Women and the Helping Professions: A Judicial View

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Available at: https://scholarsarchive.byu.edu/irp/vol11/iss1/6

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May I ask your indulgence if I impose on you some of the issues that arise in the context of my profession. I do so in part because, like most professionals who step out of their own professional neighborhood into someone else's, it is easy for me to be intimidated by the theory and doctrine of another discipline. In order to avoid that, I will attempt to intimidate by using some of my own theory and jargon.

One of the themes of my remarks this morning is that of risk, and the introduction given by Dr. MacMurray is extremely relevant to that theme. The risks I am talking about are those undertaken by women who must encounter, at various junctions of their lives, the helping professions in one capacity or another. These women do so often at extraordinarily high risk to themselves: personal risk, physical risk, and for many and sometimes in extreme ways, financial risk. By helping professions, I mean the members of those professions whose work involves personal problem solving, decision making, or active intervention of some kind involving the core of another human being's life. These helping professions make decisions in ways that effect some change for good or ill in the lives of persons seeking assistance. This somewhat limited definition includes the medical profession, those who are involved in the treatment of physical, emotional, or mental ailments; the legal profession, including my own subset, the judiciary; and finally, education, since the essence of teaching is an attempt to bring change into the lives of human beings.

Of course, anyone seeking help from members of one of these helping professions is taking a risk, but I suggest that women, who in many instances have been socialized to dependence, to defer to authority, and to avoid personal responsibility, are taking extra risks. You all know the Cinderella fairy tale. I recently read an essay written a few years ago by a single Latter-day Saint woman in her thirties who talked about her own Cinderella fantasy. Growing up, she had believed that she was a princess in disguise and that all it would take was a prince, a party, and a dress converging at the right moment to remove her disguise and permit her to live happily ever after. She pointed out that not only had she not encountered any princes, but as of now she had not even met any frogs—although a few rats had come into her life. The Cinderella fantasy, however, does not end with the notion of Prince Charming, the party, and the dress converging at the right time. The fairy tale ends, as you will recall, with the phrase "and they lived happily ever after."

Many women are socialized to believe that, if they can find a prince, they will indeed live happily ever after. Many promises, spoken and unspoken, are assumed within that fairy tale. Thus, women who come to the helping professions for assistance in problem solving are, in many instances, also being forced to deal with the denial of everything they had been raised to believe—namely, that they will never need that kind of help. They are already in the process of dealing with their lost myths, with their lost assumptions, with broken promises, and with the resulting bitterness. When they ask us for help, they
run the risk of being disappointed,
thrown back on what they perceive as
their own helplessness. They run the
risk of being mistreated; abuse that
could be prevented if they were dealt
with as adults.

I am particularly sensitive to the
risks women take in seeking legal and
medical services. If you have any trouble
identifying with this kind of vulnerabil­
ity, just think about the last time you had
to take your car in to get that funny noise
fixed. We are all dependent on the
expertise of others when we venture
outside of our own areas of competence;
we all experience a certain sense of
helplessness. But it is much magnified
when the field of expertise, such as
medicine or law, has its own language,
vocabulary, history—even unique tools
and instruments which appear entirely
foreign and very intimidating to people
coming in from the outside. Women
seeking help also run the risk of being
exploited by unethical practitioners in
our disciplines. We have an obligation
and responsibility to police our disci­
plines to minimize that risk.

Finally, women asking assistance
run the risk of being damaged in some
very fundamental ways. They risk their
self-esteem when they trust a system
which sometimes acknowledges their
group identity as women rather than
their individuality. I am talking about
the kinds of subtle sexism—the attitudes
and practices—which categorize people
and their attitudes, responses, abilities,
options, and behavior on the basis of
their gender, rather than on the basis of
accurate and independent data.

In a recent major survey by Dr.
Alice I. Baumgartner, two thousand
children in Colorado were interviewed
respecting their attitudes about the op­
posite sex. They were asked questions
such as, "If you woke up tomorrow and
discovered that you were a boy or a girl,
how would your life be different?" In
summarizing the results of that survey,
researchers used the word "contempt"
to describe how children, in grades
three through twelve, from both metrop­
olitan and small rural communities,
}

felt about being female. Now these are
not Mormon children, these are not
Utah children. They are American chil­
dren from another state. Listen to some
of the things they said:

"It wouldn't be fun," said a fourth­
grade boy, "if I woke up and I was a girl.
I'd hope it was a bad dream and I'd go
back to sleep."

A sixth-grade boy wrote, "If I were
a girl, everybody would be better than
me because boys are better than girls."

The girls agreed. "If I were a boy I
could do more stuff better than I do it
now," said one third-grader.

"People would take my decisions
and my beliefs more seriously," said an
eleventh-grade girl.

"If I were a boy my whole life
would be easier," claimed a sixth-
grader.

"I would be treated better, I would
get paid more, and be able to do more
things," said a fourth-grade girl.

Now you know if we had the boys
saying similar things about being girls
and the girls saying similar things about
being boys, maybe we could draw the
inference that the grass is simply greener
on the other side. But to these two
thousand school children in Colorado,
the grass grows greener very consistent­
ly on the boys' side of the fence.

The boys, asked to think about
being girls, talked about how long it
would take them to get ready for school,
how important and how hard it would
be to be as gorgeous as they needed to
be, how much they would hate being
jeered at if they were not gorgeous or
not gorgeous enough. In fact, they felt
that jeering would occur whether or not
they were gorgeous, and they worried
about that. The girls commented that as
boys they would not have to be "neat."
They would not have to worry about
how they looked or take so much time
going ready for school. Now, as a
parent of an II-year-old boy, I take that
with a grain of salt—his every hair has to
be in place before he leaves the house,
but there is a clear message in the
responses of the Colorado children. In
this study, not one girl expressed a
hostile reaction to activities which she perceived as male. However, most of the boys did have critical or hostile reactions to "women's work" or any female activities, whether they involved school, play, home chores, marriage, or eventual choice of occupation. Their general view was summed up in the words of one boy who said, "Girls can't do anything that's fun," and the depressing words of the girl who said that her expectation as a female was "to be nothing."

Girls said if they were boys, they would be professional athletes, the president, architects, scientists, mechanics. Most of the boys said if they were girls they would be married and would not work. Forced to imagine what they would do if they were married and working outside the home, they listed secretary and nurse most often. They also named cocktail waitress, social worker, airline stewardess, interior decorator, model, beauty queen, and even prostitute as possibilities. Both sexes, interestingly enough, named truck driver, computer programmer, doctor, and lawyer, an indication that at least some of these professions are coming to be perceived as open to both men and women although they are traditionally male dominated.

Asked about how their behavior would differ, if their gender changed, the children's responses were clear. The boys said they would have to be nicer and there was a long list of things that they couldn't do. They could not climb trees, throw spit balls, have pocket knives, play football or basketball, or have live snakes. The girls seemed to know that boys are expected to conceal their feelings and saw that as one of the few disadvantages. "If I were a boy, I would have to stay calm and cool whenever something happened." But the girls also had a long list of things being a boy would allow them to do that they felt they could not do now.

These two thousand children from Colorado also had different perceptions about how the world around them would treat them if they were to change their sex. "I might be shown that someone cares how I do in school," said one girl. "My father would like me better," said another.

The belief among boys was that, if they were girls, they would have to fear for their safety. "I would have to know how to handle all the drunk guys and the rapists," said an eighth-grade boy. "I would have to be around other girls all the time for safety." "The teacher would favor me," said one boy. While the boys complained of being unfairly singled out for discipline in school, the girls complained of being ignored. The girls' attitudes are supported by a great deal of other research, most of which you are probably familiar with. For girls the price of conformity is anonymity. The boys get reprimanded, but they also get more praise and attention.

Now, that study was done during the past two years. We are not talking about 10 years ago or 20 years ago. We are talking about a generation of children who will begin their lives as adults in the next decade. So we are talking about pervasive, subtle perceptions which—despite all our efforts to combat legal discrimination and overt sexism in the schools and elsewhere—continue to influence our children and our family life.

I think there are historical reasons that make the helping professions and their members particularly vulnerable to the kind of subtle sexism that is still a problem in our society. These professions are ancient in their traditions, lore, language, and some methods. In addition, until very recently, they have always been predominantly male. Times are changing. We see the changes even in the perceptions of these children regarding some of the professions. But change is slow and little boys who think about little girls in the way the boys in Baumgartner's study do, too often grow up to become professional men who think the same way about the limitations and the obligations of being female. Likewise, the little girls who think the way the girls in that study think grow up to become women with attitudes still
influenced by their childhood perceptions.

Let me discuss briefly some examples close to home. The other day, I had a casual encounter with a young woman who taught several of my children in nursery school and of whom I was always very fond. I asked her how things were going, and she almost burst into tears right there on the sidewalk. She explained to me that things were not going well at all for her. Her husband of 12 years had recently fallen in love with another woman and deserted her, and she was in the process of a divorce. What she wanted to talk about was the immense discomfort, fear, and apprehension that she experienced as she anticipated her court appearances during the divorce proceedings. I tried to reassure her, but I found that my ability to do so was somewhat limited. Although my own related experience has been from a position of control and power of the court system, some of her apprehension and concern was justified. I will disclose to you candidly that sexism, both subtle and overt, is still extremely common in the courts of this country. It takes many forms. It may be in the language of judges and supervisors in court who refer to women—whether they be witnesses or potential jurors or, even on occasion, lawyers—as "girls." That may not seem like a big thing, but when a man refers to a grown woman as a girl, what has happened? There has been a diminution in her stature, and a relationship of superiority/inferiority has been established. There are other subtle things relating to language—for instance, judges and courtroom personnel who address women by first names and men by surname. Again, instead of a relationship of parity and equality, a relationship of male power and authority versus female helplessness is established.

Sexist or sexually-oriented jokes and put-downs unfortunately are not unknown in the courtrooms of this country. I can remember one of the first trials which I undertook in the state of Utah—which I won. After the trial, the judge came over to the bar and said, "Mrs. Durham, you did the best job I've ever seen a woman lawyer do in my courtroom." I ask you, was that a compliment or a put-down? Comments on personal appearance and attractiveness are also a very subtle thing, and there are occasions when the niceties of human interaction call for appropriate comments. But if the one woman in a group—whatever it may be—is singled out for being the prettiest one there or for upgrading the general appearance of the group, she is being identified in her sexual identity and not in her professional or business identity. She is not being identified in the context of the purpose for which she has come to that gathering.

There are other ways in which sexism is still a problem in the courts in this country. Dr. MacMurray referred to the problem of spouse abuse and domestic violence. Just as the efforts to identify those incidents are very recent, the responsiveness of the legal system to such violence in this country is also extraordinarily recent. Utah has attempted to deal with the domestic violence problem in a statutory context only within the last five years. Interestingly enough, when that statute was initially passed, among other members of my profession, I consistently met with jokes which attributed the responsibility for the abuse to the victim. There is also a tremendous resistance to becoming involved. I know judges who frankly refused to listen to spouse-abuse complaints because the first statute gave litigants the specific authority to represent themselves. It is difficult for a lawyer or judge to deal with someone who is representing himself or herself. Lay people do not know the rules of evidence; they do not understand the procedural requirements of a court, and they can disrupt your schedule drastically because of the extra time that they take to go through the system. But I would suggest that one reason why spouse-abuse problems were discounted and ignored by many members of my profession is that they
were — by and large — women’s problems.

Sexism in the courts is a problem in still other ways. In sentencing, research shows that females receive lighter sentences than male offenders for similar offenses, and they get more non-custodial or probationary sentences. However, female offenders who are incarcerated generally serve longer periods of time than male offenders for similar offenses. In the area of personal injury, where individuals sue because someone has committed a negligent act that has harmed them in some way, awards given by judges and juries are significantly lower when women are the injured parties. I was a little shocked recently to participate in a conversation with a lawyer who had tried a personal injury case involving the wrongful death of a 16-year-old girl. It was a products liability case involving toxic shock syndrome. In his research on jury awards for the value of a 16-year-old girl, he had discovered that in our region such awards are between one-fourth and one-half the size of the awards given for a 16-year-old boy. That means that the juries, our peers, value 16-year-old girls at somewhere between one-half and one-fourth the worth of 16-year-old boys. Placing economic value on the life of a human being is problematic to begin with, but that the discrepancy is so extensive is shocking.

Finally, between values assigned to male and female lives, there are the matrimonial issues which many of us have to deal with so often. I am sure that a great deal of your work, like a great deal of mine, deals directly with the dissolution of marriage and with the personal and legal problems encountered by people going through that process. As a case in point, let me describe to you briefly what happens economically to women in a divorce.

The summary of findings of the governor’s task force on integrating women into the work place in the state of Utah found that women comprise more than 41 percent of the work force in our state. That percentage is consistently increasing. Most women, whether they are married or single, work because of economic necessity. Forty-five percent, or nearly half, of all the women who are working in this state are either single or separated. In other words, they are responsible to a very large degree for their own support and sometimes for that of an entire household. Two-income households have nearly doubled in the last 20 years, which means more women who are still married are also working outside the home. Additional women work in support of displaced workers—husbands who are unemployed due to technological advances or economic problems.

The average woman in our state works for 26 years of her life span, over double what that figure was 30 years ago (Governor’s Task Force 1984, 2). They are employed primarily in secondary or part-time positions, which provide little pay, few benefits, inadequate family support systems, and limited opportunity for advancement. Institutional structures based on stereotyping deprive women of economic independence and deny the work place their potential. Families headed by females comprise the fastest growing segment of the poverty population in this state as well as throughout the country. In Utah, the number of families with female heads of household has grown by 10 percent during the last decade, and nearly half of those families with children under 18 headed by females live below federal and state guidelines for poverty. Both in Utah and nationwide this is a rapidly accelerating problem.

Recently, a very significant study was done in California which extensively viewed its reversed divorce laws (Weitzman, 1981). The revisions were designed to eliminate the concept of fault, minimize acrimony, eliminate some of the mudslinging, and try to turn court proceedings into more evenly balanced, less emotional places for resolving economic and financial matters rather than providing a forum for people to work out the personal difficulties which led them to divorce in the first
place. Unfortunately, this study did not attempt to assess people's personal satisfaction with the changes in the law. It did discover, however, that women have incurred significant economic disadvantage by the change. For example, the earning capacity of a spouse, usually the husband, is typically worth much more than any of the tangible assets of the marriage. That is the thing both parties had really invested in during the course of a marriage of any length at all. The study discovered that pensions and retirement benefits, extremely significant factors in the marriage, were very often discounted at an extremely high level in divorce proceedings. It discovered that in the state of California only 17 percent—that is, less than one in five—of women who were awarded personal support, spousal support, or alimony ever received one dime.

That means, among other things, that expectations of self-sufficiency for divorced women—especially after a marriage of any length and especially in view of the kind of statistics that we have just talked about in the state of Utah on the kinds of employment available and the kinds of training many women have—are extremely grim. It is true that the no-fault divorce law in California established a new norm of self-sufficiency for younger women who are capable of supporting themselves after divorce. In theory, however, the law is supposed to insure support and protection for those women who have been married for a long time. Women are raised to believe that someone will take care of them financially. Everything we know about divorce and the court system suggests that the promise is not kept in the divorce settlement, even with respect to child support. There is an implicit assumption on the part of courts making these kinds of awards that women are in a position to find a job and become self-sufficient.

There is a peculiar paradox here, and I have heard it described as the high cost of feminism. The paradox is that, as women have struggled over the last decade to equalize their access to the work place and economic self-sufficiency, they have as a matter of statistical fact failed dismally, for many reasons. One of these is sexism, and another has to do with the economy and lifestyle choices. Notwithstanding that failure, many of our institutions, and particularly our judicial institutions, are assuming that the effort has been successful and are predicated on that basis. Therein lies the paradox. Women are literally paying a high price, because of unequal access and disparate standards of living, for the legal equality they have fought so hard to obtain. It is interesting, too, to look at the alternatives to spouse-support or self-support. I was a little discouraged to find out that a woman's chance of remarriage after divorce when she is under the age of 30 is about 75 percent, which is not so bad. But, between the ages of 30 and 40, it drops to 50 percent, and after the age of 40, for those women least able to fend for themselves if they have been out of the market place during the duration of a lengthy marriage, it drops by half again, down to about 20 percent. I guess there is a sense in which—notwithstanding what Ronald Reagan says—it does not pay to get old.

I do not mean to barrage you with statistics, especially since I am sure each of you has an anecdote either to illustrate one of my points or refute it, but the statistical considerations are important for two reasons. First, they demonstrate some of the ways in which my profession is failing to help women. Second, they illustrate one of the ways in which your profession is susceptible to failure as well. Too many women in my view are maimed in spirit by their encounters with our respective professions. Sometimes part of the problem is judges, lawyers, counselors, and therapists who are too ready to assign blame and to increase guilt because women do not function well under the stress of family problems, particularly the stress of family dissolution. During my tenure on the trial court, I often
heard evaluations from counselors who seemed far too ready, in my view, to interpret normal reaction to stress as significant character disorders which rendered a woman unfit for custodial responsibilities. Economic deprivation for instance is a very destructive force. Any of us who have encountered it, even second-hand, can attest to that.

In short, what I am saying is that there is a tremendous danger that women will be made to feel that they are crazy or that they are not functioning adequately in the context of circumstances which would make anyone crazy. One would be crazy not to be crazy, especially when facing the awesome kind of economic problems that many women must contemplate when they are suffering familial dissolution or stress.

My indictment of my own profession is based on a familiarity I lack with yours, but I do not want to let you off the hook. You exercise enormous power and authority in your relationship with patients and clients. You know it, and they know it. You study it and attempt to understand it, and they feel it. That is so because of the bonding necessary for successful therapy. If you do not become intimate with a person’s problems and a person’s needs, you will not be in a position to offer help to that person. So the risk is a necessary function of the work that you do.

But how sensitive are you to the world women live in? How empathic are you to the messages that women receive? Do you unwittingly make assumptions and are those assumptions based on your own experience or, worse yet, on your experience with your own wives, nieces, and daughters? It is not fair to make assumptions on the basis of personal experience until your experience has expanded to include the scope, breadth, and depth of someone like the Savior. I expect that the Savior is the only human being who has ever lived on the earth who was capable and worthy to make assumptions on the basis of inferences rather than overt and objective data about what is in the heart of other human beings.

Do you unwittingly make assumptions which may reinforce some women’s sense of their own limitations, or are you always careful to respond to people in terms of their life experience, their circumstances, and their individual needs rather than in terms of general assumptions or stereotypes, about who and what women are, or men are, and can do? The risks that women take when they ask us for help should not include the risk that we will apply generalizations or stereotypes or that we will reinforce the "I think I can’t" mode which emerges in so much of women’s socialization. Our society is by no means ready to free itself from long-held notions about the roles of men and women. At the same time, however, I think both sexes are encountering increasing difficulty in accepting the limitations of rigid roles. The traditional reinforcements that society has used are not working as well as they used to.

It was in 1973 that a justice of the United States Supreme Court wrote in a case involving a question of legal sex discrimination that the pedestal upon which women have historically been placed reveals itself upon closer inspection all too often to be a cage (Brennan, 1973). Another essay on that same subject observes:

The hidden message to women on a pedestal is that their work is valued because it must be done but that it is beneath the talents of men to do it. People on pedestals are sometimes held in awe. They are also loved, cherished, and protected. They are not respected as doers because they are held out of the mainstream, are measured by a shorter ruler. Thinking of life in terms of its limitations instead of its opportunities. People on pedestals never get to do the work they need to do in order to learn what they can do. People on pedestals, and most of those people are women, are growing up thinking they can't. (Shepard, 1983)

When women survive the necessary risks of their dealings with us in the helping professions, they grow. That is
what risk-taking is all about. You know more about that than I. The job, however, for those of us who help people solve their problems is to do everything possible to see that the problem solving process does not diminish their capacities in any way but enlarges them. We, the experts, have skills which make us powerful, for good or ill. This is particularly true of you, because your skills relate so closely to the intimate sectors of human life. You often exercise great influence, and with such influence—as I hope you all feel very deeply—comes enormous responsibility.

In 1 Samuel 16:7 we learn a very important lesson: "... the Lord seeth not as man seeth; for man looketh on the outward appearance, but the Lord looketh on the heart." Those attempting to help can never be of real service to those in need if they fail to strive to look upon the heart. From the scriptures we also learn, "It is the nature and disposition of almost all men, as soon as they get a little authority ... [that] they will immediately begin to exercise unrighteous dominion." (D&C 121:39) In that same revelation there is a wonderful discussion of the proper exercise of power in human lives. I think that discussion is equally applicable both to members of the helping professions as well as bearers of the priesthood: "No power or influence can or ought to be maintained... only by persuasion, by long-suffering, by gentleness and meekness unfeigned; by kindness, and pure knowledge, which shall greatly enlarge the soul without hypocrisy, and without guile..." (D&C 121:41-42) What a beautiful notion, that the soul may be enlarged by kindness and pure knowledge.

As I think of all the helping professions, yours strives most to combine kindness and pure knowledge. We work a great deal in my profession on pure knowledge, but I do not always see a striving for kindness. I hope that these attributes—kindness and pure knowledge—may continue to characterize your work with the women and with the men who seek your help.

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References