

# 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.

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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

<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:

	<b>BAR MEMBERSHIP PERCENTAGES</b>	<b>SURVEY RESPONDENTS PERCENTAGES</b>
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.