

*Appraising Change and Progress a
Decade After the Report of the
New York Task Force on
Women in the Courts*

EQUAL Justice EQUAL Treatment EQUAL Opportunity

*A Report by the New York Judicial
Committee on Women in the Courts
May 1996*



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History of the Task Force

The creation of the New York Task Force on Women in the Courts in 1984 marked the starting point for systematic change in the responses of New York's courts to women. Appointed by then-Chief Judge Lawrence H. Cooke, in part to respond to concerns expressed by the New York State Association of Women Judges and the Women's Bar Association of the State of New York, the Task Force was composed of jurists, attorneys, academics, advocates for women, committed feminists, and independent citizens from outside the legal community.³ Invoking a "concept of justice ... antithetical to any discrimination triggered by prejudice,"⁴ Chief Judge Cooke asked the Task Force to examine the entire court system—substance as well as procedures, conduct as well as rules. He set for Task Force members a dual goal: first, determining the extent of gender bias and, second, making recommendations to address it. Gender bias was defined expansively, as occurring whenever "decisions are made or actions taken because of weight given to preconceived notions of sexual roles rather than upon a fair and unswayed appraisal of merit as to each person or situation."⁵

Laboring for nearly two years, using a battery of imaginative strategies to understand the nature and scope of gender bias in New York's courts and its possible remedies, the Task Force conducted a comprehensive study. Four public hearings provided the Task Force with the opportunity to hear some 85 witnesses. Litigants, attorneys, public officials, bar leaders, and professors all testified and provided written materials describing both personal experiences and scholarly work. To reach people without convenient access to these hearings, informal sessions were held in five upstate counties. Regional meetings with judges and practicing attorneys were used to solicit views on gender bias in courtrooms and the application of substantive law. Interested in the appointment and election of women to the bench, the Task Force queried the entire panoply of committees, commissions, and bar association screening panels responsible for making recommendations about judicial selections. Research and literature, not only from legal but also from social science sources, were examined. The Center for Women in Government at the State University of New York, Albany, was asked to survey both employment practices and working conditions, and, after analyzing personnel rules, examining statistics on women in the court system, and interviewing employees and administrators, the Center wrote an extensive report. An ambitious survey was conducted in which nearly 1800 attorneys, including men and women of various ages and in diverse practices, responded to 107 short-answer questions. Almost a third of the respondents added stories and ideas in narrative comments.

The Task Force produced a report covering comprehensively the status of women litigants, women attorneys, and women court employees and meticulously supporting sometimes sharp

³ For a list of members of the Task Force, see *Appendix A*.

⁴ *Task Force Report* at 167.

⁵ *Id.* at 168.

criticism of the courts' treatment of women. The Report presented concrete evidence of disadvantages to women, spelled out detailed conclusions, and made numbered recommendations addressed variously to court officials, bar associations, judicial screening committees, the Legislature, law schools, district attorneys, and even police departments. Chief Judge Judith S. Kaye, then-Associate Judge of the Court of Appeals and its only woman member, characterized the Report as a "thoroughly documented composite picture of discrimination, drawn by a panel of distinguished citizens of different backgrounds [that] cannot be lightly dismissed by anyone."⁶

Most extensive was the Report's exploration of the bias encountered by women who turn to the courts for justice and the fair resolution of disputes, particularly victims of sexual assault and domestic violence, matrimonial litigants, and women seeking support for their children. Applications of substantive law, the Task Force found, suffered when stereotypes were used, and "cultural myths about women's roles in the family and in society and expectations about appropriate modes of behavior at times obscure considerations that are highly relevant to the decision-making process."⁷ The very atmosphere of the courts, where women litigants were "sometimes treated dismissively ... or disrespectfully" prejudiced women.⁸ Women attorneys, too, according to the Task Force, encountered discrimination that compromised their authority in the courtroom and obstructed their ability to advance in their chosen profession. Turning to the court system's female employees, the Task Force reported women were disproportionately found in the lower-paying, lower-status jobs, and, occasionally, were subjected to unwelcome sexual attention and harassment.⁹ Coloring the Task Force's conclusions was the finding, since confirmed by numerous task forces from other states and the Ninth Circuit Gender Bias Task Force on the Effects of Gender in the Federal Courts, that women and men perceive transactions in courtrooms differently. Women consistently reported more bias, more prejudice, and more assaults on the credibility of females, both litigants and attorneys, than men.¹⁰

Impossible to ignore, the Task Force Report and its strongly-worded conclusions evoked immediate and sustained responses from court officials. Within weeks of the time the Report was made public, then-Chief Judge Sol Wachtler used his Law Day address to launch a campaign aimed at eliminating all vestiges of gender bias in New York's courts. Task Force members were thanked for their effort and commitment, the Task Force Report was credited with observing that "the courts have a special obligation to reject—not reflect—society's irrational prejudices," and the court system was rededicated to making "abundantly clear that gender-biased conduct is wrong wherever found in New York's courts [and] inimical to any concept of justice."¹¹

Most important for the court system's commitment to systemic change was the appointment of a standing committee. Called originally the Committee to Implement Recommendations of the New York Task Force on Women in the Courts, the Committee grew into the present New York Judicial Committee on Women in the Courts with its mandate to address not only the spe-

⁶ Forward to the *Task Force Report* at 1.

⁷ *Task Force Report* at 27.

⁸ *Id.*

⁹ *Id.* at 155.

¹⁰ *Id.* at 25.

¹¹ Law Day Remarks, "The Lady in the Harbor and the Lady in Albany—Two Symbols of Freedom," *Task Force Report* at 4.

cific, numbered recommendations of the Task Force Report but also the Task Force's more general concern about a system that, it had found, exhibited pervasive bias.

Resolve from the courts' leadership has remained strong. Recounting progress two years after the Task Force Report, then-Chief Administrative Judge Albert Rosenblatt (now Associate Justice of the Appellate Division, Second Department) concluded his assessment with a forceful rededication to the task of eradicating bias. "[T]here is much that remains to be done, and we aim to do it," he said.¹² Chief Judge Judith S. Kaye has continued the unwavering support of her predecessors while making distinctive contributions to institutional responses to women, especially victims of family violence, women with matrimonial proceedings before the courts, and litigants with children.

¹² Hon. Albert Rosenblatt, "Women in the Courts: A Historical Perspective," *New York Law Journal*, Nov. 1, 1988, p. 1, col.1.

Status of Women Attorneys

The Task Force recognized that opening the legal profession to women and extending them membership on equal terms were questions of equity not just to women who are attorneys but also to those they represent.⁷⁰ The Task Force Report, first, addressed professional acceptance. Educational programs by the court system in its various institutional identities on bias and stereotypes, which have brought to bar and bench the message that gender bias is unacceptable, have inured to the benefit of the growing number of women in New York who are attorneys. The effects of education, however, are subtle. They are felt not necessarily immediately, but over years, and they are invariably difficult to measure. More concrete and easier to assess is the other topic the Task Force Report discussed, the status of professional opportunities for women who are lawyers.

Women in the Legal Profession

Although women have entered the legal profession in large numbers during the past decades, they often have found their paths to the upper reaches of professional life steep and stony. They are now 23% of the nation's lawyers, up from 13% in 1985,⁷¹ but these numbers tell only part of the story.

Stubborn barriers to the advancement of women have been the subject of several recent studies that bear indirectly but importantly on the status of women in New York courts. One of these, initiated by the Committee on Women in Profession of the Association of the Bar of the City of New York, looked at women practicing in large New York City firms.⁷² According to this study, women at these firms start in numbers proportionate to their representation in law schools and at pay equal to that of their male colleagues, and they work in all legal specialties, not just the few formerly considered suitable for females. Yet, the study found, women encounter major obstacles as they proceed along the career path typical of attorneys in private firms. The number of women partners, although increasing, remains small, and few women serve in top management positions.⁷³

⁷⁰ *Task Force Report* at 126-53.

⁷¹ American Bar Association Commission on Women in the Profession, *Unfinished Business: Overcoming the Sisyphus Factor* at 5 (1995) [*Unfinished Business*].

Figures on women practicing law in New York are not yet readily available, although the Association of the Bar of the City of New York's Committee on Women in the Profession, with help from the New York Judicial Committee on Women in the Courts, has embarked on a project to amass this data. Working with computer printouts generated from the Office of Court Administration's attorney registration rolls, the project expects to have information not only on the total number of men and women attorneys in New York, but also on the geographical locations of their practices and the number of years they have been admitted to the bar.

⁷² Cynthia Fuchs Epstein *et al.*, "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession," 64 *Fordham L. Rev.* 291 (1995).

⁷³ *Id.* at 438-39.

The American Bar Association's Committee on Women in the Profession, in its recent review of the status of women in all types of practices throughout the country, reported the same mixture of good news and bad as the New York study. The Commission too noted entry-level parity, but documented pay inequities and the dearth of women in law firm partnerships and among corporate general counsel. Even in the public sector, which historically has been more hospitable to women attorneys, the Commission found comparatively few women in supervisory positions despite the large number of women attorneys in government offices.⁷⁴ According to the Commission, "The legal work environment is rife with attitudes and actions that systematically devalue women."⁷⁵

No different is the news from law schools. Numbers have grown. Women are now 44% of the nation's law school students.⁷⁶ Yet the American Bar Association's Commission on Women in the Profession recently reported that, "Sadly, gender bias and the barriers it creates to women's full and equal participation have not disappeared as the result of the increased number of women students and faculty."⁷⁷ The differences in the experiences of women and men at law school has been well-documented, and bias against women, even outright harassment, continues to be seen on law school campuses.⁷⁸ Statistics on female faculty follow the pattern for the profession as a whole: the more prestigious the position, the less likely women are to hold it. While women are 28% of the total law school faculty and administrators, they are only 16% of the tenured faculty and 8% of the country's law school deans.⁷⁹

*Judges*⁸⁰

While the presence of women as well as men on the bench may be read as a signal that the courts belong to all, regardless of gender, the Task Force looked at women in the judiciary as a measure of the ability of women to advance within the legal profession.⁸¹ Here, too, as in other segments of profession, plainly visible progress is tempered by lingering problems.

The gains are substantial and evident each day in New York's courtrooms. New York now has 226 women judges, and women currently are 20% of the state's judges. Ten years ago only 133 of New York's judges, or 11%, were women. (See *Table I*.)

⁷⁴ *Unfinished Business* at 10-14.

⁷⁵ *Id.* at 12.

⁷⁶ American Bar Association Commission on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education* at 23, Jan. 1996 [*Elusive Equality*].

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* at 8-18; Lani Guinier *et al.*, "Becoming Gentlemen: Women's Experiences at One Ivy League Law School," 143 *Univ. of Pa. L. Rev.* 1, 32-59 (1994).

⁷⁹ *Elusive Equality* at 23.

⁸⁰ Data on women in the judiciary and employment in the courts were provided by the Office of Court Administration, Human Resources Division. The New York Judicial Committee on Women in the Courts would like to thank Phil Ferrara, Jane Craig, and Michael Minter for their able assistance in assembling and presenting this data.

⁸¹ *Task Force Report* at 150.

The Task Force, which considered the ability of women to achieve judicial office as part of the broader question of professional advancement for women, provided no figures on the number of women who served as Town and Village Justices, the majority of whom are not lawyers. However, Office of Court Administration records showed in 1991 that 11.0% (220 out of 2008) of the state's Town and Village Justices were women. By 1995 the percent had risen to 14.4% (301 out of 2085).

TABLE I

WOMEN IN THE NEW YORK STATE JUDICIARY 1986 AND 1996

COURT	1986		1996	
	TOTAL JUDGES	WOMEN	TOTAL JUDGES	WOMEN
Court of Appeals	7	14 % (1)	7	29 % (2)
Appellate Division	44	14 % (6)	52	19 % (10)
Administrative Judges	22	5 % (1)	22	27 % (6)
Supreme Court	290	8 % (22)	327	12 % (40)
Acting Supreme Court ¹	126	16 % (20)	110	30 % (33)
Surrogates Court	29	7 % (2)	27	15 % (4)
Court of Claims	29	10 % (3)	48	15 % (7)
County Court ²	114	4 % (5)	118	5 % (6)
Family Court - Outside NYC	70	10 % (7)	72	22 % (16)
District Court, Nassau & Suffolk	46	7 % (3)	45	11 % (5)
City Court - Outside NYC ³	115	5 % (6)	151	12 % (18)
NYC Family Court	30	54 % (16)	40	58 % (23)
NYC Civil Court	71	20 % (14)	88	42 % (37)
NYC Criminal Court	42	21 % (9)	42	48 % (20)
TOTALS	1035	11% (133)	1149	20% (227)

¹ Judges from other trial level courts who are designated to sit in Supreme Court and Supervising Judges from New York City's Civil, Family and Criminal Courts.

² Judges who sit in County Court only and judges who combine service on the County Court with service on the Family and/or Surrogates' Court.

³ City Court Judges, Acting City Court Judges, and Chief Judges of the City Court.

The last decade has seen a cadre of impressive women move into the court system's highest positions and a number of "firsts" for New York. The Court of Appeal's first woman judge, Hon. Judith S. Kaye, was elevated to Chief Judge of the State of New York in 1993, becoming its first female Chief Judge. Hon. Carmen Ciparick joined Chief Judge Kaye on the state's highest bench in 1994 so that, for the first time, two women sit on the Court of Appeals. The number of women on the state's Appellate Division has doubled in the past ten years, with 10 women or 19% of the bench now female.⁸² In 1991, Hon. M. Dolores Denman became the Appellate Division, Fourth Department's—and New York's—first woman Presiding Justice. The Second Department now has four women justices, enough so that when they sit together, as they did for the first time in 1994, lawyers argue to an all-female appellate bench.⁸³ The ranks of administrative judges too now include women in unprecedented numbers. Women fill 6 out of 22 of these highly visible appointments.

But progress is uneven. Women interested in achieving judicial office have more success in some courts and some regions of the state than others. Particularly difficult for women is winning seats on Supreme Court benches. The state's highest trial level court, the Supreme Court, is important not just because of the nature of the cases it hears but also because, according to New York's Constitution, only justices elected to Supreme Court seats may serve on the Appellate Division. In 1986, women held only 22 or 8% of these positions on the trial level. Although 40 of these Supreme Court Justices now are women, this is only 12% of this bench, a percent far below the 20% for the judiciary as a whole. Nor is there any evidence of much recent progress. The percent and number of women elected and serving as trial Supreme Court Justices has remained virtually the same for the past five years.

Worth noting too are regional variations. Women judges are—and were in 1986—far more common in New York City than outside the City limits. In New York City's courts of limited jurisdiction (New York City Family, Civil, and Criminal Courts), a total of 48% of the bench, or nearly half, are women. In 1986, the percent of these judicial positions held by women was 27%. Outside New York City, in courts of limited jurisdiction (County, Family, District, and City Courts), just 12% of these seats are filled by women, up from only 8% in 1986.

The distribution of women elected Supreme Court Justices sitting in trial courts also tends to follow this regional pattern, although not invariably. Of the 40 women serving in these judicial positions across the state, 28, or 70% of the state's total, sit in New York City. But the Eighth Judicial District, which includes Buffalo's Erie County, also has a significant number of women—five—sitting on its Supreme Court trial bench, and Nassau County has three.⁸⁴

Non-Constitutional Judges and Quasi-Judicial Posts

Housing Court Judges and Family Court Hearing Examiners are important, visible participants in the court system. They achieve office, however, neither by election nor by

⁸² For a table showing the number and location of New York's women Appellate Division Justices, see *Appendix E*.

⁸³ See "Appellate Division, Second Department Fields All-Female Bench," *New York Law Journal*, April 15, 1994, p: 1, col. 3.

⁸⁴ For a table showing the location of women on New York's Supreme Court in 1996, see *Appendix E*.

appointment by executive branch officials, but rather through choices made by court administrators, who have the authority to make appointments to these posts.

Well-represented among their ranks in 1986, women serving in these non-constitutional and quasi-judicial posts have increased in number in the past decade. In 1986, women were 20% of the Housing Court bench; by 1996 the number had increased to 36%. Women accounted for 34% of the state's Family Court Hearing Examiners in 1986, and, in 1996, they held 43% of those positions.⁸⁵

Attorneys Employed in the Courts

The judicial branch employs attorneys, and the progress of women among the ranks of lawyers who work for the courts contributes to the overall advancement of women in the profession. Opportunities for attorneys within courthouses, however, take on a significance beyond the mere number of attorneys holding these positions and even beyond their visibility within the legal system because employment in the courts often serves as a stepping stone to the judiciary.

Women account for a large percent of the attorneys employed in New York's courts, and their percentage has increased steadily over the past ten years. In 1986, the percent of women in the court systems' attorney lines was 31%. By 1996, they held 45% of these positions. Furthermore, the common pattern of women clustered in large numbers at the bottom rungs of the legal profession and sparsely represented in its upper reaches is largely absent in the courts. Women fill 46% of the entry level attorney lines in the court system and 43% of the senior positions.⁸⁶

Many lawyers working for the New York courts do move from nonjudicial positions to the bench, and women are among those who have traveled this route to the judiciary. No single source lists all judges who once were among the courts' nonjudicial employees. However, limited research found 92 current judges who were working for the courts in nonjudicial titles a decade earlier. The majority of them were law clerks to judges or law assistants. Thirty of these judges who were nonjudicial court employees in 1986, or nearly a third, are women. Among those who have moved from law assistant or law clerk to the bench are New York Court of Appeals Judge Carmen Ciparick and the only two women to serve on the Appellate Division, First Department, Hon. Betty Weinberg Ellerin and Hon. Angela Mazzairelli.

⁸⁵ For a table on women Housing Court Judges and Family Court Hearing Examiners, see *Appendix F*.

⁸⁶ For a table and graph on the participation of women as attorneys in the court system's nonjudicial workforce, see *Appendix G*.