



John Nethercut, Executive Director
Tyra Robinson, Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 223
robinsont@publicjustice.org

HB 950 – Judges – Community and Cultural Awareness Training

Hearing before the House Judiciary Committee, February 24, 2021

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Race Equity Team works to demonstrate to people in power the impact of their decisions on communities of color and low-income communities. The PJC **SUPPORTS HB 950** and requests a **FAVORABLE** report.

HB 950 Addresses the Stark Lack of Diversity Within the Judiciary in Proportionality with the Demographics of Individuals with Whom Courts Interact. The legal profession only boasts a limited 14.1% of lawyers of color.¹ 5% are Black (a percentage which has not increased in the past decade), 5% are Latino, and 0.4% are Indigenous.² At the same time, 86% of lawyers are white.³ Within the judiciary, the numbers are even worse.

The gavel gap is defined as a “disparity in race and gender between those who hold judicial power and the public they serve.”⁴ According to the most recent available statistics, 90% of U.S. cases are tried in state courts.⁵ Maryland’s population is 48% people of color; yet only 32% of state court judges are.⁶ Meanwhile, 53% of Maryland’s population is white and 67% of state court judges are.⁷ The lack of diversity within the judiciary means that decision-makers are not representative of the populations they are impacting and interacting with. Because decision-makers are more often not members of the communities whose lives are impacted most, an updated baseline understanding of

¹ American Bar Association National Lawyer Population Survey (2020).

² *Id.*

³ *Id.*

⁴ American Constitution Society, The Gavel Gap Study. Available at: <https://gavelgap.org/>.

⁵ American Constitution Society, The Gavel Gap Report. Available at: <https://gavelgap.org/pdf/gavel-gap-report.pdf>.

⁶ American Constitution Society, The Gavel Gap Study. Available at: <https://gavelgap.org/>.

⁷ *Id.*

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

these communities through minimum cultural competency requirements will help the judiciary confront biases that exist within themselves.⁸

HB 950 Implements Training That Will Combat Institutional Racism. Systemic racism functions through various mechanisms, including institutional racism. Institutional racism occurs when entities operate through racist or discriminatory policies (formal or informal) and actors enforce those policies within the entity.⁹ The judicial system can and has been demonstrated to perpetuate institutional racism.¹⁰ These instances add up and decrease trust in the judiciary's value. Nationally, only 52% of Black communities trust state courts whereas 70% of white communities do.¹¹

A 2004 Maryland report, conducted by the Commission on Racial and Ethnic Fairness in the Judicial Process ("Fairness Commission"), found that more white people believed court processes were fair than people of color, and the more affluent the responder, the more fair they believed court processes were.¹² The report also concluded that significant numbers of citizens, divided by race, ethnicity, and economic status, question the degree of fairness received.¹³ Some of the report's recommendations included: "continuing to stress training for the improvement of multicultural competence and the recognition of differences for judges and the personnel of the courts, and of the clerks of courts and register of wills' offices..."¹⁴ and also "expanded education and training programs should be developed for court personnel regarding unique cultural issues relating to specific racial or ethnic groups, as such groups achieve significant percentages of population in the relevant court jurisdictions."¹⁵ HB 950 finally follows through on recommendations from this designated committee within the Maryland judiciary to combat elements of institutional racism and can help increase judicial awareness and understanding in how courtroom attendees are treated.

HB 950 Reinforces the Judiciary's Commitment to Uphold Values of Fairness, Impartiality, and Equity, and Benefit the Judiciary's Functionality in Resolution of Issues.

Unexamined and unaddressed biases push judges to make decisions that are not as balanced as they strive to be.¹⁶ Although a standing pillar of courts is equity and equal justice under law¹⁷, unfortunately there are numerous instances of racism and other discrimination towards court

⁸ U.S. Circuit Judge Bernice Donald, *Judges on Race: Reducing Implicit Bias in Courtrooms* (Dec. 6, 2020). Available at: <https://www.law360.com/articles/1309550/judges-on-race-reducing-implicit-bias-in-courtrooms>

⁹ Racial Equity Tools Core Concepts. Available at: <https://www.racialequitytools.org/resources/fundamentals/core-concepts/racism>

¹⁰ Jason Wu, *Pervasive Racial Bias in Courts Requires Transformative Social Change* (Nov. 9, 2020). Available at <https://truthout.org/articles/pervasive-racial-bias-in-courts-requires-transformative-social-change/>. See also *Lawyering While Black: Examining the Practice of Law through the Prism of the Black Experience* (Oct. 2020). Available at: https://issuu.com/leosur/docs/thl_sepoct20/s/11154623.

¹¹ American Constitution Society, *The Gavel Gap Study*. Available at: <https://gavelgap.org/>.

¹² Report of Racial and Ethnic Fairness in Maryland's Judicial Process (June 2004).

¹³ *Id.* at 2.

¹⁴ *Id.* at 43.

¹⁵ *Id.* at 44.

¹⁶ Kang et. al., *Implicit Bias in the Courtroom* at 1129 (Mar. 2012). See also Terry Carter, *Implicit Bias is a Challenge Even for Judges* (Aug. 5, 2016). Available at: https://www.abajournal.com/news/article/implicit_bias_is_a_challenge_even_for_judges

¹⁷ Court of Appeals of Maryland, *Statement on Equal Justice under Law* (Jun. 9, 2020). Available at: <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/statementonequaljustice060920.pdf>

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

participants of all kinds (parties, attorneys, and paralegals alike). The earlier referenced study by the Fairness Commission compiled various instances of racism and discrimination towards court participants in Maryland.¹⁸ The Public Justice Center's staff similarly observe how bias and discrimination continue to permeate through courts they engage with.

Here are but some examples:

Common behaviors of non-Black judges:

- Rolling their eyes when addressing Black women, both tenants and tenants' lawyers
- When discussing postponement, not asking Black women tenants about their work schedule or availability before selecting a date
- Referring to a Black lawyer by their first name and never referring to them as counsel or counselor, while always doing so with white lawyers
- Refusing to allow a Black attorney to enter their appearance on the record while routinely allowing white attorneys to do so
- Referring to Black tenants as "you people," "those people," or "these people"
- Virtually daily, interrupting, dismissing and discrediting testimony from Black and Latine¹⁹ tenants, especially women, e.g., with "Did you pay the rent?," "We're not here to discuss the conditions [of the property]," "We're not here to discuss the landlord's behavior," "You can't live there for free," or "You should have picked a better place to live," while listening without interruption to most white tenants
- Devaluing and dismissing the seriousness of dangerous conditions in the property and refusing relief in rent escrow/habitability for Black or Latine families, while providing relief to white families for the same conditions, e.g., lack of heat in winter, lack of running water, lack of electricity
- Criticizing tenants of color on the record, including openly criticizing their parenting, for moving into dangerous properties and not moving out of them, while ignoring the landlord's culpability for the conditions, and not subjecting white tenants to the same
- Disregarding the testimony of women tenants of color concerning conditions in the property, no matter how obvious, e.g., not allowing tenants to testify about lack of a functioning furnace resulting in lack of heat, requiring instead the testimony of a housing inspector, but accepting testimony from white landlords/agents

Extreme incidents:

¹⁸ Report of Racial and Ethnic Fairness in Maryland's Judicial Process at 46-51 (June 2004).

¹⁹ In order to be inclusive in the language and due to concerns of linguistic imperialism, The Public Justice Center decided to use Latine instead of Latinx.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

- Entering judgment for possession of the property against a tenant of color, after finding her habitability claim valid and the landlord's dereliction severe, based on her "attitude" in court
- Allowing a bailiff to refuse entry to the courtroom to a Black tenant because she wore a head-wrap, forcing the woman to choose between a default judgment against her and removing the covering to reveal tangled and unkempt hair, the result of months of inability to visit a hairdresser due to the pandemic; the tenant was visibly humiliated and her Black attorney was subjected to the painful choice between confronting the racism and pursuing her client's immediate interests in the case
- Denying a tenant's motion for postponement, where the grounds were that the tenant had COVID-19 and could not come to court (and would have been prevented from entering the courthouse per court protocol), finding the claim of illness not credible based solely on the amount of rent claimed by the landlord
- Forcing an attorney of color to stand in front of the courtroom for the entire docket, preventing them from representing clients, as discipline for walking in and out of the courtroom during the docket in order to interview clients and prepare for trials, behavior that is common and constant, and which white lawyers, landlords, and agents continued to engage in throughout that very docket, giving as the reason for this sanction, "Because I said so"

Systemic disparate treatment of landlords and their representatives, the vast majority of whom are white, compared with tenants, the vast majority of whom are people of color:

- Solicitous questioning on the record of white landlords who are unfamiliar with how to prove their case, ready offers of postponements, while tenants' explicit requests for postponements routinely denied and questions posed to them generally adversarial
- Routinely allowing landlords to call the court if they're running late and have their cases held until they arrive, while entering default judgments against tenants who are not present when their case is called and frequently denying motions for new trial, even when tenant was in the corridor preparing for trial when judgment was entered, or had to visit the restroom after waiting hours for their case, while providing no way for a tenant who has had to step out to know when their case is called
- Bundling cases for landlords at the beginning of the docket for their convenience while regularly denying explicit requests from tenants to be heard quickly so as not to miss work or lose their job

HB 950 is therefore a meaningful step acting on an identified urgent and necessary change to continuously progress towards a more equitable judiciary.

For the foregoing reasons, the PJC **SUPPORTS HB 950** and urges a **FAVORABLE** report. Should you have any questions, please call John Nethercut at 410-400-6952 or Tyra Robinson at 410-625-9409 ext. 223.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.