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There's No Accounting for Judges

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I. INTRODUCTION

On February 8, 1994, a Maryland trucker named Kenneth Peacock came home unexpectedly during a winter storm and found his wife in bed with another man.[1] For several hours Peacock argued with his wife while drinking wine and beer. Then he shot her in the head with a hunting rifle. Peacock plead guilty to voluntary manslaughter.[2] The prosecutor recommended a sentence within the three to eight year sentencing guidelines, citing Peacock's lack of a prior record.[3]

On October 17, 1994, Baltimore County Circuit Court Judge Robert B. Cahill, Sr. sentenced Peacock to three years, but suspended nearly half the time.[4] Peacock's real sentence was eighteen months, to be served on work release at the Baltimore County Detention Center, and fifty hours of community service in a domestic violence program.[5] The defendant was back at work hauling cargo between five A.M. and nine P.M. within two weeks of sentencing.[6]

At sentencing, the defendant's attorney focused on the defendant's lack of a prior record, his fine family, and his strong work habits.[7] Judge Cahill stated that "the most difficult thing that a judge is called upon to do . . . is sentencing noncriminals as criminals," and likened this case to automobile manslaughter committed by drunk

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1 Karl Vick, *Maryland Judge Taking Heat in Cuckolded Killer Case*, WASH. POST, Oct. 30, 1994, at Al, A28.

2 Reporter's Official Transcript of Proceedings (Sentencing) at 3, State v. Peacock (Md. Cir. Ct. Oct. 17, 1994) (No. 94-CR-0943) (on file with the *Albany Law Review*).

3 *Id.* at 12.

4 *Id.* at 21.

5 *Id.* at 21-22.

6 Vick, *supra* note 1, at A28.

7 Reporter's Official Transcript of Proceedings (Sentencing) at 4-5, *Peacock* (No. 94-CR-0943).

drivers.[8] In explaining his sentence, Judge Cahill stated, "I seriously wonder how many married men, married five years or four years would have the strength to walk away, but without inflicting some corporal punishment . . . . I shudder to think what I would do."[9]

Judge Cahill's sentence and trivializing comments made national headlines.[10] What did not receive much press were his remarks about why he thought he could get away with imposing a de minimis sentence in this case. As stated above, Cahill compared the *Peacock* case to having to sentence drunk drivers who had simply been involved in tragic accidents, characterizing such drivers as "noncriminal citizens."[11] He noted that whereas in drunk driving cases he is constrained in his sentencing by the presence of the victim's family and court watchers from Mothers Against Drunk Driving (MADD), in this case only visitors from the defendant's side were in the courtroom, giving him "the benefit of, in effect, sentencing in anonymity."[12] He further commented that "[t]he chances are this case will not even be written up."[13] Had there not been a reporter in the courtroom, he probably would have been right in his prediction.

Judge Cahill's sentence is notable not only for the de minimis time imposed, but also because the sentence included community service in a domestic violence shelter. Sentencing in domestic violence and sexual assault cases often includes highly misguided requirements that defendants work in battered women's shelters or rape crisis centers, which are the least appropriate placements for these type of offenders.[14] Victim empathy does not come from proximity to victims but from long, intensive, painful treatment in specialized batterers' and sex offenders' programs.[15]

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8 *Id.* at 13-14. It is interesting to note that while repeatedly calling Peacock an alcoholic and likening his case to one of DUI manslaughter, *id.* at 6, Cahill seemed to have no problem with an alcoholic being employed as a truck driver.

9 *Id.* at 20.

10 *See, e.g.*, Bill Hewitt et al., *Heat of Passion*, PEOPLE, Nov. 7, 1994, at 89; Tamar Lewin, *Outrage over 18 Months for a Killing*, N.Y. TIMES, Oct. 21, 1994, at A18; Sheridan Lyons & Glenn Small, *Sitting in Judgment on Maryland's Judges*, SUN (Baltimore), Feb. 5, 1995, at C1; Vick, *supra* note 1, at A1.

11 Reporter's Official Transcript of Proceedings (Sentencing) at 14, *Peacock*, (No. 94-CR-0943).

12 *Id.* at 14-15.

13 *Id.* at 15.

14 NATIONAL JUDICIAL EDUC. PROGRAM, NOW LEGAL DEFENSE & EDUC. FUND, UNDERSTANDING SEXUAL VIOLENCE: THE JUDICIAL RESPONSE TO STRANGER AND NONSTRANGER RAPE AND SEXUAL ASSAULT, UNIT IV 37 (1994).

15 Because batterers and sex offenders often are aroused by their victims' powerlessness and fear, ordering defendants to work at a shelter or rape crisis center may actually be pleasurable for them. *See* James A. Vaught & Margaret Henning, *Admissibility of Rape Victim's Prior Sexual Conduct in Texas: A Contemporary Review and Analysis*, 23 ST. MARY'S

Robert Cahill is hardly the first judge to trivialize domestic violence, including murder, or approve of it as a husband's appropriate response to "provocation." The reports of state supreme court task forces on gender bias in the courts are replete with reports of judges who trivialize violence against women.[16] For example, the director of the Missouri Coalition Against Domestic Violence testified to that state's task force that "[t]here are often inappropriate comments and belittling behaviors that occur within in [sic] the courtroom from the bench."[17] Another Missouri witness said that one judge sometimes asks women in court if they like being beaten.[18] Some of these trivializations are startling in their cruelty, as in the case of a Florida judge who, when told that a man had doused his wife with lighter fluid and set her on fire, sang "you light up my wife" to the tune of *You Light Up My Life*.[19]

As to judges who excuse or even approve of mayhem and murder by a man when the victim is a wife, examples from just the last two years, as well as the *Peacock* case, show how little has changed since 1984, when the Colorado judiciary came under siege after a local judge gave a minimal sentence, to be served on weekends, to a man

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L.J. 893, 906 (1992). Also, these defendants have what are called "thinking errors," which they may transmit to the women. Many women already think their victimization is their own fault; these men think so, too, and thus may reinforce the women's mistaken beliefs. Deborah W. Denno, *Perspectives on Disclosing Rape Victims' Names*, 61 FORDHAM L. REV. 1113, 1125 (1993). Another possibility is that these men might assault a woman they meet at the center or shelter. Often, these women are beaten down and passive, and unscrupulous men may seize the opportunity to make contacts with women outside the shelter or crisis center. And, of course, for a woman at a shelter or rape crisis center, knowing that she is working with a convicted wife murderer, batterer or rapist is hardly a comforting thought.

16 Lynn Hecht Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, TRIAL, Feb. 1990, at 28; *Update: Gender Bias in the Courts*, TRIAL, July 1991, at 112. Some task force reports also cite instances in which women have assaulted men and the legal system has disparaged the men for seeking orders of protection, proposing instead that the men take care of themselves. *E.g.*, J.D. LeBlanc, Testimony at the St. George Hearing of the Utah Task Force on Gender and Justice (July 1987) (on file with the *Albany Law Review*). Note, however, that the current vogue of claiming that women and men are equally violent misrepresents the facts. While some women do act out violently, in the majority of cases these violent acts are expressive or defensive rather than classic battering for the purpose of controlling the partner through physical and psychological terrorism. *See* Andrea Brenneke, *Civil Rights Remedies for Battered Women: Axiomatic and Ignored*, 11 LAW & INEQ. J. 1, 6 n.13 (1992). For example, reports on women's violent acts do not include marital rape or chaining the spouse in the bathroom while the wife is out at work, which are the kinds of acts documented in the literature on woman abuse. *E.g.*, DIANA E.H. RUSSELL, RAPE IN MARRIAGE 77 (1990).

17 EXECUTIVE COUNCIL OF THE MO. JUDICIAL CONFERENCE, REPORT OF THE MISSOURI TASK FORCE ON GENDER AND JUSTICE 37 (1993).

18 *Id.*

19 SUPREME COURT OF THE STATE OF FLA., REPORT OF THE FLORIDA SUPREME COURT GENDER BIAS STUDY COMMISSION 121 (1990) (citing DEBBIE BOONE, *You Light Up My Life*, *on* BEST OF DEBBIE BOONE (Curb Records 1990)).

who killed his wife when she tried to flee their abusive marriage.[20] The defendant tracked his wife and shot her five times in the face.[21] The judge said she provoked her husband by not telling him she was leaving.[22]

In 1993, a New Hampshire judge sentenced a man to twenty-eight days to be served on the weekends for assaulting the wife from whom he had been estranged for a year.[23] The defendant stalked his wife on a camping trip and found her in a tent with another man. The judge asserted that because the couple was not yet divorced she was still his wife and stated, " 'I can't conclude that [the attack] was completely unprovoked. I think that would provoke the average man.' "[24]

Another 1993 case involved an Ohio man who entered his estranged wife's home, beat her with a crowbar, then knocked out some of her daughter's teeth when she tried to call 911.[25] The defendant had a record for murder, rape, and armed robbery.[26] The judge imposed the state-required sentence of three to fifteen years, then released the defendant after he served seven months. Said the judge, "The guy walked into his house with his wife in his bed with another guy. It's enough to blow any guy's cool if he's any kind of man."[27]

How some male judges' projection of themselves into domestic violence cases skews justice and endangers women was vividly demonstrated in a February 1995 ABC television program in which Utah Judge Ronald Kunz was interviewed about his role in the death of Katrina Clark.[28] Clark's former husband, Cameron, had been arrested four times, and Judge Kunz handled all four incidents. There were frightening, harassing tapes and letters in which Cameron called Clark a bitch and a slut. Only on the fourth occasion when Cameron Clark broke into his ex-wife's home did the judge take any action. The judge sentenced Clark to an eight hour (yes, hour) pro-

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20 *Judge Upheld on Remark About Slain Woman*, N.Y. TIMES, July 17, 1984, at A22; *Judge's Verdict Creates Stir*, WASH. POST, July 1, 1983, at A13; *Life Insurance Changes Judge's Mind on Sentence*, N.Y. TIMES, June 30, 1983, at A14.

21 *Judge Upheld on Remark About Slain Woman*, *supra* note 20, at A22.

22 *Id.* The sentence was ultimately vacated as illegal and the defendant was sentenced by a new judge to 10 years of imprisonment. *Id.*

23 Sheila Weller, *America's Most Sexist Judges*, REDBOOK, Feb. 1994, at 83, 85.

24 *Id.* (alteration in original).

25 Sheila Weller, *More of America's Most Sexist Judges*, REDBOOK, Dec. 1994, at 88, 90-91.

26 *Id.* at 91.

27 *Id.*

28 *Day One: Soft on Domestic Violence?* (ABC television broadcast, Feb. 2, 1995), *transcript available in* LEXIS, News Library, Curnws File.

gram on anger management. On the day Clark finished the program, he broke into his ex-wife's home and killed her and himself in front of their younger child. When Judge Kunz was asked why he had not treated Cameron Clark's threats and break-in more seriously, he said that he had felt sorry for Clark. He said that he, too, had been through a painful divorce and understood that Clark was angry, felt alone, and felt that no one cared about him. The judge said he would again sentence a batterer to the eight hour anger management program if he thought it was appropriate.[29]

A notable aspect of the Clark case is the judge's age. With domestic violence, as in other areas of the law, people want to believe that as younger lawyers come to the bar and bench, manifestations of gender-based bias, such as indifference to domestic violence, will spontaneously abate.[30] This is not the case, as Judge Kunz demonstrates. While Judge Cahill and several of the other judges cited in this Article are in their sixties, Judge Kunz is at least twenty years their junior.[31]

II. What Can We Do About Judges Who Treat Domestic Violence as Unimportant or as a Man's Right?

How can we insure that judges do not trivialize domestic violence or treat spousal murder as a man's right when a wife "provokes" him? This is a difficult question because there is so little accountability for judges. *There's no accounting for judges*, in either sense of that phrase. Sometimes judges' actions are shocking, ignorant, or inexplicable. Often, only minimal mechanisms are available to hold them accountable. Long or lifetime tenure[32] and judicial immunity for all actions relating to the decision-making process[33] are essential

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29 *Id.*

30 *See* Ninth Judicial Circuit, U.S. Courts, The Final Report of the Ninth Circuit Gender Bias Task Force 71 (1993).

> "A popular approach when explaining . . . gender differences in perceptions of courtroom interactions . . . is to assume that they reflect generational differences. According to this view, male and female attorneys may see things differently because the men are, on average, older than the women and were socialized in an earlier era. As older male judges and attorneys retire, they will be replaced by males who share the values of current women attorneys."

Id.

31 The Ninth Circuit Gender Bias Task Force analyzed its survey of attorneys by age cohorts. *Id.* at 71-72. It found that men under 40 have the same attitudes as men over 40. *Id.* at 72.

32 *See* N.Y. Const. art. 6, § 6 (establishing 14-year terms for supreme court justices in New York); U.S. Const. art. 3, § 1 (establishing lifetime tenure for Article III federal judges).

33 Under Forrester v. White, 484 U.S. 219 (1988), state judges can be sued for administrative actions, such as employment and personnel decisions or sexually harassing a

to achieving judicial independence.[34] Yet these protections are a two-edged sword. Police departments have been motivated to improve their response to domestic violence calls by cases like *Thurman v. City of Torrington*,[35] in which a multi-million dollar judgement was entered against a Connecticut police department whose officers literally sat in a police car watching a man beat his wife.[36] But when a judge like Ronald Kunz ignores a man's escalating violence against his wife and she dies as a result, judicial immunity protects that judge, and the message to other judges that *Thurman* sent to other police is never sent.

Improving the judicial response to domestic violence requires multiple strategies focusing on the attitudes of candidates for the bench before they become judges, then on judicial education, specialized domestic violence courts, and the accountability that can be imposed on sitting judges through court watching, judicial performance evaluation, media attention, and insistence on a meaningful response from judicial disciplinary commissions.

A. *Legislation*

" 'We see that we have developed some fabulous laws in Texas. I get a lot of accolades when I travel around the country from other states that see the written word of our laws, but I very quickly have to say these laws [are] not being enforced.' "[37]

The legislation affecting domestic violence has improved strikingly over the last twenty years.[38] Although the laws vary from state to state and there are gaps to be filled, legislation is no longer the major stumbling block it once was. Focusing on legislation is seductive because when it passes it produces a "product" that gives an almost tangible sense of accomplishment. Yet laws are no more effective than the judges who interpret, apply, and enforce them. Judges are a critical link in the chain of protection for battered women, yet they

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law clerk. Federal judges could be named in a constitutional tort lawsuit under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

34 *See* Tracy M. Smith, Comment, Forrester v. White: *Personal Consequences of Personal Decisions: Extending Judicial Immunity to Employment Discrimination by Judges*, 71 MINN. L. REV. 1068, 1069-73 (1987) (discussing judicial independence).

35 595 F. Supp. 1521 (D. Conn. 1984).

36 *Id.* at 1526; Cindy Hancock Finney, *Deputies Train To Defuse Family Violence*, SENTINEL TRIB. (Orlando), Apr. 25, 1991, at I1.

37 STATE BAR OF TEX. DEP'T OF RESEARCH & ANALYSIS, GENDER BIAS TASK FORCE OF TEX., FINAL REPORT 69 (1994) (alteration in original) (testimony of the executive director of the Texas Counsel on Family Violence to the Texas Gender Bias Task Force).

38 *Developments in the Law—Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1528-51 (1993).

are the weakest link because they are largely unaccountable for their decisions.

B. *Judicial Selection*

Ensuring a judicial branch in which domestic violence is taken seriously requires attention to this issue in the judicial selection process. Judicial selection is a patchwork of systems across the country.[39] When a judge is considered for appointment, election, or retention there is usually a vetting process which includes inquiries and interviews by judicial nominating commissions and/or bar associations.[40]

Questions about a candidate's knowledge of and attitudes toward domestic violence should consistently be part of this vetting process. Issues relating to family violence arise in virtually every court, although many judges assume they will never deal with the subject. For example, most federal judges would say that domestic violence was never an issue in the federal courts until 1994 when the Violence Against Women Act passed as part of the Violent Crimes Control and Law Enforcement Act,[41] which makes it a felony to travel interstate to assault a spouse[42] and creates a civil rights remedy for gender-based crimes.[43] Yet throughout the federal circuits, battered women indicted for federal crimes have raised duress as a defense and a reason for mitigation in sentencing, claiming that they committed the crime because a spouse or boyfriend beat them or threatened greater harm to them or their family members when they refused to carry out the illegality in question.[44]

The process of selecting judges must be changed so that being "qualified" and having "merit" are understood to include a commitment to taking domestic violence seriously and a rejection of the notion that a man has the right to impose "corporal punishment" on his current, or former, wife or girlfriend. A model for incorporating at-

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[39] *E.g.*, Henry J. Abraham, The Judicial Process 22 (6th ed. 1993); Walter F. Murphy & C. Herman Pritchett, Courts, Judges, and Politics 133 (4th ed. 1986).

[40] For a discussion of the judicial selection process in New York State, see Colloquy, *The Road to the Judiciary: Navigating the Judicial Selection Process*, 57 Alb. L. Rev. 973 (1994).

[41] Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (to be codified at 42 U.S.C. §§ 13931-14040).

[42] 18 U.S.C.S. §§ 2261-66 (Law. Co-op. Supp. 1994).

[43] 42 U.S.C.S. § 13981 (Law. Co-op. Supp. 1994).

[44] *E.g.*, United States v. Sebresos, 972 F.2d 1347 (9th Cir. 1992); United States v. Homick, 964 F.2d 899 (9th Cir. 1992); Dunn v. Roberts, 963 F.2d 308 (10th Cir. 1992); United States v. Johnson, 956 F.2d 894 (9th Cir. 1992); United States v. Whitetail, 956 F.2d 857 (8th Cir. 1992); Burton v. Johnson, 948 F.2d 1150 (10th Cir. 1991); United States v. Santos, 932 F.2d 244 (3d Cir. 1991); Arcoren v. United States, 929 F.2d 1235 (8th Cir. 1991).

tention to domestic violence into judicial selection is provided by the Federation of Women Lawyers' Judicial Screening Panel (FWL), an organization which, within a few years, made the concept of *demonstrated* commitment to equal justice under the law an integral part of the federal judicial selection process.[45]

In 1979, then Attorney General Griffin Bell agreed to the proposal of a group of women's rights organizations that a panel of women attorneys be given the same opportunity as the American Bar Association and the National Bar Association (the national African-American bar organization) to evaluate individuals under consideration by the President for nomination to the federal bench. When the Attorney General agreed, I was asked to become director of the new entity, and we organized the FWL. At that time, the standard factors on which judicial candidates had long been evaluated were ability, integrity, and judicial temperament.[46] FWL decided to focus on an attribute missing from that list: demonstrated commitment to equal justice under the law.[47] Every candidate claims to believe in equal justice under the law, but abstract commitments are not enough. It was critical to learn what candidates had actually done in their professional and personal lives that demonstrated a concrete commitment to this principle.

FWL researched candidates' backgrounds; spoke to current and past co-workers, superiors, subordinates, and clients; and interviewed candidates, all with a focus on demonstrated commitment to equal justice under law.[48] Within two years, the ABA Standing Committee on Federal Judiciary and the Senate Judiciary Committee had begun to include this issue in their own evaluations.

Background checks on judicial candidates should include inquiries into whether a candidate has been the subject of domestic violence or sexual harassment charges, and how they were resolved. FWL came across one federal judicial candidate whose wife divorced him on grounds of physical cruelty. As I write this Article, a New York judge has just been on trial for beating his girlfriend.[49] A number of

[45] Judy Mann, *Justice: Equal Justice, but Not for All*, WASH. POST, July 1, 1981, at B1.

[46] *See, e.g.*, Lawrence E. Walsh, *The Attraction and Selection of Good District Court Judges*, 39 WASH. & LEE L. REV. 33, 37 (1982).

[47] *See* Mann, *supra* note 45.

[48] *See id.*; *see also* Karlyn Butler, *The Price of Power and Glory: What Price Power and Glory?*, WASH. POST, Sept. 4, 1980, at 1.

[49] Bronx Acting Supreme Court Justice Frank Diaz was indicted after his female live-in companion, Patricia Roberts, called 911 twice saying, "I have a maniac over here attacking me. . . . I want to keep this quiet because he's a judge." Daniel Wise, *Bronx Judge Is Acquitted After Assault Bench Trial*, N.Y. L.J., Feb. 17, 1995, at 1, 8. She refused to press charges but the prosecutor went forward, requiring her to testify. *Id.* Two police officers testified that on

judges have had to resign because it was discovered that they sexually harassed law clerks, court employees, and litigants.[50]

Interviews with judicial candidates should include questions and hypotheticals about domestic violence. One must ask candidates if they know that many women withdraw their complaints, and why they think that is so. Pose the *Peacock* case and ask the candidate what sentence she or he would impose and why. Pose hypotheticals that deal with race and class to learn whether candidates subscribe to the stereotypes that say certain minority groups are naturally violent so there is no point in acting to protect battered women from those communities, or that upper-class men never beat their wives.[51]

Obviously this kind of investigation and interview will not take place unless judicial selection panel members care about domestic violence. Attention must be paid to the make-up of these panels, and specialized bar associations, particularly women's bar associations, that do care about battering must have judicial screening panels and become an integral part of the process in their own communities. If these panels or their individual members are persuaded that a candidate should be rejected because he or she is hostile to this issue and uneducable, that information must be communicated to the community through the media so that neither the appointing authority nor the electorate places this individual on the bench.

An important point about the judicial selection process is that even apparent "protections" in these systems are not what they seem on the surface. Most judicial selection and judicial discipline panels now include lay persons as well as lawyers. The addition of nonlawyers was intended to give the community a voice. But what

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arrival they saw into the ground floor apartment through a lighted window and observed a man punching a half-naked woman in the head and chest. Two assistant district attorneys testified that they saw Ms. Roberts in the complaint room and that she had one black eye and bruising around the other eye. She testified that the judge never punched her, that her facial swelling was due to menopause, and that her only injury was a split lip when she lost her balance and fell into a door. Judge Diaz waived a jury. The judge who conducted the bench trial ruled without opinion that the prosecution had not proven the misdemeanor charges and acquitted him. *Id.*

50 *See, e.g.,* Marina Angel, *Sexual Harassment by Judges*, 45 U. MIAMI L. REV. 817 (1991); *infra* notes 118-23 and accompanying text (detailing the case of Judge Edward Seaman).

51 The falsity of this latter stereotype is being widely exposed by the president-elect of the American Bar Association, Roberta Cooper Ramo. *See* Roberta Cooper Ramo, Remarks to the ABA Commission on Women in the Profession and ABA Women's Caucus, ABA Mid-Year Meeting (Feb. 12, 1995). She reports that over the last several months, whenever she speaks to a bar association or service organization about the newly formed ABA Commission on Domestic Violence, she invariably hears afterward from some of the professional women in attendance that they have been victims of domestic violence, or that they are trying to find the courage to leave abusive relationships. *Id.*

happens on too many of these panels is that all the lawyer representatives are white males, all the nonlawyers are women and minorities, and the nonlawyers' sense of what constitutes merit in a candidate or what warrants serious discipline is overridden by the "professionals." Thus, those who care about a quality judiciary and an effective response to domestic violence must begin by ensuring that the appointing authority appoints panel members who will be effective on these issues.

C. *Judicial Education*

1. Education Is Both Essential to the Judicial Process and Effective in Altering Judicial Behavior

Judicial education is critical. No one, female or male, is born knowing the dynamics of domestic violence, and it is rarely taught in law schools. Most judges come to the bench with no training in this area and a lifetime of exposure to the same myths that shape the public's attitudes. It is therefore not surprising that many judges do not understand why a battered woman finds it very difficult to go through with an arrest and prosecution, and are not aware that the most dangerous time for a woman fleeing an abusive relationship is after she leaves. Judges must be provided with the education necessary to do their jobs. Moreover, it is imperative that this information be covered not only thoroughly in judicial training, but also repeatedly. Judges need to be provided with the latest knowledge on this issue, and often education relating to violence against women does not take hold at first hearing.[52]

Many judges educated in domestic violence respond with interest and caring and do change their practices because of what they learn. A striking example is Nevada District Court Judge Terrance P. Marren. In 1989, the Nevada Supreme Court Gender Bias Task Force reported that the legal system had failed to protect battered women.[53] The next year Judge Marren viewed a television program about the seriousness with which police respond to domestic violence

[52] The judicial education provided should be much more than an hour or two of talking heads. Effective judicial education requires a combination of expert presentation by judicial and nonjudicial faculty and interactive exercises in which judges practice applying their new knowledge. Two well-developed curricula are: JANET CARTER ET AL., FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES (1991) (available from the Family Violence Prevention Fund at 383 Rhode Island Street, Suite 304, San Francisco, CA 94103); WOMEN JUDGES' FUND FOR JUSTICE, FAMILY VIOLENCE: EFFECTIVE JUDICIAL INTERVENTION (1992) (available from the Women Judges' Fund for Justice at 733 15th Street, NW Suite 700, Washington, D.C. 20005).

[53] NEVADA SUPREME COURT GENDER BIAS TASK FORCE, JUSTICE FOR WOMEN 54-64 (1989).

calls in Albuquerque.[54] He was so impressed that he arranged for the creation of a countywide domestic violence task force to implement this model in his own community.[55]

Soon after that task force issued its report, Judge Marren was invited to attend a national interdisciplinary conference funded by the State Justice Institute (SJI).[56] The conference, which was attended by teams of judges from across the nation, focused on the impact that domestic violence has on families and communities.[57] The judges were encouraged to create action plans to deal with their own state's domestic violence problems.[58] Judge Marren was so impressed by this conference that he persuaded the Nevada Supreme Court to close that state's courts for two days and require every judge to attend the Nevada Judiciary Family Violence Conference.[59] At the April 7, 1994 American Bar Association meeting dedicated to gender bias in family courts—sponsored by the Family Law Section—at which Judge Marren and I were co-panelists, the judge disclosed that he came from a family in which his father abused his mother, and that although he once perceived that he was dealing fairly with the abuse cases that came before him, his experience with judicial education showed him that he had a great deal to learn and led to his commitment to educate other judges.

2. The Growth in Judicial Domestic Violence Education

As Judge Marren's story demonstrates, judicial education regarding domestic violence has increased markedly in recent years.[60] Indications of this trend come from a number of states. New York has recently instituted a statewide domestic violence education program

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54 *Educating One State's Judges About Domestic Violence*, FAM. ADVOC., Summer 1994, at 63, 63-64.

55 *Id.*

56 The State Justice Institute is an independent federal agency established by Congress to distribute and monitor grants for a wide range of projects to improve the administration of justice in state courts. Telephone Interview with Sandy Thurson, Program Manager, State Justice Institute (Apr. 4, 1995).

57 *Educating One State's Judges About Domestic Violence*, *supra* note 54, at 63-64.

58 *Id.*

59 *Id.* For a list of this conference's recommendations, see *id.*

60 For example, in addition to the national conference noted above, the SJI has funded several model judicial education curricula about domestic violence and provided support for their replication in individual states. Telephone Interview with Sandy Thurson, Program Manager, State Justice Institute (Apr. 4, 1995) (for information about these curricula, contact SJI at 1650 King Street, Suite 600, Alexandria, VA 22314); *see supra* note 52 (citing two well-developed curricula funded by the SJI).

for judges.[61] The program, sponsored by the New York Unified Court System's Family Violence Task Force, is structured in fourteen regional seminars scheduled in the first half of 1995.[62] It is intended to "discuss requirements of the Family Protection and Domestic Violence [Intervention] Act of 1994,[63] to bring to the fore the most current thinking and research on family violence, and to afford the judges an opportunity to exchange experiences in handling [domestic violence] cases."[64]

This recent effort by New York's court system has been preceded by a lack of judicial education regarding domestic violence. With respect to New York City, for example, a 1993 report on the city's response to domestic violence found that:

> Family Court judges receive little training in handling domestic violence cases. At one time, new judges received a week of training on the broad spectrum of their duties; because of budget constraints this has, in recent years, been pared to two days. Formerly mandatory one-week annual training seminars for all Family Court judges, which had included workshops on women's issues, were discontinued in 1990 because of budget cuts.[65]

Despite New York's recent efforts, judicial education in many states is lacking, and cost is often a controlling factor. In what seems like a plague time of homelessness and dysfunction among myriad adults and children, judicial education may seem like a luxury that can be pared. But this concept completely misperceives the consequences of an uninformed judiciary. Domestic violence is not only physically dangerous for women, it is also a principal cause of poverty and homelessness for women and their children because batterers often beat their partners when they begin to work and try to become economically independent.[66] Domestic violence is also a ma-

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61 Telephone Interview with Jan Fink, Counsel to the New York Unified Court System's Family Violence Task Force (Apr. 5, 1995).

62 Press Release of the New York State Unified Court System, *Regional Judicial Seminars on Family Violence to Start Around the State* (1995) [hereinafter *Regional Judicial Seminars*] (on file with the *Albany Law Review*).

63 1994 N.Y. Laws 222.

64 *Regional Judicial Seminars*, *supra* note 62.

65 RUTH W. MESSINGER & RONNIE M. ELDRIDGE, NEW YORK TASK FORCE ON FAMILY VIOLENCE, BEHIND CLOSED DOORS: THE CITY'S RESPONSE TO FAMILY VIOLENCE 44 (1993).

66 U.S. GAO, GAO/HEHS-95-28, WELFARE TO WORK 12 (1994); WASHINGTON STATE INST. FOR PUB. POLICY, OVER HALF OF THE WOMEN ON PUBLIC ASSISTANCE IN WASHINGTON STATE REPORTED PHYSICAL OR SEXUAL ABUSE AS *Adults* (1992); Jody Raphael, *Domestic Violence and Welfare Reform*, POVERTY & RACE, Jan./Feb. 1995, at 19; Joan Zorza, *Women Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421 (1991); Maria Arias, *Lack of Housing for Domestic-Violence Victims*, N.Y. L.J., July 26, 1988, at 3 (reporting that between

jor cause of physical and psychological injury to children, even if they are not being physically assaulted themselves.[67] When the judiciary does not understand why it is vital to take strong action the first time a domestic violence victim comes to court, the violence will escalate with major costs to the individual, her children, and society.

3. Mandating Judicial Education

Court rules for judicial education should require participation in domestic violence education. One problem in delivering judicial education in the current system is that most domestic violence training programs are voluntary; judges may not be required to receive any judicial education at all, or they may have complete choice as to which courses among the state's offerings they will attend.

California took a lead among the states when it adopted legislation which acknowledged the need for mandatory judicial training regarding family law. The legislation recognized that "more citizens are affected by family law proceedings than any other type of judicial proceedings," and required that the "Judicial Council shall establish judicial training programs for judges, referees, commissioners, mediators, and others who perform duties in family law matters .... It is the intent of the Legislature that the training program for judges be at least 30 hours per year."[68]

In recent years, Texas has also increased its commitment to judicial education by instituting a mandatory program. Each Texas district and county court judge must complete at least eight hours of training within that judge's first term of office.[69] Six of the eight hours must be spent on instruction regarding the following: (1) the availability of community and state resources for counseling and aid to victims; (2) the presence of gender bias in the judicial process; and (3) the dynamics and effects of being a victim of family violence.[70] Judges are excused from such instruction only upon the submission of an affidavit stating that the judge hears no cases involving family violence, sexual assault, or child abuse.[71]

New Jersey family court judges, and all other New Jersey judges likely to encounter domestic violence disputes, are similarly required

35% to 40% of the homeless population in New York City consists of battered women and their children); *see* B.E. Aguirre, *Why Do They Return? Abused Wives in Shelters*, 30 Soc. Work 350 (1985).

67 American Bar Ass'n, The Impact of Domestic Violence on Children 1 (1994).

68 Cal. Gov't Code § 68553 (West 1995).

69 Tex. Gov't Code Ann. § 22.011(b) (West Supp. 1995).

70 *Id.* § 22.011(d)(5)-(7).

71 *Id.* § 22.011(b).

to participate in judicial education.[72] New Jersey's forty hour program is likened to that required for a victim counselor and is designed to instruct judges on "information concerning the impact of domestic violence on society, the dynamics of domestic violence, the statutory and case law concerning domestic violence, the necessary elements of a protection order, [and the] policies and procedures as promulgated or ordered by the attorney general or the [New Jersey] Supreme Court."[73]

Even while encouraging judicial education, however, it must be acknowledged that, given judges' lack of accountability, training alone cannot overcome attitudes as retrograde as Judge Cahill's. It is a supreme irony that during the sentencing of Kenneth Peacock, Judge Cahill noted that in less than two weeks he and all the other Maryland judges would be attending a two day judicial education conference on family violence, and that he would be attending with "a great deal of current experience."[74] Another Baltimore County Circuit Judge, Thomas J. Bollinger, was disciplined in 1993 for his remarks in a rape case in which he sentenced to probation a forty-four-year old man who raped his eighteen-year-old employee while she was unconscious from drinking.[75] Part of the discipline the judge received included attendance at a program to sensitize him to rape cases.[76] He refused to attend and has suffered no consequence as a result.[77]

D. *Judicial Performance Evaluation*

Evaluation of judges by lawyers and others involved in the litigation process is a growing trend.[78] The guidelines of the American Bar Association Special Committee on Evaluation of Judicial Per-

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72 1994 N.J. Laws 93 (amending N.J. STAT. ANN. § 2C:25-19 to -20 (West Supp. 1995)).

73 *Id.*

74 Reporter's Official Transcript of Proceedings (Sentencing) at 15, State v. Peacock (Md. Cir. Ct. Oct. 17, 1994) (No. 94-CR-0943). It is small comfort that Judge Cahill found it necessary to attend the conference with bodyguards because he had been subjected to death threats and humiliating television coverage in which he was shown fleeing from a television camera across his own lawn. Vick, *supra* note 1, at A1, A28.

75 Vick, *supra* note 1, at A28. Judge Bollinger stated that finding a woman in such a state was "the dream come true for a lot of males." *Id.*

76 *Id.*

77 *Id.*

78 *See, e.g.*, Cynthia Gray, *National Commission on Judicial Discipline and Removal Calls for Moderate Changes*, 77 JUDICATURE 271 (1994); Barbara L. Morgenstern, *An Uncomfortable Distance*, A.B.A. J., July 1994, at 60, 61; John M. Roll, *Merit Selection: The Arizona Experience*, 22 ARIZ. ST. L.J. 837, 875 (1990); Peter M. Shane, *Structure, Relationship, Ideology, or How Would We Know a "New Public Law" if We Saw It?*, 89 MICH. L. REV. 837, 853 (1991).

formance state that "[a] program for evaluation of judicial performance is the appropriate vehicle through which to measure such things as race, gender or other biases."[79]

Judicial performance surveys are an important place to ask questions about judges' responses to cases involving domestic violence. These questions should be as specific as possible. They should include, for example, what action does the judge take when orders of protection are violated and how does the judge deal with custody disputes in which domestic violence is a factor. Note that many survey researchers prefer to use as few open-ended questions as possible for ease of tabulation. However, that approach may not provide the information the public needs or make the judge aware of where public concerns lie. The creation of judicial performance evaluation surveys should be a careful collaboration among quantitative and qualitative survey researchers, lawyers, and judges.

E. *Specialized Domestic Violence Courts*

A major barrier to ensuring that judges, as well as the rest of the justice system, deal with this issue seriously is that domestic violence is at the intersection of two of the most pernicious tendencies in the law: the devaluation of violence against women, and the devaluation of family law. As Evan Stark explains elsewhere in this symposium, the law has yet to recognize violence against women as a course of deliberate criminal conduct.[80] As to attitudes toward family law, there is a widespread attitude that "real law" is about commerce and crime, while family law is seen as a second-class assignment or punishment for junior judges. It is instructive that in *New York* magazine's recent article on the 100 best lawyers in New York City, family law was the last category of lawyers listed,[81] despite the fact that family law cases are the majority of every state's civil docket.[82] This attitude is apparent in the judicial context in the frequent appointment of new, untrained judges to the family court,

[79] GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE Guideline 3-1 commentary (ABA 1985). Unfortunately, what these evaluations often reveal is race and gender bias on the part of lawyers, who consistently downgrade minority and female judges. *E.g.*, Joyce S. Sterling, *The Impact of Gender Bias on Judging: Survey of Attitudes Toward Women Judges*, 22 COLO. LAW. 257, 257-58 (1993). This must be guarded against in the development and analysis of a judicial performance survey. The National Association of Women Judges has a new committee to deal with this and should be contacted.

[80] Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 980-81, 989 (1995).

[81] *Let's Cull All the Lawyers*, NEW YORK, Mar. 20, 1995, at 32.

[82] COURT STATISTICS PROJECT STAFF, STATE JUSTICE INST., STATE COURT CASELOAD STATISTICS ANNUAL REPORT 15 (1992).

where they pay their dues and earn their way out as if it were some type of purgatory. It is most apparent in counties where family court is the depository for political hacks who have to be given a judgeship.

One answer to judges who are indifferent or hostile to domestic violence victims is to create specialized domestic violence courts presided over by judges who are informed and caring and want to be in these courts. The prototype is the Quincy, Massachusetts court created in 1978 and considered one of the country's fifteen most effective courts for battered women.[83] Since the court was created, despite a frightening rate of wife murder elsewhere in Massachusetts,[84] there has not been a single domestic violence homicide in Quincy.[85] While most of these specialized courts are civil courts, Chicago is experimenting with a domestic violence court that is part of its criminal court system.[86]

Most recently, the courts in Dade County (Miami), Florida, created a Domestic Violence Department which hears all domestic violence misdemeanors.[87] The judges and the lawyers from the State Attorney's and Public Defender's offices have received specialized domestic violence training.[88] Specialists in the courtroom "serve as liaisons between the victim, the defendant and the defendant's family members and the resources and programs relating to domestic violence in the community."[89] This specialized court was created after a 1991 pilot project increased the percentage of victims of misdemeanor domestic violence fully participating in the resolution of their cases from thirty percent to sixty-eight percent.[90]

As important as it is to create a specialized domestic violence court in every county with sufficient cases to warrant it, these courts do not obviate the need for domestic violence training for all judges. Judges in smaller and rural counties will continue to be generalists. Felony court judges will continue to hear domestic violence felony

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83 Anita Diamant, *How the Quincy District Court Protects Battered Women*, BOSTON GLOBE, Oct. 11, 1992, (Magazine), at 14.

84 In the first three months of 1992, one woman was murdered every nine days as a result of domestic violence. *Id.*

85 *Id.*

86 Jilian Mincer, *Victims of Abuse Seek Help in Experimental Court*, N.Y. TIMES, Aug. 11, 1985, § 1, at 28.

87 Cindy S. Lederman, *Dade County Domestic Violence Court: A Responsible Approach to the Treatment of Family Violence*, COUNTERBALANCE, Summer 1994, at 11, 12.

88 *Id.*

89 *Id.*

90 *Id.*

assaults and murders. Domestic violence will continue to be an issue in a variety of other cases, such as in federal drug cases.

F. Court Watching

In the *Peacock* case, Judge Cahill pointed out that because no one was present from the victim's family or a victim's advocacy group, he could sentence "in anonymity."[91] Later he said that "Mothers Against Drunk Drivers have accomplished a great deal in recent years to stop the [toll] of deceased people on the highways. Had they not been around in recent years, we might still be killing people at a much higher rate, and driving when we shouldn't be driving."[92] This acknowledgment of MADD's critical role in forcing judges to sentence drunk drivers with the severity they deserve underscores the importance of court watching. Every community needs trained court watchers who can monitor the trial process in spousal abuse and murder cases to ensure fairness. This will not be easy to accomplish. Advocates from domestic violence shelters are the obvious candidates for this task, but there are too few of them and they are needed in many places. Perhaps the funds made available to shelters in the Violence Against Women Act[93] can be used to create effective court watching programs that can be duplicated nationwide.

G. Role of the Media

One role court watchers can play is to alert local and national media to important cases and problematic judges. The media play a critical role in judicial accountability. It is essential that both print and electronic media be made aware that the community expects them to follow domestic violence issues with consistency, accuracy, and concern. As we have seen, had there not been a reporter in Judge Cahill's courtroom, his sentencing of Kenneth Peacock might indeed have gone off "in anonymity."[94]

A case that illustrates how the media can contribute to judicial accountability and prevent a miscarriage of justice involves the sen-

91 Reporter's Official Transcript of Proceedings (Sentencing) at 15, State v. Peacock (Md. Cir. Ct. Oct. 17, 1994) (No. 94-CR-0943).

92 *Id.* at 17.

93 Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (to be codified at 42 U.S.C. §§ 13931-14040).

94 Reporter's Official Transcript of Proceedings (Sentencing) at 15, *Peacock* (No. 94-CR-0943).

tencing phase of a 1992 rape case, *New York v. Garay*.[95] A jury convicted the defendant of anally raping and sexually abusing a twenty-three-year-old retarded woman who had an I.Q. of fifty-one and the social functioning of a small child.[96] These counts carried maximum sentences of eight and one-third to twenty-five years and one-third to seven years, respectively.[97] The prosecutor sought maximum sentences on both counts.[98] The defense attorney, himself a former criminal court judge, argued that the judge should not impose the maximum sentence for two reasons.[99] First, the victim had sustained no physical injury and therefore the rape was not violent.[100] Second, because the victim had been sexually assaulted before by her father and brothers, the impact of the most recent rape was not as severe as it would have been for a first-time rape victim.[101] The judge, New York Supreme Court Justice Nicholas Figueroa,[102] concurred readily in both defense arguments, to the shock of the prosecutor, who tried to explain that rape is inherently violent.[103] Indeed, the judge was wrong on both counts. Not only is rape always violent even without extrinsic physical injury,[104] it is those who have been repeatedly victimized that suffer the most.[105] Following an acrimonious debate, the judge adjourned the sentencing hearing to allow the prosecutor to bring in the guardian with whom the victim lived to attest to the victim's nightmares,[106] which the judge had derided as "apocryphal."[107]

After the first hearing, the prosecutor's office contacted the NOW Legal Defense and Education Fund (LDEF), which contacted the press to urge coverage of the second sentencing hearing. After extensive press coverage and additional sentencing hearings, the judge sought the advice of other judges and imposed a lengthy sentence.[108]

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95 No. 669/91 (Sup. Ct. March 11, 1992). The press coverage and the victim impact issues of this case are discussed in Lynn Hecht Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, 20 FORDHAM URB. L.J. 439 (1993).

96 Schafran, *supra* note 95, at 439.

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id.*

102 In New York, the supreme court is the trial court of general jurisdiction. DAVID D. SIEGEL, NEW YORK PRACTICE § 12 (2d ed. 1991).

103 Schafran, *supra* note 95, at 439.

104 *See id.* at 441-47.

105 *See id.* at 447-48.

106 *Id.* at 440.

107 *Id.* at 439.

108 *Id.* at 440.

A particularly interesting point about *Garay* is that, unlike Judge Cahill about whom myriad complaints surfaced after the *Peacock* case aroused public fury, Justice Figueroa is a well-respected judge.[109] It is not uncommon for otherwise fine judges to have a blind spot in cases about battering, rape, and child sexual abuse.

One reason the media have such a critical role to play in judicial accountability is that people rarely realize the effect judges can have on their lives. As a result, minimal public attention is paid to judicial selection, and judicial elections are often a charade with the public having little sense of who they are voting for.[110] Focusing media attention on the entire process of judicial selection rather than covering the judiciary only when something goes awry will attract public attention to and increase participation in the selection process and hopefully will improve the caliber of those judges selected. Media attention to disciplinary proceedings helps to keep them from being a whitewash or a slap on the wrist, as discussed below in connection with the case of a sexually harassing New Jersey judge, Edward Seaman.[111]

H. Cooperation Between Those Inside and Outside the System

The *Garay* case also illustrates the importance of different systems working with each other to create judicial accountability. The prosecutor's office alerted NOW LDEF to the judge's acute insensitivity to the harm to this rape victim, and NOW LDEF alerted the press to cover the subsequent sentencing hearings. This coverage undoubtedly played a role in persuading the judge to solicit the views of other judges and ultimately impose their suggested sentence. The importance of having those entirely outside the legal system become involved in judicial accountability is also illustrated by the public response to Judge Cahill and to Judge Seaman.

I. The Community's Role in Judicial Discipline

Judges' behavior is governed by the Canons of Judicial Conduct of each state, which are adapted from the ABA Model Code of Judicial Conduct.[112] Most states have a version of Canon 2 which states that "[a] judge should avoid impropriety and the appearance of impropri-

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109 *Id.*

110 *See* Colloquy, *The Road to the Judiciary*, *supra* note 40, at 987-88.

111 *See infra* notes 118-27 and accompanying text.

112 *See, e.g.*, N.Y. CODE OF JUDICIAL CONDUCT Canon 2 (McKinney 1992 & Supp. 1994).

ety in all of the judge's activities,"[113] and commentary to the effect that "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges."[114]

When a judge excuses a wife-murderer, as Robert Cahill did, and the community is outraged, Canon 2, as well as other canons, is breached and a disciplinary complaint can be filed. Most states have commissions charged with the investigation of violations of the Canons of Judicial Conduct; these commissions may discipline judges and some may even remove a judge from the bench.[115] The commissions go by different names and operate in varying styles. For example, the Massachusetts Judicial Conduct Commission operates in total secrecy, except in instances when it removes a judge from the bench.[116] In contrast, the New York State Commission on Judicial Conduct can admonish or censure a judge publicly.[117] Furthermore, some commissions are extremely sensitive to issues of gender bias and take strong measures against biased judges, while others take minimal or no action.

The cases of New Jersey Judge Edward Seaman and Maryland Judge Roger Cahill provide two excellent examples of the community insisting on serious punishment in the face of a de minimis response from the entities charged with judicial discipline.

Edward Seaman was charged with sexually harassing his law clerk, Barbara Denny.[118] Ms. Denny alleged that the judge initiated talk of sexual relations, bragged of his sexual prowess, asked her about her views on premarital sex and various sexual acts, questioned her about her underwear, attempted to place her hand on his crotch, and touched her inappropriately.[119] Two other female law clerks testified that they had witnessed an incident of touching in which Seaman reached under Denny's skirt and touched her knee.[120] The law clerk filed a complaint with the New Jersey Advi-

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113 MODEL CODE OF JUDICIAL CONDUCT Canon 2 (1990); *see* Leslie W. Abramson, *Deciding Recusal Motions: Who Judges the Judges?*, 28 VAL. U. L. REV. 543, 543 n.1 (1994) (stating that "most states have adopted the American Bar Association's Model Code of Judicial Conduct").

114 MODEL CODE OF JUDICIAL CONDUCT Canon 2 cmt. (1990).

115 REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE & REMOVAL 184 (1993) (reporting 33 states have commissions which formally recommend discipline of judges to the appropriate state officials, and six states plus the District of Columbia authorize special commissions to actually remove judges).

116 MASS. GEN. L. ch. 211C, § 5 (1994).

117 N.Y. JUD. LAW § 44(7) (McKinney 1983 & Supp. 1995).

118 *In re* Seaman, 627 A.2d 106 (N.J. 1993).

119 *Id.* at 111; Russ Bleemer, *Former Clerk Sues Seaman for Sexual Harassment*, N.J. L.J., Apr. 12, 1993, at 3.

120 *Seaman*, 627 A.2d at 111.

sory Committee on Judicial Conduct (ACJC) in 1989; however, the committee took no action until 1992.[121] After considerable public pressure, the ACJC held hearings and finally forwarded an opinion to the New Jersey Supreme Court finding that Seaman had engaged in sexual harassment and thus violated several Canons of the Code of Judicial Conduct, and recommending public censure.[122] The Supreme Court decided that public censure was insufficient, and imposed a sixty-day suspension without pay and mandated Seaman's attendance at a court-approved sensitivity program.[123]

The community refused to accept this determination as final. Not only did the law clerk and her attorney express outrage, so did organizations like NOW and several newspapers, which wrote scathing editorials about this "slap on the wrist."[124] This public outcry brought attention from state legislators. The Assemblywoman representing the district in which Judge Seaman sat said that her constituents considered the Supreme Court's proposed punishment laughable and that she planned to draft articles of impeachment.[125] While the Assembly considered whether to move toward impeachment, Seaman resigned.[126] In an editorial condemning the Supreme Court's failure to take serious action despite its own findings that Seaman "committed acts of sexual crudity, deeply offensive to another person," one newspaper wrote, "[p]ublic outrage and threats of impeachment that followed the court's action were the real force that drove Seaman out . . . if not for an engaged and outraged public, a statewide storm of protest might never have formed to pressure Seaman to resign."[127]

In Judge Cahill's case, the legal and nonlegal community immediately went into high gear to ensure that serious sanctions were imposed on Cahill for violating the Code of Judicial Conduct. Barbara Dale, a prominent Baltimore cartoonist and owner of a greeting card company, assembled a group of twenty-five highly visible women and men, including Pulitzer-prize winning author Taylor Branch and Orioles' Hall of Fame pitcher Jim Palmer, to file a formal com-

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121 *Id.* at 109.

122 *Id.*

123 *Id.* at 124.

124 *E.g.*, Kathy Barrett Carter, *Judge Seaman Is Unfit To Serve on Bench*, N.J. L.J., Aug. 9, 1993, at 19; *Justice Delayed and Justice Denied*, N. Jersey Herald News, Aug. 10, 1993, at A11.

125 *Anti-Seaman Mood Grows in Statehouse*, N.J. L.J., Aug. 23, 1993, at 8.

126 Jim O'Neill, *Suspended Judge Quits over Sex Case*, Star-Ledger (Newark), Aug. 31, 1993, at 1.

127 *Judge Seaman Himself Did What Supreme Court Didn't*, News Trib. (New Jersey), Sept. 1, 1993, at A10.

plaint against Cahill, which generated extensive local television coverage.[128] The Women's Bar Association of Maryland created an ad hoc committee to gather information and complaints about Cahill and received more than 100 complaints about a wide variety of abusive incidents.[129]

Domestic violence advocates should learn how judicial discipline works in their own states and whether it is responsive to their concerns. The Center for Judicial Conduct Organizations of the American Judicature Society, headquartered in Chicago, has information about how the judicial conduct commission in each state operates and how it compares to commissions in other states.[130] As with judicial selection panels, the composition of the disciplinary commission and whether it has had training on gender bias are critical issues. Even committed staff can be overridden by ill-informed or insensitive commission members.

Despite widespread insensitivity, advocates can change the judicial disciplinary system in their states. Both Maryland and California have recently revised their disciplinary commissions. The Maryland Judicial Disabilities Commission now has new members and a new chair who states that she feels as stymied as others by the way this commission has operated in the past—as a black hole.[131] The formation of the new commission was in response to a call for change, and there is intense pressure to further modify this disciplinary system and open it to the public.[132] The proposals include a constitutional amendment that would place a majority of lay persons on the commission, and administrative changes that would make the commission's proceedings public when formal misconduct is charged.[133]

California voters, fed up with the secrecy and inaction of their Commission on Judicial Performance, have changed it radically. In a 1994 referendum, voters mandated that the Commission have six public members and five lawyers/judges as compared to two public members and seven lawyers/judges as in the past, that the commis-

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128 Lyons & Small, *supra* note 10, at C3.

129 Telephone Interview with Paula Peters, Committee Chair, Women's Bar Association of Maryland (Apr. 10, 1995).

130 *See* Lyons & Small, *supra* note 10, at C3.

131 *Id.* at C1, C3.

132 *Id.*

133 Sheridan Lyons & Peter Jensen, *Judges Oppose Bid To Change Discipline*, SUN (Baltimore), Feb. 23, 1995, at B1.

sion make its own rules, and that all proceedings be public once formal proceedings are initiated.[134]

III. Conclusion

Judges are the most visible symbol of our justice system and are the actors with the last word. In domestic violence, as in other aspects of the law, how judges respond to cases shapes the responses of those who might use the courts, as well as the entire legal community. When domestic violence victims learn that a judge thinks it is acceptable for a man to maim or murder his wife, she sees no point in turning to the courts for her own protection. Additionally, police and prosecutors see no point in spending time on domestic violence cases when they know the judge will so humiliate the victim that she drops the case, or will merely slap the batterer on the wrist. Judges must be selected, trained, evaluated, and if need be, disciplined with a focus on the fact that domestic violence is a major national problem with profound implications for the safety, physical and mental health, and poverty of women and children, and that it is a crime. Batterers must be held accountable for their violence. Judges must be held accountable for their role in stopping it.

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134 Judicial Council of Cal., Summary of Changes Affecting the Commission on Judicial Performance Resulting from Enactment of Proposition 190 (1995).