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The Long and Winding Road: Pursuing Gender Equality in Rhode Island

Cassandra L. Feeney*

ABSTRACT

For decades, national organizations and local bar leaders have taken numerous steps to raise awareness of the need to increase gender equality within the legal profession. In the 1980s, national organizations encouraged judicial involvement in the formation of task forces to investigate gender bias in the courts, issue recommendations to address the problems, and form committees to monitor the elimination of gender bias. Rhode Island was an early leader in response to this call to action: it became the third state to form such a committee—the Rhode Island Supreme Court Committee on Women in the Courts—which issued a report in 1987.

While there have undeniably been some advances in Rhode Island to promote gender equality since the 1987 report, much work remains to be done. There must be a conscious, long-term

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commitment to eliminate gender bias, while identifying ongoing and emerging problems. We all have a responsibility to fight for equality in the legal profession.

INTRODUCTION

In 1984, acknowledging a problem of gender bias in the courts, Joseph A. Bevilacqua, then-Chief Justice of the Rhode Island Supreme Court, appointed the Committee on Women in the Courts (the Committee). Chief Justice Bevilacqua charged the Committee with three tasks: “1. Determine the extent of the problem; 2. Document specific instances of discrimination; [and] 3. Develop programs to eliminate gender bias.”¹

After approximately two-and-a-half years of data collection and interpretation, the Committee issued a report in 1987. Based on the investigation, the Committee concluded that “discrimination based on gender [wa]s a serious problem in the Rhode Island courts.”² However, Rhode Island male attorneys were largely unaware of or refused to acknowledge gender-bias issues. Although the Committee verified gender-bias complaints with objective data—including trained courtroom observers, who witnessed an average of 1.64 gender-bias incidents per hour during the study—approximately 66% of male attorneys reported having never seen gender discrimination in the Rhode Island state courts.³ The Committee dismissed any notion that the discriminatory environment was a limited “woman issue”; this was a systemic issue with the judiciary’s administration of justice that adversely impacted the rights of Rhode Islanders.⁴ Given the extent of the problem, the Committee also recognized that efforts to eliminate gender bias required long-term commitment.

Although the chief justices of the Rhode Island Supreme Court embraced a permanent committee to root out gender bias, many of the problems identified in the Committee’s report from 1987 still exist today. Throughout the legal profession, there is persistent

1. R. I. COMM. ON WOMEN IN THE COURTS, A REPORT ON GENDER BIAS 3 (1987) [hereinafter RHODE ISLAND REPORT]. In 1986, Chief Justice Bevilacqua’s successor, Chief Justice Thomas F. Fay, reissued the same charge for the Committee. *Id.* at 3.

2. *Id.* at 22–23.

3. *Id.* at 12, app. exhibit C at 9.

4. *See id.* at 11.

bias—often subtle and unconscious—stemming from society’s deep-seated patriarchal foundation.⁵ This deeply entrenched and continuing discrimination against women impacting the legal profession has serious consequences. Although women and men have been graduating from law school and entering law firms in roughly equal numbers for decades, women continue to face a multitude of obstacles in the pursuit of a successful career. These obstacles force women out of the legal profession before ever having a chance to pursue a successful career.⁶

The barriers women face from gender bias start early in a legal career.⁷ A recent study noted that “women have comprised between 45% and 50% of entering law firm associates but nonetheless in 2018 account for just 20% of law firm equity partners.”⁸ By mid-

5. See Deborah L. Rhode, *The Subtle Side of Sexism*, 16 COLUM. J. GENDER & L. 613, 613 (2007).

6. See Roberta D. Liebenberg, *Too Many Senior Women Are Leaving the Profession*, L. PRAC. TODAY (Nov. 14, 2018), <https://www.lawpractice.today.org/article/many-senior-women-leaving-profession/> [<https://perma.cc/WZF3-NX6F>] (“[R]ecent statistics show that women make up only 40% of practicing lawyers over age 40 and only 27% of lawyers over age 50”).

7. See *id.*; see also Heidi Gardner, *Harvard Study: On Gender and Origination in the Legal Profession (Perspective)*, BLOOMBERG L. (Nov. 3, 2016, 11:41 AM), <https://news.bloomberglaw.com/business-and-practice/harvard-study-on-gender-and-origination-in-the-legal-profession-perspective> [<https://perma.cc/LD8E-S7RR>] (explaining that “men tend to ‘inherit’ institutional clients—either as the sole or co-lead partner on major accounts,” while women “grow their book incrementally and often through the (obviously harder) process of developing clients who are brand new to the firm”).

8. ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 1 (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf> [<https://perma.cc/JH5A-SZTV>]; see also *Representation of Women and Minority Equity Partners Among Partners Little Changed in Recent Years*, NALP (2019), <https://www.nalp.org/0419research> [<https://perma.cc/Y995-B5RY>] [hereinafter *Women and Minority Equity Partners*]; MCAA, 2018 VAULT/MCAA LAW FIRM DIVERSITY SURVEY 4 (2018) (providing 2018 data showing that women make up 20.64% of equity partners and 35.7% of all lawyers, and women of color represent only 2.81% of equity partners and only 8.657% of all lawyers), <https://www.mcca.com/wp-content/uploads/2018/11/2018-Vault-MCCA-Law-Firm-Diversity-Survey-Report.pdf> [<https://perma.cc/3KTC-9AFL>]; COMM. ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 3–5 (Apr. 2019) (illustrating that women only hold 30% of general counsel positions, 35% of law school dean positions, and 34.7% of judgeships across U.S. federal courts), https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf [<https://perma.cc/C4XN-YE7K>].

career, additional barriers include lack of mentorship, lack of role models, and lack of sponsors to build their careers.⁹ Advancement is further hindered with biases against motherhood—whether a woman has children or not—and work-life balance.¹⁰ For women who obtain equity partnership, the wage gap amplifies: women equity partners earn 44% less than male colleagues.¹¹ These compounding barriers to a female lawyer's career advancement have resulted in a high number of women lawyers pushed out of the profession.¹²

Although there has been some improvement since the initial report by the Committee and Rhode Island's achievements should be acknowledged, the journey is far from over. The Committee understood the identification and eradication of gender bias as a process, not a one-time event. Yet, around the turn of the century, the movement to eradicate gender bias started to lose steam.

Rhode Island must reinvigorate the movement initiated over thirty-five years ago and meaningfully address current issues with a new, deeper inquiry. Many of the original questions examined by the Committee deserve continued monitoring. Rich research into how implicit bias affects the legal profession and models of successful initiatives in other states offer guidance for addressing these issues in the legal profession in Rhode Island.

This Article examines some of the hurdles stalling the advancement of women in the Rhode Island legal profession and calls on the judiciary and legal community as a whole to mobilize in the efforts to eliminate gender bias in the legal profession. Section I reviews the findings, conclusions, and recommendations of the original Committee in the 1987 report. Section II examines the efforts to carry out the recommendations to achieve gender equality undertaken by the implementation advisory committee, and the evolution of that process over the ensuing years. Section III calls for reinvigoration: mobilization of the legal community to renew

9. See Rhode *supra* note 5, at 625.

10. See *id.* at 626–27.

11. See Elizabeth Olson, *A 44% Pay Divide for Female and Male Law Partners, Survey Says*, N.Y. TIMES (Oct. 12, 2016), <https://www.nytimes.com/2016/10/13/business/dealbook/female-law-partners-earn-44-less-than-the-men-survey-shows.html> [<https://perma.cc/737H-MTST>].

12. See Liebenberg *supra* note 6.

and carry forward Rhode Island's efforts to eliminate gender bias in the legal system.¹³

I. THE RHODE ISLAND SUPREME COURT COMMITTEE ON WOMEN IN THE COURTS

In 1984, Rhode Island became the third state (after New Jersey and New York) to create a state task force dedicated to self-examination of gender bias in the judiciary. The impetus for the Committee was a 1983 report of the Rhode Island Bar Association Committee on Sex Discrimination that revealed concerns of gender discrimination on the part of judges, court personnel, and opposing counsel.¹⁴ Based on the responses of Rhode Island Bar members to a questionnaire on employment and treatment of women lawyers, the Rhode Island Bar Association Committee articulated the following concerns:

A large number of female respondents, and a smaller but significant number of male respondents, reported significant instances of sex discrimination on the part of judges, court personnel and opposing counsel, some of it in open court. The instances included unwanted attention, demeaning comments of a sexual nature, studiously

13. See LYNN HECHT SCHAFFRAN & NORMA JULIET WIKLER, NAT'L JUDICIAL EDUC. PROGRAM, GENDER FAIRNESS IN THE COURTS: ACTION IN THE NEW MILLENNIUM 3-5 (2001), http://womenlaw.law.stanford.edu/pdf/gender_fairness-strategiesproject.pdf [<https://perma.cc/VYR6-AP2M>]. The American Bar Association (ABA) and other national organizations continue important research on attorneys of color, attorneys with disabilities, diversity and inclusion, LGBTQ+ attorneys, and women attorneys. Although the scope of this Article is limited to the evolution of gender bias in Rhode Island, the study and implementation of strategies to address all aspects of diversity in the profession is significant to enrich work experience, life experience, and the law itself. See Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN'S STUD. 1, 80 (1996) (highlighting states, such as California, that recognized the "incomplete[ness]" of its initial study of gender bias "without also addressing effects of racial and ethnic bias," and the importance of making an effort to include "wherever appropriate recommendations that apply equally to racial and ethnic bias"; to discuss the intersection of racial/ethnic bias and gender bias; and "to recommend that another task force study racial and ethnic bias more thoroughly"); see generally Jennifer Durkin, *Queer Studies I: An Examination of the First Eleven Studies of Sexual Orientation Bias by the Legal Profession*, 8 UCLA WOMEN'S L.J. 343 (1998).

14. RHODE ISLAND REPORT, *supra* note 1, at 2.

ignoring a female attorney, and refusing to negotiate because the opposing counsel was female. In a significant number of these instances the respondent believed that the discriminatory conduct had a prejudicial effect on the interests of the female attorney's client.¹⁵

Around that time, national organizations were also actively supporting and encouraging judicial involvement in the formation of task forces to investigate gender bias, issue recommendations to meaningfully address the problem, and form organizations to monitor progress.¹⁶

Against this backdrop, the Committee was created. The Committee consisted of twenty-two members, eighteen adjunct members, nine advisors, and six staff; it was chaired by the Honorable Corinne P. Grande, Associate Justice of the Rhode Island Superior Court, and vice-chaired by the Honorable Francis J. Darigan, Jr., Associate Judge of the Rhode Island District Court at that time,¹⁷ who was later appointed as an Associate Justice of the Rhode Island Superior Court in 1991. The Committee was divided into four subcommittees, including a subcommittee examining gender bias in the court environment and a subcommittee examining gender bias in employment, among others.¹⁸ Data for the report was collected from a number of sources, including courtroom observations and surveys. Surveys were sent to and completed by judges, attorneys, jurors, and court employees regarding "their experiences with and perception of

15. REPORT TO THE 1985 ANNUAL BAR ASSOCIATION MEETING AND JUDICIAL CONFERENCE FROM THE COMMITTEE ON WOMEN IN THE COURTS PRESENTED BY HONORABLE CORINNE P. GRANDE 2 (1985) [hereinafter 1985 ANNUAL BAR ASSOCIATION MEETING AND JUDICIAL CONFERENCE].

16. New Jersey was the first state to commission a task force to evaluate gender bias in its judicial system. *Id.* at 1; *see also* R.I. REPORT ON THE JUDICIARY 1983–1984, at 10 (1984), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1039&context=lawarchive> [<https://perma.cc/MBX9-B3V8>] (stating that the New Jersey task force "precipitated the appointment of a Rhode Island Task Force to examine discrimination against women in the Rhode Island court system").

17. RHODE ISLAND REPORT, *supra* note 1, at iii.

18. *Id.* at 3–4. The Committee also examined gender bias in the administration of the courts and court decisions and gender bias in family law, *id.*, which are not examined in detail in this Article.

gender bias in the courts and their attitudes toward equality for women.”¹⁹

After two-and-a-half years of investigation, the Committee’s Final Report (the Report) was issued in 1987, ultimately concluding that there were serious concerns of discrimination in the Rhode Island court system.²⁰ The Report detailed the Committee’s findings, conclusions, and recommendations as to each area examined and offered suggestions for long-term implementation.²¹

A. *The Committee Confirmed That Women Attorneys Were Not Treated as Equals in the Court System*

Based on the data collected by examining gender bias in the courtroom environment, the Committee concluded that women were not accepted “as professionals by all participants in the court system.”²² Overall, women attorneys and litigants were “portrayed” as “inferior in status.”²³ The rejection of women attorneys as professionals and equals was manifested in behavior and treatment directed only at women that was “demeaning, unfair . . . disrespectful. . . [and] sometimes condescending and even hostile.”²⁴ This discriminatory climate and disparaging treatment of women undermined their credibility and adversely impacted judicial decisionmaking, case outcomes, and the public’s perception of and access to justice.²⁵

19. *Id.* at 5. The survey, funded with a grant by the Rhode Island Bar Foundation, was conducted in 1986, with progress being reported by the Rhode Island Judiciary in 1985 and 1986. See RHODE ISLAND REPORT ON THE JUDICIARY 1985, at 8–9 (1985), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1040&context=lawarchive> [<https://perma.cc/9ZU8-HJ5D>]; RHODE ISLAND REPORT ON THE JUDICIARY 1986, at 7–8 (1986), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1041&context=lawarchive> [<https://perma.cc/GYV7-AGCT>].

20. See RHODE ISLAND REPORT, *supra* note 1 (containing Letter from Corinne P. Grande, Assoc. Justice, R. I. Superior Court, to Thomas F. Fay, Chief Justice, R. I. Supreme Court).

21. *Id.* at 1. The Committee’s report also included an appendix with statistical data from the research and sample questionnaires used in the survey. *Id.*

22. *Id.* at 11.

23. *Id.* at 14.

24. *Id.* at 11.

25. *Id.* at 11–12.

As one source of data, trained observers monitored Rhode Island courtrooms for gender bias. In 58.4 hours of courtroom observations, 96 incidents of gender bias were observed, or an average of 1.64 incidents per hour.²⁶ Male attorneys were responsible for most of the gender-bias interactions (45%), but judges (31%) and courtroom staff (24%) also engaged in discriminatory conduct.²⁷

Some examples of the more frequent gender-bias interactions observed in the courtroom included addressing women informally or with terms of endearment; extraneous comments on a woman's personal appearance and dress; hostile remarks and jokes; condescending treatment; and unwelcome verbal and physical advances.²⁸ Gender bias by judges was frequently manifested with consistently delaying responses to women and failing to make eye contact with them.²⁹

As a second source of data and to cross-validate the findings of gender bias, in 1986 the Committee sent a questionnaire to all judges, jurors, court employees, and attorneys who appeared in court at least once in the prior year.³⁰ The survey gathered respondents' demographic information, as well as their behavioral observations relative to gender bias and attitudes towards women attorneys.³¹

When the survey was conducted, women comprised approximately 10% of the Rhode Island judiciary and 14% of in-state Rhode Island attorneys were women.³² In reviewing the demographics of those who responded to the survey, the Committee noted the sample size was a fair reflection of the overall demographic of the legal profession.³³ Based on data collected from the survey, male attorneys were overrepresented in all specialties, except for appellate law (in which both genders were equally represented), and family law (where almost 9% more women than men attorneys identified this area of law as one of their

26. *Id.* at 12.

27. *Id.* at 13.

28. *Id.* at 12–13, 23.

29. *Id.* at 14.

30. *Id.* at 5.

31. *Id.*

32. *Id.* at app. exhibit C at 3, 7.

33. *See id.* at 10.

specialties).³⁴ The Committee concluded that the overrepresentation of women attorneys in family law was suggestive of the bias that women were more likely to be involved and accepted in only traditional “female” areas of practice.³⁵

The survey’s behavioral questions revealed that approximately 71% of women attorneys observed gender bias directed towards other women attorneys within the year preceding the survey, and approximately 70% of women attorneys personally experienced gender-biased treatment within that timeframe.³⁶ Of the female attorneys who experienced gender bias, approximately 33% believed the incident adversely affected the outcome of their case yet felt powerless to do anything “without jeopardizing their case or their client.”³⁷ By contrast, only 21% of men attorneys reported that they observed gender bias against women within the prior year.³⁸ A small percentage of men did acknowledge that they felt the observed gender-bias event did affect the outcome of the case.³⁹

Women lawyers were asked to describe the types of disadvantages they experienced as a result of gender bias. Many women explained that they were “outsiders in a system in which the ‘old boy’s network’ clearly work[ed] to the advantage of their male peers.”⁴⁰ Survey answers also included that women had to “work harder than males to gain respect,” that “females [were] simply not treated as equals,” and that “judges expect[ed] ‘perfection from women attorneys but not from male attorneys.’”⁴¹

A portion of the survey also collected data on attitudes toward gender equality. Despite the majority of male and female attorneys responding that women “should take their rightful place in business,” almost 25% of male attorneys “felt that there were some jobs in which preference in hiring and promotion should be given to men over women.”⁴² In addition, 25% of male attorneys believed

34. *See id.* at app. exhibit C at 7.

35. *Id.* at app. exhibit C at 12.

36. *Id.* at 14–15.

37. *Id.* at 16, 23.

38. *Id.* at 16.

39. *Id.* at app. exhibit C at 2.

40. *Id.* at app. exhibit C at 11.

41. *Id.*

42. *Id.* at app. exhibit C at 12.

“women should not expect to have the same freedom of action or be allowed to go to the same places as men.”⁴³

Supported by observations in the courtroom and survey responses, the Committee concluded that “discrimination based on gender is a serious problem in the Rhode Island courts, particularly in the courtroom environment.”⁴⁴ The Committee further determined that this discriminatory climate negatively impacted the judicial process, litigation determinations, and society’s opinion of justice.⁴⁵

B. *The Committee Offered Concrete and Specific Recommendations to Address the Pervasive Inequality in the Court System*

The Committee offered eight recommendations to eliminate gender bias in the courtroom environment and in the interaction between legal professionals in its Report published in 1987:

1. A mandatory judicial conference should be scheduled this year to present this report and to educate judges about the nature of gender bias, the forms, both subtle and blatant, that gender bias takes, and the adverse effects it has in the courts. This was the approach recommended most often by both judges and attorneys for addressing the problem.
2. The Chief Justice should issue a policy statement condemning gender bias and sexist conduct by judges, lawyers and court personnel. Along with this he should promulgate guidelines for judges and court employees regarding appropriate and inappropriate behavior toward female litigants, witnesses, attorneys and employees and enlist the support of the Presiding Justice of the Superior Court, the Chief Judge of the Family Court, the Chief Judge of the District Court and the Chairperson of the Workers’ Compensation Commission in implementing these guidelines.

43. *Id.*

44. *Id.* at 22–23.

45. *Id.* at 11.

3. The Chief Justice should transmit this report to the Bar Association with the recommendation that educational programs be developed which raise the consciousness of attorneys regarding gender biased attitudes, and he would offer assistance to the Bar in developing these programs.
4. Although much of the behavior described in the previous section is prohibited implicitly by the Canons of Judicial ethics and by the Canons of Professional Responsibility for Attorneys, these rules should be revised so that bias is expressly defined either in the canons themselves or in accompanying commentary as unethical conduct. This will give notice to both judges and attorneys that such behavior is a serious violation of the principles of justice. (See Exhibit E ["Suggested Amendments to the Code of Judicial Conduct and The Rules of Professional Conduct," which were adopted]). Membership by judges in private clubs that discriminate on the basis of race, sex, or national origin should also be discouraged.
5. The Chief Justice should transmit this report to the Governor's Advisory Commission on Judicial Appointments with the suggestion that the committee consider questioning judicial candidates about their attitudes about the role of women in the courts as part of the screening process.
6. The Chief Justice should transmit this report to the Disciplinary Counsel, the Disciplinary Board and the Judicial Tenure and Discipline Commission.
7. Rotating lists should be established of qualified attorneys who are available for court appointments. These lists should be developed and updated by the Bar Association and should cover all types of appointments in both civil and criminal cases.
8. The Chief Justice should enlist the assistance of the chief clerks of the various courts in each county, the High

Sheriffs, and the Jury Commissioner in eliminating gender bias in their departments.⁴⁶

C. The Committee Found that Gender Bias Infected Employment and Promotion of Court Personnel

The Report also demonstrated that gender bias infected employment and promotion of court personnel. In examining gender bias in court-personnel employment, the Committee examined three objective metrics: “distribution of employees by pay grade, the average ranges of salaries paid to employees, and the type of positions held by males and females.”⁴⁷

Based on the data collected, while 67% of employees in the court system were women, the women employees were “primarily in positions at the lower end of the pay scale and earn[ed] substantially less than male court employees.”⁴⁸ Specifically, women were clustered in the lowest pay grade: 95% of employees in the seven lowest pay grades were women, and no women were in the seven highest pay grades.⁴⁹ When comparing women and men in the same pay grade, women were paid only 77% of what men earned.⁵⁰ In terms of types of positions held, approximately 40% of men identified as supervisors or administrators as compared to a little over 12% of women.⁵¹ Further, women were afforded fewer opportunities than men for training and promotion: 86.1% of men versus 64.4% of women believed they were encouraged to take advantage of training opportunities.⁵²

In addition to employment, the Committee examined the work environment for females. Like female attorneys, female court employees reported they were “subjected to inappropriate terms of address, unwanted sexual teasing and jokes, and even unwanted, physical advances.”⁵³ Almost 20% of female court employees experienced “unwanted, deliberate touching by males.”⁵⁴ In

46. *Id.* at 23–25.

47. *Id.* at 28–29.

48. *Id.* at 25.

49. *Id.* at 26.

50. *Id.*

51. *Id.* at 26–27.

52. *Id.*

53. *Id.* at 29.

54. *Id.* at app. exhibit C at 16.

addition, female employees assigned to the courtroom observed “inappropriate touching of women by men,” “off-hand remarks about the dress or appearance of females in court,” and “sexist jokes or hostile remarks about women.”⁵⁵ When asked about their reaction to gender-bias incidents, some women did not consider this treatment a problem.⁵⁶ However, others were bothered by these experiences but felt it “was a hopeless situation” to attempt to deal with the incidents because it would ultimately come down to “his word against mine.”⁵⁷

Based on the investigation, the Committee concluded women were at a disadvantage relative to men in each objective category examined, including: pay grade, salary, position, and opportunities for training and promotion.⁵⁸ Further, women were subjected to a work environment with gender-bias treatment, unwanted sexist conduct, and inappropriate touching.⁵⁹

D. The Committee Offered Concrete and Specific Recommendations to Address the Gender-Bias Faced by Court Personnel

The Committee provided six recommendations to address the disadvantages experienced by female court employees in the 1987 Report:

1. The Chief Justice should issue a statement of court policies with respect to fair pay, fair employment practices, equal access to training and promotion opportunities for the court’s female employees, and the elimination of sexist conduct.
2. Since the establishment of the Committee, court employees in the Supreme, Superior and District Courts have become part of Local 808 of the International Laborers’ Union. The Chief Justice should transmit this report to the officials of the court employees’ union,

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 28–29.

59. *Id.* at 29.

making clear the Court's concern about fair pay and equal opportunities for its female employees.

3. The union should be encouraged to take a strong stand to represent its female and male members with equal concern and to see that the discriminatory employment practices of the past are not continued.
4. As part of the negotiation of the Union contract the court system has agreed to conduct a study of all nonjudicial positions in the courts to determine if the pay grades assigned adequately reflect the skill requirements and responsibilities of the job. The Chief Justice should encourage this as an effort to correct past inequities.
5. The Chief Justice should transmit this report to the Superior Court Chief Supervisory Clerk and the Clerks of each county as well as the Clerks of the District Court, Family Court, and Workers' Compensation Commission, asking for greater efforts to provide additional training, educational and promotional opportunities for women.
6. Finally, there should be ongoing review of the content of all forms and publications produced by the court system to make sure that the language is always gender neutral. There should also be a rewrite of the Canons of Judicial Ethics and the Canons of Professional Responsibility to make sure the language is gender neutral.⁶⁰

E. The Committee Offered Concrete and Specific Recommendations for Long-Term Implementation

The Committee recognized that overcoming gender-bias required long-term commitment. To demonstrate to the Bar, the public, and the judiciary a permanent commitment to afford equal treatment to all, the Committee proposed that the Chief Justice name a permanent advisory committee to monitor the status of women lawyers in the courts and implement the recommendations in the Report.⁶¹ The Committee specifically recommended that the permanent advisory committee's role would be the following:

60. *Id.* at 29–30.

61. *Id.* at 50.

1. To monitor the effectiveness of the Chief Justice's directives regarding appropriate behavior towards female litigants, witnesses, attorneys and employees and to monitor implementation of the Committee's recommendations;
2. To serve as a resource for the development and implementation of training programs for judges and nonjudicial personnel to raise the level of consciousness about gender bias and its effects;
3. To monitor implementation of the court's position classifications study;
4. To review periodically the recruitment and promotion policies in the court system;
5. To conduct further studies into areas which th[e] Committee was not able to examine in depth . . . ;
6. To provide assistance to the Bar Association and to law enforcement agencies in conducting education programs concerning gender bias; [and]
7. To provide a mechanism for resolving issues of gender bias informally and quickly.⁶²

II. IMPLEMENTATION OF THE COMMITTEE'S RECOMMENDATIONS

In total, the Committee made thirty recommendations to address the judiciary's gender-bias treatment of women in the areas it investigated.⁶³ One of the principle recommendations called for the creation of a permanent advisory committee to monitor the implementation and effectiveness of the recommendations.⁶⁴ In response, Chief Justice Fay created the Advisory Committee on Women in the Courts (the Advisory Committee), a provisional, one-year committee tasked with implementing the recommendations in the Report.⁶⁵

62. *Id.* at 50–51.

63. RHODE ISLAND REPORT ON THE JUDICIARY 1987, at 9–10 (1987), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1042&context=lawarchive> [<https://perma.cc/TR2X-CJ4Z>].

64. *Id.* at 10.

65. *Id.*

During its first year, the Advisory Committee went above and beyond its directive to begin implementing recommendations in the Report by also identifying and addressing additional areas of concern. Recognizing improvement to the court environment from the efforts by the Advisory Committee, the one-year appointment was extended year after year.⁶⁶ Ultimately, the Advisory Committee became a permanent committee, pursuant to an executive order of then-Chief Justice Joseph R. Weisberger in 1993.⁶⁷

Each year, the Advisory Committee published its work and accomplishments striving for gender equality in the annual Report on the Judiciary. It also carried out a five-year survey, conducted in 1992, and a 10-year survey, conducted in 1998.⁶⁸ Although the surveys showed some progress, both revealed that gender-bias issues persisted.⁶⁹ Thereafter, the scope of the Advisory Committee was expanded to include efforts to strive for racial and ethnic equality.⁷⁰ Its membership nearly doubled, and three subcommittees were created to carry out its objectives.⁷¹

With the turn of the century, however, the momentum towards achieving gender equality in the court systems began to stall, both in Rhode Island and across the nation. Attention started to wither as original members of the movement and task forces cycled off, resources diminished, social and culture environments changed, leaders directed their energy elsewhere, and new projects and initiatives were taken up.⁷²

A. *The Advisory Committee Began to Implement the Report*

In the first year following the Report, the one-year provisional Advisory Committee was asked to undertake several projects, including creating a judicial education program, revising the

66. RHODE ISLAND REPORT ON THE JUDICIARY 1989, at 10 (1989), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1044&context=lawarchive> [<https://perma.cc/V2PG-VXBK>].

See *infra* Part II.A–C.

67. See R.I. Exec. Order No. 93–3 (Feb. 15, 1993).

68. See *infra* Section II.B–C.

69. See *infra* Section II.B–C.

70. See *infra* Section II.D.

71. See *infra* Section II.D.

72. SCHAFFRAN & WIKLER, *supra* note 13, at 104–05.

Judicial Canons and Rules of Professional Conduct to expressly prohibit bias, and developing a plan for unbiased fee-generating court appointments.⁷³ The Advisory Committee was able to make significant progress on the directives.

In 1988, the Advisory Committee “sponsored a day long judicial conference . . . focusing on the role of judges as decision makers and leaders, and the use of this role in assuring the fair treatment of all court participants.”⁷⁴ The Committee also conducted education programs on gender-bias issues for court employees and sheriffs on effective communication in the court environment.⁷⁵ The Committee proposed language to revise what are now the Rules of Professional Conduct that the Supreme Court adopted.⁷⁶ These revisions expanded attorney misconduct to include “harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers and others based on race, nationality or sex.”⁷⁷ Further, the Committee submitted proposed revisions to the Judicial Canons,⁷⁸ which were eventually adopted.

Finally, the Committee developed a plan for unbiased fee-generating court appointments, which it submitted to the Chief Justice.⁷⁹ Beyond the initial 1987 mandate, the Committee also identified and addressed issues with child support guidelines.⁸⁰ Following submission of its year-end report, Chief Justice Fay extended the life of the Advisory Committee for a second year. In addition, Judge Darigan was named to succeed Justice Grande as chair.⁸¹

In the Committee’s second report published in 1989, it summarized its accomplishments over the past two years, as follows:

73. RHODE ISLAND REPORT ON THE JUDICIARY 1988, at 9 (1988), <https://helindigitalcommons.org/cgi/viewcontent.cgi?article=1043&context=lawarchive> [<https://perma.cc/BX5Q-27QZ>].

74. *Id.*

75. *Id.*

76. *Id.* at 10.

77. *Id.* (internal quotation marks omitted).

78. *Id.*

79. *Id.*

80. *Id.*

81. RHODE ISLAND REPORT ON THE JUDICIARY 1989, *supra* note 66, at 10.

1. Planning and conducting two statewide conferences on gender bias, one for judges and one for sheriffs and court employees;
2. Drafting proposed revisions to the Canons of Judicial Ethics and the Canons of Professional Responsibility (now the Rules of Professional Conduct);
3. Proposing a system for establishing panels of qualified attorneys for fee-generating court appointments;
4. Reviewing the language in all court forms, rules, and publications to eliminate sexist language; [and]
5. Studying the impact of new child support guidelines.⁸²

B. *The Advisory Committee Continued its Efforts with a Five-Year Survey that Showed Continued Bias*

After receiving the 1989 report, Chief Justice Fay commended the Advisory Committee.⁸³ With the work of the original Committee and the subsequent Advisory Committee, Rhode Island was at the forefront in addressing gender bias. Chief Justice Fay acknowledged that Rhode Island's efforts had the "potential of serving as a model for other states."⁸⁴ His next set of directives to the Advisory Committee included:

1. Conducting training for nonjudicial employees in communication;
2. Studying and proposing solutions to potential gender bias in the division of marital assets, determination of child custody, and awarding of alimony in divorce cases;
3. Implementing the proposal to establish rotating panels for fee-generating appointments; [and]
4. Conducting follow-up studies to measure the progress the courts have made in eliminating gender bias.⁸⁵

Of the four tasks outlined by Chief Justice Fay, the Advisory Committee publicized its work addressing gender bias issues in

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

family law,⁸⁶ as well as a five-year follow-up study to measure progress in eliminating gender bias.

The five-year follow-up study was conducted in 1992 and 1993.⁸⁷ Questionnaires consistent with the original study were distributed to attorneys, judges, jurors, and court employees.⁸⁸ The Advisory Committee published the findings of the survey in the annual Report on the Judiciary in 1992–1993. Based on the five-year survey, there was some reported improvement given “[t]he vast majority of attorneys and judges believed there [wa]s less gender bias in the court system today [in 1993] than in 1986.”⁸⁹ However, it was clear that gender-bias issues persisted in the Rhode Island court system.⁹⁰

C. *The Ten-Year Survey Showed Gender Bias Continued*

Based on the findings from the 1992 and 1993 survey, the Advisory Committee renewed the original Committee’s recommendation for the establishment of a permanent committee. This request was adopted by Chief Justice Weisberger in September 1993, and the Permanent Advisory Committee on Women in the Courts (the Permanent Advisory Committee) was established by Executive Order No. 93–03.⁹¹

Chief Justice Weisberger issued a number of directives to the Permanent Advisory Committee. One was to continue to monitor

86. From 1990 to 1993, the Advisory Committee examined and addressed issues of gender bias in the division of marital assets, determination of child custody, and alimony, areas of concern identified in the 1987 Report. RHODE ISLAND REPORT ON THE JUDICIARY 1990, at 11 (1990), <http://helindigitalcommons.org/lawarchive/44> [<https://perma.cc/HE87-7M4T>]; RHODE ISLAND REPORT ON THE JUDICIARY 1991, at 15 (1991), <https://helindigitalcommons.org/lawarchive/53/> [<https://perma.cc/PSH4-KHFL>]; RHODE ISLAND REPORT ON THE JUDICIARY 1992–1993, at 86 (1993), <http://helindigitalcommons.org/lawarchive/52> [<https://perma.cc/2LF5-NJXL>].

87. RHODE ISLAND REPORT ON THE JUDICIARY 1992–1993, *supra* note 86, at 26.

88. *Id.*

89. *Id.*

90. *Id.* (listing other identified issues, including that attorneys viewed other attorneys as the main perpetrators of gender bias, jurors were not conscious of gender-bias issues, judges and attorneys did not see eye-to-eye on how gender bias affected case outcomes, and the salary and opportunity gaps persisted).

91. See R.I. Exec. Order No. 93–3 (Feb. 15, 1993).

the implementation of the Report's recommendations and conduct future studies regarding gender bias, including that "[a]t least every five years the committee [wa]s responsible for conducting a survey of court participants to discern if there [were] any areas where gender bias [wa]s perceived as a problem."⁹² Other goals were to "develop educational programs for judges and for non-judicial staff to increase awareness about the problems and effects of gender bias in the judicial process"; and "examin[e] court statutes, rules, practices[,] and conduct" to determine whether "there [wa]s any indication that they may result in the unfair treatment of women."⁹³

In response to the directives of Chief Justice Weisberger, the Permanent Advisory Committee organized a number of educational seminars on gender bias, including a judicial seminar on gender bias to "sensitize judges about proper forms of communication in the court setting and to encourage their leadership in eliminating biased behavior."⁹⁴ The Committee also worked with the Providence County sheriffs' department, wherein an administrative order against sexual harassment was issued, sexual-harassment training was expanded from only new employees to all employees, and similar programs were created for expansion to the other counties.⁹⁵ The Permanent Advisory Committee also published a booklet on gender bias in the courts, entitled "Blind Justice."⁹⁶ In addition, between 1995 and 1998, a joint subcommittee was formed with the Rhode Island Bar Association to draft a client statement of rights and responsibilities to improve the relationship between the legal system and the public.⁹⁷

92. RHODE ISLAND REPORT ON THE JUDICIARY 1997, at 37 (1997), <https://helindigitalcommons.org/lawarchive/48/> [<https://perma.cc/manage/create?folder=12605>].

93. *Id.* at 37.

94. RHODE ISLAND REPORT ON THE JUDICIARY 1994, at 25 (1994), <https://helindigitalcommons.org/lawarchive/51/> [<https://perma.cc/ZNF5-ZPCV>]. The Supreme Court Judicial Education Commission reported that an education seminar on "Gender Bias" was offered in 1994. *Id.* at 23.

95. *Id.* at 25.

96. *Id.*

97. See RHODE ISLAND REPORT ON THE JUDICIARY 1995, at 25 (1995), <https://helindigitalcommons.org/lawarchive/50/> [<https://perma.cc/WQF9-2DCS>]. This project was commenced to improve the judiciary and bar's

In 1998, the Permanent Advisory Committee conducted a ten-year survey to monitor progress of the efforts to eliminate gender bias. Surveys were sent to judges and selected attorneys, and the results were published in the Rhode Island Bar Journal.⁹⁸ The ten-year assessment revealed that gender-biased behaviors persisted in the court system.⁹⁹ Bias in the courtroom environment included the following:

- Almost half [46%] of the respondents observed a mixed audience being addressed as “gentlemen;”
- Nearly the same number [44%] heard sexual comments on the dress of female attorneys, litigants and witnesses in court;
- Just over a third [35%] observed off-color remarks demeaning to women made in court; [and]
- 34[%] heard litigants or witnesses addressed by endearing terms, such as “honey,” “dearie,” or “young lady.”¹⁰⁰

More than 33% of attorneys believed there was persistent bias against women by judges, court personnel, and sheriffs. The survey results also revealed “[j]udges [were] perceived as primarily responsible for addressing mixed groups as ‘gentlemen’ and using

relationship with the public after a legislator reported receiving numerous complaints from female constituents about attorney billing practices. *Id.* A proposal was created based on court rules enacted in New York and samples from other jurisdictions. *Id.* In addition, the subcommittee made efforts to obtain feedback and comments from members of the Rhode Island bar by circulating the proposed client statement of rights and responsibilities in the Bar Journal and at the Annual Meeting of the Rhode Island Bar Association. RHODE ISLAND REPORT ON THE JUDICIARY 1996, at 27 (1996), <https://helindigitalcommons.org/lawarchive/49/> [<https://perma.cc/QT5J-EY7C>]. Thereafter, the Permanent Advisory Committee focused on implementing the client’s statement of rights and responsibilities. RHODE ISLAND REPORT ON THE JUDICIARY 1997, *supra* note 92, at 37.

98. See RHODE ISLAND REPORT ON THE JUDICIARY 1998, at 37 (1998), <https://helindigitalcommons.org/lawarchive/47/> [<https://perma.cc/KPX3-C5FU>]; RHODE ISLAND REPORT ON THE JUDICIARY 1999, at 40–41 (1999), <https://helindigitalcommons.org/lawarchive/58/> [<https://perma.cc/D3MU-BF28>].

99. See Supreme Court Permanent Advisory Comm. on Women in the Courts, *Gender Bias in the State Courts: How the Problem is Perceived Today by Attorneys and Judges*, R.I.B.J., May 1999, at 17, 17 (1999).

100. *Id.*

endearing names when addressing female litigants or witnesses; attorneys [were] seen as the group primarily responsible for sexual comments about dress and for off-color remarks.”¹⁰¹ Similar to the original study in 1987, male attorneys were identified as the main perpetrator of gender bias.

Women reported observing and experiencing bias more frequently than men. Some examples of bias included “addressing female attorneys by endearing names in court or in chambers, questioning female attorneys about the interference of work with family, and judges giving credibility to arguments made by male attorneys but not for similar arguments by female attorneys.”¹⁰² Most women attorneys “perceived that males ha[d] an advantage and [we]re favored by male judges,” while most judges responded that gender did not have a bearing on their decisions.¹⁰³

In conducting the ten-year assessment, the Permanent Advisory Committee also identified gender-based issues in specific areas of the law, such as personal-injury law, family law, and criminal law.¹⁰⁴ For example, in personal-injury matters, judges and attorneys noticed a demeaning trend where law firms would place a female attorney with no active role at counsel table as an apparent strategic ploy to curry favor with jurors.¹⁰⁵

D. *The Focus of the Permanent Advisory Committee Was Expanded to Include Racial and Ethnic Bias*

Following the 1998 survey, the Permanent Advisory Committee prepared and proposed a harassment policy for the

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 17–19. In the area of family law, it was viewed that the reluctance of judges to award attorneys’ fees disadvantaged female litigants because they were more frequently the economically dependent spouse; mothers were more often precluded from trying to increase child support because of the cost of an attorney; and issues persisted with alimony, custody decisions, and division of marital property. *Id.* Further issues were identified in the area of domestic violence, where attorneys believed review or issuance of protective orders was adequate while judges believed they were excessive. *Id.* at 18. A majority of attorneys disagreed with prosecuting a violation of a protective order when a victim recanted, but 90% of the judges supported it. *Id.* Additional issues were identified and detailed in criminal court and sexual-assault cases. *Id.*

105. *Id.* at 18–19.

judiciary.¹⁰⁶ In addition, by Executive Order No. 99–09, the role of the Permanent Advisory Committee was expanded to include a focus on eliminating racial and ethnic bias, and it was renamed the Permanent Advisory Committee on Women and Minorities in the Courts.¹⁰⁷ The newly expanded Permanent Advisory Committee was charged with “identify[ing] problems and mak[ing] recommendations that ensure fair and equal treatment for all parties, attorneys, court employees, and other persons who come in contact with the state courts” by “examining all levels of the state judicial system, including a review of court statutes, rules, practices, and conduct, and raising awareness about the problems and effects of bias in the judicial process.”¹⁰⁸ In order to carry out its directive, membership of the newly expanded Permanent Advisory Committee more than doubled from twelve to twenty-five members. In addition, three subcommittees were developed: the “Education Subcommittee”; the “Forms Subcommittee”; and the “Survey Subcommittee” (the last of which was eventually eliminated and replaced with the “Employment Subcommittee”) that focused on diversifying the workforce in the court.¹⁰⁹

In 2001, the Permanent Advisory Committee focused on improving the education and understanding of diversity issues. The Education Subcommittee published a pamphlet, entitled “Equal Justice for All,” regarding “appropriate language and actions to avoid biased behavior, or the appearance of bias, within the court context” that was distributed at diversity training programs.¹¹⁰ In addition, to help develop a future agenda, the Permanent Advisory Committee conducted two studies: one on

106. RHODE ISLAND REPORT ON THE JUDICIARY 1999, *supra* note 98, at 40.

107. *Id.* at 41.

108. *Id.*; *see also* R.I. JUDICIARY, RHODE ISLAND REPORT ON THE JUDICIARY 2000, at 48 (2000), <https://helindigitalcommons.org/lawarchive/57/> [<https://perma.cc/5TRD-AR2R>]; *Rhode Island Supreme Court’s Permanent Advisory Committee on Women and Minorities in the Courts*, NAT’L CONSORTIUM ON RACIAL AND ETHICS FAIRNESS IN THE CTS., <http://www.national-consortium.org/~media/Microsites/Files/National%20Consortium/State%20Resources/Rhode-Island-Women-Minorities-Advisory-Committee-2014.ashx> [<https://perma.cc/MKM8-LEGY>] (last visited Apr. 8, 2020).

109. *Rhode Island Supreme Court’s Permanent Advisory Committee on Women and Minorities in the Courts*, *supra* note 108.

110. RHODE ISLAND JUDICIARY, RHODE ISLAND REPORT ON THE JUDICIARY 2001, at 31 (2001), <http://helindigitalcommons.org/lawarchive/56/> [<https://perma.cc/WXA8-L7HM>].

public perceptions of the court process, including an examination of racial and ethnic bias by court personnel and in court processes, and a second examining sentencing practices “to determine the extent to which race and ethnicity were factors in sentencing.”¹¹¹

The Permanent Advisory Committee submitted its first interim report and recommendation in 2002 to then-Chief Justice Frank J. Williams, who had been elevated to Chief Justice of the Rhode Island Supreme Court in 2001 following the retirement of Chief Justice Weisberger.¹¹² The Education Subcommittee reported that it facilitated diversity training for judges and magistrates at the Judicial Conference and for new lawyers at orientation.¹¹³ The Forms Subcommittee prioritized forms to be translated in concert with the Court’s initiative to improve language-access services in the court system.¹¹⁴ Finally, the Survey Committee recommended increasing diversity among judicial employees and the jury pool, as well as reviewing bail practices for diversity issues.¹¹⁵

In 2003, the Permanent Advisory Committee continued its education programs for court employees and attorneys that focused on providing the tools to serve a diverse public. Additionally, the Permanent Advisory Committee focused on hiring and recruiting more minorities in the Judiciary. Finally, the Permanent Advisory Committee continued its efforts in supporting the translation of judiciary forms.¹¹⁶

E. The Permanent Advisory Committee’s Momentum on Gender Bias Issues Stalled

Although the Permanent Advisory Committee was very active for a sixteen-year period from 1987 to 2003—and had been at the forefront of addressing gender-bias issues, serving as a model for other states—momentum on gender equality seemed to stall around

111. *Id.* The Rhode Island Bar Association, the Rhode Island Foundation, and the State Justice Institute funded the two studies. *Id.*

112. RHODE ISLAND JUDICIARY, RHODE ISLAND REPORT ON THE JUDICIARY 2002, at 26 (2002), <https://helindigitalcommons.org/lawarchive/55/> [<https://perma.cc/9BYT-TMAA>].

113. *Id.*

114. *Id.*

115. *Id.*

116. RHODE ISLAND REPORT ON THE JUDICIARY 2003, at 2 (2003), <http://helindigitalcommons.org/lawarchive/54> [<https://perma.cc/3L6H-B6GU>].

2003. For the next fifteen years, the work of the Permanent Advisory Committee was no longer readily published. After 2003, the only reference to the work of the Permanent Advisory Committee in the annual Rhode Island Report on the Judiciary was in the reports by the Office of Interpreters between 2005 and 2008.¹¹⁷ The Office of Interpreters reported that it was an active member of the Permanent Advisory Committee and translated forms identified by the Permanent Advisory Committee in an effort to make the courthouse more accessible.¹¹⁸

The only other publicly available window into the Permanent Advisory Committee's activity in this fifteen-year period is the Permanent Advisory Committee's meeting minutes. The minutes reflect that the Permanent Advisory Committee during that time period was no longer focused on the elimination of gender bias. For example, during the final meeting on June 9, 2016, one member of the Permanent Advisory Committee suggested that "things w[ould] get better, they just take time."¹¹⁹ Another member put forth a "theory" that "there was a time when women were stay-at-home mothers and lived a different lifestyle" and "little by little women started going out into the workforce and now the Judiciary is comprised of 65% women" as a result of "societal changes that allowed for more and more women to start working outside of the

117. RHODE ISLAND REPORT ON THE JUDICIARY 2008, at 3 (2008), <https://helindigitalcommons.org/lawarchive/69/> [<https://perma.cc/8LRL-Y2A6>]; RHODE ISLAND REPORT ON THE JUDICIARY 2007, at 4 (2007), <https://helindigitalcommons.org/lawarchive/70/> [<https://perma.cc/X6AS-LLQ5>]; RHODE ISLAND REPORT ON THE JUDICIARY 2006, at 4 (2006), <https://helindigitalcommons.org/lawarchive/65/> [<https://perma.cc/KQ7T-8PAA>] [hereinafter 2006 REPORT]; RHODE ISLAND REPORT ON THE JUDICIARY 2005 4 (2005), <https://helindigitalcommons.org/lawarchive/66/> [<https://perma.cc/V67H-68K8>]. On January 2, 2003, Chief Justice Williams entered Executive Order No. 2003-0001, altering the composition and requirements regarding submission of reports to the Chief Justice. R.I. Supreme Court, Exec. Order No. 2003-0001 (2003). The composition of the Permanent Advisory Committee and requirement regarding submission of reports to the Chief Justice was again amended by Administrative Order No. 2010-04, entered by Chief Justice Paul A. Suttell on July 13, 2010. R.I. Supreme Court, Admin. Order No. 2010-04 (2010).

118. 2006 REPORT, *supra* note 117, at 4.

119. Permanent Advisory Committee on Women and Minorities in the Courts, Meeting Summary June 9, 2016, at 5 (June 9, 2016) (on file with the Roger Williams University Law Review) [hereinafter 2016 Meeting Summary].

home.”¹²⁰ That observation, however, was inaccurate: there were actually more women employed in the judiciary (67%) in 1987 when the Committee issued its initial Report. Furthermore, a focus on the sheer number of women employed overlooks important considerations, such as equality in pay grade, salary, position, and opportunities for training and promotion, all of which the Committee identified as areas where women were disadvantaged.¹²¹

Although some members of the Permanent Advisory Committee believed that change would happen gradually over time, other members demanded answers for why there had not been change and suggested looking to what others, “someone, somewhere,” had done to successfully diversify.¹²² The Employment Subcommittee was further tasked with investigating and creating a proposal to promote gender equality, but it appears that the full Permanent Advisory Committee never reconvened after the June 9, 2016 meeting.

During this time, Rhode Island was not the only state to deemphasize and fail to prioritize efforts to achieve gender equality in the court system.¹²³ Other states, however, pulled ahead as

120. *Id.*

121. RHODE ISLAND REPORT, *supra* note 1, at 25.

122. 2016 Meeting Summary, *supra* note 119, at 5.

123. There are a number of studies to explain the stall in the momentum around the turn of the century:

Many scholars explain the “stalled” gender revolution as an outcome of three conditions: persisting beliefs in “gender essentialism” (that is, women and men are “innately and fundamentally different” in interests and skills), a failure to achieve greater egalitarianism in domestic work and childrearing, and an adjustment by even strongly career-oriented women to the reality of dual pressures from work and family by making career compromises even if they have not actually adopted an ideology of “opting out.”

Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in U.S. Women’s Economic and Social Status and Political Participation*, RSF: RUSSELL SAGE FOUND. J. SOC. SCI., Aug. 2016, at 1, 19; accord Sara Raley et al., *When Do Fathers Care? Mothers’ Economic Contribution and Fathers’ Involvement in Child Care*, 117 AM. J. SOC. 1422, 1423 (2012) (“[S]tudies . . . demonstrate that it is the division of labor surrounding children—not housework—that seems to differentiate the activities of men and women and *stall movement toward greater gender equality in labor market outcomes.*” (citing studies) (emphasis added)); SCHAFFRAN & WIKLER, *supra* note 13, at 103–06 (detailing reasons for the

leaders in the charge for gender equality. These leading states persistently kept a spotlight on gender-bias problems, continued to monitor for progress and obstacles, created and nurtured a state-wide network of local gender-bias committees to implement recommendations, and expanded efforts by forging working relations with advocacy groups outside the court system.¹²⁴ Now more than ever, a designated committee is necessary to eliminate gender bias throughout the legal system in Rhode Island. Change will not happen with just time alone. The commitment to eliminating gender bias in the legal profession must be revitalized.

III. THE ROAD AHEAD: NEXT STEPS TO ADVANCE GENDER EQUALITY

The Committee and its progeny have many accomplishments. The initial Report was significant to identifying ongoing gender-bias issues in the court system in Rhode Island. The Report also provided concrete recommendations to address those issues. The subsequent implementation by the Advisory Committee and Permanent Advisory Committee resulted in some improvement of the issues of gender bias in the court environment.

Appreciating that the efforts of the Committee and its progeny have resulted in some progress reinforces the continued need for a designated committee focused on combating gender bias. Fueled with voluminous and cutting-edge research, as well as models of successful initiatives in other states, such a committee can make Rhode Island a national trailblazer for gender equality once more. Now is the time to reinvigorate the efforts to cement the gains already achieved and to maximize the opportunity for further

declining focus on eliminating gender bias in the judiciary); *see also* Philip N. Cohen, *The "End of Men" Is Not True: What Is Not and What Might Be on the Road Toward Gender Equality*, 93 B.U. L. REV. 1159, 1180 (2013) (explaining that at the turn of the century, "[a]ctive intervention to move toward gender equality [wa]s not high on the mainstream political agenda"); Robin J. Ely et al., *Rethink What You "Know" About High-Achieving Women*, HARV. BUS. REV. (Dec. 2014), <https://hbr.org/2014/12/rethink-what-you-know-about-high-achieving-women> [<https://perma.cc/M9WU-62M3>] (primary responsibility for child rearing "hinders" a woman's "equal career importance"); Miranda McGowan, *The Parent Trap: Equality, Sex, and Partnership in the Modern Law Firm*, 102 MARQ. L. REV. 1195, 1231 (2019) ("A woman's 'shouldering most of the child rearing' and responsibilities for managing a home make it likely that her career will take a backseat to her husband's. That in turn makes it harder for women to devote energy and time to advancing their careers.").

124. *See* SCHAFFRAN & WIKLER, *supra* note 13, at ix.

reform. Gender bias is deeply entrenched throughout the legal profession and will perpetuate unless intentionally interrupted.¹²⁵

A. *Gender Biases Persist Within the Legal Profession Today*

The gender-bias issues examined in the 1987 Report were not unique to Rhode Island; the reported problems were issues faced by all courts and all states. Many of the issues identified in 1987 continue to exist today.¹²⁶ Even decades after women have comprised half of law school graduates and entry-level associates, women are still only making up about 20% of equity partners in law firms.¹²⁷

The Rhode Island surveys and the current national data make it clear that much work remains to be done in this area. The issues identified by Rhode Island women in 1987—being “outsiders in a system in which the ‘old boy’s network’ clearly work[ed] to the advantage of . . . male peers,” having to “work harder than males to gain respect,” “simply not [being] treated as equals,” and that “[judges expect[ed] ‘perfection from women attorneys but not from male attorneys’”¹²⁸—persist today.¹²⁹

A study published in the Fall of 2019 by the American Bar Association (ABA) examined why gender disparity remains and evaluated issues such as the compensation system, homemaker stereotypes, the “boys club,” and limited opportunities. Some statistics from the study include: women account for 20% of equity

125. See *id.* at x; see also Joan C. Williams, *Hacking Tech’s Diversity Problem*, HARV. BUS. REV. (Oct. 2014), <https://hbr.org/2014/10/hacking-techs-diversity-problem> [<https://perma.cc/R62M-B2MX>].

126. Compare discussion *supra* Part I.A and I.C (detailing Rhode Island gender-bias issues for women in the legal profession in 1987, including sexual harassment such as extraneous comments on a woman’s personal appearance and dress, unwelcome verbal and physical advances, and unwanted sexist conduct, lack of access to opportunities for advancement and promotional opportunities, and lower salary), with LIEBENBERG & SCHARF, *supra* note 8, at ii (detailing nationwide gender-bias issues for women lawyers in 2019, including sexual harassment, unwanted sexual advances and requests for sexual favors; lack of access to opportunities for advancement, business development, and promotional opportunities; lower salary; and denial of salary increases or bonuses).

127. *Women and Minority Equity Partners*, *supra* note 8; LIEBENBERG & SCHARF, *supra* note 8, at 1.

128. RHODE ISLAND REPORT, *supra* note 1, at 11.

129. See LIEBENBERG & SCHARF, *supra* note 8, at ii.

partners despite associate classes comprised of 45–50% women attorneys; 50% of women attorneys in comparison to 6% of men attorneys reported experiencing unwanted sexual conduct at work; 82% of women attorneys in comparison to 0% of men attorneys reported being mistaken for lower-level employees; and 54% of the women attorneys said arranging childcare was their full responsibility, compared to 1% of men attorneys.¹³⁰

Leading gender-bias commentators unanimously conclude that gender bias, although subtler than the overt bias that was prevalent when state and federal task forces began their work in the 1980s, continues to exist. This implicit bias, which is often overlooked or not recognized by many members of the legal profession, continues to affect the advancement of women in the legal profession.¹³¹ The ABA's Commission on Women in the Profession and the Minority Corporate Counsel Association identified four discrete biases affecting women's equal opportunities for advancement: (1) The "Prove-It-Again" bias, wherein women are held to a higher standard, must "go 'above and beyond' to get the same recognition and respect as their colleagues," and often have their ideas "stolen"; (2) the "Tightrope" bias, wherein women are pressured "to behave in feminine ways" (i.e., "modest, self-effacing, and nice—good team players," versus "direct, assertive, competitive, and ambitious—leaders"); (3) the "Maternal Wall" bias, wherein women with children are "passed over for promotions, given 'mommy track' low-quality assignments, demoted or paid less, and unfairly disadvantaged for working part-time or with a flexible schedule;" and (4) the "Tug of War" bias, sometimes called "queen bee syndrome," wherein gender bias against women fuels conflict among women who respond by, for instance, undercutting other women if it is felt there is only room for one woman in a prized position, distancing themselves from other women, and assimilating to the "boy's club" as an attempted

130. *Id.* at 7–8, 12; *Women and Minority Equity Partners*, *supra* note 8; *see also supra* note 126.

131. *See, e.g.*, Amy Barasch, *Gender Bias Analysis Version 2.0: Shifting the Focus to Outcomes and Legitimacy*, 36 N.Y.U. REV. L. & SOC. CHANGE 529, 545–51 (2012); Alison M. Nelson, *Spotlight on Bias*, ADVOCATE Feb. 2019, at 31, 31; Michele N. Struffolino, *The Devil You Don't Know: Implicit Bias Keeps Women in Their Place*, 38 PACE L. REV. 260, 284 (2018).

strategic move to avoid being seen as “a woman.”¹³² These biases, often now occurring unintentionally and at unconscious levels, continue to be major barriers to advancement at every stage in a woman’s legal career—from law school to all phases of the legal profession, including promotions, assignments, performance evaluations, compensation, mentorship, and advancement.¹³³ These are some of the identified barriers that have caused a disproportionately high rate of attrition of women lawyers who are pushed out of the profession.

The work of the Committee and its progeny, as well as other task forces, bar associations, and organizations, have contributed to a greater understanding of these issues for women lawyers. As was true in the 1980s, there must be continued, conscious commitment to change from the entire profession if persistent gender-bias issues are to be eradicated.¹³⁴ The

132. JOAN C. WILLIAMS, ET AL., YOU CAN’T CHANGE WHAT YOU CAN’T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION, 3, 7–8 (2018) <https://www.americanbar.org/content/dam/aba/administrative/women/Update%20Bias%20Interrupters.pdf> [<https://perma.cc/U78D-8AXV>]; see generally Nicole P. Dyszlewski, *Boldly Marching Through Closed Doors*, 25 ROGER WILLIAMS U. L. REV. 340 (2020) (collecting anecdotes, experiences, and stories shared by early Rhode Island women lawyers of the challenges faced in the legal profession as a result of these biases).

133. See Pearl Gondrella Mann, *Unfinished Business Obstacles to Advancement for Women Lawyers*, ORANGE COUNTY LAW., Aug. 2006, at 32, 32 (discussing the research of the ABA Commission on Women in the Profession in identifying major barriers to women’s advancement, including traditional gender stereotypes, inadequate access to mentors and support networks, and inflexible workplace structures).

134. There have been and continue to be long-term, ongoing initiatives on the national level that research gender-bias issues and make recommendations for improvement. For example, around the same time that state and federal courts were establishing task forces to examine gender bias in the judiciary, the ABA created the Commission on Women in the Profession to address gender discrimination throughout the legal profession. This Commission was first chaired by Hillary Rodham Clinton in 1987. The first report recognized the persistence of discrimination against women in the legal profession—a finding common to all task forces—and affirmed its commitment to ending barriers that prevent “full integration and equal participation of women in all aspects of the legal profession.” *Policy*, A.B.A., https://www.americanbar.org/groups/human_rights/resources/policy/ [<https://perma.cc/6W5S-3MKZ>] (last visited Apr. 4, 2020). Since then, the ABA’s Commission on Women in the Profession continues to assess the status of women lawyers, identify barriers in advancement, and recommend action to address problems. *Commission on Women in the Profession: About Us*, A.B.A., <https://www.americanbar.org/>

underrepresentation of women among leadership positions and the disturbing implications of the gender divide confirmed in recent studies, by the ABA and others, necessitate action by the Rhode Island bar to provide equality for all of its members.

B. A Permanent Committee Focusing on Elimination of Gender Bias in the Legal Profession in Rhode Island is Needed Now More Than Ever

The Rhode Island judiciary was a forerunner in taking innovative steps towards gender equality that yielded significant gains. The self-examination of the Committee and its progeny

groups/diversity/women/about_us/ [https://perma.cc/2FGC-8KJW] (last visited Apr. 4, 2020). The ABA has amended both its Model Code of Judicial Conduct and the Model Rules of Professional Conduct to include prohibitions on bias. It has also issued a number of reports that document continuing progress, as well as continuing discrimination against women throughout the legal profession, and has recommended agendas for change. *See Women in the Profession*, A.B.A., <https://www.americanbar.org/groups/diversity/women/> [https://perma.cc/8SXW-M77A] (last visited Apr. 4, 2020). For example, the ABA created “Bias Interrupter Tools” to assist law firms and legal departments in “interrupting bias in hiring, assignments, performance evaluation, compensation, and sponsorship, using metrics to identify bias, adjustments to business systems to interrupt bias, and reevaluation of metrics to assess progress.” Nelson, *supra* note 131, at 33. In 2017 and 2018, the ABA undertook a Presidential Initiative, “Achieving Long-Term Careers for Women in Law” that “focused on increasing the number of women lawyers who pursue successful long-term careers in the law.” *Presidential Initiative: Achieving Long-Term Careers for Women in Law*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/office_president/Initiative_Overview.pdf [https://perma.cc/TRY5-C7WJ] (last visited Apr. 4, 2020). The ABA Commission on Women in the Profession has continued the work of the initiative. The first of many reports to carry out the 2017 and 2018 Presidential Initiative was published in the fall of 2019, *Walking Out The Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, authored by Roberta D. Liebenberg and Stephanie A. Scharf. This report examined causes of the tremendous talent drain of women lawyers in the profession and offered solutions to increase the numbers and advance women into leadership. LIEBENBERG & SCHARF, *supra* note 8. The initiatives, articles, research, and resources gathered by the ABA Commission on Women in the Profession may be helpful in providing guidance for a Rhode Island committee in examining and surmounting modern barriers and career dynamics women lawyers still confront. *See Resources*, A.B.A., <https://www.americanbar.org/groups/diversity/women/resources/> [https://perma.cc/4JJW-SUGA] (last visited Apr. 22, 2020) (providing links to various reports, research, statistics, and organizations in furtherance of the mission of ensuring full and equal participation of women in the ABA, the profession, and the justice system).

enhanced the understanding that gender equality is an important goal to allow full utilization of Rhode Island's legal talent pool, enabled the court to identify and devise means to eliminate the harmful effects of gender bias, brought attention to unconscious prejudice, and heightened the appreciation that "progress does not occur automatically, but requires a concerted effort to change habitual modes of thinking and action."¹³⁵

Although progress was slow, it was progress nonetheless. However, that progress required active attention with continuous monitoring and reevaluation. Eliminating gender bias must be a long-term endeavor. Without a mechanism to effect, integrate, and institutionalize reform, the gains Rhode Island made may, over time, be lost. The Rhode Island bar, in connection with the Rhode Island Bar Association, should form a new committee to pick up the path of reform that the Permanent Advisory Committee once led, with a focus on eliminating gender bias in the legal profession as a whole in Rhode Island.

C. *Reconstructing the Path: A Roadmap*

Although the initial focus of the Committee and its progeny was limited to identifying and eliminating gender bias in the courtroom, issues go beyond the courtroom.¹³⁶ Further, although the state judicial process impacts a large segment of the legal profession, many members of the profession are not regular participants in the court system. These attorneys are equally affected by the same gender-bias issues identified above. Therefore, the mandate of the revitalized committee needs to expand to address gender bias across the legal profession as a whole and not

135. Ruth Bader Ginsburg, *Foreword*, 84 GEO. L.J. 1651, 1651–52 (1996) (foreword to *The Gender, Race, & Ethnic Bias Task Force Project in the D.C. Circuit* (1995) which is on file with the Georgetown Law Journal).

136. As recognized by the New York Judicial Committee on Women in the Courts, which, from the start, examined women in the profession and not just the judiciary: "[A]n issue separate and apart from the treatment of women in courtroom settings . . . [is] the ability of women to reach positions of responsibility within the legal profession." N.Y. STATE JUDICIAL COMM. ON WOMEN IN THE COURTS, *WOMEN IN THE COURTS: A WORK IN PROGRESS. 15 YEARS AFTER THE REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURT* 33 (2002), http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/womeninthecourts_report_0.pdf [<https://perma.cc/2LKC-DVED>] [hereinafter N.Y. COMM. ON WOMEN IN THE COURTS].

just in the court system. For that reason, the committee should be created under the auspices and with the support of the Rhode Island Bar Association, an organization to which all Rhode Island attorneys pay mandatory annual dues.¹³⁷

Fortunately, there is a wealth of experience from which this new committee could draw.¹³⁸ Numerous state and local bar associations and committees across the country have taken an active role in addressing gender-bias issues in the legal profession. The various bar associations have utilized a variety of tools to address the persistent problem of gender bias. Significantly, these tools engage men and women—both of whom are stakeholders and co-beneficiaries of gender-equality efforts—and address challenges that ultimately advance equality for the benefit of the profession as a whole.¹³⁹ Some of the recommended measures include:

137. See Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 FLA. INT'L U. L. REV. 515, 539 (2013) (examining research on gender bias and calling for Women's Bar Associations to “mobilize to insist professional associations take on the responsibility of governing the gap”); SCHAFFRAN & WIKLER, *supra* note 13, at 63 (“The Committee should be proactive and invite representatives from court divisions and commissions, bar associations, law schools and community and civic organizations to meet with the Standing Committee to discuss possible collaborative projects.”).

138. A particularly helpful resource is the “Action in the New Millennium” manual developed by a grant from the State Justice Institute to the National Association of Women Judges on behalf of five national organizations. See SCHAFFRAN & WIKLER, *supra* note 13, at 1–2. The manual was developed based on the experiences of approximately forty-five state and federal task forces and offers a framework to lead efforts for gender equality in the legal profession. It details strategies for success and addresses questions, concerns, and obstacles for committees when implementing a plan to institutionalize gender-bias reform. *Id.*

139. See *Good Guys: Guys Overcoming Obstacles to Diversity*, NAT'L CONF. WOMEN'S B. ASS'N, <https://ncwba.org/programs/good-guys-toolkit/> [<https://perma.cc/ZJ8G-DDEY>] (last visited Apr. 4, 2020) (providing resources, research, and toolkits on the importance of engaging all people, men and women, to achieve gender equality for the benefit of all). By way of example, the Women's Impact Network of San Francisco includes a “Male Impact Subcommittee,” discussed, *infra* note 142; see also Kathleen Guthrie Woods, *In It to WIN It: Revitalized Women's Impact Network Strives to Benefit Everyone* (Mar. 5, 2019), <https://blog.sfbar.org/2019/03/05/in-it-to-win-it-revitalized-womens-impact-network-strives-to-benefit-everyone/> [<https://perma.cc/7CAL-YCDH>]; see generally A. GLINSKI, ET AL., GENDER EQUITY AND MALE ENGAGEMENT: IT ONLY WORKS WHEN EVERYONE PLAYS, (2018), <https://www.cartierphilanthropy.org/uploads/media/5acb7ba53fb8f/icrw-maleengagementbrief-webready-v5-150dpi.pdf> [<https://perma.cc/X6YY-MK29>].

- Developing formal mentorship and leadership programs;¹⁴⁰
- Developing training programs for attorneys on topics like gender issues in the courtroom, gender issues in the legal profession, negotiating strategies, unconscious bias in the legal profession, and business development;¹⁴¹
- Announcing goals and timetables for promoting gender equality in law firms, including in recruitment, hiring, retention, evaluation, mentoring, assignments, business development, and promotion;¹⁴²

140. See, e.g., N.Y. COMM. ON WOMEN IN THE COURTS, *supra* note 136, at 6 (recommending that bar associations create programs to encourage senior attorneys to act as mentors for women attorneys and law students); Mariane L. Dorris, *Mentoring Matters: The Diversity and Inclusion Fellowship Programs of the Florida Bar and Its Sections*, FLA. B.J., Mar./Apr. 2019, at 20, 20–21 (recognizing the significance of mentoring to advance women lawyers and discussing the efforts of the Florida Bar in creating mentorship opportunities for young lawyers through the Leadership Academy, the Business Law Section Fellowship Program, and the Real Property Probate and Trust Law Section Fellowship Program).

141. See, e.g., Linda M. Glover, *HBA's Gender Fairness Committee: Fifteen Years Committed to Shattering the Glass Ceiling*, HOUS. LAW., Mar./Apr. 2018, at 24, 24–25 (discussing the Houston Bar Association's Gender Fairness Task Force, which has created training programs on a variety of topics related to gender issues, as well as general topics such as "rain-making[,] . . . client expectations, balancing work and family, and bridging the generation gap"); see also Woods, *supra* note 139.

142. For example, the Bar Association of San Francisco, the Los Angeles County Bar Association, and New York have successfully increased diversity with the use of measurable goals, timetables, and incentives, which helped push forward diversity efforts in hiring and promoting practices. Mann, *supra* note 133, at 35; David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 598–99 (1996) (linking recent increases in the number of minority associates to programs with these characteristics). Initiatives that set clear measurable goals create accountability, which maintains a spotlight on gender-bias issues that is needed to drive systemic change. See, e.g., Kevin Sneader & Lareina Yee, *Confronting the Early-Career Gender Gap*, MCKINSEY & COMPANY: MCKINSEY Q., (Jan. 2020), <https://www.mckinsey.com/business-functions/organization/our-insights/confronting-the-early-career-gender-gap> [<https://perma.cc/4Y6V-AA63>] ("Managers need clear goals, data visibility on how they are doing, positive incentives, and training on inclusive leadership."). Areas that can be measured and tracked with written policies include assignments, evaluations, training, opportunities for business development, and mentoring, all of which keep leaders and managers accountable for uniform and consistent implementation and access to advancement and career-development opportunities. See generally ABA PRESIDENTIAL INITIATIVE ON ACHIEVING LONG-TERM CAREERS FOR WOMEN IN LAW, REPORT ON THE NATIONAL

- Encouraging employers in the legal profession to adopt employment policies that provide flexibility for fathers and mothers to choose the extent of involvement in raising children without prejudice to their careers;¹⁴³

SUMMIT HELD AT HARVARD LAW SCHOOL, NOVEMBER 7–8, 2017 (2017) [hereinafter HARVARD SUMMIT REPORT]. For example, in the early 2000s San Francisco’s Bar Association adopted a goal program for gender diversity called the “No Glass Ceiling Initiative,” wherein over eighty law firms and legal departments pledged to ensure gender equity by taking actions such as raising the levels of women in partnership and management positions to at least 25%. Angela Bradstreet, *Breaking the Glass Ceiling*, WOMEN LAW. J., Winter 2004, at 13, 13–14. This initiative eventually evolved into the Women’s Impact Network: No Glass Ceiling 2.0, which in turn expanded to five subcommittees that each focus on an impact goal: the Policy Impact Subcommittee works with the women’s legislative caucus, “identif[ies] the curriculum,” prepares members “for more leadership experiences,” and identifies issues in which the association can take action; the Male Impact Subcommittee “engag[es] and address[es] challenges,” while also “provid[ing] thought leadership for the benefit of all genders”; the Lawyer Lifestyle Impact Subcommittee “examin[es] work-life balance”; the Communications and Special Programs Subcommittee “identif[ies] speakers, reach[es] out to the community, and plan[s] special events”; and the Professional Development Impact Subcommittee focuses on “[s]kills and leadership training,” as well as mentorship. Woods, *supra* note 139. Along similar lines, the Orange County Bar Association’s Elimination of Bias Committee has “compiled a list of suggestions and recommendations designed to assist law firms to improve diversity, recruit, retain, support, and mentor minority and women attorneys in Orange County.” Orange Cty. Bar Ass’n Elimination of Bias Comm., *Suggestions for Law Firms to Improve Diversity in Orange County’s Legal Community*, ORANGE COUNTY LAW. 14, June 2005, at 14, 14 (2005).

143. See, e.g., N.Y. COMM. ON WOMEN IN THE COURTS, *supra* note 136, at 6 (recommending that bar associations “[e]ncourage legal employers to adopt employment policies that provide flexibility for parents to choose the extent of involvement in raising children without prejudice to their careers”); Mann, *supra* note 133, at 35 (discussing the No Glass Ceiling Task Force of Sacramento, which encourages employers to “establish part-time and flexible work policies and a parental leave policy for all attorneys at all levels”). Many “professional services firms” have “few female partners,” which is often attributed to a presumed desire of women to dedicate more time to their home and family than can be tolerated at high-level careers. Robin J. Ely & Irene Padavic, *What’s Really Holding Women Back?*, HARV. BUS. REV. (Mar.–Apr. 2020), <https://hbr.org/2020/03/whats-really-holding-women-back> [https://perma.cc/5C78-HUWF]. And yet, at least one study found that “[w]omen weren’t held back because of trouble balancing the competing demands of work and family,” which was a problem they shared with men; they were instead disadvantaged because “unlike men, they were encouraged to take accommodations, such as going part-time and shifting to internally facing roles, which derailed their careers.” *Id.* That study’s authors concluded that in order to really help women, employers must reduce the expectation of long

- Conducting and publishing an exhaustive review of data on salaries, law firm and organizational structures, hiring, promotion, retention, job titles and descriptions, and alternative work schedules in all areas of the legal profession with regular and continued data collection and publication to monitor progress toward gender equality;¹⁴⁴

hours for all. *Id.* The legal profession in general is overrun with a crushing culture of overwork, notorious for unnecessarily long hours and poor work-life balance which lead to poor mental health outcomes. *See, e.g.*, NAT'L TASK FORCE ON LAWYER WELL-BEING, *THE PATH TO LAWYER WELL BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 7, 11 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> [<https://perma.cc/F4GT-GHUT>] (generally examining concerns of lawyer wellness and providing recommendations for improvements in the profession); SUPREME JUDICIAL COURT STEERING COMMITTEE ON LAWYER WELL-BEING, *REPORT TO THE JUSTICES* 8 (2019), <https://www.mass.gov/doc/supreme-judicial-court-steering-committee-on-lawyer-well-being-report-to-the-justices/download> [<https://perma.cc/EN9G-SBMD>]. Because women still bear a heavier burden than men in caring for children and other family members, and there is still a stigma about flexible schedules, a small percentage of lawyers actually use part-time work schedules. DEBORAH L. RHODE, *ABA COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 6 (2001) (citing a survey where, although 90% of law firms allowed part-time schedules, approximately 3–4% of lawyers actually used them, due to a belief that a reduction in hours would jeopardize career advancement). The legal profession must shed these outdated gender roles and the expected twenty-four/seven work schedules and adapt to how families live and work today with flexible work schedules, childcare, family and medical leave, and equal pay. “Enabling male employees to use family policies is critical to broadening their base of support, minimizing potential backlash, and challenging the perception that caretaking is a woman’s responsibility.” Rhode, *supra* note 5, at 640; accord Connson Locke, *Why Gender Bias Still Occurs and What We Can Do About It*, *FORBES* (July 5, 2019), <https://www.forbes.com/sites/london-schoolofeconomics/2019/07/05/why-gender-bias-still-occurs-and-what-we-can-do-about-it/#afda44e5228c> [<https://perma.cc/CHF2-DVBX>] (examining a study in Canada, where implementation of “use it or lose it” paternity leave resulted in more fathers taking leave and becoming more involved and equal partners). For a comprehensive examination of the re-shaping American landscape as a result of women and mothers becoming primary breadwinners or co-breadwinners in the majority of families, see MARIA SHRIVER, ET AL., *THE SHRIVER REPORT: A WOMAN’S NATION CHANGES EVERYTHING* (2014).

144. *See, e.g.*, Rhode, *supra* note 5, at 641; SCHAFFRAN & WIKLER, *supra* note 13, at 56. Data transparency raises consciousness and encourages compliance with initiatives for gender quality, allowing employers to compare their performance to others and assisting individuals in holding employers accountable with quantifiable data. Rhode, *supra* note 5, at 640–41. Data collection also allows for identification of new and persistent gender bias

- Requiring a diversity-and-inclusion component as part of attorney Continuing Legal Education (CLE) requirements;¹⁴⁵
- Publicizing initiatives, findings, assessments, survey results, and updated material on gender bias and reform initiatives;¹⁴⁶ and
- Collaborating with, and serving as a liaison and resource for, other legal groups, agencies, and communities, including the Rhode Island judiciary, a restored and revitalized Permanent Advisory Committee on Women and Minorities in the Courts and a much-needed subcommittee focused on women and women lawyers, Roger Williams University School of Law, the Rhode Island Women’s Bar Association, and nonlegal groups, agencies, and communities.¹⁴⁷

issues, tracks progress, and provides a metric of advancement. *Id.*; see also HARVARD SUMMIT REPORT, *supra* note 142, at 12.

145. Betty Weinberg Ellerin, *Changes to State CLE Requirements Now Include Diversity, Inclusion and Elimination of Bias*, N.Y.L.J. (Mar. 23, 2018), <https://www.law.com/newyorklawjournal/2018/03/23/changes-to-state-cle-requirements-now-include-diversity-inclusion-and-elimination-of-bias/> [<https://perma.cc/E7M5-2URP>]. For example, California, Minnesota, and New York have all adopted such components in their CLE programs. *Id.*

146. Publications keep attention, awareness, and interest on the issues and reform efforts in the legal profession and community. SCHAFFRAN & WIKLER, *supra* note 13, at 68 (“This outreach educates different groups about gender bias in the courts and helps to overcome one of the most important barriers to achieving gender fairness in the courts: the widespread assumption that gender [bias] will disappear on its own as younger people come to the bar and bench.”); see also NAT’L JUDICIAL EDUC. PROGRAM, THE GENDER FAIRNESS STRATEGIES PROJECT: IMPLEMENTATION RESOURCES DIRECTORY 99 (1998), <https://www.legalmomentum.org/node/213> [<https://perma.cc/CSH9-B4V7>] (citing examples of newsletters and other publications used by committees in Florida, New York State, and Massachusetts). For example, the Gender Equality Committee in Massachusetts has a monthly publication with a summary of events and progress and has worked with the Women’s Bar Association to create a joint committee that publishes in *Lawyers Weekly*. *Id.* The publications reach hundreds of individuals, and many readers have requested copies of documents cited in the publications and reports, which they would not have known about otherwise. *Id.*

147. See *supra* note 137 and accompanying text; see *infra* notes 148–49 and accompanying text. For example, the New York Judicial Committee on Women in the Courts created a network of Gender Bias Committees in each of New York’s districts, which work independently but also work together with guidance from the Judicial Committee for suggested projects, programs, and recognition of significant contributions. SCHAFFRAN & WIKLER, *supra* note 13,

Rhode Island's committee can decide which of these options are appropriate for addressing gender bias in the state's legal profession.¹⁴⁸ There are also undoubtedly other viable options for addressing the problem.¹⁴⁹ These measures are not an exhaustive

at 64. There have also been successful collaborative efforts in Alaska, California, and Massachusetts. *Id.* at 63–67.

148. A strategic plan can be created to provide the committee with a clear road map. *See, e.g., Strategic Plans*, NAT'L CONF. WOMEN'S B. ASS'N, <https://ncwba.org/resources/governance/strategic-plans/> [<https://perma.cc/G492-RNB8>] (last visited Apr. 8, 2020); *Strategic Plan*, FLA. ASS'N WOMEN LAW., <https://www.fawl.org/our-mission> [<https://perma.cc/6YXG-9JZE>] (last visited Apr. 8, 2020); *WBA 2018–2023 Strategic Plan*, WOMEN'S B. ASS'N D.C., <https://www.wbadc.org/strategicplan> [<https://perma.cc/K259-BS3M>] (last visited Apr. 26, 2020); NAT'L ASS'N OF WOMEN JUDGES, STRATEGIC PLAN 2019–2024 (2019), https://www.nawj.org/uploads/files/long_range_plan/nawj-strategic-plan-2019-2024.pdf [<https://perma.cc/SMQ5-MBQR>] (last visited Apr. 15, 2020) (detailing the comprehensive strategic plan of the National Association of Women Judges to further its mission through “five pillars of action,” including education, membership, organizational excellence, marketing and communication, and financial sustainability).

149. After almost four decades of work on this issue, there is a rich body of research available offering toolkits and other models of solutions. *See, e.g.,* SCHAFFRAN & WIKLER, *supra* note 13 (a detailed implementation guide); HARVARD SUMMIT REPORT, *supra* note 142 (detailing examples of proposed solutions); NALP, DIVERSITY BEST PRACTICES GUIDE (2019), <https://www.nalp.org/diversitybestpracticesguide> [<https://perma.cc/V7MM-2LZ4>]; LAUREN STILLER RIKLEEN, CLOSING THE GAP: A ROADMAP FOR ACHIEVING GENDER PAY EQUITY IN LAW FIRM PARTNER COMPENSATION (2013), https://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.pdf [<https://perma.cc/7AGZ-SPZE>] (providing detailed recommendations on how to close the gender pay gap, including checklists of steps to take and the benefits of implementing the recommendations); Cindy-Ann L. Thomas, *A Theoretical Framework for Implementing Workplace Diversity*, FED. LAW., Feb. 2003, at 36, 36–37 (citing SCHAFFRAN & WIKLER, *supra* note 13); Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*, HARV. BUS. REV. (Aug. 2016), <https://hbr.org/2016/07/why-diversity-programs-fail> [<https://perma.cc/EN3Z-WV4N>] (examining which diversity programs are most effective); *Gender and Racial Fairness State Links*, NAT'L CTR. ST. CTS., <https://www.ncsc.org/Topics/Access-and-Fairness/Gender-and-Racial-Fairness/State-Links.aspx?cat=Gender%20Fairness%20Task%20Forces%20and%20Reports> [<https://perma.cc/8E73-5A8K>] (last visited Apr. 26, 2020) (providing links to gender fairness task forces and reports by state). There are seminars, conferences, newsletters, and consulting firms, as well as guidance from state bar associations and task forces, the National Association of Women Lawyers, and the ABA. There are also resources from other professional fields that can provide guidance to the committee. *See, e.g.,* WOMEN'S FUND OF R.I., GENDER EQUITY IN THE WORKPLACE: A TOOLKIT FOR MAKING IT WORK FOR SMALL BUSINESSES (2017).

list of potential options to combat gender bias, but they offer concrete guidance as Rhode Island's new committee for elimination of gender bias begins its work.¹⁵⁰

150. In addition to the support of the Rhode Island Bar Association and the Women's Bar Association, and the continued support of the Rhode Island judiciary, commentators recognize the vital role that law schools can play in addressing gender-bias issues. See, e.g., Kristy D'Angelo-Corker, *Don't Call me Sweetheart! Why the ABA's New Rule Addressing Harassment and Discrimination Is So Important for Women Working in the Legal Profession Today*, 23 LEWIS & CLARK L. REV. 263, 303–09 (2019) (calling for training and education initiatives on gender bias in law schools, law firms, and as a CLE requirement); KATIE AHERN, GUIDE FOR LAW SCHOOLS IN PREPARING LAW STUDENTS FOR HANDLING AND ADDRESSING GENDER BIAS IN THE PRACTICE OF LAW (2019), <https://ncwba.org/wp-content/uploads/2019/07/Guide-for-Law-Schools-in-Preparing-Law-Students-for-Handling-and-Addressing-Gender-Bias-in-the-Practice-of-Law.pdf> [<https://perma.cc/65X4-RA67>]; DEBORAH JONES MERRITT & KYLE MCENTEE, THE LEAKY PIPELINE FOR WOMEN ENTERING THE LEGAL PROFESSION 1–2 (2016), https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf [<https://perma.cc/D7DR-RS6V>]. Law schools can incorporate gender bias training into the law school curriculum. See SCHAFFRAN & WIKLER, *supra* note 13, at 68. In New Jersey, for example, an Educational/Law School Subcommittee was created by the standing committee on gender equality to encourage programs at the law schools that “foster inclusion of course materials on how gender bias affects substantive decisionmaking and how to address problems of gender bias experienced by women law students and professors,” which is “a critical means of addressing gender bias before attorneys begin practicing law.” *Id.* at 70. Efforts to address gender bias before attorneys begin practicing law are already underway in Rhode Island: Roger Williams University School of Law initiated a lecture series entitled “Women in Law Leadership” in 2020. *Women in Law Inaugural Leadership Lecture*, ROGER WILLIAMS U. SCH. L., <https://law.rwu.edu/events/women-law-inaugural-leadership-lecture> [<https://perma.cc/9XFR-GXF9>] (last visited Apr. 26, 2020). In addition, the Rhode Island Judiciary has taken steps to increase diversity in the legal profession by reaching the next generation of potential lawyers as early as possible. In 2017, the first Judiciary Diversity Coordinator, Dorca M. Paulino, was appointed by Chief Justice Suttell; she launched a public initiative to increase community awareness of career opportunities within the state court system and to broaden the applicant pool. *Courts Launch Diversity Hiring Initiative*, WARWICK BEACON (Sep. 26, 2017, 1:32 PM), <http://warwickonline.com/stories/courts-launch-diversity-hiring-initiative,127943> [<https://perma.cc/V94R-LQ2C>]. By 2019, several initiatives were launched that were designed to encourage diverse applicants, such as a “judiciary employment education program,” which educates high school students on careers in the judiciary and encourages them to pursue higher education generally and specifically within the legal field. *Supporting Judicial Diversity*, ROGER WILLIAMS U.: GRADUATE STORIES, <https://www.rwu.edu/graduate/about/stories/supporting-judicial-diversity> [<https://perma.cc/B7JC-6X6C>] (last visited Apr. 16, 2020). In May 2019, the Rhode Island Judiciary was recognized for its commitment to

CONCLUSION

As the third state to initiate a study on gender bias in the courts, the Committee's work in the 1980s was groundbreaking and contributed greatly to the body of research on gender bias. Despite the positive strides made under the guidance of the Committee and the Permanent Advisory Committee, the work is far from over; gender bias continues to plague the legal profession in this state and across the nation.¹⁵¹

Rhode Island needs to once again become a national leader in efforts to eradicate gender bias. Building on the foundation already laid in this state and using the examples from other jurisdictions, Rhode Island should create a committee to eliminate more subtle and intractable forms of gender bias, detect new problems, and ensure that reform remains effective and paramount moving forward.

All of us—men and women alike—have a responsibility in shaping an equitable future. We must not wait for or expect someone else to do it. We each must enthusiastically and publicly embrace a gender-equitable path forward in our home, life, work, and profession. In the pursuit of fairness and equality for women lawyers, the legal profession, and to attain equal access to justice for all, we are all in this together.

promoting diversity by the American Society for Public Administration with its Equal Opportunity/Affirmative Action Exemplary Practice Award. *Courts Recognized for Employment Diversity*, R.I. JUDICIARY (Mar. 15, 2019), <https://www.courts.ri.gov/PublicResources/media/PDF/Diversity%20award%200319%20web.pdf> [<https://perma.cc/LY47-PRMS>].

151. SCHAFFRAN & WIKLER, *supra* note 13, at 107.