

# Reader's Letter

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## Mandatory Minimums Shift Power

Some say that the criminal justice system is like a pendulum, alternating between the rights of the accused and those of the state. An element that is usually missing from the current debate is the recognition that the pendulum, at present swinging towards the state, has shifted power towards prosecutors and law enforcement agencies. The forum on criminal justice in the Fall 1998 issue of *Oregon's Future*, directly and indirectly touched on several aspects of this phenomenon.

As Michael Kelly pointed out in his article, Measure 11 and related laws have dynamically altered criminal defense relationships and strategies. These changes have given power to the prosecutors in every step of the process. From the choice of which charge to file through the decision of whether and how to plea bargain, prosecutors have the upper hand. Defense attorneys are now ethically bound to consider the consequences of mandatory sentences in advising their clients. Often the accused will plead guilty to a lesser charge rather than run the risk of losing at trial and facing a mandatory sentence. Thus the defendant is deprived the opportunity to be heard at trial and perhaps to be found innocent or to be convicted of a lesser crime.

Another result of the swinging pendulum is an increased emphasis on "victims' rights." In any criminal proceeding, the accused is charged with breaking a law, which is an offense against the state, not against a particular individual. Between the acts of charging a person with a crime and convicting a person of that crime lies a process that is designed to protect equally the rights of all parties. Until the process is completed and a conviction is entered, there is no crime and, therefore, there is no victim. To identify a victim is to make a judgment, and that cannot be done until the process has been played out. The recent Christmas tree lot beating case in Washington County demonstrated the inherent danger in defining victims and criminals without sufficient information. Thus, Deschutes County's program that identifies and offers assistance to crime "victims" before trial is another example of the shift in power against criminal defendants.

Every true victim of a crime suffers an individual, personal tragedy. But perpetrating a criminal justice system that runs roughshod over alleged criminals is no less a tragedy.

**Beverly A. Deguc  
Beaverton, OR**

## D E D I C A T I O N

### Michelle Howard, 1961-1998

The forum on poverty and welfare reform in this issue was edited by Michelle Howard. Michelle joined the Editorial Board of *Oregon's Future* in the Fall of 1997. Her determination and the force of her personality inspired us all. Tragically, Michelle was murdered last October while driving a cab in Salem to make ends meet. Michelle Howard (AKA "Turtle McBride" and "Katharine L. James", two pen names she often used) was a mother, an economist, a writer, a teacher, and an "in-your-face" editor and friend. Her piece on the Oregon Lottery in this issue displays her ingenuity, her commitment to the truth and her fierce compassion for those suffering below the poverty line. We dedicate this issue of *Oregon's Future* to the memory of Michelle.



#### A sonnet In Memory of Michelle Howard

Michelle is dead.  
A chill invades my body that no fire can warm.  
This is not the time for the stillness of death.  
Noises bombard my senses.  
How can we go silently into that good night,  
The night defiled by evil?  
There should be cannons and drums to denounce injustice,  
To shake the living, and wake the dead.  
Michelle is dead.  
Give her tambourines so she can announce the things  
she has to say.  
Open our ears to hear their urgent sounds.  
Give her a pen to imprint her words on our hearts.  
Then Michelle can find peace and rest.

Cynthia Himmelfarb  
Read at Michelle's memorial service  
Salem, 11 October 1998