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."[1]

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,[2] lawyers and paralegals,[3] lawyers and court reporters, and among employees of the Oregon State Bar (OSB) and the Professional Liability Fund (PLF).[4] 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, commonalties 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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1 Comment by a female court reporter.

2 This term includes legal professionals referred to as "assistants" who perform primarily secretarial functions.

3 This term denotes both "paralegals" and "legal assistants."

4 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:[5]

(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.[6] 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.[7] 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[8] and litigants developed by the Criminal Law and Judicial

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[5] This list reflects a narrowing of issues for practical reasons. See the Appendix for a complete list of all questions discussed.

[6] 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.

[7] 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.

[8] 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.[9]

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.[10]

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[11] claims are filed; and (3) who are involved in Bar-sponsored fee arbitrations.[12] We also collected information from OSB's Lawyer Referral Service[13] 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:[14]

(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.[15] 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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[9] Copies of these surveys are in the Appendix.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

[14] 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.

[15] 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,[16] 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.[17] Most respondents were between the ages of 32 and 50.[18] 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."[19] 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

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[16] 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.

[17] There are five male members of the Oregon Legal Secretaries Association.

[18] Twenty-three (18%) of the women said that they have physical disabilities.

[19] 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[20] — almost 60% wanted a lawyer of a particular gender.[21] 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?"[22] 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.[23] 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.[24] 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.[25] 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 w]anted 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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[20] 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).

[21] 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.

[22] 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.

[23] 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.

[24] Analysis was somewhat difficult, because the data were not broken down by gender of lawyer requested.

[25] 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.[26]

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."[27]

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.[28] 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.[29]

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.[30]

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

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[26] Testimony at Salem public hearing, Dec. 5, 1996.

[27] Comment on client survey.

[28] These requests were characterized by two firms as "rare" and by a third as not having occurred yet.

[29] See the Opportunities in the Legal Profession chapter for a discussion of lawyers' perceptions of gender bias in case assignments.

[30] See Appendix for specific survey questions.

some were treated better by women and some by men.[31]

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.[32]

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.[33]

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 EOCI. 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.[34] 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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[31] 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."

[32] 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.

[33] For a discussion of gender and case outcome in civil cases, see the chapter on Judicial Administration.

[34] 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.[35] 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.[36]

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.'"*[37]

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

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[35] 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.

[36] 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.

[37] 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.[38] 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.[39] 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.[40] 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.[41] 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.[42]

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.[43] 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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[38] Male inmates generally reported many more negative experiences and made more negative comments than did female inmates.

[39] For a caution regarding the reliability of these statistics, see the Introduction section to the chapter on Criminal Law and Juvenile Justice.

[40] This was in contrast to the other surveys, in which more women than men said they had been subjected to such comments.

[41] *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.

[42] *See* Official Transcript of 1991 Oregon State Bar Annual Meeting.

[43] *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."*[44]

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.[45] 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.[46] 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

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[44] *See* Official Transcript of 1992 Oregon State Bar Annual Meeting, at 189.

[45] 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.

[46] 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).[47] 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]."[48]

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.[49] Similarly, roughly one-third of respondents of both sexes believed that men and women in similar positions were treated differently regarding family-care issues.[50]

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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[47] 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.

[48] 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.

[49] 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.

[50] 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.[51]

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.[52] 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"*[53] and *"Secretaries Speak Out"*[54] — 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."[55]

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.[56]

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

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[51] 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.

[52] 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.

[53] Miriam A. Green, *The Good, the Bad and the Ugly*, OR ST B BULL, June 1997, at 15.

[54] Julie A. Hankin, *Secretaries Speak Out*, OR ST B BULL, June 1997, at 17.

[55] 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.

[56] 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.[57]

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.[58]

Finally, several court reporters expressed their perception that lawyers want court reporters to lower their fees and receive less income because they are women.[59] This phenomenon is sometimes referred to as the "pinking" 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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[57] These perceptions on enforcement were more pronounced among white female respondents over 50 years of age.

[58] 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.

[59] 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,[60] 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.[61]

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

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[60] 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.

[61] 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;[62] 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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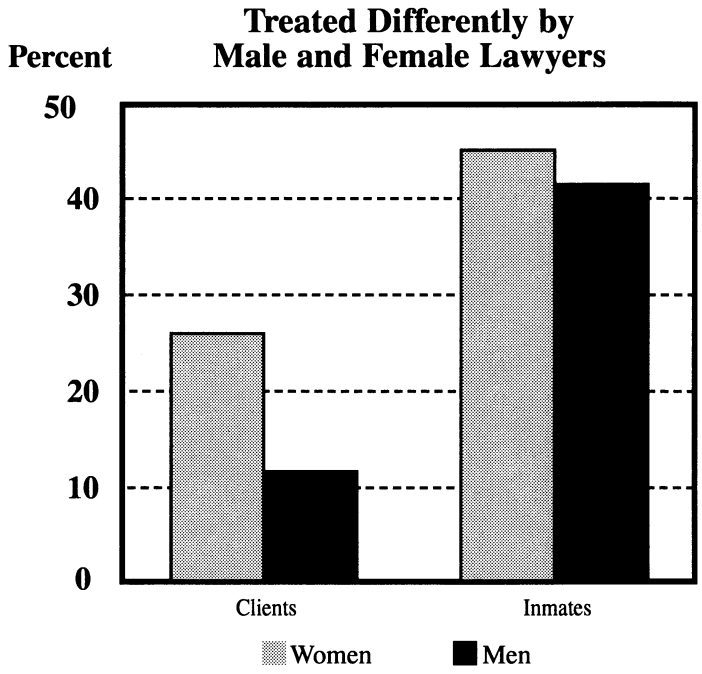
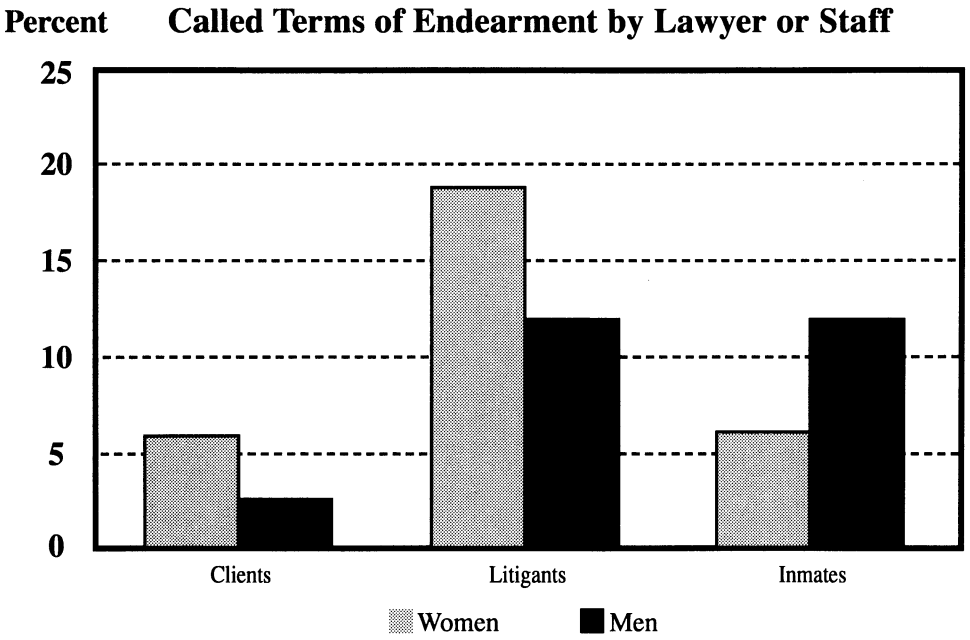
[62] A sample sexual harassment policy is included in the Appendix.

ATTACHMENTS



Clients:
Female - 26.3%
Male - 12.9%

Inmates:
Female - 45%
Male - 42%



Clients:
Female - 5.8%
Male - 2.6%

Litigants:
Female - 17.5%
Male - 12.8%

Inmates:
Female - 6.7%
Male - 12.8%