



REPORT OF THE
SELECT COMMITTEE ON GENDER EQUALITY
OF THE
MARYLAND JUDICIARY
AND THE
MARYLAND STATE BAR ASSOCIATION
October, 1992

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ON
GENDER EQUALITY

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Select Committee on Gender
Equality (Md.)
~~Report of the Select~~
Committee on Gender



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Courts of Appeal Building
Annapolis, Maryland 21401
(410) 974-2353

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To: The Honorable Robert C. Murphy, Chief Judge, Court of Appeals of Maryland
Roger A. Perkins, Esquire, President, Maryland State Bar Association

The Select Committee on Gender Equality began its fourth year in August 1992. As Chairperson I felt it would be beneficial to evaluate what has been accomplished. With the dedicated support of the members of this Committee the following report has been compiled. As you will see, many objectives set forth in the Gender Bias in the Courts report of May 1989 have been met. Many recommendations, however, still need to be addressed or completed and the job of achieving gender equality in the Courts continues to evolve.

The members of the Select Committee welcome your comments and suggestions as well as those from any person who reads this report. Following this letter are the names, business addresses and telephone numbers for all members and staff of the Select Committee on Gender Equality who may be contacted to help provide the education and support that is so necessary to achieve gender equality. The Select Committee hopes this report will be broadly circulated and reviewed.

Lynne A. Battaglia
Chairperson

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(410) 974-2353

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Select Committee on Gender Equality
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Maryland Judiciary
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Chair: Lynne A. Battaglia, Esquire
Sen. Barbara A. Mikulski's Office
Hart Senate Office Building, Room 320
Washington, DC 20510
(202) 224-8868

Members:

Neil E. Axel, Esquire
10320 Little Patuxent Pkwy.
Suite 311
Columbia, Maryland 21044
(410) 964-9300

Hon. Rosalyn B. Bell
Judicial Center, 3rd Floor
50 Courthouse Square
Rockville, Maryland 20850
(301) 217-7210

Susan C. Elgin, Esquire
307 West Allegheny Avenue
Towson, Maryland 21204
(410) 825-0716

Robert L. Frank, Esquire
10451 Mill Run Circle, Suite 340
Owings Mills, Maryland 21117
(410) 363-0040

Hon. Barbara K. Howe
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
(410) 887-6507

Eric M. Johnson, Esquire
50 Courthouse Square
P. O. Box 151
Rockville, Maryland 20850
(301) 217-7301

Linda H. Lamone, Esquire
1807 Viewtop Court
Annapolis, Maryland 21401
(410) 757-1942

Albert J. Matricciani, Jr., Esquire
Whiteford, Taylor & Preston
7 St. Paul Street, Suite 1400
Baltimore, Maryland 21202
(410) 347-8700

Hon. Keith E. Mathews
Borgerding Dist. Court Building
5800 Wabash Avenue
Baltimore, Maryland 21215
(410) 764-8700

Hon. James S. McAuliffe
Judicial Center
50 Courthouse Square
Rockville, Maryland 20850
(301) 217-7620

M. Peter Moser, Esquire
Piper and Marbury
36 South Charles Street, 8th Floor
Baltimore, Maryland 21201
(410) 539-2530

Hon. Theresa A. Nolan
District Courthouse
Room 173B, Bourne Wing
Upper Marlboro, Maryland 20772
(301) 952-4020

Hon. John L. Norton, III
P.O. Box 547
County Office Building
Cambridge, Maryland 21613

Hon. Lawrence F. Rodowsky
620 Clarence Mitchell Courthouse
100 North Calvert Street
Baltimore, Maryland 21202
(410) 333-4374

Hon. David Ross
561 Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202
(410) 396-5132

Nancy L. Slepicka, Esquire
10210 Greenbelt Road, Suite 900
Lanham, Maryland 20706
(301) 794-6900

Hon. Kathleen M. Sweeney
Borgerding Dist. Court Building
5800 Wabash Avenue
Baltimore, Maryland 21215
(410) 764-8700

Hon. Robert F. Sweeney
Courts of Appeal Building
3rd Floor
Annapolis, Maryland 21401
(410) 974-2412

Hon. Raymond G. Thieme, Jr.
Courthouse
Annapolis, Maryland 21401
(410) 222-1290

Pamela J. White, Esquire
Ober, Kaler, Grimes & Shriver
120 East Baltimore Street
Baltimore, Maryland 21202-1643
(410) 685-1120, ext. 208

Staff of the Select Committee:

Ms. Deborah A. Unitus
Administrative Office of the Courts
Courts of Appeal Building
Annapolis, Maryland 21401
(410) 974-2353

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I. INTRODUCTION

In May 1989, the report Gender Bias in the Courts was released by the Special Joint Committee on Gender Bias in the Courts of Maryland, and will be referred to as the "1989 Report." It was the culmination of a two year investigation by the Special Joint Committee -- a joint effort of the Judiciary and the attorneys of Maryland. The 1989 Report defined gender bias as it affects the judicial system to include four aspects:

- (1) when people are denied rights or burdened with responsibilities solely on the basis of gender;
- (2) when people are subjected to stereotypes about the proper behavior of men and women which ignore their individual situations;
- (3) when people are treated differently on the basis of gender in situations where gender should make no difference; and
- (4) when men or women as a group are subjected to a legal rule, policy or practice which produces worse results for them than for the other group.

The Special Joint Committee concluded that gender bias does exist in Maryland Courts, and that it affects participants in and decisions made throughout the judicial process. The 309 page report addressed gender bias in the following areas:

Domestic Violence
Child Custody and Visitation
Child Support
Alimony, Property Disposition, and Litigation
Court Treatment of Personnel
Selection of Judges
Women in the Courtroom: Treatment of Women
Parties, Witnesses, Jurors, and Lawyers

For each substantive area, the 1989 Report detailed the findings and set forth recommendations for the Courts, Legislature, Bar Associations and other relevant participants in the particular substantive area. In addition to setting forth many area-specific recommendations, the report identifies four which cover all substantive areas and are

essential to gender-neutrality in the judicial system in Maryland. These four recommendations are:

1. **Formation of Committee: Education on Gender Issues: Investigate Complaints**
A permanent joint committee of the bench and bar should be appointed to encourage, monitor, evaluate, and report on efforts undertaken to carry out the recommendations of this [1989] Report relating to litigants, witnesses, jurors, and lawyers. This committee should serve as an advisory body to the continuing education efforts recommended in the [1989] Report.

This committee also should receive and investigate complaints when a judge or lawyer subverts the goal of gender-neutrality. Separate bench and bar subcommittees of this subcommittee should focus on issues particularly pertinent to each group.
2. **Education on family-law**
A study commission on equity in family law should be appointed to conduct a study and report to the bench and bar on whether laws and practices pertaining to the family and family-type relationships result in fair and equitable treatment to all the people affected by the proceedings.
3. **Judicial Conduct**
The Maryland Code of Judicial Conduct (Rule 1231 of the Maryland Rules of Procedure) and the Code of Conduct for Masters, Examiners, Auditors, Referees, and District Court Commissioners (Rule 1232 of the Maryland Rules of Procedure) should be amended to provide explicit direction to all members of the bench and similar offices that gender bias is a form of partiality which is beneath the ethical standards appropriate for the judiciary.
4. **Court employees**
A permanent joint committee of judges and court personnel from all levels and geographic areas of court, should be appointed to encourage, monitor, evaluate, and report on the efforts undertaken to carry out the recommendations of this [1989] Report relating to court employees.

The Select Committee on Gender Equality, the "Select Committee", was formed to meet the first recommendation. This report marks the third anniversary of the Select Committee on Gender Equality. At its first meeting on July 25, 1989, Chief Judge Murphy described the purpose of the Select Committee as follows:

- (1) In consultation with the Maryland Institute for Continuing Professional Education for Lawyers, Inc. (MICPEL) and the Judicial Institute of Maryland, to assist in the development and scheduling of educational programs for members of the bench and bar assigned to educate attorneys and judges of the means by which gender bias may be eliminated in the Maryland legal system.
- (2) To monitor and report on the progress in achieving gender equality in the Maryland legal system.

- (3) To monitor and make periodic reports on the status of implementation or recommendations of the Special Joint Committee on Gender Bias in the Courts.
- (4) To make periodic reports to the Chief Judge of The Court of Appeals of Maryland and the President of the Maryland State Bar Association on the work of the Committee.

The Select Committee has made significant progress to achieve these purposes and to implement the recommendations of the 1989 Report. This report reflects the progress made in the past three years as well as the immediate goals for the next year (1992-1993) and long range goals thereafter.

II. EDUCATION ON GENDER EQUALITY ISSUES

A. Facilitators' Program - District and Circuit Court Judges' Educational Programs

Twenty one members were appointed to the Select Committee on Gender Equality when it was formed in June 1989: ten judges, ten attorneys and a chairperson. The newly constituted Select Committee chose as its first priority the education of the bench. To that end, the Select Committee selected the areas of domestic violence and courtroom demeanor as most in need of attention. The Select Committee concluded that the best way to reach the judges in this diverse state was through regional discussions at bench meetings led by judges and attorneys who would be trained as facilitators.

Utilizing a portion of a grant from the State Justice Institute through the Women Judges' Fund for Justice, 25 judges and lawyers, including Select Committee members and specially invited participants, spent two days in November 1989 preparing themselves, in a Facilitators' Program, to conduct meetings with the Circuit Court and District Court judges in the various regions in Maryland. The 25 participants were placed in teams of three or four, to attend bench meetings to stimulate debate and discussion on the judge's role in domestic violence and courtroom demeanor. The purpose of the Facilitators' Program was to learn through participation, using the 1989 Report as a resource.

A two day conference, held to train the "teachers' in the Facilitators' Program, began with a questionnaire on domestic violence and courtroom demeanor. To stimulate debate, the group turned its attention to certain pertinent issues, i.e., belonging to or attending functions of clubs with discriminatory practices. The participants focused on group participation techniques, identification of difficult problems of attitudinal and behavioral change, the process of developing a plan for presentation, and major components of an action plan. Presentations by Dr. Gordon Zimmerman of the University of Nevada at Reno were similarly aimed at learning by doing and utilizing the techniques being taught. Groups of three or four facilitators then met to plan their presentations to the bench. On the second day of the conference, each group gave a short segment of the presentation they proposed to make to their groups of judges, with other participants in the conference acting as "judges". In each case, the presentation was followed with a critique, including suggestions on how to make the approach more effective. The conference ended with a summation followed by enthusiastic review of the participants.

Teams of judges, attorneys and the Select Committee staff attended bench meetings across the State on the following dates:

December 1989 - 5th Judicial Circuit (Anne Arundel, Carroll and Howard Counties)

February 1990 - Baltimore City, Anne Arundel and Montgomery County District Courts, Montgomery County Circuit Court, 7th Judicial Circuit (Calvert, Charles, St. Mary's and Prince George's Counties)

March 1990 - Prince George's County District Court, 8th Judicial Circuit (Baltimore City)

June 1990 - Howard, Carroll, Harford and Baltimore County District Courts

September 1990 - 3rd Judicial Circuit (Baltimore and Harford Counties), Washington and Frederick Counties Circuit and District Court Judges

October 1990 - 1st and 2nd Circuits (Dorchester, Somerset, Wicomico, Worcester, Caroline, Cecil, Kent, Queen Anne's and Talbot Counties) and District Courts.

B. The Judicial Institute of Maryland

At the suggestion of the Select Committee on Gender Equality, the Board of Directors of the Judicial Institute asked the Institute instructors to integrate gender fairness issues into the judicial education courses offered to Maryland judges and masters.

The Judicial Institute of Maryland currently offers approximately 20 judicial education programs a year to the Maryland judiciary. Each judicial officer is asked to select any combination of courses totaling two days. Members of the teaching faculty include judges, attorneys, law school professors, physicians, and other professionals.

In the experience of the Select Committee, attempts to cover gender bias concerns in one program are not successful and do not substitute for integrating gender issues throughout the judicial curriculum. The Select Committee worked with the Judicial Institute to achieve this integration.

A particularly helpful way of examining gender issues in the judicial curriculum is found in the book, Promoting Gender Fairness Through Judicial Education: A Guide to the Issues and Resources, by Lynn Hecht Schafran, Esq. This book provides a range of substantive and procedural manifestations of gender bias problems in the courts which judicial education should address. It also suggests ways in which gender bias issues can be incorporated into education programs and provides references. This document is consulted by both staff and faculty in program planning.

Since 1989, the Judicial Institute of Maryland has included gender issues in the following programs:

- Specialty Topics in Addiction
- The Right to Forego Treatment
- Marital Property
- Mental Health Issues affecting Maryland Courts
- Contempt
- Judging Through the Looking Glass of Literature
- Fairness in the Courtroom
- Demeanor and Efficiency in the Courtroom
- The Use of Experts in Disputed Custody Cases

Expert Testimony in Juvenile and Domestic Court
Handling the Chronic Youthful Offender
Emergency Ex-Parte Orders
Alternative Dispute Resolution
Race and the Criminal Process
Employment Law

In addition, during the five-day New Trial Judge Orientation program that is held once a year for all judges appointed to the bench during the previous year, one section addresses the domestic violence petition. Included in the program binder is the publication prepared by the Select Committee: "What Can Judges Do to Ensure Equality for Women and Men in the Courts." A copy is included as Appendix A to this Report.

Plans for 1993 Judicial Institute courses are being formulated now. Both the Board of Directors and the staff of the Institute will continue to work with the teaching faculty to include gender fairness issues throughout the curriculum. Their efforts will be reviewed by the Select Committee.

C. District Court Commissioners' Educational Programs

The first chapter of the 1989 Report deals extensively with the topic of domestic violence. One of the specific recommendations made in the 1989 Report is that the District Court Commissioners, among others, be familiarized with the nature of domestic violence, the characteristics of domestic violence victims and offenders, and the impact of adult domestic violence on children in the home. As a result of that recommendation, the Education Committee of the District Court of Maryland included a segment on domestic violence in their 1990 Commissioner Education Conference. Four separate conferences lasting a day and a half were held. Every District Court Commissioner in office at the time attended one of the four. The conferences were held on September 13-14, September 20-21, September 27-28, and October 4-5, in Annapolis.

At the conference, members of the Select Committee on Gender Equality presented a skit showing a Commissioner who was sensitive to women and to domestic violence issues and another who was not. Each scenario presented a confused and uninformed woman who was seeking a warrant. One Commissioner helped the woman understand the

process and provided her with additional information (e.g., the availability of the civil Protection from Domestic Violence Order and community resources); the other treated the woman's complaint as frivolous.

Following the skit, the Select Committee members generated a spirited discussion among the Commissioners on the issues. As a result of the discussion, it became apparent that the Commissioners would welcome a comprehensive, county-by-county, resource brochure which they could provide to the victims appearing before them. A member of the Committee developed the information and provided it to the District Court, which in turn had the brochures printed and distributed to each Commissioner in the State. A sample copy of the brochure is included as Appendix B to this report.

D. Sexual Harassment

Greater awareness of unacceptable behavior constituting sexual harassment by the Judiciary, attorneys, court personnel and the public at large will promote gender equality. One result of the Select Committee's educational programs was the recognition that both bench and bar would benefit from additional programs focusing on the particular problems of sexual harassment in the legal work place. The following listed programs and seminar subjects have been well received by attorneys and judicial officers:

April, 1991: "Safe Sex and the Legal Profession: How to Deal With Gender Bias, Whatever Your Sex", presented at the 1991 Bench-Bar Conference of the Bar Association of Baltimore City and the Young Lawyers' Section, with WJZ-TV.

June, 1991: "Sex, Laws and Videotape", a videotape and panel program addressing gender bias concerns of legal employers in and outside of the courthouse, developed by the Gender Bias Committee of the Bar Association of Baltimore City and initially presented with the Select Committee at the annual MSBA meeting in Ocean City, Maryland.

December, 1991: "Sexual Harassment Cases", a MICPEL program for Maryland practitioners focusing on the investigation, case preparation, and trial of a sexual harassment claim by a female attorney against her law firm employer.

January, 1992: "Sexual Harassment Vignettes", a videotape produced by the Administrative Office of the Courts and funded by the Maryland State Bar Association for circuit court clerks' training. Also included was a small group discussion problem based on one of the vignettes.

March, 1992: "Sexual Harassment Concerns in the Law Business", a program identifying such concerns to the Maryland Association of Legal Administrators.

June, 1992: "Sex in the Courthouse, Sexual Harassment in the Law Business", a program identifying difficulties of sexual harassment in the practice of law, jointly presented by the Select Committee with the MSBA Labor Law Section at the MSBA Annual Meeting in Ocean City.

Presently, the Select Committee is working with the National Judicial College to develop a video on teaching techniques to include gender fairness issues in judicial educational programs.

E. Professionalism

There is a trend, if it is not too optimistic to term it as such, toward attorneys and judges examining how they treat one another as professionals. Included in this examination is the treatment of gender issues, as demonstrated gender bias is an egregious form of unprofessional conduct. A significant accomplishment in this area is the introduction in May 1992 of a mandatory professionalism course for new admittees to the Maryland Bar. The Select Committee was instrumental in having this course established and in assuring that the teaching staff (which is appointed by the Maryland State Bar and approved by the Court of Appeals) is equally apportioned between men and women. The curriculum was developed and future course content will be expanded to address the impact of gender bias in the legal profession.

Following is a listing of the accomplishments in the professionalism area in Maryland.

February 1990: "Gender Bias in Maryland's Courts: The Next Step", an ABA program done with Lynn Hecht Schafran, Esquire at the Mid-year Meeting for the

Member Support Network and Young Lawyers Division, concerning the study and implementation of the 1989 Report.

Spring 1990: Women's Bar Association Resource Survey published concerning alternative work arrangements by legal employers, as well as leave policies.

April 1990: "You be the Judge II: The Application Process", a program and reception, hosted by the Women's Bar Association of Maryland, for members of Maryland's Judicial Nominating Commissions, to address the appointment process and the general role of women in the judicial application process.

June 1990: Testimony before the Judiciary Committee of the United States Senate, for the Women's Bar Association of Maryland and the Maryland Coalition for Open Doors, to support that Committee's resolution relating to the propriety of Federal Judicial and Department of Justice appointments of individuals belonging to exclusionary, discriminatory private clubs.

March 1991: "Current Developments in Continuing Legal Education: Professionalism and Gender Bias", presentation to law students at the University of Baltimore School of Law, one of a continuing series of programs presented or sponsored by the Women's Bar Association and/or the Women's Law Center addressing the unprofessional impact of gender bias in the courts and in the practice of law.

April 1991: Women's Bar Association(s) and other organizations (Macht Foundation and Maryland Bar Foundation) with the Administrative Office of the Courts funded a 30 minute videotape, "In Her Own Image: Women in Law - A Maryland Perspective". The Administrative Office of the Courts in cooperation with Maryland Public Television produced this video highlighting the "contributions, past, present and future of women in the legal profession." It was directed to high school students with inclusion of a discussion guide.

February 1992: "Sex in the Courtroom: Practical Tips to Avoid Gender Bias", a program by the Women's Bar Association with the Select Committee at a meeting of the Maryland Trial Lawyers' Association, at Baltimore.

March, 1992: "Creating a Responsive Judiciary: The Role of Race and Gender Bias From Judicial Selection to Judicial Decision Making", by the Women's Law Center and the Alliance of Black Women Attorneys.

III. COMPLAINT PROCESS

The 1989 Report also mandated the Select Committee to "receive and investigate complaints when a judge or lawyer subverts the goal of gender-neutrality".

A. The Struggle to Handle Complaints of Gender Bias

In its initial meeting, the Select Committee began to struggle with whether and how to deal with "gender bias" complaints. In 1989, the Select Committee heard complaints involving judicial delays, the absence of women judges, inconsistency of treatment of litigants in domestic proceedings, and the need for pro bono legal representation in domestic violence cases. As a result, the Select Committee recommended that its members, as well as clerks of the courts, officers of geographic and specialty bar associations and specific personnel of the Administrative Office of the Courts, be designated and charged with referring reports and needs for representation to alternative legal service organizations.

In 1990, the Select Committee studied complaints involving the judicial process. The clerks of court were to receive incoming complaints, and in turn forwarded them to the Administrative Judge who was delegated as the responding official. The Select Committee discovered, however, that complainants were reluctant to use this process.

The Select Committee continued to review the process of complaint resolution and its role in the process. In March of 1992, the Committee assumed a more active role; it agreed to receive complaints, participate in their resolution, and, when appropriate, to make referrals to the Attorney Grievance Commission and the Commission on Judicial Disabilities.

After extensive study and debate, an expanded Complaints Subcommittee of the Select Committee has been established and a new complaint process adopted.

B. Complaint Process

The Select Committee staff requests that complaints be made in writing. Once the complaint is received, it is sent to the Chair of the Complaints Subcommittee. The Chair will either forward the complaint to a member of the Subcommittee for investigation or will reach a decision without investigation. A letter is then sent to the complainant from the Subcommittee Chair. A copy of the same letter with the complaint attached is sent to the assigned Subcommittee member with a request from the Chair to investigate and report back with recommendations in 30 days. A copy of the complaint process is included as Appendix C of this Report.

IV. EDUCATION IN FAMILY LAW ISSUES

The second recommendation in the conclusion of the 1989 Report called for the Select Committee to study laws and practices pertaining to family and family-type relationships to determine whether all persons affected by the process were treated fairly and equitably.

A. Education in the Courts

Obviously, many of the areas, events and accomplishments referred to in this report under I. EDUCATION ON GENDER ISSUES include education on family law issues. Indeed one of the initial stated goals of the Select Committee was education of gender fairness in the area of domestic violence - a significant family law substantive area.

In November 1990, Maryland was selected as the first state in the country to hold a pilot judicial education program on spousal support and child custody/visitation issues in the Circuit Courts for Maryland. Because these issues are so important, funding for this program was appropriated by the General Assembly of Maryland, the State Justice Institute and the Maryland Judiciary. The planning committee for the program consisted of judges, academicians, and judicial educators. Both circuit court judges and domestic relations masters were invited to attend. In the program, judges and masters were combined into

small groups for the day. Circuit Court judges were selected primarily as facilitators of discussion and problem solving. The program participants gave it excellent evaluations.

B. Education of the Bar

The Select Committee continues to participate with MICPEL to educate lawyers in the family law area. Significantly, through the efforts of members of the Select Committee, in January 1992 the Maryland Board of Law Examiners announced that family law would be added as a bar examination subject on which candidates to the Maryland Bar would be tested beginning July 1993.

C. Legislative Activities

In assuring that the laws in Maryland result in fair and equitable treatment of all people in family law matters, the Select Committee must go beyond the Courts and to the Maryland General Assembly where the laws are made. The Select Committee spent its first year primarily focused on education in the Courts and there was little activity in the 1990 General Assembly. For the 1991 and 1992 sessions, the Select Committee chose to support several bills in the Maryland General Assembly.

Retroactive Awards for Child Support

The Select Committee supported bills (Senate Bill 436 in 1991 and Senate Bill 257 in 1992) which would have created a presumption that child support awards are to be retroactive to the date of filing of a pleading requesting the child support. A recommendation of the 1989 Report called for legislation which "makes child support awards retroactive to the date of the filing of the motion, unless that would be unconscionable". The Special Joint Committee found that the procedure of awarding and enforcing child support can be an area where gender bias affects the outcome of cases, because, while nearly all of the payees are women, nearly all of the payors are men who are noncustodial parents. The period of delay between the filing of a motion for child support and the occurrence of the pendente lite hearing on the motion ranged from six to eight weeks in some counties to "many months" in others. Witnesses who testified before the Special Joint Committee agree that, no matter what the delay period, support retroactive to

the date of the motion for support is rarely or never granted. The net result is that the custodial parent is left to be the sole support of the child during the time she is waiting for the hearing, and she cannot look forward to reimbursement for any of her expenses on behalf of the child during that period.

A system which delays child support hearings and denies the custodial parent retroactive support for the period of the delay discriminates against women because, as custodial parents in the majority of cases, they are left to provide for the child alone out of their own resources during the pre-hearing period. As a result, the pre-hearing period often leaves the custodial mother in debt. She receives no assistance from the father for repayment through the child support system, even though a portion of the child's expenses are his responsibility. Further, the mother's pre-hearing impoverishment may induce her into settling with the father for an amount of child support which is lower than she would be awarded by a court, simply because she cannot afford to wait for a court hearing. Her continued impoverishment also gives the father a reason to further delay the hearing, because he can use her household's reduced circumstances as evidence of their child's reduced needs. The unfairness is further compounded by the fact that women generally earn only a fraction of a dollar earned by men.

Retroactive Awards of Alimony

The Select Committee supported bills (Senate Bill 438 in 1991 and Senate Bill 258 in 1992) that would have created a presumption that alimony awards are to be retroactive for similar reasons. The specific recommendation of the 1989 Report was for legislation which "makes alimony retroactive to the date of the motion unless that would be unconscionable".

Under Maryland law, a court is empowered to award alimony pendente lite. That award is to provide the economically-dependent spouse with some resources during the course of the litigation. The law also provides for either indefinite alimony or for an award for a limited period of time during which the economically-dependent spouse is provided with the opportunity to obtain rehabilitative education and training. In either case, the economically-dependent spouse, like the custodial parent, is often forced to rely solely on their own resources, including loans, during the pendency of the hearing pendente lite. Furthermore, the Special Joint Committee found that pendente lite awards are governed by the "sentiment" that the dependent spouse should have "just enough to get by on". Once

the dependant spouse has reduced her lifestyle to one she can afford on her pendente lite award, her spouse will contend that she "needs" no more for the later award, and often he will prevail. This reality, coupled with the fact that alimony pendente lite or alimony is rarely, if ever, awarded retroactively to the date of the filing of the motion, leaves the economically-dependent spouse at a severe and unfair disadvantage. Lack of retroactivity is often justified by the notion that the economically-independent spouse will start out in arrears. That is true, but the financially-dependent spouse is by the very nature of it already in arrears. Furthermore, it puts a premium on delay and over-lawyering.

Unfortunately, these bills for retroactivity in child support and alimony awards and for child support beyond age 18 were not enacted in either 1991 or 1992 legislative sessions. The Select Committee will continue its efforts along with other interested organizations to advocate their passage.

Child Support Beyond Age 18

The Select Committee advocated the passage in 1991 of Senate Bill 437, which would have made child support available until emancipation or age 21, whichever occurs first. In 1992, the Select Committee supported Senate Bill 259, to extend child support beyond age 18 if the child was still in high school.

Under Maryland law, both parents are responsible for providing for the support of their children. The controlling factors in determining child support are the needs of the children and the financial abilities of the parents. The duty to provide for the child is apportioned according to the ability of each parent to pay. Under existing law, the legal duty of the noncustodial parent ends when the child reaches the age of 18. Nevertheless, the custodial parent often does provide for expenses of the child beyond that age for a variety of reasons, one of which being that the child is still in high school or is pursuing additional educational training. The Bill would have granted the courts the discretion to take into consideration the needs of the children and to apportion the expenses for these needs fairly between the custodial and noncustodial parents. This legislation was not enacted.

Battered Spouse Syndrome

In addition to the above, the 1989 Report called for the legislative acceptance of the Battered Spouse Syndrome. At the 1991 session, the Maryland General Assembly enacted House Bill 49 which statutorily recognizes the existence of the syndrome. Several members of the Committee worked with the other groups involved to secure passage of the legislation.

Domestic Violence Law

The 1992 session of the General Assembly was successful in two other areas of interest to the Select Committee. The first, and most significant, was the passage of Senate Bill 282 revising the Protection from Domestic Violence Law. This Bill expands the persons eligible for relief from abuse to include cohabitants and former spouses. The Bill also eliminates the requirement that the parties be living together at the time of the act of abuse in order for relief to be granted, except in the case of an order to vacate the home. The Bill expands the definition of "abuse," the types of relief that the court may grant in a protective order, the penalties for violations of an order, and allows the immediate assessment of maintenance, i.e., financial assistance to the economically dependent party. Finally, the Bill extends the maximum duration of a temporary ex parte order from 5 to 7 days and the maximum duration of a protective order from 30 to 200 days.

The other area of legislation enacted deals with the continuation of health insurance in cases of divorce. House Bill 97 and Senate Bill 68 clarify that a court may allocate between the parties in a divorce proceeding any additional costs of providing hospital, medical, or surgical benefits under a group contract.

D. Other Statewide Activities

In April 1990, the Select Committee voted to urge the Governor to support the implementation of another recommendation of the 1989 Report -- the creation of a task force to examine the current system of family law. The Governor's Task Force on Family Law was created in January 1991, and has been studying four areas of the system: (1) reformation of the laws of the grounds for divorce; (2) economic aspects of divorce (child support, spousal support, and property distribution); (3) custody and access to children;

and (4) family court and family services. The Governor's Task Force held several public hearings and issued a January 1992, Interim Report.

In addition, a joint project of the Maryland Legal Services Corporation and the University of Baltimore School of Law also began in 1990 to conduct a state-wide study of the family legal needs of low income persons. To implement the study, an Advisory Council was created and chaired by Attorney General J. Joseph Curran, Jr. The Advisory Council coordinated its work with the efforts of the Governor's Task Force on Family Law and in some areas built on the work done by the Special Joint Committee on Gender Bias as documented in the 1989 Report. The areas examined by the Advisory Council included (1) civil remedies for domestic violence; (2) paternity, support, custody and visitation; (3) court access for poor persons; and (4) a unified family court system. The Report of the Council was issued in March, 1992, and is entitled "Increasing Access to Justice for Maryland's Families".

Certain members of the Select Committee participated at various levels on the Task Force on Family Law and the Advisory Council to insure any recommendations from those groups are consistent with the recommendations of the 1989 Report.

V. JUDICIARY - SELECTION AND CODE OF CONDUCT

The third recommendation of the 1989 Report's conclusion concerned amending the Maryland Code of Judicial Conduct to provide explicit direction that gender bias is a form of partiality beneath ethical standards appropriate for the judiciary.

A. Judicial Selection

A necessary step in approaching gender neutrality on the bench is fairness in the judicial selection process. At the time that the 1989 Report was issued, only 9% of the judges in the State of Maryland were women. At the circuit court level, 19 jurisdictions had never had a woman judge, while at the District Court level, 17 counties had never experienced the appointment of a woman to the bench.

Testimony adduced at the Special Joint Committee's hearings led to findings that there were too few women lawyers elevated to the bench. Female candidates during the selection process are subjected to different standards, asked irrelevant questions about family responsibilities, and subjected to stereotypical expectations about appropriate professional experiences, stature and demeanor. The Special Joint Committee found that some women lawyers had been denied equal opportunity for judicial appointment because an informal quota system resulted in token appointments. In addition, some male lawyers were antagonistic to the efforts of women candidates to be elevated to the bench. As a result of these findings, the Special Joint Committee issued recommendations for bar associations, for court administration and for judicial nominating commissions, attempting to address the inequalities then prevalent in the judicial selection process.

Following the issuance of the 1989 Report, a number of bar associations appointed their own committees on gender equality at the local level, while the Maryland State Bar Association continued its involvement with the present Select Committee on Gender Equality. Women lawyers have become much more attuned to the need to be involved in judicial selections at all stages of the process and to establish new standards for judicial candidates which assess their sensitivity to significant gender issues. The Women's Bar Association and the Women's Law Center have become very active in the judicial selection process.

As a result of the work of the Gender Bias Committee of the Bar Association of Baltimore City, a series of questions were developed for prospective judges concerning their membership in private clubs which discriminate against persons on the basis of race, sex, religion or national origin and which assess the candidates' sensitivity to societal discrimination against women and minorities and sexual harassment. Other inquiries include whether a judge has an obligation to intervene in incidents of discrimination or debasing behavior against women or minority members in the courtroom or in chambers and whether a complaint on the basis of racial, sexual, national origin or religious discrimination has ever been filed against the candidate or their law firm or any other organization in which they held a position of control. Finally, there is a question as to whether or not the candidate had read the report of the Maryland Special Joint Committee on Gender Bias in the Courts, the 1989 Report.

The Select Committee has attempted to incorporate those questions in the materials provided to the judicial nominating commissions through the personal data questionnaire completed by all judicial applicants. The committee is working with the Administrative Office of the Courts, with the approval of Chief Judge Murphy of the Maryland Court of Appeals, to incorporate directly in the personal data questionnaire inquiries concerning a candidate's membership during the past five (5) years in discriminatory private clubs and inquiries concerning claims of discrimination against the candidate within the past (5) years. Additionally, the questions relating to societal discrimination, sexual harassment and the obligation of judges to intervene in incidents of discrimination have been recommended for inclusion in the materials provided to nominating commission members as suggested areas of inquiry during the judicial interview process.

Currently, the Administrative Office of the Courts is amending and reissuing these materials to judicial nominating commissions. It is the goal of the Select Committee not only to include these important areas of inquiry in the application and interview materials, but also to work with the Administrative Office to address significant gender issues in its orientation program for nominating commission members in the future.

B. Code of Judicial Conduct

As a follow up to the recommendation of the Special Joint Committee that the Code of Judicial Conduct be amended to remind judges that gender bias is a form of partiality beneath the ethical standards appropriate to the judiciary, the Select Committee considered proposals included in the Revised Code of Judicial Conduct adopted by the ABA in 1990. Included in Appendix D to this Report are proposed revisions to the Maryland Code of Judicial Conduct that the Select Committee recommended be adopted as a part of Rule 1231 by the Maryland Court of Appeals.

The Maryland Judicial Ethics Committee and the Maryland Judicial Conference both have approved these revisions, which now are being considered by the Court of Appeals. Action is expected in the fall of 1992. The Select Committee will continue to press for adoption of the proposals.

These revisions include the adoption of new Section 2C (prohibiting a judge's membership in any organization that practices invidious discrimination on the basis of

race, sex, religion or national origin) and most of the accompanying 1990 ABA Code Commentary.

The proposal also would add Sections 3B(5) and 3B(6) of the 1990 ABA Code to the Maryland Code of Judicial Conduct as Sections 3A(9) and 3A(10) along with the accompanying Commentary from 1990 ABA Code. These changes would serve as a reminder that judges should perform judicial duties without bias or prejudice "based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status." The changes should require similar constraints by court personnel subject to the judges' direction and control, as well as by lawyers in proceedings before them.

VI. COURTWATCH: DETERMINING IF GENDER BIAS STILL EXISTS IN MARYLAND'S COURTS

During the week of April 6-10, 1992, the Gender Bias Committee of the Women's Bar Association of Maryland (WBA) conducted a Courtwatch to determine if gender bias continues to exist in the courts of Maryland. The Courtwatch was undertaken by the WBA as a follow up to the 1989 Report by the Special Joint Committee on Gender Bias in the Courts. The Special Joint Committee's Report had concluded that gender bias had a major and negative impact on the judicial system in Maryland.

The WBA's Courtwatch was created in an effort to assess whether the educational efforts that have been undertaken within the State since the publication of the 1989 Report have been successful in diminishing or eliminating incidents of gender bias in the courts of Maryland. During the Courtwatch week, trained volunteer observers were present in the courtroom of each available District Court judge, Circuit Court judge and master to observe an entire day's proceedings.

The scope of the Courtwatch was unprecedented. Although other organizations outside of Maryland have undertaken similar projects, this was the first Courtwatch which included each available trial judge and master across the entire state. By organizing the Courtwatch in this manner, the WBA was able to obtain a "snapshot" view of the Maryland Judiciary. The 374 volunteer observers, through whose eyes and ears the "snapshot" was

obtained, were a diverse group which included: men and women, attorneys and lay people, and students and retirees. Some of the organizations whose members participated in the Courtwatch include the League of Women Voters, the American Association of University Women, the House of Ruth, Alternative Directions, Inc., the Sexual Assault and Domestic Violence Center, the Asian Women's Self Help Association and the various county Commissions for Women. Paralegal students from Villa Julie College and Anne Arundel Community College also participated as did undergraduate students from Goucher College and Frostburg State College.

In an effort to ensure consistency, each volunteer was given identical materials. Approximately two weeks before the scheduled observation date, each observer received a packet containing a copy of the WBA Courtwatch Training Manual, as well as copies of the observations forms. The Training Manual was designed for use by both attorney and lay people. In addition to instructions about how to fill out the observation forms, the Training Manual also contained an overview of the structure of the Maryland court system, tips on courtroom etiquette, and a glossary of legal terms.

There were two types of observation forms: A Courtroom Form and a Case Form. Each observer filled out one Courtroom Form for each day of observation. The Courtroom Form sought demographic information (sex, ethnicity and approximate age) about the observer, the judge/master and the courtroom personnel. The Case Form, however, sought information about each matter heard in the courtroom on the observation day. As a result, most observers filled out more than one Case Form. A sample of the Courtwatch Courtroom Form is included in Appendix E and the Case Form is included in Appendix F.

The information gathered by the volunteers and reported on the Courtroom Forms and the Case Forms will be analyzed by the WBA and the information they contain will be summarized and discussed in a report which will be issued near the end of 1992.

VII. WHERE DO WE GO FROM HERE?: RECOMMENDATIONS

This review illustrates that substantial progress has been made on the first three recommendations in the conclusion of the 1989 Report. Work will continue on ongoing projects and new ones will be undertaken.

Education on Gender Issues

Professionalism Course: The Select Committee will continue to cooperate and monitor the curriculum of the required Professionalism course for all new bar admittees which will include written materials and presentations that reflect gender equality.

Judge's Benchbook: Efforts will be undertaken by the Select Committee to include a definition of gender bias in the next edition of the Maryland Trial Judges' Benchbook, along with appropriate materials concisely demonstrating examples of gender bias.

Participation at the Annual Local Bar President's Meeting: Members of the Select Committee will contact the MSBA Special Committee on Local Bar Liaison to include a presentation on gender bias issues to local bar Presidents at their annual meeting.

Publication: The Select Committee shall explore new ways to disseminate information on gender bias in legal publications, ie. The Daily Record, Bar Bulletin.

MICPEL: Efforts on the part of members of the Select Committee shall continue to have MICPEL provide courses on gender bias and to include a fair balance of men and women presenters in their other courses.

Complaint Investigation

Gender Bias in the Courtroom. In implementing the complaint procedure, the Select Committee will make all of the various disciplinary committees and commissions aware of the procedure and request that all complaints alleging gender bias be forwarded to the Select Committee. The Select Committee should review the complaints, investigate to

the extent necessary, and respond accordingly to the complaining party as well as the party subject to the complaint.

Courtwatch: The Select Committee would support a second Courtwatch program without advance notice to the Court.

Education in Family Law Issues

Domestic Violence Law: In light of recent changes in Maryland's domestic violence law, and the bar's interest in becoming familiar with the new domestic violence law and procedure, the Select Committee will attempt to work with MICPEL to augment their current curriculum to include materials and lectures on avoiding or overcoming gender bias in the handling of domestic violence cases. In addition, the Select Committee will participate with the various organizations working on the implementation of the new domestic violence law. Several members of the Select Committee will serve as liaison to the Special Ad Hoc Committee to Implement Maryland's New Domestic Violence Law. As educational programs are organized across the State, Select Committee members will participate.

Legislative Subcommittee: Three to five members of the Select Committee will be appointed to the Legislative Subcommittee before the General Assembly convenes. This subcommittee will review all bills on family law issues and select those for support or opposition by the Select Committee.

Family Law Issues: The Committee shall establish a liaison with the Advisory Council on Family Legal Needs of Low Income Persons and the Governor's Task Force on Family Law and shall monitor their work so that gender equality issues are addressed correctly in their recommendations.

Judicial Selection and Code of Conduct

Judicial Nominating Commissions and Judicial Applications: If not already in place, The Select Committee will seek adoption of guidelines and/or sample questions for judicial applicants in all judicial circuits by the various Judicial Nominating Commissions.

Judicial Code of Conduct: The Select Committee will do everything in its means to assure adoption of the proposed revisions concerning gender bias in the Code of Judicial Conduct.

Court Employees

The final recommendation in the conclusion of the 1989 Report was to form a joint committee of judges and court personnel from all levels and geographic areas of court to encourage, monitor, evaluate, and report on the efforts undertaken in the 1989 Report relating to court employees.

To this point very little has been done in this area. As a priority for 1992-1993 the Select Committee will seek the formation of this committee so the work can begin.

Role of Women in Law Schools

The Select Committee on Gender Equality, as part of its strategic plan, will continue the effort already begun to investigate the current status of women in the area law schools. Areas which need to be studied are treatment of women faculty members with regard to tenure, placement and salaries, student body ratios, hiring practices, significance given to courses in family law and women issues and other related issues.

Women in Law Firms

The Select Committee will undertake a further inquiry into the status of women in private law firms to address the issues of hiring, retention and termination rates, partnership track, compensation, client production, assignment of work, client entertainment, maternity leave policies, hostile environment, involvement of women in management and other related issues.

VII. ARTICLES

1. Tricia D. O'Neill and Karen Czapanskiy, "Gender Bias Exists in Maryland Court System", Maryland Bar Journal, May/June, 1989, p. 38.
2. Pamela J. White, "Gender Bias in Maryland's Courts: The Next Step Towards Its Elimination", The Barrister, Summer, 1989, p. 13.
3. Susan E. Ross and Susan Goering, "Publics Perks for Private Clerks", Maryland Bar Journal, May/June, 1990, p. 33.
4. Janet Stidman Eveleth, "The Struggle Continues", Maryland Bar Journal, July/August, 1992, p. 3.
5. Peter D. Guattery, "Sexual Harassment: Hostile Environment Claims", Maryland Bar Journal, July/August, 1992, p. 7.
6. Pamela J. White, "Rainmaking and Marketing Opportunities for Women Attorneys", Maryland Bar Journal, July/August, 1992, p. 13.
7. Committee on Alternative Work and Leave Arrangements of the Women's Bar Association of Maryland, "Alternative Work Schedules and Leave Policies Make Sense", Maryland Bar Journal, July/August, 1992, p. 17.
8. Tricia D. O'Neill, "Does Gender Bias Still Exist in Maryland Courts?", Maryland Bar Journal, July/August, 1992, p. 23.
9. M. Peter Moser, "Assuring Gender Equality in the Courts", Maryland Bar Journal, July/August, 1992, p. 26.
10. Christopher L. Beard and Jacqueline Judd, "Victims No More: Changes in Domestic Violence Law", Maryland Bar Journal, July/August, 1992, p. 29.

**Appendix A - "What Can Judges Do to Ensure Equality
for Women and Men in the Courts?"**

WHAT CAN JUDGES DO

TO ENSURE EQUALITY

FOR

WOMEN AND MEN

IN THE

COURTS

**TREAT
WOMEN AND MEN
WITH EQUAL
DIGNITY, RESPECT
AND
ATTENTIVENESS**

**REQUIRE THOSE
UNDER YOUR
SUPERVISION
TO DO THE SAME**

**DEMEANING TREATMENT
IS BOTH
PERSONALLY
HUMILIATING
AND
UNDERMINES
CREDIBILITY**

**EXAMINE YOUR
ASSUMPTIONS ABOUT
WOMEN AND MEN**



**THINK ABOUT HOW
THESE ASSUMPTIONS
COLOR YOUR
PERCEPTIONS OF THE
INDIVIDUALS
IN YOUR COURTROOM,
YOUR ASSESSMENT OF
CREDIBILITY,
YOUR FACT FINDING,
YOUR DECISION-MAKING,
YOUR SENTENCING**

1. With regard to forms of address:

- Address all persons in the courtroom by title/function when a title is appropriate

For example:

- Counsel, counselor, Mr.____, Ms.____,
Dr.____, Officer____
- Jurors or Juror #1
- Foreperson

- If titles are not appropriate or customary, use simply Ms.____ or Mr.____

- Avoid referring to anyone in the courtroom with terms such as "boys," "girls," "sonny," "doll," "babe," or "honey." Courtroom protocol requires the highest degree of professional courtesies.

2. Use gender neutral language in all court correspondence. Use "Dear Counsel" when not using the individual's name and where appropriate include reference to he/she, him/her. Direct staff to do likewise.
3. Use gender neutral language in jury instructions. The plural (witnesses/they) is helpful. Use he/she, her/him as necessary.
4. Set an example by not engaging in or permitting sexist jokes and inappropriate comments about women in chambers, the courtroom or at professional gatherings.
5. Intervene when an attorney, witness, juror or other individual under your supervision speaks or behaves inappropriately toward others during trial or in other professional settings.

EXAMINE YOUR HIRING AND APPOINTMENT RECORD

DO YOU



- ◆ **HIRE BOTH WOMEN AND MEN AS LAW CLERKS?**

- ◆ **DESIGNATE WOMEN AS GRAND JURY FOREPERSONS?**

- ◆ **APPOINT WOMEN TO POSITIONS OF ADMINISTRATIVE OR SUPERVISORY RESPONSIBILITY?**

- ◆ **GIVE WOMEN ATTORNEYS FEE GENERATING COURT APPOINTMENTS, PARTICULARLY THOSE OTHER THAN GUARDIANSHIPS, ON AN EQUAL BASIS WITH MEN?**

Do you assume, for example:

- ◆ that when a man and woman walk into the court together that she is the client and he is the lawyer?
- ◆ that men are more believable than women?
- ◆ that women make better single parents than men?
- ◆ that a rape victim who was not beaten or stabbed was not hurt?
- ◆ that a man cannot be a nurturing parent?
- ◆ that a woman who charges her husband with sexually abusing their child is lying out of vindictiveness or to gain a tactical advantage?
- ◆ that men are the only good litigators?
- ◆ that status offenses committed by young women should be punished more severely than those committed by young men?
- ◆ that men who assault their wives do so because they are usually provoked?
- ◆ that a woman of any age can get a meaningful job and support herself after divorce?
- ◆ that men's complaints of pain should be taken more seriously than women's?
- ◆ that a woman who willingly accompanies a man is asking to be raped?
- ◆ that a woman who has committed adultery is not entitled to alimony?
- ◆ that a woman who goes back to her husband after she has been battered enjoys the abuse?
- ◆ that a woman who returns to the work force after 15 years in a traditional homemaker role can be reasonably expected to earn sufficient income to achieve economic parity with her spouse? Should she be entitled to that parity and, if not, why not?
- ◆ that a woman who commits adultery should not have custody of the child or children of the marriage?
- ◆ that women trade on their looks but men do not?

- ◆ that a request from a man to continue a case because he plans to be in the delivery room with his wife at the birth of their child should be denied because it is unnecessary and a burden on the court's docket?
- ◆ that a woman who has small children at home should never receive a sentence of jail time?
- ◆ that a woman is less likely to have a substance abuse problem than a man?
- ◆ that a woman should not require inpatient treatment for drug or alcohol abuse?
- ◆ that adolescent girls should not be recommended for institutionalization after a finding of delinquency?
- ◆ that men should be placed in higher paying jobs in the courts because they have families to support?
- ◆ that male judges make better administrative judges?
- ◆ that a request from a male attorney to reschedule a court proceeding because of an emergency child care obligation is unprofessional and/or unnecessary?
- ◆ that a woman who complains about sexual harassment is fantasizing?
- ◆ that a woman defendant who brings a pre-schooler to court is doing so only to get the sympathy of the court?
- ◆ that a male expert witness makes a better impression on the jury than a female expert?
- ◆ that domestic violence protective orders are only available in the District Court?
- ◆ that it is usually in the best interests of a child to award custody to the wealthier parent, all other things being relatively equal?
- ◆ that in most cases it is inappropriate to order and enforce a judgment for back child support?
- ◆ that it is unfair to the non-custodial parent to order a wage attachment for child support?

Appendix B - Brochure distributed by District Court Commissioners

DOMESTIC VIOLENCE

**RESOURCES
AVAILABLE**

BALTIMORE CITY

Battered Spouse Program

House of Ruth
2201 Argonne Drive
Baltimore, MD 21218
889-0840
Hotline: 889-7884

Victim Assistance Programs:

Sexual Assault Recovery Center
1010 St. Paul Street, Suite 2A
Baltimore, MD 21202
685-0937

Office of the State's Attorney
500 E. Baltimore Street
Baltimore, Maryland 21202
396-3133

Rape Crisis/Sexual Assault Program:

Sexual Assault Recovery Center
1010 St. Paul Street, Suite 2A
Baltimore, MD 21202
585-0937

Displaced Homemaker Program:

Career Resource Center
Maryland New Directions, Inc.
12 E. 25th Street
Baltimore, MD 21218
235-0350

Transitional Housing Program:

Family & Children's Services of
Central Maryland
204 W. Lanvale Street
Baltimore, MD 21217
669-9000

Marian House
949 Gorsuch Avenue
Baltimore, MD 21218

The Transitional Housing Program
3701 Cottage Avenue
Baltimore, MD 21215
664-3636

Court Clerk's Offices
(For Civil Protection from
Domestic Violence Forms)

Circuit Court - Baltimore City
Civil Division
Room 462 Courthouse East
111 N. Calvert Street
Baltimore, MD 21202
333-3709

District Court of Maryland
Civil Division
Fayette and Gay Streets
Baltimore, MD 21202
333-4664

Legal Services:

House of Ruth Legal Clinic 889-0840
Women's Law Center/Baltimore City Bar
Association Hotline
(Tuesdays, 9:00 a.m. to 5:00 p.m.)
301-486-0535 1-800-845-8550
Legal Aid Bureau 539-5340
Lawyer Referral Service 539-3112

Police:

Emergency 911
Baltimore City Police 396-2525

Appendix C - Complaint Process

SELECT COMMITTEE ON GENDER EQUALITY

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

COMPLAINT PROCESS

- 1) Staff receives a copy of the complaint in writing and forwards it to Judge Rosalyn B. Bell, Chair of the Complaints Subcommittee.
- 2) Judge Bell will either:
 - a) Tell staff to whom to send the complaint (a member of the Committee for investigation)
 - OR
 - b) Reach a decision without further investigation.
- 3) A letter will be sent to the complainant from Judge Bell.
- 4) A copy of this letter with the complaint attached will be sent to the assigned subcommittee member.
- 5) A letter will also be sent to the subcommittee member from Judge Bell. It will request an investigation and a report with recommendations in 30 days.

Appendix D - Proposed revisions to the Maryland Code of Judicial Conduct

PROPOSED REVISIONS

RULE 1231. MARYLAND CODE OF JUDICIAL CONDUCT

CANON 2

Avoidance of Impropriety and the Appearance of Impropriety

A. A judge should behave with propriety and should avoid even the appearance of impropriety. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The personal behavior of a judge in both the performance of judicial duties, and in everyday life, should be beyond reproach.

B. A judge should not allow judicial conduct to be improperly influenced by family, social, or other relationships. A judge should not use the prestige of judicial office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence judicial conduct. A judge should not testify voluntarily as character witness.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of judicial office into the proceeding in which a judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford a judge the privilege against testifying in response to an official summons.

Committee Note: The first and third sentences of sec. 2A are derived from current Md. Canon IV. ABA Canon 2 relegates the first sentence of sec. 2A to Commentary; but the Committee believes that it is sufficiently important to retain its status as part of the Canon. The second sentence of sec. 2A is derived from ABA Canon 2A.

The first sentence and the second clause of the second sentence of sec. 2B are derived from ABA Canon 2B and current Md. Canon XXXII. The first clause of the second sentence of sec. 2B is derived from ABA Canon 2B and prohibits a judge from advancing the "private interests" of others, while current Md. Ethics Rule 9 applies the prohibition only to "private business interests" of others, which is somewhat narrower in scope. The broader prohibitory language in the ABA Canon is not meant to preclude a judge from writing a letter of recommendation or the like under appropriate circumstances, as discussed in Md. Judicial Ethics Opinion No. 98 (issued 7/16/82).

The last sentence of sec. 2B is derived from ABA Canon 2B and

current Md. Canon XIII.

The first paragraph of the Commentary is derived from a Commentary to ABA Section 2A of Canon 2. The last paragraph of the Commentary is derived from a Commentary to ABA Canon 2 and is consistent with Md. Judicial Ethics Opinion NO. 31 (issued 5/7/75).

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or nation origin.

Commentary: Membership of a judge in an organization that practices invidious discrimination on the basis of race, sex religion, or national origin may give rise to perceptions that the judge's impartiality is impaired. It is therefore inappropriate for a judge to continue to hold membership in an organization that the judge knows or reasonably should know, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the judge's impartiality is impaired. Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interests to its members, or that it is in fact, an

intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n. Inc. v. City of New York, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 Ct. 1940 (1987), 95 L. Ed. 2d 474; Roberts v. United States Jaycees, 468 U.S. 6098, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and

impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

Committee Note: After careful consideration, the Committee decided to make membership in organizations that practice invidious discrimination a violation of the Code. New Section 2C moves to black-letter text a principle that had been in the Commentary to Canon 2 of the 1989 Code. It was determined that it was neither appropriate nor workable to leave to each individual judge's conscience the determination whether an organization practices invidious discrimination, and this discretionary standard was removed from the Commentary.

The Commentary incorporates most of the Commentary to ABA Section 2C of Canon 2. The second sentence of the first paragraph

is derived from the Commentary to current Md. Canon 2B and has been retained to make clear that membership in an organization would not be prohibitive unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhood, sisterhoods, bowling leagues, etc. - may well be restricted to persons belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is hardly likely that membership in such an organization would cause people reasonably to believe that the judge is partial.

CANON 3

Impartial and Diligent Performance of Judicial Duties

In the performance of judicial duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES

(1) A judge should be faithful to the law and maintain professional competence in it.

(2) A judge should be unswayed by partisan interests, public clamor or fear of criticism.

(3) A judge should maintain order and decorum in proceedings

before the judge.

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

(5) A judge should accord to every person who is legally interested in proceedings, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the name of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

(6) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate to that end.

(7) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers in this regard is governed by Rule 3.b of the Maryland Rules of Professional Responsibility.

(8) At the conclusion of a jury trial, the judge should neither praise nor criticize the verdict but may thank the jurors for their public service.

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

Commentary: A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(10) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(10) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

Committee Note: Secs. 3A(1) and (2) are derived from ABA Canon 3A(1) and current Md. Canon XIV.

Sec. 3A(3) is derived from ABA Canon 3A(2) and current Md. Canon XV.

Sec. 3A(4) is derived from ABA Canon 3A(3) and current Md. Canons IX and X.

Sec 3A(5) is derived from ABA Canon 3A(4) and current Md. Canon XVI.

The Commentary to sec. 3A(5) is derived from the Commentary to ABA Canon 3A(4) and the Committee Note to current Md. Canon XVI.

Sec. 3A(6) is derived from ABA Canon 3A(5) and current Md.

Canon VII.

The Commentary to sec. 3A(6) is derived from the Commentary to ABA Canon 3A(5) and from current Md. Canon VII.

Sec. 3A(7) is derived from ABA Canon 3A(6) and current Md. Ethics Rule 12.

The Commentary to sec. 3A(7) is derived from the Commentary to ABA Canon 3A(6).

Sec. 3A(8) is derived from current Md. Ethics Rule 13. There is no ABA provision on this subject.

ABA Canon 3A(7), current Md. Canon XXXIV, and current Md. Ethics Rule 11 contain provisions governing broadcasting, televising, recording or photographing in courtrooms and adjacent areas. Several states have deleted that provision on the ground that it addresses a question of court administration rather than ethics. The Committee agrees, especially since Rule 1209 of the Md. Rules of Procedure governs media coverage of civil actions, and Md. Code, Art. 27, sec. 467B prohibits (with limited exceptions) media coverage of criminal trials.

Sec. 3A(9) and the Commentary to Sec. 3A(9) are derived from ABA Canon 3B(5) and the Commentary to the Canon of the 1990 ABA

Code of Judicial Conduct.

Section 3A(10) is derived from ABA Canon 3B(6) of the 1990 Code.

Section 3A(9) and 3A(10) were added to emphasize the requirements of impartial decision - making and the appearance of fairness in the courtroom.

B. ADMINISTRATIVE RESPONSIBILITIES

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

Commentary: Former Section 3B(1) was revised to prohibit a judge from manifesting bias or prejudice in the performance of administrative duties and to encourage, rather than to require, the more practicable duty of cooperation rather than facilitation.

(2) A judge shall require staff, court officials and others subject to direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official

duties.

Commentary: Former Section 3B(2) was revised to add the requirement that a judge exercise reasonable direction and control over judicial personnel to assure that they do not manifest bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate corrective measures against a judge or lawyer for unprofessional conduct of which the judge may be aware.

Commentary: Corrective measures may include a private admonition or reporting misconduct to the appropriate disciplinary body or a bar association counseling program.

(4) In exercising a power of appointment, a judge should appoint only qualified persons and should avoid nepotism and favoritism. No unnecessary appointments should be made. A judge should not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this section.

Committee Note: Sec. 3B(1) is derived from ABA Canon C(1)

of the 1990 Code of Judicial Conduct and current Md. Canon VIII.

Sec. 3B(2) is derived from ABA Canon 3C(2) of the 1990 Code of Judicial Conduct and current Md. Canon VIII.

The Commentary to Sections 3B(1) and (2) is derived from the Commentary to ABA Canons 3C(1) and (2) of the 1990 Code of Judicial Conduct.

Sec. 3B(3) is derived from ABA Canon 3B(3) and current Md. Canon XI, except that those provisions require the judge to take appropriate "disciplinary" measures. The Committee believes that there may be instances of professional misconduct which would warrant a private admonition or referral to a bar association counseling service, actions which are less drastic than "disciplinary" measures. Requiring a judge to take "corrective" measures, therefore, gives the judge a wider range of options to deal with unprofessional conduct.

The Commentary to sec. 3B(3) is derived from the Commentary to ABA Canon 3B(3), but is modified in accordance with the Committee's changes to ABA Canon 3B(3).

Sec. 3B(4) is derived from ABA Cannon 3B(4) and current Md. Canon XII.

The Commentary to sec. 3B(4) is derived from the Commentary to ABA Canon 3B(4) and from current Md. Canon XII.

Appendix E - Courtwatch Courtroom Form

WOMEN'S BAR ASSOCIATION OF MARYLAND COURTWATCH PROJECT -- APRIL 1992

COURTROOM FORM

Please fill out one of these forms for each courtroom you observe and attach it with a staple to the CASE FORMS which you filled out in that courtroom. This form and the CASE FORMS should be mailed to THE WOMEN'S BAR ASSOCIATION OF MARYLAND, THE MARYLAND BAR CENTER, 520 WEST FAYETTE STREET, BALTIMORE, MD 21201 in the stamped envelope which has been provided. Thank you!

I. OBSERVATION TEAM MEMBER

1. Name: _____ Co-observer: _____
2. Sex: Male Female
3. Race: White African-American Other (please specify) _____
4. Age: _____
5. Occupation: Lawyer Paralegal Law Student Other (please specify) _____
6. Phone Number: (H) _____ (W) _____
7. Read training manual? Yes No
8. How did you hear about the Courtwatch? _____

II. OBSERVATION SITE

1. Date: _____
2. County: _____ Baltimore City
3. Court: Circuit Court District Court Master

III. CHARACTERISTICS OF THE JUDGE/MASTER

Name of Judge or Master _____

SEX		AGE (please estimate)			RACE		
Male	Female	Under 35	36-54	Over 55	White	African-American	Other

IV. CHARACTERISTICS OF THE COURT PERSONNEL

	POSITION				SEX		AGE (please estimate)			RACE		
	Clerk	Steno.	Bailiff	Other*	M	F	under 35	36-54	over 55	White	African-American	Other
Employee 1												
Employee 2												
Employee 3												
Employee 4												

*Please describe duties:

OTHER COMMENTS BY OBSERVER

Please record here anything else that you observed that you think it is important for us to know.
Attach additional sheets if necessary.

**NOTE: If you should misplace the envelope, please mail the forms to:
THE WOMEN'S BAR ASSOCIATION OF MARYLAND
THE MARYLAND BAR CENTER
520 WEST FAYETTE STREET
BALTIMORE, MD 21201**

Appendix F - Courtwatch Case Form

WOMEN'S BAR ASSOCIATION OF MARYLAND COURTWATCH PROJECT - APRIL 1992

CASE FORM

One of these forms should be completed for each matter which the judge or master hears on the day of your observations. In some courts, you might fill out more forms than in others. If one matter is interrupted by another matter, such as a sentencing or a settlement, each matter should be the subject of a separate case form.

At the end of the observation day, staple all the CASE FORMS (one by each observer) to the COURT FORMS and return them in person or by mail to THE WOMEN'S BAR ASSOCIATION OF MARYLAND, THE MARYLAND BAR CENTER, 520 WEST FAYETTE STREET, BALTIMORE, MD 21201. Please send in the forms as quickly as possible after your observation date. Thank you!

I. A. **OBSERVER:** Name _____
 Phone Number _____
 B. **CO-OBSERVER:** Name _____
 C. **Date** _____

II. **CASE NAME** _____
CASE NUMBER _____ (SOMETIMES OBTAINABLE FROM THE DOCKET SHEET POSTED NEAR THE CLERK'S OFFICE OR OUTSIDE THE COURTROOM DOOR. ALSO, THE JUDGE, MASTER, OR BAILIFF USUALLY WILL ANNOUNCE THE NUMBER WHEN THE CASE IS CALLED.)

III. **TYPE OF CASE**

A. CRIMINAL <input type="checkbox"/>	B. CIVIL <input type="checkbox"/>
1. Crime against the person (e.g., assault, battery, murder) <input type="checkbox"/> a. Please check if the victim is the spouse or intimate partner of defendant <input type="checkbox"/> 2. Crime against property (e.g., burglary, theft, robbery) <input type="checkbox"/> 3. Possession or sale of illegal drugs <input type="checkbox"/> 4. Possession of other illegal things (e.g., unregistered weapons, dangerous weapons) <input type="checkbox"/> 5. Traffic <input type="checkbox"/> 6. Other (please specify) _____	1. Personal injury action <input type="checkbox"/> 2. Landlord/Tenant action <input type="checkbox"/> 3. Domestic Relations action <input type="checkbox"/> (divorce, child support, child custody, paternity, marital property, alimony, etc.) 4. Contract action <input type="checkbox"/> 5. Protection from Domestic Violence action <input type="checkbox"/> 6. Other (please specify) _____

IV. **TYPE OF PROCEEDING**

A. Motion hearing	<input type="checkbox"/>
B. Jury trial	<input type="checkbox"/>
C. Non-jury trial	<input type="checkbox"/>
D. Sentencing	<input type="checkbox"/>
E. Other (please specify): _____	<input type="checkbox"/>

V. OUTCOME OF PROCEEDING you observed:

<p>A. Judgment for Plaintiff</p> <p>B. Judgment for Defendant</p> <p>C. Acquittal</p> <p>D. Conviction</p> <p>E. Motion granted for Plaintiff (or State in a criminal proceeding)</p> <p>F. Motion granted for Defendant</p> <p>G. Other (please describe to the extent possible): _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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VI. CHARACTERISTICS OF LAWYERS, PARTIES AND WITNESSES

1. Please supply the following information for each lawyer and each party involved in the case.

	SEX		AGE (please estimate)			RACE			REPRESENTATION	
									Represents Plaintiff (or State)	Represents Defendant
	Male	Female	under 35	35-55	over 56	White	African-American	Other (specify)		
Lawyer 1										
Lawyer 2										
Lawyer 3										
Lawyer 4										
Plaintiff										
Defendant										
Other Party										
Witness 1										
Witness 2										
Witness 3										
Witness 4										
Witness 5										
Witness 6										
Witness 7										

VII. JUDGE'S OR MASTER'S CONDUCT

1. Please observe the conduct of the judge or master. Put a check in any box that applies. If you check a box, please give details in the space provided below.

	L 1	L 2	L 3	L 4	Plaintiff	Defendant	W1	W2	W3	W4	W5	W6	W7
a. Judge used term of address other than formal "counsel," "Mr./Miss/Mrs./Ms." toward:													
b. Judge showed lack of courtesy toward:													
c. Judge showed lack of respect toward:													
d. Judge mentioned race or sex of:													
e. Judge mentioned physical appearance of:													
f. Judge mentioned parental status or pregnancy of:													
g. Judge stated that he or she did not believe:													

*L = Lawyer W = Witness

h. Judge made joke(s) using gender or race.	YES	NO
---	-----	----

2. **DETAILS** (please reference by using letter from above)

VIII. LAWYER'S CONDUCT

1. Please observe the conduct of the lawyers. Compare each lawyer's conduct with that of the others. For example, is lawyer 1 more respectful, as respectful, or less respectful than the other lawyers?

	RESPECTFULNESS			COURTEOUSNESS TOWARD									FORMALITY OF CLOTHING		
	TOWARD JUDGE/MASTER			OTHER LAWYERS			WITNESSES			COURT EMPLOYEES					
	more	same	less	more	same	less	more	same	less	more	same	less	more	same	less
a. Lawyer 1															
b. Lawyer 2															
c. Lawyer 3															
d. Lawyer 4															

2. Put a check mark in any box that applies. If you check a box, please give details in the space provided.

	Identify Lawyer by Number	COMMENT WAS DIRECTED TO				
		Plaintiff	Defendant	Court Employee	Judge/Master	Witness
e. Said something about sex or race						
f. Physical appearance						
g. Parental status or pregnancy						
h. Made joke(s) using sex or race						

3. DETAILS (please reference by using letter from above)
