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I really would like to begin, of course, by thanking Dean David Partlett, Professor Blake D. Morant, the Women Law Students Organization, and everyone who was present for the first open-panel discussion of the Virginia Gender Bias Report. The report is finished and printed just as all good reports are.[1] Our hope is that the report does not find its way to some shelf and stay there. I also hope to articulate here why we feel so strongly about the work that has been done.

The existence of gender bias in the courts of this country is not something new.[2] However, it is somewhat ironic that the same institutions that people view as the protectors of liberty and the dispensers of equal protection before the law would not have, from the very beginning of time, protected individuals from gender discrimination within their own institutions. As we all know, the legal system did not welcome women with open arms. In fact, stories of women's fights to get into law school and to be licensed as attorneys are well documented.[3] As in precedent and stare decisis, by applying the old to the new, legal culture has been handed down from senior partners to associates, from judges to law clerks, from professors to students, and from

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1. GENDER BIAS IN THE COURTS TASK FORCE, GENDER BIAS IN THE COURTS OF THE COMMONWEALTH – FINAL REPORT (2000). [hereinafter FINAL REPORT]. This report, released to the public in October of 2000, will be published in its entirety in the *William and Mary Women's Law Journal.*

2. *See* Barbara Allen Babcock, *Report of the Ninth Circuit Gender Bias Task Force: Introduction: Gender Bias in the Courts and Civic and Legal Education*, 45 STAN. L. REV. 2143, 2144-45 (1993) (citing Judith Resnik, *"Naturally" Without Gender: Women, Jurisdiction, and the Federal Courts*, 66 N.Y.U. L. REV. 1682, 1683 (1991); NATIONAL ASSOCIATION OF WOMEN LAWYERS, 75 YEAR HISTORY OF NATIONAL ASSOCIATION OF WOMEN LAWYERS, 1899-1974, at 5 (Mary H. Zimmerman ed., 1975); KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT 11 (1986)) (discussing evolution of gender bias studies).

3. *See generally* Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873) (deciding case of woman who sought admission to Illinois bar).

lawyer to lawyer. Until very recently, all of those people were men. So, attitudes toward women, both in substance and in the environment of the law, have been part of a very slowly evolving process. The good news is that there has been a change in the culture.[4] It has been long in coming, but the culture has changed.

For a number of years, there were many anecdotal stories about either demeaning or unfair treatment of women, whether they were attorneys in the courthouses, witnesses, jurors, or staff.[5] In the mid-1980s, as Professor Morant mentioned,[6] many states decided that it was time to address these anecdotal stories by seeking empirical data to see what kinds of problems, if any, really existed.[7]

When judges and lawyers engage in any type of biased activity, the credibility of our courts as neutral decision makers is called into question. In 1989, a massive report by a task force here in Virginia, the Virginia Commission on the Future of the Judiciary, recommended undertaking methods to eliminate gender bias, as much as possible, in this state.[8] This recommendation was given to the Judicial Council.[9] The Judicial Council, created by statute, is a group of fourteen people chaired by the Chief Justice.[10] It includes the chairman of both the House and Senate Courts Committees of the Virginia General Assembly, a general district court judge, a juvenile and domestic relations court judge, two lawyers, and eight circuit court judges.[11] The group meets, performs studies, and periodically makes recommendations to the judicial branch of the state.[12]

In 1994, the Judicial Council, operating on this 1989 report, put together an ad hoc committee study with the goal of answering the question, "How are

4. *See* FINAL REPORT, *supra* note 1, app. D at 203 (noting decreased perception of bias); *see also Eleventh Circuit: "Executive Summary" – Report of the Eleventh Circuit*, 32 U. RICH. L. REV. 751, 764 (1998) (discussing levels of gender bias); The Honorable Bruce M. Selya, *First Circuit: A Study of Gender Bias in and Around the Courts*, 32 U. RICH. L. REV. 647, 656 (1998) (same); Supreme Court Permanent Advisory Committee on Women in the Courts, *Gender Bias in the State Courts: How the Problem Is Perceived Today by Attorneys and Judges*, R.I. B.J., May 1999, at 17 (same).

5. *See, e.g.*, FINAL REPORT, *supra* note 1, at 21 (relaying personal narratives of bias).

6. Blake D. Morant, *Introductory Essay: The Relevance of Gender Bias Studies*, 58 WASH. & LEE L. REV. 1073 (2001).

7. *See* FINAL REPORT, *supra* note 1, at 1 (articulating purpose of study).

8. *See id.* at 1-2 (quoting COURTS IN TRANSITION: THE REPORT OF THE COMMISSION IN THE FUTURE OF VIRGINIA'S JUDICIAL SYSTEM 65 (1989)).

9. *See id.* at 2 (describing process of establishing study).

10. VA. CODE ANN. § 17.1-700 (Michie 1999).

11. *Id.*

12. VA. CODE ANN. § 16.1-69.31 (Michie 1999)

we going to deal with gender bias in this state?"[13] Some held the view, however, that gender bias really does not happen in Virginia. We are Virginia; we are nice and civil, and we do not do those kinds of things. Others suggested that perhaps gender bias was happening in Virginia and that a report should be done. The ad hoc committee read all of the other states' reports and identified fourteen areas that every one of those other states had studied. At that time, there were twenty-five state reports. The ad hoc committee came back with a recommendation saying that in some areas, the findings in all these states were similar. Therefore, the Committee recommended that we needed to gather Virginia-specific data to determine whether similar conduct existed in the Commonwealth. The data was necessary to convince people that gender bias did exist and that something needed to be done to address it. The report also suggested to the Judicial Council that it would require about $140,000 to undertake the effort. The Judicial Council agreed with the ad hoc committee.[14] Although the Council adopted this endeavor in 1994, we had a few years searching for the dollars to get the study off the ground.

Luckily, we found those funds in conjunction with the National Center for State Courts,[15] located in Williamsburg, and the Task Force began in 1998.[16] The Task Force had twenty-two members plus myself. It reflected a wide diversity of people including legislators, courthouse personnel, non-lawyers, representatives, and clerks of court. Committee members came from all geographic areas and from all levels of courts. The goal was to be diverse without being unwieldy, which is quite difficult even with twenty-three people. The staff consisted of personnel supplied by the National Center for State Courts, along with our own Office of Executive Secretary.

The first thing we did was to subdivide into the following three areas: Family Law, Substantive Law, and Court Environment.[17] In order to gather data, we conducted surveys.[18] Ultimately we had 1,740 responses to our surveys. The surveys were sent to different groups. We had identified eight groups such as "family law attorneys" or "Commonwealth's Attorneys."[19] Each survey had a "general perception" series of questions, but the remaining part of each survey was directed toward the people who received them.[20] We

13. *See* FINAL REPORT, *supra* note 1, at 2 (describing function of ad hoc committee).

14. *Id.*

15. Information about the National Center for State Courts can be found on the web at http://www.ncsconline.org/.

16. *See* FINAL REPORT, *supra* note 1, at 2 (describing Task Force's first meeting).

17. *See id.* at 8 (describing study's methodology).

18. *Id.*

19. *Id.* at 8-9.

20. *See id.* at app. B (containing sample survey form).

also did courtroom watching.[21] We had five public hearings around the state, and each member of the Task Force chaired and participated in at least one hearing.[22] Over 100 people testified. We did a series of case studies where trained law students went through actual case files to determine various aspects of a case.[23] Law students from Washington and Lee University School of Law participated in this exercise. The Task Force as a whole met six or seven times to analyze the data and narratives collected.

The members of the Task Force not only actively participated in data collection and came to a consensus on the findings of that data but also agreed to the recommendations from that data. The recommendations are in three basic groups, or areas, that deal with the courtroom itself, substantive law, and a particular focus on family law.

We found that family law issues remain possibly the most problematic area with regard to gender bias today.[24] Obviously, increased numbers of women are in the courtroom as lawyers. Representations of women as experts, as witnesses, as guardian ad litem, and even as judges have increased dramatically – a fact that distinguishes the Virginia study from those conducted in the 1980s.

Our goal is still to ensure that what might appear as formal or statistical fairness, really and truly becomes substantial fairness. That is the next step we are ready to take. The recommendations that have come from the Gender Bias Report are up before the Judicial Council for their consideration on March 26, 2001. We hope that the Judicial Council will favorably adopt our recommendations for implementation, monitoring, and remediating any remaining biases.

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21. *See id.* at 10-11 (describing study's methodology).
22. *Id.* at 9-10.
23. *Id.* at 10-11.
24. *See id.* at 31-58 (discussing family law matters studied).