

Changing the Face of the Law: How Women's Advocacy Groups Put Women on the Federal Judicial Appointments Agenda

Mary L. Clark*

Given the significant involvement of women judges and members of women's advocacy groups in the Women, Justice, and Authority conference, I thought it fitting to pursue some legal history for this occasion on the impact of women's advocacy groups on women's judicial appointments, looking in particular at Article III judgeships. Like Linda Kerber, I focus here on the transformative moment of the 1970s, specifically the years of the Carter presidency, 1977-81, when women's advocacy groups first exercised significant influence over women's federal judicial appointments. Before Carter, only eight women had been named to Article III courts of general jurisdiction.¹ During Carter's one term, forty women were appointed—a 500% increase. This article addresses how and why this occurred, and what lessons we can learn from it.

* Visiting Associate Professor, Washington College of Law, American University.

1. These first eight were:

<i>Name</i>	<i>Court</i>	<i>Appointing President</i>	<i>Year Confirmed</i>
1. Florence Ellinwood Allen	6 th Cir.	Roosevelt	1934
2. Burnita Shelton Matthews	D.D.C.	Truman	1949
3. Sarah Tilghman Hughes	N.D.Tex.	Kennedy	1962
4. Constance Baker Motley	S.D.N.Y.	Johnson	1966
5. June Lazenby Green	D.D.C.	Johnson	1968
6. Shirley Mount Hufstедler	9 th Cir.	Johnson	1968
7. Cornelia Kennedy	E.D. Mich.	Nixon	1970
8. Mary Anne Richey	D. Ariz.	Ford	1976

Judicial Biographical Database, Federal Judicial Center, available at <http://www.uscourts.fjc.gov> (last visited Nov. 20, 2002).

I. EARLY WOMEN'S ADVOCACY GROUP ACTIVITY AROUND WOMEN'S JUDICIAL APPOINTMENTS

Prior to the mid-1970s, there were a small number of women's legal and political organizations pressing the issue of women's judicial appointments at the federal level. After Franklin Roosevelt's first inauguration in 1933, for example, Molly Dewson, then-chair of the Women's Division of the Democratic National Committee (DNC) and friend of Eleanor Roosevelt, submitted a list of female judicial candidates to the president. Dewson's list included Florence Allen, who became the first woman named to an Article III court of general jurisdiction when Roosevelt appointed her to the Sixth Circuit in 1934.² Dewson's successor as chair of the DNC's Women's Division, India Edwards, successfully lobbied Truman to appoint Burnita Matthews to the District of Columbia district court in 1949, at a time when twenty-seven new federal judgeships had been created. According to the *Washington Post*, "[A]n impassioned letter from Mrs. Edwards to President Truman was instrumental in winning the appointment of the first woman to sit as a judge on a U.S. District Court."³ The National Association of Women Lawyers (NAWL)⁴ likewise lobbied Truman to appoint women to some of the new judgeships in 1949.⁵ Lastly, women's advocacy groups lobbied both Roosevelt and Truman to appoint Allen to the U.S. Supreme Court, though neither president seriously considered her for this post.⁶

Apart from these efforts, women's advocacy groups exerted little sustained pressure for women's judicial appointments pre-Carter. There simply were not enough women lawyers or women active in the women's movement to make women's judicial appointments an important presidential consideration. As a result, women's judicial appointments remained token, isolated events, occurring on a largely once per presidential administration basis.

2. BLANCHE WIESEN COOK, *ELEANOR ROOSEVELT, VOL. 2, 1933-1938* 67-69 (1999). Allen ran for the U.S. Senate from Ohio in 1926, losing in the Democratic primary, and for the U.S. House of Representatives from Ohio in 1932, winning in the Democratic primary but losing in the general election. During this same period, Allen was elected to a judgeship on the Cuyahoga County Court of Common Pleas (1920) and Ohio Supreme Court (1922), where she served two six-year terms as an Associate Justice before being tapped for the federal court of appeals. See *Woman Elected Judge*, *WOMAN CITIZEN* (July 1921) (reporting that Allen was elected judge "by the largest popular vote ever given a candidate for the bench in that county. Miss Allen led the ticket with the three men judges who were elected falling far behind her total."); *Judge Florence Allen*, *WOMEN LAW. J.* 15 (1932); *Miss Allen Talks of Women's Gains: First Woman Named a U.S. Circuit Judge Thinks Suffrage Improves Politics*, *N. Y. TIMES*, March 25, 1934.

3. *India Edwards, Pioneering Woman in Democratic Party, Dies at 94*, *WASH. POST*, Jan. 16, 1990, at B5.

4. NAWL formed in 1899 in response to women's exclusion from the American Bar Association. CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 259 (2d ed. 1993).

5. SHELDON GOLDMAN, *PICKING FEDERAL JUDGES: LOWER COURT SELECTION FROM ROOSEVELT THROUGH REAGAN* 93 (1997).

6. Beverly Blair Cook, *The First Woman Candidate for the Supreme Court — Florence E. Allen*, *SUP. CT. HIST. SOC. Y. B.* 1981.

II. ADVOCACY FOR WOMEN'S FEDERAL JUDICIAL APPOINTMENTS UNDER CARTER

When Carter took office in January 1977, there was only one woman among 97 judges on the federal courts of appeal and five women among 399 district court judges. By the time Carter left office in January 1981, he had appointed eleven women to the courts of appeals⁷ and twenty-nine to the district court.⁸ Indeed, women constituted nearly twenty percent of Carter's 57 court of appeals appointees and more than fourteen percent of his 202 district court appointees, an enormous increase over that of his predecessors.

Barbara Babcock, an Assistant Attorney General under Carter who was charged with generating names of women judicial candidates, spoke of the President's commitment to promoting women's opportunities through appointment to judgeships, among other posts: "Part of his platform [as presidential candidate in 1976] was to appoint more women, not just to the bench, but to government generally; he was going to bring women into the upper reaches of the administration."⁹

Carter's commitment to women's opportunity was shaped in part by the women around him—among them, his wife and partner in business and politics, Rosalynn Carter;¹⁰ his socially-committed mother, Lillian Carter; his female presidential advisors, Margaret McKenna, the Deputy White House Counsel, whose support for women's judicial appointments was strong and effective;¹¹ and *Roe v. Wade* advocate Sarah Weddington, who served as Carter's White House liaison to women's interest groups. Remarking on these latter individuals' influence on Carter's appointment of women judges, Babcock noted, "I think that all the women judges would never have been appointed again without the strong presence of women bosses in the Carter administration. It was very, very striking."¹²

7. In an effort to make the federal courts more representative of the general population, Carter had sought to appoint a woman to every court of appeals, falling just short of doing so. Likewise, he had sought to name African-Americans to courts in the Deep South.

8. Judicial Biographical Database, *supra* note 1.

9. Oral History interview with Barbara Babcock (May 19, 1995) (on file with the Federal Judicial Center's History Office), at 1. Babcock attributes her own appointment to Carter's emphasis on women's opportunities. *Id.*

10. On at least one occasion, Rosalynn Carter's lobbying of her husband was critical to a woman judge's nomination, that of Phyllis Kravitch of Savannah, Georgia, to the Fifth Circuit. See, e.g., Note from Rosalynn Carter to Jimmy Carter (Sept. 14, 1978) (on file with the Carter Presidential Library) (stating "Jimmy, I hope you can appoint Phyllis Kravitch."). See also Oral History Interview with Griffin Bell (May 9, 1995) (on file with the Federal Judicial Center's History Office) at 28 (noting, "Phyllis Kravitch was strongly supported by Mrs. Carter.").

11. Babcock recalls the centrality of McKenna's role as follows: "It was wonderful, the way she really threw her weight around. She was [Lipshutz's] deputy, and not the President, but she would say, 'This is what the White House wants.' It was great assurance. She had a lot to do with getting the names through." According to Babcock, "It was very much a collective effort among women." Oral History Interview with Barbara Babcock, *supra* note 9, at 5-6.

12. *Id.* at 3.

Of course, supporting women's appointments was also good politics for Carter, where the importance of women's votes was beginning to be recognized. Indeed, during the 1976 presidential election campaign, both the Democratic and Republican party platforms pledged to appoint more women as judges, and Ford named his only woman judge at this time.¹³

Contemporaneous with Carter's commitment to appointing more women judges was women's rapidly increasing entry into the legal profession, as well as rising activism by women's legal and political advocacy groups around the issue of women's judicial appointments. New organizations specifically focused on promoting women's appointments to the federal judiciary formed at this time, and existing organizations undertook new initiatives to lobby for women's appointments. These organizations were better organized, better connected, and more sophisticated at using the media than had been their predecessors. The pressure brought to bear by women's legal and political advocacy groups was critical in altering the political landscape in which women's judicial candidacies were considered—complementing, and indeed spurring, Carter's efforts to reform the judicial appointments process to name more women judges.¹⁴

One of the most prominent organizations lobbying for women's judicial appointments was the National Women's Political Caucus's (NWPC) Legal Support Caucus, established immediately after Carter's election to generate names of potential female judicial candidates. The Caucus stated its mission as "identify[ing] and assist[ing] well-qualified feminist lawyers in appointment to the federal bench."¹⁵ It encouraged women to apply for federal judgeships by disseminating information about the application process and conducting training sessions on how to apply. Led by Susan Ness and overseen by NWPC Chair Mildred Jeffreys, the Legal Support Caucus submitted an extensive list of judicial candidates to the administration soon after it entered office. The Caucus then worked in coalition to support particular women's candidacies, as when it wrote to Carter on behalf of Ruth Bader Ginsburg's appointment to the District of Columbia Circuit. The Caucus' letter was co-signed by a host of progressive organizations, including many women's advocacy groups: the American Association of University Women, B'nai Brith Women, California Women Lawyers, Equal Rights Advocates, Federation of Organizations for

13. This was Mary Anne Richey, appointed to the District of Arizona in 1976. Judicial Biographical Database, *supra* note 1.

14. Sally Kenney, Director of the Center on Women and Public Policy at the University of Minnesota's Humphrey Institute of Public Affairs, has written importantly about the significance of women's advocacy groups in pressing women's federal judicial appointments at this time. See, e.g., Sally J. Kenney, *Breaking the Silence: Gender Mainstreaming and the European Judiciary*, Presentation at "Mainstreaming Gender in European Public Policy" Workshop, University of Wisconsin-Madison (October 14, 2000), available at <http://wiscinfo.doit.wisc.edu/eucenter/conferences/gender/kenney>.

15. NWPC Legal Support Caucus membership circular (undated) (on file with the Schlesinger Library on the History of Women, Harvard University).

Professional Women, NAACP Legal Defense Fund, National Conference of Puerto Rican Women, Women's Division/National Bar Association, Women's Equity Action League, Women's Legal Defense Fund, and the Women's Rights Project of the Center on Law and Social Policy.¹⁶

The Caucus dramatized the need for women's judicial appointments through its press releases and judicial fact sheets, underscoring the gross underrepresentation of women on the bench.¹⁷ The Caucus likewise published periodic bulletins tracking the number of women nominated and confirmed and highlighting its activities on behalf of women's judicial appointments.¹⁸

As a sign of its influence, the Caucus testified on the slow pace of women's judicial appointments at Senator Edward Kennedy's first hearing as Chair of the Senate Judiciary Committee.¹⁹ The Caucus also lobbied the Senate Judiciary Committee, in conjunction with other civil rights groups, to include consideration of membership in discriminatory clubs when evaluating judicial nominees. In a bulletin to its members, the Caucus noted its success in raising the issue of nominees' discriminatory club memberships. Acknowledging that only race, and not sex, discrimination had been given formal attention by the Senate Judiciary Committee, the Caucus reported that the Committee's staff "informally alerts judicial candidates to the fact that women's organizations are prepared to testify against those who belong to clubs that discriminate against women." The bulletin went on to announce: "Judicial candidates have 'seen the light' and are suddenly stating their intention to resign from organizations such as Rotary and Kiwanis."²⁰

In the weeks following passage of the Omnibus Judgeship Bill, creating 152 new judgeships, Sarah Weddington noted the Caucus' important role in submitting names of prospective women judges to the administration:

As an attorney, I am only too well aware of the dearth of women judges, despite the growing number of excellently qualified women in

16. See Letter from Iris Mitgang, National Chair of the NWPC, to President Carter (Feb. 4, 1980) (on file with the Carter Presidential Library).

17. See, e.g., NWPC, *Judicial Fact Sheet* 1 (Jan. 23, 1979) (on file with the Schlesinger Library on the History of Women, Harvard University). Ness also authored articles on the status of women's judicial appointments. See, e.g., Susan Ness, *A Sexist Selection Process Keeps Qualified Women Off the Bench*, WASH. POST, March 26, 1978; Susan Ness, *Women Judges — Why So Few?*, GRADUATE WOMAN, November/December 1979, at 10.

18. The Caucus' first bulletin reported: Our efforts were on two levels: A national campaign to call attention to the appalling lack of women in the federal judiciary and a series of campaigns, directed by and centered in the state caucuses, to work on filling specific judgeships with women from those states. *NWPC Legal Support Caucus Report* 1 (June 9, 1978) (on file with the Schlesinger Library on the History of Women, Harvard University).

19. NWPC memorandum from Susan Ness, Chair of NWPC's Legal Support Caucus, to Legal Support Caucus Coordinators and Friends Working on Judgeships 4 (March 23, 1979) (on file with the Schlesinger Library on the History of Women, Harvard University) (reporting on NWPC Mildred Jeffreys' February 27, 1979 testimony).

20. *NWPC Legal Support Caucus Report* 1 (Oct. 23, 1979) (on file with the Schlesinger Library on the History of Women, Harvard University).

the legal field. My office has welcomed the information and assistance you have been able to give us concerning viable women candidates for the new judgeships, which have been created, and I am encouraged to know that you intend to expand the project.

It is always a pleasure to work with the Caucus. The political skill with which you approach a situation assures that your viewpoint will be given serious consideration. Good luck with your work for 1979, and please keep me informed about the progress of your plans. You know I stand ready to help in any way I can.²¹

Such remarks by an administration official could not have been imagined a couple of years before.

The push for women's judicial appointments, however, was not limited to women's advocacy groups. Support for women judges began to figure prominently in the agendas of other civil rights organizations at this time. The Judicial Selection Project, for example, was established in 1977 to monitor Carter's progress in diversifying the federal bench in terms of appointing women and people of color. The Project was composed of representatives from a variety of civil rights and other public interest organizations, including the American Civil Liberties Union, the NAACP Legal Defense Fund, the National Council of La Raza, the National Women's Political Caucus, the NOW Legal Defense and Education Fund, and the Women's Legal Defense Fund.²² As the list suggests, there was significant overlap in membership between the Project and groups principally pressing for women's judicial appointments.

Complementing the work of the Legal Support Caucus and the Judicial Selection Project was the 1979 formation of the Federation of Women Lawyers' Judicial Screening Panel. The Panel was created when the Carter administration agreed to forward names of prospective judicial candidates to a coalition of women's rights groups for pre-nomination screening (as the administration had earlier agreed to do for the National Bar Association, an organization of African-American attorneys).²³ NWPC Chair Mildred Jeffreys suggested this arrangement to Attorney General Griffin Bell at a January 1979 meeting between Bell and representatives of women's and other civil rights advocacy groups.²⁴ Bell agreed, and the Federation of Women Lawyers'

21. Letter from Sarah Weddington, Special Assistant to the President, to Audrey Rowe, Chairwoman, Advisory Committee of the National Women's Political Caucus 1 (November 28, 1978) (on file with the Carter Presidential Library).

22. Judicial Selection Project Membership List (Nov. 1978) (on file with the author). Initially housed at Georgetown's Institute for Public Representation under the direction of Georgetown Law Professor Charles R. Halpern, the Project later merged with the Alliance for Justice, now led by Nan Aron.

23. See, e.g., Griffin B. Bell, *Federal Judicial Selection: The Carter Years*, in JUDICIAL SELECTION: MERIT, IDEOLOGY, AND POLITICS 28 (National Legal Center for the Public Interest 1990).

24. Minutes, Meeting with Judge Bell: Monday, January 15, 1979, 3:30 p.m. (on file with the Carter Presidential Library). Participating in the meeting with Bell were representatives of the American Association of University Women, American Civil Liberties Union, League of Women Voters, National Organization for Women, NAACP, Women's Equity Action League, Women's Legal

Judicial Screening Panel was born.²⁵ Unlike the NWPC's Legal Support Caucus, the Judicial Screening Panel did not supply the administration with names of potential women candidates nor advocated particular women's candidacies, but rather screened the administration's prospective nominees with regard to their attitudes on issues related to women's rights.

Under the initial direction of Lynn Hecht Schafran,²⁶ the Panel evaluated prospective nominees in terms of their demonstrated commitment to issues of equal justice and their anticipated impact on women's rights. On receiving the administration's list of prospective candidates, the Panel asked each candidate to complete a brief questionnaire, which, among other things, inquired about the candidate's participation in clubs that discriminated against women and people of color in their membership.²⁷ Along with the Legal Support Caucus, the Panel succeeded in persuading the American Bar Association's Standing Committee on Federal Judiciary and the Senate Judiciary Committee to consider membership in discriminatory clubs in evaluating judicial nominees.

Despite unprecedented levels of cooperation between Carter officials and women's advocacy groups,²⁸ tension nevertheless arose over the pace and number of women's appointments. An October 1978 memorandum to the president from White House Counsel Robert Lipshutz and presidential political advisors Tim Kraft and Frank Moore emphasized women's advocacy groups' disappointment with Carter's failure to appoint a woman to any of the first twelve court of appeals vacancies in his administration. Indeed, they cited the disappointment of women's advocacy groups in advocating Phyllis Kravitch's nomination to the Fifth Circuit:

We recommend that you nominate for the 5th Circuit, Judge Phyllis Kravitch of Savannah. The most severe criticisms to date of this Administration's judicial appointments have come from women's

Defense Fund, and the Women's Rights Project of the Center on Law and Social Policy (now the National Women's Law Center).

25. The Panel included representatives from the Women's Legal Defense Fund, the Women's Rights Project of the Center on Law and Social Policy, the NOW Legal Defense and Education Fund, the National Association of Women Lawyers, and the Women's Equity Action League.

26. Schafran was succeeded as director of the Judicial Screening Panel by Estelle Rogers in 1981.

27. *See, e.g.*, Letter from Estelle H. Rogers, National Director of the Federation of Women Lawyers' Judicial Screening Panel, to a prospective judicial nominee (Oct. 29, 1982) (on file with the author).

28. In addition to the groups cited in the text, a myriad of other women's organizations pressed for women's judicial appointments, including the American Association of University Women, the Arizona Women's Commission, the Black Women Lawyers Association, the Black Women's Agenda Ad Hoc Committee for Black Women Federal Judges, the California Women Lawyers, the Colorado Women's Bar Association, the Minnesota Women's Political Caucus, the National Association of Black Women Attorneys, the New York City Commission on the Status of Women, the NOW Legal Defense and Education Fund, the Oregon Federated Democratic Women's Clubs, the Oregon Federation of Business and Professional Women's Clubs, the Oregon Women's Political Caucus, the Washington Women Lawyers, the Women's Equity Action League, the Philadelphia-based Women's Law Project, the Women's Legal Defense Fund, and WomenSpace. Each of these groups wrote to the President or members of his administration to lobby on behalf of particular women candidates for judgeships. Original letters on file at the Jimmy Carter Presidential Library, with copies on file with the author.

groups, who are distressed that none of the 12 circuit judges nominated to date have been women. In part, this has been caused by the failure of many nominating panels to include women on the list of candidates submitted to us. . . .²⁹

That President Carter's first nomination of a woman to the court of appeals was credited, at least in part, to advocacy groups' frustration with the slow pace of women's judicial appointments illustrates the impact and influence of such groups.

III. THE 1980 PRESIDENTIAL ELECTION AND A WOMAN FOR THE SUPREME COURT

The National Association of Women Judges (NAWJ) was inaugurated in 1979 with the purpose of advocating women's appointments at the federal, state, and local levels, as well as training women for election and selection for judgeships. Under the initial leadership of California judges Joan Dempsey Klein and Vaino Spencer, NAWJ's original bylaws declared its purpose as:

- promot[ing] the administration of justice;
- discuss[ing] legal, social, and ethical problems mutually encountered by women judges and formulat[ing] solutions;
- increas[ing] the number of women judges so that the judiciary more appropriately reflects the role of women in a democratic society; and
- addressing other important issues particularly affecting women judges.³⁰

From the outset, NAWJ adopted a resolution "call[ing] for the appointment of a woman to the U.S. Supreme Court."³¹ Fulfillment of this goal became NAWJ's immediate priority. The Association lobbied Carter and Reagan, as the two 1980 presidential nominees, to pledge to appoint a woman should a Supreme Court vacancy occur during the upcoming term. Reagan "took" the pledge, while Carter refused, likening it to sex discrimination.

29. Memorandum to President Carter from White House Counsel Robert Lipshutz and presidential political advisors Tim Kraft and Frank Moore 1 (October 1978) (on file with the Carter Presidential Library).

30. NAWJ founding documents (on file with the Schlesinger Library on the History of Women, Harvard University). NAWJ currently formulates its mission as follows:

To study and educate the general public about the number of women judges, the processes by which judges are selected, nominated, elected or confirmed and the barriers which interfere with women's full participation in this process;

In order that the judiciary may more accurately reflect the role of women in a democratic society, to encourage the selection of additional women judges by compiling accurate information on judicial candidates and potential candidates and by cooperating with private and governmental organizations concerned with judicial selection. . .

NATIONAL ASSOCIATION OF WOMEN JUDGES, 2000 MEMBERSHIP DIRECTORY 69.

31. NAWJ Founding Documents (1979) (on file with the Schlesinger Library on the History of Women, Harvard University).

Carter had given strong consideration to naming Shirley Hufstедler of the Ninth Circuit to the Supreme Court, had a vacancy occurred in his first term. But, at a NAWJ event honoring Carter for his efforts to appoint women judges (less than one month before the 1980 election),³² the President stopped short of matching Reagan's promise to put a woman on the Supreme Court, instead pledging serious consideration of women and minorities:

I would be honored to be the first President to appoint a woman to the Supreme Court, but I cannot make such a promise. I can promise, based on my record so far, that women and members of minority groups will be fully considered, but I will not rule out anyone—male or female—on the basis of sex or race or religion or national origin.

To do that, to me, to promise ahead of time that I would comply with your wish would violate the principles for which you and I have both fought so hard and would violate the trust that's been placed in me as President.³³

Invoking NAWJ members' personal experiences with sex discrimination, Carter declared, "I know that you, whose lives are full of critical decisions and who have experienced personal discrimination because you're female and arbitrary exclusion because you are women, understand that better than most people."³⁴

Despite Carter's refusal to "take" the pledge, the impact of NAWJ's lobbying for a female Supreme Court appointee can be seen in remarks Carter prepared for a televised debate with Reagan two weeks before the election. These remarks underscored that the President's record in appointing women judges far exceeded that of Reagan as Governor of California:

32. NAWJ presented Carter with a Citation of Appreciation for his appointment of women judges: WHEREAS, the National Association of Women Judges is an organization of women judges from all parts of America founded in October, 1979 in Los Angeles, California; and WHEREAS, the National Association of Women Judges has as one of its stated purposes "to increase the number of women judges so that the judiciary more appropriately reflects the role of women in a democratic society;" and WHEREAS, President Carter in recognition of the pluralistic society that is America, has appointed 40 women and 55 minority judges to the federal judiciary as of the date of this citation; NOW THEREFORE, in appreciation of these appointive acts by President Jimmy Carter, reflecting a true understanding of America's commitment to a constitutional democracy and to equal opportunity for all its citizens, the

NATIONAL ASSOCIATION OF WOMEN JUDGES
HEREBY CONFERS UPON
PRESIDENT JIMMY CARTER
THIS
CITATION OF APPRECIATION

NAWJ Citation of Appreciation of President Carter (Oct. 2, 1980) (on file with the Carter Presidential Library).

33. President Jimmy Carter, Remarks at a White House Reception for National Association of Women Judges (October 3, 1980), in PAPERS OF THE ADMINISTRATION OF JIMMY CARTER 2059, Speechwriters' Chronological File, Box 82, Carter Presidential Library.

34. *Id.* at 2059-60.

Much has been made of whether Governor Reagan or I would appoint more women or members of minority groups to the Supreme Court and our other courts. The Governor has made campaign promises to make such appointments. I have not and will not. My own record of non-discrimination in judicial appointments is clear, and it is much better than his record in California.³⁵

Soundly defeating Carter, Reagan proceeded to fulfill his pledge by appointing Sandra Day O'Connor to the first vacancy in his first term.³⁶

IV. ABOUT-FACE UNDER REAGAN AND BUSH I

The relationship between the White House and groups advocating women's judicial appointments changed markedly between the Carter and Reagan and Bush I administrations. While there was frustration with the pace and extent of women's appointments under Carter, a generally cooperative relationship existed between the advocacy groups and administration officials charged with judicial appointments. Once Reagan entered office, this cooperation ceased. Groups advocating women's appointments no longer had entrée to presidential decisionmakers. Reagan discontinued Carter's practice of forwarding names of prospective candidates to the Federation of Women Lawyers' Judicial Screening Panel and the National Bar Association for pre-nomination screening.³⁷ Hostility instead brewed between the women's advocacy groups and the White House, coming to a very public head with the defeat of Judge Robert H. Bork's nomination for the Supreme Court in 1987. Shortly thereafter, the Senate Judiciary Committee, under Democratic Senator Edward M. Kennedy's leadership, convened a hearing on Reagan's poor record of appointing women and minorities, and representatives of several women's groups testified, including Estelle Rogers, executive director of the Federation of Women Lawyers' Judicial Screening Panel.³⁸

NAWJ continued to grow, advocating increased appointments of women to the bench at all levels. In 1981, NAWJ partnered with the NOW Legal Defense and Education Fund to create the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP), under the direction of Lynn Hecht Schafran (formerly director of the Federation of Women Lawyers' Judicial Screening Panel). The Project's mission was to promote the study of gender bias at all levels of the court system—local, state,

35. President Jimmy Carter, Prepared Remarks for Presidential Debate (Oct. 20, 1980) (on file with the Carter Presidential Library).

36. *The Brethren's First Sister: A Supreme Court Nominee—And a Triumph for Common Sense*, TIME, July 20, 1981, at 8.

37. W. Gary Fowler, *Judicial Selection Under Reagan and Carter: A Comparison of Their Initial Recommendation Procedures*, 67 JUDICATURE 265, 269 n.24 (1984).

38. Estelle Rogers, Testimony before Senate Judiciary Committee (February 2, 1988).

and national.³⁹ A number of courts responded by forming gender bias task forces to study the question of women's treatment in the court system. Their findings were many and varied—among them that women judges were not always treated with the equal respect and authority accorded their colleagues.

Even though Reagan and Bush I appointed fewer women to Article III judgeships than Carter—thirty-one during Reagan's two terms and thirty-six in George H.W. Bush's single term—precedent had been firmly established for higher levels of participation by women in the federal judiciary. Clinton expanded upon Carter's breakthrough appointment of women by naming over ninety women to the bench in his two terms. While George W. Bush has not continued the Clinton expansion, he, like his predecessors starting with Carter, has not pursued the tokenism with which women historically gained opportunity for judicial service.

V. LESSONS LEARNED

Carter's presidency marked a transformative moment in women's appointments to the federal bench. The confirmation of a substantial number of women to court of appeals and district court seats happened at that time in no small part due to the persistent lobbying of women's legal and political advocacy groups, a force that is now an institutionalized part of the judicial appointments process. What lessons should be taken from the impact of women's groups on women's judicial appointments under Carter? I suggest there are at least two.

First, women's advocacy groups employed a multi-pronged approach to advancing women's opportunities for service on the federal bench, simultaneously pressing their agenda on the presidential, congressional, and public fronts. Training women to apply for judicial office and submitting women candidates' names to the administration, these advocacy groups' efforts went beyond the focused push for women's judicial appointments; they lobbied for change in the evaluation of judicial candidates such that consideration was given to their attitudes on women's rights and membership in discriminatory clubs, with potentially far-reaching consequences for women's equality of opportunity generally.

Second, these groups worked in coalition with other women's groups and civil rights groups broadly to press women's appointments on the presidential agenda, support particular women's candidacies, oppose candidates threatening

39. See Lynn Hecht Schafran, *Educating the Judiciary About Gender Bias: The National Judicial Education Program to Promote Equality for Women and Men in the Courts and the New Jersey Supreme Court Task Force on Women in the Courts*, 9 WOMEN'S RTS. L. REP. 109 (Winter 1985); Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952 (1996).

to women's and civil rights, study the impact of bias in the federal courts, and lobby for judicial reform.

To what end are these lessons relevant now and for the future? Clearly, working in coalition to pursue multiple avenues of change continues to be essential for those concerned with the ongoing pace and extent of women's judicial appointments. Likewise, these lessons continue to apply with force to the efforts to address bias in the courts. A next "frontier" for transformative work concerning women judges lies with access to opportunities for judicial leadership. It is there that women have had their most limited impact to date.