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OWLS Creates Special Committee on Family Separation & Child Detention

By Kathryn Olney

On June 3, U.S. Senator Jeff Merkley posted a Facebook Live video as he tried to enter an old Walmart in McAllen, Texas, where the federal government was holding children who had been separated from their parents at the southern U.S. border. The video was seen by many, including viewers here in Oregon, Merkley's home state. The OWLS listserve lit up with responses of outrage and questions about how to help.

The OWLS Executive Committee met to consider how we could help provide answers, and on June 21 the EC voted to create an OWLS special committee, under Sections 9.1 and 9.4 of the OWLS Bylaws. The Special Committee on Family Separation & Child Detention is charged to coordinate OWLS' response to the United States policies of family separation and child detention of immigrants. The committee "will seek to educate the membership about the policies, publicize pro bono opportunities, encourage donations dedicated to the care of detained children and parents, and advocate for the end of family separation and child detention policies."

The Special Committee meets every other week by phone and email. The committee has determined that the way it can be most useful to OWLS members is to serve as a clearinghouse for

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Special Committee co-chairs

Kathryn Olney (left) and Maya Crawford Peacock

Family Separation & Family Detention: We Must Keep Fighting for Humane Treatment

By Eileen Sterlock



Eileen Sterlock

In the past few months, there has been unprecedented public attention and outcry regarding the impact of the Trump administration's "zero tolerance" policy for immigrants who are caught entering the United States without inspection. The policy—announced in April 2018—mandated criminal prosecution under 8 USC § 1325(a) of all adults caught entering or attempting to enter the U.S. illegally along the Mexican border.

This policy resulted in the forced separation of approximately 2,600 children from their parents, many of whom are asylum seekers. Parents were jailed and children were detained separately, neither knowing the other's location or what was happening to them. Following broad public and political disapproval, the Trump administration seemed to reverse course on its family separation policy when it issued Executive Order 13841 on June 20, 2018. The executive order purported to end the Trump-created crisis of family separation by calling for an expansion of family detention—detaining parents together with their children in prison-like facilities indefinitely.

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executivedirector@
oregonwomenlawyers.org

Editor
elise.gautier@comcast.net
www.oregonwomenlawyers.org

President's Message



Amber Hollister

their strength. "Fight for the things that you care about," it reads, "but do it in a way that will lead others to join you."

Those words of Justice Ruth Bader Ginsburg have echoed through my mind as I've poured over a report recently released by the ABA Commission on Women in the Profession and the Minority Corporate Counsel Association. The report, aptly titled *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*, seeks to provide both confirmation of existing bias in the legal profession and evidence-based tools for change.¹

Data, as they say, does not lie. The report's findings are both bleak and affirming: women and people of color in today's legal profession continue to experience career-altering bias and harassment in many forms. The findings include the following:

- Women of color, white women, and men of color reported that they were required to go "above and beyond" to get the same recognition and respect as their white male colleagues for the same work. Sixty-three percent of women of color experienced this "prove-it-again" bias, a level higher than any other group (35% higher than white men).

- Women of color and white women reported experiencing pressure to behave in stereotypical "feminine" ways (e.g., acting helpful, sensitive, modest, and nice), and they reported negative consequences for displaying "masculine" behaviors (e.g., acting direct, assertive, competitive, and ambitious). One reflection of this "tightrope" bias was that about 62% of white men and 60% of men of color reported they were not penalized for assertive behavior; in contrast, only

On the edge of my computer monitor I have taped an inspirational quote cut out from an old magazine article. It's a bit yellowed, but its words have not lost

49% of white women and 46% of women of color reported the same.

- The "maternal wall" is real. Men and women of color, as well as white women, reported that they were treated worse after they had kids. Additionally, about half of women and men of color and just over half of white women agreed that taking family leave would have a negative impact on their career.

- Pay is not equal. Women of all races reported bias in their compensation systems. For example, 31% more women of color than white men agreed that they were paid less than their colleagues of similar experience and skill level.

- Sexual harassment is still a relatively common experience. Approximately 25% of women (compared to 7% of white men and 11% of men of color) reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, or romantic advances.

These numbers are sobering, but depending on your perspective, they may not be surprising. Without question, these results belie any suggestion that gender and racial bias in the legal community is a thing of the past. But for an organization like Oregon Women Lawyers, these numbers are also a call to action.

2019 will mark OWLS' 30th anniversary. On the eve of that important milestone, we can both reflect back with gratitude for the founding mothers and leaders who blazed this trail, and take stock of the tremendous work to be done.

What can OWLS, as an organization and community, do to change the picture we see? Justice Ruth Bader Ginsburg's advice—fight for the things that you care about, but do it in a way that will lead others to join you—serves as both a rallying cry and a strategic guide. Her advice is a reminder that often we must stand up for our shared vision of equity, and it's also a reminder that in our legal profession, progress may be fraught with cultural land mines and rebuffed by staid expectations. Justice Ginsburg subtly reminds us that the way forward was never destined to be easy.

We are moving forward. Certainly, the existence of the OWLS community is a

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Our mission is to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession.

Join the OWLS Tour of Cuba

Earn CLE credit, stay at an iconic Cuban landmark or a locally owned luxury B and B, and experience Havana, Pinar del Rio, Cienfuegos, Trinidad, and Santa Clara on this seven-night excursion from April 25 to May 2, 2019.

The program will feature morning CLE-credit sessions presented by local Cuban lawyers about topics ranging from the evolving socialist model to recent changes in Cuban law to legal and diplomatic perspectives.

OWLS members will also have many cultural learning opportunities, such as meeting Cuban artists, enjoying private performances from local musicians, and touring historic landmarks, museums, and restaurants.

For details, to join the listserve group of those interested, and to register, email OWLS Program Coordinator Cassondra Sumrall at cassondra@oregonwomenlawyers.org. The registration deadline is December 10.

President's Message

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strength in itself. Each OWLS chapter gathering, committee event, and mentoring circle is an opportunity to share experiences and strategies to overcome bias and advance our careers. Each OWLS CLE that highlights systemic racism, pay equity, the #MeToo movement, opportunities for working parents, or the legal rights of marginalized communities is a chance to reinforce the principles of equality and inclusion that we hold dear. Each time OWLS takes the initiative to speak out against injustice in the justice system or the unequal treatment of our neighbors, we are challenging the systems that have excluded too many from the benefits of our society for too long.

Step by step, convincing, cajoling, and debating, OWLS seeks to bend long-held expectations and assumptions in order to shape the legal profession into a place where each one of us is welcomed and valued. This is our work.



Amber Hollister
President, Oregon Women Lawyers

1. The report's executive summary is available [here](#), and the full report is available to ABA members.

Please Renew Your OWLS Membership

Thank you for your membership in Oregon Women Lawyers. Please take time to renew your membership today.

Your support allows OWLS to continue to provide unique programming and opportunities for lawyers at all stages of our careers. While we have accomplished a lot, much remains to be done as we continue to pursue our mission to transform the practice of law and ensure justice and equality by promoting women and minorities in the legal profession.

If you find that you are able to renew your membership at an enhanced level, we would be very grateful. We have three levels of enhanced membership, with varying levels of thank-you gifts:

- Enhanced Membership at \$175 (re-

ceive an OWLS-branded mouse pad)

- Enhanced Membership at \$275 (receive an OWLS-branded mouse pad and recognition in OWLS media)
- Enhanced Membership at \$500 (receive an OWLS-branded mouse pad, recognition in OWLS media, and one ticket to the 2019 Roberts & Deiz Awards Dinner)

Please consider renewing your membership today. Our work is important, and you are vital in helping us complete it. With your help, we can embark on our next 29 years stronger and better than ever.

To renew, please use the personalized renewal link in your email inbox. Email cassondra@oregonwomenlawyers.org for assistance.



The OWLS Board of Directors enjoyed a reception with Cascade Women Lawyers at Brix Law in Bend on September 28. Attendees included (from left) Adele Ridenour, Kristin Sterling, Amy Heverly, Laurie Craghead, and May Low.



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Upcoming OWLS Events

OWLS Contract Lawyer Social Hour

Portland
Friday, Oct. 19, 5 p.m.
Altabira
1021 NE Grand Ave., Suite 600

Lane County Women Lawyers The Art of the Possible

Eugene
Friday, Oct. 19, noon–6 p.m.
Wayne L. Morse U.S. Courthouse
405 East 8th Ave.
Co-sponsored by the UO School of Law and the U.S. District Court.

Linn Benton Women Lawyers Luncheon

Corvallis
Wednesday, Oct. 20, 11:45 a.m.
Sada Sushi, 151 NW Monroe Ave.

Perspectives on Non-traditional Legal Careers

Presented by OWLS Membership Com.
Call-in event, statewide
Monday, Oct. 22, 11:55 a.m. to 1 p.m.
Register [here](#).



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OWLS Chapter Summit

Portland
Friday, Oct. 26, 10:30 a.m. to 1 p.m.
Kell’s Irish Pub, 112 SW 2nd Ave.

OWLS Fall CLE

Journey to America: Access to Justice and the Oregon Refugee Experience
Portland
Friday, Oct. 26, 1–5 p.m.
Mercy Corps Headquarters
43 SW Naito Pkwy.
Register [here](#).

OWLS Reception Honoring Judges

Portland
Friday, Oct. 26, 5–7 p.m.
Mercy Corps Headquarters
43 SW Naito Pkwy.
No cost. RSVP [here](#).

Lane County Women Lawyers First-Generation Professionals’ Discussion Group

Eugene
Friday, Oct. 26, noon–1 p.m.
Lane County Circuit Court, room 306
125 East 8th Ave.

Mary Leonard Chapter 2018 New Admittee Luncheon

Salem
Wednesday, Oct. 31, noon–1 p.m.
Willamette Heritage Center
(Mission Mill) Spinning Room
1313 Mill St SE
Register [here](#).

Mary Leonard Chapter CLE: Conflating Substantial Evidence with Substantial Reason

Featuring Chief Judge James C. Egan of the Oregon Court of Appeals
Salem
Wednesday, Nov. 7, noon–1 p.m.
State of Oregon Law Library
1163 State St.
Co-sponsored by the State of Oregon Law Library

OWLS Contract Lawyer Discussion Group

Portland and by teleconference
Friday, Nov. 16, noon–1 p.m.
OWLS Headquarters
121 SW Morrison St., Suite 1100

CLE: Intro Re-entry

Presented by OWLS Community Service Committee
Portland

A look at post-prison reentry programs and reducing recidivism
Tuesday, Dec. 4, noon–1:15 p.m.
Barran Liebman
601 SW 2d Ave., Suite 2300

GrOWLS Winter Gathering & Annual Meeting

Columbia River Gorge
Wednesday, Dec. 5
For details, visit www.gorgeowls.org.

Queen’s Bench Holiday Luncheon

Portland
Tuesday, Dec. 11, 11:30 a.m.–1 p.m.
The Sentinel Hotel, Governor Ballroom
614 SW 11th Ave.

CLE: Child & Elder Abuse Reporting & Social Hour, OWLS Community Service Committee

Portland
Wed., Dec. 12, CLE 4–5 p.m., Social 5–6 p.m.
Barran Liebman
601 SW 2d Ave., Suite 2300

Joan Seitz Law Society

Roseburg
First Tuesdays, noon
Daily Grind Café, 368 SE Jackson St.

Josephine County Women Lawyers

Grants Pass
First Wednesdays, noon
La Burrita, 1501 NE F St.

Lawyers’ Association of Washington County

Hillsboro
Third Wednesdays, 8:30–9:30 a.m.
Insomnia Coffee, 317 E Main St.

Queen’s Bench Luncheons

Portland
Second Tuesdays, 11:45 a.m.–1 p.m.
Mark O. Hatfield U.S. Courthouse
1000 SW Third Ave. (except Dec.)

International Rights of Women and Children: Where Do We Stand Now?

Presented by OWLS Leadership Com.
Portland
Friday, Feb. 27, 2019, noon–1:30 p.m.
Location TBD

Roberts & Deiz Awards Dinner

Portland Art Museum
Friday, March 8, 2019

For more details, see the events calendar at www.oregonwomenlawyers.org.

Meet Linn County Circuit Court Judge Fay Stetz-Waters

By Andrea Ogston and Maya Crawford Peacock

Linn County welcomed its 45th judge to the bench on Nov. 15, 2017, when the Honorable Fay Stetz-Waters filled the vacancy created by the retirement of the Honorable Carol Bispham. Judge Stetz-Waters relocated to Oregon in 2001 and earned her law degree from Lewis & Clark Law School in 2005. She made Albany her home in 2007. She brings to the bench a deep knowledge of the Linn County community, rooted in her commitment to listening and a willingness to challenge assumptions.

As a young person growing up in Baltimore, Maryland, Judge Stetz-Waters was drawn to the military, seeking discipline and structure. She enlisted in the Marines at the age of 17 and served her country for eight years (four years active and four years inactive). She credits this time with helping her develop a strategic approach to problem-solving and highlights her sense of duty and desire to use her talents for public service. After leaving the military, Judge Stetz-Waters juggled full-time work as a 911 dispatcher at night while attending classes during the day. She graduated with honors from Trinity College in Hartford, Connecticut, with a BA in history.

While attending Trinity College, Judge Stetz-Waters met her wife, Karelia Stetz-Waters. Karelia, a native of Corvallis, brought Judge Stetz-Waters home for visits to her family, and Judge Stetz-Waters fell in love with the fresh air, green spaces, and the openness of the people. When Judge Stetz-Waters was encouraged to apply to law school by a supervisor at the police department, she applied only to schools in Oregon, knowing that this was where she wanted to make her home. She chose Lewis & Clark Law School for many reasons—among them, its evening program.

Judge Stetz-Waters was a stand-out law student. She attended night classes, worked full-time, and in a familiar pattern, used her natural leadership abilities for public service. As a law student, she was involved in numerous student groups, including the Black Law Student Association, National Crime Victims Law Institute, and Oregon Minority Lawyers Association.

The vacancy created by Judge Bispham's retirement led to 11 applications. Judge Stetz-Waters' prior legal experiences helped her rise to the top in a long winnowing process. Her experience includes working as a staff attorney at Legal Aid Services of Oregon in Albany, where she represented individuals living in poverty across a variety of subject areas. In 2009, Legal Aid Services of Oregon experienced significant budgetary cuts, and staff attorneys were likely to face layoffs. Not one to stand still, Judge Stetz-Waters applied for and obtained a position as an administrative law judge (ALJ) presiding over unemployment hearings.

After working as an ALJ for a few years, she took a position as a hearings officer with the Oregon Board of Parole and Post-Prison Supervision. This experience highlighted for her the vast impact that substance abuse disorders have on the community and the importance of access to treatment.

Judge Stetz-Waters, like all the judges in Linn County, is a generalist. Depending on the day, she may oversee civil

or criminal dockets. She hears everything from restraining orders and evictions to probate, civil commitment, and every variety of criminal case. She describes the workload as heavy, and every day as being different. Judge Stetz-Waters notes that "one sad feature of my days is the volume of cases stemming from drug addiction and the lack of support there is for recovery and treatment. One thing I would like to see is a move away from punitive incarceration (and the resulting recidivism) and a focus on healing the person and the community."

Judge Stetz-Waters likes moving quickly and hates being bored, which



Judge Fay Stetz-Waters

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WHERE RELATIONSHIPS RULE

OWLS Community Service Committee Begins New Project: OWLS for a Fresh Start

The OWLS Community Service Committee has formed a new subcommittee, chaired by Tonia Closson, which has started with a collaboration project with the Northwest Regional Re-entry Center (NWRRC). This project, OWLS for a Fresh Start, aims to support the needs of offenders leaving the federal prison system and transitioning back into society.

NWRRC is a nonprofit with an unpaid board of directors that administers the reentry facility, which is funded by its contract with the Federal Bureau of Prisons to house federal offenders, women and men, who need a structured place to live at the start of their reentry.

While in the program, these individuals work to gain suitable employment, secure housing, and reunite with family. Securing employment, an appropriate residence, and adequate mentoring support is essential to reducing recidivism and strengthening our communities.

The goals of the new OWLS project are to help educate OWLS about the reentry programs throughout the state and to increase support for these programs by gathering supplies to help the participants reach their goals of maintaining a job and following their release program requirements. In support of these goals, the committee has started a coat drive for the NWRRC participants; to donate, please email TClosson@chernofflaw.com.

Additionally, the committee will host a CLE on December 4, from noon to 1:15 p.m., at which OWLS members can learn more about reentry programs and their role in decreasing recidivism. The CLE will take place at Barran Liebman in Portland.

If you are interested in getting involved in this project or want to learn more, please contact chair Tonia Closson at TClosson@chernofflaw.com.

Judge Fay Stetz-Waters

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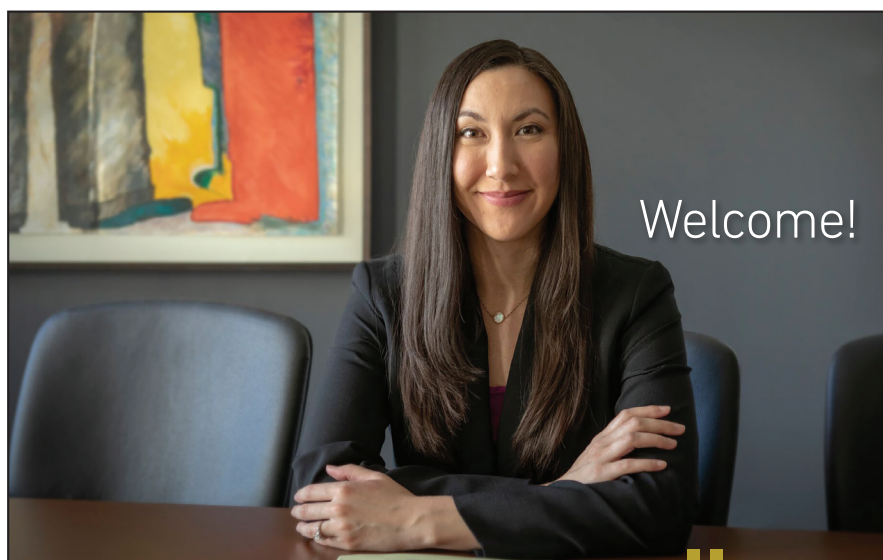
makes a seat on the bench the perfect place for her. She explains: "I love the variety of work and the fact that there is never a dull moment on the bench. Even the busy days are satisfying because I can accomplish so much in eight hours. I also have a passion for due process, so it means a lot to me to foster a calm courtroom environment in which people understand the process and feel heard and respected."

Judge Stetz-Waters is on the November ballot to retain her judicial position. She reports that for fun and relaxation these days, she enjoys meeting voters. "I genuinely enjoy canvassing. I love hearing people's stories. One thing that has really impressed me is how much we have in common despite differences of race, religion, or political party." Her appointment to the bench and subsequent candidacy have garnered support from attorneys in many parts of the state. When she isn't campaigning or on the bench, Judge Stetz-Waters enjoys visiting friends and attending concerts, movies, and fairs.

Reflecting on being the first African American judge, judge of color, and LGBTQ judge in Linn County, Stetz-Waters says she feels excited and hopeful. She firmly believes that having an African American woman on the bench helps people challenge their assumptions. In a similar vein, she is committed to challenging her own assumptions in order to better understand each person's story.

When asked if she had any advice for women lawyers or lawyers of color who want to become judges, Judge Stetz-Waters said, "My advice is to get out there and be in your community. Volunteer and be active. Engage in circles that may be unfamiliar and uncomfortable to you so that you can practice staying neutral and hearing all perspectives. Most importantly, approach all your work with a spirit of service."

Andrea Ogston works at Legal Aid Services of Oregon in Portland. **Maya Crawford Peacock**, also in Portland, is the executive director of the Campaign for Equal Justice and the OWLS secretary. Substantial portions of this article were first published in the April 2018 issue of Multnomah Lawyer. They are reprinted here with the permission of the Multnomah Bar Association.



Bodyfelt Mount welcomes associate attorney **Helaina "Laney" Chinn** to the firm. Laney graduated from the University of San Diego School of Law and most recently clerked for the Honorable Kathie F. Steele, Presiding Judge of Clackamas County Circuit Court. We are pleased to welcome Laney to the Bodyfelt team.

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New OSB Referral Service Proposed: Refugee and Immigrant Civil Assistance Panel

By May Low

On Saturday morning, Sept. 22, Chanpone Sinlapasai and I appeared before the Oregon State Bar's Public Service Advisory Committee on behalf of the OWLS Fall CLE Committee to propose a new referral service—the Refugee and Immigrant Civil Assistance Panel. The idea for the panel arose during the planning of the 2018 OWLS Fall CLE, titled "Journey to America: Access to Justice and the Oregon Refugee Experience," as the planners discussed how refugees and immigrants were able to access justice, if at all. [The CLE will take place on October 26 in Portland; visit the OWLS website to register.]

The purpose of the Refugee and Immigrant Civil Assistance Panel would be to increase access to justice for Oregon's most vulnerable populations. Currently, the OSB has three referral services—for active military and their families, for children between the ages of 13 and 17, and for people of modest means with certain types of cases. Clients in those programs are offered from 30 minutes to two hours of free legal consultation or access to legal services at a reduced fee ("low bono"). While these services are much needed, they are insufficient for many of Oregon's refugees and immigrants who are unfamiliar with the U.S. legal system and may be unable to afford anything in order to seek justice or legal protection. This lack of access and information stems largely from fear of repercussions, real or perceived, and results in a systematic disenfranchisement of entire swaths of the population.

Many social services organizations are dedicated to serving the refugee and immigrant population, but few offer immigration legal services, and even fewer offer any other type of legal assistance. Most refugees, asylees, and undocumented immigrants cannot afford even a modest means/low bono program. And many of them simply need a one- or two-hour consult to assist them in identifying the legal issues and moving in the right direction. A large number of attorneys who are not primarily immigration lawyers are willing and able to offer their services pro bono.

If the proposal is approved and implemented, the overall structure of the Refugee and Immigrant Civil Assistance

Panel will look like this:

Participants: Clients will get referrals to the panel from their refugee resettlement agencies (i.e., Catholic Charities, Lutheran Community Services NW, and Ecumenical Ministries of Oregon/SOAR), social services and culturally specific organizations, and immigration-specific legal nonprofits.

Advisory Panel: An advisory panel of experts will be tapped to conduct training sessions, create FAQ sheets for attorneys and participants, and be available to help direct clients with more urgent needs as they come in.

Screeners: Screeners for referral services are part of the existing infrastructure at the OSB. They will be trained to assist with identifying the potential issues and areas of law that are involved, so they can direct the inquiry to the appropriate volunteer group in the specific field of law. The screeners will assign up to three attorneys—one of whom will be an immigration attorney—to help each client.

Volunteer attorneys: These attorneys will be required to offer up to two hours of pro bono legal consultation, advice, and direction to each client the attorney accepts. Any additional services or time is to be negotiated between the parties. Volunteer attorneys are practitioners in myriad fields, and they will work in teams to communicate and advise the clients after mutual consultation. An immigration attorney will always be included in the group, because any potential actions might result in significant immigration implications for the client. When contacted by a screener, the volunteer attorney may accept or decline each case. Attorneys who practice in the following areas of law are particularly needed:

- Immigration, naturalization
- Landlord/tenant
- Public benefits—social services, social security, disability
- Victims' rights: domestic violence, TRO, DHS custody/guardianship, constitutional protection

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Molly Jo Mullen

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Human Rights Depend on Moral Courage: Immigration Advocacy under the Trump Administration

By Chelsea Strautman

Immigration advocacy under the Trump administration is an exercise in resiliency and moral courage. As a citizen and an attorney, I have been shocked and outraged by the administration's actions. In May, for example, Immigration and Customs Enforcement (ICE) surreptitiously transferred more than 120 immigrant detainees to an Oregon federal prison. The gravity of the constitutional and human rights violations occurring right in my backyard was not lost on me.

I jumped in my car and drove to the federal prison in Sheridan to gain access to the immigrant detainees. Along with other pro bono and ACLU attorneys, I was repeatedly denied entry by the Bureau of Prisons and ICE. In June, I became a declarant in a lawsuit filed by the ACLU. On June 25, a federal judge granted a temporary restraining order to enjoin the government's denial of the detainees' access to immigration counsel. The next day, I was one of the first immigration

attorneys allowed into the federal prison to provide legal representation to the detainees.

Albert

I took on four pro bono clients, one of whom was a 33-year-old asylum seeker from Cameroon named Albert. He speaks English. That detail alone—that Albert speaks English—has placed him in the crosshairs of the French-speaking Cameroon government. The Cameroon government is currently carrying out a genocide-level atrocity against the English-speaking minority. Albert's entire family has been murdered, imprisoned, or disappeared.

Albert cannot return to his country because if he did, he would unquestionably face the same fate as his family. Albert came to the U.S. border in May. He went directly to U.S. Customs and Border Protection (CBP) and said, "I am afraid to go home; I need protection." Albert sought asylum the so-called right way. Our government issued him an expedited

removal order and sent him to federal prison, both unprecedented and egregious deviations from the way an asylum seeker should be treated under the law.

After two months with no movement in his case, Albert was finally interviewed by an asylum officer. The officer determined that Albert's fear of returning to Cameroon was credible and a plausible basis for asylum. After passing his credible fear interview, Albert was eligible for parole.

I submitted Albert's parole request in early August. Though ICE's parole directive states that it should render a decision within seven days, weeks went by without action. I wrote letters to ICE

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Chelsea Strautman

Partner striking out?

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Referral Service

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- Family law (culturally sensitive)
- Juvenile court: dependence
- Criminal defense (federal and state)
- Wills, estates, trusts, elder abuse
- Business—ownership, employees, international
- Nonprofits: creation, transfer, employment
- Employment, including wrongful death, workers' injuries, and investors

Interpretation services: Interpretation services will be available to the clients at every stage of this process.

The Public Service Advisory Committee members were receptive to the proposal and voiced their support for the idea. Eric McClendon, the OSB's manager of referral and information services, was instrumental in helping the OWLS group develop the proposed panel so that it fits within the existing OSB structure. The proposal will soon be presented to the OSB Board of Governors.

May Low, an attorney in Portland, serves on the OWLS Board of Directors and on the OSB Advisory Committee on Diversity and Inclusion.

Immigration Advocacy

Regional Director Elizabeth Godfrey. I asked Senator Ron Wyden, Senator Jeff Merkley, and U.S. Representative Suzanne Bonamici to take congressional notice of Albert's case.

After almost three weeks, an ICE assistant field director called to say that Albert's parole request was his top priority, but he offered little explanation for the delay. Two days later, Albert walked out of federal prison into the sunshine, after 92 days of imprisonment for seeking asylum.

Though other asylum seekers have been released from the Sheridan prison, Albert appears to be the first asylum seeker detained at Sheridan for whom ICE has granted parole. We are hopeful that this indicates a shift in the blanket denial of parole that has been occurring under the Trump administration. The other detainees were able to leave because an immigration judge set bonds for them. Posting bond was available to those detainees only because they likely entered the country without inspection (EWI).

Albert and the other detainees who presented themselves to CBP agents at the border are considered "arriving aliens," not EWI. As a result, immigration judges do not have jurisdiction over their cases and cannot set bonds for them. Albert and other "arriving alien" asylum seekers can be released only if ICE exercises its discretion to grant parole requests.

Holding ICE Accountable

If an asylum seeker establishes their identity and that they present neither a flight risk nor a danger to the public, ICE's internal directive states that "[ICE] should, absent additional factors ... parole the [person] on the basis that his or her continued detention is not in the public interest." Despite that internal policy, under the Trump administration, ICE's Enforcement and Removal Operations has been denying nearly 100% of asylum seekers' requests for parole.

A strategy of issuing blanket denials is not arbitrary; it is a deliberate tactic to coerce people to abandon their meritorious asylum claims by indefinitely detaining them.

This egregiousness led the ACLU to sue the Department of Homeland Security and Secretary Nielsen on behalf of asylum seekers who, like Albert, had passed credible fear interviews but were denied parole and forced to remain in detention. In July, a federal judge granted injunctive relief in that case, *Damus v. Nielsen*.

The judge ordered ICE to follow its own policy and procedures to consider asylum seekers' parole requests. It is unclear whether ICE is complying with the order and approving more parole requests.

When Leadership Loses Its Humanity

Albert was released, but thousands of people seeking asylum in our country are being held indefinitely in detention, many in federal prisons. And the fight has only just begun for Albert. The next step—preparing his asylum claim and winning on the merits—will be arduous. Only 20% of asylum applications were granted last fiscal year, according to U.S. Citizenship and Immigration Services.

The president and his attorney general are brazen about their agenda to turn away asylum seekers. Their attempts to subvert judicial independence are overt. On Sept. 10, during a training of the largest-ever class of new immigration judges, Attorney General Sessions tried to convince the new judges that they are operatives of the Trump administration. In the same speech, Sessions vilified immigration attorneys who represent individuals before the immigration court, likening us to "water seeping through

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an earthen dam to get around the plain words" of immigration law to advance our clients' interests.

Courageously, National Association of Immigration Judges President Ashley Tabaddor later admonished Sessions on behalf of the judges' union, saying: "We find it really troubling and problematic that the AG just does not seem to appreciate the distinction that we have as immigration judges. We are not one and the same as them."

Moral Courage

In the face of these ongoing human rights violations, which many people seem content to sanction or ignore, what can Oregon women lawyers do? Our most acute obligation is moral courage. Courage is defined as "mental or moral strength to venture, persevere, and withstand danger, fear, or difficulty."

"Sometimes, especially in politicized spaces, telling the truth will be an act of courage," said Nigerian feminist writer Chimamanda Ngozi Adichie. "Be courageous," she said. "People can be remarkably resistant to the facts that they do not like. But don't let that silence you from speaking the truth. ...

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Lane County Women Lawyers Events

By Kasia Mlynski



Enjoying the social on Sept. 25 (left to right): Lorelei Craig, Julia Manela, Chelle Haynes, Lisa Donnell, Katherine Yancey, Carolyn Rasche, Kasia Mlynski, Mary Savage

Lane County Women Lawyers (LCWL) hosted a fall networking social on Tuesday, Sept. 25, at Saucefly in Eugene. Over 40 people attended the event, which we used as an opportunity to reconnect and get people excited about joining OWLS or renewing their memberships. We also highlighted several upcoming events.

On Friday, October 19, from noon to 6 p.m., LCWL will co-sponsor the “Art of the Possible” at the Wayne L. Morse U.S. Courthouse in Eugene. This year’s theme is care, courage, and the power to lead. The keynote speaker will be Emily Murphy; there will be complimentary lunch, speaker panels, and a closing reception.

LCWL members are invited to participate in WomenSpace’s second annual Wonder Run on Oct. 21, in support of Domestic Violence Awareness Month. Superhero costumes are encouraged, and many of us will run in our favorite RBG attire! Register [here](#).

On Friday, Oct. 26, LCWL will host its First-Generation Professionals’ Discussion Group at noon at the Lane County Circuit Court, in courtroom 306.

Keep up to date with LCWL events by liking our Facebook page.

Kasia Mlynski is a staff attorney at the UO Domestic Violence Clinic, in Eugene.

Immigration Advocacy

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Be courageous enough to acknowledge that democracy is always fragile. And that justice has nothing to do with the political left or the political right.”¹

The truth is that we are in a moment of constitutional crisis. As women lawyers, we can work together to problematize the abandonment of the rule of law occurring in our country. We can unite as creative, intuitive advocates to devise strategies to transcend this moment if we are brave enough to stand together against injustice.

In a 1977 lecture, American civil rights activist Audre Lorde acknowledged how terrifying it can be to raise our voices, noting that “the transformation of silence into language and action is an act of self-revelation, and that always seems fraught with danger.”² Nevertheless, the first move we must make as women lawyers is to name injustice, to call it out loudly even when the system demands silent complicity. Lorde urged women to step past fear, saying, “We can learn to work and speak when we are afraid in the same way we have learned to work and speak when we are tired.”³

As women lawyers, we are uniquely positioned to defend the most vulnerable and to effectuate the aspirational promises of American democracy. Liberty needs us to stand and fight right now. We must keep these injustices in the public discourse. We must demand accountability from our elected leaders. We must vote for leaders who will uphold the Constitution and extend its protections to all, regardless of citizenship status. Human rights—both our own and those of our sisters and brothers seeking refuge in our country—depend on our moral courage.

Chelsea Strautman is a solo practitioner in Portland practicing federal immigration law exclusively. She is also a community organizer and political strategist. She previously worked with UNICEF in Panamá, and trained in the U.S. Marine Corps for four years.

Endnotes

1. These quotations are from Adichie’s address to the Harvard class of 2018 on May 23, 2018, available [here](#).

2. Audre Lorde, “The Transformation of Silence into Language and Action,” delivered to the Modern Language Association on December 28, 1977, and subsequently published in Lorde’s *Sister Outsider*.

3. *Id.*

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The Oregon Women Lawyers Foundation, the 501(c)(3) sister organization to OWLS, is proud to focus on educating and supporting women and minorities in order to further their access to and participation in the justice system.

We fund the **Armonica Law Student Book Grant**, the **Vernellia R. Randall Bar Exam Grant**, the **Justice Betty Roberts Leadership Conference Grant**, and the **Janis Hardman Medical Support Grant**.

To learn more about the Foundation, our grants, or to donate, please visit owlsfoundation.org.



The OWLS Coffee Creek Book Drive was another great success this year, thanks to all the people who generously donated their time, books, and offices. The drive was organized by the OWLS Community Service Committee and directed by Erica Deatherage and Katie Riggs. It benefits the women at the Coffee Creek Correctional Facility.

An estimated 30 boxes of books were donated from people all over the state. Angela Wheeler, the library services coordinator at Coffee Creek, noted, "The gift of literature helps the women of Coffee Creek leave the facility for a while ... if only in their minds." Many thanks to all who participated in this year's book drive.

Special Committee

continued from page 1

information about the issues and about current opportunities for volunteering with organizations offering assistance to detainees. To that end, a blog on Wordpress has been created, and is being regularly updated with articles and volunteer and donation opportunities. The blog is at <https://owlsunitefamilies.org/>. Members are encouraged to follow the blog so that you'll receive notifications of new posts by email.

In addition, the Special Committee recently arranged a "matching fund" from \$800 contributed by OWLS board members. The money is being donated to the Asian Pacific American Network of Oregon (APANO) for use to benefit the detainees at the federal prison in Sheridan, Oregon. With that money in hand, the Special Committee challenged the OWLS membership to also donate and match the board's commitment to help those being detained in Oregon. You can donate here: www.apano.org/sheridan/.

The Special Committee is now working with the OWLS Membership Committee to arrange for a call-in CLE this fall, for an update on the legal challenges to the federal policies.

The Special Committee currently consists of co-chairs Maya Crawford Peacock and Kathryn Olney and members Amber Hollister, Megan Burgess, and Kristin Sterling. All OWLS members are welcome to join the committee; please contact either co-chair if you are interested.

Kathryn Olney works at SAIF Corporation in Bend and serves on the OWLS board.

OWLS Statement Opposing Family Separation at Border

Oregon Women Lawyers strongly opposes any policy of separating minor children from their parents when families present for asylum or cross the border into the United States for any reason. OWLS also strongly opposes any policy of placing minor children in immigration detention facilities. These unnecessarily cruel actions violate due process and are antithetical to OWLS' commitment to ensuring justice and equality.

The American Academy of Pediatrics has pointed out that by removing children from a parent or parents on whom they have relied throughout an arduous journey to the border, the U.S. government is engaging in child abuse that can result in irreparable harm with lifelong consequences.

The American Medical Association has adopted a resolution opposing the practice of separating migrating children from their caregivers in the absence of immediate physical or emotional threats to the child's well-being.

The United Nations High Commissioner for Human Rights has severely criticized the U.S. border policy of separating migrant minor children from their parents, calling such actions "unconscionable."

The separation of families and detention of minor children causes grave harm to children and their families. This inhumane policy has overwhelmed the criminal justice system and causes inefficiencies in the immigration court system when children, as young as toddlers, appear in court on their own, with no right to appointed counsel.

While the recent executive order appears to stop the routine practice of separating children from their parents, it does not present a lasting solution. OWLS calls on immigration authorities to immediately return the over 2,300 minor children who have been separated from their families to their parents. OWLS calls on congressional leadership to enact laws that will prevent these practices from ever recurring.

{We acknowledge the American Academy of Pediatrics, the New York State Bar Association, and the American Medical Association for their contributions to this statement.}

Statement issued June 29, 2018



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Thank You

OWLS thanks the following OWLS members, who joined OWLS or renewed their memberships at an enhanced level after we published the enhanced-level list in our Winter 2018 issue:

Jacqueline Alarcón	Kristen Chambers
Marcia Alvey	Julia Hagan
Alice Bartelt	Sally Hansell
Austin Batalden	Natalie Hedman
Kathryn Bourn	Diane Henkels
Sheri Browning	Kristina Holm



We Must Keep Fighting for Humane Treatment

continued from page 1

Family detention is not new—it began under the George W. Bush administration and was reinstated and drastically expanded by the Obama administration in 2014 in order to deter and punish Central American women with children coming to the United States to seek asylum. Currently, there are three permanent family detention facilities that combined hold more than 3,000 people: Berks Family Residential Center in Berks County, Pennsylvania; Karnes Residential Center in Karnes City, Texas; and South Texas Family Residential Center in Dilley, Texas. The facilities in Karnes and Dilley are run by for-profit private prison corporations and hold only mothers with children. Berks is smallest facility, with space for fewer than 100 people, and it is currently the only one that detains fathers with children. The Trump administration wants to expand family detention even further and require families to be detained throughout their entire immigration proceedings, which can take months to years.

Family detention is not the lesser of two evils; it is as evil as forcibly separating parents and children. It punishes parents, particularly women, by deliberately inflicting harm on their children. As an immigration attorney who has fought on the front lines against family detention, I have seen firsthand how detention traumatizes children and destroys parents' will to fight their immigration cases. I volunteered as a pro bono attorney four times in 2014–2015 at the family detention centers in Dilley and Karnes

and one in Artesia, New Mexico. What I witnessed at these facilities was horrific. Children turning purple from fever and languishing from lack of decent food, clean water, and proper medical care. Children unable to play and act like children. Children forced to be present in the room when their mothers discussed the details of the persecution and torture they suffered in their home countries with volunteer attorneys or immigration officials. Mothers unable to care for their children because they are imprisoned and living under constant restriction, surveillance, and control by detention center employees and ICE guards. The majority of these women and children fled life-threatening abuse in their home countries. These facilities have no services to help this vulnerable population recover from past harm, and they often inflict further trauma.

Long-term family detention creates another serious problem for asylum seekers working their way through immigration proceedings: lack of access to counsel. Immigration detention centers are typically located in small towns where there are few, if any, immigration attorneys. Attorneys must travel long distances and deal with difficult restrictions in order to be able to visit detained clients, including long unanticipated waits for visits, lack of visitation rooms, inability to make phone calls to clients directly, inability to use electronic devices such as computers or cell phones while visiting clients, and difficulties getting access to other important services for clients such as interpreters,

psychologists, and medical exams. Detention centers also concentrate a large number of people in dire need of legal services in small area, putting a serious strain on legal service providers to meet the needs of those detained, whose cases normally move through the immigration court system at a much faster pace than non-detained cases.

As an immigration attorney who focuses on asylum and humanitarian immigration, I hear in my daily work the worst cruelty that human beings inflict on one another. Sadly, I have witnessed cruelty inflicted on asylum seekers in this country, by my own government. I have been encouraged by the recent public and political outcry regarding family separation and the increased concern for the treatment of asylum seekers. But as the family separation issue fades from public attention, I hope that the public as well as our political leaders will continue to fight for humane treatment of those who come to our country seeking our protection. Keep listening, keep speaking out, continue volunteering and donating, contact your representatives and put pressure on them to dismantle family detention once and for all. Do not let asylum seekers suffer in the dark.

For more information on family separation and family detention, see www.aila.org/advo-medial/issues/all/featured-issue-end-family-separation-and-the-zero.

Eileen Sterlock has a solo immigration practice in Portland and is the current chair of the Oregon Chapter of the American Immigration Lawyers Association.

NLG and AORTA Provide Anti-Oppression Training

By Joslyn Keating

On August 24, the Portland Chapter of the National Lawyers Guild hosted an anti-oppression training facilitated by the Anti-Oppression Resource and Training Alliance (AORTA). During this interactive workshop, participants were challenged to identify systems of oppression in their own workplaces and organizations to gain an understanding of how an individual's identity affects the way the person is treated within the organization. Co-sponsoring the training were OWLS, Catholic Charities, the Oregon State Bar Diversity and Inclusion Department, and the Multnomah Bar Association.

The AORTA presenters encouraged participants to view systems of oppression as an iceberg consisting of three interconnected layers. At the tip of the iceberg are individual, perceptible types of oppression, such as refusing to call a transgender person by their correct gender pronoun, harassing women on the street, and becoming defensive when a person of color points out racism.

Lurking just below the surface of the water is institutional oppression. It is composed of conscious and unconscious policies that create and maintain systemic inequity in organizations. Institutional oppression includes lower pay for people of color and women and higher unemployment rates for people with disabilities due to lack of accessibility to jobs, housing, and education.

Lastly, cultural oppression is at the bottom of the iceberg. It is the most expansive form of oppression and the most difficult to eradicate. Cultural oppression includes beliefs that we may be socialized into, such as the "bootstrap" parable that everyone starts out on the same playing field and the narrative that men are "natural leaders" and more deserving of power than women.

Participants were asked to apply the iceberg analogy to organizations to which they belong and share examples of individual, institutional, and cultural oppression. Examples of individual oppression included policies and communications using strictly male pronouns and the common prosecutorial practice of assuming that law enforcement's rendition of an event is the equivalent of fact. Examples of institutional oppression included prohibitively expensive bar membership fees and the OSB's character-fitness requirements.



Workshop participants included (left to right), at top, Amy Zubko, Corinna Spencer-Scheurich, Ashlee Albies, Kasia Rutledge; at bottom, Kathryn Olney, Jacqueline Alarcón, and Lindsey Stallings

Several participants also identified institutional oppression in the way that the OSB responded to criticisms about an article printed in the April 2018 issue of the *Oregon State Bar Bulletin*. In that article, the leaders of several specialty bar associations supported the OSB's public denouncement of the rise of white nationalism and pointed out specific examples of racist conduct by President Trump. The article's publication led a handful of bar members to decry the OSB's alleged endorsement of a political agenda. The workshop participants noted that the OSB's response, which included refunding membership dues to complaining members, minimized the experiences and voices of those affected by white supremacy and further institutionalized a pattern of racial inequity.

With regard to cultural oppression, several participants pointed out that white supremacy is so deeply embedded in the law that it has informed nearly every aspect of our legal framework. Among other factors, this stems from colonialism, the legalization of slavery, the lack of non-white representation in the judiciary, and the eradication of native

peoples from their land. Another participant recognized cultural oppression in the widely held belief that the success of a lawyer is defined by their income.

The group then discussed ways to disrupt systems of oppression. Many participants promoted breaking down organizational hierarchies and allowing communication to flow both up and down the organizational chart. Others suggested that organizations critically evaluate their policies and practices to identify the most excluded groups and the groups that benefit from exclusionary practices. On an individual level, participants said that building alliances, trust, and solidarity with those who are most often excluded from positions of power would begin to break down organizational systems of oppression.

In an uplifting conclusion to the workshop, each participant vocalized one actionable commitment, big or small, to disrupt patterns of oppression, wherever they occur.

Joslyn Keating is an attorney for Cummins Goodman Denley & Vickers in Newberg. She represents employers and businesses.

The OWLS Fall CLE is on Friday, Oct. 26, 1–5 p.m.

Journey to America: Access to Justice and the Oregon Refugee Experience

It will be followed by an OWLS Reception Honoring Women Judges, 5–7 p.m.

Register/RSVP [here](#)

Location: Mercy Corps Headquarters
43 SW Naito Pkwy.
Portland

Mia Yamamoto Speaks at OAPABA Events in August

By Jacqueline Alarcón

This year the Oregon Asian Pacific American Bar Association (OAPABA) invited civil rights activist Mia Yamamoto to be the keynote speaker at OAPABA's annual gala dinner, held on August 30 in Portland. In her remarks, Yamamoto talked about being born in a Japanese internment camp in Arizona, her experience as a transgender individual in the legal profession, and how her personal story affected her professional trajectory and outlook on equity issues.

OAPABA and various co-sponsors offered a lunch gathering at the Portland City Grill with Yamamoto the following day. Approximately 20 attorneys attended the gathering, all interested in hearing more about Yamamoto's career path and her experience as a Japanese transgender woman. Yamamoto made it clear that race matters, and she encouraged attendees to express their truths openly.

At the luncheon, Yamamoto delved further into her experience growing up with a father who was a civil rights activist. She fondly discussed her father's working for the ACLU even while in an internment camp. Experiencing a family community that embraced activism, even when her family was being discriminated against, is just one small reason that civil rights activism resonated with Yamamoto, so much that she made a career of it as a criminal defense attorney.

Being one of the first openly transgender attorneys in California, Yamamoto knew she had to stand up for her rights. As she stated during the luncheon, "you cannot be a shrinking violet when you are the only one." Yamamoto was continually warned by her peers of rolling negative effects, predicted to include losing her client base and threats of violence. But despite the concerns of her peers, Yamamoto needed to be true to herself and to live her life openly and honestly.

She was fortunate not to lose a single client. That says a lot about the amazing advocate and force of nature that Yamamoto is—she inspired such trust and confidence in her clients that they continued to want her in their corner and accepted her for being true to herself.

Having Mia Yamamoto as the keynote speaker at the OAPABA annual gala and the luncheon was revolutionary. The Oregon legal community has yet to actively discuss all the barriers that each individual who identifies as part of the LGBTQIA community faces. The



OAPABA's 2018 Justice Lynn Nakamoto Award recipient Judge Mustafa Kasubhai, with Justice Meagan Flynn at the OAPABA gala on August 30 in Portland.



Attending the OAPABA gala (left to right): OWLS Immediate Past-President Angela Lucero, board member Aruna Masih, law student Carlotta Alverson, Board President Amber Hollister, board member Ericka Langone

experiences of transgender people are often overlooked. We cannot assume that everyone who identifies as part of the LGBTQIA community faces the same barriers and has the same experiences. Yamamoto spoke strongly about specific barriers encountered by transgender people and how the barriers differ from those encountered by other people who identify as LGBTQIA. I commend OAPABA for bringing such an honest and lively

speaker to the Oregon legal community.

I welcome the opportunity to be educated on equity issues and recognize my own ignorance as to the issues that affect the various intersections of equity and inclusion. If anything in this article should be corrected, I invite that feedback.

Jacqueline Alarcón is an attorney at Yates Family Law in Portland and serves as OWLS historian.

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Reset: My Fight for Inclusion and Lasting Change

By Ellen Pao
(Spiegel & Grau, 2017, 274 pages)

Book Review by Renata Gowie

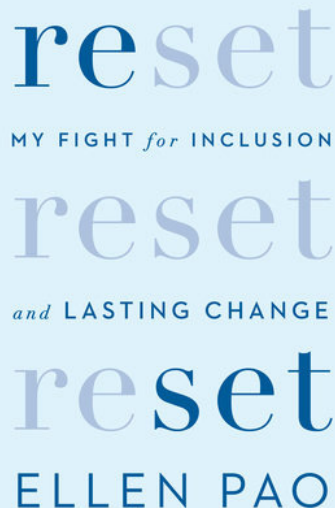
In 2012, Ellen Pao, then a junior partner at Kleiner Perkins Caufield and Byers, a Silicon Valley venture capital firm, sued the firm for sex discrimination and retaliation. *Reset* is Pao's account of events leading up to the 2015 trial, though she devotes fewer than 20 pages to the trial itself.

Pao has an undergraduate degree in engineering from Princeton and a JD and MBA from Harvard. Before joining Kleiner, she had worked as a lawyer at a prestigious law firm. When reading *Reset*, one might wonder how someone with such intellectual heft could be naïve and incautious at times.

While at Princeton, Pao wrote an article for the school newspaper that exposed rampant underage drinking at university clubs. Predictably, the administration cracked down on underage drinking, and Pao's fellow undergraduates were furious and blamed her. These foreseeable reactions somehow surprised her. Her lack of insight continued when she was at Kleiner.

At Kleiner, a billionaire investor hit on Pao during a business meeting that included her boss. The investor referred to his open marriage and repeatedly asked to spend time alone with Pao. After the meeting, her boss brought up the inappropriate behavior and admitted he should have interceded. Instead of agreeing, Pao said it was nothing. Unlike Pao, most women who receive unwanted advances do not have the benefit of the boss's proactive support. Surprisingly, she just let it go.

Still, the culture at Kleiner was reprehensible. Women were excluded from investment meetings. When included, women were interrupted and men took credit for their ideas. Women were chastised for being "too opinionated" and "raising their voices," yet also for "not owning the room." Men told jokes and made comments that were blatantly racist, anti-Semitic, sexist, and homophobic. According to Pao, the culture of Silicon Valley has been shifting from altruistic to selfish. As she describes it, the tech world no longer shares the ideal of Bill Gates, who wanted a personal computer on every desk, but the aesthetic of Mark Zuckerberg, who wanted to find women to date.



Pao sought advice on how to succeed at Kleiner from an Asian male colleague. His advice served his interests, not hers, and indeed was sabotage. He advised her not to network and encouraged her to push back on another colleague who was his competitor. While he and Pao were on an overseas business trip, she suffered a medical emergency, but he chose to make a pass at her, rather than take her to the hospital. Later, Pao made the mistake of having a sporadic fling with him for several months. It is not the affair with a co-worker that was imprudent, but the decision to have an affair with a co-worker known to be a conniving backstabber. Nothing good could come from it, as subsequent events showed.

After Pao ended the affair, her former paramour became hostile toward Pao and excluded her from information and meetings. He misdirected her and "flat out lied" to her. When she brought up his behavior to her superiors, they disregarded it. He eventually was promoted to senior partner, and gave Pao negative performance reviews. She complained about him orally and in writing, but to no avail.

When Pao filed her lawsuit against Kleiner, she naïvely opted for a "no collateral damage approach." She would not force allies to choose sides between her and Kleiner. Pao, a Harvard-educated

lawyer from a prestigious law firm, should have known Kleiner would employ a scorched-earth strategy. If Kleiner partners treated her unfairly as an employee, why would they suddenly treat her fairly when she sued? Pao voluntarily produced 700,000 pages of discovery, most of which she could have legally withheld, an admitted tactical error. Kleiner produced only 5,000 pages. After a five-week trial, the jury rendered a verdict for Kleiner. In an ironic footnote to Pao's fight for gender equality, a female defense team secured the defense verdict.

Despite the loss, Pao's trial and book have shed light on discrimination in Silicon Valley. More women are speaking out about their experiences, and some are filing their own lawsuits. This is called the "Pao effect." *Reset* is worth reading, though at times, the reader may find some of Pao's actions perplexing.

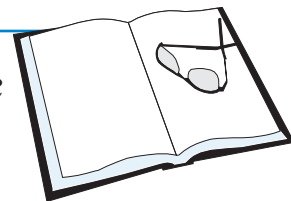
Renata Gowie is an assistant U.S. attorney and chief of the Civil Division at the U.S. Attorney's Office in Portland.

For more info on OWLS, OWLS activities, or OWLS chapters, please visit www.oregonwomenlawyers.org.



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Oregon Equal Pay Act of 2017: Most Provisions Take Effect in January 2019

By Lindsay Reynolds

On June 1, 2017, Governor Kate Brown signed into law the Oregon Equal Pay Act of 2017, expanding the current law's protection against wage disparities among employees. Currently, Oregon prohibits discrimination "between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills." The amended law increases the current law's scope to prohibit discrimination against employees on the basis of a "protected class," which is defined as "a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age" in the payment of compensation (wages, salary, bonuses, benefits, fringe benefits, and equity-based compensation) for work of comparable character.

The amended law carves out an exception, which allows employers to have varying compensation levels as long as the disparity is "based on a bona fide factor" that is related to the position in question. Those factors include the following:

- A seniority system
- A merit system

- A system that measures earnings by quality or quantity of production
- Workplace locations
- Travel (if necessary and regular for the employee)
- Education
- Training
- Experience
- Any combination of the factors listed above, but only if that combination accounts for the entire compensation differential

Most of the new provisions take effect on January 1, 2019, which gives employers time to analyze their compensation structures and make any necessary changes. Employers who violate the amended law could be held liable for unpaid wages, compensatory damages, punitive damages, and attorneys' fees. An employer may avoid having to pay compensatory or punitive damages if the employer demonstrates that it completed an equal-pay analysis of its pay practices within the three years before the date the employee filed the action, and if it eliminated the wage differentials for that employee.

In addition, the amended law pro-

hibits employers from seeking salary history information of an applicant or an employee. This means that it is unlawful for employers to ask applicants to disclose what they were paid in any prior employment position. This provision took effect in October 2017. Beginning on January 1, 2019, the Oregon Bureau of Labor and Industries will have the authority to enforce this provision and issue civil fines. Beginning January 1, 2024, employees will have a right of private action against potential employers who have inquired about their salary history.

Employers should review their hiring practices to ensure that job applications and interviewers do not ask about an applicant's salary history. Employers should also perform an equal-pay analysis to assess and correct any wage disparities among employees who perform work of comparable character that are not based on a bona fide factor. Additionally, employers should document employee performance and articulate and document legitimate reasons, listed under the statute, for pay disparities.

Lindsay Reynolds is an attorney at Tonkon Torp in Portland.

OWLS Dress for Success Fundraiser and Fashion Show



Enjoying the event (left to right): Nicole Elgin, Alana Iturbide and an unidentified student from Phagans School of Hair Design, Shari Dunn, Graciela Cowger, Rima Ghandour, Anne Milligan, and (at bottom) Simon Whang and Sean Riley

The annual OWLS Dress for Success Fundraiser and Fashion Show was held this year on July 19 at the Multnomah Athletic Club in Portland. The event raises money for Dress for Success Oregon.

Eddie Rogoway emceed the event with her usual playful sense of humor, and many lawyers modeled clothing from The Man's Shop, Folly, Veil & Valor, Garnish, and COMMUNION. Phagans School of Hair Design provided hair and makeup support.

A special thank-you to the firms that sponsored this fun event for a worthy cause: Barran Liebman, Chernoff Vilhauer, Schwabe Williamson & Wyatt, Elizabeth Christy Law Firm, Ball Janik, Richardson Wright, Miller Nash, Buchanan Angela Altschul and Sullivan, Dunn Carney, Markowitz Herbold, Tonkon Torp, and Davis Wright Tremaine. Thanks also to Garnish for sponsoring a raffle.