STUDYING THE ROLE OF GENDER

in the Federal Courts: A Research Guide

1995

Federal Judicial Center

Studying the Role of Gender in the Federal Courts: A Research Guide

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Federal Judicial Center 1995

The Board of the Federal Judicial Center adopted this resolution on February 3, 1995.

The Board, mindful of (a) the Center's statutory charge "to conduct research and study of the operation of the courts," "to stimulate and coordinate such research" by others (28 U.S.C. § 620(b)(1)) and to provide education and training for judicial branch personnel and others (§ 620(b)(3)); (b) the provisions of §§ 40421–40422 of the Violent Crime Control and Law Enforcement Act of 1994 relating to gender bias studies in the federal courts; and (c) the March 1993 resolution of the Judicial Conference of the United States encouraging such studies, resolves, after discussion, that:

(1) The Board takes no position with respect to the desirability of the appointment of gender bias task forces in the various circuits;
(2) This resolution does not preclude the Center from responding to requests from circuit councils or courts for technical assistance (including this research guide) to help ensure the integrity of the results of studies by such task forces; and
(3) The Board does not believe that such assistance should extend to analysis of judicial decisions from the perspective of gender bias.

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About This Guide

In July 1992, the Ninth Circuit Gender Bias Task Force released its Preliminary Report, documenting its findings, up to that point, on the role of gender in the courts of the Ninth Circuit. This report stimulated other circuits' interest in such studies. Interest was further heightened when, in March 1993, the Judicial Conference of the United States endorsed the provision of the then-pending Violence Against Women bill (now incorporated in the Violent Crime Control and Law Enforcement Act of 1994) that encourages the federal circuits to undertake studies of various aspects of gender bias in their courts.

As interest in conducting studies of gender in the courts increased, individuals within the courts began asking the Federal Judicial Center about how to carry out studies of gender issues and where to find relevant resources. In response to these queries, and to maximize the assistance we could give to each circuit, the Center decided to prepare this guide, drawing on our experience with both social-science methods and the federal courts. The guide provides suggestions for task-force operation, based on the experiences of groups in place, and describes the range of methods that might be used. Its purpose is not to advocate creation of task forces or to encourage any particular approach. Rather, its purpose is to help ensure, where task forces have been created, that they have the benefit of others' experiences and that they avoid the dangers that come from ill-advised research approaches.

We assembled an advisory panel to make suggestions about guide content and to review drafts. The panel included judges, court staff, social scientists, and representatives from court and executive branch agencies with relevant data, information, and experience in studies of gender in the courts.

We hope this guide helps those who appoint task forces, the task-force members themselves, and those working with the task forces in determining what questions to ask, how best to answer them, and what to do with the answers. Although the Center does not have the resources to provide continuing hands-on assistance to every task force, its staff stands ready to assist with specific queries on an ad hoc basis, consistent with the Center's other responsibilities to Judicial Conference committees and the courts.

Acknowledgments

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Preface

At its meeting in March 1993, the Judicial Conference of the United States resolved that there was "great merit" in the provision of the then-pending Violence Against Women bill, "encouraging circuit judicial councils to conduct studies with respect to gender bias in their respective circuits." Even before that time, the Center was receiving numerous requests for advice on how to undertake surveys and analyze data in support of such studies, and such requests have continued. Further, in September 1994, the Conference added support by authorizing temporary positions in circuits conducting such studies. Also in 1994, the Violent Crime Control and Law Enforcement Act, including as Title IV the Violence Against Women provisions, became law. That act further encourages circuit councils to conduct gender bias studies and encourages the Federal Judicial Center to include gender bias issues in its training programs and to prepare supporting materials.

As the judicial branch agency charged with the obligation "to conduct research and study of the operation of the courts . . . and to stimulate and coordinate such research and study on the part of other . . . agencies" (28 U.S.C. § 620(b)(1)), the Center prepared this guide to respond to the many requests for assistance it received. The guide can help ensure that task forces understand the various fact-gathering and research techniques that are available to them and the strengths and weaknesses of each. In addition to assessing these techniques, the guide highlights practical considerations involved in conducting such studies, considerations that may seem obvious but that we know from experience tend to be overlooked.

Our goal is to help task forces do their work effectively and efficiently and to reach conclusions that use appropriate modes of analysis and use them correctly, so that the integrity of the findings can hold up to intense scrutiny.

The Honorable William W Schwarzer
Director, Federal Judicial Center

Foreword

This research guide should be invaluable for anyone interested in studying the role of gender in the courts. I only wish it had been available in August 1993, when Chief Judge Richard S. Arnold asked me to organize and appoint a gender task force in the Eighth Circuit. This guide covers a broad range of topics in a concise and useful format.

Forming a task force and gaining acceptance for it to study and report on gender fairness in the courts are not simple undertakings. Some believe gender bias does not exist in the courts to any significant extent and that any study is unnecessary. Others believe that earlier studies from federal or state courts provide all the information needed, and that resources should be directed toward implementing educational programs and other changes to eliminate bias, rather than studying it.

Without undergoing some self-examination, however, a court or circuit loses the opportunity to hear about the issues of greatest concern to those who interact with the judicial system. Courts and circuits would also lose the opportunity to identify specific areas, if any, in which changes are needed. Self-study is a process that not only helps gather information, but also helps direct attention to practices and perceptions that may otherwise be overlooked. Each circuit has its own unique characteristics. Federal courts vary widely with respect to population demographics, geography, type and size of caseload, and other features that might affect the role gender plays and the extent of any problems relating to gender. Those organizing a study will want to consider such factors.

When appointing a task force for the Eighth Circuit, I began by talking with a variety of people in the seven states of our circuit—some of whom had already worked on state studies. I also consulted leaders in the field, such as Lynn Hecht Schafran and Professors Judith Resnik and Laura Cooper. Those experienced in previous projects advised that a large percentage of the task force should be composed of judges—this ensures that the courts would credit the project and any resulting recommendations.

Because of the significant differences among the seven states, it was important to represent them all. It was also important to have gender balance and representatives of the various courts, the private and public bars, both prosecution and defense, and court employees. Leadership is critical in conducting studies and in announcing and implementing any recommendations, so the most important single appointment was the chair. That position is ably filled by Chief Judge Lyle Strom, who is liked and respected by his colleagues and not perceived as having any special interest to pursue.

Size, focus, and scope are threshold issues. Our circuit task force has nineteen members, as well as a council and special consultants to assist its work. The goal was to maintain a deliberative size while still involving significant numbers. In-

formation from those who have simultaneously considered questions of race and gender led me to believe that it would be most effective in our circuit to begin by focusing primarily on one area. The role of race in the federal courts needs to be addressed as soon as possible, however, and the impetus of completed gender studies leads in that direction. Resolution of organizational issues will depend on regional characteristics and concerns, but the entire process will be simplified by the availability of this guide.

It is of historic importance that courts are now willing to embark on such programs of self-examination and to commit themselves to making sure that equal opportunity and fair treatment characterize the judicial system.

The Honorable Diana E. Murphy
U.S. Court of Appeals for the Eighth Circuit

Foreword

Procedural fairness has been a hallmark of our judicial system. It is something to which we aspire, for which we work, and by which we are motivated. Therefore, it should not come as any surprise when judges, lawyers, court administrators, and academics join forces to identify and to eradicate the effects of bias and prejudice based on gender in our federal justice system.

We in the Ninth Circuit concluded that, in order for our effort to be worthwhile, a task force was essential. Data needed to be secured and analyzed—specifics needed to be identified. We could not rely on generalities and platitudes.

We are justifiably proud of the accomplishments of the Ninth Circuit Gender Bias Task Force. The effort was pathbreaking for us. With limited staff and financial resources, countless days of work were donated by the task-force members and those who assisted. Somehow the task was completed—and done well.

But our work is not finished. As I see it, our work has really just begun. Well-articulated findings and dozens of specific recommendations in the final report cry out for further action. Through a call for ongoing education, district-by-district implementation with circuit oversight, revisions to the codes of conduct, guidelines governing judges and lawyers, and proposals for a national agenda, our task-force report has furnished us with a road map to our final destination: a justice system that assures gender fairness to all those who work in it and who come before it.

Is all of this effort worth it? Martin Luther King, Jr., correctly stated: "Injustice anywhere is a threat to justice everywhere." Without doubt, this road we have chosen is a long one. But it is one that we must take if we are to fulfill our responsibility to ensure a fair and equitable federal forum, one that litigants, lawyers, our employees, and the public have a right to expect in the courts of the United States. The following material will be helpful to those who join in the journey.

The Honorable J. Clifford Wallace
Chief Judge, U.S. Court of Appeals for the Ninth Circuit

I

Organizing the Task Force and Formulating Its Inquiry

Chapter 1—Introduction

Each federal circuit has confronted, or soon will, whether and how to undertake a study of how gender, or attitudes about gender, may affect that circuit's courts. Several bodies have encouraged such studies. Congress placed in the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322, 108 Stat. 1797, 1944 § 40421(a)) a provision that encourages the circuit judicial councils to conduct studies of gender bias in their respective circuits.[1] In March 1993, the Judicial Conference of the United States, acting on a recommendation of its Ad Hoc Committee on Gender-Based Violence, adopted a resolution endorsing that provision. In 1991, the American Bar Association adopted a resolution supporting studies of "the existence, if any, of racial, ethnic and gender bias in the federal judicial system and the extent to which bias may affect litigants, witnesses, attorneys and all those who work in the judicial branch." In addition, a recommendation in the 1993 report of the National Commission on Judicial Discipline and Removal calls on the federal circuits to conduct studies of "judicial misconduct involving bias based on race, sex, sexual orientation, religion, or ethnic or national origin, including sexual harassment . . . ."[2]

Others have cautioned against such studies. The Federal Courts Study Committee, in 1990, concluded they were unnecessary, and some federal judges have expressed considerable skepticism about the propriety of studies undertaken to date.

Purpose of This Guide

The purpose of this guide is not to encourage or discourage such studies but, rather, with respect to circuits that have decided to conduct studies of gender issues in the federal courts, to help them perform the task effectively and competently.[3] The guide provides assistance in a number of areas: it helps frame the questions to be addressed in these studies, it helps develop methods of selecting topics, and it helps carry out the studies. It provides those charged with overseeing a study a general understanding of social-science research methods and what they can contribute. In addition, we hope the guide will help give those who advise on research methods, who may not be familiar with federal-court operations, an idea of how gender issues might arise in courts and how they might be stud-

1. *See* Section 40421, reproduced in Appendix B-4.

2. Report of the National Commission on Judicial Discipline and Removal 126 (1993).

3. Several states and circuits have chosen to study other aspects of diversity, such as race or ethnicity, in addition to gender.

ied. Finally, the guide provides information about various agency resources and personnel who can help conduct gender studies. There is also a bibliography of suggested reference materials at the end of the guide.

The guide will be most useful if readers understand it as a source for suggestions and information about research approaches, not as a blueprint to produce studies conforming to a single model. Although we usually refer to "the task force," we do not necessarily mean that the task force per se will be the body likely to carry out the suggestion—for example, drawing a statistically valid sample of attorneys to survey. We direct the text at the task force as a convention because different work patterns will prevail in different task forces and because the task force is ultimately responsible for work carried out on its behalf.

A task force's initial study should not be viewed as the only occasion on which to consider issues and problems. After the first study, when recommendations are made and implementation is underway, follow-up research may be needed and, when appropriate, additional or deferred projects taken up. Thus, this study guide is relevant and should serve as a resource not only when circuits undertake a study initially but also on subsequent occasions.

Development of Gender Task Forces in the State and Federal Courts

By early 1994, more than forty states, the District of Columbia, Puerto Rico, and several federal circuits had created task forces on gender issues in the courts. This effort started in 1980, when the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP)[4] stressed the importance of each state and circuit developing information about the existence, nature, and consequences of gender bias in its own court system with the intention that this information be used in judicial education programs.[5]

State Courts

New Jersey's Chief Justice Robert Wilentz established the first state task force on gender issues in 1982, in response to New Jersey Superior Court Judge Marilyn Loftus's request for the appointment of a committee to assist in developing local information on the subject for use in an educational program. The task force's presentation of its findings at the state's judicial college and its subsequent report received national attention and spurred the development of gender task forces in states across the country. As of May 1994, task forces in twenty-nine states had

4. The NJEP is a project of the NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges.

5. Lynn Hecht Schafran, *Eliminating Gender Bias in the Courts: An Emerging Focus for Judicial Reform,* 21 Ariz. St. L. J. 237 (1989).

published final reports.[6] All of these task forces have concluded that gender affects the opportunities and treatment of litigants, lawyers, judges, court employees, and others who interact with the courts. The task-force reports include recommendations for specific ways to eliminate the problems identified. Most states have established committees to implement these recommendations.

Federal Courts

Task forces to examine gender issues in the federal courts are a more recent development, stemming indirectly from the 1990 report of the Federal Courts Study Committee (FCSC), created at the direction of Congress to study the federal courts and make recommendations about their future. Witnesses at the FCSC hearings encouraged it to recommend study of gender bias at the federal level. The committee did not recommend a study of gender bias in the federal courts:

> State studies on bias in the courts provide considerable knowledge of this subject. Rather than another study, the committee proposes means of preventing and dealing with bias in federal court proceedings and operations . . . . We believe education is the best means of sensitizing judges and supporting personnel to their own possible inappropriate conduct and the importance of curbing such bias when shown by attorneys, parties, and witnesses.[7]

Despite the FCSC's view that studies were unnecessary, in 1990 two federal circuits created task forces. The Judicial Council for the District of Columbia Circuit created a Task Force on Gender, Race, and Ethnic Bias, to determine whether and to what extent gender, race, and ethnicity affect the operations and proceedings of the federal courts of the D.C. Circuit. That task force presented a preliminary report to its judicial council in June 1994.

In August 1990, the Ninth Circuit Judicial Conference, in response to a request from its Lawyer Representatives Coordinating Committee, called for a study of gender bias in the federal courts of that circuit. The conference's executive committee established the Ninth Circuit Gender Bias Task Force and charged it with "conducting a study of gender in the Ninth Circuit, reporting to the Conference about its findings, and making recommendations to respond to any problems identified."[8] In July 1993, the Ninth Circuit's task force issued its final report. Recently, other federal circuits have begun forming or considering forming gender task forces.

6. Appendix A lists final task-force reports, as well as a summary of the questions addressed and methods used, and it provides information about how to obtain a copy of each report.

7. Report of the Federal Courts Study Committee 169 (April 2, 1990).

8. *See* The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force 3 (July 1993) [hereinafter Ninth Circuit, The Effects of Gender]. This report is reprinted in 67 S. Cal. L. Rev. 745 (1994). The Executive Summary of the Preliminary Report, along with related papers and commentary, is published in 45 Stan. L. Rev. 2143 (1993). See the bibliography at the end of this study guide for citations to specific papers in the Stanford volume.

Organization of This Guide

This guide is organized into four parts: Part II (Chapters 4–11) is the core of the guide. It discusses the details of conducting task-force studies and is designed primarily for those who are actually charged with carrying out the studies—including some task-force or committee members, as well as social-science advisors working with the task force.

Other parts are Part I: Organizing the Task Force and Formulating Its Inquiry (Chapters 1–3); Part III: Resources Available to Task Forces (Chapter 12); and Part IV: Recommendations and Implementation (Chapters 13 and 14). These parts are primarily for those involved in establishing a task force, as well as for members of a task force (and its committees) once established.

Part I

Chapter 2 deals with assembling a task force (including task-force approach, composition, and scope) and dealing with the courts, bar, and other members of the legal and judicial communities.[9] Chapter 3 was developed to help task forces chart their particular research agenda.

Part II

Chapters 4–10 contain information about various research methods by which to examine the role of gender in the federal courts. In Chapter 4 we briefly describe each approach and discuss combining information from multiple methods. Chapters 5–10 feature the mechanics of using and analyzing information obtained from each of the research methods. For example, we offer general guidelines for analyses of existing computerized databases as well as information about questionnaire design and administration. Chapter 11 provides general information about drawing conclusions and reporting results from data obtained by task-force researchers.

Part III

Chapter 12 describes resources available to assist with various aspects of the circuit studies, including data, services, and other resources that might be obtained from the FJC, Administrative Office, U.S. Sentencing Commission, and other agencies, organizations, or individuals, including social-science advisors. We

9. Although we touch on these issues here, several excellent publications already exist that deal with the formation and operation of a task force. Particularly useful is Lynn Hecht Schafran and Norma Juliet Wikler's Operating a Task Force on Gender Bias in the Courts: A Manual for Action (1986). This manual can be obtained from the Women Judges' Fund for Justice, 733 15th Street, N.W., Suite 700, Washington, DC 20005. The bibliography at the end of this study guide identifies other useful resources.

have also provided names of contacts at various agencies and identified the types of information they can provide.

Part IV

In Chapter 13 we discuss developing effective recommendations for change, the actual writing of reports and implementation plans, and the dissemination and use of findings from gender studies. In Chapter 14 we address monitoring and evaluation of changes implemented as a result of the task force's recommendations.

Chapter 2—Establishing a Gender Task Force

Courts have established gender task forces for a number of reasons: to explore whether and in what ways gender plays a role in the courts of the jurisdiction; to propose changes; to recommend mechanisms and measures to achieve those changes; and to design or oversee implementation. One of the first questions a circuit will face is whether to undertake its own study, rather than rely on task-force reports from state courts or other federal circuits and to design educational programs or make recommendations based on those findings. There are obvious benefits in time and money in not beginning a new study. On the other hand, a circuit that relies on others' research loses the opportunity to identify the issues of greatest importance in the circuit. It also risks having circuit members claim that problems exist only in other courts or other circuits but not in their own, or, conversely, that problems documented elsewhere must also exist in their courts or circuit.

Self-studies can be, or can appear to be, self-serving, so those who establish the task force and give it official imprimatur should also give it and its subcommittees or advisors substantial independence to determine the direction and content of the study. The task force and its subcommittees must also adhere to the highest professional standards with respect to information collection, analysis, and reporting.

A task force might be established by the chief judge, the circuit council, the circuit conference, or by some combination. Depending on the structure of a circuit's judicial conference, discussion and resolutions by the conference in support of a task-force effort might be appropriate.[10] A circuit conference includes lawyers, and its involvement in creating the task force could help to negate perceptions that the study will solely serve the interests of the judiciary. In addition, any inquiry about the role gender plays in the courts of a circuit is likely to examine the experiences of lawyers; having lawyers involved from the beginning could encourage cooperation from the rest of the bar and also may make it easier to involve nonlawyers.

Scope of the Task Force

An issue likely to arise when the gender task force is being established is whether to launch at the same time studies of other areas of diversity (e.g., race, ethnicity, religion, age, sexual orientation). Courts may reasonably be concerned that

10. For example, see the resolutions of the Ninth Circuit Judicial Conference in support of a gender task force and study. These resolutions are reproduced in Appendix B-5.

forming a task force focused exclusively on one topic will suggest that it is the only one that matters to them.

Since the 1980s, a number of states have formed task forces to study aspects of diversity other than gender, and most of the federal circuits that have formed task forces are also doing this. Although studying several aspects of diversity simultaneously may be appropriate, the roles of gender, race, ethnicity, religion, handicap, sexual orientation, and age each have distinct histories and expressions and may call for differing remedial responses. In addition, a study that covers everything—from parental leave policies to court employment opportunities for racial minorities to accessibility of courthouse facilities to those who are disabled—may not cover any topic in appropriate depth, heightening the risk of an unfocused and confusing report.

The "umbrella" approach, in which a task force oversees subgroups that study separate areas of diversity, has been adopted by several federal circuits. When this approach is used, inquiries from the different subgroups should be coordinated so that respondents do not receive a persistent stream of surveys, requests for interviews, and so forth. On the other hand, combined research efforts may lead potential respondents to say, for example: "I'll provide one hour of my time—ask all of your questions then." That kind of response shortchanges both inquiries, and the task force would be better served by selecting different interview respondents for each topic (e.g., race, gender) and limiting each interview to questions about one topic. Subgroup members should be aware of these potential problems and communicate with each other in determining when combined or separate research approaches are appropriate.

The Task-Force Mandate

A mandate is important to define the work of the task force. Some task forces have had very specific mandates (e.g., setting forth the questions to be addressed), while other task forces have had extremely broad mandates. A fairly broad mandate is usually preferable, because it allows for flexibility as the task force's work progresses. For example, the mandate might direct the task force to explore whether gender plays a role in the courts of that circuit; to determine the nature, extent, and consequences of any gender-related problems in the circuit; to make recommendations for changes and education; and to monitor progress in eliminating any problems identified.

Task-Force Structure and Composition

Several task-force models exist, but they differ primarily in two ways: extent of official court involvement and size. Under some models, the court (through the chief judge, circuit judicial council, circuit conference, or committees) is involved heavily in shaping and guiding the task force's work as it evolves. With other

models, those who create the task force give it authority to explore issues through advisory committees or working groups and report back.

Another variant in task-force structure is size. There is no "right" task-force size: some task forces have been relatively large (25–35 members), while others have been small (5–10 members). Generally, small groups are more efficient in reaching decisions. The federal circuit task forces established thus far generally have had a small number of members who oversee the work of advisory committees or working groups—these committees and groups have more members, and they focus on particular aspects of the task force's inquiry.

The unique dynamics of a circuit will play a significant role in determining who should be on the task force and who can be on committees or working groups created by the task force, but some generalizations are possible. First, the judicial leadership may not be in the best position to identify all of the most appropriate appointees. It may be helpful to solicit input from those with interest and expertise in gender issues and those who interact regularly with the courts of the circuit, such as members of state task forces who have studied the relevant issues, court administrators who may know of court staff knowledgeable about or interested in these issues, or university faculty members from relevant social-science disciplines.

Second, a task force is likely to have maximum effectiveness and credibility if it includes members, committee members, or advisors with diverse experiences, backgrounds, and viewpoints, including circuit, district, magistrate, and bankruptcy judges; lawyers from the public and private sectors, from solo, large, and small firm practices, and from different substantive areas of practice; court staff; nonlawyers who can provide the vantage point of litigants, witnesses, jurors, or the general public; law professors; and social scientists. These individuals should (and perforce will) differ in their knowledge of gender studies, the effects of gender in the federal courts, and the structure of federal adjudication.

Third, it is important not to stack the deck, or appear to do so. A task force dominated by people who have already concluded that gender bias is widespread in the circuit, or by individuals who are hostile to the possibility that it exists at all, will probably produce questionable research and have little credibility. Including individuals openly hostile to the possibility that bias exists in the courts or in related institutions or people convinced that gender bias permeates all aspects of the courts' functioning may create a task force whose intragroup dynamics quickly break down.

Fourth, it is important to consider other dimensions of diversity when selecting members of the task force or its committees. Women and men with differing ethnic, racial, and religious backgrounds can bring varying perspectives to the discussions; if they have ties to other specific legal communities, such as the Federal Bar Association, women's or minority bar associations, or civil rights groups, they may also encourage input and cooperation from a diverse group of lawyers. In addition, racial and ethnic diversity will help ensure that the task force

identifies and examines the unique issues involved in the combinations of gender and race or gender and ethnicity. Including members from all of the circuit's components—for example, including at least one representative from each district or each state in the circuit—is useful both because of the variety of perspectives that will be brought to the task-force process, and because these representatives can be spokespersons and points of contact for the task force in their communities.

Having a wide range of ages represented on the task force will help to avoid perceptions that younger and older generations view gender-bias issues differently—a perception that was refuted by aggregate data from the Ninth Circuit study.

Because social-science expertise will be in great demand throughout the study, it will be useful to have at least one social scientist with a broad research background (i.e., one who understands the full range of research methods likely to be considered by the task force) involved from the beginning of the task-force process. This individual can provide perspective and information about how best to approach a study of the topics the task force chooses to examine. In turn, because most social scientists are not expert in federal courts and law, having one on the task force from the beginning will help that person become more familiar with relevant court-related and law-related issues and should thus maximize the utility of his or her technical advice.

At least some members of the task force itself should be willing to devote time to carrying out some of the work of the task force—for example, supervising a particular research project. The contributions of other members will include their high credibility and visible support of the task force effort throughout the study and implementation processes, even if those members are not involved directly in carrying out the study.

A final issue is selecting the chair. In most task forces the chair has been a judge, and this approach is preferable for enhancing credibility and encouraging cooperation from the circuit's judiciary. Although chairs have most frequently been women, both women and men have been successful task-force chairs. One approach is to have co-chairs, one woman and one man, who can themselves exemplify the point that women and men must join together in creating or maintaining a fair court process.

Among existing task forces, some chairs have been people already known for their deep commitment to gender equity. In other situations, chairs have been open-minded people who were not previously identified with gender-fairness issues, but who learned about and became committed to gender fairness through the task-force process.

Task-Force Advisory Committees or Working Groups

Many task forces establish advisory committees or working groups, which include non-task force members; each committee or group addresses a different aspect of the task force's inquiry. For example, advisory groups and researchers for the Ninth Circuit task force carried out intensive studies on specific topics—such as procedures for selecting magistrate judges within the circuit and the composition of Civil Justice Reform Act (CJRA) advisory groups in the circuit. These groups and researchers produced working papers that the task force used in producing its preliminary and final reports.[11]

Advisory committees or working groups allow focused inquiry on particular topics and help ensure more diverse representation while preserving the task force as a compact, decision-making group. When appointing members to committees, which are often substantially larger than the task force itself, the same factors of diversity and expertise are relevant as when appointing task-force members.

Educating Task-Force Members About Gender Issues

Because task-force members will come to the process with varying levels of knowledge about gender issues, some may want background reading material to orient them to the ways in which gender issues can arise in the courts and various approaches to studying them. They may consult materials cited at the end of each chapter and in the bibliography to this guide.

11. See the bibliography for a list of working papers of the Ninth Circuit task force.

Chapter 3—Areas for Study

The first job for a task force is to determine what specifically it should study. This chapter treats three aspects of that determination: whether to analyze gender bias per se, or a broader phenomenon; the extent to which it will analyze perceptions as well as other types of information; and what specific topics it should research.

Studying "Gender Bias"

Both of the federal circuit task forces that have undertaken studies have chosen not to define "gender bias" for purposes of their study and not to frame their inquiries in terms of whether gender bias can be found in their courts. The task forces in the Ninth and D.C. Circuits framed their inquiries in terms of whether gender (as opposed to bias) appears to play a role or have effects in various aspects of the courts' operations and, if so, what the nature of that role is. The advantage of formulating the inquiry in this way is that it is nonaccusatory and broad enough to accommodate a wide range of situations in which gender may play a role, including those in which differences based on gender may be appropriate. In addition, use of the word *gender,* rather than a word or phrase that focuses on women, allows for examination of situations in which men as well as women are affected by gender-based biases or stereotypes.

Studying Perceptions

The perceptions of various groups or individuals, based on their experiences in the court system, are as important as other indicators of problems. If perceptions of unfairness are well founded, the court will obviously be concerned with doing what it can to rectify the problem. If the task force finds the perceptions are not well founded, it can state that finding but also determine why the perceptions arose and consider what can be done to change them.

Topics for Research

Appendix A lists all task-force reports, state and federal, completed to date and the specific areas examined in each.

If the task force's mandate designates particular areas for attention, it already has at least a minimum agenda. The task force may also wish to consider whether it will take up any of the specific areas of research recommended in the Violent

Crime Control and Law Enforcement Act of 1994, whether or not it was created in direct response to the legislation.[12]

Task forces have used other means to identify areas appropriate for their work. For example, some have convened discussion groups of judges, lawyers, court employees, litigants, and others, to learn their views about topics that should be examined. Some have also conducted surveys to determine which areas to study. Surveys, however, generally are not useful in situations where inquiries are relatively unfocused and categories of responses are hard to anticipate. At the early stages of the process, more open-ended methods of inquiry, such as discussion groups, public hearings, and review of relevant statistics, provide more information and are less costly than surveys.

To identify areas about which some may want to know more, though, is not the same as defining the specific areas that the task force will study. First, the task force should satisfy itself that it has the minimum resources to study the area adequately. As stressed in Chapter 4, a study that consists only of gathering anecdotal evidence may be worse than no study at all. The minimum requirements for reliable information gathering will differ for particular research topics, but before it embarks on studying a particular topic, the task force should assure itself that it can present an accurate picture of that topic.

Second, the task force should also consider whether the results of its study could lead to change, depending on what the data reveal. Whether change might come about depends on two factors:

- Does the body (or bodies) to which the task force reports have the administrative authority to direct remedial action? For example, a study of employment practices in the offices of clerks of court could lead the courts to implement different personnel practices.
- Is the area of study one in which research could reveal patterns of behavior that, although not subject to administrative action, could nevertheless lead participants to change behavior? For example, a study of forms of address used by judges with male and with female attorneys could alert judges to behaviors that they may wish to change.

This is not to say that task forces will not find it valuable to include in their reports historical and demographic analyses that provide context for recommendations.

Third, the task force should consider whether the proposed objects of analysis are appropriately undertaken by an administrative body within the federal judiciary. This consideration has arisen especially with respect to analyses of substantive law and analyses of nonjudicial government bodies and private organizations. Some task forces, including the majority of state task forces (see Appendix A), have chosen to examine gender effects in areas of substantive law and case

12. Section 40421(b) lists eleven specific areas of possible study; *see* P.L. 103-322, 108 Stat. 1796, at 1944-45. Subsection b also incorporates by reference nineteen other topics.

outcomes; the legislation encouraging creation of federal-circuit task forces lists such analyses among the topics that task forces should consider studying. (Task forces, for example, have examined relationships between gender of plaintiffs and civil damages awards in various types of cases, and a number of state-court task forces explored the role of gender in custody determinations or other family law issues.) There is a great deal of controversy over whether substantive decisions are an appropriate area of inquiry for a court-sponsored task force. Some think inquiries regarding gender effects in substantive law are among the most important for a task force to undertake, while others think such inquiries intrude inappropriately on judicial independence in decision making.

Similarly, some task forces have chosen to examine gender issues in entities or agencies that interact with or are ancillary to the courts, such as U.S. attorney's offices, the U.S. Marshal's service, the Federal Bureau of Prisons, or even law firms. This is another controversial area; those who advocate such inquiries argue that, although such agencies are not a part of the courts, they are integral parts of the justice process and might be perceived by the public as a part of the courts, and are therefore a proper object of analysis by an administrative body within the courts. Others assert that a task force should devote its time and energy to issues regarding which the task force or the body to which it reports can directly effect change. They also argue that many types of bias in public and private agencies fall within the federal courts' judicial jurisdiction and thus are improper objects for analysis by such a task force. The task force should consider the context of a particular agency's activity. For example, it is one thing for a task force to be concerned if court security officers treat women offensively, even though the officers are not employees of the court. It is arguably something else for the task force to inquire into the hiring practices of private law firms. If a task force chooses not to examine ancillary agencies, any issues that arise incidentally during the task-force study that are relevant to such agencies might be referred to these agencies so that the agencies may take any action they deem appropriate, including, for example, undertaking their own independent investigations.

Discussed below, with the three aspects listed above in mind, are several categories of study and specific examples within each that have been the subject of examination by task forces. The sections do not exhaust all gender issues that could be studied—they give an idea of possible areas of inquiry, including those that other task forces have addressed, and they can stimulate ideas about additional topics. Task forces have emphasized that not all women's experiences are similar, nor are all men's. Gender-related treatment varies depending on the intersection of gender with other characteristics such as race, ethnicity, age, socioeconomic status, and sexual orientation. Even if a circuit with a gender task force has task forces on other issues, it is important to include these issues within the context of a gender study.

Court Employment and Appointment

Courts employ clerks and deputy clerks of court, courtroom deputies, law clerks, court interpreters, court reporters, law librarians, staff attorneys, probation and pretrial services officers, federal public defenders, secretaries, intake clerks, docket clerks, and many other staff members. Circuit judges appoint bankruptcy judges, and district court judges appoint magistrate judges. Courts also make discretionary appointments in individual cases (e.g., court-appointed experts, special masters, counsel for indigent litigants) and to entities concerned with court management (e.g., federal practice committees and special court committees, such as the CJRA advisory groups). Some of these appointments generate fees. Most confer recognition or status on the appointees. In light of the scope of the courts' role as employer, a number of gender task forces have chosen to examine whether gender has an effect on courts' employment and appointment practices.

Because of the large number of employees and appointees and the various functions they serve, task forces wishing to study the effects of gender on employment or appointment may find it more manageable to study separately various types of appointment or employment in various offices. For example, the Ninth Circuit task force conducted separate analyses concerning the composition of CJRA advisory groups, the appointment of special masters, and the composition of Criminal Justice Act panels in the circuit.

Some task forces, including the Ninth Circuit and D.C. Circuit task forces, have also studied the gender composition of the Article III judiciary in the circuit and how gender imbalance on the bench might affect the public's perceptions of the courts.

Examples of questions a task force might ask about demographics and the role of gender in court employment and appointment include the following:

- What recruiting efforts, if any, are made to ensure that men and women have equal opportunities to become informed about available positions or appointments?
- In what proportions are men and women represented in each of the positions or appointments? How do these proportions compare with the proportions of each in the pool of qualified applicants?
- Does gender play a role in hiring or appointment practices in certain positions? If so, what is the nature of that role?
- Does gender play a role in promotion practices? If so, in what way?
- Does gender play a role in employee retention in various positions? If so, in what way?
- Are salaries for positions in which women dominate similar to those in male-dominated positions, assuming comparable skills and education are required for both sets of positions?

- Do the courts' personnel policies (e.g., leave policies) affect men and women employees differently?
- Do court employees or appointees report having experienced sexual harassment?
- Does the court, or its particular units, have a written policy on gender bias and sexual harassment, and a procedure for handling claims of gender bias or sexual harassment (in addition to the court's EEO plan)?
- Do both male and female employees and appointees feel safe in the courthouse (before, during, or after normal working hours) or traveling to and from the courthouse?
- Are the courts' physical facilities (e.g., offices, restrooms) adequate for both men and women?
- Do the courts provide child-care facilities?
- Does the court have an adequate grievance procedure?

The answers to these questions will help a circuit or court determine any need for revising recruitment, hiring, and personnel policies, and any need for training programs for judicial and nonjudicial employees, management, and staff. In addition, exploring these questions can help a court determine how it might be perceived by litigants, witnesses, attorneys, jurors, and others. For example, if the personnel information reveals a court system in which those in visible and powerful positions tend to be white males, while less prominent positions tend to be held by members of other groups, the circuit can consider how this composition might affect perceptions about access to justice in those courts on the part of those who use the courts.

Other Court Administration Issues

In addition to studying employment issues, court task forces have examined other court administration issues, particularly as they relate to the relationship between the courts and the public. Examples include jury administration and selection and whether gender-biased language appears in official court documents.

Jury Administration and Selection

There are several stages in the jury-selection process at which gender could conceivably have an effect, even if the process is free of the discrimination based on sex that is prohibited under the Jury Selection and Service Act of 1968, as implemented by each district's plan for random jury selection.[13] For example:

- Does gender play a role in the questions the court asks of prospective jurors (in addition to questions on the standard juror qualification form)?
- Are exemptions from jury duty related to gender?

13. *See* 28 U.S.C. §§ 1862, 1863 (1994).

- Are prospective jurors asked different questions at voir dire depending on their gender?
- Does gender, or the intersection between gender and race or ethnicity, appear to play a role in the composition of grand or petit juries?
- Does gender appear to play a role in the selection of petit and grand jury forepersons?

Review of Court Documents for Gender-Biased Language

Attorneys, litigants, jurors, and the public read and refer to many kinds of court documents. Gender-biased language in court forms, local rules, jury instructions, and other court-produced documents can lead to a perception that the court is not a forum for equal justice, and it may even produce biased outcomes. The task force can review these documents for gender-biased language and, if the need is found, recommend that they be revised. These revisions, which may take a long time to implement (e.g., if local rules need to be changed), are among changes that can be started before the task force has completed its report.

Interactions Within the Court System

Many task forces have examined what can be described generically as interactions. As the questions below demonstrate, these interactions are some of the more visible types of behavior in which gender may play a role—for example, a judge addresses a female witness differently from male witnesses, or presides over a jury proceeding in which a male attorney consistently uses demeaning terms to characterize his female opponent. Most of these issues in some way touch on whether gender affects the treatment or experiences of attorneys, litigants, witnesses, jurors, and others who come into contact with the court. The following are examples of some of the many interactions that task forces have explored:

- between judges and litigants, witnesses, jurors, attorneys, and court staff (e.g., law clerks);
- among attorneys;
- between attorneys and litigants, witnesses, jurors, and court staff;
- among jurors;
- among court staff;
- between court staff and litigants, witnesses, attorneys, jurors, and staff of ancillary government agencies (e.g., U.S. marshals); and
- among judges.

In addition, these interactions take place in different settings: in the courtroom, in chambers, and at depositions, for example. If a task force decides to examine the role of gender in interactions, it will first have to make decisions about which relationships and interactions are most critical and most appropriate for study, as it is very difficult and time-consuming to try to study them all. Furthermore,

there are several ways in which gender might play a role in interactions. The following are examples of questions that have been asked by other task forces:

- Does the gender of litigants, attorneys, or witnesses affect the credence given to them by judges and jurors?
- Does gender affect the form of address used for litigants, attorneys, witnesses, or judges? (E.g., do judges address male attorneys as "Mr." while addressing female attorneys by their first names?)
- Do perceptions of competence of judges or attorneys vary according to the judge's or attorney's gender?
- Are unwanted remarks about the personal appearance (e.g., clothing, physical characteristics) of attorneys, judges, litigants, or witnesses made in jury trials, in other courtroom proceedings, or in off-the-record proceedings?
- Are attorneys, judges, litigants, witnesses, or staff subjected to sexual comments by those with whom they interact?
- Are litigants, judges, attorneys, witnesses, or staff subjected to unwanted sexual advances?
- Do judges intervene when inappropriate behavior constituting gender bias or harassment occurs in their presence? If so, how do they intervene? Does their intervention vary depending on the gender of the judge? Does it vary depending on whether the behavior is in front of a jury?
- What are judges' perceptions of their responsibilities to intervene in these situations?
- Does gender play a role in whether or how often counsel's arguments are interrupted by the judge?
- How does gender-biased treatment of litigants, witnesses, jurors, or court staff by judges affect the public's perception of the courts?

II

Studying the Role of Gender in the Courts

Chapter 4—Overview: Data Sources and Research Approaches

A number of different research approaches are available for studying gender issues in the courts. These approaches vary in numerous ways, including the type and reliability of information they provide, the extent to which special expertise is required for their use, their cost, and the amount of time they take. The most effective and informative studies will use a combination of research methods, so that areas of convergence and divergence in results can be identified and explored. This chapter provides a brief overview of different methods for studying gender issues (see Table 1). The subsequent chapters contain more detailed information about using these various methods.

Three important caveats, discussed in more detail in Chapter 11, must be kept in mind when carrying out these methods.

First, a number of these methods yield anecdotal information rather than systematic evidence. By "anecdotes" we mean stories or examples that people tell about their own or others' experiences. While anecdotes often present true stories and illustrate problems very powerfully, the experiences related may be atypical, perhaps seriously so. Therefore, anecdotes are not an adequate basis for drawing conclusions about the overall effects of gender in the circuit and may be seriously misleading. More systematic data analysis—for example, from existing records and mail questionnaires—can be expensive, but the alternative may be to use questionable data. Thus, before it begins its research effort, the task force should be certain it has the minimum resources necessary to gather reliable, systematic information to supplement the anecdotal information that will come to it at less cost.

Second, the task force must be cautious about inferring causation based on simple statistics such as frequencies or correlations, which can mask more complex underlying patterns that may provide alternative explanations for the results. It is a fundamental principle of quantitative analysis that solely because two factors are related to one another does not mean that one causes the other. Consider a (hypothetical) finding that judges employ men much more frequently than women as court-appointed experts. A conclusion some would draw from this is that judges are biased against women experts, but such a conclusion would be unwarranted, or at least premature. If the task force bases this conclusion on the number of male and female experts appointed during a particular time period, it fails to take into account other potentially relevant variables that may or may not be gender related. It may be, for example, that the scientific or technical fields in which expert testimony is most often needed are fields occupied predominantly

by men, particularly at the most senior levels. Thus, in drawing conclusions the task force must be careful not to overlook other possible explanations for a particular pattern of results.

Finally, methodological errors can occur in designing and analyzing results from any research method. They severely undermine the credibility of research results. Task-force members should be alert to potential problems even if they are not the ones to recognize and correct specific problems, especially the arcane ones.

Table 1—Overview of Methods

Method	Chapter	Brief Description
Public Hearings	5	Public hearings involve asking people from various perspectives to comment on a particular topic. Public hearings serve as a public statement to the community of the task force's existence and interest. Also, although witnesses' views may not be representative of the whole population, hearings can help identify salient issues.
Focus Groups	6	Focus groups are group interviews in which a group leader or moderator elicits participants' views on one or more issues. This approach is particularly suited to obtaining detailed information about processes or about multifaceted issues. Again, though, views may not be representative.
Analysis of Existing Records or Databases	7	Information available in court or agency records and files, including computerized databases, is rarely directly about the role of gender in the courts, but these sources may nevertheless be highly relevant to a task-force inquiry. Analysis of information in computerized databases may answer a number of questions at relatively low cost.
Mail Questionnaires	8	Mail questionnaires can inform the task force about the range of perceptions and reported experiences from a large number of people on a variety of topics. Writing questions that elicit useful information is much more difficult than it may appear.
Interviews	9	One-on-one interviews, which vary in terms of how structured they are, can be used to explore particular aspects of gender and the courts in more detail than most other methods.
Observational Studies	10	Observational studies can provide information on the role of gender that is not dependent on reports from others. They are, however, quite resource- and time-intensive and may be susceptible to biases of the observers.

Obtaining Information Through Multiple Approaches

Task forces need both quantitative and qualitative information. Quantitative information is data that can be summarized and reported in terms of numbers and percentages. Some of the information sources mentioned here, such as computerized databases and mail questionnaires, generally provide quantitative information. Qualitative information provides more detail and depth about individual human experiences, but is generally not capable of being assigned numerical value. Some of the information sources already mentioned, such as focus groups, unstructured interviews, and open-ended questions on questionnaires, yield qualitative information.

Quantitative and qualitative methods can complement and build on each other. For example, a public hearing early in the task force's inquiry can identify areas of concern. Then, to determine whether specific concerns or observations raised in the public hearings are widespread, the task force might ask about the issues on a questionnaire sent to a representative group.

Similarly, questionnaire results might reveal that a particular type of interaction occurs frequently (e.g., male attorneys commenting on female attorneys' physical appearance during a proceeding in front of a jury), but leave the task force without an understanding of exactly what occurs in these interactions. The task force might then obtain specific examples and descriptions of events through focus groups or interviews to enhance its understanding of the nature of such interactions. This qualitative information can also be obtained by adding open-ended questions to a questionnaire that primarily seeks quantitative data.

Chapter 5—Public Hearings

Task forces use public hearings to identify the most salient issues, which can then be studied more systematically using other methods. They provide task-force members with first-hand descriptions of the ways in which gender can affect the courts in the circuit; engage task-force members actively in the issues by providing them an opportunity to ask questions rather than just read reports; and identify problems unique to particular regions or courts in the circuit. Public hearings can be used to seek testimony from specific people and organizations; they can also provide an opportunity for others who wish to come forward to share their experiences or information.

Public hearings also have disadvantages. One is the substantial time required to prepare, publicize, and organize hearings. Second, those who testify at public hearings are unlikely to represent the full range of views in the circuit, nor even the most prevalent views;[14] instead, they are likely to be people with a specific interest in making their views known to the task force. This lack of representativeness means that information obtained at public hearings cannot generally be used to support claims about overall views and experiences of those who interact with the courts. In addition, people generally will be reluctant to testify about extremely sensitive issues at a public hearing (e.g., a former law clerk testifying that she was harassed by a judge), so testimony at public hearings cannot be expected to identify all of the problems that may exist within the circuit.

Resources needed for scheduling and conducting public hearings include the following: staff or volunteers to schedule the hearing(s) and handle administrative matters; photocopying equipment; equipment to record the proceedings; and resources for publicizing the hearings.

Guidelines for Planning and Conducting Public Hearings

Organizational skills are particularly important in scheduling and publicizing hearings. To maximize the information obtained and to learn about potential regional differences, the task force should hold public hearings in various locations throughout the circuit, including urban and rural localities. Therefore, you may need to recruit staff help in each of the areas where a hearing will be held.

14. This problem can be addressed to some extent by careful solicitation of testimony from individuals and groups known to have a range of views.

Witnesses[15]

Soliciting Testimony

Invite testimony from those who are likely to have specific information. These people may include leaders of bar associations, leaders of civic and community organizations, members of other professional associations, and law professors.[16] Contact them with a letter or telephone call that explains the purpose of the public hearing and why they are being asked to testify.

Notify litigants and other members of the public who might want to testify by posting notices in courthouses and distributing press releases or other announcements. The press will want to attend the hearings and should be accommodated.

Form of Testimony

Invitations and announcements should instruct those testifying to submit written testimony and bring copies of this testimony for each member of the task force, for the press, and for others attending the hearings. To avoid confusion and excessively lengthy testimony, provide witnesses with guidelines for preparing their oral and written testimony, including information about how much time they will have to testify. Allow time for a presentation by the witness and questions from task-force members—perhaps ten minutes for the witness and five minutes for questioning. In addition, ask witnesses to complete a registration form with their name, phone number, organization represented (if any), and times available to testify (for an example, see Appendix C).

Task forces have found that some people want to testify on a confidential basis, and some witnesses or potential witnesses inquire about protection from reprisal based on their testimony. The task force should decide in advance how it will handle these issues and should make people aware of any opportunity to testify on a confidential basis.

Accommodating Needs of Witnesses

It is useful to schedule some hearings to continue into the evening to accommodate witnesses who cannot testify during normal working hours. In addition, the task force should identify and provide for more specific needs, such as interpreters for the deaf or non-English speaking witnesses.

15. We use the word *witnesses* to refer to all who testify at public hearings.

16. For example, the Task Force of the District of Columbia Circuit on Gender, Race, and Ethnic Bias sent notices to the following groups: bar associations; legal and professional associations with ties to the judiciary or legal community; deans of law schools in the circuit; law school clinics; area political figures; and the media. See Appendix C for examples of the notices and other materials distributed by the D.C. Circuit task force.

Administrative Details

Allow at least ninety days for planning and advertising a public hearing. Staff should reserve hearing rooms well in advance. Ideally, the sites selected for hearings will be accessible to public transportation, will be physically accessible to individuals who are handicapped, and will have photocopying capabilities so extra copies of written testimony can be made if necessary. Staff should also make arrangements for the recording and transcription of the proceedings.

A table should be set up outside the hearing room with a sign-in sheet, additional registration forms, a brief description of the task force, and copies of written statements submitted to the task force prior to the hearing. A staff person should be at this table to greet people when they arrive, answer questions, and register unscheduled witnesses, for whom time should be allowed at the end of the hearing.

The Role of the Task Force at Hearings

Because of the educational function served by public hearings, task-force members should try to attend as many hearings as possible. For each hearing, designate a task-force member as chair; the chair should explain the purpose of the hearings, introduce witnesses, and ensure that witnesses stick to their scheduled time allotments. The chair and other task-force members can ask questions of witnesses.

After each hearing, copies of written testimony and transcripts of any oral testimony not accompanied by written testimony should be distributed to each member of the task force. In reading over the testimony, the task-force members should look for patterns in the problems identified and consider what issues might be appropriate for follow-up with more rigorous research methods.

For Further Reference

Edna Wells Handy et al., National Center for State Courts/State Justice Institute, Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts (1993).

Lynn Hecht Schafran & Norma J. Wikler, The Foundation for Women Judges, Operating a Task Force on Gender Bias in the Courts: A Manual for Action (1986).

Chapter 6—Focus Groups

A number of task forces have used small-group discussion sessions, often referred to as "focus groups," to collect information on issues and problems pertaining to gender. Focus groups allow the constituent groups of the court to explore specific topics and provide richer and more detailed examples and illustrations of problem situations than hearings, questionnaires, or analysis of court statistics. Focus groups are particularly suited for studying processes (such as courtroom interactions) or multifaceted issues (such as employee working conditions).[17]

The term *focus group* has been used to refer to several different approaches. In its basic form, however, a focus group is a group interview in which the interviewer, referred to as a moderator, uses a topical interview guide or protocol to lead a group of about six to ten people in a one- to two-hour discussion on a limited number of topics. Focus groups have been used by gender task forces to interview judges, court employees, lawyers from various practice areas, prisoners, litigants, and members of bar groups. Task-force members generally do not attend or participate in the focus groups but receive summaries of the results from the committee members or researchers involved.

Advantages and Limitations of Focus Groups

Some advantages of using focus groups are:

- They are an efficient and relatively inexpensive way to gather detailed anecdotal information.
- They can be used to identify topics for a questionnaire.
- Group discussion is an effective mechanism for prompting participants to describe their experiences and views about the effects of gender. Participants may recall and be encouraged to describe their own experiences as a result of hearing about the experiences of others.[18]
- Participants do not have to be adept at expressing their views in written form.
- Participants have an opportunity to respond to others' comments, and this interaction provides more valid and richer information on a topic than do methods relying on a standardized set of responses.

17. Ninth Circuit, The Effects of Gender, *supra* note 8, at B-9.

18. *See* Deborah Hensler, *Studying Gender Bias in the Courts: Stories and Statistics*, 45 Stan. L. Rev. 2187 n.2 (1993).

- Focus groups require a less complex interview format than face-to-face interviews because fewer topics are covered and questions can be more open-ended.

There are also some limitations or caveats in using focus groups to collect information. These include the following:

- Because focus groups involve a small number of participants and generally yield only qualitative, anecdotal data, the information obtained is not representative and cannot be used to draw overall conclusions about the incidence of gender problems in the circuit. For this reason, focus groups should not be used as the sole means of data collection but as a supplement that provides more detail about information obtained through other methods.
- Invitees may refuse to participate in focus groups or not be forthcoming in the discussion if they fear repercussions in the workplace or in their professional lives, or if they do not trust the moderator and other participants.
- The extent of interaction between the moderator and participants provides an opportunity for the moderator's assumptions or biases to affect participant responses.
- It may be difficult to maintain confidentiality in situations where many of the participants know or are familiar with each other.
- Analysis of information gathered in focus groups is complex.

Resources Required

Focus groups require, at a minimum, a moderator to lead the discussion, an assistant to the moderator, and a means of recording and transcribing the focus-group session.

The task force may find it helpful to obtain the services of a social scientist skilled in working with focus groups and in observing and analyzing small-group interactions. This person can help develop a moderator's topical guide or protocol, draft guidelines for conducting the groups, set up groups, and train moderators. He or she may also moderate some of the groups.

Moderators should be familiar with the issues being discussed and be able to elicit group members' participation. Ideally, each moderator will have an assistant who observes the session, takes notes, and tape-records the session, freeing the moderator to concentrate on the discussion. Often, a social scientist will have a pool of researchers from which to select assistants and will be willing to train them. Assistants can also be found among task-force volunteers, law students, and graduate students from local colleges and universities.

Audiotaping focus-group sessions facilitates accurate and complete collection of information.[19] If resources are unavailable for audiotaping, or if participants object to audiotaping, detailed notes of the discussion must suffice.

Transcribing tapes is very time consuming; care must be taken to budget properly for this process or to locate professional transcribers willing to volunteer this service. The task force may be able to locate volunteers from the court or from the legal or business communities.

Guidelines for Focus Groups

This section provides more detailed information on how to use focus groups and how to minimize some of the disadvantages. The list of references at the end of this chapter provides suggestions for those who want to read more about using focus groups.

Planning Focus-Group Sessions

Planning focus-group sessions involves choosing topics for each group to discuss; selecting participants and composing groups; constructing the moderator's guides; selecting and training moderators and assistants; selecting and reserving sites for the sessions; and making arrangements for audiotaping and other logistics.

Choosing Topics

The task force, perhaps in consultation with social-science advisors, can choose topics for focus-group sessions in a variety of ways. The basic areas of inquiry chosen by the task force for study will provide general guidance. In addition, responses to a questionnaire may highlight issues the task force will want to explore in greater depth, particularly if the questionnaire results are unexpected or ambiguous. Issues identified at public hearings or in complaints made to judges or supervisors can also be followed up in focus groups. Finally, the first few focus-group discussions might reveal issues that could be considered for inclusion in later focus-group discussions.

Forming Focus Groups

The number of groups convened by any given task force is determined by the task force's budget and objectives, the number of constituent groups the task

19. Focus-group sessions can be videotaped instead of audiotaped, but we do not recommend this because the equipment is more intrusive, the audio quality of videotapes is often poor (defeating the goal of acquiring an accurate transcript of the discussion), and confidentiality is more difficult to maintain.

force wishes to cover in its inquiry, and the geographical size of the circuit.[20] The following are some general guidelines in making this determination:

- How homogeneous are the populations you wish to study?[21] If they are homogeneous, fewer focus groups may be needed.
- How unique is a particular population? The general rule is unless a particular category of person (e.g., employee or litigant) has singular characteristics or is small in number (e.g., thirty or fewer members), one focus group will not yield enough information.
- Are there distinct groups among the persons who make up the court and legal community, such as ethnic or racial groups? If so, it is a good idea to have enough focus groups to reflect these differences.

The objective is to form groups of individuals who are similar in some way and who will also have experience relating to the topics the task force wants discussed. For example, if the task force is interested in a discussion of the effects of gender on bankruptcy practices, groups of bankruptcy attorneys might be formed. If the task force wants to learn about perceptions of the courts' sexual harassment policies, researchers might compose groups of nonmanagerial employees. In addition, discussion may be enhanced if participants are placed in groups with others who have similar ethnic, race, and gender characteristics (see discussion on moderators below). It is important not to include supervisors or managers in a group with employees, or judges in groups with lawyers, as this would most likely inhibit discussion on the part of one or both groups. Placing them in separate groups promotes a fuller airing of issues.

The way participants are selected will affect the strength of conclusions the task force can draw from the results of focus-group discussions. If participants are selected randomly from a population of interest (e.g., bankruptcy attorneys), the results will be more generalizable than from groups composed of volunteers recruited at a bar meeting (see Chapter 11). This consideration may not be of primary importance, because focus groups are generally not the sole source of data—they instead provide ideas about topics to study more rigorously or provide richer information about situations identified through other methods. However, to the extent the task force will want to draw any general conclusions from focus-group results, the groups should be composed in an objective manner and not "stacked" to yield particular results.

Whether selected randomly or having volunteered, prospective participants can be contacted by mail or telephone and invited to participate in a specific focus group. Telephone contact is preferable because it gives an opportunity for poten-

20. The Ninth Circuit Task Force conducted 19 focus-group interviews with 139 people participating from 4 districts and 3 states (Ninth Circuit, The Effects of Gender, *supra* note 8, at B-9).

21. In making this assessment, the task force should be careful to consider whether its assumptions about homogeneity are warranted.

tial participants to ask any questions they might have about the process or purpose of the focus group.

Selecting and Training Moderators

The most important quality for a moderator is the ability to listen. Good moderators promote greater participation of employees and court users in focus-group interviews, provide greater assurance of confidentiality, and acquire better information about the discussion topics. Although a social scientist working with the task force might be available to moderate some of the sessions, a number of moderators will likely be needed. The D.C. Circuit task force, for example, has used volunteer attorneys as moderators, many of whom are with firms or organizations that are capable of recording or transcribing the discussion. The task force should be careful to select moderators who will ask questions in a neutral way and not force their views on focus-group participants.

To lessen the possibility that participants will not speak candidly, moderators should not be court employees or affiliated with the courts. The moderators should, however, be familiar with the structure of the court system and the various groups that interact with it. If the task force must use moderators with ties to the courts, select those least likely to inhibit a group's discussion. For example, it would not be advisable for an assistant U.S. Attorney to moderate a criminal defense group or for a court manager to moderate a group of court employees.

Research has shown that people are less likely to respond favorably in a research setting when they are uncomfortable with the gender, ethnicity, or race of the researcher. Thus, try to select moderators who reflect, to the extent possible, the gender, racial, and ethnic composition of the participants. Pairing up moderators with participants having similar characteristics is likely to maximize participation and lend credibility to the task-force inquiry. The overall goal is to create an atmosphere of trust between the moderator and participants.

The moderators should be given written guidelines that describe the purpose of the focus group and how the sessions should be structured. These guidelines can be developed in consultation with a social scientist working with the task force, drawing on information in this chapter.

Drafting the Moderator's Discussion Guides

Six to ten basic questions, along with follow-up questions, should be prepared. These questions typically are ranked in order of priority for discussion during a session. The moderator can begin discussion of each topic with an open question (e.g., "Have you ever observed differences in how judges treat attorneys, apparently because of the attorneys' gender?") and follow up with more specific questions once the contours of the discussion have been established (e.g., "How was the attorney treated differently? Were there verbal comments? Was there nonver-

bal behavior?"). The goal is to encourage participants to tell their stories in their own words.

In generating topic areas and questions for a discussion guide, it will be useful to speak with one or two people experienced in the subject being addressed by the group. For example, researchers for the D.C. Circuit task force spoke with several bankruptcy practitioners in developing a topic list for bankruptcy focus groups.

Selecting Sites

Focus-group discussion sites should be convenient for participants; private, so that the discussion will not be overheard by passersby; and quiet, to facilitate taping. Possible sites include local law schools, colleges, and universities; law firm conference rooms; and conference rooms in local businesses. In general, participants will be less forthcoming at a location, such as a courthouse, that they associate with the issues being discussed or where they might fear being overheard. If it is necessary to have the sessions at a courthouse, consider using jury rooms.

An appropriate location must be quiet and have adequate electrical outlets and physical arrangements that accommodate the use of a tape recorder and microphone. There should also be a table around which participants can sit and plenty of space for them to sit comfortably.

Conducting Focus-Group Sessions

Beginning the Session

Usually the moderator will sit at one end of the table. To put participants at ease and give them an idea of what to expect, the moderator should begin by introducing himself or herself and his or her note-taking assistant and by explaining the "ground rules" of the group discussion. For example, participants should be asked to speak one at a time and should be told they can direct their comments to each other and to the moderator. The moderator can then explain the purpose of the audiotaping equipment (i.e., to make sure the discussion is recorded accurately) and assure participants that names will not be associated with any comments when the tapes are transcribed. Participants should also be asked to respect each other's privacy by not sharing information from the discussion with anyone outside the group. Similarly, we recommend that focus-group sessions be closed to outside observers and task-force members, as their presence may inhibit the group discussion.

Order of Discussion

As noted, the moderator begins the discussion with an open-ended question about the most important issue to be discussed by the focus group. After the discussion on this issue begins, the moderator can follow up with more specific

questions. Next, the moderator asks an open-ended question about the second topic, followed again by more specific questions. This general process continues until all issues on the discussion guide have been covered. If the time allotted for the session has been used up and not all issues have been covered, the moderator can either end the session or tell participants that there are a few more questions and ask if they would be willing to stay longer.

Maintaining Confidentiality

It may be difficult to achieve anonymity or confidentiality in a court or legal community where people often know or are familiar with each other, and where group participants have been selected based on shared characteristics. Some possible approaches to dealing with this problem include the following:

- emphasizing to participants the importance of keeping focus-group discussions confidential;
- using a transcriber who is not affiliated with the court; and
- removing names and identifiers from final transcripts and reports.

All notes, tapes, and transcripts should be kept in a secure place and destroyed when the task-force inquiry is completed. In addition, the participants themselves must reach an understanding that they will not reveal the contents of the discussion.

Analyzing the Data

Focus groups yield information in two forms: transcripts of group sessions and notes taken during sessions by the moderators and assistants. Those who will analyze the information should begin as soon as the first few groups are completed. This will keep them from being overwhelmed with information and will allow for modification of the interview process if recurrent problems are identified.

Begin by consolidating all of the information gathered from the focus-group discussions. These materials include the following:

- the moderator's discussion guide(s);
- notes and summaries made of each session;
- transcripts of the audiotapes; and
- any other materials generated during the course of the data-collection stage, including demographic information about participants.

The objective of the analysis is to identify themes and patterns in the responses. After reading the transcripts and other materials, the researchers can construct a classification scheme for the major topics relevant to the task-force inquiry. For example, they may find that three major topics emerge from focus groups with intake clerks: (1) sexual harassment by lawyers, (2) a desire for more flexible working hours to accommodate day-care needs, and (3) a concern about safety in the courthouse. The group can code the information by identifying and marking

sections of the transcripts relevant to each of the major topics or categories. All of the information relating to a particular category can then be placed together and analyzed. One approach is to write for the task-force members a summary report of the materials relating to each category. This summary report can include an interpretation of the data and supporting evidence in the form of representative statements made during the discussions. The information obtained in focus groups can also be compared with questionnaire results and other statistical analyses to see if the focus groups provide greater insight into phenomena underlying these results.

For Further Reference

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Chapter 7—Analysis of Existing Records and Databases

The task force is likely to find that some of the questions it asks can be answered through analysis of information that courts, government agencies, and other institutions collect, either routinely or for special purposes. This chapter describes two types of analyses task forces could undertake that rely on such information: (1) analyses using original written records, and (2) analyses using existing databases (which are usually computerized).

In the normal course of their work, courts, government agencies, and other institutions generate and record in databases vast amounts of information. This information usually provides public information and accountability and helps make internal administrative and other regulatory decisions. For example, the Administrative Office of the U.S. Courts (AO) routinely collects information about civil, criminal, bankruptcy, and appellate cases that are filed in the federal courts; the Bureau of Prisons maintains information about inmates' experiences in prison (e.g., conduct violations, program participation, health problems, and care received); and many U.S. Attorneys offices have computerized records that contain information about patterns of prosecutorial decisions. Other government agencies collect information of general interest. For example, the Bureau of the Census of the U.S. Department of Commerce collects and publishes basic statistics about the population and economy of the nation.

Such information may help a gender task force, even though little of the information was amassed for the purpose of examining the role of gender within the federal court system. For example, court data could be used to examine the relationship between gender and the selection, retention, and promotion of court employees. Or the task force could use Census Bureau information, along with information maintained by the courts, to compare the demographics of job-applicant pools or jury pools with the demographics of the surrounding population.

In addition to databases, courts maintain records and files that may be relevant to a task-force inquiry—for example, case files, presentence reports, jury records, transcripts of proceedings, or records of appointments to fee-generating positions.

Advantages and Disadvantages of Analyses of Existing Records and Databases

Advantages to using existing records and databases include the following:

- Analyses of existing computerized databases may be less expensive and time consuming than collecting and transcribing information.
- Because of the size of many data sets, the task force may be able to perform more sophisticated data analyses and therefore answer more complex questions.
- Analyses of records and databases can provide quantitative information to complement information obtained through qualitative methods (e.g., focus groups).

Analyses of existing records and databases also have some disadvantages:

- The source and purpose of maintaining the records or databases may affect the information's accuracy. For example, a prospective juror completing a juror qualification form might provide some inaccurate information in the hope of avoiding jury duty.
- Existing records or databases may not contain the precise information—or all the information—that the task force needs, requiring the task force to make assumptions when drawing inferences from the data, or to use supplemental information.
- Information in databases may not be organized in the form needed by the task force.
- Databases may be outdated by the time they are made available to the task force.
- Analyses based on existing records, such as case files, can be time consuming and costly compared with other types of research methods (e.g., interviews, surveys, focus groups, and studies based on existing databases).

Analyses of Records

The two types of studies (analyses using records and analyses using databases) differ in how a researcher must access the existing information. Analysis of original written records requires the researcher to transcribe information from written documents. After extracting the information, the researcher must then put it into a format for analysis. This often involves putting the information into a computerized database. Consulting with a social scientist from the outset will help the task force understand the kinds of questions that can and cannot be answered from the available records. After the task force has formulated the specific questions it wants to ask, a study based on written records will entail several steps:

1. Select a representative subset of records to examine (see Chapter 11). Often, collections of written records will be too voluminous to allow the

task force to examine each record in-depth. The social scientists working with the task forces should be able to provide information about the various strategies for selecting representative subsets of cases or other records.

2. Devise a coding form to use in transcribing the information. The social scientist(s) and those with knowledge of the substantive questions to be answered and the possible relevant variables should work together in designing this form. The coding form indicates what information should be extracted from the record and should be structured so that anyone transcribing the information to the coding form will record the same information. Before the form is finalized for use in the study, it should be pretested with a small number of records to identify problems in its coverage and organization. Appendix C provides an example of a coding form.
3. After designing and testing the coding form, transcribe the information of interest from the written files onto the coding form, or train others to do so. Often, researchers must make judgment calls about how to code particular information. It is important that these judgment calls be made consistently across records and by the various coders who are transcribing the information. Thus, provide coding instructions—some guidelines to follow when transcribing the information. In addition, identify one person as a contact to answer questions and resolve inconsistencies found in transcribing the information.
4. If a great deal of data has been gathered, have the information entered into a computerized database for analysis.
5. Finally, analyze the information and interpret the results.

It requires time and resources to select a sample for study, develop the coding form and instructions, transcribe the information from the original records, enter the information into a computerized database, and then analyze the information. On the other hand, this approach can provide quantitative information that is likely to be more complete and specific to the task-force inquiry than that obtained using other methods.

Analyses of Existing Computerized Databases

By comparison, using existing computerized databases can be relatively inexpensive. Because the information is in a form directly accessible by computer, the costs and time associated with conducting the study are substantially reduced. The following are basic steps and resources needed to conduct a study using existing computerized data:

1. Identify a source of relevant computerized data and assess the adequacy of the data for addressing the questions of interest. It is very important to have a clear understanding at the outset of the kind of information maintained in the database.

2. Make arrangements to obtain an electronic copy of the database or portions thereof on magnetic tape or computer diskette, or make arrangements with the custodian[22] of the database to extract and provide summary information. Which of these two approaches to take depends, in part, on (a) whether the task force has access to the computer and the human resources needed to undertake the analyses; (b) whether the custodian of the database is willing and able to provide the electronic database to the task force; (c) the extent to which the custodian of the data is willing and has the resources to undertake the analyses; and (d) whether the task force's information needs can be met with a one-time request or whether follow-up analyses will be needed. If follow-up analyses will be needed, the custodian of the data may prefer to provide an electronic copy of the database to the task force rather than provide extracted summaries of the desired information.
3. If an electronic copy of the data has been obtained, arrange for the computer and human resources needed to analyze it. Some relevant questions are: How large is the database in terms of the number of records,[23] length of individual records, and overall use of computer space? Is it too large to process effectively on a personal computer, making access to a larger multiuser computer system necessary? Is the database in a form that can easily be used by a relatively inexperienced person or will the services of someone with more advanced computer skills be needed? Social scientists or computer personnel working with the task force should be able to provide direction regarding these issues.

Compared with information obtained from an analysis based on written records, the information obtained from computerized databases may be much more limited. For example, many court databases do not contain information about the gender of employees, jurors, or litigants. Further, the codes used in a database may not be sufficiently specific to answer the task force's questions. It is likely that some of the more specific information could be obtained if the researcher examined the written files themselves.

In addition, it is important to remember that the information in a computerized database is only as accurate and complete as the information supplied to the agency that maintains the database. Much of the information maintained by the Administrative Office about civil cases, for example, is drawn from the civil cover sheet, which is completed by the plaintiff's attorney at the time a case is filed. Most of the rest is supplied by clerical personnel in the courts. In addition to the possibility of errors by the attorney or court personnel, many of the "nature of suit" codes are very broad and do not permit refined analysis.

22. The custodian of the database is the person responsible for maintaining the database and authorizing its release.

23. A record is a collection of information about an entity, such as an individual or a case.

Identifying Relevant Records and Databases

Chapter 12 describes various government agencies that may have information, including databases, useful to a task force. Chapter 12 also gives the name of agency contacts who can provide more information. The agencies' published reports may contain the information a task force needs, thus eliminating the need to request additional information. On the other hand, the agency may be able to provide information that goes well beyond that summarized in published reports. The reports can help the task force determine the type of information an agency possesses and therefore what specialized requests for data are likely to prove fruitful.

In identifying sources of relevant data, it is important not to overlook what is being collected within the circuit—either routinely by the computerized docketing systems or on an ad hoc basis for special projects. Remember that when obtaining information from a court's computerized docketing system, it is important to understand that particular court's docketing practices. The standard version of the Integrated Case Management System (ICMS) for civil docketing, for example, has the capability to use certain codes to denote the occurrence of particular case activities (e.g., the filing of a particular type of motion).[24] In conducting research using the computerized docketing system, it is important to determine whether a court uses these codes when docketing case information. Those working on these studies should meet with court systems and docketing staff to learn how the courts in the circuit use their systems.

Considerations When Using Existing Records and Databases

Once a promising source of information has been located, the task force must assess how useful the information will be. Some relevant considerations include the following:

1. Why and from whom was the information collected? How might the source of and purpose for collecting the information affect its accuracy?
2. Does the database contain the precise information needed or will the task force have to make some additional assumptions? Suppose, for example, a task force is interested in the relationship between gender and hiring of employees, and this task force has decided to rely on applicant data routinely collected and maintained by the court. These data do not include information about the gender of the applicants. They do, however, contain the names of the applicants. If the task force assumes that applicants with feminine names are women and those with masculine names are men, some conclusions about the relationships between gender and hiring may

24. The ICMS is a set of computerized docketing products in use in many federal courts. ICMS is described in more detail in Chapter 12.

be drawn, particularly if this information can be supplemented by information from other methods. However, there may be some problems classifying unisex names (e.g., Pat, Lynn).

The assumptions a task force may make in linking names with gender are quite straightforward compared with other assumptions the task force may contemplate making when using existing data. For example, a task force may have access to no information about the prevalence of sexual harassment among court employees except for information contained in formal complaints that have been brought. The task force therefore may consider assuming that the amount and type of sexual harassment that exists within the court are reflected in the number and type of formal complaints that are brought. This, however, may not be a legitimate assumption, as complaints may over- or underreport the incidence of sexual harassment. Furthermore, a review of complaints will not indicate which were found to be valid. Thus, the task force probably would want to supplement the information contained in the formal complaints with other information obtained through surveys, interviews, or focus groups.

3. Is there a reason to believe that, since the data were collected, conditions have changed in such a way as to limit the data's applicability?
4. Does the database contain all pertinent information, or will supplemental information from other sources be needed? Will it be useful or necessary to use information from multiple databases (e.g., data on criminal cases from both the Administrative Office and the Sentencing Commission)? Will aggregated information from each database be sufficient, or will it be necessary to match records on a case-by-case basis? What information will be used to match records? What constitutes a perfect match? What constitutes an acceptable, although perhaps imperfect, match? (For example, criminal case records from multiple databases can be matched almost perfectly based on information regarding district, office, docket number, defendant number, filing date, and origin. The task force might consider matches based on less information to be adequate.) Will the matching be done by hand? By computer program?
5. Is the information in the database organized in the form needed by the task force? If not, can the information in the database be reorganized into the form needed by the task force?
6. Does the database include extraneous information? If so, the task force may wish to investigate whether it is possible to obtain a subset of the database containing just the information of interest.
7. Has the nature of the information compiled under a given label changed over time? For example, the Administrative Office routinely collects information about petty offenses. A cursory examination of this information suggests that the frequency of petty offenses has gone down over time, but in fact Congress has periodically changed the definition of a petty offense.

Thus, there may be no actual change in criminal activity per se, only a change in how it is classified.

8. Does the task force have the computer resources needed to analyze the data? The social scientists working with the task force may have access to the needed resources, or the resources may be available from within the court. In addition, the agency supplying the data may be willing to undertake the analyses for the task force.
9. A final note of caution: All existing databases have their idiosyncrasies. It is therefore important to work closely with someone who knows the data well before drawing any conclusions from the data.

Chapter 8—Mail Questionnaires

Most task forces will not be able to obtain all of the information they want from existing reports, records, and databases. For example, existing records are unlikely to include information about perceptions of the relationship between gender and various aspects of the court's operations. Conversely, although public hearings, focus groups, and one-on-one interviews can provide important information about perceptions and personal experiences, these methods generally will not yield reliable information about the frequency of different types of interactions or experiences. Therefore, without the more systematic data available from mail questionnaires, the task force's conclusions will be of questionable reliability. Mail questionnaires to survey attorneys, court personnel, litigants, jurors, judges, and others will often be necessary to supplement the information obtained through other methods.

Response rates can be enhanced by using an easy-to-read questionnaire with carefully worded questions and by sending follow-ups to remind recipients to return the survey. The purpose of this chapter is to help task forces obtain accurate, representative information through mail questionnaires. We suggest you read through the whole chapter to get an idea of the range of issues to consider before focusing on particular aspects of questionnaire design and administration.

A *questionnaire* is the actual research instrument sent to participants; the word *survey* refers to this method of data collection.

Advantages and Disadvantages of Mail Questionnaires

Mail questionnaires have many advantages, in addition to their ability to collect nonanecdotal information:

- They allow the task force to obtain information on a number of issues of direct relevance and from a large number of people.
- Responses can be obtained from a widely dispersed group of people, such as attorneys or litigants throughout a circuit.
- Because mail questionnaires have been used by a number of gender task forces, questions developed by others can be included so responses can be compared with those obtained in other jurisdictions.
- Respondents have time to give thoughtful answers to questions.
- A mail questionnaire allows for more privacy than such methods as public hearings or focus groups, and therefore may lead to more candid responses.

- Compared with telephone surveys or in-person interviews of a large number of people, mail questionnaires require minimal staff and facilities to administer.

Of course, mail questionnaires have some disadvantages that limit their usefulness in certain situations:

- They do not allow for probing or full exploration of the complexities of a subject, as can be done with focus groups or unstructured interviews.
- Because the written question is the only stimulus a respondent has, questions must be written with expertise and great care.
- Mail questionnaires are impersonal and may look difficult to fill out, even if they are not—this can produce a low response rate, which will undermine the credibility of the questionnaire results.

None of these disadvantages is insurmountable. Most can be addressed by keeping the questionnaire relatively brief (e.g., by not seeking information available through other methods) and by framing the questions so as to reduce ambiguity, encourage accurate responses, and reduce respondent frustration.

Resources

One or more social scientists with expertise in survey sampling and questionnaire design should assist the task force in selecting the groups of individuals to be surveyed, designing the overall questionnaire, constructing questions, administering the questionnaire, and analyzing responses. Because most social scientists do not have extensive knowledge of federal courts and law, they should work with task-force members with such knowledge to determine the appropriate respondents and the substance of the questionnaire.

Other required resources include the following:

- access to sources of respondent names and addresses, as well as resources for assembling this information into a useful database;
- staff to address and stuff envelopes;
- postage for mailing the questionnaire and self-addressed return envelopes;
- assistance with creating databases for entry and tracking of the questionnaire responses;
- staff to code questionnaire responses prior to data entry;
- data-entry capabilities for entering the results into the database; and
- statistical expertise for analysis and interpretation of the results.

The following guidelines provide detailed information about designing and administering a mailed questionnaire. Some steps, such as using printed questionnaires or postcards (for follow-ups), may require considerable lead time.

Guidelines for Mail Questionnaires

Conducting a survey using a mail questionnaire involves several steps: (1) designing the survey sample and the questionnaire; (2) administering the questionnaire; (3) preparing the data; and (4) analyzing the data. This section provides general guidelines for carrying out each of these steps.

Designing the Survey

Planning a mail questionnaire involves three tasks at the outset: (1) selecting those who are to receive the questionnaire; (2) designing the questionnaire and cover letter; and (3) creating databases for tracking questionnaires as they are sent out and returned and for entering questionnaire responses. Most surveys require a fourth task as well—pretesting the questionnaire and the database.

Selecting the Questionnaire Recipients

The survey's recipients will largely be determined by the specific questions the task force wants answered. After the task force has identified the group or groups it wants to survey, the next step is to assemble a comprehensive list of all members of that population, referred to as a *sampling frame*. For example, the *U.S. Court Directory* can provide a listing of almost all current federal judges within a circuit.

For other groups, such as attorneys who practice in the circuit, generating a sampling frame may not be as simple. For example, suppose the task force wanted to survey attorneys in the circuit about their experiences in federal court. One approach would be to obtain a list of all members of the federal bar in the relevant jurisdictions, but that could include many attorneys who do not have experience relevant to the task force's inquiries (e.g., federal bar members who do transactional work or practice primarily in state court). Another approach would be to create a list from the court's docketing system of the names and addresses of attorneys in recent cases in federal courts in the circuit. Although this approach assures that the attorneys selected have at least some connection with federal court, it will not capture those attorneys who worked on a case but did not have their names recorded on the docket. These limitations on various ways of selecting the population must be weighed carefully by the task force, as the generalizability of survey results will depend largely on how the sampling frame is selected.

If sufficient resources are available, it may be best to be over-inclusive in creating the sampling frame—i.e., include in the sampling frame respondents who potentially do not have experience relevant to the task-force inquiry, and ask a screening question at the beginning of the questionnaire to determine if the person receiving the questionnaire has relevant information and experience. If they

do not, they need not complete the rest of the questionnaire—but they should return it nonetheless so the task force can calculate an accurate response rate.

Population or Sample?

If the population (i.e., all members of the group you are interested in surveying) is quite small (e.g., clerks of court or magistrate judges in a circuit), the task force may need to survey the population to obtain reliable results. With large populations, the task force may wish to survey a sample or subset of the population, rather than the full population. A sample should be selected in such a way that it is representative of the population of interest. This is usually done through random sampling (see Chapter 11). The task force's social-science advisor, or an expert in survey sampling working with the social scientist, can help the task force determine the number of respondents needed for purposes of statistical analysis and how to select a representative sample of respondents. Where there is particular interest in a population subgroup that constitutes a minority—such as women of color—a social scientist can help design an approach that will yield a sufficient number of such respondents for analysis. These more complicated designs require the advice of a survey-sampling statistician or a social scientist with survey-sampling expertise.

Designing the Questionnaire

The process of designing the questionnaire involves several stages, including constructing the questions, the format of the questionnaire, and the cover letter that will accompany the questionnaire. In this section, we discuss practices that will help maximize response rate and enhance the accuracy of the responses.

Constructing the Questions

In Appendix C, we provide sample survey questions covering several different subject areas. In addition, federal and state gender task forces that have already developed mail questionnaires may be willing to share their questionnaires and identify any questions they found to be poorly constructed.[25] Each task force is likely to want to obtain some information that is not addressed in the sample questions or to modify the sample questions to meet its particular interests—we

25. *See, e.g.,* Christine L. Carr, Ninth Circuit Gender Bias Task Force Report: The Survey Instruments and the Compilation and Analysis of the Margin Comment Responses (June 1993). This is a working paper for the Ninth Circuit task force that provides analyses of the margin comments prompted by different questions in the Ninth Circuit questionnaires and discusses which questions were found to be worded poorly. This paper also includes copies of the Ninth Circuit's questionnaires, which other task forces are welcome to draw from. For a copy of the working paper, contact Mark Mendenhall, Assistant Circuit Executive, Court of Appeals for the Ninth Circuit, P.O. Box 193846, San Francisco, CA 94119-3846.

therefore provide general guidelines here for constructing questions that are understandable and will yield interpretable responses.

1. Questions may be closed or open-ended. A closed question lists a set of options—or response categories—and invites the respondent to select one or more of these options. This format is preferable if appropriate response categories can be designed. An open-ended question is followed by a space where the respondent is asked to write an answer in his or her own words. This type of question is more burdensome for the respondent and more difficult for the researchers to analyze but has yielded useful information for previous task forces. Because much of the work of a gender task force will be exploratory, and you may not yet know enough about the issues to generate appropriate response categories, you are likely to want to have at least some open-ended questions on your questionnaire. Consider putting open-ended questions at the end of each topic section so respondents can share any additional thoughts they have about the topic. Providing respondents with this opportunity should also discourage them from scribbling comments in the margins of the questionnaire. Such unsolicited comments can be very difficult to analyze even if they appear to contain relevant information.
2. Each response category for a closed question should have a code. For example, a set of response categories might be numbered 1, 2, 3, and 4, as in the examples in paragraph 3. Numbers or letters should be used, never simply a line or a box, as lines or boxes cannot be tallied or entered into the computer. If you use lines or boxes alone, you will either have to apply numeric codes to the responses when the questionnaires are returned, or you will have to depend on those who enter the data into the database to translate the responses into numbers. The first takes a lot of time, the second invites error.
3. Unless the respondent is being asked to check a response on a scale, list response categories vertically rather than horizontally. Respondents are likely to mark the wrong choice when categories are presented horizontally, as shown below.

   Poor:

   [ ] 1 Very frequent [ ] 2 Somewhat frequent [ ] 3 Somewhat infrequent [ ] 4 Very infrequent

   A vertical list, like the one below, will increase accuracy and also leaves more white space on the page, which enhances the overall appearance of the questionnaire.

   Better: [ ] 1 Very frequent
   [ ] 2 Somewhat frequent
   [ ] 3 Somewhat infrequent
   [ ] 4 Very infrequent

4. Make sure the response categories are balanced. The first example below is not balanced and is likely to produce—misleadingly—a higher agreement rate than the second example.

Unbalanced:	Balanced:
[ ] 1 Very much agree	[ ] 1 Very much agree
[ ] 2 Somewhat agree	[ ] 2 Somewhat agree
[ ] 3 Disagree	[ ] 3 Somewhat disagree
	[ ] 4 Very much disagree

5. Make sure the response categories are mutually exclusive. For example, the set of response categories "1–2 years," "2–3 years," and "3–4 years" is not a mutually exclusive set. A respondent who wants to answer "2 years" will not know which category to check.
6. To the extent possible, use consistent response codes throughout the questionnaire. If "yes" is represented by "1" and "no" by "2," try to retain this meaning throughout the questionnaire.
7. Make questions as specific as possible. For example, avoid general questions such as the example given below. Responses to such a question will be impossible to analyze because some respondents will not understand what is meant by "gender bias," or respondents might assume different definitions of the phrase.

   Poor: Have you ever experienced gender bias in the courts of this circuit?

   [ ] 1 Yes
   [ ] 2 No

   This question can be broken down into a series of more specific questions focusing on particular time periods and particular behaviors. The combination of all respondents' answers to these questions will give an accurate picture of the incidence of various situations if a representative sample has been chosen.

   Better: In the past year, has any federal judge before whom you had a case commented on your physical appearance in an on-the-record proceeding in federal court?

   [ ] 1 Yes, more than one judge did this.
   [ ] 2 Yes, one judge did this.
   [ ] 3 No.

8. Response categories should be ordered so that the response you expect does not appear first on the list. This will help ensure that respondents read through all of the responses before selecting their answers. That is, if you hypothesize that most attorneys have not received comments from judges about their physical appearance, your response categories should start with the disconfirming choice (that this has occurred with more than

one judge) and end with the choice you expect to be most frequent (that this has not occurred).

9. Don't ask double-barreled questions. For example, respondents who have had sexually suggestive comments made to them but have not been subjected to unwanted touching will not be able to answer the following question:

   Poor: In the past year, has a court employee made unwelcome comments about your physical appearance and subjected you to unwanted touching?

   [ ] 1 Yes
   [ ] 2 No

   You should, instead, write two questions, one asking about comments, the other about unwanted touching:

   Better: In the past year, has a court employee made unwelcome comments about your physical appearance?

   [ ] 1 Yes
   [ ] 2 No

   In the past year, has a court employee subjected you to unwanted touching?

   [ ] 1 Yes
   [ ] 2 No

10. Consider for each question whether you should provide a "no opinion," "don't know," or "no experience" option. Some respondents may have given little thought to an issue or may have too little experience to answer a question. They should be given a response choice that lets them answer correctly.
11. Avoid a long series of questions with the same response categories or same format (e.g., a long set of satisfied/dissatisfied or approve/disapprove statements). Such repetition can bore the respondent and result in response bias and error.[26]
12. As a check on response bias, consider including toward the end of the questionnaire a question similar to an earlier one but framed differently—this will help determine whether respondents are consistent.
13. Avoid agree/disagree statements. Respondents have a tendency to agree with these statements regardless of their substantive content, especially if the questionnaire consists of a long series of such questions. Instead, use forced-choice questions, which make respondents think more carefully about their choices.

26. Response bias occurs when respondents are led to select a particular response for reasons other than the substance of the response—for example, by its position in a list of responses.

Poor: A judge should intervene when an attorney comments on another attorney's physical appearance in open court.

[ ] 1 Strongly agree
[ ] 2 Somewhat agree
[ ] 3 Somewhat disagree
[ ] 4 Strongly disagree
[ ] 5 No opinion

Better: Do you believe a judge should intervene when an attorney comments on another attorney's physical appearance in open court, or should the judge refrain from intervening?

[ ] 1 A judge should always intervene in these situations.
[ ] 2 A judge should intervene only if the comment could have an effect on the proceedings.
[ ] 3 A judge should never intervene in these situations.
[ ] 4 No opinion.

14. If you need to use an open-ended question, make it as pointed as possible, so all respondents are focusing on the same issue. The first example below will prompt less useful responses than the second one.
Poor: Please comment on the court's leave policies for employees.
Better: Please describe any ways in which the court's leave policies for employees unfairly favor some employees over others.
15. Examine each question carefully. For example, words that carry emotional weight may prompt respondents to answer more negatively or positively than would a more neutral word. In the context of a gender study, a list of words likely to influence respondents would include "gender bias," "discrimination," and "sexist." Seek substitutes for these words. For example, instead of asking about "sexist remarks," ask about specific types of behaviors, such as addressing a female attorney as "young lady" while addressing a male attorney as "counselor."
16. Use words with clear, everyday meanings. Avoid sophisticated words when simple words will do.
17. When you must emphasize a word or phrase, use indicators of emphasis, such as italics or bold type, sparingly.
18. If instructions for selecting response categories are necessary (e.g., "check one" or "check all that apply"), insert them in each question rather than giving a general instruction at the top of the questionnaire. Rarely does a single instruction apply to all questions. Unless there is absolutely no ambiguity about how a response is to be chosen, include instructions for each question.

Designing the Questionnaire Format

Once the task force has an idea of the questions it wants to ask on its questionnaire, it will have to determine how best to present those questions in an attractive and logical format. Here are general guidelines for formatting the questionnaire:

1. The questionnaire should have a logic to it and should not skip around from subject to subject. Group together all questions on one subject and use topic headings to set off each subject.
2. Guide the respondent through the questionnaire. Use sentences to introduce shifts in topic or to explain complex response categories (e.g., "The next set of questions asks about your experiences with applying for promotions.").
3. If you think some of those who receive the questionnaire may not be the correct recipients (e.g., the questionnaire was sent to the attorney listed on the docket sheet for a case but a different attorney might have attended the pretrial events being asked about), begin with a question that screens out inappropriate respondents. In the example just cited, ask the recipient to write the correct name and address in a space provided on the questionnaire and to return the questionnaire so you can send it to the correct attorney.
4. Other than the screener question, always start with a question that is interesting, easy to answer, clearly related to the subject matter of the inquiry, and applies to all respondents. Such a question will pull respondents into the questionnaire, while its opposite is likely to repel them.
5. Place sensitive or demanding questions near the end, where they will be encountered after the respondent has made an investment in the questionnaire. Demographic questions (e.g., gender, race/ethnicity, areas of legal practice) should come last.
6. The final item should provide respondents an opportunity to comment—for example, "If you have anything you would like to add regarding these issues, please use the space below" (or the reverse side, etc.).
7. The questionnaire should be visually friendly and easy. It should be open in appearance, with plenty of white space. You should minimize the use of boxes and vertical or horizontal lines, which make a questionnaire cluttered and forbidding.
8. Number every question to reduce the chance that respondents will accidentally skip a question.
9. Try not to place questions calling for written comments at the bottom of a page. In this position, they are easily overlooked by respondents and by data-entry staff.

10. When the text of a question takes more than one line, indent the additional lines so the question number stands out. This will reduce the number of questions missed by respondents.
11. The text of a question should not break between pages. Nor should response categories run from one page to the next. Both make it considerably more difficult for the respondent to choose the right answer and for the data-entry staff to enter the data accurately.
12. If possible, produce the questionnaire in booklet format rather than stapling sheets together at the corner. Consider using a graphic on the booklet. Subsequent use of the graphic in follow-up mailings will increase recognition and response rate.
13. The questionnaire title and page number should appear on each page. Page numbers are especially important if respondents are directed to go to specific pages.
14. A long questionnaire is forbidding, but, if the topic is important to the respondents, response rate generally is not affected until a questionnaire reaches eleven or twelve pages. In any case, it is always wise to make the questionnaire as short as possible and to ask only questions that are essential to your project. If you can obtain some types of information from other sources, leave those subject areas out of the questionnaire. For example, if the task force has a subcommittee that will be sending a questionnaire about gender in bankruptcy proceedings, you should not include such questions on a general attorney questionnaire.
15. End the questionnaire with a thank you, and give the following information: the name and address of the person to whom it should be returned; the deadline for response; and the name and phone number to call if there are questions. You may also, if appropriate, provide an opportunity, such as a box to check, by which respondents can let you know if they would like to see a summary of the survey results.

Constructing the Cover Letter

1. The cover letter is an essential part of your questionnaire. It should contain several pieces of information, all in a single page if possible. Listed below are the critical elements of a cover letter, presented in the order in which they should appear in the letter:
    - Begin by briefly telling recipients who is sponsoring the study, what the study is about, and why it is important that they take time to complete the questionnaire. State how the results of the study may affect respondents personally (e.g., respondents to a court employee questionnaire can be told the results may inform courts' policies about changing employment policies).

- Tell the recipients why it is important that they complete the questionnaire. For example, you might note that only a small sample is being surveyed and thus each response is essential in order to have confidence in the representativeness of the findings.
- Make a promise of anonymity, but only if anonymity will be kept. If an ID code is used on the questionnaire, the letter should explain the purpose of the code (i.e., that it is for follow-up purposes only). The meaning of anonymity and the use of ID codes are discussed below in the section, Administering the Questionnaire.
- Finally, tell the respondents whom to contact if questions arise and when to return the completed questionnaire.

2. Decide whether the cover letter will be a personal letter or a form letter. Letters addressed to a particular person and individually signed produce a better response rate, but they require more preparation time. Also, if personal letters have to be matched with coded questionnaires, use of personal letters may make the mailing procedure more complicated.
3. Consider carefully whose signature should be at the bottom of the cover letter, keeping in mind that it can be signed by more than one person. Using the signature of someone whom the recipients view with respect will likely increase the response rate. For example, a general survey of district court attorneys can be introduced by a cover letter signed by the court's chief judge, while a specialized survey of CJA panel attorneys might be signed by a respected member of the criminal defense bar.

Creating Databases to Enter Responses and Track Questionnaires

Mail questionnaires are generally used to obtain quantitative data from a large number of respondents. Because of the large amount of information generated, the questionnaire responses will be most efficiently handled and analyzed if they can be entered into a computer. In addition, use of a database to "track" questionnaires will make it easy to determine who has returned the questionnaire, who should be sent a reminder, and the overall response rate. Thus, early in the process of designing a questionnaire project, the task force should consult with someone who has (1) the computer skills to create a format for entering the data and (2) some familiarity with the computer capabilities available to the task force. This person can help the task force determine whether it has adequate data-entry and computer-analysis capabilities, or if it might prefer to have data entry performed by an outside data-entry service.

To keep track of the questionnaires as they are mailed out and returned, create a tracking database—either on the computer or on paper—to contain at least the following information for each questionnaire sent:

- code number for questionnaire;
- name of person to whom questionnaire is sent;

- address of person to whom questionnaire is sent;
- date questionnaire was mailed to respondent;
- date first follow-up was mailed;
- date completed questionnaire or "other response" (see next item) was received (an entry in this field or column will alert you not to send a second follow-up);
- description of any other response received (e.g., a phone call saying the respondent is unable to complete the questionnaire);
- date second follow-up was mailed (if applicable); and
- date on which data from questionnaire were entered into computerized database.

Administering the Questionnaire

Administering a mail questionnaire involves several steps, including tracking questionnaires as they are mailed out and returned. The guidelines below will improve the response rate and the accuracy of the questionnaire data obtained.

1. Pretest your questionnaire on a small group of individuals who are similar to those who will receive the questionnaire. That is, if the questionnaire is being sent to attorneys, pretest it on some attorneys who are similar to the group who will receive the final survey. This will help you identify problematic questions and permit you to revise the questionnaire before using it.[27] You should give the pretest participants the same instructions you would give actual participants. In addition, you should tell them that they are participating in a pretest and request their critical analysis of the questionnaire. You may want to be more specific, asking them to comment on such things as the wording and order of questions, the completeness or redundancy of the questionnaire, the adequacy of response categories, and the clarity of instructions. You should also analyze responses to assess whether any questions were apparently not understood or were otherwise problematic.
2. Decide at the outset whether you will promise your respondents anonymity. Absolute confidentiality is usually not possible if you intend to use quotations from your respondents. You can only promise that no attribution will be made and that the study results will be reported in such a way that no individual respondent can be identified. Do not promise confidentiality or anonymity if you cannot keep the promise. Once the data are entered into a computer, the task force may wish to destroy the original questionnaires to further protect respondents.

27. If the task force is using questions from a questionnaire already used by another task force and can get information about experiences with those questions, less pretesting may be necessary.

3. If you plan follow-up mailings, you need to keep track of who has returned a questionnaire. If you have promised anonymity, it is best not to ask for a name on the questionnaire. Consider using a small box, placed at the end of the questionnaire, in which you can print or write a unique numeric ID code for each person in the sample. The tracking database, described above, will enable you to mark off each number as the questionnaires are returned, which will permit you to send follow-ups only to those who have not responded. As noted above, if you promise anonymity, explain in the cover letter what the ID code is and how it will be used.
4. If you use personalized cover letters and questionnaires with ID codes or names on them, take care that these correspond with each other and with the mail-out envelope. If the ID code on the questionnaire does not match the name on the envelope, you may end up sending follow-up reminders to those who already returned questionnaires while failing to send reminders to those who didn't—either of which undermines the reliability and perceived credibility of your study.
5. Give recipients no more than three weeks to respond to the initial mailing; the questionnaire will be forgotten if you give too much time. Avoid sending questionnaires near holidays or times when many of your recipients are likely to be on vacation. Include a metered, self-addressed return envelope in the mailing.
6. Follow-up mailings significantly increase the response rate. You should do at least two follow-ups, the first a simple reminder, the second another copy of the questionnaire.
    - Time the first follow-up reminder to arrive about the time the questionnaire is due to be returned. We suggest using a postcard for this follow-up. It can be sent to everyone, saying simply, "Two weeks ago we sent you a questionnaire about the role of gender in the federal courts. If you have already returned the questionnaire, thank you very much. If you have not, we hope you will respond soon." If you used a graphic on the questionnaire, consider reproducing it on the postcard to spark respondents' memories of receiving the questionnaire. If you need to have the postcards professionally printed, you will need some lead time.
    - The second follow-up should include a new cover letter, a second copy of the questionnaire, and another return envelope. It should be mailed about two weeks after the postcard and mailed only to those who have not yet responded.
7. If the questionnaire asks attorneys or litigants for their views about a particular court, have them return the questionnaire to an office or person not affiliated with the court (e.g., a social scientist or law professor working with the task force). Attorneys and litigants will be less likely to return the

questionnaire if they think their responses might be seen by members of the court.

8. If you survey court staff, try not to send questionnaires to them through supervisors. This diminishes staff members' perceptions of the importance of their responses and makes it difficult for you to know who has received the questionnaire and, thus, what type of response rate you are getting. If you must send the questionnaire through supervisors, do not have the questionnaires returned through the supervisors. The responses to your questions are likely to be more candid if staff can return the questionnaires directly to an outside entity, such as a task-force advisor.
9. Do not distribute the questionnaire by inserting it in a local legal publication or a court-employee newsletter. Although this might seem to be a simpler and less expensive approach than individual mailings, a task force using this approach has no way of determining the response rate to the questionnaire or the representativeness of those responding. In addition, this approach encourages special interest groups to mount campaigns to get people who represent the groups' interests to fill out the questionnaires. These shortcomings will severely undermine the reliability of the survey results.
10. If the response rate to the questionnaire is low despite the best efforts of the task force, the representativeness of the results will be subject to challenge because there is a possibility that those who responded do not reflect the overall population (see Chapter 11). If possible, we advise intensive follow up with some of the nonrespondents to encourage them to respond, so their responses can be compared with the responses of those who returned their questionnaires initially. If the responses are similar, the task force can be more confident that the results obtained are representative of the population surveyed. If they are not similar, the task force will not be able make generalizations from the responses received to the overall population.

Preparing the Data for Analysis

Coding the Data

Some of the responses will need to be interpreted and coded. For example, handwritten responses may be difficult to decipher, or a respondent may fail to answer a question. In addition, you may find that responses to an open-ended question fall into patterns, and you will want to assign numerical codes to the responses for ease of data entry and analysis. We suggest someone familiar with the issues and language (if there are written comments) of your study go through each questionnaire before data entry and make the necessary clarifications. Because there should be uniformity in decisions and coding regarding the problematic responses, we suggest you limit this task to a small number of people.

Who does the coding depends in part on the complexity of the questionnaire, but this person should catch—and correct, if possible—response errors. As the coder goes through each questionnaire, he or she should code unclear responses with an agreed on code (e.g., 888 for an illegible response, 999 for no response). This step should be carried out before—and separate from—the data-entry process to ensure greater accuracy for both tasks and greater efficiency during the data-entry stage.

Entering the Data and Resolving Data-Entry Errors

After coding, information from the questionnaires is entered into a computerized data set. To ensure that the data set is accurate, the information entered should be verified before analyses are conducted. One way to do this is by "double keying" the data; that is, one person enters the data into one data file, and a different person enters the data into a second data file.

Depending on the nature of your data, the data-verification method may vary. For example, double keying cannot effectively or efficiently be performed on numerous or extensive text entries (e.g., comments by survey respondents). These text entries are generally entered only once and then visually proofed for content and errors. Have someone familiar with the language of the project perform this check.

Whatever method is used, the result of comparing the two data sets is a printout that identifies the differences between them. Someone must then consult the original questionnaires to determine the correct responses. Once all of the necessary corrections have been made, compare the data sets again and review a printout of the differences to make sure all of the expected changes have been made and that no new errors were introduced.

Other reconciliation techniques also are possible, such as visually comparing the original questionnaires with a printout of information entered in a database—but visual comparison is very difficult for long or numerous surveys. Some data-entry utilities allow the data verifier (i.e., the second data-entry person) to identify and correct discrepancies immediately during the second input of the data. This is a much more efficient approach, but it requires a more sophisticated data-entry program. It also requires that the data verifier be capable of and authorized to decide which response is correct.

Using Outside Data-Entry Services

If resources are available, the task force may choose to use a professional data-entry service for entry and verification of questionnaire data. Data entry is a very time-consuming process and can quickly deplete the time of volunteers. Before questionnaires are sent to an outside service, the researchers should review responses for coding and resolution of problems, such as hard-to-read narrative responses.

Analyzing the Data

The social scientist who assists the task force in designing and administering the questionnaire may have the necessary computer and statistical-analysis skills to perform the analysis of questionnaire responses. Responses to closed questions are often analyzed in terms of simple "frequencies" (e.g., a breakdown of the number and percentage of respondents selecting each response to a question) or "cross-tabs" (e.g., a breakdown by gender of the responses to each question). These analyses can be performed using relatively simple statistical-analysis software. Researchers or committee members can then review the results and discuss possible explanations for, or implications of, various response patterns. Information from the questionnaires can also be compared with information gathered using other methods to determine areas of consistency and inconsistency.

Narrative responses are analyzed qualitatively, unless they have been assigned numerical codes during the review and coding process. In general, responses to open-ended questions are entered verbatim and then grouped according to the subjects they address. Researchers can then review at one time all comments relating to a particular topic, making it easier to discern patterns or consistencies across responses. Responses should also be cross-referenced to other related topics.

For Further Reference

Jean Converse & Stanley Presser, Survey Questions: Handcrafting the Standardized Questionnaire (1986).

Don Dillman, Mail and Telephone Surveys: The Total Design Method (1978).

Chapter 9—Interviews

Task forces have used one-on-one interviewing to achieve more in-depth examination of topics than provided by other commonly used methods, such as questionnaires or even focus groups. For example, while a respondent might indicate in a questionnaire that he or she has observed judges addressing female lawyers less formally than male lawyers, an interview allows a person to describe in detail the specific interactions observed, the context in which they occurred, and the person's reactions to the behavior. In addition, because only the interviewer is present with the respondent, it is easier to assure confidentiality of responses than with a focus group, and respondents may be more forthcoming about sensitive issues.

Interviews can be unstructured, with open-ended questions and dialogue between the interviewer and interviewee; structured, where the interviewer asks a predetermined set of specific questions and provides little or no feedback; or semistructured, including a combination of structured and unstructured questions. Unstructured interviews yield qualitative information, while structured interviews usually result in both quantitative and qualitative responses.

Advantages and Disadvantages of Interviews

Interviews have several advantages:

- They can be used to obtain information from small groups of people (e.g., chief judges within a circuit) at a lower cost than designing and administering a questionnaire.
- They give people an opportunity to provide more in-depth information.
- They allow for precise information gathering about situations that do not occur routinely and therefore are difficult to observe.
- Respondents may be more forthcoming about sensitive issues in a one-on-one interview than they would be in a focus group with their peers.
- The interviewer can clarify questions that the respondent finds ambiguous or confusing.
- Interviews can be used to collect information from those unable to express themselves in writing or from groups who tend not to respond to written questionnaires.

The main disadvantage of interviews is that they take a good deal of time for each respondent and therefore can usually be conducted with only a limited number of people. This limits the generalizability of the findings, unless the interviews are conducted with members of a very small population (e.g., female appellate judges in a circuit). For these reasons, the task force should consider

limiting the use of interviews to those situations in which (1) detailed information from a particular group cannot be obtained through other methods, or (2) the population of interest is small enough that individual interviews can be conducted with most or all members.

Resources Required

A social scientist skilled in interviewing can assist the task force in developing interview protocols and can give guidance on selecting respondents. Depending on the number of interviews scheduled, the task force may need several individuals who can conduct the interviews. If the task force plans for the interviewers to tape-record the interviews, it should provide a tape recorder and tapes. Ideally, the task force will have access to a skilled transcriber to transcribe these tapes. A typist, stationery, and postage will be needed if potential respondents are contacted by mail.

Guidelines for Interviewing

The following guidelines offer some suggestions on how to plan and carry out individual interviews.

Planning the Interviews

Selecting Respondents

There are several approaches to selecting respondents for interviews, depending on how the task force wants to be able to use the information obtained. For example, the task force may decide to interview some of the following groups:

- a few people from each category of judge, employee, or court user (including attorneys and litigants), to get a sampling (not necessarily representative) of views;
- all members of a particular category (e.g., all female judges), to capture the full range of their views and experiences; or
- individuals who make or influence policy within the circuit (e.g., chief judges, leading attorneys), to determine how policy is made.

When the categories are large, we suggest interviewing at least twenty individuals in each category. Because of the small numbers of people who typically will be interviewed, statistical description may not be a realistic goal; when statistical description is a goal, the task force should select respondents randomly or attempt to interview all members of a group. When small numbers of people are interviewed in any given category, thematic analysis across categories is more appropriate than statistical analysis.

Choosing Interview Topics

Useful sources for topic ideas include questionnaire results, testimony at public hearings, complaints to the chief judge, and findings from observational studies. If possible, it is best to avoid extremely sensitive or embarrassing topics that the respondent may be reluctant to discuss. Such topics are best addressed in a written questionnaire, where the respondent can have privacy when answering.

Constructing the Interview Protocol

To ensure consistency in data collection across interviews, a standardized interview protocol should be used. This protocol will set forth the questions and follow-up questions to be asked in each interview. Keep the following points in mind when drafting an interview protocol:

- During the first several minutes of the interview, the interviewer will be establishing a rapport with the respondent. Thus, the first few questions should be easy to answer and should not make the respondent uncomfortable or embarrassed.
- Questions should be organized logically, and transitions should be provided for the interviewer to move from one topic to another.
- If the interview will be a structured interview, the protocol will look very similar to a written questionnaire, with a list of response options for the interviewer to read to the respondent after asking the question. For a less structured interview, questions will be more open-ended, and the interviewer will have flexibility to explore responses in greater depth. When using this type of protocol, leave space after each question for the interviewer to take notes on narrative responses.
- If you want to be able to perform quantitative analyses (e.g., counting the frequency of different responses to a question), the questions should not be open-ended. Otherwise, respondents may interpret and answer the question in very different ways, and you will not be able to analyze across responses.
- If certain questions should be skipped depending on the response to a previous question, give instructions about this on the interview protocol. For example, after a particular question the protocol might say: "Interviewer: If answer is NO, GO TO Question 15." The instructions to interviewers should be in a different style (e.g., bold or italics) than the questions.
- If you think some respondents might not understand a question, it is helpful to provide alternative wording so the interviewer does not have to improvise.
- Keep the questions simple, as it is difficult for a respondent to consider multiple parts of a spoken question.

- Make sure the questions are phrased in a neutral way—that is, they should not suggest what response is considered "appropriate."

Pretest the interview protocol with members of the group to whom it will be administered or others who are similarly situated. After going through the interview protocol, ask the pretest respondents for feedback, including comments on whether they understood the questions, whether they found the questions threatening or embarrassing, and whether the order of questions seemed logical. The person conducting the interview should also make notes on problems encountered (e.g., interviewer instructions that were not clear).

Length of Interviews

Although more topics can be covered in individual interviews than in focus-group sessions, most respondents will not be able to commit to more than one hour per sitting. For this reason, we recommend that the topics of inquiry be limited to those which can be covered adequately in one hour.[28] Sometimes researchers hope to conduct a series of interviews with an individual, but few respondents are willing or able to make such a time commitment.

Contacting Interviewees

Once potential respondents have been selected, they can be contacted by mail. Send a letter informing the potential interviewee of the following:

- the task-force mandate and purpose of the interview;
- the topics to be covered;
- the length of the interview;
- whether and how confidentiality will be preserved; and
- a time when the interviewer will call to schedule an interview, or a telephone number the respondent can call to suggest an interview time.

When setting up interviews, the task force and researchers may find that some prospective respondents are reluctant to be interviewed because of concerns about confidentiality, issues of privilege when discussing ongoing cases, or time constraints. The interviewers should be prepared to discuss each of these points and work out an arrangement that is satisfactory to the respondent.[29] In addition, the site selected for the interview should be one that is convenient and comfortable for the respondent.

28. As we mentioned in Chapter 2, if a circuit is studying several aspects of diversity, respondents may suggest that all topics be covered in one interview. The task force should resist this pressure and limit interviews to one major aspect of diversity (e.g., effects of gender). Otherwise, the opportunity that interviews afford to get in-depth information will be lost.

29. Consider, for example, providing interview notes to respondents after their interviews and allowing them to correct any inaccuracies. This approach, which was used by the special committees of the D.C. Circuit task force in their interviews with judges, can increase respondents' confidence in the interview process and enhance the authority of the material in the notes.

Selecting Interviewers

To promote confidence in the task-force inquiry and to assure respondents that confidentiality will not be breached, the interviewers should not be from the same office or legal community as the individuals they interview.

For consistency in data collection, the same person or a small number of people should interview everyone in a particular category. For example, if the task force decides that magistrate judges will be interviewed, one or two interviewers should interview all of those magistrate judges selected in a district.

If possible, interviewers should be selected to mirror the demographic characteristics of the court and legal community. Relevant characteristics include gender, age, social class, race, and ethnicity. Research has shown that people are less likely to respond favorably to research inquiries when they are uncomfortable with the gender, race, or ethnicity of the researcher. Given the small numbers of interviewers, it might not be possible to select interviewers to completely reflect respondent characteristics, but we advise sensitivity to this issue.

Training Interviewers

Unstructured interviewing requires much more training—or knowledge of the issues—than structured interviewing, because the interviewer must be able to follow up spontaneously on interesting issues and adapt questions to the respondent during the course of the interview. The task force, in consultation with a social scientist, may be able to train those selected to conduct unstructured interviews by rehearsing the protocol in mock interviews and providing feedback about tone, use of follow-up questions, and use of other approaches for obtaining more detailed information.

Those conducting structured interviews have a specific protocol to follow and have much less opportunity to exercise discretion. Nevertheless, interviewers should at least be trained to know what an adequate answer is (i.e., when follow-up is unnecessary) and how not to influence responses by the way they ask the questions or respond to answers. For example, nodding or sighing could indicate the interviewer agrees or disagrees with the answer given.

Conducting Interviews

Beginning the Interview

The interviewer should begin the interview by introducing himself or herself to the respondent; explaining briefly the purpose of the task force and why the respondent was chosen for an interview; emphasizing the importance of each individual's responses; reassuring the respondent that all efforts will be made to keep the interview confidential; and asking for permission to tape-record the session after explaining the rationale for such a request.

Tape recording makes it possible to collect accurate and complete information and allows the interviewer to focus on the responses. This is especially helpful for an unstructured interview, in which the respondent will be giving narrative answers rather than selecting a response option. If the respondent prefers not to be tape-recorded, he or she should be told that the interviewer will have to take brief notes during the interview. If notes are taken during the interview, the interviewer should supplement them with additional notes immediately following the interview, before details have faded from memory.

Asking Questions

An interviewer following a structured interview protocol will have little flexibility. In contrast, the interviewer conducting an unstructured interview must be careful to listen for mention of topics that would be interesting to explore further but were not anticipated in the interview protocol. In either type of interview, if the respondent begins to talk about something not contemplated by the interviewer but pertinent to the research topic, the respondent should be permitted to continue as long as this does not threaten to make the interview overly long. The interviewer should take detailed notes on these spontaneous comments so the comments can be analyzed later.

Acknowledging Appreciation

When the interview is completed, the interviewer should thank the respondent and reiterate the importance of his or her responses to the task-force inquiry. It is a good idea to tell respondents that they might be contacted later to clarify comments or respond to a few additional questions. In addition, the task force and interviewer should send a letter to the respondent immediately following the interview expressing the task force's appreciation for the respondent's participation in the task-force inquiry.

Analyzing Data

If a structured interview protocol has been followed and the questions asked are not open ended, analysis of the responses will be similar to analysis of questionnaire responses (see Chapter 8). For responses to unstructured interviews, open-ended questions, or spontaneous comments made during an interview, the analysis will be qualitative. The task force and researchers should read over the notes on responses to each question, develop a scheme for categorizing responses, and develop rules for assigning responses to categories. This approach is similar to analysis of data from focus groups (see Chapter 6).

Maintaining Confidentiality

It is essential that information obtained from interviews not be attributed.[30] Tapes and notes of interviews should not be shared beyond those overseeing, conducting, and analyzing the interviews. Only the findings—with no attribution—should be shared beyond this group. Some security measures that can be taken include the following:

- keeping tapes, transcriptions, and notes locked away when not in use;
- making only those identifications on data that are necessary for analysis;
- being vigilant about "leaks";
- hiring a professional transcriber who is outside the employ of the courts and legal community or using a volunteer transcriber who is not perceived as closely affiliated with the courts of the circuit;
- destroying all tapes at the end of the task-force inquiry; and
- striving to maintain anonymity when presenting findings in the task-force reports and in presentations to the judicial council and other audiences.

Telephone Interviews

Telephone interviews are particularly useful if the task force is under severe time constraints, or when more information is sought from someone who has been previously interviewed in person. They should generally be designed to last no more than 30–45 minutes.

30. The only exception to this rule might arise in the context of interviews with prominent circuit policy makers, who might agree to attribution of some or all of their responses.

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Chapter 10—Observational Studies

Some task forces have used observational studies to collect information on whether gender plays a role in day-to-day activities and interactions in the courtroom, the clerk's office, or other locations. Most commonly, task forces have placed observers in various locations (e.g., courtrooms) where the observers use a coding form to record particular behaviors or incidents of interest to the task force. For example, observers for the Rhode Island Committee on Women in the Courts recorded information about the level of attention paid to female speakers, forms of address, extraneous comments with gender content, use of gender stereotypes in argument, and inappropriate physical contact.[31] This type of observation is referred to as *nonparticipant observation*.

By contrast, *participant observation* involves a more intensive, qualitative approach in which the outside observer enters and is actively involved in the activities of a particular setting (e.g., an office) by observing, listening, asking questions, and participating in the group's activities for a substantial period of time, ranging from a few weeks to a year or more. This approach focuses on obtaining detailed information about how people interact with each other and how they interpret or perceive each other's behavior. Participant observation requires a significant time commitment as well as expertise in qualitative observational methods; thus, the task force is likely to be able to use this method only if it can locate a social scientist with the requisite expertise who is interested in and able to carry out the study.

Advantages of Observational Studies

Observational studies have the following advantages:

- Information about behavior is gathered in a natural setting rather than in an artificial situation, such as when a person responds to a questionnaire or participates in a focus group.
- Because observers are in natural settings, they have the opportunity to become aware of gender issues or problems that might not have been anticipated by the task force.
- Information can be obtained on nonverbal behavior, which is more difficult, if not impossible, to obtain using questionnaires or other methods.
- Information can be collected on sensitive issues that participants might be reluctant to report in questionnaires or interviews.

31. The Final Report of the Rhode Island Committee on Women in the Courts 6 (1987) [hereinafter Rhode Island Report].

- If conducted properly, observational studies can yield information about the actual frequency of occurrence of various behaviors that might have been reported as anecdotes when using focus groups, public hearings, or other methods.

Disadvantages of Observational Studies

- A serious disadvantage of observational studies is the high risk of the results being affected by the biases (conscious or otherwise) of the observers. Some of those who volunteer to conduct observations for a gender task force, for example, might be predisposed to interpret and report certain behaviors as reflecting gender bias. For this reason, the task force must train observers carefully and limit their discretion in interpreting events and behaviors.
- Also, those being observed might modify their behavior if they are aware of the observer's presence. If they act differently than they normally would, the information gathered will not be reliable. In fact, they might not only change their behavior. At the same time, they may resent the fact of being monitored as an improper intrusion.
- Finally, observational methods take a good deal of time. To obtain reliable information about events and occurrences, several settings should be observed and each setting should be observed a number of times. Some state task forces have had difficulty getting reliable information through observation because of difficulty in finding observers able to commit the time required.[32]

Nonparticipant Observation

In this type of study, trained observers are placed in various sites to record unobtrusively the frequency with which certain specified behaviors or events occur. Observers record their observations on a form that indicates the behaviors or events to be noted. The observers have little discretion in determining what should be recorded.

32. *See, e.g.,* Wisconsin Equal Justice Task Force Final Report app. C at 7 (1991) (unable to collect enough data for state-wide comparisons because volunteers could not observe consistently except in two counties); Gender and Justice in the Colorado Courts: Final Report of the Colorado Supreme Court Task Force on Women in the Courts 6–7 (1990) (three student interns who composed one observation group were unable to observe settings long enough to collect sufficient data for use in the task-force report; another student group collected adequate data for the supervising professor to write a report for task force). But see Rhode Island Report, *supra* note 31, at 12–14, for a discussion of a successful courtroom observational study (total observation time was 58.4 hours); and Women's Bar Association of Maryland, Courtwatch Report (May 1993) (during a one-week period, proceedings were observed in the courtrooms of 172 judges and masters as a follow up to a report issued in 1989 by the (Maryland) Special Joint Committee on Gender Bias in the Courts).

The guidelines below will help the task force obtain accurate and reliable information with observational studies. An example of the type of coding form used in these studies is provided in Appendix C.

1. Select several examples of each type of site to be observed (e.g., courtroom, clerk's office). These sites should be selected systematically so that they differ in terms of their locations (urban or rural), population demographics, and other relevant characteristics. Judges or other subjects to be observed should also be selected in a representative way.
2. Obtain permission from the chief judges of the districts or circuits in which observations will be made.
3. Decide, in consultation with the chief judges in the jurisdictions being observed, whether to notify the judges or others who will be observed. From a research standpoint, it is preferable that subjects not be aware of the observers, as this knowledge might affect their behavior. On the other hand, failing to notify those who will be observed may create resentment and suspicion when the task-force results are reported, or if the fact of the observers' presence leaks out.
4. In consultation with a social scientist working with the task force, develop a coding form for observers to use in recording behaviors. Instructions on the coding form should be explicit about what is to be recorded; the more specific the instructions, the less discretion the observer will have in recording events, the less error or bias there will be, and the more reliable the findings will be. The coding form should also include space for the observer to take notes on activities and behaviors that are not covered explicitly by the form but that appear relevant to the task-force inquiry. If these notes are reviewed as the observation process continues, the task force may find patterns of behavior that it will want to analyze and add to the coding form.
5. Recruit and train observers. Because of the time commitment involved, observers will often be law students or graduate students. They should be instructed on such matters as what to expect when they go to the observation site, courthouse etiquette, how to use the coding form, and how to take notes on other behaviors that may be of interest. This can be done by conducting training sessions and by providing observers with a written training manual.
6. Each site should be observed a number of times and at different times of the day. This temporal "sampling" may show variation in work practices, activities, and participants. It is a good idea for the researchers to set up an observational work schedule.
7. To determine whether subjective interpretation is influencing the recording of events despite the use of a standardized coding form, conduct a pilot test to do reliability checks. This involves placing two or three observers at a

single site to record observations independently (i.e., without seeing each other's coding forms or notes). After the observation period, compare the observers' coding forms to see if they have coded information consistently. If they have not, the instructions on the coding form should be made more explicit or the observers should be given additional training in using the coding forms.

8. Analysis of data from coding forms is similar to analysis of other quantitative data, such as those obtained through questionnaires. Analysis of qualitative observational data, such as additional notes taken by observers, involves reviewing the notes from all observers and looking for patterns of reported behavior. If the researchers identify patterns, they can code the observations fitting these patterns into new analytic categories. These categories can be added to the coding form for use in future observations.

Participant Observation

A participant observer immerses herself or himself in a setting for a substantial period of time, often interacting with the people being observed. Unlike observers using a coding form or checklist, participant observers typically do not attempt to foresee which behaviors are relevant or dispositive respecting the issue or problems that interest them. For example, a participant observer interested in the role of gender in courtroom interactions would not decide in advance which behaviors to record. Instead, the observer would watch everything for a number of weeks to determine whether and in what way gender plays a role in courtroom behavior. After making background observations and documentation, the observer begins to focus on a few select behaviors and then systematically collects information on those behaviors through observation and interviewing, keeping an eye out for newly arising events as well.

Participant observation is much more flexible than nonparticipant observation, which relies on a coding form. This same flexibility, however, allows subjective interpretation to play a large role in data collection, making it difficult for the task force to document conclusions based on this method. Thus, participant observation should be used only with the guidance of a social scientist experienced with such an approach, and the task force should ensure that the process of drawing conclusions from the resulting data is thoroughly documented.

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Chapter 11—Drawing Conclusions from Research

Task forces that undertake studies using some or all of the methods described in this guide may acquire vast amounts of information. This chapter discusses general issues to consider and common pitfalls to avoid in describing and drawing conclusions from the data obtained. The first section addresses issues applicable to both qualitative and quantitative data, while the second section, beginning on page 84, deals with issues most pertinent to analyzing and drawing conclusions from large quantitative data sets.

Considerations in Drawing Conclusions from Data

Effects of Preconceptions

Research has shown that when people have an expectation or a theory before encountering evidence, they tend to find evidence that confirms their theory. For example, someone who expects women interviewees to have many complaints about a court's personnel policies might interpret comments made by an interviewee as constituting complaints, even if such comments were intended to be neutral. Therefore, task-force members should be wary about drawing quick conclusions that are consistent with their expectations. This problem can be avoided to some extent by including on the task force people with a range of views, as we discussed in Chapter 2. In addition, it is important to recognize that this potential risk exists and to explore aggressively, before reporting the findings, data that both support and refute any preconceptions about the effects of gender in the circuit. As noted in Chapter 4, anecdotal data, dramatic but not necessarily representative, are particularly dangerous in this regard.

Alternative Explanations for Results

Another major concern in interpreting results is the "third variable problem," which is also known as the "problem of alternative hypotheses." This problem occurs when researchers do not take into account other explanations or variables that might be responsible for relationships observed in the data.

Suppose, for example, a task force is interested in the hiring practices of a court, with particular interest in the relationship between gender and hiring. To examine this, the task force collects a list of all applicants for positions in the clerk's office for the past several years and compares that with information on who was actually hired for each position. Assume that the task force finds a cor-

relation between being a female applicant and being hired in the clerk's office. This association may or may not reflect a causal relationship between gender and hiring. The task force should be attuned to the existence of other variables (some of which may also be gender linked) that could affect causation. There is a possibility, for example, that a third variable, such as performance on a job skills test, correlated with both gender and hiring. In reporting findings such as these, the task force might want to discuss a range of possible conclusions and inferences that could be drawn, and it should be careful to identify instances in which unexamined variables may have explanatory force.

Reporting Results from Qualitative and Quantitative Analyses

When reporting results from either qualitative or quantitative data analysis, the task force should fully explain the nature and scope of the data collected and used in the analysis. The basic results from each method, such as tables of response frequencies or correlations, should be provided in the report itself. The report or its appendices should document all data-collection procedures (e.g., how a questionnaire was administered) and any subsequent changes or modifications made to the collected data. In addition, all data created or modified during the statistical analysis should be preserved so that they can be made available to other researchers.[33]

Furthermore, a detailed technical appendix should be provided with the final report or made available upon request. It should supply the reader with all of the information necessary to reanalyze the data with a complete understanding of how those data were collected (including copies of data-collection instruments, such as questionnaires and interview protocols). In addition, a complete and detailed code book explaining what the data consist of and how they were categorized should be developed and preserved. All of these steps bolster the credibility of the task-force report by documenting how the task force arrived at its conclusions.

Specific Pitfalls in Analyzing Quantitative Data

In general, the uses of quantitative data fall into two broad categories: description and inference. Description involves making statements about the particular data collected by the researcher. For example, if all law clerks in a circuit were surveyed, the task force could present the frequencies of responses to different questions and make descriptive statements based on the frequencies, such as "Fifteen percent of the female law clerks in the circuit report having been asked

33. It is accepted scientific practice to make data available to other researchers, with identification of individuals removed if anonymity was promised. Among other things, making data available allows other researchers to replicate the analysis. If the original analysis is sustained, one can have greater confidence in the conclusions.

questions about their marital or parental status when they interviewed with a judge for their current position."

The researcher moves from description to inference when the data are used to draw conclusions that go beyond those specific data. For example, the task force would be using inference if it surveyed only a sample of law clerks in the circuit and then used the answers from the sample to draw conclusions about all law clerks in the circuit (i.e., the population). Similarly, the task force might draw inferences about a population of cases by looking at a sample of case files. The question of whether such inferences are valid depends largely on how closely the selected sample mirrors the full population. Because most task-force research is likely to involve samples rather than populations, the rest of this chapter deals primarily with issues to be aware of when drawing inferences from a sample to make statements about an entire population.

Generalizability and Representative Samples

The strength and validity of conclusions that can be drawn from data obtained from a sample depend largely on the issue of generalizability. Generalizability in turn rests on several factors, particularly whether the sample size is adequate (see discussion beginning on page 87) and whether the sample is representative of the full population (i.e., whether those from whom data are obtained reflect the characteristics of the population).

To maximize the representativeness of a sample, the task force should first define the appropriate reference population. The reference population is the population of people, cases, or other subjects about which the researcher is attempting to generalize. If the task force does not identify the appropriate reference population in advance of a research project, the conclusions drawn from the data may be misleading or invalid.

Suppose, for example, the task force wishes to explore the question of gender differences in the appointment of lawyers to committees established by a court. The task force finds that female lawyers constitute 40% of the attorneys admitted to the federal bar in that jurisdiction but only 15% of attorneys appointed to court committees. A straightforward but potentially misleading analysis would be to compare the proportion of female lawyers appointed to court committees with the proportion of female lawyers admitted to the bar. An analysis of this sort ignores the fact that there may be requirements for appointment to a court committee other than simply being admitted to the bar. In other words, the makeup of the bar overall may be an inappropriate reference population for addressing this question.

A preferable approach would be to determine first the qualification requirements for these appointments (e.g., perhaps only partners are eligible to be appointed), and then compare the proportion of female attorneys eligible for a court-committee appointment (e.g., female partners) with the proportion that

were appointed. This analysis compares the appropriate proportion with the appropriate reference population and sheds light on whether gender plays a role in the appointment process and, if so, in what way.

Of course, this type of analysis does not explore historical or other factors that may have led to the underrepresentation on committees of female attorneys possessing the qualifying characteristics (in this case, as partners). However, the analysis described above will provide a sounder answer to the question of whether gender affects the appointment of eligible lawyers to court committees than an analysis using all members of the bar as the reference population.

Selecting a Representative Sample

After the reference population has been identified—and if the whole population cannot be studied—the task force will want to draw an unbiased sample. The surest way to create a representative sample is to select it randomly. Random sampling procedures help eliminate or control for many potential biases that could affect the research results and call their validity into question. A simple random sample, for example, is a subset of a population selected in such a way that each member of the total population has an equal probability of being selected into the sample. In a systematic sample, subjects are selected sequentially from an ordered list, with only the starting place in the list selected at random. For example, the task force might select a sample of every fourth attorney from an alphabetical list of attorneys.

There are a variety of other random sampling methods that could be used by the task force, and social-science advisors should be able to help the task force select the most appropriate sampling method.

Other sampling techniques, though not as rigorous as random sampling, may yield a reasonably representative sample. One example is what statisticians refer to as "quota sampling." In a quota sample, the researcher attempts to select participants in the proportions in which they are prevalent in the population being studied. For example, the task force might select employees from various job positions to participate in interviews, with the number of employees from each job position approximately proportional to their number in the courts overall. This technique can minimize some of the biasing effects of drawing a nonrandom sample.

On the other hand, use of a nonrepresentative sample yields results that cannot be generalized to the population of interest. For example, asking for volunteers to participate in focus groups or passing out questionnaires at a bar meeting is not likely to produce a group that represents all members of the population in which the task force is interested (e.g., a volunteer focus group cannot represent all attorneys practicing in the circuit). Instead, the people in these samples are likely to be those who have a specific interest in relating their experiences.

This is not to imply that the task force should ignore the information that can be gained from samples generated in a nonrepresentative manner. Public hearings, for example, in which witnesses are often volunteers or individuals recruited because of their prominent positions on an issue, are useful for highlighting areas of concern and providing the task force with specific examples of gender-related issues in the circuit. The point is simply that data collected from self-selected samples or other "biased" samples are likely to underrepresent or overrepresent the actual effects of gender and should not be used to generalize about gender effects or perceptions overall. Consequently, to speak authoritatively on gender issues in the circuit, the task force should rely on data collected in a way that is consistent with accepted social-scientific methods.

Nonresponse

Although use of a nonbiased sampling technique is one of the surest ways to enhance the representativeness of the task force's research results, the task force will encounter problems in drawing valid conclusions if many members of the sample do not participate in or respond to the task force's inquiries. For example, suppose the task force has designed a mail questionnaire and wants to compare responses of a randomly selected group of female and male attorneys practicing in the circuit, but only 50% of the respondents return the questionnaire. When the response rate is broken out by gender, the task force finds that 30% of the men and 70% of the women returned the survey. The task force is now faced with a critical question: Do the people who responded represent the population of interest? It is possible, for example, that the men who did not respond hold views quite different from those who did respond. A variety of statistical methods can assess this issue, and the task force's social-science advisor should be able to assist the task force in minimizing the impact of nonresponses.

Thus, in planning its research and determining the generalizability of its findings, the task force should, in consultation with a social scientist or statistician, consider the following: (1) whether it has identified an appropriate reference population; (2) whether the sample was selected randomly or at least in a representative way; (3) whether the response or participation rate is sufficiently high; and (4) to what extent missing responses bias the findings.

Sample Size Considerations

Two questions need to be considered regarding sample size: (1) Does the task force have sufficient data to do the analyses it wishes to conduct?; and (2) Does the task force have an excess of data? A social-science advisor working with the task force should be able to help it assess the first question—whether it has sufficient data to perform statistical analyses. For example, if the task force wants to be able to conduct separate analyses of the questionnaire responses of different

subgroups (such as men and women), it will need to make sure it has a sufficient number of respondents in each subgroup.

Just as the task force may have insufficient data for some analyses, it may have too many data for others. Many of the statistical data sets referred to in Chapter 7 contain thousands or tens of thousands of data records. As a statistical matter, analyses on data sets with a very large number of records or observations will yield differences that are "statistically significant" (see next section) even though the actual observed differences are very small. For example, if many records are analyzed, even a 2% difference in the hiring rate between women and men will be statistically significant at any preset significance level. The question the task force needs to answer is: How large must a difference or effect size be for us to consider it important? That is a question that cannot be answered by a statistical test; it is a matter of policy or intuition and should be determined by the task force at the outset of the project.

Reporting of Statistical Results

Finally, in reporting results of statistical analyses, the task force should be careful not to place undue emphasis on results solely because they are "statistically significant." *Statistical significance* is a technical term, frequently misunderstood. It does not reflect a probability that the results are accurate or reliable. Rather, it indicates that the results obtained differ to a predetermined extent from those that would have been expected if there were no actual effect of the variable being examined (e.g., gender).[34]

Researchers have traditionally used evidence of statistical significance to validate their research findings, when in reality statistical significance is only one limited step in determining whether the results obtained are important and to what extent they reflect reality. In conjunction with determining whether a result is statistically significant, the task force should consider the extent to which the results converge with other findings, the size of the effect, and whether there are method-related artifacts that might have produced "significant" results that do not reflect the true situation.

Suppose that the task force compared the responses of 1,000 male and female attorneys with 25 questions relating to gender effects in courtroom interactions and found that males and females responded differently to only one of the questions. For example, in response to a question asking whether federal judges treat female attorneys more favorably than male attorneys, 25% of male attorneys and 20% of female attorneys answered "Yes." Suppose further that this difference was statistically significant. Would this result support a conclusion by the task force

34. The probability value against which results are evaluated to determine whether they are statistically significant is usually 1% or 5%, although this is just a matter of social-science convention. This probability value merely indicates the probability that an effect as large or larger than the one reflected in the data could have been observed if there were no actual underlying difference.

that male and female attorneys hold very different views of the prevalence of gender bias among federal judges? For several reasons, it probably would not.

First, the 5% response difference may not have much practical significance; in other words, the task force may conclude that the responses are not in fact very disparate (see the discussion of effect size above). Second, the large number of question responses being compared creates a strong possibility of finding at least one "statistically significant" result that does not reflect an actual effect. Third, the fact that no other significant differences between responses were found suggests this result may be a "fluke," particularly since all of the questions addressed the same general topic (if the questions were heterogeneous, there might be less reason to doubt the one significant effect). Finally, a strong statement about differences in attorneys' perceptions of gender bias is not supportable by responses to one specific question.

On the other hand, if the task force found that male and female responses to eighteen of the twenty-five questions were significantly different, that the response differences were quite broad (e.g., 20% vs. 50%), and that the results converged with results from other methods, the task force could draw much stronger conclusions.

Although the above example is extreme, it highlights the types of issues the task force should be aware of in analyzing, reporting, and drawing conclusions from statistical data. Statistical advisors working with the task force can provide more detail about these and other potential analysis problems.

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III

Resources Available to Task Forces

Chapter 12—Resources for Conducting Gender Studies

The extent of a circuit's study of gender in the courts will depend in part on the personnel and other resources available to assist it in carrying out the research. Any assistance must be obtained ethically, legally, and without compromising the objectivity of the task force's work. There are many potential resources, including appropriated funds or donated funds; services (volunteer or paid) from professional individuals, such as social scientists, statisticians, or law professors; services (volunteer or paid) from organizations, such as law firms or research institutions; research assistance (volunteer or paid) from students or other individuals interested in working with the task force; services from court personnel; and information or assistance from various agencies. This chapter summarizes the various ways in which different types of people or organizations might be able to assist the task force by providing information or services.

Statutes and judicial branch rules, regulations, and policies (including the Code of Conduct) sometimes limit the kind of services or funding assistance a federal-court task force may accept, and they may prescribe procedures to be followed in accepting or using these resources. Therefore, to the extent the task force turns to outside resources for assistance or funding, this activity should be coordinated with the Office of General Counsel at the Administrative Office of the U.S. Courts. The AO should be contacted about any contracting issues, funding problems, or procedural or ethical issues perceived by the task-force members. The Office of General Counsel also can answer questions about using various court funds.

Services from Individuals

Social Scientists

Social scientists trained in research design and methods can be an invaluable resource to a task force during the gender study. It may be beneficial to have at least one social scientist as a full member of the task force (see Chapter 2).

Perhaps most important, a competent social scientist can make the task force aware of what issues can and cannot be addressed through empirical research and can show what limitations exist on conclusions that can be drawn from data gathered by the task force. Social scientists can assist in a number of ways: by designing research approaches to help answer the task force's questions; by drafting research instruments (e.g., questionnaires or interview protocols); by training assistants to carry out research methods (e.g., interviews, observational

studies); and by analyzing data collected through various methods. Most law professors do not have such knowledge and skills, because their training and research do not require them. Therefore, asking a local law professor to draw up a questionnaire is unwise unless that professor is also a skilled social scientist. Social scientists who are professors are likely to have a number of students working with them who also may be able to assist with the task-force studies.

The term *social scientist* encompasses a variety of disciplines, including experimental psychology, sociology, political science, economics, and statistics. Different types of expertise will be relevant to different stages of the task-force study. For example, an expert who can advise the task force on drawing samples for survey research may not have any familiarity with conducting focus-group sessions. Similarly, an expert in focus-group methods may not be adept at analyzing large quantitative data sets, and not all social scientists are skilled in quantitative methods. Ideally, the task force will be able to locate one or more social scientists with fairly broad backgrounds (i.e., experienced in a number of the methods the task force will use) to work with the task force from the beginning. As the study moves along, these scientists can identify when other expertise is needed and might be able to suggest colleagues who can assist.

Law Professors

Law professors—particularly those familiar with federal courts and federal substantive law—can be another valuable resource for the circuit task forces. Again, those with experience in gender issues in the courts will probably have the most to offer. Law professors also are likely to have access to students who will be interested in assisting the task force in various ways, and the professors may have access to other resources, such as computerized databases.

Other Personnel

Some task forces have designated "executive directors"—either paid or unpaid—to oversee the administration of task-force activity and coordinate the work of various task-force committees. A few have hired reporters, who play a role similar to that of the reporters for the Civil Justice Reform Act advisory groups. Finally, most task-force work has relied heavily on the services of professional and nonprofessional volunteers.

The Office of General Counsel of the AO can provide assistance and advice regarding procedures to follow and ethical and legal limits involved in securing personal assistance (paid or unpaid) for the task force. For more information on these issues, contact the Office of General Counsel at (202) 273-1100.

Materials and Assistance Available from Various Agencies

Valuable data about the role of gender in the federal circuits are collected routinely by various federal agencies, both within and outside the judicial branch. As noted, most data are not collected specifically to address inquiries about gender, but the information often can be made available to the circuit task forces in a way that enables gender-based analysis. In addition, many agencies produce annual statistical reports, some of which provide a "snapshot" of certain information basic to the task-force inquiries (for example, demographics of court employees). The following section lists some of the major agencies with databases or other resources likely to be of interest to circuit task forces; the section also lists names of contacts at each agency from whom more detailed information can be requested.

None of these agencies is likely to have the time to conduct exhaustive analyses of information in its databases at the request of a task force. If the task force will be able to conduct analyses on its own, agencies may be more willing to provide requested data or materials. Alternatively, an agency may be willing to perform the analyses if the task force presents it with a well thought-out set of specific questions rather than an all-inclusive "grab bag" of issues on which it wants to obtain data. In general, preferred methods of providing data will vary with the agency involved and the nature of the task force's request.

Courts and Judicial Branch Agencies

Administrative Office of the U.S. Courts

The Administrative Office of the U.S. Courts routinely collects information from the courts about specific types of cases, court personnel, juries, and other topics, for the most part in response to specific statutory mandates in its organic statute[35] that may be related to the task-force inquiry. The AO enters most of this information into large computerized databases from which it generates various statistical reports. The AO publishes an annual report with summary tables providing information about caseload distributions, trials, jury activity, probation and pretrial services, Criminal Justice Act appointments, and many other issues. As mentioned in Chapter 7, these databases and statistical reports typically do not contain specific information about gender of parties, attorneys, or jurors, but might nonetheless be relevant to the task force's inquiry. Courts can obtain copies of the AO's annual statistical report by calling Patricia Richards, Statistics Division, Administrative Office of the U.S. Courts, at (202) 273-2240.

In addition to maintaining many centralized databases, the AO supports a number of database products used by the courts, including electronic-docketing systems. These products would allow the task force to generate reports and statistical information specific to a particular court (see below for more detail).

35. *See, e.g.*, 28 U.S.C. §§ 604(a)(2), (3), (13), (24).

The following describes briefly the types of information available in various databases maintained or supported by the AO.

AO Statistics Division

The Statistics Division of the AO maintains several databases and provides most of the statistical information in the AO's annual reports. In addition, this office responds to ad hoc requests from the courts for particular statistical reports. For more information, contact Steven Schlesinger, chief, Statistics Division, at (202) 273-2240.

Case Information. AO databases contain information from forms submitted by the courts about civil, criminal, appellate, and bankruptcy cases. These forms are generally available in court clerks' offices and can be reviewed by the task force to determine if the AO databases corresponding to the forms will contain information of interest to the task force.

Jury Information. Courts submit JS-11 forms to the AO—these forms contain information about jury selection and jury trials. A JS-11 form reports by month the number of jurors present for voir dire, the number selected and challenged, the total number of trials for which juries were selected, and other relevant information; data about gender and race of potential jurors, however, are not collected. For grand jurors, the JS-11G form reports monthly grand jury activity for each court. In addition, courts complete a JS-12 form when a jury wheel is refilled—the JS-12 includes information about race and gender of those in the jury wheel; this information is not reported to the AO, but is maintained by the district courts.

Many other types of court workload information are collected routinely by the AO and compiled in computerized databases. The Statistics Division can provide further details about information in which the task forces might be interested.

Equal Employment Opportunity and Special Projects Office

The Equal Employment Opportunity and Special Projects Office of the AO produces an annual report that includes the following: a description, by job category, race/national origin, sex, and handicapped status, of all permanent federal court employees; statistics on promotions, appointments, and interviewees; and allegations contained in discrimination and reprisal complaints filed during the year. Separate tables containing data on judges and magistrate judges are also included in the report. As with many other AO reports, this report is compiled from information submitted by the courts electronically or in hard copy.

In response to the anticipated needs of circuits' gender and diversity task forces, the EEO Office also has changed its reporting form to collect cross-tabulated information about the race and gender of court employees. For more infor-

mation, contact Maurice White, chief, EEO and Special Projects Office, Administrative Office of the U.S. Courts, at (202) 273-1260.

Court Databases Supported by the AO

Task forces should not overlook databases maintained at the courts to docket cases and generate reports. These include the Integrated Case Management System (ICMS) for civil, criminal, bankruptcy, and appellate cases. Although some aspects of the ICMS are standardized, each court has the ability to customize (to some extent) how various items are docketed, and therefore it is important for the task force to be aware of the features unique to the system of each court from which it wants to gather data.

Not all of these systems are available in all courts, so the task force should check with the clerks of court or systems managers to determine what capabilities are available in each court. The systems manager will also be able to describe how the systems have been customized for a particular court. Where available, these systems provide an excellent local resource for questions regarding case-management practices or caseload distributions.

ICMS CIVIL replaces manual civil docketing in the district courts and is used by more than 90% of the district courts. This system has functions other than docketing, such as creating customized reports, providing information in response to individual queries, and compiling judicial statistics.

ICMS CRIMINAL is used by more than two-thirds of all district courts and replaces manual criminal docketing in those courts. It shares many features with the ICMS CIVIL system.

The ICMS Appellate Information Management System (AIMS) is installed in ten of the twelve appellate courts.[36] It is a full electronic-docketing system and includes report-generation capabilities. It also is used to provide judicial statistics to the AO and for local court use.

There are two automation systems being used in the bankruptcy courts. More than three-quarters of all bankruptcy courts use the ICMS Bankruptcy Court Automation Project (BANCAP). The remainder use the National Interim Bankruptcy System (NIBS). Both systems provide, among other things, electronic statistical reporting, reports and summary information, and professional fee reporting.

The Probation and Pretrial Services Automated Case Tracking System (PACTS) provides a number of case-management functions at the district-court level as well as an important on-line query capability. PACTS has proven useful as a means to locate case files and generate reports. A significant advantage of PACTS is its compatibility with established court-automation programs, which include case-management, financial, and fine-collection systems.

36. The Fifth Circuit will begin using AIMS in 1995. The Eleventh Circuit has a separate electronic-docketing system that has capabilities similar to those of AIMS.

The Federal Judicial Center

While the AO routinely collects data from the courts, the Federal Judicial Center (FJC) does not. However, Center research projects may yield data of interest to task forces. For example, in an effort to develop a risk-prediction device to help probation officers determine the level of supervision needed by different types of offenders, the Center gathered information on the experiences of approximately 3,700 offenders. Among other outcomes, the analysis will produce either (1) a risk-of-recidivism-prediction device that has been developed and tested for gender, racial, and ethnic differences, or (2) separate recidivism-prediction devices for each of these population subgroups should their recidivism patterns not match those of the overall offender population. Similarly, as part of a research project conducted at the request of the National Commission on Judicial Discipline and Removal, the Center reviewed and summarized files in cases that alleged judicial misconduct involving race or gender bias.

For a list of FJC publications, including research reports, contact the Information Services Office, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003, or call (202) 273-4153.

FJC research staff also have a good deal of experience with many of the study methods task forces are likely to use, including mail questionnaires, interviews, and analyses of existing records and databases. Members of the research staff will be available as time permits to consult with task forces on an ad hoc basis (e.g., to review drafts of questionnaires or interview protocols, to provide specific advice on statistical analysis and reporting, and to explain limitations on databases with which we are familiar). The FJC also maintains a longitudinal database of the basic civil, criminal, and appellate data collected by the Statistics Division of the Administrative Office (see *supra* page 96). The structure of this database allows quick analyses of data from several years. Staff of the Research Division may be able to perform limited queries from these data for the task forces. For more about information and services available from the Research Division, contact Molly Johnson at (202) 273-4086.

In addition to research projects, the FJC sponsors many educational programs for judges and court staff on gender and diversity issues. For information about the FJC's activities in these areas, contact the Judicial Education Division at (202) 273-4052 or the Court Education Division at (202) 273-4110.

U.S. Sentencing Commission

The effect of gender on sentencing has been examined by a number of entities, including some task forces as well as the U.S. Sentencing Commission. The U.S. Sentencing Commission maintains a database with extensive information about defendants sentenced (for other than petty offenses) under the Sentencing Re-

form Act of 1984.[37] The commission also conducts research projects focused on specific issues and produces a brochure describing the data sets and reports available from various projects.

In its annual report, the commission sets forth a table showing the age, race, and gender of defendants sentenced that year under the guidelines, as well as separate tables showing the age, race, and gender of defendants sentenced for each primary offense category. Finally, the report displays tables for each judicial district showing demographic information (including race and gender) for all defendants sentenced within that district.

The Sentencing Commission is willing to make portions of its database available, with appropriate documentation, to task forces interested in conducting their own analyses of gender-related sentencing issues. For more information about help available from the Sentencing Commission, contact Susan Katzenelson, Director of Policy Analysis, United States Sentencing Commission, at (202) 273-4530.

Individual Courts

The task force should also be aware that many records and databases that may be useful to the task-force inquiry are maintained by individual courts. Clerks of court and systems managers in each court should be able to describe the databases in use in their courts.

Executive Branch Agencies and Private Institutions

In addition to courts and judicial branch agencies, a number of government and private institutions, including agencies within the Department of Justice, the Department of Commerce, and the Department of Health and Human Services, collect information that may be of use to the task forces. The following is a brief, nonexhaustive list of government agencies that may have relevant information, the type of data they are likely to have, and contacts. This list was compiled from information provided by the agencies, information in the Statistical Abstract of the United States, copies of reports produced by these agencies, and from a book on information and data available to policy makers.[38]

Department of Justice

Federal Bureau of Prisons

The Federal Bureau of Prisons (BOP) produces an annual report, *The State of the Bureau,* that summarizes the bureau's operations and the prison population for a given year. The report contains statistical tables describing staff and prison

37. Information on defendants sentenced prior to the Sentencing Reform Act of 1984 is contained in a database maintained by the Administrative Office of the U.S. Courts.

38. David C. Hoaglin et al., Data for Decisions: Information Strategies for Policymakers (1982).

inmate characteristics. Task forces may be interested as well in BOP's annual statistical report, which provides more detailed statistical information about prison inmates and BOP staff.

BOP also issues program statements and operations memoranda that describe the BOP's procedures, programs, and policies, including those related to gender studies. Researchers from other federal gender task forces have found it useful to review these documents prior to developing research projects that address prisoner issues. Task forces conducting research in the BOP must comply with the research program statement issued by the bureau and are asked to coordinate their research efforts through the agency's Office of Research and Evaluation. Staff members in this office are experts in criminal-justice research and can help task forces determine approaches for studying gender in the BOP.

Finally, BOP's inmate database (SENTRY) contains a wealth of information on inmate characteristics, including demographics and offense information. The staff of the Office of Research and Evaluation will work with task forces to customize statistical analyses from this database to address task-force needs.

For more about information and research assistance from the Bureau of Prisons, contact Sue Kline, Office of Research and Evaluation, at (202) 724-3121, or Dr. Joyce Conley, deputy chief, Psychology Services, at (202) 633-2214.

U.S. Marshals Service

The duties of the U.S. Marshals Service include providing judicial and witness security, service of judicial process, seizing and disposing of assets used in or obtained as a result of criminal activities, apprehending federal fugitives, detaining federal offenders held by order of the court prior to trial, and transporting both pretrial offenders and sentenced prisoners in cooperation with the Bureau of Prisons. While the Marshals Service collects some data about individuals within its custody, the data are not easily accessible. However, representatives are willing to discuss with the circuit task forces how they might be of help. For more information, contact Kristine M. Marcy, U.S. Marshals Service, associate director for operations support, 600 Army-Navy Drive, Suite 1200, Arlington, VA, 22202. (202) 307-9740.

Office of Justice Programs/National Criminal Justice Reference Service

Information: Distributes publications and serves as a clearinghouse for national criminal justice publications or research; most publications from divisions within the Office of Justice Programs are available free of charge.

Contact: National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, MD 20850. Telephone: Bureau of Justice Assistance: 1-800-688-4252; Bureau of Justice Statistics: 1-800-732-3277; National Victims' Resource Center: 1-800-627-6872; National Institute of Justice: (301) 251-5500; Office of Juvenile Justice and Delinquency Prevention: 1-800-638-8736.

The National Criminal Justice Research Service document database, which catalogs the largest criminal justice collection in the country, is also available on-line through DIALOG, an international on-line retrieval service.

Immigration and Naturalization Service (INS)

Information: Data and publications about immigrants, naturalization rates, and other information relating to immigration. Contact: Immigration and Naturalization Service, Statistics Division/COSTA, 425 I Street, N.W., Room 235, Tariff Building, Washington, DC 20536.

Department of Commerce

Bureau of the Census

Information: Detailed statistics on population characteristics. Contact: Customer Services Branch, Data User Services Division, Bureau of the Census, U.S. Department of Commerce, Washington, DC 20233. (301) 763-4100.

Bureau of Economic Analysis

Information: Economic statistics, including regional economics. Contact: Current Business Analysis Division, BE-53, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. (202) 606-9900.

Department of Health and Human Services

Social Security Administration

Information: Conducts research and gathers data on Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs and the populations served or potentially served by these programs. Contact: Publications Staff, Office of Research and Statistics, Social Security Administration, VanNess Centre, 4301 Connecticut Ave., N.W., Room 209, Washington, DC 20008.

Department of Labor

Bureau of Labor Statistics

Information: Data about labor economics, mostly gathered from surveys of households or businesses. Contact: Office of Publications and Information Services, Bureau of Labor Statistics, U.S. Department of Labor, 441 G Street, N.W., Room 2831A, Washington, DC 20212.

Inter-University Consortium for Political and Social Research

The Inter-University Consortium for Political and Social Research (ICPSR) provides a central repository and dissemination service for general databases as well

as data sets from specific social-science research projects, including some from the Census Bureau, Bureau of Justice Statistics, U.S. Sentencing Commission, Federal Judicial Center, and other relevant agencies. Membership to the consortium is open to institutions (e.g., universities), and it is likely that social-science or law professors working with the task force will be affiliated with institutions that belong to the consortium. If the task force has access to the data available through the consortium, to the requisite database expertise, and to the statistical expertise, it may be able to conduct analyses of database information directly, rather than contacting the individual agencies for assistance. The task force will first need to determine whether a consortium membership can appropriately be used for the work of the task force or if special arrangements will need to be made.

For further information about the consortium, contact: Inter-University Consortium for Political and Social Research, The University of Michigan Institute for Social Research, P.O. Box 1248, Ann Arbor, MI 48106. (313) 764-8392.

IV

Recommendations and Implementation

Chapter 13—Formulating Recommendations and Writing the Report

After the task force and its committees or working groups have analyzed and drawn conclusions from their research inquiries, they will still have a good deal of work to do. In particular, they will need to (1) formulate recommendations to address any problems identified in the study that are appropriate for treatment by the body to which they report; (2) write and disseminate a report describing their areas of inquiry, research methods, and recommendations; and (3) establish mechanisms to track whether their recommendations are carried out and to monitor their effectiveness. This chapter provides suggestions for formulating recommendations and writing the report; Chapter 14 discusses the important issues of implementing changes and monitoring their effectiveness.[39]

Formulating Recommendations

The process of formulating recommendations should begin with the committees or working groups most familiar with their individual topics. The task force should review proposed recommendations to ensure that they are carefully thought out, based on the findings, realistic, and can be implemented by the body to which the task force reports.[40] In addition, the task force can formulate overarching recommendations that address problems identified through more than one inquiry.

Task forces have recommended a variety of ways to address problems identified through their studies, including the following: educational programs; revised personnel policy statements; establishment of ongoing data-collection procedures to obtain information about gender, race, and other aspects of diversity as they relate to the courts; legislation; revision of court forms and manuals; sanctions and codes of ethics; and other administrative modifications in the circuit (e.g., establishment of a committee to monitor progress, or adoption of procedures for handling complaints relating to gender-based misconduct). Reviewing recommendations from other gender task forces (state and federal) can help generate ideas about concrete steps the task force can take to address any problems identified.

39. For a detailed discussion of these points, see Schafran & Wikler, *supra* note 9; and Edna Wells Handy et al., Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts 51–61 (The National Center for State Courts 1993).

40. Some task forces have also issued recommendations for the consideration of entities other than their oversight bodies.

Writing and Disseminating Reports

Planning for Dissemination

At the inception of its work, the task force should begin formulating plans for disseminating its reports. The task force should identify the audiences who will be interested in and affected by the task-force findings, set up a schedule for circulating drafts among committee and task-force members, and consider whether a preliminary report or other communications to those outside the task force will be appropriate. For example, a task force may want to consider establishing communication links with certain groups (e.g., federal judges in all of the circuit's courts, court personnel, committees of the court, lay users of the court, bar associations, law schools, the public, and the media). In order to discuss preliminary findings and generate recommendations during the course of its inquiry, a task force can distribute materials to these individuals and organizations through interim reports, memoranda, circuit newsletters, and oral presentations.

To budget adequately for production of the final report, a task force should at the beginning of the project consider who should receive copies of its report. At a minimum, task-force reports should be given to all members of the administrative body to which the task force is reporting, all judges and clerk's offices in the circuit, all court and law school libraries within the circuit, lawyer representatives to the circuit judicial conference, and the circuit executive. In addition, to share results outside the circuit, copies can be sent to the chief judge of each circuit, the circuit executive of each circuit, all circuit libraries, the Federal Judicial Center, the Administrative Office of the U.S. Courts, major bar associations, and major law school libraries.

There are many other individuals or organizations with whom a task force will want to share its final report. Because printing these reports can be very expensive, particularly if they include detailed appendices, the task force should explore whether a law review might publish the report or whether it can be published in any other type of reporting service. The Ninth Circuit, for example, printed 1,500 copies of its final report, all of which were gone within five months. However, that report was reprinted in the *University of Southern California Law Review*.

Keep in mind that both printing a report and submitting it for publication take considerable lead time. Thus, in addition to estimating the number of copies it will need, the task force should also explore the time and format requirements for printing or publishing the report.

Writing Reports

The task force is responsible for coordinating and reviewing any subcommittee or working-group reports and preparing a final report. The task force may find it useful to begin thinking from the beginning of the inquiry about how to com-

plete these tasks. Planning ahead will give the task force room to adapt to new situations as the inquiry evolves and expands. Some of the decisions the task force needs to make about report writing include the following:

- who will write the final report;
- the format and editing style for committee reports;
- the schedule for submission of reports; and
- the standards of review for committee reports to evaluate how accurately data are analyzed and presented to the reader.[41]

Making these decisions will lead to standardized committee reports and facilitate writing the final report. If the task force decides that a staff member, social scientist, or other advisor should write the final document, it should consider including this item in its budget, unless the individual is already employed by the task force or is willing to write the report without compensation. Whoever will write the final report should be involved in the task-force process as early as possible. It is important that the report be written by a single author, rather than simply combining various subreports into one document.

Overseeing the Report-Writing Process

There are various ways to oversee the report-writing process. Some task forces may decide that committee or working-group heads can oversee report writing for their respective groups. Others may want to designate a task-force member or staff person to be a report coordinator for the entire task force. The report coordinator can monitor submission of committee reports, answer questions, and act as a "clearinghouse" for the ongoing report-writing process. Another approach is that taken by the Utah Task Force, which divided into five subcommittees and had four of the subcommittees each write a chapter on a substantive topic with the fifth subcommittee serving as a review committee.[42] Committees or working groups should be encouraged to share working drafts throughout the project with those overseeing the report-writing process. Reviewing these drafts will help reveal any weaknesses in the data, keep committee members informed of new findings, promote an exchange of views, and facilitate consensus on final committee reports.[43]

Types of Reports

In addition to the final task-force report, some task forces may choose to issue a preliminary or interim report during the task-force's inquiry. An interim report

41. Schafran & Wikler, *supra* note 9, at 46 (They suggest asking the following sorts of questions: "Does each report fully and fairly convey the data and the spectrum of views collected by the task force? Are the findings warranted? Is anything omitted? ").

42. Utah Task Force on Gender and Justice, Report to the Utah Judicial Council 8 (1990).

43. See Schafran & Wikler, *supra* note 9, at 46–47 for discussion of avoiding dissent or minority reports; Handy et al., *supra* note 39.

typically includes a statement of the task-force objectives, describes the task-force composition and research plan, and presents preliminary findings and future research plans. In addition, the task force may want to suggest possible recommendations for discussion. An interim report can be a good way to provide a large number of individuals with information about the task force's preliminary findings, stimulate discussion, and obtain feedback.

Both the Ninth and D.C. Circuits had task-force preliminary reports provided at their circuit judicial conferences. These conferences included sessions addressing the materials collected and discussing their import. Given that circuits and many districts routinely hold judicial conferences (either annually or biannually), such conferences may be well suited to dissemination of preliminary or final reports. After the task force has issued its report, circuit judicial conferences might also provide opportunities to consider implementation efforts and follow-up studies.

In deciding whether to produce an interim report, the task force should consider the following issues:

- Are the time, personnel, and funds available to produce both an interim and final report?
- Is an interim report the best way to communicate findings and stimulate discussion? How is information usually communicated within the circuit? Is there a circuit newsletter? Can the task force make a special committee report at the annual circuit conference?
- What kinds of preliminary information are available? In what shape are the data?

Whether a public interim report is issued, the task force may choose to submit periodic progress reports to the circuit judicial council or other administrative body that appointed the task force, to advise them of the status of the project and initiate an ongoing conversation to resolve emerging issues.

The task force may choose to ask its committees or working groups to produce companion reports or working papers on the issues they are studying. For example, the Ninth Circuit Task Force commissioned working papers on several issues, including procedures for selecting magistrate judges in the circuit and the demographics of special master appointments.[44] These reports can be drawn on when writing the final report and are useful for presenting detailed findings on a particular issue. The task force may choose to make the companion reports available to the public upon request.

44. For a list of these working papers, see the bibliography at the end of this guide.

Writing the Final Report

A final report is a comprehensive statement describing the task force's project, its findings, and its recommendations. A final report typically includes some variation of the following sections:

- introduction;
- description of data-collection procedures;
- findings;
- conclusions and recommendations; and
- appendices.

The introduction is an important part of the document because it provides the context for understanding the purpose and work of the task force. The more comprehensive the introduction, the better its readers will appreciate the task force's work. An introduction often includes the following: a statement of the mandate given to the task force; a list of the task force's objectives; the reasons or rationale for each inquiry; a brief history of the project; and an overview of the report.

The presentation of findings is the most important part of the report because the findings form the basis for the task force's recommendations. Findings can be organized by topic or theme, where each subsection is devoted to a different topic or research objective. Each topical subsection might include, for example, the following elements: an introduction stating the research objective and reiterating its relationship to gender issues in the court and legal community; an overview summarizing the main findings on that topic; presentation of data on that topic in tables, charts, graphs, or illustrative quotations; a discussion of each finding; and a conclusion.[45]

The task force should describe each data-collection method used in the inquiry in as much detail as possible. Include the subjects addressed by each method, how the data were collected, and constraints within which the task force and social scientists worked. For example, the California Task Force summarized its use of the survey method by presenting a general description of its survey instrument, its sampling procedure, response rate, and nature of findings.[46] The data-collection instruments used by the task force, such as questionnaires or interview protocols, are normally reproduced in an appendix.

The task force should pay close attention to the section on conclusions and recommendations because many readers will turn to that section first and may read only it.[47] The conclusion generally restates the task-force objectives and sets forth the main conclusions to be drawn from the findings on each topic ad-

45. *See, e.g.*, Ninth Circuit, The Effects of Gender, *supra* note 8, at 9–22.

46. Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts, 1990, § 3, at 4–8.

47. It is convenient to incorporate the conclusion and recommendations into the same chapter or section to illustrate the clear connection between the findings and proposals for change.

dressed by the task force. In the conclusion, a task force may consider discussing its accomplishments, the limitations of the report, a comparison between its findings and those of other gender task forces, and future topics of inquiry. Stating what the task force was not able to accomplish is important because it may help other circuit bodies, and it delineates the current knowledge base about the gender issues studied by the task force.

A task force may choose to discuss each recommendation in detail, laying out for its readers the rationale behind the recommendation. If this is done, it is useful to conclude the section with a summary of the recommendations.

Finally, the report should be accompanied by appendices to provide more detailed information for readers. Appendices should include, for example, a description of the data-collection instruments and research procedures (see Chapter 11) and a bibliography. In addition, appendices could also include working papers; resolutions relating to gender; and examples of guidelines, policies, canons of ethics, or any other materials that the task force believes inform the reader of its activities and conclusions. The more documentation the final report contains, the more credible it will be and the more useful it will be as an educational tool for the court, legal community, and public.

Several task forces have produced a summary report or executive summary to be released simultaneously with the final report. An executive summary is a short document, typically twenty-five to thirty pages, that communicates to as many people as possible a succinct statement of the task force's findings, conclusions, and recommendations. Many people who will not have the time or patience to read the full report will read an executive summary. Typically, its contents will parallel the final report. It can be included with the final report (as an accompanying document or in a section at the front of the report) or published separately. Keep in mind that law reviews may be a venue for publication of the executive summary or the final report.[48]

48. For example, the Executive Summary of the Ninth Circuit Task Force's preliminary report was published in 45 Stan. L. Rev. 2143 (1993). The final report was published in 67 S. Cal. L. Rev. 745 (1994).

For Further Reference

Edna Wells Handy et al., National Center for State Courts, Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts (Marilyn McCoy Roberts ed., 1993) (available from the National Center for State Courts, 300 Newport Ave., Williamsburg, VA 23187-8798. (804) 253-2000).

National Center for State Courts, Proceedings of the National Conference on Gender Bias in the Courts (Dixie K. Knoebel & Marilyn McCoy Roberts eds., 1990) (available from the National Center for State Courts, 300 Newport Ave., Williamsburg, VA 23187-8798. (804) 253-2000).

Ninth Circuit Gender Bias Task Force, *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force,* 67 S. Cal. L. Rev. 745 (1994).

Lynn Hecht Schafran & Norma Juliet Wikler, The Foundation for Women Judges, Operating a Task Force on Gender Bias in the Courts: A Manual for Action (1986) (available from the Women Judges' Fund for Justice, 733 15th St., N.W., Suite 700, Washington, DC 20005).

Norma Juliet Wikler & Lynn Hecht Schafran, Women's Judges' Fund for Justice, Learning from the New Jersey Supreme Court Task Force on Women in the Courts (1989) (available from the Women Judges' Fund for Justice, 733 15th St., N.W., Suite 700, Washington, DC 20005).

Chapter 14—Implementing Recommendations and Monitoring Changes

The task force should try to work with its appointing authority from its inception to develop a comprehensive plan to implement recommendations and monitor changes. For example, the Minnesota Supreme Court Task Force for Gender Fairness in the Courts established an implementation committee one year before issuing its report so that there would be a seamless transition from presenting its report to taking action on it. In New Jersey, the task force itself continued to implement recommendations for several years, at which point the chief justice established a standing committee of the Supreme Court to continue implementation. After the Ninth Circuit task force report was issued, Chief Judge Wallace appointed a four-person Ad Hoc Committee on Implementation of Gender Fairness to advise staff on proposals to implement the recommendations of the Ninth Circuit Gender Bias Task Force.

The task force should also think long range about monitoring and evaluating to learn whether it has effected the improvements it recommended. *Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts,* by Lynn Hecht Schafran,[49] explains how task forces can gather information throughout the study, information that will facilitate evaluation. Many of the research approaches discussed in this guide will also be useful for ongoing evaluation of the implementation efforts recommended or undertaken by the task force.

49. Lynn Hecht Schafran, Women Judges' Fund for Justice, Planning for Evaluation: Guidelines for Task Forces on Gender Bias in the Courts (1989).

Appendix A—Summaries of Gender Task Force Reports

In this appendix, we provide summaries of final published reports from state and federal gender task forces. The summaries include a description of the issues addressed and the research approaches used by each task force. In addition, we include information about obtaining copies of the reports.

For more information about state task forces on gender in the courts, contact the National Center for State Courts, Information Services Office, 300 Newport Ave., Williamsburg, VA 23187-8798. (804) 253-2000.

California

Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts (1990).

Areas Covered

- Civil Litigation and Courtroom Demeanor
- Family Law
- Domestic Violence
- Juvenile and Criminal Law
- Court Administration

Research Approaches and Sources of Data

- Questionnaires
  - judges
  - court clerks
- Regional Bar Meetings (confidential meetings with attorneys)
- Public Hearings
- Site Visits to Two Jail Facilities
- Focus Groups
  - judges
  - civil litigators
  - family attorneys
  - minority attorneys
- Information Gathering Meetings with Domestic Violence Advocates
- Meetings with Court Clerks
- Review of Reports Submitted by Affiliates of California Women Lawyers on:
  - domestic violence diversion
  - attorneys' fees in family law matters
  - alternative sentencing and dispositional programs in criminal and juvenile law
  - appointment of counsel in juvenile and criminal matters
- Review of Literature
- Case Law Searches and Analysis
- Comments Submitted to the *California Lawyer*
- Follow-up Telephone Interviews with Participants in Focus Groups and Public Hearings
- Survey of Court Employment Practices

For a copy of the report, contact: Bobbie L. Welling, Esq., Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107. (415) 396-9139.

Colorado

Colorado Supreme Court Task Force on Women in the Courts, Gender and Justice in the Colorado Courts (1990).

Areas Covered

- Economic Consequences of Divorce
- Domestic Relations
- Child Custody and Visitation
- Child Support
- Domestic Violence
- Criminal Justice
- Civil Justice
- Courtroom Environment
- Court Administration

Research Approaches and Sources of Data

- Public Hearings
- Listening Sessions (accompanied the public hearing; confidentiality assured and testimony was not transcribed)
- Meetings with Attorneys
- Mail Questionnaires
  - all registered attorneys
  - judges and referees
  - court employees
- Court Watching
- Analysis of Court Records (concerning child custody and divorce cases)
- Telephone Calls and Letters Received by Task Force

For a copy of the report, contact: Virginia Leavitt, Office of the State Court Administrator, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203-2416. (303) 837-3658.

Connecticut

Gender, Justice and the Courts: Report of the Connecticut Task Force (1991).

Areas Covered

- Women in the Courts (attorneys, judges, litigants, witnesses, jurors, em - ployees)
  - gender-biased language in the courts and on court forms
  - interactions
  - appointments to prestigious and fee-generating positions
- Women and Children in the Criminal Justice System
- Sentencing
- Sexual Assault
- Family Law
- Domestic Violence
- Court Administration
- Probate Court

Research Approaches and Sources of Data

- Review of Literature and Other States' Reports
- Questionnaires
  - judges
  - attorneys (public and private)
  - court employees
- Public Hearings
- Meetings with Women Attorneys
- Analyses of Court Data

For a copy of the report, contact: Judge Francis X. Hennessy or Marjorie M. Wilber, Legal Services Unit, Judicial Branch, 231 Capitol Ave., Hartford, CT 06106. (203) 566-7483.

District of Columbia

District of Columbia Courts, Final Report of the Task Force on Racial and Ethnic Bias and Task Force on Gender Bias in the Courts (May 1992).

Areas Covered

- Court Administration (including court employment)
- Treatment of Participants in the Court System
- Civil and Criminal Law
- Family Law

Research Approaches and Sources of Data

- Questionnaires
  - court employees
  - judicial officers
  - jurors
- Statistical Analyses
  - sentences
  - damage awards in personal injury cases
  - respondents in disciplinary actions
  - requests for and issuance of civil protection orders
  - appointments made under the Criminal Justice Act
- Focus Groups (with attorneys from various legal specialties)
  - employment law
  - child abuse and neglect
  - personal injury
  - criminal law
  - intrafamily disputes
- Conferences and Workshops to Receive Public Input and Recommendations
- Individual Interviews and Meetings with Leaders of Minority Bar Associations

For a copy of the report, contact: Chief Judge Annice M. Wagner, District of Columbia Court of Appeals, 500 Indiana Ave., N.W., Washington, DC 20001. (202) 879-2700.

Florida

Report of the Florida Supreme Court Gender Bias Study Commission (1990).

Areas Covered

- Gender Bias in the Dissolution of Marriage, Custody, and Child Support
- Gender Bias in the Criminal Justice System
- Gender Bias in the Legal Profession

Research Approaches and Sources of Data

- Public Hearings
- Regional Meetings (informal roundtable discussions by attorneys and other professionals)
- Questionnaires
  - attorneys (several subgroups)
  - judges
  - law students
- Interviews
  - representatives of fathers' rights groups
  - representatives of women's rights groups
  - representatives of sexual and domestic abuse treatment programs
  - judges
  - attorneys
  - law enforcement personnel
  - correctional officers
  - rehabilitation and drug counselors
  - social workers
  - medical personnel
  - prostitutes
- Analyses of Existing Data
- Analysis of Reported Decisions
- Review of Scholarly Publications and Unpublished Legal Research
- Review of Statements and Reports Submitted to the Commission

For a copy of the report, contact: Ken Palmer, State Court Administrator, Supreme Court Building, Tallahassee, FL 32399-1900. The report was published in 42 Fla. L. Rev. 803 (1990).

Georgia

Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Justice System (1991).

Areas Covered

- Domestic Violence Involving Adults
- Sexual Offenses
- Adult Sentencing
- Juvenile Justice System
- Child Custody
- Visitation
- Child Support
- Alimony & Equitable Distribution of Property
- Treatment of Attorneys, Litigants, and Witnesses in the Courtroom
- Treatment of Court Employees
- Formal Language in the Courts
- Judicial Ethics and Discipline
- Judicial Selection
- Court Facilities

Research Approaches and Sources of Data

- Review of Existing Data and Statistics
- Questionnaires
  - court employees
  - attorneys
  - judges
- Public Hearings
- Confidential Hearings (in conjunction with public hearings)
- Review of Judicial Selection and Appointment Process
- Review of Court Forms and Documents for Gender-Biased Language
- Review of Numerous Studies, Books, and Articles
- Review of Statutory and Case Law
- Interviews with Female Inmates
- Review of Reports and Letters Submitted to the Commission
- Court-Watching Project

For a copy of the report: The report was reprinted in 8 Ga. St. U. L. Rev. 539 (1992). Also available from: Marla S. Moore, Judicial Liaison Officer, Administrative Office of the Courts, 244 Washington Street, S.W., Suite 550, Atlanta, GA 30334-5900. (404) 656-5171.

Hawaii

Achieving Gender Fairness: Designing a Plan to Address Gender Bias in Hawaii's Legal System (Report of the Ad Hoc Committee on Gender Bias) (1989).

Areas Covered

- Courtroom Interaction
- Judicial Decision Making

Research Approaches and Sources of Data

- Questionnaire to Attorneys (ad hoc committee modified a questionnaire used by the New York Court of Appeals Task Force on Women in the Courts)

For a copy of the report, contact: L. Dew Kaneshiro, Project Coordinator, Gender and Other Fairness, Office of the Administrative Director of the Courts, P.O. Box 2560, Honolulu, HI 96804.

Idaho

Report of the Fairness and Equality Committee of the Supreme Court of Idaho (1992).

Areas Covered

- Gender Bias in the Court Environment
- Domestic and Family Law
- Domestic Violence
- Women as Victims of Crime
- Women as Criminal Defendants
- The Court System as an Employer

Research Approaches and Sources of Data

- The committee studied and summarized the results of other states' studies, including those of California, Colorado, Florida, Georgia, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Rhode Island, Utah, Washington, and Wisconsin.

For a copy of the report, contact: Justice Linda Copple Trout, Supreme Court of Idaho, P.O. Box 83720, Boise, ID 83720-0101. (208) 334-2207.

Illinois

The 1990 Report of the Illinois Task Force on Gender Bias in the Courts (1990).

Areas Covered

- Domestic Relations
  - property distribution, maintenance, and litigation expenses
  - child support
  - child custody and visitation
  - domestic violence
- Criminal Justice
  - sexual assault
  - domestic violence
  - criminal sentencing
- Civil Damage Awards
- Courtroom Dynamics

Research Approaches and Sources of Data

- Questionnaires
  - state's attorneys and defense attorneys
  - domestic relations litigants
  - judges
  - domestic violence victim advocates
- Public Hearings
- Roundtable Discussions (with attorneys, mediators, judges, and other professionals)
- Interviews
  - pre-divorce financial planners
  - chief of sexual crimes prosecution division in county state attorney's office
  - individuals working with incarcerated women
- Research on the Evolution of Law in Areas of
  - domestic relations
  - criminal law (including sexual assault and domestic violence)
  - civil damage awards
  - courtroom dynamics
- Literature Reviews
- Review of Existing Statistics

For a copy of the report, contact: Janet Paul, Illinois State Bar Association, 424 South Second Street, Springfield, IL 62701. (217) 525-1760.

Iowa

Final Report of the Equality in the Courts Task Force. State of Iowa (February 1993).

Areas Covered

- Appointments, Hiring, and Advancement
- Courtroom and Professional Interactions
- Jury Selection
- Civil Damages
- Domestic Relations
- Domestic Abuse
- Bias in the Criminal System

Research Approaches and Sources of Data

- Questionnaires
  - judges
  - court personnel
  - attorneys
- Telephone Interviews with Members of the General Public
- Public Hearings
- Meetings with Attorneys and Service Workers

For a copy of the report, contact: The Supreme Court of Iowa, Statehouse, Des Moines, IA 50319. (515) 281-5174.

Kansas

Report of the Kansas Bar Association Task Force on the Status of Women in the Profession (1992).

Areas Covered

- General Practice of Law
- Legal Education Setting
- Judicial Conduct

Research Approaches and Sources of Data

- Telephone Interviews with Attorneys
- Follow-up Mail Surveys to Those Who Were Interviewed
- Written Questionnaires to Area Law Students
- Review and Analysis of Other State Task-Force Reports

For a copy of the report, contact: Kansas Bar Association, P.O. Box 1037, Topeka, KS 66601-1037. $15.00 charge.

Kentucky

Kentucky Task Force on Gender Fairness in the Courts: Equal Justice for Women and Men (1992).

Areas Covered

- Gender Bias in the Legal Profession
- Gender Bias in the Courts
- Domestic Relations
- Domestic Violence
- Criminal Justice
- Gender Bias in Damages and Awards

Research Approaches and Sources of Data

- Public Hearings
- Review of Confidential Correspondence
- Questionnaires
  - attorneys
  - judges
- Review of Court Personnel Statistics
- Review of Other State Task-Force Reports
- Analyses of Existing Data
- Meeting with Inmates

For a copy of the report, contact: Ellen Razor, Director of Communications, Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1883.

Louisiana

Louisiana Task Force on Women in the Courts: Final Report (1992).

Areas Covered

- Women as Litigants
  - domestic relations
  - domestic abuse
  - general civil litigation
- Women as Criminal Defendants
- Women as Attorneys and Judges

Research Approaches and Sources of Data

- Public Hearings (members of the public were allowed to testify privately and anonymously)
- Telephone Interviews of Attorneys
- Review of Letters, Statements, and Affidavits Sent to Task Force

For a copy of the report, contact: Paulette H. Holahan, Deputy Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Ave., Rm. 109, New Orleans, LA 70112. (504) 568-5748.

Maryland

Report of the Special Joint Committee on Gender Bias in the Courts (May 1989).

Areas Covered

- Domestic Violence
- Child Custody and Visitation
- Child Support
- Alimony, Property Disposition, and Litigation Expenses in Divorce Cases
- Court Treatment of Personnel
- Judicial Selection
- Women in the Courtroom: Treatment of Women Parties, Witnesses, Jurors, and Lawyers

Research Approaches and Sources of Data

- Questionnaires
  - judges
  - attorneys
  - court personnel
- Public Hearings
- Review of Reports, Statements, and Complaints Submitted to the Committee
- Review of Court Files and Transcripts
- Analysis of Personnel Data
- Other (The committee obtained information from judges and court-appointed masters by having them respond to hypothetical problems about child custody, alimony, sentencing, and jury instructions.)

For a copy of the report, contact: Deborah A. Unitus, Administrative Office of the Courts, The Court of Appeals Building, 361 Rowe Blvd., Annapolis, MD 21401. (410) 974-2475.

Massachusetts

Gender Bias Study of the Court System in Massachusetts. Supreme Judicial Court (1989).

Areas Covered

- Family Law
- Domestic Violence and Sexual Assault
- Criminal and Juvenile Justice
- Civil Damage Awards
- Courthouse Interactions
- Court Personnel

Research Approaches and Sources of Data

- Analysis of Court Records (re: court employment and appointments; equitable distribution in divorce cases; abuse prevention)
- Questionnaires
  - attorneys (general and specialized)
  - jurors
  - court employees
  - judges
  - parties
  - witnesses
  - members of the public
- Individual/Group Interviews
  - listening sessions with attorneys
  - regional meetings of court employees
  - interviews with divorcing couples
  - interviews with family-law attorneys
  - interviews with family-service officers
  - meetings with litigants
  - group interview with sexual assault victims
  - interviews on sexual assault (judges, assistant district attorneys, members of advocacy and service groups)
  - public hearings
  - focus groups with personal-injury attorneys
- Other (experiment using videotapes of hypothetical trials to determine influence of plaintiff's gender on juror-damage awards)

For a copy of the report, contact: Justice Ruth Abrams, Supreme Judicial Court, 1300 Courthouse, Boston, MA 02108. (617) 725-8010.

Michigan

Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts (1989).

Areas Covered

- Courts' Response to Violence Against Women
- Domestic Relations
- Gender Bias Within the Court Environment
  - treatment of women litigants and witnesses
  - treatment of women attorneys
  - treatment of women judges
  - the judge's role in courtroom control
  - case assignments and appointments of women in criminal matters
  - mediation
  - treatment of court personnel
- Status of Women in the Profession
  - professional associations
  - employment issues for women lawyers
  - law schools

Research Approaches and Sources of Data

- Public Hearings
- Review of Case Transcripts
- Review of Judicial Opinions
- Data Concerning Court Demographics
- Court Employment Questionnaire
- Questionnaires
  - court users
  - judges
  - attorneys
- Telephone Interviews with Litigants and Court Users
- Review of Scholarly Research (published and unpublished)
- Presentations by Scholars and Experts in Various Fields

For a copy of the report, contact: Michigan Office of Court Administration, Department of Management and Budget, Office Services Division, Publications Section, 2461 Crowner Drive, Lansing, MI 48913. $7.00 charge.

Minnesota

Minnesota Supreme Court Task Force for Gender Fairness in the Courts: Final Report (1989).

Areas Covered

- Family Law
  - spousal maintenance
  - property division
  - child support
  - child custody
  - access to the courts
- Domestic Violence
  - context of the problem
  - the civil process: orders for protection
  - criminal enforcement: dismissals
- Criminal and Civil Justice
  - sexual assault
  - sentencing adult felons
  - juvenile justice
  - civil-damage awards
  - gender-based employment discrimination
- Courtroom Environment
  - the courtroom environment for female litigants, witnesses, and attorneys
  - women judges
  - gender fairness in court documents
  - the court as employer
  - sexual harassment

Research Approaches and Sources of Data

- Public Hearings
- Lawyers' Meetings
- Meeting with Women Judges
- Questionnaires
  - attorneys
  - judges
  - in-court personnel
  - court administrators
- Review of Written Comments
- Review of Reports and Research Results Submitted to Committee
- Analyses of Existing Statistical Data

- Interviews with Practicing Attorneys
- Literature Reviews
- Review of Court Rules, Forms, and Brochures for Gender-Biased Language

For a copy of the report: The report is reprinted in 15 Wm. Mitchell L. Rev. 827 (1989).

Missouri

Report of the Missouri Task Force on Gender and Justice (1993).

Areas Covered

- Domestic Violence
- Family Law
- Criminal Justice
- Treatment of Jurors, Litigants, Witnesses, Attorneys, and Judges in the Courtroom
- Treatment of Court Personnel
- Judicial Selection

Research Approaches and Sources of Data

- Public Hearings
- Questionnaires
  - attorneys
  - judges
  - court personnel
- Inquiry to Presiding Judges on Rules and Policies
- Judicial Nominating Commission Questionnaire

For a copy of the report, contact: The Missouri Bar Center, 326 Monroe Street, P.O. Box 119, Jefferson City, MO 65102. (314) 635-4128.

Nevada

Justice for Women: First Report of the Nevada Supreme Court Task Force on Gender Bias in the Courts (1988).

Areas Covered

- Justice for Women in Divorce Cases
  - spousal support
  - property division
  - child custody
  - child-support awards and enforcement
- Justice in Protection of Women Victims of Domestic Violence
- Just Treatment of Women Participants in the Legal System

Research Approaches and Sources of Data

- Review of Other State Task-Force Reports on Gender Bias
- Review of Literature
- Questionnaires
  - judges
  - attorneys
- Public Hearings
- Comments Submitted to the Task Force

For a copy of the report, contact: Justice Charles Springer, Nevada Supreme Court, Capitol Complex, Carson City, NV 89710. (702) 687-5190.

New Hampshire

Report of the New Hampshire Bar Association Task Force on Women in the Bar (1988).

Areas Covered

- Demographics (of male and female attorneys)
- Professional Life—Activities and Motivation
- Personal Life—Influence on Professional Life
- Perceptions of Discrimination
  - "old boy network"
  - discrimination within the profession
  - treatment of female attorneys—outside of court
  - treatment of female attorneys in court or chambers
  - client complaints
- Job Satisfaction
- Measures of Discrimination
  - salary differences: the profession as a whole
  - salary differences: private firms
  - effect on partnership
  - differences in making partner
  - management functions
  - billing rates

Research Approaches and Sources of Data

- Questionnaire to Attorneys
- Public Hearings
- Interviews with Attorneys
- Review of Letters Submitted to Task Force

For a copy of the report: This report is published in 29 N.H. B. J. 213 (Summer 1988).

New Jersey

First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts (1984); Second Report of the New Jersey Supreme Court Task Force on Women in the Courts (1986)

Areas Covered

- Treatment of Women and Men in the Legal and Judicial Environment
  - treatment of litigants
  - treatment of witnesses
  - treatment of lawyers in the courtroom, in chambers, and at professional gatherings
- Effect of Gender-Based Myths, Biases, and Stereotypes on Substantive Law and Judicial Decision Making
  - personal injury damages
  - domestic violence
  - child support, custody, and visitation
  - juvenile justice system
  - matrimonial law
  - sentencing
- Court Administration (including gender-neutral language in court forms and correspondence)

Research Approaches and Sources of Data

- Review and Analysis of Cases, Legal and Social Scientific Studies, and Statistical Information
- Interviews with Judges
- Survey of Attorneys
- Regional Meetings with Bar Association Members
- Review of Letters Received by Task Force

For a copy of both reports, contact: Marilyn Slivka, Administrative Office of the Courts, R. J. Hughes Justice Complex, CN-037, Trenton, NJ 08625. (609) 292-0856.

New Mexico

The Status of Women Attorneys in New Mexico: Final Report of the Task Force on Women and the Legal Profession (1990).

Areas Covered

- Legal Employment Experience
- Judicial Selection
- Bar Activity
- Courtroom Environment
- Court Documents (concerning the use of gender-neutral language)
- Civil Justice
- Domestic Violence
- Criminal Law
  - sexual assault
  - sentencing adult felons
- Juvenile Justice
- Family Law
  - access to the courts
  - property division
  - alimony
  - child support
  - physical custody

Research Approaches and Sources of Data

- Review of Literature and Other State Task-Force Reports
- Analysis of Court Rules
- Survey of Law Firms on Parental Leave Policies
- Regional Meetings
- Survey of All Active In-State Members of the Bar

For a copy of the report, contact: State Bar of New Mexico, P.O. Box 25883, Albuquerque, NM 87125. (800) 876-6227. There is no charge for the report. The appendices cost $6.00.

New York

Report of the New York Task Force on Women in the Courts (March 1986).

Areas Covered

- Status of Women Litigants
  - the courts' response to violence against women
  - the courts' enforcement of women's economic rights (equitable distribution, damage awards in personal injury suits, child support)
  - the court's consideration of gender in custody determinations
  - the courtroom environment
- Status of Women Attorneys
  - professional acceptance
  - professional opportunity
- Status of Women Court Employees
  - women's representation in the unified court system
  - gender-biased conduct

Research Approaches and Sources of Data

- Review of Research and Literature
- Review of Other State Task-Force Reports Concerning Gender Bias
- Public Hearings
- Regional Meetings with Judges and Attorneys
- Regional Listening Sessions
- Surrogate's Court Survey of Fee-Generating Appointments (questionnaires to surrogates)
- Questionnaires to Those Involved in Nominating Judges
- Statistical Analysis of Court Personnel Information
- Interviews with Court Employees and Administrators
- Textual Analysis of Personnel Rules
- Questionnaire to Attorneys

For a copy of the report: The report is reprinted in 15 Fordham Urb. L.J.1 (1986–87). Fordham Urban Law Journal, 140 West 62nd Street, New York, NY 10023. (212) 841-5247. Individual copies may be purchased for $5.00.

Rhode Island

The Final Report of the Rhode Island Committee on Women in the Courts: A Report on Gender Bias (June 1987).

Areas Covered

- Court Environment
  - treatment of women litigants, witnesses, and attorneys
- Fee-Generating Appointments
- Court Employment
- Language of Court Publications
- Court Decisions
- Family Law

Research Approaches and Sources of Data

- Court Watching Project
- Analysis of Court Decisions
  - case dispositions
  - sentencing decisions
  - damage awards
- Review of Court Appointments for Indigent Defense
- Comparison of Salary Grades of Male and Female Court Employees
- Review of Court Forms and Publications for Gender-Biased Language
- Questionnaires
  - judges
  - attorneys
  - jurors
  - court employees

For a copy of the report, contact: Susan McCalmont, Esq., Rhode Island Administrative Office of the Courts, 250 Benefit Street, Rm. 705, Providence, RI 02903. (401) 277-2500.

Texas

The Gender Bias Task Force of Texas Final Report (February 1994)

Areas Covered

- General Perceptions of Gender Bias
- Courtroom Interactions
  - treatment of litigants
  - treatment of attorneys
  - effect of gender on the litigation process
- Gender Bias in Areas of Substantive Law
  - divorce and division of property
  - custody and visitation
  - child support
  - domestic violence
  - sexual assault
  - sexual harassment
  - adult criminal sentencing
  - juvenile justice
- Lack of Access to the Judicial System
- Use of Gender-Biased Language in Texas Statutes
- Gender Differences in Court-Appointed Fees

Research Approaches and Sources of Data

- Questionnaires
  - judges
  - attorneys
- Regional Meetings
- Public Hearings
- Survey of Rape Crisis Centers
- Review of Results from State Bar of Texas 1990 Member Attitudes Survey
- Review of Results from 1992 State Bar of Texas Legal Needs of the Poor Assessment Project
- Assessment of Language Used in Statutes Relating to Secretary of State's Office
- Analysis of Lubbock County Court Appointments for Fiscal Year 92
- Interviews
- Review of Results from Other State Gender Bias Task Forces

For a copy of the report, contact: State Bar of Texas, Department of Research and Analysis, P.O. Box 12487, Austin, TX 78711. (800) 204-2222/(512) 463-1463.

Utah

Utah Task Force on Gender and Justice: Report to the Utah Judicial Council (March 1990).

Areas Covered

- Domestic Relations
- Domestic Violence
- Judicial Selection
- Court Employment
- Courtroom Interaction

Research Approaches and Sources of Data

- Public Hearings
- Confidential Hearings
- Mail Questionnaire to Attorneys
- Telephone Interviews with County Attorneys
- Review of Personnel Data on Court Employees, Including Judicial Appointments
- Focus Groups with Court Employees
- Appellate Case Law Study
- Review of Studies Conducted by Other Groups and Submitted to the Task Force

For a copy of the report, contact: Holly Bullen, Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, UT 84102. (801) 578-3817. Free for state agencies. $5.00 charge for individuals.

Vermont

Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System (1991).

Areas Covered

- Domestic Violence
- Courtroom Interaction
- Judicial Selection
- Court Personnel
- Child Support
- Child Custody
- Mediation
- Guardians Ad Litem
- Criminal Justice
- Civil-Damage Awards
- Access to the Legal System

Research Approaches and Sources of Data

- Questionnaires
  - attorneys (general)
  - women attorneys with more than five years of experience
  - appointed judges
  - court personnel (including nonappointed judges)
- Private Listening Groups
- Public Hearings
- Interviews
  - members of judicial nominating board
  - judges
  - lawyers
  - guardians ad litem
  - law enforcement officers
  - criminal defense attorneys
  - state's attorneys
  - victim's advocates
- Review of Substantive Case Law
- Review and Analysis of Docket Information
- Review of Existing Statistical Data
- Review of Written Submissions
- Review of Literature and Other Studies

For a copy of the report, contact: Thomas J. Lehner, Court Administrator and Clerk, 111 State Street, Montpelier, VT 05602. (802) 828-3278.

Washington

Washington State Task Force on Gender and Justice in the Courts, Gender and Justice in the Courts (1989).

Areas Covered

- Consequences of Violence: Domestic Violence and Rape
- Consequences of Divorce
  - property division
  - maintenance awards
  - custody and visitation
  - child support
  - legal services
- Economic Consequences of Other Civil Litigation
  - wrongful death
  - loss of consortium
  - court-awarded attorneys' fees
- Treatment of Lawyers, Litigants, Judges, and Court Personnel

Research Approaches and Sources of Data

- Review of Research and Literature
- Review of Other States' Gender-Bias Studies
- Questionnaires
  - judges
  - attorneys
  - social-service personnel
- Public Hearings
- Review of Court Personnel Policies and Procedures
- Substantive Case Research
- Analysis of Relevant State and National Data
- Analysis of Case Files
- Interviews with Attorneys

For a copy of the report, contact: Gloria Hemmen, Office of the Administrator for the Courts, 1206 South Quince Street, Olympia, WA 98504. (206) 753-3365.

Wisconsin

Wisconsin Equal Justice Task Force Final Report (January 1991).

Areas Covered

- Civil Law
- Criminal Law
- Domestic Abuse
- Family Law
- Gender Discrimination and the Legal Profession

Research Approaches and Sources of Data

- Mail Questionnaires
  - judges
  - district attorneys
  - clerks of court
  - family court commissioners
- Review of Probation Files and Sentencing Transcripts
- Review of Family Law Files
- Review of Jury Instructions for Gender-Biased Language
- Court Observers
- Focus Groups
- Public Hearings
- Confidential Listening Sessions with Attorneys

For a copy of the report: This report is reprinted in 6 Wis. Women's L.J. 173 (1991). State Printing Office—Document Sales, P.O. Box 7840, Madison, WI 53707-7840. (608) 266-3358.

U.S. Courts of the Ninth Circuit

The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force (1993).

Areas Covered

- The Courts, Lawyers, and Litigants
  - the roles of women and men in the Ninth Circuit: a demographic profile
  - appointments, hiring, and promotion: practices and perceptions
  - courtroom interactions: on and off the record
  - work and life
- The Interaction Between Gender and Federal Law
  - federal courts and administrative adjudication: federal benefits and immigration law
  - gender and employment law
  - gender and bankruptcy
  - gender and federal Indian law
  - gender and the criminal justice system

Research Approaches and Sources of Data

- Review of Existing Records and Published Information
- Questionnaires
  - judges
  - attorneys (general and bankruptcy practitioners)
  - courtroom deputies
  - specialized questionnaires (re: areas of substantive law)
- Focus Groups
  - attorneys
  - magistrate judges
  - courtroom deputies
  - probation officers
  - court interpreters
- Analysis of Margin Comments on Questionnaires
- Office Self-Studies
  - U.S. Attorney offices
  - federal public defender offices
- LEXIS and Westlaw Computer Searches
- Analysis of Case Law, Statutes, and Regulations
- Telephone Interviews

For a copy of the report: The report is reprinted in 67 S. Cal. L. Rev. 745 (1994). The executive summary of the preliminary report and related essays are published in 45 Stan. L. Rev. 2143 (1993).

Appendix B—Calls for Gender Studies

This appendix sets forth several recent resolutions or suggestions for gender studies in the federal courts.

Appendix B-1—Judicial Conference of the United States

In March 1993, the Judicial Conference of the United States adopted the following resolution:

> After considering the report and recommendations of the Ad Hoc Committee on Gender-Based Violence, and as a result of the dialogue the Ad Hoc Committee has undertaken with the sponsors of the proposed Violence Against Women Act of 1991 since the Judicial Conference adopted its resolution about the proposed 1991 Act, the Conference takes no position on specific provisions of the proposed Violence Against Women Act of 1993. The Conference reiterates its concerns expressed in its prior resolution and its general concerns about the trend toward federalization of state law crimes and causes of action.
>
> At the same time, the Conference believes that the provision of Title V of S. 11, encouraging circuit judicial councils to conduct studies with respect to gender bias in their respective circuits, has great merit and the Conference endorses that specific provision.[50]

50. Report of the Proceedings of the Judicial Conference of the United States 28 (March 16, 1993) (citations omitted).

Appendix B-2—American Bar Association

In 1991, the American Bar Association House of Delegates adopted the following resolution, as recommended by the following groups: its Standing Committee on Federal Judicial Improvements; Commission on Women in the Profession; Commission on Opportunities for Minorities in the Profession; Section of Criminal Justice; Association of the Bar of the City of New York; and the Boston Bar Association.

> RESOLVED, that the American Bar Association supports the enactment of federal legislation, or other authoritative measures, requiring a study of the existence, if any, of racial, ethnic and gender bias in the federal judicial system and the extent to which bias may affect litigants, witnesses, attorneys and all those who work in the judicial branch.
>
> BE IT FURTHER RESOLVED, that the American Bar Association urges that such a study should include the development of remedial steps to address and eliminate any racial, ethnic and gender bias found to exist.[51]

51. American Bar Association, Report with Recommendations to the House of Delegates, Annual Meeting (1991).

Appendix B-3—National Commission on Judicial Discipline and Removal

In its 1993 report, the National Commission on Judicial Discipline and Removal made the following recommendation:

> The Commission recommends that each circuit that has not already done so conduct a study (or studies) of judicial misconduct involving bias based on race, sex, sexual orientation, religion, or ethnic or national origin, including sexual harassment, and of the extent to which the 1980 Act and other existing mechanisms and programs, including judicial education, are adequate to deal with it. The Judicial Conference should monitor the implementation of this recommendation and when such studies have been completed, consideration should be given both locally and nationally within the judiciary to such changes in policies, procedures, and programs as are warranted.[52]

52. Report of the National Commission on Judicial Discipline and Removal 126 (1993).

Appendix B-4—The Violent Crime Control and Law Enforcement Act of 1994

Section 40421 of this Act contains the following provision:

> In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms . . . The studies . . . may include an examination of the effects of gender on —
>
> (1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;
>
> (2) the interpretation and application of the law, both civil and criminal;
>
> (3) treatment of defendants in criminal cases;
>
> (4) treatment of victims of violent crimes in judicial proceedings;
>
> (5) sentencing;
>
> (6) sentencing alternatives and the nature of supervision of probation and parole;
>
> (7) appointments to committees of the Judicial Conference and the courts;
>
> (8) case management and court sponsored alternative dispute resolution programs;
>
> (9) the selection, retention, promotion, and treatment of employees;
>
> (10) appointment of arbitrators, experts, and special masters;
>
> (11) the admissibility of the victim's past sexual history in civil and criminal cases; and
>
> (12) the aspects of the topics listed in section 40412 [dealing with training on violence against women] that pertain to issues within the jurisdiction of the Federal courts.

Appendix B-5—Ninth Circuit Judicial Conference

In August 1990, the Ninth Circuit Judicial Conference passed the following resolution, which was submitted by its Lawyer Representatives Coordinating Committee:

> WHEREAS, gender bias in the courts includes behavior or decision making of participants in the justice system which is based upon or reveals stereotypical attitudes regarding the roles of women and men, cultural perceptions about the relative worth of the sexes, and misconceptions about the social and economic realities encountered by women and men;
>
> WHEREAS, the problem of gender bias may continue to exist in the federal courts within the Circuit despite efforts by the bench and bar to eradicate it;
>
> WHEREAS, gender bias in the courts is an impediment to the fair administration of justice;
>
> WHEREAS, a large number of state judicial councils have established gender bias committees; and
>
> WHEREAS, the California Judicial Council has recently issued its report finding that gender bias in the California courts is pervasive and widespread and recommended dozens of reforms;
>
> NOW, THEREFORE, BE IT RESOLVED that:
>
> 1) The Special Studies Committee of the Ninth Circuit Conference establish an Advisory Committee on Gender Bias in the Courts composed of judges, lawyers, and other experts to conduct a comprehensive review of gender bias issues including, but not limited to, courtroom interaction, judicial branch employment practices and other issues of court administration, gender bias within the judiciary, selection of court-appointed counsel, and jury instructions.
>
> 2) The Special Studies Committee be authorized to conduct public hearings, regional meetings, and surveys; consult with other professionals in the justice system; collect statistical information and perform any other tasks consistent with its charge.
>
> 3) The Special Studies Committee prepare a written report which will set forth its findings and make recommendations for the elimination of gender bias in the courts.

Appendix C—Sample Research Instruments

In this appendix we provide examples of the types of research instruments used with the methods described in the guide. These are not intended to serve as prototypes for the task forces, but to give task-force members a more concrete idea of what the research instruments look like. Some of the sample instruments were developed by the FJC, while others are based on those used in previous task-force efforts.

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Appendix C-1—Public Hearings

Task Force of the District of Columbia Circuit on Gender, Race, and Ethnic Bias

UNITED STATES COURTHOUSE, WASHINGTON, D.C. 20001 202-273-0477 FAX: 202-273-0559

NOTICE

A public hearing to identify and prioritize issues to be explored by the Special Committee on Race and Ethnicity of the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias will be held on Tuesday, May 11, 1993, from 8:30 a.m. until 6:30 p.m. in the Thurgood Marshall Federal Judiciary Building (lower level), One Columbus Circle, N.E.

Preliminary areas identified for study include:

**Criminal Justice
including bail, charging, and sentencing

**Class, Race & Gender
including unique issues confronting minority women as lawyers or parties

**Employee Worklife
including issues affecting hiring and work of federal courthouse employees

**Demographics
including demographics of federal bench, bar, and courthouse

**Access to Justice
including availability of attorneys to minority populations, court access for non-English speakers

**Litigation Process
including the role race or ethnicity may play in substantive outcomes, interactions among judges, attorneys, jurors, witnesses, etc.

**Federal Equality Law
including court's attitudes toward cases in which minorities and women are frequently parties

**Relationship of Federal Court & Legal Community
including representation at Judicial Conference, selection for fee-generating appointments

Any person or organization wishing to testify or to submit written comments, or seeking further information, should contact Katherine L. Garrett at the Task Force, United States Courthouse, Room 4816, Washington, DC 20001, (202) 273-0477, no later than May 3, 1993.

On request, the Special Committee will arrange for receipt of confidential testimony or written comments.

Task Force of the District of Columbia Circuit on Gender, Race, and Ethnic Bias Special Committee on Race and Ethnicity

Public Hearing Participant Registration Form
[used for registration in advance of the hearing]
Date: May 11, 1993
Place: Federal Judiciary Bldg.

Name:
Address:

Phone: (day) (evening)
I represent an organization (please circle): Yes No
Name and address of organization you represent:

I would be available to testify during the following times (please circle):

8:30–9:30 a.m.	1:30–2:30 p.m.
9:30–10:30 a.m.	2:30–3:30 p.m.
10:30–11:30 a.m.	3:30–4:30 p.m.
11:30 a.m.–12:30 p.m.	4:30–5:30 p.m.
12:30–1:30 p.m.	5:30–6:30 p.m.

*All witnesses will be scheduled to speak for no more than ten minutes.

[ ] I need language interpretation for my testimony for the language.

[ ] I would like to provide a confidential statement. Please contact me at:

[ ] I will submit a written statement.

Please return this form by May 3, 1993, to:
Katherine L. Garrett, Executive Director
Task Force of the D.C. Circuit on Gender, Race, and Ethnic Bias
U.S. Courthouse, Room 4816
Washington, DC 20001
or FAX to: Katherine Garrett, (202) 273-0559

Special Committee on Race and Ethnicity of the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias

Participant Registration Form
[used on the day of the hearing]
PUBLIC HEARING—MAY 11, 1993

Name:
Address:

Phone:
Are you representing an organization? ____ Yes ____ No
If yes, please provide the name and address of organization:

Did you send/bring written testimony or materials for the Special Committee?
____ Yes ____ No

How are you involved in the matter you will testify about?

____ Witness in a case
____ Attorney
____ Party (plaintiff or defendant)
____ Juror
____ Student
____ Employee
____ Other (please explain)

Please briefly describe the matter that you wish to share with the Special Committee:

Special Committee on Race and Ethnicity of the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias

Guidelines for Testimony—Public Hearing

1. The Special Committee is looking at the federal courts in the D.C. Circuit, the U.S. District Court for the District of Columbia, and the U.S. Circuit Court of Appeals for the District of Columbia. It is not looking at the local courts of the District of Columbia (Superior Court, D.C. Court of Appeals), or at any other federal court that happens to be in D.C. (such as the U.S. Claims Court or U.S. Tax Court).
2. The Special Committee cannot decide individual cases and cannot help you with your legal case.

   While the Committee cannot give legal advice or become involved in any legal case, it would like to know if you thought you were treated unfairly. The Committee can learn from your experiences and help the D.C. Circuit prevent others from being treated unfairly.
3. The Special Committee is exploring procedural issues: Are individuals treated with dignity and courtesy by court participants regardless of race and ethnicity?
4. The Special Committee is also concerned with substantive issues: Is decision making fair and impartial on substantive matters? Do neutral practices nonetheless have significant racially and ethnically biased results?
5. Written materials will help the Special Committee—let the Committee know if there is a transcript, written decision, or report that relates to the matter you are testifying about. Submit any written materials to the address below NO LATER THAN FRIDAY, MAY 14, 1993.

Forward any questions or information to the Special Committee at:

Katherine L. Garrett, Exec. Dir.
D.C. Circuit Task Force on Gender, Race, and Ethnic Bias
United States Courthouse, Rm. 4816
Washington, DC 20001

Appendix C-2—Focus Groups

Moderator's Guide—Litigator's Group

(based on guide developed by Katharyn Marks for the D.C. Circuit Task Force)

I. Introduction (10 min.)

Good afternoon. My name is _____ , and I'd like to welcome you on behalf of the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias and thank you for agreeing to participate in today's discussion.

I'll be acting as the moderator or facilitator for today's discussion, and with me is _____ , who'll be acting as notetaker. We'll be here for about 1 1/2 hours and the subject for our discussion will be your impressions of, opinions about, and experiences with gender in the court system of the D.C. Circuit.

There are no right or wrong answers for today's discussion. We are simply interested in getting your views and hearing about your experiences.

To allow the conversation to flow more smoothly, I will offer the following ground rules so that we will all be moving in the same direction.

- Please *talk one at a time* and in a voice at least as loud as mine.
- The tape recorder you see on the table is here so that we don't have to try to write absolutely everything down during the discussion. The tapes will be used to help make sure we get the information correct when the report is written, but *no names will be attached to any of the comments*. Nor will any names be used in the report. We are interested in the content of your comments—not in who says what. Also, the Task Force will only be using the information in performing its work and for no other purpose.
- Since the information is being kept confidential by the Task Force, we would also ask you to agree to honor this confidentiality and not to share the information you hear in this group with anyone outside it.
- I need to hear from everyone during the course of today's discussion, but you do not need to answer every question.
- You also do not need to address all your comments to me. You can respond directly to what someone else says, *but* do try to avoid side conversations with your neighbors.

Before we get started, I'd like us to introduce ourselves. Please tell us:

- your first name;
- the main types of law you practice;
- how long you've litigated in the D.C. Circuit; and
- whether you practice primarily at the trial or appellate level.

I'll start. My name is _____. Right now I'm not actively practicing in the circuit, but when I did, I primarily represented clients at the trial level in pension and other employment related cases.

II. Discussion Issues (70 min.)

1. Thinking specifically of the *courtroom* environment in the D.C. Circuit, how would you describe the gender, race, and ethnic make-up of the participants there?
2. In the courtroom, what role, if any, does gender play in how participants are perceived? In how they are treated? (By participants, we mean anyone including attorneys, clients, witnesses, judges, court reporters, bailiffs, etc.)

   Have you ever heard or observed any assumptions being made about a particular person in a courtroom based upon his or her gender? Could you please tell us about it?

   [PROBE: What assumptions were made? Under what circumstances did this happen? Who was involved (what roles did they play)?]
3. We've talked a bit about the courtroom itself. Now let's discuss the *noncourtroom litigation environment.*

   How would you describe the gender, race, and ethnic make-up of the participants in the noncourtroom litigation environments in the D.C. Circuit?

   What roles or effects, if any, does gender have in such settings (including depositions, settlement negotiations)? Does this vary with race and ethnicity?
4. Have you ever observed or experienced an attorney being treated differently from attorneys of the other gender (for example, not being recognized as an attorney)? What were the circumstances? What happened?
5. In what ways, if any, do you feel that the gender of an attorney affects his or her *ability to get federal cases* to work on?
6. In what ways, if any, do you feel that gender affects the *perceived credibility of attorneys?*

   —Of *witnesses?*

   —Of *parties?*
7. In what ways, if any, do you think gender affects litigation *strategies?*

   —What about litigation *outcomes?*
8. In your opinion, in what ways, if any, is the *attorney–client relationship* affected by the gender of an attorney or a client?

   —Have you ever observed or experienced such effects? Please tell us about it.
9. In addition to the specific business or litigation environment, there is also the social environment—social situations that can, in turn, affect professional opportunities. In what ways, if any, do you think gender impacts upon an attorney's other social, professional, or athletic activities that, in turn, can affect professional status or opportunities? What have you observed?

[PROBE: How about membership in certain clubs or organizations?]

10. Are there any other areas related to federal litigation in which gender might play a role? What are these areas?
    —What about employment opportunities?
    —What about other professional opportunities?
    —What have you observed or experienced?

III. Closing/Summary

We've covered a number of issues today, but before we wrap things up, I'd like to hear any other comments any of you would like to make about the role of gender in the D.C. Circuit.

[Take comments & questions]
Thank you very much for your help! We really appreciate your taking the time to discuss your opinions with us.

Appendix C-3—Original Records

On the following pages are examples of the type and format of items that might appear on a coding form used to code information from case files regarding criminal offenders. The items are taken from a coding form used in an FJC study on risk of recidivism (see *supra* page 98). They are not intended to represent a complete coding form, but include examples of questions about demographics and other information that might be of interest in a study of gender issues using original records. In addition to coding forms, those doing the coding would receive a detailed codebook explaining unfamiliar terms, describing where in the case file information about the various items would be found, and explaining the meaning of each code.

Code Sheet

Date: |_____|_____|_____|

1. Coder's Initials: |_____|_____|_____|

Demographics

2. Offender's Date of Birth (mm/dd/yy):
3. Gender: ___
   (1) Male
   (2) Female
4. Race: ___
   (1) African/Black
   (2) Asian
   (3) Caucasian/White
   (4) Native American/American Indian
   (5) Other _____
5. Hispanic: ___
   (1) No
   (2) Yes
6. Residency Status of Offender: ___
   (1) Citizen by Birth
   (2) Naturalized Citizen
   (3) Resident Alien
   (3) Illegal Alien
   (9) Residency Status Unknown
7. Marital Status at Time of Instant Offense: ___
   (1) Single: Never Married
   (2) Common Law
   (3) Divorced
   (4) Separated
   (5) Widowed
   (6) Married
   (7) Other
   (9) Unknown
8. Years of School Completed: ___
   (00) No Schooling
   (01–12) Actual Years of Elementary or Secondary School Completed
   (13) Less Than One Year of College
   (14) One Year of College
   (15) Two Years of College
   (16) Three Years of College
   (17) Four Years of College

(18) More Than Four Years of College
(99) Unknown

9. Highest Educational Degree Attained: ___
   (1) No Educational Degree Attained
   (2) G.E.D. (General Education Diploma)
   (3) High School Graduate
   (4) Trade or Vocational Degree
   (5) Associate's Degree
   (6) Bachelor's Degree
   (7) Master's Degree
   (8) Professional Degree (J.D., M.D., Ph.D., etc.)
   (9) Unknown
10. Offender's Living Arrangements at Time of the Instant Offense: ___
   (1) w/Others: Wife/Husband and/or Children
   (2) w/Others: Parents or Guardian
   (3) w/Others: Paramour
   (4) w/Others: Common Law Spouse
   (5) w/Others: Unspecified
   (6) Alone: Fixed Address
   (7) Alone: No Fixed Address
   (8) Community Treatment Center
   (9) Halfway House
   (10) Institution
   (11) Military
   (99) Other
11. Offender's Annualized Income at Time of Instant Offense: $ _____
12. Employment Status at Time of Instant Offense: ___
   (1) Offender Was Unemployed and Not Otherwise Involved in Any Productive Efforts
   (2) Unemployed but Actively Seeking Employment
   (3) Offender Was Employed by Another Person for 35 or More Hours Per Week
   (4) Offender Was Self-Employed and Devoting 35 or More Hours a Week to Such Work
   (5) Offender Was Attending High School
   (6) Offender Was Attending College and Carrying a Full Load
   (7) Offender Was Working a Minimum of 29 Hours Per Week
   (8) Offender Was Working a Minimum of 20 Hours Per Week and Attending School
   (9) Offender Is Physically or Mentally Incapable of Working
   (10) Other: _____
   (99) Unknown

13. Type of Job Held by Offender at the Time of the Instant Offense:
   _____-_____ [Use DOT Codes (000-000 = None, 999-999 = Unknown)]

14. The Number of Offender's Offspring: ___
    (0) None
    (9) Unknown
15. Has Offender Ever Absconded from a Previous Period of Parole, Probation, or Supervised Release? ___
    (1) No
    (2) Yes

Instant Offense

16. Was Offender Sentenced Under the U.S. Sentencing Guidelines? ___
    (1) No
    (2) Yes
17. Number of Codefendants Involved in Instant Offense: ___
18. Legal Disposition of Instant Offense: ___
    (1) Guilty Plea
    (2) Nolo Contendere
    (3) Jury Trial/Bench Trial
    (9) Unknown
19. Was a Plea Bargain Involved in the Instant Offense of Conviction? ___
    (1) No
    (2) Yes

19a. If Yes, What Is the U.S.C. Title & Section of the Most Serious Count in the Indictment? _____

20. Was There a Relationship Between Offender and Victim? ___
    (1) No
    (2) Yes
21. Were There Any Aggravating or Mitigating Circumstances Involved in the Instant Offense? ___
    (1) No Additional Aggravating or Mitigating Circumstances
    (2) Additional Aggravating Circumstance
    (3) Additional Mitigating Circumstance
    (4) Both Additional Aggravating and Mitigating Circumstances
    (9) Unknown
22. What Was Offender's Role in the Instant Offense?___
    (1) Acted Alone
    (2) One of the More Culpable (Must Have at Least One Codefendant)
    (3) One of the Less Culpable (Must Have at Least One Codefendant)
    (4) Of Equal Culpability (Must Have at Least One Codefendant)
    (9) Unknown

Appendix C-4—Observational Studies

On the following pages are examples of the types of items that might appear on a coding form for observing behaviors and interactions in a courtroom. A coding form containing items such as these would be accompanied by detailed instructions explaining unfamiliar terms and specifying the criteria to be used in recording behaviors.

Observation Form

[based on form developed by Women's Bar Association of Maryland]

I. Observer
Name:
Phone No.:
Name of co-observer (if applicable):

II. Court Information
District:
Division (if applicable):
Judge:

III. Date and Time of Observation
Date:
Time Observation Began:
Time Observation Ended:
Number of Separate Proceedings Observed:

IV. Characteristics of Courtroom Participants
Please supply the following information about the judge, courtroom employees, and each lawyer, party, and witness observed. Place check marks in the applicable columns for each individual.

	Sex		Age (please estimate)			Race			Representation	
	M	F	under 35	35–55	over 56	White	African-Amer.	Other (specify)	Plaintiff (or state)	Defendant
Judge										
Courtroom deputy									N/A	N/A
Court reporter										
Other court employee										
Lawyer 1										
Lawyer 2										
Lawyer 3										
Lawyer 4										
Lawyer 5										
Lawyer 6										
Lawyer 7										
Lawyer 8										
Plaintiff 1										
Defendant 1										
Other party 1										
Plaintiff 2										

	Sex		Age (please estimate)			Race			Representation	
	M	F	under 35	35–55	over 56	White	African -Amer.	Other (specify)	Plaintiff (or state)	Defendant
Defendant 2										
Other party 2										
Witness 1									N/A	N/A
Witness 2										
Witness 3										
Witness 4										
Witness 5										
Witness 6										
Witness 7										
Witness 8										

V. Judge's Conduct

1. Please use the table below to indicate whether the judge engaged in any of the listed behaviors during the period of your observation. Put a check in any box that applies, accompanied by the code number used in the table in section IV to identify the individual to whom the judge's behavior or remark was directed. For example, if the judge mentioned the physical appearance of the lawyer whom you have designated as "Lawyer 5," you would place a check mark in row "c" under the "Lawyer" column, and write "Lawyer 5" next to the check mark. If you check any boxes, please describe the behavior(s) below in as much detail as possible.

	Lawyer	Party	Court employee	Witness
a. Judge used term of address other than formal "counsel" or "Mr./Miss/Mrs./Ms." toward:				
b. Judge mentioned race or sex of:				
c. Judge mentioned physical appearance of:				
d. Judge mentioned parental status or pregnancy of:				
e. Judge stated that he or she did not believe:				

Judge made joke(s) using gender or race: [ ] Yes [ ] No

2. Details

VI. Lawyer's Conduct

1. Please use the table below to indicate whether a lawyer engaged in any of the listed behaviors. Place a check in any box that applies, and supply the code number (from the table in section IV) of the lawyer engaging in the behavior. For any behavior you note, please give details in the space provided below, including the code number of the individual to whom the behavior or remark was directed.

Lawyer		Plaintiff	Defendant	Court Employee	Judge	Lawyer	Witness
	a. Mentioned sex or race of:						
	b. Mentioned physical appearance of:						
	c. Mentioned parental status or pregnancy of:						

Lawyer made joke(s) using sex or race: [ ] Yes [ ] No

2. Details

VII. Other Notes

Please note in this section or on additional pages any behaviors or interactions you observed involving gender that are not covered by previous items. Provide as much detail as possible.

Appendix C-5—Interviews

The following are examples of questions that might be asked of judges in a one-on-one interview. This is not intended to be a complete interview protocol; it includes only a few examples of questions from two topic areas. The examples are set forth here to illustrate some of the protocol-writing concepts discussed in Chapter 9.

Sample Interview Questions for District Judges

My name is _____ , and I am on the staff of the gender task force. The task force is interested in learning about the perceptions of judges, attorneys, court staff, and others regarding whether gender or attitudes and assumptions about gender play a role in the courts of this circuit. We are interviewing a random sample of district judges, both men and women, to learn their views on this issue. Because we can interview only a small number of people, each person's responses are very important and we greatly appreciate the time you are taking to meet with us.

First, I would like to talk with you about your observations of interactions that take place before you in the courtroom. Then I'd like to ask about court appointments of attorneys to panels or fee-generating positions. As we talk, I'll be interested in any related observations you have made, and I'll want to hear any questions you may have about the task force's study.

This is a confidential interview. We will not identify individuals in any reports we write or to others who may ask.

I. Courtroom Interactions

1. Thinking for a moment about the attorneys who have appeared in formal proceedings in your courtroom over the last two years, about what percentage would you say have been women?

1a. About what percentage of "first chair" attorneys have been women?

2. Have you observed female attorneys being treated by other attorneys in a way that draws attention to their gender or reflects assumptions about their gender?
   IF NOT: Skip to Question 3
   IF SO:

2a. Can you describe some examples?

2b. Does this treatment differ depending on whether the proceeding is in front of a jury?

3. Have you observed male attorneys being treated by other attorneys in a way that draws attention to their gender or reflects assumptions about their gender?
   IF NOT: Skip to Question 4
   IF SO:

3a. Can you describe some examples?

3b. Does this treatment differ depending on whether the proceeding is in front of a jury?

4. Do you think judges should intervene in situations in which an attorney makes a comment drawing attention to the gender of another attorney?

IF NOT: 4a. Why not?
IF SO: 4b. In what way should a judge intervene? Does this depend on whether the proceeding is in front of a jury?

4c. Can you describe any examples of situations like this in which you have intervened or observed other judges intervening?

II. Court Appointments

Now I'd like to ask a few questions about the role gender plays, if any, in appointment of attorneys to positions such as magistrate judgeships, special masters, counsel for indigent defendants, and court panels.

1. Do you think that in this district appointments of attorneys to serve as special masters, court experts, counsel for indigent defendants, or similar positions are influenced by the gender of attorneys?
IF SO: 1a. In what way?

1b. Does the effect of gender vary depending on the type of appointment? If so, in what way?

2. Do you think that in this district appointments of magistrate judges are influenced by the gender of prospective appointees?
IF SO: 2a. In what way?

Appendix C-6—Mail Questionnaires: Sample Questions for an Attorney Questionnaire

The following sample questions cover each of several different areas a task force may choose to explore. These are questions for a general attorney survey—the task force would likely want to ask additional or more specific questions if it wished to survey particular groups of attorneys, such as those specializing in bankruptcy law or administrative law. The general areas covered are court appointments, demographics, and interactions. The examples do not exhaust all the issues that could be addressed in an attorney questionnaire, nor do we recommend that all of these questions be used to constitute a questionnaire. The questions are set forth primarily as illustrations of the question-writing concepts we discussed in Chapter 8. Comments following some of the questions point out the concepts illustrated by the question.

Task forces will choose to use some questions as they are, adapt others to their particular needs, and not use some at all. In the set of questions on interactions, for example, our samples are generally phrased in terms of how men treat women, but not how women treat men. If the task force wants questions about interactions that are completely balanced along these lines, it will want to modify the samples to produce parallel questions about how women treat men. The task force may also want to ask about how women treat other women and men treat other men. As we mentioned in Chapter 3, and as evidenced by the large number of questions set forth here, there are numerous types of interactions that could be studied, and the task force will need to make decisions at the beginning of its inquiry about the interactions in which it is most interested.

In addition to using and modifying questions from this appendix or questions used by previous task forces, each task force will likely want to draft some of its own questions to address particular information needs. Compiling questions into a questionnaire should be done using the questionnaire construction techniques discussed in Chapter 8. General topics should be introduced with headings, as illustrated below.

Court Appointments

The following set of questions could be used—in conjunction with demographic information about the questionnaire respondents—to determine whether gender has an effect in court appointments of attorneys to various positions. Questions such as these would be appropriate for the beginning of a questionnaire because they are concrete, clearly relevant to the task-force inquiry, and based on personal experience.

1. Have you ever expressed interest to a federal court in this circuit in being appointed by the court as a magistrate judge or to a committee, panel, or fee-generating activity (e.g., appointed as counsel)?

   Please check one.
   [ ] 1 No.
   [ ] 2 Yes. —> Please explain the positions in which you expressed interest:

2. Have you ever been appointed to a position such as those described above in a federal court in this circuit?

   Please check one.
   [ ] 1 No. —> Skip to Question 4.
   [ ] 2 Yes, once.
   [ ] 3 Yes, more than once.

3. Please indicate the position(s) to which you have been appointed in a federal court in this circuit:

   Please check all that apply.
   [ ] 1 Court-appointed counsel for a criminal defendant.
   [ ] 2 Court-appointed counsel in a civil case.
   [ ] 3 Member on a committee established by the court.
   [ ] 4 Member of a panel of ADR neutrals established by the court.
   [ ] 5 Special master.
   [ ] 6 Magistrate judge.
   [ ] 7 Other. —> Please specify:

4. All other things being equal, do you think gender plays a role in appointments of attorneys to any position by the federal courts in this circuit?

   Please check one.
   [ ] 1 No.
   [ ] 2 Yes, women are favored.
   [ ] 3 Yes, men are favored.
   [ ] 4 Yes, in some situations men are favored, while in other situations women are favored.
   [ ] 5 Other. —> Please explain:

Demographics

1. What percentage of your practice has been devoted to federal court litigation during the past five years (or during the time you have been in practice, if less than five years)?

   ___% of my practice

2. How many total years have you practiced law?

   ___ years

3. Which of the following best describes your practice setting? *Please check one.*

   [ ] 1 Sole practitioner
   [ ] 2 Private law firm of ≤ 20 attorneys
   [ ] 3 Private law firm of 21–100 attorneys
   [ ] 4 Private law firm of >100 attorneys
   [ ] 5 Government
   [ ] 6 Corporate counsel (in-house)
   [ ] 7 Legal aid or legal services organization
   [ ] 8 Other nonprofit organization
   [ ] 9 Other —> Please specify:

4. During the past year, how frequently have you appeared in a federal court-room or in chambers in this circuit? *Please check one.*

   [ ] 1 Daily
   [ ] 2 Weekly
   [ ] 3 Once or twice a month
   [ ] 4 A few times
   [ ] 5 Once
   [ ] 6 Not at all

5. What was your age at your last birthday? *Please check one.*

   [ ] 1 Under 30
   [ ] 2 30–39
   [ ] 3 40–49
   [ ] 4 50–59
   [ ] 5 60–69
   [ ] 6 70 or over

6. What is your gender?

   [ ] 1 Male
   [ ] 2 Female

7. What race or ethnicity do you consider yourself? *Please check one.*

   [ ] 1 White Anglo
   [ ] 2 African-American/Black
   [ ] 3 Asian-American
   [ ] 4 Hispanic/Latino/Latina
   [ ] 5 Native American
   [ ] 6 Other` —> Please specify:

8. What is your marital status? *Please check one.*
   [ ] 1 Married
   [ ] 2 Living with a partner
   [ ] 3 Single
   [ ] 4 Widowed
   [ ] 5 Divorced
   [ ] 6 Other

Interactions in Events Related to Cases Filed in Federal Court

Q#:In your interactions with attorneys in cases filed in federal courts in this circuit, to what extent are each of the following behaviors present? *Please check one response for each item.*

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q1. Male counsel addressing female counsel less formally than they address male counsel (e.g., by their first names or by such terms as "young lady" or "honey")					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q2. Male counsel commenting on female counsel's physical appearance or attire					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q3. Male counsel interrupting or cutting off female counsel more often than they interrupt or cut off male counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q4. Male counsel making sexually suggestive comments to or about female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q5. Male counsel making derogatory remarks to or about female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q6. Male counsel making disparaging remarks about female counsel's professional competence or performance					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q7. Male counsel making disparaging remarks about female counsel's ability to serve as attorney or judge					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q8. Male counsel treating female counsel in a condescending manner, seemingly because she is a woman					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare ornever; a surprise when it happens	5 Don't know; have no opinion
Q9. Male counsel inappropriately touching female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

Q#: People have different views about the behavior referred to in the previous question. Which of the statements below best captures your feelings about each type of behavior? *Please check one response for each item.*

	1 Does not reflect gender bias; a traditional way of treating women or conducting litigation	2 A form of gender bias, but has little or no impact on legal process or outcomes	3 A form of gender bias that may adversely affect counsel's credibility and case outcome	4 Don't know; have no opinion
Q1. Male counsel addressing female counsel less formally than they address male counsel (e.g., by their first names or by such terms as "young lady" or "honey")				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]
Q2. Male counsel commenting on female counsel's physical appearance or attire				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]

	1 Does not reflect gender bias; a traditional way of treating women or conducting litigation	2 A form of gender bias, but has little or no impact on legal process or outcomes	3 A form of gender bias that may adversely affect counsel's credibility and case outcome	4 Don't know; have no opinion
Q3. Male counsel interrupting or cutting off female counsel more often than they interrupt or cut off male counsel				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]
Q4. Male counsel making sexually suggestive comments to or about female counsel				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]

	1 Does not reflect gender bias; a traditional way of treating women or conducting litigation	2 A form of gender bias, but has little or no impact on legal process or outcomes	3 A form of gender bias that may adversely affect counsel's credibility and case outcome	4 Don't know; have no opinion
Q5. Male counsel making derogatory remarks to or about female counsel				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]
Q6. Male counsel making disparaging remarks about female counsel's professional competence or performance				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]

	1 Does not reflect gender bias; a traditional way of treating women or conducting litigation	2 A form of gender bias, but has little or no impact on legal process or outcomes	3 A form of gender bias that may adversely affect counsel's credibility and case outcome	4 Don't know; have no opinion
Q7. Male counsel making disparaging remarks about female counsel's ability to serve as attorney or judge				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]
Q8. Male counsel treating female counsel in a condescending manner, seemingly because she is a woman				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]

	1 Does not reflect gender bias; a traditional way of treating women or conducting litigation	2 A form of gender bias but has little or no impact on legal process or outcomes	3 A form of gender bias that may adversely affect counsel's credibility and case outcome	4 Don't know; have no opinion
Q9. Male counsel inappropriately touching female counsel				
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]
c. in proceedings such as depositions or settlement conferences NOT before a judge	[ ]	[ ]	[ ]	[ ]

Q#: If such behavior does occur, do you think the judge should intervene? *Please check one response for each item.*

	1 No	2 Only in the most egregious circumstances	3 Whenever it might affect the outcome of the proceedings	4 Always	5 Don't know; have no opinion
Q1. Male counsel addressing female counsel less formally than they address male counsel (e.g., by their first names or by such terms as "young lady" or "honey")					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q2. Male counsel commenting on female counsel's physical appearance or attire					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q3. Male counsel interrupting or cutting off female counsel more often than they interrupt or cut off male counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

	1 No	2 Only in the most egregious circumstances	3 Whenever it might affect the outcome of the proceedings	4 Always	5 Don't know; have no opinion
Q4. Male counsel making sexually suggestive comments to or about female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q5. Male counsel making demeaning or derogatory remarks to or about female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q6. Male counsel making disparaging remarks about female counsel's professional competence or performance					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

	1 No	2 Only in the most egregious circumstances	3 Whenever it might affect the outcome of the proceedings	4 Always	5 Don't know; have no opinion
Q7. Male counsel making disparaging remarks about female counsel's ability to serve as attorney or judge					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q8. Male counsel treating female counsel in a condescending manner, seemingly because she is a woman					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]
Q9. Male counsel inappropriately touching female counsel					
a. in public proceedings before a judge or jury	[ ]	[ ]	[ ]	[ ]	[ ]
b. in in-chambers proceedings before a judge	[ ]	[ ]	[ ]	[ ]	[ ]

Q# How often have you observed federal judges intervening in circumstances such as those listed above? *Please check one.*

[ ] 1 Whenever such behavior occurs.
[ ] 2 On some occasions but not others.
[ ] 3 Never.
[ ] 4 Does not apply; haven't observed behavior.

Q# In general, what effect, if any, do you think intervention by the judge in situations such as those described above has on the credibility of the attorney who was the target of the behavior? *Please check one.*

[ ] 1 Enhances the credibility of the attorney who was the target.
[ ] 2 Has no impact on the credibility of the attorney who was the target.
[ ] 3 Undermines the credibility of the attorney who was the target.
[ ] 4 No opinion; don't know.

Q# Thinking about attorneys who have said or done the things listed above, would you say the behaviors are confined to certain individuals or more pervasive than that? *Please check one.*

[ ] 1 Confined to a few individuals.
[ ] 2 Engaged in by more than a few attorneys, but not most.
[ ] 3 Engaged in by most attorneys at one time or another.
[ ] 4 Can't say.

Q#: In your interactions with federal judges in the courtroom or in chambers, to what extent are each of the following behaviors present? *Please check one response for each item* .

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q1. Judges addressing female counsel in a less professional manner than they address male counsel	[ ]	[ ]	[ ]	[ ]	[ ]
Q2. Judges favoring female counsel, seemingly because she is a woman	[ ]	[ ]	[ ]	[ ]	[ ]
Q3. Judges making sexually suggestive comments to female counsel	[ ]	[ ]	[ ]	[ ]	[ ]
Q4. Judges singling out female counsel for disparaging or demeaning remarks about their professional competence or performance	[ ]	[ ]	[ ]	[ ]	[ ]
Q5. Judges cutting off or interrupting female attorneys while permitting men more time to make their point	[ ]	[ ]	[ ]	[ ]	[ ]
Q6. Judges being stricter with or harder on female counsel, seemingly because she is a woman	[ ]	[ ]	[ ]	[ ]	[ ]
Q7. Judges showing favoritism toward female attorneys in setting and managing schedules, processing papers, etc.	[ ]	[ ]	[ ]	[ ]	[ ]
Q8. Judges showing favoritism toward male attorneys in setting and managing schedules, processing papers, etc.	[ ]	[ ]	[ ]	[ ]	[ ]

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q9. Judges being unresponsive or insensitive to counsel or parties' parental obligations (maternity/paternity leave, child-care schedules) when scheduling case events	[ ]	[ ]	[ ]	[ ]	[ ]
Q10. Judges ignoring or not listening to female counsel because of their gender	[ ]	[ ]	[ ]	[ ]	[ ]

Q# Have you ever heard other lawyers make disparaging remarks about a female judge's presumed sexual orientation or behavior in the context of that judge's managerial style or professional career? *Please check one.*

[ ] 1 No
[ ] 2 Yes —> Please describe:

Q# Have you ever heard other lawyers make disparaging remarks about a female attorney's presumed sexual orientation or behavior in the context of that attorney's managerial style or professional career? *Please check one.*

[ ] 1 No
[ ] 2 Yes —> Please describe:

Q# FOR FEMALE ATTORNEYS: Have you ever been told that you should not appear in court or before a particular judge in this circuit because you were pregnant? *Please check one.*

[ ] 1 No
[ ] 2 Yes —> Please describe:

Q#: In your interactions involving female witnesses, litigants, defendants, or victims, to what extent are each of the following behaviors present? *Please check one response for each item.*

	1 Pervasive; a part of most interactions	2 Common; not unusual to see or hear this	3 Infrequent; not usually seen or heard	4 Rare or never; a surprise when it happens	5 Don't know; have no opinion
Q1. *Counsel* using first names or terms of endearment to address women appearing as witnesses, litigants, defendants, or victims while addressing men in the same roles by surnames or titles	[ ]	[ ]	[ ]	[ ]	[ ]
Q2. *Judges* using first names or terms of endearment to address women appearing as witnesses, litigants, defendants, or victims while addressing men in the same roles by surnames or titles	[ ]	[ ]	[ ]	[ ]	[ ]
Q3. *Counsel* singling out female witnesses, litigants, defendants, or victims for derogatory or demeaning remarks	[ ]	[ ]	[ ]	[ ]	[ ]
Q4. *Judges* singling out female witnesses, litigants, defendants, or victims for derogatory or demeaning remarks	[ ]	[ ]	[ ]	[ ]	[ ]
Q5. *Counsel* cutting off or interrupting female witnesses, litigants, defendants, or victims while permitting men more time to make their point	[ ]	[ ]	[ ]	[ ]	[ ]
Q6. *Judges* cutting off or interrupting female witnesses, litigants, defendants, or victims while permitting men more time to make their point	[ ]	[ ]	[ ]	[ ]	[ ]

Q# Listed below are some situations that may arise in federal practice in this circuit. For each one, please indicate whether you think clients are currently better served by male counsel or by female counsel, or that gender makes no difference. Please describe what is the case, not what you think ought to be the case. *Please check one response for each item.*

	1 Better served by male counsel	2 Better served by female counsel	3 Gender of counsel makes no difference	4 Don't know; have no opinion
Q1. Male criminal defendant in a white-collar case	[ ]	[ ]	[ ]	[ ]
Q2. Parties in a high-stakes business or regulatory dispute	[ ]	[ ]	[ ]	[ ]
Q3. Plaintiff in a personal-injury suit	[ ]	[ ]	[ ]	[ ]
Q4. Corporate defendant in a personal-injury suit	[ ]	[ ]	[ ]	[ ]
Q5. Corporation challenging federal energy or environmental regulatory action	[ ]	[ ]	[ ]	[ ]
Q6. Plaintiff in an employment discrimination suit	[ ]	[ ]	[ ]	[ ]
Q7. Corporate defendant in an employment discrimination suit	[ ]	[ ]	[ ]	[ ]
Q8. Female narcotics criminal defendant	[ ]	[ ]	[ ]	[ ]
Q9. Social security disability claimant	[ ]	[ ]	[ ]	[ ]

Q# In the past five years have you ever been the object of unwanted sexual advances or other forms of sexual harassment by:

	1 Yes	2 No
Federal judges	[ ]	[ ]
Other federal court personnel	[ ]	[ ]
Opposing legal counsel	[ ]	[ ]
Colleagues in your firm or office	[ ]	[ ]
Clients	[ ]	[ ]

Q# Which of the following statements best describes your overall perception of bias against women in the federal courts in your circuit at the present time? *Please check all that apply.*

[ ] 1 There is no bias against women.
[ ] 2 Gender bias exists but is limited to a few areas or certain individuals.
[ ] 3 Gender bias is widespread but subtle and hard to detect.
[ ] 4 Gender bias is widespread and readily apparent.
[ ] 5 No opinion; can't say.

Q# Which of the following statements best describes your perception of bias against women in the federal courts in this circuit over the past five years? *Please check one.*

[ ] 1 There has never been any bias against women, now or in the past.
[ ] 2 There is less gender bias now than there was five years ago.
[ ] 3 There is more gender bias now than there was five years ago.
[ ] 4 There is gender bias, and the extent of it has remained steady over the past five years.
[ ] 5 No opinion; can't say.

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