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Study Finds Discrimination Occurs in Federal Courts

By BENJAMIN WEISER

A draft study of the Federal courts in New York, Connecticut and Vermont has found a problem of bias among judges, lawyers, jurors and others throughout the legal process.

But some members of the task force that conducted the study, which was released yesterday, disagreed over the significance of the findings.

The report came after a three-year study of the Federal courts of the Second Circuit and concluded that biased conduct by judges and lawyers "does occur," based on the number of female and minority lawyers polled in the study who reported that they had observed such behavior. The report also found that 70 percent of women and 59 percent of members of minorities who have served on Federal juries believe "whether rightly or wrongly" that sex or race was a factor in their selection.

But it was insensitivity and bias in other aspects of court — legal proceedings, interactions among judges, lawyers and court employees — that was the focus of the 122-page task force document.

A three-year project exposes flaws in the legal system.

The biased conduct took many forms, the report said, including ethnic slurs, patronizing behavior and sometimes imitations or parodies of minority lawyers' speech.

"Enough was reported," said Judge John M. Walker Jr. of the United States Court of Appeals for the Second Circuit, who was co-chairman of the task force, "that we can't ascribe it all to misperceptions of innocent conduct or overly sensitive observations."

The report issued yesterday included scientific polling by Louis Harris and Associates of more than 1,000 randomly selected lawyers, and a questionnaire administered to judges, law clerks, and court employees by a team from Baruch College School of Public Affairs. About 500 jurors who served on trials last year were also surveyed.

"We believe this to be the most thorough and scientifically conducted survey on this subject to date," said Judge Walker.

There was some disagreement among the nine members of the task force over how to interpret the findings. Judge Walker said the statistics showed that bias occurred infrequently, because the majority of respondents had not observed such conduct. "We believe that this study generally reveals a positive and quite satisfactory picture of the treatment of lawyers and parties and witnesses," Judge Walker said.

But another task force member, Fern Schair, a lawyer, said she was struck "by what seemed to be a fairly large number of incidents reported." Ms. Schair, who is the chief staff officer of the Association of the Bar of the City of New York, said, "There's a lot that the court system should be proud of and one is not necessarily going to encounter insensitivity but it happens much more often than it should."

The task force included six judges and three lawyers; six of the members were women and three were members of minorities.

The report also said that some trial judges showed impatience with employment discrimination cases and might not be treating all parties "evenhandedly."

It also expressed concern that some judges exhibited "stereotyped thinking about the seriousness or the reality of sexual harassment claims." It cited one unnamed judge who was alleged to have said in open court that a plaintiff's sexual harassment claim was not serious "because her employer only stared at her breasts, rather than touching them, and 'most women like that.' "

The report, which also recommends ways to guard against bias, did not analyze how bias might have affected the outcome of cases. It did, however, say that significant numbers of women and minority lawyers believed that they were at a disadvantage in the courtroom because of their sex or race.

Charles J. Ogletree, professor of law and director of the Criminal Justice Institute at Harvard Law School, who was not involved in the study, said he hoped that it would serve as a "wake-up call that not only are incidents of bias widely perceived by participants, but there's enough anecdotal evidence to suggest that bias really exists in the system."