

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS *

395 Hudson Street, 5th Floor, New York, NY 10014
Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

Table of Contents

NATIONAL JUDICIAL EDUCATION PROGRAM

About the National Judicial Education Program to Promote Equality for Women and Men in the Courts

SOCIAL CONTEXT JUDICIAL EDUCATION

“The Role of Judicial Branch Education in Court Reform: Defining and Presenting Social Context Education.” Speech by NJEP Director Lynn Hecht Schafran to the National Association of State Judicial Educators, 2001.

UNDERSTANDING SEXUAL VIOLENCE SERIES

Introduction to the *Understanding Sexual Violence Series*

Video Curriculum Description:

Understanding Sexual Violence: The Judge’s Role in Stranger and Nonstranger Rape and Sexual Assault Cases (four-hour video curriculum, DVD-ROM forthcoming).

GENDER, JUSTICE & LAW: FROM ASYLUM TO ZYGOTES--ISSUES AND RESOURCES FOR JUDICIAL, LEGAL AND CONTINUING LEGAL EDUCATION

Gender, Justice and Law: From Asylum to Zygotes—Issues and Resources for Judicial, Legal and Continuing Legal Education—Publication Description

SUPREME COURT TASK FORCES ON GENDER BIAS IN THE COURTS INFORM AND ENHANCE JUDICIAL EDUCATION

Introduction and Citations to Articles about the Supreme Court Task Forces on Gender Bias in the Courts

Descriptions of Selected Task Force Manuals:

The Gender Fairness Strategies Project: Implementation Resources Directory (1998).

Gender Fairness in the Courts: Action in the New Millennium (2001).

ORDER FORM FOR ALL NJEP PUBLICATIONS AND VIDEOS/DVDS

* a project of Legal Momentum in cooperation with the National Association of Women Judges

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS *

395 Hudson Street, 5th Floor, New York, NY 10014

Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

About the

NATIONAL JUDICIAL EDUCATION PROGRAM TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS

The National Judicial Education Program is a unique, award-winning project which pioneered judicial education about gender bias and was the catalyst for nearly 50 high level state and federal task forces on gender bias in the courts nationwide. In 1980, Legal Momentum* established the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) and invited the newly-formed National Association of Women Judges to become NJEP's co-sponsor. NJEP's purpose is to integrate into continuing judicial education information and materials that illustrate the ways gender bias undermines fairness in decision-making and court interaction and to suggest ways to promote gender fairness. NJEP defines gender bias as:

- stereotyped thinking about the nature and roles of women and men
- society's devaluation of what is perceived as women's work
- lack of substantive knowledge about the social and economic realities of women's and men's lives
- placing a burden on one sex not placed on the other.

When NJEP began its work, knowledgeable judges, lawyers and journalists warned that the judiciary would never accept gender bias as a legitimate topic for judicial education or be willing to engage in the self-scrutiny necessary to eliminate it. Yet over the years, NJEP has moved the issue of gender bias in the courts from being nonexistent for the judiciary to being a featured educational program at the annual meeting of the Conference of Chief Justices and grounds for reversal and sanction.

NJEP addresses gender bias and gender fairness across the spectrum of civil, criminal, juvenile and family law. For nearly twenty-five years, NJEP has utilized a three-fold approach to promote access to the justice system and equality for women and men in the courts:

- education;
- publications;
- supporting the task forces on gender bias in the courts that emerged from NJEP's judicial education programs.

* Legal Momentum is the new name of NOW Legal Defense and Education Fund

JUDICIAL, LEGAL AND PUBLIC EDUCATION

NJEP creates model curricula and presents and advises on programs about gender bias in the courts for judicial colleges and organizations, bar associations, law schools, and legal and lay organizations across the country. Gender bias often results from lack of knowledge about the social and economic realities of women's and men's lives. Thus, much of NJEP's work includes an interdisciplinary approach toward supplying that information and showing its relevance to judicial decision-making and the legal system. Descriptions of NJEP's curricula about rape cases, custody cases involving child sexual abuse allegations and women of color in the courts are at <http://www.legalmomentum.org/njep/curric.shtml>.

PUBLICATIONS

NJEP increases professional and public awareness of gender bias in the courts and identifies ways to eliminate it through articles it publishes in professional journals and other media. When NJEP began in 1980, articles about gender bias in the courts were confined to women's law journals. Due to NJEP's involvement, the subject is now featured in mainstream judicial and legal periodicals and the popular press. A list of NJEP publications is on NJEP's website at www.njep.org.

In 2004 NJEP published a new 500-page resource, *Gender, Justice & Law: From Asylum to Zygotes—Issues and Resources for Judicial, Legal and Continuing Legal Education*. It addresses 62 areas of substantive and procedural law as well as issues related to law practice and law teaching. It summarizes the issues in each area addressed and provides an annotated list of resources useful for learning about these issues, teaching about them, and integrating them throughout the judicial, legal and continuing legal education curriculum. A detailed description of this publication and its table of contents are at <http://www.legalmomentum.org/njep/publications.shtml>.

STATE AND FEDERAL COURT TASK FORCES ON GENDER BIAS IN THE COURTS

NJEP's judicial education programs were the catalyst for a series of high-level task forces established by state chief justices and federal circuit councils to examine gender bias in their own court systems. These task forces document discriminatory court decisions, policies and practices and implement recommendations to eradicate these barriers to equal justice. NJEP provides technical assistance to the task forces in all phases of their work as investigating bodies, implementation committees and standing committees of the courts. Task forces in more than 45 states and seven federal circuits have published reports which are now frequently cited in judicial decisions and used to inform and enhance judicial education. Information about these task forces and their reports is at <http://www.legalmomentum.org/njep/genderbias.shtml>.

**The Role of Judicial Branch Education in Court Reform:
Defining and Presenting Social Context Education**

by

**Lynn Hecht Schafran
Director
National Judicial Education Program**

**National Association of State Judicial Educators
Annual Meeting 2001**

**Williamsburg, Virginia
August 24, 2001**

Cynthia Epstein is a distinguished professor of sociology who started out long ago as a student at the University of Chicago Law School. She left after a year and became a sociologist because there was no context to what she was being taught. What counted were supposedly neutral rules and principles applied in a vacuum. The facts of a case were barely presented in the appellate opinions studied, and the larger social context in which these facts arose was literally non-existent. She was up against what I call the fallacy of legal education – something judicial branch educators must contend with constantly – the notion that once you teach people to think like lawyers they are competent to handle any and every subject in the world with no further training.

If that sounds extreme, consider this. When I speak at law schools, I often begin by asking for a show of hands as to how many students would like to go down to the courthouse, put on a judge's robe, and decide whether someone offered as an expert witness in a child sexual abuse case should be qualified. I never get any takers. Then I ask: Assume that the experts in the case have been qualified, how many of you want to decide which of them is more credible? Again, no takers. Then I tell the students that across America, judges who know nothing more about child sexual abuse than they do are making these decisions everyday. The law students are aghast.

The public is aghast as well. For example, at the National Conference on Public Trust and Confidence in the Justice System, I described a recent call I'd had from an organization complaining about its state's family courts. The caller said that women go into these courts expecting to find trained, knowledgeable individuals. Instead they find judges who just yesterday were land use lawyers and hearing officers who are newly hatched college graduates. No one has had any education about child development, family dynamics, domestic violence, child sexual abuse, or the other areas that judicial and non-judicial court personnel in family courts need to know about. As a result, their decisions often exacerbate rather than solve litigants' problems.

We know from the national and state public trust and confidence surveys that people want problem solving courts and as judicial branch educators we know that judicial and non-judicial court personnel cannot solve problems if they know nothing about the context in which they arise. Correcting this state of affairs requires Social Context Education.

I. What is Social Context Education?

What is Social Context Education? One answer is: Everything judges need to know about how the world really works in order to do their jobs properly. When the National Judicial Education Program began its work in 1980 we defined gender bias the courts as having three aspects:

- Stereotyped thinking about the nature and roles of women and men;
- How society values women and what is perceived as women's work; and
- Myths and misconceptions about the social and economic realities of women's and men's lives.

NJEP was especially concerned with this third aspect. We knew, for example, that state courts were unwittingly contributing to the feminization of poverty through inadequate and unenforced support awards because judges were unaware of the striking disparity in employment and earning capacity between women and men and the real costs of child raising. We set out to provide judges with accurate information about these and other areas because we believed this knowledge was essential to impartial and equitable judging. And the judges at these programs agreed. One wrote on his evaluation, "Improved my sensitivity 500%. It was the impact of knowledge on ignorance."

Early on, NJEP began to work with Canadian judicial educators who subsequently undertook a major, national effort in this vein. It is they who coined the term "Social Context Education." Their Chief Justice, Antonio Lamer, defined its purpose as:

[T]he Social Context Education Project is designed to make those who participate in it better judges by making them more aware of the broader social, economic, cultural and political contexts within which we judges function in a society as diverse as Canada.¹

The Canadian program has addressed a variety of issues including domestic violence, concepts of constitutional equality under the Charter, sexual assault and Aboriginal rights.

II. The Raison d'être for Social Context Education

In the description of our program today I quoted United States Chief Justice William Rehnquist on the importance of social context education. In his 2000 Year-End Report on the Federal Judiciary, Chief Justice Rehnquist observed that:

Federal judges today face cases involving complicated statutes and factual assertions, many of which straddle the intersections of law, technology, and the physical, biological and social sciences. [Federal Judicial Center] education programs and reference guides help judges sort out relevant facts from the panoply of information with which the adversary system bombards

¹ National Judicial Institute, *Social Context Education Project Phase II Judicial Education Consultation*, June 212-22, 2000 at 17 (Draft).

them. The FJC thus contributes to the independent decisionmaking that is the judge's fundamental duty.²

I quote this statement constantly because it's good for judicial branch education to have the endorsement of the Chief Justice of the United States. But there is something about it that I find troubling. Note his use of the word "today." The implication is that social context education is necessary now, today, because of complicated new issues like bioethics and the Internet, but that this was not always the case. His statement brings to mind decisions such as the New Jersey Supreme Court's recent ruling on the use of frozen embryos. This is indeed a fascinating, ground-breaking case. But cases like this are not and never will be the bread and butter of the courts. And the issues that are – issues like family law, domestic violence and juvenile justice – are as complex and demanding and confusing as the genome project. In fact, I would say they are *more* problematic because with the headline-grabbing cases, the courts know enough to know that they are sailing in uncharted waters where they cannot fall back on whatever knowledge and life experience they bring to the table.

But with these other issues, judicial and non-judicial court personnel think they are qualified to make decisions without specialized education, and they often go seriously off the track. How far off is vividly captured in a recent book titled *Battered Women in the Courtroom* by James Ptacek, a detailed examination of courtroom interactions between judges and battered women in Massachusetts. At one point he writes:

Another judge spoke of how her sense of what was 'intuitively' true about battering, a sense she learned from other judges, shifted when she began reading about women's experiences of violence:

"Those judges who *I thought* were the most creative and the most sensitive were judges who would typically take the time and say 'Okay, let's work this out in the family.' But, I mean, I think intuitively you would do that, *unless you read and started to realize that by doing that, you were enforcing precisely the wrong thing in the situation.* That isn't what you want to do.

You need to treat this as a crime, you can't perpetuate this as a family matter. Well, those are all really learned responses I don't think they are intuitive." [Emphasis added by author.]³

Judicial branch educators need to guard against the rush to the new, sexy topics at the expense of the subjects that comprise the majority of court filings. Of course, judges need to learn about bioethics – from my point of view they especially need to learn about the gender-related issues here such as different standards applied to women and men in right to die cases. But the new issues should not crowd out the old, which will always be with us.

² THE THIRD BRANCH, Jan. 2001 at 1, 6.

³ James Ptacek, BATTERED WOMEN IN THE COURTROOM 119 (1999).

III. Overcoming Resistance to Social Context Education

Overcoming resistance to social context education requires understanding the sources of that resistance and helping judges to see this kind of education as something that is truly in their best interest.

Judicial branch educators need to help judges realize two things: first, that social context education will make them better, more informed, fairer judges; second, that social context issues arise in the day to day work of every judge.

With respect to the first point, it is interesting to me that there is so much resistance to social context education when it can protect judges from bad decisions that may haunt them personally and may even land them in the headlines. To go back to those child sexual abuse cases I ask the law students about, in 1996 NJEP published a model curriculum titled *Adjudicating Child Sexual Abuse Allegations When Custody is in Dispute*⁴ In the evaluations for the pilot programs we asked what the judges would do differently as a result of the information examined during the program. One judge wrote, “I will not be so punitive toward the protective parent.” “Punitive” is a striking word to use in the context of a parent trying to protect a child from sexual abuse. Think about the decisions that judge must have made using his punitive approach.

And as to headlines, I’ll mention a Pennsylvania case which shocked even me – and I thought I’d heard everything. State social workers investigating the potential adoption of seven-year old girl learned that the prospective adoptive father had lied about his criminal record when he applied to become the child’s foster parent. He said he had no record when in fact he had been convicted of impregnating his own daughter when she was twelve. Two Pittsburgh judges refused to remove the little girl from the home, and one judge asked the expert he’d brought in himself whether this seven-year old child would be able to fight the man off if he attacked her, since he was old and ill.

Social Context Education can help judges and the judicial system avoid decisions like these, which thoroughly undercut public trust and confidence in the courts. Indeed, I learned about the Pennsylvania case from the Letters to the Editor column in a Pittsburgh newspaper.

With respect to social context issues arising in the day to day work of the courts, certainly one source of resistance to social context education is some judges’ perception that it is peripheral to their work.

This year I am giving a series of workshops for federal district court judges on violence against women issues in the federal courts. Federal judges believe they do not deal with these issues, that they are strictly for the state courts. But I put together a list of 27

⁴ For a detailed description of this curriculum see <http://www.legalmomentum.org/njep/PDFdocs/childsexassault.PDF>

areas of federal law – areas ranging from rape cases arising under Title VII⁵ to habeas corpus decisions respecting women who murdered their batterers – where the federal courts are handling these issues every day. Why even federal judges need social context education about violence against women is vividly demonstrated by the case of Kemba Smith, who was pardoned by President Clinton. She was a naïve young college student manipulated into a relationship with a savage drug dealer who almost killed her and then embroiled her in his activities in an extremely minor way. She was indicted on drug charges and agreed to a plea. When she sought a downward departure on the grounds that she could not refuse to do the few, low-level things demanded of her in furtherance of his drug scheme because she reasonably feared he would kill her and/or her parents, the district court judge sentenced her to twenty-six years and said “[T]here isn’t a soul alive that can understand how any woman or girl would permit some man to beat on her and then continue to live with him and to love him.”⁶

This case illustrates not only the judge’s ignorance about domestic violence, but the ubiquity of this issue.⁷ Officially this is a drug case, but the entire sentencing process was about domestic violence.

Another source of resistance is defensiveness. When education focuses on some kind of bias, the implication is that judges need this because they have violated the core norm of the judiciary – fairness. None of us wants to be told we are failing at the job. And when the subject is gender bias, the defensiveness is heightened because it calls into question judges’ relationships with the women and men in their own personal lives.

Another source of resistance is the fallacy of legal education I mentioned earlier. One judge told us “I know that I have biases like everyone else, but law school taught me to put them aside in my role as a judge. Therefore they do not affect my decisions.” This way of thinking presents a two-fold problem. When this judge used the word “biases” he likely thought of what we conventionally label biases: for example, attitudes toward people based on race or sex. It is very unlikely that the judge thought about the bias that results from a lack of factual, contextual knowledge: for example, assuming that a rape victim is lying because she delayed her report, when in fact, delay is normative for the very small percentage of victims who report at all. Law school rarely explores either kinds of bias. And it reinforces the second kind precisely because it teaches students that once they learn to think like lawyers, they can handle any area of law with no further knowledge of its context.

Another source of bias is the flip side of the “I know everything” model. This is the “I know nothing” model. Some judges believe that once they become judges all their previous knowledge and attitudes fall away and they become *tabula rasa*, a completely clean

⁵ Title VII of the Civil Rights Act of 1964 bars discrimination in employment on the basis of race, sex, religion or national origin.

⁶ U.S. vs. Kemba Niambi Smith, No. 2:93cr162 (E. D. Va. 1995) Sentencing Transcript, April 28, 1995 at 253.

⁷ For information about domestic violence in contexts ranging from employment to housing to taxation, see LYNN HECHT SCHAFFRAN & ELIZABETH J. VRATO, GENDER, JUSTICE & LAW: FROM ASYLUM TO ZYGOTES—ISSUES AND RESOURCES FOR JUDICIAL, LEGAL AND CONTINUING LEGAL EDUCATION (2004) and ABA (AMERICAN BAR ASSOCIATION) COMMISSION ON DOMESTIC VIOLENCE, THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER’S HANDBOOK, 2ND EDITION (2004).

slate on which each case writes anew. They believe that they come to the bench with no preconceptions, prejudices or misinformation, and that providing them with a context for understanding their cases interferes with their neutrality. This myth of the judge as *tabula rasa* is truly dangerous because it exalts ignorance and leads to the kind of deeply flawed “intuitive” decisionmaking described in the book about battered women in the Massachusetts courts from which I quoted earlier.

Other sources of resistance are the belief that these issues can be addressed once and then they are “done;” that addressing bias in the courts is a fad; and that while this may be important, there are lots of new issues that need time on the judicial education agenda and something has to give way to make room for them.

IV. How to Overcome Resistance to Social Context Education

How can we overcome resistance to Social Context Education? There are a variety of approaches. They involve carrots, sticks, and what I inelegantly call sneaking up on them.

Courses on Bias in the Courts:

One approach is programs that deal with issues of bias directly and under that heading, in the context of the code of judicial conduct and what can happen if a judge fails to honor it. In your reading materials there is an excerpt from NJEP’s new publication, *Gender Fairness in the Courts: Action in the New Millennium*⁸ in which we describe a National Judicial College course called “How to Run a Bias Free Courtroom” which uses this “save yourself embarrassment, reversal and job loss” approach. Judges who teach this course report that recently judges have arrived with a sense of purpose linked to professional risk, and left with thanks to the instructors for helping them steer clear of reversible error. These kinds of courses address:

BIAS/FAIRNESS COURSES

- Canons of Ethics, particularly states’ versions of Canons 3B(5) and (6) of the ABA Model Code of Judicial Conduct explicitly barring biased conduct by judges and those under their direction and control.
- Judges being disciplined and removed for biased behavior.
- Risk of reversal (see cases such as *Catchpole v. Brannon*, 35 Cal. App. 4th 237, 42 Cal Rptr 2d 440 (1995)).⁹
- Liability for bias in administrative actions (see *Forrester v. White*, 484 U.S. 219 (1988)).

⁸ LYNN HECHT SCHAFRAN AND NORMA J. WIKLER, GENDER FAIRNESS IN THE COURTS: ACTION IN THE NEW MILLENNIUM (2001), online at <http://womenlaw.stanford.edu.model.policies.html>.

⁹ See Lynn Hecht Schafran, *Judges Cite Gender Bias Task Force Reports*, THE JUDGES’ JOURNAL, Spring 2000 at 13.

- Negative media attention (e.g., cases in which judges' careers have been destroyed by their sexual harassment of court personnel and others).
- Elections
- Judicial Performance Evaluation

These courses also explore the impact of biased attitudes in all substantive areas of law: criminal, civil and family. This focus on substantive law communicates that this is serious judicial business and not merely a matter of courtroom etiquette, although examples are given of how bias can be manifested in courtroom conduct through language, demeanor and peremptory challenges.

This kind of direct approach to fairness courses is especially important for new judges orientation. These judges need to know that in recent years, largely at the prompting of the state supreme court task forces on gender, race and ethnic bias in the courts, states have adopted formal anti-bias standards for judges and lawyers which judges are obligated to live up to and enforce, and that there are consequences if they do not.

When the National Judicial Education Program began its work in 1980, one of the most frequent responses was that gender bias would disappear by itself as younger women and men came to the bench and bar. Wrong!! No one, female or male, is born knowing, for example, that rape victims typically delay reporting, and exceedingly few learn it in law school. And even with respect to presumably well understood issues such as the need for gender-neutral language and intervening to stop sexist trial tactics in the courtroom, we have heard recently from several state judicial educators that their new judges orientation programs were problematic because some of these newcomers, including the women, had to be hit over the head with the code of judicial conduct before they "got it."

At new judges orientation programs, you can begin to address the fallacy of legal education with a talk from a seasoned, respected judge who explains why social context education will be valuable for these new judges both now and throughout their careers, and makes clear that ongoing participation in these programs is part of the official judicial culture in your state. Attending these programs is what judges who want the respect of their peers and the trust and confidence of the public do. And if your state has any judicial education requirements, whether by law or court rule, make the most of them.

Remind your new judges that they are being thrown into a situation where not only will the personnel and procedures be new to them, but the substantive law areas over which they will preside may be totally new to them as well. The domestic relations lawyer may be assigned to Family Court, but it's just as likely that this assignment will go to the land use lawyer I mentioned earlier. State it as *fact* that the new judges will need education about these new areas. It will be particularly effective if the judge who gives this talk can say from personal experience that he or she found out the hard way how much there was to learn about things that seemed obvious. For example, "I thought that because I have children of my own I know how to interview and question kids. Wrong! Interviewing children and

assessing their credibility requires special expertise that I only learned about after I made a few serious blunders.”

Then explain that judicial branch educators are there to help them in their hour of need. Tell them what will be covered at the orientation program, give them a sense of what will be covered at upcoming judicial education programs and colleges, and then tell them about the resources available to help them in the interim and on an on-going basis as they change assignments or are confronted with new issues: videos, handbooks, articles, monographs, model curricula and so forth.

One of the best ways to open new judges' minds to their own need for social context education is to show them how much they don't know, because, as in the example I gave you earlier about interviewing child witnesses, they literally don't know what they don't know. Consider creating individualized packets for judges being sent to particular courts. For example, give the new Family Court judge the excellent publication on child development from the National Council of Juvenile and Family Court Judges, the Department of Justice Handbook on Child Witnesses, the domestic violence video created by the California Center for Judicial Education and Research that I will describe in a moment, and the National Judicial Education Program's curriculum on child sexual abuse cases that I mentioned earlier.

Make it clear from day one that understanding the contextual background of an issue is as critical to effective, independent decisionmaking as knowing the rules of evidence. And on this point, you can quote Chief Justice Rehnquist.

A Curriculum-Based Model of Judicial Education:

An effective way to surmount the notion that if a judge has been to one program on domestic violence or family law he or she has “done” that subject is to move to a curriculum-based model of judicial education. In this model, judges move through a sequenced and increasingly sophisticated curriculum on particular issues or areas of substantive law that reflects their own intellectual growth from “baby judges” school through years of experience and new assignments. The California Center for Judicial Education and Research (CJER) developed such a domestic violence curriculum and is preparing one on family law. For the domestic violence curriculum CJER developed a video on the link between social science information about domestic violence and decisionmaking and sent it to all new judges. States that want to move to curriculum-based education should take advantage of work done in other states. These curricula are time consuming to produce, but can often be easily adapted for use in other states. They must always be of top quality, created with or reviewed by judges.

An Integrated Curriculum:

The third approach and the one I want to stress most with you today is to integrate social context education throughout your judicial branch programming. Let me give you three examples: one focused on a specific area of law, one focused on a specific judicial function, and one focused on legal theory. None of them “announces” in its title that it is about bias or fairness, which allows you to draw in judges who might never attend a course

that does, and afterward they may not even realize what hit them. This is the sneaking up on them part. Minnesota Supreme Court Justice Rosalie Wahl, who chaired her state's gender bias task force, reported that after they presented a lengthy program about the economic consequences of divorce she heard two judges talking about how informative it was, and then one saying to the other, "and thank goodness they didn't give us any of that gender bias stuff."

With respect to focusing on a specific area of law, you could present a program on *Current Challenges in Juvenile Justice* in which you explore two issues. Issue one is whether and when juveniles should be tried as adults. Bring in an expert on adolescent brain development to explain what we know and are learning about the adolescent brain as context for the judges to explore whether and how this knowledge should inform the philosophical debate.

The second issue is girls and gender bias in the juvenile justice system. On a percentage basis, the number of girls in the system is rising far more rapidly than the number of boys. Your program can explore why this is so and what the courts need to understand and do, in conjunction with other systems, to better serve these girls and keep them from moving on to the criminal justice system. Last year the American Bar Association issued a report called *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*. I am sorry to say it echoes much of the ABA's 1977 report, *Little Sisters and the Law*. Neither of these reports says it is about gender bias, but it documents all kinds of bias against girls. Girls are remanded to secure facilities for behavior that is barely criticized in boys. The constant subtext is that girls must be prevented from engaging in sexual behavior and becoming pregnant, yet there is an almost willful blindness to the sexual abuse by parents and others which has driven many of these young women into the streets. Moreover, the correctional and rehabilitative aspects of the juvenile justice system are designed to meet the needs of boys, not girls. Your program can give judges and others the context they need to better understand the forces shaping these young girls' lives, how the current system is failing them, and what role the courts can and should play in reforming this flawed response to girls in the court system.

With respect to a specific judicial function, if you are in a state where judges have some sentencing discretion, you can hold a sentencing institute which explores appropriate sentencing in several kinds of cases. Here you can integrate social context education about sexual assault by presenting a case involving a nonstranger rape by a college student defendant whose background and demeanor make him look nothing like the typical defendant in a criminal case. Bring in someone with expertise on this kind of sex offender to talk about how to evaluate and sentence this kind of defendant.¹⁰ This approach brings in judges who might not attend a program focused on sexual assault cases. It can hopefully prevent situations such as that in a recent Nebraska case where an 18-year-old student at the state's best prep school received probation and treatment for a three-hour rape in which he also punched and kicked his 14-year-old date and tore out her pubic hair. He went on to assault several other teens and college women while on probation.

¹⁰ This issue is addressed in the National Judicial Education Program's video curriculum, *Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases* (2001). A description and order form is at <http://www.legalmomentum.org/njep/video.shtml#judgevideo>.

A sentencing institute can also provide social context education about gender-related mitigating factors, such as domestic violence and family responsibilities. The case of Kemba Smith that I described earlier demonstrates the need for this exploration with respect to battered women. Several federal judges have written eloquently in the Gender and Sentencing Symposium issue of the *Federal Sentencing Reporter* about the disparate impact on women of the federal sentencing guidelines' directive to ignore family responsibilities in setting sentences.¹¹

My final example relates to legal theory. You could develop a program called *Old and New Themes in Jurisprudence* where you explore legal realism, law and economics, critical race theory and feminist jurisprudence. For critical race theory and feminist jurisprudence you would choose a few very specific cases to bring the theorizing down to the concrete, show judges precisely how race and gender bias play out in the courts, and provide an opportunity for social context education around the cases chosen.

“Intersectionality” is the term legal theorists coined to describe the way the confluence of race and gender creates an indivisible identity that shapes the lives of women of color. This results in a type of bias that is more than race or sex bias alone, and more than race plus sex.¹² It is a compound bias with geometrically damaging results for women of color who are attorneys and who encounter the legal system in other capacities. The concept of intersectionality was originally developed as a way to talk about the dilemma of women of color bringing employment discrimination suits. Title VII required them to plead either race or sex discrimination, a single-axis approach that did not reflect their experience and that left them unable to demonstrate the harms they had suffered.

As the leading theorist in this area, Professor Kimberle Crenshaw, commented concerning a 1976 case, “The court refused to recognize the possibility of compound discrimination against black women and analyzed their claim using the employment of white women as the historical base. As a consequence, the employment experiences of white women obscured the distinct discrimination that black women experienced.”¹³

In your reading materials is an article of mine about issues and models in judicial education and a note about a publication of mine that should be in your judicial education library, *Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources* (1989). This book covers nearly fifty areas of substantive and procedural law ranging from right to die cases to driving while intoxicated in which gender bias may be a factor. It also describes how these gender-related issues can be integrated throughout the complete judicial education curriculum, in programs on evidence, sentencing, juvenile justice, law and

¹¹ 8 *Federal Sentencing Reporter* 131 (1995).

¹² Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

¹³ *Id.* at 148. NJEP has created a curriculum to address these issues, WHEN BIAS COMPOUNDS: INSURING EQUAL JUSTICE FOR WOMEN OF COLOR IN THE COURTS (1997). For a detailed description see <http://www.legalmomentum.org/njep/curric.shtml#woc>

psychiatry, torts and damages and more. This book is being updated and will be reissued in soon.¹⁴

V. Problem Solving Courts Require Judicial Branch Education

Our program today began with a presentation about judicial branch education as part of a judicial reform movement that began in the 1950s. Every reform effort has a natural cycle: building, reaching its apogee and then declining as a movement either because interest and enthusiasm wane or because the reform becomes so institutionalized that it does not feel like a reform movement any more.

In the excerpt from *Gender Fairness in the Courts: Action in the New Millennium*¹⁵ that is in your reading materials, Norma Wikler and I write about this phenomenon and the irony of the gender bias reform movement; that the issues we began to raise twenty years ago – bias in decisionmaking, incivility in court interactions, and the plight of the *pro se* litigant who then as now is so often a woman in Family Court – are now such mainstream concerns that the focus on the gender-related aspects of these problems is often lost. We have become victims of our own success.

Judicial branch education has had great success and moved from being the reformers' dream to an accepted function of the court system. But rather than the arc declining, I think judicial branch education is going to enjoy another wave of reform momentum thanks to the advent of problem solving courts.

Two days ago I received an essay called *Problem-Solving Courts* by two New York court administrators that I think you will find useful to help people understand what problem-solving courts do, their successes to date and the concerns they raise. Here is how the authors define these courts:

Problem-solving courts use their authority to forge new responses to chronic social, human, and legal problems – including problems like family dysfunction, addiction, delinquency, and domestic violence – that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behavior of litigants and ensuring the future well-being of communities. And they attempt to fix broken systems, making courts (and their partners) more accountable and responsive to their primary customers – the citizens who use courts every day, either as victims, jurors, witnesses, litigants, or defendants.¹⁶

¹⁴ This book was published in 2004 as GENDER, JUSTICE & LAW: FROM ASYLUM TO ZYGOTES—ISSUES AND RESOURCES FOR JUDICIAL, LEGAL & CONTINUING LEGAL EDUCATION. Description and Table of Contents at <http://www.legalmomentum.org/njep/publications.shtml#gender>

¹⁵ LYNN HECHT SCHAFFRAN AND NORMA J. WIKLER, GENDER FAIRNESS IN THE COURTS: ACTION IN THE NEW MILLENNIUM (2001). Available online at <http://womenlaw.stanford.edu/model.policies.html>.

¹⁶ Greg Berman and John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW AND POLICY 125, 126 (2001).

One thing about these courts is clear. As I said at the start of my remarks, judicial and non-judicial court personnel cannot solve litigants' problems if they know nothing of the context in which they arise.

The commitment to education these courts require is made clear in another essay I commend to you by New York Chief Judge Judith Kaye titled *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*. She writes:

In New York, we have institutionalized our commitment to keeping abreast of the latest learning in this area through the establishment of a Family Violence Task Force. Comprising judges and practitioners from around the state, the Task Force conducts year-round training programs for both judicial and nonjudicial staff on the legal, medical and psychosocial aspects of family violence.¹⁷

The growth in problem-solving courts is a potential boon for judicial branch education because it will create significant interest in social context education. But paradoxically, I think this trend may also make judicial branch education harder in certain respects.

Any of you who were at the National Symposium on Judicial Branch Education saw writ large the tension I am sure you are feeling in your individual states between traditionally trained and focused judges who equate problem-solving with social work and want no part of it, and the demand for problem-solving courts that is so clear from the community surveys.

To the extent that problem solving is in the ascendent, judges not temperamentally suited to preside in that type of court are going to have to shape themselves, or be shaped, into a new breed of judge. It is a lot harder to be a problem solver and have a long-term relationship to a case than to say guilty/not-guilty or damages here/none there and be done with it.

Another aspect is the political dimension. At the Fifteenth Anniversary Celebration of the New York Judicial Commission on Women in the Courts, the first judge to preside in New York's first domestic violence court spoke about what he perceives still needs to be done to improve the courts' response to battered women. He concluded with an observation that really took me aback because ordinarily it is so hard to find judges who want to preside in these courts.

This judge expressed the concern that as these specialized courts begin to get good press and develop a certain cachet, ambitious judges who want to move up in the system will feel they have to do a stint there, and people with no interest in or sensitivity to these cases will get themselves appointed to these courts.

¹⁷ Judith S. Kaye and Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*, 27 WESTERN STATE UNIVERSITY LAW REVIEW 1 (1999) at n27.

Judicial branch educators should be involved in setting parameters for training for these positions, so that at least by court rule, a Domestic Violence Court judge must have taken a substantial number of hours of training in this area. New Jersey is one of the very few states that by law has forty hours of mandatory judicial education about domestic violence for every judge with any responsibilities in the area – which – as in the example of the federal drug case of Kemba Smith I mentioned earlier, means just about everyone.

VI. Great Time to Be a Judicial Branch Educator

The demand for judicial branch education is going to grow. The need for creativity on your part to set new judges on the right path, to serve those judges who want to learn, and to bring along the less enlightened is going to grow.

And the variety of techniques available to help you do this will grow. After our group discussion and break we will talk about the National Judicial Education Program's video and DVD curriculum on rape cases, *Understanding Sexual Violence: The Judges's Role in Stranger and Nonstranger Rape and Sexual Assault Cases*, as an example of a flexible learning tool that takes advantage of new technologies to enhance social context education.¹⁸

¹⁸ A description of this curriculum, the many ways it can be used and comments from judges who participated in the pilots can be accessed at <http://www.legalmomentum.org/njep/PDFdocs/usvflyer.PDF>

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014, USA

Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

Understanding Sexual Violence

Sexual violence committed against adult women and men is the most misunderstood crime and, as a result, the least well handled in the courts. To dispel the myths that surround this crime, demonstrate how stereotyped thinking undermines the fair administration of justice and suggest ways that judges can preside more effectively in these cases while maintaining their neutrality, the National Judicial Education Program (NJEP) in 1994 published a two-day model judicial education curriculum titled *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*. The curriculum was funded by the State Justice Institute and is intended to be adapted by judges and judicial educators for their own jurisdictions.

The curriculum provides extensive social science research about how different victims react during and after the assault: rape-related posttraumatic stress disorder; nonstranger sex offenders, who are by far the majority; sex offender sentencing and treatment; and jurors' attitudes towards rape. It then explores how this research relates to judges' responsibilities in the pre-trial, trial and sentencing phases of a rape or sexual assault case and how judges can minimize retraumatization of victims without undermining defendants' rights. The curriculum has been presented across the United States to an extremely positive response. In order to make this critical information more readily available, NJEP subsequently created a video version and is completing a DVD-ROM. The several versions of this curriculum are listed below.

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault, (two-day, live training program).

Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases, (four-hour video curriculum).

Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases, (DVD-ROM, forthcoming).

The "Undetected" Rapist (6-minute video).

Detailed descriptions of each and order forms are online at www.njep.org. Click on Curricula and Videos & DVDs. A detailed description of the video version is attached.

At the request of judges nationwide, NJEP created a four-day curriculum for prosecutors and a related video on medical evidence in rape trials. Descriptions are also online at www.njep.org.

Understanding Sexual Assault: Prosecuting Adult Rape and Sexual Assault, (four-day live training program). The complete curriculum is online at <http://www.vaw.umn.edu/documents/usvpros/usvpros.shtml>.

Presenting Medical Evidence in an Adult Rape Trial, (two-hour video). To view the associated website and video resource guide go to www.njep.org/medicalevidence.

* a project of Legal Momentum in cooperation with the National Association of Women Judges

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014

Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

UNDERSTANDING SEXUAL VIOLENCE: THE JUDGE'S ROLE IN STRANGER AND NONSTRANGER RAPE AND SEXUAL ASSAULT CASES

A Self-Directed Video Curriculum

The National Judicial Education Program to Promote Equality for Women and Men in the Courts announces an important new resource for education about rape that is focused on judges but is relevant also to probation departments, prosecutors, defense attorneys, victim advocates, medical personnel, and police. *Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases* is a self-directed video version of NJEP's highly regarded model judicial education curriculum, *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*. The video/self-study guide version will enable judges to access critical information on an as-needed basis and on their own time schedules. The video curriculum was developed under a joint grant from the State Justice Institute and the Department of Justice Violence Against Women Office and approaches these issues from the critical vantage point of fairness in the administration of justice. The curriculum focuses on learning to deal fairly with sexual assault cases, especially nonstranger rapes, without undermining defendants' constitutional rights.

Understanding Sexual Violence provides the most current empirical information about how different victims react during and after the assault, Rape-Related Post-Traumatic Stress Disorder, sex offenders and sex offender sentencing and treatment, and jurors' attitudes toward rape. This information is presented in the context of its implications for conduct of the pretrial and trial process, jury selection, assessment of force and consent, evidentiary decisions, pleas and sentencing. The National Judicial Education Program published the original SJI-funded curriculum in 1994 as a live, two-day presentation. Since then, educators and experts have traveled around the country to present it in person. NJEP has now produced key sections of the curriculum in a video version that will be particularly useful to judges whose time to attend programs is constrained by demanding dockets and caseloads and to judges who are newly appointed or rotated into a criminal assignment.

ORGANIZATION OF THE VIDEO AND SELF-STUDY GUIDE:

The curriculum is a four-hour program that consists of three videotapes and a self-study guide. It covers three units from the two-day "live" presentation: Victims, Offenders, and Voir Dire. The video is structured around a case study that follows the stages of a trial from the pretrial hearing through sentencing. The curriculum covers the following subject matter:

* a project of Legal Momentum in cooperation with the National Association of Women Judges

Part I: Victims

Probable Cause
Continuance Hearing
Motion in Limine-Expert Witness
Voir Dire

Part II: Offenders

Probable Cause
Prior Bad Acts
Victim Impact Statement
Defendants' Sentencing Hearing

Each of these units of the videotapes is organized into five components:

1. **Courtroom Vignette:** A short courtroom scene which illustrates the key issues for each unit.
2. **Discussion with an Expert:** Judge Michael Keasler, from the Texas Court of Criminal Appeals, interviews experts on victim impact, sex offenders and voir dire.
3. **Judges' Panels:** Five judges from across the country, who participated as faculty members when the two-day *Understanding Sexual Violence* program was presented in their own states, discuss what they learned from the material and how they are applying it in their courtrooms. In addition to Judge Keasler these judges are: Judge Jacqueline F. Allen, Court of Common Pleas, Philadelphia, Pennsylvania; Judge Susan P. Finlay, Superior Court, San Diego, California; Judge Mel Flanagan, Milwaukee County Circuit Court, Milwaukee, Wisconsin; and Judge William Hughes, Superior Court, Noblesville, Indiana.
4. **Steps Judges Can Take:** A list of ways in which judges can apply the material presented.
5. **Self-Study Guide Exercises:** At the conclusion of each segment, viewers are asked to answer specific questions about the issues raised in that section.

The self-study guide includes copies of all of the experts' slides that appear in the video as well as discussion questions, space for note taking, and recommendations from judges across the country who have attended the live, two-day presentation. The entire video curriculum can be watched straight through, divided into two or three showings, or watched one segment at a time. In addition to independent self-study, the video can be shown in small groups in individual courthouses with a moderator to lead discussion, in new judges' orientation programs, and at larger judicial college events with local experts invited to talk about laws and resources in your state. Additionally, the video can be shown on its own, or it can be supplemented to meet the specific needs of groups outside the judiciary.

INSTRUCTOR'S GUIDE:

In addition to the videos and self-study guide, the curriculum includes an Instructor's Guide that explains how to utilize the video curriculum for independent study, with small groups of judges in a single courthouse, in a new judge's orientation program, and at larger judicial college seminars. The guide also explains how to merge the video curriculum with live commentary from local experts and judges.

VIEWER COMMENTS:

The curriculum was piloted in both independent study and small group settings and was very well received. Judges reported that they acquired very specific and useful information that would inform their conduct of subsequent rape trials. For example:

·"I will give less weight to a failure to report a rape promptly and a failure to seek any medical attention."

·"[I] will do increased voir dire myself."

·"I will consider that nonstranger rapes cause more psychological damage than stranger rapes."

OVERALL COMMENTS INCLUDED:

·"I feel much more informed. It is helpful for all judges to know this information. I would recommend it to everyone, particularly for criminal court judges and family court judges."

·"[T]he experts were very knowledgeable and convincing and the Judge panelists' comments were thoughtful and thought provoking...Having just recently assumed a criminal assignment, I learned a lot."

The independent study group included judges who had attended the "live" two-day presentation and were asked to compare the video to it. They commented:

·"The tapes are as effective as the live presentation, if not more so."

·"I thought the tapes were an excellent way to get the info to more judges at a significantly reduced cost. The tapes were very effective."

Judges interviewed a few months after the pilot as to how they had used the curriculum responded:

·"I have used it in two cases. It was very useful to me and continues to be so."

·"I've been able to put the information to good use in the trials that have occurred since viewing the program."

Some judges have already presented the material for their colleagues. One reported, *"I did an abbreviated training on the program three times to new judges...I got great comments."*

***The information in this curriculum is important for many groups in addition to the judiciary, such as probation departments, prosecutors, defense attorneys, victim advocates, medical personnel, sex offender treatment providers and police, and can be adapted to meet their needs as well.**

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014
Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

Gender, Justice & Law: From Asylum to Zygotes— Issues and Resources for Judicial, Legal and Continuing Legal Education

Most people connect the phrase “gender-related issues in the courts” to a few topics such as custody and rape. But gender bias and gender fairness are concerns across the spectrum of civil, criminal and family law, and in the practice and teaching of law itself. These issues must be addressed in contexts as disparate as bankruptcy, evidence, immigration, sentencing, taxation, law and psychiatry and the right to die, to name just a few. A generous grant from The Atlantic Philanthropies enables the National Judicial Education Program (NJEP) to bring you a new resource that addresses the full range of these concerns, *Gender, Justice & Law: From Asylum to Zygotes—Issues and Resources for Judicial, Legal and Continuing Legal Education*. The authors are NJEP Director Lynn Hecht Schafran and Elizabeth J. Vrato.

Securing gender fairness in our legal institutions is a permanent challenge that requires ongoing attention and education. *Gender, Justice & Law* is intended for the following uses and audiences:

- Judicial branch education;
- Education for court and court-related personnel;
- Continuing legal education;
- Law school education;
- Judges;
- Court and court-related personnel;
- Lawyers;
- Law professors;
- Law students; and
- Others involved in the justice system who want to deepen their personal knowledge of gender fairness issues.

Gender, Justice & Law covers 62 areas of substantive and procedural law as well as issues related to law practice and law teaching and highlights the particular concerns for women in each of these areas. For the full table of contents go to:

www.legalmomentum.org/html/njep/publications.shtml

Gender, Justice & Law summarizes the issues in each area addressed and provides an annotated list of resources useful for learning about these issues, teaching about them, and integrating them throughout the judicial, legal and continuing legal education curriculum. These resources include:

* a project of Legal Momentum in cooperation with the National Association of Women Judges

- articles
- books and book chapters
- empirical studies
- model curricula
- reports of the state supreme court task forces on gender bias in the courts
- videos
- websites

How to Use *Gender, Justice & Law*

Gender, Justice & Law: From Asylum to Zygotes is intended to suggest subject matter for a wide variety of education programs and research. It is presented in a 3-ring binder so that sections can easily be copied and distributed and new resources can be added to the sections. Sections can be given to relevant committees, organizations and individuals involved in judicial branch education, education for court and court-related personnel, continuing legal education or law school education. *Gender, Justice & Law* is also intended for individual judges, court personnel, lawyers, law professors, law students and others involved in the justice system who want to expand and deepen their personal knowledge of gender fairness issues.

Resources Update Website

Resources relevant to the material presented in *Gender, Justice & Law* are continuously being published. NJEP will post updated resources on the website www.njep.org/genderjustice as they become available. We welcome your suggestions for additions. Please send them to us at njep@legalmomentum.org ; Subject: Gender, Justice and Law.

Our grant from The Atlantic Philanthropies allows us to distribute a significant number of copies of *Gender, Justice and Law* for **FREE**. There is only a \$10 cost of shipping and handling. If you would like more information, are interested in receiving this publication or know others who would be interested, please email the National Judicial Education Program at njep@legalmomentum.org, Subject: Gender, Justice & Law. Please include in the email your name, shipping address, telephone number and how many copies you would like. Checks for shipping and handling should be made payable to Legal Momentum and mailed to the Legal Momentum/National Judicial Education Program, 395 Hudson Street, 5th Floor, New York, NY 10014. If you wish to pay by credit card please call NJEP at (212) 925-6635.

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014

Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

Supreme Court Task Forces on Gender Bias in the Courts Inform and Enhance Judicial Education

Judicial education about bias, fairness and diversity presents unique problems. Education in this area often generates resistance and denial because it challenges judges' perception of themselves as completely impartial. In the United States, judicial education about gender bias and gender fairness has been informed and enhanced by the findings and recommendations of a series of state supreme court task forces on gender bias in the courts that emerged from the work of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP), and which NJEP continues to support.

NJEP was established in 1980 by Legal Momentum* in cooperation with the National Association of Women Judges (NAWJ). NJEP's purpose is to integrate into continuing judicial education information and materials that illustrate the ways gender bias undermines fairness in decision-making and court interaction and suggest ways to promote gender fairness. NJEP defines gender bias as:

- stereotyped thinking about the nature and roles of women and men
- society's devaluation of what is perceived as women's work
- lack of substantive knowledge about the social and economic realities of women's and men's lives
- placing a burden on one sex not placed on the other.

NJEP addresses these issues across the spectrum of civil, criminal, family and juvenile law. When NJEP began this work, it was immediately apparent that having state-specific information that documented local problems was essential to overcome denial. This led NJEP to urge anyone interested in presenting judicial education about gender-related issues to first develop information about their own court systems.

NAWJ members wanting to present judicial education about gender-related issues persuaded their state chief justices to establish high-level task forces to investigate the nature and extent of gender bias in their own jurisdictions and recommend reforms. At its 1988 annual meeting, the Conference of Chief Justices adopted a resolution urging every Chief Justice to establish a task force "devoted to the study of gender bias in the courts." In 1999, the National Conference on Public Trust and Confidence in the Justice System, attended by teams from every state that included the chief justice, state court

* Legal Momentum is the new name of NOW Legal Defense and Education Fund

* a project of Legal Momentum in cooperation with the National Association of Women Judges

administrator and state bar president, voted to make implementing the recommendations of the task forces on gender, race and ethnic bias in the courts a priority.

The task forces documented similar findings of gender bias in court interactions among judges, lawyers, court users and court personnel; in courts' response to substantive areas such as violence against women, torts and family law; and in court employment practices. Forty-five states and seven federal circuits have now had such a task force. Their findings are summed up in this quotation from the Report of the New York Task Force on Women in the Courts:

"The Task Force has concluded that gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity."

The reports of the task forces on gender bias in the courts have now been cited in more than one hundred state and federal judicial opinions. These include cases reversing judges for gender-biased decision-making and sanctioning attorneys for gender-biased conduct.

The primary recommendation of every task force has been education for judges and court personnel to overcome the stereotyped thinking and lack of substantive knowledge that gave rise to the task forces' findings. Judicial educators have utilized the task force findings and recommendations to develop programs that address and explore the issues identified.

To encourage and support task force formation and long-term implementation, NAWJ created the National Task Force on Gender Bias in the Courts. NJEP works with all the task forces in all phases of their work and published several manuals to guide their efforts. These manuals are listed below, followed by a list of articles describing the task forces' operations, findings, recommendations and implementation efforts and information about how to obtain task force reports.

The full text of each manual listed below is available online as cited. Detailed descriptions of the last two manuals—*The Implementation Resources Directory* and *Gender Fairness in the Courts: Action in the New Millennium*—are attached.

- Norma J. Wikler and Lynn Hecht Schafran, *Operating a Task Force on Gender Bias in the Courts: A Manual for Action* (1986), online at <http://womenlaw.stanford.edu/gender-bias.pdf>
- Lynn Hecht Schafran, *Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts* (1989), online at <http://womenlaw.stanford.edu/schafran.pdf>.

- Norma J. Wikler and Lynn Hecht Schafran, *Learning From The New Jersey Supreme Court Task Force On Women In The Courts: Evaluation, Recommendations And Implications For Other States* (1991), online at <http://womenlaw.stanford.edu/learningfrom-njsc.pdf>
- Lynn Hecht Schafran, Norma J. Wikler and Jill Crawford, *The Gender Fairness Strategies Project: Implementation Resources Directory* (1998), online at <http://womenlaw.stanford.edu/genderfairness-ird.pdf>.
- Lynn Hecht Schafran and Norma J. Wikler, *Gender Fairness in the Courts: Action in the New Millennium* (2001), online at <http://womenlaw.stanford.edu.model.policies.html>.

**Articles about the
State and Federal Task Forces on Gender Bias in the Courts:
Operation, Findings, Recommendations and Implementation**

For summaries of the state gender bias task forces' operation, recommendation, findings and implementation efforts, see the following articles by Lynn Hecht Schafran, Director, National Judicial Education Program:

- *Eve, Mary, Superwoman: How Stereotypes About Women Influence Judges*, JUDGES' JOURNAL, Winter 1985 at 12.
- *Educating the Judiciary About Gender Bias in the Courts: 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*, 9 WOMEN'S RTS. L. REP. 109 (1986).
- *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 280 (1987). Summarizes the findings and recommendations of the first two task forces, New Jersey and New York.
- *Overwhelming Evidence: Reports on Gender Bias in the Courts*, TRIAL, February 1990 at 28. Summarizes the findings of the nine task forces that had released their findings as of December 1989: Florida, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Rhode Island, and Washington state.
- *Update: Gender Bias in the Courts*, TRIAL, July 1991 at 112. Describes the seven reports issued subsequently from California, Colorado, Illinois, Michigan, Utah, Vermont, and Wisconsin and summarizes their implementation efforts.
- *Gender and Justice: Florida and the Nation*, 42 FLORIDA LAW REVIEW 181 (1990). Compares the findings of the above nine task forces in the area of

family law and discusses several states' efforts to implement their task forces' recommendations.

- *The Obligation to Intervene: New Direction from the American Bar Association Code of Judicial Conduct*, 4 GEORGETOWN JOURNAL OF LEGAL ETHICS 53 (1990). Discusses the task forces' findings with respect to courtroom interaction.
- *Gender Equality in the Courts: Still on the Judicial Agenda*, 77 JUDICATURE 110 (1993). Focuses on the responses of the state and federal courts and organized bar.

The task forces' findings on domestic violence and family law are discussed in:

- Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAMILY LAW QUARTERLY 247 (1993).

For summaries of the federal gender bias task forces' operations, findings, recommendations and implementation efforts see:

- Judith Resnik, *Gender Bias: From Classes to Courts*, 45 STANFORD L. REV. 2195 (1993). (re the Ninth Circuit)
- Lynn Hecht Schafran, *Will Inquiry Produce Action? Studying the Effects of Gender in the Federal Courts*, 32 U. RICH L. REV. 615 (1998). Overview of the findings and recommendations of all the federal task forces on gender bias in the courts.

For further suggestions about application of the task forces' findings and recommendations see:

- Vicki Jackson, *What Judges Can Learn From the Gender Bias Task Force Studies*, 81 JUDICATURE 15 (1997). Presents gender bias issues, prevention and remedies—ranging from informal efforts to expand the diversity of the profession to revising formal rules.

Information about how to obtain copies of the task force reports is available at <http://www.legalmomentum.org/njep/PDFdocs/taskforce.pdf>

NATIONAL JUDICIAL EDUCATION PROGRAM*

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014
Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

THE GENDER FAIRNESS STRATEGIES PROJECT

Implementation Resources Directory

On behalf of the five organizations cosponsoring the Gender Fairness Strategies Project, the National Judicial Education Program announces publication of the *Gender Fairness Strategies Project Implementation Resources Directory*. Developed under a grant from the State Justice Institute, the Directory provides an annotated list of actions taken and materials available to address gender bias in state courts that can be replicated or adapted in other jurisdictions.

Documentation of deeply embedded gender bias in the courts and initiatives to eliminate it on a state-by-state basis is one of the most profound court reform efforts of this century. Since 1982 when the New Jersey Supreme Court convened the first task force on gender bias in the courts, more than forty states have in some way studied the nature and depth of gender bias in their courts and made specific recommendations to alleviate it. A wide spectrum of implementation strategies has begun to be instituted, *e.g.*, amendments to judicial codes of conduct and court rules, sexual harassment training, legislation prompted by the task force findings, development of gender neutral court materials, training for court personnel, and judicial education.

Five national organizations— the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in the Profession and the National Judicial Education Program— are cosponsoring the *Gender Fairness Strategies Project* under a grant from the State Justice Institute. The project's intent is to promote states' efforts to eliminate gender bias in the courts, and to define an agenda for moving this vital court reform effort forward in the next decade.

The **Implementation Resources Directory** was compiled based on a nationwide survey of the committees charged with implementing the recommendations of the forty state supreme court task forces on gender bias in the courts. This 230-page Directory is divided into three segments. The first segment is an annotated list of the products developed by the Implementation Committees or at their suggestion (*e.g.* bench books, educational materials, legislation, employment policies). The second segment covers the substantive law areas to which these products relate. The third segment describes collaboration between Implementation Committees and other legal and non-legal entities. Each topic presented contains a full annotated list of relevant products and projects. The Directory also provides information about how to obtain copies of these materials.

* a project of Legal Momentum in cooperation with the National Association of Women Judges

The Implementation Resources Directory is intended for multiple audiences. The projects and programs described can be replicated by:

- Gender Bias Task Force Implementation Committees
- Supreme Court Committees on Fairness
- Court Administrators
- Judicial Educators
- Bar Associations
- Prosecutors
- Public Defenders
- Court Watching Organizations
- Judicial Nominating Commissions
- Judicial Disciplinary Commissions
- Attorney Disciplinary Commissions
- Legislatures
- Law Schools
- Advocates Against Domestic Violence and Sexual Assault

We are pleased to provide this valuable resource for all those involved in this critical court reform effort.

The Directory may be purchased for \$20.00 from the National Judicial Education Program, Legal Momentum, 395 Hudson Street, 5th Floor, New York, NY 10014; (212) 925-6635; Fax (212) 226-1066; E-mail: njep@legalmomentum.org. Checks should be made payable to Legal Momentum. Regular postage within the United States is included. If you are outside that area, postage will depend upon your location and postal preference, i.e. surface or air.

NATIONAL JUDICIAL EDUCATION PROGRAM

TO PROMOTE EQUALITY FOR WOMEN AND MEN IN THE COURTS*

395 Hudson Street, 5th Floor, New York, NY 10014
Phone: 212.925.6635, Fax: 212.226.1066, Email: njep@legalmomentum.org

Gender Fairness in the Courts: Action in the New Millennium

The National Judicial Education Program announces the final publication of the Gender Fairness Strategies Project, *Gender Fairness in the Courts: Action in the New Millennium*, by Lynn Hecht Schafran and Norma J. Wikler. This manual will help courts, bar associations and community organizations implement the mandate of the National Conference on Public Trust and Confidence in the Justice System, where 500 justice system leaders – including almost every state chief justice, state court administrator and state bar president – voted to make implementing the recommendations of the Task Forces on Gender, Race and Ethnic Bias in the Courts a priority.

Five organizations cooperated to create the Gender Fairness Strategies Project: the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in the Profession and the National Judicial Education Program. The State Justice Institute (SJI) funded and supported our work.

Gender Fairness in the Courts: Action in the New Millennium reflects the distilled wisdom of these five organizations plus a diverse group of Gender Bias Task Force Implementation and Standing Committees, gender fairness experts and judicial educators who gathered in January 1999 for the Gender Fairness Strategies Project Maximizing Our Gains Conference. After the conference, participants applied each others' tested strategies and new ideas and reported on their effectiveness. This new publication presents the collective knowledge of this reform effort and aims to aid the nation's court systems and related organizations as they continue their efforts to eliminate gender bias in the courts.

Action in the New Millennium explains how to implement the Institutionalization Plan first presented in the *Gender Fairness Strategies Implementation Resources Directory*, published in 1998. The plan covers the fifteen key components essential to achieving and securing gender fairness in the courts. The new strategies manual examines each element of the Institutionalization Plan, addresses concerns and questions, and synthesizes conference participants' strategies for strengthening the Implementation/Standing Committees.

Institutionalization Plan

1. A Standing Committee on Gender Fairness;
2. Staff and Funding to Carry Out the Work of Implementation/Standing Committees on a Long-Term Basis;

* a project of Legal Momentum in cooperation with the National Association of Women Judges

3. Education on Gender Issues for Judges, Court Personnel and Judicial Nominating and Conduct Commissions on an Ongoing Basis;
4. Initiatives that Address the Court-Related Issues Confronting Women of Diverse Racial and Ethnic Backgrounds and Lifestyles;
5. Codes of Conduct for Judges, Court Personnel and Lawyers that Address Gender Bias with Specificity;
6. Legislation Recommended by Task Forces and Implementation/ Standing Committees;
7. Gender-Neutral and Gender-Appropriate Language;
8. Mechanisms for Handling Formal and Informal Complaints of Gender Bias;
9. Initiatives to Ensure Gender Fairness in the Judicial Nomination, Election, Performance Evaluation and Disciplinary Processes;
10. Initiatives to Ensure Gender Fairness in Court Employment;
11. Data Collection Necessary to Monitor Gender Bias in the Courts;
12. Collaboration and Alliances with Other Groups and Individuals Inside and Outside the Courts.
13. Wide Diffusion of Task Force and Committee Findings and Initiatives Throughout the Justice System and Community;
14. Periodic Evaluation to Assess Implementation Efforts, Analyze their Effect on Reducing Gender Bias in the Courts and Identify New Problems;
15. Initiatives to Ensure that Court Planning and Reform Efforts Address the Relevant Gender-Fairness Concerns.

Of particular significance is the need for collaboration to ensure that every court planning and reform initiative addresses the relevant gender fairness concerns. The authors identify twenty-two initiatives ranging from alternative dispute resolution to courthouse architecture where Gender Bias Task Forces, Implementation/Standing Committees, courts and related organizations must work together to integrate these issues.

Gender Fairness in the Courts: Action in the New Millennium will be useful for a wide variety of audiences, including judges, court administrators, judicial educators, bar associations, prosecutors, public defenders, court watching organizations, judicial nominating commissions, judicial disciplinary commissions, attorney disciplinary commissions, legislatures, law schools, advocates against domestic violence and sexual assault, commissions on the status of women, and civic and religious organizations.

Gender Fairness in the Courts: Action in the New Millennium is available for \$25. Make checks payable to Legal Momentum and mail to The National Judicial Education Program, Legal Momentum, 395 Hudson Street, Fifth Floor, New York, NY 10014. Phone 212-925-6635 or email njep@legalmomentum.org for additional information.

Name: _____ Organization: _____

Address: _____

Phone: _____ Email: _____

Quantity	Understanding Sexual Violence Materials	Price
	<i>The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault</i> (Binders for Two-day Curriculum)	\$80, \$70 for court entities
	<i>The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases</i> (3 Videos, Instructors Guide, Self-Study Guide)	\$85
	<i>The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases: A Self-Directed DVD Curriculum</i> (DVD)	TBD
	<i>Prosecuting Adult Rape and Sexual Assault Cases</i> (Faculty Manual, Participant's Binder, Resources Books I & II)	\$200
	<i>Prosecuting Adult Rape and Sexual Assault Cases</i> (Includes Resource Books Only)	\$115
	<i>Presenting Medical Evidence in an Adult Rape Trial</i> (Video)	\$30
	<i>The "Undetected" Rapist</i> (Video)	\$15
	Other NJEP Publications	
	<i>Gender, Justice & Law: From Asylum to Zygotes—Issues and Resources for Judicial, Legal and Continuing Legal Education</i> (Resource Binder)	\$10 shipping fee
	<i>Adjudicating Allegations of Child Sexual Abuse When Custody is in Dispute</i> (Curriculum Binders)	\$80, \$70 for court entities
	<i>When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts</i> (Curriculum Binder)	\$80, \$70 for court entities
	<i>Gender Fairness in the Courts: Action in the New Millennium</i> (Manual)	\$25
	<i>The Gender Fairness Strategies Project: Implementation Resources Directory</i>	\$20

Orders cannot be processed until payment is received. Our federal tax ID number, which you may need for ordering, is 23-7085442. Please allow three weeks for delivery. These prices include regular postage within the United States. If you are outside the United States, postage will depend on your location and postal preference, i.e., surface or air.

You may pay by check or credit card. If paying by check, please draw the check to Legal Momentum, earmarked for NJEP. If you wish to pay by credit card, please complete the following:

Check one: Visa MasterCard American Express Total Amount: _____

Card Number: _____ Exp. Date: ____/____

Billing Address: _____

Signature: _____

Mail your order form and payment to:
 National Judicial Education Program/Legal Momentum
 395 Hudson Street, 5th Floor
 New York, NY 10014

If you have any questions please contact us at (212) 925-6635 or njep@legalmomentum.org