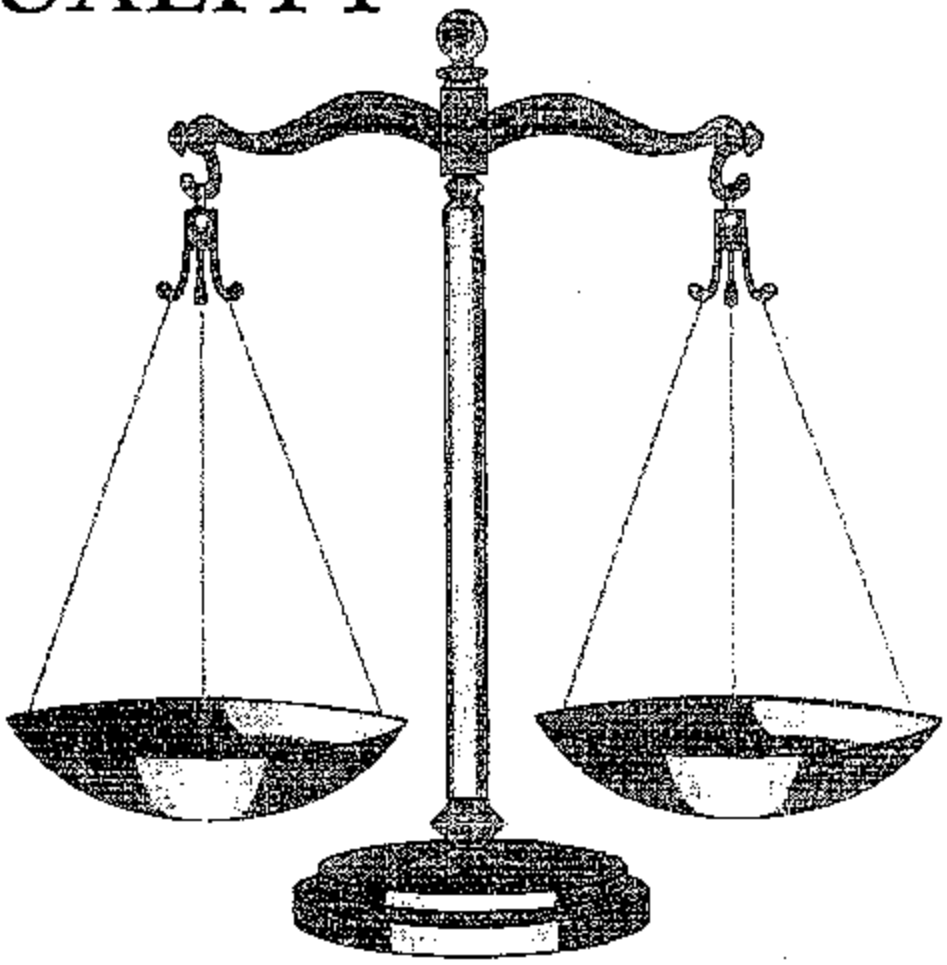
Select Committee *on* Gender Equality



Retrospective Report
Select Committee
on
Gender Equality

October, 2001

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ANN S. HARRINGTON
JUDGE

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September, 2001

To: The Honorable Robert M. Bell, Chief Judge, Court of Appeals of Maryland
Pamela J. White, Esquire, President, Maryland State Bar Association

In early 1987, the Maryland Judiciary and the Maryland State Bar Association created the Special Joint Committee on Gender Bias in the Courts to determine whether gender bias existed within the legal community and court system. The Special Joint Committee was charged with the task of examining the nature and impact, if any, of gender bias on participants in the court system. If the Special Joint Committee found that gender bias existed, it was charged with making recommendations to eliminate its effect in the Maryland judicial system.

The Gender Bias in the Courts Report, issued in May of 1989, reached the conclusion that gender bias had a major and negative impact on the Maryland judicial system and recommended a series of changes.

In direct response to the Report's findings, a permanent Select Committee on Gender Equality was formed. The Committee, comprised of members of the bench and bar, took as its mission addressing continuing concerns of gender bias in all aspects of the judicial system: legal education, bar admissions, law offices, the courts, the judicial appointment process, and disciplinary proceedings. For the past twelve years, many individuals have served as members of the Select Committee, working tirelessly to carry on the mission and implement the recommendations of the 1989 Report.

For the past two years, a major priority of the Select Committee has been to conduct a retrospective study designed to measure changes in attitudes, perceptions and experiences that have occurred over the past ten years. As part of this study, the Select Committee expanded its examination of bias within the judicial system to include issues of racial and ethnic bias. In doing so, the Select Committee seeks to further assess and ensure fairness of treatment within the court system.

The generous and constant support of the Judiciary and State Bar Association made this study possible. The Select Committee is confident that, with this unwavering support, we will achieve the objectives set forth herein to improve the system for future generations of litigants, lawyers, court personnel and judges.

I am pleased to present this report to you.

Respectfully submitted,

Ann S. Harrington, Chair

ROBERT M. BELL
CHIEF JUDGE
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The Select Committee on Gender Equality has, for the past two years been engaged in the conduct of a retrospective study to assess its effectiveness, by measuring changes in attitudes, perceptions and experiences, primarily with respect to gender equality, within the judicial system over the last ten years. As we did with respect to the Report of this Committee's predecessor, the Special Joint Committee on Gender Bias in the Courts, we eagerly await the Report. While I am confident that it will reveal what we all have witnessed - that much progress has been made, I am realistic enough to anticipate that the Report will reveal that we have yet more to do.

Twelve years ago, the Report of the Special Joint Committee was given serious consideration; after careful study, the Bench and the Bar rolled up their collective sleeves and set about to implement the recommendations. I have not the slightest doubt that this Committee's Report will engender a comparable response and as firm a resolve from the justice system, for it remains true, as Chief Judge Murphy observed, "[a] fair and efficient justice system can ill afford, in its administration, even the slightest perception of purposeful discrimination, whatever its root source."

My thanks, on behalf of the Maryland Judiciary, to the Chair and the membership of this most important Committee. Your extraordinary dedication and zeal in this critical area cannot be overstated.

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September, 2001

Members of the Maryland Bench and Bar

Dear Colleagues:

A dozen years after the May 1989 Report of Maryland's Commission on Gender Bias in the Courts, its recommendations have received considerable attention and action by the courts and their administrative offices, members of the Maryland bar and our bar associations, the General Assembly, and educators at area law schools. If nothing else had been accomplished, Maryland lawyers and judges are testament to successful educational initiatives to overcome the historic impact of gender bias in our justice system.

Pragmatic progress can be noted by such accomplishments as meaningful legislation targeting problems of domestic violence, amendments to the Judicial Canons condemning discrimination, and publication of civility codes promoting respect by lawyers for the rule of law and our role as lawyers. Less tangibly, the Maryland bar increasingly is aware that bias of any sort, including harassment by lawyers, is unprofessional conduct. Bias will not be tolerated by Maryland practitioners who understand that public trust and respect for the rule of law is undermined whenever justice is seen to deliver less to one group than another, simply because of a personal characteristic. Lawyers in a professional practice also know there is no room at the bar for bias among colleagues who have taken an oath to act fairly and honorably and who expect to interact with clients, judges and colleagues with civility and collegiality.

The survey results that are described in this Report reflect progress to eliminate gender bias, at least to mitigate its effects in our courts and in our law practice. The MSBA is a long-time and active participant in the work of the Select Committee on Gender Equality. The MSBA has supported the current survey and this Report under the leadership of past-president Judge Richard H. Sothoron, working with Committee Chair Judge Ann Harrington. Judge Sothoron made sure that MSBA resources were pledged to finish the Report even as it became apparent that the expanded scope of the report would result in its release at the conclusion of his term as MSBA President. The MSBA's current leadership remains committed to eliminate gender bias from our courts and justice system and will continue to support the work of the Gender Equality Committee, now chaired by Linda H. Lamone, Esquire.

The Report is most significant for its attention to troubling perceptions of racism in our justice system. Survey results reflect perceptions that our courts are not free of racial and ethnic bias, perceptions that judges afford less credibility to minority lawyers and participants in our courts. Such perceptions and their roots require action to eliminate racial and ethnic bias in our courts as well as gender bias. For this reason, the Maryland State Bar Association, representing more than two-thirds of the bar, will join with Chief Judge Robert M. Bell to identify critical initiatives to combat racial and ethnic bias in our courts. The MSBA is committed to appropriate judicial and legal education programs to deal with any perception of racial and ethnic unfairness in our justice system.

Maryland lawyers, and our MSBA Committees and Sections, are well-informed that the quality of justice and law practice is diminished by bias. It is economically short-sighted and morally reprehensible when racial and ethnic disparities exist in any respect in the quality of law practice and the quality of justice in this State. This Report will help each of us improve the quality and advance the cause of justice in Maryland.

Respectfully,

Pamela J. White

PJW/aes

ACKNOWLEDGMENTS

The Select Committee on Gender Equality wishes to express its gratitude to the following people and organizations for their assistance. Without their willingness to share their time, skill, and resources, the Select Committee's surveys, investigation, and Survey would not have been possible.

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BACKGROUND

In January 2000, The Select Committee On Gender Equality (hereinafter "Select Committee") began a ten-year retrospective study of the Report of Maryland Special Joint Committee on Gender Bias in the Court, which was issued in May 1989 (hereinafter "1989 Report"). In this retrospective study, the Select Committee seeks to:

- Measure changes in attitudes, perceptions and experiences that have occurred as a result of actions taken since the 1989 Report;
- Assess current perceptions, attitudes and experiences within Maryland's Judiciary concerning both gender and racial/ethnic bias;[1] and
- Identify what corrective measures, if any, are necessary in the future.

Unlike the 1989 Report, the retrospective study (hereinafter "2000 Survey") undertaken by the Select Committee did not include public hearings, review of documents or case files, or requests for submissions from the public. The information for the 2000 Survey came solely from questionnaires prepared by the Select Committee, in consultation with Market Insight,[2] that were directed to Maryland judges, court personnel and attorneys.

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[1] The mandate of the Special Joint Committee in producing the 1989 Report was to investigate gender bias. However, in the introduction to the 1989 Report the Joint Committee noted, "evidence of racial bias also came to the attention of the Committee." 1989 Report, at i, n. 1. The mandate for the 2000 Survey by the Select Committee was expanded to include racial as well as gender bias. Although, not meant to be all-inclusive, the questions concerning racial/ethnic bias were to be used as an indicator, perhaps for further study and subsequent action, if warranted.

[2] Market Insight is a consulting firm specializing in research, strategy and implementation. The principal of the firm is Anita Daniel and she has over twenty years of experience. Market Insight was selected from a short list of recommended firms and awarded the contract.

METHODOLOGY

The surveys were drafted and edited in February 2000. In mid-March, they were pre-tested. An announcement card was mailed the first week in April to all persons who were to receive the survey. It notified them that the Select Committee was conducting a ten-year retrospective study of the attitudes, perceptions and experiences of individuals within the judicial system of Maryland and indicated that they would receive a copy of the survey. All respondents were assured anonymity, and no tracking was done on an individual basis. Surveys were mailed the week of April 24. Reminder cards were mailed to all participants on May 8. That same week, the Court Information Office issued press releases in an effort to create public awareness about the study and to encourage responsiveness. Response to the survey was requested by May 26, however surveys received up to ten days after that date were included in the data. The first completed surveys were received on May 1.

Three separate groups were surveyed and each group received a group specific survey.[3] All Maryland judges and court employees received a survey. Two thousand attorneys (1000 females and 1000 males) received the attorney survey. Attorneys' names were pulled from a list supplied by the Maryland State Bar Association. A random sample from each Maryland zip code was requested, to ensure statewide representation.

The mailed survey counts for each group were as follows:

Judges	259
Court Employees	2890
Attorneys	2000
TOTAL	5149

[3] Not all questions appeared on each survey as some questions were not relevant to the particular subgroup.

A healthy forty and two-tenths percent (40.2%) overall response to the mailings was received. Specifically, the response totals are as follows:

	Total # Mailed	**Total # Rec'd**	**% Response**	**% Male: Female**	**% Caucasian: Minorities**
Attorneys	2000	377	19%	44%:52%	84%:16%
Court Employees	2890	1523	53%	19%:74%	65%:35%
Judges	259	178	69%	74%:22%	81%:19%

Perhaps the single most important question to be asked of any study is whether the sample is representative of the total population. The question about representation is, therefore relevant only to attorneys; being that in this instance it was possible to survey all judges and court employees rather than just a small sample of each population. The very large response to the survey assures us of a highly representative attorney sample. Statistical measurements of confidence intervals[4] are performed to assess the reliability and verifiability of sample surveys in relation to the total population. The confidence interval for those answering questions 26 through 104 of the attorneys' survey is ± 1.11%, ninety-five percent (95%) of the time. For questions 137 and 138, the confidence interval is ±0.6807% and ±0.5607% respectively. Given these confidence intervals, it is appropriate to conclude that the results are significant and reliable and that confidence can be placed in them.

[4] A confidence interval identifies the range in which a population's mean lies. An example – if we determine from a sample survey that 5% of the population would vote for a certain candidate, and the confidence interval is ± 1% then we are really saying that, 95% of the time, somewhere between 4% and 6% of the population would answer that they would vote for that candidate.

2000 Survey Overview

One of the first areas of analysis presented by the 2000 Survey is the opportunity to assess whether the respondents believe that incidents of gender, racial and ethnic bias are increasing or decreasing. In addition to comparing the responses to questions asked both in the 1989 Report and in the 2000 Survey, the Survey contained two specific questions that sought to ascertain the respondents' overall perspectives. The first asked: [i]*n the past 5 years, to what extent has there been a change, if any, in the number of incidents of gender bias.* The following table identifies the responses.

	Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have Never Seen Incidents of Gender Bias
Male Judges	1%	5%	7%	18%	45%	24%
Female Judges	0%	0%	9%	43%	40%	9%
Male Attorneys	1%	5%	7%	20%	43%	23%
Female Attorneys	2%	5%	13%	56%	21%	3%
Male Court Employees	8%	9%	16%	10%	16%	42%
Female Court Employees	2%	10%	17%	14%	11%	47%

As seen above, a majority of male and female judges [sixty-three percent (63%) and eighty-three percent (83%) respectively] and of male and female attorneys [sixty-three percent (63%) and seventy-seven percent (77%) respectively] indicate that the amount of gender bias

they observe has decreased in the past 5 years. Of note, too, is the fact that more females than males in each group report having observed such a decline.[5]

Moreover, a sizeable number of court employees, both male – forty-two percent (42%) and female – forty-seven percent (47%), indicate they have not seen incidents of gender bias. Among those court employees who have observed gender bias, a higher percentage - fifty-one percent (51%), report having witnessed a decrease in the past 5 years than those who report having observed an increase – twenty-nine percent (29%). This data comports with the overall response to the Survey questions. It is clear that while gender bias still exists, incidents are decreasing. Indeed, a majority of female judges [eighty-three percent (83%)] and female attorneys [seventy-seven percent (77%)] have seen a decrease in the number of incidents.

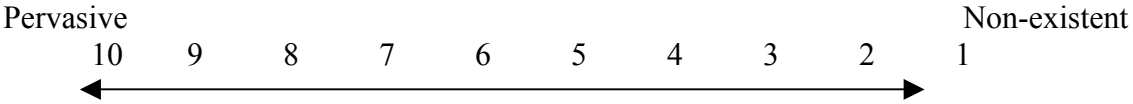
In terms of observed racial and ethnic bias, the data also indicates that incidents have declined in the past 5 years. The second question asked: [i]*n the past five years, what extent has there been a change in incidents of racial/ethnic bias.* Among Caucasian judges, fifty-seven percent (57%) see a decrease while sixty percent (60%) of Caucasian attorneys agree. Similar observations are shared by sixty-nine percent (69%) of minority judges. Nonetheless, while forty-five percent (45%) of minority attorneys say that there has been a decrease, twenty-seven percent (27%) report that there has been no change in the past five years and twenty-percent (20%) say that there has been an increase in racial and ethnic bias. The court employees tend to agree. The percentage of Caucasian court employees who perceive an increase in incidents – thirteen percent (13%), is lower than that of minority attorneys but it is higher than the percentage reported by Caucasian judges and attorneys and minority judges and attorneys.

[5] One possible explanation is that males have become more sensitized to gender bias and are therefore more aware of incidents now than in the past.

Moreover, thirty-one percent (31%) of minority court employees feel that there has been an increase in incidents while twenty-five percent (25%) report no change. Yet, it is also true, that twenty-five percent (25%) report that they have never seen incidents of racial or ethnic bias. This is the highest percentage of any group of minority respondents. Only three percent (3%) of minority judges and seven percent (7%) of minority attorneys report never having witnessed such incidents. Not surprising, a lower percentage of Caucasian respondents, from each group, report observing racial/ethnic bias than do minority respondents.

	Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have Never Seen Incidents of Racial/Ethnic Bias
Caucasian Judges	1%	4%	9%	24%	33%	29%
All Minority Judges	0%	7%	21%	38%	31%	3%
Caucasian Attorneys	1%	6%	12%	36%	24%	21%
All Minority Attorneys	9%	11%	27%	25%	20%	7%
Caucasian Court Employees	3%	10%	15%	10%	13%	49%
All Minority Court Employees	13%	18%	25%	14%	5%	25%

A separate question in the 2000 Survey asked: [o]*n a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender bias in the court system today.* The issue of racial/ethnic bias was also addressed with the following question: [o]*n a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is racial/ethnic bias in the court system today.*



The mean (or average) scores for the following groups are:

Respondents sorted by gender	Mean: Gender Bias	Mean: Racial/Ethnic Bias
Male Judges	2.42	2.82
Female Judges	3.56	3.85
Male Attorneys	3.01	3.19
Female Attorneys	5.01	5.27
Male Court Employees	3.21	3.23
Female Court Employees	3.42	3.92

Respondents sorted by race/ethnicity	Mean: Gender Bias	Mean: Racial/Ethnic Bias
Caucasian Judges	2.46	2.67
Minority Judges	4.03	5.20
Caucasian Attorneys	3.99	4.03
Minority Attorneys	4.63	5.73
Caucasian Court Employees	2.95	3.09
Minority Court Employees	4.29	5.24

A number of statements can be made after a review of the mean scores to each question by group, as shown above.

First, every group perceives racial and ethnic bias to be more prevalent than gender bias. Even non-minority judges, who perceive the prevalence of bias less than any other group, still score the prevalence of racial/ethnic bias as more prevalent than gender bias.

Second, the victims of bias perceive the prevalence of bias, regardless of whether it is gender or racial/ethnic bias, to be far more prevalent than do non-victims. Females and minorities perceive racial/ethnic and gender bias as far more prevalent than males and non-minorities.

Third, attorneys, in particular female and minority attorneys, score the prevalence of gender and racial/ethnic bias highest. Presumably, they experience that bias more frequently than others.

Fourth, the lowest scores of the prevalence of gender and racial/ethnic bias come from Caucasian and male judges, respectively.

Finally, in the year 2000, no group perceives gender and racial/ethnic bias as non-existent or even close to non-existent.

Clearly, much work remains to be done.

Executive Summary
Domestic Violence

Overall, the percentages of judges and attorneys (both male and female) who observed deficiencies in the operation and application of laws regarding domestic violence has decreased between the release of the 1989 Report and the 2000 Survey. However, disagreement about the extent of the "progress" exists particularly between female attorneys and the other two groups, male attorneys and all judges. It must also be noted that in every instance, judges perceive the courts' performance in a more favorable light than do attorneys. Education must continue in this area and steps must be taken to ensure that the judiciary is aware of the breadth of remedies available to victims of domestic violence and that the laws are applied in a gender-neutral fashion.

In the 1989 Report, four percent (4%) of judges, four percent (4%) of male attorneys and eleven percent (11%) of female attorneys thought [c]*ivil orders of protection, directing respondents to stay away from home, are granted when petitioners are in fear of serious bodily harm*, were "rarely" or "never" granted. By comparison, in 2000, none of the judges, one percent (1%) of male attorneys and eight percent (8%) of female attorneys say these civil orders of protection are "rarely" or "never" granted.

Another serious barrier facing a victim of domestic violence is a financial one. In the 1989 Report, in response to this statement, [w]*hen granting civil orders of protection, judges issue support awards for dependents*, over half of judges, fifty-eight percent (58%), nearly half, forty-eight percent (48%), of male attorneys and seventy-one percent (71%) of female attorneys, responded that the statement was "rarely" or "never" true. In contrast, today five percent (5%) of judges and twelve percent (12%) of male attorneys indicate the statement is "rarely" or "never"

true. However thirty percent (30%) of female attorneys still believe that it is "rarely" or "never" true that support awards are issued.

In a related statement, [p]*etitions for civil orders of protection are rejected where domestic relation cases are pending*, ten percent (10%) of judges, ten percent (10%) of male attorneys and twenty-four percent (24%) of female attorneys believed the statement was "always" or "often" true in 1989. In the 2000 Survey, less than three percent of all judges find the statement to be "always" or "often" true, and three percent (3%) of male attorneys and thirteen percent (13%) of female attorneys agree.

With reference to the dual pendency of criminal and civil charges, in 1989, respondents were asked whether they thought [a]*ssault charges are not treated seriously when domestic relations cases are pending.* Ten percent (10%) of judges, twenty-five (25%) of male attorneys and fifty percent (50%) of female attorneys responded this was "always" or "often" the case. In 2000, three percent (3%) of judges, twelve percent (12%) of male attorneys and twenty-six percent (26%) of female attorneys agree this statement is "always" or "often" true.

Similarly, twelve years ago twenty-three percent (23%) of judges, twelve percent (12%) of male attorneys and thirty-four percent (34%) of female attorneys agreed that "always" or "often" [t]*he courts* [did] *not treat domestic violence as a crime*. In 2000, six percent (6%) of judges, ten percent (10%) of male attorneys and nineteen percent (19%) of female attorneys still perceive this as "always" or "often" true.

Executive Summary
Child Custody and Visitation

The data compiled in the 2000 Survey indicates that strides have been made in reducing the impact gender, or expectations relating to gender, have on matters relating to child custody and/or visitation. However, the judiciary maintains a "rosier outlook" than that of the attorneys who appear before the courts. In every question regarding child custody or visitation, judges routinely rate the courts' performance higher than do attorneys. Moreover, a significant distinction between the perceptions of male and female attorneys exists here as well. As such, although one can laud the progress made with regard to "old fashioned notions" about gender as it relates to child custody and visitation, further action should be undertaken to narrow the gap between differences in the perception among judges, male attorneys and female attorneys.

In the 1989 Report, it was noted that thirty-four percent (34%) of female attorneys compared to sixty-two percent (62%) of male attorneys responded feeling that the statement, [c]*ustody awards to mothers are based on the assumption that children belong with their mothers* was "always," or "often" true. Just fourteen percent (14%) of the judges agreed. The responses to the 2000 Survey continue to show differences of opinion between male attorneys and female attorneys. This is not really the case, however, when comparing male judges and female judges. Three ways to view the results are reasonable. First, it could be that judges are truly no longer considering the maternal preference as a significant factor when awarding custody. Second, the judges are not aware that the maternal preference is still subconsciously impacting their decisions in awarding custody. Third, the truth lies somewhere in between both one and two. Judges are making an effort to not allow the maternal preference to "cloud their judgment" in custody cases. However, the result in some cases still indicates a preference to

award mothers custody. While an absolute conclusion is difficult to draw, further judicial education may be appropriate on this topic.

Yet, when the statement, [t]*he courts give fair and serious consideration to fathers who actively seek custody* was posed in 1989, eighty-one percent (81%) of judges felt strongly that courts gave fathers fair and serious consideration "always" or "often" while only twenty-seven percent (27%) of male attorneys and forty-six percent (46%) of female attorneys agreed. The majority of remaining respondents, fourteen percent (14%) of judges, forty-five percent (45%) of male attorneys and thirty-eight percent (38%) of female attorneys, agreed with this statement "sometimes." At the opposite end of the spectrum, in 1989, six percent (6%) of judges, twenty-nine percent (29%) of male attorneys and seventeen percent (17%) of female attorneys responded that the courts "rarely" or "never" gave fair and serious consideration to fathers who actively sought custody.

Comparing these percentages to the 2000 Survey, almost half - forty-five percent (45%) of judges, believe fathers are "always" given serious consideration, whereas; fifty percent (50%) of attorneys believe this to be true "sometimes." Only thirty-two percent (32%) of attorneys as compared to eighty-two percent (82%) of judges believe that fathers are given fair and serious consideration "always" or "often."

Balanced against the judicial response are the attorneys' answers to this question, clearly indicating a less zealous affirmative response that fathers are receiving serious consideration for their custody requests. Yet, the two largest categories for attorneys' responses was the "often" at twenty-five percent (25%) and "sometimes" category at fifty percent (50%),[6] equaling seventy-

[6] The question might fairly be raised, is the "sometimes" response closer to "often" or closer to "rarely?" Although much of the discourse in the 1989 Report combined the "always," "often," and "sometimes" response, treating it as one, it is our belief that this does not represent best

five percent (75%) of the attorneys feeling that the fathers now receive serious consideration. In addition, only seven percent (7%) believe fathers "always" receive serious consideration. Among judges and attorneys, a definite disparity exists in perception as to whether fathers are frequently receiving fair consideration when they seek custody.

The difference between the judges' responses and the attorneys' responses to whether a father's violence is disregarded when making a custody award prompts a closer look. In the 1989 Report, over half, sixty-three percent (63%), of the judges thought the statement, [c]*hild custody awards disregard father's violence against mother*, was "rarely" or "never" true. Their opinion was shared by roughly the same percentage of male attorneys, sixty-four percent (64%), but by just over a third of female attorneys, thirty-five percent (35%). In 2000, one must at least ask if judges answer seventy-nine percent (79%) "never" because that is the ideal answer. In contrast, only twelve percent (12%) of attorneys answer "never" to this question. The response that judges gave is the more socially favored response, while the responses from attorneys are more within the range of possible answers. The response from the judges portrays an idealistic state for the judiciary; whereas, the attorneys' responses indicates a more realistic advancement from the 1989 Report.

Similar progress can be reported with regard to the statement, [m]*others are denied custody because of employment outside the home.* In 1989, two percent (2%) of judges, two percent (2%) of male attorneys and eight percent (8%) of female attorneys responded "always" or "often." In response to the 2000 Survey, both judges and attorneys feel that mothers are "never" denied custody for employment outside of the home. Indeed, ninety-one percent (91%) of the judges report that this "rarely" or "never" occurs with only nine percent (9%) reporting

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practice and for this Survey we will endeavor to view the "sometimes" response as a separate category.

that it happens "sometimes," and eighty-four percent (84%) of male attorneys and forty-nine percent (49%) of female attorneys believing that this occurs "rarely" or "never." The response from attorneys on this question reflects favorably that judges appear not to immediately consider a mother's outside employment as a negative factor.

With regard to the topic of joint custody, the 1989 Report asked whether [j]*oint custody is ordered over the objections of one or both parents.* Of the judges, seven percent (7%) believed this statement as "always" or "often" true, and over a third, thirty-five percent (35%), believed it was "sometimes" true. Of attorneys, nine percent (9%) of male attorneys and eleven percent (11%) of female attorneys agreed that the statement is "always" or "often" true while about a third of male attorneys, thirty-four percent (34%), and nearly half, forty-five percent (45%), of the female attorneys thought it was "sometimes" true. In response to the 2000 Survey, judges feel this was a less common occurrence than attorneys. Specifically, four percent (4%) of judges state this happens "often" versus sixteen percent (16%) of attorneys. Among attorneys, fourteen percent (14%) of male attorneys and seventeen percent (17%) of female attorneys find this occurs "often." No one indicates that this occurs "always."

More attorneys feel the courts are effectively enforcing visitation rights than those who feel they "rarely" or "never" do. Overall, this reflects a view that the courts are performing adequately at enforcing visitation rights.

Response to the statement, [e]*nforcement of child support awards is denied because of alleged visitation problems*, is closer in agreement between the respective parties according to the 2000 Survey. Almost three-fourths of attorneys, seventy-two percent (72%), respond "rarely" or "never," and over three-fourths, eighty-eight percent (88%), of judges agree. Just three percent (3%) of attorneys, and less than one percent of judges perceive this "always" or

"often" occurs. Male attorneys respond "rarely" or "never" seventy-seven percent (77%) of the time while sixty-four percent (64%) of female attorneys agree. In 1989, eighty-five percent (85%) of judges, eighty percent (80%) of male attorneys and forty-nine percent (49%) of female attorneys responded "rarely" or "never." Clearly, progress has been made in this area as enforcement of child support awards is believed to be "rarely" denied because of alleged visitation problems today.

The 2000 Survey asked for a response to whether [v]*isitation rights are effectively enforced by the courts*. Once again, judges' response to this question differs from the answers the attorneys provide. Judges score themselves more favorably in this area with only four percent (4%) claiming that the courts "rarely" effectively enforce visitation rights, and none of the judges reporting that visitation rights are "never" effectively enforced. Attorneys' on the other hand, give a more diverse response. A greater percentage of attorneys, twenty-three percent (23%) believe that visitation rights are "rarely" or "never" effectively enforced; and practically one in four male attorneys, twenty-one percent (21%), and twenty-six percent (26%) of female attorneys, agree they are "rarely" or "never" effectively enforced. Consequently, continued diligence appears necessary by the courts in this area.

Executive Summary
Child Support

The passage, in 1989, of the Child Support Guidelines was a very positive step toward ensuring that adequate child support awards are made. Overall, according to the 2000 Survey, both attorneys and judges believe that awards follow the guidelines. However, issues of concern remain. Judges are not authorized to take into account the gender of the petitioner in making an award under the guidelines, yet it appears that the judiciary is perceived to exceed the guidelines more frequently if the petitioner is a woman. Additionally, judges need to be conscious that when child support payments are delinquent, by any amount of time, it negatively impacts the children. Thus, *pendente lite* awards should be timely made, without regard to concerns about the pendency of matters regarding custody and visitation. Further, earnings withholdings should be entered as soon as the obligor is determined to have fallen 30 days behind in paying support.

In the 2000 Survey, judges and attorneys were asked to respond to eight statements regarding child support. The first of these statements asks if [c]*hild support awards follow the guidelines*. In response, ninety-four percent (94%) of judges believe the guidelines are followed "always" or "often," as do eighty-three percent (83%) of the attorneys. Given the mandatory nature of the guidelines, any other result would be highly questioned. What was uncovered, however, was a perception that sometimes [j]*udges exceed the* [child support] *guidelines more frequently when the woman is the petitioner*. This view, is thought to be the case "sometimes" by twenty-three percent (23%) of the judges and thirty-three percent (33%) of the attorneys. Moreover, eighteen percent (18%) of the attorneys report that this happens "always" or "often." The other area of inquiry that was new to the 2000 Survey was the question of whether [*f*]*athers are more frequently found to be voluntarily impoverished than mothers*. Almost one-fourth of

the judges, twenty-four percent (24%), say fathers are "often" found more frequently to be voluntarily impoverished, and thirty-nine percent (39%) of attorneys say it is "always" or "often."

The remaining three questions concerning child support enforcement allow for a comparison of results between the 1989 Report and the 2000 Survey. Disturbingly, after making the comparison, there has actually been relatively little change in the responses from judges and attorneys, regardless of both additional efforts at education and the passage of time.

In 1989, seventy percent (70%) of judges and thirty-six percent (36%) of attorneys reported that "always" or "often" [p]*endente lite awards of child support are made within 60 days of filing the motion*. In the 2000 Survey, the result is quite similar. Just one percentage point less, sixty-nine percent (69%) of the judges believe that this occurs "always" or "often." Attorneys however, show a regression to this question, dropping more than ten percentage points to twenty-three percent (23%) answering "always" or "often." Yet, as is the case in most other areas reported in the 2000 Survey, male and female attorneys differ in their opinion, twenty-six percent (26%) of males compared to thirty-nine percent (39%) of females say "rarely" or "never" are *pendente lite* awards made within 60 days of filing the motion. The pattern of the judiciary seeing things in a more "positive" fashion than attorneys continues here as well; five percent (5%) of the judges answer that awards are "rarely" or "never" made within 60 days. This was true in 1989 as well. In fact, in 1989, it was found that eleven percent (11%) of the judges believed that "rarely" were the awards made within 60 days of filing, as compared with twenty-four percent (24%) of attorneys. When broken out by gender, twenty-three percent (23%) of male attorneys and thirty-nine percent (39%) of female attorneys responded that this was "rarely" or "never" the case.

When asked in the 1989 Report if [e]*nforcement of child support awards is delayed because of counter claims for custody*, twenty-three percent (23%) of the judges believed that enforcement is "sometimes" delayed as did thirty-two percent (32%) of attorneys. Therefore, as is the case with the responses to the questions about the *pendente lite* awards, it seems as though there has been relatively no progress in eradicating this perceived disparity.

In 2000, according to judges, forty-one percent (41%) feel that [e]*nforcement of child support awards is delayed because of counter claims for custody* is "rarely" true, thirty-three percent (33%) feeling this "never" happens, while twenty-four percent (24%) believe that it "sometimes" takes place. However, a higher percentage of attorneys, forty-six percent (46%), believe that this type of delay occurs "sometimes." While it is laudable that seventy-four percent (74%) of the judges and forty-three percent (43%) of attorneys say that awards are "rarely" or "never" delayed in this circumstance, the reality is that one-quarter of the judges and almost half of the attorneys admit that support awards are delayed.

The third enforcement question asks whether [e]*arnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support*. The responses indicate that the perceptions of the bench and bar also differ greatly in this area. In 1989, fifty-eight percent (58%) of all attorneys responded "rarely" or "never" are withholdings orders entered within 30 days, while only fifteen percent (15%) of the judges felt this way. In 2000, when attorneys answer this question, almost half, forty-six percent (46%), thought these withholding orders are "rarely" entered as soon as the obligor is 30 days behind. Moreover, ten percent (10%) of the attorneys answer that this "never" takes place. No judges reported that this "never" occurs, and only twenty percent (20%) report that it "rarely" occurs. The comparative difference between

the belief of one-fifth of the judges as contrasted with that of over half of the attorneys cries out for more attention to be paid to this area of enforcement.

Judges' apparent lack of a "real world" awareness of what happens in the child support enforcement arena is detrimental to the well being of Maryland's children. Education and advocacy must continue in this area until all child support awards are made *and* enforced quickly, effectively, inexpensively and in compliance with Maryland law.

Executive Summary
Alimony, Property Disposition and Litigation Expenses

While there have been many changes since the 1989 Report was released, there is still much to be done in the area of alimony, property disposition and litigation expenses. A void remains in the landscape of Maryland law. Trial courts and attorneys have been furnished no guidance as of yet from either the appellate courts or the legislature regarding the extent to which the parties' marital standard of living is to be considered a factor in determining the adequacy of alimony amounts awarded *pendente lite*. Thus, there is a real danger that in a situation of unconscionable disparity in financial resources between the parties, the recipient spouse, who is economically disadvantaged, will be awarded a *pendente lite* alimony amount that is only sufficient to meet her "minimum" needs during what may be a protracted period prior to a final divorce hearing.

In 1989, forty-nine percent (49%) of judges stated that alimony awards at the time of divorce are either "always" or "often" close to, or the same as *pendente lite* awards. In 2000, thirty-four percent (34%) of judges continue to agree. It is equally significant that nearly half, forty-nine percent (49%), of responding attorneys in 2000 answer that divorce awards are "often" close to or the same as *pendente lite* awards, and another forty-seven percent (47%) feel that this is "sometimes" the case.

When alimony is assessed at the time of divorce, the *pendente lite* award is afforded great weight by judges, a phenomenon which appears to have endured since the 1989 Report. There is a real danger that alimony awards at the time of divorce will be insufficient. Clearly, there is room for further education of both the bar and the judiciary about the differing purposes to be served by *pendente lite* and alimony awards made at the time of divorce.

Further educational efforts may also be necessary with regard to the requirement that the court consider the needs of both parties in making an alimony award as it appears from the data that the needs of the economically independent spouse are being given undue priority. When asked in 1989 if [a] *wife's alimony award is based on how much the husband can give her without diminishing his current lifestyle,* judges agreed, this occurred "always" or "often" thirteen percent (13%) of the time, as opposed to nine percent (9%) of the time in 2000. In the 1989 Report, twenty-four percent (24%) of attorneys stated this occurred "always" or "often" versus twenty-six percent (26%) believing so in 2000.

The "gender gap" apparent in 1989 also continues in the 2000 Survey. In 1989, twenty percent (20%) of male attorneys and forty-eight (48%) percent of female attorneys said that a wife's alimony award is based "always" or "often" on how much the husband can give her without diminishing his current life style. In 2000, among male attorneys, nineteen percent (19%), compared to thirty-three percent (33%) of female attorneys believe this is true.

As was the case in the 1989 Report, in the 2000 Survey, the majority of judges remain convinced that the system adequately cares for older displaced homemakers. In 1989, fifty-two percent (52%) of judges said that older, displaced homemakers are "often" awarded indefinite alimony after long-term marriages while eleven percent (11%) said this happens "always." In 2000, sixty-eight percent (68%) of judges feel that older displaced homemakers are "often" awarded indefinite alimony after long-term marriages, with another eight percent (8%) perceiving that such awards are "always" made. Attorneys however are not as convinced that such awards are often made. Slightly over half, fifty-three percent (53%), of attorneys in 2000 agree this "always" or "often" occurs, and once again we see a "gender gap," as seventy-one percent (71%) of male attorneys compared to just thirty-five percent (35%) of female attorneys

agree that older, displaced homemakers are awarded indefinite alimony after long-term marriages.

The 2000 Survey also includes a question that was not asked for the 1989 Report. It was designed to assess the extent to which judges and attorneys perceive that there may be gender bias against a husband in making awards of alimony. Respondents were asked about the frequency with which alimony is awarded without regard for its financial impact on the husband. Answering the statement, [a]*limony is awarded without regard for the financial impact on the husband*, judges believe eight percent (8%) of the time and the attorneys, twenty-two percent (22%) of the time that just such an award is "always" or "often" made. Interestingly, thirty-five percent (35%) of male attorneys compared to nine percent (9%) of female attorneys feel that this is "always" or "often" the case. Again, attorneys perceive this occurrence more frequently than do judges.

The results of the 2000 Survey prove quite similar to the results of the 1989 Report with regard to the issue of whether courts effectively enforce alimony awards. In 2000, seventy-seven percent (77%) of judges indicate that courts either "always" or "often" effectively enforce alimony awards. Less than one in three, thirty-one percent (31%), of responding attorneys believe that awards are either "always" or "often" effectively enforced. This dichotomy is significant. The difference in perception between male and female attorneys is also significant; forty-nine percent (49%) of male attorneys respond "always" or "often" while only fifteen percent (15%) of female attorneys respond "often" and none respond "always" to the same statement.

The bench and bar continue to have divergent perspectives regarding the frequency with which proper injunctive relief is awarded and the frequency with which courts award sufficient

counsel and expert fees to permit the dependant spouse to effectively pursue litigation. In 1989, sixty-two percent (62%) of judges and thirty percent (30%) of attorneys believed that [e]*ffective injunctive relief* [was "always" or "often"] *granted where necessary to maintain the status quo until monetary awards are made*. In 2000, sixty-seven percent (67%) of judges believe that effective injunctive relief is either "always" or "often" granted, along with twenty-six percent (26%) of attorneys holding the same belief. However, a significant percentage of attorneys, thirty-two percent (32%), believe that courts "rarely" grant effective injunctive relief pending divorce, while only three percent (3%) of judges answer similarly.

Judges and lawyers continue to view differently the sufficiency of awards of counsel fees and expert fees to economically dependant spouses. It is significant that responding members of the bench who perceive that [c]*ourts* ["always"] *award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation* decreased substantially from thirty-two percent (32%) to fifteen percent (15%) between the 1989 and 2000. Equally significant is the nearly forty percent (40%) of responding attorneys who now believe such awards to be "rare." Another twenty-eight (28%) of responding attorneys in 2000 believe that sufficient awards are made only "sometimes." In stark contrast, exactly one-half, fifty percent (50%), of judges believe that such awards are "often" made.

In 1989 and again in 2000, judges and attorneys were asked to respond to the statement, [w]*here a wife's primary contribution is as a homemaker, the monetary award reflects a judicial attitude that the husband's income producing contribution entitles him to a larger share of the marital estate*. To which, in 1989, seven percent (7%) of judges and nineteen percent (19%) of attorneys responded "always" or "often." Little has changed. In 2000, four percent (4%) of judges and seventeen percent (17%) of attorneys still respond "always" or "often." Additionally,

holding true to the "gender gap," in 2000, seven percent (7%) of male attorneys agree, with that proportion jumping to one-fourth, twenty-five percent (25%), of female attorneys.

In 2000, an additional question was added to the survey, asking if, [c]*ourts tend to divide the marital estate equally, without regard to the respective monetary contributions of the parties*. In response, forty-two percent (42%) of judges and forty-three percent (43%) of attorneys perceive this as true "always" or "often." Over half of male attorneys, fifty-one percent (51%), and thirty-three percent (33%) of female attorneys agree this as true "always" or "often."

Once again, we see that there is a strong divergence of opinion between the beliefs of male attorneys as compared to female attorneys. Almost twenty percent (20%) more men than women feel that marital estates are divided equally without regard to the respective monetary contributions. The reasons for this difference in perception are not self-evident but are worth additional inquiry.

There is no doubt that the progress that has been made in eliminating gender inequity in connection with the allocation of economic resources upon divorce is, at least in part, attributable to the implementation of programs sponsored by the Judicial Institute, MICPEL,[7] local and specialty bar associations, and others, as well as the dissemination of information to judges to better inform them about required considerations and the need for sensitivity to the plight of the displaced homemaker in the wake of marital dissolution. Nonetheless, it is clear that there is still room for improvement.

Although the consistency of alimony and property awards has, perhaps, improved with the designation of Family Division judges whose philosophies, tendencies and approaches regarding alimony tend to become known to the bar, thereby lending a degree of predictability

[7] MICPEL is acronym for the Maryland Institute for the Continuing Professional Education of Lawyers.

which can encourage settlements, there is still some room for guidance to be furnished so that, as between different judges, an increased degree of consistency can be obtained. Furthermore, there is room for improvement in the effective enforcement of alimony and marital property awards.

Executive Summary
Court Treatment of Personnel

The 2000 Survey results show that progress has been made in several areas noted to be of concern in the 1989 Report. Specifically, incidences of sexual harassment have dramatically decreased since the 1989 Report. However, zero tolerance must remain the standard and efforts toward eradication and education must continue in this area. Moreover, there was a reduction in the percentages of both genders that reported differential treatment based on gender regarding job responsibilities and credibility or in job training and advancement. Notably, a higher percentage of male employees perceive that they receive unequal treatment at work because of gender-based stereotypes and that employment decisions are based on gender.

However, there also exist areas where efforts toward education and eradication must continue. For example, despite similar educational and employment backgrounds, proportionately more male employees occupy higher salaried positions than female employees. In addition, notwithstanding the passage of the Family and Medical Leave Act in 1993, female employees still have grievances and misunderstandings with their supervisors regarding maternity leave. Furthermore, a need still exists for on-the-job partially subsidized child care for working parents in the court system. Lastly, it remains a concern that a majority of court employees view the Maryland court system as a job that offers little or no hope of advancement and that existing grievance procedures are used by a very small percentage of employees and provide little or (mostly) no satisfaction to those who do access them.

Despite the 2000 Survey showing marked improvements over the results of the 1989 Report with regards to females' overall pay and the break-up of lower paying jobs being categorized as "female jobs," the 2000 Survey indicates the persistent concern of females not

being promoted in proportion to their numbers. The 1989 Report found that only one percent (1%) of female employees made over $40,000, whereas sixty-four percent (64%) were earning between $15,000 and $20,000. The 2000 Survey, if graphed, illustrates a classic bell curve with under representation at both the lowest and highest pay scales, and the bulk of the respondents clustered in the middle. According to the 2000 Survey, eighty-two percent (82%) of female employees make between $20,000 and $40,000. Yet this noticeable improvement must be taken with caution in that the greatest numbers of female respondents fall into the lower end of the income bracket, $20,000 to $29,000. The 2000 Survey indicates that female employees are now under represented in the less than $20,000 income bracket, with only six percent (6%) of female employees falling into this category, as opposed to seventeen percent (17%) of male employees falling into this bracket.

Nevertheless, these improvements may only be marginal in that the 2000 Survey indicates that a glass ceiling continues to persist as significant disparities arise when analyzing females and males earning over $50,000. Fourteen percent (14%) of male respondents reported $50,000 plus salaries, compared with just three percent (3%) of the female respondents; reflecting almost the exact inversion of the 4:1 ratio of female to male employees. Interestingly, although the numbers support the continued existence of a glass ceiling, respondents, and more specifically female respondents, do not perceive that gender biases affect job advancement. In fact, a higher percentage of male respondents actually perceive job advancement via gender biases than do female respondents.

The 1989 Report found sexual harassment among the Maryland court system employees rampant, in that the public verbally harassed nearly half of both female and male respondents. The 1989 Report further indicated that female and male employees had comparable percentages

of those victimized by requests for sexual services and/or actual physical touching, whether it was directed from a judge or the public.

The 2000 Survey, on the other hand, indicates that the incidents of sexual advances are almost negligible. The highest category of harassment consists of verbal behavior, which is by four percent (4%) of judges, and ten percent (10%) of the public; towards thirteen percent (13%) of women and four percent (4%) of men. Clearly, these improvements show a sharp and significant decline of sexual harassment over the past eleven years, yet the zero tolerance standard must remain and any celebration should be deferred until sexual harassment is completely eradicated from the Maryland court system.

The 1989 Report disclosed a pervasive perception among all court employees that female employees were addressed by terms of endearment when men were addressed more formally. The 2000 Survey continues to suggest that although improvement has been made, these practices still exist. In 1989, twelve percent (12%) of court personnel found this to be at least sometimes true *by judges*, twenty-eight percent (28%) *by attorneys*, and twenty-four (24%) *by court personnel*. The 2000 Survey numbers indicate decreases to seven percent (7%) *by judges*, eight percent (8%) *by attorneys*, and thirteen percent (13%) *by court personnel*. Notably however, the 2000 Survey shows that of the six questions used to address differential treatment based on gender, a higher percentage of male respondents perceived gender biases on five of the six questions than did females.

As with work environment issues, the 2000 Survey finds a work force that perceives less gender bias in job training and advancement than it did in 1989. For example, six percent (6%) of 1989 respondents and only three percent (3%) of 2000 respondents answer "yes" when asked if they felt they were denied a promotion because of their gender. Notably again is that, unlike

the 1989 Report, the 2000 Survey finds a higher percentage of male than female respondents identifying gender bias in job training and advancement.

With regards to maternity and family leave, the 1989 Report concluded that existing policies were of a restrictive nature, placing severe limitations upon female employees with regard to the physical demands of pregnancy and childbirth. In 1989, seven percent (7%) of female employees were denied maternity leave, whereas the 2000 Survey indicates a decrease and improvement to two percent (2%). However, the 2000 Survey also indicates that female employees were more likely than males to be granted leave to care for dependant children and elderly relatives.

Finally, the 1989 Report and 2000 Survey looked into the need for on-the-job childcare. Sadly, there has been little change over the past eleven years, forty-six percent (46%) of the respondents reported a need for some sort of child care, whereas the 2000 Survey finds that twenty-one (21%) continue to hold this view for children under twelve at the workplace.

Executive Summary
Judicial Selection

Over the past twelve years, the numbers of women serving as members of judicial nominating commissions has increased from thirty-two percent (32%) to thirty-eight percent (38%). During this time the number of women serving on the bench has increased from nine percent (9%) to twenty-three percent (23%). This is in large measure a result of the intervention by the Governor in considering "the need for greater diversity of experience, gender and race." Yet with all the change and focus, women still do not serve on the bench in numbers proportional to their representation as attorneys, or the general populace. Furthermore, in fourteen (14) of Maryland's counties, no women serve on either the circuit or District Court bench.

In answering the question [a]*re you aware of any instances of gender bias in the judicial selection process*, both male judges and male attorneys reported an increase in their awareness. Among male judges the percentage increased from fifteen percent (15%) to twenty-nine percent (29%); among male attorneys the percentage grew from thirteen percent (13%) to thirty-one percent (31%). Among women judges, the percentage declined from sixty-nine percent (69%) to twenty-six percent (26%), and among women attorneys the percentage dropped from twenty percent (20%) to eighteen percent (18%). Clearly, men have become more aware of incidents of gender bias while women less so.

In 1989, fourteen percent (14%) of attorneys and twenty percent (20%) of judges stated they were aware of incidents of gender bias. Currently, seventy-two percent (72%) of judges and seventy-six percent (76%) of attorneys do not perceive gender bias in the judicial selection process. Yet, overall, twenty-nine percent (29%) of judges and twenty-four percent (24%) of attorneys today say they are aware of incidents of gender bias in the judicial selection process.

As the Governor has taken a stand to consider the need for greater diversity of gender, a light has been shone on the issue. With the issuance of an Executive Order that judicial nominating commissions "shall be sensitive to gender and diversity issues," that light has become a beacon. When emphasis is placed on any issue of importance, it is to be expected that people become more aware of and sensitized to the problem.

Further, in an attempt to right a past wrong, changes have been made that may be perceived as "reverse" bias. When change is imposed, those invested in the status quo lose the most. It is certainly true that to the extent gender or racial bias or inequality exists, it will be perceived much more readily by those who are the victim of it than by others.

Executive Summary
Women in the Courtroom: Treatment of Female Parties, Witnesses, Jurors and Attorneys

Inappropriate gender-based conduct continues to exist within the legal and judicial communities and it has a particular negative impact on female attorneys, litigants, witness and court personnel. Bias, of any type, erodes confidence in the impartiality of the judicial system. It is important that steps continue to be taken to expose and remedy, preferably by education and counseling, the attitudes and actions that give rise to the perceptions and realities of bias. Furthermore, where the conduct is overt and persistent, the judicial system must be prepared to take formal action as well.

Fortunately, the 2000 Survey shows, for the most part, an overall improvement, suggesting that public scrutiny and efforts at education since the 1989 Report have had some effect. Nonetheless, a significant disparity in perception and recognition still exists between men and women and between attorneys and judges regarding the prevalence of various forms of gender inequality. In whatever form, actual or perceived, gender bias should not be tolerated in the court system.

The 2000 Survey makes apparent that attorneys, on the whole, perceive more gender bias than do judges. However, within professions, there is a split of perception based on gender. Female attorneys and female judges report observing more gender biased behavior than their male counterparts. Nonetheless, a greater percentage of male attorneys and male judges perceive gender bias to be present than was the case in the 1989 Report. Lastly, inappropriate behavior is perceived to be more prevalent on the part of attorneys than on the part of judges.

The 2000 Survey inquired whether female attorneys, litigants and/or court employees are subjected to verbal or physical sexual advances. The results mirror those from the 1989 Report suggesting that more needs to be done to eradicate this form of blatantly illegal behavior. There was very little affirmative response in either 1989 or 2000 to the question of whether verbal and physical sexual advances were reported as being directed toward female litigants. However, in response to the 2000 Survey, twenty-six percent (26%) of female attorneys stated that verbal or physical sexual advances by other attorneys occurred "sometimes." Only six percent (6%) of male attorneys agree. Yet female judges also report that such incidents "sometimes," occur with eleven percent (11%) reporting that the actions are *by judges*, and twenty percent (20%) reporting that the actions are *by counsel.*

The observation that male judges and attorneys report witnessing less gender bias than female judges and attorneys is also readily apparent in the responses to whether female court employees are subjected to verbal or physical sexual advances. Male and female attorneys report few incidents "always" or "often," *by judges*, *by counsel* or *by court personnel*. However, female attorneys see far more problems "sometimes" than do male attorneys. Females report incidents "sometimes," twelve percent (12%) by *judges*, twenty four percent (24%) *by counsel* and seventeen percent (17%) *by court personnel*. Male attorneys clearly don't see the same problem – the highest percentage reported "sometimes" is *by counsel* at five percent (5%). Furthermore, the percentage of male judges who report an affirmative response is lower than that of the female judges. Female judges report that court employees are "sometimes," subject to advances and say that they take place twelve percent (12%) *by judges*, seventeen percent (17%) *by counsel* and thirteen percent (13%) by *court personnel*. Male judges report "sometimes," zero percent (0%) *by judges*, five percent (5%) *by counsel* and six percent (6%) *by court personnel*.

In studying questions concerning discriminatory conduct, the 1989 Report noted a significant gender disparity in the appointment of attorneys to fee-generating cases. In 1989, in response to the statement [w]*omen attorneys are appointed to important fee generating cases on an equal basis with male attorneys*, sixty-one percent (61%) of female attorneys responded "rarely" or "never" compared to twenty-two percent (22%) of male attorneys and fifteen percent (15%) of judges. In 2000, no male judges and nine percent (9%) of female judges respond "rarely" or "never." Among male attorneys, two percent (2%) respond "rarely" or "never" compared to thirty-eight percent (38%) of female attorneys. The 2000 Survey also asked questions about appointment of counsel in five areas not asked about in the 1989 Report. In each case, the results indicate that an important difference exists in perception between males and females, regardless whether the respondent is a judge or an attorney.

Another series of questions in the 2000 Survey concerned the weight given to arguments of female counsel and to the testimony of female experts and the question of whether more proof is required for a female litigant to prove her case.

As was the case in 1989, the 2000 Survey data indicates that a large percentage of female attorneys - sixteen percent (16%) said "always" or "often" and thirty-nine percent (39%) said "sometimes" - believe that *judges appear to give less weight to arguments made by female attorneys than by male attorneys*. However, only seven percent (7%) of male attorneys agree that this happens "sometimes." Female judges do not share the same view as female attorneys in this area. Both male and female judges overwhelmingly respond that judges "rarely" or "never" give less weight to arguments made by female attorneys.

As to the question of female experts' testimony being given less weight, the observations of those present in the courtroom suggest that this occurs at least "sometimes." Responding

"sometimes," six percent (6%) of female judges, seven percent (7%) of male attorneys, thirty-nine percent (39%) of female attorneys, seven percent (7%) of male court employees and thirteen percent (13%) of female court employees. These responses stand in stark contrast to the response of male judges of whom none report that this occurs "always" "often" or "sometimes."

The judges (both male and female) hold a similar belief that no bias occurs with regard to their requiring more evidence for a female litigant to prove her case than for a male litigant. However, attorneys – both male and female report that this does indeed occur "sometimes." Of female attorneys, thirty-one percent (31%) report that it occurs "sometimes" and thirteen percent (13%) feel that it occurs "always" or "often." Male attorneys are not as emphatic; none say "always" or "often" and only three percent (3%) say "sometimes." Male court employees, however, are not so optimistic and their responses are more in line with those of their female counterparts; four percent (4%) of male court employees respond "always" or "often" and seven percent (7%) respond "sometimes." Among female court employees, four percent (4%) respond "always" or "often" and thirteen percent (13%) reply "sometimes."

In 1989, the Joint Committee noted that the expectations concerning fair and impartial treatment of female attorneys, parties and witnesses were not met. Although there has been an overall decline in this sort of conduct, concerns continue. Female attorneys report that they are *asked if they are attorneys when male attorneys are not asked*. Specifically, fourteen percent (14%) of female attorneys say this "always" or "often" is done *by judges*, twenty-eight percent (28%) say that it is "always" or "often" done *by counsel*, and thirty-three percent (33%) say the encounter it *by court personnel*.

As for female attorneys being *addressed by first names or terms of endearment* when male attorneys are addressed by surnames or titles, female attorneys answer "always" or "often"

twelve percent (12%) *by judges*, twenty-six percent (26%) *by counsel* and eighteen percent (18%) *by court personnel*. Although six percent (6%) of female judges perceive this occurs "always" or "often" *by counsel*, none perceive it happening *by judges* and *court personnel*. Yet female judges respond it happens "sometimes" thirteen percent (13%) *by judges*, thirty-four percent (34%) *by counsel* and twenty-one percent (21%) *by court personnel*. Female attorneys also respond "sometimes" twenty percent (20%) *by judges*, thirty-eight percent (38%) *by counsel* and twenty-seven percent (27%) *by court personnel*. Yet male attorneys respond "always" or "often" less than one percent *by judges*, three percent (3%) *by counsel* and two percent (2%) *by court personnel*. Male judges do not even perceive a problem as less than one percent responded "always" or "often" by any of the three subgroups.

In addition, the 2000 Survey confirms that instances exist *where comments are made about the personal appearance of females* [be they attorneys, litigants or witnesses] *when no such comments are made about males* in these roles. For example with regard to comments made about the personal appearance of female attorneys, each "subgroup" agrees that this happens to female attorneys "sometimes." Specifically, six percent (6%) of male judges say "sometimes" *by judges*, nine percent (9%) say "sometimes" *by counsel* and eight percent (8%) say "sometimes" *by court personnel*. By contrast, female judges say this happens at a much higher rate than that reported by their male colleagues. Female judges say "sometimes" *by judges* sixteen percent (16%), *by counsel* thirty-three percent (33%) and *by court personnel* twenty-four percent (24%). Female attorneys views are closely aligned with those of the female judges except for one notable difference. A higher percentage of female attorneys, thirty percent (30%), than female judges, sixteen percent (16%), report that judges "sometimes" make

comments about the personal appearance of female attorneys when no such comments are made about male attorneys. Only six percent (6%) of male judges report that this occurs "sometimes."

Female attorneys reported in the 1989 Report that they felt like outsiders in a courtroom or in chambers when judges and male attorneys made sexist remarks or jokes in their presence. The 2000 Survey notes some improvement in this area, but it continues to be an area of concern. Notably, while eight percent (8%) of female attorneys report that judges engage in this conduct "always" or "often" and thirty-two percent (32%) say "sometimes," only one percent (1%) of male attorneys say "always" or "often" and nine percent (9%) say "sometimes." As for judges, six percent (6%) of male judges agree this happens "sometimes" and eighteen percent (18%) of their female colleagues agree.

In 2000, an additional question asked if *sexist jokes are told in court or in the office.* The survey respondents clearly indicate that attorneys do engage in this conduct. Specifically, fifteen percent (15%) of male judges perceive the conduct occurs "sometimes," while thirty-two percent (32%) female judges agree, as do twenty-five percent (25%) of male attorneys and thirty-seven percent (37%) of female attorneys. In addition, twenty-two percent (22%) of female attorneys say that sexist jokes are told in court or in the office "always" or "often."

Executive Summary
Perceptions and Experiences of
Racial and Ethnic Fairness

The most striking aspect of the 2000 Survey was the disparity in perception of racism between Caucasian respondents and minority respondents. In the majority of questions asked, minority respondents feel that racial and ethnic bias are more pervasive than do Caucasian respondents. The statistics drawn from the responses illustrate these perceptions. However it is also true that a significant percentage of judges, attorneys and court employees believe that racial and/or ethnic bias is a factor in the administration of justice and affects the treatment of litigants, attorneys and court employees.

This Committee recognizes the potential difficulty in distinguishing between actual acts of racism and those actions perceived as such but which are not actually motivated by racial or ethnic bias. The perception that racial and ethnic bias exists within the court system or is accepted by the courts is extremely dangerous and erodes faith that the system serves as the purveyor of justice. In order for the community and the members of the greater society to continue to have faith in and respect for the court system, it is imperative that the courts be perceived as wholly and absolutely intolerant of any degree of racial or ethnic bias whatsoever. Consequently, it should be the goal of the courts to eliminate entirely any racial and/or ethnic bias, which may exist, as well as, the perception that such bias might to some degree be acceptable within the court system.

At some court levels, judges are called upon to appoint attorneys to fee-generating cases or as trustees and receivers in property and business disputes. These appointments may involve substantial remuneration. Survey participants were asked to report their perceptions of the

comparative frequency of these judicial appointments between minority and majority lawyers. It is notable that more than half of the minority judges, attorneys and court employees perceive that appointments are not made on an equal basis between minority and non-minority attorneys. Majority respondents agree, but in much lower percentages with judges (*i.e.*, the persons who make the appointments) reporting the most agreement, with a perception of equality.

Attorneys and judges were asked if, in a domestic violence case, [c]*ivil orders of protection are granted less frequently when the petitioner is a member of a racial/ethnic minority*. In response, ninety-eight percent (98%) of Caucasian judges and ninety-five percent (95%) of minority judges say "rarely" or "never," and Caucasian attorneys share this same perception although to a lesser degree, seventy-seven percent (77%) believing it "rarely" or "never" occurs. Minority attorneys perceive it differently, sixteen percent (16%) saying "never," twenty-six percent (26%) believing "rarely," thirty-two percent (32%) responding "sometimes" and twenty-six percent (26%) saying "often."

Participants were asked if [j]*udges appear to give less weight to an attorneys' argument where the attorney is a member of a racial/ethnic minority.* Of minority attorneys, twenty-one percent (21%) say this occurs "always" or "often," and twenty-eight (28%) say "sometimes." A much lower percentage of majority attorneys share this perception; fifteen percent (15%) of Caucasian attorneys say this occurs "sometimes" and two percent (2%) believe it occurs "often." Court employees' responses show a divergence between the perceptions of majority and minority groups as well. Caucasian employees respond "always" or "often" two percent (2%) of the time, and "sometimes" six percent (6%) of the time, whereas minority court employees respond "always" or "often" eleven percent (11%) of the time and "sometimes" twenty-one (21%) percent. The response of the judges is muter; fifteen percent (15%) of the minority judges

believe it occurs "always" or "often," but only one percent (1%) of the majority judges say it "sometimes" occurs.

Opinions were also sought as to the perceived impact of race and/or ethnicity in criminal matters. Judges, attorneys and court employees were asked whether [s]*entences for the same offense, are given to minority defendants, that are* [either] *less severe, about the same, or more severe than sentences given to non-minority defendants.* Although ninety-six percent (96%) of Caucasian judges report that sentences given to minority defendants are "about the same" as sentences given to non-minority defendants, fifty percent (50%) of minority judges say sentences are "more severe" for minority defendants as do sixty percent (60%) of minority attorneys and forty-four percent (44%) of minority court employees.

Judges and attorneys were also asked [w]*here defendants are members of racial or ethnic minorities, they are accorded less credibility*. Again, almost all Caucasian judges, ninety-eight percent (98%), respond "rarely" or "never," whereas other respondents view things a bit differently. Over one-third (37%) of minority judges say this occurs "sometimes," while forty-four percent (44%) of Caucasian attorneys say "sometimes" and fourteen percent (14%) believe it happens "often." Minority attorneys see things even more differently than do Caucasian judges, nine percent (9%) saying "always," twenty-four percent (24%) feeling it occurs "often," thirty-three percent (33%) saying "sometimes," and just thirty-three percent (33%) feeling it "rarely" or "never" occurs.

Judges and attorneys were also asked whether in sex offense cases, [s]*entences are shorter where the victim is a member of a racial or ethnic minority*. An analysis of responses yields a similar pattern; ninety-six percent (96%) of Caucasian judges respond "rarely" or "never." Yet, among minority judges, while seventy percent (70%) say "rarely" or "never,"

twenty-two percent (22%) believe that "sometimes" sentences are shorter when the victim is a member of a racial or ethnic minority. Among Caucasian attorneys, thirty percent (30%) agree that this is "sometimes" true. Contrast this with the responses of minority attorneys; forty-three percent (43%) of whom believe it happens "rarely" or "never," yet eighteen percent (18%) respond "sometimes," thirty-six percent (36%) saying "often" and four percent (4%) of minority attorneys responding "always."

Court employees were asked to describe the impact race and ethnicity has on their job duties, responsibilities, assignments, and opportunities for advancement and promotion. Unlike the frequent disagreement and broad range of differing response among the groups that have been reported above, the responses here are heartening. Court employees, in general, perceive a degree of racial and ethnic fairness in the work setting not experienced elsewhere in this portion of the Survey.

Finally, an exceptionally high percentage of respondents in each group said that they had not attended a seminar or program during which issues of racial/ethnic bias were discussed. Seventy-nine percent (79%) of court employees, eighty-one percent (81%) of attorneys, and forty-six percent (46%) of judges did not attend a seminar within the past five years dealing with the topic of racial or ethnic bias.

Domestic Violence

I. Summary of the *1989 Gender Bias In the Courts* Report

In gathering information for its 1989 Report, the Special Joint Committee on Gender Bias in the Courts (hereinafter the "Joint Committee") surveyed judges and attorneys, heard testimony at public hearings, and reviewed written submissions. It concluded:

> The most compelling and moving testimony which the Committee received during its hearings throughout the State concerned domestic violence. Victims, friends of victims, and advocates for victims repeatedly impressed the Committee members with the severity and pervasiveness of the problem of domestic violence and the critical need to find and enforce effective remedies.[8]

The findings of the Joint Committee were as follows:

- Many judges and court employees lack understanding about and sensitivity to the dynamics of domestic violence and the circumstances of the victim and the batterer.
- Criminal and civil domestic violence cases are too often treated as trivial and unimportant, and the testimony of victims dismissed as incredible.
- Emergency civil procedures are only partially successful at providing the victim with protection from further violence and with other relief that is needed for her protection.
- Civil divorce and custody procedures lack sufficient emergency mechanisms to meet the needs of battered women.
- Mediation programs may not adequately protect battered women.
- Judges often lack sufficient information about the need to pursue criminal charges against batters.
- Commissioners sometimes fail to charge batters in appropriate cases and sometimes charge the victims in inappropriate cases.
- The battered woman syndrome defense is insufficiently accepted.[9]

[8] 1989 Report, at 1.
[9] *Id.* at 20.

II. The Legal Community's Responses to the 1989 Recommendations

The first successful piece of legislation recommended by the Joint Committee was the statutory recognition of the battered spouse syndrome in 1991.[10] Section 10-916 of the Courts Article was amended allowing the court to admit evidence of repeated physical and psychological abuse submitted by the victim of a crime for which the defendant has been charged.[11] This evidence may then be used to explain the defendant's motive and/or state of mind, at the time of the commission of the alleged offense.[12]

In 1992, the General Assembly extensively revised the Protection from Domestic Violence Law.[13] This bill expanded the definition of "abuse" to include rape or sexual abuse, and false imprisonment.[14] It also extended the provisions of the law to vulnerable adults, former spouses and cohabitants.[15] The law was expanded to allow the State's Attorney, the Department of Social Services, a blood relative of the child or vulnerable adult or an adult who resides in the home, to file a petition.[16] The bill also recognized a need in some circumstances for the residential address of a petitioner to be kept confidential.[17] Accordingly, provisions were enacted to ensure this confidentiality when necessary.[18] The relief available to petitioners was greatly expanded. In the case of a temporary *ex parte* order, it authorized a court to:

- order the respondent to refrain from further abuse or threats of abuse;

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[10] MD. CTS. & JUD. PROC. CODE ANN. § 10-916 (2001) (originally enacted in 1991).
[11] 1991 MD. LAWS 337; *See also id. 10-916*.
[12] § 10-916(b).
[13] 1992 MD. LAWS 65; *See also* MD. FAM. LAW CODE ANN. §§ 4-501, 4-504-06, 4-507-10 (2001) (repealing and reenacting with amendments as Act of 1992).
[14] 1992 MD. LAWS 65.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *See* § 4-504.

- order the respondent to refrain from contacting, attempting to contact, or harassing the petitioner;

- order the respondent to refrain from entering the residence of the petitioner;

- where the parties are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the petitioner with some exceptions;

- order the respondent to remain away from the place of employment, school, or temporary residence of the petitioner; and

- award temporary custody of a minor child of the petitioner and the respondent.[19]

With respect to the protective order, it authorized a court to also:

- establish temporary visitation with a minor child of the parties and such visitation orders may include restrictions to protect the child and the petitioner;

- award emergency family maintenance as necessary to support the petitioner;

- award temporary use and possession of a jointly owned vehicle if necessary for the employment of the petitioner or for the care of a minor child of the parties;

- direct the parties to participate in professionally supervised counseling or a domestic violence program; and

- order the respondent to pay filing fees and costs.[20]

The Protection from Domestic Violence Law was again expanded in 1994 to include adopted persons in the definition of "person eligible for relief."[21] Another amendment to the Law was passed in 1994 requiring police, in response to potential domestic violence situations, to give victims information on domestic violence programs.[22] That same piece of legislation

[19] 1992 MD. LAWS 65; *See also* MD. FAM. LAW CODE ANN. § 4-505(a)(2)(i-v, vii).
[20] 1992 MD. LAWS 65; *See also* MD. FAM. LAW CODE ANN. § 4-506(d)(8-11, 13).
[21] 1994 MD. LAWS 469; *See also* MD. FAM. LAW CODE ANN. § 4-501(h)(3).
[22] 1994 MD. LAWS 728; *See* MD. CRIMES & PUNISHMENTS CODE 1957 ART. 27 § 770(a)(2) (Supp. 2001).

created an exception to the prohibition against compelling the spouse to testify.[23] The Domestic Violence Medical Response Act, also enacted in 1994, was designed to standardize protocols in an effort to improve emergency response to domestic violence victims.[24] Unfortunately, this program was only enacted for a limited period of time and terminated on October 1, 1998.[25]

In 1995, the Protection from Domestic Violence Law was amended once more.[26] The amendment contained several parts. It altered the circumstances under which a police officer may arrest a party to a battery without a warrant.[27] The legislature also addressed the need to have protective orders filed with the appropriate law enforcement and judicial agencies to protect victims,[28] providing that victims are not charged for filing fees or costs for the issuance of service of protective orders or subpoenas.[29] Finally, it provided for the issuance of mutual protective orders, increasing the term of imprisonment for violations of orders from 60 to 90 days,[30] and it provided that police officers are obliged to make an arrest whenever they have probable cause to believe a person has violated a protective order.[31]

In 1997, the General Assembly expanded the assistance provided by law enforcement officers to victims of domestic violence.[32] It clarified that when a law enforcement officer is required to accompany an alleged victim of domestic violence to the family home so that the

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[23] 1994 MD. LAWS 728; *See also* MD. CTS. & JUD. PROC. CODE ANN. § 9-106(2)(i-iii) (2001).
[24] 1994 MD. LAWS 558; *See also* MD. HEALTH CODE ANN. §§ 19-701-05 (repealed 1998).
[25] MD. HEALTH-GENERAL CODE ANN. §§ 19-1701-05 (*repealed by* Domestic Violence Medical Response Act of 1998).
[26] 1995 MD. LAWS 10.
[27] 1995 MD. LAWS 10; *See also* ART. 27 § 594B(d)(1)(ii).
[28] 1995 MD. LAWS 10; *See also* MD. DEPARTMENT OF STATE POLICE Code, Art. 88B § 7A(b,c) (2001).
[29] 1995 MD. LAWS 10; *See also* MD. FAM. LAW CODE ANN. § 4-504(c)(2,4).
[30] 1995 MD. LAWS 10; *See also* MD. FAM. LAW CODE ANN. § 4-509(a).
[31] 1995 MD. LAWS 10; *See also* MD. FAM. LAW CODE ANN. § 4-504(b).
[32] 1997 MD. LAWS 316; *See also* ART. 27 § 798(b).

victim may remove personal effects, the personal effects include medicines and medical devices, regardless of who paid for them.[33]

Three bills were passed in 1998 that dealt with domestic violence.[34] The first two added to the grounds for an absolute divorce (1) cruelty of treatment toward the complaining party, if there is no reasonable expectation of reconciliation; and (2) excessively vicious conduct toward the complaining party, if there is no reasonable expectation of reconciliation.[35] The third increased the penalties for failure to comply with the relief granted in an *ex parte* order or protective order.[36]

In addition to the legislative efforts described above, in 1995, The Commission on the Future of Maryland Courts was established in order to conduct a thorough analysis of the operation of the State's justice system and to make recommendations for change.[37] One of the recommendations of the Commission was, in those counties in which a sufficient number of judges exist to make it feasible, a family division should be established within the circuit court, to handle, in a coordinated and efficient fashion, family-related and juvenile cases.[38] The Commission also recommended that the District Court should retain concurrent jurisdiction over emergency proceedings for domestic violence *ex parte* orders.

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[33] 1997 MD. LAWS 316; *See also* ART. 27 § 798(b)(2)(ii)(2).
[34] 1998 MD. LAWS 349; 1998 MD. LAWS 685; 1998 MD. LAWS 350.
[35] 1998 MD. LAWS 349; 1998 MD. LAWS 350.
[36] 1998 MD. LAWS 685; *See* MD. FAM. LAW CODE ANN. § 4-509(a)(2).
[37] 1995 MD. LAWS 561; *See* MD. CTS. & JUD. PROC. CODE ANN. §§ 13-701–07 (2001).
[38] *See* Honorable John Carroll Byrnes, *Commemorative Histories of the Bench and Bar: In Celebration of the Bicentennial of Baltimore City 1797-1997*, 27 U. BALT. L.F. 5, 14-15 (1997) (*citing* Commission on the Future of Maryland Courts, Hearing Minutes, Sept. 12, 1996; *City Debuting Family Division*, THE MARYLAND LAWYER, August 17, 1996, at 2).

Furthermore, the responses from the Judiciary to the 1989 Report was largely positive and many steps have been taken to improve the way Domestic Violence cases are handled by the Court. The list of improvements includes, but is not limited to the following:

- The Judicial Institute now offers a course on domestic violence cases, including multicultural issues, the role of the judge in domestic violence, the perspectives of the victim and the batterer and the effects of domestic violence on children. The Institute also offers a course covering the proper use of contempt and other appropriate mechanisms to enforce court orders, understanding the rules applicable to civil and criminal contempt, and alternative approaches;

- Domestic violence manuals are provided to each bench that includes a listing of Maryland Domestic Violence Programs and Services; and

- In a few counties, domestic violence counselors are available on site at the court to assist petitioners.

III. A Comparison of Survey Results 1989:2000

A victim of domestic violence may seek judicial intervention by petitioning for an emergency order known as a civil protective order, by suing for a limited or absolute divorce, or by initiating criminal proceedings for assault and battery. In addition, a victim may be before the court because she is charged with a crime against the batterer. In each context, the victim faces different procedures and difficulties.

A. Civil Protective Order

Under present Maryland law,[39] a victim of abuse can petition the District Court or a circuit court[40] to provide protection from further abuse.[41] A temporary *ex parte* order may be

[39] MD. FAM. LAW CODE ANN. §§ 4-501–16.
[40] While the petition may be filed in either District Court or circuit court, most petitions are brought and heard in District Court. Pursuant to the Violence Against Women Act, there are no filing fees required to file a petition in either court. 18 U.S.C. §2261 (1999) (criminal provisions); 42 U.S.C. §13981 (1999) (civil provisions).
[41] Abuse is defined as "any of the following acts: (i) an act that causes serious bodily harm; (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm; (iii) assault

granted and is effective for not more than seven days after service of the order on the respondent.[42] The temporary *ex parte* order may order: that the abuse stop; that the respondent refrain from contacting, attempting to contact, or harassing the petitioner; that the respondent refrain from entering the residence of the petitioner; that the petitioner have exclusive use of the family home; that the respondent remain away from the place of employment, school, temporary residence, or child care provider of the petitioner; and that the petitioner have temporary custody of any minor children.[43]

A respondent is entitled to a hearing on the question of whether the court should issue a protective order.[44] The hearing shall be held no later than 7 days after the temporary *ex parte* order is served on the respondent unless continued for good cause.[45] In addition to the relief available under a temporary *ex parte* order, a protective order may establish temporary visitation rights, award emergency family maintenance, award temporary use and possession of a jointly owned vehicle, direct the respondent or any or all persons eligible for relief to participate in counseling, order the respondent to surrender any firearm, and order respondent to pay filing fees and costs.[46] A protective order may be effective for up to one year.[47]

A violation of the order may result in a finding of contempt or criminal prosecution.[48] Upon conviction, the court may impose imprisonment, fines, or both.[49] Moreover, Section 4-

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in any degree; (iv) rape or sexual offense as defined by Article 27, §§ 462 through 464C of the Code or attempted rape or sexual offense in any degree; or (v) false imprisonment." MD. FAM. LAW CODE ANN. § 4-501(b).

[42] MD. FAM. LAW CODE ANN. § 4-505(c)(1).

[43] *Id*. at (a)(2)(i-vii).

[44] MD. FAM. LAW CODE ANN. § 4-506(a).

[45] *Id*. at (b)(1)(ii).

[46] *Id*. at (d)(1-13).

[47] *Id*. at (g)(1).

[48] MD. FAM. LAW CODE ANN. § 4-508(1, 2).

[49] *Id*. at (3).

509(b) of the Family Law Code authorizes a police officer to arrest with or without a warrant and take into custody a person whom the officer has probable cause to believe is in violation of an order.[50]

The Joint Committee noted a number of barriers facing victims who sought protective orders. These included clerks refusing to give victims the proper forms used for filing petitions, requiring the victims to testify in public, and unpredictable delays in hearings.[51] In addition, the Joint Committee found that some judges failed to give a victim's testimony the appropriate weight and credibility.[52] As a result, some judges would choose not to issue protective orders under the existing statutory standards (*i.e.*, when victims have already suffered injuries or are fearful of imminent bodily harm).[53]

The 1989 Report results showed that four percent (4%) of judges, four percent (4%) of male attorneys and eleven percent (11%) of female attorneys thought "rarely" or "never" were [c]*ivil orders of protection, directing respondents to stay away from the home granted when petitioners are in fear of serious bodily harm*.[54]

Data from the 2000 Survey demonstrates that improvement has occurred. Today none of the judges,[55] one percent (1%) of male attorneys and eight percent (8%) of all female attorneys agree that these orders of protection are "rarely" or "never" granted.[56]

Another serious barrier facing a victim of domestic violence is a financial one. The 1989 Report found that victims of domestic violence who desire to end the abuse are often financially

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[50] *Id*. at § 4-509(b).
[51] 1989 Report, at 12.
[52] *Id*.
[53] *See* 1989 Report, at 12-13.
[54] *See* 1989 Report, at 13; *See also* data from 1998 Report, Question No. 34 of the Judges' and Lawyers' Questionnaire.
[55] *See* data from the 2000 Survey, Question No. 67 of the Judges' Questionnaire.
[56] *See* data from the 2000 Survey, Question No. 92 of the Attorneys' Questionnaire.

inferior to their abusers and may not be able to survive without a grant of monetary relief.[57] However, the survey showed that monetary relief was difficult to get. In 1989, in response to the question whether, [w]*hen granting civil orders of protection the courts issue support awards for dependents*,[58] over half of the judges (58%), seventy-one percent (71%) of female attorneys and nearly half of male attorneys (48%) reported that the statement was "rarely" or "never" true.[59]

Today, although the law has been changed to specifically authorize monetary relief,[60] of the groups responding to the 2000 Survey,[61] thirty percent (30%) of female attorneys, and twelve percent (12%) of male attorneys believe the statement is "rarely" or "never" true.[62]

B. Separation, Divorce and Custody Proceedings

The 1989 Report noted that the goal of many victims of domestic violence is simply to put an end to the violence.[63] Many do not wish to end the marriage.[64] However, for some victims, divorce or separation may be the only recourse.[65] Getting to that point was found to be difficult because in 1989 as many as ten percent (10%) of judges, ten percent (10%) of male attorneys and twenty-four percent (24%) of female attorneys believed that petitions for civil protection orders were "always" or "often" rejected when other domestic relations cases were

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[57] 1989 Report at 13.
[58] 1989 Report, Question No. 35 of the Judges' and Lawyers' Questionnaire.
[59] Report, at 13; *See also* data from 1998 Report, Question No. 35 of the Judges' and Lawyers' Questionnaire.
[60] MD. FAM. LAW CODE ANN. § 4-506(d)(9) (*amended by* 1992 MD. LAWS 65; 1995 MD. LAWS 480; 1999 MD. LAWS 449).
[61] Question No. 35 of the Judges' and Lawyers' Questionnaire was again asked in 2000 Survey as Question No. 94 of the Attorneys' Questionnaire and Question No. 69 of the Judges' Questionnaire.
[62] *See* data from the 2000 Survey, Question No. 94 of the Attorneys' Questionnaire.
[63] 1989 Report, at 14.
[64] *Id*.
[65] *Id*. at 15.

pending.[66] The result of this policy was that the beginning of divorce proceedings ended the protection by court order against further abuse, the use and possession of the family home, custody of the children, or temporary spousal and child support.[67]

While the law was specifically amended in 1992 to include a nonpreclusion of remedies clause,[68] in 2000, three percent (3%) of judges, [69] three percent (3%) of male attorneys and thirteen percent (13%) of female attorneys indicate that petitions for civil orders of protection are "always" or "often" rejected where other domestic relations cases are pending.[70]

Two additional questions were asked as part of the 2000 Survey. The first asked, [j]*udges grant civil orders of protection when petitioners allege fear of bodily harm but have no physical injury*.[71] In response to this question, eighty-five percent (85%) of all judges agree this statement is "always" or "often" true.[72] In contrast, sixty-one (61%) of male attorneys and thirty-nine percent (39%) of female attorneys agree this statement is true "always" or "often."[73]

In response to the statement, [*c*]*ircuit court judges order emergency injunctive relief to protect victims of domestic violence*,[74] sixty-three percent (63%) of all judges agree this statement is "always" or "often" true.[75] Yet, fifty-four percent (54%) of male attorneys and

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[66] *See* 1989 Report, at 15; *See also* data from the 1989 Report, Question No. 36 of the Judges' and Lawyers' Questionnaire.
[67] 1989 Report, at 15.
[68] MD. FAM. LAW CODE ANN. § 4-510 (originally enacted as Act of 1992, ch. 65).
[69] *See* data from the 2000 Survey, Question No. 70 of the Judges' Questionnaire.
[70] *See* data from the 2000 Survey, Question No. 95 of the Attorneys' Questionnaire.
[71] 2000 Survey, Question No. 93 of the Attorneys' Questionnaire and Question No. 68 of the Judges' Questionnaire.
[72] *See* data from the 2000 Survey, Question No. 68 of the Judges' Questionnaire.
[73] *See* data from the 2000 Survey, Question No. 93 of the Attorneys' Questionnaire.
[74] 2000 Survey, Question No. 96 of the Attorneys' Questionnaire and Question No. 71 of the Judges' Questionnaire.
[75] *See* data from the 2000 Survey, Question No. 71 of the Judges' Questionnaire.

almost half that percentage of female attorneys, twenty-nine percent (29%), agree the statement is "always" or "often" true.[76]

Perceptions certainly differ and appear to depend upon gender and on which side of the bench one sits. There is no strong consensus. What is most striking is the difference in perception between female attorneys and others.[77]

C. Criminal Procedure

The 1989 Report noted that when violence occurs within a marriage or other intimate relationship, the victim is entitled to press criminal charges against the aggressor.[78] At that time, victims believed that crimes involving domestic violence were not treated the same as assault, battery or other crimes committed on strangers.[79] The 1989 Report showed that the victims were correct.[80] In response to the statement, [a]*ssault charges are not treated seriously when domestic relations cases are pending*,[81] ten percent (10%) of the judges said the statement was "always" or "often" true.[82] In contrast, twenty-five percent (25%) of male attorneys thought the statement was "always" or "often" true.[83] Female attorneys were even more certain that the problem existed, half of which, fifty percent (50%), believed the statement was "always" or "often" true.[84]

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[76] *See* data from the 2000 Survey, Question No. 96 of the Attorneys' Questionnaire.
[77] *Compare* female data from the 2000 Survey, Questions No. 93, 95, 96 of the Attorneys' Questionnaire, *with* male data from the 2000 Survey, Questions No. 93, 95, 96 of the Attorneys' Questionnaire and Questions No. 68, 70, 71 of the Judges' Questionnaire.
[78] 1989 Report, at 16.
[79] *Id*. at 16-17.
[80] *See id*.
[81] 1989 Report, Question No. 39 of the Judges' and Lawyers' Questionnaire.
[82] 1989 Report, at 17; *See also* data from the 1989 Report, Question No. 39 of the Judges' and Lawyers' Questionnaire.
[83] 1989 Report, at 17; *See also* data from the 1989 Report, Question No. 39 of the Judges' and Lawyers' Questionnaire.
[84] 1989 Report, at 17; *See also* data from the 1989 Report, Question No. 39 of the Judges' and Lawyers' Questionnaire.

The 2000 Survey data demonstrates some progress.[85] Only three percent (3%) of the judges believe the statement is "always" or "often" true,[86] while twelve percent (12%) of male attorneys say the statement is "always" or "often" true.[87] Female attorneys agree to some extent; twenty-six percent (26%) now indicate that they believe the statement is "always" or "often" true.[88]

While the perception of domestic violence and in a broader sense, gender equality, within criminal procedure seems to have improved among judges and attorneys,[89] there is still a noticeable disparity between judges' and attorneys' views of the impact of assault charges on domestic relations cases, and even a wider margin of perceptions between judges and female attorneys.[90]

One reason for this may be proximity to the "trenches," so to speak. Attorneys are more involved in the process of bringing assault charges into domestic relations cases, and are likely to speak more from the experiences which their client's encounter. Their perceptions are therefore most likely to reflect those of the domestic relations plaintiff.

The 1989 Report found clear evidence of judicial bias against treating domestic violence as a criminal matter.

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[85] Question No. 39 of the Judges' and Lawyers' Questionnaire was again asked in 2000 Survey as Question No. 98 of the Attorneys' Questionnaire and Question No. 73 of the Judges' Questionnaire.
[86] *See* data from the 2000 Survey, Question No. 73 of the Judges' Questionnaire.
[87] *See* data from the 2000 Survey, Question No. 98 of the Attorneys' Questionnaire.
[88] *See id*.
[89] 2000 Survey, in reexamining perceptions of ineffective criminal procedure with regards to domestic violence show significant improvements among all categories. *Compare* data from the 2000 Survey, Question No. 73 of the Judges' Questionnaire and Question No. 98 of the Attorneys' Questionnaire, *with* Data from the 1989 Report, Question No. 39 of the Judges' and Lawyers' Questionnaire.
[90] *Compare* female data from the 2000 Survey, Question No. 98 of the Attorneys' Questionnaire *with* male data from the 2000 Survey, Question No. 98 of the Attorneys' Questionnaire and Question No. 73 of the Judges' Questionnaire.

> One reason that judges fail to give domestic violence serious criminal treatment may be their misperceptions about the different roles of civil and criminal procedures. They may insist that victims choose their remedy, allowing a victim to pursue only a divorce or only a criminal action, but not both. Or they may believe that a victim is invoking the criminal process only to gain an advantage in the civil divorce case, rather than to have the defendant punished. Or, most simply, they may believe that any violence between family members is purely a domestic situation and does not belong in the criminal court.[91]

The 1989 Report showed that the perception of judges and attorneys matched the perception of victims. Twenty-three percent (23%) of judges said [t]*he courts* ["always" or "often"] *d*[id] *not treat domestic violence as a crime*, while twelve percent (12%) of male attorneys and thirty-four percent (34%) of the female attorneys responded that [t]*he courts* ["always" or "often"] *d*[id] *not treat domestic violence as a crime*.[92]

The 2000 Survey data demonstrates that the perception has decreased over the past ten years.[93] Still, the perception that courts do not treat domestic violence as a crime is most widely held by female attorneys.[94] Specifically, six percent (6%) of judges,[95] ten percent (10%) of male attorneys, and nineteen percent (19%) of female attorneys believe [t]*he courts* ["always" or "often"] *do not treat domestic violence as a crime*.[96]

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[91] 1989 Report, at 17.
[92] 1989 Report, at 16; *See also* data from the 1989 Report, Question No. 38 of the Judges' and Lawyers' Questionnaire.
[93] *Compare* data from the 1989 Report, Question No. 38 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 72 of the Judges' Questionnaire and Question No. 97 of the Attorneys' Questionnaire.
[94] *See* data from the 2000 Survey, Question No. 97 from the Attorneys' Questionnaire.
[95] *See* data from the 2000 Survey, Question No. 72 of the Judges' Questionnaire.
[96] *See* data from the 2000 Survey, Question No. 97 from the Attorneys' Questionnaire.

D. Battered Women Who Kill

Finally, the 1989 Report noted that there is sufficient research to establish that the lives and circumstances of battered women are different from other defendants in murder cases.[97] Other states have recognized the need to consider the victimization of these women and have developed the "battered woman syndrome defense" that allows these women to be found culpable of a crime less than first degree murder or to be found non-culpable altogether.[98] The 2000 Survey did not contain a question on battered woman syndrome. However, it has been legally recognized as a defense since 1991.[99]

IV. Conclusions

Overall, the percentages of judges and attorneys (both male and female) who observed deficiencies in the operation and application of laws regarding domestic violence has decreased between the release of the 1989 Report and the 2000 Survey. However, disagreement about the extent of the "progress" exists particularly between female attorneys and the other two groups, male attorneys and all judges. Nonetheless, it also must be noted that in every instance, judges perceive the courts' performance in a more favorable light than do attorneys. Education must continue in this area and steps must be taken to ensure that the judiciary is aware of the breadth of remedies available to victims of domestic violence and that the laws are applied in a gender-neutral fashion.

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[97] 1989 Report, at 19.
[98] *See, e.g.* C. Ewing, *Battered Women Who Kill* (1987); Schneider, *Describing and Changing: Women's Self Defense Work and the Problem of Expert Testimony on Battering*, 9 Wms. Rts. L. Rptr. 195 (1986).
[99] *See* MD. CTS. & JUD. PROC. CODE ANN. § 10-916 (2001).

V. Recommendations

- Introduce legislation to permit *ex parte* Orders to be issued by District Court Commissioners on a 24-hour basis. Currently a petitioner may only obtain *ex parte* relief during the court's business hours.

- Judges should, as a matter of course, order batterers to counseling (*e.g.*, anger management).

- There should be a mechanism for judges to use to ensure that batterers do in fact attend and complete court ordered counseling *i.e.*, require the batterer to return to court and produce a certificate of completion.

- Judges should consider whether petitioners might benefit from counseling in an effort to help them understand the cycle of violence.

- Judges should consider ordering, as a matter of course, emergency family maintenance.

- Examine the use of battered woman syndrome and its frequency of acceptance in domestic violence cases.

- Continue efforts to examine why judges and attorneys perceive differently the impact of criminal assault charges brought during the pendency of domestic relations and domestic violence cases.

- Amend the full faith and credit law in the Family Law Article to allow enforcement of out of state protective orders even where the other state's law is different from ours.

- Continue sensitivity training in domestic violence for the bench and the bar.

- Develop a sophisticated intra and interstate tracking system of *ex parte* and protective orders.

- Develop a protocol for cooperation between state, local and military officials regarding enforcement of *ex parte* and protective orders and for helping victims of domestic violence in general.

Child Custody and Visitation

I. Summary of the *1989 Gender Bias in the Courts* Report

In 1989, the Joint Committee "received numerous complaints from women and men that they were disadvantaged in custody disputes because of gender or because of expectations associated with gender."[100] The Joint Committee's investigation further indicated, "troubling instances of gender bias in custody disputes occur in the courts of Maryland."[101] Investigation took numerous forms including gathering information at hearings, asking judges and domestic relations masters to respond to a hypothetical concerning a custody dispute, surveying attorneys and judges about custody, reviewing letters and other materials sent to Joint Committee members and staff and reviewing court files about cases identified to the Joint Committee by name, court, or docket number.[102] The findings of the Joint Committee were as follows:

- Gender bias affects the award of custody in some cases.
- Some judges believe that men are unfit for custody because of their gender, and those men should not become too involved with their children. These biased attitudes disadvantaged men.
- Some judges believe women are unfit for custody if they engage in sexual conduct, are economically inferior to the father, work outside the home, or do not fulfill the judge's concept of a perfect mother. These biased attitudes disadvantaged women.
- Men's violence toward women and children is given insufficient weight in custody decisions.

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[100] 1989 Report, at 25.
[101] *Id.*
[102] "Few specific incidents involving visitation problems were brought to the [Joint] Committee's attention and no questions on visitation were involved in the [Joint] Committee's survey so the [Joint] Committee had little data upon which to determine whether gender bias was a problem in the granting or enforcing of visitation." 1989 Report, at 39. The 2000 Survey did include questions about visitation. *See* 2000 Survey, Questions No. 77 and 79 of the Attorneys' Questionnaire and Questions No. 52 and 54 of the Judges' Questionnaire.

- Joint custody is an option available to parents in appropriate circumstances.
- Joint custody is an inappropriate option where one parent has been violent toward the other parent.
- The unwillingness of the parents to share custody sometimes is given insufficient weight by trial courts considering joint custody requests.[103]

II. The Legal Community's Response to the Recommendations

In the years following the 1989 Report, the judiciary has responded by increasing judicial education courses on child support and visitation for judges and masters, with increased emphasis on the gender bias implications. However, there has been no significant legislation in the area of child custody and visitation since the 1989 Report.

III. A Comparison of Survey Results 1989:2000

The 2000 Survey was designed to identify the current perceptions of attorneys and judges on the role gender plays in custody decisions.[104] In addition, participants were asked questions regarding the impact of the parties' respective financial resources,[105] the consideration given where there is a history of domestic violence against the mother,[106] and the significance of a mother's outside employment in custody cases.[107] Finally, the survey questioned perceptions regarding the willingness of judges to award joint custody notwithstanding the objection of one or both parents.[108]

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[103] 1989 Report, at 42.
[104] *See generally* 2000 Survey, Questions No. 85-90 of the Attorneys' Questionnaire and Questions No. 60-65 of the Judges' Questionnaire.
[105] *See* 2000 Survey, Question No. 87 of the Attorneys' Questionnaire and Question No. 62 of the Judges' Questionnaire.
[106] *See* 2000 Survey, Question No. 88 of the Attorneys' Questionnaire and Question No. 63 of the Judges' Questionnaire.
[107] *See* 2000 Survey, Question No. 89 of the Attorneys' Questionnaire and Question No. 64 of the Judges' Questionnaire.
[108] *See* 2000 Survey, Question No. 90 of the Attorneys' Questionnaire and Question No. 65 of the Judges' Questionnaire.

Although the maternal preference in child custody cases has been abolished,[109] the 2000 Survey results show that a significant number of attorneys believe that the courts still apply a "maternal preference" in custody cases.[110] Specifically, when asked to respond to the statement, [c]*ustody awards to mothers are based on the assumption that children belong with their mothers,*[111] almost half, forty-six percent (46%), of all attorneys agree this occurs "always" or "often."[112] In this instance, sixty-seven percent (67%) of male attorneys and just twenty-seven percent (27%) of female attorneys state that custody awards are "always" or "often" awarded to mothers based on the assumption that children belong with their mothers.[113] Despite the strong difference of opinion between male and female attorneys, male and female judges maintain similar responses to this question.[114] Eleven percent (11%) of male and ten percent (10%) of female judges say that custody awards favor the mother "often;" twenty-five percent (25%) of male judges and twenty-three percent (23%) of female judges agree this statement is true "sometimes."[115] The most significant difference of opinion is between the "always" and "often" response from forty-six percent (46%) of all attorneys, and the judiciary's twelve percent (12%).[116]

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[109] *Elza v. Elza*, 300 Md. 51, 475 A.2d 1180 (1984) (holding that the 1974 amendment to Art. 72A, § 1 abolished the maternal preference in child custody cases).
[110] *See* data from the 2000 Survey, Question No. 85 of the Attorney's Questionnaire.
[111] 2000 Survey, Question No. 85 of the Attorneys' Questionnaire and Question No. 60 of the Judges' Questionnaire.
[112] *See* data from the 2000 Survey, Question No. 85 of the Attorney's Questionnaire.
[113] *See id*.
[114] *See* data from the 2000 Survey, Question No. 60 of the Judges' Questionnaire.
[115] *See id*. The question might fairly be raised, is the "sometimes" response closer to "often" or closer to "rarely?" Although much of the discourse in the 1989 Report combined the "always," "often," and "sometimes" response, treating it as one, it is our belief that this does not represent best practice and for this Survey we will endeavor to view the "sometimes" response as a separate category.
[116] *Compare* data from 2000 Survey, Question No. 85 of the Attorney's Questionnaire, *with* Data from 2000 Survey, Question No. 60 of the Judges' Questionnaire.

Three ways to view the results are reasonable. First, it could be that judges are truly no longer considering the maternal preference as a significant factor when awarding custody. Second, judges are not aware that the maternal preference is still subconsciously impacting their decisions in awarding custody. Third, the truth lies somewhere between both one and two. Judges are making an effort to not allow the maternal preference to "cloud their judgment" in custody cases. However, the result in some cases still indicates a preference to award mothers custody. While an absolute conclusion is difficult to draw, further judicial education may be appropriate on this topic.

The next statement questions whether, [t]*he courts give fair and serious consideration to fathers who actively seek custody*.[117] Close to fifty percent of judges believe that fathers are given serious consideration "always,"[118] whereas close to fifty percent of attorneys believe this to be true "sometimes."[119] The ideal scenario is that a judge is a disinterested decision maker, who delivers an unbiased opinion. Judges believe overwhelmingly that they "always," "often," or "sometimes" give serious consideration to fathers who are actively seeking custody.[120] In fact, in the 2000 Survey, eighty-two percent (82%) of judges respond "always" or "often" to this statement.[121] An additional fifteen percent (15%) believe it happens "sometimes."[122] In the 1989 Report, the response by judges was almost exactly the same; eighty-one percent (81%) of judges responding "always" or "often" and fourteen percent (14%) saying "sometimes."[123]

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[117] 2000 Survey, Question No. 86 of the Attorneys' Questionnaire and Question No. 61 of the Judges' Questionnaire.
[118] *See* data from the 2000 Survey, Question No. 61 of the Judges' Questionnaire.
[119] *See* data from the 2000 Survey, Question No. 86 of the Attorneys' Questionnaire.
[120] *See* data from the 2000 Survey, Question No. 61 of the Judges' Questionnaire.
[121] *See id*.
[122] *See id*.
[123] *See* 1989 Report, at 27; *See also* data from the 1989 Report, Question No. 29 of the Judges' and Lawyers' Questionnaire.

Balanced against the judicial response are the attorneys' answers to this question. The attorneys' response indicates a slightly less zealous affirmative response that fathers are receiving serious consideration for their custody requests.[124] The response from the attorneys seems comparable to the response from the judges.[125] Yet, the two largest categories for attorneys' responses was the "often" and "sometimes" categories, equaling seventy-five percent (75%) of the attorneys feeling that the fathers now receive serious consideration.[126] In addition, only seven percent (7%) believe that the fathers "always" receive serious consideration.[127] It seems safe to conclude that given the two sets of responses, from judges and attorneys, that fathers are *frequently* receiving fair consideration when they seek custody but that male and female attorneys see the issue differently; twenty-five percent (25%) of male and thirteen percent (13%) of female attorneys say "rarely" or "never" is fair and serious consideration given to fathers who actively seek custody.[128] On the flip side, thirty-eight percent (38%) of female attorneys believe that fathers are given serious consideration "always" or "often," while only twenty-three percent (23%) of male attorneys believe this occurs "always" or "often."[129]

The next statement concerns the financial position of the parents when awarding custody. It inquires whether [t]*he courts favor the parent in the stronger financial position when awarding custody*.[130] Interestingly, four percent (4%) of judges,[131] ten percent (10%) of male attorneys and

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[124] *See* data from the 2000 Survey, Question No. 86 of the Attorneys' Questionnaire.
[125] *Compare* data from the 2000 Survey, Question No. 86 of the Attorneys' Questionnaire, *with* data from the 2000 Survey, Question No. 61 of the Judges' Questionnaire.
[126] *See* data from the 2000 Survey, Question No. 86 of the Attorneys' Questionnaire.
[127] *See id*.
[128] *See id*.
[129] *See id*.
[130] 2000 Survey, Question No. 87 of the Attorneys' Questionnaire and Question No. 62 of the Judges' Questionnaire.
[131] *See* data from the 2000 Survey, Question No. 62 of the Judges' Questionnaire.

nine percent (9%) of female attorneys find this statement is "often" true.[132] In contrast, fifty-six percent (56%) of judges,[133] forty-eight percent (48%) of male attorneys and thirty-five percent (35%) of female attorneys state this is "rarely" or "never" true.[134]

When asked to respond to the statement, [c]*hild custody awards disregard father's violence against mother*,[135] judges overwhelmingly believe, by seventy-nine percent (79%), that such disregard "never" occurs.[136] Another eighteen percent (18%) said disregard of the father's violence "rarely" occurs.[137] While seventy-six percent (76%) of male attorneys felt that disregard of a father's violence against a mother "rarely" or "never" occurs, less than half the male attorney percentage, only thirty-three percent (33%) of female attorneys agree.[138] Although none of the judges state that a father's violence against a mother in custody awards are disregarded "always" or "often,"[139] four percent (4%) of male attorneys and a markedly noticeable twenty-two percent (22%) of female attorneys disagree, saying that a father's violence is "always" or "often" disregarded.[140]

The difference between the judges' responses and the attorneys' responses to whether a father's violence is disregarded when making a custody award prompts a closer look. One must at least ask if judges answered seventy-nine percent (79%) "never"[141] because it is the "ideal

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[132] *See* data from the 2000 Survey, Question No. 87 of the Attorneys' Questionnaire.
[133] *See* data from the 2000 Survey, Question No. 62 of the Judges' Questionnaire.
[134] *See* data from the 2000 Survey, Question No. 87 of the Attorneys' Questionnaire.
[135] 2000 Survey, Question No. 88 of the Attorneys' Questionnaire and Question No. 63 of the Judges' Questionnaire.
[136] *See* data from the 2000 Survey, Question No. 63 of the Judges' Questionnaire.
[137] *See id*.
[138] *See* Data from the 2000 Survey, Question No. 88 of the Attorneys' Questionnaire.
[139] *See* Data from the 2000 Survey, Question No. 63 of the Judges' Questionnaire.
[140] *See* data from the 2000 Survey, Question No. 88 of the Attorneys' Questionnaire.
[141] *See* data from the 2000 Survey, Question No. 63 of the Judges' Questionnaire.

answer." In contrast, twelve percent (12%) of attorneys answered this question as "never."[142] The responses that the judges gave is the more socially favored response, while the responses from attorneys is more spread out among the range of possible answers. The set of responses from the judges portrays an idealistic state for the judiciary; whereas, the attorneys' responses indicates a more realistic advancement from the 1989 Report.

The 2000 Survey also asks if attorneys and judges believe [m]*others are denied custody because of employment outside the home*.[143] Overwhelmingly, ninety-one percent (91%) of judges state this "rarely" or "never" occurs; moreover, only nine percent (9%) of judges believe that mothers are "sometimes" denied custody because of employment outside the home.[144] No judge believes this occurs "always" or "often."[145]

Among attorneys, two percent (2%) of male attorneys and nine percent (9%) of female attorneys report that mothers are denied custody "always" or "often" because of employment outside the home.[146] Yet, eighty-four percent (84%) of males and forty-nine percent (49%) of females believe this occurs "rarely" or "never."[147] Once again, we see a substantial difference between what judges and male attorneys believe to be true and what female attorneys believe to be true.[148]

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[142] *See* data from the 2000 Survey, Question No. 88 of the Attorneys' Questionnaire.
[143] 2000 Survey, Question No. 89 of the Attorneys' Questionnaire and Question No. 64 of the Judges' Questionnaire.
[144] *See* data from the 2000 Survey, Question No. 64 of the Judges' Questionnaire.
[145] *See id*.
[146] *See* data from the 2000 Survey, Question No. 89 of the Attorneys' Questionnaire.
[147] *See id*.
[148] *Compare* data from the 2000 Survey, Question No. 89 of the Attorneys' Questionnaire, *with* data from the 2000 Survey, Question No. 64 of the Judges' Questionnaire.

Things have changed since the 1989 Report in that both judges and attorneys feel that mothers are never "always" denied custody for employment outside of the home.[149] The response from attorneys on this question reflects favorably that judges are not immediately considering a mother's outside employment as a negative factor. By considering the 2000 Survey responses of both judges and attorneys in total, one may read the results to indicate that in general a mother's employment outside the home is only "rarely" or "sometimes" a consideration to deny custody. From a gender bias standpoint, the 2000 Survey results may indicate improvement, since the 1989 Report, in terms of seeking equitable treatment for mothers and fathers.[150]

Attorneys and judges were asked to respond to the statement, [j]*oint custody is ordered over the objections of one or both parents*.[151] Again, as with earlier responses, judges feel this occurs less frequently than attorneys.[152] Specifically, four percent (4%) of judges state this happens "often"[153] versus sixteen percent (16%) of attorneys.[154] Among attorneys, fourteen percent (14%) of male attorneys and seventeen percent (17%) of female attorneys find this occurs "often."[155] No one indicates it occurs "always." [156]

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[149] *See* data from the 2000 Survey, Question No. 89 of the Attorneys' Questionnaire and Question No. 64 from the Judges' Questionnaire.
[150] *Compare* data from the 2000 Survey of Questions No. 60-65 of the Judge's Questionnaire and Questions No. 85-90 of the Attorney's Questionnaire, *with* data from the 1989 Report of Questions No. 28-33 of the Judges' and Lawyers' Questionnaire.
[151] 2000 Survey, Question No. 90 of the Attorneys' Questionnaire and Question No. 65 of the Judges' Questionnaire.
[152] *Compare* data from the 2000 Survey, Question No. 65 of the Judges' Questionnaire, *with* data from the 2000 Survey, Question No. 90 of the Attorneys' Questionnaire.
[153] *See* data from the 2000 Survey, Question No. 65 of the Judges' Questionnaire.
[154] *See* data from the 2000 Survey, Question No. 90 of the Attorneys' Questionnaire.
[155] *See id*.
[156] *See id*.

The 2000 Survey asked for responses to the statement, [v]*isitation rights are effectively enforced by the courts*.[157] Once again, the judges' response to this question differs from the answers the attorneys provide.[158] The judges score themselves more favorably in this area.[159] Only four percent (4%) claim that [*v*]*isitation rights are rarely effectively enforced by the courts*.[160] None of the judges say that visitation rights are "never" effectively enforced.[161] The attorneys' response is more diverse. A much greater percentage of attorneys, twenty-three percent (23%), believe that visitation rights are "rarely" or "never" effectively enforced; practically one in four attorneys, twenty-one percent (21%), of male attorneys and twenty-six percent (26%) of female attorneys agree they are "rarely" or "never" effectively enforced.[162] Response to the statement, [e]*nforcement of child support awards is denied because of alleged visitation problems* is much closer in agreement.[163] Almost three fourths of attorneys, seventy two percent (72%), respond "rarely" or "never" [164] and over three-fourths, eighty-eight percent (88%), of judges agree.[165] Just three percent (3%) of attorneys[166] and less than one percent of judges answer this with "always" or "often."[167] Male attorneys respond "rarely" or "never"

[157] 2000 Survey, Question No. 77 of the Attorneys' Questionnaire and Question 52 of the Judges' Questionnaire.
[158] *Compare* data from the 2000 Survey, Question No. 52 of the Judges' Questionnaire, *with* data from the 2000 Survey, Question No. 77 of the Attorneys' Questionnaire.
[159] *See id*.
[160] *See* data from the 2000 Survey, Question No. 52 of the Judges' Questionnaire.
[161] *See id*.
[162] *See* data from the 2000 Survey, Question No. 77 of the Attorneys' Questionnaire.
[163] *Compare* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire, *with* data from the 2000 Survey, Question No. 53 of the Judges' Questionnaire.
[164] *See* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire.
[165] *See* data from the 2000 Survey, Question No. 53 of the Judges' Questionnaire.
[166] *See* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire.
[167] *See* data from the 2000 Survey, Question No. 53 of the Judges' Questionnaire.

seventy-seven percent (77%) of the time while sixty-four percent (64%) of female attorneys agree.[168]

IV. Conclusions

The data compiled in the 2000 Survey indicates that strides have been made in reducing the impact gender, or expectations relating to gender, have on matters relating to child custody and/or visitation. However, the judiciary maintains a "rosier outlook" than that of the attorneys who appear before the courts. In every question regarding child custody or visitation, judges routinely rate the courts' performance higher than do attorneys. Moreover, a significant distinction between the perceptions of male and female attorneys exists here as well. As such, although one can laud the progress made with regard to "old fashioned notions" about gender as it relates to child custody and visitation, further action should be undertaken to narrow the gap between differences in the perception among judges, male attorneys and female attorneys.

V. Recommendations

- During new trial judge orientation, judicial conferences and family law judicial education courses, judges and masters should be educated as to the gender bias implications of the following factors in deciding child custody cases:
  - relative wealth and employment obligations of the parents;
  - stereotypes about behavior of men and women as parents;
  - sexual activity on the part of the mother; and
  - spousal/partner abuse.

- Judges should consider spousal/partner abuse in determining the best interest of the child in custody cases.

- Judges should recognize that withholding of visitation is only a factor in awarding custody and is not determinative.

- Judges should recognize the importance to a child of continuing to live with a parent who has provided adequate and appropriate care.

- Judges should consider the cost of childcare to the custodial parent when the non-

[168] *See* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire.

custodial parent fails to exercise visitation.

- Evaluate judges and masters on a regular basis, taking into account gender neutrality on issues relating to child custody.

- Bar associations should continue to support committees engaged in the analysis of problems in the law of custody with a view toward eliminating the problems rooted in the gender bias described in this Survey.

- Law schools should include in family law courses information about the psychological consequences of divorce for children, the impact of spousal abuse on children, and the way in which stereotypes about women and men influence custody decisions.

- The legislature should remove relative wealth of parents as a factor in custody disputes.

Child Support

I. Summary of the *1989 Gender Bias in the Courts* Report

In gathering information for its 1989 Report, the Joint Committee surveyed judges and attorneys, heard testimony at public hearings and reviewed written submissions. The 1989 Report highlighted concerns about instances of gender bias in the area of awarding and enforcing child support. Specifically the Joint Committee found:

- Child support awards often are inequitable to the custodial parent, usually the child's mother, because they do not reflect a fair assessment of the child's needs and a division of the financial responsibility to the child which is proportional to the parents' incomes.

- Enforcement of child support awards is inadequate to ensure that the custodial parent, usually the mother, has the resources necessary to meet the child's needs.

- Delays in awarding child support, denial of retroactive support awards and denial of adequate attorney's fees contribute to the impoverishment of custodial parents, usually mothers, and their children.[169]

II. The Legal Community's Response to the Recommendations

Since the Gender Bias Committee's previous report, legislation, education and attention to gender bias issues has had a positive impact on the area of child support. In July of 1990, the Child Support Guidelines, found in the Family Law Article of the Maryland Annotated Code went into effect.[170] Under this new law, unless the court finds from the evidence that the amount of the award will produce an inequitable result, the court *shall* award child support according to specific guidelines.[171] The court is required to give credit for payments that the court finds have

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[169] 1989 Report, at 53.
[170] MD. FAM. LAW CODE ANN. §§12-201 (originally enacted as Act of 1989 ch. 2 taking effect in 1990; *amended by* 1996 ch. 351), 202 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1997 ch. 635; ch. 636; 2000 ch. 121), 203 (originally enacted as Act of 1989 ch. 2), 204 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1992 ch. 22).
[171] *Id*. at (a)(1-3).

been made during the period beginning from the filing of the pleading requesting child support.[172] The issue of assessing a child's needs in proportion to the parent's income and ability to pay was remedied as well by determining the support obligation proportionately between parents according to their adjusted actual incomes.[173] It was the hope of the Joint Committee, and the legislators that enacted the Child Support Guidelines, that bias based on gender in the past would be effectively removed by these mandatory guidelines.[174] However, the data collected in the 2000 Survey indicates that even with the new law, gender bias continues to exist in child support matters.

III. A Comparison of Survey Results 1989:2000

Judges and attorneys were asked to respond to eight statements regarding child support in the 2000 Survey. One reads, [c]*hild support awards follow the guidelines*.[175] In response, twenty-four percent (24%) of judges answer "always" and seventy percent (70%) answer "often."[176] Less than one percent of judges say "rarely" do child support awards follow the guidelines.[177] The fact that ninety-four percent (94%) of the judges say "always" or "often" certainly is not surprising given the mandatory nature of the guidelines; any other result would be highly questioned.

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[172] *See id*. at (b).
[173] *See* MD. FAM. LAW CODE ANN. §§12-201 (originally enacted as Act of 1989 ch. 2, taking effect in 1990; *amended by* 1996 ch. 351), 202 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1997 ch. 635; ch. 636; 2000 ch. 121), 203 (originally enacted as Act of 1989 ch. 2), 204 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1992 ch. 22).
[174] *See generally* §12-204.
[175] 2000 Survey, Question No. 78 of the Attorneys' Questionnaire and Question No. 53 of the Judges' Questionnaire.
[176] *See* data from the 2000 Survey, Question No. 53 of the Judges' Questionnaire.
[177] *Id*.

The overwhelming majority of attorneys respond affirmatively that the child support awards follow the guidelines.[178] Specifically, sixteen percent (16%) of attorneys perceive the guidelines as "always" being followed, sixty-six percent (66%) believe they are "often" followed, and sixteen percent (16%) answer that they are "sometimes" followed.[179] Less than two percent (2%) of attorneys respond "rarely" do child support awards follow guidelines and none of the attorneys believe that the guidelines are "never" followed.[180]

In terms of gender difference among attorneys' responses, no male attorneys respond "rarely" or "never" to the statement and only three percent (3%) of female attorneys say the courts "rarely" follow the guidelines.[181] This is the rare instance in the 2000 Survey results where male and female attorneys are almost in complete agreement.[182] However, the peace is tenuous; there remains a "gender gap" of eleven percent (11%) in the responses of male and female attorneys who believe that the courts "always" follow the guidelines, twenty-three percent (23%) of male attorneys as compared to twelve percent (12%) of female attorneys.[183]

The passage of the Child Support Guidelines was an important step toward eliminating bias in this area. However, one area of concern, related to the application of the guidelines, was elicited by the 2000 Survey. Specifically, judges and attorneys were asked whether [j]*udges exceed the* [child support] *guidelines more frequently when the woman is the petitioner*.[184] Almost half of all judges, forty-three percent (43%), answer that these guidelines are "rarely"

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[178] *See* data from the 2000 Survey, Question No. 78 of the Attorneys' Questionnaire.
[179] *See id*.
[180] *See id*.
[181] *See id*.
[182] *Compare* female data from the 2000 Survey, Question No. 78 of the Attorneys' Questionnaire, *with* male data from the 2000 Survey, Question No. 78 of the Attorneys' Questionnaire.
[183] *See* data from the 2000 Survey, Question No. 78 of the Attorneys' Questionnaire.
[184] 2000 Survey, Question No. 83 of the Attorneys' Questionnaire and Question No. 58 of the Judges' Questionnaire.

surpassed when the petitioner is a woman.[185] Similarly, twenty-five percent (25%) of judges believe this "never" happens.[186] Therefore, sixty-eight percent (68%) of judges believe that this is a rare occurrence, if in fact it happens at all.[187] Yet, twenty-three percent (23%) of judges answer that this does occur "sometimes," raising the specter of potential bias against male petitioners.[188]

Attorneys gave a more mixed response to this question. When asked whether [j]*udges exceed the* [child support] *guidelines more frequently when the woman is the petitioner*,[189] thirty-three percent (33%) of attorneys answer "sometimes" and another one-third believe this "rarely" occurs.[190] Moreover, seventeen percent (17%) of attorneys believe that this happens "often," as opposed to sixteen percent (16%) of attorneys answering "never."[191] Finally, less than two percent of attorneys perceive this open gender bias occurs "always."[192]

Despite the spread across all five categories of the attorney's responses, it is significant to note that in addition to the twenty-three percent (23%) of judges who believe they "sometimes" exceed the guidelines more frequently when the woman is the petitioner,[193] almost one-fourth, twenty-three percent (23%), of male attorneys and ten percent (10%) of female attorneys state that this occurs "always" or "often."[194] Thus, there is evidence that a negative perception about favoritism towards women exists both within the judiciary and the bar.

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[185] *See* data from the 2000 Survey, Question No. 58 of the Judges' Questionnaire.
[186] *See id*.
[187] *See id*.
[188] *See id*.
[189] 2000 Survey, Question No. 83 of the Attorneys' Questionnaire.
[190] *See* data from the 2000 Survey, Question No. 83 of the Attorneys' Questionnaire.
[191] *See id*.
[192] *See id*.
[193] *See* data from the 2000 Survey, Question No. 58 of the Judges' Questionnaire.
[194] *See* data from the 2000 Survey, Question No. 83 of the Attorneys' Questionnaire.

In the 2000 Survey, both judges and attorneys agree that most often [*p*]*endente lite awards of child support are made within 60 days of filing the motion*.[195] Almost three-fourths of judges, sixty-nine percent (69%), respond that this occurs "always" or "often."[196] Also answering affirmatively, twenty-six percent (26%) of judges believe this occurs "sometimes."[197] Attorneys also respond positively to this question. According to attorneys, twenty-three percent (23%) answer "always" or "often" and forty-four percent (44%) say these motions "sometimes" occur within 60 days of filing.[198] Only thirty-three percent (33%) of attorneys feel this "rarely" or "never" occurs.[199] Yet, as is the case in most other areas in the 2000 Survey, male and female attorneys differ in their opinion, twenty-six percent (26%) of males as compared to thirty-nine percent (39%) of females believe *pendente lite* awards are "rarely" or "never" made within 60 days of the motion being filed.[200] The pattern of the judiciary seeing things in a more "positive" fashion than do attorneys continues; only five percent (5%) of judges answering that awards are "rarely" or "never" made within 60 days.[201] In addition, there has been little change in the judges' and the attorneys' perception in this area since the 1989 Report.[202]

In 1989, the perception of *pendente lite* awards being made within 60 days of filing received an "always" or "often" response from seventy percent (70%) of judges and thirty-six

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[195] 2000 Survey, Question No. 81 of the Attorneys' Questionnaire and Question No. 56 of the Judges' Questionnaire.
[196] *See* data from the 2000 Survey, Question No. 56 of the Judges' Questionnaire.
[197] *See id*.
[198] *See* data from the 2000 Survey, Question No. 81 of the Attorneys' Questionnaire.
[199] *See id*.
[200] *See id*.
[201] *Compare* data from the 2000 Survey, Question No. 81 of Attorneys' Questionnaire, *with* Question No. 56 of the Judges' Questionnaire.
[202] *Compare* data from 2000 Survey, Question No. 81 of the Attorneys' Questionnaire and Question No. 56 of the Judges' Questionnaire, *with* data from the 1989 Report, Question No. 26 of the Judges' and Lawyers' Questionnaire.

percent (36%) of attorneys.[203] Female attorneys responded twenty-three percent (23%) and male attorneys responded thirty-eight percent (38%) of the time "always" or "often."[204] While eleven percent (11%) of judges said "rarely," twenty-four percent (24%) of attorneys said "rarely" or "never."[205] The response according to gender among attorneys found thirty-nine percent (39%) of females and twenty-three percent (23%) of male attorneys responded "rarely" or "never."[206]

The next inquiry specifically addresses the issue of enforcement of child support. It inquires whether the [e]*nforcement of child support awards* [*are*] *delayed because of counter claims for custody*.[207] In 2000, according to judges, twenty-four percent (24%) believe that these delays "sometimes" occur, forty-one percent (41%) feeling that such a statement and/or act is "rarely" true, and thirty-three percent (33%) feeling that such a statement or act is "never" true.[208] Although no attorney responds "always," forty-six percent (46%) of attorneys believe that this type of delay occurs "sometimes," and twelve percent (12%) perceive the enforcement of child support awards being delayed "often" because of counter claims for custody.[209] Yet, thirty percent (30%) of attorneys feel that this "rarely" happens and thirteen percent (13%) say "never."[210] Half of all male attorneys and one-third of all female attorneys respond that "rarely" or "never" are enforcement of child support awards delayed because of counter claims for custody.[211] While it is notable that forty-three percent (43%) of attorneys say that awards are

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[203] *See* 1989 Report, at 52; *See also* data from the 1989 Report, Question No. 26 of the Judges' and Lawyers' Questionnaire.
[204] *See* data from the 1989 Report, Question No. 26 of the Judges' and Lawyers' Questionnaire.
[205] *Id*.
[206] *Id*.
[207] 2000 Survey, Question No. 80 of the Attorneys' Questionnaire and Question No. 55 of the Judges' Questionnaire.
[208] *See* data from the 2000 Survey, Question No. 55 of the Judges' Questionnaire.
[209] *See* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire.
[210] *See id*.
[211] *See id*.

"rarely" or "never" delayed in this circumstance,[212] the reality is that one-quarter of the judges[213] and almost half of the attorneys admit that support awards are delayed.[214]

As with the *pendente lite* awards, there has been relatively no progress in eradicating the perceived disparity in this area. In 1989, seventy-two percent (72%) of judges responded "rarely" or "never" while only a little over half of attorneys, fifty-four percent (54%), agreed.[215] Twelve years ago, thirty-five percent (35%) of female attorneys and fifty-six percent (56%) of male attorneys responded "rarely" or "never."[216]

Another child support question that relates to enforcement is the inquiry as to whether [e]*arnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support*.[217] Eleven percent (11%) of judges respond to this question by stating that this "always" occurs, and more than a third, thirty-seven percent (37%), believe that this "often" is the case.[218] Another one third, thirty-two percent (32%), of judges answer that withholding orders are entered within 30 days "sometimes."[219] While twenty percent (20%) answer that "rarely" are earnings withholding orders entered as soon as the obligor is 30 days behind in paying child support, none of the judges state "never."[220]

The response of the attorneys indicates that the perceptions of the bench and bar differ greatly in this area. When attorneys answer this question, almost half, forty-six percent (46%),

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[212] *See id*.
[213] *See* data from the 2000 Survey, Question No. 55 of the Judges' Questionnaire.
[214] *See* data from the 2000 Survey, Question No. 80 of the Attorneys' Questionnaire.
[215] *See* 1989 Report, at 53, n. 26; *See also* data from the 1989 Report, Question No. 25 of the Judges' and Lawyers' Questionnaire.
[216] *See* data from the 1989 Report, Question No. 25 of the Judges' and Lawyers' Questionnaire.
[217] 2000 Survey, Question No. 82 of the Attorneys' Questionnaire and Question No 57 of the Judges' Questionnaire.
[218] *See* data from the 2000 Survey, Question No. 57 of the Judges' Questionnaire.
[219] *See id*.
[220] *See id*.

answer that these withholding orders "rarely" are entered as soon as the obligor is 30 days behind.[221] Moreover, ten percent (10%) answer that this "never" takes place.[222] A relatively smaller percentage of attorneys agree that respondents experience earnings withholding orders being entered,[223] but it should be noted that this happens only in a minority of cases. The comparative difference between the belief of one fifth of the judges as contrasted with that of over half of the attorneys cries out for more attention to be paid to this area of enforcement.[224]

In 1989, a similar skewing of perception could be seen. While fifty-eight percent (58%) of all attorneys responded "rarely" or "never" are withholdings orders entered within 30 days, only fifteen percent (15%) of the judges felt this way.[225] Viewed differently, only fifty-one percent (51%) of judges said this happens "always" or "often" while just thirteen percent (13%) of attorneys concurred.[226] As for the two prior questions, which also focused on enforcement, there has been little progress toward equitable application of the law in this area. Seemingly, the judiciary continues to lack a "real world" awareness of what actually happens in the child support enforcement arena.

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[221] *See* data from the 2000 Survey, Question No. 82 of the Attorneys' Questionnaire.
[222] *See id*.
[223] Thirty-four percent (34%) answer that earnings withholdings orders are entered "sometimes" as soon as the obligor is 30 days behind in paying child support, and nine percent (9%) believe it occurs "often." *See* Data from the 2000 Survey, Question No. 82 of the Attorneys' Questionnaire.
[224] *Compare* data from the 2000 Survey, Question No. 82 of the Attorneys' Questionnaire, *with* Question No. 57 of the Judges' Questionnaire.
[225] *See* 1989 Report, at 50; *See also* Data from the 1989 Report, Question No. 27 of the Judges' and Lawyers' Questionnaire.
[226] *See* 1989 Report, at 50; *See also* Data from the 1989 Report, Question No. 27 of the Judges' and Lawyers' Questionnaire.

Finally, judges and attorneys were questioned whether [f]*athers are more frequently found to be voluntarily impoverished than mothers*.[227] Judges answer twenty-three percent (23%) of the time that this "often" occurs, and thirty-eight percent (38%) of the time it happens "sometimes."[228] Twenty-eight percent (28%) of judges say that this "rarely" happens and only ten percent (10%) replied that it "never" happens.[229] Consensus on this question is hard to come by, thirty-six percent (36%) of male judges and forty-four percent (44%) of female judges state "rarely" or "never," while twenty-eight percent (28%) of male judges and thirteen percent (13%) of female judges respond "always" or "often."[230]

Attorneys find that fathers are more frequently found to be voluntarily impoverished, thirty-nine percent (39%) saying "always," or "often," and thirty-six percent (36%) "sometimes."[231] Only twenty-six percent (26%) answered that this "rarely" or "never" happens.[232] Little consensus with respect to gender appears here as well. Considering that twenty-one percent (21%) of male attorneys and thirty-one percent (31%) of female attorneys respond "rarely" or "never,"[233] this is strikingly similar to the difference of opinion that exists between male and female judges.[234] Yet, further study may also be warranted. Nearly one fourth of the judges say fathers are "often" found more frequently to be voluntarily impoverished,[235] and thirty-nine (39%) of attorneys say "always" or "often."[236] From this data, it

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[227] 2000 Survey, Question No. 84 of the Attorneys' Questionnaire and Question No. 59 of the Judges' Questionnaire.
[228] *See* data from the 2000 Survey, Question No. 59 of the Judges' Questionnaire.
[229] *See id*.
[230] *See id*.
[231] *See* data from the 2000 Survey, Question No. 84 of the Attorneys' Questionnaire.
[232] *See id*.
[233] *See id*.
[234] *Compare* data from the 2000 Survey, Question No. 84 of the Attorneys' Questionnaire, *with* data from the 2000 Survey, Question No. 59 of the Judges' Questionnaire.
[235] *See* data from the 2000 Survey, Question No. 59 of the Judges' Questionnaire.

is impossible to determine whether the difference between mothers and fathers is thought to be the product of bias or simply reflects an observation that fathers are indeed more frequently voluntarily impoverished.

IV. Conclusions

The passage, in 1989, of the Child Support Guidelines was a very positive step toward ensuring that adequate child support awards are made. Overall, according to the 2000 Survey, both attorneys and judges believe that awards follow the guidelines. However, issues of concern remain. Judges are not authorized to take into account the gender of the petitioner in making an award under the guidelines, yet it appears that the judiciary is perceived to exceed the guidelines more frequently if the petitioner is a woman. Additionally, judges need to be conscious that when child support payments are delinquent, by any amount of time, it negatively impacts the children. Thus, *pendente lite* awards should be timely made, without regard to concerns about the pendency of matters regarding custody and visitation. Further, earnings withholdings should be entered as soon as the obligor is determined to have fallen 30 days behind in paying support.

V. Recommendations

The 2000 Survey results indicate that progress has been made in terms of neutralizing gender bias in the calculation of the amount of child support to be awarded. The improvements that still need to be made could be achieved by implementing the following recommendations:

- Judges should recognize that any custodial parent whether male or female should be considered fairly prior to increasing an award beyond the statutory guidelines.
- Judges should recognize that a counter claim for custody should not impact the enforcement of child support.
- Judges should recognize the importance of entering an earnings withholding order as soon as the obligor falls 30 days behind in child support payments.

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[236] *See* data from the 2000 Survey, Question No. 84 of the Attorneys' Questionnaire.

Alimony, Property Disposition and Litigation Expenses

I. Summary of the *1989 Gender Bias in the Courts* Report

The Joint Committee explored the extent to which gender bias might surface in the allocation of economic resources at the time of divorce. In addition to surveying the bench and bar, the Joint Committee collected data by taking testimony from witnesses at public hearings, and by considering written complaints sent by people to the Joint Committee, and by disseminating to judges and masters a hypothetical problem involving alimony. The Joint Committee perceived three major problems in its study of the interaction between alimony awards and gender: the amount of the award, the duration of the award, and the decision whether to award alimony. The Joint Committee also focused on procedural problems with regard to property disposition, specifically examining issues relating to payment of litigation expenses and pre-divorce disposition of property. Throughout its analysis, the 1989 Joint Committee relied on the premise that gender bias in alimony awards often harms wives more than husbands, as wives are more often the economically dependant spouse.

Specifically the Joint Committee found:

- Inconsistency in alimony awards results in unpredictable and unfair awards.
- Many alimony awards are too low.
- Indefinite alimony often is inappropriately denied to homemaker wives after long marriages.
- Alimony may be denied improperly in cases involving mothers of young children, women with relatively small incomes, and women found to blame for causing the marriage to end.[237]

[237] 1989 Report, at 72.

II. The Legal Community's Response to the Recommendations

Many of the recommendations, which the Joint Committee made for the legislature, by virtue of a combination of legislative enactments and appellate court decisions post-dating the 1989 Report, are now part of Maryland's body of law.

The recommendation that the court assume a more effective role in the identification and valuation of marital property through the appointment of special masters or through the required compensation of necessary experts has been addressed. The Court of Appeals, by order dated December 15, 1993, adopted Title 5 of the Maryland Rules, which includes Rule 5-706[238] that provides expressly for the appointment of court-appointed experts and allowing for the court to assess, as it sees fit, the costs of compensating them.[239] Legislation has also recently been passed clarifying the authority of courts to award attorney's fees for services rendered in connection with the martial property portion of the case.[240]

The judiciary, through reported appellate decisions, has also addressed the Joint Committee's recommendation (albeit for the legislature) that emphasis be given to the principle that the standard of living of the parties during the marriage is the standard by which the adequacy of the alimony award should be judged.[241]

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[238] 1993 MD RULE 5-706 (2001) (derived from Federal Rule of Evidence 706).
[239] *Id*. at (a), (b).
[240] Previously, although there was clear legislative authority for the award of attorney's fees for services rendered in connection with custody, visitation, child support (MD. FAM. LAW CODE ANN. §12-103(a)) and alimony issues (MD. FAM. LAW CODE ANN. §11-110(b)), arguments were made that there was no express authority for the award of fees for efforts expended in connection with the property disposition portion of a case. With the1999 enactment of section 8-214 of the Maryland Family Law Code, an award of fees for efforts expended on the property portion of a divorce case was expressly authorized, putting to rest this controversy. MD. FAM. LAW CODE ANN. §8-214 (2001).
[241] *See e.g., Long v. Long*, 129 Md. App. 554, 584, 743 A.2d 281, 297 (2000).

The Joint Committee further recommended that the standard for *pendente lite* alimony and child support awards should be that which is necessary to maintain the status quo of the parties to the extent feasible.[242] To a certain extent, the legislature has responded, at least with respect to the child support issue, by the enactment of the Child Support Guidelines.[243] Enacted in 1989 and implemented in 1990, the Child Support Guidelines establish presumptively valid levels of support for children based on data which accounts for the average needs of children whose parents enjoy a certain level of combined income, and apportions child support obligations between parents in accordance with their *pro rata* share of combined income.[244] Thus, with regard to child support at least, the legislature has opined that children should continue to enjoy the pre-separation status quo.[245] Their standard of living should continue, to the extent feasible, to be that which they enjoyed before the dissolution of their parent's marriage.[246]

The Joint Committee also recommended the passage of legislation enabling courts to award alimony retroactive to the date of the motion requesting alimony "unless that would be unconscionable."[247] The legislature responded to this suggestion in 1992 by passing Family Law Article, section 11-106(a)(2) of the of the Maryland Code, empowering courts to award alimony retroactive to the date of a request for it.[248] Pursuant to the enactment there is neither

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[242] 1989 Report, at 73.
[243] *See* MD. FAM. LAW CODE ANN. §§12-201 (originally enacted as Act of 1989 ch. 2, taking effect in 1990; *amended by* 1996 ch. 351), 202 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1997 ch. 635; ch. 636; 2000 ch. 121), 203 (originally enacted as Act of 1989 ch. 2), 204 (originally enacted as Act of 1989 ch. 2; *amended by* 1990 ch. 58; 1992 ch. 22).The legislature has declined the opportunity to enact similar guidelines governing alimony.
[244] MD. FAM. LAW CODE ANN. §§12-201-04.
[245] *See id*.
[246] *See id*.
[247] 1989 Report, at 73.
[248] MD. FAM. LAW CODE ANN. §11-106(a)(2) (2001).

retroactivity of an alimony award, nor an included concept of unconsionability, rather retroactivity is left to the discretion of the court.[249]

Neither the legislature nor the appellate courts have embraced the suggestions of the Joint Committee that indefinite alimony be made "mandatory in appropriate circumstances," or that *pendente lite* awards of counsel fees and costs of experts, appropriate to the duration and complexity of the case, be made "mandatory." Nor has any legislative enactment made the homemaker's lifetime reduced earning capacity an express factor to be considered in connection with alimony. The legislature apparently believed that the general language of the statute requiring consideration of the economic circumstances of both parties to be sufficient direction to trial courts to consider this.[250]

The legislature has also not adopted the Joint Committee's suggestion that the indirect contribution of a homemaker spouse to the appreciation in the value of non-marital property should cause that property to become marital, at least to the extent of the appreciation. Several important changes have, however, been made which bear on the obvious concern which the Joint Committee had in making this recommendation. In 1994, the legislature expressly provided that, even if owned entirely by one spouse prior to marriage, realty becomes marital when, following marriage, it is re-titled as tenants by the entirety (unless excluded by valid agreement between the parties).[251] Additionally, appellate court decisions since the 1989 Report have recognized that the character of previously non-marital property can be changed when either a wife contributes to the family finances, thereby freeing the husband to reinvest his income in non-

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[249] There is no statutory support requiring alimony modification begin only after the actual filing of a request. Retroactivity is one for the trial judge, in the exercise of discretion, and as circumstances and justice may require. *Langston v. Langston*, 136 Md. App. 203, 222, 764 A.2d 378, 388 (2000).

[250] 1989 Report, at 73.

[251] MD. CODE ANN., FAM. LAW. §8-201(e)(2).

marital property, or where, by virtue of the active efforts of a husband during marriage, the value of premarital property (for example a business) can become partly marital.[252] Thus, Maryland law now highlights the value to be placed on the performance of traditional homemaker services when determining a fair allocation of property on divorce, even when the economically advantaged spouse before marriage owned that property.

Moreover, the Joint Committee's recommendations for the judiciary have, in many respects, been adopted. Implementation of designated Family Divisions in the largest Maryland circuits, and the establishment of differentiated case management systems, as well as effective use of the power of referring cases to Family Division Masters[253] have no doubt contributed greatly to more expeditious awards of alimony *pendente lite* to recipients in need. If reported appellate decisions are any indication, efforts to educate the judiciary on issues concerning the wage-earning potential of middle-aged women, who have been economically dependant during a long marriage and on the statutory provisions governing the consequences of divorce for displaced homemakers, have to some degree been successful.[254]

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[252] *See e.g., Merriken v. Merriken*, 87 Md. App. 522, 590 A.2d 566 (1991).
[253] *See* Maryland Rule 9-207 (2001).
[254] In the case of *Odunukwe v. Odunukwe*, 98 Md. App. 273, 633 A.2d 418 (1993) for example, the appellate court emphasized the "huge contributions" to the well-being of the family made by the alimony recipient, as well as the responsibilities she would be faced following divorce (which included the task as a single mother caring for three pre-teen children) as factors supporting the award to her of twelve years of rehabilitative alimony, in spite of her already having attained a Master's Degree in public heath. *See also*, *Reuter v. Reuter*, 102 Md. App. 212, 649 A.2d 24 (1994) (Rehabilitative alimony appropriate where psychological evidence adduced at trial supported the finding that the best interests of the child warranted wife being at home and available to attend to the child's emotional condition related to the separation, instead of working full-time).

III. A Comparison of Survey Results 1989:2000

A. Inconsistency of the Award

The Joint Committee found a striking inconsistency in the amounts of alimony awarded by the various judges and the domestic relations masters who responded to its hypothetical problems. While the 1989 Report admitted "it would be unreasonable to expect an identical result in every case,"[255] it also noted that, at least in similar cases, one could reasonably expect to find a relative relationship between alimony awards.[256] Nonetheless, the responses received by the Joint Committee showed a difference of almost One Thousand Five Hundred Dollars ($1,500) between the highest and lowest awards.[257]

This variance, as the Joint Committee noted, complicates post-divorce financial planning.[258] Further, because the "most extreme variations from the average award were at the lower end,"[259] there is strong likelihood that an award is too low. Additionally, the variance potentially harmed divorcing wives disproportionately, given their conventional status as the economically dependent spouse.[260] The potential variation in awards was also seen by the Joint Committee as favoring the economically advantaged spouse by tending to force dependant

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[255] 1989 Report, at 56
[256] *Id*.
[257] 1989 Report, at 56-57.
[258] *See* 1989 Report, at 57.
[259] *Id*.
[260] *Id*. The 2000 Select Committee recognizes the existence of data from recent studies challenging the current validity of past assumptions regarding the extent to which wives occupy the role of the financially dependent spouse. According to one study, for example, recently reported in the Washington Post, "Nearly one in three working wives nationwide is now paid more than her husband, compared with fewer than one in five in 1980." *Bread Winning Wives Alter Marriage Equation*, WASHINGTON POST, Feb. 27, 2000, at A1. According to the article, "Some 10.5 million [U.S. women] earned more than their husbands in 1998." *Id*. at A16.

spouses to settle for unfairly low awards rather than running the risk of receiving an unpredictably low award following an expensive trial.[261]

Although the hypothetical problem disseminated to judges and masters, upon which the Joint Committee's observations regarding the inconsistency of amounts awarded as alimony was not repeated as part of the 2000 Survey effort, a comparison of the results of two questions contained in both the 1989 Report and 2000 Survey suggests that the inconsistency prevalent in 1989 continues today.[262]

B. The Amount of the Award

The amount of the award is of concern primarily where there is a significant disparity in the post-divorce standards of living of the spouses. While the 1989 Report noted that a primary goal of alimony is ostensibly to have the parties share equitably in the reduction of their respective standards of living following the divorce, studies have shown that this goal is rarely met. For example, a study performed by the Honorable Rosalyn Bell in 1986 found that "alimony awards resulted in the mean per capita income of the economically independent spouse increasing by fifty-five percent (55%), while that of the economically dependant spouse in a custodial household declined by thirty-seven percent (37%)."[263] The results of the 1989 Report indicated at least two factors to which the discrepancy may be attributed: (1) that *pendente lite* alimony is used as a basis for calculating the alimony award at divorce, and (2) that the

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[261] *See* 1989 Report, at 57.

[262] The first question deals with the effect of *pendente lite* alimony awards upon the award made at the time of divorce. *See* 2000 Survey, Question No. 75 of the Attorneys' Questionnaire and Question No. 50 of the Judges' Questionnaire. The second question inquires whether an alimony award is based on the amount that can be given without diminishing the obligor spouse's current lifestyle. *See* 2000 Survey, Question No. 72 of the Attorney Questionnaire and Question No. 47 of the Judges' Questionnaire.

[263] 1989 Report, at 58 (*citing* Honorable Rosalyn Bell, *Alimony and the Financially-Dependant Spouse in Montgomery County, Maryland*, XXII FAM. L. QUART. 225 (1989)) (hereinafter "Bell Study").

economically independent spouse is normally not made to pay an amount of alimony that would cause his or her standard of living to diminish.[264]

1. The Effect of *Pendente Lite* Awards

A *pendente lite* alimony award is a temporary allowance of support to the dependant spouse during the pendency of litigation and can include a reasonable amount for preparation of the suit. The award is based primarily upon the courts assessment of the recipient's immediate needs, and therefore is not indicative of that party's economic needs or resources.[265] As the Joint Committee observed, it is often the case that after the dependant spouse has reduced his or her standard of living in line with the *pendente lite* award, the independent spouse may then claim, at the time of divorce, that the dependant spouse "needs" no more than the amount provided by the *pendente lite* award.[266] The Joint Committee noted that such claims often prevail, and found that a majority of judges and attorneys surveyed agreed that the alimony award made at divorce often mirrors that made in the *pendente lite* award.[267] The Joint Committee found that this problem more often harms wives, who are more likely to occupy the role of dependant spouse.[268] The courts' reliance on the *pendente lite* award in determining the amount to be awarded at the time of divorce, furthermore, gives the husband an incentive to prolong litigation in order to convince the court that his wife is able to sufficiently support herself solely on the amount provided in the *pendente lite* award.[269] This leaves the wife no

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[264] *Id*. at 59.
[265] *Guarino v. Guarino*, 112 Md. App. 1, 19, 684 A.2d 23, 32 (1996); *Maynard v. Maynard*, 42 Md. App. 47, 52-53, 399 A.2d 900, 902 (1979).
[266] 1989 Report, at 60.
[267] *Id*.
[268] *Id*. at 61.
[269] *Id*.

option but to attempt to show that she has gone into debt or delayed paying expenses because of the meagerness of the award.[270]

In the 1989 Report, forty-nine percent (49%) of judges stated that alimony awards at the time of divorce are either "always" or "often" close to, or the same as *pendente lite* awards.[271] In 2000, thirty-four percent (34%) of responding judges agree.[272] This unfortunate continuation of the trend revealed by the 1989 Report is, perhaps, surprising, given the clarity with which the Court of Special Appeals has, in the interim, reiterated for the benefit of the trial bench and bar, the principle that the purpose of a *pendente lite* alimony award is quite distinct from the purpose to be served by an award of alimony upon the granting of a divorce.[273] *Pendente lite* alimony being that which the economically disadvantaged spouse will require in order to meet her needs during the pendency of the litigation, while permanent alimony is generally more forward looking, and may include an assessment of needs that, although not necessarily incurred during the pendency of the case, could reasonably be expected to be incurred by the dependent spouse in the foreseeable future.[274] Given the distinct purposes, it is disturbing that over one-third of responding judges would continue to perceive that awards upon divorce are "always" or "often" the same as amounts awarded *pendente lite*.

It is equally significant that nearly half, forty-nine percent (49%), of responding attorneys in 2000 answer that divorce awards are "often" close to or the same as *pendente lite* awards, and another forty-seven percent (47%) feel that this is "sometimes" the case.[275] Clearly there is a

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[270] *Id*.
[271] *Id*. at 60; *See also* data from 1989 Report, Question No. 20 of the Judges' and Lawyers' Questionnaire.
[272] *See* data from the 2000 Survey, Question No. 50 of the Judges' Questionnaire.
[273] *James v. James*, 96 Md. App. 439, 450-453, 625 A.2d 381, 382 (1993).
[274] *Id*.
[275] *See* data from the 2000 Survey, Question No. 75 of the Attorneys' Questionnaire.

need for both the bench and the bar to be further reminded of the different purposes to be served by each award, and of the fact that there are needs of the recipient at the time of divorce which are to be considered in addition to those forming the basis of a *pendente lite* alimony award.

Differences in attorney response by gender are not significant. On this issue at least, there is significant agreement in both 2000 and in 1989.[276] In 1989, sixty-two percent (62%) of male attorneys and fifty percent (50%) of female attorneys believed alimony awards were "always" or "often" close to or the same as *pendente lite* awards.[277] In 2000, those percentages were fifty-two percent (52%) for male attorneys and forty-four percent (44%) for female attorneys.[278] In sum, the issue exists, regardless of gender.

2. Impact of the Financially Independent Spouses' Lifestyle on the Size of the Award

The Joint Committee also found courts unwilling to force the financially independent spouse to lower his or her standard of living to support the dependant spouse.[279] While Maryland law requires the court to consider the needs of both parties in making an alimony award,[280] the needs of the economically independent spouse were seemingly being given undue priority in the end.[281] The Joint Committee therefore concluded that, as wives were more often the dependant spouses, they were disproportionately disadvantaged by such an outcome.[282] Again, the 1989 Report's hypothetical was instrumental to the Joint Committee's findings, as

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[276] *Compare* data from the 1989 Report, Question No. 20 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 75 of the Attorneys' Questionnaire.
[277] 1989 Report, at 60; *See also* data from the 1989 Report, Question No. 20 of the Judges' and Lawyers' Questionnaire.
[278] *See* data from the 2000 Survey, Question No. 75 of the Attorneys' Questionnaire.
[279] 1989 Report, at 61.
[280] MD. FAM. LAW CODE ANN.§11-106(9), (11).
[281] *See* 1989 Report, at 62.
[282] *Id*.

well as the response to the survey question, [a] *wife's alimony award is based on how much the husband can give her without diminishing his current lifestyle*.[283] This question was repeated on the 2000 Survey.[284] The response indicates that a significant percentage of the bar continues to hold the view that in many instances alimony amounts are still being driven primarily by the needs of the payor.[285] In 1989, judges agreed this occurred "always" or "often" thirteen percent (13%) of the time[286] versus nine percent (9%) of the time in 2000.[287] In the 1989 Report, twenty-four percent (24%) of attorneys stated this occurs "always" or "often"[288] compared to twenty-six percent (26%) in 2000.[289]

The "gender gap" apparent in the 1989 Report continues in the 2000 Survey. In 1989, twenty percent (20%) of male attorneys and forty-eight (48%) percent of female attorneys said that a wife's alimony award is based "always" or "often" on how much the husband can give her without diminishing his current life style.[290] In 2000, among male attorneys, nineteen percent (19%), compared to thirty-three percent (33%) of female attorneys, say this is true.[291] Overall, the 2000 Survey suggests that although judges perceive the effect of the alimony award on the payor's current lifestyle to be less of a governing factor in the making of alimony awards, more

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[283] 1989 Report, Question No. 17 of the Judges' and Lawyers' Questionnaire.
[284] 2000 Survey, Question No. 72 of the Attorneys' Questionnaire, and Question No. 47 of the Judges' Questionnaire.
[285] *Compare* data from the 1989 Report, Question No. 17 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 72 of the Attorneys' Questionnaire, and Question No. 47 of the Judges' Questionnaire.
[286] 1989 Report, at 62; *See also* data from the 1989 Report, Question No. 17 of the Judges' and Lawyers' Questionnaire.
[287] *See* data from the 2000 Survey, Question No. 47 of the Judges' Questionnaire.
[288] *See* 1989 Report, at 62; *See also* data from the 1989 Report, Question No. 17 of the Judges' and Lawyers' Questionnaire.
[289] *See* data from the 2000 Survey, Question No. 72 of the Attorneys' Questionnaire.
[290] 1989 Report, at 62; *See also* data from the 1989 Report, Question No. 17 of the Judges' and Lawyers' Questionnaire.
[291] *See* data from the 2000 Survey, Question No. 72 of the Attorneys' Questionnaire.

attorneys continue to perceive that intended or unintended, the amount awarded is more than occasionally affected by whether the payor's lifestyle will be diminished.

C. Duration of Alimony Award

The Joint Committee survey materials pertaining to the duration of alimony awards revealed that many women whose requests for indefinite alimony were denied were displaced homemakers divorced after many years of marriage.[292] While judges and practitioners generally believed that displaced homemakers were awarded indefinite alimony, testimony before the Joint Committee showed that this was frequently not the case.[293] Practitioners expressed frustration that, despite the Maryland Code's admonition to award indefinite alimony in appropriate cases, women eligible for such awards were often left impoverished after the divorce.[294] This result was confirmed by the 1989 hypothetical written to satisfy statutory elements for an award of indefinite alimony, to which only fifty-percent (50%) of judges and masters granted an award of indefinite alimony.[295] As the Bell Study noted, a result such as this may be attributable to the assumption by some judges that any displaced homemaker can readily obtain marketable training and job skills, obviating the need for an award of alimony for an indefinite period.[296]

The Joint Committee also observed that judges may give greater weight to monetary contributions of the independent spouse than to non-monetary contributions made by the dependant spouse, thereby viewing alimony demands made by the dependant spouse as simply unwarranted requests for "money earned 'solely' by the career spouse."[297] Clearly, as the Joint Committee found, the practice of denying such awards harms women more than men, as it is

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[292] 1989 Report, at 62.
[293] *Id.* at 63.
[294] *Id*. at 64.
[295] *Id.* at 64-65.
[296] 1989 Report, at 65 (*citing* Bell *supra* note 27, at 279).
[297] *Id*. at 65.

women who traditionally have been in the position of displaced homemaker, and it is these same women who often face employment discrimination based on their age and gender upon entry into the workforce following divorce.[298]

As was the case in the 1989 Report, in the 2000 Survey, the majority of judges remain convinced that the system adequately cares for older displaced homemakers. In 1989, fifty-two percent (52%) of judges said that [o]*lder, displaced homemakers are* ["often"] *awarded indefinite alimony after long-term marriages*,[299] while eleven percent (11%) said this happens "always."[300] In 2000, sixty-eight percent (68%) of judges respond that [o]*lder displaced homemakers are* ["often"] *awarded indefinite alimony after long-term marriages*,[301] with another eight percent (8%) perceiving that such awards are "always" made.[302] Attorneys however are not as convinced that such awards are often made. Slightly over half, fifty-three percent (53%), of attorneys in 2000 agree this "always" or "often" occurs,[303] and once again we see a "gender gap," seventy-one percent (71%), of male attorneys compared to just thirty-five percent (35%) of female attorneys agree that [o]*lder, displaced homemakers are awarded indefinite alimony after long-term marriages* ["always" or "often"].[304]

The 2000 Survey also includes a question that was not on the first survey. Designed to assess the extent to which judges and attorneys perceive a gender bias against a husband in making awards of alimony, respondents were asked about the frequency with which [a]*limony is*

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[298] *Id*. at 66.
[299] 1989 Report, Question No. 18 of the Judges' and Lawyers' Questionnaire.
[300] *See* 1989 Report, at 63; *See also* data from the 1989 Report, Question No. 18 of the Judges' and Lawyers' Questionnaire.
[301] 2000 Survey, Question No. 48 of the Judges' Questionnaire.
[302] *See* data from the 2000 Survey, Question No. 48 of the Judges' Questionnaire.
[303] *See* data from the 2000 Survey, Question No. 73 of the Attorneys' Questionnaire.
[304] *Id*.

awarded without regard for the financial impact on the husband.[305] Eight percent (8%) of judges[306] and twenty-two percent (22%) of attorneys respond "always" or "often."[307] Interestingly, thirty-five percent (35%) of male attorneys compared to nine percent (9%) of female attorneys respond "always" or "often."[308] Again, we see that attorneys perceive this to happen more frequently than judges.[309] Note, too, that a majority of both populations, seventy-eight percent (78%), of judges[310] and fifty-seven percent (57%) of attorneys, conclude that it either "rarely" or "never" happens.[311] This is somewhat reassuring given the fact that the statute delineating the factors required to be considered in determining the amount and duration of alimony mandates consideration of "the financial needs and financial resources of each party."[312]

D. The Decision to Award Alimony

The Joint Committee also found that three groups of economically dependent women were routinely denied alimony although Maryland law would permit such an award.[313] The groups were comprised of: (1) women who received some income, but whose spouses had a considerably greater income stream; (2) women who forgo gainful employment to care for their children; and (3) women accused of marital misconduct.[314]

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[305] 2000 Survey, Question No. 76 of the Attorneys' Questionnaire, and Question No. 51 of the Judges' Questionnaire.
[306] *See* data from the 2000 Survey, Question No. 51 of the Judges' Questionnaire.
[307] *See* data from the 2000 Survey, Question No. 76 of the Attorneys' Questionnaire.
[308] *Id*.
[309] *Compare* data from the 2000 Survey, Question No. 76 of the Attorneys' Questionnaire, *with* Question No. 51 of the Judges' Questionnaire.
[310] *See* data from the 2000 Survey, Question No. 51 of the Judges' Questionnaire.
[311] *See* data from the 2000 Survey, Question No. 76 of the Attorneys' Questionnaire.
[312] MD. FAM. LAW CODE ANN. §11-106(b)(11).
[313] 1989 Report, at 66.
[314] *Id*.

1. Impact of Wife's Earnings on Award of Alimony

The Joint Committee determined that the denial of alimony to women with some stream of income was often based on the notion that such women are self-supporting, and therefore do not need an award of alimony.[315] The Joint Committee observed, however, that as the law does not mandate denial of alimony when the recipient has a stream of income, judges should make a determination of what constitutes "self-supporting" in each case, taking into account the relative post-divorce financial positions of the parties as well as the resources available to each during the marriage.[316] Failure to do so, the Report noted, will more often harm women as the economically dependant spouse, and therefore also "unfairly benefits relatively wealthy men, because it disregards the mandate in the statute that the financial needs and resources of both parties be considered."[317]

The 2000 Survey includes no specific question to assess the perception of the bench and bar regarding the impact of a wife's earnings on the amount of alimony awarded. Cases decided since the 1989 Report have clarified that the concept of "self-support," as it pertains to an alimony recipient, is not to be equated with "bare subsistence" and held that the marital standard of living is to be considered in determining whether the level of self-support a recipient is able to obtain warrants a continuation of alimony in some amount.[318] Finally, the Court of Appeals has

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[315] *Id*.
[316] *Id*. at 67.
[317] *Id*.
[318] In *Long v. Long*, 129 Md. App. 554, 743 A.2d 281 (2000) the Maryland Court of Special Appeals found that a "[w]ife's self-sufficiency alone does not bar an award of indefinite alimony where an unconscionable disparity exists between the two parties' standards of living after the divorce." 129 Md. App. at 584, 743 A.2d at 297; *See also Doser v. Doser*, 106 Md. App. 329, 354, 664 A.2d 453, 465 (1995) (The extent to which the wife would earn an income comparable to the husband's salary must be considered in deciding whether to award indefinite alimony); *Blaine v. Blaine*, 97 Md. App. 689, 709, 632 A.2d 191, 201 (1993) (*citing Tracey v. Tracey*, 328 Md. 380, 392, 614 A.2d 590, 597 (1992)) *aff'd by*, 336 Md. 49, 646 A.2d 413 (1994) (Indefinite

clarified the entitlement of an economically dependant spouse to have her alimony received in addition to that realized from primary employment.[319]

2. The Custodial Parent

As the Bell Study noted, women who stopped working in order to care for their children were often denied alimony as well.[320] Clearly, a hiatus from the workforce will normally reduce one's marketable skills, and employers are often reluctant to hire mothers returning to full time employment following extended absences.[321] Following a divorce, as the demands of child rearing increase exponentially, a commitment to full-time employment becomes even more difficult.[322] Yet, "the [Joint] Committee was advised that many women in these circumstances were not awarded alimony, even for a short term."[323] The 1989 Report offered, as a potential explanation of this paradox, that judges may not be realistically assessing the ability of custodial mothers to be self-supporting, feeling that since many other mothers work, these women should have no trouble doing the same.[324] Courts may often fail to recognize that divorcing mothers, with increasing physical and emotional responsibilities toward their children, are not in the same position as other mothers.[325] The result, the Joint Committee noted, is that the difficulties attending the transition to single parenthood are compounded by a denial of adequate financial resources.[326] The Joint Committee concluded that clearly such a predicament harmed women more than men, in light of the Joint Committee's statement that ninety percent (90%) of custodial

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alimony appropriate if there will be an unconscionable disparity between the respective standards of living after the recipient has become self-supporting).

[319] *Tracey v. Tracey*, 328 Md. 380, 394, 614 A.2d 590, 597-598 (1992).

[320] 1989 Report, at 67 (*citing* Bell *supra* note 27, at 300-306).

[321] *See id*. at 68.

[322] *Id*.

[323] *Id*.

[324] *See* 1989 Report, at 68.

[325] *Id*.

[326] *Id*. at 68-69.

parents are women.[327] While the percentage of men who are either awarded primary residential custody of their children or who have petitioned for and received an increase in the amount of visitation with their children has no doubt increased during the past decade, it appears that a majority of women still find themselves occupying the role of primary custodian following divorce. Consequently, they continue to be disproportionately affected to the extent that alimony determinations are a function of their ability to obtain a level of self-support, which ability is, in turn, affected by their responsibilities as custodial parents.[328]

3. The Wrongdoer Spouse

Finally, relying on testimony and on the Bell Study, the Joint Committee found that, in making an alimony award, improper weight was often given to marital misconduct committed by wives.[329]

Under Maryland law, "fault" can be considered as an element in determining the amount of alimony "when it affects the economic needs of the party seeking alimony."[330] Consistent with this holding is the Family Law Article, section 11-103 of the Maryland Code which provides that "[t]he existence of a ground for divorce against the party seeking alimony is not an automatic bar to the court awarding alimony to that party."[331] The Family Law Article, Section 11-106 of the Maryland Code also provides that in determining the amount and duration of alimony, as distinguished from the entitlement to alimony, the court may consider "the

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[327] *Id*. at 69.
[328] Appellate courts, through reported decisions, have displayed some degree of sensitivity to the fact that custodial responsibilities affect the needs of prospective alimony recipients. (*See e.g., Long v. Long*, 129 Md. App. 554, 743 A.2d 281 (2000); *Doser v. Doser*, 106 Md. App. 329, 664 A.2d 453 (1995); *Blaine v. Blaine*, 97 Md. App. 689, 632 A.2d 191, (1993); *Tracey v. Tracey*, 328 Md. 380, 614 A.2d 590, (1992)).
[329] 1989 Report, at 70 (*citing* Bell *supra* note 27, at 289-291 (Judge Bell's 1989 study of Montgomery County found that no wife "at fault" was awarded alimony.)
[330] *Kingsley v. Kingsley*, 45 Md. App. 199, 210, 412 A.2d 1263, 1270 (1980).
[331] §11-103.

circumstances that contributed to the estrangement of the parties."[332] While circumstances contributing to marital estrangement may clearly be considered under Maryland law, giving improper weight to these circumstances, the Joint Committee concluded, will often harm women more than men, as women are more often the economically dependant spouse.[333]

Until recently, there was significant debate and disagreement regarding whether a spouse seeking alimony must have and prove grounds for divorce as a prerequisite to obtaining it. In March of 2000, the Court of Special Appeals decided the case of *Caccamise v. Caccamise*.[334] The Court in *Caccamise* upheld the award of alimony to a spouse at fault in a divorce proceeding who established a need for alimony.[335] The court stated that as long as one of the two spouses establishes grounds for a divorce and a divorce is granted, alimony can be awarded to either party based upon need.[336]

However, the Court of Special Appeals' decision *Holston v. Holston*[337] provides judges with the flexibility to deny prospective alimony recipients that amount or duration of alimony otherwise appropriate in light of a disparate standard of living, when the prospective recipient is found to be primarily at fault in the marital break up.[338] The Court stated that, "[i]f the dependant spouse was guilty of a fault which destroyed the marriage, permitting considerable disparity in standards of living may be tolerated."[339]

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[332] §11-106(b)(6).
[333] 1989 Report, at 70.
[334] 130 Md. App. 505, 747 A.2d 221, *cert. denied*, 359 Md. 29, 753 A.2d 2 (2000).
[335] *Caccamise*, 130 Md. App. at 514, 747 A.2d at 225-226.
[336] *Id*.
[337] 58 Md. App. 308, 473 A.2d 459 (1984)
[338] *Holston*, 58 Md. App. at 323-324, 473 A.2d at 467.
[339] *Holston*, 58 Md. App. at 323, 473 A.2d at 467.

The results of the 2000 Survey proved quite similar to the results of the 1989 Report with regard to the issue of whether courts effectively enforce alimony awards.[340] In 2000, seventy-seven percent (77%) of judges indicate that [t]*he courts either* ["always" or "often"] *effectively enforce alimony awards*.[341] Less than one in three, thirty-one percent (31%), of responding attorneys believe that awards are either "always" or "often" effectively enforced.[342] The dichotomy is significant. The difference in perception between male and female attorneys to the same statement is also significant; forty-nine percent (49%) of male attorneys respond "always" or "often" while only fifteen percent (15%) of female attorneys respond "often," and none respond "always."[343] The explanation for differing perceptions is debatable. It may be that attorneys are on the front line of this issue, and must deal directly with client dissatisfaction about the enforcement of awards. Because not all incidents of non-payment of alimony result in litigated enforcement, there is undoubtedly some filtration of client complaints by lawyers. It is probably safe to assume that not all lack of compliance by payors is brought to the attention of courts by formal court filing. Many probably result in negotiated settlements short of litigation, or, for reasons of cost or emotion, are not pursued through the point of litigation. Judges are likely to become aware of the disregard of their alimony awards only when proceedings are filed to obtain the court's assistance in enforcement. It is obviously the perception of the bench that when matters of alimony enforcement are brought before them, their awards are either "often" or "always" effectively enforced.[344]

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[340] *Compare* data from the 1989 Report, Question No. 19 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 74 of the Attorneys' Questionnaire and Question No. 49 of the Judges' Questionnaire.
[341] *See* data from the 2000 Survey, Question No. 49 of the Judges' Questionnaire.
[342] *See* data from the 2000 Survey, Question No. 74 of the Attorneys' Questionnaire.
[343] *See id*.
[344] *See* data from the 2000 Survey, Question No. 49 of the Judges' Questionnaire.

E. Litigation Expenses, Injunctive Relief and Property Disposition

1. Litigation Expenses and Injunctive Relief

The bench and bar continue to have divergent perspectives regarding the frequency with which proper injunctive relief is awarded and the frequency with which courts award sufficient counsel and expert fees to permit the dependant spouse to effectively pursue litigation. In 1989, sixty-two percent (62%) of judges and thirty percent (30%) of attorneys believed that *effective injunctive relief* [*was* "always" or "often"] *granted where necessary to maintain the status quo until monetary awards are made*.[345] In 2000, sixty-seven percent (67%) of judges believe that effective injunctive relief is either "always" or "often" granted.[346] Twenty-six percent (26%) of attorneys hold the same belief.[347]

Yet a significant percentage of attorneys, thirty-two percent (32%), believe that courts "rarely" grant effective injunctive relief pending divorce,[348] whereas just three percent (3%) of judges answered similarly.[349] In 1989, those percentages were twenty-seven percent (27%) for attorneys and four percent (4%) for judges.[350] Further, the percentage of judges responding that effective injunctive relief is "always" granted decreased dramatically, dropping from thirty-four percent (34%) in 1989 to only sixteen percent (16%) in 2000, suggesting a growing awareness on the part of members of the bench that effective injunctive relief is not "always" awarded.[351] Judges and lawyers also continue to view differently the sufficiency of awards of counsel fees

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[345] *See* 1989 Report, at 71; *See also* data from the 1989 Report, Question No. 15 of the Judges' and Lawyers' Questionnaire.
[346] *See* data from the 2000 Survey, Question No. 45 of the Judges' Questionnaire.
[347] *See* data from the 2000 Survey, Question No. 70 of the Attorneys' Questionnaire.
[348] *Id*.
[349] *See* data from the 2000 Survey, Question No. 45 of the Judges' Questionnaire.
[350] *See* 1989 Report, at 71; *See also* data from the 1989 Report, Question No. 15 of the Judges' and Lawyers' Questionnaire.
[351] *Compare* data from the 1989 Report, Question No. 15 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 49 of the Judges' Questionnaire.

and expert fees to economically dependant spouses. It is significant that responding members of the bench who perceive that [c]*ourts* ["always"] *award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation*[352] decreased substantially, from thirty-two percent (32%) to only fifteen percent (15%) between the 1989 and 2000 surveys.[353] Equally significant is the nearly forty percent (40%) of responding attorneys who now believe such awards to be "rare."[354] Another twenty-eight (28%) of responding attorneys in 2000 believe that sufficient awards are made only "sometimes."[355] In stark contrast, in 2000, one-half, exactly fifty percent (50%), of judges believe that such awards are "often" made.[356] Consider the divergent opinions on the issue - nine percent (9%) of judges,[357] thirty percent (30%) of male attorneys and sixty-six percent (66%) of female attorneys believe "rarely" or "never" do the [c]*ourts award counsel and expert fees to economically dependent spouses sufficient to allow that spouse to effectively pursue litigation*.[358] The perceptions of the bench and bar are difficult to reconcile. If the perception of judges are correct, courts are generally awarding sufficient fees to permit the economically dependent spouse to effectively pursue litigation, and they are awarding effective *pendente lite* injunctive relief to prevent financial manipulation by the economically advantaged spouse. If, on the other hand, the perception of attorneys is correct, the system is not working in a manner that is fair to the financially disadvantaged spouse. To the extent that women still comprise the majority of

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[352] 1989 Report, Question No. 14 of the Judges' and Lawyers' Questionnaire, and from the 2000 Survey, Question No. 69 of the Attorneys' Questionnaire, and Question No. 44 of the Judges' Questionnaire.
[353] *Compare* data from the 1989 Report, Question No. 14 of the Judges' and Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 44 of the Judges' Questionnaire.
[354] *See* data from the 2000 Survey, Question No. 69 of the Attorneys' Questionnaire.
[355] *Id*.
[356] *See* data from the 2000 Survey, Question No. 69 of the Attorneys' Questionnaire.
[357] *See* data from the 2000 Survey, Question No. 44 of the Lawyers' Questionnaire.
[358] *See* data from the 2000 Survey, Question No. 69 of the Attorneys' Questionnaire.

spouses who are financially disadvantaged, as was the case in 1989, there is clearly room for improvement. The lack of effective *pendente lite* injunctive relief to prevent financial manipulation and the insufficiency of fee awards to economically disadvantaged spouses is a combination that creates an uneven playing field, unduly empowering financially advantaged spouses.

2. Property Disposition

In the 1989 Report and again in the 2000 Survey, judges and attorneys were asked to respond to the statement, [w]*here a wife's primary contribution is as a homemaker, the monetary award reflects a judicial attitude that the husband's income producing contribution entitles him to a larger share of the marital estate*.[359] To which, in 1989, seven percent (7%) of judges and nineteen percent (19%) of attorneys responded "always" or "often."[360] Little has changed. In the 2000 Survey, four percent (4%) of judges[361] and seventeen percent (17%) of attorneys respond "always" or "often."[362] And while in 2000 only seven percent (7%) of male attorneys agree, that proportion jumps to over one-fourth, with twenty-five percent (25%), of female attorneys agreeing.[363]

[359] 1989 Report, Question No. 13 of the Judges' and Lawyers' Questionnaire, and from the 2000 Survey, Question No. 68 of the Attorneys' Questionnaire, and Question No. 43 of the Judges' Questionnaire.
[360] *See* data from the 1989 Report, Question No. 13 of the Judges' and Lawyers' Questionnaire.
[361] *See* data from the 2000 Survey, Question No. 43 of the Judges' Questionnaire.
[362] *See* data from the 2000 Survey, Question No. 68 of the Attorneys' Questionnaire.
[363] *See id*.

The 2000 Survey also contained an additional question reading [c]*ourts tend to divide the marital estate equally, without regard to the respective monetary contributions of the parties*.[364] In response, forty-two percent (42%) of judges[365] and forty-three percent (43%) of attorneys perceive this to be true "always" or "often."[366] Over half of male attorneys, fifty-one percent (51%), and a third, thirty-three percent (33%), of female attorneys agree this is true "always" or "often."[367]

Once again, illustrated is a strong divergence of opinion between the beliefs of male attorneys as compared to female attorneys.[368] Almost twenty percent (20%) more men than women feel that marital estates are divided equally without regard to the respective monetary contributions.[369] The reasons for this difference in perception are not self-evident but merit additional inquiry. All that can be said with certainty is that people perceive things primarily from their personal point of view and that male and female attorneys report seeing things differently quite frequently throughout this Survey.

IV. Conclusions

While there have been many changes since the 1989 Report results were released, there is still much to be done. A void remains in the landscape of Maryland law. Trial courts and attorneys have been furnished no guidance as of yet from either the appellate courts or the legislature regarding the extent to which the parties' marital standard of living is to be considered

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[364] 2000 Survey, Question No. 71 of the Attorneys' Questionnaire, and Question No. 46 of the Judges' Questionnaire.
[365] *See* data from the 2000 Survey, Question No. 46 of the Judges' Questionnaire.
[366] *See* data from the 2000 Survey, Question No. 71 of the Attorneys' Questionnaire.
[367] *See id*.
[368] *Compare* female data from the 2000 Survey, Questions No. 71 of the Attorneys' Questionnaire, *with* male data from the 2000 Survey, Questions No. 71 of the Attorneys' Questionnaire.
[369] *See id*.

a factor in determining the adequacy of alimony amounts awarded *pendente lite*. Thus, there is a real danger that in a situation of unconscionable disparity in financial resources between the parties, the recipient spouse, who is economically disadvantaged, will be awarded a *pendente lite* alimony amount that is only sufficient to meet her "minimum" needs during the perhaps protracted period before a final divorce hearing is held.

Given the apparent weight which the *pendente lite* award is afforded by judges when alimony is assessed at the time of divorce (a phenomenon which appears to have endured since the 1989 Report), there is a real danger that alimony awards at the time of divorce will be insufficient to permit the recipient spouse to obtain an award that is adequate in light of the pre-separation standard of living, and which is above that necessary to simply meet *pendente lite* needs. Clearly, there is room for further education of both the bar and the judiciary about the differing purposes to be served by alimony awards *pendente lite* and awards made at the time of divorce.

There is no doubt that the progress that has been made in eliminating gender inequity in connection with the allocation of economic resources upon divorce is, at least in part, attributable to the implementation of programs sponsored by the Judicial Institute, MICPEL,[370] local and specialty bar associations, and others, as well as the dissemination of information to judges to better inform them about required considerations and the need for sensitivity to the plight of the displaced homemaker in the wake of marital dissolution. Nonetheless, it is clear that there is still room for improvement.

Although the consistency of alimony and property awards has, perhaps, improved with the designation of Family Division judges whose philosophies, tendencies and approaches

[370] MICPEL is the acronym for the Maryland Institute for the Continuing Professional Education of Lawyers.

regarding alimony tend to become known to the bar (thereby lending a degree of predictability which can encourage settlements), there is still some room for guidance to be furnished so that, as between different judges, an increased degree of consistency can be obtained. Furthermore, there is room for improvement in the effective enforcement of alimony and marital property awards.

V. Recommendations

- Because the level of instruction available to judges is not yet available to lawyers, continuing legal education programs designed to further inform members of the bar about the extent of current gender bias in the court system in general, and in matters arising from the dissolution of a marriage in particular are needed.

- The bench and bar need to be better informed about the different purposes to be served by awards of *pendente lite* alimony and alimony upon divorce.

- Through education, the judiciary must become better informed about the compelling need to award, in appropriate cases, the amount of *pendente lite* expert and counsel fees necessary to enable a financially disadvantaged spouse to effectively pursue a fair allocation of financial resources upon divorce. Deferring such awards until the conclusion of the case, instead of granting them *pendente lite* should not be encouraged.

- While being sensitive to the right of a property owner to exercise an appropriate degree of control over and make decisions regarding property, judges need to be more aware of economically advantaged spouses who manipulate finances and holdings, thereby complicating the opposing litigant's task in identifying and valuing marital property or assessing income upon which alimony awards should be based.

- The formulation of guidelines should be considered to assist the judiciary in exercising its power to enter injunctions on an emergency basis.

- A continuing need exists to educate the bench and bar regarding the role that marital misconduct plays in determinations regarding alimony and equitable distribution of property.

- The legislature or the appellate courts should clarify the extent to which the pre-separation standard of living of the parties is a factor to be considered in awarding *pendente lite* alimony.

Court Treatment of Personnel

I. Summary of the *1989 Gender Bias in the Courts* Report

The Joint Committee's 1989 Report was based upon survey responses from forty-nine percent (49%) of the Maryland state court workforce, testimony given at statewide public hearings, and data provided by the State Department of Personnel and the Administrative Office of the Courts.[371]

The findings of the Joint Committee were as follows:

- A majority of female employees occupy the lowest end of the salary scale.
- Female employees remain in lower salaried positions for longer periods of time than male employees.
- Proportionately more male employees occupy higher salaried positions than female employees.
- Employees of the Maryland Court System reported the following types of *quid pro quo* harassment from judges, supervisors, attorneys, co-workers, and the public:
  (a) unwelcome requests for sexual activity; and
  (b) sexual favors in exchange for employment security.
- Incidents of hostile work environment harassment were reported such as:
  (a) unwelcome physical touching of a sexual nature;
  (b) unwelcome verbal or physical or sexual advances; and
  (c) sexist remarks or jokes.
- Many court employees perceive that employment decisions are based upon gender-based stereotypes and that preferential treatment is accorded based upon gender.
- A higher percentage of male employees felt that they were permitted to attend job training and more males than females reported actually attending job training.
- Male employees who attended job training were more often reimbursed for registration fees and mileage than female employees.

[371] 1989 Report, at 76.

- The State leave policy is restrictive in that it does not provide employees paid leave and a job guarantee when they experience short-term disabilities such as pregnancy.

- Male employees are more often denied paid family (non-medically related) leave than female employees.

- A need exists for on-the-job and/or partially subsidized childcare for working parents in the court system.[372]

II. The Legal Community's Response to the Recommendations

The response to the 1989 recommendations relating to court treatment of personnel has been substantial and dramatic. With the guidance, direction and support of the Chief Judge of the Court of Appeals of Maryland and the Chief Judge of the District Court, many of the suggestions and recommendations emanating from the 1989 Report have been addressed and implemented.

Although some legislation has been enacted to address specific concerns arising out of the findings, the greatest emphasis in this particular area has been the implementation of training and education programs and seminars for the benefit of court personnel.

The availability of court sponsored programs and training seminars has been increased significantly since the 1989 Report. Each and every court employee is required to attend an orientation seminar at which time they have the opportunity to review a video addressing a variety of issues germane to the court system and their employment obligations and opportunities for advancement. The "District Court Regional Orientation Video," originally made in 1997 and updated in 1999, is a professionally made video where court employees are greeted and welcomed by the Chief Judge of the District Court of Maryland, the Honorable Martha F. Rasin. The video provides employees with an overview of the Maryland Court system. Moreover, the video addresses pertinent issues such as sexual harassment in the workplace. More specifically,

[372] 1989 Report, at 93-94.

the video provides the viewer with examples of what constitutes sexual harassment, and instructs the employee of the policies and procedures to follow in the event that the employee should encounter such a situation. Additionally, the training video places emphasis on the confidentiality aspects of the reporting process.

Each state employee in the Maryland Court system is also provided a copy of the "Employee Handbook" which is an exhaustive and all-inclusive publication addressing a multitude of important policies.[373] The employee handbook is updated on a regular basis, and perhaps most relevant to the recommendations put forth in the 1989 Report, it consistently and thoroughly addresses the importance of equal opportunity in the workplace.

Legislative changes have taken place as well. The State Personnel and Pensions Article, section 2-302 of the Maryland Code, as amended July 1996,[374] provides the statutory framework upon which the above referenced training and education efforts are successfully implemented. Specifically, section 2-302 provides, *inter alia* that:

> [t]he State recognizes and honors the value and dignity of every person and understands the importance of providing employees and applicants for employment with a fair opportunity to pursue their careers in an environment free of discrimination or harassment prohibited by law.[375]

The statute provides further that each and every State employee is expected to assume personal responsibility and leadership in ensuring fair employment practices and equal employment.

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[373] The employee handbook referred to is the *Judiciary Human Resources Policies and Procedures Manual* (hereinafter "employee handbook").
[374] MD STATE PERSONNEL AND PENSIONS CODE ANN. §2-302 (2001) (*amended by* 1996 ch. 347, 349).
[375] §2-302(a).

The Family and Medical Leave Act (FMLA)[376] took effect on February 3, 1993. The FMLA is a federal law that requires Maryland, in its capacity as an employer and as a public agency to grant job-protected time off from work to employees who meet the FMLA's eligibility requirements.[377] The Act permits employees to take leave with no loss of accrued benefits during their absence and job restoration upon return from FMLA absence.[378]

Both the Maryland State Bar Association and local county bar associations have aggressively addressed the issue of gender equality since the 1989 Report. Education, training, and professional development are some of the areas that have been addressed. Bar presidents throughout the state have made it their priority during their respective administrations to promote professionalism and civility among all levels of the legal community.

III. A Comparison of Survey Results 1989:2000

A. Economics

The 1989 Report concluded that female employees suffer three forms of economic discrimination:

(1) Female employees are paid less overall, despite having backgrounds similar to those of male employees;

(2) Female employees are not promoted in proportion to their numbers; and

(3) Certain low paying job classifications within the court system are categorized as "female jobs."[379]

The 2000 Survey results, in conjunction with data provided by the Administrative Office of the Courts suggest that (1) and (3) are probably no longer true but that (2) remains emphatically, if not shockingly, true.

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[376] 29 U.S.C. §2601.
[377] *See id*.
[378] *See generally id*.
[379] 1989 Report, at 76-77.

The 1989 Report found that the average income for female District Court employees was $4,282 less than that of male employees.[380] Using the salary differential, as well as other data found in their survey, the 1989 Report concluded that certain low paying positions are "female jobs."[381]

The 2000 Survey results, if graphed for female employees' salaries, would form a classic bell curve with under representation on both ends of the scale and most respondents clustered in the middle.[382] Of the 1084 female respondents, 894 or eighty-two percent (82%) report salaries in the $20,000 to $40,000 range.[383] Within that bracket, the largest number of respondents fall within the $25,000 - $29,999 range.[384]

The salary graph for male court employees would, in contrast, show over-representation within the low and high salaried positions and under-representation in the middle salary range.[385] Only fifty-six percent (56%) of the male employees report salaries in the $20,000 to $40,000 range, compared with eighty-two (82%) of the females.[386] Among male court employees, fourteen percent (14%) earn $50,000 or more while among females, four percent (4%) earn $50,000 or more.[387] Males earning less than $20,000 account for seventeen percent (17%) of their number while among females that number is six percent (6%).[388]

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[380] 1989 Report, at 77.
[381] *See generally* 1989 Report, at 77-79.
[382] *See* data from the 2000 Survey, Question No. 70 of the Court Employees' Questionnaire.
[383] *See id*.
[384] *See id*.
[385] *See id*.
[386] *Compare* female data from the 2000 Survey, Questions No. 70 of the Court Employees' Questionnaire, *with* male data from the 2000 Survey, Questions No. 70 of the Court Employees' Questionnaire.
[387] *See* data from the 2000 Survey, Question No. 70 of the Court Employees' Questionnaire.
[388] *See id*.

The 1989 Report concluded that female employees were locked into "salary ghettos" at the lower end of the pay scale, sixty-four percent (64%) of females within the $15,000 to $20,000 range compared with only thirty-eight percent (38%) of the males, with little hope for advancement.[389] Only one percent (1%) of women made over $40,000, whereas eight percent (8%) of men did.[390] As noted above, the income distribution patterns are still different for men and women, and except for the continuing "gender gap" at the top pay levels, the case for salary ghettoizing of women is definitely weaker, according to the 2000 Survey, than it was in 1989.[391] For example, sixty-four (64%) of women earn between $25,000 and $49,000 compared with forty-seven percent (47%) of men.[392] It is when we examine salaries above $40,000 that worrisome gender disparities exist.

Clearly the most troubling finding in the 2000 Survey is the continuing imbalance in the $50,000 plus bracket. Fourteen percent (14%) of the male respondents reported $50,000 plus salaries, compared with just three percent (3%) of the female respondents, reflecting an almost exact inversion of the 4:1 ratio of female to male employees.[393] In order to verify the survey results, the Administrative Office of the Courts provided categorized data, by gender, for all employees in the $50,000 plus range. The total figures paint a slightly brighter picture, but do not diminish our concern.

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[389] *See generally* 1989 Report, at 77-79; *See also* data from 1989 Report, Question No. 25 of the Court Employees' Questionnaire.
[390] 1989 Report, at 77; *See also* data from 1989 Report, Question No. 25 of the Court Employees' Questionnaire.
[391] *Compare* data from the 1989 Report, Question No. 25 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Question No. 70 of the Court Employees' Questionnaire.
[392] *Compare* female data from the 2000 Survey, Questions No. 70 of the Court Employees' Questionnaire, *with* male data from the 2000 Survey, Questions No. 70 of the Court Employees' Questionnaire.
[393] *See id*.

The numbers alone suggest the existence of a glass ceiling, yet the survey responses do not seem to bear this out, at least by perception. Several questions on the 2000 Survey addressed job responsibilities and promotions.[394] The responses uniformly express extremely low levels of agreement (generally 2-5%) with statements that job advancement is gender biased.[395] Looking at the breakdown of court employee responses by gender discloses that a higher percentage of males than females agree that gender bias effects job advancement.[396]

Just because gender bias may be invisible to those affected by it, does not mean that it does not exist, but it certainly encourages us to seek alternative explanations or find other variables that might explain this disparity. An obvious variable to explore is educational levels compared with salary.

Thirty-three (33%) of male respondents and sixty percent (60%) of the females have received at least some college-level education, yet twenty-four (24%) of men and eight percent (8%) of women report graduate-level work.[397] Twelve (12) of the thirty-seven (37) men earning over $50,000 and sixteen (16) of the thirty-nine (39) women report some graduate-level work.[398] The other individuals, representing both genders, who make over $50,000, have a wide range of educational levels and only those without a high school diploma appear to be excluded.[399] The only salary range where some graduate school education appears to create a significant

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[394] 2000 Survey, Questions No. 72, 73, 79, 80, 84, 88, 102, 103, 107, and 108 of the Court Employees' Questionnaire.
[395] *See generally* data from the 2000 Survey, Questions No. 72, 73, 79, 80, 84, 88, 102, 103, 107, and 108 of the Court Employees' Questionnaire.
[396] *See id*.
[397] *See* data from the 2000 Survey, Questions No. 67-68 of the Court Employees' Questionnaire.
[398] *Compare* data from the 2000 Survey, Questions No. 67-68 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Question No. 70 of the Court Employees' Questionnaire.
[399] *See id*.

advantage for both genders is the $65,000 plus range, where twelve (12) of the twenty (20) men and ten (10) of the twenty-four (24) women report some graduate-level work.[400]

It is clear that educational levels alone do not account for the disparities found at the top of the pay scale, given that some high school graduates of both genders earn over $50,000.[401] There does, however, appear to be evidence that graduate work may give an employee a leg up on the $65,000 plus salaries, and a much higher percentage of men than women report some graduate work.[402]

The 1989 Report concluded the following:

> The Maryland court system should be concerned that despite similar educational and employment backgrounds, proportionately more male employees occupy higher salaried positions than female employees.[403]

In the 2000 Survey, regrettably, we reach the identical conclusion.

B. Sexual Harassment

The 1989 Report found that both kinds of sexual harassment, *quid pro quo* and hostile work environment, were present in the Maryland court system, especially for female employees.[404]

> A system that focuses on gender rather than performance is not only inefficient and disruptive, it is illegal. By fostering, condoning, or, at a minimum, failing to discourage sexual harassment, the Maryland court system has permitted a work environment to exist in which female employees are constantly reminded of their different and subordinate status.[405]

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[400] *See id*.
[401] *Compare* data from the 2000 Survey, Question No. 139 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Question No. 70 of the Court Employees' Questionnaire.
[402] *See id*.
[403] 1989 Report, at 79.
[404] *Id*. at 80.
[405] *Id*. at 83.

Twelve years ago, female court employees *experienced sexual advances in exchange for an employment security/opportunity*,[406] five to eight percent (5% to 8%) of the time and men experienced it four to seven percent (4% to 7%) of the time.[407] These advances derive from a number of sources, of which both the 1989 Report and 2000 Survey separate into five categories; (1) judges, (2) attorneys, (3) coworkers, (4) supervisors, and (3) the public. In 1989, women's *requests for sexual activity*,[408] ranged from a low of six percent (6%) of the time from *supervisors*, to a high of twenty-two percent (22%) from the *public*; men similarly received requests a low of four percent (4%) from *attorneys*, to a high of twenty-six percent (26%) from the *public*.[409] *Physical touching of a sexual nature*,[410] was experienced by a low of eight percent (8%) of women from *supervisors*, to a high of eighteen percent (18%) of women from *coworkers*, and a low of five percent (5%) of men from *judges* to a high of sixteen percent (16%) from *coworkers*.[411] *Verbal behavior such as sexist jokes or comments*,[412] ranged from a low of twenty-five percent (25%) from *judges* to a high of forty-five percent (45%) from *coworkers* for women; and a low of twenty-one percent (21%) from *judges* to a high of forty-four percent (44%) from *coworkers* for men.[413]

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[406] 1989 Report, Question No. 13 of the Court Employees' Questionnaire.
[407] *See generally id*. at 81-82; *See also* data from the 1989 Report, Questions No. 13 of the Court Employees' Questionnaire.
[408] 1989 Report, Question No. 14 of the Court Employees' Questionnaire.
[409] *See generally id*. at 81-82; *See also* data from the 1989 Report, Questions No. 14 of the Court Employees' Questionnaire.
[410] 1989 Report, Question No. 15 of the Court Employees' Questionnaire.
[411] *See generally id*. at 81-82; *See also* data from the 1989 Report, Questions No. 15 of the Court Employees' Questionnaire..
[412] 1989 Report, Question No. 16 of the Court Employees' Questionnaire.
[413] *See generally id*. at 81-82; *See also* data from the 1989 Report, Questions No. 16 of the Court Employees' Questionnaire..

Today, the report of sexual advances is almost negligible[414] as are the numbers regarding reports of requests for sexual activity,[415] and concerns regarding physical touching.[416] The highest category of unwanted harassment is verbal behavior, which was reported by four percent (4%) from judges to ten percent (10%) from both coworkers and the public by men and four percent (4%) from judges to thirteen percent (13%) from coworkers by women.[417]

According to the 2000 Survey, it is clear that there has been a significant decline in incidents of sexual harassment over the past eleven years, but any celebration should be deferred until sexual harassment is eradicated from the Maryland court system. Zero tolerance must remain the standard.

The 2000 Survey does not disclose the reasons for the decline in incidents of sexual harassment but some reasonable hypotheses may include heightened awareness brought about by the 1989 Report, mandatory training, well-publicized incidents of harsh consequences for sexual harassers, and possibly, a collective consciousness raising that such behavior is wrong, at work or anywhere.

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[414] *See* data from the 2000 Survey, Questions No. 28-30 and 47-61 of the Court Employees' Questionnaire (less than one percent (1%) of men and less than two percent (2%) of women reporting sexual advances).
[415] *See* data from the 2000 Survey, Questions No. 28-30 and 47-61 of the Court Employees' Questionnaire (less than two percent of men and less than four percent of women reporting requests for sexual activity).
[416] *See* data from the 2000 Survey, Questions 28-30 and 47-61 of the Court Employees' Questionnaire (less than one percent of the time by men and less than three percent of the time among women reporting concerns regarding physical touching).
[417] *See* data from the 2000 Survey, Questions No. 28-30 and 47-61 of the Court Employees' Questionnaire

C. Work Environment, Job Training and Advancement

> It is evident from the answers to these questions that both male and female employees of the Maryland court system feel that gender-based stereotypes are used as a substitute for individual employment decisions.[418]

1. Work Environment

The 1989 Report disclosed a fairly pervasive perception among all court employees, and especially females, that female attorneys, litigants, and court personnel were addressed by first names or terms of endearment when men are addressed formally and that comments were made about the personal appearance of female employees when no such comments were made about males. [419]

While the 2000 Survey reveals that these lamentable practices still exist, they are experienced or observed by a much smaller percentage of court personnel, male and female alike, than in 1989. Appearing on both surveys was the inquiry of whether [*c*]*omments are made about the personal appearance of female litigants or witnesses when no such comments are made about men*.[420]

In 1989, twelve percent (12%) of court personnel found this to be at least "sometimes" true *by judges*, twenty-eight percent (28%) *by attorneys*, and twenty-four (24%) *by court personnel*.[421] The 2000 Survey shows a decrease among all categories surveyed, with seven percent (7%) of the time *by judges*, eight percent (8%) *by attorneys*, and thirteen percent (13%)

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[418] 1989 Report, at 88.
[419] 1989 Report, at 84.
[420] 1989 Report, Question No. 6 of the Court Employees' Questionnaire, and from the 2000 Survey, Question No. 13-15 of the Court Employees' Questionnaire.
[421] *See* data from the 1989 Report, Question No. 6 of the Court Employees' Questionnaire.

by court personnel, finding this statement true "sometimes."[422] Similarly, comparable reductions from respondents of both genders can be seen in all questions dealing with court interactions.

Despite reductions, these practices still exist as illustrated by the following responses to open-ended questions from court employees.

- Asked staff person not to make gender based remarks - jokes.
- Bailiff called courtroom clerk a "little girl."
- Clerks being called "Honey" inappropriate remarks.
- Had to counsel employee over gender and racial remarks.
- Several male clerks have habit of referring to women as "girls." Have corrected them.[423]

Six questions in both 1989 and 2000 addressed differential treatment based on gender regarding job responsibilities and credibility.[424] The questions cover the following issues: [*m*]*y job duties and responsibilities have been reduced solely because of my gender*,[425] or [*m*]*y job duties and responsibilities have been increased solely because of my gender*;[426] [*m*]*y opinions in job related situations are given different weight or importance than a person of the opposite gender*;[427] *I feel I am asked to perform duties that would not be asked of a person of the opposite sex*;[428] *I feel that there are job duties I am not allowed to perform because of my gender*;[429] and

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[422] *See* data from the 2000 Survey, Question No. 13-15 of the Court Employees' Questionnaire.
[423] *See* Data to Questions 91-92 of the 2000 Court Employees' Questionnaire.
[424] 1989 Report, Questions No. 27-32 of the Court Employees' Questionnaire, and from the 2000 Survey, Questions 72-73 and 76-79 of the Court Employees' Questionnaire.
[425] 1989 Report, Question No. 27 of the Court Employees' Questionnaire. 2000 Survey, Question No. 72 of the Court Employees' Questionnaire.
[426] 1989 Report, Question No. 28 of the Court Employees' Questionnaire. 2000 Survey, Question No. 73 of the Court Employees' Questionnaire.
[427] 1989 Report, Question No. 29 of the Court Employees' Questionnaire. 2000 Survey, Question No. 76 of the Court Employees' Questionnaire.
[428] 1989 Report, Question No. 30 of the Court Employees' Questionnaire. 2000 Survey, Question No. 77 of the Court Employees' Questionnaire.

[*c*]*hoice job assignments are given to employees on the basis of gender*.[430] Substantial percentages of both genders, twenty-five percent (25%) to twenty-eight percent (28%) agreed with at least some of the proposals put forward in the 1989 Report, *e.g.*, "I feel I am asked to perform duties that would not be asked of a person of the opposite sex." with females generally responding in higher percentages.[431]

The 2000 Survey contains lower percentages of positive responses from both genders to all six questions. In other words, perceptions of gender bias appear to have decreased in 2000 compared with 1989.[432] However, sixty-five percent (65%) of respondents to the 2000 Survey reported that in the past five years, they had not attended a seminar or program during which issues of gender bias were discussed.[433]

What is also notable about this portion of the 2000 Survey is that a higher percentage of male respondents perceive gender bias than do females.[434] In fact, only one question, [m]*y opinions in job related situations are given different weight or importance than a person of the opposite gender* drew a higher percentage of concurring female responses, fourteen percent (14%) of men agreeing as opposed to sixteen percent (16%) of women.[435] The question asking employees if, [they] *feel* [they are] *asked to perform duties that would not be asked of a person*

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[429] 1989 Report, Question No. 31 of the Court Employees' Questionnaire. 2000 Survey, Question No. 78 of the Court Employees' Questionnaire.
[430] 1989 Report, Question No. 32 of the Court Employees' Questionnaire. 2000 Survey, Question No. 79 of the Court Employees' Questionnaire.
[431] 1989 Report, at 278 and 281.
[432] *Compare* data from the 2000 Survey, Questions No. 72-73 and 76-79 of the Court Employees' Questionnaire, *with* data from the 1989 Report, Questions No. 27-32 of the Court Employees' Questionnaire.
[433] *See* data from the 2000 Survey, Question No. 127 of the Court Employees' Questionnaire.
[434] *Compare* female data from the 2000 Survey, Questions No. 72-73 and 76-79 of the Court Employees' Questionnaire, *with* male data from the 2000 Survey, Questions No. 72-73 and 76-79 of the Court Employees' Questionnaire.
[435] *See* data from the 2000 Survey, Question 76 of the Court Employees' Questionnaire.

of the opposite sex,[436] found twenty-five (25%) of males agreeing that this happens at least "sometimes," compared with only nine percent (9%) of the females.[437] The open-ended responses in this area are instructive and are similar to comments quoted from the 1989 Report.

- There is favoritism toward females in District Court system and an unfavorable bias by some.
- I'm a male and just because I am, women in the office think that I am a mover and fixer of everything.
- Am only male among a group of 13 in my department. I am unfortunately and unfairly subject to gender bias.
- Heavy lifting, moving supplies/inventory "dirty work."[438]

2. Job Training and Advancement

> It is also important to note that in addition to the perceptions concerning on-the-job treatment, both male and female employees perceive gender based disparity with regard to job training and job advancement opportunities.[439]

As with work environment issues, the 2000 Survey finds a work force that perceives less gender bias in job training and advancement than it did in 1989. For example, six percent (6%) of 1989 respondents[440] and three percent (3%) of 2000 respondents answer "yes" when asked [*d*]*o you feel that you have been denied a promotion while employed in the court system because of your gender*.[441] Similar reductions are found in all the questions in this section.[442]

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[436] 2000 Survey, Question No. 77 of the Court Employees' Questionnaire.
[437] *See* data from the 2000 Survey, Question 77 of the Court Employees' Questionnaire.
[438] *Compare* 1989 Report, at 87, *with* 2000 Survey, open-ended responses to Question No. 77 of the Court Employees' Questionnaire.
[439] 1989 Report, at 87.
[440] 1989 Report, at 87-88; *See also* data from 1989 Report, Question No. 44 of the Court Employees' Questionnaire.
[441] *See* data from the 2000 Survey, Question No. 102 of the Court Employees' Questionnaire.

Notable again is that, unlike the 1989 Report, the 2000 Survey finds a higher percentage of male than female respondents identifying gender bias in job training and advancement.[443] Some representative responses:

- I have been passed over by women with less education and training.
- I'm male.
- Judges hire women because they think men will leave the job for more money in private sector.[444]

Whatever the reasons for the decline in perception of gender bias in job training and advancement, the existence of an effective dispute resolution mechanism does not appear to be one of them. Both surveys found a very small number of employees filing complaints and a very high level of dissatisfaction with the results.[445] Less than one percent (1%) of both genders in 2000 Survey report that their complaint was resolved satisfactorily.[446] The survey results are too vague to reach any definitive conclusions, but it seems logical that a complaint process that provides little or no satisfaction will eventually atrophy from neglect and may need an overhaul or, at the very least, a tune-up.

Both surveys posed the question of, [h]*ow much job advancement opportunity do you feel is available to you in the court system in Maryland*.[447] Sixty-two percent (62%) of female

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[442] *Compare* data from the 1989 Report, Questions No. 35- 47 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Questions No. 84-111 of the Court Employees' Questionnaire.
[443] *See id*.
[444] *See* data from the 2000 Survey, Question 91 of the Court Employees' Questionnaire.
[445] *See generally* data from the 1989 Report, Question No. 40 of the Court Employees' Questionnaire; *See also generally* data from the 2000 Survey, Question No. 93-94 of the Court Employees' Questionnaire.
[446] *See* data from the 2000 Survey, Questions No. 93-94 of the Court Employees' Questionnaire.
[447] 1989 Report, Question No. 47 of the Court Employees' Questionnaire, and from the 2000 Survey, Question No. 111 of the Court Employees' Questionnaire.

respondents in 1989[448] and fifty-seven percent (57%) in 2000 answer "no opportunity" or "little opportunity."[449] Male responses were only slightly lower, fifty-three percent (53%) responding "little opportunity" or "no opportunity" in 1989,[450] and fifty-seven percent (57%) responding "little opportunity" or "no opportunity" in 2000.[451] Thus, relatively, both genders equally perceive that they are in dead-end jobs.

D. Maternity and Family Leave

The 1989 Report not only surveyed court personnel but also examined then-existing leave policies and concluded:

> The restrictive nature of the State leave policy places severe limitations upon female employees with regard to the physical demands of pregnancy and childbirth.[452]

Report results showed female employees more likely than males to be granted leave to care for dependent child and elderly relatives and thus produced the following observations:

> Disparate leave policies also tend to reinforce the stereotype that females are less committed to their job than their male counterparts since the females are the ones who take leave to care for their children.[453]

In 1989, seven percent (7%) of the female employees who requested maternity leave were denied.[454] The 2000 Survey reported two percent (2%) of all female respondents being denied maternity leave at some point.[455] Unfortunately, there is no way of knowing how many

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[448] *See* data from the 1989 Report, Question No. 47 of the Court Employees' Questionnaire.
[449] *See* data from the 2000 Survey, Question No. 111 of the Court Employees' Questionnaire.
[450] *See* data from the 1989 Report, Question No. 47 of the Court Employees' Questionnaire.
[451] *See* data from the 2000 Survey, Question No. 111 of the Court Employees' Questionnaire.
[452] 1989 Report, at 91.
[453] 1989 Report, at 92.
[454] 1989 Report, at 91; *See also* data from the 1989 Report, Question No. 48 of the Court Employees' Questionnaire.
[455] *See* data from the 2000 Survey, Question No. 113 of the Court Employees' Questionnaire.

of these respondents were reporting incidents that occurred prior to the 1989 Report or the passage of the Family and Medical Leave Act in 1993.

If the open-ended responses represent relatively contemporary experiences, then much needs to be done to educate both supervisors and employees about current maternity and paternity leave policies.

- By law, six weeks granted but a request for an additional two weeks denied, although I had time on books. Supervisor asked clerk to deny it. No explanation given.
- I could have taken twelve weeks, but since office was apparently not sure of new family law, I only was permitted six weeks!
- I had to use all my annual leave and sick leave hours then apply for FMLA.
- I had to use my annual and sick leave because the District Court does not have maternity leave.
- Told there is no such leave and that I had to take sick leave or leave without pay.
- No maternity leave - had to use vacation/sick/personal time.
- We really don't have maternity leave. It is taken from our sick leave.[456]

E. Child Care

> A need exists for on-the-job and or partially subsidized child care for working parents in the court system.[457]

There was little change in the number of respondents reporting the availability of day care at the workplace.[458] Twenty-one percent (21%) of the 2000 Survey respondents report a

[456] *See* data from the 2000 Survey, Question No. 114 of the Court Employees' Questionnaire.
[457] 1989 Report, at 94.

need for child care for children under 12 and thirty-three percent (33%) said they would use it if available at their work place.[459]

Given that approximately sixty percent (59%) of female employees earn less than $30,000 and that undoubtedly many of these women are trying to support families on their incomes alone, it is hard to imagine how they can afford to pay for child care in order to work.

IV. Conclusions

The 2000 Survey results show that progress has been made in several areas noted to be of concern in the 1989 Report. Specifically, incidences of sexual harassment have dramatically decreased since the 1989 Report. However, zero tolerance must remain the standard and efforts toward eradication and education must continue in this area. Moreover, there was a reduction in the percentages of both genders that reported differential treatment based on gender regarding job responsibilities and credibility or in job training and advancement. Notably, a higher percentage of male employees perceive that they receive unequal treatment at work because of gender based stereotypes and that employment decisions are based on gender.

However, there also exists areas where efforts toward education and eradication must continue. For example, despite similar educational and employment backgrounds, proportionately more male employees occupy higher salaried positions than female employees. In addition, notwithstanding the passage of the Family and Medical Leave Act in 1993, female employees still have grievances and misunderstandings with their supervisors regarding maternity leave. Furthermore, a need still exists for on-the-job partially subsidized child care for working parents in the court system.

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[458] *Compare* data from the 1989 Report, Question No. 53 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Question No. 119 of the Court Employees' Questionnaire.

[459] *See* data from the 2000 Survey, Question No. 119 of the Court Employees' Questionnaire.

Lastly, it remains a concern that the majority of court employees view the Maryland court system as a job that offers little or no hope of advancement and that existing grievance procedures are used by a very small percentage of employees and provide little or (mostly) no satisfaction to those who do access them.

V. Recommendations

- Conduct a thorough review of qualification requirements and promotional procedures to the top level positions ($50,000 plus) to ensure that our courthouses have no glass ceilings.

- Advocate for fair compensation, especially for those in the lowest pay grades in order to boost morale and promote retention.

- Ensure that training programs are equally accessible to male and female employees, particularly those that are required for promotion to supervisory positions.

- Continue to provide and refine education and training programs for all judicial and court support personnel which address issues of sexual harassment and gender bias.

- Review all current grievance procedures to ensure easy access and no retaliation by supervisors or co-workers of those who file complaints.

- Establish on-site child care or subsidize off-site child care programs.

- Assure that all personnel are fully conversant with all leave policies, especially family medical leave policy, so as to avoid unequal treatment based on misinformation or ignorance of an employee's rights.

- Provide support for increased levels of respect by lawyers toward court personnel, especially women.

Judicial Selection

I. Summary of the *1989 Gender Bias in the Courts* Report

In its 1989 Report the Joint Committee identified two reasons why it was necessary to determine if gender bias existed in the process of judicial selection in Maryland; the first being the need to have an unbiased judiciary, which includes the public perceiving the judiciary as unbiased, and second, providing an equal opportunity for women attorneys.[460] At the time, there were two hundred twenty-two (222) judges serving the Maryland courts, nineteen (19) of them - nine percent (9%) - were women.[461] Moreover, only one woman, the Honorable Rosalyn Bell, served on an appellate level court, the Court of Special Appeals.[462] Previously, the Honorable Rita Davidson, had been appointed to the Court of Appeals in 1979, yet had succumbed to cancer several years prior to 1989.[463] By 1989, women had served as judges on the circuit courts for Baltimore City and four Maryland counties,[464] but in none of the remaining nineteen (19) counties.[465] Female judges had served at the District Court level in Baltimore City and six (6) counties.[466]

To determine whether gender bias did affect the judicial selection process, the Joint Committee solicited information on the issue at hearings, in private meetings, by letter and in questions included in the Joint Committee's survey of judges and attorneys.[467]

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[460] 1989 Report, at 97.
[461] *Id*.
[462] *Id*. (*citing* Thurlow, *Profiles*, 19 Md. B.J., June 1986, at 25).
[463] *Id*. (The Honorable Rita Davidson became the first woman elevated to an appellate court in Maryland upon her appointment to the Court of Special Appeals in 1972.)
[464] The four counties are Baltimore, Frederick, Montgomery, and Prince George's.
[465] 1989 Report, at 97-98.
[466] *Id*. at 98 (women had served on the District Courts of Anne Arundel, Baltimore, Frederick, Howard, Montgomery and Prince George's counties).
[467] *Id.* at 99.

The findings of the Joint Committee were as follows:

- Too few women lawyers had been elevated to the bench.
- Female candidates for judicial appointments are asked irrelevant questions about family responsibilities.
- Female candidates for judicial appointments are often subject to different standards than those applied to male candidates.
- Female candidates for judicial appointments often are subject to stereotyped expectations about appropriate professional experiences, stature and demeanor which devalue their abilities and background.
- Some women lawyers have been denied equal opportunity for judicial appointments by judicial nominating commissions which subject them to biased, irrelevant, and stereotypical standards.
- Some women lawyers have been denied equal opportunity for judicial appointments by an informal quota system which results in token appointments.
- Some male lawyers have been antagonistic to the efforts of women candidates to be elevated to the bench.[468]

II. The Legal Community's Response to the Recommendations

In 1995, Governor Parris Glendening created the Governor's Task Force on Judicial Nominating Commissions (hereinafter "Task Force") and charged the Task Force with the responsibility of making recommendations to the Governor relating to the evaluation and selection of candidates for judgeships in Maryland.[469] Consistent with the recommendations of the Joint Committee,[470] on April 28, 1995, Governor Glendening issued Executive Order 01.01.1995.10 (hereinafter "Executive Order"), which committed the State to creating a more

[468] *Id*. at 104-105.
[469] Exec. Order No. 01.01.1995.06 (March 28, 1995). Thirteen members were appointed to the Governor's Task Force on Judicial Nominating Commissions by Governor Glendening, one each by the President of the Maryland Senate and the Speaker of the House of Representatives. The Task Force was directed to present its recommendations to Governor Glendening with 21 days.
[470] *See* 1989 Report, at 105-106.

representative judiciary, and to ensuring that the selection and evaluation of judges was conducted fairly, based on merit, experience and diversity.[471] In accordance with the Task Force's recommendations, Governor Glendening revised the process of appointing members of judicial nominating commissions.[472] Regarding the Appellate Judicial Nominating Commission, the Governor retained responsibility for appointing the Chairperson and one lay member from each appellate circuit; the Executive Order added an at-large lay member and an at-large attorney member to be appointed by the Governor.[473] The remaining seven lawyer members continued to be elected by the Maryland Bar.[474]

The process of appointing members to the Trial Court Judicial Nominating Commission was also revised.[475] The Governor retained the power to appoint the Chairperson and the lay members.[476] In addition, the Executive Order gave the Governor the responsibility to appoint two of the six attorney members; the remaining four attorney members continued to be elected by the Maryland Bar.[477] In changing the number of attorney members appointed by the Governor, the Executive Order stated that "[t]he Governor will consider the need for greater diversity of experience, gender and race."[478]

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[471] Preamble, Exec. Order No. 01.01.1995.10 (April 28, 1995). On May 16, 1995, Exec. Order No. 01.01.1995.10 was amended by Exec. Order No. 01.01.1995.13 for the purpose of clarification and making technical changes. (Hereinafter, all references to the "Executive Order" refer to Exec. Order No. 01.01.1995.13 (May 16, 1995)).
[472] Exec. Order No. 01.01.1995.13, § B(1). Section B(1)(b)(iv) provides that, "[t]o the fullest extent possible, the composition of the members appointed by the Governor shall fairly and appropriately reflect the minority and female population of the area from which appointed."
[473] *Id*.
[474] *Id*.
[475] Exec. Order No. 01.01.1995.13, § C(2).
[476] *Id*.
[477] *Id*. (under prior Executive Orders, all 6 lawyer members were elected by Maryland Bar).
[478] *Id*. at § C(2)(c)(iii).

The Executive Order also set forth the procedures to be followed by judicial nominating commissions, and provided that the Administrative Office of the Courts (hereinafter "AOC"), together with the Governor, were responsible for providing "the training of Commission members in effectively evaluating judicial candidates and in screening for sensitivity to diversity issues."[479] Further, the Executive Order stated that judicial nominating commissions "shall be sensitive to gender and diversity issues in the evaluation of judicial candidates."[480]

Pursuant to the recommendations of the 1989 Report, the AOC revised the confidential questionnaire to be completed by applicants for judicial office, eliminating questions regarding past medical leaves from work based on childbirth and/or maternity leave.[481] In addition, the AOC revised the Manual for State of Maryland Judicial Nominating Commissions to include "Suggested Interview Questions for Judicial Candidates."[482] Organizations such as the Select Committee on Gender Equality, the Women's Law Center and the Women's Bar Association of Maryland contributed questions to the Manual.[483]

III. A Comparison of Survey Results 1989:2000

There has been a significant increase in the number of women serving on the Maryland bench since 1989. As of July 20, 2001, sixty-two (62) of the two hundred sixty-four (264) Maryland judges - twenty-three percent (23%) - are women,[484] compared to nine percent (9%) in

[479] Exec. Order No. 01.01.1995.13, § E(1).
[480] *Id*. at § E(5).
[481] 1989 Report, at 106; *see also* A MANUAL FOR STATE OF MARYLAND JUDICIAL NOMINATING COMMISSIONS (revised July 1999).
[482] *Id*.
[483] *Id.,* at 5-3 to 5-4.
[484] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality.

1989.[485] Five (5) women now sit on the Maryland appellate courts translating to twenty-nine percent (29%) being female in 2001,[486] as opposed to only one percent (1%) in 1989. The percentage of women on the circuit courts has increased from nine percent (9%) in 1989,[487] to twenty-one percent (21%) in 2001.[488] And at the District Court level, the number of women judges has increased from nine percent (9%) in 1989,[489] to twenty-six percent (26%) in 2001.[490]

However, there are still a number of counties where women have not been elevated to the bench. In 1989, a woman had not served on the circuit courts of nineteen (19) counties, nor had a woman served on the District Courts in seventeen (17) counties.[491] Currently, there are twelve (12) counties in the State of Maryland in which a woman serves on neither the circuit court nor the District Court.[492]

The number of women serving as members of judicial nominating commissions has also increased. In 1989, thirty-two percent (32%) of the judicial nominating commission members were female; of these, nine (9) were attorneys and thirty-eight (38) were lay members.[493] In 2001, thirty-eight percent (38%) are female; of these, thirty-one (31) are attorneys and fifty-five

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[485] 1989 Report, at 97; *see also* data from 1989 Report, Part IX, Question No. 5 of the Judges' Questionnaire.
[486] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality.
[487] 1989 Report, at 97; *see also* data from 1989 Report, Part IX, Question No. 5 of the Judges' Questionnaire.
[488] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality.
[489] 1989 Report, at 97-98; *see also* data from 1989 Report, Part IX, Question No. 5 of the Judges' Questionnaire.
[490] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality.
[491] 1989 Report, at 98.
[492] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality (the twelve counties being, Allegany, Cecil, Charles, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington and Worcester).
[493] 1989 Report, at 100, n.12.

(55) are lay members.[494] Further, the majority of judicial nominating commission members in three counties are female.[495] And finally, a woman serves as the chair of five (5) of the seventeen (17) judicial nominating commissions.[496]

Although the current survey did not involve state-wide hearings, it did include the same two questions regarding gender bias in the judicial selection process propounded in 1989. Judges and attorneys were asked, [*a*]*re you aware of any instances of gender bias in the judicial selection process*, and if the respondent thought so, they were asked to briefly describe their perception.[497] In 1989, fifteen percent (15%) of male judges and sixty-nine percent (69%) of female judges answered "yes" to this question.[498] In 2000, twenty-nine percent (29%) of male judges and twenty-six percent (26%) of female judges answer "yes."[499]

Among attorneys in 1989, thirteen percent (13%) of male respondents and twenty percent (20%) of female respondents answered "yes."[500] In 2000, thirty-one percent (31%) of male attorneys and eighteen percent (18%) of female attorneys answer "yes."[501]

Also in 2000, when asked about the existence of gender bias in the judicial selection process, nineteen percent (19%) of the attorneys[502] and twenty-five percent (25%) of the judges who responded provided written comments beyond their "yes" or "no" answers.[503]

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[494] Data compiled by AOC; statistical analysis provided by the Select Committee on Gender Equality.
[495] *Id*. (the three counties being Frederick County, Howard County, and Anne Arundel County).
[496] *Id*.
[497] 1989 Report, Question No. VII of both the Attorneys' and Judges' Questionnaires; from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire and Question No. 110 of the Judges' Questionnaire.
[498] 1989 Report, at 99; *see also* data from 1989 Report, Question No. VII of the Judges' Questionnaire.
[499] *See* data from the 2000 Survey, Question No. 110 of the Judges' Questionnaire.
[500] 1989 Report, at 99; *see also* data from 1989 Report, Question No. VII of the Judges' Questionnaire.
[501] *See* data from the 2000 Survey, Question No. 110 of the Judges' Questionnaire.

Among the one-fourth or fewer who commented, ten percent (10%) expressed approval of the Governor's policy and the system as it currently operates; eighty-two percent (82%) found the system to be biased in some fashion.[504] However, this is neither surprising nor alarming. People generally comment when they wish to express a grievance. A lack of comment usually indicates that a respondent does not have a concern with the issue in question.

Three observations can be made from the 2000 Survey's written comments. First, a perception exists of reverse gender bias because women are aggressively nominated and selected.[505] Consider the following representative comments.

- Female judges are picked solely because of gender and not qualification[506]
- Females are favored regardless of qualification or experience[507]
- Females are clearly favored over males [508]
- Females preferred over males [509]
- Selections are often made specifically to increase the number of women on the Bench[510]
- I believe some female candidates have been appointed not because they were the best on the list but because a female was necessary[511]

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[502] *See* data from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire.
[503] *See* data from the 2000 Survey, Question No. 110 of the Judges' Questionnaire.
[504] *See* data from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire and from Question No. 110 of the Judges' Questionnaire.
[505] *See generally* data from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire and from Question No. 110 of the Judges' Questionnaire.
[506] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).
[507] *Id*. (written comment by female attorney).
[508] *Id*.
[509] *Id*.
[510] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).
[511] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by female judge).

- Selecting women because they are women rather than because they are qualified[512]

- Slanted against white males[513]

Second, all groups are aware of gender preference in judicial selection and understand the need for the Governor's actions.[514]

- Generally perceived if everything is equal, the selection should be the woman[515]

- The Government has announced a goal of increasing the diversity of the Judiciary by the appointment of women and minorities to the Bench [516]

- Governor has stated a policy of bias for diversity[517]

- Only if you call affirmative outreach by the Government "bias" which I do not[518]

- My perception is there is effort to put more women on the Bench resulting in equally qualified men not appointed. I believe this is justified and appropriate as it has been done." [519]

- There is a stated goal of appointing more women and minorities to the bench. This is necessary but is a form of bias.[520]

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[512] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by female attorney).
[513] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by male judge).
[514] *See generally* data from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire and from Question No. 110 of the Judges' Questionnaire.
[515] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).
[516] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by male judge).
[517] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).
[518] *Id*.
[519] *Id*.
[520] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by female judge).

- The intent to balance the gender and ethnicity of the bench has been evident for many years[521]

- I can't say as a fact but the perception is that the Governor has selected qualified females over qualified males because he perceives a need for more female judges[522]

Third, an underlying perception of bias still exists.[523]

- A member of a Trial Court Judicial Nominating Commission stated – when requesting the Commission not to recommend a female – "the people of --- County don't want a female judge[524]

- Women seem to be scrutinized harder by local committees.[525]

- Women's Bar Association expressed a negative attitude toward male applicants who belong to clubs not admitting women to membership[526]

- Larger number of experienced female litigators found by selection Committee to be "unqualified[527]

- Males preferred in Southern Maryland[528]

- In Baltimore County, a male attorney on a committee kept mocking the comments of women applicants and other belittling things[529]

- Baltimore County Nominating Commission leaving off qualified Female Lawyer[530]

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[521] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by female attorney).
[522] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by male judge).
[523] *See generally* data from the 2000 Survey, Question No. 125 of the Attorneys' Questionnaire and from Question No. 110 of the Judges' Questionnaire.
[524] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by female judge).
[525] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).
[526] *Id*.
[527] *Id*. (written comment by female attorney).
[528] *Id*.
[529] 2000 Survey, Question No. 125 of the Attorneys' Questionnaire (written comment by male attorney).

- Known gender bias against females of a male applicant was disregarded and he was appointed a judge[531]

- Reference to a female applicant as a little young lady and inquiring of her age…by an interviewer for a Bar Association Committee[532]

- Woman applicant whom I believe was found not qualified because of fear that if she was on the list she may be appointed[533]

IV. Conclusions

Over the past twelve years, the numbers of women serving as members of judicial nominating commissions has increased from thirty-two percent (32%) to thirty-eight percent (38%). During this time the number of women serving on the bench has increased from nine percent (9%) to twenty-three percent (23%). This is in large measure a result of the intervention by the Governor in considering "the need for greater diversity of experience, gender and race."

Yet with all the change and focus, women still do not serve on the bench in numbers proportional to their representation as attorneys much less the general populace. Furthermore, in twelve (12) counties in the State, women have yet serve on either the circuit or District Court benches.

As the Governor has taken a stand to consider the need for greater diversity of gender, a light has been shone on the issue. With the issuance of an Executive Order that judicial nominating commissions "shall be sensitive to gender and diversity issues," that light has become a beacon. When emphasis is placed on any issue of great importance, it is to be expected that people shall become more aware of and sensitized to, the problem.

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[530] 2000 Survey, Question No. 110 of the Judges' Questionnaire (written comment by female judge).
[531] *Id*.
[532] *Id*.
[533] *Id*. (written comment by male judge).

Further, in an attempt to right a past wrong, changes have been made that may be perceived as "reverse" bias. With change, many feel threatened. Rightly or wrongly, when change is imposed, those invested in the status quo perceive they may lose. It is certainly true that to the extent gender or racial bias or inequality exists, it will be perceived much more readily by those who are the victim of it than by others.

V. Recommendations

- Continue efforts to educate members of the bar, the bench, and the community in the value of a diverse judiciary, with particular emphasis on the differing perspectives a more diverse bench will bring to all issues before them, resulting in fairer and more effective judicial decisions.

- Stress excellence as a priority in the judicial selection process to dispel the inaccurate but seemingly widespread perception by respondents that the women appointed have been less qualified than their male counterparts.

- Continue training of Judicial Nominating Commission Members in the importance of using appropriate criteria in the selection of judicial candidates

Women in the Courtroom: Treatment of Female Parties, Witnesses, Jurors, and Attorneys

I. Summary of the *1989 Gender Bias in the Courts* Report

The Joint Committee's report was based largely on the results of a questionnaire survey of judges, attorneys, and court employees, supplemented by information presented at hearings conducted by the Joint Committee. Specifically, the Joint Committee found:

- Gender bias affects the outcome of cases where stereotyped expectations about proper conduct for men and women are applied to particular cases.
- Female parties can be disadvantaged by judges and masters who give their testimony less credibility solely because they are women.
- Female parties and witnesses sometimes are subjected by judges, masters, and court personnel to disrespectful and demeaning forms of address and comments about their sex and personal appearance.
- Female parties can be disadvantaged by the absence of accommodations for the presence of children in court.
- Selection of the foreperson of a jury can be affected by gender bias.
- Female attorneys sometimes are subjected to different and discriminatory treatment in court by judges, masters, court personnel, and male attorneys.
- Female attorneys sometimes are subjected by judges, masters, court personnel, and male attorneys to disrespectful and demeaning forms of address and comments about their sex and personal appearance.
- Female attorneys sometimes are subjected to verbal and physical sexual advances by judges.
- Judicial intervention can assist a female attorney who is being treated inappropriately and disrespectfully by a male attorney.[534]

[534] 1989 Report, at 127.

II. The Legal Community's Response to the Recommendations

Significant efforts at education regarding the status of women in the courtroom have been undertaken since the 1989 Report by the State and local bar associations. Moreover, while there have been no significant changes in legislation or reported cases in this area, there has been widespread media coverage of incidents of alleged gender bias by judges occurring in the courtroom.

III. A Comparison of Survey Results 1989:2000

The Survey questions can be roughly grouped into two categories: (1) actual disparate treatment of women, and (2) environmental gender inequality. In the first category are questions dealing with unwanted verbal or physical sexual advances, along with forms of disparate treatment, such as in the appointment of counsel, the weight given to arguments of counsel, whether more proof is required of female attorneys than of male attorneys, disparity in sentencing based on gender, whether the outcome of the litigation process was affected by the gender of a party or counsel, the judicial selection process, and whether intervention has occurred when gender bias is evident.

The "environmental" questions deal with such things as the manner of addressing female attorneys, litigants, and witnesses, comments regarding the personal appearance of women, sexist remarks and jokes, the perceived prevalence of gender bias generally in the court system, and types of behavior that judges find either offensive or preferential on the part of men and women.

Overall, four general findings emanate from the 2000 Survey:

(1) Attorneys perceive more of a problem in most areas than do judges;

(2) Inappropriate behavior is perceived to be more prevalent on the part of attorneys than on the part of judges;

(3) Female attorneys and judges perceive more of a problem than do male attorneys and judges; and

(4) A greater percentage of male attorneys and judges perceive a problem than was the case in the 1989 Report.

A. Actual Disparate Treatment of Women

1. Overtly Unlawful Conduct

The most dramatic kind of disparate treatment is overtly unlawful conduct, such as direct sexual harassment. In both the 1989 Report and 2000 Survey, the Committees sought to determine whether female attorneys, litigants and court personnel were subjected to verbal or physical sexual advances by judges, attorneys and/or court personnel.[535] The perception was that this occurred infrequently.[536]

The 1989 Report found that female attorneys were "sometimes" subjected to verbal and physical sexual advances by judges, and even more frequently by other attorneys.[537] In 1989, when asked [w]*omen attorneys are subjected to verbal or physical sexual advances*,[538] no judges responded "often" or "always;" two percent (2%) of female and two percent (2%) of male attorneys however, felt it occurred "always" or "often," *by judges*, *attorneys* or *court*

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[535] *See* 1989 Report, Questions No. 7, 8 of the Lawyers' Questionnaire, Judges' Questionnaire and Court Employees' Questionnaire; *See also* 2000 Survey, Questions No. 47-55 of the Attorneys' Questionnaire, Questions No. 22-30 of the Judges' and Court Employees' Questionnaire (in the 2000 Survey, questions inquiring into sexual advances where actually comprised of three questions, whether such advances were made *by judges, by counsel,* or *by court personnel*).

[536] *See* data from the 1989 Report, Questions No. 7, 8 of the Lawyers', Judges' and Court Employees' Questionnaire; *See also* data from the 2000 Survey, Questions No. 47-55 of the Attorneys' Questionnaire, and Questions No. 22-30 of the Judges' Questionnaire and Court Employees' Questionnaire

[537] *See* data from the 1989 Report Questions No. 7, 8 of the Lawyers' Questionnaire and Judges' Questionnaire, and Question No. 7 of the Court Employees' Questionnaire.

[538] 1989 Report, Question No. 8 of the Lawyers' Questionnaire and Judges' Questionnaire.

personnel.[539] In 2000, once again no judges respond "always" or "often."[540] Attorneys report a one percent (1%) occurrence *by judges* "always" or "often," four percent (4%) say "always" or "often" *by counsel* and one percent (1%) again "always" or "often" *by court personnel*.[541]

When broken down by gender, female attorneys report occurrences "always" or "often" one percent (1%) of the time *by judges*, seven percent (7%) *by counsel* and two percent (2%) *by court personnel*.[542] On the other hand, male attorneys feel that such advances are not at all present "always" or "often" *by judges*, occur less than one percent of the time *by counsel*, and also do not exist *by court personnel*.[543] Male court employees believe such advances "always" or "often" occur *by judges* two percent (2%) of the time, three percent (3%) *by counsel*, and two percent (2%) *by court personnel*.[544] Here, too, a significant discrepancy in awareness exists between males and females. For instance, in 2000, twenty-six percent (26%) of the responding female attorneys state that verbal or physical sexual advances by other attorneys occur "sometimes."[545] Only six percent (6%) of male attorneys agree.[546] Yet female judges also report incidents "sometimes," eleven percent (11%) of the time *by judges*, and twenty percent (20%) *by counsel*.[547]

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[539] *See* 1989 Report, at 125; *See also* data from the 1989 Report, Question No. 8 of the Lawyers' Questionnaire.
[540] *See* data from the 2000 Survey, Questions No. 25-27 of the Judges' Questionnaire.
[541] *See* data from the 2000 Survey, Questions No. 50-52 of the Attorneys' Questionnaire.
[542] *See id*.
[543] *See id*.
[544] *See* data from the 2000 Survey, Question No. 25-27 of the Court Employees' Questionnaire.
[545] *See* data from the 2000 Survey, Questions No. 50-52 of the Attorneys' Questionnaire.
[546] *See id*.
[547] *See* data from the 2000 Survey, Questions No. 25-27 of the Judges' Questionnaire.

The Survey also asks whether [f]*emale litigants are subjected to verbal or physical sexual advances*.[548] There was little noted incidence of this in the 1989 Report, and even less in 2000.[549] In 1989, three percent (3%) of female attorneys, one percent (1%) of male attorneys, one percent (1%) of judges and one percent (1%) of court employees felt that verbal or sexual advances "always" or "often" occurred *by counsel*, *by judges* and *by court personnel*.[550]

In 2000, male attorneys report "always" or "often" one percent (1%) of the time *by judges*, two percent (2%) *by counsel* and one percent (1%) *by court personnel*.[551] Female attorneys report verbal or sexual advances occurring "always" or "often" one percent (1%) of the time *by judges*, four percent (4%) *by counsel* and three percent (3%) *by court personnel*.[552] As for male and female court employees, they generally are in agreement. Males report "always" or "often," these advances occurring two percent (2%) of the time *by judges*, two percent (2%) *by counsel* and one percent (1%) *by court personnel*.[553] Females report "always" or "often" two percent (2%) of the time *by judges*, two percent (2%) *by counsel* and three percent (3%) *by court personnel*.[554]

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[548] 2000 Survey, Questions No. 47-49 of the Attorneys' Questionnaire, and Questions No. 22-24 of the Judges' Questionnaire and of the Court Employees' Questionnaire.
[549] *Compare* 1989 Report, Question No. 7 of the Lawyers' Questionnaire, Judges' Questionnaire and Court Employees' Questionnaire, *with* the 2000 Survey, Questions No. 47-49 of the Attorneys' Questionnaire, and Questions No. 22-24 of the Judges' Questionnaire and of the Court Employees' Questionnaire.
[550] *See* data from the 1989 Report, Question No. 7 of the Lawyers' Questionnaire, Judges' Questionnaire and Court Employees' Questionnaire.
[551] *See* data from the 2000 Survey, Questions No. 47-49 of the Attorneys' Questionnaire.
[552] *See id*.
[553] *See* data from the 2000 Survey, Questions No. 22-24 of the Court Employees' Questionnaire.
[554] *See id*.

By contrast, fifteen percent (15%) of female judges feel incidents occur "sometimes" *by counsel*.[555] Further, sixteen percent (16%) of female attorneys also note incidents "sometimes," *by counsel* and eleven percent (11%) of the time it is "sometimes" *by court personnel*.[556]

In response to the statement, [f]*emale court employees are subjected to verbal or physical sexual advances*,[557] both male and female judges report it never occurring "always" or "often" *by judges*, *by counsel* or *by court personnel*.[558] However, female judges report these advances being "sometimes" made on court employees twelve percent (12%) of the time *by judges*, seventeen percent (17%) of the time the advances are made *by counsel* and thirteen percent (13%) of the time it is *by court personnel*.[559] Male judges on the other hand, feel such advances do not occur "sometimes" *by judges*, occur five percent (5%) of the time *by counsel* and six percent (6%) *by court personnel*.[560]

Male and female attorneys do not perceive an abundance of incidents "always" or "often" occurring *by judges*, *by counsel* or *by court personnel*.[561] However, female believe "sometimes" these incidents occur far more often than do male attorneys.[562] Females report incidents occurring "sometimes," twelve percent (12%) *by judges*, twenty four percent (24%) *by counsel* and seventeen percent (17%) *by court personnel*.[563] Male attorneys clearly do not perceive the

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[555] *See* data from the 2000 Survey, Question No. 22-24 of the Judges' Questionnaire.
[556] *See* data from the 2000 Survey, Questions No. 47-49 of the Attorneys' Questionnaire.
[557] 2000 Survey, Questions No. 53-55 of the Attorneys' Questionnaire, and Questions No. 28-30 of the Judges' Questionnaire and of the Court Employees' Questionnaire.
[558] *See* data from the 2000 Survey, Questions No. 28-30 of the Judges' Questionnaire.
[559] *See id*.
[560] *See id*.
[561] *See* data from the 2000 Survey, Questions No. 53-55 of the Attorneys' Questionnaire.
[562] *Compare* female data from the 2000 Survey, Questions No. 53-55 of the Attorneys' Questionnaire, *with* male data from the 2000 Survey, Questions No. 53-55 of the Attorneys' Questionnaire.
[563] *See* data from the 2000 Survey, Questions No. 53-55 of the Attorneys' Questionnaire.

same problem, the highest percentage reporting that the "sometimes" advances occur only five percent (5%) of the time *by counsel*.[564]

Male court employees feel such actions "always" or "often" happen *by judges* and *by counsel* four percent (4%) of the time, and *by court personnel* three percent (3%) of the time.[565] Male court employees also feel advances "sometimes" occur four percent (4%) of the time *by judges*, eight percent (8%) *by counsel* and nine percent (9%) *by court personnel*.[566] Female court employees believe advances happen "always" or "often" two percent (2%) of the time *by judges*, two percent (2%) *by counsel* and five percent (5%) *by court personnel*.[567] Further, female court employees perceive problems "sometimes" seven percent (7%) of the time *by judges*, thirteen percent (13*%) by counsel* and seventeen percent (17%) *by court personnel*.[568]

In sum, female litigants, attorneys and court employees are subjected to verbal or physical sexual advances at least "sometimes" *by judges, by counsel* and *by court personnel*.

2. Appointment of Counsel

In studying questions concerning discriminatory conduct, the 1989 Report noted a significant gender disparity in the appointment of attorneys to fee-generating cases. In 1989, in response to the statement [w]*omen attorneys are appointed to important fee generating cases on an equal basis with male attorneys*,[569] sixty-one percent (61%) of female attorneys felt this happened "rarely" or "never" as compared to twenty-two percent (22%) of male attorneys[570] and

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[564] *See id*.
[565] *See* data from the 2000 Survey, Questions No. 28-30 of the Court Employees' Questionnaire.
[566] *See id*.
[567] *See id*.
[568] *See id*.
[569] 1989 Report, Question No. 9 of the Lawyers' Questionnaire and Judges' Questionnaire.
[570] *See* data from the 1989 Report, Question No. 9 of the Lawyers' Questionnaire.

fifteen percent (15%) of judges.[571] In 2000, no male judges and nine percent (9%) of female judges believe this occurs "rarely" or "never."[572] Among male attorneys, two percent (2%) respond "rarely" or "never" compared to thirty-eight percent (38%) of female attorneys.[573] Once again, and although some improvement has been made since 1989, it is clear that female judges and attorneys perceive that female attorneys are not being appointed equally.

In response to the statement [m]*ale and female attorneys are appointed to non-fee generating cases on an equal basis*,[574] three percent (3%) of male judges and twenty-three percent (23%) of female judges respond "rarely" or "never."[575] In comparison, five percent (5%) of male attorneys and thirty-one percent (31%) of female attorneys report "rarely" or "never."[576] This question was not asked in 1989 and therefore comparative data is unavailable. However, it is important to note the percentage of female judges and attorneys perceiving that male and female attorneys are not being appointed on an equal basis.

When asked [m]*ale attorneys are appointed counsel in family law cases on an equal basis with female attorneys*,[577] five percent (5%) of male judges and eight percent (8%) of female judges respond "rarely" or "never."[578] This compares to twenty-one percent (21%) of male attorneys and thirty-six percent (36%) of female attorneys who also respond "rarely" or "never."[579] Once again, this question was not asked in 1989 and therefore comparative data is

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[571] *See* data from the 1989 Report, Question No. 9 of the Judges' Questionnaire.
[572] *See* data from the 2000 Survey, Question No. 31 of the Judges' Questionnaire.
[573] *See* data from the 2000 Survey, Question No. 56 of the Attorneys' Questionnaire.
[574] 2000 Survey, Question No. 58 of the Attorneys' Questionnaire, and Question No. 33 of the Judges' Questionnaire.
[575] *See* data from the 2000 Survey, Question No. 33 of the Judges' Questionnaire.
[576] *See* data from the 2000 Survey, Question No. 58 of the Attorneys' Questionnaire.
[577] 2000 Survey, Question No. 59 of the Attorneys' Questionnaire, and Question No. 34 of the Judges' Questionnaire.
[578] *See* data from the 2000 Survey, Question No. 34 of the Judges' Questionnaire.
[579] *See* data from the 2000 Survey, Question No. 59 of the Attorneys' Questionnaire.

unavailable. Yet, even in this instance a large difference of perception between judges and attorneys is visible and informative.

In response to the statement [f]*emale attorneys are appointed as personal representatives in estate matters on an equal basis with male attorneys*,[580] no males judges but thirty-six percent (36%) of female judges respond "rarely" or "never."[581] Ten percent (10%) of male attorneys and forty-six percent (46%) of female attorneys likewise agree.[582] Once again, this question was not asked in 1989 and therefore, comparative data is unavailable, however a stark contrast between female judges and attorneys, and male judges and attorneys clearly exists.

Response to the statement [m]*ale attorneys are appointed counsel in guardianship cases on an equal basis with female attorneys*,[583] one percent (1%) of male judges compared to nineteen percent (19%) of female judges respond "rarely" or "never."[584] Fourteen percent (14%) of male attorneys versus thirty percent (30%) of female attorneys also respond "rarely" or "never."[585] This question was not asked in 1989 thus comparative data does not exist, yet again the 2000 Survey alone can show that male judges stand alone on this issue.

When asked [f]*emale attorneys are appointed to criminal cases on an equal basis with male attorneys*,[586] none of the male judges, but twenty-two percent (22%) of female judges respond "rarely" or "never."[587] Among attorneys, males respond "rarely" or "never" eleven

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[580] 2000 Survey, Question No. 61 of the Attorneys' Questionnaire, and Question No. 36 of the Judges' Questionnaire.
[581] *See* data from the 2000 Survey, Question No. 36 of the Judges' Questionnaire.
[582] *See* data from the 2000 Survey, Question No. 61 of the Attorneys' Questionnaire.
[583] 2000 Survey, Question No. 62 of the Attorneys' Questionnaire, and Question No. 37 of the Judges' Questionnaire.
[584] *See* data from the 2000 Survey, Question No. 37 of the Judges' Questionnaire.
[585] *See* data from the 2000 Survey, Question No. 62 of the Attorneys' Questionnaire.
[586] 2000 Survey, Question No. 63 of the Attorneys' Questionnaire, and Question No. 38 of the Judges' Questionnaire.
[587] *See* data from the 2000 Survey, Question No. 38 of the Judges' Questionnaire.

percent (11%) of the time as compared to thirty-five percent (35%) of females.[588] Again, this question was not asked in 1989 so comparative data is unavailable, yet in the year 2000, it is apparent that an important difference exists in perception between male and female, regardless whether that individual is judge or attorney, when considering all appointments of counsel.

3. Weight Given to Arguments of Counsel

In response to the statement [j]*udges appear to give less weight to female attorneys' arguments than to those of male attorneys*,[589] neither male nor female judges believe it to happen "always" or "often," and only eight percent (8%) of female judges say "sometimes."[590] Among attorneys, one percent (1%) of male attorneys versus sixteen percent (16%) of female attorneys respond "always" or "often," and seven percent (7%) of male attorneys and thirty-nine percent (39%) of female attorneys respond "sometimes."[591] In 1989, only two percent (2%) of judges said "sometimes," fifteen percent (15%) of female attorneys said "always" or "often" and another forty-two percent (42%) of female attorneys said "sometimes."[592] Male attorneys responded "always" or "often" one percent (1%) of the time and eleven percent (11%) felt "sometimes."[593]

In both 1989 and 2000, a large percentage of female attorneys responded that judges appear to give less weight to arguments made by female attorneys than by male attorneys,

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[588] *See* data from the 2000 Survey, Question No. 63 of the Attorneys' Questionnaire.
[589] 2000 Survey, Question No. 64 of the Attorneys' Questionnaire, and Question No. 39 of the Judges' Questionnaire and the Court Employees' Questionnaire.
[590] *See* data from the 2000 Survey, Question No. 39 of the Judges' Questionnaire.
[591] *See* data from the 2000 Survey, Question No. 64 of the Attorneys' Questionnaire.
[592] *See* 1989 Report, at 122; *See also* data from the 1989 Report, Question No. 10 of the Lawyers' Questionnaire and Judges' Questionnaire, and Question No. 9 of the Court Employees' Questionnaire.
[593] *See id*.

although only a small number of male attorneys agreed.[594] However, data indicates that female judges do not share the same view as female attorneys in this area. As for both male and female judges, overwhelmingly, they responded that judges "rarely" or "never" give less weight to arguments made by female attorneys.

When asked if [j]*udges appear to give less weight to the testimony of female experts than to that of male experts*,[595] in 1989, sixteen percent (16%) of female attorneys, three percent (3%) of male attorneys, none of the judges, and two percent (2%) of court employees felt this happened "always" or "often."[596] Again in 1989, forty percent (40%) of female attorneys, nine percent (9%) of male attorneys, one percent (1%) of judges, and six percent (6%) of court employees responded "sometimes."[597] In 2000, fourteen percent (14%) of female attorneys,[598] four percent (4%) of male court employees and three percent (3%) of female court employees feel this "always" or "often" is the case but none of the judges (male or female) and none of the male attorneys share this view.[599] Responding "sometimes," are none of the male judges, six percent (6%) of female judges,[600] seven percent (7%) of male attorneys, thirty-nine percent

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[594] *Compare* data from the 1989 Report, Question No. 10 of the Lawyers' Questionnaire and Judges' Questionnaire, and Question No. 9 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Question No. 64 of the Attorneys' Questionnaire, and Question No. 39 of the Judges' Questionnaire and the Court Employees' Questionnaire.
[595] 1989 Report, at 114; *See also* 1989 Report, Question No. 11 of the Judges' Questionnaire and Lawyers' Questionnaire, and Question No. 10 of the Court Employees' Questionnaire.
[596] *See* 1989 Report, at 114-115; *See also* data from the 1989 Report, Question No. 11 of the Judges' Questionnaire and Lawyers' Questionnaire, and Question No. 10 of the Court Employees' Questionnaire.
[597] *See* 1989 Report, at 114-115; *See also* data from the 1989 Report, Question No. 11 of the Judges' Questionnaire and Lawyers' Questionnaire, and Question No. 10 of the Court Employees' Questionnaire.
[598] *See* data from the 2000 Survey, Question No. 65 of the Attorneys' Questionnaire.
[599] *See* data from the 2000 Survey, Question No. 40 of the Court Employees' Questionnaire.
[600] *See* data from the 2000 Survey, Question No. 40 of the Judges' Questionnaire.

(39%) of female attorneys,[601] seven percent (7%) of male court employees and thirteen percent (13%) of female court employees.[602]

4. Whether More Proof is Required by Female Litigants

To the statement [j]*udges appear to require more evidence for a female litigant to prove her case than for a male litigant*,[603] in 1989, none of the judges,[604] fourteen percent (14%) of female attorneys, two percent (2%) of male attorneys[605] and one percent (1%) of court employees believed this to happen "always" or "often."[606] Answering "sometimes," were none of the judges,[607] thirty percent (30%) of female attorneys, one percent (1%) of male attorneys,[608] and six percent (6%) of court employees.[609] In 2000, no judges feel this either occurs "always," "often" or "sometimes."[610] Among attorneys, no males and thirteen percent (13%) of females believe it "always" or "often" happens; whereas three percent (3%) of male and thirty-one percent (31%) of female attorneys respond "sometimes."[611] For male court employees, four percent (4%) respond "always" or "often" and seven percent (7%) respond "sometimes."[612] Among female court employees, four percent (4%) again respond "always" or "often" and thirteen percent (13%) reply "sometimes."[613]

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[601] *See* data from the 2000 Survey, Question No. 65 of the Attorneys' Questionnaire.
[602] *See* data from the 2000 Survey, Question No. 40 of the Court Employees' Questionnaire.
[603] 1989 Report, Question No. 12 of the Judges' Questionnaire and Lawyers' Questionnaire, and Question No. 11 of the Court Employees' Questionnaire.
[604] *See* data from the 1989 Report, Question No. 12 of the Judges' Questionnaire.
[605] *See* data from the 1989 Report, Question No. 12 of the Lawyers' Questionnaire.
[606] *See* data from the 1989 Report, Question No. 11 of the Court Employees' Questionnaire.
[607] *See* data from the 1989 Report, Question No. 12 of the Judges' Questionnaire.
[608] *See* data from the 1989 Report, Question No. 12 of the Lawyers' Questionnaire.
[609] *See* data from the 1989 Report, Question No. 11 of the Court Employees' Questionnaire.
[610] *See* data from the 2000 Survey, Question No. 41 of the Judges' Questionnaire.
[611] *See* data from the 2000 Survey, Question No. 66 of the Attorneys' Questionnaire.
[612] *See* data from the 2000 Survey, Question No. 41 of the Court Employees' Questionnaire.
[613] *See id*.

Both the 1989 Report and the 2000 Survey offer similar results and disparity in percentages in regard to whether judges appear to require more evidence of female litigants than of male litigants, and whether judges appear to give less weight to the testimony of female experts than to that of male experts.[614] Significantly, more female attorneys than male attorneys report that this occurs "always," "often," or "sometimes." The view of male attorneys is closer to that of female and male judges, who responded that such conduct "rarely" or "never" occurs.

5. Sentencing

Another area considered was whether there was a disparity in the severity of sentencing between genders. In the 2000 Survey, twenty-five percent (25%) of male judges feel that women were given less severe sentences than men, whereas thirty-seven percent (37%) of female judges believed that to be the case.[615] The difference in perception was even more pronounced among attorneys; sixty-seven percent (67%) of male attorneys and fifty-three percent (53%) of female attorneys believing women are given less severe sentences than men.[616]

6. Gender Bias Affecting Litigation Process or Outcome

More female attorneys today believe that the gender of a party affects the outcome of cases than was true in the 1989 Report. However, fewer female judges hold that view. More than half of the cases in which the gender of a party was perceived to affect the outcome of the case were family law matters, with the second largest category being criminal sentencing. More female and male attorneys reported situations in which it appeared that the litigation process or

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[614] *Compare* data from the 1989 Report, Questions No. 11-12 of the Judges' Questionnaire and Lawyers' Questionnaire, and Questions No. 10-11 of the Court Employees' Questionnaire, *with* data from the 2000 Survey, Questions No. 65-66 of the Attorneys' Questionnaire and Questions No. 40-41 of the Judges' and Court Employees' Questionnaire.
[615] *See* data from the 2000 Survey, Question No. 80 of the Judges' Questionnaire.
[616] *See* data from the 2000 Survey, Question No. 105 of the Attorneys' Questionnaire.

outcome was affected by the gender of counsel in 2000 than in 1989.[617] Again, however, judges, both male and female, perceive an improvement in this area.

In 2000, twenty-eight percent (28%) of male attorneys and thirty-two percent (32%) of female attorneys indicate [i]*n the past 5 years,* [they] *have personal knowledge of a case(s) in which it appeared the litigation process or outcome was affected (either negatively or positively) by the gender of one of the parties*.[618] Among male judges, six percent (6%) answer "yes" and twenty-eight percent (28%) of female judges answer "yes."[619]

In 1989, twenty-one (21%) percent of male attorneys and thirty-one percent (31%) of female attorneys responded "yes."[620] Among judges, in 1989, eleven percent (11%) of males and sixty-seven percent (67%) of females answered "yes."[621]

When asked in 2000 if [i]*n the past 5 years, has there been a situation in which it appeared the litigation process or outcome of a case was affected by the gender of counsel*,[622] twelve percent (12%) of male attorneys and twenty-five percent (25%) of female attorneys respond "yes,"[623] while two percent (2%) of male judges and eleven percent (11%) of female judges respond "yes."[624] In 1989, four percent (4%) of male and thirty percent (30%) of female

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[617] *Compare* data from the 1989 Report, Question V of the Judges' Questionnaire and Question IV of the Lawyers' Questionnaire, *with* data from the 2000 Survey, Question No. 109 of the Attorneys' Questionnaire and Question No. 94 of the Judges' Questionnaire.
[618] 2000 Survey, Question No. 109 of the Attorneys' Questionnaire, and Question No. 94 of the Judges' Questionnaire.
[619] *See* data from the 2000 Survey, Question No. 94 of the Judges' Questionnaire.
[620] *See* 1989 Report, at 107; *See also* data from the 1989 Report, Question IV of the Lawyers' Questionnaire.
[621] *See* 1989 Report, at 107; *See also* data from the 1989 Report, Question V of the Judges' Questionnaire.
[622] 2000 Survey, Question No. 113 of the Attorneys' Questionnaire, and Question No. 98 of the Judges' Questionnaire.
[623] *See* data from the 2000 Survey, Question No. 113 of the Attorneys' Questionnaire.
[624] *See* data from the 2000 Survey, Question No. 98 of the Judges' Questionnaire.

attorneys responded "yes."[625] In comparison, eight percent (8%) of male judges versus nineteen percent (19%) of female judges responded "yes" in 1989.[626]

7. Intervention

Overall, very few attorneys or court employees report that they have intervened because they observed gender bias in the past five (5) years. Judges, however, have increasingly become more active over the past ten (10) years in intervening when they have observed gender bias. In 2000, among judges, twenty-three percent (23%) of men and thirty-four percent (34%) of women report intervening in the court or office because they observed gender bias in the past 5 years.[627] Among attorneys, five percent (5%) of male attorneys and nine percent (9%) of female attorneys have intervened.[628] Among court employees, three percent (3%) of men and two percent (2%) of women report having intervened.[629]

B. Environmental Gender Inequality

In 1989, the Joint Committee noted that the expectations concerning fair and impartial treatment of female parties and witnesses were not met.[630]

A particular concern was the manner in which female attorneys, litigants and witnesses are addressed in court. Two questions were asked on this issue, whether (1) [w]*omen attorneys are addressed by first names or terms of endearment when male attorneys are addressed by surnames or titles*,[631] and (2) [w]*omen litigants or witnesses are addresses by first names or*

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[625] *See* data from the 1989 Survey, Question V of the Lawyers' Questionnaire.
[626] *See* data from the 1989 Report, Question VI of the Judges' Questionnaire.
[627] *See* data from the 2000 Survey, Question No. 112 of the Judges' Questionnaire.
[628] *See* data from the 2000 Survey, Question No. 127 of the Attorneys' Questionnaire.
[629] *See* data from the 2000 Survey, Question No. 125 of the Court Employees' Questionnaire.
[630] 1989 Report, at 110-11.
[631] 1989 Report, Question No. 2 of the Judges' Questionnaire and Lawyers' Questionnaire.

terms of endearment when male litigants or witnesses are addressed by surnames or title.[632] Female attorneys feel demeaned when they are addressed informally while others are addressed in a formal manner. Such conduct toward a female litigant or witness, results in her feeling less important.[633] This is another area in which female attorneys and judges continue to see a greater problem than do their male counterparts. With regard to female attorneys being addressed by judges, the 1989 Report concluded that forty-five percent (45%) of female attorneys noted this as opposed to fifteen percent (15%) of male attorneys and none of the judges.[634]

To the 2000 statement, [*f*]*emale attorneys are asked if they are attorneys when male attorneys are not asked*,[635] none of the judges, male or female,[636] one percent (1%) of male attorneys, fourteen percent (14%) of female attorneys,[637] three percent (3%) of male court employees and five percent (5%) of female court employees believe this occurs "always" or "often" *by judges*.[638] *By counsel*, none of male and four percent (4%) of female judges,[639] three percent (3%) of male attorneys and twenty-eight percent (28%) of female attorneys,[640] four percent (4%) of male court employees and six percent (6%) of female court employees answer "always" or "often."[641] *By court personnel*, neither male nor female judges,[642] five percent (5%)

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[632] 1989 Report, Question No. 3 of the Judges' Questionnaire, Lawyer's Questionnaire, and Court Employees'.
[633] 1989 Report, at 113.
[634] *See* data from the 1989 Report, Question No. 3 of the Lawyers' Questionnaire.
[635] 2000 Survey, Questions No. 26-28 of the Attorneys' Questionnaire, and Questions No. 1-3 of the Judges' Questionnaire and Court Employees' Questionnaire. The following sets of questions from the 2000 Survey are actually comprised of three questions, whether such advances were made (1) *by judges,* (2) *by counsel,* or (3) *by court personnel*.
[636] *See* data from the 2000 Survey, Question No. 1 of the Judges' Questionnaire.
[637] *See* data from the 2000 Survey, Question No. 26 of the Attorneys' Questionnaire.
[638] *See* data from the 2000 Survey, Question No. 1 of the Court Employees' Questionnaire.
[639] *See* data from the 2000 Survey, Question No. 2 of the Judges' Questionnaire.
[640] *See* data from the 2000 Survey, Question No. 27 of the Attorneys' Questionnaire.
[641] *See* data from the 2000 Survey, Question No. 2 of the Court Employees' Questionnaire.
[642] *See* data from the 2000 Survey, Question No. 3 of the Judges' Questionnaire.

of male attorneys and thirty-three percent (33%) of female attorneys,[643] and two percent (2%) of male and eight percent (8%) of female court employees answer "always" or "often."[644]

Although the perception of this conduct on the part of judges has sharply declined, improper form of address by counsel continues to be a problem. To the question [f]*emale attorneys are addressed by first names or terms of endearment when male attorneys are addressed by surnames or titles*; two percent (2%) of male and thirteen percent (13%) of female judges agree this "sometimes" occurs *by judges*, eight percent (8%) of male and twenty percent (20%) of female attorneys respond "sometimes" and an additional twelve percent (12%) of female attorneys say *by judges* "always" or "often." Male court employees agree seven percent (7%) "sometimes" and eleven percent (11%) of female court employees agree "sometimes" *by judges*, plus an additional five percent (5%) of female court employees say "always" or "often" *by judges*.

By counsel – ten percent (10%) of male and thirty-four percent (34%) of female judges respond "sometimes;" fourteen percent (14%) of male attorneys and thirty-eight percent (38%) of female attorneys respond "sometimes;" fifteen percent (15%) of male court employees and nineteen percent (19%) of female court employees agree "sometimes" *by counsel*.

By court personnel – seven percent (7%) of male judges, twenty-one percent (21%) of female judges, nine percent (9%) of male attorneys and twenty-seven percent (27%) of female attorneys, twelve percent (12%) of male court employees and fifteen percent (15%) of female court employees respond that female attorneys are addressed by first names or terms of endearment "sometimes" *by court personnel*.

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[643] *See* data from the 2000 Survey, Question No. 28 of the Attorneys' Questionnaire.
[644] *See* data from the 2000 Survey, Question No. 3 of the Court Employees' Questionnaire.

A third area of concern in both surveys pertained to comments made about personal appearance. Questions read, [c]*omments are made about the personal appearance of female attorneys when no such comments are made about male attorneys*[645] and [c]*omments are made about the personal appearance of female litigants and witnesses when no such comments are made about male litigants or witnesses*.[646] The Joint Committee noted that when the personal appearance has the court's attention, whether by comments from the judge or counsel, "the impartiality of the court must come into question."[647] This results in the female litigant or witness thinking that what she has to say has little meaning compared to her appearance or behavior. The Joint Committee noted that judges who comment on appearance, sexuality or maternity promote an improper message, that female attorneys are "fundamentally different" from male attorneys.

In 1989, almost half of the women attorneys surveyed stated that gender-related comments were at least "sometimes" directed at female attorneys when no such comments were made about male attorneys;[648] only fifteen percent (15%) of male attorneys noted that problem.[649] Although there has been some decrease in the perception of this conduct on the part of both judges and attorneys, a significant percentage of female judges and attorneys still see it as a problem.

Although no male judges respond "always" or "often" to any of the statements, *i.e.* [c]*omments are made about the personal appearance of female attorneys when no such*

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[645] 2000 Survey, Questions No. 35-37 of the Attorneys' Questionnaire, Questions No. 10-12 of the Judges' Questionnaire and Court Employees' Questionnaire.
[646] 2000 Survey, Questions No. 38-40 of the Attorneys' Questionnaire, and Questions No. 13-15 of the Judges' Questionnaire and Court Employees' Questionnaire.
[647] 1989 Report, at 113.
[648] *See* 1989 Report, Question No. 4 of the Lawyers' Questionnaire.
[649] *See* data from the 1989 Report, Question No. 4 of the Lawyers' Questionnaire.

comments are made about male attorneys, six percent (6%) say this "sometimes" occurs *by judges*,[650] nine percent (9%) say "sometimes" *by counsel*,[651] and eight percent (8%) say "sometimes" *by court personnel*.[652] By contrast, female judges say "sometimes" *by judges* sixteen percent (16%),[653] *by counsel* thirty-three percent (33%),[654] and *by court personnel* twenty-four percent (24%).[655] In addition, female judges say this happens "always" or "often" *by judges* eight percent (8%) of the time,[656] *by counsel* ten percent (10%) of the time,[657] and *by court personnel* six percent (6%) of the time.[658] Male attorneys say "always" or "often" *by judges* three percent (3%),[659] *by counsel* eight percent (8%)[660] and *by court personnel* four percent (4%),[661] and an additional number agree that it happens at least "sometimes" *by judges* ten percent (10%) of the time,[662] *by counsel*, nineteen percent (19%)[663] and *by court personnel* ten percent (10%).[664] Female attorneys say "always" or "often," *by judges* fifteen percent (15%),[665] *by counsel* thirty-two percent (32%),[666] and *by court personnel*, twenty-two percent (22%).[667] Furthermore, female attorneys say comments regarding personal appearance of female

[650] *See* data from the 2000 Survey, Question No. 10 of the Judges' Questionnaire.
[651] *See* data from the 2000 Survey, Question No. 11 of the Judges' Questionnaire.
[652] *See* data from the 2000 Survey, Question No. 12 of the Judges' Questionnaire.
[653] *See* data from the 2000 Survey, Question No. 10 of the Judges' Questionnaire.
[654] *See* data from the 2000 Survey, Question No. 11 of the Judges' Questionnaire.
[655] *See* data from the 2000 Survey, Question No. 12 of the Judges' Questionnaire.
[656] *See* data from the 2000 Survey, Question No. 10 of the Judges' Questionnaire.
[657] *See* data from the 2000 Survey, Question No. 11 of the Judges' Questionnaire.
[658] *See* data from the 2000 Survey, Question No. 12 of the Judges' Questionnaire.
[659] *See* data from the 2000 Survey, Question No. 35 of the Attorneys' Questionnaire.
[660] *See* data from the 2000 Survey, Question No. 36 of the Attorneys' Questionnaire.
[661] *See* data from the 2000 Survey, Question No. 37 of the Attorneys' Questionnaire.
[662] *See* data from the 2000 Survey, Question No. 35 of the Attorneys' Questionnaire.
[663] *See* data from the 2000 Survey, Question No. 36 of the Attorneys' Questionnaire.
[664] *See* data from the 2000 Survey, Question No. 37 of the Attorneys' Questionnaire.
[665] *See* data from the 2000 Survey, Question No. 35 of the Attorneys' Questionnaire.
[666] *See* data from the 2000 Survey, Question No. 36 of the Attorneys' Questionnaire.
[667] *See* data from the 2000 Survey, Question No. 37 of the Attorneys' Questionnaire.

attorneys are "sometimes" made *by judges* thirty percent (30%) of the time,[668] *by counsel* thirty-three percent (33%) of the time,[669] and *by court personnel* twenty-two percent (22%) of the time.[670]

The response to the statement, [c]*omments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants or witnesses* are similar. No male judges perceive that this occurs "always" or "often" either *by judges*, *by counsel* or *by court personnel*.[671] Meanwhile they agree it happens "sometimes," *by judges* five percent (5%) of the time,[672] *by counsel* seven percent (7%) of the time,[673] and *by court personnel* nine percent (9%) of the time.[674] Female judges are of a different mind – saying "always" or "often," five percent (5%) *by judges*,[675] ten percent (10%) *by counsel*,[676] and thirteen percent (13%) *by court personnel*.[677] Additionally, female judges also feel that "sometimes" these comments are made; eighteen percent (18%) of the time *by judges*,[678] thirty-six percent (36%) of the time *by counsel*,[679] and nineteen percent (19%) *by court personnel*.[680]

The statement, [c]*omments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants or witnesses* are similar for attorneys. Male attorneys say it happens "always" or "often" *by judges* two percent (2%) of the

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[668] *See* data from the 2000 Survey, Question No. 35 of the Attorneys' Questionnaire.
[669] *See* data from the 2000 Survey, Question No. 36 of the Attorneys' Questionnaire.
[670] *See* data from the 2000 Survey, Question No. 37 of the Attorneys' Questionnaire.
[671] *See* data from the 2000 Survey, Question No. 13-15 of the Judges' Questionnaire.
[672] *See* data from the 2000 Survey, Question No. 13 of the Judges' Questionnaire.
[673] *See* data from the 2000 Survey, Question No. 14 of the Judges' Questionnaire.
[674] *See* data from the 2000 Survey, Question No. 15 of the Judges' Questionnaire.
[675] *See* data from the 2000 Survey, Question No. 13 of the Judges' Questionnaire.
[676] *See* data from the 2000 Survey, Question No. 14 of the Judges' Questionnaire.
[677] *See* data from the 2000 Survey, Question No. 15 of the Judges' Questionnaire.
[678] *See* data from the 2000 Survey, Question No. 13 of the Judges' Questionnaire.
[679] *See* data from the 2000 Survey, Question No. 14 of the Judges' Questionnaire.
[680] *See* data from the 2000 Survey, Question No. 15 of the Judges' Questionnaire.

time,[681] *by counsel* nine percent (9%) of the time,[682] and *by court personnel* four percent (4%) of the time.[683] Male attorneys further feel this "sometimes" occurs *by judges* six percent (6%) of the time,[684] *by counsel* twelve percent (12%) of the time,[685] and *by court personnel* ten percent (10%) of the time.[686] Female attorneys say it happens "always" or "often" *by judges* eleven percent (11%) of the time,[687] *by counsel* twenty-three percent (23%) of the time,[688] and *by court personnel* fifteen percent (15%) of the time.[689] They also find it happens "sometimes" *by judges* thirty percent (30%) of the time,[690] *by counsel* thirty-six percent (36%) of the time,[691] and *by court personnel* thirty percent (30%) of the time.[692] Male judges agree this occurs "sometimes" five percent (5%) *by judges*, seven percent (7%) *by counsel* and nine percent (9%) *by court personnel* while female judges respond "sometimes" this occurs eighteen percent (18%) *by judges*, thirty-six percent (36%) *by counsel* and nineteen percent (19%) *by court personnel*.

Clearly, although there has been an overall decline in the perception of this conduct, female attorneys and judges continue to recognize it as a problem more so than their male counterparts.

The same question was asked with regard to female litigants and witnesses, and although there has been an overall decline in the perception of this conduct, female attorneys and judges continue to recognize it as a problem more so than their male counterparts.

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[681] *See* data from the 2000 Survey, Question No. 38 of the Attorneys' Questionnaire.
[682] *See* data from the 2000 Survey, Question No. 39 of the Attorneys' Questionnaire.
[683] *See* data from the 2000 Survey, Question No. 40 of the Attorneys' Questionnaire.
[684] *See* data from the 2000 Survey, Question No. 38 of the Attorneys' Questionnaire.
[685] *See* data from the 2000 Survey, Question No. 39 of the Attorneys' Questionnaire.
[686] *See* data from the 2000 Survey, Question No. 40 of the Attorneys' Questionnaire.
[687] *See* data from the 2000 Survey, Question No. 38 of the Attorneys' Questionnaire.
[688] *See* data from the 2000 Survey, Question No. 39 of the Attorneys' Questionnaire.
[689] *See* data from the 2000 Survey, Question No. 40 of the Attorneys' Questionnaire.
[690] *See* data from the 2000 Survey, Question No. 38 of the Attorneys' Questionnaire.
[691] *See* data from the 2000 Survey, Question No. 39 of the Attorneys' Questionnaire.
[692] *See* data from the 2000 Survey, Question No. 40 of the Attorneys' Questionnaire.

As stated in 1989 report,

> Paying attention to the appearance of a female attorney may seem to the judge like gentlemanly and even complimentary behavior, but often it is perceived by the female attorney as a diversion that converts her from a professional to an object to admire or criticize. One reason for this perception is that the appearance of male lawyers is rarely noted by the judge or male counsel, so the appearance of female attorneys is singled out for attention.[693]

Female attorneys reported in 1989 that they felt like outsiders in a courtroom or in chambers when judges and male attorneys made sexist remarks or jokes in their presence. The 2000 Survey notes some improvement in this area, but it continues to be an area of concern. Here, too, the disparity in perception between men and women is significant. For instance, with respect to remarks made *by judges*, among responding female attorneys eight percent (8%) say they occur "always" or "often," and thirty-two percent (32%) respond that they occur "sometimes."[694] Among female judges, three percent (3%) say this happens "always" or "often" and eighteen percent (18%) say "sometimes."[695] But one percent (1%) of male attorneys say "always" or "often" and another nine percent (9%) say "sometimes,"[696] and six percent (6%) of male judges reported that such remarks were made at least "sometimes."[697]

In 1989, among female attorneys, twenty-six percent (26%) reported it to occur *by counsel* "always" or "often" and forty percent (40%) said "sometimes" *by counsel*.[698] Nine percent (9%) of female judges said "always" or "often" *by counsel* and forty seven percent (47%) said "sometimes."[699] Six percent (6%) of male attorneys responded "always" or "often"

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[693] 1989 Report, at 124.
[694] *See* data from the 2000 Survey, Question No. 41 of the Attorneys' Questionnaire.
[695] *See* data from the 2000 Survey, Question No. 16 of the Judges' Questionnaire.
[696] *See* data from the 2000 Survey, Question No. 41 of the Attorneys' Questionnaire.
[697] *See* data from the 2000 Survey, Question No. 16 of the Judges' Questionnaire.
[698] *See* data from the 2000 Survey, Question No. 42 of the Attorneys' Questionnaire.
[699] *See* data from the 2000 Survey, Question No. 17 of the Judges' Questionnaire.

and twenty percent (20%) of male attorneys said "sometimes."[700] Eighteen percent (18%) of male judges reported that this conduct on the part of attorneys occurred "sometimes."[701]

In 2000, an additional question asked was whether [*s*]*exist jokes are told in court or in the office*.[702] No male judges perceive this conduct as occurring "always" or "often" and nine percent (9%) believe it only happens "sometimes" *by judges*, while seventeen percent (17%) of female judges say "sometimes" and none believe it to occur "always" or "often" *by judges*.[703] Among attorneys, only one percent (1%) respond "always" or "often" and six percent (6%) of females respond "always" or "often" *by judges*, with nineteen percent (19%) answering "sometimes."[704] Thirteen percent (13%) of male court employees and eighteen percent (18%) of female court employees cite the conduct deriving "sometimes" *by judges*.[705]

By counsel, fifteen percent (15%) of male judges and thirty-two percent (32%) of female judges say "sometimes,"[706] twenty-five percent (25%) of male attorneys and thirty-seven percent (37%) of female attorneys agree, feeling it occurs "sometimes."[707] Moreover, twenty-two percent (22%) of female attorneys respond that these sexist jokes occur "always" or "often."[708] Seventeen percent (17%) of male and twenty-seven percent (27%) of female court employees say it happens "sometimes."[709] *By court personnel,* fourteen percent (14%) of male judges and

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[700] *See* data from the 2000 Survey, Question No. 42 of the Attorneys' Questionnaire.
[701] *See* data from the 2000 Survey, Question No. 17 of the Judges' Questionnaire.
[702] 2000 Survey, Questions No. 44-46 of the Attorneys' Questionnaire, and Questions No. 19-21 of the Judges' Questionnaire and Court Employees' Questionnaire.
[703] *See* data from the 2000 Survey, Questions No. 19-21 of the Judges' Questionnaire.
[704] *See* data from the 2000 Survey, Questions No. 44-46 of the Attorneys' Questionnaire.
[705] *See* data from the 2000 Survey, Question No. 19 of the Court Employees' Questionnaire.
[706] *See* data from the 2000 Survey, Question No. 20 of the Judges' Questionnaire.
[707] *See* data from the 2000 Survey, Question No. 45 of the Attorneys' Questionnaire.
[708] *See id*.
[709] *See* data from the 2000 Survey, Question No. 20 of the Court Employees' Questionnaire.

twenty-three percent (23%) of female judges say "sometimes,"[710] ten percent (10%) of male attorneys and nineteen percent (19%) of female attorneys respond "sometimes,"[711] and twenty-two percent (22%) of male court personnel and thirty-one percent (31%) of female court employees respond "sometimes" as well.[712]

Clearly, sexist remarks and sexist jokes are an issue in the court system.

IV. Conclusions

Inappropriate gender-based conduct continues to exist within the legal and judicial communities and it has a particular negative impact on female attorneys, litigants, witness and court personnel. Bias, of any type, erodes confidence in the impartiality of the judicial system. It is important that steps continue to be taken to expose and remedy, preferably by education and counseling, the attitudes and actions that give rise to the perceptions and realities of bias. Furthermore, where the conduct is overt and persistent, the judicial system must be prepared to take formal action as well.

Fortunately, the 2000 Survey shows, for the most part, an overall improvement, suggesting that public scrutiny and efforts at education since the 1989 Report have had some effect. Nonetheless, a significant disparity in perception and recognition still exists between men and women and between attorneys and judges regarding the prevalence of various forms of gender inequality. In whatever form, actual or perceived, gender bias should not be tolerated in the court system.

The 2000 Survey makes apparent that attorneys, on the whole, perceive more gender bias than do judges. However, within professions, there is a split of perception based on gender.

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[710] *See* data from the 2000 Survey, Question No. 21 of the Judges' Questionnaire.
[711] *See* data from the 2000 Survey, Question No. 46 of the Attorneys' Questionnaire.
[712] *See* data from the 2000 Survey, Question No. 21 of the Court Employees' Questionnaire.

Female attorneys and female judges report observing more gender biased behavior than their male counterparts. Nonetheless, a greater percentage of male attorneys and male judges perceive gender bias to be present than was the case in the 1989 Report. Lastly, inappropriate behavior is perceived to be more prevalent on the part of attorneys than on the part of judges.

V. Recommendations

- The Court's policy holding that gender bias in judicial conduct is unacceptable needs to be reinforced and addressed by effective warnings that result in disciplinary procedures when violated. Judges have a responsibility not only to keep their own house clean but also to intervene when they observe attorneys and court personnel acting or speaking inappropriately.

- Because gender bias issues can easily become divisive and confrontational, they are not easily addressed. In some areas, there is no "bright line" rule of what one can and cannot do. The best rule, perhaps, is simply that a judge, attorney or court employee should not treat a woman with whom they are dealing in a professional capacity or setting, any differently than he or she would treat a man. Unless specifically required by the circumstance, no comment or gesture should be made to one gender that the person would not feel comfortable making to the other. Judges, attorneys, and court employees need to be sensitive of their audience, especially when making remarks that are personal in nature or that depart from normal professional bounds.

- Create more open and non-confrontational dialogue, to explore why female attorneys and judges see a greater prevalence of gender bias in the courts than do male attorneys and judges, and why attorneys see more of a problem with judicial conduct than do judges.

- Establish confidential professionalism committees within local bar associations where gender bias concerns can be raised. These committees could assist in providing both a confidential counseling mechanism and a forum for discussion, to deal with complaints that otherwise might either go unaddressed or end up before a formal grievance committee. These committees could also assist persons in the community by developing informational campaigns to educate the legal community to be more sensitive of behavior that is, or may be perceived as, gender-biased.

Perceptions and Experiences of Racial and Ethnic Fairness

> When people perceive…bias in a legal system, whether they suffer from it or not, they lose respect for that system as well as for the law.[713]

I. Historical Review

In its 1989 Report, the Joint Committee noted in its initial footnote that:

> [w]hile the Committee's mandate was to investigate gender bias, evidence of racial bias also came to the attention of the Committee. Recent reports have shown that gender and racial bias persist in the legal system and that both must be addressed.[714]

Although other state and federal task forces have studied racial and ethnic fairness for some time,[715] this Survey by the Select Committee is the first time the Maryland bench and bar have studied this important area of potential bias.

In 1998, as part of a national effort by the Conference of Chief Judges and through the leadership of Maryland Court of Appeals Chief Judge Robert M. Bell, the Maryland judiciary spearheaded an effort to determine the level of confidence and trust which the public has in the justice system. [716]

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[713] *The Gender, Race and Ethnic Bias Task Force Project in the D.C. Circuit*, The D.C. Circuit Task Force on Gender, Race and Ethnic Bias, 1995, IVB-1 (address of Justice Sandra Day O'Connor at the Ninth Circuit Judicial Conference on issues of gender bias).

[714] 1989 Report at i, note 1.

[715] The first state task force to study race and ethnicity was formed in Michigan in 1987; a final report was issued in 1989. *Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts* (1989). *See also, Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission "Where the Injured Fly for Justice"* (1991) and *The Gender, Race and Ethnic Bias Task Force Project in the D.C. Circuit* (1995).

[716] The product of this effort was the *Report to the National Conference on Trust and Confidence*, Maryland Committee on Building Trust and Confidence in the Justice System (1999).

Chief Judge Bell appointed a statewide, multi-disciplinary committee to formulate a plan on how to address issues of public confidence. The Maryland Committee on Building Trust and Confidence in the Justice System, conducted a survey that identified specific areas for improvement. The results showed a lack of confidence in two primary areas:

1. timeliness and efficiency of the court system; and
2. racial and ethnic bias.

The Building Trust and Confidence survey results showed that almost half of responding registered voters agreed or strongly agreed with the statement that in a courtroom, a white person will generally get a better outcome than a member of an ethnic minority. More than half of those responding disagreed or strongly disagreed that the system treats people the same way regardless of their race.[717] After receiving the Trust and Confidence Report, Chief Judge Bell directed the Select Committee to expand its study to include questions about perceptions of racial and ethnic bias.

II. The 2000 Survey Results[718]

Participants identified their race or ethnic origin within these categories: African American, Hispanic, Asian American, Native American, Caucasian or other. The term "minority" is used in the 2000 Survey to refer to all participants who identified themselves as belonging to a racial or ethnic category other than Caucasian.

The Court Employees' Questionnaire was sent to every court employee. Of the two thousand eight hundred and ninety (2,890) surveys mailed, responses were received from one

[717] The product of this effort was the *Report to the National Conference on Trust and Confidence*, Maryland Committee on Building Trust and Confidence in the Justice System. (1999).

[718] It is not possible to compare the results of the 2000 Survey with those of the 1989 Report because there were no questions asked in 1989 regarding racial and ethnic bias.

thousand five hundred twenty-three (1,523).[719] Of those who responded, twenty-nine percent (29%) identified themselves as minorities; twenty-two percent (22%) as African American, one percent (1%) Hispanic, one percent (1%) Asian American, two percent (2%) Native American, and three percent (3%) other.[720]

The Attorney's Questionnaire was sent to two thousand (2,000) individuals. An equal number of male and female attorneys received the survey. Of the three hundred seventy-seven (377) attorneys who responded, thirteen percent (13%) identified themselves as a minority: six percent (6%) as African American, one percent (1%) Hispanic, two percent (2%) Asian American, one percent (1%) Native American, and three percent (3%) as other.[721]

All members of the Maryland judiciary who were on the bench in April, 2000 received the Judges' Questionnaire. Of the 264 judges currently sitting in Maryland courts, there are one hundred seventy-two (172) white males, forty-six (46) white females, thirty (30) African American males, fourteen (14) African American females, and two (2) Hispanic females.[722] Minority judges comprise seventeen percent (17%) of the Maryland bench.[723] This percentage is

[719] The Administrative Office of the Courts "AOC" does not maintain a demographic breakdown of court employees by race or ethnicity. Consequently, it is not possible to characterize the population percentages by race and ethnicity of those participants in the court system.
[720] *See* data from the 2000 Survey, Question No. 140 of the Court Employees' Questionnaire (six percent (6%) gave no response to this question).
[721] *See* data from the 2000 Survey, Question No. 146 of the Attorneys' Questionnaire (Three percent (3%) gave no response to this question. The Maryland State Bar Association does not collect statistics on numbers of minority versus non-minority attorneys. Consequently, it is not possible to characterize the population percentages by race and ethnicity of those participants in the court system).
[722] The AOC maintains statistical information reflecting the gender, race and ethnicity of the current members of the bench. Judges are identified as Male, Female, White, African American, Asian, American Indian and Hispanic.
[723] *See* AOC statistical information reflecting the gender, race and ethnicity of the current members of the Maryland bench.

fairly equivalent to the demographic breakdown of the judges who responded to the survey; fifteen percent (15%) identified themselves as a minority.[724]

A significant goal of the study was to understand how attorneys, court personnel and judges describe the effects, if any, of race and ethnicity on the administration of justice. All participants were asked about the ways race and ethnicity influences the treatment of attorneys, court employees, parties, witnesses and criminal defendants.[725] Both observations and personal experiences of the participants were solicited.[726]

At some court levels, judges are called upon to appoint attorneys to fee-generating cases or as trustees and receivers in property and business disputes. These appointments may involve substantial remuneration. Survey participants were asked to report their perceptions of the comparative frequency of these judicial appointments between minority and non-minority attorneys.[727]

In response to the statement [a]*ttorneys who are members of a racial/ethnic minority are appointed to fee generating cases on an equal basis with non-minority attorneys*,[728] four percent (4%) of Caucasian judges as compared to forty-five percent (45%) of minority judges believe

[724] *See* data from the 2000 Survey, Question No. 128 of the Judges' Questionnaire.
[725] 2000 Survey, Questions No. 57, 60, 67, 91, 101, 104, 106, 108, 117, 121, 126, 128, 133, 138, 139, 146 of the Attorneys' Questionnaire, Questions No. 32, 35, 42, 66, 76, 79, 81, 89, 102, 106, 111, 113, 118, 123, 128 of the Judges' Questionnaire, and Questions No. 32, 35, 42, 74, 75, 80, 83, 85, 89, 92, 95, 96, 104, 105, 109, 110, 122, 124, 126, 131-134, 136, 140, 144 of the Court Employees' Questionnaire.
[726] *See id*.
[727] *See* 2000 Survey, Questions No. 57, 60 of the Attorneys' Questionnaire, Questions No. 32, 35 of the Judges' Questionnaire, and Questions No. 32, 35 of the Court Employees' Questionnaire.
[728] 2000 Survey, Question No. 57 of the Attorneys' Questionnaire, Question No. 32 of the Judges' Questionnaire, and Question No. 32 of the Court Employees' Questionnaire.

this "rarely" or "never" occurs.[729] Among Caucasian attorneys, thirteen percent (13%) say "rarely" or "never" compared to over half (52%) of minority attorneys responding "rarely" or "never."[730] Caucasian court employees respond "rarely" or "never" twenty percent (20%) of the time compared to forty-seven percent (47%) of minority court employees.[731] Clearly a strong difference of perception exists on this issue.

Likewise, in response to the statement [r]*acial/ethnic minorities are appointed as trustees or receivers in property disputes on an equal basis with non-minority attorneys*,[732] fifty-seven percent (57%) of minority judges and three percent (3%) of Caucasian judges respond "rarely" or "never."[733] Among attorneys, seventy-two percent (72%) of minority attorneys and thirty percent (30%) of Caucasian attorneys feel this occurs "rarely" or "never."[734] The responses of court employees show a similar difference in perception; fifty-four percent (54%) of minority court employees believing "rarely" or "never" while twenty percent (20%) of Caucasian court employees believe "rarely" or "never."[735] It is notable that more than half of the minority judges, attorneys and court employees perceive that appointments are not made on an equal basis between minority and non-minority attorneys. Non-minority respondents agree, but in much

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[729] *Compare* Caucasian judges' data from the 2000 Survey, Questions No. 32 of the Judges' Questionnaire, *with* minority judges' data from the 2000 Survey, Questions No. 32 of the Judges' Questionnaire.
[730] *Compare* Caucasian attorneys' data from the 2000 Survey, Questions No. 57 of the Attorneys' Questionnaire, *with* minority attorneys' data from the 2000 Survey, Questions No. 57 of the Attorneys' Questionnaire.
[731] *Compare* Caucasian court employees' data from the 2000 Survey, Questions No. 32 of the Court Employees' Questionnaire, *with* minority court employees' data from the 2000 Survey, Questions No. 32 of the Court Employees' Questionnaire.
[732] 2000 Survey, Question No. 60 of the Attorneys' Questionnaire, Question No. 35 of the Judges' Questionnaire, and Question No. 35 of the Court Employees' Questionnaire.
[733] *See* data from the 2000 Survey, Question No. 35 of the Judges' Questionnaire.
[734] *See* data from the 2000 Survey, Question No. 60 of the Attorneys' Questionnaire.
[735] *See* data from the 2000 Survey, Question No. 35 of the Court Employees' Questionnaire.

lower percentages with judges (*i.e.*, the persons who make the appointments) reporting the most agreement, with a perception of equality.

In addition to the two questions about attorney appointments, the 2000 Survey asks those responding to assess the fairness of treatment by judges afforded to members of racial and ethnic minorities, by asking whether [j]*udges appear to give less weight to an attorneys' argument where the attorney is a member of a racial/ethnic minority*.[736] Twenty-one percent (21%) of minority attorneys say this occurs "always" or "often" and twenty-eight percent (28%) said "sometimes."[737] A much lower percentage of non-minority attorneys share this perception; fifteen percent (15%) of Caucasian attorneys say this occurs "sometimes," two percent (2%) believing it occurs "often," and none think this happens "always."[738] Court employees' responses show divergence between the perceptions of non-minority and minority groups as well.[739] Caucasian employees respond "always" or "often" two percent (2%) and "sometimes" six percent (6%).[740] Minority court employees perceive bias as well; responding "always" or "often" eleven percent (11%) and "sometimes" twenty-one (21%) percent of the time.[741] The response of the judges is muter, only fifteen percent (15%) of the minority judges saying "sometimes" and just one percent (1%) of the non-minority judges agreeing.[742]

Judges, attorneys and court employees were also asked whether [s]*entences for the same offense, are given to minority defendants, that are* [either] *less severe, about the same, or more*

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[736] 2000 Survey, Question No. 67 of the Attorneys' Questionnaire, Question No. 42 of the Judges' Questionnaire, and Question No. 42 of the Court Employees' Questionnaire.
[737] *See* data from the 2000 Survey, Question No. 67 of the Attorneys' Questionnaire.
[738] *See id*.
[739] *Compare* Caucasian court employees' data from the 2000 Survey, Questions No. 42 of the Court Employees' Questionnaire, *with* minority court employees' data from the 2000 Survey, Questions No. 42 of the Court Employees' Questionnaire.
[740] *See* data from the 2000 Survey, Question No. 42 of the Court Employees' Questionnaire.
[741] *See id*.
[742] *See* data from the 2000 Survey, Question No. 42 of the Judges' Questionnaire.

severe than sentences given to non-minority defendants.[743] Of Caucasian judges, ninety-six percent (96%) report that sentences given to minority defendants are about the same as sentences given to non-minority defendants while only fifty percent (50%) of minority judges respond the same way.[744] The other half of minority judges respond that sentences are more severe than sentences given to non-minority defendants.[745] Among attorneys, sixty-three percent (63%) of Caucasian respondents said sentences are "about the same," yet only thirty-seven percent (37%) of minority attorneys agree.[746] A higher percentage, sixty percent (60%), of minority attorneys believe that sentences are "more severe" than those given to non-minority defendants.[747] A similar split is shown for court employees; eighty-eight percent (88%) of Caucasian employees say sentences are about the same, and fifty percent (50%) of minority court employees agree.[748] Forty-four percent (44%) of minority court employees believe sentences are "more severe."[749]

Attorneys and judges were asked if, in a domestic violence case if [*c*]*ivil orders of protection are granted less frequently when the petitioner is a member of a racial/ethnic minority*.[750] In response, ninety-eight percent (98%) of Caucasian judges say "rarely" or "never" and minority judges share a similar view with ninety-five percent (95%) of those responding saying "rarely" or "never."[751] Caucasian attorneys share this same perception although to a

[743] 2000 Survey, Question No. 106 of the Attorneys' Questionnaire, and Question No. 81 of the Judges' Questionnaire; *See also* 2000 Survey, Question No. 122 of the Court Employees' Questionnaire.
[744] *See* data from the 2000 Survey, Question No. 81 of the Judges' Questionnaire.
[745] *See id*.
[746] *See* data from the 2000 Survey, Question No. 106 of the Attorneys' Questionnaire.
[747] *See id*.
[748] *See* data from the 2000 Survey, Question No. 122 of the Court Employees' Questionnaire.
[749] *See id*.
[750] 2000 Survey, Question No. 91 of the Attorneys' Questionnaire, and Question No. 66 of the Judges' Questionnaire.
[751] *See* data from the 2000 Survey, Question No. 66 of the Judges' Questionnaire.

lesser degree; seventy-seven percent (77%) responding "rarely" or "never."[752] Minority attorneys perceive it differently; sixteen percent (16%) believing "never," twenty-six percent (26%) saying "rarely," thirty-two percent (32%) responding "sometimes" and twenty-six percent (26%) saying "often."[753]

Judges and attorneys were also asked their perceptions in criminal cases. The first statement attempted to determine in cases [w]*here defendants are members of racial or ethnic minorities, they are accorded less credibility*.[754] Almost all, ninety-eight percent (98%), of Caucasian judges respond "rarely" or "never."[755] Minority judges respond "rarely" or "never" fifty-three percent (53%) of the time, and thirty-seven percent (37%) feel "sometimes."[756] Of Caucasian attorneys, twenty-six percent (26%) respond "rarely" while forty-four percent (44%) say "sometimes" and fourteen percent say "often."[757] Minority attorneys see things far differently, nine percent (9%) believing "always," twenty-four percent (24%) saying "often," thirty-three percent (33%) feeling "sometimes," eighteen percent (18%) responding "rarely," and fifteen percent (15%) thinking "never."[758] Once again, the responses of the various groups differ significantly.

Judges and attorneys were also asked whether in sex offense cases, [s]*entence are shorter where the victim is a member of a racial or ethnic minority*.[759] Of Caucasian judges, ninety-six

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[752] *See* data from the 2000 Survey, Question No. 91 of the Attorneys' Questionnaire.
[753] *See id*.
[754] 2000 Survey, Question No. 101 of the Attorneys' Questionnaire, and Question No. 76 of the Judges' Questionnaire.
[755] *See* data from the 2000 Survey, Question No. 76 of the Judges' Questionnaire.
[756] *See id*.
[757] *See* data from the 2000 Survey, Question No. 101 of the Attorneys' Questionnaire.
[758] *See id*.
[759] 2000 Survey, Question No. 104 of the Attorneys' Questionnaire, and Question No. 79 of the Judges' Questionnaire.

percent (96%) respond "rarely" or "never."[760] Among minority judges, seventy percent (70%) say "rarely" or "never" and twenty-two percent (22%) think "sometimes."[761] Among Caucasian attorneys, sixty-two percent (62%) say "rarely" or "never" and thirty percent (30%) say "sometimes."[762] Again, minority attorneys hold different views: while forty-three percent (43%) say "rarely" or "never," eighteen percent (18%) respond "sometimes," thirty-six percent (36%) say "often" and four percent (4%) of minority attorneys respond "always."[763]

Court employees were asked to describe the impact race and ethnicity has on their job duties, responsibilities, assignments, and opportunities for advancement and promotion.[764] In contrast to the frequent disagreement and broad range of differing response among the groups that we have seen on the above topics, the responses here are heartening. Court employees in general perceive a degree of racial and ethnic fairness not experienced elsewhere.

To the statement [m]*y job duties and responsibilities have been reduced solely because of my race/ethnicity*,[765] ninety-four percent (94%) of non-minority court employees "strongly disagree" while eighty-seven percent (87%) of minority court employees also "strongly disagree."[766]

Response to the statement [m]*y job duties and responsibilities have been increased solely because of my race/ethnicity*,[767] ninety-two percent (92%) of Caucasian and eighty-seven percent (87%) of minority court employees "strongly disagree."[768]

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[760] *See* data from the 2000 Survey, Question No. 79 of the Judges' Questionnaire.
[761] *See id*.
[762] *See* data from the 2000 Survey, Question No. 104 of the Attorneys' Questionnaire.
[763] *See id*.
[764] *See* 2000 Survey, Questions No. 74, 75, 80, 83, 85, and 89 of the Court Employees' Questionnaire.
[765] 2000 Survey, Question No. 74 of the Court Employees' Questionnaire.
[766] *See* data from the 2000 Survey, Question No. 74 of the Court Employees' Questionnaire.
[767] 2000 Survey, Question No. 75 of the Court Employees' Questionnaire.

Answering whether [c]*hoice job assignments are given to employees on the basis of race/ethnic origin*,[769] eighty-six percent (86%) of non-minority court employees and sixty-eight percent (68%) of minority court employees respond "rarely" or "never."[770]

Almost all non-minority, ninety-seven percent (97%), and minority court employees, eighty-seven percent (87%), respond "rarely" or "never" when asked if [t]*he opportunity to attend job training programs appears to be granted on the basis of one's race/ethnicity*.[771]

In response to the statement [o]*pportunities for advancement in the court system are limited because of my race/ethnicity*,[772] eighty-eight percent (88%) of non-minority court employees feel this occurs "rarely" or "never."[773] While sixty-four percent of minority court employees concur, and thirty-six percent (36%) do not.[774]

To the statement [i]*n my area, it appears that preferential appointments to supervisory positions are made based on race/ethnic origin*,[775] eighty-nine percent (89%) of non-minority court employees respond "rarely" or "never," while sixty-five percent (65%) of minority court employees agree.[776]

Clearly, court employees perceive a work place marked in general by racial and ethnic fairness. However, despite well over half of minority court employees not perceiving a problem regarding opportunities for advancement and/or preferential appointments, there is some lack of agreement with these statements and further study may yield some cause for concern.

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[768] *See* data from the 2000 Survey, Question No. 75 of the Court Employees' Questionnaire.
[769] 2000 Survey, Question No. 80 of the Court Employees' Questionnaire.
[770] *See* data from the 2000 Survey, Question No. 80 of the Court Employees' Questionnaire.
[771] *See* data from the 2000 Survey, Question No. 83 of the Court Employees' Questionnaire.
[772] 2000 Survey, Question No. 85 of the Court Employees' Questionnaire.
[773] *See* data from the 2000 Survey, Question No. 85 of the Court Employees' Questionnaire.
[774] *See id*.
[775] 2000 Survey, Question No. 89 of the Court Employees' Questionnaire.
[776] *See* data from the 2000 Survey, Question No. 89 of the Court Employees' Questionnaire.

Respondents were asked if they had ever intervened in a racial or ethnic bias incident either in court or in their offices and if they had attended a program or seminar addressing these issues in the past.[777] Just eleven percent (11%) of non-minority judges, compared to twenty-five percent (25%) of minority judges say they have intervened in a racial or ethnic incident.[778] Attorneys intervene less frequently; only two percent (2%) of Caucasian attorneys having intervened compared to four percent (4%) of minority attorneys.[779] Among court employees, two percent (2%) of non-minorities have ever intervened versus nine percent (9%) of minority employees.[780] In every instance, we see that those of a racial or ethnic minority are more likely to intervene in racial or ethnic bias incidents and that the percent of minorities who say they have intervened is at least twice that of non-minorities.[781]

An exceptionally high percentage of respondents in each group report that they had not attended a seminar or program during which issues of racial/ethnic bias were discussed. Among court employees, seventy-nine percent (79%) respond that they have not attended a program

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[777] 2000 Survey, Questions No. 128, 133 of the Attorneys' Questionnaire, Question No. 113, 118 of the Judges' Questionnaire, and Question No. 126, 131 of the Court Employees' Questionnaire.
[778] *Compare* Caucasian judges' data from the 2000 Survey, Questions No. 113 of the Judges' Questionnaire, *with* minority judges' data from the 2000 Survey, Questions No. 113 of the Judges' Questionnaire.
[779] *Compare* Caucasian attorneys' data from the 2000 Survey, Questions No. 128 of the Attorneys' Questionnaire, *with* minority attorneys' data from the 2000 Survey, Questions No. 128 of the Attorneys' Questionnaire.
[780] *Compare* Caucasian court employees' data from the 2000 Survey, Questions No. 126 of the Court Employees' Questionnaire, *with* minority court employees' data from the 2000 Survey, Questions No. 126 of the Court Employees' Questionnaire.
[781] *Compare* Caucasian judges' data from the 2000 Survey, Questions No. 113 of the Judges' Questionnaire, Caucasian attorneys' data from the 2000 Survey, Questions No. 128 of the Attorneys' Questionnaire and Caucasian court employees' data from the 2000 Survey, Questions No. 126 of the Court Employees' Questionnaire, *with* minority judges' data from the 2000 Survey, Questions No. 113 of the Judges' Questionnaire, minority attorneys' data from the 2000 Survey, Questions No. 128 of the Attorneys' Questionnaire and minority court employees' data from the 2000 Survey, Questions No. 126 of the Court Employees' Questionnaire.

within the past five years.[782] Among attorneys, eighty-one percent (81%)[783] and among judges, forty-six percent (46%) did not attend a seminar.[784] And at least in this instance, no significant difference exists between the responses of minorities and non-minorities.[785]

III. Conclusions

The most striking aspect of the 2000 Survey was the disparity in perception of racism between Caucasian respondents and minority respondents. In the majority of questions asked, minority respondents feel that racial and ethnic bias was more pervasive than did Caucasian respondents. The statistics drawn from the responses illustrate these perceptions. However it is also true that a significant percentage of judges, attorneys and court employees believe that racial and/or ethnic bias is a factor in the administration of justice and affects the treatment of litigants, attorneys and court employees.

This Committee recognizes the potential difficulty in distinguishing between actual acts of racism and those actions perceived as such but which are not actually motivated by racial or ethnic bias. The perception that racial and ethnic bias exists within the court system, or is accepted by the courts is extremely dangerous and erodes faith that the system serves as the purveyor of justice. In order for the community and the members of the greater society to continue to have faith in, and respect for the court system, it is imperative that the courts be perceived as wholly and absolutely intolerant of any degree of racial and/or ethnic bias

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[782] *See* data from the 2000 Survey, Question No. 131 of the Court Employees' Questionnaire.
[783] *See* data from the 2000 Survey, Question No. 133 of the Attorneys' Questionnaire.
[784] *See* data from the 2000 Survey, Question No. 118 of the Judges' Questionnaire.
[785] *Compare* Caucasian court employees' data from the 2000 Survey, Questions No. 131 of the Court Employees' Questionnaire, Caucasian attorneys' data from the 2000 Survey, Questions No. 133 of the Attorneys' Questionnaire and Caucasian judges' data from the 2000 Survey, Questions No. 118 of the Judges' Questionnaire, *with* minority court employees' data from the 2000 Survey, Questions No. 131 of the Court Employees' Questionnaire, minority attorneys' data from the 2000 Survey, Questions No. 133 of the Attorneys' Questionnaire and minority judges' data from the 2000 Survey, Questions No. 118 of the Judges' Questionnaire

whatsoever. Consequently, it should be the goal of the courts to eliminate entirely any racial and/or ethnic bias, which may exist, as well as, the perception that such bias might to some degree be acceptable within the court system.

IV. Recommendations

- A committee comprised of members of the bench and bar should be appointed to address perceptions detailed in this Survey that racial and ethnic bias exists and leads to unequal treatment with the Maryland judicial system.

- That committee should conduct a broader study with emphasis solely on issues of racial and ethnic bias. The committee should consider surveying litigants to determine their experiences and the perceptions of the public at large regarding racial and/or ethnic bias in the courts.

- A questionnaire should be designed to elicit the details supporting future respondents' beliefs that given incidents were based upon racial or ethnic bias. (For example, if a respondents reports that a less qualified applicant was given a position over a better qualified applicant because of racial/ethnic preference, ask the respondent to explain why one applicant was more qualified than the other, *etc*.)

- Develop and implement appropriate sensitivity programs available to court employees, attorneys and judges, emphasizing the issues developed through the study.

- Within the court system, continue to develop procedures by which complaints of racial/ethnic bias can be reported. Teach supervisors and other personnel appropriate and effective ways to respond to complaints of racial/ethnic bias.

Appendix

INSTRUCTIONS: This survey measures attitudes, perceptions and experiences. In most instances, you will simply circle your answer or check the appropriate box. If you would like to comment further, you may add a sheet of paper. Please be sure that hand written comments are legible. Return the survey in the envelope provided. Do not sign your name. All responses are confidential. It is very important that all surveys be returned. Please do your part - we need your help. Thank you.

Judges' Questionnaire

The following questions ask about YOUR PERCEPTIONS of specific behaviors and the frequency of their occurrence in the Maryland Court System. *Circle your response.*

COURT INTERACTIONS

	Always	Often	Sometimes	Rarely	Never	Don't Know	No Response
Female attorneys are asked if they are attorneys when male attorneys are not asked.							
1. By judges	0.0%	0.0%	7.3%	23.6%	63.5%	5.6%	0.0%
2. By counsel	0.0%	1.1%	6.7%	25.3%	41.0%	25.8%	0.0%
3. By court personnel	0.0%	0.6%	11.2%	24.2%	39.3%	24.7%	0.0%
Female attorneys are addressed by first names or terms of endearment when male attorneys are addressed by surnames or titles.							
4. By judges	0.0%	0.0%	4.5%	12.9%	80.3%	2.2%	0.0%
5. By counsel	0.0%	1.7%	13.5%	24.7%	47.8%	11.8%	0.6%
6. By court personnel	0.0%	0.0%	8.4%	18.0%	59.6%	12.9%	1.1%
Female litigants or witnesses are addressed by first names or terms of endearment when male litigants or witnesses are addressed by surnames or titles.							
7. By judges	0.0%	1.1%	3.4%	13.5%	78.7%	3.4%	0.0%
8. By counsel	0.0%	3.9%	15.2%	27.5%	44.9%	8.4%	0.0%
9. By court personnel	0.0%	1.1%	3.9%	18.5%	64.0%	12.4%	0.0%
Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys.							
10. By judges	0.0%	2.2%	7.9%	25.8%	60.7%	3.4%	0.0%
11. By counsel	0.0%	2.2%	11.8%	20.2%	46.1%	19.7%	0.0%
12. By court personnel	0.0%	1.7%	10.1%	19.1%	51.7%	17.4%	0.0%
Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants or witnesses.							
13. By judges	0.0%	1.7%	7.3%	24.2%	62.4%	4.5%	0.0%
14. By counsel	0.0%	2.2%	10.7%	20.8%	47.8%	18.5%	0.0%
15. By court personnel	0.0%	2.8%	9.0%	21.9%	50.0%	16.3%	0.0%
Sexist remarks are made in court or in the office.							
16. By judges	0.0%	0.6%	9.6%	35.4%	51.7%	2.8%	0.0%
17. By counsel	0.0%	1.7%	21.3%	25.3%	36.5%	14.6%	0.6%
18. By court personnel	0.0%	1.7%	11.2%	28.7%	42.7%	15.2%	0.6%
Sexist jokes are told in court or in the office.							
19. By judges	0.0%	0.0%	11.2%	28.1%	56.7%	3.4%	0.6%
20. By counsel	0.0%	0.0%	15.7%	28.7%	38.2%	16.3%	1.1%
21. By court personnel	0.0%	0.0%	13.5%	25.8%	43.8%	16.3%	0.6%
Female litigants are subjected to verbal or physical sexual advances.							
22. By judges	0.0%	0.0%	0.6%	9.0%	82.0%	8.4%	0.0%
23. By counsel	0.0%	0.0%	3.9%	11.8%	54.5%	29.2%	0.6%
24. By court personnel	0.0%	0.0%	1.1%	7.9%	67.4%	23.6%	0.0%
Female attorneys are subjected to verbal or physical sexual advances.							
25. By judges	0.0%	0.0%	2.2%	11.2%	78.7%	7.9%	0.0%
26. By counsel	0.0%	0.0%	3.9%	12.4%	51.1%	30.9%	1.7%
27. By court personnel	0.0%	0.0%	0.6%	9.0%	66.9%	23.0%	0.6%
Female court employees are subjected to verbal or physical sexual advances.							
28. By judges	0.0%	0.0%	2.2%	13.5%	75.3%	9.0%	0.0%
29. By counsel	0.0%	0.0%	5.1%	10.7%	52.2%	31.5%	0.6%
30. By court personnel	0.0%	0.0%	5.1%	10.1%	53.9%	30.9%	0.0%

A1

APPOINTMENT OF COUNSEL

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
31. Female attorneys are appointed to fee generating cases on an equal basis with male attorneys.	38.2%	14.6%	3.9%	1.7%	0.0%	41.0%	0.6%
32. Attorneys who are members of a racial/ethnic minority are appointed to fee generating cases on an equal basis with non-minority attorneys.	30.3%	12.9%	4.5%	5.6%	0.6%	43.8%	2.2%
33. Male and female attorneys are appointed to non-fee generating cases on an equal basis.	37.1%	15.7%	2.2%	2.8%	1.1%	40.4%	0.6%
34. Male attorneys are appointed counsel in family law cases on an equal basis with female attorneys.	35.4%	13.5%	7.3%	2.8%	0.6%	39.3%	1.1%
35. Racial/ethnic minorities are appointed as trustees or receivers in property disputes on an equal basis with non-minority attorneys.	19.7%	8.4%	6.7%	3.9%	1.7%	55.1%	4.5%
36. Female attorneys are appointed as personal representatives in estate matters on an equal basis with male attorneys.	17.4%	9.0%	3.4%	1.7%	0.6%	65.2%	2.8%
37. Male attorneys are appointed counsel in guardianship cases on an equal basis with female attorneys.	33.7%	14.0%	6.2%	2.8%	0.0%	41.6%	1.7%
38. Female attorneys are appointed to criminal cases on an equal basis with male attorneys.	29.2%	9.6%	1.1%	1.7%	0.6%	54.5%	3.4%

CREDIBILITY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
39. Judges appear to give less weight to female attorneys' arguments than to those of male attorneys.	0.0%	0.0%	2.2%	11.2%	81.5%	5.1%	0.0%
40. Judges appear to give less weight to the testimony of female experts than to that of male experts.	0.0%	0.0%	1.7%	10.1%	80.9%	7.3%	0.0%
41. Judges appear to require more evidence for a female litigant to prove her case than for a male litigant.	0.0%	0.0%	1.7%	11.2%	82.0%	5.1%	0.0%
42. Judges appear to give less weight to an attorney's argument where the attorney is a member of a racial/ethnic minority.	0.0%	0.0%	2.8%	11.8%	78.1%	6.2%	1.1%

MARITAL PROPERTY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
43. Where a wife's primary contribution is as a homemaker, the monetary award reflects a judicial attitude that the husband's income producing contribution entitles him to a larger share of the marital estate.	1.1%	1.1%	8.4%	20.8%	30.3%	36.0%	2.2%
44. Courts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation.	9.0%	30.3%	15.7%	5.6%	0.0%	37.1%	2.2%
45. Effective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made.	9.6%	30.9%	18.5%	1.7%	0.0%	37.6%	1.7%
46. Courts tend to divide the marital estate equally, without regard to the respective monetary contributions of the parties.	6.2%	19.1%	20.2%	9.0%	6.2%	37.1%	2.2%

ALIMONY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
47. A wife's alimony award is based on how much the husband can give her without diminishing his current life style.	1.7%	3.4%	11.2%	15.2%	27.0%	39.9%	1.7%
48. Older, displaced homemakers are awarded indefinite alimony after long-term marriages.	4.5%	39.9%	12.9%	1.1%	0.0%	39.3%	2.2%
49. The courts effectively enforce alimony awards.	15.2%	32.0%	12.4%	2.2%	0.0%	36.5%	1.7%
50. Alimony awards at the time of divorce are close to, or the same, as pendente lite awards.	0.6%	16.9%	30.3%	2.8%	0.0%	47.2%	2.2%
51. Alimony is awarded without regard for the financial impact on the husband.	1.1%	3.4%	9.0%	27.0%	19.7%	38.2%	1.7%

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CHILD SUPPORT

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
52. Visitation rights are effectively enforced by the courts.	14.0%	45.5%	15.2%	2.8%	0.0%	20.2%	2.2%
53. Child support awards follow the guidelines.	18.5%	54.5%	4.5%	0.6%	0.0%	20.2%	1.7%
54. Enforcement of child support awards is denied because of alleged visitation problems.	0.0%	0.6%	7.9%	23.0%	38.8%	28.1%	1.7%
55. Enforcement of child support awards is delayed because of counter claims for custody.	0.0%	1.1%	14.6%	24.7%	20.2%	37.1%	2.2%
56. Pendente lite awards of child support are made within 60 days of filing the motion.	4.5%	28.1%	12.4%	2.2%	0.0%	50.0%	2.8%
57. Earnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support.	5.1%	16.3%	14.0%	9.0%	0.0%	52.2%	3.4%
58. Judges exceed the guidelines more frequently when the woman is the petitioner.	1.1%	2.8%	10.1%	19.1%	11.2%	52.2%	3.4%
59. Fathers are more frequently found to be voluntarily impoverished than mothers.	0.6%	11.2%	18.5%	13.5%	5.1%	48.3%	2.8%

CUSTODY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
60. Custody awards to mothers are based on the assumption that children belong with their mothers.	0.0%	9.6%	20.2%	23.0%	28.7%	16.9%	1.7%
61. The courts give fair and serious consideration to fathers who actively seek custody.	38.2%	32.0%	12.4%	1.7%	1.1%	12.4%	2.2%
62. The courts favor the parent in the stronger financial position when awarding custody.	0.0%	2.8%	32.0%	33.7%	11.2%	18.0%	2.2%
63. Child custody awards disregard father's violence against mother.	0.0%	0.0%	2.2%	16.3%	71.3%	9.0%	1.1%
64. Mothers are denied custody because of employment outside the home.	0.0%	0.0%	7.3%	29.8%	41.0%	19.7%	2.2%
65. Joint custody is ordered over the objections of one or both parents.	0.0%	3.4%	31.5%	27.5%	14.6%	20.8%	2.2%

DOMESTIC VIOLENCE

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
66. Civil orders of protection are granted less frequently when the petitioner is a member of a racial/ethnic minority.	0.0%	0.6%	1.1%	12.9%	67.4%	16.3%	1.7%
67. Civil orders of protection, directing respondents to stay away from the home, are granted when petitioners are in fear of serious bodily harm.	44.4%	45.5%	1.1%	0.0%	0.0%	6.7%	2.2%
68. Judges grant civil orders of protection when petitioners allege fear of bodily harm but have no physical injury.	13.5%	61.8%	12.9%	0.0%	0.6%	8.4%	2.8%
69. When granting civil orders of protection, judges issue support awards for dependents.	5.6%	37.1%	41.6%	3.9%	0.6%	9.0%	2.2%
70. Petitions for civil orders of protection are rejected where domestic relation cases are pending.	0.0%	2.2%	28.1%	30.3%	27.5%	9.0%	2.8%
71. Circuit court judges order emergency injunctive relief to protect victims of domestic violence.	14.0%	30.3%	20.2%	5.6%	0.0%	27.0%	2.8%
72. The courts do not treat domestic violence as a crime.	1.7%	3.9%	9.0%	30.9%	41.0%	9.6%	3.9%
73. Assault charges are not treated seriously when domestic relations cases are pending.	1.7%	0.6%	12.4%	30.3%	44.4%	7.9%	2.8%

SEX OFFENSES

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
74. Victims of sex offenses are accorded less credibility than victims of other types of assault.	0.6%	2.2%	13.5%	25.8%	50.6%	5.6%	1.7%
75. Sex offense victims are accorded greater credibility where the victim and accused are strangers.	4.5%	21.9%	27.0%	15.7%	19.1%	9.6%	2.2%
76. Where defendants are members of racial or ethnic minorities, they are accorded less credibility.	0.0%	1.7%	7.9%	19.1%	60.7%	9.0%	1.7%
77. Judges control the court so as to protect the complaining witness from improper questioning.	41.6%	30.9%	18.0%	0.6%	1.1%	5.6%	2.2%

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	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
78. Sentences are shorter where the victim had a prior relationship with the defendant.	0.0%	10.1%	37.6%	18.5%	12.9%	19.1%	1.7%
79. Sentences are shorter where the victim is a member of a racial or ethnic minority.	0.0%	1.7%	5.6%	28.1%	47.2%	15.7%	1.7%

SENTENCING

80. Judges give sentences, based solely on gender, to female defendants that are: No Response = 5.1%

Less severe than sentences given to male defendants	About the same as sentences given to male defendants	More severe than sentences given to male defendants
26.4%	68.0%	0.6%

81. Sentences for the same offense, are given to minority defendants, that are: No Response = 3.9%

Less severe than sentences given to non-minority defendants	About the same as sentences given to non-minority defendants	More severe than sentences given to non-minority defendants
0.6%	84.3%	11.2%

82. What would you consider to be mitigating factors in sentencing a female? List all factors. _____

_____

83. Would these mitigating factors be different for a male? No 60.7% Yes 13.5% - In what ways? Be specific. No Response = 25.8%

JURY SELECTION

84. What criteria do you use to select the jury foreperson? _____ NA 29.8%

85. In the past year, approximately what percentage of the time have you selected a woman as jury foreperson?

Less than 25%	25% - 49%	50%	51% - 74%	75% - 100%	N A
0.6%	3.4%	27.5%	10.1%	3.9%	43.8%

No Response = 10.7%

86. Can you recall cases in which you felt it was *advantageous* to have a male jury foreperson?
No 52.8% N A 33.7% Yes 2.8% - Why was that? Be specific. No Response = 10.7%

87. Can you recall cases in which you felt it was *advantageous* to have a female jury foreperson?
No 50.6% NA 34.3% Yes 3.9% - Why was that? Be specific. No Response = 11.2%

GENERAL

88. In the past 5 years, to what extent has there been a change, if any, in the number of incidents of gender bias?

Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have never seen incidents	Don't Know	
0.6%	2.8%	6.2%	19.7%	39.3%	16.3%	13.5%	NR=1.7%

89. In the past 5 years, to what extent has there been a change in the number of incidents, if any, of racial/ethnic bias?

Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have never seen incidents	Don't Know	
0.6%	3.9%	9.0%	21.3%	26.4%	19.1%	17.4%	NR=2.2%

90. Is there a behavior that is often displayed by female attorneys, which you find especially *offensive*?
Yes 15.2% No 82.0% No Response = 2.8% If yes, what? _____

91. Is there a behavior displayed by female attorneys, which you find *preferential*? Yes 7.9% No 89.3% NR=2.8%
If yes, what? _____

92. Is there a behavior that is often displayed by male attorneys, which you find *preferential*?
Yes 5.6% No 91.0% No Response = 3.4% If yes, what? _____

93. Is there a behavior that is often displayed by male attorneys, which you find especially *offensive*?
Yes 12.9% No 84.3% No Response = 2.8% If yes, what? _____

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94. In the past 5 years, do you have personal knowledge of a case(s) in which it appeared the litigation process or outcome was affected (either negatively or positively) by the gender (male or female) of <u>one of the parties</u>?
No 87.1% Yes 11.8% No Response = 1.1%
95. How many times in the past five years has this occurred? _____
96. Briefly describe the most recent case in which this occurred - in what way did gender affect the case?
_____
97. In which County or Baltimore City? _____

98. In the past 5 years, has there been a situation where it appeared the litigation process or outcome of a case was affected (negatively or positively) by the gender (male or female) of <u>counsel</u>?
No 92.7% Yes 4.5% No Response = 2.8%
99. How many times in the past five years has this occurred? _____
100. Briefly describe the circumstances of the most recent case where you felt this occurred: _____
_____
101. In which County or Baltimore City? _____

102. In the past 5 years, do you have personal knowledge of a case(s) in which it appeared the litigation process or outcome was affected (either negatively or positively) by the race or ethnicity of <u>one of the parties</u>?
No 86.5% Yes 12.4% No Response = 1.1%
103. How many times in the past five years has this occurred? _____
104. Briefly describe the most recent case in which this occurred - in what way did race/ethnicity affect the case? _____
105. In which County or Baltimore City? _____

106. In the past 5 years, has there been a situation where it appeared the litigation process or outcome of a case was affected (negatively or positively) by the race or ethnicity of <u>counsel</u>?
No 90.4% Yes 7.3% No Response = 2.2%
107. How many times in the past five years has this occurred? _____
108. Briefly describe the circumstances of the most recent case where you felt this occurred: _____
_____
109. In which County or Baltimore City? _____

110. Are you aware of any instances of <u>gender bias</u> in the *judicial selection process* in the past 5 years?
No 67.4% Yes 27.0% NR=5.6% - Briefly describe. _____
_____

111. Are you aware of any instances of <u>racial or ethnic bias</u> in the *judicial selection process* in the past 5 years?
No 66.9% Yes 27.5% NR=5.6% - Briefly describe. _____
_____

112. In the past 5 years, have you <u>intervened</u> in <u>any</u> <u>matter</u> in your court or office because you observed gender bias?
No 72.5% Yes 25.3% NR=2.2% - Briefly describe. _____
_____
_____

113. In the last 5 years, have you <u>intervened</u> in <u>any</u> <u>matter</u> in your court or office because you observed racial or ethnic bias?
No 83.7% Yes 13.5% NR=2.8% - Briefly describe. _____
_____

continue to the last page

114. In the past 5 years, did you attend a seminar(s) or program(s) during which issues of *gender* bias were discussed?
Yes 63.5% No 34.8% NR=1.7%

115. If yes, what was the title and subject of the course(s)? _____

116. Did the discussion affect your behavior? Yes 27.0% No 40.4% NR=32.6%

117. If yes, in what ways? Be specific. _____

118. In the past 5 years, did you attend a seminar(s) or program(s) during which issues of *racial/ethnic* bias were discussed?
Yes 51.7% No 43.8% NR=4.5%

119. If yes, what was the title and subject of the course(s)? _____

120. Did the discussion affect your behavior? Yes 23.6% No 34.3% NR=42.1%

121. If yes, in what ways? Be specific. _____

122. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender bias in the court system today? *Circle your answer.*

Pervasive ← Mean = 2.73 → Non-existent

10	9	8	7	6	5	4	3	2	1	
0.0%	1.1%	0.0%	1.7%	2.2%	3.9%	9.6%	28.7%	37.1%	13.5%	NR=2.2%

123. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is racial/ethnic bias in the court system today? *Circle your answer.*

Pervasive ← Mean = 3.12 → Non-existent

10	9	8	7	6	5	4	3	2	1	
0.6%	2.8%	0.0%	3.4%	3.9%	6.2%	10.1%	26.4%	30.9%	13.5%	NR=2.2%

THE FOLLOWING QUESTIONS PROVIDE GENERAL BACKGROUND INFORMATION. RESULTS WILL BE REPORTED AS GROUP DATA; INDIVIDUALS WILL NOT BE IDENTIFIED.

124. How may years has it been since you were admitted to the practice of law in Maryland?

0 - 5 Years	6 - 10 Years	11 - 15 Years	16 - 20 Years	More than 20 Years	
0.0%	0.6%	2.2%	16.9%	77.5%	NR=2.8%

125. In what court do you serve? District 30.9% Circuit 59.6% Appellate 6.2% NR=3.4%

126. In what jurisdiction do you serve?

Dorchester/Wicomico/Worcester Counties	3.4%	Caroline/Cecil/Kent/Queen Anne's/Talbot Counties	5.1%
Baltimore/Harford Counties	12.4%	Allegany/Garrett/Washington Counties	3.9%
Anne Arundel/Carroll/Howard Counties	12.9%	Montgomery/Frederick Counties	12.4%
Calvert/Charles/Prince George's/St. Mary's	20.2%	Baltimore City	18.5%

No Response = 11.2%

127. **What is your gender?** **Male 74.2%** **Female 21.9%** **No Response = 3.9%**

128. **What is your race/ethnic origin?**

African American	**14.0%**	**Asian American**	**0.0%**	**Caucasian**	**81.5%**
Hispanic	**0.0%**	**Native American**	**0.0%**	**Other**	**0.6%** NR=3.9%

129. Include an additional piece of paper for any further information on gender bias or racial/ethnic discrimination in the state courts, including attitudes, in addition to those described above, occurring in the last five years that you would like to bring to The Select Committee's attention. Be specific.

****

Please fold, insert, seal and mail the survey in the postage paid envelope provided, by May 26, 2000.
Mailing address: MARKET INSIGHT, PO Box 33486, Baltimore, MD 21218

4/13/00-7/31/00

Thank you!

INSTRUCTIONS: This survey measures attitudes, perceptions and experiences. In most instances, you will simply circle your answer or check the appropriate box. If you would like to comment further, you may add a sheet of paper. Please be sure that hand written comments are legible. Return the survey in the envelope provided. Do not sign your name. All responses are confidential. It is very important that all surveys be returned. Please do your part - we need your help. Thank you.

Attorneys' Questionnaire

In the following areas of law, do you PERCEIVE that the state courts in Maryland apply, interpret and enforce laws in a way that treats males more favorably than females, treats females more favorably than males, or treats individuals the same, regardless of their gender?

Circle your response.

	Treats Males More Favorably	Treats Both Equally	Treats Females More Favorably	No Opinion	No Response
Family Law - Marital Property					
1. Amount of monetary award	10.3%	18.6%	23.9%	41.6%	5.6%
2. Enforcement of award	13.5%	19.6%	18.0%	43.2%	5.6%
Family Law - Alimony					
3. Amount of award	10.1%	11.4%	34.2%	38.7%	5.6%
4. Modification of award	9.8%	16.4%	23.9%	43.8%	6.1%
5. Duration of award	10.3%	13.3%	28.4%	43.0%	5.0%
6. Enforcement of award	11.4%	19.6%	20.2%	43.0%	5.8%
Family Law - Child Support					
7. Amount of award	6.4%	31.0%	20.4%	37.1%	5.0%
8. Modification of award	6.6%	30.0%	16.7%	41.1%	5.8%
9. Enforcement of award	11.4%	22.8%	18.8%	41.1%	5.8%
10. Departure from guidelines	2.7%	1.9%	1.6%	1.9%	92.0%
11. Custody of children	2.7%	13.3%	41.6%	37.1%	5.3%
12. Visitation with children	4.5%	23.6%	28.6%	37.4%	5.8%
Domestic Violence - Civil Order Of Protection					
13. Securing ex parte order	8.8%	14.3%	36.3%	35.5%	5.0%
14. Securing protective order	9.3%	15.6%	34.0%	35.5%	5.6%
15. Enforcement of order	13.5%	17.8%	25.2%	37.7%	5.8%
Criminal Proceedings					
16. Pretrial release	1.9%	20.4%	18.6%	54.1%	5.0%
17. Length of sentence	1.3%	18.8%	21.2%	53.6%	5.0%
Juvenile Courts					
18. Delinquency cases	1.3%	21.5%	11.4%	60.7%	5.0%
19. Status offense cases	1.1%	21.8%	7.4%	64.7%	5.0%
20. Treatment of CINA cases	0.8%	21.8%	7.2%	65.3%	5.0%
Negligence					
21. Liability finding	4.8%	47.2%	2.7%	41.1%	4.2%
Negligence - Amount of Judgment					
22. General	4.8%	45.6%	2.7%	41.6%	5.3%
23. Pain and Suffering	4.8%	40.6%	8.5%	41.4%	4.8%
24. Disability	7.7%	40.3%	5.3%	41.6%	5.0%
25. Scarring and Disfigurement	2.9%	30.8%	19.9%	41.6%	4.8%

The following questions ask about YOUR PERCEPTIONS of specific behaviors and the frequency of their occurrence in the Maryland Court System. *Circle your response.*

COURT INTERACTIONS

	Always	Often	Sometimes	Rarely	Never	Don't Know	NoResponse
Female attorneys are asked if they are attorneys when male attorneys are not asked.							
26. By judges	1.1%	5.3%	18.0%	28.1%	24.7%	19.6%	3.2%
27. By counsel	1.9%	12.7%	28.1%	22.5%	18.3%	12.7%	3.7%
28. By court personnel	1.9%	15.4%	24.7%	20.4%	17.5%	17.0%	3.2%
Female attorneys are addressed by first names or terms of endearment when male attorneys are addressed by surnames or titles.							
29. By judges	0.3%	5.6%	12.2%	28.4%	39.0%	11.7%	2.9%
30. By counsel	1.9%	11.7%	23.6%	22.8%	27.3%	9.8%	2.9%
31. By court personnel	0.5%	8.5%	14.9%	28.4%	29.2%	15.6%	2.9%

Female litigants or witnesses are addressed by first names or terms of endearment when male litigants or witnesses are addressed by surnames or titles.							
32. By judges	0.3%	2.9%	9.0%	29.7%	39.5%	15.4%	3.2%
33. By counsel	1.3%	6.9%	20.7%	25.7%	28.1%	14.1%	3.2%
34. By court personnel	0.5%	5.6%	10.6%	27.9%	32.1%	20.4%	2.9%
Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys.							
35. By judges	1.9%	6.1%	17.0%	21.5%	37.1%	14.3%	2.1%
36. By counsel	3.2%	14.1%	22.8%	19.9%	25.2%	12.7%	2.1%
37. By court personnel	1.9%	8.0%	13.0%	21.5%	31.8%	21.8%	2.1%
Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants or witnesses.							
38. By judges	1.1%	4.2%	14.1%	22.3%	37.4%	18.0%	2.9%
39. By counsel	2.7%	10.1%	19.6%	21.0%	27.3%	16.2%	3.2%
40. By court personnel	1.6%	5.3%	15.6%	21.0%	30.8%	22.8%	2.9%
Sexist remarks are made in court or in the office.							
41. By judges	0.3%	3.2%	15.6%	22.3%	36.9%	18.8%	2.9%
42. By counsel	1.9%	12.5%	25.7%	24.9%	20.2%	12.2%	2.7%
43. By court personnel	0.3%	4.8%	9.0%	24.4%	34.5%	24.7%	2.4%
Sexist jokes are told in court or in the office.							
44. By judges	0.5%	2.4%	10.1%	24.1%	40.1%	19.9%	2.9%
45. By counsel	1.6%	10.1%	26.3%	26.0%	21.8%	11.4%	2.9%
46. By court personnel	0.5%	2.7%	10.6%	22.3%	36.1%	24.4%	3.4%
Female litigants are subjected to verbal or physical sexual advances.							
47. By judges	0.3%	0.3%	2.1%	10.9%	54.4%	29.4%	2.7%
48. By counsel	0.5%	1.6%	6.6%	15.6%	44.8%	28.1%	2.7%
49. By court personnel	0.5%	0.5%	3.2%	10.6%	48.3%	34.0%	2.9%
Female attorneys are subjected to verbal or physical sexual advances.							
50. By judges	0.3%	0.3%	4.0%	12.7%	53.8%	26.5%	2.4%
51. By counsel	0.5%	2.7%	11.7%	18.0%	41.6%	23.1%	2.4%
52. By court personnel	0.5%	0.3%	5.0%	12.2%	49.3%	30.0%	2.7%
Female court employees are subjected to verbal or physical sexual advances.							
53. By judges	0.0%	0.3%	2.9%	8.5%	36.3%	48.8%	3.2%
54. By counsel	0.3%	0.8%	6.1%	10.1%	33.4%	46.2%	3.2%
55. By court personnel	0.3%	1.3%	4.5%	8.2%	32.9%	49.9%	2.9%

APPOINTMENT OF COUNSEL

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
56. Female attorneys are appointed to fee generating cases on an equal basis with male attorneys.	8.8%	9.3%	8.5%	7.2%	0.8%	63.4%	2.1%
57. Attorneys who are members of a racial/ethnic minority are appointed to fee generating cases on an equal basis with non-minority attorneys.	7.7%	9.0%	8.0%	6.6%	0.8%	65.8%	2.1%
58. Male and female attorneys are appointed to non-fee generating cases on an equal basis.	8.8%	11.4%	8.5%	5.8%	1.6%	61.5%	2.4%
59. Male attorneys are appointed counsel in family law cases on an equal basis with female attorneys.	5.8%	9.5%	9.0%	9.8%	0.5%	62.6%	2.7%
60. Racial/ethnic minorities are appointed as trustees or receivers in property disputes on an equal basis with non-minority attorneys.	4.8%	4.8%	5.8%	9.0%	2.1%	70.8%	2.7%
61. Female attorneys are appointed as personal representatives in estate matters on an equal basis with male attorneys.	6.4%	7.2%	6.9%	7.2%	0.5%	68.7%	3.2%
62. Male attorneys are appointed counsel in guardianship cases on an equal basis with female attorneys.	8.2%	10.1%	9.3%	6.6%	0.5%	62.6%	2.7%
63. Female attorneys are appointed to criminal cases on an equal basis with male attorneys.	6.6%	6.6%	8.8%	6.1%	0.5%	68.7%	2.7%

continue to page 3

CREDIBILITY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
64. Judges appear to give less weight to female attorneys' arguments than to those of male attorneys.	0.5%	6.4%	18.6%	20.2%	34.2%	15.4%	4.8%
65. Judges appear to give less weight to the testimony of female experts than to that of male experts.	0.5%	4.2%	15.9%	16.4%	30.8%	27.6%	4.5%
66. Judges appear to require more evidence for a female litigant to prove her case than for a male litigant.	0.5%	4.2%	11.7%	16.4%	40.1%	22.3%	4.8%
67. Judges appear to give less weight to an attorney's argument where the attorney is a member of a racial/ethnic minority.	0.3%	3.4%	11.7%	18.3%	35.8%	25.7%	4.8%

MARITAL PROPERTY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
68. Where a wife's primary contribution is as a homemaker, the monetary award reflects a judicial attitude that the husband's income producing contribution entitles him to a larger share of the marital estate.	1.6%	6.4%	14.3%	16.2%	9.5%	46.4%	5.6%
69. Courts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation.	1.1%	9.3%	12.5%	17.2%	4.5%	49.1%	6.4%
70. Effective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made.	0.8%	9.8%	14.6%	12.7%	2.4%	53.3%	6.4%
71. Courts tend to divide the marital estate equally, without regard to the respective monetary contributions of the parties.	2.4%	17.2%	17.0%	7.4%	1.6%	48.0%	6.4%

ALIMONY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
72. A wife's alimony award is based on how much the husband can give her without diminishing his current life style.	0.8%	11.1%	15.6%	12.7%	4.8%	48.5%	6.4%
73. Older, displaced homemakers are awarded indefinite alimony after long-term marriages.	4.0%	19.1%	13.5%	6.1%	0.8%	50.4%	6.1%
74. The courts effectively enforce alimony awards.	1.9%	11.1%	22.0%	6.6%	0.3%	51.2%	6.9%
75. Alimony awards at the time of divorce are close to, or the same, as pendente lite awards.	0.3%	19.1%	18.3%	1.6%	0.0%	54.6%	6.1%
76. Alimony is awarded without regard for the financial impact on the husband.	0.8%	9.3%	10.1%	18.8%	7.2%	47.7%	6.1%

CHILD SUPPORT

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
77. Visitation rights are effectively enforced by the courts.	2.7%	15.4%	20.2%	10.6%	1.1%	43.5%	6.6%
78. Child support awards follow the guidelines.	8.2%	33.4%	8.0%	0.8%	0.0%	43.0%	6.6%
79. Enforcement of child support awards is denied because of alleged visitation problems.	0.3%	1.1%	10.9%	17.8%	13.3%	49.9%	6.9%
80. Enforcement of child support awards is delayed because of counter claims for custody.	0.0%	5.0%	19.4%	12.5%	5.3%	51.2%	6.6%
81. Pendente lite awards of child support are made within 60 days of filing the motion.	0.5%	8.0%	16.4%	10.3%	1.9%	56.0%	6.9%
82. Earnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support.	0.5%	3.4%	13.3%	17.8%	3.7%	53.6%	7.7%
83. Judges exceed the guidelines more frequently when the woman is the petitioner.	0.5%	5.8%	11.4%	11.7%	5.6%	57.8%	7.2%
84. Fathers are more frequently found to be voluntarily impoverished than mothers.	1.9%	12.2%	13.0%	8.0%	1.3%	57.0%	6.6%

CUSTODY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
85. Custody awards to mothers are based on the assumption that children belong with their mothers.	3.2%	22.5%	21.8%	6.1%	1.9%	39.0%	5.6%
86. The courts give fair and serious consideration to fathers who actively seek custody.	3.7%	14.1%	27.9%	9.5%	1.1%	37.9%	5.8%

continue to page 4

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
87. The courts favor the parent in the stronger financial position when awarding custody.	0.0%	5.0%	25.2%	21.0%	1.3%	41.1%	6.4%
88. Child custody awards disregard father's violence against mother.	0.3%	6.1%	16.2%	20.4%	5.8%	44.6%	6.6%
89. Mothers are denied custody because of employment outside the home.	0.0%	2.7%	13.3%	23.6%	8.2%	45.1%	7.2%
90. Joint custody is ordered over the objections of one or both parents.	0.0%	7.4%	21.8%	14.1%	2.9%	47.7%	6.1%

DOMESTIC VIOLENCE

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
91. Civil orders of protection are granted less frequently when the petitioner is a member of a racial/ethnic minority.	0.0%	3.2%	7.4%	13.5%	9.5%	59.2%	7.2%
92. Civil orders of protection, directing respondents to stay away from the home, are granted when petitioners are in fear of serious bodily harm.	7.2%	28.6%	10.9%	2.4%	0.0%	42.7%	8.2%
93. Judges grant civil orders of protection when petitioners allege fear of bodily harm but have no physical injury.	2.1%	22.3%	17.8%	5.8%	0.8%	44.0%	7.2%
94. When granting civil orders of protection, judges issue support awards for dependents.	0.8%	11.9%	15.9%	6.9%	1.1%	55.4%	8.0%
95. Petitions for civil orders of protection are rejected where domestic relation cases are pending.	0.0%	2.9%	14.3%	16.2%	3.7%	55.4%	7.4%
96. Circuit court judges order emergency injunctive relief to protect victims of domestic violence.	3.2%	14.9%	17.5%	7.4%	0.5%	48.5%	8.0%
97. The courts do not treat domestic violence as a crime.	1.1%	6.1%	15.9%	16.4%	9.5%	42.7%	8.2%
98. Assault charges are not treated seriously when domestic relations cases are pending.	1.3%	8.0%	16.4%	16.2%	5.8%	45.1%	7.2%

SEX OFFENSES

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
99. Victims of sex offenses are accorded less credibility than victims of other types of assault.	0.8%	12.7%	16.7%	12.7%	3.4%	46.9%	6.6%
100. Sex offense victims are accorded greater credibility where the victim and accused are strangers.	5.0%	21.8%	13.5%	4.0%	0.3%	48.8%	6.6%
101. Where defendants are members of racial or ethnic minorities, they are accorded less credibility.	1.1%	6.9%	18.0%	10.6%	6.6%	50.7%	6.1%
102. Judges control the court so as to protect the complaining witness from improper questioning.	3.4%	16.4%	15.9%	7.2%	0.0%	50.4%	6.6%
103. Sentences are shorter where the victim had a prior relationship with the defendant.	1.9%	16.2%	18.0%	2.1%	0.3%	54.9%	6.6%
104. Sentences are shorter where the victim is a member of a racial or ethnic minority.	0.3%	4.5%	8.8%	12.5%	5.8%	61.3%	6.9%

SENTENCING

105. Judges give sentences, based solely on gender, to female defendants that are:

37.4%	Less severe than sentences given to male defendants	22.0%	About the same as sentences given to male defendants	3.2% More severe than sentences given to male defendants

37.4% No Response

106. Sentences for the same offense, are given to minority defendants, that are:

1.6%	Less severe than sentences given to non-minority defendants	36.1%	About the same as sentences given to non-minority defendants	23.9% More severe than sentences given to non-minority defendants

38.5% No Response

GENERAL

107. In the past 5 years, to what extent has there been a change, if any, in the number of incidents of gender bias?

1.1%	3.4%	7.4%	28.6%	22.0%	9.3%	23.3%	4.8%
Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have never seen incidents	Don't Know	No Response

108. In the past 5 years, to what extent has there been a change in the number of incidents, if any, of racial/ethnic bias?

1.6%	4.2%	9.5%	21.8%	14.9%	11.9%	31.3%	4.8%
Significant Increase	Some Increase	No Change	Some Decrease	Significant Decrease	Have never seen incidents	Don't Know	No Response

109. In the past 5 years, do you have personal knowledge of a case(s) in which it appeared the litigation process or outcome was affected (either negatively or positively) by the gender (male or female) of one of the parties?
66.3% No 28.6% Yes NR=5.0%
110. How many times in the past five years has this occurred? _____
111. Briefly describe the most recent case in which this occurred - in what way did gender affect the case?
_____
112. In which County or Baltimore City? _____

113. In the past 5 years, has there been a situation where it appeared the litigation process or outcome of a case was affected (negatively or positively) by the gender (male or female) of counsel?
73.7% No 17.0% Yes NR=9.3%
114. How many times in the past five years has this occurred? _____
115. Briefly describe the circumstances of the most recent case where you felt this occurred: _____
_____
116. In which County or Baltimore City? _____

117. In the past 5 years, do you have personal knowledge of a case(s) in which it appeared the litigation process or outcome was affected (either negatively or positively) by the race or ethnicity of one of the parties?
74.8% No 17.2% Yes NR=8.0%
118. How many times in the past five years has this occurred? _____
119. Briefly describe the most recent case in which this occurred - in what way did race/ethnicity affect the case? _____
120. In which County or Baltimore City? _____

121. In the past 5 years, has there been a situation where it appeared the litigation process or outcome of a case was affected (negatively or positively) by the race or ethnicity of counsel?
78.2% No 9.8% Yes NR=11.9%
122. How many times in the past five years has this occurred? _____
123. Briefly describe the circumstances of the most recent case where you felt this occurred: _____
_____
124. In which County or Baltimore City? _____

125. Are you aware of any instances of gender bias in the *judicial selection process* in the past 5 years?
70.0% No 22.5% Yes - Briefly describe. 7.4% No Response _____
_____

126. Are you aware of any instances of racial or ethnic bias in the *judicial selection process* in the past 5 years?
74.0% No 18.8% Yes - Briefly describe. 7.2% No Response _____
_____

127. In the past 5 years, have you intervened in any matter in the court or office because you observed gender bias?
88.1% No 6.9% Yes - Briefly describe. 5.0% No Response _____
_____

128. In the last 5 years, have you intervened in any matter in the court or office because you observed racial or ethnic bias?
92.0% No 2.1% Yes - Briefly describe. 5.8% No Response _____
_____

129. In the past 5 years, did you attend a seminar(s) or program(s) during which issues of gender bias were discussed?
24.9% Yes 71.6% No 3.4% No Response
130. If yes, what was the title and subject of the course(s)? _____
_____
131. Did the discussion affect your behavior? 6.9% Yes 26.3% No NR=66.8%
132. If yes, in what ways? Be specific. _____
_____

continue to the last page

133. In the past 5 years, did you attend a seminar(s) or program(s) during which issues of racial/ethnic bias were discussed?
18.0% Yes 75.6% No 6.4% No Response

134. If yes, what was the title and subject of the course(s)? _____

135. Did the discussion affect your behavior? 6.4% Yes 22.0% No 71.6% No Response

136. If yes, in what ways? Be specific. _____

137. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender bias in the court system today? *Circle your answer.* **Mean = 4.09**

Pervasive ←									→ Non-existent	
10	9	8	7	6	5	4	3	2	1	
0.8%	1.1%	4.0%	8.0%	9.8%	9.8%	12.2%	20.7%	18.3%	4.8%	NR=10.6%

138. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is racial/ethnic bias in the court system today? *Circle your answer.* **Mean = 4.29**

Pervasive ←									→ Non-existent	
10	9	8	7	6	5	4	3	2	1	
0.3%	2.4%	6.9%	9.3%	7.4%	9.5%	10.6	15.6%	18.6%	5.3%	NR=14.1%

139. Use a separate sheet of paper for any cases, instances or examples of gender bias or racial/ethnic discrimination occurring in the last five years in the state courts, in addition to those just described above. Be as specific as possible.

The Select Committee is especially interested in obtaining transcripts, sections of transcripts or relevant opinions, reported and unreported. Send these documents in a separate envelope to the address below. The Select Committee will consider purchasing transcripts in appropriate cases when all information necessary to identify the case is provided. Provide the information you have available - case name, case number, county, year, and court.

THE FOLLOWING QUESTIONS PROVIDE GENERAL BACKGROUND INFORMATION. RESULTS WILL BE REPORTED AS GROUP DATA; INDIVIDUALS WILL NOT BE IDENTIFIED.

140. How may years has it been since you were admitted to the practice of law in Maryland? No Response=2.4%
21.8% 0 - 5Yrs 16.2% 6 - 10Yrs 18.6% 11- 15Yrs 14.6% 16 - 20Yrs 26.5% > 20Yrs

141. In what area of the state of Maryland do you primarily practice law?

1.6%	Dorchester/Wicomico/Worcester Co	1.1%	Caroline/Cecil/Kent/Queen Anne's/Talbot Counties
12.7%	Baltimore/Harford Counties	1.6%	Allegany/Garrett/Washington Counties
9.5%	Anne Arundel/Carroll/Howard Counties	16.7%	Montgomery/Frederick Counties
8.8%	Calvert/Charles/Prince George's/St. Mary's Co	21.2%	Baltimore City

No Response = 26.8%

142. During the past two years has litigation formed over 20% of your practice? 65.5% Yes 30.2% No NoResponse 4.2%

143. Please indicate if any of these areas constitute 20% or more of your practice: *Check <u>all</u> that apply.*

19.0%	Personal Injury (Plaintiff)	16.4%	Personal Injury (Defendant)	14.1%	Criminal (Defense)
3.1%	Criminal (Prosecutor)	26.6%	Domestic	43.2%	No Response

(total exceeds 100% because of multiple answers)

144. What is your age? 0.0%	Less than 25 Yrs	18.8%	25 - 34 Yrs	34.7%	35 - 44 Yrs
24.9%	45 - 54 Yrs	13.0%	55 - 64 Yrs	5.6%	65 Yrs or Older
				2.9%	No Response

145. **What is your gender? 43.5% Male 52.3% Female 4.2% No Response**

146. **What is your race/ethnic origin?**

6.4%	**African American**	**1.6%**	**Asian American**	**84.4%**	**Caucasian**
1.3%	**Hispanic**	**0.3%**	**Native American**	**2.7%**	**Other**

3.4% No Response

****

Please fold, insert, seal and mail the survey in the postage paid envelope provided, by May 26, 2000.
Mailing address: MARKET INSIGHT, PO Box 33486, Baltimore, MD 21218

Thank you!

INSTRUCTIONS: This survey measures attitudes, perceptions and experiences. In most instances, you will simply circle your answer or check the appropriate box. If you would like to comment further, you may add a sheet of paper. Please be sure that hand written comments are legible. Return the survey in the envelope provided. Do not sign your name. All responses are confidential. It is very important that all surveys be returned. Please do your part - we need your help. Thank you.

Court Employees' Questionnaire

The following questions ask about YOUR PERCEPTIONS of specific behaviors and the frequency of their occurrence in the Maryland Court System. *Circle your response.*

COURT INTERACTIONS

	Always	Often	Sometimes	Rarely	Never	Don't Know	No Response
Female attorneys are asked if they are attorneys when male attorneys are not asked.							
1. By judges	0.3%	1.1%	4.9%	9.6%	15.2%	63.5%	5.4%
2. By counsel	0.2%	1.5%	6.9%	8.3%	12.0%	64.8%	6.2%
3. By court personnel	0.4%	2.6%	11.2%	13.3%	20.0%	49.0%	3.5%
Female attorneys are addressed by first names or terms of endearment when male attorneys are addressed by surnames or titles.							
4. By judges	0.1%	1.4%	3.4%	8.5%	23.3%	57.8%	5.4%
5. By counsel	0.1%	2.4%	6.0%	8.0%	17.7%	59.8%	6.0%
6. By court personnel	0.2%	2.4%	7.1%	12.7%	28.6%	45.4%	3.5%
Female litigants or witnesses are addressed by first names or terms of endearment when male litigants or witnesses are addressed by surnames or titles.							
7. By judges	0.1%	1.1%	2.4%	7.4%	25.5%	57.6%	6.0%
8. By counsel	0.2%	1.4%	4.1%	7.8%	21.3%	58.4%	6.8%
9. By court personnel	0.1%	1.2%	4.1%	10.5%	33.1%	46.9%	4.0%
Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys.							
10. By judges	0.6%	2.2%	5.3%	7.0%	21.1%	58.0%	5.9%
11. By counsel	0.5%	1.8%	5.7%	7.9%	17.5%	59.9%	6.6%
12. By court personnel	0.7%	2.4%	9.5%	12.5%	26.8%	44.4%	3.7%
Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants or witnesses.							
13. By judges	0.6%	2.0%	4.6%	7.6%	20.6%	58.6%	6.1%
14. By counsel	0.5%	1.8%	5.5%	7.4%	17.8%	60.2%	6.8%
15. By court personnel	0.7%	2.4%	9.5%	11.2%	27.2%	45.7%	3.5%
Sexist remarks are made in court or in the office.							
16. By judges	0.5%	1.7%	6.2%	8.4%	28.4%	47.5%	7.2%
17. By counsel	0.3%	1.8%	8.3%	9.8%	22.3%	49.8%	7.7%
18. By court personnel	1.1%	3.9%	18.0%	16.3%	29.8%	26.7%	4.2%
Sexist jokes are told in court or in the office.							
19. By judges	0.5%	1.2%	7.2%	7.7%	27.4%	47.9%	8.1%
20. By counsel	0.3%	1.6%	10.4%	9.8%	20.4%	49.2%	8.3%
21. By court personnel	1.4%	4.6%	20.8%	19.1%	26.3%	24.4%	3.3%
Female litigants are subjected to verbal or physical sexual advances.							
22. By judges	0.2%	0.3%	1.6%	4.3%	29.2%	58.0%	6.4%
23. By counsel	0.2%	0.5%	2.4%	4.3%	25.5%	59.8%	7.2%
24. By court personnel	0.2%	0.9%	2.7%	5.4%	39.9%	47.5%	3.5%
Female attorneys are subjected to verbal or physical sexual advances.							
25. By judges	0.2%	0.3%	1.4%	3.8%	27.7%	60.7%	5.9%
26. By counsel	0.1%	0.6%	2.1%	3.8%	24.2%	62.4%	6.8%
27. By court personnel	0.3%	0.5%	2.1%	4.7%	38.6%	50.3%	3.5%
Female court employees are subjected to verbal or physical sexual advances.							
28. By judges	0.1%	0.9%	3.3%	4.8%	38.0%	46.3%	6.6%
29. By counsel	0.2%	0.8%	5.6%	7.0%	31.6%	47.5%	7.4%
30. By court personnel	0.5%	2.4%	9.6%	11.4%	40.1%	32.8%	3.3%

APPOINTMENT OF COUNSEL

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
31. Female attorneys are appointed to fee generating cases on an equal basis with male attorneys.	3.5%	3.5%	2.7%	1.2%	0.8%	84.6%	3.7%
32. Attorneys who are members of a racial/ethnic minority are appointed to fee generating cases on an equal basis with non-minority attorneys.	2.9%	2.0%	2.5%	1.7%	1.3%	85.8%	3.8%
33. Male and female attorneys are appointed to non-fee generating cases on an equal basis.	4.1%	3.2%	2.5%	1.4%	0.7%	84.4%	3.7%
34. Male attorneys are appointed counsel in family law cases on an equal basis with female attorneys.	3.9%	3.8%	2.8%	1.6%	0.4%	84.0%	3.5%
35. Racial/ethnic minorities are appointed as trustees or receivers in property disputes on an equal basis with non-minority attorneys.	2.2%	1.6%	2.2%	2.0%	0.8%	87.3%	3.8%
36. Female attorneys are appointed as personal representatives in estate matters on an equal basis with male attorneys.	2.2%	2.2%	2.4%	2.1%	0.4%	86.8%	3.8%
37. Male attorneys are appointed counsel in guardianship cases on an equal basis with female attorneys.	3.9%	3.1%	2.9%	1.6%	0.5%	84.4%	3.7%
38. Female attorneys are appointed to criminal cases on an equal basis with male attorneys.	4.8%	3.3%	2.9%	2.0%	0.5%	82.7%	3.9%

CREDIBILITY

	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
39. Judges appear to give less weight to female attorneys' arguments than to those of male attorneys.	0.3%	1.1%	4.2%	6.6%	22.3%	62.0%	3.4%
40. Judges appear to give less weight to the testimony of female experts than to that of male experts.	0.3%	0.8%	3.3%	5.8%	22.1%	64.1%	3.5%
41. Judges appear to require more evidence for a female litigant to prove her case than for a male litigant.	0.3%	0.9%	3.8%	4.9%	23.0%	63.6%	3.5%
42. Judges appear to give less weight to an attorney's argument where the attorney is a member of a racial/ethnic minority.	0.3%	1.2%	3.3%	4.5%	22.7%	64.0%	4.0%

In the first column, please check those behaviors that you have personally experienced while working in the court system. In the second column, check those behaviors of which you have personal knowledge.

Within the last 5 years, sexual advances in exchange for an employment security/opportunity.	EXPERIENCE	PERSONAL KNOWLEDGE	No Response
43. From a judge	0.1%	3.4%	96.5%
44. From an attorney	0.7%	2.6%	96.7%
45. From a co-worker (including subordinates)	1.2%	3.0%	95.8%
46. From a supervisor	0.9%	3.5%	95.6%
Requests for sexual activity, within the last 5 years.			
47. From a judge	0.1%	2.6%	97.3%
48. From an attorney	0.7%	2.1%	97.2%
49. From a co-worker (including subordinates)	1.8%	3.0%	95.2%
50. From a supervisor	0.7%	2.4%	97.0%
51. From the public	2.9%	2.2%	94.9%
Physical touching of a sexual nature, within the last 5 years.			
52. From a judge	0.6%	2.6%	96.8%
53. From an attorney	0.9%	2.1%	97.0%
54. From a co-worker (including subordinates)	2.2%	3.9%	93.9%
55. From a supervisor	0.8%	2.4%	96.8%
56. From the public	0.9%	2.8%	96.3%
Verbal behavior such as sexist jokes or comments, within the last 5 years.			
57. From a judge	3.7%	4.6%	91.7%
58. From an attorney	6.4%	3.9%	89.7%
59. From a co-worker (including subordinates)	11.8%	7.4%	80.8%
60. From a supervisor	5.7%	4.4%	89.9%
61. From the public	10.0%	5.1%	84.8%

The following questions concern job responsibilities and opportunities in the state court system. Results will be reported only as GROUP data.

62. Does your position have a written job description? Yes 86.0% No 9.9% No Response 4.1%

63. How many years have you been employed in the Maryland court system?
0 - 5 Yrs 37.5% 6 - 10 Yrs 16.6% 11 - 15 Yrs 16.5% 16 - 20 Yrs 10.0% > 20 Yrs 17.4% NR=2.0%

64. How many years have you been employed in your current position?
0 - 5 Yrs 54.4% 6 - 10 Yrs 20.4% 11 - 15 Yrs 12.7% 16 - 20 Yrs 5.8% > 20 Yrs 4.7% NR=2.0%

65. Before your employment within the court system, did you have prior work experience or was this your first job?
Yes, I had prior work experience 86.1% No, I had no prior work experience 11.7% NR=2.2%

66. If you had experience prior to working in the court system, how many *years of experience* did you have?
Less than 1 Year 5.6% 1 - 5 Years 28.0% 6 - 10 Years 18.2%
11 - 15 Years 11.8% 16 - 20 Years 7.4% More Than 20 Years 15.1% NR=14.1%

67. What was your level of education when you were *first hired* in the court system?
Some High School 1.0% Some College 28.8% Some Graduate Work 2.6%
High School Degree 36.5% College Degree 16.6% Graduate Degree 5.8% NR=8.8%

68. What is your current level of education?
Some High School 0.7% Some College 31.8% Some Graduate Work 3.4%
High School Degree 31.5% College Degree 17.8% Graduate Degree 6.6% NR=8.2%

69. What was your annual salary when you were *first hired*?
43.3% Less than $15,000 29.0% $15,000 - $ 19,999 14.5% $20,000 - $24,999 3.2% $25,000 - $29,999
2.2% $30,000 - $34,999 1.8% $35,000 - $39,999 0.9% $40,000 - $44,999 0.1% $45,000 - $49,999
0.2% $50,000 - $54,999 0.5% $55,000 - $59,999 0.3% $60,000 - $64,999 0.3% $65,000 + NR=3.8%

70. What is your *current* annual salary?
2.8% Less than $15,000 5.4% $15,000 - $ 19,999 24.1% $20,000 - $24,999 24.0% $25,000 - $29,999
17.2% $30,000 - $34,999 8.8% $35,000 - $39,999 5.4% $40,000 - $44,999 2.6% $45,000 - $49,999
1.4% $50,000 - $54,999 0.2% $55,000 - $59,999 0.8% $60,000 - $64,999 3.0% $65,000 + NR=4.3%

71. How much of your time is usually spent *in the courtroom* while performing your job responsibilities and duties? NR=7.7%
14.2% Less than 25% 4.8% 25% - 49% 3.4% 50% - 74% 11.5% 75%or More 58.4% Do Not Work In Courtroom

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Circle the response which best describes YOUR experiences while employed in the state court system.

	Strongly Agree ←				→ Strongly Disagree	Don't Know	No Response
72. My job duties and responsibilities have been *reduced* solely because of my gender.	1.0%	0.7%	2.8%	3.6%	78.2%	10.4%	3.4%
73. My job duties and responsibilities have been increased solely because of my gender.	2.7%	1.5%	3.5%	4.9%	73.3%	10.9%	3.2%
74. My job duties and responsibilities have been *reduced* solely because of my race/ethnicity.	1.3%	0.6%	2.6%	2.9%	79.6%	9.8%	3.2%
75. My job duties and responsibilities have been increased solely because of my race/ethnicity.	1.3%	1.1%	3.2%	3.0%	77.7%	10.4%	3.3%

Circle your response.	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
76. My opinions in job related situations are given different weight or importance than a person of the opposite gender.	2.1%	2.8%	10.4%	11.3%	54.3%	15.8%	3.3%
77. I feel I am asked to perform duties that would not be asked of a person of the opposite sex.	1.6%	2.7%	7.7%	10.4%	64.7%	9.9%	2.8%
78. I feel that there are job duties I am not allowed to perform because of my gender.	1.4%	0.9%	4.3%	9.3%	71.1%	10.2%	2.8%
79. Choice job assignments are given to employees on the basis of gender.	2.0%	2.0%	6.3%	7.9%	64.0%	14.8%	2.9%

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	Always	Often	Sometimes	Rarely	Never	Don't Know	NR
80. Choice job assignments are given to employees on the basis of race/ethnic origin.	2.6%	3.7%	9.1%	7.4%	55.2%	18.2%	3.8%
81. I am permitted to go to job training programs that are available to employees in my position.	44.5%	14.8%	14.5%	5.5%	7.3%	10.2%	3.1%
82. Permission to attend job training programs appears to be granted based on gender.	1.2%	0.9%	2.0%	6.2%	68.5%	18.6%	2.7%
83. The opportunity to attend job training programs appears to be granted on the basis of one's race/ethnicity.	1.1%	0.9%	2.8%	4.8%	68.4%	19.2%	3.0%
84. Opportunities for job advancement in the court system are limited because of my gender.	2.2%	2.1%	7.0%	7.7%	55.2%	22.5%	3.4%
85. Opportunities for advancement in the court system are limited because of my race/ethnicity.	3.0%	3.8%	7.7%	5.4%	54.8%	21.3%	3.9%
86. When promotional opportunities are available in the court system, I am informed of the openings.	37.5%	16.2%	19.2%	8.8%	8.7%	6.1%	3.4%
87. I am encouraged to apply for promotional opportunities.	22.5%	8.7%	13.8%	14.7%	26.4%	8.1%	5.8%
88. In my area, it appears that members of one gender are given preferential appointments to supervisory positions.	3.1%	3.1%	6.5%	9.8%	53.4%	20.3%	3.8%
89. In my area, it appears that preferential appointments to supervisory positions are made based on race/ethnic origin.	2.7%	3.5%	8.1%	7.5%	53.8%	20.4%	4.0%
90. If there is a problem or complaint about my job, there is a person or agency to deal with it.	46.6%	12.6%	12.9%	6.1%	6.8%	11.5%	3.5%

91. If your job duties or conditions of employment have been affected because of your gender, briefly describe how. _____

92. If your job duties or conditions of employment have been affected because of your race/ethnicity, briefly describe how. _____

93. In the past five years, have you filed a complaint involving gender bias on the job? 2.2% Yes 95.7% No NR=2.0%

94. If yes, was your complaint resolved to your *satisfaction*? 0.1% Yes 6.7% No NR=93.2%

95. In the past five years, have you filed a complaint involving racial/ethnic bias on the job? 2.2% Yes 94.6% No NR=3.2%

96. If yes, was your complaint resolved to your *satisfaction*? 0.3% Yes 6.0% No NR=93.7%

97. Have you attended any job training programs in the past five years? 79.0% Yes 17.3% No NR=3.7%

98. Why/why not? _____

99. If you attended a job training program(s), were you given: *Check all that apply.*

65.3% Paid Administrative Leave 1.3% Unpaid Administrative Leave

57.8% Mileage Reimbursement 5.9% Reimbursement of Registration Fees No Response = 21.4%

100. In your opinion, is the salary for most court employees too high, too low or equitable for the work required?

0.5% Too High 76.6% Too Low 12.3% Equitable 7.1% Don't Know NoResponse 3.5%

101. Are individuals of the opposite sex paid more, less or the same, for performing the same job duties and responsibilities that you perform?

4.5% Paid More 1.1% Paid Less 46.2% Paid the Same 45.0% Don't Know No Response 3.3%

102. Do you feel that you have been *denied* a promotion while employed in the court system because of your gender?

3.3% Yes 78.3% No 14.3% Don't Know No Response 4.1%

103. If yes, briefly describe the circumstances. *Be specific.* _____

104. Do you feel you have been denied a promotion while employed in the court system because of your race/ethnicity?

4.5% Yes 76.6% No 15.4% Don't Know No Response 3.5%

105. If yes, briefly describe the circumstances. *Be specific.* _____

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106. If you have been denied a promotion, were you given a reason for the denial? 9.1% Yes 14.2% No 62.2% NA =14.5%

107. Do you feel that someone else was granted or denied a promotion while employed in the court system because of his/her gender? 7.7% Yes 43.2% No 45.2% Don't Know No Response 3.8%

108. If yes, briefly describe the circumstances as specifically as possible. _____

_____

_____

109. Do you feel that someone else has been granted or denied a promotion while employed in the court system because of his or her race/ethnicity? 10.3% Yes 40.6% No 45.1% Don't Know No Response 3.9%

110. If yes, briefly describe the circumstances as specifically as possible._____

_____

_____

111. How much job advancement opportunity is available to you in the court system in Maryland?
13.1% No opportunity 43.9% Little opportunity 28.6% Some opportunity 5.1% A lot of opportunity
6.0% Don't Know No Response 3.3%

112. Have you ever requested maternity or paternity leave? 16.6% Yes 78.4% No No Response 5.0%
113. If yes, was the leave granted? 15.6% Yes 1.8% No No Response 82.5%
114. If not, why not? _____

115. Have you ever felt pressured NOT to request maternity/paternity leave? 1.9% Yes 43.5% No 39.7% NA NR 14.9%
116. If yes, what were the circumstances? _____

117. Do you have children under 12 years of age for whom day care is needed? 21.3% Yes 70.8% No NR 7.9%
118. If yes, is the day care needed for: 3.9% Infant 6.8% Preschool 14.4% After school NR 78.1%
119. Is day care currently available at your work place? 2.0% Yes 59.6% No NR 38.5%
120. Would you use it if it were available and needed? 33.1% Yes 16.6% No NR 50.3%

121. Is it your PERCEPTION that judges give sentences, based solely on gender, to female defendants that are:
16.7% Less severe than sentences given to male defendants 52.4% About the same as sentences given to male defendants 1.9% More severe than sentences given to male defendants NR 29.0%

122. Do you PERCEIVE that sentences for the same offense, are given to minority defendants that are:
3.7% Less severe than sentences given to non-minority defendants 54.6% About the same as sentences given to non-minority defendants 13.4% More severe than sentences given to non-minority defendants NR 28.3%

123. In the past 5 years, to what extent has there been a change, if any, in the number of incidents of gender bias? NR=6.0%
1.3% Significant Increase 3.5% Some Increase 6.4% No Change 4.9% Some Decrease 4.4% Significant Decrease 17.1% Have never seen incidents of bias 56.3% Don't Know

124. In the past 5 years, to what extent has there been a change in the number of incidents, if any, of racial/ethnic bias? NR= 5.8%
2.6% Significant Increase 4.8% Some Increase 7.2% No Change 4.5% Some Decrease 4.1% Significant Decrease 16.2% Have never seen incidentsof racial/ethnic bias 54.8% Don't Know

125. In the past 5 years, have you ever *intervened* in any matter in your office because you observed gender bias?
NR=5.9% 91.7% No 2.4% Yes - *Briefly describe.* _____

_____

126. Have you ever intervened in any matter in your office in the last 5 years, because you observed racial or ethnic bias?
NR=5.6% 90.3% No 4.1% Yes - *Briefly describe.* _____

continue to the last page

127. In the past 5 years, have you attended a seminar or program during which issues of gender bias were discussed?
27.4% Yes 64.6% No NR=8.0%

128. If yes, what was the title and subject of the program(s)? _____

129. Did the discussion affect your behavior? 6.6% Yes 27.7% No 65.7% No Response

130. If yes, in what ways? *Be specific.* _____

131. In the past 5 years, have you attended a seminar or program during which issues of racial/ethnic bias were discussed?
19.2% Yes 70.7% No 10.1% No Response

132. If yes, what was the title and subject of the program(s)? _____

133. Did the discussion affect your behavior? 4.7% Yes 22.1% No 73.1% No Response

134. If yes, in what ways? *Be specific.* _____

135. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender bias in the court system today? *Circle your answer.* Mean = 3.38

Pervasive ← → Non-existent

10	9	8	7	6	5	4	3	2	1	
1.1%	1.3%	2.8%	3.7%	5.8%	11.0%	8.1%	13.9%	15.4%	22.0%	NR=15.0%

136. On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is racial/ethnic bias in the court system today? *Circle your answer.* Mean = 3.79

Pervasive ← → Non-existent

10	9	8	7	6	5	4	3	2	1	
3.6%	2.4%	4.8%	5.0%	5.1%	10.3%	8.1%	10.2%	13.4%	23.1%	NR=14.0%

THE FOLLOWING QUESTIONS PROVIDE GENERAL BACKGROUND INFORMATION. RESULTS WILL BE REPORTED AS GROUP DATA; INDIVIDUALS WILL NOT BE IDENTIFIED.

137. Where are you currently employed?

8.3% Administrative Office of the Courts or Court Related Agencies (Includes Law Library, Attorney Grievance Commission, Board of Law Examiners, & Rules Committee)
37.2% Circuit Court
44.1% District Court
3.5% Other
No Response 6.8%

138. What is your age?

5.3% Less than 25 Years	16.7%	25 - 34 Years	26.6%	35 - 44 Years	
27.8% 45 - 54 Years	16.4%	55 - 64 Years	3.1%	65 Years or Older	NR = 4.1%

139. What is your gender? 18.8% Male 73.6% Female NR = 7.6%

140. What is your race/ethnic origin?

22.1% African American	1.4%	Asian American	65.3%	Caucasian	
0.7% Hispanic	2.0%	Native American	2.6%	Other	NR = 5.7%

141. Are you employed: 89.8% Full-time 6.3% Part-time NR = 3.9%

142. On what basis are you employed? 83.9% Permanent 5.1% Permanent Contractual 6.3% Contractual NR4.7%

143. If your position is contractual, do you receive benefits, e.g., health insurance, sick leave, annual leave etc? 5.3% Yes 12.1% No
No Response = 82.5%

144. Include an additional sheet of paper for any further information of gender bias or racial/ethnic discrimination in the state courts, including attitudes, in addition to those described above, which occurred in the past five years that you would like to bring to The Select Committee's attention. Please be as specific as possible.

****

Please fold, insert, seal and mail the survey in the postage paid envelope provided, by May 26, 2000.

Mailing address: MARKET INSIGHT, PO Box 33486, Baltimore, MD 21218

4/13/00 - 8/00

Thank you!

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