Towards the Elimination of Gender Bias in the Florida Courts

Sandy Karlan*
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Abstract

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KEYWORDS: gender, bias, courts
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Florida's judicial system is beginning to respond. The Chief Justice of the Florida Supreme Court has announced the creation of a Gender Bias Commission. The purpose of the Commission is to uncover the areas within the court system where gender bias operates and to propose solutions to these problems.

Gender bias is the tendency to think about and behave toward people mainly on the basis of their sex. It affects everyone — attorneys, witnesses, plaintiffs, defendants, jurors, and judges. According to The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts, gender bias is reflected in attitudes and behavior based on stereotypical beliefs about the sexes' "true natures" and "proper roles," rather than on independent evaluation of each individual's abilities, life experiences, and aspirations.1

Consider the case of the judge in Chicago who stated to a woman attorney appearing before him, "I don't think that ladies should be lawyers. I believe that you belong at home raising a family." Although this might appear to be an extreme example, I assure you it is commonplace in our system.

I recall appearing at a motion calendar hearing where opposing counsel was also a woman. We were intently arguing our respective positions when the male judge looked up from his court file, interrupted my presentation, and said, "I love to see you women fight." I was mortified. Images of mud wrestling immediately came to mind, and the male lawyers waiting their turn had a good laugh at our professional expense.

* J.D., Nova Law Center, 1978; B.A., University of Miami, 1971. Ms. Karlan is an attorney in Miami.


On another occasion, I was appearing before the court on a serious family law matter. Opposing counsel, who was a man, referred to me as a "cute little girl" and addressed me as "little lady." Although I brought this to the judge’s attention and asked him to instruct counsel to address me in a formal manner, such as "counselor," the judge dismissed my request and simply said, "let’s move on."

These types of comments affect my credibility in the courtroom and the credibility of all women participating in the legal system. As Gill Freeman, past president of the Florida Association for Women Lawyers, has observed, “the issue of credibility for women in the judicial system is fundamental.” These comments affect a lawyer’s ability to adequately represent her client as well as her client’s peace of mind in having chosen the proper attorney. It affects the results that an abused wife seeking protection from the court obtains. It affects the mother who tries to persuade the judge to enforce a child support or alimony arrearages order. And it affects the treatment that a woman receives when testifying as a victim in a rape case, an expert witness, or a party litigant.

Unfortunately, nothing will change until members of the bar focus on these abuses and demonstrate that bias based on deeply held, often unconscious beliefs about the proper roles of men and women is undermining justice and fairness. And precipitating change in a system based upon precedent is difficult. Although we are all aware that there have been and are laws that discriminate on the basis of sex, what judge believes that he or she discriminates against women or men based upon personal bias?

1. Early Work in Florida and Other States

Two years ago the Florida Association for Women Lawyers (FAWL) began the inquiry into gender bias by hosting at its annual Florida Bar Convention, a panel discussion on gender bias in the courtroom. The panelists included two prominent Florida trial attorneys, Elizabeth DuFresne and Joel Hirschhorn, Judge Gavin K. Botts of Florida’s Fourth District Court of Appeal, Judge Frederica Smith, a trial court judge from the Eleventh Judicial Circuit (Dade County).

3. Personal conversation with the author.
4. This project was initiated by Gill S. Freeman, then President of the Florida Association for Women Lawyers, and Sandy Karlan. Both remain co-chairs of FAWL’s gender bias project.

and Lynn Hecht Schafran, director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts.

The panelists were asked to review the First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts. That task force, the first in the nation, was created in 1982 by New Jersey Chief Justice Robert N. Wilentz to investigate the nature and extent of gender bias in the court system and to develop judicial education courses to eliminate such bias.

The findings of the first report of the New Jersey Task Force included:

- Judges sometimes appear to give less credibility to lawyers, witnesses, experts, and probation officers who are women than to their male counterparts.
- Some 86 percent of the women lawyers surveyed said their peers made hostile remarks or demeaning jokes about women. Two-thirds of these women said judges did the same.
- Homemakers involved in personal injury damage suits receive modest awards compared to men because such awards are generally related to earning potential, and homemakers are unpaid for their services.
- Divorced women are trapped in cycles of poverty because of inadequate awards for alimony and child support and weak sanctions for nonpayment of these awards.

The FAWL panelists were asked to review the report and discuss whether they experienced bias in Florida’s courts, and, if so, what steps should be taken to eliminate such bias. All of the panelists acknowledged that gender bias existed in Florida. Elizabeth DuFresne, a seasoned litigator, revealed her personal experiences with bias in terms of inappropriate comments by judges and opposing counsel. She added that she assumed “it went with the territory” because when she began practicing, women trial attorneys were a novelty in Florida courtrooms.

Trial lawyer Joel Hirschhorn admitted that, in order to distract opposing counsel, he once called a female prosecutor “honey” in the midst of her very effective cross-examination of his witness. Hirschhorn acknowledged that he had not been aware of gender bias until he read New Jersey’s report and appeared on the panel. Under similar circumstances he admitted that he would not have made a racist comment to distract an opposing counsel who was a member of a racial minority.

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All of the panelists agreed that there was substantial gender bias in Florida courts and that a task force such as the one created in New Jersey should be established in Florida.

Since the creation of a state-wide gender bias commission was FAWL's goal, a videotape was made of the entire proceeding with the intention of showing it to the justices of the Florida Supreme Court and the Florida Bar's Board of Governors. We believed that we needed the support of the Bar's governing body to make our appeal to the supreme court.

During this same time, the Chief Justice of New York empaneled a gender bias commission to review that state's court system. Inspired by the work of the New Jersey Commission, Judge Lawrence H. Cook stated:

Recently, a similar study was conducted on behalf of the court system in New Jersey. Its leadership is to be commended and its methodology provides an exemplar for the study to be conducted here in New York.

Distinctions grounded on improper concerns have no place whatsoever in the operation of our legal system and every reasonable effort should be made to guarantee that the scales of justice are balanced evenly for every person who comes before the courts. They expect no less, and certainly are entitled to no less. There must be no corridors of special privilege, high hurdles for some, or bans for any. There must be no institutional hypocrisy.

Additionally, the Chief Judge of Rhode Island also announced the creation of a similar task force in that state. We felt confident that all we had to do was to tell the Florida Supreme Court about the results of the New Jersey Task Force, our panel discussion, and the creation of task forces in New York and Rhode Island; then we would succeed. This was not immediately the case.

In September, 1985, a group composed of FAWL members and women judges met with then Chief Justice Joseph A. Boyd, Jr., to formally request the creation of a gender bias task force. We urged that the results in New Jersey and the emerging information from New York strongly suggested that gender bias in all court systems was pervasive and insidious. At a minimum, we had an obligation to all Floridians to investigate whether Florida justice was tainted by bias and, if so, to immediately begin to find solutions. We explained that gender bias is often evidenced by a judge's interpretation and application of basically neutral laws through a filter of unconscious personal prejudice. Consequently, one proposal of such a task force would be the creation of judicial education programs to raise the consciousness of the judiciary. The Chief Justice promised to review the materials, consult with the court, and consider our proposal.

One month later the Chief Justice denied our request and asserted that there was no reason to assume, because New Jersey and New York experienced discrimination in their court systems, that Florida had such problems. He challenged our group to demonstrate concrete examples of bias in Florida's court system.

In a letter dated December 2, 1985, Justice Boyd wrote:

I have discussed with all members of this Court, several women judges, lawyers, and law students the question of establishing a task force on a commission relating to gender bias. Not one of them has agreed that a task force or a commission on the matter is necessary at this time. They feel that current efforts are sufficient and that gender bias is being eroded by the high quality of performance of both women and men.

He further urged us to report incidents of gender bias by judges to the Judicial Qualifications Commission and offending lawyers to the Florida Bar. Our experience, however, was that these two disciplinary bodies generally dismissed such complaints as frivolous and provided little or no real corrective action. We realized that we were caught in the essence of the gender bias issue — the inability of judges and lawyers to recognize the existence and seriousness of bias as an issue.

6. Sometimes our efforts to communicate the issue of gender bias to bar leaders, local attorneys, and judges were dismissed. We were told that gender bias was nonexistent, and that we were focusing on a "special interest." Some even suggested that we were creating a problem where none previously existed.


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II. The Difficulty of "Proving" Gender Bias

The problem of gender bias as evidenced by the New Jersey and New York results is widespread. Judges bring their entire education, background, opinions and beliefs to the courtroom; it is almost impossible for an individual to separate herself or himself from these influences without substantial "re-education." The New Jersey Task Force Report summarized the depth of the problem in its First Year Report:

Gender bias also refers to the greater value society places on men, as evidenced by consistent research findings of a preference for male children, as well as to myths and misconceptions regarding the economic and social problems encountered by both sexes. Although there has been significant progress in the recognition and elimination of gender bias, it remains a pervasive problem in all American social institutions. Sometimes gender bias works against men. Most often and most severely it impacts on women. Often, gender bias is expressed in ways which seem so natural to our society that the element of bias is not understood. Sometimes it may be expressed through acts of overt discrimination.*

The report quoted Justice Alan B. Handler's comments in a sex discrimination case:

[N]ot everyone has a nose for discrimination especially in its most subtle forms. We are coming to realize that people are products of cultural conditioning which frequently obscures recognition of social wrongs . . . . The "commonplace" may constitute a Trojan horse of social inequities. Discrimination frequently goes uncorrected because it is undetected.**

III. Initial Research in Florida

Those of us who met with Chief Justice Boyd continued to seek support from the legal and political community. Our first opportunity came at the investiture of Justice Rosemary Barkett, Florida's first woman supreme court justice. We talked to Florida Bar Association lead-

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9. NEW JERSEY TASK FORCE, supra note 1, at 1.
applied in such a way as to have a disproportionate negative impact on women and provided serious evidence of bias that disadvantaged women attorneys, judges and jurors. Three of the more egregious areas were family law and domestic violence, criminal sentencing, and women in the legal profession.

A. Family Law and Domestic Violence

The Department of Health and Rehabilitative Services Child Support Enforcement System revealed that in 1985 almost eight million dollars of child support arrearages existed. The average percentage of monthly support successfully collected was 28%. The accumulated uncollected arrearages reported for December 1985 were $248,253,158.00, or nearly a quarter of a billion dollars. The unwillingness or inability of courts to enforce their orders of child support payments contributes to the condition known as the “feminization of poverty” since the majority of single parent households with minor children are headed by women.

Florida law provides that “The Court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony will be awarded to such spouse and the amount of alimony, if any, to be awarded.” Although the language of the statute is neutral the vast majority of spouses seeking alimony are women. The statute does not provide that the adultery of the spouse who has to pay alimony shall be considered in determining how much that spouse should pay. This statute evidences the traditional double standard regarding marital conduct and impacts disproportionately on women.

The report also revealed that in domestic violence cases where the abused spouse requests a protective temporary restraining order from the court, the judges in at least one Florida circuit will issue a mutual restraining order without any evidence that the abused spouse has engaged in violent behavior.

Under Florida law a temporary restraining order may be granted only upon a showing of past behavior and/or threat as well as evidence of irreparable harm if the order is not granted. By issuing a mutual restraining order the court undermines the credibility of the abused spouse, generally a woman, and provides little or no protection. The woman’s testimony of fear and danger is discounted and both parties are ordered to leave one another alone. The police power to protect the woman is also limited; with a mutual order they can only separate the parties because both are assumed to be at fault, unlike with a temporary restraining order, which could allow the law enforcement officer to remove the abusive spouse.

B. Sentencing

Statistics collected from the Florida Sentencing Guidelines Commission show that sentences for rape are mitigated (reduced) in 29.2% of cases, whereas other sentences for males convicted of crimes that are not primarily against women are mitigated in only 12.23%. This raises the question of why sentences are reduced in felony crimes against women disproportionately to other crimes.

In other crimes judges give aggravated (harsher) sentences to men almost twice as often as to females. This requires additional study to reveal the nature of the bias that in this instance affects males disproportionately.

C. Women in the Legal Profession

In 1984, Florida law schools employed 163 faculty members, of whom twenty-five (or 15%) were women. Fifty-four percent of all male law professors had tenure, while only five female professors (or 20%) had tenure. Of the 628 full-time judges in Florida’s courts, only forty-nine (or 7.8%) are women.

In 1976, there were 620 women lawyers in The Florida Bar. Today there are almost 6,000, or approximately 15% of the Bar’s membership. The Florida Bar conducted a survey of lawyers’ salaries in 1984 which revealed the following information:

13. Id. at 6. See also Note, Congress Demands Stricter Child-Support Enforcement: Florida Requires Major Reforms to Comply, 10 Nova L.J. 1376 (1986).
15. C. Carres, supra note 11, at 7-8.
16. This practice occurs in the Eleventh Judicial Circuit (Dade County), and appears to exist as an administrative policy.
18. C. Carres, supra note 11, at 12.
19. Id. at 18.
20. Id. at 31.
21. Id. at 46-47.
22. Id. at 47.
23. Id. at 46.
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21. Id. at 46-47.
22. Id. at 47.
23. Id. at 46.
LAWSYERS' SALARIES IN FLORIDA**

All Lawyers

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>44%</td>
<td>11%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>36%</td>
<td>43%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>20%</td>
<td>46%</td>
</tr>
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</table>

In practice more than 11 years

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
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<tbody>
<tr>
<td>Over $50,000</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>22%</td>
<td>40%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>11%</td>
<td>27%</td>
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In firms with more than 11 members

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>59%</td>
<td>30%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>36%</td>
<td>55%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>5%</td>
<td>15%</td>
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Practicing Alone

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
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<tbody>
<tr>
<td>Over $50,000</td>
<td>34%</td>
<td>3%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>34%</td>
<td>21%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>31%</td>
<td>76%</td>
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Although entering the legal profession in increasing numbers, women clearly are not receiving equal treatment based upon the Florida Bar's salary survey.

Because the report from FSU's Policy Studies Clinic was primarily a compilation of existing data, it was limited in scope. Yet it clearly showed disparate treatment under the law apparently based upon sex. The report contained only the more in-depth discoveries and conclusions of New Jersey and New York and recommended that the Florida Supreme Court create a task force to spend two years studying the issue in our courts and to propose solutions.** Some of the more specific recommendations included:

1. A thorough review of state statutes.
2. A review of administrative court orders that may impact unfairly on women.
3. A poll of Florida's attorneys to discover their personal experiences in the courts with bias directed against them or their clients.
4. Public hearings to provide an opportunity for people who feel they have been discriminated against in the legal system to share their experiences.**

IV. Gaining Support

As FAWL's representatives, Gill Freeman, Charlene Carres, and I believed that the monograph provided the "evidence" that Justice Boyd had requested. We suspected, however, that if the request to the Florida Supreme Court came from the Florida Bar Board of Governors, rather than FAWL, it would be more compelling to the members of the court. That is, the Bar's concern about gender bias within its ranks could not be dismissed simply as a "woman's issue." Consequently, with the encouragement and support of Bar President Joseph Reiter, President-elect Ray Ferrero, Jr., and Executive Director Jack Harkness, Gill, Charlene and I were scheduled to make a presentation to the Board of Governors for a resolution to the supreme court requesting the creation of the task force.

Additionally, we determined that the Florida Bar was the appropriate organization to fund and conduct a survey of attorneys as its contribution to the project. I appeared before the budget committee and asserted that it was the Bar that had to take the lead in assuring fair treatment in the courts for lawyers and litigants, and that the Bar had an obligation to discover whether any of its members were experiencing bias in the courts. The committee agreed to fund such a survey and recommend that $16,500.00 be appropriated for that purpose. Our next step was to appear before the full board.

Gill Freeman made the presentation on behalf of FAWL, with Charlene Carres and I as additional resources. We presented the members with a resolution which the board debated for one and a half hours. There was concern about the need for a task force and about whether the supreme court had the authority to create it. Some board members wondered whether we should go directly to the court with our request or should defer our resolution until the attorney survey was completed. In general, however, most board members were sympathetic to the issue, having been educated for the two years since FAWL's original panel program and having reviewed the monograph report.

24. Id. at 48-49.
25. Id. at 60-61.
26. Id. at 77-80.
LAWYERS’ SALARIES IN FLORIDA

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<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>44%</td>
<td>11%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>36%</td>
<td>43%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>20%</td>
<td>46%</td>
</tr>
</tbody>
</table>

In practice more than 11 years

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>22%</td>
<td>40%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>11%</td>
<td>27%</td>
</tr>
</tbody>
</table>

In firms with more than 11 members

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>59%</td>
<td>30%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>36%</td>
<td>55%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>5%</td>
<td>15%</td>
</tr>
</tbody>
</table>

Practicing Alone

<table>
<thead>
<tr>
<th>Salary</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $50,000</td>
<td>34%</td>
<td>3%</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>34%</td>
<td>21%</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>31%</td>
<td>76%</td>
</tr>
</tbody>
</table>

Although entering the legal profession in increasing numbers, women clearly are not receiving equal treatment based upon the Florida Bar’s salary survey.

Because the report from FSU’s Policy Studies Clinic was primarily a compilation of existing data it was limited in scope. Yet it clearly showed disparate treatment under the law apparently based upon sex. The report compared Florida’s information with the more in-depth discoveries and conclusions of New Jersey and New York and recommended that the Florida Supreme Court create a task force to spend two years studying bias in our courts and to propose solutions. Some of the more specific recommendations included:

1. A thorough review of state statutes.
2. A review of administrative court orders that may impact unfairly on women.
3. A poll of Florida’s attorneys to discover their personal experiences in the courts with bias directed against them or their clients.
4. Public hearings to provide an opportunity for people who feel they have been discriminated against in the legal system to share their experiences.

IV. Gaining Support

As FAWL’s representatives, Gill Freeman, Charlene Carres, and I believed that the monograph provided the “evidence” that Justice Boyd had requested. We suspected, however, that if the request to the Florida Supreme Court came from the Florida Bar Board of Governors, rather than FAWL, it would be more compelling to the members of the court. That is, the Bar’s concern about gender bias within its ranks could not be dismissed simply as a “woman’s issue.” Consequently, with the encouragement and support of Bar President Joseph Reiter, President-elect Ray Ferrero, Jr., and Executive Director Jack Harkness, Gill, Charlene and I were scheduled to make a presentation to the Board of Governors for a resolution to the supreme court requesting the creation of the task force.

Additionally, we determined that the Florida Bar was the appropriate organization to fund and conduct a survey of attorneys as its contribution to the project. I appeared before the budget committee and asserted that it was the Bar that had to take the lead in assuring fair treatment in the courts for lawyers and litigants, and that the Bar had an obligation to discover whether any of its members were experiencing bias in the courts. The committee agreed to fund such a survey and recommend that $16,500.00 be appropriated for that purpose. Our next step was to appear before the full board.

Gill Freeman made the presentation on behalf of FAWL with Charlene Carres and I as additional resources. We presented the members with a resolution which the board debated for one and a half hours. There was concern about the need for a task force and about whether the supreme court had the authority to create it. Some board members wondered whether we should go directly to the court with our request or should defer our resolution until the attorney survey was completed. In general, however, most board members were sympathetic to the issue, having been educated for the two years since FAWL’s original panel program and having reviewed the monograph report.

24. Id. at 48-49.
25. Id. at 60.
26. Id. at 77-80.
On an almost unanimous vote, the Board passed the following resolution:

Be It Resolved that the Florida Bar consistent with its long-standing commitment to eliminate discrimination in the legal system and to the enhancement of public confidence in the profession's commitment to equality in the court, hereby respectfully petitions the Supreme Court of Florida to charter a statewide Commission to study, evaluate and propose solutions for the effects of gender bias on both men and women in the court system.27

The resolution was forwarded to the supreme court on September 25, 1986. Without any further discussion, new Chief Justice Parker Lee McDonald accepted the Bar's resolution and agreed to create a statewide commission to study gender bias in the courts.28

In January 1987, Chief Justice McDonald appointed a steering committee to recommend people to serve on the commission, the areas of inquiry, and the source of funding. The Steering Committee completed its work in May 1987.29

28. We discovered later that Chief Justice McDonald had heard a presentation on the gender bias study by New York's Chief Justice and was persuaded that there was a necessity for such a study.
29. I was the chair of the steering committee. The other members were attorneys Gill Freeman (Miami), Gregory Presnell (Orlando), William McBride (Tampa), and Charlene Carres (Tallahassee), and Judge Bobbi Gunther of the Fourth District Court of Appeal.

The committee made the following recommendations:

The mandate of the Gender Bias Commission is to investigate the nature of gender bias in the Florida judicial system and the extent to which it exists. Additionally, the Commission will develop recommendations and policies to eliminate any such bias. The focus of the commission should be upon all aspects of the system, both substantive and procedural, including the structure and functioning of personnel in the system.

SUBJECT OF STUDY
The Commission will address the following areas:
1. Family
   The extent of inequities in family law actions/decisions, which are the result of gender bias. Included are:
   Custody determinations and the establishment of visitation rights.
   Awards of alimony and the distribution of property assets.
   Evaluation of the worth of a woman's work/pro-

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V. Towards the Future

Since the publicity surrounding the creation of the task force has surfaced, other areas of inquiry that were not included in the monograph have been proposed. In the family law field, a survey of recent appellate court decisions reviewing dissolution proceedings reveals that under the concept of equitable distribution, wives are receiving (at most) only 30% of the marital property.30 This is so even though the courts have stated that a starting place for dividing property in dissolu-

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   - Custody determinations and the establishment of visitation rights.
   - Awards of alimony and the distribution of property assets.
   - Evaluation of the worth of a woman’s work/profession in domestic relations cases.
   - Enforcement of child support and alimony obligations.
2. Judicial Response
   - Judicial system response or lack of response in cases involving domestic violence.
3. Sexual Assault
   - Treatment of parties in the system including the disposition and handling of acquaintance rape cases.
4. Sentencing Disparity
   - Sentencing disparity which may be gender based.
5. Evaluation of the existence of disparate damage awards and other equitable relief.
6. Behavior and attitudes in and outside of the courtroom, which reflect sex stereotypes that may result in disparate treatment of similarly situated males and females.
7. The effect of gender bias on the award of attorneys fees and the selection of attorneys for various court-appointed cases including criminal cases, guardianships, personal representatives, executors or administrators of estates, etc.
8. The manner in which gender related policies and practices affect employees in court and court-related agencies, including: judges, assistant state attorneys, public defenders, and court support personnel including trial court administrators, clerks of court and the administrative staff of the appellate courts.
9. The judiciary
   (a) Is the Judicial Qualifications Commission responding adequately to allegations of gender bias?
   (b) Whether there is gender bias in the judicial selection process?
   (c) Whether judicial nomination commissions make adequate efforts to determine whether judicial candidates are gender biased?
10. Any additional areas that the commission may choose to investigate.
Another area requiring further study involves women attorneys with young families and a need for flexible work schedules. The traditional experience of a young lawyer in a medium to large law firm is to work sixty to eighty hours per week to stay on the partnership track. However, women lawyers with young children are being forced to choose between satisfying and exciting legal jobs and their families. These issues, plus the ones raised in the FSU report, are proposed to be studied thoroughly by the task force. Additionally, it is expected that the attorney survey and public hearings will raise additional issues.

The two-year process of creating the task force was enlightening, as it demonstrated the inherent difficulty in dealing with an issue such as gender bias. In order to convince the supreme court that the study was necessary, we first needed to demonstrate that there was a problem.

Bar leaders and members of the court were required to consider the possibility that they might harbor unconscious prejudices that unwittingly affect the way they treat women lawyers and the way they apply generally neutral laws to the people appearing in court. They had to be convinced that fixed notions about the roles of men and women impair the administration of justice. If we had not been able to convince them that we are all products of our socialization, including our unexamined belief systems, we could never have established the need for a gender bias task force.

It is my belief that people who become lawyers and ultimately judges do so out of their commitment to justice and fairness and their desire to contribute to improving the quality of people's lives. Judges do not intend to discriminate against women or men, and if they do so based upon their unconscious or unexamined belief systems then they do not consider their actions discriminatory.

In the conclusion of the gender bias report, Charlene Carres succinctly stated the depth and significance of this issue:

The courts are the last arbiters. Once people have determined that it is necessary to involve the courts to protect them from harm, to enforce their rights, or to resolve their disputes, they have invoked a final authority with the power to set things right and put them to rest. If women are subject to systemic bias in the courts, their last resort is illusory.

Regardless of how other social institutions deal with various classes of people, the courts must be free of unfounded bias. When women lawyers are hindered in representing their clients because they are seen as less serious or less effective than their male colleagues, justice suffers. When rape victims are presumed to be seductresses until it is proven they were brutalized, justice suffers. When divorced custodial mothers cannot afford new shoes for their children while their fathers can afford Guccis, justice suffers. Gender bias is a phenomenon that distorts the law and harms our society; therefore, it has no place in Florida's system of justice.

I am proud to say that Florida's legal community has demonstrated the courage and integrity to grapple with one of the most difficult issues of our time. By creating the Gender Bias Commission, Florida has joined with four other states to lead the effort for an effective and fair justice system.


32. C. Carres, supra note 11, at 81.
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