

FOR COURT MEETING 4/16/87

C2-87-1089

MEMORANDUM

April 13, 1987

TO: THE COURT

FROM: SUE K. DOSAL *S*

SUBJECT: MINNESOTA TASK FORCE FOR GENDER FAIRNESS PROPOSAL

Attached for your consideration at the Court meeting on Thursday is a proposal for the establishment of the Minnesota Task Force for Gender Fairness.

SKD:sjr

Attachment



RECEIVED  
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THE MINNESOTA COURT OF APPEALS  
1300 AMHOIST TOWER  
ST. PAUL, MINNESOTA 55102

(612) 297-1000

April 10, 1987

The Honorable Douglas Amdahl  
Chief Justice, and members of the  
Minnesota Supreme Court  
223 State Capitol  
St. Paul, Minnesota 55155

Dear Justice Amdahl:

We are pleased to submit to the court this proposal to create a Minnesota Task Force for Gender Fairness in the Courts. We have attempted to put together some preliminary information on gender bias in the courts in order to discuss methods of identifying bias in court systems.

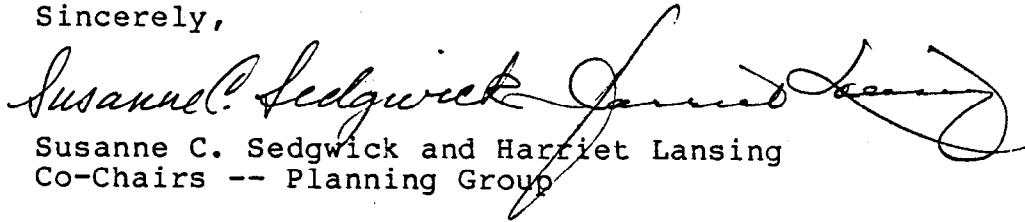
Dr. Norma Wikler, our advisor, provided you with background on similar activities undertaken in other states. Minnesota was instrumental in making gender bias studies possible because several Minnesota foundations, law firms, attorneys and individuals provided funds for the manual used as a blueprint in those states. However, Minnesota has not yet done a study of its own.

Studies in other states have shown a need to gather state specific information on the gender biased treatment of men and women in the court, so that judges can recognize it. The task force would be established with the mission of ascertaining if there are statutes, rules, practices or conduct that work unfairness or undue hardship on women in the Minnesota state court system. For example a task force may look into the effects of bias in the exercise of judicial discretion as it affects litigants, whether men and women are treated similarly as defendants in the criminal justice system, as plaintiffs in personal injury suits, and in maintenance and property awards in marital dissolution cases. We are also interested in the treatment of attorneys and court personnel.

We all take pride in Minnesota's courts and their procedures. Identifying and eliminating gender bias through an internal evaluation process will assure fairness in our courts' processes. We hope the enclosed proposal meets with your approval and will further your commitment to continually improving our judicial system.

We ask the court to establish a Minnesota Task Force for Gender Fairness in the Courts to be composed of approximately 27 members for the purposes outlined in our attached proposal. We have taken the liberty of gathering the names of a number of individuals who we believe would be valuable task force members. Today you might approve the task force and by May 1 we will have a list of names for you so that at your May meeting you could take the official appointing actions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susanne C. Sedgwick and Harriet Lansing". The signature is written in dark ink and is positioned above the typed names of the signatories.

Susanne C. Sedgwick and Harriet Lansing  
Co-Chairs -- Planning Group

Robert Schiefelbein  
Cara Lee Neville  
Sue Dosal  
Aviva Breen, Executive Director  
Commission on the Economic Status of Women  
Ann Huntrods, Minnesota Women Lawyers  
Richard Pemberton, President  
Minnesota State Bar Association  
Tom Tinkham, Secretary  
Minnesota State Bar Association

## DRAFT

# PROPOSAL TO CREATE A MINNESOTA TASK FORCE FOR GENDER FAIRNESS IN THE COURTS

## PURPOSE

The purpose of the task force is to ascertain if there are statutes, rules, practices or conduct that works unfairness or hardship on women in our state court system and to provide methods to eliminate gender bias through judicial education, public leadership and informational publications. The inquiry will involve substantive areas of law, procedural issues, personnel issues and problems which may arise in gaining access to court processes. The task force will collect data on Minnesota court decisions and proceedings, administrative procedures, treatment of litigants and witnesses and treatment of judicial, legal, administrative and court personnel.

The problem of gender bias is often an unconscious one. Individuals can be sensitized to its existence and effects only through education. Minnesota has not had judicial education on gender bias, nor has it had studies on either the nature or effect of gender on judicial decision-making. The National Judicial College and the American Academy of Judges have both recognized the necessity of gender bias education programs. The cornerstone of such a program is the collection and analysis of data.

## BACKGROUND

Several gender bias task forces have been set up in other states, most of them created by the Supreme Courts of the respective states. New York was one of the earlier states and the results of the study so impressed New York Chief Justice Sol Wachtler that he stated:

Gender bias is one of the most troublesome aspects of our entire legal system, and the reason it is so troublesome and so insidious is because there is a failure to recognize its existence even a small amount of gender bias is intolerable and we are working very hard to eliminate it.

New Jersey, New York and Rhode Island have completed their studies, Hawaii, Massachusetts, Maryland, Arizona, California and Utah have appointed task forces and begun studies. Most of these studies have used as a blueprint a manual written by Lynn Hecht Schafran and Dr. Norma Wikler entitled "Operating a Task Force on Gender Bias in the Courts: A Manual for Action." Contributions from Minnesota foundations, law firms, attorneys and other individuals made the publication of this manual possible. Thus, Minnesota has been at the forefront in supporting these studies and, at the same time, can benefit from the experiences of other states. At this time Oregon, Louisiana, Florida, Nevada and Vermont are seriously exploring setting up a task force. There can be no doubt that there is an awakening all across the country that a problem exists. It is time for Minnesota to begin its own study.

#### PROPOSED STRUCTURE

We propose a task force composed of approximately 27 members, 14 of whom would be judges or former judges, 7 attorneys and 6 members of the public. Ideally, the membership should be diverse along sex, race, age and geographic lines. It is important that the non-judicial members of the task force include social science academics with the expertise to develop a questionnaire and survey and analyze the collected data. Design of the questionnaire and survey will be provided by outside consultants, but it is necessary to have someone on the task force who is knowledgeable in this area.

Other non-judicial members will be drawn from bar association leadership, law professors and community groups with a knowledge of the legal system.

We believe that task force leadership should be provided by two individuals as co-chairs, with an executive committee charged with keeping the task force on track and completing the work.

The task force should have adequate staffing and continuity of staff. We have allocated funds for staff in our proposed budget and also included funds for a consultant. This budget was presented to the Senate Judiciary committee with the proposed legislation (Senate file 950, House file 1214) to allocate funds for the task force. State Justice Center funds have also been requested from Women Judges Fund for Justice to provide part of Prof. Wikler's consulting fees.

PROPOSED BUDGET	YR 1	YR 2	(If Feb.1 remains)
Administrator (1/2 time)	\$15,000	\$15,000	\$10,500
Research Assistant (1/2 time)	10,000	10,000	7,000
Telephone	2,000	1,000	500
Supplies	1,800	1,500	1,000
Postage (Includes lawyer Survey mailing)	6,000	1,500	1,000
Reproduction & Printing	2,000	2,000	1,500
Consultants			
Survey Design	5,000	0	0
Statistical Analysis	0	5,000	5,000
Public Hearings (Travel, Meals, Hotel)	3,500	3,500	3,500
Preparation & Printings (Interim & Final Recommendations)	5,000	10,000	10,000
<b>Sub-Total</b>	<b>\$50,300</b>	<b>\$49,500</b>	<b>\$40,000</b>
Computer Time (Commission on the Economic Status of Women - In Kind)	3,000	3,000	3,000
<b>TOTAL</b>	<b>\$53,300</b>	<b>\$52,500</b>	<b>\$43,000</b>

We are fortunate to have Dr. Norma Wikler as our consultant. Dr. Wikler was the first Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts. She is currently an Associate Professor of Sociology at the University of California, Santa Cruz and Research Associate at the Institute for the Study of Social Change at the University of California, Berkeley. She serves as advisor to the New Jersey and New York Task Forces on Women in the Courts and is a Senior Advisor to the Foundation of Women Judges. She co-authored Operating a Task Force on Gender Bias in the Courts: A Manual for Action with Lynn Hecht Schafran, Esq.

#### WHY WE SHOULD HAVE A STUDY IN MINNESOTA

The initial work of the task force will be directed toward identifying whether there is gender bias in Minnesota. Because this information requires research and evaluation, we cannot provide extensive documentation at the outset. However, the following examples show that evaluation is warranted. We have also attached examples from other states

and included tables which demonstrate the severe disparity in income between men and women which may affect access to the legal system. These tables also provide information on child support and spousal maintenance awards.

#### Recent Anecdotal Information

##### Treatment of women attorneys:

##### Minnesota, Metropolitan Area:

One referee repeatedly referred in Court to a female assistant county attorney as "the lady" whenever he addressed her. He refused to use the attorney's name or refer to her as the attorney for the county. This practice continued for approximately one year until the attorney complained to her supervising attorney and threatened to file a complaint against the referee

In a settlement conference involving commercial litigation, three parties were each represented by a senior male attorney and a female associate attorney. In chambers there were not enough chairs for all of the attorneys so one of the male attorneys offered to let one of the female attorney's sit on his lap. When the female attorney looked shocked, the male attorney laughed and said he could get away with such a proposal because he was from an "older" generation.

##### Minnesota, Nonmetropolitan Area:

A female attorney reports that both judges and male attorneys frequently refer to female attorneys as "lawyerettes" in a joking and patronizing manner in her judicial district.

##### Treatment of Female Litigants

##### Minnesota, Metropolitan Area:

A male attorney was cross-examining a female plaintiff who was the owner of a business about the amount of time she spent at the business. The cross-examination was part of an attack on her claim for damages. The female litigant responded that at times she spent 10-12 hours per day at the business. The male attorney asked whether she had children, and if so, what childcare arrangements she had. After she answered that she had children, the presiding judge in front of the jury questioned how she could leave her children for that many hours a day and stated that as a grandfather he could not condone such treatment of children.

## Family Law

One assistant county attorney reported a consistent pattern of child support awards to consider the full amount of daycare expenses as expenses of the mother, not something that should be shared by both parents.

## Criminal Law

### Minnesota, Nonmetropolitan Area:

According to one county attorney, judges often refuse to require bail for females charged with crimes or to impose incarceration on females if the female offender has small children. The judges often state that the reason for the treatment is that they do not wish to "break up the family." Men with similar families are not given the same treatment. Sentencing is based upon the judges' stereotypes of male and female roles.

### POTENTIAL AREAS FOR STUDY

Disparity in bodily injury and wrongful death awards between men and women;

Property division, maintenance, child custody and support and visitation awards in marital dissolution proceedings;

Appropriateness and extent of mutual restraining orders in domestic abuse cases;

Criminal sentencing;

Treatment of male and female juveniles and the handling of status offenses;

Conduct and decorum of lawyers and judges in court proceedings;

Compensation and assignment of court personnel;

Jury selection and dynamics of the jury trial system;

Relationship between lawyers and clients and the effect of gender bias on litigants and witnesses.

### PROPOSED PROCEDURES

The task force will implement procedures appropriate to the specific area being analyzed. Methods used in other states have included:

Surveys of judicial attitudes (anonymous questionnaires);



Questionnaires of attorneys and parties in the judicial system on their experiences and observed instances;

Studies of judicial decisions in substantive areas of the law;

Studies of administrative proceedings and awards;

Public hearings on the experiences of different groups in the judicial system.

Testimony can be invited by representative groups.

After the field work and data collection is completed, the task force will analyze data, decide on recommendations and write a comprehensive report.

This report will be distributed and, assuming the experience of Minnesota is similar to other states--that bias does exist--the implementation of the recommendations will begin. This phase will include publicizing results and monitoring reforms. This would specifically include judicial education.

#### LIST OF HELPFUL PUBLICATIONS

Operating a Task Force on Gender Bias in the Courts: A Manual for Action, by Lynn Hecht Schafran, Esq., and Norma Juliet Wikler, Ph.D. Published by the Foundation for Women Judges, Washington, D.C.

Documenting Gender Bias in the Courts: The Task Force Approach, by Lynn Hecht Schafran, in *Judicature* Vol. 70, No. 5, Feb.-Mar. 1987.

Report of the New York Task Force on Women in the Courts, Published by the Unified Court System Office of the Court Administration, March 1986.

The First Year Report of the New Jersey Supreme Court Task Force on Women and the Courts, June 1984.

The Second Report of the New Jersey Supreme Court Task Force on Women in the Courts, 1986.

Establishing a Gender Bias Task Force, Panel presentation at the Annual Conference of the National Association of Women Judges by the Honorable Marilyn Loftus, Superior Court of New Jersey, Lynn Hecht Schafran, Esq., and Norma Juliet Wikler, Ph.D. Published by the Law and Inequality Journal Vol. 4, Issue 1 (1986), pp. 103-106.

Wisconsin Bar Bulletin, Vol. 60 No. 3 March 1987 Research  
Survey Report of the State Bar's Special Committee on the  
Participation of Women in the Bar.