

# OPPORTUNITIES IN THE LEGAL PROFESSION

*"I have seen really enormous progress made....But I have, over the course of my experience, seen a lot of . . . dismissal of women lawyers' arguments. And to my mind, it's on the level almost of unconscious discrimination."<sup>1</sup>*

## A. INTRODUCTION AND OVERVIEW

We heard the above-quoted testimony at a public hearing. The opening sentence, respecting the progress that the profession has made on issues of gender fairness, captures the sentiment of many of the lawyers and judges who responded to our surveys or participated in public hearings and focus groups. Not surprisingly, we also heard concerns about the continued existence of more subtle and sometimes "unconscious discrimination."<sup>2</sup> More women than men voiced those concerns, although there were exceptions: some women reported never having experienced discrimination during their careers; and some men believe that women enjoy a "fundamentally unfair bias [in their favor] in the Oregon courts and legislature."<sup>3</sup>

The experiences of men and women in the legal profession have differed markedly, the differences inuring most often to the benefit of men and to the disadvantage of women. As recently as 1983, even in law school, the concept of women as lawyers was still met with open hostility. A female lawyer related this experience:

*"The prominent male trial attorney sitting as the judge [and who is still in practice today] remarked that women 'should devote themselves to their families and not plan to be lawyers.'"<sup>4</sup>*

More recently, a female summer associate at a large urban law firm was not invited to join the male lawyers and summer associates in a round of golf, because the men were playing at an all-male club.<sup>5</sup> Although such blatant expressions of bias are infrequent today, the fact that they were not uncommon in the recent past continues to have a detrimental effect on the lawyers now in practice.

The depth and intensity of comments received by the Task Force reveal that men and women continue to have very different perceptions as to whether and, if so, to what extent gender affects opportunities in the legal

profession. Female judges and lawyers in Oregon report more perceptions of unfairness than do their male counterparts. This could, of course, be due to a variety of factors: men not seeing bias against women, men not wanting to see bias against women, women wanting to see bias against women, men being less sensitive to the issue, or women being hypersensitive and eager to attribute different treatment to gender.

Objective data relating to patterns of hiring, promotion, retention, compensation, case responsibility, practice specialty, and positions of leadership support the perception of gender unfairness in some areas. With respect to the hiring process, most lawyers do not report inappropriate inquiries during interviews but, of those who do, female lawyers report being asked personal questions more frequently than do male lawyers. Judges, on the other hand, regardless of gender, have not experienced this type of inquiry as part of the judicial interview process.

Gender-based patterns also are apparent with respect to the area of specialty that lawyers choose to pursue. Female lawyers view the public sector, and solo private practice, as more desirable places to practice law than large law firms. Possible reasons include lack of part-time positions and long hours, which are incompatible with family responsibilities, in large-firm private practice.

Gender does appear to play some role in the geographical area in which women and men choose to practice. The experiences of lawyers in rural areas differ from those in urban areas in ways that appear related to gender, for example, with respect to compensation and acceptance within the legal community.

As to advancement opportunities, female lawyers continue to lag behind their male counterparts in compensation and in attaining positions of power. This phenomenon appears to be changing, however, as more women enter the profession.

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<sup>1</sup> Testimony by male lawyer at Portland public hearing, Oct 21, 1996.

<sup>2</sup> For example, in a recent letter to the *OSB Bulletin*, a male lawyer used the following words to describe his view of the perfect judge:

"He was the physical embodiment of what a jurist should be . . . tall, spare frame, slightly bent with age, an ample shock of unruly gray hair . . . ." OR ST B BULL, Oct 1997, at 5.

<sup>3</sup> Letter to Chief Justice Wallace P. Carson, Jr., from a white male lawyer in Lane County.

<sup>4</sup> Excerpt from letter to Task Force by female lawyer describing her experience in her law school trial practice class in 1983.

<sup>5</sup> Witness statement submitted to the Task Force by a female lawyer.

Finally, women, more than men, feel great pressure to meet the demands of family, particularly with respect to responsibility for child care.

## B. ISSUES STUDIED

We studied whether, and to what degree, gender has an effect on hiring or advancement opportunities in the practice of law, specifically:

- whether male and female lawyers are treated similarly in the hiring process, case assignment,<sup>6</sup> and advancement;
- whether men and women practice in different specialties;
- whether male and female lawyers are equally compensated and whether they are in positions of power proportionate to their years in practice;
- whether geography plays a role in the experiences of male and female lawyers;
- whether there are differences in the experiences of male and female lawyers in the public and private sectors;
- whether family obligations or other outside pursuits affect male and female lawyers' ability to realize their professional goals; and
- whether retention rates for male and female lawyers differ.

## C. METHODS OF STUDY

The work group studying Opportunities in the Legal Professional initially included male and female practicing lawyers in the private and public sectors, one retired lawyer, one state judge, one Tribal Court judge, a law professor, and a social scientist.<sup>7</sup> The work group represented diverse geographical areas (both urban and rural), areas of practice, and types of professional employment. The group also included individuals of diverse racial and ethnic backgrounds and included two Asian-Americans and one Native American. One work group member was a lesbian, and one was a gay man.

We used several methods to study opportunities in the legal profession. We developed survey questions for

inclusion in the surveys sent to lawyers, judges, litigants, and court personnel.

We collected statistical and anecdotal data from survey respondents on their legal employment-related experiences and their perceptions of gender fairness. We analyzed whether the respondents' gender, age, geographical location, and type of practice affected their perceptions. We also analyzed data maintained by the Oregon State Bar, the Oregon District Attorneys Association, the Oregon Attorney General, the offices of county counsel, the Office of the State Court Administrator, the Oregon Judicial Department's Indigent Defense Services Division, and the National Association of Law Placement.

We attended public hearings, conducted focus groups, and reviewed written comments in letters, surveys, and Task Force comment forms. We conducted a total of eight focus groups in five counties — Multnomah, Jackson, Josephine, Marion, and Baker. Four focus groups were composed of women, three of men, and one of members of both sexes. Lawyers from various practice settings and areas of practice participated.<sup>8</sup>

Finally, we reviewed and summarized existing literature and surveys, including articles published in the media and gender fairness reports from other jurisdictions.

## D. FINDINGS

### 1. Work Environment

We studied the opportunities available to male and female lawyers within the legal profession by examining: (1) hiring and promotion experiences within the private and public sectors; (2) the effect of geographical location on those experiences; and (3) the compensation of lawyers, the areas of practice in which lawyers specialize, and the retention rates of lawyers.

#### a. Hiring Practices

Most male and female lawyers and judges perceive no significant disparity in hiring for men and women in the legal profession. However, some female lawyers and judges reported gender bias during the hiring process.<sup>9</sup> We explored this issue from two perspectives:

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<sup>6</sup> For a discussion of case assignment practices at law firms providing indigent defense services (court-appointed counsel) in criminal cases, see the Interactions Between Lawyers, Clients, Staff, and Other Professionals chapter.

<sup>7</sup> Personal reasons necessitated the departure of some members of the initial work group.

<sup>8</sup> One focus group was composed of male partners in large urban law firms, another of men practicing in the public sector, and a third of male lawyers in the public and private sectors from mixed rural/urban settings whose practices ranged from solo practice to large-firm practice. Similarly, the four focus groups with female lawyers included women from diverse areas of specialty, geographical region, and type of practice. An eighth focus group sought comments from lesbian and gay lawyers with various kinds of law practices in a large urban area. Each group was conducted by one or two moderators.

<sup>9</sup> In letters to the *OSB Bulletin* in May and July 1996, female lawyers provided examples of the "overt illegal sexism that is a part of every woman attorney's interviewing experience." OR ST B BULL, May 1996, at 6.

(1) lawyers as prospective employees; and (2) lawyers as prospective employers.

The surveys of lawyers and judges asked whether, during the hiring interview, questions inquired into, discussed, or took into account an applicant's:

- (1) personal relationships; (2) family obligations;
- (3) personal commitments; or (4) sexual orientation.

### i. As an Applicant

Male and female lawyers reported different experiences when being interviewed for legal positions. Female respondents were three to five times more likely than male respondents to report that interviewers inquire about, discuss, or take into account personal relationships, family obligations, or personal commitments. For example, in response to the question whether the applicant was asked about personal relationships, one-third of the female lawyers responded that these questions were "often" or "sometimes" asked. By contrast, only 17% of male lawyers reported that these questions were asked with such frequency.

The disparity between the responses of male and female lawyers is striking with respect to other hiring questions as well. Nineteen percent of female respondents indicated that personal relationships are "often" discussed during an interview, whereas only 4% of male respondents said that this occurred. Women reported being asked questions about their family obligations twice as often as men.

Female judges reported similar experiences. When they interviewed for non-judicial positions earlier in their careers, female judges were asked about their personal relationships, family obligations, and personal commitments more often than their male judge counterparts. When judges were interviewed for judicial positions, however, such questions were rare.<sup>10</sup>

Female lawyers opined that such questions are unnecessarily intrusive and demeaning; they feared that the answers would be used against them in hiring decisions.<sup>11</sup> For example, a female lawyer reported that, when she applied for a federal clerkship position in 1987, the male judge asked whether her husband supported her taking the position and whether he would help her with child care. She reported a comparable experience during an interview with a large Portland law

firm. In that (more recent) interview, a male partner asked the applicant whether she had children, cautioned her that "the law is a jealous mistress," and then asked whether her husband wanted her to be a lawyer. Another female lawyer, admitted to the bar in 1993, reported that her male former employer had not only asked numerous personal questions during the hiring interview, but later had subjected her to derision when she became pregnant:

*"He complained...about [my] pregnancy and its effect on [the] firm; he complained to one of my clients; he...complained to other attorneys in the office, and he said...I would like to fire her, but I don't want to get sued."*<sup>12</sup>

On the other hand, male lawyers did not report being questioned about whether their wives support their employment as lawyers. Nor did they report being questioned about their plans to have a family.

In a recent article reprinted in the Oregon State Bar *Bulletin*, a woman wrote anonymously about her hiring experiences in Seattle, Washington.<sup>13</sup> She described numerous interviews in which she was asked about her marital status and her husband's employment. Her article drew immediate responses from female lawyers who described similar hiring experiences in Oregon.<sup>14</sup> One woman wrote:

*"I have been asked what my husband does for a living. When I tell them he's a truck driver, all communication stops. I don't know which is worse, the lawyers that ask about my husband or the ones who simply don't respond to my job applications because I am female."*<sup>15</sup>

Another female lawyer recounted:

*"Curiously, I have not been grilled about my husband. . . . I have, however, been asked many, many times what my child-bearing plans are in the same way you [the Washington lawyer] have been asked about your husband. Many of those questions have been phrased in crude terms, and many have, like your experience, been prefaced with 'I know it's illegal to ask, but....' . . . I have winced at the time, answered the questions and raged later."*<sup>16</sup> (Emphasis in original.)

A third female lawyer wrote:

*"I have found that otherwise incredibly kind men can say the dumbest things in job interviews. Recently, while interviewing for a deputy D.A. position in Central Oregon, the D.A. said: 'God, the last time I*

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<sup>10</sup> Data gathered from the judge survey may be less relevant to this study than data gathered from lawyers, because the responses most likely reflect interviewing practices common in the past. Nonetheless, judges' responses are consistent with lawyers' responses to this same question.

<sup>11</sup> We do not know the full effect of the interview inquiries, however. That is, we do not know whether the inquiries generated information that inured to the applicant's advantage or detriment.

<sup>12</sup> Excerpt of testimony from a female lawyer at Portland public hearing, Oct 21, 1996.

<sup>13</sup> *The Job Search*, OR ST B BULL, Apr 1996, at 37, reprinted from KING COUNTY [WASH] B BULL, Jan 1996.

<sup>14</sup> See Letters to the Editor, OR ST B BULL, May 1996, at 6, and July 1996, at 5.

<sup>15</sup> Letter to the Editor, OR ST B BULL, May 1996, at 6.

<sup>16</sup> Letter to the Editor, OR ST B BULL, May 1996, at 6.

*hired a female lawyer was such a disaster!' Then he stuck his foot deeper in his mouth when he inquired what the career plans were of another (male) lawyer in my office. Not surprisingly, I did not get that job. My sister who is in one of the most male-oriented professions (cattle ranching) gets more respect from her peers than I do from this supposedly 'enlightened' group."*<sup>17</sup>

Some women reported demeaning interviews. For example, when one woman expressed concern about the firm's monthly practice of publicly discussing each lawyer's billable hours, she was told to "consider it the way you do your annual pap exam; it's good for your health."<sup>18</sup>

Participants in the focus group with gay and lesbian lawyers also revealed that personal issues, including sexual orientation, arose in interviews occasionally, although far less frequently than did other inquiries into personal aspects of their lives.

In general, the majority of men and women report no negative hiring experiences. Survey data and anecdotes suggest that, when personal questions are asked in a hiring interview, particularly when those questions probe into child-bearing plans, women are concerned about answering the questions honestly, fearing that their job prospects will suffer. Male lawyers generally do not face such questions, nor do they share those concerns.

#### **ii. As an Interviewer**

We next inquired about lawyers' experiences as interviewers. More male than female lawyers "often" or "sometimes" ask questions about family obligations and personal commitments. However, female lawyers inquire slightly more often into "personal relationships." Because the survey did not define the distinctions among "family obligations," "personal commitments," and "personal relationships," we do not know why female interviewers reported asking more questions about "personal relationships."

In anecdotes, however, some further information emerged. Several female lawyers expressed a need to ask certain questions about the applicant's personal relationships to determine whether the applicant would "fit" in the firm. Female lawyers frequently were of two minds on the subject. All agreed that personal questions usually were inappropriate, but all also recognized that finding out whether an applicant would be likely to stay is of primary importance to an employer. One female lawyer who hires associates was particularly candid:

*"I have found it very difficult to have the other lawyer in my office be a single parent, because there were problems with illness or problems with this and that. And that lawyer simply wasn't in the office at the time when I needed that person...Most people who are single parents are women, but I would have the same difficulty with a single man with children...I would never not hire somebody because of that. But it is something in the back of my mind. [I would think] Oh God, here we go again."*<sup>19</sup>

In summary, we found that all lawyers conducting the hiring interview, regardless of gender, find themselves seeking some personal information about the prospective employee to make a determination about the likelihood that the applicant will work well with others in the firm, will want to stay in the area, and will be able to do the work required. Both male and female interviewers tend to ask female applicants more personal questions than they ask of male applicants because of the interviewers' belief that child-bearing or other family obligations may interfere with the female lawyer's long-term ability to work.

#### **b. Case Assignment**

##### **i. Generally**

In the legal profession, a lawyer's status depends, in part, on the kind and complexity of cases to which the lawyer is assigned. In private law firms and in the public sector, cases typically are assigned by a senior person in the office. That person can influence a junior lawyer's rank in the office by ignoring or selecting the lawyer for "big" case assignments.

The survey asked respondents whether they had lost a case assignment in the previous five years for reasons that they believed were associated with gender. The overwhelming majority of lawyers responding to the survey did *not* believe that they had lost a case assignment for gender-related reasons.<sup>20</sup> Of those who did, the average total number of cases believed to have been lost for such reasons was between one and three in the previous five years. Of those few lawyers who observed an assignment lost by a female to a male lawyer for a gender-related reasons, three times as many females (12.5%) as males (4.5%) had seen this occur.

The following table contains the choices available to survey respondents as reasons for assigning a case to a male lawyer and charts the frequency of their selection by male and female survey respondents. The numbers in boldface type show the five reasons given where the

<sup>17</sup> Letter to the Editor, OR ST B BULL, July 1996, at 5.

<sup>18</sup> Comment of female lawyer to member of the Task Force in Oct 1997.

<sup>19</sup> Comment of female lawyer in a focus group in Southwestern Oregon in 1997.

<sup>20</sup> Only 32 of 571 respondents answered that they had lost a case assignment for reasons related to gender. When asked *why* a case had been assigned to a male lawyer rather than to a female lawyer (when two or more lawyers of different genders competed for the assignment), a higher percentage of lawyers responded. For example, 121 respondents selected "the male lawyer was more qualified" as a reason typically given for assigning a case to a male lawyer rather than to a female lawyer.

disparity between men’s and women’s answers was greatest.<sup>21</sup>

	Male Lawyers	Female Lawyers
<b>Case requires a “heavy hitter”</b>	<b>4.0%</b>	<b>23.8%</b>
Assigned Judge prefers male counsel	1.3%	4.8%
<b>Client prefers male counsel</b>	<b>5.6%</b>	<b>17.3%</b>
Male lawyer brought in client	4.8%	6.0%
<b>Case requires more aggressive counsel</b>	<b>1.3%</b>	<b>16.7%</b>
<b>Case requires a particular type of expertise that the female lawyer lacks</b>	<b>11.6%</b>	<b>26.8%</b>
Male lawyer is more qualified	19.4%	26.2%
Jury will respond better to a male lawyer	1.0%	6.5%
It isn’t the sort of case for a woman lawyer	0.8%	6.5%
<b>Male lawyer is more senior in the office</b>	<b>10.1%</b>	<b>27.4%</b>
A male lawyer has a clear tie to the case	11.9%	13.7%

The most frequent reasons given by both men and women for a man’s receiving a case assignment were that the male lawyer was senior, that the case required an expertise that the male lawyer had, that the male lawyer was more qualified, and that the male lawyer had a “clear tie” to the case. The survey did not explore the nature of what “more qualified” or “clear tie” meant to respondents.

In the following sections, we examine further those rationales that could suggest gender stereotyping or prejudice.

**ii. “Heavy Hitter” and “Aggressive Counsel” Rationales**

Of the lawyer and judge respondents who said that a case went to a man rather than a woman because he was a “heavy hitter,” female lawyers (23.8%) and female judges (26.3%) were far more likely than male lawyers (4.0%) and male judges (6.8%) to have this perception. Similarly, female lawyers and judges were far more likely to have reported that a case went to a man because he is “aggressive.”

Ironically, female lawyers sometimes are judged harshly for exhibiting traits of aggressiveness. Responding to the survey question that asked whether “[c]onduct tactics, or arguments of a female lawyer are viewed as inappropriate when the same conduct by a male attorney is viewed as good advocacy,” more than one-third of lawyers, and more than one-fourth of judges, “strongly” or “somewhat” agreed. Men and women saw the issue differently: only 20% of male lawyers and 16.5% of male judges “strongly” or “somewhat” agreed. By contrast, nearly 75% of female lawyers and 86.5% of female judges had this perception.

Comments in response to the lawyer survey supported the statistical data:

*“I have observed a number of female litigation attorneys that carry a big chip on their shoulder. They are more aggressive, assertive, less willing to be flexible.”<sup>22</sup>*

*“I have been surprised and disappointed at the number of younger female attorneys who think that to be effective they must emulate male traits of aggressiveness. I find some of them acting unprofessional in their relations with other lawyers, being uncooperative and angry.”<sup>23</sup>*

In a statement to the Task Force, a woman described her experience in private practice when the promotion of an aggressive female litigator to partner was being considered:

*“It was a major issue. Many of the male partners described her as being overly aggressive and not enough of a team player... At the same time, the female lawyers at the firm viewed her as a role model. She was someone who stuck up for herself and her clients. ....The exact traits that this female lawyer exhibited and was being penalized for, would have been tolerated — in fact, extolled — if they were exhibited by a male lawyer at that firm.”*

In order to receive the best case assignments, lawyers of both sexes must be perceived as aggressive. Women may be expected to temper their aggressiveness in ways that men are not.

**iii. “Client Prefers Male Counsel” Rationale**

Approximately one-fourth of the lawyers and judges believe that, when a case goes to a male lawyer for gender-related reasons, it is because the client prefers *male* counsel. Female lawyers and judges are far more likely than male lawyers and judges to perceive this to be true.

We do not know what leads lawyers and judges to this perception, which is at odds with other information that we obtained. As noted in the chapter on

<sup>21</sup> The numbers do not add up to 100% in either column, because respondents could select more than one answer. Also, not all survey respondents answered this question; the percentages in the chart are based on the number of male and the number of female survey respondents, respectively.

<sup>22</sup> Comment from the Task Force lawyer survey.

<sup>23</sup> Comment by a lawyer on the Task Force lawyer survey.

Interactions Between Lawyers, Clients, Staff, and Other Professionals, few clients actually appear to have a gender preference for a lawyer.

Additionally, many people commented at focus groups and at public hearings that it is not uncommon for clients to prefer a *female* lawyer some of the time, particularly in domestic relations cases, employment discrimination cases, or criminal cases involving a sex crime charged against a male defendant. Comments such as the following were common in the client survey:

- “I prefer a female for a divorce action”; and
- “Prefer gender of defense lawyer to match plaintiff when possible.”

Similarly, some respondents to the inmate survey commented that they preferred female lawyers, because “females tend to be more open minded to circumstances and [to] what you want to have happen” or “because of the charge.”

In a focus group discussion with male partners, the men observed that corporate clients may have an interest in having female lawyers in the firm:

*“You know, one of the questions a lot of people ask is ‘what are you doing for minorities? What are you doing for women?’”*

### **c. Compensation**

We examined whether gender has an effect on lawyers’ salaries and promotional opportunities. We began with a review of the 1994 Oregon State Bar Economic Survey of compensation of Oregon lawyers. According to that survey, female lawyers in Oregon earn less than male lawyers. The average gross compensation for male lawyers working full-time in 1993 was \$85,083, compared with \$54,530 for female lawyers. For lawyers working part-time, the average compensation for male lawyers was \$51,248, while for female lawyers it was \$31,255.

That 1994 survey and anecdotal data gathered in focus group discussions and in interviews of lawyers suggest that a variety of factors contribute to this disparity in income between male and female lawyers. Practice specialty, geographic location, number of hours worked, public versus private sector work, and number of years in practice all have an effect. For example, 25% of female lawyers who responded to the survey were government employees, while only 15% of men reported working in the public sector. Seventeen percent of female lawyers reported being in solo practice, and 20% reported working in 2- to 6-lawyer firms; the percentages for men were 23% and 27%, respectively.

The most significant factor affecting the overall compensation difference, as revealed in the 1994 economic survey, is the number of years admitted to

practice. Men reported an average number of years admitted to practice of 17.3 years, nearly twice that of women at 8.8 years. However, the compensation of male lawyers outpaces that of female lawyers at every level, regardless whether the lawyers are working full-time, part-time, or have similar years in practice. For example, male lawyers in full-time practice from 21 to 30 years averaged \$112,751, while women in the same category averaged \$84,400. For full-time lawyers with 0 to 3 years of total experience, men reported an average compensation of \$35,363, compared to \$32,793 for women.

In an effort to learn why female lawyers earn less, we reviewed other data collected by the OSB during its economic survey. We discovered that factors in addition to those related to years in practice, geography, and practice specialty appear to be at work. For example, female lawyers appear to charge less for their time. They also appear to bill fewer hours per month.

Anecdotal evidence is to similar effect. Women often commented on an expectation on the part of clients that female lawyers would charge less. One woman participating in a focus group noted the tendency of others to refer *pro bono* cases to her, and she acknowledged her reluctance to turn the cases down:

*“I get lots of referrals from people who either know, or think, [that] the best shot for talking someone into doing a pro bono case is to send them to me. So I get a lot of those, a lot of non-paying referrals.”*

We did not hear similar remarks from male lawyers, suggesting that they are more comfortable charging (or that clients are more willing to pay) higher fees for their services, that their seniority results in higher fees from clients, or that fewer poor clients are referred to them.

We also heard comments that the income of female lawyers’ spouses affects the compensation of female lawyers. Because it was hard to obtain data on compensation practices in private law firms, we relied on comments at public hearings and focus groups. Several men and women attested to the importance of the income of a female lawyer’s spouse. For instance, a male lawyer cited the experience of his wife, whose compensation was adversely affected because the senior associate felt that her husband’s income put her in a different situation from other associates. Another male lawyer in the same focus group made a similar remark; he described a nearly identical experience relayed to him by a female lawyer. A female lawyer with personal experience on this issue testified at a public hearing:

*“When I requested a raise to match a recent promotion, I was told by my direct supervisor, ‘What do you need a raise for? Didn’t you just get married to a rich lawyer?’”<sup>24</sup>*

<sup>24</sup> Excerpt from statement at Eugene public hearing, Dec 13, 1996.

Male lawyers did not report similar experiences. Income of a spouse does not appear to play a role in determining a male lawyer's salary.

Within the public sector, compensation does not appear to have a gender component. Generally, salaries and benefits in the public sector are structured to take into account such factors as length of service, prior experience, and function within the organization.

#### **d. Rainmaking**

Historically, financial success and promotions in the private sector have depended in part on one's "rainmaking" ability, that is, the ability to generate and maintain clients. Accordingly, our surveys asked lawyers and judges to rank the factors having the most positive effect in generating and maintaining clients. Both male and female lawyers identified the following three factors, in order of importance: (1) "years in practice," (2) "professional recognition," and (3) "age." Judges, on the other hand, regardless of gender, ranked "law school attended" as the most important positive characteristic, although female judges gave "age" equal importance.

Age is seen as either a positive or a negative factor. Male and female lawyers commented that clients come to older lawyers more readily. On the other hand, age is a negative factor when it is equated with lack of experience. Because female lawyers, on average, have practiced for fewer years than male lawyers, age generally works to their disadvantage. In addition to youth, other negative factors cited by respondents included "sexual orientation" and "parenting." Female respondents also cited "gender" as a negative factor in generating and maintaining clients.

With the passage of time, as substantial numbers of women graduate from law school, the combined effect of age and gender in this respect may be expected to diminish. However, successful rainmaking also involves the opportunity to meet clients. The opportunity to meet clients often occurs when an older partner provides the introduction. We heard anecdotal evidence that female lawyers have been excluded from such opportunities on occasion. For example, one woman described client entertainment at an all-male golf tournament, another at an all-male club. One of these same women noted that, when she and an older partner entered an all-male bar in a popular club to be introduced to a client, she was required to leave.<sup>25</sup>

#### **e. Personal Treatment**

Two lawyers — one male and one female, and each from a different city — who have represented a number of female lawyers in various employment-related matters told us that many women in the profession experience,

but fail to report or complain about, adverse treatment that they have received from other lawyers with whom they work. The reported adverse treatment included sexual harassment and denial of promotional opportunities. Some female lawyers declined to report their experiences, we were told, even when complaint procedures were in place at their places of employment. The women reported to their counsel that they feared active retaliation or more subtle forms of disapproval by their male colleagues. Other women wished to disclose their experiences but were prohibited from doing so because of confidential settlement agreements.

## **2. Geography**

In order to compare possible gender unfairness in rural and urban areas, we considered whether the experiences of lawyers practicing in those settings were different. We gathered statistics from three sources: the Task Force surveys of lawyers and judges, the Oregon State Bar, and the 1994 Oregon State Bar Economic Survey. In addition, the work group conducted focus groups in five counties.

According to 1997 Oregon State Bar statistics, female lawyers constitute 26% of the total bar membership, but are under-represented in rural areas. In Eastern and Southern Oregon, women comprise about 19% of the practicing lawyers, whereas they comprise 27.7% and 38.3% of practicing lawyers in Multnomah County and the Mid-Willamette Valley, respectively.

Testimony at public hearings suggested that female lawyers have particular difficulty finding jobs in rural areas and that, in turn, their earning power is diminished. One female lawyer who has practiced for 10 years and who now works in Eastern Oregon described her experience looking for legal employment in a rural area:

*"I came here actually two years ago.... Within the last six months ...there's been an influx of male lawyers fresh out of law school. Now I finished law school almost ten years ago. There are three guys who just finished law school, and they got jobs....It's easier as a male to just fit into the established order."*

Others added these similar comments:

*"They [the clients] go to the old boy network, in my town...to the old, established firms...to the ones that have several generations worth of history of being here."<sup>26</sup>*

*"Women haven't been in the law forever. [Of the firms] that are built on families, and family relationships and friends of families, [very few] have women practicing law."<sup>27</sup>*

<sup>25</sup> Comments by a female lawyer in April 1996 focus group in Southern Oregon, describing experiences in Portland, Oregon.

<sup>26</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

<sup>27</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

At a public hearing in Ontario, a male judge with many years of experience in Eastern Oregon corroborated that perception:

*"When you come into Eastern Oregon, you realize that things are more conservative, that the role of women...involves more difficulties than it might in the Willamette Valley or the tri-county area. And thus, it is more difficult I think for women to have some of the same advantages for advancement...even simply to be recognized right at the outset of being fully capable of performing certain positions."*

Likewise, female lawyers from Eastern Oregon expressed their perception that, on the whole, male lawyers in Eastern Oregon are receptive to female lawyers, but that there continues to be difficulty with some male lawyers:

*"The majority of men in Eastern Oregon, male attorneys, are very open to women practicing law, [but] the minority are a little more outspoken than you would expect in a city."<sup>28</sup>*

Moreover, more often in rural areas than in large cities, women find limited opportunities to enter certain practice specialties. We were told that it is difficult, for example, for a woman to enter such areas as environmental or mining and water law, because of the lack of a support or referral network.

Gay and lesbian lawyers also expressed a strong preference to work in a large-city setting, fearing intolerance in rural areas. Given the perception, noted above, that sexual orientation has a negative effect on a lawyer's ability to generate and maintain clients, this fear may be well-founded.

### 3. Practice of Law

#### a. Public and Private Sector Experiences

##### i. Demographics

Women constitute 26% of bar membership overall but only 20% of the private bar. By contrast, 80% of male lawyers are employed in the private bar, although men constitute 74% of the total bar membership.<sup>29</sup>

Female lawyers are almost 36% of the lawyers employed in the government sector, 55.2% of the lawyers employed in legal services, and 44.3% of the lawyers employed in public defenders' offices.

#### Oregon State Bar General Areas of Practice by Gender

	Total	Male	Female	% Male	% Female
Active Members	9,351	6,924	2,427	74%	26%
Private Practice	6,011	4,793	1,218	79.7%	20.3%
Government Employees:					
Total	1,656	1,065	591	64.3%	35.7%
PLF Exempt	1,413	937	476	66.3%	33.7%
Legal Aid Lawyers	67	30	37	44.8%	55.2%
Public Defenders	176	98	78	55.7%	44.3%

##### ii. Discussion

Anecdotal evidence suggests that many women view the public sector as being a more desirable place to work than the private sector. Participants in focus groups cited four reasons: (1) entrenched attitudes against women in the private sector, (2) the perceived lack of mentors there, (3) the relatively smaller percentage of women at private firms, and (4) greater billing and time demands in private practice. Both male and female lawyers expressed their view that female lawyers are treated "more equally" in the public sector. In the private sector there is competition among lawyers to "make partner," and that competition may contribute to reduced cooperation with co-workers.

Whether there is a "male style" or a "female style" in approaching law practice is hard to document statistically; those concepts may be nothing more than stereotyping based on (actual or perceived) ingrained social patterns of behavior. However, our surveys of lawyers and judges revealed that, generally speaking, men are viewed as being more "aggressive" and women as more "cooperative" and that the private sector more than the public sector values and rewards the "aggressive" approach to cases. We heard that the greater presence of women in the public sector allows

<sup>28</sup> Comment from female lawyer in Southern Oregon focus group in 1997.

<sup>29</sup> Gender fairness studies conducted in other states mirror our finding that proportionately fewer women than men engage in private practice. In Indiana, the figures for women and men are 53% and 74%, respectively. The New Hampshire study found 68% of women in private practice, compared with 80% of men. Similarly, the Wisconsin survey found 54% of women in private practice, compared with 68% of men. A study of University of Michigan Law School graduates found only 44% of female graduates in private practice, compared with 70% of male graduates. Likewise, in a survey conducted in the District of Columbia Circuit, a higher percentage of the male respondents were in private practice — 69% compared with 54% of the women.

In the public sector, by contrast, a higher percentage of women than men are lawyers in the United States Justice Department, other federal agencies, the United States Attorney's Office, and the Office of the Federal Public Defender — 26% of the women, compared with 19% of the men. The United States Court of Appeals for the Ninth Circuit also found higher concentrations of women in positions with the United States Attorney's and Federal Public Defender's offices than in private practice.

Of the Oregon district attorneys, 8% are women; of the deputy district attorneys, 35% are women; of county counsel, 17% are women; and of assistant county counsel, 35% are women. The results of a 1997 survey of the 10 largest law firms in Oregon reflects that women comprise on the low end 17% and on the high end 31% of the lawyers employed in the firms, with most falling approximately in the 25% range. Data from Oregon State Bar, March 11, 1997, and 1997 National Association for Law Placement (NALP) forms. (NALP forms are discussed *infra* at note 46.)

for a broader array of styles, including those styles that other women find comfortable.<sup>30</sup>

But the greater presence of women in government cannot be attributed solely to a perception that the litigation-based nature of much private firm practice is less welcoming to women than the less adversarial atmosphere of public sector work. Most lawyers, including female lawyers, who work in state or local government are engaged in adversarial litigation, both civil and criminal. Female trial lawyers also are common in indigent defense firms, including public defenders' offices.

Whether female lawyers *apply* for public sector jobs disproportionately to their overall numbers is unclear. We did not explore this factor, although we did hear several comments during focus group discussions that the public sector has a larger pool of female applicants from which to choose. A smaller pool of female applicants in the private sector may have an effect on the composition of law firms.

This is not to say that female lawyers uniformly regard the public sector as the preferred work place. For example, a female lawyer employed in the public sector expressed her belief that, in the public sector, women are treated unfairly:

*"When a woman raises an issue, it is often ignored by the male lawyers or dismissed as 'the stupidest idea I've heard.' When a male lawyer raised that same issue as if it were his own, the male colleagues respond to it as a valuable concept."*<sup>31</sup>

Another female lawyer cited her public sector hiring interview with three female interviewers as her "toughest." Compelling testimony contradicting the perception of the public sector as welcoming to women came from a female lawyer who described her experience in the 1980s while working as a deputy district attorney:

*"One assistant district attorney showed me a picture of a lineup of women all doing the can-can dance. He had transposed all the faces of the women in that picture with photographs of all the female DAs. And he had captioned the photograph, the V team. The Circuit Court teams in the district attorney's office are alphabetically designated: A team, B team, C team, D team. I did not think that V stood for Victory."*<sup>32</sup>

#### **b. Practice Specialties**

As noted earlier, female lawyers constitute 26% of the bar membership in Oregon. Women are dramatically over-represented in the practice specialties of poverty law (59%) and disability law (40%). Women are significantly under-represented in general practice, corporate law, real estate law, and environmental law.<sup>33</sup> Female judges tended to have backgrounds in the areas of juvenile law, labor law, poverty law, and public defender work.<sup>34</sup> Male judges commonly have backgrounds in appellate practice, general practice, and civil litigation.<sup>35</sup> This difference mirrors those areas in which female and male lawyers tend to practice currently.

We do not know *why* female lawyers are found in these areas of specialty. Several factors likely contribute: Women may be drawn to certain areas for reasons of personal interest, women may perceive that the opportunities for mentorship and advancement increase in specialties with higher numbers of female lawyers, or women may choose practice specialties that are likely to afford personal control over their cases. It also is possible that men in predominantly male-occupied practice areas may deliberately or unintentionally deny women access to those practice areas.

#### **c. Family Obligations**

We cannot consider gender fairness in the practice of law without acknowledging the changing environment for all lawyers: In the late 1990s, the practice of law entails significant economic pressures and is a business as well as a profession.<sup>36</sup> Men and women experience

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<sup>30</sup> Comment by female lawyer in Willamette Valley focus group in 1997.

<sup>31</sup> Comment by female lawyer in Willamette Valley focus group in 1997.

<sup>32</sup> Testimony from female lawyer at Eugene public hearing, Dec 13, 1996.

<sup>33</sup> Data provided by the Oregon State Bar. For a full listing of the bar sections and the percentages of female lawyers, see the Appendix.

<sup>34</sup> The relative percentages for female and male judges in these practice areas were: Juvenile Law (57.9% vs. 43.8%); Labor Law (26.3% vs. 6.8%); Legal Services (15.8% vs. 4.1%); and Public Defender (21.1% vs. 8.2%).

<sup>35</sup> The relative percentages for male and female judges in these practice areas were: General Practice (65.8% vs. 42.1%); Appellate (32.9% vs. 21.1%); and Civil Litigation (65.8% vs. 52.6%).

<sup>36</sup> See, e.g., James W. Jones, *Law Firm Diversification: Is It the Wave of the Future?*, ABA J, Sept 1989, at 52, who wrote in his discussion of the topic:

"The practice of law — however it may be defined and whatever its scope — has become far more complex and diverse in recent years than could have been imagined even 20 years ago."

Similarly, Sol Linowitz has observed:

"Much of the hunger to make top dollar now. . . can be traced to . . . the possibility that a lawyer, like an athlete, will have only a few years to maximize his reward and must get what he can while his talents are in demand."

SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

ongoing difficulty in balancing the demands of work and the need for personal time. However, both men and women report that women especially feel pressure to meet the demands of family.<sup>37</sup>

Statistical information from the surveys of judges and lawyers was revealing in this regard. The majority of the judges responding to the survey were married. Although the percentage of married judges was similar for men (89%) and women (84%), there were many fewer female judges who had children (63%) than male judges (93%). Similarly, a majority of the male lawyers (83%) and female lawyers (63%) were married. However, female lawyers (53%) were more likely than male lawyers (39%) to have no children.

Several possible explanations exist for this disparity. Women who choose not to have children may be more attracted to the legal profession; women who delay bearing children to complete their legal education and to build their careers may be unable to have children later in life; women who are lawyers may experience the stress commonly associated with law practice that, apart from delay, may affect their ability to conceive; women be younger than their male counterparts and may yet start a family; or women in law practice may be discouraged by their employers from having children.

We heard testimony from women who delayed having families until they were assured of partnership or other tenured positions by their employers. There were other anecdotal reports from women who consciously chose career over children, particularly when the only role models available to them were men who chose not to place family obligations ahead of career advancement.

Female respondents (16%) were twice as likely as male respondents (7%) to be divorced or separated. As noted in the chapter on Domestic Relations Cases, it is more likely that divorced women with children are the custodial parents. This family responsibility necessarily affects the balancing issues with which lawyers and law firms grapple. A female lawyer commented that, as a single mother, she had chosen to work in a small private firm in a small city, instead of a large firm in a large city, believing that her ability to meet the needs of her family was enhanced by more reasonable work demands on her time.<sup>38</sup>

In focus group discussions, both male and female participants cited the need for female lawyers to attend to family obligations as the primary reason why women pursue solo practice and employment in the public

sector. As noted in the earlier discussion, lawyers believe that the public sector provides more predictable hours and that solo private practice provides greater flexibility in controlling one's hours. By contrast, private and especially large-firm practice often is not viewed as conducive to successful balancing of work and family.

At the public hearing in Portland, a female managing partner corroborated the difficulty posed by issues of family needs and professional demands. Her large firm has many female partners:

*"Now, while I think it is true that we have made substantial progress, it is also the case that there are a couple of issues that are particular challenges to us.... The first is not unique to large law firms: our women face the competing demands of family and career. That wasn't created by large law firms. It can't be solved by large law firms. It's just a fact of our society, and we have to deal with it."*

Her firm has addressed this issue with a less-than-full-time commitment program for male and female partners, as well as those on the partnership track. That program has not been entirely successful:

*"[W]e suffer attrition, because many of our women have difficulty balancing the demands of family and the practice. It's just the way it is, and it's very difficult. And so we do see, a higher amount of attrition from our women based on those kinds of decisions that they make."<sup>39</sup>*

Other legal employers do not offer a less-than-full-time work schedule to lawyers.<sup>40</sup> A female lawyer with a five-month-old baby reported that her firm (a large urban law firm) does not allow anyone to work part-time. She expressed her disappointment at this policy and stated that she would be forced to seek employment elsewhere. Although the policy applies equally to all lawyers, regardless of gender, it has a disparate effect on female lawyers with children. Overall, the lack of part-time work opportunities creates an impediment to work in the profession for women who have, or want to have, children.

Even where part-time opportunities exist, compensation of female and male lawyers may differ. One male lawyer refused to discuss with us the details of his compensation agreement with his large, urban law firm. However, he did acknowledge that the female lawyers working part-time at his law firm did not have the same (advantageous) financial arrangement as he did and that there was no uniform policy for determining the salaries of part-time lawyers.<sup>41</sup>

<sup>37</sup> The Oregon State Bar formed a task force to examine issues related to balancing family and career, which generated a report in 1990. Thereafter, the Bar formed an implementation committee, which supplemented that report in 1992.

<sup>38</sup> Note from female lawyer to Task Force co-chair, Dec 1997.

<sup>39</sup> Testimony by female partner at Portland public hearing, Oct 21, 1996.

<sup>40</sup> The 1992 report of the Oregon State Bar Committee on Balancing Personal Life, Family and Career concluded that a number of public agencies, as well as private law firms, consider part-time, flex-time requests on a case-by-case basis. Few have written policies. Lawyers working part-time rarely are considered for partnership.

Of course, some men also face difficulty in balancing the demands of family and professional life. For example, a female lawyer reported that, when she and her husband (who was employed in private practice) had their first child, her husband's firm "pulled his leave" the day she returned from the hospital, despite a promise that he would be granted some time off.<sup>42</sup> Another male lawyer reported that, following his return to the office after exercising his right to parental leave, he experienced what he perceived to be "punishment" for having been gone.<sup>43</sup> For example, when he asked for the assignment of associates to assist him in completing a project, his male partners denied his request, commenting that "it appears that you are about six weeks behind" — exactly the period of time that he had taken as leave. We heard several other comments of the same nature. All too often, private law firms accommodate a mother's decision to take parental leave, but not a father's.

#### d. Retention

The retention of lawyers of both genders, but particularly women, and in all sectors (albeit less in the public sector) is seen as a continuing challenge to employers. This is generally true throughout the country.

We did not find out how many men and women have left the practice of law in Oregon. However, we heard anecdotal evidence from men and women, in focus group discussions and at public hearings, that female lawyers leave the profession in greater numbers than do male lawyers. We do not know the reasons for women's or men's departures from the legal profession.

We did find, however, that female lawyers who leave private practice may be responding to the pressures of long hours in certain specialties, to family responsibilities, or to a perceived lack of satisfactory mentors.

Women are particularly likely to depart from certain practice specialties. For example, in civil litigation departments, both men and women often leave, but female lawyers are more likely to do so. As a male partner commented during a focus group discussion:

*"We have had a hell of a time keeping women litigation associates. They either leave and go into the business department for more predictable hours or they jump out...for whatever reason. And we, have several young women partners who, you know, plowed right*

*through it but we have just had a damn tough time, especially in litigation, keeping people there."*

In the discussion that followed, another male partner observed that the predictability of hours appeared to be the primary reason why female lawyers selected non-litigation departments in his firm:

*"Employee benefits, labor and estate and trusts is where the women tend to be in higher numbers and higher percentages in our office because...[it's] pretty predictable work. You don't have to worry about, you know, what's going to happen when the nanny turns into a pumpkin at 5:30. Cause you're going to be there at 5:30. Every single day."*

This is not to say that only female lawyers feel the stress of child-care responsibilities. In a focus group in Southern Oregon, for example, two female lawyers noted the difficulties faced by male lawyers whom they know. To quote one:

*"He has the same problems...his wife goes up to [another city] every Friday to work and he has problems getting to work."*

In discussions with lawyers throughout the state, we heard that the presence of a mentor is widely regarded as very important to retaining a junior lawyer. The absence of female mentors, in particular, poses a challenge in retaining female lawyers, especially in large firms. A sense of frustration pervaded the focus group of male partners practicing in an urban area, as they reflected on the variety of strategies that their firms have used to increase retention rates for promising lawyers.

*"I would find some way of manufacturing more senior women partners generally and just sprinkling them around the firm. I think that would be a great thing. I mean you can't do it now. ...There aren't that many gray-haired eminent women lawyers right now. ...[T]en years from now, that's going to change."<sup>44</sup>*

#### e. Positions of Power

Nationally, 37% of all lawyers admitted to practice since 1985 have been women. However, the number of women who have obtained partnership positions in large firms is still in the low teens.<sup>45</sup> In Oregon, the trend is the same. Of the Oregon law firms completing the National Association for Law Placement (NALP) firm questionnaire, as of February 1, 1997, the total percentage of female partners was 15%.<sup>46</sup> The results of the Task Force survey of lawyers was nearly identical: Thirty-three (14.8%) of the 223 respondents who were partners in private law firms were women.

<sup>41</sup> Telephone conversation between Jessica Mindlin, Task Force Coordinator, and male lawyer.

<sup>42</sup> Comment from female lawyer in Willamette Valley focus group.

<sup>43</sup> Comment from male lawyer to member of Task Force in 1997.

<sup>44</sup> Excerpt from comment by male partner in focus group. The statistical data from the lawyer survey support the foregoing perception to this extent: female respondents constitute 43.5% of the respondents who are under the age of 30, and 40% of the respondents under the age of 40. Women constitute only .6% (one out of 40) of the respondents aged 60 or over.

<sup>45</sup> COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASS'N, WOMEN IN THE LAW: A LOOK AT THE NUMBERS (1995).

We did not gather data respecting managerial positions occupied by lawyers in the public sector. However, focus group discussions suggested that, although a higher percentage of women occupy positions of power in that sector than in the private sector, male lawyers occupy managerial positions proportionately more than female lawyers. Nationally, this is true as well. At the United States Department of Justice, for example, in which 35% of the approximately 25,000 lawyers are women, only 18.5% of the women occupy supervisory positions, compared with 25.1% of the men.<sup>47</sup>

In the judiciary, the pattern is similar. Of the presiding judges in Oregon's 26 trial court districts, 4 (16%) are women. A woman also is the presiding judge of the Oregon Court of Appeals, while a man serves as Chief Justice of the Oregon Supreme Court. Tremendous progress in the appointment and election of women to the bench has been made in the last decade, as the table below reflects:<sup>48</sup>

**1997 Snapshot of the Oregon Judiciary**

	Total No. of Judges	Number of Women	Percentage of Women
District Court Judges	63	13	20.6%
Circuit Court Judges	93	19	20.4%
Tax Court <sup>49</sup>	1	0	0%
Court of Appeals	10	3	30%
Supreme Court	7	1	14.3%
Total Judges	174	36	20.7%
Presiding or Chief Judges	28	5	17.9%

Additionally, the percentages of women at each level of the judiciary who were appointed or elected initially after January 1, 1985, have been slightly higher (overall, about one-fourth).

We did not study whether there are gender-related disparities in case assignments among judges of the same court. However, we received anecdotal information from female judges that some female judges are perceived to obtain less favorable case assignments than their male peers.

**E. CONCLUSIONS**

Overall, tremendous progress has been made in the opportunities afforded to female lawyers. In Oregon, female lawyers now constitute 26% of the bar membership, up from approximately 2% in 1970, and 9% in 1980.<sup>50</sup> Women graduate from Oregon law schools in numbers nearly equal to men. Women hold nearly 21% of judicial positions in the Oregon judiciary.

However, a significant minority of female lawyers face gender bias or gender unfairness within the legal profession. Moreover, as reported in survey responses, Oregon's female judges and lawyers perceive more unfairness than do their male counterparts. For example:

- 73.7% of female judges (compared with 2.7% male judges), and 65.5% of female lawyers (compared with 19.2% male lawyers) reported being treated differently by *clients* because of their gender;
- 42.1% of female judges (compared with 1.4% male judges), and 61.3% of female lawyers (compared with 7.6% male lawyers) reported being treated differently by *lawyers* because of their gender; and

<sup>46</sup> The NALP form is prepared by an individual at a law firm for distribution to law students seeking employment opportunities. The form describes law-firm characteristics, including information about the lawyers practicing in the firm, based on self-reports. At least with regard to sexual orientation and disability, we *know* that there is under-reporting by lawyers. The figures below must, therefore, be considered with caution.

**Demographic Composition of Portland Law Firms in Numbers and as Percentages**

	Partner/ Firm Member	Of Counsel	Associate	Senior Lawyer	Staff Lawyer	Summer 1997
<b>Men</b>	391 (85%)	40 (93%)	149 (64%)	5 (60%)	7 (58%)	40 (63%)
<b>Women</b>	68 (15%)	3 (7%)	83 (36%)	2 (40%)	5 (42%)	30 (37%)
<b>Total</b>	459	43	232	5	12	70
<b>African-Am.</b>	1 (.2%)	0 (0%)	5 (2%)	0 (0%)	0 (0%)	8 (11.4%)
<b>Hispanic</b>	2 (.4%)	0 (0%)	10 (4%)	0 (0%)	1 (8%)	4 (6%)
<b>Asian-Am.</b>	2 (.4%)	0 (0%)	13 (5.6%)	0 (0%)	1 (8%)	13 (18.6%)
<b>Disabled</b>	2 (.2%)	2 (5%)	1 (.4%)	0 (0%)	0 (0%)	0 (0%)
<b>Openly Gay/Lesbian</b>	1 (.2%)	0 (0%)	1 (.4%)	0 (0%)	0 (0%)	0 (0%)

<sup>47</sup> NATIONAL TECHNICAL INFO SERV, FEDERAL CIVILIAN WORKFORCE STATISTICS, OCCUPATIONS OF FEDERAL WHITE COLLAR AND BLUE COLLAR WORKERS (Sept 1993).

<sup>48</sup> Data provided by Doug Bray, Deputy Court Administrator, Office of the State Court Administrator, dated July 28, 29 & 30, 1997.

<sup>49</sup> In addition to the one Tax Court judge, there are five Tax Court magistrates; two are women and three are men. One male tax magistrate is disabled.

- 31.6% of female judges (compared with 2.7% male judges), 31.5% of female lawyers (compared with 5.6% male lawyers) reported being treated differently by *judges* because of their gender.

## 1. Work Environment

### a. Hiring Practices

Gender plays a role in the hiring process in some cases. Personal issues are the subject of inquiry for female candidates more often than for male candidates. Women sometimes face intrusive questions about their marital status, child-bearing plans, and husbands' approval of their career choices. Men are not subjected to similar questioning during the interview process.

### b. Case Assignment

Few case assignments are made on the basis of gender. Sometimes, however, case assignments are made to lawyers who are perceived to be "aggressive" or "heavy hitters," and such lawyers more often are men. Female lawyers displaying traits of aggressiveness may be criticized.

Male and female lawyers believe that case assignments are made to accommodate the preferences of clients. However, clients generally do not appear to prefer male counsel more than female counsel for reasons of gender.

### c. Compensation

Female lawyers earn less than their male counterparts. Factors that appear to play a role include:

- female lawyers charge less for their time;
- female lawyers work fewer billable hours;
- some firms may consider the income of a female lawyer's spouse in setting the compensation of a female lawyer;
- women may have fewer "rainmaking" opportunities than men;
- female lawyers practice in fields that are less highly compensated (in part to have greater control of their work schedules and to accommodate family responsibilities); and
- women disproportionately practice in the public sector.

Additional objective and subjective factors may be at work.

For the most part, compensation in the public sector does not appear to be based on the gender of the lawyer.

In both private and public employment, positions of leadership and supervision are held disproportionately by male lawyers.

### d. Personal Treatment

Some women are reluctant to report adverse treatment under existing procedures.

## 2. Geography

Judges and lawyers in rural areas are disproportionately male. Female lawyers in rural areas have fewer opportunities than their urban counterparts to associate with other female lawyers, particularly in the private sector. That fact, and the relative lack of mentoring opportunities, contribute to a sense of isolation for female lawyers in rural areas.

## 3. Practice Specialties

Female lawyers are under-represented significantly in several practice specialties: general practice, corporate law, real estate law, and environmental law.

Female lawyers predominate in government work, poverty law, disability law, and public defender practice, which are areas in which compensation is typically lower.

## 4. Public and Private Sector Experiences

The public sector appears to be a more welcoming work environment to female lawyers. Factors that may contribute to this perception are:

- a higher ratio of female to male lawyers than in the private sector;
- less competition and more collaboration in the public sector;
- more control over hours;
- more consideration of family issues and personal lives; and
- few or no "rainmaking" obligations.

## 5. Family and Outside Obligations

The practice of law often conflicts with family and personal obligations. All lawyers, regardless of gender, experience difficulty balancing work and family. However, women are more frequently responsible for home and family obligations. This factor, more than any other that we examined, appears to affect women's career decisions and career opportunities. The effort to achieve balance drives women to make career choices such as area of specialty, public sector versus private

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<sup>50</sup> This is slightly more than the national average; nationally, women comprise 20% of all lawyers. See Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry Into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 NYU L Rev 829, 847-48 (1995).

sector, solo practice versus firm, and geographic location. Concerns about that balance also cause some employers to limit the opportunities that they make available to women.

Male lawyers, too, suffer from the inflexible or onerous demands of their law practices. When men assume family responsibilities, there is little tolerance for the choice.

Some law firms are developing and implementing part-time positions, including positions on a partnership track. To the extent that female lawyers bear greater responsibility for family and household obligations, this option assists in the balancing of family and career without undue sacrifice of financial reward and career success. Not all law firms' compensation arrangements with part-time lawyers are fairly applied, however.

## 6. Retention

Retention of female lawyers in the private sector, especially in areas such as civil litigation, presents a challenge to law firms, for a number of reasons. Female lawyers describe a male-dominated culture, an inability to control the hours worked, a lack of mentorship opportunities, and an unwillingness to address the need for female lawyers to meet family obligations. Part-time and flex-time options are available in some firms, but exercising those options may jeopardize a lawyer's attainment of partnership status.

## 7. Positions of Power

Women have made great strides in the last several years, not only in representation in the bar overall, but also in attaining positions in the judiciary and partnership status in the private sector. However, compared to their numbers in the bar, women are still under-represented in leadership roles, such as partnerships in private firms. Additionally, women are still somewhat under-represented in the judiciary and its leadership positions. Although time alone may help to change those facts, conscious effort also will be required.

## 8. Intersectionality

Young, female lawyers may be disadvantaged in their practice, both inside and outside the courtroom. Although most respondents to the judge and lawyer surveys considered the personal characteristics of the litigants to be more important to the outcome of litigation than the personal characteristics of counsel, significant numbers of both lawyers and judges responded that representation by a young, female lawyer in a civil case may have a negative effect on the outcome of the case for her client.<sup>51</sup>

## F. COMMENDATIONS

We commend public sector legal employers for hiring substantial numbers of women and for establishing gender-neutral compensation policies and practices.

We commend the Oregon lawyers who participate in mentoring programs, including those sponsored by the Inns of Court, the Professional Partnership Program of the Oregon State Bar, Oregon Women Lawyers, the Multnomah Bar Association, the Oregon Trial Lawyers Association, the Association of Oregon Black Lawyers, and the Minority Law Students Association at Willamette University College of Law.

We commend the legal employers that have:

- implemented part-time and flex-time practice options for lawyers, especially those on partnership tracks;
- established structured mentoring programs for newer lawyers;
- recruited female lawyers and lawyers of color; and
- created structured evaluation procedures for lawyers to ensure fairness.<sup>52</sup>

## G. RECOMMENDATIONS

### 1. The Oregon State Bar should:

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

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

<sup>51</sup> For further findings and discussion of this issue, see the Judicial Administration chapter.

<sup>52</sup> See COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASS'N, FAIR MEASURE — TOWARD EFFECTIVE ATTORNEY EVALUATIONS (1997).

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

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

d. undertake to consider, by January 1, 2000, the feasibility of establishing a process by which lawyers may complain of adverse treatment without the need to reveal that complaint, at least initially, to persons in the complainant's own firm or community;

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

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

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

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

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

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

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

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

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

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

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

- continue to appoint qualified lawyers who are women, people of color, gay men, lesbians, and

disabled persons to judicial positions (especially outside major metropolitan areas).

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

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