

Final Report
Perceptions of Fairness and Diversity in the Florida Courts

Florida Supreme Court
Standing committee on Fairness and Diversity
March 14, 2008

Judicial Branch Vision and Mission

A mission statement defines an organization's purpose. It helps an organization focus on what is truly important and serves as a reference point for developing and prioritizing goals and strategies. An organization's mission statement typically reflects its mandates and the expectations of those who work in or are served by the organization.

THE MISSION OF THE FLORIDA JUDICIAL BRANCH IS TO PROTECT RIGHTS AND LIBERTIES, UPHOLD AND INTERPRET THE LAW, AND PROVIDE FOR THE PEACEFUL RESOLUTION OF DISPUTES.

A vision statement helps an organization develop a picture of how it wants to operate or what it desires to become in the future. It defines what an organization would aspire to when it performs at its best. The Judicial Branch vision statement speaks directly to the issues of fairness and access. In addition to describing a desired future state, the following vision statement for the Florida judicial branch is also an expression of the organization's fundamental values:

JUSTICE IN FLORIDA WILL BE ACCESSIBLE, FAIR, EFFECTIVE, RESPONSIVE, AND ACCOUNTABLE.

TO BE **ACCESSIBLE**, THE FLORIDA JUSTICE SYSTEM WILL BE CONVENIENT, UNDERSTANDABLE, TIMELY, AND AFFORDABLE TO EVERYONE.

TO BE **FAIR**, IT WILL RESPECT THE DIGNITY OF EVERY PERSON, REGARDLESS OF RACE, CLASS, GENDER OR OTHER CHARACTERISTIC, APPLY THE LAW APPROPRIATELY TO THE CIRCUMSTANCES OF INDIVIDUAL CASES, AND INCLUDE JUDGES AND COURT STAFF THAT REFLECT THE COMMUNITY'S DIVERSITY.

TO BE **EFFECTIVE**, IT WILL UPHOLD THE LAW AND APPLY RULES AND PROCEDURES CONSISTENTLY AND IN A TIMELY MANNER, RESOLVE CASES WITH FINALITY, AND PROVIDE ENFORCEABLE DECISIONS.

TO BE **RESPONSIVE**, IT WILL ANTICIPATE AND RESPOND TO THE NEEDS OF ALL MEMBERS OF SOCIETY, AND PROVIDE A VARIETY OF DISPUTE RESOLUTION METHODS.

TO BE **ACCOUNTABLE**, THE FLORIDA JUSTICE SYSTEM WILL USE PUBLIC RESOURCES EFFICIENTLY, AND IN A WAY THAT THE PUBLIC CAN UNDERSTAND.

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EXECUTIVE SUMMARY

The Standing Committee on Fairness and Diversity was established by the Chief Justice of the Supreme Court of Florida to help advance the State Courts System's efforts to eliminate from court operations bias based on race, gender, ethnicity, age, disability, socioeconomic status, or any characteristic that is without legal relevance. This report is responsive to the Standing Committee's charge to "...conduct outreach and obtain input from judges, court staff, attorneys, jurors, litigants, and/or the public on their perceptions of disparate treatment in Florida courts..."

Perceptions of Fairness Influence the Public's Trust in the Courts

The independence and legal authority of the courts is a grant by the people. As stated by A. Russell Smith, "If enough ordinary citizens begin to believe that they cannot trust the justice system, or that it will treat them fairly, there is absolutely nothing the government can do to maintain order."¹ In recent decades, our nation has experienced diminished public trust and confidence in government generally, as well as in the judicial system. The erosion of public trust and confidence in the courts diminishes the effectiveness of the justice system and reduces the ability of the judicial branch to fulfill its constitutional mandate. At the 1999 National Conference on Public Trust and Confidence in the Justice System, the following were identified as the most pressing issues lying at the core of the public trust problem: unequal treatment in the justice system; high cost of access to the justice system; and lack of public understanding.²

In the United States, most people have a desire for justice, and our courts are the primary formal institution that our nation has created to meet this desire. Today's judicial system is confronted by a rapidly changing world, characterized by

¹ The Decline of Trust: Is It a Loss of Hope?, A. Russell Smith, Florida Defender Magazine.

² Source: National Center for State Courts; see <http://www.ncsconline.org/>.

profound social, economic, demographic, and technological advances. The court system faces tremendous obstacles in the face of these sweeping new challenges and pressures as it strives to meet its mandate to provide justice.

Over four million cases are filed in the Florida courts each year. Such a high volume of cases has a major impact on litigants, witnesses, jurors, victims, and other participants from all walks of life. This report documents the perceptions and self-reported experiences of court participants who were willing to share their stories with the Standing Committee. The Standing Committee notes that the perceptions reported during this initiative may not accurately describe the realities of Florida law, court policies, and legal procedures. However, it may be said that the judicial branch of government, perhaps even more so than the executive and legislative branches, relies upon the trust and confidence of the citizenry. As stated by Alexander Hamilton,³ "The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment...." Therefore, individual and even group perceptions, as well as first-hand accounts, are important to the judiciary and should be considered as the court system develops policy and implements administrative practices to serve its various constituents.

As with similar surveys and outreach conducted by state courts throughout the country, information collected by the Standing Committee shows that the perceptions of those inside the court system are often at variance with the views of external court participants. In a recent white paper, the American Judges Association made the following observation about the difference between judges' perceptions and those of the public: "Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it."⁴ The Association went on to discuss the impact of procedural fairness on the public's perceptions of the court. "While judges should definitely continue to

³ Alexander Hamilton, *The Federalist Papers* No. 78, June 14, 1788.

⁴ *Procedural Fairness: A Key Ingredient in Public Satisfaction*; A White Paper of the American Judges Association, Judge Kevin Burke and Judge Steve Leben, September 26, 2007.

pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public's expectations of procedural fairness. By doing so, these judges will establish themselves as legitimate authorities... Procedural fairness also will lessen the difference in how minority populations perceive and react to the courts."

At the Standing Committee's February 2, 2007, public meeting Hank Coxe, President of The Florida Bar at the time, spoke about the importance of treating people with respect during their court experience. As stated in his column in The Florida Bar Journal:⁵

...Nobody wants to sue or be sued, engage in unpleasant divorce proceedings, be a victim or watch a family member prosecuted as a criminal, sit in probate proceedings because of the loss of a loved one, have to appear as a witness to testify that your business records are authentic, participate in termination of parental rights, or be involved in domestic violence...

While we work to serve the hundreds of thousands who must enter our doors, we often ignore the people this branch of government is designed to serve...

...When one must appear at 9:00 a.m., and cannot be late, only to find that 50 others were ordered to appear at the same time, wages are lost, serious inconveniences occur, and we offend the people we serve. When juvenile courts strive to steer tens of thousands of children on a better path but conduct sessions when they should be in class, rather than after school, we serve ourselves.

When security people are rude, when courthouse personnel will not make the effort or cannot politely inform people where they need to be, when courtroom attendees are ordered to be silent, while lawyers converse openly during judicial proceedings with each other and place beverages on counsel tables, we offend the people we serve.

...These are the people who share their experiences with families, co-workers and neighbors, and many leave our courthouses convinced that our system serves only itself...

⁵ "This Event Requires Respectful Hosts," Henry M. Coxe III, The Florida Bar Journal, February 2007.

Most judges and lawyers work hard to perform their obligations well. We would be wise to work collectively to improve how we treat our guests, because personal experiences are the tools with which we are measured.

It is important to note that the objective of this initiative was to look inward at the court system; its scope did not extend to an examination of perceptions of bias throughout the entire justice system or society in general. Additionally, because survey participants and speakers at the public meetings were specifically asked to identify and discuss their perceptions of disparate treatment in the courts, there is consequently less discussion in this report of the many areas in the Florida court system that are working well. The Standing Committee commends the Florida court system for its willingness to openly, freely, and candidly examine its operations, in the ongoing journey toward ensuring fairness for all court participants.

Court Workforce Not Fully Reflective of State's Cultural Diversity

Inclusion of diverse population groups in the court process, as both participants and decision makers, increases the perception of fairness and the credibility of the justice system. Diversity issues must constantly be addressed to keep pace with the changing profile of our state's population.

Floridians are proud of the state's cultural diversity. According to recent population estimates,⁶ 15.7% of Floridians are African-Americans, 19.5% are Hispanic or Latino, 2.1% are Asian, 16.7% are foreign born, and 23.1% speak a language other than English at home. Florida also has the highest proportion of elders in the nation, with 16.8% of the population age 65 and over. Persons with some type of disability comprise 15.8% of Florida's population. This diversity adds a richness and texture to the fabric of society; however it also presents an array of challenges to the fair and equal application of the rule of law for all.

Florida is a microcosm of our nation, which is rapidly becoming more diverse. It is projected that the diversification of the United States will continue for decades to come.

⁶ Source: U.S. Census Bureau, State & County Quickfacts.

Nation's Changing Population⁷

	2000	2050
Number	228 million	420 million
White, non-Hispanic	69%	50%
Hispanic (any race)	13%	24%
Black	13%	15%
Asian	4%	8%
All Other Races	3%	5%

Florida has grown dramatically, with a 13.2% increase in population from 2000 to 2006, and is even more diverse than the national average. The Florida justice system must not only address current fairness and diversity issues but also prepare now to meet tomorrow's challenges.

The Florida State Courts System can better serve the people of this state and enhance the credibility of the justice system if judges and court staff reflect the diversity of the community we serve. Minority judicial appointments increased significantly under the gubernatorial terms of former Governors Lawton Chiles and Jeb Bush. During the 1990's, 109 minorities and women were appointed by Chiles to fill approximately 250 judicial vacancies in Florida courts.⁸ Bush's appointments were 30% female and 23% minority; overall, the number of minority judges on the state court bench grew from 85 to 144 during his terms.⁹ While Governor Charlie Crist has had few judicial appointment opportunities since he assumed office in January of 2007, he has expressed a commitment to diversity. The Standing Committee is confident that Governor Crist will follow in the footsteps of his predecessors by further enhancing the diversity of Florida's judiciary.

⁷ Source: U.S. Census Bureau. Percentages may not total 100%, due to rounding.

⁸ *Is merit selection and retention of trial judges a good idea?* John L. Remsen, Florida Bar News, September 15, 1999.

⁹ *Appointments put his stamp on judiciary*, Colleen Jenkins and Chris Tisch, St. Petersburg Times, January 1, 2007.

Statistical data reflect the following information about the demographics of judges and court staff since the original bias study commissions nearly two decades ago:

	Judges			Court Staff ¹⁰		
	1990	2000	2007	1990	2000	2007
Male	90%	78.1%	70.9%	11	11	17.6%
Female	10%	21.9%	28.6%	11	11	82.4%
White, Non-Hispanic	94.5%	88.1%	83.8%	91.0%	82.1%	70.7%
African-American	4.0%	6.3%	6.7%	4.6%	8.1%	10.4%
Hispanic	1.5%	5.0%	7.2%	4.0%	8.4%	13.8%

As the above table shows, while diversity has slowly and steadily increased among judicial officers and staff, women and minorities are still not equitably represented on the bench, and women are over-represented among court staff.

Several speakers and survey respondents questioned the equity of the process by which judges are selected. In Florida, Judicial Nominating Commissions (JNCs) are charged with recommending to the governor qualified persons for appointments to the six appellate courts as well as mid-term vacancies in the trial courts.¹² A number of people who addressed the Standing Committee attributed, in part, the JNCs for the lack of minority recruitment and representation in Florida's

¹⁰ Court staff includes judicial assistants, law clerks and staff attorneys, court administration staff, case managers, and all other non-judicial positions within the court system. Percentages reflect state-funded court staff positions only, for 1990 and 2000. Prior to 2004, some trial court positions were county funded and no statewide demographic data is available on those county positions.

¹¹ This historical information is not available.

¹² Prior to a legislative change to the law regarding the appointment of members to the state's judicial nominating commissions in 2001, three lawyer members were appointed by The Florida Bar, three members were appointed by the governor and could be either lawyers or nonlawyers, and three nonlawyer members were selected by the other six commission members. Under the revision, the governor appoints all nine members of each commission.

judiciary. The perception among some minority legal professionals is that the JNCs lack meaningful diversity. One Miami attorney told the Standing Committee that she did not believe the JNCs had “enough minority members to look broadly in terms of the criteria of the candidates that are before them.”

The composition of the Florida’s JNCs is presented in the following table.

**Composition of Florida Judicial Nominating Commissions¹³
November 1, 2007**

<i>JNC</i>	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>	<i>Hispanic</i>	<i>Asian</i>	<i>Other</i>
Supreme	6	3	4	2	3	0	0
1 st DCA	6	3	6	2	1	0	0
2 nd DCA	8	1	4	2	3	0	0
3 rd DCA	7	2	2	0	7	0	0
4 th DCA	7	2	5	1	3	0	0
5 th DCA	6	3	6	2	1	0	0
1 st Circuit	5	4	7	2	0	0	0
2 nd Circuit	5	4	7	0	2	0	0
3 rd Circuit	7	2	8	0	1	0	0
4 th Circuit	7	2	6	3	0	0	0
5 th Circuit	3	6	9	0	0	0	0
6 th Circuit	4	5	8	1	0	0	0
7 th Circuit ¹⁴	6	2	7	1	0	0	0
8 th Circuit	4	5	7	1	1	0	0
9 th Circuit	7	2	7	1	1	0	0
10 th Circuit	5	3	6	1	1	0	0
11 th Circuit	6	3	1	2	6	0	0
12 th Circuit	4	5	9	0	0	0	0
13 th Circuit	7	2	6	1	2	0	0
14 th Circuit	7	2	9	0	0	0	0
15 th Circuit	5	4	7	1	1	0	0
16 th Circuit	6	2	8	0	0	0	0
17 th Circuit	6	3	6	1	2	0	0
18 th Circuit	5	3	6	2	0	0	0
19 th Circuit	4	5	8	1	0	0	0
20 th Circuit	5	3	7	0	1	0	0
Statewide	148	81	166	27	36	0	0
Percentage	64.6%	35.4%	72.5%	11.8%	15.7%	0%	0%

Common Themes

Through this outreach initiative, the committee learned that while those who provided input believe there has been substantial progress toward achieving a bias-

¹³ Source: Appointments Office, Executive Office of the Governor, Tallahassee, Florida, November 1, 2007.

¹⁴ The 7th Circuit, 10th Circuit, 16th Circuit, 18th Circuit, and 20th Circuit JNCs each had one vacancy as of November 1, 2007.

free justice system in Florida, many believe the process is ongoing. The overall perception of those with long-standing experience in the Florida court system is that significant improvements in reducing discrimination have been made over the past two decades. At the same time, there are perceptions among court participants that disparate treatment continues to occur, albeit in more isolated instances than was reported decades ago. The Florida courts must continue to call attention to fairness and diversity matters until the promise of full equality under the law is accomplished – both in fact and in perception.

Justice requires that the court system be open and accessible to all; respect the dignity of every person; include judges and staff who reflect the community's diversity; and respond to the needs of all members of society. Yet, these aspirations have not been completely fulfilled in the Florida justice system. As further described in this report, the following themes emerged during the Standing Committee's outreach:

1. **Procedural Justice.** The Standing Committee's outreach documented a perceived lack of procedural justice, which leads to disenchantment with the system. Numerous studies have documented that most people care more about fair treatment than they do about winning or losing a particular case.¹⁵ The perceived fairness of court outcomes influences the public's evaluations of the courts, but is secondary to perceived procedural fairness. Accordingly, court users' perceptions of procedural fairness are a critical component of their interpretation of experiences with the court system. Litigants tend to comply with court decisions made through procedures they deem to be fair. A litigant may lose a case but, if treated fairly, may still be satisfied with his or her day in court.

¹⁵ See Procedural Fairness: A Key Ingredient in Public Satisfaction, A White Paper of the American Judges Association, Judge Kevin Burke and Judge Steve Leben, September 26, 2007, and Trust and Confidence in the California Courts, Judicial Council of California/ Administrative Office of the Courts, 2006.

2. **Barriers to Access.** Court participants face enormous obstacles in trying to access the court system including costs, communication and language barriers, lack of information or even literacy skills, cultural and attitudinal biases, and physical obstructions.
3. **Concerns about Design of the System.** The lack of adequate legal counsel can have devastating consequences for working poor and middle-income Floridians, and the widespread perception is that persons with insufficient resources are oftentimes negatively impacted by a justice system that tends to favor those of higher socioeconomic status. Many court users also perceive that the justice system is designed for the convenience of those who work in the system, rather than the people who have the right of access to the courts. Court policies and procedures are cumbersome and legal terminology is difficult to understand. A “conveyor belt” justice system that moves a large number of cases through the system in a short amount of time does not necessarily allow adequate time for full and fair hearing of individual cases, nor do court participants perceive that procedural fairness has occurred.
4. **Inappropriate Conduct and Expressions of Bias.** Inappropriate remarks by judges, attorneys, and court personnel were reported to the Standing Committee. Court participants do not always feel that they receive bias-free treatment, or even that they are treated with respect; this concern was frequently voiced by racial and ethnic minorities, women, people with disabilities, those without adequate financial resources, and individuals who are gay, lesbian, bisexual, or transgendered. The Standing Committee was also advised that judicial officers and court staff are sometimes impatient with participants who require additional time or assistance.
5. **Diversity of the Judiciary and Court Staff.** The Florida justice system – including judges, court staff, attorneys, prosecutors, mediators, and others – does not yet fully reflect the diversity of those

it serves. The lack of diversity in the Florida courts system is perceived to contribute to bias and to diminish the concept of fairness. Additionally, court participants suggested that judges and court staff would benefit from ongoing cultural diversity training, which would better prepare them for administering justice fairly and effectively in this rapidly changing environment.

All Floridians should have equal access to their courts. The Florida court system must be ever vigilant in continuing to identify and eliminate from court operations any impediments to fair treatment, especially bias that is based on race, gender, ethnicity, age, disability, socioeconomic status, or any characteristic that is without legal relevance.

CHAPTER ONE: Introduction

Justice requires that the court system be accessible to all, respect the dignity of every person, include judges and court staff who reflect the community's diversity, and respond to the needs of all members of society. Bias or other barriers to meaningful access may lead to injustice.

Courts occupy a unique position within the justice system, as a neutral body and the ultimate arbiter of disputes. The people look to the courts for fairness and equal treatment. Moreover, the courts have an obligation to address issues of fairness within the justice system. Whether it be documented incidents or a widespread perception of unequal treatment in the justice system, a swift and unequivocal response is necessary because even the perception of unfairness impacts the public's trust and confidence in the courts. Therefore, the Florida court system must remain attentive to any bias or appearance of bias in its operations.

Diversity issues must constantly be addressed as well to keep pace with the changing face of our state's population. The increasing diversity of our population is a challenge for the justice system. Inclusion of diverse groups in the court process, as both participants and decision makers, increases the perception of fairness and credibility of the justice system. The Florida State Courts System can better serve the people of this state and enhance the credibility of the justice system if judges and court staff reflect the diversity of the community they serve.

Commitment to Fairness

In the 1970s and 1980s, women and minorities began entering the legal profession in increasing numbers. At the same time, claims of bias in the justice system began to escalate, even decades after the enactment of laws designed to end discrimination.

The Florida State Courts System has been a pioneer and a leader in identifying and eliminating bias. On June 9, 1987, the Florida Supreme Court established the Gender Bias Study Commission. The Commission issued its report

in March 1990, documenting inequities in three primary areas: family law; the criminal justice system, including crime and incarceration, domestic violence, sexual battery, prostitution, and juvenile justice; and the legal profession. Every statutory change recommended by the Gender Bias Study Commission was ultimately adopted.

On December 11, 1989, the Florida Supreme Court created the Racial and Ethnic Bias Study Commission to determine whether race or ethnicity affects the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate. During its two years of inquiry, the Commission issued findings and recommendations on the topics of the judicial system workforce; law enforcement interaction with minorities; juvenile justice; the adult criminal justice system; the experiences of minority women in the judicial system; and minority lawyers in Florida. A ten-year retrospect of the Commission's work, conducted in 2000, reflected that nearly every recommendation under the control of the courts had been addressed.

In the early 1990s, following the enactment of the Americans with Disabilities Act (ADA), the Florida court system examined issues relating to accessibility. The Committee on the Court-Related Needs of Elders and Persons with Disabilities issued its report in 1994, and the Office of the State Courts Administrator published Guidelines around that same period to inform judicial officers and courthouse personnel about the requirements of the ADA and to facilitate court compliance with the law.

The topics formerly assigned to distinct committees were combined under the umbrella of the Supreme Court Commission on Fairness in 1997. Pursuant to directives by the various Chief Justices, that Commission conducted a train-the-trainer program with emphasis on sexual harassment; studied jury service accessibility for older persons and persons with disabilities; examined the judicial administration of the Baker Act and its effect on Florida's elders; hosted the National Consortium on Racial and Ethnic Fairness in the Courts; and issued recommendations on guardianship monitoring. Other court projects during that timeframe include the work of the EEO Committee, which completed its report in

2000, and the Court Interpreter Committee, which issued recommendations in 2004.

During the national economic downturn and state budgetary shortfalls following the attacks on the World Trade Center on September 11, 2001, funding for the Commission on Fairness regrettably was eliminated. Funding was restored in 2004, and the Commission was reauthorized by former Chief Justice Barbara J. Pariente as the Standing Committee on Fairness and Diversity. The Standing Committee was renewed in September 2006 by Chief Justice R. Fred Lewis, who reinforced its mission “to advance the State Courts System’s efforts to eliminate from court operations bias that is based on race, gender, ethnicity, age, disability, socioeconomic status, or any characteristic that is without legal relevance.”

In its first two years, the Standing Committee on Fairness and Diversity accomplished a number of important objectives, including: created an online court diversity information resource center; compiled a bibliography of resources on diversity and fairness in the justice system; conducted research on the diversity of staff attorneys and published the report “Promoting and Ensuring the Diversity of Judicial Staff Attorneys and Law Clerks Within the Florida State Courts System;” and began an extensive outreach project to discover and document perceptions of fairness in Florida’s courts.

Under Chief Justice Lewis, the Standing Committee was additionally instructed, first, to assist the judicial branch with surveying the accessibility of court facilities for people with disabilities; and, second, to coordinate with the Florida Court Education Council, Office of the State Courts Administrator, and the trial and appellate courts to develop local court diversity and sensitivity awareness education programs for judges and court staff. In addition to focusing on those new directives, the committee has been implementing the recommendations relating to the law clerk diversity project, and this report completes the outreach project on perceptions of fairness in the courts.

More information about previous court initiatives addressing fairness is available on the Florida Courts web site at www.flcourts.org/diversity.

Changes that Have Made a Difference

In the intervening two decades since the first bias study commission was established, Florida has implemented numerous actions that have resulted in vast improvements in equity within the justice system. Following are some highlights in that regard:

- The appointment of unprecedented numbers of women and minorities to the bench.
- Increased diversity of court staff.
- Changes to the State Courts System Personnel Rules.
- Creation of a Civil Rights Division within the Attorney General's Office.
- Cultural-awareness training for all Florida law enforcement officers.
- Statutory amendments to ensure that the composition of jury pools reflects the diversity of the population.
- Establishment of two new law schools for the purpose of recruiting minorities to the legal profession.
- Increased diversity of Judicial Nominating Commissions and other justice system committees such as the Commission on Juvenile Justice and the former Juvenile Justice Standards and Training Council.
- Creation and funding of a project to compare pre-trial release practices.
- A proliferation of drug courts, mental health courts, and other problem solving courts.
- Expanded use of community-based programs for pre-trial intervention and probation.
- Review of racial implications of "mandatory minimum" and "habitual offender" statutes.
- Increased utilization of alternative dispute resolution mechanisms, such as mediation.
- Implementation of the Unified Family Court initiative.
- Amendments to family law statutes.
- Strengthening of domestic violence laws.
- Funding for victim advocates.
- Adoption of gender-neutral language in the statutes, rules of court procedure, and court publications.
- Incorporation of the following critical areas into model court education curricula: elder abuse, Americans with Disabilities Act, domestic violence, professionalism, substance abuse, mental health issues,

judicial ethics, child support enforcement, sexual harassment, child abuse, capital cases, fairness/improving judicial decision-making.

- Adoption of a policy to institutionalize judicial fairness into the curricula of the Florida College of Advanced Judicial Studies and the Florida Conference of Circuit Judges.
- Advanced training on fairness issues for judicial education faculty.

Outreach on Perceptions of Fairness

The Standing Committee on Fairness and Diversity was established to help advance the State Courts System's efforts to eliminate from court operations bias that is based on race, gender, ethnicity, age, disability, socioeconomic status, or any characteristic that is without legal relevance. This report addresses the committee's charge to "...conduct outreach and obtain input from judges, court staff, attorneys, jurors, litigants, and/or the public on their perceptions of disparate treatment in Florida courts..."

A serious challenge of this project was the analysis and description of a large volume of quantitative and narrative data reflecting participants' perceptions of disparate treatment in the court system. The Standing Committee had the opportunity to submit questions for The Florida Bar's 2005 Membership Opinion Survey. In all, 711 attorneys completed that survey. Another set of material derives from the committee's survey of more than 5,000 Florida judges, court personnel, attorneys, jurors, litigants, and members of the public. The final set consists of transcripts from four public meetings hosted by the committee between January 2006 and February 2007.

To attract a broad cross-section of speakers, the committee scheduled meetings in Miami, Tallahassee, Orlando, and Jacksonville. And a diversity of speakers did indeed participate. In addition to members of the legal profession, speakers included representatives of state agencies, not-for-profit organizations, and other government-associated entities, as well as members of the public, in particular self-represented litigants. Speakers focused on a range of topics: race, gender, domestic violence issues, socioeconomic concerns, due process rights, criminal court matters, the legal profession, children's issues, and various

disabilities (e.g., speakers represented court users who are deaf or hard of hearing, have vision disabilities, or have a mental health diagnosis).

From racially-inspired comments about courtroom experiences to lower expectations of performance by women and other groups, individuals and organizations throughout the state advised the Standing Committee regarding their perceptions of inequitable treatment in Florida courts. The overall message was that the appearance of bias, as well as the reality of bias, has the potential to weaken the public's trust in the justice system.

Although committee members were, at times, daunted by some of what they heard, they were heartened by the realization that, as a starting point, the courts could employ many common-sense strategies that would significantly improve court users' perceptions of fairness in the courts. Recognizing the benefits—to the courts as well as to court-users—of having held these public meetings, several committee members have suggested that the committee continue to hold them periodically so that the judicial branch remains sentient of, and responsive to, the perceptions of court participants.

Research Methodology

In order to accomplish the Standing Committee's charge to conduct outreach and obtain input from judges, court staff, attorneys, jurors, litigants, and the public, the Outreach Subcommittee developed the following approaches to reach the groups outlined and solicit their comments and opinions.

Surveys

Survey instruments were developed to solicit input from each of the following groups:

- Judges – trial and appellate court judges;
- Court staff – employees of the state court system, as well as bailiffs and staff of the offices of the clerks of circuit and county courts;
- Attorneys – attorneys, including those in private practice and those employed by public agencies, such as state attorneys and public defenders;
- Litigants – parties in civil and criminal cases; and

- Jurors – members of the public who had been summoned for jury duty, whether or not they were selected to serve.

Five survey instruments were developed, one for each of the groups listed above. Each survey was developed around a set of core questions regarding the court system in order to provide common ground for comparison of perceptions across the various groups. Additionally, particular questions were developed for each targeted group of participants in order to capture comments and perceptions specific to their perspective. Though most questions were presented in a close-ended question, forced-choice answer format, participants were also asked to provide narrative responses to a number of questions regarding their individual perceptions and experiences. Those narrative responses are utilized throughout this report with regard to both the qualitative responses and the overview of survey data.

The surveys asked questions regarding bias or disparate treatment in the following areas:

- Race/ethnicity;
- Gender;
- Age;
- Disability;
- Socioeconomic status;
- Language (i.e., limited English proficiency); and,
- Sexual orientation.

Additionally, members of the court community (judges, attorneys, court staff) were asked to respond to a series of in-depth questions regarding the court system and instances of unfair or disparate treatment they had experienced or observed.

Finally, the surveys requested demographic data from participants, including their sex, race, ethnicity, geographic location, and whether they have a disability. Demographic information about the survey respondents is included in Appendix B.

Several approaches to survey administration were utilized in order to reach the largest possible number of potential survey participants. Electronic versions of the survey instruments for all five groups of participants were posted on the Florida Courts website (www.flcourts.org) to be accessed through the Internet. An effort was made to ensure that the software used to administer the on-line survey was

accessible to persons with disabilities. A notice appeared on the Florida Courts home page alerting all visitors of the surveys and providing links to connect to the surveys. Judges and court staff throughout the state were notified of the survey and encouraged to log on and participate. Attorneys were alerted and asked to take part in the survey through a notice distributed by The Florida Bar. Printed notices containing the link to the OSCA website were distributed in court facilities throughout the state to notify jurors and litigants of the opportunity to participate in the on-line survey. The surveys were available on-line for approximately two months.

Paper copies of surveys for litigants and jurors were made available for those who did not have access to the Internet. Clerks of the circuit and county court and court administration staff throughout the state also provided copies to those litigants and jurors interested in completing the survey. Once complete, the clerks and court staff collected the surveys and sent them to the Office of the State Courts Administrator for data compilation and analysis. Additionally, the Florida Association of Court Clerks posted on its web site a .pdf version of the litigants' and jurors' surveys to enable website visitors to print out and complete paper copies of the survey, which were then mailed to the Office of the State Courts Administrator for processing. Legal aid and legal services offices throughout Florida were also active partners in soliciting responses to the survey. Many legal aid offices provided copies of the survey to their clients, and some even assisted clients who could not read or write with completing the survey forms. One legal aid office translated the litigant survey into Spanish. Public defender offices distributed copies of the survey to their clients, as well.

Public Meetings

In order to provide another avenue for interested parties to provide input on their perceptions of fairness and diversity in the courts, the Standing Committee arranged for a series of public meetings at which committee members received comments from a variety of individuals and groups. The public meetings occurred as follows:

- January 19-20, 2006 – Miami, Florida – 32 speakers;
- October 20, 2006 – Tallahassee, Florida – 15 speakers;

- December 7, 2006 – Orlando, Florida – 21 speakers; and
- February 2, 2007 – Jacksonville, Florida – 13 speakers.

Notices announcing the public meetings and encouraging all interested individuals to participate were distributed by mail, posted on the Florida Courts web site, and circulated via email Listservs. Additionally, invitations to speak at the public meetings were issued to a variety of individuals and organizations known to have an interest in fairness and diversity in the courts. Those invited to speak included voluntary and local bar associations, women's rights and father's rights organizations, racial and ethnic minority groups, advocates for elders and persons with disabilities, family and victim advocacy groups, Legal Services, gay rights organizations, and individuals who contacted the committee with concerns about fairness in the courts (see Appendix A for a list of speakers).

Those who wished to address the committee were asked to contact staff in advance so that a schedule could be developed, to ensure access for interested parties and to assure that as many speakers as possible would have an opportunity to be heard. The submission of written comments in addition to, or instead of, addressing the committee was also encouraged. Though they were free to address issues as they wished, speakers were requested to consider the following questions as they prepared their comments.

1. What are your views on any unfair treatment in Florida's court system? Are your views based on your own personal experiences, incidents you have seen, or someone else telling you about unfair treatment?
2. What do you believe are the most important fairness issues that need further study by the Florida courts?
3. What do you believe are the most important steps that could be taken to improve fairness in the Florida courts?

A court reporter was present at each public meeting to record the comments made by speakers, as well as the ensuing discussion by committee members.

CHAPTER TWO: Perceptions of Racial and Ethnic Bias

With the progression of American society since the turbulence of the 1960s, some Floridians may share the belief that racial and ethnic bias is of diminishing importance. Yet, a substantial number of respondents to the Standing Committee's surveys perceive that racism still lingers in the Florida courts system—the one place where justice should prevail. Moreover, there is a persistent and significant disparity between the observations of minority and non-minority individuals with regard to fair treatment in the courts. This chapter explores the quantitative and qualitative data documenting these perceptions.

Florida is one of the most racially and ethnically diverse states in the nation. According to recent population estimates,¹⁶ 15.7% of Floridians are black or African-American, 19.5% are Hispanic or Latino, and 2.1% are Asian. The nation's minority population topped 100 million for the first time in early 2007, and now comprises about one-third of the United States' population.¹⁷ And, our nation and state are rapidly becoming even more diverse.

The United States has struggled for centuries with concepts of race and ethnicity, and while this struggle has matured over the past few decades, it has not been fully resolved. It was more than 30 years ago that Martin Luther King, Jr., delivered his "I Have a Dream" speech on the steps of the Lincoln Memorial in our nation's capital:

When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir... Now is the time to make real the promises of democracy... Now is the time to make justice a reality for all of God's children... We cannot turn back.

¹⁶ Source: U.S. Census Bureau, State & County Quickfacts.

¹⁷ Source: Nation's minority numbers top 100M, Haya El Nasser and Paul Overberg, USA Today, May 17, 2007.

There are those who are asking the devotees of civil rights, "When will you be satisfied?" No, no, we are not satisfied, and we will not be satisfied until justice rolls down like water and righteousness like a mighty stream...

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal..." And if America is to be a great nation this must become true.

The Civil Rights Act was enacted the following year. Yet, our nation is still grappling to ensure justice for people of color while at the same time recognizing and celebrating our differences:

I would love to see an America where race is understood in the same way that the ethnic diversity of the white population is understood. People take pride in being Irish-American and Italian-American. They have a particular culture that infuses the [whole] culture and makes it richer and more interesting. But it is not something that determines people's life chances and there is no sense of superiority or inferiority. I think if we can expand that attitude to embrace African-Americans and Latino-Americans and Asian-Americans, then we will be in a position where all our kids can feel comfortable with the worlds they are coming out of, knowing they are part of something larger.

Barack Obama, United States Senator¹⁸

Overview of Qualitative Responses

The anecdotal stories paint a vivid picture of perceptions of racial and ethnic bias in Florida courts. A noticeable number of persons reported having observed or experienced unfair treatment or bias on the basis of race and ethnicity in Florida courtrooms, especially with regard to minority litigants. Such conduct ranged from racially or ethnically-inspired or stereotypical remarks by court employees to lowered judicial expectations of performance based on an individual's race or ethnic background.

¹⁸ Barack Obama, 'I Have the Potential of Bringing People Together,' Politico, February 8, 2007; <http://www.politico.com/news/stories/0207/2689.html>.

For example, one attorney reported, "I represented a female client in a domestic violence matter. She was from Colombia. The judge at the hearing told her she was surely an expert on drugs, being a Colombian, asked to see her Green Card (she was a U.S. citizen), told her and [me] as her counsel, in broken Spanish to 'shut up,' along with a tone of patronizing and obvious prejudice."

This concept of preconceived notions based on skin color or ethnic affiliation was highlighted by another survey respondent, who wrote, "I experienced clear prejudice against a black party by a white judge where I was acting pro bono to get a child's name changed. The white judge ridiculed the parents who had chosen an African sounding name for the child." Another attorney recalled a judge's public comment to a Hispanic attorney, tardy for a motion conference, that "Hispanics are always late."

Individuals speaking during the public meetings recounted similar incidences. According to one attorney, it is often difficult for judges to believe racial or ethnic minorities can hold professional positions in the workforce. He reported that "in the presence of the courtroom full of lawyers and members of the public, the judge asked an African-American woman what she did for a living. Her response was, 'I work for the Dade County public schools.' The judge said, 'Do you drive a bus?' The response was, 'No, I'm a teacher.'"

The president of a voluntary bar association recounted several instances in which judges referred to minority attorneys and litigants by their first names. She said, "In all of these cases regardless of what they intended, regardless of how well-intentioned or well-meaning or attempting to create a sense of familiarity, everybody reported feeling very affronted and very belittled by the experience."

In addition to ignoring or "talking down" to minorities, court personnel were also noted to be rude or verbally abusive to persons who were not affiliated with their own racial or ethnic group. "I often see court personnel give more patience and effort to people of their own group," wrote one attorney, or "go out of their way to explain procedures to Hispanic parents but be rude to black parents," observed a court employee. A circuit court judge described a time he witnessed a bailiff make racist remarks to another court employee where members of the public were within earshot, including a member of the minority group being mocked. Other court staff

shared reports of bailiffs restraining minority defendants more aggressively than white defendants and court staff showing contempt toward minority court participants.

The President of the Asian Pacific American Bar Association of South Florida informed the Standing Committee that Asian Pacific Americans currently comprise 2% of Florida's population. They are one of the fastest growing minorities in the United States, and the Census Bureau projects that by 2020 Asian Pacific Americans will comprise 6.8% of this country's population. The largest Asian populations in Florida are Indian, Filipino, and Chinese. The number of Asian Pacific Americans entering the legal profession is accelerating at a rapid pace, and the court system should be proactive in anticipating the needs of the Asian American community, he said. Asian Pacific Americans share many of the same perceptions about the justice system as other minority groups, including the observation of ethnically-based remarks or comments based on stereotypes of Asians. They would like to see judges and court staff reflect the diversity of the community, they need language access to the courts, and they recommend cultural diversity training for judges, attorneys, and court personnel.

The perception of racial bias extends beyond minority litigants to affect minority attorneys. Most commonly expressed by minority attorneys was the humiliation they felt when judges and court personnel failed to consider they could be members of the Bar. As a minority female attorney recounted, "Very often court staff, attorneys, and sometimes judges assume I am a litigant rather than an attorney even if I am wearing a suit and carrying my briefcase. I have had clerks at the courthouse ask me to step out of the attorney line when I am attempting to file documents."

As the recipients of insensitive and offensive conduct, minority attorneys tend to feel that they are not viewed in the same light as their white colleagues. In fact, one judge expressed the opinion that the work of African-American attorneys often is prejudged and devalued, and that some judges hold diminished expectations of minority attorneys. Survey respondents voiced similar perceptions of bias in private settings where legal professionals congregate. "In private social settings, I have heard several judges complain about 'Miami' lawyers lacking in

ethical behavior and relating it to their ethnicity (Cuban or Latin)," wrote one survey respondent.

In another instance, a judge recalled inappropriate remarks made publicly by a fellow jurist: "I had a judge in a class go into a diatribe about how blacks get pregnant on purpose to get the welfare checks, and that blacks commit most juvenile crime which accounts for their statistical presence in court."

A related issue is the perception that the guilt or innocence of a minority defendant is presumed prior to trial. "I know from working closely with judges and state attorneys that minority defendants are expected to be guilty," a court employee responded. An attorney commented on an appellate judge who often refers to blacks using the "N" word and routinely presumes that they must be guilty when charged by police. Another judge corroborated this perception, reporting that a former judge in his circuit was well-known for imposing harsher sentences on blacks than whites. Additionally, an attorney recalled being told by a litigant that a certain judge has "a problem believing black people."

In addition to inappropriate comments and objectionable conduct, many individuals described perceptions of bias based on overtly discriminatory practices, such as unequal sentencing outcomes for minority defendants. Whether racial bias exists in any manner within sentencing, the perception is that it plays a very real part in the process. "Fairness in the justice system seems so far-fetched sometimes," said Estella Chatman, president of the Tri-City Branch NAACP. She described the belief of the black community that "if you are white and kill a black, there is a very slim chance that you will be punished. But if you are a black and kill a white, you[re] not only [going to] be punished, but severely."

According to the Sentencing Project,¹⁹ more than 60% of the people now in prison in the United States are racial and ethnic minorities and that trend is expected to continue or increase:

Overall, data from the Bureau of Justice Statistics document that one in six black men had been incarcerated as of 2001. If current trends continue, one in three black males born today can expect to spend time

¹⁹ The Sentencing Project, www.sentencingproject.org.

in prison during his lifetime. The prevalence of imprisonment for women is considerably lower than for men, but many of the same racial disparities persist, with black women being more likely to be incarcerated than white women.

In 2005, Hispanics comprised 20% of the state and federal prison population, a rise of 43% since 1990. As a result of these trends, one of every six Hispanic males and one of every 45 Hispanic females born today can expect to go to prison in his or her lifetime. These rates are more than double those for non-Hispanic whites.²⁰

High rates of incarceration for racial and ethnic minorities affect not only the individuals who are incarcerated, but also their families and communities. Data document the likelihood that children will have parents who are incarcerated is disproportionately linked to race. In 1999, one of every 14 black children had a parent in prison, compared with one in every 125 white children. Black children are almost nine times more likely than white children to have a parent in prison, and Hispanic children are three times more likely.²¹ The Sentencing Project goes on to explain the collateral and long-term consequences of disparate treatment in the criminal justice system:

Increasingly, laws and policies are being enacted to restrict persons with a felony conviction (particularly convictions for drug offenses) from employment, receipt of welfare benefits, access to public housing, and eligibility for student loans for higher education. Such collateral penalties place substantial barriers to an individual's social and economic advancement.

According to an attorney who spoke on behalf of the Miami Chapter of Florida Association for Criminal Defense Lawyers, "There's a perception that white people get better justice in criminal court. That they have better lawyers and they get better deals. They get better results in trial." Additionally, some attorneys reported first-hand instances of non-whites having received stiffer penalties than whites with similar criminal backgrounds for the same offenses.

²⁰ Uneven Justice: State Rates of Incarceration by Race and Ethnicity, Marc Mauer and Ryan S. King, July 2007, The Sentencing Project, Washington, D.C.

²¹ Women in the Criminal Justice System, The Sentencing Project, May 30, 2007.

A member of the Paul C. Perkins Bar Association spoke about her experience representing criminal defendants, first as an assistant public defender and now as private counsel. Disparate treatment in the criminal justice system oftentimes begins with unfair arrests of black males in low-economic neighborhoods who are stopped more frequently than their white counter-parts for minor traffic infractions and then searched illegally, she reported. These minority defendants are frequently represented by public defenders who are overburdened with cases. Some of these cases could be resolved with motions to suppress evidence; however, the public defenders may lack the resources to thoroughly research and prepare such motions. This situation results in the disparate treatment of these black defendants.

A representative of the Florida Association of Criminal Defense Lawyers reported during a public hearing on what he termed the "white boy syndrome." "Through the years I found that on many occasions I would sit in a courtroom and watch young African-American males sentenced...to incarceration and then come back the next day and watch a pretty young white boy sentenced on the same offense before the same judge to a period of probation."

One judge responding to the survey concluded: "Judges (including myself) harbor unconscious and undisclosed prejudices and impose stereotypes on people of color or minorities in making credibility choices, imposing sentences, setting bonds, etc."

On the other hand, some survey respondents indicated policies that were originally established to eliminate discrimination against racial and ethnic minorities have resulted in discrimination against members of the majority group. Moreover, some attorneys stated that judges go out of their way to help minority litigants but do not show the same courtesy to white litigants. As one attorney stated, "I have witnessed judges who give more favorable treatment to lawyers who are from a specific national origin group because that group has strong political power in the local community and those lawyers are strongly organized." This type of perceived preferential treatment to minority groups caused one attorney to respond, "Regardless of the law and the facts, the minority litigant and/or lawyer has prevailed, albeit unfairly."

Similarly, many respondents reported different perceptions as to the value of examining racial and ethnic bias in the Florida courts. At least two judges indicated their belief that Florida's court system does not have a problem with racial bias or prejudice and questioned the purpose of the surveys. "I am tired of hearing that the 'system' is unfair, with broad brush accusations, when the system is just fine," a judge said. One court employee commented, "The courts in general bend over backwards to appear that they are not prejudiced against minorities, which places an undue burden on the court system."

Still, a considerable number of respondents observed that the courts must continue their efforts to identify and eliminate bias from court operations. One judge described it this way: "I think Florida's trial courts are fair to all—much better than 20 years ago. There is room for improvement, and we need to remain vigilant that we are being fair."

Judges nearly unanimously (99%) agreed that it was their duty to address unfair or biased conduct in their courtrooms. Several of the judges advised that they do not tolerate unfair treatment in the courtroom and intervene to correct it when it occurs. They further indicated that they try to set a standard of fairness in the courtroom and they expect everyone to adhere to that same standard. These responses indicate fidelity to Canon 3(B), of the Florida Code of Judicial Conduct, which states:

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so...

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures,

or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others.

Many survey respondents and speakers at the public meetings were of the opinion that perceptions of a lack of fairness in Florida courts are attributable, at least in part, to the under-representation of racial and ethnic minorities within the justice system. For instance, the perception is that an under-representation of minorities in jury pools leads to their under-representation on actual jury panels and subsequently increases the occurrence of inappropriate guilty verdicts and disproportionate sentencing. Many felt that the method of jury selection works to exclude minorities, and that often times, the use of peremptory challenges by prosecutors is racially motivated.²² As stated by one respondent, “state attorneys utilize various measures to develop for cause challenges to excuse minorities from the jury panel.” Interestingly, though, not one juror who responded to the survey indicated a belief that he or she had been excused from service because of race or ethnicity.

Moreover, some survey respondents (16.5%) believed that minorities are not employed in meaningful numbers in either supervisory or rank-and-file positions within the court system. When asked about their knowledge of unfair employment decisions, several court staff responded that minority applicants have not been given the same opportunities and are often looked over for professional or higher-paying positions. One employee stated, “My manager told me she was not going to hire any more blacks because they cause problems.” Still another commented: “Most of our supervisors/managers and all of the directors are either white or Hispanic even though there are qualified persons of African descent on staff who have been working for the courts in excess of ten years.”

²² Florida jurisprudence currently provides a meaningful mechanism to eliminate racial, ethnic, and gender discrimination in the jury selection process. See State v. Neil, 457 So. 2d 481 (Fla. 1984) (race); State v. Alen, 616 So. 2d 452 (Fla. 1993) (ethnicity); Abshire v. State, 642 So. 2d 542 (Fla. 1994) (gender). The law requires a trial judge to conduct an inquiry in every case in which a party contests the exercise of a peremptory challenge. See State v. Johans, 613 So. 2d 1319 (Fla. 1993); Dorsey v. State, 868 So. 2d 1192 (Fla. 1994); Melbourne v. State, 679 So. 2d 759 (Fla. 1996).

Inappropriate conduct by some Judicial Nominating Commission (JNC) members was also reported to the standing committee. One respondent said that he had witnessed a member of the JNC ask an applicant to imitate a former African American judge, while another recalled being asked whether he had been fully assimilated into United States society, referring to his Spanish accent, although he had lived in the U.S. for more than 30 years. "I will not put myself through the process again until there is a dramatic change," an attorney remarked.

If the public perceives that the judicial selection process, including its participants, is biased in any way, then it is easy to see how the public might regard the entire judicial system as biased. At the very least, racial and ethnic minorities may question the ability of the judicial system to deal with them justly. Thus, in evaluating racial and ethnic bias in the judicial system, it is critical that the method by which judges are selected for appellate courts and vacancies is analyzed as well.

It is apparent that a substantial number of racial and ethnic minority participants feel that the playing field is compromised because the courts system does not reflect the world they live in. "The lack of diversity affects the public perception of justice," said Ardyth Walker of the Equal Opportunities Law Section of The Florida Bar, during a public hearing in Miami. "In a state like ours that is so diverse, when a person comes before the bench where there are no black judges...no Hispanic judges, there's a perception that there's no justice in that courtroom...for that person." Although the presence of minorities in all areas of the legal profession is not a guarantee of unbiased behavior, it certainly plays a major role in increasing the public's perception of fairness.

Overview of Survey Data²³

The Committee received 5,060 responses from attorneys, judges, court staff, jurors, and litigants regarding their perception of unfair treatment of individuals in Florida courts based on race and ethnicity. As shown in the table below, at least

²³ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

half of the participants in each of the polled groups agreed with the statement that Florida courts treat Caucasians and minorities alike. Jurors and judges reported the highest levels of agreement, indicating the most positive perception of the courts, with levels of agreement at 82% and 79% respectively, while attorneys and litigants indicated the lowest levels of agreement at 55% and 50% respectively. Conversely, attorneys and litigants reported the highest levels of disagreement with this statement, indicating the most negative perception of the courts, with levels of disagreement at 26% for both groups.

Florida courts treat Caucasians and minorities alike.							
	Attorneys	Judges	Staff	Jurors	Litigants	Non-Hispanic White ²⁴	Minorities ²⁵
# Responses	1,319	240	1,082	1,211	1,136	3,689	874
Agree	55%	79%	72%	82%	50%	70%	43%
Disagree	26%	13%	12%	3%	26%	12%	36%

When analyzing the responses based solely on the race and ethnicity of survey participants, the levels of agreement become substantially different for non-Hispanic whites and minorities. Participants who identified themselves as non-Hispanic white reported much more positive perceptions of Florida’s courts regarding treatment of Caucasians and minorities than did those who identified themselves as part of a racial or ethnic minority. Seventy percent (70%) of non-Hispanic white participants agreed that Caucasians and minorities are treated alike by Florida courts, while only 43% of minority participants agreed with that statement. Further, only 12% of non-Hispanic white participants disagreed with this statement, while three times as many (36%) minority participants disagreed, indicating a noticeably more negative perception of the courts among minorities who participated in the survey.

²⁴ Includes survey respondents who self-identified as “White or Caucasian” and “Not Hispanic/Latino.”

²⁵ Includes survey respondents who self-identified as “Black or African American,” “Hispanic/Latino (any race),” “Asian, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander,” “Multi-Racial,” or “Other.”

Have you seen or experienced unfair treatment of individuals in Florida courts based on their race or ethnicity?					
	Attorneys	Judges	Staff	Non-Hispanic White	Minorities
<i>#Responses</i>	1,321	236	1,038	2,204	293
Yes	32%	24%	12%	19%	47%

As the table above shows, when asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on race or ethnicity, 32% of attorneys, 24% of judges, and 12% of court staff participants reported having seen or experienced such unfair treatment. However, when responses are analyzed based on the participants' race and ethnicity, there are noticeable differences. Nearly half of the minority participants (47%) reported that they had seen or experienced unfair treatment of individuals in Florida courts based on their race or ethnicity, while only one in five (19%) of non-Hispanic whites reported seeing or experiencing such treatment.

In general, comments regarding judicial conduct addressed inappropriate comments and the use of biased, negative language and comments to or about minority litigants, attorneys, or jurors; not allowing equal court time for minorities; and, rulings made in favor of the perceived "preferred" race or ethnicity (depending upon the judge's own race or ethnicity). As to the court system, respondents commented that racial or ethnic minorities are often economically disadvantaged, resulting in inadequate or no legal representation; minorities in criminal court receive harsher treatment as far as sentencing and plea inequities; and that the courts system in general lacks diversity. Regarding court staff conduct, respondents gave examples of disrespectful and inappropriate comments made to or about minority litigants, attorneys, jurors, and court staff, as well as harsh, disrespectful treatment of minority defendants. Likewise, comments regarding attorney conduct centered on disrespectful comments and behavior on the part of attorneys toward racial/ethnic minorities, as well as disparate, demeaning treatment of minority court participants.

As a <i>judge</i>, have you seen or experienced unfair treatment of individuals in your courtroom based on:						
	RACE?			ETHNICITY?		
	White	Minority	All	Non-Hispanic	Hispanic	All
<i># Responses</i>	197	18	223	138	15	220
"Yes"	13%	17%	14%	11%	13%	14%

When judges were asked about unfair treatment based on race or ethnicity in their own courtrooms, 14% of all participating judges responded that they had seen or experienced such treatment. As shown above, a slightly higher percentage of racial minority judges (17%) than white judges (13%) indicated they had seen or experienced such treatment in their courtrooms, and the same was true for Hispanic judges (13%) as compared to non-Hispanic judges (11%).

As a <i>court employee</i>,²⁶ have you seen or experienced unfair employment decisions (including hiring, promotions, pay and discipline) based on:						
	RACE?			ETHNICITY?		
	White	Minority	All	Non-Hispanic	Hispanic	All
<i># Responses</i>	696	123	829	563	72	830
"Yes"	7%	28%	10%	7%	7%	7%

As reflected in the above table, individuals employed directly by the court system were asked whether they had seen or experienced unfair employment decisions based on race or ethnicity. Only 10% of all court employees reported having seen or experienced unfair employment practices based on race. However, a comparison of the observations of white employees and racial minority employees reflects substantial differences: while only 7% of white employees reported having seen or experienced unfair employment practices based on race, four times that rate (28%) of minority employees reported such practices. When the responses

²⁶ Includes only those who are directly employed by the State Courts System (Supreme Court, District Courts of Appeal, Circuit Courts, County Courts, and the Office of the State Courts Administrator). Does not include offices of the clerks of the circuit and county courts, bailiffs, or other court-related offices or personnel.

are viewed based on the respondents' ethnicity, the percentage of affirmative responses is the same (7%).

Have you seen or experienced <i>judges</i> exhibit biased attitudes or behaviors in professional settings other than the courtroom based on:				
	RACE?		ETHNICITY?	
	Attorneys	Judges	Attorneys	Judges
# Responses	1,232	219	1,232	220
"Yes"	16%	17%	16%	17%
	White	Racial Minorities	Non-Hispanic	Hispanic
# Responses	1,266	141	1,031	118
"Yes"	15%	28%	14%	25%

Additionally, judges and attorneys were asked if they had seen or experienced racial and ethnic bias by judges in professional settings *other than the courtroom*. As shown above, nearly identical percentages of participating attorneys and judges reported having seen or experienced racial or ethnically-biased attitudes or behaviors in professional settings other than the courtroom (16% and 17%, respectively). However, when responses were analyzed based on the race or ethnicity of participants, a noticeable difference appears between white and racial minority participants, as well as non-Hispanic and Hispanic participants. Only 15% of white participants stated they had seen or experienced such attitudes or behavior on the part of judges, compared to 28% of racial minority participants. Similarly, 25% of Hispanic participants reported such experiences, compared to only 14% of non-Hispanic participants. The individual comments reported racist or derogatory comments and behaviors made about or directed towards racial and ethnic minorities, including the use of the "N" word, at training events, conferences, and bar meetings.

Have you seen or experienced <i>attorneys</i> exhibit biased attitudes or behaviors in professional settings other than the courtroom based on:				
	RACE?		ETHNICITY?	
	Attorneys	Judges	Attorneys	Judges
<i># Responses</i>	1,242	221	1,232	218
"Yes"	40%	26%	38%	25%
	White	Racial Minorities	Non-Hispanic	Hispanic
<i># Responses</i>	1,280	143	1,033	118
"Yes"	36%	55%	35%	47%

As shown above, substantial percentages of participating attorneys and judges reported having seen or experienced attorneys exhibiting racial or ethnically-biased attitudes or behaviors in professional settings other than the courtroom. As to race, attorney and judge respondents affirmatively answered at 40% and 26% respectively, and 38% and 25% respectively as to ethnicity. When responses were analyzed based on the race and ethnicity of the participants, there is a noticeable difference between white and minority participants. Thirty-six percent of white participants stated they had seen or experienced such attitudes or behavior on the part of attorneys, compared to more than half (55%) of the racial minority participants. Thirty-five percent of non-Hispanic participants reported having seen or experienced such behavior, compared to 47% of Hispanic participants. Generally, participants reported biased or derogatory comments made by attorneys in a variety of settings, including Bar meetings and conferences. These comments often take the form of jokes or "humorous" stories, i.e., disguising prejudice as humor.

Were you treated unfairly during your jury service because of your race/ethnicity?	
<i># Responses</i>	1,232
"Yes"	0%

The key question asked of jurors was whether they had been treated unfairly during their jury service because of their race or ethnicity. None of the 1,232 jurors responding to the survey indicated that they had experienced such treatment.

Have you seen or experienced biased attitudes or behaviors by judicial nominating commissions (JNCs) based on:				
	RACE?		ETHNICITY?	
	Attorneys	Judges	Attorneys	Judges
<i># Responses</i>	758	209	747	210
"Yes"	13%	14%	12%	11%
	White	Racial Minorities	Non-Hispanic	Hispanic
<i># Responses</i>	842	97	666	82
"Yes"	12%	23%	12%	17%

Finally, attorneys and judges were asked whether they had seen or experienced biased attitudes and behaviors by Judicial Nominating Commissions (JNCs) based on race or ethnicity. As noted in the above table, a small but noticeable minority of attorneys and judges responded that they had seen or experienced racially or ethnically-biased attitudes or behaviors by JNCs, with affirmative responses of 13% and 14% respectively as to race, and 12% and 11% as to ethnicity. A visible difference appears when analyzing responses based on the race or ethnicity of participants. Twelve percent of white participants indicated that they have seen or experienced racially biased attitudes or behaviors by JNCs,

compared to 23% of racial minority participants. Similarly, 12% of non-Hispanic participants responded in the same manner, compared to 17% of Hispanic participants. Comments made in response to the survey questions reveal the perception that the JNCs tend to nominate candidates who look like them – wealthy, white males.

CHAPTER THREE: Perceptions of Socioeconomic Bias

Florida is the fourth most populous state in the nation²⁷ and, with an annual economic output of three quarters of a trillion dollars, is the eighth largest economy in the western hemisphere and the nineteenth largest economy in the world.²⁸ Florida has one of the highest concentrations of wealth in the nation, exceeded only by Connecticut, Colorado, New Jersey, and the District of Columbia.²⁹ At the same time, 13% of Floridians live below the poverty level.³⁰ The growing divide between the “haves” and the “have nots” has magnified the importance of disparate treatment based on socioeconomic status.

Article I, section 21, of the Constitution of the State of Florida states: “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” In order for this fundamental constitutional principle to become reality, all Floridians must have the opportunity for meaningful access to the courts. Yet, too often lawyers for indigent criminal defendants³¹ are inexperienced, overworked, and underpaid, and there is a dearth of lawyers available to represent low-income people in civil matters.³²

U.S. Supreme Court Justice Hugo Black wrote that “There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”³³ The lack of adequate legal counsel can have devastating consequences for working poor and middle-income Floridians, including the loss of liberty, property, housing, safety, family rights, or even medical treatment. The widespread

²⁷ Source: United States Census Bureau.

²⁸ Enterprise Florida, www.eflorida.com, citing to the U.S. Department of Commerce, Bureau of Economic Analysis.

²⁹ Source: Earle Klay, Askew School, Florida State University, presentation May 2006.

³⁰ Source: United States Census Bureau.

³¹ See for example: “Keeping Public Defender Workloads Manageable,” The Spangenberg Group, U.S. Department of Justice, Bureau of Justice Assistance Monograph, NCJ 185632, January 2001, available at <http://www.ncjrs.gov/pdffiles1/bja/185632.pdf>.

³² It has been estimated that as much as 80% of the legal needs of the poorest Americans go unmet; source: Michael S. Greco, Past President, American Bar Association.

³³ Griffin v. Illinois, 351 U.S. 12 (1956).

perception is that persons with inadequate resources and limited access to available resources are negatively impacted by a justice system that tends to favor those of higher socioeconomic status. This chapter will explore the statistical and personal reports attesting to various perceptions of disparate treatment in Florida courts based on socioeconomic status.

Overview of Qualitative Responses

The public testimony and individual survey comments evidenced a strong perception that wealth leads to better access and preferential treatment in Florida's court system. This perception appears to stem most frequently from disparate sentencing among poor and wealthy criminal defendants, inability to access the court in civil matters because of the prohibitive cost of filing fees, and lack of adequate and/or affordable legal representation. One attorney responding to the survey summed up his beliefs thus:

Poorer individuals do not have the same access to quality services and representation; they are shuffled through the system, forced to sit for hours waiting for cases to be called, and are assigned to public defenders who are overworked and underpaid and have too many cases to give each case sufficient attention. Individuals who have the means to hire private attorneys are treated with much more respect, do not have to spend the same time sitting around court, typically get better plea deals in the end, and their attorneys are able to focus much more attention on their cases.

Plea offers and case outcomes in criminal cases are often related to whether the defendant is represented by a public defender or private counsel, wrote one judge. Oftentimes, private lawyers are able to negotiate the initial charges in a manner that is more favorable to the defendant; this is usually not the situation for those represented by public defenders who may not be appointed until after the initial charges have been filed. Because they are unable to make bond, indigent criminal defendants may also be more willing to resort to plea arrangements in order to be released from jail. "Wealthy people get out on bail, but poor people accused of felonies languish in jail for months awaiting their trial date," said an attorney respondent.

Invariably, poor defendants are unable to pay large amounts of restitution or to afford access to treatment for psychological or substance abuse issues, as a wealthy defendant may. "When litigants are financially challenged, some judges will rule without regard for the law, as they know that the litigants do not have the money to appeal. Conversely, when the litigants are wealthy, added care and consideration is given as the judge knows they can and will appeal an adverse judgment," commented one judge.

A public defender provided input to the Standing Committee on the treatment of indigent defendants during their first appearance in county criminal proceedings. "Rights are routinely being denied in favor of expediency," he reported. He believes that as many as 90% of the pleas in first appearance may be avoidable because defendants are not provided with a meaningful opportunity to access legal counsel. Further, according to the public defender, some judges keep poor defendants who plead not guilty at first appearance in jail, because the judges know the defendants will oftentimes plead guilty at the end of the 30 days and take their time served. Bond decisions are determined in chambers and announced in the courtroom, the public defender said, without defense counsel being heard first. Other examples of problems at first appearances that the public defender recounted include judges making inappropriate remarks based on physical appearances or assumptions, and judges who do not want to delay hearings in order for interpreters to be obtained. He recommended that attorneys with criminal justice experience be assigned to anonymously observe first appearances throughout the state, as a means to document the serious constitutional problems that he believes are occurring. The public defender also spoke about individuals who are repeatedly arrested as a result of their homelessness. This builds up their "jacket," and they are eventually sentenced based on the weight of the file rather than the evidence.

Cliff Nehmer spoke on behalf of Hubbard House First Step Program, which was Florida's first batterers' intervention program. He informed the Standing Committee that although domestic violence affects every segment of the community, there are racial, economic, and professional discrepancies in the demographics of participants in the batterers' intervention programs. African-Americans and Hispanics are over-represented, as are poor people, he reported.

The perception is that people who cannot afford bond rapidly agree to a plea that includes a batterers' intervention program, in order to avoid an extended stay in jail. Additionally, individuals with higher incomes can afford better legal defense, which may be a factor as well. People holding prominent positions in the community – doctors, lawyers, teachers, and pastors, for example – appear to be able to avoid treatment for domestic violence, which does not ensure equitable victim safety across the social spectrum.

Others espoused a similar belief about the administration of civil matters. According to Marcia Cypen of Legal Services of South Florida, faulty implementation of the new filing fees and waivers law by individual clerk's offices presents serious obstacles for low income individuals. "There is no more waiver of filing fees for low income people. In practice, it has been devastating. There are only three states that don't allow waivers, and Florida is the only one that makes the indigent person pay as the case proceeds, even if there is a chance that the cost would be assessed against the opposing counsel. The bottom line is that the law and the way it is implemented denies access to the court to people who are poor." She opined that domestic violence victims, for example, are deterred from petitioning the court for a divorce or child custody because they cannot afford the monthly payments and collection fees.

A related perception is that access to the court is unattainable for the working poor. These individuals do not qualify for free counsel, although they often cannot afford to hire a private attorney or even to be absent from work for court appearances. While some lower income litigants attempt to represent themselves, as one judge noted: "Pro se litigants are not treated with the same respect and dignity that represented litigants receive. I have even seen where pro se litigants actually have a higher legal burden than an attorney must meet." Or as a pro se litigant stated at one of the public meetings "They take a look at [pro se litigants] and say: 'You don't have a Bar card. We don't honor you.' And that's just the way it is." In divisions where the courts have a large docket, such as traffic court, litigants with lawyers often have their cases heard first, which gives an appearance that those with the resources to hire attorneys receive preferential treatment from the court.

A law school clinic professor voiced concerns about poor people being strong-armed into settlements during mediation in small claims court. "They're sitting in the back with the county court mediators, and the mediators are supposed to be mediating the case between the two parties. You have an unsophisticated consumer, a local attorney, and a mediator who, more often than not is an attorney. Nobody is looking to see if these debts are beyond the statute of limitations, which more often than not they are. No one is looking for these types of legal issues in order to protect the consumer. It's not really much of a mediation at all; it's 'let's work out a payment plan-how much are you going to pay?,'" she said. Additionally, the preprinted form used in county court mediation includes a statement that allows the creditor to obtain a judgment without further notice to the debtor if there is a default, which precludes the opportunity for court review of the terms of the settlement and an impartial determination of whether there has been compliance. She went on to recommend changes to the form and quality improvements to mediation in small claims court.

Inflexibility in scheduling and lack of transportation also pose hindrances for poor litigants. It is perceived that less affluent participants typically are required to appear in court more frequently and are given less scheduling latitude for issues arising outside of court, such as medical or family emergencies. Additionally, people who are impoverished experience serious transportation issues, and because they tend to change residences more often, issues with notification also arise. This can create dire situations when they are faced with probationary sentences, for example.

According to respondents, not only do poor litigants bear the brunt of biased assumptions and attitudes, but so do their legal counsel. Some responded that court-appointed counsel are treated impolitely by judges; others stated that many judges routinely place public defender cases last on the docket, which sends a message that poor people are less significant than wealthy people and that a public defender's time is less important. It is perceived that this type of treatment discourages interested attorneys from volunteering for court-appointed cases or pursuing careers in public service.

Speaking on behalf of the Advocacy Center for Persons with Disabilities, Inc., Steve Howells reported that he has observed situations involving indigent, incapacitated individuals who do not have a court-appointed guardian and for whom medical care and treatment decisions are being made without appropriate legal authority. Guardianship is the process by which a court finds a person's ability to make decisions so impaired because of mental or physical disabilities, that the right to make decisions is legally granted to another party. That party, known as a guardian, becomes the surrogate decision-maker in personal or financial matters for the incapacitated person, who is known as a "ward."

Howells reported that elders and individuals with disabilities who are indigent and become incapacitated are not always provided with basic human rights protections, including legal representation, appointment of a guardian or surrogate decision maker, and adequate court oversight to ensure their safety and well being. As a result, incapacitated elders and persons with disabilities are vulnerable to serious irreparable harm, as well as abuse and neglect by family members or unscrupulous health care providers.

The purpose of guardianship monitoring is to collect, provide, and evaluate information about the well-being and property of all persons adjudicated of having a legal incapacity so that the court can fulfill its legal obligation to protect and preserve the interests of the ward, and thereby promote confidence in the judicial process. Howells urged that recommendations by the Supreme Court Commission on Fairness, Committee on Guardianship Monitoring be fully implemented as a means to safeguard wards. The Committee on Guardianship Monitoring described the elements of an ideal guardianship monitoring program and recommended that monitoring programs be adequately funded in every judicial circuit.³⁴

Overview of Survey Data³⁵

³⁴ Guardianship Monitoring in Florida: Fulfilling the Court's Duty to Protect Wards, Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003; available online at http://www.flcourts.org/gen_public/family/diversity/bin/guardianship_monitor.pdf.

³⁵ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

The Committee received 4,934 responses from attorneys, judges, court staff, jurors, and litigants regarding their perceptions of socioeconomic bias in Florida courts. The key question asked of all groups was whether Florida courts treat poor people and wealthy people alike.

Florida courts treat poor people and wealthy people alike.					
	Attorneys	Judges	Staff	Jurors	Litigants
<i># Responses</i>	1,314	236	1,045	1,210	1,129
% Agree	31%	57%	47%	71%	36%
% Disagree	48%	28%	26%	8%	43%

Jurors were the most positive in their perception of how the courts treat individuals based on their socioeconomic status, with 71% agreeing that Florida courts treat poor and wealthy people alike. Fifty-seven percent (57%) of judges also tended to share this view. However, for every two judges that agreed with this statement, one judge disagreed that Florida courts treat poor people and wealthy people alike. Attorneys (48%) and litigants (43%) reported the most negative perceptions, with disagreement levels of 48% and 43% respectively.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their level of wealth?			
	Attorneys	Judges	Staff
<i># Responses</i>	1,307	227	1,013
% "Yes"	42%	26%	19%

When asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on their level of wealth, nearly half of all attorneys (42%) answered yes. Approximately one out of every four judges (26%) and one out of every five (19%) court employees reported having seen or experienced such unfair treatment.

In general, comments regarding judicial conduct were that judges are more deferential to private attorneys and treat represented litigants with more respect

than self-represented litigants. As to the court system, respondents commented that court users who are poor are routinely disadvantaged and have difficulty accessing the court because of their lack of financial resources. Comments regarding staff conduct addressed the lack of patience and disrespectful treatment given to less affluent litigants. Finally, comments regarding attorney conduct centered on the inability of public defenders and legal aid counsel to provide adequate representation due to limited resources and large caseloads.

As a <i>judge</i>, have you seen or experienced unfair treatment of individuals in your courtroom based on income level?	
<i># Responses</i>	225
% "Yes"	18%

As the above table shows, 18% of judges responded that they had seen or experienced unfair treatment of individuals in their courtrooms based on income level. Those judges providing individual comments opined that individuals with expansive financial resources fare better in both civil and criminal cases because they typically have access to privately-paid mental health and substance abuse treatment services, as well as translators, mediators, investigators, and expert witnesses.

As a <i>court employee</i>, have you seen or experienced unfair employment decisions (including hiring, promotions, pay and discipline) based on income level?	
<i># Responses</i>	831
% "Yes"	5%

Individuals employed directly by the court system were asked whether they had seen or experienced unfair employment decisions based on income level. As seen in the above table, only 5% of respondents said they had.

Have you seen or experienced biased attitudes or behaviors in professional settings <i>other than the courtroom</i> based on income level:				
	BY JUDGES?		BY ATTORNEYS?	
	Attorneys	Judges	Attorneys	Judges
<i># Responses</i>	1,229	220	1,226	216
"Yes"	18%	13%	41%	18%

Judges and attorneys were also asked separately about their experiences involving socioeconomic bias outside of the courtroom. Overall, attorneys reported more than twice as many incidences of bias by other attorneys (41%) than by judges (18%) in professional settings outside the courtroom. Similarly, judges were more likely to have seen or experienced such bias by attorneys (18%), as opposed to other judges (13%).

Have you seen or experienced biased attitudes or behaviors by <i>judicial nominating commissions (JNCs)</i> based on Income Level?		
	Attorneys	Judges
<i># Responses</i>	739	205
% "Yes"	7%	4%

Only a small percentage of attorneys and judges reported having seen or experienced biased attitudes or behaviors by judicial nominating commissions based on income level. As noted in the above table, 7% of attorneys and 4% of judges reported having encountered such experiences. A noticeable number of respondents commented that their answer to this question was "no," because they had no personal experience with JNCs.

As a juror, were you treated unfairly during your jury service because of Income Level?	
<i># Responses</i>	1,232
<i>% "Yes"</i>	0%

No juror polled during the survey indicated that he or she was treated unfairly during jury service because of his or her income level.

CHAPTER FOUR: Perceptions of Gender Bias

Gender bias is behavior based on an underlying belief in stereotypical attitudes about the nature and roles of men and women, perceptions of their relative worth, or misconceptions about the social and economic realities encountered by both sexes. Many individuals who interact with the Florida justice system in some manner report that gender bias still exists within the system and that more work is necessary to secure gender fairness in the courts.

When the Florida Supreme Court released its Gender Bias Study Commission report in March 1990, in his introductory letter then-Chief Justice Raymond Ehrlich stated:

The Commission's ... study of gender bias in the legal system is part of a continuing effort by this state's judiciary to eliminate any vestiges of unfair and prejudicial conduct in Florida's legal profession and courts. Through such means we hope to ensure that our justice system abides by the Florida Constitution's goal of guaranteeing "equal civil and political rights to all."

Trusting that lawyers and judges alike are equally committed to this goal, the Court is publishing this Report throughout the state so that we may better identify problems in need of a solution, and solutions in need of our earnest support.

His words still hold true today. Through this report, the court system continues to identify gender bias problems in need of a solution, and gender fairness solutions in need of everyone's earnest support.

This chapter will explore the statistical and personal reports documenting various perceptions of gender bias in Florida courts. Additionally, the data will revisit the three primary areas addressed in the 1990 Gender Bias Study Commission Report: the legal profession; family law; and the criminal justice system.

Overview of Qualitative Responses

Legal Profession

A South Florida attorney with a long-standing involvement in gender bias issues reported that “significant changes” have occurred since the issuance of the original Gender Bias report, especially in the way that female lawyers are treated by judges. Based on his observations and others who spoke at the public meetings, women appearing before the court decades ago often felt they were being demeaned or degraded; however, such treatment has diminished to a great degree.

Notwithstanding, statements made as part of the surveys and during the public meetings reveal that gender inequality persists in Florida’s court system despite the advances women have made in the legal profession and society as a whole. Such forms of gender bias are manifested verbally through pejorative or demeaning statements, in the demeanor of judges and attorneys, and in the application of different standards for male and female attorneys.

For example, female attorneys reported that their work is sometimes scrutinized more critically than their male counterparts and that they are automatically judged less competent because of their gender. According to one attorney, “Most women in the profession realize that they must be twice as smart and twice as dedicated if they hope to be successful. They simply aren’t given the same presumption of competence that most male lawyers have simply by showing up.”

Others stated that the inherent bias in the judiciary makes it difficult for women, regardless of their role, to be viewed as equal to men, particularly in the courtroom. A few respondents commented on the disparate treatment against female attorneys by some judges, for instance in granting a continuance for vacation purposes at a male attorney’s request but not for a female attorney’s parental obligations. Several other female attorneys spoke of being mistaken for court reporters, litigants, or citizen observers, although professionally clad and carrying a briefcase. “Sometimes, if I’m up against a male attorney, the judge will not look or talk directly to me but will look at and talk directly to opposing counsel, as if I’m not there,” stated a South Florida attorney. Encounters such as this were echoed by other female attorneys who also reported hearing or personally

experiencing demeaning, gender-specific language, such as “honey” or “little lady,” use of first names only, or various comments on physical appearances.

Although grievance procedures currently exist to address these types of biases, such as the Judicial Qualifications Commission, female attorneys and court personnel do not perceive them to be very effective, and in fact, hesitate to file complaints for fear of retribution to themselves or their clients. A member of the Jacksonville Women Lawyers Association expressed reservations about reporting inappropriate conduct so as not to be “singled out as being overly sensitive.” A number of other female attorneys reporting anecdotal stories to the committee insisted on remaining anonymous.

Some female attorneys also expressed their frustration with the lack of collegiality with judges, which most male lawyers seemed to enjoy with male judges. “Many times I have seen male lawyers buddy up to male judges, creating a collegial atmosphere/attitude that signals to the lady lawyers, ‘you’re not a part of this group, and I’ve got an advantage over you,’” said a female attorney.

Women also reported inappropriate questions about child care arrangements during interviews with Judicial Nominating Commissions, while similar questions were not asked about the family obligations of male applicants.

Not all respondents shared the view that women are treated unfairly in the courts system. A substantial number of respondents perceived that male attorneys are treated more harshly, particularly in criminal and family-related matters.

At least one attorney attributed the low salaries for judicial staff attorneys to the fact that most of the positions are held by women lawyers and viewed as a “woman’s position.” Another attorney noted it is absolutely necessary that court committees continue to serve as the “eyes and ears of the court” to identify and report on gender-based disparate treatment.

Family Court

On behalf of the Family Law Section of The Florida Bar and as a long-time observer of gender issues as they relate to family court matters, Evan Marks reported that he has “seen changes, but we still have a long way to go.” He said that “education is still necessary, not just for the judges,” but also “for lawyers, for everybody in the system.” That concept was endorsed by a representative of the

Florida Association for Women Lawyers who observed that diversity training in certain circuits has been beneficial and should be provided in courts across the state.

According to Marks, one cause of unfair treatment in family courts stems from the reliance on standard visitation schedules, which unduly disadvantages fathers who are most often the non-residential parent. Current Florida law requires a judge to make individualized determinations of appropriate visitation based on the family's needs, rather than just the imposition of a standard visitation schedule.

Another attorney reported that a circuit judge assigned to family court frequently makes comments about the woman "trying to live off a man" when issues of child support or alimony are concerned. The committee also heard that self-represented litigants in family court are not treated with respect.

Several members of an organization on the east coast of Florida said that women are financially disadvantaged in family court proceedings. They asserted that the adversarial system harms the financial, emotional, and physical well-being of families. Representatives of the organization said that some abusers use the family court system to continue abusing their spouse and children. Their view of the family court system is that it is "the most profitable legal venue for the entire system," which exists as a money-generating industry comprised of professionals who make a living off of parents who are fighting for joint custody or reasonable visitation. From their perspective, nine out of ten times the parent with the "most money and power" wins.

These women alleged systematic and structural bias by Florida courts against mothers in disputed custody proceedings. They reported that the mothers' counsel are prevented from asking certain questions, while the fathers' counsel are allowed great leeway with the same issues. They also believe that judges sometimes mistakenly identify a mother's emotional distress over the loss of her children as mental illness.

One speaker expressed concern about the manner in which some family court mediators deal with cases involving domestic violence. "One of my mediators told me that if I didn't like what was going on why didn't I give the children to the abuser [the other parent]. What kind of mediation is that?"

Anna Martinez-Mullen, from the Hubbard House domestic violence center in Jacksonville reported that male victims of domestic violence also experience gender discrimination, even though the law requires that male victims be accorded the same due process rights as women. She told of a recent case where a male victim was told “you’re a big guy, I can’t see how a woman can scare you.”

As one attorney stated, “Court personnel, from clerks to bailiffs to judges to probation officers to law enforcement to prosecutors to public defenders bring many gender-biased presumptions with them when performing their duties relative to domestic violence victims and offenders.” Often it is difficult to obtain services for men who are victims of domestic violence, for example, due to the widespread disbelief that a man can be a “real” victim. Additionally, there is the perception that women are overwhelmingly presumed to be truthful in domestic situations whereas there is a presumption that men are untruthful, even when the evidence demonstrates otherwise.

Criminal Justice System

One in four American women will experience domestic violence in her lifetime, and one in six has been raped.³⁶ The Standing Committee heard that in some instances gender bias still exists in sexual assault cases. A long-time prosecutor reported that the system continues to view female victims as if they’re “asking for it,” she said. A column by Ernest Hooper in the October 11, 2007, edition of the St. Petersburg Times reported that “you don’t have to search long or hard to find someone who thinks women purposely attract abusive mates or deserve beatings because they’re weak.”

Female defendants also encounter barriers and disparate treatment in the criminal justice system. The following discussion is based on information and data developed by the Sentencing Project.³⁷ Since 1985 the number of women in prison has increased at almost double the rate of incarcerated men: 404% versus 209%.

³⁶ Tjaden P. Thoennes, N. Extent, nature and consequences of intimate partner violence: findings from the National Violence Against Women Survey. Washington DC: Department of Justice; 2000a. Publication No. NCJ 181867. See also Legal Momentum in Brief, October 2007, published by Legal Momentum, 395 Hudson Street, New York, NY, the oldest legal advocacy organization dedicated to advancing the rights of women and girls.

³⁷ See Women in the Criminal Justice System, The Sentencing Project, May 30, 2007.

More than one million women are currently under the supervision of the criminal justice system in the United States. These women often have significant histories of physical and sexual abuse, high rates of HIV infection, and substance abuse. Women in prison are more likely than men to have been diagnosed with a mental illness, as well. Two-thirds of women in state prisons are mothers of a minor child. According to the Sentencing Project, these children are disadvantaged from their mothers' incarceration and the loss of family ties.

Disparities extend to girls in the juvenile justice system, as well, Gerry Glynn reported on behalf of The Florida Bar Legal Needs of Children Committee. Girls are languishing in detention awaiting the availability of appropriate treatment, he said. He provided the Standing Committee with information about a Missouri model system, which focuses on community-based programs rather than detention of girls and boys.

Overview of Survey Data³⁸

The Committee received 4,939 responses from attorneys, judges, court staff, jurors, and litigants regarding their perception of unfair treatment of individuals in Florida courts based on gender. As shown in the table below, at least half of the participants in each polled group agreed with the statement that Florida courts treat men and women alike. Jurors and judges were the most positive in their perception of Florida courts (84% and 76%). Court staff tended to share this view as well (67%). On the other hand, the lowest levels of agreement were maintained by attorneys (55%) and litigants (50%). Consequently, attorneys and litigants reported the most negative perception, with the lowest levels of agreement and the highest levels of disagreement.

Florida courts treat men and women alike.							
	Attorneys	Judges	Staff	Jurors	Litigants	Male	Female

³⁸ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

Florida courts treat men and women alike.							
	Attorneys	Judges	Staff	Jurors	Litigants	Male	Female
# Responses	1,311	235	1,044	1,212	1,137	2,222	2,558
Agree	55%	76%	67%	84%	50%	68%	63%
Disagree	28%	16%	11%	3%	28%	16%	18%

When analyzing the responses based solely on the gender of survey participants, the perception of gender bias in Florida courts among males and females is relatively similar. Nearly two-thirds of both male (68%) and female (63%) respondents agreed that Florida courts treat men and women alike. Likewise, both groups reported levels of disagreement at similar frequencies, with males at 16% and females at 18%, thus, supporting an overall positive perception of Florida courts among the male and female respondents.

However, as the following table reflects, there are distinct differences between the views of female attorneys and judges and those of male attorneys and judges with regard to disparate treatment in the courts based on gender.

Florida courts treat men and women alike.				
	Male Attorneys	Female Attorneys	Male Judges	Female Judges
Agree	64%	37%	82%	65%
Disagree	19%	45%	10%	27%

The individual comments by respondents to this statement reflected a culture in the judicial system of inappropriate conduct toward, and lack of respect for, women who are involved in some capacity with the courts. Other comments suggested that women receive favoritism from judges, which often results in sentencing and plea inequities. Still, some respondents noted that the judiciary maintains systemic discrimination against women in favor of men.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their gender?					
	Attorneys	Judges	Staff	Male	Female
<i># Responses</i>	1,310	234	1,030	1,170	1,336
Yes	33%	21%	11%	22%	24%

When asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on gender, a minority of those routinely involved with the court system answered “yes.” While court employees (11%) were less likely to report that they had experienced gender-biased treatment in Florida courts, 33% of attorneys indicated that they had encountered such experiences. Approximately one of out every five judges (21%) answering the survey reported similar experiences, as well.

A noticeable similarity surfaces when the responses are analyzed based on the participants’ gender; 22% of males and 24% of females responded affirmatively to the question.

As a <i>judge</i>, have you seen or experienced unfair treatment of individuals in your courtroom based on gender?			
	Male	Female	All
<i># Responses</i>	160	55	223
% Yes	11%	22%	14 %

Judges were also asked whether they had seen or experienced unfair treatment of individuals in their courtrooms based on gender. Twenty-two percent (22%) of female judges reported having experienced unfair treatment in their courtroom based on gender, compared to only 11% of male judges.

As a court employee, have you seen or experienced unfair employment decisions (including hiring, promotions, pay and discipline) based on gender?			
	Male	Female	All
# Responses	119	704	834
% Yes	12%	6%	7%

Individuals directly employed by the courts system were asked whether they had seen or experienced unfair employment decisions based on gender. Of the 834 court employees responding, 7% of them answered “yes,” with the male employees (12%) responding affirmatively at twice the rate of female employees (6%).

Have you seen or experienced biased attitudes or behaviors in professional settings <i>other than the courtroom</i> based on gender:					
BY JUDGES?					
	Attorneys	Judges		Male	Female
# Responses	1,237	223		956	472
“Yes”	22%	23%		16%	33%
BY ATTORNEYS?					
	Attorneys	Judges		Male	Female
# Responses	1,249	220		968	471
“Yes”	48%	31%		39%	58%

Regarding experiences in professional settings other than the courtroom, both attorney and judge groups shared similar views on the gender-biased behaviors of judges. Incidents of gender bias outside the courtroom on the part of attorneys were reported by 48% of the participating attorneys and 31% of the participating judges. Incidents of gender bias outside the courtroom on the part of judges were reported by 22% of attorneys and 23% of judges.

When the responses are viewed based on the respondents’ gender, the results showed distinct differences in the professional experiences of men and women. Twice the proportion of females (33%) indicated that they had encountered such behavior by judges, while only 16% of males provided the same

affirmative response. Similarly, a higher percentage of females (58%) reported instances of gender-biased behavior by attorneys than did males (39%).

Were you treated unfairly during your jury service because of gender?	
# Responses	1,232
% Yes	0.2%

The key question asked of jurors was whether they had been treated unfairly during their jury service because of their gender. Only 0.2% of the 1,232 jurors responding to the survey indicated that they had experienced such treatment.

Have you seen or experienced biased attitudes or behaviors by judicial nominating commissions (JNCs) based on gender?				
	Attorneys	Judges	Male	Female
# Responses	783	209	680	293
"Yes"	14%	17%	12%	21%

Finally, attorneys and judges were asked whether they had seen or experienced biased attitudes and behaviors by Judicial Nominating Commissions (JNCs) based on gender. As noted in the above table, a small but noticeable minority of attorneys and judges responded that they had seen or experienced gender-biased attitudes or behaviors by JNCs, with affirmative responses of 14% and 17% respectively. A visible difference appears when analyzing responses based on the gender of the participants. Twelve percent (12%) of male participants indicated that they have seen or experienced gender-biased attitudes or behaviors by JNCs, as compared to 21% of female participants. A noticeable number of respondents commended that their answer to this question was "no," because they had no personal experience with JNCs.

CHAPTER FIVE: Perceptions of English Language Bias

Language is the most powerful tool in the courtroom. But for those whose native language is not English, the experience of being in court can be one of powerlessness. People with limited proficiency in English may be unable to communicate with court personnel, conduct legal research, read their opponents' legal papers, or understand and participate in court proceedings.³⁹ Further complicating the situation is that many non-English speakers come from cultures and legal systems that are significantly different and that can hinder their ability to understand the American justice system, even with the aid of a spoken language interpreter. This is a critically important matter for Florida courts since 16.7% of our state's population is foreign born and 23.1% speak a language other than English at home.

According to the Florida Supreme Court Racial and Ethnic Bias Study Commission Report that was issued in December 1991:

A fundamental issue of fairness which has enormous implications at every stage of the criminal justice system [is] the impact of language barriers upon linguistic minorities.

Meaningful access to the courts should be available for all persons regardless of their ability to communicate effectively in the English language. While the lack of qualified court interpreter services in criminal court proceedings reported in 1991 by the Racial and Ethnic Bias Study Commission now has been largely addressed, language barriers to justice remain. This chapter will explore the statistical and personal reports reflecting perceptions of language bias in Florida courts.

³⁹ Access to Justice: Opening the Courthouse Door, David Udell and Rebekah Diller, Brennan Center for Justice at New York University School of Law, 2007, www.brennancenter.org.

Background on Court Interpretation in Florida⁴⁰

The logistics of ensuring spoken language access are vast and complex in Florida courts, where litigants speak at least 51 different languages.⁴¹ Justice requires that courts take measures to ensure that spoken language interpreters are competent. Additionally, the impact on judicial administration is tremendous, given the number of proceedings that are lengthened by interpretations or delayed or postponed because of the lack of interpreters. These problems correlate to inadequate court resources and are often most acute in rural areas where interpreters are particularly scarce.

Prior to the 2004 trial court funding transition, commonly referred to as implementation of "Article V: Revision 7," the individual counties bore the cost of foreign language interpreters required by the public defender or the state attorney or appointed by the court in judicial proceedings. Section 29.004(5), Florida Statutes, now requires state funding for "court foreign language and sign-language interpreters and translators essential to comply with constitutional requirements." Pursuant to proviso language accompanying the court system appropriation for due process costs, courts also have some discretion to appoint a spoken language interpreter when a fundamental interest is at stake and no other alternative exists for resolution of the issues involved in the case.

Another law with potential impact on state court policies for the provision of foreign language interpreters in judicial proceedings is Section 601 of Title VI of the Civil Rights Act of 1964, which bars discrimination on the basis of race, color, national origin, sex, and religion, in programs that receive federal financial assistance. The United States Department of Justice has issued guidelines for recipients of federal funds administered by the Department, with regard to the provision of language services to persons with limited English proficiency. The Department's guidelines provide a set of factors to be considered by the Florida courts, as a recipient of federal funds administered by the Department, in

⁴⁰ This chapter addresses spoken or foreign language interpreter issues; sign language interpreter issues are addressed in Chapter Six.

⁴¹ Interpreters, by language, that were used in court appointed cases as of March 10, 2006.

determining whether language services may need to be offered to meet Title VI requirements.

Court Interpreter Certification

The skills and abilities of court interpreters are of paramount importance. According to the National Center for State Courts, professional court interpreters are individuals who possess educated, native-like mastery of both English and a second language; display wide general knowledge characteristic of what a minimum of two years of general education at a college or university would provide; and perform the three major types of court interpreting: sight interpreting, consecutive interpreting, and simultaneous interpreting. Court interpreters must perform each type of interpreting skillfully enough to include everything that is said, preserve the tone and level of language of the speaker, and neither change nor add anything to what is said.

In 1991, the Florida Supreme Court Racial and Ethnic Bias Study Commission made two recommendations relative to court interpreting:

The Florida Legislature should mandate and fund the development of a statewide training and certification program, to be administered through the Office of the State Courts Administrator. Once funded, the OSCA should be encouraged to collaborate with the state university system to design a curriculum appropriate for pre- and post-certification education.

OSCA should, through appropriate means, ensure the effective dissemination of information to all judges and court administrators, regarding the availability and appropriate use of court interpreters, training, and certification services.

Repeated attempts during the 1990s to pass legislation to implement these requirements failed or were vetoed. Meanwhile, at the national level, the State Court Interpreter Certification Consortium was formed in 1995, with support and assistance from the National Center for State Courts. Member states agree to share court interpreter exams and abide by test security standards. Benefits include savings in test development costs. To date, almost 30 states are members of the Consortium. Florida joined the Consortium in fiscal year 1996/97.

The Florida Court Interpreters Advisory Workgroup was established in 1997. The Workgroup accomplished a number of important tasks including the development of a statewide registry of interpreters who had attended the two-day court interpreter orientation program and passed the qualifications examination. During the 2006 Legislative Session, the Florida Legislature enacted substantive legislation and authorized additional state-level positions, which will enable the courts to establish a full-fledged spoken language court interpreter certification program. The Florida Supreme Court has now adopted Rules of Court Procedure that govern the certification process. To attain certification, interpreters are required to attend a two-day orientation program; pass a written ethics/general knowledge examination; pass a qualifications examination; undergo a background check; take an oath to uphold the Code of Professional Responsibility; and agree to obtain certain continuing education points or hours.

Currently, Spanish, Haitian Creole, Russian, Vietnamese, Cantonese, Korean, Polish, and Arabic examinations are offered in Florida. More language examinations will be available as the Consortium continues to identify the need for such exams.

Overview of Qualitative Responses

One of the most repeated perceptions by respondents as it relates to language bias was that judges and court employees lack tolerance and respect for non-English speaking parties and individuals who speak with an accent. Participants reported impatient, disrespectful, disparaging remarks and behavior in the courtroom directed at parties who are not fluent in English as well as their interpreters. "There are some judges who will berate non-English defendants about their lack of English fluency and go so far as to tell them that if they are to live in this country they must learn to speak English," said one attorney.

It was also noted that judges frequently become frustrated with the lack of interpreters and may either hurry the case through the system without giving litigants time to adequately understand what is being said or reschedule the case because the docket is too full to allow for proper explanations of the proceedings. One attorney stated: "There are not enough translators and sometimes judges

allow other [court participants] to translate or they act as though the parties are fluent in English to avoid waiting for a translator.”

Of equal concern to many was the impact cultural barriers have on an individual’s ability to access the court, particularly in light of Florida’s rapidly growing immigrant population. Many non-English speakers come from cultures and legal systems that are significantly different from American culture, which can hinder their ability to understand the intricate details of their cases, even with the aid of a spoken language interpreter. According to Anna Martinez-Mullen, special life services coordinator for Hubbard House,⁴² “[M]ost petitioners that don’t speak English can’t even get the process started until they can find somebody [who] can... interpret for them.”

Some respondents remarked that spoken language interpreters are either unavailable or too few in number to address the needs presented by individuals with limited English proficiency. There is a perception that the need for a spoken language interpreter is an inconvenience rather than a due process right in criminal cases or a necessity to ensure effective participation in other types of court proceedings.

In most civil cases, there is no state funding for the courts to provide spoken language interpreters, even for persons who are indigent. In those situations, the litigants may bring family members or friends – who oftentimes lack the requisite education, language skills, and training to provide qualified interpreter services – to translate for them. The Standing Committee heard stories of domestic violence survivors who bring their abusers or children into court to translate for them because they are unable to afford a spoken language interpreter. Another situation that may occur relates to litigants who are required to return to court numerous times – at considerable expense and inconvenience – because they are unable to locate a spoken language interpreter.

Some respondents believed that judges treat parties who are fluent in English more leniently than those who are not. Others felt that non-English speakers are significantly disadvantaged and frequently do not receive the

⁴² The Hubbard House is a domestic violence center located in Jacksonville, Florida.

necessary assistance to aid in understanding their cases. For example, in many court-related legal proceedings, such as mediations and depositions, spoken language interpreters are not readily available and there is no public funding source for interpreters when the parties are indigent. Additionally, it was noted that most court forms are provided only in English, even those that explain how to obtain an interpreter.

Sometimes the available interpreter does not meet the litigant's needs because of dialect differences. One attorney commented: "I have observed numerous times that interpreters do not properly interpret because of variations in the Spanish language." In other situations the litigant is not well educated or proficient in his or her first language, which poses other challenges to interpretation.

Along with the increased immigrant population is the need for more diverse translators. Phillip Buhler of the Hispanic Bar Association of Northeast Florida spoke of the lack of interpreters for the growing Russian and Bosnian populations in the Jacksonville area. Similarly, other speakers highlighted the need for more translators to accommodate the Asian-Pacific American and Haitian communities. "[T]hese communit[ies] are expanding and moving beyond Dade County, but the courts have not yet caught up with those changes," said Lisa Metellus-Hood of the Haitian Lawyers Association, during a Miami public meeting.

Martinez-Mullen spoke about the cultural barriers that impact on victims of domestic violence and their ability to access the court system. There is a lack of interpreters for certain domestic violence proceedings and forms are not available in other languages. Additionally, there is a general lack of understanding by court officials of different countries and their culture. For example, in some countries the police are not trusted, so victims may not report incidents of violence. In other countries, leaving one's husband is shameful and the wife faces losing not only her relationship with her husband but also the relationship with her entire family. A greater understanding of these cultural dynamics will help the court understand the situation of the family before it.

Mary Gundrum, managing attorney with the Florida Immigration Advocacy Center, spoke about the severe challenges immigrants face when trying to access

the state courts. “They have, most fundamentally...a well-grounded fear of deportation.” She explained that immigrants are reluctant to access the state courts at all, because they fear they will be reported to the federal authorities, detained, and/or deported.

Gundrum relayed information about a mother of three children who was the victim of domestic violence. The mother went to the court for a temporary restraining order against her abusive husband. When the court learned she was undocumented, the court notified the Department of Homeland Security. The abused mother and her children were picked up and detained for deportation. The Immigration Advocacy Center obtained release of the mother and her children, because the law provides immigration relief via an asylum claim.

Another example of disparate treatment of immigrants is in the area of juvenile dependency. Gundrum informed the Standing Committee of a case where the judge referred an abandoned, abused, or neglected child to the Department of Homeland Security, which picked him up and prepared him for deportation. She advised the Committee that the law provides protections for undocumented children who have a need for protection from abandonment, abuse, or neglect. Because many state court judges may be uninformed about the legal protections that apply to immigrants, there is a need for judicial education to ensure the protection of these children and families.

Overview of Survey Data⁴³

The Committee received 4,919 responses from attorneys, judges, staff, jurors, and litigants regarding their perception of unfair treatment of individuals in Florida based on use of the English language.

⁴³ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

Florida courts treat English-speaking and non English-speaking persons alike.					
	Attorneys	Judges	Staff	Jurors	Litigants
<i># Responses</i>	1,315	238	1,047	1,199	1,120
% Agree	46%	70%	62%	68%	47%
% Disagree	22%	15%	14%	6%	21%

As shown above, the majority of judges (70%) and jurors (68%) perceived that Florida courts treat persons the same, based on their English language skills, and the majority of court staff participants shared this view as well (62%). On the other hand, less than half of the attorneys (46%) and litigants (47%) agreed with this statement, registering the most disagreement with the court system in this regard at 22% and 21% respectively.

In 2005, the Standing Committee had an opportunity to submit question to The Florida Bar for inclusion in its annual membership survey. Among those responding to the question on perceptions of language bias there was a difference between the views of Hispanic attorneys and other attorneys, as reflected in the table below:

Florida courts treat English-speaking and non English-speaking persons alike.			
	Non-Hispanic White Attorneys	African-American Attorneys	Hispanic Attorneys
% Agreeing	45%	44%	35%

When asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on their language skills, fewer than 20% of attorneys, judges, and court staff responding to the Standing Committee's survey answered "yes." At 18%, attorneys reported the highest level of unfair treatment, while court staff, at 11%, indicated the lowest level of unfair treatment. Of those who commented on their personal experiences, the most common response was that courtroom participants who are not fluent in English are often disrespected and

treated unfairly by judges and court personnel. The comments also highlighted the unavailability of qualified interpreters during court proceedings.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their language skills?			
	Attorneys	Judges	Staff
<i># Responses</i>	<i>1,306</i>	<i>231</i>	<i>1,028</i>
<i>% "Yes"</i>	<i>18%</i>	<i>16%</i>	<i>11%</i>

CHAPTER SIX: Perceptions of Age Bias

Aging baby boomers have increased the awareness of bias toward elders, commonly known as “ageism.” Age bias occurs when stereotypes—whether positive or negative, accurate or inaccurate—concerning an individual because of his or her age guides one’s decision-making and behavior about that individual. The existence of ageism in the legal system raises many issues that can affect the performance of judges, jurors, attorneys, and litigants alike, including how they view other participants in the court system.

In 2006, the oldest of the baby boomers, the generation born between 1946 and 1964, turned 60 years old. The number of people turning 60 each day in 2006 was 7,918, or 330 every hour.⁴⁴ And, according to data compiled by the National Center for Health Statistics, these aging boomers are living longer. Life expectancy for Americans is now nearly 78 years, the longest in United States history. By 2030, it is projected that more than one in every four Florida residents will be age 65 and older.⁴⁵ The ramifications of an aging population will affect the court work force as well as the number and types of cases brought before the courts.

Elders are not the only age group that experience unique challenges in the court system. As documented by the Commission on the Legal Needs of Children,⁴⁶ children who are involved in the justice system often lack a voice in proceedings that affect their lives. Children may lack adequate legal representation in delinquency proceedings or be denied the opportunity to attend dependency proceedings.

This chapter explores the statistical and personal reports on perceptions of age bias in Florida courts.

⁴⁴ Source: Facts for Features, Oldest Baby Boomers Turn 60!, United States Census Bureau, January 3, 2006.

⁴⁵ Source: Facts for Features, Oldest Baby Boomers Turn 60!, United States Census Bureau, January 3, 2006.

⁴⁶ See Final Report, Florida Bar Commission on the Legal Needs of Children, June 2002; [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/0718346282810A0985256BEA00684438/\\$FILE/finalLNCversionfromJan%20website%20file.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/0718346282810A0985256BEA00684438/$FILE/finalLNCversionfromJan%20website%20file.pdf?OpenElement).

Elders

While a substantial majority of survey respondents appear to believe that age bias in the court system is non-existent, or at the very least, isolated, there were a few differences of opinion identified in the surveys. Attorneys frequently stated the belief that elders are given better treatment and more flexibility than younger individuals, particularly by judges and court personnel. One attorney described his belief this way:

In my personal experience, judges give preferential treatment to older attorneys over younger counter-parts irrespective of the case law being argued. While I recognize that older attorneys certainly have more experience, that does not necessarily equate with knowledge. Judges should ignore age and focus on the law and decide the issues at hand [based] on the applicable law.

This perception of preferential treatment for elders was echoed by a judge who stated: "My perception is not that there is discrimination against the elderly, but rather that their age is taken into account so that by some measures they may receive more favorable treatment than a non-elderly person." According to another attorney, "The court is very deferential to the elderly and quite often hostile to the young."

The majority of the comments from judges, however, suggested that older litigants receive poor treatment, as opposed to preferential treatment. One judge commented that in guardianship and Baker Act⁴⁷ cases, elders are sometimes ignored by their attorneys or left out of important conversations regarding their case. Still other judges acknowledged that because it may take older court participants longer to get things accomplished, attorneys and court staff tend to

⁴⁷ The Florida law covering both voluntary and involuntary treatment is Chapter 394 of Florida Statutes, known as the Florida Mental Health Act or the Baker Act. The Baker Act is a means of providing individuals with emergency services and temporary detention for mental health evaluation and treatment when required, either on a voluntary or an involuntary basis. For more information about the Baker Act and elders, see "Judicial Administration of the Baker Act and Its Effect on Florida's Elders (Executive Summary)," available online at http://www.flcourts.org/gen_public/family/diversity/bin/bakeract.pdf.

show little patience for them. "Judges have a tendency to be impatient with elderly litigants, particularly if pro se," one judge said.

Speaking on behalf of the Elder Law Section of The Florida Bar, Christopher Likens observed the stakes are high in many cases involving elders. Likens said that in guardianship cases, some elders "seem to lose more rights than most criminal defendants do." Other obstacles facing elders include inadequate or difficult physical access to the court and communication barriers. Additionally, many judges lack training specific to elder exploitation, incapacity, and elder disability issues.

Professor Rebecca Flowers provided the Standing Committee with an informative presentation about a model courtroom at Stetson Law School that was specifically designed to be elder friendly. Flowers said the motto at Stetson in creating the barrier-free courtroom was "the first step to justice for all is access for all." She also stressed the need to provide elders with understandable information about the court process.

Juveniles

Gerry Glynn, Chair of The Florida Bar Legal Needs of Children Committee, spoke about the "incredible disparities" that occur in juvenile delinquency proceedings. Citing empirical data, he said the disparity is most severe with regard to detention, commitments, and other sanctions for children of color. Florida is one of 15 states that give prosecutors – rather than juvenile judges – the power to charge teens as adults. A nationwide study released in the spring of 2007 found that Florida was among the first states to give prosecutors the power to decide whether a youthful offender should be tried as an adult. The study, by Campaign for Youth Justice, an advocacy group against adult sentencing of juveniles, and the Justice Policy Institute, a Washington-based think tank, showed that in the 1990s, Florida sent nearly as many youthful offenders to adult court each year as all the other states combined. According to the Department of Juvenile Justice, the

number of juveniles in Florida transferred to adult court increased to 3,408 in FY 2006-07, a sharp increase (17%) since 2005-06, when the total was 2,903.⁴⁸

Glynn also spoke about the issue of schools and how they impact Florida's juvenile justice system. He reported that "schools are our number one feeders [of children into] juvenile delinquency proceedings." He suggested that the prosecutors should consider alternative sanctions in the school rather than pulling the child out of school and sending them into the juvenile justice system. Minority children are more likely to be sent to the juvenile justice system, to get them out of the school system, he said.

Steve Howells, speaking on behalf of the Advocacy Center for Persons with Disabilities, shared information about children with disabilities who become involved with the juvenile delinquency system. He provided startling national statistics gathered by Philip Uninsky, an attorney in New York, reflecting that children with disabilities are twice as likely to be arrested as non-disabled youth for comparable delinquent acts.⁴⁹ Statistics also show that children who have learning disabilities, who are seriously emotionally disturbed, who have ADHD, or who have mental retardation are over-represented in juvenile detention, Howells reported. Sue Hohmamt, of NAMI Florida, advised the Standing Committee that 50-75% of incarcerated youth have a diagnosis for a mental disorder.

Howells recommended that Florida develop and implement an interagency partnership that clarifies the respective roles of educators, law enforcement,

⁴⁸ Five Year Juvenile Delinquency Trends and Conditions, Florida Department of Juvenile Justice, <http://www.djj.state.fl.us/Research/Trends.html>.

⁴⁹ Philip B. Uninsky, Executive Director, Partnership for Results, Auburn, New York, citing sources including the National Center of Education, Disability, and Juvenile Justice (<http://www.edjj.org>); Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current Status of Evidence-Based Research, National Council on Disability, May 2003, <http://www.ncd.gov/newsroom/publications/2003/juvenile.htm#Data>; Leone, P.E. & Meisel, S.M. (1997), Improving Education Services for Students in Detention and Confinement Facilities, Children's Legal Rights Journal 17(1), pp. 1-12; Rutherford, Robert B. Jr., Michael Bullis, Cindy W. Anderson, and Heather M. Griller-Clark, 2002, Youth with Disabilities in the Correctional System: Prevalence Rates and Identification Issues, College Park, MD, Center for Effective Collaboration and Practice, American Institutes for Research; Murphy, Donna M. 1986, "The Prevalence of Handicapping Conditions Among Juvenile Delinquents," Remedial and Special Education 7:7-17; Pamela Casey and Ingo Keilitz, Estimating the Prevalence of Learning Disabled and Mentally Retarded Juvenile Offenders: A Meta-Analysis in Understanding Troubled and Troubling Youth.

department of juvenile justice, and others in providing for the health, safety, and education of children with disabilities while at the same time providing for the security of the community. A similar initiative in Auburn, New York, resulted in a decline in the number of delinquency offenses, foster care placements, and adolescent arrests. It also improved school safety through reductions in bullying, crimes against persons, fighting, property crimes, and bomb threats.

The Standing Committee learned that some Florida courts have a blanket policy of restraining all juveniles with leg irons and handcuffs that are chained to their waists. Some child advocates believe such restraints should be used only after a judge makes an individual determination of whether a juvenile is violent or poses a flight risk. It has been reported that in Miami-Dade County, where judges recently began holding individual hearings to determine if a child should be restrained before entering the court, judges found shackles were unnecessary in 95% of the cases. This matter is under review by a Bar rules committee and is also under consideration by the executive and legislative branches.

Glynn spoke to the Standing Committee about the need to improve legal representation for children. "Children as a group may be at a disadvantage," because nearly 50% are unrepresented in delinquency proceedings. The lack of legal representation for children in court may violate international treaties, Glynn said. "Many of our children are not having their voices heard in court." In some instances, children enter uncounseled plea agreements because their parents tell them to or because the parents refuse to hire legal counsel. There are racial and economic disparities that impact on legal representation in delinquency court, as well, Glynn reported.

According to a report by the National Juvenile Defender Center, Florida's system for providing constitutionally guaranteed defense services for poor children accused of crimes is flawed.⁵⁰ The report found that the lack of indigent defense resources, late appointment of counsel, and multiple systemic barriers converge to deny children involved in the delinquency system with their fundamental right to

⁵⁰ "Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings," National Juvenile Defender Center, October 2006; <http://www.njdc.info/florida.php>.

legal representation. As a result, children are navigating the legal system alone at complex, fast-paced hearings where critical decisions are being made that have lasting implications. The report also found that juvenile defenders labor under staggering caseloads and may lack the specialized training required to handle these complex cases.

In dependency court, Glynn said, children's best interests are required to be represented. "But under the statutes it says not only is their best interest supposed to be represented, but the guardian ad litem is supposed to indicate their choice in the matter. That's not happening."

On behalf of the Florida Guardian ad Litem Program, Angeli Kramer said there are 10,000 abused or neglected children for whom no guardian ad litem is available. She also reported that every day court decisions are made that involve important aspects of children's lives: whether to remove a child from his parents and siblings, whether to place a child in a foster home or with a relative, or whether to involuntarily commit a child to a residential treatment facility. Most of these decisions are made without the presence or participation of the children who are the most affected by the decisions. The Standing Committee heard that some courts are reluctant to allow the children to be present because it would lengthen hearings. Additionally, Department of Children and Family case workers are responsible for transporting the children to the court, but reportedly claim they do not have the resources to do so.

Kramer also spoke about children with developmental disabilities who are involved in the dependency system. She said there are problems with proper diagnosis; for example, a child found by the school system to have a mental disability may suddenly be deemed by the state agency to have an IQ high enough to prevent the child from qualifying for state services. Even when the child is determined to qualify for state services, there is a lengthy waiting list. Many children with developmental disabilities age out of the foster care system without receiving needed services. Similar issues exist with regard to treatment for mental illness. Kramer also noted that permanent placement is delayed for children with physical or mental disabilities, due to the difficulty in locating adoptive homes for those children.

Maria Martinez, of the Orange County Children’s Advocacy Center, said there may be a perceived lack of accountability with regard to judicial handling of dependency cases, as these proceedings are sometimes closed to protect the child’s privacy. However, it was noted by Standing Committee members that most dependency cases are open proceedings that are subject to public scrutiny.

Glynn noted that going to court is an extraordinarily stressful experience for children, especially if they are victims of abuse or neglect, but even if they have been charged with a delinquent act. He reported on the advantages of courts that are able to provide kid-friendly waiting areas and kid-friendly court processes.

The Standing Committee also heard that a child’s comprehension of court proceedings is very low. Children may not understand the laws they are accused of breaking, or the court proceedings they are faced with as a result. Then, if they fail to follow the court’s order, which they may not have understood, they are punished. A judge shared her experience that when juveniles are asked to raise their right hand, many raise their left hand as a result of nervousness or an inability to distinguish right from left. Glynn believed it would be helpful for judges and attorneys to receive training on communicating with children.

Overview of Survey Data⁵¹

The Committee received 4,934 responses from attorneys, judges, court staff, jurors, and litigants regarding their perception of unfair treatment of individuals in Florida courts based on age.

Florida courts treat elderly and non-elderly persons alike.					
	Attorneys	Judges	Staff	Jurors	Litigants
<i># Responses</i>	1,310	239	1,045	1,210	1,130
Agree	60%	75%	73%	82%	52%
Disagree	10%	11%	5%	2%	19%

⁵¹ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

As a whole, the majority of participants in each of the polled groups agreed that Florida courts treat elderly and non-elderly persons alike (see table above). Judges (75%), court staff (73%), and jurors (82%) reported the highest levels of agreement, while attorneys and litigants indicated the lowest levels of agreement at 60% and 52% respectively. Litigants reported the highest levels of disagreement with this statement at 19%.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their age?			
	Attorneys	Judges	Staff
<i># Responses</i>	<i>1,302</i>	<i>233</i>	<i>1,031</i>
"Yes"	10%	8%	3%

As the table above shows, when asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on their age, one out of ten attorney participants answered affirmatively. Eight percent (8%) of judges responded that they had seen or experienced such treatment, as well as 3% of court staff participants. In general, survey participants commented that the courts give elders preferential treatment while at other times elders are dealt with impatiently.

As a <i>judge</i>, have you seen or experienced unfair treatment of individuals in your courtroom based on age?	
<i># Responses</i>	<i>220</i>
"Yes"	7%

Judges were asked about unfair treatment in their courtrooms based on the age of court participants. Of the 220 who responded, 7% answered "yes" to this question. Those who reported such experiences commented that elders are often given more leeway regarding court procedure and treated with more respect than others.

As a <i>court employee</i>, have you seen or experienced unfair employment decisions (including hiring, promotions, pay and discipline) based on age?	
<i># Responses</i>	830
"Yes"	5%

As shown in the above table, persons employed directly by the court system were asked whether they had seen or experienced unfair employment decisions based on age. Of the 830 responding to the survey question, 5% answered affirmatively.

Have you seen or experienced biased attitudes or behaviors in professional settings <i>other than the courtroom</i> based on age:				
	BY JUDGES?		BY ATTORNEYS?	
	Attorneys	Judges	Attorneys	Judges
<i># Responses</i>	1,218	219	1,217	217
"Yes"	7%	6%	26%	13%

Regarding biased behaviors by judges in professional settings other than the courtroom based on age, a minority of attorneys (7%) and judges (6%) reported having had such experiences. However, slightly more than one-quarter of all attorneys (25%) reported having experienced age-biased attitudes and behaviors involving other attorneys outside the courtroom, and 13% of judges agreed.

Were you treated unfairly during your jury service because of your age?	
<i># Responses</i>	1,232
"Yes" (Jurors)	0%

The key question asked of jurors about age bias was whether they had been treated unfairly during their jury service because of their age. None of the 1,232 jurors responding to the survey indicated that they had experienced such treatment.

Have you seen or experienced biased attitudes or behaviors by judicial nominating commissions (JNCs) based on age?		
	Attorneys	Judges
<i># Responses</i>	739	206
"Yes"	7%	9%

Finally, less than a tenth of all attorneys (7%) and judges (9%) agreed to having experienced biased attitudes or behaviors by judicial nominating commissions based on age. A noticeable number of respondents commented that their answer to this question was "no," because they had no personal experience with nominating commissions.

CHAPTER SEVEN: Perceptions of Disability Bias

The Americans with Disabilities Act (ADA) was enacted to afford qualified individuals with disabilities the same opportunities that are available to persons without disabilities. The ADA provides civil rights protections to individuals with disabilities similar to those provided by the Civil Rights Act to individuals on the basis of race, color, sex, national origin, age, and religion. While Florida's courts have made significant progress since the 1990 passage of the ADA, individuals with disabilities still encounter architectural, communication, and attitudinal barriers as they seek access to the justice system. This chapter will explore the statistical and personal reports that reflect perceptions of disability bias in Florida courts.

According to the U.S. Census Bureau, approximately 12% of our nation's population have a severe disability. A wide variety of disabilities may be experienced, such as people with mental disabilities; persons who are blind or have low vision; people who are deaf or hard of hearing; individuals with mobility impairments; persons with developmental disabilities; and people who have combinations of disabilities.

There are well-documented links between disability and the opportunity for meaningful participation in society. Indeed, as stated by the United States Congress:

Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

Congressional Findings, Americans with Disabilities Act of 1990 (42 U.S.C. §12101(a)(7)).

As the following table reflects, individuals with disabilities are disadvantaged with regard to education, employment, and earnings opportunities, and the

disparity increases with the severity of the disability.⁵² These disadvantages follow individuals with disabilities into the courthouse.

Indicator	No Disability	Nonsevere Disability	Severe Disability
Age 21-64 employed in past year	88%	82%	43%
Median earnings	\$25,000	\$22,000	\$12,800
Poverty rate age 25-64	8%	11%	26%
Household incomes of \$80,000 or more	26%	18%	9%
College graduates	43%	33%	22%

The Florida Supreme Court Commission on Fairness, predecessor of the Standing Committee on Fairness and Diversity, examined discrete issues involving interaction between the courts and persons with disabilities, including:

- Jury Service Accessibility for Older Persons and Persons with Disabilities in Florida (report issued 1999)
- Judicial Administration of the Baker Act and Its Effect on Florida's Elders (report issued 1999)
- Guardianship Monitoring in Florida (report issued 2003)

Additionally, the Florida Supreme Court's Committee on the Court-Related Needs of Elders and Persons with Disabilities, which was modeled after the American Bar Association committee of the same name, issued a report and recommendations in 1994.

The Standing Committee's surveys and public meetings documented some of the continuing obstacles that individuals with disabilities experience in accessing the courts.

⁵² Source: U.S. Census Bureau Facts for Features: Americans with Disabilities Act.

Overview of Qualitative Responses

Based upon the individual comments obtained through the surveys and public hearings, it is evident that of primary concern to many people with disabilities are the remaining physical, communication, and attitudinal barriers that impede access to courts. According to Steve Howells, who was speaking on behalf of the Advocacy Center for Persons with Disabilities, Inc., obstacles range from inaccessible jury boxes, public restrooms, and parking lots, to a scarcity of qualified sign language interpreter services as well as inaccessible electronic court information and information technology.

And, although auxiliary aids and services are now routinely provided by the state courts, Howells noted that architectural compliance problems are still widespread in courts throughout the state. Other speakers reported that persons who use wheelchairs or have other disabilities experience extreme difficulty locating parking near the courthouse, especially since additional parking restrictions have been imposed to enhance court security. Structural barriers in court facilities pose tremendous obstacles for individuals with disabilities and their families, such as narrow entrances to courtrooms, counsel tables that do not provide sufficient knee space for persons who use mobility devices, witness stands that do not provide vertical access, and a lack of adequate assistive listening devices.

Because of transportation difficulties, side effects of medicine, or for other medical reasons, individuals with disabilities may have difficulty arriving at the courthouse at the scheduled time. When they arrive at the security screening area, many court security officers are not prepared to deal with service animals, screen persons who use wheelchairs, or communicate with court visitors who are deaf or hard of hearing about security protocols. One attorney reported he had witnessed persons who use wheelchairs being denied entry to the court, physically frisked in an improper manner, and verbally disrespected by security staff.

During a public meeting, Julie Shaw, then Executive Director of the Governor's ADA Work Group, recalled observing announcements to the jury pool being provided verbally with no attempts to accommodate potential jurors who were deaf or hard of hearing. She also told about a member of a jury being replaced by the judge due to the lack of an assistive listening device in the

courtroom. The Standing Committee heard from several persons with disabilities about their personal experience with jury service. There is a perception that persons with disabilities are routinely discouraged from jury service or inappropriately removed from a jury panel due to stereotypes and misconceptions about their ability to serve.

One speaker reported that an attorney who uses a wheelchair has been told by a judge on more than one occasion of the need to stand while addressing the court. Similar observations were recounted by Matthew Dietz on behalf of the Disability Independence Group, who described how attorneys using wheelchairs have difficulty engaging in sidebar dialogues due to the height of the judge's bench. Dietz further explained how attorneys with limited or no vision may be disadvantaged by the inability to review exhibits or documents prior to their scheduled court appearance.

The courts system faces a new challenge with the need to make electronic court information and technologies more accessible. With the explosion of personal computers, the advent of the Internet, and the rapid growth of other technologies since the enactment of the Americans with Disabilities Act, the concept of accessibility has taken on a new meaning. During the 2006 session, the Florida Legislature enacted a law that requires state government entities to adhere to the standards set forth in Section 508 of the Rehabilitation Act of 1973, as amended. Sections 282.601 through 282.606, Florida Statutes, require the judicial branch to ensure that court electronic information and information technology are accessible to persons with disabilities. These requirements extend to word processing documents, spreadsheet files, and .pdf files, as well as web pages, slide show presentations, videos, audio files, software applications, computer hardware, telephone systems, and self-contained closed products such as faxes and copy machines.

The law became effective July 1, 2006, and applies to electronic information or information technology developed, competitively procured, maintained, or used by state entities on or after that date. No funding was provided to support implementation of this important legislation, however. Furthermore, those with technology expertise advise that in some instances the aspirations of the law

exceed the current state of technology. Nevertheless, the Florida courts are earnestly working to afford access to electronic information and information technologies. Educational presentations and training sessions on this topic have been, and will continue to be, provided for chief judges, court managers, court webmasters, court technology officers, and other court staff. Many improvements have been made to the Supreme Court website (www.floridasupremecourt.org) and the Florida Courts website (www.flcourts.org) as well. "Equitable access to electronic information technology and equipment for persons with disability is essential to the exercise of rights and responsibilities and full citizenship," said Camille Washington, an attorney speaking on behalf of the Advocacy Center for Persons with Disabilities. The courts must continue to gain in their understanding of how the new law impacts on court business, including distance learning programs, contracting practices, and e-filing. Full accessibility of court technology will require the cooperation of all components of the justice system.

Sharon Caserta, who is both an attorney and a certified sign language interpreter, reported on barriers to legal proceedings faced by persons who are deaf, hard of hearing, or deaf-blind. Caserta operates the grant-funded Deaf/Hard of Hearing Legal Advocacy Program at Jacksonville Area Legal Aid and understands well the linguistic presentation of persons who use American Sign Language (ASL), which is a conceptual language. For many persons who communicate through ASL, English is their second language and that may also affect comprehension of written court materials. Caserta also noted that when it comes to communicating with persons who have hearing disabilities, one size does not fit all.

Caserta reported that when a deaf person is arrested in Florida, the court is not always notified of the need for an interpreter or other accommodation in advance of the first appearance or arraignment. Partnerships and improved communication between law enforcement and the court could remedy that situation, she suggested. She also emphasized the importance of educating attorneys, mediators, and medical professionals who perform court-ordered psychiatric evaluations about how to work effectively with clients who are deaf or hard of hearing. The failure of organizations that perform court-ordered ancillary services – such as parenting classes, traffic school, counseling services, substance

abuse treatment, AA meetings, and community service – to accommodate disabilities is a frequent problem, as well.

To ensure quality service, Caserta recommended credentialing requirements for interpreters who work in the court system. If video is used to facilitate court proceedings, such as video arraignments, care must be taken to ensure that the person who is using the service can view an interpreter. Caserta also suggested that the court system review its contracts with sign language interpreter services, as she believes there is a potential to both increase the level of proficiency while at the same time reduce court cost.

While every trial and appellate court has designated at least one individual to serve as the ADA coordinator in their jurisdiction, several speakers noted that court participants do not always know how to contact the court ADA coordinator, how to request an accommodation, or how to file a grievance if they believe their rights have been violated.

The Standing Committee heard that many individuals are reluctant to divulge their disability due to lingering stereotypes or fear of reprisal. Additionally, some attorneys with disabilities believe they are disadvantaged when they publicly reveal their disability in the courtroom. For example, one speaker reported that an attorney who wears sneakers for his rheumatoid arthritis feels humiliated by having to “apologize” for not wearing formal attire to court.

Some speakers at the public meetings commented on discrimination with regard to the employment of attorneys with disabilities. An attorney described how she was told that having a mental illness would be “career suicide,” and another attorney with multiple sclerosis described how she spends “an inordinate amount of time trying to cover up” her disability because when she discloses she is treated quite differently. There is a perception that legal employers are reluctant to hire attorneys with disabilities because of concerns about the cost of providing the accommodations that will enable these attorneys to pursue their chosen profession. Such concerns may not be warranted, however, since according to the Job Accommodation Network nearly half (46%) of the accommodations needed by employees and job applicants with disabilities cost nothing, and of those

accommodations that did have a cost the typical one-time expenditure by employers was \$500.⁵³

Several people spoke about obstacles faced by individuals with mental disabilities. One mental health advocate observed that society perceives and treats mental illnesses differently than other health issues. “[M]ost people have to stay in the closet because there is so much lack of accurate information about mental illnesses,” she said. She observed that some judges are unsure about the differences between a psychologist and a psychiatrist, and may consequently make a faulty ruling on the admission of evidence and credibility of witnesses. The Standing Committee also heard that individuals with psychiatric disabilities may find it challenging to handle the stress of courtroom proceedings, communicating with courthouse officials and judges, and the daily effects of medications.

Representatives of the National Alliance for Mental Illness (NAMI) spoke about persons with psychiatric disabilities who become involved in the criminal justice system. The failure of the mental health system to provide adequate treatment has resulted in the criminal justice system being left to confront the unmet needs of persons with mental illnesses. Persons with mental illnesses often cycle in and out of jail, many times for minor crimes. Additionally, there is a perception that bias sometimes results in disparate sentencing of defendants with mental disabilities. People with mental disabilities are, therefore, at increased risk of spending unnecessary time in jail and prison. Indeed, Florida jails and prisons have become the de facto treatment centers for persons with mental illnesses. Susan Hohmant, Executive Director of NAMI Florida, referred to a 2006 publication by the U.S. Department of Justice indicating that in Florida 64% of jail inmates, 56% of state prisoners, and 45% of federal prisoners have symptoms of serious mental illnesses. Justice requires that these individuals be diverted from the criminal system into the treatment they so desperately need, NAMI representatives said. Through mental health court, which is a specialized docket, the state courts can be an influence in diverting this population into treatment.

⁵³ Workplace Accommodations: Low Cost, High Impact, Job Accommodation Network, Morgantown, WV.

Marion Moore from NAMI-Jacksonville also reported that individuals who are incompetent to stand trial are held in jails longer than the statutes allow because of the lack of beds in treatment facilities. Generally speaking, a criminal defendant is not considered competent to stand trial if the defendant's mental condition prevents him or her from understanding the nature and objective of the proceedings against him or her, or if the court determines that the defendant is unable to assist in his or her defense. Florida law requires persons who are incompetent to stand trial due to a mental illness, mental retardation, or autism, be committed to a forensic facility where those individuals receive short-term treatment aimed specifically at enabling them to stand trial with as little delay as possible. Moore suggested that the rules for determining when competency has been restored should be reviewed, as she believes many individuals are returned for trial without achieving competency. Additionally, the length of time a defendant is held in jail without treatment while waiting for the trial to begin may lead to his or her decompensation, with the individual again becoming legally incompetent to stand trial.

A judge responding to the Standing Committee's survey commented on economic barriers facing individuals with disabilities. The judge stated that "disabled people are commonly victimized by the courts and connected attorneys in guardianship proceedings, and since many disabled people are on fixed incomes, they have less ability to afford counsel to defend them in guardianship proceedings and other proceedings." Gordon Scott, an attorney with the Advocacy Center for Persons with Disabilities, Inc., observed that the process to request indigent status is extremely complicated and unnecessarily cumbersome for elders or individuals with disabilities who are surviving on Social Security, Supplemental Security Insurance, or Social Security Disability Insurance.

Overview of Survey Data⁵⁴

⁵⁴ Percentages may not total 100%, as those who neither agreed nor disagreed are not included in this analysis.

The Committee received 4,934 responses from attorneys, judges, court staff, jurors, and litigants regarding their perceptions of bias in Florida courts based on disability. Each of the five groups was asked to record their agreement or disagreement with the following statement: "Florida courts treat persons with disabilities and persons without disabilities alike."

Florida courts treat persons with disabilities and persons without disabilities alike.					
	Attorneys	Judges	Staff	Jurors	Litigants
<i># Responses</i>	1,307	235	1,046	1,200	1,130
% Agreeing	62%	80%	75%	76%	52%
% Disagreeing	10%	9%	5%	2%	18%

As shown in the above table, at least half of the participants in each of the polled groups agreed that Florida courts treat such persons alike, with judges reporting the highest level of agreement (80%). Court staff and jurors tended to share this view as well, with 75% and 76%, respectively, agreeing with this statement. While attorneys and litigants tended to agree more often than not, they reported the least positive perception of the courts, with levels of disagreement at 10% and 18% respectively.

One respondent commented that the court system has made many accommodations for persons with disabilities so that they are treated fairly, albeit not alike. However, in general, the narrative survey responses reflected negative perceptions of the willingness of judges and court personnel to accommodate persons with disabilities, particularly those with mental illnesses. Additionally, respondents commented that judges are sometimes impatient with individuals who are disabled or make inappropriate comments about disabilities. Likewise, respondents noted that a number of court facilities still present physical barriers to those with disabilities.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their disability?			
	Attorneys	Judges	Staff

Have you seen or experienced unfair treatment of individuals in Florida courts based on their disability?			
	Attorneys	Judges	Staff
<i># Responses</i>	1,302	231	1,032
% "Yes"	9%	6%	3%

Regarding personal experiences of unfair treatment of disabled individuals in Florida courts, only 3% of court staff, 6% of judges, and 9% of attorneys reported having seen or experienced unfair treatment based on disability.

As a <i>judge</i>, have you seen or experienced unfair treatment of individuals in your courtroom based on disability?	
<i># Responses</i>	219
% "Yes"	5%

Judges were asked whether they had seen or experienced unfair treatment of individuals in their courtrooms based on disability. One out of every twenty judges responding (5%) answered "yes" to this question. While this percentage may appear to be low it is, nevertheless, important since the judges were noting such unfair treatment had occurred within their own courtrooms.

As a <i>court employee</i>, have you seen or experienced unfair employment decisions (including hiring, promotions, pay and discipline) based on disability?	
<i># Responses</i>	828
% "Yes"	2%

As seen in the above table, when individuals employed directly by the court system were asked whether they had seen or experienced unfair employment decisions based on disability, only 2% expressed that they had.

Have you seen or experienced biased attitudes or behaviors in professional settings <i>other than the courtroom</i> based on disability:

	BY JUDGES?		BY ATTORNEYS?	
	Attorneys	Judges	Attorneys	Judges
<i># Responses</i>	1,220	217	1,221	217
% "Yes"	4%	5%	18%	10%

In addition, judges and attorneys were asked whether they had seen or experienced biased attitudes or behaviors based on disability in professional settings other than the courtroom. As shown above, nearly identical percentages of attorneys and judges reported such experiences by judges, with affirmative responses at 5% and 4% respectively. As to evidence of such behavior by attorneys, the attorney participants more frequently responded (18%) "yes" than the judge participants (10%).

Were you treated unfairly during your jury service because of a disability?	
<i># Responses</i>	1,232
% "Yes"	0.2%

The key question asked of jurors on this topic was whether they had been treated unfairly during their jury service because of a disability. Only 0.2% of the 1,232 jurors responding to the survey indicated that they had experienced such treatment.

Have you seen or experienced biased attitudes or behaviors by judicial nominating commissions (JNCs) based on disability?		
	Attorneys	Judges
<i># Responses</i>	734	206
% "Yes"	3%	2%

Both attorneys and judges reported low frequencies of biased attitudes or behaviors by judicial nominating commissions based on disability. However, attorneys (3%) tended to agree slightly more often than judges (2%). A noticeable

number of respondents commented that their answer to this question was "no," because they had no personal experience with nominating commissions.

CHAPTER EIGHT: Perceptions of Other Biases

The Standing Committee received comments on various other forms of biases, as well, which are discussed in this chapter.

Sexual Orientation and Gender Identity

While the Florida legal system is slowly making progress on the journey toward fairness and inclusion of persons of different sexual orientations, there is still a long road ahead. In 1978, the Florida Supreme Court considered a case in which the Board of Bar Examiners requested guidance in determining whether a gay lawyer should be admitted to the Bar. The majority ruled he should be admitted to the Bar, but one justice wrote a dissenting opinion stating: "There should not be admitted to The Florida Bar anyone whose sexual lifestyle contemplates routine violation of a criminal statute." Nearly 30 years later, attitudes are more accepting, and there are openly gay and lesbian judges and attorneys today in Florida.

Still, it is not always easy to be a gay or lesbian lawyer. The Standing Committee heard reports of uninformed and inappropriate remarks by judges and lawyers. An attorney at the Miami public meetings reported that "I had lawyers describe to me how they were chilled or that their clients were chilled from accessing the court system because they were afraid that their personal sexual orientation would be made an issue at mediation or in court. And they have actually settled cases when they would not otherwise have done so."

And, unlike the other forms of discrimination addressed in this report, sexual orientation is an area where biases are written into state law.⁵⁵

⁵⁵ The Standing Committee notes that while there are statutes that discriminate against individuals on the basis of sexual orientation, Canon 3(B), of the Florida Code of Judicial Conduct, expressly prohibits judge from manifesting bias or prejudice on the basis of sexual orientation.

As seen in the table below, when asked whether judges treat people with courtesy and respect without regard to their sexual orientation, a majority of those responding agreed. As with other forms of disparate treatment, responses by litigants (14%) and attorneys (9%) reflected the highest levels of disagreement with the question.

Judges in Florida show courtesy/respect to people without regard to sexual orientation.					
	Attorneys	Judges	Staff	Jurors	Litigants
<i># Responses</i>	1,311	235	1,047	1,207	1,135
% Agreeing	54%	81%	72%	81%	55%
% Disagreeing	9%	7%	4%	2%	14%

In addition, judges, attorneys, and court staff were asked whether they had seen or experienced unfair treatment of individuals in Florida courts based on their sexual orientation. As shown below, 9% of attorneys, 8% of judges, and 4% of staff responding indicated that they had observed such disparate treatment.

Have you seen or experienced unfair treatment of individuals in Florida courts based on their sexual orientation?			
	Attorneys	Judges	Staff
<i># Responses</i>	1,299	230	1,030
% "Yes"	9%	8%	4%

There are an estimated 609,000 adult lesbian, gay, bisexual, or transgendered (LGBT) individuals living in Florida,⁵⁶ which places our state second in the nation in LGBT population. Florida is one of a number of states that reportedly has seen a 30 to 50% increase in the number of same-sex couples residing in the state since the 2000 census.

⁵⁶ Source: The Williams Institute on Sexual Orientation Law and Public Policy, UCLA School of Law.

The Standing Committee heard that certain Florida law works to divide families. Although same-sex couples are raising children together in Florida, because state law does not recognize “psychological” or “de facto” parents, honor co-parenting agreements, or allow gay or lesbian people to adopt, these families are relegated to second class status, asserted Florida attorney Karen Doering, senior counsel for the National Center for Lesbian Rights. Florida law only recognizes one legal parent (the biological parent); the co-parent is a legal stranger to the child. With no available legal remedy, gay and lesbian parents are unable to fully protect their families. For instance, when the biological parent dies prematurely or the same-sex partners’ relationship ends, the co-parent faces the heartbreaking reality of losing access to a child he or she has loved and raised for many years because the co-parent lacks standing to seek custody or visitation even if it is undeniably in the best interests of the child.

The system is unfair to children, as well. From the child’s perspective, he or she has two parents, but Florida law does not provide any legal mechanism through which the co-parent can acquire the legally binding rights and responsibilities of parenthood. As a result, the child suffers emotionally and financially, especially in times of crisis.

The Standing Committee heard that some judges do not understand transsexualism, a medical condition also known as Gender Identity Disorder in which the transsexual person undergoes sex reassignment as part of the medical treatment protocol. Unconscious bias against transsexual parents can hurt children, as well. In cases involving LBGT parents, the focus is often on the parents rather than the best interest of the children, Doering reported.

The Family Law Section spearheaded an effort in 2005 to gain permission for several voluntary bar sections to lobby in support of a legislative effort to eliminate Florida’s discriminatory law that prohibits gay and lesbian people from adopting, but The Florida Bar denied the lobbying request, deeming the issue too divisive.

Cronyism and Political Affiliation

Much of the input the Standing Committee received with regard to bias based on political affiliation or cronyism related to the selection and discipline of judicial officers.

In Florida, Judicial Nominating Commissions (JNCs) are charged with recommending to the governor qualified persons for appointments to one of six appellate courts as well as mid-term vacancies in the trial courts. Some respondents blame the JNCs, in part, for the lack of diversity among Florida's judiciary. Attorneys and judges alike observed that the nominating commissions embody the same biases that exist in the broader society.

The perception among some of the legal professionals who provided input to the Standing Committee is that the JNCs themselves lack meaningful diversity.⁵⁷ To some respondents, the perceived lack of diversity among JNCs is attributable in large part to the political nature of the process by which members are appointed.⁵⁸

Some attorneys who addressed the Standing Committee perceive that political party affiliation, rather than merit, is the most important factor in judicial appointments. In some areas, the legal community reported that cronyism is perceived to rule the JNCs. "If you are a part of the 'old boys' network' you get nominated," wrote one judge. "The nominees are usually from the old and wealthy families in the area and almost without exception went to the 'right' high school here. Outsiders need not apply." Another respondent commented: "Everyone knows ... people are appointed because they are the flavor of the month, or they have a political 'in,' not generally for their qualifications."

⁵⁷ As further detailed in a table in the Executive Summary, as of November 1, 2007, statewide the JNC members were 64.6% male, 35.4% female, 72.5% white, 11.8% black, and 14.7% Hispanic.

⁵⁸ Prior to a legislative change to the law regarding the appointment of members to the state's judicial nominating commissions in 2001, three lawyer members were appointed by the Florida Bar, three members were appointed by the governor and could be either lawyers or nonlawyers, and three nonlawyer members were selected by the other six commission members. Under the revision, the governor appoints all nine members of each commission.

Court users who addressed the Standing Committee also reported there is a perception that attorneys who contribute to judicial election campaigns receive preferential treatment from judges.

Respondents commented on the judicial disciplinary process as well. In Florida, allegations of misconduct by judges are handled by the Judicial Qualifications Commission (JQC). The Commission is created in the Florida Constitution and is “vested with jurisdiction to investigate and recommend to the Supreme Court of Florida” the removal or discipline of any justice or judge whose conduct warrants such action. The Commission is comprised of two district court of appeal judges, two circuit court judges, two county court judges, four members of The Florida Bar, and five lay person members.⁵⁹

The Standing Committee heard that there are instances of inappropriate conduct or remarks by judicial officers that may not be actionable by the JQC, but which nevertheless undermine trust and confidence in the justice system. An experienced attorney reported that he did not have faith that the Judicial Qualifications Commission would address individual, one-time issues relating to biased conduct or remarks. The perception among some is that the JQC will only take action when judges continually treat people very badly all the time in the courtroom. Other attorneys said minority organizations are skeptical about JQC investigations of complaints involving discriminatory language or conduct. The Standing Committee received testimony indicating that in one highly publicized case the JQC dismissed a complaint as “no probable cause” when the witnesses who were present in the courtroom had not even been questioned. Several attorneys also remarked that many incidents of unfair treatment are not reported to the JQC, for fear of retribution.

⁵⁹ Article V, Section 12, Constitution of the State of Florida.

CHAPTER NINE: Conclusion

Fairness is Fundamental

Fairness is a fundamental value recognized in the vision statement of the Florida court system: “Justice in Florida will be accessible, fair, effective, responsive, and accountable.”⁶⁰ Fairness is the foundation of the public’s trust and confidence in their court system. Courts that operate fairly and treat all participants with respect are perceived to be places where justice is done. By establishing and maintaining for more than two decades committees that are specifically dedicated to studying matters of fairness, the Florida courts have demonstrated their strong commitment to the elimination of bias and disparate treatment.

The purpose of the Standing Committee on Fairness and Diversity is to continue previous efforts to eliminate from court operations bias based on race, gender, ethnicity, age, disability, socioeconomic status, or any characteristic that is without legal relevance. In In re: Standing Committee on Fairness and Diversity, No. AOSC06-44 (Fla. Sept. 8, 2006), Chief Justice R. Fred Lewis tasked the Standing Committee to “...conduct outreach and obtain input from judges, court staff, attorneys, jurors, litigants, and/or the public on their perceptions of disparate treatment in Florida courts...” Through extensive outreach in the form of surveys, public meetings, consideration of written comments, and review of previous reports on fairness and diversity in the courts, the Standing Committee documented the perceptions – whether correct or incorrect – that are held by court participants on the treatment of persons from diverse walks of life.

The chapters in this report discuss the perceptions held by court participants of disparate treatment specific to race, ethnicity, gender, disability, age, financial status, English proficiency, or sexual orientation. While there are unquestionably matters of concern to individuals within each of those demographic groups, there are also basic issues of keen mutual interest to all.

⁶⁰ “Taking Bearings, Setting Course: The Long-Range Strategic Plan for the Florida Judicial Branch,” Judicial Management Council, 2000.

Common Themes

Justice requires that the court system be open and accessible to all; respect the dignity of every person; include judges and staff who reflect the community's diversity; and respond to the needs of all members of society. Although some testimony suggested that progress has been made, these objectives have not been fully realized within the Florida justice system. The following themes were widespread among those who took the time to share their views with the Standing Committee:

1. **Procedural Justice.** The Standing Committee's outreach documented a perceived lack of procedural justice, which leads to disenchantment with the system. Numerous studies have documented that most people care more about fair treatment than they do about winning or losing a particular case.⁶¹ Elements of procedural justice include:
 - INTERPERSONAL RESPECT: Court participants are treated with dignity and respect;
 - NEUTRALITY: Decision makers are honest and impartial, basing decisions on facts;
 - PARTICIPATION: Litigants can express their views directly or indirectly; and
 - TRUSTWORTHINESS: Decision makers are motivated to treat people fairly, are sincerely concerned with court participants' needs, and are willing to consider the litigants' respective sides of the story.

The perceived fairness of court outcomes influences the public's evaluations of the courts, but is secondary to perceived procedural

⁶¹ See Procedural Fairness: A Key Ingredient in Public Satisfaction, A White Paper of the American Judges Association, Judge Kevin Burke and Judge Steve Leben, September 26, 2007, and Trust and Confidence in the California Courts, Judicial Council of California/Administrative Office of the Courts, 2006.

fairness. Accordingly, court users' perceptions of procedural fairness are a critical component of their interpretation of experiences with the court system. Litigants tend to comply with court decisions made through procedures they deem to be fair. A litigant may lose a case but, if treated fairly, still be satisfied with his or her day in court.

2. **Barriers to Access.** Court participants face enormous obstacles in trying to access the court system including costs, communication and language barriers, lack of information or even literacy skills, cultural and attitudinal biases, and physical obstructions.
3. **Concerns about Design of the System.** The lack of adequate legal counsel can have devastating consequences for working poor and middle-income Floridians, and the widespread perception is that persons with insufficient resources are oftentimes negatively impacted by a justice system that tends to favor those of higher socioeconomic status. Additionally, many court users perceive that the justice system is designed for the convenience of those who work in the system, rather than those who have the right of access to the courts. Court policies and procedures are cumbersome and legal terminology is difficult to understand. A "conveyor belt" justice system that moves a large number of cases through the system in a short amount of time may be efficient but does not necessarily allow adequate time for individual participants to gain an understanding of proceedings or for court participants to perceive that procedural fairness has occurred.
4. **Inappropriate Conduct and Expressions of Bias.** Inappropriate remarks by judges, attorneys, and court personnel were reported to the Standing Committee. Court participants do not always feel that they receive bias-free treatment, or even that they are treated with respect; this concern was frequently voiced by racial and ethnic minorities, women, people with disabilities, those without adequate financial resources, and individuals who are gay, lesbian, bisexual, or transgendered. The Standing Committee was also advised that judicial

officers and court staff are sometimes impatient with participants who require additional time or assistance.

5. **Diversity of the Judiciary and Court Staff.** The Florida justice system – including judges, court staff, attorneys, prosecutors, mediators, and others – does not yet fully reflect the diversity of those it serves. The lack of diversity in the Florida courts system is perceived to contribute to bias and ultimately undermines the perception of fairness. Additionally, court participants suggested that judges and court staff would benefit from ongoing cultural diversity training, which would better prepare them for administering justice fairly and effectively in this rapidly changing environment.

The Challenge Is Great

As discussed throughout this report, Florida is one of the most diverse states in one of the most diverse nations on Earth. Floridians are proud of their state's cultural diversity, which adds a richness and texture to the fabric of the society; however, this extensive diversity also presents an array of challenges to the fair and equal application of the rule of law for all.

With demographic trends pushing Florida inexorably toward greater diversity, the challenge is in how the state courts will respond to these rapid social changes. Through its widespread outreach initiative, the Standing Committee on Fairness and Diversity learned that while there has been substantial progress toward achieving a bias-free justice system in Florida, many believe the process is ongoing. The overall perception of those with long-standing experience in the Florida court system is that significant improvements in reducing discrimination have been made over the past two decades. At the same time, there are perceptions among court participants that disparate treatment continues to occur, albeit in more isolated instances than was reported decades ago.

In a massive study⁶² based on detailed interviews of nearly 30,000 people across America, Harvard political scientist Robert Putnam found that diversity presents a challenge to civic life. The study found that virtually all measures of civic health are lower in more diverse settings. The study found that the greater the diversity in a community, the fewer people vote, the less they volunteer, the less they give to charity, and the less they work on community projects. As stated by Professor Putnam, "New evidence from the US suggests that in ethnically diverse neighborhoods residents of all races tend to 'hunker down'. Trust (even of one's own race) is lower, altruism and community cooperation rarer, friends fewer."

Professor Putnam went on, however, to express the view that in the long run diversity can and does benefit society. The motto *e pluribus unum*, Latin for out of many, one, reflects the belief that a diverse population strengthens the foundation of our nation, and the Standing Committee is certain that principle will hold true far into the Twenty-First Century.

The findings from the Harvard and other research⁶³ about the challenges of diversity may help provide insight as to why fairness issues have not been eliminated from the court system despite twenty years of concerted effort and why these issues will need to be addressed by the courts for years to come. As Professor Putnam states, "Tolerance for difference is but a first step. To strengthen shared identities, we need more opportunities for meaningful interaction across ethnic lines where Americans work, learn, recreate, and live." Florida's courts are committed to taking this first step and the many more that will follow.

⁶² "*E Pluribus Unum: Diversity and Community in the Twenty-first Century*," Robert D. Putnam, *Scandinavian Political Studies*, Vol. 30 – No. 2, 2007,

⁶³ See, for example, "Understanding the Decline in Social Capital, 1952-1998," Dora L. Costa, Massachusetts Institute of Technology and National Bureau of Economic Research, and Matthew E. Kahn, Tufts University, May 2001, available at <http://web.mit.edu/costa/www/scapital8.pdf>; "Diversity, Civic Engagement, and the Social Capital Debate," Louis J. Ayala and Ericka Benavides, University of Notre Dame, Paper Submitted for Presentation at the 2003 American Political Science Association, available at http://www.allacademic.com//meta/p_mla_apa_research_citation/0/6/2/4/4/p62446_index.html?type=info&PHPSESSID=acc1343cbd177545e17a583b18c5f753; and "The Downside of Difference," Andrew Leigh, Australian National University, as published in *The Australian*, January 31, 2007; at <http://www.theaustralian.news.com.au/story/0,20867,21144135-12332,00.html>.

A View to the Future

The Standing Committee acknowledges that in some instances language or behavior by judges and court staff that appears to be biased may be attributable to a lack of knowledge about how to respond or refer to court participants from various backgrounds or with different abilities. Furthermore, such language or behavior may arise from unconscious attitudes. Personal experiences affect the way an individual perceives and reacts to events. It is often observed that people do not always 'speak their minds,' and it is suspected that people may not always 'know their minds.' People may not admit to personal biases, because they do not know those biases exist. A person's inner expectations and implicit attitudes influence his or her initial perceptions of other individuals, while his or her conscious values and chosen beliefs may be quite different. Understanding such divergences is important to understanding how an individual's experiences influence his or her views.

Accordingly, the Standing Committee strongly encourages the Florida State Courts System – through statewide court education programs sponsored by the Florida Court Education Council and through local diversity education initiatives – to continue expanding experiential learning opportunities for all judges and court staff on a wide array of diversity topics. Ongoing judicial education efforts, beginning with the new judges' college and threading through each and every educational conference, are essential to achieving a bias-free court system and preparing for the increasing diversity of court participants of the future.

Achieving fairness can only be accomplished through ongoing attention at both the state and local levels. The Supreme Court is encouraged to continue to authorize and prioritize work by the Standing Committee on these important issues at the statewide level. Such direction should include future opportunities, on an intermittent basis, for court participants to provide valuable input on their perceptions of fairness. At the local level, chief judges and court managers must make fairness and diversity core values within their respective jurisdictions.

The Standing Committee recognizes that the ability to achieve a bias-free court system is dependent on a partnership with judicial system partners, as well. Accordingly, leadership of The Florida Bar, voluntary and local bar associations, law

firms, and other organizations must continue their efforts to address fairness and diversity throughout the legal profession.

The substance of fairness and diversity discussions fluctuates over time. In the early Twentieth Century, the United States was grappling with conflicts among European ethnic groups, women's suffrage, and Jim Crow laws. Today the struggle continues but with a focus on different issues: civil rights for gays and lesbians, access for persons with disabilities, and the ongoing quest for equitable treatment for racial and ethnic minorities, among other concerns. New issues and concerns will doubtless rise to the forefront in the decades ahead, and the need to address those matters in the justice system will be an ongoing process.

All people should have equal access to the courts. Barriers to meaningful access to the legal system can result in unequal treatment which can give rise to injustice. The Florida court system must be ever vigilant in continuing to identify and remove procedural, physical, communication, language, financial, and attitudinal barriers to court access. With the publication of this report, the Standing Committee endeavors to continue the dialogue within the Florida justice system about important issues that are too often overlooked or not openly discussed. The Florida courts must continue to call attention to fairness and diversity matters until the promise of full equality under the law is accomplished – both in fact and in perception.

APPENDIX A: Speakers at the Public Meetings

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October 20, 2006; Tallahassee, Florida

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February 2, 2007; Jacksonville, Florida

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APPENDIX B: Demographics of Survey Respondents

Demographics of JUDGE Respondents

Sex:	
# Responding	228
Male	73.68%
Female	26.32%

Age:	
# Responding	191
29 or younger	0%
30-39	1.05%
40-49	18.85%
50-59	48.69%
60+	31.41%

Race:	
# Responding	226
American Indian or Alaska Native	1.33%
Asian	0%
Black or African American	4.87%
Native Hawaiian or Other Pacific Islander	0%
White or Caucasian	91.59%
Multi-Racial	1.33%
Other	.88%

Ethnicity:	
# Responding	160
Hispanic/Latino	10.63%
Not Hispanic/Latino	89.38%

In what county is your office located (analyzed by number of respondents in each circuit):	
1 st	4
2 nd	6
3 rd	9
4 th	13
5 th	10
6 th	9
7 th	6
8 th	7
9 th	3
10 th	7
11 th	38
12 th	3
13 th	10
14 th	0
15 th	24
16 th	2
17 th	24
18 th	6
19 th	4
20 th	6

How long have you been working with Florida's courts?	
# Responding	191
0-4 years	12.57%
5-9	11.52%
10-19	29.32%
20+	46.60%

Do you have a disability?	
# Responding	223
Yes	2.69%
No	97.31%

Demographics of ATTORNEY Respondents

Sex:	
# Responding	1,306
Male	65.93%
Female	34.07%

Age:	
# Responding	1,259
29 or younger	5.72%
30-39	23.03%
40-49	28.44%
50-59	29.55%
60+	13.26%

Race:	
# Responding	1,291
American Indian or Alaska Native	0.39%
Asian	0.85%
Black or African American	4.26%
Native Hawaiian or Other Pacific Islander	0.00%
White or Caucasian	89.54%
Multi-Racial	2.32%
Other	2.63%

Ethnicity:	
# Responding	1,071
Hispanic/Latino	10.08%
Not Hispanic/Latino	89.92%

In what county is your office located (analyzed by number of respondents in each circuit):	
1 st	43
2 nd	121
3 rd	6
4 th	72
5 th	32
6 th	65
7 th	24
8 th	23
9 th	102
10 th	16
11 th	180
12 th	22
13 th	117
14 th	9
15 th	43
16 th	5
17 th	133
18 th	30
19 th	17
20 th	46

How long have you been working with Florida's courts?	
# Responding	1,224
0-4 years	14.22%
5-9	15.69%
10-19	28.35%
20+	41.75%

Do you have a disability?	
# Responding	1,301
Yes	6.99%
No	93.01%

Are you a member of the Florida Bar?	
# Responding	1,310
Yes	99.77%
No	0.23%

Demographics of COURT STAFF Respondents

Sex:	
# Responding	1023
Male	16.32%
Female	83.68%

Age:	
# Responding	876
29 or younger	14.04%
30-39	22.26%
40-49	28.77%
50-59	28.65%
60+	6.28%

Race:	
# Responding	1009
American Indian or Alaska Native	.20%
Asian	1.29%
Black or African American	8.62%
Native Hawaiian or Other Pacific Islander	0%
White or Caucasian	85.83%
Multi-Racial	.99%
Other	3.37%

Ethnicity:	
# Responding	731
Hispanic/Latino	11.63%
Not Hispanic/Latino	88.37%

In what county is your office located (analyzed by number of respondents in each circuit):	
1 st	79
2 nd	138
3 rd	34
4 th	34
5 th	46
6 th	69
7 th	57
8 th	28
9 th	7
10 th	60
11 th	87
12 th	13
13 th	46
14 th	1
15 th	57
16 th	29
17 th	105
18 th	32
19 th	9
20 th	1

How long have you been working with Florida's courts?	
# Responding	924
0-4 years	34.63%
5-9	22.51%
10-19	26.73%
20+	16.13%

Do you have a disability?	
# Responding	1017
Yes	3.64%
No	96.36%

Are you directly employed by the State Courts System (personal staff to judges, court administration, appellate clerks and marshals)?

# Responding	1015
Yes	85.91%
No	14.09%

Are you currently employed in the court system or by any court-related agency?

# Responding	929
Yes	92.03%
No	7.97%

Demographics of JUROR Respondents

Sex:	
# Responding	1,206
Male	44.11%
Female	55.89%

Age:	
# Responding	1,012
29 or younger	11.46%
30-39	13.34%
40-49	22.73%
50-59	26.28%
60+	26.19%

Race:	
# Responding	1,128
American Indian or Alaska Native	.35%
Asian	1.42%
Black or African American	12.50%
Native Hawaiian or Other Pacific Islander	.18%
White or Caucasian	82.89%
Multi-Racial	1.60%
Other	1.06%

Ethnicity:	
# Responding	434
Hispanic/Latino	28.80%
Not Hispanic/Latino	71.20%

In what county do you live (analyzed by number of respondents in each circuit):	
1 st	258
2 nd	55
3 rd	17
4 th	11
5 th	42
6 th	38
7 th	0
8 th	38
9 th	1
10 th	49
11 th	168
12 th	281
13 th	3
14 th	0
15 th	13
16 th	38
17 th	33
18 th	2
19 th	0
20 th	46

Do you have a disability?	
# Responding	1,189
Yes	5.05%
No	94.95%

Annual Household Income:	
# Responding	1,133
Up to \$25,000	17.65%
\$25,001-\$50,000	30.89%
\$50,001-\$75,000	21.62%
More than \$75,000	29.83%

Demographics of LITIGANT Respondents

Sex:	
# Responding	1,105
Male	48.33%
Female	51.67%

Age:	
# Responding	898
29 or younger	25.17%
30-39	25.06%
40-49	26.17%
50-59	16.37%
60+	7.24%

Race:	
# Responding	968
American Indian or Alaska Native	.72%
Asian	.62%
Black or African American	35.54%
Native Hawaiian or Other Pacific Islander	.21%
White or Caucasian	58.78%
Multi-Racial	1.65%
Other	2.48%

Ethnicity:	
# Responding	476
Hispanic/Latino	39.50%
Not Hispanic/Latino	60.50%

In what county do you live (analyzed by number of respondents in each circuit):	
1 st	21
2 nd	42
3 rd	6
4 th	128
5 th	32
6 th	56
7 th	102
8 th	18
9 th	10
10 th	114
11 th	201
12 th	55
13 th	43
14 th	2
15 th	81
16 th	11
17 th	61
18 th	46
19 th	2
20 th	6

Do you have a disability?	
# Responding	1,081
Yes	15.45%
No	84.55%

Annual Household Income:	
# Responding	966
Up to \$25,000	48.65%
\$25,001-\$50,000	26.19%
\$50,001-\$75,000	11.80%
More than \$75,000	13.35%