

DOMESTIC RELATIONS CASES

"We welcome this group. We need to be examined. We need to grow. We need to increase our gender awareness. We have problems; everybody does in this area.

"And we're lawyers. We're not psychiatrists, we're not psychologists; we're judges and lawyers. And you know that and I know that, but not everybody in the world seems to know that."¹

A. INTRODUCTION AND OVERVIEW

Most Oregonians have little contact with the court system. When they do, it is most likely to be in matters involving traffic offenses, domestic relations, or domestic violence. Few types of court proceedings engender more heightened emotion or have more lasting effect than marital dissolutions or hearings related to domestic violence, particularly when they involve children. During the public hearings, both men and women testified that they perceived the courts to be gender-biased in matters related to domestic relations and domestic violence.

We conclude that both men and women justifiably perceive some areas of unfairness in Oregon state courts in cases involving domestic relations and domestic violence. Women tend to receive financial dispositions in marital dissolutions that ultimately leave them at a long-term economic disadvantage relative to men. Because so many women are awarded custody of minor children and so many male obligors do not pay some or all of the support ordered, the economic injury to women and their children is compounded. Both men and women of low income are disadvantaged by the lack of available legal services and effective access to the courts in Oregon; this is particularly so for non-English speaking persons. Litigants who are victims of domestic violence, primarily women, confront lawyers, judges, and law enforcement personnel who are not sufficiently trained or experienced concerning domestic violence to deal effectively with the issues presented by these litigants. Finally, male victims of domestic violence are more likely to be disbelieved or denied relief than are female victims.

B. ISSUES STUDIED

We studied (1) whether and, if so, how gender affects the ability to pursue domestic relations litigation and the results thereof; and (2) whether and, if so, how gender affects the treatment accorded parties in domestic violence cases. Specifically, we focused on gender inequities, real or perceived, in matters involving:

- child custody and visitation,
- child support,
- spousal support,
- property division,
- Family Abuse Prevention Act (FAPA)² restraining orders, and
- marital dissolution cases.

C. METHODS OF STUDY

Members of the Domestic Relations work group brought a range of expertise to the tasks at hand. Members included domestic relations lawyers, prosecutors, a legal services lawyer, a domestic violence expert, a child support enforcement lawyer, and a support enforcement division staff person. A male state trial court judge chaired the group. A total of two men and six women served on the work group, including two Asian-Americans and one Hispanic. Volunteers from other professional disciplines helped the work group accomplish selected tasks.

We settled on six primary means of acquiring information:

1. Public hearings and written comments.
2. The survey of lawyers. (Nearly 50% of the lawyers who responded either did not answer the questions concerning domestic relations cases or stated, "I don't know.")
3. The survey of judges.
4. Marital dissolution case study. We reviewed a representative sample of dissolution cases terminated by judgment in 1995 and 1996 in 11 Oregon counties.³ We divided the state into four quadrants for comparison purposes: Northeast (Deschutes County only⁴), Northwest (Multnomah, Yamhill, Marion, Polk, and Lane Counties), Southeast (Harney and Malheur

¹ Testimony of a male judge at the Medford public hearing, Sept 25, 1996.

² ORS 107.700 *et seq.*

Counties), and Southwest (Curry, Coos, and Douglas Counties).

5. Review of other national, state, and local studies and literature.
6. Review of a "courtwatch" study conducted in three Oregon counties.

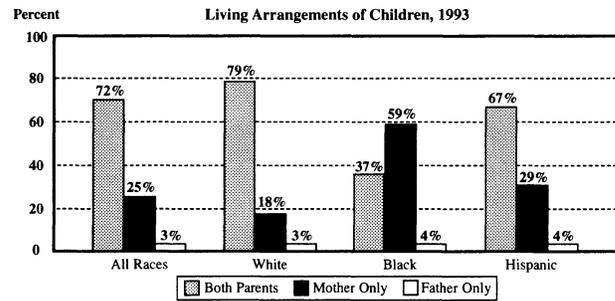
D. FINDINGS

Much of the testimony presented at each of the public hearings related to domestic relations or domestic violence. Testimony was offered in person by 93 people (60 women and 33 men). Of those who testified, 32 persons (21 men and 11 women) offered testimony concerning issues primarily related to domestic relations, and 28 (6 men and 22 women) offered testimony concerning issues primarily related to domestic violence. We also received written materials from many others.

1. Background: Demographic Trends and Systemic Intervention

The United States is experiencing high rates of separation, divorce,⁵ and domestic violence,⁶ and Oregon is no exception. It is little wonder, then, that so many witnesses at the public hearings had experienced the justice system through a dissolution or domestic violence-related proceeding.

The percentage of children in Oregon who live with one parent nearly doubled from 1970 (14.7%) to 1993



(28%). The distribution of these children among parents is extremely disproportional by both race and gender:

Far more white children live in two-parent households than do either African-American or Hispanic children. Women are vastly over-represented in the ratio of one-parent households, and this is especially true for African-American women. Oregon mirrors these trends.⁷ These statistics are, however, only one part of the picture.

In the two decades between 1970 and 1990, wages were stagnant or declining, while family costs were rising.⁸ According to an Oregon study, "all racial and ethnic groups have the same overall pattern of household income variation. Married couple families have the highest income, followed by male heads of household with no children at home and female heads of household with no children. Men with children are next, while women with children consistently have the

³ The specific findings from this survey, which are noted in later sections of this chapter according to subject matter, are categorized as "very significant" (*i.e.*, very unlikely to have occurred by random chance), "moderately significant," "slightly significant," or "insignificant."

⁴ Other counties in the northeast quadrant of the state did not participate in our study.

⁵ Approximately 50% of first marriages and 62% of second marriages in Oregon end in divorce. The divorce rate has tripled since 1960. *Testimony, Oregon Legislature*, Nov 18, 1996 (statement of Hugh McIsaac, Secretary of the Oregon Task Force on Family Law). Although both marriage and divorce rates in the United States have dropped in the last few years, in Oregon the divorce rate increased from 4.6 per thousand in 1970 to a high of 6.9 per thousand in the mid-1970s and is now at 4.9 per thousand. In 1995, the rates for divorce in Oregon varied widely, from a low of 3.5 per thousand in Union County to a high of 7.2 per thousand in Baker and Crook Counties. Oregon Health Division, Center for Health Statistics, July 1996.

⁶ National surveys in 1975 and 1985 found high levels of domestic violence. A national probability sample of more than 2,000 families allowed researchers to estimate that, in the prior year, over 1.7 million Americans had faced a spouse wielding a knife or gun and that well over 2 million had experienced a severe beating at the hands of a spouse. Murray A. Straus & Richard J. Gelles, *Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys*, 48 J MARRIAGE & FAM 465 (1986). The Surgeon General of the United States has reported that the leading cause of injury to women between the ages of 15 to 44 is domestic violence. In 95% of all domestic violence assaults, crimes are committed by men against women. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE (1983).

⁷ In Oregon, 5.6% of all households are headed by a white female with minor children, 5.7% of all households are headed by an Asian/Pacific Islander female with minor children, 9.5% of all households are headed by a Hispanic female with minor children, 13.8% of all households are headed by a Native American female with minor children, and 17.7% of all households are headed by an African-American female with minor children. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS POPULATION (General Population Characteristics, Table 43); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS POPULATION (General Characteristics, Oregon Table 21, and Summary File Tape 1, Oregon).

⁸ For married couples, the median price of a one-family house increased 23 times as fast, health care four times as fast, and consumption twice as fast as median income. U.S. COMM'N ON CHILD AND FAMILY WELFARE, PARENTING OUR CHILDREN: IN THE BEST INTEREST OF THE NATION 13-14 (1996).

lowest incomes.⁹ The percentage of children living with single mothers in Oregon increased from 5% in 1960 to 15% in 1990.¹⁰

Children in single-parent families are much more likely to be poor than are children in two-parent families.¹¹ Non-custodial parents' failure to pay support is a significant contributor to the low incomes of single-parent families. In 1991, 60% of the 9.9 million women and about 80% of the 1.6 million men who were custodial parents received no child support. Only about 52% of the men and 43% of the women to whom child support was owed received full payment.¹² The consequences of the failure to receive support are far more severe for women than for men¹³ and help to contribute to the well-documented and widely recognized "feminization of poverty."

Children who live with one parent often have limited contact with their other parent. The National Survey of Children found that 49% of the children in its national sample who lived with only one of their parents had not seen their non-residential parent in the preceding year, and only one in six children averaged one or more contacts per week.¹⁴ As the United States Commission on Child & Family Welfare pointed out, "There are . . . complex reasons why men lose contact with their children, from apathy to a belief that the system is biased against them."¹⁵ Regardless of the reasons, the consequences of a non-custodial parent's absence may

be detrimental to the child, as children are more likely to suffer both from economic disadvantage and from the emotional and developmental scars of neglect. However, in some cases, judges must weigh the benefits of promoting contact between children and their parents against the safety risks presented when domestic violence is an issue in the family.¹⁶

2. The Role of the Courts

When married couples with children divorce, the courts oversee and, not infrequently, decide the arrangements for custody, visitation, and support of the children. In 1995, courts decided custody for 12,991 children in Oregon.¹⁷ In the great majority of cases, custody is not contested.¹⁸ Of those cases in which the parents did not contest custody, 65.6% of children were placed in the sole custody of the mother and 11% were placed with their fathers.¹⁹ The remainder were placed in joint custody.

In Oregon, with the important exception of mandatory mediation²⁰ in child-custody cases, limited services are available to divorcing or separating parents outside the courtroom to help them work out what is best for the children. Few counties in Oregon offer formalized services to educate families before the relationship founders and to help them cope during and after dissolution of the marriage.

⁹ Center For The Study Of Women In Society & The Labor Education And Research Center, University Of Oregon, Women In Oregon: A Profile From The 1990 Census 112 (1993) ("WOMEN IN OREGON").

¹⁰ *Id.* at 30.

¹¹ Nationwide, 9% of the children in families headed by a married couple, 23% of the children in families headed by a man, and 46% of the children in families headed by a woman are poor. The 1990 U.S. Census reflected that 60.9% of households in Oregon headed by a female with related children under 5 years, and 40% (27,346 single female-headed households) with children under 18 years, fell below the poverty line. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *Income, Poverty and Valuation of Noncash Benefits: 1993*, CURRENT POPULATION REP, at Tables D-6 and D-22 (Series P60-18, 1995). An additional 2,440 Oregon households headed by a single female with no children fell below the poverty line. OREGON HOUSING AND COMMUNITY SERVS DEPT, OREGON CENSUS ABSTRACT, CENSUS 1990 (1992).

¹² BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, *Child Support for Custodial Mothers and Fathers: 1991*, CURRENT POPULATION REP 2, 15 (Series P60-187). A computer sample of 99,463 Oregon child support cases, done by the Oregon Child Support Enforcement Division at our request, disclosed that approximately 30% of males and 21% of females ordered to pay child support actually pay the full amount.

¹³ Five and nine-tenths million women, but only 1.3 million men do not receive child support. In addition, because women's incomes are generally lower, the economic effect of not receiving support is greater, on average, in their households. U.S. COMM'N ON CHILD AND FAMILY WELFARE, *supra* note 8, at 15. In 1990, in Oregon, 40% of female-headed households with children had incomes below the poverty line. WOMEN IN OREGON, *supra* note 9, at 130-31.

¹⁴ Frank F. Furstenberg, Jr., et al, *The Life Course of Children of Divorce: Marital Disruption and Parental Contact*, 48 AM SOC REV 656 (1983).

¹⁵ U.S. COMM'N ON CHILD AND FAMILY WELFARE, *supra* note 8, at 13.

¹⁶ As violence against women becomes more severe and more frequent in the home, children experience a 300% increase in physical violence by the male batterer. Murray A. Straus & Richard J. Gelles, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES* (1990).

¹⁷ Oregon Health Division, Center for Health Statistics, July 1996.

¹⁸ NATIONAL CTR OF HEALTH STATISTICS, U.S. DEP'T OF HEALTH AND HUMAN SERVS, MONTHLY VITAL STATISTICS REPORT, Vol 43, No 9 (Supp Mar 22, 1995).

¹⁹ OREGON VITAL STATISTICS, DIVORCE FACT SHEET: OREGON OCCURRENCE.

²⁰ See ORS 107.755 *et seq.*

Unlike most other types of cases, marital dissolutions involve an equal number of men and women, and a victory or defeat in court is easily susceptible to the perception that the result is gender-based. Inevitably, it seems, dissolutions involve issues inextricably related to generally perceived gender roles and responsibilities.

The reasons why litigants may feel that they are not treated fairly in family law cases vary by gender. Men's perceptions may be related to the fact that men do not receive custody of their children as frequently as women.²¹ Women's perceptions may be related to the fact that they often receive monetary dispositions that place them at a relative financial disadvantage.

3. Surveys of Lawyers and Judges: General Information

We surveyed both lawyers and judges concerning a wide variety of subjects, including domestic relations and domestic violence. Of those responding lawyers who practice family law, 68.7% were men and 30.5% were women.²²

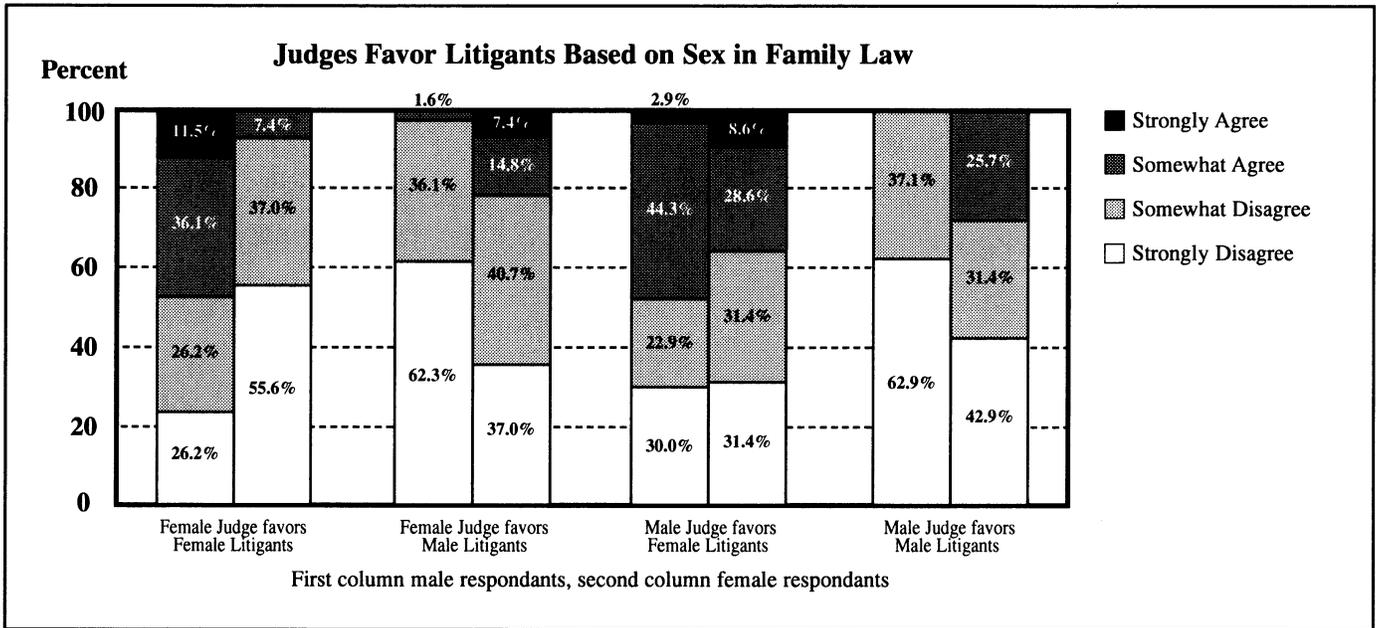
More than 60% of both male and female judges said that they had dealt with family law cases in the preceding 12 months. We asked judges whether they perceive that judges favor one sex over the other in family law matters. Generally speaking, most judges do not believe that such bias exists. Interestingly, not one

judge, male or female, believed that female judges tend to favor male family law litigants. On the other hand, nearly one-fifth (18%) of all male judges (but only one female judge) stated a belief that male judges tend to favor female family law litigants.

The survey of lawyers elicited somewhat different responses on this issue of gender-based bias in the judiciary. For instance, 47.5% of male, but only 7% of female, lawyers with an opinion indicated that they "somewhat or strongly" agreed that female judges favor women in family law cases. Concerning the converse issue, although no male respondents were of the opinion that male judges favor men in family law cases, 25.7% of female and 23.5% of divorced lawyers with an opinion indicated that they "somewhat" agreed that male judges favor men in family law cases. Female lawyers (22.2%) and divorced lawyers (25%) were much more likely than their non-divorced male counterparts (1.6%) to believe that female judges favor men in family law cases. Of those who expressed an opinion, many more male lawyers (47.1%) than their female (37.1%) or divorced (29.4%) counterparts believed that male judges favor women in family law cases.

The following charts summarize the survey responses of judges and lawyers, concerning perceptions of favoritism by male and female judges toward male and female domestic relations litigants:

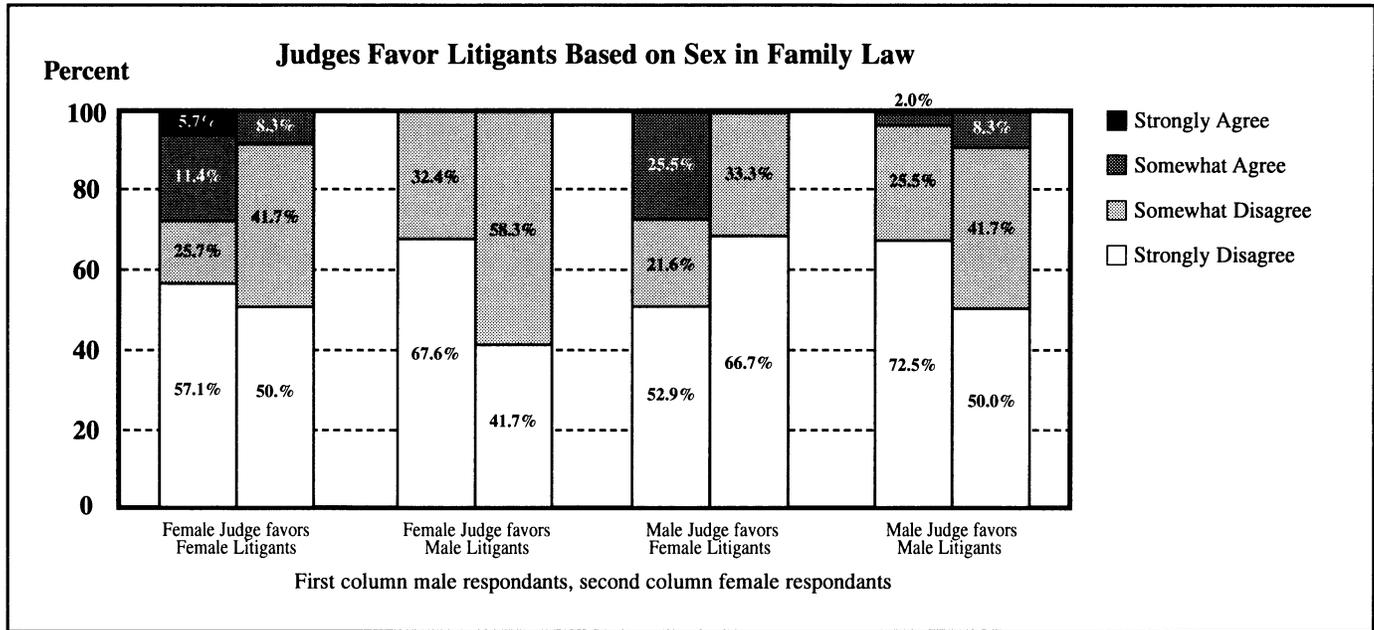
Lawyers' Responses



²¹ On May 9, 1995, Karen Czapanskiy, Professor of Law at the University of Maryland, testifying before the U.S. Commission on Child and Family Welfare, stated that her analysis of studies of gender bias in the courts conducted in about 60% of the states demonstrated that, for the most part, custody awards in favor of women did not result from judicial bias, but rather from the fact that women, even those who work outside the home, are the primary caregivers of the children before divorce.

²² These percentages approximately reflect the percentages of men (74%) and women (26%) in the Oregon State Bar and the composition, by gender, of the OSB Family and Juvenile Law Section. That section is 66.2% male and 33.7% female.

Judges' Responses



The judicial survey also included questions concerning domestic violence. Both male and female judges tended to agree “somewhat or strongly” that it is appropriate for the courts to issue restraining orders. Male judges were almost as likely (86%) as female judges (93%) to believe that the legal process does not show too much sympathy for women who allege domestic abuse. Similar percentages of male (87.5%) and female (93%) judges believed that the legal process does not show too much sympathy for men who allege domestic abuse. Four male judges and one female judge agreed with the statement that “judges should not issue restraining orders to victims of domestic violence who repeatedly return to abusive relationships.”

By contrast, a large percentage of lawyers with an opinion (40.9%) believed that the legal process shows too much sympathy for women who allege domestic abuse. Responses to this question revealed some important differences based on demographics, particularly gender. Although there was some variation in the data based on urban (35.4%) and rural (45.8%) differences, age and years in practice were even more telling. The longer a lawyer had been admitted to the bar, the more likely that lawyer was to believe that the legal process shows too much sympathy for women who return to abusive situations.²³ The most significant differences in rates of agreement with the “too-much-sympathy” proposition were between male (49.3%) and female (25%) lawyers. Only 20% of male lawyers, but nearly 64% of female lawyers with an opinion, “strongly disagreed” that the legal process

shows too much sympathy to women who allege domestic abuse. Nearly 40% of those who “strongly disagreed” were between 40 and 49 years of age. An additional 26% were between 30 and 39 years of age. Approximately 20% of both male and female lawyers agreed that judges should not issue FAPA restraining order to domestic violence victims who repeatedly return to abusive relationships.

In short, women appear to be much more sympathetic to women’s claims of domestic abuse in the legal process than are men. With respect to claims by men of domestic abuse, overwhelming majorities of both male (94%) and female (85%) lawyers with an opinion disagreed that the legal process shows too much sympathy.

4. Child Custody and Visitation

Both mothers and fathers voiced concerns at the public hearings about gender bias in court decisions related to child custody. The nature of these concerns was different, albeit fairly consistent, for men and for women. Men perceived that both male and female judges were biased in favor of mothers in custody decisions and that that bias tends to have the effect of largely excluding fathers from their children’s lives. For instance, one divorced male witness complained that gender stereotyping was so pervasive that, even when a mother was unfit to have custody of her children, the court would not change custody to an otherwise fit and professionally employed father.²⁴ Mothers, on the other hand, repeatedly testified to the apparent lack of

²³ Not surprisingly, older lawyers are predominantly male. Among survey respondents, about 90% (154) of the lawyers in practice 20 years or more were male, and about 10% (15) were female.

understanding by their own lawyers and by the court for concerns regarding the safety of their children. There was a widespread belief that this disregard of the safety of the children, as related to domestic violence and abuse, was gender-based.²⁵

Nearly identical percentages of male and female judges (38% of each) believed that trial courts are biased against men in child custody matters. Far fewer believed that trial courts are biased against women in such matters. One exception to this perception of lack of bias may arise when the children's last name is at issue. In the January 1998 OSB *Bulletin*, a female lawyer described her recent court experience litigating that issue. She recounted how the male judge hearing the matter insisted that a "man's children need to have his last name. A man has to have a connection with his children."²⁶ The judge stated that "It's just crazy for a woman's name to be the children's last name." The judge's final argument, "echoed by the opposing counsel, was that the father paid child support and was 'entitled' to insist on the name change."

Regarding possible appellate court bias, 13.7% of male judges and 21.1% of female judges believed that such bias exists against male litigants in child custody matters. As for bias against female litigants, only three male judges and one female judge believed that such bias exists in child custody matters.

We also surveyed judicial perceptions regarding any domestic relations bias reflected in the statutes and regulations regarding child custody. Only insignificant numbers of male judges, and no female judges, were of the opinion that the statutes and regulations reflect bias against men or women regarding child custody.

Of particular interest in the lawyer survey were the substantial responses regarding bias against male litigants in the trial court on child-custody matters. More than 72% of male respondents "strongly" or "somewhat strongly" believed that there is bias against men in the trial courts. Forty-three percent of female respondents felt similarly.

Overwhelming percentages of both male (96%) and female (91%) lawyers with an opinion did not believe that trial courts are biased against women in

child-custody proceedings. Similarly, there appears to be very little perception among lawyers of either sex that there is bias against men or women in the appellate courts or in the child-custody statutes or regulations.

5. Child Support

a. Survey Results

Somewhat surprisingly, there was little testimony at the public hearings concerning child support. What testimony there was focused mainly on some men's perceptions that the courts place them in a culturally pre-conceived, non-involved "gender role" regardless of their true place in their children's lives. These men felt that the courts viewed them as "cash cows" whose sole function in post-dissolution families is to provide money without regard to their role as "fathers." A female legal services lawyer testified at the Medford public hearing to a different perspective about gender and child support:

"Locally, I have heard a presiding judge in — County state when he was deciding [a] child support case, state] to a man, he said quote, 'There's nothing I hate more than having to write a check to my ex-wife for child support.' This remark seemed to me to undermine a whole lot more than the respect for women but certainly for the judicial system and for the obligations to provide for child support for the children."

Although a significant minority of male and female judges (nearly one-quarter of each) believed that there is trial court bias against men on child support issues, very few judges believed that such bias exists against women. Similarly, approximately 18% of both male and female judges responding were of the opinion that the appellate courts are biased against men regarding child support, yet very few judges believed that appellate courts evince bias against women regarding child-support awards. Statistically insignificant percentages of judges believed that Oregon's statutes and regulations regarding child support are biased against either men or women.

Among lawyers, the perception of judicial bias regarding child support issues was much greater. Of those expressing an opinion, more than one-quarter of female lawyers and nearly one-half of male lawyers believed that there is trial court bias against men. Of

²⁴ Testimony of male witness at the Medford public hearing, Sept 25, 1996.

²⁵ A scathing written comment on this subject was directed at a female judge's decision to give custody of a child to an acknowledged abusive father. The judge is quoted as saying: "Although the father has an anger problem and has sought minimal help, and while his testimony reflects that he is the epitome of an abuser, that still does not answer the ultimate question as to what is in the best interest of the child."

²⁶ Rose L. Hubbard, *Gender Discrimination — It's Still With Us*, OR ST B BULL, Jan 1998, at 70. The three children who were the subject of the dispute each had a different last name during the parents' marriage: "the first child had the last name of the mother, the second child had a hyphenated last name, and the third child had the last name of the father." *Id.* According to the judge, it is "natural for a man's children to have his last name." *Id.* Opposing counsel reportedly shared the judge's opinion, stating in court that "he would 'kill' his ex-wife before he ever allowed his child to be called by his ex-wife's last name." Her gender notwithstanding, the judge might have permitted the children to keep their current names "if the mother had an 'important' last name or an 'important' or 'monied' family." *Id.*

those lawyers who “strongly agree[d]” that there is such bias, 90% were men. Overwhelming majorities of male and female lawyers with an opinion did not believe that trial courts are biased against women with respect to child support. Of those who did perceive bias, however, female lawyers outnumbered male lawyers three to one.

Lawyers of both sexes overwhelmingly stated that they “did not know” whether there is appellate court bias against male or female litigants regarding child support.²⁷ Of those who expressed an opinion, it is of some interest to note that more than one-quarter (26.9%) of male lawyers said they “somewhat or strongly” agree that the appellate courts are biased against men regarding child support, whereas only 5% of female lawyers concurred.

b. Administrative Procedures

We included Oregon’s administrative child-support procedures and practices in our study. In 1979, the Oregon legislature authorized the use of the Administrative Procedures Act to establish child-support orders when the state was paying public assistance for a child.²⁸ Largely driven by federal directives aimed at improving child support collection rates, the next two decades produced a comprehensive administrative child support system in Oregon. By the end of the 1995 legislative session, agency processes were available for the establishment of paternity; establishment of child support orders; modification of child support orders; and enforcement of child support orders. Administrative rules supplement other remedies available under Oregon law.²⁹

Paternity may be established by administrative or judicial proceedings. Federal law requires that states make paternity and child-support services available to everyone needing them, and Oregon’s agencies have adopted an administrative rule clarifying that men who wish to establish paternity for a child may apply for these services. Women also may apply for services, regardless of public assistance status, and seek to establish paternity for their children. Likewise, either mothers or fathers may move for modification to increase or decrease a support award in the judicial or administrative arenas.³⁰

Women and men are parties to Oregon’s administrative child-support proceedings and have an opportunity to participate fully regardless of public assistance status, geographic location, or representation by legal counsel. Most hearings are conducted telephonically, enabling parents to participate regardless of geographic location. The state provides translation services for both telephonic communications and written documents. In contested proceedings, men and women may retain and be represented by private lawyers.

The amount of the child-support award is determined by a formula, which creates a rebuttable presumption applicable in any judicial or administrative proceeding to establish support. ORS 25.280. Oregon’s guidelines are intended to be gender-neutral and seek to establish a support amount that entitles the child to benefit from the income of both parents to the same extent that the child would have benefited had the family unit remained intact or had there been an intact family unit consisting of both parents and the child.³¹ This standard reflects a gender-neutral public policy choice favoring the active support of children.

In the area of support enforcement, the overwhelming majority of obligors, and therefore delinquent parents, are males. This fact certainly has a disproportionately negative effect on women and the children in their custody. Some fathers maintain that non-custodial parents do not pay support because of lack of access to parenting time with their children, and they argue that the legal system has not been as zealous in finding ways to require shared parenting time as it has been in child support collection. This disparity in emphasis is fiscally driven: The federal government pays two-thirds of the cost of the states’ child support programs in order to reduce welfare costs. The federal government has not demonstrated a commensurate interest in parental access issues, although recent federal welfare reform legislation allocates minimal amounts to states for pilot programs in this area.³² This failure has, of course, a disproportionately negative effect on males.

For purposes of this study, the Oregon Department of Human Resources’ Accounting Unit identified 99,463 Oregon child support cases in which there was a court order for monthly child support in effect. Of those

²⁷ Sixty-seven percent of the male and 80% of the female lawyers answered that they “didn’t know” whether there was such bias.

²⁸ ORS 416.400 to 416.470.

²⁹ See ORS chapter 107.

³⁰ Only the State of Oregon’s Title IV-D agencies may seek modification under a “review and adjustment procedure.” ORS 25.287. “Title IV-D” refers to the section of the federal Social Security Act that sets that requirement for the child support programs that states must administer as a condition of receiving federal funds for welfare under Title IV-A of the Act (formerly Aid to Dependent Children, now Temporary Assistance to Needy Families). See 42 USC § 651 *et seq* (1997).

³¹ At two public hearings, men made negative comments about their perception that support was calculated in “earnings potential” instead of true earnings.

³² See 42 USC § 669(B) (1997).

cases, 91% of the non-custodial parents were male, and 9% were female. Approximately 30% of the men and 21% of the women ordered to pay support actually paid the full court-ordered amount each month; another 11% of the men and 6% of the women made at least a partial support payment each month.

6. Spousal Support

Testimony at the public hearings revealed a gender-based difference of perception on spousal support issues. Women, far more than men, believed that judges do not sufficiently value the contribution that homemakers make to the family.³³ Women stated that they receive too little spousal support and that its duration is insufficient to provide them with an opportunity to achieve financial independence.

When asked whether they perceive bias against men in the trial courts on issues of spousal support, 37% of male judges and 42% of female judges who had an opinion answered affirmatively. When we asked lawyers the same question, about two-thirds of male lawyers and slightly more than one-half of female lawyers who responded perceived such bias against men. As for bias against women in the trial courts regarding spousal support, nearly 17% of both male and female judges with an opinion believed that such bias exists. However, among lawyers, significant gender differences became apparent: 53% of female lawyers but only 9% of male lawyers said that they “somewhat or strongly” agreed that such bias exists. In other words, male lawyers believed overwhelmingly that female litigants are treated fairly in spousal support decisions in the trial courts; a minority of female lawyers so believed. One lawyer suggested that neither the trial courts nor the appellate courts are inclined to award spousal support to a man (unless he has a disability) in circumstances in which it would be awarded if the person requesting it were a woman.³⁴

We also sought to identify judges’ perceptions concerning bias in the appellate courts. More than one-quarter of responding female judges were of the opinion that there is bias against men in the appellate courts on the issue of spousal support; approximately 15% of responding male judges shared this belief. Only 5% of both male and female judges responding expressed a belief that statutes or regulations reflect a bias against women on the issue of spousal support. Among lawyers, 27.3% of female lawyers expressing an opinion indicated that they “somewhat or strongly” agree that the statutes and regulations are biased against women regarding spousal support, yet only 5% of male lawyers with an opinion shared that view. When asked whether Oregon’s statutes and regulations reflect bias against men regarding spousal support, almost 10% of male judges but only one female judge answered affirmatively.

Interestingly, an analysis of the survey of dissolution files reveals no statistically significant findings as to awards of permanent spousal support — by region, judge’s sex, or litigant’s income. Those findings suggest that permanent spousal support awards are unbiased with respect to the variables mentioned. However, with respect to non-permanent spousal support, female judges provide larger awards, on average, than do male judges.³⁵

7. Property Division

At the public hearings, several women reported a belief that the property division in their dissolutions were substantially disproportionate in favor of the men involved. Each of those women firmly believed that the judge’s gender-role stereotyping about the man as the family’s financial manager played a central role in unequal awards of property. Lawyers who testified expressed the opinion that, even when the woman is given the “larger half” of the property, the award is not sufficient to offset the long-term disparity in income or potential for income.

³³ For example, a female domestic relations lawyer testified to the Task Force that, in her opinion, “women who stay at home are viewed as parasites on society. And, that’s particularly true when they get to the courtroom.” Testimony at Eugene public hearing, Dec 13, 1996. That at least some people do view women in this way was confirmed in a letter to Chief Justice Carson, in which a male Lane County lawyer opined:

“In the overwhelming majority of cases . . . the husbands end up losing half of everything they have truly worked for to a wife who has had the luxury of staying home and raising her children while taking classes or going to the country club, or to the fitness center, or [to] whatever social activity they are involved in, or simply staying home while the children are in school. Once she files for divorce, she then claims that she has somehow ‘earned’ half of her husband’s six or seven figure business because she ‘endured’ the relative luxury of staying at home, working at home with or without the children, something that most dads would love to do.”

Letter to Chief Justice Carson and the Oregon Survey Research Laboratory, responding to the lawyer survey.

³⁴ Testimony at the Portland public hearing, Oct. 21, 1996, from a lawyer who practices primarily in the area of family law, citing a Court of Appeals decision (*Maidel and Maidel*, 108 Or App 702, 816 P2d 1206 (1991)) reversing an award of spousal support to a male.

³⁵ The probability of such an occurrence’s happening by chance was determined to be .0401. Oregon Survey Research Laboratory and Task Force on Gender Fairness *Dissolution File Survey*, 1997. That is, a trial judge’s gender is a significant variable in the award of non-permanent spousal support.

Among the 55 male judges and 14 female judges who responded to the survey question, 12 of the men and just one of the women expressed the belief that there is bias in the trial courts against men on property division matters. Among lawyers, fully one-third of the male lawyers with an opinion — but not one female lawyer — believed that such bias exists. In contrast, regarding bias against women in the division of property, more than 40% of female lawyers and fewer than 5% of male lawyers believed that such bias exists.

Regarding appellate court decisions, three male and three female judges believed that a bias exists against female litigants regarding property division matters, and almost no respondents perceived appellate court bias against male litigants on property division issues. Among the lawyers, not one man believed that there was bias against female litigants in the appellate courts regarding property division. Significantly, however, the 10 female lawyers (25%) who expressed an opinion were equally divided on this subject. It would appear that female lawyers are much more convinced than male lawyers that there is bias against women in both the trial and appellate courts regarding property division.

Regarding possible gender bias or property division matters in Oregon's statutes and regulations, only four male judges and no female judges perceived bias against men. On the other hand, fully 22% of the male judges and nearly 36% of the female judges perceived bias against women in the statutes and regulations. Among lawyers, responding female lawyers also were much more likely (21.8%) than their male counterparts (8.6%) to say that they "somewhat or strongly" agreed that the statutes and regulations are biased against women regarding property distribution.

8. Domestic Violence

The public hearings conducted throughout Oregon revealed consistent, pervasive, and wide-ranging concerns about domestic violence. The witnesses' perceptions of unfairness focused principally on the following problems:

- lack of community resources to combat domestic violence;
- police agencies that do not enforce mandatory arrest laws, and police officers who are uninformed about or insensitive to domestic violence;³⁶

- judges, lawyers, and staff who are uninformed, misinformed, or insensitive to domestic violence issues and dynamics;
- inadequate or non-existent bilingual court processes for domestic violence proceedings;
- lack of legal representation for victims of domestic violence, particularly after recent cutbacks of federal funds supporting legal services programs.

Considerable testimony at the public hearings suggested that, to the extent that a marital dissolution case involves both children and domestic violence, courts often become an unintentional pawn in the battle by the abuser to continue control and domination of the victim. Testimony also reflected a widespread belief and experience that a substantial lack of understanding exists, in both the domestic relations bar and among judges, about the dynamics of domestic violence as it relates to decision-making in dissolution cases. At the Medford public hearing, a male trial judge commented:

"The judges had a meeting...three years, four years [ago], at a judicial conference about the family violence, domestic violence and talking about some of the — and the person that was presenting it felt very strongly about it. And there was reaction among the judiciary that thought this person seemed like such an advocate, maybe they seemed like an advocate because. . .the judiciary were not as aware of gender fairness...."

"We need more education like that. The judges continually need to be reminded...I think it needs to go to the Bar, too, for the practitioners that are appearing before the court understanding these [battered woman] syndromes and being sensitive to them."

"It seems to me that it's very complex and needs a lot of education and we need to keep hearing about it."³⁷

Most FAPA complaints in Oregon are filed by women to protect themselves, or themselves and their children.³⁸ Witnesses contended that judges, lawyers, and police officers often appear to be unaware or uninformed concerning the practical safety considerations in these situations.³⁹ Witnesses also voiced concerns that lawyers and litigants, male and female, abuse the FAPA process as a "preemptive strike" in marital dissolutions as a tactic to discredit the other party, especially in custody battles, and that judges are not screening cases adequately.

³⁶ The conduct of police and other law enforcement officers was outside the scope of our study. However, witnesses in several of the rural counties expressed concern that local law enforcement officers do not fully and fairly enforce domestic violence laws, including Family Abuse Prevention Act (FAPA) restraining orders. Recent statistics published by the Oregon Department of State Police (March 1997) support those complaints. In Malheur and Umatilla Counties, for example, the rates of domestic disturbance incidents-to-arrests were only 54.15% and 59.24%, respectively. The rates of arrests-to-restraining order violations were 15.6% and 33.3%, respectively. In other counties, such as Lane and Washington, the incidents-to-arrest rates were 98.4% and 92.78%, respectively.

When we asked judges about domestic violence issues, some differences in attitude between male and female judges emerged. For example, 93% of female judges, but only 70% of male, judges, “strongly disagreed” with the proposition that judges should not issue restraining orders to women who repeatedly return to their abusers. Nearly twice as many male judges (49.3%) as female judges (25%) who expressed an opinion believed that the legal process shows too much sympathy for women who allege domestic abuse. When asked whether, in their opinion, “the legal process shows too much sympathy to men who allege domestic abuse,” twice as many female judges (15%; 4 of 27) as male judges (6.3%; 4 of 64) responding to the survey agreed with the statement.

Among lawyers, nearly one-half of male lawyers, but only one-quarter of female lawyers with an opinion, said that the legal process shows too much sympathy for women who allege domestic abuse. Even more graphically, only 20.5% of male lawyers, but 63.8% of female lawyers with an opinion, said that they “strongly disagree[d]” with this proposition. Although an overwhelming majority of all lawyers rejected the proposition that the legal process shows too much

sympathy for men accused of committing domestic violence, 15% of female lawyers and 6% of male lawyers with an opinion agreed with the proposition.

A fundamental concern, raised by witnesses and experts alike, is the lack of access to legal representation in domestic violence matters.⁴⁰ This problem disproportionately (but not exclusively) harms women⁴¹ and is particularly pernicious in cases involving domestic violence. An additional serious need affecting women and children is the lack of adequate shelter space for victims of domestic violence.⁴² Although this lack of space is not directly an issue of gender fairness in the courts, it is a factor about which the courts must be cognizant when fashioning appropriate remedies.

As a further part of our study, we reviewed the work of the Oregon Coalition Against Domestic and Sexual Violence Legal Access Project, which conducted a “courtwatch” in three Oregon counties in 1994 and 1995 using trained volunteers.⁴³ Data accumulated in the project demonstrated that 83% of all FAPA cases observed involved a female petitioner requesting a restraining order against a male respondent.⁴⁴ Approximately 90% of all petitioners and respondents were unrepresented by legal counsel.⁴⁵

³⁷ Comment by a male trial judge at the Medford public hearing, Sept 25, 1996.

³⁸ Oregon Judicial Department statistics show that there were approximately 3,350 fewer FAPA filings in 1996 than in 1995 and approximately 2,300 fewer than in 1994. The seven counties in which there was an increase in FAPA filings all were counties that are among the most sparsely populated in Oregon. The reasons for those reductions are unclear, but the extent of domestic violence in Oregon is evident in that the total number of FAPA filings is still very substantial: 16,637 in 1994, 17,679 in 1995, and 14,331 in 1996. A number of Oregon’s more populous counties have very active and growing domestic violence councils that may be having some effect, particularly in the light of the growing population.

It recently was reported in a study by the United States Department of Justice’s Bureau of Justice Statistics that domestic violence is “seriously under reported.” Jube Shiver, Jr., *Domestic abuse vastly underreported, study shows*, OREGONIAN, Aug 25, 1997, at A1. There is new evidence that suggests that current domestic violence figures may underestimate the actual number of domestic violence incidents by at least fourfold. NY TIMES, Aug 24, 1997, at A12 (reporting on Department of Justice report).

³⁹ See also JESSICA E. MINDLIN, COURTWATCH: JUDGES RESPOND TO DOMESTIC VIOLENCE, A REPORT FROM THE LEGAL ACCESS PROJECT OF THE OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE 7 (1996). It has been reported that more than 53% of male abusers beat their children, Lenore Walker et al, *Beyond the Juror’s Ken: Battered Women*, 7 VT L REV 1 (1982), and that, as violence against women becomes more severe and more frequent in the home, children experience a 300% increase in physical violence by the male batterer, STRAUS & GELLES, *supra* note 16. Women who leave their batterers are at a 75% greater risk of being killed by the batterers than those who stay. Barbara Hart, Pennsylvania Coalition Against Domestic Violence, 1988.

⁴⁰ According to Oregon Legal Services, legal services programs must reject 2 out of 3 applicants who seek services; the declination rate for family law clients is greater than in any other area of legal representation. Requests for services for domestic violence victims are escalating.

⁴¹ At the public hearings, some men contended that they are without representation in marital dissolutions or their aftermath and that there are more legal resources available to women, because legal services programs prioritize services to victims of domestic violence. See, e.g., transcript of Eugene public hearing, Dec 13, 1996. Oregon legal services programs provide services based on client need. Programs prioritize service needs; securing the physical safety of clients and their children (through protective orders and landlord-tenant cases, for example) is among legal services programs’ highest priorities.

⁴² In 1990, there were three times as many animal shelters in the United States as there were shelters for battered women. U.S. Senate Judiciary Committee hearings, 1990. According to the Oregon Coalition Against Domestic and Sexual Violence, shelters in Oregon for victims of domestic violence typically turn away 75% or more of those in need of housing, due to lack of shelter space.

⁴³ The Courtwatch Project provided trained volunteers to monitor judicial practices concerning the issuance and enforcement of restraining and anti-stalking orders in Multnomah, Washington, and Marion Counties. The volunteers completed nearly 1,600 surveys in 20 months.

⁴⁴ MINDLIN, *supra* note 39, at 7.

⁴⁵ MINDLIN, *supra* note 39.

The Courtwatch Project documented a number of exemplary practices⁴⁶ by judges and court staff. However, courtwatchers also noted a number of judicial practices that fairly could be labeled as insensitive at best, and unfair or dangerous at worst. Courtwatchers recorded that, in over 7% of the cases, judges made comments that were discouraging or belittling to the petitioners. In about 4% of the cases, judges ordered the domestic violence victim into mediation with the abuser, in direct violation of Oregon law.⁴⁷ In almost 6% of the cases, judges issued restraining orders with mutually binding terms, even though Oregon law does not provide for the issuance of such orders. Men were three times as likely as women to request such a mutual restraining order.

Language is a barrier to access to the courts in matters of domestic violence. The growing number of persons in our state who do not speak English⁴⁸ requires the courts to be much more conscious of the need for bilingual staff, interpreters, and explanatory court literature.⁴⁹ The Courtwatch Project found that, in almost 50% of the cases in which an interpreter was needed, no interpreter was available. The Courtwatch Project found a disproportionately low percentage, only 5% of the petitioners and respondents,⁵⁰ to be non-English speaking. Cultural and language barriers may be discouraging victims of domestic violence from using the legal system.

9. Attorney Fees

The only method that we used to examine attorney fees was the survey of marital dissolution files. No statistically significant differences were found regarding the frequency of the award of attorney fees by region or

gender of judge. A moderately significant finding, however, was that female judges were likely to award a higher amount of attorney fees than were male judges.

10. Intersectionality

Four specific findings emerged from our study of intersectionality and domestic relations cases.

(a) Poor women fare worse than non-poor women and men in domestic relations matters. During the public hearings, several lawyers who work primarily with women in the area of domestic relations and domestic violence expressed the opinion that, because men tend to have more resources, they may have more power in domestic disputes. Litigants expressed similar concerns. A witness at one of the public hearings described her experience with her marital dissolution proceeding:

“By the time the trial occurred, having been forced to suffer one calamity after another, I was in ill health, poor and untenable since . . . I had no money to employ an attorney. I believe I contacted every divorce attorney from Ashland to Portland including those referred by the Oregon State Bar referral service. Legal aid was not available to me because it had a prerequisite that I had to have children to receive assistance and I had none.”⁵¹

We also heard testimony about how divorce drove women into poverty. One witness described how she had supported her husband for 20 years before he asked for a divorce. She described how her ex-husband had benefited in the proceedings and then said:

*“[B]eing poor is very difficult . . .
[I]t just, it just blows me away to think that I worked for 20 years and that a person who has a lot of power,*

⁴⁶ Some of those practices included the following: providing orientation for FAPA petitioners and respondents, providing referrals to community resources, addressing victims in a compassionate and respectful manner, first handling cases where children are present, refusing to accept or tolerate abusive behaviors, acting to revoke concealed weapons permits, establishing comprehensive case-tracking and monitoring procedures, providing clear and concise visitation orders that anticipate the safety concerns of the situation, and providing bilingual forms and procedures. MINDLIN, *supra* note 39, at 13-15.

⁴⁷ ORS 107.755(1) provides that the circuit court “may provide mediation . . . for custody and visitation disputes in a domestic relations suit *not including proceedings under [FAPA].*” (Emphasis added.)

⁴⁸ According to 1992 data compiled by Portland State University’s Population Research and Census Center, there are substantial numbers of persons in Oregon between the ages of 18 and 64 who do not speak English in the home and who report not speaking English “well or at all”:

	Percentage of Population Who Do Not Speak English in Home	Percentage of That Population Who Do Not Speak English Well/At All
Multnomah County	10%	20%
Marion County	12%	30%
Washington County	22%	10%

⁴⁹ The Office of the State Court Administrator is in the process of translating FAPA documents into Spanish so that they will be available throughout the state. In several counties, including Multnomah, interpreters are provided in any language when a party requests it. ORS 45.275(1) requires courts to appoint interpreters “whenever it is necessary . . . to assist the court in performing the duties and responsibilities of the court.”

⁵⁰ MINDLIN, *supra* note 39, at 10.

⁵¹ Testimony of a female witness at the Medford public hearing, Sept 25, 1996.

all the control over the money that we earn together in a business which was a partnership, that he and his partner could have so little respect for me and my energy and my 20 years that they would leave me financially devastated for the rest of my life. . . . [I]f I live to be a thousand years old, I will never get over the humiliation of being broke.”⁵²

(b) Gay men and lesbians expressed concern about the lack of legally enforceable rights, such as child custody, visitation, and property rights, in the breakup of a family unit and the enormous degree of misinformation and bias among judges and other court personnel regarding homosexuality. A gay man and a lesbian recounted separate experiences in which they had faced allegations in custody proceedings that they were unable to relate to their child of the opposite sex because of their sexual orientation. A lesbian parent expressed concern that, in the dissolution of lesbian relationships, the partner with the biological connection to the child or children receives a preference in custody decisions. A lawyer recounted difficulties faced by non-heterosexuals when a marriage between a man and a woman breaks up and one partner becomes involved in a gay or lesbian relationship; that lawyer noted that the gay or lesbian (or bisexual) partner often is treated automatically as a less fit parent than the heterosexual parent.

(c) Anecdotal testimony and a survey of the relevant literature suggest that litigants of color might have very different experiences in the domestic relations arena than do white litigants. For instance, one witness described how language barriers, mistrust of the police, and fears regarding immigration status are impediments to accessing certain legal safeguards. That witness testified:

“[Hispanic] women find it difficult to request services or protection. . . . I think many Hispanic women [in our community] would be surprised to learn that there was such a thing as a restraining order, that you legally could keep a man out of ‘his’ house.”⁵³

That observation may well reflect a general pattern in which women of color are reluctant to use the courts or even to consult with a lawyer. During all the public hearings conducted for this study, the only hearing at which a woman of color addressed the topic of domestic violence at all was in the state women’s prison, where the witness was serving a sentence for killing her batterer.

An outreach coordinator for an urban domestic violence shelter described how the intersection of race and gender affects a domestic violence victim’s experience in the court system. As she put it, women of color “have been very much discriminated against both because of their race and their gender, by the court systems. Whether their partner is a man of color or their

partner is a white man, they’re more discriminated against.”⁵⁴

(d) Finally, an intersection of gender, class, and race surfaced at the public hearings. At nearly every hearing, significant numbers of men testified about their experiences in domestic relations cases. Almost all the testimony about discrimination against men in domestic relations cases was offered by white male witnesses.

E. CONCLUSIONS

1. Child Custody and Visitation

There is a substantial perception among judges, lawyers, and male litigants that child custody proceedings are biased against men. Indeed, women become the primary custodians of their children far more often than men. But, in most cases, fathers do not seek custody. When custody is litigated, fathers are awarded primary parenting custody of their children about half the time.

2. Child Support

The establishment of the amount of child support is gender-neutral. Most obligors do not pay the child support that they have been ordered to pay, and most obligors are men. Women, more than men, suffer serious harm from the failure of obligor parents to comply with child support orders. Federal interest and dollars are expected to continue the enhancement of child-support collection methods.

3. Spousal Support and Property Division

In marital dissolutions, women tend to receive monetary dispositions (spousal support and property division) that place them at a significant short- and long-term financial disadvantage. When women have primary care and custody of their children, these financial disadvantages harm their children, as well.

4. Domestic Violence

Not infrequently, women are discouraged and belittled by judges and court staff who, although usually well-intentioned, are insufficiently educated concerning the dynamics of domestic violence and how best to address the problem.

Women, in particular, suffer from the lack of adequate shelter and safety resources for victims of domestic violence. In turn, judges do not always appear cognizant of the safety issues involved in their decision-making.

⁵² Testimony of a female witness at the Medford public hearing, Sept 25, 1996.

⁵³ Testimony of a female witness at the Tillamook public hearing, Nov 21, 1996.

Women are placed at risk of further domestic violence when courts allow batterers to have continued visitation with their children.

Although men constitute only a small percentage of the victims of domestic violence, their injuries are real, but they are sometimes disregarded or denied relief due to gender-stereotyping.

5. Intersectionality

a. Gender and Poverty

Approximately 70% of those at or below the poverty level are women, and women constitute about that same percentage of legal aid clients. The Oregon State Bar Civil Legal Services Task Force, in its May 1996 report, concluded that “not more than one-third of the legal needs of Oregon’s low-income population were being addressed by legal services programs [even] before the [35% federal] funding cuts.” Members of the judiciary and private bar were reported to have perceived that the greatest unmet needs were in the area of domestic relations and domestic violence.

b. Gender and Race, Ethnicity, and Language

Men and women who do not speak English are at a disadvantage in gaining effective and informed access to the courts in most Oregon counties. This problem is especially severe for women and children who also are victims of domestic violence. Litigants of color may not have access to the courts in domestic relations and domestic violence matters as frequently as white litigants.

c. Gender and Sexual Orientation

Gay men and lesbians are adversely affected by their lack of enforceable legal rights with respect to a variety of domestic relations issues.

F. COMMENDATION

We commend the efforts of some trial judges to accommodate the unique needs of litigants who are victims of domestic violence.

G. RECOMMENDATIONS

1. The Chief Justice and the Oregon State Bar should:

- a. appoint a Task Force on Spousal Support to consider the feasibility of formulating statewide spousal support guidelines for adoption in the 2001 legislative session; and
- b. study the legal and practical issues surrounding the dissolution of gay and lesbian relationships (including child custody and support) and

develop recommendations for ensuring that the courts resolve such cases fairly and appropriately.

2. The Legislative Assembly and the Governor should:

- work with the Oregon Family Law Legal Services Commission’s recommendations, when issued, to ensure that there is adequate funding in the 1999-2001 state budget for providing legal services to low-income people in family law matters.

3. The Education Division of the Office of the State Court Administrator should:

- a. continue to provide regular education for judges regarding the law surrounding marital dissolution cases; and
- b. continue to provide regular education for judges and other court personnel concerning domestic violence, including its dynamics, its effect on children, and “best practices” for handling protective orders and dissolution cases involving domestic violence (*e.g.*, see the protocols of the Oregon Council on Domestic Violence).

4. Oregon law schools should:

- by the 2000-01 academic year, ensure that they educate law students about domestic violence.

5. The Oregon State Bar should:

- a. further develop *pro bono* lawyer referral programs that specialize in domestic relations and domestic violence matters; and
- b. by January 1, 1999, begin to implement a statewide outreach program to inform non-English speakers about what services are available to victims of domestic violence.

6. The Oregon Council on Domestic Violence should:

- a. consider recommending to the Legislative Assembly that Oregon statutes on child custody be amended to include a rebuttable presumption that a parent who has engaged in domestic violence toward the other parent or who has battered a child should not be awarded custody of the couple’s children; and
- b. by January 1, 2000, study whether law enforcement officers are fully and fairly enforcing Oregon’s domestic violence laws and, if not, recommend needed changes.

⁵⁴ Testimony at the Portland public hearing, Oct. 21, 1996.