

Maryland Special Joint Committee

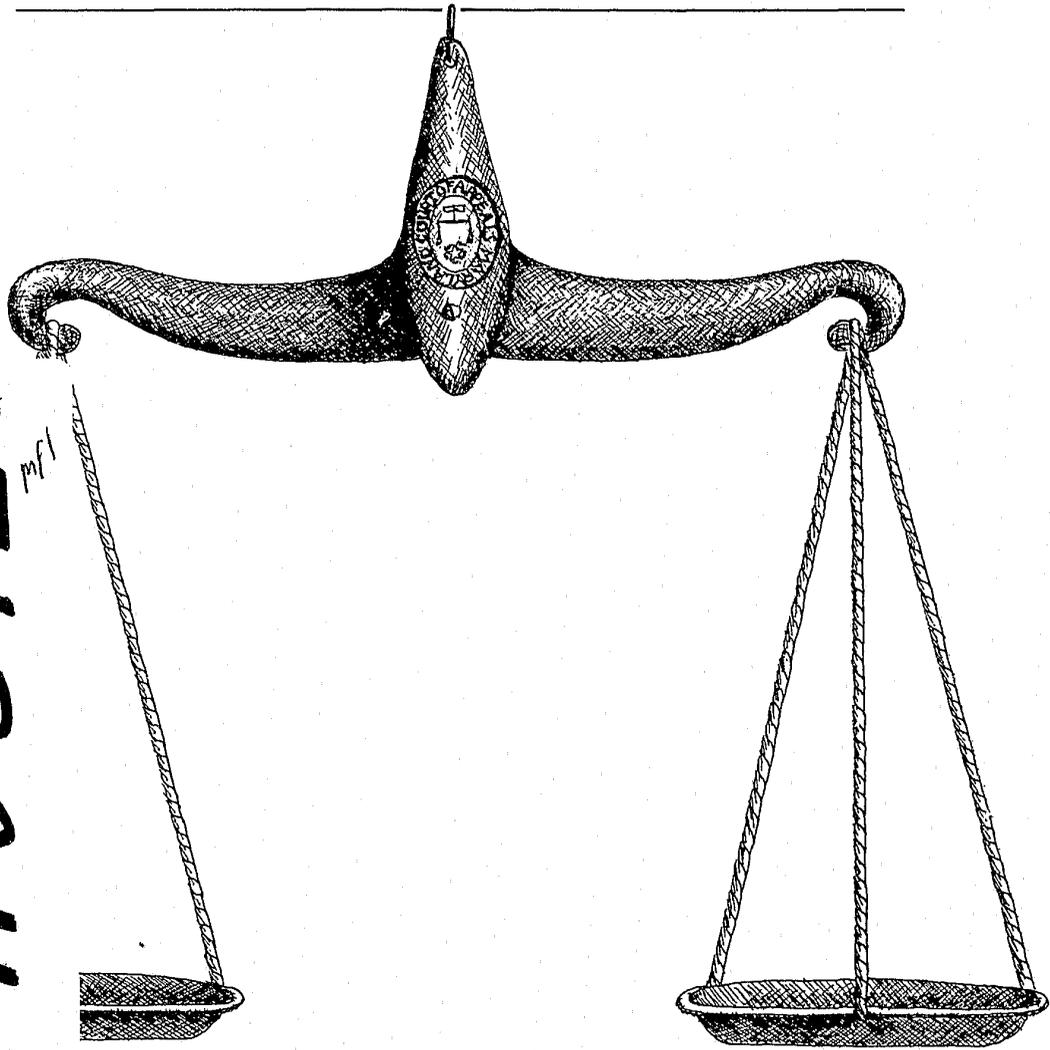
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# GENDER BIAS IN THE COURTS

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**REPORT OF THE SPECIAL JOINT COMMITTEE  
ON GENDER BIAS IN THE COURTS**

**May 1989**

**NCJRS**

**JUL 15 1989**

**ACQUISITIONS**

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**Members of the Committee:**

- Honorable Hilary D. Caplan, Chair**
- Honorable William H. Adkins, II**
- Honorable Rosalyn B. Bell**
- Professor Karen Czapanskiy**
- Marvin J. Garbis, Esquire**
- Linda H. Lamone, Esquire**
- Honorable William D. Missouri**
- H. Peter Moser, Esquire**
- Honorable Louise G. Scrivener**

**Reporters:**

- Professor Karen Czapanskiy**
- Tricia O'Neill, Esquire (Chapter 5)**

**Staff:**

- Deborah Unitus**
- Administrative Office of the Courts**
- Annapolis, Maryland**

# SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

Courts of Appeal Building  
Annapolis, Maryland 21401  
(301) 974-2353

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May, 1989

To: Chief Judge Robert C. Murphy  
Roger W. Titus, Esquire, President, Maryland State  
Bar Association

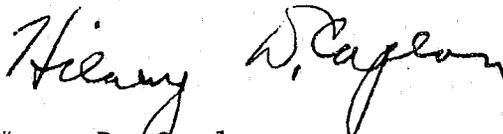
The Special Joint Committee on Gender Bias in the Courts has been privileged to work together for the past two years. On behalf of our Committee, I am pleased to present our report to you.

Our recommendations speak for themselves. They are based on data which have been fully explored, documented and discussed. Open hearings were held around the State where all persons could be heard, including special interest groups, litigants, lawyers and judges. Other data were carefully and professionally collected through anonymous questionnaires. We did not, however, actively seek to single out specific individuals for criticism or praise.

In an undertaking of this nature, it would be impossible to recognize every person who contributed to our Committee's work. We have recognized many of those persons and organizations in our List of Acknowledgements and apologize for any inadvertent omissions. One person stands above all others and her contributions have been outstanding. Our heartfelt thanks to Deborah Unitus of the Administrative Office of the Courts.

With the continued support of the Judiciary and the State Bar Association, our Committee is confident that we will achieve the objectives addressed herein in order to improve the system for future generations of lawyers, litigants and judges.

Respectfully yours,



Hilary D. Caplan  
Chairperson



ROBERT C. MURPHY

CHIEF JUDGE

COURT OF APPEALS OF MARYLAND

COURTS OF APPEAL BUILDING

ANNAPOLIS, MARYLAND 21401

The Special Joint Committee on Gender Bias in the Courts has been one of uncommon dedication and competence. Its eagerly awaited Report merits, indeed commands, serious attention and careful study not only by lawyers, judges and court personnel, but by all people within our State.

The response of our justice system to the Committee's Report will, I am sure, be closely monitored by the public and by the media. In light of the Committee's recommendations, the Maryland Judicial Conference will undoubtedly embark on an educational process designed to eliminate any vestige of gender-based discrimination in our court and legal systems. A fair and efficient justice system can ill afford, in its administration, even the slightest perception of purposeful discrimination, whatever its root source.

Knowing the judges and lawyers of Maryland as I do, I am confident that the Committee's Report will be well received.



*Maryland State Bar Association, Inc.*

THE MARYLAND BAR CENTER  
520 WEST FAYETTE STREET  
BALTIMORE, MARYLAND 21201

ROGER W. TITUS  
PRESIDENT

(301) 685-7878

In early 1987, Chief Judge Robert C. Murphy, and my predecessor, Judge Vincent E. Ferretti, Jr., appointed the Special Joint Committee on Gender Bias in the Courts. The Special Joint Committee held public hearings and conducted extensive research and has now produced an excellent report.

The Maryland State Bar Association recognizes that lawyers, judges and court employees share the responsibility for assuring the impartiality of judicial proceedings. Attorneys are officers of the court and, as professionals, they must insure the fair administration of justice for all parties, as well as the appearance of justice. Gender bias in the courts is not a subject which can be ignored and it warrants special attention from every member of the Bar and Bench.

The goal of the Special Joint Committee was to present the overall issue of gender bias and the role that it plays in the courts in Maryland. Among other things, the Special Joint Committee found that women were not asking for special treatment, but only for fair treatment.

In a recent study undertaken by our Special Committee on Law Practice Quality, 63% of the lawyers responding reported that there continues to be discrimination in the legal profession because of sex, race, disability, religion or national origin. Although there was no breakdown of the type of discrimination, one of them was sex discrimination and I have no doubt that it played a major role in the disturbingly large affirmative response to this question.

The Maryland State Bar Association is committed to eliminating gender bias in the courts and we pledge to work with the judiciary to accomplish this extremely important goal.

Sincerely,

Roger W. Titus  
President

## ACKNOWLEDGEMENTS

The Committee wishes to express its gratitude to the following people and organizations for their help. Without their willingness to share time and skill and their generosity with resources, the Committee's surveys, hearings, investigation, and report would not have been possible.

### **Financial Support:**

Administrative Office of the Courts  
Maryland State Bar Foundation, Inc.  
Maryland Bar Foundation, Inc.  
Baltimore Bar Foundation, Inc.  
State Justice Institute, through the Women Judges Fund for Justice  
The Daily Record  
University of Maryland School of Law

### **Survey Research Assistance:**

Cheryl Kaplowitz, Sc.D.  
Sue Dowden  
Survey Research Center of the University of Maryland  
University of Maryland Institute for Governmental Services

### **Administrative and Clerical Assistance:**

Flo Smith  
Mary C. Richter  
Gary Grabowski

### **Printing the Report:**

Department of Fiscal Services, Maryland General Assembly

### **Cover Designs:**

Linda McKnight  
Juana Godinez

### **Legal Consultants:**

Lynn Hecht Schafran, Esquire  
Professor Jana B. Singer

### **Legal Research:**

Tricia O'Neill, Esquire  
Sherryl Statland  
Halee Weinstein  
University of Maryland School of Law Library Reference Staff

## **Organizing Hearings:**

Montgomery County

Judy Vaughan-Prather  
Executive Director  
Montgomery County Commission for  
Women, and her staff

Eastern Shore - Easton

Jane Tolar, Esquire  
Sally D. Adkins, Esquire  
Anne C. Ogletree, Esquire

Prince George's County -  
Upper Marlboro

Barbara Miller  
Executive Director  
Prince George's County Commission for  
Women, Marge Zimmerman, and their staff

Western Maryland -  
Hagerstown

Kandyce M. Douglas

Baltimore City

Donna Talbert  
Executive Director  
Maryland Commission for Women, and her  
staff  
Sally T. Grant, Chair  
Maryland Commission for Women

Annapolis - Anne Arundel  
and Howard Counties

Randolph R. Farmer  
National Congress for Men  
Judy Holmes  
Administrative Officer  
Anne Arundel County Council

Baltimore, Carroll, and  
Harford Counties

Randolph R. Farmer  
National Congress for Men

## **Public Relations:**

Mitchell and Associates, Inc.

## **Recording and Transcribing the Committee's Hearings:**

Maryland Shorthand Reporters Association and its Pro Bono  
Committee

Montgomery County: Bossard Associates, Inc. -  
Dennis Bossard

Eastern Shore - Easton: Capital-Shore Reporting Co. -  
Pamela L. Garland

Prince George's County - Upper Marlboro:  
Gore Reporting Company - Karen Morganelli

**Western Maryland - Hagerstown: Barclay Adams Business  
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## SPECIAL ACKNOWLEDGEMENTS

Many people contributed their valuable time and services to the Special Joint Committee on Gender Bias in the Courts. We would like to pay a special tribute to several individuals whose assistance to the Committee was greatly appreciated.

Professor Karen Czapanskiy, as Reporter for the Committee, wrote the Report, with the exception of Chapter 5. She developed the hypothetical problems and served on the subcommittee to develop questionnaires for judges, attorneys, and court employees. Professor Czapanskiy spent many hours conducting research and reviewing transcripts.

Tricia D. O'Neill, Esquire, as Reporter for the Committee, wrote Chapter 5 of the Report. In addition, she assisted the Committee at hearings and meetings. She did legal research, reviewed hearing transcripts, investigated case references from testimony, and assisted in the development of the hypothetical problems.

Cheryl Kaplowitz, Sc.D., a special consultant to the Committee, assisted in questionnaire development. She conducted questionnaire pre-tests, reported on the results and suggested improvements to the survey instruments. She also spent time helping with methodological and statistical support. Dr. Kaplowitz provided valuable assistance to the Committee by consulting on data analysis and interpretation.

The Public Relations firm of Mitchell and Associates, Inc., under the direction of Ron Mitchell, advised the Committee on media relations. Mr. Mitchell and his staff wrote press releases and planned press conferences.

The Womens Judge Fund for Justice and its Executive Director, Marilyn Nejelski, volunteered both time and services to the Committee.

Linda McKnight drew the cover design and prepared the cover for printing.

Most of all, the Special Joint Committee on Gender Bias in the Courts would like to pay a special tribute to the 133 individuals who testified at the public hearings and told us their stories. We would also like to thank the countless number of people who wrote letters to the Committee providing case materials and transcripts. Without these individuals, this Report would not have been complete.

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# REPORT OF THE SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

## INTRODUCTION

The Special Joint Committee on Gender Bias in the Courts is a joint effort of the Courts and Bar of Maryland to examine whether gender bias is affecting participants in the judicial system.

When the Committee was created in early 1987, Chief Judge Robert C. Murphy charged it:

1. *To examine the extent to which gender bias, if it exists, affects decision-making in the courts of Maryland.*
2. *To examine the extent to which gender bias, if it exists, affects participants in the court system, such as judges, attorneys, litigants, jurors, witnesses and court employees and members of the public who come into contact with the courts of Maryland.*
3. *If gender bias exists, to recommend means to eliminate its effect in the Maryland judicial system.*

After a two year investigation, the Committee's answer is yes: gender bias exists in the courts of Maryland, and it affects decision-making as well as participants.<sup>1</sup>

The Committee's investigation addressed the following areas:

Domestic Violence (Chapter 1)  
Child Custody and Visitation (Chapter 2)  
Child Support (Chapter 3)  
Alimony; Property Disposition and Litigation Expenses (Chapter 4)  
Court Treatment of Personnel (Chapter 5)  
Selection of Judges (Chapter 6)  
Women in the Courtroom: Treatment of Women Parties, Witnesses,

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<sup>1</sup> While 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. See G.L. Hoffer and J.S. Macleod, A 1988 Pilot Research Study of How Attorneys in Law Firms in Maryland's Major Urban Areas View the Quality of their Professional Lives and Issues Facing the Profession, 10, 45-48 (1988)(majority of lawyers interviewed believe that there continues to be discrimination in the legal profession on the basis of sex, race, religion, disability and national origin, both within firms and in the courtroom); Maryland State Bar Association Conference on Minorities in the Legal Profession, Report and Recommendations (1987)(minority lawyers experience discrimination in many aspects of the practice of law, including judicial selection); Burleigh, Black Women Lawyers, A.B.A.J. June 1, 1988 at 64 (black female attorneys continue to experience double discrimination in the legal profession).

## Jurors, and Lawyers (Chapter 7)<sup>2</sup>

The Committee was given a year to do its work. Because of the vast scope of the investigation, the deadline was extended an additional year. The Committee used a press conference, press releases, print and broadcast interviews and other publicity to notify people throughout the state of its interest in receiving pertinent information and testimony on the question of gender bias in the courts. Several community-based groups, including local Commissions for Women and the National Congress for Men, volunteered to assist the Committee in obtaining a full representation of views, issues and experiences at the Committee's hearings. During its seven hearings throughout the state, the Committee heard testimony from 133 witnesses.<sup>3</sup> The Committee also sought information by asking a group of judges and masters to respond to hypothetical problems on subjects including alimony and child custody.<sup>4</sup> Many groups and individuals submitted reports and statements. Where appropriate, members of the Committee reviewed court files and transcripts.

In an effort to gather the fullest possible information, the Committee conducted surveys of judges, lawyers and court personnel. The Committee was assisted in preparing the three questionnaires, in devising an appropriate methodology for distributing the questionnaires, and in interpreting the data which was collected by Dr. Cheryl Kaplowitz, Sue Dowden and the Survey Research Center and the Institute for Governmental Services of the University of Maryland. A report on the survey methodology prepared by Ms. Dowden appears in the Appendix as Exhibit E(1).<sup>5</sup> As Ms. Dowden's report explains, the surveys were mailed to all of the judges, of whom

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<sup>2</sup> The Committee intended to report as well on the treatment of victims of sexual assaults and on the outcome of personal injury claims by women, but the investigation did not disclose sufficient information on which to base a report at this time.

<sup>3</sup> A list of the hearing locations appears in the Appendix as Exhibit C.

<sup>4</sup> Copies of the hypothetical problems and an explanatory note on methodology are reprinted in the Appendix as Exhibit D.

<sup>5</sup> Copies of the questionnaires appear as Exhibits E(2)(a), (b), and (c). The results of the surveys appear in tabular form as Exhibit E(3).

80% responded, and to all of the court personnel, of whom 49% responded. The surveys were mailed to randomly selected groups of male and female attorneys, of whom 54% and 49%, respectively, responded. Given the professional survey research techniques which were employed in the development and distribution of the surveys, the high response rates which were achieved to mail-out survey instruments, and the similarities between the characteristics of the respondents and the populations as a whole, the Committee has great confidence in the results of the surveys.

The Committee has defined gender bias as it affects the judicial system to include four aspects.<sup>6</sup> Gender bias exists when people are denied rights or burdened with responsibilities solely on the basis of gender. Gender bias exists when people are subjected to stereotypes about the proper behavior of men and women which ignore their individual situations. Gender bias exists when people are treated differently on the basis of gender in situations where gender should make no difference. Finally, gender bias exists when men or women as a group can be subjected to a legal rule, policy or practice which produces worse results for them than for the other group.

It is clear to all of the Committee's members that gender bias in all of its forms is found within the judicial system of this State. The two-year investigation which led us to this conclusion is reported in detail in the pages which follow. We have concluded that eliminating gender bias must become and remain a priority for the legal community, and the Report contains numerous recommendations for beginning that process.

Two preliminary points need to be made. First, the mandate of the Committee was to investigate gender bias, regardless of the sex of the person who experiences the harm. Taking this mandate seriously, the Committee carefully investigated allegations of bias from men and from women, and it found that gender bias affects both sexes. At the same time, the Committee's

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<sup>6</sup> See generally Commonwealth of Massachusetts, Gender Bias Study of the Supreme Judicial Court: Status Report 1 (1988); New York Task Force on Women in the Courts, Report, 15 Fordham Urban L.J. 11, 16 (1986-87); Rhode Island Committee on Women in the Courts, Final Report i (1987); New Jersey Supreme Court Task Force on Women in the Courts, The First Year Report 1 (1984).

investigation demonstrates that women are harmed by gender bias in more ways than men. As the Report explains, women's negative experiences cover the range from the aggravating to the life-threatening: a woman attorney may appear before a judge who assumes that she is not an attorney; a victim of domestic violence may be denied effective protection from a violent husband. Women experience different treatment in each of the substantive areas investigated by the Committee, as well as in each of the procedural areas, and their experiences are neither trivial nor infrequent. The information before the Committee indicated that men's negative experiences are clustered around relationships with children, in areas such as child custody problems and parental leave.

The second preliminary point concerns finger-pointing. Focusing on what is right in the judicial system is needed even when one's mandate is to identify what is wrong. The Committee wants to emphasize, therefore, its belief, based on its investigation, that everyone in the judicial system will read this Report in good faith and with the intention of improving the system as a whole. Indeed, many participants in the judicial system have demonstrated that they are sensitive to the existence of gender bias. Their awareness and efforts already have fostered positive change. Many incidents described in this Report may have been the result of inadvertent behavior or a lack of sensitivity about the impact of particular behaviors on people who perceived the conduct as biased. The Committee, further, recognizes that satisfying every litigant of the gender-neutrality of the decision in his or her case can be difficult because some cases are close. That is one reason the Committee has been careful to review court records, including transcripts, concerning a number of incidents. Most importantly, the Committee's purpose is not to single out individuals or call into question their decisions. Instead, the Committee's goals are to make people aware of the many ways in which gender bias can affect decision-making and the outcome of litigation, and to recommend ways to eliminate it from the judicial system.

What follows this Introduction is the Executive Summary of the Report. The full Report begins on page 1.

## EXECUTIVE SUMMARY<sup>7</sup>

### I. SUBSTANTIVE AREAS OF LAW

#### A. Domestic Violence

In the area of domestic violence, the Committee discovered problems in the treatment of victims, in the interpretation and application of laws which affect victims, and in the laws themselves. Domestic violence causes death and injury to many women in this state and country. During 1988, domestic violence caused the deaths of at least 19 women in Maryland alone. Over 4,500 petitions for emergency civil protection from domestic violence were filed in Maryland courts in fiscal year 1988-1989. Many criminal cases involving domestic violence were heard by the District Court and by the circuit courts. Nonetheless, the Committee learned that the attitudes and lack of understanding of many judges and court employees about the nature of domestic violence are the most pervasive and difficult problems facing victims of domestic violence.

Too often judges and court employees deny the victim's experiences, accuse the victim of lying about her injuries, treat the cases as trivial and unimportant, blame the victim for getting beaten, and badger the victim for not leaving the batterer. All this is due to a lack of understanding of the dynamics of domestic violence. These same judges and court employees are unaware of studies of batterers which show that the violence is not caused by the victim; that batterers do not give up control when the victim leaves; and that batterers try to manipulate victims to affect the judicial process. Some judges and court employees overlook the victim's circumstances: that she is economically dependent on the batterer; that she is socialized to be responsible for his conduct and feels at fault for being beaten; that she has children to care for; that she knows that separating from or divorcing her abuser may not guarantee her safety.

The Committee heard repeated testimony from and about victims of domestic violence who

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<sup>7</sup> Supporting data for the material in the Executive Summary, are found in the chapter on each topic which appears in the full Report.

experienced the court system as an adversary rather than an ally. One witness reported about her attempts to get help after her husband had threatened to kill her with his gun:

The thing that has never left my mind from that point to now is what the judge said to me. He took a few minutes and he looked at me and he said, "I don't believe anything that you're saying." He said,

The reason I don't believe it is because I don't believe that anything like this could happen to me. If I was you and someone had threatened me with a gun, there is no way that I would continue to stay with them. There is no way that I could take that kind of abuse from them. Therefore, since I would not let that happen to me, I can't believe that it happened to you.

I have just never forgotten those words.... When I left the courtroom that day, I felt very defeated, and very powerless and very hopeless, because not only had I gone through an experience which I found to be very overwhelming, very trying and almost cost me my life, but to sit up in court and make myself open up and recount all my feelings and fear and then have it thrown back in my face as being totally untrue just because this big man would not allow anyone to do this to him, placed me in a state of shock which probably hasn't left me yet.<sup>8</sup>

The overwhelming majority of victims of domestic violence are women. Whether they come to court to obtain protection from further abuse, to get a divorce, or to see their abuser punished, they should be treated with the same understanding and seriousness which should be accorded all litigants. Courts cannot provide equal treatment for victims of domestic violence, however, until all judges and court personnel become educated about the dynamics of domestic violence and sensitive to the situation of the victim.

The Committee's investigation also disclosed problems in the interpretation and application of laws and procedures relating to domestic violence. A victim who is seeking emergency civil protection from the District Court, for example, may be granted an order requiring the abuser to stay away from the family home for 30 days. Typically, she will not be awarded, however, an order requiring the abuser to provide any financial support during the 30-day period. Without

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<sup>8</sup> Testimony of Roslyn Smith, Mont. Cty. Tr., pp. 97-102.

financial help from the abuser, the victim may be unable to pay the rent or provide food for herself and her family. As a result, she may be forced to allow the abuser to return home.

If the victim and the abuser have children, the victim may be awarded their custody by the District Court, but the order may be interpreted as expiring after 30 days. If the victim lacks the resources to invoke the more expensive custody procedures of the circuit court at the end of the month, she may be unable to both protect herself and provide a home to the children and be forced to return to him in order to be with the children. The Committee also found that a victim who experiences further abuse during the 30-day protection period may be denied an effective and speedy remedy, because judges of some District Courts do not routinely use the power to sanction the abuser.

If a victim who is married to her abuser decides to seek a divorce in the circuit court, she has additional problems. She may be denied a protective order during the pendency of the divorce proceedings, so her husband is not subject to the court's contempt powers if he beats her. In addition, she may be unable to get an emergency order for custody or financial assistance from the circuit court, and may have to wait weeks or months before an award is made in the usual course of judicial business. In the meantime, she is open to custody and economic threats from her husband, who can use the delay to force his victim to return to him.

When a husband or boyfriend beats a wife or girlfriend, he may be guilty of the crime of battery. While a victim has the right to seek to have her assailant charged and punished, bringing criminal proceedings can prove difficult. The Committee learned that victims of domestic violence often face a judicial system which does not believe that what they have suffered is a crime. They are treated differently from assault victims who were attacked by a stranger. They may be denied the right to file charges by court-appointed commissioners who do not understand the dynamics of domestic violence. Or they may be told by the judge that their problems are not serious or their testimony not credible, and that the whole issue belongs in the divorce court.

A victim also may be in the criminal court system to defend against charges that she has beaten or, in rare circumstances, killed her batterer. Although many states recognize a defense based on studies of domestic violence called the battered women's syndrome, progress toward accepting this defense in Maryland has been slow. Without further progress in this area of the criminal law, a victim cannot be assured that her situation can be explained fully to the jury, and her plea of self-defense may be wrongly denied.

## FINDINGS

1. *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.*
2. *Criminal and civil domestic violence cases are too often treated as trivial and unimportant, and the testimony of victims dismissed as incredible.*
3. *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.*
4. *Civil divorce and custody procedures lack sufficient emergency mechanisms to meet the needs of battered women.*
5. *Mediation programs may not adequately protect battered women.*
6. *Judges often lack sufficient information about the need to pursue criminal charges against batterers.*
7. *Commissioners sometimes fail to charge batterers in appropriate cases and sometimes charge the victims in inappropriate cases.*
8. *The battered women's syndrome defense is insufficiently accepted.*

## RECOMMENDATIONS

### For Court Administration and the Judiciary

1. *Take necessary steps to assure that judges, masters, commissioners, court clerks, and security personnel are familiar with the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, including:*
  - a. *The battered woman syndrome.*
  - b. *The need for calendar preferences for violation of order of protection cases.*
  - c. *The powers of criminal courts in cases of domestic violence and harassment.*

- d. *The efficacy of educational or therapeutic programs for those found to have been violent toward members of their families.*
  - e. *The effectiveness of ordering those found to have committed family offenses to vacate the family home.*
  - f. *The appropriateness of jail for those found to have violated protective orders issued by the courts.*
  - g. *The relevance of the battered woman syndrome and the importance of expert testimony in cases involving women who kill men who have abused them.*
  - h. *Characteristics of batterers.*
  - i. *Advisability and acceptability of simultaneous civil and criminal proceedings.*
  - j. *The importance of treating the assault of a spouse or intimate friend as a crime just as the assault of a stranger would be a crime.*
  - k. *The relationship between spouse battering and child custody and visitation.*
  - l. *The harm of dissuading domestic violence victims from seeking all the civil and criminal relief that is available to them under the law.*
  - m. *The availability of a protective order where there is evidence not only of physical abuse, but also where there is fear of imminent bodily harm.*
  - n. *The inappropriateness of routinely issuing retaliatory criminal charges.*
2. *Initiate studies by the Judicial Conference's Committee on Juvenile and Family Law and Procedure on the problems of domestic violence in order to develop legislation and court rules designed to resolve them. Multiprofessional consultations with psychologists, social workers, and others are needed as well as experimentation with new programs, the results of which must be carefully monitored.*
  3. *In Montgomery County, initiate a pilot program permitting masters of the circuit court to hear civil protective orders with immediate orders being issued. The program should be evaluated to determine victim satisfaction, speed, cost, and effectiveness of sanctions.*
  4. *Evaluate court-sponsored mediation programs to determine impact on victims of domestic violence.*
  5. *Evaluate judges, masters, and commissioners on a regular basis, taking into account gender-neutrality on issues relating to domestic violence.*
  6. *Establish uniform procedures for handling domestic violence cases, including scheduling and calendar preferences.*
  7. *Make the system for obtaining civil protection from domestic violence easier to understand and less intimidating by means of a booklet which includes the necessary forms and information.*
  8. *Develop, on an annual basis, material to inform judges about the incidence and prevalence of domestic violence in Maryland.*
  9. *Regardless of whether self-defense is at issue, expert testimony about the battered woman syndrome should be admissible.*

**For the Legislature**

*Enact legislation that:*

1. *Provides that access to the courts for protective orders be available seven days a week, 24 hours a day.*
2. *Provides that adjournments in criminal cases in contemplation of dismissal may be conditioned upon the defendant's attendance at education and counselling programs for those charged with family violence.*
3. *Provides that abuse by one parent of the other is evidence of parental unfitness for custody and a basis for termination of visitation or a requirement of supervised visitation.*
4. *Provides for studies on the feasibility and advantages of a full service family court. In conjunction with the study, a pilot project with full services should be undertaken to serve as the basis for a longitudinal study.*
5. *Clarifies that, in proceedings for civil protective orders, monetary relief such as spousal and child support can be awarded by the District Court and only the order to vacate the family home has a time limit.*
6. *Specifically sanctions the use of civil protective orders when a divorce is pending and simplifies obtaining injunctive relief as part of a domestic case.*
7. *Establishes that a victim of the battered woman syndrome may use evidence of her or his victimization and expert testimony to show that the murder or attempted murder was committed in self-defense.*

**For State's Attorneys**

1. *Establish domestic violence prosecution units in those jurisdictions with sufficient volume to justify one. In jurisdictions with fewer cases, direct all domestic violence prosecutions to one assistant State's attorney.*
2. *Ensure that all assistant State's attorneys receive training as to the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, including the same topics recommended for judges and court personnel.*
3. *Provide for paralegal and social work support for domestic violence victims or link to existing services in the community to assure that the safety and social service needs of the victims are met.*
4. *Request protection for the victim as a routine condition of bail and probation when the defendant is alleged to be involved with domestic violence.*

**For Bar Associations (including State, local and specialty bar associations)**

1. *Recognize the need for social work and other support services for clients who are victims of domestic violence; become knowledgeable about the availability of community resources.*
2. *Start a domestic violence task force in the community if none exists, including as members*

*all agencies dealing with domestic violence, including State's attorneys, commissioners, police, health services, county legislative body, chief executive, courts, bar associations, etc.*

3. *Prepare a brochure for domestic violence victims so they know what is available to them, what they can expect, where they can secure services, etc.*
4. *Create a vehicle to publicize the existence of services for victims, particularly where a diverse ethnic population makes publicity essential.*
5. *Establish a bench-bar committee to consider establishing statewide standards for the District Court concerning civil protective order cases, including matters such as the availability of forms, scheduling of hearings, and enforcement of orders.*

#### **For Domestic Violence Task Forces**

1. *Develop educational materials in addition to this Report and present them in seminars attended by lawyers, judges, masters, and commissioners, and in the law schools. Teachers' outlines should be developed for use in law school professional responsibility and clinical courses and in pre-collegiate schools.*
2. *Work for improved service of civil protective orders where this is a problem.*
3. *Study whether criminal assault cases involving family members are treated similarly to or differently from assault cases involving non-family members with respect to such matters as degree of culpability and severity of sentence.*
4. *Evaluate need for victim's assistance program.*
5. *Increase publicity about programs and services already available.*

#### **For the Law Schools**

*Include information on domestic violence in appropriate courses which addresses the issues specified as the basis for education for the courts.*

#### **For Judicial Nominating Commissions**

1. *Make available to all members information concerning the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, covering the same topics recommended above for judges and court personnel.*
2. *Encourage members to investigate the conduct and attitudes of all applicants with respect to domestic violence. Members may, for example, attend court sessions of those judges and masters applying to move up within the system when matters involving domestic violence are being heard. In the case of attorney applicants, the views of clients, witnesses, and other counsel in such cases may be sought.*



## **B. Child Custody and Visitation**

The Committee's investigation disclosed a widespread perception that courts are biased against men in custody disputes. Judges were reported to resist fathers' claims for custody, joint custody, and visitation enforcement because of their belief that mothers as a class are better suited to care for children. This stereotype was said to interfere with an individualized examination of the particular mother, father, and child before the court. Many judges and lawyers reported to the Committee that they share the belief of some litigants that mothers are preferred in custody disputes.

The Committee's research indicates that judges in some cases appear to award custody based on a maternal preference rather than on an individualized consideration of the parties before him or her. These instances, while few, are serious and important. They should be seen in the context of the rest of the Committee's research, which indicates that a widely-used method for resolving custody disputes is to make the award to the parent who is providing care at the time of the decision so long as the child is faring reasonably well in the care of that parent. By applying this child-focused standard to the custody decision, rather than a standard which focuses on the parent's perceived role, judges avoid weighing one parent against the other. Biases about the proper roles of fathers and mothers, as a result, do not play a major part in most custody awards.

When gender bias is a factor in a custody award, the mother can be disadvantaged by stereotypes about how women should behave as mothers just as fathers can be disadvantaged by the complimentary stereotypes about men. The Committee learned that mothers are disadvantaged by stereotypes about children needing a mother at home, about children being better off in the home of the wealthier parent, about mothers being unworthy of custody if they engage in sex with a partner other than the child's father, and about mothers who must be "perfect" to deserve custody. In addition, the violence of fathers toward mothers is sometimes given too little weight in decisions about custody, joint custody and visitation.

## **FINDINGS**

1. *Gender bias affects the award of custody in some cases.*
2. *Some judges believe that men are unfit for custody because of their sex, and that men should not become too involved with their children. These biased attitudes disadvantage men.*
3. *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 disadvantage women.*
4. *Men's violence toward women and children is given insufficient weight in custody decisions.*
5. *Joint custody is an option available to parents in appropriate circumstances.*
6. *Joint custody is an inappropriate option where one parent has been violent toward the other parent.*
7. *The unwillingness of the parents to share custody sometimes is given insufficient weight by trial courts considering joint custody requests.*

## **RECOMMENDATIONS**

### **Custody**

#### **For Court Administration and the Judiciary**

1. *Educate judges and masters as to the gender bias implications of the following factors in child custody cases:*
  - a. *relative wealth and employment obligations of the parents.*
  - b. *stereotypes about behavior of men and women as parents, such as the maternal preference.*
  - c. *sexual activity on the part of the mother.*
  - d. *spousal abuse.*
2. *Recognize that withholding of visitation is only a factor in awarding custody, and is not determinative.*
3. *Recognize the importance to a child of continuing to live with a parent who has provided adequate and appropriate care.*
4. *Consider the cost of child care to the custodial parent when the non-custodial parent fails to exercise visitation.*
5. *Consider spousal abuse in determining child custody cases.*

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

**For Bar Associations** (including State, local and specialty bar associations)

*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 Report.*

**For Law Schools**

*Include in family law courses information about the psychological consequences of divorce for children, the impact of spousal abuse on children, and the ways in which stereotypes about women and men influence custody decisions.*

**For the Legislature**

*Remove relative wealth of parents as factor in custody disputes.*



## C. Child Support

Child support awards can be affected by gender bias, since most custodial parents are women and most noncustodial parents men. The Committee's investigation indicates that gender-neutrality can be breached in several respects.

First, the amount of child support which the noncustodial parent is required to pay can be set too low, given the evidence of a child's needs and the relative economic resources of the parents in a particular case. When this occurs, the custodial parent is burdened disproportionately with expenses of the child. The Committee found significant evidence that child support awards are set too low in many cases, with the resulting impoverishment of custodial parents.

Gender bias also was found by the Committee in child support enforcement and procedures. The Committee found that problems exist with entering orders for earnings withholding, the generally preferred enforcement method. The Committee also learned that hearings on child support petitions are not scheduled quickly, so the custodial parent is burdened unfairly with being the sole support of the child for a period ranging from two months to "many" months. Even when the hearing is scheduled, the custodial parent's situation may not improve because retroactive orders are rarely entered. As a result, the noncustodial parent is exempted from paying child support for the period after the motion for support was filed, even though both parents share an equal responsibility to provide support. Finally, adequate attorney's fees may be denied.

## FINDINGS

1. *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' economic resources.*
2. *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.*

3. *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.*

## **RECOMMENDATIONS**

### **For Court Administration and Judiciary**

1. *Take necessary steps to assure that judges and masters are familiar with:*
  - a. *Current, accurate information about the costs of raising a child, the costs and availability of child care, and other statistical and social data essential to making realistic child support awards.*
  - b. *The economic consequences of divorce from the standpoint of ensuring that parents' financial contributions to child support are proportional to each party's economic resources.*
  - c. *All available enforcement mechanisms and the importance of utilizing them to the fullest extent of the law.*
2. *Establish enforcement by a computerized system for the collection of child support which can collect and provide data to enable effective monitoring of child support enforcement cases.*
3. *Provide routinely for child support payments be made through the courts.*
4. *Establish a system for rapid determination and enforcement of pendente lite awards.*
5. *Make awards retroactive to the date of the filing of the motion for support in the absence of compelling reason to do otherwise.*
6. *Award to the economically dependent parent attorney's fees that accurately reflect the value of the work of the attorney.*
7. *Evaluate judges and masters on a regular basis, taking into account gender-neutrality on issues relating to child support.*

### **For the Legislature**

*Enact legislation that:*

1. *Makes child support available until emancipation or age 21, whichever first occurs.*
2. *Makes child support awards retroactive to the date of the filing of the motion, unless that would be unconscionable.*
3. *Make earnings withholding orders automatic at the time the support order is entered.*

### **For Bar Associations** (including State, local and specialty bar associations)

*Establish a bench-bar committee to study the appropriateness, fairness, and effectiveness of child support guidelines and to recommend changes as required.*

**For Law Schools**

*Family law courses should include information about 1) the award and enforcement of child support similar to that recommended for judges and masters, and 2) the hardship to children and custodial parents when child support awards are insufficient or unenforced.*



## **D. Alimony; Property Disposition and Litigation Expenses**

Upon divorce, a couple's economic resources are divided or allocated according to laws relating to alimony, litigation expense, and division of marital property via a monetary award. The Committee's investigation shows that gender bias has a significant impact on the amount of alimony awarded, the duration of the alimony award and whether alimony is awarded. It also has an impact on whether a fair determination can be made with respect to marital property and the concomitant monetary award.

Under Maryland law, alimony is provided for an economically dependent spouse to become economically independent or, in appropriate circumstances, to provide long term support. The law specifies a group of factors to be considered in determining whether to award alimony and the amount and duration of the award. The responses to a hypothetical problem distributed to judges and masters showed wide variation in the amount of alimony awarded. The amounts ranged from a low of \$1.00 a month to a high of \$1,500.00 a month. These same responses suggested that most awards are low: a typical husband, after paying the usual alimony award of \$500 a month, will enjoy an increase in his standard of living compared with his pre-divorce standard of 44%; the typical wife, after receiving alimony of \$500 a month, will suffer a decline in her standard of living of 44%. Since most economically independent spouses are men and most economically dependent spouses women, the wide variations in alimony awards and their adverse impact on the payee's standard of living will hurt women more than it will harm men.

Most middle-aged women who have been homemakers and face a divorce after a long marriage believe they will be awarded alimony for an indefinite period rather than rehabilitative alimony for a short term of years. Assuming that the former husband continues to have a reasonable earning capacity, a displaced homemaker should be able to assume that she will not be required to make a delayed entry into the paid labor force in order to provide herself with basic support. Although the Committee found that most judges and lawyers agree that she should be awarded indefinite alimony, often she is not. Many displaced homemakers are denied indefinite

alimony and forced into the paid labor market after years of contributing to the marriage and their husband's career by caring for the home and family. This harms women more than men because, traditionally, women have been assigned the unpaid homemaker role within families while men have been assigned the role of income provider.

Finally, the Committee learned that several groups of former wives often are denied alimony altogether, although Maryland law would permit an alimony award to be made. These groups include women with earnings which are relatively low compared to the earnings of the former husband but who nevertheless are deemed self-supporting; women with custodial responsibilities for young children; and women who can be blamed for the failure of the marriage. Again, women, as the economically dependent group, are more likely to be harmed by these discretionary decisions.

With respect to marital property and the monetary award, the Committee found that most problems are procedural, such as the failure of the court to award sufficient funds for an economically dependent spouse to assess and litigate marital property claims. In addition, courts may fail to protect the property from being disposed of by the economically independent spouse. Economically dependent spouses, predominantly women, are the most likely to be harmed by these procedural problems, because the property is likely to be controlled by and in the hands of economically independent spouses, predominantly men, who have the resources to use procedural problems to their advantage.

## *FINDINGS*

1. *Inconsistency in alimony awards results in unpredictable and unfair awards.*
2. *Many alimony awards are too low.*
3. *Indefinite alimony often is inappropriately denied to homemaker wives after long marriages.*
4. *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.*

## RECOMMENDATIONS

### For Court Administration, the Judiciary and Masters

1. *Ensure speedier awards of alimony pendente lite.*
2. *Adopt guidelines for judges and masters in awarding alimony and support that are area-specific and include limitations on the over-use of rehabilitative alimony.*
3. *Provide education on the issue of the impact of marital misconduct on the alimony award.*
4. *Provide education on issues concerning wage-earning potential of middle-aged women who have been economically dependent during a long marriage.*
5. *Take necessary steps to ensure that judges and masters are familiar with the statutory provisions governing, and materials relating to the social and economic considerations relevant to monetary awards and the award of expenses. These materials include studies, statistics, and scholarly commentary on the economic consequences of divorce, women's employment opportunities and pay potential, and the costs of child rearing.*
6. *Include, where appropriate, masters in the educational segment of the new judges' orientation program.*
7. *Evaluate judges and masters on a regular basis, taking into account gender-neutrality on issues relating to alimony, litigation expenses, and property disposition.*

### For the Legislature

*Enact legislation that:*

1. *Makes the homemaker's lifetime reduced earning capacity an express factor to be considered in connection with alimony.*
2. *Provides that a spouse's indirect contribution to the appreciation of non-marital property (e.g., for maintenance of family or through homemaker's services) causes that property, to the extent of appreciation, to become marital property.*
3. *Requires the court to assume a more effective role in the identification and valuation of marital property through appointment of special masters or through required compensation of necessary experts from marital assets.*
4. *Clarifies 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 and, if a reduction in living standard is required, it should be equally shared by both parties.*
5. *Provides for mandatory pendente lite awards of counsel fees and costs of experts and investigators appropriate to the duration and complexity of the case and sufficient to enable both parties to pursue litigation.*

6. *Establishes a standard that pendente lite alimony and child support should maintain the status quo of the parties to the extent feasible.*
7. *Clarifies that indefinite alimony is mandatory in appropriate circumstances.*
8. *Makes alimony retroactive to the date of the petition unless that would be unconscionable.*

**For Bar Associations** (including State, local and specialty bar associations)

1. *Develop informational materials through family law sections about the social and economic considerations relevant to alimony and equitable distribution and litigation expense awards. These materials should include studies, statistics, and scholarly commentary on the economic consequences of divorce, women's employment opportunities and pay potential, and the costs of child rearing. These materials should be made available to lawyers for use in submissions to courts considering alimony and property disposition and litigation expense awards.*
2. *On a cost of materials basis, invite judges and masters to join in continuing legal education programs concerning alimony, litigation expenses, and property disposition.*

## II. Court Treatment of Personnel

The Committee was concerned that employment policies and practices affecting court employees might be biased according to gender. To determine the opinions of court employees about their employment conditions, the Committee surveyed them about their own experiences and their perceptions of the experiences of others. The questionnaire addressed job-related topics, such as responsibilities, training, leave, and harassment. In the case of employees who spend 50% or more of their time in court, it also dealt with courtroom-related topics, such as employees' perceptions about the treatment of litigants, witnesses, and lawyers. Courtroom-related questions were comparable to questions on the surveys of judges and lawyers.

In terms of compensation, the Committee's investigation shows that female employees are paid less than male employees, despite the existence of similar backgrounds. In addition, female employees are not promoted in proportion to their numbers, and they are clustered into low-paying job classifications categorized as "female jobs."

Employment conditions also are affected by gender bias. Court employees reported a significant number of incidents of sexual harassment involving both "quid pro quo" harassment and toleration of a work environment which is hostile to women due to unwelcome sexual touching and sexually-oriented entertainment and joking. Both types of harassment undermine the self-respect of women employees and make it more difficult to perform well on the job. Further, both types of harassment are illegal.

Female employees report being treated worse than male employees in terms of forms of address, comments about their appearance, and opportunities for promotion and training. Both male and female employees reported being asked to perform duties because of stereotypes about proper roles for women and men: for example women should make coffee, for example, while men should lift boxes.

The Committee found that the leave policies applicable to many court employees make it difficult for female employees to have sufficient leave time available for childbirth-related physical

disabilities. The absence of a reinstatement guarantee, furthermore, means that childbirth may be the end of the employee's career. In addition, time off for child care unrelated to childbirth appears to be granted or denied on gender-based grounds: more men report being denied such leave while more women report being granted it. This disparate pattern suggests the presence of stereotyped thinking that men should not nurture their children, while women should.

Finally, employees reported a significant need for child care facilities. Facilities, however, appear to be unavailable in courts and court-related offices. More women than men are harmed by the absence of child care facilities because of their lower salaries and the greater possibility that a female employee will have sole custody of a child.

## *FINDINGS*

1. *A majority of female employees occupy the lowest end of the salary scale.*
2. *Female employees remain in lower salaried positions for longer periods of time than male employees.*
3. *Proportionately more male employees occupy higher salaried positions than female employees.*
4. *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.*
5. *Incidents of hostile work environment harassment were reported, such as:*
  - (a) *unwelcome physical touching of a sexual nature;*
  - (b) *unwelcome verbal or physical sexual advances; and*
  - (c) *sexist remarks or jokes.*
6. *Many court employees perceive that employment decisions are based upon gender-based stereotypes and that preferential treatment is accorded based upon gender.*
7. *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 programs.*
8. *Male employees who attended job training were more often reimbursed for registration fees and mileage than female employees.*

9. *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.*
10. *Male employees are more often denied paid family (non-medically related) leave than female employees.*
11. *A need exists for on-the-job and/or partially subsidized child care for working parents in the court system.*

## **RECOMMENDATIONS**

### **For Court Administration and the Judiciary**

1. *Implement the broadest possible recruitment efforts for all positions on a continuing basis.*
2. *Monitor the hiring of non-classified personnel (i.e., those not selected from eligibility lists established by the Secretary of Personnel) to determine if women are part of the eligibility pool.*
3. *Review qualification requirements and salary grades of all non-judicial titled State and county employees in the judicial system.*
4. *Review all job descriptions of non-judicial titled State and county employees of the judiciary and establish that personal services and errands for supervisors are excluded from those job descriptions.*
5. *Provide gender-neutral job descriptions and enforce job requirements without regard to gender.*
6. *Set goals to increase the number of qualified women appointed by the circuit bench to the positions of master, commissioner, examiner, and auditor in each county.*
7. *Increase appointments of qualified women to all positions within the court system including in the Administrative Office of the Courts, Court of Appeals Clerk's Office, Court of Special Appeals Clerk's Office, other court units under the direction of the Chief Judge of the Court of Appeals, circuit court clerks' offices and those positions within the supervision of the circuit courts bench, the Office of the Chief Clerk of the District Court and the District Court Clerks' offices.*
8. *Monitor training programs to ensure equal access to male and female employees and equal treatment with regard to reimbursement of fees and expenses.*
9. *Develop a system for job-related training of masters, examiners, auditors, commissioners, administrators, professional staff, clerical and technical personnel.*
10. *Allocate training money from state and local sources to implement recommendation 9.*
11. *Propose an appropriate implementation group, under the direction of the State Court Administrator, to ensure the necessary administrative and fiscal support for this education system.*

12. *Issue a directive defining the various types of sexual harassment and stating that this type of behavior is illegal, unacceptable, and grounds for termination.*
13. *Establish a system for confidential reporting and investigating incidents of sexual harassment and monitor the outcome of those complaints.*
14. *Develop education programs for all judicial and court support personnel which address issues of gender bias and sexual harassment. Such programs shall include training in gender bias, neutral hiring procedures, equitable enforcement of gender-neutral personnel policies, and the adoption of gender-neutral management practices in all courts and court-related units.*
15. *Provide training to all judicial and court support personnel in avoiding gender biased verbal and non-verbal communications. This training should encompass internal as well as external communications.*
16. *Issue a local administrative order in each appellate, circuit, and district court to mandate equal treatment of all persons in the courtroom.*
17. *Assure that grievance procedures are available to all employees.*
18. *Implement a short-term program which would provide paid leave and a job guarantee for employees who are temporarily unable to work as a result of disabilities such as those which accompany pregnancy and childbirth.*
19. *Develop a family leave policy with a strong statement on its importance and implementation. Issue a directive stating that decisions concerning family leave are to be made without regard to the gender of the person requesting the leave.*
20. *Establish on-site child care or subsidize off-site child care programs.*
21. *Appoint a permanent joint committee of judges and court personnel from all levels and geographic areas of court to encourage, monitor, evaluate, and report on the efforts undertaken to carry out the recommendations of this Report relating to court employees.*

*For the Bar Association (including State, local, and specialty bar associations*

*Develop programs to sensitize lawyers to the needs of court personnel, especially women, for increased levels of respect and cooperation.*

### III. Selection of Judges

The Committee was concerned that the small representation of women on the bench, only 9%, may be an indication that gender bias affects the process of judicial selection. According to statements, testimony and surveys, the Committee found that gender bias can be a factor in at least two respects.

The Committee found gender bias in several forms in the workings of judicial nominating commissions, which are responsible for compiling lists of candidates for the governor's consideration. Female candidates for judicial positions may be asked questions about their personal lives, day care arrangements for their children, and the like, when male candidates never are subject to scrutiny on those topics. Stereotypes about women, such as their being unable to exercise authority and their bearing a larger share of family responsibilities, were seen to affect the selection process to the detriment of female candidates. Legal career paths which are more common for women were viewed less favorably. Finally, women were perceived as subject to a quota system and nominated only when it appeared to be a "woman's turn."

In addition to the discriminatory commission process, women candidates for judicial appointments face the barrier of hostile attitudes on the part of some of their male colleagues at the bar. Antagonism may be so extreme that applying for the bench can pose an unacceptable risk to the reputation of a female lawyer who is qualified for appointment. As a result, some qualified women may not apply.

Diversity on the bench is an important value both to individual litigants and to the state as a whole, because the bench must present to the public an image of fairness and impartiality. So long as women and minorities are underrepresented, the bench may be subject to mistrust by many citizens of Maryland.

### *FINDINGS*

1. *Too few women lawyers have been elevated to the bench.*

2. *Female candidates for judicial appointments are asked irrelevant questions about family responsibilities.*
3. *Female candidates for judicial appointments often are subject to different standards than those applied to male candidates.*
4. *Female candidates for judicial appointments often are subject to stereotyped expectations about appropriate professional experiences, stature and demeanor which devalue their abilities and background.*
5. *Some women lawyers have been denied equal opportunity for judicial appointments by judicial nominating commissions which subject them to biased, irrelevant and stereotypical standards.*
6. *Some women lawyers have been denied equal opportunity for judicial appointments by an informal quota system which results in token appointments.*
7. *Some male lawyers have been antagonistic to the efforts of women candidates to be elevated to the bench, and their hostility has adversely affects those efforts.*

## **RECOMMENDATIONS**

### **For Bar Associations (including State, local and specialty bar associations)**

1. *Review mechanisms by which judges are nominated and elected or appointed, identify impediments to achieving fair representation and develop means to assist qualified women in gaining judicial appointment.*
2. *Review the process for selecting attorney members of the Judicial Nominating Commissions to determine whether it ensures the selection of members from a broad cross-section of the bar, including women.*
3. *Conduct a joint study to review the entire judicial selection process to determine whether and how the process can be improved, with specific attention to the following:*
  - a. *Survey the members of the Judicial Nominating Commissions to evaluate the mechanisms and procedures used and substantive criteria applied by the Commissions in selecting nominees.*
  - b. *Evaluate whether there is a need to develop and apply uniform standards and questions, keeping in mind geographic distinctions.*
  - c. *Determine the effectiveness and impact of the candidate evaluations conducted by the bar associations and other interest groups.*
  - d. *Determine the extent of influence on the decisions of commission members by individual judges, politicians, concerned citizens, and members of the bar.*
  - e. *Determine what resources are and should be available to and what resources are utilized by the commissions.*

4. *Review the selection committee and/or evaluation processes of each bar association to determine whether they ensure gender-neutrality and, if not, determine what changes are required to achieve gender-neutrality.*

#### **For Court Administration**

*Review the confidential questionnaire propounded to applicants for judicial office to eliminate questions which elicit gender-biased information including:*

- a. *marital status*
- b. *general questions relating to past medical leaves from work as they relate to child birth or maternity leaves.*

#### **For Judicial Nominating Commissions**

1. *Circulate copies of this Report to all members of each commission and sensitize members to the subtlety and insidiousness of gender bias.*
2. *Circulate proposed questions similar to those prepared by the National Association of Women Judges (Appendix, Exhibit F) as a guide to formulating questions designed to elicit the level of sensitivity to gender bias on the part of an applicant.*
3. *Preclude questions to candidates concerning marital status and child care arrangements.*
4. *Educate members about the common misperceptions that lack of experience in criminal cases or concentration in domestic relations or public service areas of the law render an attorney unqualified for the bench.*
5. *Preclude sexist remarks and discussion of physical attributes of a candidate in when evaluating candidates for the bench.*



#### **IV. Women in the Courtroom: Women Parties, Witnesses, Jurors, and Lawyers**

The Committee was concerned that, in addition to the specific substantive areas in which gender bias is a concern, women may find that they are treated differently throughout the judicial process. Through its surveys, hearings and other data, the Committee found that gender bias in the judicial process sometimes favors men and sometimes women, and that differential treatment, whomever is favored, should be a source of substantial concern.

The perception that male and female parties are treated differently was widespread among judges and lawyers. In general, females parties were believed to have an advantage in child custody litigation and criminal sentencing, while male parties were believed to have an advantage in disputes over monetary issues in domestic relations matters, such as alimony and child support. Women were viewed as having more difficulty than men in terms of credibility; their testimony was said to be viewed more often with suspicion and distrust.

The Committee found that perceptions of bias were supported in some areas by the realities facing litigants. In the arena of criminal sentencing, however, the perception that women are treated more leniently than men is without support. When one takes into account the severity of the crime and the criminal history of the defendant, apparent sentencing disparities between male and female defendants become insignificant.

Once in the courtroom, female witnesses and parties reported that their testimony is treated as trivial and dismissed. Further, they too often experience treatment different from and worse than that accorded male witnesses and parties. Comments are made about their personal appearance; they are treated disrespectfully with informal and condescending modes of address; and their sexuality is made the subject of judicial attention. Experiences such as these serve to convince litigants and witnesses that their claims are not being decided according to fair and impartial standards. While this impression may not be true in most cases, courts should not communicate to litigants that impartiality may be an issue. Female litigants and witnesses are faced

with an additional hurdle in court: they often are in the situation of having children with them, sometimes because the children are parties or witnesses, and sometimes because there is no one else available to care for the children. In court, however, no facilities are available for these children. As a result, they must be in the courtroom with the female litigant or witness, or she must take the chance of missing her hearing if it is called when she is with the children in the hallway. The lack of planning for the presence of children and the absence of child care facilities impair the access of these women to the courts and need to be corrected.

The Committee's research disclosed that although sex discrimination in jury service is illegal, the experience of jurors can be affected by gender bias. Specifically, he Committed learned that some judges may decide not to appoint a woman to the position of foreperson because of stereotyped thinking about the ability of a woman to be a leader or to understand issues having to do with business or the like. On the other hand, lawyers may strike women from juries because of stereotyped thinking about the ways in which they will view the case. In such situations, women and men in the courtroom are given the unacceptable message that gender bias is acceptable in courts.

Women lawyers are entering the courtrooms of the state in increasing numbers every year. Now comprising approximately 14% of the lawyers in the state, women lawyers engage in all types of legal practice, from litigation to estates and trusts. With their increasing numbers in the bar and presence in court, female lawyers are gaining in respect and effectiveness. While their progress in gaining equality of treatment has been monumental during the last decade, problems remain which must be remedied.

Lawyers and judges reported on the Committee's surveys that the gender of the attorney can affect the process or outcome of a case. Usually, what is affected is the process: a woman lawyer may be treated more cavalierly and with less respect than her male colleague or opponent. She may be made to prove herself and her competence repeatedly. She may be the subject of comments about her appearance, parental status, or sexuality, when she is in court to do the job of

a professional and no such comments are made about male lawyers. She may be addressed by condescending or demeaning terms of address, such as "hon" or "dear." While paying attention to the appearance of a female attorney may seem complimentary or gentlemanly, it can be perceived by the female attorney as a diversion which converts her from a professional to an object to admire or criticize.

Female attorneys find that the court can be an environment which is uncomfortable and sometimes hostile. Sexually-oriented jokes are not uncommon; nor are conversations between judges and male counsel which exclude female counsel. Some lawyers report being propositioned by judges, which contributes to their discomfort. Given the power of the judge over the client's case, furthermore, the lawyer is in a no-win situation. Responding forthrightly might harm her client's interests as well as her own.

Judges can assist female counsel by being sensitive to the implications of their own conduct and the conduct of male attorneys. Effective interventions can be made by a judge who is willing to tell a male lawyer that his inappropriate conduct toward a female lawyer or witness is not acceptable. Changing the courtroom environment from one which is uncomfortable and even hostile to women lawyers is essential if the judicial system is to preserve a reputation for fairness and impartiality to all.

## ***FINDINGS***

1. *Gender bias affects the outcome of cases where stereotyped expectations about proper conduct for men and women are applied to particular cases.*
2. *Female parties can be disadvantaged by judges and masters who give their testimony less credibility solely because they are women.*
3. *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.*
4. *Female parties can be disadvantaged by the absence of accommodations for the presence of children in the court.*

5. *Selection of the foreperson of a jury can be affected by gender bias.*
6. *Female attorneys sometimes are subjected to different and discriminatory treatment in court by judges, masters, court personnel, and male attorneys.*
7. *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.*
8. *Female attorneys sometimes are subjected to verbal and physical sexual advances by judges.*
9. *Judicial intervention can assist a female attorney who is being treated inappropriately and disrespectfully by a male attorney.*

## **RECOMMENDATIONS**

### **A. Courtroom Environment**

#### **For Court Administration**

1. *Develop and conduct regular training for sitting and newly elected and appointed judges, domestic relations masters, and court employees designed to make them aware of the subtle and overt manifestations of gender bias directed against women attorneys, witnesses, and litigants and possible due process consequences.*
2. *Review all court forms, manuals, and pattern jury instructions to ensure that they employ gender-neutral language.*
3. *Establish, in conjunction with the appropriate bar associations, a confidential reporting and investigation process for those who feel they have a gender bias complaint involving a member of the judiciary, master, courthouse employee, or attorney.*
4. *Establish on-site day care for jurors, litigants, and witnesses.*

#### **For Judges**

1. *Monitor behavior in courtrooms and chambers and swiftly intervene to correct lawyers, witnesses, and court personnel who engage in gender-biased conduct.*
2. *Ensure that official court correspondence, decisions, jury instructions, and oral communications employ gender-neutral language and are no less formal when referring to women litigants, witnesses, and lawyers than to men litigants, witnesses and lawyers.*

#### **For Bar Associations (including State, local and specialty bar associations)**

1. *Develop and conduct informational campaigns designed to make members aware of*

*the incidence and consequences of gender-biased conduct toward women litigants, lawyers, and witnesses on the part of judges, lawyers, and court personnel.*

2. *Undertake a study of the extent to which gender bias adversely affects women in the practice of law outside of the courtroom. This topic was considered to be outside the scope of this Committee's mandate, but issues such as hiring and partnership considerations were raised and should be part of an in-depth study by the Bar.*

### **For Law Schools**

*Include information and material in professional responsibility, constitutional law, clinical, and skills training courses to make students aware of the subtle and overt manifestations of gender bias directed against litigants, lawyers, and witnesses.*

## **B. Professional Opportunities for Women Attorneys**

### **Judiciary**

*Ensure that court appointments by judges are made without regard to the sex of the appointee.*

### **For Bar Associations (including State, local and specialty bar associations)**

1. *Review the assigned counsel mechanisms in local jurisdictions in which members practice and develop means to ensure that appointments to fee-generating positions are not only fairly received by qualified male and female attorneys but are perceived to be fairly received.*
2. *Encourage continuing legal education programs to utilize women as speakers and program chairs where qualified women are available.*
3. *Examine the process for selection of officers, committee chairs, and section chairs to ensure that qualified women are considered and to identify impediments that would prevent qualified women from attaining leadership positions within the bar association.*



## V. Conclusion

After two years of study, seven hearings, and review of thousands of surveys and hundreds of documents, the Committee is convinced that gender bias has a major and negative impact on the judicial system of this state. Decisions in cases involving domestic violence and family law, the selection of judges, the treatment of female court employees, and the environment of the courtroom all are affected by attitudes, practices, and policies which differentiate according to gender. Gender bias can be seen whenever a battered woman is denied protection from her batterer solely because the judge finds the testimony of any woman less trustworthy than that of any man. It is demonstrated whenever a court employee is paid a lower salary or given fewer opportunities than her male counterpart. It is visible whenever a father or a mother is denied custody because he or she fails to meet the stereotype of a proper father or mother. It exists whenever the amount of alimony awarded a middle-aged homemaker wife is diminished because the judge believes that no husband should have to reduce his standard of living to support a former wife. It is articulated whenever a female candidate for a judgeship is interrogated about her child care responsibilities. It is shown whenever a lawyer is called "honey" and her argument demeaned because of her sex.

In most situations, women are the ones who are harmed by gender bias. Whether it is men or women who experience the burden of bias, however, the public has an interest because the judicial system has failed to adhere to the highest standards of fairness and impartiality. Further, Maryland has committed itself to equality for all its citizens, irrespective of sex. As the Equal Rights Amendment<sup>9</sup> states, "Equality of rights under the law shall not be abridged or denied because of sex." Whenever citizens are treated unequally by the courts or the judicial system solely because of sex, the commitment of Article 46 is undermined. Finally, respect for the law is crucial to the legitimacy of the judicial system. People lose respect for the law when they observe actions and decisions which deny people fair and individualized treatment, which stereotype them

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<sup>9</sup> Md. Declaration of Rights art. 46.

according to their gender, or which burden or benefit them because of their sex. Whenever gender bias in any form affects the judicial system in any part, the entire system suffers.

This Committee is confident that the bench and the bar will respond with dedication and vigor to eliminating the types of gender bias that have been identified by the Committee's investigation. Implementing the Committee's recommendations is vital for this effort. It should be understood that the purpose of each recommendation is the elimination of gender bias. None of the recommendations calls for special treatment for women or for men, because special treatment is not what is needed. What is needed, instead, is sensitivity to the ways in which unexamined attitudes about men and women lead to the unintended result of biased decision-making. Once the sensitivity is achieved, the credibility decisions which all judges, masters, and commissioners must make will be more credible, because they will be made with less risk that biased assumptions affect the result. What is needed is curiosity about why the favored party in some types of disputes frequently is a member of one sex or the other. Once that curiosity is developed, many disputes involving domestic violence and family law can be judged differently because traditionally accepted outcomes no longer will seem inevitable. What is needed is openness to ways of looking at problems that include the experiences of all people. Once that openness becomes commonplace, litigants will be able to explain their circumstances to a court that is more willing to learn and to change.

The goal of gender-neutrality in the judicial system is vital and important. Hard work will be needed for a long time to achieve it, but every effort in this direction is worthwhile.

## **RECOMMENDATIONS**

*The Committee urges that the following recommendations be implemented as quickly as possible.*

- 1. A permanent joint committee of the bench and bar should be appointed to encourage, monitor, evaluate, and report on efforts undertaken to carry out the recommendations of this Report relating to litigants, witnesses, jurors, and lawyers. This committee should serve as an advisory body to the continuing education efforts recommended in this Report.*

*This committee also should receive and investigate complaints when a judge or lawyer subverts the goal of gender-neutrality. Separate bench and bar subcommittees of this subcommittee should focus on issues particularly pertinent to each group.*

2. *A study commission on equity in family law should be appointed to conduct a study and report to the bench and bar on whether laws and practices pertaining to the family and family-type relationships result in fair and equitable treatment to all the people affected by the proceedings.*
3. *The Maryland Code of Judicial Conduct (Rule 1231 of the Maryland Rules of Procedure) and the Code of Conduct for Masters, Examiners, Auditors, Referees, and District Court Commissioners (Rule 1232 of the Maryland Rules of Procedure) should be amended to provide explicit direction to all members of the bench and similar offices that gender bias is a form of partiality which is beneath the ethical standards appropriate for the judiciary.*
4. *A permanent joint committee of judges and court personnel from all levels and geographic areas of court, should be appointed to encourage, monitor, evaluate, and report on the efforts undertaken to carry out the recommendations of this Report relating to court employees.*

## CHAPTER 1 DOMESTIC VIOLENCE

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.

During the last decade, efforts have been made in the State of Maryland to address the violence committed against women by their husbands and other intimate partners. New programs have been established and new legal protections have been fashioned.<sup>1</sup> The Committee nonetheless heard that many women<sup>2</sup> seeking civil and criminal relief against their batterers still face barriers from within the judicial system. Information was gathered at hearings, from people writing to the Committee and from surveys of judges and lawyers. The Committee found that, while progress was notable in some areas, problems are plentiful at all levels.

### **I. Victims of Domestic Violence: Treatment by Courts and Court Personnel**

Studies show that at least 1.8 million women are battered every year in this country,

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<sup>1</sup> See Md. Fam. Law Code Ann. §§ 4-501-4-510.

<sup>2</sup> The overwhelming majority of the adult victims of domestic violence are women. The Maryland State Police, for example, reports that 88% of spousal assault victims are female. House of Ruth Domestic Violence Legal Clinic, Domestic Violence Cases: Skills and Strategies 1 (1987). According to the United States Department of Justice, 95% of spousal assaults committed between 1973 and 1977 were committed by men. U.S. Department of Justice, Report to the Nation on Crime and Justice: The Data (1983). According to the information before the Committee, including testimony, surveys and letters and reports submitted by victims, friends of victims and advocates for victims, problems facing female victims are severe. No data were received showing any problems experienced by male victims. Nonetheless, it is clear that changes which will benefit female victims often will assist male victims as well.

approximately one woman every 18 seconds.<sup>3</sup> Every day, four are beaten to death.<sup>4</sup> During 1988, at least 19 women in Maryland died in what were reported to be incidents of domestic violence.<sup>5</sup> The former husband of one of the Committee's witnesses, Zitta Friedlander, stands accused of her homicide.<sup>6</sup>

Over 4,500 petitions for emergency civil protection from domestic violence were filed in the District Court of Maryland in fiscal year 1987-1988.<sup>7</sup> In addition, the District Court heard thousands of criminal cases involving domestic violence, and circuit courts heard both criminal and domestic relations cases. The Committee learned that the most pervasive and difficult problems for the victims are the attitudes and lack of understanding of judges and court personnel about domestic violence.<sup>8</sup>

Although it is well-established and should be well known that violence against women by their husbands and mates is serious and can be deadly, the Committee found substantial evidence that many officials of the Maryland judicial system lack an understanding of domestic violence and therefore treat it as a trivial matter. A witness before the Committee's hearings spoke of her attempts to get help after her husband had threatened to kill her with his gun:

The thing that has never left my mind from that point to now is what the judge said to me. He took a few minutes to decide on the matter and he looked at me and he said, "I don't believe anything that you're saying." He said,

The reason I don't believe it is because I don't believe that anything like this could happen to me. If

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<sup>3</sup> Gelles and Straus, Intimate Violence (1988); Kantrowitz, A Tale of Abuse, Newsweek, Dec. 12, 1988, at 56-61; see generally L. Walker, The Battered Woman Syndrome (1984); R. Dobash and R. Dobash, Violence Against Wives (1979).

<sup>4</sup> Id.

<sup>5</sup> Maryland Network Against Domestic Violence, Newsletter, Vol. VII, No. 3, Fall-Winter 1988-89.

<sup>6</sup> Testimony of Zitta Friedlander, Prince George's Cty. Tr., pp. 139-144; see Commonwealth v. Friedlander, Cr. 58917 (Cir. Ct. for Fairfax Cty., Va., Jan. 1, 1989).

<sup>7</sup> Administrative Office of the Courts, Annual Report of the Maryland Judiciary, 1987-1988, p. 86.

<sup>8</sup> The Committee's investigation addressed the conduct of judges and court personnel. Victims may also experience problems with prosecutors and police, which are not the focus of this Report.

I was you and someone had threatened me with a gun, there is no way that I would continue to stay with them. There is no way that I could take that kind of abuse from them. Therefore, since I would not let that happen to me, I can't believe that it happened to you.

I have just never forgotten those words.... When I left the courtroom that day, I felt very defeated, very defenseless, and very powerless and very hopeless, because not only had I gone through an experience which I found to be very overwhelming, very trying and almost cost me my life, but to sit up in court and make myself open up and recount all my feelings and fear and then have it thrown back in my face as being totally untrue just because this big man would not allow anyone to do this to him, placed me in a state of shock which probably hasn't left me yet.<sup>9</sup>

Victims of domestic violence report that their testimony is given little credibility. An advocate for battered women told the Committee about a judge who wanted to know whether counseling programs for families involved with violence are able to "flush out 'all these women who are lying.'" This advocate expressed her dismay at the skepticism of the judge, since she saw no reason for judges to believe that victims of domestic violence are manipulating the system. In her view, "[f]ar from overusing, abusing and manipulating the court system, women are, by and large, intimidated by the system and are underutilizing it in vast numbers."<sup>10</sup>

Nonetheless, suspicion may greet a victim of domestic violence at the courthouse door. One judge informed an advocate of his belief that women use the civil protection system to get the family home before a divorce. As an example, he described a case in which the husband hit the wife after she was "up in his face" about another woman.<sup>11</sup> Another judge denied an application for a protective order because he did not believe that the husband would behave in the manner the

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<sup>9</sup> Testimony of Roslyn Smith, Mont. Cty. Tr., pp. 97-102. Another witness told the Committee about another judge who could not put himself in the shoes of the victim. The judge thought it humorous that a victim would be afraid of her husband coming after her with a pillow as if to smother her; he could not understand how a woman might be afraid of a pillow. Testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., pp. 48-49.

<sup>10</sup> Statement of Sheila Litzky (on file with Committee).

<sup>11</sup> Testimony of Connie Koenig, Heartly House, Frederick, Washington Cty. Tr., p. 31. (Statement on file with Committee).

wife had described because he was a doctor.<sup>12</sup> In another case, the judge did not believe the victim had been beaten because she did not have any bruises. The victim told the Committee that the judge told her that she had to go back and get beaten up and have bruises to get a civil protective order.<sup>13</sup> In one particularly egregious case, the judge called the victim "one hell of an actress," despite clear and consistent testimony by the victim and a witness that her husband had beaten her frequently. The testimony was given during her husband's trial on assault and battery charges in which the wife, who had had a mastectomy, testified that abuse inflicted by her husband had dislodged her silicon breast implant, and that it had to be reinserted surgically.<sup>14</sup> One woman was beaten by her husband over the weekend between two court hearings, and she appeared at the second hearing wearing a neck brace because of the injuries he inflicted. The judge's response to her injuries was that "anyone could put on a neck brace just to make him think something had happened."<sup>15</sup>

Witnesses reported that cases involving domestic violence are regarded as trivial and unimportant, even though human life can be at issue. One witness said:

I have heard of resentment on the part of Circuit Court judges at having to be involved with issuing protection from domestic violence orders for battered women. The sentiment is that such relatively "unimportant" work is more appropriate to the judges of the district court.<sup>16</sup>

Another witness advised the Committee that:

Statements are often made from the bench that make light of these very serious cases, which can often lead to homicide. Our local papers are filled each week with stories of domestic fatalities often after [the victims] turning

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<sup>12</sup> Id.

<sup>13</sup> Letter from Joan Purdy (on file with Committee); testimony of Deborah Paparella, Clinical Director, Life Crisis Center in Salisbury, Eastern Shore Tr., p. 35.

<sup>14</sup> Testimony of Dorothy Burchette, Anne Arundel Cty. Tr., p. 1-66; State v. Burchette, No. Cr. 623419A6 (Dist. Ct. Anne Arundel Cty., July 1, 1987, tape recording of proceedings); see testimony of J. Klapac, Mont. Cty. Tr., p. 66.

<sup>15</sup> Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty. Tr., p. 6.

<sup>16</sup> Statement of Sheila Litzky (on file with Committee).

to the courts for help and assistance, and not having been believed when they described their abuse and their fear of death....[C]ourt officers use terms such as Punch and Judy cases....<sup>17</sup>

An assistant State's attorney testified that:

We've noticed that there is a prevalent judicial attitude that these types of cases [assault, battery, robbery, etc., where the complaining witness and the defendant have or had a relationship] are a waste of time, that they're not serious, that they belong in Domestic Relations Court. They do not belong in the criminal justice system.<sup>18</sup>

The same assistant State's attorney provided two examples. The first was a criminal case in which the victim was choked by her boyfriend until she almost passed out. When the victim testified that she had attempted a reconciliation with the defendant after the incident, the judge told the prosecutor that the case was "garbage," and that "he didn't know what this case was doing there in the criminal justice system." In the trial on these charges, defendant was convicted of assault in a bench trial before another judge. In another case, the husband was charged with kidnapping his wife, hitting her with a stun gun and threatening her with death by gasoline fire. While he was out on bond, he followed and harassed the victim continually. Revocation of bond was denied because the judge said the defendant was permitted to follow the victim in order to gather evidence for the divorce. Furthermore, the judge thought the victim was "being a fretful woman for worrying about that sort of thing because it was obvious [the defendant] would not hurt her."<sup>19</sup>

Victims reported to the Committee that many judges and court personnel do not understand the experiences of victims of domestic violence. Domestic violence has been studied extensively

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<sup>17</sup> Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty. Tr., p. 5.

<sup>18</sup> Testimony of Diane Atkins, assistant State's attorney, Prince George's Cty. Tr., p. 13.

<sup>19</sup> Testimony of Diane Atkins, assistant State's attorney, Prince George's Cty. Tr., p. 13. The Committee was told of another case in which the husband was charged with assault after dragging his wife from her car, hitting her against the car, and attempting to force her into his own car. His defense was that he was making a citizen's arrest because she had taken some of his personal property after she moved out of their residence. The judge dismissed the case as a "domestic dispute." Survey Respondent.

and it is important that judges and court personnel be aware of certain basic data.<sup>20</sup> The victims of domestic violence overwhelmingly are female: 88% of spousal assaults reported to the Maryland State Police involve a female victim. Typically, the violence is not triggered by psychosis or mental illness; instead it occurs when the assailant experiences a loss of control over the victim. Treating the violence as a marital dispute does not make it end. Change is more likely to occur when domestic violence is treated as a serious criminal act.

Batterers share many characteristics. Often, they learned to use violence as young boys in families where violence was common; their education is reinforced by social acceptance of violence by men against women. Batterers often are insecure and possessive men, dependent on partners whom they feel the need to control through methods such as battering and abuse. They may feel remorse about the battering after the incident and promise never to repeat it; however, studies are clear about the repetitive nature of the conduct.

The victims of domestic violence also have some things in common. Often, they are women who were raised with traditional values about the woman's responsibility to make things right within the marriage. A victim may think her conduct can change her partner's violence, or that his lack of change is her fault. She is likely to be financially dependent on him, both because of the problems women experience in the labor market and because his violence toward her may have affected her employability. Also, she may be socially isolated due to his jealous or possessive behavior. Generally, she will have low self-esteem. Because of her economic, psychological, and social circumstances and her socialization, staying in an abusive situation may seem preferable to leaving. Finally, even if she does leave, he may continue to pursue and abuse her. Over a quarter of reported assault cases involving domestic violence involved couples who were divorced or separated. Based on the experiences of her friends or neighbors, she may have

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<sup>20</sup> The following materials were used as the basis for the description of domestic violence which follows: Domestic Violence Cases: Skills and Strategies (MICPEL 1987); Gelles and Straus, Intimate Violence (1988); Kantrowitz, A Tale of Abuse, Newsweek, Dec. 12, 1988, at 56-61; see generally L. Walker, The Battered Woman Syndrome (1984); R. Dobash and R. Dobash, Violence Against Wives (1979).

were divorced or separated. Based on the experiences of her friends or neighbors, she may have little confidence that the courts or the police will protect her.

Domestic violence often involves a cyclical pattern of three phases: the tension-building phase, the acute battering phase and the "honeymoon" phase. During the first phase, the violence may be relatively minor, but the batterer's tension and the victim's efforts to placate him intensify. During the second phase, he is likely to be violent and may use weapons. He is likely to try to deflect his responsibility for his actions by blaming her for provoking him. In the third phase, he will be repentant and promise to end his violence. He may appeal to her not to leave him or prosecute him, and may threaten suicide if she persists in her efforts to end the violence. If he can persuade her not to leave him or take other action during this phase, and no intervention occurs, phase one will begin again in most cases.

Some judges, commissioners, and other court personnel fail to understand why a victim of domestic violence might return to the home she shares with the batterer. They do not inquire about whether her assailant might be pressuring her to return through economic coercion, further violence, or threats about her custody of the children. They do not take into account the victim's economic or emotional dependency, or why, because of her socialization, she might feel responsible for the violence.<sup>21</sup> They may not understand that the "honeymoon" phase of the domestic violence cycle has begun, and the batterer is acting contrite and promising to end the violence. Instead, they see the victim's decision to return home or to reconcile as proof that the violence never happened or that her report was exaggerated.<sup>22</sup> They grow impatient with her coming back into court several times for relief. Witnesses reported that commissioners and District Court judges said things such as "oh, it's you again," or "how long are you going to stay this

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<sup>21</sup> One judge was reported to have scoffed at the idea that the victim might have economic problems if she left her abuser because she had access to numerous "giveaway programs." Courtroom observations by law students of the University of Maryland School of Law, Baltimore City, February 1986 (on file with Committee)(herein after referred to as "Courtroom observations.").

<sup>22</sup> Testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., p. 48; testimony of Hannah Sassoon, Mont. Cty. Tr., p. 51.

Court judges said things such as "oh, it's you again," or "how long are you going to stay this time," or "you want to go back and get beat up again."<sup>23</sup> One witness reported that

Frequently women are humiliated while on the witness stand with comments asking why do they put up with it, or why they waited so long to file charges, or even statements which infer that if the abuse had really been bad, they would have done something about it before now.<sup>24</sup>

Some judges are reported to have threatened the victim with sanctions for the repeated use of the courts:

Three years is long enough for the court to put up with both of you.<sup>25</sup>

This will be the last time, or both of you will go to jail.<sup>26</sup>

Victims who attempt to file criminal assault and battery charges with court commissioners report getting the same response:

[Commissioners] also say, "Have you filed charges before?" "Have you ever dropped charges before?" If the answer is yes, then they say they don't think that the person is a good candidate for filing charges again. Or they will tell the person they have a year in which they can file the charges, so they should go home and think about it. And if the women come back in a few days after that to file charges, then they are asked why they waited so long to file.<sup>27</sup>

Lack of understanding about domestic violence also leads judges and other court personnel to believe that the best solution to the problems of the victim is for the parties to separate, because then the violence will stop. Unfortunately, separation without legal protection does not stop the

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<sup>23</sup> Testimony of M. Franzella Hayward-Starkey, Legal Aid, Eastern Shore Tr., p. 23. Many similar statements were reported, such as "Why do you remain with him when he treats you this way?" "Why do you keep coming back here?" "Why don't you go to a lawyer for a separation?" "Three times is enough for him to use you as a punching bag, and for you to take it. You have to protect yourself and your children." Courtroom observations by law students of the University of Maryland School of Law, Baltimore City, February 1986 (on file with Committee).

<sup>24</sup> Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty. Tr., p. 6.

<sup>25</sup> Courtroom observations, Baltimore City, February 1986.

<sup>26</sup> *Id.*

<sup>27</sup> Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty., Tr., pp. 8-9; *see* testimony of Joella Braun, Prince George's Cty. Tr., p. 108; testimony of Marla Hollandsworth, Esquire, Balto. City Tr., p. 30.

violence in all cases, and, in some cases, the violence worsens because the abuser is angered at losing control over the victim.<sup>28</sup> Nonetheless, the Committee learned of cases where judges delayed, trivialized or dismissed criminal cases involving serious injuries to the victim because they believed a divorce was the appropriate and sufficient remedy. One case involved a victim who had been hit so much that she had gone to an emergency room for treatment of a misaligned jaw and had mouthplates because of her injuries. The judge dismissed criminal charges with the following comment:

We have a situation here which basically is one arising out of a very heated and difficult domestic problem. It's not a case that belongs in this court.... I think both people suffered some slight physical injury and perhaps in [wife's name] case, somewhat more than slight physical injury.<sup>29</sup>

In a case involving a wife who was "severely pummelled" and had her arm in a sling for three weeks, a judge said:

This matter is now really a domestic case. There may have been some injuries on both sides, but the point is that these people are no longer living together, and if you insist upon trying these charges, all you're going to do is exacerbate an already bad situation. I've seen it happen hundreds of times. There's just no point in it. Unless there's a serious permanent injury that resulted in this case, I could encourage you both to consider agreeing not to prosecute each other and let the matter be resolved as a divorce case.<sup>30</sup>

Judges and other court personnel often suggest that the victim of domestic violence has control over her victimization. If she would stop provoking her assailant, they believe, she would not get hit. This analysis overlooks the research showing that the assailant often is using violence to assert control over the victim, and that the victim cannot divert him from his goal by "behaving." Even if her conduct is not exemplary in the judge's eyes, furthermore, that is not legal justification for her to be assaulted and battered. Nonetheless, the Committee learned of cases where the victim's conduct was condemned as much as or more heavily than her assailant's, and where she

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<sup>28</sup> Testimony of Barbara Miller, Prince George's Cty. Tr., p. 7.

<sup>29</sup> Report of the Women's Law Center of Baltimore (on file with Committee).

<sup>30</sup> Id.

victim's conduct was condemned as much as or more heavily than her assailant's, and where she was said to be the agent of her own misery.

The most notorious case involves Charlotte and John Fedders. At the divorce trial, the testimony showed that he had subjected her to frequent and severe violence throughout their marriage, including throwing her over a bannister and breaking her eardrum. He testified that he was violent because of her conduct: she did not give him help when he suffered from depression and she "made references not only to the defendant but also to his mother." Based on all the testimony, the master concluded that:

Overall the circumstances that contributed to the estrangement of the parties has got to be on an equal basis. There is no question that the plaintiff suffered physical abuse but that in and of itself was not what brought about the estrangement of the parties.<sup>31</sup>

In another case involving criminal charges, the husband was acquitted despite testimony from the victim and a neighbor and medical records documenting the wife's injuries. The husband had testified that he beat the wife in self-defense, to protect himself from being "hen-pecked."<sup>32</sup>

Cases such as these should not occur in courtrooms and courthouses where judges and court personnel understand the dynamics of domestic violence and can appreciate the situation of the victim. She is a person in need of help. The fact that she knows or lives with the person who has done her harm does not justify a court or court personnel denying her that help. She is entitled to the same degree of credibility, seriousness, understanding, and assistance as any other petitioner

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<sup>31</sup> Report of the Domestic Relations Master, Fedders v. Fedders, Equity No. 84618, Circuit Court for Montgomery County, Oct. 16, 1987. This part of the Master's Report was not made part of the judgment of the circuit court, in which Charlotte Fedders was granted a monetary award of \$50,000.00 and half of the joint marital property. Judgment of Absolute Divorce, id., February 17, 1988.

<sup>32</sup> Testimony of J.W. Klapac, Mont. Cty. Tr., p. 66. The Committee also heard about other court personnel who expressed greater concern about the problems of the abusing husband than the needs of the victim. Commissioners were reported to have discouraged women from filing complaints against their husbands, for example, on the rationale that the husbands should not be "given" a criminal record or spend time in jail. Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty. Tr., pp. 8-9; see testimony of Joella Braun, Prince George's Cty. Tr., pp. 108-110; letter from volunteer coordinator of Community Crisis and Referral Center, Inc., Waldorf, Md. (on file with Committee); testimony of Marla Hollandsworth, Esquire, Balto. City Tr., p. 30.

in a civil matter and complainant in a criminal matter. Until courts ensure that she receives the same treatment, gender bias against women, the vast majority of victims of domestic violence, has not been eradicated.

## **II. Judicial Procedures Involving Domestic Violence**

A victim of domestic violence may seek judicial assistance 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. The following sections explore the civil and criminal processes separately.

### **A. Civil Protective Order**

Under Maryland law,<sup>33</sup> an adult victim of abuse can petition the court to provide protection from further abuse. Abuse is defined as "an act that causes serious bodily harm" or "an act that places another in fear of imminent serious bodily harm." The court can order that the abuse stop, that the petitioner have exclusive use of the family home for up to 30 days and temporary custody of minor children, that household members enter counseling, and "any other relief as necessary." A violation of the order may result in a finding of contempt or criminal prosecution. Upon conviction, the court may impose imprisonment, a fine, or both. While the order can be entered by either the District or a circuit court, almost all the petitions are brought in and heard by the District Court, where filing fees are lower and procedures easier for unrepresented parties. The civil protective order procedure is designed to be temporary and quick; an initial order for relief lasting five days can be issued upon the sworn statement of the victim alone (ex parte order), and the hearing on the 30-day protective order is held immediately upon the expiration of the initial ex parte order.

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<sup>33</sup> Md. Fam. Law Code Ann. §§ 4-501-4-510.

The Committee heard a number of complaints about barriers facing victims who attempt to petition for a civil protective order. It was reported that in one county, clerks refused to give victims the forms used for filing petitions.<sup>34</sup> In another county, there had been a practice of scheduling hearings on the petitions behind closed doors and at specific times. When these practices were abandoned, victims were required to testify in public. In addition, they suffered because unpredictable delays preceded their hearings. This caused problems with child care and employment, and witnesses and family members could not remain in court to help the victim.<sup>35</sup> Serious complaints reached the Committee about the decision to award a civil protective order. While most judges appreciate the need for an order when they find that the victim has suffered serious bodily harm and when she is in fear of imminent serious bodily harm, some still find it difficult to make the finding because they fail to give the victim's testimony appropriate weight and credibility.<sup>36</sup> This problem was discussed at length earlier in this Report.<sup>37</sup> In circumstances where such attitudes are not a problem, it appears that judges are prepared to grant civil protection to victims of domestic violence under the statutory standards, that is, when victims have suffered injuries already or are fearful of imminent bodily injury. This perception was verified by the

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<sup>34</sup> Testimony of Joella Braun, Prince George's Cty. Tr., pp. 114-116; testimony of M. Franzella Hayward-Starkey, Esquire, Eastern Shore Tr., p. 29.

<sup>35</sup> Testimony of Deborah Paparella, Eastern Shore Tr., pp. 36-37.

<sup>36</sup> See, e.g., testimony of Hannah Sassoon, Abused Persons Program, Mont. Cty. Tr., p. 51 (petitioner disbelieved because she did not leave abuser after first beating); testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., p. 48 (no threat of serious bodily harm found when husband came at wife with a pillow as if to smother her); testimony of Dorothy Burchette, Anne Arundel Cty. Tr., p. 1-66 (judge not sympathetic to middle-aged petitioner; his sympathy is "with young women with infant babies and she is married to a brute who is knocking her all over the landscape and she has no resources"); testimony of The Honorable Theresa Nolan, P.G. Cty. Tr., p. 120 (tying wife to the bed is "just kinky sex," not abuse); testimony of Deborah Paparella, Eastern Shore Tr., p. 35 (bruises are not sufficient bodily harm to constitute abuse); testimony of Connie Koenig, Heartly House, Frederick, Washington Cty. Tr., p. 30 (petitioner not believed because, according to the judge, "a professional doctor" [sic] would not commit abuse); letter from Joan Purdy (on file with Committee) (bruises are insufficient proof of abuse); testimony of Roslyn Smith, Mont. Cty. Tr., pp 97-102 (judge did not believe she was abused because he would not have permitted anyone to threaten his life with a gun in the way she said her husband threatened her life). As was discussed earlier in this Report, cases such as these illustrate the need to educate and sensitize judges, masters, and commissioners about the characteristics of both the batterer and the victim involved in domestic violence.

<sup>37</sup> Supra nn. 9-19 and accompanying text.

Committee's survey of judges and lawyers, which asked whether "Civil orders of protection ... are granted when petitioners are in fear of serious bodily harm."<sup>38</sup> Over 80% of judges and 70% of male lawyers thought that is always or often true. Female lawyers were somewhat more skeptical, but over half (55%) agreed that the statement is always or often true, and another 37% believe the statement is sometimes true.

A serious problem facing a victim of domestic violence who wants to put a halt to the abuse is how she will pay the rent and buy food during a separation from the batterer. In most situations, the victim has a lower income than the batterer,<sup>39</sup> and may have children to care for which she cannot manage alone. The batterer's financial superiority and control may make it impossible for the victim to demand that he leave, unless he is ordered to provide support during the separation.

While the civil protection statute does not provide explicitly for monetary relief, it may be read to authorize that monetary relief be granted.<sup>40</sup> The Committee found, however, that monetary relief is difficult to get. In its survey, the Committee asked judges and lawyers whether "[w]hen granting civil orders of protection, the courts issue support awards for dependents." Over half of judges (58%) and female lawyers (64%) and nearly half of male lawyers (48%) report that the statement is rarely or never true.<sup>41</sup>

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<sup>38</sup> Question 34 of Judges' and Lawyers' Questionnaires.

<sup>39</sup> B. Bergmann, The Economic Emergence of Women, 119-145 (1986).

<sup>40</sup> Md. Fam. Law Code Ann. § 4-506(e)(5) empowers the court to award "any other relief as necessary." A court sitting in equity has the power to enter an order providing for monetary relief, such as child and spousal support. Md. Fam. Law Code Ann. § 1-201(a). In granting monetary relief, a circuit court is exercising its equity jurisdiction under Md. Fam. Law Code Ann. § 4-506(e)(5). While it does not otherwise have equity jurisdiction, the District Court is granted the same equity powers under Ct. and Jud. Proc. Code Ann. § 4-404, when it is hearing a petition for civil protection.

<sup>41</sup> Question 35 of Judges' and Lawyers' Questionnaires. Some lawyers (38% of males and 18% of females) and judges (29%) report that monetary relief sometimes is granted. These respondents may be referring to circuit court proceedings, since the question did not specify District Court proceedings. Even if these respondents are correct that monetary relief sometimes is granted by the District Court, they agree that most petitioners will not receive such an award. Unless a victim of domestic violence can be assured of financial security, she may not be in a position to demand that her abuser leave the home. If most victims are denied relief, no such assurance is possible.

The Committee was advised that victims of domestic violence are concerned that some courts find that the civil protective order expires and all relief ceases at the end of 30 days.<sup>42</sup> The law authorizes the petitioner to be awarded exclusive use of the family home for 30 days; it also permits orders on matters such as custody and counseling to be entered, and does not specify a durational limit. According to an Opinion of the Attorney General of Maryland, civil protective order relief is "subject only to such durational limits as the court, in its discretion, imposes;" no durational limits are imposed by the statute.<sup>43</sup> No counseling program is likely to end within 30 days, nor does the need for a custody order to terminate in a month if the victim does not reconcile with the abusing spouse or partner. Therefore, it is questionable to interpret the statute as limiting the duration of the relief under those sections where the legislature has not provided limits.

The civil protective order procedure, like any other judicial remedy, is most effective if the court routinely sanctions violators of the order. Although both contempt and criminal sanctions are available under the statute, victims reported to the committee that some courts fail to invoke these procedures expeditiously and effectively.<sup>44</sup> Unless sanctions are certain and effective, the court's order will be meaningless, and the abuser will learn that he need not change his conduct because it is not taken seriously.

### **B. Separation, Divorce, and Custody Proceedings**

The goal of many victims of domestic violence is not to separate from or divorce the batterer; it is to have the violence end. In some cases, however, divorce or separation is the only

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<sup>42</sup> See, e.g., Survey Respondent; testimony of Elizabeth Renuart, Legal Aid Bureau, Washington Cty. Tr., p. 9.

<sup>43</sup> 72 Opinions of the Attorney General \*\* (1987), Opinion No. 87-009 (February 18, 1987).

<sup>44</sup> See, e.g., testimony of Maria Wonders, Prince George's Cty. Tr., p. 49 (court order for treatment not enforced); testimony of Linda Hirschy, Balto. Cty. Tr., pp. 32-36 (although wife awarded use and possession of home, husband kept forcing his way onto property, assaulting wife and daughter and destroying personal property. Husband found in contempt and ordered to stay away over 78 times in an 8-month period; wife eventually was forced to move out of state); testimony of B. Miller, P.G. Cty. Tr., p. 6 (victim told by judge that her only remedy for an incident of abuse which occurred after a civil protective order had been issued was to apply for a new civil protective order).

batterer; it is to have the violence end. In some cases, however, divorce or separation is the only recourse. These procedures are not without difficulties, however.

A major question for a victim of domestic violence seeking a separation or divorce is her personal safety, because often the violence escalates after the victim attempts to loosen the batterer's control over her. When victims apply for a civil protective order in a circuit court proceeding, however, the response is not certain. According to the Committee's survey, as many as 10% of judges believe that petitions for civil protective orders always or often are rejected when other domestic relations cases are pending.<sup>45</sup> Another 30% believe that to be true sometimes. For the victim, this means that the beginning of divorce proceedings may be the end of protection by court order against further abuse by her husband. At the same time, she may be unable to secure an emergency hearing from the circuit court hearing her divorce on her petition for use and possession of the family home, custody of the children, or temporary spousal and child support.<sup>46</sup> Thus, she can be left without judicial assistance for basic needs and protection from violence until a hearing is scheduled in the ordinary course of business by the court handling the divorce. This may take many months.

An additional problem arises if the victim is in a county which offers a mediation program for custody disputes.<sup>47</sup> While there is no disagreement that abused women should not be forced to mediate on any subject with their abusers, there may be problems in identifying victims and diverting them from mediation before the first appointment.<sup>48</sup> This creates two problems.

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<sup>45</sup> Question 36 of Judges' and Lawyers' Questionnaires.

<sup>46</sup> Testimony of Shellie Frankford, Esquire, Balto. City Tr., pp. 112-113; testimony of Zoe Ann Gill, Mont. Cty. Tr., pp. 117-118; testimony of the Honorable Rita Rosenkrantz, Mont. Cty. Tr., pp. 119-120, 124-127; testimony of Phyllis Martin, Balto. Cty. Tr., pp. 12-13; Report of the Women's Law Center, Inc. (on file with Committee).

<sup>47</sup> Md. Code Ann. Rule S73A, effective July 1, 1988, authorizes every circuit court to implement a custody mediation program.

<sup>48</sup> Md. Code Ann. Rule S73A (court may not order mediation in any case where "there is a genuine issue of physical or sexual abuse of the party or the child."); testimony of Marla Hollandsworth, Esquire, Baltimore City Tr., pp. 38-39; Judy Wolfer, Esquire, Baltimore City Tr., pp. 62-63.

First, the victim may be in the mediation situation before the identification occurs, thereby terminating mediation. Second, if mediators receive no training about domestic violence or understanding how to identify cases involving violence, they will be unaware of the need to divert such couples from mediation.

As will be discussed in the chapter on child custody, the violence of one parent against the other is relevant to the custody decision. Domestic violence is also pertinent to visitation orders, because a batterer can use visitation periods for physical or verbal abuse of the victim.<sup>49</sup> Supervised visitation often is required to protect the victim's physical safety and security; suitable orders should be available to battered women.

### C. Criminal Procedure

When violence occurs within a marriage or other intimate relationship, the victim may press criminal charges against the aggressor. If the case is one involving relatively less serious injuries, the procedure may begin with the police arresting the defendant and filing a charge or it may begin with the victim filing a charge with a court commissioner. The defendant typically will be charged with a crime such as assault or battery that may be tried in District Court. Cases involving serious injuries or death will be brought before a circuit court grand jury.

The Committee learned that many victims believe that crimes involving domestic violence are not treated the same way as crimes in which the complaining party and the defendant do not know each other. The Committee attempted to test this belief in its survey of judges and lawyers by asking whether they believed that courts do not treat domestic violence as a crime.<sup>50</sup> Nearly a tenth of the judges who responded said that the statement is always true, and another 14% said that the statement is often true. Among the lawyers, 33% of female attorneys and 12% of male attorneys thought the statement is always or often true. Interestingly, over half of male attorneys (51%) and female attorneys (68%) who have a substantial domestic relations practice

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<sup>49</sup> Testimony of Lisa Ann Fuller, Baltimore City Tr., p. 151; testimony of Judy Wolfer, Esquire, Balto. City Tr., pp 57-58, 64.

<sup>50</sup> Question 38 of Judges' and Lawyers' Questionnaires.

attorneys (51%) and female attorneys (68%) who have a substantial domestic relations practice thought the statement is always, often, or sometimes true.

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.

That women's choices are limited by judicial bias is shown by the responses to a question on the Committee's survey of judges and lawyers. Respondents were asked to evaluate the statement, "[a]ssault charges are not treated seriously when domestic relations cases are pending."<sup>51</sup> Ten percent of judges thought the statement is always or often true; 28% thought the statement is true sometimes; and 62% thought the statement is rarely or never true. By contrast, a quarter of male attorneys thought the statement is always or often true, 37% thought it true sometimes, and 38% thought it rarely or never true. Female attorneys were more certain that the problem exists: 48% thought the statement is always or often true, 32% thought the statement sometimes true, and only 21% thought the statement to be rarely or never true. Domestic relations practitioners, whether male or female, indicated similar certainty: 58% of females and 40% of males believed the statement is always or often true.

The criminal procedure should be available if a woman who has been injured wants to have the state impose a punishment and use the criminal sanction to deter future violence. The civil procedure should be available if a woman who has been subject to violence or threatened with violence wants to separate, temporarily or permanently, from the aggressor. Some women have both goals, and both goals are legitimate. If a woman invokes both processes, however, she runs

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<sup>51</sup> Question 39 of Judges' and Lawyers' Questionnaires.

the risk that the criminal charge will not be taken seriously. The judicial system should not require her to make that choice, especially when it has been shown that the criminal process is the most effective one for controlling and changing the batterer's violent conduct.

Commencing the case also can be a problem for victims of domestic violence. As was shown in section I of this chapter, court commissioners have been known to treat domestic violence complaints as frivolous and unimportant. Commissioners are court-appointed officers who, in some cases, make the decision whether a criminal charge should be brought. Witnesses reported to the Committee that commissioners sometimes encourage the victim to not press a charge, berate her for dropping prior charges or for not leaving the abuser, or refuse to file charges altogether.<sup>52</sup> One witness reported the following incident, which she observed when accompanying a victim to a commissioner's office:

[The commissioner] "cautioned [the victim] that once she signs the document she would not be able to nullify it. He also shook his finger at her and warned her that he better not be called in the middle of the night to drop the charges. Commissioner ... also sternly told [the victim] that the charges she was bringing against her husband were very serious and she should think twice before signing the warrant since she would 'probably be severely beaten' once [the attacker] found out.' [The victim] asked Commissioner ... if he would please put a condition on the warrant stating that [the attacker] not come near her, since prior to that date he had broken down the door and severely beat her. Commissioner ... told us 'that would come later in court.' [The victim] was upset since she anticipated him coming back as the commissioner had pointed out.

All of these actions communicate a failure to understand the dynamics of domestic violence, and they have the consequence of discouraging the victim from trying to improve her situation or get out.

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<sup>52</sup> Testimony of Joella Braun, Prince George's Cty. Tr., p. 108 (commissioner does not process assault and battery charges if woman has filed more than a couple of charges); *id.*, P.G. Cty. Tr., p. 10 (commissioner expressed disgust with women who press charges and then drop them); testimony of Barbara Miller, P.G. Cty. Tr., pp. 8-9 (commissioners tell women "You know you'll be giving him a criminal record for the rest of his life?" "You know he can be in jail for twenty years?" Also, commissioners discourage multiple charges by same victim); testimony of Marla Hollandsworth, Esquire, Balto. City Tr., pp. 29-31 (commissioners discourage victims from filing because victim caused violence, because husband should not be given criminal record, because victim should file civilly instead, because victim who has been beaten before cannot be believed).

The Committee also heard that some commissioners issue documents charging the victim with assault where it is clear that she was merely defending herself against an attack and no prima facie showing is made that an offense occurred.<sup>53</sup> In some cases, the commissioner is not in a position to know the circumstances of the offense, and issuing a charge is not a biased decision. In other circumstances, however, it should be clear to the commissioner that the batterer is seeking to use the criminal process to manipulate his victim into dropping charges. Retaliatory charges require the victim to defend herself in court. They also divert attention from what should be the issue: the batterer's conduct.

#### **D. Battered Women Who Kill**

In some extreme circumstances, victims of domestic violence kill their abusers. Many states in the last decade have recognized that because of her victimization, the situation of a battered woman is different from that of some other killers. A defense based on the research into the lives and circumstances of battered women has been recognized, called the battered woman syndrome defense, with the result that women may be found culpable of a crime less than first degree murder or may be found non-culpable altogether.<sup>54</sup>

Progress in Maryland in developing the battered woman syndrome defense has been slow.<sup>55</sup> While some prosecutors now recognize their victimization and enter into plea bargains at a low level of culpability, battered women continue to be convicted of first and second degree murder in cases which would be treated with greater compassion, leniency, and fairness in other states.<sup>56</sup>

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<sup>53</sup> Testimony of Joella Braun, P.G. Cty. Tr., pp. 108-109; testimony of Marla Hollandsworth, Esquire, Balto. City Tr., p. 33; testimony of Susan Elgin, Esquire, Wash. Cty. Tr., p. 27.

<sup>54</sup> 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).

<sup>55</sup> See, e.g., Friend v. State, No. 483 Sept. Term 1988 (Ct. Spec. App., Dec. 12, 1987) (unreported); Kriscumas v. State, No. 1072 Sept. Term 1986 (Ct. Spec. App., July 9, 1987) (unreported).

<sup>56</sup> Testimony of Mary Joel Davis, New Directions for Women, Baltimore City Tr., pp. 99-100. An additional problem for an abused woman is that her own victimization may be ignored if her assailant also harms or kills a child in the household. The battered woman may be treated as equally culpable with her abuser by the

## FINDINGS

1. *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.*
2. *Criminal and civil domestic violence cases are too often treated as trivial and unimportant, and the testimony of victims dismissed as incredible.*
3. *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.*
4. *Civil divorce and custody procedures lack sufficient emergency mechanisms to meet the needs of battered women.*
5. *Mediation programs may not adequately protect battered women.*
6. *Judges often lack sufficient information about the need to pursue criminal charges against batterers.*
7. *Commissioners sometimes fail to charge batterers in appropriate cases and sometimes charge the victims in inappropriate cases.*
8. *The battered woman syndrome defense is insufficiently accepted.*

## RECOMMENDATIONS

### For Court Administration and the Judiciary

1. *Take necessary steps to assure that judges, masters, commissioners, court clerks, and security personnel are familiar with the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, including:*
  - a. *The battered woman syndrome.*
  - b. *The need for calendar preferences for violation of order of protection cases.*
  - c. *The powers of criminal courts in cases of domestic violence and harassment.*
  - d. *The efficacy of educational or therapeutic programs for those found to have been violent toward members of their families.*

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criminal or the juvenile court system. Testimony of Mary Joel Davis, Baltimore City Tr., p. 100; testimony of Sherryl Statland, Baltimore City Tr., pp. 69-71.

- e. *The effectiveness of ordering those found to have committed family offenses to vacate the family home.*
  - f. *The appropriateness of jail for those found to have violated protective orders issued by the courts.*
  - g. *The relevance of the battered woman syndrome and the importance of expert testimony in cases involving women who kill men who have abused them.*
  - h. *Characteristics of batterers.*
  - i. *Advisability and acceptability of simultaneous civil and criminal proceedings.*
  - j. *The importance of treating the assault of a spouse or intimate friend as a crime just as the assault of a stranger would be a crime.*
  - k. *The relationship between spouse battering and child custody and visitation.*
  - l. *The harm of dissuading domestic violence victims from seeking all the civil and criminal relief that is available to them under the law.*
  - m. *The availability of a protective order where there is evidence not only of physical abuse, but also where there is fear of imminent bodily harm.*
  - n. *The inappropriateness of routinely issuing retaliatory criminal charges.*
2. *Initiate studies by the Judicial Conference's Committee on Juvenile and Family Law and Procedure on the problems of domestic violence in order to develop legislation and court rules designed to resolve them. Multiprofessional consultations with psychologists, social workers and others are needed as well as experimentation with new programs, the results of which must be carefully monitored.*
  3. *In Montgomery County, initiate a pilot program permitting masters of the circuit court to hear civil protective orders with immediate orders being issued. The program should be evaluated to determine victim satisfaction, speed, cost, and effectiveness of sanctions.*
  4. *Evaluate court-sponsored mediation programs to determine impact on victims of domestic violence.*
  5. *Evaluate judges, masters, and commissioners on a regular basis, taking into account gender-neutrality on issues relating to domestic violence.*
  6. *Establish uniform procedures for handling domestic violence cases, including scheduling and calendar preferences.*
  7. *Make the system for obtaining civil protection from domestic violence easier to understand and less intimidating by means of a booklet which includes the necessary forms and*

*and less intimidating by means of a booklet which includes the necessary forms and information.*

8. *Develop annually informational material to inform judges about the incident and prevalence of domestic violence in Maryland.*
9. *Regardless of whether self-defense is at issue, expert testimony about the battered woman syndrome should be admissible.*

### **For the Legislature**

*Enact legislation that:*

1. *Provides that access to the courts for protective orders be available seven days a week, 24 hours a day.*
2. *Provides that adjournments in criminal cases in contemplation of dismissal may be conditioned upon the defendant's attendance at education and counselling programs for those charged with family violence.*
3. *Provides that abuse by one parent of the other is evidence of parental unfitness for custody and a basis for termination of visitation or a requirement of supervised visitation.*
4. *Provides for studies on the feasibility and advantages of a full service family court. In conjunction with the study, a pilot project with full services should be undertaken to serve as the basis for a longitudinal study.*
5. *Clarifies that, in proceedings for civil protective orders, monetary relief such as spousal and child support can be awarded by the District Court and only the order to vacate the family home has a time limit.*
6. *Specifically sanctions the use of civil protective orders when a divorce is pending and simplifies obtaining injunctive relief as part of a domestic case.*
7. *Establishes that a victim of the battered woman syndrome may use evidence of her or his victimization and expert testimony to show that the murder or attempted murder was committed in self-defense.*

### **For State's Attorneys**

1. *Establish domestic violence prosecution units in those jurisdictions with sufficient volume to justify one. In jurisdictions with fewer cases, direct all domestic violence prosecutions to one assistant State's attorney.*
2. *Ensure that all assistant State's attorneys receive training as to the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, including the same topics recommended for judges and court personnel.*
3. *Provide for paralegal and social work support for domestic violence victims or link to existing services in the community to assure that the safety and social service needs of the victims are met.*

4. *Request protection for the victim as a routine condition of bail and probation when the defendant is alleged to be involved with domestic violence.*

#### **For Bar Associations (including State, local and specialty bar associations)**

1. *Recognize the need for social work and other support services for clients who are victims of domestic violence; become knowledgeable about the availability of community resources.*
2. *Start a domestic violence task force in the community if none exists, including as members all agencies dealing with domestic violence, including State's attorneys, commissioners, police, health services, county legislative body, chief executive, courts, bar associations, etc.*
3. *Prepare a brochure for domestic violence victims so they know what is available to them, what they can expect, where they can secure services, etc.*
4. *Create a vehicle to publicize the existence of services for victims, particularly where a diverse ethnic population makes publicity essential.*
5. *Establish a bench-bar committee to consider establishing statewide standards for the District Court concerning civil protective cases, including matters such as the availability of forms, scheduling of hearings, and enforcement of orders.*

#### **For Domestic Violence Task Forces**

1. *Develop educational materials in addition to this Report and present them in seminars attended by lawyers, judges, masters, and commissioners, and in the law schools. Teachers' outlines should be developed for use in law school professional responsibility and clinical courses and in pre-collegiate schools.*
2. *Work for improved service of civil protective orders where this is a problem.*
3. *Study whether criminal assault cases involving family members are treated similarly to or differently from assault cases involving non-family members with respect to such matters as degree of culpability and severity of sentence.*
4. *Evaluate need for victim's assistance program.*
5. *Increase publicity about programs and services already available.*

#### **For the Law Schools**

*Include information on domestic violence in appropriate courses which addresses the issues specified as the basis for education for the courts.*

#### **For Judicial Nominating Commissions**

1. *Make available to all members information concerning the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, covering the same topics recommended above for judges*

*characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home, covering the same topics recommended above for judges and court personnel.*

2. *Encourage members to investigate the conduct and attitudes of all applicants with respect to domestic violence. Members may, for example, attend court sessions of those judges and masters applying to move up within the system when matters involving domestic violence are being heard. In the case of attorney applicants, the views of clients, witnesses, and other counsel in such cases may be sought.*

## CHAPTER 2 CHILD CUSTODY AND VISITATION

### I. CHILD CUSTODY

The 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. The Committee's investigation indicates that troubling incidents of gender bias in custody disputes occur in the courts of Maryland. At the same time, the Committee's investigation indicates that most cases are resolved at the trial level in conformity with a child-oriented approach which is gender-neutral in practice: custody of a child usually is awarded to the parent who is providing care at the time of the custody decision if the child is faring reasonably well in the care of that parent.

Even though gender bias in the award of custody was not found to be a widespread problem, all incidents, however few, are serious and important to the parents and the child. The problem is equally important to the bench, the bar, and the state. When gender bias affects the outcome of a custody case, a decision vital to the upbringing of a young person has been made on an illegal basis: discrimination on the basis of sex in custody decisions is violative of the Equal Rights Amendment.<sup>1</sup> Even if a particular gender-based decision is not detrimental to a particular child, unlawful decision-making promotes disrespect for the law.

The Committee's investigation included gathering information at its hearings, asking judges and domestic relations masters to respond to a hypothetical concerning a custody dispute, surveying lawyers and judges about custody, reviewing letters and other materials sent to Committee members and staff, and reviewing court files about cases identified to the Committee by name, court, or docket number.

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<sup>1</sup> Md. Decl. of Rts. art. 46; see Md. Fam. Law Code Ann. § 5-203(c); McAndrew v. McAndrew, 39 Md. App. 1 (1978).

## A. Perceptions of Unfairness toward Fathers

Fathers and advocates for fathers told the Committee that fathers were denied custody because judges refused to see them as capable custodial parents. One witness told the Committee that he perceived an "a priori" belief running through the court system that men are not suitable for custody of children, particularly female children."<sup>2</sup> An advocate for fathers stated that judges demonstrate that they look at fathers and mothers differently by failing to look at financial statements and by denying witnesses a chance to be heard.<sup>3</sup> A witness for a father in a custody trial wrote to the Committee that, in her view, "[the decision was] based purely on gender and not the facts involved... the outcome... was based on old-fashioned ideas and the actual case was, in fact, never actually heard."<sup>4</sup> An advocate for fathers described the bias as inherent in the family law system: "Mothers are presumed to be the only logical custodian of minor children."<sup>5</sup>

Fathers and their advocates also told the Committee that judges see the father's role only in terms of providing money. If a father also wants to provide direct care, he is deemed unnatural.<sup>6</sup> As one witness put it, judges believe that a father who "did too much" should not have custody.<sup>7</sup>

The maternal preference in custody disputes was the law in Maryland until 1974.<sup>8</sup> The 15 years that have elapsed since the preference was abolished may not have been enough time

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<sup>2</sup> Testimony of Frank Gambino, Montgomery Cty. Tr., p. 132.

<sup>3</sup> Testimony of Bruce Burrows, Equal Rights Foundation, Fathers United, Montgomery Cty. Tr., p. 79.

<sup>4</sup> Statement of Diane D. Bauer (on file with Committee).

<sup>5</sup> Bruce Burrows, Montgomery Cty. Tr., p. 71. See also testimony of David Harris, Mont. Cty. Tr., p. 59-60; testimony of "John Doe" Anne Arundel Cty. Tr., p. 1-79; testimony of Roger Perkins, Esquire, Anne Arundel Cty. Tr., p. 1-90.

<sup>6</sup> Testimony of "John Doe," Anne Arundel Cty. Tr., p. 1-76; testimony of Michael Sanow, Baltimore City Tr., p. 80; testimony of David Harris, Mont. Cty. Tr. p. 59-63; statement of David Harris submitted at Montgomery County hearing (on file with Committee).

<sup>7</sup> Testimony of "John Doe," Anne Arundel Cty. Tr., p. 1-76.

<sup>8</sup> McAndrew v. McAndrew, 39 Md. App. 1 (1978).

to erase its impact on the judicial system.<sup>9</sup> The Committee's survey of judges and lawyers included questions about biases in custody disputes. To test the assertion that fathers are disadvantaged in custody disputes because of a sub silentio maternal preference, the Committee's survey asked judges and lawyers to state whether "custody awards to mothers are apparently based on the assumption that children belong with their mothers."<sup>10</sup> Of those with an opinion on the question, roughly half of judges (49%) said the statement is always, often, or sometimes true, while the other half thought the statement was rarely or never true. Many more lawyers than judges were convinced that custody awards were tilted toward mothers: 79% of female attorneys and 95% of male attorneys said the statement is always, often or sometimes true. While the answers to this question could be seen as convincing evidence that anti-father bias is rampant in the judicial system, answers to another of the Committee's survey questions tilt in the opposite direction. The Committee asked judges and lawyers whether "the courts give fair and serious consideration to fathers who actively seek custody."<sup>11</sup> Of those with an opinion on the question, 85% of judges, 83% of female attorneys and 72% of male attorneys said the statement is always, often, or sometimes true.

The responses to the two questions appear contradictory: giving fathers fair consideration by definition requires courts not to apply a maternal preference. One way to reconcile the apparently contradictory results is to consider the fact that not many fathers seek custody, so the perception of anti-father bias may reflect a societal bias against fathers seeking custody, rather than a judicial bias against courts awarding them custody. In addition, lawyers for fathers may discourage them from seeking custody.<sup>12</sup> Once the fathers overcome inhibitions against seeking custody and present their cases in court, generally they receive a fair and serious

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<sup>9</sup> Id.

<sup>10</sup> Question 28 of Judges' and Lawyers' Questionnaires.

<sup>11</sup> Question 29 of Judges' and Lawyers' Questionnaires.

<sup>12</sup> See L. Weitzman, The Divorce Revolution, 237-244 (1985).

against seeking custody and present their cases in court, generally they receive a fair and serious hearing.

## B. Perceptions of Unfairness to Mothers

Mothers and advocates for mothers also brought their concerns to the Committee. They contended that mothers are denied custody because judges held mothers to different and sometimes higher standards than those applied to fathers. One witness told the Committee that the judge in her case said, "A boy needs his father." Another judge was reported to have said that "any woman who chose to work, chose to neglect her family."<sup>13</sup>

Mothers and their advocates reported that judges condemned sexual activity by mothers, while ignoring sexual activity by fathers. According to one advocate, "adulterous behavior on the part of males has no legal consequences but the same behavior on the part of females results in punitive decisions regarding loss of custody."<sup>14</sup> One judge was reported to have told a mother who had a boyfriend that she "should have revolving doors on her home."<sup>15</sup> Another witness reported that she was denied custody because of her sexual activity, and that the father to whom custody was awarded had been jailed for abusing a child, beating the mother and being involved in a theft ring.<sup>16</sup> One witness summed up:

I think there is a terrible double standard that goes on. If she is an adulteress, God forbid, if he is an adulterer, it's, oh, come on, let's talk about that impact on the children. It just isn't even handed.<sup>17</sup>

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<sup>13</sup> "Boe" Statement to Committee. Boe, Coe, Doe, Foe, and Goe are being used as pseudonyms in this chapter of the Report to avoid any possible embarrassment to the parties.

<sup>14</sup> Sheila Litzky Statement (on file with Committee).

<sup>15</sup> Testimony of "Ms. Kay," Eastern Shore Tr., p. 93.

<sup>16</sup> Testimony of Carolyn Roof, Washington County Tr., p. 61; *see* testimony of Kay Blesz, Washington Cty. Tr., p. 47, Memorandum Opinion, *Blesz v. Blesz*, No. 35,080 Equity, Cir. Ct. for Washington Cty., July 20, 1984; testimony of Laura Norris (and file); Eastern Shore Tr., pp. 77-78; statement of Sheila Litzky (on file with Committee); Survey Respondent.

<sup>17</sup> Testimony of Ann Sundt, Esquire, Mont. Cty. Tr., p. 161. The presumption that a mother who has committed adultery is unfit for custody was abolished only 12 years ago. *Davis v. Davis*, 280 Md. 119 (1977). It may continue to have an impact on courts today.

A number of complaints raised the specter of double standards. One advocate described a case in which a father who had been completely uninvolved with his children sought to deprive the mother of sole custody. According to this advocate,

[T]his is the guy whom she had to beg to stick around, who she has to beg to just watch her son's soccer practice just once, could you please. He would leave town and the way that she would know this is that there would be a note on the kitchen table saying I will be back in five days. No address. No telephone number. No way in which to get in touch with him.... I would suggest to you all, have that woman pull that stunt once and ... [s]he would have lost custody of her kids. What kind of a mother would go out and do something like that, leaving no place she could be reached in an emergency.<sup>18</sup>

A mother who testified before the Committee had lost pendente lite custody when she had denied the father visitation one weekend on the advice of a lawyer who thought that would make the father contribute to the children's support. The mother had always been the primary care provider for the children prior to the custody order.<sup>19</sup> According to witnesses before the Committee, a mother has to be "perfect" to win a custody fight. As one woman put it:

It seems the mother has to be completely perfect and [if] the father, as my ex-husband did, spent a little bit of extra time with his son, it made him seem like God and [that] he was a more worthy parent for custody when I thought of everything I possibly could in the best interest of my child, yet that wasn't enough.<sup>20</sup>

Of particular concern to mothers and advocates for mothers was the perception that a father's violence against the mother and children is disregarded in custody decisions.<sup>21</sup> A female lawyer reported that "most lawyers want to disregard a husband's violence in the marriage because they don't want 'everyone to get angry all over again.'"<sup>22</sup> A male lawyer agreed: "There is a

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<sup>18</sup> Testimony of Ann Sundt, Esquire, Mont. Cty. Tr., p. 160.

<sup>19</sup> Testimony of Carol Haverstadt, Mont. Cty. Tr., p. 34.

<sup>20</sup> Testimony of Kay Blesz, Washington Cty. Tr., p. 47; see testimony of Judy Wolfer, Esquire, Balto. City Tr., pp. 63-64.

<sup>21</sup> Testimony of Judy Wolfer, Esquire, Baltimore City Tr., pp. 56-59.

<sup>22</sup> Survey Respondent. See Testimony of "Ms. Kay," Eastern Shore Tr., p. 91.

general failure to protect children and women from violent fathers or husbands."<sup>23</sup> The Committee was told of a judge who deemed the father's violence less harmful to the children than the mother's decision to report the father to authorities. Although the father was found to have sexually abused his two pre-teen daughters, the judge denied the mother custody because her reporting him "showed [that] her hatred for the father took precedence over the children's need to hold a high image of their father."<sup>24</sup>

Mothers and advocates for mothers also advised the Committee of their concern that judges sometimes equate financial superiority with the best interests of the child. Since most mothers have less income than most fathers, mothers will be disadvantaged in a custody fight that turns on financial resources.<sup>25</sup> Stereotypes about mothers having less income than fathers can also have an adverse impact. In one case a judge's assumption that the mother had a lower income was used as a part of the rationale to award custody to the father, although the evidence of their respective salaries was, at best, unclear.<sup>26</sup>

To test the perception that mothers are disadvantaged in custody disputes because of judicial attitudes about women's financial situations and about how women should behave, the Committee's survey asked lawyers and judges whether "the courts favor the parent in the stronger financial position when awarding custody."<sup>27</sup> Of those with an opinion on the question, 39% of judges, 45% of male attorneys, and 57% of female attorneys said the statement is always, often, or sometimes true. The Committee also asked lawyers and judges whether "mothers are denied

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<sup>23</sup> Survey Respondent.

<sup>24</sup> Survey Respondent.

<sup>25</sup> Testimony of Sylvia Becker, Esquire, Mont. Cty. Tr., pp 8-9; L.J. Weitzman, The Divorce Revolution (1985); B.R. Bergmann, The Economic Emergence of Women (1986).

<sup>26</sup> Bleesz v. Bleesz, No. 1563, Sept. Term 1984 (Ct. Spec. App., June 6, 1985) (unreported).

<sup>27</sup> Question 30 of Judges' and Lawyers' Questionnaires. While the question is phrased in gender-neutral terms, respondents fairly can be assumed to be indicating bias against mothers, since mothers in nearly every case are the economically less advantaged parents. See n. 25, *supra*.

custody because of employment outside the home."<sup>28</sup> Of those with an opinion on the question, 17% of judges, 14% of male attorneys, and 35% of female attorneys said the statement is always, often, or sometimes true.

On the issue of violence by fathers against mothers, lawyers and judges were asked whether "child custody awards disregard fathers' violence against mothers."<sup>29</sup> Over half (63%) of judges thought the statement was rarely or never true, indicating their belief that the father's violence against mothers usually is or should be a consideration in child custody determinations. Their opinion was shared by roughly the same percentage of male attorneys (64%), but by only a third of female attorneys (35%).

It should be noted that male and female respondents (whether judges or lawyers) have relatively similar opinions on the existence and effect of anti-father bias in custody disputes. On the other hand, they have substantially different perceptions on two of the questions which concern anti-mother bias. It is possible that some female lawyers, including those employed by the Legal Aid Bureau, represent more female clients, and, as a result, are more aware of the possibilities of anti-mother bias in custody decisions than are their male colleagues. In addition, because of personal experiences, they may be more sensitive to the types of biases which mothers report in custody disputes.

### **C. Bias in the Resolution of Custody Disputes**

The Committee attempted to determine whether gender bias affects the outcome of custody disputes in two ways: 1) asking judges and domestic relations masters to respond to hypothetical problems concerning custody,<sup>30</sup> and 2) reviewing specific cases which were brought to the Committee's attention.

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<sup>28</sup> Question 32 of Judges' and Lawyers' Questionnaires.

<sup>29</sup> Question 31 of Judges' and Lawyers' Questionnaires.

<sup>30</sup> The four versions of the hypothetical problem are reprinted in the Appendix as Exhibit D.

## 1. Hypothetical Custody Dispute

The hypothetical custody dispute involved a 10-year-old child whose parents were both employed. In two of the four versions of the story, the child was male, and in the other two, female. In two versions the father was the primary caretaker of the child before the separation and continued in that role after the separation, and his income was approximately half the mother's income. In the other two the mother fulfilled the caretaking roles and had an income approximately half that of the father's. After the separation, the non-caretaking parent visited the child regularly and paid a reasonable amount of child support. The child's post-separation adjustment was satisfactory.

Each judge and master was asked to respond to questions about a randomly-selected version of the hypothetical case.<sup>31</sup> The first question was who would be awarded custody. In every case, respondents awarded custody to the parent who was providing care to the child at the time of the decision: no distinctions were made between the father and the mother.

The respondents were asked to rank a number of factors which could have affected the decision. Overwhelmingly, the factor considered most important by both judges and masters was the child's post-separation adjustment. The second most important factor was the amount of time the child spent with each parent. The importance of these factors did not vary according to the gender of the parent to whom the award was being made.

Respondents were asked if evidence that the father had beaten the mother before the separation would change their decisions. The responses were about evenly split: 11 of 19 (58%) judges and 3 of 8 (38%) masters replied that the father's violence toward the mother would change their decisions. To test whether a mother's sexual conduct is judged differently from a father's, respondents also were asked if the presence of a paramour in either the mother's or the father's household would change the decision. Both judges and masters found the presence of

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<sup>31</sup> The hypothetical problems are reprinted in the Appendix as Exhibit D along with an Explanatory Note about methodology.

the father's household would change the decision. Both judges and masters found the presence of a paramour to be of little concern, regardless of the sex of the parent.

Given the relatively large number of respondents and the nearly complete unanimity of their responses, the Committee concluded that, in most instances, judges and masters do not apply gender-biased standards to resolve custody disputes.<sup>32</sup> The Committee was impressed that the standard applied by the respondents is not gender-biased because it is not parent-oriented: it is a child-oriented standard premised on a belief that a child's present adjustment is the best evidence of what is in the child's best interests. If the mother is providing the environment in which the child is thriving, then the mother is awarded custody; if it is the father, he is awarded custody. A parent's superior economic position did not give him or her an advantage; nor did an accusation of sexual activity.

Evidence of gender bias seems evident in the responses to the hypothetical problem in only one element, the impact of family violence on the custody decision. Half of the respondents would have changed custody upon hearing evidence that the father was violent to the mother. The other half of respondents would not change custody, but what is unknown is what weight they would give to the evidence of violence.

Violence directed at the spouse can have an adverse impact on the mental and sometimes physical health of the child, whether or not the child witnesses any violence.<sup>33</sup> Therefore, judges who exclude or downplay such evidence are overlooking information of vital importance to the child's future. Since women are most often the victims of domestic violence, excluding or downplaying evidence of violence will do women more harm than men, both at the time of the custody decision and, later, when they attempt to arrange visitation with a father who

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<sup>32</sup> This conclusion was seconded by lawyers, both male and female, who testified at the Committee's hearings that both parents usually want the mother to take custody because she is doing the job satisfactorily already, not because she is female. In the few cases where the father was doing the job, he was reported to have been awarded custody. *See, e.g.,* testimony of James Almand, Esquire, Eastern Shore Tr., p. 162; testimony of Jerry Solomon, Esquire, Anne Arundel Cty. Tr., p. 1-122.

<sup>33</sup> *See pp. 37-38, infra.*

time of the custody decision and, later, when they attempt to arrange visitation with a father who has victimized them during the marriage.

## **2. Individual Case Review**

The Committee also undertook to investigate allegations of biased custody decisions by reviewing the records in cases brought to the Committee's attention. Since judges typically do not reveal biased assumptions or grounds when announcing a decision, determining whether gender bias affected the cases the Committee heard about is not simple. The Committee's review identified several instances in which it appeared that the father seeking custody was required to make a stronger showing than the mother. In other courts, the mother's burden appeared to be heavier and her conduct judged more harshly.

To determine how widespread and deep the problems might be, the Committee sought a standard against which to measure the cases that the Committee investigated. One way of testing whether gender bias is present in any particular decision is to test whether it varies from an acceptable gender-neutral standard and, if so, whether the variance is explainable by any factor other than gender bias. One widely-accepted gender-neutral standard is the one applied by all the judges and masters who responded to the Committee's hypothetical problems: when a child is doing well in the home of one parent, a change of physical custody should not be made. Under this standard, to determine whether gender bias is present in any particular case, one looks to see if the gender-neutral outcome was reached. If it was not, was the outcome explainable on a gender-neutral basis? Thus, for example, if a child who is doing well in his or her present care arrangement is moved to the physical custody of the other parent, one should ask whether the unusual result is the product of gender bias or the product of some other factor not touched by gender considerations.

Nearly all of the complaints from fathers and some from mothers involved a decision to leave a child in the care of the parent who had been providing care before the

decision.<sup>34</sup> In most of those instances, it appeared to the Committee that the decision was gender neutral in that the record review indicated that the child was doing reasonably well where he or she was.<sup>35</sup> To decide not to move such a child is not the same as saying that the other parent cannot be a good parent; it is instead a statement that one should not take a risk with the child's future, and a move places the child at risk.

The Committee found some evidence that decisions not to change a child's physical custody involved a higher evidentiary standard being placed on fathers to show that a child is not doing well in the mother's care. While rare, these cases should not be overlooked: the maternal preference was abolished over a decade ago, and decisions like these indicate that it still has weight.<sup>36</sup>

Both fathers and mothers complained about decisions to change a child's care from one parent to the other. The Committee concluded that several decisions involved biased attitudes about what is proper behavior for men and women as parents. Expectations about men are that they should not be too involved with their children.<sup>37</sup> Women are subject to contradictory preconceptions that mothers should not be employed outside the home but, at the same time, children belong in the home of the wealthier parent. Further, women are expected not to engage in sexual activity.

The Committee identified cases involving mothers who, after separating from their husbands, had sexual relations with another man and lost custody solely or primarily for that reason.<sup>38</sup> Under Maryland law, a parent's sexual activity is pertinent to the custody determination if it affects the child adversely, but it is not presumptive evidence of the parent's

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<sup>34</sup> Usually these cases involved an initial custody decision, so change of custody language is not appropriate.

<sup>35</sup> E.g., Foe v. Foe (on file with Committee); Goe v. Goe (on file with Committee).

<sup>36</sup> See n. 8, *supra*; "Coe v. Coe."

<sup>37</sup> "Doe v. Doe."

<sup>38</sup> Bleesz v. Bleesz, No. 1563, Sept. Term 1984 (Ct. Spec. App., June 6, 1985) (unreported).

unfitness.<sup>39</sup> In none of these cases was an adverse impact on the child's development or post-separation adjustment demonstrated. In one instance, the Court of Special Appeals vacated the trial court's award of custody to the father because it found that the court "ignored" case law "requiring it to weigh the impact of the mother's adultery upon the child" and "[i]nstead ... substituted its own moral judgment."<sup>40</sup>

The Committee also found instances where a custody decision turned on the father's superior economic position.<sup>41</sup> While the benefit to a child of an improved economic position is clear, the question is how to achieve it. Two choices exist: place the child in the home of the wealthier parent,<sup>42</sup> or evaluate the best interests of the child without regard to economic resources and, if a custody award to the poorer parent is proper, provide adequate child support to provide for the child. The former route is problematic for the child because it gives unwarranted weight to one factor, the parents' economic circumstances, over all the other pertinent factors, such as the parents' child-rearing contributions and abilities. That route also leads to gender-biased decision-making, because the favored factor is one where men will succeed most often and women will fail, since men in this society generally have higher incomes than women do.

Custody decisions also turned on judges giving substantial weight to caretaking activity on the part of fathers, while at the same time giving little weight to the caretaking

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<sup>39</sup> Davis v. Davis, 280 Md. 119 (1977), cert. denied, 434 U.S. 939 (1978).

<sup>40</sup> Bleesz v. Bleesz, No. 1563, Sept. Term 1984 (Ct. Spec. App., June 6, 1985) (unreported) (emphasis in opinion).

<sup>41</sup> Bleesz, n. 38, supra; see Campbell v. Campbell, No. 739, Sept. Term 1984 (Ct. of Spec. App., Feb. 1, 1985) (unreported).

<sup>42</sup> In the case of Montgomery County v. Saunders, 38 Md. App. 406 (1978), the Court of Special Appeals noted that the "material opportunity[ies] affecting the future life of the child" is an appropriate factor to consider in a child custody determination. 38 Md. App. at 420. To say that material opportunities constitute one factor among many, however, is different from saying that economic superiority of one parent over the other is, or should be, determinative of custody, particularly when the provision of adequate child support can ensure that the child's economic security can be maintained. In Sanders, child support was not a factor because of the circumstances of the parties.

work of mothers.<sup>43</sup> In one instance, a judge was criticized by the Court of Special Appeals for overemphasizing the father's "quality time" with the child while failing to credit the mother for the contributions she made to the child's well being during the four years when the child lived with her after the separation.<sup>44</sup> Underlying such decisions may be a biased attitude that a mother's caretaking is not important because mothers "just naturally" provide care to children, while fathers who do so are special.

### 3. Conclusion

The Committee attempted to determine whether the perception that bias affects custody determinations was supported by evidence of judicial conduct. The Committee's investigation indicates that, indeed, judges need to examine their attitudes about both mothers and fathers in custody disputes. Both parents can be disadvantaged by judges who hold biased attitudes about the proper roles of men and women in society and families. When these attitudes are the bases for deciding cases and become a substitute for an individualized examination of the evidence in a particular case, a judge will bring gender bias into decision-making about custody.

Gender bias also can affect custody determinations when the substantive criteria which are used favor one parent over another in ways that advantage a parent because of his or her sex. The Committee found that this occurs, for example, when the determinative factor in a custody determination is which parent can provide the economically more advantaged home or whether a parent's sexual mores are unacceptable to the court. Both factors result in a preference for fathers over mothers, while neither, in and of itself, promises a better outcome for the child.

The most troublesome issue disclosed by the Committee's investigation is that some judges refuse to consider at all or give too little weight to violence which a mother has suffered at the hands of the father unless the child has been a victim as well or has witnessed the violence. Ignoring or diminishing the importance of domestic violence has two consequences.

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<sup>43</sup> Bleesz, n. 38, supra; Judy Wolfer, Esquire, House of Ruth, Balto. City Tr., p. 63.

<sup>44</sup> Bleesz v. Bleesz, No. 7, Sept. Term 1986 (Ct. Spec. App. Sept. 29, 1986) (unreported).

First, the court will not understand the environment in which the mother has been living, and will not be able to evaluate properly her circumstances. As was discussed in greater detail in the earlier chapter on domestic violence,<sup>45</sup> a victim of domestic violence is likely to experience social, economic and psychological difficulties because of her victimization. As a result, she may be at an economic and emotional disadvantage in a custody dispute compared to her former partner. To ignore her circumstances only continues her victimization. The other adverse consequence falls on the child, who may be harmed by domestic violence whether or not he or she was the intended victim or ever witnessed the abuse. Studies are clear that children whose mothers have been abused by their fathers can experience severe psychological and emotional problems.<sup>46</sup> Because of the violence in their homes, they may learn to use violence to resolve problems. As they mature, they may repeat their parents' patterns and either become violent toward their partners or the victims of their partners. If a court ignores the violence which the mother has suffered and which has been part of the child's home environment, the court may make a custody determination which is detrimental to the child as well as the mother.

## II. GENDER BIAS IN VISITATION DISPUTES

When one parent is awarded sole custody of a child, the other parent ordinarily is provided with access to the child that is called visitation. Both mothers and fathers expressed concerns to the Committee that visitation enforcement was affected by gender bias. Since most sole custodial parents are mothers, complaints from fathers focused on difficulties they experienced in enforcing visitation orders.<sup>47</sup> Mothers, on the other hand, were concerned with problems which arise when

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<sup>45</sup> See pp. 6 - 7, *supra*.

<sup>46</sup> See, e.g., L.E. Walker, The Battered Woman Syndrome 57-66 (1984); Wallerstein, Keynote Address: Association of Family and Conciliation Courts (1988 Spring Conference); Giles-Sims, A Longitudinal Study of Battered Children of Battered Wives, 34 *Family Relations* 205 (1985); Hershorn & Rosenbaum, Children of Marital Violence: A Closer Look at the Unintended Victims, 55 *Am. J. Orthopsychiatry* 260 (1985); Hughes & Barad, Psychological Functioning of Children in a Battered Women's Clinic, 53 *Am. J. Orthopsychiatry* 525 (1983).

<sup>47</sup> Testimony of Randy Farmer, Anne Arundel Cty. Tr., p. 1-85; testimony of David Levy, P.G. Cty. Tr., pp. 61-62; testimony of Charles Pelesky, President of Children Unlimited, Balto. Cty. Tr., p. 88-100; testimony of Brent Ashley, representative of Fathers United for Equal Rights, Lower Eastern Shore Chapter, Eastern Shore Tr., p.

the noncustodial parent fails to visit. Serious concerns were expressed as well about unsupervised visitation by a noncustodial parent who is violent or abusive to the child or the mother.<sup>48</sup> Mothers also asserted that courts are punitive to those who deny visitation. Finally, noncustodial mothers reported that their visitation rights were not vigorously protected by the courts.<sup>49</sup>

Few specific incidents involving visitation problems were brought to the Committee's attention and no questions on visitation were included in the Committee's survey, so the Committee has little data on which to determine whether gender bias is a problem in the granting or enforcing of visitation. The Committee's limited information, however, suggests that serious problems may exist. Children ordinarily should not be denied access to either parent, and both parents have responsibilities to the child in this regard. The courts should be available to assist parents in fulfilling their responsibilities toward their children and in providing that access occurs in safe and appropriate ways. If the courts are not fulfilling this role, it should be determined why that is happening and remedies should be formulated.

### III. JOINT CUSTODY

Joint custody is a type of custody award under which the parents share responsibility for the child. The shared responsibility may be limited to decision-making about long-range issues such as the child's education, religion and medical care, or it may extend to sharing the duty of providing a home and day-to-day care for the child. The former is called joint legal custody, while the latter is called joint physical custody.<sup>50</sup>

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85; written statement of David Levy, President, National Council for Children's Rights (on file with Committee).

<sup>48</sup> One parent reported, for example, that a court required that she reveal the location of a shelter for battered women, where she had taken refuge because of her husband's violence, so that he could visit the children. Testimony of Lisa Ann Fuller, Balto. City. Tr., p. 150. A safer solution in such situations is supervised visitation at a neutral location.

<sup>49</sup> Testimony of Sallie White-Bishton, Anne Arundel Cty. Tr., p. 1-109; testimony of Maria Wonders, Prince George's Cty. Tr., p. 50; testimony of Jean Karol, Mont. Cty. Tr., p. 30; testimony of Judy Wolfer, Esquire, House of Ruth, Balto. City Tr., pp. 58, 64-65; testimony of Hannah Sassoon, Abused Persons Program, Mont. Cty. Tr., p. 51-54; testimony of Carol Haverstadt, Mont. Cty. Tr., p. 34.

<sup>50</sup> Md. Fam. Law Code Ann. § 5-203(c)(1); Taylor v. Taylor, 306 Md. 290 (1986).

In Taylor v. Taylor,<sup>51</sup> the Court of Appeals confirmed that Maryland courts are empowered to award both joint legal and joint physical custody, even over the objection of one parent. The Court also provided a nonexclusive list of factors to be considered when a joint custody is requested by a party. The most important factor is the capacity of the parents to communicate and reach shared decisions about the child's welfare. Other factors include the willingness of the parents to share custody; the relationship between the child and each parent; the child's preference; the geographic proximity of parental homes; the demands of parental employment; the age and number of the children; the sincerity of the parents' request; the financial status of the parents; the impact on state or federal assistance; and the benefits to the parents.

Some fathers and advocates for fathers told the Committee that joint custody is desirable because it provides support for both parents in the parenting process.<sup>52</sup> They complained, however, that judges refused to consider joint custody because of bias against fathers. One witness said that two masters have "stated publicly and unapologetically that joint custody will not be entertained as an option in the courtroom."<sup>53</sup> Another witness complained that in one county, joint custody is never granted over the objections of a parent.<sup>54</sup>

Mothers and advocates for mothers had different problems with joint custody. While acknowledging that joint custody can be an appropriate award in the right circumstances, they expressed concern about situations where the father had been violent to the mother before the separation. The occasions when the parents have to meet to transfer the children provide the

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<sup>51</sup> 306 Md. 290 (1986); see Singer and Reynolds, A Dissent on Joint Custody, 47 Md. L. Rev. 497 (1988).

<sup>52</sup> Testimony of David Levy, President, National Council for Children's Rights, P.G. Cty. Tr., p. 59.

<sup>53</sup> Testimony of Bruce Burrows, Equal Rights Foundation, Mont. Cty. Tr., p. 71; see id., Mont. Cty. Tr., p. 81; testimony of Brent Ashley, Fathers United for Equal Rights, Lower Eastern Shore Chapter, Eastern Shore Tr., p. 85.

<sup>54</sup> Testimony of Brent Ashley, Fathers United for Equal Rights, Lower Eastern Shore Chapter, Eastern Shore Tr., p. 85.

abuser with further opportunities for abuse, and joint decision making without intimidation is nearly impossible.<sup>55</sup>

The Committee sought information about joint custody awards in its survey of judges and lawyers, who were asked whether "joint custody is ordered over the objections of one or both parents."<sup>56</sup> Seven percent of judges believe the statement to be always or often true, and over a third (35%) believe that it is sometimes true. Nine percent of male lawyers and 11% of female lawyers agree that the statement is always or often true. About a third (34%) of male lawyers think the statement is sometimes true, while nearly half (45%) of female lawyers think so.

The Committee was not provided with sufficient specific information to permit an investigation into the allegations that some judges and masters will not consider a joint custody request. If that is the case, that may be evidence of gender bias against fathers. Since Taylor, Maryland law has been clear in requiring a court to give serious consideration to a joint custody request, although it far from guarantees that joint custody will be awarded.

The Taylor decision also provides guidance in cases involving a parent who opposes a joint custody request because of her fear of violence. Two of the Taylor factors are central: the capacity of the parents to communicate and the willingness of the parents to share custody. The first factor involves, according to the Court, mutual respect on the part of the parents, flexibility, and their willingness to relinquish control. Such characteristics do not typify a relationship affected by the violence of one parent against the other.

The second Taylor factor, the willingness of the parents to share custody, if properly interpreted, should provide protection for a battered woman who does not want to share custody with her batterer. As the Taylor Court said of this factor, "Generally, the parents should be willing to undertake joint custody or it should not be ordered." Only rarely would a battered spouse be willing to share the custody of a child with a battering spouse, so typically it should not be ordered

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<sup>55</sup> Testimony of Barbara Miller, Prince George's County Commission for Women, Prince George's Cty. Tr., p. 9.

<sup>56</sup> Question 33 of Judges' and Lawyers' Questionnaires.

willing to share the custody of a child with a battering spouse, so typically it should not be ordered in such a case.

Based on the results of the Committee's survey, however, it appears that trial courts too often order joint custody over parental objection. As discussed earlier,<sup>57</sup> judges and lawyers agreed that such an order is always, often, or sometimes entered approximately half the time. Because of this data, the Committee is concerned that joint custody may be ordered with some frequency over the objections of battered women, contrary to the language of Taylor, and that such orders expose these women to intimidation and violence at the hands of their former spouses.

### **FINDINGS**

1. *Gender bias affects the award of custody in some cases.*
2. *Some judges believe that men are unfit for custody because of their sex, and that men should not become too involved with their children. These biased attitudes disadvantage men.*
3. *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 disadvantage women.*
4. *Men's violence toward women and children is given insufficient weight in custody decisions.*
5. *Joint custody is an option available to parents in appropriate circumstances.*
6. *Joint custody is an inappropriate option where one parent has been violent toward the other parent.*
7. *The unwillingness of the parents to share custody sometimes is given insufficient weight by trial courts considering joint custody requests.*

### **RECOMMENDATIONS**

#### **Custody**

##### **For Court Administration and the Judiciary**

1. *Educate judges and masters as to the gender bias implications of considering the following factors in deciding child custody cases:*

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<sup>57</sup> See n. 56, supra, and accompanying text.

- a. *relative wealth and employment obligations of the parents.*
  - b. *stereotypes about behavior of men and women as parents, such as the invalidity of the maternal preference.*
  - c. *sexual activity on the part of the mother.*
  - d. *spousal abuse.*
2. *Recognize that withholding of visitation is only a factor in awarding custody, and is not determinative.*
  3. *Recognize the importance to a child of continuing to live with a parent who has provided adequate and appropriate care.*
  4. *Consider the cost of child care to the custodial parent when the non-custodial parent fails to exercise visitation.*
  5. *Consider spousal abuse in determining child custody cases.*
  6. *Evaluate judges and masters on a regular basis, taking into account gender neutrality on issues relating to child custody.*

**For Bar Associations (including State, local and specialty bar associations)**

*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 Report.*

**For Law Schools**

*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.*

**For the Legislature**

*Remove relative wealth of parents as factor in custody disputes.*



## CHAPTER 3 CHILD SUPPORT

Awarding and enforcing child support can be an area where gender bias affects the outcome of cases because nearly all the payees are women, while nearly all the payors are men who are noncustodial parents. The Committee collected information on the problems by way of testimony at its hearings, letters sent to the Committee, and questions on the Committee's survey of judges and lawyers.

### I. AMOUNT OF AWARD

Under the Maryland Equal Rights Amendment, both parents are responsible for providing for the support of their child.<sup>1</sup> The Court of Appeals said in the case of Rand v. Rand that,

[W]e hold that the parental obligation for child support is not primarily an obligation of the father but is one shared by both parents.... The common law rule [that only the father is responsible]...cannot be reconciled with our commitment to equality of the sexes. Sex of the parent in matters of child support cannot be a factor in allocating this responsibility. Child support awards must be made on a sexless basis.<sup>2</sup>

The Rand Court was considering a case in which the father was to pay more than a proportional share of support, while the mother was to pay none. Based on the information before it, the Committee believes that the question now, over a decade later, is whether mothers are being made to pay more than a proportional share of support. If that is the case, the Rand mandate is not being implemented.

The controlling factors in determining child support are the needs of the children and the financial abilities of the parents. Maryland law does not require that each parent provide an equal amount of money to meet the child's needs; instead, the duty to provide for the child is apportioned

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<sup>1</sup> Md. Decl. of Rts. art. 46; Rand v. Rand, 280 Md. 508 (1977).

<sup>2</sup> Id., 280 Md. at 516.

according to the ability of each parent to pay.<sup>3</sup> Thus, what should happen in a particular case is that the child's needs are assessed, the financial resources of each parent are assessed, and the responsibility to meet the child's needs is allocated between the parents according to their relative ability to pay. A judgment requiring the payment of his or her allocated support is entered against the noncustodial parent; this is called the child support award. No judgment is entered requiring a payment by the custodial parent; the assumption is that he or she provides the allocated share to the child in the usual course of providing for the child's household. Thus, each time the custodial parent buys groceries, pays for rent, purchases clothing, gives the child an allowance, etc., the custodial parent is meeting her or his responsibility to provide child support.<sup>4</sup>

The Rand mandate is implicated in this process if either parent is required to provide for the child in an amount greater than a fairly allocated share. For example, if the child's needs are calculated to be \$600 a month, the custodial parent has available economic resources of \$1,000 a month and the noncustodial parent has available economic resources of \$2,000 a month, a proportional allocation of support would require the custodial parent to pay \$200 and the noncustodial parent to pay \$400. If the custodial parent in this case is required to pay only \$100, the Rand mandate is violated, because the remaining \$500 will be paid by the noncustodial parent, and that is a higher percentage of the child's needs than he or she should pay. At the same time, if the noncustodial parent is required to pay only \$300, the Rand mandate is violated, because the remaining \$300 will be paid by the custodial parent, and that is a higher percentage of the child's needs than he or she should pay.

It is difficult to assess whether the Rand mandate is respected or ignored in most cases, because judges typically do not state their findings about the exact amount of the child's needs, the financial resources of both parties, the allocation system being applied, and the amount of support the noncustodial parent is expected to provide. Instead, judges typically enter an order requiring

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<sup>3</sup> Rand v. Rand, *supra*; German v. German, 37 Md. App. 120 (1977).

<sup>4</sup> See Stern v. Stern, 58 Md. App. 280 (1984).

the noncustodial parent to pay a certain amount without providing the underlying data. What the Committee sought in the data it collected, therefore, was evidence as to whether judges go through the entire process without articulating it, or whether child support is determined by other methods. Where alternative methods are used, do they result in burdening one party or the other with an inappropriate level of responsibility for child support?

According to the witnesses who appeared at the Committee's hearings, courts do a number of things which suggest that the Rand mandate is not always followed. First, witnesses stated that noncustodial parents are ordered to pay unfairly low amounts of child support.<sup>5</sup> One witness noted that \$25 a week is a common figure for child support in one county.<sup>6</sup> Another witness told the Committee about a noncustodial parent who could afford a car payment of \$1,000 a month being ordered to pay only \$400 in child support.<sup>7</sup> Another noncustodial parent paid less for child support than he paid the servants who cleaned his house.<sup>8</sup> Second, the Committee was told that judges give great or exclusive weight to the noncustodial father's income when determining child support, and little or no weight to the child's needs or the custodial mother's income.<sup>9</sup>

The Committee's surveys of judges and lawyers included a number of questions about child support. To determine whether the child's needs are appropriately addressed, the Committee asked whether "child support awards adequately reflect a realistic understanding of the local costs of child raising."<sup>10</sup> Of those expressing an opinion, 27% of judges thought the statement is always true. They were joined by only 1% of female attorneys and 3% of male attorneys. Nearly

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<sup>5</sup> One witness noted that noncustodial fathers pay more than noncustodial mothers, according to a Texas study. Testimony of Randy Farmer, Anne Arundel Cty. Tr., p. 1-83. Whether this is true in Maryland is unknown to the Committee, although one witness said he knew of only one case in which a noncustodial mother was ordered to pay child support. Testimony of Jerry Solomon, Esquire, Anne Arundel Cty. Tr., p. 1-118.

<sup>6</sup> Testimony of Anne Ogletree, Esquire, Eastern Shore Tr., p. 74.

<sup>7</sup> Testimony of Shellie Frankford, Esquire, Balto. City Tr., p. 117.

<sup>8</sup> Id.

<sup>9</sup> Testimony of Judy Wolfer, Esquire, Balto. City Tr., p. 59; testimony of Shellie Frankford, Esquire, Balto. City Tr., p. 59.

<sup>10</sup> Question 21 of Judges' and Lawyers' Questionnaires.

half of the judges (44%) thought the statement is often true. On this they were joined by 29% of male attorneys, but by only 8% of female attorneys. The differences between the perceptions of judges and female attorneys on the question is notable: 9% of all female attorneys and 15% of female domestic relations specialists thought the statement is never true, while only 3% of judges thought so.

Judges and lawyers were also asked whether "[c]hild support awards reflect a realistic understanding of a particular child's needs."<sup>11</sup> Of those expressing an opinion, 25% of judges thought the statement is always true. They were joined by only 3% of male lawyers and by no female lawyers. Again, nearly half of judges (43%) thought the statement is often true. They were joined by 27% of male lawyers but by only 9% of female lawyers. The women had the strongest negative reaction: 8% of all female attorneys and 12% of domestic relations specialists thought the statement is never true. The male lawyers, similarly, did not share the opinion of the judges.

On the issue of the parents' economic resources, judges and lawyers were asked if "[c]hild support awards adequately reflect the earning capacity of the (a)noncustodial and (b)custodial parent."<sup>12</sup> There was remarkable uniformity in the responses about both parents. Over 90% of judges believe the statement is always, often, or sometimes true for both noncustodial and custodial parents. Over 80% of male attorneys agree. Female attorneys are much less sure: only approximately 55% agree the statement is always, often, or sometimes true. Nearly half think the earning capacity of both parents is rarely or never adequately reflected in the award.

If the judges are correct in their assessment of the child support system, Rand compliance may not be a problem because child support awards adequately reflect the child's needs and the parents' resources. The only question would be whether the parents' obligations are allocated proportionately, and that cannot be assessed based on these survey questions. The lawyers' responses, however, give reason to doubt the accuracy of the judges' assessment of the system.

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<sup>11</sup> Question 22 of Judges' and Lawyers' Questionnaires.

<sup>12</sup> Question 23 of Judges' and Lawyers' Questionnaires.

According to both the male and the female lawyers, problems exist in assessing the child's needs: between a quarter and a half of the lawyers believe that child support awards rarely or never "reflect a realistic understanding of a particular child's needs."<sup>13</sup> If the child's needs are not accurately determined, the court cannot accurately determine how much each parent should provide.<sup>14</sup> Underestimating expenses attributable to a child's needs is more likely to occur than overestimating, so the result of inaccurate determinations will be to overburden the custodial parent with uncompensated expenses for the child.<sup>15</sup> Since most custodial parents are women, overburdening the custodial parent means requiring women to pay an unfair amount of child support, in contravention of Rand.

The survey indicates that many lawyers, in particular female lawyers, believe that support awards fail to reflect the earning capacity of the parents.<sup>16</sup> While the survey did not attempt to parse this question further, the most likely interpretation of these responses is that awards reflect an earning capacity on the part of the custodial parent which is higher than the reality, and that the converse is true for the noncustodial parent. As the result of these skewed perceptions, the custodial parent will be responsible for a higher amount of support than the noncustodial parent. Again, the Rand equality principle is undermined when the parent with less ability to pay is required to be responsible for a disproportionately high amount of support.

The overall inequity in child support awards is reflected in the national statistics which

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<sup>13</sup> Question 22 of Judges' and Lawyers' Questionnaires.

<sup>14</sup> T. Espenshade, Investing in Children (1984); see Polikoff, Looking for the Policy Choices Within an Economic Methodology: A Critique of the Income Shares Model, in Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations (1986).

<sup>15</sup> The difficulty of accurately calculating the costs properly attributable to a particular child is well known to family law practitioners, who find that even custodial parents typically understate costs. See e.g., Williams, Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches, in American Bar Association, Improving Child Support Practice I-5 (1986); Bruch, Developing Standards for Child Support Payments: A Critique of Current Practice, 16 U.C.D.L. Rev. 49, 54-56 (1982); N. Hirowitz, Support Practice Handbook 108-139 (1985).

<sup>16</sup> Question 23 of Judges' and Lawyers' Questionnaires.

indicate that over a third of female-headed households live in poverty.<sup>17</sup> If the Rand principles were followed in every case, some of this inequity would be resolved. Inappropriate factors would no longer have great weight in the determination of support, and overall levels of support would increase. Further, with this increase, the unfair impoverishment of custodial mothers' households relative to the households of noncustodial fathers would decline.

## II. ENFORCEMENT

The Committee heard numerous complaints that child support awards are not enforced quickly, effectively, and inexpensively. The contempt procedure, unless followed by a credible promise of imprisonment for continued nonpayment, was not deemed helpful, because it was time-consuming and ineffective.<sup>18</sup> Enforcement by attaching wages was deemed much more effective, but problems were noted even there, despite changes in Maryland law making it possible to obtain an earnings withholding order once the obligor is in arrears for more than 30 days' support.<sup>19</sup>

The Committee's survey of judges and lawyers confirmed the perceptions of the witnesses. While over half (51%) of the judges believed that earnings withholdings orders are always or often entered at the earliest possible moment, only 9% of female attorneys and 13% of male attorneys agreed with them.<sup>20</sup> Over half of both groups of lawyers (62% females, 56% males) believed that the statement rarely or never true.

Enforcement problems result in gender bias, because the obligees of support awards are custodial parents, usually mothers. When they are denied access to the child support which has

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<sup>17</sup> Testimony of Sylvia Becker, Esquire, Women's Defense Fund, Washington, D.C., Mont. Cty. Tr., pp. 8-10; see testimony of Jill Coleman, Esquire, Baltimore City Tr., p. 44.

<sup>18</sup> Testimony of Bessie Neal, Anne Arundel Cty. Tr., p. 1-106-112; testimony of V. Davis, Prince George's Cty. Tr., p. 157; testimony of Mary Anne Day, Washington County State's attorney's office, Washington Cty. Tr., p. 57; testimony of Joan Bossman, Baltimore City State's attorney's office, Balto. City Tr., p.87; testimony of Shellie Frankford, Esquire, Balto. City Tr., p. 118.

<sup>19</sup> Md. Fam. Law Code Ann. §§ 10-120 et seq.; see testimony of Zoe Gill, Mont. Cty. Tr., p. 111; testimony of Joan Ury, Mont. Cty. Tr., p. 90; testimony of Mercedes Samborski, Esquire, Balto. County Tr., p. 10-19.

<sup>20</sup> Question 27 of Judges' and Lawyers' Questionnaires.

been ordered, they will provide whatever support they can afford out of other resources, which results in their further impoverishment. At the same time, noncustodial parents, usually fathers, are allowed to retain resources which properly belong to the child's household. The father is, in effect, unjustly enriched at the expense of both the child and the mother.

### III. PROCEDURE

Witnesses at the Committee's hearings were adamant that women are harmed in the child support process by procedural problems such as the failure to award adequate attorney's fees and delaying pendente lite hearings for a long time. One witness reported that the standard court-ordered attorney's fee in her county for a pendente lite child support hearing is \$150, which is so low that attorneys cannot afford to accept a case in which the custodial mother lacks the resources to pay a fee.<sup>21</sup>

Long and seemingly unwarranted delays in scheduling hearings on child support matters were reported to the Committee by several witnesses. In one county, six to eight weeks was the standard delay between filing and a hearing before a master; in another, the delay was reported to be between 60 and 90 days; in a third, it was reported to be "many months." Witnesses were uniformly in agreement that, no matter what the delay period, retroactive support back to the date the motion for support was filed is rarely or never granted.<sup>22</sup> The net result is that the custodial parent is left to be the sole support of the child during the time she is waiting for the hearing, and she cannot look forward to reimbursement for any of her expenses on behalf of the child during that period.

One witness, a custodial parent of three children whose husband is the vice-president of a company, described her predicament when her husband refused to pay enough support voluntarily,

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<sup>21</sup> Testimony of Anne Ogletree, Esquire, Eastern Shore Tr., p. 74; testimony of Sylvia Becker, Esquire, Women's Legal Defense Fund, Mont. Cty. Tr., p. 13.

<sup>22</sup> The court is authorized to order that the support begins as of the date the motion for support was filed. Md. Fam. Law Code Ann. § 12-104. Testimony of Shellie Frankford, Esquire, Balto. City Tr., pp. 112, 115; testimony of James Almand, Esquire, Eastern Shore Tr., p. 169; testimony of the Honorable Rita Rosenkrantz, Mont. Cty. Tr., pp. 122-125; testimony of Phyllis Martin, Balto. Cty. Tr., pp 12-13; Report of the Women's Law Center, Inc. (on file with Committee).

the hearing to establish a support order was delayed for four months, and vigorous enforcement efforts produced little result.

As all this time passed, my children and I were falling further and further into debt .... In the past year I had my phone disconnected twice for nonpayment, my electric has been turned off, my water has been cut off, I had no heat last winter when we had almost two feet of snow on the ground. My house has already gone for tax auction .... [M]y husband is \$6,000 in arrears in child support and still I am waiting for another court date.<sup>23</sup>

Responses to the Committee's survey of judges and lawyers confirm the perceptions of the witnesses about delay. The survey sought opinions about the statement that "[p]endente lite awards of child support are made within 60 days of filing the motion."<sup>24</sup> While 70% of judges believed the statement to be always or often true, only 38% of male lawyers and 18% of female lawyers agreed with them.

A system which delays child support hearings and denies the custodial parent retroactive support for the period of the delay effectively discriminates against women because, as custodial parents, they are left to provide for the child alone out of their own resources during the pre-hearing period. They spend whatever is necessary for the child, while the child's father is allowed to spend all of his resources however he wishes. Often, the pre-hearing period leaves the custodial mother in debt, and she gets no assistance from the father for repayment through the child support system, even though a portion of the child's expenses are his responsibility.<sup>25</sup> Further, the mother's pre-hearing impoverishment may push her into settling with the father for an amount of child support which is lower than she would be awarded by a court, simply because she cannot afford to wait for a court hearing. Her continued impoverishment also gives the father a reason to

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<sup>23</sup> Testimony of Zoe Ann Gill, Mont. Cty. Tr., pp. 114-116.

<sup>24</sup> Question 26 of Judges' and Lawyers' Questionnaires.

<sup>25</sup> A separate contract or necessities suit may be possible, but it involves additional delay and expense. Both are avoided by making a child support award date back to the date the petition was filed.

further delay the hearing, because he can use her household's reduced circumstances as evidence of their child having reduced needs.<sup>26</sup>

## **FINDINGS**

1. *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.*
2. *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.*
3. *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.*

## **RECOMMENDATIONS**

### **For Court Administration and Judiciary**

1. *Take necessary steps to assure that judges and masters are familiar with:*
  - a. *Current, accurate information about the costs of raising a child, the costs and availability of child care, and other statistical and social data essential to making realistic child support awards.*
  - b. *The economic consequences of divorce from the standpoint of ensuring that parents' financial contributions to child support are proportional to each party's economic resources.*
  - c. *All available enforcement mechanisms and the importance of utilizing them to the fullest extent of the law.*
2. *Establish enforcement by a computerized system for the collection of child support which can collect and provide data to enable effective monitoring of child support cases.*

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<sup>26</sup> Two additional problems about child support enforcement were uncovered by the Committee's survey, which asked about the impact of visitation and custody problems on the enforcement of child support. Although the issues should be entirely separate under Maryland law, 39% of female attorneys, 20% of male attorneys, and 16% of judges thought that visitation problems always, often, or sometimes result in the denial of child support enforcement. Question 24 of Judges' and Lawyers' Questionnaires. Sixty-four percent of female attorneys, 45% of male attorneys, and 29% of judges thought that a counterclaim for custody would delay the enforcement of child support. Question 25 of Judges' and Lawyers' Questionnaires. In both situations, the custodial mother will be harmed because her claim for child support will be delayed or denied altogether. In the meantime, she will be providing support for the child by herself, and the father will be permitted to retain for his own use the resources which should have been provided for the child's support.

3. *Provide routinely for child support payments to be made through the courts.*
  4. *Establish a system for rapid determination and enforcement of pendente lite awards.*
  5. *Make awards retroactive to the date of the filing of the motion for support in the absence of compelling reason to do otherwise.*
  6. *Award to the economically dependent parent attorney's fees that accurately reflect the value of the work of the attorney.*
  7. *Evaluate judges and masters on a regular basis, taking into account gender neutrality on issues relating to child support.*

**For the Legislature**

*Enact legislation that:*

1. *Makes child support available until emancipation or age 21, whichever first occurs.*
2. *Makes child support awards retroactive to the date of the filing of the motion, unless that would be unconscionable.*
3. *Make earnings withholding orders automatic at the time the support order is entered.*

**For Bar Associations (including State, local and specialty bar associations**

*Establish a bench-bar committee to study the appropriateness, fairness, and effectiveness of child support guidelines and to recommend changes as required.*

**For Law Schools**

*Family law courses should include information about 1) the award and enforcement of child support similar to that recommended for judges and masters and 2) the hardship to children and custodial parents when child support awards are insufficient and unenforced.*

## CHAPTER 4 ALIMONY; PROPERTY DISPOSITION AND LITIGATION EXPENSES

The Committee perceived the allocation of economic resources at the time of divorce as an occasion when judicial gender bias might surface. Information on the subject was collected four ways: questions were included in the survey administered to the bench and bar; judges and masters were asked to respond to a hypothetical problem involving alimony; witnesses testified at the public hearings; and people sent written complaints to the Committee. Three major problem areas were identified with respect to alimony: the amount of alimony awarded, the duration of the alimony award, and the decision whether to award alimony. The major difficulties in the area of property disposition are procedural and often involve payment for litigation expenses.

### I. Alimony

Maryland law requires judges to consider eleven factors when deciding whether to award alimony and what amount to award. These include the ability of the applicant spouse to be self-supporting; what period of time may be needed for him or her to achieve self-sufficiency; the standard of living of the parties during the marriage; the parties' contributions to the family's well-being; the circumstances behind the separation of the parties; any agreement between the parties; the personal characteristics of the parties, including age and physical and mental condition; and the relative needs and resources of each party.<sup>1</sup> Alimony typically is awarded for a limited period of time during which the economically dependent spouse is provided with the opportunity to obtain rehabilitative education and training. Indefinite alimony can be awarded instead if the court finds that one of two situations exists: (1) the party seeking alimony is unable to become self-supporting due to age, illness, infirmity, or disability; or (2) the standard of living of the former spouses will

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<sup>1</sup> Md. Fam. Law Code Ann. § 11-106(b).

be unconscionably disparate even after the applicant spouse has made as much progress as possible toward self-sufficiency.<sup>2</sup>

## **A. The Amount of the Alimony Award**

### **1. Inconsistency of Alimony Awards**

A fact known to practitioners and documented by the Committee's research is that alimony awards vary tremendously from one case to another, even where the circumstances of the parties are similar. The Committee found evidence of inconsistency in the responses of 34 judges and domestic relations masters to a hypothetical problem involving the award of alimony.<sup>3</sup> In the hypothetical problem, the parties, both middle-aged, had been married 22 years. The economically independent spouse had an after-tax income of \$35,000 a year, or \$2,917 a month; the economically dependent spouse had an after-tax income of \$5,200 a year, or \$433 a month. The amounts of alimony awarded in this hypothetical ranged from \$1,500 a month to \$1.00 a month. Five awards were for \$1,000 or more; 19 were above \$400 and below \$1,000; and ten were for \$400 or less. The average award was \$602. The typical award, made in eight instances, was \$500.

Given the many factors which must be taken into account when determining alimony and the differences in cost of living from one county to another, it would be unreasonable to expect an identical result in every case, no matter how close the facts. One should be able to expect that awards in similar cases would have some relative relationship to one another, however. The 34 awards made in response to the Committee's hypothetical problem cannot be said to have any approximate relationship to one another. There is a \$1,499 difference between the highest

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<sup>2</sup> Md. Fam. Law Code Ann. § 11-106(c).

<sup>3</sup> The four versions of the hypothetical problem are reprinted in the Appendix as Exhibit D, along with an Explanatory Note on methodology. The responses of the judges and masters are on file with the Committee.

(\$1,500) and the lowest (\$1.00) award. There is a spread of \$1,000 between the highest award and the typical award of \$500; a spread of \$499 between the lowest award and the typical award.

Both spouses in an alimony contest may be disadvantaged by inconsistent awards because unpredictability makes planning for the post-divorce period impossible. Further, it is possible that the awards at both ends of the spectrum are unfair, either to the payor spouse or the payee spouse. The economically dependent spouse, usually the wife, will suffer more from this inconsistency, however. First, in the hypothetical, the most extreme variations from the average award were at the lower end, not the higher end. This indicates that variability is more likely to result in an award that is too low, not one that is too high. Second, the uncertainty of outcome makes a judicial determination of the award attractive to the economically independent spouse. The economically dependent spouse will have fewer resources to use in a trial, however, and may be forced to settle for an unfairly low award rather than risk an unpredictably low award.

## **2. The Amount of the Award**

The amount of alimony awards is a matter of concern, particularly in situations where the post-divorce standards of living of the former spouses are significantly different. A good example of this situation is provided by the responses to the Committee's hypothetical problem just discussed. The typical award made by the judges and masters responding to the hypothetical case is \$500. After it is paid, the economically independent spouse will have a monthly income of \$2,417; the economically dependent spouse will have a monthly income of \$933.<sup>4</sup> Thus, the paying spouse would enjoy a per capita monthly income approximately two and a half times higher than that of the payee spouse. Prior to the divorce, when presumably the couple pooled their joint resources of \$3,350 a month, their per capita income was \$1,675. After the divorce, and after the alimony award has been paid, the payor

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<sup>4</sup> Since alimony is deductible to the payor and taxable to the payee, the paying spouse would have access to a somewhat higher amount of money and the payee spouse would have access to a somewhat lower amount.

spouse has increased his or her share of the pre-divorce resources by \$742, while the payee spouse's resources have decreased by exactly the same amount, \$742.

One goal of alimony is to have the parties share fairly in the reduction in their standard of living that will follow the divorce. The typical award of \$500 fails to meet this goal for both spouses: the payor spouse has improved his or her standard of living by approximately 44%, while the payee spouse has suffered a decline of approximately 44%. An award of approximately \$1,200 would provide the payor and payee spouses with approximately equal incomes.<sup>5</sup> Two responses to the hypothetical cases made an award of \$1,200. Only one award was for more than \$1,200 (\$1,500). All the other awards were below \$1,200. Even before tax adjustments,<sup>6</sup> in 91% of the cases, the award meant that the payee spouse would suffer a much greater decline in his or her per capita income. The decline ranged from \$242 a month (14%) to \$1,241 a month (74%), with the average being \$640 a month (38%). The payor spouse enjoyed an increase in his or her per capita income ranging from \$1,241 (74%) to \$242 (14%). The average increase was \$640 (38%).

The Committee's findings were confirmed by a study of alimony awards made in Montgomery County during 1986. These alimony awards resulted in the mean per capita income of the economically independent spouse increasing by 55%, while that of the economically dependent spouse in a custodial household declined by 37%.<sup>7</sup>

During its hearings, the Committee received further confirmatory information on the inequities in alimony awards. In one case, the former husband earned between

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<sup>5</sup> While an award of \$1,200 approximately equalizes the parties' incomes, it does not equalize their post-tax standard of living because the paying spouse benefits from being allowed to deduct the alimony payment, which is taxable to the payee spouse. An alimony award of approximately \$1,600 is necessary to achieve post-tax parity.

<sup>6</sup> See n. 5, *supra*.

<sup>7</sup> Bell, Alimony and the Financially-Dependent Spouse in Montgomery County, Maryland, XXII Fam. L. Quart. 225 (1989) [hereinafter cited as Bell Study]. Where the divorcing couple had children, the per capita income of the children decreased by an even larger percentage. Id. at 284.

\$75,000 and \$80,000 a year, which roughly equals \$6,000 a month. The alimony award to the former wife, who had been a homemaker at the husband's request during their 25-year marriage, was \$250 a month. Prior to the divorce, each spouse enjoyed a per capita monthly income of approximately \$3,000. After the divorce, his per capita monthly income rose to approximately \$5,750, while hers declined to \$250.<sup>8</sup>

In another case, the wife, divorced after 35 years of marriage, was awarded \$12,000 a year in alimony. Her former husband earned \$90,000 a year. Even with her investment income of \$7,000 a year, her income was approximately a quarter of her former spouse's.<sup>9</sup> Another case involved a middle-aged woman with six children, three of whom still lived at home. She was awarded \$1,300 a month for the support of herself and the three dependent children. The combination of the alimony, child support and her annual earnings of \$16,000 meant that the resources available to her and the couple's children amounted to just over half of the resources available to the children's father.<sup>10</sup>

The Committee's research identified two important factors which help to explain low alimony awards. The first is that the temporary alimony award made for the purpose of providing support to the economically dependent spouse during litigation is used as the basis for the alimony award made at the time of the divorce. The second factor is that the economically independent spouse is not required to pay alimony in an amount which would result in diminishing his or her standard of living.

**a. Effect of Pendente Lite Award**

The Committee learned that a major limitation on the alimony award in the divorce decree is the alimony award made for the support of the economically dependent

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<sup>8</sup> Testimony of Joanne Shearin, Eastern Shore Tr., p. 100.

<sup>9</sup> Testimony of Joan Ury, Mont. Cty. Tr., pp. 86-87.

<sup>10</sup> Testimony of Joan Ury, Mont. Cty. Tr. at pp 86-87.

spouse during the course of the litigation (alimony pendente lite).<sup>11</sup> Unfortunately, these awards are often very low. According to one circuit court judge, pendente lite awards are governed by "the sentiment" that the dependent spouse should have "just enough to get by on."<sup>12</sup> Once the dependent spouse has reduced her lifestyle to one she can afford on her pendente lite award, the other spouse will contend that she "needs" no more for the permanent award, and often he will prevail.

In the survey, the Committee sought the opinion of judges and lawyers about the impact of the pendente lite award on the divorce alimony award.<sup>13</sup> Forty-nine percent of the judges, 62% of the male lawyers, and 50% of the female lawyers who had an opinion on the question responded that the alimony award at the time of divorce is always or often close to or the same as the pendente lite award. Another 45% of the judges, 39% of the female lawyers and 35% of the males lawyers who had an opinion on the question responded that the divorce alimony award sometimes is close to or the same as the pendente lite award. Over 60% of male and female lawyers engaged largely in domestic relations practice agreed that the pendente lite award and the divorce award are always or often close or the same.

Under Maryland law, a court is empowered to award alimony pendente lite.<sup>14</sup> The court is not required to undertake a complex evaluation of the parties' needs or resources before awarding alimony pendente lite; the award is made to provide the economically dependent spouse with some resources during the course of the litigation. As the Court of Special Appeals has noted,<sup>15</sup> a pendente lite award is not indicative of the total needs of the economically dependent spouse; it is indicative "only of [the payor spouse's] ability to pay that amount as

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<sup>11</sup> Testimony of Michael Loney, Esquire, Anne Arundel Cty. Tr. pp 1-41 to 1-42 .

<sup>12</sup> Testimony of the Honorable James McAuliffe, Mont. Cty. Tr. p. 163.

<sup>13</sup> Question 30 of Judges' and Lawyers' Questionnaires.

<sup>14</sup> Md. Fam. Law Code Ann. § 11-102.

<sup>15</sup> Rosenberg v. Rosenberg, 64 Md. App. 487, 534-35, cert. denied, 305 Md. 107 (1985).

alimony following a divorce."<sup>16</sup> The amount of the pendente lite award is not one of the factors which judges are required to assess when awarding permanent alimony.<sup>17</sup>

Overuse of the pendente lite award to determine the amount of the divorce award harms wives more than husbands, since wives are more likely to be in the position of economically dependent spouses. Using the pendente lite award as the basis for the divorce award will hurt the wife because the divorce award will be lower than it might have been upon full consideration of all the factors that should be considered.<sup>18</sup> In addition, she may have to wait longer to obtain a divorce award because the court's reliance on the pendente lite award as a criterion gives the husband an incentive to delay the decision. The longer the husband can delay, the more likely it is that he will be able to argue persuasively that his wife has successfully supported herself on the pendente lite award and, therefore, has no need for a higher divorce award. To counter his argument, she may have to show that, because of the meagerness of the pendente lite award, she has gone into debt, postponed certain expenses or delayed payment on others.<sup>19</sup> Establishing what would have been her legitimate level of support at the time of the separation becomes, as a result, much more complex and difficult.

**b. Impact of the Financially Independent Spouse's Lifestyle on Size of Award**

Another factor which can unfairly depress the amount of the alimony award is judicial reluctance to require a financially independent spouse to reduce his or her<sup>20</sup> lifestyle to support the financially dependent spouse. The Committee's survey asked respondents

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<sup>16</sup> Id.

<sup>17</sup> Md. Fam. Law Code Ann. § 11-106(b).

<sup>18</sup> Md. Fam. Law Code Ann. § 11-106(b).

<sup>19</sup> See, e.g., Rosenberg, supra.

<sup>20</sup> In half of the versions of the Committee's hypothetical, the economically independent spouse was the wife and in half, the husband. The economically independent spouse was allowed to maintain his or her lifestyle in most cases.

whether they believed that "a wife's alimony award is based on how much the husband can give her without diminishing his current lifestyle."<sup>21</sup> Of those expressing an opinion, 30% of judges, 20% of male attorneys and 44% of female attorneys expressed the belief that the alimony award always or often has such a basis. Approximately the same percentages of domestic relations practitioners share the same belief (22% of the male attorneys and 44% of the female attorneys). An additional 17% of the judges, 33% of female lawyers and 26% of male lawyers agreed that the husband's lifestyle sometimes affected the alimony award.

Under the law,<sup>22</sup> the court is required to consider the financial needs and resources of both parties when determining alimony. To the extent that the needs of the economically independent spouse are given priority over those of the economically dependent spouse, the statutory mandate is being abrogated. The result is more detrimental to women than to men because the dependent spouse typically is the wife.

#### **B. Duration of Alimony Award**

The Committee learned through surveys, testimony, and other materials that the duration of the alimony award is often a problem. Most of the women who asserted that their requests for alimony for an indefinite term were improperly denied were displaced homemakers, whose divorces occurred after many years of marriage.<sup>23</sup> During their marriages, their participation in the paid labor force was minimal because they and their spouses believed that the care of their families and homes was their full-time job. Under Maryland law, displaced homemakers often should qualify for alimony for an indefinite term; indeed, it may be argued that a denial of indefinite alimony to the homemaker spouse after many years of marriage should be a fairly rare event, assuming that the other spouse has income-producing capability.

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<sup>21</sup> Question 17 of Judges' and Lawyers' Questionnaires.

<sup>22</sup> Md. Fam. Law Code Ann. § 11-106(9) and (11).

<sup>23</sup> See, e.g., nn. 29-30, *infra*, and accompanying text.

The general belief among attorneys and judges appears to be that displaced homemakers are awarded indefinite alimony after long-term marriages. In response to a question in the Committee's survey, only 7% of judges and 13% of male attorneys believed that displaced homemakers are denied indefinite alimony.<sup>24</sup> Skepticism was somewhat higher among female attorneys, especially those who are domestic relations practitioners: 26% of female attorneys and 33% of female domestic relations practitioners believed that displaced homemakers are denied indefinite alimony.

The testimony received by the Committee and the response to its hypothetical alimony problem indicate that the skepticism of the female lawyers is not without basis. Witnesses told the Committee of frequent cases where indefinite alimony is denied to economically dependent spouses who met the statutory guidelines. These women were either unable to become self-supporting or were unable to earn enough money to bring them close to the standard of living of their former spouses.

Examples included the case of a woman who was divorced after an 18-year marriage. Although trained as a nurse, she had little prospect of returning to her profession because of the long break in service which occurred after her marriage and because she had experienced two hospitalizations for mental disorders. Her former husband earned approximately \$200,000 a year. The judge awarded short-term alimony on the theory that the wife had an earning potential of \$20,000 a year.<sup>25</sup> Another case involved a middle-aged woman with five children, four of them minors at the time of the hearing. The judge, although finding the wife "used up, physically [and] mentally," awarded her alimony in the amount of \$250 a month for six months, then reduced it to \$100 a month for a limited term. In the judge's view, "it is a good calculated risk that you, young lady, will be able to do some work.... Because you are asking for this divorce as

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<sup>24</sup> Question 18 of Judges' and Lawyers Questionnaires.

<sup>25</sup> Statement of Stewart Oneglia, Esquire (on file with Committee).

well, and you are getting it."<sup>26</sup> Another case involved a middle aged woman who had not worked for pay during her 26 years of marriage and was caring for a blind child. Alimony was awarded for only five years, although the court found that she would never be able to support herself at the level enjoyed during the marriage.<sup>27</sup> Yet another case involved a 17 year marriage. The wife was mentally ill and unable to work; the husband earned \$95,000 a year. Alimony was awarded for three years.<sup>28</sup>

Practitioners report that, in many counties, short-term alimony is the rule.

Indefinite alimony is awarded extremely rarely.<sup>29</sup> Practitioners expressed frustration about the situation because of their belief that the Maryland Code permits the award of indefinite alimony in many cases in which it is denied. As a result, women who are eligible for indefinite alimony awards are left impoverished shortly after the divorce. This result, they contend, is contrary to what the legislature intended when enacting the changes in the alimony law providing for short-term and indefinite alimony.<sup>30</sup>

The Committee's hypothetical problem on alimony involved a middle-aged couple divorced after a 22-year marriage. The economically dependent spouse had been a homemaker throughout the marriage, had a back injury causing lower back pain, and held only a part-time job, earning \$5,200 a year after taxes. The economically independent spouse had worked full-time for pay throughout the marriage and at the time of divorce earned \$35,000 a year after taxes. Although the hypothetical case was designed in such a way as to satisfy the statutory requisites for an award

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<sup>26</sup> Tayman v. Tayman, Equity No. DR 79-4466 (Pr. George's County) (on file with Committee).

<sup>27</sup> Statement of Stewart Oneglia, Esquire (on file with Committee).

<sup>28</sup> Statement of Stewart Oneglia, Esquire (on file with Committee).

<sup>29</sup> Statement of Stewart Oneglia, Esquire (on file with Committee); testimony of James Nolan, Esquire, Montgomery Cty. Tr., p. 138; testimony of Jane Tolar, Esquire, Eastern Shore Tr., p. 124; testimony of Michael Loney, Esquire, Anne Arundel Cty. Tr., pp. 1-41; testimony of Roger Perkins, Esquire, Anne Arundel Cty. Tr., pp. 1-91; Bell Study, *supra* n. 7, at 271-275.

<sup>30</sup> Statement of Stewart Oneglia, Esquire (on file with Committee); testimony of Joan Ury, Mont. Cty. Tr. pp. 86-87; testimony of James Nolan, Esquire, Mont. Cty. Tr., pp. 138-149.

of indefinite alimony, only 50% (21) of the judges and masters awarded indefinite alimony. The remaining 50% awarded alimony only for a limited term.

One reason many displaced homemakers are denied alimony may be that judges are assuming that any displaced homemaker readily can train herself in a marketable skill and find suitable work, so that indefinite alimony is not needed.<sup>31</sup> Because of this assumption, the judges do not require evidence in each case that a particular applicant spouse has the skills and personal attributes required to take advantage of employment opportunities in her or his locale.<sup>32</sup> Thus, judges may assume that many employment opportunities are open to a middle-aged job seeker, even though she may bring outdated skills to the job market and may face job discrimination because of her age.

An additional reason that displaced homemakers are denied indefinite alimony may be that judges give less weight to their nonmonetary contributions to the family than they do to the career spouses' monetary contributions. Rather than crediting a wife's homemaking work as an important contribution to a husband's success, they may view a request for alimony as an unwarranted demand for the money earned "solely" by the career spouse.<sup>33</sup>

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<sup>31</sup> Bell Study, *supra* n. 7, at 279.

<sup>32</sup> Where the burden of proof should rest in a case involving the income-earning capacity of the dependent spouse is not specified in the statute. In Zorich v. Zorich, the trial court implied that it rests on the economically independent spouse. See Zorich v. Zorich, 63 Md. App. 710 (1985), in which an indefinite award was upheld for a wife in her 50's after a 30-year marriage in which she had been a homemaker. After the separation, she became employed, earning \$10,000 a year, while the husband made \$50,000 per year. The trial court mentioned in its decision that there was "no real solid evidence that she is able to gain much of an education to better herself," evidence which, the trial court implied, the husband should have provided. 63 Md. App. at 717. Placing the burden on the spouse who is contending that the other spouse can become economically independent is consistent with general principles on allocation of the burden of proof. See generally L. McLain, Maryland Practice, Vol. 5: Maryland Evidence, State and Federal 131-181 (1987).

<sup>33</sup> A similar problem affects how judges determine the equitable adjustment of marital property by way of the monetary award. Under Md. Fam. Law Code Ann. § 8-204(1), the factors to be considered include the "contributions, monetary and nonmonetary, of each party to the well-being of the family." The Committee's survey of judges and lawyers asked whether, "[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." Question 13 of Judges' and Lawyers' Questionnaires. Of those expressing an opinion, affirmative answers were given by 79% of female attorneys with a specialty in domestic relations practice and by 39% of

A practice of denying indefinite alimony to displaced homemakers will harm women more than men because, traditionally, women dedicated themselves to the needs of family and home and did not develop a career. People in long marriages who are divorcing in the 1980's did not have the same assumptions about equal wage-earning roles within marriage as many people have today. Further, despite advances in their legal rights since the 1970's, middle-aged women continue to face employment discrimination on the basis of gender which may be compounded by age discrimination. Thus, they are more likely to be the needy spouse than their former husbands.

### **C. The Decision to Award Alimony**

The Committee received information suggesting that three groups of economically dependent spouses routinely are being denied alimony on any basis although the Maryland statute permits an award of alimony. The groups are 1) women who have some income but whose former spouses have incomes that are considerably greater, 2) women who left paid work in order to care for young children, and 3) women who have been accused of marital misconduct.

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

Some spouses are awarded no alimony because they have some income and, as a result, are deemed self-supporting. The Montgomery County study of alimony awards made in 1986, for example, found that a woman earning \$20,000 a year rarely is awarded alimony, even if her pre-divorce standard of living was significantly higher and her former spouse earns considerably more than \$20,000 a year.<sup>34</sup> The Committee heard testimony about one woman with a part-time job who was denied alimony and advised by the judge to "put this behind you, get on with your life."<sup>35</sup>

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similarly specializing male attorneys. Sixteen percent of judges agreed. These answers suggest strongly that, despite the equivalent standing which the statute gives to monetary and nonmonetary contributions, the monetary contributions are still more important in too many cases.

<sup>34</sup> Bell Study, *supra* n. 7, at 276-278.

<sup>35</sup> Testimony of Jill Coleman, Director, Fair Family Law Assoc., Balto City Tr., p. 45.

The law<sup>36</sup> does not bar an award of alimony to applicants with some income; instead, it requires judges to evaluate a party's ability to be "self-supporting." What self-supporting means should be determined in each case: in some situations, a spouse earning \$20,000 a year will be able to provide adequately for herself or himself. In others, the amount will be inadequate because it is far less than the resources available to the spouse during the marriage or it is less than the amount needed for the location where the spouse lives. It may be argued that "self-supporting" is a relative term, not an amount which is determined according to a standard external to the case at hand. The law<sup>37</sup> also requires the court to consider the relative financial positions of the parties. Thus, a case in which both spouses earn \$12,000 is quite different from one in which the applicant spouse earns \$12,000 and the other spouse earns \$120,000.

Denying alimony to applicant spouses who earn a relatively small amount of money will harm women more than men because the economically dependent spouse is usually the woman. In addition, denying alimony in this situation unfairly benefits relatively wealthy men, because it disregards the mandate in the statute that financial needs and resources of both parties be considered. Denying women alimony because they have a relatively small income effectively permits a higher-earning man to retain a larger share of his income than the legislature appears to have intended.

## 2. The Custodial Parent

Another group of economically dependent spouses who are denied alimony are those who stopped working for pay in order to care for the couple's children and whose children are still young at the time of the divorce.<sup>38</sup> One woman testified that she was awarded no alimony when her 15-year marriage ended, although she had stopped working for pay when the

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<sup>36</sup> Md. Fam. Law Code Ann. § 11-106(b).

<sup>37</sup> Id.

<sup>38</sup> See Bell Study, *supra* n. 7, at 300-306.

first of her three children was born. At the time of the divorce, the children were nine, seven, and four. The logic of the master's decision to deny alimony was that the woman could immediately get a full-time job earning what she had earned 10 years earlier, before the birth of the children.<sup>39</sup>

Although it is perhaps less true now than in years past, many families having children decide that the mother rather than the father should leave paid labor or reduce her labor force participation when children are born. Typically, time out of the paid labor force on either a full-time or a part-time basis results in a reduction of one's employment-related skills and desirability to employers. As a result, employers are reluctant to employ a mother returning to full-time paid labor at the same level of salary she earned before the hiatus. In addition, the demands of child rearing increase in intensity when the parents separate and divorce. For a mother in these circumstances to make a commitment to participate in the paid labor force equivalent to what she made when she was not solely responsible for the care of children is difficult indeed. Nonetheless, the Committee was advised that many women in these circumstances were not awarded alimony, even for a short term.

One reason judges may deny alimony to mothers of young children is that they do not have a realistic grasp of the inability of these women to be wholly or partly self-supporting. They may assume that, since most mothers work, these mothers should be able to quickly find full-time and appropriate work. In making this assumption, judges may be overlooking the difficulties that accompany all workers who return to the paid labor force after several years of absence, such as employer resistance, a degradation of skills or a need for retraining in one's specialty. Second, mothers with sole custody or sole physical custody who are separating or divorcing are not in the same circumstances as married mothers who worked throughout their children's younger years. They have sole responsibility for the children, and those children are going through the emotional and physical changes and difficulties that

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<sup>39</sup> Testimony of "Mary Smith," Prince George's Cty. Tr., p. 56.

accompany their parents' separation. Third, day care is a costly, scarce, and unsatisfactory commodity in many communities, and mothers may have difficulty locating an appropriate placement for a child. As a result, a mother's return to paid labor can be delayed or impeded.

Under the law,<sup>40</sup> a decision to award alimony can turn on the difficulties facing a custodial parent who is returning to paid labor after a hiatus spent caring for children. In appropriate cases, such a parent can be found to be unable to be fully self-supporting because of the demands of the children. In addition, that parent may need a period of time for education or training because of his or her time away from paid labor. If these factors are ignored, many parents who need alimony to make the transition from the life of the married parent to the life of the single custodial parent will be denied the resources they need and which, under the statute, they can be awarded.

Denying alimony to the custodial parent harms women more than men because approximately 90 percent of custodial parents are women. Most of these women become custodial parents by agreement with their former spouses, who, as a result, do not face the same challenges in the marketplace as a single custodial parent.<sup>41</sup>

### 3. The Wrongdoer Spouse

Finally, the Committee was told that in order to be awarded alimony,

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<sup>40</sup> Md. Fam. Law Code Ann. § 11-106(b)(1) and (2).

<sup>41</sup> Weitzman, Judicial Perceptions and Perceptions of Judges: The Divorce Law Revolution in Practice, in Women, The Courts and Equality (Crites & Hepperle, eds. 1987).

As was noted in Chapter 2, Child Custody, the mother seeking custody in a contested case may be faced with conflicting expectations: 1) a good mother should stay home with her children, but 2) custody should go to the parent who is wealthier. See pp. 30-31, supra. Her difficult position in the custody contest worsens when she is denied alimony, because her economic position suffers in comparison to the father's position.

women must be free of fault at the time of divorce. This perception was verified by a study of alimony awards in Montgomery County, which found that, in the cases studied, no wife who was at fault was awarded alimony.<sup>42</sup>

Under the law,<sup>43</sup> one of the factors which the court considers when deciding whether to award alimony is the "circumstances that contributed to the estrangement of the parties." Adultery and other forms of marital wrongdoing can be such circumstances. For marital wrongdoing to be the only factor considered, however, is not consistent with the mandate that the court consider "all the factors necessary for a fair and equitable award," including the 11 that are specified.<sup>44</sup>

If judges are erroneously giving too much weight to marital wrongdoing when determining whether to award alimony, women are going to be harmed more than men because women are more likely to be economically dependent and therefore in need of alimony.

## **II. Property Disposition and Litigation Expenses**

When a couple has real or personal property to divide at the time of divorce and cannot agree on how that is to occur, the court may intervene to ensure equitable division by making a monetary award.<sup>45</sup> Before a monetary award can be determined, the assets which qualify as marital property that is subject to an award must be identified and valued. This can be a difficult undertaking, because not everything each member of the couple has an ownership interest in may

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<sup>42</sup> Bell Study, *supra* n. 7, at 289-291; *see* statement of Sheila Litzky (on file with Committee). While there is little evidence on the subject, it is possible that the "adultery" disqualification may not operate against men seeking alimony. While the Committee did not hear from any men seeking (or paying) alimony, a woman who was ordered to pay alimony pendente lite to her former husband brought her situation to the Committee's attention. The master found that her husband was living with a woman, but his report contained no mention of adultery. Letter from Nyal D. Conger (on file with Committee). While the case suggests that different standards may be applied to men and women, it is not directly comparable with the Montgomery County study because the alimony award was pendente lite only, and the Montgomery County study addressed final divorce decree awards exclusively.

<sup>43</sup> Md. Fam. Law Code Ann. § 11-106(b)(6).

<sup>44</sup> Md. Fam. Law Code Ann. § 11-106(b).

<sup>45</sup> Md. Fam. Law Code Ann. §§ 8-201-8-213.

be marital property, and, furthermore, not all assets have an obvious value. Often, the assistance of experts is required.

Because the wife is often the economically dependent spouse in the marriage, she is likely to find it more difficult to afford the expenses of legal and other expert assistance in a conflict over marital property and a monetary award. Furthermore, in the case of an economically dependent spouse, the assets are more likely to be in her husband's hands or under his control. To determine whether economically dependent wives are disadvantaged in the ways in which marital property disputes are managed by the courts, the Committee asked judges and lawyers whether "[c]ourts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation."<sup>46</sup> Of those expressing an opinion, 79% of female lawyers with a domestic relations specialty gave a negative response (rarely or never). They were joined by 45% of their male colleagues. Judges, however, seem to believe that adequate fees are awarded: 92% said that fee awards are always, often, or sometimes sufficient.

A second area of disadvantage may appear if the husband has control of the property and disposes of it before the marital property dispute is decided. The Committee asked whether "[e]ffective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made."<sup>47</sup> Of those expressing an opinion, 63% of female attorneys with a domestic relations specialty gave a negative response, along with 33% of their male colleagues. Judges again did not agree: 34% believe that effective injunctive relief is always granted, and 54% believe it is often or sometimes granted. Almost all judges (90%) also believe they impose meaningful sanctions if an injunction is violated.<sup>48</sup> Only 27% of female domestic relations

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<sup>46</sup> Question 14 of Judges' and Lawyers' Questionnaires. The court may order that fees and costs be paid by either party, depending on their financial resources and needs and on the justifiability of the party's position in the proceeding. Md. Fam. Law Code Ann. § 11-110; see Rosenberg v. Rosenberg, 64 Md. App. 487, 537-539 and 537 n. 14, cert. denied, 305 Md. 107 (1985).

<sup>47</sup> Question 15 of Judges' and Lawyers' Questionnaires.

<sup>48</sup> Question 16 of Judges' and Lawyers' Questionnaires.

meaningful sanctions if an injunction is violated.<sup>48</sup> Only 27% of female domestic relations practitioners and 45% of male domestic relations practitioners agree.

Procedural problems such as fees for experts and injunctions against the dissipation of property can make it impossible for an economically dependent spouse to obtain the equitable division of marital property for which the law provides through the monetary award. Lawyers with specialized experience in domestic relations practice reported to the Committee that these problems can be so difficult that economically dependent spouses sometimes cannot make their case.<sup>49</sup> Permitting these procedural problems to undermine the statutory scheme is not what the legislature intended, and it is not a fair outcome for the parties involved.

### ***FINDINGS***

1. *Inconsistency in alimony awards results in unpredictable and unfair awards.*
2. *Many alimony awards are too low.*
3. *Indefinite alimony often is inappropriately denied to homemaker wives after long marriages.*
4. *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.*

### ***RECOMMENDATIONS***

#### ***For Court Administration, the Judiciary and Masters***

1. *Ensure speedier awards of alimony pendente lite.*
2. *Adopt guidelines for judges and masters in awarding alimony and support that are area-specific and include limitations on the over-use of rehabilitative alimony.*
3. *Provide education on the issue of the impact of marital misconduct on the alimony award.*

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<sup>49</sup> Testimony of Roger Perkins, Esquire, Anne Arundel Cty. Tr., pp. 1-88-1-89; testimony of the Honorable Rita Rosenkrantz, Mont. Cty. Tr., p. 120; testimony of Sylvia Becker, Mont. Cty. Tr., p. 8; testimony of Linda Hirschy, Balto. Cty. Tr., pp. 36-38.

4. *Provide education on issues concerning wage-earning potential of middle-aged women who have been economically dependent during a long marriage.*
5. *Take necessary steps to ensure that judges and masters are familiar with the statutory provisions governing, and materials relating to the social and economic considerations relevant to monetary awards and the award of expenses. These materials include studies, statistics, and scholarly commentary on the economic consequences of divorce, women's employment opportunities and pay potential, and the costs of child rearing.*
6. *Include, where appropriate, masters in the educational segment of the new judges' orientation program.*
7. *Evaluate judges and masters on a regular basis, taking into account gender neutrality on issues relating to alimony and property disposition.*

### For the Legislature

*Enact legislation that:*

1. *Makes the homemaker's lifetime reduced earning capacity an express factor to be considered in connection with alimony.*
2. *Provides that a spouse's indirect contribution to the appreciation of non-marital property (e.g., for maintenance of family or through homemaker's services) causes that property, to the extent of appreciation, to become marital property.*
3. *Requires the court to assume a more effective role in the identification and valuation of marital property through appointment of special masters or through required compensation of necessary experts from marital assets.*
4. *Clarifies 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 and, if a reduction in living standard is required, it should be equally shared by both parties.*
5. *Provides for mandatory pendente lite awards of counsel fees and costs of experts and investigators appropriate to the duration and complexity of the case and sufficient to enable both parties to pursue litigation.*
6. *Establishes a standard that pendente lite alimony and child support should maintain the status quo of the parties to the extent feasible.*
7. *Clarifies that indefinite alimony is mandatory in appropriate circumstances.*
8. *Makes alimony retroactive to the date of the motion unless that would be unconscionable.*

**For Bar Associations (including State, local and specialty bar associations)**

1. *Develop informational materials through family law sections about the social and economic considerations relevant to alimony and equitable distribution and litigation expense awards. These materials should include studies, statistics, and scholarly commentary on the economic consequences of divorce, women's employment opportunities and pay potential and the costs of child rearing. These materials should be made available to lawyers for use in submissions to courts considering petitions for alimony and property disposition and litigation expense awards.*
2. *On a cost of materials basis, invite judges and masters to join in continuing legal education programs concerning the property disposition.*

## CHAPTER 5 COURT TREATMENT OF PERSONNEL

### I. INTRODUCTION

The Special Joint Committee's mandate also directed that it investigate what effect, if any, gender bias has upon the employees of the Maryland court system. In an effort to ascertain the attitudes, perceptions and actual experiences of court employees, the Committee sought data from a variety of sources. Court employees had the opportunity to testify at each of the seven public hearings conducted by the Committee throughout the state in the Fall of 1987. In addition, information concerning the salary classifications of state court employees was provided by George E. Lyons, Jr. of the State Department of Personnel and information concerning state leave policies was provided by Ernest F. Bailey, Jr., of the Administrative Office of the Courts.<sup>1</sup> A confidential survey questionnaire was also sent to 2,411 employees of the Maryland court system.

The survey questions fell into two primary categories: description of the employees' own experiences, and employees' perceptions of the employment experiences of others. Some of the substantive areas addressed by the survey included: job responsibilities; job satisfaction; job training; opportunities for advancement within the court system; leave policies; and the employees' perceptions of how employees, witnesses, litigants, and attorneys are treated with regard to courtroom interaction and credibility. The survey also sought to elicit information regarding incidents of verbal or physical sexual harassment as well as general demographic information. Most of the questions either asked for a simple affirmative or negative response or allowed the employee to choose among six alternative responses: always, often, sometimes, rarely, never, and

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<sup>1</sup> The information provided by Mr. Bailey pertains chiefly to employees of the Administrative Office of the Courts and related units. Somewhat different rules may apply to employees of the District Court and to the clerks of the circuit courts. Still other rules govern county employees of the circuit courts.

don't know.<sup>2</sup> Some of the questions also provided the employees with an opportunity to supply open-ended responses.

Completed questionnaires were returned by 1,187 employees or 49% of those surveyed. Responses to the demographic questions indicate that 93% of the employees who responded work in full-time positions. Almost three-quarters of the employees who responded are female (74% F, 26% M),<sup>3</sup> and 19% of the respondents stated that they are members of a racial minority group.<sup>4</sup> Approximately one third of the employees had some education beyond the high school level (29% F, 31% M)<sup>5</sup> and four-fifths had some work experience (83% F, 87% M)<sup>6</sup> before becoming employees of the court system. Sixteen percent of the employees said that their job duties required that they be in the courtroom more than half the time.<sup>7</sup> The responses to questions concerning length of employment, educational levels, prior job experience, salary and leave come from only those employees who work full-time. The percentages indicated for the remaining questions reflect the responses from all of employees who returned the questionnaire.<sup>8</sup>

## II. ECONOMICS

Examination of the relevant economic positions of male and female employees suggests that female employees suffer three forms of economic discrimination:<sup>9</sup> (1) female employees are paid

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<sup>2</sup> In order to clarify the significance of the data and to simplify its reporting in this chapter, affirmative responses to the first three categories ("always", "often" and "sometimes") are added together to reflect the percentages indicated. The full tables appear in the Appendix.

<sup>3</sup> Question 56 of Court Employee's Questionnaire.

<sup>4</sup> Question 57 of Court Employee's Questionnaire.

<sup>5</sup> Question 22 of Court Employee's Questionnaire.

<sup>6</sup> Question 21 of Court Employee's Questionnaire.

<sup>7</sup> Question 26 of Court Employee's Questionnaire. Only the responses from this last category of employees were used in reporting the data concerning courtroom interactions. See Sections III and IV, *infra*.

<sup>8</sup> Not all employees answered every question. Accordingly, the percentages indicated do not reflect the whole population but, rather, the subgroup of employees who responded to each individual question.

<sup>9</sup> The Committee recognizes that the limited scope of the questionnaire prevents full analysis of these issues and it acknowledges that a more detailed inquiry is required. A similar conclusion was reached in The State of Maryland Comparable Worth Study released in February of 1986. A discussion of the Study results and of the topic

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." Examples of each form of discrimination are set out below.

Despite the fact that female employees outnumber male employees six to one in the circuit courts and three to one in the District Court, the average income for female employees in the District Court is \$4,282 less than that of male employees.<sup>10</sup> One employee who testified at a public hearing summed up the bleak picture afforded female employees by stating that "women in the state courts and local courts are locked into salary ghettos." Examination of the salaries at the District Court level confirms the existence of "salary ghettoizing." Over one-half (64%) of the female employees are congregated in the \$15,001 to \$20,000 salary range, compared with only one-third of the male employees.<sup>11</sup> This fact, when contrasted with the fact that the over \$40,000 salary range is occupied by 8% of the males as compared with less than 1% of the females, demonstrates that the majority of female employees occupy the lowest end of the salary scale.<sup>12</sup> This is true despite the similar backgrounds of the two groups. Eighty-seven percent of the male employees reported having prior work experience before being hired by the courts compared with 83% of the female employees.<sup>13</sup> Forty percent of the female employees and 55% of the male employees reported that they had graduated from college or had some college education prior to

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of comparable worth is contained in Comment, Comparative Worth and the Maryland ERA, 47 Md. Law Rev. 1129 (1988).

<sup>10</sup> No corresponding data were available for the circuit courts.

<sup>11</sup> Question 25 of Court Employees' Questionnaire.

<sup>12</sup> Id.

<sup>13</sup> Question 21 of Employees' Questionnaire.

being hired by the courts.<sup>14</sup> Sixty-seven percent of the female employees and 59% of the male employees reported having been employed by the court system for 1-10 years.<sup>15</sup>

Salary differentials such as these also indicate that female employees remain in lower salaried positions for longer periods of time than male employees; that is, only male employees survived the "thinning of the ranks." For example, 37 male and 106 female employees statewide are classified Circuit Court Specialist II (job #7668) and earn between \$15,958 and \$20,902. Yet, seven grades higher at the Deputy Clerk V level (job #7675), there are 10 male employees and only three females each earning between \$26,763 and \$35,153. Additionally, although 98% of the female employees and 90% of the male employees reported that their salary when hired was less than \$20,000,<sup>16</sup> comparison of current salary levels demonstrates that 35% more female than male employees reported currently earning less than \$20,000.<sup>17</sup> By contrast, 11% more male employees reported currently earning \$30,000 or more.<sup>18</sup>

One employee suggested that the reason female employees salaries are low is that "historically, women occupied positions which are paid on a lower scale than those positions occupied by men."<sup>19</sup> This phenomenon would seem to remain true today. Female employees' lack of advancement and over-representation in lowest salary brackets are indicative of a philosophy that entry level, low paying, non-managerial positions are "female positions."

The inequalities of the compensation structure do not go unnoticed by employees: 13% of the female employees felt that male employees were paid more for performing the same duties, and this attitude was shared by 5% of the male employees as well.<sup>20</sup> One female employee asserted

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14 Question 22 of Court Employees' Questionnaire.

15 Question 19 of Court Employees' Questionnaire.

16 Question 24 of Court Employee's Questionnaire.

17 Question 25 of Court Employee's Questionnaire.

18 Id.

19 Survey Respondent.

20 Question 43 of Court Employee's Questionnaire.

that "two male occupied positions [with the same job title as hers] are reimbursed at higher grade levels". Other open-ended responses showed that the perceptions concerning differing treatment are not limited to salary alone. One employee commented,

[w]omen are supposed to be meek and follow orders without questioning or suggesting other methods. If a women is assertive, in my opinion, she will be denied advancement.

The impact of the lower salaries earned by female employees is perhaps felt hardest by those women who head the family household.<sup>21</sup> Not only does a more limited income make paying for quality child care more difficult,<sup>22</sup> a single parent generally cannot use his or her limited income to buy services which would save time and allow the purchase of services. For the employed single parent, a child's periodic minor illnesses can turn an already difficult life into a nightmare causing loss of pay and possibly the loss of a job, depending on the availability of leave.<sup>23</sup> In order to improve the quality of life for these women, it is imperative that they be paid the same salaries as male employees and that they be provided the same opportunities for advancement.

Although it is impossible, based upon the data collected, to link phenomena such as "salary ghettoing," "female jobs," and the failure of female employees to survive the "thinning of the ranks" to one causal factor, it does appear that when knowledge, skill, and ability are equal, salaries are often not. 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. In addition, the employees' perception that persons of the opposite gender are not paid equally for performing the same tasks has a deleterious effect upon motivation, morale, and productivity.

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<sup>21</sup> One employee commented that "[m]en are considered head of household where single women are not." Nonetheless, in 1984, 23% of families with children were maintained by women who did not have husbands living with them. B. Bergmann, The Economic Emergence of Women, 229 (1986). The 1980 Census identified 176,770 such families in Maryland.

<sup>22</sup> See Section VI, infra.

<sup>23</sup> See Section V, infra.

### III. SEXUAL HARASSMENT

The most significant data concerning the existence of gender bias in the Maryland court system came from the employees' answers to survey questions concerning sexual harassment. In Meritor Savings Bank, FSB v. Vinson,<sup>24</sup> the United States Supreme Court categorized the types of conduct which are considered sexual harassment under Title VII of the Civil Rights Act of 1964.<sup>25</sup> in the following manner: (1) quid pro quo harassment where unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is directly linked to the grant or denial of economic benefits; and (2) non-quid pro quo or "hostile environment" harassment which has the purpose or effect of unreasonably interfering with an individual's work performance or the creation of an intimidating or offensive working environment.<sup>26</sup>

#### A. Quid Pro Quo Harassment

When asked whether they knew of co-workers who experienced sexual advances in exchange for employment security, 49% of the female and 33% of the male employees who responded to the question answered yes.<sup>27</sup> Eight percent of the female and 7% of the male employees reported that they had experienced this form of sexual harassment themselves: 27 employees said that they were harassed by co-workers; 20 said they were harassed by supervisors;

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<sup>24</sup> \_\_\_ U.S. \_\_\_, 106 S.Ct. 2399 (1986).

<sup>25</sup> 78 Stat. 253, as amended, 42 U.S.C. 2000e et seq. Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1). The individuals whose conduct is governed by Title VII include judges, supervisors, and co-workers. State law also provides protection from discriminatory practices. See, e.g., Md. Decl. of Rts. art. 46; Md. Ann. Code art. 49B, § 7; Executive Order 01.01.1987.20 (Aug. 14, 1987) (establishing a Code of Fair Practices for State Employment).

<sup>26</sup> The Supreme Court's recent decision in Forrester v. White, \_\_\_ U.S. \_\_\_, 108 S.Ct. 538 (1988), also has implications in the area of redress for sexual harassment. In Forrester, the Court held that judges do not enjoy absolute immunity for administrative, legislative, or executive functions. Accordingly, employees who are sexually harassed by judges may now seek redress.

<sup>27</sup> Question 13 of Court Employee's Questionnaire.

18 said they were harassed by attorneys; and 16 said the harassment came from judges.<sup>28</sup> One employee, who felt that she had been denied a promotion because of gender replied:

At the time I was refused a promotion, I had filed sexual harassment charges against my supervisor. I eventually dropped the charges because my supervisor attempted or gestured at suicide. My supervisor continued to treat me with disregard .... I am still not treated the same as my male counterpart, i.e., all daylight opportunities to work are given to a male -- I am given nighttime shifts only. Recently I requested two different times for vacation leave and was refused.<sup>29</sup>

Approximately a third of the employees (32%) reported that they knew of other court employees who received unwelcome requests for sexual activity from either judges, attorneys, co-workers, supervisors or the public. One employee perceived that the reason why a co-worker was not promoted was because "She wasn't sleeping with the top boss."<sup>30</sup>

#### **B. Hostile Work Environment Harassment**

Employees also reported experiencing non-quid pro quo or "hostile work environment" harassment. A number of employees reported that they themselves had experienced unwelcome requests for sexual activity from judges<sup>31</sup>, supervisors<sup>32</sup> and co-workers.<sup>33</sup> Over a quarter of the employees said that they knew of a co-worker who had experienced unwelcome physical touching of a sexual nature from some source<sup>34</sup>; approximately a tenth reported that they had experienced this behavior personally.<sup>35</sup> Victims of harassment said it came from judges (12% F, 5% M), supervisors (8% F, 5% M) and co-workers (18% F, 16% M).<sup>36</sup> Of the subset of

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28 Id.

29 Survey Respondent.

30 Survey Respondent.

31 Question 14 of the Court Employee's Questionnaire (8% F, 6% M).

32 Question 14 of the Court Employee's questionnaire (6% F, 5% M).

33 Question 14 of Court Employee's Questionnaire (15% F, 11% M).

34 Question 15 of the Court Employee's Questionnaire.

35 Id.

36 Id.

employees who spend more than half of their time in the courtroom,<sup>37</sup> 22% of the females and 8% of the males said that female employees are subjected to unwelcome verbal or physical sexual advances from judges, and 35% of the females and 20% of the males said that the advances came from co-workers.<sup>38</sup> More than a quarter of courtroom employees also reported that they had experienced harassing verbal behavior such as sexist jokes or comments.<sup>39</sup> One female employee stated:

I attended one of my first ... meeting[s], ready to work on problems and real issues, instead I was told there would be a luncheon for a clerk who was retiring. The entertainment [was] ... a belly dancer. When I voiced my objections I was informed that if I was offended, I could of course leave.<sup>40</sup>

Conduct such as this is representative hostile work environment harassment. As the Court pointed out in Meritor:

"Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the work place that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets."<sup>41</sup>

### C. Impact of Sexual Harassment

There is compelling evidence that Maryland court system employees are subject to sexual harassment: 96 court employees reported experiencing unwelcome requests for sexual activity;<sup>42</sup> 81 employees reported experiencing sexual advances made in exchange for employment security/job opportunities;<sup>43</sup> 126 employees reported experiencing physical touching of a sexual

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<sup>37</sup> See n. 7, *supra*.

<sup>38</sup> Question 8 of Court Employee's Questionnaire.

<sup>39</sup> Question 16 of Court Employee's Questionnaire.

<sup>40</sup> Survey Respondent.

<sup>41</sup> 106 S.Ct. at 2406 (quoting Henson v. Dundee, 682 F.2d 897, 902 (11th Cir. 1982)).

<sup>42</sup> Question 14 of Court Employee's Questionnaire.

<sup>43</sup> Question 13 of Court Employee's Questionnaire.

nature;<sup>44</sup> and 869 employees reported experiencing harassing verbal behavior such as sexist jokes or comments.<sup>45</sup>

Although the total psychological impact upon the victim of sexual harassment is unknown, it is not unusual for female employees who are subjected to this type of treatment to suffer from a diminished sense of self-esteem. One employee described her experience:

The circuit court is very discriminating against female employees. I have had sexual harassment from my assistant supervisor, and when I reported it nothing was done to him or about the situation. I told my supervisor not to place me and my assistant supervisor together because I think he likes me. My supervisor laughed and the next day he stuck me and the assistant supervisor down in the basement to work. That was when he grabbed me and tried to kiss me. This is the worst part of the State of Maryland.<sup>46</sup>

A female employee's commitment to her job may also be adversely affected if she perceives herself as being treated as a sexual object rather than as a professional. The message being sent to female employees who are subjected to sexually oriented verbal or physical acts as a condition of their employment is a chilling one; they are being singled out for disparate and discriminatory treatment solely because of their gender. The day-to-day effect of this enforced inequality is the creation of a hostile work environment which affects work place productivity and morale as well as the psychological well-being of the employees, both male and female.

On a more basic level, it must be understood that treating employees differently simply on the basis of their gender is inappropriate. A system which focuses on gender rather than performance is not only inefficient and disruptive, it is illegal. By fostering, condoning, or, at 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.

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<sup>44</sup> Question 15 of Court Employee's Questionnaire.

<sup>45</sup> Question 16 of Court Employee's Questionnaire.

<sup>46</sup> Survey Respondent.

#### IV. WORK ENVIRONMENT, JOB TRAINING AND ADVANCEMENT

In the Court Interactions Section of the survey, the employees were asked whether female employees are referred to or are treated differently than male employees. Of the subset of employees who spend more than half of their time in the courtroom,<sup>47</sup> 64% of females and 32% of males said that their co-workers made comments about the personal appearance of female employees when no such comments were made about males.<sup>48</sup> Almost half (48%) of female employees reported similar behavior by judges<sup>49</sup> or attorneys.<sup>50</sup> A similar percentage of female employees also reported that co-workers (49%), attorneys (50%), and judges (43%) address women employees by first names or terms of endearment when men are addressed formally.<sup>51</sup> One female employee responded that "[a]lthough I haven't experienced or observed sexist behavior in the form of physical or verbal sexual behavior, the women in the office are always referred to by the clerk, the judges, judge's secretaries, and the women themselves as 'girls'."<sup>52</sup>

Overgeneralizations such as these reinforce the impression that employment decisions are based upon a person's gender rather than upon her or his individual capabilities and performance. Regardless of whether the discriminatory treatment is directed at male or female employees, the end result is that both groups suffer. Disparate treatment on the basis of gender demeans the employees and may affect the extent to which they feel employment opportunities are available to them.

In response to questions concerning credibility, a higher percentage of female employees felt that their opinions were given different weight or importance than that of persons of the

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<sup>47</sup> See n. 7, *supra*.

<sup>48</sup> Question 4 of Court Employee's Questionnaire.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Question 2 of Court Employee's Questionnaire. Many male employees agreed about the conduct of co-workers (30%), attorneys (27%) and judges (23%).

<sup>52</sup> Survey Respondent.

opposite sex (25% F, 16% M).<sup>53</sup> In response to an open-ended response, a female employee stated:

The job that I have rarely draws any male interest to apply for any positions. Therefore, the office is virtually all female with the exception of the judges and deputies. When a male's input is made into a certain duty or situation, there is a tendency for their opinion (at times) to carry more weight.<sup>54</sup>

More female employees also felt that there were job duties they were not allowed to perform because of their gender (14% F, 6% M).<sup>55</sup> As one stated, "[s]imply put, I believe men are asked to do harder tasks sometimes." A few employees also felt that their duties were reduced because of their gender (5% F, 1% M).<sup>56</sup> One female employee commented that she "[felt] that women must excel to be considered average". Another simply said:

My duties are decreased only in that I am not requested to perform physical tasks (carrying briefcases) and if we travel together I am expected to sit in the back seat of the car.<sup>57</sup>

More female employees also perceived that their job opportunities were limited because of their gender (26% F, 14% M).<sup>58</sup>

When areas other than "clerical" have opened -- they have been given to males.<sup>59</sup>

I was told a man would be better -- have more authority.<sup>60</sup>

Similarly, a slightly higher percentage of females also thought that members of one gender received preferential appointments to supervisory positions (29% F, 21% M).<sup>61</sup> Some comments include:

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<sup>53</sup> Question 29 of Court Employee's Questionnaire.

<sup>54</sup> Survey Respondent.

<sup>55</sup> Question 31 of Court Employee's Questionnaire.

<sup>56</sup> Question 27 of Court Employee's Questionnaire.

<sup>57</sup> Survey Respondent.

<sup>58</sup> Question 35 of Court Employee's Questionnaire.

<sup>59</sup> Survey Respondent.

<sup>60</sup> Survey Respondent.

<sup>61</sup> Question 38 of Court Employee's Questionnaire.

There are many men in administrative positions who get reclassified when they reach the top of a pay grade, whereas women (professional and clerical) reach the top of a grade and stay there.<sup>62</sup>

Clerks of court offices are notorious for keeping women in assistant positions, working for men who assign them all of the work. I cite Baltimore City, Baltimore County, Anne Arundel County, P.G. County and Carroll County as offices I know firsthand this happens. In my immediate office most women are either clerical or mid-level professionals. Only female attorneys enter the higher level positions.<sup>63</sup>

[I] was told court commissioner would not be a woman.<sup>64</sup>

My former supervisor had her title taken away because keeping it would have meant giving her a two grade pay raise.<sup>65</sup>

The complaints regarding preferential treatment on the basis of gender are not limited to its effect upon female employees. Comments from male employees included:

A female administrative clerk in a suburban Washington District made it clear that she enjoyed not having men working in that court and said she intended to keep it that way. This comment was made during the interview of a prospective applicant for a position in that court.<sup>66</sup>

Court supervisory positions always go to women in our district (only one male), and sometimes it appears without proper procedures being followed.<sup>67</sup>

More male employees (17% F, 18% M) also felt that they were asked to perform duties that would not be asked of persons of the opposite gender<sup>68</sup> and that their duties had been increased because of their gender<sup>69</sup> (13% F, 18% M):

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<sup>62</sup> Survey Respondent.

<sup>63</sup> Survey Respondent.

<sup>64</sup> Survey Respondent.

<sup>65</sup> Survey Respondent.

<sup>66</sup> Survey Respondent.

<sup>67</sup> Survey Respondent.

<sup>68</sup> Question 30 of Court Employee's Questionnaire.

<sup>69</sup> Question 28 of Court Employee's Questionnaire.

I am a male and because of that I always have to retrieve heavier or higher up boxes even though there are ladders.<sup>70</sup>

The tough jobs, indelicate matters are usually given to the guys. Am told that if I can't handle the job they will find a real man to do it. Asked to repair things, move equipment, etc. and am harassed if I don't.<sup>71</sup>

Females with less experience and length of service with the state have been given promotions and salary increases over myself. I have been asked to do everything from move furniture to sweep floors while female employees are "exempt" and I'm asked to assist them in various areas while they are not required to do so for me.<sup>72</sup>

Female employees also identified areas where they felt they were singled out to perform certain tasks solely on the basis of their gender. Their open-ended survey responses included the following:

[I] have had to do typing and errand running when male employees are never requested to do these same jobs despite the fact that they do extensive typing in their normal jobs. They are also not expected to help clean the common kitchen or lounge areas.<sup>73</sup>

I am asked to perform personal and/or social duties because of my sex by my supervisors because many of them still feel that women are below men and should do these things as opposed to men.<sup>74</sup>

I have been asked to repair the judge's robe. On another occasion, I have been asked to sew buttons on the judge's robe.<sup>75</sup>

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. Although the same percentage of male and female employees felt that they were denied a promotion because of their gender<sup>76</sup> (6%), more females

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<sup>70</sup> Survey Respondent.

<sup>71</sup> Survey Respondent.

<sup>72</sup> Survey Respondent.

<sup>73</sup> Survey Respondent.

<sup>74</sup> Survey Respondent.

<sup>75</sup> Survey Respondent.

<sup>76</sup> Question 44 of Court Employee's Questionnaire.

than males (13% F, 11% M) felt that someone else was denied a promotion because of gender.<sup>77</sup>

An illustrative comment is:

A woman that worked here for quite a while put in for assistant supervisor, a job that she was well qualified for and a young man got the position who was not as qualified.<sup>78</sup>

Disparate treatment was also reported with regard to job training. Seventeen percent more males thought they were permitted to attend job training programs (57% F, 74% M),<sup>79</sup> and this perception was born out by reality: a higher percentage of males reported actually attending job training programs than females (36% F, 51% M).<sup>80</sup> One female employee explained why she had not attended any job training by stating:

[The] [o]ppportunity [is] not given to the best of my knowledge. Many times the programs are all in Baltimore. If they are offered at all. Last time registration fees were not reimbursed and \$25 is a lot around the beginning of the school year with three children. Promotions are few so why bother wasting your time going?<sup>81</sup>

A higher percentage of male employees reported being reimbursed for registration fees<sup>82</sup> (82% F, 89% M) and mileage expenses<sup>83</sup> (83% F, 91% M) than female employees.

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. Certain State employees who have complaints concerning working conditions, classification, discipline and other matters may take advantage of the Judicial Branch

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<sup>77</sup> Question 46 of Court Employee's Questionnaire. No data are available regarding the gender of the persons thought by court employees to have been denied a promotion.

<sup>78</sup> Survey Respondent.

<sup>79</sup> Question 34 of Court Employee's Questionnaire.

<sup>80</sup> Question 41 of Court Employee's Questionnaire.

<sup>81</sup> Survey Respondent.

<sup>82</sup> Question 41 of Court Employees Questionnaire.

<sup>83</sup> Id.

Grievance Procedure.<sup>84</sup> Of the 31 female employees and 12 male employees who reported filing a complaint involving gender bias on the job within the past two years, however, 70% of the females and 85% of the males felt that the complaint was not resolved to their satisfaction. One employee described her experience:

I filed an E.E.O.C. charge against my office after being denied a new classification. Job duties were lessened in retaliation. When I received my current promotion, my office decided not to replace me, leaving vacant a professional position. That has resulted in significant responsibilities being shifted to me and my all female staff.<sup>85</sup>

She further explained:

My E.E.O.C. charge was based on the fact that a male was compensated at a grade 19. For comparable duties I performed at a grade 13.<sup>86</sup>

## V. MATERNITY AND FAMILY LEAVE

In order to determine whether gender influenced the grant of maternity and family leave, the survey asked the court employees whether they had requested or received leave to: (1) recover from the medical difficulties accompanying pregnancy and child birth; (2) care for an infant or adopted child; or (3) care for an elderly relative.<sup>87</sup>

The Committee also obtained a copy of the State Personnel Leave Policy in order to determine the range of leave options available to State employed court employees.<sup>88</sup> That policy provides the following options with regard to employee leave time:

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<sup>84</sup> The Grievance Procedure excludes the Clerks and Chief Deputy Clerks of the Courts of Appeal, the State Court Administrator and the Deputy State Court Administrator and any individual employed by the Administrative Office of the Courts in pay grade 16 or higher.

<sup>85</sup> Survey Respondent.

<sup>86</sup> Survey Respondent.

<sup>87</sup> The Baltimore City Commission for Women recently published a report about Baltimore City personnel policies on leave, alternative work arrangements, flexible benefit plans and dependent day care provisions. Diverse Needs, Flexible Response: Family-Oriented Personnel Policies for Baltimore City Government (1988). A similar study, if undertaken in the state and county judicial systems, would be an important first step in resolving some of the issues raised in this section of the Report.

<sup>88</sup> See n. 1, *supra*. The State Employees Personnel Leave Policy does not apply to the county employees of the circuit courts. No information was obtained concerning individual county leave programs.

- (1) Sick leave is earned at the rate of 15 working days a year and may be accumulated without limit and is available at any time. It may be used only for illness, injury or disability; for medical, dental, health care appointments; or because of death or illness in the immediate family of the employee.
- (2) Advanced sick leave is available on a pro rata basis at the rate of 15 days for each year of completed State service up to a maximum of 60 days advance sick leave per year.
- (3) Extended sick leave with pay is leave that is granted to an employee who sustains an illness or injury which causes the employee to be absent from work provided that the employee has been in the State service for at least ten years and has used all available sick, annual and personal leave.
- (4) Personal leave is acquired at a rate of 3 days per year and may be used only with advanced permission of the supervisor and/or unit director.
- (5) Annual leave is leave earned on a pro rata basis according to the amount of hours the employee works and the length of service. An employee may not earn more than 25 working days of leave a year and a maximum of 45 work days may be carried into a new calendar year.
- (6) Seasonal or family leave without pay is leave which is available to any employee who needs to take time off from work to care for a newly born or adopted child, a foster child placed with the employee, a seriously ill child of the employee, a seriously ill spouse, parent or legal dependent of the employee, or school age children under the age of 14 during periods of school vacation. All benefits including health care are suspended for the period of seasonal or family leave provided, however, that the employee may continue such benefits as permitted by law by paying the full cost. Approval of seasonal or family leave is at the discretion of the State Court Administrator, but an employee who is granted such leave has a guaranteed right to reinstatement in the position occupied upon approval. Seasonal or family leave may be granted to an employee for a total combined period of not more than 12 weeks within any 12 month period of time.<sup>89</sup>
- (7) Leave of absence without pay may be granted for a period not to exceed one year. For grants exceeding 30 days, the State Court Administrator may require an employee to waive

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<sup>89</sup> This portion of the leave policy came into effect July 1, 1988, after the questionnaires were returned and the public hearings conducted. Thus, there are no data on which to assess how this policy affects current decisions about leave.

reinstatement rights and privileges with regard to the position vacated.

Thus, based upon the structure of the State Employees Personnel Leave Policy, it would appear that the amount of leave time available for maternity would depend upon the amount of sick leave (either regular or advanced) available or the availability of accrued annual or personal leave. The state-offered options for unpaid maternity leave are either seasonal or family leave, which does carry a job guarantee, or leave of absence without pay, which if taken for more than 30 days may require a waiver of a right to reinstatement.<sup>90</sup>

The restrictive nature of the State leave policy places severe limitations upon female employees with regard to the physical demands of pregnancy and childbirth. Eighteen percent of the female employees reported asking for maternity leave,<sup>91</sup> and of those employees, 7% reported having their request for leave denied.<sup>92</sup> Almost all of the full-time female employees who reported taking maternity leave took 3 months or less of leave.<sup>93</sup> It is not known how many of the female employees would have taken more time off had it been available. It is reasonable to assume, however, that the decisions of the 76 employees<sup>94</sup> who took less than one month of leave were in part due to the limited nature of leave available.

In situations where the medical disabilities that accompany pregnancy and child birth were not implicated, a pattern of discrimination on the basis of gender was evident. Similar percentages of males and females (9% F, 10% M) reported requesting leave to care for an infant or adopted

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<sup>90</sup> One obvious option that is missing from the State leave policy is short-term paid leave with a job guarantee. This form of leave could be provided for employees who have completed a specified term of service and would allow them to recuperate from the physical disabilities of childbirth while retaining job benefits, compensation and their jobs.

<sup>91</sup> Question 48 of Court Employee's Questionnaire.

<sup>92</sup> Id.

<sup>93</sup> Id. Seven of the 76 employees who took leave took less than one month leave; 62 took one to three months leave and 7 took three months of leave or more.

<sup>94</sup> Question 48 of Court Employee's Questionnaire.

child;<sup>95</sup> but leave was more often granted to the female than the male (96% F, 81% M).<sup>96</sup> In addition, while similar percentages of males and females requested leave to care for elderly relatives<sup>97</sup> (8% F, 11% M) or dependent children<sup>98</sup> (7% F, 8% M), females employees were more likely to have their requests granted than their male counterparts (90% F, 84% M elderly leave) (95% F, 79% M child leave).<sup>99</sup>

This disparate treatment of male employees with regard to leave is a form of gender bias which denies males coequal status with females as parents and care givers. The preferential treatment of female employees with regard to leave is, in effect, a dual-edged sword which manifests itself as gender bias against females as well. A leave policy that is more liberally applied to females reinforces the concept that females are the primary care givers in society. By refusing males leave, while granting it to females, the court system is implicitly stating that it is a female's "job" to care for children and other family members. This policy also sends the subtle message that females in the work place are expendable and to some extent interchangeable since they often take leave and are replaced by other female employees. 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.

## VI. CHILD CARE

The acute need for adequate care for children of working parents was recognized by both male and female employees, although the percentage of females requiring day care for children

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<sup>95</sup> Question 49 of Court Employee's Questionnaire.

<sup>96</sup> Id.

<sup>97</sup> Question 51 of Court Employee's Questionnaire.

<sup>98</sup> Question 50 of Court Employee's Questionnaire.

<sup>99</sup> Questions 50 and 51 of Court Employee's Questionnaire. It is not clear how many of the employees requesting leave under the circumstances are state employees who would qualify for the seasonal or family leave program. Thus, it would be inaccurate to state that the policy has been applied in a biased manner. What is disturbing, however, is that the percentages seem to indicate that discretionary decisions to grant these forms of leave may be made based upon the gender of the person requesting leave.

under 12 was somewhat higher than that of males (23% F, 16% M)<sup>100</sup>. Nonetheless, only 1% of the employees responded that day care is currently available where they work.<sup>101</sup> Of those employees who indicated that they needed day care for children under 12 years of age, almost half of the female employees (46%) said that they would use day care at work if it were available.<sup>102</sup>

The absence of adequate child care has a disproportionate effect upon female employees because they comprise 74% of the work force.<sup>103</sup> Further compounding the problem is the fact that 66% of the female employees earn \$20,000 or less while 87% earn \$25,000 or less<sup>104</sup>.

In addition, the increasing emergence of female-headed households means that many of these women are trying to support families on their incomes alone. Accordingly, it is hard to imagine how court employees can afford to pay for child care in order to work.

### *FINDINGS*

1. *A majority of female employees occupy the lowest end of the salary scale.*
2. *Female employees remain in lower salaried positions for longer periods of time than male employees.*
3. *Proportionately more male employees occupy higher salaried positions than female employees.*
4. *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.*
5. *Incidents of hostile work environment harassment were reported such as:*
  - (a) *unwelcome physical touching of a sexual nature;*

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<sup>100</sup> Question 52 of Court Employee's Questionnaire.

<sup>101</sup> Question 53 of the Court Employee's Questionnaire.

<sup>102</sup> Id.

<sup>103</sup> Question 56 of Court Employee's Questionnaire.

<sup>104</sup> Question 25 of Court Employee's Questionnaire.

- (b) *unwelcome verbal or physical sexual advances; and*
- (c) *sexist remarks or jokes.*
- 6. *Many court employees perceive that employment decisions are based upon gender-based stereotypes and that preferential treatment is accorded based upon gender.*
- 7. *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 programs.*
- 8. *Male employees who attended job training were more often reimbursed for registration fees and mileage than female employees.*
- 9. *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.*
- 10. *Male employees are more often denied paid family (non-medically related) leave than female employees.*
- 11. *A need exists for on-the-job and/or partially subsidized child care for working parents in the court system.*

## **RECOMMENDATIONS**

### **For Court Administration and the Judiciary**

- 1. *Implement the broadest possible recruitment efforts for all positions on a continuing basis.*
- 2. *Monitor the hiring of non-classified personnel (i.e., those not selected from eligibility lists established by the Secretary of Personnel) to determine if women are part of the eligibility pool.*
- 3. *Review qualification requirements and salary grades of all non-judicial titled State and county employees in the judicial system.*
- 4. *Review all job descriptions of non-judicial titled State and county employees of the judiciary and establish that personal services and errands for supervisors are excluded from those job descriptions.*
- 5. *Provide gender-neutral job descriptions and enforce job requirements without regard to gender.*
- 6. *Set goals to increase the number of qualified women appointed by the circuit bench to the positions of master, commissioner, examiner, and auditor in each county.*
- 7. *Increase appointments of qualified women to all positions within the court system including in the Administrative Office of the Courts, Court of Appeals Clerk's Office, Court of Special Appeals Clerk's Office, other court units under the direction of the Chief Judge of the Court of Appeals, circuit court clerks' offices and those positions within the*

*supervision of the circuit court's bench, the Office of the Chief Clerk of the District Court and the District Court Clerks' offices.*

8. *Monitor training programs to ensure equal access to male and female employees and equal treatment with regard to reimbursement of fees and expenses.*
9. *Develop a system for job-related training of masters, examiners, auditors, commissioners, administrators, professional staff, clerical and technical personnel.*
10. *Allocate training money from state and local sources to implement recommendation 9.*
11. *Propose an appropriate implementation group, under the direction of the State Court Administrator, to ensure the necessary administrative and fiscal support for this education system.*
12. *Issue a directive defining the various types of sexual harassment and stating that this type of behavior is illegal, unacceptable, and grounds for termination.*
13. *Establish a system for confidential reporting and investigating incidents of sexual harassment and monitor the outcome of those complaints.*
14. *Develop education programs for all judicial and court support personnel which address issues of gender bias and sexual harassment. Such programs shall include training in gender bias, neutral hiring procedures, equitable enforcement of gender-neutral personnel policies, and the adoption of gender-neutral management practices in all courts and court-related units.*
15. *Provide training to all judicial and court support personnel in avoiding gender biased verbal and non-verbal communications. This training should encompass internal as well as external communications.*
16. *Issue a local administrative order in each appellate, circuit, and district court to mandate equal treatment of all persons in the courtroom.*
17. *Assure that grievance procedures are available to all employees.*
18. *Implement a short-term program which would provide paid leave and a job guarantee for employees who are temporarily unable to work as a result of disabilities such as those which accompany pregnancy and childbirth.*
19. *Develop a family leave policy with a strong statement on its importance and implementation. Issue a directive stating that decisions concerning family leave are to be made without regard to the gender of the person requesting the leave.*
20. *Establish on-site child care or subsidize off-site child care programs.*
21. *Appoint a permanent joint committee of judges and court personnel from all levels and geographic areas of court to encourage, monitor, evaluate, and report on the efforts undertaken to carry out the recommendations of this Report relating to court employees.*

**For the Bar Association (including State, local, and specialty bar associations**

*Develop programs to sensitize lawyers to the needs of court personnel, especially women, for increased levels of respect and cooperation.*

## CHAPTER 6 JUDICIAL SELECTION

Determining whether gender bias affects judicial selection is important in two respects. The first is public perception about an unbiased judiciary: if judges are selected through a system which discriminates against lawyers who are women or members of a minority group, or both, women and minorities generally will be concerned about whether the state's system of justice takes into account their needs, experiences and interests. Also, they may question whether a biased judicial selection system produces judges who are unbiased. The second concern has to do with equality of opportunity for women lawyers. Elevation to the bench is a goal of many lawyers, and women should not be denied the equal opportunity of realizing the dream.

The first woman appointed to the bench in Maryland was the Honorable Kathryn Lawlor Shook Dufour, who was appointed to the Circuit Court for Montgomery County in 1955.<sup>1</sup> The first and to date only black woman appointed to the bench, the Honorable Mabel H. Hubbard, was appointed to the District Court in Baltimore City in 1981 and the Circuit Court for Baltimore City in 1985.<sup>2</sup> The Honorable Rita C. Davidson became the first woman to serve on an appellate bench when she was appointed to the Court of Special Appeals in 1972.<sup>3</sup> She was also the first, and remains the only, woman to have served on the Court of Appeals, to which she was elevated in 1979.<sup>4</sup> The second woman appointed to the Court of Special Appeals, the Honorable Rosalyn B. Bell, is the only woman serving on an appellate bench today.<sup>5</sup>

As of January 30, 1989, 19 of the 222 judges on the bench were women (9%): one of the 20 appellate judges (5%); ten of the 110 circuit court judges (9%); and eight of the 92 district court

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<sup>1</sup> Thurlow, Profiles, 19 Md. B.J., June 1986, at 25.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id. at 24. The preceding information and the statistics that follow do not take into account judges of the orphans' courts.

judges (9%).<sup>6</sup> As of that date, women have served on the Circuit Courts for Baltimore City and four counties (Baltimore, Frederick, Montgomery, and Prince George's). The remaining 19 counties have never had a woman circuit court judge. The District Court has had women judges in Baltimore City and six counties (Anne Arundel, Baltimore, Frederick, Howard, Montgomery, and Prince George's); none has been appointed in the remaining 17 counties.<sup>7</sup>

Of the 22 judges appointed between May 1, 1986 and June 1, 1988, one is a woman.<sup>8</sup> Given that most women lawyers have entered the profession only in the last 20 years, it is possible that few are old enough for appointment to the bench. An analysis of the ages of the judges appointed during this two-year period, however, suggests that there are sufficient numbers of women lawyers who are of an appropriate age for appointment to the bench. The average age of the judges at the time of appointment is 45. One was older than 65 (4.5%); three were between 55 and 64 (13.5%), eight were between 45 and 54 (36%), and 10 were between 35 and 44 (45%). The largest group of appointees, nearly the majority, were between the ages of 35 and 44 at the time of appointment. The Committee's survey of lawyers sought information about the age of the respondents. Approximately the same percentages of female and male lawyers reported that they were between the ages of 35 and 44 (35% females, 39% males).<sup>9</sup>

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<sup>6</sup> The data were compiled by the Administrative Office of the Courts (report on file with the Committee). Between January 30 and March 15, 1989, an additional woman was appointed. *Id.*

<sup>7</sup> Maryland's figures are comparable to other states for trial but not for appellate courts: 7.2% of all state court judges are women, 6.8% of judges on courts of last resort are women, and 6.5% of intermediate appellate judges are women. ABA Commission on Women in the Profession, Report to the House of Delegates (1988).

<sup>8</sup> The Committee compiled information on the ages of all judges appointed during this two-year period.

<sup>9</sup> An additional measure of the pool of available candidates is the relative numbers of male and female lawyers who have a degree of legal experience similar to that of judicial appointees. A rough measure of legal experience is reflected in the number of years between a person's admission to the bar and his or her appointment to the bench. Exactly half of the 22 judges appointed between May 1, 1986 and June 1, 1988 had been admitted to practice for between 10 and 19 years at the time of their appointment. Of those who responded to the Committee's survey, 32% of male lawyers and 16% of female lawyers had been admitted to practice for between 10 and 19 years. While the proportion of women in this group is smaller than the proportion of men, the data indicate that the pool of women with sufficient experience for appointment to the bench is adequate.

To determine whether gender bias has affected the selection of judges, the Committee solicited information on the issue at its hearings, in private meetings, and by letter. In addition, questions were included in the Committee's survey of judges and lawyers. The Committee identified problems in the judicial selection process which may be attributable to gender bias and which result in few women being appointed to the bench.

The judicial selection process in Maryland has two steps. For each judicial vacancy, a nominating commission screens candidates and develops a list which is transmitted to the Governor. The Governor has elected to make his appointments from such lists as augmented by lists of nominees submitted within a year of the occurrence of the existing vacancy. Under certain very limited circumstances, the Governor may ask the commission to develop a new list.<sup>10</sup>

The Committee's survey asked judges and lawyers whether they were "aware of any instances of gender bias in the judicial selection process."<sup>11</sup> Of those with an opinion, 13% of male attorneys, 20% of female attorneys and 15% of male judges said they were aware of instances of gender bias. Those women who had succeeded in the appointments process, women judges, had the strongest negative feelings about it. An overwhelming 69% of female judges answered that they were aware of gender bias in the selection process.

The surveys also invited respondents to provide open-ended responses about gender bias in the judicial selection process. Concerns were expressed in two directions: some respondents believe that nominating commissions discriminate against women, while others believe that women have been accorded special favorable treatment in the appointments process.

Nominating commissions were criticized on two grounds: their composition and the criteria they apply. Each commission has attorney and lay members. While approximately two-

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<sup>10</sup> Executive Order 01.01.1988.06 (March 31, 1988).

<sup>11</sup> Question VII of Judges' and Lawyers' Questionnaires.

fifths of the lay members are female, only about a tenth of the attorney members are female.<sup>12</sup>

This composition may influence the criteria applied by commissions to applicants. The Committee was told repeatedly that higher standards were applied to female applicants with respect to matters such as professional experience.

It doesn't seem to matter how qualified the woman is, how many years she has had and the trials she has had, [the question is,] is it the woman's turn? And if a woman should get appointed, that ... doesn't mean a woman is qualified. After all, it was a political decision. And that woman judge again has to prove and reprove that she is a good judge and a good attorney.<sup>13</sup>

Women are still judged by stricter standards than male applicants for judicial appointments.<sup>14</sup>

Respondents and witnesses also reported that inappropriate criteria are applied in the screening process, and that these criteria disadvantage women. For example, public sector experience is given less weight than private sector experience, and fewer women applicants come from the private sector.<sup>15</sup> Experiences that male attorneys are more likely to have, such as numerous jury trials and criminal prosecution work, are highly valued by commission members.<sup>16</sup> Both relate to only a portion of a judge's job, however, and other equally important experiences, such as bench trials and domestic relations representation, are likely to be more prominent on a female candidate's resume.<sup>17</sup>

Of equal significance are reports that members of nominating commissions hold and act on negative stereotypical views about women. For example, commissions were reported to be

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<sup>12</sup> As of February 1989, 47 of the 146 members of the commissions were female. Of these, nine were attorneys, and 38 were lay people. The information was compiled by the Administrative Office of the Courts, and is on file with the Committee.

<sup>13</sup> Testimony of Roberta McCarthy, Esquire, Prince George's County Women's Lawyer Caucus, Prince George's Cty. Tr., p. 86.

<sup>14</sup> Survey Respondent.

<sup>15</sup> Testimony of Albert Matricianni, Esquire, Balto. City Tr., p. 132. Even matters as trivial as a female candidate's style of dressing may be reviewed and criticized harshly by commission members. See testimony of the Honorable Kathleen O'Ferrall Friedman, Balto. City Tr., p. 171.

<sup>16</sup> Testimony of Albert Matricianni, Esquire, supra.

<sup>17</sup> Id.

interested in irrelevant matters such as the family responsibilities of female candidates, their spouses' occupations<sup>18</sup> and their need for the job. Questions such as these arise from a traditional set of beliefs that women are always responsible for the care of children and that their careers and views are subordinate to those of their husbands. Because these stereotypes apply only to women, questions about child care and the like are not asked of male candidates. Commissioners also were reported to have questioned the ability of female candidates to control a courtroom because of their "small" voices and stature.<sup>19</sup>

Members of the commission ask women applicants about their children, their husband's activities, their opinion on abortion and whether their spouse will be "sharing in the decision-making process." Unmarried applicants are immediately suspect and are subjected to inappropriate questions about personal life activities, etc.<sup>20</sup>

Inquiries are made of women applicants, but not of men, regarding child care arrangements.<sup>21</sup>

I wish someone could convince [nominating commissions] that if they are going to ask anyone what they [do] with their kids when they're going to be a judge, they should ask everyone, not just women.<sup>22</sup>

[Comments were made such as] "He has a wife and family. She has a husband. She doesn't need this job and he does."<sup>23</sup>

Finally, the Committee learned that there is a widespread belief that a quota system applies to women judges. Once "enough" women have been appointed, no more need apply.

[An appointment of one woman judge] may mean for those behind her, well, we've had a judge in the past year, we don't need another woman judge for two years. That kind of pervasive tokenism is gender bias.<sup>24</sup>

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73. <sup>18</sup> Testimony of Gail Bagaria, Esquire, Prince George's County Women's Lawyer Caucus, P.G. Cty. Tr., p.

<sup>19</sup> Testimony of Albert Matricianni, Esquire, Balto. City Tr., p. 142; Survey Respondent.

<sup>20</sup> Survey Respondent.

<sup>21</sup> Survey Respondent.

<sup>22</sup> Testimony of Anne Ogletree, Esquire, Eastern Shore Tr., p. 76.

<sup>23</sup> Testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., p. 44.

<sup>24</sup> Testimony of Roberta McCarthy, Esquire, P.G. Cty. Tr., p. 86.

Seems to be a tacit "quota" of women.<sup>25</sup>

Appointments made because it was a woman's turn.<sup>26</sup>

Everyone knows that women are sought to fill certain vacancies when it is politically advantageous.<sup>27</sup>

Prior to meeting of judicial [nominating commission], the "word" is out whether it is a "woman's" turn.<sup>28</sup>

To the extent that the judicial nominating process is affected by discriminatory attitudes, stereotypes and criteria such as those described to the Committee, female candidates will not be given a fair opportunity to be appointed to the bench. In addition, limiting the numbers of women on the bench to a small quota reinforces the discriminatory environment women face.

The Committee found evidence that potential female judicial candidates face discrimination from a source outside the nominating commission process: their fellow members of the bar.<sup>29</sup> Witnesses and survey respondents reported that women often find the bar hostile to the efforts of female lawyers to be elevated to the bench. The appointment of the Honorable Martha Wyatt, the first and only woman appointed to the bench in Anne Arundel County, was offered as a case in point. Judge Wyatt's appointment to the bench was accompanied by "hysteria," according to a witness before the committee. Male lawyers declared her to be incompetent, and the lawyer

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<sup>25</sup> Survey Respondent.

<sup>26</sup> Survey Respondent.

<sup>27</sup> Survey Respondent.

<sup>28</sup> Survey Respondent.

<sup>29</sup> Evaluation of the experience and reputation of candidates by the nominating commissions also may be affected, to a degree not determined by the Committee, by the screening process which various bar associations use to evaluate or endorse candidates. Certain commissions, for example, meet with local bar association leaders to discuss candidates, and many bar associations provide evaluations or endorsements of candidates to commissions. See, e.g., Bylaws of the Maryland State Bar Association, Inc., Article 7, § 5; Bylaws of the Anne Arundel County Bar Association, ¶ f; Bylaws of the Women's Bar Association of Maryland, Section 6. If the evaluation or endorsement procedures of bar associations discount the qualifications of female candidates, an additional source of possible gender bias is introduced into the judicial selection process.

members of the nominating commission reportedly voted against her.<sup>30</sup> One survey respondent described the events as follows:

Women's failure to be part of the network [of the private bar] has caused them to do poorly when "popularity" polls are circulated to the bar [about judicial candidates]. The furor surrounding the appointment of Martha Wyatt is a prime example. Totally unjustified remarks were made as to her qualifications. Letters to the editor were written and an editorial cartoon published -- all because she wasn't one of the boys. She has been a superb judge and many of those originally questioning her ability have since apologized.<sup>31</sup>

A person who is considering whether to apply for a judgeship must keep in mind that he or she will continue to practice law in the same community if the attempt fails. An application process which harms one's professional reputation in that community is too great a risk for most practitioners. If potential women candidates believe that they will face hostility and vilification such as that which greeted Judge Wyatt's application, they will not apply for the bench. Therefore, many talented and capable women will be unavailable to serve the state, and the pool of those who will take the risk will be too small.

The Committee's investigation shows that, unfortunately, antagonism to women candidates appears to be quite strong among male lawyers. Open-ended responses of a number of male survey respondents are illustrative:

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<sup>30</sup> Testimony of Paula Peters, Esquire, Anne Arundel Cty. Tr., p. 1-26.

<sup>31</sup> Survey Respondent. In an editorial which appeared after Judge Wyatt's death of cancer at 47, the Evening Capital described her as "remarkable," and "a judge who earned the respect of colleagues for blending legal judgment with compassion and understanding." The editorial concluded that:

Coincidentally, a special panel has been studying sex discrimination in Maryland's judicial system. The most fitting memorial to Martha Wyatt would be reform action to erase such discrimination.

Of course, male-dominated courts tend to be blind to sex bias, especially in its more subtle forms. That is why the Judicial Nominating Commission should seek qualified women candidates to fill the vacancy Judge Wyatt left, and recommend such women for appointment to Gov. William Donald Schaefer.

Evening Capital, Dec. 16, 1987.

Judge Wyatt was not succeeded by a woman.

Over the past 10 years, women with less qualifications picked over males far greater qualified.

It happens all the time. Women are being selected because of their sex.

[I] believe female judicial aspirants with no trial experience beyond administrative attorney-general type stuff have preference over other trial-trained candidates.

Judicial selection has tended to favor females out of a misplaced sense of imbalance on the bench.

Women are picked because they are women, not because they are qualified or unqualified.

The Committee's investigation does not substantiate the allegations made by these respondents that women are appointed frequently to the bench or that those appointments are made without regard to qualifications. If anything, the Committee's investigation indicates that the opposite is true: only three of 36 recent judicial appointments have gone to women,<sup>32</sup> and women candidates have been subjected to intense scrutiny. In these circumstances, the antagonism evidenced in the survey responses is nothing short of astonishing. Male lawyers must accept some of the responsibility for the small numbers of women on the bench because their attitudes have contributed to making the journey to the bench more difficult and more risky.

### ***FINDINGS***

1. *Too few women lawyers have been elevated to the bench*
2. *Female candidates for judicial appointments are asked irrelevant questions about family responsibilities.*
3. *Female candidates for judicial appointments often are subject to different standards than those applied to male candidates.*
4. *Female candidates for judicial appointments often are subject to stereotyped expectations about appropriate professional experiences, stature and demeanor which devalue their abilities and background.*

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<sup>32</sup> Appointments made between July 1, 1986 and January 30, 1989. See n. 6, supra.

5. *Some women lawyers have been denied equal opportunity for judicial appointments by judicial nominating commissions which subject them to biased, irrelevant, and stereotypical standards.*
6. *Some women lawyers have been denied equal opportunity for judicial appointments by an informal quota system which results in token appointments.*
7. *Some male lawyers have been antagonistic to the efforts of women candidates to be elevated to the bench.*

## **RECOMMENDATIONS**

### ***For Bar Associations (including State, local, and specialty bar associations)***

1. *Review mechanisms by which judges are nominated and elected or appointed, identify impediments to achieving fair representation and develop means to assist qualified women in gaining judicial appointment.*
2. *Review the process for selecting attorney members of the Judicial Nominating Commissions to determine whether it ensures the selection of members from a broad cross-section of the bar, including women.*
3. *Conduct a joint study to review the entire judicial selection process to determine whether and how the process can be improved, with specific attention to the following:*
  - a. *Survey the members of the Judicial Nominating Commissions to evaluate the mechanisms and procedures used and substantive criteria applied by the Commissions in selecting nominees.*
  - b. *Evaluate whether there is a need to develop and apply uniform standards and questions, keeping in mind geographic distinctions.*
  - c. *Determine the effectiveness and impact of the candidate evaluations conducted by the bar associations and other interest groups.*
  - d. *Determine the extent of influence on the decisions of commission members by individual judges, politicians, concerned citizens, and members of the bar.*
  - e. *Determine what resources are and should be available to and what resources are utilized by the commissions.*
4. *Review the selection committee and/or evaluation processes of each bar association to determine whether they ensure gender-neutrality and, if not, determine what changes are required to achieve gender-neutrality.*

### **For Court Administration**

*Review the confidential questionnaire which is filled out by applicants for judicial office to eliminate questions which elicit gender-biased information including*

- a. marital status*
- b. general questions relating to past medical leaves from work as they relate to child birth or maternity leaves.*

### **For Judicial Nominating Commissions**

- 1. Circulate copies of this Report to all members of each commission and sensitize members to the subtlety and insidiousness of gender bias.*
- 2. Circulate proposed questions similar to those prepared by the National Association of Women Judges (Appendix, Exhibit F) as a guide to formulating questions designed to elicit the level of sensitivity to gender bias on the part of an applicant.*
- 3. Preclude questions to candidates concerning marital status and child care arrangements.*
- 4. Educate members about the common misperceptions that lack of experience in criminal cases or concentration in domestic relations or public service areas of the law render an attorney unqualified for the bench.*
- 5. Preclude sexist remarks and discussion of physical attributes of a candidate when evaluating applicants for the bench.*

**CHAPTER 7**  
**WOMEN IN THE COURTROOM:**  
**TREATMENT OF WOMEN PARTIES, WITNESSES,**  
**JURORS, AND LAWYERS**

The Committee received abundant information indicating that women lawyers, parties, witnesses and jurors are treated differently in court solely because of their sex. Sometimes the biased or stereotyped treatment favors men and sometimes women. All of it is of concern to the Committee because biased treatment is unfair and unacceptable in a judicial system dedicated to the impartial administration of justice.

The Committee investigated gender bias in the courtroom by surveying judges, lawyers and court personnel, by hearing testimony at hearings around the state, and by receiving information from people who wrote to the Committee. This chapter will address the treatment of parties, witnesses and jurors first, then the treatment of female lawyers.

**I. FEMALE PARTIES, WITNESSES, AND JURORS**

**A. Parties**

The Committee asked judges and lawyers whether the gender of the parties had affected the litigation process or the outcome of particular cases.<sup>1</sup> Of those expressing an opinion, 21% of male attorneys, 31% of female attorneys, 11% of male judges, and 67% of female judges answered they were aware of such cases. In the open-ended supplements to the question, judges and male and female lawyers tended to agree that male litigants were advantaged in disputes involving financial matters pertaining to divorce, such as child support, alimony, and property division, and in rape prosecutions. None of these views was unanimous, however. Some female and male lawyers reported believing that male litigants are advantaged in child custody disputes, while others believed that female litigants have the advantage. Both male and female lawyers reported that women experience credibility problems, but they diverged on the subjects: female lawyers reported problems about women's testimony in child support, alimony, acquaintance rape,

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<sup>1</sup> Question V of Judges' Questionnaire; Question IV of Lawyers' Questionnaire.

domestic violence, and sexual abuse cases (involving the witness or her child), while male lawyers reported problems about women's testimony in personal injury cases. No credibility problems were reported for male litigants. Male and female lawyers reported believing that women are treated more leniently than men in criminal sentencing.

The perceptions of lawyers about the impact of gender bias were also sought in a series of questions asking whether the courts "apply, interpret and enforce laws [relating to a particular area] 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."<sup>2</sup> Family law was broken into five subdivisions: marital property, alimony, child support, custody of children and visitation. In the area of the custody of children, more than a majority of male and female lawyers expressing an opinion say that both men and women are treated equally (69% of female lawyers and 77% of male lawyers). On most other family law issues, more male lawyers than female lawyers reported that men and women are treated equally. For example, of those expressing an opinion, between two-fifths and one half of male lawyers believe men and women are treated equally with respect to the amount of the monetary award (51%); alimony modification (49%), duration (44%), and enforcement (43%); and child support amount (48%) and modification (43%). Relatively few female lawyers with an opinion on the same questions agree. A fifth or fewer report believing that men and women receive equal treatment with respect to the amount of the monetary award (20%); alimony modification (13%), duration (17%), and enforcement (15%); and child support amount (15%) and modification (13%). On each issue, further, over half of female attorneys report believing that male litigants receive more favorable treatment than female litigants. In each instance when male attorneys report a belief that female litigants are advantaged over male litigants, fewer than two-fifths of male attorneys agree.

In the area of gender bias in domestic violence cases, both male and female lawyers reported believing that women and men are not treated equally in a variety of ways. For example,

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<sup>2</sup> Question I of Lawyers' Questionnaire

only a third of female lawyers (31%) and about half of male lawyers (51%) report that men and women are treated equally in securing a protective order. About a third of female lawyers think the advantage is held by men in these proceedings, while a third think the advantage is held by women. Only 9% of male lawyers think men have an advantage in these proceedings, while 40% believe women do.

A widespread perception that gender bias affects the process or outcome of particular cases is important because such bias undermines the image of impartiality which is crucial to the system. Where that perception has a basis in fact, it is imperative that the judicial system eliminate it in order to protect the reputation of the judiciary for impartiality. In many instances, as this Report documents, the reports of respondents about gender bias have a basis in fact: it is true that women suffer a disadvantage in many arenas of the legal system, in terms of both credibility and case outcome, and it is also true that men suffer a disadvantage in some custody disputes.

It is important not only to understand and correct gender bias, but also to correct misperceptions about gender bias. The Committee found no evidence to support the perception of some respondents that women are sentenced more leniently than men. The Committee uncovered the perception of bias by way of two survey questions. The Committee's survey of judges asked whether "[j]udges give sentences, based solely on gender, to female defendants that are (less severe, about the same, more severe) than they give to male defendants."<sup>3</sup> Again, about two-fifths (41%) of judges believe that women are sentenced less severely than men. Finally, the same question was asked on both surveys: "Women offenders are sentenced below the guidelines (less

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<sup>3</sup> Question 44 of Judges' Questionnaire. About a quarter of the judges (27%) responded affirmatively to a survey question asking whether mitigating factors in sentencing would be different for a male than for a female. Questions 45 and 46 of Judges' Questionnaire. The most frequently cited reasons for treating them differently is pregnancy and child care responsibilities, which female defendants were said to bear more frequently than male defendants; the respondents did not want to leave the children without caretakers. If child care were such a common reason for treating women more leniently, however, one would expect to see a greater degree of difference between the percentage of men and women sentenced within the guidelines. What appears to be much more likely is that women with responsibilities for children qualify for lower sentences under the guidelines. For example, their criminal records may not be extensive or the crimes may not be severe.

frequently than men, about the same as men, more frequently than men)."<sup>4</sup> Of those with an opinion, 38% of judges, 65% of male lawyers, and 70% of female lawyers believe that women are sentenced below the guidelines more frequently than men.

Despite the widespread perception of bias toward women in sentencing, according to the data collected by the Administrative Office of the Courts about the application of Maryland's Sentencing Guidelines between 1983 and 1986, women and men received similar treatment: 69.3% of men and 73.6% of women were sentenced within the guidelines.<sup>5</sup> In terms of leniency, the claim can be made that men are treated better than women, because 25.4% of men and only 22.9% of women were sentenced below the guidelines. At the same time, somewhat fewer women than men were sentenced above the guidelines: 3.5% versus 5.3%.<sup>6</sup>

## B. Witnesses

Parties and witnesses have the right to believe that gender will play no role in determining how they are received in a courtroom. Their testimony should be heard with fairness and impartiality, whether they are male or female. The Committee obtained information about whether these expectations are met from surveys of judges, lawyers, and courtroom personnel, testimony at hearings, and letters sent to the Committee. The Committee has found that

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<sup>4</sup> Question 43 of Judges' Questionnaire and Question III of Lawyers' Questionnaire.

<sup>5</sup> Report on file with the Committee.

<sup>6</sup> The Committee was advised that greater severity in sentencing may be common for female defendants who are convicted of violent crimes against their husbands or partners, even in cases where the defendants may have been acting in self defense. Testimony of Mary Joel Davis, *New Directions for Women*, Balto. City Tr., pp 99-100; statement of Sheila Litzky (on file with Committee). It was also said that male defendants who are convicted of violent crimes against their wives, partners, or other women with whom they had a relationship received lighter sentences than men with no relationship to their victims. Statement of Sheila Litzky (on file with Committee). In response to a survey question on this subject, over 50% of all lawyers and 20% of judges with an opinion on the question said that it is often true that "[s]entences are shorter where the victim had a prior relationship with the defendant." Question 42 of Judges' and Lawyers' Questionnaires.

The data collected about sentencing guidelines by the Administrative Office of the Courts do not indicate the gender of the victim or the victim's relationship to the defendant, so the Committee cannot investigate whether gender bias is involved in sentencing in these circumstances. The allegations are serious, however, and the Administrative Office should undertake to collect data from both the District Court and the circuit courts about the victim's relationship to the defendant and the gender of the victim.

expectations about fair and impartial treatment of female parties and witnesses are not met.<sup>7</sup> The fact that parties and witnesses are female is noted in circumstances where sex is irrelevant. Often, female parties and witnesses are treated disparagingly and their credibility is undermined by trivializing or sexually-oriented comments and forms of address. On some occasions, their testimony is given little weight solely because of gender.

The Committee heard testimony that women parties and witnesses too often have to hear judges talk about their gender when it has no pertinence to the proceedings. For example, one judge was reported to have used gender-focused comments to defuse a tense courtroom situation when the witness was an attractive woman.<sup>8</sup> Although the judge apparently believed his comments to be innocent, or even flattering, a female party to the case was put in doubt about her chances because she was not as attractive as the witness. The Committee heard about many comments by judges referring to the sexuality of the party or the witness, despite the irrelevance of the person's sexual conduct to the proceedings. A criminal defendant reported that a judge accused her of promiscuity when the issue before the court was whether to suspend the balance of her sentence because she had been found HIV positive.<sup>9</sup> The custodial parent in a child support case reported that the judge accused her of being unfit to have custody of her older children because she had given birth to an illegitimate child.<sup>10</sup> In a divorce case not involving adultery, the wife was asked if she had been "chaste."<sup>11</sup> In a different divorce case, the judge noted the wife's physical appearance in detail, including describing her as "not what would be called a chesty individual,"

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<sup>7</sup> The committee's surveys and announcements invited information about the experiences of the male and female participants in the judicial system. No information was received indicating that male parties and witnesses are treated in ways which undermine their credibility or raise concerns about whether their testimony is being given fair and impartial reception. It seems fair to conclude that, overall, women suffer the more significant harm in terms of issues affecting the credibility and treatment of parties and witnesses.

<sup>8</sup> Testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., p. 43.

<sup>9</sup> Testimony of Ruth Lopez, Eastern Shore Tr., pp. 6-7.

<sup>10</sup> Testimony of Kathy Abey, Eastern Shore Tr., p. 96.

<sup>11</sup> Testimony of Donna Richardson-Smith, Baltimore Cty. Tr., pp. 101-106.

and the possessor of a "Mona Lisa smile."<sup>12</sup> The appearance of the husband was the subject of only brief notice.

In rape prosecutions, the defense attorney may attempt to address improper questions to the complaining witness about her sexual activity and history.<sup>13</sup> The Committee surveyed judges and lawyers to determine whether "[j]udges control the court so as to protect the complaining witness from improper questioning."<sup>14</sup> Roughly half of female attorneys (48%) and a third of male attorneys (31%) replied that the statement is only true sometimes. A fifth of the judges (19%) agreed. Nearly a fifth of female attorneys (18%) and a tenth of male attorneys reported that the statement is rarely or never true. Unless the court asserts control in this situation, the complaining witness will be subjected to hearing the defense attorney make inappropriate comments about her sexuality. She may even be forced to provide irrelevant testimony about her sexual activity and history.

The Committee asked judges, lawyers and court personnel whether "[c]omments are made [by judges] about the personal appearance of women litigants or witnesses when no such comments are made about men."<sup>15</sup> Of those expressing an opinion, nearly half of female attorneys (46%) and a third of female court personnel (31%) said the statement is always, often, or sometimes true. Nearly a fifth of the male attorneys and court personnel agreed that it always, often, or sometimes occurred. Nearly all judges (97%), on the other hand, reported that such comments are rarely or never made.

Judges, lawyers, and court personnel were also asked whether lawyers made comments about the personal appearance of women litigants or witnesses.<sup>16</sup> Female attorneys and court personnel were again the most likely to report such comments: 68% of female lawyers and

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<sup>12</sup> Testimony of Janice Bova, Prince George's Cty. Tr., p. 149.

<sup>13</sup> See Md. Ann. Code art. 27, § 461A (1987).

<sup>14</sup> Question 41 of Judges' and Lawyers' Questionnaires.

<sup>15</sup> Question 5 of Judges', Lawyers' and Court Employees' Questionnaires.

<sup>16</sup> Question 5 of Judges', Lawyers' and Court Employees' Questionnaires.

38% of female court personnel reported such comments always, often, or sometimes occur.

Nearly a third (33%) of male lawyers and a fifth of male court personnel (22%) agreed, along with 17% of the judges.

When the appearance and sexual activity of a female party or witness become the focus of the court's attention, whether by comments from the judge or the lawyer, the impartiality of the court must come into question. The woman can be made to feel like an object who is present in court solely to be examined and evaluated for her physical form and sexual performance. She may understand the court's message to be that what she has to say has little meaning in comparison to how she looks and behaves.

Focusing inappropriate attention on a woman's body and sexuality is only one way that women in the courtroom are treated differently from men. They also are addressed more informally, and, as a result, made to feel less important. "Young lady" is a term often applied to women parties and witnesses,<sup>17</sup> as are "hon" and "sweety,"<sup>18</sup> "pretty little lady"<sup>19</sup> and "babe."<sup>20</sup> The informal names are similar in that they refer to women as young and small, not the type of person one would listen to with seriousness.

The Committee's surveys asked judges, lawyers and court personnel whether "[w]omen litigants or witnesses are addressed [by judges] by first names or terms of endearment when men are addressed by surnames or titles."<sup>21</sup> Of those with an opinion, 34% of women lawyers said such addresses are always, often or sometimes used. Their opinion was shared by 17% of female court personnel. Judges, male lawyers, and male court personnel did not report that such forms of address were used with any frequency. The reports changed somewhat when

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<sup>17</sup> Testimony of Helen Tayman, Anne Arundel Cty. Tr., 1-55; Tayman v. Tayman, Equity No. DR 79-4466, Cir. Ct. for P.G. Cty., Nov. 21, 1980; Adams v. Leager, Civ. No. 85026L, Cir. Ct. for Cecil Cty., February 9, 1987 (transcript on file with Committee).

<sup>18</sup> Testimony of Joan Bossman, Balto. City Tr., p. 87.

<sup>19</sup> Testimony of The Honorable Theresa Nolan, P.G. Cty. Tr., p. 118.

<sup>20</sup> Survey Respondent.

<sup>21</sup> Question 3 of Judges', Lawyers', and Court Employees' Questionnaires.

the respondents were asked whether lawyers were the ones addressing litigants and witnesses. Over half of female lawyers (57%) and a quarter (25%) of female court personnel reported that lawyers always, often, or sometimes use inappropriately informal forms of address. Their perception was shared by 19% of judges, 13% of male attorneys, and 12% of male court personnel.

Witnesses told the Committee that they felt that the testimony of female witnesses and experts was not believed and that judges imposed a higher burden of proof on women than on men. Where these cases involve child custody and domestic violence, they are discussed at greater length in this Report in chapters on those topics.<sup>22</sup> To determine whether there is a general perception of bias in this regard, the Committee asked judges, lawyers, and court personnel in its survey whether "[j]udges require more evidence for a female litigant to prove her case than for a male litigant."<sup>23</sup> Of those with an opinion on the question, more than two-fifths (43%) of female lawyers thought the statement is always, often, or sometimes true, an opinion shared by 22% of female court personnel. Most male lawyers (82%) and male court personnel (81%) believed the statement is never true, but nearly a fifth (17% of male lawyers and 19% of male court personnel) thought it is true sometimes or rarely. All the judges who answered the question denied that the statement is ever true.

Judges, lawyers, and court personnel also were asked whether "[j]udges appear to give less weight to the testimony of female experts than that of male experts."<sup>24</sup> Of those expressing an opinion, 43% of female attorneys<sup>25</sup> and 19% of female court personnel thought the statement is sometimes true. Male attorneys and male court personnel agreed that the phenomenon

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<sup>22</sup> The Committee also sought information on the treatment of rape victims in its survey of judges and lawyers. Respondents were asked whether "[r]ape victims are accorded less credibility than victims of other types of assault." Of those expressing an opinion, over half of female attorneys (51%) believed the statement to be always or often true. Twenty percent of male attorneys agreed, as did 9% of judges.

<sup>23</sup> Question 11 of Judges' and Lawyers' Questionnaires; Question 10 of Court Employees' Questionnaire.

<sup>24</sup> Question 11 of Judges' and Lawyers' Questionnaires; Question 10 of Court Employees' Questionnaire.

<sup>25</sup> Another 2% believed the statement is always true and 13% thought it is often true.

occurs, but with less frequency: 9% of male attorneys and 3% of male court personnel thought the statement sometimes is true. All but 2% of the judges, on the other hand, reported that this never happens.

Despite the consistent denials by judges in response to the Committee's surveys, it is clear that many observers, both male and female, agree that women litigants and witnesses too often receive different and worse treatment than men. This differential treatment does not go unnoticed; it undermines respect for the law and convinces people that they can be deprived of a fair and impartial hearing solely because of their sex.

Women litigants face an additional disadvantage in the courtroom: sometimes their circumstances require them to have children with them. This is particularly true in cases involving domestic violence, child support, juvenile proceedings, and landlord/tenant cases. It occurs when the mother is the primary or sole caretaker of the child and cannot afford to pay someone to care for the child during the court appearance, as well as in cases where the child's presence is required by the court.

So far as the Committee is aware, no courthouse in this State has made provisions for assisting litigants to care for children who must accompany them to court. As a result, children must be brought into the courtroom while the parent, usually a mother, waits for the case to be called. Women have reported being criticized by judges for the behavior of these children, who naturally can get restless. Some women are put to the choice of waiting in the hall with their children and missing the call for their cases, leaving the children in the hall alone, or disciplining them inappropriately to compel the quiet behavior required in the courtroom. Some women have been required to testify with children in their laps. Other women have been forced to abandon their cases and leave the courthouse because of the needs of their children.

Courts can assist these litigants in many ways. Suggestions include scheduling hearings in cases where children are likely to be in court at specific times, rather than putting these cases on a general list. This will permit the parent to schedule a limited period of time for being in

court, rather than the whole day. The parent may be able to afford to provide child care for that limited time. Second, courts could give priority to cases in which litigants have brought children, so the children need not wait so long. Third, courts could provide drop-in centers where the children are cared for in a safe and appropriately staffed facility.<sup>26</sup> Other solutions can be devised for this troubling problem. Ignoring the problem, however, means maintaining the status quo, which places an unacceptable burden on women litigants. That is a form of gender bias which, in effect, deprives women of equal access to the courts.

### C. Jurors

Although sex discrimination in jury service is explicitly prohibited by statute,<sup>27</sup> the Committee found that the selection of the foreperson of a petit jury may be affected by gender bias. All other factors being equal, a selection system that pays no attention to gender should result in roughly half of the petit jury forepersons being female and about half male. To determine whether the system works in a gender-neutral fashion, the Committee asked judges how many times in the last year they had selected a woman as jury foreperson. More than a quarter of judges (29%) reported that they selected women between 40 and 60% of the time.<sup>28</sup> This group of judges, therefore, achieves the level of selecting women roughly half the time, which is what one would expect in a gender-neutral system. It may be that these are the same judges who answered another survey question about selection criteria by saying that they choose, essentially, by chance. Typically, these judges designated the person who sits in the first seat in the jury box to be the foreperson.<sup>29</sup>

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<sup>26</sup> For example, the Superior Court for the District of Columbia opened a day care center in 1974. It is used by approximately 300 children each year while their parents are in the courthouse. The Washington Lawyer, Aug. 1988, p 20.

<sup>27</sup> Md. Cts. Jud. Proc. Law Code Ann. § 8-103; see Tolbert v. State, No. 65, Sept. Term 1988 (CA Feb. 15, 1989) at n. 7.

<sup>28</sup> Table 23. The figure drops to 27% when female judges are excluded from the sample.

<sup>29</sup> Question 47 of Judges' Questionnaire.

In contrast to these judges, another 28% of the judges reported that they selected women fewer than 40% of the time, while 10% reported that they selected women more than 60% of the time.<sup>30</sup> These responses indicate that a selection system which takes gender into account may be at work. Judges did not indicate an awareness, however, that what some of them are doing may be influenced by gender bias. For example, another question on the Committee's survey asked judges if they "recall cases in which you felt it was advantageous to have a male jury foreperson." Only 15% of the judges answered yes.<sup>31</sup>

To the extent that gender bias affects the selection of the foreperson, it must come into play when judges apply subjective criteria. The most common subjective criteria reported to the committee were, in order, "education" or "intelligence," "leadership," and "experience." None of these terms was defined, so it was impossible to tell with certainty how the criteria are gendered. The open-ended responses to another question suggest that sometimes these criteria may have gendered meanings, however.<sup>32</sup> When asked whether a male foreperson might be advantageous, typical comments included:

I do perceive some males as being more authoritative.

[It is a] gut reaction -- cannot be specific -- have had more "hung" juries with female foreperson.

At time[s] men assert more control over deliberation of jurors.

[In] cases with press notoriety; it often takes the apparent physical force of a man to control the papperazzi.

If these comments are typical of how judges feel when selecting a foreperson, stereotypical feelings about men having superior leadership abilities may be influencing the selection process.

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<sup>30</sup> A third of the judges did not respond to the question.

<sup>31</sup> Question 49 of Judges' Questionnaire.

<sup>32</sup> It is possible that these comments reflect characteristics of the particular jurors involved, and, therefore, are not the product of gender-based stereotypes.

In addition, some judges reported believing that a male foreperson is an advantage in cases involving technical and mechanical issues and complicated contractual or business disputes. These comments also suggest that stereotypical thinking about male superiority in one or more of the areas of innate abilities, intelligence, or education may be at work in the selection process.

While gender bias in the selection of the jury foreperson does not appear to be a major issue, the cases in which biased selection occurs cannot be overlooked. Women as well as men are capable of providing leadership and understanding to the jury deliberation process, and their abilities should not be devalued because they do not fit male stereotypes. When a judge selects a foreperson for reasons having to do with gendered expectations and stereotypical thinking, the judge is reinforcing outdated social norms and depriving men and women of opportunities to perform all the roles in the society for which they are qualified as individuals. Furthermore, by using gendered criteria, the judge sends the message to others in the courtroom, whether they are lawyers, parties, witnesses, or court personnel, that women and men are different as groups, and can and should be treated differently.

## **II. FEMALE ATTORNEYS**

Women are entering the legal profession in large numbers. Twenty years ago, only 4% of lawyers were female; today, a fifth of the bar nationally is female.<sup>33</sup> Not only are the numbers growing, so are the opportunities. Rather than being hired primarily by public agencies or relegated to estates and trusts department in private firms, women today are involved in every phase of legal practice. Litigation, long a heavily male specialty, is now engaged in by many women, both in the public and the private sectors.

According to the Committee's information, women comprise approximately 14% of the lawyers in Maryland. The majority (52%) have been in practice less than six years.<sup>34</sup> A third (35%) have practiced for between six and 10 years, while a tenth have practiced between 11 and 15

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<sup>33</sup> American Bar Association Commission on Women in the Profession, Report to the House of Delegates (1988).

<sup>34</sup> The demographics information is reported on Table 3 of Exhibit E.

years. Nearly half (48%) are between the ages of 25 and 34; 39% between the ages of 35 and 44; and 9% between the ages of 45 and 54. Women lawyers are concentrated in two jurisdictions, Baltimore City with 40% and Montgomery County with 21%, but women lawyers can be found throughout the state. Nearly all female lawyers are white (95%), 4% are black, and 1% reported their race as "other."

Two-thirds of the Committee's female respondents reported that litigation formed over 20% of their practices during the last two years. For the purposes of this survey, a lawyer was deemed to have a specialty if practice in that area constituted more than 20% of her or his work. Nearly half the female lawyers (49%) reported a domestic relations specialty; 29% reported a specialty in personal injury work for plaintiffs; 19% personal injury work for defendants; 19% criminal defense work; and 15% criminal prosecution work.

The Committee learned that, with their increasing numbers at the bar and presence in court, female lawyers are gaining in respect and effectiveness. It seems clear that, had this survey been conducted a decade ago, every woman lawyer who had appeared in court would have had a story about being treated differently and worse than her male counterpart. While still severe, the problems which exist now are not as universal.

A recent survey conducted for the Maryland State Bar Association confirms the Committee's research. When asked whether "there continues to be discrimination against some lawyers because of their sex, race, disability, religion or national origin," 63% of the lawyers surveyed responded affirmatively. Over half of the male lawyers (56%) and four-fifths (80%) of the female lawyers agree with the statement. Among the comments which respondents made were:

Judges, lawyers, clerks, etc., definitely discriminate against women, particularly the older members of the [bar]. I've been treated like a child and called little girl in front of my clients by [certain] judges, and I resent it. But I'm in a position where I can't do anything without adversely affecting my client's case.

Blacks and females are treated differently in court by all court personnel. Black and white clients have more faith in white attorneys. Black attorneys always stick out.

It's been an uphill struggle as a female trial attorney just to simply fight for equality, not for special treatment. Now, it's o.k., because they know who I am, [but being a female attorney is still an oddity].

I've personally experienced it in the court system more than in my firm. It has made me feel inadequate and noncompetitive. Judges should be chastised. There should be avenues for victims of this abuse. It's just abominable.<sup>35</sup>

The Committee's survey asked judges and lawyers whether "there had been a situation where you felt the litigation process or outcome of a case was affected (negatively or positively) by [the lawyer's] gender (male or female)." Of those expressing an opinion, 30% of female attorneys, 19% of female judges, 9% of male judges, and 4% of male attorneys said yes. In the open-ended supplemental answers to the question, female attorneys expressed concerns about being patronized, ignored, demeaned, harassed, stereotyped and treated as outsiders. They reported that their arguments sometimes were given little weight and that they were treated on occasion as pretty objects in the courtroom rather than as professionals with jobs to perform.

Judge lectured me in open court telling me I belong in the home and that overall the education will never hurt me.

I was defending against a motion.... The judge, in chambers, repeatedly commented on my personal appearance and offered to show me pictures of his "handsome" son.

I was appointed to represent a child in a contested custody case. The judge in a chambers conference told the male attorneys representing the parents that he valued my view of the case because I am a mother.

[I recall] in-chambers bantering between judge (white male) and other attorney (white male), while third attorney (black male) and I (white female) were conspicuously not able to participate in the conversation, because we didn't have the "history" they shared. [The] conversation [lasted] approximately ten minutes, not just a passing remark or two. (We won the case, however.)

Male attorneys provided some similar examples:

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<sup>35</sup> G.L. Hoffer and J.S. Macleod, A 1988 Pilot Research Study of How Attorneys in Law Firms in Maryland's Major Urban Areas View the Quality of Their Professional Lives and Issues Facing the Profession, 45-48 (1988).

Judge makes sexist remarks during custody and criminal cases, "Honey," "Babe."

At criminal trial (homicide by motor vehicle), state's attorney was female. Judge made remark to effect [that] "sometimes she forgets she's [an] attorney," in reference to what he perceived as [the] state's emotional appeal to the jury. Judge very favorable to me at sentencing.

At its hearings and through its survey, the Committee heard about numerous incidents indicating that some judges still treat women lawyers differently from men, and that the differences make the job of representing their clients more difficult. Judges were reported to have demonstrated an attitude that female lawyers are less important, less entitled to respect, and less competent as a group than male lawyers. Complaints were common, for example, from female and male attorneys who believed that judges assume the women to be less competent than men and who accord female attorneys less credibility because of their sex.

In a jury trial in a personal injury case, the judge virtually ignored me for at least the first half of the case until I had demonstrated my competence. He didn't listen to my arguments on objections and carried on a lengthy personal conversation in chambers with opposing counsel. His attitude improved after I produced authority for each of my evidentiary arguments and demonstrated that I knew what I was doing.<sup>36</sup>

Generally my experience is that judges are easier on women attorneys -- the expectations are not as high.<sup>37</sup>

It seems to me that at the District Court level women are not accorded anywhere near the respect male attorneys are accorded. Judges constantly repeat and re-explain everything over that a woman has just explained, but never do this to male attorneys. The judges also tend to reprimand women attorneys for the slightest--and often imagined--breach of decorum while failing to comment on the most blatant breaches by male attorneys.<sup>38</sup>

I have been practicing here long enough that everybody is kind of used to me. And the local bench, for example, will regularly report to me what some woman that I don't even know has done that they consider inappropriate. Somehow if something inappropriate has happened, we are all one and we are all judged by that standard. But, if I do something correctly, I am different. We aren't judged by those of us who excel.

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36 Survey Respondent.

37 Survey Respondent.

38 Survey Respondent.

Those of use who excel are exceptions. We are judged by the general incompetence of one person and that, that is projected out on to everyone.<sup>39</sup>

In its survey of judges, lawyers, and court personnel, the Committee asked whether "[j]udges appear to give less weight to female attorneys' arguments than to those of male attorneys."<sup>40</sup> Of those who expressed an opinion, over half of the female attorneys (57%) answered affirmatively, as did 26% of female court personnel, 12% of male lawyers, and 11% of male court personnel. Only 2% of judges acknowledged that a credibility gap could be perceived.

Judges communicate a view that female and male lawyers are fundamentally different in a variety of ways. One way is to comment on the appearance, sexuality or maternity of a woman lawyer rather than focusing on her lawyering, her argument or her professional activity. A survey respondent recounted an incident involving one male and three female attorneys. During a chambers conference, the judge asked, "How's the rooster making out with all these hens?"<sup>41</sup> In a case where a female attorney was representing proposed adoptive parents, the judge looked her up and down and said, "They don't make the stork like they used to..."<sup>42</sup> Another judge said to a pregnant attorney, "So I see you got knocked up."<sup>43</sup>

The Committee surveyed judges, lawyers, and court personnel about the frequency and extent of certain behaviors which create difficulties or indicate a lack of respect for female attorneys. Respondents were asked whether "[w]omen attorneys are asked [by judges] if they are attorneys when men are not asked."<sup>44</sup> Of those expressing an opinion, over half of female attorneys (56%), 20% of male attorneys, 30% of female court personnel, and 10% of male court personnel reported that this always, often, or sometimes happens. Only 2% of judges agreed. Counsel were reported

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<sup>39</sup> Testimony of Paula Peters, Esquire, Anne Arundel Cty. Tr., p. 1-28.

<sup>40</sup> Question 10 of Judges' and Lawyers' Questionnaires; Question 9 of Court Employees' Questionnaire.

<sup>41</sup> Survey Respondent.

<sup>42</sup> Survey Respondent.

<sup>43</sup> Survey Respondent.

<sup>44</sup> Question 1 of Judges', Lawyers', and Court Employees' Questionnaires.

to have asked the question more often: always, often or sometimes, according to 13% of judges, 82% of female lawyers, 26% of male lawyers, 37% of female court personnel, and 15% of male court personnel.

Female attorneys feel demeaned when they are addressed informally while others in the courtroom are addressed formally. They report being called by their first names as well as by diminutives such as "hon," "dear," "baby doll," "honey," and "sweetheart."<sup>45</sup> One survey respondent said that having a judge call her by terms of endearment in front of opposing male counsel is "not only embarrassing and demeaning, but also undermines my position in the eyes of [the other] counsel who may not know me well enough to realize they are facing a competent adversary."<sup>46</sup> A Committee witness reported the apprehension of a large male defendant in a criminal case about having a short female attorney, especially when the judge called her "little girl."<sup>47</sup> Another Committee witness described with irony an incident in which the opposing counsel objected when she addressed his expert witness by his first name after he had repeatedly called "Pam" and "Pam dear." The judge told her not to worry about it; she was just being "oversensitive."<sup>48</sup>

The Committee's survey asked whether "[W]omen attorneys are addressed by first names or terms of endearment when male counsel are addressed by surnames or titles."<sup>49</sup> Of those expressing an opinion on whether judges did this, 45% of female attorneys responded affirmatively, as did 15% of male attorneys. Judges responded that this did not occur. Even more respondents reported that counsel are inappropriately informal in addressing female attorneys:

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<sup>45</sup> Survey Respondents; testimony of Sheila Sachs, Esquire, Balto. City Tr., p. 17; testimony of Laura Norris, Eastern Shore Tr., p. 79.

<sup>46</sup> Survey Respondent. Even when elevated to the bench, women are not immune from such comments. A witness advised the Committee about a male lawyer who refers to female judges as well as attorneys as "babes" and "broads." Testimony of Pamela Bresnahan, Balto. City Tr., p. 4.

<sup>47</sup> Testimony of Mary Joel Davis, Balto. City Tr., pp. 103-104.

<sup>48</sup> Pamela A. Bresnahan, Esquire, Baltimore City Tr., p. 7.

<sup>49</sup> Question 2 of Judges' and Lawyers' Questionnaires.

73% of female lawyers responded affirmatively to this question, as did 26% of male lawyers. Nearly a fifth (18%) of judges agreed.

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 which converts her from a professional to an object to admire or criticize.<sup>50</sup> 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 lawyers is singled out for attention. The Committee's survey asked whether "[C]omments are made about the personal appearance of women attorneys when no such comments are made about men." Of those expressing an opinion, 54% of female attorneys gave an affirmative response, as did 48% of female court employees, 20% of male attorneys, and 16% of male court employees. Only 5% of judges answered affirmatively; the rest responded that such comments are rarely or never made.

The comments of other counsel about the appearance of a female attorney also can result in trivializing and demeaning the professionalism of the female attorney. Seventy-six percent of female attorneys, 25% of judges, 35% of male attorneys, 48% of female court personnel and 23% of male court personnel reported such comments by counsel.

Women lawyers have reported being made to feel like outsiders who do not belong in the courtroom or in chambers when judges and male counsel make sexist remarks or jokes in their presence.<sup>51</sup> The Committee's survey asked whether such remarks or jokes are made by judges.<sup>52</sup> Of those expressing an opinion, affirmative responses were received from 55% of female attorneys, 24% of male attorneys, 35% of female court personnel, and 23% of male court personnel. Only 6% of judges responded affirmatively. Hearing such remarks and jokes from

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<sup>50</sup> A Committee witness reported, for example, that a judge explained that he "only hire[d] pretty women [for judicial clerkships] because I have to look at them for a whole year." Testimony of Anne Ogletree, Esquire, Eastern Shore Tr., p. 72.

<sup>51</sup> Testimony of Gail Bagaria, Esquire, P.G. Cty. Tr., pp. 70-72.

<sup>52</sup> Question 6 of Judges', Lawyers', and Court Employees' Questionnaires.

counsel is a more common experience, according to those expressing an opinion to the Committee's survey question on the subject. Over three-quarters (78%) of female attorneys responded affirmatively, as did 35% of male attorneys, 44% of female court personnel, 25% of male court personnel, and 23% of judges.

Attorneys reported to the Committee that some judges and lawyers do not stop with sexist remarks, jokes, or general comments about the appearance of women lawyers; they make verbal or physical sexual advances in the course of the professional interaction. A survey respondent described the invitations for social events which she received from a judge and the personal questions he asked her. When she declined the invitations, he said, "I just asked you out to dinner; I didn't ask you to go to bed with me." The attorney continues to feel uncomfortable:

I wish that judges could be made aware of what a profound effect their behavior can have on the judicial system. If judges fail to respect female attorneys, no one else will respect them either. If judges use their positions to make advances toward female attorneys, we will never resolve the problems of sexual harassment and sexual discrimination.<sup>53</sup>

Another respondent emphasized the no-win position of both the judicial system and the female attorney when a judge feels free to make sexual advances:

[The] biggest worry is that your client will be at a disadvantage if you don't "flirt" back -- or more....[H]is behavior is obvious to witnesses and litigants (several clients have made comments to me about how the judge obviously flirts with women in the hallways of the Courthouse and they hope this will give them an advantage).<sup>54</sup>

The Committee's survey asked whether "[w]omen attorneys are subjected [by judges] to verbal or physical sexual advances."<sup>55</sup> Nearly a fifth (19%) of female attorneys answered affirmatively. Judges and male attorneys responded, on the whole, that such conduct rarely or never occurred. When asked whether other counsel make such advances, 47% of female attorneys answered affirmatively, as did 7% of judges, and 8% of male attorneys.

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<sup>53</sup> Survey Respondent.

<sup>54</sup> Survey Respondent.

<sup>55</sup> Question 8 of Judges' and Lawyers' Questionnaires.

When female attorneys find themselves in a difficult, demeaning, or harassing situation, responding effectively is a challenge because of the power of the judge. If the response is perceived negatively, the judge has the power to retaliate against the lawyer and her client. While the lawyer may be willing to accept the retaliation, she will refuse to place the client's interests in jeopardy.<sup>56</sup> At the same time, if she makes no response, the problem will only continue.

If the source of the problem is another lawyer in a courtroom, the judge who is willing can be helpful in solving the problem. An unwilling judge, by saying nothing, helps to perpetuate the misconduct, while a judge who is willing to intervene can have a long-lasting impact.<sup>57</sup> The Committee's survey asked judges whether they "have ever intervened in a trial in your court because you observed gender bias in the proceedings."<sup>58</sup> Nearly half of female judges (44%) and over a tenth of male judges (13%) answered yes. In the open-ended supplemental responses, the judges provided examples:

Male attorney addressed female attorney as "My dear lady." I told him, "She is not your's."

In two cases, the defense attorney called the Assistant State's Attorney "hun." I interrupted and said, "You mean Miss \_\_\_\_\_, the prosecutor, don't you."

Instructed attorney on other side to stop referring to counsel by first name.

Opposing counsel made sexist comments concerning his opponent's motives and reasons why she was aggressively pursuing her client's case.

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<sup>56</sup> Survey Respondents; testimony of Sheila Sachs, Esquire, Balto. City Tr., pp. 23-24.

<sup>57</sup> The Committee was told about a number of aggravating incidents where the judge said nothing. These included a male attorney who kissed a female attorney at a bench conference saying, "That's such a good argument for a girl." Testimony of Pamela A. Bresnahan, President, Women's Bar Association, Balto. City Tr., p. 5. A female attorney was repeatedly interrupted by male opposing counsel. When she complained to the judge, he responded that "if she couldn't take it, she probably should get out of the courtroom." Testimony of Sheila Sachs, Esquire, Balto. City Tr., p. 19. Another lawyer was told by opposing counsel that she should look for a missing exhibit in her pocketbook. The exhibit later showed up on the opposing counsel's table. Testimony of Jo Benson Fogel, Esquire, Mont. Cty. Tr., p. 43. Finally, a male opposing counsel commented on the pregnancy of his female opponent to the jury and urged the jurors not to consider her client more favorably on that account. He concluded that she had "promised [her] water would not break in court." Survey Respondent.

<sup>58</sup> Question VIII of Judges' Questionnaire.

On an almost daily basis, it is necessary to advise male lawyers and witnesses not to refer to women as "girls;" not to address women lawyers, litigants, witnesses by their first names; and not to characterize domestic violence cases in both the civil and criminal contexts as only "little domestic matters."

Changing courtroom practices so that women and men can represent clients effectively without the difference between their sexes making them unequal is a challenge that the courts must meet. To do less is to deny women equal opportunity in the profession. On a more general level, to do less is to ensure that unfairness and inequality will haunt courtrooms for decades to come. Now that women are making their mark in the legal profession, the courts should be in the vanguard to ensure that full opportunities are open to them and to all women who seek justice.

### *FINDINGS*

1. *Gender bias affects the outcome of cases where stereotyped expectations about proper conduct for men and women are applied to particular cases.*
2. *Female parties can be disadvantaged by judges and masters who give their testimony less credibility solely because they are women.*
3. *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.*
4. *Female parties can be disadvantaged by the absence of accommodations for the presence of children in the court.*
5. *Selection of the foreperson of a jury can be affected by gender bias.*
6. *Female attorneys sometimes are subjected to different and discriminatory treatment in court by judges, masters, court personnel, and male attorneys.*
7. *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.*
8. *Female attorneys sometimes are subjected to verbal and physical sexual advances by judges.*
9. *Judicial intervention can assist a female attorney who is being treated inappropriately and disrespectfully by a male attorney.*

## RECOMMENDATIONS

### A. Courtroom Environment

#### For Court Administration

1. *Develop and conduct regular training for sitting and newly elected and appointed judges, domestic relations masters, and court employees designed to make them aware of the subtle and overt manifestations of gender bias directed against women attorneys, witnesses, and litigants and possible due process consequences.*
2. *Review all court forms, manuals, and pattern jury instructions to ensure that they employ gender-neutral language.*
3. *Establish, in conjunction with the appropriate bar associations, a confidential reporting and investigation process for those who feel they have a gender bias complaint involving a member of the judiciary, master, courthouse employee, or attorney.*
4. *Establish on-site day care for jurors, litigants, and witnesses.*
5. *Educate court personnel not to treat male and female attorneys differently and not to assume all men are attorneys and that females must prove they are.*
6. *Inform court employees not to refer to female attorneys, litigants, or witnesses by their first names, nicknames, or "terms of endearment" in situations in which they would not so address men.*

#### For Judges

1. *Monitor behavior in courtrooms and chambers and swiftly intervene to correct lawyers, witnesses, and court personnel who engage in gender-biased conduct.*
2. *Ensure that official court correspondence, decisions, jury instructions, and oral communications employ gender-neutral language and are no less formal when referring to women litigants, witnesses, and lawyers than to men litigants, witnesses, and lawyers.*

#### For Bar Associations (including State, local, and specialty bar associations)

*Develop and conduct informational campaigns designed to make members aware of the incidence and consequences of gender-biased conduct toward women litigants, lawyers, and witnesses on the part of judges, lawyers, and court personnel.*

*Undertake a study of the extent to which gender bias adversely affects women in the practice of law outside of the courtroom. This topic was considered to be outside the scope of this Committee's mandate, but issues such as hiring and partnership considerations were raised and should be part of an in-depth study by the Bar.*

#### For Law Schools

*Include information and material in professional responsibility, constitutional law, clinical, and skills training courses to make students aware of the subtle and overt manifestations of gender bias directed against litigants, lawyers, and witnesses.*

**B. Professional Opportunities for Women Attorneys**

**Judiciary**

*Ensure that court appointments by judges are made without regard to the sex of the appointee.*

**For Bar Associations (including State, local and specialty bar associations)**

1. *Review the assigned counsel mechanisms in local jurisdictions in which members practice and develop means to ensure that appointments to fee-generating positions are not only fairly received by qualified male and female attorneys but are perceived to be fairly received.*
2. *Encourage continuing legal education programs to utilize women as speakers and program chairs where qualified women are available.*
3. *Examine the process for selection of officers, committee chairs, and section chairs to ensure that qualified women are considered and to identify impediments that would prevent qualified women from attaining leadership positions within the bar association.*



## CONCLUSION

After two years of study, seven hearings, and review of thousands of surveys and hundreds of documents, the Committee is convinced that gender bias has a major and negative impact on the judicial system of this state. Decisions in cases involving domestic violence and family law, the selection of judges, the treatment of female court employees, and the environment of the courtroom all are affected by attitudes, practices, and policies which differentiate according to gender. Gender bias can be seen whenever a battered woman is denied protection from her batterer because the judge finds the testimony of any woman less trustworthy than that of any man. It is demonstrated whenever a court employee is paid a lower salary or given fewer opportunities than her male counterpart. It is visible whenever a father or a mother is denied custody because he or she fails to meet the stereotype of a proper father or mother. It exists whenever the amount of alimony awarded a middle-aged homemaker wife is diminished because the judge believes that no husband should have to reduce his standard of living to support a former wife. It is articulated whenever a female candidate for a judgeship is interrogated about her child care responsibilities. It is shown whenever a lawyer is called "honey" and her argument demeaned because of her sex.

In most situations, women are the ones who are harmed by gender bias. Whether it is men or women who experience the burden of bias, however, the public has an interest because the judicial system has failed to adhere to the highest standards of fairness and impartiality. Further, Maryland has committed itself to equality for all its citizens, irrespective of sex. As the Equal Rights Amendment<sup>1</sup> states, "Equality of rights under the law shall not be abridged or denied because of sex." Whenever citizens are treated unequally by the courts or the judicial system solely because of sex, the commitment of Article 46 is undermined. Finally, respect for the law is crucial to the legitimacy of the judicial system. People lose respect for the law when they observe actions and decisions which deny people fair and individualized treatment, which stereotype them according to their gender, or which burden or benefit them because of their sex. Whenever gender bias in any form affects the judicial system in any part, the entire system suffers.

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<sup>1</sup> Md. Decl. of Rts. art. 46.

The Committee's recommendations include changes which should be undertaken by judges, court administrators, lawyers, law schools, public agencies, community organizations, and the legislature. Many of the recommendations involve actions which will take several years; others will require significant institutional changes. While the mandate of this Committee has been fulfilled, it is clear that a successor committee is required in order to monitor, encourage, and evaluate the work which is undertaken in response to this Report. Accordingly, the Committee recommends that a permanent committee be established as a joint project of the bench and the bar. That committee should undertake to monitor, encourage, and evaluate efforts to implement the recommendations made by this Committee. It should also identify and investigate new allegations of gender bias as they occur. The committee should act as a liaison with the legislature and pertinent public agencies and community organizations, as well as with committees of the Judicial Conference and the state bar associations. Periodic reports on the work of the committee should be published in the Maryland Bar Journal.

Many of the problems that the Committee identified as affecting women in the judicial system arise during controversies over intimate relationships involving husband and wife, nonmarried partners, and parents and child. The Committee's study shows that all the people affected by these disputes may have concerns about whether they are treated fairly. These concerns are particularly acute for those women with custody of children who are impoverished after a divorce. Both the parties and the public have an interest in ensuring that the laws and practices affecting these people are fair. Accordingly, the Committee believes that a study should be undertaken to assess and evaluate laws and practices affecting family and family-type relationships to determine whether changes in law and procedure are required to ensure equity.

This Committee is confident that the bench and the bar will respond with dedication and vigor to eliminating the types of gender bias that have been identified by the Committee's investigation. Implementing the Committee's recommendations is vital for this effort. It should be understood that the purpose of each recommendation is the elimination of gender bias. None of the

recommendations calls for special treatment for women or for men, because special treatment is not what is needed. What is needed, instead, is sensitivity to the ways in which unexamined attitudes about men and women lead to the unintended result of biased decision-making. Once the sensitivity is achieved, the credibility decisions which all judges, masters, and commissioners must make will be more accepted, because they will be made with less risk that biased assumptions affect the result. What is needed is curiosity about why the favored party in some types of disputes frequently is a member of one sex or the other. Once that curiosity is developed, many disputes involving domestic violence and family law can be judged differently because traditionally accepted outcomes no longer will seem inevitable. What is needed is openness to ways of looking at problems that include the experiences of all people. Once that openness becomes commonplace, litigants will be able to explain their circumstances to a court that is more willing to learn and to change.

The goal of gender-neutrality in the judicial system is vital and important. Hard work will be needed for a long time to achieve the goal, but every effort in this direction is worthwhile.

### **RECOMMENDATIONS**

*The Committee urges that the following recommendations be implemented as quickly as possible.*

- 1. A permanent joint committee of the bench and bar should be appointed to encourage, monitor, evaluate, and report on efforts undertaken to carry out the recommendations of this Report relating to litigants, witnesses, jurors, and lawyers. This committee should serve as an advisory body to the continuing education efforts recommended in this Report. This committee also should receive and investigate complaints when a judge or lawyer subverts the goal of gender-neutrality. Separate bench and bar subcommittees of this subcommittee should focus on issues particularly pertinent to each group.*
- 2. A study commission on equity in family law should be appointed to conduct a study and report to the bench and bar on whether laws and practices pertaining to the family and family-type relationships result in fair and equitable treatment to all the people affected by the proceedings.*
- 3. The Maryland Code of Judicial Conduct (Rule 1231 of the Maryland Rules of Procedure) and the Code of Conduct for Masters, Examiners, Auditors, Referees,*

*and District Court Commissioners (Rule 1232 of the Maryland Rules of Procedure) should be amended to provide explicit direction to all members of the bench and similar offices that gender bias is a form of partiality which is beneath the ethical standards appropriate for the judiciary.*

4. *A permanent joint committee of judges and court personnel from all levels and geographic areas of court, should be appointed to encourage, monitor, evaluate, and report on the efforts undertaken to carry out the recommendations of this Report relating to court employees.*

## APPENDIX

- Exhibit A Letter of Appointment from Chief Judge Robert C. Murphy
- Exhibit B Members, Special Joint Committee on Gender Bias in the Courts
- Exhibit C Public Hearing Schedule
- Exhibit D Hypothetical Problems
- Exhibit E Surveys
1. Methodology
  2. Questionnaires
    - a. Judges' Questionnaire
    - b. Attorneys' Questionnaire
    - c. Court Employees' Questionnaire
  3. Survey Results
- Exhibit F National Association of Women Judges, Questions for Prospective Judges



Exhibit A

LETTER OF APPOINTMENT





ROBERT C. MURPHY  
CHIEF JUDGE  
COURT OF APPEALS OF MARYLAND  
COURTS OF APPEAL BUILDING  
ANNAPOLIS, MARYLAND 21401

To the Members of the Special Joint Committee on  
Gender Bias in the Courts

President Ferretti of the Maryland State Bar Association and I are most appreciative of your willingness to serve as members of the Special Joint Committee on Gender Bias in the Courts.

President Ferretti has appointed as State Bar Association members of the Committee the following individuals.

Louise Scrivener  
Suite 320  
414 Hungerford Drive  
Rockville, MD 20850  
340-9090

Read A. McCaffrey\*  
3rd Floor - Sun Life Bldg.  
Charles Center  
Baltimore, MD 21201  
539-5541

Marvin J. Garbis  
Suite 1001  
207 E. Redwood St.  
Baltimore, MD 21202  
837-4767

Linda H. Lamone  
Legislative Services Bldg.  
90 State Circle - RM 104  
Annapolis, MD 21401  
841-3889

On behalf of the Judiciary, I have appointed the following members, one from each level of Maryland's four-

\*Committee Note: After this letter, M. Peter Moser, Esquire was appointed by the President of the Bar Association in Mr. McCaffrey's place.

tiered Judicial System:

William H. Adkins, II  
Courts of Appeal Bldg.  
Annapolis, MD 21401  
269-2295

Rosalyn B. Bell  
Suite 301  
50 Courthouse Square  
Rockville, MD 20850  
251-7210

Hilary D. Caplan  
Clarence M. Mitchell, Jr. Courthouse  
100 N. Calvert Street  
Baltimore, MD 21202  
396-5090

William D. Missouri  
14757 Main St.  
P.O. Box 422  
Upper Marlboro, MD 20772  
952-4020

We have asked Hilary Caplan to serve as Chairman\* of the Special Committee and he has very graciously accepted.

As you know, New York and New Jersey recently published extensive reports on "Women in the Courts". Other states, including California and Massachusetts, have ongoing studies concerning the matter of gender bias as it affects the courts. Needless to say, equal treatment for all who participate in the judicial system, and all who come into contact with it, is an absolute essential, regardless of race or gender.

The mission of the Special Committee, as we see it, is as follows:

1. To examine the extent to which gender bias, if it exists, affects decision making in the courts of Maryland.

2. To examine the extent to which gender bias, if it exists, affects participants in the court system, e.g. judges, attorneys, litigants, jurors, witnesses, court employees and members of the public who come into contact with the courts of Maryland.

\*Committee Note: After this letter, Professor Karen Czapanskiy was appointed to the Committee by the Chief Judge and the President of the Bar Association.

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January 13, 1987

3. If gender bias exists, to recommend means to eliminate its effect in the Maryland judicial system.

In the course of your studies, you may wish to consider other matters closely associated with the Committee's mission and you, of course, should feel free to do so.

Deborah Unitus, of the Administrative Office of the Courts, will act as staff to the Special Committee. Expense vouchers for travel of the members should be forwarded to Deborah. Meals and other expenses of the members will be paid from the Maryland Judicial Conference budget.

Deborah's address is as follows:

Ms. Deborah Unitus  
Administrative Office of the Courts  
Post Office Box 431  
Annapolis, MD 21404  
974-2353

I would like to put a one year sunset qualification on the Committee's existence, dating from the time of the Committee's organizational meeting, which both President Ferretti and I would like to attend.

Judge Caplan will determine the time and place of the first meeting and notify you as soon as possible.

Gender bias behavior is indeed a sensitive and serious subject, and President Ferretti and I look forward to your study and to your recommendations.

Robert C. Murphy  
Chief Judge

RCM:lm

cc: Ms. Deborah Unitus  
Mr. James H. Norris, Jr.  
President Vincent E. Ferretti, Jr.



Exhibit B

MEMBERS -  
SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS



# SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

Courts of Appeal Building  
Annapolis, Maryland 21401  
(301) 974-2353

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## Committee Members

Hon. Hilary D. Caplan, Chair  
Circuit Court for Baltimore City

Hon. William H. Adkins, II  
Court of Appeals

Hon. Rosalyn B. Bell  
Court of Special Appeals

Professor Karen Czapanskiy  
University of Maryland School of Law

Marvin J. Garbis, Esquire  
Johnson and Swanson

Linda H. Lamone, Esquire  
Office of the Lieutenant Governor

Hon. William D. Missouri  
Circuit Court for Prince George's County

M. Peter Moser, Esquire  
Frank, Bernstein, Conaway, and Goldman

Master Louise Scrivener  
Domestic Relations Master



Exhibit C

PUBLIC HEARING SCHEDULE



# SPECIAL JOINT COMMITTEE ON GENDER BIAS IN THE COURTS

Courts of Appeal Building  
Annapolis, Maryland 21401  
(301) 974-2353

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## Public Hearing Schedule

1. Montgomery County - Rockville  
Wednesday, September 16, 1987  
1 p.m. - 5:30 p.m.  
Stella B. Werner Council Office Building  
7th Floor Hearing Room  
100 Maryland Avenue  
Rockville, Maryland 20850
  
2. Eastern Shore - Easton  
Tuesday, September 22, 1987  
1 p.m. - 5:30 p.m.  
Council Chambers  
Mayor and Council Building  
14 South Harrison Street  
Easton, Maryland
  
3. Prince George's County - Upper Marlboro  
Wednesday, September 30, 1987  
1 p.m. - 5:30 p.m.  
County Council Hearing Room  
County Administration Building  
Upper Marlboro, Maryland 20772
  
4. Western Maryland - Hagerstown  
Wednesday, October 7, 1987  
1 p.m. - 5:30 p.m.  
Courtroom Number One  
Washington County Courthouse  
Summit and Washington Streets  
Hagerstown, Maryland
  
5. Baltimore City  
Tuesday, October 13, 1987  
1 p.m. - 5:30 p.m.  
University of Maryland School of Law  
Moot Courtroom  
500 West Baltimore Street  
Baltimore, Maryland 21202

Public Hearing Schedule  
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6. Anne Arundel and Howard Counties  
Tuesday, October 30, 1987  
1 p.m. - 5:30 p.m.  
County Council Chambers  
Anne Arundel County  
Arundel Center  
Calvert and North West Streets  
Annapolis, Maryland 21401
  
7. Baltimore, Carroll, and Harford Counties  
Monday, October 26, 1987  
1 p.m. - 5:30 p.m.  
Perry Hall Library - Baltimore County  
9440 Belair Road  
Baltimore, Maryland 21236

Exhibit D

**HYPOTHETICAL PROBLEMS**



Exhibit D  
Explanatory Note

The hypothetical problems were developed by members of the Committee who sought information on how judges and masters in domestic relations cases might decide highly sensitive cases in which gender bias could affect the outcome. The problems concern child custody, alimony, sentencing and jury instructions. Four versions of the problems on child custody, alimony and sentencing were developed. Respondents who were judges were asked to respond to one version of each problem and to the problem addressing jury instructions. Domestic relations masters, who do not hear cases outside of their specialized area of assignment, were asked to respond only to a problem relating to child custody and alimony.

The hypothetical problems were presented to 51 judges who were attending programs presented by the Judicial Institute during March 1988. Which version of each problem a judge saw was purely random. The response rate was between 67 and 69%. (Some judges responded to fewer than all four problems.

Domestic relations masters received the hypothetical problems by mail, with the particular version of the problems being selected randomly.

The hypothetical problems were mailed to 41 people who were identified by the Administrative Office of the Courts as holding a position as master or examiner. Fourteen responded to the hypotheticals, for a response rate of 34%.

Respondents were not asked to identify themselves.

All of the responses are on file with the Committee



Instructions: We are asking the following questions in order to gather information on judicial attitudes about a variety of situations. Please take a few minutes to fill in the blanks in the following problems. If you want to give further information about your answers, please use the back of the paper. Thank you.

1. A woman is convicted of second degree murder in the death of her two month old child. She presented evidence that she got very drunk one day shortly after the birth of the child and that she lost control when the baby would not stop crying. The woman has no prior criminal record; no weapon was used in the crime. Under the sentencing guidelines, the typical sentence for such an offender would be imprisonment for 12-20 years. Should she be sentenced within the sentencing guidelines, above the guidelines, or below the guidelines?
  - a. Please check your choice:
 

Within the guidelines	_____
Above the guidelines	_____
Below the guidelines	_____
  - b. What sentence would you impose? \_\_\_\_\_
  
2. In a divorce proceeding, both parents are seeking custody of the couple's child, a girl age 10. The child has been living with the mother since the separation, which occurred approximately six weeks before the pendente lite hearing. Prior to the separation, the mother was primarily responsible for the care of the child. Both parents have worked full-time throughout the marriage; the mother's net (after tax) income is approximately half that of the father. Under an informal agreement between the parties, until a pendente lite order is entered, the mother has custody, the child visits the father at the father's home on alternate weekends, and the father pays approximately 20 percent of his net salary to the mother in child support. The child is doing reasonably well both at home and at the day care center.
  - a. Assuming that, under the law, custody could be awarded to either parent, would you award custody to:
 

The father	_____
The mother	_____
Jointly to the mother and father	_____

b. Which of the following factors would influence you to award sole custody to the father (please rank each factor in order of importance, beginning with 1 for the most important):

- Age of the child \_\_\_\_\_
- Amount of time each parent spends with the child \_\_\_\_\_
- Child's post-separation adjustment \_\_\_\_\_
- Father's full-time employment \_\_\_\_\_
- Gender of the child \_\_\_\_\_
- Gender of the parent awarded custody \_\_\_\_\_
- Mother's full-time employment \_\_\_\_\_
- Relative economic circumstances of parents \_\_\_\_\_

c. Which of the following factors would influence you to award sole custody to the mother (please rank each factor in order of importance, beginning with 1 for the most important):

- Age of child \_\_\_\_\_
- Amount of time each parent spends with the child \_\_\_\_\_
- Child's post-separation adjustment \_\_\_\_\_
- Father's full-time employment \_\_\_\_\_
- Gender of the child \_\_\_\_\_
- Gender of the parent awarded custody \_\_\_\_\_
- Mother's full-time employment \_\_\_\_\_
- Relative economic circumstances of parents \_\_\_\_\_

d. If the evidence showed that the father had beaten the mother several times before the separation, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

e. If the evidence showed that the father had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

f. If the evidence showed that the mother had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. In a divorce proceeding, the husband is seeking indefinite alimony. The court has found that the divorce can be granted on the ground of voluntary separation. During the marriage, which lasted 22 years, he was employed intermittently on a part-time basis. He is 45 years old and suffers from lower back pain as the result of an injury suffered 20 years earlier; his primary occupation throughout the marriage was caring for the children and taking care of the home. He now is employed part-time; his net (after tax) income is \$5,200 per year. The wife, who is also 45 years old, was employed full-time in her occupation throughout the marriage. She has a net income of \$35,000 per year.

a. Assuming that, under the law, the husband is entitled to alimony for some period of time, approximately what amount of alimony would you award?

\$ \_\_\_\_\_ per month

b. Would you make the award: (check your choice)

For a limited number of years? \_\_\_\_\_

For an indefinite period? \_\_\_\_\_

4. You are presiding over a medical malpractice case. The plaintiff was initially hospitalized for a severe kidney infection and later contracted uremic poisoning. He alleges that the defendant, a urologist, breached the applicable standard of care by failing to diagnose and treat his condition at an earlier date. Dr. Angela Williams, a urologist, testified for the defense. Dr. Williams, a professor at The Johns Hopkins University, is a well-known expert in her field. She has published a number of articles concerning catheterization of kidney patients and has testified as an expert many times. It is her opinion that the patient's illness was caused by the negligence of the nurse who catheterized the patient. She testified that the defendant's health care provider did not breach the standard of care but, rather, acted in conformance with it.

The following jury instructions have been proposed for use in the case. Please place an "x" next to the one you would use in this case. Rank the others 1 to 3 according to your preference for each beginning with 1 for the most important.

Rank \_\_\_\_\_

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you should consider her experience, training and skills, and her knowledge of the subject matter about which she is expressing an opinion.

You should give her testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider her opinion together with all the other evidence.

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Instructions: We are asking the following questions in order to gather information on judicial attitudes about a variety of situations. Please take a few minutes to fill in the blanks in the following problems. If you want to give further information about your answers, please use the back of the paper. Thank you.

1. A woman is convicted of second degree murder in the death of her two month old child. She presented evidence that she had been depressed after the birth of the child and that she lost control when the baby would not stop crying. The woman has no prior criminal record; no weapon was used in the crime. Under the sentencing guidelines, the typical sentence for such an offender would be imprisonment for 12-20 years. Should she be sentenced within the sentencing guidelines, above the guidelines, or below the guidelines?
  - a. Please check your choice:
 

Within the guidelines	_____
Above the guidelines	_____
Below the guidelines	_____
  - b. What sentence would you impose? \_\_\_\_\_ years
  
2. In a divorce pendente lite proceeding, both parents are seeking custody of the couple's child, a boy age 10. The child has been living with the mother since the separation, which occurred approximately six weeks before the pendente lite hearing. Prior to the separation, the mother was primarily responsible for the care of the child. Both parents have worked full-time through the marriage; the mother's net (after tax) income is approximately half that of the father. Under an informal agreement between the parties, until a pendente lite order is entered, the mother has custody, the child visits the father's home on alternate weekends, and the father pays approximately 20 percent of his net salary to the mother in child support. The child is doing reasonably well both at home and at the day care center.
  - a. Assuming that, under the law, custody could be awarded to either parent, would you award custody to:
 

The father	_____
The mother	_____
Jointly to the mother and father	_____

- b. Which of the following factors would influence you to award sole custody to the father (please rank each factor in order of importance, beginning with 1 for the most important):

Age of the child \_\_\_\_\_  
Amount of time each parent spends with the child \_\_\_\_\_  
Child's post-separation adjustment \_\_\_\_\_  
Father's full-time employment \_\_\_\_\_  
Gender of the child \_\_\_\_\_  
Gender of the parent awarded custody \_\_\_\_\_  
Mother's full-time employment \_\_\_\_\_  
Relative economic circumstances of parents \_\_\_\_\_

- c. Which of the following factors would influence you to award sole custody to the mother (please rank each factor in order of importance, beginning with 1 for the most important):

Age of the child \_\_\_\_\_  
Amount of time each parent spends with the child \_\_\_\_\_  
Child's post-separation adjustment \_\_\_\_\_  
Father's full-time employment \_\_\_\_\_  
Gender of the child \_\_\_\_\_  
Gender of the parent awarded custody \_\_\_\_\_  
Mother's full-time employment \_\_\_\_\_  
Relative economic circumstances of parents \_\_\_\_\_

- d. If the evidence showed that the father had beaten the mother several times before the separation, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

- e. If the evidence showed that the father had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

- f. If the evidence showed that the mother had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. In a divorce proceeding, the wife is seeking indefinite alimony. The court has found that the divorce can be granted on the ground of voluntary separation. During the marriage, which lasted 22 years, she was employed intermittently on a part-time basis. She is 45 years old and suffers from lower back pain as the result of an injury suffered 20 years earlier; her primary occupation throughout the marriage was caring for the children and taking care of the home. She now is employed part-time; her net (after tax) income is \$5,200 per year. The husband, who is also 45 years old, was employed full-time in his occupation throughout the marriage. He has a net income of \$35,000 per year.

a. Assuming that, under the law, the wife is entitled to alimony for some period of time, approximately what amount of alimony would you award?

\$ \_\_\_\_\_ per month

b. Would you make the award: (check your choice)

For a limited number of years? \_\_\_\_\_  
 For an indefinite period? \_\_\_\_\_

4. You are presiding over a medical malpractice case. The plaintiff was initially hospitalized for a severe kidney infection and later contracted uremic poisoning. He alleges that the defendant, a urologist, breached the applicable standard of care by failing to diagnose and treat his condition at an earlier date. Dr. Angela Williams, a urologist, testified for the defense. Dr. Williams, a professor at The Johns Hopkins University, is a well-known expert in her field. She has published a number of articles concerning catheterization of kidney patients and has testified as an expert many times. It is her opinion that the patient's illness was caused by the negligence of the nurse who catheterized the patient. She testified that the defendant's health care provider did not breach the standards of care, rather, acted in conformance with it.

The following jury instructions have been proposed for use in the case. Please place an "x" next to the one you would use in this case. Rank the others 1 - 3 according to your preference for each beginning with 1 for the most important.

Rank \_\_\_\_\_

A witness who has special training or experience in a given field is permitted to express opinions based on observed or assumed facts to aid you in deciding the issues in the case. In weighing her opinion you should consider her experience, training and skills, and her knowledge of the subject matter about which she is expressing an opinion.

You should give her testimony the weight and value you believe it should have. You are not required to accept an expert's opinion. You should consider her opinion together with all the other evidence.

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Instructions: We are asking the following questions in order to gather information on judicial attitudes about a variety of situations. Please take a few minutes to fill in the blanks in the following problems. If you want to give further information about your answers, please use the back of the paper. Thank you.

1. A man is convicted of second degree murder in the death of his two month old child. He presented evidence that he had been depressed after the birth of the child and lost control when the baby would not stop crying. The man has no prior criminal record; no weapon was used in the crime. Under the sentencing guidelines, the typical sentence for such an offender would be imprisonment for 12-20 years. Should he be sentenced within the guidelines, above the guidelines, or below the guidelines?

a. Please check your choice:

Within the guidelines \_\_\_\_\_  
 Above the guidelines \_\_\_\_\_  
 Below the guidelines \_\_\_\_\_

b. What sentence would you impose? \_\_\_\_\_ years

2. In a divorce proceeding, both parents are seeking custody of the couple's child, a girl age 10. The child has been living with the father since the separation, which occurred approximately six weeks before the pendente lite hearing. Prior to the separation, the father was primarily responsible for the care of the child. Both parents have worked full-time throughout the marriage; the father's net (after tax) income is approximately half that of the mother. Under an informal agreement between the parties, until a pendente lite order is entered, the father has custody, the child visits the mother at the mother's home on alternate weekends, and the mother pays approximately 20 percent of her net salary to the father in child support. The child is doing reasonably well both at home and at the day care center.

a. Assuming that, under the law, custody could be awarded to either parent, would you award custody to:

The father \_\_\_\_\_  
 The mother \_\_\_\_\_  
 Jointly to the mother and father \_\_\_\_\_

- b. Which of the following factors would influence you to award sole custody to the father (please rank each factor in order of importance, beginning with 1 for the most important):

Age of the child \_\_\_\_\_  
Amount of time each parent spends with the child \_\_\_\_\_  
Child's post-separation adjustment \_\_\_\_\_  
Father's full-time employment \_\_\_\_\_  
Gender of the child \_\_\_\_\_  
Gender of the parent awarded custody \_\_\_\_\_  
Mother's full-time employment \_\_\_\_\_  
Relative economic circumstances of parents \_\_\_\_\_

- c. Which of the following factors would influence you to award sole custody to the mother (please rank each factor in order of importance beginning with 1 for the most important):

Age of the child \_\_\_\_\_  
Amount of time each parent spends with the child \_\_\_\_\_  
Child's post-separation adjustment \_\_\_\_\_  
Father's full-time employment \_\_\_\_\_  
Gender of the child \_\_\_\_\_  
Gender of the parent awarded custody \_\_\_\_\_  
Mother's full-time employment \_\_\_\_\_  
Relative economic circumstances of parents \_\_\_\_\_

- d. If the evidence showed that the father had beaten the mother several times before the separation, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

- e. If the evidence showed that the father had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

- f. If the evidence showed that the mother had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. In a divorce proceeding, the wife is seeking indefinite alimony. The court has found that the divorce can be granted on the ground of the wife's adultery. During the marriage, which lasted 22 years, the wife was employed intermittently on a part-time basis. She is 45 years old and suffers from lower back pain as the result of an injury suffered 20 years earlier; her primary occupation throughout the marriage was caring for the children and taking care of the home. She now is employed part-time; her net (after tax) income is \$5,200 per year. The husband, who is also 45 years old, was employed full-time in his occupation throughout the marriage. He has a net income of \$35,000 per year.

a. Assuming that, under the law, the wife is entitled to alimony for some period of time, approximately what amount of alimony would you award?

\$ \_\_\_\_\_ per month

b. Would you make the award: (check your choice)

For a limited number of years? \_\_\_\_\_

For an indefinite period? \_\_\_\_\_

4. You are presiding over a medical malpractice case. The plaintiff was initially hospitalized for a severe kidney infection and later contracted uremic poisoning. He alleges that the defendant, a urologist, breached the applicable standard of care by failing to diagnose and treat his condition at an earlier date. Dr. Angela Williams, a urologist, testified for the defense. Dr. Williams, a professor at The Johns Hopkins University, is a well-known expert in her field. She has published a number of articles concerning catheterization of kidney patients, and has testified as an expert many times. It is her opinion that the patient's illness was caused by the negligence of the nurse who catheterized the patient. She testified that the defendant's health care provider did not breach the standard of care but, rather, acted in conformance with it.

The following jury instructions have been proposed for use in the case. Please place an "x" next to the one you would use in this case. Rank the others 1 to 3 according to your preference for each beginning with 1 for the most important.

Rank \_\_\_\_\_

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You should give her testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider her opinion together with all the other evidence.

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Rank \_\_\_\_\_

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1. A man is convicted of second degree murder in the death of his two month child. He presented evidence that he got very drunk one day shortly after the birth of the child and that he lost control when the baby would not stop crying. The man has no prior criminal record; no weapon was used in the crime. Under the sentencing guidelines, the typical sentence for such an offender would be imprisonment for 12-20 years. Should he be sentenced within the sentencing guidelines, above the guidelines, or below the guidelines?

a. Please check your choice:

Within the guidelines \_\_\_\_\_  
 Above the guidelines \_\_\_\_\_  
 Below the guidelines \_\_\_\_\_

b. What sentence would you impose? \_\_\_\_\_ years

2. In a divorce proceeding, both parents are seeking custody of the couple's child, a boy age 10. The child has been living with the father since the separation, which occurred approximately six weeks before the pendente lite hearing. Prior to the separation, the father was primarily responsible for the care of the child. Both parents have worked full-time throughout the marriage; the father's net (after tax) income is approximately half that of the mother. Under an informal agreement between the parties, until a pendente lite order is entered, the father has custody, the child visits the mother at the mother's home on alternate weekends, and the mother pays approximately 20 percent of her net salary to the father in child support. The child is doing well both at home and at the day care center.

a. Assuming that, under the law, custody could be awarded to either parent, would you award custody to:

The father \_\_\_\_\_  
 The mother \_\_\_\_\_  
 Jointly to the mother and father \_\_\_\_\_

b. Which of the following factors would influence you to award sole custody to the father (please rank them in order of importance, beginning with 1 for the most important):

- Age of the child \_\_\_\_\_
- Amount of time each parent spends with the child \_\_\_\_\_
- Child's post-separation adjustment \_\_\_\_\_
- Father's full-time employment \_\_\_\_\_
- Gender of the child \_\_\_\_\_
- Gender of the parent awarded custody \_\_\_\_\_
- Mother's full-time employment \_\_\_\_\_
- Relative economic circumstances of parents \_\_\_\_\_

c. Which of the following factors would influence you to award sole custody to the mother (please rank each factor in order of importance, beginning with 1 for the most important):

- Age of child \_\_\_\_\_
- Amount of time each parent spends with the child \_\_\_\_\_
- Child's post-separation adjustment \_\_\_\_\_
- Father's full-time employment \_\_\_\_\_
- Gender of the child \_\_\_\_\_
- Gender of the parent awarded custody \_\_\_\_\_
- Mother's full-time employment \_\_\_\_\_
- Relative economic circumstances of parents \_\_\_\_\_

d. If the evidence showed that the father had beaten the mother several times before the separation, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

e. If the evidence showed that the father had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

f. If the evidence showed that the mother had a paramour, would that change your decision?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. In a divorce proceeding, the husband is seeking indefinite alimony. The court has found that the divorce can be granted on the ground of the husband's adultery. During the marriage, which lasted 22 years, the husband was employed intermittently on a part-time basis. He is 45 years old and suffers from lower back pain as the result of an injury suffered 20 years earlier; his primary occupation throughout the marriage was caring for the children and taking care of the home. He now is employed part-time; his net (after tax) income is \$5,200 per year. The wife, who is also 45 years old, was employed full-time in her occupation throughout the marriage. She has a net income of \$35,000 per year.

a. Assuming that, under the law, the husband is entitled to alimony for some period of time, approximately what amount of alimony would you award?

\$ \_\_\_\_\_ per month

b. Would you make the award:

For a limited number of years? \_\_\_\_\_

For an indefinite period? \_\_\_\_\_

4. You are presiding over a medical malpractice case. The plaintiff was initially hospitalized for a severe kidney infection and later contracted uremic poisoning. He alleges that the defendant, a urologist, breached the applicable standard of care by failing to diagnose and treat his condition at an earlier date. Dr. Angela Williams, a urologist, testified for the defense. Dr. Williams, a professor at The Johns Hopkins University, is a well-known expert in her field. She has published a number of articles concerning catheterization of kidney patients, and has testified as an expert many times. It is her opinion that the patient's illness was caused by the negligence of the nurse who catheterized the patient. She testified that the defendant's health care provider did not breach the standard of care but, rather, acted in conformance with it.

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Rank \_\_\_\_\_

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Rank \_\_\_\_\_

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Exhibit E

SURVEYS



EXHIBIT E (1)

**GENDER BIAS IN THE COURTS**  
**Report to the Survey Subcommittee: Methodology**

**Report Prepared by**  
**Sue Dowden**  
**Survey Research Center**  
**University of Maryland at College Park**

## METHODOLOGY

### Characteristics of the Samples

In order to determine perceptions and evaluations of the occurrence, frequency, and type(s) of gender bias in the Maryland courts, the Special Joint Committee on Gender Bias in the Courts surveyed judges, attorneys, and court personnel in the Maryland judicial system. Random samples of male and female attorneys licensed to practice law in Maryland were selected, while all sitting judges to the Maryland judiciary and all Maryland court personnel were surveyed. Identical questions were included in all versions of the questionnaire. Completed questionnaires were returned by 54% of the male attorney sample, 49% of the female attorney sample, 80% of the judges, and 49% of the court personnel.

#### Questionnaire Construction

Each of the questionnaires used in this research project was a collaborative effort of the survey subcommittee and its consultants. The questionnaires were drafted using the New York Gender Bias questionnaire as a model, adapting the questions to specifics of Maryland law and other issues identified as germane to Maryland's situation. Subsequent redraftings reflect issues from the public hearings which were ongoing at the latter stages of questionnaire construction, and comments and suggestions made by pretest respondents.

The intent of the survey subcommittee was to measure attitudes and perceptions as well as actual experiences dealing with specific areas of law and courtroom procedures. The questionnaire was designed to leave respondents sufficient opportunity to describe experiences which might not be covered or fully explored in the questions. For example, the attorney questionnaire provided one entire page for "other experiences you would like to bring to the Committee's attention" as well as instructions on each of the questionnaire forms encouraging the submission of additional material(s).

The questionnaires distributed to the samples of male and female attorneys were identical. This same questionnaire was later distributed to all female attorneys. Questions in this instrument included the following categories: courtroom interaction, credibility of female attorneys, litigants and witnesses, alimony, child support, custody, domestic violence, rape, sentencing, frequency and location of any experiences of gender bias, judicial selection, and demographics. The attorney questionnaire included one section on perceptions of application of the law which was not included in the versions of the questionnaire sent to judges and court personnel.

The questionnaire sent to judges in the state followed the same model, using identical question wording except changes in the credibility section which reflect the same issue from the judges' viewpoint of their own behavior. In addition, judges were asked about jury selection and given an opportunity to describe behavior of male and female attorneys.

Consistent with the questionnaires sent to attorneys and judges, that distributed to the court personnel asked about court interactions and credibility of female attorneys, litigants and witnesses. Since most court personnel do not have direct involvement with the courtroom, respondents in this sample as in the questionnaires distributed to the other samples, were given a "don't know" option in response categories. As a further control in analysis, a question about the amount of time "usually" spent in the courtroom was asked of court personnel.

Most of the court personnel questionnaire focused around the job duties and responsibilities which might be affected by perceptions or actual experiences of gender bias. Respondents were asked to describe their own experiences as well as perceptions of experiences of others in this personnel category. Topics of questions included sexual harassment, job opportunities, promotion and training opportunities, and child care needs.

#### Questionnaire Distribution, Sampling and Response Rates

Questionnaires were mailed to all judges from the Administrative Office of the Courts in late January, 1988. Postage paid return envelopes were included. For all of the questionnaires distributed (including attorneys and court personnel), the return envelopes were addressed to the University of Maryland Survey Research Center where data entry and tabulation were performed.<sup>1</sup>

Two weeks after the original mailing, a reminder notice was sent to all judges; no attempt was made to follow up individually. However, the response rate from this group was 80%, the highest of any of the groups surveyed. At the time the questionnaire was distributed, four vacancies existed in the judicial system, leaving a total of 216 sitting judges. Of this number, 173 completed and returned the questionnaire. Table 1 compares some characteristics of the group who returned the questionnaire to the total population. The distribution of the

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<sup>1</sup> All results are reported as aggregate data; no individuals are identified throughout this report. The individual questionnaires remain under the supervision of the University of Maryland Survey Research Center and the Project Director of this research.

respondents' gender and race closely approximates that of the total population. The percentage of whites responding is slightly lower (88%) than the actual number (91%), as is the percentage of males (88% responding compared to the actual 91%). No answer as to gender or race was received from two percent of the respondents.

The distribution of respondents from the various courts was also remarkably close to the actual population. In only one category, the Circuit Court, was a different percentage received from the actual distribution (47% responded as compared to 50% in the population). Three percent of the respondents did not indicate their court.

Table 1  
Judges  
Distribution of Respondents Compared to Population

	Respondents to Questionnaire (n=173)	Total Number in Maryland (n=216)*
<u>Sex</u>		
Male	88%	91%
Female	9%	9%
No Answer	3%	
	<u>100%</u>	<u>100%</u>
<u>Race</u>		
White	89%	92%
Black	8%	8%
Other	1%	
No Answer	2%	
	<u>100%</u>	<u>100%</u>
<u>Court</u>		
Appellate	9%	9%
Circuit	47%	50%
District	41%	41%
No Answer	3%	
	<u>100%</u>	<u>100%</u>

\*Based on information available February 26, 1988 from the Administrative Office of the Courts.

## Attorney Sample and Characteristics

The second group of interest to the survey subcommittee were attorneys, male and female, practicing in the State of Maryland. The Committee felt a mailed, self-administered questionnaire would be the most appropriate method of data collection given the length of the questionnaire and the sensitive nature of some of the topics. However, as with most mailed questionnaires, the issue of a complete mailing list was problematic. The most complete list available was that of the Client Security Trust Fund, which maintains a list of all attorneys licensed to practice in the State. This listing does not mean, however, that the attorneys either live in Maryland or practice in the Maryland courts, nor does the list provide any demographic data other than county or residence (from the address) and sex. Given the proximity to the District of Columbia, the usual number of federal courts in any state, and the usual number of attorneys whose practice does not involve courtroom appearances, the actual number of attorneys who fit the definition of the study was considerably reduced.

Independent random samples were drawn for male and female attorneys: 750 males and 750 females by selecting every nth name from each strata, male and female. This allows approximately equal sample sizes when comparing the two groups. However, when the total sample results for all attorneys -- male and female-- are computed, the sample has been statistically weighted to represent females as 14% of the attorney sample. This corresponds with the information available, that males constitute 86% of practicing attorneys in Maryland and females constitute 14%.

Questionnaires were mailed to the sample of attorneys early in November 1987. Enclosed with the questionnaires was a return, postage paid envelope addressed to the University of Maryland Survey Research Center. Each questionnaire was coded for follow-up purposes. As a questionnaire was returned and checked in by the Project Director, that name and address were deleted from the master list. Early in December, a second mailing was made to those who had not returned the questionnaire. Since the response rate was still below 50% for both the male and female samples, telephone follow-ups were initiated in January 1988. These follow-ups were primarily designed to ascertain if the listed addresses were adequate, whether selected respondents had received the first two mailings, to mail a questionnaire to those requesting it, and to ascertain some demographics of the non-respondents.

The following table shows the response categories for these two samples. After the follow-up procedures, contact had been made with 540 male attorneys and 505 female attorneys. Among the males, 28% were determined "out of sample"; 34% of the females.

Table 2  
Categories of Responses from Males and Females

	Male Attorneys	Female Attorneys
Questionnaires sent	750	750
Determined Out of Sample	210	267
Total Sample	<u>540</u>	<u>483</u>
Refused (on telephone contact)	38	30
No response (unable to contact to verify address, etc.)	210	217
Questionnaires Completed	272	236
Response Rate (Questionnaire Completed divided by Total Sample)	54%	49%

Out of sample was defined as those not practicing in Maryland courts, deceased, or retired from practice. The response rate for the males was 54%, that for females 52%. This lower response rate for female attorneys differs from the experience of other states in gender bias research. Other studies have consistently found the female response rate higher than that of male attorneys.<sup>2</sup> Consistent with the response rate of the female attorney sample, when the questionnaire was distributed to all female attorneys in the state, the total response rate from this group was approximately 44%.

<sup>2</sup> For example, Arizona's Pima County study of gender bias received a 48% response rate from male attorneys and a 64% response rate from female attorneys. In New Jersey's study, female attorneys accounted for one-third of the returned questionnaires, whereas they are only 13% of all attorneys in the State.

The resulting samples of males (n=292) and females (n=236) are profiled in Tables 3 and 4. As expected, female attorneys are younger (57% are between the ages of 25 and 34 compared to 30% of the males in this age category), have been admitted to the bar more recently (44% since 1983), and have been practicing law a shorter period of time (51% less than six years) than their male counterparts.

Table 3  
Attorney Samples

Number of years practicing law:

	Males (n=292)	Females (n=236)
Less than 6 years	27%	51%
6 to 10 years	20%	35%
11 to 15 years	19%	10%
16 to 20 years	14%	2%
21 to 25 years	7%	*
26 to 30 years	5%	1%
More than 30 years	7%	*
	99%**	100%

During the past two years, has litigation formed over 20% of your practice?

	Males (n=292)	Females (n=236)
Yes	68%	64%
No	32%	36%
	100%	100%

Check if any of these areas constitute 20% or more of your practice:

	Percent Indicating Yes	
	Males (n=292)	Females (n=236)
Personal Injury (Plaintiff)	46%	18%
Personal Injury (Defendant)	28%	15%
Criminal (Defense)	39%	15%
Criminal (Prosecutor)	7%	13%
Domestic	41%	43%

\*Less than one percent

\*\*Some totals are other than 100% because the figures were rounded-off.

Age:

	Males (n=292)	Females (n=236)
25 to 34	30%	57%
35 to 44	36%	35%
45 to 54	19%	7%
55 to 64	11%	1%
65 to 74	3%	1%
75 and older	<u>1%</u>	<u>0%</u>
	100%	101%

---

Race:\*\*\*

	Males (n=292)	Females (n=236)
White	96%	96%
Black	3%	3%
Other	<u>1%</u>	<u>1%</u>
	100%	100%

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\*\*\*Although no precise figures could be obtained about the racial composition of the bar, figures compiled by the Monumental Bar Association show that approximately 700 black lawyers have been admitted to practice and that approximately half are female and half male. Black lawyers comprise, therefore, approximately 4% of all attorneys licensed to practice, 3% of all the male attorneys and 8% of all the female attorneys.

Table 4  
Attorneys  
Distribution of Respondents Compared to Population

	<u>Respondents to Questionnaire</u>		<u>Total Number in Maryland</u>	
	Males (n=292)	Females (n=236)	Males (n=14928)	Females (n=4136)*
Date Admitted to Bar				
1983-1987	27%	44%	24%	61%
1978-1982	18%	38%	18%	27%
1973-1977	19%	13%	18%	11%
1968-1972	13%	3%	12%	1%
1963-1967	8%	1%	8%	* **
1958-1962	4%	1%	5%	*
1953-1957	4%	1%	4%	*
1952 or before	6%	*	11%	1%
	99%***	101%	100%	101%

Primary County (practice law):

	Males (n=292)	Females (n=236)	Males (n=11827)	Females (n=3110)****
Baltimore City	33%	39%	30%	33%
Baltimore County	8%	8%	16%	11%
Montgomery	22%	20%	25%	29%
Prince George's	11%	13%	9%	9%
Anne Arundel/ Howard	8%	10%	10%	13%
Eastern/ Southern	4%	4%	5%	2%
Western	7%	4%	2%	1%
Other	7%	3%	4%	3%
	100%	101%	101%	101%

\*These figures represent the total number of male and female attorneys licensed to practice as of March 27, 1989, according to the Client Security Trust Fund.

\*\*Less than one percent.

\*\*\*Some totals are other than 100% because the figures were rounded-off.

\*\*\*\*These figures represent the total number of male and female attorneys practicing or residing in Maryland as of March 27, 1989, according Client Security Trust Fund.

Concerning other characteristics examined by this survey, the male and female samples are remarkably similar. The samples are the same in racial distribution: 96% of the male and female samples are white, 3% black. The different geographic regions of Maryland are represented in almost equal proportions in the male and female samples. Thirty-three percent of the males practice in Baltimore City, and 39% of the females practice in the City; similar proportions (22% and 20%) list Montgomery County as their primary county of practice. Other regions of the State are represented by almost equal proportions of males and females, the exception being the rural counties (defined in the categories as "Western" and "Eastern and Southern" counties) where the number of male attorneys responding (14%) is double that of female attorneys responding (7%).

Of those responding to this survey, males are only slightly more likely (68%) than females (64%) to report that litigation has formed over 20% of their practice in the last two years. The majority of both samples have experience in the courtroom. However, the type of law practiced (of those listed on the questionnaire) is different for each sample. Males report more participation in personal injury (plaintiff and defendant) and criminal defense, whereas females indicate more participation in criminal prosecution and slightly more in domestic law.

The distribution of the respondents with respect to race, number of years since admission to practice, and location of practice (see Tables 3 and 4) approximates that of the total population of lawyers. Somewhat over-represented among the respondents are female attorneys admitted to practice between 1978 and 1982 and male and female attorneys who practice in Baltimore City. Somewhat under-represented among the respondents are black female attorneys, female attorneys admitted to practice between 1982 and 1987, male attorneys admitted to practice before 1952, and male and female attorneys practicing or residing in Montgomery and Baltimore Counties.

#### Court Personnel

Questionnaires were distributed to each of the 2,411 court personnel in late December 1987 through the biweekly payroll disbursement. Each questionnaire was stapled to a postage paid envelope addressed to the Survey Research Center at the University of Maryland College Park. The envelopes were not precoded as no list was available for follow-up. A reminder notice was distributed in the following payroll cycle (January 1988). A total of 1,187 court personnel returned completed questionnaires, a response rate of 49%.

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Table 5  
Court Personnel Response Rate

	Number Sent	Number Returned	Response Rate
District Court	1,025	565	55%
Circuit Court	1,152	482	42%
Administrative Office	234	55	24%
		*	
Total	2,411	1,187	49%

\*78 respondents did not identify place of employment

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Characteristics of this group of respondents are shown in Tables 6 and 7. Unfortunately, aggregate data about the total group of court personnel are not available so the representativeness of those returning questionnaires is difficult to determine. Almost three-quarters (74%) of respondents are female, 80% are white. Personnel in the district court system are more represented in the sample (50%) than in the total population (43%), reflecting the higher response rate shown above.

Table 6  
Place of Employment in Court System

	Percent (n=1138)	Total Population
Administrative Office of the Courts	5%	10%
Circuit Court	42%	48%
District Court	50%	43%
Other	<u>3%</u>	<u>101%*</u>
	100%	

Respondent's Age

	Percent (n=1104)
18 to 24	11%
25 to 34	28%
35 to 44	25%
45 to 54	20%
55 to 64	14%
65 to 74	2%
75 and older	<u>*</u>
	100%

Respondent's Gender

	Percent (n=1155)
Female	74%
Male	<u>26%</u>
	100%

\*Some totals are other than 100% because the figures were rounded-off.

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Table 7  
Respondent's Race

	Percent (n=1140)
White	80%
Black	18%
Hispanic, Oriental, Other	<u>2%</u>
	100%

Type of Position

	Percent (n=1137)
Permanent	86%
Permanent Contractual	6%
Contractual	<u>8%</u>
	100%

---

Number of Hours Employed

	Percent (n=780)
Full time	93%
Part time	<u>7%</u>
	100%

---

Methodological Considerations

Two methodological considerations must be evaluated as part of the discussion of results from the data. The first is evident in the response rate from the male and female attorney samples and that from the universe of court personnel. The average response rate for these three groups is 50.6%, which, according to E.R. Babbie, is an adequate response rate for analysis and reporting.<sup>3</sup> Although no follow-up was attempted with the court personnel, the attorney samples did receive a telephone call and, in some cases, a second mailing.

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<sup>3</sup> Babbie, E.R., Survey Research Methods, Wadsworth Publishing Company, Inc., 165, (1973).

Studies of gender bias in other states have experienced a higher response rate from female attorneys than from males. The experience in Maryland has been just the opposite: 54% of the male attorneys responded compared to 49% of the female attorneys.

The scope of this study does not include a non-response analysis, although several suggestions have been made as to why the response rate was not higher. Issues of confidentiality have been mentioned. Some attorneys felt they would be professionally harmed for criticizing colleagues or judges and that somehow questionnaire responses would not be confidential. Others suggested that whether confidential or not, professional ethics prevented them from making what might seem like criticism of the system or participants in the system.<sup>4</sup>

The second consideration is the number of "don't know" responses to the majority of questions on the respective questionnaires for each of the samples. In a self-administered questionnaire, the "don't know" option is more readily available than in a telephone survey so that an increase in this response category can be expected. However, the results show the "don't know" response in pluralities of each sample. Analysis of the data indicates that this is not a "response set" bias, that is, where the same group of respondents tend to answer all questions by marking the same category. Rather, the "don't know" responses are spread throughout the sample, occurring in some topics of the questionnaire for some respondents and in other areas for other groups of respondents.

A possible explanation for the "don't know" responses, according to this author, is the lack of common professional experience among attorneys and court personnel. This is not unexpected given the trend toward specialization in law and the number of distinct positions in the court system. It underscores one of the problems involved in studying the judicial system. Each area of the law and its application, interpretation, and enforcement should be considered separately and in more depth.

Whatever the reasons for non-response, the methodological question is how representative the sample(s) might be of the particular populations surveyed. There are some parameters available for the populations of judges (e.g., race, sex, court). Very little is available for the court personnel (e.g., place of employment), although the district court and the administrative office of the courts did provide aggregate information regarding sex and race. Other than an estimate of the male-female proportions (86%-14%), there are no data available for the attorney population.

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<sup>4</sup> Subcommittee Report on Gender Bias in the Court, The Women's Law Center, Inc., 1-14, Prepared January, 1988.

For the attorney samples, responses from appropriate subsamples -- female and male litigators, female and male domestic relations attorneys, and male and female criminal attorneys -- are also shown. These subsamples are based on answers given by respondents in the questionnaire as to type of practice, and amount of their practice involving litigation. The sample size and the sampling error associated with that size are shown in the table below.

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Table 8  
Sample Sizes and Associated Sampling Error

	N	Sampling Error (plus/minus)
Female Attorneys	236	5.5
Litigators	143	8.0
Domestic Relations	66	14.0
Criminal	43	14.5
Male Attorneys	292	5.0
Litigators	195	7.0
Domestic Relations	69	10.0
Criminal	58	14.0

---

Sampling error cannot be given for the judges or for the court personnel since these are not random samples, but rather, canvasses of both populations. The sample of judges is not broken out by responses from male and females in order to preserve the anonymity of respondents.

The results are given as percentages; row totals may sometimes equal 99% or 101% due to rounding error.

QUESTIONNAIRES



Exhibit E-2(a)

JUDGES' QUESTIONNAIRE





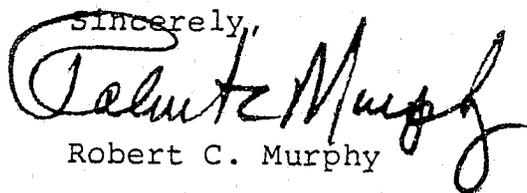
ROBERT C. MURPHY  
CHIEF JUDGE  
COURT OF APPEALS OF MARYLAND  
COURTS OF APPEAL BUILDING  
ANNAPOLIS, MARYLAND 21401

December 16, 1987

Maryland's Special Joint Committee on Gender Bias in the Courts is seeking to ascertain the attitudes, perceptions, and actual experiences of State judges concerning the treatment of individuals within the State judicial system. To this end, the attached questionnaire is of extreme importance in assisting the Committee with its work.

It would be greatly appreciated if you would complete the questionnaire and return it in the enclosed envelope by January 18, 1988. Individuals completing the questionnaire will not be identified. The results of the survey will appear in the form of group data and be tabulated by the University of Maryland Survey Research Center, with the aggregated results made available to the Committee.

I most earnestly enlist your support and cooperation. Should you have questions or need additional information about the Committee, please contact Deborah A. Unitus, Administrative Office of the Courts, at (301) 974-2353.

sincerely,  
  
Robert C. Murphy



- I. The following questions ask about specific behaviors and the frequency of their occurrence in your experience: Circle the response which best describes your perceptions of the court system in Maryland. Responses are (1) Always (2) Often (3) Sometimes (4) Rarely or (5) Never. (CIRCLE RESPONSE; IF YOU HAVE NO EXPERIENCE IN A PARTICULAR AREA, CIRCLE "DON'T KNOW" COLUMN.)

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<i>Court Interactions:</i>						
1. Women attorneys are asked if they are attorneys when men attorneys are not asked.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
2. Women attorneys are addressed by first names or terms of endearment when men attorneys are addressed by surnames or titles.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
3. Women litigants or witnesses are addressed by first names or terms of endearment when men are addressed by surnames or titles.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
4. Comments are made about the personal appearance of women attorneys when no such comments are made about men.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
5. Comments are made about the personal appearance of women litigants or witnesses when no such comments are made about men.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
6. Sexist remarks or jokes are made in courts or in chambers.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
7. Women litigants are subjected to verbal or physical sexual advances.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
8. Women attorneys are subjected to verbal or physical sexual advances.						
— by you	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
9. Women attorneys are appointed to important fee generating cases on an equal basis with male attorneys.	1	2	3	4	5	8

ALWAYS    OFTEN    SOMETIMES    RARELY    NEVER    DON'T  
KNOW

*Credibility*

- |  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| 10. Do you give less weight to female attorneys' arguments than to those of male attorneys.        | 1 | 2 | 3 | 4 | 5 | 8 |
| 11. Do you give less weight to the testimony of female experts than that of male experts.          | 1 | 2 | 3 | 4 | 5 | 8 |
| 12. Do you require more evidence for a female litigant to prove her case than for a male litigant. | 1 | 2 | 3 | 4 | 5 | 8 |

*Marital Property*

- |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| 13. 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 | 2 | 3 | 4 | 5 | 8 |
| 14. Courts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation.   | 1 | 2 | 3 | 4 | 5 | 8 |
| 15. Effective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made.   | 1 | 2 | 3 | 4 | 5 | 8 |
| 16. Judges impose meaningful sanctions, including civil contempt, when injunctions are violated.  | 1 | 2 | 3 | 4 | 5 | 8 |

*Alimony*

- |  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| 17. A wife's alimony award is based on how much the husband can give her without diminishing his current life style. | 1 | 2 | 3 | 4 | 5 | 8 |
| 18. Older, displaced homemakers are awarded indefinite alimony after long term marriages.                            | 1 | 2 | 3 | 4 | 5 | 8 |
| 19. The courts effectively enforce alimony awards.   | 1 | 2 | 3 | 4 | 5 | 8 |
| 20. Alimony awards at the time of divorce are close to or the same as pendente lite awards.                          | 1 | 2 | 3 | 4 | 5 | 8 |

*Child Support*

- |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| 21. Child support awards reflect a realistic understanding of the local costs of child raising. | 1 | 2 | 3 | 4 | 5 | 8 |
| 22. Child support awards reflect a realistic understanding of a particular child's needs.       | 1 | 2 | 3 | 4 | 5 | 8 |
| 23. Child support awards adequately reflect the earning capacity of the                         |   |   |   |   |   |   |
| a. non-custodial parent.  | 1 | 2 | 3 | 4 | 5 | 8 |
| b. custodial parent.  | 1 | 2 | 3 | 4 | 5 | 8 |
| 24. Enforcement of child support awards is denied because of alleged visitation problems.       | 1 | 2 | 3 | 4 | 5 | 8 |
| 25. Enforcement of child support awards is delayed because of counter claims for custody.       | 1 | 2 | 3 | 4 | 5 | 8 |

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
26. Pendente lite awards of child support are made within 60 days of filing the motion.	1	2	3	4	5	8
27. Earnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support.	1	2	3	4	5	8
<i>Custody</i>						
28. Custody awards to mothers are apparently based on the assumption that children belong with their mothers.	1	2	3	4	5	8
29. The courts give fair and serious consideration to fathers who actively seek custody.	1	2	3	4	5	8
30. The courts favor the parent in the stronger financial position when awarding custody.	1	2	3	4	5	8
31. Child custody awards disregard father's violence against mother.	1	2	3	4	5	8
32. Mothers are denied custody because of employment outside the home.	1	2	3	4	5	8
33. Joint custody is ordered over the objections of one or both parents.	1	2	3	4	5	8
<i>Domestic Violence</i>						
34. Civil orders of protection, directing respondents to stay away from the home, are granted when petitioners are in fear of serious bodily harm.	1	2	3	4	5	8
35. When granting civil orders of protection, the courts issue support awards for dependents.	1	2	3	4	5	8
36. Petitions for civil orders of protection are rejected where domestic relations cases are pending.	1	2	3	4	5	8
37. Circuit court judges order emergency injunctive relief to protect victims of domestic violence.	1	2	3	4	5	8
38. The courts do not treat domestic violence as a crime.	1	2	3	4	5	8
39. Assault charges are not treated seriously when domestic relations cases are pending.	1	2	3	4	5	8
<i>Rape</i>						
40. Rape victims are accorded less credibility than victims of other types of assault.	1	2	3	4	5	8
41. Judges control the court so as to protect the complaining witness from improper questioning.	1	2	3	4	5	8
42. Sentences are shorter where the victim had a prior relationship with the defendant.	1	2	3	4	5	8

II. Sentencing

43. Women offenders are sentenced below the guidelines: (CIRCLE ONE:)

- 1. Less frequently than men
- 2. About the same as men
- 3. More frequently than men
- 8. Don't know

44. Judges give sentences, based solely on gender, to female defendants that are (less severe, about the same, or more severe) than they give to male defendants.

- 1. Less severe
- 2. About the same
- 3. More severe

45. List what you would consider to be mitigating factors in sentencing a female?

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46. Would these mitigating factors be different for a male?

- 0. No
- 1. Yes — In what ways? \_\_\_\_\_

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III. Jury Selection

47. What are the criteria you use to select jury forepeople?

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48. In the last year, how many times have you selected women as jury forepersons?

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49. Can you recall cases in which you felt it was advantageous to have a *male* jury foreperson?

- 0. No.
- 1. Yes — Why was that? \_\_\_\_\_

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IV. General

50. Is there a behavior that is often displayed by *female* attorneys which you find especially offensive?

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51. Is there a behavior that is often displayed by *male* attorneys which you find especially offensive?

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V. In your experience, have you observed or been informed of a case(s) in which you felt the litigation process or outcome was affected (either negatively or positively) by the gender (male or female) of *one of the parties*? (Please circle your response.)

0. No — GO TO NEXT QUESTION.

1. Yes

a. How many times in the past five years has this occurred? \_\_\_\_\_

b. Briefly describe *the most recent case* in which you felt this occurred — in what way do you feel gender affected the case?

(You may include a separate sheet of paper if you feel you need more room.)

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In which year did this occur? \_\_\_\_\_

In which County (or Baltimore City)? \_\_\_\_\_

VI. In your experience, has there been a situation where you felt the litigation process or outcome of a case was affected (negatively or positively) by the gender (male or female) of *counsel* (Circle response.)

0. No — GO TO NEXT PAGE

1. Yes

a. How many times in the past five years has this occurred? \_\_\_\_\_

b. Briefly describe these circumstances of the *most recent case* where you felt this occurred?

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In which year did this occur? \_\_\_\_\_

In which County (or Baltimore City)? \_\_\_\_\_

VII. Are you aware of any instances of gender bias in the judicial selection process?

0. No

1. Yes — Briefly describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VIII. During your tenure as a judge, have you ever intervened in a trial in your court because you observed gender bias in the proceedings?

0. No

1. Yes — Briefly describe the circumstances? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IX. The following questions are to provide general background information about the judges answering the survey. Results will be given as group data so that no individuals will be identified in the survey.

1. Number of years on the bench \_\_\_\_\_ (years)

Year Admitted to the Maryland Bar: 19\_\_\_\_ (year)

2. Jurisdiction:

- \_\_\_\_\_ Baltimore City
- \_\_\_\_\_ Baltimore County
- \_\_\_\_\_ Anne Arundel County
- \_\_\_\_\_ Montgomery County
- \_\_\_\_\_ Prince George's County
- \_\_\_\_\_ Other

3. Court: \_\_\_\_\_ District

\_\_\_\_\_ Circuit

\_\_\_\_\_ Appellate

4. In what year were you born? 19\_\_\_\_

5. Sex: \_\_\_\_\_ Male \_\_\_\_\_ Female

6. Race/Ethnicity (Optional):

\_\_\_\_\_ White

\_\_\_\_\_ Black

\_\_\_\_\_ Hispanic

\_\_\_\_\_ Oriental

\_\_\_\_\_ Other — Please specify: \_\_\_\_\_

PLEASE DO NOT SIGN YOUR NAME; ALL QUESTIONNAIRES ARE CONFIDENTIAL.

- X. This space is provided for any information of gender bias or discrimination in the courts, including attitudes, in addition to those just described which have occurred in the last five years that you would like to bring to the Committee's attention. Be as specific as possible.

THANK YOU FOR YOUR TIME AND COOPERATION. PLEASE RETURN THE QUESTIONNAIRE AS SOON AS POSSIBLE IN THE ENCLOSED ENVELOPE OR RETURN IT TO:

SURVEY RESEARCH CENTER  
ROOM 1103 ART/SOCIOLOGY  
UNIVERSITY OF MARYLAND  
COLLEGE PARK, MARYLAND 20742



Exhibit E-2(b)

ATTORNEYS' QUESTIONNAIRE





ROBERT C. MURPHY

CHIEF JUDGE

COURT OF APPEALS OF MARYLAND

COURTS OF APPEAL BUILDING

ANNAPOLIS, MARYLAND 21401

Maryland's Special Joint Committee on Gender Bias in the Courts is seeking to ascertain the attitudes, perceptions, and actual experiences of attorneys with respect to the treatment of individuals within the State judicial system. To this end, the attached questionnaire is of extreme importance in assisting the Committee with its work.

It would be greatly appreciated if you would complete the questionnaire and return it in the enclosed envelope by November 30. Individuals completing the questionnaire will not be identified. The results of the survey will appear in the form of group data and be tabulated by the University of Maryland Survey Research Center, with the aggregated results made available to the Committee.

I most earnestly enlist your support and cooperation. Should you have questions or need additional information about the Committee, please contact Deborah A. Unitus, Administrative Office of the Courts, at (301) 974-2353.

Sincerely,

A handwritten signature in cursive script that reads "Robert C. Murphy".

Robert C. Murphy

NOTE FROM THE COMMITTEE: The Committee has tried, within space limitations, to include as many specifics as possible in the questionnaire. It focuses on areas of the law most frequently aired at the Committee's public hearings. Please feel free to provide additional information about any other personal experiences with gender bias in the courts which you feel should be brought to the Committee's attention.

I. In the following areas of law, have you found that the 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 RESPONSE.).

	Treats Males More Favorably	Treats Females More Favorably	Treats Both Equally	No Opinion
<b>I. Family Law</b>				
<b>a. Marital property</b>				
— Amount of monetary award	1	3	2	8
— Enforcement of judgment	1	3	2	8
<b>b. Alimony</b>				
— Amount of award	1	3	2	8
— Modification of award	1	3	2	8
— Duration of award	1	3	2	8
— Enforcement of award	1	3	2	8
<b>c. Child support</b>				
— Amount of award	1	3	2	8
— Modification of award	1	3	2	8
— Enforcement of award	1	3	2	8
<b>d. Custody of children</b>				
<b>e. Visitation with children</b>				
	1	3	2	8
	1	3	2	8
<b>II. Domestic Violence</b>				
<b>a. Civil order of protection</b>				
— Securing ex parte order	1	3	2	8
— Securing protective order	1	3	2	8
— Enforcement of order	1	3	2	8
<b>b. Criminal proceedings</b>				
— Commissioner's decision to issue a warrant	1	3	2	8
— Commissioner's decision to issue a summons	1	3	2	8
— Length of Sentence	1	3	2	8
<b>III. Juvenile Courts</b>				
<b>a. Delinquency cases</b>				
<b>b. Status offense cases</b>				
<b>c. Treatment of adults in cases involving abuse/neglect</b>				
	1	3	2	8
	1	3	2	8
	1	3	2	8
<b>IV. Negligence</b>				
<b>a. Liability Finding</b>				
<b>b. Amount of Judgment</b>				
— General	1	3	2	8
— Pain & suffering	1	3	2	8
— Disability	1	3	2	8
— Scarring/Disfigurement	1	3	2	8

PLEASE FEEL FREE TO INCLUDE DETAILS (ON A SEPARATE SHEET OF PAPER) IF YOU HAVE SUGGESTIONS FOR CHANGES IN THE APPLICATION OF THE LAW WHICH COULD CORRECT ANY AREAS OF UNEQUAL TREATMENT REFLECTED ABOVE, OR IF YOU WOULD LIKE TO GO INTO MORE DETAIL ABOUT YOUR EXPERIENCES.

II. The following questions ask about specific behaviors and the frequency of their occurrence in your experience: Circle the response which best describes your experience. Responses are (1) Always (2) Often (3) Sometimes (4) Rarely or (5) Never. (CIRCLE RESPONSE; IF YOU HAVE NO EXPERIENCE IN A PARTICULAR AREA, CIRCLE "DON'T KNOW" COLUMN.)

DON'T  
ALWAYS    OFTEN    SOMETIMES    RARELY    NEVER    KNOW

*Court Interactions:*

1. Women attorneys are asked if they are attorneys when men are not asked.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
2. Women attorneys are addressed by first names or terms of endearment when men attorneys are addressed by surnames or titles.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
3. Women litigants or witnesses are addressed by first names or terms of endearment when men are addressed by surnames or titles.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
4. Comments are made about the personal appearance of women attorneys when no such comments are made about men.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
5. Comments are made about the personal appearance of women litigants or witnesses when no such comments are made about men.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
6. Sexist remarks or jokes are made in court or in chambers.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
7. Women litigants are subjected to verbal or physical sexual advances.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
8. Women attorneys are subjected to verbal or physical sexual advances.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
9. Women attorneys are appointed to important fee generating cases on an equal basis with male attorneys.						
	1	2	3	4	5	8

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<i>Credibility</i>						
10. Judges appear to give less weight to female attorneys' arguments than to those of male attorneys.	1	2	3	4	5	8
11. Judges appear to give less weight to the testimony of female experts than to that of male experts.	1	2	3	4	5	8
12. Judges require more evidence for a female litigant to prove her case than for a male litigant.	1	2	3	4	5	8
<i>Marital Property</i>						
13. 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	2	3	4	5	8
14. Courts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation.	1	2	3	4	5	8
15. Effective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made.	1	2	3	4	5	8
16. Judges impose meaningful sanctions, including civil commitment, when injunctions are violated.	1	2	3	4	5	8
<i>Alimony</i>						
17. A wife's alimony award is based on how much the husband can give her without diminishing his current life style.	1	2	3	4	5	8
18. Older, displaced homemakers are awarded indefinite alimony after long term marriages.	1	2	3	4	5	8
19. The courts effectively enforce alimony awards.	1	2	3	4	5	8
20. Alimony awards at the time of divorce are close to or the same as pendente lite awards.	1	2	3	4	5	8
<i>Child Support</i>						
21. Child support awards reflect a realistic understanding of the local costs of child raising.	1	2	3	4	5	8
22. Child support awards reflect a realistic understanding of a particular child's needs.	1	2	3	4	5	8
23. Child support awards adequately reflect the earning capacity of the						
a. non-custodial parent.	1	2	3	4	5	8
b. custodial parent.	1	2	3	4	5	8
24. Enforcement of child support awards is denied because of alleged visitation problems.	1	2	3	4	5	8
25. Enforcement of child support awards is delayed because of counter claims for custody.	1	2	3	4	5	8

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
26. Pendente lite awards of child support are made within 60 days of filing the motion.	1	2	3	4	5	8
27. Earnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support.	1	2	3	4	5	8
<i>Custody</i>						
28. Custody awards to mothers are apparently based on the assumption that children belong with their mothers.	1	2	3	4	5	8
29. Judges give fair and serious consideration to fathers who actively seek custody.	1	2	3	4	5	8
30. Judges favor the parent in the stronger financial position when awarding custody.	1	2	3	4	5	8
31. Child custody awards disregard father's violence against mother.	1	2	3	4	5	8
32. Mothers are denied custody because of employment outside the home.	1	2	3	4	5	8
33. Joint custody is ordered over the objections of one or both parents.	1	2	3	4	5	8
<i>Domestic Violence</i>						
34. Civil orders of protection, directing respondents to stay away from the home, are granted when petitioners are in fear of serious bodily harm.	1	2	3	4	5	8
35. When granting civil orders of protection, judges issue support awards for dependents.	1	2	3	4	5	8
36. Petitions for civil orders of protection are rejected where domestic relations cases are pending.	1	2	3	4	5	8
37. Circuit court judges order emergency injunctive relief to protect victims of domestic violence.	1	2	3	4	5	8
38. Judges appear to believe that domestic violence is not a crime.	1	2	3	4	5	8
39. Assault charges are not treated seriously when domestic relations cases are pending.	1	2	3	4	5	8
<i>Rape</i>						
40. Rape victims are accorded less credibility than victims of other types of assault.	1	2	3	4	5	8
41. Judges control the court so as to protect the complaining witness from improper questioning.	1	2	3	4	5	8
42. Sentences are shorter where the victim had a prior relationship with the defendant.	1	2	3	4	5	8

III. Women offenders are sentenced below the guidelines: (CIRCLE ONE:)

1. Less frequently than men
2. About the same as men
3. More frequently than men
8. Don't know

IV. In your experience as an attorney, have you been involved with a case(s) in which you felt the litigation process or outcome was affected (either negatively or positively) by the gender (male or female ) of *one of the parties*? (Please circle your response.)

0. No — GO TO QUESTION V.

1. Yes

a. How many times in the past five years has this occurred? \_\_\_\_\_

b. Briefly describe *the most recent case* in which you felt this occurred — in what way do you feel gender affected the case?

(You may include a separate sheet of paper if you feel you need more room.)

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In which year did this occur? \_\_\_\_\_

In which County (or Baltimore City)? \_\_\_\_\_

V. In your experience as an attorney, has there been a situation where you felt the litigation process or outcome of a case was affected (negatively or positively) by *your* gender (male or female)? (Circle response.)

0. No — GO TO NEXT PAGE

1. Yes

a. How many times in the past five years has this occurred? \_\_\_\_\_

b. Briefly describe these circumstances of the *most recent case* where you felt this occurred?

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In which year did this occur? \_\_\_\_\_

In which County (or Baltimore City)? \_\_\_\_\_



VII. Are you aware of any instances of gender bias in the judicial selection process?

0. No

1. Yes — Briefly describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following questions are to provide general background information about the attorneys answering the survey. Results will be given as group data so that no individuals will be identified in the survey.

1. Number of years practicing law \_\_\_\_\_ (years)  
Year Admitted to the Maryland Bar: 19\_\_\_\_ (year)

2. Primary County (including Baltimore City) where you practice in the State of Maryland: \_\_\_\_\_

3. During the past two years, has litigation formed over 20% of your practice? \_\_\_\_\_ No \_\_\_\_\_ Yes

4. Check if any of these areas constitute 20% or more of your current practice:

- \_\_\_\_\_ Personal Injury (Plaintiff)
- \_\_\_\_\_ Personal Injury (Defendent)
- \_\_\_\_\_ Criminal (Defense)
- \_\_\_\_\_ Criminal (Prosecutor)
- \_\_\_\_\_ Domestic

5. In what year were you born? 19\_\_\_\_\_

6. Sex: \_\_\_\_\_ Male \_\_\_\_\_ Female

7. Race/Ethnicity (Optional):

- \_\_\_\_\_ White
- \_\_\_\_\_ Black
- \_\_\_\_\_ Hispanic
- \_\_\_\_\_ Oriental
- \_\_\_\_\_ Other \_\_\_\_\_ Please specify: \_\_\_\_\_

PLEASE DO NOT SIGN YOUR NAME; ALL QUESTIONNAIRES ARE CONFIDENTIAL.

THANK YOU FOR YOUR TIME AND COOPERATION. PLEASE RETURN THE QUESTIONNAIRE AS SOON AS POSSIBLE IN THE ENCLOSED ENVELOPE OR RETURN IT TO:

SURVEY RESEARCH CENTER  
ROOM 1103 ART/SOCIOLOGY  
UNIVERSITY OF MARYLAND  
COLLEGE PARK, MARYLAND 20742

Exhibit E-2(c)

COURT EMPLOYEES' QUESTIONNAIRE





ROBERT C. MURPHY  
CHIEF JUDGE  
COURT OF APPEALS OF MARYLAND  
COURTS OF APPEAL BUILDING  
ANNAPOLIS, MARYLAND 21401

November 18, 1987

Maryland's Special Joint Committee on Gender Bias in the Courts is seeking to ascertain the attitudes, perceptions, and actual experiences of employees of the Maryland court system concerning the treatment of individuals within the State judicial system. To this end, the attached questionnaire is of extreme importance in assisting the Committee with its work.

It would be greatly appreciated if you would complete the questionnaire and return it in the enclosed envelope by December 23. Individuals completing the questionnaire will not be identified. The results of the survey will appear in the form of group data and be tabulated by the University of Maryland Survey Research Center, with the aggregated results made available to the Committee.

I most earnestly enlist your support and cooperation. Should you have questions or need additional information about the Committee, please contact Deborah A. Unitus, Administrative Office of the Courts, at (301) 974-2353.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert C. Murphy".

Robert C. Murphy

NOTE FROM THE COMMITTEE: The Committee has tried, within space limitations, to include as many specifics as possible in the questionnaire. It focuses on areas of the law most frequently aired at the Committee's public hearings. Please feel free to provide additional information about any other personal experiences with gender bias in the courts which you feel should be brought to the Committee's attention.



1. The following questions ask about specific behaviors and the frequency of their occurrence in your experience: Circle the response which best describes your experience. Responses are (1) Always (2) Often (3) Sometimes (4) Rarely or (5) Never. (CIRCLE RESPONSE; IF YOU HAVE NO EXPERIENCE IN A PARTICULAR AREA, CIRCLE "DON'T KNOW" COLUMN.)

ALWAYS    OFTEN    SOMETIMES    RARELY    NEVER    DON'T  
KNOW

*Court Interactions:*

1. Women attorneys are asked if they are attorneys when men are not asked.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
2. Women employees in the court system are addressed by first names or terms of endearment when men employees are addressed by surnames or titles.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
3. Women litigants or witnesses are addressed by first names or terms of endearment when men are addressed by surnames or titles.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
4. Comments are made about the personal appearance of women employees in the court system when no such comments are made about men.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
5. Comments are made about the personal appearance of women litigants or witnesses when no such comments are made about men.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
6. Sexist remarks or jokes are made in court or in chambers.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
7. Women litigants are subjected to verbal or physical sexual advances.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8
8. Women employees in the court system are subjected to verbal or physical sexual advances.						
— by judges	1	2	3	4	5	8
— by counsel	1	2	3	4	5	8
— by court personnel	1	2	3	4	5	8

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*Credibility*

- |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| 9. Judges appear to give less weight to female attorneys arguments than to those of male attorneys.                 | 1 | 2 | 3 | 4 | 5 | 8 |
| 10. Judges appear to give less weight to the testimony of female experts than to that of male experts.              | 1 | 2 | 3 | 4 | 5 | 8 |
| 11. Judges appear to require more evidence for a female litigant to prove her case than for a male litigant.        | 1 | 2 | 3 | 4 | 5 | 8 |
| 12. Judges give different sentences to female defendants than they give to male defendants, based solely on gender. | 1 | 2 | 3 | 4 | 5 | 8 |

II. In the first column, please check those behaviors that you personally have experienced while working in the court system. In the second column, please check those behaviors that you have heard have occurred to another employee.

	Experienced	Heard About
13. Sexual advances in exchange for an employment security/opportunity:		
— from a judge	_____	_____
— from an attorney	_____	_____
— from a co-worker (including subordinates)	_____	_____
— from a supervisor	_____	_____
14. Requests for sexual activity		
— from a judge	_____	_____
— from an attorney	_____	_____
— from co-worker (including subordinates)	_____	_____
— from a supervisor	_____	_____
— from public	_____	_____
15. Physical touching of a sexual nature		
— from a judge	_____	_____
— from an attorney	_____	_____
— from co-worker (including subordinates)	_____	_____
— from a supervisor	_____	_____
— from public	_____	_____
16. Verbal behavior such as sexist jokes or comments		
— from a judge	_____	_____
— from an attorney	_____	_____
— from co-workers (including subordinates)	_____	_____
— from a supervisor	_____	_____
— from public	_____	_____

III. The following questions are directed at job responsibilities and opportunities in the court system. All information is confidential; no individuals will be identified. All results will be reported as group data. Additional information or experiences which you would like to bring to the Committee's attention may be included on a separate sheet of paper. (Circle your response or fill in the blanks)

17. What is your job title? \_\_\_\_\_

Briefly describe your job duties: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

18. Does your position have a written job description?

0. No 1. Yes 8. Don't Know

19. Number of years you have been employed in the Maryland court system? \_\_\_\_\_

20. Number of years employed in your current position? \_\_\_\_\_

21. Before your employment with the court system, did you have prior work experience or was this your first job?

0. No, first job

1. Yes \_\_\_\_\_ How many years? \_\_\_\_\_

22. Level of education when *first hired* in the court system?

1. Less than high school

2. High School graduate

3. Some college

4. College graduate

5. Post graduate credits or degree

23. *Current* level of education:

1. Less than high school

2. High school graduate

3. Some College

4. College graduate

5. Post graduate credits or degree

24. Yearly salary level when *first hired*: \_\_\_\_\_ (approximate)

25. *Current* yearly salary: \_\_\_\_\_ (approximate)

26. How much of your time is *usually* spent in the court room while performing your job responsibilities and duties?

1. 0-24% 2. 25%-49% 3. 50%-74% 4. 75%-100%

IV. Please circle the response (Always, Often, Sometimes, Rarely, Never, or Don't Know) which best describes your experiences while employed in the court system.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
27. My job duties and responsibilities have been reduced because of my gender.	1	2	3	4	5	8
28. My job duties and responsibilities have been increased because of my gender.	1	2	3	4	5	8
29. My opinions in job related situations are given different weight or importance than a person of the opposite gender.	1	2	3	4	5	8
30. I feel I am asked to perform duties that would not be asked of a person of the opposite sex.	1	2	3	4	5	8
31. I feel that there are job duties I am <i>not</i> allowed to perform because of my gender.	1	2	3	4	5	8
32. Choice job assignments are given to employees on the basis of gender.	1	2	3	4	5	8
33. I get all the support/information I need to do my job.	1	2	3	4	5	8
34. I am permitted to go to job training programs which are available to my position.	1	2	3	4	5	8
35. Opportunities for job advancement in the court system are limited because of my gender.	1	2	3	4	5	8
36. When promotional opportunities are available in the court system, I am informed of the opening.	1	2	3	4	5	8
37. I am encouraged to apply for promotional opportunities.	1	2	3	4	5	8
38. In my area, it appears that members of one gender are given preferential appointments to supervisory positions.	1	2	3	4	5	8
39. If there is a problem or complaint about my job, there is a person or agency that would deal with the problem or complaint.	1	2	3	4	5	8

IF YOU INDICATED THAT YOUR JOB DUTIES AND RESPONSIBILITIES HAVE BEEN INCREASED OR AFFECTED BECAUSE OF YOUR GENDER (QUESTIONS 28 AND 30 ABOVE), BRIEFLY DESCRIBE HOW:

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40. In the past two years, have you filed a complaint involving gender bias on the job?

0. No

1. Yes \_\_\_\_\_ Was it resolved to your satisfaction? \_\_\_\_\_ No \_\_\_\_\_ Yes

41. In the past two years, have you attended any job training programs?

0. No \_\_\_\_\_ Why not? \_\_\_\_\_

1. Yes \_\_\_\_\_

Were you given:

Administrative leave to attend: \_\_\_\_\_ No \_\_\_\_\_ Yes

\_\_\_\_\_ Paid \_\_\_\_\_ Unpaid

Expenses: mileage reimbursement: \_\_\_\_\_ No \_\_\_\_\_ Yes

registration (if any) \_\_\_\_\_ No \_\_\_\_\_ Yes

42. Do you feel that the salary for most court employees in your area is too high, too low or about right for the work that you do?

1. Too High

2. About right

3. Too low

8. Don't know

43. Are persons of the opposite sex paid more, paid less or about the same for performing the same job duties and responsibilities that you perform?

1. Paid more

2. Paid same

3. Paid less

8. Don't know

44. Do you feel that you have been denied a promotion while employed in the court system because of your gender?

0. No

1. Yes \_\_\_\_\_ Briefly describe the circumstances: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

45. If you were ever denied a promotion, were you given a reason for the denial?

0. No

1. Yes

8. Have not been denied a promotion

46. Do you feel that someone else has been granted or denied a promotion while employed in the court system because of his/her gender?

0. No

1. Yes \_\_\_\_\_ Briefly describe the circumstances: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

47. How much job advancement opportunity do you feel is available to you in the court system in Maryland?
1. No opportunity
  2. Little opportunity
  3. Some opportunity
  4. A lot of opportunity
  8. Don't know, not sure

48. Have you ever requested maternity leave?

0. No \_\_\_\_\_

1. Yes \_\_\_\_\_ Was the leave granted? \_\_\_\_\_ No \_\_\_\_\_ Yes

\_\_\_\_\_ Paid \_\_\_\_\_ Unpaid

What amount of time was requested \_\_\_\_\_

What amount of time was granted? \_\_\_\_\_

49. Have you ever requested leave, other than maternity leave, to provide care for an infant or adopted child?

0. No \_\_\_\_\_

1. Yes \_\_\_\_\_ Was the leave granted? \_\_\_\_\_ No \_\_\_\_\_ Yes

\_\_\_\_\_ Paid \_\_\_\_\_ Unpaid

What amount of time was requested \_\_\_\_\_

What amount of time was granted? \_\_\_\_\_

50. Have you ever requested any leave beyond that described in questions 48 and 49 to provide care for dependent children?

0. No \_\_\_\_\_

1. Yes \_\_\_\_\_ Was the leave granted? \_\_\_\_\_ No \_\_\_\_\_ Yes

51. Have you ever requested leave to provide care for elderly relatives?

0. No \_\_\_\_\_

1. Yes \_\_\_\_\_ Was the leave granted? \_\_\_\_\_ No \_\_\_\_\_ Yes

52. Do you have children under 12 for whom day care is needed?

0. No \_\_\_\_\_

1. Yes \_\_\_\_\_ Infant \_\_\_\_\_ Preschool \_\_\_\_\_ After School

53. Is day care currently available at your work place?

0. No \_\_\_\_\_ Would you use it if it were available?

0. No

1. Yes \_\_\_\_\_ Infant \_\_\_\_\_ Preschool \_\_\_\_\_ After School

1. Yes

\_\_\_\_\_ Infant \_\_\_\_\_ Preschool \_\_\_\_\_ After School

V. The following questions are to provide general background information about the people answering the survey. Results will only be given as grouped numbers; no individual information will be released from the questionnaires.

54. Currently employed at:

Administrative Office of the Courts \_\_\_\_\_

includes Maryland Law Library

Attorney Grievance Commission

Board of Law Examiners

Rules Committee

Circuit Court \_\_\_\_\_

District Court \_\_\_\_\_

Other \_\_\_\_\_

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55. In what year were you born? 19\_\_\_\_\_

56. Gender: \_\_\_\_\_ Male \_\_\_\_\_ Female

57. Race/Ethnicity: (optional): \_\_\_\_\_ White \_\_\_\_\_ Hispanic  
\_\_\_\_\_ Black \_\_\_\_\_ Oriental  
\_\_\_\_\_ Other \_\_\_\_\_ Please specify: \_\_\_\_\_

58. Is your position?

\_\_\_\_\_ permanent \_\_\_\_\_ permanent contractual or \_\_\_\_\_ contractual  
Is it \_\_\_\_\_ fulltime or \_\_\_\_\_ parttime

59. If your position is contractual, do you receive benefits (medical, sick leave, annual leave)?

\_\_\_\_\_ yes \_\_\_\_\_ no

Please include any additional comments and experiences that you would like to bring to the attention of the Special Joint Committee on Gender Bias in the Courts.

THANK YOU FOR YOUR TIME AND COOPERATION. THE COMPLETED QUESTIONNAIRE SHOULD BE MAILED IN THE ATTACHED ENVELOPE TO:

SURVEY RESEARCH CENTER  
1103 ART/SOCIOLOGY BUILDING  
UNIVERSITY OF MARYLAND  
COLLEGE PARK, MARYLAND 20742



Exhibit E-3

**SURVEY RESULTS**



Exhibit E(3)  
Explanatory Note

The results of the Committee's surveys are reported in this section. The data are reported in tabular form with respect to each question.

Each table in this section identifies the question number and the questionnaire on which the question appeared (judges, lawyers or court employees). The text of the question precedes the response data. Where appropriate, one table indicates the responses of all the respondents on the particular question, and another table indicates the responses of those who expressed an opinion on the question. Where open-ended answers were given, illustrative examples of these answers follow the tables.

Many questions appeared on more than one questionnaire. For example, both judges and lawyers were asked whether "[c]ircuit court judges order emergency injunctive relief to protect victims of domestic violence." (Question 37.) Where this occurs, the data are reported for both the judges and the lawyers in the same table.



Question I -- Lawyers' Questionnaire

In the following areas of law, have you found that the 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:

	TREATS MALES MORE FAVORABLY	TREATS FEMALES MORE FAVORABLY	TREATS BOTH EQUALLY	NO OPINION
<b>I. Family Law</b>				
<b>a. Marital property</b>				
-- Amount of monetary award				
FEMALE ATTORNEYS:	23%	10%	12%	55%
LITIGATORS:	22%	14%	11%	53%
ALL FEMALE ATTORNEYS:	26%	7%	14%	53%
MALE ATTORNEYS:	6%	28%	21%	46%
LITIGATORS:	7%	21%	30%	43%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	52%	28%	20%	
LITIGATORS:	47%	29%	24%	
ALL FEMALE ATTORNEYS:	55%	15%	30%	
MALE ATTORNEYS:	11%	38%	51%	
LITIGATORS:	11%	36%	52%	
-- Enforcement of judgment				
FEMALE ATTORNEYS:	20%	4%	19%	57%
LITIGATORS:	20%	20%	5%	55%
ALL FEMALE ATTORNEYS:	23%	4%	18%	55%
MALE ATTORNEYS:	7%	21%	26%	46%
LITIGATORS:	9%	24%	24%	43%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	41%	50%	10%	
LITIGATORS:	44%	44%	11%	
ALL FEMALE ATTORNEYS:	50%	9%	41%	
MALE ATTORNEYS:	13%	49%	39%	
LITIGATORS:	15%	42%	42%	
<b>b. Alimony</b>				
-- Amount of award				
FEMALE ATTORNEYS:	22%	15%	7%	56%
LITIGATORS:	27%	9%	14%	50%
ALL FEMALE ATTORNEYS:	27%	11%	8%	54%
MALE ATTORNEYS:	7%	34%	13%	46%
LITIGATORS:	8%	12%	38%	42%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	54%	15%	31%	
LITIGATORS:	54%	17%	29%	
ALL FEMALE ATTORNEYS:	58%	25%	17%	
MALE ATTORNEYS:	13%	24%	63%	
LITIGATORS:	13%	21%	66%	
-- Modification of award				
FEMALE ATTORNEYS:	23%	6%	12%	59%
LITIGATORS:	26%	14%	7%	53%
ALL FEMALE ATTORNEYS:	24%	5%	12%	59%
MALE ATTORNEYS:	8%	25%	19%	49%
LITIGATORS:	9%	19%	28%	45%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	54%	34%	13%	
LITIGATORS:	55%	31%	14%	
ALL FEMALE ATTORNEYS:	57%	13%	30%	
MALE ATTORNEYS:	15%	36%	49%	
LITIGATORS:	16%	33%	51%	
-- Duration of award				
FEMALE ATTORNEYS:	24%	7%	11%	58%
LITIGATORS:	27%	12%	9%	52%
ALL FEMALE ATTORNEYS:	26%	7%	10%	57%
MALE ATTORNEYS:	7%	22%	22%	49%
LITIGATORS:	8%	21%	25%	46%



Question I -- Lawyers' Questionnaire (cont'd)

THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	57%	26%	17%	
LITIGATORS:	57%	24%	19%	
ALL FEMALE ATTORNEYS:	61%	15%	24%	
MALE ATTORNEYS:	13%	43%	44%	
LITIGATORS:	15%	38%	47%	
-- Enforcement of award				
FEMALE ATTORNEYS:	25%	7%	13%	56%
LITIGATORS:	25%	16%	7%	52%
ALL FEMALE ATTORNEYS:	24%	6%	13%	57%
MALE ATTORNEYS:	9%	22%	20%	49%
LITIGATORS:	11%	18%	25%	46%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	53%	33%	15%	
LITIGATORS:	52%	33%	15%	
ALL FEMALE ATTORNEYS:	56%	13%	30%	
MALE ATTORNEYS:	17%	40%	43%	
LITIGATORS:	20%	34%	46%	
c. Child support				
-- Amount of award				
FEMALE ATTORNEYS:	32%	9%	12%	47%
LITIGATORS:	35%	14%	10%	42%
ALL FEMALE ATTORNEYS:	31%	7%	14%	48%
MALE ATTORNEYS:	11%	27%	18%	44%
LITIGATORS:	11%	20%	29%	41%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	61%	23%	15%	
LITIGATORS:	60%	23%	17%	
ALL FEMALE ATTORNEYS:	59%	14%	27%	
MALE ATTORNEYS:	19%	33%	48%	
LITIGATORS:	18%	34%	48%	
-- Modification of award				
FEMALE ATTORNEYS:	27%	7%	16%	50%
LITIGATORS:	30%	18%	9%	43%
ALL FEMALE ATTORNEYS:	27%	6%	16%	52%
MALE ATTORNEYS:	10%	23%	21%	46%
LITIGATORS:	11%	23%	25%	42%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	54%	32%	13%	
LITIGATORS:	53%	31%	16%	
ALL FEMALE ATTORNEYS:	56%	11%	33%	
MALE ATTORNEYS:	18%	39%	43%	
LITIGATORS:	19%	39%	43%	
-- Enforcement of award				
FEMALE ATTORNEYS:	28%	6%	19%	47%
LITIGATORS:	28%	23%	9%	41%
ALL FEMALE ATTORNEYS:	27%	6%	18%	50%
MALE ATTORNEYS:	12%	18%	24%	45%
LITIGATORS:	15%	24%	20%	42%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	49%	39%	12%	
LITIGATORS:	47%	39%	15%	
ALL FEMALE ATTORNEYS:	54%	11%	35%	
MALE ATTORNEYS:	23%	44%	34%	
LITIGATORS:	25%	41%	34%	
d. Custody of children				
FEMALE ATTORNEYS:	2%	40%	15%	43%
LITIGATORS:	3%	18%	39%	40%
ALL FEMALE ATTORNEYS:	4%	34%	16%	46%
MALE ATTORNEYS:	1%	46%	13%	41%
LITIGATORS:	1%	13%	48%	39%

Question I -- Lawyers' Questionnaire (cont'd)

THOSE EXPRESSING AN OPINION				
	FEMALE ATTORNEYS:	5%	26%	69%
	LITIGATORS:	5%	30%	66%
	ALL FEMALE ATTORNEYS:	8%	64%	29%
	MALE ATTORNEYS:	1%	22%	77%
	LITIGATORS:	2%	21%	77%
e.	Visitation with children			
	FEMALE ATTORNEYS:	9%	17%	27%
	LITIGATORS:	10%	28%	18%
	ALL FEMALE ATTORNEYS:	9%	16%	28%
	MALE ATTORNEYS:	3%	24%	32%
	LITIGATORS:	2%	32%	27%
				47%
				44%
				48%
				42%
				39%
THOSE EXPRESSING AN OPINION				
	FEMALE ATTORNEYS:	17%	51%	32%
	LITIGATORS:	18%	50%	32%
	ALL FEMALE ATTORNEYS:	16%	30%	53%
	MALE ATTORNEYS:	5%	54%	41%
	LITIGATORS:	4%	52%	44%
II. Domestic Violence				
a.	Civil order of protection			
	-- Securing ex parte order			
	FEMALE ATTORNEYS:	15%	20%	11%
	LITIGATORS:	14%	13%	23%
	ALL FEMALE ATTORNEYS:	15%	14%	12%
	MALE ATTORNEYS:	3%	26%	18%
	LITIGATORS:	3%	17%	31%
				55%
				50%
				58%
				54%
				49%
THOSE EXPRESSING AN OPINION				
	FEMALE ATTORNEYS:	29%	29%	41%
	LITIGATORS:	28%	26%	46%
	ALL FEMALE ATTORNEYS:	36%	34%	30%
	MALE ATTORNEYS:	6%	38%	56%
	LITIGATORS:	7%	33%	60%
	-- Securing protective order			
	FEMALE ATTORNEYS:	17%	14%	14%
	LITIGATORS:	16%	17%	18%
	ALL FEMALE ATTORNEYS:	16%	11%	13%
	MALE ATTORNEYS:	4%	23%	18%
	LITIGATORS:	5%	17%	28%
				55%
				50%
THOSE EXPRESSING AN OPINION				
	FEMALE ATTORNEYS:	34%	35%	31%
	LITIGATORS:	32%	33%	35%
	ALL FEMALE ATTORNEYS:	41%	28%	32%
	MALE ATTORNEYS:	9%	40%	51%
	LITIGATORS:	10%	34%	56%
	-- Enforcement of order			
	FEMALE ATTORNEYS:	18%	10%	14%
	LITIGATORS:	17%	16%	13%
	ALL FEMALE ATTORNEYS:	20%	7%	13%
	MALE ATTORNEYS:	5%	20%	19%
	LITIGATORS:	6%	20%	24%
				59%
				55%
				61%
				56%
				51%
THOSE EXPRESSING AN OPINION				
	FEMALE ATTORNEYS:	39%	39%	22%
	LITIGATORS:	37%	35%	28%
	ALL FEMALE ATTORNEYS:	50%	17%	33%
	MALE ATTORNEYS:	12%	45%	43%
	LITIGATORS:	11%	40%	48%

Question I -- Lawyers' Questionnaire (cont'd)

b. Criminal proceedings				
-- Commissioner's decision to issue a warrant				
FEMALE ATTORNEYS:	14%	10%	13%	64%
LITIGATORS:	15%	16%	13%	57%
ALL FEMALE ATTORNEYS:	12%	10%	13%	66%
MALE ATTORNEYS:	4%	18%	20%	58%
LITIGATORS:	4%	23%	21%	51%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	34%	39%	27%	
LITIGATORS:	34%	37%	29%	
ALL FEMALE ATTORNEYS:	34%	29%	37%	
MALE ATTORNEYS:	10%	48%	42%	
LITIGATORS:	9%	47%	44%	
-- Commissioner's decision to issue a summons				
FEMALE ATTORNEYS:	11%	10%	15%	65%
LITIGATORS:	11%	18%	12%	59%
ALL FEMALE ATTORNEYS:	10%	8%	15%	67%
MALE ATTORNEYS:	3%	16%	23%	58%
LITIGATORS:	4%	25%	20%	52%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	29%	46%	25%	
LITIGATORS:	27%	44%	29%	
ALL FEMALE ATTORNEYS:	31%	25%	45%	
MALE ATTORNEYS:	7%	55%	38%	
LITIGATORS:	8%	51%	41%	
-- Length of sentence				
FEMALE ATTORNEYS:	11%	14%	6%	69%
LITIGATORS:	12%	9%	18%	61%
ALL FEMALE ATTORNEYS:	12%	15%	8%	66%
MALE ATTORNEYS:	4%	25%	14%	57%
LITIGATORS:	4%	15%	31%	50%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	30%	26%	44%	
LITIGATORS:	30%	23%	46%	
ALL FEMALE ATTORNEYS:	35%	42%	23%	
MALE ATTORNEYS:	9%	32%	59%	
LITIGATORS:	9%	30%	62%	
III. Juvenile Courts				
a. Delinquency cases				
FEMALE ATTORNEYS:	1%	11%	17%	71%
LITIGATORS:	1%	22%	12%	66%
ALL FEMALE ATTORNEYS:	2%	9%	16%	73%
MALE ATTORNEYS:	(0)	10%	24%	67%
LITIGATORS:	(0)	27%	11%	63%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	2%	61%	38%	
LITIGATORS:	2%	64%	34%	
ALL FEMALE ATTORNEYS:	7%	34%	60%	
MALE ATTORNEYS:	(0)	71%	29%	
LITIGATORS:	(0)	72%	28%	
b. Status offense cases				
FEMALE ATTORNEYS:	2%	5%	19%	74%
LITIGATORS:	3%	24%	6%	68%
ALL FEMALE ATTORNEYS:	4%	4%	16%	77%
MALE ATTORNEYS:	(0)	5%	23%	72%
LITIGATORS:	(0)	27%	6%	67%
THOSE EXPRESSING AN OPINION				
FEMALE ATTORNEYS:	7%	73%	20%	
LITIGATORS:	9%	74%	17%	
ALL FEMALE ATTORNEYS:	16%	19%	66%	
MALE ATTORNEYS:	(0)	81%	19%	
LITIGATORS:	(0)	83%	17%	

Question I - Lawyers' Questionnaire (cont'd)

c. Treatment of adults in cases involving abuse/neglect

FEMALE ATTORNEYS:	6%	7%	15%	72%
LITIGATORS:	8%	19%	8%	65%
ALL FEMALE ATTORNEYS:	5%	6%	17%	72%
MALE ATTORNEYS:	2%	7%	24%	67%
LITIGATORS:	2%	27%	8%	64%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	20%	59%	21%	
LITIGATORS:	22%	56%	22%	
ALL FEMALE ATTORNEYS:	17%	22%	60%	
MALE ATTORNEYS:	5%	74%	22%	
LITIGATORS:	5%	74%	21%	

IV. Negligence

a. Liability finding

FEMALE ATTORNEYS:	6%	5%	24%	66%
LITIGATORS:	7%	30%	4%	59%
ALL FEMALE ATTORNEYS:	6%	3%	29%	63%
MALE ATTORNEYS:	2%	5%	53%	41%
LITIGATORS:	2%	58%	6%	34%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	14%	76%	11%	
LITIGATORS:	16%	73%	11%	
ALL FEMALE ATTORNEYS:	15%	9%	76%	
MALE ATTORNEYS:	3%	89%	8%	
LITIGATORS:	3%	89%	9%	

b. Amount of judgment

-- General

FEMALE ATTORNEYS:	8%	2%	24%	66%
LITIGATORS:	9%	30%	1%	59%
ALL FEMALE ATTORNEYS:	9%	3%	26%	62%
MALE ATTORNEYS:	3%	7%	49%	41%
LITIGATORS:	4%	53%	9%	34%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	18%	76%	11%	
LITIGATORS:	23%	74%	4%	
ALL FEMALE ATTORNEYS:	23%	7%	70%	
MALE ATTORNEYS:	6%	82%	12%	
LITIGATORS:	6%	80%	14%	

-- Pain and suffering

FEMALE ATTORNEYS:	7%	4%	23%	65%
LITIGATORS:	8%	29%	4%	59%
ALL FEMALE ATTORNEYS:	8%	4%	26%	63%
MALE ATTORNEYS:	3%	12%	44%	42%
LITIGATORS:	3%	48%	14%	36%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	17%	73%	10%	
LITIGATORS:	19%	70%	11%	
ALL FEMALE ATTORNEYS:	20%	11%	69%	
MALE ATTORNEYS:	5%	75%	20%	
LITIGATORS:	4%	74%	22%	

-- Disability

FEMALE ATTORNEYS:	16%	2%	17%	65%
LITIGATORS:	18%	21%	3%	59%
ALL FEMALE ATTORNEYS:	14%	3%	21%	63%
MALE ATTORNEYS:	8%	8%	42%	42%
LITIGATORS:	8%	46%	9%	36%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	40%	53%	7%	
LITIGATORS:	43%	50%	7%	
ALL FEMALE ATTORNEYS:	38%	7%	55%	
MALE ATTORNEYS:	14%	73%	13%	
LITIGATORS:	13%	73%	15%	

Question I -- Lawyers' Questionnaire (cont'd)

-- Scarring/disfigurement

FEMALE ATTORNEYS:	3%	17%	13%	67%
LITIGATORS:	4%	19%	16%	61%
ALL FEMALE ATTORNEYS:	3%	16%	18%	63%
MALE ATTORNEYS:	1%	30%	30%	39%
LITIGATORS:	1%	33%	33%	32%

THOSE EXPRESSING AN OPINION

FEMALE ATTORNEYS:	7%	49%	44%
LITIGATORS:	9%	49%	42%
ALL FEMALE ATTORNEYS:	8%	42%	50%
MALE ATTORNEYS:	2%	49%	49%
LITIGATORS:	2%	49%	49%

Question III -- Lawyers' Questionnaire, and Question 43 -- Judges' Questionnaire  
Sentencing

Women offenders are sentenced below the guidelines:

	Less Frequently Than Men	About the Same as Men	More Frequently Than Men	Don't Know
<b>ALL RESPONSES</b>				
FEMALE ATTORNEYS:	1%	7%	23%	69%
LITIGATORS:	2%	7%	26%	65%
CRIMINAL PRACTITIONERS:	(0)	22%	51%	27%
MALES ATTORNEYS:	8%	8%	30%	54%
LITIGATORS:	7%	8%	37%	48%
CRIMINAL PRACTITIONERS:	14%	8%	57%	21%
ALL JUDGES:	2%	35%	23%	40%
MALE JUDGES:	2%	35%	23%	40%
<b>THOSE EXPRESSING AN OPINION</b>				
FEMALE ATTORNEYS:	7%	23%	70%	
LITIGATORS:	6%	19%	75%	
CRIMINAL PRACTITIONERS:	(0)	30%	70%	
MALE ATTORNEYS:	18%	17%	65%	
LITIGATORS:	13%	14%	72%	
CRIMINAL PRACTITIONERS:	18%	10%	72%	
ALL JUDGES:	4%	58%	38%	
MALE JUDGES:	3%	58%	38%	

Question 44 -- Judges' Questionnaire  
Severity of Sentencing

Judges give sentences, based solely on gender, to female defendants that are (less severe, about the same, more severe) than they give to male defendants.

	All Judges	Male Judges
Less severe	41%	39%
About the same	49%	51%
More severe	2%	1%
No answer	8%	9%

Question IV -- Lawyers' Questionnaire  
Parties' Gender

In your experience as an attorney, has there been a situation where you felt the litigation process or outcome of a case was affected (negatively or positively) by gender (male or female) of one of the parties?

	Yes	No	No Answer
MALES:	19%	72%	9%
FEMALES:	21%	47%	32%
 THOSE EXPRESSING AN OPINION:			
MALES:	21%	79%	
FEMALES:	31%	69%	

a. How many times in the past five years has this occurred?

	MALE	FEMALES
1 to 3	27	14
4 to 6	6	8
7 to 9	2	2
More than 9	7	8
Several, many	6	7
No answer	8	10

b. In what year did this occur?

1987	24	22
1986	8	4
1985	6	9
1984	2	2
1983	(0)	2
1982	4	1
1980	1	(0)
No year given	11	9

In what county (or Baltimore City)?

Baltimore City	12	12
Baltimore County	6	4
Montgomery County	5	7
Prince George's County	6	8
Anne Arundel/Howard Counties	5	4
Eastern/Southern	4	3
Western	6	2
No location given	12	9

*Illustrative Comments*

**Female Attorneys**

In a CINA proceeding, a father was not required to be drug free to visit with child - mothers are regularly required to have three clean urines before visiting.

There isn't one particular case. Overall, I have the feeling judges don't believe women who say their children are being sexually abused by an ex-husband. Also, in order to obtain contempt for non-payment of child support requires several times in court before you get the judge's attention.

Panel Chairman in Health Claims excluded economist's testimony on value of woman's services in the home because testimony on her employment outside the home was "enough"; i.e., panel refused to admit evidence that showed women who work outside the home still substantially work in the home as well.

Question IV -- Lawyers' Questionnaire (cont'd)  
Parties' Gender

Panel found it preposterous to suggest that plaintiff/decedent worked 4-6 hours per day in the home while working 8 hours per day as a nurse, even though the testimony was unrebutted.

As a prosecutor, I've tried many domestic abuse and sex offense cases where the female complainant is regarded with less credibility because she was at some point with the defendant voluntarily.

I believe there is a lot of gender bias in my area of practice - child support - both towards males and females. Welfare mothers are not encouraged or expected to meet their earning potential and males are often allowed to avoid their support obligations.

Custody case - boy, 10, who was being physically and verbally abused by his father, was placed in his father's custody. Girl, 13, was placed in her mother's custody. Sons "belong" with their fathers. Master's decision.

I feel that men are given special consideration if they assume any responsibility for their children. Women are expected to be satisfied with any help that they received, especially regarding child visitation/support, and are often advised that his is better than what many fathers do.

Wife's infidelity viewed by judge as more serious offense than husband's brutality and alcoholism where alcoholism had caused parties' joint debts to soar.

In domestic violence cases, Judge [ ] assumes the woman is lying or did something to provoke the violence.

Judge ordered an expedited trial date because the plaintiff was a former model and he wanted to try the case "if she's as pretty as her picture" (he was reviewing an exhibit, her picture, when he made this decision). The plaintiff (our client) won. Docket control really should not be a function of physical characteristics of the litigants.

Female plaintiff seeking custody obtained it in spite of testimony of violence, promiscuity and instability. Had she been the father, custody would have been denied her.

Although the father was clearly proven to be a fit and proper parent and an established alternating week custody arrangement had been in place (and successful) many months, and only evidence showed mother had threatened child, mother was awarded custody and father's visitation greatly reduced.

**Male Attorneys**

Former husband asked for child support for children now living with him and reduce alimony payments. Alimony was not reduced and ex-husband was given no child support; former wife was working.

Court awarded wife amount which would enable her to maintain current life style without considering her potential earning power.

Retired elderly lady not given due consideration of the jury partially because she was "old" and had a "retirement income."

Men just don't win custody cases unless the mother is a female Attila the Hun. Women don't get protection from violence. It's uniform unfairness on both issues.

Women uniformly get lesser sentences in criminal cases and are favored in domestic cases with respect to custody, support, and alimony. In a recent multiple offender D.W.I. case, an attractive young woman was sentenced to one weekend in jail -- a similar offense by a male defendant would have gotten five weekends in jail or thirty days.

Violation of domestic violence order. Wife had attorney assigned by House of Ruth, plus other "supporters." I represented husband and feel judge was intimidated, and ruled unfairly against husband.

The judge was clearly biased against the mother, refused to give credence to her claims for support though the husband was well able to pay, and awarded woefully inadequate child support payments.

Question IV -- Lawyers' Questionnaire (cont'd)  
Parties' Gender

Male Attorneys (cont'd)

The judge (a male) allowed an older male attorney to present patently inadmissible evidence of the complaining witness' sexual history over the repeated objection of a female prosecutor. The case is on appeal.

Custody awarded to father living with a woman without benefit of marriage when the most damning testimony was mother's sexual activity (not around children), her temper, and her job requirements. This was subsequently reversed by judge.

Question V -- Judges' Questionnaire  
Party Gender

In your experience, have you observed or been informed of a case(s) in which you felt the litigation process or outcome was affected (either negatively or positively) by the gender (male or female) of one of the parties?

	Yes	No
ALL JUDGES	16%	84%
MALE JUDGES	11%	89%
FEMALE JUDGES	67%	33%

*Illustrative Comments*

My bias is toward the mother of young children in custody disputes. This is a natural bias, also strengthened by common sense and experience as a parent (father). I recognize this and constantly try to eliminate it or at least reduce its influence.

I feel failure to award indefinite alimony to women over 50 who have spent most of their adult life outside the labor market to be such a case.

(1) A widow received a disproportionately high award in a condemnation case. (2) In a similar case, two businessmen received only a little more than the original offer from State Roads.

Low verdict for destitute women; sometimes jury less than sympathetic.

Female attorney representing male defendant in a rape case. Verdict - not guilty. Women on jury did not believe victim and defendant's attorney presented good closing argument to jury (7 women, 5 men).

Question V -- Lawyers' Questionnaire  
Counsel Gender

In your experience as an attorney, has there been a situation where you felt the litigation process or outcome of a case was affected (negatively or positively) by your gender (male or female)?

	Yes	No	No Answer
MALES:	4%	86%	10%
FEMALES:	20%	47%	32%

THOSE EXPRESSING AN OPINION:

MALES:	4%	96%
FEMALES:	30%	70%

- a. How many times in the past five years has this occurred?

	MALES	FEMALES
1 to 3	8	24
4 to 6	1	5
7 to 9	(0)	1
More than 9	1	4
Several, many	(0)	6
No answer	(0)	7

- b. In what year did this occur?

1987	7	19
1986	2	6
1985	(0)	5
1984	(0)	1
1983	1	1
1982	(0)	3
1980	(0)	1
No year given	(0)	11

In what county (or Baltimore City)?

Baltimore City	3	15
Baltimore County	1	7
Montgomery County	2	5
Prince George's County	1	2
Anne Arundel/Howard Counties	2	5
Eastern/Southern	1	3
Western	(0)	(0)
No location given	(0)	11

*Illustrative Comments*

**Female Attorneys**

Usually the court doesn't lend my arguments as much credibility as a male attorney if the judge is swayed by gender at all. But the most recent time was a custody case in which I represented a father and obtained joint custody with physical custody alternating weekends for my client. I'm not sure, but it seemed as though my gender as my client's advocate may have given him more credibility.

Question V -- Lawyers' Questionnaire (cont'd)  
Counsel Gender

**Female Attorneys (cont'd)**

In the case set forth above, opposing counsel requested numerous continuances, all of which were granted. My request was denied; opposing counsel called me names.

Two female attorneys with a discovery dispute on motion. Male judge lectured us and refused to rule on issue. Treated us like children.

Most of the time it is a "type" of treatment more than a specific incident. It is overtly male-oriented and self-protective of its "good ole boy" networking and females are outsiders.

At motions hearing in [ ] County in large cases, the single or few females present often are targeted to be the first to address pending motions even when such motions are not advanced by their parties or motion-opposition is led by other parties. The judges are prone simply to suggest: "ladies first."

Three male attorneys involved in a deposition attempted to "gang up" on me to try to get me to agree to certain concessions. I felt they did this and went to the lengths they did because I was a young woman.

Representing children in CINA proceedings, my assertions of appropriate placement and services were given more weight simply by virtue of judge's attitude that as a female, my instincts about child rearing are sounder than those of a male.

I was chastised by a male judge for not standing when I addressed the court (although I was in the process of standing). A male attorney - opposing counsel - addressed the court five consecutive times without standing following my rebuke and was not rebuked by the judge. Outcome favorable to opposing counsel.

This is a difficult question to answer because it is often difficult to determine whether a judge's decision is influenced by factors such as gender. However, I have often felt that judges give more weight to arguments made by attorneys that the judges know - and these attorneys tend to be male. I believe a female attorney has to overcome a certain amount of skepticism on the part of some judges.

During the course of a dispute in a domestic case, the judge (male) was making favorable rulings for my client, and at the end in the chambers, complimented by outfit.

The case was a request by defense counsel for reduction in child support. I believe that had I been one of the male friends (buddies) of the judge, the case would have been dismissed instead of continued indefinitely - twice for the judge's friend (defense counsel).

During civil suit in court, the judge kept smiling at me at my table, let me talk at length while telling opposing counsel (male) to keep quiet, and that he didn't want to hear him. Even my client commented about it after the trial.

In chambers, bantering between judge (white male) and other attorney (white male), while third attorney (black male) and I (white female) were conspicuously not able to participate in the conversation - because we didn't have the "history" they shared. Conversation approximately ten minutes, not just a passing remark or two. (We won the case, however.)

"Good ole boy" syndrome of defense attorney litigating in what was probably calculated to be a patronizing way. Ultimately probably did not affect outcome, but made process unpleasant and probably confusing to panel.

I was appointed to represent a child in a contested custody case. The judge, in a conference in chambers, told the male attorneys representing the parents that he valued my view of the case because I am a mother.

Complex mechanic's lien case - petitioner was represented by older, established male counsel (I am female). Court did not even listen to my arguments, which were very sophisticated and technical. Clearly, the "old boy" network was at work.

Question V -- Lawyers' Questionnaire (cont'd)  
Counsel Gender

**Female Attorneys (cont'd)**

In a jury trial in a personal injury case, the judge virtually ignored me for at least the first half of the case until my arguments on objections and carried on a lengthy personal conversation in chambers with opposing counsel, etc. His attitude improved after I produced authority for each of my evidentiary arguments and demonstrated that I knew what I was doing.

**Male Attorneys**

I followed a women attorney with a DWI client in the District Court for [ ] County. Our respective clients were arrested under virtually identical facts and presented equally compelling reasons for the entry of a probation before judgment. The woman's client received a PBJ, my client was found guilty of DWI and placed on 18 months' probation. This particular judge is known for a rather paternalistic attitude towards women attorneys.

A particular female judge is quite apparently biased against male attorneys when they are opposed by a female attorney.

Court refused to impose sanctions against female opposing counsel who had been shown, through sworn testimony, to have engaged in undue influence of opposing client before legal representation commenced. Court refused to hear balance of case on second trial date for procedural reasons, earlier ruling which brought about hearing in first instance.

Judge makes sexist remarks during custody and criminal cases, "Honey," "Babe."

Hearing before Domestic Relations Master. I had the distinct impression that as male, I was treated with disrespect by female Master.

Question VI -- Judges' Questionnaire  
Counsel Gender

In your experience, have you observed or been informed of a case(s) in which you felt the litigation process or outcome was affected (either negatively or positively) by the gender (male or female) of counsel?

	Yes	No
ALL JUDGES	9%	91%
MALE JUDGES	8%	92%
FEMALE JUDGES	19%	81%

*Illustrative Comments*

During a court deposition a local male attorney referred to (female attorney) as, "Honey, why don't you go shopping while we (men) take care of this." (Female attorney), who is by the way an excellent attorney spent the next six months making life miserable for the male attorney by making him respond to numerous pleadings and by extremely aggressive (but appropriate) tactics. In other words, (female attorney) does her own fighting and is well able to take care of herself and is highly respected for it as well as for her competence.

When I was an attorney, there were several instances where I was given the impression that my gender helped my side -- particularly when I was representing young people.

An angelic, pregnant state's attorney prosecuted a male day-care provider for child molestation. The man didn't have a chance.

Informed by male attorney that young female attorneys reject negotiation attempts. The male attorney therefore, no longer attempts to negotiate settlements when other litigant is represented by female attorney.

As attorney in a number of cases the attitude of jurors varies greatly. Frankly, a good looking woman will fare better than a heavy, non-attractive female attorney. As a judge I have not seen that happen in my presence.

Question VII -- Judges' and Lawyers' Questionnaires  
Judicial Selection

Are you aware of any instances of gender bias in the judicial selection process?

	Yes	No	No Answer
<b>ALL RESPONSES</b>			
All Attorneys (weighted)	12%	76%	11%
Males	12%	79%	9%
Females	13%	54%	33%
All Judges	19%	76%	5%
Male Judges	14%	82%	4%
Female Judges	69%	31%	(0)
<b>THOSE EXPRESSING AN OPINION</b>			
All Attorneys (weighted)	14%	86%	
Males	13%	87%	
Females	20%	80%	
All Judges	20%	80%	
Male Judges	15%	85%	
Female Judges	69%	31%	

*Illustrative Comments*  
**Judges**

There seems to be a definite trend to appoint by gender and race - presumably to overcome past appointments of judges should be blind as the statue of justice.

Just in a general sense that there seems to be a special effort made to appoint women and other minorities - but that's not necessarily wrong.

Appointments made because it was a woman's turn.

Members of the commission ask women applicants about their children, their husband's activities, their opinion on abortion and whether their spouse will be "sharing in the decision-making process." Unmarried applicants are immediately suspect and are subjected to inappropriate questions about personal life activities, etc. Male applicants are not asked such questions. I would also like to see more women judges in administrative roles and important committee chairs. Female judges should have an opportunity to attend training for administrative assignments.

Women and blacks are not treated as favorably by nominating commissions.

Women are under-represented on the nominating commissions. Inquiries are made of women applicants, but not of men, regarding child care arrangements. Comments are made that women may not be able to control courtrooms because of diminutive size/stature.

My opinion, some female lawyers have not been endorsed when they are qualified.

**Female Attorneys**

Judging by the number of female judges on the district and circuit benches, it seems apparent that there is gender biased discrimination.

I understand that women applicants are asked questions re: family life etc., that males are not. General comments are made. I've served on judicial administrative committees for the city bar and those comments are routine.

Question VII -- Judges' and Lawyers' Questionnaires (cont'd)  
Judicial Selection

Female Attorneys (cont'd)

Harder for women to get leadership roles in bar association, which can be stepping stone to judicial appointment. Women who are active in women's rights organizations viewed with skepticism by bar members and judges.

Certain seats are designated as "women" seats or "men" seats.

The Judicial Nominating Commission for [ ] consistently favors female applicants, irrespective of their abilities or experience.

It is impossible for women to compete in the "good ole boy" network.

I believe a recent circuit court judgeship in [ ] County was filled by a female (very qualified) in part to get another female on the bench.

Male Attorneys

Women, especially in [ ] are given judgeships over more qualified male applicants.

Yes, in some seats, a gender bias exists for women, i.e., the "female seat."

Given the percentage of attorneys with 10 years or more experience who are white males, it appears clear that in [ ] there is discrimination in favor of women and blacks.

Women are picked because they are women, not because they are qualified or unqualified.

Sat on judicial selection committee for bar association, have heard sexist remarks re: candidates.

Everyone knows that women are sought to fill certain vacancies when it is politically advantageous.

Judicial selection has tended to favor females out of a misplaced sense of imbalance on the bench.

The lists submitted by the judicial selection committees generally have not had female lawyers. While I recognize that their numbers are smaller than the males with the experience required, we must be sensitive to this matter.

Question VIII -- Judges' Questionnaire  
Intervention

During your tenure as a judge, have you ever intervened in a trial in your court because you observed gender bias in the proceedings?

	Yes	No	No Answer
ALL JUDGES	16%	80%	4%
MALE JUDGES	13%	83%	4%
FEMALE JUDGES	44%	56%	(0)

*Illustrative Comments*

In domestic cases, I usually said something when the wife was asked, "Do you work?" Of course, they mean "for pay" but it was clearly biased.

- (1) Rape trials - dismissing of witness
- (2) Lack of respect for female attorneys by male attorneys.

Defendant was woman physician; plaintiff's attorney constantly referred to her as Miss, and not Dr.

Defendant's attorney referred to female officer as "she" - I told him he would call her officer because she was a police officer.

Male attorney addressed female attorney as "My dear lady" - told him, "she is not yours."

Question 1 -- Judges', Lawyers', and Court Employees' Questionnaire  
Court Interactions

Women attorneys are asked if they are attorneys when men are not asked.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	1%	3%	16%	26%	34%	20%
FEMALE ATTORNEYS:	1%	17%	32%	19%	19%	12%
LITIGATORS:	1%	15%	36%	20%	22%	6%
ALL FEMALE ATTORNEYS:	2%	17%	30%	22%	15%	15%
MALE ATTORNEYS:	1%	1%	14%	26%	27%	21%
LITIGATORS:	1%	1%	14%	30%	42%	12%
JUDGES:	(0)	(0)	2%	12%	87%	(0)
COURT PERSONNEL	(0)	2%	10%	26%	38%	24%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	4%	20%	32%	42%	
FEMALE ATTORNEYS:	1%	19%	36%	22%	22%	
LITIGATORS:	2%	16%	38%	21%	23%	
ALL FEMALE ATTORNEYS:	2%	19%	35%	26%	17%	
MALE ATTORNEYS:	1%	1%	18%	33%	47%	
LITIGATORS:	1%	1%	16%	34%	48%	
JUDGES:	(0)	(0)	2%	12%	87%	
ALL COURT PERSONNEL:	(0)	3%	13%	34%	50%	
MALE:	*	*	10%	28%	60%	
FEMALE:	*	7%	23%	29%	40%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	6%	22%	28%	24%	20%
FEMALE ATTORNEYS:	3%	24%	46%	9%	10%	8%
LITIGATORS:	2%	26%	50%	9%	9%	4%
ALL FEMALE ATTORNEYS	2%	26%	43%	12%	6%	12%
MALE ATTORNEYS:	*	3%	17%	31%	27%	21%
LITIGATORS:	(0)	2%	19%	35%	31%	14%
JUDGES:	(0)	2%	8%	15%	50%	24%
COURT PERSONNEL (#):	(0)	2%	12%	25%	35%	27%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	8%	27%	34%	30%	
FEMALE ATTORNEYS:	3%	28%	51%	10%	9%	
LITIGATORS:	2%	27%	53%	9%	9%	
ALL FEMALE ATTORNEYS:	2%	29%	48%	14%	7%	
MALE ATTORNEYS:	1%	4%	22%	39%	34%	
LITIGATORS:	(0)	3%	22%	40%	36%	
JUDGES:	(0)	2%	11%	20%	67%	
ALL COURT PERSONNEL:	(0)	3%	16%	34%	47%	
MALE:	(0)	4%	11%	35%	50%	
FEMALE:	*	9%	28%	27%	36%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	1%	8%	22%	22%	21%	26%
FEMALE ATTORNEYS:	4%	36%	32%	13%	6%	9%
LITIGATORS:	4%	35%	35%	14%	6%	6%
ALL FEMALE ATTORNEYS:	3%	33%	36%	11%	5%	12%
MALE ATTORNEYS:	*	3%	20%	24%	25%	28%
LITIGATORS:	(0)	3%	19%	29%	28%	21%
JUDGES:	(0)	3%	12%	13%	44%	29%
COURT PERSONNEL (#):	1%	6%	18%	28%	27%	20%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	11%	29%	30%	29%	
FEMALE ATTORNEYS:	4%	39%	37%	14%	6%	
LITIGATORS:	4%	37%	37%	15%	7%	
ALL FEMALE ATTORNEYS:	4%	37%	41%	13%	6%	
MALE ATTORNEYS:	1%	5%	27%	34%	34%	
LITIGATORS:	(0)	3%	24%	37%	36%	
JUDGES:	(0)	4%	17%	18%	61%	
ALL COURT PERSONNEL:	1%	8%	22%	35%	34%	
MALE:	*	5%	20%	35%	41%	
FEMALE:	*	11%	34%	24%	30%	

\*The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

**Question 2 -- Court Employees' Questionnaire  
Court Interactions**

**Women employees in the court system are addressed by first names or terms of endearment when men employees are addressed by surnames or titles.**

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER
<b>THOSE EXPRESSING AN OPINION</b>					
<b>By judges</b>					
MALE:	(0)	4%	19%	27%	48%
FEMALE:	7%	15%	21%	22%	36%
<b>By counsel</b>					
MALE:	(0)	7%	20%	30%	43%
FEMALE:	5%	18%	27%	18%	31%
<b>By court personnel</b>					
MALE:	3%	7%	20%	27%	44%
FEMALE:	9%	18%	22%	20%	30%

Question 2 -- Judges' and Lawyers' Questionnaires  
Court Interactions

Women attorneys are addressed by first names or terms of endearment when men attorneys are addressed by surnames or titles.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	1%	4%	12%	26%	42%	16%
FEMALE ATTORNEYS:	1%	18%	25%	26%	19%	11%
LITIGATORS:	1%	19%	26%	27%	21%	6%
ALL FEMALE ATTORNEYS:	1%	14%	27%	26%	20%	12%
MALE ATTORNEYS:	1%	2%	10%	26%	45%	16%
LITIGATORS:	1%	2%	11%	28%	51%	8%
JUDGES:	(0)	(0)	(0)	3%	95%	2%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	4%	14%	31%	49%	
FEMALE ATTORNEYS:	1%	17%	27%	32%	24%	
LITIGATORS:	2%	20%	28%	29%	22%	
ALL FEMALE ATTORNEYS:	1%	16%	31%	29%	22%	
MALE ATTORNEYS:	1%	2%	12%	31%	54%	
LITIGATORS:	1%	2%	12%	31%	55%	
JUDGES:	(0)	(0)	(0)	4%	97%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	8%	19%	26%	30%	16%
FEMALE ATTORNEYS:	3%	33%	32%	16%	8%	8%
LITIGATORS:	4%	33%	35%	18%	7%	3%
ALL FEMALE ATTORNEYS:	3%	32%	33%	14%	9%	9%
MALE ATTORNEYS:	1%	4%	17%	28%	34%	16%
LITIGATORS:	1%	4%	15%	32%	39%	9%
JUDGES:	(0)	3%	11%	19%	49%	18%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	10%	23%	31%	35%	
FEMALE ATTORNEYS:	4%	32%	37%	19%	9%	
LITIGATORS:	4%	34%	26%	19%	7%	
ALL FEMALE ATTORNEYS:	4%	35%	36%	16%	10%	
MALE ATTORNEYS:	1%	5%	20%	34%	40%	
LITIGATORS:	1%	5%	17%	35%	43%	
JUDGES:	(0)	4%	14%	23%	69%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	1%	4%	14%	26%	35%	21%
FEMALE ATTORNEYS:	2%	21%	30%	24%	13%	10%
LITIGATORS:	2%	22%	29%	28%	13%	7%
ALL FEMALE ATTORNEYS:	2%	21%	30%	24%	12%	11%
MALE ATTORNEYS:	1%	1%	11%	26%	39%	23%
LITIGATORS:	1%	1%	8%	29%	45%	17%
JUDGES:	(0)	3%	4%	11%	58%	24%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	5%	17%	32%	45%	
FEMALE ATTORNEYS:	2%	22%	32%	29%	15%	
LITIGATORS:	2%	23%	31%	30%	13%	
ALL FEMALE ATTORNEYS:	2%	24%	33%	27%	13%	
MALE ATTORNEYS:	1%	1%	14%	33%	51%	
LITIGATORS:	1%	1%	10%	35%	54%	
JUDGES:	(0)	4%	5%	15%	77%	

Question 3 -- Judges', Lawyers', and Court Employees' Questionnaires  
Court Interactions

Women attorneys are addressed by first names or terms of endearment when men are addressed by surnames or titles.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	1%	1%	7%	26%	45%	21%
FEMALE ATTORNEYS:	(0)	9%	20%	33%	23%	15%
LITIGATORS:	(0)	10%	21%	35%	24%	10%
ALL FEMALE ATTORNEYS:	1%	8%	22%	31%	21%	18%
MALE ATTORNEYS:	1%	(0)	5%	25%	49%	21%
LITIGATORS:	1%	(0)	4%	29%	55%	12%
JUDGES:	(0)	(0)	(0)	4%	95%	1%
COURT PERSONNEL (#):	1%	2%	2%	21%	61%	13%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	1%	9%	32%	57%	
FEMALE ATTORNEYS:	(0)	9%	25%	38%	28%	
LITIGATORS:	(0)	11%	24%	39%	27%	
ALL FEMALE ATTORNEYS:	1%	10%	27%	37%	26%	
MALE ATTORNEYS:	1%	(0)	6%	31%	62%	
LITIGATORS:	1%	(0)	5%	33%	62%	
JUDGES:	(0)	(0)	(0)	4%	97%	
ALL COURT PERSONNEL:	1%	3%	3%	24%	70%	
MALE:	*	*	4%	24%	70%	
FEMALE:	2%	4%	11%	24%	60%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	3%	12%	28%	36%	20%
FEMALE ATTORNEYS:	1%	18%	28%	25%	12%	16%
LITIGATORS:	1%	19%	29%	30%	10%	11%
ALL FEMALE ATTORNEYS:	1%	20%	30%	22%	11%	17%
MALE ATTORNEYS:	1%	1%	9%	29%	41%	20%
LITIGATORS:	1%	(0)	8%	32%	49%	11%
JUDGES:	(0)	4%	12%	21%	49%	14%
COURT PERSONNEL (#):	1%	3%	13%	22%	48%	13%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	4%	15%	36%	45%	
FEMALE ATTORNEYS:	1%	20%	36%	29%	14%	
LITIGATORS:	2%	22%	33%	33%	11%	
ALL FEMALE ATTORNEYS:	2%	23%	37%	26%	13%	
MALE ATTORNEYS:	1%	1%	11%	36%	51%	
LITIGATORS:	1%	(0)	9%	36%	54%	
JUDGES:	(0)	5%	14%	25%	57%	
ALL COURT PERSONNEL:	1%	4%	15%	26%	55%	
MALE:	(0)	(0)	12%	26%	62%	
FEMALE:	1%	7%	17%	25%	50%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	1%	2%	9%	25%	38%	26%
FEMALE ATTORNEYS:	(0)	12%	22%	27%	17%	22%
LITIGATORS:	(0)	12%	19%	30%	20%	19%
ALL FEMALE ATTORNEYS:	1%	10%	22%	27%	17%	24%
MALE ATTORNEYS:	*	*	7%	25%	42%	26%
LITIGATORS:	1%	1%	5%	27%	50%	17%
JUDGES:	(0)	*	4%	10%	64%	22%
COURT PERSONNEL (#)	1%	1%	6%	22%	59%	11%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	3%	12%	34%	51%	
FEMALE ATTORNEYS:	(0)	15%	27%	35%	24%	
LITIGATORS:	(0)	15%	24%	36%	25%	
ALL FEMALE ATTORNEYS:	1%	14%	28%	35%	22%	
MALE ATTORNEYS:	1%	1%	9%	34%	56%	
LITIGATORS:	1%	1%	6%	32%	61%	
JUDGES:	(0)	1%	5%	13%	82%	
ALL COURT PERSONNEL:	1%	1%	6%	25%	67%	
MALE:	(0)	(0)	6%	29%	65%	
FEMALE:	*	6%	11%	24%	58%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

Question 4 -- Court Employees' Questionnaire  
Court Interactions

Comments are made about the personal appearance of women employees in the court system when no such comments are made about men.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER
THOSE EXPRESSING AN OPINION					
By judges					
MALE:	*	3%	13%	29%	55%
FEMALE:	6%	13%	29%	20%	33%
By counsel					
MALE:	(0)	4%	19%	31%	46%
FEMALE:	5%	14%	29%	20%	32%
By court personnel					
MALE:	1%	5%	26%	26%	41%
FEMALE:	8%	23%	33%	15%	22%

\*Less than one percent

Question 4 -- Judges' and Lawyers' Questionnaires  
Court Interactions

Comments are made about the personal appearance of women attorneys when  
no such comments are made about men.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	1%	6%	12%	19%	41%	19%
FEMALE ATTORNEYS:	2%	25%	23%	16%	19%	15%
LITIGATORS:	2%	26%	28%	17%	20%	8%
ALL FEMALE ATTORNEYS:	2%	18%	27%	16%	17%	20%
MALE ATTORNEYS:	*	4%	11%	19%	46%	19%
LITIGATORS:	1%	3%	13%	22%	52%	10%
JUDGES:	(0)	(0)	5%	9%	85%	1%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	8%	16%	24%	51%	
FEMALE ATTORNEYS:	2%	25%	27%	23%	23%	
LITIGATORS:	2%	28%	30%	18%	22%	
ALL FEMALE ATTORNEYS:	2%	23%	34%	20%	22%	
MALE ATTORNEYS:	1%	5%	14%	24%	57%	
LITIGATORS:	1%	4%	14%	25%	57%	
JUDGES:	(0)	(0)	5%	9%	87%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	10%	23%	20%	29%	17%
FEMALE ATTORNEYS:	2%	35%	30%	12%	9%	12%
LITIGATORS:	2%	36%	34%	12%	10%	6%
ALL FEMALE ATTORNEYS:	3%	31%	30%	11%	9%	17%
MALE ATTORNEYS:	*	7%	22%	21%	33%	17%
LITIGATORS:	1%	5%	23%	25%	39%	8%
JUDGES:	(0)	4%	16%	10%	48%	22%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	12%	28%	24%	35%	
FEMALE ATTORNEYS:	2%	35%	35%	16%	12%	
LITIGATORS:	2%	38%	36%	13%	11%	
ALL FEMALE ATTORNEYS:	3	37%	36%	13%	11%	
MALE ATTORNEYS:	*	8%	27%	25%	40%	
LITIGATORS:	1%	5%	25%	27%	42%	
JUDGES:	(0)	5%	20%	13%	62%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	*	5%	15%	19%	34%	28%
FEMALE ATTORNEYS:	1%	20%	23%	21%	13%	22%
LITIGATORS:	1%	22%	25%	22%	15%	15%
ALL FEMALE ATTORNEYS:	2%	15%	26%	20%	14%	23%
MALE ATTORNEYS:	*	3%	14%	18%	37%	28%
LITIGATORS:	1%	1%	14%	21%	43%	20%
JUDGES:	(0)	3%	11%	12%	49%	25%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	7%	21%	26%	46%	
FEMALE ATTORNEYS:	1%	23%	32%	27%	18%	
LITIGATORS:	1%	26%	30%	25%	18%	
ALL FEMALE ATTORNEYS:	3%	20%	33%	26%	18%	
MALE ATTORNEYS:	1%	4%	19%	25%	51%	
LITIGATORS:	1%	1%	8%	26%	54%	
JUDGES:	(0)	4%	14%	16%	66%	

\*Less than one percent

Question 5 -- Judges', Lawyers', and Court Employees' Questionnaires  
Court Interactions

Comments are made about the personal appearance of women litigants or witnesses when no such comments are made about men.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	*	4%	13%	21%	38%	24%
FEMALE ATTORNEYS:	1%	14%	23%	22%	16%	24%
LITIGATORS:	1%	15%	26%	22%	17%	18%
ALL FEMALE ATTORNEYS:	1%	11%	23%	21%	15%	30%
MALE ATTORNEYS:	*	2%	12%	21%	42%	23%
LITIGATORS:	1%	1%	14%	22%	49%	14%
JUDGES:	(0)	(0)	3%	12%	84%	1%
COURT PERSONNEL (#)	*	2%	11%	23%	41%	23%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	5%	17%	28%	49%	
FEMALE ATTORNEYS:	1%	18%	27%	31%	23%	
LITIGATORS:	2%	18%	32%	27%	21%	
ALL FEMALE ATTORNEYS:	1%	15%	33%	30%	21%	
MALE ATTORNEYS:	1%	3%	15%	27%	55%	
LITIGATORS:	1%	1%	16%	26%	56%	
JUDGES:	(0)	(0)	3%	12%	85%	
ALL COURT PERSONNEL:	1%	2%	14%	30%	53%	
MALE:	2%	2%	13%	27%	56%	
FEMALE:	2%	10%	19%	29%	40%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	*	9%	20%	20%	29%	22%
FEMALE ATTORNEYS:	2%	20%	31%	18%	9%	20%
LITIGATORS:	1%	22%	35%	17%	11%	14%
ALL FEMALE ATTORNEYS:	2%	22%	28%	14%	9%	25%
MALE ATTORNEYS:	*	7%	19%	20%	33%	21%
LITIGATORS:	1%	6%	22%	22%	38%	12%
JUDGES:	(0)	3%	10%	17%	50%	20%
COURT PERSONNEL (#):	*	2%	17%	21%	37%	23%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	11%	25%	26%	37%	
FEMALE ATTORNEYS:	2%	25%	37%	24%	12%	
LITIGATORS:	2%	26%	40%	19%	13%	
ALL FEMALE ATTORNEYS:	2%	29%	37%	19%	13%	
MALE ATTORNEYS:	1%	9%	23%	26%	42%	
LITIGATORS:	1%	7%	25%	25%	43%	
JUDGES:	(0)	4%	13%	21%	63%	
ALL COURT PERSONNEL:	1%	2%	22%	27%	48%	
MALE:	(0)	5%	17%	28%	50%	
FEMALE:	3%	12%	23%	25%	37%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	*	5%	14%	19%	32%	30%
FEMALE ATTORNEYS:	1%	14%	24%	21%	12%	28%
LITIGATORS:	1%	15%	27%	20%	14%	23%
ALL FEMALE ATTORNEYS:	1%	13%	23%	20%	12%	32%
MALE ATTORNEYS:	*	3%	13%	18%	36%	30%
LITIGATORS:	1%	2%	15%	20%	42%	21%
JUDGES:	(0)	2%	7%	18%	49%	24%
COURT PERSONNEL (#)	1%	3%	16%	27%	36%	17%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	7%	20%	27%	46%	
FEMALE ATTORNEYS:	1%	19%	32%	32%	16%	
LITIGATORS:	1%	20%	35%	26%	18%	
ALL FEMALE ATTORNEYS:	1%	19%	34%	29%	17%	
MALE ATTORNEYS:	1%	4%	18%	26%	52%	
LITIGATORS:	1%	2%	19%	25%	53%	
JUDGES:	(0)	3%	9%	23%	65%	
ALL COURT PERSONNEL:	1%	4%	19%	32%	44%	
MALE:	(0)	6%	16%	28%	50%	
FEMALE:	6%	12%	23%	26%	33%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

Question 6 -- Judges', Lawyers', and Court Employees' Questionnaires  
Court Interactions

Sexist remarks or jokes are made in court or in chambers.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	*	3%	19%	21%	35%	21%
FEMALE ATTORNEYS:	1%	17%	29%	22%	14%	17%
LITIGATORS:	1%	18%	31%	22%	15%	13%
ALL FEMALE ATTORNEYS:	2%	14%	30%	19%	16%	20%
MALE ATTORNEYS:	*	1%	17%	21%	39%	21%
LITIGATORS:	1%	1%	19%	22%	45%	13%
JUDGES:	(0)	(0)	6%	17%	76%	1%
COURT PERSONNEL (#)	1%	5%	19%	14%	40%	21%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	4%	24%	27%	44%	
FEMALE ATTORNEYS:	1%	19%	35%	26%	19%	
LITIGATORS:	1%	21%	36%	25%	18%	
ALL FEMALE ATTORNEYS:	2%	18%	37%	24%	20%	
MALE ATTORNEYS:	1%	1%	22%	27%	49%	
LITIGATORS:	1%	1%	22%	25%	51%	
JUDGES:	(0)	(0)	6%	17%	77%	
ALL COURT PERSONNEL:	1%	6%	24%	18%	51%	
MALE:	2%	4%	17%	24%	53%	
FEMALE:	2%	11%	22%	22%	43%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	6%	27%	21%	27%	19%
FEMALE ATTORNEYS:	2%	24%	42%	11%	5%	15%
LITIGATORS:	3%	27%	44%	12%	6%	9%
ALL FEMALE ATTORNEYS:	2%	22%	38%	11%	8%	16%
MALE ATTORNEYS:	*	3%	25%	23%	31%	18%
LITIGATORS:	1%	1%	29%	24%	35%	11%
JUDGES:	(0)	3%	17%	24%	42%	14%
COURT PERSONNEL (#):	2%	6%	22%	19%	33%	19%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	7%	33%	26%	33%	
FEMALE ATTORNEYS:	3%	26%	49%	14%	8%	
LITIGATORS:	3%	30%	49%	13%	6%	
ALL FEMALE ATTORNEYS:	2%	29%	46%	13%	10%	
MALE ATTORNEYS:	1%	4%	30%	28%	38%	
LITIGATORS:	1%	1%	32%	27%	39%	
JUDGES:	(0)	4%	19%	28%	49%	
ALL COURT PERSONNEL:	2%	7%	27%	24%	40%	
MALE:	*	6%	19%	34%	41%	
FEMALE:	2%	10%	32%	19%	37%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	*	3%	14%	20%	30%	32%
FEMALE ATTORNEYS:	1%	9%	23%	22%	16%	28%
LITIGATORS:	1%	9%	24%	24%	19%	24%
ALL FEMALE ATTORNEYS:	1%	9%	24%	22%	16%	29%
MALE ATTORNEYS:	*	2%	13%	20%	33%	32%
LITIGATORS:	1%	2%	14%	21%	37%	26%
JUDGES:	(0)	2%	11%	18%	47%	22%
COURT PERSONNEL (#):	3%	5%	25%	19%	37%	12%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	5%	20%	30%	45%	
FEMALE ATTORNEYS:	1%	13%	31%	30%	24%	
LITIGATORS:	1%	12%	32%	31%	25%	
ALL FEMALE ATTORNEYS:	2%	12%	33%	31%	22%	
MALE ATTORNEYS:	1%	3%	18%	30%	49%	
LITIGATORS:	1%	2%	19%	28%	50%	
JUDGES:	(0)	2%	14%	24%	60%	
ALL COURT PERSONNEL:	3%	6%	28%	22%	42%	
MALE:	1%	5%	23%	27%	43%	
FEMALE:	4%	10%	32%	19%	36%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

Question 7 -- Judges', Lawyers', and Court Employees' Questionnaires  
Court Interactions

Women litigants are subjected to verbal or physical sexual advances.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	*	*	1%	7%	58%	33%
FEMALE ATTORNEYS:	(0)	1%	4%	15%	36%	44%
LITIGATORS:	(0)	1%	3%	14%	39%	42%
ALL FEMALE ATTORNEYS:	*	1%	4%	14%	35%	46%
MALE ATTORNEYS:	*	1%	1%	6%	63%	30%
LITIGATORS:	2%	(0)	(0)	6%	71%	22%
JUDGES:	(0)	(0)	(0)	*	99%	*
COURT PERSONNEL (#)	1%	1%	3%	7%	61%	27%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	*	2%	11%	87%	
FEMALE ATTORNEYS:	(0)	3%	6%	24%	67%	
LITIGATORS:	(0)	2%	6%	24%	68%	
ALL FEMALE ATTORNEYS:	*	2%	7%	26%	65%	
MALE ATTORNEYS:	1%	(0)	1%	8%	90%	
LITIGATORS:	1%	(0)	(0)	8%	91%	
JUDGES:	(0)	(0)	(0)	1%	99%	
ALL COURT PERSONNEL:	1%	2%	5%	9%	84%	
MALE:	2%	*	4%	7%	87%	
FEMALE:	1%	3%	10%	11%	75%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	1%	1%	4%	12%	51%	32%
FEMALE ATTORNEYS:	(0)	2%	16%	15%	22%	45%
LITIGATORS:	(0)	1%	17%	15%	23%	43%
ALL FEMALE ATTORNEYS:	*	2%	14%	15%	24%	45%
MALE ATTORNEYS:	1%	*	2%	11%	57%	29%
LITIGATORS:	1%	(0)	1%	11%	66%	21%
JUDGES:	(0)	(0)	4%	4%	63%	29%
COURT PERSONNEL (#):	*	2%	3%	10%	56%	29%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	1%	6%	17%	75%	
FEMALE ATTORNEYS:	(0)	4%	29%	27%	41%	
LITIGATORS:	(0)	2%	30%	27%	41%	
ALL FEMALE ATTORNEYS:	*	4%	26%	26%	44%	
MALE ATTORNEYS:	1%	1%	3%	15%	80%	
LITIGATORS:	1%	(0)	1%	14%	83%	
JUDGES:	(0)	(0)	6%	5%	89%	
ALL COURT PERSONNEL:	1%	2%	4%	14%	79%	
MALE:	(0)	(0)	7%	10%	83%	
FEMALE:	*	5%	12%	15%	68%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	*	*	2%	10%	51%	38%
FEMALE ATTORNEYS:	1%	1%	7%	16%	28%	48%
LITIGATORS:	1%	1%	6%	15%	32%	46%
ALL FEMALE ATTORNEYS:	*	2%	5%	15%	30%	49%
MALE ATTORNEYS:	*	1%	1%	8%	55%	35%
LITIGATORS:	1%	(0)	(0)	7%	65%	27%
JUDGES:	(0)	*	1%	3%	70%	25%
COURT PERSONNEL (#):	*	(0)	6%	10%	61%	23%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	*	2%	15%	81%	
FEMALE ATTORNEYS:	1%	2%	12%	30%	55%	
LITIGATORS:	1%	1%	10%	28%	59%	
ALL FEMALE ATTORNEYS:	*	3%	10%	29%	58%	
MALE ATTORNEYS:	1%	(0)	1%	13%	85%	
LITIGATORS:	1%	(0)	(0)	10%	89%	
JUDGES:	(0)	1%	2%	4%	94%	
ALL COURT PERSONNEL:	1%	(0)	7%	13%	79%	
MALE:	*	(0)	8%	12%	79%	
FEMALE:	2%	3%	16%	13%	66%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

Question 8 -- Court Employees' Questionnaire  
Court Interactions

Women employees in the court system are subjected to verbal or physical sexual advances.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER
THOSE EXPRESSING AN OPINION					
<b>By judge</b>					
MALE:	*	*	8%	14%	77%
FEMALE:	1%	3%	18%	12%	66%
<b>By counsel</b>					
MALE:	*	3%	9%	17%	70%
FEMALE:	1%	3%	22%	22%	52%
<b>By court personnel</b>					
MALE:	1%	4%	15%	19%	62%
FEMALE:	2%	6%	27%	16%	49%

\*Less than one percent

Question 8 -- Judges' and Lawyers' Questionnaires  
Court Interactions

Women attorneys are subjected to verbal or physical sexual advances.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
<b>By judges</b>						
ALL ATTORNEYS (weighted):	*	*	2%	9%	58%	31%
FEMALE ATTORNEYS:	(0)	2%	13%	19%	40%	26%
LITIGATORS:	(0)	2%	15%	18%	42%	23%
ALL FEMALE ATTORNEYS:	*	2%	11%	17%	38%	32%
MALE ATTORNEYS:	*	*	*	8%	62%	30%
LITIGATORS:	1%	(0)	(0)	7%	70%	22%
JUDGES:	1%	(0)	(0)	(0)	98%	1%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	*	*	3%	13%	83%	
FEMALE ATTORNEYS:	(0)	3%	16%	25%	57%	
LITIGATORS:	(0)	3%	20%	23%	54%	
ALL FEMALE ATTORNEYS:	*	3%	16%	24%	56%	
MALE ATTORNEYS:	1%	(0)	1%	11%	88%	
LITIGATORS:	1%	(0)	(0)	10%	90%	
JUDGES:	1%	(0)	(0)	1%	99%	
<b>By counsel</b>						
ALL ATTORNEYS (weighted):	*	2%	8%	12%	51%	28%
FEMALE ATTORNEYS:	(0)	9%	29%	19%	24%	20%
LITIGATORS:	(0)	8%	34%	20%	23%	15%
ALL FEMALE ATTORNEYS:	*	6%	27%	18%	24%	26%
MALE ATTORNEYS:	*	1%	4%	11%	56%	28%
LITIGATORS:	1%	(0)	3%	12%	64%	21%
JUDGES:	(0)	1%	4%	5%	62%	28%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	*	2%	11%	16%	70%	
FEMALE ATTORNEYS:	(0)	10%	37%	24%	29%	
LITIGATORS:	(0)	10%	40%	24%	27%	
ALL FEMALE ATTORNEYS:	*	8%	36%	25%	32%	
MALE ATTORNEYS:	1%	1%	6%	15%	78%	
LITIGATORS:	1%	(0)	4%	15%	80%	
JUDGES:	(0)	1%	6%	7%	87%	
<b>By court personnel</b>						
ALL ATTORNEYS (weighted):	*	1%	3%	9%	52%	36%
FEMALE ATTORNEYS:	(0)	1%	15%	21%	37%	27%
LITIGATORS:	(0)	1%	13%	21%	40%	24%
ALL FEMALE ATTORNEYS:	*	2%	11%	19%	35%	33%
MALE ATTORNEYS:	*	*	1%	7%	55%	36%
LITIGATORS:	1%	(0)	1%	7%	63%	29%
JUDGES:	(0)	(0)	1%	5%	69%	25%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	1%	1%	5%	14%	80%	
FEMALE ATTORNEYS:	(0)	2%	18%	29%	51%	
LITIGATORS:	(0)	2%	17%	28%	53%	
ALL FEMALE ATTORNEYS:	*	2%	16%	29%	53%	
MALE ATTORNEYS:	1%	1%	1%	10%	89%	
LITIGATORS:	1%	(0)	1%	10%	89%	
JUDGES:	(0)	(0)	1%	6%	93%	

\*Less than one percent

Question 9 -- Judges' and Lawyers' Questionnaires  
Court Interactions

Women attorneys are appointed to important fee generating cases on an equal basis with male attorneys.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	9%	9%	7%	7%	2%	66%
FEMALE ATTORNEYS:	3%	5%	11%	22%	4%	56%
LITIGATORS:	5%	5%	12%	23%	5%	51%
ALL FEMALE ATTORNEYS:	3%	5%	11%	24%	5%	53%
MALE ATTORNEYS:	10%	9%	6%	5%	2%	68%
LITIGATORS:	11%	10%	6%	6%	2%	65%
JUDGES:	27%	8%	5%	1%	7%	52%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	26%	25%	21%	21%	7%	
FEMALE ATTORNEYS:	8%	11%	27%	46%	8%	
LITIGATORS:	10%	10%	24%	47%	10%	
ALL FEMALE ATTORNEYS:	6%	10%	23%	51%	10%	
MALE ATTORNEYS:	31%	28%	20%	15%	7%	
LITIGATORS:	32%	29%	17%	17%	6%	
JUDGES:	57%	17%	11%	1%	14%	

Question 9 -- Court Employees' Questionnaire and  
 Question 10 -- Judges' and Lawyers' Questionnaires  
 Credibility

Judges appear to give less weight to female attorneys' arguments than to those of male attorneys.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	(0)	2%	13%	21%	41%	23%
FEMALE ATTORNEYS:	(0)	12%	40%	23%	12%	13%
LITIGATORS:	(0)	11%	45%	25%	13%	7%
ALL FEMALE ATTORNEYS:	1%	11%	35%	22%	14%	17%
MALE ATTORNEYS:	(0)	1%	9%	21%	46%	23%
LITIGATORS:	(0)	1%	8%	23%	55%	13%
JUDGES: (**)	(0)	(0)	2%	(0)	98%	1%
COURT PERSONNEL (#)	1%	*	7%	18%	51%	23%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted)	(0)	3%	17%	28%	53%	
FEMALE ATTORNEYS:	(0)	12%	45%	26%	17%	
LITIGATORS:	(0)	12%	48%	27%	14%	
ALL FEMALE ATTORNEYS:	1%	14%	42%	26%	17%	
MALE ATTORNEYS:	(0)	1%	11%	28%	60%	
LITIGATORS:	(0)	1%	10%	26%	63%	
JUDGES:	(0)	(0)	2%	(0)	98%	
ALL COURT PERSONNEL:	1%	1%	9%	23%	66%	
MALE:	*	2%	9%	13%	75%	
FEMALE:	1%	5%	20%	22%	52%	

# The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\* Less than one percent

\*\*The question wording in the judges' questionnaire was changed to measure the judges' evaluation of their own behavior. Thus, Question #10 on the judges' questionnaire reads: "Do you give less weight to female attorneys' arguments than to those of male attorneys?"

Question 10 -- Court Employees' Questionnaire and  
 Question 11 -- Judges' and Lawyers' Questionnaires  
 Credibility

Judges appear to give less weight to the testimony of female experts than that of male experts.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	*	2%	8%	16%	30%	44%
FEMALE ATTORNEYS:	1%	9%	25%	12%	12%	41%
LITIGATORS:	1%	9%	25%	14%	13%	38%
ALL FEMALE ATTORNEYS:	*	8%	22%	14%	11%	44%
MALE ATTORNEYS:	(0)	1%	5%	17%	34%	43%
LITIGATORS:	(0)	1%	4%	18%	41%	36%
JUDGES: (**)	(0)	(0)	1%	1%	98%	1%
COURT PERSONNEL (#)	1%	*	4%	15%	55%	24%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	*	4%	14%	28%	54%	
FEMALE ATTORNEYS:	2%	13%	43%	21%	21%	
LITIGATORS:	2%	14%	41%	22%	21%	
ALL FEMALE ATTORNEYS:	1%	15%	40%	25%	20%	
MALE ATTORNEYS:	(0)	3%	9%	29%	60%	
LITIGATORS:	(0)	2%	7%	28%	64%	
JUDGES:	(0)	(0)	1%	1%	98%	
ALL COURT PERSONNEL:	1%	1%	6%	20%	72%	
MALE:	*	*	3%	17%	79%	
FEMALE:	1%	2%	19%	22%	56%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\* Less than one percent

\*\*The question wording in the judges' questionnaire was changed to measure the judges' evaluation of their own behavior. Thus, Question #10 on the judges' questionnaire reads: "Do you give less weight to female attorneys' arguments than to those of male attorneys?"

Question 11 -- Court Employees' Questionnaire and  
 Question 12 -- Judges' and Lawyers' Questionnaires  
 Credibility

Judges require more evidence for a female litigant to  
 prove her case than for a male litigant.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	*	2%	3%	12%	51%	32%
FEMALE ATTORNEYS:	1%	8%	19%	16%	19%	37%
LITIGATORS:	1%	8%	21%	16%	21%	33%
ALL FEMALE ATTORNEYS:	1%	8%	18%	18%	16%	39%
MALE ATTORNEYS:	(0)	1%	*	11%	57%	30%
LITIGATORS:	(0)	1%	1%	11%	67%	21%
JUDGES: (**)	(0)	(0)	(0)	(0)	99%	1%
COURT PERSONNEL (#):	1%	1%	4%	14%	59%	21%
<b>THOSE EXPRESSING AN OPINION</b>						
ALL ATTORNEYS (weighted):	*	3%	4%	18%	75%	
FEMALE ATTORNEYS:	2%	11%	30%	26%	32%	
LITIGATORS:	2%	12%	31%	24%	31%	
ALL FEMALE ATTORNEYS:	1%	13%	30%	30%	26%	
MALE ATTORNEYS:	(0)	2%	1%	16%	82%	
LITIGATORS:	(0)	1%	1%	14%	84%	
JUDGES:	(0)	(0)	(0)	(0)	100%	
ALL COURT PERSONNEL:	1%	1%	6%	17%	75%	
MALE:	*	(0)	5%	14%	81%	
FEMALE:	2%	4%	16%	18%	60%	

#The subsample of court personnel reported here are those who spend 50% or more of their time in the courtroom in the performance of job duties or responsibilities (n=185).

\*Less than one percent

\*\*The question wording in the judges' questionnaire was changed to measure the judges' evaluation of their own behavior. Thus, Question #10 on the judges' questionnaire reads: "Do you give less weight to female attorneys' arguments than to those of male attorneys?"

Question 13 -- Judges' and Lawyers' Questionnaires  
Marital Property

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.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	8%	14%	11%	15%	52%
FEMALE ATTORNEYS:	4%	19%	12%	7%	2%	56%
LITIGATORS:	4%	19%	12%	9%	3%	54%
DOMESTIC RELATIONS:	9%	36%	24%	15%	3%	13%
ALL FEMALE ATTORNEYS:	3%	19%	14%	7%	2%	55%
MALE ATTORNEYS:	*	6%	14%	12%	16%	51%
LITIGATORS:	(0)	7%	15%	13%	18%	47%
DOMESTIC RELATIONS:	(0)	13%	23%	23%	33%	7%
JUDGES:	1%	4%	6%	11%	44%	34%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	17%	29%	23%	30%	
FEMALE ATTORNEYS:	7%	41%	29%	17%	7%	
LITIGATORS:	9%	40%	25%	19%	6%	
DOMESTIC RELATIONS:	10%	41%	28%	17%	3%	
ALL FEMALE ATTORNEYS:	7%	42%	30%	16%	5%	
MALE ATTORNEYS:	1%	13%	29%	24%	34%	
LITIGATORS:	(0)	13%	28%	24%	34%	
DOMESTIC RELATIONS:	(0)	14%	25%	25%	36%	
JUDGES:	1%	6%	9%	17%	67%	

Question 14 -- Judges' and Lawyers' Questionnaires  
Marital Property

Courts award counsel and expert fees to the economically dependent spouse sufficient to allow that spouse to effectively pursue the litigation.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	9%	18%	14%	3%	55%
FEMALE ATTORNEYS:	(0)	3%	11%	20%	6%	60%
LITIGATORS:	(0)	4%	9%	23%	7%	57%
DOMESTIC RELATIONS:	(0)	5%	13%	51%	16%	15%
ALL FEMALE ATTORNEYS:	*	4%	10%	25%	5%	57%
MALE ATTORNEYS:	1%	9%	19%	13%	3%	54%
LITIGATORS:	1%	11%	22%	15%	3%	48%
DOMESTIC RELATIONS:	(0)	19%	32%	33%	7%	9%
JUDGES:	19%	18%	19%	3%	2%	39%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	20%	39%	32%	7%	
FEMALE ATTORNEYS:	(0)	8%	26%	53%	13%	
LITIGATORS:	(0)	10%	21%	54%	16%	
DOMESTIC RELATIONS:	(0)	5%	16%	60%	19%	
ALL FEMALE ATTORNEYS:	1%	8%	22%	57%	12%	
MALE ATTORNEYS:	2%	20%	42%	29%	6%	
LITIGATORS:	1%	21%	43%	30%	5%	
DOMESTIC RELATIONS:	(0)	21%	35%	37%	8%	
JUDGES:	32%	30%	31%	5%	3%	

\*Less than one percent

Question 15 -- Judges' and Lawyers' Questionnaires  
Marital Property

Effective injunctive relief is granted where necessary to maintain the status quo until monetary awards are made.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	2%	11%	16%	11%	2%	58%
FEMALE ATTORNEYS:	*	5%	11%	15%	5%	64%
LITIGATORS:	1%	6%	10%	16%	5%	62%
DOMESTIC RELATIONS:	2%	6%	21%	37%	12%	22%
ALL FEMALE ATTORNEYS:	1%	4%	13%	19%	3%	61%
MALE ATTORNEYS:	2%	12%	18%	10%	1%	57%
LITIGATORS:	1%	13%	18%	13%	2%	54%
DOMESTIC RELATIONS:	2%	28%	26%	23%	4%	17%
JUDGES:	22%	18%	17%	2%	4%	37%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	4%	26%	39%	27%	4%	
FEMALE ATTORNEYS:	1%	16%	31%	42%	10%	
LITIGATORS:	2%	16%	27%	42%	13%	
DOMESTIC RELATIONS:	2%	8%	27%	48%	15%	
ALL FEMALE ATTORNEYS:	1%	11%	34%	48%	7%	
MALE ATTORNEYS:	4%	27%	41%	24%	4%	
LITIGATORS:	2%	28%	39%	28%	3%	
DOMESTIC RELATIONS:	2%	33%	32%	28%	5%	
JUDGES:	34%	28%	26%	4%	7%	

Question 16 -- Judges' and Lawyers' Questionnaires  
Marital Property

Judges impose meaningful sanctions, including civil contempt, when injunctions are violated.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	8%	15%	19%	1%	56%
FEMALE ATTORNEYS:	1%	3%	9%	22%	4%	61%
LITIGATORS:	1%	6%	7%	22%	6%	59%
DOMESTIC RELATIONS:	2%	6%	13%	46%	12%	21%
ALL FEMALE ATTORNEYS:	*	3%	10%	25%	3%	60%
MALE ATTORNEYS:	1%	8%	15%	20%	1%	55%
LITIGATORS:	1%	9%	14%	24%	1%	51%
DOMESTIC RELATIONS:	1%	12%	25%	46%	1%	15%
JUDGES:	19%	26%	17%	6%	1%	32%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	17%	33%	44%	3%	
FEMALE ATTORNEYS:	1%	13%	25%	51%	10%	
LITIGATORS:	2%	14%	17%	54%	14%	
DOMESTIC RELATIONS:	2%	8%	17%	59%	15%	
ALL FEMALE ATTORNEYS:	1%	8%	24%	61%	7%	
MALE ATTORNEYS:	3%	18%	34%	44%	2%	
LITIGATORS:	1%	19%	29%	49%	2%	
DOMESTIC RELATIONS:	2%	14%	29%	54%	2%	
JUDGES:	27%	38%	25%	8%	2%	

\*Less than one percent

Question 17 -- Judges' and Lawyers' Questionnaires  
Alimony

A wife's alimony award is based on how much the husband can give her without diminishing his current life style.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	11%	13%	18%	7%	51%
FEMALE ATTORNEYS:	4%	15%	16%	6%	4%	54%
LITIGATORS:	4%	18%	17%	8%	5%	48%
DOMESTIC RELATIONS:	10%	34%	31%	10%	5%	9%
ALL FEMALE ATTORNEYS:	3%	19%	16%	6%	2%	55%
MALE ATTORNEYS:	*	10%	13%	20%	7%	50%
LITIGATORS:	(0)	10%	16%	23%	8%	44%
DOMESTIC RELATIONS:	(0)	22%	26%	39%	12%	1%
JUDGES:	2%	6%	12%	16%	31%	33%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	22%	27%	36%	14%	
FEMALE ATTORNEYS:	7%	37%	33%	16%	7%	
LITIGATORS:	8%	35%	32%	16%	9%	
DOMESTIC RELATIONS:	12%	38%	34%	12%	5%	
ALL FEMALE ATTORNEYS:	7%	41%	35%	13%	4%	
MALE ATTORNEYS:	1%	1%	26%	39%	15%	
LITIGATORS:	(0)	17%	28%	41%	14%	
DOMESTIC RELATIONS:	(0)	22%	27%	40%	12%	
JUDGES:	3%	10%	17%	24%	46%	

Question 18 -- Judges' and Lawyers' Questionnaires  
Alimony

Older, displaced homemakers are awarded indefinite alimony after long-term marriages.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	21%	15%	5%	1%	57%
FEMALE ATTORNEYS:	1%	8%	17%	9%	1%	64%
LITIGATORS:	1%	10%	20%	8%	1%	59%
DOMESTIC RELATIONS:	2%	18%	33%	22%	3%	22%
ALL FEMALE ATTORNEYS:	*	8%	18%	13%	1%	59%
MALE ATTORNEYS:	1%	23%	15%	5%	1%	55%
LITIGATORS:	2%	29%	14%	4%	1%	50%
DOMESTIC RELATIONS:	3%	52%	22%	9%	1%	13%
JUDGES:	6%	32%	19%	3%	2%	38%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	49%	34%	13%	2%	
FEMALE ATTORNEYS:	2%	27%	44%	24%	2%	
LITIGATORS:	3%	24%	49%	20%	3%	
DOMESTIC RELATIONS:	2%	23%	42%	29%	4%	
ALL FEMALE ATTORNEYS:	1%	21%	45%	32%	2%	
MALE ATTORNEYS:	3%	52%	33%	11%	2%	
LITIGATORS:	3%	58%	28%	9%	2%	
DOMESTIC RELATIONS:	3%	60%	25%	10%	2%	
JUDGES:	11%	52%	31%	4%	3%	

\*Less than one percent

Question 19 -- Judges' and Lawyers' Questionnaires  
Alimony

The courts effectively enforce alimony awards.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	3%	16%	18%	11%	1%	52%
FEMALE ATTORNEYS:	1%	3%	20%	16%	2%	58%
LITIGATORS:	1%	4%	22%	15%	1%	57%
DOMESTIC RELATIONS:	2%	8%	42%	22%	5%	22%
ALL FEMALE ATTORNEYS:	1%	7%	17%	18%	2%	56%
MALE ATTORNEYS:	2%	19%	18%	10%	*	50%
LITIGATORS:	4%	19%	19%	12%	(0)	46%
DOMESTIC RELATIONS:	9%	23%	39%	23%	(0)	6%
JUDGES:	13%	34%	16%	2%	2%	33%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	5%	34%	37%	23%	1%	
FEMALE ATTORNEYS:	1%	13%	45%	37%	4%	
LITIGATORS:	2%	10%	51%	35%	3%	
DOMESTIC RELATIONS:	2%	10%	54%	29%	6%	
ALL FEMALE ATTORNEYS:	2%	15%	39%	40%	4%	
MALE ATTORNEYS:	6%	38%	35%	20%	1%	
LITIGATORS:	7%	36%	36%	22%	(0)	
DOMESTIC RELATIONS:	9%	25%	42%	25%	(0)	
JUDGES:	19%	51%	24%	4%	3%	

Question 20 -- Judges' and Lawyers' Questionnaires  
Alimony

Alimony awards at the time of divorce are close to or the same as pendente lite awards.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	25%	15%	2%	(0)	56%
FEMALE ATTORNEYS:	3%	16%	13%	4%	(0)	64%
LITIGATORS:	3%	17%	15%	3%	(0)	62%
DOMESTIC RELATIONS:	8%	40%	19%	9%	(0)	24%
ALL FEMALE ATTORNEYS:	2%	19%	13%	2%	*	64%
MALE ATTORNEYS:	*	27%	16%	2%	(0)	55%
LITIGATORS:	1%	32%	17%	2%	(0)	48%
DOMESTIC RELATIONS:	3%	59%	30%	1%	(0)	6%
JUDGES:	*	28%	26%	3%	*	43%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	57%	35%	5%	(0)	
FEMALE ATTORNEYS:	7%	43%	39%	12%	(0)	
LITIGATORS:	9%	44%	38%	9%	(0)	
DOMESTIC RELATIONS:	10%	53%	26%	12%	(0)	
ALL FEMALE ATTORNEYS:	6%	52%	36%	6%	*	
MALE ATTORNEYS:	2%	60%	35%	4%	(0)	
LITIGATORS:	2%	61%	33%	4%	(0)	
DOMESTIC RELATIONS:	3%	63%	32%	2%	(0)	
JUDGES:	1%	48%	45%	5%	1%	

\*Less than one percent

Question 21 -- Judges' and Lawyers' Questionnaires  
Child Support

Child support awards adequately reflect a realistic understanding of the local costs of child raising.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	2%	15%	20%	17%	3%	44%
FEMALE ATTORNEYS:	1%	3%	17%	27%	5%	47%
LITIGATORS:	(0)	4%	18%	28%	6%	44%
DOMESTIC RELATIONS:	(0)	8%	25%	45%	13%	9%
ALL FEMALE ATTORNEYS:	1%	5%	16%	27%	6%	46%
MALE ATTORNEYS:	2%	17%	21%	16%	2%	43%
LITIGATORS:	1%	19%	25%	14%	2%	40%
DOMESTIC RELATIONS:	3%	28%	35%	26%	6%	3%
JUDGES:	19%	32%	11%	8%	2%	28%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	27%	26%	30%	4%	
FEMALE ATTORNEYS:	1%	8%	34%	48%	9%	
LITIGATORS:	(0)	7%	32%	51%	10%	
DOMESTIC RELATIONS:	(0)	8%	28%	49%	15%	
ALL FEMALE ATTORNEYS:	1%	9%	31%	50%	10%	
MALE ATTORNEYS:	3%	29%	37%	28%	3%	
LITIGATORS:	2%	31%	42%	23%	3%	
DOMESTIC RELATIONS:	3%	28%	36%	27%	6%	
JUDGES:	27%	44%	16%	11%	3%	

Question 22 -- Judges' and Lawyers' Questionnaires  
Child Support

Child support awards reflect a realistic understanding of a particular child's needs.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	2%	14%	24%	15%	2%	43%
FEMALE ATTORNEYS:	(0)	3%	22%	24%	4%	47%
LITIGATORS:	(0)	5%	21%	25%	6%	44%
DOMESTIC RELATIONS:	(0)	6%	33%	42%	10%	9%
ALL FEMALE ATTORNEYS:	*	5%	18%	27%	3%	46%
MALE ATTORNEYS:	2%	15%	25%	14%	1%	42%
LITIGATORS:	1%	17%	30%	12%	2%	39%
DOMESTIC RELATIONS:	3%	28%	42%	22%	4%	1%
JUDGES:	18%	31%	15%	7%	2%	27%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	25%	43%	27%	3%	
FEMALE ATTORNEYS:	(0)	9%	40%	42%	8%	
LITIGATORS:	(0)	9%	37%	44%	10%	
DOMESTIC RELATIONS:	(0)	7%	36%	46%	12%	
ALL FEMALE ATTORNEYS:	1%	10%	34%	50%	6%	
MALE ATTORNEYS:	3%	27%	44%	25%	2%	
LITIGATORS:	2%	27%	48%	20%	3%	
DOMESTIC RELATIONS:	3%	28%	43%	22%	4%	
JUDGES:	25%	43%	20%	10%	3%	

\*Less than one percent

Question 12 -- Court Employees' Questionnaire  
Credibility

Judges give different sentences to female defendants than they give to male defendants, based solely on gender.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
By court personnel ALL RESPONSES:	1%	6%	16%	13%	40%	23%
	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	
THOSE EXPRESSING OPINION:	3%	8%	20%	17%	52%	
MALE:	3%	7%	31%	13%	46%	
FEMALE	3%	10%	29%	18%	40%	

Question 13 -- Court Employees' Questionnaire (All Court Employees)

**Sexual advances in exchange for an employment security/opportunity**

	<b>EXPERIENCED</b>		<b>HEARD ABOUT</b>	
	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
<b>From judges</b>				
MALE:	96%	4%	72%	28%
FEMALE:	95%	5%	49%	50%
<b>From attorneys</b>				
MALE:	96%	4%	71%	29%
FEMALE:	94%	6%	64%	36%
<b>From co-workers</b>				
MALE:	93%	7%	67%	33%
FEMALE:	92%	8%	51%	49%
<b>From supervisors</b>				
MALE:	96%	4%	59%	41%
FEMALE:	93%	7%	54%	46%

Question 14 -- Court Employees' Questionnaire (All Court Employees)

**Requests for sexual activity**

	<b>EXPERIENCED</b>		<b>HEARD ABOUT</b>	
	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
<b>From judges</b>				
MALE:	94%	6%	71%	29%
FEMALE:	92%	8%	61%	39%
<b>From attorneys</b>				
MALE:	96%	4%	75%	25%
FEMALE:	89%	11%	68%	32%
<b>From co-workers</b>				
MALE:	89%	11%	65%	35%
FEMALE:	85%	15%	59%	41%
<b>From supervisors</b>				
MALE:	95%	5%	68%	32%
FEMALE:	94%	6%	67%	33%
<b>From the public</b>				
MALE:	84%	26%	71%	29%
FEMALE:	78%	22%	68%	32%

Question 15 -- Court Employees' Questionnaire (All Court Employees)

Physical touching of a sexual nature

	EXPERIENCED		HEARD ABOUT	
	No	Yes	No	Yes
<b>From judges</b>				
MALE:	95%	5%	78%	22%
FEMALE:	88%	12%	64%	36%
<b>From attorneys</b>				
MALE:	92%	8%	76%	24%
FEMALE:	89%	11%	73%	27%
<b>From co-workers</b>				
MALE:	84%	16%	68%	32%
FEMALE:	82%	18%	60%	40%
<b>From supervisors</b>				
MALE:	95%	5%	72%	28%
FEMALE:	92%	8%	70%	30%
<b>From the public</b>				
MALE:	90%	10%	79%	21%
FEMALE:	91%	9%	76%	24%

Question 16 -- Court Employees' Questionnaire (All Court Employees)

Verbal behavior such as sexist jokes or comments.

	EXPERIENCED		HEARD ABOUT	
	No	Yes	No	Yes
<b>From judges</b>				
MALE:	79%	21%	79%	21%
FEMALE:	75%	25%	74%	26%
<b>From attorneys</b>				
MALE:	72%	28%	72%	28%
FEMALE:	68%	32%	72%	28%
<b>From co-workers</b>				
MALE:	56%	44%	63%	37%
FEMALE:	55%	45%	64%	36%
<b>From supervisors</b>				
MALE:	75%	25%	73%	27%
FEMALE:	74%	26%	72%	28%
<b>From the public</b>				
MALE:	67%	33%	77%	23%
FEMALE:	66%	34%	70%	30%

Question 18 -- Court Employees' Questionnaire (Full-Time)  
Employment

Does your position have a written job description?

	Yes	No
FULL-TIME MALE:	69%	13%
FULL-TIME FEMALE:	60%	17%

---

Question 19 -- Court Employees' Questionnaire (Full-Time Court Employees)

Number of years you have been employed in the Maryland court system?

FULL-TIME MALE:		FULL-TIME FEMALE:	
Years	Percent	Years	Percent
1	15%	1	15%
2	5%	2	8%
3	4%	3	8%
4	5%	4	7%
5	4%	5	5%
6	6%	6	4%
7	5%	7	6%
8	4%	8	5%
9	5%	9	4%
10	6%	10	5%
11	2%	11	5%
13	4%	12	3%
14	3%	13	4%
15	5%	14	4%
16	5%	15	4%
17	3%	16	4%
18	*	17	3%
19	1%	18	*
20	3%	19	*
21	*	20	2%
22	2%	22	*
23	1%	23	*
24	2%	24	*
25	2%	25	*
26	1%	26	*
27	1%	27	*
28	*	28	*
31	2%	30	*
33	1%	31	*
		32	*
		41	*

\*Less than one percent

Question 20 -- Court Employees' Questionnaire (Full-Time)

Number of years employed in your current position?

FULL-TIME MALE:		FULL-TIME FEMALE:	
Years	Percent	Years	Percent
1	21%	1	32%
2	7%	2	16%
3	6%	3	10%
4	6%	4	9%
5	8%	5	4%
6	8%	6	4%
7	5%	7	4%
8	5%	8	4%
9	4%	9	4%
10	6%	10	3%
11	3%	11	1%
12	2%	12	2%
13	3%	13	2%
14	1%	14	*
15	4%	15	2%
16	5%	16	*
17	3%	17	*
18	1%	18	*
19	*	19	*
22	*	20	*
24	2%	22	*
25	*	23	*
31	*	26	*
		41	*

---

\*Less than one percent

Question 21 -- Court Employees' Questionnaire (Full-Time)

Before your employment with the court system, did you have prior work experience or was this your first job?

Yes

FULL-TIME MALE: 87%  
 FULL-TIME FEMALE: 83%

A. Yes, how many years?

FULL-TIME MALE:		FULL-TIME FEMALE:	
Years	Percent	Years	Percent
1	8%	1	5%
2	10%	2	7%
3	13%	3	7%
4	9%	4	7%
5	9%	5	7%
6	6%	6	4%
7	4%	7	7%
8	4%	8	2%
9	2%	9	3%
10	9%	10	8%
11	2%	11	2%
12	4%	12	5%
13	2%	14	*
14	1%	15	2%
15	3%	16	2%
16	1%	17	*
17	*	18	*
18	2%	19	2%
19	1%	20	7%
20	3%	21	*
21	2%	22	2%
22	*	23	*
23	*	24	2%
24	*	25	3%
25	1%	26	*
26	*	27	2%
28	*	30	7%
30	*	31	*
32	*	32	*
35	*	33	*
36	*	34	*
39	*	35	2%
40	*	37	*
50	*	42	*

\*Less than one percent

Question 22 -- Court Employees' Questionnaire (Full-Time)

Level of education when first hired in the court system?

	H.S.	<H.S. Grad.	Some Coll.	Coll. Grad.	Post-Grad. Work
FULL-TIME MALE:	2%	24%	31%	24%	17%
FULL-TIME FEMALE:	1%	53%	29%	11%	4%

---

Question 23 -- Court Employees' Questionnaire (Full-Time)

Current level of education?

	H.S.	<H.S. Grad.	Some Coll.	Coll. Grad.	Post-Grad. Work
FULL-TIME MALE:	2%	18%	32%	21%	24%
FULL-TIME FEMALE:	*	44%	36%	11%	6%

---

Question 24 -- Court Employees' Questionnaire (Full-Time)

Yearly salary level when first hired:

	\$1K to \$5K	\$5K to \$10K	\$10K to \$19,999	\$20K to \$24,999	\$25K to \$29,000	\$30K to \$34,999	\$35K to \$39,999
FULL-TIME MALE:	11%	39%	40%	3%	4%	*	1%
FULL-TIME FEMALE:	9%	45%	44%	*	2%		

---

Question 25 -- Court Employees' Questionnaire (Full-Time)

Current yearly salary:

	\$5K to \$10K	\$10K to \$19,999	\$20K to \$24,999	\$25K to \$29,999	\$30K to \$34,999	\$35K to \$39,999	\$40K to \$44,999	\$45K to \$49,999	\$55K to \$59,999	\$60K or more
FULL-TIME MALE:	2%	35%	24%	23%	6%	1%	4%	3%	*	1%
FULL-TIME FEMALE:	\$1K to \$5K	\$5K to \$10K	\$10K to \$19,999	\$20K to \$24,999	\$25K to \$29,000	\$30K to \$34,999	\$35K to \$39,999	\$40K to \$44,999		
	*	2%	64%	21%	8%	2%	2%	2%	*	

\*Less than one percent

Question 23 -- Judges' and Lawyers' Questionnaires  
Child Support

Child support awards adequately reflect the earning capacity of the:

a) non-custodial parent	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	2%	21%	20%	12%	1%	44%
FEMALE ATTORNEYS:	1%	7%	19%	23%	2%	48%
LITIGATORS:	2%	9%	19%	25%	2%	45%
DOMESTIC RELATIONS:	2%	16%	31%	27%	5%	9%
ALL FEMALE ATTORNEYS:	1%	8%	23%	20%	2%	47%
MALE ATTORNEYS:	2%	23%	21%	10%	1%	43%
LITIGATORS:	3%	23%	25%	11%	(0)	38%
DOMESTIC RELATIONS:	7%	35%	35%	19%	1%	3%
JUDGES:	23%	33%	11%	3%	2%	28%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	4%	37%	36%	21%	2%	
FEMALE ATTORNEYS:	1%	18%	38%	40%	4%	
LITIGATORS:	1%	16%	34%	45%	4%	
DOMESTIC RELATIONS:	2%	18%	34%	41%	5%	
ALL FEMALE ATTORNEYS:	2%	15%	43%	37%	3%	
MALE ATTORNEYS:	4%	41%	36%	18%	1%	
LITIGATORS:	4%	38%	40%	17%	(0)	
DOMESTIC RELATIONS:	8%	36%	36%	19%	2%	
JUDGES:	32%	46%	16%	4%	3%	
b) Custodial parent						
ALL ATTORNEYS (weighted):	1%	15%	23%	15%	2%	44%
FEMALE ATTORNEYS:	1%	8%	19%	22%	2%	48%
LITIGATORS:	1%	7%	19%	25%	2%	46%
DOMESTIC RELATIONS:	3%	14%	32%	38%	5%	9%
ALL FEMALE ATTORNEYS:	1%	8%	22%	20%	2%	48%
MALE ATTORNEYS:	1%	16%	24%	14%	2%	43%
LITIGATORS:	1%	18%	26%	15%	2%	39%
DOMESTIC RELATIONS:	3%	26%	42%	22%	4%	3%
JUDGES:	22%	29%	15%	4%	2%	28%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	27%	41%	27%	3%	
FEMALE ATTORNEYS:	2%	17%	37%	41%	4%	
LITIGATORS:	3%	13%	35%	46%	4%	
DOMESTIC RELATIONS:	3%	15%	35%	42%	5%	
ALL FEMALE ATTORNEYS:	2%	15%	42%	38%	3%	
MALE ATTORNEYS:	2%	29%	42%	24%	3%	
LITIGATORS:	2%	30%	42%	24%	3%	
DOMESTIC RELATIONS:	3%	27%	43%	22%	5%	
JUDGES:	31%	42%	20%	5%	3%	

Question 24 -- Judges' and Lawyers' Questionnaires  
Child Support

Enforcement of child support awards is denied because of alleged visitation problems.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	(0)	3%	8%	20%	18%	51%
FEMALE ATTORNEYS:	(0)	3%	16%	16%	11%	54%
LITIGATORS:	(0)	3%	19%	17%	12%	49%
DOMESTIC RELATIONS:	(0)	5%	25%	31%	22%	16%
ALL FEMALE ATTORNEYS:	*	4%	15%	17%	10%	55%
MALE ATTORNEYS:	(0)	3%	7%	20%	20%	50%
LITIGATORS:	(0)	3%	7%	24%	21%	45%
DOMESTIC RELATIONS:	(0)	3%	8%	45%	40%	5%
JUDGES:	(0)	1%	9%	26%	33%	30%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	(0)	7%	16%	4%	37%	
FEMALE ATTORNEYS:	(0)	7%	32%	39%	22%	
LITIGATORS:	(0)	5%	37%	34%	24%	
DOMESTIC RELATIONS:	(0)	5%	30%	38%	27%	
ALL FEMALE ATTORNEYS:	*	8%	32%	27%	22%	
MALE ATTORNEYS:	(0)	6%	14%	41%	39%	
LITIGATORS:	(0)	6%	12%	45%	38%	
DOMESTIC RELATIONS:	(0)	3%	8%	47%	42%	
JUDGES:	(0)	2%	14%	38%	47%	

Question 25 -- Judges' and Lawyers' Questionnaires  
Child Support

Enforcement of child support is delayed because of counter claims for custody.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	6%	5%	16%	9%	53%
FEMALE ATTORNEYS:	(0)	10%	17%	11%	4%	58%
LITIGATORS:	(0)	10%	18%	12%	4%	56%
DOMESTIC RELATIONS:	(0)	18%	33%	19%	8%	22%
ALL FEMALE ATTORNEYS:	1%	10%	17%	11%	4%	58%
MALE ATTORNEYS:	*	6%	15%	17%	10%	52%
LITIGATORS:	1%	6%	14%	17%	12%	49%
DOMESTIC RELATIONS:	3%	13%	23%	33%	20%	7%
JUDGES:	(0)	4%	16%	21%	28%	32%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	1%	13%	32%	34%	20%	
FEMALE ATTORNEYS:	(0)	22%	42%	27%	9%	
LITIGATORS:	(0)	22%	41%	28%	9%	
DOMESTIC RELATIONS:	(0)	23%	42%	25%	10%	
ALL FEMALE ATTORNEYS:	1%	24%	41%	26%	9%	
MALE ATTORNEYS:	2%	12%	31%	35%	21%	
LITIGATORS:	2%	13%	28%	33%	24%	
DOMESTIC RELATIONS:	3%	14%	25%	36%	22%	
JUDGES:	(0)	6%	23%	31%	41%	

\*Less than one percent

Question 26 -- Judges' and Lawyers' Questionnaires  
Child Support

Pendente lite awards of child support are made within 60 days of filing the motion.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	13%	16%	8%	2%	59%
FEMALE ATTORNEYS:	1%	5%	16%	12%	2%	63%
LITIGATORS:	1%	4%	17%	13%	4%	61%
DOMESTIC RELATIONS:	2%	10%	36%	27%	6%	19%
ALL FEMALE ATTORNEYS:	1%	8%	14%	13%	2%	63%
MALE ATTORNEYS:	1%	14%	16%	8%	2%	59%
LITIGATORS:	2%	16%	19%	10%	1%	53%
DOMESTIC RELATIONS:	4%	23%	39%	20%	4%	9%
JUDGES:	7%	30%	10%	6%	(0)	47%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	3%	33%	40%	20%	4%	
FEMALE ATTORNEYS:	1%	17%	46%	29%	7%	
LITIGATORS:	2%	11%	45%	34%	9%	
DOMESTIC RELATIONS:	2%	13%	44%	33%	7%	
ALL FEMALE ATTORNEYS:	2%	21%	39%	34%	5%	
MALE ATTORNEYS:	4%	34%	40%	19%	4%	
LITIGATORS:	3%	34%	40%	21%	2%	
DOMESTIC RELATIONS:	5%	25%	43%	22%	5%	
JUDGES:	13%	57%	19%	11%	(0)	

Question 27 -- Judges' and Lawyers' Questionnaires  
Child Support

Earnings withholding orders are entered as soon as the obligor is 30 days behind in paying child support.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	4%	12%	19%	4%	60%
FEMALE ATTORNEYS:	(0)	2%	11%	21%	7%	59%
LITIGATORS:	(0)	4%	11%	22%	7%	57%
DOMESTIC RELATIONS:	(0)	8%	28%	34%	13%	16%
ALL FEMALE ATTORNEYS:	1%	4%	9%	21%	6%	60%
MALE ATTORNEYS:	1%	4%	12%	19%	4%	60%
LITIGATORS:	1%	6%	13%	21%	4%	55%
DOMESTIC RELATIONS:	3%	12%	22%	35%	10%	19%
JUDGES:	4%	23%	18%	6%	2%	47%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	11%	30%	47%	11%	
FEMALE ATTORNEYS:	(0)	9%	29%	48%	14%	
LITIGATORS:	(0)	8%	26%	50%	16%	
DOMESTIC RELATIONS:	(0)	9%	34%	41%	16%	
ALL FEMALE ATTORNEYS:	1%	9%	21%	53%	16%	
MALE ATTORNEYS:	2%	11%	30%	47%	9%	
LITIGATORS:	2%	13%	29%	46%	10%	
DOMESTIC RELATIONS:	4%	14%	27%	43%	13%	
JUDGES:	7%	44%	34%	11%	4%	

Question 27 -- Court Employees' Questionnaire (All Court Employees)

**My job duties and responsibilities have been *reduced* because of my gender.**

	Yes	No
ALL MALE:	1%	99%
ALL FEMALE:	5%	95%

---

Question 28 -- Court Employees' Questionnaire (All Employees)

**My job duties and responsibilities have been *increased* because of my gender.**

	Yes	No
ALL MALE:	18%	82%
ALL FEMALE:	13%	87%

---

Question 29 -- Court Employees' Questionnaire (All Employees)

**My opinions in job related situations are given different weight or importance than a person of the opposite gender.**

	Yes	No
ALL MALE:	16%	84%
ALL FEMALE:	25%	75%

---

Question 30 -- Court Employees' Questionnaire (All Employees)

**I feel I am asked to perform duties that would not be asked of a person of the opposite sex.**

	Yes	No
ALL MALE:	28%	72%
ALL FEMALE:	17%	83%

---

Question 31 -- Court Employees' Questionnaire (All Employees)

**I feel that there are job duties I am *not* allowed to perform because of my gender.**

	Yes	No
ALL MALE:	6%	94%
ALL FEMALE:	14%	86%

Question 28 -- Judges' and Lawyers' Questionnaires  
Custody

Custody awards to mothers are apparently based on the assumption that children belong with their mothers.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	3%	30%	19%	3%	1%	43%
FEMALE ATTORNEYS:	1%	18%	24%	10%	2%	45%
LITIGATORS:	1%	17%	27%	11%	3%	42%
DOMESTIC RELATIONS:	(0)	24%	48%	16%	6%	6%
ALL FEMALE ATTORNEYS:	1%	17%	25%	9%	1%	47%
MALE ATTORNEYS:	3%	32%	19%	2%	1%	43%
LITIGATORS:	3%	34%	22%	2%	1%	39%
DOMESTIC RELATIONS:	7%	46%	38%	3%	3%	3%
JUDGES:	*	10%	27%	14%	26%	23%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	5%	53%	34%	6%	2%	
FEMALE ATTORNEYS:	2%	33%	46%	16%	4%	
LITIGATORS:	1%	29%	46%	19%	5%	
DOMESTIC RELATIONS:	(0)	25%	51%	18%	6%	
ALL FEMALE ATTORNEYS:	2%	32%	46%	17%	3%	
MALE ATTORNEYS:	5%	57%	33%	4%	2%	
LITIGATORS:	5%	55%	36%	3%	2%	
DOMESTIC RELATIONS:	8%	48%	39%	3%	3%	
JUDGES:	1%	13%	35%	18%	34%	

Question 29 -- Judges' and Lawyers' Questionnaires  
Custody

The courts give fair and serious consideration to fathers who actively seek custody.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	3%	14%	24%	15%	1%	44%
FEMALE ATTORNEYS:	5%	20%	19%	9%	(0)	47%
LITIGATORS:	6%	22%	21%	8%	(0)	43%
DOMESTIC RELATIONS:	12%	43%	24%	16%	(0)	5%
ALL FEMALE ATTORNEYS:	5%	20%	20%	8%	*	47%
MALE ATTORNEYS:	3%	12%	26%	15%	1%	43%
LITIGATORS:	3%	12%	27%	18%	2%	39%
DOMESTIC RELATIONS:	6%	22%	45%	20%	4%	3%
JUDGES:	34%	27%	10%	4%	1%	24%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	5%	24%	43%	26%	2%	
FEMALE ATTORNEYS:	8%	41%	34%	18%	(0)	
LITIGATORS:	11%	39%	37%	13%	(0)	
DOMESTIC RELATIONS:	13%	45%	25%	17%	(0)	
ALL FEMALE ATTORNEYS:	9%	37%	38%	16%	1%	
MALE ATTORNEYS:	5%	22%	45%	27%	2%	
LITIGATORS:	4%	20%	44%	30%	3%	
DOMESTIC RELATIONS:	6%	22%	46%	21%	5%	
JUDGES:	45%	36%	14%	5%	1%	

\* Less than one percent.

Question 30 -- Judges' and Lawyers' Questionnaires  
Custody

The courts favor the parent in the stronger financial position when awarding custody.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	*	4%	21%	24%	5%	45%
FEMALE ATTORNEYS:	1%	8%	21%	20%	1%	49%
LITIGATORS:	(0)	8%	24%	22%	1%	44%
DOMESTIC RELATIONS:	(0)	16%	40%	36%	(0)	8%
ALL FEMALE ATTORNEYS:	1%	8%	22%	18%	1%	51%
MALE ATTORNEYS:	(0)	4%	21%	25%	6%	44%
LITIGATORS:	(0)	4%	23%	26%	6%	40%
DOMESTIC RELATIONS:	(0)	9%	35%	42%	12%	3%
JUDGES:	(0)	3%	24%	30%	14%	29%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	*	8%	39%	44%	9%	
FEMALE ATTORNEYS:	1%	14%	42%	44%	2%	
LITIGATORS:	(0)	15%	44%	39%	3%	
DOMESTIC RELATIONS:	(0)	18%	44%	39%	(0)	
ALL FEMALE ATTORNEYS:	1%	16%	45%	36%	2%	
MALE ATTORNEYS:	(0)	7%	38%	45%	11%	
LITIGATORS:	(0)	7%	38%	44%	11%	
DOMESTIC RELATIONS:	(0)	9%	36%	43%	12%	
JUDGES:	(0)	4%	35%	42%	20%	

Question 31 -- Judges' and Lawyers' Questionnaires  
Custody

Child custody awards disregard father's violence against mother.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	6%	12%	23%	6%	53%
FEMALE ATTORNEYS:	2%	9%	17%	12%	3%	57%
LITIGATORS:	2%	10%	20%	12%	4%	53%
DOMESTIC RELATIONS:	5%	19%	34%	22%	3%	16%
ALL FEMALE ATTORNEYS:	1%	10%	17%	12%	3%	57%
MALE ATTORNEYS:	1%	6%	11%	24%	7%	51%
LITIGATORS:	1%	7%	11%	27%	8%	47%
DOMESTIC RELATIONS:	13%	21%	41%	12%	(0)	13%
JUDGES:	(0)	6%	21%	21%	25%	27%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	12%	24%	48%	13%	
FEMALE ATTORNEYS:	3%	19%	39%	32%	8%	
LITIGATORS:	4%	21%	43%	25%	7%	
DOMESTIC RELATIONS:	5%	23%	41%	27%	4%	
ALL FEMALE ATTORNEYS:	3%	23%	39%	29%	6%	
MALE ATTORNEYS:	2%	12%	23%	50%	14%	
LITIGATORS:	1%	12%	21%	51%	14%	
DOMESTIC RELATIONS:	(0)	15%	24%	48%	14%	
JUDGES:	(0)	9%	28%	28%	35%	

\*Less than one percent

Question 32 -- Court Employees' Questionnaire (All Employees)

**Choice job assignments are given to employees on the basis of gender.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	18%	82%
ALL FEMALE:	22%	78%

---

Question 33 -- Court Employees' Questionnaire (All Employees)

**I get all the support/information I need to do my job.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	90%	10%
ALL FEMALE:	85%	15%

---

Question 34 -- Court Employees' Questionnaire (All Employees)

**I am permitted to go to job training programs which are available to my position.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	74%	26%
ALL FEMALE:	57%	43%

---

Question 35 -- Court Employees' Questionnaire (All Employees)

**Opportunities for job advancement in the court system are limited because of my gender.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	14%	86%
ALL FEMALE:	26%	74%

---

Question 36 -- Court Employees' Questionnaire (All Employees)

**When promotional opportunities are available in the court system, I am informed of the opening.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	81%	19%
ALL FEMALE:	75%	25%

---

Question 32 -- Judges' and Lawyers' Questionnaires  
Custody

Mothers are denied custody because of employment outside the home.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	(0)	1%	7%	29%	13%	50%
FEMALE ATTORNEYS:	(0)	2%	12%	23%	6%	57%
LITIGATORS:	(0)	2%	13%	23%	8%	55%
DOMESTIC RELATIONS:	(0)	5%	24%	41%	12%	18%
ALL FEMALE ATTORNEYS:	*	4%	14%	22%	6%	55%
MALE ATTORNEYS:	(0)	1%	6%	31%	14%	48%
LITIGATORS:	(0)	1%	6%	35%	15%	44%
DOMESTIC RELATIONS:	(0)	2%	6%	58%	30%	5%
JUDGES:	1%	(0)	11%	28%	33%	27%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	(0)	2%	14%	59%	25%	
FEMALE ATTORNEYS:	(0)	6%	29%	51%	15%	
LITIGATORS:	(0)	5%	28%	51%	17%	
DOMESTIC RELATIONS:	(0)	6%	30%	50%	15%	
ALL FEMALE ATTORNEYS:	*	8%	31%	48%	13%	
MALE ATTORNEYS:	(0)	2%	12%	61%	26%	
LITIGATORS:	(0)	2%	11%	62%	26%	
DOMESTIC RELATIONS:	(0)	2%	6%	61%	31%	
JUDGES:	2%	(0)	15%	38%	45%	

Question 33 -- Judges' and Lawyers' Questionnaires  
Custody

Joint custody is ordered over the objections of one or both parents

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	4%	16%	14%	11%	55%
FEMALE ATTORNEYS:	(0)	4%	17%	12%	6%	61%
LITIGATORS:	(0)	4%	18%	13%	7%	58%
DOMESTIC RELATIONS:	(0)	9%	34%	22%	13%	21%
ALL FEMALE ATTORNEYS:	*	5%	17%	14%	6%	59%
MALE ATTORNEYS:	*	4%	16%	15%	12%	54%
LITIGATORS:	(0)	3%	15%	18%	14%	51%
DOMESTIC RELATIONS:	(0)	7%	26%	29%	29%	9%
JUDGES:	1%	4%	24%	25%	15%	31%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	1%	8%	36%	31%	24%	
FEMALE ATTORNEYS:	(0)	11%	45%	27%	17%	
LITIGATORS:	(0)	10%	43%	28%	17%	
DOMESTIC RELATIONS:	(0)	11%	43%	28%	17%	
ALL FEMALE ATTORNEYS:	*	12%	40%	34%	14%	
MALE ATTORNEYS:	1%	8%	34%	32%	25%	
LITIGATORS:	(0)	5%	30%	36%	28%	
DOMESTIC RELATIONS:	(0)	8%	29%	32%	32%	
JUDGES:	1%	6%	35%	36%	22%	

\*Less than one percent

Question 34 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

Civil orders of protection, directing respondents to stay away from home, are granted when petitioner are in fear of serious bodily harm.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	10%	25%	13%	2%	*	50%
FEMALE ATTORNEYS:	5%	18%	17%	5%	1%	53%
LITIGATORS:	6%	21%	19%	5%	1%	48%
DOMESTIC RELATIONS:	8%	28%	36%	5%	3%	21%
ALL FEMALE ATTORNEYS:	5%	21%	16%	5%	1%	53%
MALE ATTORNEYS:	10%	26%	12%	2%	(0)	50%
LITIGATORS:	13%	27%	14%	2%	(0)	45%
DOMESTIC RELATIONS:	21%	43%	21%	3%	(0)	12%
JUDGES:	36%	39%	12%	2%	1%	10%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	20%	50%	26%	5%	*	
FEMALE ATTORNEYS:	12%	40%	37%	10%	2%	
LITIGATORS:	12%	41%	36%	9%	3%	
DOMESTIC RELATIONS:	9%	36%	45%	6%	4%	
ALL FEMALE ATTORNEYS:	11%	44%	34%	10%	1%	
MALE ATTORNEYS:	21%	52%	24%	4%	(0)	
LITIGATORS:	24%	49%	25%	3%	(0)	
DOMESTIC RELATIONS:	24%	49%	24%	3%	(0)	
JUDGES:	40%	43%	14%	3%	1%	

Question 35 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

When granting civil order of protection, the courts issue support awards for dependents.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	5%	12%	13%	4%	65%
FEMALE ATTORNEYS:	1%	1%	5%	19%	8%	66%
LITIGATORS:	1%	1%	6%	20%	10%	63%
DOMESTIC RELATIONS:	1%	1%	8%	38%	20%	32%
ALL FEMALE ATTORNEYS:	*	2%	7%	16%	7%	67%
MALE ATTORNEYS:	1%	4%	13%	13%	4%	65%
LITIGATORS:	2%	6%	22%	36%	9%	25%
DOMESTIC RELATIONS:	1%	9%	22%	14%	28%	26%
JUDGES:						
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	13%	34%	39%	12%	
FEMALE ATTORNEYS:	1%	7%	18%	53%	21%	
LITIGATORS:	2%	4%	15%	54%	26%	
DOMESTIC RELATIONS:	2%	2%	11%	56%	29%	
ALL FEMALE ATTORNEYS:	*	7%	22%	49%	22%	
MALE ATTORNEYS:	2%	13%	38%	37%	11%	
LITIGATORS:	1%	10%	37%	39%	13%	
DOMESTIC RELATIONS:	2%	8%	30%	48%	12%	
JUDGES:	2%	11%	29%	19%	39%	

\* Less than one percent

Question 36 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

Petitions for civil orders of protection are rejected where domestic relations cases are pending.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	*	4%	15%	11%	6%	65%
FEMALE ATTORNEYS:	3%	6%	14%	8%	2%	67%
LITIGATORS:	3%	7%	14%	11%	3%	62%
DOMESTIC RELATIONS:	8%	13%	24%	16%	6%	33%
ALL FEMALE ATTORNEYS:	2%	6%	12%	8%	2%	71%
MALE ATTORNEYS:	(0)	4%	15%	11%	7%	64%
LITIGATORS:	(0)	11%	26%	27%	15%	21%
DOMESTIC RELATIONS:	2%	5%	24%	27%	23%	18%
JUDGES:						
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	1%	11%	41%	30%	17%	
FEMALE ATTORNEYS:	9%	17%	41%	28%	6%	
LITIGATORS:	9%	18%	36%	29%	7%	
DOMESTIC RELATIONS:	11%	20%	36%	24%	9%	
ALL FEMALE ATTORNEYS:	5%	19%	42%	28%	6%	
MALE ATTORNEYS:	(0)	10%	41%	30%	19%	
LITIGATORS:	(0)	11%	39%	32%	18%	
DOMESTIC RELATIONS:	(0)	14%	33%	35%	19%	
JUDGES:	3%	7%	30%	33%	28%	

Question 37 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

Circuit court judges order emergency injunctive relief to protect victims of domestic violence.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	2%	16%	14%	8%	2%	59%
FEMALE ATTORNEYS:	1%	8%	14%	11%	2%	64%
LITIGATORS:	1%	8%	19%	12%	2%	58%
DOMESTIC RELATIONS:	3%	12%	30%	15%	5%	36%
ALL FEMALE ATTORNEYS:	1%	8%	18%	10%	2%	62%
MALE ATTORNEYS:	2%	16%	14%	8%	2%	58%
LITIGATORS:	2%	20%	14%	8%	2%	55%
DOMESTIC RELATIONS:	6%	28%	25%	19%	3%	18%
JUDGES:	5%	20%	30%	9%	4%	32%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	5%	38%	34%	19%	4%	
FEMALE ATTORNEYS:	3%	25%	39%	29%	5%	
LITIGATORS:	3%	18%	44%	30%	5%	
DOMESTIC RELATIONS:	5%	19%	47%	23%	7%	
ALL FEMALE ATTORNEYS:	3%	20%	46%	26%	5%	
MALE ATTORNEYS:	5%	19%	47%	23%	7%	
LITIGATORS:	5%	44%	30%	17%	5%	
DOMESTIC RELATIONS:	7%	35%	31%	24%	4%	
JUDGES:	8%	29%	44%	14%	5%	

\*Less than one percent

Question 37 -- Court Employees' Questionnaire (All Employees)

**I am encouraged to apply for promotional opportunities.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	55%	45%
ALL FEMALE:	54%	46%

---

Question 38 -- Court Employees' Questionnaire (All Employees)

**In my area, it appears that members of one gender are given preferential appointments to supervisory positions.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	21%	78%
ALL FEMALE:	29%	71%

---

Question 39 -- Court Employees' Questionnaire (All Employees)

**If there is a problem or complaint about my job, there is a person or agency that would deal with the problem or complaint.**

	<b>Yes</b>	<b>No</b>
ALL MALE:	88%	12%
ALL FEMALE:	81%	19%

---

Question 40 -- Court Employees' Questionnaire (All Employees)

**In the past two years, have you filed a complaint involving gender bias on the job?**

	<b>Yes</b>	<b>No</b>
ALL MALE:	4%	96%
ALL FEMALE:	4%	96%

**A. Was it resolved to your satisfaction:**

	<b>Yes</b>	<b>No</b>
ALL MALE:	15%	85%
ALL FEMALE:	30%	70%

Question 38 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

The courts do not treat domestic violence as a crime.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	6%	13%	16%	13%	51%
FEMALE ATTORNEYS:	4%	15%	16%	9%	5%	51%
LITIGATORS:	3%	16%	18%	13%	6%	43%
DOMESTIC RELATIONS:	6%	24%	22%	16%	9%	22%
ALL FEMALE ATTORNEYS:	1%	15%	17%	10%	5%	52%
MALE ATTORNEYS:	*	5%	13%	17%	14%	50%
LITIGATORS:	*	5%	15%	21%	15%	45%
DOMESTIC RELATIONS:	2%	15%	29%	21%	23%	11%
JUDGES:	8%	13%	22%	22%	23%	13%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	13%	27%	33%	26%	
FEMALE ATTORNEYS:	6%	27%	32%	23%	12%	
LITIGATORS:	6%	28%	32%	23%	11%	
DOMESTIC RELATIONS:	8%	31%	29%	21%	12%	
ALL FEMALE ATTORNEYS:	3%	31%	36%	20%	10%	
MALE ATTORNEYS:	1%	11%	26%	34%	28%	
LITIGATORS:	1%	9%	27%	37%	27%	
DOMESTIC RELATIONS:	2%	17%	32%	24%	25%	
JUDGES:	9%	14%	25%	26%	26%	

Question 39 -- Judges' and Lawyers' Questionnaires  
Domestic Violence

Assault charges are not treated seriously when domestic relations cases are pending.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	13%	18%	13%	4%	52%
FEMALE ATTORNEYS:	4%	22%	13%	7%	1%	53%
LITIGATORS:	6%	22%	16%	10%	2%	45%
DOMESTIC RELATIONS:	9%	34%	18%	10%	3%	25%
ALL FEMALE ATTORNEYS:	3%	20%	16%	6%	2%	54%
MALE ATTORNEYS:	*	12%	18%	15%	4%	51%
LITIGATORS:	1%	14%	22%	16%	3%	44%
DOMESTIC RELATIONS:	2%	34%	28%	18%	8%	10%
JUDGES:	1%	9%	26%	27%	29%	7%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	26%	37%	28%	7%	
FEMALE ATTORNEYS:	8%	40%	32%	18%	3%	
LITIGATORS:	10%	40%	29%	14%	4%	
DOMESTIC RELATIONS:	12%	46%	24%	14%	4%	
ALL FEMALE ATTORNEYS:	7%	43%	34%	13%	4%	
MALE ATTORNEYS:	1%	24%	37%	30%	8%	
LITIGATORS:	1%	24%	40%	29%	6%	
DOMESTIC RELATIONS:	2%	38%	32%	20%	8%	
JUDGES:	1%	9%	28%	32%	32%	

\*Less than one percent

Question 40 -- Judges' and Lawyers' Questionnaires  
Rape

Rape victims are accorded less credibility than victims of other types of assault.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	1%	11%	16%	14%	6%	52%
FEMALE ATTORNEYS:	5%	22%	12%	5%	3%	53%
LITIGATORS:	5%	24%	14%	6%	5%	47%
CRIMINAL:	8%	28%	28%	13%	6%	17%
ALL FEMALE ATTORNEYS:	4%	20%	14%	5%	2%	55%
MALE ATTORNEYS:	*	9%	16%	16%	7%	52%
LITIGATORS:	*	8%	19%	20%	7%	46%
CRIMINAL:	1%	10%	23%	32%	16%	17%
JUDGES:	1%	6%	12%	15%	47%	19%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	22%	33%	30%	13%	
FEMALE ATTORNEYS:	9%	42%	30%	10%	8%	
LITIGATORS:	9%	46%	26%	10%	9%	
CRIMINAL:	10%	33%	33%	15%	8%	
ALL FEMALE ATTORNEYS:	10%	44%	30%	11%	5%	
MALE ATTORNEYS:	1%	19%	34%	33%	14%	
LITIGATORS:	1%	15%	34%	36%	14%	
CRIMINAL:	2%	13%	28%	39%	19%	
JUDGES:	2%	7%	15%	19%	58%	

Question 41 -- Judges' and Lawyers' Questionnaires  
Rape

Judges control the court so as to protect the complaining witness from improper questioning.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	8%	19%	16%	4%	1%	53%
FEMALE ATTORNEYS:	1%	12%	22%	8%	1%	56%
LITIGATORS:	2%	15%	24%	8%	1%	51%
CRIMINAL:	6%	21%	38%	15%	(0)	19%
ALL FEMALE ATTORNEYS:	2%	12%	21%	7%	*	57%
MALE ATTORNEYS:	9%	19%	15%	4%	1%	52%
LITIGATORS:	10%	22%	18%	4%	1%	46%
CRIMINAL:	21%	30%	25%	4%	(0)	21%
JUDGES:	38%	25%	15%	1%	2%	19%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	2%	22%	33%	30%	13%	
FEMALE ATTORNEYS:	9%	42%	30%	10%	8%	
LITIGATORS:	9%	46%	26%	10%	9%	
CRIMINAL:	10%	33%	33%	15%	8%	
ALL FEMALE ATTORNEYS:	10%	44%	30%	11%	5%	
MALE ATTORNEYS:	1%	19%	34%	33%	14%	
LITIGATORS:	1%	15%	34%	36%	14%	
CRIMINAL:	2%	13%	28%	39%	19%	
JUDGES:	2%	7%	15%	19%	58%	

\*Less than one percent

Question 41 -- Court Employees' Questionnaire (All Employees)

In the past two years, have you attended any job training program?

	Yes	No
ALL MALE:	51%	49%
ALL FEMALE:	36%	64%
<b>A. Were you given administrative leave to attend?</b>		
	Yes	No
ALL MALE:	87%	13%
ALL FEMALE:	93%	7%
<b>B. Were you given paid leave to attend?</b>		
ALL MALE:	2%	98%
ALL FEMALE:	2%	98%
<b>C. Were you given expenses: mileage reimbursement</b>		
ALL MALE:	91%	9%
ALL FEMALE:	83%	17%
<b>D. registration</b>		
ALL MALE:	89%	11%
ALL FEMALE:	82%	18%

Question 42 -- Court Employees' Questionnaire (All Employees)

Do you feel that the salary for most court employees in your area is too high, too low or about right for the work that you do?

	Too High	About Right	Too Low
ALL MALE:	2%	12%	82%
ALL FEMALE:	*	15%	78%

Question 43 -- Court Employees' Questionnaire (All Employees)

Are persons of the opposite sex paid more, paid less or about the same for performing the same job duties and responsibilities that you perform?

	Paid More	Paid Same	Paid Less
ALL MALE:	5%	73%	3%
ALL FEMALE:	13%	42%	*

\*Less than one percent

Question 42 -- Judges' and Lawyers' Questionnaires  
Rape

Sentences are shorter where the victim had a prior relationship with the defendant.

	ALWAYS	OFTEN	SOMETIMES	RARELY	NEVER	DON'T KNOW
ALL ATTORNEYS (weighted):	3%	21%	15%	2%	*	60%
FEMALE ATTORNEYS:	8%	21%	8%	1%	(0)	61%
LITIGATORS:	8%	25%	10%	1%	(0)	57%
CRIMINAL:	15%	36%	17%	2%	(0)	30%
ALL FEMALE ATTORNEYS:	5%	22%	9%	1%	*	63%
MALE ATTORNEYS:	2%	20%	16%	2%	*	59%
LITIGATORS:	2%	24%	18%	2%	(0)	54%
CRIMINAL:	1%	36%	29%	(0)	(0)	34%
JUDGES:	2%	14%	38%	8%	9%	29%
THOSE EXPRESSING AN OPINION						
ALL ATTORNEYS (weighted):	7%	51%	37%	4%	1%	
FEMALE ATTORNEYS:	18%	55%	23%	3%	1%	
LITIGATORS:	18%	57%	22%	3%	(0)	
CRIMINAL:	21%	51%	24%	3%	(0)	
ALL FEMALE ATTORNEYS:	15%	58%	24%	3%	1%	
MALE ATTORNEYS:	6%	50%	39%	5%	1%	
LITIGATORS:	5%	52%	40%	4%	(0)	
CRIMINAL:	2%	55%	43%	(0)	(0)	
JUDGES:	4%	20%	53%	10%	13%	

\*Less than one percent

Question 44 -- Court Employees' Questionnaire (All Employees)

Do you feel that *you* have been denied a promotion while employed in the court system because of your gender?

	Yes	No
ALL MALE:	6%	94%
ALL FEMALE:	6%	94%

---

Question 45 -- Court Employees' Questionnaire (All Employees)

If you were ever denied a promotion, were you given a reason for the denial?

	Yes	No
ALL MALE:	8%	21%
ALL FEMALE:	17%	18%

---

Question 46 -- Court Employees' Questionnaire (All Employees)

Do you feel that *someone else* has been granted or denied a promotion while employed in the court system because of his/her gender?

	Yes	No
ALL MALE:	11%	89%
ALL FEMALE:	13%	87%

---

Question 47 -- Court Employees' Questionnaire (All Employees)

How much job advancement opportunity do you feel is available to you in the court system in Maryland?

	No opportunity	Little opportunity	Some opportunity	Much opportunity
ALL MALE:	19%	44%	29%	8%
ALL FEMALE:	14%	48%	24%	5%

Question 45 -- Judges' Questionnaire  
Sentencing

List what you would consider to be mitigating factors in sentencing a female:

Factors not discussed: 23%  
Factors discussed: 78%

*Illustrative Comments*

Prior record; age and custody of children; nature of offense.

Usually, a past history of criminal behavior is less than that of a male.

Sole responsibility for young children.

I like to think I would consider equally the same factors for men and women: motive, background of defendant, effect on defendant's family.

Pregnancy; child care responsibilities when no other person is available.

Dependent children for which mother is sole or primary supporter.

Same as any defendant.

Custody of children - single parent or husband to be incarcerated; actual dominating influence by male.

No differences between male and female.

Lack of prior record, no violence, family situation.

Pregnancy

Same as male - 1) type of offense; 2) age; 3) relationship to victim; 4) educational background; 5) prior record; 6) dependent children.

Same factors as those considered for a man - except if she has dependent children, I want to know what happens to them.

Lack of prior record; genuine remorse; rehabilitation in drug cases (including alcohol).

Lack of paternal financial support; need to care for children - usually non-violent offense.

Pregnancy, family responsibilities and other considerations which are also applied in sentencing a male (wife's pregnancy may affect male's sentencing)

Basically same factors for males; would inquire as to money, children highly dependent on female.

The main factor, not common to both sexes, is the fact that females, more frequently than males, may be custodians of children who would be adversely affected by a parent's incarceration.

Stable employment history, family responsibilities, contrition, some reasonable basis for criminal action, sensible plan for future.

Question 46 -- Judges' Questionnaire  
Sentencing

Would these mitigating factors be different for a male:

	Yes	No
ALL JUDGES	27%	73%
MALE JUDGES	28%	72%

In what ways?

*Illustrative Comments*

Dependent children with female unless dependent children living with the male (in truth, therefore, there is no distinction since the living arrangements of the children are a mitigating factor for either; the general perception and assumption is that children are living with the mother)

I hold men to a greater degree of accountability.

Family responsibilities; if father has physical custody.

Men can't get pregnant.

No pregnancy, although his wife's pregnancy might if she has to go on welfare.

Many male defendants don't live with their families.

Males often tend to be less remorseful and amenable to help or self-help.

Prior sentences imposed if any record; age, education, drug addiction, etc.

Women, more often, take responsibility for their children and the children suffer and the female defendant suffers additional consequences thereby for her crime.

Too many men take the rap when both are equally involved.

A physical condition or illness that would likely result in jeopardy to the individual's life or health if incarceration were imposed, may be considered if both men and women.

Not if he was the custodian and "sometimes" shorter sentences will accomplish desired effect on females.

Question 47 -- Judges' Questionnaire  
Jury Selection

What are the criteria you use to select jury forepeople?

	All Judges	Male Judges
Criteria not discussed	43%	42%
Criteria discussed	57%	58%

*Illustrative Comments*

Education and knowledge of the jury person.

None - the occupant of the first chair is always designated as foreperson.

Education and sophistication of person.

Education, experience, try to alternate foreperson between the sexes and races.

Position on jury list - gender plays no part.

Minimal intelligence; dependent upon complexity of case; juror seated #1 is usually foreperson unless based on complexity of case requires minimal intelligence on part of foreperson.

I alternate - select a male, next time that panel is in select female, then male. I keep record of selected forepersons and never appoint same person twice.

Age, occupation, education, experience, appearance, numerical position on panel.

Senior status (but not retired), good background (job status), social vocations.

Education, business experience, how they've responded to voir dire.

Some indication of leadership ability.

Employed in a supervisory or leadership position; assertive body language on the way to the box.

What little is known about education, employment as bearing on "leadership."

I generally select a different foreperson for each case in order to give everyone - whites, blacks, males and females, an equal opportunity to serve.

Question 48 -- Judges' Questionnaire  
Jury Selection

In the last year, how many times have you selected women as jury forepersons?

Percentage of times selecting a woman	All Judges	Male Judges
0%	20%	18%
1% to 9%	4%	4%
10% to 19%	1%	1%
20% to 29%	3%	1%
30% to 39%	(0)	(0)
40% to 49%	1%	1%
50% to 59%	28%	26%
60% to 69%	1%	1%
70% to 79%	5%	6%
80% to 95%	1%	1%
over 95%	3%	3%
No answer/don't know	33%	38%

---

Question 49 -- Judges' Questionnaire  
Jury Selection

Can you recall cases in which you felt it was advantageous to have a male jury foreperson?

	All Judges	Male Judges
No	85%	87%
Yes	15%	13%

Question 48 -- Court Employees' Questionnaire (Full-Time Employees)

Have you ever requested maternity leave?

	Yes	No
FULL-TIME MALE:	2%	98%
FULL-TIME FEMALE:	18%	82%

A. Was the leave granted?

FULL-TIME MALE:	20%	80%
FULL-TIME FEMALE:	93%	7%

B. Was leave paid or unpaid?

	Paid	Unpaid
FULL-TIME MALE:	missing	
FULL-TIME FEMALE:	88%	11%

C. What amount of time was requested?

	<1 <u>month</u>	1 to 3 <u>months</u>	4 to 6 <u>months</u>	7 to 9 <u>months</u>	10 to 12 <u>months</u>
FULL-TIME MALE:	100%				
FULL-TIME FEMALE:	9%	82%	7%	1%	1%

D. What amount of time was granted?

	<1 <u>month</u>	1 to 3 <u>months</u>	4 to 6 <u>months</u>	7 to 9 <u>months</u>	10 to 12 <u>months</u>
FULL-TIME MALE:			missing		
FULL-TIME FEMALE:	11%	78%	8%	1%	1%

Question 49 -- Court Employees' Questionnaire (Full-Time Employees)

Have you ever requested leave, other than maternity leave, to provide care for an infant or adopted child?

	Yes	No
FULL-TIME MALE:	10%	90%
FULL-TIME FEMALE:	9%	91%
<b>A. Was the leave granted?</b>		
FULL-TIME MALE:	81%	19%
FULL-TIME FEMALE:	96%	4%
<b>B. Was the leave paid or unpaid?</b>		
	Paid	Unpaid
FULL-TIME MALE:	100%	
FULL-TIME FEMALE:	85%	15%
<b>C. What amount of time was requested?</b>		
	<1 month	1 to 3 months
FULL-TIME MALE:	100%	
FULL-TIME FEMALE:	97%	3%
<b>D. What amount of time was granted?</b>		
	<1 month	1 to 3 months
FULL-TIME MALE:	100%	
FULL-TIME FEMALE:	97%	3%

Question 50 -- Court Employees' Questionnaire (Full-Time Employees)

Have you ever requested any leave beyond that described in questions 48 and 49 to provide care for dependent children?

	Yes	No
FULL-TIME MALE:	8%	92%
FULL-TIME FEMALE:	7%	93%
<b>A. Was the leave granted?</b>		
FULL-TIME MALE:	79%	21%
FULL-TIME FEMALE:	95%	5%

Question 50 -- Judges' Questionnaire  
Behavior of Female Attorneys

Is there a behavior that is often displayed by female attorneys which you find especially offensive?

Behavior Not Discussed

80%

Behavior Discussed

20%

*Illustrative Comments*

I only want the person to act as a professional.

Generally, the conduct of female attorneys is more decorous than male.

Over-aggressiveness by some, need to win.

Yes, when they are shrill.

Failure to speak up and assert themselves, inappropriate attire (short skirts, etc.)

Not offensive, but sometimes female attorneys get too emotional - not often.

Yes, I have had women attorneys cry after a ruling adverse to their client.

Hairstyle that requires frequent "adjustment."

At times female attorneys either scream or speak too softly, also show anger when ruled against.

Yes, when they try to act like men (or at least the offensive, brusque, macho men), but I find the same characteristics offensive in men.

Frequently can't hear them.

Female attorneys, especially assistant state's attorneys are overly aggressive, appearing to feel any accommodation or compromise is a sign of weakness on their part.

Paranoid they're being discriminated against by reason of being female (proverbial "chip" on the shoulder).

Question 51 -- Judges' Questionnaire  
Behavior of Male Attorneys

Is there a behavior that is often displayed by male attorneys which you find especially offensive?

Behavior Not Discussed

75%

Behavior Discussed

25%

*Illustrative Comments*

Poor courtroom demeanor, argumentative.

Playing with loose change and/or keys in pants or jacket pocket.

Lack of preparation.

Over-ego and self importance at trial litigation.

Yes, when they are shrill.

Remarks that are belittling in nature to opposing counsel who are women.

Failure to accept a ruling of the court without extensive rebuttal reasons.

Yes, flipping their shoes on and off.

Yes, male attorneys often argue with the court after a ruling has been made.

They are more prone to interrupt another lawyer or witness.

Male attorneys wink at me often. Sometimes they are unprofessional with female law clerks, flirting with them and inquiring into personal matters.

Not often, but sometimes, too argumentative with opposing counsel.

Sometimes male attorneys are less respectful in the courtroom to the court such as being tardy, not standing to address the court; these things rarely occur with female attorneys.

Condescending attitudes toward other counsel, litigants, witnesses, court personnel.

Question 51 -- Court Employees' Questionnaire (Full-Time Employees)

Have you ever requested leave to provide care for elderly relatives?

	Yes	No
FULL-TIME MALE:	11%	89%
FULL-TIME FEMALE:	8%	92%

A. Was the leave granted?

FULL-TIME MALE:	84%	16%
FULL-TIME FEMALE:	90%	10%

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Question 52 -- Court Employees' Questionnaire (Full-Time Employees)

Do you have children under 12 for whom day care is needed?

	Yes	No
FULL-TIME MALE:	16%	84%
FULL-TIME FEMALE:	23%	77%

A. Infant?

FULL-TIME MALE:	31%
FULL-TIME FEMALE:	28%

B. Preschool?

FULL-TIME MALE:	30%
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C. After School?

FULL-TIME MALE:	46%
FULL-TIME FEMALE:	43%

Question 53 -- Court Employees' Questionnaire (Full-Time Employees)

Is day care currently available at your workplace?

	Yes	No
FULL-TIME MALE:	1%	99%
FULL-TIME FEMALE:	1%	99%

A. Would you use it if it were available?

	Yes	No
FULL-TIME FEMALE:		54%
Infant	24%	
Preschool	10%	
After School	12%	

B. Type of care offered at work.

	Infant	Preschool	After School
FULL-TIME FEMALE:	50%	33%	17%

Question 54 -- Court Employees' Questionnaire (All Employees)

Currently employed at:

	Admin. Office of Courts	Circuit Court	District Court	Other
ALL MALE:	6%	33%	57%	4%
ALL FEMALE:	5%	46%	47%	3%

Question 55 -- Court Employees' Questionnaire (All Employees)

In what year were you born?

	ALL MALE	ALL FEMALE
1912	*	
1913	*	
1915	*	
1916	*	
1917	*	
1918	1%	
1919	*	*
1920	*	*
1921	2%	*
1922	*	*
1923	3%	*
1924	1%	*
1925	2%	*
1926	2%	1%
1927	2%	2%
1928	4%	1%
1929	2%	1%
1930	2%	*
1931	4%	1%
1932	2%	1%
1933	2%	1%
1934	2%	1%
1935	3%	1%
1936	4%	2%
1937	2%	2%
1938	2%	2%
1939	1%	3%
1940	*	3%
1941	3%	3%
1942	3%	2%
1943	2%	2%
1944	*	2%
1945	3%	2%
1946	2%	4%
1947	3%	2%
1948	2%	2%
1949	2%	3%
1950	3%	3%
1951	1%	3%
1952	2%	2%
1953	3%	4%
1954	2%	2%
1955	*	4%
1956	2%	2%
1957	3%	2%
1958	2%	4%
1959	1%	3%
1960	3%	2%
1961	3%	4%
1962	1%	4%
1963	1%	3%
1964	*	2%
1965	*	3%
1966	1%	2%
1967	*	1%
1968	*	2%
1969	*	*
1970		*

\*Less than one percent

Question 56 -- Court Employees' Questionnaire (All Employees)

Gender:

MALE: 26%      FEMALE: 74%

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Question 57 -- Court Employees' Questionnaire (All Employees)

Race/Ethnicity:

	White	Black	Hispanic	Oriental	Other
ALL MALE:	82%	15%	*	*	2%
ALL FEMALE:	79%	2%	*	*	*

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Question 58 -- Court Employees' Questionnaire (All Employees)

Is your position

	Permanent	Permanent/Contractual	Contractual
ALL MALE:	77%	5%	18%
ALL FEMALE:	89%	6%	5%

A. Is it	Full-Time	Part-Time
ALL MALE:	84%	16%
ALL FEMALE:	97%	3%

---

Question 59 -- Court Employees' Questionnaire (All Employees)

If your position is contractual, do you receive benefits?

	Yes	No
ALL MALE:	100%	
ALL FEMALE:	100%	

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\*Less than one percent

Exhibit F

NATIONAL ASSOCIATION OF  
WOMEN JUDGES, QUESTIONS  
FOR PROSPECTIVE JUDGES



QUESTIONS FOR PROSPECTIVE JUDGES

Please answer the following questions. Feel free to comment as you deem appropriate.

1. Membership in Discriminatory Clubs:

a. Do you belong to any club or organization (other than a bona fide religious organization) which discriminates or otherwise excludes members on the basis of sex, race, national origin, or religion?

b. Have you belonged to any such clubs or organizations in the past? When? Under what circumstances did you cease to be a member? Please explain.

c. Do you think the canons of judicial ethics should include a provision that it is unethical for a judge to belong to a discriminatory club or organization? \_\_\_\_\_

Please explain why or why not. \_\_\_\_\_

2. Perception of Bias in the Community:

a. Do you believe that discrimination against women still exists in our society today? In your community? \_\_\_\_\_

b. (For the purposes of this question and those that follow, the term "minorities" will refer to members of racial, ethnic, or religious minority groups.) Do you believe that discrimination against other minorities still exists in our society today? In your community? \_\_\_\_\_

c. Do you believe that any of the following pose a problem for women in our society?

(1) Wage discrimination? Yes \_\_\_\_\_ No \_\_\_\_\_

(2) Hostile attitudes? Yes \_\_\_\_\_ No \_\_\_\_\_

(3) Patronizing attitudes? Yes \_\_\_\_\_ No \_\_\_\_\_

(4) Sexual harassment? Yes\_\_\_\_\_ No\_\_\_\_\_

d. Do you believe that any of the following pose a problem for other minorities in our society?

(1) Wage discrimination? Yes\_\_\_\_\_ No\_\_\_\_\_

(2) Hostile attitudes? Yes\_\_\_\_\_ No\_\_\_\_\_

(3) Patronizing attitudes? Yes\_\_\_\_\_ No\_\_\_\_\_

(4) Harassment? Yes\_\_\_\_\_ No\_\_\_\_\_

e. Can you think of a woman you know personally who has been discriminated against or otherwise treated unfairly because of her sex? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_

f. Can you think of a minority you know personally who has been discriminated against or otherwise treated unfairly because he or she is a member of a minority group? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_

g. Have you witnessed such incidents (as described in questions e. and f. above) in law school, in the workplace, or in the courtroom? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_

h. Do you believe that a judge has an obligation to intervene if he or she witnesses such incidents (as described in e. and f. above) in the courtroom? In chambers? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_

3. Efforts to Overcome or Eliminate Bias:

a. Have you participated in or promoted any efforts to broaden diversity, eliminate bias or advance the status of women or minorities in any organization, school, or workplace? \_\_\_\_\_  
If so, what did you do? \_\_\_\_\_  
\_\_\_\_\_

4. Policies of Concern to Women and Minorities in the Workplace:

- a. Does your firm, court, faculty or agency have a policy regarding maternity leave or childcare leave (for legal, judicial, academic and/or lay employees)? \_\_\_\_\_  
\_\_\_\_\_
- b. Do you know what these policies are? \_\_\_\_\_  
If you know, please explain the policies. \_\_\_\_\_  
\_\_\_\_\_
- c. Did you participate in formulating those policies?  
\_\_\_\_\_
- d. What is your opinion of your firm, court, faculty or agency's policies in that regard? \_\_\_\_\_  
\_\_\_\_\_
- e. Does your firm, court, faculty, or agency have an articulated policy regarding sexual or minority harassment? \_\_\_\_\_
- f. Has your firm, court, faculty, or agency established a particular procedure for dealing with complaints of sexual or minority harassment? \_\_\_\_\_
- g. What is your opinion of your firm, court, faculty, or agency's policy and procedures in that regard? \_\_\_\_\_  
\_\_\_\_\_

5. Employment Experience with Women and Minorities:

- a. For Members of a Law Firm or Governmental Agency:
  - (1) How large is your firm or agency?  
Number of lawyers? \_\_\_\_\_  
Number of non-lawyer employees? \_\_\_\_\_
  - (2) What percentage of the attorneys in your firm or agency are women? \_\_\_\_\_  
Minorities? \_\_\_\_\_
  - (3) What percentage of the partners in your firm are women? \_\_\_\_\_  
Minorities? \_\_\_\_\_
  - (4) Have you, your firm or agency ever been reluctant to employ or promote a woman or a minority to a particular position because of concerns regarding the reactions of clients? \_\_\_\_\_  
Did you share that concern? \_\_\_\_\_  
Please explain. \_\_\_\_\_

Do you still have that concern? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_

b. For a judge:

- (1) Have you ever had a woman as a courtroom bailiff?  
\_\_\_\_\_
- (2) Would you be reluctant to have a woman as a  
courtroom bailiff? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_
- (3) Have you ever employed a woman as your law clerk?  
\_\_\_\_\_
- (4) Would you be reluctant to hire a woman as your law  
clerk in the future? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_
- (5) How large is your court (number of judges)? \_\_\_\_\_
- (6) How many women judges are there on your  
court? \_\_\_\_\_

c. For faculty members:

- (1) How large is the faculty on which you  
serve? \_\_\_\_\_
- (2) How many of the faculty members are women?  
\_\_\_\_\_
- (3) How many of the faculty members have tenured  
positions? \_\_\_\_\_
- (4) How many of the women faculty members have tenured  
positions? \_\_\_\_\_

d. For all respondents:

- (1) Have you, your firm, agency, court or faculty ever  
been reluctant to employ or promote a woman to a  
particular position because of concerns relating  
to the impact on your firm, agency, court or  
faculty of her child-bearing or child-rearing  
responsibilities? \_\_\_\_\_  
Please explain. \_\_\_\_\_  
\_\_\_\_\_
- Do you still have that concern? \_\_\_\_\_

Please explain. \_\_\_\_\_

(2) Have you, your firm, agency, court or faculty ever discharged or expressed disapproval to a female or male colleague, associate or employee for what you, your firm, agency, court or faculty considered to be sexual misbehavior? \_\_\_\_\_

Please explain. \_\_\_\_\_

(3) Have you, your firm, agency, court or faculty ever discharged or expressed your disapproval to a female colleague, associate or employee for becoming pregnant? \_\_\_\_\_

Please explain. \_\_\_\_\_

(4) Have you, your firm, agency, court or faculty ever discharged or expressed disapproval to a colleague, associate or employee for what you, your firm, agency, court or faculty considered to be inappropriate behavior directed at members of any minority group? \_\_\_\_\_

Please explain. \_\_\_\_\_

6. General Questions:

a. In what year did you graduate from law school? \_\_\_\_\_

b. What percentage of your law school classmates were women? \_\_\_\_\_

c. Are you aware of the approximate percentage of women in the senior class of your law school today? \_\_\_\_\_

d. What do you think has been the impact, if any, of the increase in the number of women in the legal community?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_