself.115/

Accordingly, the advisory committee recommends that regular training of commission members on issues of gender bias ought to occur and requests the bar to institutionalize this aspect of its training program.

e. Prompt resolution of the problem of gender bias in attorney conduct is in the public interest

Solutions to problems of bias in our courts are urgently needed. Mr. Robert Raven, past-president of the American Bar Association and a member of the original Judicial Council committee on gender bias, issued the challenge at the Sacramento Public Hearing:

> Although gender bias by judges is a significant problem, the task forces around the country . . . have repeatedly heard that the greatest problem lies with the treatment of women by male -- by many male attorneys, and as leaders of the profession and members of the firm, we must come down hard on such behavior. It cannot be tolerated.116/

2. Use of gender neutral language

RECOMMENDATION 7

(a) Request the Judicial Council to adopt a rule of court regarding gender neutral language in local court rules, forms, and documents which would make the existing standard of judicial administration on this subject mandatory.

(b) Request the Judicial Council to adopt a rule of court which would require the use of gender neutral language in all jury instructions by January 1, 1991, and to adopt in the interim a standard of judicial administration which would encourage attorneys and judges to recast all standard jury instructions (CALJIC and BAJI) in gender neutral language.

a. Objections to language that is not gender neutral

Witnesses who testified at both the public hearing and regional meetings objected to the use of language that is not gender-neutral and in particular the use of the masculine generic to refer to both men and women. One Los Angeles attorney shared a speech she had delivered to a gathering of family law judges. She stated:

> Finally, I think discrimination by careless language must be dealt with as uncompromisingly as discriminatory actions. If we can clean up our language, we can eliminate a certain amount of gender bias. Language is not insignificant. Words are the tools of our trade. Language not only reflects how we think but affects it as well. When I was in college, I briefly considered becoming a lawyer, but at the time, lawyers were "He's" and I dismissed the thought until much later. Calling counsel "Gentlemen" as a generic term implies that women do not belong to the class of people known as lawyers -- and our clients do not miss the inference.[117/]

Other examples of the refusal to use gender-neutral terms are numerous; sometimes the result is unexpected. For example, a prosecutor arguing a case before the Supreme Court of California referred to the justices as "you guys." Justice Joyce L. Kennard reportedly asked the prosecutor, "Does that include me?"[118/] Antagonism toward women attorneys who prefer to use Ms. has been noted as well as against those who retain their maiden name.[119/]

b. Nature of gender-based language and the consequences of its use

Dr. Campbell Leaper, assistant professor of psychology at the University of California at Santa Cruz, explained at the San Francisco Public Hearing that language can be used to

demean women in three specific ways. First, words can be selected that ignore women, that is, that refer to "he" or "man" exclusively. Language can be used that tends to define or stereotype women. Examples of this usage include the gratuitous modifier ("lady lawyer") or the definitional phrase to disclose more information about a woman than is disclosed about a man (for example, the use of Mrs. to define marital status). Finally, phrases can be employed that tend to specifically trivialize or demean women ("I'll have my girl do it"). More importantly, Dr. Leaper pointed out that studies show that the consequences of this usage may be that listeners respond differently. Dr. Leaper noted that approximately 20 studies have been completed that tend to show that people do not think of males and females equally when they hear the masculine generic.[120/]

There is some evidence that language that does not refer to both sexes equally and specifically may mislead jurors by signifying that the meaning is applicable only to one sex. One attorney wrote: "The lack of gender neutral language in jury trials is a serious problem. Picture a male defendant and a female victim at a criminal trial. The female testifies that he raped her, and the male testifies that he did not. When the court reads the instructions to the jurors concerning the testimony of witnesses he always says "he" or "him." As the jurors sit there they think the judge is referring to the defendant."[121/]

Dr. Leaper testified about a Washington case that resulted in the conviction of a woman for murdering a child molester who was in her home. A jury instruction regarding a person's right to protect "his" home was given. The defense appealed on the ground that it was likely that the jury did not think the instruction was applicable to the defendant because she was female. As part of the appeal, a study was undertaken in which college students read the case and responded to two versions of the jury instructions. The researcher found that

the students thought the defendant acted in self-defense more frequently when the instructions were given in a gender-neutral form than when the masculine generic was used.[122/]

A related issue is also the effect that jury instructions written in the male generic may have on female jurors. One writer concluded that women participate on juries less because of their cultural tendency to choose subordinate rather than dominant roles. A way to combat this tendency is to use gender-neutral language so that women jurors know that all of the instructions and other information are equally applicable to them.[123/]

c. The debate

The debate about the usefulness of transforming the language with which lawyers practice their profession and judges make decisions into terms that are gender-neutral is a surprisingly vigorous one. Many attorneys and judges tend to support rules and procedures that require our legal writing and speaking to be gender-neutral. Others, however, are uneasy about the prospect. The late Professor Irving Younger wrote a provocative piece on gender-neutral language in his regular columun on writing in the American Bar Association Journal.[124/] The piece elicited many letters in opposition to the views expressed. Professor Younger asserted that the use of the pronoun "he" to signify both he and she is grammatically correct and that there is no adequate substitute that is gender-neutral. He opined that the use of "he" is a "quirk of language, not a tool of oppression." In his view, until a third pronoun is developed, clarity in writing will be better served by retaining the use of "he" to signify both "he" and "she."

The debate is also reflected in the choices made by the Los Angeles Superior Court committees that draft and approve the standard jury instructions universally in use in

California courtrooms. Los Angeles Superior Court Judge Aurelio Munoz, chair of the Committee on Standard Jury Instructions -- Criminal (CALJIC), reported that the committee redrafted the language in the new edition of the standard instructions in gender-neutral language.[125/] In contrast, the Committee on Standard Jury Instructions -- Civil (BAJI) came to the opposite conclusion and did not change the instructions in the same manner.[126/] BAJI is using gender-neutral language, however, as it adds and modifies instructions. The committee apparently concluded that the use of "he" to signify both genders was grammatically correct and that to use other forms would be too cumbersome.

d. Growing trend to use gender-neutral language

Standards of Judicial Administration, standard 1.2 provides:

> Each court should use gender-neutral language in all local rules, forms, and court documents and should provide for periodic review to ensure the continued use of gender-neutral language. These changes may be made as local rules, forms, and documents are modified for other reasons.

Courts report that they are taking extensive steps to comply with this standard. Many judges are now laboriously rewriting jury instructions in gender-neutral language. Precious judicial time would be saved if all the standard instructions were modified so that judges need no longer perform this task themselves.

The California standard appears to be part of a larger national effort to make state laws and procedures gender-neutral.[127/] For example, the new ABA Model Code of Judicial Conduct has been drafted in gender-neutral language.[128/]

e. Advisory committee recommendations

The advisory committee on gender bias in the courts dissents from Professor Younger's view and the position taken by BAJI based on the following factors:

1. Precision in language is the attorney's tool; specific reference to both men and women when both are intended is clearer.

2. Clarity of construction is not as important as clarity of meaning. Using "he" to mean "he" and "she" may be misunderstood as excluding women and might affect case outcome.

3. There is a growing national trend that favors the use of gender-neutral language.

4. Exclusion of one sex in language potentially offends an entire class of people.

Standard of Judicial Administration 1.2, referred to above, now encourages each court to use gender-neutral language in local rules, forms, and documents. The advisory committee recommends that the standard become a rule. Further, the committee recommends that all jury instructions be submitted to the jury in gender-neutral language by January 1, 1991, and that an interim standard of judicial administration be adopted that would encourage the recasting of all jury instructions in gender-neutral language during the interim period.

3. Appointed counsel

RECOMMENDATION 8

(a) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts which would provide a model local rule setting forth a policy with respect to the appointment of counsel in civil cases, including family law, and appointments as arbitrators and receivers, to

ensure equal access for all attorneys regardless of gender, race, or ethnicity. The standard setting forth the model local rules shall include:

(1) A recruitment protocol to ensure dissemination to all local bar associations, including women and minority bar associations.

(2) A written description of the selection process which includes a statement of: minimum qualifications; application procedure; and selection procedure.

(3) Regularly scheduled recruitment

(b) Request the Judicial Council to adopt a rule of court requiring that each court establish by local rule a policy for the appointment of counsel in civil litigation, as specified above. The rule should provide that if a court fails to adopt a local rule regarding appointed counsel, the model rule contained in the standards shall be deemed the local rule.

(c) Request the Judicial Council to adopt a Standard of Judicial Administration that would provide for the selection of attorneys for bench, bar, and other court related committees in a manner that would provide for equal access to selection for all attorneys regardless of sex, race, or ethnicity.

Women attorneys report that it is their perception that they are less frequently appointed as arbitrators, receivers in complex civil cases, temporary judges, and members of settlement panels.[129/] In some counties, women report that they are "bumped" from panels at the whim of the judge who oversees the process.[130/] Some of these positions are remunerative, and others are valuable for their high profile and the enhancement of the attorney's reputation and credentials.

The subject of fairness in the appointment of counsel is discussed at greater length in the chapter on criminal and juvenile law.[131/] That discussion will not be duplicated here. While the bulk of the information received by the advisory committee pertained to appointments in criminal matters, the committee determined that similar procedures would be beneficial for civil appointments as well. Accordingly, the committee recommends a parallel standard of judicial administration and rule for civil cases. The standard would set forth a model rule requiring a recruitment protocol, a written description of the selection process with a statement of minimum qualifications, application procedure, and selection procedure, and regularly scheduled recruitment. These procedures will ensure that counsel are appointed on the basis of ability and will help to prevent any group from exclusion.

4. Attorney employment

RECOMMENDATION 9

Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendations:

(a) The State Bar should adopt a Rule of Professional Responsibility prohibiting lawyers from discriminating in employment decisions and from engaging in sexual harassment.

(b) The State Bar and all appropriate sections and committees should vigorously support and take immediate steps to adopt the recommendations of the Women in the Law Committee submitted in its recent survey of women and the practice of law in California.

The changes created by the entry of women into the legal profession in record numbers during the past 20 years helped to trigger the studies of gender bias occurring throughout the country. When entry into the profession is no longer a pressing issue, examination of the terms and conditions of practice becomes possible and, more importantly, an analysis of the fate of women as litigants becomes imperative. The focus of this study is not conditions of employment for women attorneys, but rather the environment in our courtrooms and gender bias in judicial decision-making. Nonetheless, the advisory committee determined that the issues for women in employment are of such vital concern that they should be included briefly both in this report and in the committee's recommendations. For most of the documentation summarized here, the advisory committee is indebted to the State Bar Committee on Women in the Law for its pioneering survey of women lawyers and the practice of law.[132/] The advisory committee joins with the Committee on Women in the Law in recommending adoption of a Rule of Professional Responsibility prohibiting discrimination and sexual harassment in legal employment.

a. The statistical profile

In August of 1987, the American Bar Association adopted Goal IX as part of its national agenda. Goal IX targeted "full and equal participation in the profession for minorities and women" as an urgent objective of the association. In furtherance of Goal IX, the ABA established the Commission on Women in the Profession, which held extensive public hearings on the status of women in the profession in 1988. Chief Judge Patricia M. Wald of the United States Court of Appeals for the D.C. Circuit in Washington, D.C., addressed the ABA Annual Meeting in Toronto in August of 1988 as follows:

> Beneath some heartening statistics (40 percent of law students and 20 percent of practitioners are women) lurk signs of trouble. Only 8 percent of the partners in the 250 largest law firms in the country are women; only 6 percent of law-school deans and 10 percent of tenured law-school teachers are women. In the four years from 1976-1980, 41 women were appointed to the federal bench; in the next eight years, only 31 were appointed.
>
> More alarming indicators: the median income of women 10 years out of law school runs 40 percent lower than men's. Far more men than women in law firms are partners; far more men practitioners are married and have children.
>
> In one mid-eighties survey of lawyers, twice as many women as men expressed dissatisfaction with their work environment. Yet women lawyers come from the same social backgrounds as men, go to the same law schools, earn the same grades, and serve on the same law reviews. What happens later?[133/]

California surveys conducted by local women's bars corroborate some of the data asserted by Judge Wald. Although California statistics appear to exceed the national average, the discrepancy between the number of women associates and the number of women partners in major law firms is still vast. In May of 1989, for example, Queen's Bench, a San Francisco women's bar association, found that whereas 42 percent of the associates in the firms surveyed were women, only 12 percent of the partners were women. The percentage of partners marked a 3 percent increase over the percentage recorded in a similar survey conducted three years earlier.[134/] Women Lawyers Association of Los Angeles announced survey results indicating that 8.1 percent of partners in the major law firms surveyed were women and 30.6 percent of the associates were women.[135/] Of the women surveyed by the Committee on Women in the Law, 40 percent were associates and 13 percent were partners.[136/]

Significantly, many women lawyers in California do not practice in a large firms. This is especially true in rural settings. In March of 1988, Fresno County Women Lawyers conducted a survey of women lawyers in that county. The survey revealed that only one woman among the 168 attorneys in the largest law firms in Fresno, defined as those with more than 15 attorneys, was a partner in her firm. Moreover, that one woman became a partner during the preceding year.

Traditionally, governmental positions have been more open to women and minorities. The Fresno survey revealed that in the three largest public sector groups--the office of the district attorney, public defender, and county counsel--there were no women with the title of assistant and only one female chief deputy appointed within the preceding year.[137/] Ms. Janice Kaminer-Reznik, then-president of California Women Lawyers, explained in her testimony at the Sacramento Public Hearing that in small towns women are apt to be sole practitioners or in partnerships with other women and their numbers are not reflected in surveys of the larger firms.[138/]

b. Employment concerns of women lawyers

This information indicates that women compose a substantial number of practicing lawyers and that while their numbers are increasing in positions of leadership, the discrepancy between the number with leadership roles and the number with subordinate roles is great. The progress of change in this regard is slow. Moreover, in the context of this statistical information, the advisory committee found that women lawyers have a series of growing concerns that may contribute to this discrepancy and relate to their ability to achieve full and equal participation in the profession.

The identified concerns include:

1. Opportunitites for advancement and promotion appear less available to women than to men. More specifically, women are concerned about achieving equal earnings, rainmaking and the acquisition of new business, increased roles in managing law firms and influencing decision-making in firm governance, the equal availability of mentors, and avoiding relegation to stereotypic employment roles.

2. Difficulties in balancing home and family directly influence the status of women in the profession. Women are concerned about forced entry into "mommy track" rather than partnership track positions, the need for adequate parenting leave, flex-time opportunities, and the need for adequate child care.

3. Sexual harassment of women in the legal work place exists. Women are concerned about eliminating such unlawful conduct.

These employment issues surfaced when the Women in the Law Committee surveyed women who practiced in small firms and later in the survey of women lawyers in California. For example, 96 pecent of the women surveyed believed that they experienced more difficulty than men in balancing home and family; 62 percent believed that they had fewer opportunities for advancement than did men; 31 percent said that having children had a negative effect on their employment situation; and 89 percent said that their employer did not provide any child care benefits, in the form of either funding or on-site child care facilities. Sexual harassment proved to be a significant issue for those who responded to the survey. Eleven percent said that they had experienced some form of sexual harassment at their present job; 25 percent said that sexual harassment had occurred at a previous job; and 25 percent said they believed sexual harassment existed in the legal profession in general.[139/]

These concerns were in evidence at the public hearings conducted by the advisory committee as well. Ms. Patricia Phillips, a member of the State Bar Board of Governors, remarked:

> Women lawyers have become, in fact, the drones of the legal profession. Women lawyers are generally saddled with the lowest paying cases, and they are practicing in the least effective, least glamorous, if you will, fields of practice. I am told that between 45 to 50 percent of the graduating classes these days constitute women.
>
> Yet the percentage of women who become partners in firms of any size today, not just major law firms, is disproportionately small. Indeed, most women lawyers are either in sole practice, or very small firms, sometimes all women firms, or have opted for less remunerative types of practice.
>
> An alarming number of those who do enter the practice as associates in law firms often find themselves so stressed out between the demand of the practice, and the demands of family life, that they opt out altogether, or they opt for the new second class citizen track, the mommy track.[140/]

One woman eloquently described her plight when, despite her heroic effort to match the time commitment and abilities of her male colleagues at a time when her child was seriously ill, her firm, in her view, forced her to leave her employment. She stated:

> The final straw for me came when I was informed in substance that there were no complaints about the number of hours I billed for the firm, but the firm objected to me spending time away from the office and performing duties away from the office when my daughter, who has a severe health problem, was hospitalized

> or ill. In substance, my long days and my long nights were not enough. I was offered a choice, neglect my daughter's needs or leave the firm. I chose the latter. The men who offered me this choice pride themselves on the sacrifices their families have made in order for them to practice high quality law.[141]/

Ms. Louise A. LaMothe argued forcefully in an article in the San Francisco Recorder reprinted from the Stanford Lawyer that accommodation of women lawyers during child-bearing years makes good economic sense. She stated:

> The firms that will succeed in our increasingly competitive profession are those with policies that further the concern of lawyers -- 50 percent of them women -- who are coming along. Successful firms will not simply use a talented young associate for three or four years and drive her out. Instead, the firms will take a long-term approach to careers, recognizing that accommodation during the five to ten years of young parenthood help protect the firm's investment in the career of a well-trained attorney. That will be smart management.[142]/

Sexual harassment within law firms was not addressed, with the exception of one witness' testimony, at either the regional meetings or the public hearings. The witness who did touch on the subject related an anecdote about the snide remarks and innuendos made when she traveled with one of the senior partners on business. Despite the fact that no sexual relationship had transpired, she was informed by the firm that it would be better if she were married, and ultimately she was asked to leave the firm because she "did not fit in." She contended that her firm admitted that her work was superior and that her clients enthusiastically praised her. Ironically, the absence of sexual involvement and the appearance to some of sexual impropriety, from this woman's perspective, resulted in her departure from the firm.[143]/

Although no other testimony on this subject was submitted to the advisory committee, 11 pecent of the attorneys surveyed by the Committee on Women in the Law reported that they had experienced some form of sexual harassment in their present job. A possible explanation for this silence may be the fear that women attorneys feel about disclosing incidents of sexual harrassment. As concluded in a recent ABA publication:

> The bottom line on sexual harassment in law firms? Don't assume that the absence of complaints means it isn't a problem. It could just mean that women lawyers -- even the best educated and most forceful -- are afraid to complain.144/

c. Recommendations

Professor Deborah Rhode, an expert in gender and the law, wrote:

> Although women have been moving into upper level professions in greater numbers, they have not attained the positions of greatest power, prestige and economic reward. Formal barriers to entry have fallen, but informal obstacles to advancement remain. The persistence of such obstacles has, in turn, added a new dimension to the traditional debate. The question is not simply how well women can accommodate the demands of male-dominated professions, but also how these professions must change to accommodate women.145/

In the spirit of Rhode's call for change and based on the documentation provided by the Committee on Women in the Law and accompanying testimony submitted to the advisory committee,

the committee recommends that the State Bar adopt a Rule of Professional Responsibility that would prohibit discrimination including sexual harassment in legal employment.

The advisory committee also recognizes that committees such as the Committee on Women in the Law and women's bar organizations have shouldered the burden to produce change in the legal profession. Gender issues have long been considered the exclusive province of women. While the contribution of these organizations has been extraordinary, it is not enough. Change will continue to be slow and inadequate until the profession recognizes that the issue of fairness in legal employment is an issue that concerns all lawyers, male and female, that specific benefits for all lawyers are to be gained from improving conditions for women in the practice of law, and that the profession's public reputation, so sadly tarnished, will be enhanced when full participation for all members of the bar is guaranteed. Only then will solutions to the problems described in this discussion be possible. For this reason, the advisory committee similarly recommends that all of the proposals suggested by the Women in the Law Commitee in its recent survey be given the full attention and priority of the full bar and all appropriate sections and committees.

5. Membership in discriminatory clubs

RECOMMENDATION 10

Request the Judicial Council to transmit and urge consideration by the State Bar of California of the advisory committee's recommendation that the State Bar use every available means permitted by the Constitution to discourage attorneys from using for business purposes clubs that practice invidious discrimination.

The advisory committee recognizes that the debate about attorney membership in discriminatory clubs is one that bitterly divides the profession between those who seek to end the serious limitations that have heretofore prevented women and minorities from full participation in the profession and those who emphasize a cherished right of privacy and freedom of assembly. It is not our purpose here to resolve that debate or submit a definitive brief on the constitutional issues of great complexity that are raised.

The advisory committee agreed, however, that the continued membership in and use for business purposes of discriminatory clubs by members of the legal profession has a significant deleterious effect on the ability of men and women who are excluded from membership in achieving equality in the profession. The committee members found it difficult to reconcile a professed lack of bias or prejudice with use of club premises for business purposes. The committee found that exclusion from membership in these clubs creates the following negative and undesirable effects:

1. Fosters a stereotype of inferiority for members of the affected class of attorneys.

2. Deprives affected attorneys of access to important business or political meetings.

3. Conveys an impression of a lack of impartiality on the part of the bar to the public and to present and future clients.

4. Deprives affected attorneys of business and political influence and the right to make important business and professional contacts in a congenial setting.

5. Deprives affected attorneys of a source of support in seeking elected or appointed office.

6. Deprives affected attorneys of a source of community involvement.

7. Affects a growing number of attorneys as more women and minorities enter the profession.

These negative effects were recognized by women attorneys in both the survey of small firms and the later survey of women lawyers conducted by the State Bar Committee on Women in the Law.[146/]

The issue of membership in discriminatory clubs has been compelling statewide. Efforts to eradicate discriminatory practices by clubs have included: the adoption of local ordinances, the attempt to eliminate a tax deduction for business expenses incurred at discriminatory clubs, the attempt to revoke liquor licenses of discrminatory clubs, the adoption of an ABA resolution in 1988 finding discrimination by private clubs unfair.

Accordingly, the advisory committee supports the efforts of the State Bar to date which seek to urge law firms not to pay club dues or reimburse club expenses, to refuse to use club premises for firm functions, to work to reform club policies, and to urge firm members to voluntarily resign from discriminatory clubs.[147/] Further, the advisory commitee supports the State Bar Conference of Delegates' resolution that would prohibit members of the Board of Governors from belonging to discriminatory clubs provided the measure is found to pass constitutional muster, and, if it does not, to require, at a minimum, disclosure of club memberships for any attorney standing for election to the board.

V. Conclusion: Judicial Appointments

The evidence received and reviewed by the advisory committee in the area of litigation and courtroom interaction collectively points to one inescapable conclusion: substantial amelioration of the problem of gender-biased conduct in the courtroom would be accomplished if women were appointed to judicial office in greater numbers commensurate with their numbers in the legal profession and in society as a whole. This conclusion has not resulted in an advisory committee

recommendation because the Judicial Council itself, and appropriately so, has no control over the appointment process. Further, the advisory committee acknowledges the efforts of the present governor and his predecessor to appoint qualified women to the bench. The issue, however, is of such paramount importance that the advisory committee determined that information must be provided in this report supporting the proposition that the appointment process must be geared to accomplishing greater diversity in judicial appointments.

A. The case for diversity on the bench

Statistics on the appointment of women on the bench are constantly fluctuating and differ depending on their source. In California, those figures have ranged from 11 percent to 16 percent. As of this writing, 196 out of 1,481 filled judicial positions and 1,555 authorized positions were held by women. This figure represents approximately 13 percent of the appointed and elected state court judges in California. In contrast, at least 24 percent of California lawyers are women.[148/] Women are entering the profession in much larger numbers and represent at least 50 percent of the state's population. Although California surpasses the national average quoted as 7.4 percent of federal judges and 7.2 percent of state court judges,[149/] the percentage of women judges here does not come close to their percentage in the profession or in society. Moreover, the lack of diversity in judicial appointments and elections is paralleled in other appointed government offices. A recent study examined appointments to state boards and commissions made by the Governor, the Senate Rules Committee, and the Assembly speaker. Women did not reach parity of appointments in any of the categories considered and tended to approach parity in areas traditionally associated with female interests such as health and social service boards.[150/]

Witnesses who submitted testimony to the advisory committee and judicial scholars support the notion that gender diversity on the bench helps to end bias based on gender in our courts. This testimony was received by a wide range of individuals performing various roles in our court system, including presiding judges, distinguished civil litigators, presidents of bar associations, family lawyers, and attorneys practicing in rural areas.

Judge Daniel M. Hanlon, then-presiding judge of the San Francisco Superior Court, attributed success of that court in ensuring gender fairness in the courtroom to the presence of the women judges in that court. He said:

> With these women in leadership positions in our courts in this county, we find that from their courts, we find a professional consideration of lawyers who happen to be women, a fair treatment of litigants who happen to be women, and the dignified relationship with attaches and employees of the court who also happen to be women.[151/]

The need for gender diversity on the bench was expressed perhaps more poignantly by practicing women attorneys in various jurisdictions, including the then-president of California Women Lawyers, Ms. Janice Kaminer-Reznik, who deemed diversification on the bench "the only way to ensure that there will be a compassionate, fair judicial system for everybody."[152/] An anecdote from the Sacramento Public Hearing further illustrates this point. The panel of advisory committee members present at the Sacramento Public Hearing contained a majority of women. One witness looked up as she began her testimony, appeared to gasp slightly, and, somewhat humorously, told the committee that she fervently hoped no mishap occurred in the building that day that would imperil these women judges since the women litigators in the state could ill afford to lose so great a percentage of them.[153/]

One litigator linked what she described as affirmative action in the appointment process to improving gender fairness in the courtroom:

> But overall, it makes a huge and positive difference when women, people of color, and others who are cousins in this world of prejudice, are placed in positions of authority in our system, and when those individuals proudly represent themselves on the bench, while not letting their identity interfere, allowing their identity to be seen.
>
> And I think in that regard, that I have to say that there's one element of all this inquiry into gender bias that leads me to the conclusion that you can't do much without the direct and vigorous application of affirmative action principles.
>
> Women educate men for the most part about gender bias. Men then educate other men, but women start it. And when women educate men on the bench, some very magical differences get named. So along with all the things that this committee can recommend, it seems to me that keeping up the process of making sure that qualified women and minorities make their way into positions of authority is at the heart of making hearings like this one unnecessary in the next century.154/

Ms. Honey Kessler-Amada, co-chair of the judicial appointments committee for California Women Lawyers, added:

> Our goal is that it should go without saying, rather than still bear repeating, that the bench in California must reflect the diversity and richness of California's social landscape. Each person sees the world through his or her own eyes, and how and what we see is inescapably colored by our own personal experiences.

> Thus, without implying that one cannot be sensitized through many of the programs that have been discussed this morning, it is true that one who experiences prejudice sees it and understands its pain and debilitations more readily than those who have never experienced prejudice.
>
> Those who experience prejudice are less likely to dismiss prejudice as just a joke, or call on the victim to toughen up. In addition, women have different experiences in socialization and bring these different kinds of insights into their positions of responsibility and authority.
>
> A bench reflecting California's varied makeup will go a long way toward eradicating gender bias in the courtroom.155/

In a recent article in Judicature, an esteemed publication on court administration, political scientist Professor Elaine Martin reported her findings on a survey of federal judges appointed by former President Jimmy Carter. In the analysis of her findings, she found that attitudes differed dramatically between male and female judges on issues such as the degree of conflict between professional and family roles, marital conflicts, differing parental and household roles, interest and support for women achieving political office, and perception of discrimination as an obstacle for women professionals. Although she was careful to qualify her findings as limited to documenting the differing experiences and attitudes of male and female judges appointed by a single president, she did venture an opinion that these different attitudes might influence decisional output, conduct of courtroom business, and efforts to heighten awareness of gender problems in our courts.156/

Northwestern University School of Law Professor Anthony D'Amato concurs. In his view, "we need representative minds on the bench. If society makes some minds different from others

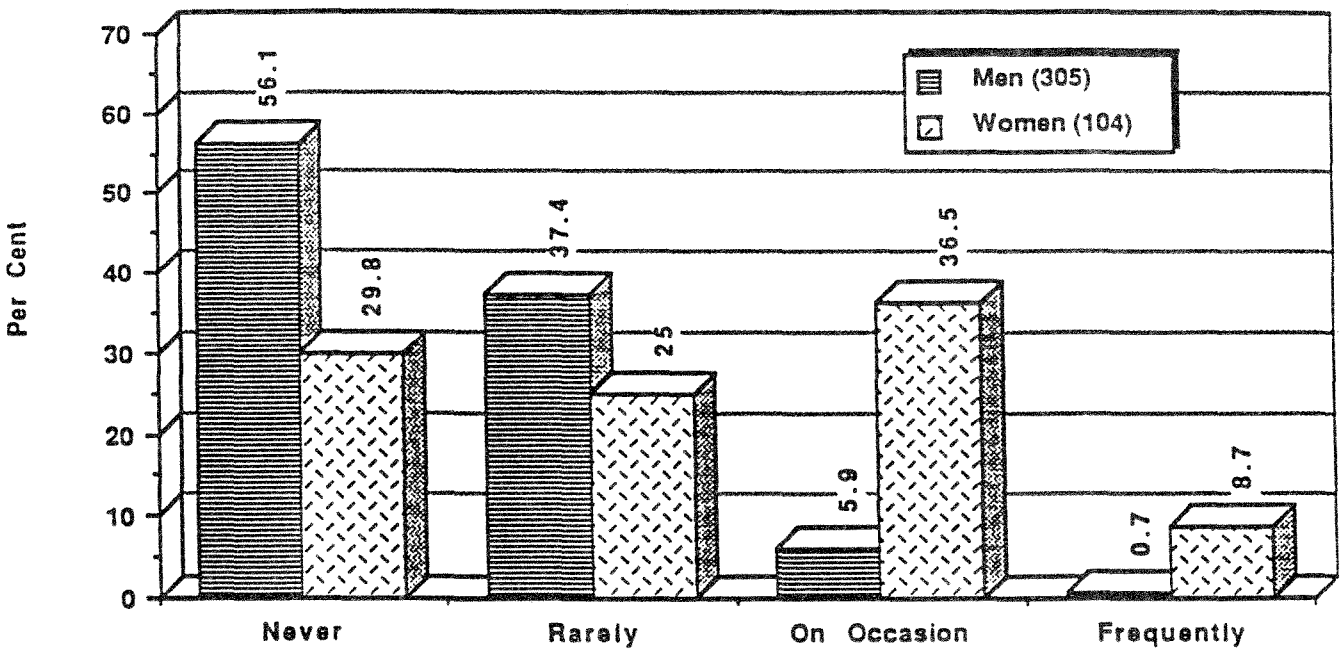
-- because of the way society treats persons based on characteristics such as race or gender -- then the bench should reflect those different perspectives."[157/]

Perhaps the strongest and most immediate case for gender diversity in judicial appointments can be made based on an analysis of the responses submitted by the judges who completed the California judges' survey. The survey corroborates fully the speculation that women bring different attitudes and perceptions to the bench, that these different perceptions may influence case outcome, and that therefore society is entitled to the benefits of those different perceptions. Male and female judges differed dramatically on both questions relating to the perception of gender bias in the courts and questions relating to substantive decisionmaking.

For example, a dramatic gender difference emerged when judicial officers were asked if they had observed remarks <u>by judges</u> that they consider demeaning to women. A statistically significant and very large gender difference characterizes answers to this question -- roughly 45 percent of female judges said they had observed such remarks "on occasion" or "frequently," while the corresponding figure for male judges is less than 7 percent.[158/] A graphic depiction of this gender difference is set forth below.

ASRQ09a

In the last three years, have you observed remarks or jokes in the courtroom, in chambers, or in informal professional gatherings, which you considered demeaning to women? (a) By a judge.

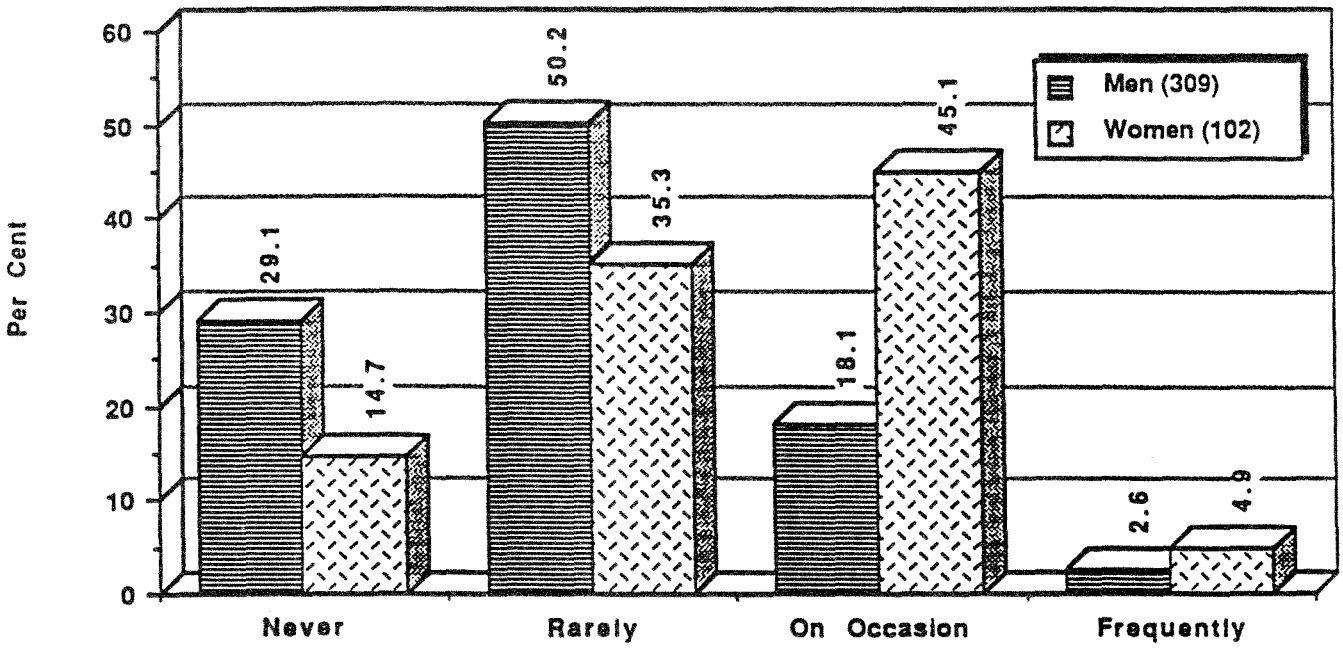


A similar difference appears when judicial officers were asked whether they have observed lawyers make remarks demeaning to women. Roughly 50 percent of female judges report observing such remarks by lawyers "on occasion" or "frequently," while a much smaller proportion, roughly 21 percent of male judges report observing such remarks.[159/] This

difference between female and male judges is summarized visually below.

ASRQ09b

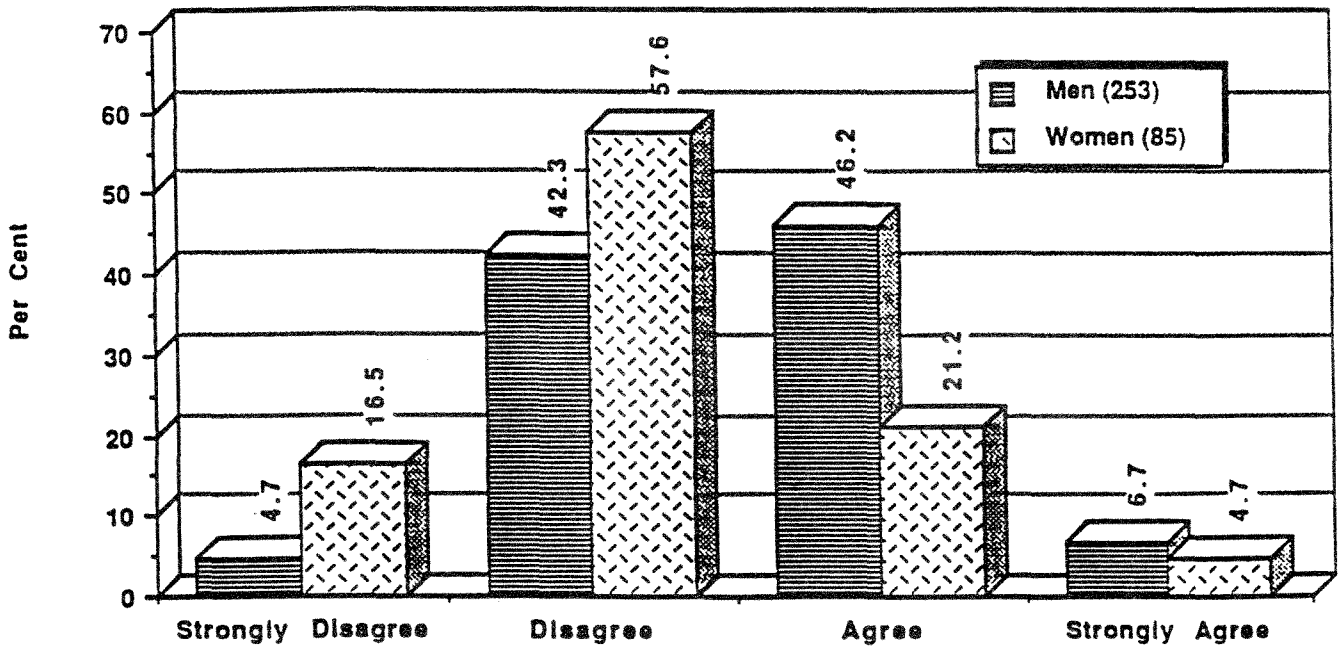
In the last three years, have you observed remarks or jokes in the courtroom, in chambers, or in informal professional gatherings, which you considered demeaning to women? (b) By a lawyer.



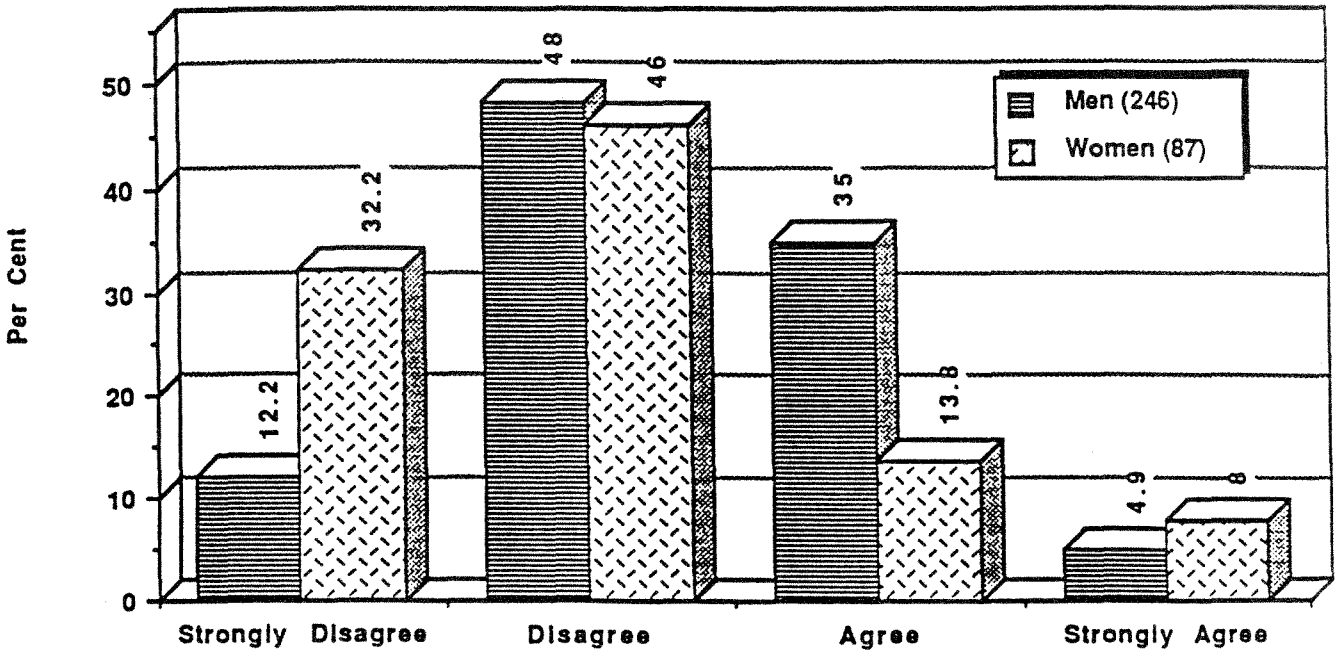
Moreover, female and male judges also disagree in their perceptions of issues that clearly have import for the outcomes of specific cases. For example, judges were asked if they believe that allegations, declarations, and testimony about domestic violence are often exaggerated. Roughly 75 percent of female judges disagree or strongly disagree; that is, they reject the view that such testimony and allegations are often exaggerated. The corresponding figure for male judges is 47 percent.[160/] This difference extends as well to the disposition of domestic violence criminal matters. Judges were asked their views of the following statement: "Domestic violence offenses are better dealt with in the context of diversion and counseling than in a criminal prosecution." Roughly 22 percent of female judges agree or agree strongly with this statement; the remainder disagree or strongly

disagree. Roughly twice as many, 40 percent, of male judges agree or agree strongly with this statement while the remainder disagree or strongly disagree.[161/] Graphic depictions of these responses follow.

ASRQ12a In a proceeding involving allegations of domestic violence, supporting declarations and testimony are often exaggerated.



ASRQ13b **Domestic violence offenses are better dealt with in the context of diversion and counseling than in a criminal prosecution.**



B. Rural courts: a case study

Nowhere was the need for gender diversity in judicial appointments stated as strongly as it was in the rural counties, where only two women hold the office of superior court judge. One of those judges, Butte Superior Court Judge Ann H. Rutherford, testified at the Sacramento Public Hearing. In the past 13 years, the length of Judge Rutherford's tenure on the bench, the appointment picture in the rural courts of Northern California has not changed much. She described the situation as follows:

> But to give you a little concept, I've been on the bench 13 years, and when I started, if we took a line from the Golden Gate Bridge to the north border

> of Sacramento County and went to the north third of the state, and that is a third of the state territory, I think I was the only woman (judge) in that territory.
>
> Since that time, we've acquired a justice court judge in Lake County. We had a justice court judge at Grass Valley before her demise. We've acquired two municipal court judges in Yolo. We've acquired judges in Sonoma and Marin, and I think that is it. That's the progress we've made to date.[162/]

Judge Rutherford's testimony is still essentially accurate with the exception of a female appointment to the superior court in Yolo County.

In Fresno, a fast-growing but essentially rural and farming community, the struggle to acquire a woman on the superior court has been bitter. Women lawyers in Fresno point to discrimination in some of the major law firms that serve as a primary source of judicial appointments as an underlying cause of the dearth of women judges. At the Fresno regional meeting, distressing law firm practices were reported. Women spoke about their exclusion from client contact, court appearances, social events, and firm lunches, their relegation to "bottom of the barrel" legal tasks and unequal access to clerical support, and the outright refusal by some firms to recognize that qualified women deserved employment.[163/]

In a letter to the editor of the Fresno Bee, a local gender bias committee wrote:

> Women judges, it has been shown, educate their colleagues: They form part of a group of peers that exercises strong influence on its members. Thus, through instruction, education and a healthy dose of peer pressure, women jurists eventually mitigate the effects that long years of acculturation and training have had on their brethren.

> We must be very clear that we do not consider to be evil-spirited or bad those judges who evidence gender bias: they are products of our culture, and most have not had an opportunity to see how our culture blinds and biases us.
>
> In addition, many men who sit on Fresno County courts are products of the three or four largest law firms in town, or of the District Attorney's Office, where women have not until recently been hired as attorneys at all. The role of women in these firms traditionally has been that of support staff: secretaries, paralegals, go-fers. The men in such firms thus have had no opportunity to deal regularly with women as peers: The women in their daily experiences are handmaidens, not powerful allies or adversaries.
>
> We advocate the appointment and election of a substantial number of qualified women to our courts at every level. We believe that women's life experience and perspective are important in the substantive decisionmaking that forms the daily bread of a judge's existence, and, as important, that the presence of women on the bench makes unavoidable the enrichment of perspective necessary for the entire judiciary to do its job right.[164]/

A second woman judge was recently appointed to the Fresno Municipal Court, but the superior court in that county is still composed entirely of men.

C. Conclusion

The Judicial Council Advisory Committee on Gender Bias in the Courts commends this material and these recommendations to the urgent attention of the Judicial Council. The committee believes that embarking upon the program described in this chapter will mark the commencement of the critical work of ensuring equality for women and in our courts. Accordingly, the committee asks the council to:

o Urge establishment of a clear ethical duty of judges to refrain from and prevent gender bias in the courtroom.

o Urge extension of that same ethical duty to others acting in judicial capacities.

o Distribute a manual on fairness for use by those who work in our courts, including both judges and court employees.

o Create an informal mechanism for addressing complaints about gender-biased conduct that does not require judicial discipline.

o Urge imposition of a clearer mandate that judges should not belong to clubs that practice invidious discrimination.

o Urge establishment of an ethical duty, duly tested on the bar examination, for lawyers to refrain from exhibiting gender bias that exceeds the bounds of legitimate advocacy and urge creation of a comprehensive education program for lawyers on issues of gender bias.

o Mandate the use of gender-neutral language in all court communications including jury instructions.

o Establish a model policy for the appointment of counsel that ensures equal opportuntity in the appointment process.

o Urge the imposition of an ethical duty for lawyers to refrain from discrimination on the basis of sex in employment and to refrain from sexual harassment in the legal workplace.

o Urge that the State Bar take all necessary steps consistent with the Constitution to combat the pernicious effects of the use of discriminatory clubs for business purposes in the legal profession.

o Encourage the appointment of judges in the State of California that will ensure diversity of sex and race in the California courts.

ENDNOTES

1/ See Tab 10 of this report.

2/ See Tab 9 of this report.

3/ A full discussion of this committee recommendation is found at Tab 9 of this report.

4/ Los Angeles Public Hearing Transcript, p. 34.

5/ Mills, Billy G. and Ann A. Sato, "The Effect of Judicial Misconduct and Personal Bias on Courtroom Fairness," Supplement to the Metropolitan News Enterprise, May 27, 1988, p. 7.

6/ Los Angeles Public Hearing Transcript, p. 54.

7/ Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 279, fn. 6.

8/ Geiler, supra, p. 279, fn. 6.

9/ Geiler, supra, p. 277.

10/ Ryan v. Commission on Judicial Performance (1988) 45 Cal.3d 518, 544.

11/ Inquiry Concerning A Judge No. 70, filed March 4, 1988.

12/ See Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826.

13/ Inquiry Concerning A Judge No. 72, filed January 8, 1988.

14/ The states that have completed reports as of this writing are: Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, and Washington. Note that the New Hampshire report was produced by a bar association committee, not by a task force appointed by the state's Chief Justice.

15/ See "Discipline Case Law Reflects Gender Bias in the Justice System," Judicial Conduct Reporter 1 (1985).

16/ See for example, Kushner and Lezin, "Bias in the Courtroom," 14 Barrister Magazine (1987) pp. 9-11, 38, 46; Blodgett, "I Don't Think That Ladies Should be Lawyers," ABA Journal, December 1, 1986, pp. 48-53.

17/ Judges' survey, question 9a.

18/ Orange County Regional Meeting Transcript, pp. 90-91.

19/ Written comment.

20/ Written comments dated February 16, 1989 and March 1, 1989.

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31/ Fresno Regional Meeting Transcript, p. 138.

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33/ San Francisco Regional Meeting Transcript, p. 120.

34/ Fresno Public Hearing Transcript, p. 47.

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36/ Written comment.

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47/ Letter and materials submitted by Ms. Christine Curtis, then chair of the State Bar Committee on Women in the lAW, dated September 11, 1986.

48/ See testimony of Ms. Jill Schlictman, San Francisco Public Hearing Transcript, p. 37.

49/ See Canons 3B(5) and (6), Model Code of Judicial Conduct (1990), final draft, November 1989.

50/ The issue is treated in depth in this report at Tab 10.

51/ See Code of Civil Procedure section 1141.10 et seq., California Rules of Court, rules 1600 et seq.

52/ Los Angeles Public Hearing on Private Judges Transcript, pp. 238-249.

53/ California Rules of Court, rules 205(16) and 532.5(a)(18).

54/ Letter to presiding judges from Jack E. Frankel, dated August 28, 1989.

55/ San Francisco Regional Meeting Transcript, p. 83.

56/ San Francisco Regional Meeting Transcript, p. 146.

57/ Orange County Regional Meeting Transcript, p. 141.

58/ Los Angeles Public Hearing on Private Judges Transcript, pp. 141-143.

59/ Fresno Public Hearing Transcript, pp. 46-53.

60/ Los Angeles Regional Meeting Transcript, p. 105.

61/ See discussion of this issue in the chapter on court administration, Tab 8.

62/ San Francisco Regional Meeting Transcript, p. 138.

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68/ See for example McCartney v. Commission on Judicial Qualifications (1974) 13 Cal.3d 778, 521; Landmark Communication, Inc. v. Virginia (1979) 435 U.S. 829, 835.

69/ See Wenger v. Commission on Judicial Performance (1981) 29 Cal.3d 615, 651; Furey v. Commission on Judicial Performance (1987) 43 Cal.3d 1297, 1319.

70/ Butte County Regional Meeting Transcript, p. 164-165.

71/ Fresno Public Hearing Transcript, p. 17.

72/ San Francisco Public Hearing Transcript, p. 24.

73/ Written testimony submitted to the committee at the San Francisco Public Hearing, March 6, 1989.

74/ Letter dated September 19, 1989, and enclosed press release from Mendocino Superior Court Judge Conrad L. Cox.

75/ See chapter on family law at Tab 5.

76/ Code of Judicial Conduct, Canon 2C.

77/ San Francisco Public Hearing Transcript, pp. 20, 28.

78/ San Francisco Regional Meeting Testimony, p. 115.

79/ Draft Model Code of Judicial Conduct, November 1989, Canon 2C.

80/ See Board of Directors of Rotary International v. Duarte (1987) 481 U.S. 537; New York State Club Association, Inc. v. City of New York (1988) 487 U.S. 1.

81/ Los Angeles Public Hearing Transcript, pp. 34-35.

82/ Results of Small Firm Questionnaire, summarized in letter dated September 11, 1986, Ms. Christine Curtis, then chair, Women in the Law Committee.

83/ Orange County Regional Meeting Transcript, p. 108.

84/ San Francisco Public Hearing Transcript, p. 17.

85/ Los Angeles Public Hearing Transcript, pp. 34-37.

86/ Los Angeles Public Hearing Transcript, p. 35.

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97/ Los Angeles Regional Meeting Transcript, pp. 116-117.

98/ Los Angeles Regional Meeting Transcript, p. 122-123.

99/ San Francisco Regional Meeting Transcript, p. 136.

100/ San Francisco Public Hearing Transcript, p. 21.

101/ Letter from Judge Judith McConnell, dated March 13, 1989, and response dated March 29, 1989.

102/ Written comment.

103/ Orange County Regional Meeting, p. 141.

104/ Butte Regional Meeting Transcript, p. 149.

105/ Fresno Public Hearing Transcript, pp. 294-304.

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110/ Memo dated January 5, 1988 to members of the Board Committee on Professional Standards.

111/ See for example Fresno Public Hearing Transcript, p. 34.

112/ Draft American Bar Association Model Code of Judicial Conduct, November 1989, Section 3B(6).

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ACHIEVING EQUAL JUSTICE IN FAMILY LAW

The Report of the Judicial Council
Advisory Committee on Gender Bias
in the Courts on Family Law

Hon. Meredith C. Taylor, Chair of the Family Law Subcommittee
Judge of the Los Angeles Superior Court

"First of all, unlike, perhaps, any other court, gender bias is going to rear its head in every single case, because what other case is there that is gender specific as to the litigants?"
Hon. Steven Z. Perren
Judge of the Superior Court
Ventura County
(commenting on his experiences hearing the temporary custody and support calendar in a family law department)
Fresno Public Hearing, page 105

I. Introduction

A female attorney who has been practicing law for 30 years, the last 20 of which have been in family law, stated at one of the confidential regional bar meetings:

> I don't know, we have some new people on the bench and I haven't been before any of them, but I know in the past years we have had males, nothing but males on the family law bench and not a one of them was happily married. Everyone of them, every one of them had been through divorce and was supporting a spouse in some way. Now, maybe it's just coincidental, but it does give you pause when you are representing a woman who is coming in and asking for court orders for support for herself.[1/]

Similarly, the advisory committee received a letter from a concerned friend of a young woman whose children were the subject of an order changing custody. According to the letter, the young woman filed for dissolution due to her husband's continued infidelity. She was granted custody of her two children, and her husband had visitation every other weekend and for six weeks during the summer. Thereafter, she made plans to remarry, but her husband-to-be lived in Nevada. The marriage would require a move, and the prospective move catapulted her former husband into initiating modification proceedings. The woman immediately canceled her marriage plans but the court ordered a change in physical custody to her husband. The writer of the letter asserted that the children were unhappy, the mother had lost her second chance at a happy marriage, and it was rumored that the judge who ordered the change in custody had himself gone through a divorce and lost custody of his own children.[2/]

These two examples are striking not necessarily for the truth of the matters they assert, but rather as examples of why family law matters are breeding grounds for bias. How many judges have preconceived notions about why airplanes crash? How many judges are convinced that certain automobiles are defective? These personal injury cases do not usually call out the inherent and deeply held personal views judges have about life and relationships between people. Ask instead, however, how many judges have views about the way to raise children, the proper role of women in our society, whether children of a young age are better off with their mothers or their fathers if a choice needs to be made, or whether after divorce women should be entitled to money earned by men, and you may reach a different result. Each of us has been raised in a family and many of us have gone on to create our own families. Thus, our views about the way families should function are forged out of our own experiences.

The demographics on the judges' survey verify that a large number of judges have themselves experienced a divorce. The judges' survey reflects the marital status of the respondents as follows:

Status	Percent
Single	4.5
Divorced	9.7
Widowed	1.2
Married (and previously divorced)	22.8
Married (and never previously divorced)[3/]	61.8

Thus, 32.5 percent of the judges who answered the survey have experienced divorce and bring the memories of that experience with them to the bench. And, of course, this number would be even greater if the survey had asked in addition whether the judges' parents had been divorced or whether a close sibling had experienced divorce.

In this context, we ask family law judges every day to put aside their deeply held personal views. We ask them to do this even though they are not necessarily educated in the field of family law. They may have no information about the economics of divorce, the sociological ramifications of their decisions, or psychological information about children. They may also have little time in which to make the decisions they are required to make and limited staff resources to assist them. We do this in a field with vast discretion and limited appellate review and one that touches the lives of more people than any other category of civil litigation.

To the extent there is bias in family law cases, and the advisory committee has found that bias is a serious problem in this field, the responsibility appears to be in part that the system has so little valued families that judges are effectively deprived of the experience, the knowledge, the time, and the resources to do the right thing. This devaluation has a sharper and more serious effect on the impecunious spouse, who is usually the woman, and the children.

II. Chapter Overview

In 1988-1989, 171,120 petitions for dissolution of marriage were filed in California. Of these filings, 9,855 (5.8 percent) were resolved after a trial of contested issues. (See Judicial Council of California, Annual Data Reference, 1989, page 13.) The number of cases filed in this category of civil litigation is greater than the number in any of the other

categories of civil litigation for which statistics are collected. The issues at stake in a dissolution of marriage are of primary significance to the litigants. They may involve substantial amounts of money, the family home or business, the health and safety of the children, and the future financial security of the family. The resolution of these issues in a dissolution of marriage has a disparate impact on women for three reasons:

o Despite significant and continuing changes in the social structure of California, women are still overwhelmingly the primary caretakers of children.[4/]

o While advances have been made, the wage rates for women still fall well below those for men.[5/]

o The discretionary nature of most family law issues and the difficulty, expense, and delay of appealing a decision result in the incorporation of biases based on gender stereotypes and misconceptions in family law decision making.

Consequently, issues of family law are of primary importance to the study of gender fairness in the courts of this state, and the Judicial Council Advisory Committee on Gender Bias in the Courts finds that gender bias affects the resolution of family law cases in both overt and subtle ways. The operation of bias in the family law system involves the following factors, which will be discussed in this section:

1. The laws applicable in family law proceedings and the ways in which judges interpret and enforce them.

2. Impediments to the neutral participation in family law proceedings of judges, lawyers, and mediators.

3. The interaction of the components of the family law system to create delays, inappropriate allocation of court resources, and issuance of conflicting and overlapping orders that affect families.

4. Other barriers to full and fair access to the courts for family law litigants.

5. The need for greater information and research vital to the impartial resolution of family law cases, and the need for augmented training and education of judges.

III. Methodology

The most significant sources of information on the subject of gender bias in family law included (1) the testimony of the expert witnesses invited to participate in the public hearings as well as the testimony of the members of the public; (2) the judges' survey; and (3) the results of an extensive literature search. The public hearings were valuable because experts among judges, mediators, certified family law specialists, and psychologists currently conducting research in the fields of concern to the committee were invited to testify. They often prepared their remarks in advance and submitted a written copy to the committee members. Further, the public hearings provided a forum for members of the public to air their grievances about the family law system. While the accuracy of the anecdotes related could not be checked, the sincerity and respect with which the witnesses expressed themselves were impressive. They provided the committee with an excellent demonstration of the public's perception of the family law court system.

The judges' survey contained an extensive section on family law and provided the committee with the best information available on judicial practices and attitudes in this area. Questions were designed to elicit information about mediation, custody, spousal abuse, access to the courts, and child and spousal support. Judges were also asked to reflect on their assignment preferences and whether they believed that judicial resources were adequate in the field of family law.

Scholarly and professional journals abound with articles about family law. The committee reviewed as many articles as practicable and found the literature a good source of analytical criticism of the system.

The family law subcommittee also benefitted greatly from the ideas and views expressed at the family law focus group conducted at the State Bar Annual Meeting in September 1988. There, the subcommittee members were able to discuss questions of the allocation of judicial resources in family law with attorneys of long-standing eminence in the profession. Specific questions guiding the discussion were distributed in advance and the emphasis was on possible remedies for problems discerned. Family law was discussed as well at the regional bar meetings, which provided the committee with its first sense of what the problems in the family law area might be. Finally, a survey of practices in awarding attorney's fees was conducted by affiliates of California Women Lawyers and yielded information about these practices in 22 counties.

IV. Findings, Recommendations, Discussion, and Analysis

A. The laws applicable in family law proceedings and the ways in which judges interpret and enforce them

1. Child Support

Findings

The advisory committee's examination of child support has revealed three serious problems that create a differential impact on women and children. They are:

a. Child support awards are too low

Child support experts generally agree that the imposition of support guidelines triggered by increasing federal involvement in ensuring higher and more collectible

child support awards has in fact resulted in an increase in the aggregate dollar amount of the awards.[6/] That amount is nevertheless too low, especially in individual cases, because the formulas and guidelines are not always realistically calculated or applied. The guidelines are based on figures used to calculate the cost of maintaining one intact household, not the two households created perforce at the time a marriage breaks up. Guidelines in California are also linked to the amount of time the custodial and noncustodial parent spend with the children of the marriage. In practice, the noncustodial parent may not spend the anticipated amount of time with the child. Moreover, with the advent of child support guidelines and formulas for minimum child support awards, judicial and court time has been saved at the expense of the welfare of some individual women and children. To save time, judges may rely too heavily on formulaic approaches. Although the law permits deviation from the minimum or the guideline, some judges tend to use these levels as a ceiling not a floor.

Finally, the duration of support is too short. Child support stops at age 18. Children who would ordinarily be supported while they pursue higher education are abruptly left to rely on the custodial parent's income or their own savings and earnings at a time when the expense of higher education is skyrocketing.

b. Child support becomes a bargaining chip in the custody dispute

Child support awards are linked by statute to custody arrangements.[7/] As a result, in the halls of our courthouses, noncustodial parents are calculating the number of days they must spend with their children to secure lower child-support awards. Sometimes with no intention of carrying out the agreed-upon visitation or custody plan, a parent will use the threat of a custody battle to force the custodial parent to accept an

unfair support award. Support awards may also be predicated on an agreed upon but unrealistic custody plan.

c. Child support is too often not collected

Although procedures for collection are available, child support awards, even if properly and fairly calculated, are often not enforced even when the payor has the funds. It is time-consuming, expensive, and complicated to enforce child support awards. Legal assistance in collecting and modifying support is provided by district attorneys' offices and private counsel, but many receive no assistance because of inadequate funding for district attorneys' offices and because of the financial inability of many families to retain an attorney. The failure to pay child support is perhaps the most flagrant and routine example of disrespect and disobedience of a court order and should not be tolerated. Some courts appear to evidence an indifference to the failure to pay child support and do not adopt an aggressive position on this issue. This indifference is demonstrated by the tendency to deny contempt, refusal to order jail time for repeated contempts, and the tendency to order small installment payments even when the arrearages are great and the history of failure to pay is long.

RECOMMENDATION 1

Request the Judicial Council to (a) fund and adopt as a top priority a study by a trained economist of the application of child support guidelines with the ultimate goal that guidelines would be established which would conform to federal mandates for uniformity and the rebuttable presumption of validity, would reflect fair calculations of the amount required to raise children

in a divorcing family, and would not necessarily link amounts due to shared custody.
(b) urge introduction of and support legislation which would
(1) amend Civil Code section 4720(a) by requiring that all child support awards, even those which are equal to the amount designated by the applicable guidelines, shall set forth the factors on which the judge relied in setting the award at that level.
(2) amend Civil Code section 4724 to provide and ensure that children, after divorce, continue to share in the increased standard of living of the higher income parent who is usually the noncustodial spouse.
(3) extend the duration of child support obligations prospectively to age 21.

Discussion and Analysis

a. Child support awards are too low

1. Statistical background

United States Census data shows that as of the spring of 1986, 8.8 million women were living with children under 21 years of age whose fathers were not living in the households; 61 percent or about 5.4 million of these women had been awarded child support payments. Of the 5.4 million women awarded child support, 4.4 million women were supposed to receive child support for their children in 1985. Of those due payment, about half received the full amount due. The remaining women were equally split between those receiving partial payment and those receiving no payment at all (26 percent each). The child support award rate reported in 1986 (61 percent) increased from that of 1984 (58 percent). However, the proportion of women receiving payments in 1985 (74 percent) showed no significant

change from that of the previous survey (76 percent). The aggregate amount of child support payments due in 1985 was $10.9 billion, but actual payments received amounted to about $7.2 billion. Thus, 66 percent of the total amount due was paid in 1985. This information is usually referred to in shorthand as this country's $3 billion unpaid child support debt.[8/]

Federal legislation designed to change this picture of women and children in poverty and to collect revenues due the states for welfare payments paid to dependent children has mandated the imposition of uniform child support guidelines that are presumed to be the appropriate amount of child support due unless rebutted by evidence that would lower or raise the guideline amount.[9/] Guideline legislation has been in effect for several years, but until recently the guidelines were neither required to be uniform nor presumed adequate. The federal regulations implementing this legislation are not yet final.

2. Existing child support levels in California

The Senate Task Force on Family Equity recognized that the crisis in child support awards and payments identified nationally was acute in California. The 1987 task force report stated:

> California especially has been impacted by the growth in female-headed households; in 1983 California had the highest number of such households in the United States. Following the same trend as the nation, the number of female-headed households with children under age 18 in California has steadily increased from 565,000 in 1977 to 648,000 in 1986. Of these 648,000 families, 46 percent live on incomes below the proverty level.[10/]

The report further recognized that the poverty of women and children in California was directly related to the abysmal record of child support awards and collection:

> The January - March 1986 Quarterly Report of the Child Support Management System, submitted to the Governor by the California Department of Social Services, showed the average monthly child support payment collected by district atorneys' offices to be $154.74 ($151.22 in AFDC cases; $167.69 in non-AFDC cases). This amount is less than the national median child support payment reported by the 1983 Census Survey of approximately $195 per month ($2,340 annually), and is only slightly higher than the U.S. poverty guideline of $150 per month per child.[11/]

Within this context, then, in California, the Agnos Child Support Standards Act imposed mandatory minimum support guidelines.[12/] In addition, child support awards above the Agnos guidelines in appropriate cases were mandated and engendered the development of various sets of discretionary child support schedules.[13/] In California, seven sets of guidelines are in effect: the Santa Clara version, the Judicial Council version that permits a 15 percent deviation above or below the Santa Clara levels, the Kern County version that selects levels about 29 percent below the Santa Clara version, the old Santa Clara version now used in Fresno, the Sacramento version, and the version used in Los Angeles' central district that permits a 20 percent deviation.[14/] Existing law provides that the Judicial Council guidelines prevail unless a county has adopted a different local practice.[15/]

Thus, a threshold question is presented as to whether the statutory scheme in California complies with the federal intent that child support guidelines be uniform and presumptively adequate. Although the advisory committee takes no position on whether the guidelines are in compliance, the

committee notes that the Judicial Council has funded a project that is studying and comparing the existing guidelines in effect in various locales. The study, however, will analyze only the nature of the guidelines and not the manner and extent of their application by California judges. The result of this research may assist this state in complying with the federal mandates.[16/]

3. Research on child support

The national focus on increasing the amount of child support awarded and collected, and the consistent California experience, have triggered extensive scholarly inquiries and debate on the philosophical issue of who should bear the expense of supporting children of divorce and the practical issue of how to implement the resolution of this policy dilemma. It is not the purpose of this report to catalogue and critique this scholarship. One article stands out, however, as a warning to those involved in the development and implementation of child support guidelines to heed the embedded policy questions and the consequences of the resolution of those questions for those who must live on amounts awarded as child support. Professor Carol Bruch of the University of California at Davis, Martin Luther King, Jr., Law School, carefully discusses the policy choices that underlie the creation of child support guidelines and admonishes policy makers to be cognizant of these issues.[17/] With increased federal pressure to create uniformity, it is even more crucial for California to participate in this important research.

4. The guidelines game

The advisory committee recognizes the following problems, with their concomitant effect on single-parent households headed mostly by women, with California's system of applying child support guidelines:

1. The guidelines are not uniform.

2. They are based on data representing the costs of raising children in intact rather than divorcing families. (The most recent information on the costs of raising children was developed by Thomas Espenshade in his work Investing in Children: New Estimates by Parental Expenditures (1984) Urban Institute Press. The federal government is apparently about to fund a new study in the near future.)

3. They are linked with time-sharing arrangements that may have no bearing on the actual time parents spend with their children in the years after divorce.

4. Due to time pressures in our courts, they are applied routinely as a ceiling rather than a minimum, and insufficient opportunity is afforded to rebut the de facto presumption that an award equal to the guideline is adequate.

Associate Justice Donald B. King of the Court of Appeal for the First Appellate District, Division Five, a renowned expert in family law, told the advisory committee:

> Support I've talked about before; support is a real problem. Child support guidelines which we now have in all counties, either by their own adoption, or by Judicial Council guidelines, which are not very great, are based on a fallacy. The only knowledge we have, the only study that's ever been done, . . . [is based on] the costs of raising children in intact families, and yet we take those costs and develop guidelines from them for non-intact families, where there's a second housing cost which is huge.18/

Justice King's view is shared by several scholars critical of guideline formulas that rely on currently favored data to establish the cost of raising children. As stated by one child support expert: "There is no inherent reason derived from a certain methodology why the consumption level of the one household family unit should be applied to the post-divorce family."19/

In admonishing family lawyers to critically assess and, when appropriate, argue for deviations from established child support guidelines, Ms. Sally F. Goldfarb, a nationally recognized expert on child support, points out many factors that current guidelines do not assess. She asserts that guidelines must be deemed a minimum level, not a maximum, in determining child support awards. Some of the significant factors not taken into consideration in guidelines include: extraordinary expenses such as child care or medical expenses, failure to exercise rights to extended visitation or joint physical custody, and the increased standard of living of the payor spouse after divorce. To the extent that these factors are not reflected in existing child support guidelines, the custodial spouse, usually the mother, will be disadvantaged.[20/]

Practicing family lawyers who testified at the public hearings and the regional meetings reported that child support guidelines were less than satisfactory in conception and application. The inadequacy appears to apply whether the mandatory minimum is at issue or whether a larger discretionary amount may be awarded, and regardless of the income level of the family. One attorney observed that at the time the Agnos legislation was debated, claims were made that the mandatory minimum was too low. The answer to that claim was that the minimum would provide a floor and that the discretionary guidelines contemplated were also just that: "guidelines." The attorney concluded: "In practice, however, courts will almost never award more than the guidelines, and the guidelines, in our opinion, bear no relationship to how much it costs to support a child."[21/]

Ms. Betty Nordwind, executive director of the Harriet Buhai Center in Los Angeles, concurred and advocated that hearings be conducted on the optimum amounts for child support guidelines. The Harriet Buhai Center is the largest provider of family law services in Los Angeles County, with 75 percent

of the client population women and 25 percent men. In addition, 90 percent of the client population is minority.[22/] Middle-class parents appear to fare no better. An attorney who represented mostly middle-income parents stated:

> The guidelines do tend to be . . . [the] awards of child support in Orange County, in my kinds of cases where there is not somebody who is wealthy, this definitely means that the parent with the primary amount of parenting time is very much disadvantaged economically. The guideline awards tend to be, perhaps, enough to meet the basics, shelter, every-day clothing, food, maybe, assuming that they are going to be paid. And when you start getting to the fees for soccer or ice-skating or baseball or school field trips or prom dresses or prom tuxes or any other extraordinary expense beyond the basics, not to mention things like medical care and child care, that parent is definitely on the short end of the financial stick.[23/]

The public perception of child support levels parallels that of attorney-experts. Ms. Susan Speir, president and founder of Single Parents United 'n Kids (SPUNK), stated: "Women feel that the judges do not have any idea of what it costs to actually raise a child. They also think that the judges feel sorry for the non-custodial parent who is ordered to pay, and that if the judge orders a lower amount, then the custodial parent will surely pay."[24/]

Case law, too, reflects the fact that trial judges stray from the actual intent of guideline legislation: that is, that mandatory minimums should not be used as a ceiling but as a floor and that, at the next income levels, discretionary guidelines may be exceeded in a proper case. For example, in In re the Marriage of Hanchett (1988) 199 Cal.App.3d 937, the trial court denied a child support increase on the ground that

the mother had failed to show need even though the child support was below the Agnos minimum. The appellate court held that, in the absence of exceptional circumstances, the minimum level must be awarded without regard to discretionary factors such as need and ability to pay. Similarly, at the other end of the economic scale, a trial court denied an increase in child support that would have reflected a very large increase in the supporting father's standard of living. The appellate court reversed and held that the trial court must take into consideration the living standards of both parents when child support is set and grant or modify awards beyond the bare necessities of life if possible. The court held further that a child has a right to expect to share in the improved lifestyle of his or her parents.[25/]

The judges' response to a question on the need for changing child support guidelines was equivocal and suggests a need for judicial education in this area. The survey asked: "If you could change the child support guidelines now in effect, what changes, if any, would you make?" This question did not provide choices for the respondents and instead asked the judge to supply an individual response. Of the judges who responded 55.3 percent provided some suggestion for change. The most common suggestion was to compensate for different factors such as cost of living increases or a third income. On the other hand, 39.5 percent saw no reason to change the guidelines.[26/] This apparent disagreement among judges about the need for change in the guidelines is significant when the testimony that the guidelines are often used as a ceiling is considered. Some judges may be unaware that the guidelines are insufficient and may compound the effects of that lack of awareness by rarely deviating from them. More information about the costs of raising families should be provided in judicial education.

5. Duration of child support

A controversial issue that has been pending on the family law legislative docket for several years is the question of how long the obligation to support our children extends. Since the change in the age of majority from 21 to 18, the child support obligations of supporting parents have terminated at 18. Needless to say, in many families, age 18 marks the beginning of perhaps the most costly period in a child's life -- the commencement of a higher education. The need for support of children during this crucial period was recognized by the Senate Task Force on Family Equity[27/] and has been the subject of several legislative proposals. The most recent attempt by advisory committee co-chair Senator Diane Watson of Los Angeles (Sen. Bill No. 215) was vetoed.

Researchers Judith S. Wallerstein and Shauna B. Corbin found:

> Within the average middle-class family, children anticipate that their educational aspirations will be acknowledged and that serious plans to pursue a college education will be encouraged and economically supported by parents to the entent of their capacity to do so. Such expectations appear to be severely shaken by divorce. Findings over the ten-year period that was brought to a close in 1982 show that child support payments, which were established and maintained with varying degrees of regularity when the child was young, were generally not revised upward when the same youngster entered adolescence, and were terminated abruptly when the youngster reached age eighteen. Thus, at the point of entry into college, when the young person's need for financial support and encouragement to pursue goals commensurate with his or her intellectual capacity customarily increases, financial support ceased altogether or was

maintained at minimal levels, conveying a lack of emotional investment in the youngster's education strangely at odds with the father's social position and professed values.[28]

6. The remedies

Thus, we see that child support amounts are, in the first instance, based on statutory minimums or guidelines that are calculated on the basis of imperfect data and questionable concepts, that they are adhered to rigidly more often than they are exceeded due to the press of business in family law departments, and that they are based on too short a period of obligation. In an effort to correct some of these problems that differentially affect women who are the primary caretakers of children, the advisory committee members agreed that:

o there should be an immediate reassessment of guideline amounts to comply with federal mandates and to more accurately reflect the actual cost of raising children by custodial parents in a divorcing family;[29]

o when the mandatory minimum or the guideline amount is awarded, the judge should also be required to state the factors on which the judge relied in setting the amount at the minimum level rather than a level above the minimum that provides the child with more than the bare necessities of life; and

o a child's right to share in the increased living standard of a parent should be codified; and

o the period of child support obligation should be extended prospectively until the child reaches the age of 21.

RECOMMENDATION 2

Request the Judicial Council to
(a) urge introduction and support legislation that would modify or repeal Civil Code section 4727 so that shared

> physical custody for more than 30 percent of a 365-day period is no longer a factor capable of reducing child support obligations; and (b) instruct the Advisory Committee on Legal Forms to modify the family law forms to reflect notice of the provisions of Civil Code section 4700(b) for recovering childcare expenses when the non-custodial parent fails to fulfill caretaking responsibilities, and to create a simple application procedure for recovering the expenses.

Discussion and Analysis

b. Child support as a bargaining chip in the custody dispute

As recognized by the members of the Senate Task Force on Family Equity, current law and the inherent formula upon which guidelines are based have institutionalized the practice of using custody as a bargaining chip in lowering support:

> Current child support law provides an incentive to bargain over custody of the child by directly linking the amount of child support to the type of custody arrangement. Civil Code section 4727 permits the court to reduce the mandatory minimum child support award (Footnote: if the child is not receiving AFDC) where the obligor-parent is awarded 30 percent or more custodial or visitation time with the child. The Judicial Council's discretionary guideline expressly includes the amount of time the child spends with each parent as a factor in the support formula (California Rules of Court, Division VI, Sections 2(a) and 5.) These laws treat the parents' homes as "hotels", allotting support based on the number of nights the child sleeps in each.30/

The policy considerations inherent in the applicable laws were similarly recognized by the task force:

> Moreover, when custody and support are tied to the amount of support awarded, the focus may shift from what is best for the child to what is least expensive for the obligor-parent. Civil Code section 4727, by allowing for decreased support with increased visitation or joint custody, provides financial incentives for the obligor-parent to seek joint custody in order to lower his (or her) support obligation. Similarly, this statute creates disincentives for the lower-income parent (usually the mother) to agree to increased visitation or joint custody. Instead of focusing on what would be the best custody arrangement for the child emotionally, the lower income parent may be forced to base the custody decision on what will be best for the child economically -- e.g. sole custody because it will increase the support award.[31/]

Inherent in this recognition is the notion that the interplay between custody and support adversely affects the parent with primary custody, usually the mother, in two ways. First, the initial calculation of the award results in a lower award based on the time that is spent by the other parent with the child even though that may not have any bearing on the actual costs borne by the primary custodian. Second, the underlying custody arrangement upon which the support award is based may be honored more in the breach. These two factors were readily recognized by the attorneys who participated in the regional meetings and public hearings. A San Diego certified family law specialist stated:

> But one that happens quite frequently in this county and in other counties, perhaps, is a father, for instance,

> suggesting that joint custody, joint physical custody is very important to him. That he wants not only quality time, but quantity time with his children, and I think that that's a wonderful, wonderful motivation as long as it's in good faith.
>
> Now, one thing that I'm finding quite often is that dad says that, and dad gets that, and dad also gets something else when he gets that, generally, he gets a smaller child support award. And then, lo and behold, dad doesn't excercise that joint custody that he fought so vehemently for.
>
> All of a sudden he's on a more traditional, once every other weekend, once a month, maybe on Christmas, all of a sudden the children aren't hearing from dad at all, and what mom has is the children on a full-time basis, which she probably likes, but she has half as much money as she would have had had it meant a traditional child custody and child support situation.
>
> Her remedy, then, of course, is to go back to court, and more times than not, there's a financial disparity. It's going to cost mom to go back, if she even has any money to obtain the services of an attorney, she probably is going to get a token award of attorneys' fees at the end.[32/]

And in response to a question as to the frequency of this phenomenon, the certified specialist explained to committee members:

> I think it's so common that that's what makes me suspect the motive, and see, I hate to apply bad faith to anyone, but it's so suspect because it happens so often. I believe part of it is also that men are more enthusiastic in the beginning of a proceeding concerning the children, from a good faith

> perspective, that they think they want to spend more time with the children.
>
> . . . I do suspect also, though, and this maybe is a big part of the system, I think they're also being told by counsel, well, that's good, because you know, one of the results of that will be that your child support will probably go down if you're successful.[33/]

Mediators, too, as they strive to assist parents in reaching custody agreements, recognize that support is an important chip in the family poker game. As stated by Dr. Mary Duryea, director of Family Court Services in the Alameda Superior Court, "And you get things -- like you overhear people in the hallway saying, now, how many days do I need to get before my child support obligation is reduced, and you get a mixture of motivation in people coming in asking for more time with their children, when what they're really asking for is less money."[34/]

To reduce the two aspects of this inequity that has a disparate impact on divorced women, the advisory committee proposes that the statute linking support and custody be modified or repealed. In an earlier recommendation, the advisory committee suggested a review of the statistical underpinnings of child support guidelines, including the connection between support amounts and time spent with children evidenced in the formulas.

Civil Code section 4700(b) provides for recovery of childcare expenses expended when the noncustodial parent fails to fulfill caretaking responsibilities. This statute reflects at least a partial recognition that custody arrangements ordered by one court, either pursuant to one party's agreement or after a contested hearing, may be very different from the actual behavior of the parties after judgment is entered. The statute, however, does not provide for any expedient way for a spouse to

enforce the collection of these amounts other than in the context of a modification request. Accordingly, the advisory committee proposes that the Judicial Council amend or add forms that would create a simple procedure for collecting these amounts and for notifying parents of their right to collect childcare expenses if the caretaking responsibilities contemplated are neglected.

RECOMMENDATION 3

Request the Judicial Council to (a) review compliance with the statute that requires the superior court clerk to distribute booklets explaining parents' rights and duties relating to child support and augment and improve those efforts; and (b) study whether a system of informal assistance similar to that provided litigants in the small claims court can be extended to parents seeking to collect unpaid child support.

Discussion and Analysis

c. Child support is too often uncollectible

In Los Angeles, a board was appointed in June of 1989 to recommend ways to improve collection of child support payments in response to Los Angeles' low ranking in child support collections by the district attorney's office.[35/] This is just one example of the general consensus that district attorneys' offices are failing to collect child support in sufficient amounts, especially for non-AFDC parents. Court practices that render the collection of support even more difficult enumerated by commentators and public hearing participants include: failure to order contempt or jail time, ordering small installment payments even when arrears are very large, and marked inefficiencies in clerks' offices. Attorneys pointed out that often

the impecunious spouse cannot afford the assistance of private counsel to enforce child support, the district attorney has insufficient resources to assist all who need help, and the law of enforcing support is too complicated for easy self-representation.[36/]

The advisory committee determined that expanding public information and exploring ways to provide public assistance in collecting child support would be the most effective mechanism within the purview of the Judicial Council for improving the collection rate.

Effective January 1, 1988, Welfare & Institutions Code section 11475.5, which was part of the original legislative proposals suggested by the Senate Task Force on Family Equity, mandated distribution of a booklet about the proper procedures and processes for collection and payment of child and spousal support. The booklet, drafted by the Department of Social Services and reviewed by the Judicial Council, was to be distributed by superior court clerks and served on all respondents in family law matters. No evaluation of the booklet or the effectiveness of this process has been conducted to date. A spot check of compliance in Bay Area counties revealed that booklets were in short supply and although sometimes available were not routinely distributed to prospective petitioners for dissolution. For example, a law clerk employed at the Administrative Office of the Courts called the clerk's office in a Central Valley court and asked what information was available on child support. He was not told about the booklet until he specifically mentioned to the clerk that he thought a booklet was available. The advisory committee proposes that the Judicial Council monitor the progress of this legislation and seek to augment or improve its operation.

The advisory committee similarly proposes that the Judicial Council study whether it is feasible to create a system of assistance for parents seeking to collect child

support in the superior courts. Code of Civil Procedure section 116.18 mandates a system of assistance for small claims litigants. This program has had marked success and may be appropriate for extension to family law litigants. Many of the issues facing small claimants include enforcing small claims judgments. The training and experience of small claims advisors may be applicable to collecting support orders. Given the inability of most to retain counsel and the lack of resources of the district attorneys' offices, some assistance is urgently needed.

2. Spousal support

Findings

The advisory committee's review and analysis of spousal support issues occurred in the midst of the development of critical reforms begun by the work of the Senate Task Force on Family Equity. One of these reforms, effective January 1, 1989, codified the holdings of appellate cases that require that the standard of living during the marriage should serve as a point of reference in determining the award of spousal support. (See Civil Code section 4801(a).) A second reform, effective July 1, 1990, will impose an automatic wage assignment provision in a spousal support award that will permit, absent a stay order, an immediate wage assignment rather than one effective only after arrearages are demonstrated.[37/] The advisory committee observed that its findings corroborated the observations found in the Senate Task Force on Family Equity report that triggered these reforms. The committee decided that it would be most useful if recommendations were submitted that would require monitoring of these reforms to ensure that the intent of the task force, the advisory committee, and the Legislature are carried and to alert the committee to the need for further reform.

Accordingly, the advisory committee found:

1. Historically, spousal support awards have been infrequent and, when issued, have been insufficient in amount and duration.

2. The unpredictability and insufficiency of spousal support awards have unfairly affected two groups of women: the older homemaker who has had no significant employment outside the home and the younger mother with children who has experienced a gap in employment history due to her attention to child-rearing duties.

3. Spousal support arrearages cause financial reversals for the supported spouse that make it difficult to retain counsel to launch a collection effort.

4. Specific reforms designed to increase the amount of spousal support and its duration in proper cases in accordance with appellate case law and to provide an automatic method of collection that will not require the assistance of counsel should be monitored to ensure that no further reform is necessary.

RECOMMENDATION 4

Request the Judicial Council to (a) institute a monitoring process to review the operation of Civil Code section 4801(a) concerning the standard of living during the marriage as a point of reference in determining spousal support and Civil Code section 4390.3 providing for automatic wage assignments in spousal support awards and (b) propose additional recommendations for reform, if necessary, including consideration of whether spousal support guidelines would be appropriate.

Discussion and Analysis

a. Pioneeering work of the Senate Task Force on Family Equity

Convened to examine the conclusions contained in Dr. Lenore J. Weitzman's book The Divorce Revolution, which has transformed the national family law landscape, the Senate Task Force on Family Equity reviewed the information in Weitzman's book, augmented it, and proposed specific changes in California law designed to implement reform.

In general, the task force found:

o that a very low percentage of women received spousal support awards and that their numbers were not increasing;

o that the average award issued provided supported women with an inadequate standard of living close to the poverty line;

o that these conclusions applied even to women in marriages of long duration;

o hat the period for which support was awarded was getting shorter since the advent of no-fault divorce;

o that inadequacies in spousal support rendered the failure to collect child support even more crucial for women with primary care of minor children;

o that the inadequacies in spousal support awards affected mainly two groups of women: older homemakers with little or no work experience outside the home and younger women with minor children who were devoting their time and energies to raising children;

o that the view that women who had been supported during marriage should be able to quickly become self-supporting was based on false assumptions about the ease with which women

could become employed and a lack of knowledge about job discrimination and age discrimination against women in the labor market; and

o that judges had limited appreciation of the economic plight of divorced women and that low spousal support awards are a function of the devaluation of homemakers' services.[38/]

This research has also been corroborated by others, including Dr. Judith S. Wallerstein in her longitudinal study of 60 families of divorce. Dr. Wallerstein's eloquent description of the plight of the older women in her small sample describes more personally what other researchers have identified:

> Ten years after divorce, the older women stand out from other groups in our study. With one or two major exceptions, they undergo much less psychological change, explore fewer second chances, and have less sense of pride or accomplishment than their younger counterparts. They do not shift gears psychologically or socially. Eighty percent are insecure financially and almost half experienced a decline in their standard of living in the five previous years. . . .
> Tragically, many courts, not recognizing the greater difficulty that divorce poses for older women, treat them as no different from thirty-year-olds, with the admonition "You are able-bodied, so go out and sell your house, get a job, and carry your own weight in society." This attitude overlooks the psychological, economic, and social barriers that older divorced women face. Ironically, many dating services are more realistic; men willing to date women over fifty are invited to join at half price.[39/]

b. Reform triggered by case law

Immediately after passage of no-fault divorce, some judges recognized that the new law might adversely affect a newly identified group of women referred to as "displaced homemakers." In In re the Marriage of Brantner (1977) 67 Cal.App.3d 416, the appellate court reviewed a spousal support order for $200 per month for 2 years, $150 per month for 2 years, $100 per month for 2 years, $50 per month for 2 years, and $1 per month for 4 years, followed by the termination of support. The parties had been married for 25 years; they had two children, ages 14 and 16. The wife was 44 years old, had not completed high school, and had no apparent job skills. In holding that the trial court's order was an abuse of discretion, the appellate court stated:

> The new Family Law Act, and particularly Civil Code, section 4801, has been heralded as a bill of rights for harried former husbands who have been suffering under prolonged and unreasonable alimony awards. However, the act may not be used as a handy vehicle for the summary disposal of old and used wives. A woman is not a breeding cow to be nurtured during her years of fecundity, then conveniently and economically converted to cheap steaks when past her prime. If a woman is able to do so, she certainly should support herself. If, however, she has spent her productive years as a housewife and mother and has missed the opportunity to compete in the job market and improve her job skills, quite often she becomes, when divorced, simply a "displaced homemaker."40/

Justice Gardner's prophetic remarks in Brantner bear remarkable similarity to later cases, which suggests that not much change has occurred for the more than 10 years since his opinion.

Dr. Wallerstein's observation that many courts do not recognize the plight of the older woman is made manifest in a case pre-dating the institution of the reforms proposed by the Senate task force. In In re Marriage of Gavron (1988) 203 Cal.App.3d 705, at 709, a California trial court abruptly terminated a $1,100 per month spousal support award and chastised the supported spouse. The appellate court quoted from the trial court's order as follows:

> Aside from demonstrating a lack of diligence, in regards to becoming employed, [Wife] remains highly improvident by relying on [husband] for her sole support. She apparently has given no thought to the possibility that [Husband] may become incapacitated or meet an untimely demise. It should be noted that a marriage of twenty-five (25) years is not tantamount to social security. The Court is mindful that this is a lengthy marriage and that [Husband's] duty to support [Wife] will not terminate by the mere passage of time. Nonetheless, the [Wife's] failure to become employable or seek training after so many years shift[s] the burden to her to demonstrate her continued need for support in light of her continued inaction in this regard.

Mrs. Gavron was 57 years old; she cared for her 87-year-old mother; and she had health problems. Her failure to seek employment or retraining had occurred over an eight-year period. The appellate court reversed and held that the abrupt termination of spousal support with no explicit earlier warning to Mrs. Gavron that she had a duty to become self-supporting constituted an abuse of discretion. The court noted that Mrs. Gavron had "presumably devoted herself initially to the development of her husband's earning capacity, rather than to her own earning capacity, then to wifely and parental duties . . ."41/

The case of In re Marriage of Ramer (1986) 187 Cal.App.3d 263 presented a fact situation that the appellate court deemed "a continuing miscarriage of justice of which we have seldom seen the like."[42/] In Ramer, the supported spouse had been married to her husband for 22 years, at the time of the first trial had four minor children, one of whom had a learning disability, had no special skills or training that would qualify her for remunerative employment, and there was some evidence that she had health problems. She also had the responsibility of keeping up the payments and property tax on the family home for which the husband received a tax deduction. On appeal from the judge's order, spousal support of $550 per month was held to be unconscionably low, and the case was reversed and remanded. Upon remand the trial court increased the amount of the award to $900 and ordered the husband to pay a substantial arrearage ($10,500) at the rate of $100 month. During the interim, the husband's income and that of his new wife had substantially increased. The court squarely held, quoting from earlier decisions, that "[w]hen the order made by the trial court affords one of the spouses a significantly higher standard of living than the other and affords the other a significantly lower standard of living than was accustomed during the marriage, an abuse of discretion is indicated."[43/] The court viewed the small amount required to be paid to retire the arrears as a further abuse of discretion.

This case is important for two reasons. First, it delineated unequivocally the importance of using the standard of living during the marriage as a point of reference for determining spousal support. And, second, it demonstrated clearly the recalcitrance of some trial judges despite sharp and repeated messages from the appellate courts. When the low appeal rate in family law cases and the expense of launching an appeal are considered together with the likelihood that other trial judges are committing similar abuses, the plight of the older divorced woman in the courts becomes fully dramatized.

c. Receipt of corroborating testimony

Attorneys and others who testified at the public hearings and regional meetings corroborated the findings of the Senate Task Force on Family Equity. Two portions of the testimony stand out. A San Diego certified family law specialist told the advisory committee:

> We're talking about a family in which, as one of our local judges calls them, the wife is a dinosaur. Lovely. That means that she has been married for probably 25 to 35 years, her sole career is homemaker. She is now being forced or faced with becoming a single person, probably the rest of her life, and she has no ability to be self-sustaining in any meaningful way. That's one profile.
>
> Another profile is a younger person who has done the same thing, who has done it for a little less long, and probably has an ability at least to attain some personal satisfaction in a career, but a little differently than if she hadn't spent the 20 years between 20 and 40 being a homemaker. And then there are lots of other variations.44/

Another witness from Santa Barbara put it differently:

> Number one, oftentimes the wife in a situation has been the homemaker, does not have the knowledge, or the exposure to the activities of the husband outside the home. You have a situation where a husband generally has put years into his career, and at the end of this marriage, he will continue to move forward with an increased earning capacity based upon the years of experience that he has had outside the home.
>
> What has been found is that at the end of the divorce, the women is financially, if she's lucky, going to tread water, and very probably will be moving backwards. Part of

> the reason is that she is now forced out into the work force. Child support and spousal support awards are wholly inadequate.
>
> Spousal support. There are assumptions that now that women have equal parity in the work force, that they can earn equally. The fact is there is no equal parity in the work force. There's all sorts of institutional discrimination. Women, generally speaking, are still the primary caretakers, even after the marriage dissolves.
>
> What are the future opportunities for them? Well, they're very limited. Number one, if they have been homemakers as their primary occupation during the marriage, they go out into the work force, they face age discrimination, sex discrimination, job discrimination by the very nature of the fact that women still are classified in the lower paying job categories.
>
> I see this happen all the time in Santa Barbara, which is one of the areas I now practice in. Frequently I represent a woman who has been a homemaker as her primary occupation, leaves a marriage where the husband makes $150,000-$250,000 a year, and I see her over at Robinson's selling perfume for $4.50 an hour and being threatened by her husband that because of this job, he's going to take her back to court to reduce her spousal support.
>
> This is just an example, but I can tell you, it is an example that could apply throughout this state.[45]

This testimony and the trial court decisions discussed earlier also illustrate another aspect of gender bias operating in the consideration of requests for spousal support. The older woman is a "dinosaur" whose dependence and inability to become self-sufficent may be distasteful to the trial court judge. Without clear and equitable standards for setting spousal support awards, these stereotypes will inevitably influence the outcome of requests for spousal support and requests to terminate it.

d. The remedy

Possible remedies for these problems of spousal support have already been enacted into law in the form of Civil Code section 4801(a) relating to the standard of living in the marriage and Civil Code section 4390.3 imposing automatic wage assignments in a spousal support order. Responses to the judges' survey indicate that the implementation of these reforms may not be uniform among judges and suggest that a monitoring and evaluating process should be undertaken to ensure that no further reforms are necessary. Judges were asked how a finding on the standard of living in the marriage now required by Civil Code section 4801 would affect their spousal support awards with respect to amount and duration. Of the judges who responded, 41.9 percent said that the finding should affect the amount but not the duration of spousal support.[46/] In contrast to these responses, the instructions in a popular handbook on California family law relating to implementation of the new provision states: "These statutory changes effectively incorporate prior case law consensus that the marital standard of living should be used as a point of reference in the court's weighing process; i.e. spousal support awards, both in terms of amount and duration, should reflect the parties' accustomed standard of living during marriage. (Emphasis added.)"[47/]

Accordingly, the advisory committee suggests that these new reforms be monitored to ensure compliance with the intent of their framers. The monitoring should include the collection of statistical data on the frequency, amount, and duration of both original and modified spousal support awards.

3. Custody

Findings

The advisory committee received over 50 letters of comment relating to custody issues. The letters were predominantly from parents and grandparents who had been involved as litigants or the parents of litigants in custody disputes. Some of the letters were from step-parents; some were from neighbors. Although a majority of comments related to bias against women in custody, a significant number related to bias against men. No one view predominated. The experiences related were poignant, sometimes tragic, harrowing and heart-rending. The advisory committee also reviewed the extensive literature on the issue of joint custody and its history, development, and advisability. Witnesses discussed joint custody at the public hearings from the perspective of the judge, the attorney, and the mediator. Some parents testified as well.

The evidence received by the committee shows that bias, or the perception of bias, in custody decisions against both men and women exists. The evidence is conflicting, however, on the issue of what objective standard should be applied in custody decisions to reduce the likelihood of bias. This report is not intended nor does it strive to resolve the great custody debate on the appropriate standard apparently raging in California and nationally. Rather, the committee examined issues that might assist the court in rendering bias free decisions in an admittedly difficult area of the law.

The committee therefore finds:

1. When judges are asked to make custody decisions, they do so within a relatively uncharted zone of discretion, and biases about the proper roles of women and men inherently affect those decisions.

2. Most custody decisions are made between the parents themselves or with the assistance of counsel or a mediator. Mediators and attorneys may be just as likely to be influenced by gender stereotypes.

3. Bias in custody decision making is best cured by judicial, attorney, and mediator education.

4. Research on the nature of custody arrangements that will truly be in the best interests of our children is urgently needed.

5. Custody battles should be resolved as quickly as possible, and custody trials should be given the preference afforded them by statute.

RECOMMENDATION 5

Request the Judicial Council to target the study of joint custody and acquiring more information about best interests of children as a top priority for further research funded by the Family Court Services Program and for the relevant educational programs planned and administered by CJER and the AOC. The judicial education programs for family law judges and presiding judges should also stress the need for affording the preference given to disputed custody trials by law.

Discussion and Analysis

a. A review of the debate about joint custody

The crucial issue in the debate over joint custody is whether joint custody should be imposed over one parent's objection. A recent research report published in the Congressional Quarterly provides an excellent survey and summary of the nature and extent of that custody debate. The article emphasizes the following factors:

1. Women's groups support a primary caretaker standard in custody determinations and oppose imposition of joint custody over the objection of either parent. They point to problems created when spousal abuse has occurred and to the use of custody requests as a bargaining chip to lower support. They refer to research that shows that in high conflict families, joint custody has an adverse impact on children. They contend that the lack of agreement about custody already indicates a high degree of conflict in the family and that if the parents agreed, no court resolution would be required. They object to joint custody as the court's way of abdicating responsibility and saving court time.

2. Father's rights groups and many mediators, on the other hand, say that even if parents disagree about custody they should and can learn to cooperate for their children's benefit. They contend that fathers who are involved with their children are more likely to pay child support, not less likely. They also believe strongly that mental health professionals are more suited than the court system for determining difficult questions of custody. Finally, historically men have been left out of custody determinations based especially on the "tender years" doctrine, and recompense should now be made.[48/]

Recently, the American Bar Association adopted a model joint custody statute that permitted the award of joint custody over the objection of one of the parents. The debate on the issue was acrimonious. While the debated joint custody provision prevailed, the provision urging each state legislature to adopt the model statute was defeated.[49/]

Some scholars choose a middle ground. They suggest that joint custody is not inappropriate, but the way it has been implemented is. They argue that the defects cited by some researchers can and should be remedied. For example, they suggest that joint custody is inappropriate where spousal abuse has occurred. They contend that a parent should be permitted

to oppose joint custody in good faith and thus the parent less likely to be awarded custody without being characterized as the parent who impedes the child's frequent and continuing contact with the other parent. (See Civil Code section 4600.5.) They also contend that child support should not be linked to time sharing and that women and children should not be forced to accept a lower standard of living in exchange for the custody rights of fathers.[50/]

b. The debate in California

Civil Code section 4600.5 sets forth the guidelines for issuance and implementation of joint custody orders. If the parties agree, there is a presumption that joint custody is in the best interests of the child. If one party objects, then the court must look to a series of factors enumerated in Civil Code section 4608. These factors include the child's health, safety and welfare, any history of child abuse, and the nature and amount of contact with both parents. Language was recently added to the statute to clarify that no preference for joint custody was contained in the law.[51/]

The Senate Task Force on Family Equity, the principal proponent of the recent clarification that no preference for joint custody is imposed by law, made a series of findings supporting its recommendation for clarification. The task force recognized that, based on 1985 data, 90 percent of children living in single-parent homes live with their mother. The report cited the supposed preference for joint custody as a force for imposing financial hardship on women and children. The task force called for reforms where spousal abuse is alleged and called for research on the effects of joint custody on children, especially small children.

California researchers concede that the information we have about the effects of joint custody on children is limited. Some preliminary findings from admittedly small

samples suggest that children suffer when joint custody is ordered in high-conflict families.[52/]

c. Testimony reviewed by the advisory committee

Testimony received by the advisory committee reflects the deadlock perceived nationally. In general, commentators agree that men are less likely to be awarded sole custody of their children than are women. Justice Donald King said:

> Custody and visitation, terrible issues. We have bias. This is probably an area where we have more bias, more gender bias than anywhere else, in anything we do in the family law courts, but it's inherent in the people that come in.
>
> We don't have people come in where both people have been playing meaningful parenting roles. Ninety percent of the people that come into courts, one has been -- had the responsibility for child rearing, and the other one has had the responsibility for servicing the car and mowing the lawn. And you're not going to, in that kind of situation, all of a sudden now have co-equal parenting, it just doesn't work that way.
>
> These people have developed their own structure, and now the marriage has fallen apart, and there's nothing the court's going to do to change that structure. If someone has not taken a meaningful role in child rearing during the marriage, it's unlikely they're going to take a meaningful role afterwards, or certainly, they have to prove that that's what they're going to do.[53/]

From one attorney's point of view, Justice King's observation would support the primary caretaker standard for awarding custody. At the San Francisco public hearing,

Attorney Margaret Gannon points out additional elements of bias against women in custody determinations, including penalizing mothers with limited financial resources on the one hand and questioning the parenting abilities of mothers who work full-time on the other hand.[54/]

California witnesses, even those who generally favor joint custody, called for more research. Mr. Hugh McIsaac, director of Family Court Services in Los Angeles, acknowledged the need for research in light of conflicting studies,[55/] as did Dr. Janet Johnston, who explained her own research and described the suffering of children from high-conflict families. She stated:

> [T]here is very little knowledge in the field, and there are not even any ongoing research studies upon which family court services workers can draw to effectively argue a particular custody choice, or to argue a suspension or limitation of visitation in order to protect children from disturbed parents, or from highly conflictual family situations after divorce. More research is needed which directly examines the impact of the California courts on children's adjustment.[56/]

Perhaps the most dramatic juxtaposition of public views was presented to the advisory committee on issues of custody. Eloquent spokespersons from the fathers' movement, such as Mr. James Cook, presented their view of discrimination against men in custody and the need to ensure that children have equal contact with both parents.[57/] Vivid portrayals of custody nightmares were also described by women who were forced to move long distances when their former spouses moved or sacrifice custody of their children and by those with small children who frequently traveled alone by plane in compliance with a custody order.[58/] While the members of the advisory committee were often moved by this testimony, they had no

ability to analzye the difficult situations presented. They did observe that the anecdotes sometimes reflected gender-based assumptions that appeared to affect the custody arrangements that had been ordered. More importantly, though, fathers and mothers who loved their children were being deprived of their company, usually to the detriment of everyone in the family, by courts based on very little research or knowledge about what is best for children.

d. The remedies

Issues of custody and domestic violence and the role of the mediator were excluded from this discussion and will be discussed in later sections. Similarly, an in-depth treatment of the need for judicial education in family law will be discussed in the section devoted to judicial education.[59/] Finally, a discussion of the administration of family law matters and the need for affording more judicial resources may also be found in a subsequent section of this chapter.

The advisory committee targeted education and research as its primary focus in this most difficult area of family law. The committee does not pose statutory reforms because finding solutions to these thorny problems was beyond the expertise of the advisory committee and because proposals to change the substantive law are beyond the usual purview of the Judicial Council. The advisory committee hopes that this summary of the debate will be a useful tool for education and research.

4. Special problems: custody and child sexual abuse

Findings

The seemingly irresolvable debate over whether joint custody is in the best interests of children in California

rages, but the debate is far eclipsed by the consternation and conflict apparently experienced by judges, lawyers, mediators, mental health professionals, and, most importantly, parents at the dilemmas posed by allegations of child sexual abuse within the context of dissolution proceedings. The advisory committee analyzed the debate and the testimony received. The committee's review was not exhaustive, and the testimony received was selective. The committee did not view its charge as offering solutions to the thorny problems posed by this type of custody litigation, but rather as examining the issue for traces of gender stereotyping and recommending ways to reduce the possibility of its occurrence. The committee concluded that the current state of confusion and disagreement about resolving these disputes creates an environment in which stereotypes about men and especially about women can readily influence decision making.

The advisory committee found:

1. Allegations of child sexual abuse are sometimes made by mothers against fathers in child custody disputes. These allegations present difficult issues for judges to resolve.

2. The evidence tends to support the conclusion that instances of false allegations are not common although they somtimes occur.

3. Explanations, other than that the mother was motivated to gain an advantage in the custody dispute or wanted to punish the father for leaving her, exist for the apparent tendency for allegations of child sexual abuse to surface in the context of a divorce when they were not made prior to the separation of the parties.

4. Stereotypes and prejudices influence decision making in this area of custody disputes. One striking example is the tendency to doubt the credibility of women who make these allegations and characterize them as hysterical or

vindictive even when medical evidence corroborates a claim of child abuse.

5. There is an urgent need for speedy and expert resolution of these disputes as well as defined protocols for judges to follow in taking the steps necessary to reach a fair and just solution in the best interests of the allegedly molested child.

RECOMMENDATION 6

Request the Judicial Council to
(a) adopt a rule of court or if necessary introduce legislation that would permit the family law judge in a case in which allegations of child abuse are raised to have confidential access to any existing investigatory reports submitted, for example, by Child Protective Services in the context of another proceeding outside the family law department and to consider the need for ordering an expeditious investigation of the child abuse allegations if there are not adequate reports. The goal of all of the departments of the court should be to limit the evaluations to one court-ordered evaluation. The investigation ordered must be conducted by a competent investigator who is well-trained in the area of child abuse, and shall be completed and submitted to the court as quickly as possible.
(b) adopt a Standard of Judicial Administration setting forth a model protocol for judges resolving custody disputes involving child sexual abuse allegations.

(c) mandate the inclusion of child sexual abuse issues and the model protocol in family law judicial education programs and other judicial education programs as appropriate.

Discussion and Analysis

a. Child sexual abuse and custody: the research

Custody disputes involving allegations by the mother that the father has sexually abused a child of the marriage trigger the application of stereotypes by those called upon to participate in the custody decision. Some fathers assert and some judges believe that the allegations are usually false and that they are made by hysterical or vindictive women seeking to gain financial or other advantage in a bitter custody dispute. Research in the field indicates that these stereotypes are not valid. Moreover, the fact that the charge of malicious false allegations is routinely made emphasizes the lack of credibility our system affords to women and children.

Although the advisory committee's review of the literature in the area of child sexual abuse was not extensive, several researchers who have paid particular attention to the issue as it arises in custody disputes informed the committee's thinking on this issue. Dr. Nancy Thoennes, who is the director of the Association of Family and Conciliation Courts Research Unit in Denver, Colorado, and who has participated with others in extensive research in child custody and mediation, asserts the following based on a two-year study in Colorado completed in 1988:

o Allegations of child sexual abuse actually arise in only a small fraction of contested custody and visitation cases

o The increase in the incidence of these allegations in custody and visitation disputes is probably due to the increased reporting patterns and media attention to the issue.

o Custody disputes involving sexual abuse allegations are the most time-consuming and complex cases heard in the family law departments which may account for the impressionistic reports by court attaches that these cases are increasing.

o No evidence that the allegations are typically false was produced by the study.

o Child sexual abuse may be first disclosed after divorce because it may begin then due to the hostility of the "abandoned" and allegedly abusing spouse.

o The accusation of mothers falsely and maliciously accusing fathers is based on a stereotype and is unwarranted.

o The study refutes the assertion that these custody disputes are "commonly motivated by a reporting parent who is vindictive or seriously impaired."[60/]

Another researcher corroborates some of these findings and states:

> There are several reasons abused children may be more likely to disclose abuse by a parent and to be believed by the other parent following separation or divorce. With the breakup of the parents comes diminished opportunity for an abusing parent to enforce secrecy as there is increased opportunity for the child to disclose abuse separately to the other parent. Decreased dependency and increased distrust between parents increases willingness to suspect child abuse by the other parent.[61/]

Practicing attorneys have supported these general assertions as well. Ms. Sandra Joan Morris, a certified family law specialist and past vice-president of the American Academy of Matrimonial Lawyers, has had extensive experience trying custody disputes involving allegations of child sexual abuse by the mother against the father. In a recent publication, she emphasizes as well that the vast majority (86 percent) of allegations appear to be substantiated. She also contends that experienced evaluators are able to discern when false allegations are being made. She points out the element of bias underlying these claims of false charges:

> In the cases reviewed in this article, most of the husbands were professional people who were able to maintain facades of normalcy and logical thinking, although they did not test as being psychologically sound. This finding is consistent with the current studies.
>
> Subsequent impulsivity and hostile behavior on the part of the father is often excused as being understandable given "what he is going through." The father's tenacity in fighting the case to the bitter end is matched by the mother's tenacity in doing what she thinks is necessary to protect her child. While either or both of them may be misguided, it is the mother who is almost universally blamed for the exhibition of this quality. As stated by MacFarlane, K, et al., supra " . . . it is much easier and more in accordance with our images of the world to regard a mother as crazy or hysterical than to recognize an otherwise seemingly rational and caring father as capable of the behaviors described."62/

Testimony presented to the advisory committee drawing from this research likewise corroborated the link between bias against women and their uphill battle to establish credibility in the courts and the issue of false allegations of child sexual abuse. Professor John Myers, an evidence expert and professor of law from McGeorge University, stated:

> The fact that women make most of the allegations of child sexual abuse, and the evidence indicates that that is so, may raise important gender implications. Male judges may feel a personal sense of jeopardy when another male is accused of child sexual abuse.63/

Professor Myers goes on to suggest that the claim of false charges may be due in part to the "predilection on the part of some males to see women as hysterical or particularly

vindictive and willing to stop at nothing when it comes to custody of children."[64/] He points out that women are in a double bind because they are either not believed or they are criticized for their failure to discover the abuse and protect the child. Professor Myers finds the roots of these views in historical treatises on evidence. In the testimony he presented to the advisory committee, he quotes John Henry Wigmore, one of the foremost experts on evidence who was very heavily influenced by Freud, as follows:

> Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted partly by inherent defects, partly by diseased derangements or abnormal instincts, partly by bad social environments, and partly by temporary physiological or emotional conditions.
>
> One form taken by these complexes is that of contriving false charges of sexual offenses against men. The unchaste mentality finds incidental but direct expression in the narration of imaginary sex incidents of which the narrator is either the heroine or the victim.
>
> On the surface, the narration is straightforward and convincing. The real victim, however, too often in these cases is the innocent man. . . .
>
> No judge should ever let a sex offense charge go to the jury unless the female complainant's social history and mental make-up have been examined and testified to by a qualified physician.[65/]

Ms. Sandra Joan Morris, cited earlier in this section, also testified at the public hearings. She emphasized the great lack of knowledge and study in the area of child sexual abuse, especially in the context of custody disputes. In

general, she asserted that studies show that children don't lie, or if they do it is relatively easy to tell when they are lying and that not many allegations of child sexual abuse are false and when they are the falsehood is usually not deliberately fabricated. The failure to believe women who allege child sexual abuse is based on the myth that women are more emotional, hysterical, and vindictive and results in the revictimization of the woman and the child. In one case in the witness' experience, the child was returned to the father and remolested. If possible, Ms. Morris believes that the child should testify.[66/]

Several women who are themselves mothers of allegedly abused children or are friends or family members testified and focused on: the lack of credibility afforded them and their children, the conflicting orders from different departments of the courts, and the lack of special training and expertise in this area.[67/] At the regional meetings these views were echoed. Spokespersons for men accused of sexual abuse, while not in agreement that false allegations are rare, joined others by insisting upon the importance of obtaining trained experts and upon resolving the allegation as quickly as possible. One attorney who represented many fathers said:

> My thought on that is a solution and it's an economic problem for the system is that we need an immediate process wherein if there is an allegation made, to get in and have our mental health professionals, our social workers get involved immediately and then be back to court in a matter of weeks, 20 days, back into court and intensely look into the allegations to help the courts make a determination of whether or not there should be some temporary restrictions between the parent and child.[68/]

California judges were also asked their views on allegations of child sexual abuse. The judges posed the

question: "How often do you hear allegations of child sexual abuse in the course of a dissolution proceeding," and asked the judge to select one of the following responses: always, frequently, rarely, and never. Of the representative sample, 44.1 percent of the judges selected "frequently" and 50 percent selected "rarely." When these responses were broken down by gender, the survey indicated that 68 percent of the female respondents answered "rarely" and only 32 percent answered "frequently" as compared to 43.3 percent of the male judges who answered "rarely" and 52.5 percent who answered "frequently." Clearly, male judges appear to perceive an increase in claims of sexual abuse.[69/]

The survey then asked the judges to relate how frequently the allegations of child sexual abuse are true. Again, the choices were: always, frequently, rarely, and never. Of the representative sample, 34.6 percent said that the allegations were frequently true, and 61.5 percent said that the allegations were rarely true. Note, however, that 58.8 percent of the women judges who responded said that the allegations were "frequently" true and 35.3 percent of the women said that the allegations were "rarely" true.[70/]

These responses to the survey indicate that there is a vast disparity in judicial opinion about whether claims of false allegations are warranted and within this disparity are even greater gender differences. Women judges tend to believe the truth of the allegations much more readily.

b. The remedies

False allegations of child sexual abuse are sometimes made by vindictive women in the course of a dissolution proceeding. There is no evidence, however, that false allegations are as common as some judges seem to think. Indeed, some commentators, as discussed above, believe that false allegations rarely occur.

What does seem clear, however, from the advisory committee's inquiry is that ambiguity and different standards for how an investigation of child sexual abuse allegations should be handled prevail. Delays occur that jeapardize children and parents alike. Different branches of the court become involved, which subjects the child to continuing and extensive questioning and which may cause inconsistent results.

The advisory committee suggests therefore that a rule be adopted that will permit court-ordered investigations by family law judges and access to the evaluations and investigations of other departments within the court with the ultimate goal that only one professional court-ordered evaluation be conducted. In addition, a model protocol for handling a custody dispute involving child sexual abuse allegations should be developed and serve as a guideline for all courts and should be contained in the Standards of Administration. Appropriate judicial education programs should then focus on the model procedures.

Dr. Nancy Thoennes in the study described in an earlier portion of this section has some suggestions about the characteristics of good expert evaluations in custody cases involving child sexual abuse allegations. She suggests the following:

o The value of an evaluation report is a function of the expertise of the professional who prepares the report. Some professionals have well-known biases that should be questioned by judges.

o The evaluator's credentials should include a demonstrated experience with family dynamics in sexual abuse, common characteristics of sexual abuse victims and offenders, and child adjustment to divorce.

o Every member of the family and extended family should be seen, and more than one interview of each person should be conducted.

o The evaluation should be court-ordered, and multiple evaluations should be avoided.

o The evaluator should consider not just the sexual abuse charge but all aspects of the family so that mistakes are not made regarding symptoms that might be explained in other ways.

o Issues to be explored in the interviews should be extensive and follow a set protocol.

o Psychological testing should be ordered using a combination of standardized tests.

o Evaluators should contact all other professionals who have seen the family on prior occasions.

o The resulting evaluation should be a product of the cooperation of the different departments of the court that might be concerned with the allegation of sexual abuse.[71/]

5. Division of marital assets

Findings

The division of assets in a dissolution proceeding was not a major focus for the advisory committee. Nevertheless some testimony on the issue was received, and the advisory committee found some evidence that:

1. The division of assets upon dissolution may follow the dictates of gender stereotypes.

2. Simplified procedures that can be carried out by lay people should be created to implement existing law that permits an accounting of marital assets during or prior to dissolution.

RECOMMENDATION 7

Request the Judicial Council to instruct the Advisory Commitee on Legal Forms to

develop a simple petition form that would permit a spouse to request an accounting of the marital assets as now provided in Civil Code section 5125.1.

Discussion and Analysis

Although the issue of division of marital property was not emphasized by the regional meeting and public hearing participants, some attorneys did comment on stereotypes and the ways in which they influence the division of property. One Nevada County attorney said:

> There is kind of in this county a definite feeling that male things went to the men, and what is called female, I mean female things went to the woman. And most things, one was if there was a pickup we knew it was going to go to the guy, you know. We got one issue where the pickup was really an issue because she ran a janitorial service. She needed the pickup to work. We thought maybe this time he (the judge) is going to say that she should get it. She didn't get it. He got it, even though it was her livelihood.[72/]

In the more affluent neighborhoods of Los Angeles, the issue is present, albeit in a different form. As one attorney told the advisory committee members: "I have had a female judge say, well, the man's going to get the Mercedes because he has to go out and start dating. Explain that to your client."[73/] Perhaps the conclusion here is whether we are talking about pickups or Mercedes, male or female judges, men and cars cannot be separated.

Other testimony on the division of marital assets stressed that a stereotype exists that women cannot handle money. Men are typically awarded the business or growth assets. This testimony was also corroborated in the family law focus groups in September 1988 at the State Bar Annual Meeting.

A second theme in the testimony on marital property was the need to properly implement existing law that permits one spouse to petition the court for an accounting of the marital assets.[74/] Ms. Dorothy Jonas testified about the new law designed to assist spouses in exercising their right of joint management and control over the community property by requiring disclosure. She asserted that the law has been ineffective because it is too expensive to hire a lawyer to force disclosure. A simple form is needed to enable a spouse to acquire the information without the assistance of counsel or at least make the process less expensive.

The advisory committee reasoned that the key to appropriate division of assets upon divorce may, in fact, be a strenthening of rights during marriage. At Ms. Jonas' suggestion, the committee recommends that a simple form be adopted to expedite the exercise of this right and reduce potential litigation on this issue. The advisory committee also noted that a bill that would have created a fiduciary duty between spouses similar to that which exists between business partners was passed by the Legislature but vetoed by the Governor. (See AB 2194 (Spiers).)

B. Impediments to the neutral participation in family law proceedings for judges, lawyers, and mediators

1. Judges

Findings

The family law assignment in the superior court, especially for proceedings seeking temporary orders of support, custody, or visitation, is one of the least sought after and most burdensome of all available judicial assignments. Many of the cases seem insoluble and the time afforded to resolve them is neglible when the seriousness and difficulty of the issues are considered. The situation is exacerbated when one considers in addition, as did the advisory committee, the potential for bias in decision making in this field of law, the lack of mandatory judicial education for family law judges, and the tendency to select for the assignment newly appointed judges who are often reluctantly assigned and have no training or background in family law.

The advisory committee found in the course of its examination of the judicial assignment in family law that:

1. Stereotypes about men, women, and divorce inevitably arise in family law proceedings.

2. Judges rate the family law assignment as their lowest preference by a wide margin.

3. Working conditions for family law judges are substandard. Time constraints, inadequate staffing, and pressure to move calendars augment the stress inherent in hearing matters of great emotional import to the parties and result in judicial burn out among family law judges, especially among those who hear requests for temporary support, visitation, and custody.

4. The inadequacy of the working conditions and the unpopularity of the assignment may both be due to relegation of "women's and children's issues" to the lowest priority.

5. More attorneys with demonstrated expertise in family law should be appointed to the bench.

6. In many counties, there is no gender diversity among judges hearing family law matters either because no female superior court judge has been appointed or elected in the county or because no female superior court judge has been assigned to a family law department.

RECOMMENDATION 8

Request that the Judicial Council refer to the Advisory Committee on Family Law the task of examining the working conditions and educational needs of family law judges and submitting recommendations for ways in which the family law assignment might be enhanced.

Discussion and Analysis

a. The effects of embedded bias in society on family law judges

Examples of the ways in which stereotypes about women and men permeate judicial decision making are pervasive throughout this report. They are important to emphasize here, however, because, in the advisory committee's view, bias in decision making occurs primarily because it reflects the bias of the larger society. Without education designed to provide information that will contradict the stereotypes upon which we often rely and sufficient time to make reasoned objective decisions reflecting that education, bias in decision making is more likely to occur. As Justice Donald B. King stated:

> There is bias. There is bias everywhere, and it's certainly present in the court system. It's present in the family law court system. If it's not present in the judges, it's often present in the parties themselves. And it's understandable, we all grow up with likes, and dislikes, and preferences, and some of them we -- I suppose are instinctive, some of them we can blame on our parents having given to us, and some of them we've had the pleasure of developing ourselves.
>
> In my experience, most judges, once they go on the bench, do try to put these aside. I think the first step to doing that partly is a result of judicial education, and partly, I suppose, a result of consciousness raising, is to recognize what they are, and to recognize that we all possess them and deal with it.[75/]

b. Family Law: assignment to Siberia

The task of the family law judge is to avoid bias in decision making under the most stressful circumstances and without appropriate resources. Further, the nature of decision making in family law is conducive to reliance on bias or stereotypes: there is wide discretion, little time, and limited opportunity for appeal. Judges who presented information to the advisory committee pointed to the following factors as contributing to the adverse conditions for family law judges and hence to creating a climate where bias is likely to affect decision making:

o In family law, there is "an emotional level that is unequalled in any other kind of case."[76/]

o Family law departments are inadequately staffed.[77/]

o The family law judge is often the newest judge on the court and usually has little or no experience in family law.[78/]

Ventura Superior Court Judge Steven Z. Perren eloquently described his experiences as a judge assigned to a family law department for one year. He said: "But day in and day out, I had anywhere from 30 to 50 settings a day for trials on OSC, plus anywhere from 5 to 15 walk-in ex parte applications, and that's one judge. You're not going to do a great job, be you Solomon or Perren under . . . that kind of a setting."[79/] Judge Perren stressed as well the need to afford the judge more time, the seriousness of the issues to be decided, the unpopularity of the assignment choice because of these issues, and the fact that many parties appear in court without representation.

It comes as no surprise therefore that family law was selected by a wide margin as the least favored area of assignment by judges who responded to the judges' survey. Judges were asked the following question: "If you were free to choose your judicial assignment which type of assignment would you choose?" They were asked to respond to this question by ranking in order of preference the fields of criminal, civil, juvenile, and family law by selecting 1 (most preferred assignment), 2, 3, or 4. The results of this question are listed in the table below for the entire sample broken down by gender and by family law and non-family law judges.

Assignment	Male	Female	F. Law	Non-F. Law
Criminal	1.7	1.6	2.3	1.5
Civil	1.8	1.8	1.8	1.8
Juvenile	2.9	2.7	3.1	2.6
Family	3.0	2.8	2.5	3.3

The table contains scores that represent respondents' rankings. The closer the score is to 1 indicates how often the item was ranked Number 1. As the table demonstrates, family law was selected at the very bottom of the list by every category of judge except for existing family law judges. Even family law judges selected family law as their third preference. The table clearly displays a uniformity of preference among judges for criminal law assignments and a uniform distaste for family law. Ironically, discussions with judges and practitioners in Los Angeles revealed that in some branches of the court judges compete for the family assignments. This represents a change from the past, motivated at least in part by the possibility of early retirement and subsequent service as private judges in family law matters. This phenomenon is increasing as the use of private judges in family law matters involving large sums of money also increases.[80/]

Attorneys report, as well, that judges in family law are sometimes untrained and uninterested and those who are not are often working under abusive conditions. One certified family law specialist who was the current chair of the family law section of the county bar association and who, as the chair of the section's rules committee, had worked closely with judges for the preceding four years testified at the Sacramento Public Hearing. She said: "Family law judges work themselves to death if they're good judges. And if they're good judges, they try very hard to do their very best in making decisions they're often not prepared for at all."[81/] She called for the immediate appointment of more family lawyers to the bench. In describing the qualities of a good family law judge, she said:

> I think a good family law judge is a judge who comes into a family law assignment with a positive attitude.

> Who does not look at this as being sent to Siberia. Who is willing to keep an open mind, who understands that just like all the rest of us as human beings, he or she has biases and prejudices, but is willing to be open enough to work very hard to put those aside. Who is willing to listen and to learn from the people who know.[82]

Attorneys appear to recognize as well that the selection process for family law judges may be one factor that contributes to the lack of interest and training. Moreover, the unpopularity of the family law assignment has been linked to gender issues. For example, another Sacramento family law attorney stated:

> We get the new judges. We get the judges who lost the toss of the coin in some of the smaller counties because no one wants to do the family law.
>
> It is the highest volume. It is the most emotionally draining, and again, normally, it's -- you either get it because you're the new judge, or you annoyed someone, and they've sent you back down to family law as a punishment, or as I said, in some of the smaller counties around Sacramento where there are only two or three judges, it's by the toss of the coin, and it's the loser who sits for that year in family law.
>
> It is this attitude that family law is somehow a woman's issue, and that attorneys and judges who practice in family law have not hit the big time yet. I think that this is one of the main reasons that we have difficulty in family law.[83]

Coupled with the need for the appointment of more family lawyers to the bench, attorneys noted the need for gender diversity of judicial appointments as well. For

example, one certified specialist who testified at the Orange County Regional Meeting noted the different experiences of men and women and how these differences can influence custody results. She said: "I think as long as men and women have different perspectives which they probably always will, we have to have women judges. Half of all people getting divorced are women. Half of them are women, but are half the judges women? So we just need a balanced perspective I believe."[84/]

c. The remedies

The advisory committee discussed possible remedies for the adverse conditions commonly experienced by family law judges and the general unpopularity of the assignment at the focus groups on family law conducted at the State Bar Annual Meeting in 1988. Mr. Steven Adams, a noted expert and educator in family law, presented his view that the family law assignment must be enhanced in some manner. He suggested increased staffing, the need for more judges, education, and consideration of sabbaticals. He also suggested that family law judges be given exit interviews as they leave the assignment. Possible questions might include: Why were you willing to be assigned in family law, why did you leave, what suggestions would you have?

The participants discussed the possible reasons for judicial antipathy toward family law and cited the following: judges feel they become too personally involved in the proceeding; they find it unpleasant, too personal, too fraught with bickering; they may believe that issues of property are more important than issues affecting people; and they may incorporate a general societal bias that accords more importance to money. Although these problems may not be caused by gender bias, they may be producing gender bias in many cases.

Based on the information gathered, the advisory committee determined that the Judicial Council may wish to

consider possible ways to enhance the family law assignment so that the underlying conditions that create the potential for bias can be ameliorated. The committee members believed that the appropriate body to make these recommendations would be the Judicial Council Family Law Advisory Committee, whose members are all specialists, both lawyers and judges, in family law. The committee noted as well, as stated in the concluding section of the report of the Courtroom Demeanor and Civil Litigation Subcommittee, that the need for the appointment of more women to the bench is crucial to ensuring fairness. The committee members further recognized that in light of the high volume and difficulties of the proceedings more attorneys with family law expertise should be appointed to the bench. While understanding that the Judicial Council cannot appropriately influence the appointment of judges, the committee nevertheless wishes to emphasize these points in its report without submitting a recommendation relating to judicial appointments.

B. Lawyers

Findings

Based on its findings concerning judges and discussions about attorney bias at the focus group for family lawyers in September 1988, the advisory committee favors early training for all lawyers on issues of gender bias in family law. Training will ensure that not only lawyers but also those who are ultimately appointed to the bench will be knowledgeable in family law and more likely to overcome stereotypic notions of the roles of women and men in their practice and decision making. Lawyer training on these issues will benefit the public and prospective clients by rendering attorneys more sensitive to these issues.

The committee also considered impediments that may exist for attorneys to fairly and vigorously represent their

clients. One of these issues, the awarding of attorney's fees and the lack of represenation in family law for indigent parties, will be considered later in this chapter. A second barrier appears to be the growing practice, designed to reduce court time, of mandating that motions for temporary support, visitation, and custody be submitted to the court on declarations without taking testimony. This practice, commonly enforced in at least one county, seeks to deprive counsel of examining the parties and may ultimately result in unfairness.

Accordingly, the advisory committee finds that:

1. To ensure that informed attorneys, and ultimately informed judges, engage in their profession without bias, major steps should be taken to provide for adequate training in family law that includes coverage of issues of gender bias for law students and lawyers.

2. The refusal to permit the taking of live testimony at a hearing for temporary support, visitation, or custody without exception may seriously impede the ability of counsel to ensure fairness for his or her client.

RECOMMENDATION 9

Request the Judicial Council to
(a) commend the advisory committee's report to the State Bar and the Committee on Bar Examiners and urge that family law and gender bias issues in family law be included on the State Bar exam and that education on gender bias issues in family law be required for certification as a family law specialist; and
(b) commend the report to all law school deans and urge that gender bias issues in family law be incorporated into the law school curriculum.

RECOMMENDATION 10

Request the Judicial Council to refer to the Family Law Advisory Committee the issue of precluding without exception the taking of live testimony at hearings for temporary support, visitation, or custody.

Discussion and Analysis

a. Legal education

Most law schools now offer family law courses, but they are ordinarily not required and do not necessarily cover the issues of gender bias that are the subject of this report. In the advisory committee's view, these problems are societal and all education and training of lawyers and prospective judges should include curriculum that covers gender bias in family law. As noted earlier in the chapter of this report devoted to considerations of courtroom demeanor and civil litigation, a judge's behavior reflects the norms and customs of not only the society but also of the legal culture. If from the beginning of their acquaintance with the legal world law students are sensitized to the issues of bias embedded in family law, the task of changing judicial conduct and decision making will be made easier.

It is not, however, for the limited purpose of training future judges that a suggestion to provide legal education on gender bias in family law is offered. At the focus group for family lawyers, attorneys admitted that in the press of business the behavior of some attorneys toward their clients might reflect gender bias. This especially occurs when a client is needy, upset, perhaps uncooperative, and the attorney's fees are low. Moreover, a greater understanding of the underlying

issues confronting women in divorce will improve an attorney's ability to represent his or her client.

Professor Herma Hill Kay, a professor at Boalt Hall School of law, immediate past president of the American Association of Law Schools, and a family law scholar, discussed the absence of courses and legal scholarship that directly relate to women's experience. She did so in the course of a discussion on the tenure of women faculty members, but her remarks are equally applicable to the woman law student. She stated:

> And I have to say that I do think that we have experienced a phenomenon in legal education, as in other areas of university scholarship, where young women have come into a field, they have seen first that the areas that interested them were not dealt with. They have felt that new methodology needed to be created to deal with those issues that they perceived, and they have formulated and created a new kind of scholarship. In legal education, we know it as feminist jurisprudence.85/

The advisory committee's conclusions on the issue of legal education in family law are echoed nationally. As stated in a New York Times article: ". . . [A]n increasing number of American law schools are reassessing and changing the way they teach family law. They are giving students more practical experience in casework and adding other disciplines, like sociology and economics, to their curriculums." The article also noted that more attention is being paid to family law due to the increased number of women in the work force and changes in the nature of family relationships. One professor assigns behavioral research on bonding between mothers and children as part of a course on child custody. One New York family law expert concluded: "Even if the lawyers never handle an adoption case, a divorce or any other family law matter, during their careers, I believe they will be better lawyers for having

completed these courses because what family law does is to show lawyers the tremendous impact that the law has on people's lives."[86/]

The advisory committee therefore suggests that law school and legal education include curricula designed to study family law and issues of gender bias in family law. The issues should be included in law school education, tested on the bar exam, and made a part of the certification requirements for family law specialists.

b. Reliance on declarations in hearings for temporary orders

Ms. Patsy Ostroy, past chair of the Conference of Delegates to the State Bar, reported that in the Central District of the Los Angeles Superior Court a rule has been proposed that would require submission of declarations in place of live testimony to resolve issues of temporary support, visitation, and custody. Ms. Ostroy contends that this incursion on the adversary system as a truth-finding mechanism is unwarranted.[87/] The advisory committee recognizes that resolution of these issues based on declarations may indeed save court time and obviate the need for time-consuming hearings to establish generally incontrovertible facts. The committee believes, however, that such a rule should not be rigidly and uniformly enforced. If, for example, serious allegations of child abuse or spousal abuse are at issue, live testimony may be necessary to preserve fairness to both parties. As noted by Ventura Superior Court Judge Steven Z. Perren in his discussion of ex parte matters when the parties are not before the court: "Number one, you typically deal with the cold word . . . in that you are receiving something by way of declaration as opposed to a human being who is testifying. Moreover, that cold word that you received is probably as much the result of the draftsmanship of counsel as it is the reality of the situation."[88/]

Accordingly, the committee suggests that the collective expertise of the Family Law Advisory Committee be brought to bear on this issue. An examination of whether this practice occurs without exception and its nature and extent should be conducted with a goal of preserving legitimate exceptions for cases that require live testimony to ensure fairness.

3. Mediators

Findings

An analysis of problems of gender bias in the system of mandatory mediation in family law disputes concerning visitation and custody now in effect in California was a complex and demanding task for the advisory committee. On the one hand, judges, lawyers, mediators themselves, and other experts not only stoutly defend the mediation system in California but also assert that the use of mediation has allowed the court to resolve disputes more expeditiously and with the benefit, knowledge, and assistance of mental health professionals. Moreover, mediators emphasize that client satisfaction is another basis on which mediation should be the method of choice for resolving family law custody and visitation disputes.

In this context, then, the advisory committee also was impressed with the contentions of the critics of mediation who especially decry the use of mandatory mediation without exception in all disputes covered by the enabling legislation. The critics point to serious inherent problems in the process, such as the often unequal bargaining positions of the parties, the lack of public accountability, the fact that mediation occurs in private and is not subject to public scrutiny, the coercive nature of mediation when the mediator's primary goal is settlement, and the fact that biases of all kinds, including gender bias, are just as likely to be embedded in the personalities of mediators as they are in the minds of judges. The critics

emphasize as well that the party who usually possesses the least bargaining power and the one most easily coerced is often the woman.

The advisory committee has struggled with these seemingly dichotomous views. The committee recognizes, however, that mandatory mediation in California is here to stay at least for the foreseeable future and that mediation is overwhelmingly supported by those who supervise and participate in its processes. To suggest that mediation be made voluntary has the potential of crippling an already burdened court system. When family law judges already report that they have insufficient time to handle grueling calendars, a suggestion that would increase that caseload by a large margin is untenable.

Thus, the advisory committee reasoned that the quid pro quo for retention of the mandatory mediation system must certainly be the improvement of the system to create safeguards that protect against the problems identified by its critics. Discussing and proposing these safeguards and challenging the family law legal community to develop new ideas and remedies is the primary purpose of this section of the report.

Accordingly, the advisory committee finds:

1. The level of qualifications and training of mediators throughout the state is not uniform and needs improvement.

2. Professional standards for mediators need to be promulgated that include an ethical duty to avoid bias in all aspects of the mediation process.

5. Dangers inherent in uniform mandatory mediation of custody and visitation disputes include:

o the possibility that one party will be coerced into agreement due to unequal bargaining power or acculturation that seeks to "please the mediator";

o the pressure to resolve the dispute and serve the court's goal of avoiding litigation may result in inappropriate or unfair agreements in some cases;

o mediators themselves are just as prone to exhibit biases, including gender bias, as are the other participants in the process and as a reflection of the bias of the larger society in which they perform their tasks; and

o the fact that mediation occurs in private and, as a practical matter, is not often subject to court review renders the accountability of the process questionable.

4. The public perception of the fairness of mediation is of vital importance to the court system. Therefore, public grievance procedures for complaints of bias or prejudice against mediators should be instituted.

RECOMMENDATION 11

Request the Judicial Council to
(a) instruct the Family Court Services Program to

(1) include the issues of gender bias outlined in this section of the report with respect to gender stereotypes and the relative power balance between the parties in its mediator training programs; and

(2) include an ethical duty to refrain from exhibiting gender bias or other bias in the course of a mediation in the uniform standards now being proposed pursuant to statutory mandate.

(b) adopt a rule of court that provides that to the extent recommendations are made to bench officers by mediators, the recommendations must be in writing with the reasons for the recommendations stated on a standard form developed for the purpose, and copies of the report and recommendation are to be made available to the parties by the court.

The rule should further provide that to the extent a bench officer relies on the recommendations contained in the mediator's report in making orders, the basis of the bench officer's determination is to be stated on the record unless otherwise waived by the parties.

(c) refer jointly to the Family Law Advisory Committee and the Family Court Services Program the task of studying the custody evaluation process in California and request the submission of recommendations promoting improvement of the qualifications and professional standards of evaluators.

(d) adopt a rule of court that would require that the parties to a mediation be informed at the initiation of the process what the process will entail and how the information obtained by the mediator will be used.

(e) adopt a rule of court that would create a simple grievance procedure for family law litigants who participate in mediation and that would vest oversight responsibilities in the family law judge or family law presiding judge. The proposed rule should include a requirement that family law litigants be informed of the right to submit a complaint regarding the conduct of a mediator.

(f) seek adequate funding to accomplish the goals set forth in this recommendation.

Discussion and Analysis

a. Introduction

California is one of three states[89/] with statewide provisions compelling mediation of custody and visitation

disputes in family law cases. In California, the law provides:

> In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. . . . The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interests of the child or children, pursuant to Section 4608.[90/]

California's latest statistics reveal that of the 171,120 dissolution petitions filed in fiscal year 1988-1989, 94,934 were disposed of before trial, 44,111 uncontested matters were disposed of after trial, and only 9,855 contested matters or approximately 5.8 percent of the total filings were actually tried.[91/] Although many of the contested cases resolved before trial were disposed of by the parties themselves or with the assistance of attorneys, a major portion were resolved in the context of court-ordered mediation. Thus, mediators and their work for the courts has a major impact and influence on California's divorcing families.

b. Mediation: the good news

The advisory committee was persuaded by the information gathered that judges who supervise and mediators who conduct

the mediation process believe in its effectiveness. Mr. Hugh McIsaac, who is the director of Family Court Services for the Los Angeles Superior Court, testified at the public hearing. Los Angeles has by far the largest family court docket of any other county in California. In Los Angeles, 42,035 petitions were filed in 1988-89, 32,920 were disposed of prior to trial, 8,373 uncontested matters were disposed of after trial, and 1,917 contested matters were tried.[92/] Mr. McIsaac's testimony outlined the advantages he perceived in the mandatory mediation system in place in California. He pointed out the following virtues of the system:

o Mediation creates a conflict/resolution process for most parties that they will need in their future dealings with each other.

o It provides parents with a way to avoid the adversary system in resolving their parental roles.

o Mediation promotes coordination between the disciplines including attorneys, judges, and mental health professionals who work together to "find sensible solutions for these families at a very difficult moment in their lives."

o It focuses on the needs of the parties rather than their extreme positions.

o Mediation creates options other than winning or losing and promotes creative compromise.[93/]

National research on the advantages of mediation has also been conducted. Dr. Jessica Pearson and Dr. Nancy Thoennes conducted a longitudinal evaluation of mediating and litgating custody disputes. In general, they cautiously found that on the average 60 percent of the clients in the study reached agreement in the process, that the clients seemed satisfied with the process, that soon after mediation compliance was high, that successful mediation improved the relationship between the former spouses, that more agreements resulted in joint custody arrangements, and that successful mediation

participants progressed through the system at a faster rate. While generally supporting the use of mediation, the researchers did express concern for the likelihood of success of uncooperative or otherwise uncompromising parents who, for example, have severely strained relationships, complex disputes, or serious financial problems.[94/]

California judges who have heard family law matters at some time during the preceding three years overwhelmingly support mediation. On the judges' survey, respondents were asked the following questions: "Do you think that the qualifications of the mediators in your court are adequate?" The answer "yes" was selected by 97.7 percent of the judges. When the sample that included an oversample for women judges is nalyzed, an interesting gender difference emerges. Of the women respondents 89.5 percent answered "yes" and 98.4 of the men made that selection.[95/] Thus, California judges with immediate experience in family law support the mediation system resoundingly and believe that mediators are qualified.

c. Suggestions for improvement

The imposition of mandatory mediation occurred in California after little empirical evaluation of its effects on women and children. Mediation was chosen as a method for reducing court time and referring messy custody and visitation litigation to the mental health professionals. The biases and value judgments of the mental health professions have been severely criticized by at least one family law scholar, Prof. Martha Fineman of the University of Wisconsin Law School. Prof. Fineman asserts that mental health professionals serving as divorce mediators are not in fact neutral parties. She states: "They have an institutional and professional bias for certain procedural and substantive results that promote their own interests and that will produce changes designed to enhance and ensure their continued centrality." She also perceives the

operation of mediator biases about custody arrangements as essentially detrimental to women. She argues:

> Joint custody can be a disaster if parents are unwilling or unable to cooperate. Such an arrangement may give a man continued control over his children (and through the children, control over his ex-wife's life), yet not result in increased assumption of responsibility on his part. Anecdotal evidence indicates that many women view joint custody as "losing" -- whereas many men view it as "winning" -- the divorce wars; as a result, many women bargain away needed property and support benefits to avoid the risk of "losing" their children. The negative implications of the shift to a therapeutic model and mediation remain largely unexplored.[96/]

Professor Carol S. Bruch of Martin Luther King, Jr., Law School at the University of California at Davis is concerned with the issue of fairness in mediation. She asserts:

> The substantive fairness of divorce mediation depends on the mediator's impartiality and on the ability of divorcing parties to effectively express and represent their own interests without the assistance of counsel but with the aid of a mediator. Although concerns of impartiality and adequate representation also arise in judicial proceedings, the matter is far more pressing in mediation because the process occurs in private, without the presence of attorneys or court reporters, and without access to appellate review. Even a skilled mediator cannot compensate for the sharp disparities in power and sophistication that often exist between divorcing spouses.[97/]

Another researcher who considers mediation an imperfect method but nonetheless better than the courts points out the following flaws: (1) the process is conducive to "emotional intimidation, asset-hiding, and the exertion of financial leverage;" (2) mediator recommendations are rubber-stamped, which creates concerns about due process and accountability; (3) mediation is difficult for the more passive of the parties, who is often female.[98/]

Outside the divorce context, worries about dramatic differences between the bargaining power of the parties have caused a reevaluation of unreflective expansion of alternative dispute resolution methods. While exempting divorce mediation from the scope of the article, the authors nevertheless pointed out some of the same inherent problems. Their concern, however, is primarily for the small businessman. James L. Guill and Edward A. Slavin, Jr., point out that the impecunious litigant embarking on a form of alternative dispute resolution or ADR can be induced to settle for a lower than just figure in order to obtain the settlement amount quickly. They point to the advantages of resolution of disputes by persons who are selected in a public process and therefore subject to public scrutiny and ethical duties that are subject to enforcement. They conclude:

> Clearly, alternative dispute resolution is highly appropriate in certain cases. However, for the less powerful it does not adequately ensure fairness, equality, and justice. . . . ADR should be a method of informed choice rather than the only means available for resolving disputes.[99/]

In California, the Senate Task Force on Family Equity was concerned with fairness in mediation as well. The task force called for safeguards to protect parents from undue coercion in mediation. They concluded, as did Prof. Bruch,

that fairness in mediation is a function of the individual commitment to fairness of the mediator, and they point out that perceptions of fairness vary from county to county because of the highly individual approaches taken in different regions of the state and the differing levels of mediator competence, qualifications, and training throughout the state. The task force asserted that biases including gender bias and bias in favor of certain parenting arrangements all affect the fairness of the mediation proceeding.

Several witnesses at the public hearings and regional meetings corroborate the views of these critics. One Fresno family lawyer told the advisory committee that he was aware of 25 women who had complaints against a certain mediator but felt they had no recourse for their complaints.[100/] Regional meeting witnesses from Butte County and Orange County told committee members that mediator recommendations were "rubber-stamped" by the court and that mediators had preferences for equal time-sharing arrangements.[101/]

A certified family law specialist who testified at the San Francisco Public Hearing pointed out the tyranny and injustice of expecting an abandoned party to quickly put aside all thought of grief and rage at the demise of a marriage and often at the betrayal of a spouse. The spouse might be expected, as early as 30 days after the breakup, to be willing to enter into mediation to arrive at a successful co-parenting plan. The certified specialist described a hypothetical case that she said occurred regularly in her practice in which a woman with young children is confronted with the disclosure of her husband's secret affair after perhaps a long marriage. The disclosure of the affair and, of course, other factors, result in the end of the marriage. The husband, especially if he has immediate remarriage plans, immediately files for dissolution. The wife is then confronted quickly with a proceeding for temporary custody that requires mediation. The attorney emphasized the fact that women are more apt to reveal feelings of grief

and rage whereas men are acculturated to hide those feelings. She also stated that more often than not it is the husband who has the affair when there are young children in the family, because the mother is occupied with bearing and caring for the children. In the course of the proceeding, the attorney told the advisory committee members:

> And what happens then is that the message, whether explicit or implicit, is given to them by the mediator, and by the evaluator, and often in the chambers conference with the family law judge, that if the woman doesn't clean up her act and stop being so emotional and vindictive and angry and start looking at the present, and start moving from right now onto what's best for the children, then that's going to be a factor that will be considered by the court in making its ultimate custody award. In other words, she's told perhaps 30 days after she's been left that she's not only lost her husband, but if she doesn't shape up fast, she's going to lose her children too, and I've seen it happen. I've seen courts make those orders. I've seen them made on the recommendation of evaluators and mediators who have looked at these situations and who have expected . . . that a woman would be able to transcend . . . probably the most devastating thing that could happen in a family situation, that she can transcend it in a period of as quickly as the husband can get into court to put on a motion for temporary custody, and that's 20 to 30 days.102/

More importantly, the attorney contended the woman is probably going to agree to a parenting arrangement that she is unable to live with, and then she will become a "basket case." The attorney concluded:

> It's quite unfair, and what the courts are doing when they impose this kind of -- what I would call an inhumane, unspoken standard on women that they're supposed to recover instantly, what they're doing is compounding the injury, blaming the victim, call it what you will, but they're not being reasonable, and they're not being humane.[103]

Members of the public came forward at each public hearing and told committee members often heartbreaking stories of their experiences in mediation. Although the committee members recognized that these stories are necessarily affected by the parties' anguish at the results of their custody battles and that their claims cannot be individually evaluated, nevertheless the committee determined that this testimony does constitute a public perception of unfairness in some cases and at a minimum a misunderstanding of the process. One particularly poignant example follows.

> I don't foresee any hope for him living anything but what we're living right now, which is a joint custody situation. We have equal time. The father does not work. He has no job, no home to speak of. I know -- I never know where he's going to be. I have no phone number to contact him when he's with the child.
>
> . . . I have never had a judge order our custody arrangement. It has always been a mediator and her recommendations. She never took into account anything that was ever going on in our lives. She coerced me, in the beginning, to discontinue my breastfeeding with the child so that the father's bonding rights were upheld. The more he insisted on, the more she gave him. The more she gave him, the less he followed through on what he wanted. He just continued to want more and more and more. The child is suffering and nobody seems to -- everybody seems to be more concerned

about the two parents, and somebody's going to have to look at these children, because they are our future.

They are going to be taking care of us when we're older, and if we have a whole society of mixed up children because the judicial system has not -- has failed them, there is no hope for the future.[104]/

d. The remedies

Mediators themselves are well aware that reforms are needed. The Family Court Services program at the Administrative Office of the Courts is engaged in a monumental effort to conduct statewide training and develop professional standards for mediators in accordance with the legislation that created the program.[105]/ The Director of the Administrative Office of the Courts in addressing mediators gathered for a statewide training conference charged mediators to be aware of the issues of equality of the sexes as well as issues of cultural diversity.[106]/

Researchers at the National Center for State Courts have called for increased focus and evaluation of the mediation process and have stressed some of the same issues described above that trouble the critics of mandatory mediation. They contend that little reliable information can be gleaned from the few research studies that exist. Development of management models are needed that will ensure "the dignity and the perceived thoroughness or carefulness of the procedure." They suggest that findings on client satisfaction are equivocal. They especially call for more studies analyzing gender-based differences in satisfaction with mediation. Finally, they express vital concern with ensuring the fairness of the procedure, a result that is dependent on the mediator's training, qualifications, and professional standards.[107]/

Accordingly, the advisory committee suggests that the problems identified by the critics of mediation be immediately addressed as follows:

1. The likelihood of mediator bias can be reduced by the inauguration of specific components in training programs on gender bias issues as they present themselves in mediation and by the creation of an ethical duty to refrain from bias included in the professional standards now being promulgated for mediators.

2. The process of "rubber-stamping" recommendations should end and the accountability of the process should be improved by rules that require written recommendations by mediators and statements of reasons by judges for their reliance on those recommendations.

3. The crucial task of child custody evaluation should be undertaken by qualified professionals who meet minimum standards and follow uniform professional standards.

4. To ensure public understanding and fairness, the participants in the mediation process should be informed about the mediation process and the uses for the mediator's recommendation and should be afforded a simple grievance procedure for resolution of complaints of mediator bias or unfairness.

5. Adequate funding for these important tasks should be made a priority.

C. Devaluation of family law

Not only do specific factors exist that impede the ability of judges and lawyers to ensure fairness in the family law courts, but in addition the various components of the entire system interact to create unfairness. This unfairness manifests itself in the form of inadequate allocation of judicial resources, delays, and conflicting and overlapping orders that affect families.

The advisory committee has identified this issue as an issue of gender bias for two reasons. First, historically family law has been devalued and deemphasized because it is associated with "women's issues" and women's work." Family law was one of the few entrees for graduating women law students looking for law firm jobs a scant 20 years ago. The care and feeding of the family, and hence its disintegration during dissolution, are associated with tasks that traditionally women have performed. Second, to the extent the family law system malfunctions or inexpertly and inefficiently performs its vital tasks, women are much more often the losers because they simply have less money. The primary caretakers in single parent families are much more often women, and they have fewer dollars with which to demonstrate their care and responsibility. When the system takes too much time it is the impecunious spouse, usually the woman, who suffers most. Delay is also exacerbated by the fact that there are not enough judges assigned to family law in light of the demands of the caseload. A mother who alleges, for example, child sexual abuse against a child's father may be subject to conflicting rulings from the family, juvenile, and criminal departments of the court or rulings from those departments in other counties. The lack of coordination and communication among these departments and courts hampers her ability to protect her child.

Accordingly, the advisory committee finds:

1. Too few judges are assigned and too few courtrooms are available to resolve family law matters in California.

2. The family law court has been relegated to an inferior status among the other departments and functions of the court and the proportion of the court's resources devoted to family law is not commensurate with either the volume, the issues at stake, or its importance to the parties and society.

3. The lack of available resources has sometimes resulted in coerced settlement of family law matters, coerced references to private judges, or denial of courtroom time.

4. Delay in family law is endemic; there is little case management; and these factors adversely affect the impecunious spouse who is more often the woman.

5. Conflicting orders affecting families and a lack of coordination and communication among the various departments of the court including those situated in different counties further exacerbate these adverse conditions for those families who are in the most distress.

RECOMMENDATION 12

Request the Judicial Council to
(a) refer the question of the need for more family law judges to the Judicial Council Court Profiles Advisory Committee and suggest that the committee should reevaluate the method of weighting family law cases to ensure that the number of bench officers available for assignment to family law is proportionate and appropriate to the family law workload; and
(b) amend the rules of court governing the duties of presiding judges to include a duty to allocate adequate judicial resources to family law cases in proportion to the weights given family law cases in determining judgeship needs and ensure that those bench officers assigned to family law are adequately trained in family law.

RECOMMENDATION 13

Request the Judicial Council to refer to the Family Law Advisory Committee the task of creating a pilot project applying the concepts of delay reduction and calendar management to family law cases. The advisory committee should work in cooperation with the gender bias implementation committee to ensure that issues of fairness are considered. The pilot project should be closely scrutinized and should contain both an evaluative and educational component.

RECOMMENDATION 14

Request the Judicial Council to develop protocols for solving the problems resulting from the overlapping jurisdiction of family, juvenile, and criminal departments within one court and among different courts as part of its implementation of Penal Code section 14010(b)(3), if funded, which requires the development of special procedures for coordination and cooperation in case management when a child is involved in overlapping proceedings.

Discussion and Analysis

1. Inadequate allocation of resources

> [I]n its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment, quite often being fobbed off on a commissioner. One of the paradoxes of our present legal system is that it is accepted practice to tie up a court for days while a gaggle of professional medical witnesses expound to a jury on just how devastating or just how trivial a personal injury may be, all to the personal enrichment of the trial lawyers involved, yet at the same time we begrudge the judicial resources necessary for careful and reasoned judgments in this most delicate field -- the breakup of a marriage with its resulting trauma and troublesome fiscal aftermath. The courts should not begrudge the time necessary to carefully go over the wreckage of a marriage in order to effect substantial justice to all parties involved.[108/]

The selection from a 1977 opinion written by Justice Gardner set forth above was quoted by Justice Donald B. King at

the public hearing in San Francisco. In Justice's King's view the improvements since 1977 have been modest. Justice King voluntarily sits on assignment in the superior court trying family law cases that have been set for trial three, four, or even five times. He described one county where there were approximately 17 different judges assigned to family law within a two-year period, and he pointed to increasing social problems such as drug use and domestic violence that require more attention and special expertise. He states:

> And these are the people who pay the taxes who support our courts. This is not some insurance company from Hartford. These are the people that live down the street. We treat them terribly. It's no wonder they feel there's some bias against them. There is. It's there. It's there in the whole system. And I think until we change the system, at least in the family law area, we can only expect modest results.[109/]

Ventura Superior Court Judge Steven Z. Perren echoed Justice King's sentiments when he testified at the Fresno Public Hearing. He spoke of insufficient time allotted to resolve family law issues and too few resources in light of the significant issues presented. He called for giving family law the "principal spotlight" rather than relegating it "off to the side of the courthouse."[110/] Similarly, in a judicial profile printed in the Los Angeles Daily Journal legal newspaper, a profile of Judge A. Richard Backus of the Sacramento Superior Court quoted him as saying:

> I sometimes wonder about a system that is willing to spend a week on a personal injury automobile accident case involving a claim of $10,000 and yet devotes so little resources, comparatively, to things that are really vital to people's lives. And [those things are] the dissolution of their marriage and the custody of their children. . . . [The

work] is high volume, high emotion and after awhile, when you are able to you get out. Perhaps more continuity could be accomplished by a reduction in some of the stress and load on those departments.[111]/

Responses to the judges' survey confirm these assertions by family law experts and judges. Only 48.5 percent of the respondents stated that they have enough time to adequately adjudicate the temporary custody motions on their calendars. In contrast, 32.7 percent said that they thought they did not have enough time, and 18.8 percent said they did not hear temporary motions.[112]/

Judges were also asked an open-ended question about their views on the adequacy of facilities and staffing for family and juvenile law departments. The table below reflects their responses.

Please explain your views of whether the number of judges, the facilities, and the staffing for family law and juvenile departments are adequate. To the extent these resources are inadequate, what factors do you think contribute to the inadequacy?

Response	Percent
Resources, staff, facilities inadequate	29.3
Lack of funding causes inadequacy	13.3
Resources are adequate	10.3
Nature, overabundance of cases causes inadequacy	9.5
Low priority of area causes inadequacy	6.8
There is a need for specialized judges in this area	8.1
No experience	8.4
Miscellaneous	14.4
	100% (n=100)[113]/

Mediators and attorneys agree. Dr. Mary Duryea, director of Family Court Services in Alameda County, recounted:

> I think that I would second Justice King's statements about a bias that's more subtle in terms of family law, which is its second-class citizenship within the court, in terms of the amount of resources it gets, in terms of the whole -- the number of judges per case, and so forth.
>
> In terms of the income that the staff make, for example, the family court services personnel, even though (they) have a great deal of training, and in addition have a requirement of two years of additional community service, plus a list of specialties in terms of experience to come up to, and unfortunately, I don't know how to understand this, but generally, those family court services people are women, probably 60 percent of them are women, and generally, of course, the judges are men.[114]

These sentiments are echoed by certified family law specialists. Ms. Hannah Beth Jackson, a member of the Senate Task Force on Family Equity, queried: "I would like to know why a $15,000 or even a $50,000 personal injury case can get a 10-day jury trial in the superior court, and a $10 million, if you should be so lucky, case in a family law matter gets an hour or two hours, and maybe a day if you're lucky."[115] Those gathered at the focus group for family lawyers at the State Bar Annual Meeting in September of 1988 talked as well about the tendency to "force" settlement, sometimes unjustly, because of the unlikelihood that trial time will be afforded in complex family law cases.

An attorney at one of the regional meetings related the following case history:

I was involved, approximately a year ago, in a very heavily contested custody case in which there were substantial issues, among which was an allegation of sexual abuse supported by corroborating testimony of mental health professionals and others. In other words, this was a charge; whether true or not, it deserved attention. I think it deserved the attention of the judiciary.

We were on the trial calendar. Our case was called. Even though there were courtrooms available, I was told that there weren't any available for that case, and, quoting the judge, "Why wasn't this matter resolved in mediation?"

Well, I had a client, who happened to be the mother, who was very upset over this event in her life, and that of her child. Her husband, who was in danger of losing his medical license, was equally very upset by this whole proceeding. Both desperately needed to get it resolved, to get it behind them. We did not get a courtroom.

And when I pointed out to the judge that in custody cases there is a statutory preference in setting, the judge reacted as though I had the effrontery to bring that to his attention. Eyes rolled heavenward, and he said, "Dropped from the calendar."

. . . I don't know what I was supposed to tell that client. I didn't have an answer for her, but I think that illustrates the kind of -- I'm going to call it bias, and I don't think it's too strong a word -- the type of bias that . . . exists in many of our superior courts concerning problems that emanate from the family.

And if one wants to identify the root of that, I strongly suspect -- I don't know, but I suspect that it has to do with the denigration of what are considered feminine concerns in our society.[116]/

Another certified family law specialist and former chair of the State Bar family law section further related the denial of sufficient time to conduct an adequate trial or the refusal to permit trial at all to gender bias issues in that "the person who is hurt in a family law case is usually the spouse who's not in control of either the money or the property. And as our society is currently constituted, that person is usually female."[117/] The attorney went on to illustrate the point by describing a case in which the parties were forced to pay for a special master to resolve the substantial property issues in a case with a 30-day time estimate. Had the attorney's client been poor and the issues related to custody and visitation instead of money, this option would have been unavailable. Others confirmed that these problems were especially prevalent in those counties that send out family law trials on the master calendar rather than to an established family law department.[118/] Attorneys in Fresno and Orange County as well called for more family law judges.[119/]

2. Delay, delay, delay

Professor Carol S. Bruch when asked to provide the advisory committee with her ideal research agenda for family law replied, in part: "What are the effects of calendaring delays? Whether because mediation is taking place, or because there's a trailing calendar, or because of litigants maneuvering. What is that impact on a needy spouse's ultimate awards? Is that person forced to settle? . . . . (T)hese kinds of matters have a tremendous impact on the ability of the financially weaker person, obviously, most often, the woman, to maintain a posture which could maximize that person's award."[120/]

To reduce delay and its effects on family court litigants, Justice Donald B. King has instituted his own program of

individual case management in family law. He sits on assignment in the San Francisco Superior Court and selects specific cases. The parties stipulate to his hearing the matter and to a series of ground rules. His approach includes early judicial intervention, management and control of the litigation, informal exchange of discovery, and cooperative and inexpensive dealings with attorneys. He handles many tasks by conference call and believes his system may ultimately save court time.[121/] State Bar Board of Governors member and family law specialist Ms. Patricia Phillips has also called for active case management of family law cases from their inception.[122/] Mediators, as well, recognize the need for case management and a system akin to the one Justice King has initiated on an experimental basis.[123/]

3. Conflicting orders affecting families

The advisory committee did not undertake to analyze the complex interaction among the family law, juvenile law, and criminal law departments that might affect families in, for example, cases involving domestic violence or child abuse. Testimony was submitted, however, by mothers and advocates as well, attesting to the problems created when jurisdictional conflicts occur both among the departments in one court and among different counties, especially in rural or regional areas.

One family law attorney in Los Angeles described her representation of a father in a dissolution proceeding. In the course of the proceeding the mother alleged that the father had sexually abused his child. The family law department issued a custody and visitation order based on a psychiatrist's report. Subsequently, one of the child's counselors reported that the child displayed sexual awareness in play, and the child became the subject of a dependency proceeding. Thereafter, the father saw the child only in supervised visitation. Approximately one and one-half years later, the case was resolved, and no finding

of child sexual abuse was substantiated. The ultimate custody and visitation order was, however, more restrictive than originally suggested by the psychiatrist. The public hearing witness related this case to the advisory committee to show the way the different departments in the court interact or fail to interact and how delays in the system potentially adversely impact parents. The attorney concluded: "[T]here clearly has to be . . . at a minimum a better understanding between the family law judicial officers, and particularly those who have been doing family law for a long time and really don't understand how the dependency system works."[124/] Attorneys gathered at the focus group for family law attorneys also recognized that the lack of coordination between the family and dependency court causes problems for families.

Witnesses at the public hearings discussed the possibility of a family court, an issue that was debated when the original no-fault divorce law was promulgated.[125/] A family court proposal has also been the subject of inquiries conducted by the Office of the Attorney General[126/] and the Senate.[127/] Judges in general have opposed the creation of a family court, partially in fear that both juvenile and family law departments will suffer even less prestige and fewer resources than characterize the present situation.[128/]

Legislation effective January 1, 1990, will at least partially alleviate some problems. Welfare and Institutions Code sections 304 and 362.4 now provide that when a child is declared a dependent, all orders of the juvenile court take precedence over other orders or serve to modify existing orders. The orders issued by the juvenile court can be filed in and are effective in other counties. California Rules of Court, rule 1457, adopted by the Judicial Council implements this leglislation.

The Attorney General's report, referred to above contained a recommendation that "Courts and court systems should develop efficient means of communicating with each

other regarding proceedings involving the same child or family."[129/] Legislation implementing some of the recommendations contained in the report also provides that court systems should develop: "special procedures for coordination and cooperation in case management when a child is involved in criminal and dependency proceedings, domestic relations and dependency proceedings, dependency and delinquency proceedings, or related domestic violence proceedings."[130/] This aspect of the new legislation, if funded, will be supervised by the Judicial Council.

The advisory committee defers to the expertise of other bodies convened to study this problem. The committee does suggest, however, that its concerns regarding the conflicts among court departments and jurisdictions be considered by the council when the new legislation is implemented.

4. Conclusion

With these recommendations to reallocate judicial resources available to family law departments, to consider adoption of a case management system designed to reduce delay and promote efficiency in family law, and to develop protocols to reduce conflicts among departments and courts that affect families, the advisory committee hopes to ameliorate the inequities produced for families in California. The advisory committee believes that these reforms will assist all families and the men, women, and children that comprise them. The committee emphasizes, however, that the problems noted here disparately affect the spouse who is the primary caretaker of the children and the spouse who has the least access to and knowledge of the family finances or indeed any available funds. More often than not that spouse is the wife.

D. Other barriers to full and fair access to the courts for family law litigants

Findings

In addition to the issues for court management discussed in the previous section, the advisory committee examined the question of whether family law litigants enjoyed a meaningful right of access to the family law court. In analyzing this issue, the advisory committee asked the question: Are there obstacles, other than those relating to allocation of resources, delay, and overlapping orders, that impede the right of access to family law litigants, and do these obstacles have a more deleterious effect on some litigants as compared to others? In the course of this inquiry, the advisory committee realized that in practical effect the courthouse door is closed to many. This fact is of particular concern because dissolving a marriage, allocating custody, visitation, spousal support, and child support, and dividing property can only be accomplished in the courts. Although the courts use other methods along the way, there is no alternative dispute resolution method in family law that does not require, in the end, a court order.

Accordingly, the advisory committee found:

1. Public information on family law is grossly inadequate. Citizens do not know or understand the ways in which the family law court can and does affect their lives.

2. Representation in family law is grossly inadequate to serve the needs of the citizenry.

3. Inequities in the award of attorney's fees present serious obstacles to obtaining representation. These inequities include the denial of fees when they should be awarded according to case law and the granting of differential awards between male and female attorneys.

4. Additional obstacles to progressing through the family law system include obstructionist and unhelpful practices by clerks' offices, denial of appropriate requests for fee waivers, and imposition of job search requirements upon women receiving welfare grants for dependent children.

5. These barriers to access to the courts have their most serious impact on the poor and on the primary caretakers of children who are most often women in the context of the family law court.

RECOMMENDATION 15

Request the Judicial Council to instruct the Advisory Committee on Family Law to work with the Advisory Committee on Legal Forms to develop a general information booklet or other educational device for family law litigants setting forth the court's procedures regarding custody, mediation, investigation, enforcement of orders, definitions of relevant legal terms, and the way to obtain an accounting of marital assets.

RECOMMENDATION 16

Request the Judicial Council to (a) officially transmit and commend the advisory committee report to the attention of the State Bar, especially with respect to those portions describing the current crisis in family law representation, which has a disparate effect on women litigants; and (2) urge the State Bar to immediately create a task force to focus on solutions to this problem.

RECOMMENDATION 17

Request the Judicial Council to support legislation introduced that would codify existing case law that requires the trial court in exercising its discretion to award attorney's fees under Civil Code section 4370 to consider the respective incomes and needs of the parties in order to ensure that each party has access to legal representation to preserve all of his or her rights.

Discussion and Analysis

1. Access to information

The members of the public who testified at the public hearings presented often very persuasive and eloquent accounts of the personal trauma they experienced in the family law courts. One witness told an especially moving story of her grief at the custody order in her dissolution. Her former husband moved to another state and sought a modification of custody. The court's order ultimately provided for equal time-sharing of the young son of the parties to be exercised on alternate weeks. The court's order further conditioned this arrangement upon the mother's move to the state where the father lived. The witness attributed the custody arrangement to the son's slight preference for living with his father and a custody evaluation that relied on a study purporting to suggest that the best interests of the child would be served by an award that preferred the parent of the same sex. Her suggestions included, among others: that judges should be required to state the reasons for their decisions (her own statement of decision was one paragraph long and didn't explain much), that the appeal process should be faster, at least less that the four years she was told to expect, that information should be gathered about what really happens in custody decisions and with the mediators, and that questionnaires should be sent to every person who goes through mediation in order to obtain feedback from the actual litigants about the process."

This young woman traveled from her home in a distant state to testify before the committee. She wrote articulate accounts of the events in her case. Her parents wrote to the committee as well. She appeared to the committee members as an intelligent and devoted parent. Her life had been seriously and adversely affected by the move she undertook to be able to

share custody of her son. She lost her job, vested pension rights, and the care and comfort of living near an extended family. She incurred significant expense. She did not come to the hearing to ask for intervention in her case, but rather to suggest that these serious matters of such dramatic effect on people's lives be explained to litigants and that they be given an opportunity to comment to the court on their experiences in mediation.[131/]

At least four to five witnesses at every public hearing came forward with personal stories of the ways in which they believed the court system had failed to appropriately adjudicate their dispute. Female witneses told harrowing tales of child sexual abuse, unenforced child support, and custody orders requiring them to choose between moving long distances or sacrificing custody of their children. Male witnesses told of being denied visitation of their children and of lingering preferences to award primary physical custody of small children to their mothers.

In Ventura County, a group of citizens have organized to protest what they deem unequal treatment for women in the Ventura Superior Court.[132/] From the court's point of view, these allegations are unfounded. What is clear, however, is that a basic misunderstanding has occurred. Judge Steven Z. Perren in commenting on the controversy in Ventura County stated:

> Well, one thing you can be relatively certain of, if the cases come to you for adjudication, there's a problem, the parents can't agree. The ones that can agree, you don't see. If the parents can't agree, whatever order you make is going to make somebody unhappy, and the somebody who is unhappy is going to focus on something that is going to explain something other than their own shortcomings, perhaps, is the reason why the order went as it did. The judge is the most available target.

> Now, it is true sometimes judges do make mistakes and the error is the judge's, but we have to find the resources, and we have to elevate the family law court to some status far higher than the one in which it now finds itself in order to, I think, avoid charges such as those which I now see of some form of bias or prejudice in favor of a mother or a father, particularly with respect to child custody.[133]

Included in the resources referred to by Judge Perren must surely be improving the information we dispense to family law litigants. Other courts throughout the state have embarked on a public education program. In Sacramento, San Francisco, and soon in Marin, judges have conducted public meetings so that citizens can meet the judges and understand the way in which the court works. Judges are recognizing that the public's understanding of the court system is minimal, and when that system intimately and adversely affects their lives, the reaction is angry.

Thus, the advisory committee suggests that public information about family law should be a high priority. A beginning might be to provide an informational booklet or other educational device that is multi-cultural and designed to dispel some myths and misconceptions about family law. The court should provide information about mediation and custody, the enforcement of court orders, the definitions of relevant legal terms, and the way to obtain an accounting of marital assets.

2. Access to representation

a. Lack of representation

Judges were asked the following question on the judges' survey: "During the last three years have you observed an

increasing number of family law litigants appearing in your courtroom who are unrepresented?" 60.8 percent of the judges responded "yes" and the remaining 39.2 percent responded "no."[134/] Thus, a large number of judges are realizing that unrepresented parties are increasing in our family law courts. The respondents were then asked to describe any problems for the parties or the court resulting from the lack of representation for family law litigants. The chart below illustrates their responses.

Response	Percent
Problems for the court, poor presentation, delay, burden on court personnel	45.6
Unfair results or treatment, lack of knowledge regarding issues, rights	36.8
Miscellaneous	8.0
No or very few problems	8.0
No experience in this area	1.6

Finally, judges were asked what means to ensure fair treatment for unrepresented parties might be employed. Of the respondents, 16.1 percent suggested that assistance by paralegals and nonattorneys be expanded, and 20.7 percent suggested that representation by attorneys and pro bono representation be expanded. An additional 29.9 percent suggested that court intervention, assistance, and referral might be appropriate.[135/]

The survey responses reflect strong recognition among judges that parties increasingly appear without representation; that problems are created for the court; more importantly, that fair results are jeopardized; and that increased representation or intervention is necessary.

Attorneys and others at the regional meetings join with judges in recognizing that there is a growing crisis in representation in family law matters. Ms. Mablean Paxton, chair of the Board of Directors of the Harriet Buhai Center in Los Angeles, explained that in Los Angeles their program is devoted to helping indigent family law litigants but that the demand for representation is so great that the assistance they provide is limited to the preparation of documents. Attorneys do not appear in court. This means that women, who make up the great majority of the program's clients, have no access to representation, cannot afford to hire experts to evaluate a house or a pension, and desperately need simplified procedures or other means of obtaining representation.[136/] The lack of representation was also observed by Mr. Hugh McIsaac, director of Family Court Services in Los Angeles, who suggested increased support for legal aid and the development of alternative dispute resolution methods.[137/] A certified specialist who practices in Ventura and Santa Barbara pointed out that often women have no access to the family's financial records and no money to pay counsel fees for discovery.[138/]

b. Attorney's fees

In In Re Marriage of Hatch (1985) 169 Cal.App.3d 1213, the appellate court reiterated clearly that under Civil Code section 4370 the trial court must consider the respective incomes and needs of the parties in awarding fees with a goal of ensuring each party access to legal representation. This laudable objective is apparently unheeded almost five years later. In San Diego, Ms. Kate Yavenditti, who heads the volunteer lawyer program there, stated:

> I think that those of us who represent low income women come into court with a mark against us.

> I mean, I've made comments to judges about it, how I -- you know, I know what you're going to do to me because you know who I represent and they laugh it off. But it's not a laughing matter, it's an absolute reality. We come into court and we don't get attorney's fee orders, . . . or lower attorney's fee orders, or . . . the attorney's fees will be deferred.
>
> Now, that doesn't matter to me a tremendous amount, because I'm paid staff at Volunteer Lawyer Program. But that matters a lot to our hundreds of attorneys who take pro bono cases, and who have the ability to ask for attorney's fees in court, and are not receiving them, but have to come back over and over again for returns on job searches, for returns to review visitation, for that sort of thing.139/

A long-time family law attorney in Fresno corroborated this information and described for the committee the plight of poor women as follows:

> I think there is a real problem when you have a woman who is forced on to welfare as a result of the famiy break-up, and the attorney goes into court and asks for attorney's fees,and it is postponed, deferred, postponed, deferred, and here is a poor woman who is trying to get representation to fight the bread-winner of the family who has all the money and she is penniless. And I will tell you that as an attorney, it is very difficult to represent these people when there is no money in the offing.140/

In Alameda County, the director of Family Court Services reported, attorney's fees were routinely denied at the time of the OSC hearing until bench and bar meetings were conducted to resolve the issue. The result was adoption of a local rule

regarding the award of fees to the spouse who has no access to the community property. Justice Donald B. King, the author of the Hatch, case vigorously supports the award of attorney's fee whenever possible, as does Ventura Superior Court Judge Steven Z. Perren. Attorneys at the Los Angeles, San Francisco, Butte, Orange, and Fresno regional meetings all confirmed the lack of appropriate attorney's fees awards. In Fresno, attorneys even reported that male lawyers were paid more than female lawyers for the same amount of work. One attorney stated: "I have been told on at least two occasions by two different judges, who balked at the amount of attorney's fees suggested and I have suggested, that when other male attorneys have asked for attorney's fees, the judge has suggested greater amounts, and I have been told with them looking me in the eye, 'You don't need as much as he does.'"141/

Affiliates of California Women Lawyers conducted a survey of 21 counties to determine local practices regarding the award of attorney's fees. Most counties reported that the majority of family law judges reserve attorney's fees at the time of the temporary order. Where fees are awarded, they are inadequate. Answers varied greatly on the question with regard to orders at the time of trial. Most counties responded that where fees are ordered based upon the ability to pay, they are not adequate. Most respondents noted that this practice adversely affects the ability of the spouse with no income or a very low income, most often women, to retain counsel. Comments on the reasons for these practices included: the lack of understanding of the current costs of litigation; the tendency to base the fee awards on a fixed schedule rather than on actual costs or ability to pay and needs; some judges' tendency to overlook the fact that equal division of the property (especially in the case of a deferred sale) does not necessarily amount to equal ability to pay fees; and the tendency of some judges to treat attorney's fees as "punishment" to the payor.

c. Other court procedures and practices

The committee determined that the lack of available representation and the failure to grant appropriate and warranted fee awards effectively bars the courthouse door for many, the larger percentage of whom are poor women. Moreover, the greater percentage of poor women tend to be members of racial and ethnic minorities, and thus discrimination and bias uniquely combine to create serious adverse effects for poor women of color. For a woman who does manage to get her toe in the door, however, the committee members found that the welcome is far from hospitable. Witnesses told the committee members, especially at the regional bar meetings, about practices and procedures that suggest a climate of bias and hostility.

In Orange County, for example, an attorney related her view that poor women are especially discriminated against. She told the committee:

> To some extent in our society we base our respect for other people on their success and that is very often defined by economics. And this carries over to credibility, it carries over to sympathies. I think that there is a sort of unconscious feeling that is projected perhaps by members of the bar as well as the bench that if only the poor worked harder that they would make more money and they would be more successful and they would be better off in what they're doing. To the extent that women are poorer, this comes out as militating against them.142/

A paralegal in Butte County who assisted women in obtaining temporary restraining orders and who worked at a rural legal services office covering five counties reported:

> [I]t is very difficult to tell sometimes whether what the client is

> experiencing is gender bias or if it is because the client is poor. And it is real tough to separate those two. Poor people are treated with a contempt that middle-class people are not treated with.
>
> When I prepared a woman for court, I would go through, "This is how you dress." Some women would show up anyway in what they had, which was not very nice. They would not get what they wanted as easily as another woman who was dressed better.[143]

Thus, within this sometimes hostile climate, practices and procedures have developed that seriously impair the rights of litigants to access to the family law court. As counties encounter increasing fiscal problems, they search for ways to reduce expenses. One of these ways, apparently, has been the denial of appropriate fee waivers in family law matters. This was reported in Butte County and neighboring counties and in the Fresno area. A Fresno family lawyer told the committee that fee waivers are denied for all those who are not receiving welfare benefits even if their income levels would qualifiy them for fee waivers.[144] In Sacramento, a legal aid attorney reported that in two Northern California counties proof of public assistance eligibility is required to be presented to the court before a fee waiver application can be filed even though the application requires a declaration under penalty of perjury.[145]

In one Northern California county, the court conducted what was described as a "fee waiver calendar," although the fee waiver applications are required to be kept confidential. All persons whose fees were waived went to a special calendar where they were grilled in a derogatory fashion, and most of the people appearing on the calendar were women. This practice is no longer followed, but only as a result of litigation.[146] In another county, the court took the position that a fee

waiver did not apply to the fees charged for mediation. Again, only after negotiation with counsel for the fee waiver applicants was the practice of denying waivers for mediation fees terminated.[147]

Practices in clerks' offices can also create barriers, especially for the unrepresented party. A legal aid attorney from a rural community told the committee members:

> There also is a tendency of the clerks if you are sending a pro per client that the pro per client is treated with disrespect, especially if the pro per client is a poor woman than if you have an advocate going in asking for the same forms. . . . If you are poor or you get labeled with that label of being poor or coming from the "wrong side of the tracks" . . . . (you) do not get treated the same.[148]

Perhaps the most serious example of a practice that clearly impeded access of poor women to the courts occurred in San Diego. There, a family law department imposed a requirement that women on welfare who appeared before the court either as a party in a default divorce, or as an applicant for a temporary restraining order, or even as a witness in an action to collect child support brought by the district attorney were ordered to show proof of job searches or face possible reduction of their welfare grant. All of the women were unrepresented. The job search requirement exceeded the requirements mandated in the welfare regulations that exempt women with young children and women who are attending school from work requirements.[149]

One of the attorneys who initiated litigation seeking an order prohibiting this practice described the effects of a job search order on the hundreds of women who have been affected. The women feel victimized, degraded, and humiliated. They often refuse to go to court, even when a restraining order is vital to their safety. No similar job search requirements

are imposed on women who are not working and not receiving welfare benefits.[150/]

Two of the women who were subjected to these orders testified at the San Diego Public Hearing. One woman is a single mother with a five-year-old son. She attends San Diego State University full-time. She has two part-time jobs and a guaranteed student loan and she is a welfare recipient. In the context of an action to collect child support from the father of the child, the judge asked her whether there was any emotional or physical impediment to her acquiring a full-time job and when she replied that there was none she was ordered to search for a full-time job and show proof to the court of her search at peril of having her welfare benefits reduced. She stated: "I totally felt he was very condescending in the courtroom, not only to myself, but I felt to all women, and especially ethnic people. . . . (H)e asked me if I thought that it was fair for me to be able to go to college and receive a four-year degree when other women weren't even able to finish high school, and he was making them support their children full-time, and why couldn't I go to work full-time and go to school at nights . . . ."[151/]

This practice was ultimately prohibited by the Court of Appeal in Anderson v. Superior Court (1989) 213 Cal.App.3d 1321. The court stated:

> Much of the outrage expressed by the petitioners and others over the court's job search orders relates to the dignity interest recognized under the California Constitution. . . . [W]e can understand how the court's actions here could be viewed as "unfair" and "arbitrary." At the very least it is counterproductive to require a custodial parent who is caring for a preschool child, attending college and/or working part-time to cease relying on AFDC benefits and find a full-time job. Consistent with the interest in fostering dignity and

> respect, legitimate efforts within AFDC guideline(s) to improve skills and education should be encouraged, not thwarted. We therefore hold that the court violated the petitioners' due process rights when it failed to provide adequate and timely notice of the family law procedure through which their AFDC benefits could be reduced or lost.[152]/

A more forceful and separate concurring opinion written by the same justice who authored the unanimous opinion of the court expressed serious doubts about the authority of the family law court to order job searches that would not be authorized under the federal and state statutory welfare scheme.[153]/

The committee members were further shocked to learn that the imposition of a requirement to learn English was also imposed upon occasion for non-English-speaking women. The same attorney reported:

> I have seen this court not only make job search orders for women on welfare, but order non-English-speaking women to learn English. You come back here in a month, and if you haven't learned English, or if you're not speaking English, you're in a class, then I'm going to order you off welfare. You know, that's certainly an issue for women of color, and as far as I'm concerned, it's an order that the court can't make.[154]/

Lack of affordable representation, the denial of attorney's fees at the time of the temporary order in a manner contrary to case law, and the imposition of other barriers such as the denial of fee waivers in a manner contrary to statute and the imposition of job search requirements and language requirements all are factors that conspire to deprive poor family law litigants, especially those who are female and

members of ethnic or racial minorities, of their rightful access to the courts. In the committee's view, the State Bar should consider this a crisis in representation and take immediate steps to investigate ways to extend the right to legal representation in family law. Further, the case law relating to the award of attorney's fees should be codified.

V. Conclusion: Family Law and the Future

E. The need for research and adequate statistical reporting

Findings

The topics considered in this section of the report collectively suggest an urgent need for information and research. The committee members were faced with determining whether bias exists in a family law system that provides researchers with very little data. Indeed, the committee members observed that in California major social policies concerning families are initiated often with little or no evaluative components. When statutory changes are criticized and resulting reversals of policy occur, it is often again without the benefit of comprehensive research and evaluation. The committee's work was especially hampered by the absence of this information.

The committee therefore finds:

1. Changes in family law are often initiated without a proper research foundation and without regard to future evaluation of the social experiment proposed.

2. Without proper research and evaluation a study of unfairness in the courts is seriously hampered.

3. California is no longer part of a national data collection system in family law.

4. The failure to conduct appropriate research and data collection is in itself bias because it insulates policies and practices from meaningful review and criticism and because similar inadequacies are not present in other fields.

RECOMMENDATION 18

Request the Judicial Council to add staff, budget, and other resources to provide for and ensure the creation of a uniform statistical reporting system in family law as required by statute and to reevaluate the priorities for research grants funded by the Family Court Services Program in light of this report.

Discussion and Analysis

Civil Code section 5180(b) provides that the Judicial Council shall:

> Establish and implement a uniform statistical reporting system relating to actions brought pursuant to this part, including, but not limited to, a custody disposition survey.

Civil Code section 5180(c) requires the council to:

> Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the following:
>
> (1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.

(2) The establishment of criteria to insure that a child support order is adequate.

(3) The development of methods to insure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 5183. The training shall include, but not be limited to, the order of preferences set forth in Section 4600 and the meaning of the custody arrangements described in Sections 4600 and 4600.5.

With limited funds and extensive mandated responsibilities, the Family Court Services program has made admirable progress to date in carrying out these statutory duties.[155/] It is the hope of the advisory committee, however, that this important work can continue and be augmented so that the special concerns of the committee can be addressed.

In virtually every area of the committee's inquiry relating to family law, practitioners, mediators, and professors spoke of the urgent need for more information and more research. The purpose of this section is to catalogue some of the suggestions received and to suggest that the implementation committee proposed in a later section of this report[156/] be called upon to participate with the Family Court Services program in the research and information gathering choices to be made in the future.

An urgent call for more funding for research in family law was also issued at a conference sponsored by the Earl Warren Legal Institute of the University of California at Berkeley and The Institute for Research on Women and Gender of Stanford

University in November of 1988. There, distinguished scholars from throughout the country dicussed the need for the development of more state-specific information so that new social policies can be assessed and the effects of already instituted changes in the law can be evaluated.

What follows is a brief summary of some of the suggestions made at the public hearings conducted by the advisory committee. This summary is derived from the testimony of the following experts: Dr. Janet Johnston from the Center for the Family in Transition; Mr. Hugh McIsaac, director of Family Court Services for the Los Angeles Superior Court; Ms.Betty Nordwind, executive director of the Harriet Buhai Center for Family Law in Los Angeles; Professor Herma Hill Kay of the University of California at Berkeley, Boalt Hall School of Law; and Professor Carol S. Bruch of the University of California at Davis, Martin Luther King, Jr., School of Law.[157/]

First, California needs to once again participate in the national data collection efforts that establish basic demographic information about the parties to dissolution proceedings in California. Without this basic information, California's practices cannot be compared to those in other states and national researchers are hampered. We need to discern whether differential treatment is evident in the actual awards made with respect to low-income parties, and we need to be able to compare practices and procedures in different parts of the state. An examination of whether there are impediments to access to the courts should be undertaken. An evaluation and "feedback" loop must be created when new law or policies are adopted.

Information on child support including statistics on its collection and whether judges are deviating from the guidelines is needed. Similarly, the relationship between child support and spousal support should be examined, and an analysis of the interplay between custody and support should be undertaken.

Custody is an especially important area of inquiry. We need to know what the effects of divorce on children really are, particularly in high-conflict families. An examination of the viability of a primary caretaker standard in custody should be conducted, and the interplay between custody and parents who move to distant locations should be studied.

These areas of inquiry have proved to be vital to the study begun by the advisory committee, but the corroborative data gathered by the committee is incomplete. To institutionalize the changes suggested in this report, a more vigorous and comprehensive research program should be launched.

B. Judicial education

Judicial education in family law is essential to gender fairness in decision making. This principle was pronounced by Justice Donald B. King, who equated the success judges have in putting aside bias with the benefits of judicial education.[158/] It was reiterated by Dr. Mary Duryea, director of Family Court Services for the Alameda Superior Court, who said: "[I]n the absence of that experience as a family law judge, and training from organizations like CJER, . . . judges tend to rely on, and fall back on their own personal experiences."[159/] Professor Herma Hill Kay noted for the committee that the no-fault divorce law was predicated on the creation of "an educated judiciary senstive to the concerns of women and children in family law cases."[160/] Certified family law specialists recognized the need and called for education on spousal support awards and the economics of divorce, the realities of child support schedules, and joint custody.[161/]

The judges' survey asked: "In your opinion, in which of the following areas of judicial education should increased attention be paid to the effects of gender bias on the court system?" Judges could choose among the following: criminal

law, civil law, family law, juvenile law, other, and none. If a category of education was selected, the judge was asked to list specific issues that need to be addressed. Of the respondents 34.5 percent indicated that increased attention to gender bias issues in family law would be desirable. The most commonly cited areas for increased attention were custody and visitation (40 percent) and support and economics (26.2 percent).[162/]

Thus, judges, mediators, professors, and practitioners have urged increased judicial education in family law as the clear path to ensuring gender fairness in our courts.

A recommendation on the nature and scope of judicial education can be found at Tab 9 of this report. This section will provide a summary of the content areas the committee would like to suggest for inclusion in the programs to be developed on gender bias issues in family law.

Education programs for family law judges should include:

o Information concerning the economic impact of dissolution including (1) the impact on the parties, and especially on the caretaker spouse, and (2) the general costs of living, and the costs of child rearing and of child care.

o The importance of early attorney's fees orders.

o The issues surrounding the concept of joint custody and the factors to be considered in the making of custody determinations.

o Sensitization to the problems of pro. per. litigants in family law courts, and awareness of programs available to provide counsel to indigent and low-income persons in order to be able to recommend opportunities for legal assistance.

o Knowledge concerning resources available to the court and to litigants in family law matters.

o Avoidance of the use of stereotypes in all areas relating to family law and most particularly in the division of assets and in the awarding of custody and visitation.

- Appropriate handling and the determination of credibility in child sexual abuse cases.

The members of the advisory committee unanimously believe that with ambitious programs of research and judicial education designed to analyze and monitor our policies and practices in family law and then to supply the judiciary with this much-needed information, gender equality in family law may truly be achieved.

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ACHIEVING EQUAL JUSTICE FOR VICTIMS OF DOMESTIC VIOLENCE

The Report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Domestic Violence

Ms. Sheila James Kuehl, Chair of the
Domestic Violence Subcommittee
Managing Attorney, Southern California
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> The Legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. There are hundreds of thousands of persons in this state who are regularly beaten. In many cases, the actions of domestic violence lead to the death of one of the involved parties. Victims of domestic violence come from all socioeconomic classes and ethnic groups, though it is the poor who suffer most from marital violence, since they have no immediate access to private counseling and shelter for themselves and their children. Children, even when they are not physically assaulted, very often suffer deep and lasting emotional effects, and it is most often the children of those parents who commit domestic violence that continue the cycle and abuse their spouses.
>
> -- Welfare and Institutions Code, section 18290

Many people wonder, why does a woman stay? Well, one of the reasons she does stay is because she's extremely distrustful of the judicial system, that it's not going to help her . . . . From the time the police arrive at the home, until the time that she is standing before the judge, she is . . . victimized. . . . [M]any . . . officers have the attitudes that, well, I've been out here three or four times before and she doesn't leave, well, I'm not going to do anything about it this time, because she's not going to do anything about it. . . . If she does, somehow is able to get the information that there's a restraining order available . . . she gets to the clerk of the court and, again, sometimes misinformation is given out. . . . [I]n _____ County the clerk is informing women that they have to pay filing fees, and we all know that that was discontinued two years ago . . . . If she can't afford it, she doesn't get the restraining order . . . And then, finally, after she does get this restraining order, she gets her day in court to tell her side of the story to the judge, and he's [the batterer] standing there, very much intimidating her. The mediation of custody around the children, it's her and him and the mediator . . . . She's intimidated by the judge . . . we don't have the resources to send them to attorneys so . . . it's very intimidating to walk in for the first time and not know exactly what's going to happen, what the procedures and the processes are . . . . Also . . . if he does get sentenced . . . it will be very light. Usually he will get off, and it's nowhere near like what he would get if he had committed this crime on a stranger, you know, it was his wife, and it was not a stranger. . . . And to her, you know, well, why should she go through all that process if nothing's going to happen to him, and nine times out of ten, he's going to come back and victimize her again, even worse this time than before.

Domestic Violence Victim's Advocate
Fresno Public Hearing, Transcript,
pages 203-205

I. Introduction

The quotations from Welfare and Institutions Code section 18290 and the testimony of the domestic violence victim's advocate set forth above illustrate a wide and disturbing disparity between the letter and intent of the law pertaining to domestic violence and its actual application. Testimony and survey responses further documented this gulf in understanding.

The Legislature and the justice system have long recognized that domestic violence is a problem of vast proportions. For example, Welfare and Institutions Code section 18290 was first enacted in 1977 and constituted the legislative findings and declaration supporting the creation of pilot programs to establish domestic violence centers to aid victims. The same language was included when the pilot program was made permanent in 1980 and the state agreed to support the programs. In its findings the Legislature emphasized the huge numbers of victims, the presence of violence without regard to socioeconomic or ethnic group, the particular suffering of the poor due to lack of access to counseling and shelter, the harm perpetrated on children, and the likely continuing cycle of violence. The Domestic Violence Prevention Act (DVPA) (Code of Civil Procedure section 540 et seq.), enacted in 1979 and operative July 1, 1980, provides a comprehensive statutory scheme for the issuance and enforcement of civil restraining orders designed to protect victims of domestic violence. And, domestic violence has long been recognized in California as a crime. [PC § 273.5.]

Further, the committee believes that marked improvements have occurred in providing services to the victims of domestic violence, and that the California judiciary is strongly committed to resolving issues of domestic violence in the courts. Responses to the judges survey indicate, for example, that 75.5 percent of the respondents disagreed or

strongly disagreed with a statement indicating a preference for avoiding domestic violence cases.[1/] 82.8 percent disagreed or strongly disagreed that court staff view domestic violence proceedings as more burdensome than other types of cases,[2/] and a large majority believe that domestic violence proceedings are not burdensome for court staff. This response is particularly noteworthy in light of the acknowledged difficulties presented by domestic violence proceedings: the emotional turmoil of the parties, the danger to public safety, and problems of proof when complaining witnesses recant.

The committee also concludes that the courts can play a more effective role in the realization of legislative reforms begun long ago.

> One's worst nightmare is being a victim of domestic violence . . . I found that not only did the judiciary lack an understanding of me, but as well, its extended branches, law enforcement, attorneys in the courtroom, and, at times, there was even a lack of understanding among the friends I had . . . . I ask that you consider . . . what recommendations can be done within the judiciary that can improve the system. It's been an ordeal for me. I really don't want to have to come back.
>
> Rosa Moran-Durst
> Los Angeles Public Hearing,
> Transcript, pages 120-127

The committee heard repeated and very moving testimony that the courts offer the last and sometimes only protection available to vast numbers of people who suffer and hope to end the violence in their lives. It also heard repeated and very moving testimony that victims of domestic violence are often denied access to the protection of the justice system. The committee concludes that the justice system, when it fails to deal effectively with victims of domestic violence, contributes to their victimization.

Finally, a heart-rending record convinced this committee that an understanding of the judicial response to domestic violence offers the most compelling argument for the eradication of gender bias in the courts.

Numerous statistics on the nature and extent of domestic violence were brought to the committee's attention. The statistics are offered here, not as proof to support the stated facts, but to emphasize the severity of the problem that the courts must face.

-- An estimated 30 percent of female homicide victims in this country are killed by their husbands or boyfriends.[3/]

-- Almost 60 percent of married women are subject to physical abuse by their husbands at some time during their marriages.[4/]

-- A recent figure reflects that an estimated three to four million American women are battered each year by their husbands or partners.[5/]

-- In 1988, in California, the total number of domestic violence calls for help received in all counties equaled 182,540.[6/]

-- The National Crime Survey showed that after a woman is first victimized by domestic violence, her risk of being victimized again is high and that during one six-month period approximately 32 percent of the women who are abused once were victimized again.[7/]

-- Nearly half of all incidents of domestic violence against women discovered in the National Crime Survey (48 percent) were not reported to the police, and a victim who called the police was 41 percent less likely to be assaulted again than one who had not called.[8/]

-- In 1984, the California Legislature established that 35 to 40 percent of all assaults are related to domestic violence and further concluded that the incidents of domestic violence that are actually reported represent only a portion of the total number of incidents of domestic violence that in fact occur.[9/]

-- 95 percent of all victims of domestic violence are women.[10/]

These statistics clearly reflect that although domestic violence is a crime and a pattern of behavior that affects men and women, both young and old, women are the primary victims of domestic violence and the failure to address the protection of victims and ensure their access to both the civil and criminal justice systems has a disparate impact on the women of this state. However, the fact that domestic violence affects more women than men and the fact that the inequitable or ineffective application or enforcement of the law has a disparate impact on women is only part of the committee's analysis of how gender bias operates in the court system to the disadvantage of domestic violence victims.

The advisory committee's working definition of gender bias is set forth at page 2 in Tab 1 of this report. Not only does gender bias include the disparate treatment of men and women, it also includes reliance on myths and stereotypes about the roles and nature of men and women and the "lack of understanding of the realities of men's and women's lives."[11/]

Laura Crites, in her article entitled "Wife Abuse - The Judicial Record," describes some of the stereotypes that have been applied historically to victims of domestic violence: women, because of their inherent nature, are to be controlled by their husbands and physical force is a legitimate means of asserting that control; the husband is the legitimate head of the household and guards its privacy from intrusion ("a man's home is his castle"); and women provoke or deserve abuse.

In another article,[12/] Ms. Crites states:

> Gender bias can affect a judge in spouse abuse cases in the following three ways: (1) blaming the victim for not meeting her husband's needs and for provoking the violence; (2) tending to accept the husband's testimony over his wife's, and (3) identifying with the husband as a victimized male.

Other common and traditional stereotypes about women--that women are not credible, that they are overly emotional and tend to exaggerate, and, that their concerns are less important and their thoughts less valuable than those of men--may affect the judicial response, indeed society's response, to domestic violence.

Again and again, this committee heard testimony that police officers, district and city attorneys, court personnel, mediators, and judges--the justice system--treated the victims of domestic violence as though their complaints were trivial, exaggerated, or somehow their own fault. Some court officers were reported to have said as much, and some domestic violence victims and advocates imputed to court officers the deliberate intent to convey these messages. Most testimony, however, revealed that domestic violence victims perceived that they were not taken seriously, that they were not believed, and that their safety was of little concern to the justice system. Witnesses repeatedly testified, in effect, that "the judge did not seem to understand."

Based upon the perceptions and realities of injustice revealed in the testimony, the committee concluded that:

1. Some judges and court personnel approach domestic violence cases, whether consciously or unconsciously, with assumptions based not upon personal experience or the facts of a particular case but upon stereotypes and biases such as those described above; and

2. Some judges and court personnel lack information about the psychological, economic, and social realities of domestic violence victims.

The committee found that gender bias contributes to the judicial system's failure to afford the protection of the law to victims of domestic violence.

II. Chapter overview

This chapter sets forth the methodology used by the committee to gather data.

In several instances, the committee identified problems embedded in the substantive law that adversely affect domestic violence victims. Since, traditionally, the Judicial Council does not propose legislation to amend the substantive law, the committee has set forth a limited number of "special findings" that do not result in specific recommendations. These findings are offered to make a record in those areas that may require further inquiry and curative legislative proposals.

Special findings relate to the following:

1. The need to develop alternate means of serving process in domestic violence cases;

2. The need to mandate a waiver of filing fees in civil harassment cases involving domestic violence that does not fall within thre DVPA;

3. The need to provide court protection between the expiration of an Emergency Proctective Order and the next available hearing date;

4. The need to ensure access to the courts to economically disadvantaged litigants;

5. The need to provide legal representation in domestic violence cases;

6. The need to exempt domestic violence cases from mandatory mediation of custody and visitation disputes;

7. The need to consider spousal abuse as detrimental to the best interests of the child in decisions regarding custody and visitation;

8. The need for exceptions to the legislative policy favoring "frequent and continuing contact" in domestic violence cases;

9. The need for alternatives to joint custody in domestic violence cases;

10. The need for funding for alternative visitation programs; and

11. The need for post-plea domestic violence diversion.

The committee makes the following recommendations to the Judicial Council:

A. Protective orders

1. Temporary restraining orders (TRO's)

The committee developed recommendations and special findings on procedures to make TRO's more readily available, simplify application forms, make court hearings safer and clearer, limit the issuance of mutual restraining orders, and limit notice and proof requirements. Sensitive to the difficulties created when a victim, children in tow, must acquaint a series of judicial officers with a story already painful to tell, the advisory committee developed recommendations concerning direct calendaring of cases under the DVPA and the scheduling of hearings to coincide with hours when staffed children's waiting rooms are available.

2. Emergency protective orders (EPO's)

Statutory law provides for the issuance of EPO's at the request of law enforcement officers,[13/] when the courts are closed. The advisory committee recommends extension of the time limitations in these orders, so that victims may be ensured protection until the court is not only open but is able to issue orders.

B. Access to judicial system

The advisory committee found that a number of related factors discourage victims of domestic violence from using the

courts to obtain protection. Because the safety of victims may be further jeopardized by court appearances, the committee recommends procedures that take the victim's danger into account during court visits. Additional recommendations focus on ensuring greater access for non-English-speaking litigants and the economically disadvantaged and the need for representation in family law matters.

C. Child custody and visitation

The committee makes special findings and recommendations concerning mandatory mediation, Family Court Services procedures, standards and training for mediators, consideration of spousal abuse in custody and visitation orders, and models for alternative visitation programs.

D. The criminal courts

The committee makes a special finding that domestic violence diversion should be ordered only after a guilty plea has been entered and recommends that statewide standards for diversion programs be promulgated by the Judicial Council with appropriate participation by other agencies.

The committee also recommends that the Judicial Council transmit this report and commend it to the attention of prosecutors, victim-witness programs, and law enforcement, for purposes of continuing education.

E. Judicial education

The committee recommends that specific information and issues concerning domestic violence be included in judicial education courses on family and criminal law.

III. Methodology

The Domestic Violence Subcommittee participated with the other subcommittees in gathering information on issues related to the treatment of victims of domestic violence in the court system at five public hearings and six regional attorney meetings. Attorneys and lay advocates who testified at the regional meetings were asked a serious of subject-related questions. Judges, family lawyers, mediators, lay advocates, prosecutors, and law enforcement officers with special expertise in the area of domestic violence were asked to testify at the public hearings. Members of the public who were themselves victims of violence and one batterer also testified. This subcommittee further held three special hearings, in Los Angeles, Fresno, and Vallejo, to take testimony from three regional Coalitions Against Domestic Violence. These direct service workers provided a wealth of information about battered women's experiences with the justice system. The committee also received written testimony from the California Women of Color Coalition Against Domestic Violence, which provided extensive commentary on the interaction between gender bias and racial and ethnic bias for persons who are victims of both forms of prejudice. And, affiliate organizations of the California Women Lawyers gathered empirical data on services and procedures related to domestic violence in several California counties.

The judges' survey contained a comprehensive section on domestic violence that proved to be a valuable tool for evaluating other testimony. The questions tapped attitudes about the subject matter, judicial practices in both criminal and family law, and suggestions for education.

The committee reviewed more than 200 letters of comment, numerous articles, studies, and surveys, and gender bias reports and recommendations from Maryland, Massachusetts, Michigan, Minnesota, New York, New Jersey, New Hampshire,[14/]

Rhode Island, and Washington. The examination of gender bias reports from other states revealed a marked similarity between this committee's recommendations and those of other task forces.

IV. Recommendations, findings, discussion and analysis

A. Protective orders

Findings

The Domestic Violence Prevention Act (DVPA) (Code Civ. Proc., §§ 540 et seq.) provides that protective orders are available to prevent the recurrence of domestic violence.

Evidence was presented that victims of domestic violence are often deterred from obtaining protective orders because of procedural barriers. Most victims have no legal representation and lack the basic tools to overcome barriers such as arbitrary and severe time restrictions and substantial delays in issuing protective orders. Some courts are insensitive to the physical dangers the victims are exposed to when they use the judicial system. Courts and judges often require victims to be in dangerous proximity to their alleged batterers and judges often issue orders that endanger the victim further, such as mutual restraining orders or orders for mediation before restraining orders are issued.

Lack of transportation, lack of child-care, lack of financial resources, and other hardships frequently accompany domestic violence situations, particularly where the victim has had to flee his or her home. Yet the judicial system too often appears insensitive to victims, particularly pro per petitioners who are typically unfamiliar with the legal system.

These recommendations attempt to eliminate, or at least reduce, the obstacles a domestic violence victim must overcome in order to receive protection under the DVPA.

1. Temporary restraining orders--ex parte and after hearing

Recommendation No. 1

Request the Judicial Council to adopt rules of court which would provide that:

(a) Ex parte temporary restraining orders shall be available during substantially all court hours, and emergency protective orders shall be available during all hours when an ex parte order is not available.

(b) An ex parte temporary restraining order shall be issued on the same day that the application is filed unless the application is filed too late in the day to permit effective review, in which case the petitioner shall be advised of the availability of emergency protective orders.

(c) The right to file an application for or obtain a temporary restraining order shall not be conditioned upon pursuing any other remedy, court service, or court proceeding.

(d) No applicant for a temporary restraining order shall be required to go to mediation prior to attending the order-to-show-cause hearing regarding the application for the temporary restraining order.

(e) Each court shall devise a simplified procedure to obtain a temporary restraining order, including allowance for prompt notification that the order has been signed and that it can be retrieved from an easily accessible location.

(f) An applicant for a temporary restraining order shall not be required to type the application as a condition of obtaining the order; legible handwritten applications shall be acceptable.

(g) Judicial Council forms for temporary restraining order applications shall be made available free of charge at the courthouse,

and a multilingual sign shall be posted in each clerk's office indicating where the forms may be obtained.

(h) In certain counties, temporary restraining orders in domestic violence cases may be issued by a judge of a municipal or justice court assigned by the Chairperson of the Judicial Council to the superior court in the county where the application for a temporary restraining order was made.

(i) No notice to the party to be restrained shall be required prior to the issuance of an ex parte temporary restraining order in domestic violence cases, unless such notice is ordered in a particular case upon a finding of good cause for such notice.

(j) Where a custody or a residence exclusion request is ordered ex parte without notice to a party, that party may be granted an expedited hearing upon request supported by a written declaration.

(k) No greater burden of proof shall be required for residence exclusion orders than for other orders.

(l) Support persons shall be allowed to accompany and support an applicant for a restraining order during all court proceedings, so long as they do not purport to provide legal representation.

Discussion and analysis

Testimony and supporting materials showed that although the DVPA provides for immediate, effective protective orders to prevent the recurrence of domestic violence, courts in various counties have, through local rules or customs, established procedural obstacles which prevent or hinder victims from taking advantage of the law. This recommendation focuses on removing many of those obstacles, so that victims may receive the full protection to which they are entitled without undue delay. The recommendation, if adopted, would

also remove many inconsistencies between the counties as to how and when protective orders are issued, making the process easier to understand. Each subsection below relates to the similarly labeled part of Recommendation No. 1.

(a) Courts have established various time schedules for obtaining protective orders. Testimony indicated that the hours, and even the days on which orders are available are often severely restricted.

In one county, cases are heard four days a week, but the court only hears two cases a day. So, if the applicant for the TRO is the third person to request an order, the matter is put over to the next day.[15/] In another county restraining orders are issued only during one hour a day, every other day. If an applicant misses the assigned time, he or she is required to come back later.[16/] Testimony was heard at every hearing that applicants must take off work, juggle medical appointments and arrange for childcare to get to the courts for orders. Because of the possibly of imminent danger, applicants for restraining orders should be allowed to apply for and receive orders at any time the court is open. Similarly, information about emergency protective orders must be available when the court is not open.

(b) Victims of domestic violence were frequently exposed to substantial delays before restraining orders were issued. According to Nancy Lemon, an attorney specializing in domestic violence cases and Co-Chair of the Family Law Committee of the California Alliance Against Domestic Violence,

> . . . [T]he time can be a big problem. In some of the rural counties, they have commissioners available only one or two days a week from what I've heard, and if you don't happen to get . . . your request for a restraining order in that day, then you may have to wait a week to get your ex parte restraining order.

Constance Carpenter, a family law practitioner, testified that she was told by a family court judge, "Well, if she's been beaten for seven years, what's the big rush for restraining orders now? Another week or two of beatings certainly can't be any big deal."[17/]

The committee received testimony that delay in issuing ex parte orders often subjects a domestic violence victim to repeated or threatened injury. It also affects victims' ability to effect service before the hearing date. Lisa Warner-Beck, an attorney who serves as the Legal Services Coordinator for the Marjaree Mason Center in Fresno, testified that it takes at least five days to get an order.[18/] And, "when we get them back, many times there are only two days, sometimes one day to get them served to meet the 15-day deadline for service."[19/]

In one county, a temporary restraining order was not issued until a week and a half after the application. Another county reported a three- to four-day wait, another a four- to five-day wait, and another seven days.[20/] Delay can be devastating, as the victim remains at risk. Murder of the victim has been attributed to delay.[21/]

The safety of the applicant necessitates issuing restraining orders on the same day that the application is received. In the rare case where this is truly impossible, the applicant must be informed of the availability of Emergency Protective Orders.

(c) Civil Procedure section 545 specifically provides that protective orders may not be preconditioned on the filing of a petition for legal separation or dissolution. Nevertheless, testimony was received that some counties still require the applicant to file for dissolution or custody.[22/] This requirement discourages applications for orders because of the expense and time involved and because some victims want the violence to stop but have not yet decided to legally terminate their relationship. The courts must allow victims access to

restraining orders without imposing unnecessary procedural burdens.

(d) Testimony indicated that several courts condition issuance of a restraining order upon a referral to mediation or conciliation.[23/] Some courts seem to believe that they cannot issue orders of custody and visitation ex parte without mediation. Testimony was received at every hearing opposing the use of mediation in domestic violence cases. Where emergency domestic violence protective orders are sought, mediation is especially dangerous and futile to the victim and should not be required. (See also Special Finding No. 6 on mediation and domestic violence.)

(e) Testimony indicated that delays in obtaining orders result from cumbersome procedures which make it difficult for applicants to retrieve orders once they are signed. Sometimes, applicants are unaware that the order has been signed or of the location from which to pick up the signed order.[24/] A simple uniform procedure could rectify the situation.

(f) Testimony was received at every hearing that handwritten petitions are not accepted in many counties.[25/] Many victims have no access to typewriters and most courts do not provide them. Thus, petitioners are sometimes forced to travel by bus to another location to type their petitions. They must then return to court another day which places them in further danger. So long as testimony can be read, there is no reason to impose a rigid requirement that applications must be typed.

(g) Although no filing fee is required under the DVPA (Code Civ. Proc., § 546.5), some courts charge for Judicial Council forms.[26/] This puts an unintended financial burden on victims. Forms for these particular actions should be available free of charge.

(h) Restraining orders are issued only by superior courts. However, in rural areas, superior courts may be many

miles or hours away, while justice or municipal courts are more readily accessible. Testimony from victim's advocates in rural areas described the great problems that distance creates for battered victims seeking restraining orders. The advocates suggested that the authority to issue protective orders be expanded to closer courts.[27/] In rural areas, or where victims must travel more than an hour to get to a superior court, victims must be allowed to obtain protection from municipal or justice court judges.

(i) Local rules often require victims to give notice to respondents before applying for an ex parte restraining order. Victims testified that some judges were not sympathetic to the fact that such a requirement places the victim in extreme danger. Often the victim has no safe haven from his or her batterer after giving notice and before appearing in court. Even if the victim could move somewhere for temporary safety, such a move often requires relocating children to ensure their safety.

Specific testimony detailed the danger such notice requirements impose on applicants. Notice requirements ranged from two hours to six hours, and at least one court "requires notice of an entire day before you go in which really puts the woman at risk to be beaten up."[28/] Sometimes no excuse for notice not being given is accepted, not even "I am afraid I'll be killed."[29/]

As one advocate commented regarding a 24-hour notice requirement, "we find ourselves in a position of either lying, perjuring ourselves because we don't want to notify this guy, or making a phone [call] and letting it ring once and hanging up."[30/]

When one judge was asked where victims were to go between the time they gave notice and the time they appeared in court, the answer was that they could give notice early in the morning and then wait in the courtroom for six hours.[31/]

The committee is cognizant of the fact that some judges may believe that notice to the respondent in these cases is preferred even though it is not required by law. However, the committee received convincing testimony that blanket notice requirements create significant risks to the safety of domestic violence victims and operate to discourage victims from pursuing their legal remedies. The committee therefore recommends that no notice should be required prior to the issuance of an ex parte TRO unless such notice is ordered in a particular case upon a showing of good cause.

(j) and (k) Testimony was received that many judges are particularly reluctant to issue custody or residence exclusion orders ex parte, since they are concerned about failing to protect the rights of the respondent. These concerns could be addressed by permitting a respondent who challenges a custody or residence exclusion order to shorten time for hearing. Many courts make it extremely difficult to obtain such orders.

> This of course can put the victim in extreme danger from her abuser, particularly if she does not have anywhere else to go in the meantime and since the TRO has not been signed yet she usually does not have court-ordered custody of the minor children and once the abuser has notice of what she is attempting to do he will often attempt to take the children from her. . . .
>
> It is also not fair in cases of obvious and extreme abuse or threats the victim should have to leave her home and allow the abuser to remain often allowing him time and opportunity to remove and/or destroy much of the property.[32]

Sometimes exclusion orders will not issue at all, thereby probably allowing the batterer to remain in the same house as the victim. One judge would not issue an exclusion order because the violence "didn't happen often enough."[33/]

Another required three incidents of severe violence before he issued an exclusion order.[34/] Another told an attorney "we just can't kick a man out of his house because his wife says he's been beating her."[35/] Some judges simply will not issue an ex parte exclusion order, which is particularly difficult for women with children and those who live in counties with no shelters.[36/]

For example, one judge refused to issue an exclusion order after the woman testified as to beatings and other abusive treatment she had received from her husband. The judge commented that the house was the husband's separate property. After the woman's attorney explained that in a temporary exclusion proceeding, the court may order the batterer excluded no matter who owns the marital residence (Civ. Code, § 5102), the judge said he would order the woman to move out in 30 days.[37/]

Certainly the rights of all parties are equally important. On balance, however, where the law provides that a residence exclusion order may issue upon proper application, the property rights of persons who have jeopardized the physical safety of others who also reside in the home should yield until an expedited hearing.

(1) Victims reported that they are often terrified by court proceedings, particularly when they appear in pro per and must face the alleged batterer alone. They may have been living in shelters or other safe places, unable to return to their homes. This is often their first contact with the judicial system, and comes at a time when they are already emotionally distraught. Representatives from domestic violence coalitions strongly emphasized that lay advocates should be allowed to accompany a victim during court proceedings to "stand between the victim and his or her abuser," (literally and figuratively) obtain assistance from court personnel, if necessary,[38/] and provide emotional support to victims who are intimidated by their batterers.[39/]

Respondents to the judges' survey were sharply divided on the issue of the appropriateness of permitting lay advocates to participate in courtroom proceedings. 56.8 percent disagreed or strongly disagreed with the statement:

> It is appropriate to permit a lay advocate assisting a domestic violence victim to participate in the proceeding in ways other than as an observer in the courtroom audience.

In contrast, 43.2 percent agreed or strongly agreed with the statement.

This divergence of views may well reflect a concern among some judges that lay persons should not function as attorneys, that is, engage in the unauthorized practice of law. To meet this concern, the advisory committee's recommendation carefully precludes any possibility of confusion about the lay advocate's role. Support to the victim is so valuable, in the committee's view, that supportive functions such as sitting with the victim at the counsel table ought to be permitted as long as lay advocates do not engage in the practice of law. The committee believes that lay advocates would make the courts more accessible to victims of domestic violence.

Recommendation No. 2

[Judicial Council restraining order forms]

Request the Judicial Council to study ways to simplify the procedure for obtaining a temporary restraining order and:

> (a) Request adoption of a one-page form that includes the required application, declaration, and order.
>
> (b) Mandate that the form be simplified so that relevant information is clarified and written in plain language.

(c) Mandate that the forms be translated into languages other than English, as needed.

(d) Request simplification of the in forma pauperis form;

(e) Permit the forms to be handwritten or computer generated.

(f) Prepare a revised instructional pamphlet which more clearly explains the procedures to be followed.

(g) Request the adoption of a form for any court with jurisdiction over criminal matters to issue a restraining order pursuant to Penal Code section 136.2.

Discussion and analysis

The Judicial Council forms for application and issuance of domestic violence restraining orders were repeatedly criticized as cumbersome and confusing. This is of particular concern to the committee because applicants are frequently in pro per, and may be unduly delayed in obtaining protection if they are unable to understand or complete the necessary forms. Deanna Jang, Legal Clinic Coordinator of the Cooperative Temporary Restraining Order Clinic, San Francisco, reported:

> [E]ven though the Judicial Council forms were designed for people to go through the process on their own . . . people who are trying to do it on their own have found it very confusing, and [they] very often fall through the cracks.

It was also reported that declarations, which must be written in narrative form (there are no boxes to check to describe incidents of violence) are often rejected because they are not properly worded. For example, one woman who wrote that her batterer "hit her upside the head" was denied an order because

the judge said he didn't understand it.[40/] Victims were also described as "overwhelmed by the number of forms that they have to fill out."[41/]

The in forma pauperis form was described as "ridiculous," and "like doing your tax forms."[42/]

One witness reported that applicants often resort to paying other people to fill out their forms. One service charges $75 for this service.[43/]

The need for comprehensible forms available in various languages is particularly acute for applicants who are not English-speaking and appear in pro per. For example, one Spanish-speaking woman applied for a protective order restricting visitation when her ex-husband was intoxicated. She did not know that local rules required her to set up a conciliation appointment before obtaining an order. The commissioner who heard her petition was aggravated that she hadn't made the appointment, and told her that the requirement was written right on the form, in English. The commissioner then issued an order that did not restrict visitation.[44/]

As discussed above, legible, handwritten forms should be acceptable to the court. It is further recommended that the courts accept computer-generated forms. This would enable clinics assisting pro per applicants to use computers to prepare and complete the forms.

Dr. Susan McCoin, co-principal of the Pro Se Litigant Project of the Department of Sociology of the University of California, Los Angeles, testified about the inadequacies of the existing information booklet approved by the Judicial Council.[45/]

Finally, restraining orders are available in criminal cases to prevent intimidation or harassment of victims and witnesses, (Pen. Code, § 136.2). However, it was reported that these orders are rarely issued, in part because no Judicial Council form has been adopted.

As Nancy Lemon explained:

> We have some very good statutes right now that do allow for stay away orders in criminal cases. These are different from the civil restraining orders, TRO's, however, they're not used very much throughout the State because we don't have a form for it.
>
> This is a very easy recommendation. We need the Judicial Council to develop a one page form which the judges could then be encouraged to use, and the D.A.'s could be encouraged to ask for, and the law enforcement officers would then get some training on how to enforce it, and then the law would actually be able to be implemented.46/

Criminal protective orders issued under Penal Code section 136.2 would supplement, not supplant, civil restraining orders, and could be issued at any criminal proceeding where the defendant is present. A form used in Los Angeles was submitted by Alana Bowman, Deputy City Attorney, and could be adopted by the Judicial Council for statewide use.

To the extent that the complexity of domestic violence forms or the total lack of a form keeps a victim from obtaining relief, the Judicial Council can remedy the problem and provide meaningful access to the courts.

Recommendation No. 3

[Procedures during Order-to-Show-Cause (OSC) hearing on application for temporary restraining order]

Request the Judicial Council to adopt a new Standard of Judicial Administration as follows:

> (a) The judge should begin each hearing with a description of the procedure, ground rules, and what will be expected of all parties.

(b) The judge should provide for the safety of all persons throughout the proceedings.

(c) In cases where restraining orders are granted, the judge should inform the parties orally at the hearing that violations of the orders will subject the violator to contempt proceedings and arrest and are punishable as misdemeanors or felonies.

Discussion and analysis

Procedures for hearings on an Order to Show Cause in domestic violence cases should reflect concern for the safety of the applicant and impress the respondent with the seriousness of his or her situation. Testimony revealed that victims of domestic violence are often further traumatized by the hearing on their application for protective orders. The committee heard reports that judges appear to minimize the seriousness of the violence to "favor" the alleged batterer over the victim. Judges often fail to clearly state the findings in support of the restraining order and fail to adequately explain the consequences of the violation of court orders.

Further, specific restrictions on a batterer's behavior to ensure the victim's safety are often not included in restraining orders. And, victims' advocates testified that the victim's safety is often ignored in visitation orders. For example, courts allow open, unrestricted visitation without seeming to realize that such an order vitiates an existing restraining order.[47/]

Victims of domestic violence also reported escalating problems after both parties appear in court. Often the batterer harasses the victim as they leave the court or courtroom.[48/]

As one couple was leaving the courtroom,

The man hit the woman just outside the door and the judge ordered them both back into

> the courtroom for 'fighting' and declared that both would go to jail if there should be any further incident.[49/]

Testimony revealed that while violence is likely to continue if the court states or implies that the victim and batterer are equally to blame, when they are not, restraining orders are more effective if the judge makes it clear that the batterer will go to jail if the order is violated.[50/]

The tone set by the judge and the degree to which the judge explains both the nature of the proceedings and the court's expectations of both parties affect the ultimate effectiveness of court orders and significantly reduce the trauma of the courtroom experience so often reported by domestic violence victims.

Attention to the safety of domestic violence victims who appear in court is crucial. The committee heard testimony that victims are beaten, even killed, at the courthouse. Some courts offer petitioners a bailiff-escort to the parking lot after hearing. Some issue 15-minute TROs to allow safe exit from the courthouse. Whatever the solution may be, it is tragic that anyone, much less a victim of past violence, should risk or suffer physical violence at the courthouse when he or she has come to the court to seek protection. (See Recommendation 7.)

Recommendation No. 4
[Mutual restraining orders]

Request the Judicial Council to adopt a Rule of Court which would provide that mutual restraining orders shall not be issued either ex parte or after hearing absent written application, good cause, and the presence of the respondent.

Discussion and analysis

"Mutual" restraining orders are orders restraining both parties to a domestic violence proceeding from further acts of violence, contact, harassment, etc. As a legal matter, the court lacks authority to issue a restraining order absent a showing of "a past act or acts of abuse." (Code of Civ. Proc., § 545.) Thus, mutual restraining orders are inappropriate unless the court finds that the applicant physically abused the respondent.

Testimony revealed that the practice of issuing mutual restraining orders in domestic violence proceedings absent application and proof by both parties is widespread. As one practitioner explained, in many counties, it is "almost routinely the practice to mollify everybody by just giving mutual restraining orders."[51/]

Responses to questions on the judges' survey document this legal error. When asked to select the circumstances under which they would issue a mutual order, 26.6 percent of the judges responding to the judges' survey reported that they issue mutual orders routinely. 64.1 percent issue mutual restraining orders when it appears to them that a mutual order would likely reduce the violence between the parties. 14.9 percent selected the legally correct alternative: "only when the violence between the parties is mutual."[52/]

The committee heard compelling testimony that the harmful effects of this practice are twofold. Mutual restraining orders present difficult enforcement problems and they are degrading to parties who have not engaged in an act or acts of violence. Mutual restraining orders were characterized by one witness as "dangerous and devastating."[53/] When a restraining order protects both parties equally "the police have no way of determining who needs to be arrested, and who needs to be separated."[54/] Other witnesses reported that police often arrest both parties or neither party[55/] when enforcing mutual restraining orders.

70.6 percent of the judges surveyed indicated that they were unaware of enforcement problems created by mutual orders. When asked to comment on any enforcement problems perceived, 5.6 percent of the judges expressed the view that mutual orders result in settlement and enforcement is not crucial.[56/]

The testimony was equally convincing that victims of domestic violence who have not engaged in an act of violence are confused and humiliated when orders restraining them from such conduct are issued. As explained by Joyce Faidley, Director, Family Violence Prevention Center, San Diego, "Many battered women have told us that this is humiliating and unnecessary."[57/] Others reported that mutual restraining orders give victims the message that they are being blamed.[58/]

One regional meeting speaker suggested that judges issue mutual restraining orders because they see no harm resulting and in an effort to placate the batterer, without understanding the effects of their orders.[59/] Perhaps a potentially volatile courtroom situation is diffused somewhat by issuing orders against both parties, but it will undermine respect for the law.

The committee remains unconvinced that mutual restraining orders operate to reduce violence. Indeed, testimony suggested that they do not. Because these orders create problems of enforcement and often attribute violent conduct to a party who has not engaged in violence, the committee recommends that mutual restraining orders should not be ordered absent a proper showing.

Recommendation No. 5

[Standardize calendar systems]

Request the Judicial Council to adopt new standards relating to calendaring of actions brought under the Domestic Violence Protection Act (DVPA) as follows:

(a) In courts with a separate family law department, a separate calendar within that department shall be established for the purpose of calendaring and hearing actions brought under the DVPA.

(b) Each court shall establish a direct calendaring system for cases brought under the DVPA.

(c) Each court shall schedule domestic violence calendars at a time that staffed children's waiting rooms are available for the use of children.

Discussion and analysis

Testimony at several hearings indicated that victims may be required to testify before various judges when they apply for orders, file for custody hearings, go back for hearings or for contempt proceedings; that is difficult for victims of domestic violence to talk about their situation easily, especially in the presence of the alleged batterer; and that different judges issue conflicting orders. Separate and direct calendaring of domestic violence cases would aid access of victims to the justice system.

If a judge were assigned to hear an entire case, he or she would be more likely to understand all aspects of the case, ensuring that protective orders are not rendered meaningless when issues of custody and visitation are considered. Also, for persons appearing in pro per who are unfamiliar with the system, hearings before the same judge may offer a degree of continuity.[60/]

> [A] federal system of calendaring, or a direct calendaring system greatly aids a family law judge in being able to see a case from beginning to end, and understand what the outcomes of various decisions are. Otherwise, what you get are decisions that are very much piecemeal and really rip families apart, and create a system in which it's very possible for people to manipulate

the system to--usually to the detriment of the children involved.[61]

A domestic violence calendar also "assists in making the process much less scary."[62] And, on-going connection with a judicial officer who is knowledgeable about domestic violence will lead "to better behavior on people's parts."[63]

Child care is also a major problem for primary caretakers, usually women, who have no choice but to bring their children to court. Some courts do provide children's waiting rooms, but these may be staffed by volunteers and are not always open. "Many times women end up, therefore, bringing their babies right into the courtroom, or they have to leave small children unattended out in the waiting room area."[64] At least one court the committee visited had a sign posted outside a courtroom saying that no children were allowed in court, but did not refer people to a children's waiting room.[65] One woman was ordered to wait outside the courtroom with her children when applied for an ex parte order. No one came out to tell her that her case was called so "she had to leave for the weekend with no order."[66] Hearings must be scheduled when a staffed children's waiting room is available in order to make access to relief from courts a reality.

Special Finding No. 1

[Service of Process]

The committee heard testimony that persons appearing in pro per often do not understand service requirements, and lack the resources to pay someone to serve the respondent.[67] Inadequate service can prevent a protective order from being issued, leaving a victim unprotected.

Marshals are available to serve restraining orders, but they require a fee.[68] It is important for judges to notify poor applicants that they can request a waiver of fees under California Rules of Court, rule 985(i)(6).

Special Finding No. 2

[Filing fees in civil harassment cases]

Filing fees are not charged for DVPA petitions (Code of Civ. Proc., § 546.5), but the DVPA is limited to certain household or family members. It does not cover a non-family member with whom the victim has not regularly resided within the previous six months (Code Civ. Proc., § 542). A victim not eligible for an order under the DVPA may need such an order but have no choice other than to file for a civil harassment restraining order. (Code Civ. Proc., § 527.6). If unable to afford the filing fees necessary for an ordinary civil harassment order, the victim will remain in danger.[69/]

Where a victim of domestic violence is unable to qualify under the DVPA and seeks an order under the civil harassment statute, he or she should receive a waiver of filing fees.

2. Emergency protective orders

Recommendation No. 6

[Clarification of expiration time for EPO]

Request the Judicial Council to adopt a rule or standard which would provide a clarification of the language of Code of Civil Procedure section 546(b) such that the expiration date provided for in the statute ("the next day of judicial business") will be defined as the next day when a court is actually available to issue an order.

Discussion and analysis

Since 1989, victims of domestic violence in most counties have been able to obtain emergency protective orders (EPOs) when courts are closed, through requests placed by law enforcement officers at the scene of a domestic disturbance to a designated duty judge. However, such orders automatically expire at the end of the next court day. Emergency protective

orders should remain in effect until a victim of domestic violence can actually obtain an order in court.

If temporary restraining orders are not available during all court hours, as testimony shows they are not, then a victim who has obtained an EPO is left unprotected because the EPO expires on the next court day even if a restraining order may not be obtained on that day. In many courts, hours and days in which restraining orders may be obtained are severely restricted, leaving a victim without protection. This is a particularly acute problem in rural areas. As explained by Michelle Aiken, Executive Director of the Central California Coalition Against Domestic Violence:

> [I]f there's no place to go on Monday morning, or whatever, Monday through Friday morning to get a longer lasting restraining order, the after-hours restraining order is of no use, basically.[70/]

The EPO could state on its face the next day the court will actually issue orders. That date would also be the expiration date for the EPO. This clarification would eliminate that period of time when a victim is left without the protection of a court order.

Special Finding No. 3

[EPO procedures]

The committee also received testimony that the problem of EPO's expiring without a victim being able to obtain other court protection could be relieved by extending the time periods for EPOs. An ex parte application would be unnecessary because a hearing date on the temporary restraining order could be stamped on the EPO. Such a legislative solution would make it unnecessary for a court to decide when a victim "could have" gotten a court order, as proposed in the previous recommendation.

B. Access to judicial system

It goes without saying that legal protections are worthless unless those most in need of protection have meaningful access to the courts. The committee has concluded that some domestic violence victims do not have adequate and meaningful access to the courts because of language and economic barriers, or the lack of available legal representation in family law cases, or, in some cases, the judicial system's insensitivity to safety and child care issues.

These recommendations and special findings attempt to ensure access to the courts for all victims of domestic violence.

1. Court safety

Recommendation No. 7

[Standards relating to court safety]

Request the Judicial Council to adopt a Standard of Judicial Administration relating to court safety which would recommend that:

(a) The family law and domestic violence departments and the Family Court Services office should be equipped with metal detectors.

(b) Escorts to and from the courthouse to the parking lot should be provided to anyone upon reasonable request.

(c) The courts should provide safe, separate and/or guarded waiting areas for all court proceedings including mediation.

(d) Bailiffs should be available for use in Family Court Services when necessary.

Discussion and analysis

Domestic violence cases are both emotionally charged and potentially dangerous to the victim. Numerous witnesses testified to actual incidents of violence which occurred in court. Others described such fear that violence would recur, that they were unable to recount the facts of their cases before the court. Still others said they made concessions out of fear. Courts should provide protection for victims of domestic violence so as not to force them to choose between their own safety and access to the justice system.

Testimony about violence and the fear of violence during court proceedings was overwhelming. As explained by Mildred D. Pagelow, Ph.D., and professional expert in the domestic violence field:

> Protection, while in the courthouse itself, is very important because some women have been not only badgered and harassed in court, but we also had a case of a woman's throat being slashed right in Superior Court in Los Angeles by her disgruntled husband. And so it's a very dangerous place . . . .[71/]

The need for protection in court was also reported by Mary Duryee, Director of Family Court Services for Alameda County Superior Court, who said, "The family law courts are one of the places of the highest degree of violence in courts."[72/] As stated in "Security in Family Law Courts and Family Court Services: Survey Report" by Mary A. Duryee, 4/27/88:

> Family law courts, (and by extension family court services) are as likely to experience violent behaviors from the participants as high risk criminal courts.

Training for staff on how to deal with violent persons is needed. The court may need to afford victims escorts to and from the courthouse. As summarized by one lay advocate,

> [T]he courthouse is very intimidating and frightening. It is probably the second biggest betrayal besides the battery or beating her, that a battered woman may realize that her rights are not even [protected] in this ostentatious building.[73/]

She further testified that an area of safety could be set up in a courthouse. The Facilities Advisory Committee may wish to consider this suggestion, as well as the placement of mental detectors in certain areas. A security plan would help victims and court personnel alike.

2. Non-English speaking victims of domestic violence

Recommendation No. 8

[Access to the courts by non-English speaking persons]

> **(a) Request the Judicial Council to propose legislation or support legislation which would provide for qualified interpreters in domestic violence cases and which would permit the use of multi-lingual court employees as interpreters.**
>
> **(b) Request the Judicial Council to create a statewide registry of qualified interpreters.**
>
> **(c) Request the Judicial Council to instruct the proposed Advisory Committee on Ethnic and Minority Concerns to study the issue of access to the courts by non-English speaking persons.**

Discussion and analysis

Testimony indicated that victims of domestic violence who appear in pro per are at a great disadvantage in California courts[74/] and a disproportionate number of pro pers are non-English speaking. "[P]eople of color in this society are more likely to be economically disadvantaged, more people of

color are likely to go into court without adequate legal representation and they don't know their rights."[75/] These problems are obviously worse if the person is also non-English speaking. Demographic trends in California indicate that this problem will intensify rather than abate.

Since court interpreters are not provided in non-criminal cases, domestic violence victims are at an even greater disadvantage. Friends who accompany the applicant may be asked to interpret, but there is no guarantee that the alleged batterer will accept them or that they are sufficiently qualified.[76/] Even if the applicant brings his or her own interpreter, judges will continue the hearing if the alleged batterer is not willing to use that interpreter.[77/] Asking friends or relatives to interpret is unsatisfactory, but often occurs, despite problems of accuracy and bias.[78/] Victims suffer if their interpreter does not give them full information,[79/] or translates inaccurately to the court.

Court-paid interpreters are therefore recommended.[80/]

3. Economically disadvantaged victims of domestic violence

Special Finding No. 4

[Access to the courts by economically disadvantaged persons]

The committee requests the Judicial Council to devise a means to ensure access by the poor to the justice system and to monitor and study the impact of the use of private judges on the criminal and civil justice system.

There are a large number of access problems for economically disadvantaged litigants, more than this committee can address. However, testimony was received indicating that some child custody matters remain unresolved for long periods of time, or require lengthy waits for hearings, despite the statutory preference of Civil Code section 4600.6. Examples of incidents in which judges refused or were reluctant to hear

child custody disputes, despite the statutory preference, were given.[81/]

In such cases, litigants using private judges are able to move their cases faster while some victims of domestic violence, who would be safer if their custody matters were resolved, are unable to afford a private judge. Those who can afford a private judge may do so, but economically disadvantaged persons cannot.[82/]

Special Finding No. 5

[Representation in Family Law Cases]

Domestic violence victims appearing in pro per suffer from the lack of legal representation. Many domestic violence victims lack resources to retain an attorney, and legal services offices are often overwhelmed by too many cases or simply refuse to accept family law cases. Sometimes, the judicial system favors those who are represented, by giving attorneys greater accessibility and respect. Also, pro per litigants often fail to understand and exercise their rights, and therefore do not receive all the protection to which they are entitled. This is particularly true where one party, typically the man, can afford representation, but the other, typically the woman, cannot.

> All women in California are entitled to live violence free; and therefore, if necessary, should be able to access the judicial process be it civil or criminal . . . .
>
> Our first big [problem] is affordable and even available legal help.[83/]

Women who appeared without representation reported that they were often afraid and did not understand the system. Without help, they did not complete the forms properly or the judge did not understand their presentation of the facts.[84/]

This was reported to be a particular problem for minority women.[85/]

It was reported that judges are sometimes impatient with pro pers.[86/] As one witness explained,

> It's very clear there is a huge differential between the way a person representing themself in court is treated, and the way a person with an attorney is treated, . . . [I]t's very clear that women are not treated as well as they could be if they could afford representation, and they can't afford representation in many cases.[87/]

"[T]here is a bias towards people who file pro per in the court system."[88/]

Public financing for attorneys was recommended by a number of witnesses.[89/] The committee recognizes the enormity of the problem but believes that lack of representation is an important element of gender bias in the family law courts, particularly for victims of domestic violence who have great difficulty representing themselves. A possible model for such a program is the "CASA" program--court-appointed special advocate--used for juveniles.

C. Child custody/visitation

When victims of domestic violence with children turn to the justice system for protection from violence, they may encounter a most serious and long-term problem regarding child custody and visitation. Whether they are requesting restraining orders or a dissolution, if the victims have children in common with their batterers, the courts are required to adjudicate the matter of custody and visitation of the children.

At public hearings and regional meetings, at special hearings and in written testimony, evidence showed that victims

of spousal abuse are physically endangered by court orders that force them to share custody with their abusers.

The survey of California judges reveals an interesting conflict. 81.8 percent of the representative sample of judges surveyed strongly agreed that spousal abuse is detrimental to children who are aware of it. An additional 17.5 percent agreed. Thus, 99.3 percent of all judges surveyed agreed that spousal abuse is detrimental to children.[90/] No other question showed wider agreement among the judges who completed the survey.

Despite the near unanimity on the detrimental effect of spousal abuse on children, only 46.6 percent of the judges recognized a history of spousal abuse as a factor which would render a custody order with nearly equal division of physical custody inappropriate.[91/] This response is puzzling in light of the fact that many judges (49.5 percent) consider a high degree of conflict between the parents as a factor mitigating against an equal custody order, and the increased contact necessitated by a nearly equal sharing of custody will continue the conflict inherent in spousal abuse.

Every study reviewed by the committee indicates that spousal abuse is detrimental to children and must be considered a significant factor in custody decisions. The description of Post Traumatic Stress Disorder, contained in the DSM-III-R of the American Psychiatric Association, 1987, indicates that such trauma, for a victim of domestic violence or her children, may include

> a serious threat to one's life or physical integrity; or harm to one's children, spouse or other close relatives and friends; . . . or seeing another who has recently been, or is being, seriously injured or killed as the result of . . . physical violence. In some cases the trauma may be learning about a serious threat or harm to a close friend or relative . . .

The committee reviewed more than twenty studies and articles on this subject, including Silent Screams and Hidden Cries by Wohl and Kaufman, 1985; Intimate Violence by Gelles and Straus, 1988, and Children of Battered Women by Westra and Harold, a study conducted for the U.S. Department of Health and Welfare in 1984. The studies tend to show that witnessing or in some cases knowing about parental violence has detrimental effects on children. Those effects can include depression, somatic concerns, aggressive behavior, impaired cognitive abilities and delayed verbal development.

The committee concludes that there is a need for corrective legislation and procedural changes in matters relating to child custody and visitation and mediation. The one recommendation under this section relates to the role, qualifications and training of family court services personnel. Discussion of the need for legislative change in the area of custody, visitation, and mediation is found in special findings 6-11.

1. Mediation

California law mandates mediation of child custody and visitation disputes (Civ. Code, § 4607(a)). However, separate mediation is required if a party protected by the DVPA so requests (Civ. Code, § 4607.2) and separate mediation of parties not protected by a restraining order may be permitted if requested and there is a "history of domestic violence" (Civ. Code, § 4607(d)).

Victims of domestic violence and their advocates testified repeatedly that mediation is inappropriate in domestic violence cases. Testimony demonstrated, for example, that mediation places victims at further risk of violence and intimidation, that victims make concessions during mediation out of fear, and that the severe "imbalance of power" in a violent relationship precludes attaining mediation's goal of effective resolution of the issues.

Special Finding No. 6

[Mediation in domestic violence cases]

The Committee heard testimony about the need for legislation or rules of court which would:

a) Exempt domestic violence cases from mandatory mediation; or

b) If mandatory mediation continues;

1) Provide for notice of the option provided by Civil Code § 4607(d) that face-to-face mediation is not required when there has been a history of domestic violence between the parties;

2) Amend the existing exemption from face-to-face mediation upon the application of the victim to eliminate the requirement that a restraining order be in effect;

3) Provide for meeting the parties at different times and places for the purpose of determining factors to be considered in making a child custody recommendation;

4) Provide that the absence of one party at a Family Court Services proceeding should not delay the issuance of appropriate recommendations and orders; and

5) Permit lay advocates to attend the mediation.

Discussion and analysis

Mandatory mediation between two parties when domestic violence has been alleged is a subject of controversy. Some mediators believe that mediation is preferable because they can help identify cases in which domestic violence has occurred and because mediation is better than litigation. Domestic violence advocates disagree. They believe that mandatory mediation is inappropriate because of the trauma associated with a victim being forced to negotiate with a person who has controlled the victim's behavior with violence and threats.

The committee also heard repeatedly that face-to-face mediation between domestic violence victims and batterers intimidates the victim and often leaves the victim unprotected. Witnesses explained that the mediator's mission is to "use his or her best efforts to effect a settlement" (Civ. Code, § 4607(a)), and that this presupposes that both parties are operating from an "equal bargaining position." They asserted that because, in domestic violence cases, the parties lack equal power, it is impossible to reach a settlement unaffected by the history of domestic violence.

Witnesses recommended either the elimination of mandatory mediation in cases of domestic violence or the revision of the mediation process to ensure that victims are not intimidated, taken advantage of, or further abused.

Since no other state has mandatory mediation, the literature in the area is not extensive. However, several articles recommend against mediation in cases of domestic violence; see, for example, Germane, Johnson and Lemon, "Mandatory Custody Mediation and Joint Custody Orders in California: The Danger for Victims of Domestic Violence," Berkeley Women's Law Journal, Vol. 1, No. 1, Fall, 1985.

a. Elimination of mediation as an option

The committee heard testimony from two mediators who support mandatory mediation because it allows mediators to identify cases in which domestic violence has occurred and because it is preferable to litigation.[92/] Domestic violence victims, advocates and other witnesses, however, strongly opposed mandatory face-to-face mediation in cases involving domestic violence. Testimony described the terror felt by victims, their inability to express themselves or assert their rights, concessions made out of fear of the batterer, and their continued victimization by being requiredd to deal with their batterer.

Numerous incidents of violence that occurred during or were triggered by the mediation process were described. A father shot his three sons, killing one and then killing himself after mediation sessions in which the mediator was not aware of his history of violence.[93/] In another instance, a husband physically assaulted his wife during the mediation, and the bailiff had to be called.[94/] Other assaults, including a stabbing, were reported.[95/]

The mediation may be influenced by fear. Another victim was placed in new danger after the mediator revealed the address of the shelter where she was staying.[96/] Many witnesses described how frightening it was to be in the same room or waiting area with the batterer.[97/] And, it was reported that if victims are intimidated, they are often unable to tell their story fully.[98/] It was also reported that batterers have great difficulty participating in mediation, since they are used to resorting to violence to cope with stress.[99/]

As a lay advocate explained, "The courts are assuming that the woman and the man are coming there as emotionally equal and that is not true. She is devastated and he is strong . . . ."[100/]

As one witness summarized:

> Mediation trivializes domestic violence and does not treat it as the real crime that it is, or acknowledge the severe and lifelong impact it has on women and children. You cannot mediate an unequal power relationship.[101/]

Testimony was offered that a woman who agreed to drive her ill baby every other day for a three-hour visit, because she was so intimidated.[102/]

As stated in the City of Los Angeles, City Attorney's Domestic Violence Prosecution Policy:

> Mediation of domestic violence issues is totally inappropriate since the format presupposes equality of parties and equal commitment to the process. Since the victim is always at a disadvantage, a process which requires each side to present information in a neutral setting, with the goal of coming to a compromise, should not be attempted.

Dr. Mildred D. Pagelow testified:

> Mediation is based on two assumptions: One, that the parties come to negotiations with relatively equal bargaining powers; and two, that they come together with the mediator or mediators voluntarily. Neither assumption is met when a couple with a violent history are mandated into mediation.[103]

Dr. Pagelow generally described mediation as "the panacea for resolving cases more expeditiously." But she agreed with Hugh McIsaac, Director of Family Court Services for Los Angeles Superior Court, that mediation is not appropriate for very intense forms of domestic violence:

> A former wife abuser and a formerly battered wife are on no more equal footing than a rapist and a rape victim, and no one would expect them to negotiate future behavior together.[104]

b. Suggestions for improvement in mandatory mediation

(Numbers below refer to the sections of subdivision (b) of Finding No. 6.)

(1) Although the law provides that face-to-face mediation may be excused in cases of domestic violence, victims often do not know they may request separate mediations.[105]

(2) Separate mediation is mandated if a party protected by a restraining order so requests, but since it is available wherever there is a history of domestic violence, the absence of a court order should not be used to deny separate mediation.

(3) Meeting the parties at separate times or places would reduce the danger created by requiring the parties to be in the same waiting room, office, hallway or parking lot at the same time.[106/]

(4) Testimony indicated that mediators sometimes reschedule a mediation session if the batterer fails to attend, giving even greater opportunity to the batterer to prolong a dangerous situation.[107/] An obvious solution is to deny the batterer this opportunity.

(5) The use of lay advocates, not to provide legal representation but to provide support to the victim, was strongly recommended by many witnesses.[108/] "[T]he advocate can assist the woman in telling her story to the mediator,"[109/] and "an advocate will advise a woman when she buckles under from fear and intimidation not to settle for less than she is legally entitled to."[110/] Since meaningful access to the justice system must include a real ability to participate and represent one's own interest, recognition of the special need of a victim of domestic violence with the help of an advocate is essential. The need for lay advocates may be particularly critical because mediators may exclude counsel from the mediation process (Civ. Code, § 4607(d)).

Recommendation 9

(Mediator role, standards and training.)

Request the Judicial Council to adopt Standards of Judicial Administration which would

(1) Define the role of Family Court Services in domestic violence cases as an in-house system that provides the following services:

(a) Identifies cases that involve domestic violence and codes the files to identify such cases.

(b) Makes appropriate referrals.

(c) Assures the safety of the victim and other parties.

(d) Reports each case in which domestic violence has occurred to the family court judge (with service on the parties or their attorneys).

(e) Investigates the facts surrounding the allegation of domestic violence.

(f) Provides for these services free of charge.

(2) Establish minimum statewide standards for mediators regarding training, qualifications, protocols, and procedures for dealing with situations involving domestic violence and which would prohibit counties from charging for the services.

(3) Instruct the Family Court Services Program to provide on-going training to all personnel on issues related to domestic violence including:

(a) the cycle of violence and issues of safety;

(b) the necessity for confidentiality of the victim's address;

(c) issues affecting women as victims;

(d) avoiding preconceptions and judgments regarding the victim;

(e) the need to understand the judicial process;

(f) issues of equality and inequality in bargaining power; and

(g) the risk that strict neutrality, that is, treating both parties the same, disadvantages victims of domestic violence.

Discussion and analysis

If mediation continues to be required in cases involving domestic violence, serious problems must be addressed.

At present, there are no qualifications or professional standards for mediators. Programs appear to vary greatly from county to county, with varying degrees of success. Minimum standards should be established to ensure that Family Court Services programs operate at a professional level, and that mediators are qualified to deal effectively with cases involving a history of domestic violence.[111/]

The committee heard repeated testimony in support of training family court mediators on domestic violence issues. The Director of Pasadena Superior Court's Family Services Program explained, with regard to the work of another task force:

> [T]hose who were working in the domestic violence field did not have a thorough knowledge of the family law system, and those working within the family law system, didn't have enough knowledge of the subtle issues involved in domestic violence . . . . We can't wait for the victim to announce the victimology . . . . [W]e have to be educated as to the subtle cues that exist.[112/]

Another witness emphasized that education is required to accomplish "a change in attitude of many court personnel, including mediators, away from the fiction of dealing neutrally with parties of relatively equal strength, into assuming a proactive stance resulting in a redistribution of power into some semblance of equality."[113]

Testimony also revealed that some family court mediators show a woefully inadequate understanding of domestic violence issues. One witness contrasted how mediation handles allegations of spousal abuse with how child abuse allegations are handled.[114/] The latter is investigated immediately and fully, the former is not investigated. Witnesses reported that some mediators do not consider spousal abuse relevant to the issues of custody and visitation.[115/]

One victim testified that her mediator did not care about her restraining order, denied her request for separate mediation, refused to return telephone calls and cancelled appointments, failed to recognize that her ex-spouse was manipulative and controlling, and in dealing with visitation, said, "even murderers get to see their children once a week."[116/] Mediators "don't take into consideration the violence in the home."[117/] They say "battering is not our job."[118/] Or they say spousal abuse doesn't matter for custody or visitation because they assume the abuse will stop after the couple separates.

It was reported that mediators were also unaware of the need to protect the victims by keeping addresses confidential.[119/] When training on domestic violence was proposed for mediators in one county, it was resisted because "there would be a backlash from men's rights groups."[120/]

Some mediators, however, spoke convincingly of the role that family court services can play in assisting families with a history of domestic violence. As the Director of Alameda Superior Court's Family Court Services testified: "Very often . . . the court mediators are the first identifiers of these [domestic violence] cases and discover the violence between the couple and are the references to resources in the community."[121/]

Family Court Services could "identify victims of domestic violence when they enter the system, and as many do, they come in pro per. So that a process of victim protection, education, and advocacy is automatically initiated."[122/] Los Angeles has developed such a protocol, which could be adopted statewide. Mediators could also arrange services such as bailiff escorts and separate waiting areas.

If Family Court Services is to assist victims of domestic violence in reaching a fair resolution of custody and visitation disputes, and not merely an expeditious settlement, then in-depth training of family court personnel, stressing

active intervention in cases involving domestic violence, is required.

2. Custody and visitation orders

As pointed out in the introduction to this section, the committee strongly encourages the adoption of legislation requiring judges to consider spousal abuse as detrimental to the best interests of children when making custody decisions.

Special Finding No. 7

[Witnessing violence is detrimental to the best interests of the child]

No California statute contains an express statement that spousal abuse is an issue to consider in determining custody or visitation arrangements in a child's best interest. While domestic violence is sometimes considered, as the judges survey clearly shows, too many times it is not. The committee received extensive testimony urging judges to consider the existence or residual effect of domestic violence as detrimental to the best interests of the child in custody or visitation disputes.

Studies show that spousal abuse and other forms of domestic violence can have a devastating effect on children. Dr. Robert Pynoos, Director of UCLA's Program in Trauma, Violence, and Sudden Bereavement, has studied children who witness violence. He described to the committee both the long-term and immediate effects of domestic violence on children. The long-term effect is "the intergenerational transmission of abuse," with such children becoming either victims of abuse or abusers as adults in their own marital situation.[123/] "Up to 80 percent of men who abuse their wives were victims of violence or witnessed the abuse of their mothers."[124/] And children who witness violence "are those children most at risk of being homicidally aggressive adolescents and adults."[125/]

The danger of causing violent adult behavior in a child who has witnessed domestic violence was also described by Dr. Pagelow, who said:

> Probably the most profound effect of domestic violence on children is the message that violence is what adults do when they're angry or upset, and this is most likely to be learned and carried into adulthood by boys witness their same sex role models abuse their mothers.[126/]

The more immediate effect, post-traumatic stress disorder (PTSD) "has major impact on a child's normal development," restricting his or her emotional and brain development.[127/] Feelings include being "very anxious and afraid," and "helpless."[128/] One mother reported to the committee that her child was substantially overweight as a result of witnessing domestic violence, and "that's insulation. She's protecting herself, her therapist even says that."[129/]

It was also reported that there is a strong likelihood of child abuse in families where there has been spousal abuse. "We know that 50 percent of the children, in marriages in which there is spouse abuse, are also abused," according to Susan Hanks, Director of the Family Violence Institute at Berkeley.[130/] And even if child abuse did not occur while the spousal abuse occurred, it may begin afterwards, as "some abusive fathers who have lost control over their wives transfer the control and abuse to their children . . . ."[131/] As a family law practitioner explained, "A person who has been violent towards his wife is going to lash out at the next person who annoys him, and it's probably the child . . . ."[132/]

Despite the evidence that domestic violence adversely affects children, domestic violence is often not considered in custody or visitation decisions. One advocate reported that a

judge who refused to consider spousal abuse said, "I am concerned about the children's interest, not yours."[133/] The gender bias task forces in New York and Maryland urged that any abusing parent be declared unfit. The committee suggests legislation to take spousal abuse into consideration in determining the best interests of the child.

Special Finding No. 8

[Exceptions to policy favoring frequent and continuing contact]

The committee received evidence supporting the need for exceptions to the existing public policy favoring frequent and continuing contact between children and both parents in cases where there has been spousal abuse. Current law establishes a policy that children be assured "frequent and continuing contact with both parents." (Civ. Code, § 4600(a).) But in families with a history of domestic violence, it was reported, "frequent and continuing contact" often gives the batterer additional opportunities for spousal abuse and, as discussed above, can endanger the child.

Witnesses testified that "the policy requiring the child's close and continuing contact with both parents has no doubt provided in some cases ongoing opportunities for further intimidation, harassment, and/or physical assaults of the battered woman."[134/] In cases of domestic violence, there should be an exception to a presumption favoring continuing contact, and "it should be up to the judge to decide whether frequent and continuing contact is really in the best interests of that child in that situation."[135/] "Frequent and continuing contact as required by the Civil Code should be an ideal to be worked towards, not a starting point."[136/]

Special Finding No. 9

[Joint custody in domestic violence]

The committee received testimony that joint custody is inappropriate where there has been domestic violence by one

parent against the other, and that the court should consider other options such as alternative visitation arrangements or in some cases, no visitation at all. Although joint custody is always an option, custody is to be awarded according to the child's best interest (Civ. Code, § 4600(b)(1)). While there is no legal preference for joint custody (§ 4600(d)), some judges may continue to prefer it. But, since joint custody requires cooperation between the parents, witnesses recommended that it be presumed inappropriate in domestic violence cases. A judge would have to make a specific finding that joint custody was appropriate despite the history of domestic violence.

"Many women express fear and concern at having to share child custody with a man who has physically abused them."[137/] One family law practitioner described joint custody as "a crime against children in cases where there has been domestic violence."[138/] She based this upon the assumption that violence to the mother endangers the children. Another practitioner recommended "a presumption against joint custody, or sole custody to the batterer if there's been a history of domestic violence."[139/] "Joint custody can create major problems for battered women, due to the more frequent contact with the batterer. . . ." Joint custody only works well when the two parents get along.[140/]

Special Finding No. 10

[Need for funding of alternative visitation programs]

The committee heard testimony supporting the need for alternative visitation programs that ensure the safety of victims of spousal abuse and their children when the court orders shared custody or visitation. The usual supervised visitation program, supervised by a relative, may not be available to the victim of domestic violence.

The committee was told that during the "cycle of domestic violence" victims become isolated from a support

system of friends or relatives, and that often the batterer's mother is the victim's only permitted outside contact. When victims finally decide to initiate a custody proceeding, they may request third party or supervised visitation in order to try to protect themselves and their children from the danger posed by the batterer. But often, because of their isolation, victims do not have people to rely upon to supervise the exchange or visitation of children. "Part of the whole cycle of domestic violence involves cutting off--the batterer cutting off the woman's support system, her friends, her relatives, etc. So a lot of times there's nobody available to supervise that visitation."[141/] It was reported that women who are poor, women of color, and immigrant women often lack access to sufficient resources to provide an adequate supervisor,[142/] and that many battered women have great difficulty arranging for a safe location to transfer their children to the father under court-ordered vistation.[143/] In sum, if the burden is on the abused person requesting supervision, safe and satisfactory arrangements are often not available.[144/]

A supervised visitation program available to all persons, whatever their income, similar to the Creative Visitation program designed by the YWCA in San Diego, was recommended by witnesses. However, creative visitation programs are fairly expensive, and at present must rely upon grants to supplement sliding fees.[145/] One pilot program now underway in Santa Clara, under a grant from the Judicial Council, uses senior centers to provide supervised visitation.[146/] The committee concluded that public funding of visitation programs is desirable.

D. Criminal prosecution

The legislative intent of California Penal Code Section 13700 et seq., is clear:

> The purpose of this Act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated.

Obviously, prosecutors and police are the frontline in carrying out the legislative intent of the section. (See Recommendations 11 and 13, infra.)

Judges also play a major role in deterring domestic violence. In the U.S. Attorney General's Task force on Family Violence-Final Report, judges were advised to take seriously their impact on a defendant's future behavior. Further, the report said, at page 41:

> Judges are the ultimate legal authority in the criminal justice system. If they fail to handle family violence cases with the appropriate judicial concern, the crime is trivialized and the victim receives no real protection or justice. Using the yardstick of the court to measure conduct, the attacker will perceive the crime as an insignificant offense. Consequently, he has no incentive to modify his behavior and continues to abuse with impunity. The investment in law enforcement services, shelter support and other victim assistance is wasted if the judiciary is not firm and supportive . . .

The criminal court system can remove a batterer from proximity with a victim and demonstrate society's disapproval of the batterer.[147/] One possible disposition the court can make is send the defendant to a diversion program. In California, the law provides for pre-trial domestic violence

diversion of a defendant charged with battery to counseling and treatment programs (Pen. Code sec. 1000.6). Several models of effective programs were presented to the committee.[148/]

1. Diversion

Special Finding No. 11

[Post-Plea domestic violence diversion]

Penal Code section 1000.6 provides for diversion, under specified circumstances, of defendants accused of spousal abuse. Upon completion of a diversion program, the defendant's record is expunged.

The committee heard testimony that the availability of diversion sends a message that domestic violence is treated less seriously than comparable crimes against non-family members.[149/] It was reported that some courts use diversion to reduce their caseload, and that mechanisms for court review of a defendant's failure to complete diversion are inadequate. And, by the time a failure to complete diversion is discovered and the defendant must stand trial, the prosecution is rarely successful due to the passage of time. It was reported that probation departments have statutory responsibility to investigate diversion programs, but that heavy caseloads generally prevent much investigation,[150/] few programs report batterers who fail to show up,[151/] and there is no communication between domestic violence diversion programs and other diversion programs such as drug diversion.[152/]

Testimony was received linking the availability of domestic violence diversion programs and gender bias. "Domestic diversion exists because of a bias against women who are the victims of these crimes."[153/] "Diversion is seen as a valid method of dumping these cases by prosecutors and by judges."[154/] Diversion was viewed by these witnesses as an alternative to taking the crime of domestic violence seriously.

Batterers treat diversion as a joke. "They know there is no follow-up. They will show up once, if they show up at all."[155] "[B]atterers batter because there are no consequences."[156] As a former batterer explained, "Batterers feel they can get away without any consequences."[157] Batterers see diversion as a way to "con" the system."[158]

Witnesses recommended that diversion be a condition of probation after a plea of guilty.[159] This, they said, would send a clear message that domestic violence is a serious matter and that failure to complete diversion will result in criminal penalties. After a plea, "[I]f the batterer reoffends by beating . . . again, or misses the counseling sessions, the counselor has to call the probation officer and probation can be revoked.[160] Post-plea diversion would provide greater safety for the victim, protecting him or her from re-violation by giving time "to get her act together, or to get out of town safely, or to establish the safer relationship with him."[161]

A period of probation may provide a longer period of time to work with the batterer's behavior. As Gail Pincus, Director of the Domestic Abuse Center in Northridge, explained:

> [O]ur batterers will do absolutely anything to stay out of that jail. If that means coming to my program and stop violating her, that's what they're going to do.[162]

A former batterer agreed, "batterers do not under any circumstances want to go to jail."[163]

Finally, the committee heard testimony that where batterers plead guilty and go to diversion as a condition of probation, there is a far higher rate of program completion.[164]

Therefore, a guilty plea should be required as a condition of eligibility for diversion, so that the clear message is sent that this is a serious matter and that failure to complete diversion will result in criminal penalties.

Recommendation No. 10

[Statewide standards for diversion programs]

Request the Judicial Council to adopt new Standards of Judicial Administration which would create statewide standards for diversion programs, with input from domestic violence advocates, and statewide standards for effectively monitoring participation and successful completion of diversion programs.

Discussion and analysis

Diversion programs now vary greatly from county to county and are not governed by statewide procedural or operational standards. In January 1990, the California Auditor General issued a report entitled "The Administration of the State's Domestic Violence Diversion Program Could be Improved." Its three major findings were:

1) Probation Department in the Counties We Reviewed are Not Adequately Monitoring their Domestic Violence Diversion Cases;

2) Defendants in Domestic Violence Diversion Sometimes Attend Inappropriate Treatment Programs and Programs that Consist of Only a Few Treatment Sessions;

3) Courts are Granting Domestic Violence Diversion to Some Defendants Who are Not Eligible.

It was reported that probation officers fail to investigate the quality of the programs, and that some programs are wholly inadequate. Testimony was received as to the inadequacies of existing diversion programs. For example, in some programs, batterers were required to attend only a few

hours on weekends. Some programs demonstrated their lack of knowledge about domestic violence by requiring the victims to participate[165/] or by blaming the victim.[166/] Some programs are simply "money-making schemes."[167/]

It was suggested that programs need to be closely supervised with regular reports to the judge.[168/] However, less than half the judges responding to the judges survey reported that they required follow-up reports on diversion.[169/] Judges should only divert batterers to programs that adhere to statewide standards and provide effective monitoring of batterers.

If defendants are in different diversion programs for different offenses, such as drug-related cases, these need to be coordinated.

2. District attorneys/city attorneys

Recommendation No. 11

[Prosecution]

Request the Judicial Council to transmit the advisory committee's report and commend it to the attention of district attorneys and city attorneys who prosecute misdemeanor domestic violence offenses. The letter of transmittal should:

(a) Outline the need for the treatment of domestic violence offenses as serious crimes and as felonies where warranted;

(b) Recommend establishment of a specially trained vertical prosecution unit to handle all domestic violence cases whenever possible.

(c) Recommend training for prosecutors regarding the availability of restraining orders pursuant to Penal Code section 136.2 in the criminal courts and encourage their use.

(d) Recommend training for prosecutors regarding standards for effective diversion programs, including effective monitoring.

(e) Recommend that the prosecutor, not the victim, decide whether or not to prosecute.

Discussion and analysis

Domestic violence offenses are serious crimes, and should be treated as such. Historically, "prosecutors and judges were reluctant to vigorously prosecute these cases [of domestic violence] for fear of breaking up family units or ruining a husband's career. All concerned would subordinate a woman's safety to the issues of family and her husband's career," according to a Los Angeles Deputy City Attorney who now prosecutes domestic violence cases.[170/] As she further explained, "Cases that are considered by anyone's lights to be the less severe and the least likely of prosecution are domestic violence cases."[171/] Most alleged batterers are prosecuted for misdemeanor offenses, although battery is prosecuted as a felony in San Francisco.[172/] Where victims are reluctant to testify, prosecutors often drop the charges even if other evidence, such as eye witnesses, severe injuries, or other physical evidence exists.[173/] There was also testimony that prosecutors are quick to drop charges if the victim vacillates, and that "if the DA's took the domestic violence cases as seriously as they take other cases, it would make a big difference in terms of women wanting to drop charges."[174/]

Vertical prosecution units, in which specially trained prosecutors handle a case from beginning to end, were reported to have proven successful in domestic violence cases.[175/] Such units exist in Los Angeles, San Diego, Santa Barbara, San Francisco, and San Jose.[176/] In Los Angeles, the prosecution unit was able to increase the caseload substantially,[177/] and the emphasis in filing cases has resulted in "fewer repeat cases because we were having the office program treated as a

revolving door."[178/] One witness stated that a major benefit of vertical prosecution is that

> [t]he victim is talking to one prosecutor throughout the case. She doesn't have to go through the story for a variety of different prosecutors, and she also has someone who knows the special techniques that are often effective in dealing with these cases when you're prosecuting them.[179/]

Criminal restraining orders are available but rarely used.[180/] Alana Bowman, Deputy City Attorney in Los Angeles, submitted a form to the Committee that is used for criminal restraining orders in Los Angeles it could be used as a model for a Judicial Council form.

Many times, out of a realistic fear, victims may not want to pursue the prosecution of a case. Several witnesses suggested that one way for prosecutors to break the continuing cycle of violence is to have the prosecution, rather than the victim, sign the complaint. Under such circumstances, it is no longer the victim who chooses to press or drop charges. The decision is up to the prosecutor.

San Diego County prosecutors do not require victims to sign charges. It is thus made clear that it is not the victim's decision whether to press or drop charges.[181/] The benefit of this approach, it was suggested, is "to avoid the emotional dynamics that may come up as far as whether the victim wishes to go forward or doesn't, how fearful she is of retaliation, and so forth."[182/] In San Francisco as well, prosecutors, not the victims, decide whether or not to prosecute. "No victim has ever dropped charges because it is not within her power to do that. I think that is an important distinction for the prosecutor's office to make; that it's the district attorney that drops charges or pursues charges."[183/] Further, as explained in a criminal law bench guide used in a judicial education program on domestic violence:

> The court can counteract the belief that violence is an effective means of maintaining power and control by imposing negative consequences, in the form of legal sanctions upon the behavior. In addition, the defendant's control over the victim is partially severed when the court makes it clear that the criminal justice system controls the case, not the defendant or the victim. In this way, the defendant learns that coercing the victim into requesting that charges be dismissed is no longer an effective means of avoiding criminal sanctions.184/

The committee concluded that procedures used in Los Angeles, San Diego and San Francisco counties may serve as successful models for prosecution of domestic violence cases. These procedures have, it seems, effectively dealt with problems presented by reluctant or recanting witnesses.185/

Recommendation No. 12
[Victim/Witness programs]

Request the Judicial Council to affirm the need for publicly funded, active victim-witness programs in each county to deal with domestic violence victims and commend and encourage the continued funding and support of these programs.

Discussion and analysis

Victim-witness programs have assisted the prosecution of domestic violence cases by providing needed emotional and practical support such as transportation and child care, so that the victim can effectively participate in the prosecution.

Dee Fuller, Director of the District Attorney's Victim Witness Assistance Program in San Diego County, explained: "If there's anything that's truly important to any crime victim, it's information, and it's resources, it's support, and it's knowing you're not alone."186/ The San Diego program helps victims get in touch with support agencies and provides basic

services such as transportation, child care, and someone who accompanies the victim to court.

Staying in touch with the victim and providing support was reported to be "a very important link in terms of getting convictions in domestic violence cases."[187/] For example, Janet Carter, Director of the Criminal Justice Advocacy Unit in the San Francisco District Attorney's Family Violence Project testified that victim advocacy services have assisted victims who go through the prosecution process, and have resulted in a dramatic decrease in victim reluctance, rising filing rates, and a higher percentage of cases resulting in a positive disposition.[188]

Therefore, public funding of victim-witness programs is recommended.[189/]

3. Law enforcement

Recommendation No. 13

Request the Judicial Council to transmit the advisory committee's report and commend the report to the attention of law enforcement organizations and:

(a) highlight the testimony dealing with the need to treat domestic violence cases in the same way as similar crimes against strangers.

(b) highlight the testimony dealing with the need to protect the victim after the alleged battery for long enough to permit the victim to arrange for his or her safety.

(c) suggest the need for training on emergency protective orders, their availability, the means to notify victims, and how to obtain issuance.

(d) suggest the need for training that restraining orders are to be enforced, that violation is cause for arrest, and that proof of service need not be filed with the court before enforcement is required.

(e) suggest that training should be conducted by domestic violence experts on all aspects of domestic violence including the characteristics of the victim and the batterer, the seriousness of the crime, the need for arrest, measures to protect the victim, the need to make reports, and the need to give prompt attention to calls.

Discussion and analysis

The actions and attitudes of law enforcement officers can make a significant difference in the lives of a family torn by domestic violence.

Studies show that arresting a batterer when circumstances call for it is a greater deterrent to future violence than mediating a battery as a mere family dispute.[190/] Also, releasing a batterer when bail release is available was described as "a really major problem for the battered woman because he may be back within an hour" and the victim needs time to get to safety.[191/] Police should try to make some provision for the victim's safety.

Witnesses testified that sometimes police officers refuse to do anything if there is no restraining order, even though they could advise the victim of his or her right to make a citizen's arrest.[192/] After the police have been called several times but the victim hasn't left or gotten a restraining order, officers have refused to do anything, let alone make an arrest.[193/] One woman reported that the police stopped responding to her calls because she called too often.[194/] Another was told by police that they wouldn't help her because she had filed a complaint earlier and then dropped it.[195/] Even where there is a restraining order, police sometimes merely take an informational report after a violation occurs.[196/] In other cases, police are slow to respond to TRO violation calls, feeling their time would be better spent on other matters.[197/]

Law enforcement's failure to respond to calls for assistance can lead to tragedy, as in an incident which occurred in Los Angeles on August 27, 1989, where lack of response resulted in four deaths. A woman who had a restraining order against her husband called 911 for assistance after he threatened to come over with a gun. The dispatcher, after learning that this was only a threat, told the woman, "The only thing to do is just call us if he comes over there." He arrived 15 minutes later, shot and killed the woman and three others.[198/]

The committee heard testimony that when police come when called, their response may be inadequate. A full investigation with all available resources may not be forthcoming. One victim testified she could not get the police to take her to a hospital, despite repeated requests. Instead, they told her to just go home, even though she was terrified.[199/] She also said that some officers showed great disrespect by laughing as they took pictures of her bruises.[200/]

Victims often do not know about Emergency Protective Orders, and law enforcement personnel do not seem to be sufficiently trained to inform victims of their availability.[201/]

Police were reported to have told victims that if they call again, both parties will be arrested.[202/] Police also failed to enforce an order from other counties, believing it was not effective in their county.[203/]

Pursuant to Penal Code section 13519, law enforcement personnel are to be offered training on "enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim." This training has been very effective in assisting law enforcement personnel to understand domestic violence issues and to provide better protection to domestic violence victims.

Leslie Lord, a Lieutenant with the San Diego Police Department who is the Domestic Violence Liaison Coordinator, explained: "Law enforcement officers . . . are struggling to overcome many of the misperceptions that are related to the psycho-social dynamics of the phenomena of domestic violence, or battering."[204/] Much progress has obviously been made during the time this training has been offered, but occasionally problems still are reported.[205/]

E. Judicial education

Recommendation No. 14

[Judicial education]

Request the Judicial Council to urge CJER to conduct training of all judges on the following issues:

(a) The psychological profiles of both victims and batterers

(b) The nature and perpetuation of the cycle of violence and the battered women's syndrome

(c) An understanding of the nature of the victim's experience and emotional state

(d) An understanding of the intimidating effects the court system has on victims of domestic violence

(e) An understanding of the role of professionals who work in the area of domestic violence including expert witnesses and lay advocates

(f) The need to issue enforceable and effective restraining orders and attention to whether the order should take effect immediately, should limit the taking of property, and should not be too limited in time

(g) The need to inform victims of the availability of emergency protective orders by telephone

(h) The need for focus on problems of the poor and minorities, including adequate representation, interpreters, and the avoidance of stereotypes about violence in ethnic or minority communities

(i) The need for monitoring diversion to ensure that an effective program is completed

(j) Knowledge of safety measures to protect the victim including supervised visitation, neutral pickup points, third-party visitation arrangements, or creative visitation plans

Discussion and analysis

Sexual stereotypes and misconceptions concerning domestic violence do, unfortunately, still exist among the judiciary, according to evidence presented to the Committee. Sometimes, active hostility towards victims of domestic violence is expressed. More often, the problem is simply lack of education. The incidents recounted below support the need for training on domestic violence issues.

> Most judges and bench officers are hostile to domestic violence prosecutions. They do not understand the nature of domestic violence, or the effects upon the victim. They have little patience with terrorized and hesitant victims and are unwilling to let prosecutors try cases in which no victim's testimony is available, or when the victim recants on the stand.
>
> What is needed is education of judges, prosecutors, and probation officers of the issues of domestic violence.[206/]

Testimony revealed that judges do not understand why a victim who has fled her home might come to court in jeans. Some think that victims ask for the violence because they are seductive.[207/] Sometimes they believe the victim should be passive, and don't understand her frustrations if she's loud and abrasive.[208/]

Judges need training on why victims may want to drop charges.[209/] Since judges often don't understand the cycle of violence, with tension building, explosion, and forgiveness, judges' perception that domestic violence allegations are either not as serious as stated or just not true is reinforced if complaints are later withdrawn."[210/] Some judges refuse to allow testimony of the cycle of violence and the events preceding and following the explosion.[211/] When one woman wanted to drop charges, the judge told her, "If you are unfortunate to have another beating, and you make another complaint to the police, you will have a lack of credibility, by that, I mean they won't believe you. Don't come before this court again, all right?"[212/]

In the Judges' Survey, Question 12, about 40 percent of those answering agreed, and 6 percent strongly agreed, that allegations of domestic abuse are often exaggerated. Some judges minimize violence or display hostility toward domestic violence victims. One judge overturned a jury verdict when a husband assaulted his wife with a vacuum cleaner, because better weapons were available but not used.[213/] Another judge commented that a domestic violence victim "probably should have been hit."[214/] Many complaints were received about light sentences for batterers, orders for diversion despite the prosecutor's objection and attempts to dispose of domestic violence cases quickly.

Several incidents of minority bias were also reported. One judge was reported to have said, "Well, don't you expect that in this type of culture," to an attorney representing a woman of color applying for a restraining order after she had been beaten and had a gun held to her head.[215/] Another judge called domestic violence "an old Chinese custom" when a Korean couple was involved.[216/] In another incident, "We have a judge who did say to a Cambodian client of mine why can't you name your children names like Robert and John to make it easier for us in court. . . .[217/]

immigrant victims depending on their spouses for legal immigration status also report that they are sometimes questioned about their green cards.[218/]

In view of the attitudes, misinformation, and lack of understanding indicated by comments such as these, the need for judicial education cannot be overstated. In sparsely populated rural areas, it is particularly important for male judges to take a proactive role in educating themselves and the community about the harmful realities of domestic violence.

Recommendation No. 15

[Judicial Training Specifically Needed to Guarantee Safety of Victim in Child Custody Visitation Matters]

Request the Judicial Council to adopt a Standard of Judicial Administration which would provide that in cases where domestic violence has been established, custody or visitation orders should be issued in such a way as to ensure the safety of the victim of domestic violence, whether by supervised visitation, neutral pick-up points, third-party visitation arrangements, or creative visitation plans that protect all parties from further violence.

Discussion and analysis

Because there now exists no statutory requirement that judges consider domestic violence in decisions regarding custody and visitation orders, sometimes these orders fail to provide for safe transfer of children between parents and safety for the children while they are with the abusing parent.

Numerous reports were received that visitation and transfer of children were opportunities for further violence to occur. As one victim explained, "You are given custody orders that expose you to harm at all times."[219/] As a practitioner echoed,

> The safety of the woman, the mother, is often a concern when you have joint custody, or liberal visitation, because the contacts between the batterer and the victim is increased by liberal visitation with the batterer, and very often, the batterer will use the opportunities of visitation to have access to the woman and increase the violence.[220]

A case was reported where a father who got visitation three days a week, meeting the mother twice a week to exchange the child, murdered her during an exchange.[221/] Another victim reported that during one court-ordered visit, the batterer showed up at her home, demanded the child, and raped her in front of the child.[222/] Even when transfer of the child took place at a police station parking lot, the same woman was assaulted by her ex-spouse's new wife.[223/] Advocates reported that a batterer may follow a woman home from a transfer point.[224/] One witness testified that, with visitation orders, the judge

> will not take into account that often a transfer of a child is an opportunity for the batterer to again harass the woman, to beat her up, to kidnap the child and often we have women who were, who had moved out, and the batterer did not know where she lived. At the time of transfer visitation the batterer would follow her home so that he could again have access to her . . . . [225/]

The need to take safety into account was emphasized repeatedly.[226/] One successful model was reported to the committee. The YMCA Creative Visitation program in San Diego allows for on-site exchanges where the batterer and the victim do not meet. It also provides for supervised visitation.[227/]

As a former victim testified, based on her successful experience with supervised visitation monitored by a therapist, "The courts can create a safety zone which protects endangered

women and children from remaining trapped into perpetual harassment and fear."[228/] She asked that courts "find the alternatives to traditional custody arrangements that allow/request continuous unmonitored visitation without regard to safety and psychological damages."[229/]

Conclusion

Many members of the committee began the investigation into the effect of gender bias on domestic violence cases in the courts with the question "Why does the domestic violence victim stay?" After hearing the deeply moving testimony of domestic violence victims and their advocates, the committee learned that even this question has gender bias implications, because it blames the victim and the victim is usually female. The question should be "Why does one person batter another and how can we stop it?"

While the committee does not have the answers to these questions, it does suggest methods to ensure that the court and the judicial process protect a victim, help a batterer who can be helped, and, if there is punishment to be meted out, punish the wrongdoer rather than the victim.

ENDNOTES

1/ Judges' survey, question 13a.

2/ Judges' survey, question 12c.

3/ FBI, "Crime in the United States" 1986.

4/ Baker, Fleming, Stopping Wife Abuse, (1979), p. 155.

5/ Stark, E. et al., "Wife Abuse in the Medical Setting: An Introduction for Health Personnel," Monograph Series No. 7, National Clearinghouse on Domestic Violence, Washington, D.C.: U.S. Government Printing Office, April 1981.

6/ Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, Washington, D.C.: Office of Justice Programs, U.S. Dept. of Justice, October 1983; see also written comment, Dr. Mildred Pagelow.

7/ Id.

8/ Id.

9/ Penal Code section 13700.

10/ Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, Washington, D.C.: Office of Justice Programs, U.S. Dept. of Justice, October 1983; see also written comment, Dr. Mildred Pagelow.

11/ Women, the Courts, and Equality, p. 38

12/ Crites, "A Judicial Guide to Understanding Wife Abuse," The Judges Journal 5 (Summer, 1985).

13/ Code of Civ. Proc. § 546(b)

14/ The New Hampshire report is distinct from the others in that it was issued by the bar association and not by a task force appointed by the Chief Justice.

15/ Central California Coalition Transcript, p. 22.

16/ Southern California Coalition Transcript, p.1.

17/ Sacramento Public Hearing Transcript, pp. 177-178.

18/ Fresno Public Hearing Transcript, p. 231, pp. 234-5.

19/ Fresno Public Hearing Transcript, p. 231.

20/ Central California Coalition Transcript, p. 23.

21/ Fresno Regional Meeting Transcript, pp. 49-50.

22/ Butte Regional Meeting Transcript, p. 53; Central California Coalition Transcript, p. 17; Fresno Butte Regional Meeting Transcript, p. 79.

23/ Southern California Coalition Transcript, p. 6: Northern California Coalition Transcript, p. 8.

24/ Fresno Public Hearing Transcript, p. 199; Fresno Regional Meeting Transcript, pp. 50-51.

25/ Southern California Coalition Transcript, p. 2; Central California Coalition Transcript, p. 31; Northern California Coalition Transcript, pp. 39-40, pp. 48-49.

26/ Central California Coalition Transcript, p. 31.

27/ Central California Coalition Transcript, pp. 16-17; Northern California Coalition Transcript, p. 29.

28/ Southern California Coalition Transcript, p. 2; Written Comment.

29/ Id., at p. 5.

30/ Central California Coalition Transcript, p. 16.

31/ Southern California Coalition Transcript, p. 14.

32/ Northern California Coalition Transcript, pp. 16-17.

33/ Southern California Coalition Transcript, p. 1.

34/ Id., at p. 5.

35/ Sacramento Public Hearing Transcript, p. 177.

36/ Fresno Public Hearing Transcript, p. 205. See also Butte Regional Meeting Transcript, p. 57, pp. 78-83.

37/ Orange Regional Meeting Transcript, pp. 120-123.

38/ Central California Coalition Transcript, pp. 13-14.

39/ Southern California Coalition Transcript, pp. 22-23.

40/ Southern California Coalition Transcript, pp. A4 - A5.

41/ San Diego Public Hearing Transcript, p. 233. (See also Written Comment; Northern California Coalition Transcript, p. 19).

42/ San Francisco Public Hearing Transcript, p. 288.

43/ Fresno Regional Meeting Transcript, p. 11.

44/ Southern California Coalition Transcript, p. 4.

45/ Sacramento Public Hearing Transcript, pp. 87-94.

46/ San Francisco Public Hearing Transcript, p. 267.

47/ Southern California Coalition Transcript, pp. 6, 10, 12.

48/ Central California Coalition Transcript, pp. 5, 13.

49/ Northern California Coalition Transcript, p. 75.

50/ Butte Regional Meeting Transcript, p. 68.

51/ Sacramento Public Meeting Transcript, p. 178.

52/ Judges' Survey, question 14.

53/ Sacramento Public Hearing Transcript, p. 178.

54/ Sacramento Public Hearing Transcript, pp. 178-179.

55/ Northern California Coalition Transcript, pp. 16, 20-21; San Francisco Regional Meeting Transcript, pp. 46-47.

56/ Judges' Survey, question 15.

57/ San Diego Public Hearing Transcript, p. 232.

58/ Butte Regional Meeting Transcript, p. 67; San Francisco Regional Meeting Transcript, pp. 45-47.

59/ San Francisco Regional Meeting Transcript, p. 59.

60/ Los Angeles Public Hearing Transcript, p. 244.

61/ San Francisco Public Hearing Transcript, p. 232.

62/ San Francisco Public Hearing Transcript, p. 280.

63/ Los Angeles Public Hearing Transcript, p. 250.

64/ San Diego Public Hearing Transcript, p. 236.

65/ Orange Regional Meeting Transcript, pp. 183-185.

66/ Orange Regional Meeting Transcript, pp. 79-80.

67/ Sacramento Public Hearing Transcript, pp. 90-97.

68/ Northern California Coalition Transcript, p. 80.

69/ Written comment.

70/ Fresno Public Hearing Transcript, p. 193.

71/ San Diego Public Hearing Transcript, p. 166.

72/ San Francisco Public Hearing Transcript, p. 237. Others testifying as to the danger inherent in these cases and need for protection included Nancy Lemon, an attorney specializing in domestic violence cases (San Francisco Public Hearing Transcript, pp. 273-274), Constance Carpenter, another family law paractitioner (Sacramento Public Hearing Transcript, p. 184), Michelle Aiken (Fresno Public Hearing Transcript, p. 195), and Lisa Warner-Beck, Legal Services Coordinator of the Marjaree Mason Center (Fresno Public Hearing Transcript, p. 236).

73/ Central California Coalition Transcript, p. 5. See also Central California Coalition Transcript, p. 13.

74/ Sacramento Public Hearing Transcript, pp. 81-99.

75/ San Diego Public Hearing Transcript, p. 168.

76/ San Francisco Public Hearing Transcript, p. 284. (See Written Comment, report submitted by California Women of Color Against Domestic Violence).

77/ Fresno Public Hearing Transcipt, p. 233.

78/ San Diego Public Hearing Transcipt, pp. 235-236.

79/ Southern California Coalition Transcript, p. 12.

80/ Fresno Public Hearing Transcript, p. 236.

81/ San Francisco Regional Meeting Transcript, pp. 12-13, 37.

82/ Id., at pp. 37-38, 41.

83/ Fresno Public Hearing Transcipt, p. 192.

84/ Southern California Coalition Transcript, p. 6.

85/ Report submitted by: California Women of Color Against Domestic Violence.

86/ Southern California Coalition Transcript, p. 1.

87/ Southern California Coalition Transcript, p. 47.

88/ Orange County Regional Meeting Transcript, p. 78.

89/ San Francisco Public Hearing Transcript, pp. 274-5 ; Butte Regional Meeting Transcript, pp. 72, 76.

90/ Judges' Survey, question 13(c).

91/ Judges' Survey, question 27.

92/ San Francisco Public Hearing Transcript, p. 235; Los Angeles Public Hearing Transcript, p. 245.

93/ San Diego Public Hearing Transcript, p. 157.

94/ Butte Regional Meeting Transcript, pp. 58-59.

95/ Northern California Coalition Transcript, pp. 44-45.

96/ San Francisco Regional Meeting Transcript, pp. 54-56; Southern California Coalition Transcript, pp. 7, 9.

97/ Northern California Coalition Transcript, pp. 14, 30, 33; Southern California Coalition Transcript, p. 23.

98/ Northern California Coalition Transcript, pp. 14, 45; Southern California Coalition Transcript, pp. 8, 9-11, 16; Los Angeles Regional Meeting Transcript, p. 54; Orange Regional Meeting Transcript, pp. 61, 81. Written comment.

99/ San Francisco Public Hearing Transcript. pp. 143-144.

100/ Central California Coalition Transcript, p. 18.

101/ San Diego Public Hearing Transcript, p. 179.

102/ Central California Coalition Transcript, p. 10. See also, "Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women"; 7 Harvard Women's Law Journal 57 (1984); United States Commission on Civil Rights, "Under the Rule of Thumb: Battered Women and The Administration of Justice" p. 96 (1982).

103/ San Diego Public Hearing Transcript, p. 161.

104/ San Diego Public Hearing Transcript, p. 163.

105/ Sacramento Public Hearing Transcript, p. 183.

106/ Id., at p. 183.

107/ Northern California Coalition Transcript, p. 7; Written comment (El Dorado County).

108/ Northern California Coalition Transcript, p. 30; Southern California Coalition Transcript, p. 7.

109/ Los Angeles Public Hearing Transcript, p. 247.

110/ San Diego Public Hearing Transcript, p. 179.

111/ As a model, see: Kuehl & Lerman, "Mediators' Response to Abusive Men and Battered Women: Guidelines for Policymakers and Mediators," U.S. Department of Justice National Women's Abuse Prevention Project.

112/ Los Angeles Public Hearing Transcript, p. 240.

113/ San Diego Public Hearing Transcript, p. 165.

114/ Orange County Regional Meeting Transcript, pp. 60-61.

115/ Written comment

116/ Orange County Regional Meeting Transcript, p. 307.

117/ Southern California Coalition Transcript, p. 31. See also San Francisco Regional Meeting Transcript, p. 54.

118/ Northern California Coalition Transcript, p. 27.

119/ San Francisco Regional Meeting Transcript, pp. 55-56.

120/ Northern California Coalition Transcript, p. 43.

121/ San Francisco Public Hearing Transcript, p. 235.

122/ San Diego Public Hearing Transcript p. 165.

123/ Los Angeles Public Hearing Transcript, p. 16.

124/ Crites article, see footnote 12, supra.

125/ Id.

126/ San Diego Public Hearing Transcript, p. 159.

127/ Id., at p. 198.

128/ Los Angeles Public Hearing Transcript, p. 199.

129/ Los Angeles Public Hearing Transcript, p. 125.

130/ San Francisco Public Hearing Transcript, p. 142.

131/ San Diego Public Hearing Transcript, p. 159.

132/ Sacramento Public Hearing Transcript, p. 180.

133/ Southern California Coalition Transcript, p. 17.

134/ San Francisco Public Hearing Transcript, p. 143.

135/ San Francisco Public Hearing Transcript, p. 269.

136/ Id., at p. 145.

137/ San Diego Public Hearing Transcript, p. 233.

138/ Sacramento Public Hearing Transcript, p. 180.

139/ San Francisco Public Hearing Transcript, p. 269.

140/ Los Angeles Public Hearing Transcript, p. 125.

141/ San Francisco Public Hearing Transcript, p. 270.

142/ San Francisco Public Hearing Transcript, p. 282.

143/ San Diego Public Hearing Transcript, pp. 175-176

144/ Written Comment - El Dorado, San Francisco Regional Meeting Transcript, pp. 56-57.

145/ San Diego Public Hearing Transcript, p. 176.

146/ "Santa Clara Gets Pilot Child Visitation Program." The Recorder, 5/24/89.

147/ Goolkasian, G., Confronting Domestic Violence: The Role of the Criminal Court Judges, National Institute of Justice Research in Brief (Washington, D.C. U.S. Dept. of Justice, 1986.

148/ See "Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client," by A. Gnaley, Ph.D., Chapter 9 of Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence, edited by Sonkin, D. (New York, Springer, 1986).

149/ Sacramento Public Hearing Transcript, p. 187.

150/ Los Angeles Public Hearing Transcript, pp. 274-275.

151/ Id., at p. 295.

152/ Butte Regional Meeting Transcript, p. 60.

153/ Los Angeles Public Hearing Transcript, p. 266.

154/ Id., at p. 267.

155/ Los Angeles Public Hearing Transcript, p. 298.

156/ Id., at p. 292.

157/ Los Angeles Public Hearing Transcript, p. 298.

158/ Los Angeles Regional Meeting Transcript, p. 59.

159/ San Diego Public Hearing Transcript, p. 199; Los Angeles Public Hearing Transcript, pp. 266 and 290. Written Comment.

160/ San Francisco Public Hearing Transcript, p. 265.

161/ Los Angeles Public Hearing Transcript, p. 291.

162/ Los Angeles Public Hearing Transcript, p. 291.

163/ Id., at p. 298.

164/ San Diego Public Hearing Transcript, p. 197.

165/ Los Angeles Public Hearing Transcript, p. 267.

166/ Written Comment - El Dorado.

167/ Los Angeles Public Hearing Transcript, p. 274.

168/ San Francisco Regional Meeting Summary, pp. 63-64; Butte Regional Meeting Transcript, pp. 87-88; Orange Regional Meeting Transcript, p. 75.

169/ Judges' Survey, question 19.

170/ Los Angeles Public Hearing Transcript, p. 264.

171/ Id., at p. 268; see also Los Angeles Regional Meeting Transcript, pp. 61-62.

172/ Los Angeles Public Hearing Transcript, p. 289. Written Comment - El Dorado. See also San Diego Public Hearing Transcript, p. 233.

173/ Written Comment.

174/ San Francisco Regional Meeting Transcript, p. 52.

175/ San Francisco Regional Meeting Transcript, p. 52.

176/ Los Angeles Public Hearing Transcript, pp. 270-271.

177/ Id., at p. 269.

178/ Id., at p. 270.

179/ San Francisco Public Hearing Transcript, p. 293. See also San Francisco Regional Meeting Transcript, pp. 52-53.

180/ San Franciso Public Hearing Transcript, p. 267.

181/ San Diego Public Hearing Transcript, p. 193.

182/ San Diego Public Hearing Transcript, p. 192.

183/ Northern California Regional Meeting Transcript, p. 52.

184/ Benchguide for the Criminal Courts, at p. 45.

185/ It was reported that some courts encourage the use of subpoena and contempt to compel victims to testify, to "keep a defendant from intimidating a victim into not coming to court on the day of trial and thus resulting in the dismissal of the case." (San Diego Public Hearing Transcript, p. 194.) Witnesses who appeared before the committee strongly opposed this practice as a form of further "victimization of the victim." Experience in several counties appears to show that it is possible to prosecute without the recanting victim. (Los Angeles Public Hearing Transcript, pp. 277-278.)

186/ San Diego Public Hearing Transcript, p. 172.

187/ San Francisco Public Hearing Transcript, p. 266

188/ San Francisco Public Hearing Transcript, p. 293. See also San Francisco Regional Meeting Transcript, pp. 14-16, 53; Orange Regional Meeting Transcript, pp. 72-73.

189/ San Francisco Public Hearing Transcript, p. 266.

190/ Sherman, L., & Berk, R. "The Minneapolis Domestic Violence Experiment: Police Foundation Report (Washington, D.C.: The Polic Foundation, 1984.)

191/ San Francisco Public Hearing Transcript, p. 268.

192/ San Francisco Public Hearing Transcript, p. 283.

193/ Fresno Public Hearing Transcript, p. 203 and p. 225; Butte Regional Meeting Summary, p. 86; Orange Regional Meeting Transcript, p. 66.

194/ Fresno Public Hearing Transcript, p. 225.

195/ Southern California Coalition Transcript, pp. 34-35.

196/ Sacramento Public Hearing Transcript, p. 314.

197/ Southern California Coalition Transcript, pp. 33-34. See also the Daily Journal, 10/29/87, "Winning Orders Half the Battle in Family Violence".

198/ Sacramento Bee, Augusut 31, 1989, p. A3.

199/ San Diego Public Hearing Transcript, p. 252.

200/ Id., at p. 254.

201/ Southern California Coalition Transcript, p. 4, (California Women of Color Against Domestic Violence).

202/ Southern California Coalition Transcript, pp. 38-39.

203/ Written Comment - Tulare.

204/ San Diego Public Hearing Transcript, pp. 218-219.

205/ Id., at pp. 229-230.

206/ Los Angeles Public Hearing Transcript, p. 267. See also San Diego Public Hearing Transcript, pp. 200-201.

207/ Los Angeles Public Hearing Transcript, p. 262.

208/ San Diego Public Hearing Transcript, p. 267.

209/ San Francisco Public Hearing Transcript, p. 267.

210/ Orange Regional Meeting Transcript, pp. 67-68.

211/ San Diego Public Hearing Transcript, p. 203.

212/ Sacramento Public Hearing Transcript, p. 186.

213/ Sacramento Public Hearing Transcript, pp. 186-187.

214/ Los Angeles Regional Meeting Transcript, p. 59.

215/ Orange Regional Meeting Transcript, p. 64.

216/ Sacramento Public Hearing Transcript, p. 185.

217/ Northern California Coalition Transcript, p. 27.

218/ California Women of Color Against Domestic Violence.

219/ Los Angeles Public Hearing Transcript, p. 122.

220/ Sacramento Public Hearing Transcript, p. 187. See also San Diego Public Hearing Transcript, pp. 232-3.

221/ Sacramento Public Hearing Transcript, p. 181.

222/ Sacramento Public Hearing Transcript, p. 301.

223/ Id., at p. 306.

224/ Southern California Coalition Transcript, p. 7.

225/ Southern California Coalition Transcript, p. 15.

226/ Southern California Coalition Transcript, p. 7; Sacramento Public Hearing Transcript, p. 181; San Francisco Public Hearing Transcript, p. 281.

227/ San Diego Public Hearing Transcript, pp. 175-177.

228/ Los Angeles Public Hearing Transcript, p. 204.

229/ Id.

ACHIEVING EQUAL JUSTICE IN CRIMINAL AND JUVENILE LAW

The Report of the Judicial Council
Advisory Committee on Gender Bias in the Courts
on Criminal and Juvenile Law

Hon. Kathryn Doi Todd, Chair,
Criminal and Juvenile Law Subcommittee
Judge of the Los Angeles Superior Court

"Institutions are, of course, microcosms of our society. All of the bias that exists in our society exists in our institutions. They're like little cities and little towns. All the girls--all the decisions made regarding girls in juvenile halls, all the women's programs reflect the same bias, the same benign neglect that appears in small cities with respect to women."

Ms. Sylvia Johnson, Director
Juvenile Hall
San Bernardino County

San Diego Public Hearing, page 247

I. Introduction

California has the largest incarcerated female population in the world. The number of women in state and federal prisons has more than doubled over the past decade, rising from over 12,000 in 1977 to close to 27,000 in 1986. The state prison female population has grown at a faster rate than the male population since 1981. There are currently 6,057 women in the state prison system. The number of women in county jail facilities is also increasing significantly. There are 3,000 women incarcerated in county jails in Los Angeles. That number is expected to triple by the mid-1990's.

The typical female prisoner is a woman between 18 and 40 years of age who has not completed high school. Between 70 and 80 percent of them are mothers. The crimes they commit are mostly nonviolent (see Appendix A).

Though their numbers are increasing, women still make up only 5 to 8 percent of the incarcerated population in California. Although the penal system has a much larger male population, there nevertheless exists a disproportionate disparity between resources for men and women inmates. It is recognized that the system was established to correct men's behavior, and as a result there continues to be a lack of understanding of the specific needs of women.

Young female juvenile offenders fare no better than their adult counterparts. They face many of the same problems: histories of physical and sexual abuse, emotional instability, substance abuse, and teenage pregnancy.

In 1986, there were 69,951 new referrals of male juveniles to probation departments for delinquent acts, and 28,837 new referrals of females. (See Appendix B.) Again, because their numbers are comparatively small, the problems of female juvenile offenders are frequently ignored. The young males in the system are in the overwhelming majority; because of their more aggressive behavior, programs and policies are too often designed to meet only their needs.

Because women are the primary caretakers of children, the general lack of community-based resources has a disproportionately negative effect on them that is gender-based. For example, the placement of women outside their local geographical area seriously limits their access to children in families.

The connection and bond between women and their children creates a nexus between the criminal and juvenile justice systems. Since most incarcerated women and many female juvenile offenders are single parents, many of their children become part of the juvenile dependency system. Insofar as the judicial system does not provide adequate reunification services, the lack of resources for families translates into a lack of services for women and children.

In addition to reviewing the manner in which female offenders are treated by the courts and by the agencies that work in conjunction with them, the committee was also concerned about how courts appoint and compensate attorneys, both male and female, to represent indigents in criminal and juvenile proceedings.

The number of court appointments for indigent representation and the amount of money paid for these appointments can be substantial. In Los Angeles County alone, approximately 47,000 criminal defendants were represented by counsel during the 1988-1989 fiscal year. The majority of these defendants were represented by the public defender's office. A small percentage had private counsel, but approximately 11,000 of these defendants (about 23 percent) were represented by court-appointed counsel. For court-appointed attorney representation during the 1988-1989 fiscal year, Los Angeles County paid more than 18 million dollars for criminal defense, 4 million dollars for juvenile delinquency cases, and 9 million dollars for juvenile dependency matters.1/

Court appointments affected by gender bias can therefore create serious consequences for the integrity of the judicial system, the representation of the client, and the economic and professional status of the lawyer. Qualified women and minority attorneys who are denied access to court appointments because of bias may be financially harmed in actual fees earned and in their reputations in their local communities. If they don't receive appointments, they will be less marketable as identified criminal experts and less likely to attract retained cases.

The committee, therefore, concentrated its review on the ways in which males and females, as attorneys and participants, are differentially affected by the criminal and juvenile justice system.

II. Chapter Overview

The committee's charge was to identify the ways in which the criminal and juvenile justice system treats females as compared to males. Is gender bias reflected in the manner in which courts make such decisions as appointment of counsel for indigent representation or treatment of adult and juvenile offenders?

The committee began by reviewing the policies and procedures concerning court appointments of counsel and made recommendations to help minimize the effect of gender bias.

The committee then focused its attention on the ways in which the criminal and juvenile justice system can be modified to avoid unequal treatment based on gender, while recognizing inherent differences between males and females and the special needs of females brought into the system. The committee sought to determine whether there was differential treatment motivated by gender bias and whether there were

instances in which certain policies and practices created a disparate, negative impact on females.

During the course of its inquiry, the committee found that gender bias affects the ways in which the criminal and juvenile courts operate both directly and indirectly. This chapter discusses the subcommittee's methodology and reports the advisory committee's findings and recommendations.

The recommendations include:

(1) The establishment of formal written policies and statistical reporting of fee-generating court appointments to ensure equal access for attorneys regardless of their gender, race, or ethnicity.

(2) The suggestion that local and state agencies responsible for implementing criminal and juvenile court decisions develop protocols that

(a) make available on an equivalent basis for males and females:

(i) programs and services administered by local probation departments,

(ii) institutions and placements, and

(iii) education and training programs;

(b) design programs and services that reduce any differential effect on female offenders who have infants and young children;

(c) design programs and services that meet the special physical and medical needs of institutionalized females, including pregnancy-related care; and

(d) assure the safety of inmates and detainees from sexual harassment and assault by others.

(3) The development and dissemination of informational materials for institutionalized parents on dependency law and procedure.

(4) Legislation to implement protocols for state and local agencies responsible for inmates and detainees to notify and

secure the presence of parents at dependency-related proceedings.

(5) Implementation of measures to enhance the status of juvenile court.

(6) The development of training and standards on issues that relate to trial and jury selection in matters involving sexual assault, domestic violence, and child abuse.

III. Methodology

The committee used a number of research methods in order to gather data on the subject of gender bias in criminal and juvenile law. The primary tools relied upon by the committee included:

(1) the testimony of the expert witnesses invited to participate in the public hearings;

(2) visits to two county jail facilities and interviews with staff and female inmates;

(3) judges' survey;

(4) the testimony of attorneys with criminal and juvenile law expertise who participated in the regional bar meetings;

(5) a survey of practices concerning fee-generating court appointments conducted by Affiliates of California Women Lawyers; and

(6) a comprehensive review of the literature.

The visits and interviews at the county-operated jail facilities were of special value because the committee obtained firsthand information on the problems and concerns of incarcerated women. While the accuracy of the anecdotes related by the inmates could not always be verified, their perceptions, in conjunction with remarks by the staff, proved very worthwhile. And, in many instances, their complaints about conditions of overcrowding, lack of available resources,

and lack of notice of and transportation to dependency court proceedings were corroborated by interviews with staff.

The committee requested the Affiliates of the California Women Lawyers to assist in its investigation by gathering specific information on the procedures for selection of appointed counsel on a county-by-county basis. The function of the Affiliate Inquiry was to learn more about appointment policies and to provide a factual basis upon which the committee could refine its investigation.

It is important to recognize that although the information reported in the survey was anecdotal, other information provided to the committee, in regional hearing testimony and confidential interviews of judges and court administrators by staff, supports the information collected.

Court appointments affected by the gender of an attorney create serious consequences for the integrity of the system, the representation of the client, and the economic and professional status of the lawyer.

IV. Findings, Recommendations, and Discussion

A. Appointed counsel

Findings

The courts in California are responsible for appointing and compensating with public funds a significant number of attorneys to represent indigents in juvenile and criminal proceedings. The advisory committee sought to determine whether gender bias affected court appointments. Although the manner of appointment by each local court varies, female and minority attorneys appear to be underrepresented throughout the state.

The committee found:

1. Generally, there is a lack of a formal written court policy for court-appointed attorneys statewide.

2. The lack of written policies, recruitment protocols, and reporting requirements creates a climate and conditions where gender and ethnic bias are likely to grow and remain unabated.

3. On a comparative basis, women and minority attorneys receive fewer appointments on the more financially lucrative death penalty and serious felony cases, while they receive more appointments on the less-paying juvenile and misdemeanor cases.

4. In the absence of a requirement to keep and report statistical data showing the gender and race of attorneys appointed by the court, the type of case, and the amount of compensation, it is difficult to accurately determine whether court appointments are made in a bias-free manner.

RECOMMENDATION 1

(a) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, which would provide a model local rule setting forth a policy with respect to the appointment of counsel to ensure equal access for all attorneys, regardless of gender, race, or ethnicity.

(b) Request the Judicial Council to adopt a rule of court requiring that each local court establish by local rule a policy for the appointment of counsel. Request the Judicial Council to provide in the adopted rule of court that in the event a court fails to adopt a local rule regarding appointed counsel, the model rule contained in the standards shall be deemed the local rule.

The standards for the appointment of counsel shall include:

(1) A recruitment protocol to ensure dissemination to all local bar associations, including women and minority bar associations;

(2) A written description of the selection process that includes a statement of: minimum qualifications; application procedure; and selection procedure; and
(3) Regularly scheduled recruitment.

(c) Request the Judicial Council to provide in the adopted rule of court that local courts shall report monthly to the Judicial Council, for a three-year period, statistical information regarding the gender, race, and ethnicity of attorneys appointed, in order to monitor implementation of the local rule. Request the Judicial Council to include the findings of the three-year study in its Annual Report to the Governor and the Legislature.

Discussion and Analysis

In order to evaluate whether gender bias exists in the appointment process, the committee sought to determine how criminal and juvenile courts recruit and select attorneys, and by what formal policy, if any. The advisory committee reviewed the testimony from the regional hearings, a survey of the courts using the assistance of the California Women Lawyers Conference of Affiliates, and staff interviews of judges and court personnel. The committee asked those commenting to compare the various procedures and policies for the selection of appointed counsel in death penalty, serious felony, misdemeanor, juvenile delinquency, and juvenile dependency cases.

- Statutory background

--attorney appointments in criminal and juvenile delinquency cases

The right to the appointment of counsel for an indigent adult or minor accused of a criminal offense is guaranteed by both the federal and state Constitutions.[2/] In California, it

is the statutory duty of the public defender, upon order of the court, to represent any defendant accused of a crime who has not waived counsel and who is financially unable to afford counsel.

In counties where there is no public defender, or in a case in which the court finds--because of conflict of interest or other reasons--the public defender has properly refused to represent a defendant, the court will appoint a private attorney.3/

If a county uses an appointed private counsel system as either the primary method of public defense or as a method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all the following: (1) establish panels that shall be open to members of the State Bar of California; (2) categorize attorneys for panel placement on the basis of experience; (3) refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause; and (4) seek to educate those panel members through an approved training program.4/

Courts may also contract with an attorney or with a panel of attorneys to provide criminal defense services for indigent defendants. Unless there is a finding of good cause, the court shall use the services of the county-contracted attorneys prior to assigning any other private counsel.5/

--attorney appointments in juvenile dependency and termination of parental rights proceedings

In California, there generally is no right to court-appointed counsel in civil cases. However, in juvenile dependency cases petitioned under section 300 of the Welfare and Institutions Code, the appointment of counsel for indigent

parents or children is governed by state statute.[6/] There are other civil cases, such as termination of parental rights proceedings, where the right to court-appointed counsel is either statutorily recognized or required under the due process mandate of the state Constitution.[7/]

--compensation

Compensation for a court-appointed attorney is paid by the county and/or state subject to any reimbursement by the party.[8/]

- Present court practices and procedures

The committee discovered, generally, an absence of formal written policies for all types of cases. Of the 19 counties responding to the affiliate survey, three courts had written court policies for death penalty and felony cases, two courts had them for misdemeanor cases, and two courts had them for juvenile delinquency and dependency cases. The committee notes that most of those counties that had written policies were counties that contract with local firms to provide indigent representation.

The committee found that the manner in which courts make appointments varies according to local custom and culture. Most individuals responding to the affiliate and staff surveys indicated that their court had an official unwritten policy that encompassed some or all of the provisions suggested in section 987.2 of the Penal Code. However, in one instance, the survey respondent indicated that the court policy was to appoint attorneys at the pleasure of the judge. Another commentator said that the court did not have an official policy and that the local practice was to "try to select attorneys who need the business."

The unwritten policies generally included the development of a list by the court or the local bar association of eligible attorneys from which an individual judge makes an appointment. Frequently, attorneys on the list are designated to "pick up" new cases in the arraignment court on specified dates. The names of the attorneys on the list are supposed to be rotated so that a fair distribution can be made.

- Potential for unequal treatment

The committee found a greater percentage of appointments of female attorneys in courts having written policies. In two of the three misdemeanor courts that make appointments pursuant to written policy, women attorneys represented 25 percent and 33 percent respectively.

In the misdemeanor court with 25 percent female court-appointed attorneys, the bar association qualifies members for appointment. To qualify, attorneys must have a certain number of years in practice. A lottery every six months determines the panel. The court retains the right to approve the standards employed by the bar association, but is separated from the appointment process to avoid favoritism.

In the misdemeanor court with 33 percent female court-appointed attorneys, attorneys are classified by experience at one of four levels. Misdemeanor cases are classified as Level 1. It is at this level that the list of attorneys contains 33 percent females. According to the affiliate survey respondent, this also reflects the percentage of women attorneys practicing in that county. The third misdemeanor court with a written policy contracts with an outside firm for services and no percentages concerning the gender of attorneys in the firm were given.

Although most individuals responding to the affiliate survey stated that their court followed its official policy, the

committee received evidence that indicated that actual practice may differ from the policy. One survey respondent indicated that appointments frequently were made to attorneys who happened to be present in court even if they were not on the list. Another survey respondent stated that although there was a list of volunteers maintained by the clerk, an unspoken "good ole boy" policy was often followed.

Testimony at the regional hearings also indicated that judges do not always follow the unwritten policy and instead appoint attorneys according to their own pleasure and possible bias. One judge commented anonymously that in the busy metropolitan courts the selection is often made by the clerk and that even if there is a list, the judge guessed that the clerk sometimes skipped over certain names in favor of others.

A prosecuting attorney who testified before the committee stated that, while waiting for her case to be called in a master calendar court, she observed the following discriminatory practices:

> In the area that I am in there are 987 appointments and you belong to the panel for the local bar association that surrounds the courthouse. And the good-ole-boy network system is alive and well and flourishing.[9/]

This attorney indicated that sometimes sexism and racism played a role in making appointments. She told of the case where two white male prosecutors left the office for private practice in early January 1988. By mid-January they were in superior court picking up cases. They were able, she said, to "short-circuit the procedure" and pick up appointments over those attorneys who were next in line.

She also indicated that in the geographical area in which she works, about 75 percent of the attorneys on the appointment list are black. She said that if they are not in court, they do not get the appointment. The courts, she noted,

are supposed to call before they give away the appointment. They do not call, however, even though they know the names of the persons who are designated to pick up the felony custody arraignments and misdemeanors.10/

- Need for understanding of qualifications and criteria for appointments

The committee notes that how a court defines a "qualified attorney" is rarely specified. Experience and a willingness to serve are frequently stated as criteria for establishing eligibility. But how does an attorney get experience if a judge makes appointments with no formal policies? Without formal policies courts are free to use differing standards to determine eligibility. One survey respondent noted that while female lawyers received some of the appointments, male lawyers seemed "to receive the majority of the appointments regardless of the extent to which they practice criminal law."

In an atmosphere of unwritten and undefined policies, recruitment and eligibility requirements appear elusive. It is easy in this type of environment to permit gender bias to affect court appointments. If there is no written policy, or if a judge ignores the policy and continues to appoint attorneys at the judge's pleasure, meeting the qualifications and being placed on the list is meaningless.

- Underrepresentation of female attorneys in serious felony cases and overrepresentation in juvenile proceedings

The committee found evidence that there still exists a significant underrepresentation of female attorneys in appointments made for felony and death penalty cases. If women attorneys do receive court appointments, they are appointed on lesser crimes or misdemeanors and juvenile cases. The committee

found the profile of the typical appointment for a female attorney to be consistent with stereotypical ideas of the role that should be played by a woman in the law--she should work on cases involving children and families.

Staff interviews with judges and court administrators in Los Angeles and other counties indicated a general perception that women make up a larger percentage of the panels for juvenile dependency and misdemeanor cases than for felony and death penalty cases.

This disparity also translates to lower compensation for women attorneys, since the schedule of fees for juvenile and misdemeanor cases is frequently lower than for felony and death penalty cases. (See Appendix C for sample schedule of fees.)

The committee also heard testimony at the regional hearings about the disparity in appointments. One attorney observed:

> I saw it, more times than not, happening with the more serious cases being given to the men and this would be the system, not just whereby you had a day to pick up and if you came to pick up, you got all those cases, of course. This would be a case where several attorneys were in the room, in a courtroom and, of course, they'd look over you and look all around and say, we'll give it to the guy back here.[11]/

A deputy district attorney in Los Angeles stated that she had not observed any women attorneys being appointed to death-penalty cases. She noted, "[T]here are many women attorneys who have been practicing a long time and it just seems that they do not get the more serious cases." She further indicated that to qualify to be on the panel, you had to be an attorney for a certain number of years or have handled a certain number of cases. She cautioned that if women aren't being appointed to the cases to begin with, they probably can't qualify for the death penalty cases.[12]/

Another attorney testified:

> I know of a case where a black female attorney, who has a very good track record, was not appointed a capital case because she's a black female. There was no real justification why she didn't get that case, and this happened in the same context as the other ones have. She was supposed to be the next in line to pick up a case and somebody made a phone call from the judge's chambers and gave it to one of his friends and she missed out on the appointment. And she's a very well qualified person, very highly respected, and fought and kicked and screamed and called it to everybody's attention. And I think they tried to make some kind of atonement by giving her the next couple of cases. But, it was a high-publicity case and it was a special circumstance case, and she missed out on that, in my opinion. And, the way it was handled, because she's a female, one, and because she's a black female, number two.[13/]

- Need for recruitment

Given the dearth of female attorneys on many of the lists or in the contract firms, the manner in which attorneys are recruited to serve raises serious concerns with the committee. The committee notes that the percentage of women attorneys appearing on behalf of the contract firms appeared to be the same, if not lower, than on court-selected panels. Several respondents to the survey indicated that there were few, if any, female attorneys practicing criminal law in this area. One commentator noted that there was only one female attorney in his county that handled criminal cases. Another stated that the criminal bar in the county is 100 percent white male. Another survey respondent stated that the list for criminal and juvenile court appointments is not diversified because there are so few women or minority attorneys in that county who have made themselves available.

The committee questions on what basis the preceding determinations were made. Without formal recruitment policies, interested individuals may be uninformed of the availability of these appointments and may feel unwelcome. The committee therefore finds that a recruitment protocol directing application information to all local bar associations, including women and minority bar associations, and regularly scheduled recruitment are needed to ensure a diverse panel of court-appointed attorneys. The committee also urges inclusion of the same protocols in contracting with firms.

- Need for statistics

Although very few counties participating in the affiliate survey gave statistical data specifying by gender the number of male and female court-appointed attorneys for the various kinds of cases, several did, and the information is revealing. For juvenile dependency cases, two counties reported a significant number of women attorneys on the panel. One county reported that four out of the nine attorneys were female.

For juvenile delinquency cases, the results differed slightly. The percentage of female court-appointed attorneys was less than for dependency cases. The stereotypical perception appears to be that women can represent or understand abused and neglected children better than delinquent children. A small county that reported three female attorneys on its dependency panel reported it was unable to locate available women for the delinquency panel. The county reporting that four out of nine attorneys on the dependency panel were female also reported a smaller percentage of female attorneys on the delinquency panel. In that county, the delinquency cases are classified I to IV, from misdemeanor to felony. The breakdown by class was as follows: Class I, one woman attorney out of four; Class II, four women attorneys out of eight; Class III, one woman attorney out of seven; and Class IV, one woman

attorney out of seven. Only seven out of twenty-six attorneys were women and only two women attorneys handled the more serious cases.

When the focus shifted to adult criminal court, the percentages changed even more dramatically. As reported earlier in this chapter, two courts indicated a substantial number of women attorneys on their misdemeanor panel. One was 25 percent female and another was 33 percent. For felony and death penalty cases, though, most courts indicated only one or no women attorneys on their list. Inexperience and unavailability were the usual reasons for this startling lack of women.

Finally, the committee found that few counties surveyed actually keep statistics on the number of women or minority attorneys receiving court appointments. It would not be difficult for a county to gather this information because all attorneys are required to complete fee declarations to receive compensation by the courts. An explanation about the collection of the statistics should be provided appointees and the attorneys should be permitted to self-report information concerning race and ethnicity on a voluntary basis.

- Conclusion

A written policy describing the court's recruitment protocol and selection procedures, and regularly scheduled enrollment periods, provide both the court and the attorneys with a common understanding of the selection criteria and the appointment process. In addition, the reporting of statistical information regarding the gender, race, and ethnicity of court-appointed attorneys heightens a court's awareness of potential bias. By adopting standards for the appointment of counsel, along with a model rule and a rule requiring reporting of necessary statistical data, the Judicial Council can encourage equal access and equal treatment in publicly financed court appointments.

B. Programs, services, and facilities

The committee concentrated its inquiry on examining the ways in which males and females are differentially affected by the system, particularly in terms of disposition and sentencing alternatives, institutions and placements, and education and training programs. Although conditions are improving, the disparity between available resources for male and female offenders is still profound.

Findings

1. The number of female offenders in California, though increasing, is a small percentage of the adult and juvenile probation and inmate population.

2. There is a disparity of available resources, programs, services, and facilities available based on gender. A low priority in the justice system equates to fewer services and programs for women and girls compared to their male counterparts with an apparent disproportionate share of the resources and facilities going to adult and juvenile males.

3. There are few, if any, programs designed to meet the special needs of institutionalized females.

4. The majority of adult women inmates are single mothers, whose children are frequently dependents of the court. Thus the lack of coordination of services and programs between the criminal and juvenile dependency systems has a gender-related impact. A lack of community-based resources has a more significant impact on women because they are the primary caretakers of children. Insofar as the justice system does not provide adequate reunification services, the lack of resources for families translates into a lack of services for women and children.

5. The problems faced by female juvenile offenders are similar. Many have young children who are also the subject of juvenile court jurisdiction. The lack of programs to meet their special medical and mental health needs is especially apparent.

6. Community-based alternative sentencing programs that keep nonviolent sentenced women and their children together or facilitate regular contact should be encouraged.

B.1. Local programs and services administered or supervised by probation departments or county welfare agencies.[14/]

RECOMMENDATION 2

(a) Request the Judicial Council to recommend to local probation departments that:

(1) sentencing and dispositional alternatives and rehabilitation programs for adults and juveniles administered or supervised by probation departments be made available on an equivalent basis to males and females;

(2) sentencing and dispositional alternatives and rehabilitation programs for adults and juveniles administered or supervised by probation departments be made available to meet the special needs of pregnant women and women with young children; and

(3) residential programs administered or supervised by the probation departments be maintained in facilities with space suitable for parental visitation.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile cases to become familiar with and consider sentencing and dispositional alternatives and programs available through the probation department.

Discussion and Analysis

In recognizing the importance of investigating female offenders as they move through phases of the criminal and juvenile systems, the committee decided to study the treatment of female offenders.

A female offender who is under the supervision of the probation department encounters many obstacles not faced by males. Frequently she is a single parent with a drug abuse problem. Consequently, the range of personal and family challenges is usually greater and more complex than those faced by males.

- Unavailability of local programs and sentencing alternatives

There was a consensus regarding the lack of programs and services available to females, not only in the adult system but in the juvenile system as well. Some commentators attributed the lack of local services and facilities to the comparatively small number of females in both the adult and juvenile justice system. However, the committee notes that administrative convenience and the relatively smaller number of females in the justice system are not valid reasons to deny services to women.15/ Additionally, the lack of local programs and sentencing alternatives may have a more significant impact on females. Females who are incarcerated or detained in juvenile facilities who are not able to participate in a reunification plan may lose their children. Since mothers are the primary caretakers, the loss of child custody because of such institutionalization is a gender issue.

- Special problems of juvenile offenders

Judge Daniel M. Hanlon, Presiding Judge of the San Francisco Superior Court, in his address to the committee, remarked that as a supervising judge of the juvenile court for

three years, he had always been concerned about the lack of adequate funding and facilities for girls and young women who entered the juvenile justice system in his county. He wondered why resources were not being set aside, and said that it was perhaps based on gender and the number of females coming into the system.16/

Ms. Anna Roberts, deputy public defender of Los Angeles County, testified about not only the lack of services but also the dearth of research and statistics concerning what happens to girls who come into the juvenile justice system as incorrigibles under section 600 or delinquents under section 602. Ms. Roberts noted that since 1960 she has worked with women and girls in the Los Angeles justice system in one capacity or another. She spent 17 years as a deputy probation officer and the past six years as a deputy public defender, working most of the time in juvenile services.

Ms. Roberts observed that although an increasing number of girls are engaging in delinquent acts that threaten public safety, the majority of girls still seemed to act in a self-destructive manner. She believes that because girls do not act out publicly, community agencies, schools, and law enforcement tend to ignore, excuse, or give low priority to girls with problems. A large number of the treatment programs that are available to minors use behavior modification techniques and work with groups rather than individuals, and these techniques are not always appropriate. The general lack of mental health resources has a greater impact on girls, she noted.17/

Ms. Linda Siegal, Executive Director, California Foundation for the Protection of Children in Sacramento, joined many other witnesses in expressing her concern for the lack of local camp and ranch alternatives for juvenile girls and stated that she doubted that there are many probation officers and counselors who are oriented toward the problems that girls have. Though Ms. Siegal expressed concern about placing girls

and boys in the same facility, she suggested building adjunct programs for the girls next to the boys' facility.18/

Ms. Susan K. Medina, a former attorney in the Public Defender's Office in Fresno, also confirmed the lack of local programs for adolescent mothers. She observed that in Fresno County there were no local group homes for teen mothers and that often they were forced to either give up their child or place the child in foster care. The only other alternative, she indicated, was to send mother and child to Los Angeles or San Francisco to have the benefit of keeping the child with the mother.19/

- Alternative programs for women with children

Ms. Barbara Bloom, criminal justice consultant and member of the Blue-Ribbon Commission on Inmate Population Management, noted that over 75 percent of incarcerated women are mothers or mothers-to-be. The situation is very serious for the children of these inmates. Since many of the children experience emotional problems, physical trauma, lack of self-esteem, and abuse due to the absence of their mother, she urged:

> [E]very effort should be made to preserve and strengthen family ties between incarcerated mothers and their children, and the policy-makers, the courts, and the law enforcement officials who run our prisons and jails should be involved in diverting as many eligible women as possible, and as I said before, the majority of women in prison are non-violent, diverting them from penal institutions and placing them in alternative settings. On the local level, work release programs, community service, restitution, substance abuse treatment programs, employment readiness programs.20/

In her comments to the committee, Ms. Siegal also stressed the lack of sentencing alternatives for adult women

offenders. She noted that she has been involved in children's services for 25 years, 15 of those in California. Based on her years of experience, she also encouraged the development of alternative mechanisms for female offenders of child-bearing age. Since so many of the women are nonviolent offenders, she suggested using electronic monitoring in lieu of incarceration.21/

- Need for increased awareness by judges of sentencing alternatives

Increased cognizance and consideration by judges of available alternative sentencing programs, where appropriate, was stressed by many of those testifying before the committee. A lack of recognition of available resources and programs inhibits the ability of judges to accomplish their sentencing or dispositional objectives.

Ms. Ann O'Rielly, Director of Family and Children's Services for the City and County of San Francisco, joined others in the call for seeking alternatives to incarceration on a statewide basis. Ms. O'Rielly stressed the need for courts to consider making sentencing orders aimed at assisting the offender in maintaining her parental role and said:

> The maintenance or establishment of the role as a mother has been shown to be a critical factor in motivating women, and in keeping them from re-offending after release. This is particularly true of women who have just given birth. There is a window of opportunity there, a time to motivate women that really doesn't come around very often, and when you take babies away from women at two days, you lose it, and you may have lost it permanently. I would argue that such programs make sense economically due to lower recidivism, reduced prison population, but probably, more importantly, from a social policy perspective in that the family unit which we keep being told is so very vulnerable in our society today, I believe can be protected and strengthened through such programs.22/

- Juvenile dependency cases

In order to evaluate whether gender bias exists in the availability of community-based services, it is also important to understand some provisions of the juvenile dependency laws in California as they relate to institutionalized females.

A child is subject to the jurisdiction of the juvenile court if the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor.23/

Unless a court does not order reunification services, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period.24/ There are specific guidelines for reunification services for institutionalized parents.

Welfare and Institutions Code section 361.5(e) provides:

> If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Services may include, but shall not be limited to, all of the following:

(1) Maintaining contact between parent and child through collect phone calls.

(2) Transportation services, where appropriate.

(3) Visitation services, where appropriate.

(4) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

Institutionalization of the parent during the 18-month period does not serve to interrupt the duration of the period. Since women are the primary caretakers in our society, the potential loss of child custody due to incarceration is a gender issue.

- Particular need for drug treatment programs

During the course of its inquiry, the committee identified exemplary programs worthy of note and possible replication that may reduce recidivism and help accommodate the unique and disparate problems females face in the criminal and juvenile justice system.

The committee heard testimony regarding three model programs, operated in Watts in South Central Los Angeles, that may offer a better approach to dealing with substance-abusing women and their drug-exposed newborns and children. These programs are affiliated with the Martin Luther King Pediatrics Department and are funded primarily by foundation grants.

The committee found compelling the testimony of Ms. Kathleen West, program development director, Eden Development Center, Children's Ark (Assistance and Relief for Kids), and Project Support, as she described the research and development of these three programs. Ms. West told the committee that she

has been working on the issue of drug-exposed newborns and drug use in pregnancy for the last five years at Martin Luther King and UCLA. She is currently completing an eight-year follow-up study of 1,300 drug-exposed newborns in Los Angeles County as part of her doctoral dissertation.

Included in the follow-up study are all drug-exposed infants reported to the Los Angeles Department of Children's Services, where the department filed a petition to declare the child a dependent of the juvenile court. The study includes both dependent children and children who were not declared dependents by the juvenile court.

Ms. West, while stating why she has not yet finished her doctoral dissertation, stated:

> I'm a very applied researcher, and frankly, I was unable to continue going through yet one more court file to see the lack of services in this county for the women's great needs and the children's great needs, and so basically wrote all the grants to set up these three programs that now exist. I therefore cannot give you the exact numbers and statistics, which will be forthcoming when I finish my data analysis, but I can tell you, substantially through the lives of families that I work with, which speak to me much more intelligently and eloquently, if not louder in the state capitol than the numbers that hit us in the newspapers.25/

Ms. West concurred with other speakers that the availability of programs and facilities is affected by gender bias. Ms. West emphasized that the limited treatment programs available were designed for men and tend to be run by male ex-addicts. These programs have difficulty in working with substance-abusing women because of women's problems. She observed:

> [A] lot of the mothers that we have identified because of their substance abuse are court-ordered to drug treatment

> programs, which do not take women with children, or do not take pregnant women, or do not take a woman with more than one child, or a child over a certain age, or whatever, and that seems to be quite legal, although it's very bizarre.[26/]

Ms. West testified that the Children's ARK program and Project Support program were intentionally designed to meet the special needs of these women. The Eden Project is a cooperative therapeutic daycare center for drug-exposed babies, their siblings, and their families, where they work on both parenting and reparenting skills with the mothers.

The Children's ARK program is a crisis nursery with a 24-hour warm line, an intervention program that is specifically for substance-abusing mothers and their drug-exposed children. The program is designed to prevent neglect and abuse from happening to women who have custody of their children. Ms. West observed that it is also a cooperative program, not just a regular respite care program, where you "drop the kid off and then go out and buy some crack." But you may "drop the kid off" if you need to; then you are required to stay there and learn how to deal with whatever problems exist in order to prevent the next crisis.[27/]

Ms. West indicated that Project Support has outreach prenatal and postpartum components, both home- and hospital-based, in which the staff works with substance-abusing women to provide them with help in getting and staying clean. She noted that this is a very important project, since drug treatment programs in Los Angeles County have extremely long waiting lists.

Project Support is a program aimed at maintaining the mothers' motivation at a time when they are very motivated, immediately postpartum when they really want to deal with their baby, to tide them over until they can get into a treatment program.

In emphasizing the importance for these types of community-based programs, which are designed to meet the special needs of pregnant women and their children, Ms. West discussed the "maternal fetal conflict" issue. She noted that about 50 to 60 cocaine-exposed newborns are delivered each month at Martin Luther King Hospital alone. She stressed the continued victimization of the women she works with and stated that there is a tremendous amount of guilt and denial surrounding the birth of a drug-exposed baby; the women believe it is morally wrong. She said, however:

> [T]hey externalize their own moral judgment about their reality, and when they are already unempowered, they have very low self-esteem, they have been victimized and abused for a long time, usually, they are resigned to living in a zip code where you cannot protect your four-year-old from drug dealers, and these women often accept legal actions, albeit discriminatory on the basis of both race and gender as just actions, partly because they are done by the legal system which they empower with right. And they are very, very hard on themselves.[28/]

In pleading for therapeutic rather than punitive programs to help these women and children have a better life, she said:

> [W]e are identifying lots of substance-abusing Hispanic and African/American women, but we are not doing anything therapeutic about it. The fact that we have now got about 36,000 children in out-of-home placement in L.A. County and with the largest increase in that population being under the age of one, which our society has never dealt with before, we have never had children under the age of one, who are very different people, being state charges, and we are not caring for them well. That it is evidenced that these women are coming back with multiple drug-exposed babies. Like

> family planning problems in developing countries, they replace the children that they lose, and we are not being therapeutic in how we are going about it right now.29/

The committee also heard testimony from Ms. Marie Bockwinkel, an attorney in Los Angeles, stressing the need for special rehabilitation programs to deal with the problems of women who are drug abusers. She testified that incarceration of pregnant women, who have drug problems, is an expensive alternative to providing a drug treatment program like Eden Center. She also stated that incarceration can be dangerous to both mother and fetus since the health care that is found in a prison setting is not adequate for the people who are there now, and prenatal care is not available. She called for improved prenatal care for all women, stating that "it's estimated that there are approximately 32,000 pregnant women in the State of California who cannot get prenatal care."

In addition to possible gender bias issues concerning pregnant women who abuse drugs or alcohol, others also expressed concern about the apparent disparity in treatment and response by the medical, social welfare, and justice systems that may be related to biases based on ethnicity and poverty. Ms. Elaine Rosen, president of the Los Angeles Juvenile Courts Bar Association, raised the issue of the possible unequal treatment between poor women of color and wealthier women regarding drug-exposed infants. She said that the majority of cases involving drug-exposed infants that are referred to the juvenile court

> come from hospitals in South Central L.A. We rarely get referrals of drug babies from Cedar-Sinai, or from other private hospitals, and I know from people that I know that work in those hospitals, there are babies born under the influence in more prestigious, private hospitals. There is a disparate recording and of course, this affects women and their children.30/

B.2. Institutions and placements

RECOMMENDATION 3

(a) Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority, and local agencies that adult and juvenile facilities, for detention, disposition, or sentencing, be available on an equivalent basis for males and females.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile court proceedings to become personally familiar with all detention facilities, placements, and institutions used by the court for males and females.

Discussion and Analysis

Information concerning the availability of local facilities and placements for female offenders was obtained through the public hearings, jail visits, and the judges' survey. Again, the committee identified a need for both adult and juvenile facilities that keep the female offender within her community, close to family and services. Consideration of local placements for mothers who have a dependent child should be given the highest priority to facilitate reunification services.

- Legal framework

The constitutional issues concerning equivalent programs and placements for incarcerated inmates were discussed in depth in Molar v. Gates (1979) 98 Cal.App.3d 1. In Molar

the Court of Appeal affirmed the trial court's conclusion that the county's practice of providing minimum security jail facilities with their attendant privileges for male prisoners, while denying such facilities and privileges to female inmates, constituted invidious sex discrimination and was in violation of the equal protection clauses of the state and federal Constitutions.

In Molar the plaintiff, a female inmate serving a one-year sentence in the Orange County jail, filed a petition for writ of mandate on behalf of herself, and all other women who were sentenced or would be sentenced in the future to the county jail, to require the defendants (Sheriff and Board of Supervisors of Orange County) to (1) permit female inmates to be housed and detained at minimum security branch jails that were used exclusively for male inmates; (2) apply the same criteria to female applicants as were applied to male applicants in determining their eligibility for such housing; (3) house female inmates who are eligible for minimum security detention at the minimum security branch jails; and (4) permit female inmates housed at branch facilities to apply for, and be assigned to, available jobs on the same basis and under the same circumstances as male inmates.

At the time the petition for writ of mandate was filed, all incarcerated females were housed in a women's jail facility. The building was a concrete and steel structure with opaque windows so inmates could not see out. The daily count of female inmates in the women's jail facility averaged 124. Sentenced women averaged 68 per day, and the number of unsentenced women inmates averaged 42. Approximately two to ten sentenced women were on a work furlough program. Unless unable to do so, all sentenced women were required to work in the jail facility. The jobs for the women inmates consisted of washing and ironing, cooking, stocking food shelves, serving food, cleaning, mopping and waxing floors, collecting trash, sewing and mending clothes for male inmates, and serving as beauty operators.

Approximately 10 times as many men as women were sentenced to jail in Orange County. The men served their sentences in one of three facilities maintained by the county--the main men's jail and two branch jails (Theo Lacy and James A. Musick). About 55 percent of the sentenced male inmates served their time at the main facility where conditions were found to be "more onerous" than those of the women's jail. The remaining 45 percent of the male inmates served their time at one of the two branch jails.

The Lacy facility was a minimum security jail consisting of an eight-acre campus surrounded by a chain link fence. Inmates were housed in unlocked barracks and were permitted to move freely around the compound and use the athletic field. The male inmates were allowed visitors on both Saturday and Sunday and could shake hands or kiss their guests and hold children. All of the inmates were either on work furlough or assigned to jobs within the jail system. The men assigned to jail system jobs (approximately 31 percent) cooked, cleaned, maintained the campus yard, cleaned and polished floors, and did minor repairs. The men with work assignments off campus (about 59 percent) worked at the county animal shelter, county service station, Environmental Management Agency, Sheriff's Office, road department, county transportation, and forestry division.

The Musick facility was a 100-acre farm located in a rural area of the county. All of the men assigned to Musick, except a small crew, worked on the compound raising crops, poultry, and livestock. They also did the cooking and maintenance work for the facility. They lived in barracks with high windows and were allowed to move around the acre-and-one-half inner compound after dark. Male inmates at this facility were also permitted visitors on both Saturday and Sunday and could shake hands with or kiss their guests and hold infants.

The trial court found that inmates assigned to the branch jails were confined under substantially less onerous and

restrictive conditions than those in the main jails. The court also found that the defendants (Sheriff and Board of Supervisors of Orange County) had pursued a policy and practice of providing minimum security branch facilities and related outdoor work programs only for male inmates, and that female inmates were required to serve their time in the maximum security jail without being afforded the opportunity for assignment to minimum security facilities regardless of whether they met the criteria applied to male inmates. Finally, the court found it was untrue that the gender classification established by defendants was necessary to carry out their duty to protect inmates from each other or their duty to permit no female inmates to sleep, dress, bathe, or perform eliminatory functions in the same room with male inmates.

The court concluded that although defendants were not under a legal duty to provide minimum security facilities or outdoor work opportunities to any prisoner, they were under an obligation to end the practice of providing minimum branch facilities and programs to male inmates only, and to apply similar qualifying criteria to all inmates regardless of sex.

Other state and federal cases have also held that prison inmates are protected by the equal protection clause of the state and/or federal Constitution. In Mitchell v. Untreiner (N.D.Fla. 1976) 421 F.Supp. 886, the court held that female inmates of a county jail were denied equal protection of the laws because they were denied the opportunity to be trustees, to have contact visitation privileges, to have regular outdoor exercise, and to serve their sentences in a less severe facility than the county jail. In McAuliff v. Carlson (D.Conn. 1974) 377 F.Supp. 896, the coed that a prison may not charge only male prisoners for hospital costs. The court held that gender-based classification was invalid under the Fourteenth Amendment to the United States Constitution both because it embodied an outdated notion of the economic status of women in our culture and because mere administrative convenience cannot justify a gender-based classification.

- Present conditions

Although the committee found that the number and types of programs and facilities available to women and juvenile offenders is increasing, there still exists a noticeable disparity between the number of these for males and females. As an example, in Los Angeles County, the men in the main county jail facility have access to a library. The women's main facility doesn't have one.

Typically, of less restrictive places of confinement for sentenced inmates are not available on an equivalent basis for males and females. Sentenced women must spend their time at a county jail while sentenced males are able, where appropriate, to go to an honor camp or ranch. In Los Angeles, for example, unsentenced males and females who cannot get bail are kept in a secured jail facility. For sentenced men and women, the availability of low security facilities differs dramatically. If you are a sentenced male and you have low security, you can go to the Peter Pitchess Honor Camp or to Mira Loma Camp. If you are a woman, however, you spend the majority of your time, whether you are sentenced or unsentenced, at the Sybil Brand Institution for Women. Several years ago they opened the women's side of Mira Loma. It now accommodates a small percentage of the sentenced women, and is expanding to accommodate more women.

The committee took the opportunity to visit both Sybil Brand Institution and Mira Loma Camp. It was very impressed with the cooperation and assistance of the Los Angeles County Sheriff's Department and its representatives and the staff at both jail facilities. In their visits to both Sybil Brand and Mira Loma, members of the committee found significant differences in the living conditions.

Sybil Brand is located near downtown Los Angeles. Although it was built to house only 900 female inmates, it currently has in excess of 2,000 women incarcerated there. Because of the severe overcrowding, women are placed in cramped

dormitories, each holding approximately 200 inmates. There is very little space between each bunkbed and inmates have no facilities to store their belongings.

Due to the overcrowded conditions, the women are given only one set of clothes instead of the two sets they are supposed to receive. There is only one washer and dryer in each dorm. Inmates commented that they had to wrap themselves in a towel or wear their nightgowns while they washed their clothes.[31/] An inmate won't get a clean set of clothing if she doesn't exchange the clothes she currently posseses. Therefore, if the inmate doesn't have something to cover herself while she is standing in line to exchange her clothes, she must either stand there in her underwear or not get clean clothing.

Several women also noted that when they tried to hang their washed clothes on the windows or bedrails to dry, the deputies frequently would take them down. There are only four showers and five toilets for a dorm of 200 women. As a result, the plumbing is frequently inoperable and in need of constant repair.

The jail is so overcrowded that the women must line up as early as 4 o'clock in the morning to have breakfast. If the facility did not begin food service at that time and also limit the amount of time each inmate has to eat, they would not have the ability to serve food to all of the inmates. Recreational facilities and educational and training opportunities are also severely limited due to the jail overcrowding. Many inmates must therefore remain in their cramped dormitory surroundings each day without an opportunity to exercise or attend any classes.

The jail is also extremely understaffed. According to the testimony of a sheriff's department representative, although the inmate population has more than doubled, the number of deputies at the facility has remained the same. This understaffing sometimes creates situations in which deputies utilize unauthorized control techniques that are against the

formal policies established by the sheriff's department. As an example, the committee heard independent testimony indicating that the windows in one of the dormitories had been kept open all night as a form of punishment. This created a potentially hazardous condition for one inmate indicated who was eight months pregnant and had to sleep directly under an open window. Other inmates told the committee about "elevator" rides where deputies handcuff an inmate, take her into an elevator, and beat her. One inmate said she had observed deputies shoving inmates into the walls.

Conditions at Mira Loma are significantly different. The facility was built to accommodate 700 sentenced inmates. It currently has about 900. Mira Loma is located in the northern section of Los Angeles County on grounds that are expansive. The inmates are housed in dormitories with considerable space between each bed. There is storage space for each inmate and adequate bathroom and washing facilities. Clothing is usually not a problem and there are a greater number of educational and training programs available.

While recognizing that attempts have been made to better conditions at Sybil Brand, the committee encourages continuing efforts for improvement. If other facilities similar to Mira Loma and the minimum security camps for sentenced men were available to sentenced women, they would no longer have to endure the overcrowded conditions at Sybil Brand.

- Special programs

Ms. Rebecca Jurado, staff attorney for the ACLU Foundation of Southern California and director of the Women Prisoners' Rights Project, told the committee that other counties in addition to Los Angeles, such as San Luis Obispo County and San Bernardino County, are planning or will soon open low security facilities for sentenced women. She also noted that in the state there are now some low security programs for women called "fire camps," where women go out and

fight fires. She commented that there had been litigation, and when the state was asked why they did not have a camp program for women, their response was that women did not have the skills and they did not want to do that kind of physical labor.

However, a survey was done and the state found many women carpenters, auto mechanics, and female inmates in general who wanted to and could do those kinds of things. There are now, she said, over 100 beds for women in fire camps.

- Juvenile facilities

The committee found that placements throughout California are at a minimum for girls. There are very few ranch and camp programs for girls throughout this state. There is also an absence of design and planning for outdoor programs for girls.

Judge Patrick Morris, presiding judge of the Juvenile Court in San Bernardino County and co-chair of the Judicial Council Advisory Committee on Juvenile Court Law, in speaking to the committee about the disparity in the available institutions and placements for those in the juvenile system, commented:

> As I've spent the last five years in juvenile justice, I've noted that we have a fairly decent selection of services for our youthful offenders who are male, and for our dependent children who are male. We do not have that same kind of continuum of service to offer to young girls in our county.
>
> In fact, we have only one county-sponsored program, a 20-bed facility for older delinquent girls. We have some 130 to 140 beds for boys that are county funded, and we do not have a single facility in our county of 1.3 million for delinquent girls if we want to place them outside of this 20-bed girls' facility and juvenile hall.
>
> We have to go outside the county, to Pride House in Los Angeles or Martinez, to a

> program here in San Diego, if a girl is pregnant, she comes to Door of Hope, or to Florence Crittendon in L.A. County, remote from their families, remote from their support systems, we cast them all over the state.
>
> I can usually find within the bounds of our county an appropriate program for young boys, dependent or delinquent, I have nothing for girls. I literally put them all over California, and that's a tragedy for young girls. It almost seems like the young girls are--their problems are treated less seriously than boys, and we tend to remove them last from the family and return them first. We simply don't give them the same consideration that we do the young boys.[32]/

Mr. Jeffrey M. Reilly, supervising public defender of juveniles in San Diego, told the committee that their girls' rehabilitation facility has 20 beds compared to the boys' facility which has 200.

He also observed that the boys in his county have a relatively short wait from the time their disposition occurs until they go to the juvenile camp, based on the number of beds. He said that girls have to wait between 30 and 45 days before they actually are allowed to go to the girls' facility. The girls, therefore, must stay an additional month to month-and-a-half at juvenile hall where the conditions are worse because of the lack of beds.[33]/

Ms. Sylvia Johnson, director of the Juvenile Hall in San Bernardino County, discussed the failure of the justice system to recognize the needs of the female offenders. Speaking from 30 years of experience as a correctional professional, she told the committee that she has managed jails, prisons, and juvenile halls, and has provided line services as a probation officer.

She said the most significant recommendation that she could make to judges was to monitor, through site visits, all facilities throughout the state where orders are made to

confine people. She emphasized that it is very important that judges be aware of the conditions of confinement.[34/] The committee notes and encourages juvenile court judges to follow the mandate of section 209 of the Welfare and Institutions Code, which requires the judge of the juvenile court, or if there is more than one in a county, any of the judges of the juvenile court, to annually inspect any jail, juvenile hall, or lockup that is used for the confinement of any minor and to evaluate whether it is a suitable place to confine minors.

- Conclusion

The committee found a substantial disparity in the availability of local facilities and placements for female offenders. By recommending to state and local agencies that adult and juvenile facilities be made available on an equivalent basis to males and females, the Judicial Council can encourage fair treatment of the females the courts place in these institutions.

B.3. Education and training programs

RECOMMENDATION 4

(a) Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority, and local agencies that the nature and extent of education and training programs in adult and juvenile facilities be equivalent for males and females (see Title 15 of the Administrative Code, divisions 4 and 7). Education and training programs should include:

(1) basic education courses with basic reading and math skills and access to higher educational opportunities;

(2) a full range of vocational training without traditional gender classifications and limitations;

(3) health education with emphasis on sex education and on prenatal/perinatal care;

(4) parenting skills, including programs facilitating contact visits; and

(5) drug and alcohol rehabilitation programs.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration, and amend section 24 of the Standards of Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile proceedings to become personally familiar with the education and training programs in state and local facilities available for males and females.

Discussion and Analysis

Although educational and vocational opportunities for female inmates and detainees statewide are improving, the committee determined that access to these programs is still not offered, generally, on an equivalent basis to what is offered to males. The lack of equivalent programs that are gender-neutral will have a long-term negative impact on rehabilitation.

The public hearing testimony and the jail hearing testimony disclosed there were educational and training programs available to male inmates that were not available to female inmates. Programs that were available to females frequently followed traditional female stereotypes. There were also few health and parenting programs for pregnant inmates and incarcerated women or girls with children.

Ms. Barbara Bloom, criminal justice consultant, stated:

The majority of female prisoners are incarcerated for nonviolent, economic-type

> offenses. Statistics indicate that most female prisoners are young, poor, single parents who have been the head of household, and women of color who are disproportionately represented in our system. A high percentage of female offenders have been physically, emotionally, and/or sexually abused throughout their lifetimes, and also a significant percentage of female prisoners have serious substance abuse problems. Statistics also show us that the majority of female offenders were unemployed at the time of their arrests. Women experience different problems than their male counterparts in prison. The lack of sufficient vocational training programs, educational programs, and adequate health care have traditionally been problems for women in prison.[35]

- Disparity in vocational training

Most county and state facilities offer female inmates traditional vocational programs such as sewing and beautician classes. The women are frequently asked to sew the garments for both male and female inmates. Male inmates are frequently offered classes in auto mechanics, carpentry, plumbing, and animal husbandry.

As an example of the disparity in available programs, one commentator noted that the California Institution for Men operates a dairy program. However, five miles away where the women's facility is, they have no such program. These are two facilities, five miles apart, that are both in dairyland. Yet, this type of program is not provided to the women.

- Disparity in educational opportunities

With regard to education programs at the state level, it is common to have extensive college programs in the men's institutions. It is very common to have only one college program on the women's side, and have in-cell study because

there are not enough services.

During its tour of female jail facilities in Los Angeles County, the committee learned that in addition to sewing and beauty classes, a tile-setting program is now available at Sybil Brand and an auto-detailing program at Mira Loma for female inmates. Building maintenance and lawn sprinkler installation programs are also offered on a limited basis. These are all programs that the women can use to earn a living outside.

- Juvenile programs

Female juvenile offenders also do not have equivalent access to educational and vocational programs.

Mr. Jeffrey M. Reilly noted that the lack of vocational training is exacerbated by the general lack of services for female juvenile offenders. He said that at their girls' juvenile facility, there are no on-site vocational programs. In addition, the girls' facility does not have a van, so the girls cannot go off-site for training either.

The differential availability of equivalent recreational programs for juvenile offenders was also discussed. Ms. Sylvia Johnson observed:

> Too often in our budget planning sessions, when we all discuss what we can do and what we cannot do because of dollars, it is obvious and understood that the male athletic program must have the newest baseball equipment, football gear, and basketball equipment. Too often the question is asked, "What are the girls doing taking out the baseball equipment?" as if there is automatic ownership. Rarely do you see similar dollar amounts planned for girls' programs in adolescent treatment facilities.[36/]

- Need for classes on health education, parenting skills and drug and alcohol rehabilitation

As reported in other sections of this chapter, many adult and juvenile offenders have substance abuse problems. Many of them have had little or no health care, including prenatal care. Frequently they lack sufficient knowledge to make informed choices about their health care. And along with a majority of adult female inmates, many of the young women under the supervision of the juvenile court are mothers.

The availability of health education, parenting classes, and drug and alcohol rehabilitation classes at both adult and juvenile facilities was identified by the committee as necessary for both males and females. Experts who testified before the committee not only stressed the need for these classes but also noted that for many of these women the institutional environment could provide them with both the motivation and the opportunity to attend classes on these important subjects. This observation was supported by testimony at the jail hearings where many women indicated an interest in attending such classes.

- Conclusion

The committee found that although access to educational and vocational opportunities was improving, a disparity in the availability of these programs for females still existed. The Judicial Council can encourage fair access for females by recommending to state and local agencies that operate adult and juvenile facilities that the programs be made available on an equivalent basis.

C. Special needs of institutionalized females

In addition to reviewing the ways in which males and

females are differentially treated by the justice system, the committee concentrated its inquiry on whether the system meets the special needs of institutionalized females. The committee found that the particular needs of women and young female offenders pose unique challenges to a criminal and juvenile justice system that was designed for males. Although there is a growing awareness of the special needs of female detainees and inmates, there is still a significant need for improvement.

Findings

1. The clothing that is available in both male and female facilities is designed to accommodate the anatomy and physiology of men. There is generally a lack of available clothing specifically designed for a female's anatomy, especially for a pregnant female.

2. Institutionalized females have difficulty obtaining adequate supplies of personal hygiene products for sanitary needs and getting additional clothing and increased access to laundry facilities during the menstrual cycle.

3. Restraining hardware and shackles available in both male and female facilities are designed to accommodate the anatomy of men. Generally, there is a lack of available hardware and shackles designed specifically for a female's anatomy, especially that of a pregnant female.

4. Since the child care responsibilities of institutionalized females are different than those of males, programs that allow institutionalized females to remain with their young children, such as provided by the state prison Mother/Infant Care Program under Penal Code section 3410 et. seq., should be expanded. In instances where institutionalized mothers cannot remain with their children, visitation programs which facilitate regular contact should be encouraged.

RECOMMENDATION 5

(a) Request the Judicial Council to recommend to the Department of Corrections and the California Youth Authority and local agencies that the protocols for institutionalized females be re-examined and modified to institute practices which recognize the specific needs of women (see Title 15 of the Administrative Code, divisions 4 and 7). The protocols should specifically address:

(1) provision for adequate and appropriate clothing designed for female anatomy;

(2) provisions for meeting personal hygiene and sanitation needs and increased access to laundry facilities during the menstrual cycle.

(3) hardware and shackles amenable to the female anatomy.

The protocols should also address pregnancy-related issues. Limits on the use of leg chains, waist chains, and handcuffs should be encouraged unless there is a security risk. Pregnancy should not limit a woman's ability to earn work credits. Job assignments should be made with a physician's approval. Protocols for expansion of the Mother/Infant Care Program under Penal Code section 3410 et. seq., and establishment of similar local programs for mother and children should be considered. Protocols for visiting with children of inmates should also be considered.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration, and amend section 24 of the Standards of Juvenile Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile proceedings to become familiar with these protocols.

Discussion and Analysis

Since the penal system services more men than women, a significant lack of understanding of the specific needs of women who are incarcerated was identified by the committee in the public and jail hearings. The committee heard testimony equating the perception of a low priority in the justice system with a failure to recognize and design programs to meet the special needs of females. Since jails and prisons were primarily designed for men and their needs, the committee found that female facilities tend to follow those designs without regard to the institutional needs of women.

- Need for adequate and appropriate clothing

Generally, the committee found that male and female inmates were provided with the same jail clothing. Although the jail garments were sufficient for most female inmates, the committee identified a need for appropriate undergarments, nightwear, and clothing for pregnant and smaller inmates.

As stated previously in this chapter, the committee found that due to overcrowded conditions, female inmates at Sybil Brand were provided with only one set of clothes per week. Because of the lack of adequate clothing, women sometimes had to wear their nightgowns during the day while waiting for access to laundry facilities. In some instances, this meant that an inmate could not participate in a work, education, vocational, or recreation program.

There was also a shortage of maternity dresses for pregnant inmates, and a lack of pants with expandable waistlines to help keep them warm.

- Special hygiene problems of institutionalized females

The committee heard testimony regarding the special hygiene problems facing institutionalized adult and juvenile females. The problems may be exacerbated by a lack of

sufficient clothing and regular access to laundry facilities.

Although serious conditions of overcrowding exist in both male and female prison facilities, Ms. Karen Schryver, attorney, Prison Law Office and chair of the Standing Committee on Prisoners' Legal Services of the California State Bar, explained that overcrowding problems in women's prisons are compounded by issues related to the female anatomy. As an example, she discussed a lawsuit she is involved with concerning problems faced by women at the California Institute for Women.

She stated that although the institution was built for 930 people, there are now about 2,400 women living there. New bathrooms have not been added for those extra people. She asserts that

> [U]nder the Constitution, under the prohibition for cruel and unusual punishment that these women have access to toilets, because they have to go in stairwells, they have to go in buckets, they have to hold their urine, and they have to beg guards to get to the toilets--beg guards to unlock toilets.

She said that the women are being told by the guards, "If you're good, I'll open it for you. If you cross your legs, maybe you won't have to go. Why don't you wait for the scheduled period for the bathroom to unlock?"

As part of the lawsuit she provided the court with a doctor's declaration and information explaining the differences between men and women. Some of the information she provided is

> [T]hat women don't have open flies in the front of their pants. They can't urinate with their clothed back turned to a group of people. They also need toilet paper. They menstruate, they have additional open orifices that can get infected.

Another example she gave involved a lawsuit about

conditions at a local jail. In the facility, the women were given one pair of underwear per week. She explained,

> [N]ow that's bad enough if you try to think about living with one pair of underwear a week, but the fact was that I had to sit down with a group of male attorneys and tell them that when you get one pair of underwear per week, and you're on your menstrual cycle, and all you get is sanitation pads, you have to take your underwear off to wash it, and you can't take your underwear off because you have to have something to hold up the sanitary pad.
>
> So I had to argue for two pairs of underwear just so a woman's menstrual cycle could occur in some kind of decent fashion. These types of personal hygiene essentials we take for granted. Nothing is taken for granted in a prison or jail. I'm not even talking about privacy. I don't even want them to have the privacy to go to the bathroom, I just want them to have the toilet.39/

The combined lack of personal hygiene products, adequate supplies of clothing, and laundry facilities creates a very unhealthy and unsanitary condition for institutionalized females.

- Hardware and shackles amenable to the female form

The committee also heard testimony regarding the need to design restraint equipment which meets the bone structure, body design, and unique aspects of a female. Ms. Sylvia Johnson, a probation expert, noted that handcuffs, shackles, and any kind of restraint or physical equipment that is used in an institutional setting to control or move females on a day-to-day operational basis is rarely designed with the woman's unique structure in mind.38/

Limits on the use of handcuffs, waist chains, and leg

chains were encouraged, unless there was a security risk. Restricting the use of restraining hardware was especially stressed for those females who are pregnant or in the process of delivering their babies.

- Residential prison and jail programs

For those women ineligible for community treatment programs as sentencing alternatives, institutional facilities that provide maximum access to children were suggested.

Although research on female inmates and their children is scarce, one study, Prisons and Kids: Programs for Inmate Parents, sponsored and released by the American Correctional Association in June, 1985, surveyed programs in 55 states and 2 federal institutions. The study, representing 15,337 incarcerated women, concluded that parenting and bonding may play an important role in rehabilitation and is essential to the healthy development of the children.

Based on his findings, the author of the study, James Boudouris, included in his recommendations the following:

(1) More must be done for inmates' children and families, including care at correctional institutions when states are willing to commit funds to such programs.

(2) In some cases, especially when placement with another family member is impossible, a child's best interest is served by remaining with his or her mother in a correctional institution.

(3) Previously existing prison nursery programs should be reinstated and subjected to rigorous evaluation.

(4) A retrospective study should be conducted of mothers and children who lived in former prison nurseries operating in Florida, Illinois, Kansas, Massachusetts, New York, and Virginia.39/

Ms. Doris Meyer, Coordinator/Parenting Child Abuse Prevention, Correctional Education Division, Hacienda La Puenta

Unified School District, discussed the need to reassess the manner in which the justice system handles women who need to be incarcerated so that they may retain maximum access to their newborns and infants. She said that they have found, working in their own parenting class, that if the mothers do not bond to their babies within the first six to eight months, and they stay longer, the women get out and get pregnant again. They have the need to bond, she said. The desire to have a baby is a very biological one; they want that baby, and they want access to it. If they cannot get it, they will have another one. Ms. Meyers cited the Bedford Hills Prison in New York as a model. The program permits women who have given birth to keep their babies with them.40/

A Children's Center at the Federal Correction Institution in Pleasanton, California, was opened in 1978. The Children's Center was developed to provide women and their children a place where they could continue to have ties and strengthen their relationship. There are other children's centers throughout the country.

In addition to the need for new mothers to bond with their infants, other reasons were cited for keeping mothers and their children together. Concerns about the safety of the children when a mother goes to jail were raised by Ms. Meyer. She noted that in about 75 percent of the cases, the women are able to find a family member to take the child in. This may not always be the safest place for the child, since many of the women in jail have been abused as children. These children are now going back to the home in which the mother was abused.

Probably the most pathetic and difficult issue to deal with, she noted, is the woman who has never admitted to being abused until she got to jail, and now admits it because her child has just gone back to the abusive family. She is afraid of what may be happening to her child, and she has to be taken to a telephone and told how to call the hotline, how to turn in her father, her uncle, or her brother, because her child is now in potential danger in that home.

Ms. Meyer said that her best guess is that, at a low estimate, 46,000 children are involved in the system. Those 46,000, she noted, are mostly all in the hands of the mother with very few exceptions; basically, nobody knows where they are. These children just fade into the woodwork.

She said that if the mother cannot get help, the child becomes part of the dependency system. "If the neighbor has the child when you were arrested, and you don't tell the arresting officer you have children, you hope the neighbor will keep them, because you don't want the child in the system. And that's a real gender bias issue."41/

Ms. Linda Siegal joined in recommending that increased efforts should be made to keep mothers and their children together. She suggested that facilities be created which are attached to jails in which both mother and children reside, especially very young children and babies born to a pregnant mother, "rather than disrupting that bond, and rather than creating even more social problems than you started with, with the woman having the crime."42/

Several commentators urged greater expansion of the Mother/Infant Care Program established by the Department of Corrections.43/ The program is utilized as an alternative to state prison. The program allows women who are sentenced for a term of six years or less to be placed in a community facility for the term of their incarceration. The women remain with any children up to the age of six. The program allows the mother and child to be together in a community facility rather than a state prison.

There are only five of these community-based programs in the state. Statewide, the Mother/Infant Care Program accommodates between 60 and 70 women. The facility in San Diego is a two-story building with a yard. The mother must comply with all rules. If she walks away from the program, it is treated as if she escaped from a regular state prison facility.

The program provides parenting classes, substance

abuse education and treatment, and work furlough opportunities. In addition, it meets the bonding needs of mother and child and deals with maintaining the mother's parental rights. The program also avoids the need for reunification services while she is incarcerated.

- Visitation

In cases where mothers cannot be housed with their children, many stressed the need for continued contact and visitation for mothers with children of all ages. An attorney who works with male and female prisoners commented:

> At the male prisons--I work right outside the gates of San Quentin. I see the visitors, the people line up, friends and family come from all over to see the male members of their family behind bars. Families relocate to the Bay Area so they can visit their family. At the woman's prison, this doesn't happen. Women sit there for their entire term without any visits at all and the visiting room, unless they're lucky enough to have family in an area, in a local area, is not that crowded.44/

Ms. Doris Meyer observed that the lack of easily accessible visitation at local jail facilities is also a gender bias issue. She noted,

> [T]he women and the men that are incarcerated in our facilities have the very common male/female stereotype roles and those kinds of outlooks on life, which means that by default, children are now a feminist issue, and the children of incarcerated parents are the concern and the care of the mother. When you stand outside of a female facility and look at the children, you will find that those children coming to see mother are being brought to her by grandma or sister. When you stand outside the male facility, you find the children that are coming in are being brought by wives, or significant

> others, biological mothers of the children, that the women are staying with the men, and waiting for the men to get out, but the men are not doing the same for the women, so that the children are really the responsibility of the mother.[45/]

She noted that fathers who have sole custody of their children have problems similar to those of women inmates. The committee, through its visit to the Sybil Brand and Mira Loma prisons, and through the testimony of Ms. Meyer, learned of an exemplary program called TALK, which stands for Teaching and Loving Kids, operating at both the male and female jails in Los Angeles County.

Ms. Meyer explained that the TALK program is the only local jail program of its kind in the United States, but there are a couple of similar programs at the prison level. The program allows the children of incarcerated parents to come into a jail and have a contact visit with their mother or father. The first program for fathers began in January, 1989.

Ms. Meyer, in commenting about the no-contact visit policy at all jail facilities in Los Angeles County, stated,

> [I]n fact at Sybil Brand you look through plexiglass, you talk over a telephone. So a child brought to see their mother is looking through plexiglass, fighting with the adult that brought her for who's going to hold the phone, and who's going to get the majority of the 15 minutes on the telephone.[46/]

An exception to the no-contact policy has been made for participants in the TALK program. In the TALK program, the child is brought into the jail facility and allowed between 1 1/2 to 2 hours to sit with their parent "to read a book with, to talk with, to cuddle and hug and do Play-Doh with mom or dad, and to try to solve some of the problems."

She stated that the program can accommodate few inmates. Of the 23,000 inmates in Los Angeles, there are 3,000

women, she noted, and added that in the TALK program they bring in children of 75 inmates on the weekend. These inmates get to visit with about 170 children.

Ms. Jurado noted that San Luis Obispo County Jail is now allowing contact visits for sentenced women who are low security.47/

Ms. Karen Schryver, staff attorney, the Prison Law Office, and chair of the Standing Committee on Prisoners' Legal Services of the State Bar of California, spoke to the committee and encouraged overnight visitation, with their children, for female inmates. She said the lack of overnight visitation had a significant impact on female inmates because they are the primary caretakers of children. She also reminded the committee that most of the women were sentenced for nonviolent crimes.

Since the women's prison is in the very southern end of the state, and the women there are from all over the state, visitation is extremely difficult. Having a child visit, she stated, is really a lot easier if a child could spend the night, or spend a 2- or 3-day period with the parent, because it is usually at great expense for the child to come down.

She noted that the single most popular concern of women inmates is their children. In comparing the male and female prisoners she works with, she observed that the women will write and ask about their children before they will tell her that they do not have toilets, or medical care, or have problems with their visits.

In urging efforts to provide greater opportunities for visits, Ms. Schryver said,

> [I]f you ever go to a women's prison and stand outside and see a child come in to visit their mother, you will dispel the myth that it's not a good idea to have children visit their parents in prison. They are overjoyed to see their parent. They are crying, they don't want to leave. That is their parent, whether they're inside or not.48/

- Facilities and visitation programs for juvenile mothers

Facilities and programs which help juvenile mothers with their children were also recommended.

Ms. Sylvia Johnson testified that there is a dramatic increase in the number of pregnant girls in our juvenile detention facilities. Ms. Johnson stated that according to recent statistics, there are 157,000 school-age mothers in California. She said that currently, programs and alternatives are planned based on the girl's offense. If a girl is pregnant, and has been a runaway or been committed for robbery, whatever the action may be, the pregnancy and her medical state is not part of the program design and plan. Ms. Johnson urged that the system begin to be concerned with the health care of the young women who are incarcerated because it is a captive time, a "time out" for them.

She also called for an increase in and emphasis on placements, specifically of maternity home-type, where there is education and planning for the pregnancy of the adolescent female. "Too often," she noted, "the young girl has no sense of responsibility or understanding of her present state."49/

Ms. Rebecca Jurado told the committee that a program similar to the state prisons' Mother/Infant Care Program has been started for young girls at the California Youth Authority. She encouraged this type of program for young women who are in county detention facilities.

The development of visitation protocols would benefit juvenile female offenders since, the committee found, they also have difficulty visiting with their children. A deputy public defender expressed concerns about the lack of local probation policies for detained girls who want to visit with their babies. The deputy public defender said that these visits are set up through the Probation Department, and that the probation officers, "frankly have little concern, or put it on the low list of priorities to set up. I've had girls waiting in juvenile hall for 24-hour placement who haven't seen their

babies in weeks, and this is just something that is not on the high list of priorities for probation officers to set up."[50]/

As a positive example, the committee heard testimony from Ms. Anna Roberts, Deputy Public Defender of Los Angeles County, about the visitation policy at Camp Scott, a probation camp for girls in Los Angeles County. She indicated that Camp Scott encourages visits to the camp by children of the residents, and will arrange visits any day or time. She quoted the director as stating, "We're like Denny's Restaurant, we're open 24-hours a day."[51]/

- Juvenile dependency cases--reunification

Ms. Ann O'Rielly, Director of Family and Childrens' Services for the City and County of San Francisco, indicated that recent changes in the Welfare and Institutions Code (see explanation of these changes on pages 24-25 of this report) make it clear that the reunification time frames for parents are not stayed by incarceration, and that the juvenile court can order services to the incarcerated parent, unless the court finds it would be detrimental to the child. She noted that her department was seeing an increasing number of orders to provide services to parents while they are incarcerated in order to meet their reunification goal.

However, Ms. O'Rielly warned:

> Failure of correctional systems to acknowledge this time frame and either make available, or permit others to make available necessary services, I think does constitute an additional but invisible sentence on the incarcerated parent who may well permanently lose custody as a result.[52]/

Currently, Ms. O'Rielly stated, the correctional system provides little or no support to a parent trying to reunify. She expressed concern that a facility's failure to provide services is a form of gender bias. Since most inmates

are unable to make a phone call out of the correctional facility, they are not able to contact their social worker to implement the reunification plan.

The need for residential programs and facilities with space suitable for visitation was also discussed by Ms. O'Rielly. Visitation frequency, she noted, is the factor with the highest positive correlation to successful reunification. She called for liberalization of facility policies to permit extensive contact in visitation with children of all ages and recommended a progressive system for parent and child contact at the correctional facility. Day visits would progress to overnight visits on-site, to overnight release, then weekend visits, then week-long furlough-type visitation in preparation for release and reunification.53/

- Conclusion

By recommending to state and local agencies that operate adult and juvenile facilities to implement practices which recognize the specific needs of females, the Judicial Council can encourage fair treatment of the females the courts place in these facilities.

The committee also recognizes that the typical female offender, adult or juvenile, would benefit greatly from local community facilities which permit residence or contact with her children. The children will also benefit, as will society.

D. Medical problems of institutionalized females

Findings

1. Institutionalized females have difficulty in obtaining appropriate medical care, including: prenatal and other pregnancy-related services, medically supervised drug detoxification programs, and voluntary AIDS testing.

2. Protocols and guidelines for state and local agencies operating adult and juvenile facilities specifying procedures

and minimum standards for appropriate medical care would assist institutionalized females in obtaining necessary services.

RECOMMENDATION 6

Request the Judicial Council to recommend to the Department of Corrections, the California Youth Authority and local agencies the adoption of protocols requiring appropriate medical services for incarcerated and institutionalized females, including:

(1) full gynecological care;

(2) pregnancy-related services, including:

(a) pregnancy screening (voluntary) with pregnancy classification upon confirmation;

(b) special diet;

(c) prenatal/perinatal care;

(d) appropriate housing (lower bunks, medical unit);

(e) access to abortion where requested;

(f) transportation to medical services/hospital; and

(g) procedures for dealing with pregnancy-related medical emergencies.

(3) medically supervised drug detoxification program; and

(4) voluntary, confidential AIDS testing

Discussion and Analysis

Although women inmates and female juvenile offenders have the statutory right to adequate medical facilities and

supplies, pregnancy care, birth control, and abortion services, the committee found that these services were not readily available. Lack of access to mandated medical and hygiene services can create dangerous and unsafe conditions for institutionalized females.

- Statutory framework

Both the Penal Code and Welfare and Institutions Code contain provisions for hygiene, family planning services, pregnancy care and abortion services. The following sections of the Penal Code apply to adult female inmates in local jail facilities.

> §4023.5. Female Personal Hygiene Materials--Family Planning Services.
>
> (a) Any female confined in any local detention facility shall upon her request be allowed to continue to use materials necessary for (1) personal hygiene with regard to her menstrual cycle and reproductive system and (2) birth control measures as prescribed by her physician.
>
> (b) Each and every female confined in any local detention facility shall be furnished by the county with information and education regarding the availability of family planning services.
>
> (c) Family planning services shall be offered to each and every woman inmate at least 60 days prior to a scheduled release date. Upon request any woman inmate shall be furnished by the county with the services of a licensed physician or she shall be furnished by the county or by any other agency which contracts with the county with services necessary to meet her family planning needs at the time of her release.
>
> (d) For the purposes of this section, "local detention facility" means any city, county, or regional facility used for the confinement of any female prisoner for more than 24 hours.

§4023.6. Pregnancy--Right to Summon and Receive Services of Physician and Surgeon

Any female prisoner in any local detention facility shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. The superintendent of such facility may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate such determination.

If the prisoner is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of such services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the prisoner.

For the purposes of this section, "local detention facility" means any city, county, or regional facility used for the confinement of any female prisoner for more than 24 hours.

Any physician providing services pursuant to this section shall possess a current, valid, and unrevoked certificate to engage in the practice of medicine issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The rights provided for prisoners by this section shall be posed in at least one conspicuous place to which all female prisoners have access.

§4028. Abortion.

No condition or restriction upon the obtaining of an abortion by a female detained in any local detention facility, pursuant to the Therapeutic Abortion Act (Chapter 11 (commencing with Section 25950), Division 20 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions shall be permitted to determine their eligibility for an abortion pursuant to law, and if

determined to be eligible, shall be permitted to obtain an abortion.

For the purposes of this section, "local detention facility" means any city, county, or regional facility used for the confinement of any female prisoner for more than 24 hours.

The rights provided for prisoners by this section shall be posed in at least one conspicuous place to which all female prisoners have access.

[See also Penal Code sections 3405, 3406 and 3409 for adult females in state prison facilities and also W&I Code sections 220, 221, 222, 1773, 1774 and 1753.7 for juveniles detained in facilities operated by local agencies and the California Youth Authority.]

- Need for medical services

The committee heard testimony indicating that approximately two-thirds of incarcerated women have young children or are pregnant. Statistical data collected at Sybil Brand, the main women's jail facility in Los Angeles County, indicated that 75 percent of the women who enter have had no prenatal care prior to incarceration.54/ There are, therefore, unique health concerns for women. Many of these concerns are not addressed by the state or local agencies responsible for supervising these women while they are incarcerated.

Ms. Karen Schryver observed that there is currently no female state prison that has a hospital in this state. She said there may be a hospital or medical facility at the new Madera County prison when it opens in 1993. This means, she noted, that any kind of medical concern that requires care above an infirmary level has to go to an outside hospital. The closest hospital outside of the California Institute for Women is at least a half hour away. This is a special problem for women who are pregnant and who need emergency services apart from regular medical care.55/

Many of the inmates at Sybil Brand complained about

the lack of access to medical services, including prenatal care and abortion assistance. Staff at the facility also reported that it was increasingly difficult for the inmates to obtain appropriate medical care. Approximately 14 to 16 percent of the jail population at Sybil Brand is pregnant at any given time. There are approximately 150 babies born there each year.

A representative of the sheriff's department confirmed that about fifty percent of the complaints about the delivery of medical care identified by the inmates were probably true.

One inmate stated that she had to get a court order so she could be examined by a physician and confirm that she was pregnant. Until the court order she was unable to receive any prenatal care at the jail. She noted that once an inmate is identified as pregnant, she is given a yellow wrist band. Pregnant inmates with the yellow wrist band are supposed to receive one extra portion of milk per day and a lower bunk. Because of overcrowded conditions, additional portions of milk and food are not always readily available. Difficulties in obtaining prenatal vitamins were also discussed at the jail facility.

Inmates also testified about their inability to obtain statutorily permitted abortions. One inmate, who already has four children, stated that she first discovered she was pregnant about two months after her incarceration. Upon confirmation of her pregnancy, she immediately requested an abortion. She expressed concern that she was now four months pregnant and still had not received an abortion.

Another inmate stated that she was two to three months pregnant when she was incarcerated. She also asked for an abortion immediately. She had to have a more complicated procedure because of the delay at the jail facility in obtaining the abortion. One inmate told of her experience in a holding tank where she was held for six hours with a woman who was hemorrhaging because of a self-induced abortion. The woman, she said, almost died.

- Need for drug detoxification programs and AIDS testing

As stated elsewhere in this chapter, the majority of incarcerated women have substance abuse problems. The committee heard testimony during the jail interviews indicating the need, not only for drug treatment programs, but also for medically supervised drug detoxification programs. Additionally, because of their own drug use or that of their partners, institutionalized females may be at risk of having AIDS. Inmates at Sybil Brand indicated a desire for and a willingness to obtain confidential testing for AIDS on a voluntary basis. Information regarding a positive test may be used by the individual woman to avoid transmission to others and reduce the likelihood of having a child infected with AIDS.

- Need for protocols and minimum standards

Medical protocols which include abortion guidelines and child care protocols for correctional and juvenile facilities were identified by the committee as necessary to assist pregnant inmates. In addition to adequate prenatal care, issues relating to housing, such as lower bunks for pregnant women, were suggested.

The committee heard from Ms. Ellen Barry, Director of Legal Services for Prisoners with Children. Ms. Barry has worked with women in prison for the last 14 years advocating mainly on the issues affecting incarcerated mothers and their children.

Ms. Barry testified that as part of a settlement agreement[56/], the Department of Corrections developed protocols for emergency treatment for both high-risk pregnancies and normal pregnancies. The protocols will require the care of an obstetrician/gynecologist as well as the creation of a special pregnancy-related health care team and a special obstetrical unit for women in advanced stages of pregnancy.

In monitoring the settlement for the last year and a

half, she stated that some parts of the system have changed. There has been confirmation that infant mortality has been reduced and that miscarriages have been reduced in the state prison system. This is really a matter of eternal vigilance, she stated, and we are continuing to monitor the situation.

With respect to prenatal and perinatal care, she asked the committee to review the county jail systems as well as the state system. Ms. Barry emphasized the critical need for perinatal care to avoid substantial infant mortality rates and developmentally disabled children.

In addition to statewide maternal and child health standards, she also asked for the creation of statewide standards for adequate perinatal care using the American College of Obstetrics and Gynecology standards and the adaptation to the county jail and state prison systems, so that the standards function in those environments in an effective way.57/

The committee heard testimony from a former perinatal coordinator for the Santa Rita County Jail, that called for statewide standards for perinatal care to be provided within the criminal justice system. She recommended a case management approach for high-risk, incarcerated pregnant women, that provides comprehensive medical care and supervision while they are in prison and once they are released. She also suggested putting together a plan for what will happen to them as it relates to benefits and to their children.

You need, she said, someone who can coordinate services and do case management for pregnant, incarcerated women and it has to be someone whose job is identified as that. If there is not somebody there to do case management, she also noted, requests for abortions often fall through the cracks. Many times the women end up not having the abortion because too much time has passed and she has lost her chance.58/

- Needs of institutionalized juveniles

The committee heard testimony that young women placed at the California Youth Authority also may lack adequate pregnancy-related services. Ms. Linda Siegal indicated:

> [T]here have been babies that have been born in CYA, they haven't heard the girl crying out for help, and her baby has been born in her cell, and that's really tough for, you know, for anybody, much less a kid. You know, babies having babies.59/

The lack of appropriate pregnancy-related medical care is also apparent in local juvenile detention facilities. One attorney told of a 14-year-old female client she had, who took her father's car without his permission. The young woman was pregnant with twins. A petition under section 602 of the Welfare and Institutions Code was filed. The young woman admitted the allegations and the juvenile court sustained the petition and issued a camp order.

The attorney testified that the camp did not want to take the girl because of her pregnancy. They indicated that they lacked the facilities and nursing staff to provide prenatal care. Meanwhile, the young woman was detained in juvenile hall pending a placement. Though the attorney had a doctor's statement indicating that the young woman was anemic and a high-risk pregnancy, the judge denied the attorney's motion for change in dispositional order. Three days later, the young girl miscarried and lost both babies.60/

The committee also heard about the insensitivity of the facility staff to medical problems facing young female detainees. In her discussion of medical problems unique to young women offenders, Ms. Johnson, Director of Juvenile Hall in San Bernardino County, observed that the girls in juvenile halls throughout the state fall between the cracks. They are adolescents who have dropped out of school and have not been

part of any health education programs through the school. They have not experienced community-based treatment programs. They are, she indicated, girls who are the most at-risk population we could be considering. The girls that come into the juvenile detention facilities are desperate for some direction and medical care.

The medical care may be there, but often the girl returns from the health clinic and the record reflects no care provided on the basis that the girl refused. We need to ask, she said, why the girls refuse. Too often counseling staff, nurses, and physicians, as well as other persons who provide in-service care, say to these young women, "Well, you've had three babies, and you were on the street for three years. Why are you so shy about taking off your clothes today?" That is often the scenario; the girl never takes her clothes off to get the medical care.

There is often a real misunderstanding by the medical professional and staff about the girl's level of sophistication. The myth is that the girl has been promiscuous and knows everything. Yet, in reality, she has no knowledge of her body, her body's physiology, or basic hygiene. These young women have overwhelming medical needs.61/

- Conclusion

By recommending that the Department of Corrections, the California Youth Authority and local agencies, who supervise institutionalized females, adopt protocols implementing the statutory rights for appropriate medical services, the Judicial Council will encourage the availability of mandated medical and hygiene services.

E. Sexual assault and sexual harassment suffered by inmates

Findings

Females are sometimes the victims of sexual assault and harassment while institutionalized in adult and juvenile facilities.

RECOMMENDATION 7

Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority and local agencies operating adult and juvenile detention facilities (see Title 15 of the Administrative Code, sections 4 and 7), that they implement policies and procedures to assure detainees' safety from sexual harassment and sexual assault perpetrated by:

(1) guards, counselors or staff;

(2) other inmates, detainees in the institution; and

(3) inmates with whom contact is made during transportation to and from court and in the courthouse lock-up.

Discussion and Analysis

The committee heard testimony from inmates and staff at the women's county jail facilities that females are sometimes the victims of sexual harassment and assault by other inmates, guards, or male inmates they come in contact with. One female inmate told the committee that in the men's jail the homosexual men are separated from the other inmates. However, that is not the case in the women's facility. A staff member stated that there are rapes in the women's jail and that some of the women feel very intimidated and are afraid to discuss the assaults in public.

Other female inmates complained about being harassed by

male inmates while being transported to and from court in county buses. They said that in addition to being verbally assaulted, some men exposed themselves to them.

An attorney at the public hearings testified that she had a woman client in state prison who was raped by a guard. She said the guard was finally prosecuted after he also raped several female guards.62/

- Conclusion

By increasing their recognition and remedial efforts, agencies who supervise females in custody can prevent and eliminate any sexual assault and harassment suffered by the females in their custody. The committee therefore recommends to the Judicial Council that it encourage state and local agencies operating adult and juvenile detention facilities to implement policies and procedures to assure inmates and detainees' safety from sexual harassment and assault.

F. Juvenile dependency proceedings

Findings

1. Up to 80 percent of incarcerated women are mothers or mothers-to-be. A significant number of these women have children who are under the jurisdiction of the juvenile court. A substantial number of female offenders in juvenile detentions and placements also have children who are dependents of the juvenile court.

2. Institutionalized females lack adequate information about juvenile dependency proceedings, and are unable to make knowledgeable decisions about the placement and future of their children.

3. Institutionalized parents do not receive proper notice of proceedings and are therefore being denied due process. As a result, they are at risk of not having the opportunity to

assert their statutory rights to participate in dependency proceedings, thereby loosing custody of their children by default.

4. In addition to not receiving notice, institutionalized parents are not provided with transportation to court and an adequate opportunity to participate in dependency court proceedings.

F.1. Parental ignorance of dependency law and procedures

RECOMMENDATION 8

Request the Judicial Council to:

(1) Revise the informational brochure on dependency law and procedure.

(2) Produce an informational video on dependency law and procedure.

(3) Amend the juvenile court rules to require that the informational brochure be given to parents in court.

(4) Recommend to the Department of Corrections, the California Youth Authority and local detention and placement facilities to require dissemination of the brochure and use of the video in their facilities (see Title 15 of the Administrative Code, divisions 4 and 7).

Discussion and Analysis

Testimony at both the public hearings and the jail hearings indicated that parents lack necessary information about the juvenile dependency process. Since women are usually the caretakers, this has a more significant impact on them. Even the incarcerated mothers at Sybil Brand and Mira Loma who were represented by attorneys indicated they were unable to call them collect by telephone and that their attorneys did not come to

the facilities to speak with them. Many of the inmates interviewed stated that they were not represented by attorneys in the dependency case.

Young juvenile offenders also have difficulty obtaining information about juvenile dependency procedures. Ms. Anna Roberts stated:

> [I]n the 28 years I have been in the system, I have never, never encountered a girl, a minor mother who had any reasonable understanding of her rights, or the action of the dependency court in relation to her own children.[63/]

A parent may lose permanent custody of a child, if the child is a dependent of the juvenile court and remains in out of home placement for up to 18 months. (See sections W&I 300 et. seq.) It is therefore important to have a mechanism to provide incarcerated parents with basic information about juvenile court dependency proceedings.

Section 307.4 of the Welfare and Institutions Code (Stats. 1986, ch. 386) requires the Judicial Council to prepare and make available for distribution an informational brochure on dependency proceedings for parents whose children have been taken into protective custody.

Under section 307.4, the brochure shall include at the following information:

> (1) The conditions under which the minor will be released, hearings which may be required, and the means whereby further specific information about the minor's case and conditions of confinement may be obtained.
>
> (2) The rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and his or her parents, guardians, or responsible relative.

The brochure has not yet been revised to reflect the significant changes in dependency law and termination procedures which were enacted, effective January 1, 1989. The committee urges the revision of the brochure and an amendment to the juvenile court rules to provide for distribution to parents who are able to attend court hearings.

Additionally, the committee believes that an informational video which can be used in adult and juvenile institutions to acquaint parents with their rights would be of great assistance, especially to those parents who are functionally illiterate.

- Conclusion

By requesting state and local institutions to disseminate the brochure and use the video, the Judicial Council will help to ensure that parents in these institutions will have at least a basic knowledge of the proceedings.

F.2. Notice to parents in custody or detention regarding dependency, delinquency and termination of parental rights proceedings.

RECOMMENDATION 9

(a) Request the Judicial Council to propose legislation or support legislation introduced which would amend the Welfare and Institutions Code to require the Department of Corrections, California Youth Authority and local agencies responsible for detention of inmates to implement protocols to be followed in notifying and securing the presence of parents confined at such facilities at dependency, delinquency, or termination of parental rights

proceedings (see Title 15 of the Administrative Code, divisions 4 and 7).

(b) Request the Judicial Council to adopt a Standard of Judicial Administration which would encourage all bench officers and court personnel to become familiar with the procedures for obtaining the release and the return of such inmates. The standard should also encourage the use of low-cost facsimile machines which will speed up the notification process and increase the likelihood of a timely hearing, thus reducing the cost of such procedures by minimizing delays.

(c) Request the Judicial Council to adopt a notice and proof of service form to be used for incarcerated and detained parents.

Discussion and Analysis

Section 301 of the Welfare and Institutions Code provides that unless their parental rights have been previously terminated, parents shall be notified of all dependency hearings, including guardianship and termination of parental right proceedings under section 366.26 of the Welfare and Institutions Code, involving their child. Parents also have a right to notice of termination of parental rights proceedings under section 232 of the Civil Code[64/] and may be entitled to notice of delinquency proceedings petitioned under section 602 of the Welfare and Institutions Code for any of their minor children.[65/]

- Need for notice and transportation to proceedings

Testimony at the public hearings and the jail hearings by both inmates and teachers working in the facility revealed that notice to parents in custody regarding dependency, delinquency and termination of parental rights proceedings is often not given.

Facilitating notice within the institution and providing transportation to court were both identified by the committee as problems. Again, since mothers are the primary caretakers, the lack of notice and transportation has a disproportionately severe hardship on females.

In some instances the agency, required to give notice, sends notice to the parent in custody but the parent does not receive the information. Ms. Ellen Berry testified that although there are many social workers in this state who are trying very hard to do the best job possible within the parameters of a difficult system, her agency has documented cases where parents did not receive notice prior to the dependency hearing, or prior to the six- or twelve-month review.66/

The committee also heard testimony at both the public and jail hearings that indicated that there were a substantial number of cases where a parent had received actual notice of the impending proceedings, but was unable to attend because of coordination problems in transportation procedures. Ms. Berry noted that it is particularly difficult to have a parent transported to court. Generally, at least three different agencies are involved and complex coordination is required. Transportation to court for juvenile proceedings involving the prisoner's child is not taken as seriously as transportation to court for the criminal proceeding.

She observed that although judges may be willing to continue the case when a problem of notice and transportation is brought to their attention, the delay can be harmful to the child and may interfere with the process of reunification and development of an effective case plan.67/

- Notice to juvenile mothers

Ms. Anna Roberts also raised concerns about juvenile mothers. She pointed out that the children of girls who are on probation are often dependents of the juvenile court. She

stated that minor mothers may never receive notices of dependency court hearings, and if they do, they rarely understand them. The mother's transportation to the court hearing is also a problem; if she does get to the courthouse, she may be placed in a waiting room and never get called to the courtroom. Ms. Roberts recalled:

> I can remember one case where I tried to get the juvenile court judge to make an order to the probation officer to take the girl to the dependency hearing. He really didn't believe that the dependency hearing would take place without her presence, and it wasn't until I presented a minute order from the dependency court showing that she had not been there, plus a probation transportation order showing that she had been taken there and left all day, that he finally, I think, understood that indeed, this girl was telling the truth. She had gone, but not gone to the court hearing for her child.[68]

Ms. Roberts did provide a positive example of a probation facility which attempted to assist minor mothers. She testified that at Camp Scott, the probation camp for girls in Los Angeles County, they have taken a very aggressive position in regard to minor mothers. She noted that their childcare staff transports the mothers to the dependency hearings and waits with the mothers to insure that they are able to participate in the court hearing.[69]

- Conclusion

The Judicial Council could significantly increase the likelihood that a parent in custody will receive notice and achieve due process by: (1) sponsoring legislation requiring the implementation of protocols, regarding notice to parents and transportation to court, by agencies responsible for adult inmates and juvenile detainees; and, (2) adopting standards which encourage judges to become familiar with the notice and transportation procedures to facilitate appearance of these parents who wish to be present at the court hearing.

G. Enhancing status of the juvenile court

Findings

1. The juvenile court is generally regarded by other judges and participants, as well as the public, as having a lower status than civil and general criminal courts. As with family law court, a factor relevant to this low status may be the perception that juvenile court is a court that deals with "women's problems." In addition, juvenile court is perceived by many as unimportant because the majority of families that come before it are poor, of color, and headed by a single parent who is female.

2. As a consequence, juvenile court is given low priority within the superior court. This low priority results in heavy caseloads and inadequate facilities and staffing, further discouraging the interest of judges in seeking a juvenile court assignment.

3. Since women are the primary caretakers of children, juvenile court's low status has a differentially negative impact on women and their children.

RECOMMENDATION 10

Request the Judicial Council to refer the following issues to its Advisory Committee on Juvenile Court Law for study and recommendations:

(a) Re-evaluation of weighted caseload measures to accurately reflect the complexities of juvenile court law, statutorily mandated multiple review hearings, and intense court supervision required in juvenile dependency cases.

(b) Review judicial assignment procedures and inadequate facilities and staffing in juvenile court.

(c) Review methods to enhance status of juvenile court and the judicial assignments to that court.

Discussion and Analysis

The committee heard testimony indicating that juvenile court is generally perceived by judges, attorneys, participants, and the public as having a low priority and status within the superior court. As a result of this low priority, judges generally do not seek juvenile court assignments.

- Nexus between low priority and lack of resources

Judge Patrick Morris of San Bernardino County Superior Court equated the low priority given juvenile court with a distinct bias against women and children. He observed that most of the children that come before his court are from broken, mother-led homes.

In commenting about the lack of status for juvenile court within the community, he said,

> [A]nd the powerlessness of this group is reflected, I think, in the quality of the facilities, and the services offered by most counties. My view is that most of the county planners, the decision makers are proud of their courthouses, and their structures. They tend to like to build courthouses as a symbol in the community.
>
> That doesn't, however, generally happen with juvenile court. They're often stuck away, in my view, on back lots and behind fences, and they do not feel good about what happens in juvenile law. It is a true stepchild of the system.
>
> Our--in our county, we have just built a 30 million dollar courthouse. We're about to renovate another major court structure. I've been advocating for five years for a long-term need assessment on juvenile justice, and I have yet to even get the assessment study funded by the county board. That's not a priority item on their agenda.[70/]

Ms. Shelley McEwan, Deputy County Counsel (now a superior court commissioner), Solano County, also linked the

lower status given to juvenile dependency court to women and children, stating,

> [T]he juvenile court on the dependency side of the court is perhaps one of the areas where the effect of gender bias is simply an assumption of the judicial system, not an inadvertent by-product of discrimination. You have a court in the dependency court that affects women and families in particular. You have an overlay of that, of poverty, you have an overlay of dysfunctional families due to substance abuse, and you have all of the intergenerational problems that come from a background of having been raised, perhaps, in foster care, subject to child abuse, domestic violence, sexual abuse, all sorts of problems all coming together so that those problems meet in the dependency court.[71/]

Ms. Jane Via stated that it is her perception as a deputy district attorney in the Child Abuse unit in San Diego that there is a "systemic bias against women which is deflected on to children in our society that results in an enormous lack of resources in the juvenile court." She further asserted that children are perceived as women's work, and since women are undervalued in our society, children are also undervalued.

Ms. Via noted that many of the cases in dependency court involve families with two or more children. Since the judicial officer makes separate orders for each child, if there are 20 cases on the calendar, the clerk may have 36 or more copies of minutes to prepare. Because of the heavy caseloads in dependency court, all participants, including judges, clerks, attorneys, and social workers are tremendously overworked.

Attorneys do not have the time to adequately prepare their cases, and are unable therefore to even interview the child victim before the child is placed in a courtroom and asked to testify. All of this, she testified, reflects the lack of importance women and children have in the justice system's hierarchy of values.

Finally, she observed, that there is also a false

assumption that, because children are women's work, women are better suited for the positions in dependency court such as judges, clerks, public attorneys and social workers.[72]

- Need to revise juvenile caseload measures

Ms. McEwan expressed the concern that juvenile courts have little time to make important decisions about the lives of the children and their families that appear before them. She observed that in a two and one-half minute period, a juvenile court judge is asked to supervise a risk analysis for a child and determine whether it is safe to return the child home safely. The judge must also make a determination whether adequate services have been provided.

She attributed the insufficient amount of time to make these important decisions to the low priority juvenile court is given within the superior court. She stated that juvenile court is "[E]ither a training ground for going on to something better, or it's, you know, somewhere where you expect to find people who can't do anything else, and the juvenile dependency court suffers from all of those problems."

Based on the comparative complexity of the cases, she questioned the validity of the weighted caseload approach, which allots much more time to criminal cases than to juvenile dependency and domestic law cases. Though she did not question the importance of fair criminal trials, she compared the seven-months time it took recently to try a death penalty case in her court to the miniscule amount of time allotted for dependency cases and said,

> [W]e deal in life and death decisions every single day, and we are not, by this judicial system, allowed the time or the priority to make those same reasoned decisions on those cases.[73]

- Judicial assignments

Responses to the judges survey on preference of judicial assignment confirm that juvenile court assignments are much less sought after than civil and criminal assignments. When given a choice in the type of judicial assignment, the majority of judges indicated a preference for civil or criminal assignments. Family and juvenile court assignments were the least preferred.[74/]

- Conclusion

Accordingly, the gender bias committee requests the Judicial Council transmit this report to the its Advisory Committee on Juvenile Court Law for study and recommendations.

H. Judicial training

RECOMMENDATION 11

(1) Request the Judicial Council to adopt Standards of Judicial Administration which encourage CJER and local courts to develop training on issues relating to criminal and juvenile law which relate to attitudes of gender bias.

(2) Request the Judicial Council to adopt Standards of Judicial Administration which require CJER and local courts to develop training on issues and techniques which relate to attitudes of gender bias as it pertains to trial and jury selection in matters involving sexual assault, domestic violence and child abuse.

(3) Request the Judicial Council to amend section 8.5 of the Standards of Judicial

Administration on examination of prospective jurors in criminal cases to include recommended questions which relate to attitudes of gender bias as it pertains to cases involving sexual assault, domestic violence and child abuse.

Discussion and Analysis

Heightened awareness by judges of gender-related issues previously identified in this chapter and recognition of stereotypical perceptions and attitudes of gender bias, including those that pertain to trial and jury selection in sexual assault, domestic violence and child abuse cases, will lessen the opportunity for bias in the criminal and juvenile justice system.

- Need for judicial training programs

Although the committee received considerable information identifying many instances of unequal treatment based on gender, the committee notes that the results of the judges survey indicate a lack of a perceived awareness by judges of the ways in which females receive differential treatment in the criminal and juvenile justice system and the instances where certain policies and practices, which appear gender neutral, actually have a negative disparate impact on females.75/

The committee, therefore, encourages training programs, provided by CJER and local courts, for criminal and juvenile law judges, which incorporate into their curriculum issues relating to attitudes of gender bias as they effect judicial decision-making regarding: programs and services administered by local probation departments; institutions and placements; education and training programs; medical and special needs of institutionalized females; and the reunification and notice requirements in juvenile dependency proceedings.

The curriculum should also include programs discussing existing sentencing and dispositional alternatives, such as the

Eden Program and the Mother/Infant Care Program, discussed earlier in this chapter. Training on hygiene and medical needs of female inmates and mother/child relations should be included in the curriculum, along with an overview of the Penal Code and Welfare and Institutions Code sections which provide for the rights of institutionalized personal hygiene, medical care, family planning services and prenatal care.

- Credibility issues and sexual stereotypes

In addition to those issues identified earlier in this chapter, the committee heard testimony indicating a need for judicial education on credibility issues relating to females in the justice system, sexual stereotypes, paternalistic attitudes and lifestyle practices.

Judges need to be sensitized to the biased attitudes and sexual stereotypes that may be reflected in probation and social work reports submitted to the court.

Professionals in the field testified that descriptions of a female's sexual behavior were included in probation reports, whereas nothing is said of the sex life of males. This reporting practice may have a detrimental effect on sentencing and dispositions.

Information in a report about a mother's sexual behavior may place her at a disadvantage when the court is considering placement of a child in a juvenile dependency hearing.

Ms. Kathleen West noted that whereas for mothers this information may cast aspersions on her character,

> [I]f a father who has been absent for 18 months shows up on the scene at last, and has fathered 16 children by whatever number of women, that never becomes material to the court record.[76/]

Ms. Ana Espana, a deputy public defender in San Diego

County, expressed concern that if a male juvenile offender participated in sports, that involvement was included favorably in probation reports. However,

> [I]f I have a female offender who is very much involved in sports, that usually isn't included in the probation officer's reports. Or if she is not involved in sports, but is involved in equally exciting activities, that also isn't mentioned.[77]

Other gender-related issues include different expectations and perceptions regarding parental responsibilities and culpability. Because mothers are the primary caretakers, they are more often held responsible for their child's negative behavior. Since the mother is usually the parent who appears in delinquency court there is a disparate financial impact on her based on gender if she is asked to reimburse the county for her child's attorney fees.

Women are frequently held to a different standard than men in the dependency court process. Several commentators noted that judges expect more from mothers than they do from fathers in evaluating parenting skills and determining if and when a child should be returned to a parent. One attorney commenting about dependency cases stated,

> [I]f a father is perceived to be less than proficient in caretaking, well, gosh, we need to teach him. Nobody ever taught him, and it's kind of okay if a father really doesn't know what to do. But, if a mother shows a deficiency, and I think in some cases it is because of a deprived background educationally, economically or otherwise, she's not given, in many cases, the same kind of benefit of the doubt that she wants to take care of the child properly.[78]

Ms. Jane Via, a deputy district attorney in San Diego's child abuse unit, also observed:

> A mother who abandons her child is held liable for that. A father who abandons his child, takes no financial responsibility for that child, provides no actual care of any kind, and often has no contact with that child, may be contacted in the dependency hearing when the child has suffered some kind of abuse and neglect in the mother's home. That person then steps forward and is identified as "the non-offending parent," and we decide to give this child over to this father whose qualifications are highly suspect. A mother who just gives the care or custody of her child to someone else, it seems to me, is held responsible for whatever that other person does to the child in her absence.79/

Ms. Via also told the committee that she sees gender bias in interpreters whose cultural biases are against females in sex crimes. Education about the issues raised by her would assist judges in making bias-free decisions.

- Fairness in jury selection

The committee heard testimony from the judge, prosecuting attorney, defense attorney, and jury consultant, regarding a case involving a woman charged with the murder of her husband. The crucial issue was the fairness in the jury selection.80/

According to the testimony presented, the woman had been a battered wife. Her defense centered on the "battered woman syndrome". The woman was found guilty of second degree murder and was sentenced to prison for 17 years to life. During the course of the appeal, it was revealed that a juror had lied during voir dire. She withheld information about her own battering.

The case was retried. The participants testified that the manner in which the jury was selected was one of the most important facets that was different from the first trial. The

judge recognized that the jury selection process needed to incorporate a procedure to elicit potential bias by prospective jurors based on any of their own experiences of violence in their families.

The jurors were initially given a written questionnaire to complete. They were then questioned individually and in groups at specified times. This comprehensive selection process was designed to elicit any potential bias about this type of case. The jury selection took only one day longer in the second trial than in the first. The defendant was acquitted in the second trial.

The committee recognizes that because of certain stereotypes about female victims of sexual and physical abuse, it is therefore important to develop a jury selection process that will minimize any potential juror bias.

- Conclusion

With the aid of training programs on gender-related issues in criminal and juvenile law, judges will have increased recognition of stereotypical perceptions and bias which may occur in the jury selection process and in probation reports. Furthermore, education can assist judges, when executing judicial orders and dispositions, to recognize when there is a disparity of available resources, programs, services, and facilities which is gender-related. Training can also increase a judges cognizance of the factors that are unique to adult and juvenile female offenders and accordingly, make orders and dispositions that address their particular needs.

The committee therefore recommends that training be made available to judges who preside over criminal and juvenile proceedings and that the standards of judicial administration be amended to include specific questions which would facilitate bias free jury selection.

END NOTES

1/ Statistics provided by the Los Angeles Superior Court.

2/ U.S. Constitution, Sixth Amendment and article I, section 15 of the California Constitution.

3/ Penal Code section 987 and section 654 of the Welfare and Institutions Code.

4/ Penal Code section 987.2.

5/ Penal Code section 987.2.

6/ Welfare and Institutions Code section 317.

7/ Civil Code section 232 and Welfare and Institutions Code section 366.26.

8/ Penal Code sections 987.2-987.6 and Welfare and Institutions Code sections 317 and 634.

9/ Los Angeles Regional Meeting Transcript, pp. 132-134.

10/ Los Angeles Regional Meeting Transcript, pp. 132-134.

11/ Los Angeles Regional Meeting Transcript, p. 131.

12/ Los Angeles Regional Meeting Transcript, pp. 143-144.

13/ Los Angeles Regional Meeting Transcript, pp. 132-134.

14/ Duties of probation officer may be delegated to county welfare department when supervising cases involving dependent children of the juvenile court. Sections 215 and 272 of Welfare and Institutions Code

15/ See discussion of Molar case later in this chapter.

16/ San Francisco Public Hearing Transcript, p. 12.

17/ Los Angeles Public Hearing Transcript, pp. 26-27.

18/ Sacramento Public Hearing Transcript, p. 284.

19/ Fresno Public Hearing Transcript, p. 258.

20/ San Francisco Public Hearing Transcript, pp. 242-246.

21/ Sacramento Public Hearing Transcript, p. 284.

22/ San Francisco Public Hearing Transcript, pp. 340-343.

23/ Welfare and Institutions Code section 300(g).

24/ Welfare and Institutions Code section 361.5(a).

25/ Los Angeles Public Hearing Transcript, p. 321.

26/ Los Angeles Public Hearing Transcript, p. 318.

27/ Los Angeles Public Hearing Transcript, p. 320.

28/ Los Angeles Public Hearing Transcript, p. 324.

29/ Los Angeles Public Hearing Transcript, pp. 326-327.

30/ Los Angeles Public Hearing Transcript, p. 312.

31/ This and all subsequent observations of jail conditions by inmates and staff are from interviews conducted at the Sybil Brand Institution for Women on February 13, 1989, and at Mira Loma Camp on March 13, 1989.

32/ San Diego Public Hearing Transcript, pp. 282-283.

33/ San Diego Public Hearing Transcript, p. 293.

34/ San Diego Public Hearing Transcript, p. 247.

35/ San Francisco Public Hearing Transcript, p. 243.

36/ San Diego Public Hearing Transcript, p. 253.

37/ San Francisco Public Hearing Transcript, pp. 315-316.

38/ San Diego Public Hearing Transcript, pp. 254-255.

39/ Emerging Criminal Justice Issues: Children of Female Prisoners, Office of Criminal Justice Planning, Research Update, Vol. 1, No. 11 (1987).

40/ San Diego Public Hearing Transcript, p. 241.

41/ San Diego Public Hearing Transcript, p. 243.

42/ Sacramento Public Hearing Transcript, p. 287.

43/ Penal Code sections 3410, et. seq.

44/ San Francisco Public Hearing Transcript, p. 313.

45/ San Diego Public Hearing Transcript, p. 239.

46/ San Diego Public Hearing Transcript, p. 242.

47/ San Diego Public Hearing Transcript, p. 311.

48/ San Francisco Public Hearing Transcript, pp. 322-323.

49/ San Diego Public Hearing Transcript, p. 253.

50/ San Diego Public Hearing Transcript, p. 297.

51/ Los Angeles Public Hearing Transcript, p. 257.

52/ San Francisco Public Hearing Transcript, p. 340.

53/ San Francisco Public Hearing Transcript, pp. 340-341.

54/ San Diego Public Hearing Transcript, p. 238.

55/ San Francisco Public Hearing Transcript, p. 316.

56/ San Francisco Public Hearing Transcript, p. 328.

57/ San Francisco Public Hearing Transcript, p. 330.

58/ San Francisco Public Hearing Transcript, pp. 344-346.

59/ Sacramento Public Hearing Transcript, p. 92.

60/ Los Angeles Regional Meeting Transcript, pp. 165-166.

61/ San Diego Public Hearing Transcript, pp. 251-252.

62/ San Francisco Public Hearing Transcript, p. 318

63/ Los Angeles Public Hearing Transcript, p. 256.

64/ Civil Code section 235.

65/ Welfare and Institutions Code sections 630, 660.

66/ San Francisco Public Hearing Transcript, pp. 332-333.

67/ San Francisco Public Hearing Transcript, pp. 332-333.

68/ Los Angeles Public Hearing Transcript, pp. 255-256.

69/ Los Angeles Public Hearing Transcript, pp. 256-257.

70/ San Diego Public Hearing Transcript, pp. 279-280.

71/ Sacramento Public Hearing Transcript, p. 256.

72/ San Diego Public Hearing Transcript, pp. 272-275.

73/ Sacramento Public Hearing Transcript, p. 262.

74/ Judges' Survey, question 7.

75/ Judges' Survey, questions 40-48.

76/ Los Angeles Public Hearing Transcript, pp. 330-331.

77/ San Diego Public Hearing Transcript, pp. 295-296.

78/ Los Angeles Regional Meeting, Transcript, pp. 179-180.

79/ San Diego Public Hearing Transcript, pp. 277-278.

80/ Sacramento Public Hearing Transcript pp. 210-256.

APPENDIX A

CRIMINAL JUSTICE PROFILE

CALIFORNIA STATE PRISON SYSTEM

December 31, 1989

	Men	Women	Total
Prison Population	81,426	6,057	87,483
New Violent Offenses in 1988			
Homicide (including Murder 1, 2, manslaughter and vehicular manslaughter)	1,410	110	1,520
Assault (including with deadly weapon and with battery)	2,092	125	2,217
Robbery	2,676	163	2,839

Source:
Bureau of Criminal Statistics
California Department of Justice

396/NU

DISPOSITIONS OF JUVENILES REFERRED TO PROBATION DEPARTMENTS FOR DELINQUENT ACTS, 1986
NEW REFERRALS SHOWING SEX AND RACE/ETHNIC GROUP BY TYPE OF DISPOSITION
STATEWIDE

		SEX		RACE/ETHNIC GROUP				
	TOTAL	MALE	FEMALE	WHITE (NOT HISPANIC)	HISPANIC	BLACK	OTHER	UNKNOWN
DISPOSITIONS OF REFERRALS FOR DELINQUENT ACTS								
NOT DETAINED	91,226	69,951	21,275	51,279	22,147	11,220	3,891	2,689
DETAINED-NONSECURE FACILITY	2,489	1,226	1,263	1,567	499	262	96	65
DETAINED-SECURE FACILITY	30,519	24,377	6,142	13,929	8,277	6,279	1,742	292
UNKNOWN	604	447	157	389	61	114	15	25
TOTAL	124,838	96,001	28,837	67,164	30,984	17,875	5,744	3,071
PROBATION DEPARTMENT DISPOSITION								
CLOSED	62,211	45,588	16,623	34,698	14,743	8,116	2,941	1,713
TRANSFERRED	3,421	2,412	1,009	2,137	739	284	127	134
INFORMAL PROBATION	17,363	13,357	4,006	10,331	4,354	1,663	726	289
PETITION FILED	41,843	34,644	7,199	19,998	11,148	7,812	1,950	935
TOTAL	124,838	96,001	28,837	67,164	30,984	17,875	5,744	3,071
PROSECUTOR ACTION								
NO AFFIDAVIT FILED	78,224	57,178	21,046	44,678	18,592	9,446	3,514	1,994
AFFIDAVIT ACCEPTED	41,102	34,327	6,775	19,590	10,998	7,706	1,920	888
AFFIDAVIT NOT ACCEPTED	5,512	4,496	1,016	2,896	1,394	723	310	189
TOTAL	124,838	96,001	28,837	67,164	30,984	17,875	5,744	3,071
COURT DISPOSITION								
CLOSED/DISMISSED/TRANSFERRED	9,440	7,520	1,920	4,676	2,228	1,832	433	271
REMANDED TO ADULT COURT	153	135	18	49	53	33	15	3
INFORMAL PROBATION	600	482	118	339	108	104	44	5
NON-WARD PROBATION	1,412	1,126	286	906	253	166	50	37
WARDSHIP PROBATION	29,698	24,881	4,817	13,888	8,327	5,487	1,380	616
CALIFORNIA YOUTH AUTHORITY	540	500	40	140	179	190	28	3
TOTAL	41,843	34,644	7,199	19,998	11,148	7,812	1,950	935
WARDSHIP PLACEMENTS								
OWN/RELATIVE'S HOME	22,444	18,916	3,528	10,610	6,375	3,941	1,079	439
NONSECURE COUNTY FACILITY	434	349	85	224	41	140	17	12
SECURE COUNTY FACILITY	2,939	2,515	424	1,520	936	223	145	115
CALIFORNIA YOUTH AUTHORITY	540	500	40	140	179	190	28	3
OTHER PUBLIC FACILITY	1,701	1,556	145	368	571	684	58	20
PRIVATE FACILITY	822	568	254	543	93	143	32	11
OTHER	1,358	977	381	623	311	356	49	19
TOTAL	30,238	25,381	4,857	14,028	8,506	5,677	1,408	619

APPENDIX C

SUPERIOR/MUNICIPAL COURT

SCHEDULE OF FEES

ON COURT-APPOINTED CASES

	HOURLY RATES		
	IN-COURT		PREPARATION
	TRIAL	NON-TRIAL	
CLASS A			
1. Death Penalty	$65.50	$60.50	$49.00
2. Penal Code §§37, 187 209, 218, 219, 667.6(d), 4500, and any other life without possibility of parole cases.	$60.50	$54.00	$43.50
CLASS B			
Penal Code §§38, 182, 192, 203, 207, 211, 217.1 220, 261, 285, 286, 288, 288 (a), 289, 451, 459 (first degree and second degree residence), 667.6(a)(b)(c), 1026, 1026.5 and 4501 cases.	$54.00	$43.50	$32.00
CLASS C			
All felonies except those listed in Class A and B; civil cases; Municipal Court appeals; Writ of Habeas Corpus.	$39.50	$32.00	$27.00
CLASS D			
All misdemeanors.	$32.00	$32.00	$27.00

Investigator Fees:
$25.00 for Class A1 & A2
$20.00 for Class B, C & D

DATE EFFECTIVE: 7/1/86

ACHIEVING EQUAL JUSTICE IN COURT ADMINISTRATION

The Report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Court Administration

Hon. Lisa Hill Fenning, Chair,
Court Administration Subcommittee
Judge of the United States Bankruptcy Court for
the Central District of California

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"(T)he courts and the judicial branch, the very institution that has the power to tell all other employers that their employment policies and practices are gender biased, must be an example, particularly as this polycultural state moves into the twenty-first century."

Witness at the Public Hearing in San Francisco, pp.137-38.

I. INTRODUCTION

California court administration is a patchwork of 229 separate court administrative systems,[1] stitched together by a few statewide rules and standards. Thousands of men and women work in the courts; in Los Angeles County Superior Court alone, there are 2,622 employees, not including judges. Of these Los Angeles employees, 68 percent are women.[2] In other courts, the percentage of female employees is even higher.[3] Given the high percentage of females in the court workforce[4] and the lack of statewide standards, the potential for gender bias in court administration exists.

Is gender bias reflected in the ways the courts are internally administered? That is the question to which the committee sought an answer.

California was not the first state to examine its court system to detect gender bias. In 1984, the New Jersey Supreme Court Task Force on Women in the Courts issued a report on its investigation into the nature and extent of gender bias in the court system including court administration. As part of its study of gender bias in the New York State court system, in November 1985, the New York State Unified Court System received a report on the effects of its personnel system on nonjudicial female employees. This report noted that women are disproportionately represented in the lowest level positions; employment practices can have a disparate negative impact on women in these positions. The New York report recommended broader recruitment, monitored hiring, salary grade review, affirmative action, and increased opportunity for training, transfers, and promotions. The New York report also found that female employees carried out male superiors' personal chores and errands, and were subject to sexual harassment. After New York's report, a second report from the implementation committee of the New Jersey Supreme Court Task Force on Women in

the Courts echoed the same problems, as well as the use of suggestive, overly familiar remarks to female court employees and other inappropriate conduct between these employees and attorneys. Both states called for increased training for supervisors and judges to sensitize them to manifestations of gender bias in the employment context.

Against this background, in 1986, a special committee of Judicial Council members generated numerous proposals on gender bias, including what are now sections 1, 1.2 and 1.3 of the Standards of Judicial Administration. In Standards of Judicial Administration section 1, subsection 2, judges are called upon to "refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits gender or other bias, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants" (emphasis added). The special committee also called for further study of other possible manifestations of gender bias in the courts, including "employment practices affecting state and local judicial branch employees."

Thus, the present Advisory Committee on Gender Bias was appointed, and a subcommittee on Court Administration was organized. Its charge was to look at the courts as a place to work, both for employees and for judges.

Unlike New York, the California court system is not a unified system. Every county maintains its own court employment system, making the task of investigation into court employment practices in California much more difficult. Nevertheless, an ambitious proposal for an action plan followed, encompassing a broad investigation of court employment practices that might be affected by gender for judges and nonjudicial employees and an examination of the current status of (1) waiting rooms for children; (2) gender-neutral language in local rules and forms; (3) the response of the Commission on Judicial Performance to gender bias complaints; (4) the

218BI

judicial selection process; and (5) education on gender bias involving judicial administration. As shown below, despite the differences in court structure, the California investigation into employment practices resulted in findings that are remarkably consistent with findings in other states.

II. CHAPTER OVERVIEW

The committee found, and reported to the full committee, that the fragmented nature of California court administration results in varying manifestations of gender bias in every county's employment practices. Despite the variety in employment practices, the committee found that it would be relatively simple to drastically reduce the opportunity for gender bias to affect court administration.

First, by adopting comprehensive personnel plans that contain standard provisions on salary setting for gender-neutral job classifications, promotions, affirmative action, sexual harassment, alternative work schedules, dependent care benefits, and pregnancy and parenting leaves, courts can minimize the effect of gender bias in court administration. Second, judges as well as court employees need the protection of written policies on leaves. Third, courts must respond to the need for care of the children of employees and other court participants. Finally, training for all court employees, as well as bailiffs and others not employed by the court, about gender bias is essential to preventing it.

Also in this section, the committee is making recommendations to law schools because the effect of law schools on gender bias in the courts does not fit neatly under any other category. The committee is calling upon law schools to adopt employment practices to minimize the effect of gender bias on the environment in which lawyers are educated and to teach courses concerning the effect of gender bias on different aspects of litigation.

218BI

Thus, this chapter will explain the court administration subcommittee's methodology, report the committee's findings, and make recommendations based on these findings. The recommendations are based on the following perceived needs:

(1) the need for comprehensive personnel plans and modern personnel practices;

(2) the need to have elements in each court's personnel plan, including

(a) Sound and equitable salary-setting procedures;

(b) Revised job classifications and titles;

(c) Criteria and standards for promotion;

(d) Regular performance evaluations for all levels of employees;

(e) An affirmative action plan applying to all court personnel;

(f) Job-related training and continuing education programs for all court personnel;

(g) A sexual harassment policy;

(h) Grievance procedures covering, but not limited to, sexual harassment;

(i) A policy statement on professional behavior;

(j) An employee benefits plan which may include: (i) flex-time, part-time, job-sharing or other alternative work schedules; (ii) disability leave, including pregnancy leave in accordance with Government Code section 12926(c); (iii) unpaid leaves, including parental leave; and (iv) "cafeteria" options to use pre-tax dollars for dependent care and banked sick leave for care of dependents;

(3) the need to require compliance by judges with the personnel plan;

(4) the need for the Administrative Office of the Courts to assist courts in developing and updating the personnel plans;

218BI

(5) the need to assess and assist related agencies, such as the sheriff's and probation departments, in the training of their employees;

(6) the need for a comprehensive judicial leave policy;

(7) the need for employee childcare;

(8) the need for children's waiting rooms; and

(9) the need for law schools to eliminate gender bias in teaching and employment practices and to study the effect of gender bias on different aspects of litigation and other legal work.

III. METHODOLOGY

In addition to the public hearing and regional meeting testimony and judges' survey discussed earlier, the committee gathered the specific information it needed through a variety of methods. The committee prepared a questionnaire on employment practices and gender bias in the court work environment. In July of 1988, court employees from around the state who attended an Administrative Office of the Courts workshop on "Developing Management Skills" received the questionnaire (July questionnaire). Some of these mid-level employees attended discussion groups conducted by the committee during the conference and discussed concerns about gender bias in the courts. A copy of the July questionnaire is attached to this part of the report as Attachment A. Municipal court clerks attended a special conference in October 1988; they too filled out a slightly modified questionnaire (October questionnaire) and some of them attended a drop-in roundtable discussion led by committee members on gender bias issues arising in the court workplace. A copy of the October questionnaire is attached to this part of the report as Attachment B.

In March 1989, the committee prepared a comprehensive survey about employment practices in the courts. Every court in the state received a survey and a request for written

materials about court policies on such issues as affirmative action, sexual harassment policies and training, and pregnancy and parenting leaves. The results gleaned from the answers to the survey questions were often supplemented by a review of the more detailed written materials. Occasionally, the written materials directly contradicted the answer on the survey; in such a case, the committee relied upon the written materials as the more authoritative response. The survey itself is attached to this part of the report as Attachment C. The tabulated results of this survey are attached as Attachment D.

During the spring of 1989, AOC staff conducted in-depth interviews on court employment practices with representatives of six courts. Court executives, court clerks, and presiding judges in the following California courts participated: Alameda County Superior Court; Monterey County Superior Court; Placer County Superior Court; Ventura Municipal Court; Stanislaus County Municipal Court; and Santa Cruz Municipal Court. These courts vary in size and in the rural/urban mix of the population each serves. Interestingly, both the interviews and the survey results indicated that greater size and urban location does not necessarily indicate a more generous response to employee concerns related to gender bias.

As the Advisory Committee on Gender Bias in the Courts reviewed the materials gathered and formulated its recommendations, certain matters were redistributed between subcommittees for report-writing purposes. Thus, some matters that were initially investigated by the Court Administration Subcommittee, such as the need for gender-neutral language in rules and forms, the judicial selection process, training and performance by the Commission on Judicial Performance, and general judicial education on gender bias issues, are discussed in other sections of this final report.[5/]

218BI

IV. FINDINGS, RECOMMENDATIONS, ANALYSIS AND DISCUSSION

A. COURT EMPLOYMENT PRACTICES

1. The Need for Comprehensive Personnel Plans

A comprehensive personnel plan provides both employee and employer with flexible guidelines for workplace life. Both employee and employer have a shared understanding of the criteria for advancement, the usual amount of training provided, the normal length of pregnancy leaves, the method for reporting sexual harassment, the foundations of an affirmative action program. Such a comprehensive personnel plan can minimize the opportunities for gender bias to affect workplace decisions. In California, inequity can arise not only within the workplace, but because there is not a unified court system, among different counties and sometimes from court to court within a county. By urging each court continually to develop and implement modern personnel practices, often in concert with the others courts within a county, the Judicial Council can encourage both efficient court administration statewide and enlightened responses to the gender-linked problems facing court employers and employees today.

Findings

Two major findings formed the underpinnings of Recommendation 1. First, like New York and New Jersey, California's courts employ predominantly women in the lower-paid classifications. Because of the sheer numbers of women in the clerk and secretary positions, particular personnel policies can have a disparate impact on women. Policies on training, advancement, dependent care, affirmative action, pregnancy leaves, and sexual harassment are crucial in the lives of the women working in the courts; without policies that are fair and clear to management and employees alike, gender bias is able to taint the decision-making that will advance or hold back these women. 218BI

Second, even within a county, the committee found confusion and uncertainty regarding which personnel policies apply to particular employees. This confusion stems from the different methods by which court personnel come to the courthouse. Judges are elected or appointed. In turn, the judges may appoint administrators, chief probation officers, referees, or commissioners. Some judges may hire their own secretaries or court reporters or research attorneys, who are then exempt from civil service rules. The elected or appointed county clerk may hire employees through the county personnel department, using the county civil service system, as may the court administrator. But the court administrator might also use a court personnel system with some or all of the employees hired on an "at will" basis.[6/] The interpreters and court reporters may be independent contractors. The bailiffs are usually employees of the marshall, an appointed official, or the sheriff, an independent elected public official. Are all of these people "municipal or superior court employees"? In order to improve the administration of justice, the committee believes that people in the same courtroom should be working under the same set of rules.

RECOMMENDATION 1.

1. [Personnel Plans]

(a) Request the Judicial Council to endorse the continuing development and implementation of new personnel policies and practices to promote the efficient administration of justice and to eliminate gender bias.
(b) To this end, request the Judicial Council to amend California Rules of Court, rule 205(11), rule 207(1), and rule 532.5 to establish written court personnel plans consistent with a new Standard of Judicial Administration to be adopted (see recommendation 2, below).
(c) Request that the Judicial Council

further amend rule 205, rule 207, and rule 532.5 to require by March 1 of each year a calendar year report to the Administrative Office of the Courts regarding the contents of the court personnel plan, including data indicating implementation of the plan, such as affirmative action reports.

Analysis and Discussion

To discover the current range of employment practices and rules in California courts, the committee sent a survey (Attachment C) to presiding judges and court administrators in every court in California in the spring of 1989. The responses (Attachment D) received revealed every possible combination of civil service and "at will" employment. Of the 31 superior courts responding, 11 of them had written court personnel policies or rules, and 18 of them followed the county personnel policies. Of the 40 municipal courts responding, 25 had written court personnel policies or rules and 14 followed the county personnel policies. The other courts responding either had no written personnel policies, or adhered to policies embodied in collective bargaining agreements. In several instances, two surveys from the same court were returned with different information, indicating that one respondent thought the court followed county policies while the other was aware of independent court policies. The Los Angeles Judicial District municipal courts are in the process of decentralizing, and exhibited extreme confusion about whether a particular court followed county policy and what that policy was. (See materials in the AOC files.) Thus, comprehensive personnel plans composed of similar elements would ameliorate this confusion.

Testimony at public hearings also supported comprehensive court personnel plans for every court level. Regarding the superior court level, JoAnne Lederman, the executive officer of the Alameda Superior Court, favored court-approved personnel plans including procedures for

218BI

grievances dealing with sexual harassment, performance appraisals, and affirmative action. She described her court as typical, with an overrepresentation of females in clerical positions.[7] When she began her position as executive officer, women in so-called management positions were still doing clerical-type work; they were being denied the opportunity to make decisions and really supervise. She also recalled some instances of sexual harassment and a dearth of racial diversity at the management level. Instituting a personnel plan, she believes, provides a mechanism for dealing with these problems. She testified:[8]

> Rule 207 of the California Rules of Court, which outlines the Executive Officer's responsibilities, indicates that the Executive Officer is responsible for implementing a court approved personnel plan. I don't think this is enough. The county has policies regarding sexual harassment, discrimination and affirmative action, and I think there need to be rules in some form, from the state, from the Judicial Council, which tell the local trial courts that you will, in fact, have these policies and they are required.
>
> ***
>
> I think there are certain basic guidelines which need to be written and included. Those include leave for both men and women with the birth or adoption of a child. The statement has to be there, stating that these are areas which the Court recognizes need to be dealt with. . . . (T)he statement should not preclude flexibility and ability to deal with a specific situation . . .

Regarding the municipal court level, Ed Kritzman, court administrator, and Virginia Piper, deputy court administrator of the Municipal Court of the Los Angeles Judicial District, testified about the personnel plan for the more than 1,000 employees of that municipal court. Clerical

staff comprises about three-fourths of the workforce; the other 25 percent includes data processing analysts, accountants, and a variety of other administrative positions. The staff includes both civil service and non-civil service employees, as well as employees represented by unions.[9] Ms. Piper too testified that the personnel plan allows the administrators to deal effectively with some of the problems in court administration. She said:[10]

> I don't think you can deal with the kinds of issues we're talking about today, be they gender, or affirmative action, without looking at the personnel program that one has in the courts, and it's how you deal with people, what kind of programs do you have to attract and to develop the employee population.

Eva Goodwin, a retired judicial attorney with the Court of Appeal for the First District, addressed the need to develop formal policies and guidelines at the appellate court level. In her court, benefits such as job-sharing or part-time work and even pregnancy leave are individually negotiated; there are no generalized court policies.[11] At the time she testified, no clerks of court in any of the six appellate districts were women and only one woman was in a supervising position as a principal attorney. Ms. Goodwin stated:[12]

> To sum up--to really change the institutional structure and do away with the subtle masking of gender bias, the Appellate Court systems need formal system-wide policies and guidelines on dependency leave, part-time work, flex-time, childcare, recruitment, sexual harassment, affirmative action, age discrimination, tenure and seniority.

Assuming the Judicial Council adopts the recommendation to have court personnel plans consistent in form across the state, the reporting requirement in Recommendation 1(c) will allow the Administrative Office of the Courts to track the subsequent changes in policies in the courts. This

tracking is necessary for two distinct purposes. First, the reporting requirement will allow the AOC to ensure that all courts do adopt comprehensive personnel plans. Second, it will allow the AOC to operate as an information center for court personnel policies and as a resource for those courts seeking new ideas in employment practices. During the interviews conducted on site at six courts around the state, AOC staff discovered that court administrators wanted the AOC to act as a resource in this way. (See Recommendation 4 below.)

In conclusion, the recommendation for comprehensive personnel plans in each court should resolve any confusion and inequity employees may suffer under ad hoc policies. It will provide court employers with the opportunity to detect gender bias in their current employment practices and abolish those policies, replacing them with modern personnel practices that meet the needs of the courts and their employees. Finally, it will ask courts to send in personnel plans on an annual basis, hopefully spurring those courts to review and update the policies yearly. The Administrative Office of the Courts will act as a clearinghouse and resource for model court personnel practices, enabling all courts to benefit through shared knowledge of preferred personnel policies.

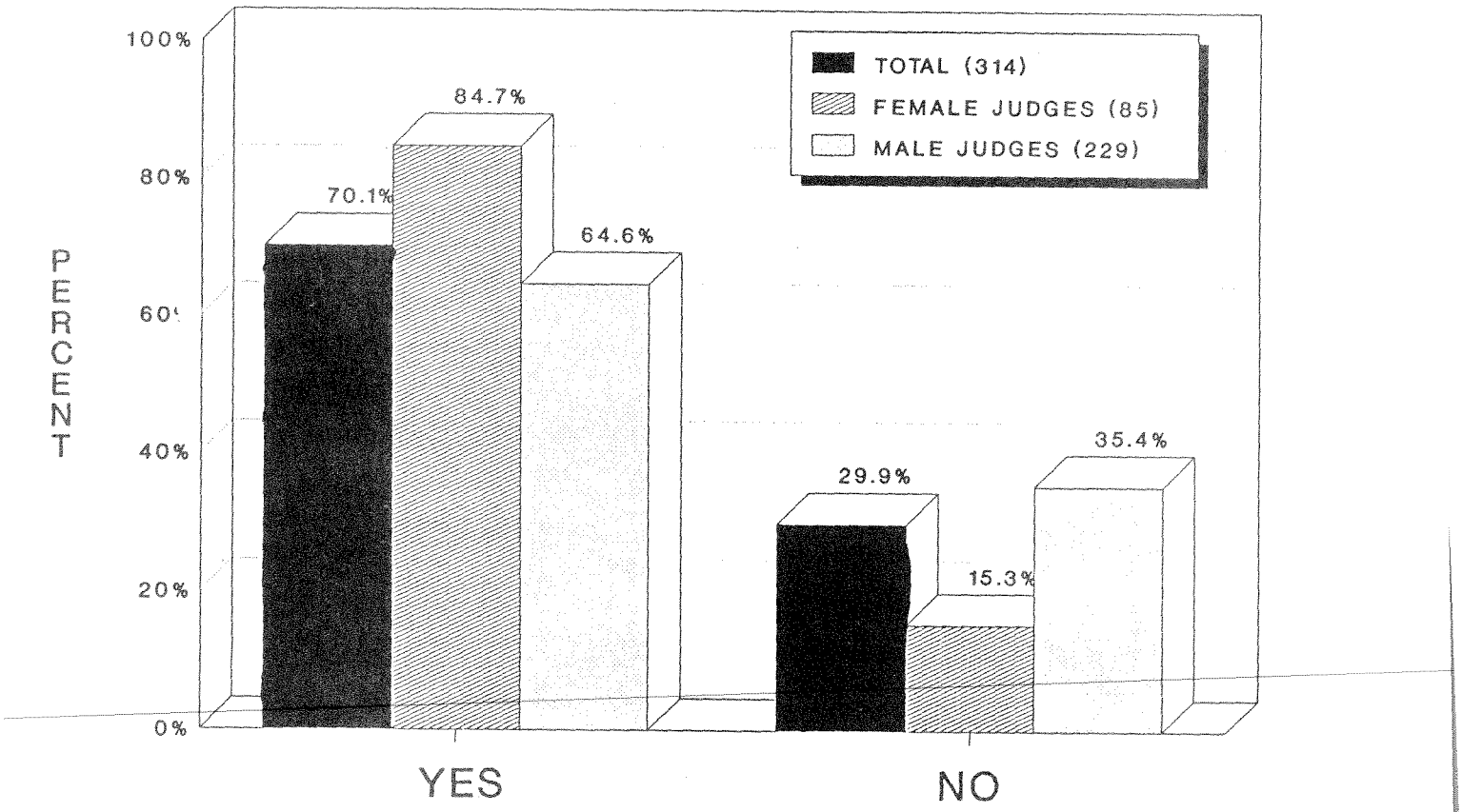
2. The Elements of a Personnel Plan

If the Judicial Council amends the rules to require comprehensive personnel plans for every court, the courts will need guidance on what subjects should be covered in order to minimize gender bias in employment practices. A Standard of Judicial Administration should give courts guidance on subject matter while allowing courts to retain the flexibility to respond to local conditions. Generally, however, the following subjects would be addressed in a comprehensive personnel plan: (a) salary setting; (b) job classifications and titles; (c) criteria and standards for promotion; (d) performance evaluations; (e) affirmative action; (f) training; (g) sexual harassment policy; (h) grievance procedures; (i) professional

behavior; and (j) employee work schedules, leaves, and benefits.

Findings

As reflected in the table below based on responses to the judges' survey, California judges overwhelmingly support the concept of uniform statewide personnel guidelines that deal with, for example, affirmative action, sexual harassment claims, and discrimination claims. Question 51a asked, "Would you support statewide personnel guidelines for court employees that deal with, for example, affirmative action, sexual harassment claims and discrimination claims?"



218BI

To eliminate gender bias, the committee found that courts in the 1990's must employ modern personnel policies that are responsive to the needs of the growing female workforce. Yet, the committee found that many courts do not have personnel plans at all, let alone plans designed to eliminate gender bias. While many courts may not have the ability to implement costly innovations, working in partnership with the county administration may make innovations possible in areas such as training. The findings and evidence in support of the inclusion of each identified element in a comprehensive personnel plan are discussed separately below.

RECOMMENDATION 2.

2. [Elements of personnel plan in Standard of Judicial Administration]

Request the Judicial Council to adopt a Standard of Judicial Administration outlining the elements of a court personnel plan, with the explicit proviso that the courts should work closely with the County Board of Supervisors and other county officials regarding compensation, benefits and conditions of employment for all employees in the court. This Standard of Judicial Administration would incorporate preferred personnel practices, and would note that a court plan should, but is not required to, include at least the following items because plans without written guidance on these items create a climate in which bias is more likely to occur:

(a) Sound and equitable salary setting procedures;

(b) Revised job classifications and titles;

(c) Criteria and standards for promotion;

(d) Regular performance evaluations for all levels of employees;

(e) An affirmative action plan applying to all court personnel;

(f) Job-related training and continuing education programs for all court personnel as appropriate to their level, including but not limited to (i) affirmative action concepts and recruitment methods, (ii) sexual harassment detection, prevention and remedies, (iii) career development, including basic skills, managerial skills and time-off for education, and (iv) gender bias;

(g) A sexual harassment policy;

(h) Grievance procedures covering, but not limited to, sexual harassment;

(i) A policy statement on professional behavior, requiring that all employees must conduct themselves in a professional manner at all times, and refrain from offensive conduct or comments that reflect gender bias;

(j) An employee benefits plan which may, when consistent with court requirements and county policies, but is not required to, include: (i) flex-time, part-time, job-sharing or other alternative work schedules; (ii) disability leave, including pregnancy leave in accordance with Government Code section 12926(c); (iii) unpaid leaves, including parental leave; and (iv) "cafeteria" options to use pre-tax dollars for dependent care and banked sick leave for care of dependents.

Discussion and Analysis

a. Equitable Salaries and Revised Job Titles

Nationwide, women predominate in the lowest-paid positions in court administration. (See footnote 4.) As courtroom clerks, deputy county clerks, judicial secretaries, and other indispensable personnel, they are required to perform complex tasks and follow ever-changing rules. The compensation allotted for these jobs is not commensurate with the skills and intelligence required. Indeed, the job titles themselves, such as "clerk," no longer accurately describe the jobs done, but may be perceived as belittling the value of the work.

In May 1989, Dr. James Shaw of the University of San Francisco and student James Brighton surveyed 189 top court executives and county clerks in California. Following is a summary of their findings:

INCOME DISTRIBUTION BY GENDER AND COURT TYPE

ANNUAL INCOME	TOTAL M	TOTAL F	JUSTICE M	JUSTICE F	MUNICIPAL M	MUNICIPAL F	SUPERIOR M	SUPERIOR F	PERCENT M	PERCENT F	TOTAL %
$16,000-20,000	1	14	1	11	0	0	0	3	0.53%	7.41%	7.94%
$21,000-25,000	3	13	0	7	0	4	3	2	1.59%	6.88%	8.47%
$26,000-30,000	1	16	1	6	0	4	0	6	0.53%	8.47%	8.99%
$31,000-40,000	5	19	0	1	1	8	4	10	2.65%	10.05%	12.70%
$41,000-50,000	14	25	0	0	8	10	6	15	7.41%	13.23%	20.63%
$51,000-60,000	19	13	0	0	11	10	8	3	10.05%	6.88%	16.93%
$61,000-70,000	16	11	0	0	10	8	6	3	8.47%	5.82%	14.29%
Over $70,000	16	3	0	0	5	1	11	2	8.47%	1.59%	10.05%
	75	114	2	25	35	45	38	44	39.68%	60.32%	100.00

Total N=189

Patently, there is evidence that women are not in the higher-paying jobs even at the top levels of management. Are the jobs held by women compensated fairly, unaffected by the dender of the incumbent?

The need for sound and equitable salary-setting procedures surfaced as an issue in the in-depth interviews with six courts around the state. Alameda County Superior Court, for instance, is in the process of rationalizing its salary setting with new job descriptions. Both the executive officer and the county clerk in Alameda County noted that women were historically overrepresented in the lower-paid ranks of court employment, and that salaries were not commensurate with the difficulties of the duties of "clerks." The county clerk in Monterey County concurred that his 38 female employees do not receive salaries commensurate with their duties. At the time of the interview in Monterey County Superior Court, the judges, executive officer, clerk of court, and county clerk were male, and everyone else, in lower-paid jobs, was female. Since that the interview, a female executive officer has been hired. Placer County Superior Court also follows the pattern of females filling the lower-paid jobs, as does Ventura County Municipal Court. Custodians are paid more than courtroom clerks in Ventura; those interviewed surmised that women are in entry-level jobs because of the undervaluation of those jobs and the concomitant low pay. In Stanislaus County Municipal Court, women fill all the clerk and clerical positions. Stanislaus' court administrator noted that courtroom clerks suffer from an extremely depressed salary range.[13/]

A more rational salary level can attract men to female-dominated jobs as well as more fairly compensate women. The Stanislaus Municipal Court clerk position used to be paid less than the county clerk position; now the salary is up and a male is in the position. Supporting the link between higher salary and male interest in the job, the South Bay Municipal Court District of Los Angeles County reported more men applying for entry-level clerk positions when the salary was raised.[14/] Conversely, some in a group of 17 female participants[15/] at the AOC conference on Developing Management Skills held in July 1988 believed that the salary level for courtroom clerks stagnated as more women became courtroom clerks. The

perception that "courtroom clerk" was now a female job classification seemed to hold the salary levels down.

The perception that job titles are gender-identified is supported by recent research. In their May 1989 study of top court management, Dr. James Shaw and James Brighton inquired about the name of the top positions at each court and the sex of the incumbent. They found that whereas one top male manager was called "clerk", seventeen top female managers were called "clerk." Conversely, twice as many men had titles with the word "executive" in it as did women.16/

Revised gender-neutral job classifications and titles, in addition to salary upgrading, will allow women to advance according to skill level. Recently, the Stanislaus Municipal Court established new positions between the lowest level and supervisors so that some of its employees could be upwardly classified. In the titles of the new positions, job function is apparent. This emphasis on job function distinguishes the new titles from the general designation "clerk." In Alameda County, women are now moving into higher-level jobs, such as court commissioners or referees and the position of court Executive officer, which used to be viewed as "male" jobs. However, some jobs, such as chief probation officer, continued to be male-identified. A job such as this might "open up" if it were given a new name.

In sum, sound and equitable salary setting and revised gender-neutral job titles form the basis of personnel plans free of gender bias. Moreover, such policies make good sense from a managerial perspective. Valued employees will stay in the courts and valuable prospective employees will be attracted to job opportunities that are not sex-stereotyped and undervalued as "women's work." The gender bias committees of other states, such as Massachusetts, Rhode Island, Maryland, and New York, have also recommended the reassessment of pay grades to assign salaries that adequately reflect the skill requirements and responsibilities of the job.

b. Performance Evaluations and Standards for Promotion

The committee found that the role of gender bias in decisions to terminate or promote can be minimized by regular performance evaluations and by clear standards and criteria for promotion. Discrimination suits based on gender often follow when an employee and an employer do not share an understanding of the performance expected. When there is no objective measurement of performance, the employee may reasonably suspect that gender bias played a part in a decision to terminate or not to promote. Documentation of inferior performance and help in improving performance take the surprise out of a termination. Standards for promotion allow merit to prevail over discretion exercised based on stereotype.

Literature on equal employment opportunity reflects the need for performance evaluations with standardized criteria. For instance, in Equal Employment Opportunity and Affirmative Action: A Sourcebook for Court Managers, published by the National Center for State Courts, the authors discuss promotions, transfers, and other upgrading. They note that practices that ensure equal opportunity for advancement on the job are as important as nondiscriminatory practices in hiring. Safeguards in the use of performance evaluations are necessary: specification of evaluation criteria; regular and automatic review procedures; the use of two or more supervisory appraisals; and the presence of women and minorities on the rating panel. Subjective statements in such evaluations should have a job-related basis, and eliminating personal bias should be the goal.

Jo Anne Lederman, executive officer of Alameda County Superior Court, called performance appraisal "critical and basic to promotions being based on merit."17/ Since Alameda County Superior Court did not have a performance appraisal program, one was devised and made part of the personnel plan instituted in 1989. The performance appraisal report itself is a three-page form, including one page for a future objectives and development plan. Strikingly, the Supervisor's Guide for

Employee Performance Appraisal is 25 pages long, underscoring the need for an explicit common methodology for supervisors in appraising employees. This common methodology helps to eliminate the effect of subjective biases. Virginia Piper, Deputy Court Administrator for Personnel and Court Services in the Municipal Court for the Los Angeles Judicial District, echoed Ms. Lederman's statements on the importance of having documentation of work performance as a basis for assessment of candidates up for promotion.18/ The performance appraisal program was instituted relatively recently in her court as well.

Despite the need for regular performance evaluation, many courts do not do it. When 35 participants at the 1988 "Developing Management Skills" conference answered the July questionnaire that asked, as one question, whether performance evaluations were done on a regular basis according to a standard procedure for each job classification, 12 respondents answered that such evaluations were done sometimes, rarely, or never.19/ Indeed, the Administrative Office of the Courts has just started doing performance evaluations this year.

In conclusion, regular performance evaluations and written criteria and standards for promotion will help to minimize the role that gender bias plays in the crucial court administration decisions on terminations and promotions. From a managerial point of view, court employment decisions will be more insulated from charges of bias and employees will benefit from the regular evaluations.

c. Affirmative Action Plans Applying to All Court Personnel

As the final arbiter in any dispute, the courts must maintain the public's perception of the courts as fair, just, and honorable. Indeed, the Canons of Judicial Ethics caution judges to act so as to preserve both the appearance and the reality of fairness. By the same token, the courts must do more than other public employers in striving to achieve the appearance as well as the reality of fairness to court employees.

Justice O'Connor, in her concurring opinion in Wygant v. Jackson Board of Education 476 U.S. 267, 106 S.Ct. 1842, 1855 (1986), explained the value of voluntary efforts by public employers in meeting their civil rights obligations. She declared:

> The value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance. See S. Rep. No. 92-415, p. 10 (1971) (accompanying the amendments extending coverage of Title VII to the States) ("Discrimination by government . . . serves a doubly destructive purpose. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community, but also creates mistrust, alienation, and all too often hostility toward the entire process of government").

The committee found that voluntary affirmative action in the courts would serve the beneficent purposes outlined by Justice O'Connor. The courts should endeavor to be and to appear fair in their employment practices. For the lower echelons of court administration, as previously noted, an affirmative action plan might well call for recruiting more men into court employment. Despite the unusual nature of an affirmative action plan for men, the usual rationale would apply--a more diverse court would benefit all. For the higher-paid positions, women would need to be recruited in some courts.

In testimony, both Virginia Piper and Eva Goodwin stressed the importance of recruitment in achieving diversity in a court staff.[20/] Eva Goodwin particularly emphasized the need for very specific guidelines for affirmative action, noting that the federal courts have already instituted policies and guidelines for affirmative action.[21/]

Affirmative action plans would be new for many courts. The court survey discovered that of the 31 superior courts responding, 16 had affirmative action plans and 12 of those clearly applied to managerial personnel. Of the 40 municipal courts replying, 28 had plans with 20 clearly applying to managerial personnel as well. The Courts of Appeal do not have any affirmative action plans. Similarly, in late 1987, the National Center for State Courts determined that of the 32 states responding to its inquiry, 16 had affirmative action plans for their courts and 16 did not. Some states, such as Minnesota, have taken creative approaches to affirmative action, such as "downfilling," that is, filling a job at a lower classification with someone not initially qualified for the higher classification and training the person up to the level required.[22]/ Some states without affirmative action plans, such as Massachusetts and Maryland, have now had these plans endorsed by their own gender bias studies. Those states with affirmative action plans, such as New York, have been asked to devote specific efforts to those titles in which women are underrepresented.

For each court, the creation of an affirmative action plan will provide an opportunity to identify the effects of gender bias in employment in that court. An affirmative action plan provides the impetus to recruit the qualified men and women who might not present themselves at the courthouse door. The courts will be enriched by recruiting these employees into the court workforce.

d. Job-related Training

The committee found that job-related training can help eliminate gender bias in several ways. First, the women who predominate in the lower ranks of court employment can be provided with an opportunity to train up to better, higher-paying jobs previously closed to them. Second, all court personnel can be trained to understand affirmative action, sexual harassment policy and prevention, and other

manifestations of gender bias. Third, while judges may not wish to or should not participate with other personnel in training sessions, when given an opportunity on the judges' survey to list topics for increased judicial education on gender bias, several respondents mentioned the need to learn more about gender bias in court administration and personnel selection and functions.[23]/

Although women are moving up through the ranks of court personnel, the opportunities are limited because many of these employees lack not only management skills, but more basic skills as well. JoAnne Lederman, executive officer of the Alameda County Superior Court, testified that the women in her office "are bright enough and sharp enough to move up in the organization, but they do not have writing skills, they do not have math skills, and they do not have analytical skills."[24]/ She suggested that courts consider giving time off from work to go to community colleges. A related problem is providing a real opportunity for training for single parents. Lederman again:

> (Y)ou can't say, go off to New York for a training program, take a course at night, because they have responsibilities and not enough money to hire somebody to take care of their children, so that some accommodation is going to have to be made so that these women are not left behind.[25]/

Lederman also tied training into the performance appraisals, stating that the appraisals are an opportunity to develop a training program to improve the skills that are necessary to move up in management.[26]/ Virginia Piper, of the Los Angeles Municipal Court, made the same connection between performance appraisal and development of employees within the workforce.

> We have at least 28 different types of programs for supervisors and nonsupervisors in the court, from generic training on how to do a job, or training in terms of the kinds of things one should be aware of, and

> being successful in the workplace, such as interpersonal relationship, and down to very specific training . . . [27]

The survey of employment practices in the courts reveals a wide range in the types of and opportunity for training. Most courts offer some free in-service training. Almost universally, however, management has more opportunity for training than the lower echelons of employees. Typically, training opportunity is indicated by a dollar amount available to classifications of employees; the dollar amount is less for nonmanagement employees, arguably those most in need of training. For example, Ventura County Municipal Court offers a $3,000 reimbursement for tuition for management employees, but only $175 for nonmanagement employees.[28] Santa Cruz Municipal Court is conducting a needs assessment on training in recognition of the needs of entry-level employees. Few courts actually pay for extended time off for further training, but some do. For instance, San Mateo Municipal Court follows the county policy. It allows nonmanagement employees to receive educational leaves with pay up to 65 days during any 52 biweekly pay periods with employer approval and also provides for tuition reimbursement for job-related off-duty education on approval.[29] Placer County Superior Court will sign a contract with an employee that if certain courses are completed (at night), the employee will get the next job available at the higher level for which those courses are necessary.

Job-related training for judges and managers may take a very different form. For instance, managers and judges need to understand the court's affirmative action plan before recruiting, hiring, and promoting. As noted earlier, judges cited these personnel issues as important for judicial education in answer to Question 55a. Anonymous comments on the questionnaires distributed at the "Developing Management Skills" conference in July 1988 reported that judges also needed training on what questions were illegal in interviews and on what type of remarks could be deemed to create a

"hostile environment."[30/] Regional meetings also elicited testimony on illegal interview questions and punitive transfers of pregnant employees,[31/] and Eva Goodwin testified about illegal questions in interviews as well.[32/]

Gender bias detection is a subject in which all courtroom personnel need training. Participants in the discussion groups at the "Developing Management Skills" conference discussed the need for education for all levels of employees, including the bench officers, concerning gender fairness. In response to question 57e on the judges' survey asking for appropriate remedies for bias by courtroom staff, 84.3 percent of the judges agreed that instituting courtroom staff education would be a good or very good idea. All employees, judges and managers need to understand the court's policy on sexual harassment and what sexual harassment is. Additionally, all need to understand the personnel plan and its interrelations with affirmative action concepts and prevention of sex discrimination. Thus, training in recognizing gender bias in all its many forms is another aspect of job-related training.

Job-related training is an integral part of any comprehensive personnel plan designed to minimize the effect of gender bias on court administration. Good management requires particularized training in order to retain experienced employees, and to ensure that managers and judges also adhere to court personnel policies. Other states' gender bias committees, such as in Rhode Island and New York, have come to the same conclusion and have recommended more training, educational, and promotional opportunities for women.

e. Sexual Harassment Policy, Training, and Grievance Procedure

A clearly written sexual harassment policy, training on that policy, and an easily accessible grievance procedure can provide court employers and employees with the tools for a more harmonious coexistence. Without these tools, the rules of behavior are those that individuals set for themselves.

Recourse for a timid individual, whether that individual is the accuser or the accused, may be nonexistent. The definition of sexual harassment must be made explicit to both employees and employers and a protocol for dealing with reported incidents must be adopted if this aspect of gender bias in the courts is to be eliminated.

Policy

The need for a policy against sexual harassment, and the leading role of judges in implementing such a policy, was discussed in testimony and in the discussion group at the "Developing Management Skills" workshop. Virginia Piper of the Los Angeles Municipal Court testified:

> (W)e have had a variety of situations, anywhere from an employee referring to another as 'honey' and patting one on the derriere, to actually a very serious hostile environment involving sexual statements and references to sex which included the discharge of a long-time court employee.33/

Ms. Piper said that her court has a written policy against sexual harassment that includes a definition section. By contrast, Eva Goodwin noted that the Courts of Appeal have no written policy specifically dealing with sexual harassment.34/ Marilyn Watts, a consultant to the Fresno Commission on the Status of Women, past president of the Fresno chapter of the National Organization for Women, and a former employee of the Fresno County Probation Department, testified about a study conducted in Fresno city and county government on sexual harassment that found sexual harassment in the courthouse.35/ Another finding of the study was that the policy against sexual harassment must be vocally endorsed by the judges. The judges and other managers must set the tone by making sexual harassment unacceptable.

Sexual harassment of court employees or by court employees surfaced as a significant problem in the anonymous responses to various questionnaires during the course of the

committee's investigation. Of the 34 respondents to questionnaires available at the "Developing Management Skills" conference in July 1988, approximately 65 percent had experienced or heard about or both experienced and heard about inappropriate comments about personal appearance by judges and by co-workers. Roughly 59 percent had experienced or heard about or both experiencedand heard about judges and co-workers making sexist remarks or jokes that demeaned women. Fifty-three percent of the respondents had experienced or heard about or both experienced and heard about verbal or physical advances made toward women by judges, and approximately 59 percent had experienced or heard about or both experienced and heard about verbal or physical advances made toward women by their co-workers.

Judges themselves corroborated this information. When asked in Question 49 on the judges' survey whether they were aware of job complaints made during the last three years that have included allegations of sexual harassment, 16.2 percent of women respondents and 5.3 percent of the male respondents were aware of such complaints.

Despite this awareness of sexual harassment as a problem for court employees, our investigation revealed that many courts do not have effective sexual harassment policies. The responses to the survey on employment practices (Attachment D) indicated that of 31 superior courts responding, 10 had clear substantive policies against sexual harassment, and 26 of the 41 municipal courts responding had clear substantive policies against sexual harassment. For the purposes of this report, statements to the effect that there would be no discrimination based on sex are not considered substantive sexual harassment policies. At least one court sent in a policy that limited its definition of sexual harassment to using authority to control, influence, or affect the employment status of another employee or a prospective employee in exchange for sexual favors.36/ While such conduct is patently sexual harassment, the law on sexual harassment provides a much

broader definition. Thus, a model policy might well be useful to the courts of the state. (See Attachment F)[37/]

Training

In order to make sexual harassment policies work, the committee also endorses training about how to recognize and how to deal with sexual harassment. Virginia Piper, of Los Angeles Municipal Court, provides a mandatory three-hour training to supervisors and managers twice a year. The training is becoming a formal part of the court clerk training program, because objectionable behavior, Piper testified, can and does occur between co-workers/peers.[38/] Alameda County Superior Court also has started with training its management employees and plans to extend the training to all employees. In its response to our survey, the San Benito Justice Court, perhaps expressing the view of many small courts, asked that the Administrative Office of the Courts provide this sexual harassment-policy training rather than asking every small court to produce a training program from scratch.[39/]

In the six courts in which in-depth interviews took place, there was often difficulty in ensuring that all employees knew about the sexual harassment policy. Training could be made a part of the orientation of new employees and refresher courses could be offered for those who may have missed an initial training when the policy was put in place.

Grievance procedure

In addition to a well-defined policy and training on recognizing and dealing with sexual harassment, a grievance procedure is necessary to remedy sexual harassment complaints. Judges were asked on the survey how they think sexual harassment complaints should be handled. In response to Question 50, 39.9 percent of the judges advocated an internal court inquiry which could include a local grievance procedure. Almost as many judges (33.2 percent) felt that sexual harassment complaints should be reported to the Commission on

Judicial Performance. The advisory committee's recommendation for a grievance procedure is based, in part, on the hope that this more drastic consequence might be averted. An internal grievance procedure has the added benefit of being oriented toward education and remedial action, rather than punishment.

The Los Angeles Municipal Court has a sexual harassment grievance procedure because, as Virginia Piper testified, it is especially important to respond quickly to a complaint of sexual harassment for the sake of both the complainant and the accused.[40/] The first response must be to separate the two employees until a determination of the facts is made. JoAnne Lederman, of Alameda County Superior Court, emphasized that she has an "open door" policy as a part of the sexual harassment grievance procedure.[41/] The Sonoma County sexual harassment grievance procedure, followed by the Sonoma County Muncipal Court, designates both a male and a female manager as alternative recipients for reports of sexual harassment.[42/]

The question of a grievance procedure becomes more complicated when the alleged harasser is a judge. Before the matter becomes a complaint before the Commission on Judicial Performance, the presiding judge may wish to establish a procedure for receiving complaints about judges who are failing to comply with a sexual harassment policy.

Thus, a significant step toward eliminating gender bias within the courts would be the promulgation of a sexual harassment policy, training on that policy, and a clear quick grievance procedure for a complainant that provides alternatives to simply going to the superior. Including this component within a personnel plan will not only encourage a healthy working environment, but bolster management's position in any later lawsuit.

f. Policy Statement on Professional Behavior

The committee found that many of the incidents of gender bias reported by female court employees involved remarks

that degraded these women by being overly familiar or patronizing. While these remarks generally did not rise to the level of sexual harassment, they were inappropriate in a professional setting. A policy statement clarifying that all staff are to be addressed with courtesy, if forcefully supported by the judges, would go far to eliminate this manifestation of gender bias in the courts.

Public hearing testimony and discussion group comments indicate that casual comments or forms of address reflecting gender bias are regularly found in the badinage between court employees and those court participants they encounter everyday. Many employees do not find such comments, whether or not directed at them, amusing or even simply harmless. JoAnne Lederman, executive officer of Alameda Superior Court, testified that the use of ethnic, racial, and sexist jokes is rampant in the court. She said,

> Things like that are very offensive to women in the court, they are offensive to some men who work in the court, and they are the type of thing that somehow judges, attorneys, and other staff people need to realize are just not acceptable. Just before this Commission was created, I had one judge who I was in the process of talking to, smile, come closer, pinch me on the cheek and say "You're so cute." Now this is someone who supported me in my position, but at the same time, those types of incidents remain.[43/]

The committee received numerous letters reflecting inappropriate comments made to court staff and by court staff. For instance, one court employee said that a judge treated her like a child, then asked to have her replaced by a clerk under 30. An attorney commented that court clerks often assume that females asking questions are secretaries, and even if the misconception is dispelled, continue to address the caller in a patronizing and rude manner.[44/]

Attorneys are often the offenders. Ms. Lederman noted that at one bench-bar committee meeting, an attorney

referred to one of the best clerks in the county clerk's office as "a real bitch". Regularly, she stated, attorneys call staff "honey," "sweetheart," "dear," and the like.45/ Celia McGuiness, a law student at Hastings College of the Law, testified that she thought sexist behavior was tolerated at law school and simply continued in court once the students became attorneys.46/

Of the 34 respondents to the questionnaire distributed at the July 1988 "Developing Management Skills" conference, 21 were aware that female court employees were sometimes or often addressed by first name or with terms of endearment when men similarly situated would not be so addressed. Eleven of the same respondents had experienced job-related stress because of the sexist behavior in the workplace. One respondent mentioned that women could be the worst offenders in terms of using "dear" or "sweetheart" when such intimacy was not desired by the female court employee to whom it was addressed.

Judges have a duty to do what they can to prevent gender bias under Standard of Judicial Administration section 1. Specifically, that section calls for judges to prohibit others from engaging in conduct that exhibits gender or other bias, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants.

Paul Li, Director of the Center for Judicial Education and Research, in testimony, called for a set of rules and standards of courtroom decorum, for judges, attorneys, bailiffs, and everyone connected with the court system to follow.47/ He referred to the testimony of Jill Schlictman, Chair of the Gender Bias Committee of the Queen's Bench organization, who advocated that judges make a statement at the beginning of a trial encouraging gender-neutral language and behavior as one method to carry out their Standard of Judicial Administration duties.48/

The Massachusetts Gender Bias Study also revealed

demeaning treatment of women by court employees and concluded that "court employees play (a part) in making the courthouse environment an uncomfortable and sometimes hostile place for women." It recommended that guidelines for courtroom behavior be issued to all court employees as did the Minnesota and Rhode Island committees on gender bias. The Maryland Gender Bias Special Committee recommended training in this area. The New York Task Force on Women in the Courts called for the dissemination of a policy against sexist conduct by court personnel, backed up by administrative action to eradicate such conduct. Such policies go beyond a mere exhortation to be "courteous."

Despite the seemingly ubiquitous nature of degrading and patronizing comments, the survey of court employment practices revealed that almost no courts have any rules or policies regarding professional behavior as reflected in comments or forms of address. One exception was found in the San Mateo County Civil Service rules, which are applicable to the municipal court.[49/] Discipline may be imposed on an employee for sexual harassment, discrimination, disrespectful or discourteous conduct toward a county officer or official, another employee, or a member of the public. The American Judicature Society executive committee has very recently approved a court employee code of conduct forbidding, inter alia, manifestation by words or conduct of bias based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.[50/]

Therefore, the gap in court procedures for dealing with more minor manifestations of gender bias should be filled by a court policy on professional behavior. This court policy should be articulated in the personnel plan, be applicable to all, and be publicly posted. Professional behavior by and towards all court participants will advance the administration of justice in a gender bias-free atmosphere.

g. Employee Benefits

The committee found that employee benefits do not meet the needs of the large numbers of parents working in the courts. Research,[51] indeed, a simple look around, reveals that women still take the primary responsibility for dependent care. Accommodating this reality is not only the humane response, but good management. These employees would be difficult to replace. Martin O'Connell, chief of the Census Bureau's Fertility Statistics Branch, notes that a declining birth rate resulting in a smaller labor pool means that it will be harder to replace experienced women who leave the workforce because of dependent care responsibilities. He is convinced of the need to provide flexible work schedules, employer-sponsored childcare, and flexible benefit plans.[52] The committee agreed that these employee benefits are incentives to keep valuable employees on the job and able to advance.

i. Flex-time, Part-time and Job-sharing

The California court system must cope with the reality of working women with dependent care responsibilities because of the large number of female employees in the system. As the primary caretakers, these women have pressing needs. In a Boston University study,[53] married male parents reported that their wives spend two to four times as many hours a week on child care as they do. The same study indicated that women employees are twice as likely to stay home with a sick child (65 percent) as male employees (32 percent). In a widely-read 1989 article in the Harvard Business Review, business consultant Felice Schwartz said that "the key to managing maternity is to recognize the value of high-performing women and the urgent need to retain them and keep them productive."[54] She endorsed all the flexible scheduling options, but believed that job-sharing is the most promising alternative for the future.

Virginia Piper of Los Angeles Municipal Court District and JoAnne Lederman of the Alameda County Superior

Court emphasized the utility of a flexible scheduling system to handle any number of employee problems.[55/] The Los Angeles court uses three schedules: flex hours; part-time for some assignments; and a week-on week-off job-sharing program for court reporters. The Alameda County Superior Court is pleased with the results of using flex-time and job sharing for court reporters. While nothing in the Alameda program requires the user to be female, most of the reporters are female and most take advantage of the program for childcare reasons.

Cheryl Peterson, a research attorney in the San Diego Superior Court, stated that the Superior Court does not have any part-time work option for attorneys, although a part-time option is available to court clerks and reporters. She said:

> I will submit that a gender bias issue arises when the female employees who work in the traditional male job of an attorney are denied the part-time option while the part-time option is available to female employees who work in the traditional female jobs of clerks and reporters.[56/]

Eva Goodwin, a retired judicial attorney from the First District Court of Appeal, pointed out that job-sharing can be economically beneficial for the court. Often, each attorney work three days, and the court gets six days of work for the cost of five plus benefits for both people.[57/] Research attorneys at the First and Fifth Districts are job sharing very successfully.[58/]

The subcommittee's investigation indicated that California trial courts are not wholeheartedly embracing the flexible scheduling concept. (See Attachment D.) Of the 31 superior courts surveyed, only 18 used flex-time, part-time, or job-sharing work options for any level of employees. Of the 40 municipal courts, 24 offered these options. Notably, only six superior courts and seven municipal courts unambiguously extended the options to managers. In contrast, the Oakland-Piedmont-Emeryville Judicial District of the Alameda County Municipal Court has a job-sharing policy that includes

written findings when a job-sharing request is denied and an appeal to the Board of Supervisors.[59/] Of the 33 court employees responding to the questionnaire distributed at the "Developing Management Skills" conference, 23 indicated that no part-time or flex-time option was available in their courts and 28 indicated that no shared shift option was available.

With one exception, the courts interviewed in-depth tended to be cautious in their use of work time options. Several had tried flexible scheduling and abandoned the experiment, claiming that understaffing made it impossible to cover all the hours the court was open. These courts did not have employees who could serve in a variety of positions.

However, Santa Cruz Municipal Court, with 80.7 employees, has a flex-time policy, job-sharing, and part-time work. The court in Santa Cruz makes a tremendous effort at cross-training so that employees can function effectively in a variety of positions. At the time of the interview, the acting court administrator, Margie Bishop, was working four nine-hour days and taking half a day off every week. Traffic supervisors were on a four day/ten hour plan. Five positions are shared, and Ms. Bishop declared that the job-sharing was extremely beneficial by providing coverage for vacations and pregnancy leaves. Her court has an average of four pregnancies a year. Santa Cruz Municipal Court also has two part-time positions (one part-time position is in management) and one half-time receptionist, with no noticeable decrease in efficiency.

Thus, for those courts with sufficient staff, experimentation with flexible scheduling, job-sharing, and part-time work may prove helpful to both employees and employers. The experience of the Santa Cruz Municipal Court indicates that the success of such an experiment may depend on the approach taken by management in advocating cross-training. Both the flexible scheduling and the training will keep productive employees in the court and allow them to advance despite child-rearing responsibilities.

ii. Pregnancy Leave and Parental Leave

In California, Government Code section 12926(c) requires most employers to grant a four-month unpaid disability leave with reinstatement rights to pregnant women.60/ Additionally, most employers must participate in temporary disability insurance programs that provide disabled male and female employees with partial wage replacement for up to 26 weeks. Because of the uncertain status of the courts under Government Code section 12926(c), it is unclear whether the courts must follow this state policy. The committee found that allowing a pregnancy disability leave, whether paid or unpaid, would be both responsive to the needs of the overwhelmingly female court workforce and aid the court in retaining competent long-term employees. According to the U.S. Census data, from 1981-84, 71 percent of women who received maternity benefits returned to their jobs; in contrast, of the women who did not receive any maternity benefits, only 57 percent returned to work.

However, the investigation revealed that the written policies of the California courts on pregnancy vary, and many are not particularly generous. Of the 31 superior courts responding to our survey, 20 had pregnancy leave policies, with only one unambiguously providing a paid leave, although five allowed use of sick leave or vacation. Of the 40 municipal courts responding, 33 had pregnancy leave policies, with two of them clearly providing a paid leave and 12 including use of sick leave or vacation time. A look at the charts attached to this section as Attachment D indicates that the amount of time available for a pregnancy or parental leave varies tremendously from court to court, with as little as six weeks available to as much as a year. Pay status is equally variable. Indeed, Cheryl Petersen, a court research attorney, testified that although court clerks are covered by California State Disability Insurance, research attorneys have inferior coverage that may result in no paid time off while disabled.61/

Parental leave is a newer concept, allowing both

fathers and mothers time to stay home to bond with a newborn or newly adopted child.62/ Ten of the superior courts responding to the survey had a parental leave, but none of these included adoption and only one was paid. Two of the parental leave provisions were gender neutral. Ten of the municipal courts provided a parental leave, with two including adoption leave, and only one having a paid parental leave. Three of the parental leave provisions were gender neutral. JoAnne Lederman testified that the four-month parental leaves in Alameda County Superior Court have not presented a problem in administration of the court.63/

Although most courts do not have provisions for a parental leave, the survey could not identify which courts with unpaid leave of absence policies allowed a leave of absence for parental leave. For instance, an in-depth interview with Placer County Superior Court indicated that there is a four-month pregnancy leave, but no official parenting leave. However, Placer Superior Court has a liberal policy on leaves of absence without pay. A leave of absence can be for up to two years, with vacation utilized first. Virginia Piper testified that the Los Angeles Municipal Court District allows women to use paid sick leave, then unpaid sick leave, and then an unpaid leave of absence.64/

By having a written parental leave policy with a right to return, the discretion to "punish" an employee for making use of leave is diminished.65/ Given the reality that women make the most use of leaves for pregnancy and parenting, any career disincentives for using the leaves fall most heavily on the female gender. For instance, the San Diego Superior Court provides a one-year parental leave, but, testified Cheryl Peterson, research attorney, the catch is that it may be granted without the right to return and without any option to continue life and health insurance benefits.66/ Eva Goodwin, retired research attorney at the First District Court of Appeal, testified that although the Judicial Branch Employee Handbook says that there is a leave of absence for one year

without pay for birth or adoption, in practice the leave depended on what could be worked out with the judges.[67] Alameda Municipal Court does not allow an employee the opportunity to file a grievance about whether a department head made his or her "best effort" to reinstate a returning mother.[68] If such a decision is not subject to the grievance procedure, it may undermine the reality of a right to reinstatement after a maternity leave.

The questionnaire distributed at the "Developing Management Skills" conference in July 1988 asked whether full use of available pregnancy leave could impede advancement. While most respondents had no experience upon which to respond, a quarter of the respondents thought making full use of pregnancy leave often or sometimes would impede advancement.

In today's world of a diminishing demographic pool of workers and an increased number of women in the workforce, courts must respond with fair, formal, written policies for pregnancy and parenting leaves with return rights that will allow the court workforce to combine work and family life. California will not be alone in implementing such policies. Other states' gender bias committees, such as the one in Maryland, have called for family leaves with job return guarantees.

iii. Cafeteria Plan Benefits[69] and Childcare Help

The committee found that affording pre-tax deductions to pay for childcare, providing nearby childcare facilities, and allowing sick leave use for ill children will facilitate the retention of women in the court workforce.[70] Although most children have two parents, it remains a truism that the burden of childcare is primarily upon the mother. Arlie Hochshild's recent book, The Second Shift (Viking Penguin), documents this, as did the Boston University study previously mentioned on p. 33. The Women's Bureau of the U.S. Department of Labor stated in its "Work and Family Resource Kit" that women employees are twice as likely to stay home with a sick

child as male employees. In 1988, 50 percent of women in the workforce had children less than one year old.[71/] Nationally, in California, and in California courts, the need for help in paying for childcare for employees must be recognized and met.

During the investigation conducted by the committee, childcare issues surfaced again and again in the concerns of female court employees. The participants at the discussion groups at the "Developing Management Skills" conference all agreed that the issue of childcare is critical because the low-paid staff cannot afford childcare now available. This has an adverse impact on staff productivity and morale. These participants specifically called for fringe benefits relating to childcare, such as use of sick leave for sick-child care. The same issues, affordable childcare and sick leave for sick children, were echoed by the participants in the groups at the Association of Municipal Court Clerks meeting in October 1988.

Despite the utility of cafeteria plan benefits, most courts do not offer them. Of the 31 superior courts responding to the survey, seven offered a cafeteria plan and it was unclear whether these benefits were only available to managers. Of the 40 municipal courts responding, 10 had a cafeteria plan and it appeared that most of these were available only to managers. Yet, Alameda County Superior Court reports no problems with the program. It is available to Court of Appeal employees for the first time this year. Courts, counties, and unions may wish to investigate this type of benefit plan.

The use of sick leave for sick child care varied radically from court to court. Some courts allow the use of sick leave to investigate childcare facilities (Monterey Superior Court, San Leandro Municipal Court), some allow only 3 days for sick children after which vacation must be used (Glendale District of the Los Angeles Municipal Court), while some allow a certain amount for routine children's medical and dental appointments and unlimited amounts for children's illness (Oakland-Piedmont-Emeryville District of the Alameda

County Municipal Court does not limit use of sick leave for children's illnesses; Placer County Superior Court has 100 day limit).[72/] Thus, employees are subject to widely varying policies on this crucial issue.

Offering pre-tax deductions for dependent care and sick leave for care of sick dependents would undoubtedly require some initial administrative readjustment by the courts. The cost of such a readjustment will generally be neutralized by the long-term benefits of keeping experienced employees, boosting morale, and responding humanely to the needs of employees.

Alternative work schedules, pregnancy and parental leave, and benefits defraying the cost of childcare are all integral parts of a meaningful response to the problems faced by the predominantly female workforce in the courts. However, the committee recognizes that the courts will respond to these problems in an individual manner, according to the needs of the courts and the resources available from the counties. The recommended Standard of Judicial Administration would also recognize the fiscal constraints on many courts.

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In conclusion, Recommendation 2 asks the Judicial Council to adopt a Standard of Judicial Administration outlining the elements of a court personnel plan that would help diminish the impact of gender bias on court administration. Standards are, of course, hortatory in nature. While some of the elements suggested are simply sound business practices that should be adopted by every court, other elements may be costly. The purpose of the standard is to urge courts to consider including these elements in their personnel plan in some form and explore the possibility of providing some of the benefits suggested in conjunction with county government to make the provision of the benefits more cost-effective.

3. The Need for Judges to Approve and Comply with the Personnel Plan

Judges hold a unique position in the court employment structure. They are simultaneously employers and employees, yet, as elected officials, accountable in many ways only to the public. However, for the court to operate effectively and fairly, the judges in any particular court must be working together with their administrators and employees. The judges must support the personnel plan and comply with it for the plan to operate effectively and fairly. Recommendation 3 requests an amendment to California Rules of Court, rule 206, requiring judges to comply with the personnel plan.

Findings

While it may seem unnecessary to require by rule that judges comply with the court's personnel plan, the committee found that judges often failed to comply with court personnel plans as both employers and as members of the court community. The rule change will provide a method for discipline if wilful failure to comply continues.

Furthermore, for some employees, such as the executive officer or occasionally court reporters, the judges themselves are the direct employers -- doing recruiting, interviewing, hiring, performance evaluations, task assignment, supervision, promotion, and firing. These employees should have the benefits and safeguards accorded to other employees of the court to the extent that is appropriate to a "confidential" position. The personnel plan could make explicit the differences affecting such positions, but still protect an employee from discrimination.

RECOMMENDATION 3.

3. [Compliance with personnel plan]

Request the Judicial Council to amend California Rules of Court, rule 206 to require that each judge in both superior and municipal court shall comply with the court's personnel plan.

Discussion and Analysis

Ideally, the court personnel plan should be the result of a collaborative process between the judges, the court executive, and representatives of court employees. The personnel plan will not be imposed upon the judges; the judges must have approved of the personnel plan as a group for it to be adopted in the first place. Thus, the rule change will simply underscore and ensure the judges' individual commitment to adhere personally to the plan that they have approved.

Judges need to know more about their obligations as employers. Anonymous questionnaire responses at the "Developing Management Skills" conference in July 1988 referred to judges who asked illegal questions at interviews or told women outright that they planned to hire men for certain jobs. One respondent said that the judge told her he only interviewed her by mistake because her name was Michael. JoAnne Lederman, executive officer of Alameda Superior Court, noted that some judges continue to think that their employees serve at their unfettered discretion and that the judges need to be educated about the potential liability for discrimination and sexual harassment.[73/] The personnel plans should contain sections on training, for judges as well as for other employees. Judges may wish to be oriented to the personnel plan as part of their training. (See section IV. A. 2(d) and (e).)

Another reason for requiring judicial compliance with the plan is to facilitate employee relations. If judges refuse

to comply with the personnel plan in regard to, for instance, leaves for the employees in their courtrooms, the executive officer may find him or herself in a difficult position unless there is a rule requiring the judges to comply. It allows the executive officer to have something more than moral suasion to keep the court running in a fair and orderly manner.

Testimony by Judge H. Ronald Domnitz, the immediate past presiding judge of the San Diego Municipal Court, touched on the overall responsibility of the presiding judge for the management of court personnel and the need to ensure that promotions are based on merit.[74/] By requiring the judges to comply with a personnel plan, they are put on notice of affirmative action goals, sexual harassment policies, and other benefit policies of the court from which they cannot individually deviate by whim or fiat. Requiring compliance with the personnel plans will also underscore the need for formal training of judges on court administration matters.

While it would be comforting to believe that there need not be a rule requiring judges to comply with a court personnel plan, such a rule is necessary. Just as there are judges who hew to their own course in ethical and procedural matters, there are judges who believe that the people who work in their courtrooms are theirs to do with as they wish. More likely, judges often do not have the time to familiarize themselves with the personnel plans, and make mistakes because of lack of knowledge. Simply by having the statement requiring compliance in the rule, judges will have the incentive to take the time to study the personnel plan and avoid mistakes that can turn into lawsuits.

4. The Administrative Office of the Courts as a Resource and Clearinghouse for Court Personnel Plans

The Administrative Office of the Courts in recent years has begun to expand the services it can offer directly to trial and appellate courts. With the cooperation of courts

around the state, and some additional staff, the AOC can operate as the hub of an information exchange on personnel practices. By collecting and disseminating information on a variety of court employment practices, the AOC can speed the evolution of court administration in this important area.

Findings

The committee found that employment practices varied dramatically from court to court in California, and that many courts simply had no experience with certain types of procedures or benefit programs. Rather than have each court administrator create a personnel plan from scratch, this recommendation, if adopted, will allow each court to gain the benefit of the experience in other courts. During the interviews conducted on site at six courts around the state, AOC staff discovered that court administrators wanted the AOC to act as a resource in this way.

RECOMMENDATION 4.

4. [AOC to provide assistance]

Request the Judicial Council to instruct the AOC to add staff:
(a) to assist the courts in developing the court personnel plans required by the amended rules;
(b) to develop reporting forms and to collect and analyze the data on personnel policies, plans, and practices required annually by the amended rules in order to identify desirable personnel practices and minimum standards for courts that would aid in the elimination of gender bias; and
(c) to act as a resource for courts by developing alternative personnel plans, compiling "case studies" from courts reflecting successful implementation of, for example, flex-time or gender bias training, and

providing videotape or other training on subjects such as gender bias and sexual harassment.

Discussion and Analysis

Recommendation 4 will enable the Administrative Office of the Courts to facilitate the use of preferred personnel practices by all California courts in three ways. First, a staff person at the AOC can work directly with courts on the required personnel plans. Second, Recommendation 4 works in conjunction with Recommendation 1(c), which asks the Judicial Council to amend certain court rules to require a report to the AOC on personnel plans so that the AOC can act as an information clearinghouse on different types of plans and the effectiveness of each in eliminating gender bias. Recommendation 4 calls for staff development of both a reporting form and responsibility for collection and analysis of the data gathered. The information gained would be accessible to all courts in developing and updating their personnel plans.

Finally, Recommendation 4 requires the AOC to actively develop alternative personnel plans, perhaps for different sizes of courts, and develop training and training materials on gender bias and other subjects for court use. As noted previously, some small courts have asked the AOC to take an expanded training role.

The thrust of the proposal is to use the AOC as a clearinghouse and resource for all courts in the area of employment practices. By so doing, every court can easily have access to information on modern personnel practices that diminish the effect of gender bias on the court workplace.

5. The Need for Training of All Courtroom Attaches

Not all of the people working in a courthouse are under the employing authority of the judges or executive officer implementing the personnel plan. Nevertheless, these

other workers can be the source of incidents of gender bias or sexual harassment. While the court cannot control these workers directly, the court can take the responsibility to ensure that they are offered training on gender fairness and sexual harassment, and in that way, make the court's expectations on appropriate workplace behavior very clear.

Findings

During the course of the public hearings and in many written submissions, the committee found that female attorneys, employees, and court users often complained about the gender-biased treatment they received from court attaches who were not under the employment jurisdiction of the judge or court executive officer.[75/] Bailiffs, county clerk employees, and probation officers were some of the types of court attaches mentioned.

RECOMMENDATION 5

5. [Employee training and policies]

Request the Judicial Council to amend California Rules of Court, rule 205 and rule 532.5, to provide that the presiding judge shall evaluate the policies and training programs concerning gender fairness and sexual harassment available for county clerk employees, bailiffs, probation officers, and other regular courtroom participants and may recommend that these individuals attend training programs on gender fairness and sexual harassment offered by the courts or other agencies.

Discussion and Analysis

During the course of the committee's investigation, many witnesses referred to problems with courtroom personnel not under the jurisdiction of the court executive. For

instance, those attending the Association of Municipal Court Clerks convention in October 1988 brought up the issue of sexual harassment by these noncourt employees, as did those attending the "Developing Management Skills" conference in July 1988. Jill Schlictman, Chair of the Gender Bias Committee of the Queen's Bench organization, recounted an instance of a bailiff forceably kissing a public defender after leading her to the lock-up room; the incident led to the revelation that he had done this to a number of attorneys.[76/] The punishment that the bailiff received for this conduct was considered inappropriately mild by Ms. Schlictman. Mild punishment may be one result of the attenuated reporting system -- a court employee complains to the court administrator who calls the sheriff who may or may not take a problem up with a bailiff.

The lack of control over certain courtroom participants is caused by the split in employing authority. In narrative responses to question 11 on the judges' survey, several judges commented on the need to speak privately with bailiffs about conduct, with the added threat of going to the bailiff's supervisor. Mr. Alan Carlson, then executive officer of the Monterey County Superior Court, stated that he thought there should be a sexual harassment training program that included bailiffs so that the judge retains control over what is occurring in the courtroom. Although the presiding judge does not have any direct line authority over these employees, he or she could work with the actual employer to make available the training offered to court employees on gender bias and sexual harassment. Including bailiffs and other employees in training would give the court more control over court personnel behavior by making the expectation regarding appropriate behavior perfectly clear.

Recommendation 5 requests the Judicial Council to amend the rules governing the duties of a presiding judge to include evaluating the training given to court employees not necessarily employed by the judges or court executive officer so that an informed decision can be made about the need to

invite these employees to join in court-sponsored training on gender fairness and sexual harassment. It is appropriate for this responsibility to fall, at least initially, on the presiding judge so that any request to join the training has the imprimatur of the court.

B. JUDICIAL LEAVE POLICY

The face of the bench in California is changing. Every year, more lawyers in their thirties and early forties are being appointed to the bench. Many of these young men and women are or are going to be the mothers and fathers of young children. Simultaneously, they may be faced with the care of aging parents. In recognition of this reality, the ABA voted in February 1989 to urge states to adopt minimum leave standards proposed by the National Conference of Special Court Judges, rather than leaving each judge to struggle individually with the problems posed by taking time to be with a new or ill family member.77/ The California Judges Association Executive Board has recently voted to recommend to the Judicial Council that it adopt three categories of family leave for judges: maternity leave; parental leave; and family compassionate leave. The California Judges Association specifically requested that "any policy adopted should not deter women of child-bearing age or their spouses from serving in the judiciary, and should promote the importance and integrity of the family unit."78/

Findings

The committee found that while judges have the same needs for pregnancy, parental, and family compassionate leaves as other employees, their needs must be dealt with separately because of their unique position. Currently, there is no clear policy about the amount of leave a judge can take. With court backlogs growing around the state, the pressure on judges to take little or no leave is tremendous. Yet those same work pressures underscore the human need to take the time to be with

a new or ill family member. As the number of judges in the child-bearing years increases, the need for such a policy becomes more pressing. The California Judges Association noted and the committee agrees that an unduly limited leave policy, or the lack of any leave policy, can deter women of child-bearing age or their spouses from serving in the judiciary.

RECOMMENDATION 6

6. [Judicial leave policy]

Request the Judicial Council to amend California Rules of Court, rule 205 and rule 532.5 to establish a comprehensive judicial leave policy, including appropriate pregnancy-related leave and parental leave policies, sick leave, disability leave, and family compassionate leave.

Discussion and Analysis

A parental leave standard is no longer as controversial as it once was, and many national organizations are calling for the adoption of parental leave standards. The National Conference of Special Court Judges has developed judicial leave standards, including standards for parental leaves (attached as Attachment E to this report). The National Association of Women Judges has also passed a resolution in support of a paid parental leave policy.[79/] It extends the definition of a parental leave to include care for a seriously ill family member, and calls for a minimum of 60 working days' paid leave, with additional leave allowed at the discretion of the judicial administrative authority for unusual circumstances.

The NAWJ resolution notes that a parental leave policy would also protect judges from criticism from the public. At Stanislaus Municipal Court, there is a three-month parenting leave for both sexes, yet the only user thus far, a

male judge, took only one week, perhaps for fear of criticism. By establishing a parental leave standard, the Judicial Council would foster a judicial climate in which male as well as female judges are really free to take the time to bond with their children.

A comprehensive policy, as recommended by the committee, will guard against arbitrary denials of leaves or any appearance of unfairness to the other judges on the bench. One judge testified that standards for judicial parental leave, for both newborns and newly adopted children, would have made her job, and the job of her presiding judge, easier.80/ Because of a series of miscarriages, a birth and an adoption, she asked for a number of leaves in her eight years on the bench. She claims she encountered resentment from her colleagues on the bench when she took leaves. A leave policy might have clarified her rights and responsibilities, allowing all to get on with the business of the court in a collegial atmosphere.

Recommendation 6 requests the Judicial Council to amend the California Rules of Court to establish a comprehensive judicial leave policy. While this report focuses on issues affecting the family life of a judge, the council may wish to address other leave issues in one rule.

C. CHILDCARE FOR COURT EMPLOYEES AND COURT PARTICIPANTS

Findings

Parents working in the court and parents coming to court as witnesses, jurors, and litigants need affordable, accessible childcare. Ignoring this need has led to lost employees, absent witnesses, delinquent jurors, and children disrupting court proceedings. It is common knowledge that as the family patterns and mobility of the American population have changed, many children no longer have the safe, free option of staying with relatives.81/ By working with county administration, courts could provide both regular and drop-in

daycare for children of employees and court participants for a reasonable fee.

1. Childcare for Court Employees

RECOMMENDATION 7

7. [Employee Childcare]

Request the Judicial Council to add to the charge of its Facilities Advisory Committee the need to develop ways for counties and courts to work together to ameliorate the important problem of creating quality and affordable childcare for all court employees near where they work.

Discussion and Analysis

As previously noted in the section on the need for employee benefits facilitating childcare, the committee found that many employees, particularly women, are being held back by the problems of combining childraising and work outside the home. The courts, just like private employers, lose experienced employees simply because the employees can find no safe affordable childcare. Those that continue to work are distracted by worrying about the quality of the childcare they can afford, or rush out at or before quitting time in order to get to the childcare site before late penalties accrue.82/ In the private sector, many employers are now starting to offer on-site or close-by childcare to their employees.83/ Other states' gender bias task forces, noting the studies showing women as primary caretakers, recommend that trial courts provide daycare facilities and institute job-sharing and flexible working hours.84/ This committee found that, working with county administrations, courts can and should help employees find an acceptable childcare situation. Courts will benefit from the resulting peace of mind in their employees.

During the investigation conducted by the committee, childcare issues were omnipresent in the concerns of female court employees. The participants at the discussion groups at both the "Developing Management Skills" conference and the Association of Municipal Court Clerks meeting in 1988 all agreed that the issue of childcare is critical because the low-paid staff cannot afford childcare now available. These participants specifically called for fringe benefits relating to childcare, such as sick-child care leave. This constant worry about childcare has an adverse impact on staff productivity and morale.

Job performance appears to be closely linked to employee comfort with childcare arrangements. The respondents to the questionnaire given out at the Association of Municipal Court Clerks meeting were asked if affordable childcare facilities were available and if not, if having such facilities would improve the job performance of employees who are parents. Only one respondent said that there was affordable childcare, but 22 believed that having such care would probably improve job performance. This is not only the view of employees; a former judge, testifying at the Fresno regional meeting, believed that the issue of childcare for employees was even more crucial than childcare for litigants.85/

Both testimony and the in-depth interviews with six courts revealed that courts are working to try to accommodate the employees' needs for affordable, available quality childcare. The possibility of establishing childcare centers for employees is being explored both in Los Angeles Municipal Court and in Alameda County. As Virginia Piper stated, "childcare is a problem in the workforce, to have adequate childcare, and affordable childcare for employees. We don't have it."86/ In Santa Cruz, the union seems to be taking the lead on this issue. In every court, however, the need has been recognized.

Recommendation 7 requests that the Judicial Council ask the Facilities Advisory Committee to develop ways for

counties and courts to work together to ameliorate the problem of affordable quality childcare for court employees. Ventura County courts worked with the county to provide sick childcare for employees' children at the county hospital. There is a childcare facility in the Los Angeles County Civic Center available to both court and county workers. Using the examples as limited models, it is hoped that programs addressing the childcare needs of both county and court employees can be created elsewhere. Other states have received similar recommendations from their gender bias task groups. For instance, the Maryland recommendations call for on-site childcare or subsidized off-site child care.

2. Childcare for Court Participants

Since 1987, Standards of Judicial Administration section 1.3 has recommended that each court endeavor to provide a children's waiting room located in the courthouse for the use of minors under the age of 16 who are present on court premises as participants or who accompany persons who are participants in court proceedings. Based on the continued problems experienced in courts without such facilities, it is time to consider mandating such facilities in new and remodeled court buildings.

RECOMMENDATION 8.

8. [Children's waiting rooms]

Request the Judicial Council to recommend to its Facilities Advisory Committee that waiting rooms for children of court participants be made a priority issue.

Discussion and Analysis

Just as employees in the courts have difficulty finding affordable quality childcare, litigants, witnesses, jurors, and defendants may also find themselves without a dependable and affordable caretaker during court appearances. Since women are still the primary caretakers in our society, this lack of childcare limits a woman's access to court; it is a type of institutionalized gender bias. For instance, if a woman normally takes care of her own pre-school children, finding a babysitter during the day is not an easy task; relatives may be far away, friends working and teenagers in school. Commercial babysitting services offer strangers to care for a woman's children, at high rates of pay. The committee found that a battered woman who must come to court for a restraining order may find herself in the most need, for she may have little advance warning of her need for childcare, and no independent means to pay for childcare.87/

Dr. Susan McCoin, co-principal in the Pro Se Litigant Project, is conducting a study at the Department of Sociology at UCLA about the problems of a woman coming to court by herself, particularly a battered woman.

> What we have here is a case where a woman who is already fearful of physical harm, she's already anxious, she comes in and she has to face a pile of forms which I think would be difficult for most anyone to do, and she's got to attend to a child at the same time. I've observed court personnel helping out women who had to bring their children into the courtroom with them so that they'd have an opportunity to fill out these forms, but I've also seen children wait in the hallway.88/

Indigent criminal defendants, at risk of losing their children all too soon anyway, are put in impossible situations by the lack of childcare in the court building. In the San Francisco regional meetings, two public defenders testified that childcare is needed in the courthouse for indigent female

defendants because male judges think the defendent brings the children to appeal to sympathy in sentencing.[89] At the Fresno regional meeting, a legal services attorney testified that one judge told a woman defendant that she would be held in contempt if she didn't remove her children from the courtroom and that if she didn't return, the judge would issue a warrant for her arrest. When she returned, the judge told her what a bad mother she was, and, in the attorney's opinion, probably sentenced her more severely than she otherwise deserved.[90] At the Orange County regional meeting, a family law civil litigator testified that there is a need for a children's waiting room for both sentencing hearings and other proceedings.[91]

Written comments have come in from around California on this issue. From Butte County, a woman wrote that children must wait for hours at courts. The tense situation and lack of diversion causes short tempers; the children are frequently hit and consequently cry. She also noted the hardships that continuances and standby witness subpenas cause to women caring for children; they must continually employ babysitters they may not use. Recently, she wrote, a juror was chastised by the court for bringing her kids to jury duty.[92] From Alameda County, a woman wrote that childcare problems account for many of the "no-shows" in juvenile court and elsewhere. From Los Angeles, a woman wrote that witnesses and litigants often bring children to court; they have no other choice. She wondered what effect having her children in court had on a female litigant and on the judge hearing her case?[93] Judge Linda Miller of North Orange County Municipal Court had already given her reactions in a 1987 Los Angeles Times article. She said,

> I've had to send children of witnesses out into the hallway because they were making so much noise. It's not safe for the kids because we don't have anyone to watch them. And it's not fair to the parent because he or she can't concentrate on testifying because they're worried about their children.[94]

While the lack of childcare in courthouses has a disparate impact on women because they are the primary caretakers, men would benefit from childcare in courthouses as well. A male attorney in San Francisco reported to the committee staff that, because of a sudden emergency, he had to have his six year-old son seated in the courtroom all day while the attorney conducted cross-examination. Childcare facilities in the courthouse could have helped not only father and son, but avoided distractions for judge and jury as well.

Around the country, there is a movement to provide childcare facilities in courthouses. The Massachusetts Gender Bias Study noted that childcare facilities are available in some courts, and recommended them for all courts. The Maryland Special Joint Committee recommended establishing on-site childcare for litigants, jurors, and witnesses. The New York report emphasized that the dearth of space for children whom mothers must bring to court effectively precludes many women from appearing in court.

Since 1987, Standards of Judicial Administration section 1.3 has suggested that each court should endeavor to provide children's waiting rooms. The Facilities Advisory Committee may wish to suggest to the council that, by newly adopted rule, new and remodeled facilities must include children's waiting rooms.

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At this point in our cultural history, childcare issues still have the heaviest impact on women, who are usually the primary caretakers. Thus, when women with children have to go to court, to work or to participate as witnesses, jurors, litigants, or defendants, both a familial and a court crisis is precipitated, in which women are asked to make impossible choices. The inevitable result is limited access to the courts for many women court participants and many female employees unable to advance in their jobs because of distracting

problems. By providing on-site or nearby childcare, the courts will significantly diminish these problems.

D. EMPLOYMENT PRACTICES AND GENDER-BIASED TEACHING IN LAW SCHOOLS

The judges, lawyers, and top court administrators in California begin their careers in law school. As men and women train in law schools and schools for legal technicians, they are shaped by the role models offered to them and by the thinking reflected in the course offerings and instruction they receive. Unfortunately, a number of studies have indicated that law schools are afflicted with gender bias in both employment practices and teaching methods. For instance, a study conducted by Georgetown University Law Center Professor Richard H. Chused for the Society of American Law Teachers[96/] shows that relatively few prestigious law schools are retaining tenured female faculty but that two-thirds of the non-tenured lower-paid legal writing instructor positions are occupied by women. Changes in employment practices and in teaching methods could balance the viewpoints offered to impressionable law students.

Findings

The advisory committee found that gender bias is evident in both the employment practices and the curricula and teaching methods in many California law schools. As discussed below, female professors have been denied tenure under circumstances that bespeak gender bias. Casebooks continue to use stereotypical females, teachers continue to discount female experience, and gender bias itself is not a subject studied in the schools for its impact on substantive law or trial practice.

RECOMMENDATION 9

9. [Law School Teaching and Employment Practices]

Due to the primary importance of educating all members of the profession on the nature and effects of gender bias in the legal system, request the Judicial Council to transmit to and urge consideration by the deans of law schools and schools training legal technicians the Advisory Committee's recommendation that the schools develop written policies and other programs that will:

(a) Eliminate gender bias from classroom interactions, casebooks, and course materials;
(b) Eliminate gender bias and encourage diversity in the hiring, promotion, and tenure of faculty;
(c) Include gender and other fairness as a required subject in all professional responsibility courses;
(d) Include an examination of the way in which gender bias can taint expert testimony, cross-examination, interpersonal conduct between attorneys, jury selection, and juror use;
(e) Provide grievance procedures and discipline for sexual harassment by students or employees;
(f) Eliminate gender bias in on-campus recruiting.

Further, request the Judicial Council to transmit to and urge consideration by the State Bar and the Committee of Bar Examiners the Advisory Committee's recommendations to the law schools, as appropriate, and further urge that representatives of the State Bar and the Committee of Bar Examiners meet with the law school deans on these subjects.

Discussion and Analysis

1. Employment Practices

Although women have consistently taken roughly 40 percent of the places in law schools in recent years according to ABA statistics, female law school graduates have not been moving into tenured professorships.[97] For instance, Stanford Law School had only two women among its 36 tenured professors when the Chused study was conducted; at USC, three out of 31 tenure or tenure track positions were held by women. The Chused study also showed that women seeking tenure at top ABA-accredited law schools are denied tenure five times as often as their male counterparts.[98] An article in the Los Angeles Daily Journal on January 25, 1989, quoted Barbara Babcock, former assistant attorney general in the U.S. Justice Department, and currently a professor at Stanford:

> So we're in a profession of trying to teach what the law can do to create a moral environment - and yet students are in an institution that on the face, discriminates against women. I really do view it - and increasingly more so over the years - as an urgent problem.[99]

Former member of the State Bar Board of Governors, Patricia Philips, recounted the poor showing of women on law school faculties at the Los Angeles public hearing. She declared:

> Coming to terms with the possibility of gender bias in the law schools is a step in the right direction toward elimination of gender bias in the court and in the practice of law. Hiring more female faculty is a step in the right direction.[100]

Boalt Hall School of Law, at the University of California at Berkeley, has recently tenured two women after prolonged battles over previous tenure denials. When Eleanor Swift filed her sex discrimination claim against Boalt, no

woman had received tenure for 17 years. Swift claimed she had been held to more exacting standards than her male counterparts when tenure was denied to her. An outside tenure review committee ultimately reversed the decision of the Boalt committee, and she gained tenure. Meanwhile, a faculty committee on Privilege and Tenure found that Boalt faculty failed to apply fair and equitable standards when considering tenure for female professors. Following this finding, Marjorie Shultz, who had previously been denied tenure twice, was granted tenure.101/ A colleague at Boalt, Professor Herma Hill Kay,102/ has noted that an underlying problem in the struggle over tenuring female faculty is a "disintegration of a traditional consensus about what constitutes excellence in legal scholarship." Among the articles Shultz had written were a number from a feminist perspective.

Betsy Levin, executive director of AALS and former dean of the University of Colorado School of Law, told the ABA commission that "promising scholars were being chilled from undertaking scholarship in gender-related legal issues, because such work is not taken seriously by the male faculty who are making tenure and promotion decisions."103/

Hastings College of the Law in San Francisco recently became embroiled in a dispute over selective denial of maternity leave. Hastings urged that Professor D. Kelly Weisberg take her maternity leave before her baby was born, rather than after.104/ Since Hastings had no formal maternity leave policy, there was no clear guidance as to whether the mother's needs or the institution's needs could dictate the time of the leave.

2. Law School Curricula and Teaching Methods

A number of scholars have suggested methods to analyze course content for sex bias and eliminate it. Nancy Erickson reviewed the methodology in "Sex Bias in Law School Courses: Some Common Issues" 38 Journal of Legal Education (March/June 1988) p.101. In the same volume, Mary Irene Combs

analyzed Perkins and Boyce's Criminal Law.[105] Carl Tobias analyzed gender issues in the Prosser, Wade, and Schwartz Torts Casebook in a 1988 Golden Gate University Law Review article.[106] Another scholar, Professor Mary Jo Frug, has analyzed a contracts casebook for gender bias.[107]

Relatively little work has been done on the effect of gender bias on the clinical trial practice courses. Yet, committee members and staff recollect learning how to play to sexual stereotypes in cross-examination, use of expert witnesses, and jury selection. These courses need to be examined for the inherent gender bias reflected in these techniques.

Gender fairness itself might well be considered as a subject for study under the preexisting legal ethics courses. As this concept enters into codes of professional responsibility and judicial conduct, students need to study it in order to take it seriously enough to make it a part of their daily lives as practitioners.

Teaching method, as well as curricula, can reflect a gender bias. The Stanford Law Review published a study in 1988 of law students and graduates from Stanford indicating that female students participate far less in class than their male peers.[108] The study posited that "lower rates of class participation may reflect women's withdrawal from . . . the law school experience" because the Socratic method denigrates the high value many women place on avoiding conflict and competition. Indeed, 44 percent of male graduates favored professors adept at Socratic dialogue, while only 29 percent of females graduates did. Women students preferred professors who were accessible and open to questions after class. Among others, Professor Carrie Menkel-Meadow, of UCLA, has written a law review article in part discussing how to revamp the Socratic method.[109] Professor Stephanie Wildman, of the University of San Francisco, has suggested specific techniques for bringing female students into the discussions, as has Catharine Hantzis of the USC Law Center.[110]

Professor Samuel H. Pillsbury, Associate Professor at the Loyola University Law School, testified at the Los Angeles public hearing about his efforts to combat gender bias in classroom teaching technique.

> In hypotheticals, and in general references to lawyers or judges, I try to use male and female pronouns. I often have women criminal law practitioners come to speak to the class. This usually makes the point about the opportunities for women in the field much more forcefully than anything I could say. . . . For our study of date rape, I assign material showing the prevalence of the crime, and the sexual attitudes which make it so common.111/

Ms. Celia McGuinness, a law student at Hastings College of the Law, testified in San Francisco that:

> (G)ender bias does not spring full grown from the brow of the courts. It is fostered in the schools where all lawyers and judges receive their training. . . . I'd like to give you some examples of what we have encountered at Hastings just this school year, and when I recite them, they sound ludicrous and funny, but to experience them is really to be chilled.
>
> After a torts class where first year students were learning to define negligence, a man slapped a woman on the rear end. When she expressed shock and anger, he replied it was just "what any reasonable man would do." . . . (A)nother man brought an inflatable sex doll to class as a joke. Again, when women expressed outrage, they were told they should be less sensitive. In another class, a man stated that students should have sympathy for a defendant who had embezzled his wife's money, after all "he had to marry her and put up with her for the next 20 years."
>
> And probably the saddest commentary on that last example is that the professor, instead of reprimanding the student, fell out laughing. . . .

> Although there are exceptions, many professors make no attempt to include women in their lectures. The most common evidence is in the language professors use. In hypotheticals, lawyers and judges and doctors are men. Women are victims and feisty old widows.[112]

She also noted the lack of gender-neutral language, or more precisely, the ubiquitous "he" in casebooks and lectures. She explained that the use of Ms. rather than Miss was important in freeing women from identity based on marital status.[113] She recounted women in criminal law classes being called emotional and their logic discounted. She mentioned a backlash at the school to the large number of women there (51 percent), with intimidation tactics against the women and the administration.[114]

Celia McGuinness called upon the Judicial Council to let law schools know that gender bias is condemned in the court system and that it is inappropriate and a disservice to students to foster it in law education. The committee received a letter from Ms. McGuiness in October 1989, noting that apparently professors had received some admonition about using gender inclusive language and hypotheticals in their lectures since her testimony, with the result of some small improvement at the beginning of the term.[115]

3. Other Aspects of the Law School Experience

The potential for sexual harassment is a reality at law schools as it is in many other institutions. The number of female students continues to burgeon, while the number of male professors stays relatively high. The relationship between student and teacher can be very close, yet the student is always vulnerable to the professor's power. The committee received written comments on sexual solicitation by law professors. For the good of the students, professors, and other employees at any law school, a sexual harassment policy and grievance procedure is a necessity.

The placement office is also a part of the law school experience. While there is some evidence that women are actually preferred over similarly situated male applicants, across the country, women also report recurring instances of illegal inquiries into their family status. See, e.g., The First Year Report of the New Jersey Task Force on Women and the Courts, at 144; "Women in Law School, It's Time for More Change" 7 Law and Inequality 135, 140 (1988). Thus, the placement office has a role to play in eliminating gender bias from the legal culture.

In conclusion, the committee agrees with the finding of the ABA Commission on Women in the Profession that law schools are "the breeding ground for many of the discriminatory practices and attitudes and acceptance of traditional notions about women's capabilities and roles." Therefore, it is incumbent upon law schools to try to eliminate gender bias in course content and teaching methods, and indeed to work affirmatively to create an atmosphere of gender equality within the law school.

V. CONCLUSION

The purpose of these recommendations is to ensure that courts and law schools do justice to their employees as well as to litigants and to students. The committee's investigation revealed that women suffer the most from gender bias in the courts. Although women form the overwhelming majority of employees on court staffs, the courts generally do not have personnel plans or court policies on sexual harassment and professional behavior that diminish the effect of gender bias on the work environment. Nor do most personnel plans enhance a woman's possibility for advancement through training, fair job tracking, reasonable leave allowances, and job scheduling options. The courts have not yet accommodated the children that are part of their employees' lives, nor the children that must accompany other parents in the courts.

Women in law schools also need the protection of guidelines and teaching that eliminates the role of gender bias in employment decisions and classroom dynamics.

Without action on these problems, gender bias is not just tolerated, it is bolstered by no less august an institution than the judicial system. The Judicial Council's constitutional mandate is to improve the administration of justice. Court administration itself must be improved, must itself be a model of fairness, in order to inspire confidence in the citizenry that justice will indeed be done in the courts.

ENDNOTES

1/ 1989 Annual Report of the Judicial Council of California

2/ Telephone conversation with the Personnel Department of the Los Angeles Superior Court, October 13, 1989.

3/ Interviews with six courts conducted by staff during the spring of 1989. Notes from the court interviews are available in the files of the Administrative Office of the Courts. No further footnoting of information from the court interviews will be made unless the source is unclear.

4/ See notes 2 and 3 above. In addition to extrapolation from this small sample, the committee has relied upon the familiarity of AOC staff with the composition of court staff statewide. Women predominating in the clerical ranks is a well-known phenomenon across the country; a few examples follow. The Massachusetts Gender Bias Study found that women account for 90 percent of the workers in clerical track jobs in the courts. The Rhode Island Committee on Women in the Courts found a similar clustering of women in the lower pay grades. The New York study found that women predominated in all but three of the lowest pay grades.

5/ Although the committee investigated judicial assignments, through the judges' survey and in in-depth interviews, it found that judges viewed the judicial assignment system as acceptable for the most part. A few female judges perceived the assignments in their courts to be tinged with bias, but this was apparently an isolated problem. (See Question 5(a) in the judges' survey.)

6/ In July 1989, the California Supreme Court decided that, pursuant to Government Code section 69898, a court could, by

local rule, transfer certain court-related duties and the civil service employees who perform them from the control of the county clerk to the control of the superior court executive officer. See, Zumwalt v. Superior Court (1989) 49 Cal.3d 167.

7/ Sacramento Hearing, transcript pp. 41-42

8/ Sacramento Hearing, transcript pp. 46-47.

9/ Los Angeles testimony, transcript p. 60.

10/ Los Angeles testimony, transcript p. 61.

11/ San Francisco hearing, transcript p. 132.

12/ San Francisco hearing, transcript p. 137.

13/ The participants at a discussion held during the convention of the Association of Municipal Court Clerks of California in 1988 also noted the low entry level salaries and the overwhelming female representation in the clerical classes. These participants were from Shafter Justice Court, Riverside and Tracy Municipal Courts.

14/ Letter from South Bay Municipal Court District in files of the AOC.

15/ The participants came from the counties of Alameda, Los Angeles, Modoc, Riverside, Sacramento, San Diego, San Joaquin, Santa Clara, Shasta, Solano, Ventura and Yolo.

16/ Data available in the files at the AOC.

17/ Sacramento Hearing, transcript p. 43.

18/ Los Angeles Hearing, transcript p. 63.

19/ Responses from both the July 1988 and October 1988 questionnaire on file at the AOC. No further footnoting on these reponses will be done.

20/ Los Angeles Hearing, transcript p. 62.

21/ San Francisco Hearing, transcript pp. 134-137.

22/ See Dosal, "Successful Affirmative Action Tactics in a Large Urban Trial Court" (1981) (obtained from the National Center on State Courts).

23/ Judges' Survey, Question 55a, narrative comments.

24/ Sacramento Hearing, transcript p. 48.

25/ Sacramento Hearing, transcript p. 49.

26/ Sacramento Hearing, transcript p. 49.

27/ Los Angeles Hearing, transcript p. 63.

28/ Materials on file at the AOC.

29/ Materials on file at the AOC.

30/ Materials on file at the AOC.

31/ Regional Meeting Summaries, Tab 10, p. 35, p. 36.

32/ San Francisco Hearing, transcript 64-65.

33/ Los Angeles Hearing, transcript pp. 64-65.

34/ San Francisco Hearing, transcript p. 135.

35/ Fresno Hearing, transcript pp. 98-101.

36/ Material on file at the AOC.

37/ For a sample policy from Alameda County Superior Court, see Attachment F. Staff notes that visual sexual harassment, in the form of graffitti, notes, posters, etc., should also be prohibited.

38/ Los Angeles Hearing, transcript pp. 63-64 and p. 70.

39/ Material on file at the AOC.

40/ Los Angeles Hearing, transcript pp. 64-65.

41/ Sacramento Hearing, transcript p. 53.

42/ Materials on file at the AOC.

43/ Sacramento Hearing, transcript p. 44.

44/ Materials on file at the AOC.

45/ Sacramento Hearing, transcript pp.45-46.

46/ San Francisco Hearing, transcript pp. 128-129.

47/ San Francisco Hearing, transcript p. 105.

48/ San Francisco Hearing, transcript p. 106.

49/ Materials on file at the AOC.

50/ Judicature, Vol. 73/No. 3 (October-November 1989) p. 135.

51/ According to statistics from the Women's Bureau and the Bureau of Labor Statistics of the U.S. Department of Labor for the year 1987, more women than ever are in the workforce while also caring for dependents. Thirty-seven percent of the workforce is comprised of working parents, and an increasing number of these parents care for their parents. Sixty-four percent of women maintaining families alone are in the labor force. The U.S. Census Bureau reported that in 1986, the labor force participation rate for new mothers climbed to 50.8 percent. Sixty-two percent of all mothers worked in 1986. Widowed, divorced and separated mothers were the most likely to be working, at 66 percent. Additionally, the U.S. Department of Labor Women's Bureau projects that women will make up 60 percent of workforce growth by the year 2000.

52/ Associated Press wire story, June 15, 1988.

53/ "Boston University Balancing Job and Homelife Study: Managing Work and Family Stress in Corporations," Dianne Burden and Bradley Googins, Boston University School of Social Work, 1986.

54/ "Management Women and the New Facts of Life," Harvard Business Review (January-February 1989) p. 65 at 73.

55/ Los Angeles Hearing, transcript pp. 65-66.
Sacramento Hearing, transcript p. 50.

56/ San Diego Hearing, transcript p. 53.

57/ San Francisco Hearing, transcript p. 133.

58/ Material in the files at AOC.

59/ Material in the files at AOC.

60/ It is surprising that there is no federal policy on pregnancy leaves. Indeed, every industrialized nation with the exception of the United States makes some parental leave option available. See Kamerman & Kahn, "Family Policy: Government and Families in 14 Countries" Columbia University Press, N.Y. (1978); "Maternity Leave Policies: An International Survey" 11 Harv. Women's L.J. 171 (1988). This year, as in many previous years, legislation is pending in Congress on this issue.

61/ San Diego Hearing, transcript p. 50.

62/ Psychological literature has strongly supported time for parent/infant bonding. For instance, in Gamble & Zigler, "Effects of Infant Day Care: Another Look at the Evidence" 1986 American Orthopsychiatric Association Journal p.26, the authors conclude that paid infant care leaves are the most attractive alternative to infant day care to meet the psychological needs of both parents and children.

63/ Sacramento Hearing, transcript pp. 51-52.

64/ Los Angeles Hearing, transcript p. 69.

65/ Review of the court policies received as a result of the survey raised issues regarding the effect of various types of leaves on anniversary dates, or the alternating of sick leave, vacation leave and unpaid leave to enable an employee to be eligible for paid benefits for a longer period. These questions are noted here, but are not meant to be resolved by the standard minimum policy proposed. Each court should consider these issues in adopting a leave policy.

Some courts have developed innovative methods for accomodating the needs of employee/parents who are adopting or

who are nursing infants. Sonoma County Municipal Court, for instance, will allow the use of sick leave for adoptions, but others, like the Courts of Appeal, will not. Santa Barbara County Municipal Court will allow newborns to come to the office for nursing for four months. Cheryl Peterson testified that one research attorney also brought her newborn into the office for four months.(San Diego Hearing, transcript p. 50) It was clear that this arrangement was not pursuant to any written policy. Again, courts may wish to consider these issues as well in crafting leave policies.

66/ San Diego Hearing, transcript p. 51.

67/ San Francisco Hearing, transcript p. 133.

68/ Material on file in AOC.

69/ Cafeteria Plan Benefits involve offering employees a range of benefit options from which to choose. Some employees with children can use the option of using pre-tax dollars to pay for dependent care (allowable under section 125 of the Internal Revenue Code) while childless employees can choose other benefits.

70/ In a survey conducted by the National Employer-Supported Child Care Project, published in 1984, 90 percent of the 178 companies responding said that the child care service their business offered had improved employee morale, 85 percent said their ability to recruit had been affected positively, and 85 percent noted more positive public relations.

71/ Women's Bureau, U.S. Department of Labor.

72/ Materials on file with the AOC.

73/ Sacramento Hearing, transcript pp. 49-50.

74/ San Diego Hearing, transcript p. 21.

75/ Material on file at AOC.

76/ San Francisco Hearing, transcript p. 38-40.

77/ The Judge's Journal, (Winter 1989), pp. 1-2. The National Association of Women Judges also encourages the adoption of a paid parental leave policy in every jurisdiction.

78/ Material on file at AOC.

79/ Material on file at AOC.

80/ Fresno Hearing, transcript pp. 75-87. The committee did not receive testimony from the presiding judge.

81/ "Employees and Childcare: Benefiting Work and Family," U.S. Dept. of Labor, Office of the Secretary, Women's Bureau (1989) p. 3.

82/ "Employees and Childcare: Benefiting Work and Family," U.S. Dept. of Labor, Office of the Secretary, Women's Bureau (1989) p. 7.

83/ Material on file at AOC. See, e.g., "On-Site Day Care: Not Just Fun and Games," Legal Times, May 15, 1989, p. 52.

84/ See, e.g., Massachusetts Gender Bias Study.

85/ Regional Meeting Summaries--Court Administration, Tab 8.

86/ Los Angeles Hearing, transcript p. 67.

87/ See section on domestic violence, Tab 6.

88/ Sacramento Hearing, transcript p. 96.

89/ Regional Meeting Summaries, Tab 8.

90/ Regional Meeting Summaries, Tab 8.

91/ Regional Meeting Summaries, insert p. 24.

92/ Regional Meeting Summaries, Tab 10, p. 34.

93/ Material on file with AOC.

94/ Los Angeles Times, Part IV, p. 1., Sunday, January 25, 1987.

95/ Material on file with AOC.

96/ The study was published in the University of Pennsylvania Law Review (Vol. 137) and it compiles responses from 149 law schools during the 1986-87 academic year.

97/ San Francisco Banner-Daily Journal, January 27, 1989, "Law Schools Lag on Tenure for Women," p. 3.

98/ See footnote 96.

99/ Los Angeles Daily Journal, January 25, 1989, "Women Face Bar to Tenure at Law Schools," p. 2.

100/ Los Angeles Hearing, Transcript p. 49.

101/ See series of articles in The Recorder: October 11, 1988; December 14, 1988; August 28, 1989.

102/ Professor Herma Hill Kay is currently president of the Association of American Law Schools. In her testimony at the San Francisco public hearing, she said that one of her top goals

is to improve the number of tenured women at ABA-accredited schools. To this end, she has appointed a special committee to study tenure and the tenuring process because there is a problem, not with attracting women to teaching, but with retaining them. She felt this was partly because feminist jurisprudence was not well evaluated by traditionalists in the law schools. San Francisco Public Hearing, transcript p. 59.

103/ Betsy Levin's quotation in material provided by Professor Herma Hill Kay, on file with AOC.

What is taught in law schools is often directly related to who is doing the teaching. Many of the women teaching in law schools today study and write about a female view of substantive and procedural law. See The National Law Journal, October 24, 1988, "Women Face Hurdles as Professors." By keeping feminist scholars out of law schools, these ideas never touch the next generation of lawyers, judges and court administrators.

104/ San Francisco Banner-Daily Journal, April 13, 1989, pp. 1-2.

105/ "Crime in the Stacks, or A Tale of Text: A Feminist Response to a Criminal Law Textbook," 38 Journal of Legal Education, p. 117.

106/ "Gender Issues and the Prosser, Wade and Schwartz," Torts Casebook, 18 Golden Gate U.L.Rev., 495.

107/ See, "Rereading Contracts: A Feminist Analysis of a Contracts Casebook", 34 Am. U.L.Rev. 1065 (1985).

108/ See Adams, "Law Schools," The National Law Journal, May 23, 1988. See also Banks, "Gender Bias in the Classroom" 38 Journal of Legal Education 137 (1988).

109/ See, "Feminist Legal Theory, Critical Legal Studies, and Legal Education", 38 Journal of Legal Education 61, 77 (1988).

110/ Wildman, "The Question of Silence: Techniques to Ensure Full Class Participation," 38 Journal of Legal Education, p. 147. Hautzis, "Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching" 38 Journal of Legal Education, p. 155.

111/ Los Angeles Hearing, transcript p. 71.

112/ San Francisco Hearing, transcript pp. 120-122.

113/ San Francisco Hearing, transcript pp. 123-124.

114/ San Francisco Hearing, transcript pp. 127-130.

115/ Materials on file with the AOC.

LIST OF ATTACHMENTS

ATTACHMENT A

DEVELOPING MANAGEMENT SKILLS: TRAINING AND TECHNIQUES

QUESTIONNAIRE

Judicial Council Advisory Committee on
Gender Bias in the Courts
Subcommittee on Court Administration

The Hyatt Regency Oakland
July 12–13, 1988

The Judicial Council
of California
Chief Justice Malcolm M. Lucas
Chairperson

The Administrative Office
of the Courts
William E. Davis
Director

DEVELOPING MANAGEMENT SKILLS: TRAINING AND TECHNIQUES

QUESTIONNAIRE ON GENDER BIAS
July 1988

Judicial Council Advisory Committee on Gender Bias in the Courts
Court Administration Subcommittee

INTRODUCTION

The Judicial Council Advisory Committee on Gender Bias, appointed by two successive Chief Justices, is examining the extent to which gender bias is a problem in the California courts. The committee is charged with gathering information from a wide range of sources and proposing recommendations to the Judicial Council.

Members and staff of the subcommittee on court administration, which is studying gender bias in court management and administration, will facilitate group discussions for all those who attend a resource section on gender bias. This segment will examine management issues related to gender bias with a focus on various experiences that may be encountered by an administrator or personnel manager. The topics will include: sexual harassment in court employment, affirmative action and equal opportunity, courtroom and staff interaction, and others.

We hope you will attend one or two of the discussion sessions. However, if you are unable to do so, the Committee would like the benefit of your personal observations and experiences on this important issue. Please complete the attached questionnaire and return it either at the discussion, or to a designated box at the materials table, or mail it by July 30, 1988. (The questionnaire can be folded to provide a pre-addressed mailer.)

Individuals completing the Questionnaire will not be identified and names will not be disclosed. The results will appear in the form of group data for the use of the Committee.

Please provide any additional information or other experiences concerning gender bias in the courts which you have observed or been involved in as a manager in the space provided at the end of the questionnaire.

QUESTIONNAIRE

The following questions ask about specific behaviors and occurrences relating to gender bias in the courts. Please check the response which best describes your experience. If you have no experience in a particular area, check the no experience column.

	ALWAYS 1	OFTEN 2	SOMETIMES 3	RARELY 4	NEVER 5	NO EXPERIENCE 0
HIRING, TRAINING AND ADVANCEMENT						
1. I have been asked for personal information relating to gender stereotypes when interviewed for a court system position.	____	____	____	____	____	____
2. My opportunities for job advancement in the court system are limited because of my gender.	____	____	____	____	____	____
3. Performance evaluations are done in my court on a regular basis according to a standard procedure for each job classification.	____	____	____	____	____	____
4. In my court, opportunities for promotion or transfer are publicly announced.	____	____	____	____	____	____
5. In my opinion training on gender-related issues would be helpful to supervisors and staff.	____	____	____	____	____	____
6. I am permitted to apply, and encouraged to attend, training programs relevant to my work.	____	____	____	____	____	____

	ALWAYS 1	OFTEN 2	SOMETIMES 3	RARELY 4	NEVER 5	NO EXPERIENCE 0
WORK ENVIRONMENT						
7. My job duties and responsibilities have been limited because of my gender.						
8. My job duties and reponsibilities have been expanded because of my gender.						
9. I am aware of incidents in the courthouse when women were addressed by their first name or terms of endearment when men in similar positions were not.						
10. In my experience, women's opinions in job-related situations are given equal recognition or credence with those of men.						
11. I feel free to discuss my concerns relating to gender bias with my supervisor.						
12. I would like an opportunity to discuss matters of sexist behavior with a representative of a neutral body or agency.						
13. In my court experience, judges or supervisors have taken adequate steps to correct inappropriate sexist behavior.						
14. I have experienced job related stress because of sexist behavior in the work place.						
LEAVE AND CHILD CARE						
15. While in the court system I would have used parenting or pregnancy leave if it had been available.						
16. In my view, full use of available pregnancy leave could impede my future advancement.						
17. Affordable child care facilities are available to employees of my court.						
18. I believe that appropriate child care facilities would improve the job performance of employees who are parents.						

In the first column, please check those behaviors that you personally have experienced while working in the court system. In the second column please check those behaviors that you have heard have occurred to another employee.

COURTHOUSE INTERACTION	EXPERIENCED	HEARD ABOUT
19. Inappropriate comments are made about the personal appearance of women:		
(a) by judges.		
(b) by attorneys.		
(c) by co-workers.		
20. Sexist remarks or jokes that demean women are made:		
(a) by judges.		
(b) by attorneys.		
(c) by co-workers.		
21. Verbal or physical advances are made toward women:		
(a) by judges.		
(b) by attorneys.		
(c) by co-workers.		

DEMOGRAPHIC INFORMATION

NOTE: Completion of the information below is important for the committee's study but not required. Do not provide your name.

Check Appropriate box

COURT

22. Employed by
    _____ superior court
    _____ municipal court
    _____ justice court

23. Number of judges and commissioners
    _____ 10 or less
    _____ 11 or more

24. Court has Affirmative Action/Equal Employment Opportunity plan
    _____ Yes
    _____ No
    _____ Uses county plan
    _____ Don't know

JOB

25. Job title or classification
    _____

26. Salary range
    _____ under $20,000 year
    _____ between $20-$35,000 year
    _____ over $35,000

27. Employed
    _____ full-time
    _____ part-time
    _____ shared time
    _____ other *(please specify)*

28. Years employed
    _____ in current position
    _____ in court work

WORK ENVIRONMENT

29. Leave time includes
    _____ sick
    _____ vacation
    _____ maternity/paternity
    _____ family/personal
    _____ educational
    _____ examination

30. Work arrangements include
    _____ part-time
    _____ flex hours
    _____ share shift
    _____ other *(please specify)*
    _____

31. Court-sponsored child care provisions include
    _____ day care: on site/nearby
    _____ day care: elsewhere
    _____ child care: allowance/credit
    _____ other *(please specify)*
    _____

32. Training programs available — Have Attended

_____ orientation	_____ yes	_____ no
_____ in-grade	_____ yes	_____ no
_____ promotional	_____ yes	_____ no
_____ affirmative action	_____ yes	_____ no

PERSONAL

33. Gender
    _____ Male
    _____ Female

34. Race/ethnicity
    _____ Black
    _____ Hispanic
    _____ Asian *(please specify)*
    _____
    _____ White
    _____ Other *(please specify)*
    _____

35. Age
    _____ under 30
    _____ 30–45
    _____ 46 and over

36. Education
    _____ high school
    _____ college or technical
    _____ college degree *(please specify)*
    _____
    _____ post graduate/advanced *(please specify)*
    _____

Thank you

The Judicial Council Advisory Committee on Gender Bias in the Courts and the Subcommittee on Court Administration very much appreciate your completion and return of this questionnaire.

Please provide any additional comments below or on reverse of this page.

DEVELOPING MANAGEMENT SKILLS: TRAINING AND TECHNIQUES

RESOURCE GROUP ON GENDER BIAS

facilitated by
Judicial Council Advisory Committee on
Gender Bias in the Courts
Subcommittee on Court Administration

The Hyatt Regency Oakland
July 12-13, 1988

The Judicial Council
of California
Chief Justice Malcolm M. Lucas
Chairperson

The Administrative Office
of the Courts
William E. Davis
Director

RESOURCE GROUP: GENDER BIAS

INTRODUCTION

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two successive Chief Justices to examine issues of gender bias in the California courts, including those issues that may arise in the area of court administration. The committee is charged with the responsibility of gathering information for purposes of making recommendations to the Judicial Council to correct any problems perceived. By gender bias we mean not only stereotypical attitudes about the nature and roles of women and men but also cultural perceptions of their relative worth. Gender bias includes, as well, myths and misconceptions about the social and economic realities encountered by both sexes. The committee is in the process of identifying the ways in which these stereotypical attitudes, myths, and misconceptions about men and women may influence decision-making and behavior in the courts.

DISCUSSION ISSUES

The purpose of this resource group is to consider how, when and why instances of gender bias occur in the day-to-day courthouse function. More importantly, the committee is seeking to identify ways to prevent and correct these occurrences and to examine the impact of gender bias on the affected employee, on coworkers, and on court administration.

The Judicial Council Advisory Committee on Gender Bias in the Courts is particularly interested in how issues of gender bias may be affected or exacerbated when race, ethnicity, or economic status are also considered. In the discussion period, please take these factors into account.

To assist you in preparing for our discussion on gender bias in court administration, we ask you to consider the questions set forth in the section entitled Discussion Issues. The committee is interested in learning about your own observations and experiences relating to the effects of gender in court operations and courtroom interaction. This list of questions may provide a framework and stimulus for your thinking and for your participation.

In our discussion please refrain from using names or making personal references to any specific individuals. Also, complaints of specific misconduct should not be submitted here, but may be brought to the attention of appropriate disciplinary bodies.

QUESTIONNAIRE

At the end of this session we ask that you take a few minutes to complete the questionnaire, which is included in this material. This will provide the advisory committee with some basic information on the scope and nature of gender bias in the California trial courts. It may also provide you, as managers, with some additional insights on the occurrence or perception of gender bias in the court system.

The advisory committee welcomes any additional remarks you care to make. Space is provided at the end of the questionnaire.

Please return the questionnaire at the close of this session, place it in the designated box on the materials table in the lobby, or mail it by July 30, 1988. The questionnaire can be folded to provide a pre-addressed mailer.

RELATED INFORMATION

Over the past 10 years approximately twenty-two different states have undertaken extensive studies on gender bias issues in their court systems. From these efforts, a national perspective is emerging, and the California data now being compiled will be important both for the California court system and as part of a larger analysis.

A useful summary of the findings of the first two task forces on gender bias in the courts in New Jersey and New York can be found in Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach* (1987) 70 Judicature 280. A copy of the article is contained in your materials and is available on request from: Ms. Wendy Hepperle, Administrative Office of the Courts, 350 McAllister Street, State Building, Room 3154, San Francisco, California 94102.

NOTE OF APPRECIATION

The Judicial Council Advisory Committee on Gender Bias expresses its sincere appreciation for your participation in this discussion group, and in completing the questionnaire. The Subcommittee on Court Administration also extends thanks for your cooperation and expresses the hope that as work progresses it may call on you from time to time for other assistance.

RESOURCE GROUP: GENDER BIAS

DISCUSSION ISSUES

INTRODUCTION

1. (MEANING)
   Gender bias is a broad term which means different things to different people. When you think of this term as applied to court administration, what issues or examples come to mind?

2. (EXAMPLES)
   a) In your opinion, what is the single most important example of gender bias in court administration which needs to be recognized and eliminated?
   b) In your opinion, what would be some appropriate solutions?

EMPLOYMENT AND ADVANCEMENT

3. (INTERVIEW)
   a) Have you been asked questions based upon gender stereotypes during an interview for a court position?
   b) If yes, what are some ways to deal with this situation?

4. (DUTIES)
   a) Is it ever appropriate or necessary to modify the job duties of an employee, based on gender?
   b) If yes, what are some examples?

5. (ADVANCEMENT)
   a) In your opinion do men and women court employees have equal and fair opportunities to advance?
   b) Should the issue of gender be a factor when considering an advancement?

WORK ENVIRONMENT

6. (FLEX TIME/SPLIT SHIFT)
   Based on your experience do you think increased availability of flex-time and split shifts would produce a more effective staff?

7. (CHILD CARE)
   a) In your opinion, is the availability of satisfactory child care related to employee job performance?
   b) Does it differ between men and women?

8. (JOB-RELATED STRESS)
   a) Is there a difference between men and women in the amount of stress (illness) that is job-related?
   b) Does job-related stress appear to be increasing?

9. (SEXUAL HARASSMENT)
   a) In your experience as a manager have you encountered complaints about sexual harassment, and if so, have they been valid?
   b) What approach do you use in dealing with complaints alleging sexual harassment?

10. (EDUCATION)
    What specific issues need most emphasis in court staff education programs designed to cover problems of gender bias?

COURTROOM INTERACTION

11. (FIRST NAMES)
    a) Is it ever appropriate for a lawyer to address a courtroom employee by his or her first name? When?
    b) Is it ever appropriate for a courtroom employee to address a lawyer by his or her first name? When?

12. (OTHER PARTICIPANTS)
    a) Have you observed a courtroom situation in which a judge, attorney, or court employee has treated a litigant, witness, or juror in a particular manner because of gender?
    b) Is such action ever appropriate?

13. (CHILD CARE)
    a) In your experience, do either witnesses or litigants have difficulty attending court proceedings or bring their minor children to court due to the unavailability of child care?
    b) If yes, do you believe this inadequacy affects access to the courts?
    c) If yes, do you believe this inadequacy interferes with the judicial process?

ATTACHMENT B

ASSOCIATION OF
MUNICIPAL COURT CLERKS
OF CALIFORNIA

CONVENTION '88

GENDER BIAS IN THE COURTS QUESTIONNAIRE

Judicial Council Advisory Committee on
Gender Bias in the Courts
Subcommittee on Court Administration

OCTOBER 8, 1988

San Luis Obispo

The Judicial Council
of California

Chief Justice Malcolm M. Lucas
Chairperson

The Administrative Office
of the Courts

William E. Davis
Director

QUESTIONNAIRE ON GENDER BIAS
October 1988

Judicial Council Advisory Committee on Gender Bias in the Courts
Court Administration Subcommittee

INTRODUCTION

The Judicial Council Advisory Committee on Gender Bias, appointed by two successive Chief Justices, is examining the extent to which gender bias is a problem in the California courts. The committee is charged with gathering information from a wide range of sources and proposing recommendations to the Judicial Council.

Members and staff of the subcommittee on court administration, which is studying gender bias in court management and administration, will facilitate two group discussions for municipal court clerks who are attending the 1988 annual meeting. These groups will examine administrative and personnel practices, staff interaction, and various experiences that may be encountered by court support staff. The focus will be on municipal court clerks and current activities and policies that impact gender bias. The topics will include: employment and advancement; sexual harassment in court employment; affirmative action and equal opportunity; courtroom interactions, and others.

We hope you will attend one or two of the discussion sessions. However, if you are unable to do so, the committee would like the benefit of your personal observations and experiences on this important issue. Please complete the attached questionnaire and return it either at the designated box in the registration area, at the discussion, or mail it to the Administrative Office of the Courts. (The questionnaire can be folded to provide a pre-addressed mailer.)

Individuals completing the questionnaire will not be identified and names will not be disclosed. The results will appear in the form of group data for the use of the advisory committee.

Please provide any additional information or other experiences concerning gender bias in the courts which you have observed or been involved in as a municipal court clerk; space is provided at the end of the questionnaire.

QUESTIONNAIRE

The following statements ask about specific behaviors and occurrences relating to gender bias in the courts. Please check the response which best describes your experience. If you have no experience in a particular area, check the "no experience" column.

	ALWAYS 1	OFTEN 2	SOMETIMES 3	RARELY 4	NEVER 5	NO EXPERIENCE 0
HIRING, TRAINING AND ADVANCEMENT						
1. I have been asked for personal information relating to gender stereotypes when interviewed for a court system position.	____	____	____	____	____	____
2. My opportunities for job advancement in the court system are limited because of my gender.	____	____	____	____	____	____
3. Performance evaluations are done in my court on a regular basis according to a standard procedure for each job classification.	____	____	____	____	____	____
4. In my court, opportunities for promotion or transfer are publicly announced.	____	____	____	____	____	____
5. In my opinion, training on gender-related issues would be helpful to supervisors and staff.	____	____	____	____	____	____
6. I am permitted to apply for, and encouraged to attend, training programs relevant to my work.	____	____	____	____	____	____

	ALWAYS 1	OFTEN 2	SOMETIMES 3	RARELY 4	NEVER 5	NO EXPERIENCE 0
WORK ENVIRONMENT						
7. My job duties and responsibilities have been limited because of my gender.	____	____	____	____	____	____
8. My job duties and reponsibilities have been expanded because of my gender.	____	____	____	____	____	____
9. I am aware of incidents in the courthouse when women were addressed by their first name or terms of endearment when men in similar positions were not.	____	____	____	____	____	____
10. In my experience, women's opinions in job-related situations are given equal recognition or credence with those of men.	____	____	____	____	____	____
11. I feel free to discuss my concerns relating to gender bias with my supervisor.	____	____	____	____	____	____
12. I would like an opportunity to discuss matters of sexist behavior with a representative of a neutral body or agency.	____	____	____	____	____	____
13. In my court experience, judges or supervisors have taken adequate steps to correct inappropriate sexist behavior.	____	____	____	____	____	____
14. I have experienced job related stress because of sexist behavior in the work place.	____	____	____	____	____	____
LEAVE AND CHILD CARE						
15. Parenting and pregnancy leave should be available to court employees.	____	____	____	____	____	____
16. In my view, full use of available pregnancy or parenting leave interferes with an employee's future advancement.	____	____	____	____	____	____
17. Affordable child care facilities are available to employees of my court.	____	____	____	____	____	____
18. I believe that appropriate child care facilities would improve the job performance of employees who are parents.	____	____	____	____	____	____

In the first column, please check those behaviors that you personally have experienced while working in the court system. In the following columns please check those behaviors that you have heard have occurred to another employee, or about which you have no experience.

COURTHOUSE INTERACTION	EXPERIENCED	HEARD ABOUT	NO EXPERIENCE
19. Inappropriate comments are made about the personal appearance of women:			
(a) by judges.	____	____	____
(b) by attorneys.	____	____	____
(c) by co-workers.	____	____	____
20. Sexist remarks or jokes that demean women are made:			
(a) by judges.	____	____	____
(b) by attorneys.	____	____	____
(c) by co-workers.	____	____	____
21. Verbal or physical advances are made toward women:			
(a) by judges.	____	____	____
(b) by attorneys.	____	____	____
(c) by co-workers.	____	____	____

DEMOGRAPHIC INFORMATION

NOTE: Completion of the information below is important for the committee's study but not required. Do not provide your name.

Check appropriate box

COURT

22. Employed by
    _____ superior court
    _____ municipal court
    _____ justice court

23. Number of judges and commissioners
    _____ 10 or less
    _____ 11 or more

24. Court has Affirmative Action/Equal Employment Opportunity plan
    _____ Yes
    _____ No
    _____ Uses county plan
    _____ Don't know

JOB

25. Job title or classification
    _____

26. Salary range
    _____ under $20,000 year
    _____ between $20-$35,000 year
    _____ over $35,000

27. Employed
    _____ full-time
    _____ part-time
    _____ shared time
    _____ other *(please specify)*
    _____

28. Years employed
    _____ in current position
    _____ in court work

WORK ENVIRONMENT

29. Authorized leave time includes
    _____ sick
    _____ vacation
    _____ maternity/paternity
    _____ family/personal
    _____ educational
    _____ examination/promotional

30. Work arrangements include
    _____ part-time
    _____ flex hours
    _____ share shift
    _____ other *(please specify)*
    _____

31. Court-sponsored child care provisions include
    _____ day care: on site/nearby
    _____ day care: elsewhere
    _____ child care: allowance/credit
    _____ other *(please specify)*
    _____

32. Training programs available — Have Attended

_____ orientation	_____ yes	_____ no
_____ in-grade	_____ yes	_____ no
_____ promotional	_____ yes	_____ no
_____ affirmative action	_____ yes	_____ no

    _____ other *(please specify)*
    _____

PERSONAL

33. Gender
    _____ Male
    _____ Female

34. Race/ethnicity
    _____ Black
    _____ Hispanic
    _____ White
    _____ Asian *(please specify)*
    _____
    _____ Other *(please specify)*
    _____

35. Age
    _____ under 30
    _____ 30–45
    _____ 46 and over

36. Education
    _____ high school
    _____ college or technical
    _____ college degree *(please specify)*
    _____
    _____ post graduate/advanced *(please specify)*
    _____

Thank you

The Judicial Council Advisory Committee on Gender Bias in the Courts and the Subcommittee on Court Administration very much appreciate your completion and return of this questionnaire.

Please provide any additional comments below or on reverse of this page.

ASSOCIATION OF
MUNICIPAL COURT CLERKS
OF CALIFORNIA

CONVENTION '88

GENDER BIAS IN THE COURTS
DROP-IN ROUND TABLE DISCUSSION

facilitated by
Judicial Council Advisory Committee on
Gender Bias in the Courts
Subcommittee on Court Administration

OCTOBER 8, 1988

8:00–9:45 a.m. Del Mar Room
3:45–5:00 p.m. Del Mar Room

San Luis Obispo

The Judicial Council
of California
Chief Justice Malcolm M. Lucas
Chairperson

The Administrative Office
of the Courts
William E. Davis
Director

DISCUSSION GROUP: GENDER BIAS IN THE COURTS

INTRODUCTION

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two successive Chief Justices to examine issues of gender bias in the California courts, including those issues that may arise in the area of court administration. The committee is charged with the responsibility of gathering information for purposes of making recommendations to the Judicial Council to correct any problems perceived. By gender bias we mean not only stereotypical attitudes about the nature and roles of women and men but also cultural perceptions of their relative worth. Gender bias includes, as well, myths and misconceptions about the social and economic realities encountered by both sexes. The committee is in the process of identifying the ways in which these stereotypical attitudes, myths, and misconceptions about men and women may influence decision-making and behavior in the courts.

DISCUSSION ISSUES

The purpose of these round table discussions is to consider how, when and why instances of gender bias occur in the day-to-day courthouse function. More importantly, the committee is seeking to identify ways to prevent and correct these occurrences and to examine the impact of gender bias on the affected employee, on co-workers, and on court administration.

The Judicial Council Advisory Committee on Gender Bias in the Courts is particularly interested in how issues of gender bias may be affected or exacerbated when race, ethnicity, or economic status are also considered. In the discussion period, please take these factors into account.

To assist you in preparing for our discussion on gender bias in court administration, we ask you to consider the questions set forth in the section entitled Discussion Issues. The committee is interested in learning about your own observations and experiences relating to the effects of gender in court operations and courtroom interaction. This list of questions may provide a framework and stimulus for your thinking and for your participation.

In our discussion please refrain from using names or making personal references to any specific individuals. Also, complaints of specific misconduct should not be submitted here, but may be brought to the attention of appropriate disciplinary bodies.

QUESTIONNAIRE

If you have not already done so, we ask that you take a few minutes at the end of this session to complete the questionnaire, which will be distributed. This will provide the advisory committee with some basic information on the scope and nature of gender bias in the California trial courts. It may also provide you with some additional insights on the occurrence or perception of gender bias in the court system.

The advisory committee welcomes any additional remarks you care to make. Space is provided at the end of the questionnaire.

Please return the questionnaire at the close of this session, place it in the designated box in the registration area, or promptly mail it to the AOC. The questionnaire can be folded to provide a pre-addressed mailer.

RELATED INFORMATION

Over the past 10 years approximately twenty-two different states have undertaken extensive studies on gender bias issues in their court systems. From these efforts, a national perspective is emerging, and the California data now being compiled will be important both for the California court system and as part of a larger analysis.

A useful summary of the findings of the first two task forces on gender bias in the courts in New Jersey and New York can be found in Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach* (1987) 70 Judicature 280. A copy of the article is available on request from: Ms. Wendy Hepperle, Administrative Office of the Courts, 350 McAllister Street, State Building, Room 3154, San Francisco, California 94102.

NOTE OF APPRECIATION

The Judicial Council Advisory Committee on Gender Bias expresses its sincere appreciation for your participation in this discussion group, and in completing the questionnaire. The Subcommittee on Court Administration also extends thanks for your cooperation and expresses the hope that as work progresses it may call on you from time to time for other assistance.

GENDER BIAS IN THE COURTS:

DISCUSSION ISSUES

INTRODUCTION

1. (MEANING)
   Gender bias is a broad term which means different things to different people. When you think of this term as applied to court administration, what issues or examples come to mind?

2. (EXAMPLES)
   a) In your opinion, what is the single most important example of gender bias in court administration which needs to be recognized and eliminated?
   b) In your opinion, what would be some appropriate solutions?

EMPLOYMENT AND ADVANCEMENT

3. (INTERVIEW)
   a) Have you been asked questions based upon gender stereotypes during an interview for a court position?
   b) If yes, what are some ways to deal with this situation?

4. (DUTIES)
   a) Is it ever appropriate or necessary to modify the job duties of an employee, based on gender?
   b) If yes, what are some examples?

5. (ADVANCEMENT)
   a) In your opinion do men and women court employees have equal and fair opportunities to advance?
   b) Should the issue of gender be a factor when considering an advancement?

WORK ENVIRONMENT

6. (FLEX TIME/SPLIT SHIFT)
   Based on your experience do you think increased availability of flex-time and split shifts would produce a more effective staff?

7. (CHILD CARE)
   a) In your opinion, is the availability of satisfactory child care related to employee job performance?
   b) Does it differ between men and women?

8. (JOB-RELATED STRESS)
   a) Is there a difference between men and women in the amount of stress (illness) that is job-related?
   b) Does job-related stress appear to be increasing?

9. (SEXUAL HARASSMENT)
   a) In your experience as a court employee have you encountered sexual harassment, and if so, what was its nature?
   b) What approach do you use in dealing with harassment?

10. (EDUCATION)
    What specific issues need most emphasis in court staff education programs designed to cover problems of gender bias?

COURTROOM INTERACTION

11. (FIRST NAMES)
    a) Is it ever appropriate for a lawyer to address a courtroom employee by his or her first name? When?
    b) Is it ever appropriate for a courtroom employee to address a lawyer by his or her first name? When?

12. (OTHER PARTICIPANTS)
    a) Have you observed a courtroom situation in which a judge, attorney, or court employee has treated a litigant, witness, or juror in a particular manner because of gender?
    b) Is such action ever appropriate?

13. (CHILD CARE)
    a) In your experience, do either witnesses or litigants have difficulty attending court proceedings or bring their minor children to court due to the unavailability of child care?
    b) If yes, do you believe this inadequacy affects access to the courts?
    c) If yes, do you believe this inadequacy interferes with the judicial process?

ATTACHMENT C

QUESTIONNAIRE

Employment Practices in the Courts

1. How are employment practices made known to employees at your court? *(Circle all that apply.)*
   a. By written local court rule?
   b. By written court personnel policy?
   c. By written county personnel policy?
   d. By oral notification?
   e. By collective bargaining agreement?

2. If your court follows county personnel policy, is this adherence pursuant to: *(Circle all that apply.)*
   a. A voluntary practice?
   b. A written agreement?
   c. By law?

3. With regard to the following issues, please briefly describe the substantive policy of your court (as opposed to your county):
   a. Affirmative Action including Equal Employment Opportunity;

   b. Disability leave for pregnancy and birth;

   c. Parenting leave for adoption or newborn care;

4. Please describe any instances you know of in which benefits in the following areas were denied and the complaint procedure which was, or could have been, utilized to appeal the denial:

   a. Disability leave for pregnancy and birth;

   b. Parenting leave for adoption or newborn care;

   c. Flextime, job-sharing or part-time work opportunities;

   d. Cafeteria plan of benefits to allow use of pre-tax dollars for childcare or sick leave for sick childcare;

ATTACHMENT D

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Superior Courts	Dress Code	Specific or Gender Specific		Complaints Temporary Employees		Enforcement Procedure
Question #:	3h	3h		3i		
Target Info #:						15
Butte	No			No		?
Contra Costa	Yes	No		Yes		Yes
El Dorado	Yes	No		Yes		Yes
Glenn	No			No		No
Humboldt	No			No		?
Kings	No			Yes		No
Lassen	?			No		?
Los Angeles	No			Yes		Yes
Marin	No			Yes		Yes
Mariposa	?			?		?
Modoc	?			?		?
Nevada	No			?		?
Riverside	No			No		Yes
San Benito	Yes	No		Yes		?
San Bernardino	No			Yes		Yes
San Diego	No			Yes		Yes
San Mateo	?			Yes		Yes
Santa Clara	Yes	No		Yes		?
Santa Cruz	No			No		?
Shasta	No			No		?
Siskiyou	?			?		?
Sonoma	?			?		?
Stanislaus	No			Yes		Yes
Trinity	?			?		?
Tuolumne	?			?		?
Ventura	No			Yes		Yes
Yuba	?			?		?

Note: Blank spaces indicate "Not Applicable".

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Municipal Courts	Employment Practices Known	Adherence to County Policy		AA/EO	AA/EO Apply to Managers		Disability Pregnancy & Birth	Disability Paid	Parenting Leave	Vacation & Sick to Parental	Parental Paid	Leave Gender Neutral
Question #:	1	2		3a			3b	3b	3c			
Target Info #:					10					7	8	6
Alameda - Alameda	B, C, D, E	A, B, C		Yes	Yes		4 Months	No	<--	Yes	No	No
Alameda - Fremont	B, C, D, E	B, C		Yes	Yes		4 Months	No	<--	Yes	No	No
Alameda - Oakland	B, C, D, E	B, C		Yes	Yes		4 Months	No	<--	Yes	No	No
Alameda - Hayward	B, C, D, E	C		Yes	Yes		4 Months	No	<--	Yes	No	No
Butte - North	C	C		Yes	Yes		4 Months	Yes	No			No
Butte - South	C	C		Yes	Yes		4 Months	Yes	No			No
Kern - West	B, C, D, E	C		?			1.5 Months	?	No			?
LA - Beverly Hills	B, C, D	C		?			?		?			?
LA - Glendale	B, C	A		?			6 Months	No	Yes / 6 M	?	No	Yes
LA - Inglewood	B	A		Yes	Yes		1.5 Months	No	Discretionary	Yes	No	?
LA - Los Cerritos	B	C		No			Yes	No	Discretionary	Yes	No	No
LA - Santa Anita	C, D, E	A, C		Yes	Yes		2 Months	?	No			?
LA - South Bay	B, C, D	C		Yes	Yes		1.5 Months	?	No			No
LA - Whittier	B, C, D	A		?			?		?			?
Merced	C, D	C		Yes	Yes		?		?			?
Napa	C, D, E	B, C		?			4 Months	No	No			No
Orange - Central	B	A		?			6 Months	No	Yes	?	No	?
Orange - South	B, D	A		Yes	?		6 Months	No	Yes / 6 M	?	No	?
Orange - ???	C, D, E	B		Yes	?		?		Yes / 6 M	?	?	?
Riverside - Desert	B, C, E	A		Yes	?		1.5 Months	No	No			No
Sacramento	B, C, D, E	B, C		Yes	Yes		Yes	No	Yes / 12 M	Yes	No	?
San Diego	A, B, C, E	C		Yes	Yes		6 Months	No	<--	Yes	No	?
San Diego - S. Bay	B, C, D	A, C		Yes	Yes		Yes	No	?			?
San Francisco	?	?		?			6 Months	?	Yes / 1 Y	?	?	?
San Mateo	A, B, C, D, E	A, B, C		Yes	Yes		Yes	No	Yes / 1 Y	Yes	No	Yes
Santa Barbara	B, C	C		?			4 Months	No	<--	Yes	No	Yes
Shasta - Southeast	B, C, E	B		Yes	?		4 Months	No	Yes / 3 Days	?	3 Days Pd.	?
Shasta - Redding	C	A		Yes	?		?		No			?
Solano - Vallejo	B, C, D, E	A, B, C		Yes	?		2-4 Months	No	No			No
Stanislaus	C	B		Yes	Yes		Yes	No	Yes / 3 M	Yes	No	No
Sutter	C	C		Yes	Yes		Yes	No	Discretionary	?	No	No
Ventura	B, D	A		Yes	Yes		6 Months	No	Adoption	?	?	No
Yolo	C	C		Yes	?		?		?			?
Yuba	C	C		?			Yes	?	?			?

Note: Blank spaces indicate "Not Applicable".

Number of Municipal Courts in survey: 34
Number of Municipal Courts in state: 88

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Municipal Courts	Flextime, Etc.	Managers use Flex-time, etc.	Cafeteria Plan	Cafeteria Plan only Managers	Anti-Sexual Harassment Policy	Form of Address	Anti-Sexual Harassment Training	Sex Harass Complaints / Evaluations
Question #:	3d		3e		3f			
Target Info #:		11		9		14	13	12
Alameda - Alameda	Yes	Yes	No		Yes	?	No	?
Alameda - Fremont	Yes	?	Yes	Yes	Yes	?	No	?
Alameda - Oakland	Yes	Yes	No		Yes	No	No	?
Alameda - Hayward	No		Yes	No	Yes	?	?	?
Butte - North	Yes	Yes	No		Yes	No	No	? / Yes
Butte - South	Yes	Yes	No		Yes	No	No	? / Yes
Kern - West	Yes	?	Yes	Yes	No		No	?
LA - Beverly Hills	Yes	?	Yes	Yes	?		?	?
LA - Glendale	Limited	?	Proposed	Yes	?		?	?
LA - Inglewood	No		Proposed	Yes	Yes	No	No	?
LA - Los Cerritos	No		Proposed	No	?		?	?
LA - Santa Anita	Yes	?	No		No		No	?
LA - South Bay	Yes	?	Proposed	No	Yes	No	Proposed	?
LA - Whittier	No		No		?		?	?
Merced	Yes	?	?		?		?	?
Napa	Yes	?	No		Yes	No	Yes	?
Orange - Central	Yes	?	No		?		?	?
Orange - South	No		No		?		?	?
Orange - ???	?		No		?		?	?
Riverside - Desert	No		No		Yes	Yes	No	?
Sacramento	Yes	Yes	Yes	No	Yes	?	Yes	?
San Diego	Yes	?	No		Yes	Yes	No	?/Yes
San Diego - S. Bay	Yes	?	No		Yes	Yes	No	?/Yes
San Francisco	Yes	?	Proposed	?	?		?	?
San Mateo	Yes	No	No		Yes	No	No	?/Yes
Santa Barbara	Limited	?	No		Yes	No	No	?/Yes
Shasta - Southeast	No		No		Yes	?	?	?
Shasta - Redding	Yes	?	No		?		No	?
Solano - Vallejo	Yes	?	No		Yes	No	No	?
Stanislaus	No		No		Yes	No	Yes	?
Sutter	Yes	Yes	No		Yes	No	No	?
Ventura	No		Yes	?	Yes	No	Yes	?
Yolo	?		No		?		?	?
Yuba	No		No		?		?	?

Note: Blank spaces indicate "Not Applicable".

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Municipal Courts	Dress Code	Specific or Gender Specific		Complaints Temporary Employees		Enforcement Procedure
Question #:	3h	3h		3i		
Target Info #:						15
Alameda - Alameda	No			Yes		No
Alameda - Fremont	No			Yes		?
Alameda - Oakland	Yes	Gender		Yes		Yes
Alameda - Hayward	Yes	Yes		Yes		?
Butte - North	No			No		?
Butte - South	No			No		?
Kern - West	Yes	Gender		Yes		?
LA - Beverly Hills	Yes	No		Yes		?
LA - Glendale	Yes	Yes		Yes		?
LA - Inglewood	Yes	Yes		Yes		?
LA - Los Cerritos	?			Yes		?
LA - Santa Anita	Yes	No		Yes		?
LA - South Bay	No			Yes		Yes
LA - Whittier	Yes	No		Yes		?
Merced	No			Yes		?
Napa	No			Yes		Yes
Orange - Central	Yes	No		Yes		?
Orange - South	Yes	No		Yes		?
Orange - ???	No			Yes		?
Riverside - Desert	Yes	Gender		No		?
Sacramento	No			?		?
San Diego	Yes	No		Yes		Yes
San Diego - S. Bay	Yes	Gender		Yes		Yes
San Francisco	?			Yes		?
San Mateo	Yes	No		Yes		Yes
Santa Barbara	Yes	Gender		Yes		Yes
Shasta - Southeast	No			No		?
Shasta - Redding	?			No		?
Solano - Vallejo	Yes	No		No		?
Stanislaus	No			Yes		Yes
Sutter	No			No		Yes
Ventura	No			Yes		?
Yolo	?			No		?
Yuba	?			?		?

Note: Blank spaces indicate "Not Applicable".

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Justice Courts	Employment Practices Known	Adherence to County Policy		AA/EO	AA/EO Apply to Managers		Disability Pregnancy & Birth	Disability Paid	Parenting Leave	Vacation & Sick to Parental	Parental Paid	Leave Gender Neutral
Question #:	1	2		3a			3b	3b	3c			
Target Info #:					10					7	8	6
Calaveras	A, B, C, D, E	A, B, C		Yes	Yes		12 Months	No	<----	Yes	No	Yes
Fresno - Kerman	C	B		?			?		?			?
Humboldt - North	C, E	B		No			?		?			?
Kern - Delano	A, C, D, E	C		?			1.5 Months	?	No			No
Mendocino - 10 Mi.	C, D	A, C		No			Yes	?	?			?
Mendocino - And.	C, D, E	C		Yes	?		?		?			?
Modoc	D	A		?			?		?			?
Nevada - Truckee	C	C		Yes	Yes		4 Months	No	No			No
San Benito	C	A		?			4 Months	No	?			No
Tulare - Lindsay	C	A		Yes	?		?		?			?

Note: Blank spaces indicate "Not Applicable".

Number of Justice Courts in survey: 10
Number of Justice Courts in state: 65

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Justice Courts	Flextime, Etc.	Managers use Flex-time, etc.		Cafeteria Plan	Cafeteria Plan only Managers		Anti-Sexual Harassment Policy	Form of Address	Anti-Sexual Harassment Training	Sex Harass Complaints / Evaluations
Question #:	3d			3e			3f			
Target Info #:		11			9			14	13	12
Calaveras	No			No			No		No	?
Fresno - Kerman	?			No			?		?	?
Humboldt - North	?			No			?		?	?
Kern - Delano	Yes	?		Yes	Yes		No		No	?/Yes
Mendocino - 10 Mi.	Yes	?		No			No		No	?
Mendocino - And.	?			?			?		?	?
Modoc	?			?			?		?	?
Nevada - Truckee	No			No			Yes	No	No	?
San Benito	Yes	?		No			No		No	?/Yes
Tulare - Lindsay	No			No			No		?	?

Note: Blank spaces indicate "Not Applicable".

Tabulation of Responses to 1989 Questionaire on Court Employment Practices

Justice Courts	Dress Code	Specific or Gender Specific		Complaints Temporary Employees		Enforcement Procedure
Question #:	3h	3h		3i		
Target Info #:						15
Calaveras	Yes	Gender		?		?
Fresno - Kerman	?			?		?
Humboldt - North	No			?		?
Kern - Delano	No			Yes		?
Mendocino - 10 Mi.	No					?
Mendocino - And.	?			?		?
Modoc	?			?		?
Nevada - Truckee	No			No		Yes
San Benito	Yes	No		Yes		?
Tulare - Lindsay	?			No		?

Note: Blank spaces indicate "Not Applicable".

Summary of Responses to 1989 Questionaire on Court Employment Practices

Gender Bias Survey

Total in Survey:

Superior:	27
Muni:	34
Justice:	10
Total:	71

Question 1: How Employment Practices Made Known

	Superior	Muni	Justice	Total
A	4	2	2	8
B	5	22	1	28
C	22	28	9	59
D	8	18	5	31
E	14	14	4	32
A or B	8	22	2	32
C Not (A or B)	17	11	7	35
E only	1	0	0	1
D only	1	0	1	2
Total:	27	33	10	70

Question 2: Adherence to County Policy

	Superior	Muni	Justice	Total
A	14	13	5	32
B	5	10	3	18
C	11	22	5	38
Responses:	23	33	10	66

Question 3a: Affirmative Action / Equal Opportunity

	Superior	Muni	Justice	Total
Yes	15	24	4	43
No	3	1	2	6
Total	18	25	6	49

Apply to Managers?

Yes	10	17	2	29
No	0	0	0	0
?	5	7	2	14
Total	15	24	4	43

Summary of Responses to 1989 Questionaire on Court Employment Practices

Gender Bias Survey

Total in Survey:

Superior:	27
Muni:	34
Justice:	10
Total:	71

Question 3b: Pregnancy Leave

	Superior	Muni	Justice	Total
Yes	16	28	5	49
No	4	0	0	4
Total	20	28	5	53
Paid?				
Yes	2	2	0	4
No	6	21	3	30
?	8	5	2	15
Total	16	28	5	49

Question 3c: Parental Leave

	Superior	Muni	Justice	Total
Yes	6	9	0	15
Part of Preg.	0	6	1	7
Discretionary	3	3	0	6
Adoption	0	1	0	1
No	11	9	2	22
Total	20	28	3	51
Paid?				
Yes	0	1	0	1
No	7	15	1	23
?	2	3	0	5
Total	9	19	1	29
Use Sick Leave and Vacation?				
Yes	4	11	1	16
Sick only	1	0	0	1
No	0	0	0	0
?	4	8	0	12
Total	9	19	1	29

Leave Gender Neutral

	Superior	Muni	Justice	Total
Yes	2	3	1	6
No	10	14	3	27
Total	12	17	4	33

Summary of Responses to 1989 Questionaire on Court Employment Practices

Gender Bias Survey

Total in Survey:

Superior:	27
Muni:	34
Justice:	10
Total:	71

Question 3d: Flextime, Job Sharing, Part-time

	Superior	Muni	Justice	Total
Yes	15	20	3	38
Limited	0	2	0	2
No	6	10	3	19
Total	21	32	6	59

Apply to Managers?

Yes	5	6	0	11
No	1	1	0	2
?	9	15	3	27
Total	15	22	3	40

Question 3e: Cafeteria Plan

	Superior	Muni	Justice	Total
Yes	5	6	1	12
Proposed	0	5	0	5
No	16	22	7	45
Total	21	33	8	62

Managers Only?

Yes	1	5	1	7
No	0	4	0	4
?	4	2	0	6
Total	5	11	1	17

Question 3f: Anti-Sexual Harassment Policy

	Superior	Muni	Justice	Total
Yes	6	20	1	27
No	8	2	5	15
Total	14	22	6	42

Form of Address?

Yes	0	3	0	3
No	6	12	1	19
?	0	5	0	5
Total	6	20	1	27

Sexual Harassment Training

	Superior	Muni	Justice	Total
Yes	2	4	0	6
Proposed	0	1	0	1
No	11	16	5	32
Total	13	21	5	39

Summary of Responses to 1989 Questionaire on Court Employment Practices

Gender Bias Survey

Total in Survey:

Superior:	27
Muni:	34
Justice:	10
Total:	71

Question 3h: Dress Code

	Superior	Muni	Justice	Total
Yes	4	16	2	22
No	14	13	4	31
Total	18	29	6	53

Specific or General?

Gender Spec.	0	5	1	6
Specific	0	3	0	3
General	4	8	1	13
Total	4	16	2	22

Question 3i: Complaints Against Temporary Employees

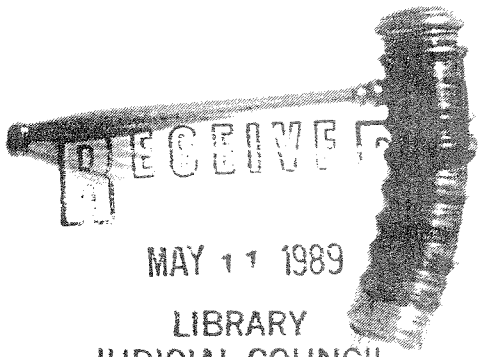
	Superior	Muni	Justice	Total
Yes	12	24	2	38
No	7	8	2	17
Total	19	32	4	55

Procedures for Enforcement

	Superior	Muni	Justice	Total
Yes	10	9	1	20
No	2	1	0	3
Total	12	10	1	23

ATTACHMENT E

Court News Roundup



The Federal Pay Raise Rises Again

The effort to increase federal judicial pay never died. Like a phoenix, it has risen again. This time the Bush administration is expected to support an immediate 25 percent pay increase for federal judges, separate from congressional raises. (The official announcement of this was scheduled for mid-April, after this column was written, so some details may change.) Another proposal by the influential National Commission on Public Service, headed by former Federal Reserve Chairman Paul A. Volcker, would completely restore federal judicial purchasing power to the base year 1969. The Volcker Commission proposal endorsed the Quadrennial Commission's call to restore purchasing power to 1969 levels in two stages: 25 percent now, and the balance by the beginning of a new Congress in 1991.

This broad new support for a federal judicial pay increase comes shortly after Congress, under pressure, rejected a federal pay increase for judges, legislators, and other high-level government officials on February 7. In spite of that rejection, the American Bar Association and other groups have continued to push for a federal judicial pay raise. The decision to propose another pay increase is apparently in response to this public outcry.

Robert D. Raven, president of the American Bar Association, stated in a February 14, 1989, letter to all federal judges:

> The rejection of the Quadrennial Commission's recommendation was a serious setback but is by no means the final word on the issue. The bar has a special responsibility to ensure the effective functioning of the justice system, and we will continue to devote our full resources to gaining approval of significant judicial pay raises as soon as humanly possible. We must achieve both short-term and long-term solutions; in the short term we must gain a pay increase for the judiciary, and in the long term we must establish a compensation system in which the judiciary will not be held hostage to extraneous political considerations.

ABA 1989 Midyear Meeting Report

The ABA House of Delegates voted in February on a number of resolutions affecting the judiciary, including one that urges states to adopt minimum standards for judicial leave. The judicial leave standards, proposed by the National Conference of Special Court Judges, recommend criteria for evaluating various types of judicial leave, including vacation leave, holiday leave, administrative leave, professional leave, sick and disability leave, parental leave, and sabbatical leave, and other leave policies. The criteria are intended only to establish *minimum* requirements.

One purpose of the standards is to "assure that a judge receives necessary respite from the bench, provide time for judicial education, and afford an opportunity for a judge to make a contribution to the improvement of the administration of justice." The standards also are aimed at helping judges avoid fatigue and combat burnout. Another goal is to allay the fears of the public that judges are not accountable for time away from the bench. The following are the proposed minimum criteria for various types of leave. They are published here in an edited, abbreviated form.

Vacation Leave. Judges should be granted no fewer than 21 days vacation a year and no more than 30. This is in addition to leave for other purposes, including sick leave, writing time, educational leave, and professional leave.

Holiday Leave. Judges should be entitled to no fewer than 10 holidays a year. Unless there are compelling reasons otherwise, judges should be entitled to the same holidays granted to other state employees within the jurisdiction.

Educational Leave. (1) A newly-appointed judge should receive initial orientation and training immediately upon assuming judicial office. (2) Within the next two years, more extensive and intensive overall orientation and training should be undertaken at recognized state and national judicial education programs. Appropriate leave should be granted to attend these educational programs, which run from 2-4 weeks. (3) There should be a structured program of continuing legal education for all

judges. They should be allowed a minimum of two weeks every three years for continuing judicial education. (4) Out-of-state education should be encouraged, because judges can learn a greal deal from other states' programs and innovations. (5) Funds for training should be underwritten by the jurisdiction or the state.

Professional Leave. Judges should be encouraged to participate in professional meetings and conferences of organizations that contribute to the improvement of law or advance the interests of the justice system.

Sick and Disability Leave. Sick leave and temporary disability include leave for illness, injury, dentist and doctor appointments, minor surgery, and medical disability caused or contributed to by pregnancy, miscarriage, abortion, or childbirth. The entitlement to sick leave should not reduce a judge's vacation leave. Judges should be entitled to sick leave as needed, subject to review of any prolonged illness at regular intervals to establish a definite date of return to service or termination of judicial tenure.

Where a jurisdiction grants a specified number of sick days, that number should be no fewer than 12 days a year. Credit in time or money should be given for any unused days.

Parental Leave. Parental leave is concerned with the health and well-being of the family unit. Maternity leave is divided into two parts: (1) that required medically for the mother, and (2) that which permits a mother time to bond with a newborn or adopted child. Paternity leave should be permitted to allow a father to bond with a newborn or adopted child.

Family medical leave would allow a judge time to take care of any critically ill family member of any age.

Sabbatical Leave. A full-time judge who has completed seven years of continuous service should be eligible for sabbatical leave for one year with half pay or for six months with full pay.

Judges should receive salaries during sabbatical years or compensation from other sources. During sabbatical leave there should be uninterrrupted continuation in office and no diminution of benefits.

Personal Leave. Three days are recommended for personal leave for various reasons such as to attend funerals or to observe a day of special significance, such as a religious holiday.

Military and Jury Leave. A judge should be allowed leave for jury duty and should be allowed 12 working days per year to serve in the military, while maintaining regular full pay and benefits.

In other action, the American Bar Association's House of Delegates supported state and federal legislation prohibiting discrimination based on sexual orientation in employment, housing, and public accommodations.

A resolution on AIDS, sponsored by the Criminal Justice Section, addressed a number of troubling issues that affect the courts: limiting sanctions and increasing education as a response to the epidemic; policies for courts, attorneys, and others to follow in administering the system; policies for correctional facilities and personnel. Copies of this resolution in booklet form can be obtained from the ABA Order Fulfillment Dept., 750 N. Lake Shore Dr., Chicago, IL 60611. The price is $7.50 per copy, plus a $2.95 handling charge per order.

Other resolutions that the ABA supported pertaining to criminal justice matters include: urging legislation to bar executions of mentally retarded defendants; adopting guidelines for appointment and performance of counsel in death penalty cases; and amending the section of the Federal Rules of Evidence that deals with extrinsic evidence. The extrinsic evidence amendments call for the court, instead of the jury, to decide whether extrinsic acts should be offered as evidence. They also require the proponent who desires to introduce this evidence to meet a "clear and convincing" standard in proving the extrinsic acts were committed.

The ABA also voted to support legislation to provide federal administrative law judges compensation parity with other senior federal executive personnel.

Appellate Judges Program Accepting Applications for 1990

The University of Virginia Law School's Graduate Program for Judges is now accepting applications for the next class, which will convene in the summer of 1990. The application deadline is January 19, 1990.

This advanced program of judicial education is designed for state and federal appellate judges. Enrollment in each class is limited to 30. The class is offered only every other year.

Participants are required to attend resident sessions of six weeks each at the Law School in Charlottesville in the summers of 1990 and 1991. In addition, each judge must write an acceptable thesis. Judges who satisfactorily complete the two resident sessions and the thesis will be awarded the degree of Master of Laws in the Judicial Process by the University of Virginia.

Funding for the Graduate Program for Judges, provided by a variety of grants and gifts, is sufficient to cover all expenses of any participating judge to the extent that he or she cannot obtain financial assistance from another source. Judges interested in learning more about this program may obtain an application form and a brochure giving full details about admission requirements and curriculum by writing or calling the Program Director: Professor Daniel J. Meador, Graduate Program for Judges, University of Virginia Law School, Charlottesville, Virginia 22901, 804/924-3947.

ATTACHMENT F

CHAPTER FIVE

DISCRIMINATION AND SEXUAL HARASSMENT POLICIES AND PROCEDURES

5.1 Policy Statement

It is the policy of the Alameda County Superior Court that invidious discrimination and sexual harassment are unacceptable behaviors and will not be condoned or tolerated. Further, it is the policy of the Court to provide training and information to all employees in an effort to eliminate such incidents and to respond to all complaints of invidious discrimination and/or sexual harassment expeditiously and in accordance with the procedures set forth in these Rules.

Sexual harassment and invidious discrimination are unlawful employment practices prohibited by both State and Federal law. They debilitate morale and interfere in the work productivity of the victims and their co-workers. It is the policy of the Superior Court to provide a work environment free from invidious discriminatory acts and unsolicited, unwelcome sexual overtures.

Any Superior Court employee who violates this policy may be subject to firm disciplinary action up to and including removal from employment.

5.2 Notice of Policy

The Superior Court's policy statement regarding sexual harassment and discrimination and its directives for handling allegations of harassment or discrimination shall be distributed to all employees and shall be posted in each facility and office in which the Superior Court is located.

5.3 Definitions

5.3.1 Sexual Harassment

Sexual harassment is defined as unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

Within the Superior Court, a supervisory employee who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary or job of an employee is engaging in sexual harassment. Similarly, an employee of the State, County or Court who behaves in this manner in the process of conducting County business is engaging in sexual harassment. Any employee who participates in unsolicited verbal comments,

gestures, or physical contact of a sexual nature which are unwelcome is also engaging in sexual harassment.

5.3.2 Discrimination

Invidious discriminatory behavior includes, verbal or written comments or actions which disparage or deride an individual's race, color, sex, religion, national origin, ancestry, age, disability, physical condition or marital status. Any implicit or explicit action or behavior based on race, color, sex, religion, national origin, ancestry, age, disability, physical or medical condition or marital status, which adversely affects an employee's work assignment, work environment, salary, career or promotional opportunity is an act of invidious discrimination.

5.4 Reporting Procedures

5.4.1 It is the policy of the Executive Officer to maintain an open door policy and to invite any inquiries or complaints of harassment or invidious discrimination at any time from any employee.

5.4.2 An employee who believes that he/she has been discriminated against or harassed shall give verbal or written notice to his/her supervisor. If the complainant is in any way uncomfortable or reluctant to notify the direct

supervisor, the complainant may report the incident/problem to the next highest supervisor, the Assistant Executive Officer or the Executive Officer, the Chair of the Superior Court Personnel Committee or the Presiding Judge.

5.4.3 The Supervisor to whom the allegation is reported shall report the alleged incident to the Executive Officer or Assistant Executive Officer, one of whom after consultation with the complainant, shall appoint an employee to conduct an investigation to (1) ascertain the facts of the allegation; (2) determine whether there are witnesses to the alleged incident or behavior; (3) notify the alleged perpetrator of the complaint and solicit a response to the allegation; and (4) submit a report to the Executive Officer, including recommendations for appropriate action.

5.4.4 The investigation shall be completed within ten (10) court days of the date the Executive Officer is notified of the complaint.

5.4.5 If the Executive Officer determines that wrongful conduct was committed, he/she shall take appropriate disciplinary action including, but not limited to counseling, reprimand, demotion, suspension or termination of employment.

5.4.6 If the allegation of harassment or invidious discrimination is made against a Judge, Referee, Commissioner or the Executive Officer of the Superior Court, the Executive Officer (or Assistant Executive Officer if a complaint is filed against the Executive Officer) shall report the allegation to the Presiding Judge or the Chair of the Personnel Committee who, after consultation with the complainant, shall appoint a member of the Personnel Committee, to conduct an investigation to (1) ascertain the facts of the allegation; (2) determine whether there are witnesses to the alleged incident or behavior; (3) notify the alleged perpetrator of the complaint and solicit a response to the allegation; and (4) submit a report to the Personnel Committee, including recommendations for appropriate action. The investigation shall be completed within ten (10) court days of the date the Presiding Judge or the Chair of the Personnel Committee is notified of the complaint. The Personnel Committee shall submit a final report to the Presiding Judge. If the Presiding Judge is the subject of the complaint, the report of the Personnel Committee shall be submitted to the Superior Court Executive Committee.

IMPLEMENTATION OF THE ADVISORY COMMITTEE'S RECOMMENDATIONS

I. Introduction

Throughout three years of information gathering and analysis, the advisory committee members have expressed great concern that this report and the specific recommendations for change contained in its pages should become fully implemented. A report gathering dust in the bookcases of judges and lawyers in California has little benefit to the citizens of California whose interests it is designed to protect.

An early decision was made to offer recommendations framed as principles or proposals. This decision was based on the conclusion that other experts in specific areas of the law were needed to hammer out the details of the recommendations and ensure that, when they were specifically drafted and adopted, they did not inadvertently and unwittingly cause unforeseen problems in the areas of the law they touched upon or for those participants in the justice system they directly affected. Public comment could again be garnered with a focus upon specific drafts and details.

For example, many of the recommendations require the leadership of other agencies and groups such as the California Judges Association or the State Bar of California. Proposals for rule changes in family or juvenile law should be analyzed and drafted by the applicable advisory committees and comment from others in the justice system should be solicited. Suggestions for activities by the Family Court Services Program must be overseen by that advisory committee and staff.

At the same time, the gender bias advisory committee members were well aware that without continuing monitoring and oversight responsibilities, their recommendations might not receive the priority that they deserve.

Much of the information contained in the report is valuable not only for purposes of carrying out the recommendations the information supports, but for providing curriculum material for educational programs for judges, lawyers, and court personnel. Since problems were discovered that did not relate to the need for changes in the law but rather to the need for awareness and education among those who enforce and interpret the law, education is a vital component of institutionalizing the changes that are needed.

The advisory committee thus determined that two additional recommendations were imperative. The first concerns the creation of an implementation and monitoring committee, and the second recommendation concerns judicial education. An analysis and discussion of the need for these two features of implementation follow.

II. The need for an implementation committee

Findings

The advisory committee found that:

1. The proposed recommendations would require experimentation, careful drafting, input and participation by diverse groups of participants in various areas of the law, evaluation, and monitoring.

2. These tasks should be performed by an implementation committee which would act as a liaison to other groups charged with the responsibility of carrying out specific recommendations, draft and solicit comment on those proposals

that are not referred to other agencies or committees, and provide technical assistance and evaluation to all groups engaged in the enterprise of ensuring implementation of the committee's recommendations as approved by the Judicial Council.

3. Without an implementation committee, the likelihood that the recommendations would come to fruition was lessened.

RECOMMENDATION 1

Request the Judicial Council to recommend that the Chief Justice appoint an advisory committee for implementation, comprised of some members of the Judicial Council Advisory Committee on Gender Bias in the Courts and others, to assist the Judicial Council with the implementation of the recommendations in this report and with evaluating their effectiveness.

Discussion

The Chief Justice of New Jersey, Chief Justice Robert N. Wilentz, was the first among many Chief Justices to appoint a task force to investigate problems of gender bias in the courts. In June of 1984, the task force published its full first-year report, and in 1986 it published its second report. New Jersey was again first in its decision to evaluate the work of the task force to determine whether the recommended changes had become implemented and fully realized in the New Jersey court system. The result was an in-depth evaluation document entitled: Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations, and Implications for Other States, by Dr. Norma Juliet Wikler and Ms. Lynn Hecht Schafran. This document emphasizes the need to plan early for the difficulties of implementation by developing systems and procedures for monitoring the suggestions for change made by the initial fact-finding body.[1/]

The California Judicial Council's advisory committee has taken this warning to heart, as have other states. Three states that have recently completed their reports are Maryland, Washington, and Minnesota. The Washington task force adopted as its flagship recommendation the creation, funding, and staffing of an implementation committee "composed of judicial, legal, and lay persons to monitor, encourage, and evaluate efforts to implement the recommendations of the Gender and Justice Task Force."[2/] In the conclusion of its report, the Maryland task force urged: "A permanent joint committee of the bench and bar should be appointed to encourage, monitor, evaluate, and report on efforts undertaken to carry out the recommendations of this report relating to litigants, witnesss, jurors, and lawyers."[3/] And in Minnesota, the Minnesota task force in the section of its report entitled "Looking Forward" concluded:

> This report represents the culmination of two years of effort on the part of the members of the Minnesota Gender Fairness Task Force. But in a very real sense, it is just the beginning of the Task Force's work. Ultimately, the value of the Task Force's contribution to the elimination of gender bias from Minnesota's courts, and to fair treatment for all of Minnesota's citizens in those courts, will be measured by future responses to the Task Force report, and especially to the Task Force's recommendations for change.
>
> Recognizing this, the Minnesota Supreme Court has established a standing committee which will continue to exist after the Task Force has disbanded, and which has been directed to monitor implementation of the Task Force's recommendations.[4/]

The California advisory committee represents a unique model among the other task forces appointed by Chief Justices to study problems of gender bias in the courts and propose solutions to those problems. The other task forces were, to a great extent, independent bodies with little ability to effectuate change other than with the powers of their persuasion. In California, however, Government Code section 68501 permits the Chief Justice to appoint advisory committees that report directly to the Judicial Council. All of the recommendations submitted that come squarely within the council's power and that are approved by the council can and should be implemented. The committee's inquiry, however, revealed that problems of gender bias are systemic. They require for their solution the collective energies of different branches of government and different justice system agencies. It is also for this reason that an implementation committee in California is imperative if we are to realize the changes suggested in these pages.

An examination of one important recommendation illustrates this need. The Courtroom Demeanor and Civil Litigation Subcommittee has proposed a pilot project that would create local gender bias committees in three counties to handle minor complaints of gender-biased behavior that do not require the intervention of a disciplinary body.[5/] One county already has such a committee and two other counties have expressed interest. An implementation committee will be needed to provide the counties with technical assistance and suggestions, to monitor and report on whether the pilot program is effective, and to suggest modification to the counties and to the Judicial Council if necessary.

The creation of an implementation committee is thus essential for the following three significant reasons:

1. The proposals recommended by the advisory committee are not submitted in detail and those that suggest the adoption of rules, forms, and standards are not accompanied by drafts. Other experts and advisory committees must participate in this process and public comment should be requested. A monitoring and liaison committee should be created to oversee these tasks.

2. Many proposals are directed to other groups and agencies in the justice system. Technical assistance and follow-up must be provided to ensure that these other agencies seriously consider the recommendations proposed.

3. Correction of the problems identified is a long-term process. It does not happen overnight, and refinement and evaluation of the proposed solutions are necessary.

III. Judicial education

Findings

The advisory committee members became aware in the course of their research and deliberations that the need for judicial education containing state-specific information and new approaches and techniques not only was a triggering mechanism for the creation of similar committees throughout the country but also was widely perceived by those who submitted testimony as the most effective and important remedy for problems of gender bias in the courts.

The committee found:

1. Attorneys and experts who testified at the various hearings conducted by the advisory committee universally support increased judicial education on issues of gender bias.

2. Judges themselves cited judicial education as the most effective remedy for curing problems of gender bias in the courts.

3. To be effective, judicial education on gender bias issues must be introduced and integrated into the curriculum as follows:

a. Curriculum must be developed that is integrated into the substantive areas of the law that are already taught so that an educational program is not focused on gender bias alone.

b. Innovative and creative teaching techniques should be developed to counter the resistance of judges encountered by those engaged in teaching these issues.

c. Information from the social sciences must be included where appropriate so that judges profit from the important research that has been done in the areas of concern and become more knowledgeable about the different life experiences of men and women in our society.

d. In certain specific areas, most notably in family law, the model of voluntary education must yield ultimately to required courses for all judges who hear matters in these crucial areas.

RECOMMENDATION 2

1. Request the Judicial Council to adopt a Standard of Judicial Administration which would encourage

(a) every new and newly elevated judge or commissioner to attend the California Judicial College;

(b) the inclusion of gender bias issues in the curriculum of both the college and the orientation program for new judges and inclusion in the substantive law courses in these two programs of components on gender bias issues relevant to the subject matter.

2. Request the Judicial Council to urge CJER's Governing Committee to create a special committee to address the significant problem of judicial education in family law. The committee's task would be to develop a program and curriculum in family law designed to ensure that every bench officer hearing family law matters, including those who hear matters only occasionally, would be educated in general on family law issues and more specifically on issues of gender bias arising in family law. CJER's Governing Committee should report back to the Judicial Council within one year with a proposed plan. Upon completion of an appropriate plan which takes into consideration the need for adequate staffing of the courts during a judge's absence for educational purposes, a rule would be proposed which would require each judge who hears family law matters to complete the program.

3. Request the Director of the Administrative Office of the Courts to select a working group or committee composed of representatives from educational programs for judges, attorneys, court staff, mediators, law students, and others involved in the justice system. The task of the committee would be to coordinate efforts to develop quality educational programs on gender bias and other biases, to exchange information, and to provide technical assistance and resources to those engaged in this effort.

4. Request CJER to develop a program which would teach CJER's instructors the subtleties and complexities of handling gender bias courses and train them in effective and innovative teaching methods.

Discussion

A. The national perspective

Judicial education on gender bias issues began in August 1980 with a two-hour program presented at the National Judicial College by a newly created project, the National Judicial Education Program to Promote Equality for Women and Men in the Courts (hereafter referred to as NJEP), and its founding director, Dr. Norma J. Wikler, the specially appointed advisor to California's advisory committee. The program discussed differential sentencing, the economic consequences of divorce, and the effects of gender on the courtroom experience. It received mixed reviews and established early in the pedagogical history of this subject that a) a climate of hostility to the topic and the teachers is typical and b) teaching issues of bias to those who are obliged to be fair and who find even the inclusion of the issue of bias an implicit accusation requires new techniques and special expertise.

The work of the national program continued. Materials were developed and teaching techniques devised. In 1981, in California, a course entitled "Judicial Discretion: Does Sex Make A Difference?" was presented to California judges. The course examined the ways in which sex-based stereotypes affected judicial decision making in different substantive areas of the law and in courtroom interaction. Examples and hypotheticals were used pertaining to rape, the courtroom environment, and family law. This landmark educational program, which was favorably evaluated, led to the creation of task forces on gender bias throughout the country and the development of state-specific information to be integrated into judicial education programs nationwide. Its goal was to transform the desire to be fair, felt and experienced by most judges, into a reality.[6/]

B. Judicial education on gender bias in California

The 1981 course developed by NJEP referred to in the preceding national history was conducted at CJER'S first Continuing Judicial Studies Program. CJER has continued this leadership in education with the development of its fairness programs and with judicial conduct courses taught at the California Judges' College. Moreover, as Judge Marie Bertillion Collins informed the advisory committee, even before the course was presented in 1981, judges were beginning to focus on issues of gender bias in judicial education and were striving to use gender-neutral language and hypotheticals in their presentations.[7/] A comprehensive summary of CJER's extensive involvement and expertise in the development and presentation of judicial education programs on gender bias and other biases is attached to this section of the report at Attachment A. This summary consists of written testimony submitted to the advisory committee in conjunction with the personal appearance of Judge Robert Weil, then chair of the Governing Committee, Judge Marie Collins, past chair of the committee, and CJER's Executive Director, Mr. Paul Li, at the San Francisco Public Hearing in March 1989.

The work of the original internal committee of the Judicial Council that led to the creation of the advisory committee included as well a recommendation on judicial education. The Judicial Council in December of 1986 urged CJER to include issues of gender bias as a regular part of its curriculum. A report on progress in this regard was submitted to the Judicial Council in October of 1987, and the report is attached to this section of the report at Attachment B.

Since the creation of the advisory committee, the Administrative Office of the Courts has developed programs on gender bias issues for court managers and presiding judges and has consistently included panels and workshops on the subject at its annual court management conference.

The advisory committee acknowledges and applauds this work and CJER's national and statewide leadership in this arena of judicial education.

C. The new challenge in judicial education

1. Judicial education as the preferred tool for correcting problems of gender bias

The advisory committee's report is under consideration at a time when increased focus and attention are directed toward continuing education in the legal profession. More than 35 other professions already have statutorily mandated continuing education requirements. Lawyers will soon be required to complete a minimum number of hours of educational programs. The Judicial Council, effective January 1, 1989, adopted a new Standard of Judicial Administration which declares: "judicial education for all trial and appellate court judges is essential to enhancing the fair and efficient administration of justice. Judges should consider participation in judicial education activities to be an official judicial duty." The new standard provides guidelines on the amount of time to be spent on judicial education, prescribes the objectives of judicial education, and encourages presiding judges to establish education plans for judges of their courts in order to facilitate the judges' participation as both students and faculty.[8/]

In a recent informal survey conducted by CJER, 8 out of 52 respondents volunteered comments that the time has come to consider mandatory judicial education. These comments were volunteered not in response to a direct question but in reponse to general questions asking for an evaluation of CJER's product, methods of distribution, and marketing. Examples of these comments included:

o The college should be mandatory, as should some continuing education. Too often we are preaching to the choir. Maybe C.R.C. 205, 206 should be amended to give PJ's more authority. I personally have tried in vain to get some of our most needy judges to go.

o If the lawyers have mandatory education, why shouldn't we?

o If California judges are to remain well respected, they must be current. I do not believe this can be assured unless it is required. It is one way to assure litigants that serving judges are continuing every effort to serve ably and fully.[9/]

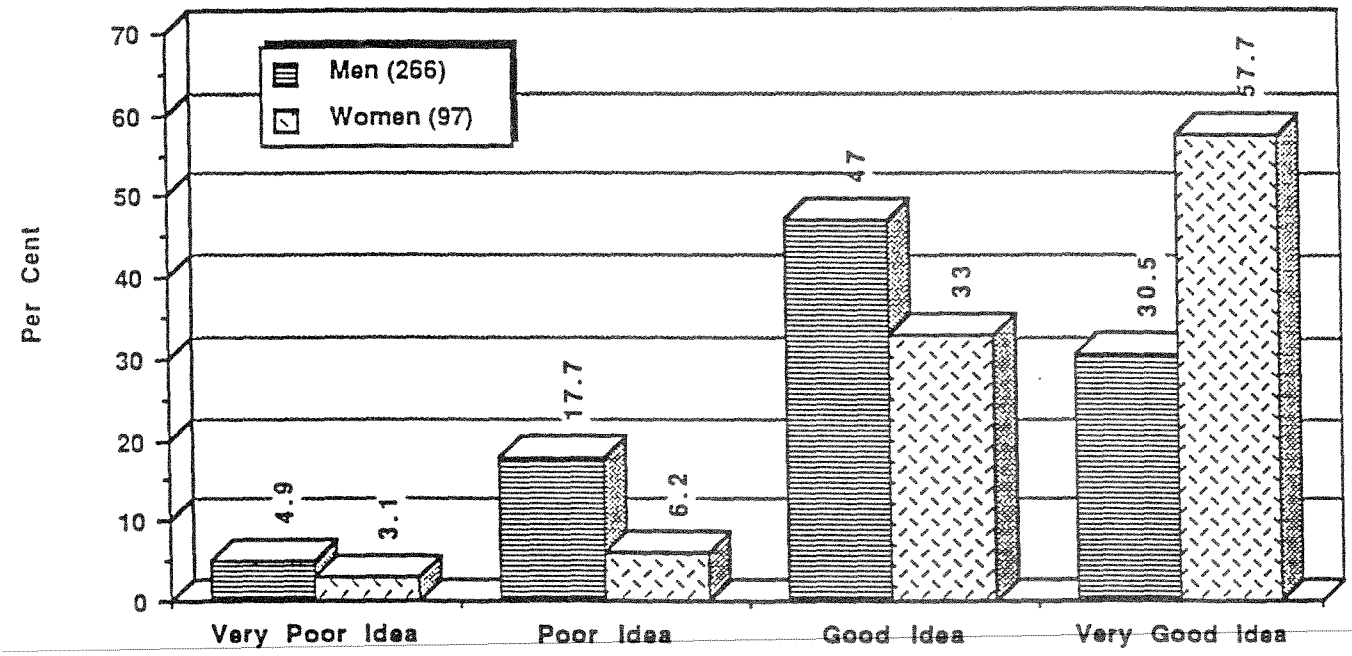
At every regional meeting and every public hearing, the advisory committee heard testimony suggesting increased education on gender bias issues for judges. Many conceded that the laws, with some exceptions, appeared to be gender-neutral but that the application of the laws and the exercise of judicial discretion were not. This was especially true in family law. Clerks discussed the need for judges to be educated about their obligations as managers to comply with affirmative action plans and about issues of sexual harassment. Domestic violence lay advocates asserted that judges need education on the life experiences of battered women and the reasons they may recant or be unable to properly complete an application for a temporary restraining order or the consequences of issuing a mutual restraining order when only one party has requested an order and the evidence does not reflect mutual violence.

Most importantly, judges themselves selected judicial education as the most important and effective remedy for problems of gender bias in the courts. Judges were asked on

the survey: "Assuming that judicial conduct on occasion reflects or results in gender bias, what additional remedies (if any) do you think would be most effective?" They were asked to rate a series of six proposed remedies, one of which was "There should be <u>increased</u> judicial education on the subject (emphasis added)." This choice was selected as either a very good idea or a good idea by the largest percentage of judges responding to the question. A graphic depiction of these responses appears below and shows that 90.7 percent of the female judges and 77.5 of the male judges selected this choice.

ASRQ56d

Assuming that judicial conduct reflects or results in gender bias, what additional remedies (if any) do you think would be most effective? (d) There should be increased judicial education on the subject.



2. The need for improvement in curriculum and teaching methods

Even a cursory review of CJER's report to the advisory committee on the educational programs on gender bias reveals extensive coverage and significant accomplishments. One might well ask, what more can be done? Many of the advisory committee members have served as presenters and planning committee members for these judicial education programs during and prior to the three years of their tenure on the advisory committee. In the course of this important work, the committee members have recognized some limitations in the current programs and have developed several suggestions for a shift in focus and content for judicial education programs on gender bias, and efforts in this regard have already begun. These suggestions are:

o While fairness courses that combine discussions of biases of all types are essential components of the judicial education program, they are not enough. Gender bias issues should be incorporated into the substantive law programs at every level.

o There is an urgent need for development of curriculum and materials that should include incorporation of the information in this report into CJER's existing courses.

o After a careful planning process is completed, judicial education in family law should be mandatory for all judges who regularly or occasionally hear family law matters. The educational plan should take into consideration the need to keep the courts fully staffed in order to continue the work of eliminating delay and backlog.

o New teaching techniques should be developed that address the difficulty of the subject matter and the potential for hostility.

o Gender bias components in judicial education programs should be institutionalized and made a permanent part of CJER's curriculum so that new issues are addressed and new judges are educated about these crucial issues.

a. Beyond the fairness course

As this report demonstrates, gender bias is a subtle and complex phenomenon that has its genesis in the historical and social bias in the society in general. When lumped together with other biases, the specific message and the need to identify its parameters become lost. Stereotypes derived from sex roles are different from those based on racial or ethnic biases. At some point in the overall education program, they must be discussed with particularity. As Ms. Lynn Hecht Schafran told the Conference of Chief Justices on August 5, 1986:

> Effective judicial education about gender bias means providing judges with an opportunity to understand in concrete and specific ways how the three aspects of gender bias -- stereotyped thinking, society's perceptions of the relative worth of women and men, and myths and misconceptions about the economic and social realities of women's and men's lives -- affect decision making and the courtroom environment."10/

The most effective way to discuss the specific and concrete ways that gender bias operates in our courts is to select meaningful hypotheticals and factual situations from real cases on topics of current and practical interest to judges that may actually occur in their courtroom and integrate dicussions of these hypotheticals into existing course work.

b. Enriched curriculum and materials

During the last three years, planning committees for CJER programs have often asked for assistance from advisory committee members and the Administrative Office of the Courts in incorporating gender bias issues into various institutes and other programs. Since the committee's research was incomplete and its recommendations not yet considered by the Judicial Council, it has been difficult to meet this need for information and materials. Thus, conscientious planning committees have been somewhat at a loss since they have been forced to start from scratch with limited time and resources to plan programs or program components that illustrate problems of gender bias in specific areas.

The advisory committee has learned that an appropriate curriculum and good materials germane to the issues presented are essential ingredients to ensure a successful program on gender bias. The development of these ingredients is time-consuming and difficult.

The advisory committee members also agree that in certain subjects there is a need to expand the scope of the information presented. The adversary system operates under the assumption that two conflicting views or versions of the facts are presented by skilled advocates and the judge on the bench either directs the combat and the jury decides or the judge becomes the finder of fact. Somehow, we believe, the truth will out. The judge must view the evidence as a tabula rasa and bring to it no preconceptions or other information. It is the latter statement with which the advisory committee members take issue in certain areas of the law.

Every person, judge or juror, brings to the task of decision making a lifetime of information about the physical world and the social realities in which court proceedings occur. It would be absurd to suggest that a lifetime of knowledge does

not inform the judge as to issues of credibility or affect the exercise of judicial discretion. Certainly, knowledge acquired that is not part of the evidence should not be determinative of the outcome. That does not mean that it plays no role in decision making. It is the contention of the advisory committee that part of this lifetime of information includes stereotypes about women and men and misconceptions about their relative worth and that a judge's life experiences often do not include areas of concern or knowledge that are particularly connected to or important to one sex or the other. Thus, a judge may know much about construction having been employed as a construction worker while in college, and in contrast, have no idea what it costs to raise children or how likely it is that a woman of 53 with no education or job skills will quickly find employment. The advisory committee suggests that indeed the only method of countering this lifetime store of information that may be skewed or incomplete is to provide the judge with additional information from other sources so that decision making will be truly balanced and neutral. This need is particularly urgent in areas such as family and juvenile law where judicial discretion is vast and where the judge brings to the work of judging closely held personal views that may affect decision making, such as the proper role of women in our society or the qualities and characteristics most necessary to the proper rearing of children.

c. Mandatory education in family law

The need for judicial education in family law is amply documented and fully discussed at Tab 5, of this report, and will not be repeated here. It is important to note, however, that the committee unanimously believes that eventual mandatory courses for all judges who regularly or occasionally hear family law matters is essential to gender fairness in the

courts. At every public hearing, citizens came before the advisory committee relating anguished tales of custody decisions that they considered gross miscarriages of justice. Many of the witnesses believed that the judges who decided their cases were untrained and uninterested in being trained to decide the issues of such crucial importance in their lives. Judges and law professors corroborated this view. The advisory committee was deeply concerned about the appearance of impropriety created when such crucial decisions are made every day in our courtrooms without an accompanying commitment to educating the decision makers. As stated in the final report of the Senate Task Force on Family Equity:

> The high volume, complexity, and impact on people's lives of family law cases require an educated, fair, and efficient family law judiciary. Continuing judicial education on family law, while not a panacea, is necessary to eliminate gender bias and sensitize judges to the economic consequences of their decisions.11/

d. New teaching techniques

Advisory committee members who have participated in judicial education programs on gender bias report that programs are sometimes met with hostility or contempt. Judges sometimes either fail to take the subject matter seriously or sincerely believe that education on the subject is not necessary. Judicial educators are struggling with the dilemma of how to find new ways to teach issues of gender bias that will be useful to judges and will minimize antagonism. Judge Susan P. Finlay, Dean of the California Judges' College, stated in her testimony at the San Diego Public Hearing:

> It's particularly challenging to educate judges in this area, because judges think of themselves as fair. To be impartial, and objective, and bias-free is the goal of our profession. To suggest, or even hint that judges' decisions may be affected by bias is to threaten the very core of our professional being and self-image.[12]

Judge Marie Bertillion Collins, past chair of CJER's Governing Committee and a past dean of the college, echoed these views and told committee members:

> Our judicial training programs are programs in transition. They are programs that are growing, that are developing, that are changing as we learn by our experiences in trying to deal with the issues. And I also want to point out that these issues go beyond the issues of say, judicial fairness, how litigants and people are treated in the court. . . .
>
> [I]t means you need new teaching techniques, but it also means you need special teaching techniques when you're giving a message that people often don't want to hear, or are reluctant to hear, or feel it's a little insulting to hear.[13]

In her analysis of the ways in which one might go about educating judges about gender bias, Dr. Norma Wikler identified four overarching pedagogical principles that might be employed. They are:

o Provide concrete information that includes technical and specific information that is directly related to judicial activity.

o Make suggestions for change and identify affirmative steps judges can take to eliminate bias from their conduct and decision making.

o At every opportunity confer upon the material and those who teach it the legitimacy the subject deserves by giving it priority in the programs and by selecting credible and respected teachers.

o Inspire judges with the material and presentation to take a personal stake in ensuring that our courtrooms are free from gender bias.[14/]

Another necessary component of developing new techniques for teaching issues of gender bias is the need for training the faculty. As many faculty members, both those who are members of the advisory committee and those who are not, can attest, teaching these issues is not easy, and special training and support are crucial to the success of the programs. Judges who teach gender bias programs sometimes meet with hostile responses and caustic evaluations. Judge Collins spoke about the particular difficulties teaching gender bias poses for women judges. She said: "Now, when a woman teaches, as I have, and as some of you have, your words are often seen as special pleadings. For those of you who see women judges as something other than real judges, the words don't have the authority."[15/]

e. Gender bias as a permanent part of the curriculum

A second point made by Ms. Schafran in her speech to the gathered Chief Justices concerned the need for institutionalization of programs on gender bias. She stated:

> In developing a judicial education program about gender bias, it is important to appreciate that this is a problem that has evolved over millennia and cannot be eliminated by a single course. To achieve lasting reform, gender bias issues must become a

permanent part of the orientation for new judges and the continuing curriculum for those already on the bench.[16/]

D. Judicial education on gender bias: the course content

Each of the preceding chapters devoted to an area of the substantive law discusses, where appropriate, the areas of judicial education and the specific issues that deserve more attention and focus in programs on gender bias. The judges' survey likewise solicited judges' views about where increased attention on gender bias issues is needed. The content areas that have been developed both by the advisory committee and by judges in response to the survey are summarized in the charts that follow with the recommendation that these issues be incorporated in future judicial education programs.

JUDICIAL EDUCATION -- ISSUES OF CONCERN

Civil Litigation and Courtroom Demeanor

The committee recommends the development of courses that focus on the following issues:

1. Judicial conduct including:
   (1) Conduct that is openly offensive, hostile, or involves sexual innuendo
   (2) Terms of endearment, refusal to extend common courtesies, appropriate forms of address, personal appearance
   (3) Stereotypes
   (4) Unequal extension of professional courtesies and the application of a double standard to female advocates
   (5) Hostility toward certain causes of action uniquely involving women
   (6) Response to pregnant women
   (7) Judicial intervention
2. The consequences and effects of judicial conduct exhibiting gender bias
3. The ethical duties of judges to refrain from and prevent behavior exhibiting gender bias in the courtroom
4. The need for and use of gender-neutral language in all court communications
5. The need for fair appointment of counsel procedures designed to ensure diversity in the appointment process

Judges, in response to the judges' survey, also mentioned the following areas for education:

1. A focus on gender-netural treatment of jurors, witnesses, and attorneys
2. Consideration of whether higher pain and suffering awards are awarded to women
3. Treatment of female attorneys, defendants, and victims
4. The plight of women on AFDC with children in unlawful detainer cases
5. Consideration of whether females have less value put on their lives and less credibility
6. The handling of jurors in voir dire in sexual harassment lawsuits

Family Law

The committee recommends the development of courses that focus on the following issues:

1. Information concerning the economic impact of dissolution including (a) the impact on the parties, and especially on the caretaker spouse, and (b) the general costs of living, the costs of child rearing and of child care
2. The importance of early attorney's fees orders
3. The issues surrounding the concept of joint custody and the factors to be considerd in the making of custody determinations
4. Sensitization to the problems of pro per litigants in family law courts, awareness of programs available

to provide counsel to indigent and low-income persons in order to be able to recommend opportunities for legal assistance

5. Knowledge concerning resources available to the court and to litigants in family law matters

6. Avoidance of the use of stereotypes in all areas relating to family law and most particularly in the division of assets and in the awarding of custody and visitation

7. Appropriate handling and the determination of credibility in child sexual abuse cases

Judges, in response to the judges' survey, also mentioned the following areas for education:

1. Custody and visitation including:
   a. Effects of spousal abuse on children
   b. Predispositions toward custody and to female spouse
2. Support and economics including:
   a. Women's economics after divorce
   b. Reluctance to award appropriate support awards against females
   c. Penalties against housewives
   d. Lack of compensation for females who usually support the kids even in college
   e. Need for financial responsiblity
3. The need to sensitize male judges
4. The need to treat female attorneys fairly
5. Miscellaneous, including:
   a. Sexual abuse claims
   b. Lack of representation of women

Domestic Violence

The committee recommends the development of courses that focus on the following issues:

1. The psychological profiles of both victims and batterers
2. The nature and perpetuation of the cycle of violence and the battered women's syndrome
3. An understanding of the nature of the victim's experience and emotional state
4. An understanding of the intimidating effects the court system has on victims of domestic violence
5. An understanding of the role of professionals who work in the area of domestic violence including expert witnesses and lay advocates
6. The need to issue enforceable and effective restraining orders and attention to whether the order should take effect immediately, should limit the taking of property, and should not be too limited in time
7. The need to inform victims of the availability of emergency protective orders by telephone
8. The need for focus on problems of the poor and minorities, including adequate representation, interpreters, and the avoidance of stereotypes about violence in ethnic or minority communities
9. The need for monitoring diversion to ensure that an effective program is completed
10. Knowledge of safety measures to protect the victim including supervised visitation, neutral pick-up points, third-party visitation arrangements, or creative visitation plans

Judges, in response to the judges' survey, also mentioned the following areas for education:

1. Spousal abuse claims that are not referred for criminal review
2. Effects of spousal abuse on children
3. Domestic violence -- use of mutual restraining orders-- difficulty in obtaining order to remove violent spouse from home
4. Economic, social, and psychological factors on why women either remain or don't report violence to themselves or spouse

Juvenile and criminal law

The committee recommends the development of courses that focus on the following issues:

1. Attitudes of gender bias as they affect judicial decision making regarding:
    a. Programs and services administered by local probation departments
    b. Institutions and placements
    c. Education and training programs
    d. Medical and special needs of institutionalized females including hygiene, mother/child relations, medical care, family planning services, and prenatal care
    e. Reunification and notice requirements in juvenile dependency proceedings
2. Training on existing sentencing and dispositional alternatives

3. Credibility issues relating to females in the justice system, sexual stereotypes, paternalistic attitudes, and lifestyle practices, including ways in which these attitudes may be reflected in probation or social work reports submitted to the court
4. Discussion of the different expectations of the justice system of male and female parents
5. Information about different cultures and the need to combat cultural biases
6. The importance of developing a jury selection process that will minimize juror bias

Judges, in response to the judges' survey, also mentioned the following areas for education:

1. Sentencing practices and penalties
2. Better treatment of females in court
3. Rape and sex crimes
4. Probation reports
5. Leniency toward female defendants
6. Bias-free dispositional orders and adjudications
7. Facilities or programs that are not available to young females

Court Administration

The committee recommends the development of courses that focus on the following issues:

1. The structure and management of the court
2. The personnel plan of the court and the judges' role in carrying out the plan as well as the judges' responsibility to adhere to the plan with respect to their personal staff in regard to areas such as hiring, promotion, affirmative action and scheduling

3. The sexual harassment policy of the court and the judges' role in carrying out the policy as the supervisor of some personnel

4. For presiding judges, the elements of a sexual harrassment training program, so that the presiding judges may carry out their duty to evaluate the sexual harrassment training program of their court and those offered to the bailiffs and other court personnel not under the court administrator's jurisdiction

Judges, in response to the judge's survey also mentioned that they wished to be trained regarding personnel issues such as how to do interviewing without asking illegal questions.

E. Conclusion

The advisory committee asserts that judicial education on issues of gender bias is the most vital and effective tool for correcting the problems identified in this report. Effective programs, however, depend upon a new focus on integration into the substantive course curriculum, providing new information especially in family and juvenile law, moving toward mandatory requirements, the development of new teaching techniques, training and support for faculty, and exploration of new issues of concern. The advisory committee's recommendation is designed to respond to these needs by encouraging new judges to attend orientation programs and the judges' college and ensuring that these programs have gender bias components, by developing a mandatory program in family law, by creating a curriculum development committee, and by developing a program to instruct the faculty. With the forthcoming report of the new racial and ethnic bias committee, these changes in judicial education will be in place and will be highly useful and applicable to educational efforts in the new issues of concern.

ENDNOTES

1/ Wikler, Norma Juliet and Lynn Hecht Schafran, Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations, and Implications for Other States, p. vii, 84.

2/ Final Report of the Washington State Task Force on Gender and Justice in the Courts (1989), p. 9.

3/ Report of the Special Joint Committee on Gender Bias in the Courts, Maryland Special Joint Commmittee, (May 1989), p. 133.

4/ Minnesota Supreme Court Task Force for Gender Fairness in the Courts, Final Report, September 1989, p. 110.)

5/ For a full discussion of this recommendation see Tab 4.

6/ This description of the national history is based on an article chronicling the development of judicial education on gender bias issues: Wikler, Norma J., "Educating Judges About Gender Bias in the Courts," in Crites, Laura L. and Winifred L. Hepperle, Women, The Courts, and Equality (1987), pp. 227-245.

7/ San Francisco Public Hearing Transcript, p. 90.

8/ Standards of Judicial Administration, standard 25, effective January 1, 1990.

9/ Judges' Responses to Governing Committee's November 17, 1989 Survey on CJER's Judicial Education Services, January 2, 1990.

10/ Schafran, Lynn Hecht, "Countering Gender Bias in the Courts Through Judicial Education," Speech to the Conference of Chief Justices and Conference of State Court Administrators, Annual Meeting, August 5, 1986, Omaha, Nebraska.

11/ Senate Task Force on Family Equity Final Report, June 1987, p. II-1.

12/ San Diego Public Hearing Transcript, p. 28.

13/ San Francisco Public Hearing Transcript, pp. 87-88.

14/ Wikler, Norma J., "Educating Judges About Gender Bias in the Courts," in Crites, Laura L. and Winifred L. Hepperle, Women, The Courts, and Equality (1987), pp. 227-245.

15/ San Francisco Public Hearing Transcript, p. 91.

16/ Schafran, Lynn Hecht, "Countering Gender Bias in the Courts Through Judicial Education," Speech to the Conference of Chief Justices and Conference of State Court Administrators, Annual Meeting, August 5, 1986, Omaha, Nebraska.

Written Testimony Submitted by

The Center for Judicial Education

and Research (CJER)

San Francisco
Public Hearing
March 6, 1989

Attachment A

THANK YOU FOR INVITING US TO ADDRESS THE ADVISORY COMMITTEE ON BEHALF OF THE CENTER FOR JUDICIAL EDUCATION AND RESEARCH (CJER).

CJER, FOR THOSE OF YOU WHO ARE NOT JUDGES, PROVIDES A COMPREHENSIVE EDUCATIONAL SYSTEM FOR CALIFORNIA JUDGES. FORMED IN 1973 AS A JOINT ENTERPRISE OF THE JUDICIAL COUNCIL AND THE CALIFORNIA JUDGES ASSOCIATION, CJER CONDUCTS CONTINUING EDUCATION PROGRAMS FOR THE JUDICIARY AND ORIENTATION PROGRAMS FOR NEW JUDGES. IT ALSO PREPARES JUDGES' BENCHBOOKS AND OTHER EDUCATIONAL MATERIALS. CJER'S JUDICIAL EDUCATION ACTIVITIES INCLUDE:

- THE CALIFORNIA JUDICIAL COLLEGE
- THE NEW TRIAL JUDGES ORIENTATION PROGRAM
- THE NEW APPELLATE JUDGES ORIENTATION PROGRAM
- THE ADVISOR JUDGE (MENTOR) PROGRAM
- THE JUDICIAL CLINIC COURT PROGRAM
- ANNUAL CONTINUING EDUCATION INSTITUTES (APPELLATE, CIVIL, CRIMINAL, FAMILY, JUVENILE, MUNICIPAL AND JUSTICE, RURAL "COW COUNTY" SUPERIOR COURT, AND COURT OF APPEAL RESEARCH ATTORNEYS)
- THE CONTINUING JUDICIAL STUDIES PROGRAM, AN ADVANCED STUDIES PROGRAM FOR EXPERIENCED JUDGES (INCLUDING AN ANNUAL PROGRAM FOR INCOMING PRESIDING JUDGES)
- EXTENSIVE JUDICIAL PUBLICATIONS
- PRODUCTION OF AUDIOTAPES AND VIDEOTAPES

o THE LOCAL COURT EDUCATIONAL LIAISON PROJECT

CJER'S INVOLVEMENT IN JUDICIAL EDUCATION ON ISSUES OF GENDER BIAS BEGAN IN 1981 WHEN A COURSE ENTITLED "JUDICIAL DISCRETION: DOES SEX MAKE A DIFFERENCE" WAS OFFERED AT THE FIRST CONTINUING JUDICIAL STUDIES PROGRAM. THE COURSE WAS A PILOT PROGRAM, PREPARED BY THE NATIONAL JUDICIAL EDUCATION PROGRAM TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS (NJEP). NJEP, DIRECTED AT THAT TIME BY DR. NORMA WIKLER, CONSULTANT TO YOUR COMMITTEE, WAS ESTABLISHED IN 1980 AS A PROJECT OF THE NOW LEGAL DEFENSE AND EDUCATION FUND IN COOPERATION WITH THE NATIONAL ASSOCIATION OF WOMEN JUDGES. THE 1981 COURSE EXAMINED THE IMPACT OF SEX STEREOTYPES, MYTHS, AND BIASES ON JUDICIAL DECISION-MAKING AND COURTROOM INTERACTION. IT WAS THE FIRST COURSE OF THIS KIND TO BE GIVEN IN AN ESTABLISHED JUDICIAL EDUCATION PROGRAM IN THIS COUNTRY.

THE COURSE MATERIALS INCLUDED A 193 PAGE INSTRUCTOR'S MANUAL AND A 224 PAGE PARTICIPANT'S MANUAL. THEY WERE DEVELOPED BY SEVERAL VERY NOTABLE EXPERTS IN THE FIELDS OF LAW, LEGAL EDUCATION, AND THE SOCIAL SCIENCES.

OUT OF THAT PIONEERING PROGRAM EVOLVED CJER'S "COURTROOM FAIRNESS" COURSE, A MANDATORY SESSION FOR STUDENTS ENROLLED IN CIVIL AND CRIMINAL LAW AND PROCEDURE AT TWO OF THE THREE ONE-WEEK CJSP COURSES OFFERED ANNUALLY. LATER, GENDER BIAS ISSUES WERE INCORPORATED INTO CJSP'S EXTENSIVE FAMILY LAW COURSE AND ITS INNOVATIVE SEMINAR ON JUDICIAL FACT-FINDING AND DECISION-MAKING. AND FINALLY, IN 1987, THE JUDICIAL COLLEGE INCLUDED FOR THE FIRST TIME, AS PART OF ITS "JUDICIAL CONDUCT" COURSE, A SEGMENT ADDRESSING COURTROOM FAIRNESS ISSUES INCLUDING GENDER BIAS.

AS THEIR TITLES REFLECT, THE FAIRNESS, FACT-FINDING/DECISION-MAKING, AND CONDUCT COURSES FOCUS ON PROMOTING FAIRNESS AND EQUALITY IN THE COURTS. SPECIFICALLY, THESE COURSES TEACH JUDGES HOW TO RECOGNIZE AND ELIMINATE THE PRESENCE OF BIAS OR PREJUDICE IN THE COURTROOM ENVIRONMENT AND THE JUDICIAL DECISION-MAKING PROCESS. THESE COURSES HAVE INCLUDED SUBSTANTIAL MATERIAL ON GENDER AND OTHER BIASES.

OVER THE YEARS, THE FAIRNESS, CONDUCT, AND DECISION-MAKING COURSES HAVE EVOLVED IN RESPONSE TO THE INTERESTS AND EXPERTISE OF THE JUDICIAL PLANNING COMMITTEES AND FACULTY AND, AS WITH ALL CJER PROGRAMS, IN RESPONSE TO THE EVALUATIONS SUBMITTED BY STUDENT JUDGES. WE ARE, EVEN NOW, INVOLVED IN THE ONGOING PROCESS OF REFINING AND IMPROVING THE COURSES.

AS YOU ARE NO DOUBT AWARE, BASED UPON A RECOMMENDATION BY THE JUDICIAL COUNCIL COMMITTEE THAT PREDATED THIS ADVISORY COMMITTEE, THE JUDICIAL COUNCIL IN DECEMBER 1986 REQUESTED THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO COMMEND CJER FOR ITS LEADERSHIP IN INCORPORATING ISSUES OF FAIRNESS AND EQUALITY IN JUDICIAL EDUCATION PROGRAMS. THE COUNCIL ALSO URGED THE CJER GOVERNING COMMITTEE TO REVIEW THE CURRICULUM IN ALL JUDICIAL EDUCATION PROGRAMS AND ENSURE THE INCLUSION OF ISSUES SPECIFICALLY CONCERNING GENDER BIAS AS A REGULAR PART OF EACH PROGRAM. IN RESPONSE TO THAT REQUEST, THE CJER GOVERNING COMMITTEE URGED EACH PROGRAM PLANNING COMMITTEE TO INCORPORATE GENDER BIAS ISSUES INTO THE CJER PROGRAMS. THE RESULTS INCLUDE THE FOLLOWING:

- THE JUDICIAL COLLEGE INCLUDED A SEGMENT ON GENDER BIAS AS PART OF THE "JUDICIAL CONDUCT" COURSE IN 1987 AND 1988. IN ADDITION, THE 1988 "JUDICIAL CONDUCT" COURSE WAS PLANNED SO THAT THE GENDER BIAS SEGMENT IMMEDIATELY PRECEEDED SMALL GROUP SEMINARS. THE SEMINARS WERE LED BY EXPERIENCED JUDGES WHO HAD

ATTENDED A TWO-DAY TRAINING SESSION IN WHICH GENDER BIAS WAS ADDRESSED. THE 1989 COLLEGE WILL INCLUDE A SEPARATE, TWO-HOUR, MANDATORY "COURTROOM FAIRNESS" COURSE, FOLLOWED BY SMALL GROUP SEMINARS. GENDER BIAS ISSUES WERE ALSO INCORPORATED INTO SEVERAL SUBSTANTIVE LAW COURSES AT THE 1988 COLLEGE. THIS EFFORT, TOO, WILL BE CONTINUED IN 1989.

o GENDER BIAS IS DISCUSSED IN THE ORIENTATION PROGRAMS FOR NEW JUDGES IN THE JUDICIAL CONDUCT AND FAMILY LAW COURSES FOR SUPERIOR COURT JUDGES AND IN THE COURSE ON "SELECTED PROBLEMS FACING NEW JUDGES" FOR THE MUNICIPAL AND JUSTICE COURT JUDGES.

o THE JUDICIAL PLANNING COMMITTEE FOR THE CJS PROGRAM MADE THE "COURTROOM FAIRNESS" COURSE MANDATORY.

o GENDER BIAS PROGRAMS WERE FEATURED AT THE 1987 AND 1988 FAMILY LAW INSTITUTES, THE 1987 COW COUNTY SUPERIOR COURT INSTITUTE, THE 1987 MUNICIPAL AND JUSTICE COURT INSTITUTE, AND THE 1989 CRIMINAL LAW AND PROCEDURE INSTITUTE.

TURNING TO THE FUTURE OF JUDICIAL EDUCATION ON GENDER BIAS, CJER WILL CONTINUE TO ADDRESS THESE ISSUES IN ITS PROGRAMS AND WILL CONTINUE TO REFINE AND IMPROVE UPON PRIOR EFFORTS. WE DO, OF COURSE, ANTICIPATE THAT SOME OF YOUR FINAL RECOMMENDATIONS TO THE JUDICIAL COUNCIL WILL RELATE TO JUDICIAL EDUCATION, AND WE WELCOME GUIDANCE FROM YOU AND THE COUNCIL.

UNDERSTANDING THE JUDICIAL EDUCATION SYSTEM IN THIS STATE AND THE EDUCATIONAL APPROACH CJER HAS FOUND TO BE MOST EFFECTIVE OVER THE YEARS MAY ASSIST YOU IN TAILORING YOUR RECOMMENDATIONS TO ACHIEVE THE GREATEST SUCCESS. BY "SUCCESS," WE MEAN BRINGING THE RESULTS OF YOUR STUDY TO THE ATTENTION OF

THE JUDICIARY IN SUCH A WAY THAT JUDGES UNDERSTAND THE ISSUES FULLY AND ARE ABLE TO ASSESS THE MEASURE AND SIGNIFICANCE OF YOUR FINDINGS.

IN OUR EXPERIENCE, FOR EXAMPLE, ABSTRACT CONCEPTS BECOME MORE MEANINGFUL WHEN THEY ARE PRESENTED IN THE CONTEXT OF A CONDUCT COURSE ON FAIRNESS OR DECISION-MAKING OR A COURSE ON THE SUBSTANTIVE LAW. THUS, RAW INFORMATION BECOMES MORE SIGNIFICANT IN AN INSTRUCTIONAL SETTING WHEN IT IS CONCRETE, PRACTICAL, AND LINKED DIRECTLY TO THE TASKS A JUDGE MUST PERFORM ON A DAILY BASIS.

ALSO, CJER COURSES ARE TRADITIONALLY PLANNED AND TAUGHT, FOR THE MOST PART, BY JUDGES WHO VOLUNTEER THEIR TIME. WE INVITE YOUR THOUGHTS ON DEVELOPING A CURRICULUM TO ADDRESS GENDER BIAS ISSUES AND SUGGEST THAT A SPECIAL COMMITTEE BE FORMED TO ASSUME THIS TASK. IT OCCURS TO US THAT THE MEMBERS OF YOUR COMMITTEE HAVE BECOME, IF THEY WERE NOT ALREADY, A UNIQUELY VALUABLE SOURCE OF JUDICIAL EXPERTISE IN THIS FIELD. A NUMBER OF YOUR COMMITTEE MEMBERS HAVE BEEN AMONG CJER'S MOST DEDICATED COMMITTEE MEMBERS AND FACULTY. [A PARTIAL LIST OF CONTRIBUTORS TO CJER'S EFFORTS IS ATTACHED TO THESE REMARKS.] WE LOOK FORWARD TO THEIR CONTINUED SUPPORT AND ASSISTANCE.

FOR OUR PART, WE ARE CURRENTLY CONSIDERING WAYS WE MIGHT ADD A GREATER DEGREE OF UNIFORMITY TO THE MANNER IN WHICH OUR FAIRNESS AND CONDUCT COURSES ARE TAUGHT. WE ALSO PLAN TO OFFER MORE FACULTY TRAINING ON GENDER BIAS AND TO INCORPORATE FAIRNESS, INCLUDING GENDER BIAS, ISSUES INTO MORE SUBSTANTIVE LAW COURSES. AND, WE ARE CLOSELY FOLLOWING YOUR COMMITTEE'S PROGRESS. WE CAN REPORT TO YOU THAT, AS A RESULT OF YOUR PUBLIC HEARING IN SAN DIEGO LAST MONTH, THE DEAN AND ASSOCIATE DEAN OF THE 1989 JUDICIAL COLLEGE HAVE INCORPORATED A GENDER BIAS COMPONENT INTO THIS YEAR'S FACULTY TRAINING SESSION, AND PLAN TO ESTABLISH A PROCEDURE FOR MONITORING THE FACULTY FOR POTENTIAL BIAS IN THE CLASSROOM.

FINALLY, IT IS OUR FIRM BELIEF AT CJER THAT THE CALIFORNIA JUDICIARY IS COMMITTED TO EXCELLENCE AND TO THE PRINCIPLE THAT FAIRNESS AND EQUALITY ARE THE FOUNDATION OF OUR SYSTEM OF JUSTICE. WE COMMEND YOUR EFFORTS AND LOOK FORWARD TO THE RESULTS OF YOUR WORK.

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Partial List of Judges Who Have Contributed to
CJER Judicial Fairness and Conduct Courses Since 1981

J. Augustus Accurso
Rafael A. Arreola
Spurgeon Avakian
Michael E. Ballachey
Richard Bancroft
Irma J. Brown
Marie Bertillion Collins
Norbert Ehrenfreund
Jeremy D. Fogel
Judith D. Ford
David A. Garcia
Ina L. Gyemant
Artemis G. Henderson
Nancy Hoffman
Anthony C. Joseph
Bernard J. Kamins
Ken M. Kawaichi
Gerald Levie
Joe O. Littlejohn
Alice A. Lytle
Judith McConnell
Billy G. Mills
Marilyn Patel
Sara Kleban Radin
David M. Rothman
Donald E. Smallwood
William H. Stephens
Alice Sullivan
James M. Sutton
Meridith C. Taylor
Robert E. Thomas
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TO: Chief Justice Malcolm M. Lucas
Members of the California Judicial Council

FROM: Hon. Ira A. Brown, Jr., Chairperson
CJER Governing Committee

DATE: October 6, 1987

SUBJECT: Report on CJER programs
dealing with gender bias

On behalf of the CJER Governing Committee, I am pleased to report how gender bias issues are being addressed in CJER's judicial education programs.

In December 1986, the Judicial Council adopted eight recommendations of its special Council Committee on Gender Bias in the Courts. Recommendation One "requested the Director of the Administrative Office of the Courts (AOC) to commend the Center for Judicial Education and Research (CJER) for its leadership in incorporating issues of fairness and equality in judicial education programs and to urge the CJER Governing Committee to review the curriculum in all judicial education programs and ensure the inclusion of issues specifically concerning gender bias as a regular part of each program."

The Governing Commitee has made a comprehensive review of CJER's educational programs and found that gender bias has been included as a specific topic in the following programs:

1. California Judicial College. The 1987 College included for the first time as part of the "Judicial Ethics" course, a segment that addresses several courtroom fairness issues, including gender bias.

2. California Continuing Judicial Studies (CJS) Program. The CJS Program has included since 1981 a half-day course entitled "Courtroom Fairness," which focuses specifically on how judges can handle various biases, including gender, that create an unfair courtroom environment or the appearance of unfairness. This course, now given twice

ATTACHMENT B

annually, is a mandatory portion of the curriculum for judicial officers who enroll in the CJS Program courses dealing with civil and criminal law and procedure. CJER's extensive CJSP family law courses also incorporate an analysis of gender bias on such issues as spousal and child support, custody and visitation, and domestic violence. Finally, the innovative CJSP course on Judicial Fact-Finding and Decision-Making includes a segment that addresses gender bias issues.

3. Continuing Education Institutes. Gender bias has been included as a topic at two recent judicial education institutes. The 1987 Family Law and Procedure Institute featured a keynote address on "Bias in the Resolution of Custody and Support Issues." One of the seminar discussion groups at the 1987 Superior Court Cow County Judges Institute focused on gender bias.

Gender bias has not been addressed specifically in the New Trial Judges Orientation Program, although a course on judicial conduct has touched on the issue. We will advise the judicial planning committee for that program to inquire into including gender bias issues in other courses as well.

We are informed that the Judicial Council's Advisory Committee on Gender Bias in the Courts is investigating the extent of gender bias in the California judicial system and will recommend methods for eliminating it. Four subcommittees met to discuss their progress on June 19, 1987. They will eventually report to the full advisory committee, which will then recommend appropriate actions to the Judicial Council. One of the committee's primary recommendations will likely be increased judicial education on gender bias issues. Two of the subcommittees have already suggested that CJER's orientation programs for new judges should include courses on gender bias and measures will be taken to implement this recommendation.

At its July 11, 1987 meeting, the Governing Committee discussed the treatment of gender bias issues in CJER's judicial education programs. The committee concluded that gender bias is being properly addressed in CJER's educational programs at the present time. However, the Governing Committee will continue to monitor the work of the Judicial Council's gender bias committee, and also to urge CJER's judicial planning committees to include this important topic in future CJER programs.

We hope this report will be of assistance to the Judicial Council and its Advisory Committee on Gender Bias in the Courts. Please let me know if the Governing Committee or I can be of further help.

cc: Members of CJER Governing Committee
Members of the Judical Council
Advisory Committee on Gender
Bias in the Courts
Hon. V. Gene McDonald
Mr. William E. Davis
Ms. Constance E. Dove
Mr. Paul M. Li

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# # #

The Future in California:
A Majority of Minorities

I. Demographics

"Due primarily to the large numbers of people immigrating from Asia and Latin American, the population of California is quickly becoming a majority of 'minorities,'" stated a representative of California Women of Color Against Domestic Violence (hereafter referred to as CWOCADV) in a report submitted to the advisory committee. The exponentially increasing cultural diversity in the United States has been noted by those who are now prudently studying the future of the court system. Figures reported at the American Judicature Society annual meeting in Toronto in 1988 reflect the following:

> Immigration now is often from South America, of course, and increasingly from Asia. Hispanics in the U.S. were roughly 4 million in 1950. They are 18 million now and possibly will be 50 million by 2020, displacing blacks as the largest "minority" in the U.S. But the fastest growing "minority" is Asian-American. It grew by 142 percent between 1970-80, and may double to over 8 million by 2000. Asians presently account for 40 percent of immigrants to the U.S. Also, whereas Japanese-Americans were once the largest Asian group, they have been replaced by Chinese-Americans, who are being overtaken by Filipinos, and they by Koreans. By 2010, the number of Vietnamese and Asian Indians in the U.S. will also surpass the number of Japanese-Americans. The result is greatly increased cultural diversity.[1/]

California is in the forefront of this national demographic trend. Statistics provided by CWOCADV reveal that in 1987, out of a total population of 26.1 million, 7.5 percent were African-American, 21 percent were Latino, and 7.5 percent were Asian. Projections, according to CWOCADV, estimate that by the year 2010, of 42.7 million people in the state, 16 million will be Latino, 16 million will be white, 6.7 million will be Asian, 2.9 million will be African-American, and .5 million will be classified as "other."

The advisory committee has conducted its study of gender bias in the courts in a state characterized by extensive racial and cultural diversity that is increasing. This reality led the advisory committee to target the question of gender and racial and ethnic bias as a special focus.

II. The equal and concomitant effects of bias based on gender, race, and ethnicity

In its developmental stages and thereafter, the advisory committee acknowledged fully that conducting a study of gender bias without addressing the equal and concomitant effects of racial and ethnic bias would be incomplete. As one Black woman attorney told the committee at a regional meeting in San Francisco: "Because women encounter different stereotypes and biases depending upon their race, an inquiry into gender bias must always be an inquiry into race and gender. The past and the present tell us that it is not a question of race versus gender, but a question of race and sex. The question is not whether a black woman is subjected to race or gender bias. She faces discrimination on the basis of her race and her gender, just as white women encounter other biases and stereotypes because of their race. . . . . I don't think there's any such thing as an inquiry into gender. I don't think it exists. Every woman walking around has some color.[2/]

The initial Judicial Council committee charged with reviewing the reports from New York and New Jersey and making recommendations to the council, one of which included the establishment of the advisory committee on gender bias, found that the focus on gender alone was insufficient. One of its recommendations was to adopt a Standard of Judicial Administration that created a judicial duty to refrain from exhibiting biased behavior and to prevent such behavior on the part of others in the courtroom. Although the committee's charge was limited to gender bias, the standard was extended unanimously to include all forms of bias.[3/]

III. The need for a task force on ethnic and racial issues of bias in the courts

While recognizing the extreme importance of an inquiry relating to race, ethnicity, and sex, the advisory committee also became keenly aware of its own limitations. The committee's charge was clearly limited to issues of gender, and an independent and comprehensive investigation was needed on racial and ethnic bias as well. Issues of racial and ethnic discrimination require consultation with many communities. A committee devoted to its study would necessarily consist of different individuals with special expertise in the applicable fields of study. A different methodology might well be required to discern the subtleties and the complexities of the problem. And, as the attorney who spoke at the regional meeting stated so eloquently, ethnic and racial minorities suffer from differing sets of stereotypes depending on the cultural underpinnings of their experiences. As a result, the advisory committee determined that it would endeavor to accomplish the following:

a. Study wherever possible the dual effects of racial and ethnic bias and gender bias by examining the issues presented with repect to women of color.

b. Include wherever appropriate recommendations that applied equally to racial and ethnic bias.

c. Include in its report a discussion of the dual effects of racial and ethnic and gender bias.

d. Recommend the establishment of a racial and ethnic bias task force to fully document these issues and submit suggestions to the Judicial Council.

Accordingly, an examination of the recommendations that have appeared in the pages of this report reveals many that apply equally to racial and ethnic bias. The model rules suggested for the appointment of counsel in both criminal and civil cases apply equally to gender and race and ethnicity. The recommendations applicable to the ethical duties of judges and attorneys likewise apply equally to racial and ethnic bias. The discussion of membership in discriminatory clubs applies not only to those excluded because of gender but also to those who are excluded because of race or ethnicity. Special problems of women of color in domestic violence have been addressed. Issues for non-English-speaking women have been of serious concern. The plight of poor women in the family law court, the majority of whom are women of color, has been highlighted. The special needs of incarcerated women, the majority of whom are women of color, have been emphasized. These are only a few examples of the ways in which the advisory committee sought to meet its responsibilities to the courts and to the culturally diverse citizens of California.

The committee members realize, however, as the Chief Justice acknowledged, this is not enough. Racial and ethnic discrimination in California is a vast area of inquiry and should be given an independent scrutiny as has the issue of gender bias in the courts. Accordingly, the Chief Justice has announced that a task force on ethnic and racial bias will soon be created. In his recent speech to the Legislature, Chief Justice Lucas stated:

> Our efforts are aimed not simply at improving a statistical bottom line but rather at assuring every individual fair and expeditious treatment in our courts. To further this goal, an advisory committee on gender bias held several public hearings in 1989 and collected data from various sources. It soon will report to the Judicial Council. I also announced last fall creation of a committee to study issues of race and ethnic bias to assure our courts meet the needs of our diverse population. I am pleased to announce that Associate Justice Allen Broussard, my colleague on the Supreme Court, has agreed to serve as co-chairperson of the committee whose other members will be named soon.[4/]

Chief Justice Lucus' foresight has made the recommendation devised by the advisory committee unnecesary. It is offered here, however, as an expression of the committee's support for the concept and for whatever assistance it will give to the new committee in its formative stages.

The advisory committee members adopted the following recommendation:

RECOMMENDATION

1. Request the Chief Justice to appoint an advisory committee to examine racial and ethnic bias in the California courts and make recommendations to the Judicial Council to correct any problems identified. The advisory committee should be characterized as follows:

a. It should be structured to maximize its operational independence.

b. The co-chairs should be appointed first and subsequently asked to submit their recommendations to the Chief

Justice for the remainder of the committee appointments. The recommendations should reflect the goal of securing primary participation by members of the various ethnic and racial communities in California.

c. The first task of the committee will be to develop its working definition of racial and ethnic bias in the court system and to adopt an agenda of the topics it plans to consider. In developing a working definition of racial and ethnic bias, the advisory committee may wish to consider the following suggested definition:

Racial and ethnic bias includes behavior or decision making of participants in the justice system that is based on or reveals (1) disparate treatment of individuals based on race or ethnicity, (2) stereotypical attitudes regarding race and ethnicity, or (3) lack of understanding or misconceptions about racial and ethnic cultural differences and life experiences.

In developing a list of topics to consider, the appointed advisory committee may wish to consider the following suggested topics:

a. Courtroom interaction
b. Judicial fact finding and decision making
c. Racial and ethnic bias within judicial administration, including court employment
d. Selection, hiring, or retention of court-appointed counsel and ancillary officials, including security staff
e. Hiring, promotion, and retention of attorneys
f. Jury selection
g. Juvenile justice
h. Criminal law including disparity of treatment
i. Sentencing and probation, including diversity of probation officers

j. Family law related issues including custody and support
k. Continuing education for judges, lawyers, and court staff
l. Housing and landlord-tenant issues
m. Special problems of non-English-speaking persons, especially with respect to the need for inter- preters
n. Ways in which the perception of bias impedes access to the court system and full participation in court pro- ceedings
o. Other factors, such as economic status, which diminish access to the court system.

2. Urge the Chief Justice to call for the joint creation of a Justice System Task Force from the different branches of government to examine racial and ethnic bias in the justice system. The Judicial Council Advisory Committee on Racial and Ethnic Bias would form only one component of such a task force, which would also include representation from similar committees formed in the Legislature, in the Office of the Attorney General, in the Governor's Office, and in the State Bar. The Judicial Council Advisory Committee on Gender Bias in the Courts particularly recommends that the inquiry on racial and ethnic issues be expanded in this way because of the committee's recog- nition from its own experience that many of the solutions to these problems require a cooperative effort on the part of all justice system agencies.

IV. Summary of testimony

In response to the advisory committee's announcement of its special focus, judges, attorneys, domestic violence workers, and other experts provided the committee with valuable data concerning racial and ethnic bias. Much of the infor- mation is contained in the preceding pages under the sub- stantive law chapter headings. A brief summary of the high-

lights from this testimony and some additional observations are offered here with the hope that the summary will assist the new committee in its work and the Judicial Council in its understanding of the dimensions of the problem. The advisory committee found that gender and race and ethnicity combined to create more profound and dif- ficult problems of bias and that these problems occurred in every field of inquiry the committee examined.

A. Judicial conduct

Judicial conduct exhibiting racial and ethnic bias and gender bias was reported to the committee and discussed at the focus group for minority lawyers at the State Bar Annual Meeting in September of 1988. Disciplinary cases that have come before the Commission on Judicial Performance have also shown that gender bias is often accompanied by an equally pernicious racial and ethnic bias.

A black woman prosecutor told the assembled committee members: "I have personally witnessed a judge who said to me, 'I know how your people are and I know the special and particular problems that your people have.'" A black woman civil litigator was asked to attend the regional meeting and discuss her views with the advisory committee members. She refused. She told the staff attorney who had contacted her that she feared retaliation. "I have to work in this town and make a living and support my children. I cannot afford to come down and go into all that," she said. And what is more, she explained that to a great extent she had to put questions of discrimination out of her mind just to survive. The emotional price of telling the committee members her views was too dear.[5/]

Several minority women attorneys who attended the focus group told the committee that they often could not tell whether they were the victims of discrimination because of their race or their sex, where one bias ended and the other began. A Fresno attorney admonished the committee: "I don't think you can look at just women without looking at also the other ways that the prejudices of this society can manifest themselves in court. I do not agree that racism is behind us in this county."[6/] Another attorney reported:

> I want to say that yesterday I had lunch with two women attorneys; one was black and one was Hispanic. And we talked about the meeting today, and we talked, and they are not here because they felt that anything that they said would be identifiable, and they felt that it would not be in their best interest to be here. We addressed how gender bias affects women of color. And they said, "We would like something to specifically address that."[7/]

A close examination of the reported cases involving discipline of judges for, among other things, gender bias reveals that often the offending judicial conduct involves statements offensive to women in which racial or ethnic slurs are embedded as well. One particularly outrageous example warrants relating here. In In re Stevens (1982) 31 Cal.3d 403, a judge was censured for conduct "'prejudicial to the administration of justice that brings the judicial office into disrepute' (Cal. Const., art. VI, Sec. 18, subd. (c))." In Justice Kaus' concurring opinion the offensive conduct was specifically described. Among a series of highly offensive statements made by the judge were two that clearly demonstrated the interlocking nature of racial and ethnic bias and gender bias and the ways in which stereotypes combine to the detriment of just decision making. Justice Kaus stated:

> In connection with a child abuse proceeding involving an Hispanic defendant with a Spanish surname, Judge Stevens observed from his prior experience that (in effect) Spanish persons live by different standards than we do; that wife abuse is common and more acceptable for them; and that such abuse might explain defendant's conduct toward her child. . . .
> During his term in office, Stevens used such terms as "cute little tamales," "Taco Bell," spic," and "bean" when referring to persons with Hispanic surnames in conversations with court personnel.[8/]

B. Criminal and juvenile law

The advisory committee found that issues of racial and ethnic bias in the criminal and juvenile law are perhaps the most serious. Throughout the report on this subject,[9/] the advisory committee has noted those instances in which women of color suffer greater discrimination than do other women and the unique ways that bias manifests itself in decision making. The advisory committee did not consider prosecutorial discretion and sentencing, other than alternatives to sentencing and dispositional alternatives for juveniles, in this inquiry. Further, there is a dearth of statistical information about women of color in general. Statistics are often delineated by gender and by race or ethnicity, but within the gender categories there is no further breakdown by race and ethnicity. Quite literally, women of color are not counted. Thus, the committee has not addressed these issues comprehensively but recommends this area as one that is vital to any study of racial and ethnic bias in the courts.

The committee's view was informed in particular by a landmark article by Professor Norval Morris, professor of law and criminology at the University of Chicago. Prof. Morris summarized some statistics that are of note:

o For every one white male in prison, more than seven blacks are in prison.

o Of every 12 black males in their 20's, 1 in every 12 is in prison or jail.

o Of all black babies born, 1 in 30 will die a victim of intentional or non-negligent homicide and among black males and females, ages 15 to 44, the leading cause of death is homicide.

o Blacks are not more likely than whites to be persistent offenders.

o Blacks have moved into the middle class, leaving the inner city neighborhoods with their astronomical crime rates to those left behind.[10/]

Prof. Norris emphasized the following questions that require immediate study and inquiry: "Does the criminal justice system discriminate unfairly against blacks at arrest, conviction and at punishment? Is the death penalty applied unfairly to black killers and yet insufficiently to protect black victims? Do the police disproportionately use deadly force against suspected black felons? If there is injustice in all this, what are the remedies?"[11/]

Observations based on national research and statistics are similar when the focus is on California. The Los Angeles Daily Journal reported on March 9, 1988:

> If you are a black Californian, your chances of being arrested are seven times as great as a white Californian's. Your chances of being sent to prison are nine times as great, and your chances of getting a death sentence are 12 times as great.
>
> Authorities on crime and society suggest a number of reasons why: more crime in black communities, too much or too little police vigilance in the ghettos, bias against blacks in the

> criminal-justice system and the society at large, and poverty and its devastating consequences on people of all colors.
>
> Whatever the explanation, specialists agree that in the relationship between blacks and the law, all is not well in California.12/

The ways in which issues of sex roles and cultural values are fused in the criminal law are highlighted in a 1985 case involving an attempt by a young mother to commit oyako-shinju or parent-child suicide. Upon discovering her husband's continued infidelity, the young mother became very distraught and waded into the ocean from a Santa Monica beach with her two children, aged four and six months. The two children perished, but the mother was rescued, near death, from the surf. She was charged with first-degree murder. In Japan, the custom of parent-child suicide stems from the belief that the mother must commit suicide due to the shame created by her failure as a wife and that it is more merciful to kill the children as well than to leave them in the world without maternal protection. The custom is outlawed in Japan but lenient treatment for offenders who survive is recommended. The Japanese community urged the same lenience and cultural understanding for the young mother. Ironically, what would have amounted to a cultural defense was not possible in the context of the case since the element of intent would have been fully established by introduction of the cultural evidence. California law does not contain a cultural defense. As a result, the defense advanced was temporary insanity. Ultimately, the mother pled to voluntary manslaughter and received a sentence of one year in the county jail, which she had already served, and five years' probation. Dr. Deborah Woo in writing about the case concluded:

> Had Kimura's suicidal act been committed in her native Japan, it is doubtful that an interpretation of personal, individualistic "irrationality" would have prevailed. From a Japanese perspective, her multiple suicide attempt with her two young and totally dependent children was comprehensible, "understandable and unavoidable" (Iga, personal communication, 8/4/88). The children were not seen as independent, autonomous beings but as extensions of the self with their destinies interwoven. The American court system however, could not acknowledge any such 'cultural imperative' as part of a formal defense. Indeed, any admission of intent-to-kill would have been incriminating. The only plausible defense had to be one that proved the defendant mentally incapable of the rational planning of such actions. Psychiatric testimony on Kimura's behalf served the very purpose of establishing her legal insanity. . . . Through such reasoning, the cultural reality of oyako-shinju was effectively nullified and converted into a psychological pathology which was devoid of any socially based understanding.[13]

The Kimura case illustrates the ways in which cultural values may clash with established legal principles and the ways in which the role of women in other cultures affects their treatment in the courts. Kimura stated, referring to those who had rescued her from drowning: "They must have been Caucasians. Otherwise they would have let me die."[14] This example is offered here not to suggest that the courts were biased in this case or that the laws should not punish a mother who drowns her children. Rather, this example vividly dramatizes the complexity and challenges that cultural issues bring to the courts.

C. Domestic violence and family law

The report of California Women of Color Against Domestic Violence provided the committee with an excellent summary of the unique ways in which the problems of women of color in domestic violence and family law are not addressed in California. In summary, the report emphasized:

o Women of color often do not know the legal rights and remedies available to them. There is very little bilingual and "culturally appropriate" information provided and, conversely, service providers, law enforcement, and court personnel have little training and understanding of communities of color.

o Language and cultural barriers exist that impede women of color who are trying to obtain temporary restraining orders in a domestic violence matter or other necessary orders in a family law matter. There is no right to an interpreter in family law. Mediation is nearly impossible without a bilingual mediator. Cultural views and values may prevent a woman from going for help. Some of these cultural norms include: (1) the view present in some cultures that women's role is to be subservient; (2) the value of the extended family and the cultural disapproval directed toward those who go outside the family to solve problems; and (3) the shame associated with divorce.

o The immigration status of women of color may block their way in trying to obtain relief in the courts. Even if a woman's status is legal, a batterer may threaten to report the woman to the immigration officials and cause problems nonetheless. The woman may fear as well that bringing her husband into court may threaten his immigration status, and she may depend on him emotionally and financially.

o Representation and legal services are grossly inadequate.

o Law enforcement may fail to respond to a call for help especially for women who live in crime-ridden neighborhoods.

o Judicial attitudes may incorporate stereotypes about cultural values. A bias against a woman's culture may exist and prevent her from obtaining relief. For example, a judge may believe that violence is part of the woman's culture and not take it as seriously. The system's protection of the victim is not as vigorous if she is a minority person.[15/]

Attorneys and others at the regional meetings and public hearings recognized these problems. One legal services attorney stated: "I think there was and is still a stereotype that domestic violence is a woman of color problem. I think probably because women of color have no other alternative but to call the police, whereas more affluent white women can pay money and see a counselor."[16/]

D. Representation and court employees

1. Lack of access to the courts

The section on family law issues of gender bias describes with particularity the problems of poor women who have no money for legal representation. Legal services offices that once offered free services in family law are limiting or deleting their family law caseload. Family law is increasingly a court for unrepresented parties. Attorney's fees at the time of the temporary order are increasingly being denied. Other barriers such as job searches and enrollment in English classes directly affect poor women, the majority of whom are members of a racial or ethnic minority.

2. Professional issues for attorneys

In general, attorneys report that racial and ethnic bias create professional problems and unfairness as they pursue their careers in the legal profession. Testimony reported in the Courtroom Demeanor and Civil Litigation section of this report indicated that minority women can be stereotyped as was the anti-trust attorney who happened to be black and diminutive of stature and could not convince judges and male colleagues of her ability to understand and handle complex economic issues. One woman attorney wrote to the committee and stated:

> It is generally agreed, even by male attorneys, that gender bias is rampant in the South County. . . . Equally disturbing is that, with some exceptions, our judges sometimes exhibit other discriminatory attitudes toward persons who are generally discriminated against on the basis of race, religion, national origin, and sexual identification. God help the minority who represents a minority.17/

The Bar Association of San Francisco commissioned a study to determine if "there were significant differences in status and the work experiences of majority and minority attorneys" and was particularly interested in "income, current position, hiring experiences, work experiences, and work environments, as well as issues relating to promotion, advancement, and discrimination." In concluding that "ethnic minorities, as a class, encounter objective and subjective disadvantage within the legal profession in San Francisco," the study found:

o Minorities earn significantly less than white attorneys at similar points in their careers.

o There are significant differences between the hiring experiences of white and minority attorneys.

o Minorities are not well represented in both small and large firms.

o Over twice as many minorities as whites report being passed over or denied a promotion.

o A significant majority of minorities and a large percentage of white attorneys believe that racial discrimination frequently occurs in hiring and promotion in different legal environments.

o The findings suggest that equally qualified minorities are less likely to achieve the income and status of their white counterparts.[18/]

3. Court employees

Court employees can be both sources and victims of racial and ethnic discrimination. Attorneys report that court employees, including court reporters, bailiffs, and clerks have treated minority attorneys with less respect than nonminority attorneys. Attorneys at the focus groups discussed this issue and related anecdotes about how they are sometimes mistaken for defendants in criminal matters despite clear indicators of their status such as a three-piece suit and an attache case. One example of a recent lawsuit illustrates the ways in which court employees can also be the victims of discrimination. In 1984 in a Southern California court, a local rule was adopted that prohibited court employees from speaking Spanish in the courthouse. The rule required court clerks to speak English during their lunch breaks and personal telephone calls as well as when performing official duties. This practice has been enjoined by a federal court but was vigorously defended by counsel retained by the judges of the court.[19/]

E. Language barriers to access to the courts

As illustrated by the previous example, language barriers and discriminatory policies have been applied to court employees. The situation for the non-English-speaking litigant is much more serious. Court interpreters are not a matter of right in civil matters. Moreover, severe problems with the system of court interpreting in the judicial system have recently been the subject of an investigative report in the San Jose Mercury News. Despite the original legislation and study done by the Judicial Council, the suggested reforms are apparently being ignored. The San Jose Mercury News reports that courts are using almost anyone to interpret; that more than two-thirds of the state's interpreters have failed the state competency test or there is no state test administered in the particular language; there is no accountability and no system for removing bad interpreters; the right to a court interpreter in a criminal case is not always enforced; and the lack of training programs has created a critical shortage of interpreters. The problem is especially serious in light of the large non-English-speaking population in California. As the news report stated:

> In the nation's largest immigrant state, thousands of defendants and witnesses who don't speak English are at the mercy of incompetent interpreters, their only link to understanding events in the courtroom.
>
> Day after day, untrained, unethical, and unskilled interpreters throughout California distort testimony, give legal advice or sometimes simply don't translate what occurs in court. While the state has many qualified interpreters, many others mangle the notion of fairness at the heart of the

> American legal system: that a defendant be allowed to tell his story in his own words and hear what his accusers say against him.[20]

Witnesses at the regional meetings recognized these issues as well. One Los Angeles attorney reported that judges will often ignore the need for an interpreter.[21] A second Los Angeles attorney noted that unrepresented parties who do not speak English are asked to stipulate to a temporary judge in civil matters and have no knowledge of the nature of the stipulation or what is happening in the court proceeding.[22] A Fresno attorney told the committee members:

> I represent a lot of Southeast Asians. Fresno has a booming huge Southeast Asian population. There's 23,000 Hmong in Fresno County. It's the largest gathering of Hmong outside of Situ (phonetic) in Thailand. There's more Hmong in Fresno than in any other place in Laos, because they're mainly a rural folk over there.
>
> With eight percent of the population, I think it would be clear that the State Bilingual Services Act requires translators. There isn't a one here.[23]

The subject of improving the use of court interpreters is so crucial to fairness in the courts that the Judicial Council will be considering whether to take immediate action on the subject separate and apart from the work of the gender bias advisory committee and before the racial and ethnic bias committee is appointed.[24]

V. A note on judicial appointments

The advisory committee did not attempt to compile statistics on the appointment of members of racial and ethnic minorities to the bench. Informal reports suggest that too few members of minority groups are appointed to the bench compared to the number of qualified applicants and compared to their numbers in the population. Moreover, increasing the appointment of white women to the bench does nothing to increase the racial and ethnic diversity in California's judiciary, which is so crucial to fairness in our courts. One anecdote from the regional meetings expresses this eloquently. A black woman attorney attended a professional dinner at which a representative from Ms Magazine spoke. The attorney reported:

> The white woman there representing Ms Magazine regaled the white women present with humorous vignettes about the experiences of white women encountering gender bias. She mentioned, for example, as she went on with her stories, a feeling of some elation and relief when Sandra Day O'Connor was appointed to the Supreme Court; and she commented that, well, at least, you know, this made her feel somewhat better about the Reagan Administration because, after all, here was someone who looked like her.
>
> Well, Sandra Day O'Connor doesn't look like me. And during the course of all of these little vignettes, this woman who was speaking never acknowledged that she was describing the experiences of white women. Rather, she purported to discuss gender bias.[25/]

VI. Conclusion

This summary has demonstrated that whether one examines judicial conduct, criminal law, domestic violence, family law, or the status of professionals, gender and race and ethnicity combine to especially disadvantage women of color. Rights of access to the courts are meaningful if representation is provided and only if litigants can understand the proceedings with the aid of a qualified court interpreter. These issues are of primary concern, and they are commended to the new advisory committee for its review.

Historically, women and racial and ethnic groups have often been forced to compete for attention, for scarce resources, and redress of grievances. In this process, women of color have been largely ignored by studies of gender bias and not specifically addressed in studies involving racial and ethnic issues. The advisory committee determined that in the course of its work, issues for women of color would not be ignored and gender and race would not become competing issues. Instead, the advisory committee strived to assist and complement the future work of the committee charged with investigating fairness for racial and ethnic groups in our courts. The committee hopes that the new committee will again focus not only on racial and ethnic issues in general but also on the problems of women of color.

ENDNOTES

1/ "The changing face of America -- how will demographic trends affect the courts?" 72 Judicature 125-132 (1988), at p. 126.

2/ San Francisco Regional Meeting Transcript, p. 92, 97.

3/ Standard of Judicial Administration, standard 1.

4/ State of the Judiciary Address, by Malcolm M. Lucas, Chief Justice of California, Joint Session of the Legislature, Sacramento, California, February 12, 1990.

5/ Staff telephone conversation, February 1989.

6/ Fresno Regional Meeting Transcript, p. 150.

7/ Fresno Regional Meeting Transcript, p. 92.

8/ In re Stevens (1982) 31 Cal.3d 403, 405.

9/ See Tab 7.

10/ Morris, Norval, "Race and crime: what evidence is there that race influences results in the criminal justice system?" 72 Judicature 111-113 (1988).

11/ Id. at p. 112.

12/ "State Legal System Riddled with Racial Distinctions," Los Angeles Daily Journal, March 9, 1988, p. 6. We note here, however, that a contrary result was reached in a recent Rand study.

13/ Woo, Deborah, "The People v. Fumiko Kimura: But Which People? 17 International Journal of the Sociology of Law (1989) 403-428, 418.

14/ Newsweek, May 6, 1985.

15/ California Women of Color Against Domestic Violence (CWOCADV) Gender Bias Testimony, March 30, 1989, see also San Francisco Public Hearing Transcript, p. 282; Los Angeles Public Hearing Transcript, p. 259.

16/ Butte County Regional Meeting Transcript, p. 72.

17/ Written comment, received July 28, 1988.

18/ Bar Association of San Francisco Minority Employment Survey: Final Report, April 18, 1988, prepared by Troy Duster, David Minkus and Colin Samson, Department of Sociology, University of California, Berkeley.

19/ San Francisco Banner Daily Journal, March 17, 1989, p. 6.

20/ San Jose Mercury News, December 17, 1989, p. 1.

21/ Los Angeles Regional Meeting Transcript p. 154.

22/ Los Angeles Regional Meeting Transcript, p. 195.

23/ Fresno Public Hearing Transcript, pp. 290-291.

24/ Judicial Council Agenda Materials, Committee Meetings, March 1-2, 1990, Tab 19.

25/ San Francisco Regional Meeting Transcript, pp. 91-92.

CONCLUSION

The Judicial Council Advisory Committee on Gender Bias in the Courts finds that the gender bias embedded in our cultural and political history influences the decision making and courtroom environment of the California justice system. The advisory committee members believe that it is the special responsibility of the judiciary and the court system, which are charged with judging the conduct and resolving the disputes of others, to take immediate steps to eradicate this bias and minimize its effects. This report documents the ways in which stereotypes about women and men, judgments about their relative worth, and failures in understanding the social and economic realities that characterize their lives can create inequities and disparities in the treatment of men and women who come before the courts. These aspects of gender bias have disadvantaged all citizens but have negative effects primarily on women and most particularly on women of low-income status, many of whom are members of ethnic or racial minorities.

To keep pace with the dramatic changes in California and in our courts -- changes in demographics, technology, and the nature of the work force -- the judiciary must respond with clear, decisive, and immediate action to ensure gender fairness in all of its decisions and practices. The advisory committee proposes concrete and specific recommendations to eradicate the effects of gender bias in civil litigation and courtroom interaction, family law, spousal abuse cases that arise in both a civil context and in criminal prosecutions, juvenile and criminal law, and in court administration. The committee also suggests the creation of an implementation committee and the development of a comprehensive program for judicial education. The report focuses attention on the disadvantages in the court for women of color and provides documentation of the need to convene an advisory committee to study the issue of racial and ethnic bias in the courts.

The committee's charge was to examine and propose solutions for correcting problems of gender bias in the courts, and that charge has been fulfilled. All of the committee's recommendations taken together represent not only specific suggestions for ameliorating problems of gender bias but also proposals that address primary concerns of the courts in general. What began for the advisory committee as an analysis from a particular perspective, that of gender, has resulted in a plan for action that has much broader and more comprehensive implications.

In many respects, the advisory committee's recommendations in many respects are consistent with and help to fulfill goals and standards for the courts that have already been proposed. Tentative Trial Court Performance Standards produced by a special commission convened by the National Center for State Courts and the United States Department of Justice are now under national consideration and have been distributed to Judicial Council members in the past. These standards are pending on the council's court management committee agenda. (See Judicial Council Agenda Materials, March 1-2, 1990, Tab 16.)

The trial court performance standards commission developed and circulated for comment a booklet that proposes 22 separate performance standards for trial courts that relate to (1) access to justice, (2) expedition and timeliness; (3) equality, fairness and integrity, (4) independence and accountablity; and (5) public trust and confidence. A list of the specific standards proposed is attached at pages 6-8. A careful review of these proposed trial court standards and an examination of the recommendations of the advisory committee reveals that these two sets of proposals are in accord. The committee based its recommendations on an analysis of a very specific issue, that of gender fairness. The standards step back from the particular and take a broad view of the court system, and yet both strive for the same results. The recommendations in this report, while directly concerning problems of gender bias,

are expressions in specific areas of the goals and standards that this distinguished commission has already suggested.

A brief comparison of several standards and the recommendations in this report supports this conclusion. Standard 1.3 urges courts to ensure that all who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience. The commentary to the standards mentions specifically the need to accomodate participants who have language difficulties. The advisory committee recommends that the need for court interpreters to assist domestic violence victims be recognized and a statewide registry be created. The committee also commends this issue to the attention of the future race and ethnic bias committee.

Standard 1.4 speaks to the need for judges and court personnel to extend courtesy and respect to all with whom they come in contact. The advisory committee recommends that new ethical duties be created for judges to refrain from exhibiting bias and to prevent others from exhibiting biased behavior in the courtroom. The committee also proposes a manual of fairness for court employees. The tentative standards express concern about the costs of access to the courts. This issue is a dominant theme in the family law chapter. The committee also recommends changes to ensure appropriate awards of attorney's fees in family law and asks the State Bar to address the urgent need for representation in family law cases.

A major focus of the trial court performance standards is the expeditious processing of cases and sound principles of court management. The advisory committee proposes that these salutary goals be implemented in the area of family law as they have been in general civil litigation. The standards urge prompt implementation of changes in the law and faithful adherence to the laws. A primary remedy for problems of gender bias is judicial education; education will help to achieve the stated goal of the standards as well.

The integrity of the court system is dependent upon the enforcement of its orders as stated in Standard 3.5. The introduction to this section of the standards specifically mentions enforcement of child support orders, a major committee concern and the subject of one of the family law recommendations. Similarly, the committee expresses concern about the enforcement of orders for diversion in domestic violence cases and the accountability of those who are diverted to complete an adequate program.

Standard 4.2 charges the trial court with seeking, using, and accounting for its public resources. The advisory committee poses specific recommendations on these issues in family and juvenile law. The integrity of the process must be realized for court employees as well. Thus the commentary to standard 4.3 suggests adequate education and training for court personnel and equal opportunity of employment. This is a primary theme of the section of the advisory committee's report on court administration.

The last section of the standards is devoted to concerns about the need for public trust and confidence in the courts. In the introductory remarks to this section, the commission discusses the essential need for the trust and confidence of all of the constituencies or "publics" served by the courts. The commission identifies the following groups of constituencies: the general public who seldom experience the courts directly; the community's opinion leaders; the researchers who study civil and criminal justice issues; those who participate as attorneys, litigants, jurors, witnesses, or who attend court proceedings as a friend of a victim or other participant; and those who serve or are employed in the court and have an "inside perspective" such as judges, prosecuting and defense attorneys, court administrators, and court clerks.

The advisory committee's method of gathering information for this report targeted each of these groups or constituencies. The committee heard from members of the public in general, community leaders, researchers, litigants and attorneys, and judges, court administrators, and clerks. It is in the spirit of fostering the trust and confidence of these constituencies in the judiciary and the courts that this report is offered.

TENTATIVE TRIAL COURT PERFORMANCE STANDARDS

[Proposed by The Commission on Trial Court Performance Standards]

1. ACCESS TO JUSTICE

Standard 1.1. Public Proceedings

The Court conducts its proceeding and other public business openly.

Standard 1.2. Safety, Accessibility, and Convenience

Court facilities are safe, accessible, and convenient to use.

Standard 1.3. Effective Participation

All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience.

Standard 1.4. Courtesy, Reponsiveness, and Report

Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come into contact.

Standard 1.5. Affordable Costs of Access

The costs of access to the trial court's proceedings and records -- whether measured in terms of money, time, or procedures that must be followed -- are reasonable, fair, and affordable.

2. EXPEDITION AND TIMELINESS

Standard 2.1. Case Processing

The trial court accepts and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Standard 2.2. Compliance with Schedules

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Standard 2.3. Prompt Implementation of Law and Procedure

The trial court promptly implements changes in law and procedure.

3. EQUALITY, FAIRNESS AND INTEGRITY

Standard 3.1. Fair and Reliable Procedures

Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

Standard 3.2. Juries

Jury lists are representative of the jurisdiction from which jurors are drawn.

Standard 3.3. Court Decisions and Actions

Trial courts give individual attention to cases, deciding them without undue disparity among like cases and only upon legally relevant factors.

Standard 3.4. Clarity

Decisions of the trial court unambiguously address the issues presented to it and make clear how compliance can be achieved.

Standard 3.5. Responsibility for Enforcement

The trial court takes responsibility for the enforcement of its orders.

Standard 3.6. Production and Preservation of Records

Records of all relevant court decisions and actions are accurate and properly preserved.

4. INDEPENDENCE AND ACCOUNTABILITY

Standard 4.1. Independence and Comity

A trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

Standard 4.2. Accountability for Public Resources

The trial court responsibly seeks, uses, and accounts for its public resources.

Standard 4.3. Professional Integrity and Dignity

The trial court maintains professional integrity and accords respect and dignity to all with whom it comes into contact.

Standard 4.4. Public Education

The trial court informs the community of its programs.

Standard 4.5. Response to Change

The trial court anticipates new conditions or emergent events and adjusts its operations as necessary.

5. PUBLIC TRUST AND CONFIDENCE

Standard 5.1 Accessibility

The trial court and the justice it delivers are perceived by the public as accessible.

Standard 5.2. Expeditious, Fair and Reliable Court Functions.

The public has trust and confidence that the basic trial court functions are conducted with expedition and fairness, and that its decisions have integrity.

Standard 5.3. Judicial Independence and Accountability

The trial court is perceived to be independent, not unduly influenced by other componenets of government, and accountable.

ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE COURTS

The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts

LIST OF RECOMMENDATIONS

LITIGATION AND COURTROOM INTERACTION

A. Judicial conduct

RECOMMENDATION 1

Request the Judicial Council to transmit and urge consideration by the California Judges Association of the advisory committee's recommendation that the association adopt Canons 3B(5) and (6) of the Draft Model Code of Judicial Conduct of the American Bar Association. This canon imposes the obligation upon judges to perform all judicial duties without bias or prejudice, to refrain from manifesting bias or prejudice by word or conduct, to prohibit staff and others under the judges' control from engaging in similar conduct, and to require lawyers to refrain from similar conduct.

B. Conduct of other bench officers

RECOMMENDATION 2

(a) Request the Judicial Council to instruct the Advisory Committee on Private Judges to study and recommend a means of enforcing the appropriate standards of conduct for private judges relating to bias as stated in the ABA Model Code of Judicial Conduct Canons 3B(5) and (6).

(b) Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendation:

The State Bar should formulate and adopt a Rule of Professional Responsibility that requires lawyers serving as judicial officers to adhere to the ABA Model Code of Judicial Conduct canons 3B(5) and (6).

C. Judges and court employees

RECOMMENDATION 3

Request the Judicial Council to instruct its staff to prepare an educational manual for judges and court personnel on fairness governing the following issues:
(a) the fair treatment of and appropriate courtroom behavior toward lawyers, jurors, court staff, experts, litigants, and others involved in the court process; and
(b) a suggested opening statement to be read at the beginning of all court proceedings expressing the court's refusal to tolerate all kinds of biases.

D. Informal resolution of gender bias complaints

RECOMMENDATION 4

Request the Judicial Council to establish a pilot project in at least three counties of varying size and in disparate geographical regions of the state to develop informal mechanisms for dealing with minor incidents of gender-biased conduct of judicial officers, attorneys, and court personnel and report the results of the pilot back to the council within two years.

E. Membership in discriminatory clubs

RECOMMENDATION 5

Request the Judicial Council to transmit and urge consideration by the California Judges Association of the advisory committee's recommendation that the association modify its existing canon to conform to Canon 2C of the Draft Model

Code of Judicial Conduct of the American Bar Association, which makes it clear that judges, as part of their ethical obligations, shall not belong to clubs that practice invidious discrimination.

F. Attorney conduct exhibiting gender bias

RECOMMENDATION 6

Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendations:
(a) The State Bar should adopt a Rule of Professional Responsibility analogous to ABA Draft Model Code of Judicial Conduct sections 3B(5) and (6) that would create a duty for all attorneys not to manifest bias on any basis in any proceeding toward any person, including court employees, with an exception for legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or other similar factors, are issues in the proceeding.
(b) The Committee of Bar Examiners should include questions pertaining to the amendment to the Rules of Professional Responsibility referred to in (a) above on the bar examination.
(c) The State Bar should conduct a major ongoing effort relating to education of the bar on issues of gender bias. Gender bias issues should be included as part of the following educational materials or programs:
(1) materials in State Bar reports;
(2) section newsletters;
(3) programs at the annual meeting;
(4) programs at bar leaders' meetings;
(5) lawyer education programs;
(6) programs developed as part of mandatory continuing legal education; and
(7) training programs for members of the Judicial Nominees Evaluation Commission.

G. Use of gender-neutral language

RECOMMENDATION 7

(a) Request the Judicial Council to adopt a rule of court regarding gender-neutral language in local court rules, forms, and documents that would make the existing standard of judicial administration on this subject mandatory.
(b) Request the Judicial Council to adopt a rule of court that would require the use of gender-neutral language in all jury instructions by January 1, 1991, and to adopt in the interim a Standard of Judicial Administration that would encourage attorneys and judges to recast all standard jury instructions (CALJIC and BAJI) in gender-neutral language.

H. Appointed counsel

RECOMMENDATION 8

(a) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts that would provide a model local rule setting forth a policy with respect to the appointment of counsel in civil cases, including family law, and appointments as arbitrators and receivers, to ensure equal access for all attorneys regardless of gender, race, or ethnicity. The standard setting forth the model local rules shall include:
(1) A recruitment protocol to ensure dissemination to all local bar associations, including women and minority bar associations.
(2) A written description of the selection process that includes a statement of: minimum qualifications; application procedure; and selection procedure.

(3) Regularly scheduled recruitment.
(b) Request the Judicial Council to adopt a rule of court requiring that each court establish by local rule a policy for the appointment of counsel in civil litigation, as specified above. The rule should provide that if a court fails to adopt a local rule regarding appointed counsel, the model rule contained in the standards shall be deemed the local rule.
(c) Request the Judicial Council to adopt a Standard of Judicial Administration that would provide for the selection of attorneys for bench, bar, and other court-related committees in a manner that would provide for equal access to selection for all attorneys regardless of sex, race, and ethnicity.

I. Attorney employment

RECOMMENDATION 9

Request the Judicial Council to transmit and urge consideration by the State Bar of the following advisory committee recommendations:
(a) The State Bar should adopt a Rule of Professional Responsibility prohibiting lawyers from discriminating in employment decisions and from engaging in sexual harassment.
(b) The State Bar and all appropriate sections and committees should vigorously support and take immediate steps to adopt the recommendations of the Women in the Law Committee submitted in its recent survey of women and the practice of law in California.

J. Membership in discriminatory clubs

RECOMMENDATION 10

Request the Judicial Council to transmit and urge consideration by the State Bar

of California of the advisory committee's recommendation that the State Bar use every available means permitted by the Constitution to discourage attorneys from using for business purposes clubs that practice invidious discrimination.

A. Child support too low

RECOMMENDATION 1

Request the Judicial Council to
(a) fund and adopt as a top priority a study of the application of child support guidelines with the ultimate goal that guidelines would be established that would conform to federal mandates for uniformity and the rebuttable presumption of validity, would reflect fair calculations of the amount required to raise children in a divorcing family, and would not necessarily link amounts due to shared custody.
(b) urge introduction of and support legislation that would
(1) amend Civil Code section 4720(a) by requiring that all child support awards, even those which are equal to the amount designated by the applicable guidelines, shall set forth the factors on which the judge relied in setting the award at that level.
(2) amend Civil Code section 4724 to provide and ensure that children, after divorce, continue to share in the increased standard of living of the higher income parent who is usually the noncustodial spouse.
(3) extend the duration of child support obligations prospectively to age 21.

B. Child support as bargaining chip

RECOMMENDATION 2

Request the Judicial Council to
(a) urge introduction and support legislation that would modify or repeal Civil Code section 4727 so that shared

physical custody for more than 30 percent of a 365-day period is no longer a factor capable of reducing child support obligations; and
(b) instruct the Advisory Committee on Legal Forms to modify the family law forms to reflect notice of the provisions of Civil Code section 4700(b) for recovering childcare expenses when the non-custodial parent fails to fulfill caretaking responsibilities, and to create a simple application procedure for recovering the expenses.

C. Child support uncollectible

RECOMMENDATION 3

Request the Judicial Council to
(a) review compliance with the statute that requires the superior court clerk to distribute booklets explaining parents' rights and duties relating to child support and augment and improve those efforts; and
(b) study whether a system of informal assistance similar to that provided litigants in the small claims court can be extended to parents seeking to collect unpaid child support.

D. Spousal support

RECOMMENDATION 4

Request the Judicial Council to
(a) institute a monitoring process to review the operation of Civil Code section 4801(a) concerning the standard of living during the marriage as a point of reference in determining spousal support and Civil Code section 4390.3 providing for automatic wage assignments in spousal support awards; and
(b) propose additional recommendations for reform, if necessary, including consideration of whether spousal support guidelines would be appropriate.

E. Custody

RECOMMENDATION 5

Request the Judicial Council to target the study of joint custody and the best interests of children as a top priority for further research funded by the Family Court Services Program and for the relevant educational programs planned and administered by CJER and the AOC. The judicial education programs for family law judges and presiding judges should also stress the need for affording the preference given to disputed custody trials by law.

F. Special problems: custody and child sexual abuse

RECOMMENDATION 6

Request the Judicial Council to
(a) adopt a rule of court or if necessary introduce legislation that would permit the family law judge in a case in which allegations of child abuse are raised to have confidential access to any existing investigatory reports submitted, for example, by Child Protective Services in the context of another proceeding outside the family law department and to consider the need for ordering an expeditious investigation of the child abuse allegations if there are not adequate reports. The goal of all of the departments of the court should be to limit the evaluations to one court-ordered evaluation. The investigation ordered must be conducted by a competent investigator who is well-trained in the area of child abuse, and shall be completed and submitted to the court as quickly as possible.
(b) adopt a Standard of Judicial Administration setting forth a model protocol for judges resolving custody disputes involving child sexual abuse allegations.

(c) mandate the inclusion of child sexual abuse issues and the model protocol in family law judicial education programs and other judicial education programs as appropriate.

G. Division of marital assets

RECOMMENDATION 7

Request the Judicial Council to instruct the Advisory Commitee on Legal Forms to develop a simple petition form that would permit a spouse to request an accounting of the marital assets as now provided in Civil Code section 5125.1.

H. Judges

RECOMMENDATION 8

Request that the Judicial Council refer to the Advisory Committee on Family Law the task of examining the working conditions and educational needs of family law judges and to submit recommendations for ways in which the family law assignment might be enhanced.

I. Lawyers

RECOMMENDATION 9

Request the Judicial Council to
(a) commend the advisory committee's report to the State Bar and the Committee on Bar Examiners and urge that family law and gender bias issues in family law be included on the State Bar exam and that education on gender bias issues in family law be required for certification as a family law specialist; and

(b) commend the report to all law school deans and urge that gender bias issues in family law be incorporated into the law school curriculum.

RECOMMENDATION 10

Request the Judicial Council to refer to the Family Law Advisory Committee the issue of precluding without exception the taking of live testimony at hearings for temporary support, visitation, or custody.

J. Mediators

RECOMMENDATION 11

Request the Judicial Council to
(a) instruct the Family Court Services Program to
(1) include the issues of gender bias outlined in this section of the report with respect to gender stereotypes and the relative power balance between the parties in its mediator training programs and
(2) include an ethical duty to refrain from exhibiting gender bias or other bias in the course of a mediation in the uniform standards now being proposed pursuant to statutory mandate.
(b) adopt a rule of court that provides that to the extent recommendations are made to bench officers by mediators, the recommendations must be in writing with the reasons for the recommendations stated on a standard form developed for the purpose, and copies of the report and recommendation are to be made available to the parties by the court. The rule should further provide that to the extent a bench officer relies on the recommendations contained in the mediator's report in making orders, the basis of the bench officer's determination is to be stated on the record unless otherwise waived by the parties.

(c) refer jointly to the Family Law Advisory Committee and the Family Court Services Program the task of studying the custody evaluation process in California and request the submission of recommendations promoting improvement of the qualifications and professional standards of evaluators.
(d) adopt a rule of court that would require that the parties to a mediation be informed at the initiation of the process what the process will entail and how the information obtained by the mediator will be used.
(e) adopt a rule of court that would create a simple grievance procedure for family law litigants who participate in mediation and that would vest oversight responsibiities in the family law judge or family law presiding judge. The proposed rule should include a requirement that family law litigants be informed of the right to submit a complaint regarding the conduct of a mediator.
(f) seek adequate funding to accomplish the goals set forth in this recommendation.

K. Devaluation of family law

RECOMMENDATION 12

Request the Judicial Council to
(a) refer the question of the need for more family law judges to the Judicial Council Court Profiles Advisory Committee and suggest that the committee should reevaluate the method of weighting family law cases to ensure that the number of bench officers available for assignment to family law is proportionate and appropriate to the family law workload.
(b) amend the rules of court governing the duties of presiding judges to include a duty to allocate adequate judicial resources to family law cases in proportion to the weights given

family law cases in determining judgeship needs and ensure that those bench officers assigned to family law are adequately trained in family law.

RECOMMENDATION 13

Request the Judicial Council to refer to the Family Law Advisory Committee the task of creating a pilot project applying the concepts of delay reduction and calendar management to family law cases. The advisory committee should work in cooperation with the gender bias implementation committee to ensure that issues of fairness are considered. The pilot project should be closely scrutinized and should contain both an evaluative and educational component.

RECOMMENDATION 14

Request the Judicial Council to develop protocols for solving the problems resulting from the overlapping jurisdiction of family, juvenile, and criminal departments within one court and among different courts as part of its implementation of Penal Code section 14010(b)(3), if funded, which requires the development of special procedures for coordination and cooperation in case management when a child is involved in overlapping proceedings.

L. Other barriers to access

RECOMMENDATION 15

Request the Judicial Council to instruct the Advisory Committee on Family Law to work with the Advisory Committee on Legal Forms to develop a general information booklet or other educational device for family law litigants setting forth the court's procedures regarding custody, mediation, investigation,

enforcement of orders, definitions of relevant legal terms, and the way to obtain an accounting of marital assets.

RECOMMENDATION 16

Request the Judicial Council to (a) officially transmit and commend the advisory committee report to the attention of the State Bar, especially with respect to those portions describing the current crisis in family law representation which has a disparate effect on women litigants; and (b) urge the State Bar to create immediately a task force to focus on solutions to this problem.

RECOMMENDATION 17

Request the Judicial Council to support legislation introduced that will codify existing case law that requires the trial court in exercising its discretion to award attorney's fees under Civil Code section 4370 to consider the respective incomes and needs of the parties in order to ensure that each party has access to legal representation to preserve all of his or her rights.

M. The need for research

RECOMMENDATION 18

Request the Judicial Council to add staff, budget, and other resources to provide for and ensure the creation of a uniform statistical reporting system in family law as required by statute and to reevaluate the priorities for research grants funded by the Family Court Services Program in light of this report.

VICTIMS OF DOMESTIC VIOLENCE

A. Temporary restraining orders

RECOMMENDATION 1

Request the Judicial Council to adopt rules of court that would provide that
(a) ex parte temporary restraining orders shall be available during substantially all court hours, and emergency protective orders shall be available during all hours when an ex parte order is not available.
(b) an ex parte temporary restraining order shall be issued on the same day that the application is filed unless the application is filed too late in the day to permit effective review, in which case the petitioner shall be advised of the availability of emergency protective orders.
(c) the right to file an application for or obtain a temporary restraining order shall not be conditioned upon pursuing any other remedy, court service, or court proceeding.
(d) no applicant for a temporary restraining order shall be required to go to mediation prior to attending the order-to-show-cause hearing regarding the application for the temporary restraining order.
(e) each court shall devise a simplified procedure to obtain a temporary restraining order, including allowance for prompt notification that the order has been signed and that it can be retrieved from an easily accessible location.
(f) an applicant for a temporary restraining order shall not be required to type the application as a condition of obtaining the order; legible handwritten applications shall be acceptable.
(g) Judicial Council forms for temporary restraining order applications shall be made available free of charge at the courthouse, and a multilingual sign shall be posted in each clerk's office indicating where the forms may be obtained.

(h) in certain counties, temporary restraining orders in domestic violence cases may be issued by a judge of a municipal or justice court assigned by the Chairperson of the Judicial Council to the superior court in the county where the application for a temporary restraining order was made.
(i) no notice to the party to be restrained shall be required prior to the issuance of an ex parte temporary restraining order in domestic violence cases, unless such notice is ordered in a particular case upon a finding of good cause for such notice.
(j) where custody or a residence exclusion request is ordered ex parte without notice to a party, that party may be granted an expedited hearing upon request supported by a written declaration.
(k) no greater burden of proof shall be required for residence exclusion orders than for other orders.
(l) support persons shall be allowed to accompany and support an applicant for a restraining order during all court proceedings, so long as they do not purport to provide legal representation.

RECOMMENDATION 2

Request the Judicial Council to study ways to simplify the procedure for obtaining a temporary restraining order and
(a) request adoption of a one-page form that includes the required application, declaration, and order.
(b) mandate that the form be simplified so that the relevant information is clarified and written in plain language.
(c) mandate that the forms be translated into languages other than English, as needed.
(d) request simplification of the in forma pauperis form.
(e) permit the forms to be handwritten or computer generated.
(f) prepare a revised instructional pamphlet that more clearly explains the procedures to be followed.
(g) request the adoption of a form for any court with jurisdiction over a criminal matter to issue a restraining order pursuant to Penal Code section 136.2.

RECOMMENDATION 3

Request the Judicial Council to adopt a new Standard of Judicial Administration on procedures governing hearings on applications for temporary restraining orders in domestic violence cases as follows
(a) The judge should begin each hearing with a description of the procedure, ground rules, and what will be expected of all parties.
(b) The judge should provide for the safety of all persons throughout the proceedings.
(c) In cases where restraining orders are granted, the judge should inform the parties orally at the hearing that violations of the orders will subject the violator to contempt proceedings and arrest and are punishable as misdemeanors or felonies.

RECOMMENDATION 4

Request the Judicial Council to adopt a rule of court that would provide that mutual restraining orders shall not be issued either ex parte or after hearing absent written application, good cause, and the presence of the respondent.

RECOMMENDATION 5

Request the Judicial Council to adopt new standards relating to calendaring of actions brought under the Domestic Violence Protection Act (DVPA) as follows
(a) In courts with a separate family law department, a separate calendar within that department shall be established for the purpose of calendaring and hearing actions brought under the DVPA.
(b) Each court shall establish a direct calendaring system for cases brought under the DVPA.
(c) Each court shall schedule domestic violence calendars at a time that staffed children's waiting rooms are available for the use of children.

B. Emergency protective orders

RECOMMENDATION 6

Request the Judicial Council to adopt a rule or standard that would provide a clarification of the language of Code of Civil Procedure section 546(b) such that the expiration date provided for in the statute ("the next day of judicial business") will be defined as the next day when a court is actually available to issue an order.

C. Court safety

RECOMMENDATION 7

Request the Judicial Council to adopt a Standard of Judicial Administration relating to court safety that would recommend that
(a) the family law and domestic violence departments and the Family Court Services office should be equipped with metal detectors.
(b) escorts to and from the courthouse to the parking lot should be provided to anyone upon reasonable request.
(c) the courts should provide safe, separate, and/or guarded waiting areas for all court proceedings including mediation.
(d) bailiffs should be available for use in Family Court Services when necessary.

D. Non-English-speaking victims

RECOMMENDATION 8

(a) Request the Judicial Council to propose legislation or support legislation introduced that would provide for qualified interpreters in domestic violence cases and that would

permit the use of multi-lingual court employees as interpreters.
(b) Request the Judicial Council to create a statewide registry of qualified interpreters.
(c) Request the Judicial Council to instruct the proposed Advisory Committee on Ethnic and Minority Concerns to study the issue of access to the courts by non-English-speaking persons.

E. Family Court Services personnel

RECOMMENDATION 9

Request the Judicial Council to adopt Standards of Judicial Administration that would
(a) define the role of Family Court Services in domestic violence cases as an in-house system that provides the following services:
(1) Identifies cases that involve domestic violence and codes the files to identify such cases.
(2) Makes appropriate referrals.
(3) Assures the safety of the victim and other parties.
(4) Reports each case in which domestic violence has occurred to the family court judge (with service on the parties or their attorneys).
(5) Investigates the facts surrounding the allegation of domestic violence.
(6) Provides for these services free of charge.
(b) establish minimum statewide standards for mediators regarding training, qualifications, protocols, and procedures for dealing with situations involving domestic violence and that would prohibit counties from charging for their services.
(c) instruct the Family Court Services Program to provide on-going training to all personnel on issues related to domestic violence including:
(1) the cycle of violence and issues of safety,
(2) the necessity for confidentiality of the victim's address,

(3) issues affecting women as victims,
(4) avoiding preconceptions and judgments regarding the victim,
(5) the need to understand the judicial process,
(6) issues of equality and inequality in bargaining power, and
(7) the risk that strict neutrality, that is, treating both parties the same, disadvantages victims of domestic violence.

F. Diversion

RECOMMENDATION 10

Request the Judicial Council to adopt new Standards of Judicial Administration that would create statewide standards for diversion programs, with input from domestic violence advocates, and statewide standards for effectively monitoring participation and successful completion of diversion programs.

G. District attorneys and city attorneys

RECOMMENDATION 11

Request the Judicial Council to transmit the advisory committee's report and commend it to the attention of district attorneys and city attorneys who prosecute misdemeanor domestic violence offenses. The letter of transmittal should
(a) outline the need for the vigorous prosecution of domestic violence offenses as serious crimes and as felonies where warranted.
(b) recommend establishment of a specially trained vertical prosecution unit to handle all domestic violence cases whenever possible.
(c) recommend training for prosecutors regarding the availability of restraining orders pursuant to Penal

Code section 136.2 in the criminal courts and encourage their use.
(d) recommend training for prosecutors regarding standards for effective diversion programs, including effective monitoring.
(e) recommend that the prosecutor, not the victim, decide whether or not to prosecute.

RECOMMENDATION 12

Request the Judicial Council to affirm the need for publicly funded, active victim-witness programs in each county to deal with domestic violence victims and commend and encourage the continued funding and support of these programs.

H. Law enforcement

RECOMMENDATION 13

Request the Judicial Council to transmit the advisory committee's report and commend the report to the attention of law enforcement organizations and
(a) highlight the testimony dealing with the need to treat domestic violence cases in the same way as similar crimes against strangers.
(b) highlight the testimony dealing with the need to protect the victim after the alleged battery long enough to permit the victim to arrange for his or her safety.
(c) suggest the need for training on emergency protective orders, their availability, the means to notify victims, and how to obtain issuance.
(d) suggest the need for training that restraining orders are to be enforced, that violation is cause for arrest, and that proof of service need not be filed with the court before enforcement is required.

(e) suggest that training should be conducted by domestic violence experts on all aspects of domestic violence including the characteristics of the victim and the batterer, the seriousness of the crime, the need for arrest, measures to protect the victim, the need to make reports, and the need to give prompt attention to calls.

I. Judicial education

RECOMMENDATION 14

Request the Judicial Council to urge CJER to conduct training of all judges on the following issues:
(a) The psychological profiles of both victims and batterers.
(b) The nature and perpetuation of the cycle of violence and the battered women's syndrome.
(c) An understanding of the nature of the victim's experience and emotional state.
(d) An understanding of the intimidating effects the court system has on victims of domestic violence.
(e) An understanding of the role of professionals who work in the area of domestic violence including expert witnesses and lay advocates.
(f) The need to issue enforceable and effective restraining orders and attention to whether the order should take effect immediately, should limit the taking of property, and should not be too limited in time.
(g) The need to inform victims of the availability of emergency protective orders by telephone.
(h) The need for focus on problems of the poor and minorities, including adequate representation, interpreters, and the avoidance of stereotypes about violence in ethnic or minority communities.
(i) The need for monitoring diversion to ensure that an effective program is completed.

(j) Knowledge of safety measures to protect the victim including supervised visitation, neutral pickup points, third-party visitation arrangements, or creative visitation plans.

RECOMMENDATION 15

Request the Judicial Council to adopt a Standard of Judicial Administration that would provide that in cases where domestic violence has been established, custody or visitation orders should be issued in such a way as to ensure the safety of the victim of domestic violence, whether by supervised visitation, neutral pick-up points, third-party visitation arrangements, or creative visitation plans that protect all parties from further violence.

A. Appointed Counsel

RECOMMENDATION 1

(a) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, which would provide a model local rule setting forth a policy with respect to the appointment of counsel to ensure equal access for all attorneys, regardless of gender, race, or ethnicity.

(b) Request the Judicial Council to adopt a rule of court requiring that each local court establish by local rule a policy for the appointment of counsel. Request the Judicial Council to provide in the adopted rule of court that in the event a court fails to adopt a local rule regarding appointed counsel, the model rule contained in the standards shall be deemed the local rule.

The standards for the appointment of counsel shall include:

(1) A recruitment protocol to ensure dissemination to all local bar associations, including women and minority bar associations;

(2) A written description of the selection process, which includes a statement of: minimum qualifications; application procedure; and selection procedure; and

(3) Regularly scheduled recruitment.

(c) Request the Judicial Council to provide in the adopted rule of court that local courts shall report monthly to the Judicial Council, for a three-year period, statistical information regarding the gender, race, and ethnicity of attorneys appointed, in order to monitor implementation of the local rule. Request the Judicial Council to include the findings of the three-year study in its Annual Report to the Governor and the Legislature.

B. Local probation programs

RECOMMENDATION 2

(a) Request the Judicial Council to recommend to local probation departments that

(1) sentencing and dispositional alternatives and rehabilitation programs for adults and juveniles administered or supervised by probation departments be made available on an equivalent basis to males and females;

(2) sentencing and dispositional alternatives and rehabilitation programs for adults and juveniles administered or supervised by probation departments be made available to meet the special needs of pregnant women and women with young children; and

(3) residential programs administered or supervised by the probation departments be maintained in facilities with space suitable for parental visitation.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile cases to become familiar with and consider sentencing and dispositional alternatives and programs available through the probation department.

C. Institutions and placements

RECOMMENDATION 3

(a) Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority, and local agencies that adult and juvenile facilities, for detention, disposition, or sentencing, be available on an equivalent basis for males and females.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration for trial courts, and to amend section 24 of the Standards of Judicial Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile court proceedings to become personally familiar with all detention facilities, placements, and institutions used by the court for males and females.

D. Education and training programs

RECOMMENDATION 4

(a) Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority and local agencies that the nature and extent of education and training programs in adult and juvenile facilities be equivalent for males and females (see Title 15 of the Administrative Code, divisions 4 and 7). Education and training programs should include:

(1) basic education courses with basic reading and math skills and access to higher educational opportunities;

(2) a full range of vocational training without traditional gender classifications and limitations;

(3) health education with emphasis on sex education on prenatal/perinatal care;

(4) parenting skills, including programs facilitating contact visits; and

(5) drug and alcohol rehabilitation programs.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration, and amend section 24 of the Standards of Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile proceedings to become personally familiar with the education and training programs in state and local facilities available for males and females.

E. Special needs for institutionalized females

RECOMMENDATION 5

(a) Request the Judicial Council to recommend to the Department of Corrections and the California Youth Authority and local agencies that the protocols for institutionalized females be reexamined and modified to institute practices that recognize the specific needs of women (see Title 15 of the Administrative Code, divisions 4 and 7). The protocols should specifically address:

(1) provision for adequate and appropriate clothing designed for female anatomy;

(2) provisions for meeting personal hygiene and sanitation needs and increased access to laundry facilities during the menstrual cycle; and

(3) hardware and shackles amenable to the female form.

The protocols should also address pregnancy-related issues. Limits on the use of leg chains, waist chains, and handcuffs should be encouraged unless there is a security risk. Pregnancy should not limit a woman's ability to earn work credits. Job assignments should be made with physician's approval. Protocols for expansion of the Mother/Infant Care Program under Penal Code section 3410 et seq., and establishment of similar local programs for mother and children, should be considered. Protocols for visiting with children of inmates should also be considered.

(b) Request the Judicial Council to adopt a Standard of Judicial Administration, and amend section 24 of the Standards of Administration for juvenile courts, to encourage each judge presiding over criminal and juvenile proceedings to become familiar with these protocols.

F. Medical problems of incarcerated females

RECOMMENDATION 6

Request the Judicial Council to recommend to the Department of Corrections, the California Youth Authority and local agencies the adoption of protocols requiring appropriate medical services for incarcerated and institutionalized females, including:
(a) full gynecological care;
(b) pregnancy-related services, including:
(1) pregnancy screening (voluntary) with pregnancy classification upon confirmation;
(2) special diet;
(3) prenatal/perinatal care;
(4) appropriate housing (lower bunks, medical unit);
(5) access to abortion where requested;
(6) transportation to medical services/hospital; and
(7) procedures for dealing with pregnancy-related medical emergencies;
(c) medically supervised drug detoxification program; and
(d) voluntary, confidential AIDS testing

G. Sexual assault and harassment

RECOMMENDATION 7

Request the Judicial Council to recommend to the Department of Corrections, California Youth Authority, and local agencies operating adult and juvenile detention facilities (see Title 15 of the Administrative Code, sections 4 and 7) that they implement policies and procedures to assure detainees' safety from sexual harrassment and sexual assault perpetrated by
(a) guards, counselors or staff;

(b) other inmates, detainees in the institution; and
(c) inmates with whom contact is made during transportation to and from court and in the courthouse lock-up.

H. Parental ignorance of dependency laws

RECOMMENDATION 8

Request the Judicial Council to
(a) revise the informational brochure on dependency law and procedure.
(b) produce an informational video on dependency law and procedure.
(c) amend the juvenile court rules to require that the informational brochure be given to parents in court.
(d) recommend to the Department of Corrections, the California Youth Authority, and local detention and placement facilities to require dissemination of the brochure and use of the video in their facilities (see Title 15 of the Administrative Code, divisions 4 and 7).

I. Notice to parents

RECOMMENDATION 9

(a) Request the Judicial Council to propose legislation or support legislation introduced that would amend the Welfare and Institutions Code to require the Department of Corrections, California Youth Authority, and local agencies responsible for detention of inmates to implement protocols to be followed in notifying and securing the presence of parents confined at such facilities at dependency, delinquency, or termination of parental rights proceedings (see Title 15 of the Administrative Code, divisions 4 and 7).
(b) Request the Judicial Council to adopt a Standard of Judicial

Administration that would encourage all bench officers and court personnel to become familiar with the procedures for obtaining the release and the return of such inmates. The standard should also encourage the use of low-cost facsimile machines that will speed up the notification process and increase the likelihood of a timely hearing, thus reducing the cost of such procedures by minimizing delays.
(c) Request the Judicial Council to adopt a notice and proof of service form to be used for incarcerated and detained parents.

J. Enhancing status of the juvenile court

RECOMMENDATION 10

Request the Judicial Council to refer the following issues to its Advisory Committee on Juvenile Court Law for study and recommendations:
(a) Reevaluation of weighted caseload measures to accurately reflect the complexities of juvenile court law, statutorily mandated multiple review hearings, and intense court supervision required in juvenile dependency cases.
(b) Review judicial assignment procedures and inadequate facilities and staffing in juvenile court.
(c) Review methods to enhance status of juvenile court and the judicial assignments to that court.

K. Judicial training

RECOMMENDATION 11

(a) Request the Judicial Council to adopt Standards of Judicial Administration that encourage CJER and local courts to develop training on issues relating to criminal and juvenile

law that relate to attitudes of gender bias.

(b) Request the Judicial Council to adopt Standards of Judicial Administration that require CJER and local courts to develop training on issues and techniques that relate to attitudes of gender bias as it pertains to trial and jury selection in matters involving sexual assault, domestic violence, and child abuse.

(c) Request the Judicial Council to amend section 8.5 of the Standards of Judicial Administration on examination of prospective jurors in criminal cases to include recommended questions that relate to attitudes of gender bias as it pertains to cases involving sexual assault, domestic violence, and child abuse.

COURT ADMINISTRATION

A. Personnel plans

RECOMMENDATION 1

(a) Request the Judicial Council to endorse the continuing development and implementation of new personnel policies and practices to promote the efficient administration of justice and to eliminate gender bias.
(b) To this end, request the Judicial Council to amend California Rules of Court, rule 205(11), rule 207(1), and rule 532.5 to establish written court personnel plans consistent with a new Standard of Judicial Administration to be adopted.
(c) Requests that the Judicial Council further amend rule 205, rule 207, and rule 532.5 to require by March 1 of each year a calendar year report to the AOC regarding the contents of the court personnel plan, including data indicating implementation of the plan, such as affirmative action reports.

B. Elements of personnel plan in Standard of Judicial Administration

RECOMMENDATION 2

Request the Judicial Council to adopt a Standard of Judicial Administration outlining the elements of a court personnel plan, with the explicit proviso that the courts should work closely with the county board of supervisors and other county officials regarding compensation, benefits, and conditions of employment for all employees in the court. This Standard of Judicial Administration would incorporate preferred personnel practices, and would note that a court plan should, but is not required to, include at least the following items because plans without written guidance

on these items create a climate in which gender bias is more likely to occur:
(a) Sound and equitable salary-setting procedures;
(b) Revised job classifications and titles;
(c) Criteria and standards for promotion;
(d) Regular performance evaluations for all levels of employees;
(e) An affirmative action plan applying to all court personnel;
(f) Job-related training and continuing education programs for all court personnel as appropriate to their level, including but not limited to (i) affirmative action concepts and recruitment methods, (ii) sexual harassment detection, prevention, and remedies, (iii) career development, including basic skills, managerial skills, and time-off for education, and (iv) gender bias;
(g) A sexual harassment policy;
(h) Grievance procedures covering, but not limited to, sexual harassment;
(i) A policy statement on professional behavior, requiring that all employees must conduct themselves in a professional manner at all times, and refrain from offensive conduct or comments that reflect gender bias;
(j) An employee benefits plan that may when consistent with court requirements and county policies, but is not required to, include (i) flex-time, part-time, job-sharing, or other alternative work schedules, (ii) disability leave, including pregnancy leave in accordance with Government Code section 12926(c), (iii) unpaid leaves, including parental leave, and (iv) "cafeteria" options to use pre-tax dollars for dependent care and banked sick leave for care of dependents.

C. Compliance with personnel plan

RECOMMENDATION 3

Request the Judicial Council to amend California Rules of Court, rule 206 to require that each judge in both superior and municipal court shall comply with the court's personnel plan.

D. AOC to provide assistance

RECOMMENDATION 4

Request the Judicial Council to instruct the AOC to add staff
(a) to assist the courts in developing the court personnel plans required by the amended rules;
(b) to develop reporting forms and to collect and analyze the data on personnel policies, plans, and practices required annually by the amended rules in order to identify desirable personnel practices and minimum standards for courts that would aid in the elimination of gender bias; and
(c) to act as a resource for courts by developing alternative personnel plans, compiling "case studies" from courts reflecting successful implementation of, for example, flex-time or gender bias training, and providing videotape or other training on subjects such as gender bias and sexual harassment.

E. Employee training and policies

RECOMMENDATION 5

Request the Judicial Council to amend California Rules of Court, rule 205 and rule 532.5 to provide that the presiding judge shall evaluate the policies and training programs concerning gender fairness and sexual harassment available for county clerk employees, bailiffs, probation officers, and other regular courtroom participants and may recommend that these individuals attend training programs on gender fairness and sexual harassment offered by the courts or other agencies.

F. Judicial leave policy

RECOMMENDATION 6

Request the Judicial Council to amend California Rules of Court, rule 205 and rule 532.5 to establish a comprehensive judicial leave policy, including pregnancy-related leave and parental leave policies, sick leave, disability leave, and family compassionate leave.

G. Employee childcare

RECOMMENDATION 7

Request the Judicial Council to add to the charge of its Facilities Advisory Committee the need to develop ways for counties and courts to work together to ameliorate the important problem of creating quality and affordable childcare for all court employees near where they work.

H. Children's waiting rooms

RECOMMENDATION 8

Request the Judicial Council to recommend to its Facilities Advisory Committee that waiting rooms for children of court participants be made a priority issue.

I. Law school teaching and employment practices

RECOMMENDATION 9

Due to the primary importance of educating all members of the profession on the nature and effects of gender bias in the legal system, request the Judicial Council to

transmit to and urge consideration by the deans of law schools and schools training legal technicians the Advisory Committee's recommendation that the schools develop written policies and other programs that will
(a) eliminate gender bias from classroom interactions, casebooks, and course materials;
(b) eliminate gender bias and encourage diversity in the hiring, promotion, and tenure of faculty;
(c) include gender and other fairness as a required subject in all professional responsibility courses;
(d) include an examination of the way in which gender bias can taint expert testimony, cross-examination, interpersonal conduct between attorneys, jury selection, and juror use;
(e) provide grievance procedures and discipline for sexual harassment by students or employees;
(f) eliminate gender bias in on-campus recruiting.

Further, request the Judicial Council to transmit to and urge consideration by the State Bar and the Committee of Bar Examiners the Advisory Committee's recommendations to the law schools, as appropriate, and further urge that representatives of the State Bar and the Committee of Bar Examiners meet with the law school deans on these subjects.

IMPLEMENTATION

A. Implementation committee

RECOMMENDATION 1

Request the Judicial Council to recommend that the Chief Justice appoint an advisory committee for implementation, comprised of some members of the Judicial Council Advisory Committee on Gender Bias in the Courts and others, to assist the Judicial Council with the implementation of the recommendations in this report and with evaluating their effectiveness.

B. Judicial education

RECOMMENDATION 2

(a) Request the Judicial Council to adopt a Standard of Judicial Administration that would encourage

(1) every new and newly elevated judge or commissioner to attend the California Judges' College;

(2) the inclusion of gender bias issues in the curriculum of both the college and the orientation program for new judges and inclusion in the substantive law courses in these two programs of components on gender bias issues relevant to the subject matter.

(b) Request the Judicial Council to urge CJER's Governing Committee to create a special committee to address the significant problem of judicial education in family law. The committee's task would be to develop a program and curriculum in family law designed to ensure that every bench officer hearing family law matters, including those who hear matters only occasionally, would be educated in general on family law issues and more specifically on issues of gender bias arising in family law. CJER's Governing Committee should

report back to the Judicial Council within one year with a proposed plan. Upon completion of an appropriate plan that takes into consideration the need for adequate staffing of the courts during a judge's absence for educational purposes, a rule would be proposed which would require each judge who hears family law matters to complete the program.

(c) Request the Director of the Administrative Office of the Courts to select a working group or committee composed of representatives from educational programs for judges, attorneys, court staff, mediators, law students, and others involved in the justice system. The task of the committee would be to coordinate efforts to develop quality educational programs on gender bias and other biases, to exchange information, and to provide technical assistance and resources to those engaged in this effort.

(d) Request CJER to develop a program that would teach CJER's instructors the subtleties of handling gender bias courses and train them in effective and innovative teaching methods.

APPENDIX A

Fact Sheet

THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON

GENDER BIAS IN THE COURTS

FACT SHEET

Committee's Mandate

The charge of the Judicial Council Advisory Committee on Gender Bias in the Courts is to examine the problem of gender bias in the California courts, gather information, and make recommendations to the Judicial Council to correct any problems identified.

Definition and Issues

The committee's working definition of gender bias includes behavior or decision making of participants in the justice system which is based on or reveals **(1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; and (3) myths and misconceptions about the social and economic realities encountered by both sexes.** The advisory committee will conduct a comprehensive review of gender bias issues, including but not limited to the following topics:

- courtroom interaction;
- judicial branch employment practices and other issues of court administration;
- gender bias within the judiciary;
- selection of court-appointed counsel;
- jury instructions;
- domestic violence;
- custody;
- child support;
- economic consequences of dissolution;
- family law education and assignment procedures and;
- juvenile and criminal law.

The committee is authorized to consult with other professionals in the justice system; conduct public hearings, regional meetings, and surveys; collect statistical information; and perform any other tasks consistent with the Judicial Council's authority and the committee's charge.

Appointment

The advisory committee was appointed by two successive Chief Justices in accordance with Government Code section 68501 which permits the Chairperson of the Judicial Council to appoint "committees composed of judges, retired judges, attorneys and experts in specialized fields, or any combination thereof, to advise with the Judicial Council in studying the condition of business in the several courts and the means for simplifying and improving the administration of justice and in the performance of any other duties of the council authorized or imposed by law." Creation of the committee followed a recommendation of the Judicial Council made at its meeting on December 6, 1986, after receipt and review of a preliminary report from a precursor committee.

Membership, Organization, and Structure

Los Angeles Superior Court Judge David M. Rothman and State Senator Diane Watson of Los Angeles co-chair the Judicial Council Advisory Committee on Gender Bias in the Courts. Los Angeles Superior Court Judge Judith C. Chirlin serves as vice-chair. The committee has an executive committee and five subcommittees as follows: Civil Litigation and Courtroom Interaction; Court Administration; Domestic Violence; Family Law; and Juvenile Law and Criminal Law. A complete roster of the committee appears on the reverse side of this fact sheet.

Committee Funding

The advisory committee's work is funded as a specifically designated portion of the general budget of the Administrative Office of the Courts as approved by the Legislature and the Governor.

Data Collection Methods

Subject to continuing reevaluation and review, the advisory committee intends to use the following methods of collecting data on the problems of gender bias in the California courts:

- Confidential regional bar meetings for California attorneys (six meetings were conducted in January through March of 1988 in Butte County, Sacramento County, City and County of San Francisco, Orange County, Fresno County, and Los Angeles County);
- Information gathering meetings with court clerks and domestic violence advocates;
- A survey of judges;
- Reports on specific issues by participants at the Conference of Affiliates of California Women Lawyers;
- Discussions with groups of attorneys, judges, and other experts on specific issues at the State Bar Annual Meeting (September 1988);
- Site visits (jail and prison facilities; diversion and alternative sentencing programs);
- Telephone surveys;
- Literature searches; and
- Public hearings. (Five hearings were conducted in January through April of 1989 in Los Angeles, San Diego, San Francisco, Sacramento, and Fresno.)

■ Reports

The advisory committee will report to the Judicial Council on a regular basis. Reports will usually be submitted in May and November. A final report will be submitted in March 1990.

■ Educational Programs

The Administrative Office of the Courts routinely includes issues of gender bias in all relevant educational programs. Initially, the purpose of the educational programs will be to advise judges, attorneys, clerks, and others of the committee's work and to gather data from the program participants. The California Center for Judicial Education and Research (CJER) also includes gender bias as a part of the curriculum in its judicial education programs for judges. CJER is sponsored by the Administrative Office of the Courts and the California Judges Association. One of the committee's primary goals is to incorporate its findings into educational programs after the committee's final report is submitted to the Judicial Council.

Further Information

For further information about the Judicial Council Advisory Committee on Gender Bias in the Courts, please contact: Ms. Bobbie L. Welling; Staff Attorney; Administrative Office of the Courts; 595 Market Street, Suite 3000; San Francisco, California 94105; (415) 396-9139.

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Advisory Committee Roster

Hon. David M. Rothman, Co-chair
Judge of the Superior Court
Los Angeles County

Hon. Diane Watson, Co-chair
Member of the Senate
Twenty-eighth Senatorial District

Hon. Judith C. Chirlin, Vice-chair
Judge of the Superior Court
Los Angeles County

Hon. Fern M. Smith
Judge of the United States District Court
Northern District of California

Hon. Lisa Hill Fenning
Judge of the United States Bankruptcy Court
Los Angeles

Hon. Elwood Lui
Retired Associate Justice, Court of Appeal
Second Appellate District, Division Three

Hon. Sheila Prell Sonenshine
Associate Justice, Court of Appeal
Fourth Appellate District, Division Three

Hon. Norman L. Epstein
Judge of the Superior Court
Los Angeles County

Hon. Judith McConnell
Judge of the Superior Court
San Diego County

Hon. Linda Hodge McLaughlin
Judge of the Superior Court
Orange County

Hon. Sheila F. Pokras
Judge of the Superior Court
Los Angeles County

Hon. Sara K. Radin
Judge of the Superior Court
Los Angeles County

Hon. Meredith C. Taylor
Judge of the Superior Court
Los Angeles County

Hon. Jack Tenner
Judge of the Superior Court
Los Angeles County

Hon. Kathryn Doi Todd
Judge of the Superior Court
Los Angeles County

Hon. Judith Donna Ford
Judge of the Municipal Court
Oakland-Piedmont-Emeryville Municipal Court District

Hon. Alice A. Lytle
Judge of the Municipal Court
Sacramento Municipal Court District

Hon. Frances Munoz
Judge of the Municipal Court
Orange County Harbor Municipal Court District

Hon. Brian L. Rix
Judge of the Municipal Court
North County Municipal Court District
Paradise Branch

Hon. Elihu M. Harris
Member of the Assembly
Thirteenth Assembly District

Ms. Linda Broder
Past-president, California League of Women Voters
Los Angeles

Mr. James J. Brosnahan
Attorney at Law
San Francisco

Mr. Kenneth Mark Burr
Deputy District Attorney
Alameda County

Ms. Juana C. Conrad
Former Court Administrator
East Los Angeles Municipal Court District

Ms. Tamara C. Dahn
Attorney at Law
Vallejo

Mr. Rene Davidson
Alameda County Clerk

Ms. Marian McClure Johnston
Deputy Attorney General
Sacramento

Prof. Sheila James Kuehl
Managing Attorney
Southern California Women's Law Center

Ms. Andrea Sheridan Ordin
Chief Assistant Attorney General
Los Angeles

Mr. Herbert M. Rosenthal
Executive Director
State Bar of California

Ms. Marjorie Swartz
Deputy State Public Defender
Sacramento

Ms. Patricia Ann Shiu
Attorney at Law
San Francisco

Mr. Frank Zolin
County Clerk/Executive Officer
Los Angeles Superior Court

Dr. Norma J. Wikler, Advisor
Associate Professor of Sociology
University of California–Santa Cruz

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APPENDIX B

Chief Justice's Speech

WELCOMING REMARKS

BY

MALCOLM M. LUCAS

CHIEF JUSTICE OF CALIFORNIA

FIRST MEETING OF THE JUDICIAL COUNCIL ADVISORY

COMMITTEE ON GENDER BIAS IN THE COURTS

LOS ANGELES, CALIFORNIA

APRIL 24, 1987

GOOD MORNING, AND THANK YOU JUSTICE LUI. IT IS A PLEASURE TO WELCOME YOU TODAY TO THE FIRST MEETING OF THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS. THIS IS A FIRST FOR ALL OF US AND I HAVE THE FEELING THAT WE ARE EMBARKING ON AN INTERESTING JOURNEY TOGETHER.

I MUST ADMIT THAT I THOUGHT THAT MANY IF NOT MOST OF THE PROBLEMS IN THE JUDICIAL SYSTEM ARISING FROM GENDER BIAS HAD DISSIPATED AS THE NUMBERS OF WOMEN ENTERING THE LEGAL PROFESSION INCREASED GREATLY OVER THE LAST 15 YEARS. I THOUGHT SHEER NUMBERS AND THE DEMONSTRATED COMPETENCE OF SO MANY FINE WOMEN LAWYERS AND JUDGES WOULD OVERCOME ANY RESISTANCE ON THE PART OF THOSE ACCUSTOMED TO THE DAYS WHEN THE TERMS LAWYER AND JUDGE IMPLIED MALE. IT WAS THEREFORE WITH INTEREST, AND A LITTLE CHAGRIN, THAT I READ CLAIRE COOPER'S STORY LAST YEAR REPORTING ON THE PROBLEMS OF WOMEN PRACTITIONERS IN LESS URBAN COUNTIES. I HAVE ALSO REVIEWED SOME OF THE MATERIALS FROM THE NEW JERSEY AND NEW YORK TASK FORCES ON GENDER BIAS IN THE COURTS, AND HAVE TAKEN NOTE OF THEIR FINDINGS REGARDING THE PERSISTENCE OF GENDER BIAS IN THEIR RESPECTIVE COURT SYSTEMS.

AS A CALIFORNIAN OF LONG STANDING, I WOULD OF COURSE LIKE TO BELIEVE THAT CALIFORNIA IS DIFFERENT. OURS IS A STATE WITH A REPUTATION FOR PROGRESSIVE AND FAIR SOCIAL ATTITUDES, AND I LIKE TO THINK THAT THAT HAS MEANT REAL PROGRESS IN TERMS OF ABATING DISCRIMINATION OF ANY SORT, ESPECIALLY IN OUR JUDICIAL SYSTEM.

I AM, HOWEVER, NOT NAIVE ENOUGH TO BELIEVE THERE IS NO BIAS IN CALIFORNIA, OR THAT DISCRIMINATION HAS DISAPPEARED SIMPLY BECAUSE IT NOW SOMETIMES TAKES LESS OBVIOUS FORMS. I AM VERY INTERESTED IN SEEING THE RESULTS OF YOUR WORK, BOTH IN TERMS OF IDENTIFYING THOSE PROBLEMS WHICH DO EXIST IN CALIFORNIA AND IN SUGGESTING HOW OUR COURT SYSTEM CAN BE IMPROVED IN AREAS WHERE IMPROVEMENT IS NECESSARY.

YOUR CHARGE IS TO INQUIRE INTO EQUAL TREATMENT FOR WOMEN AND MEN IN OUR COURTS. I KNOW THAT YOUR INITIAL TASK IS TO DETERMINE WHETHER BIAS EXISTS IN OUR COURT SYSTEM, TO DOCUMENT IT IF IT DOES, AND TO REPORT TO THE JUDICIAL COUNCIL YOUR OBSERVATIONS AND SUGGESTIONS FOR CHANGE. AS CHAIR OF THE JUDICIAL COUNCIL, I ASSURE YOU THAT YOUR WORK WILL BE SUPPORTED WITH THE RESOURCES AVAILABLE TO THE COUNCIL THROUGH THE ADMINISTRATIVE OFFICE OF THE COURTS.

ONE OF MY PRIMARY CONCERNS AS CHIEF JUSTICE IS TO ASSURE THAT OUR COURT SYSTEM ADEQUATELY AND FAIRLY SERVES THE NEEDS OF ALL THE PEOPLE OF THE STATE OF CALIFORNIA. I HAVE REVIEWED THE MATERIALS YOU HAVE RECEIVED IN PREPARATION FOR TODAY'S MEETING AND THE ROSTER OF MEMBERS AND I AM IMPRESSED WITH THE RANGE OF EXPERTISE AND ACCOMPLISHMENTS REFLECTED IN THAT ROSTER. I AM ALSO PLEASED TO HAVE HAD THE OPPORTUNITY TO ADD TWO MEMBERS TO YOUR NUMBER. I NOTE TOO THAT JUDGE MARILYN PATEL, A FORMER COLLEAGUE OF MINE FROM THE FEDERAL BENCH, IS ALSO HERE TODAY TO LEND HER CONSIDERABLE KNOWLEDGE AND SUPPORT TO THIS EFFORT. YOU HAVE ALSO HAD DISTINGUISHED PREDECESSORS WHOSE WORK CAN PROVIDE YOU WITH VALUABLE GROUNDWORK AS YOU BEGIN YOUR ENTERPRSE. I AM SPEAKING, OF COURSE, OF THE STUDIES PERFORMED BY THE NEW YORK AND NEW JERSEY TASK FORCES. WITH THE VARIOUS RESOURCES AVAILABLE TO YOU, I AM CONFIDENT THAT YOUR INQUIRY INTO THE QUESTION OF GENDER BIAS WILL PRODUCE MATERIAL THAT WILL BE OF BENEFIT TO THE JUDICIAL COUNCIL, TO ME AS CHIEF JUSTICE, AND ULTIMATELY TO THE PEOPLE OF THIS STATE.

YOU HAVE WORK TO DO, SO LET ME END BY SAYING THAT I KNOW I AM LEAVING YOU IN CAPABLE HANDS WITH JUSTICE LUI AND

SENATOR WATSON AS YOUR CO-CHAIRS. AS I AM SURE YOU ARE WELL AWARE, ALLEGATIONS OR EVEN SUGGESTIONS OF THE POSSIBILITY OF BIAS OF ANY SORT CAN MAKE PEOPLE DEFENSIVE, ESPECIALLY WHEN THEY ARE JUDGES WHO HAVE TAKEN A SOLEMN OATH TO BE FAIR. YOUR TASK THEN IS A SOMEWHAT DELICATE ONE. PART OF THE CHALLENGE FOR YOU WILL BE TO PURSUE YOUR INQUIRIES IN A MANNER THAT EMPHASIZES THAT OUR CONCERN IS TO WORK TOGETHER TO ASSURE FAIR TREATMENT TO ALL PERSONS APPEARING BEFORE OR WORKING FOR THE COURTS, RATHER THAN TO POINT FINGERS OR ASSIGN BLAME.

WE AT THE JUDICIAL COUNCIL WILL BE KEPT INFORMED OF YOUR PROGRESS AND WILL BE LOOKING FORWARD TO YOUR REPORTS AND RECOMMENDATIONS FOR IMPROVING THE SYSTEM WHERE NECESSARY. I AM HAPPY TO HAVE HAD THIS CHANCE TO BE HERE WITH YOU AT THE LAUNCH OF THIS MOST INTERESTING PROJECT. THANK YOU AND BEST WISHES FOR A GOOD AND PRODUCTIVE BEGINNING.

MALCOLM M. LUCAS

APPENDIX C

Chief Justices' Resolution

CONFERENCE OF CHIEF JUSTICES

Resolution XVIII

Task Forces on Gender Bias and Minority Concerns

WHEREAS, the Conference of Chief Justices has established a Committee on Discrimination in the Courts because the principle of equal treatment of all persons before the law is essential to the very concept of justice; and

WHEREAS, there are a multitude of federal, state and local laws and policies regarding all persons and institutions, both public and private, to avoid actions that may discriminate against any persons on the basis of race, sex, color, national origin, religion, age or handicap and to take affirmative steps to overcome the effects of discrimination on such grounds; and

WHEREAS, the state courts have been instrumental in enforcing such laws and policies as they apply to other private and public parties in cases coming before the courts; and

WHEREAS, the Conference of Chief Justices is concerned that all participants in the judicial system are treated fairly and that the judicial system operate free of discrimination against any person on the basis of race, sex, color, national origin, religion, age or handicap.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges positive action by every chief justice to address gender bias and minority concerns in the state courts; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices urges each chief justice in every state to establish separate task forces devoted to the study of 1) gender bias in the court system and 2) minority concerns as they relate to the judicial system.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices at the 40th Annual Meeting in Rockport, Maine on August 4, 1988.

APPENDIX D

Judge's Survey Questionnaire and Cover Letter

Supreme Court of California

STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

MALCOLM M. LUCAS
CHIEF JUSTICE

May 22, 1989

Dear Judge or Commissioner:

I am writing to ask you to complete the enclosed questionnaire which is part of a statewide study conducted by the Judicial Council Advisory Committee on Gender Bias in the Courts. A fact sheet describing the committee's work and its definition of gender bias is enclosed.

I realize and appreciate how busy you are, and do not make this request lightly. Your response to this questionnaire is vital to the Judicial Council's study of gender issues in the courts. A survey of the insights and perceptions of California judges and commissioners will provide the advisory committee with one of its most significant sources of information.

The survey questions are based on the information already collected by the advisory committee. As you will note, your responses will be submitted anonymously. We have retained a highly regarded survey research firm to analyze the responses and to report to the advisory committee. The committee will submit its recommendations to the Judicial Council in November of 1989.

The Conference of Chief Justices passed a resolution in August of 1988 calling for the creation of task forces to study gender bias issues in every state. I am particularly proud that the California judiciary had already embarked upon this difficult task of self-scrutiny which is so essential to ensuring fairness in our courts. Thank you for your significant contribution to this effort.

Very truly yours,

Malcolm M. Lucas

MALCOLM M. LUCAS

CALIFORNIA JUDGES SURVEY

Thank you for helping the Judicial Council Advisory Committee on Gender Bias in the Courts by participating in this survey. For your convenience, the survey has been designed to route you through categories of questions within your area of experience.

- This questionnaire focuses on judicial opinions and decisions in the trial courts during the last three years. Please select those responses which best describe your experiences and opinions during this period. The views and observations of judges of reviewing courts are equally essential to this study. Accordingly, judges of reviewing courts should answer the questions based on prior experience as trial court judges during the last three years or based on review of transcripts on appeal.

- The questions will take approximately 30 minutes to answer. Please add additional pages where necessary to answer the questions calling for narrative responses.

- Answer all questions applicable to you in those sections labeled **"For all judicial officers."** Answer in addition all questions pertaining to substantive areas of the law in which you have heard at least one matter within the last three years.

- Please complete the questionnaire within one week and <u>return at the same time to the address listed below</u> both your unidentified questionnaire and the separate attached post card with your name printed or typed on it. <u>This procedure ensures that all responses are anonymous.</u>

Return questionnaire and post card separately to:

California Judges Survey
Administrative Office of the Courts
350 McAllister Street, Room 3154
San Francisco, CA 94102

SECTION A: JUDICIAL BACKGROUND **(For all judicial officers except where otherwise noted)**

Please check below the categories that apply to your current judicial position.

1. Type of judicial officer ( ) 1-3

[ ] judge ( ) 4
[ ] commissioner ( ) 5

2. Type of court

[ ] Justice
[ ] Municipal ( )
[ ] Superior 6
[ ] Appellate Courts and Supreme Court

3. Number of judges (excluding commissioners) in your court

[ ] Sole judge ( )
[ ] 2 to 9 judges 7
[ ] 10 to 39 judges
[ ] 40 to 99 judges
[ ] 100 or more judges

4. What assignments have you had within the last three years? **(Trial court judges and commissioners only; check all that apply)**

( )
[ ] General 8
[ ] Criminal ( )
[ ] Civil 9
[ ] Family ( )
[ ] Juvenile 10
[ ] Other (specify): _____ ( )
11
( )
12

5. a. Are you satisfied with the way in which you were assigned? **(Trial court judges only)** ( )
13

[ ] Yes ( )
[ ] No 14
[ ] Don't know, not sure

b. If "no," why not?

( )
15-16
( )
17-18

6. During the last three years, approximately what percentage of your time has been spent in each of the following areas?

( )
19-21
_____% Criminal ( )
_____% Civil 22-24
_____% Family ( )
_____% Juvenile 25-27
_____% Other (specify): _____ ( )
28-30
( )
31-33

7. If you were free to choose your judicial assignment, which type of assignment would you choose? **(Trial court judges only; please rank 1, 2, 3, etc. with 1 = most preferred)**

( )
34
_____ Criminal ( )
_____ Civil 35
_____ Family ( )
_____ Juvenile 36
_____ Other (specify): _____ ( )
37
( )
38

SECTION B: COURTROOM INTERACTION (For all judicial officers)

Credibility

8. In which of the following situations, if any, have you ever perceived that attorneys or jurors have accorded less credibility to a female court participant than to a male because of gender? **(Check all that apply)**

[ ] When a female **expert witness** testified on a subject that is within a traditionally male-dominated field ( ) 39

[ ] When a **female lawyer** was an aggressive advocate ( ) 40

[ ] When a **female witness** was emotional on the witness stand ( ) 41

[ ] When the **female participant** was a member of a racial or ethnic minority group ( ) 42

[ ] When the **female participant** was indigent ( ) 43

[ ] No instances perceived ( ) 44

Demeaning Remarks

9. In the last three years, have you observed remarks or jokes in the courtroom, in chambers, or in informal professional gatherings, which you considered demeaning to women ? **(Circle the most appropriate answer)**

	Frequently	On occasion	Rarely	Never	
a. By a judge:	4	3	2	1	( ) 45
b. By a lawyer:	4	3	2	1	( ) 46
c. By court personnel:	4	3	2	1	( ) 47

Methods of Interventions

10. In what situations in the courtroom or in chambers do you think it is appropriate for a judge to intervene when the judge observes behavior exhibiting gender bias? **(Check all that apply)** ( ) 48

[ ] Every time it occurs ( ) 49
[ ] Whenever requested ( ) 50
[ ] Only when the offending behavior might influence the outcome of the case ( ) 51
[ ] Whenever intervention does not unduly interrupt the proceedings or become counter-productive ( ) 52
[ ] Never ( ) 53
[ ] Other (specify): _____

11. If you have intervened in any of the above situations in the past three years, please describe the situation and your chosen method of intervention. **(Please be as specific as possible)** ( ) 54-55 ( ) 56-57

SECTION C: DOMESTIC VIOLENCE

Part C-1: General Attitudes and Information About Domestic Violence **(For all judicial officers)**

12. Please indicate whether you agree or disagree with the following statements.
(Circle the most appropriate answer)

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know, not sure	
a. In a proceeding involving allegations of domestic violence, supporting declarations and testimony are often exaggerated.	4	3	2	1	9	( ) 58
b. It is appropriate to permit a lay advocate assisting a domestic violence victim to participate in the proceeding in ways other than as an observer in the courtroom audience.	4	3	2	1	9	( ) 59
c. In general, my court staff views domestic violence proceedings as more burdensome than other kinds of cases.	4	3	2	1	9	( ) 60

(Please comment or elaborate on your responses.) ( ) 61-62
( ) 63-64

13. Please indicate whether you agree or disagree with the following statements.
(Circle the most appropriate answer)

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know, not sure	
a. I prefer not to handle domestic violence proceedings.	4	3	2	1	9	( ) 65
b. Domestic violence offenses are better dealt with in the context of diversion and counseling than in a criminal prosecution.	4	3	2	1	9	( ) 66
c. Spousal abuse usually has a detrimental effect on children in the home.	4	3	2	1	9	( ) 67

(Please comment or elaborate on your responses.) ( ) 68-69
( ) 70-71

Part C-2: Specific Questions About Domestic Violence **(Only judicial officers who have heard at least one matter in the last three years involving domestic violence should answer the questions in this part.)**

Restraining Orders

14. Under what circumstances do you issue restraining orders applicable to both parties in a domestic violence proceeding when only one party has requested the order? **(Check all that apply)**

[ ] When it appears that a mutual order would be likely to reduce the violence between the parties ( ) 72

[ ] Only when the violence between the parties is mutual ( ) 73

[ ] I routinely issue mutual orders ( ) 74

[ ] Other (specify): _____ ( ) 75

15. a. Are you aware of any enforcement problems created when mutual orders are issued?

[ ] Yes ( ) 76

[ ] No

[ ] Don't know, not sure

b. If "yes," please give specific examples. ( ) 77-78

( ) 79-80

Visitation

16. In framing a child visitation order in a matter involving allegations of spousal abuse, what means of ensuring the safety of the abused spouse are routinely available to you? **(Check all that apply)**

[ ] Neutral third party assists with exchange of child between parents ( ) 81

[ ] Community-based supervised visitation program ( ) 82

[ ] No dependable means routinely available ( ) 83

[ ] Other (specify): _____ ( ) 84

17. If no means are available to ensure the protection of the victim of spousal abuse, under what circumstances would you deny child visitation to the abusing spouse? **(Please explain)**

( ) 85-86

( ) 87-88

Diversion

18. How often during the past three years have you granted diversion in cases involving spousal abuse when diversion is an option? **(Please give approximate percentage)**

_____ Percent ( ) 89-91

19. When you have ordered diversion under Penal Code section 1000.6, have you required a monitoring of attendance and completion of the counseling? **(Check all that apply)**

[ ] Monitoring is not a requirement in my court. ( ) 92

[ ] Monitoring is required by local rule. ( ) 93

[ ] No mechanism for monitoring is available. ( ) 94

[ ] I order monitoring by the probation department or the district attorney's office. ( ) 95

[ ] When I order monitoring, I require a follow-up report. ( ) 96

[ ] Other (specify): _____ ( ) 97

SECTION D: FAMILY LAW

Part D-1: General Attitudes and Information About Family Law **(For all judicial officers)**

20. Approximately how many disputed custody matters do you estimate you have heard in your court within the last three years? ( ) 98-100

Motion calendar _____ ( ) 101-103
Trials _____
Appeals and writs _____ ( ) 104-106

21. Existing law gives disputed custody matters calendar preference (Civil Code section 4600.6). In general, do your court's resources and caseload allow you to comply with this policy?

[ ] Yes ( ) 107
[ ] No
[ ] Don't know, not sure

(If you answered no, please explain.) ( ) 108-109

22. Existing law provides for mandatory mediation of all custody and visitation disputes. Do you believe that an exception should be made when there is evidence of spousal abuse?

[ ] Yes ( ) 110
[ ] No
[ ] Don't know, not sure

23. Civil Code section 4600 was recently amended to add subdivision (d) which clarifies that no presumption favoring either joint or sole custody exists. (Civil Code section 4600(d)). Do you agree with this statutory policy? (Please give reasons for your view.)

[ ] Yes ( )
[ ] No 111
[ ] Don't know, not sure

Reasons: ( )
112-113

( )
114-115

24. Whatever the custody arrangement, if one parent fails to assume the caretaker responsibilities specified by the court, Civil Code section 4700 (b) authorizes financial compensation for the parent who consequently assumes greater caretaker responsibilities. Do you agree with this statutory policy?

[ ] Yes ( )
[ ] No 116
[ ] Don't know, not sure ( )
117-118
( )
119-120

Part D-2: Specific Questions About Family Law **(Only judicial officers who have heard at least one matter in the last three years involving family law should answer questions in this part.)**

Custody and Mediation

25. Following OSC hearing or trial, approximately what percentage of time do you estimate that you order the following custody arrangements?

( )
a. _____% Joint physical custody 121-123
b. _____% Sole physical custody ( )
c. _____% Joint legal custody 124-126
( )
127-129

26. In which of the following circumstances, if any, is joint legal custody inappropriate? **(Check all that apply)**

[ ] Whenever one of the parties disputes its appropriateness ( )
130
[ ] Whenever the parties strongly disagree on matters affecting the child (for example, religion, health care, education) ( )
131
( )
[ ] Whenever there is a high degree of conflict between the parents 132
( )
[ ] Whenever there is a history of spousal abuse 133
( )
[ ] Other (specify)_____ 134

27. In which of the following circumstances, if any, is a physical custody order with near-equal time splits inappropriate? **(Check all that apply)**

[ ] Whenever one of the parties disputes its appropriateness ( ) 135

[ ] Whenever the parties disagree on matters affecting the child (for example, religion, health care, education) ( ) 136

[ ] Whenever there is a high degree of conflict between the parents ( ) 137

[ ] Whenever there is a history of spousal abuse ( ) 138

[ ] Whenever the order would require that the child attend more than one school ( ) 139

[ ] Whenever the child is under two years of age ( ) 140

[ ] Other (specify): _____ ( ) 141

28. Do you think you have enough time to adjudicate adequately the temporary custody motions on your calendar?

[ ] Yes ( ) 142
[ ] No
[ ] Don't hear temporary custody motions
[ ] Don't know, not sure

29. In your jurisdiction, is the mediator authorized to make custody recommendations to the court when the parties have failed to reach an agreement?

[ ] Yes ( ) 143
[ ] No
[ ] Don't know, not sure

30. In your experience, what problems may exist if a mediator is authorized to make such recommendations? **(Check all that apply)**

[ ] The parties may be reluctant to be candid in mediation. ( ) 144

[ ] The parties may be reluctant to disagree with the mediator during mediation. ( ) 145

[ ] The mediator's recommendation may be based on only one or more mediation sessions without a custody investigation. ( ) 146

[ ] The court may be unduly influenced by the recommendation. ( ) 147

[ ] None of the above. ( ) 148

[ ] Other (specify): _____ ( ) 149

31. Do you think that the qualifications of the mediators in your court are adequate?

[ ] Yes ( ) 150
[ ] No
[ ] Don't know, not sure

32. What best describes your assessment of how mothers and fathers are treated in custody disputes?

[ ] Mothers are treated better
[ ] Fathers are treated better
[ ] Mothers and fathers are treated equally well
[ ] Don't know, not sure

( ) 151

Child Sexual Abuse

33. Please answer the questions below about allegations regarding child sexual abuse. **(Circle the most appropriate answer)**

		Always	Fre-quently	Rarely	Never	Don't know, not sure	
a.	How often do you hear allegations of child sexual abuse in the course of a dissolution proceeding?	4	3	2	1	9	( ) 152
b.	In your experience, how frequently are allegations of child sexual abuse true in these cases?	4	3	2	1	9	( ) 153

c. If the allegations are sometimes false, what accounts for the allegations, in your view?

( ) 154-155
( ) 156-157

Mediation and Spousal Abuse

34. Under current law (Civil Code section 4607) a party may request that mediation be conducted separately if there is a history of domestic violence between the spouses. Under what circumstances do you think that the mediator should accede to this request? **(Check all that apply)**

[ ] Whenever a party claims that domestic violence has occurred and requests it ( ) 158
[ ] Whenever the mediator decides that violence has occurred ( ) 159
[ ] Only if there is a prior court determination that violence has occurred ( ) 160
[ ] Under no circumstances ( ) 161
[ ] Other (specify): _____ ( ) 162

35. Under what circumstances do consider spousal abuse in making custody awards? **(Check all that apply)** ( ) 163

[ ] Consideration of spousal abuse in making custody awards is not relevant ( ) 164
[ ] Whenever there is evidence of child abuse as well ( ) 165
[ ] Whenever the child witnessed the violence ( ) 166
[ ] Don't know, not sure ( ) 167
[ ] Other (specify): _____

Child and Spousal Support

36. Under which of the following circumstances do you deviate **upwards** from the child support guidelines in effect in your county? **(Check all that apply)**

( ) 168

[ ] When the income of the noncustodial parent allows it ( ) 169

[ ] To cover child care expenses ( ) 170

[ ] When the child has special needs ( ) 171

[ ] Other (specify): _____

37. If you could change the child support guidelines now in effect, what changes, if any, would you make?

( ) 172-173
( ) 174-175
( ) 176-177

38. Under the recent amendment to Civil Code section 4801, when ordering spousal support, the court must make a finding as to the marital standard of living. In your view, how should this finding affect the amount and duration of spousal support?

( ) 178-179
( ) 180-181
( ) 182-183

Access

39. a. During the last three years have you observed an increasing number of family law litigants appearing in your courtroom who are unrepresented?

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 184

b. Please describe any problems for the parties or the court you have observed resulting from the lack of representation for family law litigants.

( ) 185-186
( ) 187-188

c. If you have observed problems, what means would you suggest to ensure fair treatment for these parties?

( ) 189-190
( ) 191-192

SECTION E: JUVENILE LAW **(Only judicial officers who have heard at least one juvenile matter in the last three years should answer the questions in this part.)**

Dispositional Alternatives

40. a. In juvenile proceedings, are there any dispositional alternatives available to only one sex at present that you think should be available as well to the other?

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 193

b. If "yes," please describe.

( ) 194-195
( ) 196-197

Dependency

41. What steps do you take to ensure **actual** notice of dependency proceedings to incarcerated parents?

( ) 198-199
( ) 200-201

42. Do you think that the mechanisms of informing parents about the dependency process are adequate?

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 202

43. In your view, are incarcerated parents penalized or adversely affected for exercising their right to appear at dependency hearings? **(Please answer for both jail and prison)**

County Jail

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 203

State Prison

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 204

44. a. Do you order reunification services for incarcerated parents?

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 205

b. If "no", why not?

( ) 206-207
( ) 208-209

45. To what extent do you require searching for or contacting an absent father in the course of a dependency proceeding?

( ) 210-211

SECTION F: CRIMINAL LAW **(Only judicial officers who have heard at least one criminal matter in the last three years should answer these questions)**

Sentencing

46. Within the scope of your discretion in sentencing to county jail, in what way, if any, do the following factors affect your sentence **(answer for both make and female defendants):**

a. Defendant is the primary caretaker of one or more dependent children

Female	Male			
[ ]	[ ]	More likely to consider probation or alternative sentencing programs than jail	( ) 212	( ) 213
[ ]	[ ]	Has no effect on my sentencing	( ) 214	( ) 215
[ ]	[ ]	Don't know, not sure	( ) 216	( ) 217

b. Defendant is employed full time outside the home

Female	Male			
[ ]	[ ]	More likely to consider probation or alternative sentencing programs than jail	( ) 218	( ) 219
[ ]	[ ]	Has no effect on my sentencing	( ) 220	( ) 221
[ ]	[ ]	Don't know, not sure	( ) 222	( ) 223

c. Defendant has primary financial responsibility for a family

Female	Male			
[ ]	[ ]	More likely to consider probation or alternative sentencing programs	( ) 224	( ) 225
[ ]	[ ]	Has no effect on my sentencing	( ) 226	( ) 227
[ ]	[ ]	Don't know, not sure	( ) 228	( ) 229

d. Defendant is pregnant

Female

[ ]	More likely to consider probation or alternative sentencing programs than jail;	( ) 230
[ ]	Has no effect on my sentencing	( ) 231
[ ]	Don't know, not sure	( ) 232

e. Defendant is pregnant and there is some evidence of substance abuse

Female

[ ] More likely to consider probation or alternative sentencing programs ( ) 233

[ ] More likely to order jail time ( ) 234

[ ] Has no effect on my sentencing ( ) 235

[ ] Don't know, not sure ( ) 236

47. a. Are there any sentencing alternatives available to only one sex at present that you think should be available as well to the other?

[ ] Yes ( ) 237
[ ] No
[ ] Don't know, not sure

b. If "yes," please describe. ( ) 238-239

Probation

48. a. Have you ever detected evidence of gender bias on the part of probation officers contained in probation reports?

[ ] Yes ( ) 240
[ ] No
[ ] Don't know, not sure

b. If "yes," please give specific examples. ( ) 241-242
( ) 243-244

SECTION G: ADMINISTRATION OF JUSTICE **(For all judicial officers)**

Sexual Harassment

49. In your court, are you aware of any employee job or job-stress complaints that have included allegations of sexual harassment against judges made during the last three years?

[ ] Yes ( ) 245
[ ] No
[ ] Don't know, not sure

50. If sexual harassment complaints against judges are made, how do you think they should be handled?

( ) 246-247
( ) 248-249

Statewide Personnel Guidelines

51. a. Would you support uniform statewide personnel guidelines for court employees that deal with, for example, affirmative action, sexual harassment claims, and discrimination claims?

[ ] Yes
[ ] No
[ ] Don't know, not sure

( ) 250

b. If "no," why not?

( ) 251-252
( ) 253-254

Allocation of Judicial Resources

52. Please explain your view of whether the number of judges, the facilities, and the staffing for family law and juvenile departments are adequate. To the extent these resources are inadequate, what factors do you think contribute to the inadequacy?

( ) 255-256
( ) 257-258
( ) 259-260
( ) 261-262

Perception of Problem

53. Which of the following statements best describes your overall perception of gender bias against women in the California courts:

[ ] There is no gender bias against women in the California courts.
[ ] Gender bias against women exists, but only in a few areas and with certain individuals.
[ ] Gender bias against women is widespread, but subtle and hard to detect.
[ ] Gender bias against women is widespread and readily apparent.

( ) 263

54. Which of the following statements best describes your overall perception of gender bias against men in the California courts:

[ ] There is no gender bias against men in the California courts.
[ ] Gender bias against men exists, but only in a few areas and with certain individuals.
[ ] Gender bias against men is widespread, but subtle and hard to detect.
[ ] Gender bias against men is widespread and readily apparent.

( ) 264

Judicial Education

55. a. In your opinion, in which of the following areas of judicial education should increased attention be paid to the effects of gender bias on the court system? **(Check all that apply and list the specific issues which need to be addressed.)**

[ ] Criminal law (list issues below): ( ) 265 ( ) 266-267

[ ] Civil law (list issues below): ( ) 268 ( ) 269-270

[ ] Family law (list issues below): ( ) 271 ( ) 272-273

[ ] Juvenile law (list issues below): ( ) 274 ( ) 275-276

[ ] Other (list isues below): ( ) 277 ( ) 278-279

[ ] None of the above ( ) 280

b. If you checked "None", what are your reasons? **(Check all that apply)**

[ ] Judges already are adequately informed about these issues. ( ) 281

[ ] There is an implication of bias in judicial education courses relating to gender bias that is offensive to judges. ( ) 282

[ ] The factual information presented in these types of courses may itself taint a judge's impartiality. ( ) 283

[ ] Other (specify): _____ ( ) 284

Remedies for Judicial Misconduct Involving Gender Bias

56. Assuming that judicial conduct on occasion reflects or results in gender bias, what additional remedies (if any) do you think would be most effective? **(Circle the most appropriate answer)**

	Very good idea	Good idea	Poor idea	Very poor idea	Don't know, not sure	
a. A specific prohibition should be contained in the Code of Judicial Conduct.	4	3	2	1	9	( ) 285
b. A specific prohibition should be added to the sections of the Constitution describing judicial misconduct.	4	3	2	1	9	( ) 286
c. A specific prohibition should be contained in the California Rules of Court.	4	3	2	1	9	( ) 287
d. There should be increased judicial education on the subject.	4	3	2	1	9	( ) 288
e. There should be more rigorous review of judicial applicants.	4	3	2	1	9	( ) 289
f. Acts of gender bias on the part of a judicial officer should be grounds for reversal as an abuse of judicial discretion.	4	3	2	1	9	( ) 290

g. Other remedies (specify): _____ ( ) 291

Remedies for Conduct Involving Gender Bias on the Part of Courtroom Participants Other than Judicial Officers

57. Assuming that conduct by courtroom participants **other** than judicial officers on occasion reflects or results in gender bias, what remedies do you think would be most effective? **(Circle the most appropriate answer)**

	Very good idea	Good idea	Poor idea	Very poor idea	Don't know, not sure	
a. There should be increased judicial intervention	4	3	2	1	9	( ) 292
b. Attorneys should adopt a specific rule of professional conduct prohibiting gender bias.	4	3	2	1	9	( ) 293
c. Judges should be permitted to order sanctions for conduct exhibiting gender bias under, for example, Code of Civil Procedure section 128.5.	4	3	2	1	9	( ) 294
d. Attorney education on the subject should be instituted.	4	3	2	1	9	( ) 295
e. Courtroom staff education on the subject should be instituted.	4	3	2	1	9	( ) 296
f. In jury trials, the judge should issue a general admonition to the jury at the beginning of the case to be fair despite any stereotypes about women and men including any that might be advanced by counsel.	4	3	2	1	9	( ) 297
g. Gender neutral language should be used in all court communications.	4	3	2	1	9	( ) 298
h. Other remedies (specify): _____						( ) 299

58. Of all the gender bias issues addressed in this survey, which (if any) do you regard as most important?

( ) 300-301

( ) 302-303

59. Are there any other aspects of gender bias in the courts on which you would like to comment?

( ) 304-305

( ) 306-307

SECTION I: DEMOGRAPHIC DATA **(For all judicial officers)**

This section contains demographic or background questions that will be used only in statistical summaries.

60. Your gender:

[ ] Female
[ ] Male

( ) 308

61. Your race or ethnic background (optional):

[ ] White
[ ] Black
[ ] Hispanic
[ ] Asian
[ ] Other (specify): _____

( ) 309

62. Your age:

[ ]	Under 35	[ ]	51-55
[ ]	36-40	[ ]	56-60
[ ]	41-45	[ ]	61-65
[ ]	46-50	[ ]	Over 65

( ) 310

63. Year in which you became a judge or a commissioner: _____

( ) 311-312

64. Marital status **(please check the category that best describes your situation):**

[ ] Single
[ ] Divorced (or divorcing)
[ ] Widowed
[ ] Married (and previously divorced)
[ ] Married (and never previously divorced)

( ) 313

THANK YOU FOR YOUR PARTICIPATION

To ensure anonymity,
be sure to complete and mail separately
the attached post card.

APPENDIX E

Other Survey Instruments

DOMESTIC VIOLENCE COALITION MEETINGS ON GENDER BIAS IN THE COURTS

Issues and Observations

Restraining Orders
Custody
Visitation
Mediation
Prosecution
Diversion
Minority Communities
Economics

Presented by: The Judicial Council Advisory Committee on
Gender Bias in the Courts
Fall 1988

Introduction to Domestic Violence Coalition Meetings

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two successive Chief Justices to examine issues of gender bias in the California courts. The committee is charged with the responsibility of gathering information for purposes of making recommendations to the Judicial Council to correct any problems perceived. By gender bias we mean not only stereotypical attitudes about the nature and roles of women and men but also cultural perceptions of their relative worth. Gender bias includes, as well, myths and misconceptions about the social and economic realities encountered by both sexes.

During the past several months, the committee has undertaken a number of activities designed to assess the nature and extent of gender bias in the courts, including an extensive literature search, six regional bar meetings, and a statewide attorney request for comments (appearing in the July 1988 issue of the *California Lawyer*). Based upon the information gathered from these cumulative sources, various issues have emerged as priorities for further investigation.

The committee has chosen domestic violence as a priority issue for further investigation and has requested the California Coalitions Against Domestic Violence to participate in its data collection efforts. The coalitions have scheduled time during upcoming regional meetings to provide an opportunity for their members to speak to the committee about their personal experiences and observations.

The meetings are intended to be confidential. Information will be recorded for the advisory committee's use only, but the identities of participants or individuals referred to will not be disclosed. Public hearings will be conducted at a later time, tentatively February and March of 1989.

To help ensure confidentiality and to comply with the committee's specific mandate to gather information, we request that participants at the coalition meetings refrain from using names or making personal references to any specific individuals. Complaints of misconduct against judges or attorneys should not be submitted to the advisory committee which has no power to investigate or adjudicate these claims.

The advisory committee wishes to extend thanks to all who coordinated or participated in each regional coalition meeting for their generous contribution to the fair and equitable administration of justice.

Information for Coalition Meeting Participants

Domestic Violence Coalition Meetings
Questions for Discussion

Introduction

To assist you in preparing for the segment of your regional coalition meeting devoted to gender bias issues, we ask you to consider the questions on the following pages as they relate to your observations and experiences and those of your clients. The list of questions may provide a framework and stimulus for your thinking.

The advisory committee would be pleased to receive a written copy of your remarks in addition to or in lieu of your attendance or participation at the meeting. Since the discussion at the meeting will be structured with inevitable time constraints, we encourage you to describe your views in greater detail. A form for that purpose is attached.

The Judicial Council Advisory Committee on Gender Bias in the Courts is particularly interested in how issues of gender bias may be affected or exacerbated when race, ethnicity, or economic status are also considered. In thinking about the following questions, please take these factors into account.

Questions

1. **(RESTRAINING ORDERS)** What has been your clients' experience with obtaining temporary restraining orders in domestic violence cases?
   a. Are mutual restraining orders issued when one party has not petitioned for a restraining order or has not made a showing of good cause? If so, when are they issued (ex parte, OSC)?
   b. In cases in which mutual restraining orders have been issued, what problems, if any, have your clients experienced in enforcement (by law enforcement or the court through its contempt powers) as a result?
   c. Are there any local court policies that relate to obtaining restraining orders (e.g., fee waiver, calendaring, notice, service, limitation on appearances, forms, etc.) that adversely affect your clients?
   d. In your area, do victims of domestic violence who seek restraining orders have difficulty obtaining representation or other assistance? Please explain.
   e. Does the fact that a person is or is not represented by a non-attorney lay advocate affect his or her ability to obtain a restraining order?
   f. Are non-attorney lay advocates allowed to speak at hearings or in any other way hampered by the court in assisting victims of domestic violence? Please explain.
   g. What has been your clients' experience with regard to obtaining 24-hour telephone restraining orders (Stats. 1987, ch. 758; effective July 1, 1988)?
   h. Have your clients experienced any problems with regard to obtaining modification of restraining orders?
   i. What appear to be the attitudes of the judges and staff in your court toward domestic violence matters, victims of domestic violence, batterers and the credibility of domestic violence victims?
   j. Are the Judicial Council forms (e.g., application, order, instruction booklet, etc.) satisfactory? If not, please make specific suggestions as to how the forms might be improved.

2. **(CUSTODY)** Is spousal abuse considered as a factor in child custody orders or recommendations? What have been your clients' experiences?
   a. Are judges, mediators, and evaluators sensitive to safety issues in making custody orders or recommendations?

   b. What appear to be the attitudes of the judges, mediators and evaluators in your court toward allegations of spousal abuse in custody disputes?

   c. Have you observed cases in which an alleged victim of domestic violence or an abuser makes false claims of abuse or falsely denies abuse to obtain an advantage in a custody dispute? Please explain.

3. **(VISITATION)** Is spousal abuse considered as a factor in determining visitation rights? What have been your clients' experiences?
   a. Are judges, mediators and evaluators sensitive to safety issues in making visitation orders or recommendations?

   b. What appear to be the attitudes of the judges, mediators and evaluators in your court toward allegations of spousal abuse in visitation disputes?

   c. Have you observed cases in which an alleged victim of domestic violence or an abuser makes false claims of abuse or falsely denies abuse to obtain an advantage in a visitation dispute? Please explain.

   d. If supervised visitation is used as an option in visitation orders, recommendations, or mediated agreements, what have been your clients' experiences with supervised visitation?

4. **(MEDIATION)** How would you evaluate the use of mediation and evaluation in custody and visitation disputes involving allegations of domestic violence?
   a. Is face-to-face mediation effective in cases involving domestic violence? Please explain.

   b. Should cases involving domestic violence be exempted from the law in California that mandates mediation of custody and visitation disputes? Please explain.

   c. What changes, if any, would you suggest to make the mediation and evaluation process more effective in domestic violence cases?

5. **(PROSECUTION)** How would you evaluate the effectiveness of criminal prosecution of abusive partners?
   a. Of those clients who pursue criminal prosecution of abusive partners, what estimated percentage ultimately drop charges? Of those clients who drop criminal charges:
      i. why are charges dropped;
      ii. at what point in the process are charges generally dropped; and
      iii. what, if anything, would have made a difference?

   b. How have your clients who pursue criminal prosecution of abusive partners been treated by the police, the district attorney and the court?

   c. If your county has a Victim-Witness program, what have been your clients' experiences with the program?

d. If vertical prosecution units in which the same prosecutor handles the case from beginning to end are used in your county, please evaluate the effectiveness of that program.

e. If vertical prosecution units do not handle domestic violence cases in your county, please evaluate the effectiveness of your county's method of prosecuting domestic violence cases.

f. Are domestic violence offenses prosecuted routinely as misdemeanors when offenses of similar gravity involving strangers are prosecuted as felonies? If so, please give examples.

h. Do sentencing practices appear to indicate any particular judicial attitude toward the seriousness of domestic violence offenses?

6. **(DIVERSION)** How would you evaluate the effectiveness of diversion programs for abusive partners? To the extent these programs could be improved, what would you suggest to make domestic violence diversion programs more effective?

7. **(MINORITY COMMUNITIES)**
   a. With respect to any of the questions raised in this discussion guide, are the experiences of minority persons different from those of other persons? If so, please explain separately with respect to any racial, ethnic or linguistic minority.

   b. What appear to be the attitudes of the judges, court personnel, mediators and evaluators in your court toward minority persons who come before the court in domestic violence cases?

8. **(ECONOMICS)**
   a. With respect to any of the questions raised in this discussion guide, are the experiences of low income persons different from those of other persons? Please explain.

   b. With respect to any of the questions in this discussion guide, are the experiences of pro pers different from those of persons represented by attorneys? Please explain.

   c. Are there any finincial barriers to your clients' access to services provided by Family Court Services (e.g., mediation, evaluation)?

   d. What appear to be the attitudes of the judges, court personnel, mediators and evaluators in your court toward low income and pro per persons who come before the court in domestic violence cases?

   e. How could the court process more effectively deal with low income and pro per persons who come before the court in domestic violence cases?

9. **(GENERAL)**
   a. In cases where both spousal and child abuse are alleged, what have been your clients' experiences in dependency court?

   b. Are the judges, court personnel, mediators and evaluators in your court adequately sensitive toward domestic violence issues? If not, how could that sensitivity be improved? If your answer is "more training," please identify who should train whom about what.

JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS

Domestic Violence Coalition Meetings — Written Remarks

Name: Male _____ Female _____

County: Age _____

Address: Attorney ☐ yes ☐ no

Telephone number:

Years in practice, if attorney:

(To assist the committee, please complete at least the county information even if you prefer not to provide your name and other details. Thank you.)

(Please attach additional pages as needed. This form is a confidential communication to the Judicial Council Advisory Committee on Gender Bias in the Courts. Please do not mention the names of any individual attorneys or judges in the course of this communication.)

Mail this form to:

Ms. Kathleen Sikora, Attorney
Administrative Office of the Courts
350 McAllister St., Room 3154
San Francisco, CA 94102

JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS

Written Response Form — Domestic Violence

Two years ago, the Judicial Council Advisory Committee on Gender Bias in the Courts was established to study ways that gender might affect the experiences of men and women in the California courts. Based upon information gathered from a number of sources, the committee has chosen domestic violence as a priority issue for further investigation.

This form is designed to give those of you who have come before the courts or the justice system in cases involving domestic violence an opportunity to communicate your experiences and suggestions to the committee. The information will be used for research purposes only. The committee has no power to investigate complaints or intervene in individual cases.

You are invited to submit your comments to the committee in the space provided below. You may use the reverse side of this page or attach additional pages as necessary. Please do not use names or make personal references to any individual. Your identity will not be disclosed by the committee.

Name *(optional)*: _____ County: _____

☐ male ☐ female

In your opinion, are there ways in which your case involving domestic violence could have been handled by a judge, court employee, mediator, evaluator, district attorney or law enforcement officer with more efficiency or fairness? If so, please explain and be as specific as possible. The committee is particularly interested in issues related to restraining orders, custody and visitation, mediation, prosecution, diversion, attitudes of persons within the justice system toward you or your case and the ways race, ethnicity or income level may affect these issues.

Return this form to the person who gave it to you, or mail it directly to:

Ms. Kathleen Sikora, Attorney • Administrative Office of the Courts • 350 McAllister Street, Room 3154 • San Francisco, CA 94102

GUIDELINES—*AFFILIATE INQUIRY*

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two successive Chief Justices to examine issues of gender bias in the California courts and make recommendations to the Judicial Council to correct any problems identified. The committee's working definition of gender bias includes behavior or decision making which is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; and (3) myths and misconceptions about the social and economic realities encountered by both sexes. During the past several months, the committee has undertaken a number of activities designed to assess the nature and extent of gender bias in the courts, including an extensive literature search, six regional bar meetings, and a statewide attorney request for comments (appearing in the July 1988 issue of the *California Lawyer*). Based upon the information gathered from these cumulative sources, various issues have emerged as priorities for further investigation.

The committee has requested the Affiliates of the California Women Lawyers to assist in its continuing investigation by gathering specific information on a county-by-county basis on the following subjects:

I. Penal Code section 1000.6 (domestic violence) diversion.
II. Procedures for selection of appointed counsel.
III. Diversion and alternative sentencing programs and facilities for adult criminal defendants.
IV. Diversion, alternative disposition and confinement placements, programs and facilities for juveniles.
V. Attorneys' fees in family law cases.

The function of the Affiliate Inquiry is to learn more about certain aspects of the issues outlined above and to provide a factual basis upon which the committee may focus and refine its investigation. The inquiry requests both specific factual information and the subjective evaluation of that information based upon the observations and perceptions of practicing attorneys. It does not involve the collection of statistics or other quantifiable data, "court-watching" or the review of court records.

The Judicial Council Advisory Committee on Gender Bias in the Courts believes that your commitment of time to this project will be an invaluable contribution to the committee's work and, in time, to the California courts. We sincerely appreciate your commitment.

INSTRUCTIONS

1. Read the Fact Sheet on The Advisory Committee on Gender Bias in the Courts and the worksheets provided to you by your affiliate president or county coordinator.
2. Talk to others about the best approach to take in your county to collect the requested information. Each worksheet includes a suggested approach, but you may find that another approach is preferable.
3. Fill out the information box at the top of each page you complete.
4. Keep notes on the interviews you conduct and fill out the worksheets after you have collected the information you need. If you cannot find the information necessary to fully complete any worksheet, indicate the sources you contacted and, if possible, potential sources of information whom you were unable to contact.
5. Attach additional pages as necessary to complete your responses. Where you gather information on more than one court or branch court and practice differs among courts, please photocopy the applicable worksheet and use one worksheet for each court.
6. Please be mindful that gender bias is a sensitive topic and that the success of the Affiliate Inquiry depends in part upon the sensitivity with which you approach those whom you consult. The identity and county of individuals who complete these worksheets and the identity and county of individuals referred to on the worksheets will not be disclosed by the committee. Where the inquiry requests information about local court practice, responses should not include the names of individual judges or attorneys.
7. Return completed or partially completed worksheets to your affiliate president or county coordinator by _____.

Thank you.

[If you have questions about specific items of requested information or the scope of this inquiry, contact Ms. Kathleen Sikora, AOC staff attorney, at (415) 557-0214.]

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

I. DOMESTIC VIOLENCE DIVERSION PROGRAMS

Purpose: The committee seeks to identify domestic violence (Penal Code section 1000.6) diversion programs and evaluate whether diversion is an effective way to respond to domestic violence; whether participation in Penal Code section 1000.6 diversion programs is monitored by the court; and whether participation in domestic violence diversion programs is coordinated with participation in other diversion programs.

Suggested Approach: We suggest that you consult your local District Attorney's or Public Defender's Office, Victim-Witness program, or Probation Department. You may wish to ask them about their perceptions about the effectiveness of domestic violence diversion programs and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Is Penal Code section 1000.6 (domestic violence) diversion available in your county? ☐ Yes ☐ No

2. Please identify the Penal Code section 1000.6 diversion program in your county. Please photocopy this page and use one page for each program described; attach written descriptions if they can be obtained. For each program listed, indicate to the extent possible:
   a. Name of program:
   b. Contact person:
   c. Telephone number:
   d. Address:

   e. Brief program description:

   f. Is participation in this program monitored by the court? ☐ Yes ☐ No
   If so, how?

   g. To what extent and by whom is participation in this program coordinated with participation in other diversion programs (e.g., substance abuse diversion)?

B. Evaluation

If you have formed an opinion based upon your experience or upon your conversations with others, please evaluate the effectiveness of domestic violence diversion programs in your county. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(____)_____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

II. APPOINTED COUNSEL (MISDEMEANOR)
(1)

Purpose: The committee would like to compare various procedures for selection of appointed counsel in misdemeanor cases to determine which procedures appear to affect gender and ethnic diversity among those selected.

Suggested Approach: We suggest that you consult your local Public Defender's Office, Municipal Court Administrative Officer or Presiding Judge, local bar association, bar referral panel, or several experienced criminal defense practitioners (i.e., DUI defense). You may wish to ask them about their perceptions about whether the selection process affects gender and ethnic diversity among those selected and incorporate their views into your response to Part B, below.

A. Description of Local Practice (If there is more than one municipal court in your county, and court practice differs among courts, please photocopy this page and use one page for each court.)

1. Is court policy on the selection of appointed counsel in misdemeanor cases set forth in writing?
   ☐ Yes ☐ No
   If so, where?
   If so, please attach a copy, if possible.
   Name of person charged with responsibility for selection process:
   Telephone number:

2. Please summarize the selection process, as set forth in official court policy (written rules/guidelines), for appointed counsel in misdemeanor cases.

3. If court policy on the selection of appointed counsel in misdemeanor cases is not set forth in writing, please summarize official court policy as defined by the presiding judge or court administrator.

4. Please indicate whether, and if so, how, actual practice in the selection of appointed counsel in misdemeanor cases differs from official written or stated policy. Please indicate your source for this information.

5. If there is no official court policy on the selection of appointed counsel in misdemeanor cases, please describe local practice with *regard* to the selection process. Please indicate your source for this information.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether the procedure for selection of appointed counsel in misdemeanor cases affects gender and ethnic diversity among those selected. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

II. APPOINTED COUNSEL (FELONY, EXCLUDING DEATH PENALTY) (2)

Purpose: The committee would like to compare various procedures for selection of appointed counsel in non-death penalty felony cases to determine which procedures appear to affect gender and ethnic diversity among those selected.

Suggested Approach: We suggest that you consult your local Public Defender's Office, Superior Court Administrative Office or Presiding Judge, Municipal Court Administrative Officer or Presiding Judge, bar association, bar referral panel, or several experienced criminal defense practitioners. You may wish to ask them about their perceptions about whether the selection process affects gender and ethnic diversity among those selected and incorporate their views into your response to Part B, below.

A. Description of Local Practice

1. Is court policy on the selection of appointed counsel in felony cases (excluding death penalty cases) set forth in writing? ☐ Yes ☐ No
   If so, where?
   If so, please attach a copy, if possible.
   Name of person charged with responsibility for selection process:
   Telephone number:

2. Please summarize the selection process, as set forth in official court policy (written rules/guidelines), for appointed counsel in felony (excluding death penalty) cases.

3. If court policy on the selection of appointed counsel in felony (excluding death penalty) cases is not set forth in writing, please summarize official court policy as defined by the presiding judge or court administrator.

4. Please indicate whether, and if so, how, actual practice in the selection of appointed counsel in felony (excluding death penalty) cases differs from official written or stated policy. Please indicate your source for this information.

5. If there is no official court policy on the selection of appointed counsel in felony (excluding death penalty) cases, please describe local practice with regard to the selection process. Please indicate your source for this information.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether the procedure for selection of appointed counsel in felony cases (excluding death penalty) affects gender and ethnic diversity among those selected. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____
If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

II. APPOINTED COUNSEL (DEATH PENALTY) (3)

Purpose: The committee would like to compare various procedures for selection of appointed counsel in death penalty cases to determine which procedures appear to affect gender and ethnic diversity among those selected.

Suggested Approach: We suggest that you consult your local Public Defender's Office, Superior Court Administrative Office or Presiding Judge, Municipal Court Administrative Officer or Presiding Judge, bar association, bar referral panel, or several experienced criminal defense practitioners. You may wish to ask them about their perceptions about whether the selection process affects gender and ethnic diversity among those selected and incorporate their views into your response to Part B, below.

A. Description of Local Practice

1. Is court policy on the selection of appointed counsel in death penalty cases set forth in writing?
   ☐ Yes ☐ No
   If so, where?
   If so, please attach a copy, if possible.
   Name of person charged with responsibility for selection process:
   Telephone number:

2. Please summarize the selection process, as set forth in official court policy (written rules/guidelines), for appointed counsel in death penalty cases.

3. If court policy on the selection of appointed counsel in death penalty cases is not set forth in writing, please summarize official court policy as defined by the presiding judge or court administrator.

4. Please indicate whether, and if so, how, actual practice in the selection of appointed counsel in death penalty cases differs from official written or stated policy. Please indicate your source for this information.

5. If there is no official court policy on the selection of appointed counsel in death penalty cases, please describe local practice with regard to the selection process. Please indicate your source for this information.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether the procedure for selection of appointed counsel in death penalty cases affects gender and ethnic diversity among those selected. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____
If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

II. APPOINTED COUNSEL
(JUVENILE W & I CODE §§ 601 AND 602—DELINQUENCY)
(4)

Purpose: The committee would like to compare various procedures for selection of appointed counsel in W & I Code section 601 and 602 cases to determine which procedures appear to affect gender and ethnic diversity among those selected.

Suggested Approach: We suggest that you consult your local Public Defender's Office, Superior Court Administrator or sole or presiding juvenile judge, bar association, or several experienced private juvenile law practitioners. You may wish to ask them about their perceptions about whether the selection process affects gender and ethnic diversity among those selected and incorporate their views into your response to Part B, below.

A. Description of Local Practice

1. Is court policy on the selection of appointed counsel in juvenile 601/602 cases set forth in writing?
   ☐ Yes ☐ No
   If so, where?
   If so, please attach a copy, if possible.
   Name of person charged with responsibility for selection process:
   Telephone number:

2. Please summarize the selection process, as set forth in official court policy (written rules/guidelines), for appointed counsel in W & I Code section 601 and 602 cases.

3. If court policy on the selection of appointed counsel in W & I Code section 601 and 602 cases is not set forth in writing, please summarize official court policy as defined by the presiding judge or court administrator.

4. Please indicate whether, and if so, how, actual practice in the selection of appointed counsel in W & I Code section 601 and 602 cases differs from official written or stated policy. Please indicate your source for this information.

5. If there is no official court policy on the selection of appointed counsel in W & I Code section 601 and 602 cases, please describe local practice with regard to the selection process. Please indicate your source for this information.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether the procedure for selection of appointed counsel in W & I Code section 601 and 602 cases affects gender and ethnic diversity among those selected. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #( ) _____
If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

II. APPOINTED COUNSEL
(JUVENILE W & I Code § 300–DEPENDENCY AND CIVIL CODE § 232–TERMINATION)
(5)

Purpose: The committee would like to compare various procedures for selection of appointed counsel in W & I Code section 300 and Civil Code section 232 cases to determine which procedures appear to affect gender and ethnic diversity among those selected.

Suggested Approach: We suggest that you consult your local Public Defender's Office, County Counsel's Office, District Attorney's Office, Superior Court Administrator or sole or presiding juvenile judge, bar association, or several experienced private juvenile law practitioners. You may wish to ask them about their perceptions about whether the selection process affects gender and ethnic diversity among those selected and incorporate their views into your response to Part B, below.

A. Description of Local Practice

1. Is court policy on the selection of appointed counsel in W & I Code section 300 and Civil Code Section 232 cases set forth in writing?
   ☐ Yes ☐ No
   If so, where?
   If so, please attach a copy, if possible.
   Name of person charged with responsibility for selection process:
   Telephone number:

2. Please summarize the selection process, as set forth in official court policy (written rules/guidelines), for appointed counsel in W & I Code section 300 and Civil Code section 232 cases.

3. If court policy on the selection of appointed counsel in W & I Code section 300 and Civil Code section 323 cases is not set forth in writing, please summarize official court policy as defined by the presiding judge or court administrator.

4. Please indicate whether, and if so, how, actual practice in the selection of appointed counsel in W & I Code section 300 and Civil Code section 232 cases differs from official written or stated policy. Please indicate your source for this information.

5. If there is no official court policy on the selection of appointed counsel in W & I Code section 300 and Civil Code section 232 cases, please describe local practice with regard to the selection process. Please indicate your source for this information.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether the procedure for selection of appointed counsel in W & I Code section 300 and Civil Code section 232 cases affects gender and ethnic diversity among those selected. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

III. PROGRAMS AND FACILITIES (DIVERSION–ADULT) (1)

Purpose: The committee seeks to identify local diversion programs for adult criminal defendants and to determine whether diversion programs and facilities are equally available to males and females.

Suggested Approach: We suggest that you consult your local District Attorney's Office, Public Defender's Office, Probation Department, or several private criminal law practitioners. You may wish to ask them about their perceptions about whether diversion programs are equally available to males and females and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Does your county have a directory or list of diversion programs for adult criminal defendants?
☐ Yes ☐ No
If so, please enclose a copy of the directory or list or indicate where a copy may be obtained (include name, telephone number, and address of contact person).

2. Are there any types or categories of diversion programs or facilities in your county, excluding Penal Code section 1000.6 domestic violence programs, that are available to one sex but not available to the other (examples might include drug, alcohol, or child abuse programs)? ☐ Yes ☐ No
If so, please list the diversion programs or facilities available to males only and those available to females only. If there are more than five programs available to males or females only, please check this box ☐ and list only five examples of each. Please photocopy this page and use one page for each program described.

For each program or facility listed, indicate to the extent possible:

a. Name of program:
b. Contact person:
c. Telephone number:
d. Address:

e. Does the program serve ☐ males only? ☐ females only?
f. Brief program description:

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether diversion programs and facilities in your county are equally available to male and female adult criminal defendants. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #( ) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

III. PROGRAMS AND FACILITIES (SENTENCING ALTERNATIVES AND ALTERNATIVES TO INCARCERATION–ADULT) (2)

Purpose: The committee seeks to identify local sentencing alternatives and alternatives to incarceration for adult criminal defendants and to determine whether those programs and facilities are equally available to males and females.

Suggested Approach: We suggest that you consult your local Probation Department, Public Defender's Office, District Attorney's Office, Sheriff's Department, or several private criminal law practitioners. You may wish to ask them about their perceptions about whether alternative sentencing and alternatives to incarceration programs are equally available to males and females and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Does your county have a directory or list of sentencing alternatives and alternatives to incarceration for adult criminal defendants? ☐ Yes ☐ No
   If so, please enclose a copy of the directory or list or indicate where a copy may be obtained (include name, telephone number, and address of contact person).

2. Are there any types or categories of sentencing alternatives and alternatives to incarceration, including work furlough and house arrest, in your county that are available to one sex but not available to the other?
   ☐ Yes ☐ No
   If so, please list the sentencing alternatives and alternatives to incarceration available to males only and those available to females only. If there are more than five programs available to males or females only, please check this box ☐ and list only five examples of each. Please photocopy this page and use one page for each program described.

   For each program or facility listed, indicate to the extent possible:
   a. Name of program:
   b. Contact person:
   c. Telephone:
   d. Address:

   e. Does the program serve ☐ males only? ☐ females only?
   f. Brief program description:

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether sentencing alternatives and alternatives to incarceration in your county are equally available to male and female adult criminal defendants. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

IV. PROGRAMS AND FACILITIES (DIVERSION – PRE-WARDSHIP – JUVENILE) (1)

Purpose: The committee seeks to identify local pre-wardship diversion programs for juveniles and to determine whether those programs are equally available to males and females.

Suggested Approach: We suggest that you consult your local Probation Department, Public Defender's Office, Police Department, or several private juvenile law practitioners. You may wish to ask them about their perceptions about whether pre-wardship diversion programs for juveniles are equally available in your county to males and females and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Does your county have a directory or list of pre-wardship diversion programs for juveniles? ☐ Yes ☐ No
   If so, please enclose a copy of the directory or list or indicate where a copy may be obtained (include name, telephone number, and address of contact person).

2. Are there any types or categories of pre-wardship diversion programs in your county that are available to one sex but not available to the other? ☐ Yes ☐ No
   If so, please list the programs available to males only and those available to females only. If there are more than five programs available to males or females only, please check this box ☐ and list only five examples of each. Please photocopy this page and use one page for each program described.

   For each program listed, indicate to the extent possible:
   a. Name of program:
   b. Contact person:
   c Telephone:
   d. Address:

   e. Does the program serve ☐ males only? ☐ females only?
   f. Brief program description:

   g. At what point in the process (i.e., pre-petition, post-petition) is this program utilized? Please be specific.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether pre-wardship diversion programs for juveniles are equally available in your county to males and females. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

IV. PROGRAMS AND FACILITIES
(ALTERNATIVE DISPOSITIONS AND ALTERNATIVES TO CONFINEMENT– POST-WARDSHIP– JUVENILE)
(2)

Purpose: The committee seeks to identify local alternative disposition and alternatives to confinement placements, programs, and facilities for juveniles and to determine whether those placements, programs, and facilities are equally available to males and females.

Suggested Approach: We suggest that you consult your local Probation Department, District Attorney's Office, Public Defender's Office, or several private juvenile law practitioners. You may wish to ask them about their perceptions about whether post-wardship alternative dispositions and alternatives to confinement are equally available to males and females and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Does your county have a directory or list of placements, programs, or facilities used as post-wardship alternative dispositions and alternatives to confinement for juvenile offenders? ☐ Yes ☐ No
   If so, please enclose a copy of the directory or list or indicate where a copy may be obtained (include name, telephone number, and address of contact person).

2. Are there any types or categories of placements, programs, or facilities used as post-wardship alternative dispositions and alternatives to confinement in your county that are available to one sex but not available to the other?
   ☐ Yes ☐ No
   If so, please list the placements, programs, or facilities available to males only and those available to females only. If there are more than five programs available to males or females only, please check this box ☐ and list only five examples of each. Please photocopy this page and use one page for each program described.

   For each placement, program, or facility listed, indicate to the extent possible:
   a. Name of program:
   b. Contact person:
   c. Telephone:
   d. Address:

   e. Does the program serve ☐ males only? ☐ females only?
   f. Brief program description:

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether post-wardship alternative disposition and alternatives to confinement placements, programs, and facilities for juveniles are equally available in your county to males and females. Please be as specific as possible. Use the reverse side of this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section in each page.

IV. PROGRAMS AND FACILITIES (DETENTION AND POST-WARDSHIP CONFINEMENT–JUVENILE) (3)

Purpose: The committee seeks to identify local detention and post-wardship confinement placements, programs, and facilities for juveniles and to determine whether those placements, programs, and facilities are equally available to males and females.

Suggested Approach: We suggest that you consult your local Probation Department, District Attorney's Office, Public Defender's Office, or several private juvenile law practitioners. You may wish to ask them about their perceptions about whether detention and post-wardship confinement placements, programs, and facilities are equally available to males and females and incorporate their views into your response to Part B, below.

A. Description of Local Programs

1. Does your county have a directory or list of detention and post-wardship confinement placements, programs, and facilities for juveniles? ☐ Yes ☐ No
   If so, please enclose a copy of the directory or list or indicate where a copy may be obtained (include name, telephone number, and address of contact person).

2. Are there any types or categories of placements, programs, or facilities used for juvenile detention or post-wardship confinement in your county that are available to one sex but not available to the other? ☐ Yes ☐ No
   If so, please list the programs available to males only and those available to females only. If there are more than five programs available to males or females only, please check this box ☐ and list only five examples of each. Please photocopy this page and use one page for each program described.

   For each program listed, indicate to the extent possible:
   a. Name of program:
   b. Contact person:
   c Telephone:
   d. Address:

   e. Does the program serve ☐ males only? ☐ females only?
   f. Brief program description:

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether detention and post-wardship confinement placements, programs, and facilities for juveniles are equally available in your county to males and females. Please be as specific as possible. Use the reverse side o this page.

County _____ Court _____

Person completing this section _____ Telephone #(___) _____

If you completed this section based upon information other than your personal knowledge, please specify which person provided you with the information:

Name: _____ Title: _____ Telephone #: _____

Please complete this section on each page.

V. ATTORNEYS' FEES (FAMILY LAW)

Purpose: The committee would like to survey local practice with respect to the award, reservation, or denial of attorneys' fees in family law cases and to determine the effect of that practice, if any, on attorneys and their clients.

Suggested Approach: We suggest that you consult several family law practitioners including, if possible, Certified Family Law Specialists. You may wish to ask them about their perceptions about whether, and if so, how, local practice with respect to the award, reservation or denial of attorneys' fees affects attorneys and their clients and incorporate their views into your, response to Part B, below.

A. Description of Local Practice

1. How many judges and commissioners hear family law cases in your county? _____

2. Of the judges and commissioners who hear family law cases, approximately what percentage routinely reserve attorneys' fees at the time of the temporary order? _____ Approximately what percentage routinely grant attorneys' fees at the time of the temporary order? _____

   In those cases where fees are granted, are they adequate?
   ☐ Yes ☐ No Please explain and indicate your source for this assessment.

3. Of the judges and commissioners who hear family law cases, approximately what percentage routinely order that each party bear its own attorneys' fees at the time of trial? _____ Approximately what percentage routinely order attorneys' fees based upon ability to pay at the time of trial? _____

   In those cases where fees are ordered, are they adequate?
   ☐ Yes ☐ No Please explain and indicate your source for this assessment.

B. Evaluation

If you have formed an opinion based upon your own experience or upon your conversations with others, please indicate whether, and if so, how, local practice with respect to the award, reservation, or denial of attorneys' fees in family law cases affects attorneys and their clients. Please be as specific as possible. Use the reverse side of this page.

APPENDIX F

List of Public Hearing Witnesses

PUBLIC HEARING: GENDER BIAS IN THE COURTS

LOS ANGELES

11:00 a.m. to 11:15 a.m. INTRODUCTION AND WELCOMING REMARKS

Hon. David M. Rothman
Supervising Judge of the Superior Court
Los Angeles County—West District
Co-chair, Advisory Committee on Gender Bias in the Courts

Ms. Holly J. Mitchell
Field Deputy for Senator Diane E. Watson (Co-chair, Advisory Committee on Gender Bias in the Courts)
Twenty-eighth District, Los Angeles

Mr. Colin W. Wied
President, State Bar of California

Hon. Judith C. Chirlin
Judge of the Superior Court
Los Angeles County
Vice-chair, Advisory Committee on Gender Bias in the Courts
Chair, Public Hearing Planning Group

11:15 a.m. to 12:30 p.m. CIVIL LITIGATION, COURT ADMINISTRATION, COURTROOM INTERACTION, LEGAL EDUCATION

Hon. Richard P. Byrne
Presiding Judge of the Superior Court
Los Angeles County

Ms. Margaret M. Morrow
President, Los Angeles County Bar Association

Ms. Patricia Phillips
Member, State Bar Board of Governors

Hon. Arleigh Woods
Presiding Justice of the Court of Appeal
Second District, Division Four
Chair, Commission on Judicial Performance

Mr. Edward M. Kritzman
Court Administrator, and
Ms. Virginia Piper
Deputy Court Administrator
Los Angeles Municipal Court District

Prof. Samuel H. Pillsbury
Associate Professor
Loyola Law School

Hon. Vernon G. Foster
Judge of the Superior Court
Los Angeles County
Chair, Committee on Standard Jury Instructions—Civil of the Los Angeles Superior Court (BAJI)

Ms. Gloria Allred
President, Women's Equal Rights Legal Defense and Education Fund

12:30 p.m. to 1:00 p.m. LUNCH BREAK

1:00 p.m. to 1:45 p.m. OPEN MIKE

Ms. Fern Topas Salka
Attorney at Law
Beverly Hills

1:45 p.m. to 3:00 p.m. FAMILY LAW

Ms. Dorothy Jonas
Past-chair, California Commission on the Status of Women
Chair, National Task Force on the Rights of Women in Marriage (National Organization for Women)
Coordinator, Los Angeles Women's Leadership Network

Ms. Mablean Paxton
Attorney at Law
President, Board of Directors
Harriet Buhai Center for Family Law

Mr. Hugh McIsaac
Director of Family Court Services
Los Angeles Superior Court

Ms. Hannah-Beth Jackson
Past-chair, California Commission on the Status of Women
Member, Senate Task Force on Family Equity
Member, Governor's Commission on Child Support Development and Enforcement
Attorney at Law
Ventura and Santa Barbara

Ms. Lucianne Ranni, President and
Ms. Pamela Besser, Member and Litigant
National Organization for Women
Ventura-Oxnard Chapter

Mr. James A. Cook
President, Joint Custody Association

Mr. Vertner Vergon
President and Founder
Fathers of America

3:00 p.m. to 3:15 p.m. BREAK

3:15 p.m. to 4:00 p.m. OPEN MIKE

4:00 p.m. to 5:00 p.m. DOMESTIC VIOLENCE

Dr. Alice Oksman
Director, Family Court Services
Los Angeles Superior Court—West District

Ms. Jan Armstrong
Executive Director
Southern California Coalition Against Domestic Violence

Dr. Robert Pynoos
Director, Program in Trauma, Violence, and Sudden Bereavement
UCLA Center for Preventive Psychiatry

Ms. Rosa E. Moran-Durst
Executive Assistant
Los Angeles County Commission for Children's Services

Ms. Alana Bowman
Deputy City Attorney
Los Angeles

Ms. Gail Pincus
Director, Domestic Abuse Center
Northridge
(Ms. Pincus will be accompanied by a recovering batterer and a formerly battered woman who will also testify.)

5:00 p.m. to 5:15 p.m. BREAK

5:15 p.m. to 6:00 p.m. OPEN MIKE

Hon. Aurelio Munoz
Judge of the Superior Court
Los Angeles County
Chair, Committee on Standard Jury Instructions—Criminal of the Los Angeles Superior Court (CALJIC)

6:00 p.m. to 6:45 p.m. JUVENILE LAW
CRIMINAL LAW

Ms. Anna M. Roberts
Deputy Public Defender
Los Angeles

Ms. Elaine Rosen
Attorney at Law
Los Angeles

Ms. Mary Dodson
Attorney at Law
Riverside

Ms. Kathleen West
Program Development Director
Eden Development Center—Project Support
Co-chair, Perinatal Substance Abuse Council of Los Angeles County
(Ms. West will be accompanied by a program participant who will also testify.)

Ms. Marie Bockwinkel
Attorney at Law
Legal Aid Society of Los Angeles

6:45 p.m. to 7:15 p.m. OPEN MIKE

PUBLIC HEARING: GENDER BIAS IN THE COURTS

SAN DIEGO

11:00 a.m. to 11:30 a.m. INTRODUCTION AND WELCOMING REMARKS

Senator Diane E. Watson
Twenty-eighth Senatorial District, Los Angeles
Co-Chair, Advisory Committee on Gender Bias in the Courts

Hon. David M. Rothman
Supervising Judge of the Superior Court
Los Angeles County—West District
Co-chair, Advisory Committee on Gender Bias in the Courts

Hon. Patricia D. Benke
Associate Justice of the Court of Appeal
Fourth Appellate District, Division One
San Diego

Hon. Judith C. Chirlin
Judge of the Superior Court
Los Angeles County
Vice-chair, Advisory Committee on Gender Bias in the Courts
Chair, Public Hearing Planning Group

11:30 a.m. to 12:30 p.m. CIVIL LITIGATION, COURTROOM INTERACTION, COURT ADMINISTRATION, JUDICIAL EDUCATION

Hon. H. Ronald Domnitz
Immediate Past Presiding Judge
San Diego Municipal Court

Hon. Susan P. Finlay
Presiding Judge of the Municipal Court
South Bay Municipal Court District
Associate Dean, California Judges College

Ms. Judy E. Hamilton
Hamilton & Ranson
President
Lawyers Club of San Diego

Mr. Marc D. Adelman
President
San Diego County Bar Association

Ms. Cheryl Peterson
Research Attorney
San Diego Superior Court

Ms. Lynne Lugar
Copeland, Kemp, Lugar, Pohl, and Woods
Past President, Lawyers Club of San Diego

12:30 p.m. to 1:00 p.m. LUNCH BREAK

1:00 p.m. to 2:00 p.m. OPEN MIKE

2:00 p.m. to 2:45 p.m. FAMILY LAW AND DOMESTIC VIOLENCE

Ms. Sandra Joan Morris
Member, Executive Committee, Family Law Section
State Bar of California
Past President, Southern California Chapter, American
Academy of Matrimonial Lawyers
San Diego

Ms. Judi S. Foley
Seltzer, Caplan, Wilkins & McMahon
Chair, Gender Bias Committee
Lawyers Club of San Diego

Ms. Colleen Fahey Fearn
Domestic Welfare Counsel
Legal Aid Society of San Diego
accompanied by **Ms. Shelley Anderson,** client,
and one other client

Ms. Kate Yavenditti
Staff Attorney
San Diego Volunteer Lawyer Program
Certified Family Law Specialist

Ms. Rebecca L. Prater
Attorney at Law
Certified Family Law Specialist
Carlsbad

2:45 p.m. to 2:50 p.m. BREAK

2:50 p.m. to 3:45 p.m.	FAMILY LAW AND DOMESTIC VIOLENCE (continued) **Dr. Mildred Daley Pagelow** Director, Family Relations Specialist Educational Consulting Services Anaheim **Ms. Barbara J. Phillips** Program Director CSP (Community Services Programs) Orange County **Ms. Ashley Walker-Hooper** Acting Executive Director YWCA, San Diego **Mr. Casey Gwinn** Head Deputy City Attorney Child Abuse/Domestic Violence Unit San Diego **Lieutenant Leslie Lord** San Diego Police Department Central Division **Ms. Joyce Faidley** Director, Family Violence Prevention Center Center for Women's Studies and Services San Diego
3:45 p.m. to 4:45 p.m.	OPEN MIKE
4:45 p.m. to 5:00 p.m.	BREAK
5:00 p.m. to 6:30 p.m.	CRIMINAL LAW JUVENILE LAW **Ms. Doris Meyer** Coordinator/Parenting Child Abuse Prevention Correctional Education Division Hacienda La Puenta Unified School District

Ms. Rebecca Jurado
Staff Attorney
ACLU Foundation of Southern California
Director, Women Prisoners' Rights Project

Ms. Judith Rosen
Attorney at Law
Member, Advocates for Pregnant Women
San Diego

Ms. Diane Campbell
Attorney at Law
Member, Commission on the Delivery of Legal Services to the Indigent Accused, State Bar of California
Carlsbad

Ms. Jane Via
Deputy District Attorney
San Diego County
Child Abuse Unit

Hon. Patrick Morris
Judge of the Superior Court
San Bernardino County
Chair, Judicial Council Advisory Committee on Juvenile Law

Ms. Sylvia Johnson
Director of Juvenile Hall
San Bernardino County

Mr. Jeffrey M. Reilly
Supervising Public Defender—Juvenile
Ms. Ana Espana
Deputy Public Defender—Juvenile
San Diego Superior Court

Ms. Danielle Homant
CHS Investigators
Private Investigator and Sentencing Expert Witness
San Diego

Mr. George Grider
Peace Activist/Concerned Citizen

6:30 p.m. to 7:15 p.m. OPEN MIKE

PUBLIC HEARING: GENDER BIAS IN THE COURTS

SAN FRANCISCO

11:00 a.m. to 11:20 a.m. INTRODUCTION AND WELCOMING REMARKS

Hon. David M. Rothman
Supervising Judge of the Superior Court
Los Angeles County—West District
Co-chair, Advisory Committee on Gender Bias in the Courts

Hon. Daniel M. Hanlon
Presiding Judge of the Superior Court
City and County of San Francisco

Ms. Louise H. Renne
City Attorney for the City and County
of San Francisco

Hon. Judith C. Chirlin
Judge of the Superior Court
Los Angeles County
Vice-chair, Advisory Committee on Gender Bias in the Courts
Chair, Public Hearing Planning Group

11:20 a.m. to 1:15 p.m. GENERAL TESTIMONY

LITIGATION AND COURTROOM INTERACTION

Ms. Drucilla Stender Ramey
Executive Director
Bar Association of San Francisco

Mr. Peter G. Keane
Chief Deputy Public Defender
President, Bar Association of San Francisco

Ms. Jill Schlictman
Hallinan & Poplack
Chair, Gender Bias Committee
Queen's Bench

Ms. Mary C. Dunlap
Attorney at Law
San Francisco

Prof. Campbell Leaper
Assistant Professor of Psychology
University of California, Santa Cruz

JUDICIAL AND LEGAL EDUCATION;
COURT ADMINISTRATION

Hon. Robert I. Weil
Judge of the Superior Court
Los Angeles County
Chair, Governing Committee
California Center for Judicial Education and Research (CJER)

Hon. Marie Bertillion Collins
Judge of the Superior Court
Alameda County
Immediate Past Chair, Governing Committee
California Center for Judicial Education and Research (CJER)

Mr. Paul M. Li
Director and Secretary of the Governing Committee
California Center for Judicial Education and Research (CJER)

Ms. Celia McGuinness
Law Student
University of California
Hastings College of Law
San Francisco

Ms. Eva Goodwin
Retired Judicial Attorney
Court of Appeal, First District

ACCESS TO JUSTICE

Ms. Maria Blanco
Staff Attorney
Equal Rights Advocates
Coordinator, Women of Color Project

Ms. Patricia Sturdevant
Sturdevant & Sturdevant
President, San Francisco Women Lawyers Alliance

Ms. Gay Danforth
Altschuler & Berzon
San Francisco Women Lawyers Alliance
Executive Board and Child Care Committee

FAMILY LAW

Ms. Pauline Tessler
Certified Family Law Specialist
San Francisco

1:15 p.m. to 1:45 p.m. LUNCH BREAK

1:45 p.m. to 2:30 p.m. OPEN MIKE

Professor Herma Hill Kay
Professor of Law
University of California
Boalt Hall School of Law
Berkeley

Ms. Susan Hanks
Director, Family Violence Institute
Pyschological Services Center
Berkeley

Ms. Barbara Arms
Director, Rosalie House
Representative, San Francisco
Domestic Violence Consortium

2:30 p.m. to 3:30 p.m. FAMILY LAW

Hon. Donald B. King
Associate Justice of the Court of Appeal
First District, Division Five
San Francisco

Ms. Margaret Gannon
Attorney at Law
Oakland

Dr. Janet Johnston
Director of Research
Center for the Family in Transition
Consulting Associate Professor
Stanford University

Ms. Mary Duryee
Director, Family Court Services
Alameda Superior Court
Oakland

Ms. Jeannine Athas
Justice for Children
Foster City

Mr. Robert E. Potter
The Family Law Research Institute
South San Francisco

3:30 p.m. to 3:45 p.m. BREAK

3:45 p.m. to 4:30 p.m. OPEN MIKE

Ms. Barbara Bloom, M.S.W.
Criminal Justice Consultant
Member, Blue-Ribbon Commission on Inmate Population Management
Former Executive Director, Centerforce

4:30 p.m. to 5:30 p.m. DOMESTIC VIOLENCE

Ms. Nancy Lemon
Domestic Violence Attorney
Co-chair, California Alliance Against Domestic Violence—Family Law Committee
Professor, Boalt Hall School of Law (1988)

Ms. Deanna Jang
Legal Clinic Coordinator
Cooperative Temporary Restraining Order Clinic
San Francisco
(A joint project of: Bar Association of San Francisco, San Francisco Neighborhood Legal Assistance, W.O.M.A.N., Inc., Nihonmachi Legal Outreach, Rosalie House, Good Samaritan Community Center, and New College of the Law)

Ms. Janet Carter
Director
Criminal Justice Advocacy Unit
Family Violence Project
Office of the District Attorney
San Francisco

Ms. Rosario Oliva
Coordinator
Criminal Justice Advocacy Unit
Family Violence Project
Office of the District Atttorney
San Francisco

5:30 p.m. to 5:45 p.m.	BREAK
5:45 p.m. to 6:30 p.m.	CRIMINAL LAW JUVENILE LAW **Ms. Gloria Sandoval** Executive Director Rape Crisis Centers Contra Costa and Marin Counties **Ms. Karen Schryver** Staff Attorney Prison Law Office Chair, Standing Committee on Prisoners' Legal Services, State Bar of California **Ms. Ellen Barry** Director Legal Services for Prisoners With Children San Francisco **Ms. Ann O'Rielly** Director, Family and Children's Services Department of Social Services San Francisco **Ms. G. G. Greenhouse** Medical Social Worker Oakland
6:30 p.m. to 7:15 p.m.	OPEN MIKE

FUTURE HEARINGS

- **SACRAMENTO—March 20, 1989**
  State Capitol
  Hearing Room (check at information desk)
  Sacramento, California
  11:00 a.m. to 7:00 p.m.

- **FRESNO—April 3, 1989**
  Fresno State Office Building
  2550 Mariposa Mall
  Room 1036—Assembly Room
  Fresno, California
  11:00 a.m. to 7:00 p.m.

PUBLIC HEARING: GENDER BIAS IN THE COURTS

SACRAMENTO

11:00 a.m. to 11:30 a.m. INTRODUCTION AND WELCOMING REMARKS

Hon. David M. Rothman
Supervising Judge of the Superior Court
Los Angeles County—West District
Co-chair, Advisory Committee on Gender Bias in the Courts

Hon. Malcolm M. Lucas
Chief Justice of California
Chairperson of the Judicial Council of California

Senator Diane E. Watson
Twenty-eighth Senatorial District, Los Angeles
Co-chair, Advisory Committee on Gender Bias in the Courts

Hon. Cecily Bond
Presiding Judge of the Superior Court
Sacramento County
Chair, Superior Court Committee
Judicial Council of California

Hon. Judith C. Chirlin
Judge of the Superior Court
Los Angeles County
Vice-chair, Advisory Committee on Gender Bias in the Courts
Chair, Public Hearing Planning Group

11:30 a.m. to 12:30 p.m. CIVIL LITIGATION, COURTROOM INTERACTION, AND COURT ADMINISTRATION

Ms. Janice Kamenir-Reznik
Reznik & Reznik
President, California Women Lawyers

Ms. Windie Scott
Attorney at Law
President, Sacramento Women Lawyers Association

Ms. Barbara Malach
Attorney at Law
Co-chair, Judicial Nominations
California Women Lawyers

Ms. Joanne Lederman
Executive Officer
Alameda County Superior Court

Ms. Catherine C. Sprinkles
Jackson, Tufts, Cole & Black
Member, State Bar Board of Governors
Past member, Commission on Judicial Nominees Evaluation
San Jose

Ms. Susan McCoin, J.D. and Phd.
Co-principal, The Pro Se Litigant:
Representation in Consequential Civil Cases
Department of Sociology
University of California, Los Angeles

12:30 p.m. to 1:00 p.m. LUNCH BREAK

1:00 p.m. to 1:45 p.m. OPEN MIKE

Ms. Viola Jenson
Help Us Regain Children (HURT)
San Ramon

Ms. Joanne Pasek
Concerned Citizen
Seattle, Washington

1:45 p.m. to 3:00 p.m. FAMILY LAW AND DOMESTIC VIOLENCE

Prof. Carol S. Bruch
Professor of Law
University of California, Davis

Ms. Marla Scharf
Legal Services of Northern California
Sacramento

Ms. Mimi Modisette
Administrative Assistant to
Senator Gary K. Hart
Ms. Patricia A. Wynne
Counsel, Senate Committee on Judiciary
Staff to the Senate Task Force on Family Equity
Sacramento

Ms. Diane Waznicky
Desmond, Miller, Desmond & Bartholomew
Sacramento

Ms. Ann Taylor Garrett
Attorney at Law
Sacramento

Mr. John Alzer
President
Family Advisors of California

Ms. Gail Jones
Executive Director, W.E.V.E.
Sacramento

Ms. Constance Carpenter
Carpenter & Mayfield
Sacramento

3:00 p.m. to 3:15 p.m. BREAK

3:15 p.m. to 3:30 p.m. COMMENTS FROM THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION

Mr. Robert D. Raven
Morrison & Foerster
San Francisco

3:30 p.m. to 4:45 p.m. CRIMINAL LAW AND JUVENILE LAW

Ms. Shelley McEwan
Deputy County Counsel
Solano

Ms. Lucy Quacinella
Legal Services
Chico

Anatomy of a Criminal Proceeding: Fairness in Jury Selection

Mr. James Scott Le Strange
Chief Deputy District Attorney
Napa County

Mr. Rowan Klein
Attorney at Law
Los Angeles

Ms. Terri Waller
Ms. Karen Jo Koonan
Trial Consultants
National Jury Project

Hon. Philip A. Champlin
Judge of the Superior Court
Napa County

Ms. Linda Almdale-Siegal
Executive Director
California Foundation for the Protection of Children
Sacramento

4:45 p.m. to 5:00 p.m. BREAK

5:00 p.m. to 6:00 p.m. OPEN MIKE

Hon. Ann H. Rutherford
Judge of the Superior Court
Butte County

PUBLIC HEARING: GENDER BIAS IN THE COURTS

FRESNO

11:00 a.m. to 11:30 a.m. INTRODUCTION AND WELCOMING REMARKS

Hon. David M. Rothman
Supervising Judge of the Superior Court
Los Angeles County—West District
Co-chair, Advisory Committee on Gender Bias in the Courts

Hon. Mario G. Olmos
Presiding Judge of the Superior Court
Fresno County

Hon. Carl P. Evans
Presiding Judge of the Municipal Court
Fresno County Municipal Court District

Hon. Judith C. Chirlin
Judge of the Superior Court
Los Angeles County
Vice-chair, Advisory Committee on Gender Bias in the Courts
Chair, Public Hearing Planning Group

11:30 a.m. to 12:15 p.m. CIVIL LITIGATION AND COURTROOM INTERACTION

Ms. Ruth E. Ratzlaff
Attorney at Law
President, Fresno County Women Lawyers

Mr. G. Dana French
Wild, Carter, Tipton & Oliver
President, Fresno County Bar Association

Ms. Mary Jo Levinger
Town Attorney
Los Gatos
Chair, The Committee on Women in the Law
State Bar of California

Ms. Hong Nguyen
Staff Attorney
Fresno-Merced Counties Legal Services

12:15 p.m. to 1:15 p.m. JUDICIAL EDUCATION AND COURT ADMINISTRATION

Hon. J. Augustus Accurso
Judge of the Municipal Court
Stanislaus County Municipal Court District
Modesto
Dean, California Judges College

Hon. Sharon Mettler
Judge of the Municipal Court
West Kern Municipal Court District
Bakersfield

Ms. Honey Kessler Amado
Attorney at Law
Beverly Hills
Co-chair, Judicial Evaluations, California Women Lawyers
Member, Executive Committee, Family Law Section
State Bar of California
Member, Appellate Courts Committee, Los Angeles
County Bar Association

Ms. Marilyn Watts
Consultant to the Fresno Commission on the Status of Women
Past president, Fresno N.O.W.
Former employee, Fresno County Probation Department

Hon. Steven Z. Perren
Judge of the Superior Court
Ventura County

1:15 p.m. to 1:45 p.m. LUNCH BREAK

1:45 p.m. to 3:00 p.m. CRIMINAL AND JUVENILE LAW

Prof. John E. B. Myers
McGeorge School of Law
Sacramento

Ms. Kay Vandervort
Executive Assistant
Rape Counseling Service of Fresno

Ms. Marie Stone
Deputy Probation Officer
Fresno County Probation Department

Ms. Susan K. Medina
Attorney at Law
State Compensation Board
Formerly with the Office of the Public Defender
Fresno

Prof. Ruth Masters
Professor of Criminology
California State University, Fresno

3:00 p.m. to 3:45 p.m. OPEN MIKE

Ms. Janet Sharp
Retired Teacher
Modesto

Ms. Viola Jenson
H.U.R.T. (Help Us Regain The) Children
San Ramon

3:45 p.m. to 4:00 p.m. BREAK

4:00 p.m. to 5:15 p.m. DOMESTIC VIOLENCE AND FAMILY LAW

Ms. Michelle Aiken
Executive Director
Central California Coalition Against Domestic Violence
Modesto

Ms. Helen Butler
Executive Director
Stanislaus Women's Refuge Center
Modesto

Ms. Rose Marie Gibbs
Project Coordinator
Fresno County Victim/Witness Assistance Center

Ms. Lisa Warner-Beck
Legal Services Coordinator

Ms. Sandy Wright
Legal Assistant
YWCA Marjaree Mason Center
Fresno

Ms. Roberta Jorden
Child Support Advocate
Fresno

Mr. Donald J. Magarian
Dowling, Magarian, Phillips & Aaron
Fresno

5:15 p.m. to 5:45 p.m. MISCELLANEOUS TESTIMONY

Mr. Jack Daniel
Staff Attorney
Merced-Fresno Counties Legal Services

Mr. Howard K. Watkins
Public Sector Attorney
Past president, Fresno County Bar Association

5:45 p.m. to 6:30 p.m. OPEN MIKE

APPENDIX G

List of Focus Group Invitees

JUDICIAL COUNCIL ADVISORY COMMITTEE ON
GENDER BIAS IN THE COURTS

Roundtable Discussion for Civil Litigators
September 23, 1988 -- Monterey Sheraton
9:00 a.m. to 12:00 p.m.

List of Participants

1. Mr. Willie R. Barnes
   Manatt, Phelps, Rothenberg, & Phillips
   Los Angeles

2. Ms. Teresa A. Beaudet
   Mayer, Brown & Platt
   Los Angeles

3. Mr. Steven A. Brick
   Orrick, Herrington & Sutcliffe
   San Francisco

4. Ms. Annette Carnegie
   Morrison & Foerster
   San Francisco

5. Mr. Cedric Chao
   Morrison & Foerster
   San Francisco

6. Mr. Victor Chavez
   Pomerantz & Chavez
   Los Angeles

7. Mr. Joseph W. Cotchett, Jr.
   Cotchett & Illston
   Burlingame

8. Mr. Lawrence Crispo
   Breidenbach, Swainston, Crispo & Way
   Los Angeles

9. Ms. Kathryn Burkette Dickson
   Law Offices of Kathryn Burkette Dickson
   San Francisco

10. Ms. Margaret Fujioka
    Deputy City Attorney
    Oakland

0736C

11. Mr. Joe S. Gray
Attorney at Law
Sacramento

12. Mr. Peter J. Hinton
Hinton & Alfert
Walnut Creek

13. Ms. Marilyn Huff
Gray, Cary, Ames & Frye
San Diego

14. Ms. Louise A. LaMothe
Irell & Manella
Los Angeles

15. Mr. Kenneth W. Larson
Attorney at Law
San Pablo

16. Mr. John Link
Walkup, Shelby, Bastain, Melodia,
Kelly & O'Reilly
San Francisco

17. Mr. Don. W. Martens
Knobbe, Martens, Olson & Bear
Newport Beach

18. Ms. Cheryl W. Mason
O'Melveney & Myers
Los Angeles

19. Ms. Patricia Phillips
Hufstedler, Miller, Carlson & Beardsley
Los Angeles

20. Ms. Patricia Sturdevant
Sturdevant & Elion
San Francisco

21. Mr. James D. Ward
Thompson & Colegate
Riverside

0736C

JUDICIAL COUNCIL ADVISORY COMMITTEE ON
GENDER BIAS IN THE COURTS

Roundtable Discussion for Judges
September 23, 1988 - Monterey
1:30 to 4:30 p.m.

List of Participants

1. Hon. J. Augustus Accurso
   Judge of the Municipal Court
   Stanislaus Municipal Court District

2. Hon. James A. Ardaiz
   Associate Justice of the Court of Appeal
   Fifth Appellate District

3. Hon. Philip Ray Castellucci
   Judge of the Municipal Court
   Merced Municipal Court District

4. Hon. Warren C. Conklin
   Judge of the Superior Court
   San Luis Obispo County

5. Hon. Candace D. Cooper
   Judge of the Superior Court
   Los Angeles County

6. Hon. Susan P. Finlay
   Judge of the Municipal Court
   South Bay (San Diego County) Municipal Court District

7. Hon. Michael I. Greer
   Presiding Judge of the Superior Court
   San Diego County

8. Hon. Ina Levin Gyemant
   Judge of the Superior Court
   City and County of San Francisco

9. Hon. Daniel M. Hanlon
   Presiding Judge of the Superior Court
   City and County of San Francisco

10. Hon. Peggy Hora
Judge of the Municipal Court
San Leandro-Hayward Municipal Court District

11. Hon. Duane Martin
Judge of the Superior Court
San Joaquin County

12. Hon. V. Gene McDonald
Judge of the Superior Court
San Mateo County

13. Hon. Joseph A. Orr
Judge of the Justice Court
Long Valley (Mendocino County) Justice Court District

14. Hon. Richard A. Paez
Presiding Judge of the Municipal Court
Los Angeles Municipal Court District

15. Hon. William R. Pounders
Judge of the Superior Court
Los Angeles County

16. Hon. Ann H. Rutherford
Judge of the Municipal Court
North County (Butte) Municipal Court District

17. Hon. Alex Saldamando
Judge of the Municipal Court
San Francisco Municipal Court District

18. Hon. Howard Schwartz
Judge of the Superior Court
Alameda County

19. Hon. Harmon G. Scoville
Presiding Justice of the Court of Appeal
Fourth Appellate District, Division Three

20. Hon. Jacqueline Taber
Judge of the Superior Court
Alameda County

21. Hon. Robert J. Timlin
Judge of the Superior Court
Riverside County

22. Hon. Madge S. Watai
Judge of the Superior Court
Los Angeles County - South Central District

23. Hon. William M. Wunderlich
Judge of the Superior Court
Monterey County

Designated members of the Judicial Council Advisory Committee on Gender Bias in the Courts will also be present for the discussion.

JUDICIAL COUNCIL ADVISORY COMMITTEE ON
GENDER BIAS IN THE COURTS

Roundtable Discussion for Family Lawyers
September 26, 1988 - Monterey
9:00 a.m. to 12:00 p.m.

List of Participants

1. Mr. Stephen Adams
   Sausalito

2. Ms. Blanche Bersch
   Beverly Hills

3. Ms. Lynn Yates Carter
   San Jose

4. Ms. Hannah-Beth Jackson
   Ventura

5. Ms. Roberta Kierney
   Grass Valley

6. Mr. Stephen A. Kolodny
   Los Angeles

7. Mr. Gerald E. Lichtig
   Los Angeles

8. Ms. Bobbie Tillmon Mallory
   Los Angeles

9. Ms. Sandra Joan Morris
   San Diego

10. Ms. Barbara Jean Penney
    Van Nuys

11. Ms. Pamela E. Pierson
    San Francisco

12. Mr. Marc Tovstein
    Santa Ana

13. Mr. Stuart B. Walzer
    Los Angeles

(Amended)
153/LE

JUDICIAL COUNCIL ADVISORY COMMITTE ON
GENDER BIAS IN THE COURTS

Roundtable Discussion on Minority and Gender Issues
September 26, 1988 -- Monterey Sheraton
1:30 to 4:40 p.m.

List of Participants

1. Hon. Ellen C. DeShazer
   Commissioner of the Municipal Court
   Compton Municipal Court District
   Los Angeles County

2. Ms. E. Jean Gary
   Law Offices of E. Jean Gary
   Beverly Hills

3. Ms. Debra Lynn Gonzales
   Office of the City Attorney
   Los Angeles County

4. Ms. Irma Herrera
   Severson, Werson, Berke, & Melchior
   San Francisco

5. Ms. Cloey Hewlett
   District Attorney's Office
   City and County of San Francisco

6. Ms. Monica M. Jimenez
   Santa Ana
   Attorney at Law

7. Ms. Kathleen Lam
   Office of the Public Defender
   San Diego

8. Mr. Michael Lee
   Lee & Hui
   San Francisco

9. Ms. Shauna Marshall
   Equal Rights Advocates
   San Francisco

10. Mr. John Vernon Meigs
    McKinney, Peters, Granville & Meigs
    Los Angeles

11. Hon. Billy G. Mills
Judge of the Superior Court
Los Angeles County

12. Mr. Joel Murrillo
Attorney at Law
Fresno

13. Hon. Ramona Goday Perez
Judge of the Superior Court
Los Angeles County

14. Ms. Cheryl Poinsett
Oakland City Attorney's Office
Oakland

15. Hon. Lillian Sing
Presiding Judge of the Municipal Court
San Francisco Municipal Court District

16. Ms. Sally Suchil
MGM-UA Communications Co.
Beverly Hills

17. Ms. Glenda Veasey
Law Offices of Glenda Veasey
Los Angeles

18. Ms. Val Velasco
Staff Legal Counsel
Office of Los Angeles City
Councilman Michael Woo

19. Mr. Michael Yamaki
Attorney at Law
Los Angeles

20. Ms. Barbara Yonemura
Department of Corporations
Sacramento

(Amended)

0730C

APPENDIX H

Request for Comments Published in California Lawyer

THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON

GENDER BIAS IN THE COURTS

INVITES YOUR COMMENTS

Introduction

The Judicial Council Advisory Committee on Gender Bias in the Courts was appointed by two successive Chief Justices to examine the problem of gender bias in the California courts. Los Angeles Superior Court Judge David M. Rothman and State Senator Diane Watson of Los Angeles chair the advisory committee. The committee is charged with gathering information for purposes of making recommendations to the Judicial Council. By gender bias we mean not only stereotypical attitudes about the nature and roles of women and men but also cultural perceptions of their relative worth. Gender bias includes, as well, myths and misconceptions about the social and economic realities encountered by both sexes.

Attorneys' perceptions and experiences of the ways in which gender may affect judicial decision making and courtroom interaction constitute a vital source of information for the advisory committee. To assist the committee in collecting this information, we ask that you take a moment to express your views and relate your personal experiences and observations, if any, on problems and issues of gender bias in the courts in the following substantive areas: criminal law, juvenile law, domestic violence, family law, civil litigation, courtroom interaction, and court administration. You may also wish to read and consider the questions below which may pertain to your areas of expertise and experience.

Questions to Consider

The advisory committee is particularly interested in considering the effects of gender bias in conjunction with racial, ethnic, or economic bias. In thinking about the following questions, please take these factors into account.

Family Law

1. (CUSTODY) In what ways, if any, do you perceive gender-based stereotypes influencing judicial decisions on custody or the conduct of mediators or evaluators in custody cases? How do allegations of sexual abuse of a child in a divorcing family affect custody determinations?
2. (AWARD OF ASSETS) In what ways, if any, do you perceive stereotypes or misconceptions about the social and economic roles of women and men influencing the award of marital assets?
3. (CHILD SUPPORT AWARDS) Do you believe that child support awards favor the noncustodial spouse to the detriment of the custodial spouse and the children?
4. (CHILD SUPPORT GUIDELINES) In your experience, does the application of statutory or local child support guidelines operate as an upper limit or a minimum?
5. (SPOUSAL SUPPORT) Are spousal support awards in dissolutions involving long-term marriages adequate to provide for retraining and equivalent standards of living?
6. (ENFORCEMENT OF SUPPORT) Are judges appropriately enforcing child and spousal support awards?

Domestic Violence

1. (RESTRAINING ORDERS) What has been your experience with obtaining temporary restraining orders in domestic violence cases? Are mutual restraining orders issued even when one spouse has not petitioned for a restraining order and has not made a showing of good cause? In cases in which mutual restraining orders have been issued, have your clients experienced any problems in enforcement as a result?
2. (CUSTODY) Have you ever requested that spousal abuse be considered as a factor in child custody awards? If so, what has been your experience?
3. (VISITATION) Has spousal abuse been considered as a factor in determining visitation rights? Do visitation arrangements adequately provide for the safety of your clients who have been victims of spousal abuse?
4. (MEDIATION) How would you evaluate the use of mediation in custody and visitation disputes involving allegations of domestic violence? Should mediation be mandatory?
5. (PROSECUTION) How have your clients been treated by the police, the district attorneys, and the court when they attempt to pursue criminal prosecution against a battering spouse?
6. (DIVERSION PROGRAMS) In your experience, how would you evaluate diversion programs for domestic violence perpetrators?

Courtroom Interaction

1. (CONDUCT OF PARTICIPANTS) Have you observed situations in or out of court in which the behavior of one of the participants toward another indicates a lack of courtesy, credibility, or respect based upon the sex of the affected participant? Participants might include judges, attorneys, court employees, litigants, witness, or jurors. If so, please describe.
2. (STANDARD OF JUDICIAL ADMINISTRATION) Are you aware that a new Standard of Judicial Administration (Section 1, effective January 1, 1987) confers a duty upon a judge to prevent gender bias in the courtroom? How effectively is the standard working?

Civil Litigation

1. (DAMAGES) Have you handled or are you aware of cases in which the gender of a litigant appeared to result in a substantially lower damage award than might be expected?
2. (JURY SELECTION) Are there any aspects of the present jury selection process that reflect or operate to encourage or perpetuate gender bias?
3. (EXPERTS) Are men and women expert witnesses treated with equal respect and

attributed similar credibility by counsel and by the court? Does gender or the effect of gender on perceptions of credibility affect your choice of expert witnesses?

Criminal Law

1. (DIFFERENCES IN PROSECUTION, TRIAL AND DISPOSITION) Have you observed differences between the treatment of adult male and female defendants in the prosecution, conduct of trial, and disposition of criminal cases? If so, what are those differences?
2. (TREATMENT OF WITNESSES) Do you perceive differences based on gender in the way witnesses are treated in criminal proceedings?
3. (AVAILABILITY OF FACILITIES AND PROGRAMS) In your experience, are there any inequalities in the availability or nature of rehabilitation programs and facilities between male and female adult offenders?
4. (PARENTAL STATUS - SENTENCING) How does parental status affect the sentencing and disposition of criminal defendants?
5. (PARENTAL STATUS - INCARCERATION) Do you believe that incarcerated custodial parents suffer greater punishment because of the consequences of imprisonment on relationships with their children?

Juvenile Law

1. (DIFFERENCES IN DELINQUENCY CASES) Have you observed differences between the treatment of male and female minors in the charging, adjudication, or disposition of juvenile delinquency cases? If so, what are those differences?
2. (AVAILABILITY OF FACILITIES AND PROGRAMS) In your experience, are there any inequalities in the availability of rehabilitation programs and facilities between male and female juvenile offenders?
3. (PARENTS IN DEPENDENCY) Do you perceive differences based on the gender of the parent in the way a parent is treated in a juvenile dependency proceeding?

Court Administration

1. (COURT APPOINTMENTS) Is the selection process for commissioners, arbitrators, referees, mediators, and appointed counsel free of gender bias? Are qualified women and minorities passed over for appointment? Are the appointment procedures and policies as well as the openings adequately publicized?
2. (COURT EMPLOYMENT) Have you been asked questions based upon gender stereotypes during an interview for a court position such as a research attorney, commissioner, referee, or justice court judge?
3. (JUDICIAL MISCONDUCT) Are the methods for correcting judicial misconduct relating to gender bias adequate? Do any informal remedies exist in your jurisdiction?

Miscellaneous

1. (JURY INSTRUCTIONS) Do you believe the lack of gender neutral language in jury instructions affects jury determinations or jury perceptions of courtroom fairness? Do you know of any substantive jury instructions that reflect, encourage, or perpetuate gender bias?
2. (JUDICIAL EDUCATION) In your view, what specific issues need most emphasis in judicial education programs designed to cover problems of gender bias in courtroom interaction and substantive areas of the law?
3. (ATTORNEY EDUCATION) Are issues of gender bias adequately addressed in continuing legal education courses dealing with substantive law? Have you observed incidents or examples of gender bias during any course or program?

Space for this request for comments was provided to the Judicial Council Advisory Committee on Gender Bias in the Courts by the State Bar which has actively supported the committee. The advisory committee wishes to thank the State Bar for all of its assistance.

CONFIDENTIAL RESPONSE

If you wish the committee to consider your comments on these and any other issues relating to gender bias, please return this form with your comments to: **Ms. Bobbie Welling, Staff Attorney, Administrative Office of the Courts; 350 McAllister Street, Room 3154, San Francisco, California 94102.** The committee is also interested in obtaining transcripts and opinions that document examples of gender bias. Please forward relevant materials to the address above and, where possible, include the case name, case number, county, year, and court.

Name: Male _____ Female _____

County: Age _____

Address:

[Please identify your county of residence in the space provided above. Completion of the remaining information is optional.]

[Please attach additional pages as needed. This form is a confidential communication to the Judicial Council Advisory Committee on Gender Bias in the Courts. Please do not mention the names of any individual attorneys or judges in the course of this communication.]

Administrative Office of the Courts
595 Market St., 30th Floor • San Francisco, CA 94105 • (415) 396-9100