
Article

Sprinting a Marathon: Next Steps for Gender Equity in Criminal Law Employment

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INTRODUCTION

Nearly one year into the pandemic, Samantha was faced with a very difficult decision.¹ She loved her job as a public defender and felt her office made some efforts to be flexible, but the daily grind and stress of juggling her demanding work with being a single parent to a school-age child had become unbearable. Her daily schedule was completely unpredictable. At the beginning of the pandemic, court was online and so was her daughter's school. Hearings could sometimes last up to six hours, during which time her daughter inevitably would need help with online school frustrations, feel hunger, and simply crave attention.

When her daughter's school began to meet in person again, they canceled after school care because of Covid, and sometimes they had to close completely for days or weeks due to positive cases. Childcare, particularly emergency care, was and is scarce and difficult to afford on her salary anyway. Concerned with due process and zealous representation of their clients, the public defender's office and the district attorney's office asked employees to come in person and judges conducted in-person hearings as much as possible. When Samantha's child, too young to stay home alone, was not able to go to school and Samantha was required to be in court (even Zoom court), Samantha was in a serious bind.

With a heavy heart, Samantha quit her dream job and switched to a civil law firm based in a city one hour from her home. Realizing that once that firm returned to in-person work she would again be unable

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1. Names and identifying information changed to protect anonymity.

to juggle the commute with school drop-off and pick-up, she decided again to make a change and start her own practice. While being her own boss affords the flexibility she needs to be a single parent during Covid, it also means uncertain and unpredictable flow of cases and income. Samantha's story reflects that of women criminal lawyers and other professional women² who are primary caregivers.

This Article follows up on a number of other publications related to the work of the ABA Criminal Justice Section Women in Criminal Justice Task Force (TF).³ As described in Part I, the TF was formed in late 2018 to investigate gender-based barriers to hiring, promotion, and retention in criminal law. Over the past three years, the TF engaged in three major phases of qualitative data-gathering: 1) in-person and remote listening sessions between November 2018 and June 2020; 2) follow-up surveys of listening session participants in late 2020 to assess the impact of the pandemic; and 3) focus group meetings and surveys in November 2021 regarding proposed solutions.

The Berkeley Journal of Criminal Law (BJCL) published the author's analysis of phase one in December 2020,⁴ the ABA Criminal Justice magazine published a number of short columns,⁵ and the ABA

2. Women doctors are also quitting at higher rates for many of the same reasons described in this Article. Jessica Dudley, Sarah McLaughlin, & Thomas H. Lee, *Why So Many Women Physicians Are Quitting*, HARV. BUS. REV. (Jan. 19, 2022), https://hbr.org/2022/01/why-so-many-women-physicians-are-quitting?utm_source=The+19th&utm_campaign=73dcb407ac-19th-newsletters-daily-0119&utm_medium=email&utm_term=0_a35c3279be-73dcb407ac-360415032®istration=success [<https://perma.cc/N8U3-BLT2>].

3. The author, on behalf of the TF, extends gratitude to the Criminal Justice Section for its support of all of the TF's work, as well as to American Bar Foundation researchers, Professors Ajay Mehrotra and Bob Nelson, who provided valuable advice regarding survey structure. The author, TF Advisory Board Member and Data Committee Co-Chair Yaamini Rao, and former ABA Center for Innovation collaborator Sarah Glassmeyer developed the survey that serves as the basis for this report. TF Co-Chair Carla Laroche read numerous drafts and provided invaluable feedback. TF members Professor Sarah Redfield, Ann Ratnayake Macy, and Yaamini Rao also contributed valuable edits to an early version. Nat Saing contributed critical editing and formatting assistance. Special thanks to Emilie Keuntjes Erickson and her colleagues at the Minnesota Law Review for their hard work and careful editing. All TF members are listed in Appendix A.

4. Maryam Ahranjani, *"Toughen Up, Buttercup" versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force*, 25 BERKELEY J. CRIM. L. 99 (2020) (providing a thorough background of the history of women in criminal law and presenting initial findings from the listening sessions).

5. See Carla Laroche & Tina Luongo, *Task Force Launches*, CRIM. JUST. MAG. (Spring 2019), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2019/spring/task-force-launches [<https://perma.cc/Z6VD-CCK2>]; Maryam Ahranjani, *Listening Session Participants Express*

Criminal Justice Section published a report in October 2021.⁶ This Article follows up on the BJCL article by describing and analyzing phases two and three (the results of the follow-up survey conducted between late October and early December 2020, the focus groups conducted on

Feelings of Isolation—and Demonstrate Resilience, CRIM. JUST. MAG. (Nov. 1, 2019), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2019/fall/listening-session-participants-express-feelings-isolation-demonstrate-resilience [<https://perma.cc/LE9A-MWD8>] [hereinafter Ahranjani, *Listening Session Takeaways*]; Maria Carmen Hinayon, *Who Needs the Old Boys' Club? Let's Make Our Own—Highlights from the WCJ Bay Area Listening Session*, CRIM. JUST. MAG. (Jan. 21, 2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/winter/who-needs-old-boys-club-lets-make-our-own-highlights-the-wcj-bay-area-listening-session [<https://perma.cc/KT6D-YRHH>]; Daniela Donoso, *Heavy Purse: A Law Student's Reflection on the CJS Women in Criminal Justice Task Force's NYC Listening Session*, CRIM. JUST. MAG. (Apr. 20, 2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/spring/heavy-purse-law-students-reflection-the-cjs-women-criminal-justice-task-forces-nyc-listening-session [<https://perma.cc/P9Q9-XTEW>]; Lucian E. Dervan, *Undefined Vision: An Ally's Journey*, CRIM. JUST. MAG. (Jul. 15, 2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/summer/undefined-vision-allys-journey/ [<https://perma.cc/4LE3-3Z7S>]; Maryam Ahranjani, *Looking Back, Looking Forward*, CRIM. JUST. MAG. (Oct. 29, 2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/fall/looking-back-looking-forward [<https://perma.cc/9DSL-266J>] [hereinafter Ahranjani, *Looking Back, Looking Forward*]; Hon. Gloria Ochoa-Bruck, *The Call for the Rise of the Modern Prosecutor*, CRIM. JUST. MAG. (Jan. 11, 2021), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/winter/the-call-the-rise-the-modern-prosecutor [<https://perma.cc/EF9N-4E8V>]; Hon. Rachel Pickering, *An Awakening and More: How Being Part of the Women in Criminal Justice Task Force Has Provided Me with a Judicial Awareness*, CRIM. JUST. MAG. (May 1, 2021), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/spring/awakening-how-being-part-women-criminal-justice-task-force-provided-me-judicial-awareness [<https://perma.cc/U4NN-PGNX>]; Joy Applewhite, *Brave, Bold, Booked, and Balanced*, CRIM. JUST. MAG. (July 20, 2021), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/summer/brave-bold-booked-and-balanced [<https://perma.cc/4XXT-8395>]; Jessica J. Yeary, *From Sweetie to Sisterhood: A Public Defender's Listening Session Reflection*, CRIM. JUST. MAG. (Oct. 20, 2021), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/fall-2021/criminal-justice-v036n03-fall-2021.pdf.authcheckdam [<https://perma.cc/N4A2-NJ7E>]; Yaamini L. Rao, *Voice Lessons*, CRIM. JUST. MAG. (Jan. 12, 2022), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2022/winter/voice-lessons/ [<https://perma.cc/PAK7-GC55>]; Ann Ratnayake Macy, *From Mad Men to Times Up and Beyond: What We Must Do to Ensure Workplace Parity for Women in Criminal Justice*, CRIM. JUST. MAG. (forthcoming 2022).

6. Maryam Ahranjani, *Pulling Back the Curtain: A Follow-Up Report from the ABA Criminal Justice Section Women in Criminal Justice Task Force*, A.B.A. https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/tf-women-report.pdf [<https://perma.cc/2LBU-EMT5>].

November 18, 2021, and the focus group survey administered immediately after the focus groups).

Concluding that hiring, retention, and, particularly, *promotion* of women in the criminal justice profession continue to be a problem, the 2020 follow-up survey revealed the following challenges: (1) limited flexibility with work schedules, (2) insufficient wellness resources, (3) deficient training opportunities, particularly in state and rural criminal law offices, and (4) short supply of meaningful mentorship and transparent policy guidance. Some employers seem receptive to change but many do not. The title of this report came from one of the survey respondents who described her thirty-five-year career in criminal law as a constant sprint—implying a pace that is neither sustainable nor replicable.

Considering the results of the 2020 survey, the author and the TF designed a short summary of challenges and possible solutions.⁷ The TF then created a list of diverse criminal justice leaders from public and private employment. These leaders were invited to participate in focus groups held in person in the ABA's Washington, DC office and online on November 18, 2021. The purpose of the focus groups and follow-up survey included pressure-testing proposed solutions and soliciting additional solutions.

This report is divided into five parts. Part I summarizes and reviews the TF initial findings. Part II discusses the 2020 survey methodology, administration, and respondents and situates the diversity of respondents within available demographic data. Part III includes a summary of questions and responses, as well as separate sub-sections on the impact of the COVID-19 pandemic on women criminal lawyers, ABA membership, and miscellaneous important comments. Part IV assesses the TF's preliminary recommendations and proposes potential systemic solutions for employers to implement. Part V reports on feedback from high-level and experienced criminal justice leaders at focus group discussions held in November 2021. Finally, the conclusion shares next steps for the TF to promote systemic reform to create greater gender equity for Samantha and others like her.

I. SUMMARY OF THE TASK FORCE'S INITIAL FINDINGS

When American Bar Association Criminal Justice Section (CJS) staff member Emily Johnson discovered that only 26% of the approximately 16,000 members of the CJS were women, she wondered

7. See *infra* app. D.

whether that number reflected the total population of criminal lawyers or merely the CJS membership.⁸ She raised her questions with CJS Director Kevin Scruggs and then-CJS Chair Professor Lucian Dervan.⁹

Considering the ABA's core goal of eliminating bias and enhancing diversity, Dervan created the TF to investigate whether women faced challenges in hiring, retention, and promotion in criminal law spaces.¹⁰ He appointed Carla Laroche, then a clinical professor at Florida State College of Law who is currently a tenure-track assistant clinical professor at Washington and Lee University School of Law, and Tina Luongo, chief defender at the Legal Aid Society of New York City, to co-chair the TF. Laroche and Luongo envisioned and created a vibrant TF of women with incredibly diverse lived and professional experiences to carry out its mission and appointed the author as the reporter.¹¹

Between late 2018 and mid-2020, the TF held listening sessions across the country and heard from nearly 200 diverse people at all stages of their careers (including law students and recent graduates) about their experiences in criminal law.¹² A number of common threads regarding hiring, retention, and promotion emerged from the sessions, providing insight into the following question: Why are women, particularly women of color, left out of—and choosing to leave—criminal law? The main threads include barriers to entry and pressures to exit, explicit and implicit discrimination, and burn-out/limited resources.¹³

"Practicing criminal law as a woman is like playing tackle football in a dress."

8. *See supra* note 4, at 102.

9. *Id.*

10. Laroche & Luongo, *supra* note 5.

11. *Id.*

12. Ahranjani, *Listening Session Takeaways*, *supra* note 5.

13. *Id.*; *see also* Maryam Ahranjani, *Why Are Women Lawyers Underrepresented in Criminal Justice?*, A.B.A. (Apr. 6, 2021), <https://www.americanbar.org/groups/young-lawyers/publications/tyl/topics/criminal-law/why-are-women-lawyers-underrepresented-in-criminal-justice> [<https://perma.cc/YT38-6SUE>].

A. UNDERSTANDING THE OBSTACLES

Relatively low salaries in criminal law serve as an initial and ongoing barrier, particularly for women of color and first-generation lawyers.¹⁴ Other systemic obstacles to juggling work and life commitments add pressure on women to leave criminal justice work. Similarly, criminal justice employers are not adequately addressing stage-of-life developments that especially affect women—including marriage, childbirth and child rearing, caring for aging relatives, and menopause.

One woman explained in a listening session, “[in my role in hiring,] a woman with three children, very well qualified, declined the prosecutor position. It didn’t pay well enough to even cover the childcare.”¹⁵ One prosecutor who is a mother of two explained that she wants to have a third child but simply cannot afford it. Between her relatively low salary, high cost of childcare, and “regular therapy required for my job,” it simply was not possible.¹⁶ But the costs of enduring these challenges without support are high, and many dedicated and competent women seek other legal and nonlegal opportunities as a result.¹⁷

Another woman with aspirations to be promoted in her office explained to the TF in a listening session that the only way to have a chance at promotion in her public defender office would be to handle a homicide case. “With respect to retention and promotion, [the question] is how you make it there and still have a family . . . what’s often overlooked is fertility stuff and IVF and freezing your eggs. I don’t want to have children until I’ve done a homicide [case].”¹⁸

According to the listening session participants, they face discrimination from all stakeholders in the criminal system (judges, opposing counsel, clients, court staff, corrections staff, etc.) based on gendered expectations. One woman explained, “Men try to intimidate you through intimations of incompetence and sometimes blatant overtures of incivility.”¹⁹ This discriminatory treatment is particularly challenging for women of color and LGBTQIA+ women. One well-

14. See also Jill Lynch Cruz, Melinda S. Molina, & Jenny Rivera, *La Voz De La Abogada Latina: Challenges and Rewards in Serving the Public Interest*, 14 CUNY L. REV. 147, 199 (2010) (presenting the results of a groundbreaking study of Latinas who are public interest lawyers).

15. Notes on file with author.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

respected prosecutor described how she “was introduced by my supervisor to a judge as a ‘spicy little Latina.’”²⁰ Several women who identify as lesbian or queer reported that they were repeatedly told they did not “look or act feminine enough.”²¹ Overall, the listening sessions revealed a lack of respect for and devaluation of women and gender non-conforming individuals.

Many women criminal lawyers, particularly women of color and LGBTQIA+ women, face burnout, compassion fatigue, and vicarious trauma.²² They generally do not have the resources or support to address these challenges and asked for help to process all the stress and expectations. One Black woman judge explained, “[I] left criminal law because [I] couldn’t stand seeing so many young Black men go to prison.”²³ One lawyer noted:

Looking young [and being a woman of color] has caused . . . [me] to come in overly prepared and organized to be taken seriously. I grew up with a single mom, was the first to go to college. I came in with a different perspective: I’ve had people in my family incarcerated. I became a prosecutor to help people. However, being one is hard—from all sides: defense says you’re too aggressive, victim saying not aggressive enough, cops not wanting to come in.

Women who have remained in the field demonstrate resiliency and strong survival skills. One woman of color explained, “We bury these things [sexism, racism] because if we don’t, we can’t continue to work.”

20. *Id.*

21. *Id.*

22. These three conditions are interrelated and overlapping, but they can have different causes and symptoms. The U.S. Department of Justice Office for Victims of Crime describes burnout as “a state of physical, emotional, and mental exhaustion caused by long-term involvement in emotionally demanding situations. Symptoms may include depression, cynicism, boredom, loss of compassion, and discouragement.” *Glossary of Terms*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/program/vtt/glossary-terms> [<https://perma.cc/EHE7-P66Y>]. Both prosecutors and public defenders reported some burnout throughout the listening sessions and in the follow-up surveys. Compassion fatigue is “a combination of physical, emotional, and spiritual depletion associated with caring for others who are in significant emotional pain and physical distress,” so public defenders are more likely to experience it. *Id.* Vicarious trauma is “an occupational challenge for people working and volunteering in the fields of victim services, law enforcement, emergency medical services, fire services, and other allied professions, due to their continuous exposure to victims of trauma and violence,” so it is more often experienced by prosecutors. *Id.* “Exposure to the trauma of others has been shown to change the world-view of these responders and can put people and organizations at risk for a range of negative consequences.” *Id.*

23. Notes on file with author.

B. PROPOSED STRATEGIES TO COUNTER THE OBSTACLES

Based on these findings, the TF proposed several strategies to address these challenges. The strategies include improving access to mentors and allies, increasing flexibility, and providing more resources for training and support, which may all fall under an umbrella of culture change. Culture change means systemic shifts toward inclusion and belonging, rather than simply piecemeal performative efforts.²⁴ Culture change includes increasing access to meaningful mentorship—something that people noted as particularly lacking when testifying in our sessions. The culture change the TF proposes aligns with President Biden’s Executive Order on Diversity, Equity, Inclusion and Accessibility in the Federal Workplace.²⁵

Allyship, relatedly, is a critical buffer to gender-based discrimination. Allies sometimes come from unlikely places.²⁶ According to a recent Harvard Business Review article describing evidence-based best practices for allyship, there are a number of ways in which building allyship into work cultures can support more equitable outcomes.²⁷ The article addresses white men and others occupying spaces of privilege.²⁸ Professors Mekalu, Beeman, Smith and Johnson explained that allyship includes educating oneself, recognizing one’s own privilege, accepting feedback, becoming a trusted confidant, insisting that diverse voices be at the table, calling out harmful comments and behavior, sponsoring marginalized coworkers, insisting on diverse candidates for positions, and building a community of allies.²⁹

Another aspect of culture change is adopting more flexible workplace policies that may address drift and dissatisfaction. Based on our sessions, greater flexibility in criminal law jobs will also improve the

24. Bryan Walker & Sarah A. Soule, *Changing Company Culture Requires a Movement, Not a Mandate*, HARV. BUS. REV. (June 20, 2017), <https://hbr.org/2017/06/changing-company-culture-requires-a-movement-not-a-mandate> [<https://perma.cc/6HLW-CB8P>] (describing how leaders can create meaningful, systemic shifts in work cultures).

25. Exec. Order No. 14035, 86 Fed. Reg. 34593 (June 25, 2021) (defining and prioritizing diversity, equity, inclusion, and accessibility (DEIA) in federal employment such that the federal workforce mirrors the U.S. population, and requiring executive department and agency heads to produce and implement a DEIA Plan).

26. A number of women explained in listening sessions and in the written surveys that women sometimes do not find other women to be allies. Notes on file with author.

27. Tsedale M. Melaku, Angie Beeman, David G. Smith, & W. Brad Johnson, *Be a Better Ally*, HARV. BUS. REV., (Nov. & Dec. 2020), <https://hbr.org/2020/11/be-a-better-ally> [<https://perma.cc/S2RG-BMLS>].

28. *Id.*

29. *Id.*

likelihood of recruiting and retaining talented women. The TF's work so far indicates that women, particularly those in rural and under-resourced jurisdictions, need better training opportunities and resources related to wellness, diversity and inclusion, and professional development.

The TF leadership (the author and co-chairs) and members purposefully honored the vulnerability of the participants by nurturing relationships and connecting participants to one another and to various opportunities. The author and TF co-chairs send regular updates and links about our work to participants and facilitated leadership opportunities with the TF and in the ABA Criminal Justice Section. The author and TF co-chairs recruit participants to speak on panels, in classrooms, and on the CJS JustPod podcast³⁰ and to write about their experiences. Recruited by the TF leadership, a number of TF members and participants wrote powerful columns about the discrimination they have faced and witnesses as judges, prosecutors and defense attorneys.³¹

Based on the qualitative reports during and after the listening sessions, it was clear that the TF needed to gather more quantitative information. Through partnerships with the American Bar Foundation³² and the ABA Center on Innovation,³³ the author and the TF explored various opportunities to conduct quantitative research. After considering a number of options and balancing the limitations posed by the pandemic with the interest in continuing to do our work despite limitations, the TF decided to conduct a follow-up survey of women who had already participated in the listening sessions. The idea was that women with whom we already had a connection would be more likely to respond than those hearing from the TF for the first time during the global pandemic while they juggled caregiving responsibilities.

30. The JustPod, *Task Force Ops: Initial Findings from the Women in Criminal Justice Task Force*, A.B.A. (Mar. 3, 2021), <https://podcasts.apple.com/us/podcast/task-force-ops-initial-findings-from-the-women-in/id1454284972?i=1000511498218> [<https://perma.cc/WZY8-EVUU>].

31. See sources cited *supra* note 5, especially Hinayon, Donoso, Ochoa-Brook, Pickering, Applewhite, Yeary, Rao and Macy.

32. The American Bar Foundation is an independent, nonprofit organization committed to empirical and interdisciplinary research of the study of law. *About*, AM. BAR FOUND., www.americanbarfoundation.org/about/index.html [<https://perma.cc/R4NF-UUZQ>].

33. The ABA Center on Innovation seeks to encourage innovations that improve the accessibility of legal services. *About Us*, A.B.A., https://www.americanbar.org/groups/centers_commissions/center-for-innovation/AboutUs [<https://perma.cc/X8MA-DG4H>].

II. METHODOLOGY AND ADMINISTRATION OF THE 2020 SURVEY

The follow-up survey (2020 Survey) was open between October 29, 2020, and December 1, 2020. Targeted respondents included the women criminal lawyers who had participated in TF listening sessions between November 2018 and June 2020. Since the TF already invited the participants to answer many similar questions prior to the listening session, there were two goals for this follow-up survey: (1) to document participants responses to gender equity in hiring, retention, and promotion in the criminal law profession in a more effective way, and (2) to seek feedback on how the COVID-19 pandemic has affected their careers. One significant addition compared to the pre-listening session survey was an attempt to assess respondents' commitment to the practice of criminal law. Presumably, feedback from highly committed practitioners as opposed to less committed practitioners is even more weighty, even though feedback is valuable.

A. WHO WAS IN THE SURVEY POOL?

The TF emailed the survey with a Qualtrics link to 144 women who had participated in the TF listening sessions, including thirty-six women who were law students at the time of their participation. Although the survey was sent to practitioners and law students, the primary goal and expectation was to hear from practitioners. Four emails bounced back and a total of nine autoreplies were received. Two out-of-office replies indicated the women were on reduced schedules due to family care responsibilities. One autoreply was an open-ended reply that the attorney was out of the office indefinitely. Two autoreplies indicated the attorneys were on leave.

B. WHO WERE THE SURVEY RESPONDENTS?

Forty-nine women responded, including three who were law students at the time they testified. The overall response rate of 34% (forty-nine out of 144) or almost 43% for practitioners only (forty-six out of 108) was quite high, especially since survey response rates were down during the COVID-19 pandemic.³⁴ It is likely that the trust relationship built through the listening sessions and follow-up correspondence contributed to the relatively high response rate.

34. Jonathan Rothbaum, *How Does the Pandemic Affect Survey Response: Using Administrative Data to Evaluate Nonresponse in the Current Population Survey Annual Social and Economic Supplement*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/newsroom/blogs/research-matters/2020/09/pandemic-affect-survey-response.html> [<https://perma.cc/8KMJ-N4C5>].

The forty-nine respondents were diverse in terms of geographic location, criminal law position, graduation year from law school, race, ethnicity, and LGBTQIA+ identification. Respondents live and work all over the country—in rural, urban, and suburban settings. They are based in the Northeast (New York, Pennsylvania, Washington DC), Northwest (Washington State), Midwest (Missouri), Southeast (Florida, Virginia), and Southwest (Arizona, California, New Mexico). Respondents included tribal, state, and federal-level prosecutors, public defenders, and judges. Respondents also included law students and women working in private criminal defense and at non-profit organizations dedicated to criminal justice.

Respondents' ages ranged from twenty-three to seventy-seven, and the average age was forty-nine. Law school graduation years ranged from 1971 to 2022.

Forty-eight people responded to the questions about race and ethnicity, and one declined to answer. In terms of race/ethnicity, the survey first asked whether the respondent identified as Hispanic/Latinx. Since people who identify as Hispanic/Latinx may identify as members of various races, respondents were then invited to indicate the race(s) with which they identify. Eleven women (23%) identified as Hispanic/Latinx. In terms of race, five (10.4%) identified as American Indian or Alaskan Native; five (10.4%) as Asian/Southeast Asian/South Asian; four (8.3%) as Black or African American; one (2.1%) as Middle Eastern/North African; twenty-four (50%) as white; four (8.3%) as multiracial or multiethnic; and five (10.4%) as other.

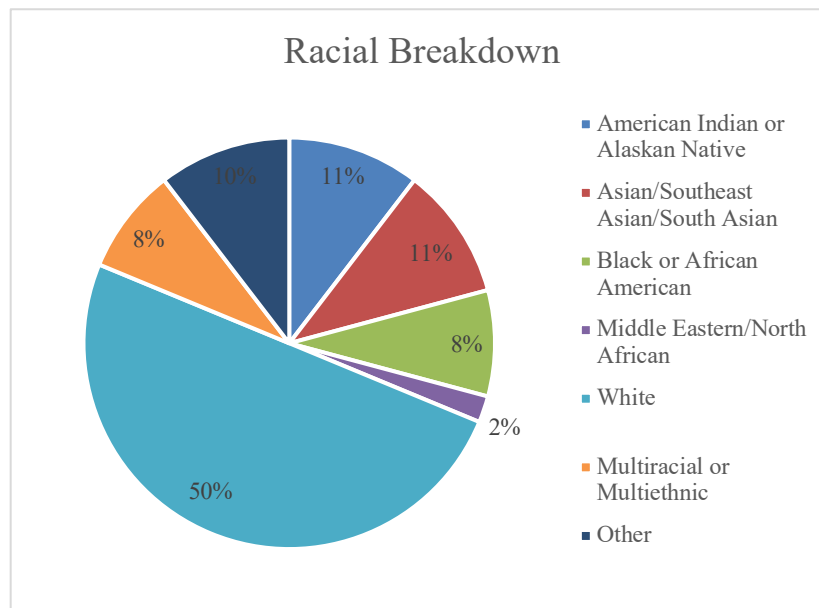


Figure 1. Depicting the racial breakdown of the 2020 Survey respondents.

In terms of gender identity, there were forty-nine responses. Forty-five (91.8%) identified as women, two (4.1%) identified as trans-women, one (2.04%) identified as a trans-man, and one (2.04%) identified as gender non-conforming. Forty-nine people responded to the question about sexual orientation. Forty participants (81.6%) identified as heterosexual, three (6.1%) identified as lesbian, two (4.1%) identified as bisexual, three (6.1%) identified as queer, and one (2.04%) preferred not to say.

C. SITUATING THE DIVERSITY OF RESPONDENTS

As explained in *“Toughen Up, Buttercup” versus #TimesUp: Initial Findings of the Women in Criminal Justice Task Force*, there is no national demographic data on women lawyers, much less women lawyers practicing criminal law.³⁵ Therefore, it is not possible to compare the demographics of survey respondents to the overall population of women criminal lawyers, or women lawyers in general, for that matter. The ABA’s 2021 National Lawyer Population Survey, however,

35. Ahranjani, *supra* note 4.

provides some self-reported racial demographic information of active lawyers in the United States.³⁶

According to that survey, 5% of lawyers identify as African American, 2% Asian, 85% Caucasian/White, less than 1% Hawaiian/Pacific Islander, 5% Hispanic, 2% multiracial, and less than 1% Native American.³⁷ The ABA survey considers Hispanic as a race, which is different from the TF's approach, which recognizes that Hispanic Americans may identify with different races. The National Association of Law Placement's (NALP) most recent data also provides some national data, showing that the percentage of lawyers who identify as "LGBT" continues to rise as of 2019—nearly 3% (2.99%) of their survey respondents identify as "LGBT."³⁸

Measured against this data, the respondents to this TF survey were significantly more diverse than the overall population of lawyers. This aligns with the TF's articulated goal of reaching out to and elevating the experiences of traditionally excluded women and gender non-conforming people.³⁹

Framing the demographic results more broadly, the percentage of women enrolling in law school has been steadily increasing. Since 2016, women have constituted slightly more than 50% of incoming 1Ls nationally.⁴⁰ However, the overall percentage of women *lawyers*, as opposed to law students, is just 37%.⁴¹ The obstacles to hiring, retention, and promotion of women criminal lawyers, particularly women of color and women who identify as LGBTQIA+, are important regardless of this trend, but the growing number of women in the profession intensifies the need to document and eliminate these barriers.

III. 2020 SURVEY QUESTIONS AND RESPONSES

The 2020 follow-up survey included questions similar to the ones previously asked of participants⁴² but expanded on personal and

36. A.B.A., *ABA National Lawyer Population Survey: 2021*, https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf [<https://perma.cc/JR34-ZT7A>].

37. *Id.*

38. *LGBT Representation Among Lawyers in 2019*, NAT'L ASS'N FOR L. PLACEMENT (Jan. 2020), <https://www.nalp.org/0120research> [<https://perma.cc/9YQS-WUUK>].

39. See Laroche & Luongo, *supra* note 5.

40. *Law School Rankings by Female Enrollment (2020)*, ENJURIS, <https://www.enjuris.com/students/law-school-women-enrollment-2020.html> [<https://perma.cc/N8KA-YUX3>].

41. A.B.A., *supra* note 36, at 4.

42. Ahranjani, *supra* note 4, at 153.

observed experiences related to hiring, retention, and promotion in criminal law and included a new section related to the impact of the COVID-19 pandemic on the women's lives.⁴³ The follow-up survey included a mix of yes/no, multiple choice, and open-ended questions.⁴⁴

A. QUESTIONS AND RESPONSES REGARDING HIRING, RETENTION, AND PROMOTION

When asked whether they personally experienced challenges with hiring, retention and promotion, twenty-six people responded. Of the twenty-six, ten (38%) said yes to hiring, fourteen (53%) said yes to retention and twenty-four (92%) said yes to promotion. Respondents were encouraged to explain further, and they shared the following challenges: retaliation for sexual harassment claims and cooperation with investigations, being passed up in favor of older men, difficulty in uprooting their families (which men seemed more able/willing to do), sexism, and discrimination based on religion and national origin.⁴⁵

When asked whether they observed *others* experiencing challenges, twenty-seven responded. Respondents reported even higher numbers: fourteen (51%) said yes to hiring, twenty (74%) said yes to retention, and twenty-four (88%) said yes to promotion. Sixty-five percent of respondents indicated that when hiring, retention, and/or promotion were issues, those who were treated negatively were likely to change jobs. Failure to accommodate women with families and intersectionality (gender plus gender and other personal characteristics)⁴⁶ were cited as the two most common reasons for making a career switch.⁴⁷

43. *See infra* app. B.

44. *Id.*

45. *Id.*

46. Columbia Law Professor Kimberlé Crenshaw's intersectionality theory describes how race, class, gender, and other individual characteristics intersect and overlap with one another. *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

47. Results on file with author.

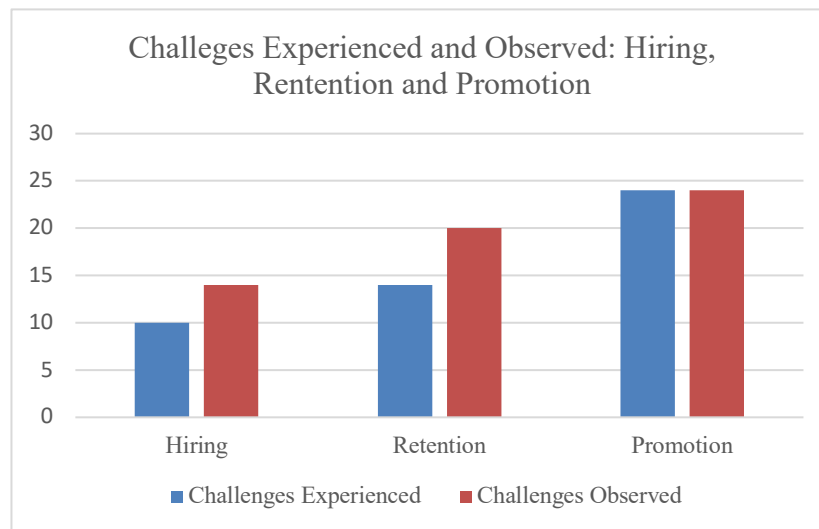


Figure 2. Charting responses to the following questions: whether respondents personally experienced challenges with hiring, retention, and promotion; and whether respondents observed others experiencing challenges with hiring, retention, and promotion.

Despite the challenges, 47% of respondents plan to stay with their employer for the foreseeable future, and another 18% said they may stay. Their reasons for staying include: a love for the work and their colleagues, commitment to their clients who they serve, retirement benefits, wanting to serve their people (Native Americans), and autonomy.

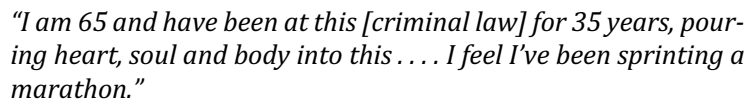
When asked whether they have an informal or formal source of support when gender-related issues arise, thirty-five women provided responses. Ninety-four percent of them responded affirmatively. They were asked to describe sources of support, and the responses included colleagues, friends, supervisors, human resources, law partners, union, and family.⁴⁸

With regard to what women need(ed) to be successful criminal law practitioners, respondents listed a number of items. They include (in no particular order) intelligence, respect, passion, training, grit, creativity, compassion, ability to learn quickly, commitment to hard work, experience, organizational skills, equal playing field, empathy, strong sense of justice, resilience, preparation, determination,

48. *Id.*

idealism, good judgment, mental health support, training, supportive colleagues and others, ability not to back down from lawyers who tend to bully, more funding, equal pay for equal work, active promotion of women, a boss that fights for office needs, mentors, and an environment that strives to help employees reduce stress and chaos.⁴⁹

One comment by a respondent sums up the career arc articulated by many women. The respondent observed, “In the beginning, I needed training and mentorship. As my career progressed, I mostly just needed to be left alone.”⁵⁰ Interestingly, though, when asked, “Have your needs changed as you have progressed in your career?” twenty-two out of the thirty-five respondents (62%) who answered stated, “No.” One comment articulates what several women said about needing more support over time because of the complexity of the cases they handle: “Need support in how to handle the gravity and destruction that can be our job.”⁵¹ Combining these responses with what participants articulated in the listening sessions, this inconsistency may reflect ambivalence and a sense that, while they were tough and did not *need* support at any stage, they certainly would have benefited from it.



“I am 65 and have been at this [criminal law] for 35 years, pouring heart, soul and body into this . . . I feel I’ve been sprinting a marathon.”

In response to the question prompt “[w]hat do you feel you need(ed) to remain in the criminal justice field?”, mental health support and self-care were cited several times. A number of powerful comments by respondents surfaced:⁵²

- “I need to not be undermined by individuals who view my success as a threat to them.”
- “I am 65 and have been at this for 35 years, pouring heart, soul and body into this. What would it take to keep at it?? A change of pace or a break. A colleague of mine quit after about 3 years, saying she had treated the job as a sprint rather than a marathon. I feel I’ve been sprinting a marathon.”
- “As long as I can help, I need to be here.”
- “Systemic racism must be addressed.”

49. *Id.*

50. *Id.*

51. *Id.*

52. Quotation information on file with author.

Of the thirty-five who provided responses to the question “[h]ow committed are you to remaining in your office?”, almost all of them said they were *at least* committed but open to new opportunities. Sixty percent said they are very committed, 14% said they are somewhat committed, and 11% said they are committed but open to other opportunities.

Thirty-five women also responded to the prompt “[h]ave your employers provided you with what you needed to be successful and remain in the field?” Twenty answered “yes” and fifteen answered “no.” Women in the federal system seemed more likely to report satisfaction. Of the seven women who identified as federal prosecutors, public defenders, and judges, five responded to the question. Out of those five, four responded, “Yes.”

Women were invited to explain what they needed from employers to be successful and remain in the field. The most frequent responses were support, training, flexibility and mentorship.⁵³ Topics that came up more than once as unmet needs include pay equity and therapy/mental health support. When asked what policies and practices are most effective for retaining women, respondents listed the following concrete items, which have been paraphrased:

- Job sharing;
- Seeing and experiencing promotion to leadership positions (particularly women with children);
- Part-time options;
- Flexibility in general;
- Flexible work schedules;
- Better enforcement of workplace harassment policies;
- Temporary positions;
- Permitting children to come to the office;
- Equal and fair pay;
- Better mentoring;
- More training;
- Listening and being more supportive/encouraging;
- Exit interviews; and
- Acknowledgement that being flexible does not mean people will be ineffective.

In terms of perceptions of employer receptivity to those suggestions, respondents were asked, “How receptive do you think your employer is or would have been to implementing these

53. See *infra* app. C for verbatim responses.

recommendations?” Out of 20 responses to this question, 20% said extremely positive, 30% said somewhat positive, 15% said neither positive nor negative, 15% said somewhat negative, and 20% said extremely negative.

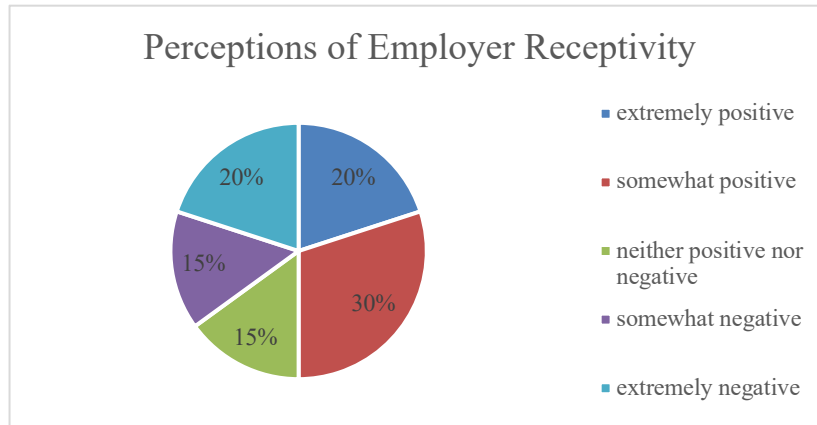


Figure 3. Depicting respondents' perceptions of employer receptivity to implementing policies and practices to retain women criminal law attorneys.

In response to “[w]hat would it take to make changes?”, respondents replied: budget changes, management support, adverse civil verdict, mass exodus of women of color/people of color, human resources or union pressure, and willingness to try.

B. COVID-19-RELATED QUESTIONS

Based on information gathered during two videoconferences in Summer 2020, the TF sought to capture the ways in which the pandemic affected the work of women in the criminal legal field, and whether they hoped to keep any aspects of the pandemic workday configuration.

When asked which aspects of their lives have been disproportionately affected by COVID-19 and their gender identity, eight said childcare, four said elder care, thirteen said professional development, twenty-three said quality of life, fifteen said work performance, and four said other.

In response to the question “[w]hat other aspects of your life have been affected by the confluence of COVID-19, being a woman, and being in criminal justice?”, responses included:⁵⁴

54. Quotation information on file with author.

- “No formal coordination with courts, prosecutors and other components of criminal justice system.”
- “Everything is harder. I have two teens, both have significant mental health issues and learning challenges. Both are failing many of their classes in online school. My husband also has mental health issues. I am trying to support my family and do my job, and not doing anything as well as I would in non-COVID times.”
- “I don’t think I’ve been more affected because I’m a woman. I actually think I probably have less running around to do because my 14-year-old daughter is in virtual school and only has one extra-curricular activity that she can do—swimming every morning with her swim team, socially distanced. She can’t see friends or go anywhere. And she’s very self-sufficient with her schoolwork, so I don’t need to help her with that. I’m lucky I don’t have small children.”
- “The practice became almost more difficult because of the varied responses by Courts in different counties. It felt as if I was a new lawyer - learning how to navigate every location anew.”
- “No quality of life.”
- “I butt heads with judges even more now. Unfortunately, our district’s chief judge is a misogynist, so those battles have gone . . . poorly.”
- “Isolation.”
- “One feels even more out of the loop.”
- “Specifically I have had to pay for additional childcare for my school age child. In addition to this, any time either one of my children as a minor symptom such as a runny nose, there is a high likelihood that they will be sent home from daycare requiring me to either take off work or work from home. Unfortunately my boss does not understand that this is directly linked to COVID and not just a “sick” child. In fact, in most cases my children are not actually sick, they just are having a symptom that comes with childhood. Currently my boss will not allow us to work from home under these circumstances though he is currently letting three male employees work from home on a scheduled basis. The three young women in the office, who have chosen to pay for daycare rather than schedule work from home are not given any support when they need a day here and there to work from home. Thus we have to use our sick leave or our vacation while our male counterparts are not put in this position.”

Finally, when asked, “In a post-COVID world, are there any changes you would like to keep?”, many women said they hoped some things—greater flexibility in telecommuting/ telework, virtual hearings/settlement conferences, and generally more flexibility in terms of when in the day work could be completed—would remain. One respondent said, “For me personally, there are none.”⁵⁵

55. *Id.*

C. ABA MEMBERSHIP

Nineteen respondents were current ABA members. For those who were not members, thirteen respondents indicated that membership costs too much (especially relative to benefits), ten indicated they see no benefit to their careers, four said they did not feel they would fit in, and thirteen selected “other.” The “other” responses ranged from practicing in tribal courts; ABA not being inclusive of Native American attorneys; already being involved in more salient professional organizations; and serving in a Presidential appointment or judgeship that required resignation from boards, commissions, and advisory councils.

D. ADDITIONAL IMPORTANT COMMENTS BY RESPONDENTS

Respondents were invited to share additional thoughts related to hiring, retention, and promotion of women in criminal law. Here are their comments and observations:⁵⁶

- “STEM-based criminal justice is an area of growth, and it’s currently dominated by straight, white men.”
- “Practicing in Indian Country requires serious commitment and perhaps someone from that community would be more likely to remain because of family.”
- “Women are the best lawyers in the profession. I’ve been practicing a long time and [have] seen a lot of lawyers working. No question, women are the best lawyers, certainly in criminal law.”
- “I think it’s always been better for women in criminal law than civil. That Old Boys Club is a lot harder to crack.”
- “There is a reason that our profession has such a high level of substance abuse. There is an extreme amount of conflict and stress that we deal with on a regular basis and the profession as a whole needs to address this in a more positive manner. More resources should be provided, employees should have a safe place to check in and voice their frustrations.”

IV. PRELIMINARY RECOMMENDATIONS BASED ON FOLLOW-UP SURVEY

This Article amplifies the diverse experiences of the people who responded to the 2020 survey. Women criminal lawyers serve a critical role in the promotion of justice. The people who responded to this survey by and large are passionate about their work and are committed to continuing to practice criminal law. However, they identified some major, persistent challenges. Broadly speaking, they include (1) limited flexibility with work schedules, (2) insufficient wellness

56. *Id.*

resources, (3) deficient training opportunities, particularly in state and rural criminal law offices, and (4) short supply of meaningful mentorship.

These challenges are firmly entrenched and are felt even more profoundly by women with intersectional identities. For example, women of color (particularly Black, Indigenous and Latina women), women from low-income backgrounds, women who have significant educational debt, women with obligations to their extended families and communities, people who identify as LGBTQIA+, and others, described the many layers of challenges they face in navigating both workspaces and their personal lives. The high-intensity and emotional nature of criminal law heighten the experience of representing defendants and the state in a system that often seems unfair and imbalanced.

Only systemic solutions will lead to long-term improvements in the hiring, retention, and promotion of women criminal lawyers. The author summarized the listening sessions and 2020 survey in the following chart, which describes potential solutions.

Challenge	Potential Systemic Solutions for Employers to Implement
Limited flexibility with work schedules	Policies that allow job-sharing, part-time work, and working from home; court schedules that accommodate children's school schedules.
Insufficient wellness resources	Create wellness spaces in offices and court-houses; provide free therapy and other wellness information, policies and programs; meet regularly with attorneys to assess job satisfaction and avoid feelings of invisibility.
Deficient training opportunities	Pool resources with other jurisdictions; amplify existing free resources through ABA and state, local, and affinity bars.
Short supply of meaningful mentorship	Pool resources with other jurisdictions; amplify existing free resources through ABA and state, local, and affinity bars; create more meaningful mentorship opportunities and incentivize/recognize participation.

The TF members digested the findings of the follow-up surveys and decided that the next major step would be to hold in-person focus group meetings. With the support of then-CJS Chair and TF member April Frazier Camara and current CJS Chair Wayne McKenzie, the TF hosted focus groups in November 2021 with criminal justice

stakeholders to share ideas and findings, and to pressure test the TF's suggested remedies. The next Part includes the methodology and findings of the focus group meetings and focus group follow-up survey. Throughout the time when the 2020 survey, focus group meetings and 2021 follow-up survey to the focus group meetings occurred, TF members continued to write and speak about our work.⁵⁷

With participants' input and the CJS's continued support, the TF seeks to make the criminal legal profession more welcoming and inclusive for all lawyers, especially those who, like the survey respondents, face too many barriers currently.

V. 2021 FOCUS GROUPS AND FOLLOW-UP SURVEY

On November 18, 2021, the ABA CJS hosted one in-person focus group in Washington, DC and two virtual focus groups with high-level criminal justice leaders who were nominated by the TF members. All three groups consisted of groups of under ten people total, including TF members. The author of this Article trained TF members to facilitate the discussions. The TF leadership team of the author and co-chairs Carla Laroche and Tina Luongo designed a script that included four questions.

Participants included six TF members, the TF co-chairs, the author and sixteen attendees who represented a wide range of criminal justice spaces, including public defenders, prosecutors, private criminal defense, associations and non-profit organizations, judges, and state and federal government. The participants were diverse in terms of geographic location, race, ethnicity, sexual orientation, gender identity, and other characteristics. Several were justice-impacted lawyers, and all are employers and leaders who have the power to implement changes.

Each focus group had approximately three to six TF members and three to seven attendees. Each discussion lasted approximately ninety minutes, although the in-person group lasted closer to 120 minutes. In preparation for the meetings, and in an effort to maximize the limited time, the author sent all confirmed participants a one-page chart that described identified challenges and sample solutions, challenges identified and potential remedies, as well as the TF's two published research papers ("*Toughen Up, Buttercup*" versus #TimesUp and *Pulling Back the Curtain*).⁵⁸

57. See sources cited *supra* note 5, especially Donoso, Ahranjani, Ochoa-Bruck, Pickering, Applewhite, Yeary, Rao, and Macy.

58. See *infra* app. D.

In each focus group, TF facilitators asked participants the following questions. The participants' responses to each question are paraphrased.⁵⁹

1. Have you or your organizations implemented anything to facilitate gender equity in hiring, retention, and promotion? If so, please describe.

- Support groups and mentorship programs
- Just because there's a lactation room doesn't mean women should not nurse in public⁶⁰
- Paternity leave
- Work-from-home policies (along with support for work-from-home like laptops, internet coverage, etc.)
- Wellness and substance abuse resources for judges
- Promotion of members' successes since women have trouble self-promoting
- Compressed work weeks (e.g., ten-hour days, four days a week)
- Sabbatical programs
- More training for employers on how to write gender-neutral job postings, be more culturally competent and how to standardize questions
- Microaggression training and bias training
- Providing questions to interviewees in advance so they can prepare
- Mandating a week off each year for self-care

2. Do you have ideas that haven't been implemented? If so, why haven't they been implemented?

- There's no shortage of great ideas; the problem is the criminal justice system is so busy it's hard to find time to implement them.
- Compressed works weeks (e.g., ten-hour days, four days a week, but need to educate judges and encourage them to participate)
- Sabbatical programs (including for judges)
- Better support for imposter syndrome
- Better support for how to handle sticky situations like interviewing while pregnant

3. As the Task Force works to create a toolkit of resources, we would like to know what resources would you and your organizations need to implement greater gender equity?

- Better mentorship for new contracted counsel through the Criminal Justice Act and other attorneys

59. Notes on file with author. Notes were taken in shorthand by a TF member and the author, so verbatim quotes were not available.

60. This point was made by a non-profit leader who was alluding to laws protecting nursing in public.

- Template and how-to videos for leadership skills (especially how to use technology effectively, how to put together a newsletter, how to schedule conference calls, etc.)
- First page of tool kit needs to have an endorsement from the ABA—gender equity is a societal issue, not just a women’s issue
- Include list of resources (including National Justice Impact Bar Association and Yale Access to Law School Program)
- Help women learn how to present on Zoom

4. What haven’t we thought about that you think we ought to think about?

- ABA could be a real leader in this space
- Legal education could play a critical role in terms of mentorship, training, motivation
- Prosecutors need support too
- There might be unique concerns for people in non-urban areas (but also maybe not)

The focus groups were supposed to be largely in person, but because of ongoing Covid concerns, participants were given the opportunity to request online participation. The format changed from mostly in-person to mostly remote several days before the meetings. The author canceled her own trip to DC because her son was in quarantine due to a Covid exposure. Because of last-minute changes, the limited time in the focus groups and an interest in expanding opportunities for criminal justice leaders to participate, on November 22, 2021, the author sent two separate emails inviting written responses to the four questions. One email went out to those sixteen remote and in-person focus group meeting participants, and another went out to the forty-one other people who had been nominated to participate but who either had not responded or who responded that they were unable to join us. The survey was open between November 22 and December 10 (plus a few extra days for several people who asked). Two reminder emails were sent after the initial request. Fifteen responses were recorded, including ten from attendees and five from non-attendees.

Appendix E contains some of the salient written responses to the questions. Respondents echoed comments made in the focus groups and contributed valuable specific and general feedback to the same four questions asked in the focus groups. Summarizing takeaways from the focus groups and surveys, it is clear that the goal of pressure-testing ideas for gender equity reform gained from phase one and soliciting new ones was met. One likely next step for the TF is to produce

a Ten Principles for Gender Equity in Criminal Law.⁶¹ The Ten Principles would be formally endorsed by the ABA and would live on a website with content that would animate the principles of creating healthy, equitable workplaces. The site would house interactive support mechanisms. For example, the site could showcase successful telework programs and outside-the-box ideas like a four-day workweek.⁶² The site would also include a robust tool kit to accompany the Ten Principles. The tool kit idea has been on the TF's agenda as an eventual work product, and it became apparent during the focus group meetings with criminal justice leaders that there already is a lot of content that could be compiled⁶³ and included in the tool kit. One particular tool kit component that was mentioned repeatedly was wellness resources, including model policies for promoting employee wellness.

61. This suggestion by an ally in one of the focus groups was inspired by the ABA's Ten Principles of a Public Defense System, which has been widely adopted by CJ organizations. See *ABA Ten Principles of a Public Defense Delivery System*, A.B.A. (Feb. 2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf [https://perma.cc/R53U-HHVU].

62. Anne Branigin, *Can Four-Day Workweeks Help Women? More Companies Are Trying It Out*, LILY (Dec. 23, 2021), <https://www.thelily.com/can-four-day-workweeks-help-women-more-companies-are-trying-it-out/> [https://perma.cc/64UG-NJ28].

63. TF member Lt. Col. Susan Upward suggested incorporating a talent management document used by the Marines. The Diversity Lab and its Mansfield Rule were also mentioned. Grounded in behavioral science, the Mansfield Rule "measures whether law firms have affirmatively considered at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions." *About the Lab*, DIVERSITY LAB, <https://www.diversitylab.com> [https://perma.cc/EC34-ENJ8]. The Women's Bar Association of DC (WBA DC) has 600+ resources related to career advancement, including pay equity information. These resources are currently accessible by members only, but the organization is willing to share its relevant content with the TF. The WBA DC also has an anti-racism tool kit, as do other organizations. The Shriver Center on Poverty Law has guidance on trauma-informed lawyering, which the TF heard over and over again was a big challenge, especially for state prosecutors who do not have as much access to training resources and who may be less diverse and connected to the populations with whom they work. See, e.g., *An Antiracist Approach to Trauma-Informed Lawyering*, SHRIVER CTR. ON POVERTY L., (June 29, 2021), <https://www.povertylaw.org/article/trauma-informed-lawyering> [https://perma.cc/6E7H-4HDC]. Another existing resource is the Association of American Law Schools Best Practices for Recruitment and Retention of Minority Law Faculty manual. *Recruitment & Retention of Minority Law Faculty Members*, ASS'N OF AM. L. SCHS., (Nov. 2012), <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members> [https://perma.cc/W332-TDLP].

Another clear need in terms of the tool kits is help in facilitating culture change. Some suggestions for culture change materials included how to assess the current climate in an office—perhaps through external consultants and surveys of stakeholders, review pay scales to make sure lateral and vertical equity exists, identify and articulate clear goals, listen to underrepresented and marginalized people in the office, address changing expectations with regard to work/life balance and advance notice of deadlines, and promote allyship.

Another suggested item for the toolkit is professional development and advancement tools. For example, according to one white collar private defense attorney, women often do not have appropriate set-ups for remote work such as ring lights, microphones, and backgrounds.⁶⁴ Since workplaces are likely to continue remote work for some time, it was mentioned that the TF should encourage improvement of online professional development. Another example of professional development was provided by a different private defense attorney who pointed out in a focus group meeting that many people who are underrepresented in leadership have not been taught certain skills—how to set up Zoom meetings, calendaring, polling, etc.—that are essential to being effective managers.⁶⁵ Another suggestion was to help women monetize the value of litigation skills gained through criminal prosecution and defense to argue for raises or to change employment.⁶⁶

An important takeaway from the focus groups and written surveys was the need to connect judges to the burdens of the current system and to inspire them to take an active role in changing courtroom schedules and cultures. TF co-chair Tina Luongo pointed out that once judges realized a compressed workweek would benefit them too, they would be more likely to schedule hearings only four instead of five days a week.⁶⁷ One TF member who is a judge suggested hosting a judges' conference for judges to learn about gender inequality and heightened challenges for women of color and women with other intersectional identities.

Guided by the qualitative data gathered from the three phases of this work, the final phase for the TF will be to create and promote the Top Ten Principles for Gender Equity in Criminal Law, tool kit, and

64. Notes on file with author.

65. *Id.*

66. *Id.*

67. *Id.*

accompanying web site. As the TF moves through the final phase, we will draw from strong relationships within the judiciary, legal academia, and federal and state criminal law leaders to assist in drafting, supplementing, and promoting our work product.

CONCLUSION

Criminal law employers should view women's drift as a significant problem. The COVID-19 pandemic has both exacerbated and exposed the tightrope on which many working women like Samantha walk.⁶⁸ Women's scars and challenges from the COVID-19 era have affected and will continue to affect their role in the work force and as lawyers.⁶⁹ Because of increased caregiving responsibilities, many women, especially college-educated women with the option to work remotely, have stepped out of the work force and others have reduced their hours.⁷⁰

"They say every crisis is an opportunity. The current pandemic is surely the former and should serve as the latter. If we in the legal profession have learned nothing else, it is how much more can be done remotely than anyone thought possible. My hope is that employers, private and public, will internalize these lessons, and that both women and men will use this experience to advocate for flexible work hours that allow them to accommodate the ever-competing needs of family maintenance, child rearing and work."

68. Jennifer L. Smuts, *Coming Up for Air: Women in Law and Adapting to the Impact of COVID-19*, JD SUPRA, (Mar. 4, 2021), <https://www.jdsupra.com/legalnews/coming-up-for-air-women-in-law-and-8541536> [https://perma.cc/QHM6-W8G6]; Cynthia L. Cooper, *Work-Life Imbalance: Pandemic Disruption Places New Stresses on Women Lawyers*, A.B.A. (Dec. 18, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/december/worklife-imbalance-pandemic-disruption-places-new-stresses-women-lawyers> [https://perma.cc/4TWK-JEPN].

69. Alexandra Samuel, *How Working From Home Has Changed Employees*, WALL ST. J. (June 12, 2021), https://www.wsj.com/articles/working-from-home-employees-11623463249?st=si1pq9hc2i5lf94&reflink=desktopwebshare_permalink&fbclid=IwAR1WjsSXOrTo91J39RIXbaqZ7HALgdcB-bFm0p_15McEnCRqZEjdZduvus0 [https://perma.cc/VM8B-XG3N].

70. *Id.*; Soo Youn, *Remote Work Was Supposed to Help Moms in the Pandemic. Instead, It Hurt Them the Most*, LILY (Nov. 10, 2021), <https://www.thelily.com/remote-work-was-supposed-to-help-moms-in-the-pandemic-instead-it-hurt-them-the-most> [https://perma.cc/4XM3-CUNA] (describing a study that reports how college-educated women with the option to work remotely were most likely to leave their jobs).

The pandemic has also provided a window into what greater flexibility could look like, and the responses from our surveys and focus groups indicate hope that some aspects of working remotely will be retained. It is important to note, however, that juggling remote work with caregiving is *not* a sustainable solution. All changes and “flexibility” must come as a result of open, honest dialogue and culture changes within offices.

One judge (who does not have children herself) noted at a listening session, “[m]y observation after years of experience is that women with children make the best criminal lawyers.”⁷¹ She described their organizational and time management skills, capacity for empathy, and problem-solving abilities as the top reasons. This anecdote is confirmed by numerous studies of professional women.⁷² In fact, researchers have found that “over the course of a 30-year career, mothers outperformed women without children at almost every stage of the game. In fact, mothers with at least two kids were the most productive of all.”⁷³

Employers should be concerned not just about retention and promotion of current women criminal lawyers—they should also be aware of demographic changes on the horizon. The enrollment of women in law schools has been steadily climbing in recent years,⁷⁴ and, presumably, so too will the number of women who could potentially be hired as criminal lawyers. The combination of the unique features of criminal law—racial and ethnic bias; intense work with clients and survivors experiencing poverty, racism, homelessness, and other challenges; litigation schedule and related stress; the emotional toll of working in a system that many feel is unjust; and relative lack of resources—with the realities of balancing out-of-work responsibilities of caregiving mean that the profession must adapt or run the risk of losing highly-skilled, highly qualified women.

71. Notes on file with author.

72. Matthias Krapf, Heinrich W. Ursprung, & Christian Zimmermann, *Parenthood and Productivity of Highly Skilled Labor: Evidence from the Groves of Academe*, J. ECON. BEHAV. & ORG. (Jan. 2014), <https://s3.amazonaws.com/real.stlouisfed.org/wp/2014/2014-001.pdf> [<https://perma.cc/XAS8-MLC8>].

73. Ylan Q. Mui, *Study: Women with More Children Are More Productive at Work*, WASH. POST (Oct. 30, 2014) <https://www.washingtonpost.com/news/wonk/wp/2014/10/30/study-women-with-more-children-are-more-productive-at-work> [<https://perma.cc/JZ8P-DSTN>].

74. *Women in the Legal Profession*, A.B.A., <https://www.abalegalprofile.com/women/> [<https://perma.cc/V5KH-YYJ8>].

For over three years, the TF has collected and elevated the experiences of diverse women and gender non-conforming folk. It is now the TF's charge to develop and implement sustainable changes that guarantee justice, inclusion, and belonging for these practitioners. We deserve, and society needs, a profession that does not require sprinting a marathon.

APPENDIX A

American Bar Association Criminal Justice Section Women in Criminal Justice Task Force

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Judge, Spokane Municipal Court (WA)

Barbara Creel

Professor of Law and Karelitz Professor of Evidence and Procedure, University of New Mexico School of Law (NM)

April Frazier Camara

President and CEO, National Legal Aid and Defender Association (DC)

Honorable Bernice Donald

U.S. Court of Appeals for the Sixth Circuit (TN)

Daniela Donoso

Equal Justice Works Fellow, Legal Services of North Florida (FL)

Maria Carmen Hinayon

Complaints Resolution Officer, Office for the Prevention of Harassment and Discrimination, University of California–San Francisco (CA)

Honorable Denise Langford-Morris

Oakland County Circuit Court (MI)

Ann Ratnayake Macy

Founder/Former Executive Director, National Center for Child Abuse Statistics and Policy (DC)

Honorable Rachel Pickering

Third Judicial District (KS)

Sarah Redfield

Professor of Law (emerita), University of New Hampshire School of Law (ME)

Lieutenant Colonel Susan Upward

U.S. Marine Corps (NC)

APPENDIX B

2020 Women in Criminal Justice Survey

Part One: Biographical Information

1. If you feel comfortable sharing your name and contact information, please do so here.
2. Are you of Hispanic/Latino/Spanish origin?
3. How would you best describe yourself? (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Middle Eastern/North African, White, Multiracial or Multiethnic, Other)
4. If you wish, please elaborate.
5. How do you describe yourself? (Female, Trans Woman/Trans Female, Gender Non-Conforming, Male, Intersex, Other Identity, Prefer not to say)
6. If you wish, please elaborate.
7. Do you consider yourself to be heterosexual/straight, lesbian, bisexual, queer, other, or prefer not to say?
8. If you wish, please elaborate.
9. How old are you (in years)?
10. What year did you graduate law school?
11. How long (in years) have you been practicing law—broadly defined to include academic, policy, and other work that involves using your law degree—overall?
12. Are you currently employed?
13. Have you practiced Criminal Law?
14. How do you primarily identify your professional identity? (prosecution, defense, judiciary, academic, other)
15. Please elaborate.
16. In what capacity have you practiced Criminal Law? Please explain and list all, including amount of time in each role and location). For example, “Public defender, Memphis, 3 years; private criminal defense, Nashville, 4 years; trial court judge, Nashville, 5 years (to present).”
17. Are you currently a member of the American Bar Association?
18. Which answers best describe why you are not a member of the ABA? (Select all that apply: Membership costs too much, I see no benefit to my career or work, I don’t feel like I would fit in, Other)
19. Please let us know other reasons that you are not a member of the ABA.

20. If not, have you ever been a member of the ABA?
21. If you previously were an ABA member but are no longer a member, would you kindly share why are you no longer a member?
22. If you have never been an ABA member, would you kindly explain why not?

Part Two: Retention of Women Criminal Lawyers

1. Please answer these questions only if you are a woman who has practiced or is practicing criminal law.
2. What challenges, if any, have you personally experienced with regard to hiring, retention, and promotion in criminal law-related positions?
3. What challenges have you observed others experience?
4. Were the hiring, promotion, and retention issues better, worse, or the same as they are in your current location?
5. Please explain. For example, did you make a conscious career switch due to a gender related issue?
6. If you currently practice criminal law, do you see yourself staying in practice for the foreseeable future?
7. Why or why not?
8. When gender issues arise in the workplace, do you have a source of support (informal or formal)?
9. If so, to whom do you go for support? We're not asking for specific names as much as roles.

Part Three: Solutions

1. Please focus on your experience as a criminal law practitioner unless the question indicates otherwise.
2. As a criminal law practitioner, what do you feel you need(ed) to be successful?
3. Have these needs changed as you have progressed in your career?
4. If yes, how so?
5. As a criminal law practitioner, what do you feel you need(ed) to remain in the criminal justice practice?
6. Do you think the need to be successful and remain in the field differed between you and your women colleagues?
7. If you have experience practicing in other areas, during your time in those other field(s), do you think these needs to be successful and remain in the field differed between you and your other women colleagues?

8. As a criminal law practitioner, were you provided with what you needed to be successful and remain in the field?
9. Could you please explain your answer?
10. What has or did your employer do to promote retention of women criminal lawyers?
11. Of those policies and practices, how effective did you find them?
12. What were the policies or practices that were more effective than others?
13. What could your employer do or could your employer have done to improve retention of women criminal lawyers?
14. How receptive do you think your employer is or would have been to implementing these recommendations?
15. What would it take for your employer to provide those things?
16. Is there any other information you would like to share regarding women practicing in the criminal justice profession?

Part Four: Covid-19 Specific Issues

1. A lot of things have changed in the past year. We'd like to about your experience.
2. Which aspect of your life do you feel has been disproportionately affected by Covid-19 and the fact that you are a woman? (Childcare, Elder care, Professional development, Quality of life, Work performance, Other)
3. Please let us know what other aspects of your life have been affected by joint forces of Covid-19 and being a woman.
4. Covid-19 has caused many changes in the workplace, such as greater flexibility in telecommuting. In a post-Covid world, what changes would you like to keep?
5. Aside from Covid-19, has anything else changed in the year since our initial listening sessions that you'd like us to know about?

APPENDIX C2020 Follow-Up Survey Responses to Level and Type of Support from Employers⁷⁵

- “There are very little resources for therapy and mental health. This field is full of substance abuse because of the amount of stress and the level of workload we have. My employer specifically also has not recognized the additional stressors that COVID has created in terms of childcare.”
- “As a trial lawyer, the office provided little support for logistical issues related to evidence presentation. I was not provided assistance with moving large 65” TVs for closing arguments. I was forced to do so in a skirt suit, with heels, and hurt myself before closing arguments in a child molest case. Certainly, my focus should have been on substantive trial work rather than physical labor that should have been performed by my support staff. This gender-neutral policy overlooked the fact that I am 5’1” and 115 lbs and moving a TV of that size was not easy. Further, moving heavy boxes of files to court each day is overwhelming. My male counterparts voiced no complaints, which reflected poorly on me when I did.”
- “Promoting competent women to visible positions. Women as supervisors with power to make decisions.”
- “I am able to attend trainings and webinars.”
- “Sometimes they do and sometimes they don’t. It depends on the year.”
- “Sexism and dismissive.”
- “My work is non-traditional, so most of my work is self-reliant. Prior to COVID, I was able to attend training I requested local and those requiring travel. I also have access to legal databases to conduct research.”
- “I am a sole practitioner; I provide what I need.”
- “I’m self-employed. I take care of myself.”
- “I only had one employer and he and the office were very supportive.”
- “Prior to my current role, I did not receive the support I needed and there were fewer opportunities to grow and lead.”
- “leeway to grow, leadership opportunity, and ability to make significant decisions and determine direction of the work”

75. Notes on file with author.

- “They need to pay women equally. That issue is emblematic of a lack of support for the women in this department that has cost us a number of good attorneys.”
- “I did not feel supported or mentored necessarily from employers who were focused on my career advancement. However, as my own boss, I am responsible for my own advancement (and the advancement of other women in the practice).”
- “As a program director, it has always been difficult to do this work because of the need for additional resources, i.e., attorneys, advocates and financial. At times, priorities must be juggled to benefit staff and clients.”
- “I have always worked with my father as the lead partner of our firm. Therefore, many of these questions are inapplicable to me - such as “policies” or “retention.”
- “They undermine my position as an administrative position instead of legal; even though be essential personnel.”
- “Overall, the various U.S. attorneys I worked for supported me and helped me to be successful, or at least didn’t stand in my way. Some were more supportive than others. In general, I felt most supported when my supervisors understood my strengths and weaknesses, assigned me cases based on my strengths, and provided training and resources to address weaknesses.”
- “I often was alone and isolated. I didn’t feel I had someone who had my back or was interested in my growth or development.”
- “I’ve been with the FPD for [many] years - superb training, usually provided with what I need to do my job. Caseload has been for the most part manageable, although right now with compassionate release stuff I feel overloaded. Boss has been great at not micromanaging and yet having our backs.”
- “Lack of resources and mentorship.”
- “I practice civil law and have worked for civil law firms. They are not equipped to address criminal issues.”
- “I have a strong, collaborative relationship with my employer and ask for what I need and generally am able to secure it. Mutual trust is important as is our mutual regard.”
- “They have not provided what we need, more humans doing this job, because the county will not provide. Our bosses would if they could.”
- “In my current position as a resource attorney I have time flexibility and control my workload. I did not have either when I was at a large public defense agency.”

- “My time in federal defender offices has allowed me to develop meaningful mentor relationships, adequate resources, and relevance within the profession.”
- “For the most part my employer has provided the basic tools needed to be successful. I was recently promoted to a management position but because of a budget and personnel freeze my ability to do my job effectively has been affected.”
- “It has been extremely difficult to obtain additional personnel positions and adequate funding [from my tribe].”

APPENDIX D

Focus Groups Guiding Document: Recommendations to employers to address major challenges to hiring, retention, and promotion of women criminal lawyers that the TF identified through listening sessions and written surveys between November 2018 and December 2020.

Growth Areas	HIRING	RETENTION	PROMOTION
Culture shift	<ul style="list-style-type: none"> • Values assessment • Systemic IDEA/DEI racism analysis and plan with focus on gender race ethnicity LGBTQIA+ • Trainings on intersectionality, implicit bias, creating inclusive workplaces that combat feelings of invisibility, and having difficult conversations 	<ul style="list-style-type: none"> • Values assessment with focus on inclusion and equity • Systemic racism analysis and elimination plan • Intersectionality training 	<ul style="list-style-type: none"> • Values assessment • Systemic racism analysis and elimination plan • Intersectionality training • Review promotion practices through an equity lens • Publicize promotion policies
Allyship/mentorship/sponsorship	<ul style="list-style-type: none"> • Amplify existing in-person and online resources through local, state and national bar associations, CJS, affiliation groups • Create new opportunities • Allyship/mentorship/sponsorship training 	<ul style="list-style-type: none"> • Amplify existing in-person and online resources through local, state and national bar associations, CJS, affiliation groups • Create new opportunities • Allyship/mentorship/sponsorship training 	<ul style="list-style-type: none"> • Amplify existing in-person and online resources through local, state and national bar associations, CJS, affiliation groups • Create new opportunities • Allyship/mentorship/sponsorship training
Flexibility	<ul style="list-style-type: none"> • Share model part-time, job sharing, remote work schedules • Promote and create policy changes (e.g., aligning court times with school schedules) 	<ul style="list-style-type: none"> • Share model part-time, job sharing, remote work schedules • Promote and create policy changes (e.g., aligning court times with school schedules) 	<ul style="list-style-type: none"> • Share model part-time, job sharing, remote work schedules • Promote and create policy changes (e.g., aligning court times with school schedules)

Support and training	<ul style="list-style-type: none"> • Lactation space (ABA policy) • Wellness room (NLADA policy) • Compassion fatigue training • Implicit bias training • How to Run a Listening Session • Share model training and promotion manuals • Gender-neutral facilities and respecting pronouns 	<ul style="list-style-type: none"> • Lactation space (ABA policy) • Wellness room (NLADA policy) • Compassion fatigue training • Implicit bias training • How to Run a Listening Session • Share model training and promotion manuals • Gender-neutral facilities and respecting pronouns 	<ul style="list-style-type: none"> • Lactation space (ABA policy) • Wellness room (NLADA policy) • Compassion fatigue training • Implicit bias training • Share model training and promotion manuals • “How to Run for Public Office” webinars (judgeships, DA, PD) • Gender-neutral facilities and respecting pronouns
Legal education	<ul style="list-style-type: none"> • Train key administrators + faculty on gender equity best practices • Encourage school-wide discussions about challenges in hiring • Mentorship or network opportunities with local, state, and national bar associations, CJS, affiliation groups • Create a short curriculum about women in criminal law 	<ul style="list-style-type: none"> • Train key administrators + faculty • Host CLEs about/for women criminal lawyers 	<ul style="list-style-type: none"> • Train key administrators and faculty about our findings • Host CLEs about/for women criminal lawyers • Schools promote our webinars/programs/mentoring with their alums

APPENDIX E

Written Responses to Focus Group Follow-Up Survey

Question 1

- “As discussed during the focus group, the WWCD⁷⁶ does extensive internal and external promotion of our members through social media, our list-serve, our website and our newsletter.”
- “Yes. Our organization specifically targets and recruits women (transgender and cisgender), nonbinary people, and transgender people (of all genders). We state that this is our mission and explicitly invite and encourage candidates who aren’t cisgender men to apply.”
- “The organization did external benchmarking. They looked at similarly-situated organizations and their positions and compared them to our organization to see where we measured. What the organization learned is that we have a portion of staff who are not being paid on par with people at comparable organizations and in comparable positions.”

Question 2

- “Yes. Some women in management positions and should have increased pay scales but the federal pay bands and hiring and promotion policies and rules have prevented full implementation. It will take time.”
- “Published policies that reflect my commitment to equitable hiring practices (e.g., requiring at least one justice-impacted voice per project).”
- “Initiatives to shine light on compensation (either raw numbers and/or metrics) within and across organizations, so that women can better assess whether they are being properly valued. Culturally, it seems people are still reluctant to discuss money.”
- “More organizations need standards. My organization has no standard or expected way for advocates to work and no real guidelines. Advocates have no way of measuring their growth, areas for improvement, or knowing what success looks like. It is hard to have equitable promotion and very hard to retain without guideposts.”
- “Yes, one of my ideas is to ensure that family leave policies are

76. WOMEN’S WHITE COLLAR CRIM. DEF. ASS’N, <https://www.wwcda.org/home> [<https://perma.cc/5F8P-Y9KF>].

gender neutral and that taking advantage of leave is gender neutral. At my last firm we were not able to achieve this at all due to institutional resistance, and I don't have visibility to it at the bigger firm but I very much doubt that people of all genders take leave equally."

- "I think capacity always constrains the totality of our ideas."

Question 3

- "Yes! Please include my organization, the Defender Services Office in the Federal Judiciary."
- "I would like to see the ABA help to promote compensation transparency."
- "Transparency on what success at the organization looks like beyond wins & losses. Flexible work schedules to allow people to work and provide care to family/friends."
- "Resources to advertise the internships in small to medium-sized criminal defense firms and then financial resources to pay all or at least half of the fellowship wages for a summer, for a year and up to two years. Also, it would be good to offer mentorships to new criminal defense lawyers."
- "Tips for empowering women to see themselves as leaders, practical guidance on communication (listening/reading and speaking/writing), a list of orgs who focus on increasing women's representation across many fields (not just legal)."
- "Measures on good screening techniques in hiring to ensure equality and fairness, especially in this virtual world we are now living in."
- "Information on applicable legal compliance to ensure gender equity measures do not create potential liability due to the symmetrical nature of nondiscrimination laws."

Question 4

- "You may have thought of this, but seems like lots of collaboration could happen with gender advocates in the fields of STEM (for example) and maybe even fields where women are overrepresented (nursing, teaching, animal welfare, etc.)"
- "We should also have measures to address the concerns of LGBTQIA+ concerns."
- "Addressing disability representation and inclusion as a matter of gender parity."
- "The added dynamic of being impacted by the so-called justice

system.”

- “Oftentimes when we think about leadership, we think about it through the lens of positional authority. However, leaders exist throughout an organization and not all leaders desire positional authority. It is important that those folks are identified and able to develop. Those are the “workers/implementers” and they are key to any leader being able to accomplish their goals. It isn’t helpful to have those folks turn over constantly merely because they don’t see new ways to grow or make more money without the responsibility of becoming an organizational leader with authority. I think corporate spaces have done this better than non-profit spaces.”
- “We had an amazing discussion in our group about formerly incarcerated attorneys and the need to work with state bars on the character and fitness barriers and how these barriers affect minorities and women disproportionately.”
- “Role-playing and story-telling from women attorneys on how to handle difficult situations for women when they are practicing law.”
- “Gender equity efforts and programs tend to focus most on junior attorneys and leave out the significant population of partner level and more senior women who face the most in terms of endemic gender discrimination and bias particularly when it comes to getting a fair share of origination credit, which is tied to compensation. More efforts and resources should be directed to facilitating an even playing field at the partner level for women to be able to rise up to senior leadership. The pipeline is not the problem, the glass ceiling is and the institutionalized systems that perpetuate that situation are often hidden, unquestioned, and seemingly impossible to change.”
- “Addressing disability representation and inclusion as a matter of gender parity.”