



**Gender Justice Study  
Advisory Committee**  
April 5, 2021  
10:00 AM – 12:30 PM  
Zoom Webconference



**Meeting Minutes**

**Members Present:**

Justice Sheryl Gordon McCloud, Co-Chair  
Dr. Dana Raigrodski, Co-Chair  
Dean Mario Barnes  
Judge Linda Coburn  
Karen Murray  
Judge Kathleen O'Connor (ret.)  
Judge Steve Scott (ret.)  
Judge Michael Spearman (ret.)  
Secretary Kim Wyman  
Sharese Jones

**Guests:**

Kristi Cruz  
Kelly Harris  
Elizabeth Hendren  
Shannon Kilpatrick  
Joanna Moore  
Diego Rondón Ichikawa  
Mary Welch

**Staff:**

Kelley Amburgey-Richardson  
Cynthia Delostrinos  
Moriah Freed  
Arina Gertseva  
Steffi Larson  
Bob Lichtenberg  
Rob Mead  
Claire Mocha  
Sophia O'Hara  
Sierra Rotakhina

**I. Welcome and Introductions**

- Justice Gordon McCloud welcome everyone and introduced our new student interns:
  - Sophia O'Hara is a third year undergraduate at University of California, Santa Barbara studying Sociology with minors in History and Applied Psychology. She is passionate about sexual health, reproductive justice, and gender equity. She has prior experience working at Public Health Seattle King County in the HIV/STD department and is the coordinator for a human sexuality course at UCSB.
  - Steffi Larson is a third-year student at Pitzer College studying politics and English and is writing the subsection on sexual assault in prisons and jails for the Study. She is planning to pursue a career in law and is particularly interested in criminal justice reform and immigration law.

- This is currently the last Advisory Committee meeting we have scheduled before the grant funding the study ends at the end of June.
- Kelley Amburgey-Richardson shared the following information:
  - We are looking at adding an additional meeting on May 24<sup>th</sup> or 26<sup>th</sup>
  - Today we will be talking about the structure of the recommendations and some individual recommendations.
  - The purpose of the May meeting will be to get AC member feedback on all the recommendations when they are closer to final and on the executive summary.
  - AC members have provided invaluable feedback during all committee meetings.
  - The goal will be to give members 3-4 weeks to review final draft recommendations before the May meeting.
  - We'll send an email about this after the meeting but wanted to share the reason for the additional meeting today.

## **II. Presentation and Discussion: Draft Prosecutorial Discretion Section**

- Dr. Raigrodski introduced the authors of this section:
  - Kelly Harris is the chief of the Criminal Division at the Seattle City Attorney's Office and a Gender and Justice Commission Member.
  - Joanne Moore was director of the Washington State Office of Public Defense (OPD) until she retired in December. Her entire 40-year career was spent working for justice reform, including 22 years at the Office of Public Defense.
  - Claire Mocha has a Master's Degree in Public Health from the University of Washington and is currently working with the Department of Health. She has contributed research and writing to several sections of the Study.
- Kelly Harris and Joanne Moore gave a brief presentation about the section.
  - Kelly Harris thanked AC members Karen Murray and Judge Michael Spearman for their direction and encouragement early in his career.
  - Thanked Claire Mocha for her work and research on this section.
  - This section primarily focuses on charging.
  - Filing/charging standards are the one area where prosecutorial discretion is unchecked by others.
  - The standards are not often published online, are subject to interpretation, and shift as different prosecutors take office.
  - It's unconstitutional for prosecutors to discriminate based on gender or race.
  - Not a lot of studies on this issue in WA but Claire Mocha found some in other states.
  - Ethical rules apply:
    - RPC 8.4 – Misconduct
    - RPC 8.4(g) – Public Attorneys
    - RPC 3.8, Comment 1 – sets out competent representation of the government.
    - Ethical violations go beyond discretion and become discrimination.

- Recommendations in this section include: better data collection and analysis, potentially requiring prosecutor's offices to publish data that would allow studies similar to other states.
- One thing that would be helpful is interviews with prosecutor's offices across the state.
- Justice Gordon McCloud noted that the Commission is looking at this study as a snapshot of where we are now, and a blueprint for the future. Many recommendations will be for additional research.

## Discussion

- Section on impact of drug arrests/convictions for women.
  - Justice Gordon McCloud noted that we know Black men are disproportionately impacted by drug arrests/convictions overall.
  - If we say women are disproportionately impacted, is that in proportion to all arrests or other crimes for women? Which women are impacted?
  - Claire Mocha shared that this data is pulled from the mass incarceration section and may be missing some context. She will look back at that section.
  - Dean Mario Barnes suggested that we speak generally to drug crimes' impact on mass incarceration and in this project focus on the gender impact and drill down and talk about which women are most impacted.
- Ethical rules and violations
  - Dr. Raigrodski highlighted the fact that it is not just about bad prosecutors that are violating ethical rules. Discrimination is baked into the law.
  - Joanne Moore agrees and doesn't think prosecutors by and large have bad intent. But the system is not transparent. The only check on prosecutors is elections. Otherwise public is not aware, involved in interpretation of these laws.
  - These problems have been recognized. These are public jobs and there must be accountability. People don't know that they are acting in a biased way.
  - Agreement that the RPC discussion is important as a foundation.
  - Kelly Harris shared anecdotally that prosecutors say they don't pay attention to race or gender when charging.
    - This is a mistake. You don't know what was in officer's mind during arrest. You may miss something if you don't have this in mind.
    - May be perpetuating racism coming from police agency that is referring cases.
  - Judge Scott noted that there will be issues that vary from county to county.
    - Prosecutors may not be discriminating intentionally, but aren't considering race/gender. The result is systemic bias.
    - Plea bargaining is at least as much of a problem systemically.
  - Dean Barnes mentioned that former Federal Defender and current American University Law School Professor Angela Davis's 2009 book, "Arbitrary Justice: The Power of the American Prosecutor" outlines how ostensibly identity-neutral factors

(not prosecutors' intent) are responsible for disproportionate impacts in charging/plea bargains/sentences. The book, however, primarily focuses on race and class discrimination.

- Need for published standards to enhance transparency
  - Judge Spearman and Judge Coburn both noted the importance of published standards.
  - This increases transparency, creates public trust.
  - Can also be referred to in individual cases to ensure what a defendant is getting is not outside the range/norm.
  - Key issues data shows that stops, arrests are where a lot of problems start.
  - Prosecutors should be required to review arrests to ensure there is a check on racial bias.
  - There should be a record made of what happens in plea bargaining.
    - Who you are, what your race is, who the victim is, all make a difference in what plea bargains are offered.
    - We need to recommend that there is some way to follow that process. Not sure the best way to do this. There are offers that go back and forth and its fluid.
    - Perhaps, recommend that everyone keep track of opening offer and final outcome.
    - Charging decisions, filing decisions, plea negotiations – all need transparency.
  - Anecdotally, members have observed difference between plea negotiations with public defenders vs. private attorneys.
    - A lot of people who are indigent, represented by public defender, are people of color.
    - Section on DV cases shows how few go to trial.
    - A big concern when the victim is person who is poor and has criminal history, cases are handled differently.
    - Parties should be transparent in court about why they are reaching a certain resolution.
  
- Judge O'Connor agreed with previous speakers and noted that we shouldn't overlook habits in juror selection, which can show bias.
  - In doing this project we should get input from other elected officials who are impacted by prosecutor's decisions. E.g., county budget office.
  - Jails, law enforcement, prosecutor make up 2/3 of the budget for many counties.
  - Prosecutors often have a lot of power to determine budget allocations.

### III. **Presentation and Discussion: Draft Section on Treatment in the Courtroom Based on Gender**

- Justice Gordon McCloud introduced one of the authors of this section:
  - Rob Mead is the State Law Librarian. Rob has done a substantial amount of writing and research on several sections of the Study including this one on treatment in the courtroom based on gender.

- Rob Mead highlighted a few specific sections of the draft for discussion.
  - This section is a “grab bag of critical issues.” Thank you to Dr. Raigrodski for reorganizing the draft.
  - This section involves looking back at the 1989 report and seeing what has changed.
  - For example, in 1989, conducted a survey.
    - Found there was bias but it was not overt. Primarily men were involved in that effort.
    - Today we have so many more women and people of color in the profession, we see different problems through that more diverse lens.
  - Treatment of jurors – prosecutors can no longer use gender-based peremptory challenges.
  - Issue of gender bias against witnesses, victims. Examples of both explicit and implicit gender bias.
  - There is a bill proposed this legislative session that is trying to reduce the impact of prior charges for victims of sex trafficking. The public hearing included powerful testimony from those impacted.
  - Bias in the legal community.
    - The section includes pay discrimination, pay disparity.
    - Gavel Gap study – women and men of color are underrepresented in state judiciary in WA.
    - Improvements have been made but there is a lot more to do.
  - Pay disparity is amplified by women continuing to contribute disproportionately to caretaking/home responsibilities. COVID has had a huge impact but we don’t have data yet.
  - Sex-based workplace harassment – women are getting harassed in law firms, in court situations, it is a continuing problem that needs to be addressed.
    - Predatory behavior by judges, by clients. Employer liability issues.
    - Harassment survey findings need to be incorporated.
  - Implicit bias against litigators who are women, women of color
    - Juror bias puts clients at disadvantage when juries, judges are primarily white, before we even get to the evidence.
    - Code of judicial conduct addresses bias by judges.
    - Model RPC 8.4(g) provides the potential for WA to adopt gender bias as an ethical issue.
    - Judicial training is also needed.
  - There are limited tools available for changing behavior of court employees, judges. Beyond changing rules, need to change hearts and minds and that is difficult to do.

### Discussion

- The 1989 survey focused only on women in the profession. Our work is broader, focused on women of color, immigrants.
  - Should include gender bias in credibility determinations for witnesses, victims.
  - What about clients who harass lawyers?

- There is also a history of women defendants being harassed by those in power, assaulted by police officers arresting them.
- Section title includes litigants, but the section comes across as focusing more on professionals.
- Interested in results of pilot project survey.
- Inclusion of anecdotal information
  - Justice Gordon McCloud noted that this was one of the areas where the 1989 report was subjective, based on surveys of perceptions. Concerned that this is still somewhat anecdotal.
  - Rob Mead wonders if it should have more anecdotal information, have women share what they have experienced in the system the past 40 years. Doesn't want the stories and data to create a focus more on professional women. Wants everyone in the system's experiences to be represented.
  - Dean Mario Barnes shared that academic studies punctuated by anecdotes is a really effective format. Anecdotes complement and help to crystalize overall effect of the research.
  - Rob Mead noted that if more anecdotes would make the section stronger, he would not be the best person to write them. Looks to the Commission and AC for this.
  - Dr. Raigrodski noted that although many on the call could share our experiences as women in the profession, what we are missing is experiences of women clients.
  - Perhaps we can rely on current and former Commission members such as Riddhi Mukhopadhyay and Grace Huang, and other section leads to share client experiences.
- Rob Mead noted that a lot of the data is old, will look again to see if there is anything more recent. If not, this is a recommendation for the future.

#### **IV. Presentation and Discussion: Preliminary Workplace Harassment Survey Findings**

- Dr. Raigrodski introduced Dr. Arina Gertseva.
  - Dr. Gertseva is a senior research associate at the Washington State Center for Court Research (WSCCR) with expertise in adolescent development, evidence-based practices, prevention, and gender issues in the juvenile justice system. Dr. Gertseva has more than 15 years of experience in survey research and program evaluation pertaining to issues in education, health, judicial needs, and community needs assessment and is leading our workplace harassment survey.
- Dr. Gertseva presented preliminary findings from the survey.
  - The survey will close soon. We currently have over 1700 responses (complete or partial).
  - Initially, about 19% of respondents skipped the demographic section.
    - Made adjustments, added framing about why these questions are important.
    - More people responded to that section after that.

- Also, less people skipped the questions about sexual orientation which were located outside of the demographics section of the instrument.
- 15-18% of respondents skipped some of the more sensitive questions.
- About 7% of respondents reported experiencing harassment serious enough to seek legal help.
- About 17% witnessed harassment of someone else.
- Women were more likely to report experiencing workplace harassment.
- Reasons for harassment
  - Survey included an extensive list.
  - Top 4 – sex, age, race/color, ethnicity.
  - There were gender differences in responses. If you look only at men, race/color and ethnicity ranked higher.
- Most common type of harassment was non-sexual work-related harassment. There were gender differences in how women and men experienced this.
- Who was the harasser? 36% of respondents said manager/supervisor
- Trying to get help
  - 56% tried to get help.
  - Majority went to supervisor first.
  - Only 9% were able to completely resolve issue.
  - Women were more likely to seek help.
- Why don't people report?
  - Didn't think the issue was serious enough.
  - Didn't have confidence in reporting procedures.
  - Afraid of negative results.
- 7% said new forms of harassment developed when moving to remote working, 3% said harassment decreased with remote work, and 3% said harassment got worse
- Has not had a chance to analyze open-ended questions yet but a large number of people responded to them.
- Will also be able to look at intersection of gender and race once data is extracted.

### Discussion and Recommendations

- It is great to have this baseline data, to finally have data on these issues.
- Dean Barnes referenced data on harassment in the academic setting. There is an iceberg visual that is used to accompany the data. Wonders if there is a similar visual that we could use for this section.

### **V. Discussion: Framing the Study Recommendations**

- Dr. Raigrodski provided an overview for discussion.
  - Do you think this structure of goals followed by SMART recommendations makes sense, gets us closer to what we are trying to accomplish with the report?
  - Should we be merging anything more (e.g., recommendations about data collection)?
  - What should we do when we can think of a concrete step but not necessarily a timeline or who should take it on?

- Some recommendations have been trimmed down. Is that the right approach and include detail in narrative? Or should we include more detail here?
  - Noted that Leads have not had a chance to adapt recommendations yet with new SMART framework so any guidance would be helpful.
- Members generally like the structure of goals, recommendations.
  - Good to have SMART recommendations that are not just aspirational.
  - Would like more time to look at these and provide feedback.
  - Feedback is helpful now to provide direction to the Leads as they adapt to the SMART framework, but not necessarily line edits at this point.
  - Sierra – goal would be by end of this month finalize draft, send to AC early May and give them a month to review, send written feedback and discuss in May meeting.
  - Robert Lichtenberg, Communication Barriers Section Co-Lead, asked about whether we are looking for a smorgasbord of all recommendations or do we want practical things that are achievable now?
    - Does not want to promise something that cannot be achieved.
    - Dr. Raigrodski indicated that we are not asking Leads to take out things that are more ambitious, but we want to hear how they recommend proceeding, and how they would prioritize their recommendations.
    - Dr. Raigrodski noted Kelley Amburgey-Richardson’s earlier recommendation to convene a GJC work group to identify funding sources for additional research, plan for implementation of recommendations.

**VI. Next Steps and Adjournment**

- AC members are in agreement about how to frame the goals and recommendations, and about the need for an additional meeting.
- Thank you everyone for putting aside your jobs, retirements, pushing through pandemic fatigue to be here. These meetings are so valuable to guide us.
- Staff will follow-up via email about scheduling a late May meeting.