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Eleventh Circuit: "Executive Summary" - Report of the Eleventh Circuit Task Force on Gender Bias

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ELEVENTH CIRCUIT: "EXECUTIVE SUMMARY"—REPORT OF THE ELEVENTH CIRCUIT TASK FORCE ON GENDER BIAS*

INTRODUCTION

In 1993 the Eleventh Circuit Judicial Council's Task Force on Gender Bias was established. It was the Mandate of this Task Force to study the effects of gender in the Eleventh Circuit and the courts that comprise the Eleventh Circuit. The Task Force elected to employ survey methods to discover whether or not various members of the court family believed that gender bias existed, if so in what form, and whether or not such bias affects the judicial process.

The Task Force, together with a social scientist trained in survey design, created and administered the surveys to all judges in the Circuit, to a sample of attorneys who practice in the Circuit, as well as to a randomly selected sample of Eleventh Circuit staff members. The Task Force drew heavily from previous surveys of gender bias in the federal system (such as the surveys conducted by the Ninth Circuit and the D.C. Circuit) in creating the current survey instruments, so that there would be some degree of continuity between these research efforts. Task Force also created a number of original questions that were of interest to Task Force members and to the larger Eleventh Circuit legal community. Task Force members reviewed the judges, attorneys, and staff surveys and offered suggestions for improvement. Once the survey instruments were approved, the consultant established a sampling design and administered the surveys. The survey data were entered into an SPSS data base and analyzed by the research consultant. Com-

* The following is the Executive Summary presented by Chief Judge Joseph W. Hatchett to the Eleventh Circuit Judicial Council on March 5, 1998. The Executive Summary has been reprinted in original format with special permission by Norman E. Zoller, Circuit Executive, United States Court of Appeals for the Eleventh Circuit.

plete analyses of these data appear in *Employee Perceptions of Gender Bias in the Eleventh Circuit* and *Perceptions of Gender Bias in the Eleventh Circuit: Report to the Gender Bias Task Force*.

DEMOGRAPHIC PROFILE OF COURT PARTICIPANTS

In order to understand the role of women in the Eleventh Circuit, it is first important to understand how well women are represented in various roles within the Circuit. While on the whole women's representation in legal practice and in the judiciary has been increasing, the Task Force sought to determine how well women are represented in various positions in the Eleventh Circuit. For instance, the Task Force wanted to determine what proportion of the federal bar is female, as well as whether or not men and women are equally represented in various practice settings and work environments.

Demographic Profile of Eleventh Circuit Bench

In October 1993, when the judges survey was administered, a total of 13 percent (21 out of 161 positions) of the judicial officers serving on the Eleventh Circuit bench were women. Women constituted nine percent of the circuit bar and about ten percent of the district bar. Among non-Article III positions, women were best represented as magistrate judges, where 24 percent of the positions were held by women. In bankruptcy court, eight percent of sitting judges were female.

Currently (July, 1997) women hold 15 percent of judicial positions in the Eleventh Circuit. Fifteen percent of circuit judges and 13 percent of district judges are female. As in 1993, women are best represented as magistrate judges, where 21 percent of the positions are held by women. Fourteen percent of bankruptcy judges are female.

Demographic Profile of Eleventh Circuit Bar

As previous Gender Bias Task Forces have noted,¹ it is often difficult to obtain estimates of the number of female attorneys appearing in federal court. The most accurate lists of attorneys who practice in the district courts of the Eleventh Circuit can be obtained from the district courts. Each court maintains a list of those attorneys whose names have appeared on docket sheets of cases recently filed in their jurisdiction. These lists, of course, will not include the names of those attorneys who have worked on cases but whose names do not appear on court filings. Some districts also do not update their lists as frequently as do other districts, meaning that the extent to which the attorney lists mirror current conditions within the district may vary. Despite these problems, the best approximation of the number of women practicing in the courts of the Eleventh Circuit can be obtained by counting the number of women whose names appear on the districts' attorney rosters. Because several thousand names appear on the district lists, a sample was taken of each district's roster, and a hand count was performed of the number of male and female attorneys in each sample. Based upon the proportion of women on each district's list,² it is estimated that approximately 17 percent of those attorneys appearing in the district courts of the Eleventh Circuit are women.

Demographic Profile of Court Employees

Survey respondents were asked to indicate which general category would best describe their current position. A chi-square analysis indicated that the pattern of responses was different at a statistically significant level. Far more female employees described themselves as deputy clerks (26%) or secretaries (19%), while males were more likely to describe themselves as

1. See THE EFFECTS OF GENDER IN THE FEDERAL COURTS: FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE (July 1993), reprinted in 67 S. CAL. L. REV. 745 (1994); *Draft Final Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias*.

2. This method, of course, only recognizes those with apparently female names. Some persons' names, however, are not indicative of gender.

probation officers (42%) or other managers/administrators (18%). Although males and females are not equally represented in all job categories, this is not, in and of itself, an indication of gender bias, since the number of men and women who are hired is affected by the number of men and women who apply for various positions.

Survey results also indicate that one significant difference in the working environment of male and female employees is the gender of their supervisor. Most males responded that they report to a male supervisor, while the largest proportion of women (45%) reported that they are supervised by a woman. Forty percent of women, however, also indicated that they reported exclusively to a male supervisor, while only 19% of males stated that they reported exclusively to a female supervisor. A chi-square analysis indicated that these differences are statistically significant.

APPROPRIATE BEHAVIORS

The surveys also asked the participants how acceptable they found a variety of behaviors that differentiated between men and women. These questions focused upon three general areas: forms of address, comments on appearance, and sexually suggestive jokes.

Forms of Address

First Names

There was general agreement among both judges and attorneys that it is inappropriate for judges to refer to women by their first names while referring to men by their surnames within the hearing of the jury. There is great variation, however, among both judges and attorneys with regards to how acceptable they view the use of first names outside the hearing of the jury. Forty-eight percent of female attorneys and 49 percent of male attorneys find this behavior to be very unacceptable, while 20 percent of female attorneys and 22 percent of male attorneys reported that they were neutral on this issue. A smaller number of judges (9% of women and 11% of men) were either neutral on this issue or found the differential use of first names in informal settings at least somewhat acceptable.

Employees were asked whether or not it was acceptable for employees to refer to a similarly situated employee of one sex by his or her first name, while calling an employee of another sex by his or her title/surname. There is wide variation in the degree to which individuals find this to be acceptable. Thirty-nine percent of women and 33 percent of men found this behavior to be very unacceptable, while 24 percent of women and 28 percent of men found the behavior to be only somewhat unacceptable. Further, 13 percent of women and 15 percent of men felt that it was either acceptable or very acceptable to differentiate in the use of first names by the gender of the employee.

Terms of Endearment

Judges and attorneys agreed that it is inappropriate to use terms of endearment, such as "dear," "honey," or "young man/lady" when referring to lawyers. A majority of both male and female employees also agreed that such terms should not be directed toward either male or female employees.

Use of Miss and Mrs.

There was a great variety of opinion among both attorneys and judges as to whether "Miss" and "Mrs." are appropriate titles for female attorneys. Female lawyers were significantly more likely than male lawyers to find this practice unacceptable. Only 18 percent of male lawyers felt that referring to women attorneys as "Miss" or "Mrs." was somewhat unacceptable or unacceptable, while thirty-two percent of female lawyers objected to this practice. There was also not a clear consensus among judges about the use of these titles. The judges' responses fell evenly across the response categories, with the most popular response being "neutral."

Court employees were asked whether they found it acceptable to address female judges as "Mrs." or "Miss," while addressing male judges as "Your Honor" or "Judge." The vast majority of employees agreed that this form of address is unacceptable.

Comments on Appearance

Commenting on the Appearance of Attorneys and Employees

Forty-nine percent of female attorneys felt that it was very unacceptable to comment on the attire or appearance of female lawyers in court, while only 31 percent of male lawyers felt such comments were very unacceptable. Male lawyers also were more accepting of comments on the appearance of male lawyers.

A number of judges felt that it was acceptable to comment upon the attire of either male or female attorneys who appear before them. Thirty-six percent of female judges and 40 percent of male judges felt that it was either very acceptable, somewhat acceptable, or neither acceptable nor unacceptable ("neutral") to comment upon the attire of *male* attorneys. Similarly, thirty-six percent of female judges and 37 percent of male judges felt that it was either very acceptable, somewhat acceptable, or neither acceptable nor unacceptable ("neutral") to comment upon the attire of *female* attorneys.

There was also diversity of opinion on the acceptability of commenting on the attire of employees. Forty-four percent of female employees and 39 percent of male employees responded that such comments on attire were unacceptable when made toward *males*. Forty-three percent of female employees and 36 percent of male employees reported that commenting on the attire of *female* employees was unacceptable.

Commenting on Physical Attractiveness of Litigants

Female attorneys, in general, are less accepting of judges commenting on the physical attractiveness of either male or female litigants than are male attorneys. Eighty-two percent of female lawyers stated that it was very unacceptable for federal judges to make comments of this nature about female litigants while in chambers, and 81 percent of female attorneys found these comments about male litigants to be very unacceptable. While the majority of male attorneys also disapproved of this behavior, only 69 percent found comments on the physical attractiveness of female litigants to be very unacceptable, and 69 percent found comments about the attractiveness of male litigants to be very unacceptable. Most judges agreed that com-

menting on the physical appearance of litigants of either sex is inappropriate.

Sexually Suggestive Jokes

Most male and female lawyers reported that telling suggestive jokes in the presence of female attorneys is inappropriate. The majority of both male and female attorneys also agreed that it is unacceptable for judges to make sexually suggestive jokes in their chambers, even if only male attorneys are present. Over a third of male lawyers, however, were either neutral on this issue or stated that it was at least somewhat acceptable for judges to tell such jokes in chambers in the presence of only male attorneys.

Ninety-one percent of female judges felt that it was very unacceptable to tell sexually suggestive jokes in chambers even when only male attorneys were present. Sixty-seven percent of male judges found such behavior very unacceptable.

Male and female employees held very different opinions as to whether such suggestive jokes were appropriate in the workplace. Fifty-nine percent of women and 44 percent of men felt that it was unacceptable for male employees to make suggestive jokes in the presence of only males. Over a quarter of the men polled, however, believed that males telling other males sexually suggestive jokes in the workplace was an acceptable practice. Similarly, 23 percent of men and 14 percent of women felt that females telling males suggestive jokes was acceptable. Most employees agreed, however, that it is inappropriate for either males or females to tell such jokes when women are present.

PERCEPTIONS OF COURTROOM INTERACTIONS³

In order to determine how gender is perceived to affect interactions in the Eleventh Circuit, survey respondents were asked

3. Questions in this section are based on responses to the attorneys survey and the judges survey. Employees who have frequent court contact also answered questions about courtroom interactions. Relatively few employees, however, indicated that they regularly observe litigation. Therefore, their responses are not included here. Full analysis of these data can be found in *Employee Perceptions of Gender Bias in the Eleventh Circuit*.

a number of questions relating to the way in which male and female attorneys and judges are treated in and around the courtroom. On the whole, women are more likely to report that gender affects courtroom interactions than are men.

Use of Informal Address

A sizable minority of female attorneys reported that female attorneys are addressed more informally than male attorneys by *federal judges* both in the courtroom (10%) and in off-the-record proceedings (16%). Very few male attorneys, however, detected this differential treatment.

A number of female attorneys also reported that *male attorneys* at times addressed female counsel more informally than they did male counsel by using their first names or terms of endearment. Women reported that this occurred during off-the-record proceeding more often than during formal proceedings. While judges reported fewer instances of this behavior than did attorneys, there were still significant gender differences, with female judges reporting that these behaviors occur more often than male judges.

Another issue of concern to the Task Force was the use of informal address toward female judges. Female attorneys were more likely than male attorneys to report that male counsel address female judges as "Mrs." or "Miss." With only eleven percent of female attorneys and one percent of male attorneys reporting this behavior, however, it is clear that not all male lawyers engage in this disrespectful treatment of female judges.

Derogatory Comments

Derogatory Comments toward Female Counsel

A relatively small number of attorneys reported that judges singled women out for derogatory comments about their professional competence or performance as attorneys. Women did note, however, that this behavior occurred more frequently than did men.

Derogatory Comments about Female Judges

Respondents were also asked how often they observed male attorneys making disparaging remarks about women's competence to serve on the bench. Almost thirty percent of female attorneys and 10 percent of male attorneys reported that they had witnessed this behavior sometimes, often or very often.

Ignoring or Interrupting Female Attorneys

A significant minority of female attorneys indicated that judges at times ignore or interrupt female attorneys, while according male attorneys greater respect. Most significantly, approximately one quarter of female attorneys reported that female counsel are at least sometimes interrupted during formal court proceedings while male counsel is allowed to continue. Slightly fewer female attorneys (22%) reported that this occurs during off-the-record-proceedings. Male counsel, on the other hand, are much less likely to report that female attorneys are treated in this manner. Fourteen percent of female attorneys also reported that at times judges ignore female counsel while giving male counsel their full attention. Male attorneys were much less likely to report such behavior.

Suggestive Comments/Comments on Appearance

Only a small number of attorneys reported that they had ever observed or experienced federal judges making sexually suggestive comments to female attorneys. Eleven percent of female attorneys, however, report that *male attorneys* at times make suggestive comments to female attorneys during the course of court business. While 11 percent is not a large figure, it is disturbing that so many female attorneys report that this type of behavior occurs with any frequency. Over 25 percent of female attorneys also reported that male attorneys at least sometimes make comments about the physical appearance of female attorneys. Only 15 percent of males reported observing such behavior.

Favoring Counsel and Jurors due to Gender

In general male attorneys are more likely to report that female attorneys are given preferential treatment, while female attorneys are more likely to report that male attorneys are given preferential treatment. Twenty-six percent of women and four percent of men stated that judges at least sometimes favor male counsel while five percent of women and fourteen percent of men reported that judges at least sometimes favor female counsel.

Both male and female attorneys, however, reported that judges do *not* routinely excuse prospective female jurors due to family responsibilities while requiring male jurors to serve.

Conduct toward Defendants and Litigants

Commenting on Appearance of Female Parties and Witnesses

Attorneys were asked how often they had observed *judges* commenting on the physical appearance or dress of women appearing as defendants, civil litigants, alleged victims or other witnesses when such comments were not made to men in similar roles. Eleven percent of women and three percent of men indicated that this behavior occurred sometimes, often, or very often. Attorneys were also asked to indicate how frequently *male counsel* commented on the physical appearance of female witnesses and parties when such comments were not made about males in similar roles. Almost a third of female attorneys and thirteen percent of male attorneys reported that this behavior occurred at least sometimes. Only three judges (all male) reported that male attorneys are guilty of this practice.

Use of Informal Address

Females and males have very different perceptions of how often females appearing as witnesses, litigants or victims are addressed informally while males in similar roles are addressed by surnames. Thirty-three percent of female attorneys and 40 percent of female judges reported that this sometimes, often, or very often occurred; only four percent of male attorneys and two percent of male judges agreed.

EMPLOYEES' PERCEPTIONS OF WORKPLACE INTERACTIONS

In the employees survey, Eleventh Circuit staff members were asked to indicate how often they had experienced or observed a variety of behaviors on the part of judges, attorneys, and court personnel. The following describe employees' responses to these questions.

Forms of Address

Terms of Endearment

The majority of both male and female employees feel that women are never or very rarely subjected to terms of endearment. In particular, 76 percent of male respondents and 75 percent of female respondents stated that federal judges never engaged in such behavior, and nine percent of males and 13 percent of females stated that it occurred very rarely. A sizable minority indicated, however, that male attorneys and other male court personnel may, at times, engage in this behavior. Twenty-three percent of women and 10 percent of men reported that male attorneys use terms of endearment toward female employees sometimes, often, or very often. Survey participants were also asked about the frequency with which terms of endearment, such as "dear" or "young man," are used to address male employees. The results indicate that most persons believe that such behavior rarely or never occurs.

Use of First Names

Over 90% of those responding stated that differential use of first names never or very rarely occurred in their workplace.

Sexually Suggestive Comments

The survey results indicate that, for the most part, court employees believe that sexually suggestive comments are relatively rare in their workplaces. Men and women overwhelmingly agreed that federal judges virtually never make suggestive comments either to male or female employees. There was also general agreement that attorneys very rarely make suggestive comments to male or female employees. Fifteen percent of women and 13 percent of men stated, however, that male employees

at least sometimes made suggestive comments to female employees.

Disparaging Remarks

Survey participants were asked how frequently they had observed either male or female employees being singled out for disparaging or demeaning remarks about their professional competence. Most individuals stated that this is a behavior that occurs very infrequently in the Eleventh Circuit. Female attorneys were, however, more likely than males to report that male court personnel at times, make disparaging comments about women's professional competence.

Court employees also indicated that they very rarely observe individuals making disparaging remarks about women's competence to serve on the bench.

Comments about Physical Appearance

Both males and females reported that judges and attorneys infrequently make inappropriate comments about the appearance or attire of female employees. Sixteen percent of men and 19 percent of women surveyed, however, indicated that male court personnel made such comments at least sometimes, while 13 percent of men and 16 percent of women reported that female court personnel at times made such remarks.

Unwanted Touching

Employees indicated that unwanted touching is extremely rare in the Eleventh Circuit. Five percent of women stated that male employees had at least sometimes subjected them to unwanted touching, and even fewer women noted that male attorneys had displayed this behavior toward them. Only one percent of male employees stated that they had sometimes been touched inappropriately by female personnel.

Parental Obligations

Survey participants were asked how responsive supervisors are to employees' parental obligations, such as maternity/paternity leave and child care schedules. Most males and females feel that supervisors are reasonably sensitive to these issues. Only six percent of males and seven percent of females

felt that most supervisors are unwilling to take such issues into account.

GRIEVANCE PROCEDURES

To determine the effectiveness of existing grievance procedures, survey participants were asked a number of questions about their familiarity and experience with their office grievance processes. A large number of persons (51% of men and 44% of women) stated that their office or court unit did have a grievance process apart from the standard EEOC complaint procedures. Thirty-two percent of men and 45 percent of women, however, reported that they did not know whether or not such a grievance procedure existed in their office.

Of those respondents who were aware of a specific office grievance process, 19 percent of women and 16 percent of men stated that these procedures were very *ineffective*, while 18 percent of women and 20 percent of men stated that their office's grievance procedures are very *effective*. These differences may be due to different grievance procedures operating in different office units. The differences also may be attributable to differences of opinion about the same procedure. Because it is impossible from the existing survey to determine which of the possibilities is accurate, the individual office or court units may want to poll their own employees about particular grievance procedures.

Employees also indicated varying degrees of familiarity with EEOC complaint procedures. Fifty-five percent of males and 71 percent of females reported that they were either unfamiliar or very unfamiliar with these procedures. Further, only 26 percent of women and 31 percent of men indicated that they would feel either comfortable or very comfortable making such a complaint. Thirty percent of men and 32 percent of women also believed that their position in the court would be affected if they filed a complaint.

DOES GENDER BIAS EXIST?

It is very difficult to answer for certain whether or not gender bias exists in the Eleventh Circuit. The survey results can only determine whether or not those who responded believe that certain types of gender bias exist in certain situations. In order to give employees full opportunity to discuss their perceptions of gender bias, respondents to the staff survey were asked whether or not they perceived that gender bias exists in their office or court unit. Twenty-three percent of women and 16 percent of men stated that gender bias did exist in their office or court unit. The description of the bias, however, differed greatly by gender. Of the women who stated that gender bias existed, 64 percent stated that the bias was against women, while only 7 percent perceived that the bias adversely affected male employees. By contrast, 36 percent of the men who stated that gender bias existed perceived that the bias harmed women, while an equal number indicated that it harmed men.⁴ The bias complaints centered around three major issues: gendered division of labor, discrimination in hiring and promotion, and family responsibilities.

Several employees mentioned that a gendered division of labor existed in their offices in which women are often asked to perform "feminine" type duties, such as polishing furniture or arranging lunch, when males at the same level were not asked to perform such tasks. Others felt that women's applications for high level positions were not taken seriously or that women, especially those with children, were not given the same opportunities to develop professionally as were men. Finally, some employees stated that male employees were given more flexibility in arranging work around family commitments, while others stated that women were given preferential treatment in this area.

4. Some employees reported that gender bias existed in their office but did not indicate whether this bias affected males or females.