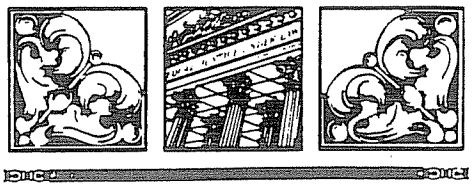
MINNESOTA SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS

REPORT SUMMARY



Introduction

"The spirit of liberty," wrote Learned Hand, "is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias." The Minnesota Supreme Court Task Force for Gender Fairness in the Courts was established in the spirit of liberty, to determine whether the Minnesota courts are indeed weighing interests without bias.

The Task Force was appointed in 1987 to examine the issues of gender bias and gender fairness, of the treatment of women and men who appear in the courts professionally and as litigants and witnesses. The Task Force was established in light of a growing understanding that major social and cultural changes in the last twenty years have presented serious challenges to long-standing assumptions about the fairness of judicial and governmental processes in dealing with gender issues.

These social and cultural changes include women's increased participation in the labor force, increased educational and professional opportunities for women, changes in the structure of the American family, redefinition and increased reporting of sexual and domestic violence, and the rapid increase of women in law schools, law practice, and the judiciary. These changes both caused and were reflected in changes in Minnesota law in the 1970's and 1980's: restructured divorce laws, new approaches to property division and maintenance, revision and recodification of criminal sexual assault laws, and major legislation on domestic abuse.

Background and Structure of the Task Force

The first states to establish task forces to examine gender issues in their court systems were New Jersey, New York, and Rhode Island. In 1985 Minnesota foundations funded a manual to be used in organizing gender bias studies in other states. Minnesota's commitment to gender fairness had been demonstrated by its leadership in legal reform and in judicial appointments by a governor with a clear commitment to diversity on the bench. As the results of studies in other states became available, however, it became clear that the questions at stake were much more comprehensive and subtle than those addressed by specific changes in laws. These studies showed that in a delicately balanced system of

justice, relying heavily on judicial discretion, residual gender bias could circumvent the intent of law reform. The early study results from other states described hardships on individuals resulting in negative perceptions of justice. These studies suggested that gender bias has a widespread influence on participants in the court system and on the potential for just results. Minnesota clearly was not exempt from these issues of contemporary justice.

The first steps to establish the Minnesota Task Force for Gender Fairness followed Chief Justice Douglas K. Amdahl's attendance at a session describing the work and early results of the existing task forces at the 1986 Annual Conference of Chief Justices. A planning group was formed to discuss the task force process and its potential in Minnesota. It recommended establishment of a Task Force and made suggestions for its structure, membership, and focus.

On June 8, 1987, Chief Justice Amdahl, by formal order, created the Task Force and appointed its thirty members. The charge of the Task Force was to:

1. Explore the extent to which gender bias exists in the Minnesota State Court System, by ascertaining whether statutes, rules, practices, or conduct work unfairness or undue hardship on women or men in our courts;

2. Document where found the existence of discriminatory treatment of women or men litigants, witnesses, jurors, and of women judicial, legal, and court personnel;

3. Recommend methods to eliminate gender bias in the courts including the development and provision of necessary judicial education, the passage of legislation, and the promulgation of court rule and policy revisions;

4. Report the findings of its investigation to this Court by June 30, 1989; and

5. Monitor, thereafter, the implementation of approved reform measures and evaluate their effectiveness in assuring gender fairness in our courts' processes.

The Task Force included state appellate and district court judges, a member of the federal court, a state senator, the state court administrator, practicing lawyers, bar leaders, members of the academic community, and citizen leaders. Its membership was selected to reflect geographic, gender, racial, and disciplinary diversity as well as a commitment to the enterprise. Supreme Court Associate Justice Rosalie E. Wahl chaired the Task Force and Court of Appeals Judge Susanne C. Sedgwick was appointed Vice-Chair. Dr. Norma J. Wikler, Associate Professor of Sociology at the University of California at Santa Cruz and a pioneer in the field of judicial education on gender issues, was appointed as consultant to the Task Force.

The Task Force organized its work by establishing six committees. Three of the committees focused on particular subject areas: Family Law; Civil, Criminal, and Juvenile Justice; and Court Administration, Courtroom Interaction, and Judicial Education. The Task Force considered whether to make domestic violence a separate subject of investigation, but recognizing its pervasive nature, determined that its thorough examination required study by each of the subject area committees. A fourth committee, Data Collection and Evaluation, had the substantial task of integrating the work of the committees and supervising the collection and evaluation of data. The Executive Committee assisted the Task Force Chair in directing the work of the Task Force. The Editorial Committee, which

included the Reporter, was responsible for coordinating production of the Task Force's interim and final reports.

Meeting the Mandate

An essential element of the Task Force investigative process was to describe the boundaries of gender-based discrimination. Other gender bias task forces have defined such discrimination as:

> stereotypical attitudes about the nature and roles of men and women, including cultural perceptions of their relative worth and myths and misconceptions about the economic realities encountered by both sexes;
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> attitudes and behavior based on stereotypical beliefs about the nature and roles of the sexes rather than upon independent evaluation of individual ability and life experiences; and
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> any situation in which a decision is made or an action taken because of weight given to preconceived notions of sexual roles rather than upon a fair and neutral appraisal of merit to each person or situation.

The Task Force, noting that the essence of gender fairness is the treatment of male and female participants in the system with equal respect, did not develop a limiting definition. The Task Force's full title, however, indicates the nature of the inquiry. The Minnesota Task Force for Gender Fairness in the Courts took a positive approach to informed investigation of the issues and committed itself to positive solutions.

The substance of this investigation was framed on the basis of the members' reading, discussion, and observation. Task Force members worked with reports from other states, scholarly books and articles, and their own experiences. Special emphasis was placed on research studies and reports that addressed gender fairness issues in the context of the Minnesota judicial system. Individual Task Force members and staff also consulted with the authors of some of these studies. This background provided a framework for developing an information-gathering plan that included public hearings, lawyers' meetings, surveys of judges, attorneys, and court personnel, a women judges' meeting, and specialized research studies and surveys.

Public Hearings. The Task Force held six public hearings to give Minnesota citizens the opportunity to discuss their concerns as to gender fairness in the courts and to give Task Force members the opportunity to hear those concerns. The hearings were held in Duluth, Rochester, Marshall, Moorhead, and the Twin Cities.

Task Force members heard testimony from over sixty witnesses, including individual members of the public, representatives of interest groups, heads of commissions and agencies, and scholars. Witnesses testified both by invitation and as volunteers. Additionally, witnesses supplemented their oral testimony with written reports and documentation. Those witnesses unwilling or unable to testify personally were urged to communicate in writing with the Task Force. All written testimony submitted to the Task Force remains

confidential. The public proceedings were tape-recorded, and the Task Force prepared transcripts and summaries of the testimony.

Lawyers Meetings. Lawyers meetings were held in conjunction with the public hearings in the Twin Cities, Rochester, Duluth, and Moorhead locations. These meetings were designed to elicit the perceptions of lawyers practicing in the state's courtrooms. To facilitate discussion, the Task Force prepared and distributed a series of questions used to guide the meetings. A number of lawyers who could not attend the meetings in person submitted written responses to the discussion questions. The lawyers' meetings were tape-recorded and summaries of the testimony were prepared for Task Force members.

Surveys. The role of lawyers and judges as sources of information on gender fairness is so significant that the Task Force resolved early to survey all of the judges and attorneys in the state. In addition to providing the Task Force with valuable information, the surveys increased awareness of gender-related issues. The surveys covered specific subjects such as courtroom interaction, family law, criminal law, employment law, and domestic violence, as well as general attitudes and perceptions concerning gender bias.

The lawyers' survey was distributed to all attorneys (approximately 13,000) registered to practice law in Minnesota. A random sample of approximately 4,000 respondents to the survey, drawn prior to mailing, was statistically analyzed. Canvassing all attorneys in the state and following up on a smaller random sample allowed the Task Force to combine the educational benefits of a statewide survey with intensive analysis of a scientifically drawn sample.

The judges' survey was distributed to all 281 judges, referees, judicial officers, and retired judges registered in Minnesota in 1988. All responses were analyzed as the core sample.[1]

Both of these surveys elicited remarkable response rates. Eighty-three percent of lawyers and ninety-three percent of judges responded, expressing diverse opinions and experience. These return rates indicate an exceptional willingness to address issues of gender bias and a commitment to work toward gender fairness.

Towards Fairness

A study of any system undertaken with this level of commitment reveals both its finest attributes and its most disappointing lapses. Narrative comments in the report, which were taken from surveys and testimony, provide compelling, often disturbing, accounts of the lapses. The statistical analyses in the report effectively, if somewhat less dramatically, indicate the extent of gender fair attitudes and behavior as well as areas in which bias persist. Both comments and survey results reflect the diverse perceptions of participants and observers.

Participants and practitioners in the court system share a number of common goals. One of these goals is equality before the law. Intellectually, every judge, lawyer and court employee understands that this equality is the central focus of the role he or she plays in

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1 The text of both survey instruments and a detailed description of survey methodology prepared by Dr. Nancy Zingale are in the Appendix section of the full report.

the judicial system. This report attempts to analyze judicial practices, procedures and demeanor with respect to that shared goal. Specifically, the report describes the progress towards equality made thus far and provides findings and recommendations to facilitate further progress.

This summary includes some of the most significant and compelling data found by the Task Force. Additional supporting data are found on each topic in the full report.

FAMILY LAW

Spousal Maintenance

Spousal maintenance was awarded in only ten percent of Minnesota divorces in 1986, and permanent maintenance was awarded in less than one-half of one percent of cases sampled. When maintenance is awarded, it is rarely high enough to allow the economically dependent spouse to sustain the standard of living maintained during the marriage. Judges seem to underestimate the difficulty women face when they re-enter the work force after a long period of absence, or to adequately respond to acknowledged differences in the earning capacities of men and women, especially women who have deferred careers during child-raising years.

According to survey responses, a majority of both male and female attorneys think that, in considering permanent maintenance, judges lack a realistic view of the likely future earnings of a homemaker who has not worked outside the home in many years. However, when judges were asked in their survey to estimate the likely earning capacity of a fifty year old homemaker who had been out of the workforce for twenty-five years, the majority of judges were able to estimate her income earning capacity in accordance with Census Bureau statistics.

A current study of the economic consequences of divorce, by Professor Kathryn Rettig and Lois Yellowthunder (the Rettig study), indicates that maintenance awards do not reflect the apparent judicial awareness of the economic plight of the long-term marginally employed homemaker facing divorce. The data and the cases suggest that judges may be hesitant to place long-term financial obligations on males.

Findings

1. Spousal maintenance is rarely ordered in Minnesota, even in long-term marriages.
2. When maintenance is awarded, it may sustain the economically dependent spouse at a minimal level but generally does not permit that spouse to maintain a previous standard of living.
3. Courts are reluctant to impose long-term maintenance obligations.
4. Maintenance awards are not sufficient in duration or amount to adequately provide for education or training of the economically dependent spouse.

Recommendations

1. Judicial education courses and continuing education courses for lawyers in family law should address spousal maintenance. These courses should contain: 1) information about the economic realities faced by women attempting to reenter the labor market after extended absences, including practical exercises dealing with spousal maintenance determinations; and 2) information emphasizing the need to make specific findings on all of the factors which state law requires courts to consider in awarding maintenance.

2. Courts should discontinue the use of the terms "rehabilitative" or "short-term" and adopt the term "maintenance" as standard usage.

Property Division

Minnesota law requires that marital property be distributed equitably upon divorce. The Task Force found that, by and large, equitable distribution works well in the state, with courts usually achieving close to a 50-50 division of the marital assets. However, the nature of the property division, with the wife usually receiving the home or non-liquid assets, and the husband receiving the majority of the couple's income-producing assets, can create inequities.

Finding

While property is divided equally in most instances, the nature of the property division, with the husband receiving the majority of the liquid and income-producing assets, can create inequities.

Recommendation

Judicial education programs should address the need for judges to divide marital property so that each of the parties retains some liquid and income-producing assets after divorce.

Child Support

Minnesota has had legislated statewide guidelines for the payment of child support since 1983. The guidelines call for the noncustodial parent to pay a percentage of net monthly income as support, with the percentage increasing as the payor's income and the number of children to be supported increases. The Task Force found that the payment levels established by the guidelines are not set high enough to provide adequately for the support of children and that dollar figures proposed as the suggested floor for support awards are being used instead as the upper limit.

The most serious consequence of inadequate child support awards is the severe economic dislocation that results for women and children after divorce.

As one attorney noted in the survey:

> The custodial parent (usually female) definitely gets the short end of the stick financially. For example, a father takes home $1,500 monthly and the mother takes home $500 monthly. This average family with two children have $2,000 a month to support 4 people ($500 per person). Now the parents divorce, mom gets the kids, child support is set in accordance with the guidelines of $450 per month. Dad now has $1,050 for himself. Mom and the kids live on $950 a month for the three of them. If she has the option of working more hours, she also

pays increased child care costs. (Female attorney, Greater Minnesota)

Low-income custodial parents face an additional disadvantage in establishing child support. When a custodial parent receives Aid to Families with Dependent Children, it is easy for the other parent to negotiate a low child support award. When these custodial parents stop receiving public assistance, they are left with a bare minimum in support.

Testimony was offered on the problem of inconsistency of enforcement of payment, which is a problem in Minnesota as it is in other states. Though federally mandated wage withholding will be in effect by 1994, this will not completely ameliorate the problem of collecting from self-employed and deliberately under-employed payors. While the majority of Minnesota judges responding to the survey say they are willing to use their contempt power to enforce child support awards, and that they note its effectiveness when applied, they do not use contempt very often. This is a troubling finding in a national environment in which less than half of all custodial parents are receiving regular child support payments.

Findings

1. Minnesota's child support guidelines are too low.
2. Courts are misinterpreting the guidelines as a maximum level of support for non-custodial parents, rather than the minimum level as intended by the legislature.
3. Deviations downward from the guidelines are much more common than upward deviations.
4. The standard of living of the custodial parent and children decreases substantially after divorce, while that of the non-custodial parent often improves.
5. Low income custodial parents are especially disadvantaged in establishing child support.
6. Inconsistency in the enforcement of child support awards results in unfairness to custodial parents and their children.

Recommendations

1. Judges should enforce child support orders through the use of contempt.
2. In keeping with the original legislative intent, judges should interpret the child support guidelines as the minimum level of the non-custodial parent's obligation, rather than the maximum.
3. When the Minnesota legislature reexamines its child support guidelines, as required by federal law, it should adopt an approach to establishing child support levels that reduces the disparity between the standard of living of custodial parents and children and non-custodial parents after divorce.
4. Judges should calculate the effects of a downward deviation from the guidelines on the post-divorce standard of living of both parties before ordering a downward

deviation. Judicial education courses in family law should contain information on how to perform these calculations.

5. Judges should use other statutorily authorized judicial sanctions for failure to pay child support, such as the appointment of receivers, where appropriate, and should consider developing additional creative sanctions, all of which should be incorporated into statewide enforcement policies.

Child Custody

The area of child custody is one in which stereotypical assumptions about the proper social roles for women and men can affect judicial decisions. The stereotype that fathers are not capable of caring for young children can make it very difficult for men to prevail in custody cases. At the same time, fathers may be given extraordinary credit for showing nonstereotypical skills, such as diapering, feeding children, etc., but penalized as "too feminine" if they take on a highly involved caretaking role. The stereotype that mothers have innate parenting skills and should behave according to the traditional notion of the nurturing mother can work against a woman in a custody challenge; she may be penalized for working outside the home, seeking counseling, dating, etc.

Damaging sex role stereotypes can extend beyond the courtroom to personnel who perform custody evaluations and mediation. Divorcing parents using these court-provided services may experience gender bias in the custody evaluation process. A number of respondents to the lawyers' survey also spoke of the additional onus placed upon poor women in custody disputes, especially when receiving public assistance. Lawyers noted that these women often face an uphill battle to convince a judge their children should live with them, rather than with a more financially secure father.

Though state law expressly prohibits judges from requiring custody mediation in cases where there is probable cause to believe that domestic abuse has occurred,[2] Minnesota judges regularly order abused women into mediation. Loretta Frederick of the Minnesota Coalition for Battered Women testified to the Task Force:

> Battered women go into mediation scared to death to assert themselves, frightened to say what they really think should happen with their children, sometimes getting literally beaten up in the parking lot afterwards for having opened their mouths, and ending up with custody and visitation [agreements] that are not in the best interests of the children.

According to data from the Rettig study, joint legal custody was awarded in almost fifty percent of divorces granted in Minnesota in 1986. The Task Force found that some judges are too willing to impose joint custody in situations where the parents cannot agree and there is no evidence that joint custody would be in the children's best interest.

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2 Minn. Stat. § 518.619, subd. 2 (1988).

Findings

1. Some judges make stereotypical assumptions about proper roles for women and men that disadvantage both fathers and mothers in custody determinations.
2. Custody mediators and custody evaluators are subject to the same gender-based stereotypes that affect judges.
3. Some judges continue to order custody mediation in situations where there has been domestic abuse in spite of state law prohibiting mandatory mediation in these cases.
4. Fathers sometimes use the threat of joint custody to obtain an economic advantage over mothers.
5. Judges are sometimes too willing to order joint custody where there is no evidence that it is in the best interests of the children to do so.
6. When the court fails to make custody decisions promptly the children suffer harm.

Recommendations

1. Judicial education programs in family law must sensitize the bench to issues of bias in custody determinations; judges must recognize that fathers can be good custodians of small children and that mothers with careers can be good parents.
2. Judicial education programs in family law should educate judges about the need to make custody decisions promptly.
3. Custody mediation should not be ordered where domestic abuse has been documented by means of sworn statements, an OFP, or arrest records.
4. Counties using court services for custody evaluations should provide rigorous training and evaluation to ensure that social workers are sensitive to issues of bias in their investigation and reporting.
5. The Office of the State Court Administrator should develop a standardized format to be used throughout the state in custody evaluations and reports.
6. Where other evidence about custody is presented to the court, the court must carefully consider it along with any recommendation from a court services worker or private evaluator.
7. Judicial education programs in family law should examine the effects of joint custody orders.
8. Judges should use great caution in deciding to order joint custody; it should be imposed over the objections of one of the parents only where the court makes specific findings which identify the reasons why such an order is in the children's best interests.

Access to the Courts

The Task Force learned that, especially in the family law area, women do not have adequate access to the courts. The barriers to access are primarily financial and reflect the imbalance of economic power between men and women. Women in poverty, or without access to their own funds, have a difficulty obtaining legal representation. This problem cannot be solved by relying on increased pro bono work or legal assistance. One important element of a remedy could be an increased willingness to award adequate attorneys fees, in temporary hearing and post-judgment orders.

Findings

1. It is extremely difficult for poor people in Minnesota to obtain legal representation in family law matters.
2. The inability to obtain counsel affects women more severely than men.
3. The reluctance of judges to award reasonable temporary attorney fees and costs in family law cases prejudices the economically dependent spouse by making it impossible for that spouse in many cases to pursue the action.

Recommendations

1. State resources should be made available for the funding of legal representation for poor people in family law matters.
2. Whenever possible judges should award temporary attorney fees and costs to the economically dependent spouse in an amount that is sufficient to allow that spouse to effectively pursue relief in family court.

General Family Law Recommendations

1. Family law should be one of the subjects covered on the Minnesota bar examination.
2. Since family law and domestic abuse cases make up an ever increasing percentage of the caseload in Minnesota's courts at the trial court level, judges should be required to accumulate at least ten hours of judicial education credit in these two areas during each certification period.
3. Judges and attorneys must include more comprehensive economic information about the parties to a divorce in both temporary and final orders. Court records are often incomplete, and vital statistics data accumulated at the state level are presently not detailed enough to permit thorough analysis of the effects of divorce on families and children.
4. The Office of the State Court Administrator should develop materials which explain the function of the court in family law matters to litigants. These materials could include both pamphlets and videotapes. They should be distributed statewide.

DOMESTIC VIOLENCE

Sixty-three thousand incidents of domestic abuse were reported in Minnesota in 1984.[3] To address this problem, the state has some of the nation's most progressive domestic abuse statutes, backed by knowledgeable advocates in both the public and private sectors. In spite of these assets, the Task Force found compelling evidence that domestic abuse victims do not receive the civil or criminal relief which the statutes were intended to provide.

Although civil Orders for Protection (OFPs) are frequently issued and are relatively easy to obtain, they are rarely enforced. Although numerous criminal arrests are made and domestic assault charges brought, discretionary dismissal by prosecutors prevents final resolution of the cases in criminal court. The evidence reveals an enormous problem, much of which is occurring outside the reach of judicial intervention.

Civil Process: The Order for Protection

Many victims of domestic abuse attempt to obtain relief from the abuse by requesting a civil Order for Protection (OFP). Though the Minnesota Domestic Abuse Act requires court personnel to assist petitioners in preparing and filing the necessary forms for an OFP,[4] the Task Force found that circumstances vary from county to county and that in some jurisdictions, petitioners may actually be discouraged from filing. In addition, the Task Force found that in some areas of the state, judges continue to issue mutual OFPs in cases in which only one person has petitioned for an order and there is no evidence of mutual abuse.

Battered women and advocates further testified that some judges do not issue orders for supervised visitation when issuing OFPs because they fail to understand the dynamic of an abusive relationship. Judges may order "reasonable visitation" when a more structured order, setting specific conditions of contact, is needed to reduce the potential for further violence. The confusion between an issued OFP which excludes the abuser from the petitioner's residence and an order of unsupervised visitation which may take place at that same residence often defeats the purpose of an OFP.

Findings

1. Domestic violence is one of the most serious problems faced by our society.
2. Minnesota has strong and progressive statutes which are not adequately implemented or enforced.
3. Judges, lawyers, court personnel, and law enforcement officers are not sufficiently sensitive to the problems of victims of domestic abuse.

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3 This is the most recent available official figure. The number of incidents is complied by the Minnesota Department of Corrections, Program for Battered Women, based upon mandatory reporting by police agencies.

4 Minn. Stat. § 518B.01, subd. 4(e) (1988).

4. Some judges in Minnesota continue to improperly issue mutual Orders for Protection in situations where only one person has requested an order and there is no evidence of mutual abuse.

5. Petitioners for OFPs often do not receive adequate relief.

6. In certain cases the process discourages abuse victims from attempting to obtain protective orders.

7. The usefulness of the OFP is undercut at the local level through absence of clear enforcement procedures and standards.

8. Advocates for victims of abuse play a valuable part in the system; their role should be clarified to ensure their continued participation.

Recommendations

1. Judges, attorneys, court personnel and law enforcement officers should be sensitized to the problems of individuals who have been victims of domestic abuse.

2. The topic of domestic abuse and Orders for Protection – including information about the abuse dynamic and the dangers of victim blaming – should be addressed in judicial education programs.

3. Courts should not issue mutual Orders for Protection in cases without cross-petitions.

4. Continuing legal education programs should address domestic abuse issues.

5. The topic of domestic abuse should become part of the curriculum in family law courses in the state's law schools.

6. Domestic abuse issues should be addressed at local bar association meetings. The Minnesota State Bar Association could prepare a videotape presentation for use by local bar associations.

7. Court administrators and their deputies should have training in the area of domestic abuse as well as a good understanding of Minnesota's Domestic Abuse Act.

8. The state's courts should set a uniform standard regarding the role of the domestic abuse advocate at OFP hearings. The advocate should be allowed to attend the hearing, be present at counsel table and address the court. The courts should also take action to ensure that advocates are allowed to assist in the preparation of OFP petitions.

9. State funding for the hiring and training of advocates should be increased.

10. The forms used to petition the court for an Order for Protection should be simplified. For example, proposed orders could contain more sections which would be checked off by the judge.

Criminal Enforcement

The issue of criminal enforcement of domestic violence cases is complicated by two factors: discretionary dismissal by the prosecutor, before the charge can be determined on the merits either by guilty plea or trial, and the burden placed upon the victim to carry responsibility for the survival of the case. The problem was stated in the lawyers' survey by a prosecutor as follows:

> In all 15 cases, the victims demanded we dismiss. I have never tried any of the cases because of these witness problems. The cops arrest with probable cause without a warrant; I draft the complaints; the victims demand dismissal. I dismiss. These are all misdemeanor charges. (Male attorney, Greater Minnesota)

The dismissal problem can best be addressed by coordinated efforts to bring more victims to court, to use domestic abuse intervention advocates, to vigorously use evidentiary tools, and to commit adequate prosecutorial resources to the problem.

The cooperation of the victim is a necessary component in the prosecution of Fifth Degree Assault (the typical charge in domestic abuse cases). The victim usually is the only witness to the charged assault other than the defendant. The question of whether the prosecutor bears responsibility for getting the victim to court raises a complex issue of the victim's relationship to the legal system. Gender bias may show up dramatically in attitudes which blame the victim for the assault or in stereotypical thinking about the victim's characteristics rather than emphasis on the defendant's conduct. Furthermore, victims may face threats, intimidation, or further battery from defendants attempting to force dismissal of charges.

The prosecutor's willingness to dismiss criminal charges, even at the request of the victim, is a contributory factor to the inability of the criminal process to deal with domestic violence. Pressure may be taken off the victim by judicious use of the subpoena, making it clear that the government, rather than the victim, is responsible for the pending prosecution. Further support can be provided to the victim, insuring higher rates of cooperation and case survival, when domestic abuse advocates are involved to minimize the intimidation factor.

Even when the two-pronged approach of subpoena and advocacy is used effectively, prosecutors still must deal with cases where the victim fails to appear or changes her testimony. In these cases the need for well-developed evidentiary tools is obvious. In the same manner that "sexual assault kits" are provided to medical personnel for use in rape cases, "domestic violence kits" could be given to medical personnel for the gathering of photographic and physical evidence. Other remedies recommended by the Task Force include gathering prompt complaint evidence in the victim's own words by video or audio record, the establishment of a statewide computerized data base for OFPs, use of witness statements other than that of the victim, the use of a single prosecutor for each case to allow for personal and supportive interaction with the victim, and the allotment of greater prosecutorial resources to these cases.

Findings

1. The survival rate of domestic assault prosecutions is significantly diminished by a practice of dismissal by the prosecutor before trial.

2. Prosecutors' offices are handicapped in their responsibility to enforce the Domestic Abuse Act by the lack of adequate resources and the absence of sufficient evidentiary tools.

3. Lack of coordination between the civil and criminal enforcements of the Domestic Abuse Act often leads to conflicting or confused handling of cases.

4. Domestic abuse intervention projects substantially enhance the number of cases finally resolved on their merits.

Recommendations

1. Legislation should be enacted that mandates funds and makes available domestic abuse advocacy programs in each county of the state.

2. The state should create a statewide computerized data base on domestic violence, available to law enforcement, prosecutors, courts, and probation, to be accessed under both victim and abuser names, to include:

   (a) existing OFPs and their conditions;

   (b) existing conditions of bond or probation;

   (c) pending criminal charges;

   (d) past domestic violence criminal history; and

   (e) past OFPs.

3. Police reporting requirements regarding domestic violence should be expanded to require law enforcement officers, prosecutors, courts and probation officers to report the items above into the statewide data base.

4. Legislation should require medical care providers to report incidents of domestic violence to law enforcement authorities, and to preserve and make available physical evidence of injury to the victim.

5. Legislation should mandate presentence investigations in all cases of conviction for domestic violence, without ability to waive the requirement.

6. Legislation should require all county and city prosecuting authorities to have a plan for the effective prosecution of domestic violence cases.

7. A policy commitment should be implemented to end discretionary dismissals for reasons of "victim cooperation," and to develop effective means of reversing this phenomenon.

8. A single prosecutor should be responsible for each case from initial charge to disposition.

9. Early contact between prosecutor and victim, with earliest possible domestic abuse advocate intervention, should be used to explain the use of subpoenas, and the role of victim as a witness.

10. The use of subpoenas should become standard procedure in all domestic violence prosecutions necessitating appearance of the victim.

11. Coordination should be established with law enforcement authorities to preserve prompt complaint evidence by means of videotape or audio recording.

12. Adequate resources must be allocated to permit prosecutors to execute the foregoing.

13. The Supreme Court should promulgate a rule which provides that domestic abuse advocates do not commit the unauthorized practice of law when appearing with or assisting victims of domestic violence in criminal proceedings.

14. The prosecutor's statutory obligation to notify domestic violence victims in advance of case dismissals should be uniformly enforced and coupled with a requirement that prosecutors state the reason for dismissal in open court.

15. Courts should require supervision of conditions of release by court services pending trial in criminal actions and of probationary conditions following sentence.

16. Courts should create uniform forms for statewide use in bail matters for criminal domestic violence proceedings.

17. Courts should enforce the statutory mandatory fine requirement in instances of conviction for domestic violence, except in cases of sworn indigency.

18. Police and sheriff's departments should be encouraged to present in-service training programs concerning domestic abuse. Post Board credit should be offered and the programs should be made as realistic as possible.

CRIMINAL AND CIVIL JUSTICE

Sexual Assault

The outdated notion that sexual consent should be measured by the assailant's interpretation of the victim's conduct, rather than by the victim's assessment of the assailant's conduct, has been at the root of much conflict in handling sexual assault cases. The statutory shift to measuring the offense by the proof of force, is very new in both a statutory and a cultural sense.

The prevailing cultural stereotype of rape remains that of assault by a "violent stranger." However, the realities of sexual assault present a much more complex picture which often stymies law enforcement agencies and the judicial system by introducing factors of human relationship that do not fit the stereotype.

After a literature review conducted for the Task Force, Marlise Riffel-Gregor, sociologist at Rochester (Minnesota) Community College, concluded that by all common estimates, twenty percent of the country's female population will at some time suffer sexual assault at the hands of an acquaintance.[5] And according to Harvard law professor Susan Estrich, even though the majority of victims sexually assaulted by someone they know do not report, of all reported cases, eighty-three percent still do not fit the "violent stranger" rape stereotype.[6] The vast majority of sexual assaults perpetrated in Minnesota are by assailants known to the victim. These assaults occur in what the Attorney General's Task Force on the Prevention of Sexual Violence Against Women termed a climate of tolerance as to sexual aggression.

In such a climate, rapes that involve an element of acquaintance are likely to be seen by the police as unfounded, dropped or plea-bargained by prosecutors, disbelieved by jurors, and treated leniently by judges in setting bail and sentencing. One judge responding to the Task Force survey commented:

> some jury decisions seem to find 'fault' on the part of women victims notwithstanding [jury] instructions to the contrary. . .I feel unable to remedy the situation as it is in the minds and attitudes of the jurors. (Male judge, Twin Cities)

In the small percentage of "acquaintance rape" cases that find their way into court, there is persuasive evidence that case preparation and trial unfolds as if the case were one in which the victim and the defendant were engaged in an ongoing, sexually intimate relationship, even if they were not. Stereotypical notions of how women manifest consent become the issue at trial. This appears to be true even in cases that involve weapons, personal injury, extreme violence, and no prior intimacy. Defense attorneys continue to use negative stereotyping, prior sexual history, and rape myths to make a case for implied consent in both "stranger rape" and "acquaintance rape" cases. Judges' survey comments reflect the courts' dilemma in handling such situations without interfering with the attorneys' right to make a case.

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5 An acquaintance is defined broadly as one known or simply recognized by the victim.

6 Real Rape, 1986.

Findings

1. Significant numbers of serious sex offenses are not heard in court due to gender-based stereotypes about acquaintance rape.

2. Victim blaming pervades the prosecution of sexual assault offenses, unfairly balancing the question of consent on the victim's conduct, rather than on the conduct of the defendant on the issue of force.

3. Penalties imposed against sex offenders in general, and especially against sex offenders known to the victim, inadequately address the seriousness of the crime.

Recommendations

1. The Minnesota Bureau of Criminal Apprehension and Department of Corrections should determine the incidence of "acquaintance rape" in Minnesota, and ascertain what proportion is formally prosecuted in criminal courts. This examination should be sufficiently detailed to separately examine intrafamilial and nonfamilial cases, and those involving intimate sexual relationships and platonic relationships.

2. County attorneys should increase prosecution of "acquaintance rape" cases.

3. Judicial education programs should be designed and taught, to heighten judicial awareness about the subject of acquaintance rape.

4. A judicial education program should be designed and taught to heighten judicial awareness about the pervasive gender-based stereotypes employed in the trial of a criminal sexual conduct case and to develop judicial skills in distinguishing between the presentation of a legitimate consent defense and the improper assertion of a gender biased defense.

5. Judges should not distinguish in setting bail, conditions of release, or sentencing, in nonfamilial criminal sexual conduct cases, on the basis of whether the victim and defendant were acquainted.

6. Judges should curtail improper reliance upon irrelevant gender stereotypes in criminal sexual conduct cases during the voir dire process, counsel's argument, witness examination, and cross-examination of the victim. They should recognize that this question is considerably more broad in scope than the questions subsumed in Minn. Stat. § 609.347.

7. Judges should scrutinize proffered plea negotiations in criminal sexual conduct cases to ensure that they are not grounded upon improper gender-based stereotypes about the victim.

Sentencing Adult Felons

Minnesota Sentencing Guidelines prescribe felony sentencing practices statewide. The Task Force explored the question of gender fairness in sentencing by looking at how the guidelines were being applied to female adult offenders. The Task Force found that

sentencing guidelines have eliminated gender differences in sentences involving prison terms. However, no guidelines exist for nonimprisonment sanctions (jail, restitution, fines), and gender differences do exist as to those sanctions.

Findings

1. No identifiable gender bias exists in imprisoning adult men and women convicted of felony offenses in Minnesota; the differing rates of imprisonment for men and women offenders result from the greater percentage of men committing crimes of violence and having higher criminal history scores.
2. Sufficient data do not exist to determine whether the broad discretion available to judges in imposing non-imprisonment sanctions on adult felony offenders results in a gender bias in probationary sentences imposed on men and women.
3. Fewer and less adequate educational, vocational, and rehabilitative programs exist for women than men adult felony offenders in probationary, imprisonment, and supervised release settings.
4. Fewer and less adequate jail facilities exist for women than for men adult felony offenders.

Recommendations

1. The Minnesota Sentencing Guidelines Commission should direct its staff to collect the data necessary to determine whether any gender bias exists in the imposition of non-imprisonment sanctions on adult women and men felony offenders.
2. The Minnesota Sentencing Guidelines Commission data on non-imprisonment sanctions should be made available to the legislative, judicial, and executive branches for the purpose of eliminating any gender bias in non-imprisonment sentences.
3. The Minnesota Department of Corrections should provide a comparable number and type of educational, vocational, and rehabilitative programs for men and women in probationary, imprisonment, and supervised release settings, consistent with the differing needs of men and women adult felony offenders.
4. Local authorities should be encouraged to provide jail facilities that will result in an equal sentencing impact on both men and women adult felony offenders.

Juvenile Justice

An attorney at the Twin Cities lawyers' meeting called the juvenile court "the real bastion of sexism and paternalism in the criminal justice system." Studies at both the state and national level report a higher percentage of arrest and detention for girls than for boys, giving weight to the theory that certain kinds of behaviors which may be dismissed in young men as tolerable are viewed as socially deviant in young women. Those working with juveniles in both the social services and the court system confirm that incorrigibility and absenting (running away) are the categories most often charged to deal with children who

do not measure up to parental expectation. In Hennepin County Juvenile Court, minor females outnumber minor males in both these categories.

Professor Barry Feld of the University of Minnesota Law School found gender-based disparities in the detention rates for male and female juveniles.

Even though female juveniles have less extensive prior records and are involved in less serious types of delinquency than are male offenders, still a larger proportion of female juveniles are detained.[7]

Findings

1. Interviews and research reveal disparate treatment by gender in cases involving juvenile females in Minnesota.
2. Girls are more likely than boys to be arrested and detained for status offenses.
3. There is a tendency to punish girls for status offenses at a rate both higher and harsher than that applied to boys.
4. The factors which account for their difference are difficult to identify and may reflect unstated cultural expectations to which girls are supposed to conform.
5. Based on the research of Feld and others, it is apparent that the courts are influenced in their disposition by societal pressures, specifically the wishes of parents and guardians.

Recommendations

1. The Office of the State Court Administrator should collect additional data on gender disparities in juvenile dispositions. The Task Force Implementation Committee and juvenile court judges should determine what additional information is needed to overcome current deficiencies.
2. A study should be conducted with the enlarged data to determine if disparities still exist for juvenile female status offenders.
3. Juvenile court personnel should receive education to make them aware of their possible biases.

Child Victim Advocacy

Information from the Minnesota Sentencing Guidelines Commission on dispositional departures for sex offenders indicates both higher mitigated and higher aggravated durational departure rates for cases involving a minor female victim than for cases involving minor male victims where the presumptive disposition is imprisonment. Social service sources suggest that victimized children are subjected to extreme pressure by families and offenders to keep the family unit intact, risking revictimization if the offender returns to

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7 Feld, Right to Counsel in Juvenile Court, 79 J. Crim. L. & Criminology 1276 (1989).

the family. The Task Force concluded that during criminal proceedings, the introduction of an adult whose sole responsibility is advocacy of the child's interest could reduce the stress on child victims and increase the court's awareness of the child's interest in dispositions that protect the victim.

Finding

The interests of the child victim in criminal sexual conduct cases are not always adequately protected under the current system.

Recommendation

A procedure should be established which would encourage the appointment of a guardian ad litem for the minor child whenever a child is a victim in a criminal sexual conduct case. The guardian ad litem would not be a party to the action, but would provide information to all parties regarding acceptance or rejection of plea agreements, as well as assisting in the preparation of the victim impact statement for sentencing.

Civil Damage Awards

The Task Force sought to examine the possibility of bias in civil damage awards by gathering statistical data and testimony. While lawyer testimony could be easily gathered, statistical data which would have corroborated their information have been impossible to obtain. Even without insurance tables and comparative award figures, the seriousness of the problem is evident from the statements of litigation attorneys who represent claimants in personal injury actions and the judges who hear these cases.

Homemaker services are undervalued in actions involving claims for lost wages. Women may not be properly compensated for the loss of future earning capacity. Conversely, disfigurement awards reflecting the cultural bias as to the value of women's appearances appear to be higher for women than for men.

Findings

1. Judges and attorneys are concerned that there are gender-based disparities in civil damage awards; however, the full extent of the problem could not be documented based on the data available to the Task Force.

2. Because homemakers work without wages, Minnesota Civil Jury Instruction Guide (JIG) 160 is a potential cause of the undervaluation of homemakers' claims for lost earnings.

Recommendations

1. The Task Force implementation committee should investigate the best methods to collect data on the effect of gender-based stereotypes on personal injury awards.

2. Minnesota Civil Jury Instruction Guide (JIG) 160 should be examined by the jury instruction committee to determine the appropriateness of a modification of the JIG to provide for valuation of lost wage claims by homemakers.

Gender-Based Employment Discrimination

State law prohibits employment discrimination based on sex. Most employment discrimination cases are handled in federal court or by administrative agencies. Studies indicate that more than two-thirds of the citizens who may experience employment discrimination simply do nothing about it and do not contact an attorney. Some attorneys felt that, in general, women are hesitant to use the legal process to resolve grievances and that the system actively discourages women from pursuing their claims. Women pressing discrimination charges may experience special difficulties as to issues of credibility, negative stereotyping, and victim blaming.

A second factor in the decision not to press a discrimination claim may be the issue of attorney fees and awards. Fees often present a major obstacle to pursuit of employment discrimination claims. The lawyers' survey responses suggest that attorney fee awards to prevailing parties are often insufficient to encourage attorneys to take on these cases.

Findings

1. Many victims of gender-based employment discrimination never seek relief in the courts.

2. Most attorneys agree that attorney fee awards to prevailing parties are insufficient to encourage lawyers to take gender-based employment discrimination cases.

3. Some defense attorneys appeal to gender-based stereotypes, and a few judges openly express similar biases; some judges are perceived as giving employment discrimination cases less consideration than other civil matters.

Recommendations

1. Judicial education programs should raise awareness of gender-based employment discrimination within the courts and of the impact of sexist, discriminatory remarks on the overall processing of gender-based employment cases in the courts.

2. Judicial and attorney education programs should reflect an awareness of the inappropriateness of the defense tactic of appealing to gender stereotypes.

3. The Bar Association should seek changes that will encourage claimants to come forward. These changes could include, but are not limited to, increased pro bono or legal aid efforts, increased attorney fee awards, improved job security legislation to prevent retaliation by employers, and doubling or tripling the plaintiff's damages.

4. The Bar Association should conduct a comparative study of damage awards and other relief granted by administrative agencies and the courts.

5. Law firms should foster an environment within the firm which encourages increased representation of litigants in employment discrimination cases.

COURTROOM ENVIRONMENT

The Court Environment for Female Litigants, Witnesses, and Attorneys

The courtroom is the most visible symbol of the legal system, and the conduct and decisions made within it have a profound impact on the legal system and the practice of law. If women, in any of the roles they assume in court, are perceived and treated less credibly than men in those same roles; if their presence is diminished in any way, then women do not, by definition, have equality under the law. The presumed neutrality of the court environment requires that all participants set aside stereotypical beliefs and biases.

Reported experiences of women litigants and witnesses indicate that sometimes their requests for enforcement and the value of their time have not been treated with complete respect; that judges have made remarks trivializing their cases; and that women have been addressed by endearments or first names when men were addressed as Mr. or Sir. Thirty-three percent of women attorneys reported that women litigants or witnesses receive verbal harassment from judges "sometimes or often."

When women appear before the bench in a professional capacity as counsel, the impact of stereotyping is even more severe. The role of the attorney before the bench is to advocate for the client by presenting to the court the facts and governing law. If the gender of the attorney becomes an issue, the justice system denies the client the opportunity for a fair hearing and resolution. Gender bias in the courtroom can distract an attorney from her legal tasks and place her in a dilemma in which she runs the risk of jeopardizing herself, her case and her client. One woman attorney wrote on her survey:

> Many clients will ask me, because I am female, "whether I will have as good a chance as a male lawyer." In order to secure clients I have to answer them that I will receive no negative bias from our court system, even though I may believe differently, or have doubts. (Female attorney, Twin Cities)

The Task Force attempted to identify the extent to which female attorneys are subject to treatment different from their male colleagues. Several areas of noticeable differentiation occur.

In the area of address, women attorneys reported being addressed by diminutive terms and terms of endearment, as well as being referred to on a first name basis in the same proceeding in which men were addressed by the judge as "counsel" or by their last names. Male attorneys were found to be even more likely than other courtroom personnel to use inappropriate terms of address toward female colleagues.

Comments about physical appearance, were found most often in the judicial setting to be an inappropriate signal to women attorneys that judges were paying more attention to how they looked than to how they presented their legal arguments. For example, one attorney wrote:

> A male judge interrupted a female prosecutor's opening statement and called her to the bench to tell her he liked the

> way she was wearing her hair that day. (Female attorney, Twin Cities)

Refusal to accept women in their professional role makes it difficult for female attorneys to carry out their legal responsibilities and undermines their credibility in the courtroom. Seventy percent of women attorneys report that they have been asked if they are attorneys when men are not asked. In some cases, even after verbally identifying themselves, women were still required to show their licenses before being allowed to proceed.

This behavior has not been limited to the courtroom. Both men and women agreed that gender bias is more often encountered in depositions and negotiations.

Lastly, the Task Force sought to determine whether, when gender biased behavior occurs in the courtroom, the judge attempted to correct it. There are significant barriers to judicial intervention. Comments may not be recognized as offensive. Comments may be made unconsciously, such as disparate forms of address. Attorneys may decide not to object to a judge's remarks, for fear of focusing attention away from the case. Judges are also hesitant to intervene concerning remarks by attorneys, not wanting to sway jury perceptions or affect the parties' perception of fairness in the outcome of a case.

Findings

1. A majority of Minnesota women attorneys have encountered gender-based differential treatment by other attorneys in the courtroom, including different forms of address, demeaning comments, inquiries about professional identity and inappropriate comments about physical appearance. A majority of women report that when such behavior occurs, judges rarely or never intervene to stop it.

2. More than forty percent of women attorneys have observed, or have been subjected, at least sometimes, to gender-based differential treatment by judges, including comments about physical appearance, inquiries about professional identity and remarks or jokes demeaning to women.

3. Discriminatory experiences are more likely to be encountered in informal interactions between attorneys in depositions or negotiations than within the courtroom.

Recommendations

1. Standards of gender fair behavior for all participants in the judicial system should be incorporated in such documents as the Code of Judicial Conduct, the Rules of Professional Conduct, and the Rules for Uniform Decorum.

2. Sensitivity training for lawyers and courtroom personnel should be provided through law schools, continuing legal education, and employee training programs.

3. Special efforts should be made to present innovative, entertaining and memorable judicial education programs to enhance sensitivity to gender fairness issues. Programs should include specific reference to the complex issue of when judicial intervention is appropriate to correct a gender fairness problem and how that intervention should be accomplished.

4. A guide on "How to Conduct Gender-Fair Proceedings" should be drafted and distributed to all judges. Such a guide could discuss forms of address, provide a uniform method for designating attorneys, and explain how to avoid in-chambers discussion topics which tend to exclude persons of one gender.

5. Evidence of gender-fair attitudes and behavior should be a criterion for judicial selection.

Women Judges

The appointment of women as judges in representative numbers relative to population is critical to achievement of gender fairness in the courts. As of June 1989, 24 out of 230 trial judges in the state were women, most of them sitting in the Twin Cities metropolitan area. Two of the seven Supreme Court justices and three of the 13 Court of Appeals judges are women. Four out of ten judicial districts have no women judges. Participants at the Task Force women judges' meeting expressed concern that although the number of female judges is still small, there is a sense in the legal community that the "women's slots" have all been filled and that women will be considered only as vacancies occur in these designated slots.

Once appointed, women judges face some of the same issues of diminished credibility that women attorneys face. They may be addressed by name on panels where male judges are addressed by title, their comments may be overridden in judicial discussions, and they may not be accorded appropriate levels of respect by attorneys appearing before the bench.

Findings

1. Women comprise approximately 10% of the state's judiciary, and some districts do not have a single woman judge.

2. Some women judges report that they are not taken seriously within judicial policy meetings.

3. Women judges are sometimes not given appropriate respect from counsel and court personnel.

4. Women attorneys are insufficiently represented on merit selection committees which recommend attorneys for judicial appointments.

Recommendations

1. The Governor should increase the number of women attorneys appointed as judges so that the judiciary will achieve a more balanced gender composition.

2. Women should be appointed to vacancies in districts with no women judges.

3. The ability to work with women and men as equals should be a criterion in the appointment of all judges.

4. Chief Judges and court employees should be given training to assure that women judges are given adequate respect and any problems are appropriately remedied.

5. Women attorneys should be fairly represented on all committees considering candidates for judicial appointment.

6. Judicial districts should develop policies for the assignment of judges which treat applicants fairly regardless of gender.

7. The judicial education system should include an opportunity for all new women judges, and especially for those geographically isolated, to learn from more experienced women judges about how best to deal with gender fairness issues.

8. The Supreme Court Information Officer should ensure equal representation of women judges in publicity about the judicial system.

9. In providing speakers at judges' meetings, attention should be paid to obtaining respected women speakers on substantive issues.

Gender Fairness in Court Documents

The Task Force evaluated the gender fairness of documents through which the court communicates with the public. Though the process of neutralizing gender bias and assumption in court documents is underway, evaluation revealed that many court documents still employ terms which presume that a variety of social roles are filled exclusively by men.[8]

Findings

1. A majority of statements of court rules and policy statements contain gender biased language.

2. Gender biased language is used in some court forms and brochures.

Recommendations

1. The Supreme Court and the Office of the State Court Administrator should issue general directives on the use of unbiased language in court documents, brochures and forms.

2. Such directives should make clear that masculine pronouns are not to be used as if they were neutral words; that all unnecessary gender-specific language should be deleted; and that drafters should consider the inclusion of language to promote gender fairness in court policy statements.

3. The Supreme Court and the Office of the State Court Administrator should appoint committees immediately to review and amend all existing court documents which use gender biased language.

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8 The full report of this evaluation is included in the Appendix to the Task Force report.

The Court as Employer

The Task Force sought to determine whether or not the court provides a gender-neutral working environment which assures all its employees equal treatment. Court employees were sent a questionnaire that included the questions on courtroom interaction used in the lawyers' surveys and a section on employment practices.

A majority of court employees did not think their opportunities for advancement were limited by gender. However, about ten percent of male employees and fourteen percent of female employees reported that they felt they had been discriminated against because of gender, and nearly all of them had not attempted to correct the situation.

Finding

The Task Force's limited investigation suggested possible problems of gender fairness for employees within the court structure and a lack of effective grievance procedures.

Recommendation

The Task Force recommends that the State Court Administrator's office conduct a more comprehensive study of employment practices within the state court system and undertake development of behavioral standards for nondiscrimination, development of effective grievance procedures, and employee training where indicated.

Sexual Harassment

Sexual harassment is defined in the law as including unwanted sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical contact or communication of a sexual nature.[9] The Task Force found that sexual harassment exists in the judicial system, just as in other institutions and places of employment.

The Task Force's surveys of judges, lawyers and court personnel indicate that the incidence of sexual harassment is far more widespread than the number of formal complaints and reported cases would suggest. Verbal harassment was more common than physical harassment, and lawyers were more likely to be the source of the problem than judges. One attorney responding to the survey cited examples she had observed or experienced:

> Opposing counsel advising female attorney "she must be on the rag," frequent use of the term "dildo" during settlement negotiations; pass made during settlement negotiations. (Female attorney, Twin Cities)

Women attorneys thought that court personnel were more likely to experience both verbal and physical harassment from lawyers and judges than either attorneys or witnesses.

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9 Minn. Stat. § 363.01, subd. 10a (1988).

Some court employees who felt they had been subjected to harassment stated that they did not have a grievance procedure available to them, especially if they served at the pleasure of the bench. Even in districts that have detailed sexual harassment policies, it is not clear how these policies are coordinated with other grievance procedures.

Findings

1. Although sexual harassment policies have been widely adopted throughout the court system, there is evidence that sexual harassment occurs at all levels and that some of it is unremedied.

2. Court personnel are more likely than other participants within the system to be subjected to sexual harassment. Some women attorneys are subjected to verbal sexual harassment by judges, but more often by other attorneys. There are reports of sexual harassment, both verbal and physical, by judges.

3. The present grievance system for sexual harassment complaints is inadequate in part because of the special vulnerability of court personnel, some of whom are employees at will, and because of the perceived power of judges which makes attorney victims fear negative consequences for themselves and their clients if they pursue complaints.

Recommendations

1. The State Court Administrator should seek consultation with experts in sexual harassment policy development to establish a policy and grievance system which can work in a structure where there are people with unusual power and people with unusual vulnerability.

2. The variety of sexual harassment policies and disciplinary systems for different categories of court employees should be coordinated so that genuine remedies are available which satisfy the needs of the victims as well as protect the rights of those against whom accusations are made.

3. Court employees at all levels should be given specific training to assure that they understand what sorts of behaviors will not be tolerated and to encourage reporting of problems of sexual harassment.

4. The Canons of Judicial Ethics should be amended to prohibit sexual harassment.

CONCLUSION

The Task Force's examination of gender issues in the courts was undertaken as a commitment by and to the state's judiciary. That it found areas in which the judicial system does not yet meet the goal of consistently treating women and men with fairness and equal respect is not surprising. The judiciary is a human system functioning within a larger human order. In meeting its mandate to explore and document the extent to which gender bias exists, the Task Force has addressed the human frailties in the system. It has cited some of the most egregious examples of unfairness in order to eliminate them. This process is grounded in acknowledgment of the judiciary's continuing dedication to those principles of fairness and equality before the law that remain at the heart of the judicial process.

To monitor implementation of the Task Force recommendations, the Supreme Court has established an Implementation Committee chaired by Associate Justice Rosalie Wahl. The committee is directed in particular to work closely with judicial education programs, to assist the office of the State Court Administrator in establishing a data base that will aid in evaluation of progress, and to generally evaluate the Task Force's effectiveness. Carried out in the context of the judiciary's continuing commitment to gender fairness, the Implementation Committee will help ensure that the Task Force's efforts are indeed effective and that what Learned Hand called the spirit of liberty – the understanding of the minds of other men and women and the unbiased weighing of interests – is felt throughout the system.