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Note: Gender Balance in the Judiciary: Why Does it Matter?

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**20TH ANNIVERSARY OF THE REPORT OF THE
MINNESOTA SUPREME COURT TASK FORCE FOR
GENDER FAIRNESS IN THE COURTS**
*Student Writing Competition Winner:
Courtroom Environment Category*

**NOTE: GENDER BALANCE IN THE JUDICIARY: WHY
DOES IT MATTER?**

Danielle Sollars[†]

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I. INTRODUCTION

To some people, it seems difficult to imagine a time when bringing a dispute before a court would certainly mean that a male judge would sit on the bench and determine the outcome of the litigation. However, not long ago, litigants would have been greatly surprised to see women not only arguing in front of a court, but also making up a substantial portion of the judiciary. Just over twenty years ago, in response to a changing social climate and the second wave of feminism, leaders in Minnesota grew concerned about gender bias in judicial and government proceedings. In response to these concerns, the Minnesota Supreme Court established the Task Force for Gender Fairness in the Courts (Task Force) in order to examine the status of gender fairness in the judiciary. This study included research about gender in regards to both litigants and the

professionals representing them in the court system.¹

Over the years, the Task Force has examined gender issues and effectuated change in the Minnesota court system. Consequently, the Task Force has had little time to document why such a study was necessary in the first place. This article will attempt to examine why it matters that Minnesota, and courts more broadly, reach a gender balance on the bench.

To understand the importance of gender balance in the judicial branch, it is helpful to first understand the current status of women in the judiciary. First, this article will examine the history of women and the judiciary in Minnesota, the Eighth Circuit, and the United States Supreme Court. This analysis begins with the Task Force and moves to past and current statistics about women judges. Next, the article examines the various reasons often cited as to why our society should have an interest in a gender-balanced judiciary. The first, and most controversial, is the idea that women bring a different perspective to the judiciary, and therefore, implement that perspective to arrive at different results than men would. In other words, men and women decide things differently. Second, it is argued that to ensure the public trusts the fairness of the justice system, the judiciary ought to be representative of the population it serves. Third, as long as the unbalanced gender representation on the judiciary persists, there is an implication that processes for vetting judges are perhaps inherently discriminatory. Finally, this article offers suggestions for moving forward towards a gender-balanced judiciary.

II. BACKGROUND

A. *The Minnesota Task Force for Gender Fairness in the Courts*

In 1987, “The Minnesota Supreme Court Task Force for Gender Fairness in the Courts was established in the spirit of liberty, to determine whether the Minnesota courts [were] indeed weighing interests without bias.”² The specific charge given to the

1. See MINN. SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS, FINAL REPORT, PART 1 1-4 (1989), available at <http://www.mncourts.gov/Documents/0/Public/Other/Gender1.pdf> [hereinafter FINAL REPORT 1]; MINN. SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS, FINAL REPORT, PART 2 (1989), <http://www.mncourts.gov/Documents/0/Public/Other/Gender2.pdf> [hereinafter FINAL REPORT 2].

2. MINN. SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS,

Task Force was as follows:

1. Explore the extent to which gender bias exists in the Minnesota State Court System, by ascertaining whether statutes, rules, practices, or conduct work unfairness or undue hardship on women or men in our courts;
2. Document where found the existence of discriminatory treatment of women or men litigants, witnesses, jurors, and of women judicial, legal, and court personnel;
3. Recommend methods to eliminate gender bias in the courts including the development and provision of necessary judicial education, the passage of legislation, and the promulgation of court rule and policy revisions;
4. Report the findings of its investigation to this Court by June 30, 1989; and
5. Monitor, thereafter, the implementation of approved reform measures and evaluate their effectiveness in assuring gender fairness in our courts' processes.³

To accomplish these goals, the Task Force employed public hearings, lawyers meetings, and surveys of lawyers, judges, referees, and judicial officers.⁴ The results were published in 1989; the findings provide a great deal of insight into the status of women in the judiciary at that time.

As of June of 1989, women constituted 10% of the sitting judges in Minnesota.⁵ Specifically on the trial court level, 24 of 230 sitting judges, or 10.4%, were women.⁶ Four of the ten judicial districts in Minnesota had zero women on the bench, and most of the women judges were seated in the Twin Cities.⁷ At the same time, women constituted nearly 51%⁸ of Minnesota's total population. The Task Force found that there was a consensus among women judges that "although the number of female judges [was] still small . . . the 'women's slots' [had] all been filled and that women [would] be considered only as vacancies occur[ed] in these desig-

REPORT SUMMARY S1 (1989), http://www.mncourts.gov/Documents/0/Public/Other/Gender_Summary.pdf [hereinafter REPORT SUMMARY].

3. *Id.* at S2.

4. *Id.* at S3-4.

5. *Id.* at S25.

6. FINAL REPORT 2, *supra* note 1, at 98.

7. REPORT SUMMARY, *supra* note 2, at S25.

8. Legislative Comm'n on the Econ. Status of Women, Minn. Legislature, Population by Sex and Age Group: Minnesota 2000 and 1990, www.commissions.leg.state.mn.us/oesw/census2000/Age/age_tab.htm (last visited Mar. 31, 2010) [hereinafter Population by Sex and Age].

nated slots.”⁹

The Task Force worked hard to understand the current status of gender fairness in the judiciary (at least to the greatest extent possible). The Task Force used its research to produce concrete findings and recommendations for improving the status of women in the judicial system. Ultimately, the Task Force suggested that the governor increase the number of women attorneys appointed to the bench, that one criterion considered in judicial selections ought to be a candidate’s ability to work with women and men as equals, that women should fill vacancies in districts without women on the bench, and that women should be represented on all committees considering judicial candidates for appointment, among other recommendations.¹⁰

According to the Minnesota Historical Society, nearly twenty years after the Task Force first issued its report, women accounted for 27.3% of the trial court judges.¹¹ By 2007, each of the ten judicial districts had at least one female judge.¹² Clearly, advances have been made in getting more women on the bench. However, to achieve a judiciary more reflective of the state population, which is currently 50.5% women,¹³ there is still a long way to go.

B. *Gender Balance on the Eighth Circuit and the Supreme Court*

The federal court system has had its own concerns with gender balance over the last twenty years. The statistics relating to women on the federal bench are disheartening if the goal is for our judiciary to closely reflect the make-up of our society.

1. *Women (Woman) and the Eighth Circuit Court of Appeals*

The Eighth Circuit Court of Appeals was officially established by Congress in 1891.¹⁴ Since that time, fifty-eight judges have

9. REPORT SUMMARY, *supra* note 2, at S25.

10. *Id.* at S25–26.

11. OFFICE ON THE ECON. STATUS OF WOMEN, MINN. LEGISLATURE, WOMEN IN THE JUDICIARY IN MINNESOTA (2007), *available* at <http://www.commissions.leg.state.mn.us/oesw/fs/Womenjudicia.pdf>.

12. *Id.*

13. Population by Sex and Age, *supra* note 8.

14. Fed. Judicial Ctr., Courts of the Federal Judiciary, U.S. Court of Appeals for the Eighth Circuit, Legislative History, <http://www.fjc.gov/public/home.nsf/hisc> (follow “U.S. Courts of Appeals” hyperlink; then follow “Eight Circuit” hyperlink) (last visited Mar. 31, 2010).

served on the court.¹⁵ Throughout the 119 years of the court's existence, only one woman has ever served on the Eighth Circuit.¹⁶ President Bill Clinton appointed Judge Diana E. Murphy to the Court in 1994.¹⁷ Judge Murphy brings the total percentage of women on the Eighth Circuit to 1.7% since Congress established the court. Currently, the Eighth Circuit is comprised of eleven judges.¹⁸ This makes the current gender balance on the court one out of eleven, or 9%.¹⁹ When the senior judges of the Eighth Circuit are factored in, women make up one in seventeen judges, or 5.8%.²⁰

When examining gender on the federal circuit courts, it is clear that the Eighth Circuit has something in common with several of its sister courts. For example, from 1995 through January 2008 only one woman was appointed to the Third Circuit.²¹ In that same time period, nine men were appointed.²² The Tenth Circuit received only one female appointment between 1995 and 2008, while at the same time appointing eight men.²³ Only three circuits' appointments resembled the gender composition of the United States within this thirteen-year period. The First and Fifth Circuits appointed 33% and 43% women, respectively.²⁴ The Seventh Circuit alone saw more women than men appointed to the bench, with three of its five appointments (60%) being women.²⁵

15. INFINITY PROJECT, HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, www.hhh.umn.edu/centers/wpp/infinity/ (last visited Mar. 31, 2010). Three additional judges served on the court prior to its official adoption by Congress. *Id.* When adding these judges, the total is 61 judges throughout the history of the court, with just one female. *Id.* The percentage of women on the court in this scenario is 1.6%. *Id.*

16. *Id.*

17. Fed. Judicial Ctr., Courts of the Federal Judiciary, Murphy, Diana E., <http://www.fjc.gov/public/home.nsf/hisc> (follow "U.S. Courts of Appeals" hyperlink; then follow "Eight Circuit" hyperlink; then follow the "Judges" hyperlink; then follow the "Murphy, Diana E." hyperlink) (last visited Mar. 10, 2010).

18. INFINITY PROJECT, HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, TALKING POINTS 1, available at http://www.hhh.umn.edu/centers/wpp/infinity/docs/talking_points.doc.

19. *Id.*

20. *Id.*

21. INFINITY PROJECT, HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, CASE STATEMENT 3, available at http://www.hhh.umn.edu/centers/wpp/infinity/docs/case_statement.doc.

22. *Id.*

23. *Id.* at 4.

24. *Id.* at 3.

25. *Id.* at 3–4.

The concern about the lack of women in the judicial system has been addressed in state courts as well as in federal courts. In 1993, Judge Murphy organized and appointed a gender task force for the Eighth Circuit.²⁶ The goals of the Eighth Circuit Gender Task Force were similar to those of Minnesota's Task Force. The mission was described as follows:

1. To study effects of gender on both processes and people in the Eighth Circuit judicial system, by gathering data through a variety of methods and from a cross section of persons involved in the Eighth Circuit judicial system;
2. To analyze the gathered data;
3. To recommend appropriate action; and
4. To make provision for the implementation of any such recommendations as approved and authorized by the Judicial Council of the Eighth Circuit.²⁷

This study examined the gender balance of the Eighth Circuit as a whole, rather than just the court of appeals.²⁸ In 1997, the final report of the Eighth Circuit Task Force was published.²⁹ The report pointed out that of 149 federal judges in the circuit, just 12.7% were women, compared to the national average for federal courts at the time of nearly 18% women.³⁰ Commenting on the current state of gender diversity on the federal bench, Judge Murphy responded:

The public and the litigants have interests in having a diverse judiciary—diverse in professional background, in life experience, and in ethnicity and gender. Diversity can also enrich and inform a collegiate appellate court. I thoroughly enjoy and learn from my all male colleagues, but nonetheless the thought sometimes occurs how different it would be for any one of them to be the only male on an eleven person court.³¹

26. Gender Fairness Task Force, *Final Report & Recommendations of the Eighth Circuit Gender Fairness Task Force*, 31 CREIGHTON L. REV. 9, 31 (1997).

27. *Id.* at 11.

28. *Id.* at 171.

29. *Id.*

30. *Id.* at 12.

31. E-mail from the Honorable Diana E. Murphy, Judge, U.S. Court of Appeals for the Eighth Circuit, to author (Feb. 16, 2010, 16:13:00 CST) (on file with author).

2. *Women and the United States Supreme Court*

The United States Supreme Court was established in the United States Constitution under Article III, section 1, which states that “the judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may . . . ordain and establish.”³² The Supreme Court itself was then set up and organized by the Judiciary Act of September 24, 1789.³³ To date, there have been 111 Justices on the Supreme Court.³⁴ This number includes the seventeen Chief Justices.³⁵ Of the 111 Justices only three have been women, for a total of 2.7%.³⁶ Currently, with two of the nine sitting Justices being female, women make up 22% of the Court.³⁷

The United States Supreme Court had been around for nearly 200 years when the first woman took her place on the bench. President Ronald Reagan appointed Justice Sandra Day O’Connor to the Supreme Court in 1981.³⁸ Justice O’Connor sat as the only woman on the Court for nearly twelve years, until Justice Ruth Bader Ginsburg was appointed in 1993.³⁹ Justice O’Connor retired from her seat in January of 2006.⁴⁰ When Justice O’Connor left the Supreme Court, the percentage of women went from 22% down to 11%. Women continued to make up just 11% of the U.S. Supreme Court until August of 2009, when the third female Supreme Court Justice, Sonia Sotomayor, was nominated and took her place on the Court.⁴¹ To date, a gender task force has not been initiated to examine gender bias in the U.S. Supreme Court.

32. U.S. CONST. art. III, § 1.

33. SUPREME COURT OF THE UNITED STATES, A BRIEF OVERVIEW OF THE SUPREME COURT 2, *available at* <http://www.supremecourtus.gov/about/briefoverview.pdf>.

34. Comm. on the Judiciary, U.S. Senate, The Supreme Court of the United States—History, <http://judiciary.senate.gov/nominations/SupremeCourt/SupremeCourtHistory.cfm> (last visited Mar. 31, 2010).

35. *Id.*

36. SUPREME COURT OF THE UNITED STATES, MEMBERS OF THE SUPREME COURT OF THE UNITED STATES 2, *available at* <http://www.supremecourtus.gov/about/members.pdf>.

37. SUPREME COURT OF THE UNITED STATES, BIOGRAPHIES OF CURRENT JUSTICES 2–3, *available at* www.supremecourtus.gov/about/biographiescurrent.pdf.

38. *Id.* at 3.

39. *Id.* at 2.

40. *Id.* at 3.

41. *Id.*

III. DO MEN AND WOMEN DECIDE CASES DIFFERENTLY?

There have been many studies on the sociological and psychological differences between men and women. Society and canons of judicial ethics generally require that judges make their decisions based solely on the status of the law.⁴² An individual's personal life experiences, according to most, are irrelevant to the proper conclusion of a case before a member of the judiciary. However, it is counter-intuitive to think that judges can completely separate themselves from their personal perspectives on life, which derive from their specific environmental characteristics. This issue became a hot topic recently with the appointment of Justice Sonia Sotomayor to the U.S. Supreme Court.⁴⁵

A. *The First Studies Examining Judicial Decision-Making*

It was not until the 1930s that researchers first looked at whether an individual's personal experiences had an impact on a judge's decision-making.⁴⁴ One of the founding legal researchers in this area was Caroline Gilligan, who in her book *In A Different Voice: Psychological Theory and Women's Development*, argued that "women have a 'different voice,' that result[s] in women judging differently than men."⁴⁵ Gilligan's work encouraged other scholars to examine gender and judicial decision-making. Suzanna Sherry, who published her work entitled *Civic Virtue and the Feminine Voice in Constitutional Adjudication* in 1986, found that "modern men and women, in general, have distinctly different perspectives on the world and that, while the masculine vision parallels pluralist liberal theory, the feminine vision is more closely aligned with classical republican theory, represented in its various forms by Aristotle, Machiavelli, and Jefferson."⁴⁶

B. *Women Judges Weigh in on Gender and Judicial Decision-Making*

The theory that men and women employ different methods of

42. MODEL CODE OF JUDICIAL CONDUCT CANON 3B (1972).

43. See *infra* Part V.C.2.

44. Sarah Westergren, *Gender Effects in the Courts of Appeals Revisited: The Date Since 1994*, 92 GEO. L.J. 689, 689 (2004).

45. Theresa M. Beiner, *The Elusive (but Worthwhile) Quest for a Diverse Bench in the New Millennium*, 36 U.C. DAVIS L. REV. 597, 601 (2003).

46. Susanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543, 543 (1986).

legal reasoning in their decision-making is grounded in the idea that judges base their case outcomes on their own personal identity.⁴⁷ This notion has received mixed reviews, including the rejection of such an idea by Supreme Court Justice Sandra Day O'Connor.⁴⁸ Justice O'Connor was particularly troubled by the notion that being female played any categorical role in judicial decision-making. She wrote:

Just when the Court and Congress have adopted a less sanguine view of gender-based classifications, however, the new presence of women in the law has prompted many feminist commentators to ask whether women have made a difference to the profession, whether women have different styles, aptitudes, or liabilities. Ironically, the move to ask again the question whether women are different merely by virtue of being women recalls the old myths we have struggled to put behind us.⁴⁹

Justice O'Connor often quoted Minnesota Supreme Court Justice Jeanne Coyne, who once said "a wise old man and a wise old woman [will] reach the same conclusion."⁵⁰

The other two female Supreme Court justices appear to take a less stringent stand on the role of gender in judicial decision-making. When giving a speech at the University of California at Berkeley in the fall of 2001, then-Judge Sotomayor stated: "Our gender and national origins may and will make a difference in our judging. . . . Personal experiences affect the facts that judges choose to see. . . . I wonder whether by ignoring our differences as women or men of color we do a disservice both to the law and society."⁵¹ When sitting for an interview with the *New York Times*, Justice Ginsburg discussed the importance of gender on the Supreme Court.⁵² She stated:

Yes, women bring a different life experience to the table. All of our differences make the conference better. That

47. Frank B. Cross, *Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance*, 92 NW. U. L. REV. 251, 265 (1997).

48. Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1553-54 (1991).

49. *Id.* at 1552-53.

50. Ruth Bader Ginsburg, *The Supreme Court: A Place for Women*, 32 SW. U. L. REV. 189, 189 (2003).

51. Amy Goldstein & Jerry Markon, *Heritage Shapes Judge's Perspective*, WASH. POST, May 27, 2009, at 1.

52. Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES, July 12, 2009, § MM (Magazine), at 22.

I'm a woman, that's part of it, that I'm Jewish, that's part of it, that I grew up in Brooklyn, N.Y., and I went to summer camp in the Adirondacks, all these things are part of me.⁵³

Justice Ginsburg went on to say that even though her gender has a role to play, she is "doubtful" about research that indicates women categorically differ from men ideologically when it comes to judicial decision-making.⁵⁴

C. *Gender's Impact on Case Outcomes*

In addition to the psychological research that has been done to determine whether men and women have an inherently different approach to judicial decision-making, researchers have compared outcomes of cases before men and women judges to get some insight into likelihood of outcomes when compared with the gender of the judge. One of the first studies on gender's impact in the judiciary looked at the role of gender in sentencing. The conclusion of the 1977 study was that, overall, men and women behaved very similarly when implementing criminal sentences.⁵⁵ When this same data set was re-analyzed in 2001, researchers amended their findings to include a showing that the female judges were twice as likely to send women to jail than their male counterparts.⁵⁶

In a more recent study, political scientist Nancy Crowe studied race and sex discrimination cases decided by the U.S. Courts of Appeals between 1981 and 1996.⁵⁷ Although the research took into account the judges' race and political affiliation in addition to gender, the results showed that in sexual discrimination cases the female judges were more likely to vote for the plaintiff than their male counterparts.⁵⁸ This conclusion is on par with a recent statement by Justice Ginsburg that with women on the bench, discrimination cases were likely to turn out differently "because the women

53. *Id.*

54. *Id.*

55. Herbert M. Kritzer & Thomas M. Uhlman, *Sisterhood in the Courtroom: Sex of Judge and Defendant in Criminal Case Disposition*, 14 Soc. Sci. J. 77, 86 (1977).

56. *Id.*

57. Beiner, *supra* note 45, at 603.

58. *Id.* at 605 (citing Nancy E. Crowe, *The Effects of Judges' Sex and Race on Judicial Decision Making on the U.S. Courts of Appeals, 1981-1996* (1999) (unpublished Ph.D. dissertation, University of Chicago)).

will relate to their own experiences.”⁵⁹ On the other hand, there was no statistical difference between men and women in determining a case of racial discrimination.⁶⁰ Similar studies have had different results. For example, Professor Jennifer Segal found that in cases involving “women’s issues”—such as gender discrimination and abortion rights—“[male judges] were more supportive of the women’s position than women.”⁶¹

D. *Research on Gender and Judging Has Been Inconclusive*

Although the topic of gender’s role in judicial decision-making has not been extensively studied, it has been the subject of a handful of analyses. For as many studies as have been conducted, there are an equal number of differing results. At times gender appears to have been a key factor, and in others, gender paled in comparison to other characteristics of a judge, such as political ideology.⁶² Ultimately, the question of whether gender has a role to play in determining a judge’s position on a particular case seems to have an ambiguous answer: it depends. One problem with finding a definite answer to this question is that until recently, there have not been enough women on the bench to allow for meaningful research on the issue. As we reach a stronger gender balance on the court, there will be more cases to include in such studies, and more judges to compare. Continued research on this issue is essential to fully understand the importance of a gender-balanced judiciary.

In addition to studies about the impact gender has on the outcome of a case, there have been several attempts to evaluate other ways gender impacts the court system. One study suggests that the personal experiences of women allow them to more easily comprehend certain legal issues.⁶³ For example, a summary judgment mo-

59. Bazelon, *supra* note 52, at 2.

60. Beiner, *supra* note 45, at 604–05.

61. *Id.* at 608.

62. See, e.g., *id.* (citing Nancy E. Crowe, *The Effects of Judges’ Sex and Race on Judicial Decision Making on the U.S. Courts of Appeals, 1981–1996* (1999), (unpublished Ph.D. dissertation, University of Chicago)); Leah V. Durant, *Gender Bias and the Legal Profession: A Discussion of Why There are Still so Few Women on the Bench*, 4 MARGINS: MD. L.J. RACE, RELIGION, GENDER & CLASS 181 (2004); Westergren, *supra* note 44.

63. See Carl Tobias, *More Women Named Federal Judges*, 43 FLA. L. REV. 477, 484 (1991). Tobias notes:

The differing perspectives that many women bring to judicial service could beneficially affect certain substantive determinations. For instance, the personal experiences of many female judges enable them to compre-

tion in a gender-based discrimination claim may turn out differently when decided by a female judge who has experienced workplace sexual discrimination.⁶⁴ Additionally, women on the bench may have an impact on the gender balance of court employees. Some studies confirmed that female judges are more likely than male judges to hire female clerks.⁶⁵ These female clerks then go on to draft orders and opinions. In sum, a judge's gender can impact a case in many ways that go beyond the final decision from the bench.

IV. PUBLIC CONFIDENCE IN THE JUDICIARY

In order for our democratic system of government to be successful, it is essential that the people have faith in constitutionally created institutions. The American Bar Association (ABA) has given two reasons why we must be concerned with the public's confidence in the judiciary:

First . . . public confidence in our judicial system is an end in itself. A government of the people, by the people, and for the people rises or falls with the will and consent of the governed. The public will not support institutions in which they have no confidence. The need for public support and confidence is all the more critical for the judicial branch, which by virtue of its independence is less directly accountable to the electorate and, thus, perhaps more vulnerable to public suspicion. Second, public confidence in the courts is a means to the end of preserving an inde-

hend more easily a number of problems confronting women in the United States today. These include gender-based discrimination and conflicts between employment and familial responsibilities. Moreover, female judges' diverse viewpoints may improve the way that courtroom litigation is conducted, modify traditional perspectives on gender roles that some male judges hold, and advantageously affect certain administrative activity, such as the hiring of law clerks.

Id.

64. *Id.*

65. See, e.g., Mark R. Brown, *Gender Discrimination in the Supreme Court's Clerkship Selection Process*, 75 OR. L. REV. 359, 382 (1996). Brown notes:

Justice O'Connor . . . hired women at greater rates than did the collective courts of appeals, and on occasion at greater rates than predicted by editorial board appointments. During the 1980s, for example, 42% of Justice O'Connor's clerks were female, compared with 29% clerking for the courts of appeals. During the 1990s, 33% of her clerks were female, compared with 29% clerking for the courts of appeals.

Id.

pendent judiciary. If the public loses its faith in a judiciary . . . the obvious solution will be to bring the judiciary under greater popular control, to the ultimate detriment of judicial independence and the rule of law that judicial independence makes possible.⁶⁶

By having a judiciary that is more representative of society, which as previously mentioned is just more than 50% female, we are able to assist in proving to the public that the justice system is fair and neutral.⁶⁷ Without women on the bench, however, litigants before the court may not have a positive feeling about their chance to receive a just outcome. Justice Ginsburg recently spoke about the problem of being the only woman on the Supreme Court for the three years between Justice O'Connor's retirement and Justice Sotomayor's confirmation.⁶⁸ She said: "My basic concern about being all alone was the public got the wrong perception of the court. It just doesn't look right in the year 2009."⁶⁹

A. *Public Confidence in Minnesota's Judicial Branch*

The Minnesota Judiciary has also acknowledged the importance of public confidence in the institution. Former Chief Justice of the Minnesota Supreme Court Kathleen A. Blatz told the Minnesota Bar Association:

Broad-brush attacks on the judiciary, in general, undermine both individual judges and the institution as a whole. But of much greater concern to me is the damage done to the public's trust in our judiciary and the impact that eroded trust has on the nature of our democracy. If the attacks on judges take root, the citizens of this country will be the losers. After all, judicial independence is not for the benefit of judges; it is for the benefit of the people. And it belongs to the people.⁷⁰

It is clear that we want the public to view the judiciary as an impartial and trustworthy part of our democratic society. Minnesota has a long history of breaking down barriers and moving women into positions of power. For example, Minnesota is only one of two

66. ABA COMM'N ON THE 21ST CENTURY JUDICIARY, *Enduring Principles*, BRIEF, Winter 2008, at 48, 52.

67. Tobias, *supra* note 63, at 484.

68. Bazelon, *supra* note 52.

69. *Id.*

70. Kathleen Blatz, *The State of the Judiciary*, BENCH & B. MINN., July 2005, at 26, 28.

states to ever have a majority of its supreme court consist of women.⁷¹

B. *America's Perception of Our Judiciary*

In 1999, the ABA sponsored a study investigating how much confidence Americans have in the judicial branch.⁷² The research involved producing and distributing a national survey that asked individuals to describe their perceived knowledge of the court system, define their level of confidence in the system, describe their personal interactions with the judiciary, and provide suggestions for making improvements to the justice system.⁷³ The results showed that men were more likely to be confident in the judicial system than women.⁷⁴ The survey results were compared to a similar study done twenty years prior in 1978, the Yankelovich study.⁷⁵ Since the production of the 1978 study, “[c]onfidence in some key components of the justice system showed significant increases.”⁷⁶ The ABA study concluded that the relevant factors to an individual’s level of confidence included (1) the education level of the respondent and (2) whether the individual had a previous positive encounter with the judiciary.⁷⁷

Another component of the research regarding public confidence in the judiciary was how individuals perceived the equality of treatment within a court.⁷⁸ Of the respondents to the survey, “[o]nly about half of the respondents agree that men and women are treated equally.”⁷⁹ Furthermore, “[the people] who are less likely to agree that sub-groups are treated equally include women, non-whites, those with lower incomes and less education, and those

71. David Margolick, *Women's Milestone: Majority on Minnesota Court*, N.Y. TIMES, Feb. 22, 1991, at B16. Michigan became the second state supreme court to have a female majority in 1997. Michigan Supreme Court Historical Society, *The Michigan Supreme Court History Timeline*, http://www.micourthistory.org/history_timeline.php?timespan=1 (last visited Mar. 31, 2010). The majority lasted only nine months. *Id.*

72. Symposium, *American Bar Association Report on Perceptions U.S. Justice System*, 62 ALB. L. REV. 1307, 1307 (1999) [hereinafter ABA Symposium].

73. *Id.* at 1308.

74. *Id.* at 1310.

75. *Id.*

76. *Id.*

77. *Id.* at 1310–11.

78. *Id.* at 1317.

79. *Id.*

with negative court experiences.”⁸⁰

When it comes to gender, it is clear that the public draws inferences regarding the availability of justice based on the make-up of the court. For example, when a woman walks into a courtroom to discuss a custody dispute with her spouse, she is likely to feel relieved if she sees a woman sitting on the bench. In the same way, she may feel disadvantaged to see a male to whom she may not relate as well. This idea is summarized in the words of Anita Hill: “The face of judging, in an emblematic way, matters as a reflection of access to justice; the diversity of the bench affects public perceptions of fairness.”⁸¹

C. Courtroom Environment: Discrimination Undermines Legitimacy

As previously discussed, one of the major factors that impacts how much confidence an individual has in the judiciary is whether that individual had previous positive interactions with the court system.⁸² This factor includes not only how the individual was treated in a courtroom, but also how the individual perceived the treatment of other people in the courtroom. One example of a situation where gender can play a role in a citizen’s negative perception of the court is when a litigant witnesses gender discrimination being inflicted on female litigants and lawyers. Minnesota’s Task Force revealed several occasions where female attorneys (and judges) felt they were treated differently in the courtroom because of their gender.⁸³ Women noted the difficulty of establishing credibility with clients due to their negative treatment in the courtroom.⁸⁴ The final report of the Ninth Circuit’s Gender Task Force best stated this problem: “When people perceive . . . bias in a legal system, whether they suffer from it or not, they lose respect for that system, as well as for the law.”⁸⁵

80. *Id.*

81. Anita F. Hill, *The Embodiment of Equal Justice Under the Law*, 31 NOVA L. REV. 237, 250 (2007).

82. ABA Symposium, *supra* note 72, at 1310–11.

83. REPORT SUMMARY, *supra* note 2, at S23–S24.

84. *Id.* Attorneys and judges in Minnesota reported some disheartening examples of gender bias in the courtroom. For example, “[a] male judge interrupted a female prosecutor’s opening statement and called her to the bench to tell her he liked the way she was wearing her hair that day.” *Id.* In another situation, “even after verbally identifying themselves [as attorneys], women were still required to show their licenses before being allowed to proceed. *Id.*”

85. Sandra Day O’Connor, *The Effects of Gender in the Federal Courts: The Final*

V. JUDICIAL APPOINTMENT PROCEDURES AND GENDER EQUALITY

Even though women fail to make a showing on the bench that is representative of their portion of the population within the state and country, this fact suggests that some sort of inherent discrimination is happening in the judicial appointment procedures. As a society we value the elimination of discrimination. Accomplishing a gender-balanced judiciary could illustrate that discriminating procedures have been eradicated, or at least minimized. To expose the discriminatory procedures at play in judicial appointments and elections, we can look at past judicial nominations and confirmations of female judges, and compare their journeys with the general trends that have applied to appointing male justices throughout history.

A. *Constitutional Authority for Judicial Appointments*

According to the U.S. Constitution, article 2, section 2, the President “shall nominate, and by and with the advice and consent of the Senate . . . judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.”⁸⁶ These words allow the President to nominate whomever he or she so chooses, subject to the consent of the Senate, which must approve the appointment by a simple majority.⁸⁷

In Minnesota, similar language is contained within our state constitution, which gives judicial appointment power to the governor. The exact language reads, “[w]henever there is a vacancy in the office of judge the governor shall appoint in the manner provided by law a qualified person to fill the vacancy until a successor is elected and qualified.”⁸⁸ At the state level the governor is free from the restriction of having to have the nominee approved by the legislature.⁸⁹

Report of the Ninth Circuit Gender Bias Task Force, 67 S. CAL. L. REV. 745, 760 (1994).

86. U.S. CONST. art. II, § 2.

87. Cf. U.S. Senate, Supreme Court Nominations, Present–1789, <http://www.senate.gov/pagelayout/reference/nominations/Nominations.htm> (last visited Mar. 31, 2010) (listing specific statistics related to the senatorial votes on U.S. Supreme Court Justices).

88. MINN. CONST. art. IV, § 8.

89. See *id.* (indicating no requirement of legislative approval).

B. *Gender Discrimination in Pre-Nomination Vetting*

1. *How the ABA Handles Evaluations of Judicial Nominees*

With regard to federal judgeships, once a list of potential nominees has been generated, historically the names have been submitted simultaneously to the ABA and the Senate Judiciary Committee. This was the case until President George W. Bush eliminated the role of the ABA in judicial vetting—though the Judicial Committee did continue to seek input from the ABA regarding the qualifications of judicial candidates.⁹⁰ President Barack Obama reinitiated the review of judicial candidates by the ABA in spring of 2009.⁹¹

The ABA rates judicial candidates as “well qualified,” “qualified,” or “not qualified,” based on “their professional qualifications: integrity, professional competence and judicial temperament.”⁹² The ABA Judicial Committee goes on to define “judicial temperament” as involving “a nominee’s ‘compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under law.’”⁹³

2. *The Role of Gender in the ABA Vetting Process for Judicial Nominees*

Although President Obama reinstated the ABA’s role in the vetting process, there is still much controversy as to whether the ABA’s devices for evaluating judicial candidates are inherently biased. Historically, the ABA has been criticized for its criteria and process used in evaluating candidates. For example, the Attorney General during President Jimmy Carter’s administration, Griffin Bell, expressed concern over the committee’s rating of three women candidates as “not qualified.”⁹⁴ One of the nominees, Carin Claus, had been the solicitor for the Labor Department.⁹⁵ She was

90. Editorial, *The A.B.A. and Judicial Nominees*, N.Y. TIMES, Apr. 13, 2009, at A22.

91. *Id.*

92. Terry Carter, *Do-Over*, A.B.A. J., May 2009, at 62, 63, available at <http://www.abajournal.com/magazine/article/do-over/>.

93. *Id.*

94. Sally Kenney, *Femocrats and Judicial Selection: Reconceptualizing Social Movement Insiders* 33 (Mar. 2, 2009), http://www.hhh.umn.edu/people/skenney/df/femocrats_judicial_selection.pdf.

95. *Id.*

turned down for a position on the Eighth Circuit because of a lack of trial experience.⁹⁶ In response, she later said, “the effects of past discrimination in the legal profession, which prevented me from having more extensive trial experience . . . prevented me from serving.”⁹⁷ Bell attempted to get the committee to reconsider, but they refused.⁹⁸ On a different occasion, Bell was able to sway the committee’s rating after a threat to pull the ABA from the vetting process.⁹⁹ When Judge Diana Murphy was nominated for a federal district court seat in 1979, the ABA took longer to give her a qualified rating, but ultimately did, and Judge Murphy became the first woman seated in the U.S. District Court for the District of Minnesota.¹⁰⁰

C. *Gender Discrimination in Senate Confirmation Proceedings*

1. *How the Senate Judiciary Committee Handles Judicial Appointments*

Within the committee, senators have the difficult task of poring over a candidate’s judicial history to determine whether he or she is qualified to hold an Article III position. As previously mentioned, judicial nominations of Article III judges rest with the President.¹⁰¹ The President submits his nomination to the Senate Judiciary Committee.¹⁰² Potential nominees are sometimes identified and recommended by members of Congress.¹⁰³ After the Senate Judiciary Committee receives a nomination, the committee requests that nominees complete a questionnaire that seeks information about a nominee’s previous professional experiences.¹⁰⁴ At this point in the process, senators from the nominee’s home state are contacted to give them an opportunity to participate in the judicial

96. *Id.* at 34.

97. *Id.*

98. *Id.*

99. *Id.* at 35.

100. Laura Provinzino & Mark Johnson, *Judge Diana E. Murphy: Memories from the District Court*, BAR TALK, May 19, 2009, at 1, available at <http://www.fedbar.org/minn-bartalk-0509.pdf>.

101. See *supra* notes 86–87 and accompanying text.

102. Comm. on the Judiciary, U.S. Senate, *Judicial Nominations and Confirmations*, <http://judiciary.senate.gov/nominations/judicial.cfm> (last visited Mar. 31, 2010).

103. *Id.*

104. *Id.*

nomination process.¹⁰⁵ The senators are given a “blue slip” to fill out; this form offers an opportunity for the senators to indicate their support or opposition for the nominee.¹⁰⁶ Next, the committee conducts a confirmation hearing for the nominee.¹⁰⁷ During the hearing, a nominee responds to any questions the Committee members may pose regarding the potential appointment and the candidate’s qualifications for the post.¹⁰⁸ Finally, “[a]fter the completion of any follow-up questions, a nomination can then be listed for committee consideration during an Executive Business Meeting.”¹⁰⁹ Unless the Committee requests for a candidate to go before the full Senate, the candidate can be approved for confirmation at the Executive Business Meeting.¹¹⁰

Although these procedures apply to federal judicial vacancies in general, there are a few minor differences that apply to appointments to the Supreme Court. For example, even though most federal judicial appointments would not be considered by the full Senate, “[t]raditionally, the committee refers [Supreme Court] nomination[s] to the full Senate for consideration.”¹¹¹

2. *The Role of Gender in Justice Sotomayor’s Senate Judiciary Committee Hearings*

The appointment procedures implemented to fill a vacancy on the U.S. Supreme Court recently received a great deal of public attention with the nomination, and eventual confirmation, of Justice Sonia Sotomayor. On May 26, 2009, President Obama announced his nomination of then-Judge Sotomayor from the U.S. Court of Appeals for the Second Circuit to be the next associate justice of the U.S. Supreme Court.¹¹²

Justice Sotomayor received significant media coverage surrounding one particular statement that she made in her profes-

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Comm. on the Judiciary, U.S. Senate, Supreme Court Nominations, <http://judiciary.senate.gov/nominations/SupremeCourt/SupremeCourt.cfm> (last visited Mar. 31, 2010).

112. Comm. on the Judiciary, U.S. Senate, Associate Justice of the U.S. Supreme Court—Sonia Sotomayor, <http://judiciary.senate.gov/nominations/SupremeCourt/SotomayorIndex.cfm> (last visited Mar. 31, 2010).

sional career. In 2001, Sotomayor said: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life."¹¹³ Many people, including Justice Ginsburg, raised concerns about the attention surrounding this comment.¹¹⁴ A reporter for the New York Times asked Justice Ginsburg if she thought that gender had anything to do with the opposition to Justice Sotomayor.¹¹⁵ Ginsburg responded, "I can't say that it was just that she was a woman. There are some people in Congress who would criticize severely anyone President Obama nominated. They'll seize on any handle. One is that she's a woman"¹¹⁶

One indication that Justice Sotomayor's treatment during her confirmation hearings was different from that of male counterparts can be seen in the statements of a male Supreme Court Justice confirmed prior to Justice Sotomayor. In 2003, then-Judge Samuel Alito made a statement that had strikingly similar implications to those found in then-Judge Sotomayor's "wise Latina" remark. Then-Judge Alito said: "[W]hen I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender."¹¹⁷

Both statements indicate that our life experiences impact our perceptions in various situations. While Justice Sotomayor faced a barrage of concerns about her ability to set aside her personal biases, "[Justices] Samuel Alito and John Roberts[] did not face questions about presumed personal biases and supposed lack of objectivity resulting from their identities as white men. Not being interrogated about your identity is one of the privileges of being in the dominant group."¹¹⁸ The inherent irony of this differential

113. Sonia Sotomayor, Judge, U.S. Court of Appeals, Second Circuit, Judge Mario Olmos Memorial Lecture and Keynote Address at the Boalt Hall School of Law, University of California, Berkeley Symposium, Raising the Bar: Latino and Latina Presence in the Judiciary and the Struggle for Representation (Oct. 26, 2001) in *A Latina Judge's Voice*, 13 BERKELEY LA RAZA L.J. 87, 92 (2002).

114. Bazelon, *supra* note 52.

115. *Id.*

116. *Id.*

117. Carolina A. Miranda, *Just What Is a 'Wise Latina,' Anyway?*, TIME, July 14, 2009, <http://www.time.com/time/politics/article/0,8599,1910403,00.html>.

118. Kristin J. Anderson, *Judging Sotomayor: Do Only Women and People of Color Have Personal Biases?*, PSYCHOL. TODAY, July 16, 2009, <http://www.psychologytoday.com/blog/benign-bigotry/200907/judging-sotomayor-do-only-women-and-people-color-have-personal-biases>.

treatment was best summed up by Ellen Goodman: “The would-be first Latina justice faced a committee with only two women members in order to get confirmed by a Senate with only 17 women for a seat on a court with only one other woman. And yet Sotomayor had to prove that she wasn’t biased.”¹¹⁹

It has also been suggested that Sotomayor’s gender played a role in her characterization as a “bully” on the bench. National Public Radio undertook an investigation of Sotomayor’s judicial temperament and published the following description of her from shortly after her appointment to the Second Circuit Court of Appeals,

Judge Guido Calabresi, former Yale Law School dean and Sotomayor’s mentor, now says that when Sotomayor first joined the Court of Appeals, he began hearing rumors that she was overly aggressive, and he started keeping track, comparing the substance and tone of her questions with those of his male colleagues and his own questions.¹²⁰

The first interesting thing about this statement is that a fellow judge would feel the need to compare Sotomayor’s tone to that of her male colleagues. With regards to his conclusions about Sotomayor’s demeanor on the bench, Judge Calabresi said: “I must say I found no difference at all. So I concluded that all that was going on was that there were some male lawyers who couldn’t stand being questioned toughly by a woman. . . . It was sexism in its most obvious form.”¹²¹

Ultimately, the whole confirmation process for Justice Sotomayor exhibited several examples of how women in the judiciary, and women in society more generally, still face gender bias and stereotypes on a daily basis. In fact, much of the media coverage surrounding Sotomayor’s confirmation hearings focused on the blatant sexism and racism directed towards her. For example, many media outlets picked up on a comment made by a radio broadcaster regarding Sotomayor’s fitness to hear cases as a woman. His exact quote was: “Let’s hope that the key conferences aren’t when she’s menstruating or something, or just before she’s going to

119. Ellen Goodman, *She’s Ready to Play*, WASH. POST WRITERS GROUP, July 16, 2009, <http://www.postwritersgroup.com/archives/good090716.htm>.

120. *Nima Totenberg: Is Sonia Sotomayor Mean?* (NPR radio broadcast June 15, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=105343155>.

121. *Id.*

menstruate. That would really be bad. Lord knows what we would get then.”¹²² Unfortunately, with comments of this nature, Sotomayor’s judicial experience and qualifications for the bench took a back seat in media coverage.¹²³ Fortunately for the Supreme Court and the American people, at some point the discussions had to come back to Sotomayor’s qualifications, and she was confirmed to the Court.

D. *Gender Discrimination in Judicial Elections*

Minnesota is one of several states that selects state judges through elections. As with any elected public office, potential candidates must launch and conduct an election campaign. Additionally, as with all political offices, “political contacts become crucial to one’s chance of obtaining a position within the judiciary.”¹²⁴ However, with women being historically underrepresented in the political world, women are less likely to have those important political connections, and therefore, are inherently disadvantaged in election campaigns.¹²⁵ Women are also disadvantaged in their search for networking and mentorship within the political world because “[b]y virtue of their gender, most women do not obtain the benefits of ‘old boy networks’ within the legal profession, [the] informal arrangements whereby men in positions of power develop contacts or exchange information.”¹²⁶ This system of judicial elections hinders women from being appointed to the bench. “Interestingly, the number of women appointed to the . . . judiciary increases when a merit system is used instead of the traditional political model.”¹²⁷

The fact that women have a lack of access to political power has been linked “to a dearth of women candidates and a reluctance

122. Lisa Bennett, NOW Communications Director, Media Hall of Shame: Liddy Worried About Sotomayor Judging While Menstruating (May 29, 2009), <http://www.now.org/issues/media/hall-of-shame/index.php/radio/liddy-worried-about-sotomayor>.

123. Press Release, The White House, Judge Sonia Sotomayor (May 26, 2009) available at http://www.whitehouse.gov/the_press_office/Background-on-Judge-Sonia-Sotomayor/ (stating that Justice Sotomayor “[brings] more federal judicial experience to the Supreme Court than any justice in 100 years, and more overall judicial experience than anyone confirmed for the Court in the past 70 years.”).

124. Durant, *supra* note 62, at 197.

125. *Id.*

126. *Id.* at 195.

127. *Id.* at 197 n.119.

on the part of voters to put women into office.”¹²⁸ An additional problem is that in some cases parties are unwilling to support women who run against men. For example, an Illinois circuit judge was told “that she ‘did not have a chance,’ and that her county already had its one woman circuit court judge.”¹²⁹ If a judicial candidate cannot convince people to vote for her, and she has no support from local political parties, it is highly unlikely that such a candidate would be successful in a judicial election campaign. The inherent structure of judicial elections shows that gender discrimination is still a problem in our society and it is actively working to keep women off the bench.

VI. SUGGESTIONS FOR OBTAINING A GENDER BALANCE ON THE BENCH.

Our society should have a strong interest in having a judiciary that reflects the American population. In order to achieve this balance, several steps should be taken to eliminate gender-biased practices currently in operation in the state and federal judiciary. By implementing these changes, we can slowly begin to impact the pipeline to the judiciary, and ensure that it allows for the inclusion of more women.

A. *Women Must Have More Access to Political Power in Order to Have More Access to Judicial Seats*

To address discrimination in judicial election and appointments, it is essential that women have more access to the necessary political power to obtain a judgeship. Women can play an active role in implementing this change by mentoring and networking with other women in power, specifically with female judges and women seeking judicial seats. In order to volunteer to mentor a potential judicial candidate, women should consider reaching out to their local women’s bar association resources.¹³⁰

128. Megan McCarthy, *Judicial Campaigns: What Can They Tell Us About Gender on the Bench?*, 16 WIS. WOMEN’S L.J. 87, 96 (2001).

129. *Id.* at 99.

130. In Minnesota, contact Minnesota Women Lawyers, Judicial Appointments, Judicial Elections and Voter Outreach & Education Committee. See Minn. Women Lawyers, Judicial Appointments, Judicial Elections and Voter Outreach & Education Committee, <http://www.mwlawyers.org/MWLInitiatives/JudicialElections/default.htm> (last visited Mar. 31, 2010). For those interested in increasing the number of women on the Eighth Circuit, contact the Infinity

To achieve gender balance on Minnesota's courts specifically, it is worth looking at the problems of gender bias in the political election model currently in place for filling judicial slots. By adopting a judicial selection process of appointments rather than election, candidates can be evaluated based on their judicial experience and fitness for the judicial position. Although gender bias can exist in judicial appointment schemas, it is easier to correct these flaws through legislative action than to counteract the problems of public perception and power imbalance in the judicial election system.

B. Courts Must Address Gender Bias in Judicial Proceedings to Get More Women on the Bench

The 2006 report of Minnesota's Gender Fairness Implementation Committee recommended "implementation of a complaint process to handle gender bias remarks and actions by judges and court employees."¹³¹ The committee was concerned that the current model for handling such complaints was not adequate.¹³²

Currently, the Minnesota Board on Judicial Standards and the Lawyer's Professional Responsibility Board receive and investigate complaints regarding a judge or lawyer's conduct in the judicial system.¹³³ There is not yet a system set up to specifically deal with gender bias complaints. The advantage to implementing the recommendation of the 2006 Gender Fairness Implementation Committee is that individuals would be more likely to come forward if they were certain that their concerns would be taken seriously.

So long as women receive unequal treatment in the courtroom, whether as litigants or attorneys, the judicial environment

Project. See Infinity Project, Hubert H. Humphrey Institute of Public Affairs, About The Infinity Project, <http://www.hhh.umn.edu/centers/wpp/infinity/> (last visited Mar. 31, 2010). Finally, for those interested in women on the judiciary in a national scope, contact the American Bar Association, Commission on Women in the Profession. See Comm'n on Women in the Profession, American Bar Association, <http://www.abanet.org/women/home.html> (last visited Mar. 31, 2010).

131. GENDER FAIRNESS IMPLEMENTATION COMM., 2006 PROGRESS REPORT 3 (2006), available at http://www.mncourts.gov/documents/0/Public/Court_Information_Office/2006Report.doc.

132. *Id.* at 8 ("The Committee was and remains concerned that complaints may not on their own rise to the level of action through the formal complaint process and that the cumulative effect of these complaints could warrant action.").

133. State of Minn., Minnesota Board on Judicial Standards, <http://www.bjs.state.mn.us/> (last visited Mar. 31, 2010).

will continue to discourage women from being appointed or elected to the bench. We need a court system that is educated about gender discrimination to adequately deal with problems when they arise, and to help eradicate the problem for the future.

VII. CONCLUSION

According to Stephen Cooper, former Minnesota Commissioner of Human Rights, “[o]ne of the major, safest, fastest, most effective ways that you can deal with gender bias in the courts is to make the courts themselves cease to be conclaves of nonrepresentative people.”¹³⁴ He made this statement to Minnesota’s Gender Task Force nearly twenty years ago. Although some movement has been made towards acting on Cooper’s suggestion, we have a long way to go in order to achieve the spirit of his words. In the year 2010, it is unacceptable that a vital part of our country’s government is still lagging so far behind in terms of gender equality. The most important thing we can do as a society, and as a legal community, is to raise awareness about the lack of gender balance in our court systems. Women bring a unique voice to all of their positions in our communities, and it is essential that we have these voices on state and federal benches.

134. FINAL REPORT 2, *supra* note 1, at 97.