

FOREWORD

The Bench and Bar of the courts of the Eighth Circuit are indebted to the Creighton University School of Law for its generous offer to print the final report and recommendations of the Eighth Circuit Gender Fairness Task Force.

As the chair of this Task Force, I had the privilege of working with thirty dedicated and hardworking judges, lawyers, professors and court personnel from this circuit during the past four years. We had the assistance of Leslie Freeman, our executive director, and Dr. Louise Fitzgerald of the University of Illinois, our consulting social scientist. Together we have produced what I believe is a very thorough and credible report on the effect of gender in the administration of justice in the Eighth Circuit.

At this year's Judicial Conference in Minneapolis, Minnesota, we presented this report to those attending the conference. Judge Carol E. Jackson, United States District Judge for the Eastern District of Missouri, and a member of the Task Force, joined me in reporting to the conference. In her remarks, she stated:

The French philosopher Michel Foucault once wrote: "Justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions."

In keeping with that notion, the Eighth Circuit Gender Fairness Task Force set out to question justice within our Circuit in an effort to determine the effects, if any, that gender may have on its people and processes. We studied three of the constituent groups that make up our court system – judges, attorneys and court employees.

As to the employees of this Circuit, we learned that despite an overall predominance of women (73% of the workforce), the Eighth Circuit's workplace is sex-segregated with respect to position and level – the higher you go, the fewer women you see. Our findings revealed that 65% of the non-judicial positions were filled by men.

As to the experiences of those involved in litigation in our courts, Judge Jackson stated:

We learned a great deal from the lawyers and judges we surveyed. First, we learned that the majority of lawyers who practice regularly in our courts are male, with the proportion of women ranging from a low as approximately 12% among the districts to approximately 20% in the court of appeals.

Of the attorneys who had practiced in civil discovery, a majority of them reported experiencing serious disputes or

uncivil behavior from opposing counsel, with female attorneys reporting higher frequencies of such disputes.

When we looked at interactions among the lawyers and judges, we discovered that both groups could benefit greatly from a Miss Manners course. General incivility, which includes rude, condescending and disrespectful behavior, was experienced across the board in disturbingly high percentages by both lawyers and judges. As we all know, it is sometimes very difficult to assess a person's intent. So, it's hard to say how often this kind of behavior is intentional or how often it results from what my grandmother used to call "no home training."

Among the lawyers we surveyed, women were more likely than men to have experienced general incivility and gender-related incivility, which includes behaviors such as unprofessional terms of address, offensive comments about appearance, offensive jokes and remarks, and being mistaken for a non-lawyer. The behaviors they reported came from a variety of sources – other lawyers, court personnel and, yes, judges, too.

Going back to the words of the philosopher I quoted at the beginning, "society can exist only by means of the work it does on itself and on its institutions." If we learned anything at all from the task force's study, it is that we have some work to do on ourselves and that if we as a court are to continue to exist as an institution that is the ultimate symbol of fairness, we need to begin that work right away.

These excerpts from Judge Jackson's remarks succinctly summarize our photograph of gender in the Eighth Circuit. In the words of Justice Sandra Day O'Connor: "By acknowledging and not trivializing the effects of gender bias on reasonable women and men, courts can work toward ensuring that neither men nor women will have to run a gauntlet of abuse in return for the privilege of being allowed to work and make a living."

It is the responsibility of the judges of this circuit to make the environment of our judicial system a gender neutral workplace. The implementation of our recommendations will start us on the path to this ultimate goal.

*The Honorable Lyle E. Strom
Senior Judge, United States
District Court for the District
of Nebraska*