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# Task Force Reports on Women in the Courts: The Challenge for Legal Education

Elizabeth M. Schneider

Over the last several years, a number of states have commissioned special task forces to investigate the status of women in the courts and issue reports.<sup>1</sup> Reports have now been completed in New Jersey and New York and are well underway in several other states.<sup>2</sup> These reports, such as the one in New York<sup>3</sup> with which I am most familiar, have important implications for legal education. They present law schools with an urgent challenge and an exciting opportunity to rethink and reconstruct legal education.

## The Task Force Reports: New York as an Example

The New York Task Force Report documents and demonstrates that "gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences."<sup>4</sup> It emphasizes the complex interrelationship of laws, legal practices, and social attitudes that persistently result in a denial of justice to women in New York. The Report explores discriminatory treatment of women litigants in a number of

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1. See generally Alberta I. Cook, *Gender Bias: Push Grows for Study, Action*, Nat'l L. J., May 19, 1986, at 1; Sherrill Kushner & Valerie Lezin, *Bias in the Courtroom*, 14 *Barrister* 8 (Spring 1987); Lynn Hecht Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 *Judicature* 280 (1987).
2. Report of the New York Task Force on Women in the Courts, 15 *Fordham Urb. L. J.* 1 (1986) [hereinafter *New York Task Force*]; First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts, 9 *Women's Rts. L. Rep.* 129, 134 (1986). The first State Supreme Court Task Force, New Jersey, was established in 1982. New York was next and issued its report in 1986. Rhode Island issued its report in 1987. Task forces are underway in Colorado, Connecticut, Massachusetts, California, Michigan, Minnesota, Florida, Illinois, Washington, Arizona, Utah, Maryland, Nevada, and Hawaii.
3. *New York Task Force*, *supra* note 2. See generally *Pervasive Sex Bias Found in Courts*, *New York Times*, April 20, 1986, at 1; *State Task Force Finds Bias Toward Women in Courts*, N.Y. L. J., April 23, 1986, at 1.
4. *New York Task Force*, *supra* note 2, at 15.

substantive areas: domestic violence, rape, judicial enforcement of women's economic rights generally, including equitable distribution, child support, and child custody. It also examines problems of "the courtroom environment," such as the tendency of judges to accord less credibility to women's claims. The Report details the problems that women attorneys face in court because judges, attorneys, and court personnel do not treat them with the same dignity and respect as male attorneys; women are addressed in familiar terms and are subject to comments about personal appearance, remarks and conduct that degrade them, and verbal or physical sexual advances: Aggressive behavior is rewarded and tolerated from male attorneys but treated as out of place or even unacceptable for women.<sup>5</sup>

The Report suggests that the first step toward reform is a critical process of self-examination by each legal institution in the state as to its role in perpetuating gender bias, and an exploration of efforts it can make to remedy these problems. It makes specific recommendations for different legal institutions, such as the judiciary, court administration, law schools, and bar associations. For example, it recommends that law schools ensure that criminal justice courses provide accurate information about rape,<sup>6</sup> that family law courses include information about low child support awards and lack of enforcement of child support,<sup>7</sup> that family law courses include information about the psychological consequences of divorce for children, the impact of spousal abuse on children, and the way in which gender bias influences custody decisions.<sup>8</sup> It also recommends that law schools include in professional responsibility courses information and material to make students aware of the subtle and overt manifestations of gender bias directed against women litigants and their due process consequences.<sup>9</sup>

### **The Role of the Law Schools**

Law schools play a critical role in shaping and socializing our attitudes toward the law, the legal profession generally, and appropriate styles of lawyering. Law schools transmit our first messages about what is permissible in the law. Many present law school faculty members went to law school when there were few women students and almost no women faculty—when law school was a largely male institution. Only in the last fifteen years have women been in law schools in significant numbers. Women law teachers are still a minority on the faculty of many law schools. However, at schools such as Brooklyn Law School and a few others there are a sufficient number of women law teachers (more than twenty at Brooklyn) to constitute a real critical mass, and many of the women play leadership roles within the law school community.<sup>10</sup>

5. *Id.* at 145.

6. *Id.* at 64.

7. *Id.* at 100.

8. *Id.* at 113.

9. *Id.* at 126.

10. At Brooklyn Law School, 15 of 41 tenured or tenure-track faculty are women, and there are 9 women clinical or legal writing instructors of law. According to figures compiled by the American Bar Association, Brooklyn Law School leads the nation in the number

The inclusion of women as law students and the presence of women on law school faculties have been important in many ways. In particular, women law faculty are important role models who send the message that women are a serious and important part of the profession. There are too few women faculty members at most schools and many who are on law faculties are not in tenure-track positions. They are clustered in clinical or legal writing jobs that frequently demand the most challenging work, but for less pay, long-term security, or status than other faculty members receive.<sup>11</sup> Yet the numbers have had an impact. Last year, for example, some first-year students in my section of Civil Procedure had three or four women teachers in their first year. Many told me how important it was for them to see women teaching the basic first-year courses. They understood the positive message that the law school was sending.

To acknowledge that increasing numbers of women in law schools is important in shaping attitudes toward the profession is not to suggest that numbers alone are sufficient. Numbers are only a start; they are *necessary* to begin to affect attitudes, but they are not *sufficient*. The task force reports dramatically document that numbers alone cannot change attitudes. The increasing numbers of women have had little impact on the pervasiveness of gender bias in the profession. And despite the statistical increase in women students and faculty, gender bias in legal education persists.

The increasing numbers of women law students and law teachers and their developing sensitivity to issues of concern to women stimulated the process of examination of gender bias in legal education that began while I was a student at NYU Law School. In 1972 I attended a historic conference, the Symposium on the Law School Curriculum and the Legal Rights of Women sponsored by the AALS, the first that I am aware of on gender bias in legal education. Presentations were made on many traditional areas of the law.<sup>12</sup> The focus was on the need to integrate issues

of women who serve on the full-time faculty. See Brooklyn Leads Nation in Women Faculty Members, Brooklyn Law School News 1 (Fall 1987).

11. For example, the preliminary results of a Society of American Law Teachers (SALT) 1986-87 law school national faculty composition study that Professor Richard Chused of Georgetown University Law School is presently completing indicate that women hold approximately 15.9% of all tenured or tenure-track positions but hold approximately 70% of all legal-writing positions.
12. The materials developed for the AALS Symposium on the Law School Curriculum and the Legal Rights of Women October 20-21, 1972, included the following unpublished materials: Babette Barton, Grace Blumberg & Carlyn McCaffrey, Tax Law Materials; Kenneth Davidson, Cases and Materials on the Equal Pay Act of 1963, Cases and Materials on Executive Order 12246, and Women in Unions: The LMRA, The LMRDA and Associated Problems: Cases and Materials; Ruth Bader Ginsburg, Toward Elimination of Sex-Biased Discrimination: Constitutional Aspects; Leo Kanowitz, The Law School Curriculum and the Legal Rights of Women: Property; Herma Hill Kay, Robert Levy, Cynthia Atwood & Kathryn Gehrels, Family Law Materials; Susan Ross, Cases and Materials and Title VII of the 1964 Civil Rights Act; Linda Singer, Women in the Criminal Justice System. These materials are available in the bound volume, AALS, Symposium on Law School Curriculum and Women's Rights (1972).

See also John Johnston, Sex and Property: The Common Law Tradition, The Law School Curriculum, and Developments Toward Equality, 47 N.Y.U. L. Rev. 1033 (1972); Judith Younger, Community Property, Women and the Law School Curriculum, 48 N.Y.U. L. Rev. 211 (1973) (both prepared for the AALS Symposium).

concerning women within the basic structure of American legal education, rather than simply relying on the Women and the Law courses that were then developing to remedy serious omissions in the curriculum as a whole. Until a few years ago, however, the effort begun in 1972 to integrate women's issues into the curriculum had not developed very far.

Recently, law teachers around the country, mostly women, have begun to address these issues. Much of the most exciting work in legal education is now focusing on the problem of how to remedy gender bias in its many forms. The New York Task Force Report urges education in all the areas of inequity that it documents.<sup>13</sup> The education that many law students now receive in law schools still omits many of these areas. Women and men in legal education concerned with these issues are beginning to meet the challenge of the task force reports, although we are still largely talking to each other. Work is now focusing on analysis of curriculum content and on casebooks in traditional, particularly first-year courses. We are beginning not only to examine overt bias and omission of women's issues in courses but to explore the traditional pedagogy of legal education that leaves many women students feeling alienated and devalued. We are now also studying what actually goes on in the classroom—all the explicit and implicit ways that women are told that their ideas and perspectives are not equally valuable, but that the law is for men. Some have begun to examine the impact of gender on career choices, professional development, and professional socialization, and are urging law schools to address the issues raised, for example, by recent articles documenting the fact that women are leaving the legal profession.<sup>14</sup> In the continuing legal education programs and the judicial education programs that schools such as CUNY Law School have developed, these issues are also being addressed. Let us look at some of these areas more closely.

### Curriculum and Casebooks

In a number of substantive areas women in legal education have begun to explore gender bias in curriculum and casebooks, both biased coverage and omission of issues of concern to women. This work was begun at the 1972 AALS Conference and has now focused on the first-year curriculum. In 1983 Professors Nancy Erickson of Ohio State Law School and Nadine Taub of Rutgers Law School-Newark initiated a project on sex bias in the teaching of criminal law, responding to complaints by students in many law schools concerning the treatment of women's issues in criminal law. Their study analyzes the leading casebooks used in the field and surveys curric-

13. In addition to the suggestions already noted *supra* p. 88, the New York Task Force Report, *supra* note 2, recommends that law schools ensure that criminal justice courses provide accurate information about rape, including substantial current data about the nature of the crime of rape, the psychology of offenders, the prevalence and seriousness of acquaintance rape, and the long-term psychic injury to rape victims. *Id.* at 64. The report also recommends that family law courses contain information about the hardship to children and custodial parents when awards are insufficient and unenforced. *Id.* at 100.

14. See, for example, Judy Klemesrud, *Women in the Law: Many Are Getting Out*, N.Y. Times, Aug. 9, 1985, at A14, col. 2.

ulum coverage. When completed, the report will be widely circulated to criminal law teachers and will provide supplementary course materials and suggestions for remedying gender bias.<sup>15</sup> Similar work is going on in torts, property, and contracts. A developing literature is analyzing gender bias in doctrine, casebooks, and curriculum content.<sup>16</sup> For example, the Torts section of the AALS and the Women in Legal Education section jointly sponsored a program at the AALS Annual Meeting in 1987 on gender bias in Torts. The Women and the Law Project at American University Law School is dedicated to examining the problem of gender bias in the law school curriculum, particularly the first-year curriculum, and to coordinating these efforts.<sup>17</sup> The efforts are just beginning—much more needs to be done to ensure that the entire range of issues raised in the New York Task Force Report is included within curricula and course materials in all law school courses.

### The Classroom

Course materials are not the only focus. Classroom dynamics are an additional area of study. A special workshop at the 1986 AALS Annual Meeting, sponsored by the Society of American Law Teachers (SALT) and various AALS sections, focused on Racism, Sexism, and Heterosexism in the Classroom. Women, minority, and gay students spoke movingly of the way in which they were made to feel unwelcome and were ignored or demeaned in the classroom. These students experienced legal education as excluding their own distinctive voices. Women students at Harvard and Yale Law Schools, for example, have written open letters to their faculties to confront and correct classroom attitudes and behaviors that they believe make women feel like outsiders in the classroom and ultimately in the legal profession.<sup>18</sup>

15. For a preliminary report of the project see Nancy S. Erickson, *Legal Education: The Last Academic Bastion of Sex Bias?* 10 *Nova L.J.* 457 (1986).
16. See Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 *A. U.L. Rev.* 1065 (1985), Lucinda Finley, *Laying Down the Masters Tools: A Feminist Re-Vision of Torts* (unpublished draft on file with author), and *Including Women's Issues in a Torts Course* (unpublished manuscript). Margaret Radin, *Market-Inalienability*, 100 *Harv. L. Rev.* 1849 (1987). See also materials developed for the Women and the Law Project's program on gender bias in the first-year curriculum, AALS Annual Meeting, January 1986 (available from Professor Ann Shalleck, Washington College of Law, American University), and materials on gender-bias in torts, prepared for the program, *Torts: A New Perspective*, jointly sponsored by the AALS Torts Section and the Section on Women in Legal Education at the AALS Annual Meeting, January 1987 (available from Professor Jean Love, University of California-Davis Law School).
17. The project has held meetings on gender bias in the curriculum at AALS Annual Meetings for the last four years. The first, in January 1985, was on teaching Women and the Law courses. The second, *Integrating Issues Concerning Women into the First-Year Curriculum*, was held in January 1986, the third, an informal meeting of people working on gender bias in legal education, was held in January 1987, and the fourth, *Different Approaches to Integrating Women's Issues in the Classroom: The Many Forms of Feminist Teaching*, was held in January 1988. See Ann Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 *J. Legal Educ.* 97 (1988).
18. See generally *Five Easy Steps Toward A Non-Sexist Classroom Environment* and other

I certainly remember this from my own law school experience. In my first year another woman student and I made a presentation to the NYU Law School faculty, on behalf of NYU Law Women, to complain of gender bias in the classroom. A study undertaken by faculty members at Yale Law School is examining this problem and analyzing its impact on professional socialization of women into law.<sup>19</sup> Many students recount that they perceive a difference in the reception of their concerns in classes taught by women or minorities. For example, some of my third-year students in Women and the Law say it is the first class in which they have spoken. The burden for eliminating these problems must not be left for women and minorities to carry alone.

### **Legal Education, Lawyering, and Professional Development**

Recent efforts to consider gender bias also look at the traditional structure of legal education and its impact on women. Many women students complain that traditional modes of legal education and models of lawyering are inappropriate, adversarial, and incorporate stereotypes of male aggressiveness as the norm. The New York Task Force Report documents the dilemma that these stereotypes pose for women lawyers when they do attempt to represent clients vigorously—they are punished for being too aggressive. Research is being undertaken to investigate whether women's lawyering styles have a different cast, modeled after Carol Gilligan's well-known work on differences in male and female moral development, *In a Different Voice*.<sup>20</sup> Many law teachers concerned with these issues are exploring the possibility of more dialogic, collaborative, and experiential educational approaches that attempt to empower and activate students rather than break and destroy them. These concerns intersect with modern efforts in legal education to include more experiential learning, clinical teaching, and simulation.<sup>21</sup> Our work seeks to help students integrate both heart and mind in addressing legal problems and to encourage the possibility of more self-critical and self-reflective styles of lawyering, sensitive to the dilemma of stereotyped roles.

### **Legal Education and Scholarship**

The New York Task Force Report documents that judges and legal decision-makers have not been sufficiently educated on issues of concern to

materials distributed by the Harvard Women's Law Association, April 1985; Open Letter to the Law School Community from Minorities and Women at Yale Law School (on file with author).

19. Project on Gender and Professional Socialization: Issues in Law and Legal Education, Yale Law School, coordinated by Professors Lucinda Finley, Robert Burt, and former Dean Jamiene Studley.
20. See Carol Gilligan, *In a Different Voice: Psychological Theory & Women's Development* (Cambridge, 1982). See generally Carrie Menkel-Meadow, *Portia in a Different Voice: Reflections on a Woman's Lawyering Process*, 1 Berk. Women's L.J. 39 (1985).
21. For a fuller discussion of these issues in the context of the first-year course in Civil Procedure, see Elizabeth M. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. Legal Educ. 41 (1987).

women, such as gender bias in family law, criminal law, and other areas of the law. There is a clear need for law schools to encourage faculty to do more scholarly work on gender bias, not just in traditionally women's rights areas or family law, but in the law broadly. This need contrasts with the implicit or explicit message which many women law faculty members have been given by deans and other members of their faculties: "Don't write on women's issues or soft topics like family law." Documentation by the task force reports of the way in which legal education has not been sufficiently responsive to women also suggests the need to recognize feminist jurisprudence as an important topic of scholarship generally. Feminist jurisprudence began with feminist legal scholars addressing issues that have largely been of concern to women. However, feminist legal theory has now been recognized as a significant approach to legal analysis and legal problem solving in general.<sup>22</sup>

### **Legal Profession**

In addition, the New York Task Force Report documents the need to investigate the impact on the profession and on women of the increasing numbers of women moving into the legal profession. The section of the Report which documents the problems which women attorneys face in practice has important implications for the legal profession generally, and for legal education. It suggests that it is important for the law schools to integrate discussion of gender bias in practice into clinical courses, trial advocacy courses, and into general discussion of ethics and strategy in more traditional courses as well. In addition it suggests that placement officers study the career paths of both men and women graduates and provide programs that are sensitive to issues which women may face in practice.

### **The Challenge of the Task Force Reports: The Work Ahead for Legal Education**

The task force reports place the burden on the law schools. The devastating picture of treatment of women in the courts that the New York Task Force paints requires that the legal education community respond. In response to the New York Task Force Report, there have been some beginning efforts. In October 1986 the Metropolitan Women Law Teachers Association, an organization of women law teachers in the New York area, held a program addressing a range of issues on gender bias in legal education. In December of that year, the New York State Department of Education sent a letter to the deans of all New York state law schools asking for information concerning the implementation of the Report. The letter received a range of responses from law school deans. The Department of Education report summarizing these responses was issued in July 1987.<sup>23</sup>

22. A panel on Feminist Jurisprudence was included in the AALS Mini-Workshop on Emerging Traditions in Legal Education and Legal Scholarship at the AALS Annual Meeting, January 1987.

23. The report, entitled Law School Response to the Task Force Report on Gender Bias in



This report has been circulated to the deans of all New York State law schools, but no further action has been taken.

The New York Task Force Report demonstrates that law schools must deal affirmatively with issues of gender bias within their own institutions. Professional development workshops and faculty fora should be instituted by deans and given institutional priority. Gender bias should be a topic of serious attention and discussion within law schools. It is an important issue that should be addressed by the AALS. The AALS should provide leadership to stimulate law school deans to take more institutional initiative. The publication of the present symposium issue of the *Journal of Legal Education* can assist in these efforts.

the Courts (1987), included the following description of its mandate and findings:

Responding to a request from the Education Commissioner's Statewide Advisory Council on Equal Opportunity for Women, the State Education Department's Office of Higher Education Academic Review sent letters in November 1986 to the deans of New York State's 15 law schools requesting information concerning their institutions' reactions to the Task Force Report. Without being issue or recommendation-specific, the letter inquired about the effects of the report on both required and elective courses within the law curricula, and it invited information concerning other institutional initiatives—formal and informal—which promote the elimination of gender bias in the courts.

SUMMARY OF INITIATIVES:

Ten of the New York State's fifteen law schools replied to the State Education Department inquiry. Synopses of the replies are listed below by institution.

Any interpretation of these summaries must be tempered by at least two factors. The first of these is the open-ended nature of the survey. Consequently, while several law schools provided detailed and extensive reports of their efforts to eliminate gender bias in the courts, other institutions suggested that their replies were intended to serve only as examples of the manner in which they address gender bias issues in general and the Task Force Report in particular. Second, the following make no attempt to cite every activity mentioned in each institution's response. They are intended to perform the two-fold purpose of illustrating the reactions of New York's schools of law to the specific findings of the Task Force on Women in the Courts and of highlighting some of the known features and initiatives within each institution's response to the general issue of gender bias.

*Id.* at 1–2.

The report concludes:

On the basis of their replies to the State Education Department inquiry, reactions of the Task Force Report range from no specified activity to formal action initiated under the leadership of the dean. Eight of the ten respondents report that their curricula comply with at least some of the Task Force recommendations. However, this represents only slightly more than half of New York's fifteen law schools. Moreover, commentaries from two of the responding institutions suggest that law schools may encounter difficulty implementing certain Task Force recommendations.

*Id.* at 4.

The law schools that responded were New York Law School, Cornell University Law School, Brooklyn Law School, Albany Law School, Fordham University Law School, New York University Law School, SUNY-Buffalo Law School, Syracuse University College of Law, Touro Law School, Cardozo Law School.

The Report is available from the Office of Higher Education Academic Review of the New York State Department of Education, Albany, N.Y. 12230.

The task force reports present an important challenge for legal education. Law schools can play a central role in changing gender bias. The question is whether they will meet the challenge. Legal education must be reconstructed to remedy the problems discussed in the task force reports. The law schools will be successful only when all law school graduates are not only knowledgeable about and sensitive to women's concerns in the law but have eradicated gender bias in their own practice.

