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Introduction to *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*

Lorie S. Gildea†

My thanks to *Law and Inequality: A Journal of Theory and Practice* for giving me the opportunity to introduce Rita Berg's article, *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*.¹ In this introduction, I hope to explain how this thought-provoking article came to be.

The framework for Berg's article was an October 27, 2009 gathering in St. Paul of leaders from Minnesota's judiciary and legal community.² We assembled on that fall day to honor and recognize the work of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts. The Task Force's charge was "to explore the extent to which gender bias exists in the Minnesota state court system, to identify and document gender bias where found, and to recommend methods for its elimination."³ The members of the Task Force included lawyers, judges, educators, and active citizens.⁴

The Task Force members devoted two years to their charge.⁵ They held public hearings and meetings around the state and conducted numerous surveys.⁶ They listened.⁷ And then, they

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1. Rita Berg, *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*, 29 *LAW & INEQ.* 5 (2011).

2. See Leo I. Brisbois, *We Are All Related*, 66 *BENCH & B. MINN.* 7, 7 n.2 (2009).

3. Rosalie Wahl, *Preface* to *MINN. SUPREME COURT TASK FORCE FOR GEND. FAIRNESS IN THE COURTS, FINAL REPORT* ix (1989).

4. *Id.*

5. *MINN. SUPREME COURT TASK FORCE FOR GEND. FAIRNESS IN THE COURTS, FINAL REPORT* 110 (1989) [hereinafter *FINAL REPORT*].

6. See *id.* at 1–2.

7. See Wahl, *supra* note 3, at ix ("But most instructive and sobering was the experience of sitting and listening as ordinary, indeed extraordinary, citizens—women and men—came forward with great difficulty and obvious effort to share their agonizing experiences of how the court system had dealt with them and their

analyzed all of the data that were collected.⁸ The Task Force presented its work, findings, and recommendations to the Court in September 1989.⁹ The Task Force report organized its findings and recommendations into four chapters: (1) family law, (2) domestic violence, (3) criminal and civil justice, and (4) courtroom environment.¹⁰

At the time of the Task Force's work in the late 1980s, "48% of the female attorneys . . . said that gender bias in the courts is widespread but subtle and hard to detect."¹¹ The Task Force made many recommendations to address its findings of gender bias.¹² Some of the recommendations were easier to implement than others. For example, the Task Force recommended that all gender-biased language be eliminated in court rules and court documents.¹³ The Task Force recommended more funding for programming and changes in legislation.¹⁴ Finally, many of the recommendations sought better and more complete education for judges and court employees.¹⁵

The Minnesota Supreme Court established a standing committee to implement the recommendations from the Task Force—the Gender Fairness Implementation Committee.¹⁶ Since my arrival on the court in January 2006, I have had the honor of chairing this committee. The full scope of the implementation committee's work cannot be captured by this foreword, but to highlight the twenty years of work that made our judicial system more gender-fair and to recognize the Task Force, the committee hosted the October 2009 gathering in conjunction with Minnesota Women Lawyers' annual Rosalie Wahl lecture.¹⁷ We gathered to celebrate the progress we have made and to discuss the progress we have yet to make.

We also partnered with the academic community in hosting the event. As part of that partnership, we sponsored a student

perceptions of the quality of justice which had been afforded them.”).

8. *Id.*

9. *See id.* at i–ix.

10. *See id.* at iii.

11. *See* FINAL REPORT, *supra* note 5, at 3.

12. *See generally* MINN. SUPREME COURT TASK FORCE FOR GEND. FAIRNESS IN THE COURTS, REPORT SUMMARY (1989) (summarizing Task Force findings and recommendations).

13. *See* FINAL REPORT, *supra* note 5, at 102.

14. *See id.* at 47, 54.

15. *See id.* at 100, 104.

16. MINN. SUPREME COURT TASK FORCE FOR GEND. FAIRNESS IN THE COURTS app. (1989).

17. *See* Brisbois, *supra* note 2, at 7 n.2.

writing competition where we encouraged law students to write papers on topics relating to the four chapters in the Task Force's report. The article that follows is the winning article submitted in the family law area.

Berg's article, *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*, is an insightful look at the way modern social science may be used and misused by the court system. Specifically, Berg's article suggests that the theory of parental alienation syndrome has been misapplied in court when utilized in the context of domestic abuse.¹⁸ She argues that, at least in some instances, mothers who are victims of spousal abuse and who act to shield their children from their ex-husbands are at risk of losing custody of their children in court to these very abusers because the courts are not equipped to address the reality of domestic abuse.¹⁹ Berg contends that parental alienation syndrome, while a potentially useful theory, was never intended to be applied in the context of domestic abuse and argues that we should encourage more awareness of the risks of gender bias in the theory's misapplication.²⁰ Berg's article is a valuable reminder that ideas have consequences and that we must be careful of how we allow social science and gender stereotypes to influence our thinking.

I extend my congratulations to Berg and to *Law and Inequality* for fostering this important discussion.

18. Berg, *supra* note 1, Part II.

19. *Id.*

20. *Id.* Part I.B.

