

# **Gender and Justice: Implementing Gender Fairness in the Courts**

**Implementation Report**

**Judicial Council of California  
Advisory Committee on Access and Fairness**

**Gender Fairness Subcommittee**

**July 1996**

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# Table of Contents

*Roster: The Judicial Council Advisory Committee on Access and Fairness* v

## **Introduction** 1

|                                 |   |
|---------------------------------|---|
| Collaborative Approach          | 2 |
| Participation by Other Agencies | 2 |
| New Efforts Launched            | 2 |
| Impact on Court Administration  | 2 |
| Judicial Council Strategic Plan | 3 |

## **History of Gender Fairness in the California Court System** 3

|                              |   |
|------------------------------|---|
| Fairness: A Statewide Effort | 4 |
| California: A National Model | 4 |

## **Highlights of Implementation** 5

|   |    |
|---|----|
| Civil Litigation and Courtroom Demeanor | 5  |
| Ethical Requirements                    | 5  |
| Conduct of judges                       | 5  |
| Conduct of court employees              | 6  |
| Conduct of lawyers                      | 7  |
| Attorney Education                      | 8  |
| Informal Complaint Procedures           | 8  |
| Standards of Judicial Administration    | 9  |
| Family Law                              | 9  |
| Child Support                           | 10 |
| Mediation                               | 11 |
| Family law statistics                   | 11 |
| Standards for mediators                 | 12 |
| More research needed                    | 12 |

**Highlights of Implementation (cont'd)**

Judicial Education 12  
Domestic Violence 13  
Protective Orders and Procedures 13  
Diversion 14  
Prosecution 14  
Judicial Education 15  
Custody and Visitation 16  
Domestic Violence Councils 16  
Criminal and Juvenile Law 16  
Court Administration 18  
Personnel Plans 18  
Children's Waiting Rooms 18  
Methods of Implementation 19

**Future Focus 20**

Sexual Harassment Awareness and Prevention 21  
Expansion of Child Care and Children's Waiting Rooms 22  
Improvement of Court Security in Family Law and Domestic Violence 23  
Expansion of Services to Non-English-Speaking Persons in Family Law  
and Domestic Violence 24  
Additional Projects 24

**Conclusion 25**

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## INTRODUCTION

In November 1990, the Judicial Council unanimously adopted a comprehensive set of recommendations designed to ensure gender fairness in the state courts of California.<sup>1</sup> The strong council consensus supporting the recommendations was made possible by the joint efforts of a special council subcommittee working with the Executive Committee of the original Judicial Council Advisory Committee on Gender Bias in the Courts. California Chief Justice Ronald M. George, then serving as associate justice, Court of Appeal, Second District (Los Angeles), chaired the council's subcommittee, and the advisory committee co-chairs, Los Angeles Superior Court Judge David M. Rothman and State Senator Diane E. Watson, provided leadership on behalf of the advisory committee. In sum, the hallmarks of the gender fairness implementation process have been justice system cooperation, adherence to statewide policies, and support for local activities. This implementation report will highlight the progress made to date in greater detail and outline future objectives.

Since 1990, significant progress has been made to implement the 68 approved proposals. Approximately one-third of the detailed recommendations have been substantially implemented. Begun by the Judicial Council Advisory Committee to Implement the Gender Fairness Proposals (again chaired by Chief Justice George), this work was continued by the Gender Fairness Subcommittee of the Judicial Council Access and Fairness Advisory Committee. The subcommittee is currently chaired by Los Angeles Superior Court Judge Meredith C. Taylor.<sup>2</sup>

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<sup>1</sup> *The Report of the Judicial Council Subcommittee on Gender Bias in the Courts: Evaluation, List of Modified Recommendations, and Comments* (November 1990).

<sup>2</sup> For the roster of the Judicial Council Advisory Committee on Access and Fairness with Gender Fairness Subcommittee members noted, see pp. v–vi.

- **Collaborative Approach**

The collaborative approach which has characterized the gender-fairness project since its inception has continued during its implementation phase. In addition to the specific council committees with oversight responsibility for implementation, numerous other council advisory committees have completed projects with similar goals that have contributed to implementing the gender-fairness proposals. This is especially true in the areas of domestic violence and judicial education. For example, in September 1994, the Judicial Council, under the direction of its Family and Juvenile Law Standing Advisory Committee, sponsored a statewide conference on domestic violence attended by teams from each county. The workshop led to the creation of county domestic-violence councils, thereby fulfilling a major objective of the gender-fairness recommendations. Significant progress has also been accomplished in judicial education. Gender-fairness issues have been fully integrated into the judicial-education curriculum under the direction of the Governing Committee of the California Center for Judicial Education and Research (CJER).

- **Participation by Other Agencies**

Other justice system agencies have participated in the implementation process as well. For example, the State Bar and the Judicial Council cosponsored a workshop for local bench/bar fairness committees. The purpose of the workshop was to develop a proposed Standard of Judicial Administration encouraging the creation of local gender-fairness committees and recommending protocols for informal complaint-resolution procedures.

- **New Efforts Launched**

In 1995, the subcommittee launched new implementation efforts in four focus areas. These areas include sexual harassment prevention and awareness training; child care for court employees, and children's waiting rooms; court security in domestic violence and family law; and the needs of non-English-speaking persons in domestic violence and family law. The subcommittee activities in these four areas will, again, be accomplished in cooperation with state and local committees and agencies.

- **Impact on Court Administration**

The recommendations adopted by the Judicial Council are the product of a specialized inquiry into issues of gender equity. Their implementation, however, has broader significance. Proposals designed to ensure gender fairness and equal access for women and men have improved court administration generally. The statewide policies adopted by the Judicial Council have spawned a cooperative effort throughout the justice system and at local levels to improve the administration of justice.

- **Judicial Council Strategic Plan**

Although the recommendations were adopted in 1990, they are fully consistent with the council's current goals and objectives. The implementation of the gender-fairness proposals directly supports the Judicial Council of California Long-Range Strategic Plan, adopted most recently in March 1995.<sup>3</sup> In that document, the council identified as a primary goal the need to "improve access, fairness, and diversity in the judicial branch" and targeted the need to "identify and eliminate bias in the courts" as a significant policy direction. The work of the subcommittee is a specific part of the action plan for the Administrative Office of the Courts (AOC). The action plan details AOC activities that support the council's goals and policy directions.

## **HISTORY OF GENDER FAIRNESS IN THE CALIFORNIA COURT SYSTEM**

The original Advisory Committee on Gender Bias in the Courts was appointed in 1987 and 1988 by two successive Chief Justices in accordance with Government Code section 68501. This provision permits the Chair of the Judicial Council to appoint committees to make recommendations to improve the administration of justice. The committee studied the following subject areas: civil litigation and courtroom demeanor, court administration, domestic violence, family law, juvenile and criminal law, and judicial education. The committee's working definition of gender bias was:

Behavior or decision-making of participants in the justice system which is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; and (3) myths and misconceptions about the social and economic realities encountered by both sexes.

The committee collected data using a variety of corroborative research methods. These methods included confidential regional bar meetings; surveys and focus groups for court clerks and domestic-violence advocates; a comprehensive survey of judges; special reports submitted by the Conference of Affiliates of California Women Lawyers; focus groups with civil litigators, judges, minority attorneys, and family law experts conducted at the 1988 State Bar annual meeting; site visits to county jails; invitations to comment; telephone interviews, literature searches; and public hearings. In general, the data collected demonstrated a variety of problems of gender inequity that were specifically described to the Judicial Council in 1990 in a comprehensive draft report.<sup>4</sup> The report did not find that gender bias in the California court system was a result of intentional acts or ill will. Rather, the report observed that problems of gender bias were historical and social in nature. The report concluded that, as the final arbiters of fairness, the courts

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<sup>3</sup> *Leading Justice Into the Future*, Judicial Council of California Long-Range Strategic Plan, Administrative Office of the Courts/Advisory Committee Action Plan (March 1995), pp. 11, 25.

<sup>4</sup> *Achieving Equal Justice for Women and Men in the California Courts*, Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (March 1990).

should take a leadership role in prescribing specific remedies for identified problems of bias in the justice system. Thus, the recommendations contained in the report are generally technical in nature and address specific problems revealed by the committee's inquiry.

- **Fairness: A Statewide Effort**

The committee's work and recommendations are consistent with other statewide inquiries. The Commission on the Future of the California Courts designated gender fairness as a high priority, and the work of the gender fairness committee was endorsed.<sup>5</sup> Similarly, the State Bar's Futures Commission issued several recommendations relating to gender fairness. The commission supported efforts to require bias and fairness training for judges, lawyers, and law students and to work toward increasing diversity on the bench. The commission's report states: "It is vitally important for the legal profession to take a leadership role in promoting and implementing access to and advancement in the profession as a whole for all qualified lawyers, regardless of race, ethnic origin, gender, age, religion, sexual orientation, or disability."<sup>6</sup> Programs in support of this goal were cited as being vitally necessary for the State Bar to provide to its members.

- **California: A National Model**

California's work on gender fairness has provided a national model for other state and federal courts. In 1988, the Conference of Chief Justices adopted a resolution emphasizing its concern that all participants in the judicial system be treated fairly, urging "each chief justice in every state to establish separate task forces devoted to the study of (1) gender bias in the court system and (2) minority concerns as they relate to the judicial system."<sup>7</sup> Subsequently, in 1993 the conference urged further efforts for equal justice by "establishing task forces to remedy any discrimination and to implement the recommendations of the task force studies."<sup>8</sup>

Since 1988, approximately 40 states and 10 federal circuits have convened gender task forces. Former Chief Justice Lucas assisted these efforts in the federal courts by serving as a discussion leader on the subject of gender bias at the Ninth Circuit Judicial Conference in 1992 when the circuit's own task force on gender fairness was in its initial phase.<sup>9</sup> The circuit studied California's recommendations and methodology in determining its course of inquiry and action. California has also provided assistance to

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<sup>5</sup> *Justice in the Balance 2020*, Report of the Commission on the Future of the California Courts (December 1993), pp. 78–80.

<sup>6</sup> *The Future of the California Bar*, Final Report of the Commission on the Future of the Legal Profession and the State Bar of California (April 1995), pp. 28, 112, 134–35.

<sup>7</sup> See *Conference of Chief Justices, Resolution XVIII: Task Forces on Gender Bias and Minority Concerns* (Fall 1989) Court Review, p. 5.

<sup>8</sup> See *Conference of Chief Justices, Resolution Urging Further Efforts for Equal Treatment of all Persons* (Jan. 28, 1993) on file at the Office of the Ninth Circuit Executive.

<sup>9</sup> See *The Quality of Justice into the Next Century*, Ninth Circuit Judicial Conference (August 1992).

other courts through participation in two national conferences. Representatives from California's advisory committee and staff have served as presenters and planning committee members, both at an initial conference devoted to issues of research and at a second conference on implementation.

As the institution charged with safeguarding fairness, the court system has appropriately provided leadership in developing programs to scrutinize the extent to which problems of gender bias occur. Its example has been followed by other institutions. Studies with similar results and accompanying remedial proposals have now been conducted in the military, academia, the school system, the medical profession, and business, to name only a few.<sup>10</sup>

Consistency with national trends, along with a firm foundation of initial corroborative research, and support from other studies, are all key elements of the subcommittee's approach to implementing the gender-fairness proposals. Implementation efforts have included legislative initiatives; Judicial Council rules, forms, standards, procedures, and studies; educational programs for judges, court staff, and attorneys; new technical rules; action by local courts; and action by the State Bar and local bar associations. These efforts are summarized below.

## HIGHLIGHTS OF IMPLEMENTATION

- **Civil Litigation and Courtroom Demeanor**

In the area of civil litigation and courtroom demeanor, the advisory committee examined factors that affect the courtroom environment and the players that appear in the courtroom drama. The committee focused primarily on judicial conduct because judges control, or should control, courtroom interaction. This focus included an examination of the duty of judges to intervene when other participants, such as attorneys or court employees, exhibit gender-biased behavior. The committee also considered the conduct of other bench officers, court employees, and attorneys. Although the committee did not propose a recommendation relating to diversity in judicial appointments, the committee concluded that substantial amelioration of the problem of gender-biased conduct in the courtroom could be expected if women were appointed to judicial office in greater numbers.

- **Ethical Requirements**

**Conduct of judges.** One of the committee's principal recommendations was to amend the Code of Judicial Ethics, then promulgated by the California Judges Association (CJA), to include an affirmative duty to perform all judicial duties without

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<sup>10</sup> See, for example, *Good for Business: Making Full Use of the Nation's Human Capital*, A Fact-Finding Report of the Federal Glass Ceiling Commission (March 1995); *Defense Equal Opportunity Report of the Task Force on Discrimination and Sexual Harassment* (May 1995).

bias or prejudice and to require others under the judge's direction to refrain from such conduct (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 1, p. 55).<sup>11</sup> This recommendation was based on similar provisions contained in the American Bar Association's Model Code of Judicial Ethics. In 1992, the CJA conducted a comprehensive review of the Code of Judicial Ethics, and among other actions, adopted canons 3B(5) and (6) setting forth these duties.<sup>12</sup>

The recommendations also focused on the need to strengthen the provision of the Code of Judicial Conduct relating to membership in discriminatory organizations (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 5, p. 80). At the time the recommendations were submitted to the Judicial Council, the Code of Judicial Conduct stated merely that "it is inappropriate" for a judge to be a member of an organization that invidiously discriminated on the basis of sex, among other protected groups. In 1992, as suggested in the gender-fairness recommendations, this language was changed to "a judge should not" belong to organizations that invidiously discriminate.<sup>13</sup> Effective March 1, 1995, a new constitutional provision (Cal. Const., art. VI, § 18(m)) required the Supreme Court to make rules for the conduct of judges. Pursuant to this provision, the court adopted a new code of Judicial Ethics. Since the new code was mandatory, the language of each canon was generally changed from the advisory "should" to the mandatory "shall." The language now states:

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.<sup>14</sup>

**Conduct of court employees.** The proposals adopted by the Judicial Council also discussed the conduct of court employees. One recommendation suggested the development of a fairness manual for court staff (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 3, p. 74), while others called for the development of sexual harassment policies and training (chap. 4, Civil Litigation and Courtroom Demeanor, recs. 4 and 5, pp. 77, 80). At the same time, a parallel development occurred in the field of ethics for court employees. Consistent with the gender-fairness proposals, California, under the auspices of the AOC's Education Division, developed a Code of Ethics for the Court Employees of California. The development of this code, funded by the State Justice Institute, was the product of a participatory process overseen by an ad hoc committee of the Judicial Council. Although advisory in nature, the code is a comprehensive model of ethical behavior and training for all levels of support staff in the state's courts. It was approved by the Judicial Council in May 1994. Effective July 1, 1994, the council

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<sup>11</sup> Unless otherwise indicated, references to the recommendations are to the text as adopted by the Judicial Council and contained in *Achieving Equal Justice for Women and Men in the California Courts: Final Report* (July 1996), Judicial Council of California Advisory Committee on Gender Bias in the Courts.

<sup>12</sup> Cal. Code Jud. Conduct, canons 3B(5)–(6), eff. Jan. 1, 1992. Pursuant to Cal. Const., art. VI, § 18(m), eff. March 1, 1995, the Supreme Court now promulgates the Code of Judicial Ethics. These provisions remain in the code adopted by the court as Cal. Code Jud. Ethics, canons 3B(5)–(6).

<sup>13</sup> Cal. Code Jud. Ethics, canon 2C, eff., as amended, Jan. 1, 1992.

<sup>14</sup> Cal. Code Jud. Ethics, canon 2C.

promulgated California Standards of Judicial Administration, section 35, encouraging all courts to adopt the model code.

The model code of ethics for court employees contains two provisions relevant to gender fairness. First, the code cautions employees to "[g]uard against and, when necessary, repudiate any act of discrimination or bias based on race, gender, age, religion, national origin, language, appearance, or sexual orientation."<sup>15</sup> In providing guidance for court employees in complying with the underlying tenets contained in the code, the following clarification is provided:

Each day court employees assist users of court services of many races, religions, national origins, languages, sexual orientations, and varieties of personal appearance. They may deal with accused felons, child abusers, participants in painful dissolutions, those grieving from an injury or loss of a loved one, or people experiencing any one of numerous kinds of human pain or dysfunction. Court employees are expected to treat each other and each user of court services equally and with compassion. *Equal access to the court system and equal treatment for all is the cornerstone of the administration of justice. Court employees must expose and discourage discrimination wherever it exists.* (Emphasis added.)

The code also advises court employees to "[r]enounce any use of positional or personal power to harass another person sexually or in any other way. . . ."<sup>16</sup> The guidance for interpreting this provision defines sexual harassment and clarifies a supervisor's duties when harassment is charged.

California's Code of Ethics for Court Employees is the first in the nation and promises to be a national model. California court employees will receive training on their ethical duties, thanks to statewide funding from the State Justice Institute.

**Conduct of lawyers.** Promulgation of new ethical provisions for lawyers was likewise an area of emphasis for the gender-fairness proposals. In that regard, the State Bar proposed a new rule, Rule of Professional Conduct 2-400, which was approved by the Supreme Court and became operative March 1, 1994.<sup>17</sup> The rule prohibits a member of the State Bar from unlawfully discriminating or knowingly permitting unlawful discrimination on the basis of sex, among other protected classifications, in the management or operation of a law practice. The rule applies to hiring, promoting, discharging, or otherwise determining the conditions of employment of any person, and to accepting or terminating representation of any client. The rule requires prior adjudication of the discrimination issue in order for discipline to be imposed. Promulgation of this rule fulfills an important gender fairness proposal (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 9, p. 99).

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<sup>15</sup> Code of Ethics for the Court Employees of Cal., tenet 10.

<sup>16</sup> Code of Ethics, *supra*, tenet 11.

<sup>17</sup> Cal. Rules Prof. Conduct, rule 2-400.

The gender-fairness recommendations also urged the State Bar to promulgate a broader anti-bias Rule of Professional Conduct that would impose a general duty not to manifest bias with an exception for legitimate advocacy when the underlying issues of fairness are issues in the proceeding (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 6, pp. 84–85). Although the State Bar carefully considered this recommendation, the committee charged with its analysis concluded that any provision in this regard would contravene the holding of *R.A.V. v. St. Paul* (1992) 112 S.Ct. 2538. This case, which dealt with a challenge to a hate-crimes ordinance, was decided during the course of the State Bar committee's deliberations on this rule. Since that time, the California Supreme Court has also considered similar issues. The State Bar may at some future time reconsider whether an anti-bias rule can be fashioned that will not run afoul of other compelling constitutional principles in light of subsequent federal and state cases.

Similarly, the gender-fairness proposals called upon the State Bar to use every possible, constitutionally permissible means to discourage attorneys from using for business purposes clubs that invidiously discriminate on the basis of sex and other classifications (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 10, p. 105). Although an outright prohibition of membership in such clubs may infringe constitutional rights of privacy and assembly, the State Bar published in *California Lawyer* a letter from the Board of Governors urging each member to refrain from membership in discriminatory clubs.

- **Attorney Education**

The gender-fairness proposals also requested the State Bar to "conduct a major ongoing effort relating to education of the bar on issues of gender bias (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 6(c), pp. 84–85). In response, the State Bar, as part of its rules for minimum continuing legal education, required at least one hour of education on the elimination of bias in the legal profession.<sup>18</sup> Since that time, local bars and education providers have developed countless educational programs on the subject of gender fairness. The State Bar at this time acts as a clearinghouse for information about these educational programs.

- **Informal Complaint Procedures**

In its report to the Judicial Council, the gender bias committee concluded that attorneys frequently noted incidents of gender bias for which there were no appropriate remedies. These incidents were not severe enough to warrant a report to the responsible disciplinary body, but were nevertheless annoying and unwarranted. The advisory committee therefore recommended that local groups be formed to experiment with local informal complaint-resolution methods and educational programs designed to address these less serious incidents of bias (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 4, p. 77).

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<sup>18</sup> MCLE Rules and Regulations, rule 2.1.3.

In October 1992, the State Bar and the Judicial Council cosponsored a workshop for approximately 14 local committees created as a result of the adoption of this gender-fairness proposal. The workshop was designed to provide a forum for representatives from local committees to discuss common issues relating to complaint procedures and legal and judicial education. The workshop goal was to consider whether a model complaint-resolution procedure should be recommended to the Judicial Council, and, if so, to reach consensus about the appropriate elements of a model procedure.

After the workshop, a model procedure was developed based on the recommendations of the workshop participants. The procedure was distributed for statewide comment, and minimum components of a model informal complaint-resolution procedure were adopted as part of the Standards of Judicial Administration.<sup>19</sup> The standard encourages the creation of local fairness committees and urges that the committees be composed of both judges and attorneys. The standard further charges local committees with developing educational programs and informal complaint-resolution procedures. The minimum components outlined in the standard emphasize that the procedures should be educational and ameliorative rather than disciplinary, and recommend that the procedures be set forth in the court's local rules.

- **Standards of Judicial Administration**

In addition to the significant implementation efforts described above, and even before completion of the report on gender fairness, the Judicial Council took important steps to correct problems of gender bias in the courts. The council added three provisions contained in the Standards of Judicial Administration. First, the council adopted a standard that imposed a duty on judges to ensure that courtroom proceedings are conducted in a fair and impartial manner, to refrain from any conduct and prohibit others in the courtroom from engaging in conduct that exhibits bias, and to ensure that all decisions are free of bias.<sup>20</sup> Second, the council amended the standards to encourage the use of gender-neutral language in all court rules, forms, and other communications.<sup>21</sup> Finally, the council encouraged the creation of children's waiting rooms on courthouse premises for use by participants in court proceedings.<sup>22</sup>

- **Family Law**

The advisory committee found that issues of family law are of primary importance to the study of gender fairness in the California courts, and that gender bias affects the resolution of family law cases in both overt and subtle ways. The operation of bias in the family law system, the committee found, involved the following factors:

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<sup>19</sup> Cal. Standards Jud. Admin., § 1(b)–(c).

<sup>20</sup> Cal. Standards Jud. Admin., § 1(a).

<sup>21</sup> Cal. Standards Jud. Admin., § 1.2.

<sup>22</sup> Cal. Standards Jud. Admin., § 1.3.

- The laws applicable to family law proceedings and the ways in which judges interpret and enforce them;
  - Impediments to the neutral participation in family law proceedings of judges, lawyers, and mediators;
  - The interaction of the components of the family law system to create delays, inappropriately allocate court resources, and issue conflicting and overlapping orders that affect families;
  - The need for greater information and research vital to the impartial resolution of family law cases; and
  - The need for enhanced training and education of judges.
- **Child Support**

The committee found inherent inequities in the formula used to calculate child-support amounts. These inequities resulted in child-support awards that were too low and were used too often as a bargaining chip in custody disputes. The vigorous and sometimes acrimonious policy debate that existed at the time the gender-fairness recommendations were adopted still surrounds the issue of child support in California. The child-support guideline formula and calculations have been substantially affected both by competing statewide interests and developing federal interests and legislation. Despite continuing controversy, since the issuance of the gender-fairness recommendations, child-support awards are higher and the cited inequity in the formula has been largely eradicated.<sup>23</sup>

Most importantly, California now has a sound mechanism for periodic resolution of the policy debates that continue to influence the imposition of child-support orders. Pursuant to Family Code section 4054, the Judicial Council is required to review the statewide uniform child-support guideline periodically and recommend to the Legislature appropriate revisions. The purposes of periodic review are to ensure that the guideline results in appropriate child-support orders, to limit deviations from the guideline, and to ensure that the guideline is in compliance with federal law. Family Code section 4054 requires the review to incorporate data about the cost of raising children; analyze case data on the actual application of the guideline; analyze guidelines and studies from other states; and take into consideration other research available to or undertaken by the Judicial Council.

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<sup>23</sup> See *Review of Statewide Uniform Child Support Guideline*, Judicial Council of Cal. (December 1993), pp. 4–25. Some judges and others charge that child-support amounts are now too high and that the complexity, for example, of the child-support formula and the difficulty most litigants have in understanding it has led to new inequities; see Johnson, *Judges Rip Formula for Child Support* (Dec. 25, 1994) San Jose Mercury News, p. 1A.

The Judicial Council Family and Juvenile Law Standing Advisory Committee, with responsibility to make recommendations to the council on child support, has tentatively targeted additional areas for review. They include the social consequences of the guideline; the impact of the guideline at different levels of income; the effect of the guideline on parent-child contact over time; and the effects of other financial considerations such as income and expenses from subsequent families, spousal support, or attorneys fees. It appears more likely that child-support issues will be resolved on the basis of rational review, rather than competing interests, sometimes influenced by gender-based stereotypes. Accordingly, the advisory committee recommendations concerning child support awards have been substantially implemented (chap. 5, Family Law, recs. 1 and 2, pp. 125, 133).

- **Mediation**

The gender-fairness recommendations also addressed the subject of mandatory mediation of child custody and visitation disputes. Issues of concern included professional standards for mediators, mediator training on gender issues, increased research on custody, and development of uniform statistical reporting in family law (chap. 5, Family Law, recs. 5, 6, and 11, pp. 145, 150–51, and 168–69). Substantial progress has been accomplished in this area due to the significant work of the Statewide Office of Family Court Services (FCS). The duties of FCS include assisting counties in implementing mediation of custody and visitation disputes; establishing and implementing a uniform statistical reporting system in family law; administering a program of grants for research in family law; and administering a training program for court personnel involved in family law proceedings.<sup>24</sup>

Since the adoption of the gender-fairness proposals, FCS has, both independently and consistent with the gender-fairness proposals, incorporated gender-equity issues into every aspect of its mandated functions. Progress has been accomplished in each of the areas cited in the gender fairness report. First, gender issues have been incorporated into the regular training and education programs sponsored by FCS, culminating in a panel entitled "The Politics of Gender," conducted at the March 1995 Statewide Educational Institute. This focus on gender issues has included an equal emphasis on the needs and issues facing fathers in dissolution proceedings and custody disputes. An extensive bibliography entitled "Gender Issues and Child Custody Determinations" is regularly made available at training sessions. FCS has also issued a series of final grant reports on the impact of custody plans on families; parental evaluations of services; supervised visitation for families where violence has been alleged; and custody issues for high-conflict families.

**Family law statistics.** These reports provide a direct response to the concerns raised in the gender fairness report that the unavailability of reliable information about families in dissolution proceedings leads to policy decisions based too frequently on the

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<sup>24</sup> Fam. Code, § 1850.

competing interests of the parties rather than on sound research. In particular FCS's development of the statewide uniform statistical reporting system based on longitudinal "snapshot" studies has contributed significant new information about families, custody plans, and client satisfaction. The snapshot study revealed a high degree of parental enthusiasm and support for mediation among families with mediated agreements, especially initially. Although support for the mediated outcome declined over time, the rate of satisfaction was nevertheless higher than among families with resolutions reached through methods other than mediation. Anecdotal information in the gender report relating dissatisfaction with mediation, although accurate and significant for those individual cases, has not been substantiated on a statewide basis. FCS plans new reports based on the original data that will more specifically explore gender differences.

**Standards for mediators.** Mediators have also developed a comprehensive set of professional standards of practice that specifically address gender-related issues highlighted in the report. Standards of Judicial Administration, section 26 (c)(3) states: "In order to maintain a neutral stance the mediator should understand and be sensitive to differences including gender biases and ethnic and cultural diversity." Section (h) focuses on the mediator's need to be mindful of power imbalances sometimes related to gender-biased attributions regarding parental role, intimidation, and economic advantage.

**More research needed.** Despite these significant accomplishments, more complex research about custody and its relationship to gender is needed. FCS coordinator for research, evaluation, and statistics, Charlene E. Depner, has independently written a careful overview and critical analysis of current custody research. Depner calls for "a new generation of inquiry" that "considers custody in the context of a dynamic system of variables that influence family functioning and well-being over the life course."<sup>25</sup>

More stringent requirements are also under consideration in the area of training and mediator standards (Sen. Bill No. 630 (1995 Reg. Sess.)). Proposed legislation would *require* training on gender issues and domestic violence and mandate standards for custody evaluation.

- **Judicial Education**

The gender bias report cited the need for specialized education in family law, including a focus on gender issues, for judicial officers<sup>26</sup> (chap. 9, Implementation, rec. 2(b), p. 404). Effective January 1, 1992, Standards of Judicial Administration, section 25.3, concerning family law judicial education curriculum, was adopted by the Judicial Council. The standard provides for a comprehensive educational curriculum for judicial officers who hear family law matters, which includes "the effects of gender on family law proceedings, the economic effects of dissolution, and interdisciplinary subjects relating

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<sup>25</sup> Depner, "Revolution and Reassessment: Child Custody in Context" in *Redefining Families: Implications for Children's Development* (Gottfried et al. edits. 1994), p. 99.

<sup>26</sup> For a general discussion of judicial education, see pp. 15–16 of this report.

mainly to court matters, including but not limited to child development, substance abuse, sexual abuse of children, domestic violence, child abuse and neglect, juvenile justice, adoption, and the social service and mental health systems."

- **Domestic Violence**

The advisory committee found that the judicial system's treatment of domestic-violence victims and the crime of domestic violence raised serious issues of gender fairness. The committee found that when domestic-violence victims<sup>27</sup> seek protection from the court, they can be further victimized by the process and by their experiences within the judicial system. Despite legislative changes that offered the promise of protection to victims of domestic violence, the inadequacies and inequities of the judicial system often meant that effective relief was not granted or enforced, according to committee findings. The committee's recommendations addressed the difficulties faced by domestic-violence victims who come to court or who otherwise seek legal assistance to obtain the protection which the law guarantees. They also suggested new or modified procedures and legislation to help ensure that the judicial system adequately, effectively, and fairly protects those who are battered from further abuse. The recommendations concerned the major areas in which domestic-violence victims interact with the judicial system: seeking protective orders against future abuse; resolving child custody and visitation disputes; and serving as witnesses in criminal prosecutions of batterers. Also addressed are both the difficulties domestic-violence victims face in obtaining access to the courts, and particular problems within various court programs and with various court personnel.

- **Protective Orders and Procedures**

Among the recommendations adopted by the Judicial Council in the area of domestic violence, several significant proposals concern procedures and standards for obtaining protective orders when violence or the threat of violence is alleged.

First, the advisory committee proposed that orders restraining *both* parties to a domestic-violence proceeding should not be issued unless both parties duly applied, supplied proof, and appeared as required. The advisory committee found that enforcement of what were referred to as "mutual restraining orders" was hampered because law enforcement officers were unable to determine the party to be restrained. The committee further found that mutual orders, absent proof of mutual violence, were personally confusing and humiliating to the victims (chap. 6, Domestic Violence, rec. 4, p. 230). Effective January 1, 1994, Family Code section 6305 imposes certain conditions on the issuance of mutual restraining orders that respond to the advisory committee's concerns. The section requires, absent agreement of the parties, that "both parties

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<sup>27</sup> An estimated 95 percent of domestic-violence victims were women at the time the gender bias report was issued. Inequities in the judicial system relating to domestic violence were, accordingly, deemed to be issues of gender fairness.

personally appear and each party presents written evidence of abuse or domestic violence."

The advisory committee also called for new procedures to permit support persons to accompany applicants for restraining orders and provide them with emotional support during a proceeding found to be intimidating to many victims of domestic violence (chap. 6, Domestic Violence, rec. 1(e), p. 217). This proposal was the subject of legislation and is now permissible under Family Code section 6303. Under this provision, support persons may accompany victims who are ordered to attend a custody or visitation mediation, provided the support persons do not purport to provide legal representation.

Since 1989, emergency protective orders have been available to victims of domestic violence during nonbusiness hours. At the time the gender-fairness proposals were issued, however, the statutory scheme lacked clarity as to the time of expiration of any emergency order issued (chap. 6, Domestic Violence, rec. 6, p. 234). Family Code section 6256 has corrected any lack of clarity and extended the duration of emergency orders to the close of judicial business on the fifth court day after issuance or on the seventh calendar day, whichever is earlier.

- **Diversion**

In 1990, when the advisory committee issued the gender bias report, domestic-violence criminal offenses were often resolved by way of post-plea domestic-violence diversion programs under Penal Code section 1000.6. The committee found that there were insufficient standards governing diversion programs, especially with respect to completion of the program requirements, and recommended that these inadequacies be remedied (chap. 6, Domestic Violence, rec. 10, p. 258). Subsequent legislation addressed these concerns. Penal Code section 1000.9 was amended to require resumption of the criminal proceeding against the offender if the domestic-violence diversion program requirements were not met; Penal Code section 1000.93 set forth a series of program standards; and Penal Code section 1000.95 imposed supervisory and monitoring duties for probation officers.<sup>28</sup>

- **Prosecution**

The advisory committee also called for improvement in the prosecution of domestic-violence offenses as serious crimes, including proposals for special training and vertical prosecution units whenever possible (chap. 6, Domestic Violence, rec. 11, p. 259). Subsequently, Penal Code section 273.8 created Spousal Abuse Prosecution Programs to tap available federal funding for enhanced prosecution of domestic violence cases. Funds are now available to counties to create vertical prosecution units with trained counselors who maintain a liaison with victims of domestic violence from initial court appearance through conclusion of the case.

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<sup>28</sup> Eff. Jan. 1, 1996, domestic-violence diversion in criminal cases was eliminated (Stats. 1995, ch. 641, amending Pen. Code, § 1203.097 and repealing ch. 2.6, tit. 6, pt. 2 of the Pen. Code).

- **Judicial Education**

Judicial education about domestic violence was a major issue of concern for the advisory committee, which recommended a comprehensive judicial education program on the subject (chap. 6, Domestic Violence, rec. 14, pp. 266–67). During the last six years, there has been an increased focus on domestic violence in judicial education curricula. Specifically, judicial educators statewide have conducted a number of courses and conferences on the subject of domestic violence, and CJER has integrated issues of domestic violence into all related substantive areas of the law, including family law, criminal law, and juvenile law.

The California Center for Judicial Education and Research (CJER) has provided excellent leadership in incorporating domestic-violence issues into every relevant aspect of its judicial education curriculum. From 1990 to 1994, more than 2,420 judge participants and 540 faculty have participated in CJER programs that incorporate or focus on issues of domestic violence.<sup>29</sup> Domestic-violence issues are featured in fairness, family law, and criminal law courses for new judges, both at the new judge orientation and the judges' college. These issues are also covered at CJER's substantive law institutes, and "stand-alone" courses have been provided in CJER's mid-career Continuing Judicial Studies Program. In addition, in 1990, in conjunction with the California Judges Association, CJER conducted a one-day program, *Domestic Violence: The Crucial Role of the Criminal Court Judge*. CJER also includes these topics in its faculty training seminars. Finally, CJER has distributed to its subscribers a bench guide on spousal abuse.

In 1994, the Judicial Council supplemented CJER's substantive judicial education programs by sponsoring an interdisciplinary action-oriented conference, *Family Violence and the Courts: A California State Conference, A Coordinated Community Response*.<sup>30</sup> The conference, planned primarily by members of the Family and Juvenile Standing Advisory Committee, was designed to implement an action plan developed by California participants at a national family violence conference held in San Francisco in 1993. State conference participants included county teams composed of judges, prosecutors, family violence prevention professionals, attorneys, mediators, and other individuals interested in family violence prevention. The conference provided strategies to the county teams regarding (1) coordination between criminal, civil, family, and juvenile cases involving family violence; (2) calendaring of family violence cases; and (3) training of judges, clerks, and other court staff on the most effective ways to handle family violence cases.

In addition to the programs sponsored by CJER, CJA, and the AOC, San Francisco's Family Violence Prevention Fund, a nonprofit organization and an early pioneer in the field of judicial education on family violence issues, continues to provide

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<sup>29</sup> See Survey on Domestic Violence Education, CJER (Feb. 16, 1994).

<sup>30</sup> See *Family Violence and the Courts: A California State Conference*, Report to the Judicial Council (Oct. 24, 1994).

needed new programs. The fund has developed a multimedia program on CD-ROM entitled "Domestic Violence: Virtual Conference for Judges," and has made the program available to CJER and CJA.<sup>31</sup>

- **Custody and Visitation**

The advisory committee's 1990 report also expressed concern that in high-conflict families, custody and visitation orders were not being fashioned adequately to ensure the maximum safety of all family members. The committee called for the imposition of a standard that would provide for family members' safety through such mechanisms as supervised visitation, neutral pickup points, third-party visitation arrangements, or creative visitation plans that protect all parties from further violence (chap. 6, Domestic Violence, rec. 15, p. 269). In response, legislation has been enacted that requires any order for custody or visitation in a case in which a protective order has been issued to provide specifically for transfer of the child in a manner that will limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members (Fam. Code, §§ 3031, 3100, and 6323).

- **Domestic Violence Councils**

As described more fully earlier in this report, the Chief Justice designated a special subcommittee of the Judicial Council to review and make recommendations regarding each of the gender fairness proposals.<sup>32</sup> The council's subcommittee recommended the adoption of all the original proposals, with certain technical revisions, and added an additional proposal to those previously submitted by the advisory committee. The subcommittee recommended as an additional proposal the formation of interdisciplinary local councils on family violence which would make suggestions to the courts on policies and procedures for handling cases involving domestic violence (rec. 15-A, tab 4, pp. 13–14).<sup>33</sup> Creation of these local councils then became a primary goal in the California action plan developed at the 1993 national conference on family violence, and has been incorporated to a large extent in the local county action plans developed at the statewide conference in 1994. The AOC will be providing technical assistance to local councils and plans to disseminate information to them through a quarterly newsletter.

- **Criminal and Juvenile Law**

In the area of criminal and juvenile law, the advisory committee concentrated its review on the ways in which the justice system treats female offenders as compared to male offenders. The committee sought to determine whether there was differential treatment motivated by gender bias and whether there were instances in which certain policies and practices created a disparate, negative impact on females. During the course

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<sup>31</sup> Aarons, *A Cyber Seminar: A New CD-ROM Brings a Conference on Domestic Violence onto a Computer Screen*, Los Angeles Daily Journal, Cal. Law Bus. Supp. (June 12, 1995), p. 9.

<sup>32</sup> See p. 1 of this report.

<sup>33</sup> This recommendation was added separately by a Judicial Council subcommittee, and this reference is to *The Report of the Judicial Council Subcommittee on Gender Bias in the Courts*, *supra*.

of its inquiry, the committee found that gender bias does affect the ways in which the criminal and juvenile courts operate both directly and indirectly.

Among its many recommendations for change, the advisory committee's report focused on the dependency court. The committee found that incarcerated parents were often unaware of the nature and importance of dependency proceedings involving their children and were in some cases penalized for attending dependency hearings. This problem had a disparate impact on female offenders because they are often the primary caretakers of their children. The committee recommended and the Judicial Council has implemented a proposal that would provide for improved notification procedures for incarcerated and detained parents (chap. 7, Criminal and Juvenile Law, rec. 9, p. 329).

The committee also reviewed the process of making court appointments in the criminal and juvenile departments, recommending that model appointment of counsel protocols be developed to ensure gender fairness in the distribution of appointments (chap. 7, Criminal and Juvenile Law, rec. 1, pp. 279–80). Although this recommendation has not yet been implemented, a new federally funded project, operating under the direction of the Judicial Council and the Family and Juvenile Law Advisory Committee, will develop a protocol for juvenile court appointments. The project also focuses on the development of attorney standards and procedures in juvenile court. A protocol developed in conjunction with this project could be replicated for criminal cases.<sup>34</sup>

The majority of the remaining recommendations in the area of juvenile and criminal law have not been implemented. This is true for two primary reasons. First, most of the recommendations concern additional duties or proposals to be carried out by related justice system agencies outside the usual Judicial Council purview. In general, the recommendations call for probation departments, correctional institutions, and juvenile placement authorities to equalize or augment their existing programs to address the special needs of both male and female offenders. Second, these external agencies have experienced dramatic reduction of resources due to state budget constraints. Extension of programs and creation of new ones are difficult to achieve in this time of dwindling resources.

At a local level, however, some courts have been able to tap available alternative funding sources to create innovative programs that address the special needs of female offenders. Judge Alice Lytle has pioneered one such program in the juvenile department of the Sacramento Superior Court. The Sacramento Healthy Teen Mothers Program involves an interagency case-management strategy that provides needed services to pregnant teenagers in the juvenile justice system. Services provided include adequate prenatal care, parenting classes, nutrition classes, emergency housing, drug and alcohol treatment (if needed), school assistance, employment/vocational assistance; mentor

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<sup>34</sup> See *Status Report on New Juvenile Projects with Special Funding*, Report to the Judicial Council (June 25, 1995).

referral; postpartum follow-up, and well-baby care. The program takes into consideration the severe fiscal constraints facing governmental agencies, using an interagency collaboration to maximize the available dollars, while attempting to address more effectively the community and family dysfunction that contributes to high rates of teen pregnancy. Judge Lytle is seeking further funding to expand the program to provide greater team management services. Judge Lytle's program is directly responsive to the advisory committee's recommendation that sentencing and dispositional alternatives be devised that are responsive to the needs of pregnant women and women with young children (chap. 7, *Criminal and Juvenile Law*, rec. 2, pp. 288–89).

- **Court Administration**

The advisory committee found that the potential for gender bias to affect internal court administration in California exists in part because the system of separate courts lacks unified statewide standards incorporating modern personnel practices. The absence of comprehensive personnel plans in every court operates to the detriment of the high percentage of female employees in the lower-paid echelons of the court system workforce. The committee concluded that modern management practices, instituted in conjunction with county officials when possible, would substantially reduce the opportunity for bias to play a part in court administration.

- **Personnel Plans**

The advisory committee called for the development of written court personnel plans containing specified elements relevant to establishing equitable working conditions for women and men in the courts. The committee further recommended that judges be required to comply with the personnel plans so developed (chap. 8, *Court Administration*, recs. 1, 2, and 3, pp. 349, 353–54, and 375). Accordingly, effective July 1, 1991, the Judicial Council adopted amendments to the rules relating to the duties of presiding judges and court executive officers requiring the creation of personnel plans (Cal. Rules of Court, rules 205(11), 207(1), and 532.5 (13)). The model elements of the personnel plans were set forth in *Standards of Judicial Administration*, section 27. Compliance with duly adopted personnel plans was required by amendments to California Rules of Court, rules 206 and 534.

- **Children's Waiting Rooms**

The advisory committee found that litigants, witnesses, jurors, and defendants may often find themselves without necessary child care during court appearances. Since women are still more frequently the primary caretakers of children in our society, observed the committee in its report, this lack of child care limits a woman's access to court and is a type of institutionalized inequity based on gender. At the time the advisory committee's recommendations were adopted by the Judicial Council, a section of the *Standards of Judicial Administration* encouraging the creation of children's waiting rooms on court premises had been adopted by the Judicial Council (*Standards Jud. Admin.*, § 1.3, eff. Jan. 1, 1987). Also, a manual prepared by Sacramento Municipal Court Judge

Alice Lytle about how to develop a children's waiting room has been distributed to each court.

The advisory committee further recommended that the work of the Judicial Council relating to court facilities include reference to the need for the creation of children's waiting rooms. The Judicial Council adopted a series of trial court facilities standards on November 8, 1991. One of the adopted standards urges all courts to maintain during court hours a supervised facility or "children's waiting room" where children may remain while parents conduct court business.

The comments to the standards contained in the report of the Advisory Committee on Court Facilities stressed that a children's waiting room is not a daycare center, but rather it serves to reduce stress on children whose parents are attending to legal matters; provide child victim-witnesses with a place to go during court recesses; protect children from the potential trauma of courtroom scenes; reduce courtroom noise and disruption in public areas; allow parents full access to the court system; and reduce the incidence of failure to appear caused by the inability of litigants or witnesses to find child care.<sup>35</sup> The facilities standard on children's waiting rooms is consistent with Penal Code section 868.6 which encourages the creation of children's waiting rooms and requires their inclusion in new courthouses.

- **Methods of Implementation**

Although most states have created gender fairness task forces in accordance with the resolution of the Conference of Chief Justices, many have not yet formalized efforts to implement recommendations for change. As more fully described in the introduction to this report, California has been fortunate indeed to have the benefit of continuing oversight and monitoring provided by a committee charged with implementation of the gender-fairness proposals (chap. 9, Implementation, rec. 1, p. 400).

Perhaps the most important aspect of implementation cited by the advisory committee was the need for issues of gender fairness to be an integral part of the curriculum in judicial education programs (chap. 9, Implementation, rec. 2, pp. 403–04). The advisory committee found that judicial education is widely perceived as fundamental to correcting problems of gender bias. Attorneys and experts who testified at the various hearings conducted by the advisory committee supported increased judicial education as a remedy for gender bias. Judges themselves cited judicial education as the most effective remedy for curing problems of gender bias in the courts. The committee determined that to be effective, judicial education on gender-bias issues must be introduced and integrated into the curriculum with an emphasis on the following:

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<sup>35</sup> See *California Trial Court Facilities Standards*, Judicial Council of Cal. (Nov. 8, 1991), p. 47.

- Issues of gender bias must be integrated into the substantive areas of the law that are already taught so that an educational program is not focused on gender bias alone;
- Innovative and creative teaching techniques should be developed to assist those who serve as teachers on these issues;
- Information from the social sciences must be included, where appropriate, so that judges benefit from the important research that has been done in the areas of concern and become more knowledgeable about the different life experiences that men and women have in our society; and
- In certain specific areas, most notably in family law, the model of voluntary education must yield ultimately to required courses for all judges who hear matters in these crucial areas.

Although curriculum planning in judicial education is an ongoing process, one that is constantly changing and evolving, the underlying goals of the advisory committee's recommendation on judicial education have been met. As amply outlined in its report to the Legislature,<sup>36</sup> CJER's program addresses all of the features contained in the advisory committee's recommendation. It includes integration of fairness issues into the curriculum, innovative teaching techniques, social science information, and newly adopted standards for attendance at programs.

## **FUTURE FOCUS**

The Gender Fairness Subcommittee, having reviewed in detail the progress made to date with respect to each recommendation, developed a series of focus areas for future implementation efforts. These areas are:

- Sexual harassment awareness and prevention;
- Expansion of available child care for court employees and children's waiting rooms;
- Improvement of court security in family law and domestic violence; and
- Expansion of services to non-English-speaking persons in family law and domestic violence.

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<sup>36</sup> Report to the Legislature pursuant to 1994–95 Budget Bill (ch. 139) (Dec. 1, 1994).

If adequate funding is obtained, the committee plans to initiate projects in each of these key areas or to collaborate with other committees or justice system agencies already working on these issues.

- **Sexual Harassment Awareness and Prevention**

In the 1990 report, the advisory committee recommended that each trial court adopt a personnel plan that includes a sexual harassment policy. The committee further proposed that the AOC provide courts with training on sexual harassment awareness and prevention as part of its duties to provide technical assistance on court personnel issues (chap. 8, Court Administration, recs. 2(g) and 4, pp. 354, 377). Although some local courts have developed training programs and other courts avail themselves of county programs, in reviewing implementation efforts, the Gender Fairness Subcommittee found that few court-related programs existed as part of a regular and ongoing training effort. Indeed, few such programs exist nationally.

The need for sexual harassment awareness and prevention programs was highlighted by two recent appellate cases. In *Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552, as modified at 9 Cal.4th 8236, a trial court judge was publicly censured for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."<sup>37</sup> The Supreme Court upheld the judge's censure after an independent review of the record. The offending conduct included:

- (1) inappropriate and offensive comments concerning the physical attributes and clothing of female members of the court staff;
  - (2) inappropriate and offensive remarks concerning the intimate relationships of court attachés or attorneys with their spouses; and
  - (3) other inappropriate and offensive remarks in the presence of court staff.
- In addition, the Commission found that (4) petitioner singled out women working under his supervision for inappropriate and nonconsensual touching, or attempted touching, although such conduct was 'unusual and episodic,' occurred over a lengthy period, was relatively infrequent, and did not constitute a pattern of misconduct.<sup>38</sup>

Subsequently, *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, the Court of Appeal for the First District, Division Two, reversed and remanded for a new trial before a different judge a former employee's action for sexual harassment, among other causes of action. The court's reversal was based specifically on the gender bias of the trial judge and included the express finding that the trial judge conveyed the sense that he considered sexual harassment cases a misuse of the judicial system.

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<sup>37</sup> See Cal. Const., art. VI, § 18 (c); Cal. Rules of Court, rule 919(b).

<sup>38</sup> *Fitch*, *supra*, p. 554.

These recent cases convinced the subcommittee that training on sexual harassment awareness and prevention for court staff and judicial officers is urgently needed. The subcommittee has received funding from the State Justice Institute to develop and publish a model curriculum for court employees and judicial officers on this issue. The curriculum will contain information and techniques specifically designed to address the unique features of court employment, and will focus as well on special issues relating to judges as managers and courtroom supervisors.

- **Expansion of Child Care and Children's Waiting Rooms**

During the gender fairness committee's initial investigation, child-care issues surfaced again and again in the concerns of female court employees. The lack of affordable child-care benefits and facilities has, the committee found, an adverse impact on employee productivity and morale. The absence of on-site child-care facilities and financial support for off-site facilities was also cited in the 1993 report on gender bias in the federal courts of the Ninth Circuit.<sup>39</sup> As one of its court administration recommendations, the advisory committee called for the development of ways to expand and improve affordable child care for court employees and judicial officers (chap. 8, Court Administration, rec. 7, p. 382).

Similarly, as noted above, the report cited the lack of affordable child care available to court participants as a limitation on access to the courts for those litigants and other participants in the court process who are the primary caretakers of children.<sup>40</sup>

These child-care needs have been recognized nationally as well. For example, the American Bar Association (ABA) urged the organized bar to help sponsor child drop-in centers in courts in their communities. In its report on children and the legal system, the ABA recognized:

For almost all children, going to court is a frightening experience which occurs at a time of family crisis already fraught with anxiety. Courthouse corridors and even courtrooms are full of children: they accompany adults who need to be there and have no other place to leave their children, or they are there because they themselves need to appear in court.

Courts should provide friendly environments, including trained staff, for children who are waiting to testify in court cases, child victims who are attending hearings or other court proceedings, and children who have merely accompanied their parents to court because there was no one to look after them.<sup>41</sup>

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<sup>39</sup> *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force* (July 1993), pp. 84–85.

<sup>40</sup> For a more detailed discussion, see p. 19 of this report.

<sup>41</sup> *America's Children at Risk: A National Agenda for Legal Action*, A Report of the American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and Their Families (1992), p. 57. See also Hurst et al., *Shaping a New Order in the Court: A Sourcebook for Juvenile and Family Court Design* (1992), a

Accordingly, the subcommittee has selected as priority recommendations both the expansion of child-care opportunities for court employees and technical assistance in the development of children's waiting rooms in courthouse facilities. The subcommittee will:

- Provide technical assistance to courts interested in developing child-care centers on court premises;
- Act as a clearinghouse of information about child care for court employees and children's waiting rooms; and
- Explore ways to expand child-care opportunities for court employees.

A source of assistance for the committee may be a national program, the National CourtCare Demonstration Project,<sup>42</sup> which is designed to document and support efforts to establish court-based child-care centers. The demonstration project has three goals: to develop court-based child-care guidelines, to assist courts with program implementation, and to disseminate information about effective programs to the courts. The Gender Fairness Subcommittee hopes to make the information and resources of this project more readily available in California.

- **Improvement of Court Security in Family Law and Domestic Violence**

Court security in family law and domestic violence matters was of concern to the original advisory committee. In finding that inadequate resources were devoted to the departments of the court hearing family law and domestic-violence matters, the advisory committee noted that more resources should be devoted to ensuring the safety of victims of domestic violence on or near court premises. The committee recommended the development of protocols that would ensure training for court staff in dealing with potentially violent situations and persons, increased use of equipment such as metal detectors, and the development of other procedures that would enhance safety in these departments (chap. 5, Family Law, rec. 7, p. 157).

The Gender Fairness Subcommittee agreed that court safety in these crucial, emotionally charged matters is vital. The subcommittee was influenced in part by the growing number of violent incidents on court premises involving family law litigants. The subcommittee also gathered information informally at CJER and CJA educational events and noted the increased concerns for safety of judicial officers serving in these assignments. The subcommittee reviewed the findings of a Judicial Council survey

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series of recommendations published by the National Center for Juvenile Justice which include a recommendation that child-care areas be provided in juvenile and family courts.

<sup>42</sup> See *Children in the Halls of Justice: A Report on Child Care in the Courts*, Center for the Study of Social Policy (June 1995).

conducted in 1991. At that time, statewide security procedures and installations varied widely. Only 45 percent of the counties responding to the survey reported having a written court security plan despite the existence of California Standards of Judicial Administration, section 7(b), which urges each court to have such a plan. Yet 57 percent of the counties responding reported incidents within the preceding two years that made judges or staff working in family law areas feel insecure.<sup>43</sup>

The subcommittee plans to work with other Judicial Council committees, most notably the Presiding Judges and Court Administrators Advisory Committees, to develop workable protocols and model court security plans to improve security in this area. The subcommittee will also explore whether increased resources may be available through the trial court budget process or through legislation designed to improve court security.

- **Expansion of Services to Non-English-Speaking Persons in Family Law and Domestic Violence**

The advisory committee also cited the needs of non-English-speaking persons in family law and domestic-violence matters as a crucial unmet need in these departments. The committee recommended that qualified court interpreters be provided in domestic-violence matters (chap. 5, Family Law, rec. 8, p. 159). The Gender Fairness Subcommittee focused on this issue by conducting an educational roundtable discussion for representatives of the following Judicial Council advisory committees: Access and Fairness; Juvenile and Family Law; and Court Interpreters. Discussion at the roundtable concerned proposed legislation that would provide for certified court interpreters in domestic-violence matters. The legislation is contingent upon funding being made available and permits a judge certain discretion to issue orders even when an interpreter is not available.<sup>44</sup>

The subcommittee determined that the original recommendation would be implemented with the passage of the legislation. The subcommittee also determined that it would monitor the development of projects under consideration by the Juvenile and Family Law Advisory Committee to provide assistance to unrepresented litigants including non-English speakers.

- **Additional Projects**

The gender fairness recommendations also include the proposal that an educational manual on fairness for judges, other judicial officers, and court personnel be developed and published (chap. 4, Civil Litigation and Courtroom Demeanor, rec. 3, p. 74). The Orange County Bar Association, in collaboration with the Alameda County Bar Association, has undertaken this project and will be presenting a draft manual to the subcommittee and to the Judicial Council with the hope that it can be published in 1996.

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<sup>43</sup> See *Courthouse Security in Family Law Matters*, Report to the Judicial Council (Oct. 11, 1991).

<sup>44</sup> This legislation was enacted, eff. Jan.1, 1996. See Stats. 1995, ch. 177, amending Pen. Code, §§ 261.7, 262.

The subcommittee has also circulated all of the recommendations relating to domestic violence to the members of each county team that participated in the statewide conference on family violence. The subcommittee asked that the team members provide current information about the importance and relevance of the recommendations, which were originally proposed in 1990. The subcommittee has found generally that the recommendations remain important to improving the administration of justice in family violence matters and will be ranking the remaining recommendations in order of general importance, based on the survey results. The subcommittee will work with the Family and Juvenile Law Advisory Committee to ensure implementation of the remaining recommendations.

## **CONCLUSION**

Collaborative efforts throughout the justice system have resulted in significant progress toward implementing the original 68 gender-fairness proposals adopted by the Judicial Council in 1990. The Gender Fairness Subcommittee is dedicated to the task of completing this important work and continuing to ensure gender equity in the court system for all participants.