



OREGON SUPREME COURT

OREGON STATE BAR



*Report of the  
Oregon Supreme Court/  
Oregon State Bar*

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**Task Force**

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**on Gender**

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**Fairness**

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*May 1998*

*Report of the  
Oregon Supreme Court/  
Oregon State Bar*

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# on Gender

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# Fairness

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*May 1998*

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# EXECUTIVE SUMMARY

The Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness studied whether and, if so, how gender affects the experiences of Oregonians in the state court system and in the legal profession. The study took a little more than two years to complete and encompassed an examination of judicial administration; civil litigation; domestic relations cases; criminal law and juvenile justice; interactions between lawyers, clients, staff, and other professionals; lawyers' professional opportunities; employment of staff by lawyers, the Oregon State Bar, and the Professional Liability Fund; bar admission; lawyer discipline; and legal education at Oregon's three law schools. In our gathering and analysis of information, we took into account other personal characteristics, such as race and age, that affect men's and women's experiences with, and perceptions of, the justice system. Methods of study included surveys of 18 different populations, such as judges, lawyers, clients, interpreters, paralegals, legal secretaries, and inmates; public hearings throughout the state; focus groups; interviews; review of extant literature and statistical data; and solicitation of written testimony.

The Task Force came to the following general conclusions:

**(1) Substantial gender fairness exists in most aspects of Oregon's justice system and legal profession.**

**(2) Gender fairness has improved markedly in the past 10 to 25 years.**

**(3) Significant areas of gender unfairness and perceptions of gender unfairness remain, however. These areas include:**

(a) Female lawyers (especially young female lawyers) commonly receive treatment that is less respectful than the treatment accorded to their male peers. For example:

- court staff ask female lawyers whether they are lawyers, while assuming that male lawyers are lawyers;
- in court and at work, male lawyers and even judges sometimes call female lawyers "little lady," "hon," and the like;
- female lawyers are called by their first names when men are not; and
- in court and at work, female lawyers are subjected to sexual comments.

(b) In custody and spousal and child support proceedings, some judges appear to favor men disproportionately, while other judges appear to favor women disproportionately.

(c) In marital dissolutions, women tend to receive spousal support and property divisions that place them at a significant short- and long-term financial disadvantage compared with their ex-husbands. Further, an Oregon case study revealed that only about 30% of the women to whom child support was owed received full payment. (Although most of the men to whom child support was owed likewise did not receive full payment, female obligors were relatively few in number.)

(d) Females housed in adult and youth state correctional facilities do not have access to the same job training, work, and general support programs and services as do male inmates and juvenile detainees.

(e) Almost one-third of legal secretaries surveyed believe that gender-based discrimination is the same or worse now, compared with the past. Areas in which they report bias include lack of opportunity for advancement and lack of having their views taken as seriously as the views of men.

(f) On average, male lawyers earn more than their female counterparts, even considering length of practice. Factors that play a role include that, on average, female lawyers charge less for their time, female lawyers practice in fields that are less highly compensated, and female lawyers work fewer billable hours. However, the disparity in compensation is difficult to explain entirely by objective criteria.

**(4) Most gender unfairness works to the detriment of women. In some areas, however, gender unfairness works to the detriment of men. For instance:**

(a) About 38% of judges surveyed (both male and female) believe that trial courts are biased against men in child custody matters. More than 72% of male lawyers and 43% of female lawyers expressed the same view. (Interestingly, in contested custody cases, men receive custody of their children about half the time.)

(b) Male victims of domestic violence (who are relatively few in number) face disbelief or ridicule because of gender stereotyping.

(c) A significant proportion of judges, criminal defense lawyers, and male inmates believe that prosecutors and judges treat female defendants more leniently than similarly situated male defendants, perhaps because of different parenting responsibilities.

**(5) Negative experiences are, in some cases, based on more than gender alone and may be compounded by race, age, sexual orientation, poverty, or other factors. For example:**

(a) About 70% of those in Oregon who live at or below the poverty line are women. Poor women lack adequate access to legal services, most notably in the areas of domestic relations and domestic violence.

(b) Sixty-five percent of female inmates of color surveyed believe that they have received different treatment from male lawyers than they have received from female lawyers. Neither male inmates of color nor white female inmates report this phenomenon in such large numbers.

**(6) Most remaining unfairness is neither malicious nor egregious but may, for that reason, be more intractable than earlier, more glaring problems.**

**(7) Identification and eradication of gender-based unfairness are essential to the achievement of a justice system that is fully responsive to the needs of all Oregonians. That is especially true of the few flagrant instances of bias that are encountered.**

Because the remaining areas of gender unfairness largely are subtle, the recommendations of the Task Force emphasize a wide range of educational programs for various participants in the court system and the legal profession. A complete list of our recommendations follows.

## RECOMMENDATIONS

### ■ GENERAL

#### 1. The Chief Justice should:

a. charge the Oregon Judicial Department's Access to Justice for All Committee with overseeing and coordinating implementation of the recommendations outlined in this report. Because that committee already is working to address issues of racial and ethnic fairness in the justice system, it is well positioned to ensure that individuals' multiple perspectives, or intersectionalities, will be incorporated into the work of securing gender fairness;

b. establish within the Oregon Judicial Department at least one permanent full-time staff position, plus appropriate support staff, to coordinate the work of the Access to Justice for All Committee; and

c. include in the Oregon Judicial Department's 1999-2001 biennial budget a request for the funds and position authority necessary for such staff.

#### 2. The Legislative Assembly and the Governor should:

- ensure that the Access to Justice for All Committee is adequately funded.

#### 3. The Oregon Judicial Department and the Oregon State Bar should:

- develop a volunteer panel of trained public hearing and focus group moderators and should sponsor periodic hearings and discussions on issues of fairness. Public hearings, focus groups, and roundtable discussions are excellent opportunities for litigants and other court participants to communicate their concerns and frustrations with the justice system. They also provide a regional perspective on whether and how issues differ from one locale to another. Finally, they provide the Judicial Department and the Bar an opportunity to educate the public. Funds for this purpose should be in the Judicial Department's 1999-2001 budget.

#### 4. The Access to Justice for All Committee should:

- review this report and, where it identifies data that were not available, decide what data should be available and develop a plan for collecting such data.

#### 5. The Chief Justice, the President of the Oregon State Bar, the Oregon Council on Domestic Violence, the Office of the State Court Administrator, and other interested persons should:

- examine the archives of the Task Force in order to identify groups, individuals, agencies, or geographic areas that warrant special attention.

#### 6. The Access to Justice for All Committee, the Oregon State Bar, the Oregon Judicial Department, law firms, and law schools should:

- include consideration of intersectionality issues in future studies and discussions of gender fairness. Likewise, all educational programs recommended in the chapters that follow should include intersectionality issues.

### ■ JUDICIAL ADMINISTRATION

#### 1. The Oregon Supreme Court should:

- by January 1, 2000, review existing procedures for making complaints of unfairness by, and against, the participants in the judicial system. That review should consider whether existing procedures are adequate to facilitate the prompt and appropriate resolution of such complaints and should recommend any needed changes.

**2. Judges, including judges pro tempore, referees, and magistrates, should:**

- a. monitor behavior in the courtroom and, to the extent appropriate, in pretrial proceedings, and should intervene to correct inappropriate gender-based conduct;
- b. participate in periodic refresher courses on the need to be aware of issues affecting gender fairness; and
- c. when appropriate, expand on precautionary instruction UCJI No.5.01 to address specific issues of fairness that may arise in a particular case.

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

- a. continue to conduct regular educational programs for judges and court staff on the existence and effects of gender-biased behavior in and around the courthouse, and on ways to avoid such behavior; and
- b. by January 1, 1999, develop a brochure on gender fairness and begin to distribute it to participants in the judicial process — including jurors, witnesses, litigants, and interpreters. The brochure should emphasize the commitment of the Chief Justice and the President of the Oregon State Bar to achieving gender fairness and should advise lay participants of available complaint processes (both formal and informal) in the event that they experience or observe unfair treatment. (Such information could, instead, be included in a brochure on other issues of fairness.)

**4. The Oregon State Bar should:**

- a. continue to conduct regular educational programs for lawyers on the importance of professionalism, including the avoidance of gender-biased behavior and other forms of biased behavior;
- b. in continuing legal education programs for litigators, explore the line between appropriate and inappropriate uses of gender (and other personal characteristics) in litigation strategy; and
- c. continue to educate the public about the workings of the legal system, in an effort to raise the general level of public understanding about the legal system and to emphasize its commitment to fairness.

**5. The Oregon State Bar's Committee on Uniform Civil Jury Instructions should:**

- by January 1, 2000, consider whether to expand the caveat in UCJI No. 5.01, which provides that “you must not be influenced in any degree by personal feelings or sympathy for, or prejudice against, any party to this case.” The Committee should consider whether it is advisable to give

more explicit guidance on issues of fairness or to refer to other participants beyond the parties (such as a party's lawyer).

**6. Law firms, lawyers' organizations, judicial organizations, and other organizations composed of regular participants in the administration of justice (such as interpreters) should:**

- a. discuss the issues raised in this report; and
- b. provide continuing education for their members on methods of achieving fairness.

**7. The Access to Justice for All Committee should:**

- assist the Office of the State Court Administrator and the Oregon State Bar in improving educational curricula to help judges and lawyers identify and avoid gender bias.

**8. The Access to Justice for All Committee, in coordination with trial court administrators, county officials, and other interested persons, should:**

- implement the recommendations of the Multnomah Bar Association's CourtCare Advisory Committee
  - a. to establish child care at courthouses for jurors, witnesses, and parties during proceedings and to form a new committee to oversee that effort; and
  - b. to begin a statewide feasibility study by January 1, 1999, respecting on-site child care at courthouses.

**9. The Access to Justice for All Committee, working together with the Information Systems Division of the Office of the State Court Administrator, trial court administrators, and other appropriate individuals and organizations, should:**

- assess the adequacy of the Civil Action Data form to permit analysis of gender fairness and intersectionality issues and recommend appropriate changes.

**10. The counties, with the assistance of the Access to Justice for All Committee, should:**

- by January 1, 2001, study whether and, if so, how gender affects the treatment of participants in the judicial system by court security personnel and procedures, and recommend any appropriate changes. This research should focus on participants, such as jurors, litigants, lawyers, and witnesses, who are not employees with security passes.

**11. The Chief Justice, trial court administrators, and other appropriate individuals should:**

- study whether and, if so, to what extent jurors experience or perceive unfairness based on gender during their jury duty and, more specifically, while participating in voir dire and while deciding cases.

**12. The Chief Justice and the Oregon State Bar should:**

- study whether the gender of participants influences civil litigation, either substantively or procedurally. This research should build on the preliminary work of the Task Force.

**13. The Governor should:**

- by January 1, 1999, form a group to study whether and, if so, how gender affects the work of administrative agencies in the performance of their adjudicative functions. Many citizens and lawyers participate in hearings before administrative agencies and in appeals of administrative decisions in the contexts of, for example, workers' compensation benefits and unemployment benefits. Administrative matters affect thousands of Oregonians, particularly those of low or moderate income, perhaps resulting in additional intersectionality concerns.

**■ DOMESTIC RELATIONS CASES**

**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.

**■ CRIMINAL LAW AND JUVENILE JUSTICE**

**I. PROSECUTORIAL AND JUDICIAL DISCRETION**

**1. All district attorneys' offices should:**

- a. by January 1, 1999, review their policies to ensure that gender does not play an inappropriate role in charging practices, plea offers, and sentencing recommendations. Other offices should consider using the Multnomah County District Attorney's policy manual as a model.
- b. as soon as possible, begin to keep data that permit analysis of gender fairness in charging practices,

indictments, and plea offers and agreements, and annually evaluate those data.

**2. Prosecutors, criminal defense lawyers, and corrections staff should:**

- participate in educational programs concerning issues of gender fairness and intersectionality.

**3. Criminal defense lawyers should:**

- consider whether gender plays a role in who accepts pleas and who rejects pleas and, if so, whether procedural changes are called for.

**4. The Oregon Department of Corrections should:**

- by January 1, 2001, develop plans for a long-term solution to the increasing problems involving inmates who are primarily responsible for the care of their children.

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

- develop a judicial education program to explore issues pertaining to the sentencing of pregnant substance abusers.

**6. The Chief Justice and the Oregon State Bar, working with the Oregon State Police, the Oregon District Attorneys Association, the Oregon State Sheriffs' Association, and the Oregon Association Chiefs of Police, should:**

- by January 1, 2002, study whether gender unfairly affects police practices at the pre-indictment and pre-charging stage.

**7. The Oregon Judicial Department, working with the Oregon District Attorneys Association, should:**

- by January 1, 2003, study court records to determine whether any gender-based patterns exist with respect to prosecutors' sentencing recommendations and judges' final orders.

**II. PROGRAMS AND SERVICES FOR ADULT OFFENDERS**

**1. The Oregon Department of Corrections should:**

- a. provide adequate space in the new women's prison for educational, vocational, and work programs, as well as for recreation and family visiting;
- b. by January 1, 1999, expand work programs and vocational training programs for female inmates to include apprenticeships that realistically prepare them for work opportunities upon release;
- c. by January 1, 2000, expand the current dual diagnosis (substance abuse and mental health treatment)

programs, which now are available at Columbia River Correctional Institution, to female inmates at other institutions;

- d. by January 1, 2000, assess the feasibility of permitting contact between incarcerated mothers and their children (especially newborns) and give special attention to pregnant inmates' needs for services;

- e. by January 1, 1999, develop educational materials for corrections officers, program staff, and contract providers on the unique needs of female inmates and make such materials a part of all orientation programs; and

- f. ensure that adequate job-training opportunities are available for inmates with sentences of varying lengths. One possible means of ensuring that people who are incarcerated for a relatively short period of time (disproportionately women) complete programs is to permit them to continue training during post-prison supervision.

**2. The counties should:**

- a. begin to address concretely the unique needs of female offenders who are housed in county jails and, by January 1, 1999, develop policies to address those needs; and

- b. by January 1, 1999, ensure that female and male offenders are afforded equal access to jail visiting hours and programs.

**3. The Oregon State Bar and the Education Division of the Office of the State Court Administrator, working with the Oregon Department of Corrections, including Community Corrections, should:**

- by January 1, 1999, create an educational program for lawyers and judges about the availability and nature of the programs and services in Oregon's correctional institutions, county jails, and community corrections facilities.

**III. JUVENILE CORRECTIONS**

**1. The Oregon Youth Authority should:**

- a. immediately take steps to comply fully with ORS 417.270 and to ensure proportional allocation of funds to girls and boys;

- b. provide more programs and services, including drug and alcohol treatment, to serve girls in the juvenile justice system. The OYA should have a plan to implement those programs by January 1, 1999, and should implement the programs by January 1, 2000;

- c. ensure that sex-offender treatment programs are available to boys, without waiting;

d. by January 1, 1999, review staffing standards at secure facilities to determine whether the number of staff is sufficient to meet the needs and deliver programs and services, especially to girls;

e. ensure that adequate treatment and vocational services are available for youths who are detained for shorter periods of time (disproportionately girls). One possible means is to permit them to continue in the program or receive services after they leave the secure facility but while they remain in the legal custody of OYA;

f. by January 1, 2000, ensure that girls and boys have access to the same types of job training (e.g., building trades for girls, beauticians' school for boys), based on interests, skills, and the like;

g. by January 1, 1999, hire women to fill maintenance crew, food service, and other training supervisor vacancies so that girls have access to the same job-training opportunities to which boys have access; and

h. by January 1, 1999, provide or arrange for transportation for children of youths who are in close custody, so as to encourage a stronger bond between the youths and their children.

## **2. The Oregon Youth Authority and the Oregon Department of Corrections should:**

- by January 1, 1999, to the extent permitted under the law, jointly develop a policy on programs and services for girls who are sentenced under Measure 11.

## **3. The Hillcrest Youth Correctional Facility should:**

- by January 1, 2000, hire a female doctor to perform obstetric and gynecological services.

## **4. The Oregon Judicial Department should:**

- by January 1, 2001, undertake to study gender and intersectionality issues affecting juveniles who are adjudicated as "status" offenders (disproportionately girls).

## **■ INTERACTIONS BETWEEN LAWYERS, CLIENTS, STAFF, AND OTHER PROFESSIONALS**

### **1. The Oregon State Bar should:**

a. by January 1, 1999, more widely include gender and intersectionality issues in continuing legal education programs for lawyers, with topics such as

- (i) the disciplinary rules prohibiting conflicts of interest and sexual relationships with clients;

(ii) clients' perspectives on the lawyer-client relationship; and

(iii) respectful treatment of office staff and court reporters; and

b. by January 1, 1999, develop a public education program designed to inform clients of their right to be free of sexual harassment from their lawyers and of the help available from the OSB to protect that right. This goal could be accomplished, in part, through additional information included in pamphlets already designed for distribution to the public, through separate publications devoted to this issue, and through public service announcements.

## **2. Every legal workplace should:**

a. by January 1, 1999, establish a policy prohibiting sex discrimination and encourage all personnel (e.g., through small-group meetings) to discuss improving workplace relationships, especially with regard to gender issues. All personnel should be protected from retaliation when they describe their experiences and perspectives;

b. by January 1, 1999, establish a policy prohibiting sexual harassment and regularly inform all employees about the policy and how to use its protection. In addition, each workplace should have a clearly identified person to whom sexual harassment complaints are to be directed; and

c. beginning by January 1, 1999, have supervisors communicate at least annually — orally and in writing — their commitment to a bias-free workplace and to enforcement of their non-discrimination and anti-harassment policies. Lawyers, as well as non-lawyer supervisors, must be willing to confront their colleagues when they observe inappropriate behavior.

## **■ THE EMPLOYMENT OF COURT, OREGON STATE BAR, AND PROFESSIONAL LIABILITY FUND PERSONNEL**

### **I. COURT PERSONNEL**

#### **1. The Oregon Judicial Department should:**

a. continue to encourage all its employees to help eliminate any form of gender bias from Oregon's court system. An appropriate reminder on this and other forms of discrimination should be delivered to court personnel annually;

b. distribute to all court personnel, biennially, statistics on hiring, promotion, and compensation that permit a comparison to the ratios of men to women within OJD;

c. include information in its regular personnel workshops to address the perceptions that gender limits

opportunities for advancement of both men and women and that members of the opposite sex receive special preferences in supervisory appointments and application of work rules;

d. by January 1, 1999, review its personnel policies and practices to determine whether any changes are needed to achieve gender fairness;

e. by January 1, 1999, assess whether there are inappropriate barriers to promoting and appointing women to actual supervisory positions within OJD in proportion to their availability among all qualified applicants. If so, OJD should take effective steps to remove those barriers;

f. review its policies on job-sharing, flexible work hours, and release time for education to promote greater use where appropriate;

g. by July 1, 1999, and periodically thereafter, review the adequacy of the procedure for court personnel to bring complaints about gender discrimination or harassment and, if appropriate, recommend changes. That review should recognize that some complaints may be directed at trial court administrators, judges, or others in high positions;

h. by January 1, 2002, study the personnel practices applicable to OJD law clerks to ensure gender fairness; and

i. by January 1, 2002, study how issues of intersectionality affect OJD employees.

## **II. EMPLOYEES OF THE OREGON STATE BAR AND PROFESSIONAL LIABILITY FUND**

### **1. The Oregon State Bar and the Professional Liability Fund should:**

a. ensure that continuing education programs for lawyers, managers, administrators, and supervisors at the OSB and the PLF include issues of gender fairness;

b. by January 1, 1999, initiate regular workplace dialogues to foster an understanding of the experiences and perceptions of people of the opposite sex and to promote mutual respect;

c. by July 1, 1998, and periodically thereafter, communicate to employees, in writing and in person, their commitment to gender fairness and to the enforcement of equal opportunity and anti-harassment policies. Additionally, the OSB and the PLF should review those policies periodically; and

d. by January 1, 2000, study whether additional policies (besides flex-time) are feasible to facilitate employees' meeting their family obligations.

## **■ LEGAL EDUCATION**

### **1. Oregon law schools should:**

a. continue to recruit law students and faculty to increase the number of persons from diverse backgrounds, including women and people of color;

b. disseminate existing written policies prohibiting discrimination and harassment on the basis of gender, race, disability, and sexual orientation, and the procedures for filing complaints, at the beginning of each academic year. Those policies should be enforced promptly and consistently when complaints are made;

c. continue to address issues of fair treatment as a part of their orientation of law students and faculty and in publications such as catalogues. By the academic year 2000-01, gender and intersectionality issues should be included in students' training in professionalism;

d. by the academic year 2000-01, conduct orientation programs for faculty members on fair treatment of staff members;

e. by the academic year 2000-01, examine administrative policies and practices, and modify them where needed, to accommodate more fully the family responsibilities of professors;

f. by the academic year 2000-01, create a variety of opportunities for dialogue among all members of the law school community regarding gender-based perceptions of the law school experience, as well as the effects of race, ethnicity, disability, sexual orientation, age, and economic class on students' experiences;

g. by the academic year 1998-99, publicize the pertinent parts of this report to faculty, students, staff, and alumni;

h. by the academic year 1998-99, review the Task Force survey results for their own campuses to determine which issues are most significant to them; and

i. beginning in the current academic year, recognize the importance of faculty members' mentoring and counseling activities outside class, and factor this important work into salary, tenure, and promotion decisions.

### **2. Oregon law schools' career services offices should:**

a. by the academic year 1998-99, solicit interviews by a wider range of prospective employers, particularly small firms and those working in the public's interest and in the public sector; and

b. by the academic year 1998-99, provide more complete preparation of students, especially female students, for interviews with recruiters.

**3. Oregon law schools' faculty should:**

- a. by the academic year 1999-2000, incorporate alternative teaching methods, as well as the Socratic method, in all years of law school to provide for different learning styles and preferences;
- b. by the academic year 1999-2000, include gender and intersectionality issues in their class discussions, and as regular parts of the curriculum;
- c. beginning in the current academic year, make every effort to create a classroom environment hospitable to different ideas and to different learning styles; and
- d. by the academic year 1999-2000, engage in collective self-assessment to determine whether the curriculum, teaching methods, and other law school practices and policies hamper the ability of faculty to be accessible to law students, in particular female students of color.

**4. Administrators and faculty at Oregon law schools should:**

- a. recognize that misperceptions concerning women's competence may adversely affect decisions concerning the promotion and tenure of female faculty; and
- b. by the academic year 1998-99, take appropriate steps to ensure that promotion and tenure decisions are not based on such misperceptions.

**5. Oregon law schools and the Oregon State Bar should:**

- a. by January 1, 2001, begin to examine how well Oregon law schools actually prepare men and women for law practice. That examination should address questions such as these:
  - Upon graduation, do men and women seek similar forms of employment? Are they hired for the jobs that they want, in the same proportions, within a similar amount of time, and for similar compensation? Are they perceived by employers and potential employers as equally suited and well-prepared for law practice?

The answers to those questions will assist both law schools and the legal profession in assessing gender fairness; and

- b. by January 1, 2001, determine whether there are gender-based differences in male and female faculty salaries in Oregon's law schools and, if so, implement the changes necessary to ensure fairness.

**■ ADMISSION TO THE PRACTICE OF LAW AND LAWYER DISCIPLINE****I. ADMISSION TO THE PRACTICE OF LAW****1. The Board of Bar Examiners should:**

- by the summer 1998 bar examination, formalize its policy addressing gender and racial and ethnic identity in examination questions, because the membership of the Board of Bar Examiners changes over time.

**2. The Oregon State Bar should:**

- continue to track bar pass rates by gender and by race and ethnicity. This process will enable the Bar and the Oregon Supreme Court to respond to any patterns of disparity that may become evident in the future.

**II. LAWYER DISCIPLINE****1. The Oregon State Bar should:**

- a. recruit equal numbers of men and women (and recruit diverse people) to serve on the committees, boards, and trial panels that conduct disciplinary proceedings; and
- b. include participants in the disciplinary process in educational programs concerning gender and intersectionality issues.

**2. Bar Disciplinary Counsel should:**

- a. by January 1, 1999, develop a system to track complaints about lawyer conduct by the gender of the complainant and of the accused; and
- b. beginning in 1999, periodically survey complainants and accused lawyers to determine whether there is any perception of gender bias in the disciplinary process.

**3. The Oregon State Bar and the Oregon Supreme Court should:**

- review disciplinary rules to determine whether there is any gender-based unfairness to lawyers, to clients, or to the interests that those rules are designed to protect. If changes are warranted, the Disciplinary Rules and Procedures Committee should make appropriate recommendations to the Oregon Supreme Court.



### **III. GENERAL**

#### **1. The Access to Justice for All Committee and all those to whom the Task Force addresses recommendations should:**

- consider the factors that have led to gender fairness, and the perception of gender fairness, in admission to the practice of law and in lawyer discipline. The Committee should determine whether areas of gender-based unfairness discussed in this report can benefit from those lessons. Such factors may include: extensive, gender-neutral, behavior-based written rules; diversity of persons in the enforcement process; conscious regard for the perceptions of people living at different intersectional points; and multiple layers of review.

### **■ OPPORTUNITIES IN THE LEGAL PROFESSION**

#### **1. The Oregon State Bar should:**

a. gather and maintain data about its membership through regular anonymous surveys, conducted at least every three years. The data should contain basic demographic information about lawyers, including gender, race, ethnicity, and self-identified sexual orientation. Specifically, the Bar should maintain, and make easily accessible, the following information:

- (i) the number of lawyers in the Oregon State Bar;
- (ii) their years of experience;
- (iii) their compensation, including benefits;
- (iv) their positions with their firm, corporation, governmental unit, or other entity;
- (v) their areas of practice;
- (vi) their career paths (longitudinal study);
- (vii) promotional opportunities offered and taken; and
- (viii) status as active or inactive;

b. beginning in 1999, sponsor periodic educational programs about state and federal laws that apply to lawyers in their roles as private and public employers, with an emphasis on appropriate hiring methods and responses to complaints of sexual harassment;

c. continue and expand mentoring programs for young lawyers, especially women and people of color;

d. undertake to consider, by January 1, 2000, the feasibility of establishing a process by which lawyers may complain of adverse treatment without the need to

reveal that complaint, at least initially, to persons in the complainant's own firm or community;

e. by January 1, 2000, study whether lawyers who serve in contract lawyer, in-house counsel, and of-counsel positions experience unfairness on the basis of gender or other personal characteristics and, if so, make appropriate recommendations to remedy any such unfairness; and

f. encourage qualified lawyers who are women, people of color, gay men, lesbians, and disabled persons to apply for judicial positions.

#### **2. Private and public legal employers should:**

a. by January 1, 1999, implement written hiring policies to ensure that interviewers conduct interviews in accordance with legal requirements;

b. ensure diversity among the persons responsible for hiring decisions, in particular by including women and people of color;

c. by January 1, 1999, implement and distribute policies prohibiting discrimination and sexual harassment;

d. plan social and business events that are open to, and are of interest to, both male and female lawyers and clients;

e. by January 1, 1999, establish promotional policies respecting management positions to ensure fairness in promotions;

f. review case assignment procedures to ensure that women have an equal opportunity to participate in challenging and high-profile cases; and

g. by January 1, 2001, adopt part-time, flex-time, and similar policies that allow lawyers to meet the demands of their personal lives, and ensure that lawyers who take advantage of such policies are not placed at an inappropriate disadvantage for having done so.

#### **3. The Governor should:**

- continue to appoint qualified lawyers who are women, people of color, gay men, lesbians, and disabled persons to judicial positions (especially outside major metropolitan areas).

#### **4. The Chief Justice should:**

- by January 1, 2000, determine whether case assignments are made fairly to female and male judges and, if not, make appropriate recommendations to remedy any such unfairness.



# INTRODUCTION

*"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."*<sup>1</sup>

## A. HOW DID THE TASK FORCE ORIGINATE?

On October 3, 1994, Oregon Supreme Court Chief Justice Wallace P. Carson, Jr., sent a memorandum to all members of the Oregon Supreme Court, recommending the formation of a Task Force on Gender Fairness. His memorandum explained:

*"In 1988, the Conference of Chief Justices adopted a resolution exhorting the chief justice of each state supreme court to address the problems of gender bias and racial and ethnic bias. . . . Oregon has acted in support of the resolution by creating and implementing the Task Force on Racial/Ethnic Issues in the Judicial System. Oregon has yet to act, however, to address gender fairness in the state law and courts."*<sup>2</sup>

The Chief Justice described the studies and findings in the many other jurisdictions that already had researched the issue. He stated his commitment to "ensuring that the judicial department treats all members of the public and its employees fairly." The memorandum concluded:

*"There has not been a systematic gender fairness survey conducted in Oregon that analyzes substantive law, fairness in the courts, legal education, and gender issues within the Bar. . . ."*

*"As part of a gendered society, Oregon courts probably face some problems created by gender bias. The majority of other states have undertaken gender bias studies and have found that both the study and the implementation of the task force's recommendations have improved the quality of gender relations in their states. Oregon likely could benefit from that process, as well."*<sup>3</sup>

The Chief Justice proposed that Oregon's study operate as a partnership between the Oregon Supreme Court and the Oregon State Bar ("OSB" or "Bar"). The Court and the Bar agreed, and a joint planning committee was formed. That committee's report served as the foundation of the Oregon Supreme Court-Oregon State Bar Task Force on Gender Fairness ("Task Force"). In December 1995, the Chief Justice and then-President

of the Oregon State Bar, Dennis C. Karnopp, appointed the Task Force members.

## B. WHO SERVED ON THE TASK FORCE?

The Co-Chairs of the Task Force were Associate Justice Susan P. Graber of the Oregon Supreme Court and Robert H. Fraser, a Eugene lawyer and past president of the Oregon State Bar. Jessica Mindlin served as Task Force Coordinator.

The original membership of the Task Force, composed of 9 men and 11 women, was drawn from all parts of Oregon; all were volunteers. Task Force members brought a range of personal and professional perspectives to the project. The membership included:

- five state court judges;
- one administrative law judge;
- one Tribal Court judge;
- one federal magistrate;
- three lawyers in private practice;
- one Assistant United States Attorney;
- one federal public defender;
- one legal services lawyer;
- the Special Counsel to the Attorney General;
- two state legislators;
- one (district attorney's office) victim advocate;
- one court Interpreter Coordinator; and
- one member of the medical community.

Five Task Force members were people of color (two Latinos, one African-American, one Asian-American, and one Native American), and three were gay or lesbian. Residents of Multnomah, Washington, Lane, Marion, Coos, Malheur, Umatilla, and Jackson Counties served on

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<sup>1</sup> The Rev. Martin Luther King, *Why We Can't Wait*, LETTER FROM BIRMINGHAM JAIL 77, 79 (1964).

<sup>2</sup> Memorandum from Chief Justice Wallace P. Carson, Jr., to the Oregon Supreme Court 17 (October 3, 1994) ("Memorandum"). The Oregon Supreme Court chose to conduct separate studies of (1) racial and ethnic issues in the justice system and (2) gender fairness issues. In 1994, the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System issued its report, REPORT OF THE OREGON SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM (1994), which was followed in 1996 by the report of the Implementation Committee, A COMMITMENT TO FAIRNESS: PROGRESS REPORT OF THE OREGON SUPREME COURT IMPLEMENTATION COMMITTEE (1996).

<sup>3</sup> Memorandum, *supra* note 2, at 16-17.

## INTRODUCTION

the Task Force. The youngest Task Force member was 29, and the oldest was 70.

For personal reasons, such as the demands of health, work, and family, several of the original appointees resigned from the Task Force. An effort was made, however, to maintain the diversity of the original membership as those departing members were replaced. The following individuals served on the Task Force. (An asterisk indicates those members who stepped down before the completion of this report.):

- \*Hon. Donald Ashmanskas (United States District Court Magistrate, Portland)
- Ann Bartsch (Oregon State Bar Legal Services Counsel, Lake Oswego)
- \*Diana Craine (principal with the law firm of Craine and Love, Lake Oswego)
- Okianer Christian Dark (Assistant United States Attorney, Portland)
- Hon. Julie Frantz (Multnomah County Circuit Court Judge, Portland)<sup>4</sup>
- Robert Fraser (partner with the law firm of Luvaas, Cobb, Richards & Fraser, Eugene)
- \*Hon. Sidney Galton (Workers' Compensation Board Administrative Law Judge, Portland)
- \*Hon. Michael Gillespie (Coos County District Court Judge, Coos Bay)
- Hon. Susan P. Graber (Associate Justice, Oregon Supreme Court)
- \*Hon. Jeanette Hamby (Oregon State Senator, Hillsboro)
- Elizabeth Harchenko (former Special Counsel to the Attorney General; Director, Department of Revenue)
- Hon. Dennis Hubel (United States District Court Magistrate)
- \*Hon. William Johnson (Umatilla Tribal Court Judge, Umatilla Reservation, Pendleton)
- Hon. Bryan Johnston (Oregon House of Representatives; Acting President, Willamette University)
- Hon. Darryl Larson (Lane County Circuit Court Judge, Eugene)

- Debra Fee Jing Lee (Director, NonProfit Legal Services, Medford)
- Dr. Joseph Matarazzo (Oregon Health Sciences University, Portland)
- Hon. Jean Kerr Maurer (Multnomah County District Court Judge, Portland)
- \*Hon. Joseph Ochoa (Marion County District Court Judge, Salem)
- David Orf (Attorney at Law, Medford)
- Kathey Warnock (Victim Advocate, Malheur County District Attorney's Office, Vale)
- Gloriela Webster (Multnomah County Interpreter Coordinator, Portland)
- Wendy Willis (Assistant Federal Public Defender, Portland)
- Hon. Janice R. Wilson (Multnomah County Circuit Court Judge, Portland)

## C. WHAT WERE THE MISSION AND GOALS OF THE TASK FORCE?

The Task Force adopted the following statements of its mission and goals.

### Mission Statement

*"The mission of the Task Force on Gender Fairness is to study issues of gender fairness in the Oregon judicial system and legal profession<sup>5</sup>] and, by September 30, 1997,<sup>6</sup>] to prepare a written report to the Chief Justice and the President of the Oregon State Bar, containing findings, conclusions, and recommendations related to those issues."*

### Goals

*"The Oregon Supreme Court and the Oregon State Bar are dedicated to treating all people fairly. As part of doing so, we strive to identify and to eliminate whatever gender unfairness may exist in the judicial system or the legal profession. The goal of the Task Force on Gender Fairness is to study whether and, if so, how the Oregon judicial system and the legal profession treat people unfairly on the basis of gender; to recognize fair treatment where it exists; and to make recommendations for change where it does not. We use the term 'gender' to refer to the biological, cultural, social, and psychological differences associated with being female or male."*

We chose the term "fairness" consciously. Early on, we agreed that gender fairness is not necessarily the

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<sup>4</sup> On January 15, 1998, the circuit and district courts of Oregon merged to form a unified state trial court system. At the time of the Task Force study, however, there were two levels of trial courts, and this report refers to the courts, and the judges, accordingly.

<sup>5</sup> The Task Force studied gender fairness only in the Oregon state courts. See the United States Court of Appeals for the Ninth Circuit's study, *THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE* (1993), for further information on gender issues in federal courts, including federal courts in Oregon.

<sup>6</sup> In August 1997, the Task Force requested and received an extension of time to complete the project.

same as gender neutrality. That is, treating women and men “the same” or “equally” sometimes can result in gender *unfairness*. For example, the unwillingness of some law firms to employ lawyers on a part-time basis, or to permit part-time lawyers to continue to advance to partnership, has a disparate effect on mothers of young children.

## **D. HOW DID THE TASK FORCE OPERATE?**

### **1. Organizing the Task Force**

We first met in January 1996. Soon thereafter, we divided into eight “work groups.” “Work group” is an accurate label; most of the substantive study was accomplished at the work-group level.

On the basis of the planning committee’s and the Task Force members’ recommendations, the work groups examined the following areas:

- civil litigation,
- criminal and juvenile law,
- domestic relations,
- interactions among lawyers, clients, and staff,
- judicial administration,
- legal education, bar admission and discipline,
- opportunities in the legal profession and professional life, and
- intersectionality<sup>7</sup> issues.

In addition to operating as an independent work group, the Intersectionality work group assigned its members to serve as liaisons and consultants to each of the other work groups.

Each work group was chaired by a member of the Task Force.<sup>8</sup> An additional 5 to 25 volunteers were recruited to serve on each work group. These additional volunteers brought particular experience and expertise to the substantive area being studied, as well as diversity with respect to age, religion, geography, race, ethnicity, culture, sexual orientation, and profession. Work group members included lawyers, judges, court personnel, psychologists, jurors, social scientists, social service providers, court reporters, interpreters, clients, litigants,

law office support staff, university and law school students, faculty, and staff, and other members of the community. Scores of additional volunteers assisted us in countless ways, such as conducting research, arranging public hearings, and editing this report.<sup>9</sup>

### **2. Preparing for the Study**

The first step was to organize the Task Force and to educate ourselves about the journey on which we had embarked. Next, we adopted the mission statement and goals set out above and established operating procedures.<sup>10</sup> Thereafter, we identified research areas and held learning sessions. We read materials on gender fairness and on methods of conducting a study. In March 1996, we hired a Task Force Coordinator. Meeting for one afternoon each month, we brought in consultants to train members on ways to work well together, given our diverse perspectives, and to educate us about our task. For example, research methodologists schooled us on the relative benefits and burdens of qualitative and quantitative research and taught us how to conduct focus groups. We learned about ways to incorporate intersectionality issues into our work. Members of other states’ task forces shared the challenges that they had faced and the lessons that they had learned. Jury consultants, public opinion researchers, management and diversity consultants, and other professionals contributed their expertise to the Task Force.

When this step was completed, the work groups began to refine the list of issues to be studied in their respective areas, to narrow the scope of their research, and to formulate plans for gathering information.

### **3. Fundraising**

The Oregon Supreme Court assumed a leadership role and made the initial financial commitment to the Task Force. The Court agreed to contribute the salary, benefits, space, and equipment for Jessica Mindlin, the Task Force Coordinator. Early on, the Oregon State Bar contributed \$20,000 and, later, the Bar spurred individual contributions by pledging another \$20,000 in matching funds. It was this impetus that enabled us to conduct such a comprehensive study. The Oregon Law Foundation followed, with its commitment of \$5,000, and became the depository of other funds raised. Generous

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<sup>7</sup> By “intersectionality,” we mean the intersection of gender and other personal characteristics, such as race, disability, sexual orientation, age, and class. For further discussion of this concept, see the Intersectionality chapter.

<sup>8</sup> Work groups were chaired by the following Task Force members: Ann Bartsch (Civil Litigation); David Orf (Criminal and Juvenile Law); Darryl Larson (Domestic Relations); Janice Wilson (Interactions Among Attorneys, Clients, and Staff, and Gender Fairness at the Oregon State Bar); Okianer Christian Dark and Wendy Willis (Intersectionality); Dennis Hubel (Judicial Administration); Elizabeth Harchenko (Legal Education and Bar Admission and Discipline); and Jean Maurer (Opportunities in the Legal Profession). Not every work group generated a separate chapter for this report, and some work groups generated two chapters.

<sup>9</sup> The Acknowledgments section at the end of this report lists work group members and volunteers.

<sup>10</sup> See Appendix for a copy of the Procedures for the Task Force on Gender Fairness.

gifts were received from the Gus Solomon Inn of Court, the Multnomah and Lane County Bars, and the Oregon Circuit Court Judges Association.<sup>11</sup> Eight Oregon State Bar Sections, representing a broad spectrum of the Bar, also made generous contributions. Several dozen law firms contributed as much as \$1,000 each, and numerous individuals contributed as much as \$250 each. The Task Force is grateful to the organizations, groups, and individuals who supported the project and contributed to it financially.<sup>12</sup>

## **E. HOW DID THE TASK FORCE COLLECT INFORMATION?**

We used both qualitative and quantitative research methods. Quantitative research provided numerical data and permitted us to collect information on a broad range of issues and from diverse groups. Qualitative, or “anecdotal,” information provided more detail, insight, and depth and thus more fully and powerfully illuminated the effects of individuals’ experiences. Because the most effective and informative study required a combination of research methods, we gathered information from many sources. We held public hearings and focus groups, administered surveys, conducted individual interviews, solicited witness statements and written submissions, and reviewed existing data and literature.

### **1. Public Hearings**

Between September and December 1996, we held nine public hearings in rural and urban communities throughout Oregon: Medford, Ontario, Bend, Portland, Pendleton, Coos Bay, Tillamook, Salem, and Eugene. The hearings were held at schools and community centers and at other accessible sites. To maximize attendance, we set hearings for the afternoon and evening hours. A child “comfort space,” with a television and children’s videos, was available on-site.<sup>13</sup> The meetings were publicized in print and on radio and through bilingual (Spanish-English) flyers distributed at community events and on community bulletin boards.<sup>14</sup> A tenth hearing was held at the Oregon Women’s

Correctional Center in Salem.<sup>15</sup> A Spanish-language interpreter attended every hearing. “Realtime” transcription for the hearing impaired was provided at the Portland public hearing. Members of the Oregon Court Reporters Association donated their services and provided the Task Force with written transcripts of all the hearings.

Witnesses, both male and female, testified on a wide range of issues, including: divorce, child custody, spousal and child support, domestic violence, sexual harassment, criminal law, inmate programs and services, interactions with law enforcement, sex discrimination in the legal profession, and judicial appointments and fitness.<sup>16</sup> That testimony helped us to identify and refine the issues that we needed to examine more closely. The public hearings also were an important tool for publicizing our work and for demonstrating the courts’ and legal profession’s willingness to engage in critical self-examination.

### **2. Written Comments**

Written comment forms in English and Spanish were provided at public hearings, were sent to legal services offices and to prison inmates, and were distributed at various community events throughout 1996 and during the early part of 1997. We received written submissions from nearly 100 individuals and organizations. The length, subject matter, and relevance of the submissions varied, but the Task Force Coordinator reviewed every submission and distributed copies to the relevant work group(s).

### **3. Surveys**

We designed 15 surveys and administered them to 18 different groups. All the surveys were anonymous. With the exception of litigants and witnesses, OSB and Professional Liability Fund (“PLF”) staff, and law school faculty, students and staff, all the groups were surveyed through the use of “mail-out/mail-in” surveys. The litigant survey was administered in person at six courthouses throughout the state; the law school, OSB

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<sup>11</sup> No judges were involved in raising funds for the Task Force.

<sup>12</sup> A complete list of financial contributors is included in the Acknowledgments section at the end of this report.

<sup>13</sup> Very few witnesses attended the hearings with their children. We were unsuccessful in our efforts to solicit volunteer child-care services and, at the time of the public hearings, did not have the funds to contract for such services. We do not know whether the lack of child care prevented witnesses from attending.

<sup>14</sup> Despite our efforts to promote diversity at the hearings, most of those who testified at the public hearings were white and English-speaking.

<sup>15</sup> To solicit information from male inmates, focus groups (described below) were conducted at four male correctional institutions. In addition, we solicited written comments from male inmates, many of whom responded.

<sup>16</sup> Some female witnesses, but almost no male witnesses, couched their comments in tentative or apologetic terms. (“I don’t want to seem like a complainer, but....”) There are several possible explanations for this difference: for example, those witnesses feared retaliation for their criticisms or at least believed that it is unpopular to identify and oppose discrimination against women; the witnesses recognized considerable past gains and were reluctant to see the glass as half empty, rather than as half full; or they were socialized to remain “pleasing” even when criticizing.

and, PLF surveys were distributed and collected on-site.<sup>17</sup>

We developed surveys of lawyers and judges in consultation with Dr. Patricia Gwartney and Kimberlee Langolf of the University of Oregon's Oregon Survey Research Laboratory ("OSRL"), after extensive review of other states' surveys. A letter personally signed by Chief Justice Wallace P. Carson, Jr., accompanied each survey. The lawyer surveys were distributed to 1,800 randomly selected active practitioners in Oregon,<sup>18</sup> 33% (592) of whom returned their surveys. Of those 592 surveys, 575 were usable; the remaining surveys were received after the cutoff date or were returned incomplete.

Respondents to the lawyer surveys are representative of the Bar with respect to gender, race, ethnicity, and age:

	BAR MEMBERSHIP PERCENTAGES	SURVEY RESPONDENTS PERCENTAGES
MEN	74	70
WOMEN	26	29
	(1% did not report their gender)	
African-American	0.6	0.4
Native American	0.5	0.5
Asian/Pacific Islander	1.6	0.7
Hispanic	1.0	1.2
Ages		
21-30	8	4
31-40	25	25
41-50	40	39
51 & over	27	32

Respondents to the survey of judges were similarly representative. The judge surveys were mailed to 157 active district and circuit court judges, 17 active appellate judges, and 87 senior status judges who continue to hear cases.<sup>19</sup> The overall return rate was 36% (95 usable<sup>20</sup> judge surveys were returned), while the return rate for active judges exceeded 50% (88 of the 95 responding judges indicated that they were on active status; the remaining 7 judges did not report their status). Active judges (*i.e.*, judges who are not on senior status) are 79% male and 21% female; among respondents, 77% of the judges were male and 20% were female. Three percent did not report their gender. The age distribution of active judges is as follows: 9% are under the age of 45; 26% are between the ages of 45 and 49; 34% are between the ages of 50 and 54; 15% are between 55 and 59 years of age; and 28% are 60 or older. Among survey respondents: 10.5% were less than 45 years of age; 28% were between the ages of 45 and 49; 31% were between

50 and 54 years old; and 12% were between 55 and 59 years of age. An additional 12% were 60 years of age or older. More than 7% of the respondents did not report their age.

In addition to fielding the lawyer and judge surveys, we surveyed 16 other populations within Oregon's judicial system and legal profession:

- paralegals and legal assistants,
- court reporters,
- legal secretaries,
- Oregon State Bar employees,
- Professional Liability Fund employees,
- law students,
- law faculty,
- law school staff,
- individuals involved in the state bar disciplinary process,
- (private and nonprofit) law firm clients,
- prison inmates,
- district attorneys and deputy district attorneys,
- criminal defense lawyers,
- litigants in the courthouse,
- court interpreters, and
- court personnel.

Survey results can be skewed by self-selection — that is, those who are interested in, or have strong opinions about, the subject matter are more likely to respond to a survey than are disinterested or ambivalent individuals. That being so, the results of some of our surveys must be interpreted with caution. However, the response rate and the demographic representativeness of respondents are among the indicators of the reliability of survey responses. Because we know that the demographics of the membership of the Oregon State Bar closely parallel those of the randomly surveyed respondents, and because of the good response rate, we believe that our survey results reasonably reflect the views of the Oregon bar generally. The same can be said of the judge survey. Certain trends are evident, and there is much to be learned from the data collected.

<sup>17</sup> The surveys are discussed in greater detail in the relevant chapter(s).

<sup>18</sup> There are approximately 9,700 active members of the Oregon State Bar practicing law in Oregon.

<sup>19</sup> Judges who hear cases are classified either as "active" or "senior." The latter have retired from full-time judicial service. Judges *pro tempore* and referees were not included in the judge survey.

<sup>20</sup> Several judges, presumably those who did not return their surveys, later completed the survey designed for court personnel. However, judges' answers to the court personnel survey could not be integrated into the judge survey.

#### 4. Focus Groups

Focus groups were our fourth method of data collection. The focus groups were designed to explore a limited number of issues in more depth than was possible through the use of written surveys.

Consultants to the Task Force specializing in research methodology recommended that most focus groups be composed of same-sex participants, in order to encourage more candid discussion, and be facilitated by trained moderators. Accordingly, nearly all the focus groups were single-sex and were led by trained moderators working with established topic guides. Focus groups were conducted throughout the state with:

- legal investigators,
- court reporters,
- legal secretaries,
- paralegals,
- law firm partners and other lawyers responsible for law firm hiring decisions,
- law students,
- law school classified staff,
- domestic relations clients, and
- prison inmates.

## F. WHAT WAS UNIQUE ABOUT THE OREGON STUDY?

Oregon was not the first state to conduct a gender fairness study. At least 32 state and federal courts had studied or were in the process of studying gender fairness when Oregon's Task Force on Gender Fairness was established.<sup>21</sup> We learned from those efforts and from the work of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, with respect to both process and content. Although our study had much in common with these earlier studies, ours was unique in several respects:

### 1. Incorporation of Intersectionality

We specifically considered how gender operates in conjunction with the other lenses through which people view their experiences in the profession and in the justice system. We called these "intersectionality" issues. We assigned a work group to study the topic and to ensure that intersectionality issues were incorporated into each work group's inquiries. We also assigned members of the Intersectionality work group to every other work group as liaisons and consultants. To our

knowledge, the United States Courts of Appeal for the Second and Third Circuits are the only other jurisdictions that have conducted a gender fairness study specifically examining gender fairness from a multiple identity ("gender *plus*") perspective.

### 2. Scope of Inquiry

The charge to the Task Force, and therefore the scope of our inquiry, was extremely broad. As a result, this project was far more comprehensive than studies conducted by other states. Few other jurisdictions, for example, have considered gender fairness issues at the law schools within their borders, and fewer still have studied staff in addition to law faculty and students. Oregon also was one of the few states to focus on interactions among lawyers, clients, and legal support staff and to examine bar admissions and lawyer discipline.

Moreover, our study did not inquire only into what lawyers and judges have to say about lawyers and judges. We recognized the important perspectives on the justice system and legal profession that many other groups and individuals had to offer. Therefore, in executing our study, we included, both on the work groups and as the subjects of our inquiry, many non-lawyer individuals and groups whose experiences often are overlooked in studies of this kind. For example, we sought the views of male and female prison inmates; criminal, civil, and domestic relations clients of private law firms and of nonprofit (legal services and public defender) agencies; and youths. Court interpreters, court reporters, legal secretaries, paralegals, and investigators also were included. Many individuals from those constituencies served on Task Force work groups.

In part because of the breadth of our charge, we found new ways to accomplish our work. Through the work groups we found ways to involve scores of people with a broad range of perspectives from all parts of the state. About 100 people served as members of the Task Force and its work groups; an additional 200 volunteers assisted us in other capacities.

## G. WHAT CHALLENGES DID THE TASK FORCE FACE?

### 1. Fundraising

Fundraising efforts, particularly for new projects, often provide a litmus test by which the fundraiser can gauge the perception and general understanding of the cause for which funds are being sought. In our case, the energy required to raise funds within the Bar was

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<sup>21</sup> Almost every other state that conducted both gender fairness and racial/ethnic studies conducted the gender fairness study first. Because the Oregon studies were completed in the reverse order, many other states completed their gender fairness studies before Oregon's Task Force on Gender Fairness was formed.



significant, suggesting that gender fairness in the judicial system is not a high priority for most lawyers. Although the fundraising committee eventually raised the necessary funds, because of the delay we could not afford extensive professional surveys and other costly data-gathering techniques.

## 2. Data Collection

Some people were mistrustful of, or hostile to, the Task Force and refused to participate in the surveys or in focus groups. Some expressed the view that women complain about gender bias where none exists.

We learned of these kinds of opposition from letters to the Task Force and to Chief Justice Carson and from survey comments. One respondent to the lawyer survey asserted, for instance:

*"I have never seen — nor heard credible reports of — a lawyer or witness being discriminated against or treated unfairly due to gender. . . . Gender bias is dead. Has been for a decade."*

Another lawyer wrote, "This is a waste of time and money. What fuzzyhead developed the need for this?" Other lawyers opined: "Women are frequently looked upon as victims of something, anything, or anyone. Rarely are women told to take responsibility for their own self-inflicted problems, mistakes or evils"<sup>22</sup> and "Women attorneys tend to be anti-male."<sup>23</sup>

Others suggested that the gender bias that exists mostly harms men. Perhaps the angriest, albeit not the most representative, response to our study was that of a male lawyer from Lane County. He wrote to the Chief Justice to say:

*"I am almost unable to tell you how shocked and offended I am by this survey. . . . If any bias exists in the courthouse and under Oregon law, it is a bias based on race and gender against Caucasian men."*

*"This survey has obviously been drafted by some she-man, man-bating, ball-busting feminist with an agenda towards improving the already fundamentally unfair bias women enjoy in the Oregon courts and legislature."<sup>24</sup>*

By contrast, many survey respondents, witnesses at public hearings, and focus group participants were supportive — even enthusiastic — about the project. Numerous witnesses and respondents spoke or wrote to the Task Force about the importance and value of the study. As one respondent to the lawyer survey observed:

*"I think this survey is long overdue. Unfortunately, gender bias is still prevalent in the legal profession as it is in society at large. I disagree with those who say*

*that there is nothing the legal profession can do to change the situation. I think there is much that can be done. . . . Until we admit that there is a problem and that there are ways to solve it, we cannot hope to resolve it."*

Other individuals commended the Task Force for conducting the study and shared their law office and courtroom experiences with us. One female lawyer wrote to the Task Force about a judge who, in chambers, referred to her client as a "lardass dyke." She noted that this same judge told her, from the bench, that she was "a fine little lady attorney." Another female lawyer wrote about her recent experience at an Inns of Court dinner where a judge, the guest speaker, opened his remarks by commenting, "It's always so wonderful to see so many lawyers, and their wives, here." As one witness explained at a public hearing, even if rare, such experiences alienate lawyers and litigants from the legal profession.

*"It doesn't take many whose manifestations of sexual discrimination — even those behaviors as benign as simply thinking that men make better lawyers than women, as opposed [to those] not really ever able to get beyond our anatomy in dealing with us as lawyers — [it doesn't take too many such experiences] to interfere with our opportunity for a rich and satisfying career."<sup>25</sup>*

## H. WHAT DID THE TASK FORCE LEARN?

We found that the gender bias that exists today usually is less blatant than that which existed in the past. Although we received complaints of a few egregious, and appalling, instances of gender-based unfair treatment, those occurrences appear to be infrequent. More often, we received testimony, comments, and complaints of more subtle or indirect forms of gender unfairness, such as inappropriate or sexual teasing or comments; disrespectful treatment of female litigants, witnesses, lawyers, and judges; and gender-based stereotyping in family law matters.

A central theme that emerged from our work is that men perceive bias against men, women see bias against women, and each sex reports that the other sex is treated better. Our challenge was to determine whether any or all of those perceptions are accurate, to develop recommendations for change where there is unfairness, and to address perceptions of bias where there is none.

We learned that, because not all women, or all men, experience or perceive gender issues in the same way, intersectionality issues are an important component of any effort to identify and eradicate gender-based unfairness.

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<sup>22</sup> Comment written on a lawyer survey.

<sup>23</sup> Comment written on a lawyer survey.

<sup>24</sup> Letter to the Chief Justice and to the Oregon Survey Research Laboratory.

<sup>25</sup> Testimony of female lawyer at the Eugene public hearing, Dec 13, 1996.

We learned that some of the problems with gender unfairness are limited to specific individuals or geographic areas. Our charge was to examine overall trends and general issues, rather than to ferret out individual problems or resolve individual complaints. The information that we received, however, suggests that not every area of unfairness (where we found unfairness) is equally distributed.

Finally, we learned that some perceptions of gender bias result from litigants' or witnesses' limited understanding of the authority of the courts and that the public hearings provided litigants with an important opportunity to voice their concerns. The hearings also afforded us an opportunity to educate the public about the structure and limitations of the courts.<sup>26</sup>

## I. WHAT DID WE CONCLUDE?

The goal of the Task Force was to identify whatever gender unfairness may exist in Oregon's judicial system or legal profession. This report represents an ambitious, yet necessarily limited, inquiry.

We conclude that instances of blatant sex discrimination are much less frequent now than in the past; however, some forms of gender unfairness persist. Although the gender bias that persists is less obvious, and in that regard perhaps less shocking, it is still harmful. It limits the potential and marginalizes the efforts of too many members of our bar and too many participants in the justice system. We commend the efforts of the Oregon Supreme Court and Oregon State Bar and of the many judges, lawyers, other professionals, and entities who seek to promote gender fairness and to combat gender-based unfairness. We hope, and recommend, that the effort to identify and eliminate gender bias, wherever it exists, will continue.

## J. RECOMMENDATIONS

### 1. The Oregon Judicial Department and the Oregon State Bar should:

- develop a volunteer panel of trained public hearing and focus group moderators and should sponsor periodic hearings and discussions on issues of fairness. Public hearings, focus groups, and roundtable discussions are excellent opportunities for litigants and other court participants to communicate their concerns and frustrations with the justice system. They also provide a regional perspective on whether and how issues differ from one locale to another. Finally, they provide the Judicial Department and the Bar an opportunity to educate the public.

Funds for this purpose should be in the Judicial Department's 1999-2001 budget.

### 2. The Access to Justice for All Committee should:

- review this report and, where it identifies data that were not available, decide what data should be available and develop a plan for collecting such data.

### 3. The Chief Justice, the President of the Oregon State Bar, the Oregon Council on Domestic Violence, the Office of the State Court Administrator, and other interested persons should:

- examine the archives of the Task Force in order to identify groups, individuals, agencies, or geographic areas that warrant special attention. For example, the Chief Justice may find that additional education on certain topics would benefit judges in particular counties.

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<sup>26</sup> For example, a male litigant at the Bend public hearing testified about the anti-male gender bias of the mediator who handled his marital dissolution. As evidence of that perceived bias, he recounted the mediator's refusal to hear testimony detailing the witness' ex-wife's alleged criminal conduct. The witness did not understand that Oregon has no-fault dissolution.

# INTERSECTIONALITY

*"That man over there say  
a woman needs to be helped into carriages  
and lifted over ditches  
and to have the best place everywhere.  
Nobody ever helped me into carriages  
or over mud puddles  
or gives me a best place . . .*

*And ain't I a woman?  
Look at me  
Look at my arm!  
I have plowed and planted  
and gathered into barns  
and no man could head me . . .  
And ain't I a woman?  
I could work as much  
and eat as much as a man —  
when I could get to it —  
and bear the lash as well  
and ain't I a woman?  
I have born 13 children  
and seen most all sold into slavery  
and when I cried out a mother's grief  
none but Jesus heard me . . .  
and ain't I a woman?  
that little man in black there say  
a woman can't have as much rights as a man  
cause Christ wasn't a woman  
Where did your Christ come from?  
From God and a woman!  
Man had nothing to do with him!  
If the first woman God ever made  
was strong enough to turn the world  
upside down all alone  
together women ought to be able to turn it  
rightside up again."*

## A. INTRODUCTION AND OVERVIEW

### 1. The Nature of Our Study and of This Chapter

We recognized from the outset that gender alone does not define an individual's experiences; each individual has multiple characteristics that affect his or her experiences in society and in the legal system. The intersection of those characteristics provides each person a perspective that influences how that person views and experiences the world. Intersectionality,<sup>2</sup> in this context, challenges our current way of categorizing, ordering,

dissecting, and resolving situations that involve people's interactions. Intersectionality requires us to examine how commonly categorized characteristics — for example, gender, race, ethnicity, age, disability, sexual orientation, and class — interrelate, how each may affect the others, and how multiple characteristics result in multiple identities, which sometimes compete.

We therefore created a work group to examine issues of intersectionality. To capture the perspectives of more people, we attempted to identify and to address these issues. We did not intend this added focus on

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<sup>1</sup> Sojourner Truth, *"Ain't I a Woman?"* (as adapted to poetry by Erlene Stetson), in *AIN'T I A WOMAN! A BOOK OF WOMEN'S POETRY FROM AROUND THE WORLD* 129, 129-30 (Illona Linthwaite ed., 1993).

<sup>2</sup> Both the Task Force and the Intersectionality work group discussed at length what to call the concept of one individual's having multiple characteristics and perspectives. The group settled on the term "intersectionality" because it seemed, most accurately, to describe the concept that several characteristics can "intersect" to influence a particular person's experiences.

intersectionality to change the gender-based nature of the study, but rather to ensure a more accurate evaluation of gender fairness in the courts and in the legal profession. Once the Task Force committed itself to the recognition that individuals' experiences are influenced by multiple characteristics, the work grew exponentially. Although recognizing and embracing the concept of intersectionality did not make our work any simpler, it made both our study and this report more inclusive and comprehensive.

Oregon is the first state to address intersectionality issues directly.<sup>3</sup> Although academicians have been writing about intersectionality for some years, "fairness" task forces have yet to squarely take on the issues of multiple identities and bias.<sup>4</sup> Oregon chose to accept that challenge.

This chapter is unlike the other chapters in the report — it does not provide a detailed discussion of the information gleaned from surveys, focus groups, public hearings, or other data-gathering sources. Rather, it sets out the theoretical framework for the concept of intersectionality that we employed and presents a substantive discussion of intersectionality apart from any data analysis. The primary purpose of this chapter is to assist the reader in conceptualizing the term "intersectionality" and to outline the challenges presented by incorporating intersectionality issues into our study.

## 2. Understanding "Privilege"

Our ability to recognize the experiences of individuals who reside at certain intersectional points may be obscured by what often is called "privilege," such as skin color privilege, gender privilege, and class privilege. Professor Kimberle Crenshaw describes how "multiple identities" render the experiences of black women invisible, thereby not addressing their realities within the current legal framework.<sup>5</sup> Another way to describe and understand privilege, especially race privilege, is that "white privilege reinforces the existing

racial status quo and overlaps and interacts with other systems of privilege, including those based on gender, sexual orientation, economic wealth, physical ability, and religion. Just as the systems themselves are made invisible by our language, the intersection between the systems is also marked."<sup>6</sup>

The more levels on which privilege exists for a particular individual or group, the more likely it is that the law and society will recognize and meet their needs.<sup>7</sup> By contrast, the more levels on which privilege is denied to a particular individual, the more invisible the individual becomes to the law and society. Privilege does not manifest itself in exactly the same way with regard to each intersectional point.<sup>8</sup> The role of intersectionality in this study is to expose those levels of privilege and to recognize and identify the needs of those who are disadvantaged by the lack of two or more privileges.

It is often asserted by those who understand the phenomenon of privilege that, even if all discriminatory conduct were eliminated, there still would be inequality based on gender, race, class, sexual orientation, and disability. "[T]he flipside of racial discrimination is racial privilege."<sup>9</sup> As another writer put it, "[a]ntidiscrimination advocates focus only on one portion of the power system, the subordinated characteristic, rather than seeing the essential links between domination, subordination, and the resulting privilege."<sup>10</sup>

An understanding of privilege is essential to understanding the experiences of individuals who interact with the judicial system and legal profession every day. As one writer described it:

*"Domination, subordination, and privilege are like three heads of a hydra. Attacking the most visible heads, domination and subordination, trying bravely to chop them up into little pieces, will not kill the third head, privilege. Like a mythic multi-headed hydra, which will inevitably grow another head if all heads are not slain, discrimination cannot be ended by focusing only on . . . subordination and*

<sup>3</sup> The District of Columbia conducted a study on gender bias and a study on racial and ethnic bias simultaneously, but that study did not synthesize the materials to explore issues of intersectionality.

<sup>4</sup> To our knowledge, the Second and Third Circuits of the United States Court of Appeals are the only other jurisdictions that have conducted a gender fairness study specifically examining gender fairness from the multiple-identity ("gender plus") perspective.

<sup>5</sup> Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 139 U CHI LEG FOR 139 (1989).

<sup>6</sup> Stephanie Wildman, Margalynne Armstrong, Adrienne Davis, and Trina Gullo, *Privilege Revealed: How Invisible Preference Undermines America* xi-xii (1996).

<sup>7</sup> Privilege can reveal itself in a variety of ways. For example, at the public hearings that we held around the state, the most strongly voiced perspective was that of men who had experiences in divorce and custody disputes. The witnesses who expressed the view that men were disadvantaged in the family law arena were mostly white and male and appeared to be organized. As a result, this Task Force heard many of their needs and suggestions for change in the system.

<sup>8</sup> Wildman, *supra* note 6, at 19.

<sup>9</sup> Bill Bradley, *Recognizing Race Privilege*, FOCUS 6-8 (1996) (former United States Senator (D-NJ)).

<sup>10</sup> Wildman, *supra* note 6, at 19.

domination.”<sup>11</sup>

### 3. The Intersections that We Examined

We chose to focus on five specific intersections: gender and race/ethnicity,<sup>12</sup> gender and class, gender and age, gender and parental status, and gender and sexual orientation. The model for studying intersectionality issues comes from the recent academic focus on gender and race. During the past decade, in particular, considerable scholarship has been produced concerning how gender and race may intersect to create exponential disadvantage for people who are not members of the socially and economically dominant gender or race.<sup>13</sup> By choosing to examine intersectionality, we recognized that a focus on only race or only gender may cause the experiences of women of color to drop out of the equation.<sup>14</sup>

In 1994, the American Bar Association Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession issued a report entitled *The Burdens of Both, The Privileges of Neither* (1994). That report focused on the experiences of women of color in the legal profession. We relied on that report as both an educational tool for grappling with the definition of intersectionality and as a source of information about experiences of women of color. That report made six general findings:

1. “The combination of being a lawyer of color and a woman is a double negative in the legal marketplace, regardless of the type of practice or geographic region involved”;
2. “Multicultural [female<sup>15</sup>] lawyers] perceive that they are ‘ghettoized’ into certain practice areas and [that] other options are closed or implicitly unavailable [to them]”;
2. “Multicultural [female lawyers] must repeatedly establish their competence to professors, peers and judges”;

4. “As evidenced by continuing attitudes and negative stereotypes, multicultural [female lawyers] are invisible to the profession and have more difficulty achieving prominence and rewards within the legal field”;

5. “To succeed, multicultural [female lawyers] must choose between race and gender”; and

6. “Minority [female lawyers] face barriers of gender discrimination in minority bar associations and race discrimination in majority bar associations.”<sup>16</sup>

The intersection of gender with characteristics other than race has been much less widely studied than has the intersection of gender and race; thus we were charting new waters as to the other four intersections. Privilege does not manifest itself in exactly the same way with regard to each intersectional point. For example, according to a well-regarded scholar on sexual orientation and the law, “different advantages accrue from society’s privilege of heterosexuality, which generally constitutes gay and lesbian relationships as invisible.”<sup>17</sup> There are three societal assumptions about gay men and lesbians: the sex-as-lifestyle assumption, the cross-gender assumption, and the idea that gay issues are inappropriate for public discussion.<sup>18</sup> Given those societal assumptions, heterosexuals can “function in a world where negative assumptions are not made about their sexuality, and their sexuality may be discussed and even advertised in public.”<sup>19</sup>

Two specific points deserve mention. First, as to gender and class,<sup>20</sup> we recognize that the disadvantaged have less access to justice than those with resources. The majority of people living in poverty, both in Oregon and in the United States as a whole, are women and

<sup>11</sup> Adrienne R. Davis, *Identity Later On: Playing in the Light*, 45 AM U L REV 1 (1996).

<sup>12</sup> We recognize that race, ethnicity, and culture are each distinct concepts.

<sup>13</sup> See, e.g., Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE LJ 365 (1991); Crenshaw, *supra* note 5; Okianer Christian Dark, *Just My 'Magination*, 10 HARV BLACKLETTER J 21 (1993); Trina Grillo and Stephanie Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-Isms)*, 1991 DUKE LJ 397 (1991).

<sup>14</sup> A common example is the often-used expression “minorities and women.” That expression, by its structure, suggests men of color and white women. Women of color are not included.

<sup>15</sup> That report used the term “multicultural women” to refer to women of color.

<sup>16</sup> “The Burdens of Both, The Privileges of Neither,” Report of the American Bar Association Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession (1994).

<sup>17</sup> Wildman, *supra* note 6, at 18.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at 19.

<sup>20</sup> “Class,” as a term, is complicated. It can refer simply to economic resources (that is, income and wealth), or to social status, education, prestige, or other opportunities and advantages. Although each dimension is distinct, many are closely related. For the purposes of this study, we treated class principally in terms of economic wealth, while at the same time acknowledging that our definition represented only one aspect of this term.

children.<sup>21</sup> Accordingly, we decided that it was important to investigate issues surrounding gender and class.

Second, the topic of the intersection between gender and sexual orientation became a lightning rod in the lawyer, judge, and court personnel surveys. Each survey's demographic section asked the respondent to identify himself or herself as "bisexual," "gay/lesbian," "heterosexual," or "other." That question drew more vitriolic comments than any other question. Responses to that question raise two issues:

(1) In the judge survey, gay and lesbian judges were concerned with identifying themselves as gay or lesbian on the survey, not because they did not wish to identify their sexual orientation, but because the small number of openly gay and lesbian judges in the state would compromise the anonymity of their survey responses.<sup>22</sup>

(2) Significant numbers of respondents to both the lawyer and court personnel surveys objected to questions about sexual orientation.<sup>23</sup> Some people said that they felt such questions invaded their privacy; others commented that sexual orientation simply was an irrelevant or inappropriate inquiry. For example, one lawyer wrote a letter to the Task Force, stating:

*"My sexual orientation is none of your business. I find it so strange that people who are otherwise so concerned about privacy and making sure people are not discriminated against because of their particular type of bedroom activity would find it even necessary to ask this question. Do you have any legitimate justification that overrides my privacy interests?"*

The level of emotion generated by the issue of sexual orientation suggests that the intersection between gender and sexual orientation strikes a nerve and that further examination of this intersection may be warranted.

## B. METHODS OF STUDY

We purposefully formed a work group that reflected many intersectional points. Work group members included people who are white and of color; heterosexual, gay, and lesbian; non-disabled and disabled; and lawyers and other professionals. The work group included people of various ages (19 to 50s) but was not as geographically diverse as we had hoped. The work group did not have representation from the eastern or far southern parts of the state.

One or two members from the Intersectionality work group worked with each other work group to assist with intersectionality issues. Liaisons' responsibilities were to:

- become familiar with the work of the assigned substantive work group,
- attend its meetings,
- keep in regular contact with its chair,
- develop questions for surveys and focus groups for the area,
- observe or co-facilitate focus groups conducted by the assigned work group,
- review secondary data or recommend other sources to the assigned work group, and
- help to formulate recommendations.

During the writing process, liaisons also reviewed and commented on drafts of portions of the report.

### 1. Public Hearings

A member of the Intersectionality work group attended at all but two of the 10 hearings.<sup>24</sup> In addition, the work group created a two-person subcommittee to review the records of the hearings and provide additional insights and observations. This process provided additional analysis on intersectionality issues.

### 2. Survey Design

In focusing on intersectionality, we recognized that the way in which we view the racial, ethnic, gender, socio-economic, and sexual orientation categories to which we assign people is in flux. As a result, we sought significantly more information than many surveys do. For some purposes, gender is a useful category by which to divide people. However, for other purposes the category of "woman" or "man" is insufficient. For example, we may want to find out whether lesbian women would respond the same way as heterosexual women, and African-American men the same way as white men.

### 3. Focus Groups

The focus groups provided another opportunity to engage in qualitative research and, in particular, to obtain information regarding intersectionality. Work group members facilitated several of those sessions.

<sup>21</sup> According to the Center for Population Research at Portland State University, the most recent available census data (1990) show that approximately 60% of the Oregon households headed by women with children under age five fall below the poverty line. About 40% of the households headed by women with children under the age of 18 fall below the poverty line. By contrast, only 13.5% of all families (with two parents or headed by men) with children under the age of 18 fall below the poverty line.

<sup>22</sup> Several female judges commented, similarly, that they could be identified by their gender and location.

<sup>23</sup> Surveys were anonymous. That is, respondents were not asked to provide their names and written comments were transcribed and reviewed separately from the completed survey.

<sup>24</sup> Intersectionality work group members did not attend the Medford and Ontario hearings.

#### **4. Data Analysis**

The Intersectionality work group analyzed both quantitative and qualitative information in each of the substantive areas studied. Its goal was to identify examples of experiences of people living at intersectional points.

We were confronted with the difficulty of collecting, through quantitative research, statistically reliable information about the intersections that we studied. As each additional characteristic is added, the number of individuals with the combination of characteristics becomes smaller.<sup>25</sup> For example, of the 571 people who completed the lawyers survey, there were four Asian women, no Asian men, three Hispanic men, four Hispanic women, one Native American man, two Native American women, one African-American woman, and one African-American man. By contrast, 375 white men and 154 white women responded to the survey. As a result, it was difficult to draw conclusions that were statistically significant. In fact, the only survey that reflected “statistically significant” numbers of non-white respondents was the inmate survey. Of the 351 male respondents, 32.5% were men of color. Of the 75 female inmates that responded to the survey, more than 25% were women of color.

Focus groups, public hearings, and written comments on the surveys provided us with additional useful information. It is in that narrative form that we found descriptions of the lives of people living at the intersections.

Accordingly, this section of the report reflects a depth of experience more than it reflects a breadth of experience. In other words, it more completely describes the experiences of particular individuals, although it may not reflect the experiences of a large number of people.

#### **C. FINDINGS AND CONCLUSIONS**

Intersectionality challenges the closely held notion that we are all the same and that fair treatment necessarily means the same treatment. The concept of intersectionality requires more work to communicate with one another, and it requires more work to understand the complexities of our own experiences and the experiences of others, but it makes our work more reflective of social reality.

By embracing intersectionality as an integral part of the study, we opened topics that are painful to address, let alone to resolve. The discomfort created by these issues is multi-layered. Members of the Task Force found it painful to confront our own exercise of multiple levels of privilege during the course of envisioning the scope of the project and gathering and evaluating data.

Additionally, our specific findings, contained in the substantive chapters that follow, suggest that people at certain intersectional points are treated unfairly in some respects.

The net result of this foray into intersectionality leaves us with as many questions as answers. Further study and discussion can lead to more effective survey instruments and methods of analyzing qualitative data. That effort will, in turn, help the courts and the legal profession to become more responsive to the needs of all participants in the legal system.

#### **D. RECOMMENDATIONS**

##### **1. The Chief Justice should:**

- a. charge the Oregon Judicial Department's Access to Justice for All Committee with overseeing and coordinating implementation of the recommendations outlined in this report. Because that committee already is working to address issues of racial and ethnic fairness in the justice system, it is well positioned to ensure that individuals' multiple perspectives, or intersectionalities, will be incorporated into the work of securing gender fairness;
- b. Establish within the Oregon Judicial Department at least one permanent full-time staff position, plus appropriate support staff, to coordinate the work of the Access to Justice for All Committee; and
- c. include in the Oregon Judicial Department's 1999-2001 biennial budget a request for the funds and position authority necessary for such staff.

##### **2. The Legislative Assembly and the Governor should:**

- ensure that the Access to Justice for All Committee is adequately funded.

##### **3. The Access to Justice for All Committee, the Oregon State Bar, the Oregon Judicial Department, law firms, and law schools should:**

- include consideration of intersectionality issues in future studies and discussions of gender fairness. Likewise, all educational programs recommended in the chapters that follow should include intersectionality issues.

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<sup>25</sup> Based on the 1996 estimates of the Center for Population Research and Census at Portland State University, the racial composition of Oregon residents is: 93.8% white, 1.7% African-American, 3.0% Asian-Pacific Islander, and 1.6% Native American/Eskimo. Among all those racial groups, 5.4% of the population is of Hispanic origin.





# JUDICIAL ADMINISTRATION: THE COURTHOUSE AND THE CASE

*"Even if discrimination does not affect a single case result, its continuing presence within our judicial system scars a process which must be pure to avoid the perception of unjust resolutions."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

This chapter incorporates information derived from the efforts of two work groups: Judicial Administration and Civil Litigation. The former considered whether participants in the legal system — such as litigants, witnesses, inmates, interpreters, lawyers, judges, and court staff<sup>2</sup> — are treated fairly on the basis of gender. The Civil Litigation work group examined the effect of gender on case outcomes in civil actions (other than domestic relations cases). Both groups studied whether gender affects litigation strategy and the litigation process.

We learned that, although most participants in the court system believe that it operates fairly in most respects, a significant minority of participants report gender-biased behavior in and around the courthouse and gender-influenced case outcomes. Women are more likely to perceive and to experience gender-biased behavior, and such behavior is usually exhibited by male participants in the court system. However, some men, with less frequency, also perceive and experience such behavior by women. Among those who perceive bias, the bias generally is perceived to operate in favor of persons of the opposite sex.

Much progress has been made in recent decades to eliminate gender bias and to encourage gender fairness in the judicial system. While Oregon's courts should be commended for that progress, there remains room for improvement. Blatantly offensive conduct still exists, although it is becoming much less common. The progress yet to be achieved is primarily on the level of our most ingrained tendencies, responses, and attitudes. Because they are so deeply embedded, their removal will be neither easy nor quick. The theme of the recommendations in this chapter is to foster conscious awareness of gender discrimination and to ensure constant vigilance and continuing education to reduce it.

## B. ISSUES STUDIED

We studied the following issues, all of which focus on how the various participants in the legal system are treated inside Oregon's courthouses:

- (1) Are female litigants treated differently than male litigants by lawyers or judges? If so, are the differences more or less pronounced when the lawyers are male or female? Are female litigants treated better or worse than male litigants? On balance, does the gender of the client make a difference in the quality of representation that they receive?
- (2) Are female inmates treated differently than male inmates by lawyers or judges?
- (3) Are female witnesses treated differently than male witnesses by lawyers or judges?
- (4) Are female interpreters treated differently than male interpreters by lawyers, judges, court personnel, or litigants?
- (5) Are female lawyers treated differently than male lawyers by their clients, opposing counsel, judges, or courthouse personnel?
- (6) Are female judges treated differently than male judges by lawyers, litigants, courthouse personnel, or other judges?
- (7) Are female court personnel treated differently than male court personnel by lawyers, judges, litigants, or other court personnel?<sup>3</sup>
- (8) Does gender affect the results of cases in the civil trial court system (especially personal injury cases)? Do participants in the legal system perceive any gender bias in the civil litigation process or in case outcomes?

## C. METHODS OF STUDY

The Judicial Administration work group included trial court administrators, other courthouse personnel,

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<sup>1</sup> Response of lawyer to Task Force survey.

<sup>2</sup> Because of time and budget constraints, we did not survey jurors. However, several members of the Task Force, members of work groups, witnesses, and others who provided information had served as jurors and commented on their experiences and observations related to this study.

<sup>3</sup> For a discussion of whether lawyers treat female court reporters differently than male court reporters, see the chapter on Interactions.

judges, lawyers in public and private practice, an expert witness, and interpreters. The Civil Litigation work group comprised lawyers throughout the state who work as private and public practitioners, as in-house counsel for a financial services corporation, as legal aid lawyers, and as trial and appellate judges and law clerks. The experience level of members of this work group ranged from a recent law school graduate to lawyers in practice for more than 20 years. A man chaired the Judicial Administration work group, while a woman chaired the Civil Litigation work group. These work groups contained seven women and five men and included one Asian-American, one Hispanic, two lesbians, and one gay man.

The work groups on Judicial Administration and Civil Litigation compiled data from responses to various surveys, including surveys of lawyers, judges, interpreters, court personnel, clients, and inmates. In addition, the work groups considered oral testimony from the public hearings, written submissions to the Task Force, and other anecdotal information. Finally, these work groups reviewed existing literature and statistics, such as jury verdict reports.

Members of the Civil Litigation work group also conducted individual interviews with members of the Oregon State Bar's Litigation Section, partners in litigation firms in the Portland metropolitan area, judges who routinely preside over civil cases and settlement conferences, and other experts in civil litigation, such as jury consultants.

With regard to the lawyer survey, 284 of the 571 respondents indicated that they practice in the area of civil litigation. Of those 284 lawyers, 223 (about 79%) were men, 59 (about 21%) were women, and two did not identify their gender. This distribution is very close to the ratio of male and female lawyers who are members of the Litigation Section of the Oregon State Bar, which emphasizes civil practice. In 1997, 1,060 men and 267 women (80% and 20%, respectively) were

members of the Litigation Section. Accordingly, the work groups considered the responses to the lawyer survey on issues affecting civil litigation to be reasonably reliable indicators of Oregon lawyers' attitudes about civil litigation.

Apart from the lawyer, judge, client, and inmate surveys that were distributed by the Task Force as a whole or by other work groups, the Judicial Administration work group administered three surveys of its own:

(1) The *litigants survey* included civil plaintiffs, criminal and civil defendants, mediation clients, victims of crime, witnesses, and parties who were landlords and tenants. The survey was pre-tested in Jackson County and then administered at five courthouses in Columbia, Malheur, Marion, Multnomah, and Tillamook Counties. It was administered in person (not by mail) by trained volunteers.<sup>4</sup> There were English and Spanish versions of the survey; however, no Spanish-language surveys were completed.<sup>5</sup> Respondents completed nearly 170 English-version surveys. Of those, approximately 60% were completed by men and 40% by women. The vast majority of completed surveys came from Multnomah and Marion Counties.

(2) The *court interpreter survey* was sent to 98 interpreters in Oregon,<sup>6</sup> with a cover letter and follow-up letter from Supreme Court Justice Graber stressing the importance of participation in the survey. The survey consisted of 70 questions regarding interpreters' perceptions and observations of the judicial system. The issues raised by the questions were similar to the issues raised in the litigant survey. Thirty interpreters, or 30.6%, responded to the survey. Of those, eight (26.7%) were men, 18 (60%) were women, and four (13.3%) did not report their gender.

(3) The *court personnel survey* was distributed to all permanent and temporary, management and nonmanagement employees of the Oregon Judicial Department, except judges, at county courthouses; to all

<sup>4</sup> Volunteers read a script to each survey respondent. For a copy of that script, see the Appendix.

<sup>5</sup> The reasons why no Spanish-language surveys were completed varied. At most locations, there were no volunteers administering the surveys who were bilingual. In Multnomah County, two volunteers spoke Spanish, but still no Spanish-language surveys were completed.

<sup>6</sup> The interpreters responding to the survey represented a wide range of interpretation experience in the court system. Although some interpreters had only one year of experience, most (78.6%) had nine or more years of experience. Of those interpreters with nine or more years of experience, 42.9% were men and 33.3% were women. Most of the interpretation was performed in criminal cases, with 41.2% of female interpreters and 37.5% of male interpreters spending 90% or more of their time interpreting in criminal cases. On the other hand, 5.6% of female interpreters spend 50-60% of their time interpreting in civil cases, and 12.5% of male interpreters spend 40-50% of their time interpreting in civil cases.

Male and female interpreters reported spending similar amounts of time interpreting in the courtroom. A little more than 10% of the total responding interpreters, 11% of the women and 12% of the men, participate in court daily. Close to half the responding interpreters (46%) interpret in court on at least a weekly basis. Twelve percent of male interpreters spend 50-60% of their time interpreting in court, while 17% of female interpreters spend 80-90% of their time interpreting in court. Responding interpreters also had experience interpreting legal matters outside the courtroom: 25% of male interpreters and 17% of female interpreters interpret one to three times a week in such settings.

Because of the small number of respondents, the survey results should be viewed with caution.

employees of the Office of the State Court Administrator; and to the judicial assistants and staff attorneys for the appellate courts. Of the 1,547 surveys distributed, 1,412 went to employees at county courthouses. The response rate for those employees was 34% (521 responses). The response rate for the 135 administrative and appellate employees was 56% (76), and the overall response rate was 39% (597).

## D. FINDINGS

This section first considers how various participants in the legal system are treated in and around the courthouse. Second, this section considers whether gender affects the litigation process, litigation strategy, pretrial proceedings, and the outcome of civil litigation (other than domestic relations cases). Third, this section considers issues of intersectionality.

### 1. In and Around the Courthouse

#### a. Overview

Litigants, inmates, interpreters, lawyers, judges, and court personnel all responded to general and specific questions about gender-based treatment of participants in the legal system inside Oregon's courthouses. The general questions asked whether the survey respondents had observed any inappropriate treatment or gender bias and whether they had perceived respectful treatment based on gender. Survey respondents also reported on their observations of specified behaviors that may indicate inappropriate gender bias in the courtroom — such as the use of terms of endearment. None of the specific behaviors was reported in large numbers, but patterns worthy of notation still emerged from the responses. In general, female lawyers reported incidences of the specific behaviors in greater numbers than did male lawyers, and lawyers of both genders reported the specific behaviors in greater numbers than did judges of both genders.

#### i. Court Personnel

Of all groups surveyed, female court personnel perceived the most gender bias against women. More than 50% of female court personnel under the age of 45, and just under 40% of female court personnel age 45 or older, reported gender bias against female lawyers to some degree.

When court personnel were asked: "Have you observed plaintiffs, defendants or witnesses who are racial minorities receive less courteous treatment than others?" 16% of the court employees who answered the question said "yes." However, different populations answered the question quite differently. Of the women

who answered the question, 17% said "yes," representing nearly 90% of all the "yes" responses. On the other hand, of the men who answered the question, 10% said "yes," representing only 10.8% of the total "yes" responses. Thus, the large majority of those who observed discourteous treatment to racial minorities were women rather than men. In addition, 14.1% of white, non-Hispanic respondents answered "yes" to the question, while 45% of respondents of color answered "yes." Some white survey respondents wrote comments suggesting that people of color received "better" treatment than white people in the judicial system.<sup>7</sup>

#### ii. Interpreters

In general, few interpreters reported inappropriate gender-based treatment. Female interpreters observed inappropriate treatment of both sexes at higher rates than did male interpreters; however, male interpreters were more likely to report observations of inappropriate treatment or bias directed at men by women and other men. Both female and male interpreters reported (within the range of 5.6% and 25%) observing inappropriate and biased behavior of men and women by both female and male lawyers, judges, interpreters, court personnel, and security personnel.

Interpreters' written comments confirmed that, as a group, interpreters believe that inappropriate or biased behavior in the courthouse is the exception to the rule. Several male interpreters praised the system. One wrote that "the entire legal or judicial system is basically free of bias or mistreatment of others." Another commented that "all [his] contacts with members of the legal/judicial system have been professional, courteous, and appropriate." Yet another expressed that, on the whole, judges and lawyers were very professional, although in one domestic relations case, he observed the judge to be more supportive of the male spouse than of the female spouse, who was deaf and required a signer to interpret. With regard to inappropriate behavior by a female lawyer with a male client, an interpreter noted that, somehow, this behavior is not considered as bad as the converse.

#### iii. Litigants

Overwhelmingly, litigants believe that they have been treated with respect by judges and courthouse staff although, in general, male litigants reported this result with greater frequency than did female litigants. Approximately 90% of male and female litigants reported they were treated respectfully by courthouse staff. Similarly, 92.1% of male litigants and 80.3% of female litigants reported being treated respectfully by the judge. There was less than a 1% variation from those overall results when the gender of the judge was male. The

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<sup>7</sup> For example, one respondent opined: "I feel the minority groups get better treatment, not equal." Comment on a court personnel survey.

results regarding respectful treatment by judges improved, however, for female judges: astoundingly, 94.4% of male litigants and 100% of female litigants appearing before female judges felt that they were treated with respect. Approximately three-quarters of all litigants observed no difference between the amount of respect that they were accorded by male versus female judges. Of the remaining litigants, it is not surprising that more men (19.5%) than women (8.3%) felt that they were treated with greater respect by male judges, while more women (11.1%) than men (7.3%) felt that they were treated with greater respect by female judges.

Similarly, over three-quarters of all litigants reported that they believed that their gender did not affect the manner in which they were treated in court. The remainder (22.7% of men and 21.3% of women) did believe that their treatment in court was affected by their gender.

Only 8.1% of men and 16.7% of women reported that male and female judges were treated differently in court. Of those reporting such differences, more female litigants (33.3%) than male litigants (25%) observed female judges being treated better than male judges; conversely, more male litigants (75%) than female litigants (66.7%) observed male judges being treated better. No reliable survey results exist with regard to the gender, occupation, or purpose in court of the persons behaving differently toward judges.

#### iv. Inmates

Unlike other litigants, many inmates reported that their treatment in court was affected by their gender. Nearly half the male and female inmates (42% and 47%, respectively) responding to the inmates' survey thought that their treatment in court was affected by their gender. When we asked inmates *who* treated them differently in court because of gender, a clear pattern emerged. The vast majority of those inmates who felt that they had been treated differently because of gender said that a man in the court system had treated them differently. Three hundred sixty-five responses identified a male judge, lawyer, court employee, court security person, law clerk, or secretary as the person who had treated them differently — in that order of frequency — as compared to 122 responses identifying a female in one of those positions as the person who treated them differently.

We also asked inmates whether other courtroom participants were treated differently because of gender. The responding male and female inmates observed such treatment at the same rate, 56%. As to whether men or women received better treatment:

- 7.2% of respondents (3 men and 32 women), thought that men were treated better; and

- 39% of respondents (184 men and 5 women) thought that women were treated better.

Those overall percentages were heavily influenced by the high percentage of male respondents: 407 (83.7%) of the respondents were men and 79 (17.3%) of the respondents were women. As in other surveys, each gender reported that the other was treated better.<sup>8</sup>

A related question asked inmates whether male or female judges treated inmates more respectfully. A large majority of the 285 inmates who answered the question, 63.9%, said that there was no difference in treatment based on the gender of the judge. About the same percentage of male and female inmates (23.2% and 22.7%, respectively) reported that female judges treated them more respectfully.

We also asked how other participants in the courtroom treat judges. More than 75% of responding inmates said that they had seen no difference in the treatment of male and female judges. When inmates perceived that judges were treated differently by gender:

- 45.8% of male inmates and 33.3% of female inmates reported that female judges were treated better;
- 25.3% of male inmates and 33.3% of female inmates reported that male judges were treated better; and
- 28.9% of male inmates and 33.3% of female inmates said that, in multiple court appearances, they had seen both male and female judges treated better.

Inmates of both sexes reported that lawyers and police officers are the groups that most frequently treat judges differently based on gender. Moreover, both male and female inmates perceived that male participants are more likely to treat judges of one gender differently from the other.

Last, we asked inmates whether their behavior in court varied with the judge's gender. Like other participants in the court system, inmates do not see themselves as regularly behaving in a gender-biased manner. Only 82 inmates (17% of all respondents) indicated that they treat a judge of a particular sex with more respect. Sixteen (21%) of the 82 male inmates and none of the 8 female inmates who answered the question, "Who do you treat more respectfully?" reported treating female judges more respectfully. Two female inmates (25%) and 8 (10.5%) of the responding male inmates reported treating male judges more respectfully.

<sup>8</sup> For a discussion of the effect of gender on sentencing, see section I.B.2 of the Criminal Law and Juvenile Justice chapter.

**b. Recognition and Opportunity to be Heard**

We addressed our first question on specific kinds of potentially gender-biased treatment to the ability of lawyers and litigants to be recognized and heard when appearing in court. We included that question in the surveys of lawyers, litigants, inmates, and court personnel. Respondents told us:

(1) Judges, lawyers, and court staff assume that male lawyers are lawyers, but question whether female lawyers are lawyers.

Some lawyers, judges, and court personnel ask female lawyers whether they are in fact lawyers, yet do not ask this question of male lawyers. More than 25% of the responding female lawyers reported that they had observed judges inquire whether a female lawyer was a lawyer and that the same question was not posed to male lawyers: 12.3% of all responding lawyers had observed this behavior by male judges; only 2.8% had observed this behavior by female judges.

Twice as many lawyers had observed this behavior in other lawyers: 26.6% of all lawyers observed male lawyers asking female lawyers whether they were lawyers, while only 5.9% of all lawyers observed female lawyers asking that question of other female lawyers.

When asked whether court personnel also ask that question of female lawyers but not of male lawyers, respondents reported as follows:

- lawyers 25.5%
- court personnel 14% (48 responses)
- male court personnel (32)
- male judges (31)
- male lawyers (27)

(2) Judges and lawyers cut off female lawyers, more often than male lawyers, when they are speaking.

Both male and female lawyers and judges reported that judges and other lawyers cut off or ignore female lawyers when they are speaking. Lawyers observed this differing treatment more by male judges (13.3%) and male lawyers (22.9%) than by female judges (3.8%) or female lawyers (3.6%). Vastly more female judges (42.1%) than male judges (1.4%) reported that female lawyers are cut off or ignored when speaking in situations in which male lawyers are not. Court personnel did not report observing this behavior in any significant numbers.

(3) Some judges afford female litigants less opportunity to be heard.

Female litigants also expressed some difficulty in being afforded an opportunity to speak and be heard in court. The survey asked litigants whether they had wanted to address the court and, if so, whether they had been given an opportunity to do so. Approximately

50% of male and female litigants expressed a desire to address the court. Of those, slightly more men (90.7%) than women (81.3%) were given the opportunity to do so when both male and female judges are considered.

This statistic holds true even when taking into consideration the gender of the judge. Slightly fewer female litigants (87.5%) than male litigants (92.6%) appearing before male judges and desiring to address the court were given an opportunity to do so. However, far fewer female litigants (50%) than male litigants (91%) appearing before female judges and desiring to address the court were given an opportunity to do so.

(4) Judges deny male criminal defendants an opportunity to be heard more often than they deny female defendants; judges and court staff treat male defendants with disrespect more often than female defendants.

Most inmates (78%) appearing before a judge wanted to address the court. Male inmates wanted to talk to the judge more frequently (79.8%) than did female inmates (69.6%). And, the judge denied more male inmates (40%) than female inmates (29%) who wanted to address the court an opportunity to speak to the judge.

When the court did allow inmates to speak, again, significantly more men (48%) than women (33%) believe that the judge treated them with disrespect. Inmates reported slightly better treatment by court staff than by judges, but still male inmates (32%) believed that they were treated less respectfully more frequently than did female inmates (21%).

**c. Credibility**

An experienced expert witness commented that, a few decades ago, it was difficult for female expert witnesses to be recognized and accepted by lawyers and the court, but the situation has changed; now the use of an expert depends much more on his or her background, qualifications, and abilities in the forensic field. Judges and juries now readily accept testimony by female expert witnesses.

The data collected from the litigant survey support that observation. Approximately one-half of all litigants (52.1% of men and 46.4% of women) believed that gender does not affect the credibility of witnesses in court. Interestingly, of those litigants who did report that gender affects a witness's credibility, both female and male litigants reported that female witnesses are *more* credible than male witnesses. Slightly more male litigants (15.1%) than female litigants (10.7%) considered female witnesses to be more credible, while fewer, 11% of male litigants and 8.9% of female litigants, considered

male witnesses to be more credible.<sup>9</sup>

By contrast, comments that we received suggest that female lawyers are not accorded the same amount of credibility as male lawyers. Several lawyers expressed their perception that the claims, arguments, and schedules of female lawyers or their clients are not taken as seriously or afforded the same respect as those of male lawyers or their clients. For example, one lawyer wrote:

*"In several discretionary matters I believe male judges have more readily listened to and accepted the representations of my male opponents regardless of how logical or accurate, with their decision ultimately favoring the cause represented by a male opponent."*

Several lawyers observed that juries may find against a client when the client's female lawyer is treated with less respect or credibility. In a few instances, however, lawyers noted that juries reacted to that behavior by responding favorably to a female lawyer's client.

#### **d. Use of First Names or Informal Address**

Litigants, judges, and interpreters report some informality or use of first names in court, although not necessarily on the basis of gender and not necessarily with women but not men.

Only 14.3% of male litigants and 9.8% of female litigants responded in the survey that they had been addressed in court or in a law office by their first names. However, a judge reported that, in a recent court appearance, a male lawyer began his argument: "I represent a little lady who believes . . ." In a letter to the Task Force, a female trial judge described a residential real estate case that came before her court in October 1996. Three parties and three lawyers participated in the court proceeding that gave rise to the following anecdote. Of those six people, only one, a party, was a woman; she was also African-American. The judge relayed the following:

*"Whenever counsel referred to or addressed either of the male clients or other men, they invariably complied with UTCR 3.030<sup>[10]</sup> prohibiting the use of first names only. However, when reference was made to the female party, all attorneys, including her own, consistently referred to her by her first name. When I corrected counsel, apologies were made and it was explained that all concerned had become familiar enough with the party to be on a first-name basis and that no disrespect was intended. However, the practice continued, as did my all too frequent admonishments. It was only after I advised counsel that all future violations would be treated as summary contempt with*

*escalating monetary fines per violation that counsel complied.*

*"The lawyers seemed surprised that I took issue with this matter and I was surprised that, once it was brought to their attention, there appeared to be little effort to redirect these 'inadvertent' references without the threat of monetary penalties.*

Several witnesses at the public hearings described occasions when female witnesses were asked whether they should be addressed as Miss or Mrs. and when female judges were not referred to as Judge, but rather as Miss or Mrs. In recent cases, a female judge received a letter (from a male witness) in which the witness called her "domineering" and "a self-righteous bitch." And a female judge reported that young lawyers whom she did not know personally, mostly female, called her by her first name at Bar functions, when she did not observe similar familiarity toward male judges.

The judges' survey responses indicated that women are addressed by their first names in court more frequently than are men and that women are more alert to this behavior. Asked whether male judges addressed female (but not male) lawyers by first names, 42.1% of female judges responded "yes," while 11% of male judges answered "yes." Only 5.3% of female judges and 6.8% of male judges reported that female judges addressed female lawyers by their first names. In the same percentages, judges reported that male lawyers address female (but not male) lawyers by their first names. Judges further responded that female (but not male) litigants, witnesses, and jurors were addressed by first names (1) most frequently by male lawyers (31.6% of female judges and 9.6% of male judges reporting); (2) occasionally by male judges (10.5% of female judges and 1.4% of male judges reported "yes"); and (3) almost never by female judges (0% female judges and 1.5% of male judges reported "yes").

Although only a few court personnel reported that lawyers of either sex are addressed by first names in court, female lawyers themselves reported being referred to by first names when male lawyers are not. Both male and female lawyers reported that male lawyers (28%) and male judges (17%) address female lawyers but not male lawyers in a patronizing manner.

On a related issue, we asked interpreters whether, when interpreting in languages that have a formal and informal form of address, they had observed a bilingual lawyer, judge, or other interpreter use the informal form of address.<sup>11</sup> Two male interpreters and eight female interpreters answered "yes." When asked who was

<sup>9</sup> But see the discussion of intersectionality, below.

<sup>10</sup> Uniform Trial Court Rule 3.030 provides:

"During trial, the litigants and litigants' attorneys must not address adult witnesses, jurors or opposing parties by their first names, and, except in voir dire, must not address jurors individually."

<sup>11</sup> Because the numbers of respondents to this survey were so small, we have omitted percentages from this discussion.

addressed in this more familiar, informal manner, one of the male interpreters and four of the female interpreters stated that women were addressed informally. Two male interpreters and seven female interpreters stated that men were addressed informally. One of the written comments reported that bilingual lawyers, as well as some interpreters, “constantly engage in this behavior when addressing witnesses and/or defendants no matter what the sex of the person is.” The data indicate that this informal behavior occurs both in and out of court.

We asked whether interpreters had observed male judges addressed by first names or in familiar terms by male lawyers. All male interpreters answered “no,” and only one female interpreter answered “yes.” One male and one female interpreter had observed female judges addressed by first names or in familiar terms by both male and female lawyers and by male judges.

We asked interpreters whether male lawyers were addressed in court by first names or in familiar terms; four male interpreters and five female interpreters answered “yes.” Interpreters reporting this behavior observed that all engage in this behavior with about the same frequency. Both male and female interpreters also had observed female lawyers being addressed by their first names or in familiar terms.

#### ***e. Terms of Endearment***

Litigants, lawyers, court personnel, and interpreters all reported some incidents of female and male participants in the legal system being addressed by a term of endearment. For example, both male and female lawyers observed female litigants, witnesses, jurors, and lawyers being addressed by terms of endearment by male lawyers (18.7%) and male judges (12.4%) when their male counterparts were not. In similar proportions, female litigants (17.5%) and male litigants (12.8%) reported being addressed in court or in a law office by a term of endearment. Female lawyers reported that they have been referred to as “young lady,” “girl,” “sweetie,” or “fine little lady attorney” by male opposing counsel or judges.

Three female but no male interpreters observed female defendants, victims, or witnesses being called by first names or by classic terms of endearment, such as “dear” or “honey,” when it was not appropriate to do so. The same number of female interpreters plus one male interpreter reported that they had observed male defendants, victims, or witnesses also inappropriately called by a first name, “dear,” or “honey.” Although the male interpreter did not specify the gender or occupation of the person using the terms of endearment, the female interpreters observed this behavior from male and female

lawyers, interpreters, judges, and court personnel, most often from male lawyers, judges, and court personnel. When we asked interpreters whether they themselves had ever been referred to by first names, “dear,” “sweetie,” “honey,” or other terms of endearment when people of the opposite sex were not, approximately one-quarter answered “yes.”<sup>12</sup>

In the highest numbers, 227 court personnel reported that they, too, were addressed or referred to by first names or by a term of endearment when it was inappropriate: 38% (94% of whom were female) responded affirmatively based on personal experience, while 33% (87% of whom were female) observed other participants being treated this way. Consistently, these addresses were spoken by male lawyers, judges, litigants, defendants, and by other court personnel of both genders.

#### ***f. Comments about Personal Appearance***

Survey results suggest that some comments are made by almost all the participants in the legal system regarding the personal appearance of other participants. Some male and female lawyers (10.2%) reported that male judges make comments about the personal appearance of female lawyers, litigants, witnesses, and jurors when similar comments are not made about their male counterparts. Many more lawyers (29.8%) reported such comments by male lawyers, and fewer lawyers (7.9%) reported such comments by female lawyers.

Approximately 10% of both male and female litigants had heard inappropriate comments about their personal appearance, either in court or in a law office setting. Similarly, two of the female interpreters had received inappropriate remarks about their appearance or dress; one was spoken in court by a male lawyer. One interpreter believed that, in one county, defense lawyers selected a particular uncertified female interpreter based on her looks, rather than calling available certified interpreters.

Court personnel both received and observed inappropriate comments directed at female employees in higher numbers than did litigants or interpreters. Approximately 25% reported such comments from other court personnel, male lawyers, male judges, and male litigants. One survey respondent complained that female court personnel, lawyers, and judges are allowed to dress more casually than men, who are expected to wear a dress shirt, tie, and jacket.

#### ***g. Sexual Advances or Comments.***

Lawyers, court personnel, interpreters, and litigants all reported, in numbers ranging between 10% and 25%,

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<sup>12</sup> One written comment from an interpreter noted that the questions regarding use of terms of endearment should have been qualified further because, although some expressions could be considered terms of endearment, inflection and context could suggest otherwise.



inappropriate comments or touching of a sexual nature. Most of this behavior is directed at women by men.

Slightly more than 10% of all lawyers responding to the survey (17 men and 48 women) reported that female lawyers are subjected to verbal or physical sexual advances from male lawyers. Fewer, 17 lawyers in all, reported that male lawyers are subjected to sexual advances from female lawyers. More court personnel, 23% (137 court employees), reported receiving unwanted sexual or suggestive comments. Again, most of those receiving such comments are female (86%). In descending order of frequency, the comments were made by

- male lawyers (55),
- male litigants or defendants (41),
- male court personnel (32),
- male judges (30),
- male police officers (25), and
- female court personnel (25).

Nearly identical numbers of court personnel reported seeing other employees receive unwanted sexual or suggestive comments, the majority of which were directed at female employees.

More than 25% of court personnel reported that they had been “subjected to unwanted sexual teasing, demeaning jokes or remarks hostile toward men or women,” and 92% reported such behavior directed at others. Approximately 85% of those who had experienced or observed such behavior were female employees. The remarks were made by male lawyers (66), female court personnel (55), male court personnel (49), male judges (45), and male police officers (30).

More than 10% of court personnel (91% of whom were female) also reported that they had received unwanted pressure for social contact from

- male lawyers (27),
- male court personnel (19),
- female court personnel (14),
- male litigants or defendants (13),
- male police officers (10), and
- judges (9).

Another 16% of court personnel (86.3% female and 13.7% male) reported unwanted, deliberate physical touching from male lawyers (33), male court personnel (29), female court personnel (20), male judges (18), and male police officers (10). Complaints were brought by only 14% (84) of court employees who reported having been subjected to unwanted sexual comments or conduct.

Similarly, three of the responding female interpreters had been subjected to sexual or suggestive comments, two of those by male lawyers. Male interpreters did not share this experience. Six female interpreters reported that they had been treated in an inappropriately familiar manner, while no male interpreters reported this treatment. Only one female interpreter had been subjected to unwanted sexual teasing, jokes, comments, or deliberate physical touching (but not in the courthouse); again, no male interpreters made this report. Male lawyers, judges, court personnel, and security personnel were responsible for various incidents of unwanted comments or physical touching, and a lawyer had called this interpreter on the telephone to ask her in very graphic terms to have sex with him.

Interpreters themselves were reported to be responsible for some incidents. Lawyers, support staff, and court personnel told us about male interpreters who had engaged in inappropriate behavior, making unwelcome advances and comments to female court staff. In one case, an interpreter had been called to interpret out of court in proceedings related to a sex offense case. He was aggressively flirtatious with female staff. The respondent perceived this behavior to be not only inappropriate, but also offensive and insensitive, given the nature of the case.

Just under 10% of female litigants experienced inappropriate sexual comments or touching, either in court or in a law office setting. Almost no male litigants reported this experience.

One work group member described an incident that occurred 15 years ago during the preparation of a civil case for trial. A single mother who was an anticipated witness had been so traumatized by the overt sexual advances of one of the lawyers that she refused at first even to speak with any other lawyers. When a non-offending lawyer requested an interview with the witness to discuss her trial testimony, she would consent only after arrangements were made for an unusually large group of people to accompany her to a relatively public setting for her interview.

Written comments on the surveys suggest that blatant instances of overt sexual conduct appear to be waning. One survey respondent described her more recent experiences as being so subtle as to be “unconscious.” However, recognizable instances of inappropriate behavior of a sexual nature still occur, most frequently directed at women by men, often male lawyers.

#### ***b. Demeaning or Hostile Remarks***

Some lawyers reported hearing, in court or in chambers, demeaning or hostile remarks or jokes about women. Approximately 10% of lawyers had observed male judges make those comments, and 15% had observed male lawyers make them. With less frequency, lawyers heard hostile remarks or jokes directed at men



by women in court or in chambers; more male lawyers (7.5%) than female lawyers (2.1%) reported such comments.

Similarly, two female interpreters, but no male interpreters, heard someone making hostile or negative remarks about other women to them. One of those female interpreters reported the hostile or negative comments from both male lawyers and male interpreters. Four female interpreters, and again no male interpreters, were themselves addressed in a rude manner when persons of the opposite sex were addressed politely. Those rude comments came from male lawyers and, to a lesser extent, from female judges. On the other hand, one male interpreter and one female interpreter encountered hostile or negative remarks directed at men by female lawyers and female interpreters outside the courtroom.

Some litigants and court personnel reported being addressed rudely or with demeaning jokes, hostile remarks, or unwanted sexual teasing. Approximately 20% of litigants were addressed rudely in court or in a law office setting, with such conduct being directed at male litigants (23%) slightly more frequently than at female litigants (18%).

Anecdotally, we learned of a recent medical malpractice case in which a female lawyer was subjected to alarmingly hostile treatment by her male opposing counsel. The action was litigated in 1997 in an Idaho state court but involved several Oregon lawyers. After a deposition in which the female defense lawyer was treated unprofessionally by the plaintiffs' male lawyer, the defendant moved for sanctions against the plaintiffs' lawyer for "disruptive, unethical, and unprofessional behavior during depositions and towards [defendant's] counsel." As described in defendant's motion for sanctions, during deposition, plaintiffs' counsel referred to defendant's counsel as "hon," "honey," "sweetheart," and "witch." He also "attempted to physically intimidate counsel, leaning across the table, and at one point, slamming the table with his fist hard enough to disconnect the phone." After repeated, argumentative objections during the deposition, the following interchange occurred between the lawyers:

*"[Defendant's Counsel:] Please don't interrupt me.*

*"[Plaintiffs' Counsel:] No, she'll say what she damn well pleases, Hon. \*\*\**

*"[Defendant's Counsel:] Are you done now? I want to give you a full chance to put whatever you need to on the record.*

*"[Plaintiffs' Counsel:] Honey, you have been needing to park your broom for a long time. Let's go.*

*"[Defendant's Counsel:] Let the record reflect that [plaintiffs' counsel] has terminated this deposition.*

*"[Plaintiffs' Counsel:] No, Ma'am, you have been a witch like you have been so many times."*

Plaintiffs' counsel then terminated the deposition, refusing to allow defendant's counsel to ask any further questions. Following the deposition, plaintiffs' counsel continued to attack defendant's counsel personally. "[He] called [her] at home, in an effort to intimidate her. [He] went to considerable lengths to find [her] home number and where she lived, as the phone was not listed in her name and was outside the . . . , Oregon, area." Defendant's counsel was forced to obtain an unlisted phone number to prevent further harassment by plaintiffs' counsel. "In addition, [plaintiffs' counsel] recently faxed drawings to [defendant's] counsel, referring to [her] as "squaw," a derogatory and racist word." In response to defendant's motion for sanctions, plaintiffs' counsel admitted his conduct. However, the Idaho trial court took the matter under advisement and as of the date of this writing still has not ruled on the motion.

### ***i. Child Care***

More than half the nearly 600 court employees who responded to the court personnel survey said that they favored a policy allowing on-site child care. Court employees also heavily favored flexible work schedules (75%) and job sharing (63%), as well as release time, to assist with family responsibilities. On-site child care may have been less favored than these options due to the fact that only a fraction of court employees have children under the age of 18 living in their homes. More women than men would be affected by these policies.

Child care also was studied by the Multnomah Bar Association, through its Court Liaison Committee and CourtCare Advisory Committee. The CourtCare Advisory Committee issued The CourtCare Study Report in March 1997. The focus of the study was the child-care needs of jurors, litigants, and witnesses in the Multnomah County courthouse.

The study found that an average of 80 children (age 12 or under) per day enter the Multnomah County courthouse. A survey was done of citizens conducting business at the courthouse counters. One hundred sixty-nine surveys were completed over a one-week period. Forty-five of the respondents had children; 19 respondents had brought a total of 29 children with them. Twenty-five respondents with a total of 39 children had made child-care arrangements before coming to court. Thirty-four respondents (17 who had brought children to court and 17 who had not) said that they would use "safe and convenient" child care at the courthouse if it were available.

The CourtCare study also surveyed jurors and court personnel who decided whether requests for excuses from jury service would be granted. During one four-week period, the court excused 159 people from jury duty because of their need to care for small children. A 1993 study of the representativeness of the jury pool in Multnomah County also showed that those who ignored their jury subpoenas were more likely to be

female heads of households with children at home (or unmarried cohabitators with children at home) than were those who served on jury duty or who sought and obtained an excuse from service. On the other hand, relatively few jurors who did serve said that they would use child care at the courthouse if it were available.

Courthouse staff, judges, and lawyers were also interviewed or surveyed as part of the study. All reported many instances of court proceedings being seriously disrupted by the presence of children and of children being exposed to extremely negative situations, including yelling, accusations of wrongdoing against parents or other family members, verbal abuse, obscenities, and graphic descriptions of violence, especially in domestic relations and criminal cases.

The CourtCare study did not ask survey respondents their gender, nor did it ask courthouse observers to note whether children being brought to court accompanied a man, a woman, or both. Anecdotally, trial judges recounted to the Task Force that most of the children in the courtrooms and hallways are in the company of a woman. The CourtCare study obtained similar anecdotes, for example:

*"In criminal cases the defendants are usually male. So the wives or girlfriends bring the kids. The judge assumes that the reason might be that the kids have a chance to see their dad in the court proceeding and that the defendant tries to gain sympathy with the kid's presence and so hopes to get no, or a less harsh punishment."*

Some other states provide child-care facilities at courthouses for litigants, witnesses, and others.<sup>13</sup> Oregon does not.

## 2. Gender and Civil Actions

### a. The Litigation Process Generally

Some lawyers and judges perceive that the gender of parties or lawyers affects the litigation process, either positively or negatively. Female lawyers and judges are more likely than are male lawyers and judges to report that a party's gender has an effect on the litigation process:

- 33.9% of female lawyers,
- 47.4% of female judges,
- 26.3% of male lawyers, and
- 20.5% of male judges.

Similarly, more women than men reported that a lawyer's gender affects the litigation process:

- 37.5% of female lawyers,
- 21.1% of female judges,
- 16.9% of male lawyers, and
- 4.1% of male judges.

Although the surveys did not explore how or to what extent gender may affect the litigation process, some anecdotal comments did provide insight. For example, a female lawyer wrote about the legal system as being "male":

*"The traditional legal system is based on a 'male' model of aggressive combative winner take all advocacy. Some women accept it—others take other career paths \* \* \*. We need more ADR [alternative dispute resolution] and other changes to the legal system even more than focusing on the treatment of women. For example, a strong look at male and female definitions of honesty and truth."*

In a letter to the Task Force, a litigant from the Willamette Valley involved in a property case noted what may be an isolated incidence of gender bias by one particular judge: "Our [female] attorney explained to us that she could not get a fair hearing on our claim before this judge. He was well known to dislike women lawyers, so she advised us to seek other [male] counsel."

Most judges, however, reported their belief that male and female lawyers are equally skilled in the courtroom. We asked judges whether, in their experience, they believed that male or female lawyers "tend to be better at" (a) reaching a settlement, (b) representing clients' interests assertively, or (c) arguing complicated questions of law. With regard to "reaching a settlement," 88.4% of judges indicated that the gender of the lawyers made no difference. Of those reporting a gender difference, there is a disparity in the responses: 21.1% of female judges believed that female lawyers are better at reaching a settlement, while only 2.1% of male judges agreed. On both "assertive representation" and "arguing complicated questions of law," more than 90% of the judges, both male and female alike, believed that the gender of the lawyers had no effect whatsoever.

The majority of litigants, both male and female, reported that they behaved no differently when appearing before a male judge than when appearing before a female judge, and most reported that they treated all judges with equal respect. Some litigants, 10.5% of men and 16.7% of women, indicated that they did behave differently before a male judge than before a female judge, but most of those respondents (78.6% of men and 84.6% of women) reported that they still treated

<sup>13</sup> 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 16 n 50 (1996); OREGON DOMESTIC VIOLENCE COUNCIL, A COLLABORATIVE APPROACH TO DOMESTIC VIOLENCE: OREGON PROTOCOL HANDBOOK 46 (1997) (recommending that courts offer child care in the courthouse).

male and female judges with equal respect, notwithstanding their different behavior.

## **b. Litigation Strategy**

### **i. Litigants' Strategy**

Most inmates (82% of male inmates and 69% of female inmates) had no gender preference with respect to selecting a defense lawyer.<sup>14</sup> When inmates did have a preference as to the gender of the lawyer, women wanted female lawyers more often than men wanted male lawyers (77% and 52%, respectively). The three most common reasons (in roughly equal degrees of popularity) that male inmates gave for preferring a certain gender for his lawyer were: the lawyer would fight harder, the lawyer would spend more time on the case and, given the nature of the charge, the inmate would have a better chance for success. Female inmates reported the same top three reasons for expressing a gender preference for their lawyers; the most popular reason for female inmates was that the selected gender would fight harder. As discussed in more detail below, inmates' reasons for gender preference correlate to their perceptions as to whether they were treated differently by male and female lawyers when they have been represented by both. More than half the male and female inmates felt that there was no difference in their treatment by male or female lawyers.

### **ii. Lawyers' Strategy**

About one-third of all lawyers reported that they used the gender of a party, witness, lawyer, judge, or other participant in the legal system as part of their civil litigation strategy. Female lawyers (36.9%) were slightly more likely than male lawyers (30.6%) to report the use of gender in their litigation strategy.

The survey did not ask *how* gender affects litigation strategy. Again, however, anecdotes provided further information. In some instances, we heard examples that might be classified as appropriate uses of gender in shaping litigation strategy, as preparation for predicted subconscious responses of decision-makers.

For instance, one female judge reported that, when she was in private practice, she chose a female witness instead of a male witness with the same job title to testify on behalf of a large corporate client following several male witnesses, in order to help "soften" the client's image before the jury. A lawyer reported that, to counteract possible perceptions of racial bias among jurors, she would ask more questions of an African-American female witness than she would ask of a white male to establish that person's qualifications as an

expert economist. In addition, certain kinds of cases, such as sex discrimination claims, inherently require that gender be an issue that lawyers consider in preparing for trial, because alleged gender bias is a substantive issue in the case.

On the other hand, the Task Force heard examples of inappropriate uses of gender in litigation strategy. At public hearings, for example, witnesses said that they had heard male lawyers belittle female opposing counsel by using her first name or making remarks about her appearance. Likewise, some male lawyers reported that some female lawyers use their attractive appearance to gain an unfair advantage with jurors and judges. We also note that lawyers may not exercise peremptory challenges to excuse jurors on the basis of sex<sup>15</sup> or race.<sup>16</sup>

After finding that female lawyers often believe that they must take their own gender into account in court, we were not surprised that more female than male lawyers report using gender as part of litigation strategy. Some female litigators reported at public hearings and in focus groups that they assume that they must work harder, be more prepared, or be more competent than their male counterparts to be perceived as equal by jurors, judges, and even their own clients. One lawyer wrote on the survey next to the question about using gender as part of litigation strategy: "Every trial. Women lawyers must work to establish the credibility in jurors' eyes that men enjoy immediately."

### **iii. Pretrial Proceedings**

Pretrial proceedings include discovery, motion practice, arbitration, and mediation. When we asked lawyers about the effect of gender on pretrial proceedings, 27.8% of male respondents observed behavior that they believed indicated a gender bias. Almost twice as many female respondents (50.8%) had observed such behavior. Fewer judges than lawyers observed such behavior. More female judges (15.8%) than male judges (4.1%) had observed gender-biased behavior by lawyers, mediators, or other judges in pretrial proceedings.

The results of the lawyer survey suggest that there is a perception of slightly less gender-biased behavior in pretrial proceedings than in the courtroom. This perception differs from the conclusions reached by task forces in other states. According to an analysis published by the American Judicature Society: "In jurisdiction after jurisdiction, task force reports show that the reported incidence of overtly biased behavior by attorneys is greater outside the presence of a judge than

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<sup>14</sup> For a discussion of civil litigants' gender preferences for lawyers, see the chapter on Interactions Between Lawyers, Clients, Staff, and Other Professionals.

<sup>15</sup> *J.E.B. v. Alabama ex rel. T.B.*, 511 US 127, 114 S Ct 1419, 128 L Ed 2d 89 (1994).

<sup>16</sup> *Batson v. Kentucky*, 476 US 79, 106 S Ct 1712, 90 L Ed 2d 69 (1986).

in settings before a judge.”<sup>17</sup> The questions in Oregon’s lawyer survey asked about the behavior of participants other than lawyers, as well as of lawyers. Had we limited the question to the behavior of lawyers, the results might have been similar to those in other jurisdictions. We received anecdotal evidence suggesting that in Oregon, as elsewhere, lawyers usually behave better when a judge is present (or when a judge may have an opportunity to observe lawyers’ behavior as, for example, when a deposition is videotaped for possible admission into evidence). Judges wield considerable influence over lawyers’ behavior.

### c. Outcome of Civil Litigation

Survey results suggest that most participants in civil litigation (other than domestic relations cases) in Oregon’s trial courts do *not* perceive that gender affects the outcome of their cases. The limited data available also suggest that, in most personal injury cases, the plaintiff’s gender does not affect the size of the verdict. Yet, a significant minority of lawyers and judges perceive that gender does affect the outcome of some cases. Some litigants also perceive that gender makes a difference in the outcome of their cases and that, when it does, the effect on them is negative. The limited jury verdict data available also suggest that male plaintiffs may receive a disproportionate number of high verdicts in personal injury cases, but it is impossible to tell whether gender bias is a factor.

#### i. Settlements

The Judicial Administration work group conducted interviews with two settlement judges (one male and one female, from two different counties), who made the observations contained in this section of the chapter: We did not obtain quantitative data on these issues.

Assuming that the facts regarding the parties and their injuries in the case are otherwise equal, successful settlement negotiations before trial judges are affected significantly by what plaintiff’s counsel is perceived to be able to achieve in the courtroom. Most trial lawyers, particularly older, more experienced trial lawyers, are male. Most personal injury defense lawyers of all ages also are male. Experienced and respected female personal injury lawyers are few. Although five years ago settlement judges perceived that female lawyers were “leaving money on the table” in settlement negotiations when male lawyers did not, they do not perceive that difference today.

Beyond counsel’s ability as a trial lawyer, the next most important factor to successful settlement

negotiations is the client’s expected performance as a witness. Settlement judges perceive that client control problems are more of an issue for plaintiffs than for defendants and that female lawyers are more likely to ask a settlement judge for assistance with client control problems than are male lawyers. Settlement judges believe that male clients are a bit more prepared to follow the advice of their lawyers or of the settlement judge than are female clients, perhaps because (in the view of the settlement judges interviewed) female clients tend to have more emotional investment in the issues in their cases than do male clients.

The settlement judges interviewed did not recall any instances of inappropriate gender-related jokes or comments in their presence. However, they did note that the physical attractiveness of a party is more likely to be mentioned when the party is a woman and that appearance, positive or negative, is more likely to be an issue for female parties than for male parties. For instance, an attractive female plaintiff who is badly scarred may fare better than a less attractive female plaintiff and is even more likely to fare better than a male plaintiff with the same injury. On the other hand, attractive women with injuries that are *not* visually obvious sometimes are viewed as having less valuable claims, particularly if there are women on the jury.<sup>18</sup>

When a disagreement arises between the plaintiff and the treating physician regarding damages, settlement judges asserted, male plaintiffs are more likely to believe that the doctor’s opinion will be accepted over their own. Female plaintiffs are more likely to believe that they can explain away a doctor’s disagreement with them.

When asked whether the combination of gender and some other attribute of a party or lawyer affects settlement results, settlement judges observed that Oregon has a disproportionately low population of female and of African-American, Hispanic, and Asian-American trial lawyers. Settlement judges also noted that a party’s size and physical attractiveness affect settlement. Indeed, when discussing settlement issues, gender is most likely to arise in *combination* with other issues, such as weight or age.

When ethnic background or race is involved in a case, language issues also may affect the outcome of a settlement conference. Less commonly, some minorities have customs or practices that reduce or eliminate the chance of reaching a successful settlement. For example, some cultures are extremely skeptical or resentful of any private caucus between the lawyers and the judge, and

<sup>17</sup> Vicki C. Jackson, *What judges can learn from gender bias task force studies*, 81 JUDICATURE 15, 18 (1997). See also *Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias*, 84 GEO LJ 1657 (1996).

<sup>18</sup> These observations are borne out by a recent study suggesting that better-looking people are treated better in court. See Richard Morin, *Justice smiles on good-lookers*, OREGONIAN, Dec 15, 1997, at C3 (discussing recent study by Kayson and DeSantis, two New York psychologists).

others object to allowing women any role in the decision-making process.

Overall, settlement judges reported that the results obtained in settlement conferences seem to depend more on a lawyer's experience, trial skills, and comfort level with settlement procedures than on any gender bias or other gender issues.

## ii. Verdicts

The Honorable Kristena LaMar, Multnomah County's chief alternative dispute resolution judge, has recorded statistical information derived from Jury Verdicts

Northwest in Multnomah County from 1987 through 1997. Jury Verdicts Northwest is a private service that gathers and publishes data on jury verdicts in personal injury cases. From reports by lawyers or other participants in the case, it gathers information including the nature of the case, the types of injuries that the plaintiff is alleged to have suffered, and other pertinent facts. Lawyers and parties use this information as a tool in assessing the dollar value of their cases. The following chart represents the statistical data available from Jury Verdicts Northwest with respect to the gender of parties and the verdicts that they received.

SYNOPSIS MALE PLAINTIFF VERDICTS & FEMALE PLAINTIFF VERDICTS MULTNOMAH COUNTY 1987-1997 <sup>19</sup>						
VERDICT AMOUNT	# OF MEN	% OF ALL VERDICTS OBTAINED BY MEN	% OF ALL VERDICTS IN THIS RANGE OBTAINED BY MEN	# OF WOMEN	% OF ALL VERDICTS OBTAINED BY WOMEN	% OF ALL VERDICTS IN THIS RANGE OBTAINED BY WOMEN
\$00.00	209	41.5%	52.9%	186	40.5%	47.1%
\$1 - 10,000	92	18.3	54.4	77	16.8	45.6
\$10,001 - 20,000	47	9.4	52.8	42	9.2	47.2
\$20,001 - 50,000	48	9.6	43.2	63	13.7	56.8
\$50,001 - 100,000	24	4.8	40.7	35	7.6	59.3
\$100,001 - 200,000	22	4.4	53.7	19	4.1	46.3
\$200,001 - 500,000	28	5.6	59.6	19	4.1	40.4
\$500,001 - 1,000,000	17	3.4	65.4	9	2.0	34.6
Over \$1,000,000	15	3.0	62.5	9	2.0	37.5

The foregoing chart shows that female plaintiffs are somewhat more likely than male plaintiffs to obtain verdicts in the middle range of \$20,000 to \$100,000, while male plaintiffs are more likely than female plaintiffs to obtain the lowest and highest verdicts, that is, verdicts of less than \$20,000 and those from \$200,000 to over \$1,000,000. Thus, the highest verdicts were obtained by male plaintiffs.

Because the sample was small and the comparability of the facts of the underlying cases uncertain, we interpret these data with caution. If the gender disparity in very large verdicts is not the result of random chance, it may reflect gender differences in society outside the courts. For example, in a personal injury case in which the plaintiff has been permanently disabled from

working, the jury may include in its verdict economic damages to compensate the plaintiff for wages lost in the past and for future lost wages or lost wage-earning capacity. Such damages must be based on evidence of what the plaintiff had earned in the past and would reasonably be expected to earn in the future and may be high if the plaintiff is young and had a long work-life expectancy. In a society in which men's wages generally are higher than women's wages (for whatever reasons), one would expect a higher jury verdict for lost wages and earning capacity for the "average" permanently disabled male plaintiff than for the "average" female plaintiff of the same age and with the same injury.

The Civil Litigation work group did not study the correlation between a *defendant's* gender (when the

<sup>19</sup> The percentages in the third and sixth vertical columns, regarding all verdicts by gender, total 100%, indicating by gender the frequency of verdicts in each amount range. Additionally, the sum of the percentages listed on each horizontal line in the fourth and seventh columns total 100%, indicating how many women versus men obtained verdicts in each amount range.

defendant is an individual) and the verdict obtained. That being so, the possible role of a defendant's gender in influencing case outcomes cannot be evaluated.

### iii. Participants' Perceptions

The data collected from the various surveys provide no concrete evidence that gender bias affects the results of civil cases (excluding domestic relations cases). However, some participants perceive that it does.

The survey responses from lawyers practicing in the area of civil litigation followed a pattern that we saw in most of our other research: (1) most respondents (both men and women) saw little or no gender bias; (2) women were more likely than men to perceive gender bias; and (3) of those who did perceive gender bias, women were more likely to see gender bias against women, and men were more likely to see gender bias against men.

A series of questions asked lawyers and judges whether they had observed behavior in the courtroom by judges, lawyers, parties, or witnesses that "indicated" gender bias. If so, they were asked whether this behavior affected the outcome of the case. More female lawyers (48.2%) than male lawyers (31.1%) reported having observed gender bias in the courtroom. A little more than 20% of the female lawyers responding believed such behavior affected the outcome of the case, while only 11.6% of the male respondents did.

Lawyers seemed to recognize that gender may have either a positive or a negative influence on case outcome, depending on the nature of the case. One lawyer wrote: "I have several times felt that because my client was a married woman, opposing counsel (and, on one or two occasions, judges) were biased when it came to offering settlements or making decisions about damages or liability, on the theory that my client had a man at home who could 'bring home the bacon.'" Conversely, other lawyers noted that gender may favorably influence the outcome of a personal injury case tried to a jury, especially when the plaintiff is a young, physically attractive woman.

The judges responded more conclusively. A substantial number of both female judges (63.2%) and male judges (57.5%) responding to the survey said that they had observed gender bias in the courtroom. Interestingly enough, the difference in the observations of female and male judges is not as great as the difference in the observations of female and male lawyers on this question. But a substantially higher percentage of female judges (21.1%) than male judges

(9.6%) reported that the gender bias that they had observed affected the outcome of the case.

The vast majority of court personnel who responded to a separate survey reported that they detected no difference in case outcomes or reported that they had no basis to respond.

Clients were less likely than lawyers or judges to perceive any effect of gender on the results of their cases. Of the 239 clients who responded to the survey, 204 (85.4%) did not believe that their own gender or the gender of their lawyer affected the outcome of their case. Female clients (14.2%) were slightly more likely than male clients (9.5%) to believe that gender did affect the outcome.

When clients, male and female, did perceive that either their own or their lawyer's gender affected the outcome of their case, they believed that gender had a negative effect. A female party described her involvement in litigation against a former business partner in a county on the Oregon coast: "[E]verybody knows that women can't win in business cases. The good old boy network is there." Another female client explained: "[M]y case related to my ability not to be a cheerleader, and I think that if I would have been a male playing football, things would have been different." Similarly, male clients perceived a negative influence because of their gender. One said: "Men are held to a higher standard in recognizing inherent dangers in equipment and avoiding injury."

Some legal scholars suggest that the legal system values various physical or emotional damages that may be more salient to one gender or another, depending on the nature of the case.

*"The law of torts values physical security and property more highly than emotional relationships . . . . The law has often failed to compensate women for recurring harms — serious though they may be in the lives of women — for which there is no precise masculine analogue."*<sup>20</sup>

Thus, the law itself favors men in the values that are attached to "economic" (out-of-pocket) damages as distinguished from "non-economic" damages, such as physical pain and emotional distress.<sup>21</sup> In Oregon, non-economic damages have been "capped" by the legislature, while economic damages have not. ORS 18.560. These factors may affect the size of verdicts awarded to male and female plaintiffs.

<sup>20</sup> Martha Chamallas & Linda K. Kerber, *Women, Mothers, and the Law of Fright: A History*, 88 MICH L REV 814, 814 (1990); see also Lucinda M. Finley, *Female Trouble: The Implications of Tort Reform for Women*, 64 TENN L REV 847 (1997).

<sup>21</sup> See Lucinda Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L REV 886, 898 (1989).

### 3. Intersectionality

In and around the courthouse, the intersection of gender and race, ethnicity, sexual orientation, or youth is perceived to result in some unfairness. With respect to case outcome, most Oregon judges and lawyers did not respond that they believed race, ethnicity, age, marital, status, disability, or sexual orientation to have had a negative influence on the outcome on a case. However, from 1% (noting Asian-American female lawyer as a negative factor) to 17.3% (noting lesbian or bisexual female litigant or witness as a negative factor) of lawyers do perceive intersectionality issues as affecting the outcome of cases.

#### a. Gender and Race/Ethnicity

We asked judges and lawyers whether gender combined with one or more other demographic factors had a negative effect on the outcome of a case. More than 90% of judges responded that the racial or ethnic background of male and female lawyers had no effect on the outcome of a case. Lawyers responded in slightly greater numbers than did judges that the race or ethnicity of a female lawyer negatively influenced case outcome: when the female lawyer is also African-American (7.7%); Hispanic (5.1%); Native American (3%); and Asian/Pacific Islander (1.9%). Lawyers responded similarly with respect to male lawyers who are also: African-American (7.4%); Hispanic (5.0%); Native American (2.5%); and Asian/Pacific Islander (1.4%).

These trends hold with respect to litigants and witnesses, although in greater numbers. Thus, when we asked whether the ethnic or racial background of female litigants or witnesses negatively affected case outcome, we obtained these results:

#### PERCENTAGES OF JUDGES WHO PERCEIVE A NEGATIVE EFFECT ON CASE OUTCOME WHEN GENDER COMBINES WITH RACE/ETHNICITY

	African-American	Hispanic	Native American	Asian/Pacific Islander
Male Litigant or witness also is	14.7	15.8	9.5	3.2
Female litigant or witness also is	12.6	12.6	9.5	3.2

#### PERCENTAGES OF LAWYERS WHO PERCEIVE A NEGATIVE EFFECT ON CASE OUTCOME WHEN GENDER COMBINES WITH RACE/ETHNICITY

	African-American	Hispanic	Native American	Asian/Pacific Islander
Male Litigant or witness also is	17	15.6	8.1	5.4
Female litigant or witness also is	15.4	13.5	7.5	5.6

More female than male court personnel reported that they had “observed plaintiffs, defendants or witnesses

who are racial minorities receive less courteous treatment than others.” Seventeen percent of the female respondents, but only 10% of the male respondents, said so. In addition, 45% of the respondents of color, but only 14% of the white respondents, answered “yes” to that question.

In our surveys and focus groups, men and women of color and white women were more likely to report or perceive discourteous treatment to people of color than were white men. We also received written comments from white respondents suggesting that people of color received better treatment than did white people in the judicial system. That perception differs from the those revealed in the lawyer and judge surveys, which suggest that people of color may be disadvantaged in civil litigation on account of race or ethnicity.

#### b. Gender and Sexual Orientation

About 90% of both judges and lawyers believed that the perceived sexual orientation of a lawyer does not have a negative effect on the outcome of the case. With respect to the sexual orientation of litigants and witnesses, judges and lawyers responding to the surveys reported as follows:

#### PERCENTAGES OF JUDGES AND LAWYERS WHO PERCEIVE A NEGATIVE EFFECT ON CASE OUTCOME WHEN GENDER COMBINES WITH SEXUAL ORIENTATION

	JUDGES	LAWYERS
Male litigator or witness also is perceived to be gay or bisexual	17.9	16.8
Female litigator or witness also is perceived to be gay or bisexual	16.8	17.3

In the lawyer survey, one lawyer commented that a judge had offensively referred to her client as a “lardass dyke.” Another lawyer commented: “Attractive female litigants who are well-spoken fare better than any other litigant. But, if their sexual orientation is known, gay and lesbian litigants are treated poorly by some judges.”

#### c. Gender and Age

About 95% of judges reported that a lawyer’s age has no effect on the outcome of a case. Lawyers disagreed. One out of five lawyers reported that being a young, female lawyer adversely influences case outcome. Half as many lawyers, 11.4%, reported that being a young, male lawyer adversely affects case outcome.

During the public hearings, several female lawyers testified about difficulties that they had encountered in being accorded respect by other lawyers and by some judges because of their gender and youth. The judge survey also contained comments suggesting that young female lawyers were more likely to be patronized or demeaned than other lawyers.

Some lawyers also reported that the compounding effects of being single, a parent, and a female lawyer (regardless of age) had similar adverse effects on case outcomes.<sup>22</sup> On the other hand, very few lawyers, less than 5%, reported that being an older lawyer, female or male, adversely affects case outcome.

Responses to the court personnel survey varied by the ages of the respondents. For example, 48% of responding court employees indicated that gender bias against female lawyers does exist in some form. Of the female respondents under the age of 45, 53.6% indicated that gender bias against female lawyers exists at some level. Of the female respondents age 45 and over, only 39.4 % indicated that gender bias exists. This sizeable discrepancy carried through in the comments that we received. Women age 45 and over frequently expressed the opinion that, although some gender bias does exist, it is not as bad as it used to be, and younger women are “looking for excuses.” That difference in perception reflects a significant correlation between age and gender in how fairness is perceived in the court system.

#### **d. Gender and Class**

Anecdotal evidence suggests that the intersection of gender and class limits women’s access to the courts. Access to justice continues to be an enormous problem for low-income people, the overwhelming majority of whom are women. The Director of the Oregon Law Center described the proportions of the crisis:

*“[I]n my experience as a Legal Services lawyer, what I have seen, with 70 percent of our clients being women, women are, of course disproportionately in the ranks of the poor as are people of color.*

*“ . . . . .*

*“But when you have 500,000 low-income people in Oregon, 70 percent of them being women, and you have just a handful of Legal Services lawyers, maybe as much as, according to some ABA studies, 80 percent are completely outside the system. So I would hope that the task force would take a look at not just even-playing-field issues but who is even allowed to be on the playing field. Because the vast majority of low-income women just don’t have access at all.”*

Another legal services lawyer reported that opposing counsel will “routinely malign our clients based on the fact that they receive welfare or they live in subsidized housing.” In addition, a lawyer reported that one judge told a mother receiving welfare that, just because she was poor, she did not deserve relief. That lawyer opined that it was doubtful that a similar statement would have been made to a male welfare recipient.

#### **e. Intersectionality and Oregon Judges**

There are few judges living in the “intersections” identified by the Task Force. Currently, there are no women of color serving as active judges. According to the statistics kept by the Office of the State Court Administrator, among male active judges, two are Hispanic, two are African-American, one is Native American, and one is Asian-American. Although the Office of the State Court Administrator does not keep statistics about the sexual orientation of judges, by anecdote, there are several openly gay men and lesbians serving as judges. The scarcity of judges living in intersectional points, particularly women of color, affects both the perspective of the judiciary and the perspective of those appearing before members of the judiciary.<sup>23</sup>

### **E. CONCLUSIONS**

#### **1. In and Around the Courthouse**

On the whole, the court system operates even-handedly toward both men and women. Nonetheless, a significant minority of judges, lawyers, litigants, inmates, interpreters, and court personnel have observed, in varying degrees, unprofessional gender-related behavior in and around the courthouse. Such behavior includes:

- differential treatment of courtroom participants by judges, and *vice versa*;
- differential uses of first names and terms of endearment;
- differential courtroom recognition of lawyers and clients;
- differential credibility of lawyers and clients;
- differential credibility accorded to lawyers;
- comments on personal appearance;
- sexual comments and advances;
- demeaning or hostile remarks; and
- discourtesy.

Those behaviors have a negative effect on the fair administration of justice. Although gender bias is a two-way street, women are much more likely than men to perceive and to experience gender-biased behavior in and around the courthouse, and men are much more likely than women to exhibit such gender-biased behavior.

To put these conclusions in perspective, we note that much progress has been made to eliminate overt

<sup>22</sup> The number of observations of this compounding effect were small in the survey.

<sup>23</sup> For further discussion of who serves as judges, see the chapter on Opportunities in the Legal Profession.



gender bias and to encourage gender fairness in the judicial system, especially during the past 25 years. Older participants in the court system confirmed that gender fairness has improved over time. And, although the survey of litigants did not obtain a representative sample, it did obtain the freshest, most current impressions of any of the surveys. It is therefore especially significant that a substantial majority of litigants reported fair, respectful, and even-handed treatment in and around the courthouse.

In combination with gender, age is the other personal characteristic that is perceived to play the greatest negative role. Youth affects both male and female lawyers, but is a particular problem for women in establishing credibility and in achieving favorable results for their clients. In addition, the minority sexual orientation and minority race or ethnicity of lawyers and their clients are perceived to be factors having an adverse effect on those who are, or are associated with, that minority person.

Eliminating the remaining gender-biased behaviors in and around the courthouse — many of them subtle and unconscious — will be neither simple nor swift. Some people believe that men and women are “hard-wired” as hunters and gatherers.<sup>24</sup> Others believe that socialization is responsible for differential behavior and differential treatment of men and women. In either event, change will take time and effort. The time and effort will be well spent to achieve courts that permit all persons fully and fairly to participate in the justice system.

There is a perceived need for on-site child care in courthouses, to respond both to court employees on a long-term basis and to litigants, jurors, and witnesses on a short-term basis. More women than men who use the courthouse are affected by the absence of on-site child care.

## 2. Gender and Civil Actions

The statistical data available to the Task Force provide no concrete evidence of gender bias affecting the outcome of civil actions, whether by settlements or verdict. Nonetheless, a substantial minority of the survey respondents believe that gender-biased behavior or the gender of a party, lawyer, or judge affects the outcome of cases. Whether the statistics or the perceptions are more reliable is unknown. However, visible efforts to ensure fairness can be expected to improve both perception and reality.

As to the litigation process, we conclude that not all strategic uses of gender are inappropriate. But lawyers and judges must be vigilant to avoid inappropriate strategic uses of gender.

## F. COMMENDATIONS

We commend the Oregon Supreme Court for adopting JR 1-101(H), which provides:

*“A judge shall not hold membership in any organization that the judge knows is a discriminatory organization. For purposes of this rule, ‘discriminatory organization’ means an organization that, as a policy or practice and contrary to applicable federal or state law, treats persons less favorably in granting membership privileges, allowing participation or providing services on the basis of sex, race, national origin, religion, sexual orientation, marital status, disability or age.”*

and JR 2-110, which provides:

*“(A) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court personnel and members of the public.*

*“(B) A judge shall not act in a way that the judge knows, or reasonably should know, would be perceived by a reasonable person as biased or prejudiced toward any of the litigants, jurors, witnesses, lawyers or members of the public.*

*“(C) A judge shall require lawyers and court personnel who are subject to the judge’s direction or control to act in accord with the principles embodied in paragraphs (A) and (B) of this rule.*

*“(D) Paragraphs (B) and (C) of this rule do not preclude consideration or advocacy of any issue relevant to the proceeding.”*

We commend the Education Division of the Office of the State Court Administrator for regularly including issues of gender fairness in educational programs for judges.

## G. RECOMMENDATIONS

### 1. The Oregon Supreme Court should:

- by January 1, 2000, review existing procedures for making complaints of unfairness by, and against, the participants in the judicial system. That review should consider whether existing procedures are adequate to facilitate the prompt and appropriate resolution of such complaints and should recommend any needed changes.

### 2. Judges, including judges *pro tempore*, referees, and magistrates, should:

- a. monitor behavior in the courtroom and, to the extent appropriate, in pretrial proceedings, and should intervene to correct inappropriate gender-based conduct;

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<sup>24</sup> See, e.g., CARL SAGAN, BILLIONS AND BILLIONS: THOUGHTS ON LIFE AND DEATH AT THE BRINK OF THE MILLENNIUM, 26-28 (1997).

b. participate in periodic refresher courses on the need to be aware of issues affecting gender fairness; and

c. when appropriate, expand on precautionary instruction UCJI No.5.01 to address specific issues of fairness that may arise in a particular case.

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

a. continue to conduct regular educational programs for judges and court staff on the existence and effects of gender-biased behavior in and around the courthouse, and on ways to avoid such behavior; and

b. by January 1, 1999, develop a brochure on gender fairness and begin to distribute it to participants in the judicial process — including jurors, witnesses, litigants, and interpreters. The brochure should emphasize the commitment of the Chief Justice and the President of the Oregon State Bar to achieving gender fairness and should advise lay participants of available complaint processes (both formal and informal) in the event that they experience or observe unfair treatment. (Such information could, instead, be included in a brochure on other issues of fairness.)

**4. The Oregon State Bar should:**

a. continue to conduct regular educational programs for lawyers on the importance of professionalism, including the avoidance of gender-biased behavior and other forms of biased behavior;

b. in continuing legal education programs for litigators, explore the line between appropriate and inappropriate uses of gender (and other personal characteristics) in litigation strategy; and

c. continue to educate the public about the workings of the legal system, in an effort to raise the general level of public understanding about the legal system and to emphasize its commitment to fairness.

**5. The Oregon State Bar's Committee on Uniform Civil Jury Instructions should:**

- by January 1, 2000, consider whether to expand the caveat in UCJI No. 5.01, which provides that “you must not be influenced in any degree by personal feelings or sympathy for, or prejudice against, any party to this case.” The Committee should consider whether it is advisable to give more explicit guidance on issues of fairness or to refer to other participants beyond the parties (such as a party’s lawyer).

**6. Law firms, lawyers’ organizations, judicial organizations, and other organizations composed of**

**regular participants in the administration of justice (such as interpreters) should:**

- a. discuss the issues raised in this report; and
- b. provide continuing education for their members on methods of achieving fairness.

**7. The Access to Justice for All Committee should:**

- assist the Office of the State Court Administrator and the Oregon State Bar in improving educational curricula to help judges and lawyers identify and avoid gender bias.

**8. The Access to Justice for All Committee, in coordination with trial court administrators, county officials, and other interested persons, should:**

- implement the recommendations of the Multnomah Bar Association’s CourtCare Advisory Committee
  - a. to establish child care at courthouses for jurors, witnesses, and parties during proceedings and to form a new committee to oversee that effort; and
  - b. to begin a statewide feasibility study by January 1, 1999, respecting on-site child care at courthouses.

**9. The Access to Justice for All Committee, working together with the Information Systems Division of the Office of the State Court Administrator, trial court administrators, and other appropriate individuals and organizations, should:**

- assess the adequacy of the Civil Action Data form to permit analysis of gender fairness and intersectionality issues and recommend appropriate changes.

**10. The counties, with the assistance of the Access to Justice for All Committee, should:**

- by January 1, 2001, study whether and, if so, how gender affects the treatment of participants in the judicial system by court security personnel and procedures, and recommend any appropriate changes. This research should focus on participants, such as jurors, litigants, lawyers, and witnesses, who are not employees with security passes.

**11. The Chief Justice, trial court administrators, and other appropriate individuals should:**

- study whether and, if so, to what extent jurors experience or perceive unfairness based on gender during their jury duty and, more specifically, while participating in voir dire and while deciding cases.

**12. The Chief Justice and the Oregon State Bar should:**

- study whether the gender of participants influences civil litigation, either substantively or procedurally. This research should build on the preliminary work of the Task Force.

**13. The Governor should:**

- by January 1, 1999, form a group to study whether and, if so, how gender affects the work of administrative agencies in the performance of their adjudicative functions. Many citizens and lawyers participate in hearings before administrative agencies and in appeals of administrative decisions in the contexts of, for example, workers' compensation benefits and unemployment benefits. Administrative matters affect thousands of Oregonians, particularly those of low or moderate income, perhaps resulting in additional intersectionality concerns.



# 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."<sup>1</sup>*

## 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)<sup>2</sup> 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.<sup>3</sup> We divided the state into four quadrants for comparison purposes: Northeast (Deschutes County only<sup>4</sup>), Northwest (Multnomah, Yamhill, Marion, Polk, and Lane Counties), Southeast (Harney and Malheur

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

<sup>2</sup> 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.

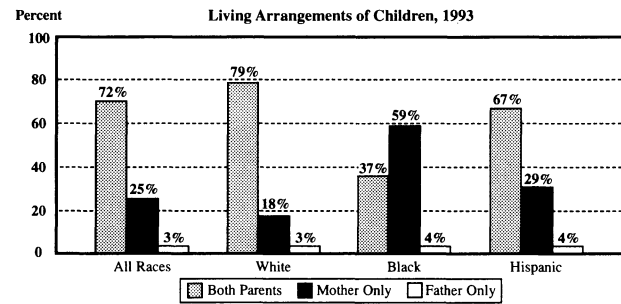
## D. FINDINGS

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,<sup>5</sup> and domestic violence,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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

<sup>3</sup> 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."

<sup>4</sup> Other counties in the northeast quadrant of the state did not participate in our study.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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.”<sup>9</sup> The percentage of children living with single mothers in Oregon increased from 5% in 1960 to 15% in 1990.<sup>10</sup>

Children in single-parent families are much more likely to be poor than are children in two-parent families.<sup>11</sup> 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.<sup>12</sup> The consequences of the failure to receive support are far more severe for women than for men<sup>13</sup> 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.<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup>

## 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.<sup>17</sup> In the great majority of cases, custody is not contested.<sup>18</sup> 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.<sup>19</sup> The remainder were placed in joint custody.

In Oregon, with the important exception of mandatory mediation<sup>20</sup> 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.

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<sup>9</sup> 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”).

<sup>10</sup> *Id.* at 30.

<sup>11</sup> 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).

<sup>12</sup> BUREAU OF THE CENSUS, U.S. DEP’T 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.

<sup>13</sup> 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.

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

<sup>15</sup> U.S. COMM’N ON CHILD AND FAMILY WELFARE, *supra* note 8, at 13.

<sup>16</sup> 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).

<sup>17</sup> Oregon Health Division, Center for Health Statistics, July 1996.

<sup>18</sup> 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).

<sup>19</sup> OREGON VITAL STATISTICS, DIVORCE FACT SHEET: OREGON OCCURRENCE.

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

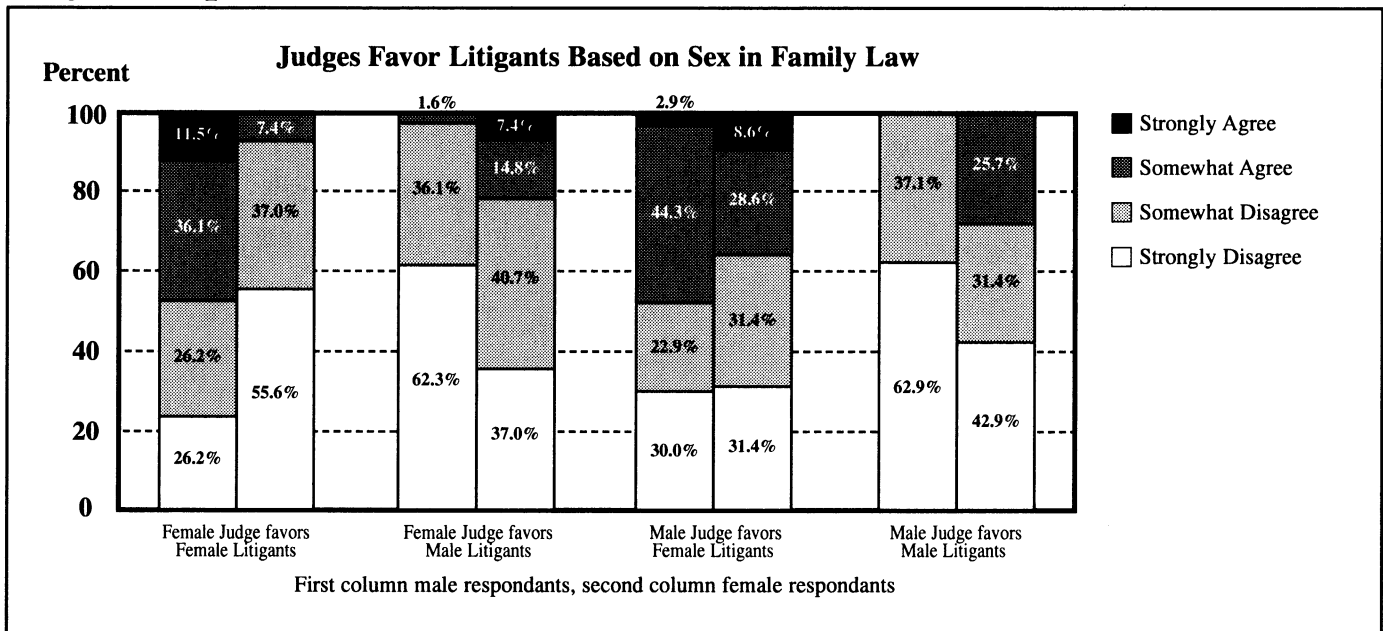
More than 60% of both male and female judges said that they had dealt with family law cases in the preceding 12 months. We asked judges whether they perceive that judges favor one sex over the other in family law matters. Generally speaking, most judges do not believe that such bias exists. Interestingly,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

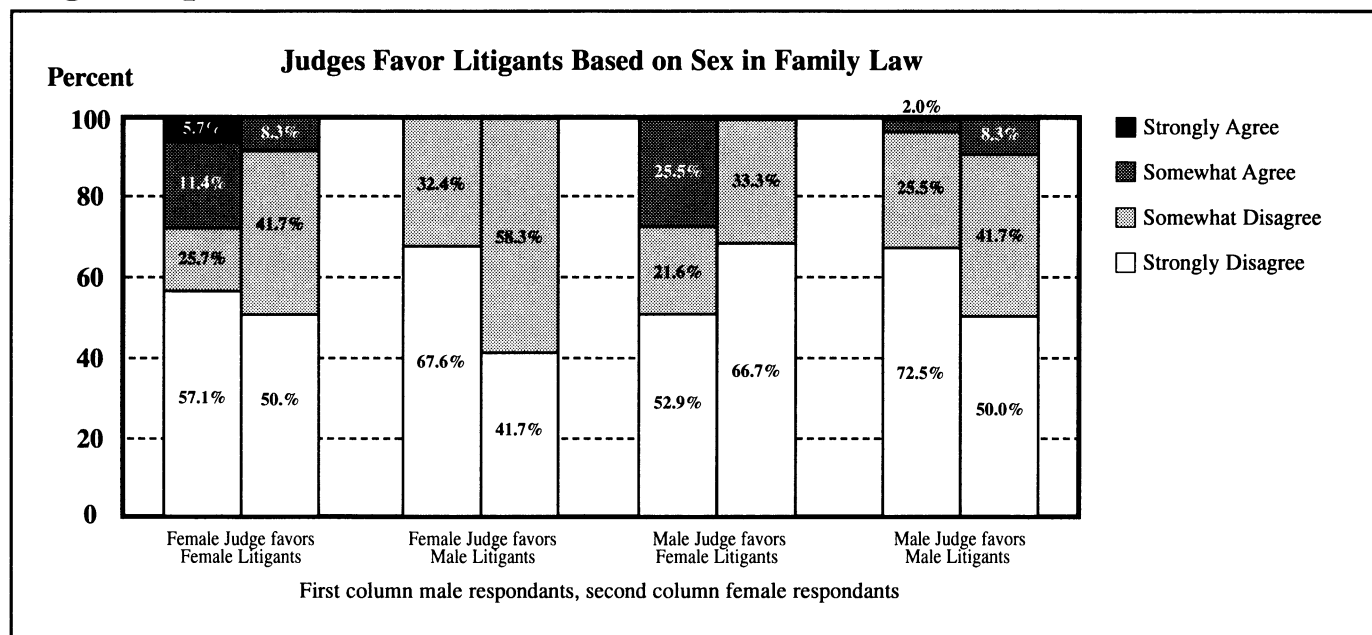


<sup>21</sup> On May 9, 1995, Karen Czapanskiy, Professor of Law at the University of Maryland, testifying before the U.S. Commission on Child and Family Welfare, stated that her analysis of studies of gender bias in the courts conducted in about 60% of the states demonstrated that, for the most part, 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.

<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> Mothers, on the other hand, repeatedly testified to the apparent lack of

<sup>23</sup> 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.<sup>25</sup>

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."<sup>26</sup> 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

<sup>24</sup> Testimony of male witness at the Medford public hearing, Sept 25, 1996.

<sup>25</sup> 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."

<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup> 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

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

<sup>28</sup> ORS 416.400 to 416.470.

<sup>29</sup> See ORS chapter 107.

<sup>30</sup> 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).

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

<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

## 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.

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<sup>33</sup> 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.

<sup>34</sup> 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.

<sup>35</sup> 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;<sup>36</sup>

- 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."<sup>37</sup>*

Most FAPA complaints in Oregon are filed by women to protect themselves, or themselves and their children.<sup>38</sup> Witnesses contended that judges, lawyers, and police officers often appear to be unaware or uninformed concerning the practical safety considerations in these situations.<sup>39</sup> 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.

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<sup>36</sup> 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.<sup>40</sup> This problem disproportionately (but not exclusively) harms women<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> Approximately 90% of all petitioners and respondents were unrepresented by legal counsel.<sup>45</sup>

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

<sup>38</sup> 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).

<sup>39</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> MINDLIN, *supra* note 39, at 7.

<sup>45</sup> MINDLIN, *supra* note 39.

The Courtwatch Project documented a number of exemplary practices<sup>46</sup> 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.<sup>47</sup> 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 English<sup>48</sup> requires the courts to be much more conscious of the need for bilingual staff, interpreters, and explanatory court literature.<sup>49</sup> 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,<sup>50</sup> 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."*<sup>51</sup>

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,*

<sup>46</sup> 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.

<sup>47</sup> 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.)

<sup>48</sup> 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%

<sup>49</sup> 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."

<sup>50</sup> MINDLIN, *supra* note 39, at 10.

<sup>51</sup> 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.”<sup>52</sup>*

(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.”<sup>53</sup>*

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.”<sup>54</sup>

(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.

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

<sup>53</sup> 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.

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<sup>54</sup> Testimony at the Portland public hearing, Oct. 21, 1996.



# CRIMINAL LAW AND JUVENILE JUSTICE

*"[On the same probation violation for the same crime, my husband] got sentenced to 30 days on his fourth violation; I got sentenced to six months [for my first violation]. . . . Now he's out, he's going through treatment."<sup>1</sup>*

*"If a male and female commit a crime together, it would be highly unlikely that the female would even be charged. If so, lesser charge, lesser sentence."<sup>2</sup>*

## A. INTRODUCTION AND OVERVIEW

Many Oregonians encounter the justice system in the arenas of adult and juvenile criminal law.<sup>3</sup> We found that gender plays a role in several areas.

A significant number of criminal defense lawyers, judges, and male defendants believe that gender plays a role in charging practices, plea agreements, and sentencing for adults accused of committing criminal offenses; they believe that both prosecutors and judges treat female defendants more leniently than male defendants. That perceived discrepancy may be due to a number of factors, including the types of crimes that men and women generally are accused of committing and the fact that judges and prosecutors may take child-care responsibilities into account when establishing sentences or accepting plea bargains for women accused of committing crimes. Additionally, inmates of color perceive that they are targeted for harsher treatment in both charging and sentencing decisions. That perception is consistent with statistical data.

We also looked at whether state and county incarceration facilities provide comparable services for male and female inmates and equal access to those services. Female inmates in state correctional facilities do not have access to the same diversity, quantity, and quality of treatment, job training, work, and general support programs and services as male inmates. Although resources for both men and women exist on the county level, there, too, women do not have access to the same types of programs as men. Moreover, there are few programs and services available to meet the specific needs of female inmates, including sufficient pre- and post-natal care and targeted mental health counseling.

Finally, we researched whether comparable programs and services are available to male and female youths who are detained at state and county facilities. Female youths are less likely to be admitted to "close custody"<sup>4</sup> facilities than are male youths, and female youths generally are detained for shorter periods of time. The Oregon Youth Authority (OYA) spends proportionately more money and expends proportionately more resources on male youths than on female youths.

## B. ISSUES STUDIED

We focused our efforts on three areas:

- (1) prosecutorial and judicial discretion (charging practices, indictments, plea bargains, prosecutors' sentencing recommendations, and judges' final orders);
- (2) programs and services for adults in the Department of Corrections; and
- (3) programs and services for youths at the OYA.

This chapter contains three parts, corresponding to those three topics.<sup>5</sup>

## C. METHODS OF STUDY

Individuals who specialize in the areas of criminal and juvenile law served on the Criminal Law and Juvenile Justice work group. Participants included a district attorney, a legal investigator, defense lawyers for accused youths, a domestic violence expert, a criminologist, a district attorney's victim advocate, a circuit court judge, and others involved in law enforcement and criminal justice issues. Most of the work group members were women. An Asian-American and an African-American were among the members of the group.

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<sup>1</sup> Testimony of female inmate at Oregon Women's Correctional Center hearing, Dec 5, 1996.

<sup>2</sup> Comment of male inmate on survey form.

<sup>3</sup> For a discussion of criminal law issues that arise in the context of domestic violence, see the Domestic Relations Cases chapter.

<sup>4</sup> "Close custody" refers to detention at Hillcrest Youth Correctional Facility, MacLaren Youth Correctional Facility, and Oregon Youth Authority camps.

<sup>5</sup> For a discussion of inmates' perceptions of gender-based treatment on non-sentencing related issues, see the Judicial Administration chapter.

We obtained information through

- public hearings,
- written surveys,
- focus groups,
- interviews,
- surveys from other states' task forces, and
- previous studies and literature in the field.

As discussed in the Introduction to this report, 1,800 randomly selected Oregon lawyers received a survey generated by the Task Force. The survey directed specific questions on criminal law to those lawyers who estimated that 25% or more of their practice was devoted to criminal law.

We sent a separate survey on charging practices to 325 prosecutors and to 518 criminal defense lawyers who have a state contract with the Indigent Defense Services Division of the Office of the State Court Administrator. In addition, we sent a survey containing 22 questions directly related to criminal law and juvenile justice to all circuit and district court judges. Also, we mailed a series of questions to all 36 district attorneys in Oregon, seeking to determine the role, if any, of gender in certain discretionary practices. We asked district attorneys to provide gender-related caseload and case-processing information for the 1995 calendar year. There were additional questions about the use of certain policy guidelines.<sup>6</sup>

Further, we distributed more than 1,300 surveys to a representative sample of inmates in all nine of Oregon's correctional institutions for men — Oregon State Penitentiary (OSP), Powder River Correctional Facility (PRCF), Snake River Correctional Institution (SRCI), Columbia River Correctional Institution (CRCI), Oregon State Correctional Institution (OSCI), Eastern Oregon Correctional Institution (EOCI), Mill Creek Correctional Facility (MCCF), Shutter Creek Correctional Facility (SCCF), Santiam Correctional Institution (SCI) — and to all inmates at the Oregon Women's Correctional Center (OWCC).<sup>7</sup>

The survey response rate for criminal defense lawyers was 13.8% (72), for prosecutors 18.7% (66), for female inmates 22.9% (79), and for male inmates 43.5% (407). The response rate for the separate district attorney

survey was 31% (11). Due to low response rates and small numbers in the surveyed populations, the results of all these surveys (except the survey of male inmates) must be interpreted with great caution.

For a different reason, male inmates' responses also must be interpreted with some caution. Based on their written comments, it appears that some inmates did not understand certain questions as we intended them. For example, when asked how men and women were treated differently in court or in law offices, some inmates selected the answer "subjected to comments about their dress or appearance" and noted that their lawyers had instructed them to wear a coat and tie to court. Other survey respondents reported that they had been subjected to (or had observed the inappropriate use of) terms of endearment and then cited demeaning remarks as examples.

We conducted focus groups with male inmates at EOICI, OSCI, and CRCI, with male inmates of color at EOICI, and with female inmates at CRCI. In addition, we held a "public" hearing with inmates at OWCC. We facilitated single-sex focus groups at Hillcrest Youth Correctional Facility, with both male and female youths. Finally, we interviewed and sought information from officials at adult and juvenile correctional institutions.

## I. PROSECUTORIAL AND JUDICIAL DISCRETION

### A. INTRODUCTION

In this portion of the study, we attempted to discover whether gender plays a role in discretionary decisions involving charging practices, plea agreements, and sentencing recommendations and whether there is a perception that gender unfairly influences such decisions. We also considered whether the intersection of gender with other factors, such as race and sexual orientation, influences those decisions.

Any investigation of judicial discretion must consider Oregon's sentencing guidelines, as well as the nature of the plea-bargaining process. Due to implementation of the sentencing guidelines and enactment of mandatory minimum sentences for certain felony convictions, judges have less opportunity to exercise their discretion in sentencing matters than they had in the past. However,

<sup>6</sup> This inquiry was prompted by the fact that even the most basic prosecution data, such as the number of felony cases reviewed for prosecution in Oregon, were not available. The fact that there is almost no information about prosecutions in Oregon stands in sharp contrast to what information is known about arrest, sentencing, and incarceration. For example, data show how many men and women were arrested in Oregon each year since the early 1930s. Information also is collected on how many men and women are sentenced each year in Oregon courts, and how many are incarcerated. What is *not* known is how many men and women are prosecuted and with what results.

<sup>7</sup> See Inmate Survey in the Appendix. There were several limitations to the inmate survey. Inmates, both native- and foreign-born, often possess limited reading and comprehension skills in English. The inmate survey was not administered in person. It was printed in English; interpreters were not generally available. Accordingly, the surveys may not have been completed by inmates with limited reading and writing skills in English.

there still is opportunity to exercise some discretion (e.g., in upward and downward departure sentences).

Defendants and defense lawyers overwhelmingly believe that gender plays a role in charging practices, plea agreements, and sentencing and that women are treated more leniently than men, whereas prosecutors and district attorneys believe that these matters generally are handled in a gender-neutral manner. Judges and criminal defense lawyers believe that female defendants are treated more leniently than male defendants in both prosecutors' sentencing recommendations and in judges' final orders. A common reason posited for this difference in treatment is that women have greater direct-parenting responsibilities than men.

## B. FINDINGS

### 1. Charging Decisions, Indictments, and Plea Bargains

Prosecutors charge many different kinds of cases, ranging from relatively minor misdemeanors to homicides. In many cases, prosecutors make charging decisions within 48 hours of the arrest of the defendant, after reviewing the completed investigation file from the police agency responsible for investigating the case. Prosecutors examine the reports to ascertain what, if any, charges to file and whether there are legal impediments that preclude the filing of charges, such as a statute of limitations or search and seizure problem.

The prosecutor may have little personal information about the defendant at the time that a charging decision is made. Generally, the police report includes only a physical description of the defendant and a description of the incident that has led to the arrest. It also may include a description of the victim.

Prosecutors typically have discretion in deciding what charges to file or to take to a grand jury (provided that there is evidence to support the charges). That discretion is limited by the statutes governing the criminal conduct and, occasionally, by internal policies of the district attorneys' offices. For example, the Multnomah County District Attorney's policy manual lists 13 factors for a prosecutor to consider in making a charging decision:

- the nature of the offense,
- the characteristics of the offender,
- the age of the offender,
- the interests of the victim,
- possible improper motives of the victim or witness,
- a history of non-enforcement of the statute,
- likelihood of prosecution by another criminal justice agency,
- possible deterrent value of prosecution,
- undue hardship caused by the accused,
- excessive cost of prosecution in relation to the seriousness of the offense,
- probability of conviction,
- recommendations of the law enforcement agency involved, and
- any mitigating circumstances.<sup>8</sup>

Many other district attorneys' and prosecutors' offices, however, do not have written charging policies and, thus, the factors considered in charging decisions are not so easily identified.

Once a defendant has been charged, the next step is for the defendant to be arraigned. Following arraignment, the prosecutor and the defendant's lawyer typically engage in plea discussions to determine whether the case can be resolved by plea, without a trial.<sup>9</sup> Most often, the defendant agrees to plead guilty to some of the charges in exchange for the dismissal of others.

The prosecutor in charge of the case has broad discretion to determine what plea offer should be made to the defendant. Internal policies of the district attorneys' offices may limit the exercise of that discretion.<sup>10</sup> The policies take into account a number of factors, including:

- the defendant's criminal record,
- the nature of the crime,

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<sup>8</sup> MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL 14 (June 1995).

<sup>9</sup> Oregon's 1973 Criminal Procedure Code established a statutory framework for plea discussions and agreements. Those statutes codified views expressed by the United States Supreme Court and the Oregon appellate courts approving the use of negotiated pleas, as announced in *Santobello v. New York*, 404 US 257, 92 S Ct 495, 30 L Ed 2d 427 (1971); *Rose v. Gladden*, 248 Or 520, 433 P2d 612 (1968); and *Stewart v. Cupp*, 12 Or App 167, 506 P2d 503 (1973). Plea discussions and plea agreements specifically are recognized under ORS 135.405. When cases are presented to a court pursuant to negotiations, the court often is not advised of many of the issues that have been resolved during negotiations.

<sup>10</sup> Some district attorneys' offices have restrictions on discretion in reducing charges for particular crimes. For example, the Multnomah County District Attorney's Office lists 10 offenses for which prosecutors may not agree to allow a defendant to plead to a lesser offense. MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL, *supra* note 8, at 33-34. Those offenses are not "Measure 11" offenses (see note 14, below, for a definition of "Measure 11").

- the views of the victim,
- the likelihood of a conviction if the case goes to trial,
- mitigating circumstances,
- the deterrent value of a prosecution, and
- the need for the conviction to reflect the conduct of the defendant.

Some statutory limitations exist. For example, in cases involving driving while under the influence of intoxicants (DUI), the prosecutor has no discretion to negotiate a guilty or no-contest plea to another offense in exchange for a dismissal of the DUI charge. ORS 813.170. Additionally, whenever a violent felony has been charged, the prosecutor handling the case is now required, on request, to consult with the victim about possible plea negotiations. ORS 135.406. We did not study whether prosecutors follow those mandates in a gender-neutral manner. As with the charging decision, however, when discretionary decisions are available, it is difficult to determine whether and how gender influences them.

Because of the paucity of quantitative data, and the small number of written charging or sentencing policies that we received, it is difficult to assess fully how gender may influence charging practices and plea decisions. The data clearly established, however, that there exists a *perception*, particularly among defense lawyers and inmates, that gender influences the exercise of prosecutorial discretion in charging practices and plea offers.

Our data revealed that inmates and criminal defense lawyers generally aligned with one another, in contrast to the views of prosecutors, in perceiving gender as an influence in charging practices. For example, when asked, "To what extent is a prosecutor's willingness to reduce the charges influenced by a defendant's gender?," 65.7% of defense lawyers and 76.6% of inmates — as opposed to 11.4% of prosecutors — answered "somewhat," "often," or "always." Both male *and* female prosecutors overwhelmingly answered that gender and motherhood rarely were factors in charging, reducing charges, or offering plea bargains, with 85% of male prosecutors and 83% of female prosecutors answering that prosecutors' charging decisions are "never" or "hardly ever" influenced by a suspect's gender.

A gender disparity was revealed, however, with regard to answers to two of the survey questions. Whereas just 5.3% of the female prosecutors believed that prosecutors are "somewhat" or "quite a bit" more likely to reduce charges for female defendants, 22% of the male prosecutors so responded, and more than twice the percentage of male prosecutors (22%) as female prosecutors (10.5%) agreed that prosecutors are more likely to offer to reduce charges for women with young children than for women who do not have children.

Approximately half of both female and male defense lawyers believed that gender influences, at least sometimes, prosecutors' charging decisions. Gender differences among defense lawyers emerged in the responses to two questions. Male defense lawyers are more inclined than female defense lawyers to perceive prosecutors as "going easier on" female defendants than on male defendants. When asked "whether prosecutors are more likely to charge female suspects than male suspects," almost 48% of male defense lawyers, but only 14% of female defense lawyers, answered "never." Conversely, nearly twice as many female defense lawyers (41%) as male defense lawyers (22.5%) believed that prosecutors "never" or "hardly ever" are more likely to reduce charges for female defendants than for male defendants.

A comparison of responses from female prosecutors and female criminal defense lawyers revealed dramatic differences. Seventy-one percent of responding defense lawyers, but only 16.7% of responding prosecutors, believed that charging decisions are influenced, at least sometimes, by a suspect's gender. Similarly, 59.1% of the female defense lawyers, but only 5.3% of the female prosecutors, believed that prosecutors are more likely, at least sometimes, to reduce charges for female defendants than they are for male defendants.

Further analysis involved combining the responses from all defense lawyers and prosecutors and separating them by gender. Consistent with the data summarized above, no significant gender differences were revealed. Rather, it appears that *the role of the lawyer in the criminal justice system*, not the lawyer's gender, is the most significant predictor of the lawyer's perception of the effects of gender, if any, on charging decisions.

As noted above, generally speaking, inmates of both sexes concurred with defense lawyers' perceptions that gender does influence charging decisions. On some issues, however, the perceptions of male and female inmates differed. When asked, for instance, whether prosecutors are more likely to reduce the charges for female defendants than for male defendants, 67% of the male inmates, but only 3% of the female inmates, responded "quite a bit" or "completely." When asked whether prosecutors are more likely to charge women with young children than women who do not have children, 37% of the female inmates, but just 11% of the male inmates, answered affirmatively.

Because of the scarcity of responses to the survey that we mailed to the 36 district attorneys, we can draw no meaningful general conclusions from those surveys.<sup>11</sup> Only two counties reported the gender distribution for felony cases that they had reviewed during 1995. Three district attorneys reported the male/female distribution of cases in which "charges were issued" and in which "charges were denied." Only one prosecutor's office provided any gender data for guilty pleas and charge reductions. For other questions, such as how many

felony cases led to convictions on the original charges, we received no information.

The district attorney from only one, albeit the most populous, of Oregon's 36 counties provided answers to nearly all our questions. In Multnomah County, of the felony cases that come to the district attorney for review, 80% involve male defendants. This 20%/80% split remains largely unaltered for cases "issued," guilty pleas, charge reductions, and cases that go to trial.

## 2. Prosecutors' Sentencing Recommendations and Judges' Final Orders

As noted above, prosecutors and defense lawyers frequently engage in plea negotiations that result in a resolution of the case without a trial. Prosecutors generally have discretion to recommend less than the maximum sentence allowed by law although, as with charging decisions, internal policies of the district attorneys' offices frequently limit the exercise of that discretion.<sup>12</sup>

Once the negotiations are completed, the parties sometimes make a joint sentencing recommendation to the judge. Judges are free to impose any sentence up to the maximum allowed by law. However, in most cases, judges impose the sentence to which the parties have agreed.

In general, judicial discretion in sentencing has been dramatically limited in the last decade. In November 1989, the legislature provided for "sentencing guidelines," which call for the imposition of a "presumptive" sentence for most crimes. Under the guidelines, the defendant's presumptive sentence is specified as a range on a grid formed by crime severity

on one axis and the defendant's criminal history on the other axis. Although judges may depart upward or downward from the presumptive sentence, a departure must be based on substantial and compelling reasons, which the judge must identify at the time of sentencing.<sup>13</sup>

More recently, in 1994, Oregon voters passed Measure 11,<sup>14</sup> which requires the imposition of mandatory minimum sentences in certain cases involving violent crimes against persons. There is no judicial discretion to impose less than the mandatory minimum sentence. A defendant can avoid the mandatory sentencing provisions of the ballot measure only if, in an exercise of prosecutorial discretion, the prosecutor files a charge that is not covered by Measure 11. All felony sentences must comply with the state's sentencing guidelines as well as the requirements of Measure 11, if applicable.

Departure rates from the Oregon Felony Sentencing Guidelines are low overall, according to data collected from the first 15 months of implementation of the guidelines.<sup>15</sup> Standard sentences were imposed in 94% of the cases.<sup>16</sup> Although "women were less likely to receive upward departures, more likely to receive downward departures, and more likely to be sentenced to optional probation," judges ordered upward and

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<sup>11</sup> Several district attorneys submitted comments on the survey, either by separate letter or as part of their anonymous responses to the survey. One district attorney labeled the Task Force survey "another witch hunt by the (Oregon State) Bar" and objected to questioning non-prosecutors about charging decisions and case results. We received other comments indicating a belief that at least some of the questions about charging standards were "outside the scope of duties for the Task Force." Other respondents sent us copies of their charging policies.

Some prosecutors disagreed with the proposition that perceptions of gender bias in the criminal justice system merited examination: "Asking for opinions is not an appropriate method to study gender bias and to facilitate changes in the judicial system," commented one deputy district attorney. "The questions do not consider the complexity of factors in charging decisions, plea negotiations and proceeding to trial," he said, and the queries are "so broadly stated it is impossible to realistically answer." In regard to written charging standards, one district attorney commented that "the Task Force is far outside its appropriate duties by promoting written guidelines."

Others offered their advice. One deputy district attorney in the Portland metropolitan area wrote that "legislation does not seem to be the answer to the problem. Education does not work either. Zero tolerance of gender bias in the workplace is the only answer I can see."

<sup>12</sup> See, e.g., MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL, *supra* note 8, at 130, 148.

<sup>13</sup> ORS 137.671; OAR 213-008-0001.

<sup>14</sup> Measure 11 was an initiative measure approved by the voters at the November 1994 general election; it became effective on April 1, 1995. Or Laws 1995, ch 2. That measure was codified as ORS 137.700.

<sup>15</sup> K. ASHFORD & C. MOSBACK, OREGON CRIMINAL JUSTICE COUNCIL, FIRST YEAR REPORT ON IMPLEMENTATION OF SENTENCING GUIDELINES: NOVEMBER 1989 TO JANUARY 1991, at 31, 37 (1991), *reprinted in* Michael Tonry, U.S. DEP'T OF JUSTICE, INTERMEDIATE SANCTIONS IN SENTENCING GUIDELINES 21 (1997).

<sup>16</sup> ED DEERY, OREGON CRIMINAL JUSTICE COMMISSION, FELONY SENTENCING IN OREGON 1994 (1997).

downward departures in only 3% of the cases.<sup>17</sup>

Departures notwithstanding, on average women receive shorter prison sentences than men. This difference appears to result both from the types and seriousness of crimes committed by women and also from women's lesser criminal histories. According to an Oregon Criminal Justice Committee report on felony sentencing under Oregon's sentencing guidelines, female defendants who were convicted of a felony accounted for fewer than 20% of convictions overall, and they tended to have less serious criminal histories than male defendants.<sup>18</sup> Nearly two-thirds of the crimes for which women were convicted were offenses in the three lowest "crime seriousness" categories on the sentencing matrix; drug offenses accounted for half the offenses for which women were convicted.

Offenders with multiple prior convictions in the more serious criminal history categories are most likely to receive an upward departure. Men have criminal backgrounds that place them in those categories more often than women (about 32% for men and about 13% for women). Accordingly, statistically, men are more likely than women to receive an upward departure sentence. This factor may account for some perceptions of leniency toward women.

Data also suggest that a disproportionate number of women, as compared to men, are convicted of felony assault of an intimate. One study found that, while approximately one in 10 assaultive offenders were female, "almost one in four convicted intimate violence offenders were female."<sup>19</sup>

In the Task Force survey, approximately half the lawyer respondents of both sexes perceived differences in prosecutors' sentencing recommendations based on the defendant's gender. Regarding judges' final orders, nearly two-thirds of lawyers of both sexes who practice in the area of criminal law believed, based on their experience, that gender-based differences exist.<sup>20</sup> The majority of lawyers who perceived different treatment

based on gender said that female defendants receive more lenient treatment than male defendants. Most commonly, they attributed the differences exclusively to the defendant's gender, although lawyers also cited greater parenting responsibilities, actual or perceived, as a causal factor. Approximately 70% of lawyers said that, under similar circumstances, judges take women's parenting responsibilities into account "more often" than men's parenting responsibilities.

A substantial minority of judges observed gender-based differences in prosecutors' sentencing recommendations. Fifty percent of the female judges who responded, compared to 37% of the male judges who responded, said that they have observed gender differences in sentencing recommendations. Regarding judges' final orders, approximately one-quarter of responding judges observed gender differences (in other judges, 24.2%; in themselves, 28.4%). More female judges than male judges reported observing differences based on gender in sentencing recommendations and judges' final orders. Of the judges responding to the survey, 48.2% of the women, compared to 29.8% of the men, responded that they have observed that other judges' final orders differ depending on the gender of the defendant. The difference between male and female judges is smallest regarding their own behavior: 37.5% of female judges and 29.9% of male judges said that their own orders have differed depending on the defendant's gender.

Those judges who observed differences based on gender in sentencing recommendations and judges' final orders indicated that female defendants receive more lenient treatment than male defendants. Relatively few judges said that these gender differences are based solely on the defendant's gender or that they are due to structural conditions, such as differences in the availability of facilities or programs for men and women. Rather, parenting responsibilities were most often cited by judges, as they were by lawyers, as the primary reason influencing gender differences in sentencing

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<sup>17</sup> LAURA J. HICKMAN, OREGON DEPT OF CORRECTIONS, THE IMPACT OF INTIMATE VICTIM-OFFENDER RELATIONSHIPS ON SENTENCING IN FELONY ASSAULT CASES 38 (1995). The study discussed in the Hickman Report compared the severity of sentences received by certain felony offenders convicted of assaulting a person with whom they were in a sexually intimate relationship with the sentences received by defendants convicted of assaulting other persons. The data were drawn from Oregon Department of Corrections records of those offenders, convicted or sentenced in Oregon in 1993, whose most serious conviction was for a completed or attempted Assault I, II, or III.

<sup>18</sup> DEERY, *Supra*, Note 16.

<sup>19</sup> LAURA J. HICKMAN, OREGON DEPT OF CORRECTIONS, THE IMPACT OF INTIMATE VICTIM-OFFENDER RELATIONSHIPS ON SENTENCING IN FELONY ASSAULT CASES 38 (1995). The study discussed in the Hickman Report compared the severity of sentences received by certain felony offenders convicted of assaulting a person with whom they were in a sexually intimate relationship with the sentences received by defendants convicted of assaulting other persons. The data were drawn from Oregon Department of Corrections records of those offenders, convicted or sentenced in Oregon in 1993, whose most serious conviction was for a completed or attempted Assault I, II, or III.

<sup>20</sup> Some lawyers and judges also perceived differences in prosecutors' sentencing recommendations and judges' final orders for youthful offenders but, because very few lawyers and judges answered the questions concerning youthful offenders, we can draw no meaningful conclusions. In addition, inmates were not part of our survey on prosecutors' sentencing recommendations and judges' final orders.



recommendations and final orders.<sup>21</sup> Fully 50.5% of the judges said that, despite similar circumstances, they take female defendants' parenting responsibilities into account "more often" than they do the parenting responsibilities of male defendants.

Arguably, women's parenting responsibilities are being taken for granted, while men's are not. On the other hand, it is possible that judges observe women's direct-parenting responsibilities with greater frequency, especially among single mothers. Among respondents to the inmate survey, 65% of the female respondents reported having children under the age of 18, while only 46% of the male respondents reported having children under the age of 18.

A number of inmates discussed the role of pregnancy and child-rearing in their experiences with the criminal justice system. A mother in the role of criminal defies conventional stereotypes and seems particularly to disturb the community; as one female inmate put it, "women are not supposed to commit crimes since they are mothers." Two themes emerged:

(1) if a woman was pregnant (and not a substance abuser) or primarily responsible for raising her children, she might obtain sentencing concessions from the judge; and

(2) crimes committed by women differ from those committed by men and are more often a response to economic pressures resulting from substance abuse<sup>22</sup> or domestic violence.

To the extent that female defendants may receive more lenient sentences than male defendants do, that difference may be attributable, in part, to a perception among judges that women with children have few options in corrections and rehabilitation facilities. Several judges noted that the services for pregnant women and women with children are limited. One judge put it succinctly in a comment on the judge survey: "Women have primary responsibility for children — few programs exist to help treat women with child-care responsibilities." Comments to the lawyer survey echoed that perception. Several lawyers noted that female defendants have more difficulty entering rehabilitative programs because of their child-care responsibilities.

A number of judges noted that a female defendant's child-care responsibilities or pregnancy may influence both the prosecutor's sentencing recommendation and the ultimate sentence. In discussing factors that influence prosecutors' sentencing recommendations, one judge said:

*"If the woman is a custodial parent, her incarceration poses significant problems for her children and social agencies. Efforts are made to avoid incarceration under these circumstances."*

By contrast, several OWCC inmates testified that they believed that they were sentenced more harshly, and were sent to prison, because of their pregnancy and concurrent substance abuse problem. One inmate recounted at the hearing that she and her husband had violated their probation in exactly the same manner (failing to enter in-patient treatment) but that her husband, who had an extensive criminal record, was given a 30-day jail sentence, while she received a six-month prison sentence.

Finally, lawyers and inmates expressed their belief that, if women are perceived as abusing or neglecting children or fetuses, they will receive harsher treatment than men in similar circumstances. One female inmate observed:

*"[T]he kind of treatment you receive in our judicial system has more to do with if you have money than what gender you are . . . [I]f a single mother struggling to raise a child alone gets accused of neglect or abuse falsely, the system is all over them rather than treating them as if they're innocent until proven guilty."*

A judge stated that, in drug-diversion programs, a pregnant defendant's release automatically will be revoked if she uses drugs. One lawyer called this the "public health theory" of sentencing. Some judges freely acknowledged that they sentence pregnant substance abusers to incarceration, even when they would not incarcerate similarly situated men or non-pregnant women.

Another issue to consider is that not all potential sentences, if applied evenly, necessarily would have the same effect on female defendants as on male defendants. For example, in a letter to the Task Force, one woman wrote that inmates who participate in "boot camps" can gain a significant reduction in their sentences. However, she asserted that studies show that a "boot camp" environment can be detrimental to women who have a history of being abused. She wrote:

*"Since a significant number of female offenders have histories of physical/sexual abuse, these female offenders do not have the opportunity for sentence reduction that male offenders do."*

We could not determine from the data gathered for this report the extent to which the dynamics between male lawyers and female defendants affect female defendants' willingness to resist a plea agreement and contest the charges. However, anecdotal evidence

<sup>21</sup> One exception to this generalization may be judges' sentencing orders in cases involving defendants who are pregnant substance abusers.

<sup>22</sup> Fifty percent of female inmates are in prison on a drug conviction, and 27% are incarcerated on a property conviction. In comparison, 37% of male inmates are in prison on a drug conviction, and 28% are incarcerated on a property conviction. DEERY, *supra* note 18, at 55.

suggests that women may be more likely than men to accept plea bargains and not contest the charges against them. At the OWCC hearing, a 19-year prison employee explained the differences that he saw between male and female defendants:

*"[T]he difference between the two is that the women often, often do what their [lawyer] tells them, whatever it may be. . . . The majority of women here, I think, have not had the opportunity for legal redress that the men have had. The women often take the first suggestion that their attorneys [propose]. The attorneys are over-burdened, the defense funds are overburdened and they often plead out and take the first remedy."<sup>23</sup>*

Several OWCC inmates who testified echoed that sentiment.

### 3. Intersectionality Issues

We examined how factors other than gender, such as race or sexual orientation, may coincide with gender to influence prosecutors' and judges' discretionary choices.

There is a distinct difference between the racial profile of inmates and the racial profile of the state in general:

	Oregon <sup>24</sup> Population (percentages)	Inmate <sup>25</sup> Population (percentages)
White	93.8	73.2
African-American	1.7	12.5
Asian/Pacific Islander	3	1.2
Hispanic	5.4 <sup>26</sup>	10.9
Native American	1.6	2.2

Those numbers reflect, to some extent, a perception articulated both in comments appended to the inmate survey and in comments made in male inmates' focus groups that men of color, particularly African-American and Hispanic men, are targeted for harsher treatment (both in charging and in sentencing) than are either white women or women of color. One African-American inmate said that he "already has a loaded count being a black man given the history and the predominance of the [Oregon] judicial system."

Approximately 4% of male inmates and 21% of female inmates reported that they are bisexual. About 2% of male inmates reported that they are gay, and almost 3% of female inmates reported that they are lesbian. In the comments on the inmate survey, gay men voiced a concern that they are treated as predatory

in their interactions with other men and with children. Some gay men believed that police officers and, perhaps, district attorneys may associate being gay and male with pedophilia. Lesbian women did not report similar concerns.

On the other hand, lesbian inmates expressed their belief that the charging decisions, findings of guilt, and sentencing decisions in their cases were affected by their sexual orientation. They believed that, if they did not fit a "feminine" stereotype, the prosecutor, judge, and jurors saw them as more dangerous. As one lesbian inmate testified at the OWCC hearing:

*"I've always been a lesbian and I feel that I was, because of this, and the fact that I don't know anybody in the State of Oregon to verify what kind of a person that I am, I feel like I was being prejudiced against. . . . The D.A. decided that I was a psychotic lesbian."*

A number of heterosexual female inmates echoed similar concerns about the importance of personal appearance and compliance with gender roles in how they were perceived and treated. For example, many female inmates stated that it was extremely important that they be provided access to make-up and hair-care products before court appearances, so that they would conform to the court's and the jury's expectations about how women should look.

One female African-American inmate expressed her belief that it was particularly important for her to appear feminine, because she was exceptionally tall; otherwise, she thought, the jury would be afraid of her. Another inmate commented that, when she dressed well and wore make-up, she looked "well off" and was treated better. Another woman said that she was treated badly because she was a "very large woman" and "looked mean."<sup>27</sup>

The issue of class appeared repeatedly. During inmate focus groups, inmates emphasized their concerns about court-appointed counsel. Many of the women felt powerless and unable to alter the relationship between themselves and court-appointed counsel. Several female inmates reported that they felt patronized by counsel and the court, because they were women and because they

<sup>23</sup> The witness also noted the disparity between the legal resources available to female inmates and those available to male inmates. Testimony at OWCC hearing, Dec 5, 1996.

<sup>24</sup> Data as of July 1996.

<sup>25</sup> Data as of Dec 1, 1997.

<sup>26</sup> Because the Hispanic population of Oregon is divided among several racial groups, the total population percentages listed exceed 100%.

<sup>27</sup> See also Richard Morin, *Justice smiles on good-lookers*, OREGONIAN, Dec 15, 1997, at C3.

were poor.<sup>28</sup> One woman told us that she had tried to scrape together money to hire a lawyer to represent her on a drug charge. After her initial meeting with the lawyer, he told her that she would not have to pay him if she would have sex with him. She felt trapped by the charges, and the lawyer continued to represent her. Ultimately, the lawyer stole the money that she put in a trust fund to pay her restitution.<sup>29</sup>

## C. CONCLUSIONS

A significant proportion of criminal defense lawyers and inmates believe that the gender of the defendant influences charging decisions, indictments, and plea bargains. Not surprisingly, prosecutors of both sexes overwhelmingly deny that gender plays any part in their decision-making. A significant proportion of judges and criminal defense lawyers concur that female defendants are treated more leniently than male defendants in both prosecutors' sentencing recommendations and judges' final orders. Whether there is any factual basis for either viewpoint is difficult to determine from the data received. A primary reason given for this reported difference in treatment is the perception that women have greater direct-parenting responsibilities than men. Approximately 65% of female inmates, compared to only 46% of male inmates, reported having children under the age of 18.

A significant proportion of male inmates, but not female inmates, believe that female defendants receive more lenient treatment from prosecutors. Again, our data could not confirm or refute the accuracy of this perception. Despite the fact that it is difficult to determine from the data received the degree to which perceptions reflect reality, these impressions are important, because perceptions of gender unfairness can undermine faith in the criminal justice system.

## D. RECOMMENDATIONS

### 1. All district attorneys' offices should:

a. by January 1, 1999, review their policies to ensure that gender does not play an inappropriate role in charging practices, plea offers, and sentencing recommendations. Other offices should consider using the Multnomah County District Attorney's policy manual as a model.

b. as soon as possible, begin to keep data that permit analysis of gender fairness in charging practices, indictments, and plea offers and agreements, and annually evaluate those data.

### 2. Prosecutors, criminal defense lawyers, and corrections staff should:

- participate in educational programs concerning issues of gender fairness and intersectionality.

### 3. Criminal defense lawyers should:

- consider whether gender plays a role in who accepts pleas and who rejects pleas and, if so, whether procedural changes are called for.

### 4. The Oregon Department of Corrections should:

- by January 1, 2001, develop plans for a long-term solution to the increasing problems involving inmates who are primarily responsible for the care of their children.

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

- develop a judicial education program to explore issues pertaining to the sentencing of pregnant substance abusers.

### 6. The Chief Justice and the Oregon State Bar, working with the Oregon State Police, the Oregon District Attorneys Association, the Oregon State Sheriffs' Association, and the Oregon Association Chiefs of Police, should:

- by January 1, 2002, study whether gender unfairly affects police practices at the pre-indictment and pre-charging stage.

### 7. The Oregon Judicial Department, working with the Oregon District Attorneys Association, should:

- by January 1, 2003, study court records to determine whether any gender-based patterns exist with respect to prosecutors' sentencing recommendations and judges' final orders.

## II. PROGRAMS AND SERVICES FOR ADULT OFFENDERS

### A. INTRODUCTION

In this portion of the study, we examined

(a) the comparability of facilities, programs, and services that are available to female and male offenders in state correctional institutions, county jails, and community corrections programs; and

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<sup>28</sup> Interestingly, in comments on the inmate survey, some of the male inmates reported similar observations regarding the treatment of female inmates. Several male inmates felt that women were treated in a "paternal" way by the court and legal counsel, while poor and, particularly, African-American men were not treated kindly and were perceived as dangerous.

<sup>29</sup> Although the speaker did not identify the lawyer, we believe that this speaker was referring to a lawyer who ultimately was disbarred for his conduct.

(b) the extent of training provided to corrections and personnel relating to the specific needs of women.

To help focus this effort, we formulated six questions:

(1) Do female inmates in state correctional facilities have access to the same treatment, education, health, job training, work, and general support programs and services as male inmates?

(2) Are the same types of community corrections programs and county jail programs available to women as to men?

(3) Are there programs and services available to meet the specific needs of women, *e.g.*, pre- and post-natal care and targeted mental health counseling?

(4) Do inmates perceive gender-based differences in the programs and services available to them in the state correctional institutions?

(5) Do staff who work with offenders or who establish policies and programs for inmates receive training or have experience in understanding gender-specific issues?

(6) What are the beliefs, attitudes, and practices of judges, lawyers, and inmates about the availability and effectiveness of services and programs for male and female inmates?

The Oregon Department of Corrections (ODOC) operates 12 correctional institutions, three of which house women. As of July 1, 1997, 41% of the female inmates were housed at OWCC, 38% at CRCI, and 2.5% at Shutter Creek; the remaining 18.4% were residing at contracted space in Arizona.<sup>30</sup>

In the judge and lawyer surveys, we included questions designed to determine lawyers' and judges' attitudes about programs and services for male and female offenders. In the inmate survey, we asked inmates to assess the services and programs available to them in correctional institutions. We analyzed responses

by gender, racial or ethnic background, sexual orientation, age, and other demographic factors.

We also conducted telephone interviews with seven institutional program services managers and with five central ODOC program administrators about the programs in each institution, and we interviewed two lawyers who have represented the state in corrections matters. Additionally, we culled information from comments made in hearings by inmates, parole and probation officers, and other parties about the programs and services in the state institutions. Finally, we asked county jail managers for information about services and programs available to female inmates in county jails, but we received few responses.

The judge and lawyer surveys contained several questions, specifically directed at lawyers whose practice was 25% or more in criminal law, on their perceptions of the availability and adequacy of rehabilitation programs and services (job training, education, and health care) to male and female inmates in community corrections, prisons, and jails. Most criminal defense lawyers did not know about the availability of programs and services for inmates. Only 20% of the 571 lawyers surveyed answered some or all of the questions on criminal law. Of the lawyers who did respond to those questions, approximately 30% did not answer or indicated that they "don't know" in reply to most of the questions.

Throughout the process, the group reviewed existing studies and literature in the field.

## B. FINDINGS

On the whole, the services and programs available to women at state and county facilities are less comprehensive than those provided to men. This disparity is most apparent in the areas of job training and work opportunities, in mental health and alcohol and drug treatment, and in programs and services provided in county facilities. Further, there is a shortage of programs that address specific needs of female inmates.

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<sup>30</sup> The inmate population of each Oregon correctional institution on July 1, 1997, was as follows:

Oregon State Penitentiary (OSP) - 2,057 men  
 Oregon State Correctional Institution (OSCI) - 951 men  
 Eastern Oregon Correctional Institution (EOCI) - 1,430 men  
 Powder River Correctional Facility (PRCF) - 162 men  
 Shutter Creek Correctional Institution (SCCF) - 244 men and 11 women  
 Snake River Correctional Institution (SRCI) - 807 men  
 Santiam Correctional Institution (SCI) - 404 men  
 Mill Creek Correctional Facility (MCCF) - 267 men  
 Oregon Correctional Intake Center (OCIC) - 155 men  
 South Fork Forest Camp (SFFC) - 145 men  
 Columbia River Correctional Institution (CRCI) - 235 men and 162 women  
 Oregon Women's Correctional Center (OWCC) - 174 women

The total number of men in custody in Oregon prisons on July 1, 1997, was 6,857, with another 396 in custody in Arizona. The total number of women in custody in Oregon prisons was 347, with another 78 women housed in Arizona.

Building a new women's prison is one of the top priorities of the Oregon Department of Corrections, because there is space for only 190 inmates at OWCC.

Finally, judges and lawyers are poorly informed about what is available.

## 1. Programs and Services - State Institutions

### a. Education

The Department of Corrections tests all inmates for their literacy level, writing skills, and math abilities upon incarceration. In the last six to seven years, the results have been consistent: There has been no difference in literacy rates between male and female inmates. Between 22% and 24% were functionally illiterate in reading, and between 75% and 80% were functionally illiterate in math skills. The average writing skill level for inmates was somewhere between second- and third-grade level. Seventy percent of all inmates had dropped out of school, although 40% had obtained some sort of high school degree, either a basic diploma or General Education Diploma (GED). Eight percent had some higher degree, such as an associate's certificate or bachelor's degree.<sup>31</sup>

Several educational and vocational programs are available to male and female inmates at the various institutions. Adult Basic Education (ABE), GED, and English as a Second Language (ESL) programs are available in all state institutions and generally are offered through contract with local community colleges. All inmates are eligible for these programs, and there appears to be no gender difference in accessibility to the programs.<sup>32</sup> A number of institutions also have interactive computer courses in study methods and basic skills for math, reading, and writing. Some institutions use ED-Net for college and community college classes, although fewer inmates are enrolled in these classes than in years past, because Basic Educational Opportunity Grants are no longer available to them.<sup>33</sup> Although there often are waiting lists for classes, men and women alike may enroll.

For high school and post-high school training there was little difference in the percentages of male and female inmates' perception of availability, of use, and of helpfulness, although slightly more women used post-high school training and said that it was helpful. More female inmates of color than white female inmates

said that they took advantage of educational opportunities and that they found the educational opportunities useful.

Most lawyers who responded to the question (about 60% of both male and female lawyers) believed that education through high school is equally available to inmates of both sexes.

### b. Work Opportunities and Job Training

With respect to *work* opportunities, all institutions use some inmate labor in the day-to-day operation of the prison. Additionally, CRCI places female inmates in sex-segregated outside work crews in a variety of jobs. Male institutions place work crews with the Forest Service, Bureau of Land Management, Oregon Department of Fish and Wildlife, Oregon Department of Transportation, and local city and school maintenance operations. Garment and furniture manufacture and laundry work are performed within the institutions for outside customers. At Shutter Creek, work crew opportunities available to male inmates also are available to female inmates.

Also, all Oregon correctional institutions now make some *job training* available to inmates, to satisfy the requirements of Measure 17.<sup>34</sup> As a result, some inmates are learning a trade as they work in a particular production area. Job training varies by institution, based on the nature of the population and the length of stay of inmates. Those with shorter sentences have less opportunity to take advantage of job training. That fact has a greater effect on female inmates than on male inmates, because female inmates tend to have shorter sentences, on average, than male inmates. Some kinds of training, such as books on tape, computer graphic arts, meat-cutting, and auto mechanics, currently are available only to male inmates. Corrections officials assert that none of these job training opportunities is available to female inmates because of space and supervision limitations.

In attempting to compare what is available to male and female inmates, we examined the work and training opportunities that are:

- available to women at OWCC,

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<sup>31</sup> Information provided by Oregon Department of Corrections, Education/Vocational Training Department.

<sup>32</sup> One female inmate testified at the OWCC hearing: "[I]n 1985 I came to prison. When I came to OWCC, the programs available for women were a GED, you could become a secretary, or you could do some repair in the mills. In other words, basically the information I have got was society preferred that women stay barefoot and pregnant, and if you couldn't do that, we'll teach you to be good secretaries and good beauticians."

<sup>33</sup> Recently, Congress passed legislation that prohibited "any individual who is incarcerated in any Federal or State penal institution" from receiving these federal grants, which pay tuition costs for post-secondary education for low-income persons. See 20 § 1070a(b)(8) (1996). Many of the post-secondary programs in the prisons have been discontinued, because most prisoners cannot pay for them.

<sup>34</sup> Measure 17, passed by Oregon voters in November 1994, added Article I, section 41, to the Oregon Constitution; it requires inmates to work, to be enrolled in educational programs, or to be in full-time treatment. Reportedly, none of the institutions is in full compliance but, on average, the compliance rate at OWCC is the same as, or greater than, the overall compliance rate. Telephone conversation between Beth Allen, Task Force volunteer, and Randy Iverson, Oregon Department of Corrections.

- available to women at OSCI or OSP,<sup>35</sup>
- not available to women,
- available to men, and
- not available to men.

We were not able to compare definitively the opportunities for men and women. (For example, we did not compare the number of training slots in a particular trade or educational program, divided by gender, to the number of male and female inmates who are interested in filling those slots.)<sup>36</sup> However, in general, male inmates have more diverse opportunities than do female inmates, and male inmates have more opportunities to become *certified* as capable of performing specified kinds of work. There are a total of 24 training programs and production jobs that are available to men but not available to women; 2 of those 24 programs soon will be available to women. There are 6 programs available to women that are not available to men; 1 of those 6 soon will be available to men. There are 2 certification programs available to female inmates and 8 certification or licensure programs available to male inmates. The only certification program that is available to women but not to men is “Clerical Basics.” Attachment A to this chapter summarizes what we learned.

We also examined perceptions of the available programs. For example, CRCI provides an eight-week program to help female inmates develop job skills, improve self-esteem, change lifestyles, and become self-sufficient.<sup>37</sup> A study of this program found that, of 187 inmates who responded who had graduated from the program, 83% found employment after their release, and 59% said that they had similar or greater incomes than before they were imprisoned.<sup>38</sup> The classes in the program specifically are designed around issues that are relevant to women, such as responding to domestic

violence and raising children. Although the state provides funding for the program, it depends heavily on volunteers.

With respect to job-training opportunities, the responses of male inmates and female inmates were approximately the same, but a slightly higher percentage of men (73%) than women (66%) said that opportunities are available, and a higher percentage of women (50%) than men (40%) have used the services and also said that they are helpful. (Sixty-nine percent of the male inmates and 89% of the female inmates who responded to the question said that the services are helpful.)

Female lawyers were much more likely than male lawyers (59% to 27%) to believe that prison and jail programs are more available to men than to women. Only 6% of the female lawyers and 22% of the male lawyers believed that jail and prison rehabilitation programs are adequate for women. On the other hand, about 28% of the male lawyers, and between 25% and 35% of the female lawyers, thought that these programs are adequate for men.<sup>39</sup> About half the lawyers who responded said that they believed that availability of job training is limited for both men and women.

More than two-thirds of male and female judges believed that job-training programs are limited in scope for both men and women. Overall, 53% of the female judges, but only 18% of male judges, believed that there are gender inequities in the availability and nature of rehabilitation programs and facilities for male and female adult offenders.

### c. Health Services

Health-care services for inmates are funded through ODOC, and the Oregon Health Plan priority list<sup>40</sup> is considered when determining the level of care that is provided.<sup>41</sup> All institutions have accredited health-care programs<sup>42</sup> but, because all except OSP lack 24-hour

<sup>35</sup> OWCC, OSCI, and OSP are located in Salem, Oregon. The Oregon Department of Corrections transports OWCC inmates to OSP and to OSCI to participate in some programs.

<sup>36</sup> These issues have been the subject of protracted litigation between the state and a class of female inmates incarcerated at OWCC. In the second appeal in that litigation, the United States Court of Appeals for the Ninth Circuit held that “prison education programs subject to Title IX must be ‘equally’ available to male and female inmates.” *Jeldness v. Pearce*, 30 F3d 1220, 1228 (9th Cir 1994). In 1996, after the Ninth Circuit’s second remand to the district court, the parties in *Jeldness* signed a settlement agreement. As part of that agreement, several OSP apprenticeship programs were terminated (thereby eliminating the obligation to make such programs “equally” available to female inmates at OWCC). Telephone conversation between Task Force Coordinator Jessica Mindlin and Oregon Department of Justice lawyer Jan Londahl, Oct 15, 1997.

<sup>37</sup> See ANNETTE JOLIN ET AL, AN EVALUATION OF THE WICS-LIFESKILLS PROGRAM FOR WOMEN AT THE COLUMBIA RIVER CORRECTIONAL INSTITUTION, PRELIMINARY RESULTS (1997) (“Jolin Study”). See also Tomoko Hosaka, *I’m just like a gladiator*, OREGONIAN, Nov 22, 1997, at B1.

<sup>38</sup> See Jolin Study, *supra* note 37.

<sup>39</sup> Among female lawyers, 34% believed that programs and services in the jails are adequate to meet the needs of male offenders; 25% believed that prison programs and services are adequate for male inmates.

<sup>40</sup> See OAR 410-141-0520.

<sup>41</sup> Treatment is provided to all inmates who are HIV-positive, and specific resources are targeted for counseling and education about HIV, regardless of gender.

<sup>42</sup> The accrediting agency is the National Association of Corrections Health Care.

infirmiry beds, the prisons must use OSP and local hospitals when needed. All institutions have a nurse on duty or on call 24 hours a day. Both OWCC and CRCI have a women's health-care nurse practitioner on staff.

The annual health-care cost for each female inmate in Oregon has been estimated at \$3,433. This figure is somewhat more than the health-care costs for male inmates, although an exact figure was not available.<sup>43</sup> Prison officials explained that larger institutions, which house men, have lower costs per day because of economies of scale. Another factor is that women entering prison generally have more health problems than men, problems that require more tests and laboratory services,<sup>44</sup> and also have more need for emergency and health services while in prison.<sup>45</sup> Pregnancy and complications of pregnancy also may increase the costs of providing health services to female inmates.

Additionally, in Oregon, following the national trend, the average cost of providing health care to female inmates continues to rise at a rate faster than that for male inmates. Oregon's annual spending for health-care costs for incarcerated women recently increased by 172%, from less than \$500,000 in 1994 to more than \$1.2 million in 1995.<sup>46</sup> Under Senate Bill 1145 (1995),<sup>47</sup> which requires that offenders sentenced to 12 months or less be incarcerated at the county level, some of the responsibility for providing obstetric and gynecological services will shift to the counties. It is uncertain how this shift will affect health services.

Obstetric and gynecological services at the institutions housing women are on contract with outside or on-call physicians. Pregnant inmates at OWCC receive pre-natal and childbirth services. In Oregon, female inmates who give birth while incarcerated are not permitted to care for their newborns in the institution, so new-baby care is not provided.<sup>48</sup> Inmates who had delivered children while incarcerated expressed concern that they had no contact with their children once they were born. One inmate, who had recently had a baby who was being cared for by a relative, expressed concern (at the OWCC hearing) that she was not able to bond with her child. Another female inmate lamented, "I have not seen my child since the day she was born. I have no pictures."

About 96% of both male and female inmates believed that health care is available, but a slightly higher percentage of women reported that they had used the services. One-third of both male and female inmates said that the health care was helpful. Regarding gynecological services, about three-quarters of the women said that they had used the service, and about two-thirds said that it was useful.

However, at the hearing at OWCC, female inmates expressed concern that the waiting list to see a doctor is too long. One female inmate at OWCC (where private physicians provide services on a contract basis) testified that

*"it took about two months for me to start my [pre-natal] care, because they were so backed up . . . there were so many people coming in and out. . . . I only had about three or four visits with the doctor."*

Additional comments from female inmates were few, but generally indicated dissatisfaction with the availability of health services, counseling, and mental health treatment. According to one female inmate, "You have to fight to be seen when you need it [health services] and, when you are seen, they don't always help you." Male inmates in focus groups did not raise this issue of access to doctors, even though all institutions but one, OSP, rely on private physicians who work under contract.

To an even greater degree than female inmates themselves, lawyers and judges believed that health services for female inmates are inadequate. Among respondents to the lawyer survey, 44% of the female lawyers and 34% of the male lawyers who practice in the area of criminal law believed that the health care available to female inmates is too limited in scope. Approximately 40% of both male and female judges thought that health care for female inmates is available but limited.

#### **d. Mental Health, Alcohol, and Drug Treatment**

According to ODOC, the institutions focus on prioritizing inmate needs and then servicing high-need populations. Mental health case managers in each institution screen and evaluate cases and then contract with local providers for mental health treatment groups. Some institutions have on-site counselors. The institutions attempt to identify inmates with persistent and clear mental health problems and those with a high

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<sup>43</sup> Greg Wees, *Inmate Health Care Part II*, CORRECTIONS COMPENDIUM, Vol 21, No 11, Nov 1996, at 15. A 1995 survey conducted by *Corrections Compendium* asked respondents to indicate whether health-care costs for female inmates "were higher, the same, or lower than those for men." *Id.* at 11. Oregon reported that its costs for women were higher. *Id.* at 15.

<sup>44</sup> Barbara A. Nadel, *Designing for Women: Doing Time Differently*, CORRECTIONS COMPENDIUM, Vol 21, No 11, Nov 1996, at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 10.

<sup>47</sup> Codified as ORS 137.124. Or Laws 1995, ch 423, § 12a.

<sup>48</sup> Only four states — Massachusetts, Nebraska, New York, and South Dakota — report that they permit newborns to stay with their incarcerated mothers. Wees, *supra* note 43, at 14-15.

suicide risk. On-site personnel staff a special management unit for acute-care psychiatric crises and day treatment for those who need more than a group setting.

Studies of inmates by ODOC reveal that a higher percentage of female inmates than male inmates have a mental illness; depression is the primary diagnosis. Despite that fact, acute care and day treatment are not available for women. The Oregon Department of Corrections anticipates that, when the new women's prison is complete, there will be 18 beds to accommodate female inmates with these needs.

As previously noted, according to Oregon Criminal Justice Council data, 50% of all female inmates in Oregon are in prison for a drug conviction. A 1995 report for ODOC concluded similarly that drug dependency is a leading cause of criminal activities by women and that sexual, emotional, or physical abuse often is a factor leading to substance abuse by women.<sup>49</sup> The report viewed long-term treatment as essential to address female offenders' chemical dependency problems effectively. The report concluded that, because most female offenders are mothers, supporting them in effective parenting is critical not only for the inmates' success, but also for the physical and emotional health of their children. Female inmates and probation and parole officers concurred that the presence of one supportive, caring individual who expects the best from a female offender often makes a pivotal difference in ensuring her long-term success. Because social networking is a valuable part of female inmates' rehabilitation, CRCI has developed a mentoring program that pairs women in the community with female inmates.<sup>50</sup>

In the area of counseling and treatment services, about the same percentage (88%) of male and female inmates said that counseling is available, although a higher percentage of women (71%) than men had used the service. However, all inmates believed that access to counseling services is limited. Almost all respondents (over 90%) found alcohol and drug treatment available. Alcohol and drug treatment programs serve women at six times the rate that they serve men. Of those who had used that service, a higher percentage of women (82%) than men (65%) found it useful.

A residential therapy unit at CRCI now has a "dual diagnosis" unit to treat alcohol or drug issues and mental illness. The Oregon Department of Corrections has a short-term drug treatment program for male inmates only

(Cornerstone) that serves inmates who are in custody for six months or less. There is no comparable program for female inmates.

Some women who responded to the survey felt that counseling and treatment services are inadequate, stating (for example) that "there is no mental health treatment for women and six new programs for men" and that "counseling is not available for me and this is wrong."<sup>51</sup> During hearings at OWCC, inmates sounded a similar theme. Some expressed concern that there often are too many prerequisites to entering the limited number of mental health and alcohol and drug treatment programs. At the Salem public hearing, a former OWCC inmate testified that, if an inmate was not incarcerated for a drug offense, it was difficult to get drug treatment.

Sex-offender treatment programs are available for male inmates at SRCI, which is where men convicted of sex offenses are sent. OWCC provides a small sex-offender treatment group (OWCC houses very few female sex offenders). No female sex offenders are incarcerated at the other two institutions that house female inmates. At OWCC, there also are special groups for victims of sexual abuse and domestic violence. This group is run by volunteers; OWCC does not provide financial support.

#### **e. Intersectionality Issues**

Female inmates of color tended to articulate a strong feeling of isolation both from white women "in the system" and from male inmates of color. Particularly in the one coeducational institution, CRCI, female inmates of color and white female inmates reported that female inmates of color find it difficult to create a sense of community, either with white female inmates or with male inmates of color in the institution.

At the male penal institutions, several "cultural clubs" support inmates with particular racial or ethnic identities.<sup>52</sup> Female inmates of color have not developed similar support systems.

## **2. Programs and Services - County Jails**

### **a. Introduction**

As noted above, as a result of SB 1145 (1995), persons sentenced to less than 12 months of incarceration must be placed in county detention facilities. To examine the effect of SB 1145 (1995) on services and programs in county facilities, we asked jail managers to provide information about services and

<sup>49</sup> INTERMEDIATE SANCTIONS FOR WOMEN OFFENDERS POLICY GROUP, OREGON DEP'T OF CORRECTIONS, INTERMEDIATE SANCTIONS FOR WOMEN OFFENDERS 8 (1995).

<sup>50</sup> See Jolin Study, *supra* note 37, at 16.

<sup>51</sup> Comments on inmate surveys.

<sup>52</sup> For example, at OSCI, inmates may belong to a Native American cultural club (Inipi-O-Yate-Ki), a Chicano club (La Raza Unida), an African-American club (Weusi Umoja), or an Asian club that does not have a name. These clubs are authorized to promote a positive understanding of the cultures and to further the cultures' values.



programs that currently exist for female and male offenders. We also asked them whether any additional programs are planned in the light of SB 1145 (1995).

Fourteen counties responded to the survey.<sup>53</sup> Larger counties reported more programs, although all responding counties provided most programs. No county said that it offered programs only to male inmates. However, generally speaking, counties with fewer jail beds provide a narrower range of services or, at best, contract with an outside agency when certain services are needed. Although many counties have specialized supervision caseloads for female offenders, few programs exist that are designed to address the unique needs of women. Also, some counties reportedly have more limited visiting hours for female inmates than for male inmates.

#### **b. Programs and Services Provided**

The programs in education, work, health service, alcohol and drug treatment, and mental health treatment provided to men and women who are incarcerated in county jails vary depending on the size of the jail population and the availability of resources. Adult Basic Education and GED programs, work programs, and health-care programs exist in every county that responded to the survey. Marion, Lane, and Jackson Counties provide work release programs in established or to-be-established work release centers.

County jail managers expressed concerns about housing mentally ill persons. Mental health programs, as well as alcohol and drug treatment programs, generally are provided by religious or other private groups or by contract with county mental health departments. More populous counties, such as Lane and Marion Counties, often are able to offer in-house programs in these areas and do their own screening and placement in treatment programs.

In a letter to the Task Force, one person noted that, when Lane County operated a Forest Work Camp, men were placed in a rural work camp setting and were given opportunities to learn skills such as woodworking and carpentry, but that women were housed at the local Community Corrections Center, where their job was to wash police cars twice a week. The women spent the rest of their time watching television or "hanging out in the common day room area." The entire program has been terminated due to funding decreases, but it may be reinstated with funding provided pursuant to SB 1145 (1995).

Pregnant women housed at county jails usually are referred to local physicians. Private service providers expressed concern about the lack of services for pregnant offenders in some counties and noted that these women, despite having been sentenced to jail,

have been sent to state prison so that they can receive pregnancy-related services there. Such diversion from county jails may no longer be possible under the limits of SB 1145 (1995), and counties will have to explore ways to meet this need.

#### **3. Education and Training of Corrections Staff**

We interviewed staff members who are responsible for the education and training of personnel in corrections, as well as directors of criminal justice programs in post-secondary educational institutions, about the content of course work dealing with gender-related issues. They reported that ODOC uniformed staff are trained through the Board of Public Safety and Standards Training and receive additional, periodic in-service education. They reported no specific effort to address gender issues, although the training addresses outside pressures on inmates, including family and child concerns. The Oregon State Police offer a program on services for victims of domestic violence, through ED-Net, that is available to community corrections departments. In addition, each institution has its own in-house educational program adapted to its inmate population.

#### **C. CONCLUSIONS**

Female inmates in state correctional institutions do not have access to all the same job training, work programs, and services as male inmates. Space is the most pressing problem. The Oregon Department of Corrections expects to rectify that deficiency in the next several years with the construction of a new women's prison.

In the state and county facilities, there are few programs and services available to meet some of the specific needs of women, such as pre- and post-natal care and targeted mental health counseling. Men's programs, including sports competition and music activities, generally are regarded as more comprehensive; yet, as one female inmate stated, "women still have just as many if not more needs than men." Several female inmates concluded that the disparity in services simply was discriminatory.

Of the prison inmates responding to the survey, most do not perceive gender-based differences in the overall programs and services available to them in state correctional institutions. However, a number of anecdotal responses indicate a perception of discrimination against female inmates in programs and services provided.

Judges and lawyers who responded to the pertinent survey questions perceive a greater gender-based difference in the availability and effectiveness of services

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<sup>53</sup> The following counties responded to our survey: Baker, Benton, Deschutes, Harney, Jackson, Josephine, Lane, Malheur, Marion, Umatilla, Union, Wallowa, Washington, and Yamhill.

and programs than do the inmates themselves. There is a clear demarcation between male and female lawyers and judges as to their perceptions, with more women in both categories stating that they believe that women have fewer resources available.

Finally, staff who work with inmates or who establish policies and programs for inmates generally do not receive specific training in understanding gender issues.

## D. RECOMMENDATIONS

### 1. The Oregon Department of Corrections should:

- a. provide adequate space in the new women's prison for educational, vocational, and work programs, as well as for recreation and family visiting;
- b. by January 1, 1999, expand work programs and vocational training programs for female inmates to include apprenticeships that realistically prepare them for work opportunities upon release;
- c. by January 1, 2000, expand the current dual diagnosis (substance abuse and mental health treatment) programs, which now are available at Columbia River Correctional Institution, to female inmates at other institutions;
- d. by January 1, 2000, assess the feasibility of permitting contact between incarcerated mothers and their children (especially newborns) and give special attention to pregnant inmates' needs for services;
- e. by January 1, 1999, develop educational materials for corrections officers, program staff, and contract providers on the unique needs of female inmates and make such materials a part of all orientation programs; and
- f. ensure that adequate job-training opportunities are available for inmates with sentences of varying lengths. One possible means of ensuring that people who are incarcerated for a relatively short period of time (disproportionately women) complete programs is to permit them to continue training during post-prison supervision.

### 2. The counties should:

- a. begin to address concretely the unique needs of female offenders who are housed in county jails

and, by January 1, 1999, develop policies to address those needs; and

- b. by January 1, 1999, ensure that female and male offenders are afforded equal access to jail visiting hours and programs.

### 3. The Oregon State Bar and the Education Division of the Office of the State Court Administrator, working with the Oregon Department of Corrections, including Community Corrections, should:

- by January 1, 1999, create an educational program for lawyers and judges about the availability and nature of the programs and services in Oregon's correctional institutions, county jails, and community corrections facilities.

## III. JUVENILE CORRECTIONS

### A. INTRODUCTION

In this part of the study, we considered whether comparable programs and services are available to males and females at the Hillcrest and MacLaren<sup>54</sup> youth correctional facilities and at county detention facilities. We focused on three issues:

- (a) whether male and female youths<sup>55</sup> who have been committed to secure custody in the juvenile justice system have access to the same treatment, education, and health programs and services;
- (b) whether there are programs and services to meet the specific needs of adolescent girls and young women in custody; and
- (c) whether the range of county detention programs and services available to female youths in custody is as extensive as that available to male youths in custody.

We surveyed the 11 county juvenile departments that operate juvenile detention facilities, concerning their programs and services. We held two single-sex focus groups at Hillcrest to hear the opinions of male and female youths separately.<sup>56</sup> In addition, we interviewed the Hillcrest superintendent in person concerning programs and services at Hillcrest, and the MacLaren administration self-reported on programs and services available to boys committed to MacLaren. We solicited

<sup>54</sup> MacLaren houses only male youths. Hillcrest houses both male and female youths.

<sup>55</sup> Throughout this chapter, the terms "juveniles," "youths," "boys," and "girls" refer to individuals under 18 years of age. Oregon statutes refer both to "youth offenders" (see ORS 419A.004(29)) and to "juveniles" (see ORS 169.730 *et seq.*). See also note 63, *infra*.

<sup>56</sup> We conducted the juvenile department surveys and the Hillcrest focus groups in collaboration with the Oregon Commission on Children and Families, which also is studying the treatment of female youths in the juvenile justice system. See JUVENILE JUSTICE ADVISORY COMM, 1997 REPORT TO THE GOVERNOR AND OREGON LEGISLATURE (1997) ("JJAC Study").

the opinions of Oregon judges and lawyers through the Task Force surveys. Finally, we reviewed national and state studies and data.

We found that a disproportionate percentage of youth offenders in custody are boys. Moreover, a disproportionate share of funds is used for boys committed to “close custody” facilities, despite statutory requirements that girls receive a proportionate share of youth corrections funding and services. Because fewer dollars and other resources are dedicated to providing services and training to female youth offenders, they often do not receive the services and training that they need to prepare them to enter and remain in the general community. In particular, girls are receiving inadequate job-training opportunities and insufficient mental health treatment opportunities.

## B. FINDINGS

### 1. Demographic Trends

The United States Department of Justice reports a disturbing national trend:

*“Although male juvenile offenders still account for most delinquent acts, the relative growth in juvenile arrests involving females was more than double the growth for males between 1989 and 1993. While juvenile arrests for violent crimes increased 33 percent for males during that period, they increased 55 percent for females. In fact, the ratio of male juvenile arrests to female juvenile arrests declined from [8:1] in 1989 to [6:1] in 1993.”<sup>57</sup>*

In Oregon, too, the increase in the number of girls arrested for delinquent acts has outpaced the increase for boys. Between 1990 and 1995, arrests of youth offenders increased 38%; the rate of increase for girls was 49.7%.<sup>58</sup> Arrests of girls increased in all categories of criminal offenses; disturbingly, the greatest increase (100%) was in crimes against persons.<sup>59</sup> In recent years, there has

been an increase in girls’ gang membership and affiliation, as well.<sup>60</sup>

Although girls account for 24% of crimes against persons by youths, girls constitute only 11% of commitments to close custody.<sup>61</sup> Between 1988 and 1992, Oregon admitted almost 8,000 youths to detention, of whom 17% were female, and admitted almost 2,000 youths to secure facilities, of whom 9% were female.

### 2. Oregon’s Juvenile Justice System<sup>62</sup>

Under Oregon’s statutes, persons under 18<sup>63</sup> who have committed an act that would be a crime if committed by an adult,<sup>64</sup> youth who have committed “status offenses” (such as being a minor in possession of alcohol, committing a curfew violation, or running away),<sup>65</sup> and children who have been abused or neglected, may be subject to juvenile court jurisdiction upon the filing of a petition and its adjudication.<sup>66</sup> The courts have wide discretion in fashioning a disposition for each of these circumstances, although only youths adjudicated as delinquents (as distinct from those adjudicated as “dependents”) may be committed to secure facilities. Secure facilities are offered at both the state and county levels. Youths can be held before trial, or for a limited time after adjudication, in county-operated detention facilities. Following adjudication, if they are found to be within the jurisdiction of the court, youths who are to be committed to secure facilities are placed in one of the state youth correctional facilities.

#### a. County Secure Custody

Eleven counties have detention facilities operated by their county juvenile departments: Coos, Deschutes, Jackson, Klamath, Lane, Lincoln, Marion, Multnomah, Umatilla, Wasco, and Yamhill.<sup>67</sup> Juvenile Department Directors in those 11 counties were surveyed, and nine

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<sup>57</sup> See EILEEN POE-YAMAGATA & JEFFREY A. BUTTS, U.S. DEP’T OF JUSTICE, FEMALE OFFENDERS IN THE JUVENILE JUSTICE SYSTEM, STATISTICS SUMMARY at iii (1996).

<sup>58</sup> OREGON COMM’N ON CHILDREN AND FAMILIES, OREGON’S YOUTH: DEMOGRAPHIC PROFILES AND CRIME ANALYSIS 18 (Draft report, 1997) (cited with permission).

<sup>59</sup> This 100% increase reflects a change from 1.4 per 1,000 youths arrested to 2.8. JJAC Study, *supra* note 56, at 32.

<sup>60</sup> OREGON COMM’N ON CHILDREN AND FAMILIES, *supra* note 58, at 233, 235.

<sup>61</sup> See OREGON YOUTH AUTH, EQUAL ACCESS TO SERVICES FOR FEMALE AND MALE YOUTH (Report on HB 3576 (ORS 417.270)) (Appendix to the Governor’s Budget, 1997), at Budget p 234.

<sup>62</sup> This chapter does not address the treatment of girls or boys as victims of abuse or neglect, nor does it address the treatment of young mothers or fathers accused of abusing or neglecting their children.

<sup>63</sup> Until recently, Oregon statutes referred to a person under the age of 18 as a “child.” During the 1995 session, the Oregon legislature revised the statutes. Now, a person under the age of 18 who is alleged to have committed an act that, if done by an adult, would be a violation or a crime is referred to as a “youth.” ORS 419A.004(27).

<sup>64</sup> ORS 419C.005.

<sup>65</sup> This report does not address the treatment of status offenders, the majority of whom are girls.

<sup>66</sup> ORS 419B.100.

<sup>67</sup> No surveys were sent to youths in county facilities and, accordingly, there are no data on their perceptions of the services and programs provided in those facilities.

responded.<sup>68</sup> All those county facilities are available to house both boys and girls. To varying degrees, as noted below, the facilities offer educational, recreational, health, treatment, and parenting services to detained youths.

All the county detention facilities offer school programs with certified instructors for boys and girls. The counties all provide a variety of skill-building classes, including anger management, refusal skills, stress management, and empathy enhancement. Lane County also offers a girls' support group. Lincoln, Deschutes, Marion, and Multnomah Counties offer opportunities to complete a GED. All nine detention facilities offer coeducational recreational activities.<sup>69</sup>

Regarding health and treatment services, all the counties indicated that, if they find that a particular issue exists, both boys and girls are provided care for that issue. For example, eight counties provide support groups for substance abusers, either sex-segregated or coeducational.

Coos, Jackson, and Marion Counties provide individual counseling services for boys and girls who are survivors of sexual abuse. Marion County also provides coeducational groups. Two counties, Coos and Lane, provide sex-offender treatment for boys and girls; Multnomah County provides such treatment for boys only.

Multnomah is the only county that routinely tests every girl for pregnancy; other counties test only if there is reason to believe that a girl is pregnant.<sup>70</sup> All nine counties responding to the survey provide obstetric and gynecological care for pregnant girls. Two counties,

Jackson and Marion, provide counseling concerning post-birth placement options. Other services for pregnant girls include nutritional information,<sup>71</sup> dietary supplements,<sup>72</sup> and pregnancy-prevention information.<sup>73</sup> Two counties, Marion and Multnomah, provide parent-training classes. In responding counties, detainees who are parents may visit with their children, either during regularly scheduled visiting hours or by special arrangements made through probation counselors.

#### **b. Commitment to State Custody**

The Oregon Youth Authority (OYA) is the agency that is responsible for youths found to be within the jurisdiction of the court for committing an act that, if done by an adult, would constitute a crime. Currently, youths committed to secure custody reside at either MacLaren (317 beds for boys) or Hillcrest (181 beds for both boys and girls).<sup>74</sup> In addition, OYA soon will open regional youth correctional facilities for boys and girls in Albany, Grants Pass, Prineville, and Warrenton. A new facility in Burns will serve boys only. OYA also operates all-male boot camps.<sup>75</sup> There are no boot camps for girls.

ORS 417.270 requires state agencies (including OYA) that provide services to youths to specify in their budgets what funds are expended for boys and for girls. That statute also requires those state agencies to identify spending disparities and to ensure equal access to appropriate services and treatment. OYA estimates that, during the 1995-97 biennium, it spent proportionately fewer dollars for females than for males in the areas of foster care,<sup>76</sup> gang-transition services,<sup>77</sup> and residential

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<sup>68</sup> The survey was developed jointly by the Task Force on Gender Fairness, Linda Wagner, and the Oregon Commission on Children and Families. Results are based on nine responses; Klamath and Umatilla Counties did not respond to the survey.

<sup>69</sup> Multnomah County reported that it also offers sex-segregated activities for boys and for girls; it did not identify those activities.

<sup>70</sup> The counties that responded to the survey estimated that there were a total of 71 pregnant detainees; about half of them were reported by Multnomah County.

<sup>71</sup> Multnomah, Yamhill, Coos, Jackson, Lane, and Marion Counties.

<sup>72</sup> Multnomah, Yamhill, Coos, Jackson, Lane, and Marion Counties.

<sup>73</sup> Multnomah, Yamhill, Jackson, and Marion Counties.

<sup>74</sup> Hillcrest originally was intended to house only girls. Now the majority of residents are boys. Eight cottages are for boys only, two cottages are for girls only, and one cottage is coeducational (by wing).

<sup>75</sup> Hillcrest's former superintendent, Mary Ellen Eiler, reports that, because the data on all-male boot camps in other states suggest that they are less than effective, Oregon has incorporated more intensive treatment in its boot camps. Oregon is experimenting with boot camps for a trial period and, if they prove effective, they may be offered to girls as well. We note that assessing the efficacy of boot camps for boys presumes that, if something is ineffective for boys it will be ineffective for girls and that what is effective for boys also will be effective for girls. That presumption may or may not be correct.

<sup>76</sup> Girls comprised almost 20% of all youths placed in foster care but received 15.6% of the expenditures. OREGON YOUTH AUTH, *supra* note 61, at Budget p 232.

<sup>77</sup> Seventy-eight percent of the youths served through residential treatment programs were male and 22% were female; 79% of the expenditures in this category were for males and 21% were for females. *Id.*

treatment.<sup>78</sup> It spent proportionately fewer dollars for boys than for girls in the areas of sex-offender aftercare (.72% of the youths who received sex-offender aftercare were girls, but 1.56% of expenditures for such services were for girls.)<sup>79</sup>

**ESTIMATED 1995-97 EXPENDITURES  
BY OREGON YOUTH AUTHORITY**

Category of Service	% Girls Served	% Expenditures for Girls
Foster care	20	15.6
Gang transition	22	21
Residential treatment	4.5	1.1
Sex-offender aftercare	.72	1.56

In its 1997-99 Recommended Budget to the legislature, OYA noted that, historically, male offenders have dominated Oregon's juvenile justice system to the detriment of female offenders:

*"Because of the different types of crimes young men and young women committed, young men have received the bulk of juvenile services and funds. In addition, OYA acknowledges that, with limited bed space, young women were often released from secure facilities and, thus, were unable to complete treatment programs available prior to release. In turn, the recidivism [rate] for women is high."*<sup>80</sup>

Several girls echoed this concern in a focus group at Hillcrest. They complained that, after they had acclimated to the institution but before they could benefit fully from the programs and services available to them, they were released. The girls believed that boys housed at Hillcrest were not returned to the community as quickly as girls were.

Having recognized the disparities in services and programs for boys and girls and the equal access requirements of ORS 417.270, OYA is developing a Gender Equity Advisory Board to advise it on the adequacy and quality of services to male and female youths in the juvenile justice system. In addition, OYA Parole and Probation is developing a Task Force on Girls to identify needs and resources and to ensure that girls receive quality services from the Oregon juvenile justice system. The following sections discuss the types of services and programs available to boys and girls at MacLaren and Hillcrest.

### **c. Services and Programs Provided at State Facilities**

#### **i. Education**

The types of educational programs that are available to boys and girls are similar. Boys who are committed to MacLaren and who have not graduated from high school or obtained a GED attend the Lord School on campus. The school is certified by the Oregon Department of Education and has programs that lead to either a high school diploma or a GED. Some of the cottages or programs have self-contained educational programs. Approximately 60% of the boys at MacLaren have special education needs and are on an Individual Educational Program (IEP). Access to community college is now provided through the Internet. According to an official at MacLaren, boys and girls have equal access to Internet facilities.

Girls committed to Hillcrest have access to the Robert S. Farrell High School on campus. Since July 1994, the school has been administered by the Oregon Department of Education and offers mid-high, high school, Chapter 1,<sup>81</sup> and vocational education programs. All students who have received a diploma or GED may take community college and college classes by correspondence. Information about what percentage of girls have special education needs and are on an IEP was not available.

#### **ii. Job Training**

The availability of and access to job training, as well as the types of job training available, are greater for boys than for girls. Indeed, the primary job training available to girls seems to be based on stereotypical perceptions of "appropriate" careers for girls, and accessibility to job training in non-traditional positions is quite limited. For example, beauticians' school is available to girls over 16 who have demonstrated trustworthiness with scissors, razors, and other tools. No such program is offered at MacLaren.

MacLaren offers vocational training to boys in horticulture, business services, building trades, and hospitality. In addition, boys at MacLaren are involved in a structured work program in the following areas: institutional laundry, food services, building maintenance, grounds upkeep, garbage and recycling collection, and janitorial and canteen services. There also is a lattice factory where the boys assemble decorative

<sup>78</sup> Four and one-half percent of the youths who received gang-transition services were girls, but girls received only 1.1% of the funds expended on those services. *Id.*

<sup>79</sup> *Id.* at 232. Disproportionately more dollars may have been spent for services to girls due to the paucity of female sex offenders. Their limited numbers often result in their receiving individual, rather than group, treatment. OYA also spent proportionately fewer dollars during the 1995-97 biennium for Individualized Flexible Services (IFS) to boys. IFS are services provided to youths who are leaving close custody or being diverted from close custody. *Id.* Until part way through the 1995-97 biennium, the IFS program served only girls, to compensate for gender inequities in the residential treatment program. *Id.* at 235.

<sup>80</sup> See *id.* at Budget p 233.

<sup>81</sup> "Chapter 1" refers to Individual Educational Programs and other federally mandated educational services.

cedar lattice used in wood fencing. Due to space shortages, not all boys who request opportunities in job training have access to the programs, however.

Boys at Hillcrest have better access than girls to vocational educational programs through Farrell High School, such as maintenance crew and food service training. Staff shortages sometimes deprive girls of opportunities. For example, maintenance crew training is available to girls only if more than one girl is interested, because training supervisors are men; girls are not allowed to work in food service, because all the staff members are men. Also, girls and boys at Hillcrest are not allowed to serve on the same work crew or training program team. A minimum number of participants must be interested in a work crew or a training program before Hillcrest staff is assigned to supervise the group. Because boys greatly outnumber girls at Hillcrest, this policy has a disparate effect on girls.<sup>82</sup>

### iii. Health Services

Girls have less access to health care than do boys. For example, MacLaren operates a 24-hour-a-day, 7-day-per-week health clinic accredited by the National Commission on Corrections Health Care. That clinic employs a full-time physician, a half-time dentist, and several nurses. MacLaren also contracts for psychiatric and psychological services and for additional dental services.<sup>83</sup>

On the other hand, Hillcrest has a health clinic for both boys and girls that is staffed by six registered nurses. A physician is available at predetermined times, and a dentist comes to the clinic as needed. Pregnant girls have access to pre-natal care, a local obstetrician-gynecologist, outside birth coaches, and post-birth baby placement counseling. Access to childbirth classes may vary.<sup>84</sup>

Several girls in the focus group expressed dissatisfaction with the health services at Hillcrest. Although most participants spoke highly of the nurses, they stated that additional medical staff was needed, because staff response time often was slow. One girl recounted that, when she was pregnant, she contacted medical staff because she thought that she was in labor. She reported that she was not examined but, instead, was told that she was not in labor and was directed to return to her room. When she finally was seen by a nurse, she was dilated five centimeters and was taken to the hospital for delivery. In a related matter, girls who give birth at Hillcrest generally are allowed to stay in the hospital for one night following the birth. Several young mothers felt that this was not enough time to bond with

their newborns. Additionally, several girls who had been victims of sexual abuse reported discomfort, fear, and extreme anxiety when a male doctor performed a physical examination, including a pap smear. (Every girl receives a complete physical examination upon admittance to Hillcrest.)

### iv. Mental Health Treatment

The types of mental health treatment provided for detained boys and girls are similar.<sup>85</sup> However, the manner in which treatment is provided and the amount of time within which to take advantage of mental health treatment programs are not the same.

The focus group with girls revealed considerable concern about treatment services for female sex offenders and survivors of sexual abuse. Several girls reported that sex-abuse survivor issues are not fully assessed upon admission and that the girls themselves might not disclose a history of sexual abuse upon admission, even if asked. In addition, girls were angry and concerned that female sex offenders and victims had been placed in the same therapy group. Some girls also expressed concern that female sex offenders do not have their own rooms, as do male sex offenders but, instead, are bunked with non-offenders, many of whom are survivors of sexual abuse.

With regard to mental health treatment generally, one girl reported:

*"There are only two and a half cottages for girls, and the rest are for boys, and ours are overfilling. We are getting quantity treatment instead of quality treatment because of the number of girls who need to come in all the time. We constantly have to cap girls out so they aren't even finished with their treatment before they get to leave."*

### v. Opportunities for Visits with Family Members

Family visits are scheduled on a designated day each week at Hillcrest and MacLaren although, with advance notice, visits may be scheduled at other times, depending on staff availability. Boys are permitted and encouraged to visit with their families, including their own children. Although the boys at MacLaren generally are prohibited from visiting with non-related girls under 18, this prohibition is waived when the mother of a male resident's child accompanies their child on the visit. At MacLaren's and Hillcrest's parenting classes, the youths' children and the other parent of those children are invited to participate.

<sup>82</sup> In a focus group at Hillcrest, some girls said that they were frustrated that girls are denied access to certain training programs for these reasons.

<sup>83</sup> Personal communication with Robin Cole, Program Director at MacLaren.

<sup>84</sup> In a focus group at Hillcrest, one girl reported being given only a pamphlet on childbirth.

<sup>85</sup> See Appendix for a complete list of services at MacLaren and Hillcrest.

Several girls reported that they do not see their children during weekly visiting hours because there is no one to transport the children. They suggested that volunteers be recruited to provide needed transportation.

**d. Special Concerns for Female Youths Committed for Measure 11 Crimes**

Female youths who have been sentenced under Measure 11 are placed in the legal custody of the Oregon Department of Corrections. As part of the intake process, ODOC (in consultation with OYA) decides whether to place a girl at Hillcrest or at OWCC. Girls who are 15 years old are sent directly to Hillcrest; girls who are 16 or 17 years old proceed through the OWCC intake process but then may be transferred to Hillcrest.<sup>86</sup> Some girls initially are placed at Hillcrest and later are transferred (or returned) to OWCC. Hillcrest administrators said that there is little coordination between Hillcrest and OWCC regarding girls sentenced under Measure 11 and that there are no policies in place to require uniform treatment at the two facilities.

**e. Staff Training Regarding Gender Issues**

The Juvenile Corrections Training Academy provides a two-week educational program for Hillcrest and MacLaren staff. The program includes security and safety issues, crisis intervention, and identifying the different needs of youths on the basis of gender with regard to treatment needs and safety from sexual harassment. Once they have completed the Academy program, staff members at Hillcrest commence two weeks of on-the-job training.

Both boys and girls reported that staff members are generally caring. Nonetheless, girls reported that two staff members told them that they were “too needy” and that the staff members preferred to work with boys. Girls reported concerns about under-staffing, commenting that staff members are spread too thin and do not have time to talk with them, “address our issues,” or escort them to recreational activities on the Hillcrest campus.<sup>87</sup>

**C. CONCLUSIONS**

The number of girls entering the juvenile justice system is on the rise, with the increase in the number of girls arrested for delinquent acts outpacing the increase for boys. However, girls still are less likely to be admitted to close custody facilities. When girls are committed to secure facilities, they stay for shorter periods of time than do boys, although girls are being committed for longer periods of time than in the past. A shorter stay in a secure facility may not be beneficial in all respects, because it deprives some girls of the

opportunity to complete training or treatment that may help keep them from re-offending.

In county detention facilities, boys and girls have access to similar educational opportunities and recreational activities. Eight of the 11 counties with juvenile detention facilities reported that they provide treatment for substance abuse. Three counties provide counseling to victims of sexual abuse for both boys and girls, and three counties provide treatment for sex offenders, with two offering treatment to boys and girls and one (Multnomah County) offering treatment only to boys. All nine counties that responded to our survey provide pregnancy-related health care. Counseling regarding birth-control options, pre-natal information and care, and post-birth baby placement is provided in about half the counties.

OYA estimates that it spends proportionately more money for services directed at boys and that the limited funds and limited space for girls have resulted in incomplete treatment for girls. OYA is taking steps to address those disparities.

Many girls in close custody are not satisfied with the health-care services that they receive. Their primary concerns are inadequate staffing and the lack of a female doctor to treat girls. Girls with children are concerned about visitation rules and about the lack of transportation resources that limit their ability to visit with their children.

**D. COMMENDATION**

We commend the Legislative Assembly for enacting ORS 417.270, which:

- “acknowledges that females under 18 years of age often lack equal access, both individually, and as a group, when compared with males under 18 years of age, to the facilities, services and treatment available through human services and juvenile corrections programs provided by or funded by the State of Oregon” (ORS 417.270(1));
- requires any state agency that regularly provides services to minors to specify in its annual budget the percentages of moneys allocated to, and expended for, minor males and minor females in Oregon (ORS 417.270(3)(a));
- requires all state agencies providing human services and juvenile corrections programs to “identify existing disparities in the allocations of moneys and services to, and expended for, . . . males under 18 years of age and females under 18 years of age” and to document such disparities, if any (ORS 417.270(3)(b)); and

<sup>86</sup> See ORS 137.124(5).

<sup>87</sup> Depending on the girls' privileges, Hillcrest offers basketball, pool, table tennis, cards, television, and music on campus.

- requires the state agencies to develop a plan to implement equal access to appropriate services and treatment for minor males and females and monitor the implementation of that plan (ORS 417.270(3)(c)).

**4. The Oregon Judicial Department should:**

by January 1, 2001, undertake to study gender and intersectionality issues affecting juveniles who are adjudicated as “status” offenders (disproportionately girls).

**E. RECOMMENDATIONS**

**1. The Oregon Youth Authority should:**

- a. immediately take steps to comply fully with ORS 417.270 and to ensure proportional allocation of funds to girls and boys;
- b. provide more programs and services, including drug and alcohol treatment, to serve girls in the juvenile justice system. The OYA should have a plan to implement those programs by January 1, 1999, and should implement the programs by January 1, 2000;
- c. ensure that sex-offender treatment programs are available to boys, without waiting;
- d. by January 1, 1999, review staffing standards at secure facilities to determine whether the number of staff is sufficient to meet the needs and deliver programs and services, especially to girls;
- e. ensure that adequate treatment and vocational services are available for youths who are detained for shorter periods of time (disproportionately girls). One possible means is to permit them to continue in the program or receive services after they leave the secure facility but while they remain in the legal custody of OYA;
- f. by January 1, 2000, ensure that girls and boys have access to the same types of job training (*e.g.*, building trades for girls, beauticians' school for boys), based on interests, skills, and the like;
- g. by January 1, 1999, hire women to fill maintenance crew, food service, and other training supervisor vacancies so that girls have access to the same job-training opportunities to which boys have access; and
- h. by January 1, 1999, provide or arrange for transportation for children of youths who are in close custody, so as to encourage a stronger bond between the youths and their children.

**2. The Oregon Youth Authority and the Oregon Department of Corrections should:**

- by January 1, 1999, to the extent permitted under the law, jointly develop a policy on programs and services for girls who are sentenced under Measure 11.

**3. The Hillcrest Youth Correctional Facility should:**

- by January 1, 2000, hire a female doctor to perform obstetric and gynecological services.



# ATTACHMENT A

## Professional, Technical, and Production Programs Available to Female and to Male Inmates in Oregon<sup>88</sup>

	Available to female inmates at OWCC	Available to female inmates at OSCI or OSP	Not available to female inmates	Available to male inmates	Not available to male inmates	May Result in Certification or Licensure <sup>89</sup>
<b>PROFESSIONAL/TECHNICAL TRAINING PROGRAMS (includes classroom instruction, lab, and on-the-job training)</b>						
Building Maintenance (OSP, OSCI, OWCC, SCI, MCCF)	X			X		Cleaning Management Institute Certification (Levels I & II)
Organic Gardening (OWCC <sup>90</sup> )	X				X	NO
Clerical Basics (OWCC)	X				X	Chemeketa Community College Certificate
Auto Mechanics (OSP)			X	X		Automotive Servicing Excellence (ASE) Certification
Hair Design (OSP)			X	X		State Licensure
Cabinet Making (OSP, OSCI)		X		X		NO
Furniture Refinishing (OSCI)		X		X		NO
Intarsia <sup>91</sup> (OSCI)		X		X		NO
Computer Literacy (OSP)			X	X		NO
Building Technology (SRCI)			X	X		Treasure Valley Community College Certificate
CAD/CAM <sup>92</sup> (certification program) (SRCI)			X	X		Treasure Valley Community College Certificate
Culinary Arts (OSCI)		(will soon be available to female inmates)	X	X		Chemeketa Community College Certificate
Books on Tape (EOCI)			X	X		NO
Audio Tape Player Refurbishing (EOCI)			X	X		NO
Computer Refurbishing/Recycling (OSCI)		(will soon be available to female inmates)	X	X		NO
Meat Cutting (MCCF)			X	X		NO
Computer Graphic (Desktop Publishing) (EOCI)			X	X		Blue Mountain Community College Certificate

88 Information provided by Oregon Department of Justice lawyer Jefry J. VanValkenburgh.

89 Oregon Department of Corrections issues certificates to all inmates who successfully complete a course or educational program. Those certificates are not to be confused with a certification (or licensure) awarded by a college or professional or trade organization.

90 No male inmates are transported to OWCC for training, education, or production purposes.

91 Intarsia is a craft that involves gluing small pieces of wood into a hollow wooden support (popular in 15th century Italy).

92 CAD/CAM is Computer Aided Drafting/Computer Aided Manufacturing.

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	Available to female inmates at OWCC	Available to female inmates at OSCI or OSP	Not available to female inmates	Available to male inmates	Not available to male inmates	May Result in Certification or Licensure <sup>89</sup>
<b>PRISON INDUSTRIES/INMATE WORK PROGRAMS (Production Only)</b>						
Phone Answering (DMV) (OWCC)	X				X	n/a
Phone Answering (Secretary of State) (OSCI)			X	X		n/a
Phone Answering (Oregon Health Plan) (OSCI)			X	X		n/a
Mail Room Operations (OSCI)			X	X		n/a
Printing Shop (OSCI)			X	X		n/a
Uniform Repair/Embroidery (OWCC)	X				X	n/a
Card Folding (OWCC)	X				X	n/a
Furniture Manufacturing (OSP)			X	X		n/a
Upholstery (OSP)			X	X		n/a
Bar Code Scanning Equipment Assembly (OSP)		X		(will soon be available to male inmates)	X	n/a
Metal Fabrication (OSP)		X		X		n/a
Laundry (OSP, EOCI)			X	X		n/a
Construction (SRCI and SRCI Expansion)			X	X		n/a
Metal / Wood Fabrication (PRCF)			X	X		n/a
CAD/CAM (work program)(OSCI)		X		X		n/a
Garment Manufacturing (Prison Blues) (EOCI)			X	X		n/a
Milk Packaging Operation (MCCF)			X	X		n/a
Meat Cutting(MCCF)			X	X		n/a
Wood Pallet Manufacturing (SCI)			X	X		n/a

# INTERACTIONS BETWEEN LAWYERS, CLIENTS, STAFF, AND OTHER PROFESSIONALS

*"I personally know of a legal secretary who is harassed on a regular basis by one of the attorneys she works for. He doesn't request sexual things from her, but subjects her to his sexual exploits by writing them on his calendar, telling her about them and talking about them on his dictation tapes. She is a single mother in her fifties and is scared to mention them because she needs the job so bad and is afraid she won't get hired elsewhere because of her age and doesn't want to be known as a troublemaker."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

We studied whether and, if so, how gender affects the interactions between lawyers and clients, lawyers and professionals, lawyers and legal secretaries,<sup>2</sup> lawyers and paralegals,<sup>3</sup> lawyers and court reporters, and among employees of the Oregon State Bar (OSB) and the Professional Liability Fund (PLF).<sup>4</sup> In general, gender unfairness in the workplace has diminished during the past several years, but it still persists to a sufficient extent to cause concern.

Among the groups studied, commonalities emerged. First, for those employed with or by lawyers, people of both sexes generally agree that there is less gender unfairness now than there was in the past. In fact, most believe either that gender bias does not exist at all or that it is limited to a few areas. Still, differences in perceptions and experiences remain. For example, 30% of legal secretaries believe that gender bias has stayed the same over time or has gotten worse. More women than men perceive that bias against women continues to exist to some degree; a few people — more men than women — perceive bias against men. Women often believe that men have advantages, while men predominantly believe that opportunities are equal. Significantly, respondents indicate that, although rare, incidents of unwanted touching, inappropriate sexual comments, requests for sexual favors, and other forms of sexual harassment still occur.

For the most part, it appears that clients do not choose their lawyers on the basis of gender, nor does the lawyer's gender affect client satisfaction. Nevertheless, some gender-based selection exists.

Where gender is a factor in the selection of a lawyer, the client more often wants to be represented by a man; and where level of satisfaction is influenced by gender, more female than male clients report an effect. Some clients believe that male and female lawyers treat them differently; clients perceive that female lawyers, as opposed to male lawyers, have better communication skills, are more empathetic, and work harder than male lawyers. Some clients also perceive that male lawyers, as opposed to female lawyers, are more aggressive and less likely to be discriminated against to the detriment of their clients. Complaints against lawyers filed with the bar, and disputes concerning client trust funds and fees, suggest that clients are more often dissatisfied with male lawyers than with female lawyers even when the larger number of male lawyers within the bar is factored in. Although clients rarely experience sexual harassment or exploitation by their lawyers, such conduct does occur, as documented in disciplinary cases.

We conclude that, over time, legal professionals have succeeded, for the most part, in significantly reducing gender bias in the workplace. Nevertheless, some bias and unfairness remain.

## B. ISSUES STUDIED

We sought, first and most importantly, to determine how, if at all, gender affects the interactions between lawyers and clients. Once under way, we discovered that it was difficult logistically to obtain information from clients. Because we had the cooperation of court reporters, paralegals, legal secretaries, and the Oregon State Bar, we expanded our focus, giving equal attention

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<sup>1</sup> Comment by a female court reporter.

<sup>2</sup> This term includes legal professionals referred to as "assistants" who perform primarily secretarial functions.

<sup>3</sup> This term denotes both "paralegals" and "legal assistants."

<sup>4</sup> For a discussion of gender issues in the employment of court, Oregon State Bar, and Professional Liability Fund employees, see the chapter on The Employment of Court, Oregon State Bar, and Professional Liability Fund Personnel. For a discussion of gender issues in the courtroom, see the chapter on Judicial Administration.

to interactions between lawyers and other legal professionals. In the end, we did obtain more data concerning the interactions between lawyers and clients than for other groups, and our findings reflect this emphasis.

As pertinent to this chapter, we addressed the following specific questions:<sup>5</sup>

(1) Lawyers and Clients

- (a) Does gender affect a client's selection of a lawyer?
- (b) Does gender affect the working relationship between lawyer and client, including the client's satisfaction with the lawyer?

- (c) Do lawyers sexually harass clients?

(2) Lawyers and Other Legal Professionals

- (a) Are employment opportunities for legal secretaries or paralegals affected by gender?

- (b) Are advancement opportunities for legal secretaries or paralegals affected by gender?

- (c) Do lawyers subject their employees to sexual harassment?

- (d) Do lawyers, as employers, have and enforce policies against sexual harassment?

(3) Lawyers and Court Reporters

- (a) Are lawyers' decisions to hire court reporters affected by gender?

- (b) Are court reporters' fees affected by gender?

- (c) Is the relationship between lawyers and court reporters affected by gender?

- (d) Do court reporters experience sexual harassment by lawyers with whom they work?

(4) Legal Staff and Clients

- Do clients experience sexual harassment by legal staff?

## C. METHODS OF STUDY

The Interactions work group comprised eight women and four men and was assisted by a male liaison from the Intersectionality work group. Two work group members were African-American. A trial judge chaired the group; other members were two health science practitioners and academics, one mental health professional, a business person, a legal secretary, a certified court reporter, a paralegal, an administrator with the Oregon State Bar, two lawyers from private practice, one lawyer from Legal Services, and one lawyer from a public defender's office.

The work group developed surveys directed to six separate groups: clients, court reporters, legal secretaries, paralegals, employees of the OSB, and employees of the PLF.<sup>6</sup> To identify client respondents, we selected 33 firms and legal organizations by practice area and location in order to obtain specialty and geographic diversity. Each firm then was asked to send the survey forms to the clients in their last 50 closed cases. Twenty-two firms participated.<sup>7</sup> In addition, we sent surveys to:

- the 330 members of the Oregon Court Reporters Association (OCRA) and to all Oregon certified shorthand reporters who are not members of OCRA;
- all 280 members of the Oregon Paralegal Association;
- all members of the Oregon Association of Legal Secretaries; and
- all employees of the OSB and the PLF.

In addition to fielding these surveys, we sent letters of inquiry to all indigent defense contractors in Multnomah County and other statewide contractors identified by the Office of the State Court Administrator as having both male and female lawyers. Those letters asked the directors whether gender mattered in the assignment of cases. Finally, we developed questions to be included in the Task Force's general survey of lawyers and in surveys of inmates<sup>8</sup> and litigants developed by the Criminal Law and Judicial

<sup>5</sup> This list reflects a narrowing of issues for practical reasons. See the Appendix for a complete list of all questions discussed.

<sup>6</sup> To develop the surveys, we reviewed other surveys from similar groups in other states, then formulated a series of questions related to our charge and tested the survey on selected individuals who provided feedback. Patricia Gwartney, Ph.D., Director of the Oregon Survey Research Laboratory at the University of Oregon, then reviewed the survey, and we incorporated her suggestions. Although some questions were changed to make them relevant to different groups, by standardizing the surveys we ensured that the findings could be compared easily. Copies of the surveys are included in the Appendix.

<sup>7</sup> A copy of the letter sent to firms is in the Appendix. It should be noted that, with respect to the client group, we encountered "identification fear" despite assurances of anonymity; also, some firms simply did not have available resources, time, or money to honor the request.

<sup>8</sup> We recognize that inmates also are clients. However, to make references simple, we chose to refer to this group of the client population as "inmates" to distinguish them from other groups of clients surveyed.

Administration work groups.<sup>9</sup>

The work group conducted five focus group meetings involving court reporters, legal secretaries, paralegals, members of the Oregon Legal Management Association (OLMA), and legal investigators for indigent defense contractors. We designed the focus groups to create an informal dialogue about issues of gender fairness and to obtain exclusively qualitative information.<sup>10</sup>

The work group obtained additional data from the Oregon State Bar regarding the gender of lawyers: (1) against whom ethics complaints are filed; (2) against whom Client Security Fund<sup>11</sup> claims are filed; and (3) who are involved in Bar-sponsored fee arbitrations.<sup>12</sup> We also collected information from OSB's Lawyer Referral Service<sup>13</sup> concerning gender-based requests for lawyers. In addition, we reviewed the cases in which the Oregon Supreme Court has disciplined lawyers for sexual exploitation of clients. We also obtained gender-specific information on salaries of lawyers statewide from the Oregon State Bar. Further, because information from the Lawyer Referral Service suggested that clients sometimes hire a female lawyer because they believe that she will charge less, we examined the "Oregon State Bar 1994 Economic Survey" — the most recent information available about the billing rates of Oregon lawyers, analyzed by gender. We also reviewed the transcript of the Oregon State Bar's Annual Meeting at which the members adopted a resolution for a disciplinary rule prohibiting sex with clients, a law review article on lawyers' sexual exploitation of clients, and two articles in the June 1997 Oregon State Bar *Bulletin* concerning lawyers' treatment of legal secretaries. Finally, we also reviewed both oral and

written testimony from the statewide public hearings sponsored by the Task Force.

As noted, the work group fielded six surveys. Two of the surveys are discussed in the chapter on The Employment of Court, Oregon State Bar, and Professional Liability Fund Personnel. The other surveys were these:<sup>14</sup>

#### (1) Clients

Of the 1,100 client surveys distributed, approximately 240 (22%) were returned, roughly half from men and half from women. Most respondents had received legal representation on more than two occasions, with nearly half using a lawyer on at least four matters. The ages of respondents were similar among men and women, the majority being between their mid-30s and early-60s. In this as in the other groups surveyed, the majority of respondents were white, English-speaking, heterosexual, married homeowners who had children and had reached educational levels ranging from some college to post-graduate work.<sup>15</sup> The respondents were represented on a variety of legal matters, including personal injury, business litigation, business transactions, civil rights (including employment discrimination), domestic relations, estate planning/probate, administrative, and criminal law.

#### (2) Court Reporters

Of the 212 surveys distributed to court reporters, 56 (26%) were returned. Of those, 16 were from men. The men tended to be older than the women — most men

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<sup>9</sup> Copies of these surveys are in the Appendix.

<sup>10</sup> Focus groups for court reporters, legal secretaries, and paralegals were conducted at the statewide conferences for each profession. The OLMA session took place in Portland at a monthly meeting of the organization. We conducted the criminal defense investigators' session through an informal invitation and lunch-meeting process.

<sup>11</sup> This Fund protects clients from misappropriation of funds by lawyers and is supported by mandatory contributions by lawyers in active practice. Claims are reviewed by a Board consisting of lawyers and non-lawyers.

<sup>12</sup> The OSB provides a program in which a client and lawyer can resolve a dispute over the lawyer's fee by arbitration. Because only lawyers in private practice are subject to fee disputes, we also asked for an analysis by gender of Oregon lawyers' practice areas.

<sup>13</sup> This is a service designed to match clients needing lawyers with lawyers who have agreed to participate and charge a low initial consultation fee. The service does not make referrals based on gender. We asked the Lawyer Referral Service to record requests for lawyers by gender for one month, from August 15 through September 16, 1996, and to summarize the reasons given by people seeking referrals for specifically requesting a male or female lawyer, when a reason was given.

<sup>14</sup> For purposes of survey analysis, we generally distinguished between "yes" and "no" responses by grouping the answers. For those questions that had answer options such as "always," "sometimes," "rarely" and "never," the answer "rarely" was grouped with "never" in the "no" grouping. However, if the question or group of questions seemed unusually important, then the "rarely" answer was noted. Generally, a response was noted only if the difference between men and women in frequency of response to the "yes" and "no" answer categories was 10% to 15% or more, unless significant trends were noted.

<sup>15</sup> Three men self-identified as African-American, one as Asian-American, two as Hispanic, and four as Native American; two women self-identified as Asian-American, two as Hispanic, five as Native American, and one as Asian/Pacific Islander. Twenty-six men and 29 women reported having physical disabilities.

were over 50,<sup>16</sup> while more women were in their 40s. Twenty-four respondents were OJD court reporters, and 20 owned their own firms.

### (3) Legal Secretaries

Of the 338 surveys distributed to legal secretaries, 128 (38%) were returned – all but two from women.<sup>17</sup> Most respondents were between the ages of 32 and 50.<sup>18</sup> Most respondents had worked in their current positions for between three and eight years, with slightly fewer than half holding supervisory positions.

### (4) Paralegals

Of the 280 surveys distributed to paralegals, 104 (37%) were returned. Ninety percent were from women. Most respondents were between the ages of 33 and 50. Most respondents were employed by law firms and had been at their current jobs for three to eight years. About half the respondents had supervisory responsibilities.

## D. FINDINGS

### 1. Clients

#### a. Overview

In most cases, clients did not select their lawyers based on gender. In the few cases in which gender-based selection did occur, the client more often wanted to hire a man than a woman. When clients expressed a preference, they based it on socially ingrained views regarding male aggressiveness and female empathy. Additionally, although most clients reported that the lawyer-client relationship was not affected by the gender of either, of those who noted a difference in how they were treated by lawyers, twice as many female as male clients reported a difference. In marked contrast, a majority of female lawyers (61.3%) reported that they were treated differently by clients because of their gender, while only a small portion of male lawyers (19.2%) reported a difference. Further, clients rarely experienced sexual harassment by their lawyers, although such harassment does occur, as documented in the survey responses, in lawyer discipline cases, and in correspondence to the Task Force. Finally, the majority of clients were satisfied with the quality of

their representation and did not report that their satisfaction level was influenced by the gender of their lawyers. Despite this fact, in 1996 Bar Disciplinary Counsel received a significantly higher proportion of ethics complaints against male lawyers, even when factoring in the higher percentage of men in the bar.

#### b. Lawyer Selection

Every tool that we used to study whether clients choose their lawyers based on the lawyer's gender yielded the same result: For the vast majority of clients, the gender of the lawyer is not a factor. When gender is a factor, it tends to be based on perceptions that men are more aggressive and that women are better communicators and are more understanding or empathetic.

For example, the Lawyer Referral Service data collection from August 15 through September 16, 1996, reflected that, of the 3,325 requests handled, only 45 clients requested a lawyer of a specified sex. Forty-one people requested a woman, and four requested a man. Most requests for female lawyers occurred at the outset of the call, while requests for male lawyers were made after referral to a woman. Callers were not asked why they wanted a man or a woman, but explanatory comments were noted when they were given. These included that women are "nicer," "more sympathetic," "easier to work with," "will look good to the jury or judge," "understand what it's like to be the underdog," and "probably charge less."<sup>19</sup> Two questions on the client survey inquired about the role of gender in selection of a lawyer. Approximately 85% of the respondents stated they had not sought a lawyer of a specific gender in the case most recently concluded and, for nearly 90%, gender had never been a factor in selecting a lawyer.

In surveys conducted by other work groups, the results were similar. For example, in the inmate survey, we asked: "In the case for which you are now serving a sentence, did you want a lawyer of a specific sex?" More than 80% (82% of the men and 69% of the women) said "no." There was a notable exception for women of

<sup>16</sup> Two men and two women self-identified as Hispanic, and the rest self-identified as white non-Hispanic. One respondent reported having a mental disability, and eight (14.3%) reported having physical disabilities, of whom five (8.9%) reported having visible disabilities.

<sup>17</sup> There are five male members of the Oregon Legal Secretaries Association.

<sup>18</sup> Twenty-three (18%) of the women said that they have physical disabilities.

<sup>19</sup> We sought to determine whether the perception that female lawyers tended to charge less than their male counterparts had a basis in fact. The most recent information available on lawyer billing rates in Oregon is in the Oregon State Bar's 1994 Economic Survey. The survey indicated that, in 1993, on average, female lawyers billed at a rate approximately 30% less than the rates charged by their male counterparts. See the chapter on Opportunities in the Legal Profession for a discussion of gender fairness implications of that finding.

color<sup>20</sup> — almost 60% wanted a lawyer of a particular gender.<sup>21</sup> At the focus group conducted with male inmates of color, only two participants said that they had a preference regarding the gender of their lawyer; both wanted a female lawyer. In the litigant survey, participants were asked, “Does the sex of your lawyer make any difference to you?” and “Have you ever requested or tried to hire a lawyer of a specific sex?”<sup>22</sup> Again, about 85% of those surveyed said that the gender of the lawyer made no difference to them. Nearly 70% of the smaller group who were asked the follow-up question said that they had not requested, or tried to hire, a lawyer of a specific sex.

Generally, men and women responded similarly to questions about whether gender influenced their selection of a lawyer. Some differences do appear, however, among those who prefer a lawyer of a particular gender. In all the surveys, the number of people seeking legal representation who engaged in gender-based lawyer selection was very small, making reliable analysis difficult. Nevertheless, differing patterns across the surveys are noteworthy. In the client survey, although both male and female clients preferred male lawyers when they had a gender preference, women were much more likely to want a female lawyer than were men. Of the ten male clients who had hired (or tried to obtain) a lawyer of a specific gender, eight wanted a male lawyer and two wanted a female lawyer. Of the 15 female clients who had a gender preference, nine wanted a male lawyer and six wanted a female lawyer. In other words, 75% of the clients who preferred a female lawyer were women.<sup>23</sup> The pattern in the litigant survey was slightly different. Male litigants preferred male lawyers, and female litigants preferred female lawyers, both in absolute and in relative terms. Male inmates expressed an extremely slight preference for male lawyers (51.9%), while 77.8% of the female inmates who had a preference wanted a female lawyer.

We gleaned reasons why clients prefer a lawyer of one gender from the responses to the multiple-choice

survey questions and from the written comments.<sup>24</sup> In all the surveys, the most common reasons checked for seeking a lawyer of a particular gender were that the lawyer would fight harder for the client (or would spend more time on the case), and that the client had had a positive experience with a lawyer of that gender, or a bad experience with a lawyer of the other gender, in the past.

A large number of both male and female inmates who had a gender preference believed that they would have a better chance with a lawyer of a particular gender because of the nature of the charges.<sup>25</sup> Seventy percent of the male inmates and more than 60% of the female inmates who preferred a lawyer of a particular gender held that view. That also is consistent with anecdotal evidence provided by a female criminal defense lawyer, who reported that male clients charged with sex offenses had told her that they hired a woman because they believed that it would enhance their credibility before the judge or jury. The theme of lower cost appeared as a reason for gender-based selection of a lawyer in the inmate survey. Seven men felt that cost was a factor in choosing a lawyer of a particular gender.

The written comments on the client and inmate surveys followed similar themes. Female lawyers were perceived to have experienced discrimination in the legal profession. To some respondents, this made female lawyers more understanding of the client's problems and willing to work harder. Others expressed concern that the client's interests would suffer because of discrimination against a female lawyer. For example, one client wrote: “I felt a male lawyer would get a better result. I felt I was discriminated against because I was a female.” Another said: “[I] wanted to have less anxiety about whether my case would be fairly heard based on gender of attorney.” We also heard this concern in testimony at public hearings. One couple expressed their belief that their female lawyer had been excellent but, because of the gender-based adverse treatment that

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<sup>20</sup> The inmate survey was the only one conducted that had a substantial number of non-white respondents. For an examination of racial and ethnic issues in the criminal justice system, see the REPORT OF THE OREGON SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM (Oregon, 1994) and A COMMITMENT TO FAIRNESS: PROGRESS REPORT OF THE OREGON SUPREME COURT IMPLEMENTATION COMMITTEE (Oregon, 1996).

<sup>21</sup> Of that 60%, 42% (8 female inmates of color) said that they preferred to be represented by a female lawyer, and 16% (3 female inmates of color) preferred to be represented by a male lawyer. Although the remaining 42% said that they preferred a lawyer of a specific sex, they did not tell us whether they preferred to be represented by a female lawyer or a male lawyer.

<sup>22</sup> The survey, which was administered orally to people at courthouses in five Oregon counties, was structured so that, if a respondent answered “no” to the question whether the sex of the lawyer made a difference, he or she was not asked the second question about gender-based lawyer selection. Nevertheless, some surveyors did not follow this instruction, as the number of responses to the follow-up question is greater than the number of people answering “yes” to the lead-in question.

<sup>23</sup> Although the number of clients of color responding to the survey was quite small, it is striking to note that only white respondents said that they preferred a male lawyer or that gender had ever played a role in their selection of a lawyer.

<sup>24</sup> Analysis was somewhat difficult, because the data were not broken down by gender of lawyer requested.

<sup>25</sup> Four of the female litigants gave “because of the nature of the charges against me” as a reason for preferring a lawyer of a particular gender; no male litigants did.

she had received from the judge, they would not hire a woman to represent them again in their county.<sup>26</sup>

Empathy, listening skills, “communication style,” and comfort were often mentioned as reasons why clients and inmates preferred to be represented by female lawyers. In their comments, clients more often mentioned the type of case when it was a domestic relations matter. It appeared that these respondents were most often women expressing a preference for hiring a female lawyer. Inmates tended to comment that female lawyers fought harder on their cases, while litigant and client survey respondents seemed more often to list this as a reason for wanting to hire a male lawyer. Two respondents to the client survey who were involved in insurance defense stated that they prefer to use a female lawyer when the plaintiff is a woman. Another client said that it is an advantage to be represented by a female lawyer in sex discrimination cases. One (apparently corporate) client reported: “My company gave ‘bonus points’ on our evaluations for each female or minority outside counsel we retained.”<sup>27</sup>

When law firms providing indigent defense services (court-appointed criminal defense counsel) were asked about the role of gender in case assignment, 25 of the 36 firms said that gender never played a role. All the firms with more than one lawyer handling cases in a particular county reported using a rotation system to assign lawyers to cases. Three firms said that they took gender into account in assigning counsel when a client has engaged in aggressive or sexual conduct toward a lawyer. Four firms said that they would honor a gender-specific request by a client or juvenile court counselor.<sup>28</sup> Five firms reported that they sometimes took gender into account in assigning lawyers to cases because of the sensitive subject matter or facts underlying the case, usually assigning a female lawyer to work with a female client. Consideration was given to gender in lawyer assignment more often in juvenile than in adult cases, and more often for female than for male clients. Six firms handling juvenile cases make gender-based exceptions to a strict rotation of lawyer assignment in juvenile cases, but five of those do so only for female clients. Five firms consider gender in the assignment of a lawyer in adult cases, but three of those do so only for female clients.<sup>29</sup>

### **c. Satisfaction with Professional Relationship**

We sought to investigate whether lawyers treat male and female clients differently, for example, by giving

male clients a greater role in decision-making. We also sought to determine whether male lawyers treat their clients differently than female lawyers do, and whether clients treat their lawyers differently based on the gender of the lawyer. Both questions proved difficult to study using the methods available. The surveys that we conducted, for instance, provided no means to compare the responses of male and female clients of the same lawyer. In addition, although we tried to distinguish between professional and personal interactions between lawyers and clients, the phrasing of survey questions did not always permit us to discern this distinction.

We asked client and inmate survey respondents whether they had used both male and female lawyers in the past and, if so, whether they had experienced a difference in the way male and female lawyers treated them. Respondents who reported a difference in treatment were asked to describe it. We asked litigants and inmates whether they had observed men and women being treated differently in a law office or other legal environment. If so, we asked whether men or women were treated better, by whom, and in what way the treatment was different.<sup>30</sup>

In the client survey, female clients were twice as likely as male clients to report a difference in treatment (26% of women versus 13% of men). Among inmates, both men and women reported being treated differently by male and female lawyers about 45% of the time. When the answers are analyzed by race together with gender, however, strikingly different experiences emerge, especially among women. Only one-third of white female inmates believed that male and female lawyers had treated them differently (the lowest percentage of any inmate group), but almost 65% of female inmates of color believed that they had received different treatment depending on the gender of their lawyers. This was the only group in which a majority of respondents reported a difference in treatment. Unfortunately, the data were not analyzed to determine which gender of lawyer was perceived as treating which gender of client better. Seven of the thirteen male inmates of color participating in a special focus group at Eastern Oregon Correctional Institution (EOCI) also reported differences in the way that they were treated by male and female lawyers. The comments suggested that

<sup>26</sup> Testimony at Salem public hearing, Dec. 5, 1996.

<sup>27</sup> Comment on client survey.

<sup>28</sup> These requests were characterized by two firms as “rare” and by a third as not having occurred yet.

<sup>29</sup> See the Opportunities in the Legal Profession chapter for a discussion of lawyers’ perceptions of gender bias in case assignments.

<sup>30</sup> See Appendix for specific survey questions.



some were treated better by women and some by men.<sup>31</sup>

A majority of litigants and inmates observed no difference in the treatment of men and women in a law office environment. Although inmates were more likely than litigants to observe a difference (27% of inmates versus 16% of litigants), the gender of the respondent did not affect the answer in either group. Among both male and female inmates, people of color were more likely than whites to perceive different treatment based on gender. Both men and women, among both inmates and litigants, perceived that the *opposite* gender receives better treatment when any difference is perceived. Among the male inmates who observed men and women being treated differently in a law office or other legal environment, about 85% thought that women were treated better than men. Of the female inmates who had observed different treatment, about 70% thought that men were treated better. Among male litigants who had observed differences in treatment, 73% thought that women were treated better. Only ten female litigants reported seeing differences in treatment. Of these, three thought that women were treated better, and five thought that men were.<sup>32</sup>

Litigants and inmates alike perceived that men were more likely than women to treat people differently based on gender in a law office environment. Lawyers were identified most often as the person who engaged in differential treatment.

Many written comments on the inmate survey reflected a belief that female lawyers worked harder and were more caring and respectful than male lawyers. For example, one respondent noted that female lawyers were more “compassionate” and “conscientious.” Another wrote that female lawyers “are willing to go the extra mile.”

When lawyers were asked whether clients treated them differently based on gender, 20% of men and 65% of women said “yes.” We tried to examine the role of gender in the client’s satisfaction with the lawyer-client relationship in several additional ways. First, the client survey asked specifically what was the client’s level of satisfaction with the lawyer and whether the lawyer’s gender influenced that level of satisfaction. We also asked clients whether they believed that their own gender had affected the outcome of the case. Inmates

were asked whether they would want the lawyer on their most recent case to represent them again and how much total time the lawyer spent with the client talking about the case, explaining options, and trying the case or reviewing the plea petition.

More than 80% of both male and female clients reported being “very satisfied” or “satisfied” with their lawyers. The vast majority of both groups believed that their lawyer’s gender did not influence their level of satisfaction, although women were slightly more likely to believe that it did. Similarly large percentages of men and women did not believe that their own gender had affected the outcome of their cases, but again women were slightly more likely to perceive that it had.<sup>33</sup>

Not surprisingly, considering that the survey respondents had been convicted and were incarcerated, the majority of both male and female inmates would not want the same lawyer representing them again. Nevertheless, it is noteworthy that substantially more male than female respondents felt this way. About 75% of the men would not want the same lawyer again, compared to about 60% of the women.

Female inmates reported that their lawyers spent more time with them than male inmates reported concerning their lawyers, although more than 65% of male inmates and 56% of female inmates said that their lawyers had spent three hours or less with them. Further, only 10% of male inmates said that their lawyers had spent 10 or more hours with them, whereas almost 25% of female inmates said that their lawyers had spent that much time. As noted above, we conducted a focus group of 13 male inmates of color at EOCL. Six of the participants said that their lawyers had spent 30 minutes or less with them before going into court.

We also examined OSB records regarding lawyer misconduct, fee arbitrations, and Client Security Fund claims as other indicators of client satisfaction.<sup>34</sup> The Bar reported that, in 1996, there were about 9,300 lawyers in active practice, of whom 26% were women. Of the more than 1,700 complaints filed against Oregon lawyers, about 15% were against women. Further, in 1996, 58 lawyers were disciplined as a result of complaints filed in 1996 or earlier. Of those, seven (12%) were women.

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<sup>31</sup> Inmates of color commented, “Females just seem to treat my case with more genuine care,” “more concern,” and “Female attorneys are more conscientious.” Others in the group stated, “Female attorneys I’ve had are more weak-willed and reluctant to stand up and fight for the individual \* \* \*. Male attorneys \* \* \* tried to go by the rule that I was innocent until proven guilty, more than the female attorneys did.”

<sup>32</sup> The form of the question, which asked for observations “in a law office or other legal work environment,” may have caused some confusion. When this question was discussed by the male inmates of color in their focus group, one inmate discussed different treatment of male and female officers within the police force.

<sup>33</sup> For a discussion of gender and case outcome in civil cases, see the chapter on Judicial Administration.

<sup>34</sup> It is important to note that bar complaints may be made by another lawyer, a judge, or the opposing party, as well as by the lawyer’s own client, and that the data do not reveal whether one lawyer was the subject of multiple complaints.

The Oregon State Bar Fee Arbitration Program involves only lawyers in private practice. In 1996, about 6,000 of Oregon's active bar members were in private practice and, of those, approximately 20% were women. In 1995 and 1996, there were about 200 fee arbitrations; slightly more than 10% involved female lawyers. In 1996, clients filed almost 360 claims with the Client Security Fund alleging misappropriation of their money by lawyers. Only about 6% involved female lawyers.

Thus, it appears that proportionately fewer ethics complaints are made against women and that even fewer result in discipline, that clients have fewer fee disputes with women, and that women are less likely than men to have claims involving the Client Security Fund.

#### **d. Personal Treatment, including Sexual Harassment**

We studied the personal interactions between lawyers and clients by asking questions in the client survey about whether the client's lawyer or anyone in the lawyer's office had called the client by a first name or addressed the client by terms of endearment that the client felt were not appropriate, had touched the client in a way that made the client uncomfortable, or had requested sexual favors of the client. We asked respondents to the inmate survey about the use of terms of endearment, touching, and requests for sexual favors. We asked litigants whether they had been called by a term of endearment, called by a first name when someone of the opposite sex was called by a last name, addressed in a rude manner when persons of the opposite sex were addressed politely, subjected to comments about dress or appearance based on sex, been subjected to comments of a sexual nature, or touched in a way that the respondent felt was inappropriate.

The vast majority of both male and female clients who responded to the client survey reported no experience of being called by their first names when others were not, but a higher percentage of women (13%) than men (4%) had this experience. Male lawyers and female secretaries were the most commonly named offenders. Lawyers or members of legal staffs very rarely used terms of endearment with clients — fewer than 3% of male clients and 6% of female clients reported this experience.<sup>35</sup> Male lawyers are far more likely to call clients of color by their first names than they are to do this with white clients; female lawyers are far less likely

than male lawyers to call any client by his or her first name.

One male and two female clients reported unwanted touching, each by a lawyer of the opposite sex. Likewise, two female clients reported being asked for sexual favors, both by a male lawyer. Both clients were white, heterosexual, and married. One client, a defendant in a criminal case, elaborated in her written comments: "Approximately six years ago I had a court-appointed lawyer who used his 'power' to get me to do things that I feel were inappropriate — but at the time I was scared of possibly going to jail or losing my son so I did what he wanted me to do." The other client reporting requests for sexual favors was involved in an estate-planning matter. From the survey, it is not possible to tell when the incident occurred.<sup>36</sup>

We received a letter from one woman, a lawyer, discussing particularly egregious behavior by a lawyer whom she was considering hiring. The male lawyer told the female lawyer to meet him at a downtown Portland bar. She wrote:

*"Mr. . . . proceeded to tell me about how he had engaged in sexual conduct with a prior client who later brought disciplinary charges against him. He discussed in detail how she engaged in oral sex but not intercourse. He also discussed his sexual relationship (and lack thereof) with his wife. He then began flirting with me and even putting his hands on my legs above my knee and caressing them. He attempted to kiss me. He told me it would be better if he wasn't my lawyer so that he wouldn't have the disciplinary problem he had with his prior client.*

*" . . . . .*

*"I never did file a formal report (although I did tell close friends) because [he] is a well-known and powerful attorney in town. A male attorney in my office referred to him as a 'classy guy.'"*<sup>37</sup>

The proportions of male and female inmates who reported being inappropriately called by a term of endearment were the reverse of those found in the client survey: 13% of male inmates, but only 7% of female

<sup>35</sup> Four of the seven women named a male lawyer as the one who inappropriately used terms of endearment. One female client marked "no" to the questions about first names and terms of endearment, but wrote in the comments that she was offended that her lawyer insisted on calling her "Mrs." when she had repeatedly requested that the title "Ms." be used.

<sup>36</sup> In the legal secretaries' focus group, one secretary from a firm that does domestic relations work said that it is her firm's policy that a male lawyer and a female client are not to be in an office alone together. Another woman from the firm must be present.

<sup>37</sup> Letter to Jessica E. Mindlin, Coordinator, Task Force on Gender Fairness, Oct 13, 1997. The letter also described how "vulnerable" the client was at the time of the incident.

inmates, reported this experience.<sup>38</sup> The rates at which men and women in various positions within a law office were reported to have used terms of endearment are roughly proportional to the rates at which men and women occupy those positions.

There were similar responses from inmates to questions about inappropriate touching. This occurred rarely, but was reported by more than 4% of the men versus only 2.5% of the women. Male inmates reported a variety of law office personnel as offenders (including both male and female lawyers), while the female inmates named male lawyers and a male investigator. Finally, one female and ten male inmates (5%) reported requests for sexual favors. The female inmate reported that the request was made by her male lawyer. The male inmates named people, both male and female, holding various jobs, including eight male lawyers and three female lawyers.<sup>39</sup> None of the male inmates of color in the focus group reported inappropriate touching or requests for sexual favors.

Most litigants denied being called by a term of endearment by anyone in a law office. Female litigants (17.5%) reported this experience slightly more often than did male litigants (12.8%). All the female litigants identified men as the offenders. Two-thirds of the male litigants reported women as the offenders. Relatively few male or female litigants reported being called by their first names when someone of the opposite sex was called by his or her last name, although slightly more men (14.3%) than women (9.8%) said that this had happened. Likewise, the number of litigants who reported being addressed in a rude manner when people of the opposite sex were addressed politely was small, with men (22.8%) who had this experience slightly outnumbering women (18%).

Of the few litigants who said that they had been subjected to comments about their dress or appearance, slightly more were men than women.<sup>40</sup> All the female litigants who noted such comments said that men had made them; 60% of the male litigants reported similarly. On the other hand, only one male litigant reported being subjected to comments of a sexual nature or being touched in a way that was inappropriate, while six

women (almost 10%) said that they had been – always by a man.

#### **e. Sex Between Lawyers and Clients**

Lawyers' sexual exploitation of their clients has been a difficult subject for the Bar. When Professor Caroline Forell published her article, "*Lawyers, Clients and Sex: Breaking the Silence on the Ethical and Liability Issues*," 22 Golden Gate U L Rev 611 (1992), no American jurisdiction had an ethical rule expressly forbidding lawyers from having a sexual relationship with a client. Lawyers at the annual meeting of the Oregon State Bar in 1991 rejected such a rule by a vote of 107 to 139.<sup>41</sup> Most of the argument in opposition was that existing ethical rules — prohibiting a lawyer from representing a client when his or her personal interests reasonably could impair the lawyer's judgment — were sufficient. Some opponents also believed that the rule would lead to invasion of lawyers' privacy. Others said that there was not a big enough problem to warrant a new rule.<sup>42</sup>

In 1992, Oregon became the first state in which lawyers voluntarily adopted a disciplinary rule, DR 5-110, prohibiting sex with a current client with whom the lawyer did not have a pre-existing sexual relationship.<sup>43</sup> Although there again were arguments in opposition, some people who had voted against the new disciplinary rule in the previous year explained that they had changed their minds. One lawyer gave testimony, through a letter, describing his experience on his local professional responsibility committee in Douglas County in the year between the 1991 and 1992 annual meetings of the Bar. Two of the three cases handled by that committee had involved lawyers having sexual relationships with clients. In neither case was there evidence that the lawyer's professional judgment had been compromised in violation of the *existing* disciplinary rules. The lawyer concluded that a new rule was necessary. Other lawyers recognized that the small number of complaints from clients that their lawyers had had inappropriate sexual relationships with them was more likely a reflection of the clients' feelings of vulnerability and embarrassment than proof of the absence of a problem.

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<sup>38</sup> Male inmates generally reported many more negative experiences and made more negative comments than did female inmates.

<sup>39</sup> For a caution regarding the reliability of these statistics, see the Introduction section to the chapter on Criminal Law and Juvenile Justice.

<sup>40</sup> This was in contrast to the other surveys, in which more women than men said they had been subjected to such comments.

<sup>41</sup> See Resolution No. 7, Official Transcript of 1991 Oregon State Bar Annual Meeting. The Disciplinary Rules governing the ethical conduct of lawyers are proposed by the Bar's Board of Governors and must be approved by a vote of the members of the Bar (now the House of Delegates); ultimately, however, all rule changes must be approved by the Oregon Supreme Court.

<sup>42</sup> See Official Transcript of 1991 Oregon State Bar Annual Meeting.

<sup>43</sup> See Official Transcript of 1992 Oregon State Bar Annual Meeting, at 191-92. The transcript of the debate is in the Task Force archives.

At the conclusion of the debate at the 1992 meeting, the presenter of the proposed rule summed up for the proponents. He said, in part:

*"The choice required of the lawyer who is sexually attracted to a client may be inconvenient, but it's not an onerous choice. He simply or she simply decides, do you take the fee and forego the sex, or do you become sexually involved and allow your partner or someone else to be the lawyer in the case?"*

*"The detriment to the members of the bar is minimal, but the benefit to the multitude of vulnerable, easily exploited clients both today and in the future is enormous."<sup>44</sup>*

In the year between the two annual meetings, the Oregon Supreme Court had suspended a lawyer from the practice of law for engaging in a sexual relationship with a client who was a minor. *In re Wolf*, 312 Or 655, 826 P2d 628 (1992). The Oregon Supreme Court concluded that the lawyer's criminal acts (contributing to the sexual delinquency of a minor, sexual abuse in the third degree, and furnishing alcohol to a minor) reflected adversely on his fitness to practice law. The court also found that the lawyer's professional judgment on his client's behalf might reasonably have been affected by his personal interest in her. The court suspended the lawyer for 18 months.

In 1997, another lawyer was disbarred for sexually exploiting several clients whom he had represented in probation violation cases, child dependency proceedings, and proceedings to terminate parental rights. *In re Hassenstab*, 325 Or 166, 934 P2d 166 (1997). The lawyer also had engaged in a sexual relationship with a deputy district attorney during a time when he represented clients in criminal cases being prosecuted by her office. The evidence presented to a trial panel of the Disciplinary Board showed that the lawyer had engaged in some form of sexual contact with 15 of his present or former clients over a four-year period.<sup>45</sup> The Court concluded that the lawyer had a personal interest that might have affected his professional judgment. The court also found that the lawyer had violated the rule prohibiting commission of a criminal act that adversely reflects on the lawyer's honesty, trustworthiness, or fitness to practice law. Finally, the court found that the lawyer had violated a disciplinary rule involving conflicts of interest when he engaged in a sexual relationship

with a deputy district attorney who was prosecuting the lawyer's clients.

In the only case that we found involving discipline for violating the rule prohibiting a sexual relationship with a client, the lawyer submitted a "Form B resignation" in 1997 after a trial panel of the Disciplinary Board found that the lawyer had violated that rule as well as the older conflict-of-interest rule. *In re Boothe*, Oregon Supreme Court Disciplinary Case No. 95-63.<sup>46</sup> The client, who was seeking a divorce, told the lawyer that her husband had subjected her to mental and sexual abuse and that she was in desperate emotional and financial circumstances. The lawyer made comments of an explicitly sexual nature, twice touched her under her jacket, rubbing his hands up and down her back, attempted to kiss her on the lips, and attempted to engage her in a full-body embrace. However, as noted above, not all clients report lawyers who have initiated, or attempted to initiate, a sexual relationship with a client.

## 2. Lawyers and Professional Staff

### a. Overview

Most legal secretaries and paralegals perceive the existence of some gender bias in their workplaces. All respondents to the paralegals' survey, and most respondents to the legal secretaries' survey, agree that there is less bias now than in the past. A significant minority of female legal secretaries (30%), however, believe that gender bias has either stayed the same or become worse. The majority of respondents to both surveys perceive bias directed mostly against women, with a larger proportion of women than men holding this view. Some paralegal respondents — a larger proportion of men than women — noted a bias against men as well. The perception of bias against women reflected in both surveys relates to a feeling among female respondents that their views are not taken as seriously as those of men and that men have greater opportunities for advancement. Among paralegals, the perception of bias against men relates to some male respondents' feeling that women were given a hiring preference in support positions. Male legal secretaries, on the other hand, feel that the profession offers equal opportunity. Legal secretaries and paralegals rarely experience sexual harassment from lawyers in their

<sup>44</sup> See Official Transcript of 1992 Oregon State Bar Annual Meeting, at 189.

<sup>45</sup> The disciplinary rule governing sex with clients had not been adopted at the time of most of the lawyer's conduct. The court's analysis focused on whether the lawyer's conduct violated the disciplinary rule prohibiting legal representation if the lawyer's professional judgment might be affected by the lawyer's personal interests. For the most part, the lawyer did not dispute the occurrence of the sexual contacts; he contended that he did not violate any disciplinary rules by "grooming" clients for sexual relationships after their cases were concluded.

<sup>46</sup> Disciplinary procedures permit a lawyer who is accused of misconduct to resign from the practice of law while disciplinary proceedings are pending. The lawyer does not further contest the pending complaints and is prohibited from applying for reinstatement. This process is called a "Form B resignation."

workplaces; however, between 20% and 25% of female respondents to both surveys indicated that they had been told offensive jokes or had heard offensive comments. Finally, although most respondents say that their employers have a policy against sexual harassment, more men than women believe that it is enforced.

**b. Paralegals**

**i. Opportunities**

Most paralegals (approximately 70% of both men and women) responding to the survey agreed that gender was not a serious factor affecting job advancement. However, roughly 20% more women than men felt that their gender often limited advancement opportunities. Related to this perception, a larger proportion of women than men stated that their opinions are not taken as seriously as those of men (35% of women vs. 11% of men).<sup>47</sup> During a focus group meeting, a female paralegal recounted a situation that exemplified this feeling. She described having called a lawyer from another firm to reschedule a hearing. The lawyer grew angry and ultimately hung up, stating: “I don’t talk to paralegals.” After consultation with lawyers from her firm, she sent a letter to the lawyer, asking him to try to work with her in a calmer fashion. The lawyer wrote back: “My daddy always taught me that you send a man to do a man’s job.”

Approximately 10% more female than male survey respondents (approximately 30% of female paralegals and 20% of male paralegals) stated that men are given preference for promotion due to their gender. Participants in the focus group shared this view. For example, a female paralegal commented that “there’s still an . . . old boys network,” and another noted that a more recently hired man was “afforded many opportunities for traveling that a female [would not be given].”<sup>48</sup>

Regarding the delegation of duties, most respondents agree that gender does not play a role (approximately 70% of both men and women). By contrast, although most survey respondents agreed, with respect to support positions, that males were not given a preference, almost half the men and women felt that women received preference in appointments to these positions.<sup>49</sup>

Similarly, roughly one-third of respondents of both sexes believed that men and women in similar positions were treated differently regarding family-care issues.<sup>50</sup>

Finally, when asked whether they had a preference regarding working for a man or woman, most paralegals replied “no.” However, one man reported that he would prefer working for a woman, and 17% of the women reported that they would prefer working for a man.

**ii. Personal Treatment**

Most respondents had not witnessed female or male lawyers or staff persons being addressed by their first names or by terms of endearment when those of the opposite sex were not (approximately 85% of both men and women). Respondents of both sexes reported witnessing more female than male lawyers and staff persons being addressed by their first names or by terms of endearment. Of those reporting that they had personally experienced being so addressed, about 25% of the women objected to being addressed by their first names, while nearly all men and women objected to terms of endearment. Finally, respondents of both sexes noted many more comments about the physical appearance of women than of men. Nearly 50% of the respondents reported comments about women; only 7% reported comments about men.

Regarding sexual harassment, no male respondents had experienced or witnessed requests for sexual favors of any nature, nor had they been touched offensively. On the other hand, although the vast majority of female respondents likewise had not experienced such requests or offensive touching, a small percentage personally had experienced some form of unwanted advance, and between 5% and 12% had witnessed it happen to others. The results were roughly similar for offensive touching. The percentages increased slightly when respondents were asked about previous employment. Most respondents had not been the recipients of inappropriate jokes or comments. Of those who had, the highest percentage was among female respondents (approximately 23%) to whom a lawyer or co-worker had made a joke or comment. Regarding sexually explicit material, the vast majority of respondents (90%)

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<sup>47</sup> Significantly, the perceptions and experiences of gender bias were more pronounced among paralegals of color, as shown in the survey responses, and among paralegals who worked outside the Portland metropolitan area, as reflected by comments received from focus group participants.

<sup>48</sup> In addition, paralegals of color were more likely to say that there is more gender bias now than in the past, when compared with white paralegals.

<sup>49</sup> This perception may relate to gender bias, or it may derive from the fact, as described by the focus group participants, that most female paralegals are stereotyped as support staff because many of them began their professional careers as legal secretaries and worked their way up. By contrast, male paralegals generally enter law firms initially as paralegals.

<sup>50</sup> Although the survey questions themselves do not permit further analysis of what distinctions respondents believe are drawn, written comments on the survey and discussion in the focus group suggest that men are treated better when they have family-care problems.

had not been subjected to or witnessed such material.<sup>51</sup>

The majority of respondents said that their employers have policies against sexual harassment (approximately 80% of both men and women) and that the policies are enforced. However, although all the male respondents were aware of such policies, and all but one of the male respondents believed that they are enforced, only about three-quarters of the women knew of the policies, and only about two-thirds thought that they are enforced.

### c. Legal Secretaries

#### i. Opportunities.

The majority of female legal secretaries responding to the survey stated that bias against women from lawyers exists in their profession. One of the two males responding to the survey agreed, but said that the bias exists “only in a few areas.” Also, although all male and most female respondents perceived that gender bias has lessened over time, roughly 30% of the women stated that gender bias is the same or worse now than it was in the past.<sup>52</sup> Men generally perceived their profession as offering equal opportunity across all positions and duties. By contrast, roughly 35% of the women perceived that men are given preference in all positions and that women are asked to perform duties not asked of men. Notably, a female participant in the focus group “doubted that a male applicant for a secretarial job would be hired.” At the focus group meeting, one woman stated that she had heard that the “boss hires on looks.” Further, 43% of the female respondents believed that their opinions are given less weight than men’s; neither of the men agreed.

The view that women are given less respect than men underlies most of the concerns expressed by female legal secretaries. In the June, 1997, Oregon State Bar Bulletin, two articles — “*The Good, the Bad, and the Ugly*”<sup>53</sup> and “*Secretaries Speak Out*”<sup>54</sup> — discussed this perception. Those articles concluded that legal secretaries want, and deserve, more respect. Similarly, a female participant in the focus group offered a

recommendation to lawyers for improving the work environment: “Support Staff 101’ — Education in manners, how to treat people with respect.”<sup>55</sup>

Additionally, although most respondents did not report discrimination based on age, more than 20% of the women responding (proportionately more who were over 50 and under 35) believed that they had experienced such discrimination, while none of the men did. Similarly, more than 40% of the women noted a difference in how they were treated regarding family-care issues, but neither of the men did. Participants in the focus groups also expressed this perception. One woman noted that, during the interview process, she was “kind of asked” whether she planned to have children. Another noted that employers “don’t like it if you take time off for sick kids.” Two female respondents took action as a result of alleged discrimination.<sup>56</sup>

Finally, although no men indicated a preference for working for a man or a woman, 30% of the women noted their preference for working for a man. Several female participants in the focus group provided an explanation, noting that “some of the best and some of the worst” bosses with whom they had worked were women. Another woman had an even stronger response: “Last job I worked for three women — a nightmare.”

#### ii. Personal Treatment

Few respondents reported being addressed by their first names, or by terms of endearment, when members of the opposite sex are not. Women are far more likely to report such treatment. Twenty percent of the women responding reported hearing female staff members addressed by their first names when male staff members were not, while no men reported observing such conduct. Similarly, more than 40% of the women said that they personally had been addressed in terms of endearment, yet no men reported such treatment. Most respondents did not object to being called by their first names, or in terms of endearment, although more women objected than did men. Further, more women

<sup>51</sup> Paralegals of color reported experiencing sexual harassment more often than did white paralegals, and paralegals working outside the Portland metropolitan area also reported more such experiences than did paralegals in the Portland metropolitan area.

<sup>52</sup> White female secretaries are more likely to perceive gender bias than are female secretaries of color. However, female secretaries of color are more likely to take the position that there is more gender bias now than there used to be than are white female secretaries.

<sup>53</sup> Miriam A. Green, *The Good, the Bad and the Ugly*, OR ST B BULL., June 1997, at 15.

<sup>54</sup> Julie A. Hankin, *Secretaries Speak Out*, OR ST B BULL., June 1997, at 17.

<sup>55</sup> Age and gender affect how legal secretaries perceive gender bias. Older women often observed in these surveys that discrimination based on gender is more subtle than in years past. Legal secretaries who were over 50 years of age were more likely to indicate that gender bias is widespread but subtle, compared to women aged 36-50 and under 25. Legal secretaries who were aged 36-50 were more likely to view women’s opportunities for advancement as limited, compared to women aged 35 and under. Legal secretaries who were over age 36 were more likely to say that their opinions on work matters are given less weight.

<sup>56</sup> Significantly, the perceptions of bias noted here were concentrated among the older respondents. In other words, it appears that older workers perceive gender bias to be a problem more often than do younger workers.

objected to being addressed in terms of endearment than by their first names. More than 60% of respondents reported more comments about the appearance of women; 8% reported more such comments about men — a substantial disparity.

The vast majority of respondents had not experienced acts of unwanted touching or requests for sexual favors. However, of those who had, a larger proportion was women, and the conduct was attributed to a co-worker more often than to a supervisor or lawyer. Such acts happened more frequently at former jobs than at the respondents' current employment. By contrast, one of the two male respondents and 26% of the female respondents reported having heard an offensive joke or comment at their current job. Exposure to sexually explicit materials, again, occurs infrequently but, when it does occur, more women than men experience it, and it comes mostly from co-workers as opposed to supervisors. Finally, although most legal secretaries reported that their employers had a policy against sexual harassment, all the men, but only half the women, thought that it was enforced vigorously.<sup>57</sup>

In the lawyers' survey, we asked: "Has anyone come to you complaining of sexual harassment in *your* workplace?" (Emphasis in original.) If the answer was "yes," we asked the respondent to give the gender and position within the office of both the complainant and the alleged perpetrator. Seventeen percent of the survey respondents (14% of the men and 26% of the women) had received such complaints. Ninety-five percent of the complaints came from women; more than 80% of the alleged perpetrators were male. The vast majority of complainants were paralegals, secretaries, and other support staff. Conversely, almost 60% of the alleged perpetrators were lawyers, and another 12% were characterized as "management," "supervisor," "manager," "boss," or "superior."

### 3. Lawyers and Court Reporters

#### a. Overview

About half the respondents to the court reporters' survey perceived gender bias against women in their profession. A larger proportion of women than men stated that their opportunities for advancement are more limited than men's. Notably, when we rephrased the

question to ask whether opportunities for men were limited based on their gender, a larger proportion of men than women responded affirmatively. However, despite these general observations, more than 90% of all respondents indicated that, personally, they had *not* been discriminated against in their current places of employment. Also, most respondents felt that there is less bias now than in the past. Some respondents said that the recent increase in the number of women in the field has had a negative effect on pay rates. A small number of female court reporters stated that lawyers made unwanted requests for sexual favors or touched them offensively. Both male and female respondents indicated that they had heard offensive jokes and comments. Finally, fewer than half the respondents said that their workplaces had a policy prohibiting sexual harassment, and even fewer noted that it was enforced.

#### b. Opportunities

Fifty percent of the responding court reporters — 45% of the women and more than 60% of the men — checked a box indicating that "[t]here is no gender bias against women" in their workplaces at the present time. Almost 65% of all respondents perceived no gender bias against men. Four individuals, all male, reported that they had been discriminated against based on gender in their current places of employment but did not identify lawyers as the source of discrimination. A larger percentage (almost 20%) reported that they were discriminated against, based on gender, at a previous place of employment in the legal field. Almost 60% of all respondents thought that there is less gender bias now than in the past. However, half of the responding men thought that there is the same amount of, or more, gender bias now than in the past.<sup>58</sup>

Finally, several court reporters expressed their perception that lawyers want court reporters to lower their fees and receive less income because they are women.<sup>59</sup> This phenomenon is sometimes referred to as the "pinkings" of the profession.

#### c. Personal Treatment

The survey results indicate that some lawyers made requests to female court reporters for sexual favors in

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<sup>57</sup> These perceptions on enforcement were more pronounced among white female respondents over 50 years of age.

<sup>58</sup> Fifty-two whites and four Hispanics (two male and two female) responded to the court reporters' survey. We received no responses from any other court reporters of color. Hispanic court reporters were more likely than white court reporters to indicate that there is more gender bias now than in the past, but were less likely to believe that they had been subjected to gender-based harassment or denial of promotion.

<sup>59</sup> Some court reporters work for the courts. The question pertaining to court reporters' fees were relevant to those reporters who are not public employees.



exchange for employment opportunities or security,<sup>60</sup> made requests for unwelcome sexual activity, or caused unwelcome physical touching of a sexual nature. No male respondents reported experiencing such behavior. Respondents of both sexes said that they had heard unwelcome sexual jokes or comments or had been shown unwelcome objects, pictures, or calendars of a sexually explicit nature by a lawyer.

## E. CONCLUSIONS

Most of the time, gender is not a factor in the interactions between lawyers and their clients, professional staff, or court reporters. People in all areas of the legal profession believe that there is less gender bias now than there was in the past. Nevertheless, some gender-based distinctions, and some problems, remain.<sup>61</sup>

Clients' perceptions of the different treatment that they experience from male and female lawyers tend to follow gender-stereotyped lines: women are better listeners; men are more aggressive. Although some clients believe that female lawyers will fight harder and other clients believe that male lawyers will, clients with both views obviously believe that there is a difference based on gender. We cannot answer the question whether male and female lawyers *actually* approach clients, cases, and their work differently. It is troubling that clients sometimes believe that the bias of *others* against female lawyers might affect the client's case and thus might affect the client's selection of a lawyer.

Gender-based selection of a lawyer may sometimes be acceptable, and other times not. For example, few people would object when a female lawyer is assigned to represent a female youth who has been sexually abused and expresses a high level of anxiety about being in the presence of male adults. At other times, gender-based selection of a lawyer should not be tolerated, such as when a client simply views women (or men) as innately inferior. There is a division of opinion in society, and on the Task Force, as to whether it is appropriate to select a lawyer of one gender or the other for the express purpose of anticipating the possible responses of the judge or jury, such as hiring a woman to defend a man accused of rape or to defend a company being sued for sexual harassment.

Although both men and women perceive that they sometimes are treated differently in the same environment based on their gender, women see the

differences more often than men do. This should not be attributed to any "paranoia" on the part of women, nor to willful blindness on the part of men. People who enjoy privileges are less likely to be aware of the advantages that they enjoy. This phenomenon is also illustrated by the fact that legal secretaries report the persistence of gender bias more than do paralegals.

Women continue to be noticed as physical objects more often than men are; both men and women report that women's clothing and appearance are much more likely than men's to be commented upon. Women are more likely than men to believe that men have advantages based on gender. Men tend to believe that opportunities are equal, although they sometimes perceive that women are more likely to be selected for support (as opposed to supervisory) positions. Although rare, sexual harassment persists.

The step of eliminating the persistent residual bias will be, in many ways, more difficult than eliminating the overt bias that once was widespread. This next step involves a change in behavior at more subtle levels, which in turn requires an increased understanding of what others are experiencing. Accordingly, our recommendations focus on education and dialogue.

## F. COMMENDATION

We commend the Oregon Supreme Court and the Oregon State Bar for

- making Oregon the first state to adopt a disciplinary rule prohibiting sex with a current client with whom the lawyer did not have a pre-existing relationship:

*"(A) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the lawyer/client relationship commenced."*

*"(B) A lawyer shall not have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation."*

*"(C) For purposes of DR 5-110 'sexual relations' means:*

*"(1) Sexual intercourse; or*

*"(2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual*

<sup>60</sup> Three court reporters said that lawyers had asked them or another court reporter for sexual favors in exchange for employment security or opportunity. One female court reporter noted that she had experienced this personally at her current job. One court reporter stated that this had happened to her at a previous job. One court reporter said that this had happened to another person at a previous job.

<sup>61</sup> Although the vast majority of respondents to the surveys reported that they believe that there is less gender bias in the workplace now than there once was, paralegals, legal secretaries, and court reporters of color all were somewhat more likely than their white counterparts to believe that gender bias is worse now than it once was. The reason for that difference in perception is not immediately clear.



*or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.*

*“(D) For purposes of DR 5-110 ‘lawyer’ means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.” DR 5-110.*

## **G. RECOMMENDATIONS**

### **1. The Oregon State Bar should:**

- a. by January 1, 1999, more widely include gender and intersectionality issues in continuing legal education programs for lawyers, with topics such as
  - (i) the disciplinary rules prohibiting conflicts of interest and sexual relationships with clients;
  - (ii) clients’ perspectives on the lawyer-client relationship; and
  - (iii) respectful treatment of office staff and court reporters; and
- b. by January 1, 1999, develop a public education program designed to inform clients of their right to be free of sexual harassment from their lawyers and of the help available from the OSB to protect that right. This goal could be accomplished, in part, through additional information included in pamphlets already designed for distribution to the public, through separate publications devoted to this issue, and through public service announcements.

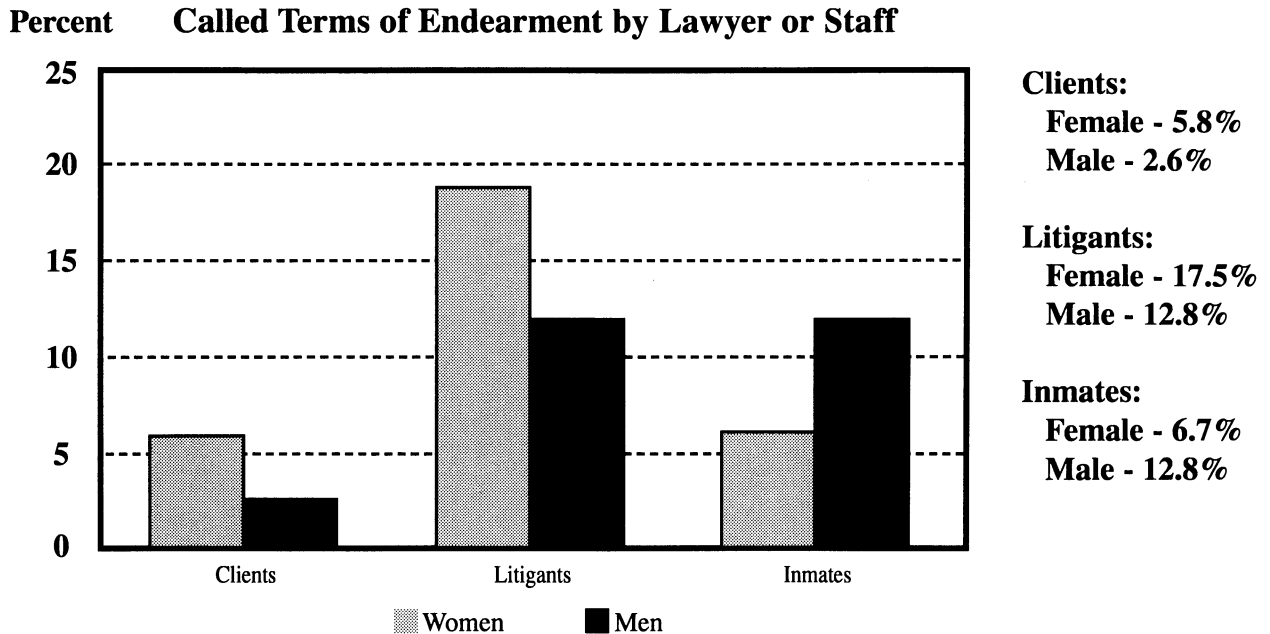
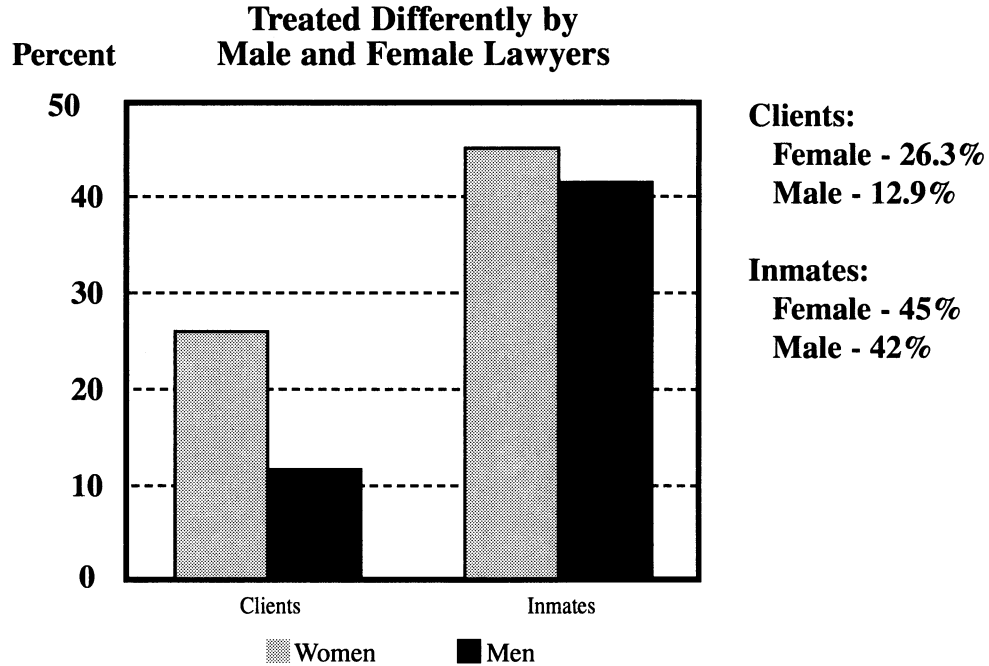
### **2. Every legal workplace should:**

- a. by January 1, 1999, establish a policy prohibiting sex discrimination and encourage all personnel (*e.g.*, through small-group meetings) to discuss improving workplace relationships, especially with regard to gender issues. All personnel should be protected from retaliation when they describe their experiences and perspectives;
- b. by January 1, 1999, establish a policy prohibiting sexual harassment and regularly inform all employees about the policy and how to use its protection. In addition, each workplace should have a clearly identified person to whom sexual harassment complaints are to be directed;<sup>62</sup> and
- c. beginning by January 1, 1999, have supervisors communicate at least annually — orally and in writing — their commitment to a bias-free workplace and to enforcement of their non-discrimination and anti-harassment policies. Lawyers, as well as non-lawyer supervisors, must be willing to confront their colleagues when they observe inappropriate behavior.

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<sup>62</sup> A sample sexual harassment policy is included in the Appendix.

## ATTACHMENTS



# THE EMPLOYMENT OF COURT, OREGON STATE BAR, AND PROFESSIONAL LIABILITY FUND PERSONNEL

*"I feel as if I know my role. Because I am older, I am accepting of a lot of things that I think younger women aren't. I think that a lot of the problems have nothing to do with gender. . . . It's more that they pay the people at the top as much as they can and the people at the bottom as little as they can. . . . More women are now moving into those top positions, but you still don't see men doing our work."*<sup>1</sup>

This chapter combines information gathered by two separate work groups: Judicial Administration and Interactions Between Lawyers, Clients, Staff, and Other Professionals. This chapter addresses gender fairness in employment by the courts, the Oregon State Bar, and the Professional Liability Fund.<sup>2</sup>

## I. COURT PERSONNEL

### A. INTRODUCTION AND OVERVIEW

Overall, the majority of court personnel within Oregon's court system do not perceive gender bias with respect to the conditions or benefits of their employment. However, a noticeable minority, generally about 10% to 25% of survey respondents, report observing some differences on the basis of gender. Women are more likely to report negative effects on female court personnel, and men are more likely to report negative effects on male court personnel.

Most significantly, both male and female court personnel perceive gender to influence female employees' opportunities for advancement, including appointments to supervisory positions, and the application of work rules. Those perceptions parallel statistical data suggesting that men hold proportionately more supervisory positions than do women. Additionally, many court employees are not aware of existing complaint procedures.

### B. ISSUES STUDIED

With respect to courthouse personnel, we studied whether the Oregon Judicial Department ("OJD") treats

court personnel differently on the basis of gender with respect to:

- hiring,
- promotion,
- compensation, or
- other aspects of employment.<sup>3</sup>

### C. METHODS OF STUDY

We compiled data from answers to survey questions, testimony at public hearings, written submissions to the Task Force, and other anecdotal information. We relied heavily on the court personnel survey, which focused its questions on hiring, promotion, and compensation issues for court personnel. We did not analyze extensively the employee policy manuals and other OJD policy guidelines.

We distributed the court personnel survey to all Oregon court personnel, including the following groups: (a) all permanent and temporary, management and non-management OJD employees at trial court locations (with the exception of judges); (b) employees of the Office of the State Court Administrator ("OSCA"); and (c) judicial assistants and staff attorneys to the 17 state appellate judges ("Appellate").<sup>4</sup> Oregon Supreme Court Justice Graber sent a letter explaining the purpose of the survey to each Presiding Judge in Oregon's 26 court districts and requested each court's cooperation. At the same time, Justice Graber wrote to all Trial Court Administrators asking that they distribute the surveys to their staff. We asked that staff be allowed to complete the survey during work hours.

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<sup>1</sup> Statement by female Oregon Judicial Department court employee.

<sup>2</sup> The Professional Liability Fund is a captive malpractice insurance carrier for members of the OSB. No lawyer may engage in the private practice of law in Oregon without paying a premium to the Fund; government, legal aid, and court-appointed criminal defense lawyers are exempt from this requirement.

<sup>3</sup> For a discussion of the perceptions of court personnel about the treatment of participants in the legal system, see the chapter on Judicial Administration. This chapter addresses only how gender affects the employment of court personnel.

<sup>4</sup> Law clerks were excluded from the survey.

We designed the court personnel survey for trial court employees. Accordingly, it instructed OSCA and Appellate employees not to complete several sections that did not apply to them. We sent the survey to a total of 1,547 court personnel: 1,412 to trial court locations and 135 to OSCA and Appellate. A total of 597 employees returned the survey, for an overall return rate of about 39%. More specifically, trial court employees returned 34%, or 521 surveys, while OSCA and Appellate employees returned 56%, or 76, of their surveys. Surveys were completed by 463 women and 98 men; 36 respondents did not tell us their gender. Of all respondents who told us their gender, 82.5% were women and 17.5% were men. As noted, the Oregon courts, through OJD, employ a total of 1,547 employees in various non-judicial positions, making it one of Oregon's larger employers. Of those employees, 79.4% are women and 20.6% are men, closely matching the proportions of women and men responding to the court personnel survey. The high rate of return and the proportional responses suggest that confidence in the results of the survey is appropriate.<sup>5</sup>

## D. FINDINGS

Oregon's state courts are structured by geographic area. The 36 counties are grouped into 26 judicial districts. Each judicial district has a presiding judge, and all are administered by OJD. Most courts have their own trial court administrators, but smaller courts have a court operations supervisor instead.

### 1. Hiring Process

In response to the question, "How did you hear about your current job?" court personnel offered the following in descending order of frequency: "another employee," "job posting," "newspaper," "other," and from a "supervisor."<sup>6</sup> For the most part, male and female court personnel identified the sources from which they heard about their jobs in similar ratios. However, slightly more men than women had heard about their jobs from a job posting, and slightly more women than men had heard about their jobs from another employee. Written comments revealed that some court personnel perceive

incidents of "nepotism" in OJD's hiring practices. For example, respondents commented that "the judge's kid," the "judicial assistant's daughter-in-law," and "the supervisor's friend" were hired.

Male and female court personnel reported no differences in their experiences with OJD's use of interviews or with the explanation of promotional opportunities during the hiring process.

### 2. Opportunities for Advancement

Both male and female court personnel viewed their opportunities for advancement as somewhat limited because of gender. In general, 22.5% of respondents felt that opportunities for advancement of women are limited because of gender, but only half as many, 11.4%, felt that opportunities for advancement of men are limited because of gender. Relatively more men believed that opportunities for advancement of men are limited due to gender, while more female court personnel believed that opportunities for advancement of women are limited because of gender.

Moreover, proportionately more women (23%) than men (15%) reported that they have been turned down for a promotion within the last five years. Five men (38%) and 28 women (27%) who had been turned down for a promotion were not told why. However, of those who were told (92 women and 12 men), more women (32%) than men (25%) were told that someone more qualified was hired, one man (8%) and four women (4%) were told that someone with more seniority was hired, and only women (3) were told that they did not have enough education for the position.

A little more than 10% of court personnel responding to the survey, all of whom were women, believed that taking parental or adoption leave hurts a woman's chances for advancement. Only 1.8% of respondents believed that taking parental or adoption leave hurts a man's chances for advancement. Of the remaining court personnel, roughly half reported no effect on promotional opportunities as a result of parental or adoption leave, and the other half did not know whether there was any effect.

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<sup>5</sup> There are limits to the utility of some of the survey data. In questions pertaining to working conditions, survey questions did not ask the respondent to specify the time frame within which an event or perception occurred. In other questions, a five-year time period was specified. Although we asked whether such an incident had been personally observed or experienced "in Oregon courts," we cannot conclude from the survey the extent to which answers indicating problem areas are occurring today or whether they are historical events still in the memory of respondents. We did not analyze the data to determine whether problem areas are localized geographically or occur throughout OJD.

Similarly, comments regarding the distribution of men and women in certain jobs reflect a snapshot of the population holding those jobs as of a certain date. That snapshot reflects historical hiring and promotion decisions, which may be different from the hiring and promotion practices today. We did not obtain data to indicate whether *current* hiring and promotion decisions still reflect biases that may have existed in past years.

<sup>6</sup> Of the 597 employees who responded to the survey, 171 employees heard about the job from another employee, 153 learned of it from a job posting, 102 learned of it from a newspaper, 42 learned of it from a supervisor, and 101 learned of it through "other" means.

In response to the question, “Have you been asked to perform duties that are not asked of the opposite sex?”, approximately 20% of court personnel said “yes.” Of those respondents, proportionately more men than women said “yes.” More specifically, although only 17% of survey respondents were men, over 40% of the male respondents believed they had been asked to perform extra duties not requested of women. Examples given included lifting cases or boxes, fixing broken equipment, and moving furniture. On the other hand, although fewer than 5% of court personnel reported that they are not allowed to perform certain duties because of their gender, almost all of those respondents were women.

Approximately 12% (70 court personnel) responded that they have “trained” a newly hired employee who was later promoted above them.<sup>7</sup> Of those newly hired employees receiving promotions, court personnel identified 14 as men and 68 as women.

Approximately 20% of court personnel believed that men are given preference over women in appointments to supervisory positions. However, of those respondents, 97% were women; accordingly, almost no male court personnel reported that men received preference in supervisory appointments. By contrast, 13.2% of all court personnel believed that women are given preference over men in supervisory appointments, but 37% of those respondents were men.

Thus, women and men perceive preferences in appointments very differently: women believe that men are given preference over women, while many men believe that women are given preference. For example, on the court personnel survey, one employee wrote:

*“Gender fairness does not exist in our office. Prejudice towards men abounds here. Hiring of male[s] is almost non-existent (3 men versus 11 women hires in 7 1/2 years). Supervisors have discriminated against males when they complained against sexual harassment.”*

By contrast, another employee opined:

*“I have applied for 2 supervisor positions in the past 4 years. Both times the positions were given to younger men with less court supervisory experience than I have. In this respect, I believe I was the subject of age and gender bias.”*

Overall, the percentages of female (78%) and male (22%) court personnel who *actually received* promotions closely matches the ratio of women (79%) and men (21%) within OJD. That statistic suggests that gender does not have a disparate effect on promotion decisions.

There are 201 employees classified as “management staff,” 72.6% of whom are women. Thus, women in management represent only slightly less than the percentage of female court personnel employed by OJD.

However, of the 201 management staff in OJD, 34 are management assistants to trial court administrators and judicial assistants to presiding judges, all of whom receive management benefits but have no actual supervisory duties. All those positions are held by women. When those positions are subtracted from the total number of management positions, the ratio of women to men with actual supervisory responsibilities changes to 67% women and 33% men:

	Percentage in OJD	Percentage who supervise
MEN	21	33
WOMEN	79	67

In other words, for their numbers, men are more likely than women to hold actual supervisory positions within OJD. Those results parallel the perceptions of court personnel generally, and especially the perceptions of female court personnel.

### 3. Compensation

The classification scheme and personnel rules of OJD do not permit men and women to be classified differently for performing the same work. OJD rules and policies also require additional compensation to be paid to employees who perform the duties of a higher position. Nonetheless, 21% of court personnel (23% of the women and 12% of the men) with an opinion stated that they do not believe that men and women doing the same work are classified the same.

### 4. Other Conditions or Benefits of Employment

The majority of court personnel, both men and women alike, favor job-sharing (87%), flexible work hours (74%), release time for education (67%), and on-site child care (60%).

Although 74% of court personnel responding to the survey felt no extra pressure to prove themselves on the job because of their gender, race, disability, age, or sexual orientation, a significant minority did feel such pressure. Sixty court personnel identified “gender” or “age” as factors to overcome on the job, with men and women responding in proportions equal to their overall representation among survey respondents. Additionally, 16 respondents identified “race,” five identified “sexual orientation,” and three identified “disability” as factors to overcome. Respondents were permitted to identify more than one pressure-inducing factor in the survey, and 26 marked more than one category, but only a handful marked more than two categories. These responses suggest that some OJD employees feel that they are under extra pressure to prove themselves on the job because of age or gender, and some because of race, sexual orientation, or disability.

<sup>7</sup> The survey did not define the term “trained.”

In addition, 18% of the respondents — all of whom were female — reported that, based on their observations and experiences, taking parental leave following the birth or adoption of a child was detrimental to a female employee's advancement and promotion opportunities. Only 4% of respondents (6 women and 3 men) believed that such leave was detrimental to a male employee's advancement and promotion opportunities.

## 5. Complaints about Gender Discrimination

Approximately one-quarter of court personnel, men and women alike, reported that they have been, or know someone who has been, the subject of gender discrimination. Because there is no way to know from the responses to our survey question the *number of instances* of gender discrimination or *when* they may have occurred, we view this result cautiously.<sup>8</sup> In any event, "older" female court personnel (age 45 and over) commented that gender discrimination still occurs, but not as frequently as in the past. One court employee explained:

*"As the 'old guard' goes into retirement the 'old boy' attitude will retire with them. Some things that offend younger women may offend but not outrage some of the older staff because of the way things 'were.'"*<sup>9</sup>

Another observed:

*"Mainly because of my age I have watched quite a change in this matter. What was normal, although unwelcome and sometimes uncomfortable, behavior was easily dealt with by females. We could always just say 'no.' [It] has become a legal problem that is costing the state an enormous amount of money both in prevention and in methods of dealing with the problem."*<sup>10</sup>

"Younger" female court personnel (under age 45) seem to possess one of two different perspectives: Half believe that gender bias does exist, and the other half believe that they are treated fairly and with respect.

More than half of court personnel who responded to the survey did not know whether there is a person in administration who receives complaints relating to gender discrimination. Only 3% (15) of the female court personnel and 2% (2) of the male court personnel reported that they had made a complaint "to a person in Court Administration /OSCA relating to gender based discrimination." However, 73 people (59 women, 11 men, and 3 people who did not tell us their gender) reported that they "wanted to make a complaint but

[had] not done so." In written comments, court personnel urged the identification of a person to receive such complaints, especially for instances in which the conduct is exhibited by a trial court administrator or judge. One employee wrote:

*"OJD has such a flat organizational structure, that it is difficult to make the decision to proceed with a complaint or report on inappropriate behavior by judges, managers, or administrators. It is often believed to be better to endure a hostile working environment than to confront or report a manager or judge. There is a definite need to develop a complaint process that is fair to both parties."*<sup>11</sup>

Another employee echoed that sentiment, noting: "It appears people are afraid of judges and allow them to do as they wish"<sup>12</sup>

Recent testimony before the Commission on Judicial Fitness and Disability, which suggested that the problem of gender discrimination exists at the highest levels of the state court system, underscores the significance of those comments.

## 6. Discipline

In representative proportions, most male and female court personnel (70%) reported that disciplinary practices are equally fair for women and men. Similarly, 81% believed that work rules are applied equally to men and women. Of the court personnel who do not believe that work rules are applied equally, men were slightly more likely than women to hold this belief. Two-thirds of those men believed that the rules are applied to benefit women. On the other hand, of the women who did not believe that the rules are applied equally, 77% believed that the rules are applied to benefit men and fewer than 1% believed that the rules are applied to benefit women. Accordingly, men and women view the unequal application of work rules very differently, with each perceiving a benefit to the opposite sex.

## E. CONCLUSIONS

A substantial majority of court personnel surveyed report no gender unfairness with respect to the conditions of their employment with OJD. Nonetheless, there is room for improvement.

In general, without respect to the gender of survey respondents, court personnel perceive that women's opportunities for advancement within OJD are more limited than are the opportunities for men. Women

<sup>8</sup> For example, if one well-known person in a large court was the subject of gender discrimination, then many court personnel could report *knowing* someone who was subjected to such discrimination.

<sup>9</sup> Comment on court personnel survey.

<sup>10</sup> Comment on court personnel survey.

<sup>11</sup> Comment on court personnel survey.

<sup>12</sup> Comment on court personnel survey.

perceive that they are more likely to be turned down for a promotion and that men are more likely to be promoted over the person who trained them. They report that their chances for a promotion are hurt when they take parental or adoption leave. Women also believe that, when work rules are not applied equally, that inequality benefits men. Although women hold a proportionate share of management positions in OJD, men hold proportionately more of the positions with actual supervisory responsibility than do women in OJD.

Conversely, men believe that their opportunities for advancement are limited due to their gender, although historically the overall statistics do not bear out that perception. More than one-third of men believe that women are preferred in supervisory appointments although, again, the overall statistics do not support this belief. Men report that they are asked to perform certain extra work duties not requested of women. Men also believe that, when work rules are not applied equally, that inequality benefits women.

It is difficult to reconcile the conflicting perceptions of male and female court personnel, all working within the same work environment. Whether or not data support employees' concerns, OJD should recognize and acknowledge men's and women's differing perspectives before further progress toward a more gender-neutral work environment can commence.

## **F. COMMENDATION**

We commend the Oregon Judicial Department for:

- adopting written policies prohibiting discrimination and harassment;
- providing job-share and flex-time opportunities for employees;
- using gender-neutral job descriptions and a gender-neutral interviewing process;
- monitoring fairness in employment opportunities; and
- establishing a gender-neutral compensation system.

## **G. RECOMMENDATIONS**

### **1. The Oregon Judicial Department should:**

- a. continue to encourage all its employees to help eliminate any form of gender bias from Oregon's court system. An appropriate reminder on this and other forms of discrimination should be delivered to court personnel annually;
- b. distribute to all court personnel, biennially, statistics on hiring, promotion, and compensation that permit a comparison to the ratios of men to women within OJD;

- c. include information in its regular personnel workshops to address the perceptions that gender limits opportunities for advancement of both men and women and that members of the opposite sex receive special preferences in supervisory appointments and application of work rules;

- d. by January 1, 1999, review its personnel policies and practices to determine whether any changes are needed to achieve gender fairness;

- e. by January 1, 1999, assess whether there are inappropriate barriers to promoting and appointing women to actual supervisory positions within OJD in proportion to their availability among all qualified applicants. If so, OJD should take effective steps to remove those barriers;

- f. review its policies on job-sharing, flexible work hours, and release time for education to promote greater use where appropriate;

- g. by July 1, 1999, and periodically thereafter, review the adequacy of the procedure for court personnel to bring complaints about gender discrimination or harassment and, if appropriate, recommend changes. That review should recognize that some complaints may be directed at trial court administrators, judges, or others in high positions;

- h. by January 1, 2002, study the personnel practices applicable to OJD law clerks to ensure gender fairness; and

- i. by January 1, 2002, study how issues of intersectionality affect OJD employees.

## **II. EMPLOYEES OF THE OREGON STATE BAR AND THE PROFESSIONAL LIABILITY FUND**

### **A. INTRODUCTION AND OVERVIEW**

For those employed by the Oregon State Bar (OSB) and the Professional Liability Fund (PLF), the sexes generally agree that there is less bias now than there was in the past. In fact, most believe either that gender bias does not exist or that it is limited to a few areas. More women than men perceive that bias against women continues to exist to some degree; a few people — more men than women — perceive bias against men.

### **B. ISSUES STUDIED**

We sought to determine how, if at all, gender affects employment opportunities at the OSB and the PLF, specifically:

- (1) Are employment opportunities in these organizations affected by gender? If "yes," does it matter whether the position is "professional" or "clerical"?

(2) Are advancement opportunities in these organizations affected by gender? If “yes,” does it matter whether the position is “professional” or “clerical”?

(3) Do employees in these organizations experience job-related sexual harassment?

(4) Do these organizations have policies against sexual harassment? If “yes,” are they publicized and enforced?

## C. METHODS OF STUDY

Our main method of answering the questions posed was to survey employees of each entity. We sent surveys to all employees. Because of the small size of each workforce, we did not believe that a statistical analysis of their present composition (*e.g.*, recent promotions) would yield significant results.

### 1. Employees of the OSB

We distributed 80 surveys, of which 75% (60) were returned. About three-quarters (43) of the returned surveys were from women, and about one-quarter (13) were from men, which is consistent with the gender composition of the OSB staff. (Four respondents did not tell us their gender.) Respondents were between the ages of 24 and 61. Most respondents had worked in their current positions for three to eight years. Four (30%) of the men and seven (16%) of the women were lawyers. One of the men and 33% (14) of the women held administrative support positions, 30% (four) of the men and 19% (eight) of the women were managers, and no men but 14% (six) of the women held professional or technical support positions.

### 2. Employees of the PLF

Of the 35 surveys distributed, 80% (28) were returned. About 60% (16) of the returned surveys were from women, and about 40% (10) were from men, which is consistent with the gender composition of the PLF staff. (Two respondents did not tell us their gender.) Respondents were between the ages of 32 and 64. Most had worked in their current positions for three to eight years. Most of the men were lawyers (70%), while the women held a variety of positions. Only women checked the box indicating that they held administrative support positions.

## D. FINDINGS

### 1. General Perceptions

Generally, fewer than half the respondents perceived gender bias at the OSB and the PLF. Overall, both male

and female respondents (61% and 64%, respectively) noted that there is less gender bias now than in the past. However, although 72% of female OSB employees believed that there is less gender bias now than in the past, only 44% of female PLF employees concurred. Female PLF employees (31%) also were more likely than female OSB employees (12%) to believe that there is *as much* gender bias now as in the past.

In addition, a larger proportion of women than of men reported having a general perception of unfairness. This perception is strongest among employees in support positions and weakest among supervisory and management employees,<sup>13</sup> and is borne out in the response showing that women felt that their opinions are given less weight than men's (16% of female OSB employees and 44% of female PLF employees reported that their opinions on work matters are “often” or “sometimes” given less weight than those of a person of the opposite sex). No men reported that their opinions were given less weight than women's. Although most employees did not perceive different treatment based on gender, a larger proportion of women (23%) than of men (17%) reported that they were asked to perform duties not asked of men.

At the OSB, a larger proportion of women (23%) than of men (15%) felt that women were treated differently than men with respect to family-care issues. Similarly, more women (21%) than men (8%) at the OSB felt that women were disadvantaged on account of their age. We did not obtain similar results from the PLF survey.

### 2. Opportunities for Advancement

Most male and female employees of the OSB (93% of men and 76% of women) and the PLF (95% of men, 68% of women) agreed that gender does not limit advancement opportunities. However, a significant minority of female employees believed that women's opportunities for job advancement at the OSB and the PLF are limited by gender. Of those female employees who expressed an opinion, 36% of female OSB employees believed that women's opportunities at the OSB are “often” or “sometimes” limited because of gender; nearly 30% (3 of the 11 female PLF employees with an opinion) believed that such opportunities are “always” or “often” limited for women.

Approximately 50% of the female OSB and PLF employees who expressed an opinion believed that men are given preference in appointments to management

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<sup>13</sup> For example, 56% of OSB and PLF supervisory and management employees believed that there is no gender bias against women at the OSB and at the PLF, compared to 41% of OSB and PLF support staff who held that view.



and to supervisory positions.<sup>14</sup> More female than male employees at the OSB (53% of women versus 15% of men) felt that women are “always,” “often,” or “sometimes” given preference in support positions. Men generally saw equal opportunity across all positions.

### 3. Personal Treatment

At both the OSB and the PLF, men noted almost no instances in which female lawyers and staff, or male lawyers and staff, were addressed by their first names or in terms of endearment when those of the opposite sex are not. By contrast, albeit in low numbers, women reported that female lawyers and staff are addressed by their first names or in terms of endearment, with more occurring at the OSB than at the PLF.<sup>15</sup>

At the PLF and the OSB, unwanted requests for sexual activity and acts of offensive touching were extremely rare. More prevalent were offensive comments and jokes. At each organization, no men and a small proportion of women had heard “unwelcome verbal jokes or comments of a sexual nature.” Four female OSB and four female PLF employees reported they had “personally experienced” “unwelcome verbal jokes or comments of a sexual nature.”

Once again, support staff were more likely to perceive gender-based behaviors than were those in more supervisory or managerial positions.

Finally, all men, and nearly all women, at each organization knew that a policy against sexual harassment exists. All of the male and most of the female OSB and PLF employees believed that it is enforced.

### E. CONCLUSIONS

Most employees of the OSB and the PLF believe that gender does not affect their employment, their opportunities for advancement, or the way in which they are treated. They also believe that there is less gender bias now than there was in the past. Nevertheless, some problem areas remain. A significant minority of female employees believe that women’s opportunities for job

advancement at the OSB and at the PLF are limited by gender, and that women (especially support staff) are at a disadvantage because of their family responsibilities and their age. Female employees sometimes are subjected to jokes or comments of a sexual nature and are addressed by terms of endearment.

### F. COMMENDATION

We commend the Oregon State Bar and the Professional Liability Fund for:

- adopting written policies prohibiting discrimination and harassment and making employees aware of those policies; and
- providing a flex-time option for employees.

### G. RECOMMENDATIONS

#### 1. The Oregon State Bar and the Professional Liability Fund should:

- a. ensure that continuing education programs for lawyers, managers, administrators, and supervisors at the OSB and the PLF include issues of gender fairness;
- b. by January 1, 1999, initiate regular workplace dialogues to foster an understanding of the experiences and perceptions of people of the opposite sex and to promote mutual respect;
- c. by July 1, 1998, and periodically thereafter, communicate to employees, in writing and in person, their commitment to gender fairness and to the enforcement of equal opportunity and anti-harassment policies. Additionally, the OSB and the PLF should review those policies periodically; and
- d. by January 1, 2000, study whether additional policies (besides flex-time) are feasible to facilitate employees’ meeting their family obligations.

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<sup>14</sup> Thirteen of the 26 female OSB respondents with an opinion, and 5 of the 11 female PLF respondents with an opinion, reported that men are “often” or “sometimes” given preference in appointments to management and to supervisory positions. By contrast, approximately 10% of male OSB and PLF employees reported that men are “often” or “sometimes” preferred.

<sup>15</sup> Female OSB employees reported the following: Seven employees (22% of those with an opinion) reported that female lawyers are “always” or “often” addressed by their first names when male lawyers are not, four employees (11% of those with an opinion) reported that female lawyers are “always” or “often” addressed by “terms of endearment (e.g., honey, dear, sweetie, babe, girl)” when male lawyers are not, one employee reported that female staff are “always” or “often” addressed by their first names when male staff are not, and 10 employees (25% of those with an opinion) reported that female staff are “always” or “often” addressed by “terms of endearment (e.g., honey, dear, sweetie, babe, girl)” when male staff are not.

Fewer female PLF employees reported similar experiences. Only one female PLF employee reported that female lawyers are “always” or “often” addressed by “terms of endearment (e.g., honey, dear, sweetie, babe, girl)” when male lawyers are not, and three female employees (20% of those with an opinion) reported that female staff are “always” or “often” addressed by “terms of endearment” when male staff are not. No female PLF employees reported that female lawyers or female staff are “often” or “sometimes” addressed by their first names when male lawyers or male staff are not, although a few reported that such references occur “rarely.”



# LEGAL EDUCATION

*"Personally I've found the way the law thinks: the cases; the issue spotting stuff; 'don't look at the context', just 'look at this,' 'get the blinders ever narrower.' I kept having these male professors — my whole first year was male professors — saying, 'No, no think like a lawyer, think like a lawyer.' I finally figured out at the end of my second year — 'Think like a guy, think like a guy.' And that is so counter to the way that I normally think."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

The work group on Legal Education examined gender issues in legal education in Oregon. The group studied how gender bias, if any, and gender affect law students, law faculty, staff, and the law school environment. We found that, in many areas, the three Oregon law schools (Northwestern School of Law at Lewis and Clark College, in Portland; University of Oregon School of Law, in Eugene; and Willamette University College of Law, in Salem) achieve gender fairness. These areas include the existence of formal non-discrimination policies, students' academic performance and participation in extracurricular activities, assistance from career services offices, classroom participation, and interactions between co-workers at the law schools. However, the information that we obtained through our surveys and focus groups suggests that the law schools need to take action in four specific areas: (1) teaching styles; (2) sexual harassment of women; (3) professional recognition of female faculty; and (4) treatment of gay and lesbian students, students with disabilities, and students of color.

The current structure of the study of law, as well as of the traditional practice of law, rewards behaviors and thought patterns that men, more often than women, use comfortably. In surveys and focus groups, many female students reported that they were not comfortable with teaching styles that rely heavily on the Socratic method of questioning students to elicit legal principles. This response was especially strong for first-year female students. They reported that their own styles of problem-solving and communication did not seem to fit into the law school environment. Although their classroom experiences do not appear to affect women's success in law school, we recommend that law faculties incorporate a mixture of styles into their teaching so that students of both sexes can participate more fully in class discussions.

Our survey of faculty members revealed similar views of the classroom and the law school environment. Female faculty members observed differences in the behavior of female students in class. They reported that

female students participate less often in class discussions than do male students. They also reported that their gender encourages female students to participate in class (both male and female students concurred).

We also found that a substantial number of female students had experienced adverse treatment because of their sex or, more seriously, sexual harassment in law school. In both instances, the source of the adverse treatment was predominantly other students. A few faculty members, administrators, and job recruiters also treated women negatively because of their sex, although sexual harassment complaints involved other students almost exclusively. Such behavior should be discouraged actively, and condemned swiftly when it occurs.

We found that lingering gender stereotypes affect female faculty members. Over half the female faculty members who responded to our survey reported being treated less respectfully by male students than by female students. Female faculty also reported that family planning is an issue in their professional advancement.

The findings of greatest concern were those related to the treatment of students of color, students with disabilities, and gay and lesbian students. Although the number of Oregon law students in those groups is very small (reflecting the population of Oregon generally), those students' experiences in law school suggest that adverse treatment based on race, ethnicity, disability, or sexual orientation is not being addressed fully in all Oregon law schools. As with the reports of gender bias and sexual harassment, incidents of racial and ethnic bias and bias based on a student's disability or sexual orientation were largely attributable to other students. Law schools are the gateway to the legal profession. They must take steps to eliminate these unacceptable behaviors.

## B. ISSUES STUDIED

We addressed the following questions:

(1) Does a student's gender affect his or her expectations, experiences, or treatment in Oregon law schools? If so, how?

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<sup>1</sup> Female law student describing her law school experience in a focus group.

(2) Are female and male law students treated differently in Oregon law school career services offices or in the law career recruitment process? If so, how?

(3) Does gender affect the way in which staff<sup>2</sup> in the Oregon law schools are treated by others in the law school community? If so, how?

(4) Does gender affect the experiences of Oregon law school faculty members? If so, how?

(5) What influence, if any, do other personal characteristics, such as race, ethnicity, sexual orientation, or disability, in combination with gender, have on the experiences or treatment of members of the law school community?

### C. METHODS OF STUDY

The work group consisted of law professors, law school administrators, law students, and recent law school graduates. A professor of sociology and members of the Intersectionality work group also assisted us. Eighteen members of the work group were women, and four were men. Two members of the work group were Hispanic; one was Asian-American. One member was disabled.

We studied gender issues in legal education at all three Oregon law schools. In order to ensure the full cooperation of the three schools, we consolidated the results of our research and chose not to report separately on each institution. Although the three schools are different in many ways, similar issues of concern arose at all three schools to varying degrees.

To explore students' expectations and experiences in the law school environment and in career services offices, we prepared and administered an extensive multiple-choice survey. The survey was administered in selected classes during class time in April 1997,<sup>3</sup> to a total of 570 male and female law students. First-, second-, and third-year students participated. Our survey respondents represented 36.5% of the total student population at all three schools.<sup>4</sup> Students also had an opportunity to provide written narratives as part of the survey. We received 94 narrative responses. We also obtained qualitative information concerning students' expectations, experiences, and treatment in law school and in career services programs from six focus groups, which were conducted by students in the Social

Research Design class at Willamette University. One focus group of men and one of women was conducted at each of the three law schools. Students were invited to participate through a random selection process.

To examine the treatment of staff in the law schools, the Social Research Design class students prepared and administered a written survey to all 72 staff at the three Oregon law schools. Forty-two (60%) of the staff responded. All were white women.

To capture the experiences of law school faculty, we prepared and administered a written survey to faculty members at the three Oregon law schools. The survey examined faculty members' personal experiences and their perceptions of the law school environment. The survey was distributed to all full-time and permanent part-time (at least half-time) faculty members (a total of 116).<sup>5</sup> Thirty-eight (33%) of the surveys were returned. Seventeen of 40 female faculty (42.5 %) responded. Twenty-one of 76 male faculty (27.6%) responded. We received responses from approximately equal numbers of faculty members from each of the three law schools. No respondents identified themselves as belonging to a specific minority group, although two respondents indicated that they were of mixed race or ethnicity.

To understand the effects of other personal characteristics on the experiences of women in Oregon's law schools, we included specific questions in the student and faculty surveys, and the Intersectionality work group conducted focus groups of students of color and gay and lesbian students (a total of 12 participants) from the three Oregon law schools.

### D. FINDINGS

#### 1. Law Students

##### a. Demographics

Of the students responding to our survey, 54% were women. In the 1996-97 academic year, 47% of all Oregon law students were female.

Although we did not ask survey respondents where they were from, the law schools report that most law students in Oregon come from Western states; on average, 70% come from Oregon, Washington, and California.

<sup>2</sup> In this chapter, the term "staff" refers to employees of the law school who are not students, faculty, or administrators.

<sup>3</sup> The survey was modeled in part after surveys developed by Professor Lani Guinier at the University of Pennsylvania Law School in 1990 and by the Law School Admission Council in 1991-92. See Lani Guinier, et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U PA L REV 1 (1994); LINDA F. WIGHTMAN, LAW SCH ADMISSION COUNCIL, *WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN* (1996).

<sup>4</sup> The three Oregon law schools had the following enrollments at the time the survey was administered: Total men - 831 (white men - 705; men of color - 126); total women - 731 (white women - 607; women of color - 124).

<sup>5</sup> Adjunct instructors were not included in the survey.

Eighty-three percent of those surveyed were between 20 and 30 years of age, 82% were white, 8% were Asian or Asian-American, 3% were African-American, and 8% were of mixed race or ethnicity or of another minority. Those numbers reflect the demographics of the law student population at the three Oregon law schools.

Ninety-five percent of those surveyed identified themselves as heterosexual. Five percent identified themselves as gay, lesbian, bisexual, or other. Of the students surveyed, 4.6% identified themselves as having a disability. Fewer than a third of those students said that their disability was visible to others.

In the survey, we asked students to report their class standing. There were no significant gender-specific patterns associated with those self-reports. Nor did the students' reports of class standing vary significantly with year in school, age, or disability. However, fewer ethnic minority students reported being in the top 10% to 25% of their class than their numbers in the student population. A disproportionate percentage of ethnic minorities reported being in the bottom 25% of their class than their numbers in the student population. Second- and third-year students' participation on law review boards or in moot court societies also did not appear to be affected by gender.

Almost two-thirds of the students surveyed were single. Fifty-five percent of the single respondents were women. Of the students who were married or partnered, men and women were equally represented. Eight percent of the surveyed students had minor children living at home; 24 of those students said that they were the primary caretaker of their children. Of those primary caretakers, 75% were women.

Men and women had similar educational debt loads. Sixty-five percent of those students surveyed expect to owe at least \$50,000 upon graduation.

## **b. Overview**

The survey, narrative comments, and focus group analyses all indicated that most law students, male and female, do not perceive gender bias at Oregon law schools. In fact, two female law students wrote that their experiences with gender fairness were far better at the Oregon law schools they attended than at the law schools in other states from which they had transferred. The majority of men and women surveyed reported that neither a student's nor a professor's gender affects the level or nature of student class participation, that male and female students are equally tolerant of comments by other students in class, and that male and female professors elicit similar levels of classroom participation. Furthermore, as self-reported, academic performance of

male and female law students is comparable, and male and female students are represented similarly on law review and on moot court teams.

Although these findings are very gratifying, all is not entirely well at Oregon law schools. The survey results and focus groups revealed that women are significantly less confident about their academic and public speaking abilities than are male students. Female students participate less in class and are much less comfortable with the Socratic method. In addition, women reported significant gender bias and sexual harassment.

## **c. Self-perceptions**

We asked students to rate themselves on five personal traits: academic ability, cooperativeness, competitiveness, public speaking, and self-confidence.<sup>6</sup> Students could rate themselves as "above average," "average," or "below average" with respect to each. We then examined these ratings for gender disparities.

Men and women viewed themselves differently with respect to each personal trait. Except for cooperativeness, males rated themselves more generously than did females. The students' self-ratings on cooperativeness and competitiveness reflect generally held views of differences between men and women: men (61% of those who rated themselves "above average") reported being more competitive, and women (57% of those who rated themselves "above average") reported being more cooperative. These self-views appear to bear some relationship to students' comfort with classroom participation and the Socratic method (see discussion below).

Focus group reactions also reflected this perceived gender difference regarding competitiveness and cooperativeness. Both men and women saw law school as inherently competitive. One male student commented, "After first year grades, you'll find an intellectual caste system immediately imposed." Another, referring to the grading system, commented that "the system creates that ultra-competitive environment." Most respondents viewed competitiveness as necessary in order to prepare them adequately for law practice. Men generally viewed competition positively, while women had mixed views. Some women gained confidence and felt more prepared for different situations through competition; for other women, however, competition created self-doubt about their ability to succeed and lowered their self-confidence. One student commented, "It's mental anorexia ... it's like the old physical anorexia where you can never be too skinny. This is you can never be too smart."

Among the 40% of students who rated themselves "above average" in self-confidence, 57% were men.

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<sup>6</sup> These traits typically are associated with success in law school and in law practice.

Conversely, of the 13% of students who rated themselves “below average,” 67% were women. Half the male students rated themselves “above average” with respect to self-confidence, while less than one-third of women rated themselves “above average.” Of particular interest was the contrast between the confidence levels of women and men in the first and in the third years of law school. In the first- and second-year classes, women had less self-confidence than men; in the third-year class, however, the gender difference disappeared. Indeed, self-confidence ratings were higher for third-year women than for third-year men.<sup>7</sup>

The focus groups painted a somewhat different picture. The majority of men expressed self-confidence upon entering law school, while women were more apprehensive and prepared more than men before entering law school. Once in law school, students’ feelings changed. Men described an initial jolt to their self-confidence after first semester grades; after that initial jolt, the men said that they experienced a steady increase in confidence. By contrast, women reported that their self-confidence either fluctuated or diminished during law school.

Men and women also differed significantly in their views of their public speaking skills. Forty-seven percent of the men rated their public speaking ability above average, in contrast to only 32% of the women. Only 11% of the men rated their public speaking skills as below average, compared to 21% of the women. Women’s more negative self-perception of their speaking ability may correlate to lower levels of self-confidence, as well as of class participation.

Based on our survey, we found that male and female law students in Oregon perform similarly academically, regardless of differences in their perception of their skills and differences in their confidence in their abilities when they enter law school.

#### **d. Participation in Law and Non-law Activities**

Male and female students reported substantial differences in how they spent their time. The only activity to which men and women devoted equal time was studying. Women spent significantly more hours than men attending class and participating in law-related extracurricular activities. By the third year, 40% of the men, in contrast to just 18% of the women, reported spending no time on law-related extracurricular activities. Also, third-year men, unlike women, dramatically increased the time spent each week working for pay. One-third of third-year men reported working for pay between 13 and 20 hours per week. Half the third-year women and most first-year students reported that they spent no time working for pay. Thus, the data suggest

that, in their third year, men — but not women — shift their time away from law-related extracurricular activities and toward outside employment.

The survey revealed modest gender differences in preferences for certain teaching styles. Most students liked mixtures of the Socratic method and lecture (63% of all students; 61% of women; 65% of men) and lecture and question (63% of all students; 71% of women; 53% of men), as compared to pure Socratic method (11% of women; 19% of men) or straight lecture (20% of women; 15% of men). When asked to identify their preferred teaching style, 56% of men and 49% of women identified mixed Socratic/lecture, and 34% of men and 45% of women identified mixed lecture/question. Although we cannot draw significant conclusions about the attractiveness of any particular style from our survey, it is interesting that twice as many women preferred the straight lecture method to the pure Socratic method.

In the focus groups, however, gender differences *vis-a-vis* the Socratic method were more pronounced. The majority of men were indifferent or viewed this method as a positive teaching style. They described the Socratic method as a game and were more comfortable just telling the teacher, “I can’t answer that question.” By contrast, fear and apprehension were the prevalent feelings that women expressed about the Socratic method. They did not think that it was a good learning style for them, but did believe that it was good preparation for becoming lawyers. The women in the focus group reported that they tend to take the experience more personally than do the men; the women reported internalizing the fear and apprehension that they associated with the Socratic method, which resulted in diminished self-esteem.

At all class levels, women were less likely than men to ask questions or to volunteer in class. Fifty-four percent of the students reported that they “never” or “rarely” ask questions in class (58% of women and 47% of men). Among the 77 students who never ask questions in class, 68% were women. By contrast, among the 63 students who frequently ask questions in class, 59% were men. The results were similar for volunteering comments in class. Fifty-two percent of students (54% of women and 50% of men) reported “never” or “rarely” volunteering to speak in class. The data indicate, however, that women over 30 participated actively in class. One student commented that “the most aggressive personalities seem to be the females who are over 30 years old; [they] dominate class discussions.” Another student noted that “women students who are smart and aggressive are more likely to be disliked and similar men are just seen as annoying.”

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<sup>7</sup> The survey was administered to all three law classes simultaneously. The work group did not perform any longitudinal studies to determine whether there is a *change* in self-confidence levels as students move from their first year to their last.

Women in the 20- to 25-year-old age group participated the least of any group.

Significant differences also emerged for students of different ages and ethnic backgrounds, regardless of gender. Compared to white students, African-American students were three times more likely, and Asian students twice as likely, never to volunteer in class. Younger students were less likely than older students to ask questions or volunteer.

Despite significant differences in actual class participation, men and women were equally comfortable with their level of participation in the classroom. Fifty-three percent of women and 57 % of men were "comfortable" or "very comfortable" with their level of participation. The percentage of women who were "very uncomfortable" with their participation decreased significantly from the first to the third year, despite women's reported decreasing level of participation during law school.

The focus groups highlighted one area in particular in which both men and women felt uncomfortable and silenced, but for different reasons: gender-related issues. Men felt silenced on issues such as rape and sexual harassment, because they feared being misinterpreted and criticized by female students and female professors. Women were less inclined to discuss the same issues for fear of being labeled "radical" or "feminist."

***e. Students' Perceptions of the Effect of Gender in the Classroom***

Male and female students had significantly different perceptions of the effect of a student's gender on classroom participation. One-quarter (26%) of the men and nearly half (47%) the women believed that a student's gender correlates to rates of student participation. Of those students who said that gender does matter, both men and women overwhelmingly reported that male students participate more in class than do female students. Those views support the self-perceptions of men and women as to their individual participation; that is, more men than women reported that they participate actively in class. In the focus groups, women stated that men dominate the classroom. Women thought that men are more comfortable jumping to an answer and working out their thoughts as they speak, whereas women said that they tend to think about the answer before volunteering and, thus, are called on less often. A number of written comments similarly suggested that men participate more in class.

We also probed tolerance of male and female class participation. More than 79% of students said that male and female students' comments are tolerated equally by male and female students. Among those who did perceive a difference in the reactions of male and female students to classroom comments, men and women held different views. Eighty-six students (16% of the survey respondents) said that female students are more tolerant

of classroom comments made by one gender or the other. Male respondents (72% of those who perceived different reactions based on gender) predominantly thought that women are more tolerant of women's comments, whereas female students (80% of those who perceived different reactions based on gender) thought that women are more tolerant of men's comments. Similarly, of the 114 students (26% of the survey respondents) who thought that male students reacted differently to student comments based on the gender of the speaker, most of the men (78% of those who perceived difference based on gender) thought that men are more tolerant of women's comments, whereas most women (73% of respondents who perceived difference based on gender) thought that men are more tolerant of men's comments.

Most students (79%) believed that the gender of the professor does not affect overall classroom participation. However, among those who said that the professor's gender does matter, 67% were women. Of those who believed that the professor's gender makes a difference, both men (71%) and women (73%) believed that female professors are more effective than male professors at promoting classroom participation. A positive view of female professors' ability to encourage classroom participation also was reflected in four narrative comments. For example, one student noted that "female teachers tend to ... encourage class participation by asking questions. Female students seem more comfortable volunteering information in this environment."

Female students of color who participated in the focus group described difficulty developing relationships with faculty members. Although they acknowledged that a few faculty members tried to interact with them in a positive way, most faculty were difficult for them to approach. In general, focus group participants agreed that they were not likely to approach a professor unless it was absolutely necessary.

***f. Students' Experiences of Bias or Adverse Treatment***

A series of questions addressed whether professors treat male and female students differently. Approximately 80% of the respondents said that neither male nor female professors treat students differently because of their sex. However, of those who said that professors treated students of one sex preferentially, most women said that professors treat men preferentially, while most men said that professors treat women preferentially. Whether the professor was male or female did not affect those responses. Women who said that there was a difference in treatment of male students saw that behavior in both male and female professors. Male students who said that there was a difference in the treatment of female students saw that behavior in both male and female professors.

Nearly one-quarter of the students (31% of the women, 17% of the men) reported that they had experienced gender-related bias or adverse treatment.<sup>8</sup> Fewer than 7% of those surveyed (10% of the women, 2% of the men) reported sexual harassment. It is noteworthy that, of the seven disabled women surveyed, four (57%) reported gender-bias. In addition, the narrative reports indicated that some men have felt victimized by gender bias: six men complained of favoritism toward women, five complained of discrimination against men, and seven expressed the view that our survey was either biased or a waste of time, or both.

Among women, the primary source of both gender-related bias and sexual harassment was other students. Two female students at different law schools provided narrative reports about male students viewing pornography on the Internet in the law school computer rooms. In addition, written and focus group comments by women described incidents of gender bias or sexual harassment by male professors: for instance, telling sexist jokes in class, ogling female students' bodies, and calling women "feminist" or "radical" during class. Among men, the primary source of sexual harassment was other students, but the primary source of gender-related bias was faculty.

Students reported substantially greater degrees of discrimination on the basis of characteristics other than their gender. High percentages of Asian-American students (61%) and African-American students (64%) reported that they had experienced racial bias or adverse treatment, predominantly from other students. A female African-American law student recounted how, in a trial practice course, a juror had told her "that she should take English language classes." The focus group moderator noted that "[t]his student speaks flawless English. English is her first and native language. . . ."<sup>9</sup> Another female African-American student described how her professor called on her in class only when they were discussing civil rights, discrimination, or similar topics.<sup>10</sup> In one focus group of women of color, *every* participant reported some instance of sexual harassment by either male students or male faculty members, such as unwanted touching.

In addition, 55% of gay and lesbian students reported discrimination based on their sexual orientation. In a focus group, one gay male student described the reluctance of his law school dean to deal with homophobic cartoons that were posted on a law school bulletin board. Another gay male student in the same focus group noted that "seeing 'fag' didn't really phase

me. . . [but] postings on campus began to make me feel threatened."

Overall, the data indicate that women, students of color, gays and lesbians, the disabled, and those over 30 are most likely to experience bias or adverse treatment during law school and that adverse treatment is most likely to come from other students. Significantly, focus group participants reported that the law school administration's attitude of tolerance or intolerance of harassment and discrimination set the tone for the students. According to focus group participants, students reported few problems at those schools where the administration had a zero-tolerance policy and made that policy well-known through actions.

### **g. Career Interests and Career Services**

Nearly half of all students reported that they came to law school because it was the best career option. Twenty-nine percent of the students reported they came to law school to help others; 39% of those students were women, and 21% were men. The focus group discussions revealed that female students were more interested in small firms and public sector jobs than were male students.

Students found that career services offices do not distinguish between male and female students in giving access to services, sponsoring activities, or counseling on career choices. Although male and female law students reported no significant differences in the behavior of career services staff toward students, women responded differently to some experiences. For example, women expressed concern that career services offices cater to large law firms and to the top students in the class and encourage students to fit into the "mold" that would appeal to those employers — such as in their manner of dress. Some female students also expressed the belief that large firms consider men to be more serious candidates for employment and that career services offices reflect that attitude. As noted, more female students than male students were interested in small firms or public sector jobs; those female students expressed a desire to see career services offices place more emphasis on those employment options.

Students observed that career services offices generally treat male and female students similarly in the interview preparation process. However, in the interview process itself, female students sometimes found it hard to make connections with interviewers, particularly if the interviewer was an older male lawyer.

All three law schools' non-discrimination policies bar on-campus recruitment by employers who discriminate

<sup>8</sup> For more information, see Attachment A to this chapter.

<sup>9</sup> Comment at focus group with law students of color, Apr 13, 1997.

<sup>10</sup> Comment to a Task Force member at focus group with law students of color, Apr 13, 1997.



on the basis of sex, race, ethnicity, or sexual orientation. In part, those non-discrimination policies conflict with current military policy toward gay men and lesbians in the armed forces. A federal law (commonly known as the “Solomon amendment”) requires educational institutions to give the United States military access to on-campus recruitment of students and withholds federal funds from any institution that does not comply.<sup>11</sup> The three Oregon law schools’ responses to the possible withholding of federal funds have varied.

## 2. Faculty

The goal of the faculty survey was to determine whether there are differences between male and female professors’ perceptions of their experiences in the law school environment. The survey included four sections: (1) classroom environment, (2) job satisfaction, (3) professional relationships, and (4) fairness issues. We mailed the survey to 116 full- and part-time faculty members (76 men; 40 women).

Of the survey respondents (21 men and 17 women), men tended to be older, longer-tenured, and more highly paid than women. Fifty-seven percent of the men were at least 51 years of age. The largest group of female faculty members (64.7%) fell into the 41-50 age bracket. Eighty-one percent of the men were tenured; 11 of the men had been tenured for at least 16 years. By contrast, 59% of the women were tenured, all but one for 15 years or less. More than half the males in the sample reported base salaries in excess of \$80,000 per year, whereas fewer than 30% of the females reported such income. In addition, four men and one woman also received supplemental compensation for endowed faculty chair positions.

### a. Classroom Environment

The responses obtained from questions concerning the classroom environment revealed differences between men’s and women’s perceptions of the effect of gender on the character and quality of classroom interaction. When asked whether “the nature or content of classroom interactions between you and the students [is] affected by the gender of the student,” 35% of the women reported that gender is a factor, but only one man responded affirmatively. Forty-one percent of the female professors, compared to just 30% of the male professors, believed that male students volunteer in the classroom more often than female students. Those responses are similar to responses from the student survey, where 49% of female students and 26% of male students believed that one gender (men) dominates in classroom

participation. Fifty-one percent of the female faculty, but only 35% of their male colleagues, perceived male students as taking up more class time than female students.

Eighty percent of the female faculty believed that female instructors elicit greater classroom participation from female students than do male instructors. By contrast, most male faculty (61.5%) did not believe that their gender has an effect on classroom participation by either male or female students. By contrast, only 26% of female students and 15% of male students believed that the professor’s gender makes a difference in classroom participation. Of those who did, 76% said that female professors encourage more participation.

Nearly two-thirds of the female professors stated that male students treat them with less respect than do female students. In sharp contrast, not one male professor said that he is accorded less respect, from female or male students, because of his gender. Those findings are consistent with findings of other studies in the field<sup>12</sup> and suggest that female faculty bear a heavier burden than their male counterparts in proving their competence to students.

With regard to mentoring of students, female professors reported both higher numbers of students whom they “mentor” and more time spent on mentoring activities than their male counterparts reported. Women, in particular, commented on the importance of mentoring, its time-consuming nature, and the need for compensation or other recognition for mentoring students.

Although both male and female faculty said that gender-neutral language is important, female professors (76%) believed it to be more important than did their male colleagues (60%). Fifty-five percent of faculty reported using gender-neutral classroom materials (70% of female faculty, 45% of male faculty).

### b. Balance Between Professional and Personal Life

Our study revealed that female professors have a much higher involvement in child care and household responsibilities than do male professors. Female professors with families spent more than twice as much time providing child care and 50% more time on other “household” affairs than did male professors with families. Conversely, male faculty reported spending 50% more time on academic research (a key component for securing professional advancement, recognized by faculty at all three law schools) than did female faculty

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<sup>11</sup> The amendment is codified at Omnibus Consolidated Appropriations Act of 1997, Pub L No 104-208, § 514(b), 1996 USCCAN (110 Stat) 3009-270 to -271.

<sup>12</sup> See generally ANNE STATHAM ET AL, GENDER AND UNIVERSITY TEACHING: A NEGOTIATED DIFFERENCE (1991); Kathleen S. Bean, *The Gender Gap in the Law School Classroom—Beyond Survival*, 14 VT L REV 23 (1989).

(15.5 hours per week for men versus 10.6 hours per week for women).

Family responsibilities, as they relate to one's professional life, are perceived by female faculty to be a factor of much greater consequence than they are to male faculty. Nearly half the female respondents reported that family planning had had a significant effect on their career advancement. No men indicated that this was a matter of importance. In a related question, "Are the needs of faculty with families adequately addressed by your law school (and the parent institution)?," 88% of male respondents answered "yes," while a sizeable minority of female respondents (41%) believed that such family responsibilities are not adequately acknowledged by their institutions. Comments critical to administrative policies or practices focused on a lack of flexibility in work schedules, a lack of day care services, and an absence of part-time options.

### **c. Professional Environment**

Forty-seven percent of the female faculty who responded to our survey believed that male faculty hold leadership positions in numbers disproportionate to their actual population. Only 10% of male respondents held that view. Although both male and female faculty were supportive of official policy goals in place to promote gender fairness in the law-school setting, female faculty were less convinced of the actual commitment of administrators to carry out such policies than were their male colleagues. That divergence of viewpoint is illustrated in responses to the question: "How hard do you think that the administration of your school has worked to develop an atmosphere of gender equality?" Sixty-two percent of the male respondents believed that administrators work "very hard" to promote gender equality, as compared to just 12% of female respondents. Indeed, more than one-third of the female faculty members believed that law school administrators work "not very hard" or "not hard at all" toward such ends, while fewer than 10% of the male respondents concurred with that view.

### **d. Fairness**

Eighty-two percent of all faculty respondents reported that they had not been the objects of discriminatory treatment by administrators with regard to pay or career advancement. However, 23.5% of the women surveyed answered "yes" in response to the question: "Do you believe that you receive (have received) a lower salary than other faculty members because of your gender?"<sup>13</sup> The faculty survey showed that women outnumber men in salary ranges below

\$70,000 and that men outnumber women in salary ranges above that level.<sup>14</sup> Most faculty members (85%) reported that they believe that it is equally difficult for men and women to gain tenure at their institutions.

A significant minority of female respondents reported having been treated inappropriately by administrators and students because of their gender. Thirty-five percent of the responding female faculty stated — in response to the question: "Have administrators at your law school, in any context, treated you inappropriately based on your gender?" — that they believed that they had been subject to inappropriate treatment. Only 14.2% of male respondents answered the same question affirmatively. In addition, two women said that they had observed such inappropriate treatment directed at others. Similarly, nearly half the female professors believed that they had been treated inappropriately by students because of their gender; only 14.2% of their male colleagues answered likewise.

Another indication that female faculty observe gender discrimination to be a greater problem in Oregon's law schools than do their male colleagues is reflected in responses to the question, "Have you ever helped a student (counseled, aided in other ways) deal with a gender discrimination issue that occurred at your school?" Thirty-three percent of the male respondents reported that they had aided a student with a gender discrimination problem; 80% percent of the female respondents answered that they had done so.

## **3. Staff**

In a separate survey, we asked staff at the three law schools about their experiences in their jobs and about their observations of interactions between other groups in the law school environment. All the respondents to our survey were female. Half the respondents added written comments at the end of the surveys. In those comments, many respondents stated that the combination of their job status and their gender adversely affects their ability to contribute to decision-making in their law schools. Many also reported that they were expected to perform menial tasks that were not part of their jobs, and some reported that they had been treated inappropriately because of their gender by faculty members or administrators. Examples given included: inappropriate comments about a staff member's children, rude or demeaning behavior toward staff, ignoring staff, and verbal abuse.

Between 51% and 71% of respondents indicated that they are treated the same by male and female faculty

<sup>13</sup> This figure does not include the responses of two female faculty members who expressed dissatisfaction with their salary levels, but who could not definitely ascribe their perceived low salaries to gender discrimination.

<sup>14</sup> As noted elsewhere, male faculty who responded to our survey tended to be older and longer-tenured than female respondents.

members. When staff members reported a difference in behavior by others, they noted that male faculty and students are less considerate of staff members than are female faculty and students. In response to the statement, “I deserve more consideration from,” 11% of the respondents replied “male students” but none replied “female students.” In response to statements about working relationships with male and female faculty, 23% of respondents said that they work best with female faculty members; 13% said male faculty members.

Staff observed that, for the most part, faculty members treated each other with respect and work well together regardless of gender. In those cases in which staff observed gender-based differences, they see male faculty members as having more respect for and working better with other male faculty, and female faculty members as having more respect for and working better with female faculty. Staff reported that some male faculty are sensitive to the needs of female colleagues and some are not. The same observations were made concerning the relationships between faculty and students, and between students and other students.

## E. CONCLUSIONS

### 1. Students

The student survey, written comments, and focus group results all indicate that, objectively, women are doing quite well in Oregon law schools. Women match men in self-reports of academic performance and participation on law review and moot court. Women are as satisfied as men that law school is preparing them for a legal career, even when they do not feel comfortable with some aspects of the preparation, such as the Socratic method, public speaking requirements, and the competitive environment.

In focus groups and narrative comments, several men and women discussed their perceptions that law, law school, and the legal profession are “male” in character. As one woman noted:

*“Personally I’ve found the way the law thinks: the cases; the issue spotting stuff; ‘don’t look at the context,’ just ‘look at this,’ ‘get the blinders ever narrower.’ I kept having these male professors, my whole first year was male professors, saying, ‘No, no think like a lawyer, think like a lawyer.’ I finally figured out at the end of my second year — ‘Think like a guy, think like a guy.’ And that is so counter to the way that I normally think.”<sup>15</sup>*

Even though law school and law practice are viewed as “male,” female law students are coping fairly well. Female respondents to the survey did not report that the “culture” of Oregon law schools has produced extensive negative effects on either their psyches or their academic

standing. Although women participate in class less frequently than men, they are comfortable with their level of class participation.

However, this level of comfort should not be interpreted to mean that there is no cause for concern. Class participation is a way of gaining the professor’s attention and learning to think on one’s feet. The fact that fewer women participate in class and that men are perceived as dominant in the classroom is of concern. Law schools should look for ways to encourage more class participation by women. Cooperative learning should be incorporated as a teaching method, and efforts should be made to make the classroom less intimidating. Professors need to be aware of the differences in class participation between their male and female students and, when they notice significant differences, look for ways to incorporate women’s voices. One way to do this is to use classroom materials in which the gender of the “characters” (authors, judges, lawyers, parties, experts, etc.) is balanced. Until recently, there were not many textbooks that reflected the true makeup of the American population, but that situation is changing and law school teachers in Oregon should continue to take advantage of those changes.

A promising finding is that, even though first-year female students reported lower self-confidence than first-year male students, they still reported performing at the same levels academically as men, and second- and third-year women (who presumably have adjusted to the law school environment and the law itself) reported self-confidence levels comparable to those of men in the same class years. This difference in women’s self-confidence suggests that women feel more competent to practice law by their final year of law school.

Women continue to be involved in law school life in their third year, while men tend to separate themselves from law school life by that time. It is unclear whether these different behaviors have any significant effect on students’ preparation for law practice. Law schools should reflect on the different strategies that men and women follow by the time they are third-year students. The schools should determine whether women are benefiting sufficiently from their continued involvement with law school and whether men are being affected detrimentally by their lack of involvement with law school.

As to gender fairness, Oregon law schools in general, and their faculties in particular, appear to be doing an adequate job. Most male and female students have not experienced gender bias and do not perceive faculty to be gender biased in their treatment of students. In fact, most students concur with the observation that

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<sup>15</sup> Comment at focus group of female law students.

their law school “goes out of its way to provide a relatively gender-neutral environment for its students.” Nonetheless, nearly one-third of the women surveyed reported that they had experienced gender bias while attending law school, and 10% of women and 3% of men reported that they had been sexually harassed. With this in mind, accusations of gender bias and sexual harassment against students, faculty members, or administration need to be taken seriously.

Regarding student perceptions of career services offices, the focus group results indicate that, although career services offices in the three Oregon law schools treat male and female students equally, three underlying differences exist. First, there is a substantial emphasis on large-firm hiring. Female students want more variety in the type of employers who interview on campus. As a group they are less interested than male students in working for large firms. Second, the advice from career services staff concerning women’s dress stresses uniformity. Many female students perceive this as sacrificing their individuality to fit a “mold.” Finally, in the interview process itself, female students do not believe that they are adequately prepared for on-campus interviews with large firms. More emphasis is needed concerning appropriate and inappropriate interview questions, “ice breaking,” and the like.

Of grave concern are reports of bias, based on their intersectional characteristics, from people of color (especially women), gays and lesbians, and disabled students. More than half the respondents of color reported racial bias. This is a significantly greater percentage than the overall percentage of women who reported gender bias. One explanation for this phenomenon is that the numbers of people of color, gays and lesbians, and disabled students in the law school population are much smaller. They are, therefore, likely to be more vulnerable.

Ironically, law schools’ attempts to be sensitive to gender occasionally may be viewed as going too far, resulting in resentment and perceived unfairness by men. The number of narrative comments complaining of reverse discrimination — as well as of bias within the survey — are indicative of this resentment. A few women also observed that a number of men refused to complete the survey, and other men intentionally were not completing the survey seriously. Care must be taken not to give in to backlash and unjustified resentment while, at the same time, care must be taken not to replace unfairness to women with unfairness to men.

Overall, the law schools appear to be making progress on gender fairness. However, they should be alert to the remaining problems and should create opportunities to educate students and faculty about gender fairness.

## 2. Faculty

The aggregate results of the faculty survey assign relatively high marks to both administrators and professors for establishing and maintaining an environment within Oregon’s law schools that promotes gender fairness and equality principles for faculty, support staff, and students alike. This general assessment is shaped, however, by observable differences in the makeup and responses of the survey population drawn along gender lines. By and large, survey responses by male professors tend to support the view that gender equality concerns are a major priority in their respective institutions and that policies already in place to deal with issues of gender fairness are adequate and effective. In short, to male faculty members, gender discrimination is not a significant problem in Oregon’s law schools, yet a sizeable portion of female professors report gender-based differences in their experiences in the law school administrative and classroom environments.

Female faculty members believe that, as compared to their male colleagues, they:

- receive less respect from students;
- are forced to make more choices between career and family; and
- have less access to leadership positions.

Drawing conclusions on intersectional issues for law faculty is difficult because of the very small sample of minority faculty members who responded to the surveys. However, two narrative comments may be worth consideration: “Sexual orientation makes more of a difference than gender,” and “Women and minorities get extra work piled on for the same pay as white males.”

## 3. Staff

Generally, staff members are treated fairly by others in the law school community. Staff also observe that interactions among faculty colleagues and between students and faculty do not appear to be affected by gender bias.

However, some staff reported adverse treatment. The law schools are the first place where students experience a “law office” environment. Poor treatment of staff members by faculty and administrators, even if not frequent and even if not motivated by gender, sets a bad example. Because most staff are female, poor treatment by those of higher rank may communicate to students that such behavior toward women is acceptable in the work environment.

We could draw no conclusions concerning intersectional issues among staff, because all respondents were white women, none of whom identified themselves as having other characteristics that were the subject of our research.

## **F. RECOMMENDATIONS**

### **1. Oregon law schools should:**

- a. continue to recruit law students and faculty to increase the number of persons from diverse backgrounds, including women and people of color;
- b. disseminate existing written policies prohibiting discrimination and harassment on the basis of gender, race, disability, and sexual orientation, and the procedures for filing complaints, at the beginning of each academic year. Those policies should be enforced promptly and consistently when complaints are made;
- c. continue to address issues of fair treatment as a part of their orientation of law students and faculty and in publications such as catalogues. By the academic year 2000-01, gender and intersectionality issues should be included in students' training in professionalism;
- d. by the academic year 2000-01, conduct orientation programs for faculty members on fair treatment of staff members;
- e. by the academic year 2000-01, examine administrative policies and practices, and modify them where needed, to accommodate more fully the family responsibilities of professors;
- f. by the academic year 2000-01, create a variety of opportunities for dialogue among all members of the law school community regarding gender-based perceptions of the law school experience, as well as the effects of race, ethnicity, disability, sexual orientation, age, and economic class on students' experiences;
- g. by the academic year 1998-99, publicize the pertinent parts of this report to faculty, students, staff, and alumni;
- h. by the academic year 1998-99, review the Task Force survey results for their own campuses to determine which issues are most significant to them; and
- i. beginning in the current academic year, recognize the importance of faculty members' mentoring and counseling activities outside class, and factor this important work into salary, tenure, and promotion decisions.

### **2. Oregon law schools' career services offices should:**

- a. by the academic year 1998-99, solicit interviews by a wider range of prospective employers, particularly small firms and those working in the public's interest and in the public sector; and
- b. by the academic year 1998-99, provide more complete preparation of students, especially female students, for interviews with recruiters.

### **3. Oregon law schools' faculty should:**

- a. by the academic year 1999-2000, incorporate alternative teaching methods, as well as the Socratic method, in all years of law school to provide for different learning styles and preferences;
- b. by the academic year 1999-2000, include gender and intersectionality issues in their class discussions, and as regular parts of the curriculum;
- c. beginning in the current academic year, make every effort to create a classroom environment hospitable to different ideas and to different learning styles; and
- d. by the academic year 1999-2000, engage in collective self-assessment to determine whether the curriculum, teaching methods, and other law school practices and policies hamper the ability of faculty to be accessible to law students, in particular female students of color.

### **4. Administrators and faculty at Oregon law schools should:**

- a. recognize that misperceptions concerning women's competence may adversely affect decisions concerning the promotion and tenure of female faculty; and
- b. by the academic year 1998-99, take appropriate steps to ensure that promotion and tenure decisions are not based on such misperceptions.

### **5. Oregon law schools and the Oregon State Bar should:**

- a. by January 1, 2001, begin to examine how well Oregon law schools actually prepare men and women for law practice. That examination should address questions such as these:
  - Upon graduation, do men and women seek similar forms of employment? Are they hired for the jobs that they want, in the same proportions, within a similar amount of time, and for similar compensation? Are they perceived by employers and potential employers as equally suited and well-prepared for law practice?

The answers to those questions will assist both law schools and the legal profession in assessing gender fairness; and

- b. by January 1, 2001, determine whether there are gender-based differences in male and female faculty salaries in Oregon's law schools and, if so, implement the changes necessary to ensure fairness.

## ATTACHMENT A

### Gender Bias Experiences of Different Groups of Students

	White		People of Color		Disabled		Gay/Lesbian		Bisexual	
Sex	M	F	M	F	M	F	M	F	M	F
<b>Number in Sample</b>	211	241	48	54	4	7	4	5	0	8
<b>Number/% Experiencing Gender Bias</b>	35 17%	74 31%	7 14%	16 30%	1 25%	4 57%	0	2 40%	—	3 38%
<b>a. By Other Students</b>	13 37%	52 70%	4 57%	12 75%	1 100%	2 50%	0	2 100%	—	3 100%
<b>b. By Faculty</b>	15 43%	40 54%	4 57%	9 56%	0	3 75%	0	1 50%	—	1 33%
<b>c. By Administrators</b>	7 20%	13 17%	4 57%	1 6%	0	1 25%	0	0	—	0
<b>d. By Recruiters</b>	12 34%	26 35%	4 57%	5 31%	0	2 50%	0	1 50%	—	0
<b>e. In Class Materials and Curriculum</b>	4 11%	16 21%	1 14%	4 25%	0	1 25%	0	0	—	1 33%
<b>Number/% Experiencing Sexual Harassment</b>	4 2%	25 10%	3 6%	4 7%	1 25%	0	0	0	—	1 13%
<b>a. By Other Students</b>	2 50%	19 76%	3 100%	3 75%	0	0	0	0	—	1 100%
<b>b. By Faculty</b>	0	11 44%	1 33%	0	0	0	0	0	—	0
<b>c. By Administrators</b>	1 25%	1 4%	1 33%	0	0	0	0	0	—	0
<b>d. By Recruiters</b>	0	0	1 33%	1 25%	0	0	0	0	—	0
<b>e. In Class Materials and Curriculum</b>	1 25%	2 8%	0	0	0	0	0	0	—	0

# ADMISSION TO THE PRACTICE OF LAW AND LAWYER DISCIPLINE

*"In short, although the impact of gender and cultural inequity is hard to measure, eliminating such inequity is, simply, the right thing to do."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

We examined the processes for admission to the practice of law and for disciplining lawyers. Generally speaking, we found both the admission and discipline processes to be gender-neutral. The preparation and administration of the Oregon State Bar examination are objective, and the Board of Bar Examiners (colloquially known as the "BBX"), which is responsible for the bar examination, has policies and practices in place that ensure gender neutrality of the admission process. The disciplinary process generally is perceived to be unaffected by the gender of the participants, by both those who administer it and those whose conduct is under review.

## B. ISSUES STUDIED

We sought answers to the following questions:

1. Does gender affect the admission of lawyers to practice? If so, how?
2. Does gender affect the lawyer disciplinary process? If so, how?

## C. METHODS OF STUDY

The work group on Admission and Bar Discipline divided its work into two parts. The sub-group on admission included three members, two white women and one white man, all of whom are lawyers who had served on the BBX. The sub-group on discipline included a white, female law professor and a white, female assistant disciplinary counsel for the Bar. That sub-group also had available to it the assistance of the Willamette University Social Research Design class for the fall of 1996.

With respect to the question whether gender affects the admission of lawyers to the practice of law, the sub-group on the admission process approached its task by examining

- the composition of the BBX,

- the process by which the BBX creates the bar examination,
- the grading process, and
- the bar results.<sup>2</sup>

We looked at national and statewide statistics regarding pass rates of men and women and at the use of gender in both multiple choice and essay questions on the Oregon bar examination during the last 10 years.

With respect to the question whether gender affects the discipline of lawyers, the sub-group worked with students from the Willamette University Social Research Design class. The students developed a survey that they sent to all people who were involved in the disciplinary process between January 1, 1994, and January 1, 1996. The surveyed group included

- accused lawyers,
- accused lawyers' defense counsel,
- defense counsel,
- Bar counsel,
- members of local professional responsibility committees,
- members of the State Professional Responsibility Board, and
- members of trial panels.<sup>3</sup>

The students sent surveys to 306 lawyers, of whom 96 (31.4%) responded.

## D. FINDINGS

### 1. Admission to the Practice of Law

#### a. Admission Process

The Oregon Supreme Court (the "Court") is responsible for admitting new lawyers to practice in this state. In order to fulfill that responsibility, it has created the Board of Bar Examiners ("BBX"). Currently, there

<sup>1</sup> Lynda Leidiger & Mary M. Sandifer, *Names, Gender, and Ethnicity in the MBE*, BAR EXAMINER, Aug 1996, at 21, 22.

<sup>2</sup> We did not survey bar applicants.

<sup>3</sup> We did not survey complainants.

are 14 BBX members, 12 of whom are lawyers and 2 of whom are “public members” appointed by the Court. Each member serves a three-year term.

The Court has charged the BBX with determining semi-annually which applicants should be recommended for admission to practice in Oregon. To this end, the BBX performs character and fitness investigations of each applicant and administers a bar examination. If the applicant passes the investigation and the examination, the BBX recommends to the Court that the applicant be admitted.

We focused on the examination process rather than on the character and fitness investigation, for two reasons. First, very few applicants are denied admission on the grounds of character and fitness; thus, any results of such a study would be statistically insignificant. Second, there is no way to measure unfairness based on the information available to us. The investigations are confidential, including the identity of the persons being investigated. The only public information is the Court’s opinion, which would be rendered only after the BBX has recommended denial and the applicant has sought review.

#### **b. Composition of the BBX**

The composition of the BBX was, from its inception in 1954 until 1981, exclusively male. One woman was appointed as a public member in 1980 for a two-year term. The first female lawyer was appointed in 1981, and a second in 1983. The BBX voted in its first female vice-chair in 1985, and its first female chair in 1989.

Since 1993, approximately equal numbers of men and women have served on the BBX. Women are actually over-represented on the BBX when compared to the composition of the bar as a whole. Between 1994-95 and today, the average annual female representation on the BBX was 44%, whereas the average female representation in the Oregon State Bar was 25.8% during that period.

#### **c. Bar Examination**

The examination itself is divided into three parts: professional responsibility (“MPRE”), multiple choice (“MBE”), and essay questions.<sup>4</sup> The MPRE and MBE are drafted by the National Conference of Bar Examiners (“NCBE”), which reviews all tests for potential bias. The NCBE appoints a group of law professors and

practitioners, both men and women, to serve on each drafting committee. Persons with varied racial and ethnic backgrounds assist in the preparation and review of items at multiple levels. In response to concerns about bias in the development of MBE questions, the NCBE has adopted guidelines for preparation of test forms that ensure balance in the use of roles, names, and gender in the MBE.<sup>5</sup>

The third area of testing is the essay examination. The BBX adopted policies in 1989 and 1990 that govern the drafting of essay questions for the Oregon bar examination. Those policies do not expressly address issues of gender identity in examination questions but, as a matter of practice, the BBX attempts to ensure that its questions do not reflect or incorporate gender bias. In appointing members of the BBX, the Court is sensitive to matters such as gender, ethnicity, region, and type of practice. In the past decade, the BBX’s composition has reflected its commitment to gender diversity.<sup>6</sup>

The BBX’s diversity produces a spectrum of perspectives and sensitivities that is brought to bear on the development and final character of each question. Each question is drafted by a member of the BBX and then is subjected to an extensive series of reviews and revisions, first by a small group of BBX members and then by the entire BBX. The months of drafting and the repeated review to which each question is subjected ensure that attention is paid not only to issues of substantive law, but also to drafting concerns such as gender neutrality.

Particular concerns that the BBX addresses in the drafting process include the following, and questions are drafted and revised to take account of these concerns:

- The roles that characters play in the questions. Both women and men run businesses and stop signs, as the case may be. There is a deliberate attempt to ensure that lawyers and judges, bad actors and innocents, are given both male and female identities or identities that do not specify gender.
- The fact patterns themselves. The questions attempt to describe events that are not, by their nature, necessarily more familiar to or more offensive to examinees of one gender or the other. Particular care is taken, for example, in the

<sup>4</sup> In 1998, a fourth component, performance testing (“MPT”), will be added.

<sup>5</sup> For a description of the guidelines, see Leidiger & Sandifer, *supra* note 1.

<sup>6</sup>

	<u>Women on BBX</u>	<u>Men on BBX</u>	<u>%Women on BBX</u>	<u>% Female Lawyers In Oregon</u>
1994-95	6	7	46.1	25.0
1995-96	5	8	38.5	26.0
1996-97	5	9	35.7	26.0
1997-98	8	6	57.1	26.2



drafting of questions that deal with issues of discrimination.

- Avoidance of words or phrases or contexts that are likely to be more readily understood by one gender than another. Thus, one would not likely see a bar exam question that uses a sports term, such as one party's making an "end run" around the letter of a contractual provision.

In addition to the foregoing specifics, the BBX also tries to ensure that the mix of examination questions as a whole reflects the range of legal practice for which applicants seek licensure, without undue emphasis being given to any particular area of practice. Thus, in selecting and approving essay topics, the BBX looks for a balance among general practice (*e.g.*, real property, family law, legal ethics, wills and trusts); commercial law (*e.g.*, UCC, contracts, corporations, partnerships); litigation (*e.g.*, evidence, civil procedure); and basic substantive law (*e.g.*, constitutional law, criminal law, tax law).

Finally, the examination is graded anonymously; that is, the grader does not know the identity of any applicant. There is no way of knowing, other than by guessing, whether a man or a woman answered a question. Applicants are given the choice whether to type or handwrite their examination. Although some handwriting styles may be associated with a man or a woman, the grading process is conducted in a way that does not allow the individual bias of a particular grader to have an effect on the outcome.

Before grading occurs, a member of the BBX develops a model answer to each essay question. From that model answer, a standard written grading outline is developed. The outline breaks the answer down into issues that an applicant is expected to identify in the answer. Each issue is broken down into sub-issues that, if identified by the test-taker, will result in points. For example, a real property question may involve the issue of adverse possession. On the grading outline, identifying adverse possession is worth five points. Identifying the element of hostility as part of the answer is worth two points. If the applicant goes on to identify that the concept of tacking of interests also was an issue, an additional three points would be awarded under the outline. In this way, each grader is awarding points in an essentially objective manner, with little room for awarding points on anything as subjective as a guess as to the gender of the applicant. Separate individuals

grade separate questions on the examination, and more than one individual may grade a specific question.<sup>7</sup>

Additionally, a regrading process is available to applicants who do not pass the bar exam on the initial grading but whose scores are close to the cutoff point. Usually some additional applicants pass after the regrading.

During the period under review (1987-1996), there was no statistical pattern in the pass rates on the bar exam that would indicate gender bias in the examination itself: overall, 74% of the female applicants and 73% of the male applicants passed the exam. Neither men nor women consistently passed at a higher percentage rate than the other group. For example, in 1989, the passage rate for men was 75% and for women 67%, whereas in 1993 the rate for men remained at 75% while women's passage rate rose to 89%. In the last 10 years, men passed in higher percentages half the time, while women passed in higher percentages the other half.<sup>8</sup>

The work group also reviewed bar examination pass rates for people of color. Race and ethnicity are the only intersectional characteristics, other than gender, for which data were available. Bar pass rates for applicants of color consistently have been lower than overall pass rates. However, there does not appear to be any gender-based disparity within the pool of test-takers of color. Between 1987 and 1996, women of color constituted 3.7% of all bar applicants. Their 52.1% pass rate was 22% lower than the pass rate for all women. Men of color constituted 4.9% of bar applicants for the same period. Their 47.5% pass rate was 25% lower than that for all men. For six of the ten years, a greater percentage of women of color than men of color passed the bar examination.<sup>9</sup>

## **2. Disciplinary Processes**

In our survey of people involved in the disciplinary process, 72% of the respondents were male, and 90% were white. Included in this group were accused lawyers, their defense counsel, Bar counsel, members of local professional responsibility committees, members of the State Professional Responsibility Committee, and members of trial panels. We did not survey complainants. Almost all returned surveys came from lawyers who are currently in practice. Sixty-five percent worked in small firms or as solo practitioners. One-third of the respondents had been accused of a disciplinary

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<sup>7</sup> Even assuming that a gender-biased grader could or would skew an essay score, the relative weight of that one essay exam is unlikely to affect the overall passing score for the applicant. Each essay question constitutes one twenty-fourth of the applicant's overall bar exam score, with fully half being determined by the multiple choice ("MBE") portion, which is not subject to an individual grader's prejudices, if any.

<sup>8</sup> For complete figures, 1987-1996, see Attachment A to this chapter.

<sup>9</sup> See Attachment A to this chapter.

violation. Eighty percent of those were men.<sup>10</sup> Two-thirds of the respondents had served at one time or another as Bar counsel or as a disciplinary trial panel member. Accused lawyers who responded had experiences at all levels of the disciplinary process. Complaints against survey respondents typically involved neglect, dishonesty, and conflicts of interest in areas of practice such as litigation, domestic relations, civil practice, and probate law. Two-thirds of the complaints against the responding lawyers had been filed by men.

The disciplinary process begins with a complaint letter. Bar Disciplinary Counsel reviews the letter to determine whether the conduct of the accused lawyer appears to violate a disciplinary rule. If it does, the complaint is referred to the State Professional Responsibility Board (SPRB), which decides whether to prosecute. The SPRB may refer the matter to a local professional responsibility committee for further investigation. If the accused lawyer does not agree that a violation of the disciplinary rules has occurred, the matter goes to a trial panel for a hearing and decision. Appeals from decisions of the trial panel go directly to the Oregon Supreme Court, which decides each matter *de novo* on the record.

We asked respondents to indicate their level of agreement or disagreement with a number of statements about aspects of the disciplinary process, such as

- conduct of disciplinary proceedings,
- trial panel decisions,
- sanctions, and
- behavior of participants during disciplinary proceedings.

We asked for respondents' perceptions about the influence of gender on those aspects of the disciplinary process. The survey responses showed that, regardless of their roles in the process, respondents did not perceive gender bias in any aspect of the disciplinary process.

## E. CONCLUSIONS

### 1. Admission to the Practice of Law

Gender appears to play almost no role in the decision whether to admit an applicant to the Oregon State Bar. At the national level, the NCBE has taken effective steps to eliminate gender bias in its tests. In Oregon, the BBX has worked hard, especially during the

past decade, to be conscious of any kind of bias that might find its way into the admission process. It has been vigilant in recruiting as board members lawyers who reflect diversity in gender, firm size, areas of practice, and location. The process by which the examination is administered is designed to make test-taking and grading anonymous. No single grader or question can distort the outcome of the examination. Additionally, in the essay examination, the mix of questions does not appear to favor any individual or group of individuals based on their background, experience, or likely area of legal practice.

Although applicants of color do not pass the bar in the same proportion as applicants do overall, there does not appear to be a gender-based difference in their performance over time. No data are currently available concerning other intersectional characteristics such as age, class, sexual orientation, or disability, and we are not aware of any concerns about discrimination in the admission of persons in those groups.

## 2. Lawyer Discipline

Because of the small number of respondents, the findings from our survey cannot establish conclusively the absence of gender bias in the disciplinary process. However, those who responded to the survey perceived no gender bias. We recognize that accused lawyers who come into contact with the disciplinary system only once or twice have little basis for making an observation about the fairness of the system overall. Nevertheless, the absence of reported perceptions of gender bias by accused lawyers reveals, at the least, that they did not perceive gender bias to be present in their own proceedings. The views of Bar counsel and members of disciplinary trial panels, who have more experience participating in the disciplinary system, tend to support those observations.

## F. COMMENDATIONS

### 1. Admission to the Practice of Law

We commend the Oregon Supreme Court and the Oregon State Bar for ensuring gender balance on the Board of Bar Examiners.

We commend the Board of Bar Examiners for its continuing commitment to producing bar examination questions that are free of gender bias.

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<sup>10</sup> As reported in the Interactions Between Lawyers, Clients, Staff, and Other Professionals chapter of this report, 85% of all bar complaints are filed against male lawyers, and male lawyers are subject to discipline in a proportion even greater than the proportion of complaints against them. Even so, we did *not* discover a perception that those disparities resulted from gender unfairness. We did not study what other factors might explain the disparities, such as a disproportionate number of complaints against lawyers in particular age groups or practice areas.

## **2. Lawyer Discipline**

We commend Bar Disciplinary Counsel and others who perform disciplinary functions for conducting processes in which participants generally do not perceive gender bias.

## **G. RECOMMENDATIONS**

### **I. ADMISSION TO THE PRACTICE OF LAW**

#### **1. The Board of Bar Examiners should:**

- by the summer 1998 bar examination, formalize its policy addressing gender and racial and ethnic identity in examination questions, because the membership of the Board of Bar Examiners changes over time.

#### **2. The Oregon State Bar should:**

- continue to track bar pass rates by gender and by race and ethnicity. This process will enable the Bar and the Oregon Supreme Court to respond to any patterns of disparity that may become evident in the future.

## **II. LAWYER DISCIPLINE**

### **1. The Oregon State Bar should:**

- a. recruit equal numbers of men and women (and recruit diverse people) to serve on the committees, boards, and trial panels that conduct disciplinary proceedings; and
- b. include participants in the disciplinary process in educational programs concerning gender and intersectionality issues.

### **2. Bar Disciplinary Counsel should:**

- a. by January 1, 1999, develop a system to track complaints about lawyer conduct by the gender of the complainant and of the accused; and
- b. beginning in 1999, periodically survey complainants and accused lawyers to determine whether there is any perception of gender bias in the disciplinary process.

### **3. The Oregon State Bar and the Oregon Supreme Court should:**

- review disciplinary rules to determine whether there is any gender-based unfairness to lawyers, to clients, or to the interests that those rules are designed to protect. If changes are warranted, the Disciplinary Rules and Procedures Committee should make appropriate recommendations to the Oregon Supreme Court.

## **III. GENERAL**

### **1. The Access to Justice for All Committee and all those to whom the Task Force addresses recommendations should:**

- consider the factors that have led to gender fairness, and the perception of gender fairness, in admission to the practice of law and in lawyer discipline. The Committee should determine whether areas of gender-based unfairness discussed in this report can benefit from those lessons. Such factors may include: extensive, gender-neutral, behavior-based written rules; diversity of persons in the enforcement process; conscious regard for the perceptions of people living at different intersectional points; and multiple layers of review.

## ATTACHMENT A BAR APPLICANTS

YEAR		TOTAL APPLICANTS <sup>11</sup>	% APPLICANTS	% PASSED
1987	All Women	219	40.4	69.0
	(Women of Color)	(19)	(3.5)	(57.9)
	All Men	323	59.6	75.0
	(Men of Color)	(23)	( 4.2)	(65.2)
1988	All Women	247	40.5	61.5
	(Women of Color)	(13)	(2.1)	(69.2)
	All Men	363	59.5	60.0
	(Men of Color)	(15)	(2.5)	(33.3)
1989 (Feb)	All Women	103	37.7	59.0
	(Women of Color)	(7)	(2.6)	(57.1)
	All Men	170	62.3	75.0
	(Men of Color)	(11)	(4.0)	(45.5)
1990	All Women	276	40.3	75.0
	(Women of Color)	(15)	(2.2)	(46.6)
	All Men	409	59.7	64.0
	(Men of Color)	(36)	(5.3)	(44.4)
1991	All Women	275	42.2	76.0
	(Women of Color)	(22)	(2.9)	(54.5)
	All Men	477	57.8	72.0
	(Men of Color)	(27)	(3.6)	(40.7)
1992	All Women	287	35.5	83.0
	(Women of Color)	(25)	(3.1)	(48.0)
	All Men	521	64.5	78.0
	(Men of Color)	(34)	(4.2)	(38.2)
1993	All Women	226	31.0	89.0
	(Women of Color)	(33)	(4.5)	(54.5)
	All Men	502	69.0	75.0
	(Men of Color)	(50)	(6.9)	(48.0)
1994 (July)	All Women	193	41.2	74.0
	(Women of Color)	(21)	(4.5)	(52.4)
	All Men	275	58.8	77.0
	(Men of Color)	(34)	(7.3)	(61.8)
1995	All Women	274	39.2	75.0
	(Women of Color)	(38)	(5.4)	(44.7)
	All Men	425	60.8	76.0
	(Men of Color)	(42)	(6.0)	(69.0)
1996	All Women	312	40.0	69.0
	(Women of Color)	(45)	(5.8)	(51.1)
	All Men	467	60.0	77.0
	(Men of Color)	(39)	(5.0)	(53.8)
TOTAL	All Women	2412	38.1	74.0
	(Women of Color)	(238)	(3.7)	(52.1)
	All Men	3911	61.9	73.0
	(Men of Color)	(311)	(4.9)	(47.5)

<sup>11</sup> Women and men of color are included within the total numbers and percentages of all women and all men applicants.

# OPPORTUNITIES IN THE LEGAL PROFESSION

*"I have seen really enormous progress made....But I have, over the course of my experience, seen a lot of . . . dismissal of women lawyers' arguments. And to my mind, it's on the level almost of unconscious discrimination."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

We heard the above-quoted testimony at a public hearing. The opening sentence, respecting the progress that the profession has made on issues of gender fairness, captures the sentiment of many of the lawyers and judges who responded to our surveys or participated in public hearings and focus groups. Not surprisingly, we also heard concerns about the continued existence of more subtle and sometimes "unconscious discrimination."<sup>2</sup> More women than men voiced those concerns, although there were exceptions: some women reported never having experienced discrimination during their careers; and some men believe that women enjoy a "fundamentally unfair bias [in their favor] in the Oregon courts and legislature."<sup>3</sup>

The experiences of men and women in the legal profession have differed markedly, the differences inuring most often to the benefit of men and to the disadvantage of women. As recently as 1983, even in law school, the concept of women as lawyers was still met with open hostility. A female lawyer related this experience:

*"The prominent male trial attorney sitting as the judge [and who is still in practice today] remarked that women 'should devote themselves to their families and not plan to be lawyers.'"<sup>4</sup>*

More recently, a female summer associate at a large urban law firm was not invited to join the male lawyers and summer associates in a round of golf, because the men were playing at an all-male club.<sup>5</sup> Although such blatant expressions of bias are infrequent today, the fact that they were not uncommon in the recent past continues to have a detrimental effect on the lawyers now in practice.

The depth and intensity of comments received by the Task Force reveal that men and women continue to have very different perceptions as to whether and, if so, to what extent gender affects opportunities in the legal

profession. Female judges and lawyers in Oregon report more perceptions of unfairness than do their male counterparts. This could, of course, be due to a variety of factors: men not seeing bias against women, men not wanting to see bias against women, women wanting to see bias against women, men being less sensitive to the issue, or women being hypersensitive and eager to attribute different treatment to gender.

Objective data relating to patterns of hiring, promotion, retention, compensation, case responsibility, practice specialty, and positions of leadership support the perception of gender unfairness in some areas. With respect to the hiring process, most lawyers do not report inappropriate inquiries during interviews but, of those who do, female lawyers report being asked personal questions more frequently than do male lawyers. Judges, on the other hand, regardless of gender, have not experienced this type of inquiry as part of the judicial interview process.

Gender-based patterns also are apparent with respect to the area of specialty that lawyers choose to pursue. Female lawyers view the public sector, and solo private practice, as more desirable places to practice law than large law firms. Possible reasons include lack of part-time positions and long hours, which are incompatible with family responsibilities, in large-firm private practice.

Gender does appear to play some role in the geographical area in which women and men choose to practice. The experiences of lawyers in rural areas differ from those in urban areas in ways that appear related to gender, for example, with respect to compensation and acceptance within the legal community.

As to advancement opportunities, female lawyers continue to lag behind their male counterparts in compensation and in attaining positions of power. This phenomenon appears to be changing, however, as more women enter the profession.

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<sup>1</sup> Testimony by male lawyer at Portland public hearing, Oct 21, 1996.

<sup>2</sup> For example, in a recent letter to the *OSB Bulletin*, a male lawyer used the following words to describe his view of the perfect judge:

"He was the physical embodiment of what a jurist should be . . . tall, spare frame, slightly bent with age, an ample shock of unruly gray hair . . . ." OR ST B BULL, Oct 1997, at 5.

<sup>3</sup> Letter to Chief Justice Wallace P. Carson, Jr., from a white male lawyer in Lane County.

<sup>4</sup> Excerpt from letter to Task Force by female lawyer describing her experience in her law school trial practice class in 1983.

<sup>5</sup> Witness statement submitted to the Task Force by a female lawyer.

Finally, women, more than men, feel great pressure to meet the demands of family, particularly with respect to responsibility for child care.

## B. ISSUES STUDIED

We studied whether, and to what degree, gender has an effect on hiring or advancement opportunities in the practice of law, specifically:

- whether male and female lawyers are treated similarly in the hiring process, case assignment,<sup>6</sup> and advancement;
- whether men and women practice in different specialties;
- whether male and female lawyers are equally compensated and whether they are in positions of power proportionate to their years in practice;
- whether geography plays a role in the experiences of male and female lawyers;
- whether there are differences in the experiences of male and female lawyers in the public and private sectors;
- whether family obligations or other outside pursuits affect male and female lawyers' ability to realize their professional goals; and
- whether retention rates for male and female lawyers differ.

## C. METHODS OF STUDY

The work group studying Opportunities in the Legal Profession initially included male and female practicing lawyers in the private and public sectors, one retired lawyer, one state judge, one Tribal Court judge, a law professor, and a social scientist.<sup>7</sup> The work group represented diverse geographical areas (both urban and rural), areas of practice, and types of professional employment. The group also included individuals of diverse racial and ethnic backgrounds and included two Asian-Americans and one Native American. One work group member was a lesbian, and one was a gay man.

We used several methods to study opportunities in the legal profession. We developed survey questions for

inclusion in the surveys sent to lawyers, judges, litigants, and court personnel.

We collected statistical and anecdotal data from survey respondents on their legal employment-related experiences and their perceptions of gender fairness. We analyzed whether the respondents' gender, age, geographical location, and type of practice affected their perceptions. We also analyzed data maintained by the Oregon State Bar, the Oregon District Attorneys Association, the Oregon Attorney General, the offices of county counsel, the Office of the State Court Administrator, the Oregon Judicial Department's Indigent Defense Services Division, and the National Association of Law Placement.

We attended public hearings, conducted focus groups, and reviewed written comments in letters, surveys, and Task Force comment forms. We conducted a total of eight focus groups in five counties — Multnomah, Jackson, Josephine, Marion, and Baker. Four focus groups were composed of women, three of men, and one of members of both sexes. Lawyers from various practice settings and areas of practice participated.<sup>8</sup>

Finally, we reviewed and summarized existing literature and surveys, including articles published in the media and gender fairness reports from other jurisdictions.

## D. FINDINGS

### 1. Work Environment

We studied the opportunities available to male and female lawyers within the legal profession by examining: (1) hiring and promotion experiences within the private and public sectors; (2) the effect of geographical location on those experiences; and (3) the compensation of lawyers, the areas of practice in which lawyers specialize, and the retention rates of lawyers.

#### a. Hiring Practices

Most male and female lawyers and judges perceive no significant disparity in hiring for men and women in the legal profession. However, some female lawyers and judges reported gender bias during the hiring process.<sup>9</sup> We explored this issue from two perspectives:

<sup>6</sup> For a discussion of case assignment practices at law firms providing indigent defense services (court-appointed counsel) in criminal cases, see the Interactions Between Lawyers, Clients, Staff, and Other Professionals chapter.

<sup>7</sup> Personal reasons necessitated the departure of some members of the initial work group.

<sup>8</sup> One focus group was composed of male partners in large urban law firms, another of men practicing in the public sector, and a third of male lawyers in the public and private sectors from mixed rural/urban settings whose practices ranged from solo practice to large-firm practice. Similarly, the four focus groups with female lawyers included women from diverse areas of specialty, geographical region, and type of practice. An eighth focus group sought comments from lesbian and gay lawyers with various kinds of law practices in a large urban area. Each group was conducted by one or two moderators.

<sup>9</sup> In letters to the *OSB Bulletin* in May and July 1996, female lawyers provided examples of the "overt illegal sexism that is a part of every woman attorney's interviewing experience." *OR ST B BULL*, May 1996, at 6.

(1) lawyers as prospective employees; and (2) lawyers as prospective employers.

The surveys of lawyers and judges asked whether, during the hiring interview, questions inquired into, discussed, or took into account an applicant's:

- (1) personal relationships; (2) family obligations;
- (3) personal commitments; or (4) sexual orientation.

### i. As an Applicant

Male and female lawyers reported different experiences when being interviewed for legal positions. Female respondents were three to five times more likely than male respondents to report that interviewers inquire about, discuss, or take into account personal relationships, family obligations, or personal commitments. For example, in response to the question whether the applicant was asked about personal relationships, one-third of the female lawyers responded that these questions were "often" or "sometimes" asked. By contrast, only 17% of male lawyers reported that these questions were asked with such frequency.

The disparity between the responses of male and female lawyers is striking with respect to other hiring questions as well. Nineteen percent of female respondents indicated that personal relationships are "often" discussed during an interview, whereas only 4% of male respondents said that this occurred. Women reported being asked questions about their family obligations twice as often as men.

Female judges reported similar experiences. When they interviewed for non-judicial positions earlier in their careers, female judges were asked about their personal relationships, family obligations, and personal commitments more often than their male judge counterparts. When judges were interviewed for judicial positions, however, such questions were rare.<sup>10</sup>

Female lawyers opined that such questions are unnecessarily intrusive and demeaning; they feared that the answers would be used against them in hiring decisions.<sup>11</sup> For example, a female lawyer reported that, when she applied for a federal clerkship position in 1987, the male judge asked whether her husband supported her taking the position and whether he would help her with child care. She reported a comparable experience during an interview with a large Portland law

firm. In that (more recent) interview, a male partner asked the applicant whether she had children, cautioned her that "the law is a jealous mistress," and then asked whether her husband wanted her to be a lawyer. Another female lawyer, admitted to the bar in 1993, reported that her male former employer had not only asked numerous personal questions during the hiring interview, but later had subjected her to derision when she became pregnant:

*"He complained...about [my] pregnancy and its effect on [the] firm; he complained to one of my clients; he...complained to other attorneys in the office, and he said...I would like to fire her, but I don't want to get sued."*<sup>12</sup>

On the other hand, male lawyers did not report being questioned about whether their wives support their employment as lawyers. Nor did they report being questioned about their plans to have a family.

In a recent article reprinted in the Oregon State Bar *Bulletin*, a woman wrote anonymously about her hiring experiences in Seattle, Washington.<sup>13</sup> She described numerous interviews in which she was asked about her marital status and her husband's employment. Her article drew immediate responses from female lawyers who described similar hiring experiences in Oregon.<sup>14</sup> One woman wrote:

*"I have been asked what my husband does for a living. When I tell them he's a truck driver, all communication stops. I don't know which is worse, the lawyers that ask about my husband or the ones who simply don't respond to my job applications because I am female."*<sup>15</sup>

Another female lawyer recounted:

*"Curiously, I have not been grilled about my husband. . . . I have, however, been asked many, many times what my child-bearing plans are in the same way you [the Washington lawyer] have been asked about your husband. Many of those questions have been phrased in crude terms, and many have, like your experience, been prefaced with 'I know it's illegal to ask, but....' . . . I have winced at the time, answered the questions and raged later."*<sup>16</sup> (Emphasis in original.)

A third female lawyer wrote:

*"I have found that otherwise incredibly kind men can say the dumbest things in job interviews. Recently, while interviewing for a deputy D.A. position in Central Oregon, the D.A. said: 'God, the last time I*

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<sup>10</sup> Data gathered from the judge survey may be less relevant to this study than data gathered from lawyers, because the responses most likely reflect interviewing practices common in the past. Nonetheless, judges' responses are consistent with lawyers' responses to this same question.

<sup>11</sup> We do not know the full effect of the interview inquiries, however. That is, we do not know whether the inquiries generated information that inured to the applicant's advantage or detriment.

<sup>12</sup> Excerpt of testimony from a female lawyer at Portland public hearing, Oct 21, 1996.

<sup>13</sup> *The Job Search*, OR ST B BULL, Apr 1996, at 37, reprinted from KING COUNTY [WASH] B BULL, Jan 1996.

<sup>14</sup> See Letters to the Editor, OR ST B BULL, May 1996, at 6, and July 1996, at 5.

<sup>15</sup> Letter to the Editor, OR ST B BULL, May 1996, at 6.

<sup>16</sup> Letter to the Editor, OR ST B BULL, May 1996, at 6.

*hired a female lawyer was such a disaster!' Then he stuck his foot deeper in his mouth when he inquired what the career plans were of another (male) lawyer in my office. Not surprisingly, I did not get that job. My sister who is in one of the most male-oriented professions (cattle ranching) gets more respect from her peers than I do from this supposedly 'enlightened' group."*<sup>17</sup>

Some women reported demeaning interviews. For example, when one woman expressed concern about the firm's monthly practice of publicly discussing each lawyer's billable hours, she was told to "consider it the way you do your annual pap exam; it's good for your health."<sup>18</sup>

Participants in the focus group with gay and lesbian lawyers also revealed that personal issues, including sexual orientation, arose in interviews occasionally, although far less frequently than did other inquiries into personal aspects of their lives.

In general, the majority of men and women report no negative hiring experiences. Survey data and anecdotes suggest that, when personal questions are asked in a hiring interview, particularly when those questions probe into child-bearing plans, women are concerned about answering the questions honestly, fearing that their job prospects will suffer. Male lawyers generally do not face such questions, nor do they share those concerns.

## ii. As an Interviewer

We next inquired about lawyers' experiences as interviewers. More male than female lawyers "often" or "sometimes" ask questions about family obligations and personal commitments. However, female lawyers inquire slightly more often into "personal relationships." Because the survey did not define the distinctions among "family obligations," "personal commitments," and "personal relationships," we do not know why female interviewers reported asking more questions about "personal relationships."

In anecdotes, however, some further information emerged. Several female lawyers expressed a need to ask certain questions about the applicant's personal relationships to determine whether the applicant would "fit" in the firm. Female lawyers frequently were of two minds on the subject. All agreed that personal questions usually were inappropriate, but all also recognized that finding out whether an applicant would be likely to stay is of primary importance to an employer. One female lawyer who hires associates was particularly candid:

*"I have found it very difficult to have the other lawyer in my office be a single parent, because there were problems with illness or problems with this and that. And that lawyer simply wasn't in the office at the time when I needed that person...Most people who are single parents are women, but I would have the same difficulty with a single man with children...I would never not hire somebody because of that. But it is something in the back of my mind. [I would think] Oh God, here we go again."*<sup>19</sup>

In summary, we found that all lawyers conducting the hiring interview, regardless of gender, find themselves seeking some personal information about the prospective employee to make a determination about the likelihood that the applicant will work well with others in the firm, will want to stay in the area, and will be able to do the work required. Both male and female interviewers tend to ask female applicants more personal questions than they ask of male applicants because of the interviewers' belief that child-bearing or other family obligations may interfere with the female lawyer's long-term ability to work.

## b. Case Assignment

### i. Generally

In the legal profession, a lawyer's status depends, in part, on the kind and complexity of cases to which the lawyer is assigned. In private law firms and in the public sector, cases typically are assigned by a senior person in the office. That person can influence a junior lawyer's rank in the office by ignoring or selecting the lawyer for "big" case assignments.

The survey asked respondents whether they had lost a case assignment in the previous five years for reasons that they believed were associated with gender. The overwhelming majority of lawyers responding to the survey did *not* believe that they had lost a case assignment for gender-related reasons.<sup>20</sup> Of those who did, the average total number of cases believed to have been lost for such reasons was between one and three in the previous five years. Of those few lawyers who observed an assignment lost by a female to a male lawyer for a gender-related reasons, three times as many females (12.5%) as males (4.5%) had seen this occur.

The following table contains the choices available to survey respondents as reasons for assigning a case to a male lawyer and charts the frequency of their selection by male and female survey respondents. The numbers in boldface type show the five reasons given where the

<sup>17</sup> Letter to the Editor, OR ST B BULL, July 1996, at 5.

<sup>18</sup> Comment of female lawyer to member of the Task Force in Oct 1997.

<sup>19</sup> Comment of female lawyer in a focus group in Southwestern Oregon in 1997.

<sup>20</sup> Only 32 of 571 respondents answered that they had lost a case assignment for reasons related to gender. When asked *why* a case had been assigned to a male lawyer rather than to a female lawyer (when two or more lawyers of different genders competed for the assignment), a higher percentage of lawyers responded. For example, 121 respondents selected "the male lawyer was more qualified" as a reason typically given for assigning a case to a male lawyer rather than to a female lawyer.



disparity between men's and women's answers was greatest.<sup>21</sup>

	Male Lawyers	Female Lawyers
<b>Case requires a "heavy hitter"</b>	<b>4.0%</b>	<b>23.8%</b>
Assigned Judge prefers male counsel	1.3%	4.8%
<b>Client prefers male counsel</b>	<b>5.6%</b>	<b>17.3%</b>
Male lawyer brought in client	4.8%	6.0%
<b>Case requires more aggressive counsel</b>	<b>1.3%</b>	<b>16.7%</b>
<b>Case requires a particular type of expertise that the female lawyer lacks</b>	<b>11.6%</b>	<b>26.8%</b>
Male lawyer is more qualified	19.4%	26.2%
Jury will respond better to a male lawyer	1.0%	6.5%
It isn't the sort of case for a woman lawyer	0.8%	6.5%
<b>Male lawyer is more senior in the office</b>	<b>10.1%</b>	<b>27.4%</b>
A male lawyer has a clear tie to the case	11.9%	13.7%

The most frequent reasons given by both men and women for a man's receiving a case assignment were that the male lawyer was senior, that the case required an expertise that the male lawyer had, that the male lawyer was more qualified, and that the male lawyer had a "clear tie" to the case. The survey did not explore the nature of what "more qualified" or "clear tie" meant to respondents.

In the following sections, we examine further those rationales that could suggest gender stereotyping or prejudice.

## ii. "Heavy Hitter" and "Aggressive Counsel" Rationales

Of the lawyer and judge respondents who said that a case went to a man rather than a woman because he was a "heavy hitter," female lawyers (23.8%) and female judges (26.3%) were far more likely than male lawyers (4.0%) and male judges (6.8%) to have this perception. Similarly, female lawyers and judges were far more likely to have reported that a case went to a man because he is "aggressive."

Ironically, female lawyers sometimes are judged harshly for exhibiting traits of aggressiveness. Responding to the survey question that asked whether "[c]onduct tactics, or arguments of a female lawyer are viewed as inappropriate when the same conduct by a male attorney is viewed as good advocacy," more than one-third of lawyers, and more than one-fourth of judges, "strongly" or "somewhat" agreed. Men and women saw the issue differently: only 20% of male lawyers and 16.5% of male judges "strongly" or "somewhat" agreed. By contrast, nearly 75% of female lawyers and 86.5% of female judges had this perception.

Comments in response to the lawyer survey supported the statistical data:

*"I have observed a number of female litigation attorneys that carry a big chip on their shoulder. They are more aggressive, assertive, less willing to be flexible."*<sup>22</sup>

*"I have been surprised and disappointed at the number of younger female attorneys who think that to be effective they must emulate male traits of aggressiveness. I find some of them acting unprofessional in their relations with other lawyers, being uncooperative and angry."*<sup>23</sup>

In a statement to the Task Force, a woman described her experience in private practice when the promotion of an aggressive female litigator to partner was being considered:

*"It was a major issue. Many of the male partners described her as being overly aggressive and not enough of a team player... At the same time, the female lawyers at the firm viewed her as a role model. She was someone who stuck up for herself and her clients. ....The exact traits that this female lawyer exhibited and was being penalized for, would have been tolerated — in fact, extolled — if they were exhibited by a male lawyer at that firm."*

In order to receive the best case assignments, lawyers of both sexes must be perceived as aggressive. Women may be expected to temper their aggressiveness in ways that men are not.

## iii. "Client Prefers Male Counsel" Rationale

Approximately one-fourth of the lawyers and judges believe that, when a case goes to a male lawyer for gender-related reasons, it is because the client prefers *male* counsel. Female lawyers and judges are far more likely than male lawyers and judges to perceive this to be true.

We do not know what leads lawyers and judges to this perception, which is at odds with other information that we obtained. As noted in the chapter on

<sup>21</sup> The numbers do not add up to 100% in either column, because respondents could select more than one answer. Also, not all survey respondents answered this question; the percentages in the chart are based on the number of male and the number of female survey respondents, respectively.

<sup>22</sup> Comment from the Task Force lawyer survey.

<sup>23</sup> Comment by a lawyer on the Task Force lawyer survey.

Interactions Between Lawyers, Clients, Staff, and Other Professionals, few clients actually appear to have a gender preference for a lawyer.

Additionally, many people commented at focus groups and at public hearings that it is not uncommon for clients to prefer a *female* lawyer some of the time, particularly in domestic relations cases, employment discrimination cases, or criminal cases involving a sex crime charged against a male defendant. Comments such as the following were common in the client survey:

- “I prefer a female for a divorce action”; and
- “Prefer gender of defense lawyer to match plaintiff when possible.”

Similarly, some respondents to the inmate survey commented that they preferred female lawyers, because “females tend to be more open minded to circumstances and [to] what you want to have happen” or “because of the charge.”

In a focus group discussion with male partners, the men observed that corporate clients may have an interest in having female lawyers in the firm:

*“You know, one of the questions a lot of people ask is ‘what are you doing for minorities? What are you doing for women?’”*

### c. Compensation

We examined whether gender has an effect on lawyers’ salaries and promotional opportunities. We began with a review of the 1994 Oregon State Bar Economic Survey of compensation of Oregon lawyers. According to that survey, female lawyers in Oregon earn less than male lawyers. The average gross compensation for male lawyers working full-time in 1993 was \$85,083, compared with \$54,530 for female lawyers. For lawyers working part-time, the average compensation for male lawyers was \$51,248, while for female lawyers it was \$31,255.

That 1994 survey and anecdotal data gathered in focus group discussions and in interviews of lawyers suggest that a variety of factors contribute to this disparity in income between male and female lawyers. Practice specialty, geographic location, number of hours worked, public versus private sector work, and number of years in practice all have an effect. For example, 25% of female lawyers who responded to the survey were government employees, while only 15% of men reported working in the public sector. Seventeen percent of female lawyers reported being in solo practice, and 20% reported working in 2- to 6-lawyer firms; the percentages for men were 23% and 27%, respectively.

The most significant factor affecting the overall compensation difference, as revealed in the 1994 economic survey, is the number of years admitted to

practice. Men reported an average number of years admitted to practice of 17.3 years, nearly twice that of women at 8.8 years. However, the compensation of male lawyers outpaces that of female lawyers at every level, regardless whether the lawyers are working full-time, part-time, or have similar years in practice. For example, male lawyers in full-time practice from 21 to 30 years averaged \$112,751, while women in the same category averaged \$84,400. For full-time lawyers with 0 to 3 years of total experience, men reported an average compensation of \$35,363, compared to \$32,793 for women.

In an effort to learn why female lawyers earn less, we reviewed other data collected by the OSB during its economic survey. We discovered that factors in addition to those related to years in practice, geography, and practice specialty appear to be at work. For example, female lawyers appear to charge less for their time. They also appear to bill fewer hours per month.

Anecdotal evidence is to similar effect. Women often commented on an expectation on the part of clients that female lawyers would charge less. One woman participating in a focus group noted the tendency of others to refer *pro bono* cases to her, and she acknowledged her reluctance to turn the cases down:

*“I get lots of referrals from people who either know, or think, [that] the best shot for talking someone into doing a pro bono case is to send them to me. So I get a lot of those, a lot of non-paying referrals.”*

We did not hear similar remarks from male lawyers, suggesting that they are more comfortable charging (or that clients are more willing to pay) higher fees for their services, that their seniority results in higher fees from clients, or that fewer poor clients are referred to them.

We also heard comments that the income of female lawyers’ spouses affects the compensation of female lawyers. Because it was hard to obtain data on compensation practices in private law firms, we relied on comments at public hearings and focus groups. Several men and women attested to the importance of the income of a female lawyer’s spouse. For instance, a male lawyer cited the experience of his wife, whose compensation was adversely affected because the senior associate felt that her husband’s income put her in a different situation from other associates. Another male lawyer in the same focus group made a similar remark; he described a nearly identical experience relayed to him by a female lawyer. A female lawyer with personal experience on this issue testified at a public hearing:

*“When I requested a raise to match a recent promotion, I was told by my direct supervisor, ‘What do you need a raise for? Didn’t you just get married to a rich lawyer?’”<sup>24</sup>*

<sup>24</sup> Excerpt from statement at Eugene public hearing, Dec 13, 1996.

Male lawyers did not report similar experiences. Income of a spouse does not appear to play a role in determining a male lawyer's salary.

Within the public sector, compensation does not appear to have a gender component. Generally, salaries and benefits in the public sector are structured to take into account such factors as length of service, prior experience, and function within the organization.

#### **d. Rainmaking**

Historically, financial success and promotions in the private sector have depended in part on one's "rainmaking" ability, that is, the ability to generate and maintain clients. Accordingly, our surveys asked lawyers and judges to rank the factors having the most positive effect in generating and maintaining clients. Both male and female lawyers identified the following three factors, in order of importance: (1) "years in practice," (2) "professional recognition," and (3) "age." Judges, on the other hand, regardless of gender, ranked "law school attended" as the most important positive characteristic, although female judges gave "age" equal importance.

Age is seen as either a positive or a negative factor. Male and female lawyers commented that clients come to older lawyers more readily. On the other hand, age is a negative factor when it is equated with lack of experience. Because female lawyers, on average, have practiced for fewer years than male lawyers, age generally works to their disadvantage. In addition to youth, other negative factors cited by respondents included "sexual orientation" and "parenting." Female respondents also cited "gender" as a negative factor in generating and maintaining clients.

With the passage of time, as substantial numbers of women graduate from law school, the combined effect of age and gender in this respect may be expected to diminish. However, successful rainmaking also involves the opportunity to meet clients. The opportunity to meet clients often occurs when an older partner provides the introduction. We heard anecdotal evidence that female lawyers have been excluded from such opportunities on occasion. For example, one woman described client entertainment at an all-male golf tournament, another at an all-male club. One of these same women noted that, when she and an older partner entered an all-male bar in a popular club to be introduced to a client, she was required to leave.<sup>25</sup>

#### **e. Personal Treatment**

Two lawyers — one male and one female, and each from a different city — who have represented a number of female lawyers in various employment-related matters told us that many women in the profession experience,

but fail to report or complain about, adverse treatment that they have received from other lawyers with whom they work. The reported adverse treatment included sexual harassment and denial of promotional opportunities. Some female lawyers declined to report their experiences, we were told, even when complaint procedures were in place at their places of employment. The women reported to their counsel that they feared active retaliation or more subtle forms of disapproval by their male colleagues. Other women wished to disclose their experiences but were prohibited from doing so because of confidential settlement agreements.

## **2. Geography**

In order to compare possible gender unfairness in rural and urban areas, we considered whether the experiences of lawyers practicing in those settings were different. We gathered statistics from three sources: the Task Force surveys of lawyers and judges, the Oregon State Bar, and the 1994 Oregon State Bar Economic Survey. In addition, the work group conducted focus groups in five counties.

According to 1997 Oregon State Bar statistics, female lawyers constitute 26% of the total bar membership, but are under-represented in rural areas. In Eastern and Southern Oregon, women comprise about 19% of the practicing lawyers, whereas they comprise 27.7% and 38.3% of practicing lawyers in Multnomah County and the Mid-Willamette Valley, respectively.

Testimony at public hearings suggested that female lawyers have particular difficulty finding jobs in rural areas and that, in turn, their earning power is diminished. One female lawyer who has practiced for 10 years and who now works in Eastern Oregon described her experience looking for legal employment in a rural area:

*"I came here actually two years ago....Within the last six months ...there's been an influx of male lawyers fresh out of law school. Now I finished law school almost ten years ago. There are three guys who just finished law school, and they got jobs....It's easier as a male to just fit into the established order."*

Others added these similar comments:

*"They [the clients] go to the old boy network, in my town...to the old, established firms...to the ones that have several generations worth of history of being here."<sup>26</sup>*

*"Women haven't been in the law forever. [Of the firms] that are built on families, and family relationships and friends of families, [very few] have women practicing law."<sup>27</sup>*

<sup>25</sup> Comments by a female lawyer in April 1996 focus group in Southern Oregon, describing experiences in Portland, Oregon.

<sup>26</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

<sup>27</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

At a public hearing in Ontario, a male judge with many years of experience in Eastern Oregon corroborated that perception:

*"When you come into Eastern Oregon, you realize that things are more conservative, that the role of women...involves more difficulties than it might in the Willamette Valley or the tri-county area. And thus, it is more difficult I think for women to have some of the same advantages for advancement...even simply to be recognized right at the outset of being fully capable of performing certain positions."*

Likewise, female lawyers from Eastern Oregon expressed their perception that, on the whole, male lawyers in Eastern Oregon are receptive to female lawyers, but that there continues to be difficulty with some male lawyers:

*"The majority of men in Eastern Oregon, male attorneys, are very open to women practicing law, [but] the minority are a little more outspoken than you would expect in a city."<sup>28</sup>*

Moreover, more often in rural areas than in large cities, women find limited opportunities to enter certain practice specialties. We were told that it is difficult, for example, for a woman to enter such areas as environmental or mining and water law, because of the lack of a support or referral network.

Gay and lesbian lawyers also expressed a strong preference to work in a large-city setting, fearing intolerance in rural areas. Given the perception, noted above, that sexual orientation has a negative effect on a lawyer's ability to generate and maintain clients, this fear may be well-founded.

### 3. Practice of Law

#### a. Public and Private Sector Experiences

##### i. Demographics

Women constitute 26% of bar membership overall but only 20% of the private bar. By contrast, 80% of male lawyers are employed in the private bar, although men constitute 74% of the total bar membership.<sup>29</sup>

Female lawyers are almost 36% of the lawyers employed in the government sector, 55.2% of the lawyers employed in legal services, and 44.3% of the lawyers employed in public defenders' offices.

#### Oregon State Bar General Areas of Practice by Gender

				%	%
	Total	Male	Female	Male	Female
Active Members	9,351	6,924	2,427	74%	26%
Private Practice	6,011	4,793	1,218	79.7%	20.3%
Government Employees:					
Total	1,656	1,065	591	64.3%	35.7%
PLF Exempt	1,413	937	476	66.3%	33.7%
Legal Aid Lawyers	67	30	37	44.8%	55.2%
Public Defenders	176	98	78	55.7%	44.3%

#### ii. Discussion

Anecdotal evidence suggests that many women view the public sector as being a more desirable place to work than the private sector. Participants in focus groups cited four reasons: (1) entrenched attitudes against women in the private sector, (2) the perceived lack of mentors there, (3) the relatively smaller percentage of women at private firms, and (4) greater billing and time demands in private practice. Both male and female lawyers expressed their view that female lawyers are treated "more equally" in the public sector. In the private sector there is competition among lawyers to "make partner," and that competition may contribute to reduced cooperation with co-workers.

Whether there is a "male style" or a "female style" in approaching law practice is hard to document statistically; those concepts may be nothing more than stereotyping based on (actual or perceived) ingrained social patterns of behavior. However, our surveys of lawyers and judges revealed that, generally speaking, men are viewed as being more "aggressive" and women as more "cooperative" and that the private sector more than the public sector values and rewards the "aggressive" approach to cases. We heard that the greater presence of women in the public sector allows

<sup>28</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

<sup>29</sup> Gender fairness studies conducted in other states mirror our finding that proportionately fewer women than men engage in private practice. In Indiana, the figures for women and men are 53% and 74%, respectively. The New Hampshire study found 68% of women in private practice, compared with 80% of men. Similarly, the Wisconsin survey found 54% of women in private practice, compared with 68% of men. A study of University of Michigan Law School graduates found only 44% of female graduates in private practice, compared with 70% of male graduates. Likewise, in a survey conducted in the District of Columbia Circuit, a higher percentage of the male respondents were in private practice — 69% compared with 54% of the women.

In the public sector, by contrast, a higher percentage of women than men are lawyers in the United States Justice Department, other federal agencies, the United States Attorney's Office, and the Office of the Federal Public Defender — 26% of the women, compared with 19% of the men. The United States Court of Appeals for the Ninth Circuit also found higher concentrations of women in positions with the United States Attorney's and Federal Public Defender's offices than in private practice.

Of the Oregon district attorneys, 8% are women; of the deputy district attorneys, 35% are women; of county counsel, 17% are women; and of assistant county counsel, 35% are women. The results of a 1997 survey of the 10 largest law firms in Oregon reflects that women comprise on the low end 17% and on the high end 31% of the lawyers employed in the firms, with most falling approximately in the 25% range. Data from Oregon State Bar, March 11, 1997, and 1997 National Association for Law Placement (NALP) forms. (NALP forms are discussed *infra* at note 46.)

for a broader array of styles, including those styles that other women find comfortable.<sup>30</sup>

But the greater presence of women in government cannot be attributed solely to a perception that the litigation-based nature of much private firm practice is less welcoming to women than the less adversarial atmosphere of public sector work. Most lawyers, including female lawyers, who work in state or local government are engaged in adversarial litigation, both civil and criminal. Female trial lawyers also are common in indigent defense firms, including public defenders' offices.

Whether female lawyers *apply* for public sector jobs disproportionately to their overall numbers is unclear. We did not explore this factor, although we did hear several comments during focus group discussions that the public sector has a larger pool of female applicants from which to choose. A smaller pool of female applicants in the private sector may have an effect on the composition of law firms.

This is not to say that female lawyers uniformly regard the public sector as the preferred work place. For example, a female lawyer employed in the public sector expressed her belief that, in the public sector, women are treated unfairly:

*"When a woman raises an issue, it is often ignored by the male lawyers or dismissed as 'the stupidest idea I've heard.' When a male lawyer raised that same issue as if it were his own, the male colleagues respond to it as a valuable concept."*<sup>31</sup>

Another female lawyer cited her public sector hiring interview with three female interviewers as her "toughest." Compelling testimony contradicting the perception of the public sector as welcoming to women came from a female lawyer who described her experience in the 1980s while working as a deputy district attorney:

*"One assistant district attorney showed me a picture of a lineup of women all doing the can-can dance. He had transposed all the faces of the women in that picture with photographs of all the female DAs. And he had captioned the photograph, the V team. The Circuit Court teams in the district attorney's office are alphabetically designated: A team, B team, C team, D team. I did not think that V stood for Victory."*<sup>32</sup>

## **b. Practice Specialties**

As noted earlier, female lawyers constitute 26% of the bar membership in Oregon. Women are dramatically over-represented in the practice specialties of poverty law (59%) and disability law (40%). Women are significantly under-represented in general practice, corporate law, real estate law, and environmental law.<sup>33</sup> Female judges tended to have backgrounds in the areas of juvenile law, labor law, poverty law, and public defender work.<sup>34</sup> Male judges commonly have backgrounds in appellate practice, general practice, and civil litigation.<sup>35</sup> This difference mirrors those areas in which female and male lawyers tend to practice currently.

We do not know *why* female lawyers are found in these areas of specialty. Several factors likely contribute: Women may be drawn to certain areas for reasons of personal interest, women may perceive that the opportunities for mentorship and advancement increase in specialties with higher numbers of female lawyers, or women may choose practice specialties that are likely to afford personal control over their cases. It also is possible that men in predominantly male-occupied practice areas may deliberately or unintentionally deny women access to those practice areas.

## **c. Family Obligations**

We cannot consider gender fairness in the practice of law without acknowledging the changing environment for all lawyers: In the late 1990s, the practice of law entails significant economic pressures and is a business as well as a profession.<sup>36</sup> Men and women experience

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<sup>30</sup> Comment by female lawyer in Willamette Valley focus group in 1997.

<sup>31</sup> Comment by female lawyer in Willamette Valley focus group in 1997.

<sup>32</sup> Testimony from female lawyer at Eugene public hearing, Dec 13, 1996.

<sup>33</sup> Data provided by the Oregon State Bar. For a full listing of the bar sections and the percentages of female lawyers, see the Appendix.

<sup>34</sup> The relative percentages for female and male judges in these practice areas were: Juvenile Law (57.9% vs. 43.8%); Labor Law (26.3% vs. 6.8%); Legal Services (15.8% vs. 4.1%); and Public Defender (21.1% vs. 8.2%).

<sup>35</sup> The relative percentages for male and female judges in these practice areas were: General Practice (65.8% vs. 42.1%); Appellate (32.9% vs. 21.1%); and Civil Litigation (65.8% vs. 52.6%).

<sup>36</sup> See, e.g., James W. Jones, *Law Firm Diversification: Is It the Wave of the Future?*, ABA J, Sept 1989, at 52, who wrote in his discussion of the topic:

"The practice of law — however it may be defined and whatever its scope — has become far more complex and diverse in recent years than could have been imagined even 20 years ago."

Similarly, Sol Linowitz has observed:

"Much of the hunger to make top dollar now. . . can be traced to . . . the possibility that a lawyer, like an athlete, will have only a few years to maximize his reward and must get what he can while his talents are in demand."

SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

ongoing difficulty in balancing the demands of work and the need for personal time. However, both men and women report that women especially feel pressure to meet the demands of family.<sup>37</sup>

Statistical information from the surveys of judges and lawyers was revealing in this regard. The majority of the judges responding to the survey were married. Although the percentage of married judges was similar for men (89%) and women (84%), there were many fewer female judges who had children (63%) than male judges (93%). Similarly, a majority of the male lawyers (83%) and female lawyers (63%) were married. However, female lawyers (53%) were more likely than male lawyers (39%) to have no children.

Several possible explanations exist for this disparity. Women who choose not to have children may be more attracted to the legal profession; women who delay bearing children to complete their legal education and to build their careers may be unable to have children later in life; women who are lawyers may experience the stress commonly associated with law practice that, apart from delay, may affect their ability to conceive; women be younger than their male counterparts and may yet start a family; or women in law practice may be discouraged by their employers from having children.

We heard testimony from women who delayed having families until they were assured of partnership or other tenured positions by their employers. There were other anecdotal reports from women who consciously chose career over children, particularly when the only role models available to them were men who chose not to place family obligations ahead of career advancement.

Female respondents (16%) were twice as likely as male respondents (7%) to be divorced or separated. As noted in the chapter on Domestic Relations Cases, it is more likely that divorced women with children are the custodial parents. This family responsibility necessarily affects the balancing issues with which lawyers and law firms grapple. A female lawyer commented that, as a single mother, she had chosen to work in a small private firm in a small city, instead of a large firm in a large city, believing that her ability to meet the needs of her family was enhanced by more reasonable work demands on her time.<sup>38</sup>

In focus group discussions, both male and female participants cited the need for female lawyers to attend to family obligations as the primary reason why women pursue solo practice and employment in the public

sector. As noted in the earlier discussion, lawyers believe that the public sector provides more predictable hours and that solo private practice provides greater flexibility in controlling one's hours. By contrast, private and especially large-firm practice often is not viewed as conducive to successful balancing of work and family.

At the public hearing in Portland, a female managing partner corroborated the difficulty posed by issues of family needs and professional demands. Her large firm has many female partners:

*"Now, while I think it is true that we have made substantial progress, it is also the case that there are a couple of issues that are particular challenges to us.... The first is not unique to large law firms: our women face the competing demands of family and career. That wasn't created by large law firms. It can't be solved by large law firms. It's just a fact of our society, and we have to deal with it."*

Her firm has addressed this issue with a less-than-full-time commitment program for male and female partners, as well as those on the partnership track. That program has not been entirely successful:

*"[W]e suffer attrition, because many of our women have difficulty balancing the demands of family and the practice. It's just the way it is, and it's very difficult. And so we do see, a higher amount of attrition from our women based on those kinds of decisions that they make."<sup>39</sup>*

Other legal employers do not offer a less-than-full-time work schedule to lawyers.<sup>40</sup> A female lawyer with a five-month-old baby reported that her firm (a large urban law firm) does not allow anyone to work part-time. She expressed her disappointment at this policy and stated that she would be forced to seek employment elsewhere. Although the policy applies equally to all lawyers, regardless of gender, it has a disparate effect on female lawyers with children. Overall, the lack of part-time work opportunities creates an impediment to work in the profession for women who have, or want to have, children.

Even where part-time opportunities exist, compensation of female and male lawyers may differ. One male lawyer refused to discuss with us the details of his compensation agreement with his large, urban law firm. However, he did acknowledge that the female lawyers working part-time at his law firm did not have the same (advantageous) financial arrangement as he did and that there was no uniform policy for determining the salaries of part-time lawyers.<sup>41</sup>

<sup>37</sup> The Oregon State Bar formed a task force to examine issues related to balancing family and career, which generated a report in 1990. Thereafter, the Bar formed an implementation committee, which supplemented that report in 1992.

<sup>38</sup> Note from female lawyer to Task Force co-chair, Dec 1997.

<sup>39</sup> Testimony by female partner at Portland public hearing, Oct 21, 1996.

<sup>40</sup> The 1992 report of the Oregon State Bar Committee on Balancing Personal Life, Family and Career concluded that a number of public agencies, as well as private law firms, consider part-time, flex-time requests on a case-by-case basis. Few have written policies. Lawyers working part-time rarely are considered for partnership.

Of course, some men also face difficulty in balancing the demands of family and professional life. For example, a female lawyer reported that, when she and her husband (who was employed in private practice) had their first child, her husband's firm "pulled his leave" the day she returned from the hospital, despite a promise that he would be granted some time off.<sup>42</sup> Another male lawyer reported that, following his return to the office after exercising his right to parental leave, he experienced what he perceived to be "punishment" for having been gone.<sup>43</sup> For example, when he asked for the assignment of associates to assist him in completing a project, his male partners denied his request, commenting that "it appears that you are about six weeks behind" — exactly the period of time that he had taken as leave. We heard several other comments of the same nature. All too often, private law firms accommodate a mother's decision to take parental leave, but not a father's.

#### d. Retention

The retention of lawyers of both genders, but particularly women, and in all sectors (albeit less in the public sector) is seen as a continuing challenge to employers. This is generally true throughout the country.

We did not find out how many men and women have left the practice of law in Oregon. However, we heard anecdotal evidence from men and women, in focus group discussions and at public hearings, that female lawyers leave the profession in greater numbers than do male lawyers. We do not know the reasons for women's or men's departures from the legal profession.

We did find, however, that female lawyers who leave private practice may be responding to the pressures of long hours in certain specialties, to family responsibilities, or to a perceived lack of satisfactory mentors.

Women are particularly likely to depart from certain practice specialties. For example, in civil litigation departments, both men and women often leave, but female lawyers are more likely to do so. As a male partner commented during a focus group discussion:

*"We have had a hell of a time keeping women litigation associates. They either leave and go into the business department for more predictable hours or they jump out...for whatever reason. And we, have several young women partners who, you know, plowed right*

*through it but we have just had a damn tough time, especially in litigation, keeping people there."*

In the discussion that followed, another male partner observed that the predictability of hours appeared to be the primary reason why female lawyers selected non-litigation departments in his firm:

*"Employee benefits, labor and estate and trusts is where the women tend to be in higher numbers and higher percentages in our office because...[it's] pretty predictable work. You don't have to worry about, you know, what's going to happen when the nanny turns into a pumpkin at 5:30. Cause you're going to be there at 5:30. Every single day."*

This is not to say that only female lawyers feel the stress of child-care responsibilities. In a focus group in Southern Oregon, for example, two female lawyers noted the difficulties faced by male lawyers whom they know. To quote one:

*"He has the same problems...his wife goes up to [another city] every Friday to work and he has problems getting to work."*

In discussions with lawyers throughout the state, we heard that the presence of a mentor is widely regarded as very important to retaining a junior lawyer. The absence of female mentors, in particular, poses a challenge in retaining female lawyers, especially in large firms. A sense of frustration pervaded the focus group of male partners practicing in an urban area, as they reflected on the variety of strategies that their firms have used to increase retention rates for promising lawyers.

*"I would find some way of manufacturing more senior women partners generally and just sprinkling them around the firm. I think that would be a great thing. I mean you can't do it now. ...There aren't that many gray-haired eminent women lawyers right now. ...[T]en years from now, that's going to change."*<sup>44</sup>

#### e. Positions of Power

Nationally, 37% of all lawyers admitted to practice since 1985 have been women. However, the number of women who have obtained partnership positions in large firms is still in the low teens.<sup>45</sup> In Oregon, the trend is the same. Of the Oregon law firms completing the National Association for Law Placement (NALP) firm questionnaire, as of February 1, 1997, the total percentage of female partners was 15%.<sup>46</sup> The results of the Task Force survey of lawyers was nearly identical: Thirty-three (14.8%) of the 223 respondents who were partners in private law firms were women.

<sup>41</sup> Telephone conversation between Jessica Mindlin, Task Force Coordinator, and male lawyer.

<sup>42</sup> Comment from female lawyer in Willamette Valley focus group.

<sup>43</sup> Comment from male lawyer to member of Task Force in 1997.

<sup>44</sup> Excerpt from comment by male partner in focus group. The statistical data from the lawyer survey support the foregoing perception to this extent: female respondents constitute 43.5% of the respondents who are under the age of 30, and 40% of the respondents under the age of 40. Women constitute only .6% (one out of 40) of the respondents aged 60 or over.

<sup>45</sup> COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASS'N, WOMEN IN THE LAW: A LOOK AT THE NUMBERS (1995).

We did not gather data respecting managerial positions occupied by lawyers in the public sector. However, focus group discussions suggested that, although a higher percentage of women occupy positions of power in that sector than in the private sector, male lawyers occupy managerial positions proportionately more than female lawyers. Nationally, this is true as well. At the United States Department of Justice, for example, in which 35% of the approximately 25,000 lawyers are women, only 18.5% of the women occupy supervisory positions, compared with 25.1% of the men.<sup>47</sup>

In the judiciary, the pattern is similar. Of the presiding judges in Oregon's 26 trial court districts, 4 (16%) are women. A woman also is the presiding judge of the Oregon Court of Appeals, while a man serves as Chief Justice of the Oregon Supreme Court. Tremendous progress in the appointment and election of women to the bench has been made in the last decade, as the table below reflects:<sup>48</sup>

**1997 Snapshot of the Oregon Judiciary**

	<b>Total No. of Judges</b>	<b>Number of Women</b>	<b>Percentage of Women</b>
District Court Judges	63	13	20.6%
Circuit Court Judges	93	19	20.4%
Tax Court <sup>49</sup>	1	0	0%
Court of Appeals	10	3	30%
Supreme Court	7	1	14.3%
Total Judges	174	36	20.7%
Presiding or Chief Judges	28	5	17.9%

Additionally, the percentages of women at each level of the judiciary who were appointed or elected initially after January 1, 1985, have been slightly higher (overall, about one-fourth).

We did not study whether there are gender-related disparities in case assignments among judges of the same court. However, we received anecdotal information from female judges that some female judges are perceived to obtain less favorable case assignments than their male peers.

## E. CONCLUSIONS

Overall, tremendous progress has been made in the opportunities afforded to female lawyers. In Oregon, female lawyers now constitute 26% of the bar membership, up from approximately 2% in 1970, and 9% in 1980.<sup>50</sup> Women graduate from Oregon law schools in numbers nearly equal to men. Women hold nearly 21% of judicial positions in the Oregon judiciary.

However, a significant minority of female lawyers face gender bias or gender unfairness within the legal profession. Moreover, as reported in survey responses, Oregon's female judges and lawyers perceive more unfairness than do their male counterparts. For example:

- 73.7% of female judges (compared with 2.7% male judges), and 65.5% of female lawyers (compared with 19.2% male lawyers) reported being treated differently by *clients* because of their gender;
- 42.1% of female judges (compared with 1.4% male judges), and 61.3% of female lawyers (compared with 7.6% male lawyers) reported being treated differently by *lawyers* because of their gender; and

<sup>46</sup> The NALP form is prepared by an individual at a law firm for distribution to law students seeking employment opportunities. The form describes law-firm characteristics, including information about the lawyers practicing in the firm, based on self-reports. At least with regard to sexual orientation and disability, we *know* that there is under-reporting by lawyers. The figures below must, therefore, be considered with caution.

### **Demographic Composition of Portland Law Firms in Numbers and as Percentages**

	<b>Partner/ Firm Member</b>	<b>Of Counsel</b>	<b>Associate</b>	<b>Senior Lawyer</b>	<b>Staff Lawyer</b>	<b>Summer 1997</b>
<b>Men</b>	391 (85%)	40 (93%)	149 (64%)	5 (60%)	7 (58%)	40 (63%)
<b>Women</b>	68 (15%)	3 (7%)	83 (36%)	2 (40%)	5 (42%)	30 (37%)
<b>Total</b>	459	43	232	5	12	70
<b>African-Am.</b>	1 (.2%)	0 (0%)	5 (2%)	0 (0%)	0 (0%)	8 (11.4%)
<b>Hispanic</b>	2 (.4%)	0 (0%)	10 (4%)	0 (0%)	1 (8%)	4 (6%)
<b>Asian-Am.</b>	2 (.4%)	0 (0%)	13 (5.6%)	0 (0%)	1 (8%)	13 (18.6%)
<b>Disabled</b>	2 (.2%)	2 (5%)	1 (.4%)	0 (0%)	0 (0%)	0 (0%)
<b>Openly Gay/Lesbian</b>	1 (.2%)	0 (0%)	1 (.4%)	0 (0%)	0 (0%)	0 (0%)

<sup>47</sup> NATIONAL TECHNICAL INFO SERV, FEDERAL CIVILIAN WORKFORCE STATISTICS, OCCUPATIONS OF FEDERAL WHITE COLLAR AND BLUE COLLAR WORKERS (Sept 1993).

<sup>48</sup> Data provided by Doug Bray, Deputy Court Administrator, Office of the State Court Administrator, dated July 28, 29 & 30, 1997.

<sup>49</sup> In addition to the one Tax Court judge, there are five Tax Court magistrates; two are women and three are men. One male tax magistrate is disabled.



- 31.6% of female judges (compared with 2.7% male judges), 31.5% of female lawyers (compared with 5.6% male lawyers) reported being treated differently by *judges* because of their gender.

## 1. Work Environment

### a. Hiring Practices

Gender plays a role in the hiring process in some cases. Personal issues are the subject of inquiry for female candidates more often than for male candidates. Women sometimes face intrusive questions about their marital status, child-bearing plans, and husbands' approval of their career choices. Men are not subjected to similar questioning during the interview process.

### b. Case Assignment

Few case assignments are made on the basis of gender. Sometimes, however, case assignments are made to lawyers who are perceived to be "aggressive" or "heavy hitters," and such lawyers more often are men. Female lawyers displaying traits of aggressiveness may be criticized.

Male and female lawyers believe that case assignments are made to accommodate the preferences of clients. However, clients generally do not appear to prefer male counsel more than female counsel for reasons of gender.

### c. Compensation

Female lawyers earn less than their male counterparts. Factors that appear to play a role include:

- female lawyers charge less for their time;
- female lawyers work fewer billable hours;
- some firms may consider the income of a female lawyer's spouse in setting the compensation of a female lawyer;
- women may have fewer "rainmaking" opportunities than men;
- female lawyers practice in fields that are less highly compensated (in part to have greater control of their work schedules and to accommodate family responsibilities); and
- women disproportionately practice in the public sector.

Additional objective and subjective factors may be at work.

For the most part, compensation in the public sector does not appear to be based on the gender of the lawyer.

In both private and public employment, positions of leadership and supervision are held disproportionately by male lawyers.

### d. Personal Treatment

Some women are reluctant to report adverse treatment under existing procedures.

## 2. Geography

Judges and lawyers in rural areas are disproportionately male. Female lawyers in rural areas have fewer opportunities than their urban counterparts to associate with other female lawyers, particularly in the private sector. That fact, and the relative lack of mentoring opportunities, contribute to a sense of isolation for female lawyers in rural areas.

## 3. Practice Specialties

Female lawyers are under-represented significantly in several practice specialties: general practice, corporate law, real estate law, and environmental law.

Female lawyers predominate in government work, poverty law, disability law, and public defender practice, which are areas in which compensation is typically lower.

## 4. Public and Private Sector Experiences

The public sector appears to be a more welcoming work environment to female lawyers. Factors that may contribute to this perception are:

- a higher ratio of female to male lawyers than in the private sector;
- less competition and more collaboration in the public sector;
- more control over hours;
- more consideration of family issues and personal lives; and
- few or no "rainmaking" obligations.

## 5. Family and Outside Obligations

The practice of law often conflicts with family and personal obligations. All lawyers, regardless of gender, experience difficulty balancing work and family. However, women are more frequently responsible for home and family obligations. This factor, more than any other that we examined, appears to affect women's career decisions and career opportunities. The effort to achieve balance drives women to make career choices such as area of specialty, public sector versus private

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<sup>50</sup> This is slightly more than the national average; nationally, women comprise 20% of all lawyers. See Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry Into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 NYU L Rev 829, 847-48 (1995).

sector, solo practice versus firm, and geographic location. Concerns about that balance also cause some employers to limit the opportunities that they make available to women.

Male lawyers, too, suffer from the inflexible or onerous demands of their law practices. When men assume family responsibilities, there is little tolerance for the choice.

Some law firms are developing and implementing part-time positions, including positions on a partnership track. To the extent that female lawyers bear greater responsibility for family and household obligations, this option assists in the balancing of family and career without undue sacrifice of financial reward and career success. Not all law firms' compensation arrangements with part-time lawyers are fairly applied, however.

## 6. Retention

Retention of female lawyers in the private sector, especially in areas such as civil litigation, presents a challenge to law firms, for a number of reasons. Female lawyers describe a male-dominated culture, an inability to control the hours worked, a lack of mentorship opportunities, and an unwillingness to address the need for female lawyers to meet family obligations. Part-time and flex-time options are available in some firms, but exercising those options may jeopardize a lawyer's attainment of partnership status.

## 7. Positions of Power

Women have made great strides in the last several years, not only in representation in the bar overall, but also in attaining positions in the judiciary and partnership status in the private sector. However, compared to their numbers in the bar, women are still under-represented in leadership roles, such as partnerships in private firms. Additionally, women are still somewhat under-represented in the judiciary and its leadership positions. Although time alone may help to change those facts, conscious effort also will be required.

## 8. Intersectionality

Young, female lawyers may be disadvantaged in their practice, both inside and outside the courtroom. Although most respondents to the judge and lawyer surveys considered the personal characteristics of the litigants to be more important to the outcome of litigation than the personal characteristics of counsel, significant numbers of both lawyers and judges responded that representation by a young, female lawyer in a civil case may have a negative effect on the outcome of the case for her client.<sup>51</sup>

## F. COMMENDATIONS

We commend public sector legal employers for hiring substantial numbers of women and for establishing gender-neutral compensation policies and practices.

We commend the Oregon lawyers who participate in mentoring programs, including those sponsored by the Inns of Court, the Professional Partnership Program of the Oregon State Bar, Oregon Women Lawyers, the Multnomah Bar Association, the Oregon Trial Lawyers Association, the Association of Oregon Black Lawyers, and the Minority Law Students Association at Willamette University College of Law.

We commend the legal employers that have:

- implemented part-time and flex-time practice options for lawyers, especially those on partnership tracks;
- established structured mentoring programs for newer lawyers;
- recruited female lawyers and lawyers of color; and
- created structured evaluation procedures for lawyers to ensure fairness.<sup>52</sup>

## G. RECOMMENDATIONS

### 1. The Oregon State Bar should:

a. gather and maintain data about its membership through regular anonymous surveys, conducted at least every three years. The data should contain basic demographic information about lawyers, including gender, race, ethnicity, and self-identified sexual orientation. Specifically, the Bar should maintain, and make easily accessible, the following information:

- (i) the number of lawyers in the Oregon State Bar;
- (ii) their years of experience;
- (iii) their compensation, including benefits;
- (iv) their positions with their firm, corporation, governmental unit, or other entity;
- (v) their areas of practice;
- (vi) their career paths (longitudinal study);
- (vii) promotional opportunities offered and taken; and
- (viii) status as active or inactive;

<sup>51</sup> For further findings and discussion of this issue, see the Judicial Administration chapter.

<sup>52</sup> See COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASS'N, FAIR MEASURE — TOWARD EFFECTIVE ATTORNEY EVALUATIONS (1997).

b. beginning in 1999, sponsor periodic educational programs about state and federal laws that apply to lawyers in their roles as private and public employers, with an emphasis on appropriate hiring methods and responses to complaints of sexual harassment;

c. continue and expand mentoring programs for young lawyers, especially women and people of color;

d. undertake to consider, by January 1, 2000, the feasibility of establishing a process by which lawyers may complain of adverse treatment without the need to reveal that complaint, at least initially, to persons in the complainant's own firm or community;

e. by January 1, 2000, study whether lawyers who serve in contract lawyer, in-house counsel, and of-counsel positions experience unfairness on the basis of gender or other personal characteristics and, if so, make appropriate recommendations to remedy any such unfairness; and

f. encourage qualified lawyers who are women, people of color, gay men, lesbians, and disabled persons to apply for judicial positions.

## **2. Private and public legal employers should:**

a. by January 1, 1999, implement written hiring policies to ensure that interviewers conduct interviews in accordance with legal requirements;

b. ensure diversity among the persons responsible for hiring decisions, in particular by including women and people of color;

c. by January 1, 1999, implement and distribute policies prohibiting discrimination and sexual harassment;

d. plan social and business events that are open to, and are of interest to, both male and female lawyers and clients;

e. by January 1, 1999, establish promotional policies respecting management positions to ensure fairness in promotions;

f. review case assignment procedures to ensure that women have an equal opportunity to participate in challenging and high-profile cases; and

g. by January 1, 2001, adopt part-time, flex-time, and similar policies that allow lawyers to meet the demands of their personal lives, and ensure that lawyers who take advantage of such policies are not placed at an inappropriate disadvantage for having done so.

## **3. The Governor should:**

- continue to appoint qualified lawyers who are women, people of color, gay men, lesbians, and

disabled persons to judicial positions (especially outside major metropolitan areas).

## **4. The Chief Justice should:**

- by January 1, 2000, determine whether case assignments are made fairly to female and male judges and, if not, make appropriate recommendations to remedy any such unfairness.



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Roy Pulvers  
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Randall Vogt  
Linda Wagner  
Mary Wagner  
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Pamela G. Wood  
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Ira Zarov

## **FIRMS and ORGANIZATIONS THAT ASSISTED THE TASK FORCE**

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James A. Arneson, PC  
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Benton County Legal Defense Corporation  
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Brophy Mills Schmor Gerking & Brophy  
Center for Non-Profit Legal Services, Inc.  
Clackamas Indigent Defense Corporation  
Brian Patrick Conry, PC  
Coos County Indigent Defense Consortium  
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Intermountain Public Defenders, Inc.  
Jackson Juvenile Consortium  
Josephine County Public Defender/Jackson County  
Public Defender  
Josephine County Defense Lawyers  
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Arnett  
Lane County Legal Aid Service  
Lane Juvenile Lawyers Association  
Lincoln Defense Consortium  
Linn County Legal Defense Corporation  
LL&W Legal Services  
LNS Reporting  
Los Abogados  
Luvaas, Cobb, Richards & Fraser PC  
Marion County Association of Defenders, Ltd  
Marion/Polk Legal Aid Service, Inc.  
McKeown & Brindle  
Metropolitan Public Defender Services, Inc.  
Morris, Bofferding & Spinhirne, PC  
Multnomah County Indigent Defense Consortium  
Multnomah Defenders, Inc.  
Multnomah County Legal Aid Service  
Multnomah Defenders, Inc.  
Northwestern School of Law, Lewis and Clark  
College  
Olsen, Huffman & Horn  
Oregon Association of Legal Secretaries  
Oregon Attorney Assistance Program  
Oregon Commission on Children and Families  
Oregon Court Reporters Association  
Oregon Department of Corrections  
Oregon District Attorneys' Association  
Oregon Legal Management Association  
Oregon Legal Services Corp.  
Oregon Paralegal Association  
Oregon Survey Research Laboratory  
Oregon Women Lawyers  
Oregon Youth Authority, Hillcrest School  
Public Defender Services of Lane County  
Rader & Rader  
Ransom Blackman & Maxfield  
Rieke & Savage  
Rogue Women Lawyers  
Saxon, Marquoit & Bertoni  
Smith, Freed & Chock  
Southern Oregon Public Defender  
Southwestern Oregon Public Defender  
Squires & Lopez  
Stoel Rives LLP  
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### **Oregon State Bar**

### **Oregon State Bar Sections**

Appellate Section  
Business Litigation Section  
Civil Rights Section  
Debtor-Creditor Section  
Disability Law Section  
Government Law Section  
Litigation Section

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Lane County Bar Association  
Multnomah Bar Association  
Wallowa County Bar Association

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OREGON SUPREME COURT

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OREGON STATE BAR



*Report of the  
Oregon Supreme Court/  
Oregon State Bar*

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**Task Force**

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**on Gender**

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**Fairness**

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**APPENDIX**

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*May 1998*





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## **Procedures for Task Force on Gender Fairness**

### **I. Meetings**

#### **A. Notice; Public Meetings**

The cochair, or one of them, shall call meetings and set the agenda. All meetings shall be announced in advance and shall specify whether the Task Force will conduct a hearing at which public comment will be taken or will conduct a work session without public comment. All meetings shall be open to the public.

#### **B. Quorum; Attendance**

A majority of Task Force members shall constitute a quorum for the transaction of business. Task Force members are expected to attend all meetings if possible and shall notify a cochair or staff person in advance if they will be absent.

#### **C. Business Requiring Quorum**

Business requiring a quorum shall be adoption of a mission statement, goals, structure, and these procedures; and adoption of the final report. If a quorum has been declared, an affirmative vote of a majority of those present is required for Task Force action on the foregoing items. With the exception of those items, neither a quorum nor formal voting is required to conduct the business of the Task Force.

### **II. Responsibilities**

#### **A. Cochair**

The cochair will coordinate and direct the work of the Task Force. The cochair shall:

- (1) coordinate the release of information to the press and the public;
- (2) determine dates for and sites of Task Force meetings;
- (3) hire and supervise any staff;
- (4) approve the budget; and
- (5) determine when reports should be made to the Chief Justice and the President of the Oregon State Bar.

## **B. Teams and Team Leaders**

The cochaIRS will appoint a team leader to coordinate and direct the work of each team. Each team will investigate a designated subject area (including the collection of data and the holding of hearings) and will present (in writing) proposed findings, conclusions, and recommendations to the Task Force. Subject to the approval of the cochaIRS, the team leader may appoint members to the team who are not members of the Task Force. In consultation with the members of the team, each team leader shall:

- (1) develop an internal plan of action, including time lines, for completion of the team's duties;
- (2) set the schedule of the team; and
- (3) be responsible for sending notices and keeping minutes.

Each team leader may propose a budget if appropriate.

## **C. Secretary**

The secretary shall:

- (1) make arrangements with the designated meeting sites;
- (2) send all Task Force meeting notices;
- (3) keep the minutes; and
- (4) circulate the minutes.

You are Invited to Attend . . . .

Oregon Supreme Court - Oregon State Bar  
**TASK FORCE ON GENDER FAIRNESS**

\* \* \* \*

# PUBLIC HEARING

- Do you believe that you were treated differently in court because you are a woman or a man?
- Do you believe that the outcome of a legal case was affected by your sex?
- Does gender have a negative or positive effect on your experience in the judicial system or the legal profession?

The Task Force on Gender Fairness wants to hear from you!

**WHEN:**

Wednesday, September 25, 1996  
4:00 p.m. to 7:00 p.m.

**WHERE:**

The Little Theater  
South Medford High School  
815 S. Oakdale  
*\*Child Comfort Room - room 117*

**WHY:**

The Task Force on Gender Fairness is studying whether (and, if so how) Oregon's judicial system and legal profession treat people unfairly on the basis of gender. We will recognize fair treatment where it exists, and make recommendations for change where it does not. The Task Force is holding a series of public hearings to gather information on these issues.

**\*\* Written comments are welcome \*\***

**\* Wheelchair accessible \* Spanish language interpreter on site \* Child Comfort Room \***  
**(Contact the Task Force for ASL interpreting or other reasonable accommodations:**  
**Realtime captioning provided at Portland and Eugene hearings.)**

## WE NEED TO HEAR FROM YOU

If you have experience as a plaintiff or defendant, a juror, witness, guardian, mediator, court employee, lawyer, judge, legal worker, law enforcement officer, domestic violence worker, or anyone else involved in the justice system or the legal profession, the Task Force is interested in hearing from you.

**\* (The Child Comfort Room is available for you to leave your child with a supervisor that you bring to the site.)**

The Task Force will hold public hearings and other listening sessions throughout the state. If you prefer to speak with us at another time or location, please contact us at: Task Force on Gender Fairness, Oregon Supreme Court Building, 1163 State Street, Salem, OR 97301; (503) 986-5921; (TDD: 503-986-5504).

## Task Force on Gender Fairness

E-mail: [jessica.e.mindlin@state.or.us](mailto:jessica.e.mindlin@state.or.us)

# OREGON STATE BAR

Supreme Court Building, 1163 State Street, Salem, OR 97310

Phone: (503) 986-5921 Fax: (503) 986-5730 TDD: (503) 986-5504

**Coordinator**

Jessica E. Mindlin

WRITTEN STATEMENT  
TO THE TASK FORCE ON GENDER FAIRNESS

The Task Force on Gender Fairness is studying whether (and, if so, how) Oregon's judicial system and legal profession (including law schools) treat people unfairly on the basis of gender (sex). We will recognize fair treatment where it exists, and make recommendations for change where it does not. Please be as specific as possible, and feel free to use additional sheets of paper.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(Any identifying information is **OPTIONAL**.) Supporting documents are also welcome. You may return this form to the box provided, or mail it to the Task Force at the address above. Thank you.

Name:

Address:

City, State, Zip:

Telephone Number: (      )

Other Information (e.g., case #):

## Task Force on Gender Fairness

E-mail: [Jessica.E.MINDLIN@state.or.us](mailto:Jessica.E.MINDLIN@state.or.us)

**OREGON STATE BAR**

Supreme Court Building, 1163 State Street, Salem, OR 97310  
Phone: (503) 986-5921 Fax: (503) 986-5730 TDD: (503) 986-5504

## DECLARACION ESCRITA

**A LA COMISION ESPECIAL SOBRE IMPARCIALIDAD EN LOS ASUNTOS  
RELACIONADOS CON EL GENERO (TASK FORCE ON GENDER FAIRNESS)**

La Comisión especial está investigando si el sistema jurídico de Oregon y la profesión legal tratan al público de forma injusta según el género (sexo) de la persona. Se le dará el debido reconocimiento al tratamiento imparcial dondequiera que exista, y haremos recomendaciones para efectuar cambios donde fuese necesario.

### Co-Chairs

The Honorable Susan P. Graber  
Robert H. Fraser

## Members

Ann Bartsch  
Okianer Christian Dark  
The Honorable Julie E. Frantz  
Elizabeth S. Harchenko  
The Honorable Dennis J. Hubel  
The Honorable William D. Johnson  
The Honorable Bryan M. Johnston  
The Honorable Darryl Larson  
Debra Fee Jing Lee  
Joseph D. Matarazzo  
The Honorable Jean Kerr Maurer  
David Orr  
Kathy Wamock  
Gloria Webster  
Wendy Rae Willis  
The Honorable Janice R. Wilson

**Coordinator**

Jessica E. Mindlin

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(Cualquier información que quiera proveer sobre su identidad es OPCIONAL.) También se agradecen cualesquier documentos que desee incluir con su declaración. Usted puede colocar este documento en la caja asignada para este propósito o enviarlo por correo a la comisión a la dirección provista arriba. Le agradecemos su participación.

Nombre:

Dirección:

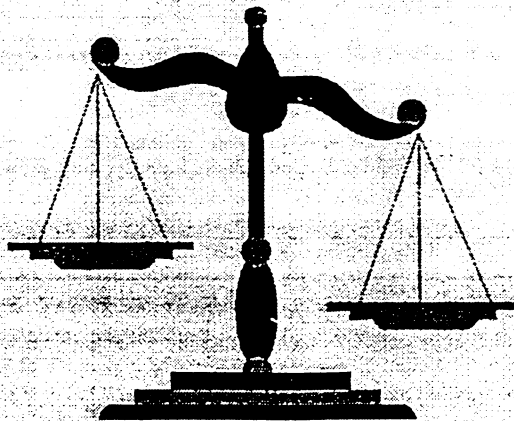
Ciudad, Estado, Código postal:

Número de teléfono: (    )

Otra información (por ejemplo, número de la causa):

# GENDER EQUITY SURVEY

Sponsored by the Oregon Supreme Court /  
Oregon State Bar Task Force on Gender Fairness



PLEASE TAKE A FEW MOMENTS TO COMPLETE  
THIS ANONYMOUS SURVEY OF LAWYERS

Please return your anonymous survey in the enclosed envelope to:

**OSRL**

OREGON SURVEY RESEARCH LABORATORY  
5245 UNIVERSITY OF OREGON  
EUGENE, OR 97403-5245



**General Instructions:** Please answer the following questions based only on your experiences as an Oregon lawyer practicing in Oregon state (not federal) court. You may need to answer only selected parts of the questionnaire, depending on your experience and involvement with different areas of the law. Some lawyers will skip a few questions; many lawyers will skip entire sections. Please return this questionnaire even if you are able to complete only a portion of the questions, as the representativeness of the data rests on the range of experiences of Oregon lawyers. Although most questions ask you just to check or circle a response, we welcome your thoughts. Feel free to include additional comments wherever you think they are necessary. Your comments will be transcribed and taken into account. Please return the questionnaire in the enclosed envelope by May 19th, 1997.

# I. GENERAL PRACTICE INFORMATION

For the following questions, please circle the answer that best describes your practice.

A. With how many other lawyers do you practice?

1. Solo practitioner
2. 1-5 lawyers
3. More than 5 lawyers
4. Other

Please explain: \_\_\_\_\_

B. Type of area where you practice:

1. Primarily rural
2. Primarily urban
3. Mixed rural/urban

C. In which area(s) do you practice?  
(Circle all that apply)

1. General practice
2. Appellate
3. Business Law
4. Civil Litigation
5. Criminal Defense
6. Criminal Prosecution
7. Corporate Law
8. Environmental Law
9. Family Law
10. Govt/Public Sector Law
11. Juvenile Law
12. Labor Law
13. Legal Services
14. Public Defender
15. Real Estate Law
16. Other (please specify) \_\_\_\_\_

D. In what year were you first admitted to practice in any state? 19 \_\_\_\_\_

E. How many years have you been in active practice in Oregon?  
\_\_\_\_\_ years

F. In the past five years, approximately what percentage of your state court practice has been spent in each of the following areas?  
(If you do not use one of the items on the list, enter zero. Percentages should add up to 100%)

\_\_\_\_\_ % Civil  
 \_\_\_\_\_ % Criminal  
 \_\_\_\_\_ % Family  
 \_\_\_\_\_ % Juvenile  
 \_\_\_\_\_ % Probate  
 \_\_\_\_\_ % Other (please specify) \_\_\_\_\_

G. On average, how often have you appeared in state court in the last five years?

1. Daily
2. Weekly
3. 1-2 times/month
4. Less than once/month
5. Never

**II. CRIMINAL LAW** - *The following questions pertain to programs and services available in the community and in correctional institutions for male and female offenders. Please answer these questions only if 25% or more of your practice or caseload in the past 5 years is in the area of criminal law; if not skip to Section III, Domestic Relations, on Page 6.*

A. For the following questions, please indicate whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statements:

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know
1. Rehabilitation programs and services in <i>community corrections</i> are more available to men than to women.	1	2	4	5	9
2. Rehabilitation programs and services in the <i>prisons and jails</i> are more available to men than to women.	1	2	4	5	9
3. Rehabilitation programs and services in the <i>jails</i> are adequate to meet the needs of <i>female</i> offenders.	1	2	4	5	9
4. Rehabilitation programs and services in the <i>prisons</i> are adequate to meet the needs of <i>female</i> offenders.	1	2	4	5	9
5. Rehabilitation programs and services in the <i>jails</i> are adequate to meet the needs of <i>male</i> offenders.	1	2	4	5	9
6. Rehabilitation programs and services in the <i>prisons</i> are adequate to meet the needs of <i>male</i> offenders.	1	2	4	5	9

B. A variety of programs could be offered in prisons to rehabilitate offenders. Which of the following program prisons do you believe are generally available, available but limited in scope, or unavailable to both male and female offenders in prison? Please answer for female and for male offenders.

	<u>Male Offenders</u>			<u>Female Offenders</u>		
	<i>Available</i>	<i>Limited in Scope</i>	<i>Not Available</i>	<i>Available</i>	<i>Limited in Scope</i>	<i>Not Available</i>
1. Job Training	1	2	3	1	2	3
2. Education through high school	1	2	3	1	2	3
3. Education beyond high school	1	2	3	1	2	3
4. How available is health care, including pre- and post-natal care and gynecological services, for female offenders?				1	2	3

C. In your experience, are there any inequalities in the availability of, or nature of, rehabilitation programs and facilities for male and female *adult* offenders?

1. Yes



2. No

1. What are those inequalities?

D. What about for male and female *juvenile* offenders?

1. Yes



2. No

1. What are those inequalities?

E. For the purpose of the following questions, assume "under similar circumstances" means that the severity of crime and criminal histories are comparable to one another. Based on your observations and experiences please select the best answer.

1. If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
  1. A lower incarceration rate for substance abusing pregnant women than for men.
  2. Neither a higher nor a lower incarceration rate.
  3. A higher incarceration rate for substance abusing pregnant women than for men.
2. If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
  1. A lower incarceration rate for substance abusing custodial mothers than for substance abusing custodial fathers.
  2. Neither a higher nor a lower incarceration rate.
  3. A higher incarceration rate for substance abusing custodial mothers than for substance abusing custodial fathers.
3. If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
  1. A lower incarceration rate for childless or non-custodial (non-pregnant) substance abusing women than for childless or non-custodial substance abusing men.
  2. Neither a higher nor a lower incarceration rate.
  3. A higher incarceration rate for childless or non-custodial (non-pregnant) substance abusing women than for childless or non-custodial substance abusing men.
4. In sentencing, judges take into account the parenting responsibilities of women...
  1. Less often than they do the parenting responsibilities of men
  2. To the same extent as they do the parenting responsibilities of men
  3. More often than they do the parenting responsibilities of men

F. In your experience, does the prosecutor's sentencing recommendation differ depending upon whether an adult offender is male or female?

1. Yes →
2. No

1. What differs?

2. What factors tend to be considered?

G. In your experience, does the judge's final order differ depending upon whether an adult offender is male or female?

1. Yes →
2. No

1. What differs?

2. What factors tend to be considered?

H. The following questions in this section refer to Juvenile Court only. Please answer these questions only if 25% or more of your total caseload is in Juvenile Court; if not skip to Section III, Domestic Relations.

1. These questions regard the frequency of dispositions for male and female juveniles under similar circumstances. Please choose the best answer based on your observations and experiences.

	<i>Less Frequently</i>	<i>Same Amount</i>	<i>More Frequently</i>	<i>Don't Know</i>
1. Compared to boys, girls are ordered to alternative treatment programs. . .	1	2	3	9
2. Compared to boys, pregnant girls are ordered to alternative treatment programs. . .	1	2	3	9
3. Compared to custodial teen fathers, custodial teen mothers are ordered to alternative treatment programs. . .	1	2	3	9
4. Compared to boys, girls are confined in a secure facility. . .	1	2	3	9

I. In your experience, does the prosecutor's sentencing recommendation differ depending on whether the offender is a male or female youth?

1. Yes → 1. What differs?
2. No

2. What factors tend to be considered?

J. In your experience, does the judge's final order differ depending on whether the offender is a male or female youth?

1. Yes → 1. What differs?
2. No

2. What factors tend to be considered?

**III DOMESTIC RELATIONS** - The following questions refer to family law caseloads. Please answer questions only if 25% or more of your practice or caseload in the past 5 years is in the area of domestic relations; if not skip to Section IV, Litigation, on Page 7.

A. On the basis of your experience, please indicate whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree for each of the following statements about female litigants and male litigants.

	MALE LITIGANTS					FEMALE LITIGANTS				
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know
1. In your <i>TRIAL COURT</i> experience, there is bias against litigants in. . .										
a. awarding child custody.	1	2	3	4	9	1	2	3	4	9
b. awarding child support.	1	2	3	4	9	1	2	3	4	9
c. awarding spousal support.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9
2. In your <i>APPELLATE COURT</i> experience, there is bias against litigants in. . .										
a. awarding child custody.	1	2	3	4	9	1	2	3	4	9
b. awarding child support.	1	2	3	4	9	1	2	3	4	9
c. awarding spousal support.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9
3. Oregon <i>STATUTES &amp; REGULATIONS</i> are biased regarding. . .										
a. child custody awards.	1	2	3	4	9	1	2	3	4	9
b. child support awards.	1	2	3	4	9	1	2	3	4	9
c. spousal support awards.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9

B. How many family law cases (including temporary or final hearings, motions, and post-decree modifications) have you litigated during the last twelve months?

\_\_\_\_\_ cases

C. Please circle the answer that best matches your observations and experiences for each of the statements.

	<u>Strongly Agree</u>	<u>Somewhat Agree</u>	<u>Somewhat Disagree</u>	<u>Strongly Disagree</u>	<u>Don't Know</u>
1. Female trial court judges tend to favor female litigants in family law matters.	1	2	3	4	9
2. Male trial court judges tend to favor male litigants in family law matters.	1	2	3	4	9
3. Female trial court judges tend to favor male litigants in family law matters.	1	2	3	4	9
4. Male trial court judges tend to favor female litigants in family law matters.	1	2	3	4	9
5. Judges should not issue FAPA restraining orders to victims of domestic violence who repeatedly return to abusive relationships.	1	2	3	4	9
6. The legal process shows too much sympathy for women who allege domestic abuse.	1	2	3	4	9
7. The legal process shows too much sympathy for men who allege domestic abuse.	1	2	3	4	9

**IV. LITIGATION** - The following set of questions concern your experiences litigating criminal and civil cases at the trial court, administrative, and appellate levels. If you are not and never have been involved in litigation as an attorney, skip to Section V, Law Practice, Page 9.

A. In your experience as an attorney, have you ever been involved in any cases in which you felt that the litigation process or outcome was affected (either negatively or positively) by the gender of one of the parties?

1. Yes →  
2. No

1. Please describe:

B. In your experience as an attorney, have you been involved with any case(s) in which you felt that the litigation process or outcome was affected (either negatively or positively) by the gender of one of the attorneys?

- 1. Yes →
- 2. No

1. Please describe:

C. In your experience as an attorney, have you ever used the gender of one of the parties, witnesses, jurors, attorneys, judge, or other participants in the civil litigation process as part of your litigation strategy?

- 1. Yes
- 2. No

D. Have you observed behavior in the courtroom by judges, other attorneys, parties, or witnesses that indicate a gender bias?

- 1. Yes →
- 2. No

1. Please describe:

2. Do you believe that this behavior affected the outcome of the case?

- 1. Yes, adversely
- 2. Yes, positively
- 3. No

E. Have you observed behavior in the pretrial stages of any matter (e.g. discovery, mediation, arbitration) by judges, mediators, arbitrators, other attorneys, parties, or witnesses that indicate a gender bias?

- 1. Yes →
- 2. No

1. Please describe:

2. Do you believe that this behavior affected the outcome of the case?

- 1. Yes, adversely
- 2. Yes, positively
- 3. No



**V. LAW PRACTICE - We are interested in learning about your experiences in court, in law offices, at Bar events (CLEs, local Bar Association, and social gatherings), with clients and coworkers, and others.**

- A. Please read the following statements, decide if you personally have observed the behavior and, if so, indicate who engaged in the behavior described. Check judges, attorneys, or court personnel as applicable. Note: a check means 'yes' you have personally observed this behavior.

Indicate who engaged in this behavior →	<u>Judges</u>		<u>Attorneys</u>		<u>Court Personnel</u>	
	Male	Female	Male	Female	Male	Female
1. Female attorneys are asked if they are attorneys in situations where male attorneys are not asked.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Female attorneys are ignored or cut off when speaking in situations where male attorneys are not.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Female attorneys are addressed by first names when male attorneys are addressed by surnames or titles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Female litigants, witnesses or jurors are addressed by first names when males are addressed by surnames or titles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Female attorneys, litigants, witnesses and/or jurors are addressed using terms of endearment (e.g., honey, sweetie, little lady) more than males.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Female attorneys are addressed in a patronizing manner more often than male attorneys.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Comments are made about the personal appearance of female attorneys, litigants, witnesses or jurors when no such comments are made about males.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Remarks or jokes demeaning or hostile about women are made in court or in chambers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Remarks or jokes demeaning or hostile about men are made in court or in chambers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<u>Indicate who engaged in this behavior</u> →	<u>Judges</u>		<u>Attorneys</u>		<u>Court Personnel</u>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
10. Women litigants are subjected to verbal or physical sexual advances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Male litigants are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Female attorneys are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Male attorneys are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Female court personnel are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Male court personnel are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. If you have observed any of the conduct described in the questions above, do you believe it affected the outcome of the case?

1. Yes →  
 2. No  
 3. Don't know

1. Please describe how you believe it affected the outcome of the case.

2. How often do you believe it has affected the outcome of a case?

1. Often  
 2. Sometimes  
 3. Rarely  
 4. Never

C. In your experience and observations, do you believe that case outcome is negatively affected when....  
(please check all that you believe to be true)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. the female attorney is also...</p> <p><input type="checkbox"/> Black/African American</p> <p><input type="checkbox"/> Hispanic</p> <p><input type="checkbox"/> Asian/Pacific Islander</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Young (less than 40 years old)</p> <p><input type="checkbox"/> Old (over 55 years old)</p> <p><input type="checkbox"/> Perceived to be a lesbian/bisexual</p> <p><input type="checkbox"/> Single</p> <p><input type="checkbox"/> Married</p> <p><input type="checkbox"/> A parent</p> <p><input type="checkbox"/> A person with a discernible disability</p>            | <p>2. the male attorney is also...</p> <p><input type="checkbox"/> Black/African American</p> <p><input type="checkbox"/> Hispanic</p> <p><input type="checkbox"/> Asian/Pacific Islander</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Young (less than 40 years old)</p> <p><input type="checkbox"/> Old (over 55 years old)</p> <p><input type="checkbox"/> Perceived to be a gay/bisexual</p> <p><input type="checkbox"/> Single</p> <p><input type="checkbox"/> Married</p> <p><input type="checkbox"/> A parent</p> <p><input type="checkbox"/> A person with a discernible disability</p>            |
| <p>3. the female litigant or witness is also...</p> <p><input type="checkbox"/> Black/African American</p> <p><input type="checkbox"/> Hispanic</p> <p><input type="checkbox"/> Asian/Pacific Islander</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Young (less than 40 years old)</p> <p><input type="checkbox"/> Old (over 55 years old)</p> <p><input type="checkbox"/> Perceived to be a lesbian/bisexual</p> <p><input type="checkbox"/> Single</p> <p><input type="checkbox"/> Married</p> <p><input type="checkbox"/> A parent</p> <p><input type="checkbox"/> A person with a discernible disability</p> | <p>4. the male litigant or witness is also...</p> <p><input type="checkbox"/> Black/African American</p> <p><input type="checkbox"/> Hispanic</p> <p><input type="checkbox"/> Asian/Pacific Islander</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Young (less than 40 years old)</p> <p><input type="checkbox"/> Old (over 55 years old)</p> <p><input type="checkbox"/> Perceived to be a gay/bisexual</p> <p><input type="checkbox"/> Single</p> <p><input type="checkbox"/> Married</p> <p><input type="checkbox"/> A parent</p> <p><input type="checkbox"/> A person with a discernible disability</p> |

D. In your experience and observations, how often do you believe that less weight is given to...

- |                                                                 | <u>Often</u> | <u>Sometimes</u> | <u>Rarely</u> | <u>Never</u> |
|-----------------------------------------------------------------|--------------|------------------|---------------|--------------|
| 1. Female attorneys' arguments than to those of male attorneys. |              |                  |               |              |
| a. by a male judge                                              | 1            | 2                | 3             | 4            |
| b. by a female judge                                            | 1            | 2                | 3             | 4            |
| c. by a male juror                                              | 1            | 2                | 3             | 4            |
| d. by a female juror                                            | 1            | 2                | 3             | 4            |

The testimony of female experts, law enforcement officers, or probation officers, than to that of their male counterparts.

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>
a. by a male judge	1	2	3	4
b. by a female judge	1	2	3	4
c. by a male juror	1	2	3	4
d. by a female juror	1	2	3	4

3. The testimony of female, non-expert witnesses than to male non-expert witnesses.

a. by a male judge	1	2	3	4
b. by a female judge	1	2	3	4
c. by a male juror	1	2	3	4
d. by a female juror	1	2	3	4

4. Have you ever observed judges, counsel, or others intervene to correct situations of biased conduct within the courtroom?

1. Yes —→  
2. No

1. Please describe what conduct occurred, what corrective actions were taken if any, and by whom:


E. Please check the box which best reflects your experience.

	<u>Strongly Agree</u>	<u>Somewhat Agree</u>	<u>Somewhat Disagree</u>	<u>Strongly Disagree</u>	<u>Don't Know</u>
1. Conduct, tactics or arguments of a female attorney are viewed as inappropriate when the same conduct by a male attorney is viewed as good advocacy.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Female lawyers should not be litigators because their family responsibilities interfere with court appearances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Female attorneys seem to get annoyed when men are just being polite.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. There is no significant gender bias in the courtroom today.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

F. In your experience, do lawyers often or sometimes prefer not to appear before a male or female judge in certain types of cases? *Please check the box if it applies to defendants or opposing counsel, and indicate whether you have filed an affidavit of prejudice for this reason.*

	<u>Defendants</u>		<u>Opposing Counsel</u>		<u>Affidavit of Prejudice filed</u>
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	
1. In a criminal case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. In a civil case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. In a domestic relations case with property issues only, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. In a domestic relations case with child custody issues only, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. In a domestic abuse case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G. *Please circle yes or no and explain your reasoning.*

1. Do clients treat you differently because of your gender?
1. Yes      
2. No

1. Please explain:

2. Do other lawyers treat you differently because of your gender?

1. Yes

2. No

1. Please explain:

3. Do judges treat you differently because of your gender?

1. Yes

2. No

1. Please explain:

4. Has your gender *plus* your sexual orientation, race, disability, etc. "earned" you any special work, committee assignments, or other tasks?

1. Yes

2. No

1. Please explain.

2. Overall, do you consider these appointments or work assignments a benefit or a burden?

1. Benefit

2. Burden

3. Mixed

H. Are most of your clients your same... gender? Yes No  
race? Yes No

I. Have you experienced or personally observed inappropriate treatment of men or women, based on gender, in your workplace?

1. Yes

2. No

1. Please explain:

J. Have you experienced or personally observed inappropriate treatment of men or women, based on gender, elsewhere in the legal system?

- 1. Yes
- 2. No



1. Please explain:

K. Are male and female *attorneys* in your workplace dealt with differently depending on family status or family needs?

- 1. Yes they are treated differently based on gender.
- 2. Yes people are treated differently, but it is based on job, not gender.
- 3. No, everyone is treated the same.

L. Are male and female *staff* in your workplace dealt with differently depending on family status or family needs?

- 1. Yes they are treated differently based on gender.
- 2. Yes people are treated differently, but it is based on job, not gender.
- 3. No, everyone is treated the same.

M. Has anyone come to you complaining of sexual harassment in your workplace?

- 1. Yes →
- 2. No

1. What was the complainant's gender?

- 1. Male
- 2. Female

2. What was the complainant's position within the office?

3. What was the perpetrator's gender?

- 1. Male
- 2. Female

4. What was the perpetrator's position within the office?

5. What was the nature of the harassment:

**Hiring and Opportunities for Promotion** - The next set of questions pertain to hiring and promotion opportunities for lawyers. Please circle the answer that best fits your personal observations and experiences.

A. When you were interviewed for a lawyer, law clerk, or other legal position, how often did the interviewer(s) inquire into, discuss, or take into account. . .

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>Not Applicable</u>
1. your personal relationships	1	2	3	4	9
2. your family obligations	1	2	3	4	9
3. your personal commitments	1	2	3	4	9
4. your sexual orientation	1	2	3	4	9

B. When considering attorney or clerkship candidates for openings in your office, how often have you or other interviewers inquired into or discussed applicants'. . .

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>Not Applicable</u>
1. personal relationships	1	2	3	4	9
2. family obligations	1	2	3	4	9
3. personal commitments	1	2	3	4	9
4. sexual orientation	1	2	3	4	9

C. When 2 or more lawyers of different genders are competing for a particular assignment on a specific case (e.g., "first chair," arguing an important motion, or appearing at an important hearing), and a male, rather than female, attorney is given the assignment, what reasons are typically given to explain the decision. (Please circle all that apply).

1. The case requires a "heavy hitter."
2. The case is assigned to a judge who prefers male counsel.
3. The client prefers male counsel.
4. A male attorney brought the client to the firm.
5. The case requires more aggressive counsel.
6. The case requires a particular type of expertise that the female attorney lacks.
7. The male attorney is more qualified.
8. The jury will respond better to a male attorney.
9. It isn't the right sort of case for a woman attorney.
10. A male attorney is more senior in the office.
11. A male attorney has a clear tie to the case.
12. Other \_\_\_\_\_ →

1. Please describe:



D. In the past 5 years (or, since you joined your firm/organization if it has been less than 5 years), have you lost an assignment or an important role on a case to a colleague of the opposite sex for what you believe to be gender-related reasons?

1. Yes →  
2. No

1. How many times?

\_\_\_\_\_

2. In what way do you believe that your gender was a factor?

E. The next 4 questions pertain to “rainmaking” in private law practice. If you are not in private practice, skip to the next section (Section VII, Page 18).

1. Please rank the top 3 legal skills with respect to their importance in *generating new clients*.

- \_\_\_\_\_ Legal analysis
- \_\_\_\_\_ Trial experience
- \_\_\_\_\_ Litigation experience
- \_\_\_\_\_ Writing ability
- \_\_\_\_\_ Speaking ability
- \_\_\_\_\_ Organizational ability
- \_\_\_\_\_ Specialization in a particular area of law
- \_\_\_\_\_ Negotiation and mediation ability
- \_\_\_\_\_ Client interaction

2. Please rank the top 3 legal skills with respect to their importance in *maintaining existing clients*.

- \_\_\_\_\_ Legal analysis
- \_\_\_\_\_ Trial experience
- \_\_\_\_\_ Litigation experience
- \_\_\_\_\_ Writing ability
- \_\_\_\_\_ Speaking ability
- \_\_\_\_\_ Organizational ability
- \_\_\_\_\_ Specialization in a particular area of law
- \_\_\_\_\_ Negotiation and mediation ability
- \_\_\_\_\_ Client interaction

3. For this question, first rank the top 3 factors with respect to their positive impact, then rank the top 3 factors with respect to their negative impact on *generating new clients or maintaining existing clients*.

Positive    Negative

- |       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

1. Ethnic diversity
2. Age
3. Marital status
4. Sexual orientation
5. Years in practice
6. Class rank in law school
7. Service on firm's management or compensation committee
8. Gender
9. Children
10. Disability
11. Law school attended
12. Professional recognition
13. Foreign language skills

4. Rank the top 3 with respect to their importance in *generating new clients or maintaining existing clients*.

- ☐ Personality
- ☐ Timeliness
- ☐ Accountability
- ☐ Involvement in professional organizations
- ☐ Involvement in community activities
- ☐ Amount of time spent in/out of the office
- ☐ Ability/ willingness to travel
- ☐ Ability/willingness to work long hours (evenings/nights) and weekends
- ☐ Chargeable/billable hours
- ☐ Legal skills

**VII. GENERAL BACKGROUND INFORMATION - Please circle the appropriate information.**

A. What is your gender?    1. Male  
                                         2. Female

B. In what year were you born? 19 \_\_\_\_\_

C. How many minor children do you have? \_\_\_\_\_

1. With whom do they live?

D. How many years have you been in your current position? \_\_\_\_\_ years

E. What is your position? (*Check all that apply*)

- ☐ Partner/Shareholder in a firm
- ☐ Associate in a firm
- ☐ Contract Lawyer
- ☐ In-house Counsel
- ☐ Government/Public Service Lawyer
- ☐ Other (*indicate position*) \_\_\_\_\_

F. What is your race/ethnicity?

- 1. Black/African-American
- 2. Asian
- 3. Hispanic
- 4. Native American
- 5. Pacific Islander
- 6. White (non-Hispanic)
- 7. Other (*please specify*) \_\_\_\_\_

G. What is your sexual orientation?

1. Bisexual
2. Gay/lesbian
3. Straight/heterosexual
4. Other (*specify*) \_\_\_\_\_

H. What is your current marital status?

1. Divorced
2. Married/living as married
3. Separated
4. Single and never married
5. Widowed
6. Other \_\_\_\_\_

I. Do you have a physical or mental disability?

1. Physical
2. Mental
3. No disabilities

1. Is the disability noticeable?

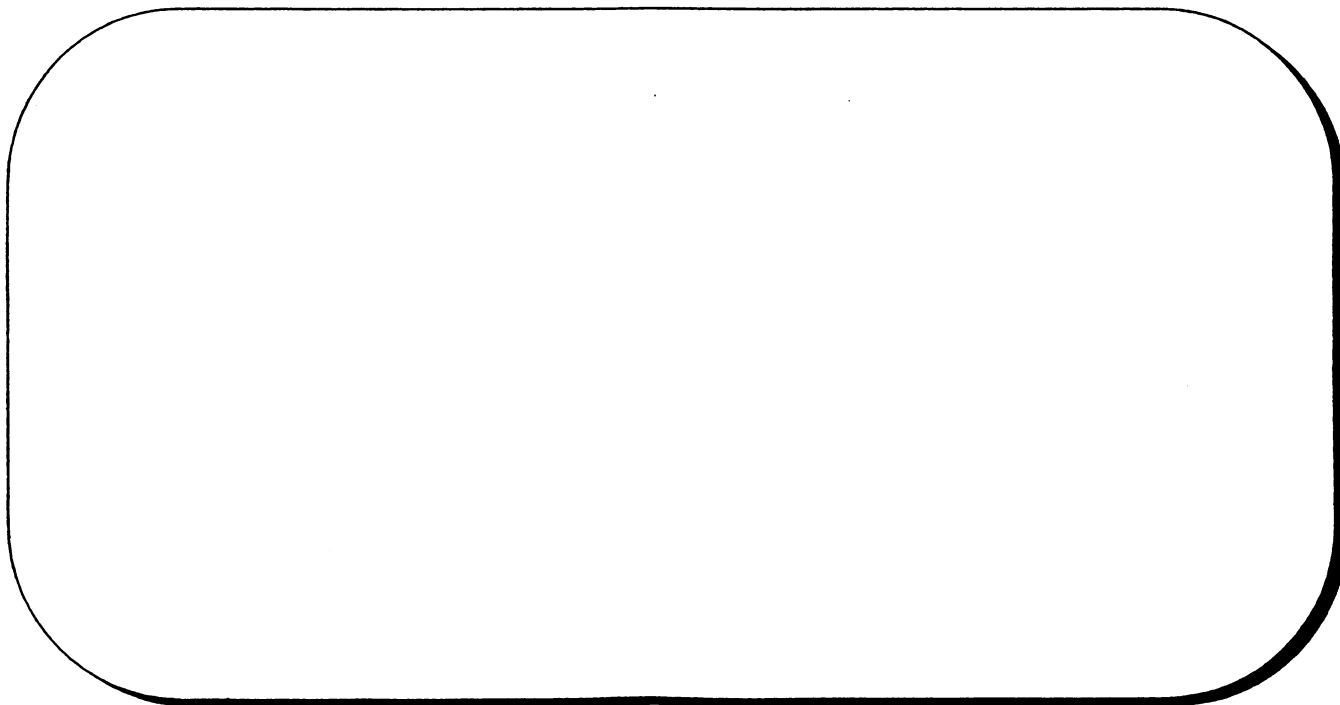
1. Yes
2. No

**Thank you for taking the time to fill out this questionnaire!**

**Please feel free to make additional comments**

**by including a separate sheet or using the space below.**

**Your comments will be transcribed and taken into account.**



WALLACE P. CARSON, JR.  
Chief Justice



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THE SUPREME COURT

May 20, 1997

Dear Colleague:

The Oregon Supreme Court-Oregon State Bar Task Force on Gender Fairness is interested in your present experience as a judge and your past experiences as a lawyer practicing in the Oregon state courts. The Task Force is studying whether and, if so, how the Oregon judicial system and legal profession treat people unfairly on the basis of gender. The Task Force will recognize fair treatment where it exists and make recommendations for change where it does not.

The purpose of the enclosed survey is to obtain information about how, if at all, gender issues influence court proceedings and the legal profession. Your experiences and thoughts on the subject are very important.

The survey will take only about 25 to 30 minutes to complete. Your answers are completely anonymous. If you wish to comment on any question or qualify any of your answers, please feel free to write in the margins or to attach additional sheets of paper. I invite your comments regarding gender fairness issues in the Oregon justice system or legal profession regardless of whether they pertain to issues specifically raised in this survey. Your comments will be read, transcribed, and considered.

Your participation is entirely voluntary, but I hope that you will take part in this important project. Your views are very important in order to obtain an accurate understanding of issues that affect our courts and the profession today. Please take a moment at your earliest convenience to complete the survey and return it, in the envelope provided, **by Tuesday, June 3, 1997**, to the Oregon Survey Research Laboratory (OSRL). OSRL has been employed for this project to ensure respondents' anonymity in tabulation of the survey results.

The Task Force is happy to answer any questions you may have regarding the project. Please feel free to contact Jessica Mindlin, Task Force Coordinator, at (503) 986-5921 (TTY: (503) 986-5504).

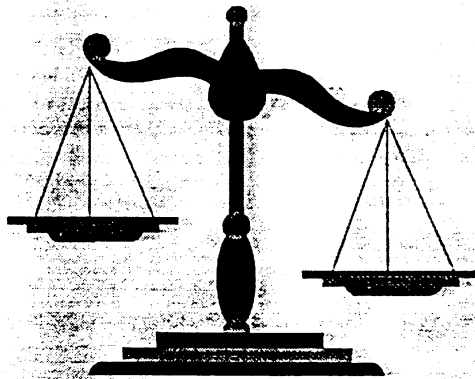
Yours sincerely,

Wallace P. Carson, Jr.

A handwritten signature in black ink, appearing to read "Wallace P. Carson, Jr.", written over the printed name.

# GENDER EQUITY SURVEY

Sponsored by the Oregon Supreme Court /  
Oregon State Bar Task Force on Gender Fairness



PLEASE TAKE A FEW MOMENTS TO COMPLETE  
THIS ANONYMOUS SURVEY OF JUDGES

Please return your anonymous survey in the enclosed envelope to:



OREGON SURVEY RESEARCH LABORATORY  
5245 UNIVERSITY OF OREGON  
EUGENE, OR 97403-5245

**General Instructions:** Please answer the following questions based only on your experiences as an Oregon state court judge unless otherwise indicated. You may need to answer only selected parts of the questionnaire, depending on your experience and involvement with different areas of the law. Some judges will skip a few questions; many judges will skip entire sections. Please return this questionnaire even if you are able to complete only a portion of the questions, as the representativeness of the data rests on the range of experiences of Oregon judges. Although most questions ask you just to check or circle a response, we welcome your thoughts. Feel free to include additional comments wherever you think they are necessary. Your comments will be transcribed and considered. Please return the questionnaire in the enclosed envelope by Tuesday June 3, 1997.

# **I. GENERAL PRACTICE INFORMATION**

*For the following questions, please circle the answer that best describes your situation.*

A. Including yourself, how many judges are there in your court?

1. One
2. 2-5 judges
3. 6-9 judges
4. 10 or more judges
5. Other

Please explain:

B. Type of area where you serve:

1. Primarily rural
2. Primarily urban
3. Mixed rural/urban

C. What kind(s) of cases do you hear?

*(Circle all that apply)*

1. Administrative Law
2. Civil
3. Criminal
4. Family Law
5. Juvenile
6. Probate
7. Other *(please specify)* \_\_\_\_\_

D. Court where you serve:

*Circle all that apply*

1. District
2. Circuit
3. Appellate
4. Juvenile
5. Administrative
6. Other *(please specify)* \_\_\_\_\_

E. When you practiced as an attorney, in which area(s) did you practice? *(Circle all that apply)*

1. General practice
2. Appellate
3. Business Law
4. Civil Litigation
5. Criminal Defense
6. Criminal Prosecution
7. Corporate Law
8. Environmental Law
9. Family Law
10. Govt./Public Sector Law
11. Juvenile Law
12. Labor Law
13. Legal Services
14. Public Defender
15. Real Estate Law
16. Other *(please specify)* \_\_\_\_\_

F. Are you on active or senior status?

1. Active
2. Senior

G. In the past five years, approximately what percentage of your time as a judge has been spent in each of the following areas?

(If you do not use one of the items on the list, enter zero. Percentages should add up to 100%)

\_\_\_\_\_ % Civil  
 \_\_\_\_\_ % Criminal  
 \_\_\_\_\_ % Family  
 \_\_\_\_\_ % Juvenile  
 \_\_\_\_\_ % Probate  
 \_\_\_\_\_ % Administrative Law  
 \_\_\_\_\_ % Other (please specify) \_\_\_\_\_

**II. CRIMINAL LAW-- The following questions pertain to programs and services available in the community and in correctional institutions for male and female offenders.**

A. For the following questions, please indicate whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statements:

	<u>Strongly Agree</u>	<u>Somewhat Agree</u>	<u>Somewhat Disagree</u>	<u>Strongly Disagree</u>	<u>Don't Know</u>
1. Rehabilitation programs and services offered through <u>community corrections</u> are more available to men than to women.	1	2	4	5	9
2. Rehabilitation programs and services in the <u>prisons and jails</u> are more available to men than to women.	1	2	4	5	9
3. Rehabilitation programs and services in the <u>jails</u> are adequate to meet the needs of <i>female</i> offenders.	1	2	4	5	9
4. Rehabilitation programs and services in the <u>prisons</u> are adequate to meet the needs of <i>female</i> offenders.	1	2	4	5	9
5. Rehabilitation programs and services in the <u>jails</u> are adequate to meet the needs of <i>male</i> offenders.	1	2	4	5	9
6. Rehabilitation programs and services in the <u>prisons</u> are adequate to meet the needs of <i>male</i> offenders.	1	2	4	5	9

- B. A variety of programs could be offered in prisons to rehabilitate offenders. Which of the following programs in prisons do you believe are generally available, available but limited in scope, or unavailable? Please answer for male and for female offenders.

	<u>Male Offenders</u>			<u>Female Offenders</u>		
	<u>Available</u>	<u>Limited in Scope</u>	<u>Not Available</u>	<u>Available</u>	<u>Limited in Scope</u>	<u>Not Available</u>
1. Job Training	1	2	3	1	2	3
2. Education through high school	1	2	3	1	2	3
3. Education beyond high school	1	2	3	1	2	3
4. How available is health care, including pre- and post-natal care and gynecological services, for female offenders?				1	2	3

- C. In your experience, are there any inequalities in the availability of, or nature of, rehabilitation programs and facilities for male and female *adult* offenders?

1. Yes  
2. No  
3. Don't know

1. What are those inequalities?

- D. What about for male and female *juvenile* offenders?

1. Yes  
2. No  
3. Don't know

1. What are those inequalities?

- E. For the purpose of the following questions, assume "under similar circumstances" means that the severity of the crime and criminal histories are comparable to one another. Based on your observations and experiences please select the best answer.

- If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
  - A lower incarceration rate for substance abusing pregnant women than for men.
  - Neither a higher nor a lower incarceration rate.
  - A higher incarceration rate for substance abusing pregnant women than for men.
- If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
  - A lower incarceration rate for substance abusing custodial mothers than for substance abusing custodial fathers.
  - Neither a higher nor a lower incarceration rate.
  - A higher incarceration rate for substance abusing custodial mothers than for substance abusing custodial fathers.



3. If, proportionately, there are fewer substance abuse treatment programs available for women than for men, does this lead to...?
1. A lower incarceration rate for childless or non-custodial (non-pregnant) substance abusing women than for childless or non-custodial substance abusing men.
  2. Neither a higher nor a lower incarceration rate.
  3. A higher incarceration rate for childless or non-custodial (non-pregnant) substance abusing women than for childless or non-custodial substance abusing men.
4. In sentencing, other judges take into account the parenting responsibilities of women...
1. Less often than they do the parenting responsibilities of men.
  2. To the same extent as they do the parenting responsibilities of men.
  3. More often than they do the parenting responsibilities of men.

F. In your experience, does a prosecutor's sentencing recommendation differ depending upon whether the adult offender is male or female?

1. Yes →
2. No

1. What differs?

2. What factors tend to be considered?

G. In your opinion, do other judges' orders (e.g., sentencing, custody) differ depending upon whether the adult offender is male or female?

1. Yes →
2. No

1. What differs?

2. What factors tend to be considered?

H. Do your orders differ depending upon whether the adult offender is a male or female?

1. Yes →
2. No

1. What differs?

2. What factors tend to be considered?

I. The following questions in this section refer to Juvenile Court only. Please answer these questions only if 25% or more of the cases you hear are Juvenile matters; if not skip to Section III, Domestic Relations.

The next 4 questions regard the frequency of dispositions for male and female juveniles under similar circumstances. Please choose the best answer based on your observations and experiences.

	<i>Less Frequently</i>	<i>Same Amount</i>	<i>More Frequently</i>	<i>Don't Know</i>
1. Compared to boys, girls are ordered to alternative treatment programs...	1	2	3	9
2. Compared to boys, pregnant girls are ordered to alternative treatment programs...	1	2	3	9
3. Compared to custodial teen fathers, custodial teen mothers are ordered to alternative treatment programs..	1	2	3	9
4. Compared to boys, girls are confined in a secure facility...	1	2	3	9

J. In your experience, does a prosecutor's sentencing recommendation differ depending on whether the juvenile offender is a male or female ?

1. Yes →
2. No



1. What differs?

2. What factors tend to be considered?

K. In your experience, do other judges' orders differ depending on whether the juvenile offender is a male or female ?

1. Yes →
2. No



1. What differs?

2. What factors tend to be considered?

L. Do your orders differ depending on whether the juvenile offender is a male or female?

1. Yes →
2. No



1. What differs?

2. What factors tend to be considered?

*Skip to the next page*

**III. DOMESTIC RELATIONS** - *The following questions refer to family law caseloads. Circle the response for each category which best describes your experience. If you have never been involved with family law cases, skip to Section IV, Litigation on page 7.*

A. On the basis of your experience, please indicate whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree for each of the following statements about female litigants and male litigants.

	MALE LITIGANTS					FEMALE LITIGANTS				
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know
1. In <i>TRIAL COURT</i> , there is bias against litigants in. . .										
a. awarding child custody.	1	2	3	4	9	1	2	3	4	9
b. awarding child support.	1	2	3	4	9	1	2	3	4	9
c. awarding spousal support.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9
2. In <i>APPELLATE COURT</i> , there is bias against litigants in. . .										
a. awarding child custody.	1	2	3	4	9	1	2	3	4	9
b. awarding child support.	1	2	3	4	9	1	2	3	4	9
c. awarding spousal support.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9
3. Oregon <i>STATUTES &amp; REGULATIONS</i> are biased against litigants regarding. . .										
a. child custody awards.	1	2	3	4	9	1	2	3	4	9
b. child support awards.	1	2	3	4	9	1	2	3	4	9
c. spousal support awards.	1	2	3	4	9	1	2	3	4	9
d. property distribution.	1	2	3	4	9	1	2	3	4	9

B. How many family law cases (including temporary or final hearings, motions, and post-decree modifications) have you presided over during the last twelve months?

\_\_\_\_\_ cases

C. Please circle the answer that best matches your observations and experiences for each of the following statements.

	<u>Strongly Agree</u>	<u>Somewhat Agree</u>	<u>Somewhat Disagree</u>	<u>Strongly Disagree</u>	<u>Don't Know</u>
1. Female trial court judges tend to favor female litigants in family law matters.	1	2	3	4	9
2. Male trial court judges tend to favor male litigants in family law matters.	1	2	3	4	9
3. Female trial court judges tend to favor male litigants in family law matters.	1	2	3	4	9
4. Male trial court judges tend to favor female litigants in family law matters.	1	2	3	4	9
5. Judges should not issue restraining orders to victims of domestic violence who repeatedly return to abusive relationships.	1	2	3	4	9
6. The legal process shows too much sympathy for women who allege domestic abuse.	1	2	3	4	9
7. The legal process shows too much sympathy for men who allege domestic abuse.	1	2	3	4	9
8. In my opinion, husbands who force intercourse on their wives are inconsiderate, even cruel, but not really rapists.	1	2	3	4	9

**IV. LITIGATION** - The following set of questions concern your experiences with criminal and civil cases.

A. As a judge, have you ever been involved in any cases in which you felt that the litigation process or outcome was affected (either negatively or positively) by the gender of one of the parties?

1. Yes  
2. No

1. Please describe:

2. Did you have this experience as a lawyer?

1. Yes  
2. No  
3. Not applicable

B. As a judge, have you been involved with any case(s) in which you felt that the litigation process or outcome was affected (either negatively or positively) by the gender of one of the *attorneys*?

1. Yes →  
2. No

1. Please describe:

2. Did you have this experience as a lawyer?  
1. Yes  
2. No

C. As a lawyer, did you ever use the gender of a party, witness, juror, attorney, judge, or other participant as part of your litigation strategy?

1. Yes →  
2. No

1. Please describe:

D. Have you observed behavior in your courtroom by attorneys, parties, witnesses, or anyone else that indicates a gender bias?

1. Yes →  
2. No

1. Please describe:

2. Do you believe that this behavior affected the outcome of the case?  
1. Yes, adversely  
2. Yes, positively  
3. No

3. Did you ever observe such behavior as a lawyer?  
1. Yes  
2. No

E. Have you observed behavior in the pretrial stages of any matter (e.g. discovery, mediation, arbitration) by attorneys, mediators, arbitrators, other judges, parties, or witnesses that indicate a gender bias?

1. Yes →  
2. No

1. Please describe:

2. Do you believe that this behavior affected the outcome of the case?  
1. Yes, adversely  
2. Yes, positively  
3. No

F. In your experience, do male or female counsel tend to be better at...?

	<u>Male Counsel</u>	<u>Female Counsel</u>	<u>No Difference</u>
1. reaching a settlement.	1	2	3
2. assertive representation of clients' interests.	1	2	3
3. arguing complicated issues of law.	1	2	3

**V. LAW PRACTICE** *We are interested in learning about your experiences in court, in law offices, at Bar events (CLEs, local Bar Association, and social gatherings), with clients and coworkers, and others. Please select the best answer to the following questions based upon your experiences as a lawyer and as a judge.*

A. Please read the following statements, decide if you personally have observed the behavior and, if so, indicate who engaged in the behavior described. Check judges, attorneys, or court personnel as applicable. Note: a check means 'yes' you have personally observed this behavior.

<u>Indicate who engaged in this behavior</u> →	<u>Judges</u>		<u>Attorneys</u>		<u>Court Personnel</u>	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
1. Female attorneys are asked if they are attorneys in situations where male attorneys are not asked.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Female attorneys are ignored or cut off when speaking in situations where male attorneys are not.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Female attorneys are addressed by first names when male attorneys are addressed by surnames or titles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Female litigants, witnesses or jurors are addressed by first names when males are addressed by surnames or titles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Female attorneys, litigants, witnesses and/or jurors are addressed using terms of endearment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Male attorneys, litigants, witnesses and/or jurors are addressed using terms of endearment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Female attorneys are addressed in a patronizing manner more often than male attorneys.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Comments are made about the personal appearance of female attorneys, litigants, witnesses or jurors when no such comments are made about males.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Remarks or jokes demeaning or hostile about women are made in court or in chambers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Indicate who engaged in this behavior</i> →	<i>Judges</i>		<i>Attorneys</i>		<i>Court Personnel</i>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
10. Remarks or jokes demeaning or hostile about men are made in court or in chambers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Female litigants are subjected to verbal or physical sexual advances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Male litigants are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Female attorneys are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Male attorneys are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Female court personnel are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Male court personnel are subjected to verbal or physical sexual advances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. If you have observed any of the conduct described in the questions above, do you believe it affected the outcome of the case?

1. Yes →  
 2. No  
 3. Don't know

1. Please describe how you believe it affected the outcome of the case.

2. How often do you believe it has affected the outcome of a case?

1. Often  
 2. Sometimes  
 3. Rarely  
 4. Never

C. In your experience and observations, do you believe that case outcome is negatively affected when....  
(please check all that you believe to be true or leave blank)

1. the female attorney is also...

- ☐ Black/African American
- ☐ Hispanic
- ☐ Asian/Pacific Islander
- ☐ Native American
- ☐ Young (less than 40 years old)
- ☐ Old (over 55 years old)
- ☐ Perceived to be a lesbian/bisexual
- ☐ Single
- ☐ Married
- ☐ A parent
- ☐ A person with a discernible disability

2. the male attorney is also...

- ☐ Black/African American
- ☐ Hispanic
- ☐ Asian/Pacific Islander
- ☐ Native American
- ☐ Young (less than 40 years old)
- ☐ Old (over 55 years old)
- ☐ Perceived to be a gay/bisexual
- ☐ Single
- ☐ Married
- ☐ A parent
- ☐ A person with a discernible disability

3. the female litigant or witness is also...

- ☐ Black/African American
- ☐ Hispanic
- ☐ Asian/Pacific Islander
- ☐ Native American
- ☐ Young (less than 40 years old)
- ☐ Old (over 55 years old)
- ☐ Perceived to be a lesbian/bisexual
- ☐ Single
- ☐ Married
- ☐ A parent
- ☐ A person with a discernible disability

4. the male litigant or witness is also...

- ☐ Black/African American
- ☐ Hispanic
- ☐ Asian/Pacific Islander
- ☐ Native American
- ☐ Young (less than 40 years old)
- ☐ Old (over 55 years old)
- ☐ Perceived to be a gay/bisexual
- ☐ Single
- ☐ Married
- ☐ A parent
- ☐ A person with a discernible disability

D. In your experience and observations, how often do you believe that less weight is given to...

1. female attorneys' arguments than to those of male attorneys.

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>
a. by a male judge	1	2	3	4
b. by a female judge	1	2	3	4
c. by a male juror	1	2	3	4
d. by a female juror	1	2	3	4



In your experiences and observations, how often do you believe that less weight is given to...

2. the testimony of female experts, law enforcement officers, or probation officers, than to that of their male counterparts.

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>
a. by a male judge	1	2	3	4
b. by a female judge	1	2	3	4
c. by a male juror	1	2	3	4
d. by a female juror	1	2	3	4

3. the testimony of female, non-expert witnesses than to the testimony of male non-expert witnesses.

a. by a male judge	1	2	3	4
b. by a female judge	1	2	3	4
c. by a male juror	1	2	3	4
d. by a female juror	1	2	3	4

4. Have you ever observed anyone intervene to address biased conduct within the courtroom?

1. Yes

2. No



1. Please describe what conduct occurred, what corrective actions were taken if any, and by whom:

E. Please check the box which best reflects your experience.

	<u>Strongly Agree</u>	<u>Somewhat Agree</u>	<u>Somewhat Disagree</u>	<u>Strongly Disagree</u>	<u>Don't Know</u>
1. Conduct, tactics or arguments of a female attorney are viewed as inappropriate when the same conduct by a male attorney is viewed as good advocacy.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Female lawyers should not be litigators because their family responsibilities interfere with court appearances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Female attorneys seem to get annoyed when men are just being polite.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. There is no significant gender bias in the courtroom today.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

F. When you practiced as a lawyer, did you or other lawyers often or sometimes prefer not to appear before a male or female judge in certain types of cases? *Please check the box if it applies to defendants or opposing counsel, and indicate whether you ever filed an affidavit of prejudice for this reason.*

	<u>Defendants</u>		<u>Opposing Counsel</u>		<u>Affidavit of Prejudice filed</u>
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	
1. In a criminal case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. In a civil case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. In a domestic relations case with property issues only, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. In a domestic relations case with child custody issues only, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. In a domestic abuse case, lawyers often or sometimes prefer not to appear in front of:					
a male judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a female judge with...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**G. Please circle yes or no and describe your experience(s).**

1. Do litigants treat you differently because of your gender?

- 1. Yes → Please explain:
- 2. No

2. Do lawyers treat you differently because of your gender?

- 1. Yes → Please explain:
- 2. No

3. Do other judges treat you differently because of your gender?

- 1. Yes → Please explain:
- 2. No

4. Has your gender *plus* your sexual orientation, race, disability, etc. "earned" you any special work, committee assignments, or other tasks?

- 1. Yes →
- 2. No

1. Please explain.

2. Overall, do you consider these appointments or work assignments a benefit or a burden?

- 1. Benefit
- 2. Burden
- 3. Mixed

**H. Have you experienced or personally observed inappropriate treatment of men or women, based on gender, in your workplace (i.e. the courthouse)?**

- 1. Yes → Please explain:
- 2. No

I. Have you experienced or personally observed inappropriate treatment of men or women, based on gender, elsewhere in the legal system?

- 1. Yes
- 2. No



I. Please explain:

J. Are male and female *employees* (including judges) in your workplace dealt with differently depending on family status or family needs?

- 1. Yes they are treated differently based on gender.
- 2. Yes people are treated differently, but it is based on job, not gender.
- 3. No, everyone is treated the same.

K. Has a court employee ever come to you complaining of sexual harassment in his/her workplace?

- 1. Yes
- 2. No



1. What was the complainant's gender?

- 1. Male
- 2. Female

2. What was the complainant's position within the court system?

3. What was the alleged perpetrator's gender?

- 1. Male
- 2. Female

4. What was the alleged perpetrator's position within the office?

5. What was the nature of the harassment:

6. In your opinion, was the complaint successfully resolved?

- 1. Yes
- 2. No

Please go to the next page

**VI. Hiring and Opportunities for Promotion** - *The next set of questions pertain to hiring and promotion opportunities for lawyers. Please circle the answer that best fits your personal observations and experiences as a judge or, where applicable, your experiences as an attorney.*

- A. When you interviewed for a lawyer, law clerk, or other legal position, how often did an interviewer inquire into, discuss, or take into account. . .

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>Not Applicable</u>
1. your personal relationships	1	2	3	4	9
2. your family obligations	1	2	3	4	9
3. your personal commitments	1	2	3	4	9
4. your sexual orientation	1	2	3	4	9

Elaborate if applicable:

- B. Were you asked about any of these when you interviewed for a judicial position?

1. Yes  
2. No

Elaborate:

- C. When interviewing potential court employees for a position, how often have you or other interviewers inquired into or discussed applicants' . . .

	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>Not Applicable</u>
1. personal relationships	1	2	3	4	9
2. family obligations	1	2	3	4	9
3. personal commitments	1	2	3	4	9
4. sexual orientation	1	2	3	4	9

Comments:

D. When you practiced as an attorney, if 2 or more lawyers of different genders competed for a particular assignment on a specific case (e.g., "first chair," arguing an important motion, or appearing at an important hearing), and a male, rather than female, attorney was given the assignment, what reasons were typically given to explain the decision. *(Please circle all that apply).*

1. The case requires a "heavy hitter."
2. The case is assigned to a judge who prefers male counsel.
3. The client prefers male counsel.
4. A male attorney brought the client to the firm.
5. The case requires more aggressive counsel.
6. The case requires a particular type of expertise that the female attorney lacks.
7. The male attorney is more qualified.
8. The jury will respond better to a male attorney.
9. It isn't the right sort of case for a woman attorney.
10. A male attorney is more senior in the office.
11. A male attorney has a clear tie to the case.
12. Other \_\_\_\_\_ →

1. Please explain:

E. In the past 5 years (or, since you joined the bench if it has been less than 5 years), have you lost an assignment to a colleague of the opposite sex for what you believe to be gender-related reasons?

1. Yes →
2. No

1. How many times?

2. In what way do you believe that your gender was a factor?

F. The next few questions pertain to "rainmaking" in private law practice. If you were in private practice, please answer the following questions, if not skip to the next section (Section VII page 18).

1. Were you ever in private practice in Oregon?

1. Yes →
2. No *(skip to Section VII, page 18)*

3. Please rank the top 3 legal skills with respect to their importance in *generating new clients*.

- \_\_\_ Legal analysis
- \_\_\_ Trial experience
- \_\_\_ Litigation experience
- \_\_\_ Writing ability
- \_\_\_ Speaking ability
- \_\_\_ Organizational ability
- \_\_\_ Specialization in a particular area of law
- \_\_\_ Negotiation and mediation ability
- \_\_\_ Client interaction

2. How many years were you in private practice in Oregon?

\_\_\_\_\_ years

4. Please rank the top 3 legal skills with respect to their importance in *maintaining existing clients*.

- \_\_\_ Legal analysis
- \_\_\_ Trial experience
- \_\_\_ Litigation experience
- \_\_\_ Writing ability
- \_\_\_ Speaking ability
- \_\_\_ Organizational ability
- \_\_\_ Specialization in a particular area of law
- \_\_\_ Negotiation and mediation ability
- \_\_\_ Client interaction

5. Rank the top 3 with respect to their importance in lawyers' ability to *generate new clients or maintain existing clients*.

☐ Personality  
☐ Timeliness  
☐ Accountability  
☐ Involvement in professional organizations  
☐ Involvement in community activities  
☐ Amount of time spent in/out of the office  
☐ Ability/ willingness to travel  
☐ Ability/willingness to work long hours (evenings/nights) and weekends  
☐ Service on firm's management or compensation committee  
☐ Legal skills

6. Please first rank the top 3 factors with respect to their positive impact, then rank the top 3 factors with respect to their negative impact on lawyers' ability to *generate new clients or maintain existing clients*.

Positive    Negative

<input type="checkbox"/>	<input type="checkbox"/>	1. Ethnic diversity
<input type="checkbox"/>	<input type="checkbox"/>	2. Age
<input type="checkbox"/>	<input type="checkbox"/>	3. Marital status
<input type="checkbox"/>	<input type="checkbox"/>	4. Sexual orientation
<input type="checkbox"/>	<input type="checkbox"/>	5. Years in practice
<input type="checkbox"/>	<input type="checkbox"/>	6. Class rank in law school
<input type="checkbox"/>	<input type="checkbox"/>	7. Gender
<input type="checkbox"/>	<input type="checkbox"/>	8. Children
<input type="checkbox"/>	<input type="checkbox"/>	9. Disability
<input type="checkbox"/>	<input type="checkbox"/>	10. Law school attended
<input type="checkbox"/>	<input type="checkbox"/>	11. Professional recognition
<input type="checkbox"/>	<input type="checkbox"/>	12. Foreign language skills

**VII. GENERAL BACKGROUND INFORMATION - Please circle the appropriate information.**

- A. What is your gender?

1. Male  
 2. Female

- B. In what year were you born? 19\_\_\_\_\_

- C. 1. In what year were you first admitted to practice in any state? 19\_\_\_\_\_

2. How many years have you been a lawyer in Oregon? \_\_\_\_\_ years

3. How many years have you been a judge in Oregon? \_\_\_\_\_ years

D. Do you have children?

1. Yes
2. No



1. How many? \_\_\_\_\_
2. Are any of your children minors?

1. Yes
2. No



3. Were you ever separated or divorced when your children were minors?

1. Yes
2. No



E. What is your sexual orientation?

1. Gay/lesbian
2. Straight/heterosexual
3. Bisexual
4. Other (*specify*) \_\_\_\_\_

4. Was there a custody dispute?

1. Yes
2. No



F. What is your race/ethnicity?

1. Black/African-American
2. Asian
3. Hispanic
4. Native American
5. Pacific Islander
6. White (non-Hispanic)
7. Mixed/Other (*please specify*) \_\_\_\_\_

5. To whom was physical custody awarded?

1. Mother
2. Father
3. Joint
4. Other

G. What is your current marital status?

1. Divorced
2. Married/living as married
3. Separated
4. Single and never married
5. Widowed
6. Other \_\_\_\_\_

H. Do you have a physical or mental disability?

1. Physical
2. Mental
3. No disabilities

1. Is the disability noticeable?

1. Yes
2. No

**Thank you for taking the time to fill out this questionnaire!**

**Please feel free to make additional comments by including a separate sheet or using the space below. Your comments will be transcribed and considered.**



Oregon Supreme Court/Oregon State Bar  
Gender Fairness Task Force  
COURT PERSONNEL QUESTIONNAIRE

Thank you for helping the Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness by completing this survey.

As a person who frequently is in the courtroom, in chambers, or in clerks' offices, you are in a unique position to help evaluate how people are treated in the Oregon court system. Please answer the following questions based only on your experiences.

Many of the following questions will ask about your observations of the way men and women are treated in courtroom proceedings and in the court system generally. Because the courts also have a special responsibility to make sure their own employees are treated fairly, some questions ask how you have been treated, as a Judicial Department employee.

All of your responses will be completely anonymous and no individual will be identified in our report.

Please return this questionnaire even if you are able to complete only some of the questions, as the representativeness of the data rests on the range of experiences of court personnel in Oregon. Although most questions ask you to just mark a response, we welcome your thoughts. Please include additional comments wherever you think they are necessary; they will be transcribed and considered.

SECTION I. HIRING, PROMOTION, COMPENSATION

- A. How did you hear about your current job: ☐ 1.newspaper  
☐ 2.supervisor  
☐ 3.job posting  
☐ 4.another employee  
☐ 5.other (please specify) \_\_\_\_\_
- B. Were you interviewed for your current job? ☐ 1.Yes ☐ 2.No
- C. Were promotional opportunities explained to you at the interview? ☐ 1.Yes ☐ 2.No
- D. Have you been turned down for a promotion within your court within the last 5 years?  
☐ 1.Yes ☐ 2.No (If no, skip to question J.)
- E. Were you told why you were turned down for the promotion? ☐ 1.not told why  
☐ 2.someone more qualified applied  
☐ 3.not enough education  
☐ 4.someone with more seniority applied  
☐ 5.not enough experience  
☐ 6.other (please specify) \_\_\_\_\_
- F. To whom was the promotion given: ☐ 1.co-worker within the court  
☐ 2.someone from another court  
☐ 3.a non-court employee  
☐ 4.other (please specify) \_\_\_\_\_  
☐ 5.don't know (please skip to Question J.)
- G. Was the individual who was hired: ☐ 1.female ☐ 2.male ☐ 3.don't know
- H. Was the individual hired a member of a racial minority or ethnic group?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- I. Did the individual hired have a discernible disability? ☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- J. Have you ever trained a newly-hired employee who later was promoted over you?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know (skip to L.)
- K. Was the individual promoted a male or a female? ☐ 1.male ☐ 2.female
- L. Do you feel that you are under extra pressure to prove yourself on the job because of any of the following? Mark all that apply: ☐ 1.Yes, because of my gender  
☐ 2.Yes, because of my race  
☐ 3.Yes, because of my disability  
☐ 4.Yes, because of my age  
☐ 5.Yes, because of my sexual orientation  
☐ 6.No
- M. Do you favor policies allowing for any of the following? Mark all that apply: ☐ 1.job-sharing  
☐ 2.flexible work hours  
☐ 3.release time for education  
☐ 4.on-site child care for employees

PAGE 1

PLEASE CONTINUE ON THE BACK OF THIS FORM

N. Please mark your level of agreement with the following statements.

- a. In your experience, men's opportunities for job advancement in the court system are limited because of gender.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge
- b. In your experience, women's opportunities for job advancement in the court system are limited because of gender.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge
- c. In your court during the past five years, men are given preference in appointments to supervisory positions in court administration.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge
- d. In your court during the past five years, women are given preference in appointments to supervisory positions in court administration.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge
- e. In your court, during the past five years, men and women doing substantially the same type of work are classified identically.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge
- f. In your court, during the past five years, compensation is increased when the duties of a higher position are performed.  
☐ Strongly Agree ☐ Somewhat Agree ☐ Somewhat Disagree ☐ Strongly Disagree ☐ No Basis to Judge

## SECTION II. SPECIFIC TREATMENT OF COURT PERSONNEL

Please mark the response that best completes the following statements:

- A. Building facilities are \_\_\_\_\_ adequate for women than for men.  
☐ 1.more ☐ 2.less ☐ 3.equally ☐ 4.Don't know
- B. The physical facilities assigned to women are \_\_\_\_\_ desirable than those assigned to men in similar job positions.  
☐ 1.more ☐ 2.less ☐ 3.equally ☐ 4.Don't know
- C. The discipline practices for tardiness, sick leave abuse, and absenteeism are \_\_\_\_\_ fair for women than men.  
☐ 1.more ☐ 2.less ☐ 3.equal ☐ 4.Don't know

The following questions ask about your experiences while an Oregon court employee.

- D. Have you ever been asked to perform duties that are not asked of the opposite sex?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- E. Are there duties that you are not allowed to perform because of your gender?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- F. Are the work rules regarding hours, breaks, and time off applied equally to men and women?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- If no, to whose benefit are they applied?  
☐ Males ☐ Females
- G. From what you've observed or experienced, does taking parental or adoption leave hurt a woman's chances for advancement and promotion once she returns to work?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- H. From what you've observed or experienced, does taking parental or adoption leave hurt a man's chances for advancement and promotion once he returns to work?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- I. Is there a person in Court administration/OSCA who will receive complaints relating to gender-based discrimination?  
☐ 1.Yes ☐ 2.No ☐ 3.Don't know
- J. Have you ever been, or know someone who has been, the subject of gender-based discrimination?  
☐ 1.Yes ☐ 2.No (skip to Section III)
- K. Have you ever made a complaint to a person in Court administration/OSCA relating to gender-based discrimination?  
☐ 1.Yes ☐ 2.No (skip to question M.)
- L. If yes, to whom did you complain?  
☐ 1.judge ☐ 2.personnel department ☐ 3.supervisor ☐ 4.Other (please specify)
- M. Have you ever wanted to make such a complaint but have not done so?  
☐ 1.Yes ☐ 2.No

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PLEASE CONTINUE ON THE NEXT PAGE

## SECTION III. WORKING CONDITIONS

The following questions ask whether you, personally, have observed or experienced specific types of behavior in Oregon courts.

- A. Have you ever been addressed or referred to by your first name, or by a term of endearment (such as dear, honey, sweetie, young lady, little lady, young man, son, etc.) when you felt you shouldn't have?  
☐ 1. Yes ☐ 2. No (skip to question C.)
- B. Who referred to you in this manner? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- C. Have you ever observed other employees being addressed or referred to by first name, or by a term of endearment (such as dear, honey, sweetie, young lady, little lady, young man, son, etc.) when you felt they shouldn't have?  
☐ 1. Yes ☐ 2. No (skip to question F.)
- D. Who was referred to in this manner? ☐ 1. female employee ☐ 2. male employee ☐ 3. Both
- E. Who referred to the other employee in this manner? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- F. Have you ever received unwanted remarks about your appearance or dress?  
☐ 1. Yes ☐ 2. No (skip to question H.)
- G. Who made the comment? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- H. Have you ever observed other employees receive unwanted remarks about their appearance or dress?  
☐ 1. Yes ☐ 2. No (skip to question K.)
- I. Was the person who received the comment: ☐ 1. female employee ☐ 2. male employee ☐ 3. Both
- J. Who made the comment? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- K. Have you ever received unwanted sexual or suggestive comments?  
☐ 1. Yes ☐ 2. No (skip to question M.)
- L. Who made the comments? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- M. Have you ever observed other employees receive unwanted sexual or suggestive comments?  
☐ 1. Yes ☐ 2. No (skip to question P.)
- N. Was the person who received the comment: ☐ 1. female employee ☐ 2. male employee ☐ 3. Both
- O. Who made the comments? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- P. Have you ever been subjected to unwanted sexual teasing, demeaning jokes or remarks hostile toward men or women?  
☐ 1. Yes ☐ 2. No (skip to question R.)

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PLEASE CONTINUE ON THE BACK OF THIS FORM

Q. Who made the unwanted comments? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

R. Have you ever observed other employees being subjected to sexual teasing, demeaning jokes or remarks hostile toward men or women?

- ☐ 1. Yes ☐ 2. No (skip to question U.)

S. Who was subjected to this treatment?:

- ☐ 1. female employee ☐ 2. male employee ☐ 3. Both

T. Who treated them this way? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

U. Have you ever experienced unwanted pressure for social contact (e.g. drinks, dates, etc.)?

- ☐ 1. Yes ☐ 2. No (skip to question W.)

V. Who made the unwanted comments? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

W. Have you ever observed other employees experience unwanted pressure for social contact (e.g. drinks, dates, etc.)?

- ☐ 1. Yes ☐ 2. No (skip to question Z.)

X. Who was subjected to this pressure?:

- ☐ 1. female employee ☐ 2. male employee ☐ 3. Both

Y. Who pressured the employee? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

Z. Have you ever experienced unwanted, deliberate physical touching?

- ☐ 1. Yes ☐ 2. No (skip to question BB)

AA. Who touched you? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

BB. I have observed other employees receive unwanted, deliberate physical touching.

- ☐ 1. Yes ☐ 2. No (skip to question BB.)

CC. Who was touched?:

- ☐ 1. female employee ☐ 2. male employee ☐ 3. Both

DD. By whom was the employee touched? Check all that apply.

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

EE. If you answered "yes" to any of the questions above, did you complain to anyone in your workplace about such treatment?

- ☐ 1. Yes ☐ 2. No (skip to question HH)

FF. To whom did you complain? Check all that apply.

- ☐ 1. judge ☐ 2. personnel department ☐ 3. supervisor ☐ 4. Other (please specify)

GG. Was the person you complained to: ☐ 1. female ☐ 2. male

HH. If No, why didn't you complain? (please explain) \_\_\_\_\_

## SECTION IV. COURTROOM TREATMENT

The following questions ask whether you, personally, have observed or experienced these specific types of behavior in Oregon state courts DURING THE LAST FIVE YEARS. Please mark the response that comes closest to your own observations or experiences.

- A. Judges are more likely to interrupt the presentation of attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- B. Judges assign more credibility to arguments of attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- C. Juries assign more credibility to arguments of attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- D. Judges assign more credibility to the opinions of experts who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- E. Juries assign more credibility to the opinions of experts who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- F. Judges assign more credibility to the opinions of witnesses who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- G. Juries assign more credibility to the opinions of witnesses who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- H. The outcome of cases is affected by bias against attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- I. The outcome of cases is affected by bias against parties who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- J. The outcome of cases is affected by bias against witnesses who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- K. Court-awarded attorney fees are higher if the party is:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- L. Court-awarded attorney fees are higher if the attorney is:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- M. Female judges give preferential treatment to attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge
- N. Male judges give preferential treatment to attorneys who are:  
☐ Male ☐ Female ☐ No Difference ☐ No Basis to Judge

Choose the answer to the following questions that most nearly fits your personal observations or experiences, over the last five years.

- O. Judges have negative attitudes toward family law. ☐ 1. Agree ☐ 2. Disagree ☐ 3. No basis
- P. Have you ever encountered inappropriate references to gender in court forms or documents in Oregon courts?  
☐ 1. Yes ☐ 2. No
- Q. Have you observed attorneys who are racial minorities receive less courteous treatment than other attorneys?  
☐ 1. Yes ☐ 2. No (skip to question S.)
- R. Who treated them less courteously?  
 Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- S. Have you observed plaintiffs, defendants, or witnesses who are racial minorities receive less courteous treatment than others? ☐ 1. Yes ☐ 2. No (skip to question U.)
- T. Who treated them less courteously? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)
- U. Have you observed female attorneys being asked if they are attorneys when male attorneys are not?  
☐ 1. Yes ☐ 2. No (skip to question W.)
- V. Who asked them? Check all that apply.  
☐ 1. female attorney ☐ 2. male attorney  
☐ 3. female judge ☐ 4. male judge  
☐ 5. female court personnel ☐ 6. male court personnel  
☐ 7. female juror ☐ 8. male juror  
☐ 9. female litigant/defendant ☐ 10. male litigant/defendant  
☐ 11. female police officer ☐ 12. male police officer  
☐ 13. Other (please specify)

W. Which of the following statements best describe your overall perception of gender bias against female attorneys in court?

1. There is no gender bias against female attorneys.
2. Gender bias against female attorneys exists, but only in a few areas and with certain individuals.
3. Gender bias against female attorneys is widespread, subtle and hard to detect.
4. Gender bias against female attorneys is widespread and readily apparent.

X. Which of the following statements best describe your overall perception of gender bias against male attorneys in court?

1. There is no gender bias against male attorneys.
2. Gender bias against male attorneys exists, but only in a few areas and with certain individuals.
3. Gender bias against male attorneys is widespread, subtle and hard to detect.
4. Gender bias against male attorneys is widespread and readily apparent.

#### SECTION V. GENDER ISSUES AND INTERACTION

The following set of questions deal with gender issues and interaction. Please mark your level of agreement with the following statements.

A. Female attorneys are addressed by their first names when male attorneys are not.

- ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge

B. If so, by whom?

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

C. Female attorneys are addressed by terms of endearment (e.g., honey, dear) when male attorneys are not.

- ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge

D. If so, by whom?

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

E. Male attorneys are addressed by their first names when female attorneys are not.

- ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge

F. If so, by whom?

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

G. Male attorneys are addressed by terms of endearment (e.g., honey, son) when female attorneys are not.

- ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge

H. If so, by whom?

- |                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> 1. female attorney           | <input type="checkbox"/> 2. male attorney            |
| <input type="checkbox"/> 3. female judge              | <input type="checkbox"/> 4. male judge               |
| <input type="checkbox"/> 5. female court personnel    | <input type="checkbox"/> 6. male court personnel     |
| <input type="checkbox"/> 7. female juror              | <input type="checkbox"/> 8. male juror               |
| <input type="checkbox"/> 9. female litigant/defendant | <input type="checkbox"/> 10. male litigant/defendant |
| <input type="checkbox"/> 11. female police officer    | <input type="checkbox"/> 12. male police officer     |
| <input type="checkbox"/> 13. Other (please specify)   |                                                      |

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PLEASE CONTINUE ON THE NEXT PAGE

# YEAR OF BIRTH

Do not mark outside this line

1	2	3	4	5	6	7	8	9	0

- I. How often have you observed an attorney receive unwanted sexual or suggestive comments? ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge
- J. Was the person who received the comment: 1. female attorney 2. male attorney 3. Both
- K. Who made the comment? 1. female attorney 2. male attorney  
3. female judge 4. male judge  
5. female court personnel 6. male court personnel  
7. female juror 8. male juror  
9. female litigant/defendant 10. male litigant/defendant  
11. female police officer 12. male police officer  
13. Other (please specify)
- L. How often have you observed an attorney receive unwanted, deliberate physical touching? ☐ Always  
☐ Often  
☐ Sometimes  
☐ Rarely  
☐ Never  
☐ No Basis to judge
- M. Was the person touched: 1. female attorney 2. male attorney 3. Both
- N. Who touched them? 1. female attorney 2. male attorney  
3. female judge 4. male judge  
5. female court personnel 6. male court personnel  
7. female juror 8. male juror  
9. female litigant/defendant 10. male litigant/defendant  
11. female police officer 12. male police officer  
13. Other (please specify)
- O. In cases in which more than one attorney appears on the case, have you observed any gender disparity in the assignment of roles to attorneys appearing on cases for trial? ☐ 1. Yes ☐ 2. No (skip to section VI)
- P. Do you agree or disagree with the following statement?  
More females than males are in "first chair" positions. ☐ 1. Agree ☐ 2. Disagree

## SECTION VI. GENERAL BACKGROUND INFORMATION

- A. What is your gender? ☐ 1. Female ☐ 2. Male
- B. In what year were you born? (Fill in bubbles at top of page also) \_\_\_\_\_
- C. What is your ethnicity/race? ☐ 1. Asian  
☐ 2. African-American  
☐ 3. Hispanic  
☐ 4. Native American  
☐ 5. Pacific Islander  
☐ 6. White (non-Hispanic)  
☐ 7. Other (please specify)  
☐ 8. Mixed race (please specify)
- D. What is your sexual orientation? ☐ 1. Straight/heterosexual ☐ 2. Gay/lesbian ☐ 3. Bi-sexual ☐ 4. Other \_\_\_\_\_
- E. What is your current relationship status: ☐ 1. Single and never married  
☐ 2. Currently divorced  
☐ 3. Widowed  
☐ 4. Married/living with domestic partner  
☐ 5. Previously divorced, now remarried  
☐ 6. Other (please specify)

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PLEASE CONTINUE ON THE BACK OF THIS FORM

F. Do you have any children under the age of 18 years? ☐ 1.Yes ☐ 2.No (skip to question H.)

G. With whom do your children live? (please specify) \_\_\_\_\_

H. Do you have a disability and/or do others regard you as having a disability?

☐ 1.Yes

☐ 2.No (skip to question K.)

I. What is your disability or the disability others regard you as having?

☐ 1.physical disability

☐ 2.mental or emotional disability

☐ 3.Both

J. Is the disability noticeable or discernible?

☐ 1.Yes

☐ 2.No

K. What is the highest educational level you have achieved?

☐ 1.some high school

☐ 2.high school diploma or GED

☐ 3.some college or training after high school

☐ 4.associate's degree (2 years)

☐ 5.bachelor's degree

☐ 6.graduate degree

L. Which category best describes your current position?

1.Court administration

2.Court operations specialist

3.Judicial assistant

4.Law clerk

5.Court reporter

6.Bailiff

7.Other \_\_\_\_\_

M. How many YEARS have you been employed in your current position?

☐ 0-1

☐ 1-2

☐ 2-3

☐ 3-4

☐ 4-5

☐ 5-7

☐ 7-10

☐ 10-15

☐ 15-20

☐ 20+

N. How many YEARS have you been employed with the court system?

☐ 0-1

☐ 1-2

☐ 2-3

☐ 3-4

☐ 4-5

☐ 5-7

☐ 7-10

☐ 10-15

☐ 15-20

☐ 20+

O. On average, how many hours PER WEEK are you in the courtroom?

☐ 0-2

☐ 2-5

☐ 5-10

☐ 10-15

☐ 15-20

☐ 20-25

☐ 25-30

☐ 30-35

☐ 35-40

P. On average, how many hours PER WEEK are you in chambers?

☐ 0-2

☐ 2-5

☐ 5-10

☐ 10-15

☐ 15-20

☐ 20-25

☐ 25-30

☐ 30-35

☐ 35-40

Please use this space to elaborate on any of your survey answers or to comment on gender fairness in your job or in the Oregon state courts.



Oregon Supreme Court/Oregon State Bar  
Gender Fairness Task Force  
INTERPRETERS' SURVEY - JUDICIAL ADMINISTRATION SUB-GROUP

The Oregon Supreme Court-Oregon State Bar Task Force on Gender Fairness is studying whether people are treated unfairly on the basis of gender in the Oregon state courts and legal profession. You are in the unique position of working with, and observing interactions between and treatment of, litigants, judges, lawyers, clients, court personnel, interpreters, and others. We want to learn from your experiences. We would greatly appreciate your assisting the Task Force by filling out this survey. YOU ARE NOT REQUIRED TO COMPLETE THIS SURVEY. However, we need and value your input. PLEASE DO NOT PUT YOUR NAME ON THE QUESTIONNAIRE. Please complete the survey by filling in the bubbles with a #2 pencil and return it in the attached envelope to: Jessica Mindlin, GPTF, Supreme Court Building, Salem, OR 97310.

Section A: GENERAL INFORMATION

1. How many years have you worked as an interpreter?  

0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9+
-----	-----	-----	-----	-----	-----	-----	-----	-----	----
2. How many years have you worked as an interpreter in Oregon?  

0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9+
-----	-----	-----	-----	-----	-----	-----	-----	-----	----
3. How many years have you worked as an interpreter in State of Oregon COURTS?  

0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9+
-----	-----	-----	-----	-----	-----	-----	-----	-----	----
4. How often do you interpret IN COURT?  

<input type="checkbox"/> Daily
<input type="checkbox"/> 3-5x/week
<input type="checkbox"/> 1-3x/week
<input type="checkbox"/> 1-3x/month
<input type="checkbox"/> 1-6x/year
<input type="checkbox"/> less than once/year
5. How often do you interpret outside of court but in a legal matter?  

<input type="checkbox"/> Daily
<input type="checkbox"/> 3-5x/week
<input type="checkbox"/> 1-3x/week
<input type="checkbox"/> 1-3x/month
<input type="checkbox"/> 1-6x/year
<input type="checkbox"/> less than once/year
6. What percentage of your interpreting work is in-court interpreting?  

<input type="checkbox"/> 0-10%
<input type="checkbox"/> 10-20%
<input type="checkbox"/> 20-30%
<input type="checkbox"/> 30-40%
<input type="checkbox"/> 40-50%
<input type="checkbox"/> 50-60%
<input type="checkbox"/> 60-70%
<input type="checkbox"/> 70-80%
<input type="checkbox"/> 80-90%
<input type="checkbox"/> 90% or more
7. What percentage of your interpreting work is interpreting in criminal cases?  

<input type="checkbox"/> 0-10%
<input type="checkbox"/> 10-20%
<input type="checkbox"/> 20-30%
<input type="checkbox"/> 30-40%
<input type="checkbox"/> 40-50%
<input type="checkbox"/> 50-60%
<input type="checkbox"/> 60-70%
<input type="checkbox"/> 70-80%
<input type="checkbox"/> 80-90%
<input type="checkbox"/> 90% or more
8. What percentage of your interpreting work is interpreting in civil cases?  

<input type="checkbox"/> 0-10%
<input type="checkbox"/> 10-20%
<input type="checkbox"/> 20-30%
<input type="checkbox"/> 30-40%
<input type="checkbox"/> 40-50%
<input type="checkbox"/> 50-60%
<input type="checkbox"/> 60-70%
<input type="checkbox"/> 70-80%
<input type="checkbox"/> 80-90%
<input type="checkbox"/> 90% or more

## SECTION 1: TREATMENT OF INTERPRETERS.

We are very interested in learning about your interpreting experiences both in and outside of the courtroom. For the following questions, please mark all the answers that apply. If you answer "yes" to any question, indicate who engaged in the behavior described and whether it took place in or out of court.

During your work as an interpreter has anyone: (Mark appropriate answers)

1.1 Called you by your first name, or "dear," "sweetie,"

"honey", or other similar type name when persons of the opposite sex were not referred to in this manner?

1. Yes 2. No

IF YES, WHO REFERRED TO YOU IN THIS WAY?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)		

1.2 Made remarks about your appearance or dress when you felt they shouldn't have?

1. Yes 2. No

IF YES, WHO WAS THIS

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.3 Made negative or hostile remarks about women to you?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.4 Made negative or hostile remarks about men to you?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.5 Made sexual or suggestive comments to you?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.6 Addressed you in a rude manner when persons of the opposite sex were addressed politely?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.7 Treated you in an inappropriately familiar manner?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.8 Subjected you to unwanted sexual teasing, jokes, or comments?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
2. Judge	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
3. Interpreter	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
4. Plaintiff/Defendant	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
5. Court personnel/security	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court
6. Other	<input type="checkbox"/> (Male)	<input type="checkbox"/> (Female)	<input type="checkbox"/> In Court	<input type="checkbox"/> Out of Court

1.9 Subjected you to unwanted, deliberate physical touching?

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
2. Judge	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
3. Interpreter	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
4. Plaintiff/Defendant	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
5. Court personnel/security	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
6. Other _____	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court

1.10 Asked you if you were the defendant? (criminal case)

1. Yes 2. No

IF YES, WHO WAS THIS?

1. Attorney	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
2. Judge	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
3. Interpreter	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
4. Plaintiff/Defendant	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
5. Court personnel/security	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
6. Other _____	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court

1.11 When you were interpreting in court, has an attorney ever treated you in an overly aggressive or demeaning manner?

1. Yes 2. No

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

1.12 When you were outside of court (but interpreting a legal matter), has an attorney ever treated you in an overly aggressive or demeaning manner?

1. Yes 2. No

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

1.13 Have you ever observed an attorney treat a male interpreter in an overly aggressive or demeaning manner in court?

1. Yes 2. No.

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

1.14 Have you ever observed an attorney treat a female interpreter in an overly aggressive or demeaning manner in court?

1. Yes 2. No.

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

1.15 Have you ever observed an attorney treat a male interpreter in an overly aggressive or demeaning manner outside of court?

1. Yes 2. No.

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

1.16 Have you ever observed an attorney treat a female interpreter in an overly aggressive or demeaning manner outside of court?

1. Yes 2. No.

IF YES, WHO DID THIS?

1. Male Attorney 2. Female Attorney

## SECTION 2: TREATMENT OF DEFENDANTS, VICTIMS OR WITNESSES

This next section asks for your observations on how others are treated in court in both civil and criminal cases. Please tell us whether you have ever heard or witnessed the actions described and, if so, where.

During your work as an interpreter has anyone: (Mark appropriate answer)

2.1 Called a male defendant, victim, or witness by their first name, or "dear", or "honey", when you felt they shouldn't have?

☐ 1. Yes ☐ 2. No

IF YES, WHO DID THIS?

1. Attorney	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
2. Judge	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
3. Other Interpreter	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
4. Court personnel/security	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
5. Other _____	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court

2.2 Called a female defendant, victim, or witness by their first name, or "dear", or "honey", when you felt they shouldn't have?

☐ 1. Yes ☐ 2. No

IF YES, WHO DID THIS?

1. Attorney	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
2. Judge	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
3. Other Interpreter	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
4. Court personnel/security	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
5. Other _____	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court

2.3 Made remarks about a male defendant's, victim's, or witness' appearance or dress when you felt they shouldn't have?

☐ 1. Yes ☐ 2. No

IF YES, WHO DID THIS?

1. Attorney	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
2. Judge	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
3. Other Interpreter	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
4. Court personnel/security	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court
5. Other _____	(Male)	(Female)	<input type="checkbox"/> In court	<input type="checkbox"/> Out of court

2.4 Made remarks about a female defendant's, victim's, or witness' appearance or dress when you felt they shouldn't have?

☐ 1.Yes ☐ 2.No

IF YES, WHO DID THIS?

- |                             |                                 |                                   |                                   |                                       |
|-----------------------------|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 3. Other Interpreter        | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 4. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 5. Other _____              | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |

2.5 Made sexual or suggestive comments to a male defendant, victim, or witness?

☐ 1.Yes ☐ 2.No

IF YES, WHO DID THIS?

- |                             |                                 |                                   |                                   |                                       |
|-----------------------------|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 3. Other Interpreter        | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 4. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 5. Other _____              | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |

2.6 Made sexual or suggestive comments to a female defendant, victim, or witness?

☐ 1.Yes ☐ 2.No

IF YES, WHO DID THIS?

- |                             |                                 |                                   |                                   |                                       |
|-----------------------------|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 3. Other Interpreter        | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 4. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 5. Other _____              | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |

2.7 Touched a male defendant, victim, or witness in a way you felt they shouldn't have?

☐ 1.Yes ☐ 2.No

IF YES, WHO DID THIS?

- |                             |                                 |                                   |                                   |                                       |
|-----------------------------|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 3. Other Interpreter        | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 4. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 5. Other _____              | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |

2.8 Touched a female defendant, victim, or witness in a way you felt they shouldn't have?

☐ 1.Yes ☐ 2.No

IF YES, WHO DID THIS?

- |                             |                                 |                                   |                                   |                                       |
|-----------------------------|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 3. Other Interpreter        | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 4. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |
| 5. Other _____              | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) | <input type="checkbox"/> In court | <input type="checkbox"/> Out of court |

2.9 When interpreting in a language that has both a formal and informal (or less and more familiar) form of address (e.g., "usted" and "tú" in Spanish), have you ever observed anyone address a party or witness in the familiar form when you felt they shouldn't have?

☐ 1.Yes ☐ 2.No

IF YES, who was addressed in the less formal, more familiar form of address?

☐ Male ☐ Female ☐ In court ☐ Out of court

By whom were they addressed in the more familiar form?

☐ Male ☐ Female ☐ In court ☐ Out of court

## SECTION 3: OVERALL PERCEPTION OF GENDER BIAS IN THE COURT SYSTEM

You are in a unique position to observe the dynamics of the court system. Select the best answer based upon your personal observations and experiences.

Have you ever: (Mark appropriate answer)

3.1 Observed biased treatment of women in the Oregon courts? ☐ 1. Yes ☐ 2. No

IF YES, who treated them in a biased manner?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.2 Observed biased treatment of men in the Oregon courts? ☐ 1. Yes ☐ 2. No

IF YES, who treated them in a biased manner?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.3 Observed inappropriate treatment of women in the Oregon courts? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.4 Observed inappropriate treatment of men in the Oregon courts? ☐ 1. Yes ☐ 2. No

IF YES, WHO WAS THIS?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.5 Observed that male judges are addressed by their first names or familiar terms? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.6 Observed that male attorneys are addressed by their first names or familiar terms? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.7 Observed that female judges are addressed by their first names or familiar terms? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.8 Observed that female attorneys are addressed by their first names or familiar terms? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.9 Observed that remarks or jokes demeaning to women are made in court or in chambers? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

3.10 Observed that remarks or jokes demeaning to men are made in court or in chambers? ☐ 1. Yes ☐ 2. No

IF YES, by whom?

- |                             |                                 |                                   |
|-----------------------------|---------------------------------|-----------------------------------|
| 1. Attorney                 | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 2. Judge                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 3. Court personnel/security | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |
| 4. Other                    | <input type="checkbox"/> (Male) | <input type="checkbox"/> (Female) |

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PLEASE CONTINUE ON THE BACK OF THIS FORM

3.11 Observed that comments are made about the physical appearance of women appearing in court?

1. Yes 2. No

IF YES, by whom?

1. Attorney ☐ (Male) ☐ (Female)  
 2. Judge ☐ (Male) ☐ (Female)  
 3. Court personnel/security ☐ (Male) ☐ (Female)  
 4. Other ☐ (Male) ☐ (Female)

3.12 Observed that comments are made about the physical appearance of men appearing in court?

1. Yes 2. No

IF YES, by whom?

1. Attorney ☐ (Male) ☐ (Female)  
 2. Judge ☐ (Male) ☐ (Female)  
 3. Court personnel/security ☐ (Male) ☐ (Female)  
 4. Other ☐ (Male) ☐ (Female)

3.13 Observed that female attorneys are asked if they are attorneys when male attorneys are not asked?

1. Yes 2. No

IF YES, by whom?

1. Attorney ☐ (Male) ☐ (Female)  
 2. Judge ☐ (Male) ☐ (Female)  
 3. Court personnel ☐ (Male) ☐ (Female)  
 4. Court security/jail staff ☐ (Male) ☐ (Female)  
 5. Litigants or witnesses ☐ (Male) ☐ (Female)  
 6. Other ☐ (Male) ☐ (Female)

3.14 Observed whether judges are more likely to interrupt a male or a female attorney?

Male Attorney ☐ Female Attorney ☐ No difference (skip to #3.15)  
 Who is more likely to interrupt a male attorney?  
☐ Male Judge ☐ Female Judge ☐ No difference

3.15 Observed that male judges assign more credibility to the arguments of male or female attorneys?

More credibility to: ☐ Male attorneys ☐ Female attorneys ☐ No difference

3.16 Observed that female judges assign more credibility to the arguments of male or female attorneys?

More credibility to: ☐ Male attorneys ☐ Female attorneys ☐ No difference

3.17 Observed that male judges assign more credibility to the testimony of male or female witnesses?

More credibility to: ☐ Male witnesses ☐ Female witnesses ☐ No difference

3.18 Observed that female judges assign more credibility to the testimony of male or female witnesses?

More credibility to: ☐ Male witnesses ☐ Female witnesses ☐ No difference

3.19 Observed that the outcome of cases is adversely affected by bias against male attorneys?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.20 Observed that the outcome of cases is adversely affected by bias against female attorneys?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.21 Observed that the outcome of cases is adversely affected by bias against male litigants?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.22 Observed that the outcome of cases is adversely affected by bias against female litigants?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.23 Observed that the outcome of cases is adversely affected by bias against male witnesses?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.24 Observed that the outcome of cases is adversely affected by bias against female witnesses?

☐ 1. Yes ☐ 2. No

IF YES, bias by whom?

☐ 1. Male Judge ☐ 2. Female Judge

3.25 Observed that male judges are more likely to chastise a male or female attorney for arriving late for a court appearance?

☐ Male attorney ☐ Female attorney ☐ No difference

3.26 Observed that female judges are more likely to chastise a male or female attorney for arriving late for a court appearance?

☐ Male attorney ☐ Female attorney ☐ No difference

3.27 Observed that judges give preferential treatment to attorneys who are male?

1. Yes 2. No

IF YES, WHO DID THIS?

1. Male Judge 2. Female Judge

3.28 Observed that judges give preferential treatment to attorneys who are female?

1. Yes 2. No

IF YES, WHO DID THIS?

1. Male Judge 2. Female Judge

3.29 Observed that judges treat family law cases (litigants, lawyers, etc.) in a more curt or harsh manner than they treat other cases?

1. Yes 2. No

IF YES, WHO DID THIS?

1. Male Judge 2. Female Judge

3.30 Observed anyone intervene to correct another person's biased behavior?

1. Yes 2. No

IF YES, WHO INTERVENED?

1. Attorney (Male) (Female)

2. Judge (Male) (Female)

3. Court personnel/security (Male) (Female)

4. Other \_\_\_\_\_

3.31 In your experience, is there bias against pregnant female attorneys? Yes No

IF YES, by whom?

Male judges

Female judges

Other \_\_\_\_\_

Male attorneys

Female attorneys

3.32 Do you believe that, in addition to gender, case outcome is affected when the male attorney is also:

(please mark all that you believe to be true)

☐ African-American or Black

☐ Hispanic

☐ Asian/Pacific Islander

☐ Native American

☐ Younger than 40

☐ Older than 40

☐ A person with a discernible disability

☐ Perceived to be a ~~lesbian~~ <sup>gay</sup> bisexual

☐ Single

☐ Married

☐ A parent

3.33 Do you believe that, in addition to gender, case outcome is affected when the female attorney is also:

(please check all that you believe to be true)

☐ African-American or Black

☐ Hispanic

☐ Asian/Pacific Islander

☐ Native American

☐ Younger than 40

☐ Older than 40

☐ A person with a discernible disability

☐ Perceived to be a lesbian/bisexual

☐ Single

☐ Married

☐ A parent

#### SECTION 4. BACKGROUND INFORMATION

Please answer the following demographic questions which will help us better understand which factors, if any, affect people experiences with gender in the justice system and the legal community.

1. Sex: ☐ 1. Male ☐ 2. Female

2. Age: ☐ 1) 18-25 ☐ 2) 26-35 ☐ 3) 36-45 ☐ 4) 46-55 ☐ 5) 56-65 ☐ 6) 66 and over

3. Marital Status: ☐ 1) Single ☐ 2) Married/Living as married ☐ 3) Divorced/Separated ☐ 4) Widowed

4. Level of education (mark the highest level completed): ☐ High School diploma (or equivalent) ☐ Some college or post-high school training ☐ AA degree ☐ BA or BS degree ☐ Some post-graduate work ☐ Post-graduate degree

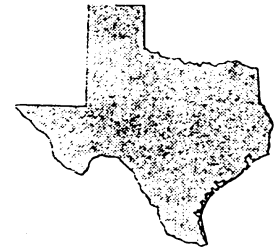
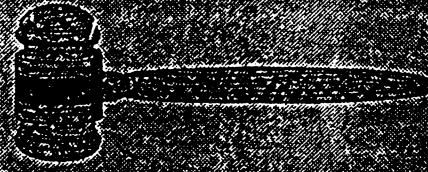
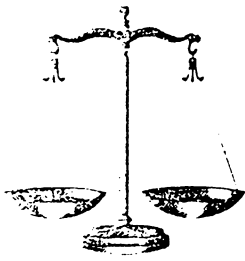
SECTION 5. COMMENTS

We invite you to comment on any question or qualify any of your answers. We also welcome your suggestions for collecting bias, if any, in the Oregon justice system or legal profession. Your comments regarding gender fairness issues are welcome regardless of whether they pertain to issues specifically raised in this survey. Thank you for your time.

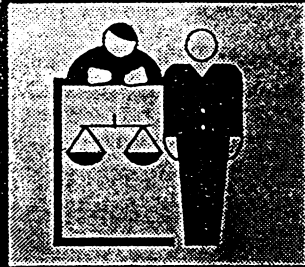
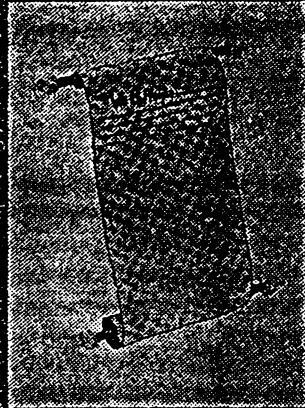
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PAGE 8





# **Guidelines for Gender-Neutral Courtroom Procedures**

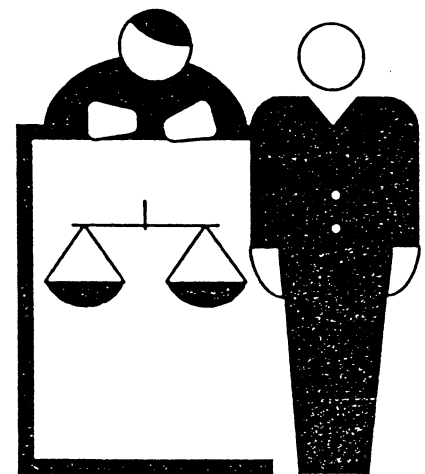


Commissioned by the  
**Texas**  
**Supreme Court**

By  
**The Gender Bias  
Reform Implementation  
Committee**

based on findings  
and recommendations of

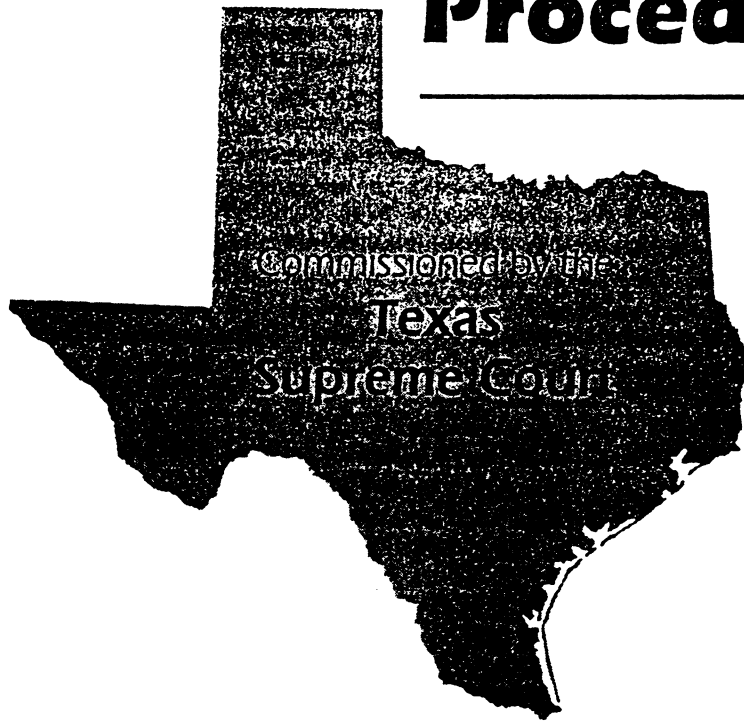
**The Gender Bias  
Task Force**



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# **Guidelines for Gender-Neutral Courtroom Procedures**

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by

**The Gender Bias Reform  
Implementation Committee**

based on findings and recommendations of

**The Gender Bias Task Force**

PUBLISHED JUNE, 1997

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## **Dedication**

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To the Supreme Court of Texas and the Texas Court of Criminal Appeals, whose recognition of the need for guidelines to provide for equal access to the halls of justice without regard to gender or race, this guidebook is gratefully dedicated.

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## **Special Thanks**

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To The Texas Bar Foundation for their support and participation in this educational project.

To GDRobinson Publications for producing this booklet at cost.

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# Introduction

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## **Do You See Yourself Here? Have you ever:**

- ☒ Told an off-color joke in chambers?
- ☒ Remarked to a female attorney how her family commitments might interfere with her responsibilities to the court or her client?
- ☒ Hesitated to award a father primary child custody or given a smaller support order if the paying spouse is the mother primarily because of their gender?
- ☒ Called a female lawyer: "dear," "honey," "sweetie," "sweetheart," "darling"? How about: "young lady," "missy," "little lady," "Miss America"?
- ☒ Expressed surprise that a woman would appear in court late in her pregnancy?
- ☒ Called a woman by her first name but addressed a man as "Mister so-and-so"?
- ☒ Referred to a female criminal defendant as a "bimbo"?
- ☒ Treated a female criminal defendant with more leniency just because she is a female?



Made remarks about a woman's physical appearance, attractiveness, or unattractiveness, either to her face or behind her back? Allowed your court staff to do this? ...**Does "nice legs" ring a bell?**

**You're saying "Not Me!" Right?**



### **Well, Consider This:**

The facade of the United States Supreme Court Building concisely expresses the mission of the nation's courts:

### **Equal Justice Under Law.**

**This abiding rule is graphically portrayed by the figure of Themis — blind justice holding scales in balance.**

The Gender Bias Task Force, created by the Supreme Court of Texas, discovered after a two-and-one-half year study, that many Texas women and men experience discriminatory or inequitable treatment in the Texas judicial system simply because of their sex.

Much of the gender bias documented by the Task Force occurs in the courtroom —in the exchanges among judges, attorneys, litigants, court personnel, and witnesses.

**For example, the Task Force made the following findings:**

- ☒ Nine out of ten female law professionals responding to a State Bar survey reported being the target of at least one incident of gender discrimination in the courtroom during the preceding three years.
- ☒ Women litigants often experience hostile, demeaning, or condescending treatment from attorneys and sometimes from judges.
- ☒ Judges rarely reprimand counsel or court personnel whose behavior or comments exhibit gender bias.
- ☒ Gender stereotypes and gender-biased treatment toward litigants and counsel of both sexes have a negative impact on the litigation process and may affect case outcome.
- ☒ Discriminatory treatment of attorneys affects their credibility and may have serious consequences on their ability to advocate effectively for clients.

**Gender bias can be subtle and unintentional. This guide is designed to help judges, attorneys and court personnel identify gender bias in our courts. Gender-neutral courts will promote “equal justice under law.”**



## **Recognizing Gender Bias**

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A striking finding of the Task Force was the significant gap between the perceptions of men and women concerning the extent of gender bias. Although a majority of male attorneys and judges surveyed by the Task Force believed that bias against women does exist, most felt that it exists in only a few areas and involves a few individuals. In contrast, more than half of the women respondents indicated that bias against female litigants not only exists, but that it is widespread. Most women also said gender bias is subtle and hard to detect rather than readily apparent.

**What, then, is gender bias?**

---

**Gender bias may be defined as the predisposition or tendency to think about and behave toward people mainly on the basis of their sex.**

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Gender bias may include the following:

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## **Stereotyped thinking that leads to disparate treatment in the courtroom**

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- ☒ Fathers denied custody because judges do not believe men can or should be primary caretakers
- ☒ Mothers denied custody because they work outside the home
- ☒ Male criminal defendants given stiffer sentences than female criminal defendants for the same crime
- ☒ Women attorneys considered “too tough” for behavior praised as zealous advocacy when exhibited by male attorneys
- ☒ Women seated at counsel table presumed to be legal assistants or secretaries rather than attorneys
- ☒ Female court personnel assumed to have no authority or ability to handle matters presented to them



## **Devaluation of Women and Women's Work**

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- ☒ Undervaluing the work women perform as homemakers and caregivers for children and the elderly in civil damage suits and in property division upon divorce
  - ☒ Credibility accorded litigants, witnesses and lawyers solely on the basis of their sex
  - ☒ Tolerating terms of endearment or less than respectful forms of address toward female counsel, witnesses or court personnel which convey that women attorneys, litigants, witnesses and court personnel have a lower status than their male counterparts
- 

## **Placing A Burden On One Sex That Is Not Placed On The Other**

---

- ☒ Holding women attorneys to higher standards than their male counterparts; assuming competence on the part of male attorneys but expecting female attorneys to prove their ability
- ☒ Expecting more credentials or greater qualifications before qualifying women as expert witnesses than those expected for men in the same profession

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# How Gender Bias Is Manifested In The Courtroom

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**AS TO LITIGANTS:** The Task Force found that women litigants often experience hostile, demeaning or condescending treatment in the courtroom, and that male litigants are negatively affected by gender stereotypes both in the family law system and in the criminal justice system.

- ☒ Calling female litigants by first names while addressing male litigants by title (Mr., Dr., Professor)
- ☒ Making condescending references to women's roles, such as referring to the litigant as "just a housewife"
- ☒ Expressing surprise upon hearing that a father is seeking custody of his child

In a gender-neutral court, the claims of men and women litigants are considered equally legitimate and are treated accordingly. A gender-neutral court strives to free the litigation process from predetermined assumptions regarding the relative roles and attributes of men and women.



**AS TO DOMESTIC VIOLENCE AND SEXUAL ASSAULT VICTIMS:** The Task Force learned that domestic violence and sexual assault cases present special gender fairness problems. **Gender biased behavior may include:**

- ☒ Viewing domestic violence and sexual assault as less serious than other criminal acts
- ☒ Minimizing victim's experiences, such as assuming that acquaintance rape is less traumatic than "stranger rape"
- ☒ Questioning the credibility of female crime victims in ways that the credibility of male crime victims is not questioned



☒ Blaming victims for causing the abuse or assault  
**In a gender-neutral court, special care is taken to treat all victims of crime with respect and sensitivity to the trauma they have experienced. Victims of domestic violence and sexual assault must not be subjected to unjust scrutiny because of the nature of the act(s) perpetrated against them. Their testimony is no less credible because the alleged acts are sexual or occurred in a domestic context.**

**AS TO COURT PERSONNEL:** Gender bias in the treatment of court personnel may include:

- ☒ Assuming that a female clerk is subordinate to a male clerk
- ☒ Addressing female court personnel by terms of endearment or diminutives

**In a gender-neutral court, court personnel are viewed as providing valuable service to everyone using the court and are accorded respect and courtesy. It is unfair to assume that employees' authority or ability to assist is related to their gender.**



**AS TO LAWYERS:** The Task Force heard of numerous incidents in which women attorneys were treated with rudeness, condescension or contempt. Treating male and female attorneys differently solely because of gender is not only unfair to them — it can undermine their credibility and may have serious consequences on their ability to be effective advocates for clients. This disparate treatment undermines the justice system's goal of providing equal justice for all. Treatment that can sabotage the goal of fairness includes:

- ☒ Referring to female attorneys by diminutives (honey, sweetie, little lady, etc.) or first names while addressing male attorneys as Mr. (Last Name)

- ☒ Remarking on the attractiveness or attire of female attorneys
- ☒ Looking to male attorneys to provide information to the court and ignoring female attorneys
- ☒ Failing to recognize and respond to women lawyers to the same extent and in the same manner that male lawyers are responded to and recognized



**In a gender-neutral court, the judge does not engage in this behavior or tolerate this behavior from attorneys or court personnel. Good attorneys, regardless of gender, are seen as competent advocates. Women attorneys in a gender-neutral court are not expected to be more passive in their advocacy or more tolerant of interruption or reprimands than men.**

**AS TO WITNESSES:** The Task Force found that male and female witnesses often experienced disparate treatment. Imagine being summoned into court for the sole reason that you have information important to a case, and then being treated in a hostile, demeaning, or condescending manner! Such behavior may include:

- ☒ Treating women in such a way as to indicate that their opinions or statements are unimportant, irrational or unduly emotional
- ☒ Referring to female witnesses by first names, terms of endearment, or diminutives

- ☒ Addressing female expert witnesses as Miss/ Mrs./Ms. rather than by an earned title, such as Doctor/Professor that denotes an area of expertise

In a gender-neutral court, credibility of witnesses is judged by the same standard for women and for men. Treatment of female or male witnesses that suggests that they are not worthy of belief solely because of their gender thwarts the goal of gender fairness. In a gender-neutral court, expert witnesses are judged on the basis of their qualifications and not their gender. Sometimes attorneys will explain that referring to witnesses in ways that undermine their credibility is nothing more than trial tactics. Trial tactics based on or exploiting gender bias are not tolerated in a gender-neutral court.



**AS TO PEOPLE FROM DIVERSE COMMUNITIES.** A court sensitive to “equal justice under law” treats everyone entering the court with dignity and respect, regardless of gender, racial or ethnic background, disability, sexual orientation, religion, age or ability to speak English.

A gender-neutral court is careful not to make assumptions about people’s roles in the courts based on any of these factors.



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## **Some Suggested Ways To Avoid Gender Bias**

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- 1** Address all persons in the courtroom by last names and appropriate title,
  - ◆Counsel or attorney
  - ◆Mr./Ms. (unless Miss or Mrs. are requested)
  - ◆Dr. or Officer or Representative/Senator
  - ◆Jurors or Juror 1
  - ◆Presiding Juror

To avoid differential treatment or even the appearance of differential treatment, address both women and men in the same formal or professional manner. Always use a consistent form of address such as "Attorney X" and "Attorney Y." In private conversation or social settings, first names and other informal address may convey a friendly or casual attitude; in the public settings where courthouse business takes place they suggest a lack of respect.

## **2 Address mixed groups of women and men with gender neutral or gender inclusive terms.**

- ◆Colleagues
- ◆Members of the jury
- ◆Members of the bar
- ◆Counselors
- ◆Ladies and gentlemen

Conversation that creates an exclusively masculine or feminine atmosphere should be avoided so that everyone is included in the justice system.

## **3 Use gender neutral language in all court correspondence and jury instructions.**

Use “Dear Counsel” when not using the individual’s name and where appropriate include reference to he/she, him/her. The plural (witnesses/they) is helpful.

## **4 Avoid terms of endearment and diminutive terms in courthouse interaction, as such terms imply a lower status**

- ◆honey, sweetie, dear, doll, babe
- ◆little lady, pretty girl, young lady, lady lawyer (in reference to adult women)
- ◆boy, son (in reference to adult men)

These terms can demean or offend even if the speaker does not intend to do so. Courtroom



protocol requires the highest degree of professionalism and courtesy.

## **5 Avoid comments on or references to physical appearance, such as:**

- ◆body parts
- ◆pregnancy
- ◆dress style
- ◆hair style

Comments on physical appearance can be seen as demeaning and put people at a disadvantage by drawing attention to their gender rather than the reason for their presence in the court. Comments appropriate in a social setting often are inappropriate in a professional setting. For example, complimenting a female attorney on her appearance or drawing attention to her pregnancy while she is conducting business may undermine how others perceive her.

## **6 Jokes and remarks with sexual content, or jokes and remarks that play on sexual stereotypes, are out of place in the courthouse setting.**

Everyone in the courthouse must protect the dignity and integrity of the court and show respect for every other person. Sexual, racial, and ethnic jokes and remarks are improper in the courthouse and in the administration of justice.

## **7 Avoid comments, gestures and touching that can offend others or make them uncomfortable.**

Because touching people may offend them, it should be avoided. They may not feel free to interrupt or complain, especially when the person doing the touching is in a position of authority, such as a supervisor touching an employee or a court employee touching a litigant, witness, juror, or attorney.

Sexually suggestive comments, gestures, and touching, as well as sexual advances, undermine the dignity of the court. Such acts may constitute sexual harassment which is prohibited by law and subject to sanction pursuant to court policy. Harassment to provoke an emotional response is inappropriate under all circumstances.

## **8 Treat women and men with dignity, respect and attentiveness, mindful of their professional accomplishments.**

The Task Force found that women lawyers are much more likely than men to be asked if they are attorneys. Do not inquire of a woman regarding her professional status when you would not ask the same question of a man. To avoid this, use a question that applies to everyone, such as, **“Will all attorneys please identify themselves to the court?”**

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# Responsibility For Eliminating Gender Bias In The Courtroom

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It is up to judges, attorneys, and court personnel to work together to eliminate gender bias and to promote fairness.

**AS JUDGES:** Judges play a key role in eliminating bias from the judicial system. A judge can establish an environment that makes it clear that men and women are and will be considered equals in the eyes of the law. Judges are obligated under the Texas Code of Judicial Conduct to require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding (see Canon 3B(7)). Judges are also obligated under the Code to require staff, court officials and others subject to the judge's direction

and control to observe the standards that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties (see Canon 3C(2)). A judge's treatment of people in the court, the decisions the judge makes, and intervention in inappropriate conduct of attorneys and court personnel are of utmost importance.

**AS ATTORNEYS:** As officers of the court, attorneys have an important role in maintaining the dignity and integrity of the court. An attorney's treatment of litigants, witnesses, court personnel, and other attorneys has a significant impact on the judicial system. The Texas Disciplinary Rules of Professional Conduct specifically address "bias or prejudice based on race, color, national origin, religion, disability, age, sex or sexual orientation" in connection with an adjudicatory proceeding (see Rule 5.08). In addition, the Texas Lawyers Creed calls on all attorneys to "treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility," and not to manifest by words or conduct bias or prejudice.

**AS COURT PERSONNEL:** Members of the public often have their first and sometimes their only experience with the court system through a court employee. By conveying respect and providing assistance to all, court personnel play an important role in eliminating bias in the administration of justice.

The Gender Bias Reform Implementation Committee has prepared this Guide based on some of the findings and recommendations of the Gender Bias Task Force published in its Final Report in February 1994. The purpose is to provide guidance for the bench, bar and court personnel. This Guide does not set a legal standard of care or conduct, nor does it supplant the Texas Code of Judicial Conduct or the Texas Rules of Disciplinary Procedure. It is not a set of rules that lawyers may use and abuse to incite ancillary litigation or arguments over whether it has been observed.



The Supreme Court of Texas and the Court of Criminal Appeals hereby approve the Guide as part of an educational program to promote fairness in the administration of justice in Texas.

Additional copies of this handbook are available through the

**Texas Center for Legal Ethics and Professionalism**

P.O. Box 12487  
Austin, TX 78711-2487  
**(512) 463-1477**

Or find the handbook on the Web:

**Texas Center for Legal Ethics and Professionalism**

[www.txethics.org](http://www.txethics.org)

**Texas Center for the Judiciary**

[www.yourhonor.com](http://www.yourhonor.com)

**Court of Appeals for the 8th District**

[www.8thcoa.courts.state.tx.us](http://www.8thcoa.courts.state.tx.us)

**Court of Appeals for the 5th District**

[www.courtstuff/5th/](http://www.courtstuff/5th/)



**CIRCUIT COURT OF THE STATE OF OREGON**

for MULTNOMAH COUNTY  
MULTNOMAH COUNTY COURTHOUSE  
1021 SW FOURTH AVENUE  
PORTLAND, OR 97204-1123  
(503) 248-3846

DONALD H. LONDER  
PRESIDING JUDGE

Department 04  
Courtroom 208

June 23, 1997

MEMORANDUM

To: Security

From: Donald H. Londer  
Presiding Judge

Re: **SURVEY**

A handwritten signature, likely of Donald H. Londer, enclosed in an oval.

The Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness will be conducting a litigant survey here at the Multnomah Courthouse. Student volunteers will be in the Courthouse conducting the survey June 24 through July 3. The information to be provided by this survey is an important part of the work of the Task Force.

Please allow the student volunteers access to the building.

Thank you for your cooperation.

cc: Jerry Cooper  
Judge Janice Wilson  
Judge Jean Maurer  
Gloriela Webster

## Task Force on Gender Fairness

E-mail: Jessica.E.MINDLIN@state.or.us

OREGON STATE BAR

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The Honorable Bryan M. Johnston  
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Joseph D. Matarazzo  
The Honorable Jean Kerr Maurer  
David Orf  
Kathey Warnock  
Gloriela Webster  
Wendy Rae Willis  
The Honorable Janice R. Wilson

### Coordinator

Jessica E. Mindlin

## MEMORANDUM

TO: Litigant Survey Volunteers  
FROM: Jessica Mindlin  
DATE: April 23, 1997  
RE: Script to follow when approaching potential survey respondent

**Hello. I am a volunteer with the Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness. I'm conducting a survey today here at the \_\_\_\_\_ County Courthouse. May I ask you just a few questions about your court experiences?**

*If they say "yes," before you begin to ask the questions on the survey inform them that:*

**"I don't work for the court, and your participation in this survey is voluntary and anonymous."**

*Note: Be encouraging but not pushy. For example, if the respondent seems reluctant you can assure them that: "It will take just a few moments of your time. Your answers are really important and will help us in our effort to ensure fairness in the justice system."*

*If they do not want to answer the survey, thank them politely for their time.*

*If anyone has any questions about the Task Force, you should refer them to Jessica Mindlin, Task Force Coordinator.*



## *Instructions for Survey Givers:*

### What is a civil case?

Civil cases are all of the non-criminal matters, such as Family Law (also known as domestic relations; includes divorce and child custody hearings), probate (dealing with wills), juvenile matters, small claims court, personal injury, and contract/business cases.

### What is the difference between district and circuit courts?

Both civil and criminal cases are divided into 2 levels: District Court and Circuit Court. All misdemeanor criminal cases are handled in District Court. All felony criminal cases are heard by the Circuit Court (although some felony cases start out in District Court and are transferred, after a hearing, up to the Circuit Court). All family law, Stalking and Family Abuse Prevention Act Restraining Orders are heard by the Circuit Court.

### How to decide which court:

1. When you get to the court house, pick up a county docket at the information desk. This will outline the schedule and types of cases being heard that day.
2. Don't bother if hearings involve only in-custody criminal defendants, because they aren't at liberty to answer our survey questions (we don't have access to them).
3. In order for the surveys to be representative, it is important to cover many different courts (e.g. small claims, jury trials, probation violations, Etc.) If there are several survey givers at the courthouse, it is best to divide up among the different court rooms.

### Where to stand:

If the court house isn't busy, it may be best to actually observe the cases. That way you know who to approach, as well as the type of case. This is only practical, however, if there is little activity in the court house. In busier counties, it would be better to post one (1) person outside each court room.

### What to do:

Review the survey before you approach anyone for the first time. Become familiar with the layout of the questions and their skip logic; this will help shorten the time it takes to complete the survey. Also, note that there is a shift in time reference from today's court appearance to their court experiences ever. These shifts are noted in the survey and should be told to the survey taker as they are written on the surveys. When you reach the end of the survey thank them for their time (there is a scripted thank you at the bottom of the survey). If the survey taker has any additional comments they wish to add, give them a written statement form to complete. They may take the form home and send it to the Task Force at their convenience.

### How to approach people:

Only approach people outside the court room. We have provided a script for you to read. Although it may seem rehearsed, it is important that every survey giver follow the script in order to avoid skewed results.

\* Please don't fold the surveys!

Gender Fairness Task Force  
Litigant Survey

1. Why were you in Court today? ☐ Plaintiff in a Civil Case  
☐ Defendant in a Civil Case  
☐ Restraining/Stalking Order  
☐ Mediation Services  
☐ Criminal Defendant  
☐ Crime Victim  
☐ Witness  
☐ Landlord/tenant (including eviction)  
☐ Other (please specify) \_\_\_\_\_

(If they are a lawyer, judge, juror, court employee, or security, thank them for their time and move on -- you're only surveying litigants & witnesses.)

\*\* THE FOLLOWING QUESTIONS ASK ABOUT YOUR EXPERIENCES IN COURT TODAY.

2. Do you have a lawyer representing you in the case for which you were in court today?  
☐ Yes ☐ No (skip to question 3)  
 a. Is your lawyer for this case a male or female? ☐ Male ☐ Female  
 b. Did you have a lawyer in court with you today? ☐ Yes ☐ No (skip to question 3)  
 c. Was the lawyer in court with you today your "main" lawyer for this case?  
☐ Yes (skip to question 3) ☐ No  
 Was the lawyer in court with you today male or female? ☐ Male ☐ Female  
 3. Did you want to address the court (talk to the judge) today? ☐ Yes ☐ No (skip to question 4)  
 a. Did the judge give you an opportunity to speak? ☐ Yes ☐ No  
 4. Did you need an interpreter in court today? ☐ Yes ☐ No (skip to question 5)  
 a. In what language? ☐ Spanish ☐ Vietnamese ☐ Russian ☐ Sign Language ☐ Other (please specify) \_\_\_\_\_  
 b. Was an interpreter available? ☐ Yes ☐ No (skip to question 5)  
 c. Could you understand the interpreter? ☐ Yes ☐ No  
 d. How helpful was your interpreter?  
☐ Very helpful ☐ Somewhat helpful ☐ Somewhat unhelpful ☐ Very unhelpful  
 e. Was your interpreter a male or female? ☐ Male ☐ Female  
 f. Would you have preferred an interpreter of a specific sex? ☐ Yes ☐ No (skip to question 5)  
 g. Which sex would you have preferred? ☐ Male ☐ Female  
 h. Why? \_\_\_\_\_  
 5. Did you bring any children under the age of 6 to court with you today?  
☐ Yes ☐ No (skip to question 6)  
 a. Would it have been easier for you to appear in court if child care were available at or near the courthouse?  
☐ Yes ☐ No  
 6. Were you treated respectfully:  
 a. by the judge you appeared before today? ☐ Yes ☐ No ☐ No basis for opinion  
 b. by the courthouse staff? ☐ Yes ☐ No ☐ No basis for opinion  
 7. Was your court appearance today before a male or female judge? ☐ Male Judge ☐ Female Judge ☐ N/A  
 8. Do you believe that the outcome of your case was affected by the sex of the people involved?  
☐ Yes ☐ No (skip to question 9)  
 a. If Yes, please describe how: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*\* THE NEXT SERIES OF QUESTIONS ASKS ABOUT YOUR COURT EXPERIENCES IN GENERAL, NOT JUST TODAY'S COURT EXPERIENCE.

9. Have you ever had your deposition taken? ☐ Yes ☐ No (skip to question 10)  
 a. In the case in which you were deposed, was the lawyer in charge of your case a male or female?  
☐ Male ☐ Female  
 b. Was the lawyer representing you at the deposition a male or female?  
☐ Male ☐ Female  
 c. Was the lawyer questioning (deposing) you a male or female? ☐ Male ☐ Female

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10. Do you believe that your gender (sex) ever affected how you were treated in court?  
☐ Yes ☐ No (skip to #11)

a. How? (please specify) \_\_\_\_\_

b. Who treated you differently? (their position) \_\_\_\_\_

c. Was this person a male or a female? ☐ Male ☐ Female

11. Approximately how many times have you appeared before a judge?  
☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10+

\*\*THE FOLLOWING QUESTIONS ASK IF YOU HAVE EVER EXPERIENCED SPECIFIC BEHAVIORS WHILE IN COURT, OR IN A LEGAL SETTING (SUCH AS A LAW OFFICE).

12. Have you ever been called by a term of endearment (such as girl, boy, dear, sweetie, honey)?

a. By whom, a male or female? ☐ Yes ☐ No (skip to #13)  
☐ Male ☐ Female

b. What was their position? (please specify) \_\_\_\_\_

13. Have you ever been called by your first name when someone of the opposite sex was called by their last name?

a. By whom, a male or female? ☐ Yes ☐ No (skip to #14)  
☐ Male ☐ Female

b. What was their position? (please specify) \_\_\_\_\_

14. Have you ever been addressed in a rude manner when persons of the opposite sex were addressed politely?

a. By whom, a male or female? ☐ Yes ☐ No (skip to #15)  
☐ Male ☐ Female

b. What was their position? (please specify) \_\_\_\_\_

15. Have you ever been subjected to comments about your dress or appearance based on your sex?

a. By whom, a male or female? ☐ Yes ☐ No (skip to #16)  
☐ Male ☐ Female

b. What was their position? (please specify) \_\_\_\_\_

16. Have you ever been subjected to comments of a sexual nature or touched in a way that you felt was inappropriate?

a. By whom, a male or female? ☐ Yes ☐ No (skip to #17)  
☐ Male ☐ Female

b. What was their position? (please specify) \_\_\_\_\_

17. Have you ever observed male and female witnesses, defendants, or other parties to a case being treated unequally in court?

a. Was the male or female treated better? ☐ Yes ☐ No (skip to #18)  
☐ Male ☐ Female ☐ Both

b. By whom was the (male/ female) treated better? ☐ a lawyer  
☐ a legal assistant  
☐ a juror  
☐ court employee  
☐ a judge  
☐ a police officer  
☐ other (please specify) \_\_\_\_\_

c. Was the person who treated the (male/female) better a male or female? ☐ Male ☐ Female ☐ Both

d. In what way were they treated differently? (please be specific) \_\_\_\_\_

18. Have you ever observed men and women being treated differently in a law office or other legal environment?

a. Was a male or female treated better? ☐ Yes ☐ No (skip to #19)  
☐ Male ☐ Female ☐ Both

b. By whom was the (male/ female) treated better? ☐ a lawyer  
☐ a legal assistant  
☐ a juror  
☐ court employee  
☐ a judge  
☐ a police officer  
☐ other (please specify) \_\_\_\_\_

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c. Was the person who treated the (male/female) better a male or female? ☐ Male ☐ Female ☐ Both

d. In what way were they treated differently? (please specify) \_\_\_\_\_

19. What is the sex of the judges you have appeared before ?

Male judges only (skip to # 23)

☐ Female judges only (skip to # 23)

☐ Both male and female judges

20. Have you ever observed witnesses, lawyers, or other parties to a case treat male judges differently from female judges in court? ☐ Yes ☐ No (skip to #21)

a. Was the male or female judge treated better? ☐ Male judge ☐ Female judge ☐ Both

b. By whom was the (male/ female) judge treated better? (mark all that apply)

By a male attorney

By a female attorney

By a male witness

By a female witness

By a male defendant

By a female defendant

By a male police officer

By a female police officer

By a male juror

By a female juror

By a male party in a case

By a female party in a case

Other male \_\_\_\_\_

Other female \_\_\_\_\_

c. How are the judges treated differently from one another? (please specify) \_\_\_\_\_

21. Do you behave differently in front of a male judge than you do in front of a female judge?

☐ Yes

☐ No (skip to #23 )

a. How do you behave differently? (please specify) \_\_\_\_\_

b. Who do you treat more respectfully - a male or a female judge?

☐ A male judge

☐ A female judge

☐ No difference

22. Who treats you more respectfully - a male or female judge?

☐ A male judge

☐ A female judge

☐ No difference

23. In General:

a. Do you think the outcome of a case is more likely to be favorable if the lawyer is a male or female?

☐ Male

☐ Female

☐ No Difference

☐ It Depends

b. Do you think the outcome of a case is more likely to be favorable if the judge is a male or female?

☐ Male

☐ Female

☐ No Difference

☐ It Depends

c. Are male or female witness viewed as more creditable?

☐ Male

☐ Female

☐ No Difference

☐ It Depends

24. Does the sex of your lawyer make any difference to you?

☐ Yes

☐ No (skip to #25)

a. Have you ever requested or tried to hire a lawyer of a specific sex?

☐ Yes

☐ No (skip to #25)

b. Which sex?

☐ Male

☐ Female

c. Why did you want a lawyer of that sex? \* Ask as an open-ended question and check all that apply.\*

☐ They will fight harder for me.

☐ They are cheaper.

☐ I have had a positive experience with an attorney of that sex in the past.

☐ I have had a negative experience with an attorney of the opposite sex in the past.

☐ Because of the nature of the charges against me.

☐ Other (please specify) \_\_\_\_\_

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THIS FINAL SET OF QUESTIONS WILL PROVIDE US WITH SOME BACKGROUND INFORMATION ABOUT OUR SURVEY RESPONDENTS:

26. What is your year of birth? Please answer by entering it in the block of bubbles at the top of this page.

29. Do you have disabilities? Yes No (skip to question 30)

b. Is your disability noticeable? ☐ Yes ☒ No

Thank you very much for taking the time to complete this survey. We value and appreciate your input.

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## LITIGANT SURVEY -- SPANISH VERSION

1. ¿Por qué estuvo usted hoy en el tribunal?

- |                                 |                                                    |
|---------------------------------|----------------------------------------------------|
| . Demandante de una causa civil | . Acusado penal                                    |
| . Demandado de una causa civil  | . Víctima de un delito                             |
| . Orden inhibitoria o de acoso  | . Testigo                                          |
| . Servicios de mediación        | . Arrendatario/arrendador<br>(incluyendo desalojo) |
| . Otro (explique) _____         |                                                    |

\*\* Si es un abogado/a, juez, jurado o guardia, déle las gracias por su tiempo y pase a otra persona. Solo se encuestarán litigantes y testigos)

\*\* Las siguientes preguntas están relacionadas con su experiencia de hoy en el tribunal.

2. ¿Tiene usted abogado/a que lo represente en su caso por el que vino hoy al tribunal?

- . Sí . No (pase a la pregunta 3)

a. ¿La persona que lo representa es abogado o abogada?

- . abogado . abogada

b. ¿Estuvo con usted un abogado/a en el tribunal hoy?

- . Sí . No (pase a la pregunta 3)

¿El abogado/a que estuvo hoy con usted es su abogado/a "principal"? . Sí (pase a la pregunta 3) . No

¿La persona que estuvo con usted hoy en el tribunal era abogado o abogada?

- . abogado . abogada

3. ¿Quería usted hablar con el juez hoy en el tribunal?

- . Sí . No (pase a la pregunta 4)

a. ¿Se le dio la oportunidad de hablar con el o la juez?

- . Sí . No

4. ¿Necesitó intérprete usted hoy en el tribunal?

- . Sí . No (pase a la pregunta 5)

a. ¿De qué lengua?

- . español . vietnamita . ruso . lenguaje para sordomudos  
. otra (especifique por favor \_\_\_\_\_)

b. ¿Hubo intérprete? . Sí . No (pase a la pregunta 5)

c. ¿Pudo entender al o la intérprete? . Sí . No

d. ¿Fue útil el o la intérprete?

- . muy útil . no muy útil  
. más o menos útil . nada útil

e. ¿Su intérprete era hombre o mujer?

- . hombre . mujer

- f. ¿Hubiera preferido usted un intérprete de un género en especial?  
           . Sí                                 . No (pase a la pregunta 5)
- g. ¿Qué hubiera preferido?  
           . Hombre                                 . Mujer
- h. ¿Por qué? \_\_\_\_\_  
 \_\_\_\_\_
5. ¿Tiene usted hijos menores de 6 años?  
           . Sí                                 . No (pase a la pregunta 6)
- a. ¿Trajo niños al tribunal hoy?  
           . Sí                                 . No
- b. ¿Le hubiera sido más fácil a usted comparecer hoy en el tribunal si hubiera cuidado de niños en el tribunal o cerca?  
           . Sí                                 . No
6. ¿Las siguientes personas lo trataron a usted respetuosamente?:  
     a. El juez ante el cual usted compareció.  
         . Sí                 . No                 . No tengo bases para opinar  
     b. El personal del tribunal.  
         . Sí                 . No                 . No tengo bases para opinar
7. ¿Compareció usted en el tribunal ante un juez o una juez?  
     . un juez                 . una juez                 . no se aplica
8. ¿Piensa usted que el género de las personas involucradas en su caso afectó el resultado? . Sí                 . No (pase a la pregunta 9)  
     a. Si respondió sí, explique de qué manera: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- \*\* La siguiente serie de preguntas tienen que ver con su experiencia en los tribunales en general, no solamente con su experiencia de hoy.
9. ¿Alguna vez le han tomado una deposición?  
           . Sí                                 . No (pase a la pregunta 10)
- a. En el caso en que tomaron su deposición, ¿la persona que estaba a cargo de su caso era: . abogada                 . abogado?
- b. ¿La persona que le representó en la desposición era:  
           . abogada                                 . abogado?
- c. ¿La persona que le estaba interrogando (tomando su deposición) era: . abogada                                 . abogado?
10. ¿Piensa usted que su género afectó la manera en como le trataron en el tribunal? . Sí                 . No (pase a la pregunta 11)  
     a. ¿De qué manera? (explique por favor) \_\_\_\_\_  
     b. ¿Quién le trató diferente? (especifique su puesto) \_\_\_\_\_  
     c. ¿La persona era hombre o mujer? . hombre                 . mujer

11. ¿Cuántas veces, aproximadamente, ha comparecido usted ante un juez? (escriba el número de veces) \_\_\_\_\_

\*\* Las siguientes preguntas tienen que ver con situaciones específicas que usted ha tenido en el tribunal o en un ambiente legal como por ejemplo un despacho de abogados.

12. ¿Alguna vez ha usado alguien un término de cariño para dirigirse a usted (por ejemplo niña, niño, querida/o, tesoro, amor)?

- . Sí . No (pase a la pregunta 13)  
a. ¿Quién? ¿Hombre o mujer? . hombre . mujer  
b. ¿Qué puesto tenía la persona? (explique) \_\_\_\_\_

13. ¿Alguna vez le han llamado por su nombre cuando a otra persona del sexo opuesto le han llamado por su apellido?

- . Sí . No (pase a la pregunta 14)  
a. ¿Quién? ¿Hombre o mujer? . hombre . mujer  
b. ¿Qué puesto tenía la persona? (explique) \_\_\_\_\_

14. ¿Alguna vez se han dirigido a usted de una manera grosera cuando a las personas del sexo opuesto se dirigieron amablemente?

- . Sí . No (pase a la pregunta 15)  
a. ¿Quién? ¿Hombre o mujer? . hombre . mujer  
b. ¿Qué puesto tenía la persona? (explique) \_\_\_\_\_

15. ¿Alguna vez ha sido usted objeto de comentarios con respecto a su manera de vestir o apariencia debido a su género?

- . Sí . No (pase a la pregunta 16)  
a. ¿Quién? ¿Hombre o mujer? . hombre . mujer  
b. ¿Qué puesto tenía la persona? (explique) \_\_\_\_\_

16. ¿Alguna vez ha sido usted objeto de comentarios sexuales o le han tocado de una manera que usted pensó que no era apropiada?

- . Sí . No (pase a la pregunta 17)  
a. ¿Quién? ¿Hombre o mujer? . hombre . mujer  
b. ¿Qué puesto tenía la persona? (explique) \_\_\_\_\_

17. ¿Alguna vez ha observado usted que testigos, acusados o partes de un caso de sexos opuestos hayan sido tratados con desigualdad en el tribunal?

- . Sí . No (pase a la pregunta 18)  
a. ¿Se trató mejor a un hombre o a una mujer?  
. hombre . mujer . ambos  
b. ¿Quién trató mejor a ese hombre o a esa mujer?  
. un abogado . un asistente legal  
. un jurado . el personal del tribunal  
. un juez . un agente de policía  
. otro (explique) \_\_\_\_\_  
c. ¿La persona que trató mejor a ese hombre o a esa mujer era hombre o mujer? . hombre . mujer . ambos  
d. ¿De qué manera se les trató diferente? (explique)



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18. ¿Alguna vez ha observado usted que hayan tratado a un hombre o a una mujer diferente en un despacho de abogados o en otro ambiente legal?

- . Sí . No (pase a la pregunta 19)
- a. ¿Se trató mejor a un hombre o a una mujer?  
. hombre . mujer . ambos
- b. ¿Quién trató mejor a ese hombre o a esa mujer?  
. un abogado . un asistente legal  
. un jurado . el personal del tribunal  
. un juez . un agente de policía  
. otro (explique) \_\_\_\_\_
- c. ¿La persona que trató mejor a ese hombre o a esa mujer era hombre o mujer? . hombre . mujer . ambos
- d. ¿De qué manera se les trató diferente? (explique)
- 
- 

19. ¿De qué género son los jueces ante los cuales ha comparecido usted en el pasado?

- . masculino (pase a la pregunta 23)  
. femenino (pase a la pregunta 23)  
. ambos, masculino y femenino

20. ¿Alguna vez ha observado usted que testigos, abogados u otras partes de un caso hayan tratado a los jueces en el tribunal de manera diferente, dependiendo de su género?

- . Sí . No (pase a la pregunta 21)
- a. ¿A quién se trató mejor, al juez o a la juez?  
. al juez . a la juez . a ambos
- b. ¿Quién trató mejor a ese juez o a esa juez?  
. un abogado . una abogada  
. un testigo . una testigo  
. un acusado . una acusada  
. un agente de policía . una agente de policía  
. un jurado . una jurada  
. un participante de un caso . una participante de un caso  
otro \_\_\_\_\_

c. ¿En qué consistió el trato diferente a los jueces? (explique)

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21. ¿Usted se comporta diferente cuando está ante un juez y cuando está ante una juez? . Sí . No (pase a la pregunta 23)

a. ¿De qué manera se comporta usted diferente? (explique)

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- b. ¿Trata usted con más respeto a los jueces o a las juezes?  
 . a los jueces . a las juezes . no hay diferencia
22. ¿Quién lo trata a usted más respetuosamente, un juez o una juez?  
 . un juez . una juez . no hay diferencia
23. En general:
- a. ¿Piensa usted que el resultado favorable de un caso es más seguro con un abogado o una abogada?  
 . abogado . abogada . no hay diferencia . depende
- b. ¿Piensa usted que el resultado favorable de un caso es más seguro con un juez o una juez?  
 . un juez . una juez . no hay diferencia . depende
- c. ¿Quién se piensa que tiene más credibilidad, un testigo o una testigo?  
 . un testigo . una testigo . no hay diferencia . depende
24. ¿El género de su abogado/a es importante para usted?  
 . Sí . No (pase a la pregunta 25)
- a. ¿Alguna vez ha solicitado o tratado de contratar a un abogado/a de un género específico?  
 . Sí . No (pase a la pregunta 25)
- b. ¿De qué género? . Masculino . Femenino
- c. ¿Por qué quiso usted un abogado/a de ese género? (explique)

\* Haga esta pregunta indefinidamente y marque la casilla apropiada.

- . Pelean más duro por mí.
- . Cuestan menos.
- . He tenido una experiencia positiva con un abogado/a de ese género.
- . He tenido una experiencia negativa en el pasado con un abogado/a del sexo opuesto.
- . Debido a la naturaleza de los cargos en mi contra.
- . Otro (explique) \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

La última serie de preguntas nos dará información general sobre los encuestados:

25. Género: . masculino . femenino
26. ¿Año de nacimiento? (escriba el año) \_\_\_\_\_
27. ¿A qué raza o etnicidad pertenece?
- . Afro-americana . Hispana
- . Nativo-americana . Blanca (no hispana)
- . Asiática . De las islas del pacífico
- . Mezclada (explique) \_\_\_\_\_
- . Otra (explique) \_\_\_\_\_

28. ¿Cuál es su nivel de ingresos?

- |                        |                       |
|------------------------|-----------------------|
| . \$10,000 o menos     | . \$35,001 - \$50,000 |
| . \$10,0001 - \$20,000 | . \$50,001 - \$75,000 |
| . \$20,0001 - \$35,000 | . Más de \$75,000     |

29. ¿Es usted incapacitado? . Sí . No (pase a la pregunta 30)

a. ¿Su incapacidad, o lo que usted percibe como incapacidad, es física, mental o ambas?

- . Física . Mental . Ambas

b. ¿Se nota su incapacidad? . Sí . No

30. ¿Hay algo sobre usted que crea que afectó el resultado de su caso? Si es así, explique por favor:

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Muchas gracias por dar su tiempo para llenar esta encuesta. Le agradecemos y valoramos su contribución.

(UTILICE ESTE ESPACIO PARA CUALQUIER INFORMACION ADICIONAL)

Oregon Supreme Court/Oregon State Bar  
Gender Fairness Task Force  
INMATE SURVEY

The Oregon Supreme Court and Oregon State Bar are studying whether and, if so, how the Oregon judicial system and legal profession treat people unfairly on the basis of sex. One of the ways in which we are gathering information is by surveying people (like you) who have experience with lawyers, judges and the prison system. Please answer the questions based on your actual experiences in Oregon State (not Federal) Court. THIS SURVEY IS COMPLETELY ANONYMOUS -- we do not need (or want) to know your name. There is no way for us to know who completed a specific survey. Filling out this form will not affect your sentence in any way.

As a prison inmate, you have important information to share with us. We want to learn from you, so please fill out and return this survey. Answer each question by completely filling in the bubble with a #2 pencil. PLEASE DO NOT USE INK. Thank you for your help.

A. The following questions ask about your court experiences in the case for which you are NOW SERVING A SENTENCE (DOING TIME).

1. In the case for which you are now serving a sentence:

a. Was your lawyer: ☐ a man

☐ a woman

☐ I did not have a lawyer (skip to question c)

b. Would you want this lawyer to represent you again? ☐ Yes ☐ No

c. Did you plead Guilty (or No Contest)? ☐ Yes ☐ No (skip to letter "d" below)

d. Were you in custody when you entered your guilty plea? ☐ Yes ☐ No ☐ Does not apply

e. How much TOTAL time (from the very beginning of your case) did your lawyer spend with you talking about your case, explaining your options and trying your case and/or reviewing the plea agreement before court? ☐ 30 minutes or less

☐ More than 30 minutes, but less than an hour

☐ 1 to 3 hours

☐ Between 3 and 5 hours

☐ Between 5 and 10 hours

☐ 10 or more hours

2. When you were in court or meeting with your lawyer, did you need a foreign language interpreter?

☐ Yes

☐ No (skip to number 3)

b. In what language? ☐ Spanish

☐ Russian

☐ Vietnamese

☐ Sign Language

☐ Other (please specify) \_\_\_\_\_

c. Was an interpreter available? ☐ Yes ☐ No (skip to number 3)

d. Could you understand the interpreter? ☐ Yes ☐ No

e. Was the interpreter a male or female? ☐ Male ☐ Female

f. Did/does the sex of your interpreter matter to you? ☐ Yes ☐ No (skip to number 3)

g. Would you rather have a male or female interpreter? ☐ Male ☐ Female

h. Why? (please explain) \_\_\_\_\_

3. When you were in court, did you want to say something to the judge? ☐ Yes ☐ No

a. If yes, did the judge give you a chance to speak? ☐ Yes ☐ No

4. Were you treated respectfully:

a. by the judge you appeared before? ☐ Yes ☐ No

b. by the courthouse staff? ☐ Yes ☐ No

4 or more

3

2

1

5. For the case that resulted in this prison sentence, fill in the bubble to tell us how many counts of each crime you were charged with:

Assault .....  
 Attempted Assault .....  
 Embezzlement .....  
 Attempted Embezzlement .....  
 Theft .....  
 Attempted Theft .....  
 Arson .....  
 Attempted Arson .....  
 Sexual Offense .....  
 Attempted Sexual Offense .....  
 Forgery .....  
 Attempted Forgery .....  
 Robbery .....  
 Attempted Robbery .....  
 Child Abuse .....  
 Attempted Child Abuse .....  
 Burglary .....  
 Attempted Burglary .....  
 Drug Offense (Possession, Manufacture or Delivery) .....  
 Attempted PCS, MCS, or DCS .....  
 Murder .....  
 Manslaughter .....  
 Attempted Murder .....  
 Negligent Homicide .....  
 Other (please specify) .....

6. What crime(s) were you CONVICTED of (in the case that resulted in this prison sentence)?

Assault .....  
 Attempted Assault .....  
 Embezzlement .....  
 Attempted Embezzlement .....  
 Theft .....  
 Attempted Theft .....  
 Arson .....  
 Attempted Arson .....  
 Sexual Offense .....  
 Attempted Sexual Offense .....  
 Forgery .....  
 Attempted Forgery .....  
 Robbery .....  
 Attempted Robbery .....  
 Child Abuse .....  
 Attempted Child Abuse .....  
 Burglary .....  
 Attempted Burglary .....  
 Attempted PCS, MCS, or DCS .....  
 Attempted Murder .....  
 Negligent Homicide .....  
 Drug Offense (Possession, Manufacture or Delivery) .....  
 Murder .....  
 Manslaughter .....  
 Other (please specify) .....

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PLEASE CONTINUE ON THE NEXT PAGE

7. In the case for which you are now serving a sentence, did you want a lawyer of a specific sex?

☐ Yes ☐ No (skip to section B)

a. Did you want a male or female lawyer? ☐ a male lawyer ☐ a female lawyer

b. Why did you want a lawyer of that sex? (Mark all that apply)

- ☐ A lawyer of that sex would fight harder for me.  
☐ A lawyer of that sex would spend more time on my case.  
☐ A lawyer of that sex would be cheaper (I had to pay).  
☐ Given the type of charge, I would have a better chance with a lawyer of that sex representing me.  
☐ The judge or jury would like a lawyer of that sex better.  
☐ I had a good experience with a lawyer of that sex in a case before.  
☐ I had a bad experience with a lawyer of the other sex in a case before.  
☐ Other (please explain) \_\_\_\_\_

8. Was the victim of your crime male or female? ☐ male ☐ female ☐ both male and female

B. The next set of questions ask about your court experiences overall. When answering them, keep in mind every Oregon State court experience you have had.

1. How many different lawyers have you had represent you?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4  
☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 or more

2. Have you had both male and female lawyers represent you? ☐ Yes ☐ No (skip to number 3)

a. How many of your lawyers were male?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4  
☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 or more

b. Was there a difference in the way male and female lawyers treated you?

☐ Yes ☐ No (skip to number 3)

c. How did they treat you differently? (please specify) \_\_\_\_\_

3. Have you ever had a lawyer or anyone in a lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) call you by names such as "honey," "dear," "sweetie," "babe," "girl," "son," or "boy" when you felt they should not have? ☐ Yes ☐ No (skip to number 4)

a. Was the person who said this to you (check all that apply):

- ☐ a male lawyer ☐ a female lawyer  
☐ a male investigator ☐ a female investigator  
☐ a male secretary ☐ a female secretary  
☐ a male paralegal ☐ a female paralegal  
☐ a male clerk ☐ a female clerk  
☐ other (please specify) \_\_\_\_\_

4. Have you ever had a lawyer or anyone in a lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) touch you in a way that made you uncomfortable?

☐ Yes ☐ No (skip to number 5)

a. Was the person who touched you (check all that apply):

- ☐ a male lawyer ☐ a female lawyer  
☐ a male investigator ☐ a female investigator  
☐ a male secretary ☐ a female secretary  
☐ a male paralegal ☐ a female paralegal  
☐ a male clerk ☐ a female clerk  
☐ other (please specify) \_\_\_\_\_

5. Have you ever had a lawyer or anyone in a lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) ask you for sexual favors? ☐ Yes ☐ No (skip to number 6)

a. Who asked you for sexual favors? (check all that apply):

- ☐ a male lawyer ☐ a female lawyer  
☐ a male investigator ☐ a female investigator  
☐ a male secretary ☐ a female secretary  
☐ a male paralegal ☐ a female paralegal  
☐ a male clerk ☐ a female clerk  
☐ other (please specify) \_\_\_\_\_

6. Do you believe that your gender (sex) has ever affected how you were treated in court?

☐ Yes

☐ No

(skip to number 7)

a. How did your sex affect your treatment? (please be specific)

b. Who treated you differently in court (mark all that apply):

☐ a male lawyer

☐ a female lawyer

☐ a male judge

☐ a female judge

☐ a male secretary

☐ a female secretary

☐ male court personnel

☐ female court personnel

☐ a male law clerk

☐ a female law clerk

☐ male court security

☐ female court security

☐ other (please specify)

7. Have you ever observed males and females being treated differently from one another in court?

☐ Yes

☐ No (skip to number 8)

If Yes, in your experience:

a. Who was treated better?

☐ a male

☐ a female

☐ both a male and female

b. Who were they treated better by? (Mark all that apply)

☐ a male judge

☐ a female judge

☐ a male lawyer

☐ a female lawyer

☐ a male juror

☐ a female juror

☐ male court personnel

☐ female court personnel

☐ a male legal assistant

☐ a female legal assistant

☐ a male police officer

☐ a female police officer

☐ other

c. How was the person who was treated worse treated differently on the basis of their sex?

Were they: (Mark all that apply)

☐ Called by their first name or term of endearment?

☐ Addressed in a rude manner?

☐ Subjected to comments about their dress or appearance?

☐ Subjected to inappropriate touching or comments of a sexual nature?

☐ other

8. Have you ever observed men and women being treated unequally in a law office or other legal work environment?

☐ Yes

☐ No (skip to number 9)

If Yes, in your experience:

a. Who was treated better?

☐ a male

☐ a female

☐ both a male and a female

b. By whom was the (male/ female) treated better?

☐ By a male

☐ By a female

☐ By both a male and female

c. Who treated them better? (Mark all that apply)

☐ a male lawyer

☐ a female lawyer

☐ a male court paralegal

☐ a female court paralegal

☐ a male secretary

☐ a female secretary

☐ a male trial assistant

☐ a female trial assistant

☐ a male investigator

☐ a female investigator

☐ other

c. How was the person who was treated worse treated differently on the basis of their sex? Were they: (Mark all that apply)

☐ Called by their first name or term of endearment?

☐ Addressed in a rude manner?

☐ Subjected to comments about their dress or appearance?

☐ Subjected to inappropriate touching or comments of a sexual nature?

☐ other

9. Have you appeared before both a male and a female judge?

☐ Yes

☐ No (skip to number 13)

10. Have you ever observed male judges being treated differently from female judges in court?

☐ Yes

☐ No (skip to number 11)

If Yes, in your experience:

a. Who was treated better? ☐ Male judge ☐ Female judge ☐ both

b. By whom was the (male/ female) judge treated better? (mark all that apply)

☐ By a male attorney

☐ By a female attorney

☐ By a male witness

☐ By a female witness

☐ By a male defendant

☐ By a female defendant

☐ By a male police officer

☐ By a female police officer

☐ By a male juror

☐ By a female juror

☐ By a male party in a case

☐ By a female party in a case

☐ Other \_\_\_\_\_

c. How were the judges treated differently from one another? \_\_\_\_\_

11. Have you ever acted differently in front of a male judge than you did in front of a female judge?

☐ Yes

☐ No (skip to number 12)

a. How did you act differently? \_\_\_\_\_

b. Who did you treat more respectfully?

☐ A male judge

☐ A female judge

☐ No difference

12. Who treats you more respectfully? ☐ A male judge ☐ A female judge ☐ No difference

13. Do you think the outcome of a case is more likely to be favorable if :

a. The lawyer is:

☐ Male

☐ Female

☐ No Difference

☐ It Depends

b. The judge is:

☐ Male

☐ Female

☐ No Difference

☐ It Depends

c. The witness is:

☐ Male

☐ Female

☐ No Difference

☐ It Depends

C. Please select the answer which best reflects your experience of what services and programs are available at your institution (unless the question instructs you to do otherwise).

1. Is job training available at your institution?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 2)

b. Was this service helpful?

☐ Yes

☐ No

2. Are services available to help you receive a high school level education?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 3)

b. Was this service helpful?

☐ Yes

☐ No

3. Are services available to help you receive an education beyond the high school level?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 4)

b. Was this service helpful?

☐ Yes

☐ No

4. Are general health care services available?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 5)

b. Was this service helpful?

☐ Yes

☐ No

5. Are gynecological services available to women inmates?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Are you female?

☐ Yes

☐ No (skip to number 7)

b. Have you used this service?

☐ Yes

☐ No (skip to number 6)

c. Was this service helpful?

☐ Yes

☐ No

6. Are pre- and post-natal care services available?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 7)

b. Was this service helpful?

☐ Yes

☐ No

7. Are counseling services available?

☐ Available

☐ Available but limited

☐ Not Available

☐ Don't Know

a. Have you used this service?

☐ Yes

☐ No (skip to number 8)

b. Was this service helpful?

☐ Yes

☐ No



8. Are alcohol and drug treatment programs available?

☐ Available ☐ Available but limited ☐ Not Available ☐ Don't Know

a. Have you used this service? ☐ Yes ☐ No (skip to number 9)

b. Was this service helpful? ☐ Yes ☐ No

9. Are sex offender services available?

☐ Available ☐ Available but limited ☐ Not Available ☐ Don't Know

a. Have you used this service? ☐ Yes ☐ No (skip to the next section)

b. Was this service helpful? ☐ Yes ☐ No

D. The following questions concern prosecutors' charging practices. Please tell us, based upon your ACTUAL EXPERIENCE(S), the frequency of the actions described.

1. How often are prosecutors' charging decisions influenced by a suspect's gender?

☐ Never ☐ Hardly ever ☐ Sometimes ☐ Often ☐ Always

2. Generally, prosecutors are more likely to CHARGE female suspects than male suspects.

☐ Never ☐ Hardly ever ☐ Sometimes ☐ Often ☐ Always

3. There are certain crimes for which prosecutors are more likely to charge female suspects than male suspects.

☐ Never ☐ Hardly ever ☐ Sometimes ☐ Often ☐ Always

Please explain: \_\_\_\_\_

4. Prosecutors are more likely to offer plea reductions to male than to female offenders.

☐ Never ☐ Hardly ever ☐ Somewhat ☐ Often ☐ Always

5. To what extent is a prosecutor's willingness to reduce the charges influenced by a defendant's gender?

☐ Never ☐ Hardly ever ☐ Somewhat ☐ Often ☐ Always

6. Prosecutors are more likely to reduce the charges for female defendants than they are for male defendants.

☐ Not at all ☐ Hardly ever ☐ Somewhat ☐ Quite a bit ☐ Completely

7. Does admissible evidence of a female suspect's sexual history influence prosecution decisions?

☐ Not at all ☐ Hardly ever ☐ Somewhat ☐ Quite a bit ☐ Completely

8. Does admissible evidence of a male suspect's sexual history influence prosecution decisions?

☐ Not at all ☐ Hardly ever ☐ Somewhat ☐ Quite a bit ☐ Completely

E. Please indicate whether you strongly disagree, disagree, agree, or strongly agree with following statements.

1. Prosecutors are more likely to charge women with young children than women who do not have children.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

2. Prosecutors are more likely to offer to reduce charges for women with young children than for women who do not have children.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

3. Prosecutors are more likely to charge female suspects who use drugs when they are pregnant than they are to charge female suspects who use drugs but are not pregnant.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

4. Prosecutors are more likely to recommend jail or prison time (or a longer sentence) for a pregnant substance abuser than for a substance abuser (with the same criminal history facing the same charges) who is not pregnant.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

5. Prosecutors are more likely to offer a plea reduction to female repeat offenders than to male repeat offenders.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

6. There is no significant gender bias in the court system today.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

7. A father who batters his children's mother should have the same rights to custody and/or visitation of the children.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

8. Husbands who force intercourse on their wives are inconsiderate, even cruel, but not criminals.

☐ Strongly Disagree ☐ Disagree ☐ Uncertain ☐ Agree ☐ Strongly Agree

PAGE 6

PLEASE CONTINUE ON THE NEXT PAGE

YEAR OF BIRTH

Do not mark outside this line

## F. GENERAL BACKGROUND INFORMATION

Please answer the following questions which will help us understand what factors, if any, might affect people's experiences with gender issues in the justice system and the legal profession.

1. What is your sex? ☐ Male ☐ Female
2. In what year were you born? (write in year and fill in bubbles at top of page) \_\_\_\_\_
3. Which prison are you in? ☐ Columbia River (CRCI)  
☐ Oregon Women's Correctional Center (OWCC)  
☐ Powder River  
☐ Snake River  
☐ Oregon State Penitentiary (OSP)  
☐ Oregon State Correctional Institute (OSCI)
4. What is your ethnicity/race? ☐ African-American  
☐ Native American  
☐ Asian  
☐ Hispanic  
☐ White (non-Hispanic)  
☐ Pacific Islander  
☐ Other (please specify) \_\_\_\_\_  
☐ Mixed (please specify) \_\_\_\_\_
5. What is your sexual orientation? ☐ Straight/Heterosexual ☐ Gay/lesbian ☐ Bi-sexual ☐ Other \_\_\_\_\_
6. What is your current relationship status? ☐ Single and never married  
☐ Married/living with domestic partner  
☐ Currently divorced  
☐ Previously divorced (now remarried)  
☐ Widowed  
☐ Other (please specify) \_\_\_\_\_
7. Do you have any children under the age of 18? ☐ Yes ☐ No (skip to number 7)  
a. With whom do your children live? (please specify) \_\_\_\_\_
8. Do you have a disability and/or do others regard you as having a disability?  
☐ Yes ☐ No (you are done with the survey)  
a. What is your disability or the disability others regard you as having? (check all that apply)  
☐ Physical disability ☐ Mental Disability  
b. Is the disability noticeable? ☐ Yes ☐ No

THANK YOU FOR YOUR HELP!

Additional comments: (use the back of this form or additional sheets of paper if you need more room)

PERSONS INTERVIEWED BY THE WORK GROUP ON  
CRIMINAL LAW and JUVENILE JUSTICE

1. Department of Corrections

Gary Field - Manager, Alcohol and Drug Programs  
Shannon DeLateur - Educational/Vocation Programs  
Catherine Knox - Health Services  
Ray Ferns - Cognitive Training  
Wayne Etherly, Greg Morton - Training and Development  
Michael Taafe - Work Programs  
Randy Ireson - Research Programs  
Ginger Martin, Barbara McGuire - Community Corrections  
Lou Allen, Jim Maras - Women's Correctional Center  
Chris Duval - Shutter Creek Program Services  
Alice Sigmunds - Columbia River program Manager  
Paula Southwick - Powder River Program Services  
John Perry - Snake River Program Services  
Jim Muranaka - Correctional Institution Program Services  
Diane Long - Santiam and Mill Creek Program Services  
Pat McKeone - Eastern Oregon Correctional Institution Program Services

2. County Jail Managers or Program Managers: Holly Russell, Benton county; Rob Gordon, Washington; Tammy Fox, Lane; Bill O'Neal and Virginia Roberg, Marion; Jeri Griffin, Josephine; Liz Stalbird, Jackson; Curt Gilbert, Yamhill; and Malheur, Baker, Deschutes, Umatilla, Union, Wallowa and Harney. Bill Garland, Director Education and Andrea Sloan Director of Legal Services, BPSST; Capt. Don Balk, Oregon State Police, Training and Education; Yvonne Iwasa, Treasure Valley Community College; Vic Sims, Southern Oregon University; Jerry Phillips, Linn-Benton Community College, Dr. Annette Jolin, Portland State University.

## SERVICES AND PROGRAMS AT JUVENILE FACILITIES

### MACLAREN

#### Secure Intensive Program/Geer

This is a self-contained secure long-term "treatment" unit for the most violent offenders. Among the treatment modalities are: offender groups, anger management groups, social skills groups, victim groups, survivor groups, gang issues, substance abuse and cultural awareness. This program also uses "marathon" groups which last from 12 to 16 hours straight and are designed to teach the offender empathy. On-site education and recreation is provided in this unit.

#### Geer IV

Secure structured program for angry, acting-out impulsive youth. Treatment centered on anger management. Behavior modification modality along with group and individual counseling. On-site education and recreation.

#### Geer V

Individual cottage for youth with diagnosed psychiatric illness. Individual treatment plans are developed and carried out with close supervision. On-site education and work experience program.

#### Dunbar and Kincaid

These are two cottage-based sex offender treatment programs using group and individual treatment. The young men in these cottages attend school on campus and are involved in work and vocational programs.

#### Hall, Holmes and McBride

These are general population cottages.

Grover	This is a cottage that deals with the most seriously affected drug and alcohol youth. According to some statistics, at least 88% of the male youth involved in juvenile justice have drug and alcohol involvement and there is other drug and alcohol treatment and usually a waiting list for Grover.
Smith	This is a criminal thinking errors confrontation form of treatment.
McKay	This cottage is self-described as serving "emotionally immature, impulsive" youth with a limited attention span. These youth are involved in a work outreach program in state and federal parks. They attend school and are involved in other work experience on the campus.
Thayer Intake	This cottage is for evaluation and assessment.
Geer III	Parole Violators. This cottage is where youth returned after parole violations are placed crisis intervention unit. By self-description, this is a secure, structured specialized unit which provides mental health services including screenings, intake evaluations on those transferred from adult corrections and youth who are homicide-related commitments, suicide assessments, discipline, and time-out.
Camps	
Boot Camp	

## HILLCREST

Alpha (boys)	Alcohol and drug treatment program certified by DHR; these programs include the 12 step program, children of substance abusers groups and substance abuse education.
Iota (girls)	Alcohol and drug treatment program certified by DHR; these programs include the 12 step program, children of substance abusers groups and substance abuse education.
Kappa (boys)	Sex offender treatment <sup>1</sup> ; behavior modification.
Sigma (boys)	Sex offender treatment.
Theta (girls)	Intake assessment for young women.
Omega (boys)	Violent offenders and property offenders.
Delta (boys)	Violent offenders and property offenders; behavior modification.
Gamma (boys)	Young offenders, ages 12-14, including sex offenders and arsonists; fire-setter treatment.
Zeta (co-ed by wing)	Violent offenders and severely emotionally disturbed offenders.
Chi (boys)	Arson treatment and youth who present safety or security risks on other cottages; fire-setter treatment.
Epsilon (boys)	Violent offenders.

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<sup>1</sup> Girls are provided sex offender treatment on an individual basis. Hillcrest has between 1 and 6 female sex offenders.

County	Cog Skills	Comm. Service	Day Reporting	DROP	Education	Electronics	Employm't	Home Custody	Housing	Jail Sanctions	ISP	Mental Health
BAKER		10				2				32		Y
BENT		Y				20	16	Y	8	Y		
CLAC	Y	1440		Y	Y	35	Y		Y		Y	Y
CLAT		100	12			4			3	2		
COLU		30	35	1		4				1		
COOS			25	Y	Y	Y	Y		14	Y	25	5
CROOK/JEFF	20	40				20	4			2		
CURRY	15	100				Y						
DESC	30	85	20	3		40						6
DOUG		Y				Y		7	5	Y		50
GRANT		Y										5
HARN												
JACK		Y	40	Y		26				30	30	31
JOSE	40	300				20						40
KLAMATH/LAKE		50				25				24		
LANE	20	40				39	30		24	Y		200
LINC		275				22	Y			10	50	
LINN		228	50			50				3	50	
MALH			75			10						40
MARI	15	60	25	Y	10	25	Y		Y	13	75	50
MULT		3800	180		40		40				250	50
NORTH CENTRAL*	10	80				15				2		
POLK			15			4				4		
TILL		20	15	20		4				1		
UMAT		200	30	Y	Y	40	Y		Y			
MORR												
UNION/WALLOWA	30	Y				Y	Y	Y	Y			Y
WASH	10	250					100	20	16	6	35	20
YAHM		Y	20				Y		7	Y		5

\*North Central includes Hood River, Gilliam, Sherman, Wasco &amp; Wheeler Counties

Y: program available, but slots/beds unknown or not indicated.

Program Capacity is identified as number of slots/beds available at any one time.

Data is from Counties' 1993-95 Biennium Plans, Plan Amendments, Utilization Reports &amp; Site Review Reports through Sept. 1994.

County	Pretrial	Rest./Prob./ Viol. Center	Sub Abuse Outpatient	Sub Abuse Inpatient	Transition	Women Services	Work Crew	Work Release	Sex Off Supv	Sex Off Tx
BAKER			10	1	2		8	2		20
BENT			45	25		5+	15		70	20
CLAC	Y	80	99	7	280	210		12	180	15
CLAT			20	6	5			4		26
COLU			25	3						20
COOS			30					7		30
CROOK/JEFF			30	2	20		15			20
CURRY			70				6	1		10
DESC			20		15				20	
DOUG			220	2	5		10	5		
GRANT			20							
HARN										
JACK			126	7	10			Y		30
JOSE		40	30				10			Y
KLAMATH/LAKE			16		40		12	2		Y
LANE	80	76	Y	20	12	5		10	60	70
LINC			Y					Y		
LINN			31	7	20		10		50	140
MALH			50				18			50
MARI	7	76	115		50			6		14
MULT	700	80	135	120	46	50	28			15
NORTH CENTRAL*			29	5	25		30			3
POLK	4		60	2				1		15
TILL			20	2	10		6			20
UMAT		3	70		Y					50
MORR										
UNION/WALLOWA			Y	2				Y		
WASH		20	64	9	70			10	240	100
YAHM			Y		10		15	20		30

\*North Central includes Hood River, Gilliam, Sherman, Wasco & Wheeler Counties

Y: program available, but slots/beds unknown or not indicated.

Program Capacity is identified as number of slots/beds available at any one time.

Data is from Counties' 1993-95 Biennium Plans, Plan Amendments, Utilization Reports and Site Review Reports through Sept. 1994.



# WOMEN SPECIFIC SERVICES AND SANCTIONS

County	Program Name	Program Type	Area Served	Resid. or Non-Resid.	Tx, Serv., or Sanct.	Women w/ Child. Prog.	Pregnant Wom. Prog.	Program Capacity	Program Length
LANE	Sponsors, Inc.	Abuse Survivors	Lane Co.	Outp	Serv.	Childcare		15	On-going
MARI	Children's Program	Childcare	Manion Co.						
VARIOUS	Employment Dept./Corr. Clients Placem't Serv.	Employment	Wash., Mult., Clack., Yalm. Co.	Outp	Serv.			No Limit	On-going
MULT	Alcohol Treatment & Training Center	Gambling Addiction	Mult., Clack., Wash. Co.	Outp	Tx			8-10	Varies
ALL	INFOCUS @ OWCC	Life Skills	State of OR	Res.	Tx & Serv.			28	6-12 Months
BENT	Women's Issues Program-Turning Point	Life Skills/A & D Ed.	Benton County	Outp	Serv.			No Cap	6 weeks
LANE	Relief Nursery, Inc.	Parenting	Eugene/Springfield Area	Outp	Serv.	Yes		160 families yearly	On-going
MULT	Prostitution Alternatives	Prostitution	Mult. Co.	Outp	Tx			50	6-12 Months
ALL	LIFETRAC @ OWCC	Public Education	State of OR	Res.	Tx & Serv.			14	Min. 1 year
ALL	Turning Point @ CRCI	Sub Abuse	State of OR	Res.	Tx			50	6-15 Months
BAKER	Baker Co. Coun / A & D Abuse	Sub Abuse	State of OR	Int. Res.	Tx			18	Varies
BAKER	Baker House	Sub Abuse	State of OR	Res.	Tx	Yes	Yes	11	6 Months
JACK	On Track, Inc. (HOME/Teen Program)	Sub Abuse	Roque Valley Area	Int. Outp	Tx	Yes	Yes	3-6 Months	3-6 Months
JACK	On Track, Inc. (HOME/Teen Program)	Sub Abuse	Roque Valley Area	Res.	Tx	Yes	Yes	3-9 Months	180 days
JOSE	Rogue Recovery Programs	Sub Abuse	Roque Valley Area	Aftercare	Tx	Yes	Yes	180 days	180 days
JOSE	Rogue Recovery Programs	Sub Abuse	So. Oregon	Res.	Tx			4	1-5 Days
JOSE	Rogue Recovery Programs	Sub Abuse	So. Oregon	Res.	Tx			No Cap	Varies
LANE	Couer De Lane	Sub Abuse	State of OR	Outp	Tx	Childcare		23	30-60 Days
LANE	Families in Recovery	Sub Abuse	Lane Co.	Outp	Tx	Yes		15	Varies
LANE	Families in Recovery	Sub Abuse	Lane Co.	Int. Outp	Tx	Yes	Yes	24 ind. Child.	5-6 Months
LANE	New Hope-Serenity Lane	Sub Abuse	Lane Co.	Aftercare	Tx	Yes	Yes	15	Varies
LANE	Sunrise House & Sunrise House Annex	Sub Abuse	State of OR	Int. Outp	Tx	Childcare		8	6-8 wks +
LANE	Bridgeway-Her Place Safehouse	Sub Abuse	Lane Co.	Res.	Tx	Yes	Yes	16	5-6 Months
MARI	Intensive Outpatient Program	Sub Abuse	Manion Co.	Both	Tx & Serv.	Yes	Yes	5	Min. 60 Days
MARI	Women's Treatment Services	Sub Abuse	Manion Co.	Outp	Tx	Yes	Yes	50+	Varies
MULT	Addictions Recovery Association	Sub Abuse	Manion Co.	Both	Tx	Yes	Yes	50+	Varies
MULT	Alcohol Treatment & Training Center	Sub Abuse	State of OR	Int. Res.	Tx	Yes	Yes	20	6-9 Months
MULT	Alcohol Treatment & Training Center	Sub Abuse	Mult., Clack., Wash. Co.	Outp	Tx	Yes	Yes	18-23	Varies
MULT	Alpha Family Treatment Center (CODA)	Sub Abuse	Mult., Clack., Wash. Co.	Int. Outp	Tx	Yes	Yes	25	3-6 Months
MULT	ASAP Treatment Services	Sub Abuse	Portland-Metro/SW Wash. St.	Corr. Int. Outp	Tx	Childcare		30-50	6-9 Months
MULT	ASAP Treatment Services	Sub Abuse	Mult. Co.	Int. Outp	Tx	Childcare		30-50	6-9 Months
MULT	DePaul Treatment Centers	Sub Abuse	Mult. Co.	Outp/Int. Outp	Tx	Childcare		Unknown	Varies
MULT	DePaul Treatment Centers	Sub Abuse	Mult. Co.	Int. Res.	Tx	Childcare		16	2-3 Months
MULT	Diversion Associates	Sub Abuse	Wash., Clack., Colu., Clat., Till. Co.	Outp & Int. Outp	Tx	Childcare		No Cap	6-12 Months
MULT	NARA-Pregnant Wom. & Wom. w/ Child.	Sub Abuse	OR, WA	Both	Tx	Yes	Yes	45	Varies
MULT	New Directions Family Tx Ctr. (CODA)	Sub Abuse	Mult. Co.	Res.	Tx	Yes	Yes	15	6 Months
MULT	New Directions Family Tx Ctr. (CODA)	Sub Abuse	Mult. Co.	Outp	Tx	Yes	Yes	30	Varies
MULT	Volunteers of America, Inc./ Residential Ctr.	Sub Abuse	Mult. Co.	Res.	Tx	Yes	Yes	40/7 w/ children	6 Months
MULT	Women's Intensive Treatment	Sub Abuse	Mult. Co.	Outp	Tx	Childcare		16	3-6 Months
MULT	Women's Residential	Sub Abuse	Mult. Co.	Res.	Tx	Yes	Yes	8	60 Days
WASH	Mountaindale Recovery Center	Sub Abuse	Wash., Clack., Colu., Clat., Till. Co.	Res.	Tx	Yes	Yes	Unknown	3-6 Months
WASH	Project Cradle	Sub Abuse	Washington Co.	Outp	Tx	Yes	Yes	No Cap	Varies
WASH	Tualatin Valley Mental Health Center	Sub Abuse	Wash. Co.	Int. Outp	Tx	Yes	Yes	No Cap	6-12 Months
YAHM	Mother's in Treatment	Sub Abuse	Yamhill Co.	Outp	Tx & Serv.	Yes	Yes	100 (incl. w/ above)	18 Month Avg.
MULT	APADT Program (Mult. Co. Comm. Corr.)	Sub Abuse/Case Mgt.	Mult. Co.	Outp	All	Yes	Yes	150-210	Varies
CLAC	Women's Team	Supervision	Clackamas Co.	Both	Tx & Serv.	Yes	Yes	50+	Varies
MARI	DROP & ISP	Supervision	Manion Co.	Outp	Tx & Serv.	Yes	Yes	5 Women w/child.	Varies
MULT	House of Nia (African American)	Transition Housing/Sub Ab.	Mult. Co.	Res.	Tx & Serv.	Yes	Yes	20	8 Weeks
MULT	WICS	Transition/Life Skills	State of OR	Res.	Serv.	Yes	Yes	No Cap	On-going
MARI	Freedom In The Son	Transition/Prison Outreach	State of OR	Outp	Serv.	Yes	Yes	3	Min. 90 Days
BENT	Women's Issues Program/LivingSpace	Transition/Sub Abuse	Benton & Linn Co.	Res.	Tx	Yes	Yes	100	18 Month Avg.
BENT	Women's Transition Services (Comm. Corr.)	Transition/Sub Abuse	Mult. Co.	Res. & Outp	Tx & Serv.	Yes	Yes	5	3-12 Months
JOSE	Stronghold Cottage	Transitional Housing	Linn, Bent., Linc. Co.	Both	Tx & Serv.	Yes	Yes	5	3-12 Months
JOSE	Freedom House	Transitional Housing	So. Oregon	Res.	Serv.	Yes	Yes	5	3 Months
LANE	Sponsors, Inc.	Transitional Housing	Lane Co.	Res.	Serv.	Yes	Yes	30	30-365 Days
MULT	Trans. Opportunities Proj. (TOP)-YWCA	Work Release	Mult. Co. & Surr. Area	Res./Work Rel.	Serv. & Sanc.				

\*mental health clinics/programs, domestic violence shelters, job/employment/vocational programs and substance abuse programs (coed) are available to women offenders throughout the State.

WOMEN SPECIFIC SERVICES AND SANCTIONS

County	Program Name	Program Type	Area Served	Resid. or Non-Resid.	Tx, Serv., or Sanct.	Women w/ Child. Prog.	Pregnant Wom. Prog.	Program Capacity	Program Length
ALL	INFOCUS @ OWCC	Life Skills	State of OR	Res.	Tx & Serv.			28	6-12 Months
ALL	LIFETRAC @ OWCC	Public Education	State of OR	Res.	Tx & Serv.			14	Min. 1 year
ALL	Turning Point @ CRCI	Sub Abuse	State of OR	Res.	Tx			50	6-15 Months
BAKER	Baker Co. Coun. / A & D Abuse	Sub Abuse	State of OR	Int. Res.	Tx			18	Varies
BAKER	Baker House	Sub Abuse	State of OR	Res.	Tx	Yes	Yes	11	6 Months
BENT	Women's Issues Program-Turning Point	Life Skills/A & D Ed.	Benton County	Outp	Serv.			No Cap	6 weeks
BENT	Women's Issues Program/LivingSpace	Transition/Sub Abuse	Benton & Linn Co.	Res.	Tx			3	Min. 90 Days
BENT	Stronghold Cottage	Transitional Housing	Linn, Bent., Linc. Co.	Both	Tx & Serv.	Yes	Yes	5	3-12 Months
CLAC	Women's Team	Supervision	Clackamas Co.	Both	All			150-210	Varies
JACK	On Track, Inc. (HOME/Teen Program)	Sub Abuse	Roque Valley Area	Res.	Tx	Yes	Yes		3-9 Months
JACK	On Track, Inc. (HOME/Teen Program)	Sub Abuse	Roque Valley Area	Aftercare	Tx	Yes	Yes		180 days
JACK	On Track, Inc. (HOME/Teen Program)	Sub Abuse	Roque Valley Area	Int. Outp	Tx	Yes	Yes		3-6 Months
JOSE	Rogue Recovery Programs	Sub Abuse	So Oregon	Res.	Tx			4	1-5 Days
JOSE	Rogue Recovery Programs	Sub Abuse	So Oregon	Res.	Tx			23	30-60 Days
JOSE	Rogue Recovery Programs	Sub Abuse	So Oregon	Outp	Tx	Childcare	Yes	No Cap	Varies
JOSE	Freedom House	Transitional Housing	So Oregon	Res.	Serv.				
LANE	Sponsors, Inc.	Abuse Survivors	Lane Co.	Outp	Serv.	Childcare	Yes	15	On-going
LANE	Relief Nursery, Inc.	Parenting	Eugene/Springfield Area	Outp	Serv.	Yes		160 families yearly	On-going
LANE	Couer De Lane	Sub Abuse	Lane Co.	Outp	Tx	Yes		15	Varies
LANE	Families in Recovery	Sub Abuse	Lane Co.	Int. Outp	Tx	Yes	Yes	15	Varies
LANE	Families in Recovery	Sub Abuse	State of OR	Res.	Tx	Yes	Yes	24 incl. Child.	5-6 Months
LANE	New Futures	Sub Abuse	Lane Co.	Aftercare	Tx	Yes		No Cap	Varies
LANE	New Hope-Serenity Lane	Sub Abuse	Lane Co.	Int. Outp	Tx	Childcare		8	6-8 wks +
LANE	Sunrise House & Sunrise House Annex	Sub Abuse	State of OR	Res.	Tx	Yes		16	5-6 Months
LANE	Sponsors, Inc.	Transitional Housing	Lane Co.	Res.	Serv.			5 women/6 children	3 Months
MARI	DROP & ISP	Supervision	Lane Co.	Outp	Tx & Sanc.	Yes		50+	Varies
MARI	Children's Program	Childcare	Marion Co.						
MARI	Bridgeway-Her Place Safehouse	Sub Abuse	Marion Co.	Both	Tx & Serv.	Yes	Yes	5	Min. 60 Days
MARI	Intensive Outpatient Program	Sub Abuse	Marion Co.	Outp	Tx	Yes		50+	Varies
MARI	Women's Treatment Services	Sub Abuse	Marion Co.	Both	Tx	Yes		50+	Varies
MARI	Freedom In The Son	Transition/Prison Outreach	State of OR	Outp	Serv.	Yes		No Cap	On-going
MULT	Alcohol Treatment & Training Center	Gambling Addiction	Mult. Clack., Wash. Co.	Outp	Tx			8-10	Varies
MULT	Prostitution Alternatives	Prostitution	Mult Co.	Outp	Tx			50	6-12 Months
MULT	Addictions Recovery Association	Sub Abuse	State of OR	Int. Res.	Tx	Yes	Yes	19	6-9 Months
MULT	Alcohol Treatment & Training Center	Sub Abuse	Mult. Clack., Wash. Co.	Outp	Tx			20	Varies
MULT	Alcohol Treatment & Training Center/SAFE	Sub Abuse	Mult. Clack., Wash. Co.	Int. Outp	Tx	Yes	Yes	18-23	Varies
MULT	Alpha Family Treatment Center (CODA)	Sub Abuse	Mult. Clack., Wash. Co.	Res.	Tx	Yes	Yes	25	3-6 Months
MULT	ASAP Treatment Services	Sub Abuse	Portland-Metro/SW Wash. St.	Int. Outp	Tx	Childcare		30-50	6-9 Months
MULT	ASAP Treatment Services	Sub Abuse	Mult. Clack., Wash. Co.	Corr. Int. Outp	Tx	Childcare		30-50	6-9 Months
MULT	DePaul Treatment Centers	Sub Abuse	Mult Co.	Outp/Int. Outp	Tx	Childcare		Unknown	Varies
MULT	DePaul Treatment Centers	Sub Abuse	Wash., Clac., Clat., Till. Co.	Int. Res.	Tx			16	2-3 Months
MULT	Diversions Associates	Sub Abuse	Mult Co.	Outp & Int. Outp	Tx	Childcare		No Cap	6-12 Months
MULT	NARA-Pregnant Wom. & Wom. w/ Child.	Sub Abuse	OR, WA	Both	Tx	Yes	Yes	45	Varies
MULT	New Directions Family Tx Ctr. (CODA)	Sub Abuse	Mult Co.	Outp	Tx	Yes	Yes	30	Varies
MULT	New Directions Family Tx Ctr. (CODA)	Sub Abuse	Mult Co.	Res.	Tx	Yes	Yes	15	6 Months
MULT	Volunteers of America, Inc./Residential Ctr.	Sub Abuse	Mult Co.	Res.	Tx	Yes	Yes	40/7 w/ children	6 Months
MULT	Women's Intensive Treatment	Sub Abuse	Mult Co.	Outp	Tx	Childcare		16	3-6 Months
MULT	Women's Residential	Sub Abuse	Mult Co.	Res.	Tx			8	60 Days
MULT	APADT Program (Mult. Co. Comm. Corr.)	Sub Abuse/Case Mgt.	Mult Co.	Outp	Tx & Serv.	Yes	Yes	100 (incl. w/ above)	18 Month Avg
MULT	WICS	Transition/Life Skills	State of OR	Res.	Serv.			20	8 Weeks
MULT	Women's Transition Services (Comm. Corr.)	Transition/Sub Abuse	Mult Co.	Res. & Outp	Tx & Serv.	Yes		100	18 Month Avg
MULT	Trans. Opportunities Proj. (TOP)-YWCA	Work Release	Mult Co. & Surr. Area	Res./Work Rel.	Serv. & Sanc.	Yes		30	30-365 Days
MULT	House of Nia (African American)	Transition Housing/Sub Ab.	Mult Co.	Res.	Tx & Serv.	Yes	Yes	5 Women w/child	Varies
VARIOUS	Employment Dept./Corr. Clients Placemt Serv.	Employment	Wash., Mult., Clac., Yahrn. Co.	Outp	Serv.	Yes		No Limit	On-going
WASH	Mountandale Recovery Center	Sub Abuse	Wash., Clac., Colu., Clat., Till. Co.	Res.	Tx	Yes		Unknown	3-6 Months
WASH	Project Cradle	Sub Abuse	Washington Co.	Outp	Tx	Yes	Yes	No Cap	Varies
WASH	Tualatin Valley Mental Health Center	Sub Abuse	Wash. Co.	Int. Outp	Tx	Yes		No Cap	6-12 Months
YAHM	Mother's in Treatment	Sub Abuse	Yamhill Co.	Outp	Tx	Yes			6-12 Months

\*mental health clinics/programs, domestic violence shelters, job employment/vocational programs and substance abuse programs (coed) are available to women offenders throughout the State.

B:\WOMINVSO.RT116-Nov-94

Sort by County/Program Type/Program Name

TOTAL SERVICE & SANCTION SLOTS/BEDS MALE & FEMALE PURCHASED BY DOC & COUNTY MONIES (1993-95 BIENNIIUM)

INSTITUTIONS		Program Name	Program Type	Slots or Beds	Other Services
Service Area					
ALL		CRCI	Minimum Security Prison	407 M/F	Release/Work Release
ALL		OR ST. HOSPITAL	Medium Security	120 M/F	SO/MED/Social Skills/Cornerstone
ALL		OWCC	Medium Security Prison	210 F	Vocational Prog./Prison Industries
ALL		SHUTTER CREEK	Minimum Security Prison	200 M/F	Boot Camp
Service Area		Program Type		Slots or Beds	
SANCTIONS					
STATE		COMMUNITY SERVICE		7,079	
STATE		DAY REPORTING		570-613	
STATE		ELECTRONICS		371-398	
STATE		HOUSE ARREST		40	
STATE		ISP		2,106	
STATE		JAIL SANCTION BEDS		121	
STATE		WORK CREW		180-398	
STATE		WORK/REST. CTR.		443-480	
TREATMENT & SERVICES					
STATE		ANGER MANAGEMENT		147	
STATE		COGNITIVE RESTRUCT		255	
STATE		EDUCATION		225	
STATE		EMPLOYMENT		N/A	
STATE		INST. WORK RELEASE		117	
STATE		MENTAL HEALTH		757	
STATE		SEX OFFENDER TX		664	
STATE		SUB ABUSE AFTERCARE		108	
STATE		SUB ABUSE INPT		125	
STATE		SUB ABUSE OUTP		1,485	
STATE		TRANSITION HOUSING		128	
STATE		TRANSITION SERVICES		843	
OTHER SERVICES					
STATE		ANTABUSE SUPPORT		N/A	
STATE		POLYGRAPH		N/A	
STATE		SUBSIDY		N/A	
STATE		URINALYSIS		N/A	

Do not mark outside this line

Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness  
Criminal and Juvenile Law Workgroup -- Charging Practices Survey

The Oregon Supreme Court-Oregon State Bar Task Force is studying whether and, if so, how the Oregon judicial system and legal profession treat people unfairly on the basis of gender. The Task Force will recognize fair treatment where it exists, and make recommendations for change where it does not.

As part of its data gathering effort, the Task Force's Criminal and Juvenile law work group is studying prosecutors' charging practices. We ask that you take a few moments and answer the following questions, based upon your experiences as a criminal defense or deputy district attorney in Oregon state courts. Please completely fill in the bubble to select the best answer. We also invite you to submit additional comments wherever you think they are necessary. Thank you for assisting us with this project. Unless instructed otherwise, please return this questionnaire to Dr. Annette Jolin, School of Urban and Public Affairs, PO Box 751, Portland State University, Portland, OR 97207-0751.

A. Workplace and Background.

1. How many prosecutors are there in your county (include those in juvenile court)?  
☐ 1    ☐ 2-5    ☐ 6-10    ☐ 11-15    ☐ 16 or more
2. Is the county where you practice:    ☐ Primarily rural    ☐ Primarily urban    ☐ Mixed rural/urban
3. For how many years have you been a lawyer?  
☐ 0-1    ☐ 1-2    ☐ 2-4    ☐ 4-6    ☐ 6-8    ☐ 8-10    ☐ 10-12    ☐ 12-15    ☐ 15 +
4. How many years have you been a lawyer in active practice in Oregon?  
☐ 0-1    ☐ 1-2    ☐ 2-4    ☐ 4-6    ☐ 6-8    ☐ 8-10    ☐ 10-12    ☐ 12-15    ☐ 15 +

B. The next set of questions pertain to ~~your~~ prosecutors' charging practices. Please select the one best answer based upon your experience.

1. How often are prosecutors' charging decisions influenced by a suspect's gender?  
☐ Never    ☐ Hardly ever    ☐ Sometimes    ☐ Often    ☐ Always

Please explain: \_\_\_\_\_

2. Generally, prosecutors are more likely to charge female suspects than male suspects.  
☐ Never    ☐ Hardly ever    ☐ Sometimes    ☐ Often    ☐ Always

Please explain: \_\_\_\_\_

3. There are certain crimes for which prosecutors are more likely to charge female suspects than male suspects.  
☐ Never    ☐ Hardly ever    ☐ Sometimes    ☐ Often    ☐ Always

Please explain: \_\_\_\_\_

4. Prosecutors are more likely to offer plea reductions to male than to female offenders.  
☐ Never    ☐ Hardly ever    ☐ Somewhat    ☐ Often    ☐ Always

Please explain: \_\_\_\_\_

5. To what extent is a prosecutor's willingness to reduce the charges influenced by a defendant's gender?  
☐ Never    ☐ Hardly ever    ☐ Somewhat    ☐ Often    ☐ Always

Please explain: \_\_\_\_\_

6. Prosecutors are more likely to reduce the charges for female defendants than they are for male defendants.  
☐ Not at all    ☐ Hardly ever    ☐ Somewhat    ☐ Quite a bit    ☐ Completely

Please explain: \_\_\_\_\_

7. Does admissible evidence of a female suspect's sexual history influence prosecution decisions?  
☐ Not at all    ☐ Hardly ever    ☐ Somewhat    ☐ Quite a bit    ☐ Completely

Please explain: \_\_\_\_\_

8. Does admissible evidence of a male suspect's sexual history influence prosecution decisions?  
☐ Not at all    ☐ Hardly ever    ☐ Somewhat    ☐ Quite a bit    ☐ Completely

Please explain: \_\_\_\_\_

Please indicate whether you strongly disagree, disagree, agree, strongly agree, or are uncertain about the following statement

9. Prosecutors are more likely to charge women with young children than women who do not have children.  
☐ Strongly Disagree    ☐ Disagree    ☐ Uncertain    ☐ Agree    ☐ Strongly Agree

Please explain: \_\_\_\_\_

YEAR OF BIRTH

Do not mark outside this line


10. Prosecutors are more likely to offer to reduce charges for women with young children than for women who do not have children.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

11. Prosecutors are more likely to charge female suspects who use drugs when they are pregnant than they are to charge female suspects who use drugs but are not pregnant.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

12. Prosecutors are more likely to recommend jail or prison time (or a longer sentence) for a pregnant substance abuser than for a substance abuser (with the same criminal history facing the same charges) who is not pregnant.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

13. Prosecutors are more likely to offer a plea reduction to female repeat offenders than to male repeat offenders.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

14. There is no significant gender bias in the court system today.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

15. A father who batters his children's mother should have the same rights to custody and/or visitation of the children.

Strongly Disagree Disagree Uncertain Agree Strongly Agree

Please explain: \_\_\_\_\_

- C. This final set of questions is demographic in nature. Your answers to these questions will help us better analyze our data.

1. Sex: ☐ Male ☐ Female

2. Year of birth (Also please enter it in the bubbles at top of page) \_\_\_\_\_

3. Ethnic/Racial identity: ☐ Black/African-American ☐ Asian  
☐ Native American ☐ Hispanic/Latino/Chicano  
☐ Pacific Islander ☐ White (non-Hispanic)  
☐ Mixed ☐ Other

4. Sexual Orientation: ☐ Heterosexual/straight ☐ Gay/lesbian ☐ Bi-sexual ☐ Other

5. Relationship Status: ☐ Single and never married ☐ Married/living with domestic partner  
☐ Currently divorced ☐ Previously divorced (now remarried)  
☐ Widowed ☐ Other

6. Number of years you have worked as a prosecutor: ☐ 0-1 ☐ 1-2 ☐ 2-4 ☐ 4-6 ☐ 6-8 ☐ 8-10 ☐ 10-12 ☐ 12-15 ☐ 15 +

7. Do you have a disability and/or do others regard you as having a disability? ☐ Always ☐ Often ☐ Sometimes ☐ Never

8. If you answered "always," "often" or "sometimes" to question #7, is your disability or the disability others regard you as having (mark all that apply): ☐ Physical disability ☐ Mental Disability  
 Is the disability noticeable? ☐ Yes ☐ No

If there is anything you wish to tell us regarding gender fairness and prosecutors' charging practices, or any other gender fairness issues in the justice system and/or legal profession, please feel free to use additional sheets of paper.

## INTERACTIONS BETWEEN LAWYERS, CLIENTS, and STAFF

### Topic Questions

#### I. Lawyers and Clients

1. Does gender matter in a client's selection of a lawyer?  
If yes, does it vary with subject area or with the client's gender?
2. Does gender matter in a client's satisfaction with the lawyer?  
If yes, does it vary with the client's gender, the lawyer's or both?
3. Does gender affect the working relationship between lawyer and client?
4. Is there sexual harassment of clients by lawyers or of lawyers by clients?  
If yes, does it vary with the client's or lawyer's gender?

#### II. Lawyers and Staff

1. Are employment opportunities for legal secretaries, paralegals (legal assistants) and other support staff affected by gender?  
If yes, is it the same in all types of legal employment?
2. Are advancement opportunities for legal secretaries, paralegals (legal assistants) and other support staff affected by gender?  
If yes, is it the same in all types of legal employment?
3. Do lawyers, or their staff, subject their employees to sexual harassment?
4. Do lawyers, as employers, have policies against sexual harassment?  
If yes, are such policies enforced?

#### III. Lawyers and Other Professionals

1. Are lawyers' decisions to hire court reporters and experts (consultants or witnesses) affected by gender?
2. Are the fees lawyers pay to such professionals affected by gender?
3. Is the relationship between lawyers and other professionals affected by gender?
4. Do other professionals experience sexual harassment by the lawyers with whom they work?

VI. Staff and Clients

1. Are the relationships between clients and staff affected by gender?
2. Do staff persons employed by lawyers experience sexual harassment by clients?
3. Do clients experience sexual harassment by staff persons employed by lawyers?

V. Clients and Other Professionals

1. Are the relationships between clients and other professionals affected by gender?
2. Do other professionals employed by lawyers experience sexual harassment by staff employees of lawyers?
3. Do staff members experience sexual harassment by other professionals employed by lawyers?

VI. Gender Fairness at the Office of the Oregon State Bar (OSB)

1. Are employment opportunities affected by gender?  
If yes, does it relate to whether the position is "professional" or clerical?
2. Are advancement opportunities affected by gender?  
If yes, does it relate to whether the position is "professional" or clerical?
3. Do employees experience sexual harassment at work?
4. Does the OSB have a policy on sexual harassment?  
If yes, is it enforced?

May 21, 1997

Judy Snyder  
Hoebet & Snyder  
900 SW Fifth Avenue, Suite 2100  
Portland, Oregon 97204

RE: *Client Survey for Oregon Supreme Court / Oregon State Bar Task Force on Gender Fairness*

Dear Ms. Snyder:

Recently, Steve Lawrence spoke to you regarding a client survey being conducted by a work group of the Oregon Supreme Court / Oregon State Bar Task Force on Gender Fairness. Your firm graciously agreed to participate.

The survey instrument and a cover letter from Justice Susan Graber are enclosed. Please make 50 copies and send them to the last 50 clients whose cases or matters have been closed by your firm. Please do not attempt to sort, screen or select clients to whom the survey is sent. If you find it necessary to exclude a client, please let us know that you have done so, and why, so that we can make the necessary adjustments in our analysis.

If the client was not an individual (*e.g.*, a corporation, partnership or association), please send the survey to the person who had the most contact with your firm. In some cases, that will *not* be the same person as the one to whom billings were sent.

Please also send a pre-addressed, postage-paid return envelope with each survey. A #10 envelope should be used, with the proper postage. Because we promise the survey respondents (and you) anonymity, both the return *and* mailing address on the envelope should be as follows -

*Jessica Mindlin, Coordinator  
Task Force on Gender Fairness  
Supreme Court Building  
1163 State Street  
Salem, OR 97310*

Time is of the essence. You will see that the survey document requests that it be returned by June 13, 1997. *Please mail it to your clients no later than May 30th.*



*May 21, 1997 - Page 2*

Thank you again for your participation in this survey and your commitment to the pursuit of gender fairness in Oregon.

Sincerely,

*JANICE R. WILSON*  
*Chair, Work Group on Interactions*

*JRW:svb*  
*enclosures*



**THE SUPREME COURT**  
SUSAN P. GRABER  
ASSOCIATE JUSTICE

May 23, 1997

1163 STATE STREET  
SALEM, OREGON 97310  
Telephone: (503) 378-6024  
FAX: (503) 373-7536  
New telephone (503) 986-5721  
New FAX (503) 986-5730

Dear Client Survey Respondent:

You are one of a select group of people being asked to participate in a survey of clients conducted by the Task Force on Gender Fairness. We deeply appreciate your taking the time to help us.

The Task Force on Gender Fairness was appointed in December 1995 by the Chief Justice of the Oregon Supreme Court and the President of the Oregon State Bar. Our goal is to study whether and, if so, how the Oregon judicial system and legal profession treat people unfairly on the basis of gender, to recognize fair treatment where it exists, and to make recommendations for change where it does not.

As part of our study, we are trying to learn whether gender plays a role in the client's selection of a lawyer and in the interaction between lawyer and client. The enclosed survey is an essential part of that effort and should take only about 10 minutes to complete.

Your answers to this survey are anonymous. The firm that has sent this survey to you has not revealed your identity to us. There is no way we can trace or link a particular questionnaire to a particular client, lawyer, or law firm.

Because a limited number of clients are being surveyed, your response is very important. An envelope with postage paid is enclosed for your convenience in returning it. **Please mail the survey back to Jessica Mindlin by June 13, 1997.**

Thank you for your help.

Sincerely,

Susan P. Graber, Co-chair  
Task Force on Gender Fairness

Enc.



**CIRCUIT COURT OF THE STATE OF OREGON**

for MULTNOMAH COUNTY  
MULTNOMAH COUNTY COURTHOUSE  
1021 SW FOURTH AVENUE  
PORTLAND, OR 97204-1123  
(503) 248-3069

JANICE R. WILSON  
JUDGE

DEPARTMENT 12  
COURTROOM 216

March 7, 1997

Al Karpinski, Esq.  
621 SW Morrison, Suite 315  
Portland, Oregon 97205

*Sample letter  
to indigent  
defense contractors.*

*RE: Gender Fairness Task Force*

Dear Mr. Karpinski:

The Oregon Supreme Court and Oregon State Bar Task Force on Gender Fairness has several "work groups" studying various issues. I chair the work group charged with investigating, among other things, the effect of gender on interactions between lawyer and client.

Our work group is gathering data on the role (if any) of gender on the client's *selection* of a lawyer, or the assignment of a case. As part of that investigation, we would appreciate your sending us a brief description of how cases and clients are assigned to lawyers in your firm, whether gender is ever a factor, and, if so, in what circumstances.

Please respond by letter addressed to me at the courthouse. Thank you, in advance, for your assistance with this important project.

Sincerely,

JANICE R. WILSON  
Circuit Court Judge

JRW:svb

# Memorandum

7/30/97

TO: Judge Wilson  
FROM: Andrew M. Kohlmetz  
RE: Indigent Defense Case Assignment Survey

---

In April, 1997, we sent letters to forty-six law offices throughout Oregon requesting information on how cases and clients were assigned to lawyers within each firm. Specifically, we asked if gender was ever a factor in the assignment process, and, if so, under what circumstances. A sample of this letter is attached as an appendix. In Multnomah County, the letter was sent to all law firms which have a contract with the State of Oregon to provide indigent defense services. For other parts of the state, we sent a letter to all indigent defense contractors which had at least one female and one male attorney. This list of firms was provided by Ann Christian, Director of the Indigent Defense Services Division. As of July 30, 1997, we had received thirty-six responses.

Of all thirty-six respondents, only one indicated that gender played a role in the initial attorney appointment. Metropolitan Public Defender of Washington County indicated that in rare case, primarily when a court juvenile counselor files a delinquency petition but does not set the matter for a preliminary hearing or when an attorney has previously withdrawn on a case, the gender of an attorney might then play a role in the initial internal appointment. However, gender is not a factor in the initial court appointments in juvenile cases in Washington County.

In all cases, participating firms, consortiums, and individual attorneys were assigned cases on a strict rotational basis (ten firms), or on a modified rotational basis taking into account factors such as an attorney's case load, level of experience, and type of case (twenty three firms). One two-attorney firm stated that each attorney handled all appointments from a specific county. (Bettis & Associates, Umatilla and Morrow Counties.) Two respondents were sole practitioners and handled all of their own appointments. (Amanda Burnett in Coos County, and Geoffrey Silver in Multnomah County.)

Of the thirty-six respondents, twenty-five indicated that no exceptions were made in the assignment process based on the gender of either the attorney or the client. However, two of these twenty-five respondents indicated that the *assistance* of

Judge Wilson  
July 30, 1997  
P. 2

an attorney or staff member of the opposite gender was sometimes required after the initial appointment.

\*Liebowitz and Associates (Multnomah County) indicated that if a client has trouble accepting advice from a male or female attorney, an attorney of the other gender will meet with the client in order to give advice and assist the primary attorney. However, reassignment does not occur based on gender issues.

\*Public Defender Services of Lane County (Lane County) indicated that a male investigator may be present if a female attorney feels physically threatened by a male client during the client interview.

#### REASONS GIVEN FOR GENDER-BASED EXCEPTIONS

The eleven respondents who indicated that gender did play a role in the assignment process gave three rationales for taking gender into consideration: because of inappropriate conduct (aggressive and/or sexual) on the part of the client; by the specific request of the client; and based on the subject matter or facts underlying the case.

Three firms made exceptions in the standard appointment process based on a client's inappropriate conduct:

\*McKeown & Brindle, P.C. (Multnomah County) indicated that since 1989, two male clients inappropriately fixated on a female attorney. When the attorneys brought it to the attention of the firm, the client was reassigned to a male attorney. There have also been several times when a male client "fixated" on non-attorney female staff. Male staff were then assigned to replace the female(s) in such cases.

\*Washington County Indigent Defenders (Clackamas County) indicated that gender becomes an issue only when the court indicates to the firm that a particular client is hostile towards female attorneys, or if he or she is known to act inappropriately towards female attorneys.

\*Metropolitan Public Defender (Washington County) indicated that, on an extremely rare basis, they are asked to assign an attorney of a particular gender to an adult case when it is clear that the client has an adversity to a male or female attorney.

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Four firms indicated that they would honor a gender-specific request made by a client:

\*Southwestern Oregon Public Defender Services, Inc. (Coos and Curry Counties) indicated that although they honor such requests, they are very rare.

\*Jackson Juvenile Consortium (Jackson County) indicated that while such a request has never been made, they assume that they might be able to accommodate the client.

\*District Court Defenders (Deschutes County) indicated that on rare occasions clients ask for an attorney of a specific gender. These requests are honored.

\*Metropolitan Public Defender (Washington County) indicated that in juvenile court appointments, juvenile counselors sometimes request an attorney of a particular gender. When such a request is made it is generally honored.

Five firms indicated that they make gender-based assignments because of the subject matter or facts underlying the case:

\*Saxon, Marquoit, Bertoni & Todd (Multnomah County) indicated that gender plays a role only in a small percentage of cases where it is determined that the case allegations or facts suggest that the client would be more comfortable with an attorney of the same gender.

\*Benton County Legal Defense Corporation (Benton County) indicated that gender-based exceptions were made only when a juvenile worker specifically requests a female attorney for a young female client when sensitive or sexual subject matter is involved.

\*Lane Juvenile Lawyers Association (Lane County) indicated that in rare cases, usually involving a replacement attorney, consideration is given to gender. The responding attorney related a specific instance involving a female juvenile client who had been molested by a male who bore a physical semblance to the male attorney originally appointed on the case. Based on the request of the child's guardian, the male attorney withdrew and a female attorney was appointed.

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\*Olsen, Huffman & Horn (Columbia County) indicated that if a female client were to request a female attorney, due to the sensitive nature of the case, they would likely honor the request.

\*Independent Defenders, Inc. (Clackamas County) indicated that they will attempt to appoint a female attorney only when a teenage girl is the victim of sexual abuse.

### **GENDER-BASED EXCEPTIONS: ADULT AND JUVENILE CASES**

All eleven responses which indicated that gender may play a role in the assignment process were further examined to determine whether gender-based exceptions were made in adult cases, in juvenile cases, or in all cases. We also looked to see if such exceptions occurred only when the client was female, or if they were made regardless of the client's gender.

#### **A) Juvenile Cases:**

Four respondents make gender based exceptions for *female* clients in juvenile cases. (Lane Juvenile Lawyers Association, Benton County Legal Defense Corp., Metropolitan Public Defender of Washington County, and Independent Defenders Inc.)

One respondent would make gender-based exceptions for clients of either gender in juvenile cases, although they have yet to do so. (Jackson Juvenile Consortium.)

#### **B) Adult Cases:**

Two respondents make gender-based exceptions for *female* adult clients. (McKeown & Brindle P.C., and Washington County Indigent Defenders.)

Two respondents make gender-based exceptions for clients of either gender in adult cases. (District Court Defenders, and Southwestern Oregon Public Defender.)

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**C) Adult and Juvenile Cases:**

One respondent makes gender-based exceptions for *female* clients in both juvenile and adult cases. (Saxon, Marquoit & Bertoni.)<sup>1</sup>

**GENDER BASED EXCEPTIONS BY PRACTICE TYPE**

The eleven responses which indicated that gender may play a role in the assignment process were then broken down by practice type, *i.e.* whether they handled adult, juvenile, or both types of cases.

**A) Adult Cases:**

One respondent indicated that their firm handled only adult cases. This firm would replace a *female* attorney with a male one due to inappropriate conduct on the part of the client. (Washington County Indigent Defenders.)

**B) Juvenile Cases:**

Three respondents indicated that they handled only juvenile cases. Two of these indicated that they would replace a *male* attorney with a female one either upon the client's request, or due to the facts of the case. (Lane Juvenile Lawyers Association, and Independent Defenders Inc., respectively.) The third respondent indicated that they would replace an attorney of either gender based upon the request of the client. (Jackson Juvenile Consortium.)

**C) Adult and Juvenile Cases:**

Seven respondents indicated that they handled both adult and juvenile cases. Of these seven, four indicated that they will replace an attorney for gender related reasons in both adult and juvenile cases. Of these four, three indicated that they replace attorneys of either gender. (Southwestern Oregon Public Defender Services, District Court Defenders, and Metropolitan Public Defender of Washington

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<sup>1</sup> One respondent makes gender based exceptions for *female* clients, but does not indicate whether they do so in adult, juvenile, or both types of cases. The firm does handle both adult and juvenile cases. (Olsen, Huffman & Horn.)



Judge Wilson  
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County.) The last would only replace a *male* attorney with a female one based on the facts of the case. (Olsen, Huffman & Horn.)

Two of the firms which handled both adult and juvenile cases make gender related attorney replacements only in juvenile cases. Both indicate that they will replace a *male* attorney with a female one based on the facts of the case. (Benton County Legal Defense Corp., and Independent Defenders Inc.)

Finally, one firm that handles both adult and juvenile cases indicated that they make gender related attorney replacements only in adult cases. This firm indicates that it will replace a female attorney with a male one based upon the inappropriate conduct of a male client. (McKeown & Brindle P.C.)

## MEMORANDUM

**To:** Donna Richardson  
**From:** Kay Pulju  
**Re:** LRS requests for female attorneys  
**Date:** October 7, 1996

~ ~ ~ ~ ~  
The RIS staff tracked client requests for attorney referrals by sex from August 15, 1996 through September 16, 1996, or 23 work days. During that time we handled 3,325 requests for private attorney referrals. A total of 41 of those clients specifically requested a female attorney, while only 4 requested a male attorney.

As I have already explained, LRS does not make referrals on the basis of sex. We will, however, give a few names out informally when a client is looking for information only and is not interested in a formal referral for the \$35 consultation we normally guarantee. In the test period, we made 2,430 formal referrals and 895 "information only" referrals.

You may be interested to know that most requests for female attorneys are made at the outset of a client call. Requests for male attorneys, however, are made almost exclusively by clients who have just been given a formal referral to a female attorney (Oh... a woman? Do you have any men?), usually in a family law context. Requests for male attorneys by female clients are so rare that only one of us remembers ever receiving such a request.

Although most requests for female attorneys are made by women, men also request female attorneys more often than they request male attorneys. Some of the reasons we have heard include: 1) women are nicer/more sympathetic/easier to work with, 2) it will look good to the jury/judge, 3) women understand what it's like to be the "underdog", and 4) women probably charge less.

I hope this information is of use to you. Please let me know if you have any questions.

Statistics Male/Female

	<b>Active Members</b>	<b>%</b>
Total	9,351	100.0
Male	6,924	74.0
Female	2,427	26.0
	<b>Private Practice</b>	<b>%</b>
Total	6,011	100.0
Male	4,793	79.7
Female	1,218	20.3
	<b>Government Employees</b>	<b>%</b>
	<b>PLF Exempt</b>	
Total	1,413	100.0
Male	937	66.3
Female	476	33.7
	<b>Legal Aid Attorneys</b>	<b>%</b>
	<i>* Criminal Defense</i>	
Total	67	100.0
Male	30	44.8
Female	37	55.2
	<b>Fee Arbitration Claims</b>	<b>%</b>
Total	212	100.0
Male	188	88.7
Female	24	11.3
	<b>Client Security Fund Claims</b>	<b>%</b>
Total	359	100.0
Male	336	93.6
Female	23	6.4

\* last 2 yrs, only

# Discipline Statistics by Male/Female

3/13/97

<b>Complaints Filed</b>		
	<b>1996</b>	<b>%</b>
Total	1732	100.0
Male	1457	84.1
Female	275	18.9
<b># of Attorneys Disciplined</b>		
	<b>1996</b>	<b>%</b>
Total	58	100.0
Male	51	87.9
Female	7	12.1



February 24, 1997

5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889  
(503) 620-0222 or WATS 1-800-452-8260, FAX: (503) 684-1366

Hon Janice R Wilson  
Circuit Court Judge  
Multnomah Co Courthouse  
1021 SW 4th Ave  
Portland, OR 97204

Dear Judge Wilson:

After our meeting last week, I contacted Bob Flick from Flikirs Professional Services, the group that conducted the most recent Economic Survey. I asked Bob if he could break down billing practices (page 23 of report, attached) by sex. Mr. Flick was kind enough to provide that information at no charge. I did not ask for the breakdown by location in the state.

Hours Billed per Month	Male	Female
Average	107	98
Median	120	110

Hourly Billing Rate	Male	Female
Low	10	20
Average	126	111
Median	125	110
High	265	225

By copy of this letter, I am providing this information to Judge Maurer, Chair of Opportunities in the Legal Profession Work Group and Diane Rynerson, OWLS.

Very truly yours,

Donna J. Richardson  
Executive Services Administrator

cc: Judge Jean Maurer  
Diane Rynerson

SAMPLE SEXUAL HARASSMENT POLICY

- CHAPTER 5 -

PERSONNEL

5.1 Nondiscrimination and Harassment. It is the policy of to grant equal opportunity to all qualified persons without regard to race, creed, color, sex, age, national origin, religion, physical or mental disability or veteran status, or any other protected classification. We believe that denying or limiting a person's contribution to our efforts because he or she is a member of a protected category is an injustice to the individual and to this firm. It is our intent and desire that equal opportunity shall be provided in employment, promotions, wages, benefits, and all other privileges, terms, and conditions of employment.

It is also our policy that employees should be able to work in an environment free from all forms of discrimination and harassment, including, but not limited to, sexual and gender harassment, religious harassment, and national origin harassment. We consider all forms of harassment to be intimidating misconduct which undermines the integrity of the employment relationship, damages morale and interferes with work effectiveness. Such conduct is prohibited and will not be tolerated.

Harassment on the basis of sex is a violation of federal and state law. It is discrimination related to or because of an individual's gender. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct is directed toward an individual because of that individual's gender, and:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Any employee or applicant for employment who believes himself or herself to be subjected to harassment is encouraged to bring any such incidents to the immediate attention of the

Any such complaints will

be immediately investigated.

# Legal Secretaries Survey

## Task Force on Gender Fairness

### Interactions Work Group

The Task Force on Gender Fairness was appointed in January of 1996 by Chief Justice Wallace Carson and then OSB President Dennis Karnopp. Its charge is to investigate and report on gender issues in Oregon's justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way to ensure that it is unbiased and is thorough in its documentation. The Task Force was divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group charged with investigating gender fairness, as well as the role of gender in interaction between attorneys, clients, staff and other professionals.

It is important that all people who receive the survey respond. It should only take 10 minutes to complete. Because the survey questions can be personal or sensitive in nature, **your answers and comments are strictly anonymous and voluntary**. There is no way to identify who completed a particular questionnaire. Thank you for helping the Interactions Work Group of the Task Force on Gender Fairness by answering this survey.

If you wish to comment upon questions or qualify any answers, please feel free to write in the margins. Your comments will be read and taken into account.

Please return the completed survey in the enclosed envelope by **Friday, May 16, 1997**.

As a legal secretary, you are in a unique position to help us evaluate how you and others have been treated by the Oregon justice system and the legal community.

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**Section I** *The following questions deal with your overall perception of gender bias issues. Please check the box for each question.*

- A.** Which of the following statements best describes your overall perception of gender bias against women in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against women.
- ☐ 2. Gender bias against women exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against women is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against women is widespread and readily apparent.

- B.** Which of the following statements best describes your overall perception of gender bias against men in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against men.
- ☐ 2. Gender bias against men exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against men is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against men is widespread and readily apparent.

- C.** In your opinion, how has gender bias changed over the past few years?

*(Please check one)*

- ☐ 1. There is less gender bias now than in the past.
- ☐ 2. There is more gender bias now than in the past.
- ☐ 3. There is the same amount of gender bias now as in the past.
- ☐ 4. There has never been any gender bias, now or in the past.

Comments from Questions A,B,C: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
D. Are you asked to perform duties that would <b>not</b> be asked of a person of the opposite sex? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there duties that you are <b>not</b> allowed to perform because of your gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>men's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>women's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>men</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are <b>men</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are <b>men</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Are <b>women</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Are <b>women</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Are <b>women</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N. Are your opinions on work-related matters given less weight than those of a person of the opposite gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Have you been given special work duties because of your gender <b>and</b> some characteristic you have (example: race, age, sexual orientation, disability)? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Have you been discriminated against in your <b>current</b> place of employment on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Q. Were you discriminated against at a <b>previous</b> place of employment in the legal field on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
R. If the answer to P or Q is "yes," did you take any action (e.g., file a complaint) as a result? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
S. Have you been discriminated against because of your age? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
T. Have you experienced different treatment of men and women who hold similar positions regarding family care issues? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
U. Check your preference for working for: . . . . .	<input type="checkbox"/> Man <input type="checkbox"/> Woman <input type="checkbox"/> No Preference					



**Section II.** *The following questions deal with gender issues and interaction in the Oregon justice system and the legal community. You will be asked to answer each question with "always," "often," "sometimes," "rarely," "never," or "no basis for judgment."*

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
A. Are <b>female attorneys</b> addressed by first names when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Are <b>female attorneys</b> addressed by terms of endearment (e.g. honey, dear, sweetie, babe, girl) when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Are <b>female legal secretaries</b> addressed by first names when <b>male legal secretaries</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Are <b>female legal secretaries</b> addressed by terms of endearment (e.g., honey, dear, dear, sweetie, babe, girl) when <b>male legal secretaries</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are <b>male attorneys</b> addressed by first names when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>male attorneys</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>male legal secretaries</b> addressed by first names when <b>female legal secretaries</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>male legal secretaries</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female legal secretaries</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are comments made about the physical appearance or apparel of <b>women</b> more often than such comments are made about men? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are comments made about the physical appearance or apparel of <b>men</b> more often than such comments are made about women? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Have you been addressed by your first name or terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy) when members of the opposite sex were not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>[go to question L]</i>			<i>[go to Section III]</i>		
L. If you answered "always", "often," or "sometimes" to K, did you find it objectionable to:						
1. Be addressed by your first name?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Be addressed by terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section III.** *The following questions deal with issues of sexual harassment. Answer "yes" or "no." Please comment where appropriate.*

- A. Does your workplace have a policy on sexual harassment? . . . . . ☐ Yes (go to question B)  
☐ No (go to question C)
- B. If the answer to A is yes, is it enforced? . . . . . ☐ Yes ☐ No
- C. Does your workplace provide formal training regarding sexual harassment? . . . . . ☐ Yes ☐ No
- D. Have you been harassed on the basis of gender at your **current** place of employment? ☐ Yes ☐ No
- E. Were you harassed on the basis of gender at a **previous** place of employment in the legal field? . . . . . ☐ Yes ☐ No

**Section IV.** *The last set of questions asks about your knowledge of sexual harassment in your workplace and at your previous places of employment. For each behavior listed, please indicate by checking the appropriate box whether:*

- You have personally experienced such behavior
- You have heard that other staff experienced such behavior although you yourself were not the object; or
- You have never experienced, seen or heard about such behavior occurring.

	In Your Current Workplace			In Previous Workplaces		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
<i>[Check all that apply]</i>						
A. Have you been asked for sexual favors in exchange for employment security or opportunity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Have you experienced requests for unwelcome sexual activity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Have you experienced unwelcome physical touching of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	In Your Current Workplace			In Previous Workplaces		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
<b>D.</b> Have you experienced unwelcome verbal jokes or comments of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>E.</b> Have you been subjected to unwelcome objects, pictures, or calendars of a sexually explicit nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Section V. General Background

Please answer the following questions which deal with demographics. In order to determine what factors, if any, might affect people's experiences with gender issues in the justice system and the legal community, we are asking for more detailed information than do most surveys. Although responses are **optional**, having this information will make the survey more meaningful.

- Sex:
  - ☐ Male
  - ☐ Female
- Year of Birth:
- Number of years in your current position?
  - ☐ 2 years or less
  - ☐ 3-7 years
  - ☐ Over 8
- Is your job?
  - ☐ Legal Secretary/Legal Assistant
  - ☐ Professional/Technical Support
  - ☐ Other (please indicate position \_\_\_\_\_)
- Do you have supervisory responsibilities?
  - ☐ Yes
  - ☐ No
- Ethnicity/Race:
  - ☐ African-American
  - ☐ Asian
  - ☐ Hispanic
  - ☐ Native American
  - ☐ Pacific Islander
  - ☐ White (non-Hispanic)
  - ☐ Other \_\_\_\_\_
- Sexual Orientation:
  - ☐ Straight/heterosexual
  - ☐ Gay/Lesbian
  - ☐ Bisexual
  - ☐ Other \_\_\_\_\_
- Current marital status (check all that apply):
  - ☐ Single, never married
  - ☐ Divorced
  - ☐ Married/living as married
  - ☐ Widowed
  - ☐ Separated

☐ Other \_\_\_\_\_

9. Do you have children?

☐ Yes

☐ No

10. If yes, number of children living at home?

11. Do you have disabilities?

☐ Always

☐ Often

☐ Sometimes

☐ Never

a. Check all that apply:

☐ Physical Disability

☐ Mental Disability

b. Is the disability visible or noticeable?

☐ Yes

☐ No

12. Do you ☐ own or ☐ rent your home?

13. Level of education (check highest level completed):

☐ some high school (no diploma and no GED)

☐ GED or high school (diploma)

☐ some college

☐ college degree

☐ post-graduate work

☐ post-graduate degree

14. Date of highest degree?

15. What language do you speak most at home?

☐ English

☐ Spanish

☐ Russian

☐ Korean

☐ Vietnamese

☐ American Sign Language

☐ Other \_\_\_\_\_

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*Additional Comments.*

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***Thank you for taking the time to fill out this survey. Please mail in the enclosed envelope and return by May 16, 1997***

# Oregon State Bar Survey

## Task Force on Gender Fairness

### Interactions Work Group

The Task Force on Gender Fairness was appointed in January of 1996 by Chief Justice Wallace Carson and then OSB President Dennis Karnopp. Its charge is to investigate and report on gender issues in Oregon's justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way to ensure that it is unbiased and is thorough in its documentation. The Task Force was divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group charged with investigating gender fairness for employees of the Oregon State Bar, as well as the role of gender in interaction between attorneys, clients, staff and other professionals.

It is important that all people who receive the survey respond. It should only take 10 minutes to complete. Because the survey questions can be personal or sensitive in nature, your answers and comments are strictly anonymous and voluntary. There is no way to identify who completed a particular questionnaire. Thank you for helping the Interactions Work Group of the Task Force on Gender Fairness by answering this survey.

If you wish to comment upon questions or qualify any answers, please feel free to write in the margins. Your comments will be read and taken into account.

Please return the completed survey in the box located in the lunchroom marked "GFTF Surveys."

As an employee of the Oregon State Bar, you are in a unique position to help us evaluate how you and others have been treated by the Oregon State Bar and the legal system.

---

**Section I** *The following questions deal with your overall perception of gender bias issues. Please check the box for each question.*

**A.** Which of the following statements best describes your overall perception of gender bias against women at the Oregon State Bar at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against women.
- ☐ 2. Gender bias against women exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against women is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against women is widespread and readily apparent.

**B.** Which of the following statements best describes your overall perception of gender bias against men at the Oregon State Bar at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against men.
- ☐ 2. Gender bias against men exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against men is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against men is widespread and readily apparent.

**C.** In your opinion, how has gender bias changed over the past few years?

*(Please check one)*

- ☐ 1. There is less gender bias now than in the past.
- ☐ 2. There is more gender bias now than in the past.
- ☐ 3. There is the same amount of gender bias now as in the past.
- ☐ 4. There has never been any gender bias, now or in the past.

Comments from Questions A,B,C: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Always</u>	<u>Often</u>	<u>Some- times</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judg- ment</u>
D. Are you asked to perform duties that would <b>not</b> be asked of a person of the opposite sex? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there duties that you are <b>not</b> allowed to perform because of your gender?. . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>men's</b> opportunities for job advancement at the Oregon State Bar limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>women's</b> opportunities for job advancement at the Oregon State Bar limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>men</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are <b>men</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are <b>men</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Are <b>women</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Are <b>women</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Are <b>women</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N. Are your opinions on work-related matters given less weight than those of a person of the opposite gender? . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Have you been given special work duties because of your gender <b>and</b> some characteristic you have (example: race, age, sexual orientation, disability)? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Have you ever been discriminated against on the basis of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q. If the answer to <b>P</b> is "yes," did you take any action (e.g., file a complaint) as a result of this? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R. Have you been discriminated against because of your age? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S. Have you experienced different treatment of men and women who hold similar positions regarding family care issues? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
T. Check your preference for working for: . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section II.** *The following questions deal with gender issues and interaction at the Oregon State Bar. You will be asked to answer each question with "always," "often," "sometimes," "rarely," "never," or "no basis for judgment."*

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
A. Are <b>female attorneys</b> addressed by first names when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Are <b>female attorneys</b> addressed by terms of endearment (e.g. honey, dear, sweetie, babe, girl) when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Are <b>female staff</b> members addressed by first names when <b>male staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Are <b>female staff</b> members addressed by terms of endearment (e.g., honey, dear, dear, sweetie, babe, girl) when <b>male staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are <b>male attorneys</b> addressed by first names when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>male attorneys</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>male staff</b> members addressed by first names when <b>female staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>male staff</b> members addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are comments made about the physical appearance or apparel of <b>women</b> more often than such comments are made about men? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are comments made about the physical appearance or apparel of <b>men</b> more often than such comments are made about women? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Have you been addressed by your first name or terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy) when members of the opposite sex were not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>[go to question L]</u>			<u>[go to Section III]</u>		
L. If you answered "always," "often," or "sometimes" to #K, did you find it objectionable to:						
1. Be addressed by your first name?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Be addressed by terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section III.** *The following questions deal with issues of sexual harassment. Answer "yes" or "no." Please comment where appropriate.*

- A. Does the Oregon State Bar have a policy on sexual harassment? . . . . . ☐ Yes (go to question B)  
☐ No (go to question C)
- B. If the answer to A is yes, is it enforced? . . . . . ☐ Yes ☐ No
- C. Does the Oregon State Bar provide formal training regarding sexual harassment? . . . . . ☐ Yes ☐ No
- D. Have you ever been harassed on the basis of gender? . . . . . ☐ Yes ☐ No

**Section IV.** *The last set of questions asks about your knowledge of sexual harassment at the Oregon State Bar and at your previous places of employment. For each behavior listed, please indicate by checking the appropriate box whether:*

- You have personally experienced such behavior
- You have heard that other staff experienced such behavior although you yourself were not the object; or
- You have never experienced, seen or heard about such behavior occurring.

	<u>At the Oregon State Bar</u>			<u>At Previous Places of Employment</u>		
	<u>Personally Experienced</u>	<u>Happened to Others</u>	<u>Nothing Witnessed or Experienced</u>	<u>Personally Experienced</u>	<u>Happened to Others</u>	<u>Nothing Witnessed or Experienced</u>
<i>[Check all that apply]</i>						
A. Have you been asked for sexual favors in exchange for employment security or opportunity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Have you experienced requests for unwelcome sexual activity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Have you experienced unwelcome physical touching of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Have you experienced unwelcome verbal jokes or comments of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Have you been subjected to unwelcome objects, pictures, or calendars of a sexually explicit nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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## Section V. General Background

Please answer the following questions which deal with demographics. Although responses are optional, having this information will make the survey more meaningful.

1. Sex:
  - ☐ Male
  - ☐ Female
2. Year of Birth:
3. Number of years in your current position?
  - ☐ 2 years or less
  - ☐ 3-7 years
  - ☐ Over 8
4. Is your position: (If you are an attorney and manager/administrator, please check both.)
  - ☐ Administrative Support
  - ☐ Attorney
  - ☐ Program Manager
  - ☐ Senior Administrator
  - ☐ Professional/Technical Support
  - ☐ Other (please indicate position \_\_\_\_\_)
5. Ethnicity/Race:
  - ☐ African-American
  - ☐ Asian
  - ☐ Hispanic
  - ☐ Native American
  - ☐ Pacific Islander
  - ☐ White (non-Hispanic)
  - ☐ Other \_\_\_\_\_
6. Sexual Orientation:
  - ☐ Straight/heterosexual
  - ☐ Gay/Lesbian
  - ☐ Bisexual
  - ☐ Other \_\_\_\_\_
7. Current marital status (check all that apply):
  - ☐ Single, never married
  - ☐ Divorced
  - ☐ Married/living as married
  - ☐ Widowed
  - ☐ Separated
  - ☐ Other \_\_\_\_\_
8. Do you have children?
  - ☐ Yes
  - ☐ No
9. If yes, number of children living at home?
10. Do you have disabilities?
  - ☐ Always
  - ☐ Often
  - ☐ Sometimes
  - ☐ Never
  - a. Check all that apply:
    - ☐ Physical Disability
    - ☐ Mental Disability
  - b. Is the disability visible or noticeable?
    - ☐ Yes
    - ☐ No
11. Do you ☐ own or ☐ rent your home?
12. Level of education (check highest level completed):
  - ☐ some high school (no diploma and no GED)
  - ☐ GED or high school (diploma)
  - ☐ some college
  - ☐ college degree
  - ☐ post-graduate work
  - ☐ post-graduate degree
13. Date of highest degree?
14. What language do you speak most at home?
  - ☐ English
  - ☐ Spanish
  - ☐ Russian
  - ☐ Korean
  - ☐ Vietnamese
  - ☐ American Sign Language
  - ☐ Other \_\_\_\_\_

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Thank you for taking the time to fill out this survey. Please fold and place in the box located in the lunchroom marked "GFTF Surveys." Surveys will be delivered directly to the GFTF. Please return by April 11, 1997

Additional Comments? Go to page 6.

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*Additional Comments.*

# **Professional Liability Fund Survey**

## **Task Force on Gender Fairness**

### **Interactions Work Group**

The Task Force on Gender Fairness was appointed in January of 1996 by Chief Justice Wallace Carson and then OSB President Dennis Karnopp. Its charge is to investigate and report on gender issues in Oregon's justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way to ensure that it is unbiased and is thorough in its documentation. The Task Force was divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group charged with investigating gender fairness for employees of the Oregon State Bar, as well as the role of gender in interaction between attorneys, clients, staff and other professionals.

It is important that all people who receive the survey respond. It should only take 10 minutes to complete. Because the survey questions can be personal or sensitive in nature, your answers and comments are strictly anonymous and voluntary. There is no way to identify who completed a particular questionnaire. Thank you for helping the Interactions Work Group of the Task Force on Gender Fairness by answering this survey.

If you wish to comment upon questions or qualify any answers, please feel free to write in the margins. Your comments will be read and taken into account.

Please return the completed survey in the box located in the PLF lunchroom marked "GFTF Surveys."

As an employee of the Professional Liability Fund, you are in a unique position to help us evaluate how you and others have been treated by the Professional Liability Fund and the legal system.

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**Section I** *The following questions deal with your overall perception of gender bias issues. Please check the box for each question.*

**A.** Which of the following statements best describes your overall perception of gender bias against women at the Professional Liability Fund at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against women.
- ☐ 2. Gender bias against women exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against women is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against women is widespread and readily apparent.

**B.** Which of the following statements best describes your overall perception of gender bias against men at the Professional Liability Fund at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against men.
- ☐ 2. Gender bias against men exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against men is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against men is widespread and readily apparent.

**C.** In your opinion, how has gender bias changed over the past few years?

*(Please check one)*

- ☐ 1. There is less gender bias now than in the past.
- ☐ 2. There is more gender bias now than in the past.
- ☐ 3. There is the same amount of gender bias now as in the past.
- ☐ 4. There has never been any gender bias, now or in the past.

Comments from Questions A,B,C: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Always</u>	<u>Often</u>	<u>Some- times</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judg- ment</u>
D. Are you asked to perform duties that would <b>not</b> be asked of a person of the opposite sex? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there duties that you are <b>not</b> allowed to perform because of your gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>men's</b> opportunities for job advancement at the Professional Liability Fund limited because of gender? . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>women's</b> opportunities for job advancement at the Professional Liability Fund limited because of gender? . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>men</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are <b>men</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are <b>men</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Are <b>women</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Are <b>women</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Are <b>women</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N. Are your opinions on work-related matters given less weight than those of a person of the opposite gender? . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Have you been given special work duties because of your gender <b>and</b> some characteristic you have (example: race, age, sexual orientation, disability)? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Have you been discriminated against in your <b>current</b> place of employment on the basis of gender? . . . . .						<input type="checkbox"/> Yes <input type="checkbox"/> No
Q. Were you discriminated against at a <b>previous</b> place of employment in the legal field on the basis of gender? . . . . .						<input type="checkbox"/> Yes <input type="checkbox"/> No
R. If the answer to P or Q is "yes," did you take any action (e.g., file a complaint) as a result? . . . . .						<input type="checkbox"/> Yes <input type="checkbox"/> No
S. Have you been discriminated against because of your age? . . . . .						<input type="checkbox"/> Yes <input type="checkbox"/> No
T. Have you experienced different treatment of men and women who hold similar positions regarding family care issues? . . . . .						<input type="checkbox"/> Yes <input type="checkbox"/> No
U. Check your preference for working for: . . . . .	<input type="checkbox"/> Man <input type="checkbox"/> Woman <input type="checkbox"/> No Preference					

**Section II.** *The following questions deal with gender issues and interaction at the Professional Liability Fund. You will be asked to answer each question with "always," "often," "sometimes," "rarely," "never," or "no basis for judgment."*

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
A. Are <b>female attorneys</b> addressed by first names when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Are <b>female attorneys</b> addressed by terms of endearment (e.g. honey, dear, sweetie, babe, girl) when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Are <b>female staff</b> members addressed by first names when <b>male staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Are <b>female staff</b> members addressed by terms of endearment (e.g., honey, dear, dear, sweetie, babe, girl) when <b>male staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are <b>male attorneys</b> addressed by first names when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>male attorneys</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>male staff</b> members addressed by first names when <b>female staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>male staff</b> members addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female staff</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are comments made about the physical appearance or apparel of <b>women</b> more often than such comments are made about men? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are comments made about the physical appearance or apparel of <b>men</b> more often than such comments are made about women? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Have you been addressed by your first name or terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy) when members of the opposite sex were not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>[go to question I]</u>			<u>[go to Section III]</u>		
L. If you answered "always", "often," or "sometimes" to #K, did you find it objectionable to:						
1. Be addressed by your first name?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Be addressed by terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section III.** *The following questions deal with issues of sexual harassment. Answer "yes" or "no." Please comment where appropriate.*

- A.** Does the Professional Liability Fund have a policy on sexual harassment? . . . ☐ Yes (go to question B) ☐ No (go to question C)
- B.** If the answer to **A** is yes, is it enforced? . . . ☐ Yes ☐ No
- C.** Does the Professional Liability Fund provide formal training regarding sexual harassment? . . . ☐ Yes ☐ No
- D.** Have you been harassed on the basis of gender at your **current** place of employment? . . . ☐ Yes ☐ No
- E.** Were you harassed on the basis of gender at a **previous** place of employment in the legal field? . . . ☐ Yes ☐ No

**Section IV.** *The last set of questions asks about your knowledge of sexual harassment at the Professional Liability Fund and at your previous places of employment. For each behavior listed, please indicate by checking the appropriate box whether:*

- You have personally experienced such behavior
- You have heard that other staff experienced such behavior although you yourself were not the object; or
- You have never experienced, seen or heard about such behavior occurring.

	<u>At the PLF</u>			<u>At Previous Places of Employment</u>		
	<u>Personally Experienced</u>	<u>Happened to Others</u>	<u>Nothing Witnessed or Experienced</u>	<u>Personally Experienced</u>	<u>Happened to Others</u>	<u>Nothing Witnessed or Experienced</u>
<i>[Check all that apply]</i>						
<b>A.</b> Have you been asked for sexual favors in exchange for employment security or opportunity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B.</b> Have you experienced requests for unwelcome sexual activity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C.</b> Have you experienced unwelcome physical touching of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>D.</b> Have you experienced unwelcome verbal jokes or comments of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	At the PLF			At Previous Places of Employment		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
E. Have you been subjected to unwelcome objects, pictures, or calendars of a sexually explicit nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Section V. General Background

Please answer the following questions which deal with demographics. In order to determine what factors, if any, might affect people's experiences with gender issues in the justice system and the legal community, we are asking for more detailed information than do most surveys. Although responses are **optional**, having this information will make the survey more meaningful.

- Sex:
  - ☐ Male
  - ☐ Female
- Year of Birth:
- Number of years in your current position?
  - ☐ 2 years or less
  - ☐ 3-7 years
  - ☐ Over 8
- Is your position: (If you are an attorney and director, please check both.)
  - ☐ Administrative Support
  - ☐ Attorney
  - ☐ Director
  - ☐ Advisor
  - ☐ Professional/Technical Support
  - ☐ Other (please indicate position \_\_\_\_\_)
- Ethnicity/Race:
  - ☐ African-American
  - ☐ Asian
  - ☐ Hispanic
  - ☐ Native American
  - ☐ Pacific Islander
  - ☐ White (non-Hispanic)
  - ☐ Other \_\_\_\_\_
- Sexual Orientation:
  - ☐ Straight/heterosexual
  - ☐ Gay/Lesbian
  - ☐ Bisexual
  - ☐ Other \_\_\_\_\_
- Current marital status (check all that apply):
  - ☐ Single, never married
  - ☐ Divorced
  - ☐ Married/living as married
  - ☐ Widowed
  - ☐ Separated
  - ☐ Other \_\_\_\_\_
- Do you have children?
  - ☐ Yes
  - ☐ No
- If yes, number of children living at home?
- Do you have disabilities?
  - ☐ Always
  - ☐ Often
  - ☐ Sometimes
  - ☐ Never
  - Check all that apply:
    - ☐ Physical Disability
    - ☐ Mental Disability
  - Is the disability visible or noticeable?
    - ☐ Yes
    - ☐ No

11. Do you ☐own or ☐rent your home?

12. Level of education (check highest level completed):

- ☐ some high school (no diploma and no GED)
- ☐ GED or high school (diploma)
- ☐ some college
- ☐ college degree
- ☐ post-graduate work
- ☐ post-graduate degree

13. Date of highest degree?

14. What language do you speak most at home?

- ☐ English
- ☐ Spanish
- ☐ Russian
- ☐ Korean
- ☐ Vietnamese
- ☐ American Sign Language
- ☐ Other \_\_\_\_\_

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*Additional Comments.*

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*Thank you for taking the time to fill out this survey. Please fold and place in the box located in the PLF lunchroom marked "GFTF Surveys." Surveys will be delivered directly to the GFTF. Please return by May 9, 1997*



# **Court Reporters Survey**

## **Task Force on Gender Fairness**

### ***Interactions Work Group***

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The Task Force on Gender Fairness was appointed in January of 1996 by Chief Justice Wallace Carson and then OSB President Dennis Karnopp. Its charge is to investigate and report on gender issues in Oregon's justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way to ensure that it is unbiased and is thorough in its documentation. The Task Force was divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group charged with investigating gender fairness, as well as the role of gender in interaction between attorneys, clients, staff and other professionals.

It is important that all people who receive the survey respond. It should only take 10 minutes to complete. Because the survey questions can be personal or sensitive in nature, **your answers and comments are strictly anonymous and voluntary**. There is no way to identify who completed a particular questionnaire. Thank you for helping the Interactions Work Group of the Task Force on Gender Fairness by answering this survey.

If you wish to comment upon questions or qualify any answers, please feel free to write in the margins. Your comments will be read and taken into account.

Please return the completed survey in the enclosed envelope by **Friday, May 9, 1997**.

As a court reporter, you are in a unique position to help us evaluate how you and others have been treated by the Oregon justice system and the legal community.

---

#### **Section I** *The following questions deal with your overall perception of gender bias issues. Please check the box for each question.*

- A.** Which of the following statements best describes your overall perception of gender bias against women in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against women.
- ☐ 2. Gender bias against women exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against women is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against women is widespread and readily apparent.

- B.** Which of the following statements best describes your overall perception of gender bias against men in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against men.
- ☐ 2. Gender bias against men exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against men is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against men is widespread and readily apparent.

- C.** In your opinion, how has gender bias changed over the past few years?

*(Please check one)*

- ☐ 1. There is less gender bias now than in the past.
- ☐ 2. There is more gender bias now than in the past.
- ☐ 3. There is the same amount of gender bias now as in the past.
- ☐ 4. There has never been any gender bias, now or in the past.

Comments from Questions A,B,C: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
D. Are you asked to perform duties that would <b>not</b> be asked of a person of the opposite sex? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there duties that you are <b>not</b> allowed to perform because of your gender?. . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>men's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>women's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>men</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are <b>men</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are <b>men</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Are <b>women</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Are <b>women</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Are <b>women</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N. Are your opinions on work-related matters given less weight than those of a person of the opposite gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Have you been given special work duties because of your gender <b>and</b> some characteristic you have (example: race, age, sexual orientation, disability)? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Have you been discriminated against in your <b>current</b> place of employment on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Q. Were you discriminated against at a <b>previous</b> place of employment in the legal field on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
R. If the answer to P or Q is "yes," did you take any action (e.g., file a complaint) as a result? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
S. Have you been discriminated against because of your age? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
T. Have you experienced different treatment of men and women who hold similar positions regarding family care issues? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
U. Check your preference for working for: . . . . .			<input type="checkbox"/> Man	<input type="checkbox"/> Woman	<input type="checkbox"/> No Preference	

**Section II.** *The following questions deal with gender issues and interaction in the Oregon justice system and the legal community. You will be asked to answer each question with "always," "often," "sometimes," "rarely," "never," or "no basis for judgment."*

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
A. Are <b>female attorneys</b> addressed by first names when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Are <b>female attorneys</b> addressed by terms of endearment (e.g. honey, dear, sweetie, babe, girl) when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Are <b>female court reporters</b> addressed by first names when <b>male court reporters</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Are <b>female court reporters</b> addressed by terms of endearment (e.g., honey, dear, dear, sweetie, babe, girl) when male court reporters are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are <b>male attorneys</b> addressed by first names when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>male attorneys</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>male court reporters</b> addressed by first names when <b>female court reporters</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>male court reporters</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female court reporters</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are comments made about the physical appearance or apparel of <b>women</b> more often than such comments are made about men? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are comments made about the physical appearance or apparel of <b>men</b> more often than such comments are made about women? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Have you been addressed by your first name or terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy) when members of the opposite sex were not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>[go to question L]</u>			<u>[go to Section III]</u>		
L. If you answered "always," "often," or "sometimes" to K, did you find it objectionable to:						
1. Be addressed by your first name?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Be addressed by terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section III.** *The following questions deal with issues of sexual harassment. Answer "yes", "no", or "does not apply." Please comment where appropriate.*

- A. Does your workplace have a policy on sexual harassment? . . . . . ☐ Yes (go to question B)  
☐ No (go to question C)  
☐ Does not apply
- B. If the answer to A is yes, is it enforced? . . . . . ☐ Yes ☐ No ☐ Does not apply
- C. Does your workplace provide formal training regarding sexual harassment? ☐ Yes ☐ No ☐ Does not apply
- D. Have you been harassed on the basis of gender at your **current** place of employment? . . . . . ☐ Yes ☐ No ☐ Does not apply
- E. Were you harassed on the basis of gender at a **previous** place of employment in the legal field? . . . . . ☐ Yes ☐ No ☐ Does not apply

**Section IV.** *The last set of questions asks about your knowledge of sexual harassment on the job and at your previous places of employment. For each behavior listed, please indicate by checking the appropriate box whether:*

- You have personally experienced such behavior
- You have heard that other staff experienced such behavior although you yourself were not the object; or
- You have never experienced, seen or heard about such behavior occurring.

	In Your Current Job			In Previous Jobs		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
[Check all that apply]						
A. Have you been asked for sexual favors in exchange for employment security or opportunity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Have you experienced requests for unwelcome sexual activity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Have you experienced unwelcome physical touching of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	In Your Current Job			In Previous Jobs		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Have you experienced unwelcome verbal jokes or comments of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Have you been subjected to unwelcome objects, pictures, or calendars of a sexually explicit nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Section V. General Background

Please answer the following questions which deal with demographics. In order to determine what factors, if any, might affect people's experiences with gender issues in the justice system and the legal community, we are asking for more detailed information than do most surveys. Although responses are optional, having this information will make the survey more meaningful.

- Sex:
  - ☐ Male
  - ☐ Female
- Year of Birth:
- Number of years in your current position?
  - ☐ 2 years or less
  - ☐ 3-7 years
  - ☐ Over 8
- Is your job:
  - ☐ Official Court Reporter
  - ☐ Freelance Firm Owner
  - ☐ Freelance Firm Employee
  - ☐ Independent Contractor
  - ☐ Other (please indicate position \_\_\_\_\_)
- Do you have supervisory responsibilities?
  - ☐ Yes
  - ☐ No
- Ethnicity/Race:
  - ☐ African-American
  - ☐ Asian
  - ☐ Hispanic
  - ☐ Native American
  - ☐ Pacific Islander
  - ☐ White (non-Hispanic)
  - ☐ Other \_\_\_\_\_
- Sexual Orientation:
  - ☐ Straight/heterosexual
  - ☐ Gay/Lesbian
  - ☐ Bisexual
  - ☐ Other \_\_\_\_\_
- Current marital status (check all that apply):
  - ☐ Single, never married
  - ☐ Divorced
  - ☐ Married/living as married
  - ☐ Widowed
  - ☐ Separated
  - ☐ Other \_\_\_\_\_

9. Do you have children?

☐ Yes

☐ No

10. If yes, number of children living at home?

11. Do you have disabilities?

☐ Always

☐ Often

☐ Sometimes

☐ Never

a. Check all that apply:

☐ Physical Disability

☐ Mental Disability

b. Is the disability visible or noticeable?

☐ Yes

☐ No

12. Do you ☐ own or ☐ rent your home?

13. Level of education (check highest level completed):

☐ some high school (no diploma and no GED)

☐ GED or high school (diploma)

☐ some college

☐ college degree

☐ post-graduate work

☐ post-graduate degree

14. Date of highest degree?

15. What language do you speak most at home?

☐ English

☐ Spanish

☐ Russian

☐ Korean

☐ Vietnamese

☐ American Sign Language

☐ Other \_\_\_\_\_

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*Additional Comments.*

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*Thank you for taking the time to fill out this survey. Please mail in the enclosed envelope and return by May 9, 1997*

# Paralegal/Legal Assistants Survey

## Task Force on Gender Fairness

### Interactions Work Group

The Task Force on Gender Fairness was appointed in January of 1996 by Chief Justice Wallace Carson and then OSB President Dennis Karnopp. Its charge is to investigate and report on gender issues in Oregon's justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way to ensure that it is unbiased and is thorough in its documentation. The Task Force was divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group charged with investigating gender fairness, as well as the role of gender in interaction between attorneys, clients, staff and other professionals.

It is important that all people who receive the survey respond. It should only take 10 minutes to complete. Because the survey questions can be personal or sensitive in nature, **your answers and comments are strictly anonymous and voluntary**. There is no way to identify who completed a particular questionnaire. Thank you for helping the Interactions Work Group of the Task Force on Gender Fairness by answering this survey.

If you wish to comment upon questions or qualify any answers, please feel free to write in the margins. Your comments will be read and taken into account.

Please return the completed survey in the enclosed envelope by **Friday, May 9, 1997**.

As a paralegal/legal assistant, you are in a unique position to help us evaluate how you and others have been treated by the Oregon justice system and the legal community.

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**Section I** *The following questions deal with your overall perception of gender bias issues. Please check the box for each question.*

- A.** Which of the following statements best describes your overall perception of gender bias against women in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against women.
- ☐ 2. Gender bias against women exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against women is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against women is widespread and readily apparent.

- B.** Which of the following statements best describes your overall perception of gender bias against men in your workplace at the present time?

*(Please check one)*

- ☐ 1. There is no gender bias against men.
- ☐ 2. Gender bias against men exists, but only in a few areas and with certain individuals.
- ☐ 3. Gender bias against men is widespread, but subtle and hard to detect.
- ☐ 4. Gender bias against men is widespread and readily apparent.

- C.** In your opinion, how has gender bias changed over the past few years?

*(Please check one)*

- ☐ 1. There is less gender bias now than in the past.
- ☐ 2. There is more gender bias now than in the past.
- ☐ 3. There is the same amount of gender bias now as in the past.
- ☐ 4. There has never been any gender bias, now or in the past.

Comments from Questions A,B,C: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	<u>Always</u>	<u>Often</u>	<u>Some- times</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judg- ment</u>
D. Are you asked to perform duties that would <b>not</b> be asked of a person of the opposite sex? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there duties that you are <b>not</b> allowed to perform because of your gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>men's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>women's</b> opportunities for job advancement in your workplace limited because of gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>men</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are <b>men</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are <b>men</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Are <b>women</b> given preference in appointments to <b>supervisory</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Are <b>women</b> given preference in appointments to <b>management</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Are <b>women</b> given preference in appointments to <b>support</b> positions? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N. Are your opinions on work-related matters given less weight than those of a person of the opposite gender? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Have you been given special work duties because of your gender <b>and</b> some characteristic you have (example: race, age, sexual orientation, disability)? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Have you been discriminated against in your <b>current</b> place of employment on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Q. Were you discriminated against at a <b>previous</b> place of employment in the legal field on the basis of gender? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
R. If the answer to P or Q is "yes," did you take any action (e.g., file a complaint) as a result? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
S. Have you been discriminated against because of your age? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
T. Have you experienced different treatment of men and women who hold similar positions regarding family care issues? . . . . .				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
U. Check your preference for working for: . . . . .			<input type="checkbox"/> Man	<input type="checkbox"/> Woman	<input type="checkbox"/> No Preference	



**Section II.** *The following questions deal with gender issues and interaction in the Oregon justice system and the legal community. You will be asked to answer each question with "always," "often," "sometimes," "rarely," "never," or "no basis for judgment."*

	<u>Always</u>	<u>Often</u>	<u>Sometimes</u>	<u>Rarely</u>	<u>Never</u>	<u>No Basis for Judgment</u>
A. Are <b>female attorneys</b> addressed by first names when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Are <b>female attorneys</b> addressed by terms of endearment (e.g. honey, dear, sweetie, babe, girl) when <b>male attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Are <b>female paralegals/legal assistants</b> addressed by first names when <b>male paralegals/legal assistants</b> members are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Are <b>female paralegals/legal assistants</b> addressed by terms of endearment (e.g., honey, dear, dear, sweetie, babe, girl) when <b>male paralegals/legal assistants</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Are <b>male attorneys</b> addressed by first names when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Are <b>male attorneys</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female attorneys</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Are <b>male paralegals/legal assistants</b> addressed by first names when <b>female paralegals/legal assistants</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Are <b>male paralegals/legal assistants</b> addressed by terms of endearment (e.g., honey, dear, sweetie, son, young man, boy) when <b>female paralegals/legal assistants</b> are not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Are comments made about the physical appearance or apparel of <b>women</b> more often than such comments are made about men? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Are comments made about the physical appearance or apparel of <b>men</b> more often than such comments are made about women? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Have you been addressed by your first name or terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy) when members of the opposite sex were not? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>[go to question L]</u>			<u>[go to Section III]</u>		
L. If you answered "always", "often," or "sometimes" to K, did you find it objectionable to:						
1. Be addressed by your first name?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Be addressed by terms of endearment (e.g., honey, dear, sweetie, babe, girl, son, young man, boy)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Section III.** *The following questions deal with issues of sexual harassment. Answer "yes" or "no." Please comment where appropriate.*

- A. Does your workplace have a policy on sexual harassment? . . . . . ☐ Yes (go to question B)  
☐ No (go to question C)
- B. If the answer to A is yes, is it enforced? . . . . . ☐ Yes ☐ No
- C. Does your workplace provide formal training regarding sexual harassment? . . . . . ☐ Yes ☐ No
- D. Have you been harassed on the basis of gender at your **current** place of employment? ☐ Yes ☐ No
- E. Were you harassed on the basis of gender at a **previous** place of employment in the legal field? . . . . . ☐ Yes ☐ No

**Section IV.** *The last set of questions asks about your knowledge of sexual harassment in your workplace and at your previous places of employment. For each behavior listed, please indicate by checking the appropriate box whether:*

- You have personally experienced such behavior
- You have heard that other staff experienced such behavior although you yourself were not the object; or
- You have never experienced, seen or heard about such behavior occurring.

	In Your Current Workplace			In Previous Workplaces		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
<i>[Check all that apply]</i>						
A. Have you been asked for sexual favors in exchange for employment security or opportunity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Have you experienced requests for unwelcome sexual activity?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Have you experienced unwelcome physical touching of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	In Your Current Workplace			In Previous Workplaces		
	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced	Personally Experienced	Happened to Others	Nothing Witnessed or Experienced
<b>D.</b> Have you experienced unwelcome verbal jokes or comments of a sexual nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>E.</b> Have you been subjected to unwelcome objects, pictures, or calendars of a sexually explicit nature?						
1. From a co-worker (including subordinates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. From a supervisor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. From an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Section V. General Background

Please answer the following questions which deal with demographics. In order to determine what factors, if any, might affect people's experiences with gender issues in the justice system and the legal community, we are asking for more detailed information than do most surveys. Although responses are **optional**, having this information will make the survey more meaningful.

- Sex:
  - ☐ Male
  - ☐ Female
- Year of Birth:
- Number of years in your current position?
  - ☐ 2 years or less
  - ☐ 3-7 years
  - ☐ Over 8
- What is your employment status?
  - ☐ employed by a law firm
  - ☐ employed by governmental agency
  - ☐ employed by private employer
  - ☐ freelance/independent contractor
  - ☐ work through a temporary employment agency
  - ☐ non-profit
  - ☐ Other (please indicate position \_\_\_\_\_)
- Do you have supervisory responsibilities?
  - ☐ Yes
  - ☐ No
- Ethnicity/Race:
  - ☐ African-American
  - ☐ Asian
  - ☐ Hispanic
  - ☐ Native American
  - ☐ Pacific Islander
  - ☐ White (non-Hispanic)
  - ☐ Other \_\_\_\_\_
- Sexual Orientation:
  - ☐ Straight/heterosexual
  - ☐ Gay/Lesbian
  - ☐ Bisexual
  - ☐ Other \_\_\_\_\_
- Current marital status (check all that apply):
  - ☐ Single, never married
  - ☐ Divorced
  - ☐ Married/living as married
  - ☐ Widowed
  - ☐ Separated
  - ☐ Other \_\_\_\_\_
- Do you have children?
  - ☐ Yes
  - ☐ No

10. If yes, number of children living at home?

11. Do you have disabilities?

- ☐ Always
- ☐ Often
- ☐ Sometimes
- ☐ Never

a. Check all that apply:

- ☐ Physical Disability
- ☐ Mental Disability

b. Is the disability visible or noticeable?

- ☐ Yes
- ☐ No

12. Do you ☐own or ☐rent your home?

13. Level of education (check highest level completed):

- ☐ some high school (no diploma and no GED)
- ☐ GED or high school (diploma)
- ☐ some college
- ☐ college degree
- ☐ post-graduate work
- ☐ post-graduate degree

14. Date of highest degree?

15. What language do you speak most at home?

- ☐ English
- ☐ Spanish
- ☐ Russian
- ☐ Korean
- ☐ Vietnamese
- ☐ American Sign Language
- ☐ Other \_\_\_\_\_

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*Additional Comments.*

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*Thank you for taking the time to fill out this survey. Please mail in the enclosed envelope and return by May 9, 1997*

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# CLIENT SURVEY

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## Task Force on Gender Fairness Work Group on Interactions Between Clients, Attorneys, Staff and Others

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The Task Force on Gender Fairness was appointed in January of 1996 by the Chief Justice of the Oregon Supreme Court and the President of the Oregon State Bar. Its charge is to investigate and report on gender fairness issues in the Oregon justice system and legal profession. The Task Force is co-chaired by Oregon Supreme Court Justice Susan Graber and past President of the Oregon State Bar, Robert Fraser. The study is to be conducted in a way that ensures that it is unbiased and is thorough in its documentation. The Task Force is divided into Work Groups. Multnomah County Circuit Court Judge Janice R. Wilson chairs the Interactions Work Group, charged with investigating gender fairness and the role of gender in interactions between attorneys, clients, staff and other professionals.

Only a small group of clients was selected to be surveyed. It is important that all people who receive

the survey respond. It should take only about 10 minutes to answer the questions.

Because some of the survey questions can be personal or sensitive in nature, your answers and comments are voluntary and will be kept strictly anonymous. There is no way to identify who completed a particular questionnaire.

If you wish to comment on a question or qualify any answers, please feel free to write in the margins. Your comments will be taken into account.

Please return the survey in the enclosed, postage-paid envelope by **Friday, June 13, 1997**.

As the client of an Oregon lawyer or law firm, you are in a unique position to help us evaluate whether (and, if so, how) gender affects fairness in the Oregon legal system. Thank you for your help.

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### I. Lawyer Selection and Client Satisfaction

A. In how many cases or matters have you had a lawyer represent you? (Write in number.)

B. In the most recent case in which you were a client, were you: (Check one)

- ☐ acting only on your own behalf
- ☐ acting on behalf of another person as guardian, conservator or personal representative of an estate
- ☐ acting on behalf of a business in Oregon
  - ☐ as corporate counsel
  - ☐ in a non-legal capacity
- ☐ acting on behalf of a business outside Oregon
  - ☐ as corporate counsel
  - ☐ in a non-legal capacity
- ☐ other \_\_\_\_\_

C. Was the matter in which you were most recently a client: (Check one)

- ☐ Personal injury litigation
- ☐ Business litigation
- ☐ Business transaction
- ☐ Civil Rights (including employment discrimination)
- ☐ Domestic relations (divorce, support, child custody, etc.)
- ☐ Estate planning/Probate
- ☐ Administrative law (involving a government agency)
- ☐ Criminal
- ☐ Other \_\_\_\_\_

D. 1. In the matter most recently concluded, did you ask for or try to get:

- ☐ a male lawyer
- ☐ a female lawyer
- ☐ didn't specify gender

**D. 2.** If you specifically wanted a male lawyer or a female lawyer, what was the reason for your preference? (Check **ALL** that apply.)

- ☐ A lawyer of that gender would fight harder for me.
- ☐ A lawyer of that gender would spend more time on my case.
- ☐ A lawyer of that gender would understand me better.
- ☐ A lawyer of that gender would charge less.
- ☐ Given the type of case, I would have a better chance with a lawyer of that gender representing me.
- ☐ The judge or jury would like a lawyer of that gender better.
- ☐ I had a good experience with a lawyer of that gender in a case before.
- ☐ I had a bad experience with a lawyer of the other gender in a case before.
- ☐ Other reasons: \_\_\_\_\_

**E.** What was the gender of the main lawyer representing you in the matter most recently concluded?

- ☐ Male
- ☐ Female
- ☐ Both (Multiple lawyers)

**F. 1.** Has gender **ever** been a factor in your selection of a lawyer?

- ☐ Yes
- ☐ No

**F. 2.** If yes, why was it a factor?

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**G.** How would you rate your level of satisfaction with your lawyer in the matter most recently concluded? (Check **ONE**.)

- ☐ Very satisfied
- ☐ Somewhat satisfied
- ☐ Somewhat dissatisfied
- ☐ Very dissatisfied

**H. 1.** Do you think the gender of your lawyer had anything to do with how satisfied or dissatisfied you were?

- ☐ Yes
- ☐ No

**H. 2.** If yes, why was it a factor?

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**I. 1.** Do you think that either your gender or the gender of your lawyer affected the outcome of your case?

- ☐ Yes
- ☐ No

**I. 2.** If yes, in what way do you think it made a difference?

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## II. Interactions Between Client, Lawyer, and Other Staff

**A. 1.** Have you had both men and women as lawyers representing you before?

- ☐ Yes
- ☐ No

**A. 2.** If yes, was there a difference in the way they treated you?

- ☐ Yes
- ☐ No

**A. 3.** If yes, what was the difference?

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*The following questions (B through E) relate to your experience at any time, not just the most recent case in which you had a lawyer.*

**B. 1.** Did your lawyer or anyone in your lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) ever **call you by your first name** when you felt it was not appropriate?

- ☐ Yes
- ☐ No

**B. 2.** If yes, who did it? (Check **ALL** that apply.)

- ☐ male lawyer
- ☐ female lawyer
- ☐ male investigator
- ☐ female investigator
- ☐ male secretary
- ☐ female secretary
- ☐ male paralegal
- ☐ female paralegal
- ☐ male clerk
- ☐ female clerk
- ☐ other \_\_\_\_\_

C. 1. Did your lawyer or anyone in your lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) ever **call you by names such as "honey," "dear," "sweetie," "babe," "girl," "young lady," "son," "young man," or "boy"** when you felt it was not appropriate?

- ☐ Yes  
☐ No

C. 2. If yes, who said it? (Check **ALL** that apply.)

- |                                            |                                              |
|--------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> male lawyer       | <input type="checkbox"/> female lawyer       |
| <input type="checkbox"/> male investigator | <input type="checkbox"/> female investigator |
| <input type="checkbox"/> male secretary    | <input type="checkbox"/> female secretary    |
| <input type="checkbox"/> male paralegal    | <input type="checkbox"/> female paralegal    |
| <input type="checkbox"/> male clerk        | <input type="checkbox"/> female clerk        |
| <input type="checkbox"/> other _____       |                                              |

D. 1. Did your lawyer or anyone in your lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) ever **touch you** in a way that you didn't like?

- ☐ Yes  
☐ No

D. 2. If yes, who did it? (Check **ALL** that apply.)

- |                                            |                                              |
|--------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> male lawyer       | <input type="checkbox"/> female lawyer       |
| <input type="checkbox"/> male investigator | <input type="checkbox"/> female investigator |
| <input type="checkbox"/> male secretary    | <input type="checkbox"/> female secretary    |
| <input type="checkbox"/> male paralegal    | <input type="checkbox"/> female paralegal    |
| <input type="checkbox"/> male clerk        | <input type="checkbox"/> female clerk        |
| <input type="checkbox"/> other _____       |                                              |

E. 1. Did your lawyer or anyone in your lawyer's office (secretary, paralegal, investigator, law clerk, another lawyer, etc.) ever **ask you for sexual favors**?

- ☐ Yes  
☐ No

E. 2. If yes, who did it? (Check **ALL** that apply.)

- |                                            |                                              |
|--------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> male lawyer       | <input type="checkbox"/> female lawyer       |
| <input type="checkbox"/> male investigator | <input type="checkbox"/> female investigator |
| <input type="checkbox"/> male secretary    | <input type="checkbox"/> female secretary    |
| <input type="checkbox"/> male paralegal    | <input type="checkbox"/> female paralegal    |
| <input type="checkbox"/> male clerk        | <input type="checkbox"/> female clerk        |
| <input type="checkbox"/> other _____       |                                              |

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**III. General Background.** *Please answer the following questions which deal with demographics. In order to determine what factors, if any, might affect people's experiences with gender issues in the justice system and the legal community, we are asking for more detailed information than most surveys do. Although responses are optional, having this information will make the survey more meaningful.*

A. Sex:

- ☐ Male  
☐ Female

B. Year of Birth:

C. Ethnicity/Race:

- ☐ African-American  
☐ Asian  
☐ Hispanic  
☐ Native American  
☐ Pacific Islander  
☐ White (non-Hispanic)  
☐ Other \_\_\_\_\_

D. Sexual Orientation:

- ☐ Straight/heterosexual  
☐ Bisexual  
☐ Gay/Lesbian  
☐ Other \_\_\_\_\_

E. Current Marital Status (check **ALL** that apply):

- ☐ Single, never married  
☐ Divorced  
☐ Married/living as married  
☐ Widowed  
☐ Separated  
☐ Other \_\_\_\_\_

F. 1. Do you have children?

- ☐ Yes  
☐ No

F. 2. If yes, how many children are living at home? (Write in number.)

G. 1. Do you have disabilities?

- ☐ Always  
☐ Often  
☐ Sometimes  
☐ Never

G. 2. If you checked "always," "often," or "sometimes," check all that apply:

- ☐ Physical disability  
☐ Mental disability

**G. 3.** Is the disability visible or noticeable?

☐ Yes

☐ No

**H.** Do you ☐ own or ☐ rent your home? (Check one.)

**I.** Level of education (check highest level completed):

☐ some high school (no diploma or GED)

☐ GED or high school diploma

☐ some college

☐ college degree

☐ some post-graduate work

☐ post-graduate degree

**J.** Date of highest degree.

**K.** What language do you use most at home?

☐ English

☐ Spanish

☐ Russian

☐ Korean

☐ Vietnamese

☐ American Sign Language

☐ Other \_\_\_\_\_

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**Other Comments** (*Attach additional sheets, if necessary.*)

***Thank You***

**Please return to:**

**Jessica Mindlin, Gender Fairness Task Force, 1163 State Street, Salem, OR 97310**



Do not mark outside this line  
GENDER FAIRNESS TASK FORCE  
Law Student Survey

The Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness is conducting this survey to assess the effects, if any, of gender on students' experiences in law school. The information gathered from this survey will be part of the Task Force's report. Your answers and comments are strictly anonymous and voluntary. There is no way to identify who completed a particular questionnaire. All results will be reported in aggregate form only.

The objective questions are to be answered by using a #2 pencil to fill in the appropriate answer or answers to each question. Please fill in the appropriate bubble COMPLETELY. Please do NOT use ink. In addition to this survey, you have been provided with a separate page on which we encourage you to give us any narrative comments you may have. You may hand the narrative page in with the survey, or hand it in at the place designated by your law school by the designated date.

Many law students enter law school with a set of expectations about legal education. The next few questions concern your expectations.

1. Which one of the reasons set out below was the most important factor in your decision to go to law school? (Mark only one box.)
- |                                   |
|-----------------------------------|
| (1) Best career option            |
| (2) Family pressure/expectations  |
| (3) Desire to earn a lot of money |
| (4) Interest in helping others    |
| (5) Prestige/power                |
| (6) Other _____                   |

How well has your law school experience matched your original expectations about law school?

COURSEWORK

- |                                     |                        |                       |                        |
|-------------------------------------|------------------------|-----------------------|------------------------|
| 2. Level of difficulty              | (1) Less difficult     | (2) About as expected | (3) More difficult     |
| 3. Amount of study time required    | (1) Less time          | (2) About as expected | (3) More time          |
| 4. Teaching style or method         | (1) Less intimidating  | (2) About as expected | (3) More intimidating  |
| 5. Relates to issues you care about | (1) Less than expected | (2) About as expected | (3) More than expected |

THE SCHOOL

- |                                             |                     |                       |                     |
|---------------------------------------------|---------------------|-----------------------|---------------------|
| 6. Accessibility of faculty                 | (1) Less accessible | (2) About as expected | (3) More accessible |
| 7. Supportiveness of the faculty            | (1) Less supportive | (2) About as expected | (3) More supportive |
| 8. Supportiveness of the law administration | (1) Less supportive | (2) About as expected | (3) More supportive |
| 9. Supportiveness of the other students     | (1) Less supportive | (2) About as expected | (3) More supportive |

Many law students enter law school with expectations of what areas of law practice would be desirable. How do the expectations you had prior to entering law school concerning certain areas of law practice compare with your current views?

- |                                                                                                                                      |                        |                   |                                   |                  |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------|-----------------------------------|------------------|
| 10. Small Law Firm                                                                                                                   | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 11. Mid-Sized Law Firm                                                                                                               | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 12. Large Law Firm                                                                                                                   | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 13. Government Agency or Legislature                                                                                                 | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 14. Public Interest                                                                                                                  | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 15. Prosecutor's or Public Defender's Office                                                                                         | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 16. Private Business                                                                                                                 | (1) More desirable now | (2) No difference | (3) Less desirable now            | (4) Don't know   |
| 17. Do you plan to do law-related work for pay within the first year after graduation?                                               |                        |                   |                                   |                  |
| If "yes" skip to question 19.                                                                                                        | (1) Yes                | (2) No            |                                   |                  |
| 18. Instead of law-related work for pay within the first year after graduation, what do you plan to do? Skip questions 19 and 20.    |                        |                   | (1) Unpaid law-related work       |                  |
|                                                                                                                                      |                        |                   | (2) Nonlaw work for pay           |                  |
|                                                                                                                                      |                        |                   | (3) Unpaid nonlaw work            |                  |
|                                                                                                                                      |                        |                   | (4) Continue in school            |                  |
|                                                                                                                                      |                        |                   | (5) Full-time stay-at-home parent |                  |
|                                                                                                                                      |                        |                   | (6) Other _____                   |                  |
| 19. If you answered "yes" to question 17, how many hours of law-related work for pay WOULD YOU PREFER to do weekly after graduation? | (1) 20 or less         | (2) 21-40         | (3) 41-60                         | (4) More than 60 |
| 20. If you answered "yes" to question 17, how many hours of law-related work for pay DO YOU EXPECT to do weekly after graduation?    | (1) 20 or less         | (2) 21-40         | (3) 41-60                         | (4) More than 60 |

PAGE 1

PLEASE CONTINUE ON THE BACK OF THIS PAGE

Law students have heavy workloads. The next few questions concern time allocation and certain law school activities and measures of achievement.

At present, approximately how many hours do/did you spend during a TYPICAL WEEK, including weekends, on each of the following activities?

- |                                                             |          |         |          |           |         |
|-------------------------------------------------------------|----------|---------|----------|-----------|---------|
| 21. Attending class                                         | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 22. Studying                                                | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 23. Law-related extra curricular activities                 | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 24. Working at a job for pay                                | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 25. Doing community or religious service or unpaid law work | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 26. Taking care of personal and family responsibilities     | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |
| 27. Relaxation and recreation                               | (1) None | (2) 1-5 | (3) 6-12 | (4) 13-20 | (5) 21+ |

If you are a first year student, skip to question 33.

28. Are you on law review? If you answered "yes" or "no, I wasn't selected" skip to question 30.

- (1) Yes (2) No, I wasn't selected (3) No, I didn't apply/try out

29. If you answered "I didn't apply/try out" to question 28, what was your most compelling reason?

- (Mark only one box.)
- (1) Too competitive
  - (2) Too time-consuming
  - (3) Not relevant to my career goals
  - (4) Too much work for educational value
  - (5) Other \_\_\_\_\_

30. Are you on a moot court? If you answer "yes" or "no, I wasn't selected", skip to question 32.

- (1) Yes (2) No, I wasn't selected (3) No, I didn't apply/try out

31. If you answered "No, I didn't apply/try out" to question 30, what was your most compelling reason? (Mark only one box.)

- (1) Too competitive
- (2) Too time-consuming
- (3) Not relevant to my career goals
- (4) Too much work for educational value
- (5) Other \_\_\_\_\_

32. The academic ability of my classmates is

- (1) Lower than expected (2) About as expected (3) Higher than expected

33. My own academic performance is

- (1) Lower than expected (2) About as expected (3) Higher than expected

34. Are you satisfied with your academic performance? (1) Yes (2) No

The next few questions focus on teaching methods and perceptions of classroom behavior by students and professors.

What is your opinion of the following teaching styles?

35. Pure Socratic method (professor asks questions of students and does little or no lecturing)

- (1) Dislike (2) Neutral (3) Like

36. Mixed Socratic method and lecture

- (1) Dislike (2) Neutral (3) Like

37. Lecture interspersed with questions

- (1) Dislike (2) Neutral (3) Like

38. Straight lecture

- (1) Dislike (2) Neutral (3) Like

39. Which teaching style do you most prefer?

- (1) Pure Socratic method
- (2) Mixed Socratic and lecture
- (3) Lecture interspersed with questions
- (4) Straight lecture

40. How often do you ask questions in class?

- (1) Never (2) Rarely (3) Sometimes (4) Frequently

41. How often do you volunteer answers in class?

- (1) Never (2) Rarely (3) Sometimes (4) Frequently

42. How comfortable are you with your level of voluntary participation in class?

- (1) Very uncomfortable
- (2) Somewhat uncomfortable
- (3) Comfortable
- (4) Very Comfortable

43. In your experience, do law students of one gender ask more questions than law students of the other gender? If you answer "n", skip to question 45. (1) Yes (2) No
44. If you answered "yes" to question 43, which gender asks more questions? (1) Male (2) Female
45. In your experience do law students of one gender volunteer more answers than law students of the other gender? If you answer "no" skip to question 47. (1) Yes (2) No
46. If you answered "yes" to question 45, which gender volunteers more answers? (1) Male (2) Female
47. In your experience how do female law students react to in-class comments by other law students?  
 (1) More tolerant of female students' comments  
 (2) Equally tolerant of female and male students' comments  
 (3) More tolerant of male students' comments
48. In your experience how do male law students react to in-class comments by other law students?  
 (1) More tolerant of female students' comments  
 (2) Equally tolerant of female and male students' comments  
 (3) More tolerant of male students' comments
49. In your experience are law students of one gender called on more frequently than law students of the other gender? If you answer "no" skip to question 51. (1) Yes (2) No
50. If you answered "yes" to question 49, which gender is called on more frequently? (1) Male (2) Female
51. In your experience do female law professors give one gender preferential treatment in class? If you answer "no" skip to question 53. (1) Yes (2) No
52. If you answered "yes" to question 51, to students of which gender do female law professors give preferential treatment? (1) Male (2) Female
53. In your experience do male law professors give one gender more preferential treatment in class? If you answer "no" skip to question 55. (1) Yes (2) No
54. If you answered "yes" to question 53, to students of which gender do male law professors give preferential treatment? (1) Male (2) Female
55. In your experience does the gender of the law professor make a difference to overall participation by members of the class? If you answer "no" skip to question 57. (1) Yes (2) No
56. If you answered "yes" to question 55, which gender encourages greater overall participation by members of the class? (1) Male (2) Female

The next few questions concern any bias or adverse treatment you may have experienced as a law student.

57. As a law student, have you experienced any bias or adverse treatment because of your gender? If you answer "no" skip to question 59. (1) Yes (2) No
58. If you answered "yes" to question 57, from which of the following was the bias or adverse treatment experienced? (Mark all that apply.)  
 (1) From other law students  
 (2) From law instructors  
 (3) From law school administrators  
 (4) During job recruitment  
 (5) In class materials or curriculum  
 (6) Other \_\_\_\_\_
59. As a law student, have you experienced sexual harassment? If you answer "no" skip to question 61. (1) Yes (2) No
60. If you answered "yes" to question 59, from which of the following was the sexual harassment experienced? (Mark all that apply.)  
 (1) From other law students  
 (2) From law instructors  
 (3) From law school administrators  
 (4) During job recruitment  
 (5) Other \_\_\_\_\_
61. As a law student, have you experienced any bias or adverse treatment because of your race or ethnicity? If you answer "no" skip to question 63. (1) Yes (2) No
62. If you answered "yes" to question 61, from which of the following was the bias or adverse treatment experienced? (Mark all that apply.)  
 (1) From other law students  
 (2) From law instructors  
 (3) From law school administrators  
 (4) During job recruitment  
 (5) In class materials or curriculum  
 (6) Other \_\_\_\_\_
63. As a law student, have you experienced any bias or adverse treatment due to your age? If you answered "no" skip to question 65. (1) Yes (2) No

64. If you answered "yes" to question 63, from which of the following was the bias or adverse treatment experienced? (Mark all that apply.)
- (1) From other law students
  - (2) From law instructors
  - (3) From law school administrators
  - (4) During job recruitment
  - (5) In class material or curriculum
  - (6) Other \_\_\_\_\_

65. As a law student, have you experienced any bias or adverse treatment because of your disability?  
If you answer "no" skip to question 67. (1) Yes (2) No

66. If you answered "yes" to question 65, from which of the following was the bias or adverse treatment experienced? (Mark all that apply.)
- (1) From other law students
  - (2) From law instructors
  - (3) From law school administrators
  - (4) During job recruitment
  - (5) In class material or curriculum
  - (6) Other \_\_\_\_\_

67. As a law student, have you experienced any bias or adverse treatment because of your sexual orientation?  
If you answered "no" skip to question 69. (1) Yes (2) No

68. If you answered "yes" to question 67, from which of the following was the bias or adverse treatment experienced? (Mark all that apply.)
- (1) From other law students
  - (2) From law instructors
  - (3) From law school administrators
  - (4) During job recruitment
  - (5) In class material or curriculum
  - (6) Other \_\_\_\_\_

How would you rate yourself on each of the following traits. (Mark one box for each item.)

- |                             |                   |             |                   |
|-----------------------------|-------------------|-------------|-------------------|
| 69. Cooperativeness         | (1) Above average | (2) Average | (3) Below Average |
| 70. Academic ability        | (1) Above average | (2) Average | (3) Below Average |
| 71. Competitiveness         | (1) Above average | (2) Average | (3) Below Average |
| 72. Public speaking ability | (1) Above average | (2) Average | (3) Below Average |
| 73. Self-confidence         | (1) Above average | (2) Average | (3) Below Average |

74. Compared to the quality of your life before coming to law school, are you more or less satisfied with the quality of your life as a law student?
- (1) More satisfied (2) Unchanged (3) Less satisfied

75. How do you think non-lawyers perceive most members of the legal profession?
- (1) Very trustworthy
  - (2) Trustworthy
  - (3) Untrustworthy
  - (4) Very untrustworthy
  - (5) Don't know

76. How do you perceive most members of the legal profession?
- (1) Very trustworthy (2) Trustworthy (3) Untrustworthy (4) Very Untrustworthy

77. How has your perception of the legal profession changed since coming to law school?
- (1) Much more positive
  - (2) More positive
  - (3) Unchanged
  - (4) Less positive
  - (5) Much less positive

78. How satisfied are you with your law school experience as preparing you for law practice?
- (1) Very satisfied (2) Satisfied (3) Unsatisfied (4) Very unsatisfied

Your answers to the following demographic questions will greatly assist in the analysis of our survey.

79. What year of law school are you in? (1) 1st (2) 2d (3) 3d (4) 4th
80. What kind of law school program are you in? (1) Full-time (2) Part-time (3) Other
81. How old are you? (1) 20-25 (2) 26-30 (3) 31-40 (4) 41 or more
82. What is your gender? (1) Female (2) Male
83. What is your racial or ethnic identity?
- (1) American Indian/Alaskan native
  - (2) Asian/Pacific Islander
  - (3) Black/African American
  - (4) Hispanic/Latino/Chicano
  - (5) White/Caucasian
  - (6) Other \_\_\_\_\_
  - (7) Mixed Race or Ethnicity
84. What is your current relationship status? (1) Single (2) Married/partnered

Do not mark outside this line

85. How many minor children (under 18) do you have living with you full or part time? Please include natural-born children, adopted children, and stepchildren who live with you. If your answer is "0" skip to question 87. (1) 0 (2) 1 (3) 2 (4) 3 (5) 4 or more
86. Would you characterize yourself as the primary caretaker of your children?  
(1) Yes (2) No (3) Uncertain
87. Concerning ADULTS you reside with, what is your current living arrangement?  
(1) By yourself  
(2) With nonrelated peers/roommates  
(3) With a spouse/partner who is not employed full time  
(4) With a spouse/partner who is employed full time  
(5) With parents or other relatives
88. What is your sexual identity? (1) Heterosexual (2) Gay/lesbian (3) Bisexual (4) Other
89. Do you have a disability and/or do others regard you as having a disability? If your answer is "no" skip to question 92. (1) Yes (2) No
90. If you answered "yes" to question 89, is your disability or the disability others regard you as having visible? (1) Yes (2) No
91. If you answered "yes" to question 89, which type of disability do you have or are you regarded as having? (Mark all that apply.)  
(1) Mobility  
(2) Visual  
(3) Hearing  
(4) Learning  
(5) Mental/psychological  
(6) Other \_\_\_\_\_
92. What is your current class rank?  
(1) Top 10% (2) Top 25% (3) Top 50% (4) Top 75% (5) Other (6) Unknown
93. As of January 1, 1997, how much did you owe for educational expenses? Give the total amount of all those loans that you are LEGALLY obligated to pay back and as of January 1 had not paid back. Include loans from educational institutions, banks, credit unions, loan companies, loan programs, family, friends, and other sources. PLEASE GIVE YOUR BEST ESTIMATE.  
(1) \$-\$5,000  
(2) \$5,001-\$30,000  
(3) \$30,001-\$50,000  
(4) \$50,001-\$75,000  
(5) \$75,001-\$100,000  
(6) Over \$100,000
94. How much do you expect to owe for educational expenses upon law school graduation? PLEASE GIVE YOUR BEST ESTIMATE.  
(1) \$-\$5,000  
(2) \$5,001-\$30,000  
(3) \$30,001-\$50,000  
(4) \$50,001-\$75,000  
(5) \$75,001-\$100,000  
(6) Over \$100,000

THIS IS THE END OF THE QUESTIONNAIRE!!!  
THANK YOU FOR TAKING THE TIME TO FILL IT OUT.

## **GENDER FAIRNESS TASK FORCE**

### **Law Faculty Survey**

The Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness is conducting this survey to assess the effects, if any, of gender on the experiences of the faculty at the three law schools in Oregon. Your answers and comments are strictly anonymous and voluntary. There is no way to identify who completed a particular survey. All results will be reported in aggregate form (University of Oregon, Willamette, and Lewis and Clark combined) as part of the Task Force report. It is estimated that this survey will take approximately 20 minutes to complete.

**Please return this survey in the envelope provided no later than May 21, 1997.**

In addition to the objective questions, there are several questions where space is provided for narrative comments. Please answer the questions based upon your experience teaching at this law school.

### **SECTION I: CLASSROOM ENVIRONMENT**

**These questions focus on teaching methods, perceptions of classroom behavior, and relationships with students.**

1. What is your teaching style in large (50+ students) classes?  
(Please check all that apply)
  - (1) Pure Socratic method (professor asks questions of students and does little or no lecturing)
  - (2) Mixed Socratic method and lecture
  - (3) Predominantly lecture interspersed with questions
  - (4) Straight lecture
  - (5) The problem approach
  - (6) Simulation or "hands on" approach
  - (7) Other \_\_\_\_\_
2. Is the nature or content of classroom interactions between you and the students affected by the gender of the student?
  - (1) Yes
  - (2) NoPlease Explain:

3. In your experience, do students of one gender ask more questions than students of the other gender in proportion to their numbers in the classroom?
  - (1) Male students ask more questions
  - (2) Female students ask more questions
  - (3) Neither group asks more questions
4. In your experience, do students of one gender volunteer more answers than students of the other gender in proportion to their numbers in the classroom?
  - (1) Male students volunteer more answers
  - (2) Female students volunteer more answers
  - (3) Neither group volunteers more answers
5. In your experience, are students more accepting of in-class comments made by students of one gender than in-class comments made by students of the other gender?
  - (1) Students are more accepting of comments made by males
  - (2) Students are more accepting of comments made by females
  - (3) Students are not more accepting of either group
6. In your experience, do students of one gender take more class time than students of the other gender asking questions or volunteering answers in proportion to their numbers in the classroom?
  - (1) Male students take more class time
  - (2) Female students take more class time
  - (3) Neither group takes more class time
7. Do students of one gender respond more quickly to your questions than students of the other gender?
  - (1) Male students respond more quickly
  - (2) Female students respond more quickly
  - (3) Neither group responds more quickly
8. Do you think your gender affects overall class participation by students of your same gender?
  - (1) My gender encourages greater participation by same-gender students
  - (2) My gender discourages participation by same-gender students
  - (3) My gender doesn't affect participation by same-gender students
9. Do you feel that students of either gender treat you with less respect?
  - (1) Students of my same gender treat me with less respect
  - (2) Students of the opposite gender treat me with less respect
  - (3) All students treat me the same

10. How important is the use of gender-neutral language to you?
  - (1) Important
  - (2) Somewhat important
  - (3) Unimportant
11. Do you habitually use gender-neutral language in the law school setting?
  - (1) Yes
  - (2) No
12. Does your use of language (regarding gender) change when you are outside the law school setting?
  - (1) Yes
  - (2) No
13. Do you use a textbook that has gender-neutral language?
  - (1) Yes
  - (2) No
  - (3) Not sure
14. Are your contacts with students outside of class more frequent with students of one gender in proportion to their numbers in the law school?
  - (1) I spend more time with male students outside of class
  - (2) I spend more time with female students outside of class
  - (3) I spend equal amounts of time with both groups
15. In your interactions with students outside of class, are you more comfortable with students of one gender?
  - (1) I am more comfortable with male students
  - (2) I am more comfortable with female students
  - (3) I am equally comfortable with both groups
16. If you hire research assistants, have you hired more students of one gender in the past five years?
  - (1) I have hired more male research assistants
  - (2) I have hired more female research assistants
  - (3) I have hired more or less equal numbers of males and female
  - (4) I have not hired any research assistants
17. Do you believe you can sometimes determine the gender of students based on their handwriting on exams?
  - (1) Yes
  - (2) No (if no, skip to question #19)



18. If you answered yes to #17, do you think this influences your grading?  
(1) Yes  
(2) No  
Please explain.
19. How many male students have you mentored (both informally and formally) at your law school in a typical academic year? \_\_\_\_\_
20. How many female students have you mentored (both informally and formally) at your law school in a typical academic year? \_\_\_\_\_
21. Do you feel that mentoring takes up too much of your time?  
(1) Yes  
(2) No  
Please explain:
22. Please rate the following factors in order of their importance to you in being an effective teacher. (Use a scale of 1-5, with 1 being the most important.)  
\_\_\_ Instructor's knowledge of the subject matter  
\_\_\_ Instructor's ability to convey information clearly  
\_\_\_ Instructor's ability to stimulate the student's interest  
\_\_\_ Instructor's communication of values (ethics, diversity issues, etc.)  
\_\_\_ Instructor's availability for one-on-one communications with students outside the classroom  
\_\_\_ Other (please specify) \_\_\_\_\_

## **SECTION II: JOB SATISFACTION**

**Law professors work many hours a week during the academic year. The next questions concern time allocations to various personal and professional activities and job satisfaction issues.**

1. At present, approximately how many hours do you spend during a TYPICAL WEEK (including weekends) during the academic year on each of the following activities?

Teaching and teaching preparation  
 Research  
 Service to the school and university  
 Mentoring students  
 Service to the profession  
 Service to the community (including local, state, national, international)  
 Outside consulting  
 Child (or family) care responsibilities  
 Household activities other than child care  
 Sleep  
 Leisure

2. How satisfied are you with the balance between your professional and personal life?

(1) Very satisfied  
(2) Somewhat satisfied  
(3) Not satisfied

3. Rate the importance of the following factors in your decision to teach law. (Use a scale of 1-8, with 1 being the most important.)

Autonomy  
 Benefits (sabbatical, medical, retirement, etc.)  
 Like teaching students  
 Like research  
 Like flexible hours  
 Time to reflect on bigger issues  
 Not client driven  
 Like to help affect change in the law  
 Other (Please specify)

4. Compared to the quality of your life before becoming a faculty member of your school, are you more or less satisfied with the quality of your life?
  - (1) More satisfied
  - (2) Unchanged
  - (3) Less satisfied
5. How much personal affinity do you feel for the content and subject matter of what you teach?
  - (1) Strong affinity
  - (2) Some affinity
  - (3) Little affinity
6. How do you perceive most members of the legal profession (including attorneys, public officials, etc.) ?
  - (1) As very trustworthy
  - (2) As trustworthy
  - (3) As untrustworthy
  - (4) As very untrustworthy
7. How do you feel the general public perceives the legal profession?
  - (1) As very trustworthy
  - (2) As trustworthy
  - (3) As untrustworthy
  - (4) As very untrustworthy

### **SECTION III: PROFESSIONAL RELATIONSHIPS**

**The next questions concern your relationships with colleagues, administrators, and staff.**

1. How often do you interact socially with other law professors?
  - (1) Frequently
  - (2) Some
  - (3) Very little
2. How satisfied are you with the quality of that social interaction?
  - (1) Very satisfied
  - (2) Satisfied
  - (3) Not satisfied
3. Do you spend more time with colleagues of one gender?
  - (1) I spend more time with my male colleagues
  - (2) I spend more time with my female colleagues
  - (3) I spend roughly equal amounts of time with both groups
  - (4) I spend little time with my colleagues

4. Does the gender of your friends within the law school differ from the gender of your friends outside of law school?
  - (1) No difference between the two
  - (2) More of my friends outside the law school are male
  - (3) More of my friends outside the law school are female
  - (4) I do not maintain friendships within the law school
5. How competitive are the professors at your law school?
  - (1) Very competitive
  - (2) Somewhat competitive
  - (3) Not competitive
6. Are colleagues of one gender more competitive than colleagues of the other gender?
  - (1) My male colleagues are more competitive
  - (2) My female colleagues are more competitive
  - (3) Neither group is more competitive
7. How sensitive to gender issues are most of your colleagues?
  - (1) Very sensitive
  - (2) Somewhat sensitive
  - (3) Not sensitive
8. How hard do you think that the administration of your school has worked to develop an atmosphere of gender equality?
  - (1) Very hard
  - (2) Somewhat hard
  - (3) Not very hard
  - (4) Not hard at all
9. Does the administration of your law school support efforts to foster or maintain a gender-fair environment (both in the classroom and outside the classroom)?
  - (1) Yes
  - (2) NoPlease explain.
10. Do your colleagues treat classified staff at your law school with respect?
  - (1) Yes
  - (2) NoPlease explain:

11. Does the gender of classified staff members affects their treatment?  
(1) Yes  
(2) No  
Please explain:

12. How often do you interact socially with classified staff?  
(1) Frequently  
(2) Some  
(3) Very little

13. How satisfied are you with this level of social interaction?  
(1) Very satisfied  
(2) Satisfied  
(3) Not satisfied

#### **SECTION IV: FAIRNESS ISSUES**

**The next questions concern any bias or adverse treatment you may have experienced as a faculty member.**

1. Have administrators at your law school, in any context, treated you inappropriately based on your gender?  
(1) Yes  
(2) No  
Please Explain:
2. Have your colleagues, in any context, treated you inappropriately based on your gender?  
(1) Yes  
(2) No  
Please Explain:
3. Have students, in any context, treated you inappropriately based on your gender?  
(1) Yes  
(2) No  
Please explain:

4. As a faculty member, have you experienced any bias or adverse treatment because of your race or ethnicity? If you answer "no" skip to question #6.  
(1) Yes  
(2) No
5. If you answered yes to question #4, from which of the following was the bias or adverse treatment experienced, and what was the nature of the bias or adverse treatment? *(Mark as many as applicable.)*  
(1) From administrators  
(2) From colleagues  
(3) From law students  
(4) Other (please specify) \_\_\_\_\_  
Please describe the nature of the experience:
6. As a faculty member, have you experienced any bias or adverse treatment because of your disability? If you answer "no" skip to question 8.  
(1) Yes  
(2) No
7. If you answered yes to question #6, from which of the following was the bias or adverse treatment experienced, and what was the nature of the bias or adverse treatment? *(Mark as many as are applicable.)*  
(1) From administrators  
(2) From colleagues  
(3) From law students  
(4) Other (please specify) \_\_\_\_\_  
Please describe the nature of the experience:
8. As a faculty member, have you experienced any bias or adverse treatment because of your sexual orientation? If you answer "no" skip to question #10.  
(1) Yes  
(2) No

9. If you answered yes to question #8, from which of the following was the bias or adverse treatment experienced, and what was the nature of the bias or adverse treatment? *(Mark as many as applicable.)*
- (1) From administrators
  - (2) From colleagues
  - (3) From law students
  - (4) Other (please specify) \_\_\_\_\_
- Please describe the nature of the experience:
10. Are the needs of faculty with families adequately addressed by your law school (and the parent institution)? (Parental leave policies, flexible work schedules, etc.)
- (1) Yes
  - (2) No
- Please explain:
11. If you have a family, do you downplay your family responsibilities to administrators, colleagues, or students?
- (1) Yes
  - (2) No
- Please explain:
12. Do you have more non-teaching commitments than your colleagues of the opposite gender (committee work, mentoring, family responsibility, etc.)?
- (1) Yes
  - (2) No
13. Has family planning (pregnancy planning, parental responsibilities) ever been a significant issue in your career as a professor at this school ?
- (1) Yes
  - (2) No
- Please explain:

14. Is the participation on law school committees proportionately greater for one gender than that which represents their numbers on the faculty?
- (1) Male faculty members participate more
  - (2) Female faculty members participate more
  - (3) Neither group participates more
  - (4) Don't know
15. At your law school, do faculty members of one gender tend to hold leadership positions on these committees in proportionately greater numbers than that which represents their numbers on the faculty?
- (1) Male faculty hold more leadership positions
  - (2) Female faculty hold more leadership positions
  - (3) Neither group holds more leadership positions
  - (4) Don't know
16. Are there certain committees that are more appealing to professors of one gender?
- (1) Yes
  - (2) No
- Please explain:
17. Is it more difficult for men or women to gain tenure at your school?
- (1) More difficult for men
  - (2) More difficult for women
  - (3) Equally difficult
- Please explain.
18. If you are not tenured (or when you were untenured), do (did) you believe you must "tone down" your opinions/beliefs in order to gain tenure?
- (1) Yes
  - (2) No
- Please explain.
19. If you are not tenured (or when you were untenured), do (did) you participate in discussion of controversial matters at faculty meetings?
- (1) Yes
  - (2) No



20. If you are tenured, have the topics of your scholarship changed much since you gained tenure?  
(1) Changed  
(2) Changed somewhat  
(3) Not at all  
Please explain:
21. Do you believe the topics of your scholarship are marginalized or devalued? If you answer yes, please explain.  
(1) Yes  
(2) No  
Explanation:
22. Do you believe that you receive (have received) a lower salary than other faculty members because of your gender?  
(1) Yes  
(2) No
23. Are you satisfied with your salary?  
(1) Very satisfied  
(2) Satisfied  
(3) Not satisfied
24. Do you feel you have lost opportunities for advancement or positions of responsibility because of your gender?  
(1) Yes, more than once  
(2) Yes, once  
(3) No
25. Have you ever informally discussed gender issues (equitable pay, sexual harassment, pregnancy , other) with administrators in the law school or parent institution?  
(1) Yes  
(2) No  
Please explain:

26. Have you ever filed a grievance due to an issue based on your gender (equitable pay, sexual harassment, pregnancy, other)?

(1) Yes

(2) No

Please Explain:

27. Have you ever helped a student (counseled, aided in other ways) deal with a gender discrimination issue that occurred at your school?

(1) Yes

(2) No

28. Does your law school (and the parent institution) adequately address the needs of students with families? (Flexible exam schedules, part-time status, etc.)

(1) Yes

(2) No

Please explain:

29. When interviewing for your faculty position by your current law school employer, did the interviewers inquire into, discuss or take into account your personal relationships, family obligations or other personal commitments, or sexual orientation? Please explain.

(a) Personal relationships:

(1) Very often

(2) Sometimes

(3) Rarely or never

Please explain:

(b) Family obligations:

(1) Very often

(2) Sometimes

(3) Rarely or never

Please explain:

(c) Other personal commitments:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

(d) Sexual orientation:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

30. **In considering candidates for faculty positions in the law school, have you or other interviewers inquired into or discussed applicants' personal relationships, family obligations or other personal commitments, or sexual orientation?**

(a) Personal relationships:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

(b) Family obligations:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

(c) Other personal commitments:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

(d) Sexual orientation:

- (1) Very often
- (2) Sometimes
- (3) Rarely or never

Please explain:

## **SECTION V: DEMOGRAPHICS**

**Your answers to the following demographic questions will greatly assist in the analysis of your previous answers to the substantive questions.**

1. How old are you?
  - (1) 20–30
  - (2) 31–40
  - (3) 41–50
  - (4) 51–60
  - (5) Over 60
2. What is your gender?
  - (1) Female
  - (2) Male
3. What is your racial or ethnic identity?
  - (1) American Indian/Alaskan native
  - (2) Asian/Pacific Islander
  - (3) Black/African American
  - (4) Hispanic/Latino/Chicano
  - (5) White/Caucasian
  - (6) Mixed Race or Ethnicity
  - (7) Other(please specify) \_\_\_\_\_
4. What is your current relational status?
  - (1) Single (including separated, divorced and widowed)
  - (2) Married/partnered
5. What is your sexual orientation?
  - (1) Heterosexual
  - (2) Gay/Lesbian
  - (3) Bisexual
  - (4) Other \_\_\_\_\_

6. Do you have a disability, or do others regard you as having, a disability? If your answer is "no," skip to question 8.  
(1) Yes  
(2) No
7. If you answered "yes" to question #6, is your disability or the disability others regard you to have visible?  
(1) Yes  
(2) No
8. How many dependents (minor children or elderly parents) do you have? Please include natural-born children, adopted children, and stepchildren who live with you full- or part-time. If your answer is "0," skip to question #10.  
(1) 0  
(2) 1  
(3) 2  
(4) 3  
(5) 4 or more
9. Who takes care of the day-to-day needs of your dependents?  
(1) I, primarily  
(2) Primarily spouse/partner  
(3) Share responsibility equally with spouse/partner  
(4) Paid care  
(5) Other (please specify) \_\_\_\_\_
10. What is your current living arrangement?  
(1) By yourself  
(2) With unrelated peers/roommates  
(3) With a spouse/partner who is not employed full-time  
(4) With a spouse/partner who is employed full-time  
(5) With parents or other relatives
11. What year did you graduate from law school?  
(1) 1940–1950           (5) 1971–1975  
(2) 1951–1960           (6) 1976–1980  
(3) 1961–1965           (7) 1981–1985  
(4) 1965–1970           (8) 1986–1990  
                                  (9) 1990–1996
12. Are you tenure-track?  
(1) Yes  
(2) No

13. Are you tenured?  
(1) Yes  
(2) No
14. If yes to question 13, what is your rank?  
(1) Assistant professor  
(2) Associate professor  
(3) Full professor  
(4) Other (please specify):
15. If tenured, how long (include tenure at other schools)?  
(1) Less than 5 years      (5) 21–25 years  
(2) 5–10 years      (6) 26–30 years  
(3) 11–15 years      (7) 31–35 years  
(4) 16–20 years      (8) More than 35 years
16. During the academic year, what are your primary duties (more than half of your time)?  
(1) Clinical  
(2) Administration  
(3) Research and writing  
(4) Classroom  
(5) Other (please specify): \_\_\_\_\_
17. What will be your annual salary (gross amount) based on 1997-98 academic year pay levels?  
(1) Under \$30,000      (5) \$60,001-70,000  
(2) \$30,000–40,000      (6) \$70,001-80,000  
(3) \$40,001–50,000      (7) \$80,001-90,000  
(4) \$50,001-60,000      (8) \$90,001 or more
18. If you occupy an endowed chair, how much extra compensation do you receive annually?  
(1) \$0–5,000      (5) \$20,001–25,000  
(2) \$5,000–10,000      (6) \$25,001–30,000  
(3) \$10,001–15,000      (7) \$30,001-35,000  
(4) \$15,001–20,000      (8) \$35,001 or more

**PLEASE USE THIS SPACE OR ADDITIONAL PAGES TO PROVIDE ANY OTHER INFORMATION THAT YOU BELIEVE IS IMPORTANT. IF YOU WANT TO EXPAND ON YOUR ANSWERS TO ANY OF THE PREVIOUS QUESTIONS, PLEASE IDENTIFY THE NUMBER OF THE QUESTION YOU ARE DISCUSSING. WE STRONGLY ENCOURAGE YOU TO PROVIDE SOME NARRATIVE COMMENTS. THANK YOU FOR YOUR PARTICIPATION.**

**PLEASE RETURN THIS SURVEY IN THE ENVELOPE PROVIDED.**

## Classified Staff Questionnaire on Gender Fairness in the Legal Education System

Circle the number of the response that best represents your answer. After voluntarily completing this survey, return it in the postage paid envelope provided and mail it by November 18. All responses will be kept strictly confidential.

### Work Environment

*These questions ask for your observations and perceptions of your work environment.*

1. Generally, I am satisfied with my job.  
1. Strongly Agree   2. Agree   3. Neutral   4. Disagree   5. Strongly Disagree
2. Generally, I am satisfied with my working relationships with co-workers.  
1. Strongly Agree   2. Agree   3. Neutral   4. Disagree   5. Strongly Disagree
3. Generally, I am satisfied with the way that I am treated by others, besides my co-workers.  
1. Strongly Agree   2. Agree   3. Neutral   4. Disagree   5. Strongly Disagree
4. Generally, I feel that my supervisor clearly communicates job expectations to me.  
1. Strongly Agree   2. Agree   3. Neutral   4. Disagree   5. Strongly Disagree
5. Do you feel that you are included by others in the decisions that directly affect you?  
1. Yes  
2. No
6. Who do you come in contact with on a regular basis at work? (*circle all that apply*)  
1. Alumni                      3. Classified Staff                      5. Students  
2. Administrators              4. Faculty                      6. Other, please specify \_\_\_\_\_
7. Do you feel there is a clearly defined hierarchy at work?  
1. Yes  
2. No (*go to question #10*)
8. Where do you place yourself in this hierarchy?  
1. Top  
2. Middle  
3. Bottom
9. Do you feel that your place in the hierarchy is affected by: (*circle all that apply*)  
1. Gender                      3. Age  
2. Job classification              4. Other, please specify \_\_\_\_\_
10. When conflicts occur at work, would you say that they are: (*circle all that apply*)  
1. Based on performance expectations                      3. Based on personality differences  
2. Caused by miscommunication                      4. Other, please specify \_\_\_\_\_  
\_\_\_\_\_
11. How often do these conflicts occur?  
1. Always   2. Frequently   3. Seldom   4. Never



12. Are these conflicts generally:
1. Between females
  2. Between males
  3. Between males and females
  4. All of the above
  5. Does not apply
13. What are the major causes of stress in your work? (*circle all that apply*)
1. Insufficient time to complete tasks
  2. Lack of directions for tasks
  3. Lack of resources for tasks
  4. Unreasonable expectations
  5. Inflexible hours
  6. Uncomfortable physical environment (such as furniture, poor lighting, lack of privacy)
  7. Other, please specify \_\_\_\_\_
14. Have you ever been criticized by others at work concerning matters that are not job related?
1. Yes
  2. No (*go to question #16*)
15. What are the sources of this criticism? (*circle all that apply*)
1. Age
  2. Gender
  3. Personal appearance
  4. Political views
  5. Religious beliefs
  6. Sexual orientation
  7. Smoking
  8. Other, please specify \_\_\_\_\_
16. Do you feel sexual harassment, in any form, is an issue at the law school?
1. Yes
  2. No
17. Have you experienced sexual harassment on the job?
1. Yes
  2. No (*go to question #21*)
18. Did you file a complaint?
1. Yes
  2. No (*go to question #21*)
19. Was appropriate disciplinary action taken?
1. Yes
  2. No
20. How satisfied were you with the way the situation was handled?
1. Very Satisfied
  2. Satisfied
  3. Neutral
  4. Dissatisfied
  5. Very Dissatisfied

### **Gender Relations in the Workplace**

*These questions ask for your observations and perceptions of interactions in your workplace.*

21. Are you expected to perform duties that you would consider gender based?
1. Yes, please specify \_\_\_\_\_
  2. No

22. Do you feel that your gender affects your ability to make positive changes at work?
1. Yes, please specify \_\_\_\_\_
  2. No
23. Have you ever felt that an administrator or faculty member, in any context, treated you inappropriately based on your gender?
1. Yes, please specify \_\_\_\_\_
  2. No
24. Have you ever felt that a law student, in any context, treated you inappropriately based on your gender?
1. Yes, please specify \_\_\_\_\_
  2. No

### Classified Staff/Faculty

*This section asks about interactions between Classified Staff and Faculty. Consider Administrators as Faculty when circling the ONE number that best represents your answer to each statement.*

Generally I feel that	Male Faculty	Female Faculty	Both	Neither	Not Applicable
25. I am treated with respect by	1	2	3	4	5
26. I am unappreciated by	1	2	3	4	5
27. I have unreasonable expectations placed on me by	1	2	3	4	5
28. I am given credit when I exceed expectations by	1	2	3	4	5
29. I do not communicate well with	1	2	3	4	5
30. I am treated as an equal by	1	2	3	4	5
31. I deserve more consideration from	1	2	3	4	5
32. I work best with	1	2	3	4	5
33. I am often given tasks that are the responsibility of	1	2	3	4	5

### Classified Staff/Students

*This section asks about interactions between Classified Staff and Students. Circle the ONE number that best represents your answer to each statement.*

Generally I feel that	Male Students	Female Students	Both	Neither	Not Applicable
34. I am treated with respect by	1	2	3	4	5
35. I am unappreciated by	1	2	3	4	5
36. I do not communicate well with	1	2	3	4	5
37. I am treated as an equal by	1	2	3	4	5
38. I deserve more consideration from	1	2	3	4	5
39. I work best with	1	2	3	4	5

## Faculty/Faculty

*This section asks about interactions between Faculty. Consider Administrators as Faculty when circling the ONE number that best represents your answer to each statement.*

	Male Faculty	Female Faculty	Both	Neither	Not Applicable
Generally I feel that <i>male faculty</i>					
40. have more respect for	1	2	3	4	5
41. are unappreciated by	1	2	3	4	5
42. do not communicate well with	1	2	3	4	5
43. are treated as equals by	1	2	3	4	5
44. are insensitive to the needs of	1	2	3	4	5
45. work better with	1	2	3	4	5

	Male Faculty	Female Faculty	Both	Neither	Not Applicable
Generally I feel that <i>female faculty</i>					
46. have more respect for	1	2	3	4	5
47. are unappreciated by	1	2	3	4	5
48. do not communicate well with	1	2	3	4	5
49. are treated as equals by	1	2	3	4	5
50. are insensitive to the needs of	1	2	3	4	5
51. work better with	1	2	3	4	5

## Student/Faculty

*This section asks about interactions between Students and Faculty. Consider Administrators as Faculty when circling the ONE number that best represents your answer to each statement.*

	Male Faculty	Female Faculty	Both	Neither	Not Applicable
Generally I feel that <i>male students</i>					
52. have more respect for	1	2	3	4	5
53. are unappreciated by	1	2	3	4	5
54. do not communicate well with	1	2	3	4	5
55. are insensitive to the needs of	1	2	3	4	5
56. work better with	1	2	3	4	5

	Male Faculty	Female Faculty	Both	Neither	Not Applicable
Generally I feel that <i>female students</i>					
57. have more respect for	1	2	3	4	5
58. are unappreciated by	1	2	3	4	5
59. do not communicate well with	1	2	3	4	5
60. are insensitive to the needs of	1	2	3	4	5
61. work better with	1	2	3	4	5

## Student/Student

*This section asks about interactions between Students. Circle the ONE number that best represents your answer to each statement.*

	Male Students	Female Students	Both	Neither	Not Applicable
Generally I feel that <i>male students</i>					
62. have more respect for	1	2	3	4	5
63. are unappreciated by	1	2	3	4	5
64. do not communicate well with	1	2	3	4	5
65. are treated as equals by	1	2	3	4	5
66. are insensitive to the needs of	1	2	3	4	5
67. work better with	1	2	3	4	5
68. are more competitive with	1	2	3	4	5

	Male Students	Female Students	Both	Neither	Not Applicable
Generally I feel that <i>female students</i>					
69. have more respect for	1	2	3	4	5
70. are unappreciated by	1	2	3	4	5
71. do not communicate well with	1	2	3	4	5
72. are treated as equals by	1	2	3	4	5
73. are insensitive to the needs of	1	2	3	4	5
74. work better with	1	2	3	4	5
75. are more competitive with	1	2	3	4	5

## Faculty/Student

*This section asks about interactions between Faculty and Students. Consider Administrators as Faculty when circling the ONE number that best represents your answer to each statement.*

	Male Students	Female Students	Both	Neither	Not Applicable
Generally I feel that <i>male faculty</i>					
76. have more respect for	1	2	3	4	5
77. do not communicate well with	1	2	3	4	5
78. are insensitive to the needs of	1	2	3	4	5
79. work better with	1	2	3	4	5
80. are more comfortable with	1	2	3	4	5

	Male Students	Female Students	Both	Neither	Not Applicable
Generally I feel that <i>female faculty</i>					
81. have more respect for	1	2	3	4	5
82. do not communicate well with	1	2	3	4	5
83. are insensitive to the needs of	1	2	3	4	5
84. work better with	1	2	3	4	5
85. are more comfortable with	1	2	3	4	5

## Demographics

*Now, we'd like to get a little background information about you.*

86. What is your sex?    1. Male    2. Female

87. How old are you? \_\_\_\_\_

88. What is your marital status?

- |                      |              |            |
|----------------------|--------------|------------|
| 1. Single            | 3. Separated | 5. Widowed |
| 2. Married/partnered | 4. Divorced  | 6. Other   |

89. How many children, under the age of 18, currently live with you? \_\_\_\_\_

90. What is your racial/ethnic identity?

- |                           |                                |
|---------------------------|--------------------------------|
| 1. African American       | 4. Chicano/Latino/Hispanic     |
| 2. Asian/Pacific Islander | 5. Native American             |
| 3. Caucasian              | 6. Other, please specify _____ |

91. What category best describes your level of education?

- |                                       |                         |
|---------------------------------------|-------------------------|
| 1. Some high school                   | 5. Associate's degree   |
| 2. High school diploma or equivalency | 6. Bachelor's degree    |
| 3. Trade or vocational school         | 7. Some graduate school |
| 4. Some college                       | 8. Graduate degree      |

92. What is included in your benefits package? (*circle all that apply*)

- |                     |                                 |
|---------------------|---------------------------------|
| 1. No benefits      | 6. Medical insurance            |
| 2. Dental insurance | 7. Life insurance               |
| 3. Disability       | 8. Pension plan                 |
| 4. Family leave     | 9. Sick leave                   |
| 5. Job sharing      | 10. Tuition remission           |
|                     | 11. Other, please specify _____ |

93. How many years have you been in your current position? \_\_\_\_\_

94. How many years have you been at the law school? \_\_\_\_\_

95. Approximately how many hours do you work each week? \_\_\_\_\_

96. Are you a:

1. Full time employee
2. Part time employee

**Please include other comments:-**

Gender and the Law School Experience  
Focus Group Questions

1. We would like to begin by discussing the expectations you had before coming to law school. Picture yourself a week before you arrived.
  - a. What were your expectations about the use of the Socratic method?
  - b. How did you feel about your ability to succeed academically?
  - c. Do you believe that men and women have similar or different expectations about law school? Explain.
2. After discussing what you expected, let's examine what you have actually experienced in law school.
  - a. In your experience, do you think that women and men react similarly or differently to the Socratic method? Explain. Give some examples.
  - b. In your experience, do you think that professors treat women and men similarly or differently when using the Socratic method? How? Why? Give examples.
  - c. Have you felt that being a woman affects your participation in class? How? Give examples.
  - d. Do you think that being a woman influences academic success? How? Give us some examples.
3. Would you characterize law school as competitive?
  - a. If yes, how has this competition affected you?
4. Now that we have discussed your experiences in law school, we would like to talk about how you have changed.
  - a. Has being in law school affected your level of confidence? How?
  - b. Are there any other ways in which you have changed? Please give examples.
  - c. Do you think that you would have changed in this way if you would have been a man? Explain.
5. You have shared with us your expectations, experiences and personal changes in law school. We finally would like you to think about how law school could be improved.
  - a. Specifically, we want to know what changes you would recommend so that women and men are treated fairly in legal education.
6. In closing, do you have any other comments or experiences that you think would be relevant to our research?

## **Gender and Career Services Focus Group Questions**

### **OPENING:**

1. Briefly, what type of law would you like to practice after graduating from law school?

### **CAREER SERVICES:**

2a. Have you been to the Career Services Office for reasons other than clerkship/job searches and interviews? Why?

2b. Have you attended any activities sponsored by Career Services for reasons other than clerkship/job searches and interviews? Which ones?

3. Do you think men and women have the same experiences when they visit the Career Services Office? Why or why not? (What has been your personal experience?)

a. Does Career Services sponsor different programs and activities for men and women? What are they?

b. Do you think that Career Services influences men and women to consider different areas of law? Explain.

### **CLERKSHIP/JOB SEARCHES AND INTERVIEWS:**

4. In what ways has the Career Services Office assisted you in searching for a clerkship/job?

5. Do you think men and women have the same experience with the Career Services Office when they are searching for a clerkship/job? Why or why not? (What has been your personal experience?)

a. Does Career Services sponsor different clerkship/jobs search programs and activities for men and women? What are they?

6. In what ways has the Career Services Office prepared you for clerkship/job interviews?

7. Do you think men and women have the same experience with the Career Services Office when preparing for clerkship/job interviews? (What has been your personal experience?)

a. Does Career Services sponsor different clerkship/job interview programs and activities for men and women? What are they?

8. What specific recommendations would you make to the Career Services Office so that it fairly services both men and women?

(TRANSITION STATEMENT)

### **ACTUAL INTERVIEWS:**

9. Does being a man or a women influence one's experience with the clerkship/job interview? How so? (What has been your personal experience?)

10. Does being interviewed by a man or a women positively or negatively influence the interview and the types of questions you are asked? How so?

11. Have you ever been asked to provide personal information or answer questions that you felt were inappropriate? For example, have you ever been questioned about your marital status, sexual orientation, family background, or partner's occupation?

12. How could the interview process be changed so that it fairly treats both men and women?



**CLOSING:**

13. Think about what we have covered in this interview, do you have any additional questions, comments, or concerns?

## Survey of Gender and the Oregon State Bar Association's Disciplinary Process

Thank you for taking the time to complete this survey. Be assured that your answers will be kept strictly confidential, and that your participation is voluntary. When you have filled out this survey, please return it to us **no later** than **November 18, 1996**.

### Section I: Demographics

First, we would like to get some background information about you.

1. Sex:    ☐ Female        ☐ Male
2. Age: \_\_\_\_\_
3. Ethnicity/Race:  
      ☐ African American                      ☐ Native American                      ☐ Other \_\_\_\_\_  
      ☐ Asian                                      ☐ Pacific Islander  
      ☐ Hispanic                                   ☐ White(non-Hispanic)
4. Current Marital Status:  
      ☐ Single                                      ☐ Divorced  
      ☐ Married/living as married           ☐ Widowed  
      ☐ Separated                                ☐ Other \_\_\_\_\_
5. Do you have any disabilities?  
      ☐ Yes    ☐ No (**If no, skip to question 6**)
  - a. What is the nature of your disability? (**Please check all that apply**)  
      ☐ Chronic Illness (e.g. C.F.S., Diabetes, Lupus)  
      ☐ Learning (e.g. Attention Deficit Disorder, Dyslexia)  
      ☐ Physical (e.g. hearing, vision, mobility)  
      ☐ Psychiatric (e.g. depression, phobias, Bipolar)  
      ☐ Other \_\_\_\_\_
6. Where would you place yourself on the political spectrum?  
      1            2            3            4            5  
      Liberal        Middle        Conservative
7. What was your class rank when you graduated from law school?  
      ☐ Top 5%        ☐ 11-25%        ☐ Below 51%  
      ☐ 6-10%        ☐ 26-50%
8. What Oregon State Bar region did you most recently practice in? \_\_\_\_\_
9. How many years have you practiced law? \_\_\_\_\_

10. Are you currently practicing law?

☐ Yes ☐ No

a. What is your professional position?

☐ Associate in a large firm (30+) ☐ Partner in a medium firm (10-29)  
☐ Associate in a medium firm (10-29) ☐ Partner in a small firm (2-9)  
☐ Associate in a small firm (2-9) ☐ Solo Practitioner  
☐ Partner in a large firm (30+) ☐ Employee (Gov. or Corporate)  
☐ Other \_\_\_\_\_

11. Since January 1, 1994, have you participated in the Oregon State Bar Association's disciplinary process in any of the following positions?

(Please check all that apply)

☐ Accused Lawyer ☐ LPRB Member  
☐ Bar Counsel ☐ SPRB Member  
☐ Complainant ☐ Trial Panel Member  
☐ Defense Counsel

## SECTION II. Complaint History

**QUESTIONS FOR ACCUSED ATTORNEYS ONLY, ALL OTHER PARTICIPANTS, PLEASE GO TO SECTION III. Answer the following questions dating back to January 1, 1994. Think about the most recent complaint only, unless otherwise instructed.**

12. How many complaints have been filed against you since January 1, 1994? \_\_\_\_\_

a. How many complaints were authorized for prosecution since January 1, 1994?  
\_\_\_\_\_ (If zero, skip to question 13)

b. What was the disposition of the most recent case?

☐ Dismissal ☐ Reprimand ☐ Disbarment  
☐ Letter of admonition ☐ Suspension ☐ Form B Resignation

13. What was the nature of the allegations in the most recent complaint?

(Please check all that apply)

☐ Advertising ☐ Dishonesty, fraud, deceit, misrepresentation ☐ Incompetence  
☐ Communication with represented party ☐ Excessive fee ☐ Neglect  
☐ Conduct prejudicial to the administration of justice ☐ Ex parte communication with the court ☐ Trust account overdraft  
☐ Conflict of interest ☐ Failure or improper withdrawal ☐ Trust account violation  
☐ Disclosure of client confidence/secret ☐ Failure to respond, failure to cooperate, or failure to respond truthfully in a disciplinary investigation ☐ Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. What area of practice was involved in the **most recent** complaint?

(Please check all that apply)

- |                                             |                                              |                                          |
|---------------------------------------------|----------------------------------------------|------------------------------------------|
| <input type="checkbox"/> Advertisement      | <input type="checkbox"/> Land use            | <input type="checkbox"/> Tenant/Landlord |
| <input type="checkbox"/> Bankruptcy         | <input type="checkbox"/> Litigation(general) | <input type="checkbox"/> Workers comp    |
| <input type="checkbox"/> Business           | <input type="checkbox"/> Personal injury     | <input type="checkbox"/> Unknown         |
| <input type="checkbox"/> Civil (general)    | <input type="checkbox"/> Probate             | <input type="checkbox"/> Other _____     |
| <input type="checkbox"/> Criminal           | <input type="checkbox"/> Real estate         |                                          |
| <input type="checkbox"/> Domestic relations | <input type="checkbox"/> Social Security     |                                          |
| <input type="checkbox"/> Labor law          | <input type="checkbox"/> Tax                 |                                          |

15. What was the gender of the **most recent** complainant?

- ☐ Female      ☐ Male

### SECTION III. Gender and the Disciplinary Process

Based on all your experiences and/or observations with the disciplinary process since January 1, 1994, rate your level of agreement with the following statements, where:

STRONGLY AGREE (SA)=1, AGREE(A)=2, NEUTRAL(N)=3,  
DISAGREE(D)=4, STRONGLY DISAGREE(SD)=5

- |                                                                                                                          | SA | A | N | D | SD |
|--------------------------------------------------------------------------------------------------------------------------|----|---|---|---|----|
| 16. The gender of the accused attorney does not affect the trial panel's decision about the outcome of the case.         | 1  | 2 | 3 | 4 | 5  |
| 17. The gender of the complainant does affect the trial panel's decision about the outcome of the case.                  | 1  | 2 | 3 | 4 | 5  |
| 18. The gender of the defense counsel does affect the trial panel's decision about the outcome of the case.              | 1  | 2 | 3 | 4 | 5  |
| 19. An accused male attorney is favored by a trial panel over a female complainant.                                      | 1  | 2 | 3 | 4 | 5  |
| 20. An accused female attorney is not favored by a trial panel over a male complainant.                                  | 1  | 2 | 3 | 4 | 5  |
| 21. An accused male attorney is not better served by a male defense counsel, assuming he has equal, relevant experience. | 1  | 2 | 3 | 4 | 5  |
| 22. An accused female attorney is better served by a male defense counsel, assuming she has equal, relevant experience.  | 1  | 2 | 3 | 4 | 5  |
| 23. An accused male attorney is better served by a female defense counsel, assuming she has equal, relevant experience.  | 1  | 2 | 3 | 4 | 5  |

Based on all experiences and/or observations with the disciplinary process since January 1, 1994, rate your level of agreement with the following statements, where:

STRONGLY AGREE (SA)=1, AGREE(A)=2, NEUTRAL(N)=3,  
DISAGREE(D)=4, STRONGLY DISAGREE(SD)=5

	SA	A	N	D	SD
24. An accused female attorney is not better served by a female defense counsel, assuming she has equal, relevant experience.	1	2	3	4	5
25. Male attorneys do not receive greater sanctions than female attorneys for the same violations.	1	2	3	4	5
26. Male trial panel members do not address female participants less formally than they address male participants.	1	2	3	4	5
27. Female trial panel members address male participants less formally than they address female participants.	1	2	3	4	5
28. Addressing a participant of the opposite sex in a less formal manner is a sign of favoring one gender over the other.	1	2	3	4	5
29. Inappropriate comments about another person's gender are not often made by the Disciplinary Counsel's Office/Bar Counsel.	1	2	3	4	5
30. Inappropriate comments about another person's gender are often made by the trial panel.	1	2	3	4	5
31. Inappropriate comments about another person's gender are often made by other participants in the disciplinary process.	1	2	3	4	5

32. Do you believe that men are treated differently than women in the Oregon State Bar disciplinary process? If yes, please explain.

Again, thank you for answering these questions. Return the survey by **November 18, 1996** in the business-reply envelope provided, or send it to:

Willamette University  
Research Design Team #4  
900 State Street, G186  
Salem, OR. 97301

**Active Members**  
**Private Practice Members**  
**Government Attorneys**

	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>% Male</b>	<b>% Female</b>
<b>Active Members</b>	9351	6924	2427	74%	26%
<b>Private Practice</b>	6011	4793	1218	79.7%	20.3%
<b>Government Employees:</b>	1656	1065	591	64.3%	35.7%
<b>Total</b>					
<b>PLF Exempt</b>	1413	937	476	66.3%	33.7%
<b>Legal Aid Attorneys</b>	67	30	37	44.8%	55.2%
<b>Public Defenders</b>	176	98	78	55.7%	44.3%

Statistics from the Oregon State Bar, March 11, 1997.

Statistics Male/Female

	<b>Active Members</b>	<b>%</b>
<b>Total</b>	<b>9,351</b>	<b>100.0</b>
<b>Male</b>	<b>6,924</b>	<b>74.0</b>
<b>Female</b>	<b>2,427</b>	<b>26.0</b>
	<b>Private Practice</b>	<b>%</b>
<b>Total</b>	<b>6,011</b>	<b>100.0</b>
<b>Male</b>	<b>4,793</b>	<b>79.7</b>
<b>Female</b>	<b>1,218</b>	<b>20.3</b>
	<b>Government Employees</b>	<b>%</b>
	<b>PLF Exempt</b>	
<b>Total</b>	<b>1,413</b>	<b>100.0</b>
<b>Male</b>	<b>937</b>	<b>66.3</b>
<b>Female</b>	<b>476</b>	<b>33.7</b>
	<b>Legal Aid Attorneys</b>	<b>%</b>
<b>Total</b>	<b>67</b>	<b>100.0</b>
<b>Male</b>	<b>30</b>	<b>44.8</b>
<b>Female</b>	<b>37</b>	<b>55.2</b>
	<b>Fee Arbitration Claims<sup>*</sup></b>	<b>%</b>
<b>Total</b>	<b>212</b>	<b>100.0</b>
<b>Male</b>	<b>188</b>	<b>88.7</b>
<b>Female</b>	<b>24</b>	<b>11.3</b>
	<b>Client Security Fund Claims</b>	<b>%</b>
<b>Total</b>	<b>359</b>	<b>100.0</b>
<b>Male</b>	<b>336</b>	<b>93.6</b>
<b>Female</b>	<b>23</b>	<b>6.4</b>



## Sections by Male/Female

3/11/97

	Total	Male	Female	% Women
Poverty Law	44	18	26	59%
Disability Law	136	81	55	40%
Civil Rights	332	213	119	36%
Labor and Employment	692	458	234	34%
Family & Juvenile Law	1053	697	356	34%
Health Law	349	233	116	33%
Appellate Practice	318	220	98	31%
Alternative Dispute Resolution	330	230	100	30%
Sole & Small Firm Practitioners	213	151	62	29%
Military & Veterans Affairs	29	21	8	28%
Corporate Counsel	339	249	90	27%
Indian Law	136	100	36	26%
Environmental & Natural Resources	494	366	128	26%
Criminal Law	560	417	143	26%
Government Law	428	324	104	24%
Public Utility Law	130	99	31	24%
Workers Compensation	462	353	109	24%
International Law	152	117	35	23%
Estate Planning & Administration	1041	809	232	22%
Litigation	1327	1060	267	20%
Consumer Law	134	108	26	19%
Debtor-Creditor	703	570	133	19%
Antitrust, Trade Regulation	165	134	31	19%
Taxation	423	346	77	18%
Computer Law	204	167	37	18%
Real Estate & Land Use	1204	988	216	18%
Products Liability	130	107	23	18%
Law Office Management	202	167	35	17%
Business Law	1120	931	189	17%
Securities Regulation	216	181	35	16%
Business Litigation	501	425	76	15%
Admiralty	61	52	9	15%
Patent & Trademark	193	165	28	15%
Construction Law	349	307	42	12%
Agricultural Law	128	115	13	10%
Aviation	50	46	4	8%

## Practice Specialties and Percentage Female.

Bar Sections by Male/Female	Total	Male	Female	% Female
Poverty Law	44	18	26	59%
Disability Law	136	81	55	40%
Civil Rights	332	213	119	36%
Labor and Employment	692	458	234	34%
Family & Juvenile Law	1053	697	356	34%
Health Law	349	233	116	33%
Appellate Practice	318	220	98	31%
Alternative Dispute Resolution	330	230	100	30%
Sole & Small Firm Practitioners	213	151	62	29%
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Construction Law	349	307	42	12%
Agricultural Law	128	115	13	10%
Aviation	50	46	4	8%

Statistics from the Oregon State Bar, March 11, 1997.

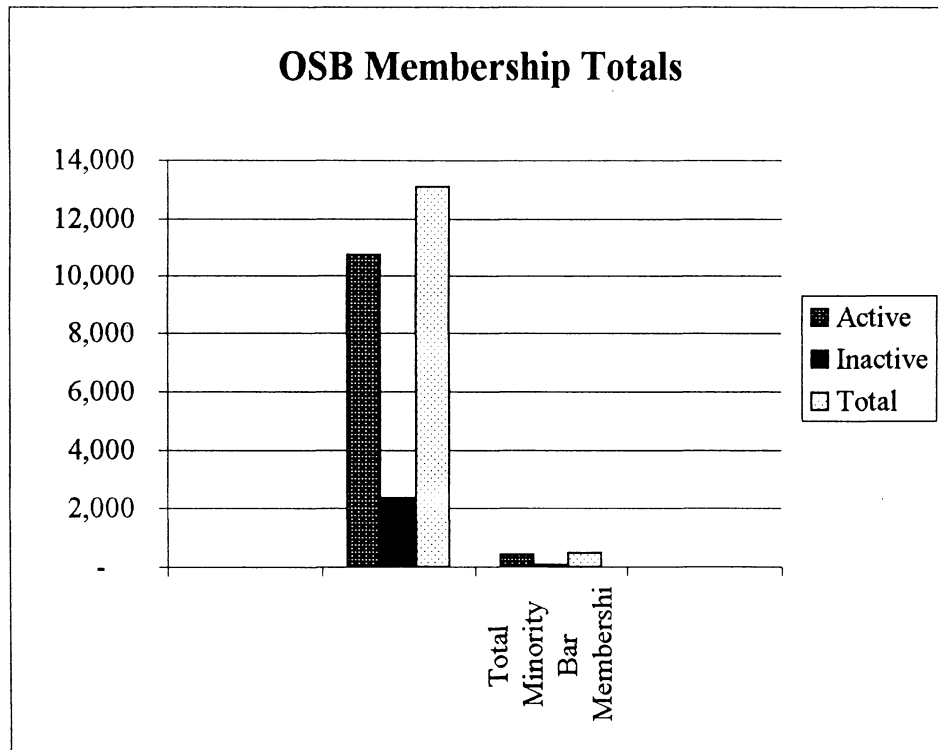
Percentage of Female Lawyers by Region

<b>Region</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>% Female</b>
<b>1 (Eastern Oregon)</b>	<b>676</b>	<b>549</b>	<b>127</b>	<b>18.8%</b>
<b>2 (Lane County)</b>	<b>947</b>	<b>694</b>	<b>253</b>	<b>26.7%</b>
<b>3 (Southern Oregon)</b>	<b>615</b>	<b>500</b>	<b>115</b>	<b>18.9%</b>
<b>4 (Northern Coastal Region)</b>	<b>1410</b>	<b>1053</b>	<b>357</b>	<b>25.3%</b>
<b>5 (Multnomah County)</b>	<b>4851</b>	<b>3506</b>	<b>1345</b>	<b>27.7%</b>
<b>6 (Mid-Willamette Valley)</b>	<b>1916</b>	<b>1373</b>	<b>543</b>	<b>38.3%</b>
<b>0 (Out-of-State)</b>	<b>2659</b>	<b>1945</b>	<b>714</b>	<b>26.8%</b>

Statistics obtained from the Oregon State Bar, July 1997, based on voting count by region.

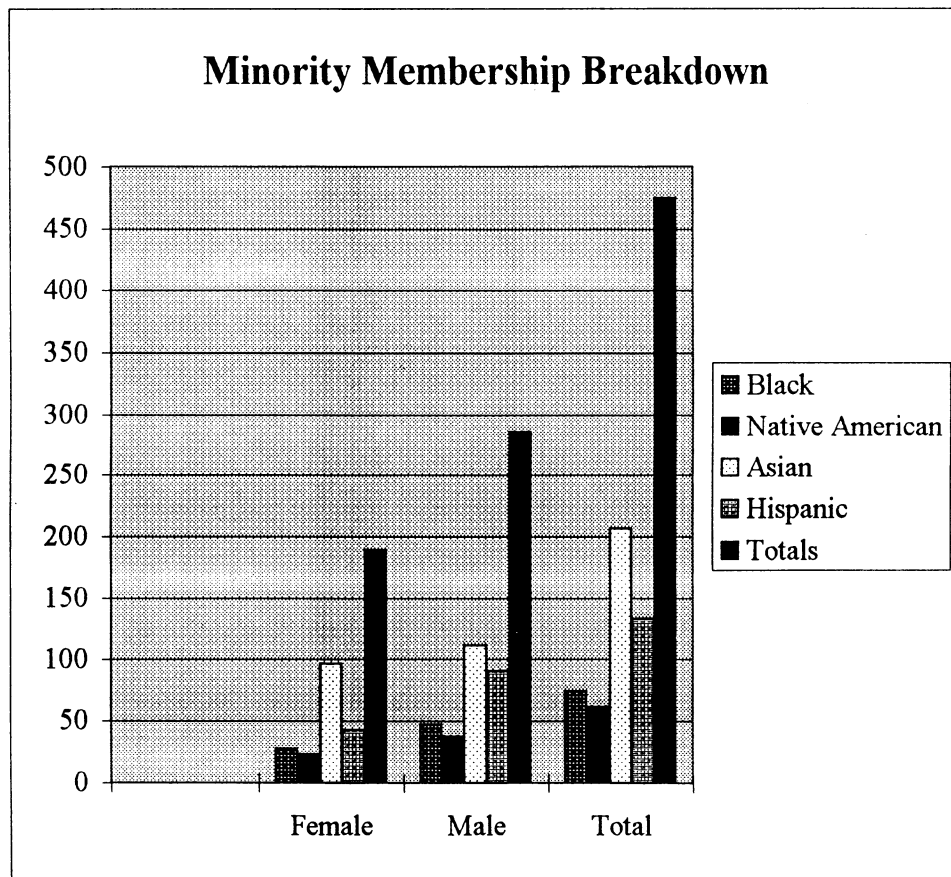
## Oregon State Bar Membership Totals 1997

	Active	Inactive	Total
<b>Total Bar Membership</b>	10,725	2,365	13,090
<b>Total Minority Bar Membership</b>	406	69	475
<b>Percentage of Minority to Total Bar Membership</b>	3.8%	2.9%	3.6%
<b>Total Male Bar Members</b>	7,931	1,698	9,629
<b>Percentage of Male Bar Members to Total</b>	73.9%	71.8%	73.6%
<b>Total Minority Male Bar Members</b>	250	36	286
<b>Percentage of Minority Male to Total Minority Membership</b>	61.6%	52.2%	60.2%
<b>Total Female Bar Membership</b>	2,794	667	3,461
<b>Percentage of Female Bar Members to Total</b>	26.1%	28.2%	26.4%
<b>Total Minority Female Bar Membership</b>	156	33	189
<b>Percentage of Minority Female to Total Minority Membership</b>	38.4%	47.8%	39.8%



### Breakdown of 1997 Minority Members

Ethnicity	Female	Male	Total	% To Total Min	% To Total Mbrs
Black	27	47	74	15.6%	0.6%
Native American	23	38	61	12.8%	0.5%
Asian	96	111	207	43.6%	1.6%
Hispanic	43	90	133	28.0%	1.0%
Totals	189	286	475	100.0%	3.6%



## RESOURCE LIST

Commission on Judicial Fitness & Disability  
(503) 222-4314 This 9-member commission investigates complaints against judges and recommends to the Supreme Court whether disciplinary action is necessary.

Oregon State Bar Lawyer Referral Service  
800-452-7636 (TDD-TTY: 800-452-8260 ext. 416)  
There is no charge for the referral, but the lawyer may charge you a \$35.00 fee for the first meeting.

Oregon State Bar Disciplinary Counsel  
The OSB Disciplinary Counsel processes complaints of lawyer misconduct. Complaints must be in writing, addressed to: Disciplinary Counsel, Oregon State Bar, 5200 Meadows Road, Lake Oswego, OR 97035.

OSB Tel-Law Library 1-800-452-4776  
Recorded information on traffic, business, criminal, family law, and other topics, including restraining orders/domestic violence (#7070), paternity (#7232), unpaid child support (#7021), and custody issues (#7020).

*Oregon Supreme Court*  
-  
*Oregon State Bar*

*Task Force*

*on*

*Gender Fairness*

Oregon Supreme Court Building  
1163 State Street  
Salem, OR 97310  
(503) 986-5921  
(TTD: 503-986-5504)  
Jessica Mindlin, Coordinator

### WHAT IS THE MISSION OF THE TASK FORCE?

The Task Force's mission is to study whether and, if so, how the Oregon judicial system and legal profession treat people unfairly on the basis of gender (sex). The Task Force will recognize fair treatment where it exists and make recommendations for change where it does not. A written report, containing findings, conclusions, and recommendations, is to be completed by September 1997.

### WHO IS ON THE TASK FORCE?

The 18-member Task Force is composed of lawyers in private, public, and non-profit practice, state & federal judges, and medical and court personnel from throughout Oregon (see roster). Supreme Court Justice Susan Graber and past Oregon State Bar President Robert Fraser co-chair the Task Force. All Task Force members are volunteers. In addition, scores of volunteers are serving on Task Force work groups.

### HOW DOES THE TASK FORCE OPERATE?

The Task Force is divided into work groups, each of which is focusing on a specific area of the law or the legal profession. Work groups are examining: Criminal and Juvenile Law; Domestic Relations and Civil Litigation; Interactions Between Attorneys, Clients & Staff; Intersectionality (the intersection of gender with other factors such as race, disability, age, sexual orientation); Judicial Administration; Legal Education, Bar Admission and Discipline; and Opportunities in the Legal Profession / Professional Life.

### HOW CAN I SUBMIT INFORMATION?

You are encouraged to come to a public hearing to tell us about your experiences. The Task Force also welcomes written statements and materials. You may submit information anonymously, if you wish. Additional information will be gathered through the use of surveys and focus groups.

### WHAT CAN I DO TO HELP?

There are many ways to support the work of the Task Force. For example, you can:

1. Provide testimony or other information to the Task Force
2. Help organize or publicize the public hearing in your community
3. Lend your expertise to a Task Force work group
4. Make a (tax-deductible) donation to the Task Force.

We need your support! (Checks should be made payable to the Oregon Law Foundation - GFTF.)

For additional information, please contact Jessica Mindlin, Task Force Coordinator, at (503) 986-5921.

### ROSTER OF TASK FORCE MEMBERS

Ann Bartsch  
Oregon State Bar  
5200 SW Meadows Road  
Lake Oswego, OR 97035

The Honorable Darryl Larson  
Lane County Courthouse  
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Eugene, OR 97401

Okianer Christian Dark  
U.S. Attorney's Office  
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Portland, OR 97204

Debra Fee Jing Lee  
NonProfit Legal Services  
PO Box 1586  
Medford, OR 97501-0266

Robert Fraser\*  
Luvaas, Cobb, Richards,  
and Fraser  
Suite 300, 777 High Street  
Eugene, OR 97401-9292

Joseph Matarazzo, Ph.D.  
Dep't. of Medical Psychology  
L-351  
3181 SW Sam Jackson Park  
Rd.  
Portland, OR 97201-3011

The Honorable Julie Frantz  
Multnomah Co. Courthouse  
1021 SW 4th Avenue  
Portland, OR 97204

The Hon. Jean Kerr Maurer  
Multnomah Co. Courthouse  
1021 SW 4th Avenue  
Portland, OR 97204-1123

The Honorable Susan Graber\*  
Oregon Supreme Court  
1163 State Street  
Salem, OR 97310

David Orf  
Attorney at Law  
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Medford, OR 97501-3004

Elizabeth Harchenko  
Attorney General's Office  
1162 State Street  
Salem, OR 97310

Kathy Warnock  
Victims' Advocate  
Malheur Co. D.A.'s Office  
215 B Street W  
Vale, OR 97918

The Honorable Dennis Hubel  
Karnopp, Peterson, et. al.  
1201 Wall St., Suite 300  
Bend, OR 97701

Gloriela Webster  
Interpreter Coordinator  
1021 SW 4th Avenue  
Portland, OR 97204

The Honorable William  
Johnson  
Umatilla Tribal Court  
PO Box 1083  
Pendleton, OR 97801-0080

Wendy Rae Willis  
Federal Public Defender  
851 SW 6th Avenue, Ste. 1375  
Portland, OR 97204-1350

The Honorable Bryan Johnston  
OR. House of Representatives  
PO Box 4043  
Salem, OR 97302-1043

The Honorable Janice Wilson  
Multnomah Co. Courthouse  
1021 SW 4th Avenue  
Portland, OR 97204-1123

\*Co-Chairs

## Order of the Supreme Court of Oregon

The Supreme Court of Oregon is committed to the highest standards of professionalism and expects those standards to be observed by lawyers in this state. Compliance with high standards of professionalism depends primarily upon understanding the value to clients, the legal system, the public, and lawyers of adhering to the voluntary standards. Secondly, compliance depends upon reinforcement by peer pressure and public opinion, and finally, when necessary, by enforcement by the courts through their powers and rules already in existence. These standards of conduct are not intended to be a set of rules that lawyers can use to incite ancillary litigation on the question whether the standards have been observed by an adversary.

We must always be mindful that the practice of law is, above all, a profession. As members of a learned art, we pursue a common calling in the spirit of public service. We have a proud tradition of leadership in our society, and we now call upon all Oregon lawyers to rededicate themselves to practice law in a manner that maintains public confidence in our profession, faithfully serves our clients, and fulfills our responsibility to the legal system.

It is now, therefore,

ORDERED that, in pursuit of these objectives, the Supreme Court of the State of Oregon hereby approves the Statement of Professionalism adopted by the Oregon State Bar on October 5, 1990, attached to and made a part of this order.

DATED this 23rd day of January, 1991.

## The Supreme Court of Oregon

By: Edwin J. Peterson  
Edwin J. Peterson  
Chief Justice

By: Wallace P. Carson, Jr.  
Wallace P. Carson, Jr.  
Associate Justice

By: W. Michael Gillette  
W. Michael Gillette  
Associate Justice

By: George A. Van Hooimissen  
George A. Van Hooimissen  
Associate Justice

By: Edward N. Fadeley  
Edward N. Fadeley  
Associate Justice

By: Richard L. Unis  
Richard L. Unis  
Associate Justice

By: Susan P. Graber  
Susan P. Graber  
Associate Justice

Oregon State Bar  
5200 SW Meadows Road  
Lake Oswego, OR 97035-0889  
(503) 620-0222  
800-452-8260



# Statement of Professionalism

Adopted  
by the  
Oregon State Bar  
and  
Approved  
by the  
Supreme Court of Oregon



# Oregon State Bar Statement of Professionalism

## Introduction

As members of the Oregon State Bar, we belong to a profession devoted to serving both the interests of our clients and the public good. In our roles as officers of the court, as counselors, and as advocates, we aspire to a professional standard of conduct. With adherence to a professional standard of conduct, we earn a reputation for honor, respect, and trustworthiness among our clients, in the legal community, and with the public.

## Professionalism

Professionalism includes integrity, courtesy, honesty, and willing compliance with the highest ethical standards. Professionalism goes beyond observing the legal profession's ethical rules: professionalism sensitively and fairly serves the best interests of clients and the public. Professionalism fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, simplifies transactions, and makes the practice of law more enjoyable and satisfying.

To further our commitment to conduct ourselves as professionals, we adopt the following principles as guidelines for our practice.

## General Guidelines

- 1.1 As officers of the court, we will promote the integrity, dignity, independent judgment, effectiveness, and efficiency of the legal system.
- 1.2 We will work professionally with all parties whose activities relate to our client's work.
- 1.3 We will conduct our practice in a courteous, fair, and respectful manner.
- 1.4 We will conduct our practice in a timely manner.
- 1.5 We will commit ourselves to developing and preserving the ideals of integrity, honesty, competence, fairness, and devotion to the public interest.
- 1.6 We will represent our clients zealously within the bounds of the law and the ethical standards approved by law or the Oregon Supreme Court, vigorously protecting the interest of our clients in a responsible manner.
- 1.7 In appropriate cases, we will advise our clients of the availability of mediation, arbitration, and other alternative methods of resolving disputes.
- 1.8 We will avoid all forms of discrimination. We will actively support all efforts to assure that all members of our society are afforded the protections and rights provided by law.
- 1.9 We will not knowingly misstate facts or law. We will not knowingly cause a person to form a mistaken conclusion or facts of law.
- 1.10 We will learn and follow practices and civilities that encourage respect, diligence, candor, punctuality, and trust.

- 1.11 We will avoid unjust and improper criticism and personal attacks on opponents, judges, and others and will refrain from asserting untenable positions.
- 1.12 We will not use delaying tactics.
- 1.13 We believe lawyers should solve problems, not create or exacerbate them.

1.14 We will be knowledgeable in the areas in which we practice, and when necessary will associate with or refer clients to counsel knowledgeable in other fields of practice.

1.15 We will not threaten to make complaints to a regulatory agency to gain advantage.

1.16 We will honor the client's right to our candid view of opposing counsel only to the extent that those views are relevant to the client's interests and not for the purpose of disparaging other counsel.

## Litigation

2.1 We will advise clients against pursuing litigation that is without merit.

2.2 We will not use tactics that are intended solely to delay, harass, or drain the financial resources of the opposing party.

2.3 Whenever litigation is contemplated in order to preserve the rights of a party against the running of a statute of limitations, we will endeavor before filing the action to seek an agreement to toll the statute of limitations long enough to investigate whether a lawsuit is warranted.

2.4 We will not assert claims for relief that have no merit.

2.5 Upon receiving a complaint and, if possible, before a responsive pleading is due, we will try to initiate informal discussions with opposing counsel to determine the precise nature of the claim, the prospect of settlement, and the possible use of alternative dispute resolution. We will try to reach agreement for scheduling of future motions, discovery, pretrial conferences, and other matters in an effort to reduce the cost of litigation to the parties and to accommodate all parties' schedules.

2.6 With respect to discovery, we will not seek information from our adversaries for the purpose of harassment, nor will we refuse to produce information that we know the court will ultimately require to be produced. We will try to schedule depositions informally by mutual agreement for the convenience of parties, counsel, and witnesses before resorting to formal notice procedures.

2.7 In making motions, we will consider costs and benefits to the parties, the court, and the system of justice, giving due consideration to any tradeoffs to our clients and the progress of the case as a whole. Motions will be considered carefully in light of the likelihood of success and practical benefit to the client.

2.8 We will make every effort to be punctual in attending hearings, conferences, and depositions.

2.9 In civil matters we will stipulate to facts as to which there is no genuine dispute.

- 2.10 We will encourage innovative methods that simplify and make less expensive the rendering of legal services. We specifically adopt and incorporate in this statement the cost containment guidelines promulgated by joint action of the Oregon Trial Lawyers Association and the Oregon Association of Defense Counsel.

## Business Practice

- 3.1 We will endeavor to represent the best interests of our clients and at the same time seek to resolve matters in a manner that minimizes legal expenses for all involved and accomplishes the goal of our client.

3.2 We will clearly identify, for other counsel and all parties, all changes made in documents submitted for our review.

3.3 We will avoid quarrels over matters of form or style and will concentrate our energy and resources on matters of substance and content.

3.4 In making representations concerning the facts of a matter, we will be accurate and indicate clearly the extent to which we have authority to bind the client.

## Lawyeering in the Public Interest

4.1 When the interests of our clients are not involved, we will endeavor to put aside self-interest and support legislation that is in the public interest. We will urge legislative bodies to consider the consequences of proposed legislation on the courts and legal system.

4.2 We will discuss the nature of the fee arrangement with the client at the beginning of the representation.

4.3 We will avoid advertising that is not fair, factual, informative, sensitive to the recipients, or beneficial to the public.

4.4 We will endeavor to increase our participation in pro bono activities. We will help lawyers recognize their obligation to make legal services available to all members of society.

4.5 We resolve to employ all the organizational resources necessary to assure that the legal profession is effectively regulated from within.

4.6 We will support activities that educate the public about legal processes and the legal system.

## Conclusion

We are committed to this statement of professionalism and we will conduct the practice of law in a manner consistent with these precepts.









*Oregon Supreme Court/Oregon State Bar  
Task Force on Gender Fairness  
c/o Oregon State Bar  
5200 S.W. Meadows Road  
Lake Oswego, OR 97035*

