

WOMEN'S LAW PROJECT

125 South Ninth Street, Suite 401
Philadelphia, Pennsylvania 19107
215/928-9801 • FAX: 215/928-9848



TESTIMONY PRESENTED TO THE HOUSE SUBCOMMITTEE ON COURTS HEARING ON JUDICIAL REFORM PROPOSALS

**CAROL E. TRACY, EXECUTIVE DIRECTOR
WOMEN'S LAW PROJECT
OCTOBER 6, 1994
PHILADELPHIA**

Thank you for inviting me to speak today on proposals to improve the state's judicial system. My name is Carol E. Tracy, and I am the Executive Director of the Women's Law Project.

The Women's Law Project is a public interest law center devoted to improving the legal, social and economic status of women and their children. Our work includes high impact litigation aimed at law reform, systems advocacy and public education. We also have a telephone counseling service that provides information and referral to 5,000 - 8,000 callers each year on a wide range of issues, including employment discrimination, sexual harassment, marriage, divorce, child support and child custody. Many of our callers have been in courtrooms seeking vindication of rights newly won for women in the past 20 years, only to be confronted by preconceived or stereotyped notions about the nature, role and capacity of women and men.

I would like to speak today about the issue of merit selection and about the need for a gender bias study of in the state court system.

You have heard testimony from many others on the need for major reform in the manner in which our appellate judges are selected. I would like to address my remarks about merit selection to its impact on gender and racial diversity.

In the most simple and straightforward terms, it seems patently obvious that those who sit in judgment of others should have some resemblance to those they are judging.

Board of Trustees / Amy Wilkinson (Chair), Heather Burns, Louise Cerasoli-Kepler, Robin Coward, Ellie DiLapi, Frank Finch, Ann Freedman, Judy Greenwood, Phoebe Haddon, Seth Kreimer, Arline Jolles Lotman, Mary McLaughlin, Lynn Marks, Karlyn Messinger, Joann Mitchell, Sarah Wiggins Mitchell, Kelly Moylan, Barbara Penny, Anu Rao, Robert Schwartz, Carole Soskis, Martha Swartz, Carol E. Tracy (ex-officio), Peter Vaughan, Thomas Zemaitis
Executive Director / Carol E. Tracy Managing Attorney / Linda J. Wharton
Program & Development Director / Dabney Miller Staff Attorney / Susan Frietsche, Terry L. Fromson
Outreach & Administrative Associate / Sherri Nehy Telephone Counseling Supervisor / Debra Rubin

United States Supreme Court Justice Ruth Bader Ginsberg expressed this ideal more eloquently when she said, "A system of justice will be the richer for diversity of background and experience. It will be the poorer, in terms of appreciating what is at stake and the impact of its judgments, if all of its members are cast from the same mold."

In Pennsylvania, only 5 of the 31 current appellate jurists are women; three are African American. A study done by the American Judicature Society in January 1993 found that 72% of the women jurists serving on state appellate courts were initially chosen by appointment (35% from a list submitted by a nominating commission, i.e., merit selection, 27% by the governor, 4% by the state legislator, and 6% from other appointment methods. This compares with 29% who first reached the bench through elections. The statistics on African Americans were almost identical - 73% chosen by appointment compared with 26% through elections.

Lynn Hecht Schafran of the National Judicial Education Program to Promote Equality for Women and Men in courts reported, "Gender bias is a problem with several aspects. Although we think of it most readily as stereotyped thinking about the nature and roles of women and men, gender bias also means society's perception of the relative worth of women and men and what is perceived as women's and men's work, and myths and misconceptions about the economic and social realities of women's and men's lives. Courtroom manifestations of these three aspects of gender bias include custody decisions which assume that women who work outside the home are not good mothers or that fathers are not meant to be primary caretakers, devaluation of homemaker work in personal injury and equitable distribution cases, and the assumption that when a battered woman divorces, the violence stops, so that requests for supervised visitation can be ignored." (Judicature, Vol. 70, No. 5, 1987)

One need look no further than today's Legal Intelligencer to see gender bias in the courts in operation. After finding a defendant innocent by reason of insanity of a rape charge, a Nashville, Tennessee judge recommended that his public defender arrange a

dating service and get him a girlfriend. This same judge gave female court employees presents of red lace panties on Valentine's day.

Over the past ten years, approximately 38 states have set up Task Forces to study gender bias in the courts. According to a report, the 24 states that completed their studies found that "bias against women permeates every aspect of the state and local court system". These studies not only document instances of gender bias, they make clear and specific recommendations for reform. I am enclosing a copy of several of these studies compiled by the Gender Bias Task Force of the Women's Right's Committee of the Philadelphia Bar Association.

Where bias exists, it pollutes the system in which it lives. While the gender equity studies have found that most judge are fair and unbiased, the instances in which bias occurs profoundly affect the administration of justice and detrimentally impact on other judges, lawyers, court employees as well as the parties to the litigation.

Unfortunately, Pennsylvania is conspicuously absent from the list of states that have performed such self-studies. Recently, Chief Judge Delores Sloviter of the United States Third Circuit Court Appeals announced that a gender and racial bias study would be conducted of the federal system. The Pennsylvania Supreme Court has agreed to perform a gender and racial bias study of our courts, but did not receive the appropriation it requested last year.

I would like to urge the Judiciary Committee to work to eradicate bias in the state court system by adopting a system of merit selection and by supporting the Supreme Court's request for funding for a gender and racial bias study of the state court system.