Differences in Men and Women Judges: Perspectives on Gender

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It is no news that women are under-represented in public office in the United States, or that they are far better represented in local office than in state and federal office. Yet it may be news to some that women are far less well represented in state judicial office than in state legislative office. In 1985, 14.8 percent of state legislative seats, nation-wide, were held by women; nine states had 20 percent or more women members. In 1987, only 7.6 percent of state general jurisdiction trial court judgeships were held by women; 8.9 percent of intermediate appellate court judges and 6.3 percent of supreme court justices were women. Twenty states have never had a woman supreme court justice; five states have no woman judge on their major trial courts and 15 more states have only one or two women. These figures, dismal as they are, represent significant gains made in the last decade. In 1977, Beverly Blair Cook (1978) found only 145 women major trial court judges in the 50 states, representing 2.8 percent of judges; by 1987 this number had more than tripled to 492 women, representing 7.6 percent of state major trial court judges.

The eligible pool from which women judges are drawn is also increasing steadily. In 1970, only 5.4 percent of law students and 4.7 percent of lawyers were women. More recent figures indicate that women comprise over 40 percent of the nation's law students, and about 17 percent of lawyers. Approximately 620 women now sit on limited jurisdiction trial courts, mostly municipal and traffic courts, up from about 300 in 1980. These lower court judges are part of the eligible pool for general jurisdiction and appellate courts at both state and federal levels. Thus, although the number of major trial court and appellate court women judges is not commensurate with the number of women lawyers or lower court judges at present, the continuing increase in the pool of eligibles suggests that increases in the numbers of women judges will continue.

Given the current rate of increase and the likelihood of continued increase, it seems appropriate to ask if women judges have something unique to contribute to the operation of our system of justice. When confronted with this exact question, Judge Patricia Wald, the first woman to serve a regular term as
Chief Judge of a federal appellate court (DC Circuit), had this to say: "I am frequently asked whether I think there ought to be more women judges just for fairness' sake, or because I think they have something unique to contribute. I say the latter". Other prominent women judges have echoed these sentiments. Justice Christine M. Durham of the Utah Supreme Court says: "We bring an individual and collective perspective to our work that cannot be achieved in a system which reflects the experience of only a part of the people whose lives it affects".

Empirical data to support or disprove such assertions are sparse and contradictory. Although there is some evidence to suggest that women judges may have more liberal attitudes on women's issues than do men, studies comparing decisional behavior of men and women judges generally conclude that, with minor exceptions, women do not differ much from men, although there are apparently some circumstances in which judicial gender may impact decisions. Unfortunately, with the exception of Cook's studies using simulated cases, most studies of gender-linked judicial decisions are seriously flawed by the unavoidably small numbers of women/and or cases analyzed.

Observers who examine only case decisions or sentencing patterns for gender influences may miss other potentially important behavioral differences. If women judges bring different perspectives to the bench, these differences might influence such things as women's conduct of courtroom business, especially as regards sexist behavior by litigators; or women's behavior as administrators, for example, in hiring women law clerks. The presence of women judges may influence the sex role attitudes held by their male colleagues, both judges and lawyers. Their presence could also impact women lawyers, litigants and jurors, affecting their behavior. To date, virtually no empirical data exists addressing these possible behavioral impacts of judicial gender.

The present paper is a first attempt to try to establish some dimensions to the different, gender-based, perspectives men and women judges might bring to the bench. Three areas of potential attitudinal differences between men and women are examined: perceptions of the role of women judges; perceptions of gender bias in the courts; and decisions on five hypothetical cases raising women's rights issues. All three variables are examined by gender, controlling for feminism. A major underlying question is whether gender or feminist ideology is a more important influence on judicial attitudes. A concluding section of the paper examines gender differences in respondents' household division of labor arrangements and feelings of family/career
conflicts.

All local and state, trial and appellate, women judges in attendance at the 1986 annual convention of the National Association of Women Judges (NAWJ) were surveyed (federal, administrative law, and retired judge members were excluded to obtain a total N of 125). The largest group of respondents were obtained at the convention itself by including the survey instrument in official registration packets. A follow-up by mail after the convention brought the response rate up to an exceptional 87 percent (n=109) assuring representativeness of the conference attendees.

However, conference attendees are probably not representative of the general body of women judges on the attitudinal variables tested. Although the NAWJ has a broad-based membership, including both Democrats and Republicans (Justice Sandra Day O'Connor is a founding member), and includes almost half of the women judges in the United States, it is in some respects a feminist-style organization. For example, it has as one of its major goals to increase the number of women judges, and its foundation wing (The Women Judges' Fund for Justice) actively seeks to educate judges to the problems of gender bias in the courts. One may reasonably expect that members who attend the conventions would tend to hold stronger feminist positions than might the general membership; members might also reasonably be expected to be somewhat more feminist than non-members. Thus, this sample of women judges is very probably more feminist in its attitudes than the general run of women judges.

There is reason to believe that the male sample may also represent a feminist bias. Men judges in the study were selected randomly from among those men sitting on the same courts as women respondents. In those very few cases where women judges had no male colleagues, men who sat on courts at the same level, in the same state, in similarly sized jurisdictions were surveyed. However, male response rates were significantly lower than that of females. Although twice as many men as women were included in the survey in anticipation of a lower response rate (n=250), only 85 responses were obtained for a 34 percent response rate. There is no way of knowing how representative the men respondents may be of the total sample in their attitudes, but the low response rate strongly suggests the possibility of bias.

In a sense, however, the present sample of men and women judges presents a "best case" scenario, at least from a feminist point-of-view. That is, it provides an opportunity for
asking whether if the bench were composed of feminists of both sexes, gender would still have a significant impact on judicial attitudes.

**Construction of Feminism Scale**

Respondents were asked to agree/disagree with six statements designed to tap feminist attitudes. A statement measuring support for the women's movement was drawn from earlier studies of political women. A four more statements were devised using Einstein's analysis of liberal feminism, to represent progressive positions on a continuum from the anti-feminism of Phyllis Schlafly to radical feminism. A final question required respondents to self-identify as feminists. The last two questions, on radical feminism and self-identity, were dropped from the final feminism measure due to low levels of agreement. The mean sum of the responses to the four remaining statements was calculated, and respondents above the mean were termed feminists, those below, non-feminists.

| Table 1 |
| "Feminism by Gender, Mean Scores" |

<table>
<thead>
<tr>
<th>Feminist Statement: Support for:</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women's Movement ***</td>
<td>3.854 (n=82)</td>
<td>4.257 (n=109)</td>
</tr>
<tr>
<td>Major Change ***</td>
<td>3.510 (n=81)</td>
<td>4.393 (n=108)</td>
</tr>
<tr>
<td>Political Action ***</td>
<td>3.430 (n=82)</td>
<td>4.463 (n=108)</td>
</tr>
<tr>
<td>Women not Already Equal Legally</td>
<td>2.524 (n=82)</td>
<td>3.766 (n=108)</td>
</tr>
<tr>
<td>I Am a Feminist **</td>
<td>3.190 (n=59)</td>
<td>4.150 (n=107)</td>
</tr>
<tr>
<td>Liberal Feminism</td>
<td>2.224 (n=76)</td>
<td>2.667 (n=105)</td>
</tr>
</tbody>
</table>

* p = < .001; 1 = strong disagreement, 5 = strong agreement
** 31% of men left this question blank
*** Responses used in constructing feminism scale
RESULTS
Perceptions on Role of Women Judges

Representation of Women

Three items examined respondents' views about the potential benefits of increasing the representation of women on the bench.

On the first item, "men's view of women is affected positively by the presence of women judges", men feminists evidenced the strongest agreement, followed by women feminists, and women non-feminists, with men non-feminists last. On the next two items, "women have unique perspectives" and "the bench without women does not reflect the total fabric of society", women feminists showed the strongest agreement. Women non-feminists were second, men feminists third, and men non-feminists last in the strength of their agreement with the statements.

<table>
<thead>
<tr>
<th>Theory:</th>
<th>Non-Feminists</th>
<th>Feminists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MEN</td>
<td>WOMEN</td>
</tr>
<tr>
<td>Men's View</td>
<td>3.780</td>
<td>4.000</td>
</tr>
<tr>
<td>Affected Positively</td>
<td>(n=50)</td>
<td>(n=22)</td>
</tr>
<tr>
<td>Women Have Unique Perspective</td>
<td>3.482</td>
<td>4.174</td>
</tr>
<tr>
<td></td>
<td>(n=56)</td>
<td>(n=23)</td>
</tr>
<tr>
<td>Bench Without Women</td>
<td>3.696</td>
<td>4.261</td>
</tr>
<tr>
<td>Doesn't Reflect Fabric of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Society</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(n=56)</td>
<td>(n=23)</td>
</tr>
</tbody>
</table>

* Analysis of variance means test, p = .000

Women Judges' Behavior

Three items tested respondents' views of the behavior of women judges on the bench.

In each instance, gender was more important than ideology in determining levels of response, although both genders also were influenced by feminist ideology. Women respondents, regardless of ideology, were significantly more likely than men to perceive that women judges do behave differently, that they have an ability to bring people together that men do not have, and that
they face special problems in the judicial system. The order of agreement with these positions was: women feminists, women non-feminists, men feminists, men non-feminists.

**Perceptions of Gender Bias in the Courts**

One item asked respondents to agree/disagree with the statement: "Judges sometimes treat women attorneys, witnesses or litigants in demeaning, condescending or unprofessional ways." This statement was derived from the survey of gender bias, conducted by the New York Task Force on Women in the Courts.

The notion of gender bias is a particularly important and current question. Ten states have recently undertaken to examine the presence of gender bias in their courts through the creation of special task forces. In eight of these ten states a woman justice was serving on the highest court when the task force was created (CA, MD, MS, NJ, RI, NY, UT, MI), although only 21 states had women supreme court justices in 1986. Clearly, this is an area of judicial behavior in which the presence of women seems to have particular significance.

Results indicate that feminism is more important than gender in the perception of gender bias. Women feminists continued to lead all four groups in their agreement with the survey statement, but men feminists out-rank women non-feminists. Men non-feminists rank at the bottom, as usual, demonstrating the least support for the notion that gender bias in the courts exists.
Table 4 *  
"Gender Bias"

<table>
<thead>
<tr>
<th>Judges:</th>
<th>Mean Agreement:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feminists,</td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>4.386 (n=83)</td>
</tr>
<tr>
<td>Men</td>
<td>4.200 (n=20)</td>
</tr>
<tr>
<td>Non-Feminists,</td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>4.136 (n=22)</td>
</tr>
<tr>
<td>Men</td>
<td>3.420 (n=50)</td>
</tr>
</tbody>
</table>

*Analysis of variance means test, p = < .000

Hypothetical Cases

Five hypothetical cases raising controversial issues in women's rights were developed from published accounts of actual cases. Cases raised issues of maternity leave rights, battered women's rights, abortion rights for minors, property rights for divorcing home-makers, and protection from sexual harassment rights. Respondents were forced to choose in favor of one party: the women raising the issue or the opposing party (private corporations, law enforcement officials, parents, spouses). Respondents were told to assume that the law would support a decision for either party. A vote for the women was coded as "1", a vote for the opposing party was coded as "0". Respondents were also given a total "Votes" score from 0 to 5, with 1 point for each pro-woman decision in the five cases.

There were statistically significant differences in three of the five case decisions, and in the total Votes score, between men and women, controlling for feminism.

Women feminists were more likely than any other group to vote in favor of women litigants in the battered women, abortion, and divorce cases. Men non-feminists were at the bottom in two of these three cases. Women non-feminists ranked second to women feminists in their pro-woman vote in two of the three statistically significant cases, battered women and divorce. However, on the third case, abortion, both men feminists and non-feminists out-voted women non-feminists in their pro-abortion stance. The relative mean vote on this case makes it clear that the issue of abortion is a major dividing line among women.
Table 5

"Hypothetical Cases"

<table>
<thead>
<tr>
<th>Case:</th>
<th>Non-Feminists</th>
<th>Feminists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MEN</td>
<td>WOMEN</td>
</tr>
<tr>
<td>Maternity (n. s.)</td>
<td>.926</td>
<td>.824</td>
</tr>
<tr>
<td></td>
<td>(n=54)</td>
<td>(n=17)</td>
</tr>
<tr>
<td>Battered Women**</td>
<td>.370</td>
<td>.667</td>
</tr>
<tr>
<td></td>
<td>(n=54)</td>
<td>(n=15)</td>
</tr>
<tr>
<td>Abortion**</td>
<td>.750</td>
<td>.733</td>
</tr>
<tr>
<td></td>
<td>(n=52)</td>
<td>(n=15)</td>
</tr>
<tr>
<td>Divorce**</td>
<td>.836</td>
<td>.933</td>
</tr>
<tr>
<td></td>
<td>(n=55)</td>
<td>(n=15)</td>
</tr>
<tr>
<td>Harassment (n. s.)</td>
<td>.811</td>
<td>.933</td>
</tr>
<tr>
<td></td>
<td>(n=53)</td>
<td>(n=15)</td>
</tr>
<tr>
<td>Votes Mean Score**</td>
<td>3.735</td>
<td>3.920</td>
</tr>
<tr>
<td></td>
<td>(n=245)</td>
<td>(n=60)</td>
</tr>
</tbody>
</table>

* 1 = pro-woman vote, 0 = pro-opposing party vote
** analysis of variance, means test, p = < .03 or better

When the mean Votes score is analyzed the pro-woman score goes in the following order: feminist women, feminist men, non-feminist women, non-feminist men. Thus, overall, in the hypothetical cases, feminist ideology is a stronger influence than gender.

An Additional Consideration: Division of Household Labor

Earlier studies of political women have found that women are handicapped in their competition for political power with men because of traditional gender role assignments, especially that of child care. Men typically do not share equally in the allocation of family tasks. Sapiro argues that this imbalance in the private division of labor constitutes a shared set of problems that characterize a special interest for women. Carroll makes a similar argument that the shared private experience of women, as a consequence
of gender roles, necessarily contribute to a unique political perspective for women.

One explanation of the degree to which women in this study tended to agree with each other, across the lines of feminist ideology, may be their shared gender-based experiences. The final topic to be addressed here is simply a description of the private household arrangements and feelings of conflict between family roles and career roles experienced by the men and women judicial respondents in this study.

There is no significant difference between men and women judges' reports of their spouses' favorable attitudes toward their judicial positions. Both sets of spouses are highly supportive. However, men judges report that their spouses have been significantly more helpful to their careers and are more likely to participate in household and child care duties.

Table 6
"Experiences of Judges in Family/Career Roles"

<table>
<thead>
<tr>
<th>Experience:</th>
<th>Men (n=77)</th>
<th>Women (n=86)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge's Spouse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Favorable Attitude n.s.</td>
<td>4.59</td>
<td>4.68</td>
</tr>
<tr>
<td>Helpful to Career*</td>
<td>4.169</td>
<td>3.023</td>
</tr>
<tr>
<td>Shares HH Labor*</td>
<td>4.608</td>
<td>3.656</td>
</tr>
<tr>
<td>Judge's Conflict</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Career and Spouse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Past*</td>
<td>2.275</td>
<td>2.742</td>
</tr>
<tr>
<td>At Present n.s.</td>
<td>2.122</td>
<td>1.974</td>
</tr>
<tr>
<td>Judge's Conflict</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Career and Children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Past*</td>
<td>2.2581</td>
<td>3.507</td>
</tr>
<tr>
<td>At Present n.s.</td>
<td>2.063</td>
<td>2.043</td>
</tr>
</tbody>
</table>

* analysis of variance means test, p = < .05 or better

Women respondents experienced significantly higher levels of conflict between their family and career roles early in their careers, but this difference from men has since disappeared and their sense of conflict has diminished to male levels. Women's parental roles engendered much greater conflict with their careers than did their spousal roles. Men respondents, on the other hand, simply felt far less conflict over-all during their earlier years and have retained the same low level of conflict into the present.
Far more dramatic gender differences showed up when judges were asked to identify the primary person in their families who does the housework and takes responsibility for running the household. The majority of judges, men and women, were not the primary person to perform housework. Nevertheless, over 46 percent of women, but less than 14 percent of men, performed the major housework themselves. Moreover, in over half of women judges' households hired help did the major housework, whereas in men's households over 70 percent of their spouses did the major housework.

Table 7
"Primary Person Who Does Housework and Runs Household in Judges' Families"

<table>
<thead>
<tr>
<th></th>
<th>Judge Personally</th>
<th>Judge's Spouse</th>
<th>Hired Help</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Housework:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men (n=73)</td>
<td>13.7%</td>
<td>71.2%</td>
<td>15.1%</td>
</tr>
<tr>
<td>Women (n=106)</td>
<td>46.2%</td>
<td>2.8%</td>
<td>5.1%</td>
</tr>
<tr>
<td><strong>Runs Household:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men (n=66)</td>
<td>30.3%</td>
<td>69.7%</td>
<td>--</td>
</tr>
<tr>
<td>Women (n=102)</td>
<td>96.1%</td>
<td>3.9%</td>
<td>--</td>
</tr>
</tbody>
</table>

* chisquare test, p = < .01

**DISCUSSION**

This paper began by raising the question of whether or not gender has a significant impact on gender-related attitudes held by men and women judges, separate from the influence of feminist ideology. The answer appears to be a qualified "yes". Statistically significant variations between genders, controlling for feminism, were found on almost every attitudinal variable tested. Item by item feminist women consistently demonstrated the strongest agreement with the survey statements and non-feminist men consistently demonstrated the least agreement. However, even though differences between feminist men and non-feminist women were statistically significant, the differences were very small and rank order was sometimes reversed between men and women.

The influence of gender and feminism was not as apparent in respondents' votes in the hypothetical cases. Two of the cases—maternity rights and sexual harassment—showed no
statistically significant differences in voting patterns among the four groups of judges. In two of the other three cases—battered women and divorce—women, both feminists and non-feminists, evidenced significantly greater support for the women litigants than either group of men, demonstrating the strength of gender influences. However, in the third case—abortion—women non-feminists dropped to the bottom of the four groups in their pro-woman vote. Both men feminists and non-feminists were more likely to vote for abortion rights. It seems that the issue of abortion is a major divisive factor among women judges.

As a consequence of their low score on the abortion case, women non-feminists ranked third in their total pro-woman Votes Score. Feminist women were at the top, followed by feminist men, and non-feminist men were at the bottom. Thus, in their overall voting patterns feminist men were more pro-woman than non-feminist women. However, within both ideological types, women were more pro-woman than their male counterparts. Differences between groups were small with the most sizable differences being between feminist women and non-feminist men.

Finally, an examination of the private household arrangements and personal experience of family-career conflicts of men and women judges showed significant differences by gender. Despite their high status as judicial elites, women judges carry a much heavier burden at home than do their men colleagues. They have also had to resolve greater problems of conflict between their traditional family roles and their judicial careers. It seems entirely possible that these gender role experiences have heightened women judges’ sensitivity to gender bias regardless of their ideological leanings.

The possible behavioral impact of the attitudinal differences found in this study remain to be uncovered. Future research should focus on possible links between attitudes and actual judicial behavior, perhaps examining some of the possibilities described in the introduction to this paper.

**FOOTNOTES**


2Martin E., 1988, State Court Political Opportunity Structures: Implications for the representation of women, American Political Science Association, Washington, DC.


4Martin E., 1988, State Court Political Opportunity Structures.


8Martin, State Court Political Opportunity Structures.


11Ibid, p. 133.


16Ibid.


20Cook, 1981. Will women judges make a difference?


