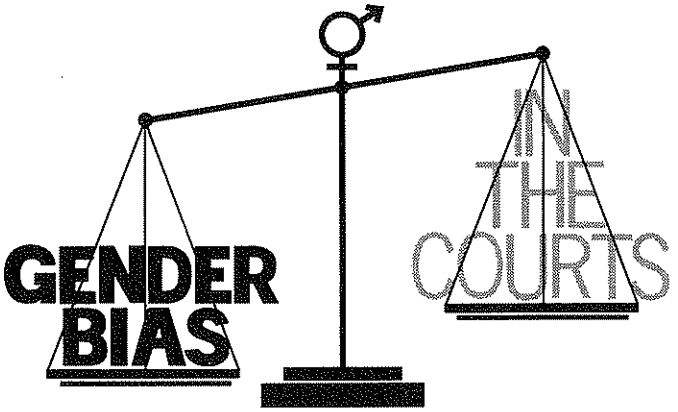

Water on Stone

A Perspective on the Movement to Eliminate Gender Bias in the Courts

Norma J. Wikler

My intent is to put our efforts in context regarding the elimination of gender bias in the courts, by which I mean understanding the gender bias reform movement in its relation to other social movements and in relation to the special qualities of the judiciary. These observations will, I hope, present a clearer picture both of where we have been and where we might wish to go.

For all of us interested in social change, a historical perspective is crucial. Regardless of the scope and depth of social movements, such as the movement for women's rights which began in the 1960s, social change will not endure unless these movements bring about lasting reforms in our core institutions. This is especially true of legal institutions, such as the courts, whose decisions affect so profoundly the operation of the whole of society. A look backward to the origins and development of our current efforts provides an understanding of how undertakings such as the gender bias task forces can serve to secure lasting change.

Curiously, both the study and the practice of institutional reform of the kind we have undertaken with respect to judicial gender bias has been neglected by American social reformers and analysts. One by-product of our work on gender bias can be to contribute to such knowledge by reflecting on what it is that we have been doing. This is the task I undertake. After describing the social and political context in which the movement to eliminate gender bias in the courts arose, I will discuss the creation of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (the NJEP) and its catalytic role in the formation of the gender bias task forces. Next, I will comment on the work and significance of the task forces, and, finally, I will give you my perspective of the road ahead.

This article is an edited version of a speech given by Professor Wikler at the National Conference on Gender Bias in the Courts, May 18, 1989, and is reprinted with permission of the State Court Journal. *Professor Wikler is a professor at the University of California—Santa Cruz, and has advised many of the state court task forces on gender bias in the courts.*—ED

One main point here will be to emphasize the changes that occurred in the very rationale for the gender bias task forces. I hope to show that in certain respects these task forces are unique in American society and that the specific missions they have undertaken are precisely tailored to the task of bringing reforms to the judiciary. Of course, this fit of form and function is much clearer in hindsight than it was to those of us who were involved in working with the first task forces, helping to define their methods and goals. And therefore, we need to be cautious in trying to predict the future path for the task forces or the broader reform movement. Nevertheless, a look at the past can help to point the way in the future.

Conditions for the emergence of the movement to eliminate gender bias in the courts

It is striking how rapidly the problem of gender bias has emerged from obscurity to prominence among judicial concerns. A visit to a law library in 1989 would yield dozens of articles on the topic, many published in leading legal and judicial journals. Courses and course segments on gender bias in the courts are included in numerous judicial education programs for state court judges and recently for federal judges, as well. Now special task forces across the country are investigating gender bias in the states' judicial systems and proposing and implementing a wide range of reforms. And the pace of change is not slowing.

The resolutions passed in August 1988 in Rockport, Maine, by the Conference of Chief Justices and the Conference of State Court Administrators (see p. 5) called for the creation in every state of both gender bias task forces and task forces for minority concerns. These resolutions signaled that gender bias and bias against minorities had been legitimated by the highest level of the judiciary as problems worthy of official investigation and reform.

Less than ten years before, the terms *judicial gender bias* or *gender bias in the courts* had not yet been introduced. As late as 1980, there was only one article on the subject in the mainstream legal and judicial literature, and there had not yet been a systematic discussion of gender bias in any judicial education program in the country. What seems so plain to us today—pervasive gender bias in the courts—was then virtually invisible.

Needless to say, the lack of attention to gender bias was not due to any shortage of the bias itself. Pioneer female litigators in the late 1960s, in both the federal and state courts, began to observe firsthand how judges' gender-based stereotypes and biases could undermine even the most progressive legal reforms through the exercise of judicial discretion and through courtroom behavior.

During the 1970s, women lawyers' firsthand observations of judicial gender bias were documented by social scientists and legal researchers who conducted empirical studies of the effects of gender on judicial fact finding and decision making in numerous areas of the law. From this uncoordinated research agenda, a disquieting picture emerged that showed that gender bias existed in all areas, operating sometimes to the disadvantage of men and more often and more seriously to the disadvantage of women. I will give a few examples that no doubt will sound familiar.

1. In juvenile law, numerous studies corroborated the finding of the American Bar Association's study *Little Sisters and the Law* that although the "crimes" that females are accused of are categorized as less serious and harmful to society than those of males, girls are more often held in detention for longer periods of time and are less likely to be placed in community programs than boys.[1]
2. Early studies also noted the casual response of the legal profession and the judiciary to the plight of battered women. Some researchers interpreted this finding as evidence of faint echoes of the common-law view of a wife as her husband's property lingering in the minds of some judges and attorneys.
3. The extensive literature generated by the anti-rape movement showed that judicial myths regarding the nature of male and female sexuality and attitudes toward the "proper" roles of women served to punish rape victims by defining rape (and spousal abuse) as "victim-precipitated crimes."
4. But it was the looming disaster in family law that most disturbed those concerned with equal justice. Social scientists studying the consequences of no-fault divorce in California began to document the important contribution state courts were unwittingly making to the feminization of poverty through seemingly minor day-to-day decisions in divorce cases. A new underclass of American women and children was coming into being through inadequate support awards, which were then inadequately enforced. Researchers traced these inequities directly to misinformation on the judges' part about the economic and social realities of women and men.[2] Disposable income for males, meanwhile, typically increased after divorce because of a combination of court decisions and the striking gender disparities in employment and earnings that persist in American society.

The need to educate judges about the findings of researchers

and the concerns of women lawyers was first articulated by Sylvia Roberts, a pioneer Title VII litigator from Louisiana. The idea crystallized in Ms. Roberts' mind in 1969, she has said, and she proposed it the next year to the newly formed National Organization for Women (NOW) Legal Defense and Education Fund, to which she served as general counsel. The idea for such a program had immediate appeal to the fund since it was aware of the serious problems that judicial gender bias was posing for much of its work. Nevertheless, this organization understood the hurdles that would have to be cleared in any attempt to bring reform to the judiciary. Roberts' proposal would require a breach in the wall society places around judges and the courts. This insularity deserves some special attention, for it is the source not only of one of the chief obstacles to reform but of the particular distinction of the task force approach.

INSULARITY OF JUDGES

The insularity of judges is intentional, a matter of social design, and desirable. The theory behind it is that the core judicial norms of evenhandedness and impartiality require judges to maintain their distance. Judging, unlike legislating, is supposed to answer to relatively timeless and nonlocalized norms of fairness and procedure rather than to the push and pull of the political process and the fads and enthusiasms of the moment. Thus, judges must be protected not only from the individuals pushing the many reform agendas but even, in a sense, from the reformers' aims and ideas.

The advantage of this arrangement for the processes of justice is apparent, but the arrangement also has its drawbacks. Not all of those who would seek to influence the judiciary are simply special interest groups attempting to bend judicial deliberations in their favor. Some are reformers who have information and ideas essential to impartial and equitable judging, which have been overlooked, due either to judicial inexpertise or to systematic biases, which judges may share with much of the larger society. Those of us involved in creating the NJEP saw ourselves in this second category. Our dilemma was that we, like most other Americans, had no basic quarrel with the insularity of the judiciary, so long as it served the purposes for which it was intended. Yet we sought to gain a hearing, both to share our research findings and to stimulate reflection on the judges' part to identify and eliminate biases of their own.

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At the time that gender bias in the courts was first being documented by researchers, the findings were not available to the judges. In the 1970s, judicial education was in its infancy and generally proceeded according to the dictum, "Only judges can teach judges." Yet the judges who did the teaching did not do field observations of the immediate causes of domestic violence nor did they conduct studies of the relative economic position of husbands and wives in the years following a divorce settlement. More importantly, they were not exposed to the work of those social scientists who did do the research. Judges who served as faculty for judicial education shared what they knew, but efforts to assure the completeness and accuracy of this knowledge were lacking.

To be sure, feminists and others concerned about equal justice tried to get the data to the judges. Women lawyers who were part of this early cadre litigating for women's rights in the early 1970s adopted the strategy of using the data-heavy amicus brief as a means to educate in a traditionally accepted form. But there was no assurance that judges would read the dense material nor that they would believe it. Even if they were receptive, this kind of uninvited contribution gave judges no sense of personal discovery or the kind of active learning that has the best chance of affecting deeply held beliefs and attitudes.

If only judges could teach judges, what was to be done? For the decade beginning in 1969, the idea sat on the back burner of the NOW Legal Defense and Education Fund. The staff referred to it as the "impossible project." Energy and time were devoted to shoring up the documentation of judicial gender bias, in part through court-watching projects, and to publicizing the problem through the media.

The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP)

In 1979 my path unexpectedly crossed that of the NOW Legal Defense and Education Fund. My academic research on women in the professions and on the status of women in American institutions

had led to my participation in one of the Fund's major conferences on the family. There I learned about its interest in finding someone to design and launch the National Judicial Education Program.

From my sociological perspective, it seemed as if the moment had come when there was a way through the impasse despite the traditions that appeared to block the path to reform of judicial gender bias. I believed that a well-coordinated and supported effort undertaken at that particular point in history might succeed in reaching judges on this issue. Taking a two-year leave from the University of California, I became the founding director of the NJEP and steered the project for two years before returning to academia. My successor in that post in late 1981 was Lynn Hecht Schafran, who continues to direct the program.

The strategy upon which the NJEP was established in 1980 rested on one key realization and one fortuitous circumstance. The key realization was that the concern over gender bias was really nothing different than a desire that judges be true to their own ideals of objectivity, fairness, and impartiality. In other words, those seeking equal justice were not trying to impose a feminist agenda in the manner of a traditional interest group. Rather, the goal was to provide facts and new sensibilities that would assist judges in doing precisely what they were doing—administering justice—only to do so with greater fidelity to their own ideals and with more precise knowledge.

The fortuitous development that enabled the project to engage in effective education was the formation in 1979 of the National Association of Women Judges and its subsequent decision to cosponsor the NJEP with the NOW Legal Defense and Education Fund. Here were bona fide members of the judicial community, whose experiences ranged beyond that of the upper-middle-class white males, who were ready to work with nonjudges to bring the necessary information to their colleagues. They were able to understand and communicate to their peers the ideological compatibility of the ideas of the women's movement with the core judicial norms of fairness and impartiality. Most significantly, these judges had credibility. When they spoke of bias, they spoke both as women, often as the victims of bias, and, simultaneously, as fellow judges with the objectivity and fairness of mind that the office requires. As mentioned earlier, judges are expected to differ from legislators in being above the political process, representing no special group. When women judges confirmed the existence of bias, therefore, their observations had to be taken seriously. And so they were.

One of the common forms of resistance of judges to information about gender bias in the courts was the denial that any such bias existed.

The efforts of the NJEP were greatly facilitated by the early endorsement of leading judicial organizations, including the National Center for State Courts, the National Judicial College, the California Center for Judicial Education and Research, and the American Academy of Judicial Education. The vision, commitment, and courage of these people deserve emphasis, for none of them had to give the new program their backing. They did so because they became convinced by the evidence that a problem did indeed exist and because of their adherence to the ideal of fairness to which the judiciary is devoted. These endorsements demonstrate that the eradication of gender bias has been a project undertaken by men as well as women in this field.

The NJEP's central purpose has been to develop and introduce courses into established judicial education programs for state and federal judges on the ways in which gender bias affects the courts and undermines fairness. Although these educational efforts introduced gender bias issues to many judges during the program's early years, their effectiveness in changing attitudes and behavior was limited in some important ways. These problems have been discussed at length in the literature on the NJEP.[3] But there is one particular obstacle of special interest, for it turned out to be the direct catalyst for the formation of the task forces.

One of the common forms of resistance of judges to information about gender bias in the courts was the denial that any such bias existed in the particular judge's jurisdiction, even if it was acknowledged to occur elsewhere. The NJEP was not equipped to deal with this challenge. Given the difficulty of obtaining high-quality data on gender bias in the courts, neither the NJEP staff nor interested judges were in a position to gather this evidence.

The success of the movement to eradicate gender bias in the courts, then, required that the individual states collect concrete and specific information about the ways in

which gender bias operated in that state's judicial system. Talks presented by the NJEP's first and second directors stressed this point continuously. One judge, the Honorable Marilyn Loftus, current president of the National Association of Women Judges, remembered this message when she spoke with Chief Justice Robert N. Wilentz and New Jersey administrative director of the courts Robert Lipscher in 1982 about introducing judicial education about gender bias in New Jersey.

In response to her letter requesting that he appoint a committee to collect relevant data for the 1983 Judicial College, Chief Justice Wilentz established a special one-year Supreme Court Task Force on Women in the Courts. (The task force is now in its seventh year.) The creation of this first task force ushered in the second phase of the national movement to eliminate gender bias in the courts.

The gender bias task forces

A dramatic burgeoning of task forces has followed. Similar entities were established in 1984 in New York, Rhode Island, and Arizona. Each subsequent year has seen other task forces brought into creation, usually by the chief justice of the state. A turning point in this development was surely the August 1986 Conference of Chief Justices in Omaha, Nebraska, which had on its educational program for the first time a panel on gender bias in the courts. Today the official gender bias task force count is 27: 5 states are in the exploratory phase; 17 are in the data collection and report-writing phase; and 5 are in the implementation phase. But even now, I may be out of date.

FUNCTIONS

The task forces have turned out to be more than instruments for the collection of state-specific data on gender bias in the courts for use in judicial education. Two further functions are especially important. First, the creation of a task force transforms gender bias in the courts from a problem "for women" to a problem "of the judiciary." Second, the task force model reinforces the idea that any needed reforms will be the result of self-scrutiny and of improvement from within. This perception results from the role of the chief justices in creating the task forces and the direct participation of judges who serve on them along with lawyers, community leaders, legislators and, occasionally, social scientists.

The task forces have turned out to be more than instruments for the collection of state-specific data on gender bias in the courts for use in judicial education.

As I have stressed already, the judiciary may need periodic updating and reform. But necessary corrections of misinformation and subjective bias need to come about through internal reform, preferably led by judges who have, for one reason or another, become aware of existing shortcomings and who have enough respect from peers within the judiciary to press effectively for improvement. This, of course, is what the task forces do, and it is difficult to conceive of any other kind of body or initiative that would accomplish this so well.

The task forces involve a broad range of data-gathering techniques: public hearings, surveys, reviews of court decisions, special empirical studies, collections of existing statistical data, private meetings with attorneys, "listening sessions" with laypeople, and other approaches. In each state, these data are analyzed and interpreted by the task force or by researchers who have been retained to conduct special studies and report to the task force. What is essential here is that the relevance and implications of these findings are assessed by task force members themselves for the judicial goals of fairness and impartiality.

By combining standard data collection techniques such as public hearings and surveys with original formats devised on their own, the gender bias task forces have organically developed into a unique general form capable of bringing to the attention of judicial, legal, and lay communities a wealth of information about the actual practices of the courts and the effects of these practices, including judicial rulings, on the administration of justice.

The task forces have gone beyond their original mission to become vehicles for broad institutional reform. This capability follows from the fact that the chief justice is usually in a position to authorize funds, compel cooperation in data collection, endorse and propose reforms, ensure their implementation, and support judicial education about gender bias issues on an ongoing basis. Thus, the agenda of task forces has expanded to include such activities as adding specific prohibitions against gender-biased behavior to codes of judicial conduct, introducing standards and rules of

court, instituting statistical data collection systems that allow for ongoing monitoring of gender bias issues, gender-neutralizing court documents, jury instructions, and recommending improvements in the work environment for court personnel.

FINDINGS

The National Center for State Courts makes available through its clearinghouse the reports, documents, and other materials produced by the task forces. Information is available on what the data have shown in the substantive, procedural, and administrative areas that have been investigated. No attempt will be made here to summarize the findings of the task forces, for to do so would do a disservice to the complexities of their work. Nevertheless, I will make some general observations about them.

Overall, what most impresses the reader of these reports is that the problems everywhere are generally the same. There are differences, of course, not only among states but in different jurisdictions within states, but essentially the task forces as a whole are generating a consistent picture of the forms of gender bias that permeate the American state court system.[4] Their findings confirm the studies of the 1970s that I referred to earlier, and they corroborate state and national data currently being assembled by academic researchers. These investigations have also done much more, however.

Task force inquiries add specific detail about the nature, extent, and consequences of gender bias, which, as we have seen, is often necessary in fostering acceptance by individual judges of the fact of bias in their own jurisdictions. New or insufficiently examined forms of gender bias are being brought to light as well. For example, women's limited access to the courts, because of their generally inferior economic position and some judges' and court systems' distaste for family law matters, is emerging as a critical issue across the country.

OUTCOMES

Without question, the task forces have been successful in identifying problems of gender bias.

Without question, the task forces have been successful in identifying problems of gender bias. But have they actually helped to ameliorate them?

But have they actually helped to ameliorate them? Thus far, there has been only one systematic evaluation of the work of a task force. It is reported in *Learning from the New Jersey Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States*, which Lynn Hecht Schafran and I wrote together.[5] In this evaluation, we report that "the Task Force's greatest accomplishment in the state is also its most subtle: creating a climate within a court system in which the nature and consequences of judicial gender bias are both acknowledged to exist and understood to be unacceptable in the New Jersey Courts."[6]

This claim, I believe, will also be true of most of the other task forces. To the outside observer, this may not sound like much—facing up to a problem is not the same as eliminating it. In the context of the judiciary's need for insulation, however, and of the traditions of judicial education, this is a monumental accomplishment. In less than ten years since the term was introduced, well-organized and dedicated groups are constituted by the profession's leaders to scrutinize the problem, design solutions, and monitor compliance with reforms.

In addition, the task forces' work promotes equal justice by stimulating change in bar associations, by facilitating inquiries about bias against minority groups, and by creating state and national public awareness of judicial gender bias in the courts through its contact with nonlegal organizations, lay individuals, and the media.

The gender bias task forces represent something genuinely new. Judges in the past have seldom been called on to reflect on the role of their beliefs and attitudes in perpetuating and entrenching systematic social injustices. There was something similar in the jurisprudential legal realist movement of the 1920s and 1930s, which first opened our eyes to the wide variations in behavior produced by judicial discretion. But the legal realists focused on the judges' personal modes of thought and attitude, rather than on the way that judges may reflect systematic cultural biases.[7] In this vein, the realist writer Jerome Frank called on judges to be psychoanalyzed. Salutary though that therapy may be, the task forces are presenting judges with more concrete and better targeted steps they might take to eradicate bias.

The gender bias movement is unique not only in terms of judicial reform; there has been no such in-house investigation or reform in

any other American institution or profession. The closest analogy is medical ethics, but that subject recalls Mark Twain's complaint about the weather, that is, though everyone was talking about it, no one was doing anything about it. The huge interest in medical ethics has spawned countless symposia, but no doctors' group has been constituted with a mandate to gather data on biases and inequities in the health care system and to issue recommended reforms and monitor compliance. In contrast, the gender bias task forces not only survey the problems but implement the remedies.

The road ahead

My focus on the past has been to better see the future. All social movements end—sometimes because their work is done, other times because they cannot go further. Right now it may be hard for us to consider this a problem. Look around: there are more task forces every year, and the number of participants is growing every day. And our work is crossing national borders. Canadians are working on the issues and are interested in learning more about the task force approach. Within the past six months, I have received requests for materials on task forces and judicial education on gender bias from the Netherlands, the Philippines, Israel, England, and Greece. Others involved in this effort have had other such requests, I am sure. In November 1989, when the National Association of Women Judges has its tenth anniversary meeting in Washington, D.C., women judges from many countries will attend and be introduced to this work. Our efforts are being multiplied as the movement to eradicate gender bias in the courts gets international.

But while there is growth in the number of task forces, we must examine what has happened to this movement in terms of its original goals and commitments. Let me speak candidly. From my point of view—and it is only my view—the future promises opportunities not only for continuing our progress but also for getting thrown off the track. As in all social movements, there are what social scientists call "tendencies" and "contradictions" that may alter the movement's direction and goals as new people come into it with different agendas and needs. Amid all the splendid growth and effort, I see the following five potential problems:

1. The focus has shifted from state-specific data on judicial decision making and courtroom interaction to broader perspectives on gender bias in the courts that look at the whole system and at other court participants such as jurors, prosecutors, and the police. This trend is understandable, and is considered in itself desirable, since gender bias permeates the entire court system. The problem for the task forces is that broadening the focus may also diffuse it, with the result that the judiciary does not remain the main subject of reform. As I have argued today, the great merit of the task force approach lies in its premise of self-scrutiny and internal reform. Other groups can and have studied other participants, but the judges must study themselves. This is a historic opportunity that is unlikely to recur. In my view, the resources of the task forces should be focused on the judges.
2. In some instances, the goal of producing the final reports looms so large that it threatens to eclipse other activities task forces should be undertaking during their duration, such as initiating judicial education and planning for ongoing monitoring and evaluation. Here, indeed, the tail begins to wag the dog. The problem is not just that important task force activities may be deferred but also that the report will come to signify to task force members the end of an arduous process when, in an important sense, it is just the beginning.

   I do not make this statement lightly because I know full well that operating a task force and producing a report are enormous jobs requiring prodigious energy and commitment from staff and task force members, who usually do this work in addition to their other demanding, sometimes full-time, duties. Yet we must appreciate the long-term nature of the enterprise, or we will be like a comet crossing the sky. The institutionalization of our gains through judicial and legal education, ongoing monitoring of gender bias, and other means are as important as the dissemination of the report itself.
3. The third caution may sound harsh. The task forces have been aided in numerous ways by women lawyers, who have often taken the lead in calling for their creation. But there have been problematic consequences stemming from their participation as well. Task forces seem to be attending more and more to the problems of women lawyers both inside and outside the courts, extending in some states into the problems confronting women law students, women attorneys in law firms, and in the profession as a whole. Gender bias against women lawyers is indeed important and it may also affect their ability to represent their clients. Yet the danger exists that by directing the spotlight too intensely on this area the task forces will, ironically, take on the role of a professional interest group. This turn of events would negate the basis of their effectiveness, which is their appeal to universal rather than to particularistic interests

and values. Just as important is the question of which women's interests are being protected. The task forces must address primarily the needs of the voiceless, those who cannot articulate their injustices and have no way to seek redress.

4. The media present a fourth challenge to the task forces because their attention is often drawn particularly to women lawyers at the expense of what are, in my view, equally important issues. We found in California, for example, that reporters who covered the public hearings at which the range of gender bias issues were addressed wrote mostly about women lawyers, especially the prominent ones. In so doing, they distorted the nature of the movement and diminished the seriousness of the problem.

The *Los Angeles Times*, for example, ran an excellent pre-public-hearing article giving the history of the California Judicial Council Advisory Committee on Gender Bias and describing its concerns. But its only coverage of the nine-hour hearing in Los Angeles, attended all day by a woman reporter who covers the courts, was a brief item in the "Only in L.A. People and Events" column, which cited a proposal by a prominent feminist attorney—who had also testified eloquently about inadequate child support—that the courts should provide diaper-changing tables in men's restrooms as well as women's. No doubt this represents some sort of inequity, but surely the powerful testimony heard by the committee deserved more coverage from the major Los Angeles newspaper.

5. The final, disquieting feature of some task forces is the tendency to focus on courtroom interaction and to what transpires in chambers and in professional gatherings rather than on judicial decision making in substantive law. The pressures to drift in this direction must be recognized and countered. Gender bias in courtroom interaction is an easier issue to address, if only because it elicits less resistance from judges. Even judges who harbor gender biases are less likely to oppose these lessons than they are to rethink the patterns of their decision making. And it is much easier for the press to report on a judge calling a woman lawyer "Honey" than it is to explain (or to understand) what is biased about a mutual order of protection in a domestic violence proceeding. But the task force's great contribution comes in identifying just such substantive inequities and pressing ahead in spite of the resistance to education and reform.

Conclusion

Recalling the origins and the progress of the gender bias task forces is a rewarding endeavor. All of us can take pride in what is really a quite extraordinary achievement, one not foreseen even a decade ago. My hope is that this proud review can serve a further purpose, which is to remind us of both the movement's original goals and the underlying reasons for its success. The task force approach addresses the problem of judicial gender bias as a key fits its lock. It is beautifully tailored to the task of promoting the basic judicial goals of evenhandedness and fairness to all those who appear before the bench. I do not believe that any other entity or strategy could do as well.

The news of progress in eradicating gender bias is almost all positive. Yet it is important to keep an eye focused on the magnitude of the problem yet unresolved. The feminization of poverty continues unabated, as do most of the other problems that gave rise to the projects we have undertaken. These injustices, in truth, are the fault of the society as a whole, not just the judiciary, and they will persist.

Nevertheless, we have an important role to play, and I believe it is an essential one. Sylvia Roberts, speaking to me some years ago in a philosophical mood, said, "We should think of ourselves as water on stone." How apt the metaphor: water on stone. Though the stone is hard, and the water seems merely to splash around it, eventually that stone wears away, and the landscape is transformed. How fitting that the water metaphor is the expression of feminine power in the Taoist philosophy of the Chinese ancients. In our efforts to eradicate gender bias in America's judiciary, we do indeed act as water on stone, and, provided our energies keep flowing, the barriers to full equality will indeed give way.

Notes

1. Report by the American Bar Association, *Little Sisters and the Law* (Washington, D.C.: ABA, 1977).

2. For the most extensive discussion of these issues, see Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985).

3. See Norma J. Wikler, "Educating Judges About Gender Bias in the Courts," in Laura L. Crites and Winifred L. Hepperle (eds.), *Women, the Courts and Equality* (Newbury Park, California: Sage Publications, 1987); and Lynn Hecht Schafran, "Educating the Judiciary About Gender Bias: The National Judicial Education Program to Promote Equality for Women and Men in the Courts and the New Jersey Supreme Court Task Force on Women in the Courts," 12 *Women's Rights Law Reporter* 9, 109-124 (Spring 1986).

4. Lynn Hecht Schafran, "Documenting Gender Bias in the Courts: The Task Force Approach," 70 *Judicature* 5, 280-290 (February-March, 1987).

5. Norma Wikler and Lynn Hecht Schafran, *Learning from the New Jersey Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States* (Washington, D.C.: The National Association of Women Judges, 1988).

6. *Ibid.*, p. 2.

7. See, for example, Frank, *Law and the Modern Mind* (New York: Doubleday & Co., 1930); and Frank, *Courts on Trial* (Princeton, New Jersey: The Princeton University Press, 1956).