

Kentucky Bar Association Diversity Study of Attorneys and Judges

Final Report

This report was prepared pursuant to a grant from JustFund KY for the LGBT Section of the Kentucky Bar Association by Melanie D. Otis, PhD, Brautigam Professor of Criminal, Juvenile and Social Justice at the University of Kentucky, College of Social Work. No Kentucky Bar Association dues revenues were expended for this project.

Kentucky Bar Association Diversity Study

Background

Catalyzed by the efforts of the National Judicial Education Program to Promote Equality of Women and Men in the Courts in the early 1980s and the formation of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts in 1989, the 1980s and early 1990s saw numerous state-level task forces addressing issues of gender and/or race/ethnicity bias in the courts¹. While individual task forces often focused on specific avenues of inquiry, collectively these efforts examined issues of gender bias and/or race and ethnic bias from the perspectives of both court-users (litigants, defendants, crime victims) and members of the judiciary (judges, attorneys, court personnel). Regardless of the nature of the specific questions asked or the role of the study participants (court-users and/or members of the judiciary), task force findings shared a common thread – gender bias and race/ethnic bias were identified as significant problems that were widespread in the courts and the legal profession.

Since the wave of task force inquiry ebbed in the mid-1990s, Beyond the ABA's annual review of the demographic profile of its members, examination of equity in the court system and the legal profession has been sparse and generally limited in geographic scope. Despite this, gender bias, race and ethnic bias, and less commonly, sexual identity and gender identity bias remain the subject of ongoing social science research. A cursory search of available information indicates that research on experiences with and perceptions of bias within the justice system generally focuses on the perspectives of court-users – those individuals who become justice-involved as a result of being a litigant or defendant in a civil or criminal case. Inquiry addressing various forms of bias from the perspective of members of the judiciary is less common.

Notwithstanding the limits of past inquiry, collectively these findings provide a useful foundation for the current Kentucky Bar Association Diversity Survey of Attorneys and Judges. Specifically, extant research has been used both in the development of the survey instrument and as a reference point for consideration of the findings. With this in mind, a brief summary of previously identified patterns of gender bias, race and ethnic bias, sexual identity/orientation bias, and gender identity/expression bias are provided below.

Brief Overview of Extant Research on Bias in the Courts and Legal Profession

Prior to summarizing the state of knowledge related to specific sources of bias (e.g., gender, race, ethnicity), it is important to understand the shifting nature of bias identified in more recent studies compared to work that began in the 1970s. While early efforts to identify and address bias in the legal profession and court system focused on overt manifestations of race/ethnic and gender bias, evidence suggests that the greater challenge comes from the

¹ Between 1979 and 1994, 42 states produced task force/commission reports addressing gender bias and 14 states produced reports on race and ethnic bias. The Kentucky Task Force on Gender Fairness and the Courts report, *Kentucky Task Force on Gender Fairness and the Courts: Equal Justice for Women and Men*, was completed in 1992.

pervasiveness of implicit bias (Kang, Bennett, Carbado, & Casey, 2011). Previously referred to as unconscious bias, implicit bias is defined as bias that results from unconscious mental processes that draw on embedded and ingrained stereotypes when making decisions about people, situations, and subsequent actions. At its core, the concept suggests that those who engage in discriminatory and/or biased behavior are often unaware of the factors that influence their thought processes and actions. It should be noted, and will be revisited in the *Summary*, that framing sources of bias and discrimination as emanating from implicit bias also suggests that addressing the problem may be out of reach as long as stereotypes persist (Selmi, 2018). This creates a complex challenge for those seeking to impact the problem.

Gender Bias

Legal Profession. Since the initial studies in the late 1970s, research examining gender bias and stereotyping within the legal profession has been fairly consistent in identifying continued evidence of bias that negatively impacts women. This work has contributed to the creation of numerous professional organizations and networks to support minority members of the legal profession, as well as changes in regulations and training designed to reduce bias throughout the system. Despite changes in regulations and increased sanctions for violations, research indicates that women still encounter both overt and covert forms of gender-biased behavior on a regular basis. Further, evidence suggests that while headway may have been made in reducing overt forms of gender bias (Moyer & Haire, 2015), implicit bias and gender stereotyping remain persistent contributors to gender inequality in the legal profession (National Association of Women Lawyers & the NAWL Foundation, 2009).

Among the more recent efforts to address these issues, a few studies offer a useful backdrop for the Kentucky Bar Association Diversity Study. Most notably when considering the experiences of members of the judiciary are the findings of a 2016 study by the American Bar Association (ABA) Commission on Women in the Profession and the Minority Corporate Counsel Association (American Bar Association and MCCA, 2018). The survey collected data from a national sample of 2,827 in-house and firm attorneys. Despite the passage of time, the study underscored the persistence of gender and race/ethnicity bias and inequality in the legal profession, with women in general and women of color in particular reporting high levels of bias. The consequences of gender bias were manifested in a variety of ways, including women being less likely to become partners in law firms, being less likely to serve as first chair, receiving lower pay than their male counterparts, and being more likely to report experiencing sexual harassment and demeaning behavior both inside the court and in their place of employment (ABA & MCCA, 2018).

Court-users. Findings related to the impact of gender-bias on court users suggest that both women and men may be negatively impacted. In criminal cases, research suggests that men are more likely to be incarcerated than women, and when incarcerated are likely to receive significantly longer sentences (Doerner & Demuth, 2014; Starr, 2012). In divorce cases and

cases involving custody decisions, research suggests that gender bias may play a role in greater likelihood that custody will be awarded to the female litigant. These decisions can be understood in part as consequences of the existence of gender bias related to expectations about caregiving, family responsibilities, and career trajectories (Starr, 2012). These are also considered to be contributing factors in criminal sentencing decisions (Doerner & Demuth, 2014).

Race and Ethnic Bias

The largest body of research on race and ethnic bias has focused on outcomes associated with court-users. As previously noted much of this work examines perceptions of bias from the standpoint of court-users or seeks to illuminate factors that contribute to disproportionate rates of conviction, incarceration, and negative outcomes on non-criminal cases for minority court-users. A few studies have addressed the views of legal professionals when considering these outcomes. Collectively, the data (both qualitative and quantitative) suggests that implicit bias and stereotyping based on race and ethnicity serve to disadvantage minority court-users.

Legal profession. Despite evidence that minorities make up a growing number of members of the legal profession, data indicates that this increased participation has not translated into professional advancement. Within the profession, race and ethnic minorities (and women) remain concentrated in lower paying jobs and often experience pay inequities despite career advancement (ABA & MCCA, 2018).

Beyond the economic realities, research on race and ethnic bias within the legal profession has generally identified two themes. First, compared to male respondents, female attorneys and judges are more likely to indicate that they have witnessed evidence of bias and discriminatory treatment of members of the judiciary and litigants who are persons of color. Second, studies have shown that women of color are more likely to indicate that they have been assumed to be part of the housekeeping or support staff both in their place of employment and in the court setting (Garcia-Lopez, 2008).

Court-users. Examination of court data provides insight into patterns of race and ethnic bias in criminal cases, where disproportionate rates of incarceration and longer sentences have been found for persons of color when compared to Caucasian/White defendants (Doerner, 2015). While data indicates that legal factors (e.g., past criminal history, elements of the crime, offense conduct) are significant contributors to sentencing decisions, research also supports the role of extralegal factors (e.g., race/ethnicity, sex) in determining final outcomes of the discretionary process. A more granular examination of this data demonstrates that unlike many other arenas where women of color are found to be the most disadvantaged; the intersection between race and sex disproportionately negatively impacts Black men (Doerner, 2015).

Studies involving court-users/participants have also been consistent in their identification of perceptions of bias in the judicial/court system. Compared to White court-users, Minority court-users/participants are more likely to believe that the courts are unfair. These perceptions

are often further influenced by the economic status of the court-user, with lower income study respondents being more likely to view the legal system as unfair. Thus, the disproportionate representation of minorities among low income court-users contributes to these findings.

Sexual Identity/Orientation and Gender Identity/Expression Bias

Legal profession. In the early 1990s the California Bar Association and the Los Angeles County Bar Association each undertook studies to examine issues of sexual orientation bias and discrimination. To date, California remains the primary source of data on experiences of sexual orientation/identity bias encountered by litigants and/or members of the judiciary. While limited, the available data on sexual identity/orientation and gender identity/expression bias indicates that these are issues for both court-users and members of the judiciary (Brower, 2007). Studies seeking to understand the experience of attorneys and judges who identify as sexual and/or gender minorities suggest that many individuals remain closeted for fear of negative consequences should their LGBT-identity become known, while others leave the profession often as a result of these fears or after having experienced such consequences (Badgett, Sears, Lau, & Ho, 2009; Brower, 2007).

Court-users. Research on the experiences of sexual and gender minorities in the court system are fairly limited, and primarily focus on those who identify as lesbian, gay, or bisexual. Despite the limited data, findings indicate that when a person's status as a sexual and/or gender minority becomes known (often for reasons that are irrelevant to the reason they are in contact with the court), court-users feel they are subjected to biased and unfair treatment (Brower, 2002, 2007). Research suggests that this also manifests in decisions about jury selections, where sexual minority court users indicated that they perceived that their sexual minority status resulted in decisions to remove them as a prospective juror, particularly in cases that involved a LGBTQ litigant (Brower, 2010). Beyond the perceptions of court-users, these perceptions have been affirmed by members of the judiciary who acknowledge that they have witnessed negative comments, jokes, etc., directed at sexual and gender minority litigants both within the courtroom and outside the court setting (Brower, 2007).

The Kentucky Bar Association Diversity Study of Attorneys and Judges

This study focused on KBA members' perceptions of and experiences with discrimination and prejudice within the judicial system – both in terms of the respondent's professional experiences and their perceptions of the treatment of court-users (e.g., litigants, defendants, victims). Specifically, judges and attorneys were asked to respond to items addressing three specific areas: gender, race and ethnicity, and sexual orientation/identity and gender identity. Although probed in less depth, questions related to immigration, intellectual disabilities, and physical disabilities were also included.

Methodology

Data for the KBA Diversity Study of Attorneys and Judges was collected through a cross-sectional, online survey. The survey was accessible via either computer or smartphone. To reduce the risk of multiple responses from a single KBA member, the online survey, accessible on the *Qualtrics*² platform, was set to allow only one response via a single IP address. The survey was secured in the researcher's password-protected *Qualtrics* account, and data was/is accessible only to the primary researcher.

Recruitment

Attorneys and judges were advised of the survey and encouraged to participate via an outreach email sent to all Kentucky Bar Association members with valid email addresses on the KBA listserv. The email was sent by the president of the KBA. The recruitment email included a cover letter explaining the purpose of the survey and delineating the process used to protect the anonymity of participants. A link to the survey was embedded in the recruitment email. Upon accessing the survey via *Qualtrics*, the respondent first encountered an informed consent cover letter from the research, complete with a detailed description of respondent's rights and protections. The survey was available online from September 2018 to December 2018. This approach allowed for full participation of members of the KBA (with acknowledgement that some members may not have maintained a valid email address in the listserv); however, participation in the survey was voluntary. Given the voluntary nature of participation, the findings of the study cannot be assumed to be representative of all members of the KBA. The relevance of this self-selection process will be addressed in greater detail in the *Conclusions* section of the report.

Protection of Anonymity and Confidentiality

To assure confidentiality and anonymity, no member of the KBA had/has access to the survey database. Conversely, the researcher did not/does not have access to the names and email addresses of KBA members included in the association's listserv. No personal identifying

² *Qualtrics* is an online survey platform that is commonly used in academic research. The platform offers extensive options to protect the integrity of the data collection process and the collected data.

information was included in the data collection. Finally, to further protect the confidentiality of respondents, all findings are reported in aggregate.

Instrument

The majority of measures included in the KBA survey were based on previously developed instruments that have been utilized in past studies, with minor edits to focus on practice in Kentucky when relevant. Where appropriate measures were not available, survey items were developed based on past research. In addition, demographic data was collected for respondent's sex, race, ethnicity, length of time in practice, disability, areas of law practice, and geographic location of primary practice. The 102-item survey took approximately 12 minutes to complete.

Drafts of the survey instrument were reviewed by representatives of the KBA and suggested edits were incorporated for subsequent review. After several iterations, the final survey was approved by the president of KBA.

The final survey consisted of 102 items/questions. The majority of survey items were closed-ended Likert-type measures. For many items, a 5-point Likert response scale ranging from *Strongly Agree* to *Strongly Disagree* was utilized. For greater clarity of interpretation, analyses presented in this report are based on recoded versions of these variables that were collapsed into three categories: *Agree* (Strongly Agree + Agree), *Neither Agree nor Disagree*, and *Disagree* (Strongly Disagree + Disagree). To assure the integrity of the findings, analyses using the original 5-point Likert scale and the recoded 3-point scale were compared. This process confirmed that recoding the measures into three categories did not substantively change the statistical relationships in the bivariate analyses. Respondents were also given the option of selecting *Don't Know* for many survey items. For analytic purposes, *Don't Know* and *Not Applicable* responses were not included in the bivariate analyses. Finally, of the 102 items/questions, 10 collected demographic information related to personal characteristics and professional practice.

Balancing Inclusiveness and Analytic Integrity

The study sought to examine diversity and perceptions of potential bias within the judicial system. In constructing the survey, efforts were made to be as inclusive as possible, while also acknowledging the potential for respondents to have privacy concerns about responding to various questions, particularly questions about respondent's personal characteristics. In the initial presentation of respondent's personal characteristics, all variables are presented with all original categories in order to provide a clearer picture of the participants in this study (Table 1). However, in subsequent bivariate analyses examining relationships between respondent characteristics and specific survey items, a number of demographic variables were recoded and categories collapsed to assure sufficient statistical power to identify relevant

findings. The interpretive limitations associated with these collapsed variables will be discussed following the presentation of findings.

The following provides a description of the recoding of relevant variables:

- A. Race/ethnicity was originally captured with five categories: African-American/Black, Caucasian/White, Hispanic or Latino/Latina, Asian Pacific Islander, and Other. For bivariate analyses, the variables were dichotomized to Caucasian/White and People of Color (POC). It is acknowledged that an all-encompassing category of POC does not allow for examination of the unique experiences and perceptions of a diverse sample of respondents. Thus, comments about the unique experiences of any specific group (e.g., African/American/Black respondents, Hispanic or Latino/Latina respondents) cannot be made. The limitations of the loss of specificity notwithstanding, past research suggests that while members of minority race/ethnic groups may have distinctly different experiences, they share in common a greater likelihood of experiencing prejudice and/or discrimination than Caucasian/White persons. (Sue, Bucci, Lin, Nadal, & Torino, 2007).
- B. Sexual identity/orientation originally consisted of five categories: bisexual, heterosexual, lesbian, gay and other. Research has shown that the experiences of sexual minorities are often distinct, depending on the focus of inquiry. Despite this, with 94.4% of the sample identifying as heterosexual, the distribution of responses across other categories of sexual identity was insufficient to treat them independently. As a result, for some analyses, this variable was recoded to two categories: LGBTQ and Heterosexual.
- C. Gender identity was not included in subsequent bivariate analyses due to insufficient sample diversity. Based on the initial gender identity question and an examination of the intersection between the variable sex (male or female) and gender identity (man, woman, transgender, other), 11 respondents identified differently on the gender identity versus sex question. These respondents are included in the LGBTQ variable for bivariate analyses.
- D. Geographic location: Analyses considering geographic location of practice included those cases that selected a single clearly defined practice area. Specifically, these five areas were included in these analyses: Louisville, Eastern Kentucky, Central Kentucky, Western Kentucky, and Northern Kentucky. There are a number of respondents who identified statewide practice, or indicated that they practice in multiple locations or practice outside Kentucky. These responses were not included in the bivariate analyses involving geographic location of practice; however, they are included in other analyses.

Data Analysis

Data collected in *Qualtrics* was exported to an SPSS³ database for analyses. Unless otherwise noted, the sample size exceeded minimum requirements for all statistical comparisons presented in this report. Post-hoc power analyses established the adequacy of the sample size for detecting statistically significant differences at a 95% confidence level with 80% power⁴. This is a common standard used in survey research (Wang & Chow, 2007). Based on this power analysis, a minimum of 727 cases was required for the analyses presented here.

The data are presented in tables of frequencies and/or percentages that allow comparisons based on gender, race/ethnicity, and were practical geographic location, sexual orientation/identity & gender identity, and judicial role (attorney or judge). Statistically significant differences were identified based on chi-square tests (differences in percentages) and t-tests (comparisons of group means) and a p-value of $\leq .05$ ⁵. This threshold sets the likelihood of a observed difference occurring simply by chance at 5%. Where differences exceeded the .05 threshold, significance levels of .01 and .001 are noted as well.

Missing data was addressed on the basis of two factors. First, responses were included in the analysis when they provided at least minimal demographic information. Since most statistical analyses was either descriptive univariate analyses or bivariate analyses examining differences in survey responses based on demographic characteristics, the number of valid responses for each analysis varies. If a respondent provided enough data to be included in a specific bivariate analysis (provided a valid response to each of the two relevant variables) they were included in that analysis, regardless of whether they answered all (most) of the survey questions.

Sample

In response to the study recruitment email, 2015 individuals accessed the *Qualtrics* survey site. Of those, 203 were removed from the analyses due to insufficient data, resulting in a final sample of 1812 Kentucky Bar Association members who answered one or more relevant items in the survey.

Findings

Participant Characteristics

Of the 1812 KBA members who provided some demographic data, the majority were male (60.7%; $n = 1099$), Caucasian/White (94.8%, $n = 1741$), and identified as heterosexual (94.4%, $n = 1702$), with an average age of 49.70 years (standard deviation [sd] = 12.91) (see

³ All analyses were completed with SPSS v. 24. SPSS is a statistical analysis program that is commonly used in social science research.

⁴ Setting statistical power at .80 provides the minimum sample size required to accurately detect small, medium and large differences between groups. Assuming a sufficient sample size, the 95% confidence level indicates there is likely to be only a 5% chance of correctly identifying a significant difference.

⁵ Chi-square is a statistical test of differences in a bivariate analysis that addresses the question of whether such differences are based on the two variables being independent of one another. T-tests are used to provide comparisons for means from two groups.

Table 1). In terms of professional practice, on average respondents have been in practice for 21.8 years ($sd = 12.69$), with the vast majority identifying as attorneys (95.7%, $n = 1746$). Table 2 provides the complete professional practice profile of participating KBA members. Mirroring the population distribution of the state, two geographic locations were identified as the most common locations of practice – Louisville (28.4%, $n = 517$) and Central Kentucky (28.4%, $n = 518$), with the balance of respondents being fairly equally divided across Northern, Eastern and Western Kentucky. It should be noted that approximately 9.9% ($n = 181$) of respondents selected “Other” for their primary geographic area of practice (e.g., Statewide practice, In-state and out-of-state practice).

Table 1 Kentucky Bar Association Survey Participants: Demographic Profile

Variable	Observed Value	Frequency	Percent
Sex	Female	713	39.3
	Male	1099	60.7
Race/Ethnicity	African American/Black	35	1.90
	Caucasian/White	1714	94.8
	Hispanic or Latino/Latina	12	0.7
	Asian Pacific Islander	7	0.4
	Other	38	2.1
Sexuality	Bisexual	24	1.3
	Heterosexual	1702	94.4
	Lesbian	20	1.1
	Gay	44	2.4
	Other	13	0.7
Gender Identity	Man	1089	60.4
	Woman	705	39.1
	Transgender	2	0.1
	Other	8	0.4
Mean Age	49.70 (12.91)		

Table 2 Kentucky Bar Association Survey Participants: Professional Practice Profile

Variable	Observed Value	Frequency	Percent
Judicial Role	Attorney	1746	95.7
	Judge	78	4.3
Region of Practice	Louisville	517	28.4
	Eastern Kentucky	192	10.5
	Central Kentucky	518	28.4
	Western Kentucky	190	10.4
	Northern Kentucky	194	10.6
	Statewide	30	1.6
	Other ^a	181	9.9
Areas of Practice ^c	Family Law	531	29.1
	Civil Law	1004	55.0
	Criminal Law	625	34.2
	Government	388	21.3
	Regulatory	172	9.4
	Transaction	248	13.6
	General Practice	559	30.6
	Judiciary	116	6.2
	Other ^b	344	18.8
Mean Years in Practice	21.81 (12.69)		

^a Other includes: Multiple regions, outside Kentucky

^b Other includes: Administration, Bankruptcy, Construction, Corporate, Disability, Environmental, Entertainment, Estate, Higher Education, Immigration, Probate, Real Estate, Social Security, Tax, Worker's Compensation

^c Respondents could select more than one area of practice.

Overview of Observations and Perceptions of Bias

For each of the three broad areas of potential bias addressed in this survey (racial and ethnic bias, gender bias, and sexual orientation/identity and gender identity bias) respondents were probed on their observations across a number of judicial roles and scenarios. First, in each arena, respondents were asked to indicate their perceptions related to the actions/behaviors/statements of judges, defense attorneys, prosecutors, civil court attorneys, and court clerks. Additionally, items sought to capture whether they believed issues of race, ethnicity, gender, sexual orientation/identity or gender identity were raised in contexts where these

factors were viewed as irrelevant. Finally, a series of statements addressed the respondent's views on needed training, awareness-raising, and whether they believed representation/reflection of community members was important as it relates to specific areas of bias. See *Appendix A* for the full instrument.

General Observations of Bias within the Profession

Initial questions asked about respondents' observations of the treatment of defendants, litigants, witnesses, or victims (court-users) within a courtroom setting or within their place of employment. Specifically, the statement reads: "Within a courtroom setting or your place of employment have you heard negative comments related to" the following: race, ethnicity, sexual identity/orientation, gender identity or gender expression, immigrant status, sex, physical disability, and intellectual disability. The characteristic that most commonly elicited negative comments was immigrant status, with 1 in 3 respondents (32.7%) affirming that they had heard such negative comments. In five other areas (race, ethnicity, sexual identity/orientation, sex, and intellectual disability), approximately 1 in 4 respondents indicated that they had heard negative comments toward the group/individual. Negative comments related to gender identity (18.5%) and physical disability (15.2%) were less common.

When asked if they perceived that sentences for the same offense are given to minority defendants that are" less severe, about the same, or more severe than those received by non-minority defendants, slightly more than half (55.3%) of respondents indicated that sentences were about the same, while 41.3% perceived minority defendants' sentences to more severe than their non-minority counterparts. Only 3.4% of participating KBA members believed that the sentences for minority defendants were less severe than those of non-minority defendants (See Figure 1). Figure 2 provides visual evidence of the impact of the intersection of sex and race on respondent's perceptions of the consistency of sentencing for minority versus non-minority defendants. While all respondents shared the view that minority defendants were unlikely to receive less severe sentences, compared to women (Caucasian/White and POC) and POC men, Caucasian/White male respondents were more likely to believe sentencing would be about the same. Further, more than half of Caucasian/White women, POC men, and POC women believed that minority defendants would receive more severe sentences than their non-minority counterparts (chi-square = 62.95, $p \leq .001$).

Figure 1. Do you perceive that sentences for the same offense are given to minority defendants that are:

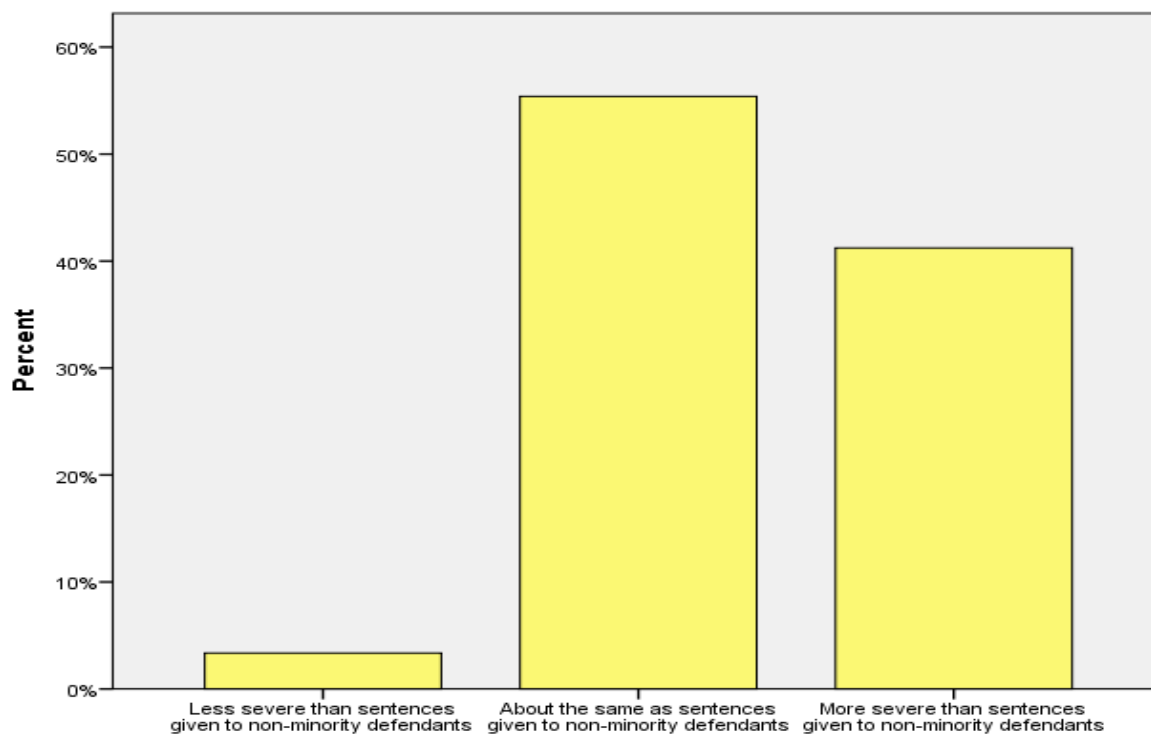
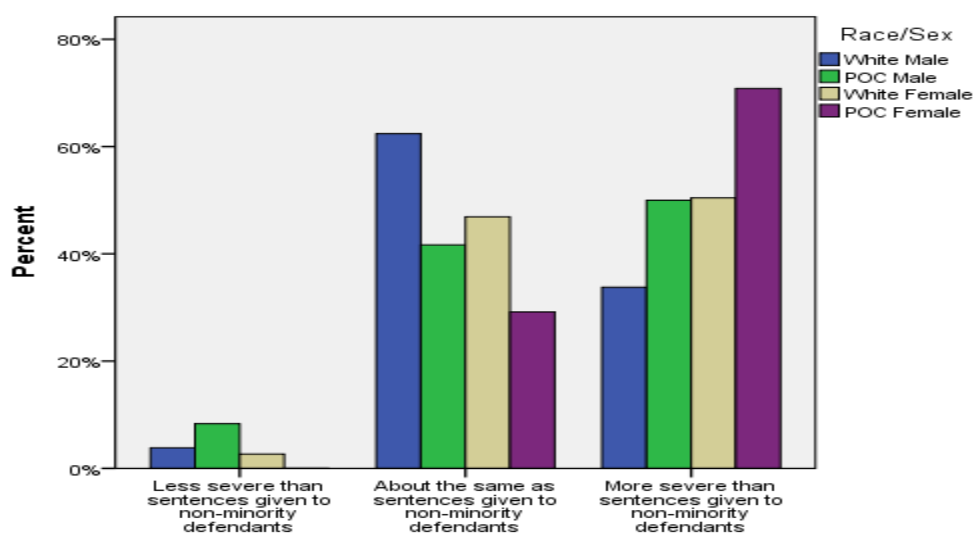


Figure 2 Do you perceive that sentences for the same offense are given to minority defendants that are:



Observations and Perceptions of Racial and Ethnic Bias

Prior to responding to a series of statements about perceptions of racial and ethnic bias within the judicial system and related environments, respondents were asked whether they had personally experienced or observed unfair treatment in Kentucky courts based on race or ethnicity in the past three years. Of the 1528 KBA respondents who answered the question, nearly 1 out of 4 survey respondents (21.7%, $n = 331$) affirmed having had such an experience. Subsequently, respondents were asked to use a 10-point scale to indicate how prevalent they believed racial/ethnic bias was within the court system today (1 = non-existent to 10 = all pervasive). The responses indicate that on average respondents view the prevalence of racial/ethnic bias to fall roughly halfway between the two anchor points (mean = 4.53, $sd = 2.4$). When considered in light of respondent's own experiences and observations of such bias, those who indicated having experienced or observed examples of racial/ethnic bias reported significantly higher scores on the 10-point scale (6.82, $sd = 1.68$ versus 3.86, $sd = 2.16$) (t-test for difference in means = 26.33, $p < .001$).

Perceptions of Racial and Ethnic Bias

1. Across each of the judicial roles addressed in survey items, the majority of respondents agreed (strongly agreed or agreed) that people were shown courtesy/respect regardless of their race and/or ethnicity. Endorsements of this view ranged from a high of 80.9% for judges to a low of 63.2% for prosecuting attorneys. The last column of **Table 3a** displays these findings.
2. Bivariate analyses found significant differences in views of males versus females, with female respondents less likely to agree that people were shown courtesy/respect regardless of race and/or ethnicity (see **Table 3a**). These differences were consistent across each of the five judicial roles, with the largest discrepancy related to views on the actions of court clerks. Specifically, 63.4% of female respondents versus 81.7% of male respondents agreed with the statement that court clerks showed courtesy/respect regardless of the race and/or ethnicity of the person (chi-square = 65.92, $p \leq .001$). Notably, while the gender discrepancy was not as large, for both male and female respondents, the lowest percentage of agreement with the statement related to the perceptions of actions of prosecutors. In this case, 69% of male respondents and slightly over half (53.7%) of female respondents believed prosecutors treated people with respect/courtesy regardless of race/ethnicity (chi-square = 40.33, $p \leq .001$).

Table 3a *Perspectives on Race/Ethnicity Bias by Gender*

	Male N (%)	Female N (%)	Total N (%)
	Agree/ Neither /Disagree	Agree/ Neither /Disagree	Agree/ Neither /Disagree
Judges	85.8/ 8.0/ 6.2	72.8/ 11.3/ 15.9	80.9/ 9.3/ 9.9***
Court Clerk	81.7/ 10.3/ 7.8	63.4/ 18.1/ 18.6	74.8/ 13.3/ 11.9***
Prosecutors	69.0/ 19.2/ 11.8	53.7/ 24.1/ 22.3	63.2/ 21.0/ 15.8***
Defense Attorney	77.9/ 18.3/ 3.8	70.8/ 22.0/ 7.2	75.2/ 19.5/ 5.1**
Civil Attorney	77.0/ 17.4/ 5.7	63.4/ 25.1/ 11.5	71.8/ 20.3/ 7.9***
** p ≤ .01			
*** p ≤ .001			

3. **Table 3b** provides a summary of the bivariate analyses examining differences in perceptions of racial and ethnic bias by respondent's race (White/Caucasian versus Persons of Color). POC respondents were significantly less likely to agree that people were shown courtesy/respect regardless of race and/or ethnicity, with a difference of approximately 25% separating the two groups for each of the following judicial roles: judges, prosecutors, and civil attorneys.

Table 3b *Perspectives on Racial and Ethnic Bias by Race/Ethnicity*

	White/Caucasian N (%)	Person of Color N (%)	Total N (%)
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
<i>Judicial Role</i>			
Judges	82.3/8.7/9.0	57.5/18.8/23.8	80.9/9.3/9.8***
Court Clerk	75.5/12.8/11.7	63.8/20.0/16.3	74.9/13.2/11.9*
Prosecutors	64.6/20.5/14.9	40.0/30.0/30.0	63.2/21.0/15.8***
Defense Attorney	76.2/19.3/4.5	58.8/26.3/15.0	75.3/19.7/5.1***
Civil Attorney	73.3/19.4/7.3	48.8/33.8/17.5	72.0/20.2/7.8***
		* p < .05	*** p < .001

4. Differences in perspectives on bias related to race/ethnicity were also examined based on primary geographic location of practice: Louisville, Central Kentucky (including Lexington), Northern Kentucky, Eastern Kentucky, and Western Kentucky (see **Table 3c**). Significant differences were found for perspectives on the behavior of prosecutors, defense attorneys and court clerks. Most notably, respondents whose primary geographic area of practice is Eastern Kentucky were significantly less likely to disagree with the statement that prosecutors treat all people with courtesy/respect without regard for race/ethnicity. While only 7.1% of respondents working in Eastern Kentucky disagreed with statement, outside that geographic location, respondents were twice as likely to disagree (ranging from 14.5% in Central Kentucky to 18.9% in Louisville).
5. Differences in perceptions of race/ethnicity bias by sexual identity/gender identity were also examined. Compared to persons who identified as heterosexual/cisgender⁶, LGBTQ persons were significantly less likely to agree that judges (81.4% versus 69.4%, respectively), court personnel (75.5% versus 61.2%, respectively), and civil court attorneys (72.3% versus 58.1%, respectively) treat all people with courtesy/respect without regard to race/ethnicity.
6. Significant differences in perceptions of attorneys and judges were found for each of the five race/ethnic bias items related to actions by judicial personnel. For each item, compared to judges, attorneys were less likely to agree with the statement, with differences ranging from 13.1% for court personnel (attorneys = 74.4% agree; judges = 87.5% agree) to 20.5% difference in view of prosecutors (attorneys = 62.3% agree; judges = 82.8% agree).
7. Respondents were asked to consider three different victim/defendant race scenarios designed to address perceptions of the roles of victim and/or defendant race on court decisions. For each scenario respondents indicated whether they believed sentencing decisions would be *much lighter*, *the same*, or *much harsher*, if the defendant or victim in the scenario was white. In each scenario the majority of respondents believed sentencing would be about the same (ranging from 60.8% to 79.3%). The following patterns of responses were also noted:
 - a. In the case of a white victim versus a minority victim, only 1.7% believed the sentence would be have been much lighter if the defendant were white, while 37.5% believed the sentence would be much harsher.
 - b. In the scenario involving a minority defendant and minority victim, 26.6% believed the sentencing would have been much lighter if both victim and defendant were white, while only 2.7% believed sentences would be much harsher.

⁶ Drawing on the definition found in the Oxford English Dictionary, cisgender is defined as having a personal identity and gender that corresponds with one's birth sex.

- c. In the scenario with a white defendant and minority victim, 7.2% of respondents believed the sentence would have been much harsher if the victim were white, with 13.4% believing the sentence would be much harsher.
- 8. When asked if they had heard race/ethnicity brought up in court when it was not relevant, 28.4% of respondents agreed that they had (21.9% of judges; 28.5% of lawyers). In a similar question addressing this experience outside court, 51.4% agreed with the statement (42.2% of judges; 51.9% of lawyers).
 - a. Bivariate analyses by sex found female respondents to be significantly more likely to agree with each of the two statements (In court: male = 24.9%, female = 34.2%; Outside court: male = 46.1%, female = 60.4%).
 - b. Bivariate analyses by race found POC respondents were significantly more likely than Caucasian/White respondents to agree that they had heard race brought up in court when it was not relevant (49.3% versus 27.4%, respectively). The majority of both groups said that they had heard race mentioned outside court when it was not relevant; however, the difference between the two groups was not significant (Caucasian/White = 51.4%, POC = 55.7%).

Table 3c *Perspectives on Racial and Ethnic Bias by Geographic Location of Practice*

	Louisville	Eastern KY	Central KY	Western KY	Northern KY	Total
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
Judges	78.8/10.6/10.6	87.6/6.5/5.9	84.3/7.1/8.6	83.1/6.6/10.2	78.8/9.0/12.2	82.2/8.3/9.5
Court Clerk	74.0/15.7/10.4	78.6/10.7/10.7	78.0/11.0/11.0	80.1/6.6/14.2	69.2/14.1/16.7	76.1/12.2/11.7*
Prosecutors	55.9/25.2/18.9	79.2/13.7/7.1	65.4/20.1/14.5	69.7/15.2/15.2	61.7/20.8/17.5	64.3/20.3/15.3***
Defense Attorney	69.2/24.9/5.9	84.4/12.0/3.6	76.3/18.1/5.6	81.9/13.9/4.2	74.7/22.1/3.2	75.6/19.4/5.0**
Civil Attorney	71.1/20.4/8.5	82.1/12.5/5.4	70.2/20.5/9.3	74.5/20.0/5.5	69.4/23.6/7.0	72.4/19.8/7.8
				* p < .05	** p < .01	***p < .001

Observations and Perceptions of Gender Bias

Initial questions related to gender bias focused on the respondent's personal experiences/observations of unfair treatment of individuals in Kentucky courts and gender-biased attitudes or behaviors in professional settings other than the courtroom. Approximately 1 in 3 (32.7%) respondents indicated that they had experienced/observed unfair treatment based on gender within the court setting, while more than half (57.8%) witnessed such actions in professional settings other than the courtroom. For each question, compared to men, women were significantly more likely to affirm having experienced/observed gender bias inside and outside the courtroom. No significant bivariate differences based on judicial role or race/ethnicity were found.

Finally, when asked, "In the past 5 years, to what extent has there been a change in the number of incidents of gender bias?", 5.7% felt the number had increased, 55.4% felt it had stayed the same, and 38.9% felt it had decreased. An examination by sex found significant differences, with females being more likely to believe that the number had increased (8.2% of women vs. 4.1% of men) and males being more likely to believe the number had decreased (47.3% of males vs. 25.9% of females; chi-square = 62.83, $p < .001$).

Respondents were also asked if they had heard the gender of defendants, litigants, witnesses, and/or victims raised in court or outside-of-court when it was not relevant to the case. Approximately one-third (35%) indicated that they had heard gender raised within court when it was not relevant, and nearly half (48%) indicated that they had heard irrelevant references to gender outside of court. A bivariate analysis found that women were more than twice as likely as men to indicate that they heard such comments within the court setting (51.2% vs. 25.0%, respectively; chi-square = 114.83, $p < .001$) and 1.5 times more likely to agree that they had heard gender raised outside-of-court (64.2% vs. 38%, respectively; chi-square = 101.83, $p < .001$).

Judicial Treatment Based on Gender

This section of the survey included six items related to observations related to judicial treatment based on gender. The following highlights many of these findings.

1. Across each of the judicial roles, the majority of respondents agreed (strongly agreed or agreed) that people were shown courtesy/respect regardless of gender (see **Table 4a**). Endorsements of this view ranged from a high of 70.3% for court clerks to a low of 60.4% for prosecuting attorneys. Slightly over half (53.4%) of the total sample agreed that Kentucky courts showed courtesy/respect regardless of gender.
2. As shown in **Table 4a**, bivariate analyses found significant differences in views of males versus females, with female respondents more likely to disagree (strongly disagree or disagree) with the statement that people were shown courtesy/respect regardless of gender.

These differences were consistent across each of the five judicial roles, with the largest discrepancies related to views on the actions of judges. Specifically, 41.6% of female respondents versus 13.8% of male respondents disagreed with the statement that judges showed courtesy/respect regardless of the gender of the person.

Table 4a *Perspectives on Gender Bias by Gender*

	Male N (%)	Female N (%)	Total N (%)
	Agree/ Neither /Disagree	Agree/ Neither /Disagree	Agree/ Neither /Disagree
Kentucky Courts	64.9/8.4/26.7	34.8/6.7/58.5	53.4/7.7/38.9***
Judges	78.5/7.7/13.8	47.1/11.3/41.6	66.5/9.1/24.5***
Court Clerk	77.8/15.6/6.7	58.3/19.4/22.3	70.3/17.0/12.7***
Prosecutors	68.9/21.4/9.6	46.6/29.4/24.1	60.4/24.5/15.1***
Defense Attorney	74.4/20.6/5.1	53.0/29.0/17.9	66.2/23.8/10.0***
Civil Attorney	73.5/19.2/7.4	44.0/23.3/32.7	62.1/20.8/17.1***
***p < .001			

- Table 4b** provides bivariate analyses for differences in perspectives on gender bias by Kentucky courts and judicial personnel based on race (Caucasian/White and POC). Significant differences were found for Kentucky Courts, court clerks, and prosecutors, with POC being more likely to disagree with statements indicating that each of these entities/judicial personnel treat persons with courtesy/respect regardless of gender. Notably, while the majority of respondents agreed with the statements for most items, less than half of POC supported such statements related to Kentucky courts (54.3% Caucasian/White vs. 39.7% of POC) and prosecutors (61.3% Caucasian/White vs. 47.2% of POC).
- An examination of the responses to these gender-bias items by primary geographic location of practice identified significant differences across all six items. **Table 4c** provides a summary of these analyses based on 1219 respondents who identified a single primary geographic location of practice. Two findings are highlighted here. First, for each of the six items, the largest percentage of respondents in each geographic location disagreed with the statement that Kentucky courts treated with respect/courtesy (ranging from 29.7% of respondents in Eastern KY to 46.8% of respondents in Louisville). Second, respondents in geographic locations with large metropolitan areas (Louisville, Central KY [Lexington], Northern KY [Cincinnati area]) were less likely to agree with statements that suggest that gender-bias is not an issue in the identified scenarios.

Table 4b *Perspectives on Gender Bias by Race/Ethnicity*

	White/Caucasian N (%)	Person of Color N (%)	Total N (%)
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
Kentucky Courts	54.3/7.9/37.8	39.7/4.1/56.2	53.5/7.7/38.8**
Judges	66.9/9.2/23.9	58.3/6.9/34.7	66.5/9.1/24.5
Court Clerk	71.2/16.6/12.2	57.5/21.9/20.5	70.4/16.9/12.7*
Prosecutors	61.3/24.4/14.3	47.2/23.6/29.2	60.6/24.4/15.1*
Defense Attorney	66.6/23.8/9.6	57.5/26.0/16.4	66.1/23.9/10.0
Civil Attorney	62.7/20.5/16.7	52.1/24.7/23.3	62.1/20.8/17.1
	* p ≤ .05		** p ≤ .01

5. Differences in perceptions of gender bias by sexual identity/gender identity were also examined. Compared to persons who identified as heterosexual/cisgender, LGBTQ persons were significantly less likely to agree that Kentucky courts, (54.7% versus 30.0%, respectively), judges (67.2% versus 53.8%, respectively), and prosecutors (61.4% versus 44.3%, respectively), treat all people with courtesy/respect without regard to gender. Notably, less than half of LGBTQ respondents agreed with the statement that prosecutors show courtesy/respect to all people regardless of gender, with 1 in 5 LGBTQ respondents disagreeing (20.3%) with the assertion.
6. Comparisons of perceptions of gender bias exhibited across various judicial roles were examined based on whether the respondent was an attorney or judge. Significant differences in the percentage of agreement with the statements were found for treatment by Kentucky courts (attorneys = 52.5%, judges = 74.6%), judges (attorneys = 65.5%, judges = 89.8%), prosecutors (attorneys = 59.5%, judges = 82.8%), defense attorneys (attorneys = 65.6%, judges = 82.8%), and civil court attorneys (attorneys = 61.3%, judges = 84.5%),.

Table 4c *Perspectives on Gender Bias by Geographic Location of Practice*

	Louisville	Eastern KY	Central KY	Western KY	Northern KY	Total
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
Kentucky Courts	45.8/7.4/46.8	65.8/4.5/29.7	54.4/7.8/37.8	60.9/8.3/30.8	55.2/4.9/39.9	54.1/7.0/38.9***
Judge	60.4/10.0/29.7	78.1/5.2/16.8	67.1/8.4/24.5	78.2/5.8/16.0	63.9/10.4/25.7	67.4/8.4/24.2***
Court Clerk	63.6/20.4/16.0	73.5/15.5/11.0	74.3/15.4/10.2	81.9/11.6/6.5	71.7/16.5/11.8	71.7/16.5/11.8**
Prosecutor	52.6/31.3/16.2	72.5/17.0/10.5	61.8/21.4/16.8	69.5/19.5/11.0	64.5/19.9/15.6	61.6/23.5/14.9***
Defense Attorney	57.8/28.5/13.7	76.5/18.3/5.2	66.5/23.9/9.6	77.3/16.2/6.5	68.1/22.7/9.2	66.6/23.5/9.9***
Civil Attorney	56.6/19.6/23.8	71.6/18.1/10.3	61.5/20.4/18.1	68.0/19.6/12.4	64.6/24.3/11.1	62.5/20.2/17.3***
				* $p \leq .05$	** $p \leq .01$	*** $p \leq .001$

While the previous series of items looked broadly at perceptions of gender bias regardless of the role of the individual (lawyers, attorneys, defendants, litigants, witnesses, or victims), several items considered judicial personnel (lawyers, attorneys, judges) and court-users (defendants, litigants, witnesses and victims) separately.

Perspectives on Gender-Bias Related to Defendants, Litigants, Witnesses, and Victims

Respondents were asked whether they perceived that judges give sentences, based solely on gender, to female defendants that are *less severe than sentences given to males* (46.3%), *about the same as sentences given to males* (51.6%), or *more severe than sentences given to males* (2.1%). Bivariate analyses found significant differences based on respondent's sex (chi-square = 39.44, $p < .001$). While few respondents believed that females were given more severe sentences than males (2.1% of males vs. 0.6% of females), male respondents were more likely to than female respondents to believe females received less severe sentences, 51.7% versus 37.5%, respectively.

When asked to rate the pervasiveness of gender-bias toward defendants, litigants, witnesses, or victims in the court system on a scale of 1 (Non-existent) to 10 (Pervasive), the mean fell slightly below the midpoint (mean = 4.26, sd = 2.36). A t-test identified significantly higher mean scores for women (5.40, sd = 2.33) compared to men (mean = 3.56, sd = 2.09; t-test = -15.01, $p < .001$), however.

Perspectives on Gender-Bias Related to Female Attorneys or Female Judges

When asked to rate the pervasiveness of gender-bias toward female attorneys or female judges in the court system on a scale of 1 (Non-existent) to 10 (Pervasive), the mean fell slightly below the midpoint (mean = 4.48, sd = 2.74). A t-test identified significantly higher mean scores for women (mean = 6.25, sd = 2.51) compared to men (mean = 3.40, sd = 2.27; t-test = -21.05, $p < .001$).

Several items focused on the extent to which respondents strongly agreed, agreed, neither agree nor disagree, disagree, or strongly disagree with various statements concerning the experiences of female attorneys and/or judges.

1. Respondents were fairly equally split on whether they agreed (41.9%) or disagreed (46.0%) with the statement, "I have heard negative gender-specific comments about female lawyers and/or judges in the courtroom." Notably, only 12.1% of the sample held a neutral view on whether they had heard such negative comments in the courtroom. Further analysis examining gender differences on agreement/disagreement with the statement found women to be 2.5 times more likely to agree with the statement compared to men (66.2% vs. 26.7%, respectively; chi-square = 229.23, $p < .001$).

2. More than half (57.6%) of respondents agreed with the statement, “I have heard negative gender-specific comments about female lawyers and/or judges outside the court.” Bivariate analysis of gender differences on agreement/disagreement with the statement found women to be nearly twice as likely to agree when compared to men (80.3% vs. 43.5%, respectively; chi-square = 191.03, $p < .001$). Similar to the previous item, few (7.1%) respondents indicated a neutral view on whether they had heard such negative comments outside the courtroom.
3. Of the 1364 respondents who responded to the statement, “I have been mistaken for a court clerk in the courtroom,” 21.4% agreed with this statement. A bivariate analysis by sex found that female respondents (48.7%) were significantly more likely to be mistaken for a court clerk compared to male respondents (4.4%; chi-square = 414.59, $p < .001$). Notably, none of the 30 male judges who responded to the statement agreed with the statement, whereas 40% of female judges ($n = 30$) indicated that they had been mistaken for a court clerk in the courtroom. When examined based on the intersection between sex and race, more than half of female POC respondents agreed with the statement (63.2%), followed by White/Caucasian women (47.6%), male POC (17.2%), and finally, White/Caucasian men (4%). These differences were significant at $p < .001$ (chi-square = 389.37).
4. Three items addressed professional opportunities for advancement for female lawyers and female judges. Two patterns in responses were consistent across each of the three items. First, the vast majority of respondents either agreed (strongly agree or agree) or disagreed (strongly disagreed or disagreed) with each of the statements – neither agree nor disagree responses ranged from 6.7% to 13.8%. Second, for each item patterns of gender differences were similar and statistically significant. Specifics of those differences are as follows:
 - a. The majority of male respondents (67.9%) believed female lawyers in Kentucky have the same opportunities for advancement as male lawyers, while nearly 3 out of 4 female respondents (73.3%) disagreed with this statement (chi-square = 329.96, $p < .001$).
 - b. Approximately 4 out 5 male respondents (78.4%) believed female judges in Kentucky have the same opportunities for advancement as male judges, compared to approximately one-third of female respondents (34.0%) who agreed with this statement (chi-square = 294.08, $p < .001$).
 - c. While 62.6% of male respondents believed male and female attorneys were equally likely to serve as lead counsel, a similar proportion of female respondents (65.6%) disagreed with this statement (chi-square = 271.14, $p < .001$; lambda = .311).

Observations of Sexual Harassment

Respondents were asked to indicate whether they had either experienced (if female) or observed (if male or female) various types of actions by male superiors, colleagues, or clients vis-à-vis female attorneys or female judges in their current job setting in the past three years. The most commonly identified form of sexual harassment experienced/observed by respondents was unwanted sexual teasing, jokes, remarks, or questions, which were witnessed by approximately one-third of respondents (38.9%). This was followed by experiences and/or observations of unwanted sexual looks or gestures (26.0%), other types of sexual harassment (20.1%), unwanted deliberate touching, leaning over, or cornering (18.3%), and unwanted pressure for dates (7.8%). Further examination found significant differences by sex for each of the five items:

- a. Unwanted sexual teasing, jokes, remarks, or questions: 62.9% females versus 24.1% males
- b. Unwanted pressure for dates: 14.4% females versus 3.6% males
- c. Unwanted sexual looks and gestures: 37.9% females versus 18.6% males
- d. Unwanted deliberate touching, leaning over, or cornering: 35.4% females versus 7.6% males
- e. Other types of sexual harassment: 35.0% females versus 10.8% males

Observations and Perceptions of Sexual Orientation/Identity and Gender Identity Bias

Observations and perceptions related to sexual orientation/identity bias and gender identity bias were addressed separately in the survey. The findings of these analyses are delineated below.

Perceptions of Sexual Orientation/Identity Bias

To provide context for specific items addressing sexual identity/orientation bias, respondents were asked to use a 10-point scale (1 = non-existent to 10 = pervasive) to rate their perception of the pervasiveness of such bias in the court system today. The average score on the item was slightly below the midpoint (mean = 4.00, sd = 2.43). Further examination of respondents' perceptions of the pervasiveness of sexual identity/orientation bias indicated that females compared to males (females = 5.00, males = 3.38) and POC compared to Caucasian/Whites (Caucasian/White = 5.20, POC = 3.93) had significantly higher mean scores on the measure.

When asked whether they had seen or experienced unfair treatment of individuals in Kentucky courts based on their sexual identity/orientation, 16.1% of the respondents responded affirmatively. Notably, statistically significant differences based on sex were found, with female respondents were more than twice as likely to indicate that they had witnessed unfair treatment based on sexual identity/orientation (women = 25.1%, men = 10.5%; chi-square = 47.78, $p < .001$)

Respondents were also asked if they had heard sexual identity/orientation raised in court or outside-of-court when it was not relevant to the case. Approximately one in four (24%) indicated that they had heard sexual identity/orientation raised within court when it was not relevant, and 39.7% indicated that they had heard irrelevant references to sexual identity/orientation outside of court. A bivariate analysis found that males were more likely than females to disagree with the statement that they heard such comments within the court setting (57.0% vs. 35.3%, respectively; chi-square = 70.93, $p < .001$) and nearly half of females agreed that they had heard sexual identity/orientation raised outside-of-court (females = 46.7% vs. males = 35.4%; chi-square = 62.44, $p < .001$).

1. Across each of the judicial roles, the majority of respondents agreed (strongly agreed or agreed) that people were shown courtesy/respect regardless of sexual identity/orientation. Endorsements of this view ranged from a high of 62.7% for defense attorneys to a low of 52.3% for court clerks (see **Table 5a**).

Table 5a *Perspectives on Sexual Identity and Gender Identity Bias by Gender*

	Male N (%)	Female N (%)	Total N (%)
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
<i>Sexual Identity</i>			
Judges	73.5/18.5/ 8.0	43.8/33.5/22.6	62.0/24.3/13.7***
Court Clerk	62.9/25.7/11.4	35.5/40.4/24.1	52.3/31.4/16.3***
Prosecutors	65.3/25.9/ 8.8	39.2/42.9/17.8	55.2/32.5/12.3***
Defense Attorney	70.9/24.6/ 4.5	49.8/42.1/ 8.1	62.7/31.4/ 5.9***
Civil Attorney	69.6/24.5/ 5.9	40.2/45.8/14.0	58.2/32.7/ 9.0***
<i>Gender Identity</i>			
Judges	71.5/20.1/ 8.4	39.8/37.7/22.5	59.2/26.9/13.9***
Court Clerk	62.2/27.4/10.4	33.4/42.3/24.3	51.1/33.1/15.8***
Prosecutors	64.2/26.0/ 9.8	39.0/43.5/17.5	54.4/32.8/12.8***
Defense Attorney	70.6/24.9/ 4.5	48.9/43.7/ 7.5	62.2/32.2/ 5.6***
Civil Attorney	68.7/24.8/ 6.5	39.1/46.8/14.1	57.2/33.3/ 9.4***
*** $p \leq .001$			

2. Bivariate analyses found significant differences in views of males versus females, with female respondents significantly less likely to agree that people were shown courtesy/respect without regard to sexual identity/orientation (see **Table 5a**). These differences were consistent across each of the five judicial roles, with the largest discrepancy related to views on the actions of judges (males = 73.5%, females = 43.8%).
3. **Table 5b** provides a summary of the bivariate analyses examining differences in perceptions of sexual identity/orientation bias by race (White/Caucasian versus POC). Although white respondents were more likely to agree with these statements, none of these group differences were significant.

Table 5b *Perspectives on Sexual Identity and Gender Identity Bias by Race/Ethnicity*

	White/Caucasian N (%)	Person of Color N (%)	Total N (%)
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
<i>Sexual Identity</i>			
Judges	62.6/24.1/13.3	54.5/25.8/19.7	62.2/24.2/13.7
Court Clerk	53.0/30.8/16.2	43.9/37.9/18.2	52.5/31.2/16.3
Prosecutors	56.0/32.0/12.0	43.9/37.9/18.2	55.4/32.3/12.3
Defense Attorney	62.9/31.2/ 5.9	60.6/33.3/ 6.1	62.8/31.3/ 5.9
Civil Attorney	58.8/32.4/ 8.8	50.0/36.4/13.6	58.4/32.6 /9.0
<i>Gender Identity</i>			
Judges	60.0/26.2/13.8	49.2/35.4/15.4	59.4/26.7/13.9
Court Clerk	51.7/32.7/15.6	43.1/36.9/20.0	51.3/32.9/15.8
Prosecutors	55.3/32.1/12.6	43.1/41.5/15.4	54.6/32.6/12.8
Defense Attorney	62.4/31.9/ 5.7	58.5/36.9/ 4.6	62.2/32.1/ 5.6
Civil Attorney	57.9/32.7/ 9.4	47.7/41.5/10.8	57.4/33.2/ 9.5

4. Differences in perspectives on bias related to sexual identity/orientation were also examined based on primary geographic location of practice: Louisville, Central Kentucky (including Lexington), Northern Kentucky, Eastern Kentucky, and Western Kentucky (see **Table 5c**). Significant differences were found for perspectives on the behavior of court clerks, prosecutors, and defense attorneys. A pattern of responses is notable across each of the three

judicial roles that produced significant differences related to geographic location of practice. This pattern is most prominently demonstrated by distribution of responses to the statement, “Prosecutors in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.” As summarized in **Table 5c**, compared to respondents practicing in geographic locations with urban centers, those practicing in rural areas were more likely to agree with the statement.

5. The largest differences in perceptions based on respondent’s sexual identity/gender identity were found for perceptions of the level of courtesy/respect judicial personnel displayed without regard to an individual’s sexual identity/orientation. **Table 5d** provides a summary of these findings. Compared to persons who identified as heterosexual/cisgender, LGBTQ persons were two to three times more likely to disagree with these statements, with one exception – perceptions of treatment by defense attorneys. More than half of both groups agreed that defense attorneys treated people with respect/courtesy regardless of sexual identity/orientation, with less than 6% disagreeing with the statement (5.9% of heterosexual/cisgender respondents and 5.4% of LGBTQ respondents).

Table 5d Perspectives on Sexual Identity and Gender Identity/Expression Bias by Sexual Identity and Gender Identity

	Heterosexual %	LGBTQ %	Total %
	Agree / Neither / Disagree	Agree / Neither / Disagree	Agree / Neither / Disagree
Sexual Identity			
Judges	63.1/24.6/12.3	44.0/18.7/37.3	62.0/24.3/13.8***
Court Clerk	53.5/31.2/15.3	36.0/29.3/34.7	52.5/31.1/16.4***
Prosecutors	56.2/32.2/11.6	40.5/33.8/25.7	55.3/32.3/12.4***
Defense Attorney	62.8/31.3/ 5.9	59.5/35.1/ 5.4	62.6/31.5/ 5.8
Civil Attorney	58.7/33.0/ 8.3	48.0/30.7/21.3	58.1/32.8 /9.1***
Gender Identity			
Judges	60.7/27.0/12.3	38.7/22.7/38.7	59.4/26.8/13.9***
Court Clerk	52.4/32.6/15.0	32.0/37.3/30.7	51.2/32.9/16.0***
Prosecutors	55.6/32.3/12.1	37.8/36.5/25.7	54.5/32.6/12.9***
Defense Attorney	62.4/31.9/ 5.6	55.4/39.2/ 5.4	62.0/32.4/ 5.6
Civil Attorney	57.8/33.6/ 8.7	45.3/32.0/22.7	57.4/33.5/ 9.5***

Perceptions of Gender Identity Bias

To provide context for specific items addressing gender identity/expression bias, respondents were asked to use a 10-point scale (1= non-existent to 10 = pervasive) to rate their perception of the pervasiveness of such bias in the court system today. The average score on the item was slightly below the midpoint (mean = 4.14, sd = 2.56). Further examination of respondents' perceptions of the pervasiveness of gender identity bias indicated that females compared to males (females = 5.17, males = 3.51) and POC compared to Whites (White = 4.08, POC = 5.18) had significantly higher mean scores on the measure.

Mirroring the items for sexual identity/orientation, respondents were asked whether they had witnessed unfair treatment based on gender identity. Of the 1291 respondents who addressed the question, 12.9% indicated that they had witnessed such unfair treatment. Differences by sex were statistically significant with female respondents were more than twice as likely to indicate that they had witnessed unfair treatment based on gender identity (women = 19.6%, men = 8.9%; chi-square = 30.85, $p < .001$).

Respondents were also asked if they had heard gender identity raised in court or outside-of-court when it was not relevant to the case. Approximately one-fourth (20.7%) indicated that they had heard gender identity raised within court when it was not relevant, and slightly more than one-third (36%) indicated that they had heard irrelevant references to gender identity outside of court. Significant differences based on respondent's sex were found for both items. Specifically, compared to female respondents, males were significantly more likely to disagree with the statement that they had heard gender identity raised in court when it was not relevant (34.0% vs. 58.4%, respectively; chi-square = 70.02, $p < .001$) and nearly twice as likely to disagree that they had heard gender raised outside-of-court (25.0% vs. 47.4%, respectively; chi-square = 64.81, $p < .001$). No significant differences were found based on respondent's race/ethnicity.

Patterns of responses to gender identity/expression bias statements mirror those found for perceptions and observations of sexual identity/orientation bias.

1. Across each of the judicial roles, a moderate majority of respondents agreed (strongly agreed or agreed) that people were shown courtesy/respect regardless of gender identity. Endorsements of this view ranged from a high of 62.2% for defense attorneys to a low of 51.1% for court clerks (see **Table 5a**).
2. Bivariate analyses found significant differences in views of males versus females, with female respondents significantly less likely to agree that people were shown courtesy/respect without regard to gender identity (see **Table 5a**). These differences were consistent across each of the five judicial roles, with the largest discrepancy (-31.7%) related to views on the actions of judges (males = 71.5%, females = 39.8%).
3. **Table 5b** provides a summary of the bivariate analyses examining differences in perceptions of gender identity bias by race/ethnicity (White/Caucasian versus POC). No significant differences were found.
4. Differences in perspectives on bias related to gender identity were also examined based on primary geographic location of practice: Louisville, Central Kentucky (including Lexington), Northern Kentucky, Eastern Kentucky, and Western Kentucky (see **Table 5c**). Significant differences were found for perspectives on the behavior of court clerks, prosecutors, and defense attorneys. A pattern of responses is notable across each of the three judicial roles that produced significant differences related to geographic location of practice. Again, this pattern is most prominently demonstrated by distribution of responses to the statement, "Prosecutors in Kentucky show courtesy/respect to people without regard to gender identity." As summarized in **Table 5c**, compared to respondents practicing in geographic locations with urban centers, those practicing in rural areas were more likely to agree with the statement. On average, 52.6% of respondents practicing in urban areas

(Louisville, Central Kentucky, Northern Kentucky) agreed with the statement related to prosecutors, compared to 66.2% of respondents in practicing in rural areas (Eastern Kentucky and Western Kentucky).

Personal Experiences with Discrimination

In addition to examining perceptions of bias as they relate to others engaged with the judicial system, several questions explored respondent's own experiences of personal discrimination/bias. Of the 1310 respondents who answered the question, 1 out of 3 ($n = 450$, 34.4%) indicated that they believed they had been discriminated against as a member of the legal profession. The most commonly cited reason for discrimination was the respondent's sex ($n = 367$, 32.3%), followed by race (6.4%, $n = 65$), ethnicity ($n = 52$, 5.3%), sexual identity/orientation ($n = 36$, 4.3%), and gender identity ($n = 16$, 1.9%). [Note: The number of respondents who addressed specific items varied as follows: sex = 1135, race = 991, ethnicity = 976, sexual identity/orientation = 840, and gender identity = 861.]

In two sets of follow-up questions, respondents were asked to respond to the following statements: a) Within a courtroom setting or your place of employment I have heard/been told about negative comments due to – my race; my ethnicity; my sexual/identity/orientation; my gender identity/gender expression; my sex; and b) Within a courtroom setting or your place of employment I have heard/been told about and/or experienced discrimination due to – my race; my ethnicity; my sexual/identity/orientation; my gender identity/gender expression; my sex. **Tables 7a, 7b, and 7c** summarize the responses by sex, race, and geographic location of practice, respectively.

1. **Table 7a** summarizes respondent's personal experiences with negative comments and/or discrimination based on sex. Several relationships are worthy of note. The most commonly endorsed reason for experiencing negative comments and/or discrimination was related to respondent's sex. While this was true regardless of respondent's sex, compared to males, female respondents were twice as likely to indicate that they had heard negative comments (7.8% versus 69.1%, respectively; chi-square = 459.73, $p \leq .001$) and/or experienced discrimination (7.9% versus 66.2%, respectively) based on their sex (chi-square = 426.64, $p \leq .001$). For three other areas significant differences were identified related to having experienced discrimination related to one's race, ethnicity, and/or gender identity/expression, with female respondents being significantly more likely to indicate that they had experienced each form of discrimination.
2. **Table 7b** summarizes respondent's personal experiences with negative comments and/or discrimination based on race/ethnicity. Slightly over half of POC respondents (53.2%) indicated that they had experienced negative comments about their race, compared to only 3.4% of Caucasian/White respondents (chi-square = 232.57, $p \leq$

.001). This pattern was largely repeated for perceptions of discrimination, where 42.6% of POC compared to 3.9% of Caucasian/White respondents endorsed the statement (chi-square = 144.25, $p < .001$). This pattern is also mirrored for experiences of ethnic-bias in the form of negative comments and/or discrimination. Finally, race/ethnicity differences related to gender bias were also evident, with POC respondents significantly more likely to indicate that they had experienced negative comments and/or discrimination.

Table 7a *Respondent's Personal Experiences with Negative Comments and/or Discrimination by Sex*

	Male N (%)	Female N (%)	Total N (%)
Negative Comments			
My Race	41 (6.5)	24 (7.2)	65 (6.7)
My Ethnicity	28 (4.5)	21 (6.3)	49 (5.1)
My Sexual Identity/Orientation	17 (3.2)	9 (3.3)	26 (3.2)
My Gender Identity/Expression	6 (1.1)	7 (2.6)	13 (1.6)
My Sex	50 (7.8)	328 (69.1)	378 (33.8)***
Discrimination			
My Race	30 (4.7)	33 (9.6)	63 (6.4) **
My Ethnicity	26 (4.2)	26 (7.7)	52 (5.4)*
My Sexual Identity/Orientation	21 (3.9)	15 (5.2)	36 (5.4)
My Gender Identity/Expression	5 (0.9)	11 (3.8)	16 (5.5)**
My Sex	51 (7.9)	316 (66.2)	367 (32.6)***
	* $p \leq .05$	** $p \leq .01$	*** $p \leq .001$

3. **Table 7c** provides a summary of differences in personal experiences of negative comments and/or discrimination based on geographic location of practice. While there were not significant differences in experiences of negative comments based on geographic location of practice, three significant relationships were identified when asked about experiences of discrimination. Specifically, geographic locations of practice differed for discrimination based on race (chi-square = 15.78, $p \leq .01$, ethnicity (chi-square = 14.30, $p \leq .01$), and sex (chi-square = 12.11, $p \leq .05$). For each of the three areas, respondents whose primary practice area is in the Louisville area were more likely to indicate that they had experienced discrimination.

Response to Experiences of Negative Comments and/or Discrimination

When asked whether they had addressed the experience of negative comments in any way, the most common response was to say they ignored the comment (ranging from 69.2% each for sexual identity/orientation and gender identity/expression to 52.1% for negative comments about the respondent's ethnicity). For the most frequently identified reason for negative comments – respondent's sex – 67.6% of those who had this experience chose to ignore the comments. This pattern is similarly repeated for experiences of discrimination, with the most common response to each form of perceived discrimination being to ignore the event. A significant portion of the sample who chose not to take action related to negative comments, identified fear of retaliation as the primary reason for that decision (ranging from 47.1% for those reporting negative comments about race to 64.3% of those reporting negative comments based on ethnicity and 100% of those who reported negative comments related to their gender identity/expression). Similarly, among those who chose not to take action related to their experiences of discrimination, the most common reason was also fear of retaliation ranging from 36.8% for those reporting race discrimination to 54.5% of those reporting discrimination based on sex and 55.6% of those who reported gender identity/expression discrimination.

Table 7b *Respondent's Personal Experiences of Negative Comments and/or Discrimination by Race*

	White/Caucasian N (%)	Person of Color N (%)	Total N (%)
<i>Negative Comments</i>			
My Race	31 (3.4)	33 (53.2)	64 (6.6)***
My Ethnicity	27 (3.0)	22 (36.7)	49 (5.1)***
My Sexual Identity/Orientation	26 (3.4)	0	26 (3.2)
My Gender Identity/Expression	12 (1.5)	1 (2.6)	13 (1.6)
My Sex	347 (32.7)	30 (51.7)	377 (33.7)**
<i>Discrimination</i>			
My Race	36 (3.9)	26 (42.6)	62 (6.3) ***
My Ethnicity	29 (3.2)	23 (39.7)	52 (5.4)***
My Sexual Identity/Orientation	32 (4.1)	4 (10.0)	36 (4.4)
My Gender Identity/Expression	14 (1.7)	2 (5.1)	16 (1.9)
My Sex	335 (31.5)	31 (51.7)	366 (32.6)***
** p ≤ . 01 ***p ≤ .001			

Table 6b Continuing Education and Professional Development Related to Bias by Respondent's Race

	White N (%)	Person of Color N (%)	Total N (%)
<i>Seminar/Program Focus</i>			
Gender Bias	657 (52.9)	45 (64.3)	702 (53.5)
Racial/Ethnic Bias	850 (68.4)	58 (81.7)	908 (69.2)*
Sexual Identity Bias	480 (38.7)	35 (49.3)	515 (39.3)
Gender Identity Bias	436 (35.2)	34 (47.9)	470 (35.9)*
*p ≤ .05			

Practice Efficacy

Respondents were asked to assess their preparedness to serve different client populations, including sexual minorities, gender identity minorities, persons of color, immigrants, persons with physical disabilities, and persons with intellectual disabilities. Based on a semantic differential scale ranging from 1 (*Not at all Prepared*) to 10 (*Fully Prepared*), on average respondent's sense of preparedness was above the neutral point (6) across all groups, with scores ranging from a high of 9.02 (sd = 1.53) for working with persons of color and a low of 7.25 (sd = 2.77) for working with immigrants.

Despite the overall tendency for participants to self-assess as largely prepared to meet the needs of different client populations, a bivariate examination of this self-appraisal based on gender (Male versus Female) and race (White versus POC) identified some significant differences. First, across all population groups, compared to female respondents, male respondents rated themselves significantly higher on preparedness to serve the specified population. Second, compared to White respondents, POC respondents assessed themselves as more prepared to serve immigrants (t-test = -2.45, $p < .05$) and persons of color (t-test = -5.02, $p < .001$).

Perspectives on Ways to Reduce Bias in the Judicial System

Several survey items sought to assess respondents' views on the importance of taking specific actions in an effort to reduce bias and increase representation within the judicial system. Four survey items asked respondents opinions on the extent to which efforts should be made to increase the diversity of court personnel and provide further education and training for those personnel. The specific items are as follows:

- The Kentucky courts should include appropriately-qualified judges who reflect the ethnic background of the community.
- The Kentucky courts should include appropriately-qualified lawyers and court personnel who reflect the ethnic background of the community.
- Court clerks should be better educated about existing biases against minorities.
- Persons who work in the courts need to be trained to understand the special/unique needs of minority groups.

After examining the frequency distributions for each of the items, bivariate analyses considered differences by sex, race/ethnicity (POC versus Caucasian/White), and judicial role (attorney versus judge). The analyses identified the following:

1. For each of the four items addressed in this section of the survey, the majority of respondents *strongly agreed* or *agreed* with the statement. Slightly more than half agreed that Kentucky courts should have judges (54.8%) and lawyers and court personnel (56.7%) who reflect the ethnic background of the community. Similarly, 55.2% of respondents agreed that court clerks should be better educated about existing biases against minorities. Finally, nearly 62% of respondents agreed that persons who work for the courts need to be trained to understand the special/unique needs of minority groups.
2. Bivariate analyses of the four statements by sex showed a consistent pattern, with females being significantly more likely than males to agree with each statement.
3. Bivariate analyses by race/ethnicity found POC to be significantly more likely than Caucasian/White respondents to agree with each of the four statements.
4. No significant differences based on judicial role (attorney versus judge) were found.

Conclusions

In 2018 the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association worked together to do a study of implicit gender and racial bias in the legal profession. Their findings underscored two important outcomes related to ongoing efforts to reduce bias both within the profession and the legal system: 1) improvements have been made both in terms of the involvement of women and minorities in the legal profession and in terms of bias reduction in the legal system, and 2) more work is needed, as evidenced by continued disparities in the profession and in persistent perceptions of the existence of bias in the legal system. Results of the Kentucky Bar Association Diversity Survey of Attorneys and Judges provide supportive evidence for each of these points.

A closer examination of findings related to the three broad areas of inquiry will be provided below; however, a few largely consistent themes are considered first. Most notably, for

the majority of analyses, members of groups that were the focal points of this survey (women, POC, and sexual identity/orientation and gender identity/expression minorities) were more likely to endorse experiences and perceptions that acknowledged the presence of bias within the judicial system. This was largely true regardless of the area of inquiry and is in accordance with findings of extant research (ABA & MCCA, 2018; Becker & Swim, 2011).

Race/Ethnicity Bias

The majority of respondents believe members of the judicial system treat people with courtesy and respect regardless of race/ethnicity. Despite this broad consensus, a substantial number of respondents either held a neutral view (neither agreed nor disagreed) or disagreed with statements that indicated that race/ethnicity played no role in the way members of the judicial system treated people. These views were underscored in responses to questions addressing respondent's professional experiences both in the court setting and in their places of employment. Consistent with past research, when considered in terms of differences in respondent characteristics, women and people of color were more likely to endorse responses that suggest evidence of race and ethnic bias and discrimination (ABA & MCCA, 2010).

Gender Bias

Extant research has been consistent in identifying evidence of gender bias within the judicial system. As a stated premise for the dual focus of the current study, much like studies of race and ethnic bias, gender bias has been shown to negatively impact both court-users and legal professionals (Becker & Swim, 2011; Lee, 2015; Wilder, 2007).

A substantial body of recent research has focused on the role of gender in a variety of criminal and civil judicial decisions (NAWL, 2009; Wilder, 2007). These studies considered ways in which gender was either unnecessarily brought into the case or that evidence of gender bias contributed to inequities in the decision-making process. In the KBA study, respondents' views on the treatment of people based on gender were more similar to those related to race/ethnicity – the majority of respondents felt that Kentucky courts and members of the judicial system treated people with courtesy and respect regardless of gender. Again however, when these statements were considered by respondent's sex, women were two to three times more likely to disagree with these statements. These findings mirror those of other studies where male respondents were significantly more likely to believe that men and women are treated the same within the judicial system (Becker & Swim, 2011). While some differences were also evident when considering gender bias by respondent's race/ethnicity, the differences were less pronounced.

Sexual Identity/Orientation and Gender Identity Bias

Findings related to sexual identity/orientation and gender identity/expression biases are in harmony with extant research (Brower, 2002, 2007, 2010). For both sexual identity/orientation

and gender identity/expression bias, compared to male respondents, less than half of female respondents agreed that people were treated with courtesy and respect. This view was mirrored by analyses examining differences in perspectives held by LGBTQ respondents versus heterosexual respondents. While the small sample size for LGBTQ respondents precluded a more in-depth exploration of these differences, findings indicate that respondents believe sexual identity/orientation and gender identity/expression minority members of the legal profession and court-users are likely to experience bias both within the court setting and outside the courtroom.

When considering the implications of these findings, it is important to do so within the context of a reality that is largely unique to these forms of bias – the threat of exposure of a stigmatized characteristic that one seeks to keep hidden out of fear of negative consequences. Past research indicates that many court-users felt they experienced sexual identity/orientation and/or gender/identity/expression bias after their status as a sexual and/or gender identity minority became evident (sometimes when they may have wished otherwise) (Brower, 2007, 2010). Similarly, research on LGBTQ persons in legal profession indicate that many may take precautions to protect against possible negative consequences or discrimination (Badgett, et al., 2009). These factors may contribute to the complexities of addressing biases related to sexual identity/orientation and gender identity/expression.

Limitations

Findings of the KBA study should be viewed in light of certain limitations. The most significant limitation is the fact that the findings are based on a non-probability sample of Kentucky Bar Association members. While all members (with valid email addresses in the KBA listserv) were invited to participate, the potential influence of self-selection is acknowledged. Despite the potential influence of self-selection, the profile of KBA Survey respondents is largely in concert with the American Bar Association's profile of practicing attorneys. Data from the 2016 annual survey of ABA members indicates that approximately 64% percent of the nation's attorneys are male and 85% identify as Caucasian/White (American Bar Association, 2018).

Survey response rates have historically been viewed as the standard for estimating accuracy of findings. Recent studies examining survey outcomes indicate that the overall quality of the sample and adequate sample size for examining relevant questions with statistical precision are more useful indicators of the value of collected data (Bartlett, et al., 2001; Groves & Peytcheva, 2008; Meterko, et al., 2015). The true response rate for the KBA survey is unknown; however, based on knowledge of the KBA requirements, it is expected that the majority of current KBA members would have valid email addresses in the system. The National Bar Association indicates that in 2018 Kentucky had 13,540 active attorneys. Given this, the approximate response rate for the study was 13.6%; however, allowing for possible email address errors, the actual rate may be slightly higher.

The response rate is likely to have been impacted by the use of a single outreach email, rather than following recommended recruitment protocols. Future efforts to better understand the views of KBA members can be enhanced by the use of Dillman's Tailored Design Method (2014), where the initial recruitment contact is followed up by subsequent emails to encourage fuller participation. For a survey of this type, a minimum of two follow-up contacts is recommended.

Bibliography

- American Bar Association. (2018). *American Bar Association's National Lawyer Population Survey*.
- American Bar Association and Minority Corporate Counsel Association (ABA & MCCA). (2018). *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*.
- Badgett, M. V. L., Sears, B., Lau, H. S., & Ho, D. (2009). Bias in the workplace: Consistent evidence of sexual orientation and gender identity discrimination 1998-2008. *Chicago-Kent Law Review*, 84(2), 559-595.
- Bartlett II, J. E., Kotrlik, J. W., & Higgins, C. C. (2001). Organizational research: Determining appropriate sample size in survey research. *Information Technology, Learning, and Performance Journal*, 19(1), 43-50.
- Becker, J. C., & Swim, J. K. (2011). Seeing the unseen: Attention to daily encounters with sexism as way to reduce sexist beliefs. *Psychology of Women Quarterly*, 35, 227–242. doi:10.1177/0361684310397509.
- Brower, T. (2002). Obstacle courts: Results of two studies on sexual orientation fairness in the California courts. *Journal of Gender, Social Policy & the Law*, 11(1), 39-65.
- Brower, T. (2007). Multistable figures: Sexual orientation visibility and its effects on the experiences of sexual minorities in the courts. *Pace Law Review*, 27, 141.
- Brower, T. (2010). Twelve angry-and sometimes alienated-men: The experiences and treatment of lesbians and gay men during jury service. *Drake Law Review*, 59, 669.
- Dillman, D. A., Smyth, J. D., & Christian, L M. (2014). *Internet, Phone, Mail, and Mixed-Mode Surveys: The Tailored Design Method*, 4th edition. Hoboken, New Jersey: John Wiley & Sons, Inc.
- Doerner, J. K. (2015). The joint effects of gender and race/ethnicity on sentencing outcomes in federal courts. *Women & Criminal Justice*, 25(5), 313-318.
- Doerner, J. K., & Demuth, S. (2014). Gender and sentencing in the federal courts: Are women treated more leniently? *Criminal Justice Policy Review*, 25(2), 242-269.
- García-López, G. (2008). “Nunca Te Toman En Cuenta [They Never Take You Into Account]” The Challenges of Inclusion and Strategies for Success of Chicana Attorneys. *Gender & Society*, 22(5), 590-612.

- Groves, R. M., & Peytcheva, E. (2008). The impact of nonresponse rates on nonresponse bias: a meta-analysis. *Public Opinion Quarterly*, 72(2), 167-189.
- Kang, J., Bennett, M., Carbado, D., & Casey, P. (2011). Implicit bias in the courtroom. *UCLA Law Review*, 59, 1124.
- Lee, C. (2015). Gender bias in the courtroom: Combating implicit bias against women trial attorneys and litigators. *Cardozo Journal of Law & Gender*, 22, 229-252.
- Meterko, M., Restuccia, J. D., Stolzmann, K., Mohr, D., Brenna, C., Glasgow, J., & Kaboli, P. (2015). Response rates, nonresponse bias, and data quality: Results from a national survey of senior healthcare leaders. *Public Opinion Quarterly*, 79(1), 130-144.
- Moyer, L. P., & Haire, S. B. (2015). Trailblazers and those that followed: Personal experiences, gender, and judicial empathy. *Law & Society Review*, 49(3), 665-689.
- National Association of Women Lawyers & the NAWL Foundation. (2009). *Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms*.
- Selmi, M. (2018). The paradox of implicit bias and a plea for a new narrative. *Arizona State Law Journal*, 50, 193.
- Starr, S. (2012). Estimating gender disparities in federal criminal cases.
- Sue, D. W. (2010). Microaggressions, marginality, and oppression: An introduction. In D. W. Sue (Ed.), *Microaggressions and marginality*. Hoboken, NJ: John Wiley & Sons, Inc.
- Sue, D. W., Bucceri, J., Lin, A. I., Nadal, K. L., & Torino, G. C. (2007). Racial microaggressions and the Asian American experience. *Cultural Diversity and Ethnic Minority Psychology*, 13, 72-81.
- Supreme Court Commission on Women in the Courts, Supreme Court of New Jersey. (2009). *Survey on Perceptions of Race and Gender in the Courts*. http://www.judiciary.state.nj.us/access/wic_report.pdf.
- Wang, H., & Chow, S.C. (2007). Sample Size Calculation for Comparing Proportions. *Wiley Encyclopedia of Clinical Trials*. Hoboken, New Jersey: John Wiley & Sons, Inc.
- Wilder, G.Z. (2007). *Women in the Legal Profession: Findings from the First Wave of the After the JD Study*. Washington, DC: National Association for Law Placement.

Appendix A

Kentucky Bar Association Survey

Part I. Professional and Educational Background

Are you a(n): Attorney Judge

Year you completed J.D degree _____ enter

Are you currently an active member of the Kentucky Bar Association? Yes/No

Areas of Practice: (Check all that apply)

Family Law Civil Law Criminal Law Government Regulatory Transaction
General practice Judiciary Other

Geographic Location of Practice

Louisville Eastern Kentucky Central Kentucky Western Kentucky
Northern Kentucky Other (Specify) _____

Race/Ethnicity

African American/Black
Caucasian/White
Hispanic or Latino/Latina
Asian or Pacific Islander
Native American/American Indian
Other (SPECIFY) _____

Sex

Male/Female

Sexual Identity

Heterosexual/Lesbian/Gay/Bisexual/Other

Gender Identity

Man/Woman/Transgender/Transsexual/Gender Queer/Other

Age (in years)

Part II. Observations within the Profession

These questions relate to observations of treatment of defendants, litigants, witnesses, or victims within a courtroom setting or within your place of employment.

1. Within a courtroom setting or your place of employment have you heard negative comments related to the following:

[YES/NO] Individual's race
[YES/NO] Individual's ethnicity
[YES/NO] Individual's sexual identity/orientation (lesbian, gay, bisexual)
[YES/NO] Individual's gender identity or gender expression (Transgender/transsexual)
[YES/NO] Individual's immigrant status
[YES/NO] Individual's sex
[YES/NO] Individual's physical disability
[YES/NO] Individual's intellectual disability

2. Do you perceive that sentences for the same offense are given to minority defendants that are:

Less severe than sentences given to non-minority defendants

About the same as sentences given to non-minority defendants

More severe than sentences given to non-minority defendants

Part IIIa. Observations and Perceptions of Bias within the Profession: Race/Ethnicity

In the past three years, have you seen or experienced unfair treatment of individuals in Kentucky courts based on their race or ethnicity? **YES NO**

For each item response options included: strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, and don't know. Indicate the extent to which you agree or disagree with each of the following statements:

Judges in Kentucky show courtesy/respect to people without regard to race or ethnicity.

Court clerks in Kentucky show courtesy/respect to people without regard to race/ethnicity.

Prosecutors in Kentucky show courtesy/respect to people without regard to race/ethnicity.

Defense attorneys in Kentucky show courtesy/respect to people without regard to race/ethnicity.

Civil court attorneys in Kentucky show courtesy/respect to people without regard to race/ethnicity.

I have heard race/ethnicity raised in court when it was not relevant to the case.

I have heard race/ethnicity raised in outside-of-court when it was not relevant to the case.

The Kentucky courts should include appropriately-qualified judges who reflect the ethnic background of the community.

The Kentucky courts should include appropriately-qualified lawyers and court personnel who reflect the ethnic background of the community.

Court clerks should be better educated about existing biases against minorities.

Persons who work in the courts need to be trained to understand the special/unique needs of minority groups.

For each of the following statements, select the response that best reflects your view of sentencing decisions. Options are: Much Lighter, Same, Much Harsher

In a case where there is a minority defendant and a white victim, will the sentence be lighter or harsher than a case where there is a white defendant?

In a case where there is a white defendant and a minority victim, will the sentence be lighter or harsher than a case where there is a white victim?

In a case where there is a minority defendant and a minority victim, will the sentence be lighter or harsher than a case where both are white?

*On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is racial/ethnic-bias in the court system today?

Part IIIb. Observations and Perceptions of Bias within the Profession: Gender

In the past three years, have you seen or experienced unfair treatment of individuals in Kentucky courts based on their gender? **YES NO**

In the past three years, have you seen or experienced biased attitudes or behaviors in professional settings *other than the courtroom* based on gender? **YES NO**

These questions relate to perceptions of treatment of female lawyers, female judges, defendants, litigants, witnesses, or victims in a case.

For each item response options included: strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, and don't know. Indicate the extent to which you agree or disagree with each of the following statements:

- a. Kentucky courts treat men and women alike.
- b. Judges in Kentucky show courtesy/respect to people without regard to gender.
- c. Court clerks in Kentucky show courtesy/respect to people without regard to gender.
- d. Prosecutors in Kentucky show courtesy/respect to people without regard to gender.
- e. Defense attorneys in Kentucky show courtesy/respect to people without regard to gender.
- f. Civil court attorneys in Kentucky show courtesy/respect to people without regard to gender.
- g. I have heard the gender of defendants, litigants, witnesses, and/or victims raised in court when it was not relevant to the case.
- h. I have heard the gender of defendants, litigants, witnesses, and/or victims raised in outside-of-court when it was not relevant to the case.
- i. I have been mistaken for a court clerk in the courtroom.
- j. I have heard negative gender-specific comments about female lawyers and/or judges in the courtroom.
- k. I have heard negative gender-specific comments about female lawyers and/or judges in the outside of court.
- l. Female lawyers in Kentucky have the same opportunities for advancement as male lawyers.
- m. Female judges in Kentucky have the same opportunities for advancement as male judges.
- n. Male and female attorneys are equally likely to be lead counsel on cases.

In the past 5 years, to what extent has there been a change in the number of incidents of gender bias?

Number has increased

Number about the Same

Number has decreased

Is it your perception that judges give sentences, based solely on gender, to female defendants that are:

Less severe than sentences given to males

About the same as sentences given to males

More severe than sentences given to males

*On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender-bias toward defendants, litigants, witnesses, or victims in the court system today?

*On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is gender-bias toward female attorneys or female lawyers in the court system today?

*Have you experienced (if you are female) or observed (if you are male or female) any of the following types of actions by male superiors, colleagues, or clients vis-à-vis female attorneys or female judges in your current job setting **in the past three years**? CHECK ALL THAT APPLY

1. Unwanted sexual teasing, jokes, remarks, or questions
2. Unwanted pressure for dates
3. Unwanted sexual looks or gestures
4. Unwanted deliberate touching, leaning over, or cornering
5. Other types of sexual harassment

IIIc. Observations and Perceptions within the Profession: Sexual Identity/Orientation and Gender Identity

In the past three years, have you seen or experienced unfair treatment of individuals in Kentucky courts based on their sexual identity/orientation? **YES NO**

In the past three years, have you seen or experienced unfair treatment of individuals in Kentucky courts based on their gender identity? **YES NO**

Note: For the following questions/statements sexual identity/orientation refers to identifying as a lesbian, gay man, or bisexual man or woman. Gender identity refers to identifying as a transgender or transsexual man or woman.

For each item response options included: strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, and don't know. Indicate the extent to which you agree or disagree with each of the following statements:

Judges in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.

Judges in Kentucky show courtesy/respect to people without regard to gender identity.

Court clerks in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.

Court clerks in Kentucky show courtesy/respect to people without regard to gender identity.

Prosecutors in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.

Prosecutors in Kentucky show courtesy/respect to people without regard to gender identity.

Defense attorneys in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.

Defense attorneys in Kentucky show courtesy/respect to people without regard to gender identity.

Civil court attorneys in Kentucky show courtesy/respect to people without regard to sexual identity/orientation.

Civil court attorneys in Kentucky show courtesy/respect to people without regard to gender identity.

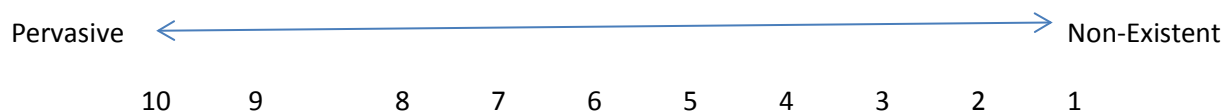
I have heard sexual identity/orientation raised in court when it was not relevant to the case.

I have heard gender identity raised in court when it was not relevant to the case.

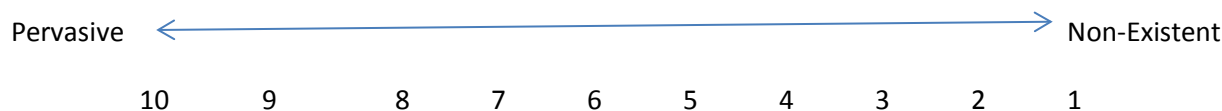
I have heard sexual identity/orientation raised in outside-of-court discussions when it was not relevant to the case.

I have heard gender identity raised in outside-of-court when it was not relevant to the case.

On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is bias based on sexual identity/sexual orientation (bias against gay men, lesbians, and bisexual persons) in the court system today?



On a scale of 1 to 10, where 10 is all pervasive and 1 is non-existent, how prevalent is bias based on gender identity/gender expression (bias against transgender persons) in the court system today?



Part IV. Education and Continuing Education

The following questions relate to professional development activities/seminars/workshops you may have attended outside your formal education.

1. In the past 5 years, have you attended a seminar or program during which issues of **gender bias** were discussed? Yes No

If so, in what way do you feel the discussion affected your behavior?

It did not impact my behavior.

It made me more aware of my own biases.

I pursued ways to reduce my gender biases.

2. In the past 5 years, have you attended a seminar or program during with issues of **racial/ethnic bias** were discussed? Yes No

If so, in what way do you feel the discussion affected your behavior?

It did not impact my behavior.

It made me more aware of my own biases.

I pursued ways to reduce my racial and ethnic biases.

3. In the past 5 years, have you attended a seminar or program during which issues of **bias based on sexual identity/sexual orientation** were discussed? Yes No

If so, in what way do you feel the discussion affected your behavior?

It did not impact my behavior.

It made me more aware of my own biases.

I pursued ways to reduce my biases related to sexual identity/sexual orientation.

4. In the past 5 years, have you attended a seminar or program during which issues of **gender identity bias** were discussed? Yes No

If so, in what way do you feel the discussion affected your behavior?

It did not impact my behavior.

It made me more aware of my own biases.

I pursued ways to reduce my biases related to gender identity.

The following items address your perception of your preparedness related to work with each of the identified populations.

On a scale of 1 to 10, where 10 indicates feeling **Fully Prepared** and 1 indicates feeling **Not at all Prepared**, how well prepared do you feel you are to meet the needs of clients who are:

Sexual minorities

Gender identity minorities

Immigrants

Persons of color

Persons with physical disabilities

Persons with intellectual disabilities

Part V. Personal Experiences with Discrimination

Do you believe you have been discriminated against as a member of the legal profession? [YES/NO]

Which of the following do you feel were the reasons for the discriminatory behavior (check all that apply)?

_____ Race

_____ Ethnicity

_____ Sexual Identity/Orientation (lesbian, gay, bisexual)

_____ Gender Identify/Gender Expression (transgender, transsexual, queer)

- ☐ Sex
☐ Country of Origin
☐ Physical disability

*These questions relate to your personal experiences encountering discrimination/bias related to **your** race, ethnicity, sexual identity/orientation, gender identity/gender expression, and/or sex.*

1. Within a courtroom setting or your place of employment I have heard/been told about negative comments due to:

<input type="checkbox"/> [YES/NO/Not Applicable]	My race
<input type="checkbox"/> [YES/NO/Not Applicable]	My ethnicity
<input type="checkbox"/> [YES/NO/Not Applicable]	My sexual identity/orientation (lesbian, gay, bisexual)
<input type="checkbox"/> [YES/NO/Not Applicable]	My gender identity/gender expression
<input type="checkbox"/> [YES/NO/Not Applicable]	My sex

2. Within a courtroom setting or your place of employment I have heard/been told about experienced discrimination due to:

<input type="checkbox"/> [YES/NO/Not Applicable]	My race
<input type="checkbox"/> [YES/NO/Not Applicable]	My ethnicity
<input type="checkbox"/> [YES/NO/Not Applicable]	My sexual identity/orientation (lesbian, gay, bisexual)
<input type="checkbox"/> [YES/NO/Not Applicable]	My gender identity/gender expression
<input type="checkbox"/> [YES/NO/Not Applicable]	My sex

Within your place of employment what actions did you take?

☐ Addressed the person making the comment immediately
☐ Addressed the person making the comment privately
☐ Reported the behavior to an appropriate person/office
☐ Ignored the comment

If you did not take action, which of the following factors contributed to that decision:

☐ Believed others would report the incident
☐ Fear of retaliation
☐ Fear of being perceived gay or lesbian
☐ Did not view the comment to be harmful
☐ Did not know what to do
☐ Ignored the comment