



DATE DOWNLOADED: Sat Apr 6 20:50:45 2024

SOURCE: Content Downloaded from [HeinOnline](https://heinonline.org)

#### Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

#### Bluebook 21st ed.

Gender, Race and Ethnic Bias Task Forces, 9 B.U. PUB. INT. L.J. 173 (2000).

#### ALWD 7th ed.

, Gender, Race and Ethnic Bias Task Forces, 9 B.U. Pub. Int. L.J. 173 (2000).

#### APA 7th ed.

(2000). Gender, race and ethnic bias task forces. Boston University Public Interest Law Journal, 9(Issues & 3), 173-372.

#### Chicago 17th ed.

"Gender, Race and Ethnic Bias Task Forces," Boston University Public Interest Law Journal 9, no. Issues 2 & 3 (Spring 2000): 173-372

#### McGill Guide 9th ed.

"Gender, Race and Ethnic Bias Task Forces" (2000) 9:Issues 2 & 3 BU Pub Int LJ 173.

#### AGLC 4th ed.

'Gender, Race and Ethnic Bias Task Forces' (2000) 9(Issues 2 & 3) Boston University Public Interest Law Journal 173

#### MLA 9th ed.

"Gender, Race and Ethnic Bias Task Forces." Boston University Public Interest Law Journal, vol. 9, no. Issues 2 & 3, Spring 2000, pp. 173-372. HeinOnline.

#### OSCOLA 4th ed.

'Gender, Race and Ethnic Bias Task Forces' (2000) 9 BU Pub Int LJ 173  
Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

#### Provided by:

Fineman & Pappas Law Libraries

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

# **REPORT OF THE FIRST CIRCUIT**

## **GENDER, RACE AND ETHNIC BIAS TASK FORCES**

### **TABLE OF CONTENTS**

Steering Committee.....	178
Gender Bias Task Force.....	178
Race and Ethnic Bias Task Force.....	178
Acknowledgments.....	179
Executive Summary.....	180
Introduction.....	184
A. Preface.....	184
B. Background.....	184
C. Research Methods.....	187
1. Court Employees.....	188
2. Court Users.....	189
3. Attorneys.....	189
D. Organization of the Report.....	189
 CHAPTER 1: DEMOGRAPHIC PROFILES—COURT EMPLOYEES AND THE JUDICIARY .....	
191	
A. Court Employees.....	192
1. Male/Female Comparison .....	192
2. Minority/Non-Minority Comparison Court of Appeals; Districts of Maine, Massachusetts, New Hampshire, and Rhode Island.....	196
3. Minority/Non-Minority Comparison District of Puerto Rico.....	202
4. Summary .....	205
B. Demographics of First Circuit Judicial Officers—Male/Female Comparison .....	206
1. Court of Appeals Judges .....	206
2. District Judges .....	207
3. Bankruptcy Judges .....	207
4. Magistrate Judges.....	207
5. Entire Circuit Male/Female Comparison.....	208
C. Demographics of First Circuit Judicial Officers—Minority/ Non-Minority Comparison.....	210
1. Court of Appeals Judges .....	210
2. District Judges Maine, Massachusetts, New Hampshire, and Rhode Island.....	211
3. Bankruptcy Judges .....	211

4.	Magistrate Judges.....	211
5.	Minority/Non-Minority Comparison Court of Appeals; Districts of Maine, Massachusetts, New Hampshire and Rhode Island.....	211
D.	District of Puerto Rico—Minority/Non-Minority Comparison.....	213

## CHAPTER 2: EXPERIENCES, OBSERVATIONS AND VIEWS OF FIRST CIRCUIT

	FEDERAL COURTS.....	213
I.	Introduction.....	213
II.	Court Employees.....	217
A.	Introduction.....	217
B.	Court Employees' Experiences.....	217
1.	Most Frequently Reported Experiences Among Employees.....	219
2.	Behaviors Reported in Disparate Proportion by Gender or Race.....	220
a.	Gender Differences Among Employees.....	220
b.	Racial/Ethnic Differences Among Employees.....	222
3.	Employees' Attributions to Bias.....	226
a.	Types of Perceived Gender Bias Most Often Reported by Employees.....	226
b.	Male and Female Employee' Reports of Gender Bias.....	227
c.	Sources of Perceived Gender Biased Behavior.....	227
d.	Types of Perceived Racial/Ethnic Bias Most Often Reported by Employees.....	228
e.	Minority and Non-Minority Employee Reports of Racial/ Ethnic Bias.....	229
f.	Sources of Perceived Race/Ethnic Biased Behavior.....	229
C.	Employee Observations and Views.....	235
1.	Work Rules and Work Environment.....	236
a.	Work Environment and Gender.....	236
b.	Work Environment and Race/Ethnicity.....	238
2.	General Views Regarding Existence of Bias.....	243
a.	Gender Bias.....	244
b.	Racial/Ethnic Bias.....	246
3.	Employees' Recommendations.....	248
III.	Attorneys' Experiences in Federal Court.....	251
A.	The Attorney Survey.....	251
B.	The Attorney Respondents.....	253
C.	Attorneys' Experiences.....	254
1.	Most Frequently Reported Experiences and Sources.....	256
2.	Gender & Racial/Ethnic Differences in Frequencies of Attorneys' Experiences.....	260
a.	Gender Differences in Attorneys' Experiences.....	260
i.	Gender Differences and Source of Behaviors.....	261
b.	Racial/Ethnic Differences in Attorneys' Experiences.....	264
i.	Racial/Ethnic Differences Reported from Attorneys in Maine, Massachusetts, New Hampshire & Rhode Island and Out-of-Circuit Attorneys.....	264

ii.	Racial/Ethnic Differences Reported in the District of Puerto Rico .....	269
3.	Locations of Attorneys' Reported Experiences .....	270
a.	Locations of Other Counsel's Behavior .....	270
b.	Locations of Judges' Behavior .....	271
D.	Attorneys' Attributions to Bias .....	272
1.	Gender Bias .....	274
a.	Behaviors Most Frequently Attributed to Gender Bias .....	274
b.	Gender Differences in Reports of Gender Bias .....	276
c.	Sources of Perceived Gender Bias .....	277
2.	Racial/Ethnic Bias .....	277
a.	Behaviors Most Frequently Attributed to Racial/Ethnic Bias .....	277
b.	Racial/Ethnic Differences in Reports of Racial Bias .....	278
i.	Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit .....	278
ii.	District of Puerto Rico .....	280
c.	Sources of Perceived Racial/Ethnic Bias .....	281
E.	Attorneys' Observations .....	283
1.	Frequencies of Reported Observations .....	283
a.	Attorneys' Observations & Source of Behavior .....	287
2.	Gender Differences in Attorneys' Observations .....	287
3.	Racial/Ethnic Differences in Attorneys' Observations .....	291
4.	Locations of Attorneys' Observations .....	295
a.	Location & Observations of Counsels' Behavior .....	295
b.	Location & Observations of Judges' Behavior .....	298
i.	Judges' Treatment of Counsel .....	298
ii.	Judges' Treatment of Civil Litigants, Criminal Defendants and Witnesses .....	300
F.	Judicial Intervention .....	302
1.	Gender Differences in Judicial Intervention .....	304
2.	Racial/Ethnic Differences in Judicial Intervention .....	304
G.	Attorneys' Views & Recommendations .....	306
1.	Attorneys' Views .....	307
a.	Views on the Pervasiveness of the Behaviors .....	307
i.	Gender Differences in Views of the Pervasiveness of Behaviors .....	308
ii.	Racial/Ethnic Differences in Views of the Pervasiveness of Behaviors .....	308
b.	Views on the Existence & Pervasiveness of Bias .....	310
i.	Views on Gender Bias .....	310
ii.	Views on Racial/Ethnic Bias .....	311
2.	Attorneys' Recommendations .....	314
a.	Recommendations Regarding Gender .....	315
b.	Recommendations Regarding Race/Ethnicity .....	315
IV.	Court Users .....	316
A.	Court Users' Experiences in Court Proceedings .....	318
1.	Most Frequently Reported Experiences .....	319



2.	Behaviors Experienced in Disparate Proportions by Gender or Race.....	321
a.	Gender Differences Among Court Users.....	321
b.	Racial/Ethnic Differences Among Court Users.....	324
B.	Court Users' Attributions to Bias in Court Proceedings .....	326
1.	Gender Bias.....	327
a.	Types of Behaviors Most Often Attributed to Gender Bias .....	327
2.	Racial/Ethnic Bias.....	327
a.	Types of Behavior Most Often Attributed to Racial/Ethnic Bias .....	327
3.	Gender & Racial /Ethnic Bias .....	328
C.	Clerks' Offices Interactions .....	328
1.	Experiences Reported in Clerks' Offices .....	328
2.	Perceived Bias in Clerks' Offices.....	331
a.	Perceived Gender Bias in Clerks' Offices .....	332
b.	Perceived Racial/Ethnic Bias in Clerks' Offices .....	332
D.	Court Users' Observations .....	332
1.	Court Users' Observations and Source of Behavior.....	334
E.	Court Users' Views .....	335
1.	Court Users' Views Regarding Gender Bias.....	335
2.	Court Users' Views Regarding Racial/Ethnic Bias .....	337
3.	Court Users' Recommendations.....	340
a.	Recommendations Regarding Gender .....	340
b.	Recommendations Regarding Race/Ethnicity .....	340
	CHAPTER 3: COURT POLICIES AND PROCEDURES.....	341
I.	Introduction.....	341
II.	Court Policies/First Circuit Equal Employment Opportunity ("EEO") Plan .....	343
A.	Recruitment/Hiring Within the First Circuit .....	343
1.	Recruitment.....	343
2.	Interview/Hiring.....	345
B.	Promotion.....	347
1.	Race/Ethnicity .....	347
2.	Gender .....	348
C.	Training.....	349
D.	Sexual Harassment Policies .....	350
E.	Federal Leave Policies .....	350
1.	Leave Statutes and Policies.....	351
a.	The Federal Employees Family Friendly Leave Act .....	351
i.	Advancing Annual and Sick Leave .....	352
ii.	The Voluntary Leave Sharing Program .....	353
b.	The Family and Medical Leave Act .....	353
c.	Excused Absences and Leave Without Pay.....	355
d.	Parental Leave .....	355
2.	Summary of Findings Regarding Implementation of Leave Policies .....	356

a. Employee Awareness .....	356
b. Medical Leave .....	356
c. Parental Leave .....	357
d. Annual Leave .....	357
e. Excused Absences and Leave Without Pay .....	358
3. Work Scheduling Policies .....	358
a. Overview of Applicable Policies .....	358
i. Compensatory Time .....	358
ii. Flexible Scheduling .....	359
4. Summary of Findings Regarding Implementation of Work Schedule Policies .....	359
a. Flex-time/Comp-time .....	359
b. Part-time/Job Sharing .....	360
<b>III. Complaint and Grievance Procedures .....</b>	<b>361</b>
A. Summary of EEO Complaint Policy .....	361
B. Survey Responses .....	361
1. Awareness .....	362
2. Retaliation .....	362
3. EEO Coordinator .....	363
4. Confidentiality .....	364
<b>CHAPTER 4: SUMMARY OF REMEDIATION .....</b>	<b>365</b>
<b>I. General .....</b>	<b>366</b>
A. Dissemination of the Report .....	366
B. Encouraging the Presence of Women and Minorities in the Courts .....	366
C. Education and Resource Library .....	366
D. Education Programs for the Judiciary .....	367
<b>II. Attorneys .....</b>	<b>367</b>
A. Policy Statement .....	367
B. Local Rule .....	367
C. Informal Grievance /Complaint Procedures .....	368
D. Seminars/Training .....	368
<b>III. Employees .....</b>	<b>369</b>
A. Model Personnel Policy Guide .....	369
B. Model EEO/EDR Plan .....	369
1. Simplification of Complaint Procedures .....	370
2. Sexual Harassment Definition .....	370
3. EDR Coordinator .....	370
4. Prohibition of Retaliation .....	371
C. Sexual Harassment Policy/Anti-Discrimination Policy .....	371
D. Training and Education .....	371
1. Workplace Opportunities .....	371
2. Job Training/Career Counseling .....	372
3. EEO/EDR Training .....	372
4. Sexual Harassment Awareness Training .....	372

## FIRST CIRCUIT TASK FORCES ON GENDER, RACE &amp; ETHNICITY\*

## STEERING COMMITTEE:

Honorable Bruce M. Selya, *Chair*, First Circuit Court of Appeals

Honorable Michael Boudin, First Circuit Court of Appeals

Honorable Joseph L. Tauro, District of Massachusetts, Chief Judge

Dean Aviam Soifer, Boston College Law School

## GENDER BIAS TASK FORCE:

Honorable Sandra L. Lynch, *Chair*, First Circuit Court of Appeals

Honorable Aida M. Delgado-Colon, District of Puerto Rico, Magistrate Judge

Honorable Michael A. Ponsor, District of Massachusetts

Margaret Curran, United States Attorney's Office, District of Rhode Island

Karen F. Green, Esquire, Hale and Dorr, LLP

Gael Mahony, Esquire, Hill and Barlow

Professor Colleen Khoury, University of Maine Law School

## RACE AND ETHNIC BIAS TASK FORCE:

Honorable Joseph L. Tauro, *Chair*, District of Massachusetts, Chief Judge

Dean Antonio Garcia-Padilla, University of Puerto Rico School of Law

Honorable Judge Joyce London Alexander, District of Massachusetts,  
Chief Magistrate Judge

Honorable Morton A. Brody, District of Maine

Kelly Sheridan, Esquire, Roberts, Carroll, Feldstein & Pierce

Rudolph Pierce, Esquire, Goulston & Storrs

Charlene F. Clinton, Esquire

## STAFF:

## EXECUTIVE DIRECTOR:

Susan J. Krueger

## ASSISTANTS TO THE EXECUTIVE DIRECTOR:

Christine F. Guthery

Florence M. Pagano

Jane A. Calautti

## CIRCUIT EXECUTIVE:

Vincent F. Flanagan

## SOCIAL SCIENCE CONSULTANT:

Professor Ellen Cohn, University of New Hampshire

---

\* Titles are those held by these individuals at the time of their appointment to the Task Forces.

## ACKNOWLEDGMENTS:

The Task Forces wish to acknowledge the following individuals for their assistance:

Nancy Asidigan	Andrew Gara	Caridad Palerm
Valery Alicea	Scott Gilbert	Deborah Peckham
Lizbet Aviles Vega	Heather Gordon	Darren Pruslow
Anna Bastian	Lela Goren	Juan Pumarejo
Anna Bazan	Ritu Goswamy	Barbara Rescoe
Tracy Beckel	Dvinka Gutnikevia	Laura Rollins
Nicole Birch	Katie Hamill	Roger Roots
Lauren Bisordi	Antonio Hernandez	Magali Rosa
Amy Busa	Andrea Hillier	Susan Rozelle
Brigitte Caron	Juliet Holmes-Smith	Cornelia Sargent
Kathy Chapman	Jennifer Horner	Jessica Shedd
Carlos Claudio Valez	Jennifer Inker	Kara Shockley
Michelle Clements	Merry Jean Chan	Susan Silbey, Professor, Wellesley College
Julie Coffin	Genevieve Johnson	Kimberly Smirles
Nicole Colby	Stephanie Kosmos	Rebekah Smith
Paul Connolly	Shawn LaGrega	Jen Stone
Tricia Darcy	Katherine Latimer	Bea Swedlow
Lisa Desroche	Andrea Longpre	Victoria Sweigert, Dean, College of the Holy Cross
Christine DiSaia	Maritza Maldonado Lopez	Bill Thornton, Professor, Univ. of Southern Maine
David Donet	Janilyn Martinez	Tera Tower
Max Duvert	Paula McCusker	Molly Treadway Johnson
Sara Eberhardt	Katherine McIver	Vered Tsarfaly
Jamie Eckstein	Bobbi Meyer	Iram Valentin
Anna Elbroch	Molly Moore	Athos Vega-DeJesus
Ivys Fernandez	Debra Morway	Julie Wilson
Milton Figueroa-	Teri Motosue	Noreen Wiscovitch
Morales	Christine Murphy	
Tim Fortune	Julia Nadeau	
Amanda Freeman	Lauren Nelson	
Carmen Fullana	Cheryl Nutter	
Jimare Gabriel	Eunice Paik	
Donna Ganache		

## EXECUTIVE SUMMARY:

The First Circuit's Gender, Race and Ethnic Bias Task Forces focused on three areas of study: demographics of the court environment; experiences and observations of those who work in and use the courts as well as observers of the courts; and policies and procedures relating to gender, race or ethnicity which apply to court employees, attorneys and other court users. The Task Forces' findings suggest that, while the majority of employees who work in the First Circuit, attorneys who practice in its courts and those who use the courts have generally positive perceptions that there is little bias and that the courts have taken steps to ameliorate any bias, there remain areas which can be improved. Many have commented that the presence of more women in high level positions and the presence of more minorities throughout the First Circuit courts would enhance perceptions of fairness. Educational and training programs to sensitize judges and court employees to the ways in which their behavior can be perceived would foster greater understanding among and between different demographic groups. Policy statements proscribing biased behavior would emphasize the courts commitment to eradicating such behavior. Complaint procedures to address issues of bias which are accessible to all court constituents and provide adequate remedies would encourage confidence in the courts of the First Circuit.

*A. Demographics**1. Judiciary*

In 1980, there were a total of four female judges in the federal courts of the First Circuit. (including Court of Appeals, District, Magistrate and Bankruptcy courts). In 1997, twelve of eighty-two (14.6%) judicial positions were held by women. At that time, the nationwide percentage of female federal judges collectively was 17.8%. The courts, of course, do not appoint judges; the President appoints federal judges with the advice and consent of the Senate.

In 1980, there were a total of two judges who were members of a minority group in the federal courts of Maine, Massachusetts, New Hampshire, and Rhode Island. In 1997, three of the sixty-six (4.5%) total federal judicial positions in these states were held by minorities. As of September 30, 1997, the nationwide percentage of minority federal judges collectively was 9.7%. In the District of Puerto Rico, in 1980, there was one non-minority judge and there were nine minority judges.\* In

---

\* Although the majority of Puerto Ricans are of Hispanic background, for purposes of all data collected by the U.S. Courts—including these surveys—persons of Hispanic background are counted as minorities.

1997, there were sixteen minority judges in Puerto Rico and there were no non-minority judges.

## 2. Employees

The 1996 snapshot of First Circuit employee demographics revealed strong representation by women. Women represented a slim majority of both attorney and law clerk positions and a large majority of staff positions. Further, women occupied nearly half of management positions. However, as head of a court unit, women were under-represented, holding seven of twenty-five positions.

The employee demographics revealed relatively small numbers of members of minority groups. Of the 705 employees who worked in Maine, Massachusetts, New Hampshire, and Rhode Island, fifty-nine, or 8.4%, were members of a minority group. Only eight percent (8%) of the nonjudicial management positions within Maine, Massachusetts, New Hampshire, and Rhode Island were held by minorities. As head of a court unit, minorities held two of twenty positions.

Many survey comments, written by attorneys, employees, and court users noted the low numbers of members of minority groups working in and using the federal courts. These low numbers are partly due to the low minority populations in states such as Maine and New Hampshire. Nonetheless, it remains an issue that should be addressed.

### *B. Experiences, Observations and Views*

The largest component of the Task Forces' investigation consisted of the preparation, dissemination and evaluation of surveys directed to court employees, attorneys and other "court users," such as witnesses, paralegals, reporters and delivery personnel. Each of the surveys contained questions concerning respondents' experiences, observations and views on issues of gender, race and ethnic bias. A total of over 2200 surveys were returned and analyzed.

Among other things, respondents were asked whether they experienced any one of a list of behaviors and then asked whether they felt the behavior resulted from gender, race or ethnic bias. The results of all three surveys revealed similarities. For example, among employees and attorneys, the most frequently reported experience was "my opinions or views were not taken seriously." Court users also reported this experience in relatively high numbers. This behavior was reported very frequently by men, women, minorities and non-minorities. Its reported frequency, therefore, may reflect general incivility.\*\* The other experiences most frequently reported by all three groups were also not attributed to gender, racial or ethnic bias as often as some of the less frequently reported behaviors. Nor were there dramatic differences between the frequencies with which the different court

---

\*\* Nonetheless, in the case of courtroom interactions, a comment that a judge did not take a lawyer's argument seriously may simply reflect that the argument lacked merit and may not reflect "general incivility" at all.

constituents reported them. For example, both employees and attorneys reported high numbers of demeaning or derogatory comments.

There were, however, some reports of gender, racial, and ethnic bias. Almost half of the female employees, who reported at least one of the listed experiences, attributed that experience to gender bias. Further, over one-quarter of the minority employees from Maine, Massachusetts, New Hampshire, and Rhode Island, who reported at least one of the listed experiences, attributed that experience to racial or ethnic bias. Employees most frequently attributed inappropriate comments about accent or manner of speech to racial or ethnic bias.

Some behaviors were reported with notably more frequency by women and minorities than by men and non-minorities. Among attorneys, many more women than men reported that either an attorney, court employee or judge "made inaccurate assumptions regarding their professional status." Further, proportionately more women than men reported that they were "addressed by their first name (when inappropriate) or by non-professional terms." Women were also more likely than men to report sexually suggestive comments or advances, comments about their physical appearance or clothing, demeaning or derogatory comments and that their opinions or views were not taken seriously. More minority than non-minority attorneys reported that an attorney, court employee or judge did not take their opinions or views seriously, were unwilling to accommodate their schedule or time requirements, made inaccurate assumptions regarding their professional status and made inappropriate comments about their presumed foreign origin or citizenship status.

Respondents from each group were also asked whether they believed gender bias exists in the courts and offices of the First Circuit. Almost one-third of the attorneys and employees who responded to the question felt that some gender bias does exist. Under twenty percent of court users who responded felt that gender bias exists in the courts. Among these respondents, however, a majority felt that gender bias was limited, rather than widespread. Similarly, while roughly one-quarter of attorneys, employees and court users felt that racial and ethnic bias exists in the courts and offices of the First Circuit, most reported that the problem is limited, rather than widespread. Nonetheless, *female* employees and attorneys were more likely to report that gender bias exists than that it does not exist. More striking, a greater number of *minority* respondents to all three surveys from Maine, Massachusetts, New Hampshire, and Rhode Island reported that racial or ethnic bias does exist than reported that it does not exist. More minority employees and court users thought that the problem was widespread than thought it was limited.

Indeed, the survey responses reveal a difference of perception with respect to both individual experiences and overall impressions of bias between women and minority respondents on the one hand and men and non-minority respondents on the other. Women tended to report experiences of gender bias with greater frequency than men, and more women than men expressed a belief that gender bias—albeit limited—does exist in the courts and offices of the First Circuit. Minorities tended to report experiences of racial and ethnic bias with greater frequency than non-minorities, and more minorities than non-minorities expressed

a belief that racial and ethnic bias does exist in the courts and offices of the First Circuit.

Finally, similarities also existed among the three groups surveyed regarding the most effective means of ensuring fair treatment. Employees, attorneys and court users all selected as two of their three top methods of achieving fairness: a.) development and posting of policies and grievance procedures relating to bias and b.) education of judges and court personnel. Both attorneys and court users also felt that judges should be encouraged to intervene when inappropriate remarks are made.

### *B. Policies and Procedures*

Employees, attorneys and court users all reported a belief that there are insufficient methods for them to raise bias issues in a confidential and effective manner. Attorneys and court users strongly recommended the development and availability of clear and effective complaint or grievance procedures. Many employees indicated unfamiliarity with existing policies and procedures, both on a national level and within their individual court units. Employees also reported a lack of confidence in the implementation of these policies and procedures. Employees sought information about policies and procedures which apply to them and the creation of additional safeguards.

### *C. Remediation*

Proposed remedial measures are meant to respond to the three primary issues identified through the Task Forces' study: evidence of perceived bias in the operation of the court system; the issues of incivility and lack of awareness of offensive behavior (whether resulting from bias or not); and the lack of knowledge and confidence in the existing grievance and complaint policies and procedures as well as the need for additional policies and procedures. The proposed remedial measures include educational programs to heighten awareness of issues relating to gender, racial and ethnic bias, as well as general incivility; the creation of training programs directed to the judiciary and court staff to address methods of dealing with perceived incidences of bias as they arise; and policy statements and grievance and complaint procedures to address perceptions of gender, race and ethnic bias.



## INTRODUCTION

*A. Preface*

A number of court systems, both state and federal, have mounted initiatives to address issues of gender, race, and ethnicity.<sup>1</sup> Bearing this in mind, the First Circuit Gender, Race and Ethnic Bias Task Forces wished to capitalize on the work already completed by these courts and, as necessary, to define and implement remedial measures within the circuit's courts. The Task Forces thus conducted a limited investigation to evaluate the nature and extent of issues present in the First Circuit and, while doing so, focused particularly on remediation.

This Report is intended not only to summarize the results of the data gathered by the First Circuit Task Forces but also to describe remedial measures which have already been taken and those planned. In its final chapter, the Report includes a discussion of remedial measures taken or contemplated.

The Report focuses on three areas: (a) evidence of perceived bias in the operation of the court system and the appropriate responses to those perceptions; (b) the elimination of negative perceptions resulting from interactions which take place in the courthouse through training and education; and (c) the creation of clear policies and procedures and the dissemination of information relating to existing and newly-developed policies and procedures.

*B. Background*

In 1993, the Judicial Council of the First Circuit passed a resolution calling for the establishment of a Task Force to study Gender, Racial and Ethnic Bias issues throughout the circuit.<sup>2</sup> Ultimately, two Task Forces (one focusing on gender bias,

---

<sup>1</sup> For examples of other courts' efforts, see Report of the Second Circuit Task Force on Gender, Racial & Ethnic Fairness in the Courts (1997); Report of the Third Circuit Task Force on Equal Treatment in the Courts, *reprinted in* 42 Vill. L. Rev. 1355 (1997); Final Report & Recommendations of the Eighth Circuit Gender Fairness Task Force, *reprinted in* 31 Creighton L. Rev. 9 (1997); Ninth Circuit Task Force on Racial, Religious and Ethnic Fairness Final Report (1997); Report of the Maine Commission on Gender, Justice, and the Courts, *reprinted in* 49 Me. L. Rev. 135 (1997); Equal Justice: Eliminating the Barriers: Final Report of the Massachusetts Supreme Judicial Court to Study Racial and Ethnic Bias in the Courts (1994); Report of the New Hampshire Bar Association Task Force on Women in the Bar (1990); Report of the Gender Bias Study, Massachusetts Supreme Judicial Court (1989); The Final Report of the Rhode Island Committee on Women in the Courts (1987); Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias, *reprinted in* 84 Geo. L.J. 1657 (1996); Report of the Special Committee on Race & Ethnicity to the D.C. Circuit Task Force on Gender, Race & Ethnic Bias, *reprinted in* 64 Geo. Wash. L. Rev. 189 (1996); The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force, *reprinted in* 67 S. Cal. L. Rev. 745 (1994).

<sup>2</sup> See Circuit Judicial Council of the First Circuit, Minutes of the Meeting of April 8, 1993.

the other on racial and ethnic bias), and a Steering Committee began work. The mission of the Task Forces was to explore the ways that issues of gender, race, and ethnicity affect the interactions of lawyers, litigants, employees, and others within and around the constituent courts of the First Circuit. Justice (then Chief Judge) Stephen Breyer selected the members of the First Circuit Steering Committee and Task Forces, and, at Justice Breyer's request, Judge Selya served as Chair of the Steering Committee. The membership of both Task Forces represented the judiciary and the legal profession and reflected the circuit's geographical composition (Maine, Massachusetts, New Hampshire, Rhode Island, and the Commonwealth of Puerto Rico). The members were diverse in terms of age, gender, racial background, and professional experience.

Although the Task Forces conducted their studies simultaneously and cooperated on certain aspects of their respective projects, the Gender Bias Task Force focused its efforts on gender-related issues in the courts, and the Race and Ethnic Bias Task Force probed race- and ethnicity-related issues. This Report catalogues the work of both Task Forces.

The Task Force Steering Committee included the following individuals: Circuit Judge Bruce M. Selya, U.S. Court of Appeals for the First Circuit, Chair; Circuit Judge Michael Boudin, U.S. Court of Appeals for the First Circuit; and Chief District Judge Joseph Tauro, U.S. District Court for the District of Massachusetts. Circuit Executive Vincent Flanagan was appointed as an ex-officio member of the Steering Committee. The Task Forces also benefitted enormously from the wise counsel of Professor Paul Gewirtz of Yale Law School and Dean Aviam Soifer of Boston College Law School.

Chief Judge Carmen Consuelo Cerezo of the District of Puerto Rico and Margaret Marshall, then Harvard University's general counsel, originally co-chaired the Gender Bias Task Force. Following Ms. Marshall's appointment as an associate justice of the Massachusetts Supreme Judicial Court in 1997, the Steering Committee elevated Circuit Judge Sandra L. Lynch from member to chair of the Gender Bias Task Force. The other members were District Judge Michael Ponsor of the District of Massachusetts; Magistrate Judge Aida M. Delgado-Colon of the District of Puerto Rico; Karen F. Green, Esquire; Gael Mahony, Esquire; Professor Colleen Khoury, University of Maine Law School; James R. Starr, Clerk, United States District Court for the District of New Hampshire; and Margaret Curran, United States Attorney's Office, District of Rhode Island.

Chief Judge Joseph L. Tauro from the District of Massachusetts and Wayne Budd, then at the private law firm of Goodwin, Procter & Hoar, originally chaired the Race and Ethnic Bias Task Force. When Mr. Budd left his position in September of 1996, Chief Judge Tauro became chair. Susan Carbon was also a member of the Race & Ethnic Bias Task Force until her appointment as a Family

---

At that time, voting members of the First Circuit Judicial Council included: Chief Judge Breyer, Judge Torruella, Judge Selya, Judge Cyr, Judge Boudin, Judge Stahl, Chief Judge Carter, Acting Chief Judge DiClerico, Judge Mazzone, Judge Acosta, and Judge Torres.

Court Judge in New Hampshire. Other members of the Race and Ethnic Bias Task Force were Antonio Garcia-Padilla, Dean of the University of Puerto Rico School of Law; Chief Magistrate Judge Joyce Alexander from the District of Massachusetts; District Judge Morton A. Brody from the District of Maine; Charlene F. Clinton, Esquire, an attorney practicing in New Hampshire; Rudolph Pierce, Esquire, an attorney practicing in Massachusetts; and Kelly Sheridan, Esquire, an attorney practicing in Rhode Island. In 1995, Susan J. Krueger, an attorney then practicing in Boston, Massachusetts, was appointed Executive Director to coordinate the work of both Task Forces.

When devising their plan of action, the Task Forces chose not to replicate the course charted by similarly situated groups in other federal and state courts, deciding not to employ typical social science research techniques to evaluate existing perceptions of gender, racial, or ethnic bias in the judicial system. Rather, the Task Forces believed it prudent to begin with an assumption, given the findings of studies in other circuits and in various state court systems<sup>3</sup>, that some bias is perceived by those who use the circuit's courts. This served a dual purpose. For one thing, it promised to conserve resources (which we thought - accurately, as matters turned out - would be scarce). For another thing, it reflected the Task Forces' firm resolve that its fundamental goal should be to create and implement remedial measures aimed at ameliorating perceived gender, race, and ethnic bias in the circuit's courts.

For two reasons, the Task Forces later decided to alter their approach somewhat and conduct a limited exploration of the perceptions of gender, race, and ethnic bias in the circuit's courts. First, as matters progressed, the Task Forces felt it important to establish whether bias is in fact perceived. This would serve both as an illustration of the need for remedial measures and as a rallying point from which to muster support for those measures. Second, the members viewed the inclusion of as many court employees, attorneys, litigants, and other court users as possible in the process of self-examination as an expedient means of fostering a court-wide dialogue on gender, race, and ethnic bias, which not only would draw additional, constructive attention to the issue, but also would help shape the selection of remedial measures.

In conducting this limited study of bias perceptions, the Task Forces tackled several preliminary issues. At the threshold, they singled out three court constituencies for particular attention and study: court employees, attorneys who practice in the circuit's courts, and court "users" (including litigants, witnesses, observers, and the like).<sup>4</sup> The Task Forces believed that they could most directly

---

<sup>3</sup> See *supra* note 1.

<sup>4</sup> Courts studied included (a) the Court of Appeals; (b) District of Maine: District and Bankruptcy; (c) District of Massachusetts: District and Bankruptcy; (d) District of New Hampshire: District and Bankruptcy; (e) District of Puerto Rico: District and Bankruptcy; and (f) District of Rhode Island: District and Bankruptcy. Due principally to logistical problems, the Task Forces decided to study jurors' experiences separately. We ultimately were unable to include a juror study in this project because of financial constraints. Such a

affect the experiences of these groups vis-a-vis implementation of court policies and procedures. Further, the Task Forces confined their studies to interactions taking place within, or under the direct control of, a federal court. Again, this was done because the court has the greatest ability to control what takes place within its purview.

Next, the Task Forces evaluated and selected research methods. Those chosen included conducting a limited number of focus groups and a "community forum," and distributing a written survey instrument to: (i) all court employees; (ii) a sample of attorneys who practice in the First Circuit; and (iii) a sample of court "users" who visited a First Circuit court during a specified period. The court user survey was the first of its kind in any comparable federal court bias study. The Task Forces retained Dr. Ellen Cohn of the University of New Hampshire to oversee the survey process and to analyze the data.

A third preliminary issue considered by the Task Forces was the fact that the First Circuit is idiosyncratic in terms of its geographic composition and its cultural diversity. The First Circuit is comprised of four contiguous New England states, on one hand, and the Commonwealth of Puerto Rico on the other hand. Obviously, there are significant cultural and sociological differences between these two regions. With respect to both gender- and race- or ethnicity-related issues, these cultural and sociological differences may significantly distinguish the experiences and reactions of those who live in Puerto Rico from those who reside in New England. Focus group sessions held in Puerto Rico confirmed this theory, as it became quite clear that many in Puerto Rico (including both attorneys and court employees) were more concerned with bias resulting from socio-economic and language factors than bias stemming from gender, race, or ethnicity. Such issues suggest further possibilities for in-depth examination at a later time.

In order to preserve anonymity and to avoid placing unnecessary emphasis on any particular district, a uniform survey was distributed circuit-wide. Accordingly, survey results are generally reported circuit-wide. Circuit-wide results include responses from those who work in, practice in or have had occasion to use the bankruptcy courts and district courts throughout the circuit and the First Circuit Court of Appeals. However, the Report catalogs results of the race and ethnic bias study separately for Puerto Rico because the majority of Puerto Ricans are of Hispanic background.

### *C. Research Methods*

The Task Forces primarily employed two different research methodologies during the course of their bias studies—focus groups and surveys.<sup>5</sup> They

---

study may be conducted at a later date.

<sup>5</sup> The Task Forces also conducted one "community forum," which took place in Springfield, Massachusetts in May 1996.

intentionally kept the scope small so as to obtain information without over-committing budgetary resources. Each of these two methodologies had advantages, as well as disadvantages that necessarily limit the conclusions that can be drawn from the data. First, while the focus groups allow the exploration of unanticipated issues and produce results simply and economically, they can provide data that is more difficult to analyze than quantitative survey data. The Task Forces chose to utilize focus groups to define the parameters of the surveys and to discuss possible remedial measures generally.

The surveys sought to obtain information efficiently from relatively large samples. They are flexible in their ability to address numerous issues in a standardized manner. Because they are standardized, of course, not all of the questions are equally applicable to each of the respondents. Most important, they rely on subjects' self-reporting; they contain subjective reports of respondents' perceptions and not objectively verifiable data.

Thus, we provide the results of the Task Forces' studies with awareness of the limitations inherent in the ways they were obtained. They are not intended to "prove" anything; but merely to describe the types of behaviors and situations that have tended to produce perceptions of gender, race, and ethnic bias in the courts and that may recur, without appropriate remedial measures. This section summarizes the Task Forces' methodologies for each of the three groups studied—court employees, attorneys, and court users. Further detail is provided in the methodology section of the Appendix.

### 1. Court Employees

Prior to drafting the Employee Survey, Task Forces' staff convened focus groups in each of the circuit's five districts and in the Court of Appeals to elucidate those gender, race and ethnic bias issues of greatest importance to judicial employees. Focus group participants were randomly selected from employee lists provided by the Administrative Office of the United States Courts ("AO"). We attempted to ensure that staff and management were represented proportionately. The results of the focus groups shaped the content of the survey distributed to each First Circuit employee in March, 1997.

Through the Employee Survey, the Task Forces obtained demographic data from the employee population. Demographic data was also obtained from records provided by the AO, which were updated internally. The surveys provided information concerning employees' experiences and/or observations of bias in the workplace. The survey instrument also examined employees' viewpoints on issues such as family leave, flexible work schedules, and grievance and complaint procedures. Finally, the survey sought employees' overall opinions and suggestions regarding gender, racial, and ethnic bias.

## 2. Court Users

The court user survey was the first of its kind in federal bias studies. Between March and May of 1997, trained volunteers distributed surveys to individuals who visited the circuit's federal courthouses and/or clerks' offices. Recipients included civil litigants, litigants' family members, lay and expert witnesses, victims of crimes, courtroom observers, members of the media, paralegals, and messengers.

The trained volunteers included students from law schools and universities within the circuit. Prior to survey distribution, all volunteers attended a two-hour training session on survey administration techniques designed by the Task Forces' social science consultant, Dr. Cohn. The volunteers administered the survey in all district and bankruptcy courts and in the Court of Appeals. The survey continued for varying lengths of time within each courthouse, depending on the volume and flow of traffic at each particular location.

## 3. Attorneys

As a starting point, Task Forces' staff convened an attorney focus group in Boston to identify those gender, race, and ethnic bias issues considered most important by attorneys practicing in the circuit's courts. Judge Ponsor, in conjunction with the Massachusetts Bar Association, held a separate community forum in Springfield, Massachusetts, entitled "Gender Bias in the Courtroom and the Litigation Process." At that forum, attorneys discussed how gender bias has shaped their experiences in state and federal courts.

The Task Forces utilized suggestions and comments from the attorney focus groups and the community forum to design an attorney survey. In addition, a selected number of attorneys participated in an attorney survey pilot study and were given copies of the draft survey to review and comment upon prior to distribution. This group of attorneys included women and minorities who practice throughout the circuit, including the District of Puerto Rico. A number of comments received from this pilot study were incorporated into the final survey instrument. In April 1997, the attorney survey was mailed to 4,187 attorneys who had practiced in the courts of the First Circuit during a three year period, December 1993 to December 1996. After survey distribution was complete, Task Forces' staff conducted two additional attorney focus groups which addressed issues of race and ethnicity in the First Circuit. Specifically, members of these groups were asked to discuss possible remedial measures. The first of these focus groups was held in Puerto Rico in July 1997. The second focus group was held in Boston in August 1997.

### *D. Organization of the Report*

In analyzing the results of their research, the Task Forces found that the concerns raised by each of the three groups studied bore considerable similarity to each other. Generally, these concerns fell into three categories: (a) reports of perceived a lack of gender, racial, and ethnic diversity in the operations of the courts; (b) reports of negative perceptions resulting from courthouse interactions; many

relating to general incivility, others relating to gender, race, and ethnicity; and (c) a perceived lack of clear policies and procedures to address concerns about gender, racial, and ethnic bias and a lack of information relating to policies and procedures which were in place already.

The Report is divided into four chapters, the first three of which focus on the issues most frequently raised by court employees, attorneys, and court users. A final chapter summarizes remedial measures taken and proposed. Many of the remedial measures are those suggested by the court constituents. Surveys revealed consistency among those measures considered most effective by attorneys, employees, and court users.

Chapter One focuses on the demographics of the court environment. The court population with which attorneys and the public interact has a significant impact on each individual's experience with the court. In addition, the court becomes a more attractive employer to women and minority groups when it reflects diversity in staff, management, and the judiciary. This section of the Report illustrates that both a historical overview and a present snapshot of the demographics of the court demonstrate a disproportionate lack of minorities in all positions and of women in leadership positions. With respect to minority groups, this problem is not unique to the First Circuit courts, particularly given the geographic region occupied by the circuit. The states of Maine, Massachusetts, New Hampshire, and Rhode Island have below average populations of minority groups.<sup>6</sup> In the District of Puerto Rico, however, although the majority of Puerto Ricans are of Hispanic background, for purposes of all data collected by the U.S. Courts, persons of Hispanic background are counted as minorities. The District of Puerto Rico, therefore, has an above-average population of minorities. To avoid confusion, demographic information (and survey results) relating to race and ethnicity for the District of Puerto Rico are reported separately.

Chapter Two focuses on the experiences and observations of those who work in and use the courts. Using the results of the three surveys distributed, the Task Forces summarized the views of the courts' constituencies about their experiences in and observations of the courts of the First Circuit. In describing these survey results, the Task Forces intend not simply to report findings, but to inform employees, judges, and attorneys about how they are perceived by each other and by those who use the courts. One interesting finding about employees', attorneys', and court users' reactions to the First Circuit courts was the predominance of reports of general incivility—rather than any form of bias. However, there were also reports of gender, racial, and ethnic bias—generally more subtle than overt.

The third chapter summarizes policies and procedures currently in place. Much of the descriptive portion of this section relates to employees, because few complaint procedures were available to attorneys and court users. Several issues

---

<sup>6</sup> These four states have the following percentages of minority populations—Maine 2.0%; Massachusetts 12.2%; New Hampshire 2.7%; Rhode Island 10.7%—compared to a national average of 24.4%. United States Census Bureau, 1990 Census Data.

became apparent in our examination of court policies and procedures. The most prominent was simple lack of knowledge of current policies and procedures. Employees also expressed concern about the implementation of complaint and grievance procedures. Further, attorneys and court users felt that there should be additional complaint procedures.

Chapter Four proposes remedial measures to address the issues identified in the Task Forces' studies. Many of the suggestions for remediation come from the courts' constituents, either through focus groups, the community forum, or from survey responses. Suggestions include increased recruitment and hiring efforts in cooperation with state and local bar associations, including women's and minority bar associations. Proposed ways to ameliorate some of the more negative perceptions, (relating to bias and incivility) include education, training, and the development of clear policy statements. Recommendations also include the publication and dissemination of complaint procedures to attorneys, court users, and employees; the enhancement of protections available to employees; and the creation of additional policies and procedures for attorneys and court users. An opportunity to enhance protection for employees has arisen in the development and implementation of a new Employment Dispute Resolution ("EDR") Plan created by the Administrative Office of the United States Courts. This Report suggests certain modifications to the EDR plan to respond to particular concerns raised in the course of this study.

#### A NOTE ON TERMINOLOGY:

This report refers to African-Americans, Asian-Americans, Hispanics, and Native-Americans as minorities. This is because the term "minority" is used by the Administrative Office of the United States Courts in collecting EEO data. Consequently, the term is employed throughout the federal court system and is understood in a uniform way by employees of the federal courts. Further, the term is used and defined in the same way by the United States Census Bureau. The term was therefore used in all bias study research, including the surveys. This Report, therefore, describes its findings using the same terminology.

However, we wish to acknowledge that the term "persons or people of color" is utilized by many African-Americans, Asian-Americans, Hispanics, and Native-Americans and is widely used in many diverse professional, business, academic, and community settings.

#### CHAPTER 1—DEMOGRAPHIC PROFILES—COURT EMPLOYEES AND THE JUDICIARY

This chapter presents a "snapshot" of the gender and racial composition of court employees as of October 1, 1996. It then presents a historical analysis of the demographics of the First Circuit judiciary. It provides a comparative view of First Circuit courts in 1980, 1990, and 1997. Data are provided on the gender and racial composition of the appellate, district, and bankruptcy courts, including active and senior judges.



### A. Court Employees

Demographic data identifying the gender and racial composition of court employees was originally obtained from the computerized database of the Administrative Office of the United States Courts. Task Forces' staff supplemented the database by verifying the employment of each individual; and by obtaining missing gender and race information. The resulting database is summarized below.

#### 1. Male/Female Comparison

The following table shows the composition of the First Circuit workforce, excluding judges, as of October 1, 1996. Of the First Circuit workforce of 904 employees, 635 or 70%, were women. Women dominated numerically throughout the First Circuit, with total female employment ranging only slightly from a low of 66% in the District of Rhode Island to a high of 74% in the District of Puerto Rico. Overall, women were well represented in the workforce.

TABLE 1-1  
ENTIRE FIRST CIRCUIT WORK FORCE IN 1996

OFFICE	TOTAL	MALE	FEMALE	% MALE	% FEMALE
Court of Appeals	105	32	73	30.5%	69.5%
District of Maine	83	23	60	27.7%	72.3%
District of Massachusetts	341	104	237	30.5%	69.5%
District of New Hampshire	83	26	57	31.3%	68.7%
District of Puerto Rico	199	52	147	26.1%	73.9%
District of Rhode Island	93	32	61	34.4%	65.6%
TOTAL	904	269	635	29.8%	70.2%

In 1996, there were 25 attorney positions within the First Circuit, 56% of which were held by women. This data includes attorneys in the offices of the Federal Public Defenders and in the Staff Attorneys' office, as shown in the following table:

TABLE 1-2  
ATTORNEY POSITIONS IN THE FIRST CIRCUIT IN 1996

OFFICE	TOTAL	MALE	FEMALE	%MALE	% FEMALE
Federal and Assistant Public Defenders	14	9	5	64.3%	35.7%
Supervisory and Staff Attorneys	11	2	9	18.2%	81.8%
TOTAL	25	11	14	44%	56%

In 1996, over half (55%) of the law clerks in the First Circuit were women.

TABLE 1-3  
LAW CLERKS IN THE FIRST CIRCUIT IN 1996<sup>7</sup>

OFFICE	TOTAL	MALE	FEMALE	% MALE	% FEMALE
Court of Appeals	28	15	13	53.6%	46.4%
District of Maine	13	4	9	30.8%	69.2%
District of Massachusetts	55	23	32	41.8%	58.2%
District of New Hampshire	12	7	5	58.3%	41.7%
District of Puerto Rico	24	8	16	33.3%	66.7%
District of Rhode Island	13	8	5	61.5%	38.5%
TOTAL	145	65	80	44.8%	55.2%

Women held 519 (78%) of the 668 staff positions within the First Circuit.<sup>8</sup>

<sup>7</sup> The figures for the Districts include law clerks of the District Court *and* Bankruptcy Court within that District.

<sup>8</sup> Staff positions are defined as positions other than judges, attorneys, and unit heads and their chief deputies and assistants.

TABLE 1-4  
STAFF POSITIONS IN THE FIRST CIRCUIT IN 1996

OFFICE	TOTAL	MALE	FEMALE	% MALE	% FEMALE
Court of Appeals & Circuit Executive's Office	24	2	22	8.3%	91.7%
Circuit Clerk's Office	13	2	11	15.4%	84.6%
Bankruptcy Appellate Panel Office	1	0	1	0%	100%
Staff Attorneys' Office	11	2	9	18.2%	81.8%
Circuit Libraries	9	4	5	44.5%	55.6%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices	261	52	209	19.9%	80.1%
Bankruptcy Court Clerks' Offices	171	25	146	14.6%	85.4%
Probation Offices	138	50	88	36.2%	63.8%
Pretrial Services Offices	22	6	16	27.3%	72.7%
Federal Public Defender Offices	17	5	12	29.4%	70.6%
TOTAL	668	149	519	22.3%	77.7%

Almost half (49%) of the nonjudicial management positions within the First Circuit were held by women. Forty-six (46) women held management positions, while 48 men held such positions.

TABLE 1-5  
MANAGEMENT POSITIONS IN THE FIRST CIRCUIT IN 1996

OFFICE	TOTAL	MALE	FEMALE	% MALE	% FEMALE
Court of Appeals & Circuit Executive's Office <sup>1</sup>	7	3	4	42.9%	57.2%
Circuit Clerk's Office <sup>2</sup>	4	2	2	50%	50%
Bankruptcy Appellate Panel Office <sup>3</sup>	2	0	2	0%	100%
Staff Attorneys' Office <sup>4</sup>	2	0	2	0%	100%
Circuit Libraries <sup>5</sup>	2	0	2	0%	100%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices <sup>6</sup>	19	12	7	63.2%	36.9%
Bankruptcy Court Clerks' Offices <sup>7</sup>	15	8	7	53.3%	46.7%
Probation Offices <sup>8</sup>	20	5	15	25%	75%
Pretrial Services Offices <sup>9</sup>	5	5	0	100%	0%
Federal Public Defender Offices <sup>10</sup>	17	12	5	70.6%	29.4%
TOTAL	94	48	46	51.1%	48.9%

<sup>1</sup> Includes Circuit Executive, Deputy Circuit Executive, and Assistant Circuit Executives.

<sup>2</sup> Includes Clerk, Chief Deputy Clerk, Administrative Manager, and Systems Manager.

<sup>3</sup> Includes Clerk and Deputy Clerk.

<sup>4</sup> Includes Senior Staff Attorney and Supervisory Attorney.

<sup>5</sup> Includes Circuit Librarian and Deputy Circuit Librarian.

<sup>6</sup> Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

<sup>7</sup> Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

<sup>8</sup> Includes Chief Probation Officers, Assistant Deputy Chief Probation Officers, Deputy Probation Officers, Supervisory Probation Officers, and Systems Managers.

<sup>9</sup> Includes Chief Pretrial Services Officers, Senior Pretrial Services Officers, and Supervisory Pretrial Services Officers.

<sup>10</sup> Includes Federal Public Defenders and Assistant Federal Public Defenders.

Male representation was greatest in the Unit Head category. In 1996, 72% or 18 of 25 unit head positions were held by men.<sup>9</sup>

TABLE 1-6  
UNIT HEADS IN THE FIRST CIRCUIT IN 1996

OFFICE	TOTAL	MALE	FEMALE	% MALE	% FEMALE
Court of Appeals & Circuit Executive's Office	1	1	0	100%	0%
Circuit Clerk's Office	1	1	0	100%	0%
Bankruptcy Appellate Panel Office	1	0	1	0%	100%
Staff Attorneys' Office	1	0	1	0%	100%
Circuit Libraries	1	0	1	0%	100%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices	5	4	1	80%	20%
Bankruptcy Court Clerks' Offices	5	4	1	80%	20%
Probation Offices	5	3	2	60%	40%
Pretrial Services Offices	2	2	0	100%	0%
Federal Public Defender Offices	2	2	0	100%	0%
TOTAL	25	18	7	72%	28%

2. Minority/Non-Minority Comparison Court of Appeals; Districts of Maine, Massachusetts, New Hampshire, and Rhode Island

The following table shows the composition of the workforce in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode

---

<sup>9</sup> Since 1996, the number of women in unit head positions has increased from 28% (7) to 36% (9) (as of December 1, 1998).

Island, excluding judges, as of October 1, 1996. Of the 705 employees who work in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, 59 or 8.4% were members of a minority group. The largest minority representation was in the Court of Appeals; the lowest in the Districts of Maine and New Hampshire.

TABLE 1-7  
ENTIRE FIRST CIRCUIT WORK FORCE IN 1996  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Court of Appeals	105	91	14	86.7%	13.3%
District of Maine	83	83	0	100%	0%
District of Massachusetts	341	307	34	90%	10%
District of New Hampshire	83	83	0	100%	0%
District of Rhode Island	93	82	11	88.2%	11.8%
TOTAL	705	646	59	91.6%	8.4%

In 1996, there were nineteen attorney positions in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, of which only one was held by a member of a minority group.

TABLE 1-8  
ATTORNEY POSITIONS IN THE FIRST CIRCUIT IN 1996  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Federal and Assistant Public Defenders	8	7	1	87.5%	12.5%
Supervisory and Staff Attorneys	11	11	0	100%	0%
TOTAL	19	18	1	94.7%	5.3%

In 1996, 12 of the 121 law clerks in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island were members of a minority group. The Court of Appeals had the highest percentage of minority law clerks, with 14%.

TABLE 1-9  
LAW CLERKS IN THE FIRST CIRCUIT IN 1996<sup>10</sup>  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Court of Appeals	28	24	4	85.7%	14.3%
District of Maine	13	13	0	100%	0%
District of Massachusetts	55	48	7	87.3%	12.7%
District of New Hampshire	12	12	0	100%	0%
District of Rhode Island	13	12	1	92.3%	7.7%
TOTAL	121	109	12	90.1%	9.9%

Minorities held 41 (8%) of the 511 staff<sup>11</sup> positions within the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island.

<sup>10</sup> The figures for the Districts include law clerks of the District Court and Bankruptcy Court within that District.

TABLE 1-10  
STAFF POSITIONS IN THE FIRST CIRCUIT IN 1996  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Court of Appeals & Circuit Executive's Office	24	21	3	87.5%	12.5%
Circuit Clerk's Office	13	12	1	92.3%	7.7%
Bankruptcy Appellate Panel Office	1	1	0	100%	0%
Staff Attorneys' Office	11	11	0	100%	0%
Circuit Libraries**	9	5	4	55.6%	44.5%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices	195	181	14	92.8%	7.2%
Bankruptcy Court Clerks' Offices	131	128	3	97.7%	2.3%
Probation Offices	106	94	12	88.7%	11.3%
Pretrial Services Offices	10	7	3	70%	30%
Federal Public Defender Offices	10	9	1	90%	10%
<b>TOTAL</b>	<b>511</b>	<b>470</b>	<b>41</b>	<b>92%</b>	<b>8%</b>

\*\*Circuit Libraries Staff includes the satellite library located in the District of Puerto Rico.

Under 10% (8%) of the nonjudicial management positions within the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island were held by minorities. Six (6) minorities held management positions, while 67 non-minorities held such positions.

<sup>11</sup> We defined staff positions as positions other than judges, attorneys, and unit heads and their chief deputies and assistants.



TABLE 1-11  
MANAGEMENT POSITIONS IN THE FIRST CIRCUIT IN 1996  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Court of Appeals & Circuit Executive's Office <sup>1</sup>	7	7	0	100%	0%
Circuit Clerk's Office <sup>2</sup>	4	3	1	75%	25%
Bankruptcy Appellate Panel Office <sup>3</sup>	2	1	1	50%	50%
Staff Attorneys' Office <sup>4</sup>	2	2	0	100%	0%
Circuit Libraries <sup>5</sup>	2	2	0	100%	0%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices <sup>6</sup>	16	15	1	93.8%	6.3%
Bankruptcy Court Clerks' Offices <sup>7</sup>	12	11	1	91.7%	8.3%
Probation Offices <sup>8</sup>	16	15	1	93.8%	6.3%
Pretrial Services Offices <sup>9</sup>	3	3	0	100%	0%
Federal Public Defender Offices <sup>10</sup>	8	7	1	87.5%	12.5%
TOTAL	73	67	6	91.8%	8.2%

<sup>1</sup> Includes Circuit Executive, Deputy Circuit Executive, and Assistant Circuit Executives.

<sup>2</sup> Includes Clerk, Chief Deputy Clerk, Administrative Manager, and Systems Manager.

<sup>3</sup> Includes Clerk and Deputy Clerk.

<sup>4</sup> Includes Senior Staff Attorney and Supervisory Attorney.

<sup>5</sup> Includes Circuit Librarian and Deputy Circuit Librarian.

<sup>6</sup> Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

<sup>7</sup> Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

- <sup>8</sup> Includes Chief Probation Officers, Assistant Deputy Chief Probation Officers, Deputy Probation Officers, Supervisory Probation Officers, and Systems Managers.
- <sup>9</sup> Includes Chief Pretrial Services Officers, Senior Pretrial Services Officers, and Supervisory Pretrial Services Officers.
- <sup>10</sup> Includes Federal Public Defenders and Assistant Federal Public Defenders.
- In 1996, members of minority groups occupied 10% of the unit head positions.<sup>12</sup>

TABLE 1-12  
UNIT HEADS IN THE FIRST CIRCUIT IN 1996  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Court of Appeals & Circuit Executive's Office	1	1	0	100%	0%
Circuit Clerk's Office	1	0	1	0%	100%
Bankruptcy Appellate Panel Office	1	0	1	0%	100%
Staff Attorneys' Office	1	1	0	100%	0%
Circuit Libraries	1	1	0	100%	0%
Settlement Counsel's Office	1	1	0	100%	0%
District Court Clerks' Offices	4	4	0	100%	0%
Bankruptcy Court Clerks' Offices	4	4	0	100%	0%
Probation Offices	4	4	0	100%	0%
Pretrial Services Offices	1	1	0	100%	0%
Federal Public Defender Offices	1	1	0	100%	0%
<b>TOTAL</b>	<b>20</b>	<b>18</b>	<b>2</b>	<b>90%</b>	<b>10%</b>

<sup>12</sup> The situation has worsened for minorities since 1996. As of December 1, 1998, no minorities occupied a unit head position in the Court of Appeals or the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island.

### 3. Minority/Non-Minority Comparison<sup>13</sup>—District of Puerto Rico

The following table shows the composition of the workforce of the District of Puerto Rico, excluding judges, as of October 1, 1996. Of 199 employees, 15 or 7.5%, were non-minorities. The largest non-minority representation was among law clerks, with 29% non-minorities.

TABLE 1-13  
TOTAL WORK FORCE IN THE DISTRICT OF PUERTO RICO IN 1996

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
District Court	69	7	62	10.2%	89.9%
Bankruptcy Court	43	0	43	0%	100%
Law Clerks	24	7	17	29.2%	70.8%
Probation	36	0	36	0%	100%
Pretrial Services	14	0	14	0%	100%
Federal Public Defenders	13	1	12	7.7%	92.3%
TOTAL	199	15	184	7.5%	92.5%

Of the 6 attorney positions in the District of Puerto Rico, 1 was held by a non-minority.

<sup>13</sup> Although the majority of Puerto Ricans are of Hispanic background, for purposes of all data collected by the U.S. Courts, persons of Hispanic background are counted as minorities.

TABLE 1-14  
ATTORNEY POSITIONS IN THE DISTRICT OF PUERTO RICO IN 1996

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
Federal and Assistant Public Defenders	6	1	5	16.7%	83.3%
TOTAL	6	1	5	16.7%	83.3%

Non-minorities held 7 (4.5%) of the 157 staff positions in the District of Puerto Rico.<sup>14</sup>

TABLE 1-15  
STAFF POSITIONS IN THE DISTRICT OF PUERTO RICO IN 1996

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
District Court Clerk's Office	66	7	59	10.6%	89.4%
Bankruptcy Court Clerk's Office	40	0	40	0%	100%
Probation Office	32	0	32	0%	100%
Pretrial Services Office	12	0	12	0%	100%
Federal Public Defender's Office	7	0	7	0%	100%
TOTAL	157	7	150	4.5%	95.6%

Just over 5% (5.6%) of the nonjudicial management positions within the District of Puerto Rico were held by non-minorities. One (1) non-minority held a management position, while 17 minorities held such positions.

<sup>14</sup> Staff positions are defined as positions other than judges, attorneys, and unit heads and their chief deputies and assistants.

TABLE 1-16  
MANAGEMENT POSITIONS IN THE DISTRICT OF PUERTO RICO IN 1996

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
District Court Clerk's Office <sup>1</sup>	3	0	3	0%	100%
Bankruptcy Court Clerk's Office <sup>2</sup>	3	0	3	0%	100%
Probation Office <sup>3</sup>	4	0	4	0%	100%
Pretrial Services Office <sup>4</sup>	2	0	2	0%	100%
Federal Public Defender Office <sup>5</sup>	6	1	5	16.7%	83.3%
TOTAL	18	1	17	5.6%	94.5%

1 Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

2 Includes Clerks, Chief Deputy Clerks, Deputy in Charge, Systems Managers, and Operations Managers.

3 Includes Chief Probation Officers, Assistant Deputy Chief Probation Officers, Deputy Probation Officers, Supervisory Probation Officers, and Systems Managers.

4 Includes Chief Pretrial Services Officers, Senior Pretrial Services Officers, and Supervisory Pretrial Services Officers.

5 Includes Federal Public Defenders and Assistant Federal Public Defenders.

In 1996, one (1) non-minority held a unit head position in Puerto Rico.

TABLE 1-17  
UNIT HEADS IN THE DISTRICT OF PUERTO RICO IN 1996

OFFICE	TOTAL	NON-MINORITY	MINORITY	% NON-MINORITY	% MINORITY
District Court Clerk's Office	1	0	1	0%	100%
Bankruptcy Court Clerk's Office	1	0	1	0%	100%
Probation Office	1	0	1	0%	100%
Pretrial Services Office	1	0	1	0%	100%
Federal Public Defender's Office	1	1	0	100%	0%
TOTAL	5	1	4	20%	80%

#### 4. Summary

The 1996 snapshot of First Circuit employee demographics revealed strong representation by women. Women represented a slim majority of both attorney and law clerk positions, and a large majority of staff positions. Further, women occupied nearly half of the management positions. However, in unit head positions, women were substantially underrepresented, holding 7 of 25 positions. This fact affects women who work in and use the courts.<sup>15</sup> An under-representation of women is also seen in the demographic profile of the judiciary. See pp. 23-27.

The employee demographics reveal a significant lack of members of minority groups. In fact, the low minority representation among employees in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island pervaded the Task Forces' examination of issues relating to race and ethnicity. First, the low minority population among employees limited the amount of data available from minority employees. The extent to which minorities might interact, experience and report bias, or for others to observe bias directed to them

<sup>15</sup> For example, one respondent to the attorney survey wrote: "Increase the number of female court employees in non-clerical roles. Increasing the number of women in non-clerical positions will help. I have observed an improvement in the current treatment of women in [a First Circuit Court] from the treatment 15 years ago and believe that the presence of the two female judges has been a major catalyst for change. If the visibility of women in the clerks, magistrates and trustees' offices increased, I would anticipate similar improvements would be made."

was constrained by their limited numbers.<sup>16</sup> This phenomenon was not limited to employees—minorities also represented a small percentage of both attorney and court user samples.

Additionally, the minority response rates to the attorney and Employee Surveys in Maine, Massachusetts, New Hampshire, and Rhode Island were lower than non-minority response rates. See note 41; Appendix at M 7. The combination of low minority representation and relatively low minority response rates further limited the chance to explore issues of race and ethnic bias. This, of course, does not mean that such bias is absent—there were simply limited numbers of respondents to provide this information.

The survey results are replete with reports by court constituents—attorneys, employees, and court users—of the absence of members of minority groups in the federal courts.<sup>17</sup> Such comments raise the cyclical problem that, as a result of their already low representation, minorities are less likely to apply for positions in the courts or to seek judicial relief in the federal court system. These issues are raised here, but they are manifest throughout every discussion of race and ethnicity in this Report.

### *B. Demographics of First Circuit Judicial Officers—Male/Female Comparison*

In this section, we describe the demographic composition of the judiciary from a historical perspective. What follows are comparative views of our courts in 1980, 1990 and 1997.<sup>18</sup> We first present the gender composition of the appellate, district and bankruptcy courts and then present the racial composition.

#### 1. Court of Appeals Judges

Pursuant to Article II and 28 U.S.C. § 44, the President, with the “advice and consent of the Senate,” appoints the circuit judges for each circuit. Circuit judges are appointed for life. The data below includes all active judges and senior judges of the First Circuit Court of Appeals.

---

<sup>16</sup> This, too, was noticed by survey respondents. An employee wrote: “[T]here are so few minorities in this office that nobody would recognize any racist behavior because everybody for the most part is white. I believe that some of the judges are racist because they have no meaningful exposure to anyone except those in their own socioeconomic background. Most of the people in this office would not recognize their bias because they have no comparative behavior.”

<sup>17</sup> For example, one attorney respondent wrote: “I think one must remember or be aware that there are very few minority attorneys here...Consequently, the opportunity to witness such conduct is very limited.” Another remarked that his federal court practice “provides a limited opportunity to observe racial/ethnic bias.” A third commented “I haven’t observed ethnic and racial bias because I rarely encounter attorneys who are minorities—they have been few and far between in my experience as a litigator....”

<sup>18</sup> This data was collected by the Circuit Executive’s Office by contacting the clerks of court in each District and Bankruptcy Court in the circuit and by examining internal data regarding the Court of Appeals.

In 1980, five circuit judges sat on the Court of Appeals, all males. In 1990, nine circuit judges sat on the Court of Appeals, all males. In 1997, of the ten circuit judges sitting on the Court of Appeals, nine are males and one is female. Appointed to the court in 1995, she is the first woman to serve on the First Circuit Court of Appeals.

Nationwide, as of September 30, 1997, 16.9% of the 183 Court of Appeals Judges were women. Over 83% (83.1%) were men.<sup>19</sup>

## 2. District Judges

The United States District Courts were created pursuant to 28 U.S.C. § 81-133 and Article III of the United States Constitution. The President appoints district judges with "the advice and consent of the Senate," and their appointment is for life. The data below includes all active and senior district court judges.

In 1980, there were 18 judges sitting on the district courts of the First Circuit. There were 16 males (88.9%) and 2 females (11.1%). In 1990, there were 31 judges, 29 males (93.5%) and two females (6.5%). In 1997, of the 41 judges sitting on the district courts, 87.8% (36) were male and 12.2% (5) were female. As of September 30, 1997, the percentage of female district judges nationwide was 16.8%. The percentage of male district judges nationwide was 83.2%.<sup>20</sup>

## 3. Bankruptcy Judges

Pursuant to 28 U.S.C. § 151, Congress creates bankruptcy courts and fixes the number of bankruptcy judges in consultation with the Judicial Conference. The Court of Appeals appoints bankruptcy judges "after considering recommendations of the Judicial Conference." 28 U.S.C. § 152(a)(3). Bankruptcy judges are "judicial officers," 28 U.S.C. § 152(a)(1), and sit on a full-time basis for fourteen years.

In 1980, there were 11 bankruptcy judges sitting on the bankruptcy courts of the First Circuit, 10 (90.9%) were male and 1 (9.2%) was female. In 1990, of 15 judges, 13 (86.7%) were male and 2 (13.3%) were female. In 1997, of 13 judges, 76.9% (10) were male and 23.1% (3) were female. As of 1997, almost 17% (16.9%) (56) of bankruptcy judges nationwide were women; 83.1% were men.<sup>21</sup>

## 4. Magistrate Judges

Magistrate judges are appointed by a majority of the district judges of each district court. If a majority cannot agree, the chief judge appoints the magistrate judge. 29 U.S.C. § 631(a). A magistrate judge must be "for at least five years a

---

<sup>19</sup> See Administrative Office of the United States Courts, Annual Report of the Judiciary Equal Employment Opportunity Program (for the twelve month period ending September 30, 1997) ("Annual Report").

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*



member in good standing of the bar of the highest court of the state. . . ." Full-time magistrate judges serve for eight year terms and part-time magistrates serve for four years. There is no prohibition against reappointment. 28 U.S.C. § 631(1).

The Judicial Conference of the United States requires that public notice of all vacancies be given, and that merit selection panels composed of residents of the individual judicial districts be established to assist the courts in identifying and recommending persons who are best qualified to fill such positions. 28 U.S.C. ' 631(b)(5). In addition, Congress requires that: "the merit selection panels. . . in recommending persons to the district court, shall give due consideration to all qualified individuals, especially such groups as women, blacks, Hispanics, and other minorities." October 10, 1979, P.L., 96082, Sec. 3(e).

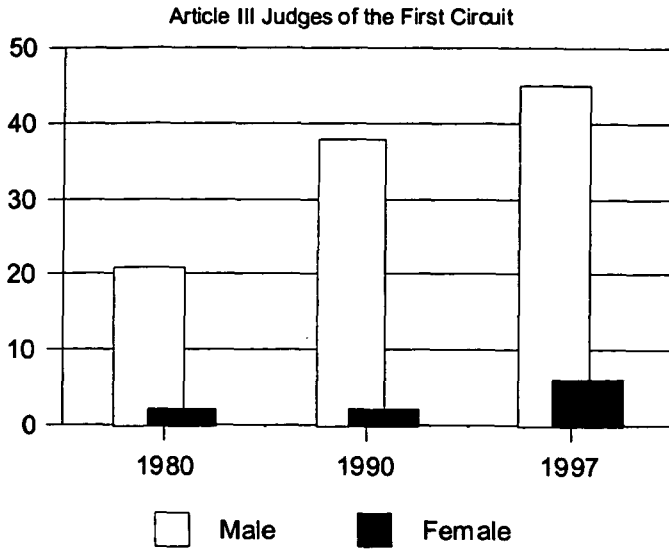
In 1980, there were 15 magistrate judges on the district courts of the First Circuit. Of the 15 magistrate judges, 14 (93.3%) were male and 1 (6.7%) was female. In 1990, of 14 magistrate judges, 13 (92.9%) were male and 1 (7.1%) was female. In 1997, of 18 magistrate judges, 83.3% (15) were male and 16.7% (3) were female. As of September 30, 1997, less than 20% (19.4%) of magistrate judges (full and part-time) nationwide were women; 80.6% of magistrate judges nationwide were men.<sup>22</sup>

#### 5. Entire Circuit Male/Female Comparison

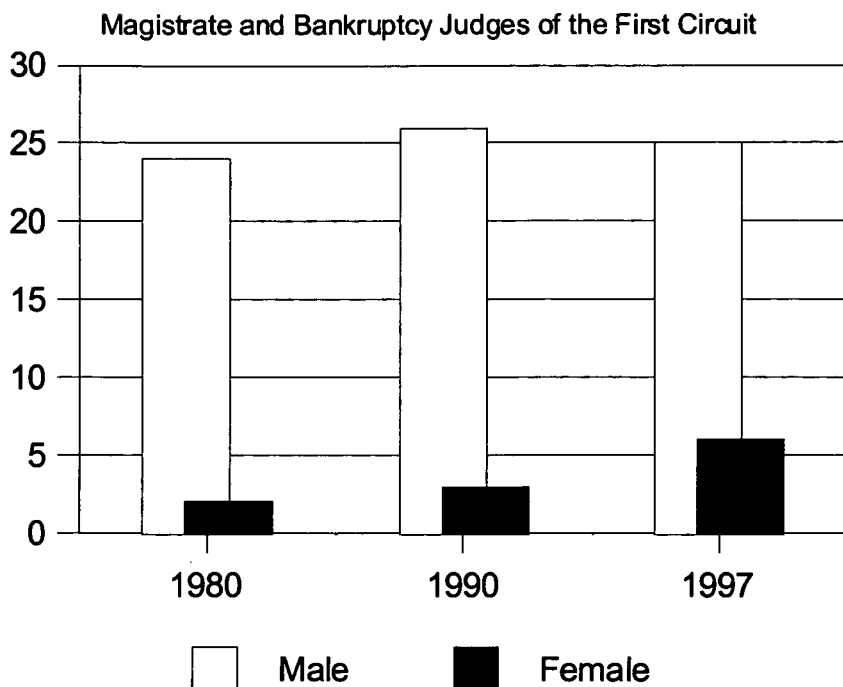
In 1980, of 23 Article III judges in the First Circuit, 21 were male, and 2 were female. In 1990, of 40 Article III judges, 38 were male, and 2 were female. In 1997, of 51 Article III judges, 45 were male, and 6 were female.

---

<sup>22</sup> See *id.*



In 1980, of 26 magistrate and bankruptcy judges, 24 were male, and 2 were female. In 1990, of 29 magistrate and bankruptcy judges, 26 were male, and 3 were female. In 1997, of 31 magistrate and bankruptcy judges, 25 were male, 6 were female.



In 1980, the total of female judges in the federal courts of the First Circuit was 4. In 1997, 14.6% (12) of 82 judicial positions were held by women.<sup>23</sup> As of September 30, 1997, the nationwide percentage of female federal judges collectively was 17.8%.<sup>24</sup>

### C. Demographics of First Circuit Judicial Officers—Minority/Non-Minority Comparison

#### 1. Court of Appeals Judges

In 1980, of 5 circuit judges, all were non-minority. In 1990, of 9 circuit judges, 8 (88.9%) were non-minority and 1 (11.1%) was minority. In 1997, of 10 circuit judges, 9 (90%) were non-minority and 1 (10%) was minority. As of September

<sup>23</sup> The relatively low number of women in judicial positions was noted by survey respondents. For example, an attorney wrote, "[T]he issue is accessibility. Each time I've argued before the U.S. District Court and First Circuit Court of Appeals, I have appeared before all white, male judges. It would be nice if there were more equal representation in the court—for attorneys as well as litigants and witnesses."

<sup>24</sup> See Annual Report.

30, 1997, the percentage of minority Court of Appeals judges nationwide was 7.7%.<sup>25</sup>

## 2. District Judges—Maine, Massachusetts, New Hampshire, and Rhode Island

In 1980, there were 15 district judges sitting on the district courts of the First Circuit in Maine, Massachusetts, New Hampshire, and Rhode Island, 93.3% (14) of which were non-minority and 6.7% (1) was minority. In 1990, of 24 district judges, 95.8% (23) were non-minority and 4.2% (1) was minority. In 1997, of 32 judges, 96.9% (31) were non-minority and 3.1% (1) was minority. As of September 30, 1997, the percentage of district judges nationwide was 14.5% minority.<sup>26</sup>

## 3. Bankruptcy Judges

In 1980, of 9 bankruptcy judges sitting with the First Circuit in Maine, Massachusetts, New Hampshire, and Rhode Island, all were non-minority. In 1990, of 13 bankruptcy judges, all were non-minority. In 1997, of 10 bankruptcy judges, all were non-minority. As of September 30, 1997, 4.5% of bankruptcy judges nationwide were minorities.<sup>27</sup>

## 4. Magistrate Judges

In 1980, of the 10 magistrate judges sitting on the district courts in Maine, Massachusetts, New Hampshire, and Rhode Island (excluding Puerto Rico), 90% (9) were non-minority and 10% (1) was minority.<sup>28</sup> In 1990, of the 10 magistrate judges, 90% (9) were non-minority and 10% (1) was minority. In 1997, of the 14 magistrate judges, 92.9% (13) were non-minority and 7.1% (1) was minority. As of September 30, 1997, 5.8% of magistrate judges nationwide, both full and part-time, were members of a minority group.<sup>29</sup>

## 5. Minority/Non-Minority Comparison—Court of Appeals; Districts of Maine, Massachusetts, New Hampshire, and Rhode Island

In 1980, of 20 Article III judges, 19 (95%) were non-minority, and 1 (5%) was minority. In 1990, of 33 Article III judges, 31 (93.9%) were non-minority, and 2 (6.1%) were minority. In 1997, of 42 Article III judges, 40 (95.2%) were non-minority, and 2 (4.8%) were minority.

---

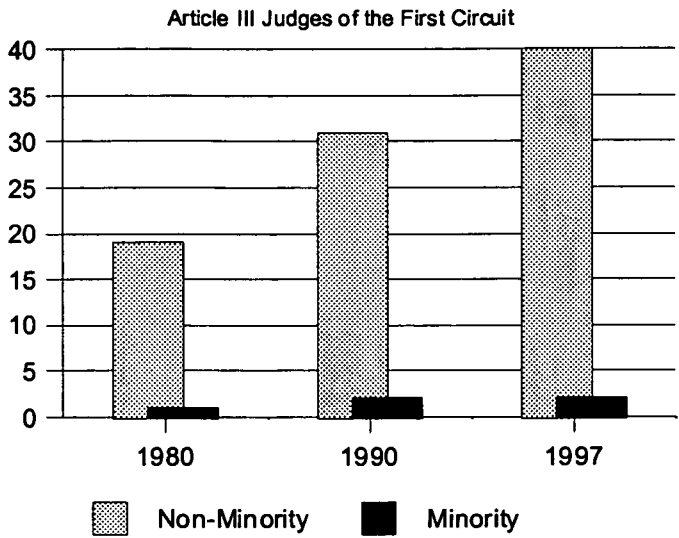
<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

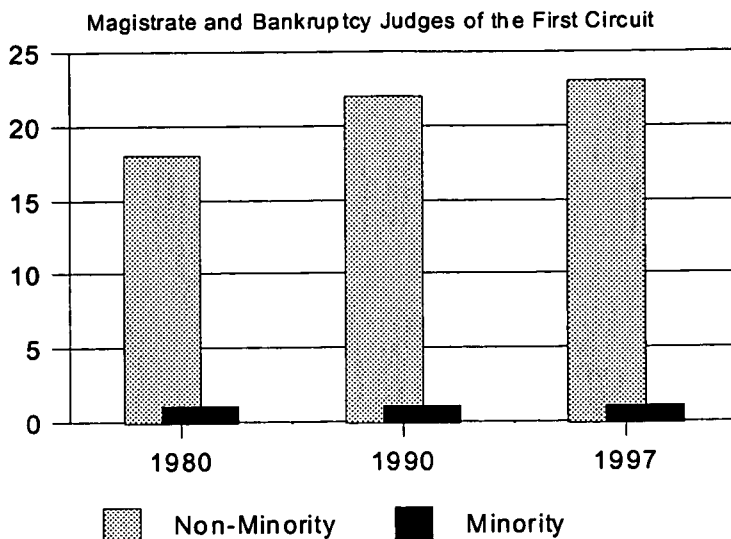
<sup>28</sup> The magistrate judge identified as a minority prefers the use of the term "person of color."

<sup>29</sup> See Annual Report.



In 1980, of 19 magistrate and bankruptcy judges, 18 (94.7%) were non-minority, and 1 (5.3%) was minority. In 1990, of 23 magistrate and bankruptcy judges, 22 (95.7%) were non-minority, and 1 (4.3%) was minority. In 1997, of 24 magistrate and bankruptcy judges, 23 (95.8%) were non-minority, and 1 (4.2%) was minority.

In 1980, the total number of minority judges in Maine, Massachusetts, New



Hampshire, and Rhode Island was 5.1% (2). In 1997, 4.5% (3) of the 66 total judicial positions in these jurisdictions were held by minorities. As of September 30, 1997, the nationwide percentage of minority federal judges collectively was 9.7%.<sup>30</sup>

#### *D. District of Puerto Rico—Minority/Non-minority Comparison<sup>31</sup>*

In 1980, of 3 Article III judges, all were minority. In 1990, of 7 Article III judges, all were minority. In 1997, of 9 Article III judges, all were minority.

In 1980, of 7 non-Article III judges, 6 (85.7%) were minority and 1 (14.3%) non-minority. In 1990, of 6 non-Article III judges, all were minority. In 1997, of 7 non-Article III judges, all were minority.

## CHAPTER 2—EXPERIENCES, OBSERVATIONS AND VIEWS OF FIRST CIRCUIT FEDERAL COURTS

### I. INTRODUCTION

One component of the Task Forces' investigation consisted of the preparation, dissemination, and evaluation of surveys directed to court constituents.<sup>32</sup> The

<sup>30</sup> See *id.*

<sup>31</sup> Although the majority of Puerto Ricans are of Hispanic background, for purposes of all data collected by the U.S. Courts, persons of Hispanic background are counted as minorities.

surveys were intended to shed light upon the constituents' experiences in, observations of, and views about the First Circuit federal courts.<sup>33</sup> Specifically, the Task Forces chose to study the perceptions of three groups who work in and use the courts: attorneys, employees, and court users.<sup>34</sup> Each of the surveys contained questions concerning respondents' experiences, observations, and views on issues of gender, race, and ethnic bias.<sup>35</sup>

Each survey contained a list of behaviors considered offensive by some.<sup>36</sup> The respondent was asked to indicate whether s/he experienced each of the listed behaviors in a federal court of the First Circuit within the past five years. Some of

---

<sup>32</sup> Surveys were distributed in the Spring of 1997. See Appendix, where each of the three surveys is reprinted.

<sup>33</sup> Courts included all bankruptcy and district courts and the First Circuit Court of Appeals.

<sup>34</sup> "Court users" included civil litigants, witnesses, courtroom observers, paralegals, and messengers. It did not include employees and attorneys, who were surveyed separately. It also did not include criminal defendants or jurors.

<sup>35</sup> The surveys also gathered information on a variety of other related topics, such as demographics, employee training and job opportunities, employee leave and work schedules, employee grievance and complaint procedures, attorneys' court appointments, and court users' overall level of satisfaction with their federal court experience. These topics are addressed in other sections of this Report and Appendix.

<sup>36</sup> The following list was developed with court employees through focus groups:

- My opinions or views were not taken seriously;
- I received inappropriate comments of a sexually suggestive nature;
- I received inappropriate sexual advances;
- I received inappropriate comments on my physical appearance or clothing;
- I received demeaning or derogatory remarks;
- I received inappropriate comments about my accent or manner of speech;
- The following individual(s) was/were less willing to accommodate my schedule or time requirements than those of other employees;
- I have been asked to perform duties outside my normal job description;
- I have been asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position;
- I was addressed by non-professional terms such as "young lady," "young man" or "honey."

The following list was developed with attorneys through focus groups:

- My opinions or views were not taken seriously;
- I experienced an unwillingness to accommodate my schedule or time requirements;
- I received inaccurate assumptions regarding my professional status (e.g., that I am not an attorney);
- I received inappropriate comments or advances of a sexually suggestive nature;
- I received inappropriate comments about my physical appearance or clothing;
- I received inappropriate comments about my presumed foreign origin or citizenship status;
- I received demeaning or derogatory comments;
- I was addressed by my first name (when inappropriate) or by non-professional terms; and
- I received inappropriate comments about (parodied) my accent or manner of speech.

the behaviors listed clearly reflected gender bias (e.g. "I received inappropriate comments of a sexually suggestive nature"); some of the behaviors clearly reflected racial or ethnic bias (e.g. "I received inappropriate comments about my foreign origin or citizenship"); and others tended to reflect general incivility (e.g. "my opinions or views were not taken seriously").<sup>37</sup>

If a respondent indicated that s/he experienced such behavior, the respondent was asked whether s/he believed the behavior was due to his/her gender, race or ethnicity.<sup>38</sup> The respondent was also asked the source of the behavior—court employee, attorney or judge.

Respondents were then asked to report their observations. Although both experiences and observations rely on the respondent's perceptions, observations remove the respondent from the interaction—that is, s/he is not actually a participant in the reported event.

In addition, court employees, court users, and attorneys were all asked whether, in their opinion, gender, race or ethnic bias exists in the federal courts of the First Circuit. If so, respondents were asked whether such bias is limited or widespread. Attorneys and employees were also asked whether in their opinion, bias was easy or hard to detect, and whether the First Circuit was taking steps to eradicate gender, racial, or ethnic bias.

This chapter is divided into three parts summarizing the experiences, observations and views of each of the three groups studied—employees, attorneys, and court users. Each section first summarizes the behaviors most frequently experienced by that group as a whole. Then, it discusses the degree to which each demographic subgroup—men, women, minorities, and non-minorities—have experienced each of the listed behaviors. By examining the degree to which these behaviors are experienced to a disparate degree by any one of the subgroups, subtle forms of bias may be revealed. Further, if the behaviors are reported in roughly equal proportions by the subgroups, it may be inferred that the issue may be more general incivility than bias.

Next, each part of this chapter summarizes the degree to which respondents actually attributed a reported behavior to gender, race or ethnic bias—that is, the frequency with which respondents actually perceived that a behavior resulted from bias. Results of the observation and opinion questions are then set forth.

The results of all three surveys revealed some striking similarities. For example, among employees and attorneys, the most frequently reported experience was "my

---

<sup>37</sup> All survey questions were limited to interactions that took place within a First Circuit federal courthouse or under the direct authority of a First Circuit Judge. This includes settlement conferences or depositions, which, even though a judge is not present, take place under the direct authority of a U.S. district, bankruptcy or magistrate judge.

<sup>38</sup> The text of this question is identical in all three surveys. (It appears as Question 11 in the Employee Survey, Question 8 in the court user survey and Questions 11, 17 and 20 in the attorney survey.) See Appendix. The question reads as follows: "In your opinion, was the behavior due to your gender, race or ethnicity?" Respondents were asked to circle one of the following answers: "(1) Due to gender only; (2) Due to race/ethnicity only; (3) Due to both gender and race/ethnicity; (4) Due to neither gender, race, nor ethnicity; (5) No opinion."



opinions or views were not taken seriously.” Court users also reported that very frequently their opinions or views were not taken seriously.<sup>39</sup> Although this behavior was reported very frequently, it was not attributed to gender, race or ethnic bias nearly as often as some of the other behaviors. Its reported frequency, therefore, may well reflect general incivility. (Nevertheless, in an adversary system, a comment that a judge did not take a lawyer’s argument seriously may simply reflect that the argument lacked merit and may not reflect “general incivility” at all.) Both employees and attorneys also reported high numbers of demeaning or derogatory comments, which they also did not often attribute to gender, race, or ethnic bias.

There were, however, some reports of gender, racial, and ethnic bias. Almost half (47.1%) of the female employees who reported at least one of the listed experiences attributed that experience to gender bias. Women most frequently attributed comments of a sexually suggestive nature and inappropriate sexual advances to gender bias.

Over one-quarter (26.3%) of the minority employees from the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island who reported at least one of the listed experiences made an attribution to racial or ethnic bias. Minorities most frequently attributed inappropriate comments about accent or speech and demeaning or derogatory remarks to racial or ethnic bias.<sup>40</sup> Thus, while reports of apparent incivility far outnumbered attributions of bias, a significant minority of women and minority employees reportedly experienced gender, racial, or ethnic bias.

In addition, some respondents from each group believed gender bias exists in the courts and offices of the First Circuit. Among these respondents from all three groups who felt that gender bias exists in the First Circuit, however, a majority felt it was limited, rather than widespread. Similarly, although some percentage of attorneys, court users and employees said that racial bias does exist, most reported that the problem is limited, rather than widespread.

Female employees and attorneys were more likely to report that gender bias exists than that it does not exist. Further, more minority respondents to all three surveys from Maine, Massachusetts, New Hampshire, and Rhode Island reported that racial or ethnic bias does exist than reported it does not exist. More minority employees and court users thought that the problem was widespread than limited.

Similarities also existed among the three groups with respect to their views regarding the most effective means of ensuring fair treatment. Employees, attorneys, and court users all selected as two of their top three methods of achieving fairness—development and posting of policies and grievance procedures relating to gender, race and ethnic bias; and education of judges and court

---

<sup>39</sup> The only experience court users reported with greater frequency was being treated in a rude manner.

<sup>40</sup> As previously explained, the few minority responses from these courts necessarily limited the number of reports of their experiences.

personnel. Interestingly, both attorneys and court users also felt that judges should be encouraged to intervene when inappropriate remarks are made.

## II. COURT EMPLOYEES

### A. *Introduction*

Surveys were distributed to all First Circuit court employees, excluding judges, in March, 1997. Respondents were asked to complete the survey and return it to the Task Forces' social scientist at the University of New Hampshire in a self-addressed, stamped envelope. A total of 914 surveys were distributed, and 389 employees returned the survey, resulting in a response rate of approximately 43%.<sup>41</sup> The survey contained questions concerning a variety of subjects about First Circuit employees' workplace environment, including: employees' experiences at work, training and job opportunities, requests for leave or flexible work schedule, workplace observations, grievance and complaint procedures, and general views. The survey contained both limited response questions, in which employees were asked to choose the most applicable answer, and open-ended questions, in which employees could write freely about a variety of subjects. This chapter deals only with those parts of the Employee Survey which address employees' experiences, observations and views of their interactions with their employer, the First Circuit federal courts. Results of the remaining topics addressed by the survey (such as grievance and complaint procedures and job opportunities) are addressed in Chapter 3.

### B. *Court Employees' Experiences*

Court employees were asked whether they experienced certain behaviors at work, and if so, to identify the source of the behavior. Specifically, respondents were asked whether they experienced any of the following:

- a. My opinions or views were not taken seriously;
- b. I received inappropriate comments of a sexually suggestive nature;
- c. I received inappropriate sexual advances;
- d. I received inappropriate comments on my physical appearance or clothing;
- e. I received demeaning or derogatory remarks;
- f. I received inappropriate comments about my accent or manner of speech;

---

<sup>41</sup> Based upon the demographic data collected by the Circuit Executive's office, the response rates of minority employees (41%: Court of Appeals; Districts of Maine, Massachusetts, New Hampshire, and Rhode Island; 26%: Puerto Rico) were lower than those of non-minority employees (47%: Court of Appeals, Districts of Maine, Massachusetts, New Hampshire, and Rhode Island; 60%: Puerto Rico).

- g. The following individual(s) was/were less willing to accommodate my schedule or time requirements than those of other employees;
- h. I have been asked to perform duties outside my normal job description;
- i. I have been asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position;
- j. I was addressed by non-professional terms such as "young lady," "young man" or "honey."

This list of behaviors was used in an attempt to capture behavior which may arise from gender, racial, or ethnic bias.<sup>42</sup> Respondents were also asked to indicate how often they had experienced the behavior, and which of the following court employees were responsible: (1) judge (my supervisor); (2) judge (not my supervisor); (3) my male supervisor (non-judge); (4) my female supervisor (non-judge); (5) other court personnel (male); and (6) other court personnel (female).

Employees who experienced any of the listed behaviors were then asked whether they perceived that such behavior resulted from their gender, race or ethnicity.<sup>43</sup> Thus, while the first question asked whether an employee had a specific experience in the First Circuit, the follow-up question asked how the employee interpreted that experience (that is, whether he or she believed the behavior resulted from gender, race or ethnic bias).

This section first presents those behaviors that employees, as a whole, reported most frequently. These behaviors were not characteristically experienced by one single group, but appear to be experienced in roughly equal proportions by males and females, as well as minority and non-minority employees. This section then reports behaviors which were reported disproportionately by men and women; minorities and non-minorities. Next, those behaviors which employees attributed to gender, race or ethnic bias are presented. It then summarizes employees' observations and views.<sup>44</sup>

---

<sup>42</sup> To assist in compiling a list of behaviors, Task Forces' staff held employee focus groups in each district. These focus groups took place in Boston, Massachusetts (July 15, 1996); Hato Rey, Puerto Rico (July 17, 1996); Providence, Rhode Island (July 22, 1996); Concord, New Hampshire (July 24, 1996); and Portland, Maine (July 26, 1996). Employees were asked at these focus groups what types of gender- and race/ethnicity-based behaviors should be included in the survey. Many employee suggestions from these focus groups were incorporated into this question (Question 10).

<sup>43</sup> The text of this question (which is included for each of the experiences listed in Question 10) reads as follows: "In your opinion, was the behavior due to your gender, race or ethnicity?" Respondents were asked to circle one of the following answers: "(1) Due to gender only; (2) Due to race/ethnicity only; (3) Due to both gender and race/ethnicity; (4) Due to neither gender, race, nor ethnicity; (5) No opinion."

<sup>44</sup> In describing the results to the Employee Survey, the Report includes the raw numbers—the frequency with which the behavior was reported (which appear as  $n=x$ ), in addition to percentages.

### 1. Most Frequently Reported Experiences Among Employees

The four experiences most often reported by employee respondents were: (1) *My opinions or views were not taken seriously*; (2) *I was asked to perform duties outside my normal job description*; (3) *I received demeaning or derogatory remarks*; and (4) *I was asked to perform duties of someone in the Courthouse with a different job title or a higher paid position*. See Table 2-1.

Almost three-quarters (73.1%) of the employees who responded to the question reported that *their opinions or views were not taken seriously*—72.7% of the females and 74.6% of the males. See Tables 2-1, 2-2.

Almost 60% (59%) of employees stated they were asked to *perform duties outside their normal job description*. This request was reported more frequently by male employees 67.6% (n=46) than by female employees 56.1% (n=119). In the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, 50% (n=8) of minorities reported being asked to *perform duties outside their normal job description*, while 56% (n=122) of non-minorities reported being requested to do so. 79.5% (n=31) of minorities within the District of Puerto Rico experienced this behavior, where 66.7% (n=4) of non-minorities reported having this experience.<sup>45</sup> See Tables 2-1, 2-2, 2-3, 2-4.

Half (50%) of the employees who answered the question reported that they had *received one or more demeaning or derogatory remarks*. Roughly the same percentage of male, 53.6% (n=30), and female, 49.8% (n=98), employees experienced the behavior.<sup>46</sup> See Tables 2-1, 2-2.

Close to half (48.8%) of employees who responded to this question reported that they were *asked to perform duties of someone in the courthouse with a different job title or in a higher paid position*. Roughly the same percentage of male and female employees experienced this behavior (49.1% (n=28) and 49% (n=98), respectively), as did minority and non-minority employees from the District of Puerto Rico (63.6% (n=21) and 60% (n=3), respectively). In the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, 61.5% of minorities (n=8) reported experiencing this behavior, while 45.9% (n=94) of non-minorities reported having this experience.<sup>47</sup> See Tables 2-1, 2-2, 2-3, 2-4.

---

<sup>45</sup> Employees most frequently reported that supervisors asked them to perform duties outside of their normal job description—male supervisors (26.6%), female supervisors (26.6%), and judge supervisors (26.1%). These percentages do not equal 100% as each question was analyzed separately. See Appendix at D 8-9.

<sup>46</sup> Between 10% and 15.6% of the employees reported the experience with each of the listed actors. See Appendix at D 8.

<sup>47</sup> Employees most frequently reported their supervisors (non-judge) as the source of this behavior—female supervisor (25.2%), and male supervisor (22%). See Appendix at D 9.

TABLE 2-1  
EMPLOYEES' GENERAL EXPERIENCES

EMPLOYEES' EXPERIENCES AT WORK (#10)	% OF EMPLOYEES WHO REPORTED EACH OF THE TEN LISTED BEHAVIORS AND FREQUENCY (N) <sup>48</sup>
My opinions or views were not taken seriously	73.1% (212)
I received inappropriate comments of a sexually suggestive nature	28.9% (68)
I received inappropriate sexual advances	8.7% (19)
I received inappropriate comments on my physical appearance or clothing	26.6% (63)
I received demeaning or derogatory remarks	50% (136)
I received inappropriate comments about my accent or manner of speech	12.2% (27)
Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	37.2% (89)
I was asked to perform duties outside my normal job description	59% (167)
I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	48.8% (127)
I was addressed by non-professional terms such as "young lady," "young man, or "honey"	35.5% (92)

## 2. Behaviors Reported in Disparate Proportion by Gender or Race

Some behaviors were reported more frequently by certain demographic groups than others. This section will first summarize those behaviors that were reported more frequently by women than by men, and those reported more often by men than by women. Next, it will address those behaviors that were reported more often by minorities than non-minorities, as well as those reported more often by non-minorities than minorities. Generally, the behaviors which, on their face, are reflective of gender and/or racial or ethnic bias are those which were most likely to be reported in disparate proportions. Often, these were not the behaviors that were reported most frequently overall. See *supra* pp. 36-37.

### a. Gender Differences Among Employees

While only 8.7% (n=19) of the employees who answered the question reported one or more instances of *receiving inappropriate sexual advances*, 9.8% (n=17) of

<sup>48</sup> Percentages reflect those employees who reported experiencing each behavior out of those who responded to each sub-part (a-j) of question 10. See also Appendix at M 11-12.

female employees compared to 4.7% (n=2) of male employees reported one or more sexual advances. See Tables 2-1, 2-2. Male court personnel were most frequently reported as the source—5.9% of the women who answered the question reported a sexual advance by male court personnel while 1.3% of the men reported such an experience from female court personnel; 1.5% of the females reported such an experience by male supervisors, although no men reported a sexual advance from their female supervisors. See Appendix at D 7.

Over one-quarter (26.6% (n=63)) of the employees who responded to this question reported *receiving inappropriate comments on physical appearance or clothing*. 27.7% (n=52) of female employees and 23.9% (n=11) of male employees reported receiving such a comment.<sup>49</sup> See Tables 2-1, 2-2.

The following behaviors/comments were reported more frequently by male than female employees:

Two of the behaviors were reported notably more frequently by male than female employees. While 59% (n=167) of the employees who responded to the question reported *that they were asked to perform duties outside [their] normal job description*, 67.6% (n=46) of the male employees compared to 56.1% (n=119) of the female employees reported having been asked to perform duties outside of their job description.<sup>50</sup> See Tables 2-1, 2-2. In a survey comment, one white male employee wrote, “The examples of gender bias in my office almost uniformly involve occasions where one is asked to perform tasks outside one’s normal job description. I think there has been a subtle tendency to assign females to tasks more traditionally associated with that gender (like secretarial work) and giving men duties more befitting a ‘male’ role model, like moving objects and carrying boxes.”

While only 12.2% of the employees who responded to the question reported receiving *inappropriate comments about accent or manner of speech*, 18.2% (n=8) of the males compared to 10.3% (n=18) of the females reported one or more comments about their accent or speech. See Tables 2-1, 2-2.

---

<sup>49</sup> Ten percent (10%) of male employees who answered the question reported receiving such a comment from their female supervisor; while 8.7% of the female employees who answered the question reported receiving such a comment from their male supervisor. Eight percent (8.1%) of male respondents who answered the question reported receiving such a comment from female court personnel; while 9.7% of female respondents who answered the question reported receiving such a comment from male court personnel. See Appendix at D 7-8.

<sup>50</sup> 23.8% of females compared to 37.5% of males reported such a request from their male supervisors. 25.9% of the female employees and 28.3% of the male employees reported such a request from their female supervisors. See Appendix at D 8.

TABLE 2-2  
MALE AND FEMALE EMPLOYEES' EXPERIENCES

EMPLOYEES' EXPERIENCES AT WORK (#10)	% OF WOMEN WHO EXPERIENCED BEHAVIOR (N)	% OF MEN WHO EXPERIENCED BEHAVIOR (N)
My opinions or views were not taken seriously	72.7% (160)	74.6% (50)
I received inappropriate comments of a sexually suggestive nature	29.5% (54)	28.6% (14)
I received inappropriate sexual advances	9.8% (17)	4.7% (2)
I received inappropriate comments on my physical appearance or clothing	27.7% (52)	23.9% (11)
I received demeaning and derogatory remarks	49.8% (98)	53.6% (30)
I received inappropriate comments about my accent or manner of speech	10.3% (18)	18.2% (8)
Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	37.8% (71)	37.5% (18)
I was asked to perform duties outside my normal job description	56.1% (119)	67.6% (46)
I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	49% (98)	49.1% (28)
I was addressed by non-professional terms such as "young lady," "young man," or "honey"	36.2% (75)	34.7% (17)

b. Racial/Ethnic Differences Among Employees

The study of race and ethnicity among employees in the First Circuit presented several challenges. First, the minority population in the Districts of Maine, Massachusetts, New Hampshire, Rhode Island, and in the Court of Appeals is low. Further, the minority response rate to the Employee Survey from these courts was slightly lower than the response rate for non-minorities.<sup>51</sup> These factors resulted in a relatively low number of reported experiences from minority employees.

Because these frequencies are so low, caution should be used in inferring results from the minority percentages alone. An extremely *low* number of responses may appear as a relatively *high* percentage because the total number of minorities (or non-minorities in Puerto Rico) are so few.<sup>52</sup> In describing results to the Employee

<sup>51</sup> The non-minority response rate to the Employee Survey in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island was 47% as compared to a 41% minority response rate.

<sup>52</sup> For example, 2 responses from 6 employees represents 33.3%, while 2 responses from 60

Survey, this Report therefore includes the raw numbers (which appear as  $n=x$ ), in addition to the percentages. Further, the results relating to race and ethnicity should be considered in context; i.e. the under-representation of minority groups generally. Finally, the responses received from the courts (bankruptcy and district) in Puerto Rico are reported separately from those received from courts in Maine, Massachusetts, New Hampshire, and Rhode Island (including the bankruptcy and district courts in each of those jurisdictions *and* the First Circuit Court of Appeals).<sup>53</sup>

The only behavior reported more frequently by minorities than by non-minorities in First Circuit courts in Maine, Massachusetts, New Hampshire, and Rhode Island was item 10(i), *asked to perform duties of someone with a different job title or in a higher paid position*. See Table 2-3. While almost half (48.8%) of the sample reported one or more such requests, 61.5% ( $n=8$ ) of the minorities, compared to 45.9% ( $n=94$ ) of the non-minorities answered this question affirmatively. See Tables 2-1, 2-3.

In the District of Puerto Rico, minority employees reported the following behaviors and comments with the greatest frequency.<sup>54</sup> Each of the sixteen (16) (100%) minorities from Puerto Rico who answered the question reported that individuals were *less willing to accommodate their schedule or time requirements than those of other employees*.<sup>55</sup> Almost eighty percent (79.5%) ( $n=31$ ) of minorities reported that they were *asked to perform duties outside of their normal job description*. An almost equal number of minorities (79.4%) ( $n=27$ ) reported that their *opinions or views were not taken seriously*.<sup>56</sup> See Table 2-4.

---

employees represents 3.3%.

<sup>53</sup> Although the majority of Puerto Ricans are of Hispanic background, for purposes of all data collected by the U.S. Courts, persons of Hispanic background are counted as minorities. Survey results from the District of Puerto Rico are therefore reported separately. These results included responses from individuals who are employed by the Court of Appeals, but work in Puerto Rico—employees of the Satellite Circuit Library and employees of the Federal Public Defender's Office.

<sup>54</sup> A comparison to non-minority employees is not made here because so few non-minority respondents answered this question in the District of Puerto Rico. See Table 2-4.

<sup>55</sup> Minorities from Puerto Rico most frequently held supervisors responsible for this behavior [36% ( $n=9$ ) female supervisors; 28% ( $n=7$ ) male supervisors]. Under 20% of the minorities from Puerto Rico held each of the other actors responsible for this behavior. See Appendix at D 11.

<sup>56</sup> Supervisors and court personnel, both male and female, were reported as the source of many of these requests; (42.3%) ( $n=11$ ) of the minority employees from Puerto Rico reported these requests from male supervisors and (53.6%) ( $n=15$ ) of the minority employees from Puerto Rico reported these requests by female supervisors. Over thirty percent (32.3%) ( $n=10$ ) of minority employees from Puerto Rico and 35.5% ( $n=11$ ) of minority employees from Puerto Rico reported these requests from male and female court personnel, respectively. See Appendix at D 11. The frequencies reported for each court actor do not always add up to the total number of individuals who reported a particular experience because respondents may have reported more than one experience, i.e., one from each of several actors.



13.8% (n=4) of minorities from Puerto Rico reported receiving *inappropriate sexual advances*. Although only four minority employees reported such an experience, each of them (10.5% of the minority population that answered the question) indicated that male court personnel made the inappropriate sexual advance.<sup>57</sup> See Table 2-4; Appendix at D 10.

TABLE 2-3

MINORITY AND NON-MINORITY EMPLOYEES' EXPERIENCES  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island<sup>58</sup>

QUESTION #10	% OF MINORITIES WHO REPORTED BEHAVIOR (n)	% OF NON-MINORITIES WHO REPORTED BEHAVIOR (n)
(a) My opinions or views were not taken seriously	72.2% (13)	72.7% (165)
(b) I received inappropriate comments of a sexually suggestive nature	26.7% (4)	29.7% (54)
(c) I received inappropriate sexual advances	7.1% (1)	7.8% (13)
(d) I received inappropriate comments on my physical appearance or clothing	20% (3)	25.8% (47)
(e) I received demeaning and derogatory remarks	43.9% (7)	50.7% (110)
(f) I received inappropriate comments about my accent or manner of speech	7.1% (1)	7.1% (12)
(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	100% (7)	100% (60)
(h) I was asked to perform duties outside my normal job description	50% (8)	56% (122)
(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	61.5% (8)	45.9% (94)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	25% (4)	33.3% (67)

<sup>57</sup> In addition, one employee reported such an experience from a judge who was his or her supervisor. These figures show 5 employees who reported such an experience, as opposed to the 4 reported above, again because one of the original four must have had more than one experience—one with male court personnel and one with their judge supervisor.

<sup>58</sup> Please note that results from these four jurisdictions include the bankruptcy and district courts from each *and* the First Circuit Court of Appeals.

TABLE 2-4  
MINORITY AND NON-MINORITY EMPLOYEES' EXPERIENCES  
District of Puerto Rico

QUESTION #10	% OF MINORITIES WHO REPORTED BEHAVIOR AND FREQUENCY (n)	% OF NON-MINORITIES WHO REPORTED BEHAVIOR AND FREQUENCY (n)
(a) My opinions or views were not taken seriously	79.4% (27)	66.7% (4)
(b) I received inappropriate comments of a sexually suggestive nature	28.6% (8)	20% (1)
(c) I received inappropriate sexual advances	13.8% (4)	0
(d) I received inappropriate comments on my physical appearance or clothing	35.5% (11)	0
(e) I received demeaning and derogatory remarks	51.7% (15)	40%(2)
(f) I received inappropriate comments about my accent or manner of speech	41.9% (13)	0
(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	100% (16)	100% (3)
(h) I was asked to perform duties outside my normal job description	79.5% (31)	66.7% (4)
(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	63.6% (21)	60% (3)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	50% (16)	60% (3)

### 3. Employees' Attributions to Bias

Employees who reported any of the listed behaviors were asked whether they believed such behavior was due to gender, race, or ethnic bias.<sup>59</sup> Over 40% (42.8%) of the employees who experienced any one of the ten listed behaviors (and answered the follow-up question) reported that they perceived one or more experiences as resulting from gender bias. Female employees more frequently attributed their experiences to gender bias than male employees. Almost half (47.1%) of the women compared to 27.9% of the men reported that they perceived one or more experiences resulting from gender bias. See Appendix at D 12.

Just over 5% (5.2%) of the respondents who experienced any one of the ten listed behaviors (and answered the follow-up question) reported an incident that they considered to reflect racial bias. However, among the few *minorities* reporting from the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island who reported experiencing a behavior, 26.3% (5) attributed at least one behavior to racial bias alone, and 10.5% (2) reported incident(s) that they attributed to *both* racial and gender bias. In contrast, within these courts, only 1.5% (3) of the *non-minorities* attributed an experience to racial bias, and 1.9% (4) attributed one or more experiences to *both* racial and gender bias. Over 14% (14.3%) (5) of minority employees from the District of Puerto Rico attributed one or more of their experiences to racial bias. See Appendix at D 12.

#### a. Types of Perceived Gender Bias Most Often Reported by Employees

There were four behaviors that over 50% of employees who reported the behavior attributed to gender bias: 73% (n=11) of those who *received inappropriate sexual advances* reported that they believed such treatment was due to gender bias; 69% (n=40) of all employees who *received inappropriate comments of a sexually suggestive nature* attributed such behavior to gender bias; 56% (n=48) of employees who *were addressed by non-professional terms such as "young lady," "young man" or "honey"* attributed such behavior to gender bias; and 56% (n=28) of employees who reported that *they received inappropriate comments on*

---

<sup>59</sup> Question 11 reads: "In your opinion was the behavior due to your gender, race or ethnicity?" The response categories include: "(1) Due to gender only; (2) Due to race/ethnicity only; (3) Due to both gender and race/ethnicity; (4) Due to neither gender, race nor ethnicity; (5) No opinion." Percentages reflecting the attributions represent the number of employees who made a given attribution out of those who reported the experience (question #10) and answered the attribution question (#11). As more fully explained in the methodology section, see Appendix at M 11-12, respondents who reported an experience (question #10) but failed to answer the attribution question (#11) must be excluded from the attribution analysis. Further, those respondents who answered question #11, but did not report an experience in question #10 were also excluded from analysis.

*their physical appearance or clothing* attributed this behavior to gender bias. See Table 2-5.

b. Male and Female Employees' Reports of Gender Bias

Several behaviors were attributed to gender bias more frequently by female than by male employees. For example, 78% (n=36) of women who reported that *they received inappropriate comments of a sexually suggestive nature* stated that they believed such treatment was due to gender bias. Only 33% (n=4) of male employees who *received sexually suggestive comments* stated that they believed such treatment was the result of gender bias. Similarly, 77% (n=10) of those women who reported that they *received inappropriate sexual advances* believed such behavior was due to gender bias, while only 50% (n=1) of men who reported this experience attributed it to gender bias. Over 60% (61%) (n=25) of women who reported that they had *received inappropriate comments on their physical appearance or clothing* believed that it was due to gender bias, while 33% (n=3) of men who reported this behavior indicated that they believed such treatment was the result of gender bias. See Table 2-6.

Additionally, 34.3% (n=49) of those women, compared to 12% (n=5) of men, who reported that *their opinions or views were not taken seriously* believed that it was a result of gender bias. Finally, 40% (n=38) of those women who reported that they *received demeaning or derogatory remarks* attributed them to gender bias, while only 14% (n=4) of men who reported such remarks attributed them to gender bias. See Table 2-6.

There was one behavior that more males than females attributed to gender bias. 25% (n=2) of men who experienced *comments regarding their accent or manner of speech* attributed the behavior to gender bias, as opposed to 6% (n=1) of women. See Table 2-6.

In sum, the *most* frequent attributions of gender bias occurred with *women* employees' reports of *sexually suggestive comments* (78%), *inappropriate sexual advances* (77%), *comments on appearance or clothing* (61%), and *being addressed by non-professional terms* (58%). See Table 2-6.<sup>60</sup> However, except for the use of *non-professional terms*, the behaviors most frequently attributed to gender bias were not the same as the behaviors that employees most frequently reported overall. See *supra* Table 2-1. Thus, while "general incivility" and "gender bias" were both reported, they appeared to manifest themselves differently and may, therefore, require different forms of remediation.

c. Sources of Perceived Gender Biased Behavior

Employees were also asked about the source of the behavior they reported.<sup>61</sup> Respondents reported that other male court personnel (male colleagues) were most

---

<sup>60</sup> These figures reflect the percentage of female respondents who reported the particular behavior and attributed it to gender bias in the subsequent question.

<sup>61</sup> Specifically, employees were asked which of the following individuals was responsible

frequently the source of behaviors/comments that they considered to be gender bias.<sup>62</sup>

Almost half (49.2%) of the female respondents who reported a behavior/comment by male court personnel attributed at least one of those behaviors to gender bias, while 26.7% of the male respondents who reported a behavior/comment by female court personnel attributed at least one of those behaviors to gender bias. The gender difference was less notable with supervisors—while 34% of females who reported an experience with male supervisors attributed at least one of them to gender bias, 28.6% of the males who reported a behavior from a female supervisor attributed the behavior to gender bias. See Appendix at D 13.

Female employees also attributed gender bias to judges more frequently than male employees. Approximately one-third (33.8%) of female employees, but 7.4% of male employees reported gender bias by judges who were not their supervisors. Over twenty percent (22.9%) of the female respondents and 11.1% of male respondents reported gender bias by judges who were their supervisors. See Appendix at D 13.

d. Types of Perceived Racial/Ethnic Bias Most Often Reported by Employees

For seven of the ten listed behaviors, less than 5% of the employee population who experienced these behaviors attributed them to racial or ethnic bias. The low frequencies of minority employees' responses may, of course, have affected these findings. However, 29% (n=7) of those employees who reported *receiving inappropriate comments regarding their accent or manner of speech* attributed such behavior to racial or ethnic bias. Also, 6% (n=7) of those employees who *received demeaning or derogatory remarks* attributed those remarks to racial or ethnic bias; and 6% of those employees who reported that individual(s) were *less*

---

for the behavior: (1) judge (my supervisor); (2) judge (not my supervisor); (3) my male supervisor (non-judge); (4) my female supervisor (non-judge); (5) other court personnel (male) and (6) other court personnel (female).

<sup>62</sup> The sources of gender bias were reported as follows:

- Male court personnel—65 respondents reported one or more incidents of gender bias by male court personnel;
- Male supervisors—38 respondents reported one or more incidents of gender bias by male supervisors;
- Female court personnel—33 respondents reported one or more incidents of gender bias by female court personnel;
- Female supervisors—21 respondents reported one or more incidents of gender bias by female supervisors;
- Judges (supervisors)—24 respondents reported one or more incidents of gender bias by judges (supervisors);
- Judges (not supervisors)—23 respondents reported one or more incidents of gender bias by judges (not supervisors).

willing to accommodate their schedule or time requirements than those of other employees attributed that behavior to racial or ethnic bias.<sup>63</sup> See Table 2-5.

e. Minority and Non-Minority Employees' Reports of Racial/Ethnic Bias

Of the minorities who reported experiencing a behavior (excluding Puerto Rico), there were only two attributions of racial bias that were reported by more than two employees.<sup>64</sup> Four (4) minority employees (31% of those minorities who experienced the behavior) reported that their *opinions or views were not taken seriously* as a result of racial/ethnic bias. In addition, three (3) minority employees (43% of those minorities who experienced the behavior) reported *receiving demeaning or derogatory remarks* that they attributed to racial/ethnic bias. See Table 2-7.

Two (2) minority employees stated that their *opinions or views were not taken seriously* as a result of *both* gender bias and racial/ethnic bias. Two (2) minority employees reported that individual(s) were *less willing to accommodate their schedule or time requirements than those of other employees*, which they attributed to *both* gender bias and racial/ethnic bias. Two (2) non-minority employees reported *demeaning or derogatory remarks* and attributed them to both gender and racial/ethnic bias. Two (2) non-minorities also reported that they were *asked to perform duties outside their normal job description*, which they attributed to *both* gender and racial/ethnic bias. See Table 2-7.

Among employees from the District of Puerto Rico who reported experiencing a behavior, there was only one type of racially biased behavior reported by more than one employee. Four (4) minority employees from Puerto Rico attributed *inappropriate comments about their accent or manner of speech* to racial/ethnic bias. Non-minority employees from Puerto Rico did not attribute any of their few reported experiences to either racial bias or to both gender and racial bias. See Table 2-8.

f. Sources of Perceived Race/Ethnic Biased Behavior

Across the circuit, there were fourteen (14) respondents who reported one or more incidents of racial/ethnic bias: five (5) were minorities from Puerto Rico,

---

<sup>63</sup> 13% (n=2) of the employees who reported inappropriate sexual advances attributed them to both gender and racial bias. Three percent (3%) or less of the employees who reported each of the other listed behaviors, and answered the attribution question, attributed them to both forms of bias. See Table 2-5. (The small number of minority respondents, and the even smaller number of attributions of racial bias, have prompted us to address attributions of both gender and racial bias in conjunction with the analysis of racial bias, alone. Attributions of both forms of bias obviously contain a racial/ethnic component that provides additional data on issues of race and ethnicity, as well as gender.)

<sup>64</sup> As previously discussed, the infrequency with which racial bias is reported may be partly a product of the under-representation of minorities in the employee population of the First Circuit, and partially the result of low response rates from minority employees and employees in the District of Puerto Rico.

eight (8) were from the rest of the circuit (5 minorities/3 non-minorities).<sup>65</sup> See Appendix at D 12. The following identifies the number of acts of respondents who reported one or more such incidents for each court actor.<sup>66</sup>

- Male court personnel—5 respondents reported one or more incidents of racial/ethnic bias by male court personnel;
- Male supervisors—2 respondents reported one or more incidents of racial/ethnic bias by male supervisors;
- Female court personnel—6 respondents reported one or more incidents of racial/ethnic bias by female court personnel;
- Female supervisors—4 respondents reported one or more incidents of racial/ethnic bias by female supervisors;
- Judges (not supervisors)—3 respondents reported one or more incidents of racial/ethnic bias by judges (not supervisors);
- Judges (supervisors)—2 respondents reported one or more incidents of racial/ethnic bias by judges (supervisors).

There were eight (8) employees who attributed one or more of the incidents to both gender and racial/ethnic bias—two from Puerto Rico, six from the rest of the circuit. See Appendix at D 12.

---

<sup>65</sup> One respondent who reported racial bias did not indicate his or her location.

<sup>66</sup> These numbers exceed 14 because respondents may have reported an incident of perceived bias from more than one court actor.

TABLE 2-5  
EMPLOYEES' ATTRIBUTIONS TO BIAS

QUESTION # 11	% of Employees who Reported a Behavior that was Attributed to Gender Bias (n)	% of Employees who Reported a Behavior that was Attributed to Race Bias (n)	% of Employees who Reported a Behavior that was Attributed to both Race and Gender Bias (n)
(a) My opinions or views were not taken seriously	29% (54)	3.2% (6)	1% (2)
(b) I received inappropriate comments of a sexually suggestive nature	69% (40)	2% (1)	3% (2)
(c) I received inappropriate sexual advances	73% (11)	0	13% (2)
(d) I received inappropriate comments on my physical appearance or clothing	56% (28)	2% (1)	2% (1)
(e) I received demeaning or derogatory remarks	34.7% (42)	6% (7)	3% (4)
(f) I received inappropriate comments about my accent or manner of speech	12.5% (3)	29% (7)	0
(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	20% (16)	6% (3)	3% (2)
(h) I was asked to perform duties outside my normal job description	21% (30)	1.4% (2)	2.1% (3)
(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	13% (14)	2% (2)	2% (2)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	56% (48)	1% (1)	2% (2)



TABLE 2-6  
MALE AND FEMALE ATTRIBUTIONS TO BIAS

QUESTION #11	% OF WOMEN WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (N)	% OF MEN WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (N)
(a) My opinions or views were not taken seriously	34.3% (49) (gender bias) 1.4% (2) (race bias) .7% (1) (both gender/race)	12% (5) (gender bias) 9.5% (4) (race bias) 2.4% (1) (both gender/race)
(b) I received inappropriate comments of a sexually suggestive nature	78% (36) (gender bias) 0 (race bias) 2% (1) (both gender/race bias)	33% (4) (gender bias) 8% (1) (race bias) 8% (1) (both gender/race)
(c) I received inappropriate sexual advances	77% (10) (gender bias) 0 (race bias) 8% (1) (both gender/race bias)	50% (1) (gender bias) 0 (race bias) 50% (1) (both gender/race)
(d) I received inappropriate comments on my physical appearance or clothing	61% (25) (gender bias) 2% (1) (race bias) 2% (1) (both gender/race bias)	33% (3) (gender bias) 0 (race bias) 0 (both gender/race)
(e) I received demeaning or derogatory remarks	40% (38) (gender bias) 2% (2) (race bias) 4% (4) (both gender/race)	14% (4) (gender bias) 18% (5) (race bias) 0 (both gender/race)
(f) I received inappropriate comments about my accent or manner of speech	6% (1) (gender bias) 25% (4) (race bias) 0 (both gender/race)	25% (2) (gender bias) 38% (3) (race bias) 0 (both gender/race)
(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	25% (15) (gender bias) 3% (2) (race bias) 2% (1) (both gender/race)	6% (1) (gender bias) 6% (1) (race bias) 6% (1) (both gender/race)
(h) I was asked to perform duties outside my normal job description	22% (22) (gender bias) 0 (race bias) 3% (3) (both gender/race)	19% (8) (gender bias) 5% (2) (race bias) 0 (both gender/race)
(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	14% (12) (gender bias) 0 (race bias) 2% (2) (both gender/race)	8% (2) (gender bias) 8% (2) (race bias) 0 (both gender/race)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	58% (40) (gender bias) 1% (1) (race bias) 1% (1) (both gender/race)	50% (8) (gender bias) 0 (race bias) 6% (1) (both gender/race)

TABLE 2-7  
EMPLOYEES ATTRIBUTIONS TO BIAS  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
Island

QUESTION #11	% OF MINORITIES WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (n)	% OF NON-MINORITIES WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (n)
(a) My opinions or views were not taken seriously	31% (4) (gender bias) 31% (4) (race bias) 15% (2) (both gender/race)	31% (45) (gender bias) .7% (1) (race bias) 0 (both gender/race)
(b) I received inappropriate comments of a sexually suggestive nature	50% (2) (gender bias) 25% (1) (race bias) 25% (1) (both gender/race)	73% (32) (gender bias) 0 (race bias) 0 (both gender/race)
(c) I received inappropriate sexual advances	0 (gender bias) 0 (race bias) 100% (1) (both gender/race)	90% (9) (gender bias) 0 (race bias) 0 (both gender/race)
(d) I received inappropriate comments on my physical appearance or clothing	33% (1) (gender bias) 0 (race bias) 33% (1) (both gender/race)	66% (23) (gender bias) 0 (race bias) 0 (both gender/race)
(e) I received demeaning or derogatory remarks	0 (gender bias) 43% (3) (race bias) 14% (1) (both gender/race)	38% (38) (gender bias) 1% (1) (race bias) 2% (2) (both gender/race)
(f) I received inappropriate comments about my accent or manner of speech	0 (gender bias) 100% (1) (race bias) 0 (both gender/race)	10% (1) (gender bias) 10% (1) (race bias) 0 (both gender/race)
(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	0 (gender bias) 14% (1) (race bias) 29% (2) (both gender/race)	27% (14) (gender bias) 0 (race bias) 0 (both gender/race)
(h) I was asked to perform duties outside my normal job description	12.5% (1) (gender bias) 12.5% (1) (race bias) 12.5% (1) (both gender/race)	25% (26) (gender bias) 0 (race bias) 2% (2) (both gender/race)

(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	12.5% (1) (gender bias) 12.5% (1) (race bias) 12.5% (1) (both gender/race)	16% (13) (gender bias) 0 (race bias) 1% (1) (both gender/race)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	50% (2) (gender bias) 0 (race bias) 25% (1) (both gender/race)	61% (37) (gender bias) 0 (race bias) 1.6% (1) (both gender/race)

TABLE 2-8  
EMPLOYEES' ATTRIBUTIONS TO BIAS  
District of Puerto Rico

QUESTION #11	% OF MINORITIES WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (n)	% OF NON-MINORITIES WHO REPORTED A BEHAVIOR THAT WAS ATTRIBUTED TO BIAS (TYPE OF BIAS INDICATED) (n)
(a) My opinions or views were not taken seriously	22% (5) (gender bias) 0 (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(b) I received inappropriate comments of a sexually suggestive nature	50% (4) (gender bias) 0 (race bias) 13% (1) (both gender/race)	100% (1) (gender bias) 0 (race bias) 0 (both gender/race)
(c) I received inappropriate sexual advances	33% (1) (gender bias) 0 (race bias) 33% (1) (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(d) I received inappropriate comments on my physical appearance or clothing	30% (3) (gender bias) 0 (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(e) I received demeaning or derogatory remarks	33% (4) (gender bias) 8% (1) (race bias) 8% (1) both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(f) I received inappropriate comments about my accent or manner of speech	17% (2) (gender bias) 33% (4) (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)

(g) Individual(s) were less willing to accommodate my schedule or time requirements than those of other employees	13% (2) (gender bias) 0 (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(h) I was asked to perform duties outside my normal job description	11% (3) (gender bias) 4% (1) (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(i) I was asked to perform duties of someone in the Courthouse with a different job title or in a higher paid position	0 (gender bias) 5% (1) (race bias) 0 (both gender/race)	0 (gender bias) 0 (race bias) 0 (both gender/race)
(j) I was addressed by non-professional terms such as "young lady," "young man," or "honey"	53% (8) (gender bias) 0 (race bias) 0 (both gender/race)	33% (1) (gender bias) 0 (race bias) 0 (both gender/race)

### C. Employee Observations and Views

The Employee Survey also sought observations and views regarding the treatment of First Circuit employees. Employees were instructed to respond "based upon [their] observations and perceptions of employment practices in the courts of the First Circuit (and not society at large)." Employees were asked whether they agreed or disagreed with a number of statements on topics including work rules, discipline, quantity of work, work space, promotion opportunities, and job performance ratings.<sup>67</sup> Also, employees were asked whether they agreed or

<sup>67</sup> The following is a list of statements in Question 25 of the Employee Survey. Employees were asked to indicate whether they agreed with the statement, disagreed with the statement, or had "no opinion/do not know":

- a. Work rules regarding hours, breaks and time off are equally applied to men and women;
- b. Work rules regarding hours, breaks and time off are equally applied to minorities and non-minorities;
- c. Discipline for tardiness, sick leave abuse and absenteeism is equally applied to men and women;
- d. Discipline for tardiness, sick leave abuse and absenteeism is equally applied to minorities and non-minorities;
- e. Minorities and non-minorities receive the same amount of work from their supervisors;
- f. Male and female employees receive the same amount of work from their supervisors;
- g. Work spaces assigned to employees from racial/ethnic minorities are the same or similar to those given to non-minority employees;
- h. Work spaces assigned to female employees are the same or similar to those given to male employees;
- i. Opportunities for promotion exist equally for both men and women;
- j. Opportunities for promotion exist equally for both minorities and non-minorities;

disagreed with a list of statements regarding hiring, promotional opportunities, and compensation.<sup>68</sup> This section first addresses employees' observations and views on these issues—work rules and work environment; it then summarizes employees' general views on the existence and pervasiveness of bias in the courts, as well as employees' recommendations for improvement.

## 1. Work Rules and Work Environment

### a. Work Environment and Gender

Employees were asked whether they believed rules and discipline applied equally to male and female employees. The majority of the respondents observed that women and men receive equal treatment as employees. Almost three-quarters (73.5%) of the employees who answered the question reported that work rules regarding hours, breaks and time off are equally applied to men and women. Over half of the employees observed that male and female employees receive equal discipline for tardiness, sick leave abuse and absenteeism (62.7%), equal opportunities for promotion (64%), and equal application of job performance ratings (58.7%). See Appendix at D 29-31.

In the area of work related discipline, female employees were more likely to report that they received harsher treatment than male employees. The male

---

k. Job performance ratings are equally applied to men and women; and

l. Job performance ratings are equally applied to minorities and non-minorities.

<sup>68</sup> The following is a partial list of statements from Question 41 of the Employee Survey. Respondents were asked to indicate their answer on a scale of 1 to 5, with (1) representing "strongly agree", (2) "agree", (3) "neutral", (4) "disagree", and (5) "strongly disagree" with the following statements:

- A man is more likely to be hired than a woman if they are competing for the same job;
- A woman is more likely to be hired than a man if they are competing for the same job;
- A non-minority is more likely to be hired than a minority if they are competing for the same job;
- A minority is more likely to be hired than a non-minority if they are competing for the same job;
- There are adequate promotional opportunities within the court system for women;
- There are adequate promotional opportunities within the court system for men;
- There are adequate promotional opportunities within the court system for non-minorities;
- There are adequate promotional opportunities within the court system for minorities;
- Women are paid less for doing the same or similar tasks as men;
- Men are paid less for doing the same or similar tasks as women;
- Minorities are paid less for doing the same or similar tasks as non-minorities; and
- Non-minorities are paid less for doing the same or similar tasks as minorities.

For reporting purposes, those who responded "strongly agree" and "agree" to a particular question have been combined under the heading "agree," and those who responded "strongly disagree" and "disagree" have been combined under "disagree."

employees who answered the question were more likely to report that they received harsher treatment than female employees. Table 2-9 presents percentages and frequencies of male and female employees who reported unequal treatment in various areas as well as those who responded "no opinion/do not know."

TABLE 2-9  
EMPLOYEES' GENDER RELATED OBSERVATIONS<sup>69</sup>

QUESTION #25	% OF FEMALE EMPLOYEES (n)	% OF MALE EMPLOYEES (n)
<b><u>Work Rules</u></b>		
Female Harsher	9.8% (27)	3.3% (3)
Male Harsher	1.1% (3)	6.6% (6)
No Opinion/do not know	15.6% (43)	17.6% (16)
<b><u>Discipline</u></b>		
Female Harsher	11% (30)	2.2% (2)
Male Harsher	1.1% (3)	6.7% (6)
No Opinion/do not know	25.4% (69)	28.9% (26)
<b><u>Work Load</u></b>		
Female More	13% (36)	1.1% (1)
Male More	.7% (2)	7.9% (7)
No Opinion/do not know	19.6% (54)	21.3% (19)
<b><u>Work Spaces</u></b>		
Female Less	4.3% (12)	2.2% (2)
Male Less	0	1.1% (1)
No Opinion/do not know	33.9% (93)	24.1% (21)
<b><u>Promotion Opportunities</u></b>		
Female Less	14.1% (39)	5.6% (5)
Male Less	1.8% (5)	9% (8)
No Opinion/do not know	22.4% (62)	15.7% (14)
<b><u>Job Performance Ratings</u></b>		
Female Harsher	8.7% (24)	1.1% (1)
Male Harsher	0	7.9% (7)
No Opinion/do not know	34.8% (96)	27.0% (24)

A majority of respondents reported that adequate promotional opportunities exist for both male and female employees, though more employees felt that more such opportunities exist for men, 66.8% (n=244) than for women, 52.7% (n=195). See Appendix at D 42. Similarly, a majority of employees disagreed that either males 74.8% (n=183) or females 58.7% (n=101) receive lower pay than the other. However, more employees agreed that women are paid less than men 15.7% (n=57) than agreed that men are paid less than women 1.1% (n=4). See Appendix at D 42-43.

<sup>69</sup> This table does not include those respondents who answered that men and women are treated equally in these areas. See Appendix at D 29-31.

The views of male and female employees on hiring, pay, and promotional opportunities differed in a number of areas. The most significant gender differences appeared with the statements regarding hiring, promotional opportunities and salaries. Female employees were more likely to report that hiring preferences favored men, while male employees were more likely to report that hiring preferences favored women. See Table 2-10. Regarding opportunities for promotion, while both male and female employees agreed that there are adequate promotional opportunities for men, male employees were more likely than female employees to feel that promotional opportunities are also adequate for women. Female employees were notably more likely than male employees to disagree with the statement that there are adequate promotional opportunities for women. See Table 2-10.

With regard to salaries, approximately three-quarters of both male and female employees *disagreed* with the statement that men receive less pay than women. Over 20% (20.2%) (n=54) of the women, compared to only 2.2% (n=2) of the men, felt that women received less pay than men. See Table 2-10. The following table presents the percentages of respondents who agreed and disagreed with the listed statements. See also Appendix at D 41-44.

TABLE 2-10  
EMPLOYEES' GENDER RELATED VIEWS

QUESTION #41	% FEMALES (n)		% MALES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
A man is more likely to be hired than a woman	23.4% (65)	49.8% (138)	7.8% (7)	77.5% (69)
A woman is more likely to be hired than a man	8.4% (23)	63.7% (175)	22.8% (21)	59.8% (55)
Adequate promotional opportunities exist for women	47.3% (131)	24.2% (67)	68.9% (62)	8.9% (8)
Adequate promotional opportunities exist for men	64.2% (174)	6.6% (18)	74.8% (68)	8.8% (8)
Women are paid less than men	20.2% (54)	52.3% (140)	2.2% (2)	78.3 (72)
Men are paid less than women	.7% (2)	73.7% (199)	2.2% (2)	78.2% (72)

b. Work Environment and Race/Ethnicity

A majority of respondents observed that minorities and non-minorities receive equal treatment as employees. Almost two-thirds (64.2%) of the employees reported that work rules regarding hours, breaks and time off are equally applied to minority and non-minority employees. Over half of the employees agreed that minorities and non-minorities receive equal discipline for tardiness, sick leave

abuse and absenteeism (57.3%), equal amounts of work (57.7%), equal or similar work space assignments (66.2%), equal opportunities for promotion (54%), and equal application of job performance ratings (50.1%). See Appendix at D 29-31.

However, a significant number of employees repeatedly indicated that they had no opinion or did not know whether there was disparate treatment between employees of different races.<sup>70</sup> The following table presents percentages and frequencies of minority and non-minority employees in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, who reported unequal treatment in various areas, as well as those who responded "no opinion/do not know."

TABLE 2-11  
EMPLOYEES' RACE/ETHNICITY - RELATED OBSERVATIONS<sup>71</sup>  
Court of Appeals; Districts of Maine, Massachusetts, NH & RI

QUESTION	% OF MINORITY EMPLOYEES (n)	% OF NON-MINORITY EMPLOYEES (n)
<u>Work Rules</u>		
Minority Harsher	4.5% (1)	1.4% (4)
Non-Minority Harsher	0	3.5% (10)
No Opinion/do not know	50% (11)	30.3% (87)
<u>Discipline</u>		
Minority Harsher	8.7% (2)	1.4% (4)
Non-Minority Harsher	4.3% (1)	4.6% (13)
No Opinion/do not know	43.5% (10)	35.8% (102)
<u>Work Load</u>		
Minority More	4.5% (1)	0
Non-Minority More	0	7% (20)
No Opinion/do not know	40.9% (9)	35.8% (102)
<u>Work Spaces</u>		
Minority Less	0	.7% (2)
Non-Minority Less	0	1% (3)
No Opinion/do not know	45.5% (10)	31.1% (89)
<u>Promotion Opportunities</u>		
Minority Less	18.2% (4)	4.2% (12)
Non-Minority Less	4.5% (1)	4.9% (14)
No Opinion/do not know	45.5% (10)	35.8% (103)
<u>Job Performance Ratings</u>		
Minority Harsher	8.7% (2)	1.4% (4)
Non-Minority Harsher	0	3.5% (10)
No Opinion/do not know	47.8% (11)	45.3% (129)

<sup>70</sup> The prevalence with which employees stated they had no opinion or did not know whether there was unequal treatment with regard to race may again be a product of the few minorities employed by the circuit (except for Puerto Rico).

<sup>71</sup> This table does not include those respondents who answered that minorities and non-minorities are treated equally in these areas. See Appendix at D 32-35.



Approximately 10% of the minority employees reporting from within the District of Puerto Rico reported that minorities were given less work space, fewer promotional opportunities, and harsher job performance ratings than non-minority employees. The minorities from the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island observed a racial difference only with regard to promotional opportunities, job performance ratings and discipline. However, for each of these questions, both minorities and non-minorities were more likely to respond "no opinion/do not know" than any of the other choices. See Tables 2-11, 2-12.

TABLE 2-12  
EMPLOYEES' RACE/ETHNICITY-RELATED OBSERVATIONS<sup>72</sup>  
District of Puerto Rico

QUESTION	% OF MINORITY EMPLOYEES (n)	% OF NON-MINORITY EMPLOYEES (n)
<u>Work Rules</u>		
Minority Harsher	4.7% (2)	0
Non-Minority Harsher	0	11.1% (1)
No Opinion/do not know	27.9% (12)	11.1% (1)
<u>Discipline</u>		
Minority Harsher	4.7% (2)	0
Non-Minority Harsher	0	0
No Opinion/do not know	37.2% (16)	33.3% (3)
<u>Work Load</u>		
Minority More	4.7% (2)	0
Non-Minority More	0	0
No Opinion/do not know	37.2% (16)	22.2% (2)
<u>Work Spaces</u>		
Minority Less	9.5% (4)	0
Non-Minority Less	0	0
No Opinion/do not know	31% (13)	11.1% (1)
<u>Promotion Opportunities</u>		
Minority Less	11.6% (5)	11.1% (1)
Non-Minority Less	0	0
No Opinion/do not know	34.9% (15)	22.2% (2)

<sup>72</sup> This table does not include those respondents who answered that minorities and non-minorities are treated equally in these areas. See Appendix at D 32-35.

<u>Job Performance Ratings</u>		
Minority Harsher	9.3% (4)	0
Non-Minority Harsher	0	0
No Opinion/do not know	39.5% (17)	33.3% (3)

In response to the statements on hiring, promotion and salary, a majority of employees did not agree that a non-minority is more likely to be hired than a minority if they are competing for the same job (55.8%) (n=201). A majority of employees also disagreed that a minority is more likely to be hired than a non-minority if they are competing for the same job (52.7%) (n=192). A majority of respondents disagreed that minorities are paid less than non-minorities, 62.2% (n=224), and that non-minorities are paid less than minorities, 64.8% (n=232). Slightly more respondents reported that there are adequate promotional opportunities for non-minorities, 57.1% (n=205) than that there are adequate promotional opportunities for minorities, 49.7% (n=177). *See* Appendix at D 42-43.

The views of minority and non-minority employees (excluding Puerto Rico) differed in some of these areas. Although the percentages reflecting the minorities' views represent very few individuals, some racial differences appear. For example, minorities were more likely to think that non-minorities are favored in the hiring process, while non-minorities were more likely to believe that minorities are favored. Far more non-minorities than minorities felt that adequate promotional opportunities exist for minorities. *See* Table 2-13. The following table presents the percentage of minorities and non-minorities in the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, who agreed and disagreed with each of the listed statements. *See also* Appendix at D 44-47.

TABLE 2-13  
 EMPLOYEES' RACE/ETHNICITY RELATED VIEWS  
 Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode  
 Island

QUESTION #41	% MINORITIES (n)		% NON-MINORITIES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
A non-minority is more likely to be hired than a minority	41.7% (10)	20.8% (5)	14.5% (41)	61.2% (172)
A minority is more likely to be hired than a non-minority	8.3% (2)	54.1% (13)	22.5% (64)	51.8% (147)
Adequate promotional opportunities exist for non-minorities	45.8% (11)	8.4% (2)	57.8% (163)	9.9% (28)
Adequate promotional opportunities exist for minorities	21.7% (15)	17.3% (4)	51.7% (145)	11.4% (32)
Minorities are paid less than non-minorities	4.3% (1)	34.7% (8)	2.9% (8)	66.2% (186)
Non-Minorities are paid less than minorities	0	43.5% (10)	1.4% (4)	66.4% (186)

There were some perceived racial differences in the District of Puerto Rico. Minorities were somewhat more likely to feel that non-minorities are favored in the hiring process, while non-minorities were more likely to disagree with this statement. Minorities reported feeling that they had somewhat fewer promotional opportunities and that they received less pay than non-minority employees. *See* Table 2-14.

The following table presents the percentage of minority and non-minority employees, within the District of Puerto Rico who agree and disagree with each of the relevant statements. *See also* Appendix at D 44-47.

TABLE 2-14  
EMPLOYEES' RACE/ETHNICITY RELATED VIEWS  
District of Puerto Rico

QUESTION #41	% MINORITIES (n)		% NON-MINORITIES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
A non-minority is more likely to be hired than a minority	31.7% (13)	31.7% (13)	11.1% (1)	88.9% (8)
A minority is more likely to be hired than a non-minority	9.5% (4)	54.8% (23)	0	77.8% (7)
Adequate promotional opportunities exist for non-minorities	60% (24)	7.5% (3)	75% (6)	0
Adequate promotional opportunities exist for minorities	50% (20)	20% (8)	75% (6)	0
Minorities are paid less than non-minorities	23.8% (10)	42.8% (18)	0	88.9% (8)
Non-Minorities are paid less than minorities	0	60.9% (25)	0	88.9% (8)

## 2. General Views Regarding Existence of Bias

The Employee Survey asked whether employees believe that gender and racial/ethnic bias exists in the courts of the First Circuit, and if so, whether that bias is limited or widespread. Respondents were also asked whether they believe bias is difficult or easy to detect and whether managers are taking steps to eradicate bias.<sup>73</sup>

<sup>73</sup> Question 42 of the Employee Survey read: "Do you believe that gender bias exists in the courts and offices of the First Circuit?" Response choices were: "(1) Yes; (2) No (skip to Question 43); (3) No opinion/don't know." Question 42(a) read: "If yes, do you believe that gender bias is limited or widespread?" Possible responses included: "(1) Gender bias is limited to a few areas or certain individuals; (2) Gender bias is widespread; (3) No opinion/don't know." Question 42(b) read: "If yes, do you think managers are taking steps to eradicate gender bias?" Response choices were: "(1) Yes; (2) No; (3) No opinion/don't know." Question 42(c) read: "If yes, do you believe that gender bias is difficult or easy to detect?" Response choices were: "(1) Gender bias is difficult to detect; (2) Gender bias is easy to detect; (3) No opinion/don't know." Question 43 of the Employee Survey asked the same set of questions as Question 42, except with regard to racial or ethnic bias.

a. Gender Bias

Over one-third (35.9%) (n=133) of the respondents believed that gender bias exists in the courts and offices of the First Circuit; and an equal number perceive that gender bias does *not* exist in the courts and offices of the First Circuit. Although there is little difference between the percentages of male and female employees who believed that gender bias exists (36.5% (n=101) of the women; 34.1% (n=31) of the men), more males than females thought that gender bias does *not* exist—45.1% (n=41) of the males compared to 33.2% (n=92) of the females.<sup>74</sup> See Appendix at D 48.

Of those who believed that gender bias exists, the majority (67.7%) (n=88) believed that it is limited, while 23.1% (n=30) believed that it is widespread.<sup>75</sup> Women were somewhat more likely than men to report that gender bias is widespread (25% (n=25) of the females; 17.2% (n=5) of the males), while men were more likely than women to report that it is limited in scope, (75.9% (n=22) of the males; 65% (n=65) of the females). See Appendix at D 48.

Almost three-quarters (71.4%) (n=80) of those who perceived gender bias reported that it is difficult to detect. Only 22.3% (n=25) believe that it is easy to detect. Male employees were somewhat more likely than female employees to think that gender bias is difficult to detect (84% (n=21) of the men; 67.4% (n=58) of the women) while women were over twice as likely as men to report that gender bias is easy to detect (25.6% (n=22) of the women; 12% (n=3) of the men). Half (50%) (n=66) of the respondents who believed that gender bias exists reported that managers are *not* taking steps to eradicate it, while only 17.4% (n=23) believed that they are taking the necessary steps. See Appendix at D 48.

Employees' views were also sought on several other gender-related topics.<sup>76</sup> Although over 60% (61.5%) (n=229) of the employees agreed that their court or office does not tolerate sexual harassment, over 10% (12.4%) (n=46) of the employees disagreed with this statement. Almost 17% (16.9%) (n=61) reported that employees who commit sexual harassment often go unpunished. However,

---

<sup>74</sup> This difference is accounted for by the fact that proportionately more women than men responded "no opinion/don't know" to this question. Also, one (1) of the respondents who reported a belief in gender bias was not identifiable by gender.

<sup>75</sup> The percentages also reflect that 9.2% of the respondents to the question answered "no opinion/don't know." For further information on how percentages for this series of questions were calculated, see Appendix at M 11-12.

<sup>76</sup> Specifically, employees were asked whether they "strongly agree," "agree," "neutral," "disagree," or "strongly disagree" with the following statements:

My court or office does not tolerate any form of sexual harassment;

Employees who sexually harass other employees often go unpunished;

In my court or office, men are treated with less respect than women; and

In my court or office, women are treated with less respect than men.

For reporting purposes, those who responded "strongly agree" and "agree" are combined as are those who responded "strongly disagree" and "disagree."

over 60% (65.8%) (n=243) of the employees did not agree that women are treated with less respect than men.<sup>77</sup> See Appendix at D 43-44.

Female and male respondents reported somewhat different views regarding toleration of sexual harassment. While over three-quarters (75.9%) (n=69) of the male respondents felt that their court or office does *not* tolerate sexual harassment, only 57.2% (n=159) of the female respondents shared this view.<sup>78</sup> Similarly, proportionately more females (20.8%) (n=55) than males (6.5%) (n=6) felt that employees who commit sexual harassment often go unpunished.<sup>79</sup> See Table 2-15.

Finally, while few employees of either gender felt that men are generally treated with less respect than women, almost 20% (19.6%) (n=54) of the female respondents, compared to only 6.6% (n=6) of the male respondents, felt that women are generally treated with less respect than men. The following table presents the percentages and frequencies of male and female employees who agreed and disagreed with these statements. See also Appendix at D 43-44.

TABLE 2-15  
EMPLOYEES' GENDER RELATED VIEWS

Question #41	MALES (n)		FEMALES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
My court or office does not tolerate any form of sexual harassment	75.9% (69)	11% (10)	57.2% (159)	12.6% (35)
Employees who sexually harass other employees often go unpunished	6.5% (6)	75.3% (60)	20.8% (55)	41.7% (110)
In my court or office, men are treated with less respect than women; and	6.6% (6)	81.4% (74)	1.4% (4)	80.4% (221)
In my court or office, women are treated with less respect than men	6.6% (6)	79.2% (72)	19.6% (54)	61.1% (168)

<sup>77</sup> While few employees, 2.7% (n=10), agreed that men are generally treated with less respect than women, 16.3% (n=18) agreed that women are treated with less respect than men. See Appendix at D 44.

<sup>78</sup> However, only 12.6% (n=35) of female respondents and 11% (n=10) of male respondents disagreed with this statement. See Table 2-15.

<sup>79</sup> Although over three-quarters (75.3%) (n=60) of the men disagreed with this statement, less than half (41.7%) (n=110) of the women disagreed with this statement. See Appendix at D 43.

b. Racial/Ethnic Bias

Almost 40% (39.5%) (n=145) of employee respondents believed that race or ethnic bias does not exist in the courts and offices of the First Circuit. However, over one-quarter (26.2%) (n=96) of the respondents believed such bias does exist.<sup>80</sup> See Appendix at D 50. In the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, 60.9% (n=14) of the minority employees compared to 22.5% (n=64) of the non-minorities, reported that racial bias exists. See Appendix at D 51.

Of those employees who believed that racial or ethnic bias exists, a majority (58.7%) (n=54) believed that it is limited, but 35.9% (n=33) believed that it is widespread.<sup>81</sup> See Appendix at D 50. Non-minorities from the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island were significantly more likely than minorities to report that racial bias is limited (42.9% (n=6) minorities; 65% (n=39) non-minorities); while minorities from these states were more likely than non-minority employees to report that racial bias is widespread (57.1% (n=8) minorities; 30% (n=18) non-minorities). See Appendix at D 51.

Over half (56.2%) (n=41) of the respondents who perceived racial bias reported that the bias is difficult to detect, while 37% (n=27) believed that it is easy to detect.<sup>82</sup> Over half (52.6%) (n=50) of the respondents who perceived racial or ethnic bias reported that managers are not taking steps to eradicate it, while only 20% (n=19) reported that they are taking the necessary steps. See Appendix at D 50. This difference was more extreme among minority employees from the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, only 7.1% (n=1) of whom reported the managers are taking steps to eradicate bias while 64.3% (n=9) reported that they are not.<sup>83</sup> See Appendix at D 51.

Within the District of Puerto Rico, minorities were slightly more likely than non-minorities to report that racial bias exists in the federal courts. Approximately thirty percent (30.4%) (n=14) of the minorities believed that racial or ethnic bias exists. In comparison, 22.2% (n=2) of the non-minorities from this District reported believing that racial bias exists. However, half (n=7) of the minorities

---

<sup>80</sup> The remaining respondents answered "no opinion/don't know."

<sup>81</sup> The percentages also reflect that 5.4% of the respondents to the question answered "no opinion/don't know."

<sup>82</sup> There was not a significant difference in the responses of minorities and non-minorities to this question—55.6% (n=5) of the minorities and 51.1% (n=24) of the non-minorities from Maine, Massachusetts, New Hampshire, and Rhode Island thought that racial bias was difficult to detect; 44.4% (n=4) of the minorities and 38.3% (n=18) of the non-minorities thought that racial bias was easy to detect. See Appendix at D 51.

<sup>83</sup> Non-minority employee responses from these districts generally reflect the population as a whole, as minorities compose such a small percentage of the employee population. Thus, 23.8% (n=15) of the non-minorities reported that managers are taking necessary steps to eradicate racial bias, while 52.4% (n=33) reported that they are not. See Appendix at D 51.

reporting from Puerto Rico felt that racial bias is widespread and that managers are not taking steps to eradicate it.<sup>84</sup> See Appendix at D 51.

The survey also asked for employees' views as to whether they perceive a great deal of racial tension in their workplace or whether racial or ethnic differences are valued.<sup>85</sup> The vast majority of employee respondents (80.3%) (n=294) did not think that there was a great deal of racial tension in their court or office. Less than half of the respondents (42.9%) (n=154) reported that racial and ethnic differences are acknowledged and valued in their court or office. See Appendix at D 43. In the Court of Appeals and the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island, non-minorities were more likely to feel that racial differences are valued while minorities were twice as likely as non-minorities to disagree with this statement. Similarly, minorities more frequently reported that they perceived a great deal of racial tension than non-minorities.<sup>86</sup> See Table 2-16; Appendix at D 46-47.

TABLE 2-16

## EMPLOYEES' RACE/ETHNICITY VIEWS

Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode Island

Question #41	MINORITIES (n)		NON-MINORITIES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
Racial and ethnic differences are acknowledged and valued	30.4% (7)	26.1% (6)	45.1% (126)	12.5% (35)
In my court or office, there is a great deal of racial tension	16.7% (4)	62.5% (15)	3.5% (10)	81.7% (233)

<sup>84</sup> Only two (2) of the non-minorities who responded to these questions from the District of Puerto Rico reported that racial or ethnic bias exists in the First Circuit courts. Only two (2) non-minorities who answered the question responded "no opinion/don't know" to the question about whether managers are taking the necessary steps to address racial bias. One (1) non-minority from Puerto Rico responded that racial bias is limited in scope. See Appendix at D 51.

<sup>85</sup> Specifically, question #41 asked employees whether they "strongly agree," "agree," "neutral," "disagree," or "strongly disagree" with the following statements: "Racial and ethnic differences among people are acknowledged and valued in my court or office;" and "In my court or office, there is a great deal of racial tension." For reporting purposes, those who answered "strongly agree" and "agree" have been combined under the heading "agree" and those who answered "strongly disagree" and "disagree" have been combined under the column "disagree."

<sup>86</sup> Totals for minorities and non-minorities do not necessarily equal the results for the entire sample of respondents, as not all of the respondents answered the question on race/ethnicity.



Employees from the District of Puerto Rico disagreed with the statement that there is a great deal of racial tension in their court or office—over 80% of both minority and non-minority employees disagreed with this statement. Both minority and non-minority employees from this district were closely divided on whether racial/ethnic differences are acknowledged and valued. See Table 2-17; Appendix at D 46-47.

TABLE 2-17  
EMPLOYEES' RACE/ETHNICITY RELATED VIEWS  
District of Puerto Rico

	MINORITIES (n)		NON-MINORITIES (n)	
	AGREE	DISAGREE	AGREE	DISAGREE
Racial and ethnic differences are acknowledged and valued	31.9% (14)	23.3% (10)	44.4% (4)	44.4% (4)
In my court or office, there is a great deal of racial tension	0	81.4% (35)	11.1% (1)	88.9% (8)

### 3. Employees' Recommendations

The final two questions of the Employee Survey asked employees to recommend actions that the First Circuit should take to ensure equality for all employees.<sup>87</sup>

<sup>87</sup> Question 44 asked employees about their recommendations regarding gender bias, while Question 45 asked about racial/ethnic bias. The text of the questions are as follows:

Question 44: Below is a possible list of actions the court can take to make sure that men and women are treated equally and fairly. Please circle the three actions you think would be most effective.

- Punish people who violate others' rights because of their gender;
- Develop a circuit-wide policy concerning sexual harassment and/or gender bias complaints and circulate policy to all First Circuit employees;
- Develop a formal grievance procedure for claims of sexual harassment and/or gender bias;
- Develop educational programs and/or sensitivity training regarding sexual harassment;
- Educate court unit heads and encourage them to report occurrences of sexual harassment and/or gender bias;
- Stress that retaliation is prohibited against employees that assert claims of sexual harassment and/or gender bias;
- Make employees aware that they may discuss instances of sexual harassment and/or gender bias with an EEO representative in strictest confidence;
- Educate judges, managers and court personnel;
- Other

Question 45: Below is a possible list of actions the court can take to make sure that minorities and non-minorities are treated equally and fairly. Please circle the three actions that you think would be most effective.

- Punish people who violate others' rights because of their race and/or ethnicity;

Employees were asked to identify the three most effective actions that the court could implement to make sure that men and women and minorities and non-minorities are treated fairly.

The three most frequently chosen means of ensuring fair treatment of male and female employees were: promoting an awareness and availability of an EEO representative to discuss possible harassment or bias; developing a circuit-wide policy concerning sexual harassment and gender bias; and education of judges, managers and court personnel. The following table presents the three most popular recommendations chosen by, employees as a whole, male employees and female employees for promoting gender equality.

TABLE 2-18  
EMPLOYEES' RECOMMENDATIONS REGARDING GENDER BIAS

EMPLOYEES	FEMALE EMPLOYEES	MALE EMPLOYEES
(1) Make employees aware that they may discuss instances of sexual harassment and/or gender bias with an EEO representative in strictest confidence	(1) Develop a circuit-wide policy concerning sexual harassment and/or gender bias complaints and circulate policy to all First Circuit employees	(1) Develop educational programs and/or sensitivity training regarding sexual harassment.
(2) Develop a circuit-wide policy concerning sexual harassment and/or gender bias complaints and circulate policy to all First Circuit employees	(2) Make employees aware that they may discuss instances of sexual harassment and/or gender bias with an EEO representative in strictest confidence	(2) Make employees aware that they may discuss instances of sexual harassment and/or gender bias with an EEO representative in strictest confidence

- Develop a circuit-wide policy concerning race and/or ethnic bias complaints and circulate policy to all First Circuit employees;
- Develop a formal grievance procedure for claims of race and/or ethnic bias;
- Develop educational programs and/or diversity training regarding racial and/or ethnic bias;
- Educate court unit heads and encourage them to report occurrences of racial and/or ethnic bias;
- Stress that retaliation is prohibited against employees that assert claims of racial and/or ethnic bias;
- Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence;
- Educate judges, managers and court personnel;
- Other

(3) Educate judges, managers and court personnel	(3) Educate judges, managers and court personnel	(3) Develop a circuit-wide policy concerning sexual harassment and/or gender bias complaints and circulate policy to all First Circuit employees <sup>88</sup>
--	--	--

First Circuit employees chose the following as the three most effective means of ensuring fair treatment of minority and non-minority employees: *development of circuit-wide policy concerning racial/ethnic bias; promoting an awareness of an EEO representative to discuss possible harassment or bias; and development of educational programs and/or diversity training.* There were not significant differences between the most popular methods of remediation chosen by minorities and non-minorities. The following table presents the three most popular recommendations chosen by employees as a whole, minority employees and non-minority employees (Court of Appeals; Districts of Maine, Massachusetts, New Hampshire, and Rhode Island) for promoting racial and ethnic equality.

TABLE 2-19

EMPLOYEES' RECOMMENDATIONS REGARDING RACIAL/ETHNIC BIAS  
Court of Appeals; Districts of Maine, Massachusetts, New Hampshire & Rhode Island

EMPLOYEES	MINORITY EMPLOYEES	NON-MINORITY EMPLOYEES
(1) Develop a circuit-wide policy concerning race and/or ethnic bias complaints and circulate policy to all First Circuit employees	(1) Develop educational programs and/or diversity training regarding racial and/or ethnic bias	(1) Develop a circuit-wide policy concerning race and/or ethnic bias complaints and circulate policy to all First Circuit employees
(2) Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence	(2) Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence	(2) Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence
(3) Develop educational programs and/or diversity training regarding racial and/or ethnic bias	(3) Educate judges, managers and court personnel	(3) Develop educational programs and/or diversity training regarding racial and/or ethnic bias

<sup>88</sup> An equal number of male employees (44.8% (n=39)) chose item (h), education of judges, managers, and court personnel, as the third most popular means of ensuring equal treatment of women and men. See Appendix at D 52.

The following table presents the three most popular recommendations chosen by minority employees and non-minority employees from the District of Puerto Rico for promoting racial and ethnic equality.

TABLE 2-20  
EMPLOYEES' RECOMMENDATIONS REGARDING RACIAL/ETHNIC BIAS  
District of Puerto Rico

MINORITY EMPLOYEES	NON-MINORITY EMPLOYEES <sup>89</sup>
(1) Develop educational programs and/or diversity training regarding racial and/or ethnic bias;	(1) Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence
(2) Develop a circuit-wide policy concerning race and/or ethnic bias complaints and circulate policy to all First Circuit employees	(2) Develop educational programs and/or diversity training regarding racial and/or ethnic bias
(3) Educate judges, managers and court personnel	(3) Punish people who violate other's rights because of their race and/or ethnicity
	(4) Educate judges, managers and court personnel

### III. ATTORNEYS' EXPERIENCES IN FEDERAL COURT

#### A. *The Attorney Survey*

The Task Forces distributed the attorney survey to 4,187 attorneys in April, 1997, and mailed a follow-up in May, 1997. Those attorneys were selected from a database of lawyers who practiced in the circuit's courts during a period spanning December, 1993 to December, 1996.<sup>90</sup> The sample of over 4,100 attorneys was selected in accordance with a sampling plan developed to ensure a representative cross-section of attorneys.<sup>91</sup> To ensure adequate representation of and input from

<sup>89</sup> Items 2, 3, and 4 received equal support from non-minority employees from the District of Puerto Rico. See Appendix at D 55.

<sup>90</sup> The survey was sent to 4,187 attorneys of record on cases filed in one or more of the First Circuit federal district or bankruptcy courts during this time period. Of these surveys, 86 were returned as undeliverable. The sample included 400 "out-of-circuit" attorneys who had filed cases within the circuit but whose offices were not located in the circuit.

<sup>91</sup> Ellen Cohn, Ph.D., the Task Forces' social science consultant, developed this plan to produce a sample of attorneys that was both demographically and geographically representative of the population of counsel practicing in the circuit. The sampling plan is described in detail in the Appendix at M 5-6.

minority and female attorneys, these two groups were intentionally oversampled.<sup>92</sup> Every attorney identified as a minority was sent a survey; the remaining surveys were sent to an equal number of male and female attorneys. In addition, because the Task Forces desired feedback from those attorneys who practice most frequently in the First Circuit federal courts, all Assistant United States Attorneys and Assistant Federal Public Defenders were sent surveys. Attorneys were asked to complete the survey and return it in the enclosed postage-paid envelope by April 25, 1997.<sup>93</sup>

The attorney survey contained a number of sections.<sup>94</sup> The first section sought background information concerning respondents' gender, race and areas of practice. The bulk of the survey contained questions on attorneys' personal experiences, observations and views of the First Circuit federal courts. The experience section asked the attorneys whether they had personally experienced any of nine (9) listed behaviors during the past five years, the number of times they had each experience, the source of each experience, the location of each experience, and whether they attributed each experience to bias of any kind. The observation questions asked the attorneys whether they had observed any of eighteen (18) listed behaviors during the past five years, the number times they observed each behavior, the source of the behavior, the party to whom the behavior was directed, and the location of each observation. Following both the experience and observation questions, the survey contained several questions on judicial intervention—whether it occurred and, if so, whether it was perceived as successful.

The survey also asked respondents to indicate whether they thought that the behaviors that they had experienced and observed were confined or widespread and to provide their general perceptions concerning the existence and pervasiveness of bias in the First Circuit. Finally, the survey requested that attorneys rank a list of possible remedial measures for ensuring fair treatment of men and women, and minorities and non-minorities. The attorney survey contained several additional questions on different but related topics, including judges' responsiveness to parental obligations and court appointments.

---

<sup>92</sup> "Oversampling" occurs when a group's representation in the sample is greater than its representation in the population as a whole. See Appendix at M 5. Data analysis involved reweighting the survey responses of members of groups that were oversampled so that their responses could be properly generalized to the population of the circuit. See Appendix at M 7. Responses of Assistant United States Attorneys and Assistant Federal Public Defenders were not reweighted separately because the sample was so small.

<sup>93</sup> In May of 1997, a follow-up letter was sent to the attorneys who had not yet returned the survey. The letter reminded counsel about the survey and again requested that they complete and return it. A copy of this letter is reproduced in the Appendix.

<sup>94</sup> The majority of the questions provided multiple answers from which attorneys were asked to choose. However, the survey also contained a number of opportunities for attorneys to write without restriction on most of the topics addressed. The attorney survey is reproduced in its entirety in the Appendix.

### *B. The Attorney Respondents*

Thirty-six percent (36%) of the attorneys sampled completed and returned the survey.<sup>95</sup> A majority (52.5%) of the attorney respondents were male; 47.5% of the attorney respondents were female. *See* Appendix at D 57.

Attorney respondents whose office was located in Maine, Massachusetts, New Hampshire, Rhode Island, and outside the circuit were predominantly Caucasian (90.1%).<sup>96</sup> Over 9% (9.9%) of the attorneys from these states and from outside the circuit represented minority groups—3.2% indicated that they were African-American; 2.4% indicated that they were Asian-American; 2.8% indicated that they were Hispanic; 0.5% indicated that they were Native American; and 1% indicated that they belonged to the minority (other) category.<sup>97</sup> *See* Appendix at D 57.

Over 80% (83.3%) of the attorneys responding from Puerto Rico reported that they were Hispanic. Approximately 11% (11.1%) of the attorneys from this district reported that they were Caucasian. Under 1% (0.5%) of the attorneys from Puerto Rico reported that they were African-American. There were no Asian-Americans or Native-Americans. *See* Appendix at D 58.

Approximately one-fifth (21%) of the attorneys who responded to the question indicated that they were born before 1947. Just over one-third (36.5%) of the respondents were born between 1947 and 1956; another third (37.2%) were born between 1957 and 1966; and the remaining 5.3% were born after 1966. *See* Appendix at D 57.

Under 10% (9.8%) of the respondents reported that they were admitted to the bar before 1970. Almost one-quarter (24.2%) of the respondents said that they were first admitted to the bar between 1970 and 1979. Over 40% (42.9%) of the attorney respondents reported that they were first admitted to the bar between 1980 and 1989. Another 23% were first admitted after 1989. *See* Appendix at D 60.

Three-quarters (75.1%) of the respondents to the question reported that their offices were located within one of the four New England states in the circuit—Maine, Massachusetts, New Hampshire, and Rhode Island. Fourteen percent (14%) of the respondents reported that their offices were located in Puerto Rico. Eleven percent (11%) of the respondents reported that their offices were outside of the circuit. *See* Appendix at D 58.

---

<sup>95</sup> This percentage excludes the 86 surveys that were returned as undeliverable.

<sup>96</sup> These figures also include the attorneys from outside the circuit. Of the 1439 attorneys who reported the location of their office, 1281 were completed by attorneys whose offices were located within the First Circuit; the remaining 158 surveys were completed by attorneys whose offices were located outside of the circuit. *See* Appendix at D 58. Although they are not reporting from one of the four New England First Circuit states, the attorneys from outside the circuit are included with the in-circuit attorneys for racial analyses, while the demographic composition of Puerto Rico necessitated separate analysis.

<sup>97</sup> The attorneys outside the circuit reported a notably higher percentage of minority representation (21.2%) than the attorneys reporting from within the circuit, excluding Puerto Rico (8.2%). Hispanics represented a significantly higher percentage of the out-of-circuit attorneys (12.8%) than in-circuit, excluding Puerto Rico (1.3%). *See* Appendix at D 59-60.

Almost all (97.9%) of the attorneys who responded to the question stated that they were currently engaged in the practice of law. Under one-fifth (18.1%) of the respondents reported that they had not participated in a federal court proceeding (defined as a pretrial, trial, appellate or bankruptcy proceeding) during the past five years.<sup>98</sup> Almost one-quarter (22.2%) of the respondents who answered the question reported that they had participated in a federal proceeding either "once" (1 time) or "rarely" (2-3 times). Over half of the respondents (59.8%) reported that they had participated in a federal proceeding "sometimes" (4-5 times) or "often" (6 or more times) during the past five years. *See* Appendix at D 61.

The most frequently reported areas of concentration in federal practice for in-circuit attorney respondents were (in descending order): general civil litigation, bankruptcy, and criminal law. *See* Appendix at D 62. Respondents reporting from other circuits reported concentrations most frequently in general civil litigation, other (unspecified), and appellate practice.<sup>99</sup>

Respondents reported that, during the past five (5) years, they had practiced most frequently in the following courts of the circuit (in descending order): Massachusetts District Court, the First Circuit Court of Appeals, and Puerto Rico District Court. *See* Appendix at D 63.

Of the types of practice listed, over one-quarter (27.2%) of the attorneys stated that they were partners in a private practice. The second largest group of respondents (20.1%) reported that they were solo practitioners in a private practice. Almost as many attorneys (19.8%) chose "other" from the listed categories, while 17.5% reported that they were employed as an associate in a private practice.<sup>100</sup> Only 6.8% of the attorneys who responded to the question reported that they had practiced as an Assistant United States Attorney or an Assistant Federal Public Defender during the past five (5) years. *See* Appendix at D 63-64.

### C. Attorneys' Experiences

A major portion of the attorney survey focused on attorneys' personal experiences while practicing in the federal courts of the First Circuit.<sup>101</sup> The survey

---

<sup>98</sup> The survey instructed these respondents to answer no further questions but to still return the questionnaire, thus enabling the Task Forces to obtain the demographic and other preliminary data from these individuals.

<sup>99</sup> Because respondents were asked to circle "all that apply" to the question regarding concentrations, percentages are not meaningful, i.e., the total percentages would exceed 100%.

<sup>100</sup> 7.2% of the respondents indicated that they were federal government attorneys; 5.3% indicated that they were state or local government attorneys; 1.9% stated that they were in-house counsel; and 1.0% stated that they were legal service attorneys (government funded legal services program or support agency). None of the respondents stated that they were employed by a trade or professional association. *See* Appendix at D 64.

<sup>101</sup> In order to preserve anonymity and to avoid placing unnecessary emphasis on any particular district, a uniform survey was distributed circuit-wide. Accordingly, survey results are generally reported circuit-wide. Circuit-wide results include responses from those

asked respondents whether they had experienced any of the following behaviors in a First Circuit proceeding.<sup>102</sup>

- My opinions or views were not taken seriously;<sup>103</sup>
- I experienced an unwillingness to accommodate my schedule or time requirements;
- I received inaccurate assumptions regarding my professional status (e.g., that I am not an attorney);
- I received inappropriate comments or advances of a sexually suggestive nature;
- I received inappropriate comments about my physical appearance or clothing;
- I received inappropriate comments about my presumed foreign origin or citizenship status;
- I received demeaning or derogatory comments;
- I was addressed by my first name (when inappropriate) or by non-professional terms; and
- I received inappropriate comments about (parodied) my accent or manner of speech.

In addition to reporting whether another attorney, judge or court employee was responsible for each behavior, respondents were also asked to indicate the frequency and location of the behavior.<sup>104</sup> For each experience reported, the survey asked attorneys to indicate, in response to the subsequent question, whether, in their opinion, the behavior was due to their gender, race or ethnicity.<sup>105</sup>

---

who work in, practice in or have had an occasion to use the bankruptcy courts and district courts throughout the circuit and the First Circuit Court of Appeals. (With respect to race and ethnicity, Puerto Rico results are reported separately. Since the survey addressed behaviors experienced in district court and in the Court of Appeals, the Puerto Rico responses could relate to perceptions of either court.)

<sup>102</sup> Question #10 asked whether another attorney had engaged in any of these behaviors. Question #16 asked whether a federal judge had engaged in any of these behaviors. Question #19 asked whether a court employee had engaged in any of these behaviors.

<sup>103</sup> Question #19(a) was phrased slightly differently from #10(a) and #16(a). Question #s 10(a) and 16(a), addressing the conduct of attorneys and judges, respectively, were phrased "Did not take my opinions or view seriously." Question #19(a) asked whether court personnel "Ignored me or did not take me seriously."

<sup>104</sup> With regard to the frequency, respondents were given the following response categories: "Often (6 or more times); sometimes (4-5 times); rarely (2-3 times); once (1 time); never (0 times); no opportunity to observe." With regard to the location, question #10 asked whether the other attorney's conduct occurred: (1) in open court; (2) in informal, side bar, or in-chambers proceedings before a judge; or (3) in proceedings NOT before a judge such as settlement discussions or depositions. Question #16 asked whether the judge's conduct occurred: (1) in open court; or (2) in informal, side bar, or in-chambers proceedings. Question #19, regarding the conduct of court employees, did not specify different locations.

<sup>105</sup> When assessing results from the District of Puerto Rico, it should be remembered that a significant "minority" group (Hispanics), in fact represents the majority (83.3%) of the attorney sample. See Appendix at D 58. Further, caution should be used when inferring



This section first presents the frequencies with which attorneys reported each of the listed experiences in their interactions with each other, judges, and employees. It then examines those behaviors that were reported by respondents who compose certain demographic subgroups, such as women, men, minorities or non-minorities. While attorneys may not have themselves attributed these behaviors to bias, the fact that they were more frequently reported by a certain subgroup of respondents may present some evidence of disparate treatment. Finally, the section will present respondents' attributions—those experiences that respondents perceived to reflect gender, racial or ethnic bias.

### 1. Most Frequently Reported Experiences and Sources

Over half of the respondents reported that their *opinions or views were not taken seriously* (69.2%) and that they felt an *unwillingness to accommodate [their] schedule or time requirements* (61.9%).<sup>106</sup> The next three most frequently reported experiences were *receiving demeaning or derogatory comments* (40.7%), *receiving inaccurate assumptions regarding professional status* (27.4%) and *being addressed inappropriately by first name or by a non-professional term* (23.2%). See Table 2-22.

The following table presents the percentages of attorneys who reported each of the listed experiences (of those that answered question #s 10, 16 & 19).

---

results about the "non-minority" group from the District of Puerto Rico because they, in fact, represent such a small percentage of the attorney sample.

<sup>106</sup> All of the percentages presented for the attorney survey have been "reweighted." Because certain subgroups of the attorney population (women and minorities) were over-sampled in order to obtain a sufficient number of responses from these demographic groups, it was necessary to recalculate ("reweight") the percentages obtained to reflect the actual representation of these groups in the attorney population. See Appendix at M 7. Only the "weighted" percentages appear in the description of attorney results in this Report. The weighted percentages, the "unweighted" percentages, as well as the corresponding frequencies for all of the attorney data, appear in the Appendix.

TABLE 2-22  
ATTORNEYS WHO REPORTED LISTED BEHAVIOR

QUESTIONS 10, 16 & 19 ATTORNEYS' COURTHOUSE EXPERIENCES	% OF ATTORNEYS WHO REPORTED BEHAVIOR
(a) Did not take my opinions or views seriously <sup>107</sup>	69.2%
(b) Was unwilling to accommodate my schedule or time requirements	61.9%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	27.4%
(d) Made inappropriate comments or advances of a sexually suggestive nature	10.9%
(e) Made inappropriate comments about my physical appearance or clothing	12.9%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	5.6%
(g) Made demeaning or derogatory comments to me	40.7%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	23.2%
(i) Made inappropriate comments about or parodied my accent or manner of speech	5.5%

Attorneys more frequently named other attorneys as the source of each of the reported experiences rather than judges or court personnel.<sup>108</sup> This difference was most significant with *not taking opinions or views seriously*; *making inappropriate comments about physical appearance/ clothing*; *making demeaning or derogatory comments*; and *addressing by first name or non-professional term*. See Table 2-23.<sup>109</sup>

<sup>107</sup> As explained above, see *supra* note 103, question #19(a) stated "Ignored me or did not take me seriously."

<sup>108</sup> 72.2% of the respondents reported one or more of the listed experiences in their interactions with other attorneys; 51% of the respondents reported one or more of the listed experiences in their interactions with federal judges; and 39.2% of respondents reported one or more of the listed experiences in their interactions with court personnel. For a gender/racial breakdown of sources, see Appendix at D 69.

<sup>109</sup> For each of these four behaviors, approximately 20% more respondents reported the behavior from attorneys than from either judges or employees. The exception is item (e) inappropriate comments about physical appearance or clothing—10.9% of the responding attorneys reported this behavior from other counsel, compared to 1.2% that reported the behavior from judges; and 0.6% who reported the behavior from employees. See Table 2-23.

Items (a) *did not take opinions or view seriously*, and (b) *was unwilling to accommodate my schedule or time requirements* were among the most frequently reported items for each court actor—attorneys, judges, and employees. The most frequently reported behaviors engaged in by other attorneys were: *did not take my opinions or views seriously* (53.9%); *was unwilling to accommodate my schedule or time requirements* (42%); and *made demeaning or derogatory comments* (34.3%). See Table 2-23.

The most frequently reported behaviors reportedly engaged in by federal judges were: *was unwilling to accommodate my schedule or time requirements* (36.3%); *did not take my opinions or views seriously* (30.7%); and *made demeaning or derogatory comments* (13%). See Table 2-23.

The most frequently reported behaviors engaged in by court personnel were: *was unwilling to accommodate my schedule or time requirements* (24.9%); *ignored me or did not take me seriously* (22.4%); and *made inaccurate assumptions regarding my professional status* (14.7%). See Table 2-23.

The following table represents the percentages of attorneys who reported each of the listed experiences (of those that answered question #s 10, 16, 19) for each of the identified court actors.

TABLE 2-23  
ATTORNEYS' WHO REPORTED BEHAVIOR WITH SOURCE

QUESTIONS 10, 16 & 19 ATTORNEYS' COURTHOUSE EXPERIENCES/BY ACTOR	% OF ATTORNEYS WHO REPORTED EACH OF LISTED BEHAVIORS ATTORNEY (#10)	% OF ATTORNEYS WHO REPORTED EACH OF LISTED BEHAVIORS JUDGE (#16)	% OF ATTORNEYS WHO REPORTED EACH OF LISTED BEHAVIORS EMPLOYEE (#19)
(a) Did not take my opinions or views seriously <sup>110</sup>	53.9%	30.7%	22.4%
(b) Was unwilling to accommodate my schedule or time requirements	42.0%	36.3%	24.9%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	17.7%	4.2%	14.7%
(d) Made inappropriate comments or advances of a sexually suggestive nature	9.4%	1.1%	0.9%
(e) Made inappropriate comments about my physical appearance or clothing	10.9%	1.2%	0.6%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	3.6%	0.6%	1.5%
(g) Made demeaning or derogatory comments to me	34.3%	13.0%	5.0%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	21.0%	4.4%	3.8%
(i) Made inappropriate comments about or parodied my accent or manner of speech	4.7%	1.0%	0.6%

<sup>110</sup> As explained above, see *supra* note 103, question #19(a) stated "Ignored me or did not take me seriously."

## 2. Gender & Racial/Ethnic Differences in Frequencies of Attorneys' Experiences

Some of the behaviors were reported less evenly than others across demographic subgroups of respondents. While attorneys may or may not have attributed these behaviors to bias, if a particular experience is reported disproportionately by any one of the demographic groups, this may indicate disparate treatment. This section addresses those behaviors that were reported disproportionately across gender lines and across racial/ethnic lines.

### a. Gender Differences in Attorneys' Experiences

Many more women than men reported *inaccurate assumptions regarding their professional status*. Almost half (47.2%) of women reported this experience as compared to 9.2% of men. Further, proportionately more women (35.5%) than men (10.9%) reported that they were *addressed by their first name (when inappropriate) or by non-professional terms*. In addition, while 21.9% of female respondents reported that they received *inappropriate comments or advances of a sexually suggestive nature*, only 1.0% of males reported experiencing this behavior. Although the differences were slightly less dramatic, women were also more likely than men to report that their *opinions or views were not taken seriously, comments about their physical appearance or clothing, and demeaning or derogatory comments*. See Table 2-24.

The following table presents the percentages of female and male respondents (of those who answered the questions) that reported each of the listed items.

TABLE 2-24  
GENDER DIFFERENCES

QUESTIONS 10, 16 & 19 ATTORNEYS' COURTHOUSE EXPERIENCES - - GENDER DIFFERENCES	% OF FEMALES WHO REPORTED BEHAVIOR	% OF MALES WHO REPORTED BEHAVIOR
(a) Did not take my opinions or views seriously <sup>111</sup>	75.9%	58.5%
(b) Was unwilling to accommodate my schedule or time requirements	60.2%	58.1%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	47.2%	9.2%
(d) Made inappropriate comments or advances of a sexually suggestive nature	21.9%	1.0%
(e) Made inappropriate comments about my physical appearance or clothing	23.2%	4.3%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	7.0%	4.4%
(g) Made demeaning or derogatory comments to me	47.6%	31.8%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	35.5%	10.9%
(i) Made inappropriate comments about or parodied my accent or manner of speech	7.0%	4.2%

i. Gender Differences and Source of Behaviors

Women more often reported *attorneys* as the source of the listed behaviors than did men. For example, 27% more women than men reported that an attorney *made inaccurate assumptions regarding his/her professional status*; 23.7% more women than men reported that an attorney *addressed him/her by his/her first name (when inappropriate) or by non-professional terms*; 21.1% more women than men reported that an attorney *did not take his/her opinions or views seriously*. See Table 2-25.

The gender differences were less significant with reports of *employees'* conduct. However, 23% more women than men reported that an employee *made inaccurate assumptions regarding his/her professional status*. In contrast, women and men

<sup>111</sup> As explained above, see *supra* note 103, question #19(a) stated "Ignored me or did not take me seriously."

reported roughly the same proportion of experiences in their interactions with federal judges.<sup>112</sup> See Tables 2-26, 2-27.

The following three (3) tables present the percentages of female and male respondents (of those that answered each question) who reported each of the listed behaviors by each of the three court actors—other attorneys, judges and employees.

TABLE 2-25  
GENDER DIFFERENCES/ATTORNEYS' CONDUCT

QUESTION # 10 ATTORNEYS' COURTHOUSE EXPERIENCES—GENDER DIFFERENCES/ATTORNEYS' CONDUCT	% OF FEMALES WHO REPORTED BEHAVIOR BY OTHER ATTORNEY	% OF MALES WHO REPORTED BEHAVIOR BY OTHER ATTORNEY
(a) Did not take my opinions or views seriously	63.2%	42.1%
(b) Was unwilling to accommodate my schedule or time requirements	39.8%	40.2%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	32.0%	5.0%
(d) Made inappropriate comments or advances of a sexually suggestive nature	19.2%	0.7%
(e) Made inappropriate comments about my physical appearance or clothing	20.1%	3.0%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	3.3%	3.6%
(g) Made demeaning or derogatory comments to me	41.2%	26.0%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	33.0%	9.3%
(i) Made inappropriate comments about or parodied my accent or manner of speech	5.7%	3.5%

<sup>112</sup> An exception was that 10% more *men* than *women* reported that a *judge* was *unwilling to accommodate his/her schedule or time requirements*. See Table 2-27.

TABLE 2-26  
GENDER DIFFERENCES/EMPLOYEES' CONDUCT

QUESTION # 19 ATTORNEYS' COURTHOUSE EXPERIENCES—GENDER DIFFERENCES/EMPLOYEES' CONDUCT	% OF FEMALES WHO REPORTED BEHAVIOR BY EMPLOYEE	% OF MALES WHO REPORTED BEHAVIOR BY EMPLOYEE
(a) Did not take my opinions or views seriously <sup>113</sup>	28.6%	16.0%
(b) Was unwilling to accommodate my schedule or time requirements	25.3%	22.9%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	27.0%	4.0%
(d) Made inappropriate comments or advances of a sexually suggestive nature	1.9%	0%
(e) Made inappropriate comments about my physical appearance or clothing	0.4%	0.7%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	3.0%	0.2%
(g) Made demeaning or derogatory comments to me	6.6%	3.5%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	6.7%	1.4%
(i) Made inappropriate comments about or parodied my accent or manner of speech	0.6%	0.7%

<sup>113</sup> As explained above, see *supra* note 103, question #19(a) stated "Ignored me or did not take me seriously."



TABLE 2-27  
GENDER DIFFERENCES/JUDGES' CONDUCT

QUESTION # 16 ATTORNEYS' COURTHOUSE EXPERIENCES—GENDER DIFFERENCES/JUDGES' CONDUCT	% OF FEMALES WHO REPORTED BEHAVIOR BY JUDGE	% OF MALES WHO REPORTED BEHAVIOR BY JUDGE
(a) Did not take my opinions or views seriously	30.4%	28.3%
(b) Was unwilling to accommodate my schedule or time requirements	29.1%	39.1%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	7.4%	1.1%
(d) Made inappropriate comments or advances of a sexually suggestive nature	1.8%	0.2%
(e) Made inappropriate comments about my physical appearance or clothing	1.6%	0.7%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	0.2%	0.9%
(g) Made demeaning or derogatory comments to me	13.7%	11.1%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	6.8%	1.8%
(i) Made inappropriate comments about or parodied my accent or manner of speech	0.7%	1.1%

**b. Racial/Ethnic Differences in Attorneys' Experiences**

**i. Racial/Ethnic Differences Reported from Attorneys in Maine, Massachusetts, New Hampshire & Rhode Island and Out-of-Circuit Attorneys**

Although caution should be used when drawing inferences from the percentages because few minority attorneys responded, proportionately more minorities than

non-minorities reported than an attorney, court employee, or judge *did not take their opinions or views seriously*. 84.6% of the minorities who answered this question reported this experience as compared to 63.1% of non-minorities. Further, a disproportionate number of minorities reported experiencing *an unwillingness to accommodate their schedule or time requirements* (72.6% minorities/ 57.8% non-minorities); *inaccurate assumptions regarding their professional status* (44.8% minorities/25.3% non-minorities); and *inappropriate comments about their presumed foreign origin or citizenship status* (14.9% minorities/3.8% non-minorities). See Table 2-28.

The following table presents the percentages of minority and non-minority respondents from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit, who reported each of the listed items.

TABLE 2-28  
RACIAL/ETHNIC DIFFERENCES  
Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit<sup>114</sup>

QUESTIONS 10, 16 & 19 ATTORNEYS' COURTHOUSE EXPERIENCES - - RACIAL/ETHNIC DIFFERENCES	% OF MINORITIES WHO REPORTED BEHAVIOR	% OF NON-MINORITIES WHO REPORTED BEHAVIOR
(a) Did not take my opinions or views seriously	84.6%	63.1%
(b) Was unwilling to accommodate my schedule or time requirements	72.6%	57.8%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	44.8%	25.3%
(d) Made inappropriate comments or advances of a sexually suggestive nature	5.5%	9.5%
(e) Made inappropriate comments about my physical appearance or clothing	14.8%	10.6%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	14.9%	3.8%
(g) Made demeaning or derogatory comments to me	43.2%	38.1%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	19.2%	20.3%

<sup>114</sup> Please note that these results reflect attorneys who reported, in response to question #2, that their offices were located in one of these four states, or outside of the circuit. The Attorney Tables indicating "Puerto Rico" reflect those who reported, in response to question #2, that their offices were located in Puerto Rico.

(i) Made inappropriate comments about or parodied my accent or manner of speech	7.2%	3.1%
---	------	------

With regard to the sources of these experiences, minorities were more likely than non-minorities to hold other attorneys responsible for *not taking their opinions or views seriously* (69.8% minorities/48.9% non-minorities) for *making inappropriate comments about their presumed foreign origin or citizenship status* (14.4% minorities/2.1% non-minorities) and for *making inaccurate assumptions regarding their professional status* (28% minorities/16.6% non-minorities). See Table 2-29.

There were similar disparities in attorneys' reports of court employees' treatment. Minorities more frequently reported that court employees *did not take their opinions or views seriously* (31.3% minorities/20.6% non-minorities); and *made inaccurate assumptions regarding professional status* (27.3% minorities/14% non-minorities). See Table 2-30.

Minorities and non-minorities reported roughly the same proportion of experiences with federal judges.<sup>115</sup> See Table 2-31.

The following three (3) tables present the percentages of minority and non-minority respondents from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit, who reported each of the listed behaviors by each of the three court actors—other attorneys, judges, and employees.

<sup>115</sup> Except for "unwillingness to accommodate schedule or time requirements," which was reported by over 12% more non-minorities than minorities. See Table 2-31.

TABLE 2-29  
 RACIAL DIFFERENCES/ATTORNEYS' CONDUCT  
 Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit

QUESTION # 10 ATTORNEYS' COURTHOUSE EXPERIENCES—RACIAL DIFFERENCES/ATTORNEYS' CONDUCT	% OF MINORITIES WHO REPORTED BEHAVIOR BY ATTORNEY	% OF NON-MINORITIES WHO REPORTED BEHAVIOR BY ATTORNEY
(a) Did not take my opinions or views seriously	69.8%	48.9%
(b) Was unwilling to accommodate my schedule or time requirements	46.0%	39.1%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	28.0%	16.6%
(d) Made inappropriate comments or advances of a sexually suggestive nature	3.4%	8.4%
(e) Made inappropriate comments about my physical appearance or clothing	7.0%	9.3%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	14.4%	2.1%
(g) Made demeaning or derogatory comments to me	36.6%	31.9%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	18.5%	18.6%
(i) Made inappropriate comments about or parodied my accent or manner of speech	6.8%	2.5%

TABLE 2-30  
 RACIAL DIFFERENCES/EMPLOYEES' CONDUCT  
 Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit

QUESTION # 19 ATTORNEYS' COURTHOUSE EXPERIENCES - - RACIAL DIFFERENCES/EMPLOYEES' CONDUCT	% OF MINORITIES WHO REPORTED BEHAVIOR BY EMPLOYEE	% OF NON-MINORITIES WHO REPORTED BEHAVIOR BY EMPLOYEE
(a) Ignored me or did not take me seriously	31.3%	20.6%
(b) Was unwilling to accommodate my schedule or time requirements	30.9%	24.5%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	27.3%	14.0%
(d) Made inappropriate comments or advances of a sexually suggestive nature	0%	0.7%
(e) Made inappropriate comments about my physical appearance or clothing	4.8%	0.2%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	1.7%	1.2%
(g) Made demeaning or derogatory comments to me	7.7%	4.8%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	3.2%	3.1%
(i) Made inappropriate comments about or parodied my accent or manner of speech	1.5%	0.1%

TABLE 2-31  
 RACIAL DIFFERENCES/JUDGES' CONDUCT  
 Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit

QUESTION # 16 ATTORNEYS' COURTHOUSE EXPERIENCES—RACIAL DIFFERENCES/JUDGES' CONDUCT	% OF MINORITIES WHO REPORTED BEHAVIOR BY A JUDGE	% OF NON-MINORITIES WHO REPORTED BEHAVIOR BY A JUDGE
(a) Did not take my opinions or views seriously	26.6%	26.3%
(b) Was unwilling to accommodate my schedule or time requirements	22.1%	34.2%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	3.3%	3.8%
(d) Made inappropriate comments or advances of a sexually suggestive nature	1.7%	0.4%
(e) Made inappropriate comments about my physical appearance or clothing	1.7%	0.5%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	0%	0.3%
(g) Made demeaning or derogatory comments to me	9.8%	11.5%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	3.3%	2.9%
(i) Made inappropriate comments about or parodied my accent or manner of speech	0%	0.3%

ii. Racial/Ethnic Differences Reported in the District of Puerto Rico

There were so few non-minority respondents reporting from the District of Puerto Rico that the percentages should be considered cautiously and in conjunction with the corresponding frequencies. Both non-minority and minority respondents from this District reported the following behaviors most frequently: *did not take opinions/views seriously* (87% minorities; 92.3% non-minorities); and *was unwilling to accommodate schedule/time requirements* (71.1% minority; 97.5% non-minority). See Appendix at D 68.

Both minority and non-minority respondents from the District of Puerto Rico held other attorneys responsible more frequently for each of the listed behaviors than either judges or court employees.<sup>116</sup> See Appendix at D 73, 76, 79.

<sup>116</sup> The only exceptions were item (a), *did not take opinions/views seriously*, which non-

### 3. Locations of Attorneys' Reported Experiences<sup>117</sup>

#### a. Locations of Other Counsels' Behavior

Attorneys more frequently reported experiencing *each* of the listed behaviors from other counsel in proceedings NOT before a judge than in either informal proceedings before a judge or in open court.<sup>118</sup> Few gender or racial differences appeared in the patterns of the locations of respondents' experiences with other counsel—proceedings NOT before a judge was the most frequently reported location with additional slight variation appearing between the other two locations.<sup>119</sup> See Appendix at D 81-83.

The following table presents the percentages of respondents, (of those who answered the question), who reported experiencing other counsel engage in each of the behaviors at each of the three (3) listed locations—(1) in open court; (2) in

---

minorities reported equally often (64.9%) from both attorneys and judges. Only 20.4% of the non-minorities from Puerto Rico reported this behavior by employees. Also, 50.2% of minorities from Puerto Rico reported that a judge was *unwilling to accommodate their schedule or time requirements* as compared to 48.5% of minorities who reported this behavior by an attorney. Finally, there were a number of behaviors that non-minorities did not report with any of the actors. See Appendix at D 73, 76, 79.

<sup>117</sup> Question #10 asked whether the other attorney's conduct occurred: (1) in open court; (2) in informal, side bar, or in-chambers proceedings before a judge; or (3) in proceedings NOT before a judge such as settlement discussions or depositions. Question #16 asked whether the judge's conduct occurred: (1) in open court; or (2) in informal, side bar, or in-chambers proceedings. Question #19 regarding the conduct of court employees did not specify different locations.

<sup>118</sup> There was less of a difference between experiences reported in informal judicial proceedings and open court—six (6) of the nine (9) listed behaviors reportedly occurred slightly more frequently in informal proceedings before a judge than in open court. But *inaccurate assumptions regarding professional status*, item 10(c), and *demeaning/derogatory comments*, item 10(g), were reported slightly more frequently in open court than in informal judicial proceedings. Respondents reported that other counsel's *unwillingness to accommodate their schedule/time requirements*, item 10(b), occurred with almost equal frequency in open court and in informal judicial proceedings, but, as with the other behaviors, significantly more frequently in proceedings NOT before a judge. See Table 2-32.

<sup>119</sup> The only exceptions appeared with the few non-minority respondents from the District of Puerto Rico. One (1) (11.6%) of the non-minorities from this district who reported receiving *inappropriate comments from other counsel about their presumed foreign origin/citizenship status*, item 10(f), reported the behavior in open court and one (1) (11.6%) reported the behavior in proceedings NOT before a judge. Two (2) (21.6%) non-minorities reported *demeaning/derogatory comments*, item 10(g), in open court, one (1) (10.9%) reported the behavior in informal judicial proceedings, and one (1) (10.9%) reported the behavior in proceedings NOT before a judge. Finally, one (1) (11.6%) non-minority from Puerto Rico reported *inappropriate comments/parodied their accent or manner of speech*, item 10(i), in each of the three (3) locations. See Appendix at D 83.

informal, side bar, or in-chambers proceedings before a judge; or (3) in proceedings NOT before a judge such as settlement discussions or depositions.

TABLE 2-32  
COUNSELS' CONDUCT BY LOCATION

EXPERIENCE QUESTION #10 COUNSELS' CONDUCT BY LOCATION	% OF ATTORNEYS WHO REPORTED EXPERIENCE IN OPEN COURT	% OF ATTORNEYS WHO REPORTED EXPERIENCE IN INFORMAL PROCEEDINGS	% OF ATTORNEYS WHO REPORTED EXPERIENCE NOT BEFORE A JUDGE
(a) Did not take my opinions or views seriously	27.8%	31.6%	47.4%
(b) Was unwilling to accommodate my schedule or time requirements	20.5%	20.6%	36.9%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	5.8%	5.5%	15.4%
(d) Made inappropriate comments or advances of a sexually suggestive nature	1.2%	2.1%	8.4%
(e) Made inappropriate comments about my physical appearance or clothing	2.0%	2.7%	9.5%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	1.0%	1.4%	3.1%
(g) Made demeaning or derogatory comments to me	14.9%	14.0%	29.9%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	8.6%	11.3%	18.5%
(i) Made inappropriate comments about or parodied my accent or manner of speech	1.7%	2.3%	3.9%

b. Locations of Judges' Behavior

There were few notable differences between the two locations of *judges'* reported conduct—most of the behaviors occurred with approximately equal frequency in open court and in informal proceedings. Attorneys reported *demeaning or derogatory comments* from judges slightly more frequently in open court than in informal proceedings. However, they reported judges *using their first name or non-professional terms* slightly more frequently in informal proceedings than in open court. See Table 2-33. There were also few significant gender or racial differences in the reported locations of judges' conduct. See Appendix at D 85-87.



The following table presents the percentages of respondents (of those who answered the question), that reported judges as the source of each of the behaviors at each of the two (2) listed locations—(1) in open court, and (2) in informal, side bar, or in-chambers proceedings before a judge.

TABLE 2-33  
JUDGES' CONDUCT BY LOCATION

EXPERIENCE QUESTION #16 JUDGES' CONDUCT BY LOCATION	% OF ATTORNEYS WHO REPORTED EXPERIENCE IN OPEN COURT	% OF ATTORNEYS WHO REPORTED EXPERIENCE IN INFORMAL PROCEEDINGS
(a) Did not take my opinions or views seriously	24.2%	23.0%
(b) Was unwilling to accommodate my schedule or time requirements	30.0%	29.3%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	2.8%	2.9%
(d) Made inappropriate comments or advances of a sexually suggestive nature	0.2%	0.8%
(e) Made inappropriate comments about my physical appearance or clothing	0.5%	0.7%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	0.2%	0.5%
(g) Made demeaning or derogatory comments to me	10.3%	8.8%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	2.3%	4.1%
(i) Made inappropriate comments about or parodied my accent or manner of speech	0.7%	0.5%

#### *D. Attorneys' Attributions to Bias*

After asking which behaviors attorneys experienced while practicing in the First Circuit courts, the attorney survey asked respondents whether they felt each experience reflected gender bias, racial/ethnic bias, or both gender and racial bias.<sup>120</sup>

<sup>120</sup> For each of the listed experiences, respondents were given the following options: "(1) Due to gender only; (2) Due to race only; (3) Due to both gender and race/ethnicity; (4) Due

In general, of the attorneys who reported one or more of the listed experiences (and responded to the attribution question), 30.1% attributed at least one of their experiences to gender bias.<sup>121</sup> Over one-third (36.1%) of the women, as compared to 2.2% of the men, attributed at least one of the listed experiences to gender bias. See Table 2-34.

Of the attorneys who reported one or more of the listed experiences, only 5.2% attributed at least one of these experiences to racial or ethnic bias. However, among lawyers from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit, 30.2% of the minorities, as compared to 2% of the non-minorities, attributed at least one of the listed experiences to racial or ethnic bias. Within the District of Puerto Rico, 28.9% of the non-minorities, as compared to 9.5% of the minorities, attributed at least one of the listed experiences to racial or ethnic bias.<sup>122</sup> See Table 2-34.

Of the attorneys who reported one or more of the listed experiences, 3.1% attributed at least one of these experiences to both gender and racial/ethnic bias.<sup>133</sup> Only 1% of females, as compared to 2.2% of males, attributed at least one of the experiences to both gender and racial bias. Among Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit attorneys, 18.8% of the minorities and 0.6% of the non-minorities reported one or more attributions to both forms of bias. Within the District of Puerto Rico, 10.3% of the minorities and 14.4% of the non-minorities attributed one or more experience to both gender and racial bias.<sup>124</sup> See Table 2-34.

The following table presents the percentages of attorneys who attributed one or more of the listed behaviors to gender, racial or both forms of bias.

---

to neither gender, race, nor ethnicity; (5) No opinion." Again, questions #10 and #11 asked about other attorneys' conduct; questions #16 and #17 asked about judges' conduct; and questions #19 and #20 asked about court employees' conduct.

<sup>121</sup> The attribution percentages were calculated from those who reported an experience in response to questions #10, 16 or 19, and answered the corresponding attribution question, #s 11, 17 or 20. Attorneys who reported a specific experience, but neglected to respond to the attribution question, were not included in the analysis of attribution. Similarly, attorneys who made an attribution to bias without having reported the underlying behavior were not included in the attribution analysis. See Appendix at M 11-12.

<sup>122</sup> Caution should be used in drawing inferences from these extremely low frequencies. See Appendix at D 88.

<sup>133</sup> The small number of minority respondents, and the even smaller number of attributions of racial bias, have prompted us to address attributions of both gender and racial bias in conjunction with the analysis of racial bias, alone. Attributions of both forms of bias obviously contain a racial/ethnic component that provides additional data on issues of race and ethnicity, as well as gender.

<sup>124</sup> Again, please note that the percentages reflect extremely low frequencies. For example, the 14.4% of non-minorities from Puerto Rico who reported both forms of bias represents only one respondent. See Appendix at D 88.

TABLE 2-34  
ATTORNEYS' ATTRIBUTIONS OF BIAS

QUESTION #s 11, 17 & 20 ATTORNEYS' ATTRIBUTIONS OF BIAS	% OF ATTORNEYS WHO ATTRIBUTED ANY OF LISTED BEHAVIORS TO GENDER BIAS	% OF ATTORNEYS WHO ATTRIBUTED ANY OF LISTED BEHAVIORS TO RACIAL/ETHNIC BIAS	% OF ATTORNEYS WHO ATTRIBUTED ANY OF LISTED BEHAVIORS TO BOTH GENDER & RACIAL BIAS
Whole Population of Attorneys	30.1%	5.2%	3.1%
Female Attorneys	36.1%	1.6%	1.0%
Male Attorneys	2.2%	6.9%	2.2%
Minority Attorneys (NOT from Puerto Rico)	18.9%	30.2%	18.8%
Non-Minority Attorneys (NOT from Puerto Rico)	30.1%	2%	0.6%
Minority (Hispanic) Attorneys from Puerto Rico	32.6%	9.5%	10.3%
Non-Minority (Caucasian) Attorneys from Puerto Rico	14.4%	28.9%	14.4%

## 1. Gender Bias

### a. Behaviors Most Frequently Attributed to Gender Bias

Attorneys most frequently attributed the following three (3) experiences to gender bias: *inappropriate comments/advances of a sexually suggestive nature*; *inappropriate assumptions regarding professional status*; and *inappropriate comments about physical appearance/clothing*. See Table 2-35. However, these were not the behaviors reported most frequently overall.<sup>125</sup>

The following table presents the percentages of attorneys, of those who reportedly experienced each behavior (and responded to the attribution question), who attributed that behavior to gender, race, or both forms of bias.

<sup>125</sup> Not taking opinions/views seriously, unwillingness to accommodate schedule/time requirements, and demeaning/derogatory comments, were the most frequently reported experiences. See *supra* Table 2-22.

TABLE 2-35  
ATTORNEYS' ATTRIBUTIONS TO BIAS

EXPERIENCE QUESTIONS 11, 17 & 20 ATTORNEYS' ATTRIBUTIONS TO BIAS	% OF ATTORNEYS WHO REPORTED EACH ITEM THAT ATTRIBUTED TO GENDER BIAS	% OF ATTORNEYS WHO REPORTED EACH ITEM THAT ATTRIBUTED TO RACIAL/ETHNIC BIAS	% OF ATTORNEYS WHO REPORTED EACH ITEM THAT ATTRIBUTED TO BOTH GENDER & RACIAL BIAS
(a) Did not take my opinions or views seriously	31.2%	2%	2.4%
(b) Was unwilling to accommodate my schedule or time requirements	15.1%	1.7%	2.4%
(c) Made inaccurate assumptions regarding my professional status (e.g., that I am not an attorney)	94.9%	3.1%	7.7%
(d) Made inappropriate comments or advances of a sexually suggestive nature	99.9%	1.4%	1.4%
(e) Made inappropriate comments about my physical appearance or clothing	81.8%	3.4%	12.6%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	19.6%	36.4%	14.5%
(g) Made demeaning or derogatory comments to me	30.1%	4.5%	2.3%
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	54%	2.7%	3.2%
(i) Made inappropriate comments about or parodied my accent or manner of speech	29.5%	27.2%	22.7%

b. Gender Differences in Reports of Gender Bias

Female attorneys were significantly more likely to attribute each of the listed experiences to gender bias than were male attorneys. The following table presents the percentages of female and male attorneys, of those who reportedly experienced each behavior (and answered the subsequent attribution question), who attributed that behavior to gender bias:

TABLE 2-36  
GENDER BIAS BY GENDER

EXPERIENCE QUESTIONS 11, 17 & 20 GENDER BIAS BY GENDER	% OF FEMALE ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO GENDER BIAS	% OF MALE ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO GENDER BIAS
(a) Did not take my opinions or views seriously	49.9%	1.8%
(b) Was unwilling to accommodate my schedule or time requirements	30.8%	2.4%
(c) Made inaccurate assumptions regarding my professional status	80.7%	5.5%
(d) Made inappropriate comments or advances of a sexually suggestive nature	100% <sup>126</sup>	65.7%
(e) Made inappropriate comments about my physical appearance or clothing	100% <sup>127</sup>	9%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	38.5%	0
(g) Made demeaning or derogatory comments to me	50.2%	1.2%

<sup>126</sup> The unweighted percentage is 98.6%. When this figure is recalculated to reflect the actual percentages of each subgroup in the population of attorneys (reweighted), the resulting weighted percentage is 100%, indicating that, if the sample had accurately reflected the composition of the population, 100% of the respondents to the question would have attributed their experience to gender bias. *See also* Appendix D 90; M 7.

<sup>127</sup> The unweighted percentage is 98.6%. *See supra* note 126.

(h) Addressed me by my first name (when inappropriate) or by non-professional terms	70.7%	0
(i) Made inappropriate comments about/parodied my accent or manner of speech	59.1%	0

### c. Sources of Perceived Gender Bias

Approximately one-third of the respondents who reported one or more of the listed behaviors by another *attorney* (33.3%) or by a *court employee* (30.1%) attributed at least one of their experiences to gender bias. Just over one-fifth (21.9%) of the respondents who reported behavior by a *judge* made such an attribution. See Table 2-37.

The following table presents the percentages of attorneys, of those that reportedly experienced one or more behaviors from each court actor, who made at least one attribution to gender bias.

TABLE 2-37  
ATTRIBUTION QUESTIONS—GENDER BIAS BY SOURCE

ATTORNEYS' ATTRIBUTIONS OF GENDER BIAS BY ACTOR	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH AN ATTORNEY) THAT ATTRIBUTED TO GENDER BIAS (#11)	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH A JUDGE) THAT ATTRIBUTED TO GENDER BIAS (#17)	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH AN EMPLOYEE) THAT ATTRIBUTED TO GENDER BIAS (#20)
Whole Population of Attorneys	33.3%	21.9%	30.1%
Female Attorneys	54.9%	36.6%	45.4%
Male Attorneys	2.2%	1%	1.7%

## 2. Racial/Ethnic Bias

### a. Behaviors Most Frequently Attributed to Racial/Ethnic Bias

In general, very few attorney respondents attributed their experiences to racial or ethnic bias. However, 36.4% of the respondents who reported an *inappropriate comment about their presumed foreign origin* attributed at least one of their experiences to racial or ethnic bias; and 27.2% of the respondents who reported

*inappropriate comments about their accent or manner of speech* attributed at least one of their experiences to racial or ethnic bias.<sup>128</sup> See *supra* Table 2-35.

b. Racial/Ethnic Differences in Reports of Racial Bias

i. Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit

Although the percentages should be considered in conjunction with the corresponding low frequencies, minority attorneys more frequently attributed eight (8) of the nine (9) listed behaviors to racial/ethnic bias than did their non-minority counterparts.<sup>129</sup> See Table 2-38.

Minorities also attributed the following experiences to both gender and racial bias more frequently than non-minorities: *opinions/views not taken seriously; unwillingness to accommodate schedule/time requirements; inaccurate assumptions regarding professional status; inappropriate comments about presumed foreign origin/citizenship status; demeaning or derogatory comments; use of first name/non-professional terms; and inappropriate comments about accent/speech.* See Table 2-38.

The following table presents the percentages of minority and non-minority attorneys, outside of the District of Puerto Rico, who reportedly experienced each behavior, and responded to the subsequent attribution question, who attributed that behavior to racial/ethnic bias or to both gender and racial bias.

---

<sup>128</sup> Of the remaining seven listed behaviors, less than 5% of respondents who experienced each behavior attributed it to racial or ethnic bias. See *supra* Table 2-35.

<sup>129</sup> The only exception was sexually suggestive comments or advances, item (d). One (1) non-minority and no minorities attributed a sexually suggestive comment/advance to racial bias, item (d). See Appendix at D 92.

TABLE 2-38  
 ATTRIBUTION QUESTION—RACIAL/ETHNIC BIAS & BOTH GENDER/RACIAL BIAS  
 BY RACE  
 Maine, Massachusetts, New Hampshire, Rhode Island and Out-of-Circuit

EXPERIENCE QUESTIONS 11, 17 & 20 RACIAL/ETHNIC BIAS & BOTH GENDER & RACIAL BIAS BY RACE OUTSIDE OF PUERTO RICO	% OF MINORITY ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO RACIAL BIAS (R) AND TO BOTH GENDER AND RACIAL BIAS (B)	% OF NON-MINORITY ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO RACIAL BIAS (R) AND TO BOTH GENDER AND RACIAL BIAS (B)
(a) Did not take my opinions or views seriously	24%(R) 24%(B)	0.5%(R) 0 (B)
(b) Was unwilling to accommodate my schedule or time requirements	13%(R) 17.2%(B)	0.9%(R) 0.3%(B)
(c) Made inaccurate assumptions regarding my professional status	39.5%(R) 49.3%(B)	0(R) 0(B)
(d) Made inappropriate comments or advances of a sexually suggestive nature	0(R) 0(B)	1.7%(R) 0(B)
(e) Made inappropriate comments about my physical appearance or clothing	34.5%(R) 0(B)	0(R) 0(B)
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	55.2%(R) 55.2%(B)	34.8%(R) 0(B)
(g) Made demeaning or derogatory comments to me	38.6%(R) 16.6%(B)	1.1%(R) 0.7%(B)
(h) Addressed me by my first name (when inappropriate) or by non-professional terms	50.2%(R) 37.7%(B)	0(R) 0.7%(B)
(i) Made inappropriate comments about or parodied my accent or manner of speech	69%(R) 34.5%(B)	0(R) 9.4%(B)



## ii. District of Puerto Rico

Within the District of Puerto Rico, minorities most frequently attributed the following items to racial/ethnic bias (in descending order): *inappropriate comments (parodied) about accent or manner of speech; inappropriate comments about presumed foreign origin/citizenship status; demeaning/derogatory comments; and inappropriate comments about physical appearance/clothing.* See Table 2-39.

Minorities from Puerto Rico most frequently attributed the following items to both gender and racial/ethnic bias (in descending order): *inappropriate comments (parodied) accent or manner of speech; inappropriate comments about presumed foreign origin or citizenship status; inaccurate assumptions regarding professional status; unwilling to accommodate schedule/time requirements; and inappropriate comments about physical appearance/clothing.*<sup>130</sup> See Table 2-39.

The following table presents the percentages of minority attorneys from the District of Puerto Rico, of those who reportedly experienced each behavior (and responded to the subsequent attribution question), who attributed each behavior to racial/ethnic bias, and to both gender and racial bias.

---

<sup>130</sup> Two (2) non-minorities from this district attributed one or more of their experiences to racial or ethnic bias and one (1) non-minority from this district attributed one or more of their experiences to both forms of bias. See Appendix at D 88.

TABLE 2-39  
 ATTRIBUTION QUESTION—RACIAL/ETHNIC BIAS & GENDER/RACIAL BIAS  
 BY RACE  
 Puerto Rico

EXPERIENCE QUESTION #s 11, 17 & 20 RACIAL/ETHNIC BIAS & BOTH GENDER & RACIAL (PUERTO RICO)	% OF MINORITY (HISPANIC) ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO RACIAL BIAS	% OF MINORITY (HISPANIC) ATTORNEYS (WHO REPORTED EACH ITEM) THAT ATTRIBUTED TO BOTH GENDER AND RACIAL BIAS
(a) Did not take my opinions or views seriously	1.4%	7.2%
(b) Was unwilling to accommodate my schedule or time requirements	2%	10.2%
(c) Made inaccurate assumptions regarding my professional status	0	23.9%
(d) Made inappropriate comments or advances of a sexually suggestive nature	0	7.1%
(e) Made inappropriate comments about my physical appearance or clothing	9.9%	9.9%
(f) Made inappropriate comments about my presumed foreign origin or citizenship status	32.7%	32.7%
(g) Made demeaning or derogatory comments to me	11.3%	6.8%
(h) Addressed me by my first name (when inappropriate) or by non- professional terms	3.5%	6.8%
(i) Made inappropriate comments about or parodied my accent or manner of speech	56.7%	37.8%

c. Sources of Perceived Racial/Ethnic Bias

The few attorneys who reported experiences that they attributed to racial or ethnic bias identified other attorneys as the source of their experiences slightly

more frequently than employees or judges. Over five percent (5.8%) of the respondents who reported one or more behaviors by another *attorney* attributed at least one of these experiences to racial or ethnic bias. Over three percent (3.7%) of the respondents who reported at least one of the behaviors by an *employee* attributed one or more of the experiences to racial or ethnic bias. Over two percent (2.4%) of the respondents who reported one or more behaviors by a *judge* attributed at least one of those experiences to racial or ethnic bias. See Table 2-40.

The following table presents the percentages of the total sample of respondents, minorities and non-minorities, of those who reportedly experienced at least one behavior with each court actor, who made one or more attributions of racial bias, and of both gender and racial bias.

TABLE 2-40  
ATTORNEYS' ATTRIBUTIONS – RACIAL BIAS & GENDER/RACIAL BIAS BY SOURCE

ATTORNEYS' ATTRIBUTIONS OF RACIAL BIAS & BOTH GENDER & RACIAL BIAS BY ACTOR	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH AN ATTORNEY) THAT ATTRIBUTED TO RACIAL BIAS (R) & TO BOTH GENDER & RACIAL BIAS (B) (#11)	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH A JUDGE) THAT ATTRIBUTED TO RACIAL BIAS (R) & TO BOTH GENDER & RACIAL BIAS (B) (#17)	% OF ATTORNEYS (WHO REPORTED ANY EXPERIENCE WITH AN EMPLOYEE) THAT ATTRIBUTED TO RACIAL BIAS (R) & TO BOTH GENDER & RACIAL BIAS (B) (#20)
Attorneys	5.8%(R) 4.7%(B)	2.4%(R) 1.7%(B)	3.7%(R) 2.7%(B)
Minority Attorneys (From Puerto Rico)	10.4%(R) 14%(B)	3%(R) 4.4%(B)	7.5%(R) 12.5%(B)
Non-Minority (From Puerto Rico)	38.4%(R) 19.2%(B)	0(R) 0(B)	0(R) 0(B)
Minority Attorneys (Maine, Massachusetts (District Court & Court of Appeals), New Hampshire, Rhode Island) & Out of Circuit	29.5%(R) 29.5%(B)	28.7%(R) 23%(B)	39.5%(R) 19.7%(B)
Non-Minority Attorneys (Maine, Massachusetts (District Court & Court of Appeals), New Hampshire, Rhode Island) & Out of Circuit	2.4%(R) 0.7%(B)	1.1%(R) 0.3%(B)	0(R) 0(B)

### *E. Attorneys' Observations*

In addition to asking about attorneys' experiences while practicing in the courts of the First Circuit, the attorney survey asked respondents to report their observations. Attorneys were asked whether, during the past five years, they had observed:

- Using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address others;
- Making demeaning or derogatory remarks to or about others;
- Making sexually suggestive comments to or about others;
- Not taking others' opinions or views seriously;
- Making race or ethnicity-based remarks to or about others;
- Making inappropriate comments regarding the presumed foreign origin or citizenship status of others; and
- Inappropriately commenting upon or parodying others' accent or manner of speech.<sup>131</sup>

#### 1. Frequencies of Reported Observations

Without regard to the party reportedly responsible for the behavior, attorneys reported the following five observations most frequently (in descending order):

- Using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address female counsel/women;
- Not taking female counsel's/women's opinions or views seriously;
- Not taking male counsel's/men's opinions or views seriously;
- Making demeaning or derogatory remarks to or about female counsel/women; and
- Not taking non-minority counsel's/non-minorities' opinions or views seriously.<sup>132</sup> See Table 2-41.

<sup>131</sup> Question #21 asked whether attorneys engaged in the listed behaviors in their interactions with other counsel (female, male, minority, non-minority). Question #26 asked whether federal judges engaged in the listed behaviors in their interactions with counsel (female, male, minority, non-minority). Question #27 asked whether federal judges engaged in the listed behaviors in their interactions with civil litigants, criminal defendants or witnesses (female, male, minority, non-minority). Question #29 asked whether court personnel engaged in any of the listed behaviors in their interactions with counsel (female, male, minority, non-minority). Question #30 asked whether court personnel engaged in the listed behaviors in their interactions with civil litigants, criminal defendants or witnesses (female, male, minority, non-minority). The intervening questions (#s 22-25, and 28) sought attorneys' views on the frequency and value of judicial intervention and the pervasiveness of the observations they noted. These results are discussed at *infra* pp. 115-118 and 119-122.

<sup>132</sup> The percentages for each actor—counsel, judge, and court personnel—were averaged. The frequency of each observation could then be ranked without regard to the reportedly responsible party. The first two items listed, (a) and (g), received equal rankings among attorneys as the *most* frequently observed behaviors.

The following table presents the percentages of attorneys, (of those that answered each question), who reported each of the listed observations.

TABLE 2-41  
OBSERVATION QUESTION – FREQUENCIES OF REPORTED OBSERVATIONS

OBSERVATION QUESTIONS 21, 26, 27, 29, 30— FREQUENCIES OF REPORTED OBSERVATIONS	% OF ATTORNEYS WHO OBSERVED BEHAVIOR
(a) Using first names (when inappropriate) or non-professional terms such as "young lady" or "dear"	40.6%
#21(a) Counsel to female counsel	14.4%
#26(a) Judges to female counsel	12.9%
#27(a) Judges to women litigants, etc.	19.6%
#29(a) Personnel to female counsel	13.6%
#30(a) Personnel to women litigants, etc.	
(b) Using first names (when inappropriate) or non-professional terms such as "young man" or "dear"	12.2%
#21(b) Counsel to male counsel	6.2%
#26(b) Judges to male counsel	7.3%
#27(b) Judges to men litigants, etc.	9.4%
#29(b) Personnel to male counsel	8.7%
#30(b) Personnel to men litigants, etc.	
(c) Making demeaning or derogatory remarks	
#21(c) Counsel to female counsel	29.3%
#26(c) Judges to female counsel	10.3%
#27(c) Judges to women litigants, etc.	5.4%
#29(c) Personnel to female counsel	9.8%
#30(c) Personnel to women litigants, etc.	9.0%
(d) Making demeaning or derogatory remarks	
#21(d) Counsel to male counsel	20.3%
#26(d) Judges to male counsel	10.4%
#27(d) Judges to men litigants, etc.	4.5%
#29(d) Personnel to male counsel	6.0%
#30(d) Personnel to men litigants, etc.	5.6%
(e) Making sexually suggestive comments	
#21(e) Counsel to female counsel	15.0%
#26(e) Judges to female counsel	1.7%
#27(e) Judges to women litigants, etc.	1.6%
#29(e) Personnel to female counsel	3.8%
#30(e) Personnel to women litigants, etc.	4.1%

(TABLE 2-41 CONTINUED) FREQUENCIES OF REPORTED OBSERVATIONS	% OF ATTORNEYS WHO OBSERVED BEHAVIOR
(f) Making sexually suggestive comments #21(f) Counsel to male counsel #26(f) Judges to male counsel #27(f) Judges to men litigants, etc. #29(f) Personnel to male counsel #30(f) Personnel to men litigants, etc.	3.1% 0.1% 0% 1.1% 1.8%
(g) Not taking opinions or views seriously #21(g) Counsel to female counsel #26(g) Judges to female counsel #27(g) Judges to women litigants, etc. #29(g) Personnel to female counsel #30(g) Personnel to women litigants, etc.	35.5% 20.7% 14.5% 17.2% 11.3%
(h) Not taking opinions or views seriously #21(h) Counsel to male counsel #26(h) Judges to male counsel #27(h) Judges to men litigants, etc. #29(h) Personnel to male counsel #30(h) Personnel to men litigants, etc.	21.3% 17.5% 11.2% 9.3% 8.2%
(i) Making demeaning or derogatory comments #21(i) Counsel to minority counsel #26(i) Judges to minority counsel #27(i) Judges to minority litigants, etc. #29(i) Personnel to minority counsel #30(i) Personnel to minority litigants, etc.	10.5% 2.3% 3.9% 3.9% 5.3%
(j) Making demeaning or derogatory comments #21(j) Counsel to non-minority counsel #26(j) Judges to non-minority counsel #27(j) Judges to non-minority litigants, etc. #29(j) Personnel to non-minority counsel #30(j) Personnel to non-minority litigants, etc.	18.9% 6.7% 3.9% 4.0% 3.6%
(k) Making race or ethnicity-based remarks #21(k) Counsel to minority counsel #26(k) Judges to minority counsel #27(k) Judges to minority litigants, etc. #29(k) Personnel to minority counsel #30(k) Personnel to minority litigants, etc.	9.3% 1.3% 2.8% 3.2% 4.2%
(l) Making race or ethnicity-based remarks #21(l) Counsel to non-minority counsel #26(l) Judges to non-minority counsel #27(l) Judges to non-minority litigants, etc. #29(l) Personnel to non-minority counsel #30(l) Personnel to non-minority litigants, etc.	6.9% 1.0% 1.6% 1.6% 1.7%

(TABLE 2-41 CONTINUED) FREQUENCIES OF REPORTED OBSERVATIONS	% OF ATTORNEYS WHO OBSERVED BEHAVIOR
(m) Making inappropriate comments regarding presumed foreign origin or citizenship status	6.0%
#21(m) Counsel to minority counsel	1.1%
#26(m) Judges to minority counsel	3.4%
#27(m) Judges to minority litigants, etc.	2.7%
#29(m) Personnel to minority counsel	4.6%
#30(m) Personnel to minority litigants, etc.	
(n) Making inappropriate comments regarding presumed foreign origin or citizenship status	3.0%
#21(n) Counsel to non-minority counsel	0.5%
#26(n) Judges to non-minority counsel	1.5%
#27(n) Judges to non-minority litigants, etc.	1.5%
#29(n) Personnel to non-minority counsel	1.4%
#30(n) Personnel to non-minority litigants, etc.	
(o) Not taking opinions or views seriously	
#21(o) Counsel to minority counsel	12.4%
#26(o) Judges to minority counsel	7.3%
#27(o) Judges to minority litigants, etc.	7.1%
#29(o) Personnel to minority counsel	7.6%
#30(o) Personnel to minority litigants, etc.	7.6%
(p) Not taking opinions or views seriously	
#21(p) Counsel to non-minority counsel	18.4%
#26(p) Judges to non-minority counsel	11.9%
#27(p) Judges to non-minority litigants, etc.	8.3%
#29(p) Personnel to non-minority counsel	7.0%
#30(p) Personnel to non-minority litigants, etc.	5.4%
(q) Inappropriately commenting upon or parodying accent or manner of speech	6.5%
#21(q) Counsel to minority counsel	1.7%
#26(q) Judges to minority counsel	2.1%
#27(q) Judges to minority litigants, etc.	2.0%
#29(q) Personnel to minority counsel	3.0%
#30(q) Personnel to minority litigants, etc.	
(r) Inappropriately commenting upon or parodying accent or manner of speech	5.0%
#21(r) Counsel to non-minority counsel	1.0%
#26(r) Judges to non-minority counsel	0.7%
#27(r) Judges to non-minority litigants, etc.	1.5%
#29(r) Personnel to non-minority counsel	1.4%
#30(r) Personnel to non-minority litigants, etc.	

a. Attorneys' Observations and Sources of Behavior

More attorneys reported observations of other counsel engaging in each of the listed behaviors than either federal judges or court personnel. *Counsel* were most frequently observed engaging in the following three behaviors toward other counsel: using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address female counsel (40.6%); not taking female counsel's opinions or views seriously (35.5%); and making demeaning or derogatory remarks to or about female counsel (29.3%). See *supra* Table 2-41.

The three most frequently reported behaviors by federal judges toward counsel were: not taking female counsel's opinions or views seriously (20.7%); not taking male counsel's opinions or views seriously (17.5%); and using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address female counsel (14.4%).<sup>133</sup> See *supra* Table 2-41.

The three most frequently observed behaviors from federal judges to civil litigants, criminal defendants or witnesses were: not taking women's opinions or views seriously (14.5%); using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address women (12.9%); and not taking men's opinions or views seriously (11.2%). See *supra* Table 2-41.

Court personnel were most frequently observed engaging in the following three behaviors toward counsel: using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address female counsel (19.6%); not taking female counsel's opinions or views seriously (17.2%); and making demeaning or derogatory remarks to or about female counsel (9.8%).<sup>134</sup> See *supra* Table 2-41.

Court Personnel were most frequently observed engaging in the following three behaviors toward civil litigants, criminal defendants or witnesses: using first names (when inappropriate) or non-professional terms such as "young lady" or "dear" to address women (13.6%); not taking women's opinions or views seriously (11.3%); and making demeaning or derogatory remarks to or about women (9.0%).<sup>135</sup> See *supra* Table 2-41.

2. Gender Differences in Attorneys' Observations

Certain behaviors were observed as directed more frequently toward women than men. Each of the three categories of actors, *attorneys*, *judges*, and *personnel*, were observed to direct the following behaviors more frequently toward female counsel/women than toward male counsel/men: using first names or non-

<sup>133</sup> Reports of judges not taking attorneys seriously may, of course, simply reflect typical courtroom interactions, rather than a form of bias or incivility.

<sup>134</sup> Almost as many respondents observed that court personnel used first names/non-professional terms to address male counsel (9.4%) and did not take the opinions or views seriously of male counsel (9.3%). See *supra* Table 2-41.

<sup>135</sup> Almost as many attorneys (8.7%) observed court personnel using first or inappropriate names to men. See *supra* Table 2-41.



*professional terms; not taking opinions or views seriously; and making sexually suggestive comments.*

The following three (3) tables present the percentages of attorneys, (of those that answered the question), who reportedly observed each of the court actors engaged in these three behaviors with females and males, respectively.

TABLE 2-42  
OBSERVATION QUESTION - GENDER DIFFERENCES  
USING FIRST NAMES OR NON-PROFESSIONAL TERMS

OBSERVATION QUESTION—GENDER DIFFERENCES/USING FIRST NAMES OR NON-PROFESSIONAL TERMS, ITEMS (A) & (B)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(a) Counsel using first/inappropriate names to address female counsel	40.6%
21(b) Counsel using first/inappropriate names to address male counsel	12.2%
26(a) Federal Judges using first/inappropriate names to address female counsel	14.4%
26(b) Federal Judges using first/inappropriate names to address male counsel	6.2%
27(a) Federal Judges using first/inappropriate names to address women litigants, defendants and witnesses	12.9%
27(b) Federal Judges using first/inappropriate names to address men litigants, defendants and witnesses	7.3%
29(a) Court personnel using first/inappropriate names to address female counsel	19.6%
29(b) Court personnel using first/inappropriate names to address male counsel	9.4%
30(a) Court personnel using first/inappropriate names to address women litigants, defendants and witnesses	13.6%
30(b) Court personnel using first/inappropriate names to address men litigants, defendants and witnesses	8.7%

TABLE 2-43  
OBSERVATION QUESTION – GENDER DIFFERENCES  
NOT TAKING OPINIONS OR VIEWS SERIOUSLY

OBSERVATION QUESTION—GENDER DIFFERENCES/NOT TAKING OPINIONS OR VIEWS SERIOUSLY, ITEMS (G) & (H)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(g) Counsel not taking female counsel's opinions or views seriously	35.5%
21(h) Counsel not taking male counsel's opinions or views seriously	21.3%
26(g) Federal Judges not taking female counsel's opinions or views seriously	20.7%
26(h) Federal Judges not taking male counsel's opinions or views seriously	17.5%
27(g) Federal Judges not taking women litigants', defendants' and witnesses' opinions or views seriously	14.5%
27(h) Federal Judges not taking men litigants', defendants' and witnesses' opinions or views seriously	11.2%
29(g) Court personnel not taking female counsel's opinions or views seriously	17.2%
29(h) Court personnel not taking male counsel's opinions or views seriously	9.3%
30(g) Court personnel not taking women litigants', defendants' and witnesses' opinions or views seriously	11.3%
30(h) Court personnel not taking men litigants', defendants' and witnesses' opinions or views seriously	8.2%

TABLE 2-44  
OBSERVATION QUESTION  
MAKING SEXUALLY SUGGESTIVE COMMENTS

OBSERVATION QUESTION—GENDER DIFFERENCES/MAKING SEXUALLY SUGGESTIVE COMMENTS, ITEMS (E) & (F)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(e) Counsel made sexually suggestive comments to or about female counsel	15.0%
21(f) Counsel made sexually suggestive comments to or about male counsel	3.1%
26(e) Federal Judges made sexually suggestive comments to or about female counsel	1.7%
26(f) Federal Judges made sexually suggestive comments to or about male counsel	0.1%
27(e) Federal Judges made sexually suggestive comments to or about women	1.6%
27(f) Federal Judges made sexually suggestive comments to or about men	0%
29(e) Court personnel made sexually suggestive comments to or about female counsel	3.8%
29(f) Court personnel made sexually suggestive comments to or about male counsel	1.1%
30(e) Court personnel made sexually suggestive comments to or about women	4.1%
30(f) Court personnel made sexually suggestive comments to or about men	1.8%

*Attorneys and court personnel* were also observed to address *demeaning/derogatory comments* to female counsel/women more frequently than to male counsel/men. The following table presents the percentages of attorneys (of those that answered the question) who reportedly observed each of the court actors addressing *demeaning/derogatory comments* to females and males, respectively.

TABLE 2-45  
OBSERVATION QUESTION—GENDER DIFFERENCES  
MAKING DEMEANING OR DEROGATORY COMMENTS

OBSERVATION QUESTION—GENDER DIFFERENCES/MAKING DEMEANING OR DEROGATORY COMMENTS, ITEMS (C) & (D)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(c) Counsel made demeaning or derogatory comments to or about female counsel	29.3%
21(d) Counsel made demeaning or derogatory comments to or about male counsel	20.3%
26(c) Federal judges made demeaning or derogatory comments to or about female counsel	10.3%
26(d) Federal judges made demeaning or derogatory comments to or about male counsel	10.4%
27(c) Federal judges made demeaning or derogatory comments to or about women	5.4%
27(d) Federal judges made demeaning or derogatory comments to or about men	4.5%
29(c) Court personnel made demeaning or derogatory comments to or about female counsel	9.8%
29(d) Court personnel made demeaning or derogatory comments to or about male counsel	6.0%
30(c) Court personnel made demeaning or derogatory comments to or about women	9.0%
30(d) Court personnel made demeaning or derogatory comments to or about men	5.6%

### 3. Racial/Ethnic Differences in Attorneys' Observations

*Attorneys, judges and court personnel* were observed to direct the following behaviors more frequently toward minority counsel/minorities than toward non-minority counsel/non-minorities: *making race or ethnicity-based remarks; making inappropriate comments regarding presumed foreign origin or citizenship status; and inappropriately commenting upon or parodying accent or manner of speech.*<sup>136</sup> See Tables 2-46, 2-47, 2-48.

The following three (3) tables present the percentages of attorneys (of those who answered the question) that reportedly observed each of the court actors engaged in these three behaviors with minorities and non-minorities, respectively.

<sup>136</sup> However, the relative magnitude of the percentage differences between the observations directed toward minorities and non-minorities is comparatively small. Further, the percentages correspond to relatively small frequencies. See Tables 2-46, 2-47, 2-48; Appendix at D 101-103.

TABLE 2-46  
OBSERVATION QUESTION— RACIAL DIFFERENCES  
MAKING RACE OR ETHNICITY-BASED REMARKS

OBSERVATION QUESTION—RACIAL DIFFERENCES/MAKING RACE OR ETHNICITY-BASED REMARKS, ITEMS (K) & (L)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(k) Counsel made race or ethnicity-based remarks to or about minority counsel	9.3%
21(l) Counsel made race or ethnicity-based remarks to or about non-minority counsel	6.9%
26(k) Federal judges made race or ethnicity-based remarks to or about minority counsel	1.3%
26(l) Federal judges made race or ethnicity-based remarks to or about non-minority counsel	1.0%
27(k) Federal judges made race or ethnicity-based remarks to or about minorities	2.8%
27(l) Federal judges made race or ethnicity-based remarks to or about non-minorities	1.6%
29(k) Court personnel made race or ethnicity-based remarks to or about minority counsel	3.2%
29(l) Court personnel made race or ethnicity-based remarks to or about non-minority counsel	1.6%
30(k) Court personnel made race or ethnicity-based remarks to or about minorities	4.2%
30(l) Court personnel made race or ethnicity-based remarks to or about non-minorities	1.7%

TABLE 2-47  
OBSERVATION QUESTION—RACIAL DIFFERENCES  
MAKING INAPPROPRIATE COMMENTS ABOUT PRESUMED FOREIGN ORIGIN OR  
CITIZENSHIP STATUS

OBSERVATION QUESTION—RACIAL DIFFERENCES/MAKING INAPPROPRIATE COMMENTS ABOUT PRESUMED FOREIGN ORIGIN OR CITIZENSHIP STATUS, ITEMS (M) & (N)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(m) Counsel made inappropriate comments about presumed foreign origin or citizenship status of minority counsel	6.0%
21(n) Counsel made inappropriate comments about presumed foreign origin or citizenship status of non-minority counsel	3.0%
26(m) Federal Judges made inappropriate comments about presumed foreign origin or citizenship status of minority counsel	1.1%
26(n) Federal Judges made inappropriate comments about presumed foreign origin or citizenship status of non-minority counsel	0.5%
27(m) Federal Judges made inappropriate comments about presumed foreign origin or citizenship status of minorities	3.4%
27(n) Federal Judges made inappropriate comments about presumed foreign origin or citizenship status of non-minorities	1.5%
29(m) Court Personnel made inappropriate comments about presumed foreign origin or citizenship status of minority counsel	2.7%
29(n) Court Personnel made inappropriate comments about presumed foreign origin or citizenship status of non-minority counsel	1.5%
30(m) Court Personnel made inappropriate comments about presumed foreign origin or citizenship status of minorities	4.6%
30(n) Court Personnel made inappropriate comments about presumed foreign origin or citizenship status of non-minorities	1.4%

TABLE 2-48  
OBSERVATION QUESTION—RACIAL DIFFERENCES  
INAPPROPRIATELY COMMENTING UPON OR PARODYING ACCENT OR  
MANNER OF SPEECH

OBSERVATION QUESTION—RACIAL DIFFERENCES/INAPPROPRIATELY COMMENTING UPON OR PARODYING ACCENT OR MANNER OF SPEECH, ITEMS (Q) & (R)	% OF ATTORNEYS WHO REPORTED OBSERVATION
21(q) Counsel inappropriately commented upon or parodied accent or manner of speech of minority counsel	6.5%
21(r) Counsel inappropriately commented upon or parodied accent or manner of speech of non-minority counsel	5.0%
26(q) Federal Judges inappropriately commented upon or parodied accent or manner of speech of minority counsel	1.7%
26(r) Federal Judges inappropriately commented upon or parodied accent or manner of speech of non-minority counsel	1.0%
27(q) Federal Judges inappropriately commented upon or parodied accent or manner of speech of minorities	2.1%
27(r) Federal Judges inappropriately commented upon or parodied accent or manner of speech of non-minorities	0.7%
29(q) Court Personnel inappropriately commented upon or parodied accent or manner of speech of minority counsel	2.0%
29(r) Court Personnel inappropriately commented upon or parodied accent or manner of speech of non-minority counsel	1.5%
30(q) Court Personnel inappropriately commented upon or parodied accent or manner of speech of minorities	3.0%
30(r) Court Personnel inappropriately commented upon or parodied accent or manner of speech of non-minorities	1.4%

4. Locations of Attorneys' Observations<sup>137</sup>

## a. Location &amp; Observations of Counsels' Behavior

Each of the listed behaviors engaged in by attorneys was reported more frequently in proceedings NOT before a judge, such as settlement discussions or depositions, rather than in either informal proceedings before a judge or in open court.

Of the respondents who answered the question, the following table presents the percentages of those (of those who answered the question) who reported observing other counsel engage in each of the listed behaviors at each of the three listed locations.

---

<sup>137</sup> Question #21, addressing the behavior of other *counsel*, asked whether each observation took place in: (1) open court; (2) informal, side-bar or in chambers proceedings before a judge; or (3) proceedings NOT before a judge such as a settlement discussion or depositions. Questions #26 and #27, addressing the behavior of *federal judges*, asked whether each observation took place in: (1) open court; or (2) informal, side-bar or in chambers proceedings. The questions that addressed the behavior of *court personnel*, questions 29 and 30, did *not* inquire about the location of the reported observation.



TABLE 2-49  
LOCATION OF ATTORNEYS—OBSERVATIONS

OBSERVATION QUESTION #21 - LOCATION OF OBSERVATIONS OF ATTORNEYS	% OF ATTORNEYS WHO REPORTED OBSERVATION IN OPEN COURT	% OF ATTORNEYS WHO REPORTED OBSERVATION IN INFORMAL PROCEEDINGS	% OF ATTORNEYS WHO REPORTED OBSERVATION NOT BEFORE A JUDGE
(a) Using first names (when inappropriate) or non-professional terms to address female counsel	23.0%	23.7%	36.6%
(b) Using first names (when inappropriate) or non-professional terms to address male counsel	5.9%	7.3%	10.8%
(c) Making demeaning or derogatory remarks to or about female counsel	9.2%	11.7%	27.9%
(d) Making demeaning or derogatory remarks to or about male counsel	6.6%	7.3%	18.4%
(e) Making sexually suggestive comments to or about female counsel	1.7%	3.2%	14.4%
(f) Making sexually suggestive comments to or about male counsel	0.5%	0.5%	2.4%
(g) Not taking female counsel's opinions or views seriously	18.0%	18.6%	32.6%
(h) Not taking male counsel's opinions or views seriously	10.7%	12.1%	19.1%
(i) Making demeaning or derogatory remarks to or about minority counsel	3.8%	3.7%	9.2%
(j) Making demeaning or derogatory remarks to or about non-minority counsel	5.4%	6.3%	17.7%

OBSERVATION QUESTION #21 - CONTINUED LOCATION OF OBSERVATIONS OF ATTORNEYS	% OF ATTORNEYS WHO REPORTED OBSERVATION IN OPEN COURT	% OF ATTORNEYS WHO REPORTED OBSERVATION IN INFORMAL PROCEEDINGS	% OF ATTORNEYS WHO REPORTED OBSERVATION NOT BEFORE A JUDGE
(k) Making race or ethnicity-based remarks to or about minority counsel	1.9%	2.9%	8.7%
(l) Making race or ethnicity-based remarks to or about non-minority counsel	0.7%	1.5%	6.6%
(m) Making inappropriate comments regarding the presumed foreign origin or citizenship status of minority counsel	1.4%	1.8%	5.6%
(n) Making inappropriate comments regarding the presumed foreign origin or citizenship status of non-minority counsel	0.7%	0.7%	2.7%
(o) Not taking minority counsel's opinions or views seriously	5.7%	6.0%	11.1%
(p) Not taking non-minority counsel's opinions or views seriously	8.3%	9.7%	16.5%
(q) Inappropriately commenting upon or parodying minority counsel's accent or manner of speech	1.8%	2.2%	5.8%
(r) Inappropriately commenting upon or parodying non-minority counsel's accent or manner of speech	0.8%	1.1%	4.6%

b. Location & Observations of Judges' Behavior

i. Judges' Treatment of Counsel

The reported observations of judges' interactions with counsel did not occur primarily in one location over another. Respondents reported that the majority of the behaviors occurred with approximately equal frequency in open court and in informal proceedings.<sup>138</sup> See Table 2-50.

The following table presents the percentages of respondents (of those who answered the question) who reported observing federal judges engage in each of the listed behaviors, in their interactions with counsel, in open court and in informal, side bar or in-chambers proceedings.

---

<sup>138</sup> The only notable difference in location was reported with *judges using first names (when inappropriate) or non-professional terms* to address female counsel—9.7% of the attorneys who answered the question reported this observation occurred in open court, whereas 12.1% of the attorneys who answered the question reported this observation occurred in informal proceedings. See Table 2-50.

TABLE 2-50  
OBSERVATION QUESTION #26—LOCATION OF OBSERVATION  
JUDGES TO COUNSEL

OBSERVATION QUESTION #26 - LOCATION OF OBSERVATION (JUDGES TO COUNSEL)	% OF ATTORNEYS WHO REPORTED OBSERVATION IN OPEN COURT	% OF ATTORNEYS WHO REPORTED OBSERVATION IN INFORMAL PROCEEDINGS
(a) Using first names (when inappropriate) or non-professional terms to address female counsel	9.7%	12.1%
(b) Using first names (when inappropriate) or non-professional terms to address male counsel	3.8%	5.1%
(c) Making demeaning or derogatory remarks to or about female counsel	7.8%	8.4%
(d) Making demeaning or derogatory remarks to or about male counsel	8.1%	7.5%
(e) Making sexually suggestive comments to or about female counsel	.7%	1.6%
(f) Making sexually suggestive comments to or about male counsel	0	.1%
(g) Not taking female counsel's opinions or views seriously	17.3%	16.9%
(h) Not taking male counsel's opinions or views seriously	14.6%	14.0%
(i) Making demeaning or derogatory remarks to or about minority counsel	2.0%	2.0%
(j) Making demeaning or derogatory remarks to or about non-minority counsel	5.7%	5.4%
(k) Making race or ethnicity-based remarks to or about minority counsel	0.8%	1.1%
(l) Making race or ethnicity-based remarks to or about non-minority counsel	0.5%	0.8%
(m) Making inappropriate comments regarding the presumed foreign origin or citizenship status of minority counsel	0.8%	0.6%
(n) Making inappropriate comments regarding the presumed foreign origin or citizenship status of non-minority counsel	0.4%	0.3%

OBSERVATION QUESTION #26 - CONTINUED LOCATION OF OBSERVATION (JUDGES TO COUNSEL)	% OF ATTORNEYS WHO REPORTED OBSERVATION IN OPEN COURT	% OF ATTORNEYS WHO REPORTED OBSERVATION IN INFORMAL PROCEEDINGS
(o) Not taking minority counsel's opinions or views seriously	5.8%	6.0%
(p) Not taking non-minority counsel's opinions or views seriously	10.4%	9.3%
(q) Inappropriately commenting upon or parodying minority counsel's accent or manner of speech	1.1%	1.5%
(r) Inappropriately commenting upon or parodying non-minority counsel's accent or manner of speech	0.7%	0.7%

ii. Judges' Treatment of Civil Litigants, Criminal Defendants and Witnesses

In their observations of judges with litigants, defendants and witnesses, respondents reported only slight differences in the locations of the behaviors.<sup>139</sup> The following table presents the percentages, of respondents (of those who answered the question) who reported observing federal judges engage in each of the listed behaviors, in their interactions with civil litigants, criminal defendants and witnesses, in open court and in informal, side bar, or in-chambers proceedings.

<sup>139</sup> Judges reportedly used first or inappropriate names, and did not take opinions or views seriously, slightly more frequently in open court than in informal proceedings. Conversely, the remaining behaviors reportedly occurred slightly more frequently in informal, side bar or in-chambers proceedings than in open court. See Table 2-51.

TABLE 2-51  
OBSERVATION QUESTION #27 - LOCATION OF OBSERVATION

OBSERVATION QUESTION #27 - LOCATION OF OBSERVATION (JUDGES TO LITIGANTS, ETC.)	% OF ATTORNEYS WHO REPORTED OBSERVATION IN OPEN COURT	% OF ATTORNEYS WHO REPORTED OBSERVATION IN INFORMAL PROCEEDINGS
(a) Using first names (when inappropriate) or non- professional terms to address women	10.5%	8.9%
(b) Using first names (when inappropriate) or non- professional terms to address men	5.6%	5.4%
(c) Making demeaning or derogatory remarks to or about women	4.1%	4.7%
(d) Making demeaning or derogatory remarks to or about men	3.2%	3.5%
(e) Making sexually suggestive comments to or about women	0.8%	1.2%
(f) Making sexually suggestive comments to or about men	0	0
(g) Not taking women's opinions or views seriously	12.5%	10.8%
(h) Not taking men's opinions or views seriously	10.0%	9.0%
(i) Making demeaning or derogatory remarks to or about minorities	2.5%	3.3%
(j) Making demeaning or derogatory remarks to or about non-minorities	2.9%	3.4%
(k) Making race or ethnicity-based remarks to or about minorities	1.6%	2.3%
(l) Making race or ethnicity-based remarks to or about non- minorities	0.6%	1.3%
(m) Making inappropriate comments regarding the presumed foreign origin or citizenship status of minorities	1.9%	2.9%

(n) Making inappropriate comments regarding the presumed foreign origin or citizenship status of non-minorities	1.0%	1.3%
(o) Not taking minorities' opinions or views seriously	6.5%	5.5%
(p) Not taking non-minorities' opinions or views seriously	7.4%	6.7%
(q) Inappropriately commenting upon or parodying minorities' accent or manner of speech	1.5%	1.9%
(r) Inappropriately commenting upon or parodying non-minorities' accent or manner of speech	0.5%	0.6%

#### F. *Judicial Intervention*

An important goal of the attorney survey was to assess whether attorneys would prefer that a judge intervene if inappropriate conduct occurs in a First Circuit proceeding. The attorney survey was designed to gather data regarding whether judges intervened, how often they intervened, and whether attorneys viewed such intervention as helpful. Attorneys were also asked whether judges should intervene if they become aware of inappropriate comments or concerns regarding gender, race, or ethnicity.<sup>140</sup>

<sup>140</sup> Specifically, question #12 asked: "If the judge was aware of the treatment, how often did the judge intervene in any of the situations described above?" Question #12 followed the *experience* questions and question #22 followed the *observation* questions. Question #22 was phrased: "If the judge was aware of these situations, how often did the judge intervene in any of the situations described above?" Both questions provided the following response categories: (1) Whenever such behavior occurred; (2) On most occasions, but not all; (3) On some occasions, but not most; (4) Never; and (5) Does not apply. Question #13 asked "How effective was the judge's intervention?" Possible responses to this question included: (1) Not effective; (2) Somewhat effective; (3) Very effective; (4) No opinion; and (5) Does not apply. Question #14 asked "If the judge DID INTERVENE in the situation(s) described above, would you have preferred that the judge had not intervened?" And question #15 asked the opposite question: "If the judge DID NOT INTERVENE in the situation(s) described above, would you have preferred that the judge had intervened?" Both question #14 and #15 provided the following response categories: (1) Yes; (2) No; (3) No opinion; and (4) Does not apply. They both also specified that if more than one situation occurred, respondents were to answer with regard to the most serious behavior.

Questions #23 and #24 asked more general questions regarding judicial intervention. Question #23 asked "If a judge becomes aware of inappropriate comments or actions regarding the GENDER of participants, should the judge intervene?" Question #24 asked the same question regarding the RACE OR ETHNICITY of courtroom participants. The survey

Of those attorneys who personally *experienced* a particular behavior and responded to the question regarding intervention, a majority (67%) reported that judges *never* intervened in the experiences they described. *See* Appendix at D 108. Similarly, 67% of the attorneys who *observed* a behavior, and responded to the judicial intervention question, reported that judges *never* intervened. *See* Appendix at D 115.

The attorneys who reported that judges had not intervened were divided on whether they would have preferred judicial intervention—53% of those who had an experience, and answered the intervention question, indicated that they would have preferred if the judge had intervened. But 38% of the respondents indicated that they would not have preferred the judge to intervene.<sup>141</sup> *See* Appendix at D 112.

Yet, of those attorneys who experienced the intervention of the judge, 80% perceived the intervention positively,<sup>142</sup> i.e., would not have preferred if the judge had *not* intervened. *See* Appendix at D 111. Of those attorneys who reported judicial intervention, 90% indicated that the judicial intervention was either very effective or somewhat effective.<sup>143</sup> *See* Appendix at D 109.

When asked if a judge should generally intervene when gender issues arise, 91% of the respondents answered that the judge should always or usually intervene.<sup>144</sup> Over 90% (94%) of the attorneys responded that judges should always or usually intervene when inappropriate comments or actions regarding race or ethnicity arise.<sup>145</sup>

---

provided the following response categories to these two questions:

- (1) Judge should always intervene;
- (2) Judge should usually intervene;
- (3) Judge should intervene only in the most egregious circumstances;
- (4) Judge should never intervene;
- (5) Judge should report conduct to an independent body;
- (6) No opinion; and
- (7) Other (asked to specify).

<sup>141</sup> The remaining respondents to question #15 responded “No opinion” or “Does not apply.”

<sup>142</sup> In response to question #14, 86% of the females, as compared to 66% of the males, stated that, in situations where the judge DID INTERVENE, they would NOT have preferred that the judge had NOT intervened. *See* Appendix at D 111.

<sup>143</sup> Only 16% of the attorneys who answered the question reported that judicial intervention was not effective. *See* Appendix at D 109. Reweighting the percentages may produce rounding error that results in weighted percentages that exceed 100%. *See* Appendix at M 7.

<sup>144</sup> Only 10% of the respondents to question #23 answered that the judge should only intervene in the most egregious circumstances; 1% answered that the judge should never intervene; and 5% answered that the judge should report the conduct to an independent body. Please note that rounding error may result in weighted percentages that exceed 100%. *See* Appendix at D117; M 7.

<sup>145</sup> Only 6% of the respondents to question #24 answered that the judge should only intervene in the most egregious circumstances; 1% answered that the judge should never intervene; and 4% of the respondents answered that the judge should report the conduct to an



## 1. Gender Differences in Judicial Intervention

Female and male attorneys reported experiencing judicial intervention with equal frequencies - 38% of both male and female attorneys who personally experienced a particular behavior reported that the judge intervened in at least some of the situations described. *See* Appendix at D 108. However, women generally appeared to favor judicial intervention more than men. Eighty-six percent (86%) of females who answered the question, as compared to 66% of the males, responded positively to judicial intervention.<sup>146</sup> *See* Appendix at D 111. Similarly, proportionately more females (58%) than males (41%) stated that they would have preferred judicial intervention had it occurred.<sup>147</sup> *See* Appendix at D 112. However, women (91%) were only slightly more likely than men (83%) to indicate that the judge should *always or usually* intervene when inappropriate comments or actions regarding gender arise.<sup>148</sup> *See* Appendix at D 117.

## 2. Racial/Ethnic Differences in Judicial Intervention

Of attorneys from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit, minorities who personally experienced a particular behavior (and responded to the question regarding intervention) reported judicial intervention somewhat more frequently than non-minorities.<sup>149</sup> *See* Appendix at D 108. When referring to the situations they had observed, however, minorities reported judicial intervention only slightly more frequently than non-minorities.<sup>150</sup> *See* Appendix at D 116.

---

independent body. Again, rounding error may result in weighted percentages that exceed 100%. *See* Appendix at D 118; M 7.

<sup>146</sup> In response to question #14, 86% of the females, as compared to 66% of the males, stated that, in situations where the judge DID INTERVENE, they would NOT have preferred that the judge had NOT intervened. *See* Appendix at D 111.

<sup>147</sup> Also in response to question #15, 43% of the males, as compared to 34% of the females, indicated that they would NOT have preferred that the judge had intervened. *See* Appendix at D 112.

<sup>148</sup> In response to question #23, nine percent (9%) of both females and males indicated that the judge should intervene in only the most egregious circumstances. One percent (1%) of both females and males responded that the judge should never intervene. Six percent (6%) of females and 4% of males responded that the judge should report the conduct to an independent body, when gender issues arise. *See* Appendix at D 117.

<sup>149</sup> The minority percentages should be interpreted cautiously, as they reflect extremely low frequencies. Sixty-five percent (65%) of the minorities from Maine, Massachusetts, New Hampshire, Rhode Island, and out-of-circuit, as compared to 35% of the non-minorities, reported judicial intervention on *at least some* of the occasions, in response to question #12. *See* Appendix at D 108.

<sup>150</sup> Forty-four percent (44%) of the minorities, as compared to 37% of the non-minorities, reported, in response to question #22, that the judge had intervened on at least some of the occasions they had observed. However, 94% of the minorities from those courts, as compared to 63% of the non-minorities, reported that the judge had *never* intervened. Again, reweighting may result in percentages that total more than 100%. *See* Appendix at D

Both minority (100%) and non-minority (80%) attorneys from Maine, Massachusetts, New Hampshire, Rhode Island, and out-of-circuit agreed that judicial intervention was either very effective or somewhat effective. *See* Appendix at D 110. They were also generally pleased with the intervention where it had occurred.<sup>151</sup> *See* Appendix at D 111.

However, both minorities and non-minorities from outside Puerto Rico were divided on whether they would have preferred judicial intervention, when it had *not* occurred.<sup>152</sup> *See* Appendix at D 113. Both minorities (100%) and non-minorities (89%) agreed that the judge should always or usually intervene when inappropriate comments or actions regarding the race or ethnicity of courtroom participants arise. *See* Appendix at D 119.

Within the District of Puerto Rico, approximately half of the minorities reported judicial intervention in at least some of the situations they had experienced (46%) and observed (48%).<sup>153</sup> *See* Appendix at D 109, 116. Puerto Rican minorities (80%) also generally agreed that the judicial intervention was at least somewhat effective.<sup>154</sup> *See* Appendix at D 110. Similarly, almost 90% (89%) of the minorities from this District would have preferred judicial intervention, when it had not occurred.<sup>155</sup> *See* Appendix at D 113. Finally, 100% of both the minorities and non-minorities who responded to the question stated that the judge should always or usually intervene when inappropriate comments or actions regarding the race or ethnicity of courtroom participants arise.<sup>156</sup> *See* Appendix at D 119.

---

116,M 7.

<sup>151</sup> One hundred percent (100%) of the minorities, as compared to 77% of the non-minorities who answered question #14 reported that they would NOT have preferred had the judge NOT intervened. *See* Appendix at D 111.

<sup>152</sup> In response to question #15, 50% of the minorities and 44% of the non-minorities stated that they WOULD have preferred if the judge HAD intervened in situations where the judge had not. But 40% of the minorities and 45% of the non-minorities responded that they would NOT have preferred judicial intervention in these situations. *See* Appendix at D 113.

<sup>153</sup> The percentages reflecting non-minority responses to these questions correspond to such low frequencies that it does not make sense to report them in percentage form. Two (2) of the three (3) non-minorities who responded to question #12 reported judicial intervention in *at least some* of the situations they had experienced. *See* Appendix at D 109. One (1) of the two (2) non-minorities who responded to question #22 reported judicial intervention in *at least some* of the situations they had observed. *See* Appendix at D 116.

<sup>154</sup> One (1) of the two (2) non-minorities who responded to question #13 agreed that the judicial intervention was *at least somewhat* effective. *See* Appendix at D 110.

<sup>155</sup> In response to question #15, one (1) of the two (2) non-minorities responded that s/he would have preferred judicial intervention. *See* Appendix at D 113.

<sup>156</sup> Because these are the weighted percentages, the 100% figure does not necessarily mean every respondent stated that the judge should usually or always intervene. *See* Appendix at D 119.

*G. Attorneys' Views and Recommendations*<sup>157</sup>

The final sections of the attorney survey addressed attorneys' views and recommendations regarding behavior in the First Circuit courts. Attorneys were asked whether they believed that the behaviors they had observed or experienced were pervasive or confined to a few individuals. These questions were designed to address the pervasiveness of the listed behaviors, regardless of whether the respondent attributed them to bias.<sup>158</sup>

The attorney survey also sought respondents general views on the existence and pervasiveness of bias. Attorneys were asked whether they believed that gender bias exists in the federal courts of the First Circuit. If so, respondents were asked: (a) whether gender bias is limited or widespread; (b) whether the courts are taking steps to eradicate it; and (c) whether gender bias in the First Circuit federal courts is difficult or easy to detect. Attorneys were asked identical questions regarding racial or ethnic bias.<sup>159</sup>

Finally, the survey presented a list of suggestions for ensuring equal and fair treatment of men and women, and minorities and non-minorities. Attorneys were asked to rank the items in order of importance to the respondent. The list of suggestions included:

- Punish/fine people who violate others' rights because of their gender/race or ethnicity;
- Encourage judges to intervene when inappropriate remarks are made;
- Increase the number of female/racial or ethnic minority court employees;
- Monitor whether members of a jury reflect the gender/race and ethnicity of litigants;
- Develop a system to periodically monitor court cases to check for bias;
- Educate judges and court personnel/raise awareness of the problem;
- Institute a formal grievance procedure for complaints of bias or misconduct; and

---

<sup>157</sup> Question #25 stated: Based on your EXPERIENCES with and OBSERVATIONS of Attorneys in First Circuit Federal Court Proceedings, would you say that the behaviors described above are confined to certain individuals or are more pervasive? Question #28 was identical, except that it referred to Judges' behavior. Question #31 regarding court personnel was identical, except that it was not limited to actual court "proceedings."

<sup>158</sup> Response categories to these questions included: (1) Confined to a few individuals; (2) Engaged in by more than a few attorneys/judges/personnel, but not most; (3) Engaged in by most attorneys/judges/personnel at one time or another; (4) No opinion; and (5) Does not apply.

<sup>159</sup> For subpart (a) to questions #38 and #39, response categories included: (1) Gender/Racial bias is limited to a few areas or certain individuals; (2) Gender/Racial bias is widespread; and (3) No opinion/I don't know. For subpart (b) to questions #38 and #39, regarding the eradication of bias, response categories included: (1) Yes; (2) No; and (3) No opinion/I don't know. For subpart (c) to questions #38 and #39, response categories included: (1) Gender/Racial bias is difficult to detect; (2) Gender/Racial bias is easy to detect; and (3) No opinion/I don't know.

- Other (please specify).

# 1. Attorneys' Views

## a. Views on the Pervasiveness of the Behaviors

Respondents were asked whether, based on their experiences and observations involving other attorneys, judges, and court personnel, in First Circuit federal court proceedings, the behaviors they reported are confined to certain individuals or are more pervasive.<sup>160</sup> Between 55% and 73% of the respondents who reported at least one experience or observation concluded that the behaviors they reported were confined to a few individuals.<sup>161</sup> Only 3% to 6% of the respondents concluded that the behaviors they reported were engaged in by more than a few or most of the individuals.<sup>162</sup> See Table 2-52.

The following table presents the percentages of respondents who reported that the listed behaviors were confined to a few individuals or engaged in by more than a few or most.

TABLE 2-52  
ATTORNEYS' VIEWS—PERVASIVENESS OF BEHAVIORS

ATTORNEYS' VIEWS — PERVASIVENESS OF BEHAVIORS <sup>163</sup>	% OF ATTORNEYS REPORTING ATTORNEYS' (#25) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING JUDGES' (#28) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING EMPLOYEES' (#31) BEHAVIORS ARE:
Confined to a few individuals	73%	60%	55%
Engaged in by more than a few or most	3%	4%	6%

<sup>160</sup> As explained, *supra* note 157, question #31, concerning court personnel, was not limited to actual court "proceedings."

<sup>161</sup> Fifty-five percent (55%) of attorneys reported that *employees'* behaviors are confined to a few individuals; 60% of attorneys reported that *judges'* behaviors are confined to a few individuals; and 73% of attorneys reported that *attorneys'* behaviors are confined to a few individuals. See Table 2-52.

<sup>162</sup> Because these responses were so few, the attorneys that responded "more than a few . . . , but not most" were combined with those that responded "most . . . at one time or another." The remaining respondents answered "no opinion" or "does not apply."

<sup>163</sup> The column percentages do not total 100% because this table does not include those respondents who answered "no opinion" or "does not apply."

i. Gender Differences in Views of the Pervasiveness of Behaviors

A majority of females (60-81%) and only a slightly lower percentage of males (47-60%) concluded that the behaviors they reported for each of the three court actors were confined to a few individuals.<sup>164</sup> See Table 2-53.

The following table presents the percentages of female and male respondents, (of those who responded to the questions), who reported that the listed behaviors were confined to a few individuals or engaged in by more than a few or most.

TABLE 2-53  
ATTORNEYS' VIEWS—PERVASIVENESS OF BEHAVIORS/GENDER DIFFERENCES

ATTORNEYS' VIEWS —PERVASIVENESS OF BEHAVIORS/ GENDER DIFFERENCES <sup>165</sup>	% OF ATTORNEYS REPORTING ATTORNEYS' (#25) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING JUDGES' (#28) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING EMPLOYEES' (#31) BEHAVIORS ARE:
Confined to a few individuals			
females	81%	67%	60%
males	60%	48%	47%
Engaged in by more than a few or most <sup>166</sup>			
females	4%	4%	7%
males	2%	5%	6%

ii. Racial/Ethnic Differences in Views of the Pervasiveness of Behaviors

There was also little difference between the views of minorities and non-minorities concerning the pervasiveness of the listed behaviors. Both minorities and non-minorities, from within and outside the District of Puerto Rico, were significantly more likely to conclude that the behaviors were confined to a few individuals.<sup>167</sup> See Tables 2-54, 2-55.

<sup>164</sup> The percentages of men and women who reported that the listed behaviors were engaged in by more than a few or most were very nearly equal. See Table 2-53.

<sup>165</sup> The total percentages for females and males do not total 100% because this table does not include those respondents who answered "no opinion" or "does not apply."

<sup>166</sup> Because these responses were so few, the attorneys that responded "more than a few. . . , but not most" were combined with those that responded "most. . . at one time or another."

<sup>167</sup> The only exception is that the two non-minorities from Puerto Rico who responded to the question were divided as to whether employees' behaviors were confined or were more pervasive. See Appendix at D 121.

The following two tables present the percentages of minority and non-minority respondents, (of those who responded to the questions), who reported that the listed behaviors were confined or more pervasive.

TABLE 2-54  
ATTORNEYS' VIEWS—PERVASIVENESS OF BEHAVIORS/  
RACIAL/ETHNIC DIFFERENCES

Maine, Massachusetts, New Hampshire, Rhode Island and out-of-Circuit

ATTORNEYS' VIEWS —PERVASIVENESS OF BEHAVIORS/ RACIAL/ETHNIC DIFFERENCES <sup>168</sup>	% OF ATTORNEYS REPORTING ATTORNEYS' (#25) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING JUDGES' (#28) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING EMPLOYEES' (#31) BEHAVIORS ARE:
Confined to a few individuals			
minorities	75%	55%	58%
non-minorities	72%	59%	54%
Engaged in by more than a few or most			
minorities	6%	0	11%
non-minorities	2%	3%	6%

TABLE 2-55  
ATTORNEYS' VIEWS—PERVASIVENESS OF BEHAVIORS/  
RACIAL/ETHNIC DIFFERENCES  
Puerto Rico

ATTORNEYS' VIEWS —PERVASIVENESS OF BEHAVIORS/ RACIAL/ETHNIC DIFFERENCES <sup>169</sup>	% OF ATTORNEYS REPORTING ATTORNEYS' (#25) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING JUDGES' (#28) BEHAVIORS ARE:	% OF ATTORNEYS REPORTING EMPLOYEES' (#31) BEHAVIORS ARE:
Confined to a few individuals			
minorities	79%	64%	66%
non-minorities	97%	76%	29%
Engaged in by more than a few or most			
minorities	13%	12%	11%
non-minorities	0	0	29%

<sup>168</sup> The total percentages for each of the sub-groups do not total 100% because this table does not include those respondents who answered "no opinion" or "does not apply."

<sup>169</sup> See *id.*

b. Views on the Existence & Pervasiveness of Bias

i. Views on Gender Bias

The survey also sought the general views among attorneys on the existence and pervasiveness of gender bias in the courts of the First Circuit. Overall, over 40% (41.9%) of the attorneys who answered the question thought that gender bias does not exist in the federal courts of the First Circuit. Almost 30% (29.6%) of the attorneys who answered the question thought that gender bias does exist in the federal courts of the First Circuit.<sup>170</sup> See Table 2-56.

Almost 80% (79.9%) of the respondents who reported that gender bias exists reported that the problem is limited to a few areas or certain individuals. Almost twenty percent (19.5%) reported that the problem is widespread.<sup>171</sup> See Table 2-56.

Over one-third (36.1%) of the respondents who perceived gender bias concluded that the courts are taking steps to eradicate gender bias, compared to 16.3% who reported that the courts are not taking such steps. Finally, almost 80% (79.3%) of the respondents who reported a belief that gender bias exists, thought that it is difficult to detect, compared to 17.3% who thought that gender bias is easy to detect.<sup>172</sup> See Table 2-56.

The following table presents the percentages of attorneys (of those answering each question) who provided each view on gender bias.

TABLE 2-56  
ATTORNEYS' VIEWS—GENDER BIAS<sup>173</sup>

ATTORNEYS' VIEWS (#38)—GENDER BIAS	% OF ATTORNEYS WHO REPORT:
Gender bias EXISTS	29.6%
Gender bias does NOT exist	41.9%
Gender bias is LIMITED	79.9%
Gender bias is WIDESPREAD	19.5%
Courts ARE taking steps to eradicate gender bias	36.1%
Courts are NOT taking steps to eradicate gender bias	16.3%
Gender bias is DIFFICULT to detect	79.3%
Gender bias is EASY to detect	17.3%

Women (45.6%) were significantly more likely than men (14.8%) to conclude that gender bias does exist in the courts of the First Circuit, while men (51.9%)

<sup>170</sup> The remaining respondents answered "No opinion/I don't know."

<sup>171</sup> See *id.*

<sup>172</sup> See *id.*

<sup>173</sup> The total percentages do not equal 100% because this table does not include those respondents who answered "No opinion/I don't know."

were more likely than women (25.2%) to conclude that gender bias does not exist. More respondents of both genders reported that gender bias is limited rather than widespread, and difficult rather than easy to detect. In addition, more female and male respondents reported that the courts are taking steps to eradicate bias than those who reported that the courts are not taking such steps. *See* Table 2-57.

The following table presents the percentages of female and male attorneys (of those answering each question) who provided each view on gender bias.

TABLE 2-57  
ATTORNEYS' VIEWS—GENDER BIAS/GENDER DIFFERENCES<sup>174</sup>

ATTORNEYS' VIEWS (#38)—GENDER BIAS/GENDER DIFFERENCES	% OF FEMALES WHO REPORT:	% OF MALES WHO REPORT:
Gender bias EXISTS	45.6%	14.8%
Gender bias does NOT exist	25.2%	51.9%
Gender bias is LIMITED	78.5%	72.2%
Gender bias is WIDESPREAD	21.1%	19.4%
Courts ARE taking steps to eradicate gender bias	33.4%	30.7%
Courts are NOT taking steps to eradicate gender bias	17.4%	16.0%
Gender bias is DIFFICULT to detect	77.9%	71.6%
Gender bias is EASY to detect	18.7%	17.2%

## ii. Views on Racial/Ethnic Bias

The survey also sought general views among attorneys on the existence and pervasiveness of racial/ethnic bias. Overall, almost 40% (37.4%) of the attorneys who answered the question thought that racial/ethnic bias does not exist in the federal courts of the First Circuit. Just over 20% (21.4%) of the attorneys who answered the question thought that racial/ethnic bias does exist in the federal courts of the First Circuit.<sup>175</sup> *See* Table 2-58.

Of those respondents who reported believing that racial/ethnic bias existed, over two-thirds (69.5%) reported that the problem is limited to only a few areas or certain individuals. Just over one-quarter (26.1%) reported that the problem is widespread.<sup>176</sup> *See* Table 2-58.

Over one-third (37.9%) of the respondents who perceived racial/ethnic bias concluded that the courts are taking steps to eradicate racial bias, compared to 14.7% who reported that the courts are not taking such steps. Finally, over three-

<sup>174</sup> The total percentages do not equal 100% because this table does not include those respondents who answered "No opinion/I don't know."

<sup>175</sup> The remaining respondents answered "No opinion/I don't know."

<sup>176</sup> *See id.*



quarters (76.3%) of these respondents thought that racial bias is difficult to detect, compared to 21.9% who thought that racial bias is easy to detect. *See* Table 2-58.

The following table presents the percentages of attorneys (of those answering each question) who provided each view on racial/ethnic bias.

TABLE 2-58  
ATTORNEYS' VIEWS—RACIAL/ETHNIC BIAS<sup>177</sup>

ATTORNEYS' VIEWS (#39)—RACIAL/ETHNIC BIAS	% OF ATTORNEYS WHO REPORT:
Racial bias EXISTS	21.4%
Racial bias does NOT exist	37.4%
Racial bias is LIMITED	69.5%
Racial bias is WIDESPREAD	26.1%
Courts ARE taking steps to eradicate racial bias	37.9%
Courts are NOT taking steps to eradicate racial bias	14.7%
Gender bias is DIFFICULT to detect	76.3%
Gender bias is EASY to detect	21.9%

Of attorneys from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-Circuit, minorities (62.6%) were significantly more likely than non-minorities (16.8%) to conclude that racial/ethnic bias does exist in the courts of the First Circuit, while non-minorities (36.6%) were more likely than minorities (19.9%) to conclude that racial/ethnic bias does not exist. More minority and non-minority respondents reported that racial/ethnic bias is limited rather than widespread, and difficult rather than easy to detect. In addition, both minority and non-minority respondents more frequently reported that courts are taking steps to eradicate racial bias than reported that the courts are not taking such steps. *See* Table 2-59.

The following table presents the percentages of minority and non-minority attorneys from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-circuit (of those answering each question) who provided each view on racial/ethnic bias.

<sup>177</sup> The total percentages do not equal 100% because this table does not include those respondents who answered "No opinion/I don't know."

TABLE 2-59  
ATTORNEYS' VIEWS—RACIAL/ETHNIC BIAS/RACIAL DIFFERENCES<sup>178</sup>  
Maine, Massachusetts, New Hampshire, Rhode Island and out-of-Circuit

ATTORNEYS' VIEWS (#39)— RACIAL/ETHNIC BIAS— RACIAL DIFFERENCES	% OF MINORITIES WHO REPORT:	% OF NON- MINORITIES WHO REPORT:
Racial bias EXISTS	62.6%	16.8%
Racial bias does NOT exist	19.9%	36.6%
Racial bias is LIMITED	72%	65.4%
Racial bias is WIDESPREAD	23%	24.6%
Courts ARE taking steps to eradicate racial bias	32.2%	42.4%
Courts are NOT taking steps to eradicate racial bias	16.0%	9.7%
Racial bias is DIFFICULT to detect	99.5%	73.4%
Racial bias is EASY to detect	22.5% <sup>179</sup>	19.8%

Within the District of Puerto Rico, both minorities and non-minorities were more likely to report that racial/ethnic bias does not exist than it does exist, though the discrepancy between these two figures was notably more significant for non-minorities (exists: 19.2%; does not exist: 86.6%) than it was for minorities (exists: 29.7%; does not exist: 46.2%). Both minorities and non-minorities from this district were more likely to report that the problem is limited than widespread. However, again, the discrepancy is more significant for non-minorities (limited: 100%; widespread: 0%) than it was for minorities (limited: 59.3%; widespread: 44.1%).<sup>180</sup> See Table 2-60.

Both minority and non-minority respondents from the District of Puerto Rico were closely divided on whether the courts are taking steps to eradicate racial/ethnic bias. But, as with each of the other subgroups of respondents, more minority and non-minority respondents reported that racial/ethnic bias is difficult to detect than reported it is easy to detect. See Table 2-60.

The following table presents the percentages of minority and non-minority attorneys from the District of Puerto Rico (of those that answered each question) who provided each view on racial/ethnic bias.

<sup>178</sup> The total percentages for minorities and non-minorities do not equal 100% because this table does not include the respondents who answered "No opinion/I don't know."

<sup>179</sup> Because these percentages reflect such low frequencies, rounding error results in weighted percentages that exceed 100%. Before re-weighting, 72.1% (31) of the minorities reported that racial bias is difficult to detect while 16.3% (7) reported that racial bias is easy to detect. The remaining minorities responded "no opinion/I don't know" to this question. See *infra* Appendix at D 125.

<sup>180</sup> The differences in the percentages reflecting non-minority responses from this District represent extremely low frequencies. See Appendix at D 125.

TABLE 2-60  
ATTORNEYS' VIEWS #39—RACIAL/ETHNIC BIAS/RACIAL DIFFERENCES  
Puerto Rico

ATTORNEYS' VIEWS (#39)— RACIAL/ETHNIC BIAS— RACIAL DIFFERENCES	% OF MINORITIES WHO REPORT:	% OF NON-MINORITIES WHO REPORT:
Racial bias EXISTS	29.7%	19.2%
Racial bias does NOT exist	46.2%	86.6%
Racial bias is LIMITED	59.3%	100%
Racial bias is WIDESPREAD	44.1%	0
Courts ARE taking steps to eradicate racial bias	28.4%	0%
Courts are NOT taking steps to eradicate racial bias	30.4%	50%
Racial bias is DIFFICULT to detect	75.7%	100%
Racial bias is EASY to detect	29.1%	0

## 2. Attorneys' Recommendations

The attorney survey asked respondents to rank a list of recommendations for ensuring fair treatment of men and women, and minorities and non-minorities, respectively.<sup>181</sup> The listed recommendations were:

- Punish/fine people who violate others' rights because of their gender/race/ethnicity;
- Encourage judges to intervene when inappropriate remarks are made;
- Increase the number of female/racial or ethnic minority court employees;
- Monitor whether members of a jury reflect the gender/race/ethnicity of litigants;
- Develop a system to periodically monitor court cases to check for bias;
- Educate judges and court personnel/raise awareness of the problem;
- Institute a formal grievance procedure for complaints of bias or misconduct; and
- Other<sup>182</sup>

<sup>181</sup> Question #40 stated: Below is a list of possible things that the courts can do to make sure that MEN and WOMEN are treated equally and fairly. Please rank these suggestions in the order of their importance to you. Question #41 was identical except that it referred to MINORITIES and NON-MINORITIES.

<sup>182</sup> Question #40 provided the recommendations for gender; Question #41 provided the recommendations with regard to race/ethnicity.

### a. Recommendations Regarding Gender

Attorney respondents ranked the listed recommendations for promoting gender equality in the courts in the following order:

1. Encourage judges to intervene when inappropriate remarks are made;
2. Educate judges and court personnel/raise awareness of the problem;
3. Institute a formal grievance procedure for complaints of bias or misconduct;
4. Develop a system to periodically monitor court cases to check for bias;
5. Punish/fine people who violate others' rights because of their gender;
6. Increase the number of female court employees; and
7. Monitor whether members of a jury reflect the gender of litigants.<sup>183</sup>

There was no difference between the rankings of women's and men's recommendations—both concurred with the above order.

### b. Recommendations Regarding Race/Ethnicity

Attorney respondents ranked the listed recommendations for promoting racial and ethnic equality in the courts in the following order:

1. Encourage judges to intervene when inappropriate remarks are made;
2. Educate judges and court personnel/raise awareness of the problem;
3. Institute a formal grievance procedure for complaints of bias or misconduct;
4. Develop a system to periodically monitor court cases to check for bias;
5. Punish/fine people who violate others' rights because of their race/ethnicity;
6. Increase the number of racial or ethnic minority court employees; and
7. Monitor whether members of a jury reflect the race/ethnicity of litigants.<sup>184</sup>

Non-minorities from Maine, Massachusetts, New Hampshire, Rhode Island and out-of-Circuit also ranked these recommendations in the above order. Minorities concurred with this ranking as well, except that minorities ranked the last two items equally: increasing the number of minority employees and monitoring the race of jurors, and punishing those who violate others' rights because of race.

Minorities from the District of Puerto Rico also concurred with the above ranking by respondents as a whole regarding the most effective means of ensuring racial and ethnic equality.<sup>185</sup> However, non-minority attorneys from this district

---

<sup>183</sup> The first two recommendations were equally popular among attorney respondents. The last two recommendations were equally ranked as least popular among respondents. Because respondents were asked to rank their responses, weighted percentages were not calculated.

<sup>184</sup> The first two recommendations were equally popular among attorney respondents. The last two recommendations were equally ranked as least popular among respondents.

<sup>185</sup> The only slight difference with this subgroup was that the last two items were not ranked equally—monitoring whether members of a jury reflect the race of the litigants received slightly more support from minorities from Puerto Rico than increasing the number of minority court employees.

ranked the listed recommendations for promoting racial equality in the following order:

1. Educate judges and court personnel/raise awareness of the problem;
2. Encourage judges to intervene when inappropriate remarks are made;
3. Develop a system to periodically monitor court cases to check for bias;
4. Monitor whether members of a jury reflect the race and ethnicity of litigants;
5. Punish/fine people who violate others' rights because of their race or ethnicity;
6. Institute a formal grievance procedure for complaints of bias or misconduct; and
7. Increase the number of racial or ethnic minority court employees.

#### IV. COURT USERS

The Court User Survey project, conducted by the First Circuit's Gender, Race & Ethnic Bias Task Forces, was the first of its kind in a federal court bias study. The survey project was intended to capture the views of those by the courts, in order to ensure fair treatment for all. Previous federal studies have not collected information from parties, witnesses, family members and others due to "temporal, financial and logistical barriers."<sup>186</sup> However, as Professor Judith Resnik points out, for example, "exploring the experiences of such privileged women as lawyers and judges may obscure critical information about the injuries of women without authority."<sup>187</sup>

Although the barriers faced by other courts in conducting such a survey did not preclude this experiment, they did result in a nonprobability sample which is not representative. The survey population was an "accidental sample" of persons who happened to be in court on the days that volunteers were handing out questionnaires. Because the probability of an individual being selected for a survey is not known, accidental sampling does not produce data that is statistically representative of the entire court user population. Thus, the results of this survey are descriptive of the sample surveyed, but no broad-based generalizations can or should be drawn reliably from them. *See* Appendix at M 8.

The Court User survey was conducted between March and May, 1997 in all First Circuit federal district and bankruptcy courts, and in the Court of Appeals.<sup>188</sup> The survey was distributed by trained volunteers to individuals visiting the First Circuit federal courtrooms and clerk's offices, including: civil litigants, witnesses, expert witnesses, victims, family members of litigants, courtroom observers, press,

---

<sup>186</sup> *See, e.g.*, Final Report & Recommendations of the Eighth Circuit Gender Fairness Task Force, reprinted in 31 Creighton L. Rev. 9, 125 n.143 (1997).

<sup>187</sup> *See* Judith Resnik, *Asking About Gender in Courts*, 21 Signs 952, 970-73 (1996).

<sup>188</sup> Surveys were distributed in the following court locations: Massachusetts (Boston, Worcester and Springfield), Maine (Portland and Bangor); New Hampshire (Concord and Manchester); Rhode Island (Providence); and Puerto Rico (Hato Rey). Surveys were provided to those using bankruptcy and district courts and the First Circuit Court of Appeals.

paralegals and messengers. However, attorneys, employees, judges, criminal defendants, and jurors were not surveyed.<sup>189</sup>

Court users were given the choice of completing the questionnaire at the courthouse or completing it at a later time and returning it by mail. Four hundred and fourteen court users responded to the survey. Of the 414 respondents, 77.9% completed the questionnaire at the courthouse; 22.1% completed the questionnaire after leaving the courthouse and returned it by mail. The larger districts, which are busier and consequently more active, produced a greater number of respondents than did the smaller districts.<sup>190</sup> See Table 2-61.

The following table presents the percentage and frequency of court user respondents from each of the districts in the circuit.<sup>191</sup>

TABLE 2-61  
PERCENTAGE OF COURT USERS PER STATE<sup>192</sup>

DISTRICT	PERCENTAGE OF SAMPLE (n) <sup>193</sup>
Massachusetts	37.9% (157)
Maine	19.1% (79)
New Hampshire	6.0% (25)
Rhode Island	10.6% (44)
Puerto Rico	21.0% (87)

The court user survey requested demographic information from the respondents, including the reason for each person's visit to the courthouse.<sup>194</sup> It inquired about

<sup>189</sup> Attorneys and employees were surveyed separately.

<sup>190</sup> The number of respondents varied greatly from district to district because of the different levels of activity in each courthouse. Of the districts, the highest number of respondents came from Massachusetts, with 157, or approximately 38% of the total. Puerto Rico had the second greatest number of participants, at 87, or approximately 21%, while Maine had the third largest number, at 79, or approximately 19% of the total. Rhode Island had the fourth largest number of respondents, at 44, or approximately 11% of the total, while New Hampshire had the smallest number of respondents, at 25, or approximately 6% of the total. See *infra* Table 2-61 and notes 192, 193. Because the smaller courts had fewer scheduled court proceedings and, consequently, less courthouse traffic, Task Force volunteers spent a greater amount of time in these courthouses, relative to the larger courthouses, in order to collect as equivalent a number of surveys as possible.

<sup>191</sup> The Massachusetts respondents include those doing business with the First Circuit Court of Appeals, as well as with the District of Massachusetts.

<sup>192</sup> Please note that the total percentage does not equal 100% due to missing data.

<sup>193</sup> The state of origin was not verified for approximately 4% of the court users who returned their surveys by mail.

<sup>194</sup> The demographic data concerning the court user sample appears in the Appendix at D

the respondents' experiences in the courthouse—for example, whether the respondents had experienced behaviors or comments potentially reflective of gender, race and ethnic bias; whether they attributed those behaviors or comments to gender, race and ethnic bias; and whether a judge, attorney, or court employee engaged in the behavior or issued the comment(s). The survey also asked whether the respondents had observed judges, attorneys, or court employees engaging in behaviors associated with gender, race and ethnic bias toward others and, if so, whether males, females, minorities or non-minorities were the recipients. Finally, the survey sought information on respondents' experiences in the clerks' offices,<sup>195</sup> their overall level of satisfaction (or dissatisfaction) with their court experiences, their general views on gender, race and ethnic bias issues, and their recommendations (if any) for possible remedial action. The Court User survey is reproduced in the Appendix.

#### *A. Court Users' Experiences in Court Proceedings*

The Court User survey asked whether respondents had experienced certain behaviors in a First Circuit federal courthouse, and if so, to identify the source of behavior.<sup>196</sup> Specifically, respondents were asked whether they experienced any of the following: my opinions or views were not taken seriously; I received inappropriate comments about my dress or appearance; I received inappropriate comments of a sexually suggestive nature; I received demeaning or derogatory remarks; I was treated in a rude manner; I received inappropriate comments regarding my accent or manner of speech; I was called by an inappropriate term such as "honey," "sweetie" or "dear"; and I received inappropriate comments about my foreign origin or citizenship status.

For each experience reported, the respondent was asked to indicate how many times s/he had the experience, and whether a judge, attorney or court employee was the source of the behavior. Those court users who experienced any of the listed behaviors were then asked whether, in their opinion, the behavior was due to their gender, race or ethnicity.<sup>197</sup>

This section of the report first summarizes those experiences reported most frequently by court users in their interactions with attorneys, judges, and court

---

127-129.

<sup>195</sup> "First Circuit Clerks' Offices" include the District Court Clerks' Offices (including the Pro Se Clerk), the Bankruptcy Court Clerks' Offices, the Court of Appeals Clerk's Office, and the Bankruptcy Appellate Panel (BAP) Clerk's Office.

<sup>196</sup> As explained above, this question (#7) applied only to those respondents who "participated in or observed any federal court proceedings (motions, trials, hearings)" during the past 5 years.

<sup>197</sup> Question #8 corresponded to question #7. It read as follows: "In your opinion, was the behavior due to your gender, race or ethnicity?" Respondents were asked to select one of the following answers: "(1) Due to gender only; (2) Due to race/ethnicity only; (3) Due to both gender and race/ethnicity; (4) Due to neither gender, race, nor ethnicity; (5) No opinion."

employees. It then summarizes those behaviors reported in greater frequencies by men, women, minorities and non-minorities. While court users may not themselves have attributed these behaviors to bias, the fact that they were more frequently reported by a certain subgroup of respondents may present some evidence of disparate treatment. Lastly, the section presents those experiences that respondents did attribute to gender, racial, or ethnic bias.

### 1. Most Frequently Reported Experiences

The two most frequently reported experiences, reported by over 30% of the respondents, were *opinions or views were not taken seriously*, and *treated in a rude manner*.<sup>198</sup> Slightly more than thirty percent (31.3%) (n=52) of court users reported that they *had been treated in a rude manner*. Attorneys were most often identified as the source of this behavior. 17.8% (n=29) of court users reported experiencing this behavior from an attorney; 13.9% (n=23) reported being *treated in a rude manner* by an employee; and 11.4% (n=19) reported being *treated in a rude manner* by a judge.<sup>199</sup> See Tables 2-62, 2-63.

30.1% (n=49) of the court users who responded to the question reported that *their opinions or views were not taken seriously*. Attorneys were identified most often as the source of this behavior. 18.6% (n=30) of the court users reported an attorney as the source of this behavior; 15.9% (n=26) experienced the behavior from a judge and 9.2% (n=15) from a court employee.<sup>200</sup> See Tables 2-62, 2-63.

Additionally, 15.2% (n=25) of the court users reported that they had *received demeaning or derogatory remarks*. Attorneys were most often identified as responsible for this behavior; 8.6% (n=14) of court users reported *receiving demeaning or derogatory remarks* from an attorney, 6.6% (n=11) from an employee, and 4.2% (n=7) from a judge.<sup>201</sup> See Tables 2-62, 2-63.

Less than 10% of the court users reported that they had each of the remaining experiences. The following two tables present the percentages of court users who reported experiencing each of the listed items. Table 2-62 presents the experiences without regard to the court actor reportedly responsible; Table 2-63 incorporates this information.

---

<sup>198</sup> The percentages throughout this section are derived from the group of respondents who answered each subpart of question #7 (7(a)-(h)), including those individuals who reported *never* having had a listed experience. See also *infra* Appendix at M 11-12.

<sup>199</sup> A number of court users reported multiple experiences with different actors. Thus, the total by actor exceeds the 52 court users who reported rude treatment.

<sup>200</sup> See *supra* note 199.

<sup>201</sup> See *id.*



TABLE 2-62  
COURT USERS' SPECIFIC EXPERIENCES

COURT USERS' COURTHOUSE EXPERIENCES QUESTION #7	% OF COURT USERS WHO REPORTED EACH BEHAVIOR (n)
(a) My opinions or views were not taken seriously	30.1% (49)
(b) I received inappropriate comments about my dress or appearance	5.4% (9)
(c) I received comments of a sexually suggestive nature	5.5%(9)
(d) I received demeaning or derogatory remarks	15.2% (25)
(e) I was treated in a rude manner	31.3% (52)
(f) I received inappropriate comments about my accent or manner of speech	6.7% (11)
(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	9.2% (15)
(h) I received inappropriate comments about my foreign origin or citizenship status	3.8% (6)

TABLE 2-63  
COURT USERS' SPECIFIC EXPERIENCES/BY ACTOR

COURT USERS' COURTHOUSE EXPERIENCES BY COURT ACTOR/SOURCE - Question #7	% OF COURT USERS WHO REPORTED EACH BEHAVIOR (n)
(a) My opinions or views were not taken seriously	15.9% (26) judge 18.6% (30) attorney 9.2% (15) court employee
(b) I received inappropriate comments about my dress or appearance	2.4% (4) judge 1.8% (3) attorney 2.4% (4) employee
(c) I received comments of a sexually suggestive nature	1.2% (2) judge 4.3% (7) attorney 1.2% (2) employee
(d) I received demeaning or derogatory remarks	4.2% (7) judge 8.6% (14) attorney 6.6% (11) employee
(e) I was treated in a rude manner	11.4% (19) judge 17.8% (29) attorney 13.9% (23) employee

(f) I received inappropriate comments about my accent or manner of speech	3.6% (6) judge 3.7% (6) attorney 2.4% (4) employee
(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	3% (5) judge 5.5% (9) attorney 4.8% (8) employee
(h) I received inappropriate comments about my foreign origin or citizenship status	1.8% (3) judge 2.5% (4) attorney 1.9% (3) employee

## 2. Behaviors Experienced in Disparate Proportions by Gender or Race

Although the majority of court users' experiences seemed to cut quite evenly across gender and racial lines, there were some behaviors that were reported more frequently by certain demographic groups. This section will first address those behaviors that were reported more frequently by women than by men, and then addresses those reported more often by men than by women. Next, it will address those behaviors that were reported more often by minorities than non-minorities, and then those reported more often by non-minorities than minorities.

### a. Gender Differences Among Court Users

There were not dramatic differences between the frequencies with which men and women reported the listed experiences. Because the number of respondents was low, it is difficult to draw broad conclusions from this data. However, women were more likely than men to report that *their opinions or views had not been taken seriously*, that they have been *treated in a rude manner*, that they had received *inappropriate comments about their dress or appearance*, and that they had received *inappropriate comments about their accent or speech*. See Table 2-64.

However, males (17.2%) (n=10) were more likely than females (4.8%) (n=5) to report being *addressed by inappropriate terms such as "honey," "sweetie," or "dear."* The following table represents the percentages of female and male court users that reported each of the listed items.

TABLE 2-64  
MALE AND FEMALE COURT USERS' SPECIFIC EXPERIENCES

COURT USERS' COURTHOUSE EXPERIENCES	% OF MALES WHO REPORTED BEHAVIOR (n)	% OF FEMALES WHO REPORTED BEHAVIOR (n)
(a) My opinions or views were not taken seriously	26.8% (15)	31.8% (34)
(b) I received inappropriate comments about my dress or appearance	3.4% (2)	6.5% (7)
(c) I received comments of a sexually suggestive nature	8.6% (5)	3.7% (4)
(d) I received demeaning or derogatory remarks	15.3% (9)	15.1% (16)
(e) I was treated in a rude manner	27.1% (16)	33.6% (36)
(f) I received inappropriate comments about my accent or manner of speech	3.4% (2)	8.6% (9)
(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	17.2% (10)	4.8% (5)
(h) I received inappropriate comments about my foreign origin or citizenship status	5.3% (3)	3% (3)

With regard to the sources of these experiences, male respondents reported *attorneys* as the most frequent source of six of the eight listed behaviors. Females attributed their experiences more evenly among attorneys, judges and court employees. They reported *employees* most frequently responsible for three of the listed items, *attorneys* for two of the listed items and *judges* for one of the listed items.<sup>202</sup> See Table 2-65.

The most notable gender difference among the sources of the behavior appeared with the following items: *opinions or views not taken seriously*—18.5% (20) of the females, compared to 10.7% (6) of the males, reported that a judge failed to take their views seriously; *treated in a rude manner*—14% (15) of the females, compared to 6.8% (4) of the males, reported that a judge treated them in a rude

<sup>202</sup> The two remaining items were almost evenly distributed among the three listed actors. See *infra* Table 2-65.

manner; *inappropriate term*, such as "honey," "sweetie," or "dear"—9% (1) of the females, compared to 13.8% (8) of the males reported receiving such a comment from an attorney. See Table 2-65.

The following table presents the percentages of female and male court users who reported each of the items by each of the court actors.

TABLE 2-65  
MALE AND FEMALE COURT USERS' SPECIFIC EXPERIENCES  
(BY ACTOR)

COURT USERS' COURTHOUSE EXPERIENCES GENDER AND COURT ACTOR	% OF MALES WHO REPORTED BEHAVIOR (n)	% OF FEMALES WHO REPORTED BEHAVIOR (n)
(a) My opinions or views were not taken seriously	10.7% (6) judge 18.2% (10) attorney 10.9% (6) employee	18.5% (20) judge 18.9% (20) attorney 8.3% (9) employee
(b) I received inappropriate comments about my dress or appearance	1.7% (1) judge 1.8% (1) attorney 0 employee	2.8% (3) judge 1.9% (2) attorney 3.6% (4) employee
(c) I received comments of a sexually suggestive nature	1.7% (1) judge 7% (4) attorney 0 employee	0.9% (1) judge 2.8% (3) attorney 1.9% (2) employee
(d) I received demeaning or derogatory remarks	3.4% (2) judge 12.1% (7) attorney 3.3% (2) employee	4.7% (5) judge 6.7% (7) attorney 8.4% (9) employee
(e) I was treated in a rude manner	6.8% (4) judge 17.2% (10) attorney 13.3% (8) employee	14% (15) judge 18.1% (19) attorney 14.2% (15) employee
(f) I received inappropriate comments about my accent or manner of speech	1.7% (1) judge 3.4% (2) attorney 0 employee	4.7% (5) judge 3.8% (4) attorney 3.8% (4) employee
(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	6.8% (4) judge 13.8% (8) attorney 8.5% (5) employee	.9% (1) judge .9% (1) attorney 2.8% (3) employee
(h) I received inappropriate comments about my foreign origin or citizenship status	3.4% (2) judge 3.4% (2) attorney 1.7% (1) employee	.9% (1) judge 1.9% (2) attorney 1.9% (2) employee

b. Racial/Ethnic Differences Among Court Users

This data must be viewed in light of the low frequencies reported. Nevertheless, minorities from Maine, Massachusetts, New Hampshire, and Rhode Island, generally, reported the listed items with proportionately greater frequency than non-minorities. Minorities reported each of the listed items, except for one, *treated in a rude manner*, proportionately more often than non-minority court users. The most notable racial difference appeared with *opinions or views not taken seriously*, 25.5% more minorities than non-minorities reported experiencing this behavior and 22.1% more minorities than non-minorities reported experiencing *inappropriate comments regarding accent or manner of speech*. The following table presents the percentages of minority and non-minority court users, from Maine, Massachusetts, New Hampshire, and Rhode Island, who reported each of the listed items.

TABLE 2-66  
MINORITY AND NON-MINORITY COURT USERS' SPECIFIC EXPERIENCES  
Maine, Massachusetts, New Hampshire & Rhode Island<sup>203</sup>

QUESTION 7 COURT USERS' COURTHOUSE EXPERIENCES BY RACE	% OF MINORITIES WHO REPORTED BEHAVIOR (n)	% OF NON-MINORITIES WHO REPORTED BEHAVIOR (n)
7(a) My opinions or views were not taken seriously	52.4% (11)	26.9% (28)
7(b) I received inappropriate comments about my dress or appearance	10% (2)	2.9% (3)
7(c) I received comments of a sexually suggestive nature	15% (3)	3.8% (4)
7(d) I received demeaning or derogatory remarks	20% (4)	16.2% (17)
7(e) I was treated in a rude manner	30% (6)	33% (35)
7(f) I received inappropriate comments about my accent or manner of speech	25% (5)	2.9% (3)
7(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	21.1% (4)	6.7% (7)
7(h) I received inappropriate comments about my foreign origin or citizenship status	15.8% (3)	1% (1)

With regard to the sources of these behaviors, non-minority respondents from Maine, Massachusetts, New Hampshire, and Rhode Island reported *attorneys* as the party most frequently responsible for six of the eight listed behaviors.<sup>204</sup> Minority

<sup>203</sup> Note that results from these four jurisdictions include the bankruptcy and district courts from each and the First Circuit Court of Appeals.

<sup>204</sup> Five of these six behaviors were the same as those that the total sample most frequently

respondents from these courts reported *attorneys* as the party most frequently responsible for four (4) of the eight (8) listed behaviors. However, minorities most frequently attributed *opinions or views not taken seriously and comments about dress or appearance* to judges; while non-minorities most frequently attributed these behaviors to *attorneys*. However, only two (2) minorities and three (3) non-minorities reported *inappropriate comments about [their] dress or appearance*. See Table 2-67.

The following table presents the percentages of minority and non-minority court users from Maine, Massachusetts, New Hampshire, and Rhode Island, who reported each of the listed items by each of the respective court actors.

TABLE 2-67

MINORITY AND NON-MINORITY COURT USERS' SPECIFIC EXPERIENCES BY SOURCE  
Maine, Massachusetts, New Hampshire & Rhode Island

QUESTION 7 COURT USERS' COURTHOUSE EXPERIENCES BY RACE	% OF MINORITIES WHO REPORTED BEHAVIOR (n)	% OF NON-MINORITIES WHO REPORTED BEHAVIOR (n)
7(a) My opinions or views were not taken seriously	45.5% (10) judge 31.6% (6) attorney 16.7% (3) employee	12.4% (13) judge 18.3% (19) attorney 7.6% (8) employee
7(b) I received inappropriate comments about my dress or appearance	10% (2) judge 5% (1) attorney 5% (1) employee	.9% (1) judge 1.9% (2) attorney 0 employee
7(c) I received comments of a sexually suggestive nature	5.3% (1) judge 15% (3) attorney 0 employee	0 judge 4.8% (4) attorney .9% (1) employee
7(d) I received demeaning or derogatory remarks	15% (3) judge 20% (4) attorney 10% (2) employee	3.8% (4) judge 8.7% (9) attorney 5.7% (6) employee
7(e) I was treated in a rude manner	20% (4) judge 25% (5) attorney 10.5% (2) employee	11.3% (12) judge 18.3% (19) attorney 15.2% (16) employee
7(f) I received inappropriate comments about my accent or manner of speech	20% (4) judge 20% (4) attorney 0 employee	1.9% (2) judge 1.9% (2) attorney 1% (1) employee
7(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	11.1% (2) judge 11.1% (2) attorney 11.8% (2) employee	.9% (1) judge 4.8% (5) attorney 3.8% (4) employee
7(h) I received inappropriate comments about my foreign origin or citizenship status	10.5% (2) judge 15.8% (3) attorney 5.6% (1) employee	0 judge 1% (1) attorney 1% (1) employee

attributed to attorneys. See *supra* Table 2-63. But instead of item 7(h), comments about foreign origin or citizenship status which court users as a whole most frequently attributed to attorneys, non-minorities most frequently attributed item 7(b), comments on dress or appearance, to attorneys. See *infra* Table 2-67.

Within the District of Puerto Rico, very few minority court users responded to the survey. Even fewer reported experiencing any of the listed behaviors in federal court. For example, a higher proportion of non-minorities than minorities reported receiving *inappropriate comments about dress or appearance*, yet only two non-minorities and one minority reported this experience. Table 2-68 *infra* illustrates the discrepancies in reports of the listed behaviors between minorities and non-minorities from Puerto Rico. The distribution among court actors of experiences reported from the District of Puerto Rico appears in the Appendix at D 132.

TABLE 2-68  
MINORITY AND NON-MINORITY COURT USERS' SPECIFIC EXPERIENCES  
Puerto Rico

QUESTION 7 COURT USERS' COURTHOUSE EXPERIENCES	% OF MINORITIES WHO REPORTED BEHAVIOR (N)	% OF NON-MINORITIES WHO REPORTED BEHAVIOR (N)
7(a) My opinions or views were not taken seriously	25% (7)	50% (2)
7(b) I received inappropriate comments about my dress or appearance	3.4% (1)	40% (2)
7(c) I received comments of a sexually suggestive nature	0	25% (1)
7(d) I received demeaning or derogatory remarks	10.3% (3)	25% (1)
7(e) I was treated in a rude manner	20.7% (6)	25% (1)
7(f) I received inappropriate comments about my accent or manner of speech	6.9% (2)	25% (1)
7(g) I was called by an inappropriate term such as "honey," "sweetie" or "dear"	10.3% (3)	0
7(h) I received inappropriate comments about my foreign origin or citizenship status	3.4% (1)	0

#### B. Court Users' Attributions to Bias in Court Proceedings

Court users who experienced any of the listed behaviors were asked whether they believed that the treatment was due to gender bias, racial/ethnic bias, both gender and racial bias, or neither.<sup>205</sup> In general, of the court users who reported one

<sup>205</sup> Question #8 stated: "In your opinion, was the behavior due to your gender, race or ethnicity?" The available answers were: "(1) Due to gender only; (2) Due to race/ethnicity only; (3) Due to both gender and race/ethnicity; (4) Due to neither gender, race nor ethnicity;

or more of the listed experiences, 31% attributed one or more of these experiences to gender bias. However, this percentage reflects only 14 court users who reported gender bias out of 45 who reported at least one experience.<sup>206</sup> Ten (10) of these respondents were male; only four (4) were female. See Appendix at D 132.

Only 4% (n=2) of the court users who reported one or more of the listed experiences attributed at least one of these experiences to racial or ethnic bias. In Maine, Massachusetts, New Hampshire, and Rhode Island, one (1) minority and no non-minorities made an attribution to racial or ethnic bias. Within Puerto Rico, one (1) minority and no non-minority respondents attributed their experience to racial or ethnic bias. See Appendix at D 132-133.

Less than 10% (9%) (n=4) of the court users reporting one or more of the listed experiences attributed at least one of these experiences to both gender and racial or ethnic bias. Each of these four (4) court users were male—three (3) minorities from Maine, Massachusetts, New Hampshire, and Rhode Island, and one (1) minority from Puerto Rico. See Appendix at D 132-133.

## 1. Gender Bias

### a. Types of Behaviors Most Often Attributed to Gender Bias

The behaviors that court users most frequently attributed to gender bias are (in descending order): *sexually suggestive comments*; and *inappropriate term such as "honey," "sweetie," or "dear."* See Appendix at D 133.<sup>207</sup>

The behaviors most frequently attributed to gender bias are those which appear to reflect gender bias on their face. Behaviors apparently reflective of general incivility, *opinions or views not taken seriously and treated in a rude manner*, were among the least likely to be attributed to gender bias, but were the most frequently reported overall. See *supra* Table 2-62.

## 2. Racial/Ethnic Bias

### a. Types of Behavior Most Often Attributed to Racial/Ethnic Bias

The following items were most frequently attributed to racial or ethnic bias (in descending order): *inappropriate comments about dress or appearance*; *comments of a sexually suggestive nature*; *inappropriate comments regarding accent or*

---

(5) No opinion."

<sup>206</sup> While Table 2-62 shows that at least 52 court users reported on or more of the listed experiences, bias percentages were calculated from those respondents who reported an experience *and* answered the subsequent attribution question. Further explanation is provided in the methodology section. See *infra* Appendix at M 11-12.

<sup>207</sup> The Table at Appendix D 133 shows court users' attributions to gender bias by source. The percentages for each actor were averaged and ranked to show which behaviors were most frequently attributed to gender bias overall.



*manner of speech; and inappropriate comments about foreign origin or citizenship status. See Appendix at D 134.*<sup>208</sup>

### 3. Gender & Racial /Ethnic Bias

The following items were most frequently attributed to both gender and racial/ethnic bias (in descending order): *inappropriate term such as "honey," "sweetie" or "dear"; inappropriate comments about foreign origin or citizenship status; and inappropriate comments regarding accent or manner of speech.* On average, court users attributed the last two (2) items, *inappropriate comments about foreign origin or citizenship status* and *inappropriate comments about accent or manner of speech*, to both gender and racial bias with equal frequency. See Appendix at D 135.<sup>209</sup>

### C. Clerks' Offices Interactions

The Court User survey also addressed court users' interactions with First Circuit Clerks' offices.<sup>210</sup> Respondents were first asked whether during the past five years, they had "visited any Clerk's Office to file documents or to seek information."<sup>211</sup> The survey then asked whether an employee of the clerk's office: (1) *treated respondent in a rude manner or with derogatory or demeaning terms*; (2) *made sexually suggestive comments*; (3) *and/or refused to help or give requested information.* For each of these questions, respondents were asked to indicate the number of times they had each experience.<sup>212</sup>

#### 1. Experiences Reported in Clerks' Offices

In general, almost one-fifth (19.5%) of the respondents to the question reported *rude treatment* in a clerk's office of the First Circuit. Over 12% (12.6%) of respondents reported a *refusal to help or provide requested information.*<sup>213</sup> Only two respondents (both men) (0.8%) reported having received a sexually suggestive comment.

---

<sup>208</sup> The percentages for each actor were averaged and ranked to show which behaviors were most frequently attributed to racial/ethnic bias overall. See *supra* note 207.

<sup>209</sup> The percentages for each actor were averaged and ranked to show which behaviors were most frequently attributed to gender and racial/ethnic bias overall. See *supra* note 207.

<sup>210</sup> "First Circuit Clerks' Offices" include the District Court Clerks' Offices (including the Pro Se Clerk), the Bankruptcy Court Clerks' Offices, the Court of Appeals Clerks' Office, and the Bankruptcy Appellate Panel (BAP) Clerks' Office.

<sup>211</sup> Only those respondents who reported that they had visited a clerk's office within the past five years to file documents or to seek information were directed to answer this set of questions.

<sup>212</sup> Each question read: "If yes, how many times?"

<sup>213</sup> 23.4% (59) of the respondents reported both rude treatment and a refusal to help or provide requested information.

The following table presents the percentages of court users who reported each of the three experiences in a clerk's office of the First Circuit.

TABLE 2-69  
COURT USERS' REPORTED EXPERIENCES IN CLERK' OFFICE

QUESTIONS 17, 18 & 19	% OF COURT USERS WHO REPORTED BEHAVIOR (n)
Treated in a rude manner or addressed in derogatory or demeaning terms by Clerk's Office employee	19.5% (50)
Received comments of a sexually suggestive nature from Clerk's Office employee	.8% (2)
Employee of Clerk's Office refused to help or give information requested	12.6% (32)

Except for the *sexually suggestive comments*, both of which were reported by men, there was little difference between female and male court users' experiences in the clerks' offices. This suggests that any problems with the First Circuit clerks' offices are more representative of general incivility than of gender bias per se.

The following table presents the percentages of court users, female and male, who reported each of the three experiences in a clerk's office of the First Circuit.

TABLE 2-70  
MALE AND FEMALE COURT USERS' EXPERIENCES IN CLERK'S OFFICE

QUESTIONS 17, 18 & 19	% OF FEMALE COURT USERS WHO REPORTED BEHAVIOR (n)	% OF MALE COURT USERS WHO REPORTED BEHAVIOR (n)
Treated in a rude manner or addressed in derogatory or demeaning terms by Clerk's Office employee	20% (30)	18.9% (20)
Received comments of a sexually suggestive nature from Clerk's Office employee	0	1.9% (2)
Employee of Clerk's Office refused to help or give information requested	12.3% (18)	12.2% (13)

Minorities from Maine, Massachusetts, New Hampshire, and Rhode Island reported each of the three experiences in the clerks' offices with somewhat greater frequency than non-minority court users. However, because each experience was reported with such low frequency, caution should be used in drawing inferences

from these figures. The following table presents the percentages of minority and non-minority court users, from Maine, Massachusetts, New Hampshire, and Rhode Island, who reported each of the three experiences in a clerk's office of the First Circuit.

TABLE 2-71  
MINORITY AND NON-MINORITY COURT USERS' EXPERIENCES IN CLERK'S OFFICE  
Maine, Massachusetts, New Hampshire & Rhode Island

QUESTIONS 17, 18 & 19	% OF MINORITY COURT USERS WHO REPORTED BEHAVIOR (n)	% OF NON-MINORITY COURT USERS WHO REPORTED BEHAVIOR (n)
Treated in a rude manner or addressed in derogatory or demeaning terms by Clerk's Office employee	30% (9)	20.6% (33)
Received comments of a sexually suggestive nature from Clerk's Office employee	3.6% (1)	0
Employee of Clerk's Office refused to help or give information requested	20% (6)	12% (19)

Within the District of Puerto Rico, only two (2) non-minority court users reported any of the listed items. Ten percent (10%) (n=5) of the minorities from this district reported *rude treatment* and 12.5% (n=6) reported a *refusal to help or provide requested information*. The following table presents the percentages of minority and non-minority court users, from within Puerto Rico, who reported each of the three experiences in a clerk's office of the First Circuit.

TABLE 2-72  
MINORITY AND NON-MINORITY COURT USERS' EXPERIENCES IN CLERK'S OFFICE  
Puerto Rico

QUESTIONS 17, 18 & 19	% OF MINORITY COURT USERS WHO REPORTED BEHAVIOR (n)	% OF NON-MINORITY COURT USERS WHO REPORTED BEHAVIOR (n)
Treated in a rude manner or addressed in derogatory or demeaning terms by Clerk's Office employee	10% (5)	20% (1)
Received comments of a sexually suggestive nature from Clerk's Office employee	0	0 <sup>214</sup>
Employee of Clerk's Office refused to help or give information requested	12.5% (6)	20% (1)

## 2. Perceived Bias in Clerks' Offices

Respondents were asked to indicate whether they believed that the treatment was due to their gender, race, or ethnicity.<sup>215</sup> In general, of the court users who reported one or more of the listed clerk's office experiences, 15% (n=10) attributed one or more of these experiences to gender bias.<sup>216</sup> Over ten percent (11.8%) (n=4) of the female court users; and 20% (n=6) of the male court users attributed one or more of their clerk's office experiences to gender bias. *See* Appendix at D 135.

Fifteen percent (15%) (n=9) of the court users who reported an experience in a clerk's office attributed one or more of these experiences to racial or ethnic bias. In Maine, Massachusetts, New Hampshire, and Rhode Island three (3) minorities, 27.3% of those who reported a behavior, and four (4) non-minorities, 11.1% of those who reported a behavior, made an attribution to racial bias. In the District of Puerto Rico, no minorities but both (100%) (n=2) of the non-minorities attributed one or more of their clerk's office experiences to racial or ethnic bias. *See* Appendix at D 135-136.

<sup>214</sup> While two respondents reported this behavior, *see supra* Table 2-69, apparently one did not report his race/ethnicity, as the racial breakdowns in Tables 2-71 and 2-72 show only one respondent reporting this behavior.

<sup>215</sup> Respondents were provided with the following response categories: (1) Yes, because of my gender; (2) Yes, because of my race or ethnicity; (3) Yes, because of both my gender and race or ethnicity; (4) No, because of neither my gender, nor race or ethnicity; and (5) No opinion/I do not know.

<sup>216</sup> Percentages reflecting those who attributed the behavior to bias are derived from those respondents who reported an experience *and* answered the subsequent attribution question. *See infra* Appendix at M 11-12.

Of the court users who reported one or more of the listed clerk's office experiences, 13.3% (n=8) attributed one or more of these experiences to both gender and racial bias. In Maine, Massachusetts, New Hampshire, and Rhode Island, no minorities and 16.7% (n=6) of non-minorities attributed at least one of their clerk's office experiences to both gender and racial bias. In Puerto Rico, 25% (n=2) of the minorities and no non-minorities attributed at least one of their clerk's office experiences to both forms of bias. See Appendix at D 135-136.

a. Perceived Gender Bias in Clerks' Offices

Ten (10) respondents (6 males/4 females) reported circuit-wide an experience in a clerk's office that they perceived resulted from gender bias.<sup>217</sup> See Appendix at D 135. Twenty percent (20%) (n=10) of the court users who reported *rude and derogatory treatment* attributed their experience(s) to gender bias and 18.8% (n=6) of the court users who reported a *refusal to help or give requested information* attributed their experience to gender bias. No court user attributed *sexually suggestive comments* in the clerk's office to gender bias. See Appendix at D 136.

b. Perceived Racial/Ethnic Bias in Clerks' Offices

Only nine (9) respondents (3 minorities and 4 non-minorities from Maine, Massachusetts, New Hampshire, and Rhode Island; and 2 non-minorities from Puerto Rico) circuit-wide reported an experience in a clerk's office that they perceived to result from racial/ethnic bias. See Appendix at D 135-136. Twelve and a half percent (12.5%) (n=4) of the respondents who reported a *refusal to help or provide information* attributed their experiences to racial bias. Ten percent (10%) (n=5) of the respondents who reported *rude treatment* attributed their experiences to racial/ethnic bias. One of the two (50%) court users who reported a *sexually suggestive comment* attributed it to racial bias. See Appendix at D 136.

Eight (8) respondents (13.3% of those who reported an experience) reported incidents in a clerk's office that they attributed to both gender and racial bias. Six (6) of these respondents were non-minorities from Maine, Massachusetts, New Hampshire, and Rhode Island, and two (2) were minorities from Puerto Rico. See Appendix at D 135-136. Twelve percent (12%) (n=6) of the respondents who reported *rude treatment* attributed their experiences to both gender and racial bias, and 9.4% (n=3) of the respondents who reported a *refusal to help* attributed their experiences to both gender and racial bias. See Appendix at D 136.

D. Court Users' Observations

The survey also asked court users to report what they observed while participating in First Circuit proceedings. Specifically, the survey asked court users whether they observed any of the following during the past five years:

---

<sup>217</sup> However, each of these respondents may have reported more than one such experience.

*statements or opinions not taken seriously (made to women/men/minority/non-minority); comments of a sexually suggestive nature (made to women/men); race or ethnicity-based remarks (made to minorities/non-minorities); inappropriate comments about a minority's/non-minority's accent or manner of speech; and use of inappropriate names (such as "honey," "sweetie," "dear," "young lady," or "young man") (made to men/women).*<sup>218</sup>

Generally, the most frequently reported observation was a *failure to take statements or opinions seriously*. Almost one-quarter (24.1%) (n=35) reported observing *women's statements or opinions not taken seriously*. Almost as many respondents, 20.7% (n=30), observed *men's statements or opinions not being taken seriously*. 16.1% (n=23) observed *non-minorities' statements or opinions not being taken seriously*. 15.3% (n=22) observed *minorities' statements or opinions not being taken seriously*. See Table 2-73.

While 12.1% (n=17) of the respondents observed *sexually suggestive comments made to women*, only 5% (n=7) observed such comments being made to men. Similarly, 15.3% (n=23) of the court users observed *women being called by inappropriate names, such as "honey," "sweetie," "dear," or "young lady"*, while only 7.5% (n=11) of the court users observed *men being called by comparable names*. See Table 2-73.

6.5% (n=9) of the respondents observed *race or ethnicity-based remarks made to minorities*, while 5% (7) of the respondents observed *race or ethnicity-based remarks made to non-minorities*. 9.4% (13) of the respondents observed *inappropriate comments about a minority's accent or manner of speech*, while 4.3% (6) of the respondents observed *inappropriate comments about a non-minority's accent or manner of speech*. See Table 2-73. The following table presents the percentage of court users of those answering each question that made each of the listed observations.

---

<sup>218</sup> Each question also asked respondents to indicate the number of times they had made each observation.

TABLE 2-73  
COURT USERS' OBSERVATIONS

OBSERVATION (QUESTION 14)	% OF COURT USERS WHO OBSERVED BEHAVIOR (n)
(a) Women's statements or opinions not taken seriously	24.1% (35)
(b) Men's statements or opinions not taken seriously	20.7% (30)
(c) Minorities' statements or opinions not taken seriously	15.3% (22)
(d) Non-minorities statements or opinions not taken seriously	16.1% (23)
(e) Comments of a sexually suggestive nature made to women	12.1% (17)
(f) Comments of a sexually suggestive nature made to men	5% (7)
(g) Race or ethnicity-based remarks made to minorities	6.5% (9)
(h) Race or ethnicity-based remarks made to non-minorities	5% (7)
(i) Inappropriate comments about a minority's accent or manner of speech	9.4% (13)
(j) Inappropriate comments about a non-minority's accent or manner of speech	4.3% (6)
(k) Women called inappropriate names such as "honey," "sweetie," "dear" or "young lady"	15.3% (23)
(l) Men called inappropriate names such as "honey," "sweetie," "dear" or "young man"	7.5% (11)

### 1. Court Users' Observations and Source of Behavior

Attorneys were most frequently reported as the source of seven (7) of the twelve (12) listed observations. They were the most frequently reported source for *each* of the three (3) observations directed toward *women*: *women's statements or opinions not taken seriously*; *comments of a sexually suggestive nature made to women*; *women called inappropriate names (such as "honey," "sweetie," "dear" or "young lady")*. See Table 2-74. The following table presents the percentages of court users (out of those that responded to the question) that reported each observation from each of the listed court actors.

TABLE 2-74  
COURT USERS' OBSERVATIONS/BY ACTOR

OBSERVATION #14	JUDGE (n)	ATTORNEY (n)	COURT EMPLOYEE (n)
(a) Women's statements or opinions not taken seriously	17.7% (26)	17.9% (26)	10.4% (15)
(b) Men's statements or opinions not taken seriously	17.2% (25)	11.2% (16)	9.2% (13)
(c) Minorities' statements or opinions not taken seriously	12.3% (18)	11.1% (16)	9% (13)
(d) Non-minorities' statements or opinions not taken seriously	13.9% (20)	10.5% (15)	7.6% (11)
(e) Comments of a sexually suggestive nature made to women	4.9% (7)	9.8% (14)	4.3% (6)
(f) Comments of a sexually suggestive nature made to men	.7% (1)	4.3% (6)	2.1% (3)
(g) Race or ethnicity-based remarks made to minorities	4.3% (6)	3.6% (5)	3.6% (5)
(h) Race or ethnicity-based remarks made to non-minorities	2.8% (4)	3.6% (5)	2.9% (4)
(i) Inappropriate comments about a minority's accent or manner of speech	3.6% (5)	7.1% (10)	5% (7)
(j) Inappropriate comments about a non-minority's accent or manner of speech	1.4% (2)	3.6% (5)	1.4% (2)
(k) Women called inappropriate names such as "honey," "sweetie," "dear" or "young lady"	4.3% (6)	10.8% (15)	7.2% (10)
(l) Men called inappropriate names such as "honey," "sweetie," "dear" or "young man"	0.7% (1)	0.7% (1)	4.3% (6)

### *E. Court Users' Views*

#### 1. Court Users' Views Regarding Gender Bias

Under 20% (17.3%) (n=63) of the court users who responded to the question reported the opinion that gender bias *exists* in a federal court of the First Circuit.<sup>219</sup>

<sup>219</sup> Question #20 asked court users whether they believed that gender bias exists in the



This figure was somewhat higher among male respondents (22%) (n=33) than among female respondents 13.6% (n=29).<sup>220</sup> See Table 2-75. The following table presents the views of court users on gender bias.

TABLE 2-75  
COURT USERS' VIEWS REGARDING GENDER BIAS

GROUP	Does Gender Bias Exist in the First Circuit? (n)
Court Users	Yes, bias exists 17.3% (63) No, bias does not exist 37% (135) No opinion/do not know 45.8% (167)
Male Court Users	Yes, bias exists 22% (33) No, bias does not exist 24% (36) No opinion/do not know 54% (81)
Female Court Users	Yes, bias exists 13.6% (29) No, bias does not exist 46.3% (99) No opinion/do not know 40.2% (86)

Of those court users who thought that gender bias exists, just over half (55%) (n=33) responded that gender bias is limited to a few areas or certain individuals. However, almost one-third (31.7%) (n=19) indicated that the problem is widespread.<sup>221</sup> See Table 2-76.

In addition to being more likely than female respondents to report that gender bias exists in the courts, male respondents were more likely than females to perceive the problem as widespread, while females were more likely than males to perceive that gender bias is limited to a few areas or certain individuals. See Table 2-76. The following table presents the percentages of male and female respondents (of those that reported that gender bias exists and answered the subsequent question) who reported that the problem is limited and widespread.

---

federal courts of the First Circuit. Possible responses included: (1) Yes; (2) No (Skip to Question 21); and (3) No opinion/I do not know. Question #20(a) asked those court users that had reported that gender bias does exist whether they believed that gender bias in the First Circuit federal courts is limited or widespread. Possible responses included: (1) Gender bias is limited to a few areas or certain individuals; (2) Gender bias is widespread; and (3) No opinion/I do not know.

<sup>220</sup> Note the number of male and female court users who responded to the question does not equal the total number of court users, due to missing data.

<sup>221</sup> The remaining 13.3% (8) stated that they had no opinion or did not know whether gender bias is limited or widespread.

TABLE 2-76  
COURT USERS' VIEWS REGARDING GENDER BIAS

COURT USERS' VIEWS (#20a)	% COURT USERS (n) (Total Sample)	% FEMALE COURT USERS (n)	% MALE COURT USERS (n)
(1) Gender bias is limited to a few areas or certain individuals	55% (33)	63% (17)	50% (16)
(2) Gender bias is widespread	31.7% (19)	22.2% (6)	37.5% (12)
(3) No opinion/I do not know	13.3% (8)	14.8% (4)	12.5% (4)

## 2. Court Users' Views Regarding Racial/Ethnic Bias

Just over 20% (21.4%) (n=78) of the court users who responded to the question had the opinion that racial or ethnic bias exists in the federal courts of the First Circuit.<sup>222</sup> This figure was substantially higher among minority respondents from Maine, Massachusetts, New Hampshire, and Rhode Island (46.8%) (n=22), than among non-minority respondents (16.4%) (n=38). In Puerto Rico, one non-minority respondent (25%) reported that there was racial or ethnic bias, compared to 18.8% (n=12) of the minorities. See Table 2-77. The following table presents the views of court users on racial/ethnic bias.

<sup>222</sup> Question #21 asked court users whether they believed that racial or ethnic bias exists in the federal courts of the First Circuit. Response categories included: (1) Yes; (2) No; and (3) No opinion/I do not know. Question #21(a) asked those court users who had reported that racial bias does exist whether they believed that racial or ethnic bias in the First Circuit is limited or widespread. Response categories included: (1) Racial and/or ethnic bias is limited to a few areas or certain individuals; (2) Racial and/or ethnic bias is widespread; and (3) No opinion/I do not know.

TABLE 2-77  
COURT USERS' VIEWS REGARDING RACIAL/ETHNIC BIAS

GROUP	DOES RACE/ETHNIC BIAS EXIST IN THE FIRST CIRCUIT? #21 (n)
Court Users	Yes, bias exists 21.4% (78) No, bias does not exist 32.1% (117) No opinion/does not know 46.6% (170)
Minority Court Users (Maine, Massachusetts, New Hampshire & Rhode Island)	Yes, bias exists 46.8% (22) No, bias does not exist 25.5% (12) No opinion/does not know 27.7% (13)
Non-Minority Court Users (Maine, Massachusetts, New Hampshire & Rhode Island)	Yes, bias exists 16.4% (38) No, bias does not exist 33.6% (78) No opinion/does not know 50% (116)
Minority Court Users (Puerto Rico)	Yes, bias exists 18.8% (12) No, bias does not exist 31.3% (20) No opinion/does not know 50% (32)
Non-Minority Court Users (Puerto Rico)	Yes, bias exists 25% (1) No, bias does not exist 25% (1) No opinion/does not know 50% (2)

Of those court users who thought that racial or ethnic bias exists (and answered this subsequent question), exactly half (50%) (n=39) responded that such bias is limited to a few areas or certain individuals. However, almost 40% (38.5%) (n=30) indicated that the problem is widespread.<sup>223</sup> See Table 2-78.

In addition to being far more likely than non-minority respondents to report that racial/ethnic bias exists in the courts, minority respondents were significantly more likely than non-minorities to consider the problem widespread, while non-minorities were more likely than minorities to conclude that racial/ethnic bias is limited to a few areas or certain individuals. See Table 2-78. The following table presents the percentages of minority and non-minority respondents from Maine, Massachusetts, New Hampshire, and Rhode Island (of those that reported that racial/ethnic bias exists and answered the subsequent question) who reported that the problem is limited or widespread.

<sup>223</sup> The remaining 11.5% (n=9) stated that they had no opinion or did not know whether racial/ethnic bias is limited or widespread.

TABLE 2-78  
COURT USERS' VIEWS REGARDING RACIAL/ETHNIC BIAS  
Maine, Massachusetts, New Hampshire and Rhode Island

COURT USERS' VIEWS (#20a)	% COURT USERS (n) (TOTAL SAMPLE)	% MINORITY COURT USERS (n)	% NON-MINORITY COURT USERS (n)
(1) Racial/ethnic bias is limited to a few areas or certain individuals	50% (39)	31.8% (7)	57.9% (22)
(2) Racial/ethnic bias is widespread	38.5% (30)	59.1% (13)	31.6% (12)
(3) No opinion/I do not know	11.5% (9)	9.1% (2)	10.5% (4)

The one (1) non-minority court user from the District of Puerto Rico who reported that racial or ethnic bias exists also reported that the problem is limited to a few areas or certain individuals. Of the 12 minorities from this district who reported that racial bias exists, seven (n=7) (58.3%) reported that racial/ethnic bias is limited. Three (n=3) (25%) responded that the problem is widespread; two (n=2) (16.7%) had no opinion or did not know. See Table 2-79.

The following table presents the percentages of minority and non-minority respondents from the District of Puerto Rico (of those that reported racial/ethnic bias exists and answered the subsequent question) who reported that the problem is limited and widespread.

TABLE 2-79  
COURT USERS' VIEWS REGARDING RACIAL/ETHNIC BIAS  
Puerto Rico

COURT USERS' VIEWS (#20a)	% MINORITY COURT USERS (n)	% NON-MINORITY COURT USERS (n)
(1) Racial/ethnic bias is limited to a few areas or certain individuals	58.3% (7)	100% (1)
(2) Racial/ethnic bias is widespread	25% (3)	0
(3) No opinion/I do not know	16.7% (2)	0

### 3. Court Users' Recommendations

The court user survey asked respondents to rank a list of recommendations for ensuring fair treatment of men and women, and minorities and non-minorities, respectively.<sup>224</sup> The listed recommendations were:

- Punish/fine people who violate others' rights because of their gender/race or ethnicity;
- Encourage judges to intervene when inappropriate remarks are made;
- Increase the number of female/racial or ethnic minority court employees;
- Monitor whether members of federal court juries reflect the gender/race and ethnicity of the parties involved in a case;
- Develop a system to periodically monitor court cases to check for bias;
- Educate judges and court employees/raise awareness of the problem;
- Establish and post a formal policy for complaints relating to gender/racial bias; and
- Other \_\_\_\_\_.<sup>225</sup>

#### a. Recommendations Regarding Gender

Court users most frequently recommended the following three actions for promoting gender equality in the courts (in descending order): *Establish and post a formal policy for complaints relating to gender bias; Educate judges and court employees/raise awareness of the problem; and Encourage judges to intervene when inappropriate remarks are made.*<sup>226</sup> See Appendix at D 138.

While women concurred with the above recommendations, men most frequently chose the following three remedial actions (in descending order): *Educate judges and court employees/raise awareness of the problem; Develop a system to periodically monitor court cases to check for bias; and Establish and post a formal policy for complaints relating to gender bias.*

#### b. Recommendations Regarding Race/Ethnicity

Court users most frequently recommended the following three actions for promoting racial and ethnic equality in the courts (in descending order): *Establish and post a formal policy for complaints relating to racial and/or ethnic bias; Educate judges and court employees/raise awareness of the problem; and*

---

<sup>224</sup> Question #22 stated: "Below is a list of actions that the court can take to make sure that men and women are treated equally and fairly. Please circle the three actions you think would be most effective." Question 23 was identical except that it referred to minorities and non-minorities.

<sup>225</sup> Question #22 provided the recommendations for gender; question #23 provided the recommendations with regard to race/ethnicity.

<sup>226</sup> Please note that, because respondents were asked to circle multiple responses, percentages exceed 100%. See Appendix at D 138.

*Punish/fine people who violate others' rights because of their race or ethnicity.*<sup>227</sup> See Appendix at D 138.

Minorities and non-minorities from Maine, Massachusetts, New Hampshire and Rhode Island agreed that *establishing and posting a formal policy for complaints relating to racial and/or ethnic bias* was of high priority.<sup>228</sup> However, minorities preferred *punishing/fining people who violate other's rights because of their race or ethnicity* and *developing a system to monitor court cases for bias*, while non-minorities chose *education of judges/employees* and *encouraging judges to intervene when inappropriate remarks are made* as two of their top three recommendations.

Minorities from Puerto Rico also agreed on the importance of *establishing and posting a formal policy for complaints relating to racial and/or ethnic bias*.<sup>229</sup> They also agreed with minorities from the other courts on the importance of developing a system to monitor cases for bias.<sup>230</sup> In addition, minorities from this district chose the *education of judges and employees* and *increasing the number of minority employees* as their third most popular recommendation(s) for addressing racial and/or ethnic bias.<sup>231</sup> The few non-minorities for Puerto Rico also agreed on the importance of *establishing a formal policy for complaints of bias* but were otherwise more divided on the most effective means of promoting equality between minorities and non-minorities.<sup>232</sup>

### CHAPTER 3 - COURT POLICIES AND PROCEDURES

#### I. INTRODUCTION

Some policies and procedures which apply to court employees are mandated by federal law. Others are in place at the discretion of the particular court unit.<sup>233</sup> To

---

<sup>227</sup> Please note that, because respondents were asked to rank the listed possibilities, percentages exceed 100%. See Appendix at D 138.

<sup>228</sup> Minorities from these courts chose this recommendation most frequently while non-minorities chose it second most frequently.

<sup>229</sup> Minorities from this district chose this recommendation most frequently from those intended to address racial or ethnic bias.

<sup>230</sup> This was their second most frequently chosen recommendation.

<sup>231</sup> Minorities chose these two recommendations with equal frequency.

<sup>232</sup> Three (3) non-minorities chose establishing and posting a formal policy for complaints of racial or ethnic bias; two (2) non-minorities chose punishing those who violate others' rights and developing a system to monitor cases for bias; and one (1) non-minority respondent from Puerto Rico chose increasing the number of minority employees and monitoring whether juries reflect the race and ethnicity of the parties.

<sup>233</sup> Employment responsibility within the First Circuit (as with every federal circuit) is highly decentralized, residing within 25 semi-independent units. The Court of Appeals employs about 120 people, who work at the Court's offices in the United States Courthouse in Boston (plus satellite libraries). The Court of Appeals has six operating units: The Circuit Executive's Office, the Clerk's Office, the Staff Attorneys' Office, the Library, the Bankruptcy Appellate Panel, and the Settlement Counsel's Office. The Circuit Executive,

evaluate those policies and procedures unique to certain court units in the First Circuit, in October 1997, the Task Forces administered a questionnaire to each unit regarding any additional policies and procedures that apply to employees ("Unit Head Questionnaire"). Court unit executives and managers provided copies of policies, procedures, and other personnel materials, such as employee manuals, for Task Force staff to review. Further, to study employees' reactions to the policies and procedures in place, the Employee Survey, which was distributed to all First Circuit employees, included a number of questions on these topics.

At the time of the Task Forces' study, no court policies relating to the treatment of attorneys or court users were in place. The only complaint mechanism available to these two groups related to complaints against judges.<sup>234</sup>

The Task Forces' study of policies and procedures revealed certain themes. In significant numbers, attorneys and court users recommended the development of complaint procedures, which apply to them.<sup>235</sup> See *supra* pp. 128-130, 153-154. Many employees indicated unfamiliarity with the policies and procedures that apply to them both on a national level and within their individual court units. Employees also reported a lack of confidence in the implementation of the policies and procedures. Employees recommended that they receive more information about policies and procedures that apply to them and that additional safeguards be created. See *supra* pp. 64-67.

This chapter first summarizes court policies relating to employees in place in the First Circuit at the time of the Task Forces' study. The results of research conducted by Task Forces' staff are set forth after each policy is described. This chapter then summarizes grievance and complaint procedures in place at the time of the Task Forces' study. Like court policies, a number of grievance and complaint procedures relating to employees were in place circuit-wide. Employees' reactions to the grievance and complaint procedures that apply to them are also described briefly.

---

appointed by the Judicial Council, is the First Circuit's principal administrative officer. Although the Circuit Executive provides certain administrative support to the courts within the circuit, each court and court unit operates with a significant amount of autonomy with respect to employment policies and practices.

The Districts of Massachusetts and Puerto Rico each have five operating units: the District Court, the Bankruptcy Court, Probation, Pretrial Services, and the Federal Public Defender Offices. The District of New Hampshire has four operating units: the District Court, the Bankruptcy Court, Probation, and the Federal Public Defender Office which operates out of the Boston office. The Districts of Maine and Rhode Island have three operating units: the District Court, the Bankruptcy Court, and Probation.

<sup>234</sup> See 28 U.S.C. § 372(c).

<sup>235</sup> One attorney wrote: "People who deal with the court system, lawyers and litigants alike, must be able to let people know if they have a bad experience, and a procedure must be put into place to investigate such complaints." Another wrote: "I think it is important to have some process that ensures the anonymity of the complainant, because of fear of reprisal or backlash. I would have filed complaints, but for fear of it affecting future cases."

## II. COURT POLICIES/FIRST CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY PLAN

Policy statements relating to federal court employees are embodied in the Equal Employment Opportunity (“EEO”) Plan. The Model Equal Employment Opportunity Plan (“Model EEO Plan”), adopted in 1980 and revised in 1986, prohibits discrimination in court employment and applies to all court employees and applicants for court employment, except judges.<sup>236</sup> The Model EEO Plan contains a commitment to the “national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap.” Model EEO Plan, Section I. At the time of this study, each court within the First Circuit had adopted an EEO Plan based upon the Model EEO Plan.

The Model EEO Plan requires that each court “promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion and advancement.” *Id.* When recruiting and hiring, the heads of all court support units must publicly announce all vacancies to attract qualified candidates from the relevant labor market. In addition, hiring decisions must be based solely on job-related factors. *Id.* at Section III.B. Once employed, all judges, court managers and supervisors, and heads of court support units must apply fair and equal opportunities for advancement and promotion through identification and development of the skills, abilities, and potential of each employee (where resources permit), and the provision of equal opportunities for employees to demonstrate job skills. *Id.* at Section III B. & C.<sup>237</sup>

### A. Recruitment/Hiring Within the First Circuit

#### 1. Recruitment

The EEO Policy regarding recruitment of potential employees is as follows: “Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market.” Model EEO Plan, Section IV A. Further, each court unit is obligated to prepare a report describing “efforts made to bring a fair cross section of the pool available for the position into its applicant pool, including listing all employment sources used (e.g., state employment offices,

---

<sup>236</sup> The Judicial Conference of the United States has directed that federal courts adopt a new dispute resolution procedure—known as the Federal Judiciary Model Employment Dispute Resolution Plan (Model EDR Plan)—beginning in January 1999. The Model EDR Plan, however, (discussed in greater detail in Chapter 4, *infra*), replaces only the EEO dispute resolution procedure—included in Appendix I of the Model EEO Plan. All other provisions of the Model EEO Plan remain in full effect.

<sup>237</sup> Under the Model EEO Plan procedures, each court or court unit is required to designate a coordinator, who is responsible for the day-to-day administration of the court’s program. The EEO Coordinator is responsible for collecting, analyzing, and reporting statistical data on employment practices to the Administrative Office of the United States Courts (“AO”).



schools, organizations, etc.).” Each unit is to explain the methods used to publicize vacancies. *Id.* at Section V A.

At the time of the Employee Survey, employees most frequently (41%) reported that they had learned of their current job by *word-of-mouth*.<sup>238</sup> The *newspaper* was the next most frequent source of information, with 27.5% of employees stating that they had learned of their position through the *city or local newspaper*. Twelve percent (12%) of respondents had learned of their positions through a *school placement office*. See Appendix at D 4. The high percentage of employees who reported that they learned of their job through word-of-mouth may present an issue relating to the goal of increasing diversity in the First Circuit federal courthouses. This is because an internal (and informal) job advertisement mechanism presumably largely perpetuates the current demographic make-up of the First Circuit workforce, rather than attracting new (and possibly more diverse) employees.

The issue of recruitment is central to the experiences of members of minority groups in the First Circuit courts in Maine, Massachusetts, New Hampshire and Rhode Island. Demographics illustrate very low proportions of minority employees in these districts.<sup>239</sup> Minority employees, attorneys and court users have indicated that low representation presents a barrier to their desire to do business with the courts and affects their perception of fairness in the courts. See Appendix at M 2.

Members of all three groups emphasized that the primary focus of the First Circuit’s Race & Ethnic Bias Task Force should be the employment of minorities. Attorneys, employees and court users also noted the scarcity of women in high-level positions in the circuit and in the judiciary.

For example, one employee wrote:

While I have no way of knowing whether there is bias in the hiring of court personnel, the results, i.e., the evident patterns of who actually is hired, reflect an imbalance in terms of gender, race, and ethnicity. I have no means of determining whether the results are a product of discrimination rather than history or chance: I have no information about who has applied for the jobs, but can only observe who got them. It may be that members of racial or ethnic minorities do not apply for court jobs in significant numbers, or it may be that because of past hiring practices, men and non-minorities have greater seniority and are in a better position for promotions than women and minorities. In any event, however, the disparities are striking. As for minorities, there appear to be very few in any positions, and almost

---

<sup>238</sup> Question 7 of the Employee Survey stated: “Please indicate the way(s) in which you heard about your current job. (Circle all that apply): (1) City/local newspaper; (2) Radio/TV; (3) School placement office; (4) Supervisor; (5) In-house publication; (6) Word-of-mouth; (7) Posting in the courthouse; (8) Legal periodical/journal; (9) Office of Personnel Management (OPM) Job Listing; (10) State unemployment office; (11) Employment agency; (12) Other, please specify: \_\_\_\_\_.”

<sup>239</sup> See *supra* Chapter 1.

none in management positions. I imagine that it is more likely for non-minority applicants to obtain promotions because the number of minorities in the lower-level positions are so few.

An attorney respondent wrote: "Although this survey seems well-intentioned, it overlooks the biggest problem in this area—the almost complete absence of people of color in the federal court—from the bench to the clerk's office to probation, etc. I generally feel that I am treated fairly . . . [b]ut I believe that the overwhelmingly white, non-Latino composition of the courthouse makes it an uncomfortable place for people of color."

The lack of minority employees in the courts was also discussed at the attorney focus group held in Boston.<sup>240</sup> One minority male attorney spoke about the need to create a fair opportunity for representation of African-Americans, Hispanics and other minorities in all courthouse personnel, including judges. Another minority male attorney noted that the lack of diversity in the workplace exists from the top down, "there is, today, only one African-American district court judge and no African-American courtroom employees." A female minority attorney noted that, although the First Circuit is more diverse than it was in 1981, it is still a "white courthouse."

## 2. Interview/Hiring

The EEO policy regarding hiring is as follows: "Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily." Model EEO Plan, Section IV B. When asked about the type of information obtained during their interviews, employees most frequently (85%) reported that they had been asked about their *previous job experience*.<sup>241</sup> Some respondents (15%) reported questions about their *marital status* during the interview process and 6% reported questions about their *spouse's occupation*. Further, approximately 6% reported questions about the *number of children* they had, and 2.3% reported questions about their *plans to have children*.<sup>242</sup> See Appendix at D 5.

The responses of male and female employees concerning their interview questions were not significantly different. Among women, 14.3% reported questions about their *marital status*, whereas 16.8% of men reported this question. 4.9% of women and 10.5% of men reported questions about their *spouse's occupation*. Further, 5.9% of women and 7.4% of men reported questions about

---

<sup>240</sup> The Boston attorney focus group took place on August 13, 1997 and was attended by ten Boston area attorneys who represented diverse ethnic and minority groups. See Appendix at M 2.

<sup>241</sup> Question 8 of the Employee Survey read: "During the interview process, were you asked questions about any of the following: (Circle all that apply) (1) College grades; (2) High school grades; (3) Previous job experience; (4) Marital status; (5) College major; (6) Plans to have children; (7) Number of children; (8) Spouse's education."

<sup>242</sup> These percentages exceed 100% because respondents were permitted to circle more than one response to this set of questions. See Appendix at D 5.

the *number of children* they had, and 3.1% of women and no men reported questions about their *plans to have children*. See Appendix at D 5.

When asked about the criteria they believed were used in the hiring decision, employees most frequently selected the following: *prior work experience* (86.5%); *recommendations* (64.7%); *level of education* (62.3%); and *personality* (58%).<sup>243</sup> Fewer employees believed that gender and/or race played a role in their being hired for their current position. Approximately 7% of respondents (8% of women; 4.2% of men) felt that *gender* was a factor in whether they were hired. Approximately 3.6% of employees felt that *race* played a role in their being hired. See Appendix at D 6.

The survey also sought respondents' general views regarding hiring preferences.<sup>244</sup> In response to these questions, female employees were more likely to report that hiring preferences favored men, while male employees were more likely to report that hiring preferences favored women. For example, more women (23.4%) than men (7.8%) felt that *a man is more likely to be hired than a woman if they are competing for the same job*.<sup>245</sup> Similarly, more men (22.8%) than women (8.4%) felt that *a woman is more likely to be hired than a man if they are competing for the same job*.<sup>246</sup> See Appendix at D 41.

With regard to minority hiring, minorities were more likely than non-minorities to believe they were at a disadvantage with regard to hiring. Over forty percent (41.7%) of the minorities from Maine, Massachusetts, New Hampshire and Rhode Island, agreed that *a non-minority is more likely to be hired than a minority*, where only 14.5% of non-minorities agreed with this statement. Only 8.3% of minorities agreed (54.1% disagreed) with the statement that *a minority is more likely to be*

---

<sup>243</sup> Question #9 of the survey asked: "Whether you were informed or not, what criteria do you believe were considered by the courts of the First Circuit in determining whether or not you would be hired?" Respondents were asked to "circle all that apply" from the following choices: "(1) Level of education; (2) Marital status; (3) Personal connections; (4) Seniority; (5) College major; (6) Prior work experience; (7) Schools attended; (8) Recommendations; (9) Personality; (10) Age; (11) Gender; (12) Race/Ethnicity; (13) Performance on skills test; (14) Other, please specify." Total percentages exceed 100% because respondents were permitted to circle more than one response. See Appendix at D 6.

<sup>244</sup> Question #41(e, f, g & h) asked employees whether they agreed or disagreed with the following statement(s): "A man/women/non-minority/minority is more likely to be hired than a women/man/minority/non-minority, if they are competing for the same job." For each statement, employees were provided with the following responses: "(1) strongly agree; (2) agree; (3) neutral; (4) disagree; (5) strongly disagree." For the purposes of this discussion, the respondents who indicated "strongly agree" are combined with those that indicated "agree", as are the employees who responded "disagree" and "strongly disagree."

<sup>245</sup> Most men (77.5%) disagreed with this statement, while 49.8% of women disagreed that *a man is more likely to be hired than a woman* if they are competing for the same job. See App. at D 41.

<sup>246</sup> However, a majority of women (63.7%) and men (59.8%) *disagreed* that *a woman is more likely to be hired than a man* if they are competing for the same job. See App. at D 41.

hired than a non-minority if they are competing for the same job, whereas 22.5% of non-minorities agreed (51.8% disagreed).<sup>247</sup> See App. at D 45.

Within the District of Puerto Rico, an equal number of minorities agreed (31.7%) and disagreed (31.7%) with the statement that *a non-minority is more likely to be hired than a minority*. The vast majority of non-minorities (88.9%) disagreed with this statement.<sup>248</sup> Most minorities also disagreed (54.8%) that *a minority is more likely to be hired than a non-minority*.<sup>249</sup> The majority of non-minorities (77.8%) also disagreed with this statement, and no non-minorities agreed. See App. at D 45.

## B. Promotion

The Model EEO Plan states that “each court will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.” Model EEO Plan, Section IV C. Nearly 54% of Employee Survey respondents reported that they had received a promotion within the First Circuit in the past 5 years, while 46% had not.<sup>250</sup> 16.6% of respondents reported that they had been turned down for a promotion, while 83.4% had not.<sup>251</sup> Over 23% (23.4%) of the employees who had been denied a promotion and responded to the subsequent question believed that gender, race or ethnicity played a role in their being denied the promotion—11.7% felt that gender played a role, 6.7% thought that race or ethnicity played a role, and 5% believed that both gender and race/ethnicity played a role.<sup>252</sup> See Appendix at D 15.

### 1. Race/Ethnicity

The Employee Survey asked several questions regarding opportunities for promotion and race/ethnicity.<sup>253</sup> A slim majority (54%) of respondents agreed that

---

<sup>247</sup> Please note that minority percentages reflect low frequencies. See Appendix at D 45.

<sup>248</sup> Only 11.1% of non-minorities agreed that *a non-minority is more likely to be hired than a minority*. See Appendix at D 45.

<sup>249</sup> 9.5% of minorities from this district agreed that *a minority is more likely to be hired than a non-minority*. See Appendix at D 45.

<sup>250</sup> Question 15 of the Employee Survey asked: “Have you received a promotion within the First Circuit within the past 5 years?” Responses included: “(1) Yes (if yes, how many promotions have you received \_\_\_\_\_); (2) No.”

<sup>251</sup> Question 16 of the Employee Survey asked: “Have you been turned down for a promotion within the First Circuit within the past 5 years?” Responses included: “(1) Yes (if yes, how many times have you been turned down); (2) No.”

<sup>252</sup> Question 17(b) asked: “Do you believe that gender, race or ethnicity played a role in your being denied the promotion?” Responses included: “(1) Yes, gender *alone* played a role; (2) Yes, race or ethnicity *alone* played a role; (3) Yes, both gender *and* race or ethnicity played a role; (4) Neither gender nor race or ethnicity played a role; (5) No opinion/ don’t know.”

<sup>253</sup> Question 25(j) of the Employee Survey read: “Opportunities for promotion exist equally for both minorities and non-minorities.” Responses included: “(1) I agree; minorities and non-minorities have equal opportunities; (2) I disagree; minorities have less opportunities; (3) I disagree; non-minorities have less opportunities; (4) No opinion/do not know.”

minorities and non-minorities have *equal opportunities for promotion*. Approximately 6% (6.3%) of respondents disagreed, stating that *minorities have less opportunities*; 4.4% of respondents disagreed, stating that *non-minorities have less opportunities*.<sup>254</sup> See Appendix at D 31.

Under one-third (31.8%) of the minority respondents from Maine, Massachusetts, New Hampshire and Rhode Island agreed that minorities and non-minorities have *equal opportunities for promotion*. But 18.2% of minorities from these courts responded that *minorities received less opportunities*. Among non-minority respondents from Maine, Massachusetts, New Hampshire and Rhode Island, 4.2% responded that *minorities had less opportunities* and 4.9% responded that *non-minorities have less opportunities*. In the District of Puerto Rico, an equal percentage of minorities (11.6%) and non-minorities (11.1%) indicated that *minorities had less opportunities for promotion than non-minorities*. No respondents from Puerto Rico, reported a belief that *non-minorities had less promotional opportunities than minorities*. See Appendix at D 34.

Employees were also asked whether they agreed that minorities/non-minorities have adequate promotional opportunities within the court system.<sup>255</sup> Slightly more respondents agreed that there are adequate promotional opportunities for non-minorities, 57.1%, than for minorities, 49.7%. See Appendix at D 42. From Maine, Massachusetts, New Hampshire and Rhode Island, 45.8% of minorities agreed that *adequate promotional opportunities exist for non-minorities*, while only 21.7% agreed that *adequate opportunities exist for minorities*. Non-minorities from these courts were more likely than minorities to agree that *adequate promotional opportunities exist for both minorities (51.7%) and for non-minorities (57.8%)*. In the District of Puerto Rico, 60% of minorities agreed that *adequate promotional opportunities exist for non-minorities*, and 50% agreed that *adequate promotional opportunities exist for minorities*. Seventy-five percent (75%) of non-minorities from Puerto Rico reported that *adequate promotional opportunities exist for both minorities and non-minorities*. See Appendix at D 46.

## 2. Gender

The Employee Survey also asked a series of questions regarding the effect of gender on opportunities for promotion.<sup>256</sup> A majority (64%) of employees agreed that there are *equal opportunities for promotion for men and women*. Only 11.9%

---

<sup>254</sup> The remaining 35.4% of respondents answered "no opinion/I do not know." See Appendix at D 31.

<sup>255</sup> Question #41 (k) & (l) asked whether respondents agreed or disagreed that there are adequate promotional opportunities within the court system for non-minorities/minorities. For each statement, employees were provided with the following 5 possible responses: "(1) strongly agree; (2) agree; (3) neutral; (4) disagree; (5) strongly disagree."

<sup>256</sup> Question 25(i) of the Employee Survey read: "Opportunities for promotion exist equally for both men and women." Responses included: "(1) I agree; men and women have equal opportunities; (2) I disagree; men have less opportunities; (3) I disagree; women have less opportunities; (4) No opinion/do not know."

disagreed, stating that *women have less opportunities* for promotion, and only 3.5% disagreed, stating that *men have less opportunities*. Of female employees, 14.1% responded that *women have less opportunities*, while only 1.8% responded that *men have less opportunities*. Among male employees who responded to the question, 5.6% responded that female employees have less opportunities, where 9% responded that *male employees have less opportunities*. See Appendix at D 30.

Employees were also asked whether they agreed that men/women have adequate promotional opportunities within the court system.<sup>257</sup> A majority of employees agreed that *adequate promotional opportunities exist for both male and female employees*, though more employees agreed that such opportunities exist for *men* (66.8%), than for *women* (52.7%). However, 24.2% of women who responded to this question disagreed that *adequate promotional opportunities exist for female employees*. Only 8.9% of male employees disagreed with this statement. Among men, 8.8% disagreed that *adequate promotional opportunities exist for male employees*, while 6.6% of women disagreed that such opportunities exist. See Appendix at D 42.

### C. Training

The Model EEO Plan provides that “each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross training, job restructuring, assignment, details, and outside training.” Model EEO Plan, Section IV.D. Thirteen percent (13.1%) of employee respondents reported that they had been denied job-related training that they had requested during the past five years, while 66.9% answered that they had not been denied requested training.<sup>258</sup> Over two percent (2.6%) of respondents answered that they had been denied training, but their superior had indicated that it was not appropriate. However, only 2.5% (3) of the respondents to the question attributed the denial of training to their gender alone; no employees answered that it was due to their race alone, and 2 employees (1.7%) answered that it was due to both their gender and race.<sup>259</sup> See Appendix at D 13.

---

<sup>257</sup> Question #41 (i) & (j) asked whether respondents agreed or disagreed that there are adequate promotional opportunities within the court system for women/men. For each statement, employees were provided with the following five possible responses: “(1) strongly agree; (2) agree; (3) neutral; (4) disagree; (5) strongly disagree.”

<sup>258</sup> Question #13 of the Employee Survey asked: “During the past five years, have you been denied job-related training that you requested?” Responses included: “(1) Yes; (2) Yes, but my superior said it was not appropriate for me; (3) No; and (4) Not applicable/I have never requested training.”

<sup>259</sup> Question 13 also asked: “If yes, do you believe that gender, race or ethnicity played a role in your being denied training?” Responses included: “(1) Yes, gender *alone* played a role; (2) Yes, race or ethnicity *alone* played a role; (3) Yes, both gender *and* race or ethnicity played a role; (4) Neither gender nor race or ethnicity played a role; (5) No opinion/ don’t know.”

Employees were then asked whether, during the past 5 years, they believed they had not been given information regarding job opportunities or promotion requirements that were appropriate.<sup>260</sup> Almost one quarter (22.5%) of the respondents stated that they had not been given this information, while 57.6% said they were given this information. Only a small number of employees responded that gender, race, or ethnicity played a role in their being denied information—5.5% answered that it was due to their gender alone, 1.6% answered that it was due to their race alone, and 0.8% answered that it was due to both their gender and race.<sup>261</sup> See Appendix at D 14.

#### D. Sexual Harassment Policies

The Model EEO Plan does not contain a sexual harassment policy, though courts were free to develop their own.<sup>262</sup> With the implementation of the EDR Plan,<sup>263</sup> more courts may adopt such a policy.

#### E. Federal Leave Policies

The rights of court employees to various types of leave have their source in two federal statutes, the Federal Employees Family Friendly Leave Act ("FEFFLA"),<sup>264</sup> also known as the Leave Act, and the Family and Medical Leave Act ("FMLA").<sup>265</sup> The Guide to Judiciary Policies and Procedures ("GJPP") incorporates the policies enunciated in these two Acts.<sup>266</sup> In addition, the Judicial Conference of the United States has adopted several policies relative to employee rights and benefits, such as excused absences and leave without pay.<sup>267</sup> This section summarizes provisions of statutes that provide for leave for judiciary employees. Following a discussion of

---

<sup>260</sup> Question 14 of the Employee Survey asked: "During the past five years, have you not been given information regarding job opportunities or promotion requirements that was appropriate for you?" Responses included: "(1) Yes; (2) No; (3) Not applicable."

<sup>261</sup> Question 14 also asked: "If yes, do you believe that gender, race or ethnicity played a role in your not receiving this information?" Responses included: "(1) Yes, gender *alone* played a role; (2) Yes, race or ethnicity *alone* played a role; (3) Yes, both gender *and* race or ethnicity played a role; (4) Neither gender nor race or ethnicity played a role; (5) No opinion/don't know."

<sup>262</sup> At the time this report was published, of the 17 units responding to the Unit Head Questionnaire, 10 had written sexual harassment policies, while 7 did not.

<sup>263</sup> See discussion, *infra* Chapter 4.

<sup>264</sup> 5 U.S.C. § 6101 et seq.

<sup>265</sup> 5 U.S.C. § 6381 et seq.

<sup>266</sup> See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1-2. While most court employees are covered by these laws, they currently do not apply to judges, law clerks who are specifically exempted by their appointing judge, court reporters who are not assigned to a regular tour of duty by their court, or judges' secretaries hired before September 30, 1983. See 5 U.S.C. § 2105, GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § A.

<sup>267</sup> See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, §§ N-P.

the types of leave available, Task Force findings regarding implementation and employee satisfaction are outlined. A summary of work scheduling policies and employees' reactions is then provided.

1. Leave Statutes and Policies

a. The Federal Employees Family Friendly Leave Act

The Federal Employees Family Friendly Leave Act ("FEFLA") entitles court employees to paid annual and sick leave.<sup>268</sup> Annual leave is accrued according to length of service and number of hours worked per administrative workweek.<sup>269</sup> Annual leave generally provides employees with a period of paid time off for vacation, personal use, or emergency circumstances.<sup>270</sup> Sick leave may be used by an employee for absence due to physical or mental illness, injury, pregnancy, childbirth, adoption, and medical, dental, or optical examinations and treatment.<sup>271</sup> Sick leave may also be used by an employee who is exposed to a contagious disease (as determined by the local health authority) if his or her presence at work

---

<sup>268</sup> See 5 U.S.C. §§ 6301-6312; 5 C.F.R. §§ 630.201-630.506; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, §§ G-H. Of the 17 units which responded to the Unit Head Questionnaire, 14 units stated that they have no written medical leave policy for employees other than that contained in the GJPP. Three units responded that they have written medical leave policies for employees *other than that* contained in the GJPP. However, after reviewing those policies, the Task Forces found that the policies are not dissimilar from the policies in the GJPP.

<sup>269</sup> See 5 U.S.C. § 6303; 5 C.F.R. §§ 630.202-204; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, §§ G(1)-(2). Full-time employees who have been employed for less than 3 years accrue 4 hours of annual leave per pay period, or 13 days (104 hours) per year. See 5 U.S.C. § 6303(a)(1); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § G(2)(a). Full-time employees who have been employed for between 3 and 15 years accrue 6 hours of annual leave per pay period, or 20 days (160 hours) per year. See 5 U.S.C. § 6303(a)(2); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § G(2)(a). In addition, full-time employees who have been employed for 15 years or more accrue 26 days (208 hours) per year. See 5 U.S.C. § 6303(a)(3); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § G(2)(a). See 5 U.S.C. § 6307(a); 5 C.F.R. § 630.202; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § H(2). Full-time employees accrue 4 hours of sick leave per pay period, or 13 days (104 hours) per year. See 5 U.S.C. § 6307(a); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § H(2)(a). Although annual leave may be carried over from one year to the next, normally only a maximum of 240 hours (30 days) of annual leave may be accumulated. See 5 U.S.C. § 6304(a); 5 C.F.R. § 630.304; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § G(7). There is no limit to the amount of sick leave that may be accrued and carried over to a successive year. See 5 U.S.C. § 6307(b); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 1, ch. X, subch. 1630.1, § H(7).

<sup>270</sup> See *Guide to Judiciary Policies and Procedures*, Vol. 1, Ch. X, Subch. 1630.1, § G(1).

<sup>271</sup> See 5 U.S.C. § 6307(a) and (c); 5 C.F.R. § 630.401(a)(1)-(2) and (5)-(6); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Vol. 1, Ch. X, Subch. 1630.1, Section H(1)(a), (c).



would jeopardize the health of fellow employees.<sup>272</sup> Generally, court employees are entitled to use up to 40 hours of paid sick leave per year to care for a family member<sup>273</sup> who is experiencing physical or mental illness, injury, pregnancy, childbirth, or any other condition which would justify the employee's use of sick leave if the employee had the condition.<sup>274</sup>

Although court employees are not covered by any short-term disability program, the FEFFLA provides two options for employees who have exhausted all of their available paid leave when a personal or family medical emergency arises, including a normal maternity situation. First, the FEFFLA provides for advancing annual<sup>275</sup> and sick leave.<sup>276</sup> Second, the Voluntary Leave Sharing Program was created to allow for donation of unused leave by fellow employees.<sup>277</sup>

#### i. Advancing Annual and Sick Leave

Courts and court units may grant permanent employees in advance the amount of annual leave they will earn during the leave year in which the advance is requested.<sup>278</sup> Under the FEFFLA, up to 30 days paid sick leave may be advanced to an employee for serious disability or illness, or for purposes of adoption.<sup>279</sup> The

<sup>272</sup> See 5 C.F.R. § 630.401(a)(5); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(1)(a).

<sup>273</sup> Under the FEFFLA, the term "family member" is broadly defined. It includes an employee's spouse, parents, siblings, children, including adopted children, parents in-law, children in-law, and spouses of siblings. Family members are also defined as "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." 5 C.F.R. § 630.201(b)(5), Guide to Judiciary Policies and Procedures, Volume 1, Chapter X, Subchapter 1630.1 § H(1)(b)(1)-(5).

<sup>274</sup> See 5 U.S.C. § 6307(d)(2)(A); 5 C.F.R. § 630.401(a)(3); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(1)(b). The use of sick leave to care for a family member includes medical, dental, or optical examinations and treatment. See 5 C.F.R. § 630.401(a)(3); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(1)(b). Sick leave may also be used to make funeral arrangements or attend the funeral of a family member. See 5 U.S.C. § 6307(d)(2)(B); 5 C.F.R. § 630.401(a)(4); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(1)(b). An additional 64 hours of paid sick leave may be used for these family-related purposes, provided that the affected employee retains 80 hours of accumulated sick leave. See 5 U.S.C. § 6307(d)(3)(A)(ii); 5 C.F.R. § 630.401(c); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(1)(b).

<sup>275</sup> See 5 U.S.C. § 6302(d); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section G(6).

<sup>276</sup> See 5 U.S.C. § 6307(d); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(6).

<sup>277</sup> See 5 U.S.C. §§ 6331-6340; 5 C.F.R. §§ 630.901-913; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2.

<sup>278</sup> See 5 U.S.C. § 6302(d); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section G(6)(a).

<sup>279</sup> See 5 U.S.C. § 6307(d); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1,

Guide to Judiciary Policies and Procedures limits the use of unearned sick leave to cases of serious disability or ailment.<sup>280</sup>

## ii. The Voluntary Leave Sharing Program

The FEFFLA establishes the Voluntary Leave Sharing Program, which allows a court employee who experiences a personal or family medical emergency and exhausts all of his or her available paid leave to receive donated annual leave from fellow employees.<sup>281</sup> The Voluntary Leave Sharing Program has been extended to include normal maternity situations.<sup>282</sup>

## b. The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA)<sup>283</sup> entitles federal court employees to receive up to 12 administrative workweeks of unpaid leave per year.<sup>284</sup> Under the Act, leave may be taken for the birth of a son or daughter, placement of a son or daughter with the employee through adoption or foster care,<sup>285</sup> or to address a

---

Chapter X, Subchapter 1630.1, Section H(6)(a)(1).

<sup>280</sup> Compare 5 U.S.C. § 6307(d) with GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(6)(a)(3). If a court employee separates from government service while indebted for unearned annual or sick leave, the employee must refund the amount of overpayment or the court or court unit may deduct the amount owed from the employee's last pay check. See 5 C.F.R. § 630.209(a); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section H(6)(a)(4).

<sup>281</sup> See 5 U.S.C. §§ 6331-6340; 5 C.F.R. §§ 630.901-913; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2.

<sup>282</sup> See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2, Section C(2)(f). Use of shared leave due to a personal or medical emergency requires an absence from duty of at least 24 hours, though not necessarily 24 consecutive hours. See 5 C.F.R. § 630.905(b); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2, Section C(3)(b)(2). If an employee's use of shared leave is due to death or illness of a family member, the restriction of maintaining an 80 hour sick leave balance does not apply. See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2, Section C(3)(b)(2). Inter-unit and inter-court transfers of donated leave may occur if a leave approving official determines that the needs of its employee cannot be met from within the court or court unit. See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.2, Section C(3)(d)(1)(b).

<sup>283</sup> See 5 U.S.C. §§ 6381-6387; 5 C.F.R. §§ 630.1201-1211; GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R.

<sup>284</sup> See 5 U.S.C. §§ 6382(a)(1); 5 C.F.R. §§ 630.1203(a); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R(3).

<sup>285</sup> When asked whether the unit has any written parental leave policies regarding birth of a child or adoption other than that contained in the Guide to Judiciary Policies and Procedures, of the 17 units which responded to the Unit Head Questionnaire, 13 units stated that they have no written parental leave policies regarding birth of a child or adoption other than that contained in the GJPP. Four units responded that they have written parental leave policies regarding birth of a child or adoption other than that contained in the GJPP. However, these

serious health condition of the employee or the employee's spouse,<sup>286</sup> son, daughter,<sup>287</sup> or parent.<sup>288</sup>

Court employees may elect to substitute accrued or advanced paid annual or sick leave for any part of the 12-week period of unpaid leave they are entitled to under the FMLA.<sup>289</sup> They may also be able to substitute leave made available under the

policies are not dissimilar from the policies in the GJPP.

<sup>286</sup> Under the FMLA, a "spouse" must be an individual who is a husband or wife pursuant to a marriage, including common law marriage where it is recognized, that is a legal union between one man and one woman. See 5 C.F.R. § 630.1202.

<sup>287</sup> Under the FMLA, a "spouse" must be an individual who is a husband or wife pursuant to a marriage, including common law marriage where it is recognized, that is a legal union between one man and one woman. See 5 C.F.R. § 630.1202.

<sup>288</sup> A "parent" may be biological, or may stand or may have stood in loco parentis to the employee when the employee was a child, but the term does not include parents "in law." See 5 U.S.C. § 6381; 5 C.F.R. § 630.1202. These terms are defined more expansively in the Federal Employees Family Friendly Leave Act (FEFFLA). See 5 U.S.C. § 6307(d)(1); 5 C.F.R. § 630.201. See 5 U.S.C. § 6382(a)(1)(A)-(D); 5 C.F.R. §§ 630.1203(a)(1)-(4); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R(3)(a)-(d). When asked whether a unit has any written medical leave policies covering leave to care for a parent, spouse, or child other than that contained in the Guide to Judiciary Policies and Procedures, of the 17 units which responded to the Unit Head Questionnaire, 15 units stated that they have no written medical leave policies covering leave to care for a parent, spouse, or child other than that contained in the GJPP. Two units responded that they have written medical leave policies covering leave to care for a parent, spouse, or child other than that contained in the GJPP. However, the policies are not dissimilar from the policies in the GJPP. If leave is taken due to a serious health condition, it may be taken intermittently or on a reduced leave schedule when medically necessary. See 5 U.S.C. § 6382(b)(1); 5 C.F.R. §§ 630.1204(b); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R(5)(b). When leave is taken due to the birth of a child, adoption or foster care, it may not be taken intermittently or on a reduced leave schedule unless an agreement is made between the employee and his or her employing court unit. See 5 U.S.C. § 6382(b)(1); 5 C.F.R. §§ 630.1204(a); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R(5)(a). This leave period expires 12 months after the birth of a child or the placement of a child with the employee, but may begin prior to or on the actual date of birth. See 5 U.S.C. § 6382(a)(2); 5 C.F.R. §§ 630.1203(b); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Volume 1, Chapter X, Subchapter 1630.1, Section R(3)(a). Additionally, an employee may take only the amount of leave that is necessary given the circumstances under which his or her need for family and medical leave arose. See 5 C.F.R. §§ 630.1203(b).

<sup>289</sup> The FEFFLA states that employees may substitute accrued or accumulated annual or sick leave for unpaid leave under the FMLA. See 5 U.S.C. § 6382(d). The Code of Federal Regulations reports that employees may substitute accrued or advanced annual or sick leave as well as leave made available under the Voluntary Leave Transfer Program for unpaid leave under the FMLA. 5 C.F.R. § 630.1205(b). The Guide to Judiciary Policies and Procedures is silent regarding substituted voluntary leave sharing but notes that "employee[s] may elect to substitute annual leave or sick leave (consistent with existing sick leave regulations) for any part of the 12-week leave entitlement." GUIDE TO JUDICIARY

Voluntary Leave Sharing Program.<sup>290</sup> Because a court employee is entitled to earned, advanced, or donated paid leave and a 12-week period of unpaid leave, an employee may choose consecutive periods of paid and unpaid leave to which they may be entitled.<sup>291</sup>

Individual court units may expand employee rights by adopting or retaining leave policies more generous than those provided under the FMLA, but those policies may not provide for greater amounts of paid time off than otherwise authorized by law, or grant sick leave not normally allowed by law or regulation.<sup>292</sup> Conversely, employee entitlements under the FMLA may not be restricted.<sup>293</sup>

#### c. Excused Absences and Leave Without Pay

Excused Absences<sup>294</sup> and Leave Without Pay (LWOP)<sup>295</sup> are administratively authorized absences from work. Excused absences are paid absences that are not charged to leave, and are granted for reasons such as brief absences and tardiness, blood donation, voting and voter registration, attendance at conferences and conventions, participation in a military funeral, participation in equal employment opportunity counseling or employee assistance counseling, reward for extraordinary performance, attendance at a funeral for a law enforcement officer or fire fighter killed in the line of duty, or emergency purposes.<sup>296</sup>

LWOP is an unpaid approved absence granted at the request of an employee in lieu of annual or sick leave.<sup>297</sup> Requests for LWOP are governed by the same rules as the type of leave it replaces.<sup>298</sup> When LWOP is granted for more than 30 days, at least one of the following results should be achieved: increased job ability, protection or improvement of health, retention of a desirable employee, or fostering a government program (*e.g.*, Peace Corps).<sup>299</sup>

#### d. Parental Leave

Although there is no specific parental leave policy in the Guide to Judiciary Policies and Procedures, parental leave is accommodated through the use of both

---

POLICIES AND PROCEDURES, Chapter X, Subchapter 1630.1, Section R(6).

<sup>290</sup> *See id.*

<sup>291</sup> *See* 5 C.F.R. § 630.1205(d) (“An agency may not require an employee to substitute paid leave . . . for any or all of the period of leave without pay to be taken” under the FMLA).

<sup>292</sup> *See* 5 C.F.R. § 630.1210(c); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chapter X, Subchapter 1630.1, Section R(11).

<sup>293</sup> *See* 5 U.S.C. § 6385.

<sup>294</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. X, Subch. 1630.1, § N(1). (“An excused absence is an absence from duty which is administratively authorized without loss of pay and without charge to leave. This is commonly referred to as administrative leave.”)

<sup>295</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. X, Subch. 1630.1, Section P(1).

<sup>296</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. X, Subch. 1630.1, § N(2)-(3).

<sup>297</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. X, Subch. 1630.1, Section P(1).

<sup>298</sup> *See id.*

<sup>299</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. X, Subch. 1630.1, Section P(2).

paid and unpaid leave. Court employees may use both paid and unpaid leave for purposes of childbirth, placement of a child with the employee through adoption or foster care, or care of a child who is ill or injured.<sup>300</sup> Employees may be compensated through any combination of accrued or advanced annual leave, accrued or advanced sick leave, voluntary leave sharing, or compensatory time where applicable.<sup>301</sup> Additionally, court employees may use up to 12 weeks of unpaid leave per year for family and medical reasons.<sup>302</sup>

## 2. Summary of Findings Regarding Implementation of Leave Policies

### a. Employee Awareness

A number of employees showed a lack of familiarity with their rights under the Family and Medical Leave Act. ("FMLA").<sup>303</sup> Over 20% of survey respondents indicated that they were not familiar with their rights under the FMLA.<sup>304</sup> See Appendix at D 25.

### b. Medical Leave

Over one-third (34%) of the respondents to the Employee Survey requested leave to care for a family member, and 93.7% of the employees who requested this

---

<sup>300</sup> See 5 U.S.C. § 6307(c)-(d), § 6333(b), § 6382(a)(1)(A)-(C); 5 C.F.R. § 630.401(a)(2)-(3) and (6), § 630.909(a), § 630.1203(a)(1)-(3); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chapter X, Subchapter 1630.1, Section G(1), Section H(1)(a)-(c), Section P(2)(b), Section R(3)(a)-(c), Subchapter 1630.2, Section C(2)(f). The Family and Medical Leave Act expressly provides for unpaid leave for the foster care placement of a child with an employee. See 5 U.S.C. § 6382(a)(1)(B); 5 C.F.R. § 630.1203(a)(2).

<sup>301</sup> See 5 U.S.C. § 6307(c)-(d), § 6333(b), § 6382(a)(1)(A)-(C); 5 C.F.R. § 630.401(a)(2)-(3) and (6), § 630.909(a), § 630.1203(a)(1)-(3); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chapter X, Subchapter 1550.2(3)(g), Subchapter 1630.1, Section G(1), Section H(1)(a)-(c), Section P(2)(b), Section R(3)(a)-(c), Subchapter 1630.2, Section C(2)(f).

<sup>302</sup> See 5 U.S.C. § 6382(a)(1); 5 C.F.R. 630.1203(a); GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chapter X, Subchapter 1630.1, Section R(3). Employees may elect to take both paid and unpaid leave consecutively, or substitute paid for unpaid leave. Employees taking parental leave may also receive donated leave through the Voluntary Leave Sharing Program. See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chapter X. Court employees are not covered by any short-term disability program for pregnancy and childbirth. Further, the Pregnancy Discrimination Act of 1978, codified as part of Title VII, does not apply to federal court employees. See 42 U.S.C. § 2000e(k).

<sup>303</sup> Question 22 of the Employee Survey asked: Are you familiar with your rights under the Family and Medical Leave Act? Responses included: (1) Yes; or (2) No.

<sup>304</sup> In addition, employees demonstrated a lack of familiarity with leave and flexible work schedules in written survey comments. For example, one employee stated that she was not familiar with the FMLA, and reported "I tried to find out on my own and was told from someone in Washington, DC to check with my superior / boss."

form of leave reported that it was always granted.<sup>305</sup> See Appendix at D 17, 19. Only one (1) respondent reported that she believed she was denied leave to care for a family member due to her gender, and no respondents reported that they were denied leave to care for a family member due to their race or ethnicity. See Appendix at D 23-24.

c. Parental Leave

Almost fourteen percent (13.9%) of the Employee Survey respondents reported that they had requested maternity or paternity leave. Forty-three (43) of the 51 reported requests (84.3%) were for maternity leave. See Appendix at D 17. Almost all of the 51 employees (96.1%) who requested leave reported that it was always granted.<sup>306</sup> See Appendix at D 19. No respondents reported that they believed they were denied maternity or paternity leave either due to their gender or to their race or ethnicity. See Appendix at D 23-24.

However, some employees believed that absence due to parental leave affected how they were perceived in the workplace. Seven (7) employees (4.4%) reported that they believed their chances for promotion had been limited; 11 employees (6.9%) reported that their job responsibilities had been changed or reduced; and 9 employees (5.6%) reported that they had been perceived by their supervisor or fellow employees as unreliable as a result of taking maternity or paternity leave. See Appendix at D 25.

d. Annual Leave

Eighty-seven percent (87%) of the Employee Survey respondents reported that they had requested annual leave. See Appendix at D 17. Almost 82% of the employees (81.9%) who requested annual leave reported that it was always granted. Almost 15% (14.6%) reported that annual leave was often granted.<sup>307</sup> See Appendix at D 19. Four (4) female respondents reported that they believed they were denied annual leave due to their gender. No respondents reported that they believed they were denied annual leave due to their race or ethnicity. See Appendix at D 23-24.

---

<sup>305</sup> Question 19 of the Employee Survey asked whether respondents had requested any of the following during the past 5 years: (a) leave to care for a family member; (b) maternity/paternity leave; (c) annual leave; (d) excused absence for an ethnic or religious holiday; (e) leave without pay; (f) flex-time; (g) part-time; (h) job sharing; and (i) compensatory time. Employees who indicated that they had requested one of the various forms of leave were asked how often their request was granted and were given the following possible responses: always; often; sometimes; rarely; never. Only 1.6% of those who requested leave to care for a family member reported that it was often granted; 3.1% reported that it was sometimes granted and 1.6% reported that it was never granted. See Appendix at D 19.

<sup>306</sup> Only 2% of the employees who requested parental leave reported that it was often granted and 2% reported that it was never granted. See Appendix at D 19.

<sup>307</sup> Only 2.8% of the employees who requested such leave reported that it was sometimes granted and under 1% (.3%) reported that it was rarely or never granted. See App. at D 19.

e. Excused Absences and Leave Without Pay

Only 14.2% of the respondents reported that they had requested an excused absence for an ethnic or religious holiday. *See* Appendix at D 17. Over three-quarters (75.9%) of the employees who requested an excused absence for an ethnic or religious holiday reported that it was always granted. Yet, over 9% (9.3%) reported that an excused absence for an ethnic or religious holiday was *never* granted.<sup>308</sup> *See* Appendix at D 19. One (1) non-minority female reported that she believed she was denied an excused absence due to her gender, and 1 non-minority male reported that he believed he was denied an excused absence due to his race or ethnicity. *See* Appendix at D 23-24.

Only 7.3% of the respondents reported that they had requested leave without pay. *See* Appendix at D 17. Over ninety percent (92.6%) of the employees who requested leave without pay reported that it was always granted, and only 3.7% said that it was rarely or never granted. *See* Appendix at D 19. No respondents reported that they believed they were denied leave without pay due to their gender or due to their race or ethnicity. *See* Appendix at D 23-24.

3. Work Scheduling Policies

a. Overview of Applicable Policies

In addition to incorporation of the policies set forth in the FEFFLA and the FMLA and the adoption of other leave policies, the Judicial Conference of the United States has adopted specific policies with regard to full-time work status and compensatory time,<sup>309</sup> while leaving other flexible work scheduling issues to the discretion of individual court and court unit managers.

i. Compensatory Time

Compensatory Time for Court Employees was authorized by the Judicial Conference of the United States on March 12, 1996. *See* Guide to Judiciary Policies and Procedures, Vol. 1, Chapter X, Subchapter 1550.2. This policy may be applied to all courts and court units in the First Circuit except the Federal Public Defenders Offices.<sup>310</sup> Under this discretionary policy, each court determines which court units may use compensatory time. Compensatory time allows court

---

<sup>308</sup> 7.4% of the employees who requested such leave reported that it was often granted and under 4% (3.7%) reported that it was sometimes or rarely granted. *See* Appendix at D 19.

<sup>309</sup> *See* GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Vol. 1, Chapter X, Subch. 1550.2.

<sup>310</sup> Out of the 17 units that responded to the Unit Head Questionnaire, 13 indicated that they provide compensatory time to employees. Of these 13, 11 have written policies, 1 is in the process of developing a written policy, and 1 does not have a written policy on compensatory time. 4 units do not offer compensatory time to employees.

employees to substitute one hour of overtime worked for one hour of time off. Compensatory time may only be credited for hours worked in excess of 80 hours per pay period. In addition, employees must use their accumulated compensatory time before they use any accrued annual leave. Employees must also use their compensatory time within 6 months of accrual or it will be forfeited, although individual court units may determine that a shorter time period will trigger forfeiture and may also limit the number of hours that may be accrued. Approval of the court unit executive or designee is required for use of accrued compensatory time in the same manner as use of annual leave. Each court or court unit utilizing compensatory time must have a written policy.

## ii. Flexible Scheduling

Some court units utilize flexible scheduling. In addition to compensatory time, flexible scheduling includes part-time scheduling, job sharing, flex-time, and compressed scheduling.<sup>311</sup> An employee who works fewer than 80 hours per pay period is considered a part-time employee. Job sharing occurs when two employees share the work and salary of one full-time employee. Flex-time allows an employee to vary his or her arrival and departure times without reducing the length of the workday, often requiring specified hours during which the employee is expected to be at work. Compressed scheduling is a fixed work schedule where an employee works more than 8 hours in one day or 40 hours in one week in order to receive an equivalent amount of time off on another day or in another week in the same pay period. In September 1990, the Judicial Conference set the full-time administrative work schedule at 80 hours per biweekly pay period, but did not proscribe flexible scheduling.<sup>312</sup> Additionally, the Guide to Judiciary Policies and Procedures contemplates part-time scheduling.<sup>313</sup> Although the Judicial Conference has promulgated only one specific flexible scheduling provision for inclusion in the Guide To Judiciary Policies and Procedures (compensatory time), individual courts and court units may adopt other policies and practices which allow court employees to maintain alternative work schedules.

## 4. Summary of Findings Regarding Implementation of Work Schedule Policies

### a. Flex-time/Comp-time

Both flex-time and comp-time were quite widely utilized by the respondents to the Employee Survey. Almost 60% (58.9%) of the respondents reported that their office allowed flex-time and almost half (43.1%) of those respondents reported that

---

<sup>311</sup> Of the 17 units that responded to the Unit Head Questionnaire, 13 offer flex-time, part-time and/or job sharing. 11 units said that they do not provide a compressed schedule for employees and 6 units said that they do provide a compressed schedule.

<sup>312</sup> See Guide to Judiciary Policies and Procedures, Vol. I, Chapter X, Subch. 1630.1 § (D).

<sup>313</sup> See e.g., *id.* at § (G)(2)(b)(part-time employees' accrual rate for annual leave), § (H)(1)(b), § (H)(2)(b)(part-time employees' accrual rate for sick leave).



they had requested flex-time during the past 5 years. Over half (53%) of the respondents reported that their office provided compensation time for hours worked beyond the forty-hour work week; and over half of those (52.2%) also reported that they had requested comp-time during the past 5 years. *See* Appendix at D 16-17.

Employees reported that their requests for comp-time and flex-time were usually granted—over 78% of those who had requested comp-time reported that it was always (60.5%) or often (17.9%) granted. Eighty-five percent (85%) of those who had requested flex-time reported that it was always (73.9%) or often (11.1%) granted. Just over 12% reported that comp-time was rarely (7.9%) or never (4.2%) granted. Under 10% reported that their requests for flex-time were rarely (.7%) or never (8.5%) granted.<sup>314</sup> *See* Appendix at D 20.

Three (3) respondents, 2 women and 1 man, reported that they believed they were denied comp-time due to their gender. Four (4) respondents, all of whom were women, reported that they believed they were denied flexible work schedules (flex-time) due to their gender. No respondents reported that they believed they were denied comp-time due to their race or ethnicity but two (2) respondents, 1 non-minority female and 1 minority female, reported that they believed they were denied flex-time due to their race or ethnicity. *See* Appendix at D 23-24.

#### b. Part-time/Job Sharing

Part-time employment and job sharing were far less common among First Circuit employees than comp-time and flex-time. Slightly over one-third (36%) of the respondents reported that their office allowed part-time employment. Under 20% (18.8%) of the respondents reported that their office allowed job sharing. *See* Appendix at D 16. Only 8.2% of the respondents reported that they had requested a part-time arrangement, almost all of whom (93.3%) were women. Only 6% reported that they had requested a job sharing arrangement during the past 5 years. *See* Appendix at D 17.

The majority of the few requests for these arrangements were reportedly granted—75.9% of the requests for part-time work were always granted; 57.1% of the requests for job sharing were always granted. Ten and three-tenths percent (10.3%) of the respondents reported that requests for part-time were never granted and almost 20% of those who requested job sharing reported that their requests were rarely (9.5%) or never (9.5%) granted.<sup>315</sup> *See* Appendix at D 20.

One male respondent reported that he believed he was denied a part-time work schedule due to his gender and one (1) non-minority male reported that he believed he was denied a part-time work schedule due to his race or ethnicity. One male respondent indicated that he believed he was denied job sharing as a result of his

---

<sup>314</sup> 5.9% indicated that their requests for flex-time were sometimes granted. *See* App. D 20.

<sup>315</sup> 6.9% of the respondents who had requested it reported that part-time work was often granted, and 3.4% reported that it was sometimes or rarely granted. Nineteen percent (19%) of those who requested job sharing reported that their requests were often granted; 4.8% of those who requested job sharing reported that their requests were sometimes granted. *See* Appendix at D 20.

gender, and one non-minority male reported that he believed he had been denied job sharing as a result of his race or ethnicity. *See* Appendix at D 23-24.

Seven (7) respondents (3.7%) reported that they believed their chances for promotion had been limited, as a result of their working part-time, flex-time or job sharing.<sup>316</sup> Nine (9) respondents (4.7%) reported that they believed their job responsibilities had been changed or reduced, and 6 respondents (3.2%) reported that they believed they had been perceived by their supervisor or fellow employees as unreliable as a result of working part-time, flex-time, or job sharing. *See* Appendix at D 27.

### III. COMPLAINT AND GRIEVANCE PROCEDURES

An essential component of any administrative system is an effective grievance and complaint procedure. In the First Circuit federal court system, the sole formal grievance and complaint procedure available to attorneys and court users relates to complaints against judges.<sup>317</sup> At the time of the Task Forces' study, employees could bring complaints either under the EEO Plan procedures, or under their court's own local grievance or complaint procedure.

#### *A. Summary of EEO Complaint Policy*

Under the Model EEO Plan procedures for asserting a discrimination claim, a complainant first must file a written complaint with the EEO Coordinator. Upon receiving the complaint, the EEO Coordinator must initiate informal procedures for resolving the matter. The EEO Coordinator is empowered to conduct an investigation. Following any investigation, the EEO Coordinator is to prepare a report to the parties, identifying the issues and describing his or her findings and recommendations. Formal procedures may be initiated within five (5) calendar days after receipt of the report by either the complainant or the person named in the complaint if either party objects to the outcome of the informal resolution. The Chief Judge then handles the formal complaint. The Chief Judge may conduct an additional investigation, may conduct a formal hearing, or may issue a final decision on the complaint.

#### *B. Survey Responses*

Employee Survey questions related to respondents' views of the dispute resolution procedure in place under the EEO Plan.

---

<sup>316</sup> One employee commented, "Because I work part-time, I do not get raises and promotions routinely given to others doing the same job."

<sup>317</sup> *See* 28 U.S.C. § 372(c).

## 1. Awareness

Most clerks report disseminating the EEO Plan to new hires.<sup>318</sup> However, Employee Survey results indicated some lack of awareness of EEO complaint procedures. Over 40% (44.2%) of Employee Survey respondents were not familiar at all with the court's EEO complaint procedures.<sup>319</sup> In written comments, one employee stated that: "I have never seen an EEO plan for this district or circuit and would be surprised if any court employee has." Another stated: "I know what I would do/to whom I would speak but do not know about official channels (if any)." Only 17.4% of employees were *very* familiar with the EEO procedures, and 38.4% were *somewhat* familiar with the procedures. In addition, nearly 63% (62.7%) did not know whether their court unit had grievance procedures other than the EEO plan. See Appendix at D 37.

Respondents were also asked whether there was a person or office to which they could bring a complaint of gender or racial/ethnic bias or sexual harassment.<sup>320</sup> Nearly 34% (33.6%) of employees responded that there was not a person or office to whom to bring a complaint of racial or ethnic bias, or that they were unaware of such a person or office. Thirty percent (30%) of respondents did not know of someone to whom a gender bias complaint could be brought, and approximately 26% did not know of someone to whom a complaint of sexual harassment could be brought (or that there was no such person). See Appendix at D 35-36.

## 2. Retaliation

In survey responses, First Circuit employees expressed fear of being retaliated against for bringing valid complaints of discrimination. Although few employees reported having filed complaints of bias or harassment, a number of employees indicated that they had refrained from filing such claims, although they believed them justified.<sup>321</sup> Thirty-four (34) (8.9%) employees chose *not* to file a complaint

---

<sup>318</sup> In fact, results of the Unit Head Questionnaire indicate that 14 of the 17 units responding have an employee orientation program. One of the remaining 3 units was in the process of developing such a program.

<sup>319</sup> Question 29 asked: "How familiar are you with the court's Equal Employment Opportunity complaint procedures?" Possible responses included: "very familiar; somewhat familiar; not familiar at all."

<sup>320</sup> Question 26 asked: "If you had a complaint or problem with your job arising from what you perceive as race or ethnic bias, is there a person or office to whom you could go with the problem or complaint?" Possible answers were "(1) Yes; (2) No; and (3) Don't know." Question 27 asked: "If you had a complaint or problem with your job arising from what you perceive as gender bias, is there a person or office to whom you could go with the problem or complaint?" Possible answers were "(1) Yes; (2) No; and (3) Don't know." Question 28 asked: "If you had a complaint or problem with your job arising from what you perceive as sexual harassment, is there a person or office to whom you could go with the problem or complaint?" Possible answers were "(1) Yes; (2) No; and (3) Don't know."

<sup>321</sup> Question 35 of the Employee Survey asked whether, within the past 5 years, an employee had chosen NOT to file a job related complaint about gender bias, sexual harassment and/or

of gender bias, 16 employees chose not to bring a sexual harassment claim, and 8 chose not to bring a complaint of racial/ethnic bias. *See* Appendix at D 38.

Those employees who answered that they had chosen not to file a job-related complaint of gender bias, race bias or sexual harassment were asked what factors entered into their decision not to file a complaint.<sup>322</sup> The two most often cited reasons motivating respondents' decisions not to file a complaint were: (1) concern about possible negative effect on future advancement; and (2) fear of immediate repercussion. *See* Appendix at D 39.

In addition, selected employee comments reflected general concern about possible retaliation. When asked whether she had filed a complaint of job-related sexual harassment during the past 5 years, one respondent stated, "No. [I] do not believe anyone would care. [I] would get back-lash fallout." Another respondent wrote: "I feel that I was penalized for exercising the option of complaint." A third respondent wrote: "Overall, things are pretty fair in my office. There are times, however, when I am reluctant to bring up an issue, complain to my supervisor or give my opinion on something, for fear of repercussions."

### 3. EEO Coordinator

Some employees expressed concerns about the person to whom complaints of discrimination or harassment were to be brought under the Model EEO procedures. Under the Model EEO Plan, each court is instructed to select one Equal Employment Opportunity Coordinator ("EEO Coordinator"). This EEO Coordinator performs a wide variety of functions, including investigating formal complaints and issuing findings and recommendations in the individual case. Under the Model EEO Plan, courts were not obligated to name an Alternate EEO Coordinator to whom complaints could be brought.<sup>323</sup> If, for instance, the EEO

---

race or ethnic bias, although s/he believed such claim was justified? Response choices were the following: (1) Yes, involving gender bias (if yes \_\_\_\_ times); (2) Yes, involving sexual harassment (if yes \_\_\_\_ times); (3) Yes, involving race or ethnic bias (if yes \_\_\_\_ times); and (4) No. The 34 people who did not file a gender bias complaint reported experiencing a problem an average of 2.1 times. The 16 people who did not file a sexual harassment complaint had reported a problem an average of 3.2 times. The 8 people who did not file a racial or ethnic bias complaint reported a problem an average of 3.6 times. *See* App at D 38.

<sup>322</sup> Employees who answered "yes" in Question 35 were asked in Question 36: "Did any of the following enter into your decision not to file a complaint (circle all that apply): (1) Concerned about a possible negative effect on future advancement; (2) Feared immediate repercussion; (3) Unfamiliarity with EEO complaint procedures; (4) Perceived EEO complaint procedures as burdensome; (5) Perceived EEO complaint process as not neutral or objective; (6) Felt that an EEO complaint would not resolve problem satisfactorily; (7) I thought EEO would ignore my complaint; (8) Chose to handle the matter myself; (9) Problem was an isolated incident and not significant; (10) Feared lack of confidentiality; and (11) Other, specify."

<sup>323</sup> According to responses to the Unit Head Questionnaire, 11 of the 17 units indicated that someone was either formally or informally designated to handle employee grievances in the event that the EEO Coordinator is unavailable or the subject of the complaint.

Coordinator was named in the complaint or directly involved in the complaint, the Model EEO Plan provides that the EEO Coordinator, "promptly transmit the complaint to the Chief Judge or a designee who will appoint another person to perform the functions of the EEO Coordinator with respect to the complaint in question." Judicial Conference EEO Model Plan, Appendix I, IV. A.

According to Employee Survey results, nearly 22% (21.8%) of those individuals who chose not to file a complaint of gender bias, race bias or sexual harassment, did not do so because the EEO coordinator was the source of the complaint.<sup>324</sup> See Appendix at D 39. In response to two questions of the Employee Survey,<sup>325</sup> which ask whether there was a person or office to whom an employee could go with a problem of race/ethnic bias or gender bias, one employee responded, "but the person to whom we'd go is the greatest offender in this regard!" Some employees expressed a desire that the EEO Coordinator not be a unit executive or person in authority. For example, one respondent wrote:

The EEO person should not be the agency head. Many complaints are never brought because of who it must be brought to. That person controls your job, your chances for promotion, and your overall financial security.

#### 4. Confidentiality

In survey responses, employees expressed a lack of faith in the confidentiality of First Circuit dispute resolution procedures. The action most often selected by court employees to ensure equal treatment was to "make employees aware that discussions with an EEO representative regarding instances of bias are held in the strictest of confidence."<sup>326</sup> See Appendix at D 52. Further, a reason employees

---

<sup>324</sup> Question 37 of the Employee Survey asked: "Did you forego filing a gender bias, sexual harassment and/or race or ethnicity based complaint because the person you would need to file it with was the source of the complaint?"

<sup>325</sup> Question 26 asked: "If you had a complaint or problem with your job arising from what you perceive as race or ethnic bias, is there a person or office to whom you could go with the problem or complaint?" Possible answers were "(1) Yes; (2) No; and (3) Don't know." Question 27 asked: "If you had a complaint or problem with your job arising from what you perceive gender bias, is there a person or office to whom you could go with the problem or complaint?" Possible answers were "(1) Yes; (2) No; and (3) Don't know."

<sup>326</sup> Question 44 of the Survey asked: "Below is a possible list of actions that the court can take to make sure that men and women are treated equally and fairly. Please circle the three actions that you think would be most effective: (a) Punish people who violate each other's rights because of their gender; (b) Develop a circuit-wide policy concerning sexual harassment and/or gender bias complaints and circulate policy to all First Circuit employees; (c) Develop formal grievance procedure for claims of sexual harassment and/or gender bias; (d) Develop educational programs and/or sensitivity training regarding sexual harassment; (e) Educate court unit heads and encourage them to report occurrences of sexual harassment and/or gender bias; (f) Stress that retaliation is prohibited against employees who assert claims of sexual harassment and/or gender bias; (g) Make employees aware that they may discuss instances of sexual harassment and/or gender bias with an EEO representative in strictest confidence; (h) Educate judges, managers, and court personnel; and (i) Other: \_\_\_\_"

frequently cited for not filing a complaint of gender bias, racial bias or sexual harassment was "fear of lack of confidentiality." See Appendix at D 39.

In Employee Survey comments, several employees discussed their concern regarding lack of confidentiality in the dispute resolution process. One employee stated, "I have felt since coming to work for the judiciary that if an inappropriate thing happened to you it is certainly best for you to overlook it because there is no confidential recourse available to you, and if there was, you would be up against one of the most powerful professions in the country to stand up against." Another employee stated, "Personally, I could never discuss instances of improprieties with an in-house EEO representative without fear of the information being shared with others."

#### CHAPTER 4—SUMMARY OF REMEDIATION

This chapter sets forth remedial measures which are suggested by the results of the Gender, Race & Ethnic Bias Task Forces' study. Some of these steps have already been taken, others are currently in progress and still others are planned for the future. The remediation process, however, will continue to develop over time. Upon issuance of this Report, suggestions and comments regarding remediation are most welcome.

The remedial measures outlined below are meant to respond to the three primary issues identified through the Task Forces' study: the demographics of the court environment; the issues of incivility and lack of awareness of offensive behavior (whether resulting from bias or not); the lack of knowledge of and the lack of faith in the existing policies and procedures and the need for additional policies and procedures.

---

Question 45 of the Employee Survey asked: "Below is a possible list of actions that the court can take to make sure that minorities and non-minorities are treated equally and fairly. Please circle the three actions that you think would be most effective: (a) Punish people who violate other's rights because of their race and/or ethnicity; (b) Develop a circuit-wide policy concerning racial and/or ethnic bias complaints and circulate policy to all First Circuit employees; (c) Develop formal grievance procedure for claims of racial and/or ethnic bias; (d) Develop educational programs and/or diversity training regarding racial and/or ethnic bias; (e) Educate court unit heads and encourage them to report occurrences of racial and/or ethnic bias; (f) Stress that retaliation is prohibited against employees who assert claims of racial and/or ethnic bias; (g) Make employees aware that they may discuss instances of racial and/or ethnic bias with an EEO representative in strictest confidence; (h) Educate judges, managers, and court personnel; and (i) Other: \_\_\_\_\_."

## I. GENERAL

*A. Dissemination of the Report*

This Report should be disseminated to court employees, judges, and attorneys who practice in the First Circuit courts to enhance awareness of issues raised and to invite comments to the proposed remedial measures. In addition, we recommend that copies of this Report be distributed to all bar associations in the First Circuit for their review and comments and to solicit their participation in the implementation of remedial measures. Finally, a summary of this Report should be made available to court users at each clerk's office.

*B. Encouraging the Presence of Women and Minorities in the Courts*

Employees, attorneys and court users have all suggested that the court environment would improve if women and members of minority groups were present in the courts in greater numbers.

Efforts should be made to attract minority candidates to the courts. Job advertisements should be more widely circulated, particularly in publications directed to members of minority groups and women. Even in those states with very low minority populations, national recruitment efforts can be mounted. Private corporations in this region have begun to develop methods of attracting qualified minority candidates, which may be emulated in the federal court system. Efforts should also be made to ensure that women occupy more managerial positions in the courts.

To enhance the perception of fairness among attorneys and others who use the courts, it is important to work in cooperation with state and local bar associations. In particular, there are numerous minority and women's bar groups with which educational and information-sharing sessions can be planned.

*C. Education and Resource Library*

The Circuit Executive's Office should maintain a library of training materials, presentations, and resources on gender fairness issues, racial and ethnic fairness issues and civility available for use by the courts for speeches, seminars and workshops. It should also provide notice of training opportunities for judges, unit heads and employees, including programs provided by the Federal Judicial Center and the Administrative Office. Judges should be encouraged to include topics of gender fairness, racial and ethnic fairness and civility in fulfilling their responsibilities under Canon 4 of the Code of Conduct for United States Judges to speak, write, lecture, teach and participate in activities concerning the law and administration of justice, as well as to include these topics in Judicial Conference programs.

#### *D. Education Programs for the Judiciary*

Many respondents to each of the three surveys distributed recommended that education programs be designed for the judiciary to heighten awareness of issues relating to gender, racial and ethnic bias as well as issues of general incivility. Such sessions should be designed in conjunction with state and local bar associations and should include attorneys' views on topics such as judicial intervention and the role of the judge in setting the tone for courtroom conduct.

### II. ATTORNEYS

The lack of civility in the litigation process has been identified as a problem in all circuits and interferes with effective case management.<sup>327</sup> The way in which judges, attorneys, and court employees conduct themselves in the litigation process affects how the public—litigants, witnesses, jurors, and observers—views the court system. Consequently, we recommend a general policy statement relating to attorney conduct. In addition, in order to address issues relating to gender, race or ethnicity, we also recommend that each District Court and the Court of Appeals explore the possibility of a local rule governing biased behavior.

#### *A. Policy Statement*

We recommend that the Judicial Council establish a policy statement about the conduct of federal court litigation, such as the following:

In all First Circuit courts, the litigation process, although adversarial in nature, should be nondiscriminatory and professional. All participants should be accorded fair, equal, and respectful treatment. Concerns about unfair treatment during the conduct of litigation should be addressed locally. Each court should assist in resolution of concerns relating to unprofessional conduct.

#### *B. Local Rule*

During the course of the Task Forces' study, attorneys commented on the lack of enforcement mechanisms to prevent improper behavior—both in court proceedings and outside.<sup>328</sup> Attorney conduct may also be regulated through local court rules.

---

<sup>327</sup> This is an issue which has been addressed quite extensively by some courts. For example, the 7<sup>th</sup> Circuit appointed a committee on civility which issued its final report in June 1992. FINAL REPORT OF THE COMMITTEE ON CIVILITY OF THE SEVENTH FEDERAL JUDICIAL CIRCUIT, 143 F.R.D. 441 (1993). The committee noted that some courts have adopted civility codes and proposed its own standards for professional conduct. *Id.* at 448. The committee's interim report provides a bibliography of bar associations that have adopted civility codes. *See id.* at 420.

<sup>328</sup> In fact, in a written survey comment—representative of many others—an attorney respondent noted:

The courts must do something to prevent attorneys from treating other attorneys unfairly because of race, ethnic background or gender. There is simply no process or system in



Each District Court and the Court of Appeals has the authority to promulgate local rules to govern the practice of law by attorneys admitted to practice within it. *See* 28 U.S.C. § 2071; Fed. R. Civ. P. 83; F.R.A.P. 47. At least seven federal districts have prohibited conduct by attorneys deemed to be biased or discriminatory.<sup>329</sup> *See, e.g.,* Local Rules of the United States District Court of the District of Arizona, Rule 1.20, Prohibition of Bias (1994); Local Rules of the United States District Court of the Southern District of California, Rule 83.5 (1994); Local Rules of the United States District Court for the District of Idaho, General Order No. 112 (1995).

### C. *Informal Grievance/Complaint Procedures*

Many attorneys and court users suggested the implementation of informal complaint procedures so they might bring instances of bias or incivility to the attention of the court without initiating a formal complaint procedure. We recommend that the Circuit Executive's Office evaluate the existence and effectiveness of such procedures in other courts. The Circuit Executive's conclusions should be conveyed to the courts of this circuit so they may assess the viability of such a procedure in their courts.

### D. *Seminars/Training*

In order to increase awareness of bias and civility issues, we recommend symposia or seminars conducted in conjunction with state and local bar associations. Many respondents to the attorney survey recommended continuing legal education

---

place to prevent or punish abuses; attorneys know that their conduct during litigation is hardly scrutinized and that they will never pay a price for it in court. Judges can't be mediators in personality clashes between counsel, but counsel should be aware that the courts have a zero tolerance policy regarding discrimination and that judges will not be reluctant to address concerns regarding discrimination which are raised by counsel.

<sup>329</sup> In addition, some federal districts, including Massachusetts and Rhode Island, apply the rules of the corresponding state court to behavior in the federal district court. For example, the local rules for the District of Massachusetts provide that a violation of the "rules concerning the practice of law in the Commonwealth of Massachusetts shall constitute misconduct and be grounds for discipline." Local Rules of the United States District Court for the District of Massachusetts, Rule 83.6(4)(B). In turn, the Rules of the Supreme Judicial Court of Massachusetts prohibit "conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation." Rules of the Supreme Judicial Court of Massachusetts, Rule 3:07, DR 7-106 (1992). The local rules of the District of Rhode Island have a similar provision, Rule 4(d), and the Rules of the Rhode Island Supreme Court, provide that "it is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice, including, but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers and others based on race, nationality or sex." Rhode Island Supreme Court, Rule 8.4(d) (1995).

programs for attorneys who practice in the First Circuit regarding gender, racial and ethnic bias in the courts. The Circuit Executive's Office should work with all First Circuit Clerks' Offices and state and local bar associations to create such programs.

### III. EMPLOYEES

#### A. *Model Personnel Policy Guide*

The Judicial Council should develop and promulgate for adoption by the courts a model Personnel Policy Guide to cover court policy on personnel matters, including family leave, flex-time, part-time, job sharing, dispute resolution procedures, grievance procedures for complaints not covered under the EEO/EDR Plans, and identifies points of contact in each unit for assistance. This guide will summarize the existing rights of all federal court employees. The guide should also describe the dispute resolution procedures under the Model EDR Plan and identify each court's EDR Coordinator. It will benefit the courts to have a model personnel guide that individual court units can tailor to ensure all employees know the internal rules, their rights and responsibilities, and whom to contact for information. The Circuit Executive's Office has volunteered to review existing policy guides and to prepare a model guide for future review by the Judicial Council.

#### B. *Model EEO/EDR Plan*

The Federal Judiciary Model Employment Dispute Resolution Plan ("Model EDR Plan"), approved by the Judicial Conference in March 1997, replaces the dispute resolution procedures included in Appendix I of the Model EEO Plan.<sup>330</sup> The Model EDR was developed in response to the Congressional Accountability Act ("CAA"), which applies eleven federal employment laws to the legislative branch of the federal government. See 2 U.S.C. § 1301 et seq. (1995).<sup>331</sup> The

<sup>330</sup> However, the remaining provisions of the Model EEO Plan which deal with equal opportunity in recruitment, hiring, promotion and advancement of employees remain in place and are further discussed in Ch. 3 of this Report. These EEO provisions are set forth in Ch. II of the First Circuit Consolidated Model Plan, entitled "Equal Employment Opportunity and Anti-Discrimination Rights."

<sup>331</sup> The *Congressional Accountability Act* ("CAA") was enacted January 23, 1995. See 2 U.S.C. s 1301 et seq. (1995). Under the CAA, the substantive protections of the following eleven federal statutes apply to legislative branch employees: (1) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); (2) The Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); (3) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.); (4) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); (5) The Family and Medical Leave Act of 1993 (5 U.S.C. ss 6381-6387); (6) Ch. 43 (relating to veterans' employment and reemployment) of Title 38 of the United States Code; (7) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); (8) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.); (9) The Employee

Judicial Conference adopted policies and procedures that it believes are comparable to those provided to legislative employees under the CAA.<sup>332</sup>

The Model EDR Plan covers circuit, district, magistrate and bankruptcy judges and their chambers staffs, unit heads and their staffs, circuit executives and their staffs, bankruptcy administrators and their staffs, and federal public defenders, probation and pretrial services and their staffs. This Plan sets out new procedures for addressing discrimination, including sexual harassment, beginning with counseling and culminating in Judicial Council review.

Each court in the First Circuit is empowered to adopt the Model EDR Plan to which it may make modifications. Each court's plan must be approved by the Judicial Council of the circuit. Based upon the results of this study, we have made suggestions outlined below, which courts may use in modifying their plan.

### 1. Simplification of Complaint Procedures

Court EDR Plans should be easily understandable and should be easily accessible. The Plans should engender a sense of confidence among employees that their concerns will be seriously considered; will remain confidential; and will result in appropriate remediation.

### 2. Sexual Harassment Definition

The Model EDR Plan includes a provision that its dispute resolution procedures may be used for claims of sexual harassment. However, the Model does not define or provide examples of sexual harassment. We suggest that each Plan include a definition of sexual harassment.

### 3. EDR Coordinator

The Model EDR Plan contemplates that each court select an EDR coordinator. Comments from First Circuit employees, during the course of this study, indicated some reluctance to file a complaint under the EEO plan, either because the EEO

---

Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.); (10) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.); and (11) Ch. 71 (relating to Federal Service labor-management relations) of Title 5 of the United States Code. Under the CAA, legislative branch employees are provided with remedies and procedures that are similarly available directly under each of the enumerated statutes, except that the authority of the Equal Employment Opportunity Commission is exercised by a Congressional officer.

<sup>332</sup> See *Study of Judicial Branch Coverage Pursuant to the Congressional Accountability Act of 1995* (Judicial Conference of the United States, December 1996), at 15 ("The Judicial Conference is developing a plan to provide the rights, protections and remedies similar to those provided under the CAA."); Memorandum dated May 8, 1997 from Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, to All United States Judges (explaining Judicial Council approval of report to Congress in response to the Congressional Accountability Act).

coordinator was the individual against whom the complaint would have been brought or because the employee was uncomfortable dealing with the EEO coordinator.<sup>333</sup> Other circuits resolved this problem under the EDR Plan by selecting two EDR coordinators and giving employees the choice of bringing their complaint to one or the other. We propose that each court's EDR Plan provide for the selection of two EDR coordinators, of different sexes, from different court units within each court so that employees may choose between them. Also in response to employee comments, we suggest that no more than one of the two EDR coordinators be a unit executive.

#### 4. Prohibition of Retaliation

Court EDR plans should prohibit retaliation by the person alleged to have violated rights under the plan or by the employing office. Employee Survey results showed a reluctance to bring employment discrimination claims because of a fear of retaliation.<sup>334</sup> The Model EEO Plan includes a prohibition of retaliation as well.

#### C. *Sexual Harassment Policy/Anti-Discrimination Policy*

Each court should establish a sexual harassment policy, which emphasizes the importance of proscribing sexual harassment and promotes educational efforts to prevent sexual harassment. Similarly, the goal of reducing racial and ethnic bias could be best promoted through courts' emphasis of the existence and importance of their anti-discrimination policy.

#### D. *Training and Education*

##### 1. Workplace Opportunities

Court employees expressed some concerns about the dissemination of information on vacancies and promotional opportunities and the lack of training opportunities. In order to ensure that all personnel have the opportunity to compete for positions and advance into management or supervisory positions, standardized procedures should be established to publicize these opportunities. At a minimum, these procedures should include posting vacancies in the clerks' offices and on intranet web pages for the First Circuit. Judges, unit heads and supervisors should be discouraged from filling positions without giving notice of the opportunity. The Circuit Executive's Office should be responsible for making units aware of training opportunities on hiring and promotional practices, management and leadership, and interpersonal skills and civility. The Circuit Executive's Office should also assist units in making such training available.

---

<sup>333</sup> See *supra* Chapter 3 at pp. 176-177.

<sup>334</sup> See *supra* Chapter 3 at pp. 175-176.

## 2. Job Training/Career Counseling

In written comments relating to job training and promotions, some employees indicated that, while they did not perceive employment issues relating to their gender, race and ethnicity, they did experience a lack of direction in their career path generally. The Circuit Executive's Office should research the possibility of developing a training program for unit heads which focuses on employee development.

## 3. EEO/EDR Training

In addition to a Personnel Policy Guide, employees should also receive training in EEO/EDR Procedures and in any local grievance and complaint procedures that apply to them. The AO and FJC offer training on EEO/EDR. Individual courts should work with these organizations to develop training appropriate for their employees.

## 4. Sexual Harassment Awareness Training

The Task Forces began implementing circuit-wide sexual harassment training, for both staff and managers, in January of 1997. The trainings were conducted by First Circuit employees who were taught by FJC staff to conduct the training. Each training session lasted 3-4 hours, and addressed topics such as the definition of sexual harassment, possible examples of harassment and hypothetical workplace scenarios. At the end of each training, the employees were asked for feedback regarding the program. All employee comments regarding the training were carefully reviewed and are often used to clarify and improve future trainings.<sup>335</sup> We suggest that this training be conducted on a regular basis for all employees who have not yet attended a session and for all new employees.

---

<sup>335</sup> In general, feedback regarding the sexual harassment awareness trainings has been very positive. Employees were asked about the sexual harassment training in the Employee Survey. Question 38 asked: Have you ever received sexual harassment awareness training? Possible answers were (1) yes; and (2) no. Question 40 asked: If you attended sexual harassment training, do you feel that any of your attitudes or beliefs have changed as a result of the training? Possible responses included: (1) Yes, I am more sensitive now to the issues surrounding sexual harassment; (2) Yes, I am more doubtful about issues surrounding sexual harassment; (3) No, but I became more aware about the feelings of others; (4) No, the training did not really change my attitude or beliefs; (5) Other, please specify \_\_\_\_\_; and (6) No opinion/don't know. Slightly over half (51.2%) (195) of the respondents to the question reported receiving sexual harassment awareness training. See Appendix at D 40. Almost half (47.4%) (92) of those who had received the training reported that they were more sensitive to the issues surrounding sexual harassment. See Appendix at D 40.