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EXECUTIVE SUMMARY

As part of its mission to monitor and oversee the District of Columbia Courts' continuing implementation of recommendations made by the early 1990s task force reports on race, ethnic, and gender discrimination in the D.C. Courts, the Standing Committee on Fairness and Access to the Courts, through its Subcommittee on Treatment of Participants, held fifteen informal outreach forum sessions with various court users, beginning in January 1998, and extending through December 2001. We began our sessions with bar associations whose membership is predominately African American, Hispanic, Asian American, or female. Because of special concerns relating to senior citizens, we added a session with the District of Columbia Commission on Aging. After these sessions, attention was devoted to institutional court users - the Office of the United States Attorney for the District of Columbia; Office of the Corporation Counsel, District of Columbia; the Public Defender Service for the District of Columbia; Family Division Abuse and Neglect attorneys; and the Family Division Trial Lawyers Association. We added the Neighborhood Legal Services Program, Inc. as a representative of low-income tenants who are summoned to the Landlord and Tenant Branch of the Superior Court's Civil Division.

Standing and Subcommittee members, who attended each of the outreach forum sessions, heard comments which covered most of the categories reflected in the 1992 task force reports, and the D.C. Courts 1993 and 1994 implementation reports, pertaining to race, ethnic and gender discrimination. These categories include: court administration, Criminal, Civil, and Family Divisions [of the Superior Court]; treatment of participants; litigation

process; and attorney and judicial disciplinary systems. By far, the greatest number of concerns fell into three categories: court administration; treatment of participants; and litigation process. Often these categories overlapped due to related comments.

The main body of this report separates the comments according to the outreach group so that the D.C. Courts may more readily appreciate the concerns of each of these groups, but the comments are reported within the subject categories mentioned above. Below, we highlight major findings across the outreach groups:

1. **Treatment of Participants: Race, Ethnicity, Gender, and Religion**

The D.C. Courts are making progress in preventing overt racial, ethnic and gender discrimination by judges and court personnel.[1] Despite the general absence of overt acts of discrimination based on race, ethnicity or gender, perceptions of more subtle discriminatory attitudes, as well as disrespectful or insensitive actions based on race, ethnicity or gender, by court personnel or judges were evident. Especially in the case of low-income racial or ethnic court users, poor service or hostility by some court clerks was tied to

[1] This progress may be attributable to the leadership role imposed on judges by the Joint Committee on Judicial Administration through a 1995 amendment of the Code of Judicial Conduct for the District of Columbia Courts. Canon 3 (B)(5) of the 1995 Code of Judicial Conduct states:

> 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.

perceived disrespect for racial and ethnic minorities. Minority attorneys may be mistaken for criminal defendants, or case workers, or parents, by courtroom clerks. Moreover, African American attorneys are convinced that they are underrepresented on the Criminal Justice Act ("CJA") U.S. panel, while they are overrepresented on the CJA Traffic and D.C. Cases panel.[2]

Attitudes toward females have improved substantially in the courthouse, although some female attorneys, including Asian Americans, believe they receive more scrutiny by judges than their male counterparts, not only with respect to the handling of cases, but also the clothing they wear, especially pants suits, which may be common to their culture. Some attorneys believe that male clients encounter unfair and stigmatizing treatment, particularly those who are the subject of domestic violence complaints, or whose children may be involved in the juvenile justice process, or who seek custody of their children.

[2] African American attorneys also believe that they are underrepresented on the list of attorneys eligible for court appointments in abuse and neglect cases. The list has been established by the Family Division's Counsel for Child Abuse and Neglect ("CCAN"). On April 26, 2002, Chief Judge Rufus King of the Superior Court issued Administrative Order No. 2-15, which creates a "Family Court Panels Committee" whose purpose is to constitute "panels of attorneys for representation of indigents in Family Court proceedings." There will be four panels, one each for: (1) juvenile proceedings, (2) guardians ad litem, (3) special education advocates, and (4) neglect and termination of parental rights.

A few comments were made about the failure of some judges to recognize and accommodate religious beliefs. Most notably, some judges are insensitive to the significance of the Sabbath and sundown to the Jewish faith; and Good Friday to Christians, especially Roman Catholics.

2. **Treatment of Participants: Senior Citizens; Persons With Disabilities**

Older court users have special needs, such as the availability of parking close to the courthouse, and a smoke-free approach to the doors of the courthouse. Seniors who care for their grandchildren and are summoned to the Family Division, or who have business in the Probate Division, or who may serve on a jury may require special assistance in understanding and navigating court processes and legal requirements.

There is increasing recognition of problems confronting court users who have disabilities, whether jurors, attorneys, or litigants. Some of these individuals need to be accommodated. For example, a juror who is deaf requires one or more sign interpreters, and blind jurors should be assisted by readers.

3. **Litigation Process: Language Barriers**

Ethnic groups, including Hispanics and Asians, are disadvantaged in accessing justice during the litigation process due to linguistic barriers, the shortage of court interpreters, and low numbers of Spanish-speaking court personnel. Recent immigrants who do not know or understand the American judicial system, and who may be *pro se* litigants, are particularly vulnerable. They enter courtrooms where they understand neither the language nor the process that is unfolding. This is particularly true in the Landlord and

Tenant Branch of the Civil Division and the Family Division of the Superior Court.[3]

Reforms were suggested to assist those who confront language barriers or who may be *pro se* litigants. For example, an introductory bilingual videotape which explains the Landlord and Tenant Branch process, as well as additional or revised legal forms which are also bilingual, would aid Spanish-speaking or *pro se* litigants to understand and follow procedures used in this branch. In addition, since the entry of a guilty plea to certain charges in the Criminal Division or the Domestic Violence Unit may have immigration consequences, it is essential that judges explain these consequences through the use of interpreters, if necessary.

4. **Litigation Process: Civility**

The litigation process is often marked by a lack of civility. Defense attorneys and prosecutors frequently become combatants in criminal cases, especially during discovery, and do not always follow the rules of civility. Attorneys in the Office of the Corporation Counsel and the Public Defender Service complain that judges insinuate that they are lying. Corporation Counsel attorneys also believe that some judges unfairly taint

[3] The District of Columbia Family Court Act of 2001, enacted on January 8, 2002, created a Family Court within the Superior Court. The Family Court consists of: the Domestic Relations Branch, the Juvenile and Neglect Branch, the Paternity and Child Support Branch, the Counsel for Child Abuse and Neglect (CCAN) Branch, the Mental Health and Retardation Branch, and the Marriage Bureau.

them with misdeeds committed by District residents, and assume that the quality of their representation will be inferior. Both Corporation Counsel and Public Defender Service attorneys consider themselves unprotected from perceived unprofessional tactics, respectively, of prosecutors and large firm civil attorneys.

Appellate oral arguments in the D.C. Court of Appeals generally were praised and regarded as positive experiences. However, exceptions in a couple of cases were noted where a judge yelled at, or was otherwise disrespectful to an attorney.

5. **Court Administration**

Aspects of court administration and case management were criticized. Most frequently cited, perhaps, were attitudes and actions of judges and court personnel which lead to long waiting periods for litigants, attorneys, and jurors. Waiting often was viewed as unnecessary, inefficient, unfair, insensitive, and disrespectful, especially if judges take the bench without apologizing for their lateness or for the delay. Victims of crime and their witnesses were cited as suffering from delays and continuances, not only emotionally but also economically since absence from work might mean the loss of a job. In addition, delays in obtaining case records and transcripts, as well as "unwarranted" rejection of documents for filing were deemed intolerable. Delays in judicial rulings on dispositive motions, such as summary judgment motions, are frustrating for litigants. Increased judicial training was viewed as a method for promoting efficient case management.

Aside from waiting and delays in court processes, outreach participants concentrated on the courthouse physical plant. They advocated better waiting space than the corridors of

the John Marshall level for the purpose of avoiding confrontation of parties involved in emotionally charged family cases, as well as forestalling any efforts to intimidate witnesses in criminal cases. In addition, outreach participants urged renovations of parts of the courthouse, such as bathrooms, and repairs to the heating and air conditioning system.

A number of steps already have been taken to address the concerns of outreach participants. As a result of periodic reports to the Board of Judges for the Superior Court, and that for the Court of Appeals, both Boards have discussed the matters reflected in this report. In addition, both the former and current Executive Officer of the D.C. Courts have alerted Division Directors to criticisms of court personnel, and meetings with line staff have been held. In addition, concrete steps have been taken to implement some of the suggestions articulated by outreach participants. For example, (1) elimination of the backlog in producing records and transcripts for appeals is almost complete; (2) publicity about the general availability of child care for 2 to 12 year-old children is more widespread; (3) a family waiting room has been established on the first floor of the courthouse; (4) some courtrooms and bathrooms have been renovated and meet disability standards; (5) there has been a modest increase in the number of bilingual court employees; (6) use of Spanish in the introductory part of the Landlord and Tenant Branch has increased, and efforts are being made to produce a bilingual videotape to explain the Landlord & Tenant Branch process; and (7) a strategic planning process is in progress that will generate performance standards for the D.C. Courts.

While a number of steps already have been taken to address the concerns of outreach

participants, much remains to be done. Recently, in consideration of the tenth anniversary of the 1992 task force reports on race, ethnic and gender discrimination in the D.C. Courts, the Chief Judge of the Court of Appeals and Chairperson of the Joint Committee on Judicial Administration, has established a Retrospective Review Advisory Committee to the Standing Committee on Fairness and Access. Part of the mission of this advisory committee, which is composed of members of the bar and court employees, will be to work with judges of the Standing Committee "to review the attitudes, perceptions and experiences which prompted our initial bias studies and to identify changes, positive or negative, in experiences and perceptions in the intervening years."

BACKGROUND

This report has been generated as the result of a series of outreach forums conducted between January 1998 and December 2001, by a subcommittee of the Standing Committee on Fairness and Access to the District of Columbia Courts ("the Standing Committee"). One of the functions of the Standing Committee is to continue, on a permanent basis, the work of the Task Forces on Racial, Ethnic and Gender Bias in the District of Columbia Courts. The Joint Committee on Judicial Administration ("the Joint Committee") established the Task Force on Racial and Ethnic Bias and the Task Force on Gender Bias in the Courts in 1990 to examine race, ethnic, and gender bias in the District of Columbia Courts ("the D.C. Courts"). The work of these task forces was extensive and involved data collection, hearings and research. The Task Force on Racial and Ethnic Bias concentrated on a study of court personnel, litigation and court activities; and the Task Force on Gender Bias examined court administration, treatment of participants in the court system, and issues relating to civil and criminal as well as family law. The final report of the task forces, released in June 1992,[4]

[4] Joint Committee on Judicial Administration, *Task Force on Racial and Ethnic Bias and Task Force on Gender Bias in the Courts: Final Report* (May 1992).

contained over 100 recommendations pertaining to these areas of concentration and examination.

The Joint Committee reviewed the recommendations of the task forces, and in an effort to implement many of these recommendations, formed eleven internal working committees. These committees were composed of judges, the Clerks of the Courts, and court administrators. The Executive Officer of the D.C. Courts was charged with implementing the recommendations. After approximately two years of endeavor by these internal working committees, the Joint Committee issued its final report on implementation of the task forces' recommendations in the areas of court administration; the Civil, Criminal and Family Divisions of the Superior Court; court activities; treatment of participants in the D.C. Courts' processes; the litigation process; the attorney disciplinary system; and the non-judicial branch.[5]

By 1995, the D.C. Courts were among approximately 24 state-level court systems that either had examined or were in the process of addressing racial and ethnic bias in the courts by the formation of a judicial task force or commission, and among 42 state court systems that had studied gender bias. In March 1995, the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts (National Conference)* was held in Albuquerque, New

[5] A preliminary report was issued in 1993: Joint Committee on Judicial Administration, *Report on Implementation of the Final Report of the Task Forces on Racial and Ethnic Bias and Gender Bias* (June 24, 1993). The final report was released in 1994: Joint Committee On Judicial Administration, *Report on Implementation of the Final Report of the Task Forces on Racial and Ethnic Bias and Gender Bias* (June 1994).

Mexico. Over 400 court officials from every state and most of the territories, several Native American nations, the federal courts, and Canada participated. The Chief Judges of the D.C. Court of Appeals and Superior Court, together with two senior court executives, represented the D.C. Courts.

Part of the work of the *National Conference* was devoted to devising successful implementation strategies. One approach discussed was establishing a commission within the court system to monitor implementation of task force recommendations. Under this approach, an entity within the court system is charged with ensuring that fairness and equality remain as permanent court-wide objectives. This approach avoids the possibility that fairness and equality issues will be given lower priority because of other pressing matters facing the D.C. Courts.

In September 1996, Chief Judge Annice M. Wagner of the D.C. Court of Appeals convened the first meeting of the Standing Committee on Fairness and Access to the Courts. The Standing Committee is composed of judges of the Court of Appeals and the Superior Court, and is chaired by Judge Inez Smith Reid. The mission of the Standing Committee is:

> To reduce and ultimately to eliminate any gender and racial and ethnic bias from the District of Columbia Courts and to guarantee equal justice for every individual affected by the District's judicial system. To continue, on a permanent basis, the work of the earlier Task Forces on Racial, Ethnic and Gender Bias in the District of Columbia Courts.

In addition, the Standing Committee has the following objectives:

> To improve court access;
> To closely monitor the hiring and promotion process;

> To improve the treatment of participants by judicial officers; and
> To communicate progress that has been made in eradicating ethnic and racial bias to court staff and the general public.

As its work began, the Standing Committee concentrated on monitoring and overseeing the implementation of the recommendations developed by the Task Force on Racial and Ethnic Bias and the Task Force on Gender Bias; improving court access by those with disabilities and monitoring compliance with the Americans with Disabilities Act ("ADA"); ensuring fairness in hiring and promoting, both from within and from outside of the court system; and examining the treatment of participants in the court system.[6] The Standing Committee is organized into three subcommittees, one of which is the Subcommittee on Improving the Treatment of Participants.[7]

The Treatment of Court Participants

In their recommendations, the task forces on racial, ethnic and gender bias envisioned a major role for the judges of the D.C. Courts in weeding out such bias from the courts. For example, the Task Force on Gender Bias recommended that: "The Joint Committee [on Judicial Administration of the D.C. Courts] should issue a clear statement that eradication of gender bias within the court system must begin with members of the bench." In response to this recommendation, the Joint Committee issued the requested statement. In addition, the

[6] The Americans With Disabilities Act, 42 UCS § 12101 *et seq*. (1990).

[7] The other subcommittees are: Hiring and Promotion, and Improving Court Access.

Task Force on Gender Bias recommended that: "Judges should take responsibility for ensuring that conduct in their courtroom is free of inappropriate external influences such as gender bias . . . .," and also advocated the adoption of "a Court rule on professional conduct of attorneys . . . to ensure equal justice under law regardless of race, gender or economic status." As a result of the these recommendations and the implementation work relating to the task force reports, the Joint Committee decided to include in its Code of Judicial Conduct a provision requiring judges to perform their duties without bias. Consequently, Canon 3 (B)(5) of the 1995 Code of Judicial Conduct for the District of Columbia Courts mandates that:

> 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.

Canon 3 (B)(6) also imposes on judges the responsibility to "require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others."[8]

In an effort to monitor and ultimately eliminate any vestige of bias and prejudice in

[8] Canon 3 (B)(6) contains an exception for "legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding."

the way court users and participants are treated, the Subcommittee on the Treatment of Participants by Judicial Officers ("the Subcommittee") was formed, with Judge Geoffrey M. Alprin as its Chair.[9] After several initial meetings, the Subcommittee decided to focus on a number of areas, including:

- The treatment of lawyers by judges.
- Issues pertaining to the general administrative orders of the various divisions of the Superior Court.
- Calendaring practices.
- The treatment of attorneys and other court users by court staff.
- The treatment of court users who are not participants in a trial.
- Training for the courtroom clerks.
- Court appointments of attorneys (e.g., Criminal Justice Act, CCAN, guardianships).

In order for the Subcommittee to proceed, it had to ascertain the perceptions and experiences of court users. The Subcommittee first turned to potential internal sources of information. It discovered that the Chief Judges receive complaints from court users, but there is no systematic way of gaining access to or compiling these complaints. Next, it focused on possible external sources. Subcommittee members met with the Judicial Tenure Commission ("Commission") to see if it would provide any information concerning the number and types of complaints against judicial officers based upon bias. They were informed that the Commission receives complaints, but the Commission has a policy of not informing judges about complaints deemed to be frivolous. Moreover, access to information about complaints deemed to be non-frivolous is limited to the judge who is the subject of the

[9] The Subcommittee's name was later shortened by dropping "by Judicial Officers".

complaint. The Subcommittee explored, without success, the possibility of securing a report on the nature of the complaints or obtaining access to redacted versions of the complaints lodged with the Commission. Ultimately, the Subcommittee concluded that trying to secure information from internal sources alone would not be adequate, and getting information from the Judicial Tenure Commission was not a good idea because of the sensitivity of the Commission's work. Thus, the Subcommittee identified a need to gather information directly from court users about their perceptions of the way that judges and court employees treat them.

The Subcommittee decided to form an Advisory Committee to obtain ideas from others, including leading members of the bar, as to how best to proceed. Those who graciously agreed to serve on the Advisory Committee were:

> Colin Dunham, Superior Court Trial Lawyers Association
> Sharon Cummings Giles, District of Columbia Bar
> Deborah Israel, Women's Bar Association of the District of Columbia
> Terrence Keeney, Office of the United States Attorney
> Dwight Murray, Bar Association of the District of Columbia
> Ramona Romero, Hispanic Bar Association of the Greater Washington, D.C. Area
> Michael S. Rosier, Washington Bar Association
> John C. Yang, Asian Pacific American Bar Association of the Greater Washington, D.C. Area

The Subcommittee, assisted by the Advisory Committee, studied the methods used by other state court systems to collect data on experiences with, and public perceptions of, the court systems. These methods include the town hall forum and public hearings.

The town hall forum approach obtains information from the general public about the

justice system by extending an invitation to the community to participate in a town meeting. The town meeting enables the court to acquire opinions, suggestions, and viewpoints from a vast representation of the community immediately. Participant involvement can range from inviting the general public to inviting specific groups, such as attorneys, public officials, and representatives of organizations in the community.

Town hall meetings were conducted in Franklin, Massachusetts at the request of the Chief Judge of the Supreme Court for the purposes of "reinventing justice" in Massachusetts. The Franklin County Futures Lab orchestrated four town meetings to obtain the community's opinion of its court system. Public notice was provided, inviting everyone in the community to come to the town meetings to voice opinions. The meetings were held in an elementary school, community center, and courthouses, with more than 475 people attending. Newspapers and radio stations covered the events for those in the community who were unable to attend. A verbatim transcript was produced.

The California courts' fairness and access committee conducted public hearings in 1991-1992. The committee convened the hearings to learn about the public's views on fairness and discrimination in the California courts. The hearings received a great deal of feedback from the 343 participants in the state. The 13 hearings were conducted over a span of seven months at various locations, including a junior college campus, municipal buildings, and community centers. Oral and written testimony was recorded and videotaped. The hearings were open to anyone and for those who could not attend, television and radio covered the event.

The Subcommittee decided that a variation of the town hall forum approach would yield the best results. This approach would also avoid turning the process into a censure or complaint system. Instead of concentrating on individual complaints, the Subcommittee wanted to focus on systemic issues that might raise questions about the fairness of and access to the D.C. Courts. Eventually, the Subcommittee decided to hold small outreach forums with various segments of the community, including members of bar associations, institutional court users, and interest groups such as senior citizens.

Description of the Outreach Initiative Forums

As indicated earlier, the Outreach Initiative Forums were conducted between January 1998 and December 2001. The forums were structured so that they were informal. In addition, the individual participants were assured that their statements would not be attributed to them, and were asked to refrain from identifying any judge who was the subject of a complaint. They were told the purposes of the forums, particularly the interest in identifying any racial and gender issues, and were further informed that the forums were not intended to serve as a place to reargue specific cases. Consistent with the priorities established by the Subcommittee, most of the forums were conducted with attorneys, including ethnic and gender-based bar associations and institutional court users (i.e., Corporation Counsel, Public Defender, U.S. Attorney). Lay persons participated in two forums, those conducted with the D.C. Commission on Aging and the Neighborhood Legal Services Program, Inc. Generally, four to five members of the Standing Committee, including those on the Subcommittee, attended each forum session. Participant comments focused not only on gender, race and

ethnic issues, but also raised other concerns.

Importance of the Initiative

The Judges listened with great interest to the candid comments of those who participated in its outreach forums. Information from the forums has been shared with key components of the D.C. Courts, including the Chief Judges, the Boards of Judges, the Executive Officer, the Clerks of the Courts, and Division Directors.

The Subcommittee regards outreach forums as a valuable tool for improving public confidence in the D.C. Courts. Therefore, it plans to continue holding periodic forums with other court users. In addition, the Subcommittee may schedule followup forums with groups that are part of this report.

Structure of the Outreach Initiative Report

To provide for some sense of continuity between (1) the work of the task forces on racial, ethnic and gender bias, including the 1993-1994 implementation work organized by the Joint Committee, and (2) the Subcommittee's Outreach Initiative Forums, this report is organized around six of the categories discussed in the June 1994 implementation report: (1) Court Administration, (2) Criminal and Civil Divisions of the Superior Court; (3) Family Division of the Superior Court; (4) Litigation Process; (5) Treatment of Participants; and (6) Attorney Disciplinary System. These categories are used to report the results of outreach sessions with the following groups:

The Washington Bar Association;
The Hispanic Bar Association;

The Asian Pacific American Bar Association of the Greater Washington, D.C. Area;
The Women's Bar Association
The District of Columbia Commission on Aging;
The Office of the United States Attorney;
The Office ofthe Corporation Counsel;
The Public Defender Service;
Family Division Attorneys (Neglect and Abuse); and
The Neighborhood Legal Services Program, Inc.

Respectfully submitted,

The Standing Committee on Fairness and Access to the D.C. Courts
Judge Inez Smith Reid, Chair
Judge Geoffrey M. Alprin,
Chair, Subcommittee on Improving the Treatment of Court Participants
Judge Stephanie Duncan-Peters,
Chair, Subcommittee on Hiring and Promotion
Judge Rafael Diaz,
Chair, Subcommittee on Improving Court Access
Judge Frank E. Schwelb
Judge Eric T. Washington
Judge Kaye K. Christian
H. Clifton Grandy, Senior Court Manager

The Washington Bar Association
January 15, 1998
September 23, 1999

Two outreach sessions were held with the Washington Bar Association ("the WBA"), which is composed predominately of African American lawyers, one in 1998 and the other in 1999. In the first session, members of the WBA expressed a number of concerns which the Subcommittee sought to have addressed immediately. The second session indicated that steps taken by the D.C. Courts to address some of the concerns have been effective. Following is a summary of comments made during the outreach sessions.

Court Administration

Litigants whose cases are to be heard on the John Marshall ("JM") level of the courthouse generally wait in the JM hallway until their cases are ready to proceed. WBA members observed that the hallway is not an ideal waiting place for those involved in emotionally charged cases, and that in at least one case, a fist fight broke

out. It was suggested that a waiting room be established on the JM level for court users who bring their children to court.[10]

During the second session with the WBA, the D.C. Courts were commended for the improved physical condition of the courthouse. Restrooms, for example, are in much better condition. However, it would also be helpful if notices of renovation could be posted indicating the nature of the renovation and the expected date of completion.

Criminal and Civil Division

[10] Child care is available to litigants with children, ranging in ages from 2 to 12 years, on the "C" level of the courthouse, but many court users may not be aware of this fact. In addition, in early 2002, a family waiting room was established on the first floor of the courthouse.

The Landlord and Tenant Branch of the Civil Division ("the L&T Branch") generally handles matters relating to the summary proceedings for the possession of real property due to non-payment of rent, or lease violations. Because some litigants often are confused as to what the process is for their cases, WBA members suggested that an explanatory video touch-screen kiosk should be installed.[11]

Treatment of Participants

Several comments related to how WBA attorneys are treated in the D.C. Courts. These comments, however, did not reflect concerns about overt racial bias by judges or court personnel. Some related anecdotes of discourteous treatment by counter clerks, although a few praised the friendliness and helpfulness of personnel in certain divisions of the trial court. Nonetheless, the comments generally conveyed the message that WBA attorneys perceive that they are treated differently from other attorneys who practice in the D.C. Courts.

WBA members contrasted their treatment in the D.C. Courts with their reception in the Maryland courts, and deplored what they perceived as an adversarial relationship between the bench and the bar. In Maryland, there is more congeniality between the bench and the bar. Maryland courts are more

[11] Questions about the processes in the L&T Branch also were raised during the outreach sessions with the Neighborhood Legal Services Program ("the NLSP"). Steps taken to address some of these questions are set forth in the section on the NLSP.

accommodating and it is easier to get a conference with a judge. The difference in the Maryland and D.C. trial courts may be traceable to the fact that many of the District's trial judges are appointed to the bench from government agencies, and may not be sensitive to the demands of private practice, and those placed on the solo practitioner. In addition, District judges were thought to be aloof and too removed from the community, possibly due to the nomination and appointment process for judges, which ultimately involves the President and Senate of the United States rather than local officials.

Clerks in the Maryland courts make an attorney's job easier than do the clerks in the D.C. trial court; court staff in the D.C. trial court delight in making things difficult for attorneys. For example, an urgent motion, filed by a WBA attorney, was held by a clerk of the trial court for 25 days. As a result of this experience and others, some WBA attorneys believe that the clerks run the Superior Court and screen motions before filing them, and that members of the bar are not perceived as important. Some judges allow the courtroom clerk to select the order in which cases are called, and some private practitioners take advantage of this system. Other examples of their treatment, and that of their clients, by judges were offered by the WBA members. Judges use contempt as a sanction for lateness much too frequently; other types of sanctions could be used. Judicial tempers may flare, and these outbursts are detrimental to the judicial process. The claims of poor clients represented by WBA members may be demeaned by judges in off-the-record pretrial

proceedings; and judges may push these clients to settle their cases. Highly emotional cases tend to bring out the ugliness of some judges who comment or take action off the record. Concern was expressed also about the appointment of attorneys to cases, including how judges make the appointments, compensation, and the type of cases to which WBA members may be appointed. Some judges tend to appoint the same attorney; and compensation for appointed counsel sometimes is not paid for a year. Some judges process attorney vouchers in a timely manner and others are slow to do so. Some WBA members believe they get worthless cases. Complaints against judicial officers generally are not filed by WBA members. They perceive that the complainant never wins.

During the second outreach session, WBA members noted some improvement in the way they are treated by judges.[12] Some indicated that they get better justice in the D.C. Courts than elsewhere. Staff members in the Probate Division are perceived as friendly and helpful in their review of documents to be filed. However, there was still a sense that District judges are aloof, and some WBA members do not feel comfortable with them. In addition, there are lingering

[12] Following the first outreach session with the WBA, the Subcommittee contacted the then Executive Officer of the D.C. Courts to advise him of the comments from some of the WBA members. Steps were taken to improve the interface between members of the bar and the various clerks of the trial court.

concerns about the treatment of WBA attorneys by some judges. Some speculated that their treatment may be due to their status as small practitioners.

Litigation Process

Various aspects of the litigation process were discussed, including access to court records, filing of pleadings, and the initial conference in a case. Attorneys experience difficulty in getting transcripts in a timely manner.[13] Sometimes an expedited fee must be paid. One attorney complained that he could not get access to a file for six months. Another explained that sometimes judges have the file, and the counter clerk is reluctant to retrieve it from the judge.

WBA attorneys have experienced instances of discourteous conduct as they attempt to file pleadings. Staff may be standing around and talking. Time could be saved by mailing pleadings.[14] Not all comments about filing were critical. The filing system in the Probate Division, which includes a pre-filing review of documents, received positive comments. The pre-filing review was perceived as avoiding the return of documents by judges for modifications.

In civil cases, an initial conference is scheduled to determine, in part, the timing track on which a case will be placed, and to facilitate case management. Some WBA members view the initial conference as a waste of time because counsel

[13] The D.C. Courts are aware of this systemic problem and have been taking steps to improve efficiency in compiling the record and transcripts for an appeal.

[14] The Civil Division of the Superior Court has introduced an electronic filing system

generally agree on the appropriate track. It was suggested that the initial conference could be conducted by telephone.

Attorney and Judicial Disciplinary Systems

WBA members expressed the view that there are inconsistent standards for referring attorneys to Bar Counsel and the Board on Professional Responsibility. Members are inhibited from filing complaints with the Commission on Judicial Tenure and Disabilities because of the impression that the judges always win.

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in selected matters on a test basis.

The Hispanic Bar Association
March 23, 1998

One outreach session was held with the Hispanic Bar Association ("the HBA") which is composed predominately of Latino-American attorneys. Many of the comments of the HBA members revolved around the language barrier to meaningful access to the D.C. Courts.

Court Administration

Latinos and Latinas have communication problems in the courthouse because of the lack of an adequate number of Spanish-speaking court personnel. The HBA regards inadequate Spanish-speaking personnel as a significant problem. Spanish-speaking people who telephone the courthouse have difficulty communicating if there is no bilingual employee to whom they can speak. Spanish-speaking persons often are seen wandering around the court's hallways because of confusion as to where they should go. More Spanish-speaking clerks are needed in the courtrooms because Spanish-speaking people often sit in the courtrooms for hours without knowing that they are in the wrong courtroom, or without knowing why they are in court. Furthermore, Hispanic court users often bring their children into the courtroom. Sometimes these children begin to make noise when they get bored and restless, but no one on the court staff tells them in Spanish that a day care center is available. In short, additional Spanish-speaking staff members are needed in every facet of the trial court's work.

Although the D.C. Courts do employ some employees who are bilingual, they have specific functions to perform, and may become overloaded by requests that they act as interpreters. For example, one HBA member who works at the courthouse later advised the Subcommittee that court staff often refer Spanish-speaking court users who do not speak English well to his office because of its bilingual staff. Other HBA attorneys recounted instances in which they have been asked to serve as interpreters in the courtrooms, or are approached by court users seeking information. Some HBA attorneys are reluctant to take on the additional role of interpreter because they believe that doing so detracts from their professional role as attorneys.

Techniques to improve communication with Hispanics within the courthouse were suggested, such as, the installation of court video monitors to inform Spanish-speaking court users about the availability of interpreter services. These types of monitors are used in the courts in Montgomery and Prince George's counties. When the trial court shows explanatory videos in English, an interpreter should be available for those who do not speak English or who have only a rudimentary knowledge of English. Notices or flyers about available court services should be printed in Spanish and distributed to Hispanic court users. Court forms also should be printed in Spanish as well as in English.[15] An information campaign about court services

[15] Some court forms have been translated into Spanish.

that would target the Hispanic community would be helpful.

The annual Open House conducted as part of the D.C. Courts' annual observation of Hispanic Heritage Month is regarded as a positive step toward familiarizing the Hispanic community with the D.C. Courts and their services. However, HBA members emphasized a need for more frequent contact with the Hispanic community because Hispanics tend to come from countries with different legal systems, and they require an explanation of the American legal system. Open houses could serve as a means for recruiting volunteer interpreters, recruiters, and information specialists. Volunteer interpreters could be certified.

Improving Hispanic service on juries also was a topic of discussion. Some Hispanics who speak English have asked to be excused from jury service because they believe they cannot handle the language used during a complicated court case. Outreach efforts to the Hispanic community were regarded as a means of allaying fears about jury service.

Family Division

There may be immigration consequences for Hispanics involved in domestic relations cases, especially intra-family cases, if they are not citizens of the United States. For example, a contempt finding for disobeying a civil protection order ("CPO") is now a deportable offense under the immigration law. Violation of a CPO is expressly mentioned in the immigration statute, and the parties involved in a CPO action should be so advised. In these types of cases, and others involving

immigration consequences, defense counsel should meet with the defendant before the case is called to explain the immigration consequences of the proceeding that is about to take place. A court interpreter should be present so that the defendant will clearly understand the attorney's explanation.

Litigation Process

Interpreters are needed at practically every phase of the litigation process, and in all types of cases. In the D.C. and Traffic Branch of the Superior Court's Criminal Division, defendants have requested an interpreter during the docket call by the courtroom clerk, but interpreters have not been provided. The same is true in criminal cases at initial hearings and arraignments. On Saturday mornings, in Courtroom C-10 where arraignments are held, expeditious case management and court interpretation sometimes present competing or conflicting considerations to the presiding judge. Because the Office of Court Interpreting Services is closed on the weekends, a duty interpreter is assigned. The duty interpreter may not be present at all times. Bilingual staff are needed in the Small Claims Branch and the Landlord & Tenant Branch of the Civil Division of the Superior Court, including at the time of the docket call. Failure to respond to the docket call may mean the entry of a default judgment. Although interpreters are needed during probation office interviews, court

policy appears to be that they are not available for the interview.[16] In addition, probation forms are in English. The Probation Office instructs defendants to bring an English-speaking person with them for the interview. Even though court interpreters are needed for domestic relations cases, they may not always be present for proceedings. Some Hispanic defendants may misunderstand the meaning of pretrial proceedings because they are accustomed to a different legal system, and an interpreter could interpret a defendant's status after preliminary proceeding. In some Latin American countries, for example, the release of a defendant means that the person is innocent, so some Latino defendants may misinterpret release on their own recognizance as a not guilty disposition or as a dismissal, and therefore, not return to court for any other proceeding. A certified interpreter could explain the nature of the preliminary proceeding. Where the court has imposed a fine, an interpreter may be needed to explain the fine and to escort the defendant to the finance office where the fine is to be paid.

When interpreters have been summoned to courtrooms, they may have to wait because priority is not given to cases requiring an interpreter. Court interpreters wear red badges and therefore are clearly visible in the courtroom. The Office of Court Interpreting Services has a policy that court interpreters are to wait no more than 15 minutes. If the case is not called within that time frame, the interpreter must

[16] Adult probation is now in the Court Supervision Offender Services Office, which is a federal executive branch entity. Juvenile matters are handled by the Social Services

leave and be recalled when the judge is ready to proceed with the case requiring an interpreter. Apparently the policy is not applied in a uniform manner by trial court judges. Moreover, the Office of Court Interpreting Services responds only to calls coming directly from the courtroom clerk.

Division of the Superior Court.

The conflict between proceeding without an interpreter and waiting for an interpreter may prompt some defendants to post collateral and then to forfeit it. To resolve the conflict, judges often asked Spanish-speaking attorneys to interpret, even though the trial court's foreign language coordinator has requested that judges not use defense attorneys as interpreters. Spanish-speaking attorneys have served the dual role of interpreter and defense counsel for their own clients. However, they feel uncomfortable in this role as interpreter and attorney because they want to avoid being called as witnesses to testify about their translations if a defendant later claims that he or she did not understand the instructions of the trial court.[17]

Treatment of Participants

Some sentiment was voiced that the D.C. Courts have not been sensitive to the findings and recommendation of the report on the 1991 civil disturbances in the Mount Pleasant section of the District.[18] A section of the report is devoted to negative experiences of "Latinos in the District of Columbia Court System." HBA

[17] The Standing Committee and its Subcommittee on Hiring and Promotion, together with the Executive Office and Human Resource Division of the D.C. Courts, have addressed ways in which to increase the number of bilingual court employees. A requirement of bilingual expertise has been added to some court positions. Steps also are being taken to increase communications in Spanish in courtrooms. For example, in the Landlord & Tenant Branch, introductory announcements are being made in Spanish; the opening statement for the daily sessions has been translated into Spanish; and the preparation of an explanatory bilingual videotape is in progress.

[18] See United States Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report* (January 1993).

attorneys wanted to know the status of the recommendations; whether new resources are available to address the concerns and recommendations set forth in the *Mount Pleasant Report*, and the status of the recommendations made in the report.

Sensitivity training was urged for judges and court staff. There is a perception of ethnic bias against Latinos, especially in the landlord & tenant cases in the Civil Division and traffic cases in the Criminal Division. There has been some basic insensitivity on the part of courtroom staff, including a lack of courtesy. Poor court service and hostility have gotten worse over the years, not better, according to some of the HBA attorneys.

Telephone service provided by trial court personnel is not helpful. Sometimes court staff will put an attorney on hold for a long time, or instruct the attorney to call back the following day. For example, an attorney called the court late one afternoon to indicate that a settlement had been reached in a case that was set on the Small Claims docket for the following day. The trial court employee told the attorney to call back the next day, the day of the scheduled proceeding. The next morning the attorney had difficulty getting through to the court. When the attorney finally reached someone at the court, he was given inconsistent information. Eventually the attorney was instructed to appear in court that morning, so he hurried in on a subway train. He then sat through the calling of the entire Small Claims calendar for the mere purpose of handing the courtroom clerk a piece of paper stating that the case

had been settled.

The Asian Pacific American Bar Association of the Greater Washington, D. C. Area

May 28, 1998

One outreach session was held with the Asian Pacific American Bar Association of the Greater Washington Area ("APABA"). In contrast to outreach forums with other groups, a major topic of discussion at the APABA forum was how to increase the number of Asian Pacific court employees, and how Asian Pacific attorneys can become judges. Other areas of discussion centered on linguistic barriers and gender concerns.

Court Administration

Participants in the forum were troubled by the low number of Asian Pacific American court employees, including law clerks, and the absence of Asian Pacific American judges. They indicated that Asian Pacific American law students are not accustomed to seeking clerkships, and that the lack of Asian Pacific American judges on the court may contribute to a reluctance to seek clerkships.

Ideas were shared as to how to recruit more Asian Pacific American court employees, law clerks, interns, and judges. Subcommittee members discussed the process for becoming a judge - - from the District of Columbia Judicial Nomination Commission to nomination by the President to Senate confirmation.

Treatment of Participants

While APABA members did not perceive bias in the courts based on ethnicity or race,

gender bias was regarded as a problem, particularly by older, white male judges. Asian Pacific American females believe that they receive more scrutiny than males. In addition, some believe that judges are not aware of cultural differences. For example, many Asian Pacific American women wear pants, but judges may look askance at a female who wears a pants suit to court. Strategies to address cultural differences were suggested by APABA members. Training of judges is important, and the D.C. Courts may find it helpful to have outside observers in the courtroom who monitor the conduct of judges with respect to race, ethnicity and gender issues.

Litigation Process

There were very few comments about the litigation process. However, APABA members expressed concern about the availability and use of court interpreters. Some judges manifest impatience with court interpreters during trials, and that display of impatience may intimidate witnesses who are already fearful and apprehensive about the judicial process. Some court interpreters are also

intimidated by a judge's impatience, and their translation may be affected.

With respect to the work of the interpreters in court, APABA members stated that a direct translation does not always convey the meaning intended. In addition, cultural differences may have an impact on interpretation.

The Women's Bar Association
April 6, 1999

During the outreach forum with the Women's Bar Association, members generally recounted positive experiences with the D.C. Courts, both the trial court and the appellate court. A limited number of concerns were expressed. At the end of the session, it was suggested that the Subcommittee hold outreach sessions with some of the women's advocacy groups to obtain their views.

Court Administration

More attention should be paid to the needs of jurors with disabilities. One attorney reported an incident involving a deaf juror whose disability was not taken into account during the *voir dire* process. A sign language interpreter was needed, but the courtroom clerk apparently was insensitive to the situation. The attorney who recounted the incident suggested that two sign language interpreters should be available to deaf jurors.

Family Division

The area of child support payments was singled out. Many women seeking child support payments are *pro se* litigants. They need more information and more helpful service from court employees in the Paternity and Child Support Branch.

Treatment of Participants

There were a few comments relating to filings, dispositions, and also the attire of female attorneys. No negative comments were made regarding the filing of pleadings, and one attorney asserted that court personnel are quite helpful with respect to filings. During the discussion of how females are treated with respect to the disposition of cases, one participant contrasted the disposition of criminal cases with civil cases. Her perception is that females are favored with respect to criminal sentences, that is, that they get lighter sentences than males; but they are awarded lower civil damages than men.

On the issue of courtroom attire for females, some women from other cultures are accustomed to wearing pants or pant suits. Some judges may regard this attire as inappropriate.

Litigation Process

Judges should take into account cultural and language differences in conducting court proceedings. Language barriers and cultural differences may affect the comfort of some female litigants. One attorney who represented a woman from the African continent reported that her client was embarrassed by some of the trial

judge's questions because in her culture certain matters relating to marriage are not discussed publicly.

Prior to a D.C. Court of Appeals decision relating in part to court interpreters, some judges were insensitive to the interpreter needs of some foreign-born females. Since that decision, however, there has been a notable increase in judges' sensitivity to language barriers of parties and witnesses.

The District of Columbia Commission on Aging
May 24, 1999

The issues discussed at the outreach session hosted by the Commission on Aging ("the Commission" or "Commission members") covered over a number of subjects ranging from parking at the courthouse, to the responsibilities of grandparents who have been appointed as guardians of their grandchildren, to the dynamics of litigation. The participants expressed strong interest in the affairs of the court, and even inquired about opportunities for court employment.

Court Administration

With respect to court access issues, seniors are concerned about parking and the atmosphere around the courthouse. Seniors who frequently have business with the Register of Wills and the Probate Division of the Superior Court experience difficulty in finding parking close to the courthouse. Parking spaces should be reserved for senior citizens, and should be distinguished from handicapped parking because all seniors do not have disabilities. Commission members observed that

police officers who park around the courthouse do not always obey parking laws when they double park or occupy an inordinate amount of street space. As seniors approach the courthouse, they have noticed court employees and court users standing outside and smoking. The smoke may aggravate health and respiratory problems, such as asthma, since the wind does not readily clear the air due to the configuration of the Moultrie building. Many seniors do not walk as fast as younger people and hence are exposed to the smoke for a longer period of time.

Many seniors come to the courthouse for jury service. Some regard receipt of a notice for jury service as intimidating. There were complaints about processing procedures, waiting, and standing in hallways outside of courtrooms.[19] Some seniors find it difficult to stand for a long period of time. Commission members also pointed out that the $2.00 per day transportation fee is insufficient for public transportation to and from the courthouse.[20] If selected to serve on a jury, many seniors require breaks during trials so that they can take medication and use the restroom. Most judges are sensitive to these needs.

Seniors sometimes serve as witnesses in cases and receive notices about those cases. In some instances, especially in criminal cases, those notices may be

[19] Judges have raised the logistics of moving jurors with the Director of the Special Operations Division which handles the jury pool. The judges now wait until they are ready for a jury, and the hallway lines are decreasing.

[20] The transportation fee has been increased to $4.00 per day for persons called to jury service.

intercepted by others.[21]

Family Division

Commission members were particularly interested in court matters pertaining to children who have been abused or neglected, or whose parents are otherwise unable to care for them, thus requiring consideration of kinship care or kinship adoption. They were troubled about what they perceived as the slowness of the disposition process, the continuation of court supervision after a grandparent is asked to care for a grandchild, obtaining medical information about an adopted child if birth parents do not want their names revealed, and financial support for grandchildren.

Proposed legislation that would have amended kinship care procedures was discussed, as well as efforts to streamline the adoption process. However, Subcommittee members mentioned due process and other constitutional considerations that may cause the disposition process to be longer than that desired by the Commission members. In addition, the increase in abuse and neglect case filings, from around 450 in the decade of the 1980s to approximately 1,500 currently,

[21] While communications between prosecutors and victims may have been poor in the past, concerted efforts have been made over the past several years to improve those communications. In addition, after a written notice is sent to witnesses, some judges chambers follow up with a phone call to make certain that the notice has been received.

helps to explain the wait with respect to some dispositions. With respect to the cost of raising grandchildren and the continuing court supervision, Subcommittee members pointed out that grandparents may seek government funding or other types of support for their grandchildren; and that the court must continue its supervisory obligation until a child is no longer under the jurisdiction of the court.

Treatment of Participants

Unlike some other groups with which outreach forums were conducted, Commission members did not complain about discourteous or other negative treatment by court personnel. Indeed, one person stated that courtesy is "infectious" in the Small Claims Branch of the Superior Court's Civil Division. Although one senior had to wait forty-five minutes to initiate a probate matter, she stated that Probate Division staff members were courteous. No complaints were registered about race, ethnic or gender bias or prejudice.

Litigation Process

Commission members commented on the litigation process and substantive matters. When seniors serve as jurors, they may not understand the proceedings fully. Some of the lack of understanding may be traceable to a degree of illiteracy because of the lack of access to educational opportunities in the past. Or, it may be attributable to a lack of knowledge as to what can happen during a trial. For example, some Commission members who have served on juries could not

comprehend the reason why jurors may spend long periods of time in the jury room while trial matters continue; one participant cited a full day in the jury room. Seniors may not be aware of the time judges and counsel spend discussing and arguing legal issues outside the presence of the jury.

Other litigation process issues raised related to the needs of deaf or hard-of-hearing relatives of persons engaged in litigation. Commission members suggested that sign language interpreter services be made available to those with hearing difficulties, or those who are deaf.

Commission members were quite concerned about conservatorships. They expressed the view that some conservators take advantage of seniors. They complained about lawyers who make their living off the estates of the elderly through high fees and administrative costs. Sometimes a senior's property is sold, and fees and costs may mount. They urged tighter supervision of those appointed as conservators by the court.[22]

[22] Subcommittee members pointed out that a letter may be sent to the Presiding Judge of the Probate Division of the Superior Court if the conservator has done something wrong;

formal pleadings are not essential. The court has the authority to sanction a conservator if there is misconduct or malfeasance. The court is responsible for determining the reasonableness of conservator fees, and the fee is always disclosed to the family. Funds under the control of a conservator are protected by bond. In addition, the D.C. Court of Appeals oversees the professional conduct of attorneys, and complaints may be lodged with the Office of Bar Counsel. The matter may be assigned to a hearing committee, and the Board on Professional Responsibility may make a report and recommendation to the D.C. Court of Appeals regarding the discipline of an attorney.

Finally, one Commission member urged the Subcommittee not to forget about cognitive disabilities, which are often "invisible disabilities." Judges were invited to use the resources of the D.C. Developmental Disabilities State Planning Council to assist in the handling of cognitive disability cases.

Non-Judicial Branch Agencies

Crime by youth and children against seniors is a major concern. Part of this concern relates to escapes of youth from halfway houses. One Commission member complained about halfway houses located in certain blocks of New York Avenue, Northeast, the number of inmates in the neighborhood as a result of those halfway houses, and the irregularities in security that make those houses unsafe for the community.[23]

Office of the United States Attorney
December 15 and 20, 1999

[23] In an effort to address the problem of escapes from halfway houses, a former Chief Judge of the Superior Court requested same day reports on escapes, rather than delayed reports.

Two forum sessions were held with the Office of the U.S. Attorney. The first concentrated on issues facing Assistant United States Attorneys ("AUSA"), and the second on the experiences of victims and government witnesses. Although a bit of concern was voiced about possible gender bias, the vast majority of comments pertained to issues of time and docket/case management in the trial court and the proper protection of victims and victim witnesses.

Court Administration

Time management is critical not only for AUSAs, but also for their witnesses, including victims and police officers. AUSAs believe that some proceedings take longer in the District than in Virginia where felony cases have status days and judges reserve one "junk" day for everything except trials; trials take place four days a week in Virginia.[24]

[24] According to one AUSA who has had trial experience in Arlington, Virginia, trials there may be faster, but not necessarily better since the litigants may be less prepared than those in the District.

Typically, AUSAs have a caseload of 85 to 110 cases per attorney. They usually meet police officers and other witnesses in the morning for conferences, beginning at 9 a.m. These conferences are important because they enable an AUSA to detect problems in a forthcoming case. If the witness is late for the witness conference, the conference must be juggled with the court appearance and trial preparation. If a judge commences court at 9 a.m., a strain is placed on the prosecutor. The AUSA may not be prepared for trial; a continuance may not be granted by the trial judge; and consequently, a dismissal may result.[25]

On the day of trial, AUSAs and their witnesses may have to wait a couple of hours or longer before the trial actually begins, or is scheduled for another day. This wait is discouraging to some witnesses who do not want to be involved in the case. Rather than having the witnesses and the AUSAs "waste their time" on these occasions when it is obvious that the judge will not reach the scheduled case, the matter should be rescheduled immediately rather than keeping the prosecutor and witnesses in court. Furthermore, AUSAs do not understand why everything is scheduled at 9:30 a.m. since all of the matters cannot be heard at the same time.

Delays and continuances also have an impact on victim witnesses. Sometimes the victim and his or her family have to travel long distances to get to the courthouse. In addition, employers of the victim, and those of the victim's family

[25] There was some complaint that when an assigned AUSA is unavailable to begin trial on the appointed day, some judges may insist on moving forward because of a belief that

members, may not be understanding or sympathetic with regard to absence from work for court appearances, especially when there are multiple days of missed work due to delays and continuances in the court proceedings. Therefore, AUSAs suggest that trial judges should at least explain the reasons for the delays or continuances.[26]

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one AUSA can be replaced with another.

[26] Subcommittee members suggested that AUSAs could call a judge's chambers to inquire about the status of a hearing or other proceeding in order to prevent unnecessary trips to the courthouse. Or, case jackets could be flagged in matters involving victim witnesses.

More attention should be paid to victim witnesses who are frightened. Some may have the feeling of "running the gauntlet" when they walk down the long corridor of the John Marshall level of the Moultrie courthouse because of their perception that there is no security in the corridors. Incidents have occurred in the corridors of the courthouse.[27]

Litigation Process

[27] AUSAs also noted that courtroom staff sometimes observe things that may be unsettling to victim witnesses, and hence, should report their observations to the trial judge. In addition, the U.S. Attorney's office should be contacted because it has a support program for victims of crime and their witnesses and which coordinates its work with the Office of Crime Victim's Compensation. Judges have requested augmented security when victims are afraid of facing the respondent in domestic violence cases.

Comments pertaining to the litigation process often related to those regarding court administration. There is wide discrepancy in the way in which trial judges manage their cases; some are faster than others and should be complimented whereas the slower judges should receive training. Stepping up the pace of the trial would help to reduce the bitterness of witnesses and jurors about the amount of time that is spent waiting for trial proceedings to commence or to resume, and the amount of police overtime that must be paid. Moreover, trial judges should not leave all substantive and evidentiary issues to the day of the trial. Doing so causes the trial to be delayed while these issues are addressed. Having these issues resolved prior to trial is desirable in complex criminal cases.[28] Getting a ruling on a motion, including a motion for a continuance, may take a long time. Responses to motions filed as long as two weeks prior to a scheduled event should be expedited.

The presence of interpreters where needed may facilitate the smooth functioning of a trial and avoid unnecessary delays. Even though a person may be conversant in English or have understandable English, an interpreter may be

[28] One trial judge who is a member of the Subcommittee pointed out that a judge's management of a criminal calendar requires a different set of skills than knowledge of substantive criminal law. Calendar management training has been offered to Superior Court judges in the past. Other case management techniques have been introduced, such as appointing one judge as a team leader, appointment of a calendar control judge for misdemeanors, and monthly case management reports. Trial judges strive to reach nonjury cases on the scheduled day of trial, even if it is not until after 4 p.m. Other time-saving mechanisms are being considered, such as a "stet docket" for unlawful entry cases, and index cards for the jury *voir dire* process to preserve the privacy of the jury panel members.

appropriate where there is a preference to use the native tongue in the stress of the courtroom. In addition to the use of interpreters, the court process may be facilitated by the avoidance of jargon and legal terminology directed at victims and witnesses, where possible; and by an explanation of the court process to victims and victim witnesses. It may also be helpful for judges to understand the behavior of and obstacles to the victim witness who faces court proceedings. In that regard, the Subcommittee's attention was called to an article by Dr. Lisa Goodman of the Psychology Department at the University of Maryland at College Park entitled: "Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective."

One aspect of the criminal process should not be rushed according to the AUSAs, and that is the victim impact statement. Because of the heavy workload in the domestic violence section which handles some 4,000 cases per year, there is insufficient time allocated for the preparation and submission of victim impact statements for the sentencing phase of the court proceeding. At least two weeks prior to sentencing are required for this process. Under the present system, a packet is mailed to the victim who must complete it and return it to the AUSA. Often the victim does not prepare the impact statement immediately - whether because of painful or ambivalent feelings or procrastination. The AUSA must then make a phone call to encourage the return of the victim impact statement. To avoid sentencing without a written victim impact statement, some judges prefer allocution

at sentencing. The victim should receive advance warning in these cases where the victim must address the court.[29]

At sentencing, defendants may be ordered to make restitution. Since an order for restitution expires when the sentence has been served or at the end of probation, restitution should be ordered separately.[30] Care should be taken to enforce the restitution orders. For example, probation officers should inform the Budget and Finance Division of the D.C. Courts of the victim's address so that timely restitution payments may be made.

AUSAs deplored what they believe to be less civility in the District's trial court than in the Federal trial court. AUSAs sometimes feel that defense attorneys and prosecutors are engaged in war in Superior Court. Prosecutors think that the atmosphere in the trial court has changed over the last ten years because judges are giving more credence to specious claims, such as claims of ethical or *Brady* violations, which require too much time to prepare responses. In the AUSAs' view,

[29] Sometimes there is pressure to sentence the defendant immediately in cases where a plea of guilty is entered, rather than continuing the case for sentencing.

[30] The United States District Court uses a consent judgment to order restitution. Model restitution orders have been prepared, and it was suggested that the U.S. Attorney's office develop a model consent judgment order for use by trial judges.

the absence of civility in the trial court between prosecutors and defense counsel may be attributable to the fact that the Public Defender Service has lost some of its skilled veterans and the rate structure for the Criminal Justice Act ("CJA") cases may have brought less skilled and experienced attorneys into the criminal defense bar that handles Superior Court cases. In the view of the AUSAs, the federal CJA bar is more professional than the one for the D.C. Courts, and the federal CJA bar is treated with more respect by federal judges. To help promote civility in the trial court, AUSAs urge that trial judges not permit or tolerate baseless accusations against them.

On the appellate level, experiences in arguing before the D.C. Court of Appeals are perceived as "wonderful" by one AUSA. Only a few instances of a judge being undignified or unprofessional by yelling at litigants were reported; however, these instances were out of the ordinary. The AUSAs appreciate the fact that oral appellate arguments begin on time.

Treatment of Participants

There were no reports of racial bias or prejudice in the D.C. Courts. However, there was one comment relating to possible gender bias in one specific case, in the form of harsh treatment of a female prosecutor by a female judge. It was difficult to discern whether the anecdote recounted reflected a personality clash between a prosecutor and a judge rather than a negative attitude by the judge against female prosecutors. Besides this one specific case, one or two other judges were

mentioned as possibly treating female and male attorneys differently in terms of the time given the attorneys and the acceptance of their views.

Some perception of unequal treatment of government witnesses and defendants surfaced. AUSAs expressed the view that defendants are treated better than government witnesses. Government witnesses have to wait when defendants are late arriving in court, but defendants receive no "sanction," such as asking a late defendant to "step back."

Office of the Corporation Counsel
January 5 and 19, 2000

Two forums were conducted with the Office of Corporation Counsel, District of Columbia (" the OCC") in January 2000. Supervisors of the OCC who participated at both sessions surveyed members of their respective divisions to determine the concerns they wanted to be raised at the meetings. Many of the comments of the OCC representatives were directed at the way in which judges and others in the judicial system treat attorneys from the OCC. Perceptions of unfairness and bias were frequently reflected. Other closely related concerns pertained to the litigation process and court administration.

Court Administration

Time and docket/case management concerns were articulated. When judges take the bench late, an Assistant Corporation Counsel's schedule will be affected if he or she is required to appear in more than one courtroom on the same morning. Some judges either take the bench late or frequently have emergencies that delay their arrival in the courtroom, and usually do not apologize for being late even though they may chastise attorneys who are late. Judges should appreciate the fact that one Assistant Corporation Counsel cannot possibly be in several courtrooms at the same time.

Initial conferences, which generally pertain to scheduling discovery, depositions, dispositive motions, mediation and trial in civil cases, are time consuming. If opposing counsel agree on the track to which a case will be assigned, the OCC sees no need for a scheduling conference. When initial conferences are scheduled, at least four Assistant Corporation Counsels may be seen in the same courtroom waiting for cases to be called. Handling this conference by mail would save time for the OCC attorneys.[31]

Although staff in the D.C. Court of Appeals are regarded as friendly, rules applicable in the Court of Appeals were criticized. Some rules are perceived as "silly" and unnecessary, and the application of the rules is viewed as hyper technical. For example, the requirement that a party contact all of the other parties to a case before filing a motion is seen as humiliating, as is the need to file a motion to correct a pleading. Documents are rejected as a result of the strict application of the rules, and must be refiled out of time. When rejection of documents occurs due to a strict or hyper technical application of appellate rules, the Clerk's office departs from its

[31] Subcommittee members who are trial judges explained that the Civil Delay Reduction Task Force developed the case management plan that is used in the trial court, and that one of the principles of case flow management is to encourage the parties to settle their differences. OCC attorneys noted, however, that large law firms may send junior attorneys to the initial conference who have no authority to settle a case. In addition, settlement is unlikely in cases where the opposing party is a *pro se* litigant. Thus, OCC should at least be able to send a "stand-in" for the initial conference. This would enable more OCC attorneys to better use their time.

historic mission as a service organization that is helpful to attorneys.[32]

Treatment of Participants

Strong perceptions of bias and unfair treatment or lack of civility due to religion, race and gender characterized many of the OCC comments during the outreach sessions, although not every OCC representative had experienced such treatment. With respect to religion, judges were faulted for not accommodating Jewish attorneys when either scheduling cases or ending a session of the court. Sundown marks the beginning of Jewish holidays and the Sabbath; however, judges do not appear to be sensitized to the significance of sundown to the Jewish faith.

The vast number of comments pertaining to the treatment of OCC attorneys concerned racial bias, and unfair treatment or lack of civility because of the status of Assistant Corporation Counsel for the District of Columbia. Court staff often assume that an Assistant Corporation Counsel who is a person of color is a criminal defendant, not an attorney. Often attitudes toward OCC attorneys are entertwined with negative attitudes towards the officials and citizens of the District of Columbia.

[32] The OCC representatives suggested that the OCC use the "Appellate Court Performance Standards" developed by the National Center for State Courts as a measure of performance by the Clerk's office. The D.C. Court of Appeals currently is reviewing its rules and comparing them with the federal appellate rules.

One OCC attorney went so far as to say that OCC attorneys become the embodiment of all the failings of the District of Columbia, and trial judges may use language in their memoranda and orders referring to "deceitful action" or "misrepresentation" by Corporation Counsel. Some judges assume that the quality of representation by OCC attorneys will be inferior. Open comments about the general quality of OCC representation gives the opposition a license to engage in unfair or unprofessional tactics. In addition, such comments have a chilling effect on an Assistant Corporation Counsel who may be reluctant to complain about indignities or bias because of long term assignments on specific court calendars which will result in frequent interaction with judges who may make derogatory comments. Moreover, OCC attorneys who have argued cases in the Court of Appeals, and who are not persons of color, have observed that some Court of Appeals judges tend to be very solicitous and complimentary of white male attorneys from large law firms, and commend OCC attorneys only as an afterthought.

Female OCC attorneys are bothered by judges' comments on their courtroom attire. Some judges have questioned the appropriateness of females wearing short skirts or pants in the courtroom; these comments may not be made during a bench conference, but on the record. One OCC attorney who was the object of an on-the-record comment about her pants suit found the experience demeaning. Her opposing counsel was male, and male lawyers in the courtroom laughed at the judge's comment and continued to laugh about the matter for approximately two

weeks. She felt that the judge's reference to her attire also gave opposing counsel license to make his own comments about her. OCC attorneys note that comments about female attire are not limited to male judges; female judges also refer negatively to the wearing of pants by female attorneys.[33]

Some OCC attorneys believe they have not received the same treatment as private attorneys during mandatory mediation of civil cases. Mediators assume that Assistant Corporation Counsels lack credibility, and require them to defend their legal positions more often than opposing counsel. The District is viewed as having "deep pockets"and rather than remaining neutral, some mediators become advocates for plaintiffs who are seeking money damages from the District. In addition, the mediator may convey the message that the District needs to be more reasonable because it has so many cases that are overloading the Superior Court's docket.

OCC attorneys have observed bias and unfairness in the treatment of litigants. In the area of mental health, elderly African American men who do not have a college education are sent to St. Elizabeths Hospital and younger African American men are dispatched to jail while young white females will not be committed to St. Elizabeths. Attorneys for white litigants who have mental problems but some college

[33] Some sentiment was expressed that pants make sense for females when it is snowing or extremely cold.

education tend to be successful in having their clients transferred to the Psychiatric Institute or George Washington University Hospital rather than being sent to St. Elizabeths which has large numbers of patients of color.

Female defendants in welfare fraud cases are asked questions which are not posed to other litigants. These questions include how many children do you have, and where are the fathers of the children?

Some judges, including those who are of the same racial group as the litigant, visibly react through the rolling of eyes or other body language when a litigant uses nonstandard English. These types of reactions could influence jurors and other lawyers in the courtroom.

Litigation Process

In contrast to problems encountered in the litigation process in the trial court, OCC attorneys regard oral arguments in the Court of Appeals as a good experience and opportunity to exchange views with judges who are prepared. Trial judges also prepare for their calendars, but OCC attorneys felt enormous pressure in the litigation process.

According to the OCC representatives, trial judges may assume that an Assistant Corporation Counsel can handle any case, even when a particular case is not assigned to the Assistant. Moreover, there is substantial pressure placed on OCC attorneys to settle cases. At pretrial conferences OCC attorneys may be told

that they are overworked and settlement is a way to resolve the case.[34]

Tactics used by private attorneys in large firms may overburden Assistant Corporation Counsels. An example of such a tactic is the filing of multiple motions for partial summary judgment. The way in which a judge handles these kinds of tactics could result either in discrediting the OCC for failure to respond in a timely fashion to all motions, or a fairer motions practice.

When OCC files motions, there may be a delay in obtaining a ruling; a case was cited in which the judge took a year to rule on a motion. Yet, OCC attorneys are criticized for not filing enough motions. Even when a ruling is obtained, the rationale may not be clear; rulings in mental health cases involving the standard of whether a person is a threat to self or to others is an example. Some judges are more thorough than others in stating their findings and articulating their rationale. Furthermore, although the law may be clearly in the District's favor, some judges are reluctant to grant the District's motion for summary judgment. This reluctance may require the District to proceed to trial and to waste resources in unnecessary litigation.

Some judges tend to hold OCC attorneys to a higher standard of performance than members of the private bar. However, they do not appreciate that although an

[34] The OCC believes that, statistically, the District settles cases at a higher rate than members of the private bar.

Assistant Corporation Counsel may be a good researcher and writer, the work of OCC has been hampered historically by the fact that for 20 years the OCC did not have a proper infrastructure or updated technological equipment.

In contrast to problems encountered in the litigation process in the trial court, OCC attorneys believe that the Court of Appeals is a good place to practice.

The Public Defender Service
May 5 and 9, 2000

Two outreach sessions were held with representatives of the Public Defender Service ("PDS"). Many of the comments and concerns of PDS attorneys centered on their treatment, and also their clients' treatment, by judges; experiences in the

litigation process; and court administration.[35]

Court Administration

Similar to other institutional litigants, such as the OCC or the United States Attorney, PDS attorneys raised time and docket/case management issues around the tendency of judges to keep them waiting. Valuable time is wasted sitting in courtrooms and waiting for judges. Waiting for judges' attention is demoralizing, and reflects the attitude of judges that the time of PDS attorneys is not as valuable as their own. Judges are often viewed as discourteous when they do not apologize for their delayed arrival, and when they forget that the same issues which may have caused their delay, such as child care arrangements, may also affect the timely arrival of PDS attorneys to court.

Judges were encouraged to communicate regarding PDS attorneys who are required to appear in more than one courtroom at the same time. Some judges refuse to release an attorney to proceed to another courtroom, as scheduled.

Favoritism by courtroom clerks should be discouraged. An attorney's friendship with a courtroom clerk may determine the order in which cases are called,

[35] The views and concerns of PDS attorneys were communicated to the Boards of Judges of the D.C. Courts. In addition, members of the Subcommittee who also are assigned to the Criminal Division of the Superior Court agreed to consider some of the concerns within the Criminal Division.

to the detriment of PDS attorneys. In addition, the courtroom clerk may not refer to the "conflict call-in" list. Moreover, the courtroom clerk controls the unlocking of the courtroom doors in the morning, and some courtrooms are not unlocked until 9:30 or 10:00 a.m. This affects a PDS attorney's ability to check in with every courtroom in which he or she is scheduled to appear on a given morning.

PDS attorneys deplore the deteriorating condition of the courthouse. For them, the courthouse used to be "glorious." Now it is an assault on one's sensibilities and demoralizing. For example, the condition of the bathrooms, elevators and escalators is viewed as deplorable.[36] There are burned-out lights in Courtroom C-10 where arraignments take place, and the courtroom for appellate arguments is overheated.

Administrative problems with preparation of the record on appeal, and transcripts, complicate the work of PDS attorneys. The tape recordings of trial proceedings are often a disgrace because of their quality. In addition, it may take two years to get a tape; the long wait constitutes an injustice. Attorneys have not been able to get around this problem by using their own creativity. For example, a large law firm brought a stenographer to court and the judge held the firm in contempt for doing so. Moreover, court reporters are not assigned to juvenile

[36] Some bathrooms and courtrooms have undergone renovations over the last few years.

proceedings and PDS attorneys must depend on the tape recording, but the proceeding sometimes is not recorded.

Fixing problems with record and transcript preparation is a priority for PDS attorneys. Lack of timely production of the record and transcripts not only results in delay, but also frustrates PDS' ability to function as effective counsel. Decisions concerning noticing an appeal require record and transcript review.

Treatment of Participants

PDS attorneys criticized the treatment of PDS clients in domestic violence and juvenile cases. While judges should be impartial in domestic violence cases, they appear to adhere to the presumption that male defendants are guilty in these types of cases. The judges often direct a berating speech to male defendants who have not been adjudged as guilty or even had evidence presented against them, saying in effect: "You got away with this one, don't let me see you in this court again." Moreover, some judges convey the stereotypical attitude that males accused of domestic violence, especially Hispanic males, are alcoholics.

Judges, in contrast to hearing commissioners, may reflect negative attitudes towards juveniles and their families based upon race and class. They may hold parents in non-white, lower income families to a higher degree of responsibility than middle or upper class white parents, and increase the level of intrusiveness into the family unit. Lower income minority parents frequently receive lectures, despite the factual circumstances. For example, a judge berated a parent whose child violated a

curfew while the parent was working. Even when the government is not ready to proceed with a case, which is often a signal by the government that the case will be dismissed, the judge may keep the case open to allow the government to find a witness or to otherwise perfect the case. A judge may explain that the case will remain open for "care and rehabilitation, and may say to the juvenile: "You still need it."

On several occasions, judges have asked PDS criminal defendants why they wear jewelry, implying that if they wear jewelry they can afford to hire a lawyer. PDS attorneys believe that judges should refrain from this kind of question because PDS clients have already been determined to be indigent by the Criminal Justice Act Office, and thus, entitled to PDS' services.

PDS attorneys are bothered by their own treatment by judges. Some feel that judges assume they are lying, and that judges are thinking: "What are you trying to get away with today?" For instance, a judge made a PDS attorney show his or her calendar to the judge during calendaring of a case. The judge then called another judge to verify information provided by the PDS attorney. In another case, a judge threatened a PDS attorney with formal sanctions when the attorney refused to go forward with a case because a critical witness had been released from jail and was missing.

In contrast to their treatment by judges, PDS attorneys believe that prosecutors are treated as officers of the court. Assistant United States Attorneys

and Assistant Corporation Counsels are perceived to have an opportunity to form a relationship with the judge. Judges often ask them for advice, thus giving the appearance of a courtroom family. While PDS attorneys are convinced that judges treat the Assistant United States Attorneys better, they sense that they fare better with judges than CJA attorneys.

Litigation Process

Comments about the litigation process focused on the criminal process, including discovery practices and PDS' use of co-counsel; the domestic violence case process; and immigration issues. PDS attorneys were adamant that discovery practices need to be changed. Not only does it take too long to get through the discovery process, but trial court practice in the Superior Court is viewed as "trial by ambush." A case that will take three days in Maryland continues for two weeks in the District. PDS attorneys experience delays in getting discovery documents from the prosecutor because the District does not have an open discovery process like that in California, Florida, and New Jersey. Although the government sometimes delays the production of discovery documents because of a fear that witnesses will be killed, the jurisdictions that practice open discovery also have problems with gangs. The government knows that sanctions for discovery violations will not be severe, and therefore, has no incentive for producing documents in a timely manner.

In actual trials, PDS uses a co-counsel system in some cases, such as complex trials and major felonies. This system pairs a senior or an experienced

attorney with a junior and less experienced lawyer. If the senior attorney has to leave the courtroom, there are implications when the junior attorney is required to proceed with the case. In those circumstances, the need for the junior attorney to go in and out of the courtroom to consult with the senior attorney underscores the fact that an attorney with less experience is handling the complex or major felony trial.

The process for domestic violence cases disadvantages the defendant. At least in the pre-adjudication stages, the process is skewed against the defendant. Training for new judges who will handle domestic violence cases does not give adequate attention to the concerns of defendants. During recent training, a PDS attorney was the only defense counsel represented on a panel that provided insight into the domestic violence case process.

The handling of immigration issues is of increasing importance in cases due to the immigration consequences of guilty pleas. Some judges go overboard, however, by informing *every person* (including those who apparently do not have immigration problems) who enters a guilty plea in a case that the plea may have an impact on the person's immigration status. Moreover, rather than informing these defendants that there be an impact, some judges ask about the defendant's immigration status. In those cases, PDS attorneys instruct their clients not to respond. Other judges provide the information only if a defendant has a Hispanic surname.

Family Division Attorneys: Abuse and Neglect
January 16, 2001

A relatively short outreach session was held with a very small group of attorneys who handle abuse and neglect cases. Most of the discussion was devoted to the organization of a larger outreach forum with members of the Family Division Trial Lawyers Association. However, a few substantive comments were made about court administration, treatment of participants, and the litigation process.

Court Administration

Appointment and compensation issues were raised. Concern was expressed about an attorney with a disability who did not get an opportunity to serve as appointed counsel because some judges thought his disability impaired his capability as an attorney. The compensation system also was perceived as unfair because a court-appointed attorney should be able to make a living without being married to an affluent partner or being subsidized by another source of income such as a pension or annuity.

Child care issues also were broached. Litigants who are parents and caretakers tend to be working people. They cannot afford to waste time waiting for their cases to be called, and would like their cases called at the time specified on their court notice or subpoena.

Treatment of Participants

One attorney recalled outrageous racial discrimination by judges in the past.

Those judges no longer are on the court due to death or retirement, and he has not observed any discrimination recently. Some judges, however, are insensitive to attorneys' religious beliefs. For example, some Roman Catholics do not work on Good Friday, and some Orthodox and Conservative Jews must leave the court by 3:00 p.m. on Friday to observe the Sabbath. At least one attorney had to withdraw from a case rather than violate religious rules. There are race and national origin implications as well in some cases of perceived religious discrimination.

Judges may display other types of insensitivity. Some have been harsh with attorneys whose functioning is impaired due to illness, such as the flu. In scheduling neglect cases, some judges are unwilling to coordinate court schedules to accommodate attorneys who have arranged for their children's day care on certain days of the week.

Litigation Process

More Spanish language court interpreters are needed. Proceedings have been continued, delayed, or accelerated because of an inadequate pool of interpreters.

Family Division Trial Lawyers Association
February 20, 2001

Approximately twenty attorneys who handle cases in the Juvenile and Neglect Branch, Mental Health and Retardation Branch, or the Domestic Relations Branch participated in this outreach forum. Many were members of the Family Division Trial Lawyers Association. Most of the concerns articulated related to court administration, the treatment of participants, or the litigation process.

Court Administration

A number of comments were made about the courthouse facility and its management; customer service rendered by court staff; scheduling and calendar management by judges; and the placement on panels and payment of appointed counsel.

As court users enter the courthouse and pass through security, they observe some court regulars who know the security guards being treated with favoritism; this is the same type of treatment that occurs in some courtrooms when courtroom clerks favor some litigants over others. After passing through security, some persons may become confused because there is no bilingual signage. Although the elevators are more accessible since they have been renovated, some people have difficulty determining what level the elevator may have reached as it moves up and down. An automated voice which announces each floor as the elevator door opens would be

helpful.

Some court users must proceed to the John Marshall ("the JM level") level of the courthouse, where juvenile, landlord/tenant, and small claims cases are heard. The JM level is viewed as overcrowded and chaotic, and its milieu as demeaning. Courtrooms on the JM level tend to be too small to comfortably accommodate all of the participants, especially when there are as many as ten persons who must be present.

Service at various counters in the courthouse is not ideal. The last year has been difficult working with counter staff. To some Family Division lawyers, courthouse staff appear to be "walking on eggshells" and miserable with their jobs. While some counter staff try to assist *pro se* litigants, the experience may wear some down, prompting the counter staff to take out their frustrations on the attorneys. A confidential printout of abuse and neglect is left on the counter in the Juvenile and Neglect Branch which is a breach of confidentiality. Sometimes, for example in the Budget and Finance Division where court appointed attorneys process their payment vouchers, counter personnel engage in personal telephone calls while people wait in line for assistance. More access to computer terminals in the Moultrie courthouse would be helpful. In Building A, computer terminals are available in the Budget and Finance Division for public use, and attorneys are able to access information on their own. In addition, the computer in the Lawyers' Lounge of the Moultrie courthouse that accesses Criminal Division records needs to be repaired.

The Family Division attorneys complained about the scheduling of cases and calendar management by judges in the trial court. Attorneys are annoyed when they sometimes get hearing date notices three or more days after the scheduled hearing; or notices for cases from which they have withdrawn; or notices containing erroneous information, such as the name of the judge; or too many notices - - 11 in one case - - for the same hearing. Of greatest concern, perhaps, is the time clients and attorneys waste waiting for something to happen. Sometimes they wait for hours before their cases are called, even when they have been given a set time to appear. Most clients are working people, and some have lost their jobs due to time spent at court. Moreover, waiting time on the day of a hearing tends to be stressful, and the judge may be in a bad mood when he or she finally appears. Judges who are late may not apologize for their lateness.

When judges insist on scheduling matters at 9:00 a.m., which is an inconvenient time, but do not take the bench until much later, an attorney's schedule may have to be altered. For example, if the attorney has a court matter scheduled on the morning when court starts late, afternoon meetings with clients may have to be rescheduled. Indeed, the way judges manage their calendars makes it difficult for an attorney to plan a day. When court begins at 9:00 a.m. rather than 9:30, more time may be needed to travel to the courthouse because of traffic patterns, curbside parking may be unavailable, and parking costs may be incurred.

Management of court appointments and the pay system for court appointed

attorneys were criticized. Some attorneys do not want to be confined to one type of area; they prefer to be placed on more than one panel in order to learn different practice areas. Although some attorneys have seen improvements in the payment system for appointed counsel, others regard the process as too slow. Any delay in payment may have a negative impact on those who have no other source of income. Still others complained about the payment cap, and the administrative requirement that they visit a client eight times per year.

Treatment of Participants

There is a perception that judges and clerks treat attorneys appointed in abuse and neglect cases as a lesser class of lawyers. They perceive their treatment as different from that given to attorneys in private practice; they sometimes feel like step-children and are sometimes viewed as a nuisance. Unlike clerks in Prince George's and Montgomery County who are very helpful, clerks in the District are often on the telephone and take their time in assisting attorneys. There are exceptions, especially a court employee in the Domestic Relations office who was described as polite, wonderful, and a model employee who should be recognized.

Family Division attorneys voiced displeasure with the disrespect given to persons caught up in Family Division matters; the tendency of court personnel and judges to engage in stereotyping on the basis of race or gender; and the insensitivity of judges to religious and age factors. When judges call attorneys, clients, foster

parents, social workers and others by their first names on the record, rather than their surnames, some perceive such treatment as disrespectful and an impediment to a professional relationship with the court, especially when, in contrast, judges are addressed as “Judge” or “your Honor.” Males who are fathers may be exposed to stereotypical thinking and unequal treatment. No one ever says to a mother that she has to prove legal custody, but judges will tell a father that he has to “go get legal custody.” Judges do not assume that the father is the natural reunification parent, and it may take the court a long time to recognize that he is. A father may be very involved in the juvenile’s life, but judges tend to want to hear from the mother. For example, in one case the judge addressed the mother and not the father at the beginning of the case. In this instance, the father, not the mother, had been working very closely with the attorney. Males tend to be lectured in domestic violence cases, even if the case is dismissed; and even though the charge of domestic violence by the male may turn out to be baseless, male clients may be forced to take domestic violence counseling or anger management training.

One African American female attorney indicated that a courtroom clerk may make the assumption that she is not an attorney and tell her to leave the courtroom. When she responds that she does not have to leave, she is asked whether she is a social worker or a parent. Other attorneys corroborated her experience, and some white female and black male attorneys have had similar experiences. White male attorneys reported only one example of race/gender stereotyping when the attorney

appeared in court in denim jeans rather than business attire. When race and gender stereotyping by courtroom clerks occurs, it raises doubt in the client's mind about the potential effectiveness of the attorney. It was suggested that the courtroom clerk should say simply, as do some courtroom clerks, "If you are not an attorney, please leave."

African American attorneys believe they are underrepresented on the abuse and neglect court appointed attorneys' list. They also claim that they are only 12% of the abuse and neglect list; and 12% (36 in number) of the 250 CJA attorneys on the U.S. panel, but that 18 of the 36 African Americans on the U.S. panel generally do not take CJA cases. Most of those on the CJA D.C. panel are African American. In the view of the African American participants in the forum, racial imbalance in the courtroom gives a bad impression, and minority attorneys are important for home visits and for reasons of cultural appreciation.

With respect to religious and age factors, there were complaints that in scheduling cases, some judges are not sensitive to the religious holidays observed by attorneys and their clients, such as Islamic and Hindu holidays, Good Friday and the importance of sundown in the Jewish faith. Older practitioners believe that they get fewer cases even though they are more experienced, and that judges value that experience less than youth. They see judges as conveying a silent message to them: "Why don't you move on?"

Litigation Process

Comments on the litigation process pertaining to family matters related to assistance needed by litigants, the discovery process, neglect review hearings, the process for mental retardation and domestic violence cases, and appellate court arguments. Many litigants require bilingual assistance, but it is not always available. The trial court does not have enough interpreters, especially for Spanish and Asian languages. Spanish-speaking people appear in the Family Division in great numbers; a significant number are *pro se* litigants who have questions that court staff cannot answer in Spanish. *Pro se* litigants who speak English may or may not get the help they need from court staff. For example, those participating in the forum believe that the Domestic Relations staff members work well with *pro se* litigants, whereas the Juvenile and Neglect Branch does not provide comparable assistance.

The discovery process in child abuse and neglect cases was regarded as flawed. The rules of discovery may be ignored, and consequently, some innocent clients are found to be culpable. One attorney has handled five sexual abuse cases, but has never received the requested tape of the proceedings. Therefore, he does not know the child's account of the alleged abuse. The same attorney sometimes gets no response to his Request for Admissions, and believes that discovery rules should be followed or modified.

Sufficient time is not allowed for neglect reviews. These hearings generally are held at the end of the day, even though some may merit a full day for the presentation of evidence. Judges appear to be less tolerant of the old fashioned

style of advocacy which involves fighting hard for one's client, which may require more time for hearings. For example, as a result of the recently enacted Adoption and Safe Families Act, some attorneys have argued for an evidentiary hearing in permanency planning matters since placement is critical to a child's life. In one particular case, however, a judge allocated only 40 minutes per side, not per party. The time allocation was deemed to be unfair.

Problems were noted in the Mental Health and Retardation Branch. The clerk's office is viewed as inefficient, although there has been some improvement since a new computer system was installed. The mental retardation docket is difficult to manage, in part because cases are scheduled 15 to 20 minutes apart; and when everyone appears, the docket is too crowded. The shortage of hearing commissioners, and the fact that domestic violence cases are given priority, means that additional hearing commissioners are not available for mental retardation cases. When hearings take place, mentally retarded clients may be treated as less than persons, and sometimes are not given an opportunity to speak despite the fact that they are physically or mentally capable of verbal expression. Attorneys are also treated differently; unlike procedures used for other court appointed counsel programs, the attorneys who handle mental retardation cases are not provided a payment voucher until after a case is completed.

Attorneys who represent mentally retarded clients need the authority and support of the trial court to work behind the scenes in support of their clients. If the

level of oversight provided by the executive branch is seen as insufficient, attorneys representing the mentally retarded may have to convince care providers to maintain the proper level of care for their clients. They believe it is inappropriate to talk to reporters about their clients, but want to be able to tell care providers: "I can take you to court if you do not provide services for my mentally retarded client."

Complaints were made about the tendency to favor women in domestic violence process. The judges' tendency to lectures males, when the prosecution has no witnesses and the case is dismissed, is viewed as offensive. Rather than lecture the male under these circumstances, an apology should be made for baseless cases. Moreover, judges should recognize that some females misuse the domestic violence process.

Finally, those present at the forum indicated that they enjoy presenting oral argument in the D.C. Court of Appeals. The rules are followed and staff members are cordial and knowledgeable.

Neighborhood Legal Services Program
October 23 and December 4, 2001

Two forum sessions were held with representatives and clients of the Neighborhood

Legal Services Program, Inc., ("NLSP"), a federally funded agency since 1964. The first session involved only the Executive Director of NLSP and the Assistant Director for Legal Operations of NLSP. The second session included representatives of NLSP and the D.C. Bar, two NLSP clients, the co-chairs of the 1995 D.C. Bar Public Service Activities Corporation Landlord Tenant Task Force ("the L&T Task Force"), and the Director of Housing for the Central American Resource Center (a nonprofit social services agency).

The L&T Task Force issued a report in August 1998. Subsequently, an ad hoc committee, appointed by the then Chief Judge of the Superior Court and consisting of judges, commissioners, and court staff, studied the L&T Task Force report, and issued its report and recommendations on October 9, 1998. Discussions at the outreach forums focused on current conditions in the L&T Branch, particularly the treatment of participants, and procedures within the Branch on court days, compared with conditions found to exist at the time of the L&T Task Force report. In addition, suggestions for improvements in the L&T process were made.

Treatment of Participants

Treatment of tenants who appear for L&T cases is still viewed as poor and unfair, despite the efforts of court staff and volunteers. Most of the tenants are African American or Hispanic. They tend to be unrepresented when they appear in court, and confront a process which is dominated by landlords who attempt to forge consent judgments. First-time *pro se* tenants generally are "pushed" into entering "settlements" that are, in fact, confessed judgments. The process tends to be demeaning, in part, because landlords sit while

unrepresented tenants stand during actual interaction; different standards are applied to landlords and tenants. The prevailing assumption is that legitimacy is on the side of the landlord and that there must be an efficient mechanism for getting payment from large numbers of nonpaying tenants. In addition, while they are waiting to enter the consent judgment clerk's office, tenants play "musical chairs" since they are constantly shifting from one chair to the next as they edge toward the office of the consent judgment clerk.

Litigation Process

There were vivid descriptions of the L&T process. As tenants approach the L&T area of the Moultrie Courthouse, they see a relatively large anteroom with tables. Landlords or their representatives generally are seated at the tables. The tenant, especially a Latino tenant, may receive no instruction as to where to go once the anteroom is entered, and may be unaware that the L&T courtroom is just beyond the anteroom. Eventually, a tenant may approach the landlord at the anteroom table and be presented with legal forms. Legal forms used in the L&T Branch need to be revised because they are geared toward settlement and confessed judgments, and do not take into consideration a tenant's defenses or the fact that a tenant may desire a jury trial.

At 9:00 a.m., tenants who are in the courtroom, which is beyond the anteroom, may hear a clerk read a script rapidly in English, followed by a call of cases on the docket. It is difficult to understand the clerk if one is English-speaking, and virtually impossible if one speaks Spanish. The judge generally takes the bench between 10:30 a.m. and 11:30 a.m. By that time, a tenant's rights may have been waived; settlement forms may be signed before roll

call. If a tenant is late, or is still in the anteroom at the time of roll call, or misses a roll call because he or she has stepped outside the courtroom momentarily, a default judgment is entered. No signs tell the tenant what to do in case of lateness. Indeed, some tenants sit in the courtroom all day, unaware that a default already has been entered against them. Volunteers usually lead three persons at a time into the consent judgment clerk's interview room. Tenants usually do not ask any questions, or admit that they do not understand what is happening. When tenants do ask questions, the consent judgment clerk usually tells them that they must see the judge. Since seeing the judge will involve more waiting and the tenants want to leave the courthouse, they tend to sign the forms presented to them.

Husband and wife clients of the NLSP, who were present at the second outreach session, described their experience in the L&T Branch through interpreters. The husband, who does not read or write English or Spanish, lived in a rental apartment with his wife and three children. He maintained that the residence needed repairs that the landlord refused to make; and that lead had shown up in the family's blood. When the landlord sought to impose a rent increase, the tenants refused to pay until repairs were made. Consequently, the husband was summoned to the L&T Branch. When he arrived, he received no information about where to go. Eventually, he made his way to the L&T anteroom and saw his landlord sitting at a table.

The tenant showed the landlord the notice that he had received. After some discussion, the landlord told the tenant to go home and think about the discussion, and that they would talk later. The tenant thought that the matter had been resolved. Weeks later,

however, he received an order to vacate his residence. Apparently, while meeting with the landlord in the anteroom of the L&T Branch, the tenant missed the roll call in the courtroom and a default judgment was entered.

On the day of the scheduled eviction, the landlord told the tenant that in order to avoid eviction, he would have to purchase the apartment in which he lived, or pay him $1200 in front of the marshals. The tenant paid $1200 to the landlord. The tenant did not seek help from the nonprofit social service organization, whose director brought the tenant to the outreach forum, before his court appearance.

After the tenant described his experiences in court and the aftermath of his court appearance, the director of the nonprofit social service organization, the NLSP representatives, and others, stressed the perception of Latinos that the L&T process is unfair. Even if translation services are available, the translation is not always understood because recent immigrant tenants may only have a third grade education. Contributing to the unfairness is the underrepresentation of Latinos on the courthouse staff; an anteroom that is regarded as part of the court process, but which actually diverts tenants from entering the courtroom for roll call; a landlord-dominated process which may result in eviction; the lack of legal representation for tenants; and the requirement for protective rent payments even though the rented property has code violations.

Suggested Changes in the L&T Process

Attention was devoted to ways in which the L&T process could be improved. Potential sources of legal representation for tenants were mentioned, as were problems in

accessing those sources. The demand for *pro bono* services is great in the District of Columbia, and it is difficult getting English-speaking attorneys, let alone those who speak Spanish. Currently, the Law Students in the Court program is the only source of unpaid legal assistance in L&T. Even if NLSP were to use all of its resources on L&T matters, it would be able to handle only 10 % of the L&T caseload. NLSP representatives advocated a system for poor and unrepresented tenants similar to that established under the Criminal Justice Act for indigent criminal defendants.

Suggested ways to improve the L&T process included:

- Post more signs in English, Spanish and other languages in the L&T Branch.
- Prepare a videotape of a judge providing an orientation to L&T in English and Spanish.
- Ensure access to court interpreter resources.
- Relocate the anteroom and make changes in the table set up for the landlord and tenant conversations.
- Station bilingual court employees in the anteroom to assist tenants.
- Review the status of the D.C. Courts' implementation or rejection of the recommendations made by the Task Force report.
- Make available in the anteroom neutral mediators from the Multi-Door Division's roster.

After the second outreach forum and informal discussions with the Presiding and Deputy Presiding Judges of the Civil Division, steps have been taken to begin implementing some of

the suggested changes. The opening script has been translated into Spanish for Spanish-speaking tenants. In addition, the preparation of a videotape in English and Spanish has been discussed; a script has been prepared for the videotape; and funding discussions are in progress. Two new L&T forms have been developed, including a new form for settlement.